

IBA –Securities Law Committee

Survey on Form Requirements

January 2021

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I. Does your jurisdiction have a general form requirement for contracts?

A. Australia

In Australia, for a valid contract to come into existence, there must be an intention to create legal relations and an offer that is accepted in exchange for consideration. In transactions that do not involve any form of consideration passing from one party to the other, a deed (as opposed to an agreement) should be entered into.

Specific types of transactions may also impose additional formalities, for example, transactions involving land.

B. Austria

There is no general form requirement for contracts under Austrian law. A contract generally requires two corresponding declarations of intent, which can be made in any way, for example, in writing, orally, in electronic form or tacitly.

In Austria, numerous legal provisions require compliance with a special form for certain contracts. The most common forms are the written form and the notarial deed. In most cases, but not always, compliance with the required form is a prerequisite for validity.

An example of the written form requirement in Austrian law is the residential property contract (*Wohnungseigentumsvertrag*). Notarial deed form is required, for example, for agreements regarding the sale and transfer of shares in limited liability companies, the articles of association of a company with limited liability, and prenuptial agreements and inheritance contracts.

As a rule, legal formal requirements under Austrian law are conditions of validity, the absence of which results in the invalidity of the contract, which must be raised ex officio.

C. Belgium

In principle, there is no general formal requirement for contract creation under Belgian law. Therefore, oral agreements and contracts by electronic means are valid, although evidential issues may occur.

There is an exception for certain types of contracts, where Belgian law stipulates particular form requirements, such as writing requirements (eg, employment contracts, insurance contracts and contracts regarding consumer credits) and the requirement of notarisation by a notary public (eg, real property sales contracts and certain corporate documents).

D. Brazil

In general, Brazilian law gives prestige to the freedom of forms, except when the law expressly requires it. The parties may enter into a written contract, public or private, or verbally, except in cases in which the law, in order to provide greater legal security and solemnity to the legal business, requires the deed, public or private (Article 107 of the Civil Code). In some cases, the law even determines additional formalities, such as registration through the public records system

(Article 221 of the Civil Code). Silence may imply consent when circumstances or uses authorise it (Article 111 of the Civil Code).

The substance of the act is legal business that concludes with the clause of not being valid without a public instrument. As there is no law stating the contrary, the public deed is essential to the validity of legal transactions that aim at the constitution, transfer, modification or waiver of real estate of an amount greater than 30 times the highest minimum wage in force in the country (Article 108 of the Civil Code).

E. Canada

No, Canadian law does not have a general form requirement for contracts. There is no requirement that an agreement be in writing or be signed by the parties in order to be valid or enforceable. Parties may use written, oral or other forms to enter into a contract.

However, Canadian law, most notably the statute of frauds, requires that specific types of contracts be concluded in written form (eg, agreements that create an estate or interest in land, certain lease agreements, and guarantees). Such written form may include correspondence, a receipt or even an internal company memorandum. Courts have found that written proof of an oral agreement can be in electronic form or in an exchange of emails. Additionally, even where no written form exists, Canadian courts have held that a contract may be deemed to have been established if one party has acted in a way that is sufficient to invoke the doctrine of part performance (ie, where one party to an oral agreement partially performs their undertaking, the oral agreement may be enforced to avoid injustice to the party conferring value).

F. Mainland China

No. Chinese law does not have a general form requirement for contracts. The parties may use written, oral or other forms to enter into a contract.

Laws and regulations may require that specific types of contracts be concluded in written form (eg, financial leasing contracts, construction project contracts, construction supervision contracts, technology development contracts and technology transfer contracts), or the parties may agree so. However, even in such a case, a contract will be deemed established despite the lack of written form if one party has performed the principal obligation and the other party has accepted it.

G. Czech Republic

No, Czech civil law is based on the freedom of form principle, allowing contracts to be made regardless of form, unless the required form is stipulated in an agreement or a law. In most cases, there is no specified form for legal acts, and these may be performed either explicitly (ie, orally or in writing, whether with a simple electronic signature or a qualified form via an electronic signature, as described below), or implicitly in a way that does not leave any doubts about the will expressed by any party.

The written form is required by law mainly in cases associated with serious legal consequences or protection of the rights of third, or weaker, parties. These include contracts for creating or

transferring rights in rem to immovable property (if there is more than one actor, all actors must sign the same document), acknowledgments of debt, guarantors' statements (suretyship), residential tenancy agreements and their termination, employment contracts and their termination, and agency agreements.

If the form of a contract is restricted by statute, then the contract must be made in the form specified or in a stricter form, with the same applying to any amendments, cancellations or pre-contracts. However, if a certain (usually written) form is required only by an agreement between the parties, the content of the contract may also be changed in a non-written form, unless excluded by the agreement of the parties. The latter does not apply to a stipulation on novation or settlements, which must also be in writing if the original obligation was created in writing, or where it is made with respect to a right that has already become statute-barred.

If the form of contract stipulated by an agreement or by statute is not satisfied, then the contract will be invalid, unless the defect is subsequently remedied by the parties. Where the form of contract has been agreed between the parties, the contract can only be claimed to be invalid if no performance has been provided yet.

H. Denmark

No. In general, there are no form requirements for contracts under Danish law – a contract does not have to be in writing, registered, signed or approved in a certain manner to be valid under Danish law. Therefore, oral agreements, contracts signed with electronic signatures, email acceptance and so on are generally accepted as legally binding documents.

In theory, an oral agreement and a written contract carry the same legal status. However, producing a written contract may be of importance to avoid evidential issues that may arise. While oral agreements are considered valid, the existence and content of such agreements can be difficult to prove.

Although there are no general form requirements, certain contracts are subject to specific mandatory statutory requirements, for instance, consumer contracts. Further, certain types of contracts may be subject to certain form requirements in order for them to have legal effect, for example, to be in writing for the purpose of recording a deed or registering a company.

Examples of contracts that are subject to general form requirements include the following:

- Distance selling contracts with consumers must be in written form.
- Consumer credit contracts must include certain mandatory terms.
- Residential rental contracts must be based on certain contract forms.

Finally, it is noted that general form requirements are commonly used in relation to company documentation, as set out in the Danish Companies Act No 763 of 23 July 2019 (the 'Danish Companies Act').

I. England

No. The default position under English law is that no particular form is required for a contract to be legally binding. In common law, provided that the key contractual elements of offer, acceptance, intention to create legal relations, consideration and certainty are present, a binding contract may be created with no prescribed formality. Accordingly, a contract may be made in writing, orally, partly in writing and partly orally, or even implied from the conduct of the parties. That said, it may be difficult to prove the terms of an oral contract if disputed. Given the general lack of requirement for structural formality, a contract concluded via email, by clicking a button on a website or by electronic signature can be valid.

Statute prescribes that a limited number of transactions (eg, guarantees, share transfers and contracts for the sale of land) be contracted for in writing, sometimes in a prescribed form in order to fulfil a substantive legal condition or to be legally enforceable. An even smaller number of transactions must be carried out by deed. These include land transfers, leases, appointments of trustees and powers of attorney. Parties may elect to execute a deed for a transaction for other reasons, for example, to benefit from the longer limitation period of 12 years from the date of the accrual of the cause of action rather than six years for a simple contract. The legal personality of the executing party will further dictate which execution formalities apply.

There are various possible consequences of non-compliance with statutory form requirements. Non-compliance may render the contract void, unenforceable by one or both parties or enforceable only by court order. Alternatively, for certain transactions, non-adherence to the deed formalities may deny the transaction of certain effects that it would have had were the formal requirements to be present. For example, in the absence of a deed, the grant of a lease of more than three years may instead result in the creation of an equitable lease, or a periodic tenancy may come into effect if the tenant is living in the property and paying rent.

J. Finland

No. Contracts are not subject to a general form requirement in Finland and are binding irrespective of their form. Contracts may, for instance, be concluded in written form or orally, as well as with or without witnesses. Even though no general form requirement exists in Finland, the content of a contract concluded in a written or witnessed form may be easier to prove if a dispute arises.

There are some exceptions to the general principle of freedom of form. For example, the law prescribes that: (1) the memorandum of association (MOA) of a limited liability company shall always be in writing; (2) a testament shall be drawn up in writing with two witnesses simultaneously present; and (3) a sale of real estate shall be concluded in writing and a notary shall attest the sale in the presence of the signatories of the sale and purchase agreement.

Even where a particular form is required by law, non-compliance with the prescribed form does not necessarily lead to the invalidity of the contract. Non-compliance may, however, lead to some other detrimental consequences. For example, an oral MOA is, in principle, valid, but the company cannot be registered with the Finnish Trade Register without a written MOA.

K. France

No. The principle under French law is that the parties have freedom of contract. They are free to agree the content and form of their contract, within the limits set by law. French law also provides for a mutual consent principle, whereby a contract is legally binding whether concluded orally or in writing, unless the law requires a particular form. Therefore, it is possible to conclude some agreements verbally or by an exchange of correspondence.

In certain cases, French law requires contracts to be in writing to make them valid. Contracts that must be in writing to be valid include contracts transferring partnership interests (*actes de cession des parts sociales*) in a private limited company (*société à responsabilité limitée*) or in a general partnership (*société en nom collectif*), land transfers, articles of association (*statuts*) of a company and pledges (*nantissements*).

Even if written form is not required for legal validity, if a dispute arises as to the existence, content or performance of an agreement, a written contract may be necessary for evidentiary purposes.

A contract relating to a sum or value exceeding €1,500 must generally be proved in writing in the form of a private or notarial deed. This general rule is subject to certain exceptions, notably commercial acts involving traders may be proved by any means unless otherwise provided by law. Despite such an exception, most corporate and commercial contracts are documented in writing for probative and enforceability purposes. Accordingly, a contract will be entered into in writing either because the law requires it or because the parties have agreed to it for probative and enforceability purposes.

Written contracts typically take one of the following legal forms, which may be prescribed by law: (1) a private deed; and (2) an authentic instrument.

A private deed is a signed contract that is drawn up and agreed privately between its parties.

An authentic instrument is a legal document that has been drawn up and executed with the required formalities by a public official, who has the requisite competence and capacity to act. Most commonly, agreements entered in authentic form are drawn up by notaries who are public officers, provided that such agreements are made in France and subject to French law.

For certain types of contracts, French law requires the use of a notarial deed, or an authentic instrument in general. For corporate law matters, the use of notarial deeds is less common and most transactions may be executed by private deed. However, a notary will be required and benefit from a monopoly under French law in certain cases, for instance, if real estate assets are transferred as part of a deal.

L. Germany

No. Under German law, a contract generally requires two corresponding declarations of intent, which can be made in any way, for example, in writing, orally, in electronic form or tacitly. There is no general form requirement for contracts under German law.

However, German law provides for specific form requirements (eg, notarisation by a notary public) for some types of contracts, particularly for contracts of special importance like prenuptial agreements, contracts of inheritance, property purchase/transfer agreements or agreements regarding the sale and transfer of shares in limited liability companies.

In addition, German law further requires the written form for contracts characterised by an economic imbalance, for example, fixed-term employment contracts or fixed-term rental agreements with a term of more than one year. Failing to meet this formal requirement would, however, not result in the contract as such being invalid but, subject to certain assumptions, rather render the time limit void.

M. Hong Kong

No. Unless explicitly prescribed otherwise for certain specific types of contracts, Hong Kong law does not require a contract to be made in any particular form. A contract will be validly made, provided the essential elements of a contract are present, regardless of whether such a contract is made orally or electronically (via electronic signatures, email execution, jpeg signature (pasting the image of a 'wet-ink' signature) or digital signatures).

Under Hong Kong law, certain types of contracts must be made in writing, and some of these must be in the form of a deed. Examples include the following:

- conveyance of interest in land (and among which, legal assignment and leases exceeding three years must be in the form of a deed);
- moneylenders' contracts;
- agreements to submit differences to arbitration; and
- articles of association of companies.

In addition, certain contracts are expressly excluded from the application of the Electronic Transaction Ordinance (ETO), which is the major legislation regulating electronic signatures in Hong Kong. These contracts cannot be validly made electronically and must be prepared and executed in a paper-based manner.

N. Hungary

There is no general form requirement for contracts in the Hungarian jurisdiction. Contracts can be concluded in writing, orally or by implicit conduct. Silence or inactivity shall be deemed as a legal statement where expressly provided for by the parties.

Either statute or an agreement between the parties may impose certain formalities. There are contracts that require particular forms, typically a written form. For instance, according to the Civil Code, a penalty, forfeiture clause or agreement on the retention of title shall be set out in a written contract. In addition, agreements on succession, fiduciary asset management contracts (trust deeds), leasehold contracts and sales contracts – when the object of the contract is a real

estate property – shall be executed in writing, and in some cases, with further requirements (eg, witnesses, countersigning by an attorney or public deed).

If a legal statement is to be made in writing, it should be considered valid if at least the key points thereof are executed in writing and the person making the statement has signed the legal statement. Additionally, it should be deemed to be in writing if it was executed in a form with facilities for retrieving the information contained in the legal statement unaltered, and for identifying the person making the legal statement and the time when it was made. Stricter rules apply to the written legal statements of a person who is illiterate or incapable of writing, or who cannot read or who does not understand the language in which the document was made out.

It should be noted that, if a contract is annulled for any breach of formal requirements, it shall become valid by acceptance of performance, up to the extent performed. If the contract is to be executed by law in an authentic instrument or private deed representing conclusive evidence, or if the contract pertains to the transfer of a real estate property, performance shall have no bearing on the annulment invoked on the grounds of infringement of statutory formalities. These rules apply to any amendment to, and termination or cancellation of, the contract.

O. Indonesia

Indonesian law does not require specific form of contracts to ensure validity. Instead, an agreement is considered 'valid' and therefore binding if: (1) it has the consent of the parties; (2) the parties have capacity to enter into the agreement; (3) the agreement contains a specific 'subject'; and (4) the 'cause' of the agreement is not against the law or public policy (Article 1320 of the Indonesia Civil Code). Therefore, if: (1) the parties' intention to be bound is clearly manifested in the document or their 'commitment' is readily apparent from the language of the document; (2) the parties are not lacking in capacity for entering into a contract; (3) the subject of the agreement is clearly stated; and (4) no public policy proscription against the subject of the contract is found, it is very likely that an agreement has been formed and is binding between the parties. There is no 'consideration' needed in order to make an agreement binding against a party under Indonesian laws.

A verbal contract is also acceptable provided that the Article 1320 requirements are met; although, it is unclear whether the court will view this lack of written document adversely in assessing the party's evidence in a dispute. Note, however, there are specific regulations that require agreements be made in a notarial form or standard form, such as for certain land-related agreements.

P. Ireland

No. The validity of a contract is not subject to compliance with any particular form unless a particular form is explicitly prescribed by law. Therefore, oral agreements, 'wet ink' signatures and/or electronic signatures can all, in principle, constitute valid evidence of agreement to a contract. Note that electronic signatures do require careful analysis before their use as they are not considered appropriate for all types of contract. In addition, while it is possible to conclude oral agreements, evidential issues may arise and it is always preferable to have a contract that is in writing and signed.

In some instances, the law specifically provides for a writing requirement (eg, legal assignments of 'choses in action'), and for certain documents to be executed as 'deeds' (eg, the creation of a charge over real property). The execution of a deed requires specific legislative requirements to be met, such as, in the case of an Irish-incorporated company, the use of a company seal.

Q. Italy

According to Italian law, there is no general form requirement for contracts, but there are specific provisions requiring compliance with certain form requirements in relation to certain types of contracts. Therefore, lacking any such requirement, the parties may freely elect to enter into agreements either in oral or written form, pursuant to the general principle of freedom of form.

As regards the written form, contracts may be executed by means of a simple written agreement, not requiring any specific formality; public deeds (executed by a public notary); or private agreements with signatures authenticated before a public notary. Written agreements may entail either analogue or digital support and/or a signature. For digital documents and signatures, see question IV below.

Pursuant to section 1350, paragraph 1, of the Italian Civil Code, the written form is required for certain agreements, such as real estate transfer agreements, establishment of easement rights agreements and lease agreements for more than nine years; should such a form requirement not be fulfilled, the agreements will be null and void. The form requirement set forth by this provision of the Italian Civil Code must be complied with for the validity of the contract (*forma ad substantiam*). By contrast, other legislative provisions require contracts to be executed in written form for probative purposes only (*forma ad probationem*).

R. Malaysia

No. Under Malaysian contract law, there is no general requirement for a contract to be in writing in order for it to be valid and enforceable. A contract will generally come into existence even if the contract is not in writing, if the basic elements of the contract are fulfilled; that is, there is a valid offer and acceptance of terms that are sufficiently certain, sufficient consideration (eg, an exchange of promises) and the conduct of the parties shows that they intended the terms to be legally binding. There are a few special exceptions, such as deeds, powers of attorney, absolute assignments and bills of sale, that must be in writing.

The established commercial practice of reducing contracts into writing is, of course, an eminently sensible one, as it is usually far easier to prove the existence and terms of a written contract than a parol contract. Such commercial practice is therefore driven predominantly by evidentiary reasons rather than issues of formal validity or enforceability.

Similarly, there is no general requirement under Malaysian law for a simple contract to be signed in order for the contract to be valid and enforceable. Traditionally, of course, signatures have been commonly used as a means of signifying a party's acceptance of the terms of a contract, on the basis that they are harder to duplicate than many other means of acceptance, and therefore make it more difficult for a party to repudiate a contract on the grounds of forgery. A valid and binding contract may, however, also be readily formed without the use of signatures (eg, through an exchange of email correspondence showing that the parties agreed to terms).

Certain types of documents (eg, deeds and powers of attorney) are, however, required to be executed in a certain manner in order to be valid or effective. Again, therefore, the use of signatures in simple contracts is driven more by evidentiary concerns rather than any issue with formal validity or enforceability.

In the premises, the question of whether or not a contract is in electronic form, or whether a signature to such a contract is a 'wet-ink' signature, has no impact on the underlying formal validity or formal enforceability of the contract. The main concerns revolve around admissibility in evidence and non-repudiability; that is, being able to prove that the counterparty agreed to the terms in question.

S. Myanmar

No. The validity of a contract is *not* subject to compliance with any particular form unless a particular form is explicitly prescribed by law. In this regard, subject to any additional requirements under Myanmar law, an agreement is considered 'valid' and therefore binding if the agreement is made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void (ie, an agreement may be void where both parties are mistaken as to a matter of fact, where the consideration and objects of the contract are unlawful, where there is uncertainty in the agreement or where the agreement is by way of a wager).

Oral agreements and/or signing via electronic signatures, email acceptance, click-to-accept, digital signatures (including a form other than the 'authenticated' electronic signature) and copying/pasting an image of a 'wet-ink' signature into a legal document are all valid in Myanmar for types of contracts that do not require a special form. However, it should be noted that evidential issues may arise, as it is unclear how courts might assess the evidential value of some of these forms.

Where the law specifically provides for a writing requirement (eg, certain agreements relating to immovable and movable property in Myanmar), this form has to be observed in order for the contract to be valid.

For some types of contracts, Myanmar law provides for additional requirements to the written form. Examples include the following:

- **Employment contract:** An employment contract concluded between an employer and employee must be executed using 'wet-ink' signatures (and not electronic signatures).
- **Mortgage:** The instrument for a mortgage other than a mortgage by deposit of title deeds is required to be signed by the mortgagor, attested by at least two witnesses and registered with the Office of Registration of Deeds (ORD).
- **Gift of immovable property:** The transfer must be effected by the instrument of transfer signed by or on behalf of the donor, attested by at least two witnesses and registered with the ORD.

- Gift of movable property: The transfer may be effected either by an instrument of transfer signed by or on behalf of the donor, attested by at least two witnesses and registered with the ORD, or by delivery.

For some types of contracts, Myanmar law even provides for the requirement of notarisation by a notary public. Documents that need to be notarised need to be in the written form. For example, a translation (from a non-Myanmar language to the Myanmar language) of a deed required to be registered with the ORD must be notarised by a notary public.

T. The Netherlands

Generally, under Dutch law there are no form requirements applicable to contracts. A contract is concluded by: (1) an offer that is: (i) sufficiently precise; and (ii) shows the intention of the offeror to be bound by an such offer; and (2) acceptance of the offer. Both, the offer and acceptance, can be expressed in any form (eg, orally, via email or including a digital signature (ie, an electronic signature in a form other than an 'authenticated' electronic signature)), unless a particular form is explicitly prescribed by law. However, it could still be advisable to enter into a contract in writing from an evidential point of view, as a Dutch court will, in principle, accept the validity of a written contract (unless and until evidence to the contrary is provided).

Examples of contracts for which a written form is prescribed by law include: a lease agreement, a contract of sale of a house when the buyer is a natural person, a contractor agreement, different clauses in an employment contract and some consumer contracts that have been concluded over the phone. Dutch law prescribes a notarial deed for the execution of certain contracts. This is, for instance, the case with the transfer of registered property (eg, a house or aircraft) and the transfer of registered shares (see below).

U. Nigeria

No. Nigerian law generally does not require contracts to be in a particular form, unless there are specific statutory provisions to the contrary. However, in whatever form a contract takes, an intention to create a legal relationship backed by an offer, acceptance and consideration must be present to confer validity. Therefore, oral agreements are valid, but evidential issues may arise and courts tend to place a heavy burden of proving their validity on the person alleging the validity.

Examples of contracts that have form requirements are those for the assignment of interest in land, which must be made under seal, and those with an illiterate person as a contracting party, which must contain *a jurat* and be made before a notary public or Commissioner of Oath. Furthermore, Nigerian law requires that a contract be stamped in order for it to be admissible in evidence before Nigerian courts. Examples of contracts that must be in writing to be valid are contracts of guarantee and hire purchase agreements.

Where a contract does not comply with a statutory form requirement, it will be regarded as invalid. However, the doctrine of equity may save the contract where there is part performance by one of the parties.

V. Norway

No. The freedom of contract is a key principle in Norwegian contract law and no general form requirements apply. Both verbal and written agreements are binding. Unless prescribed by law, parties to a contract decide the form of the contract. The absence of a general form requirement for contracts means the parties can enter into an agreement through a variety of measures. An agreement does not have to be signed to be binding. Binding contractual obligations are determined based on the principle of offer and acceptance. Whether an offer has been made and accepted is subject to a case-specific assessment where several circumstances are relevant.

Even though no general form requirements apply, it is worth noting that evidential issues may arise before the courts when assessing whether a binding contract has been entered into. If the agreement has been entered into verbally, the parties may disagree on whether an agreement has been entered into and the terms of the agreement. When there is no written agreement to interpret, the court may find it difficult to determine the exact terms of an agreement. The consequence of these evidential issues is that important agreements usually are in the written form. Certain law provisions also prescribe that an agreement must be in written form, such as the Private Limited Liability Companies Act (Aksjeloven), which stipulates that material agreements between group companies must be in written form.

The Financial Agreements Act (Finansavtaleloven) also includes mandatory form requirements for consumer protection. If these provisions are disregarded, the agreement will not be binding on the consumer.

W. Poland

No. In line with the freedom of contract rule (which also includes a choice of form of legal action), contracting parties are generally allowed to execute a contract in any desired form, provided that it reflects the intent of a contracting party in a satisfactory manner. Therefore, oral agreements and/or email acceptance, click-to-accept forms, electronic signatures and copying/pasting an image of a 'wet-ink' signature into a legal document are all valid in Poland for types of contracts that do not require a special form. The latter must show the identity of a contracting party and is referred to in the Polish Civil Code as the 'documentary' form, whereas a document, pursuant to the Polish Civil Code, is an information carrier enabling the familiarisation of its content. In some cases (eg, a loan agreement exceeding PLN 1,000 (€250)), the documentary form is mandatory. However, evidential issues may arise, as it is unclear how courts may assess the evidential value of contracts executed in the documentary form.

In some cases (eg, registered pledges and consumer loans), the written form is mandatory and, if prescribed under pain of invalidity, failure to observe this requirement renders a contract invalid.

For some types of contracts, Polish law provides for the following so-called 'special' legal forms:

- written form with signatures certified by a notary (eg, required in contracts for lease or encumbrance of an enterprise, or when disposing of shares in a company);

- written form with the date certified by a notary (eg, required in contracts for pledges of rights) – in addition, the date can be certified by public authorities, but this has minor practical significance in civil law transactions; and
- notarial deed (eg, required to transfer ownership of real property, or establish a mortgage or voluntary submission to enforcement).

If one of the above special forms is prescribed by law, then failure to observe this requirement renders a contract invalid.

Electronic signatures and the selection of the form by contracting parties are described below.

X. Singapore

No. The validity of a contract is *not* subject to compliance with any particular form, unless a particular form is explicitly prescribed by law. Therefore, oral agreements and/or signing via electronic signatures, email acceptance, click-to-accept, digital signatures (including in a form other than the 'authenticated' electronic signature) and facsimile signatures are all valid in Singapore for types of contracts that do not require a special form. However, in relation to any forms of acceptance for which verification of identity may not be readily available, this may give rise to evidential issues.

Where the law specifically provides the contract to be in a written form, this form has to be observed in order for the contract to be valid. There is also currently uncertainty over whether deeds governed under Singapore law may be enforced if signed through the use of an electronic signature and it is therefore prudent to avoid the use of an electronic signature for the execution of a deed governed under Singapore law.

Y. Spain

There is no general form requirement for contracts executed in Spain. There are three essential elements of a contract: the parties' valid consent to enter into the contract; certainty as to the object; and a lawful purpose. The parties' consent or intent to enter into a contract can be expressed, under the principle of freedom of form, through any means of communication: in writing, verbally or even by appropriate signs.

Therefore, contracts signed electronically, accepted by email or with digital signatures are, in principle, valid and effective. Although freedom of form is the general rule, barring certain exceptions as indicated below, the potential need to evidence before a judge or court that the other party's consent was validly granted (or to have certainty as to the terms of the contract, eg, its date) may influence the decision as to how to formalise the agreement.

Where, in the opinion of the legislator, certain interests deserve greater protection, a specific form may be required by law (in addition to the aforementioned three elements). In general terms, the specific form used is not an *ad substantiam* element of the contract (ie, once the formalities have been complied with, the contract can be deemed valid), but is rather required *ad solemnitatem* (ie, form is an essential element of the contract, but the other elements must exist for it to be valid) or as a requirement to provide publicity to the subject matter of the con-

tract so that it may be valid *erga omnes* and not just *inter partes*. On the one hand, if the law requires a specific form *ad solemnitatem*, the parties cannot waive or agree to exclude that requirement as the contract would not have effect. On the other hand, if the parties do not comply with statutory form requirements for the contract to have effect *erga omnes*, then the contract would only have effect between the contracting parties (*inter partes*).

The most common statutory form requirement is that the contract shall be executed in writing as a public deed (normally before a notary public). For example, the incorporation of a company, its conversion into another corporate type, and a merger or spin-off must be formalised in a public deed and registered with the commercial registry (which, in some cases, is a condition for it to have effect). Transfers of shares (*participaciones*) in a Spanish public limited company (*sociedad limitada* or SL) must also be executed in a public deed.

Contracts that create, transfer, amend or extinguish in rem rights over property (immovable assets) must also be formalised in a public deed and, in some cases, must be registered with the land registry. For instance, the validity of a mortgage is subject to its registration with the land registry, which, in turn, requires execution in a public deed.

Z. Sweden

Sweden does not have a general form requirement for contracts, except where a particular form (*formkrav*) is explicitly prescribed by law. By reason thereof, digital signatures, advanced and qualified electronic signatures, acceptance by way of email, click-to-accept terms and the insertion of 'wet-ink' signature images are all valid in Sweden for contracts that do not require a particular form. Furthermore, oral agreements (albeit not common in business law) are generally valid. The usage of oral agreements may, however, give rise to evidential issues during dispute resolutions.

Several corporate documents (which will be discussed in the answers below) are subject to form requirements. Although rare, for certain contracts (eg, real estate transfers, and last will and testament), Swedish law specifically provides for a writing requirement, which also has to be observed and signed by the observer in order for the contract to be valid. Furthermore, contracts (although necessarily not subject to form requirements inherently) that are contingent upon the approval of a Swedish governmental agency, such as the Swedish Companies Registration Office (SCRO or Bolagsverket) or the Swedish Financial Supervisory Authority (Finansinspektionen) may become unenforceable should the contract (or registration/application related thereto) not be approved by the relevant authority.

There is no general requirement under Swedish law for certain contracts to be made in the form of a public deed executed before a notary public. Other notary public services (eg, *notarius publicus apostille*) is used mainly for documents that are to be submitted to parties or public offices abroad.

AA. Switzerland

No. The validity of a contract is *not* subject to compliance with any particular form unless a particular form is explicitly prescribed by law. Therefore, oral agreements and/or signing via electronic signatures, email acceptance, click-to-accept, digital signatures (including in a form other

than the 'authenticated' electronic signature) and copying/pasting an image of a wet-ink signature into a legal document are all valid in Switzerland for type of contracts that do not require a special form. However, note that evidential issues may arise, as it is unclear how courts might assess the evidential value of some of these forms.

Where the law specifically provides for a writing requirement (eg, land transfers, pledges or assignments of claims, contracts regarding consumer credits and certain contracts regarding pre-emption rights), this form has to be observed in order for the contract to be valid.

For some types of contracts, Swiss law provides for additional requirements to the written form. Examples include the following:

- in addition to the signature, at least one component of the contract must also be handwritten (eg, in certain instances, a surety needs to indicate the amount for which he/she is liable and the existence of joint and several liability, if any, in his/her own hand in the surety bond itself);
- specific content must be mentioned in the document (eg, consumer credit contracts); or
- a certain standard form needs to be used (eg, in certain instances, a landlord must give notice of termination using a form approved by the relevant Canton).

For some types of contracts, Swiss law provides for the requirement of a public deed executed before a notary public. Documents that need to be made in the form of a public deed need to be in the written form. For example, the following acts or agreements need to be in the form of a public deed before a notary public: real property sales contracts; sureties (not guarantees) issued by individuals where the liability exceeds the sum of CHF 2,000; and corporate documents of Swiss companies, such as capital increases and changes to the articles of association.

BB. United States (New York/Delaware)

While contracts in New York are not generally subject to form requirements, there are notable exceptions, including requirements under the statute of frauds and the Uniform Commercial Code (UCC), as discussed below. There may also be other exceptions as prescribed by law.

New York follows the statute of frauds, which requires that five types of contracts must be written and signed to be valid. These are contracts regarding: (1) marriage; (2) transfer of interest in real estate; (3) suretyship; (4) executors; and (5) services that cannot be performed within one year.

Under the UCC as adopted by New York (the 'NY UCC'), contracts for the sale of goods worth \$500 or more must also be in writing to be enforceable (with certain exceptions). This applies additionally to lease contracts requiring total payments of \$1,000 or more, and certain contracts that create a security interest in personal property.

CC. Vietnam

No. The validity of a contract is not subject to compliance with any particular form unless a particular form is explicitly prescribed by law (eg, if the law specifies the form of contract, such as in writing, being notarised, certified and/or registered, the contract must be made in such a corresponding form in order for it to be legally valid). Vietnamese laws provide that contracts may be made verbally, in writing or through specific acts.

Contracts concluded by way of electronic means in the form of data messages are also permitted in Vietnam and will be considered as the written form if they satisfied conditions on signing through electronic means in accordance with the law on electronic transactions.

II. Does your jurisdiction have specific form requirements in connection with the purchase, sale, issuance, transfer (eg, by way of assignment) or listing of securities?

A. Australia

In respect of the issue of securities that are not traded electronically, generally, the company must enter into a written agreement with the investor for that issue. This may be accompanied by an application for shares; however, an application for shares is only required where the issue of securities requires a disclosure document (which must accompany the application).

In respect of transfers of securities, the transferor and transferee must enter into a proper instrument of transfer. Currently, the only requirement for an instrument of transfer is that it specifies the state or territory in which the company is registered. Usually, a share sale agreement will also be entered into between the transferor and transferee.

In respect of both issues and transfers of securities, companies will be required to:

- notify the Australian Securities and Investments Commission (ASIC) (the regulator) of the issue or transfer of securities; such notification requires the lodgement of prescribed ASIC forms; and
- insert or update the security holder's details in its members' register. Certain details must be included in the members' register, including the date of allotment, number of securities, class of securities and amounts paid/unpaid on the securities.

The company's constitution and shareholders' agreement (if any) may also prescribe specific form requirements.

B. Austria

Under Austrian law, the purchase, sale, issuance, transfer or listing of securities is not subject to a uniform regulation. The formal requirements depend on the form and type of security.

Generally, a distinction can be made between bearer securities (*Inhaberpapiere*), securities payable to order (*Orderpapiere*) and registered securities (*Rekta- oder Namenspapiere*).

Bearer securities

The holder (*Inhaber*) of bearer securities does not appear on the certificate (*Urkunde*) itself but is deemed to be the person entitled to the rights attached to the securities. Bearer securities only state that the holder of the security is also the person entitled to those rights. Note that bearer shares (*Inhaberaktien*) may only be issued by companies listed on a regulated stock exchange (or are in the process of listing) within the meaning of section 2 Z 32 of the Austrian Banking Act (*Bankwesengesetz*). Those securities are transferred in accordance with Austrian property law. This is done by agreeing on the transfer as part of a certain deal (purchase, donation, pledge, etc) as a title (*titulus*) and by handing them over by hand or in any other way that is recognised by Austrian civil law as a way of perfection (*modus*).

Securities payable to order

Certified securities payable to order do not designate the beneficiary anonymously but are in the name of the first beneficiary or to his/her order. The same transfer rules as for bearer securities apply to certified securities payable to order, which are bearing a blank endorsement (*Orderpapiere mit Blankoindossament*). Generally, for the transfer of certified securities payable to order an endorsement is required. Note that registered shares (*Namensaktien*), which are also referred to as 'geborene *Orderpapiere*', may also be transferred by assignment. However, the Austrian central securities depository accepts registered shares for custody and settlement.

Registered securities

Registered securities are also securities in a specific name but cannot be transferred by endorsement. The transfer depends on the type of attested right and can generally be made informally by assignment of the right concerned.

The issuance and listing of securities are subject to multiple Austrian and European Union laws and regulations, and generally require an elaborate and relatively formal admission/approval process.

C. Belgium

Purchase and sale

No, unless the parties to the transfer have determined otherwise, the sale and purchase of securities is, in principle, completed *inter partes*, and the title to the securities is transferred from the seller to the purchaser as soon as both parties agree on the object (ie, the type and number of securities) and the price of the sale, even if the price has not yet been paid or the securities have not yet been delivered. If other elements are material for the parties (eg, conditions precedent), these should also be agreed upon in order for the title to transfer, but there is no presumption that such other elements exist. The price of the securities should be determined or 'determinable' on the basis of objective criteria, that is, without requiring any further interference from any of the parties involved.

To prove that the transfer has taken place, parties should, however, consider putting their agreement in writing, as civil cases require written proof for all agreements that have a value of over €3,500.

Furthermore, in order to make the transfer opposable to third parties (*erga omnes*), the transfer of the shares should be reflected in the target company's securities' register.

Issuance

Yes, issuances of (and amendments of the rights attached to) securities that are governed by the Belgian Code on Companies and Associations (ie, shares, profit certificates, (convertible) bonds and subscription rights) are required to be recorded in an 'authentic deed', that is, a notarial deed passed before the notary public. This obligation results from the fact that these types of securities have to be recorded in the company's articles of association, which can only be amended by way of a notarial deed.

An issuance of securities governed by the Belgian Code on Companies and Associations will only be opposable vis-à-vis third parties after it has been published in the annexes to the Belgian Official Gazette.

However, in principle, there is no *numerus clausus* on the type of securities that the two most common company forms under Belgian law (*besloten vennootschap/société à responsabilité limitée* or BV/SRL and *naamloze vennootschap/société anonyme* or NV/SA) can create or issue. Such other securities can also be issued pursuant to an agreement between the company and one or more parties, it being understood that in order to qualify as a 'security' under Belgian law, the existence of the securities should be documented in a 'title' (ie, paper carrier, booking on a securities account or recording in a register) after its issue. This results from the fact that the main characteristic of a 'security' is its transferability, which requires a (material or immaterial) title that can be transferred. Belgian law will not recognise an instrument issued without a title as a 'security', as this would mean that it is nothing more than an agreement, and its issuance and transfer are governed by common law.

In the case in which securities are issued pursuant to an agreement, the principle as explained under 'Purchase and sale' applies with respect to the securities' issuance (ie, the issuance will be completed and the securities will be issued as soon as the parties agree over the object and consideration).

Transfer

The cases in which securities are transferred other than by way of a purchase and sale are fairly limited (with the exception of contributions – see below).

As a general principle, no specific form requirements exist for the transfer of securities, unless the law or the title to the securities determine otherwise. Therefore, the transfer of securities is completed as soon as the parties reach a consensus (orally or in writing). In order for the title to pass, the securities have to be identifiable (this follows from the title, ie, registration in the securities' register, booking on a securities account, etc).

The following exceptions however apply:

- The gifting of securities needs to be registered by way of a notarial deed.
- The transfer of securities for which certificates have been issued by the company that issued such securities cannot be transferred, unless the company is not listed and the issue terms and conditions of the certificates explicitly state that the underlying securities can be transferred.
- To the extent that parties agree in writing (ie, not solely on the basis of oral consensus) to transfer profit certificates (or any other type of security that entitles its holder to profit certificates), such writing should include the nature, issuance date and conditions of the transfer.

As with the purchase and sale of securities, the transfer of securities should be effectuated by virtue of their title in order to become opposable to third parties (including the company). For securities governed by the Belgian Code on Companies and Associations, this means documenting the transfer in the company's securities' register or on the securities' account.

A special type of transfer is the contribution in kind of securities. In the case in which the contribution is made in the company's equity, it will require a notarial deed, as well as a special report by the company's auditor and board of directors. In the case in which the contribution in kind is made in exchange for new securities, it has to be approved by the company's shareholders in principle (quorum and special majority apply).

Note that, although not a 'form requirement' *sensu stricto*, the Belgian Code on Companies and Associations requires any transfer of shares in 'closed limited liability companies' ('*besloten vennootschap/société à responsabilité limitée*') to be approved by at least half of the shareholders holding at least three-quarters of the shares (after the deduction of the shares for which the transfer is proposed), unless the company's articles of association determine otherwise.

Listing

In order to list securities on the Belgian regulated markets (ie, Euronext Brussels and the market for derivative products of Euronext Brussels NV), the applicable laws have to be complied with. In most cases, this will imply publishing a prospectus and obtaining approval for admission to listing and trading of the securities from the relevant market authority (ie, Euronext Brussels NV). Although there are no 'form requirements' *sensu stricto* to list securities, Euronext Brussels does impose certain form requirements with a view to approve the admission to trading and listing of the securities, which are set forth in the Euronext Rulebook I and Euronext Rulebook II.

D. Brazil

Yes. The securities issued by publicly held companies are in book-entry form, thereby being held in fiduciary ownership (*propriedade fiduciária*) by the central depository through a custodian institution (in which the holder is enrolled).

As soon as the securities are held by the central depository, the purchase, sale, transfer or assignment may be carried out by means of a mere instruction to the brokerage firm by the holder of the securities.

Further, the issuance of securities shall be previously approved by the company's shareholders' general meeting or the board of directors, as the case may be. If the issuance of securities is carried out within the scope of a public offering, it shall also be registered before the Comissão de Valores Mobiliários (CVM) and B3, the official Stock Exchange market in Brazil.

The listing of securities requires a prior registration of the offering before the CVM and B3. In addition, if the company is not already a publicly held company, the registration of the company before the CVM is also required.

E. Canada

Canadian law does not have specific form requirements for the purchase or sale of securities.

For a transfer of securities, although there are no specific form requirements, typically a transfer form will be prepared and signed by the registered owner evidencing authorisation for the transfer. Transfers are requests to cancel securities registered in a particular name and to reissue them in a new name. Traditionally, paper certificates have been used to evidence ownership of securities, but transfers in registered ownership can also occur online through transfer agents dealing with the applicable stock exchange.

For public issuance and listing of securities, Canadian law has specific requirements on the form and execution methods of documents. Generally, in order to issue and distribute securities, an issuer must file a preliminary prospectus and a final prospectus with the securities authorities in each Canadian jurisdiction where the offering is being made. Exemptions are in place that allow issuers to issue and distribute securities without filing a prospectus in certain scenarios.

The forms and content of the prospectus are specifically set out in securities legislation and must be signed by key individuals, such as directors, officers and underwriters. Scans of original signatures and electronic signatures are permitted for documents filed electronically on the System for Electronic Document Analysis and Retrieval (SEDAR).

In order to be listed on a Canadian stock exchange, issuers must complete and submit a listing application to the applicable exchange. Each of these exchanges has its own listing rules or manuals, which may specifically prescribe what documents must be provided and how they should be executed. The use of electronic signature is generally permitted.

F. Mainland China

Chinese law does not have general form requirements for the purchase or sale of securities. However, with respect to the transfer of shares of a listed company by agreement, a written agreement shall be executed and an original hard copy shall be submitted according to the requirements of the stock exchange.

For public issuance of securities, Chinese law has specific requirements on the form and execution methods of documents.

For example, in the case of public issuance of corporate bonds, the principal underwriter's review opinion shall be signed by the legal representative, the person in charge of the bond underwriting business, the person in charge of the internal review, the project head and other members of the principal underwriter. In addition, in the case of public issuance of stocks, the company shall attach to the prospectus several statements signed by all directors, supervisors, senior executives, controlling shareholders, actual controllers, the handling lawyer and the person in charge of the law firm, the certified accountant for auditing and the person in charge of the auditing accounting firm, the certified valuer for asset evaluation and the person in charge of the asset evaluation firm, and the certified accountant for capital verification and the person in charge of the capital verification firm. All these signatures shall be the 'wet-ink' autographs of the signatory.

The written documents should be prepared in hard copies when applying for the issuance of securities. Although companies applying for the initial public offering of stocks and listing on the innovation board or the ChiNext can submit electronic documents through the issuance and listing examination business system of the Shanghai Stock Exchange or the Shenzhen Stock Exchange, they are required to keep hard copies.

G. Czech Republic

Act No 89/2012 Coll, the Civil Code, as amended, lays down specific requirements and conditions for each form of security, which must be met in order to transfer the ownership of a security. There are three forms of security:

Bearer/au porteur security (cenný papír na doručitele)

This security does not contain the name of the authorised person (here, the authorised person is the holder of the security). The right of ownership in bearer securities is transferred by a transfer contract, concluded in any form, upon their handover. Therefore, the transferee of a security does not become its owner by concluding a contract but only by receiving it. In the case of bearer securities, it is not possible to limit their transferability.

Security to order (cenný papír na řad)

This security contains the name of the authorised person (either textually on the document or following from a continuous series of endorsements). The right of ownership in securities to order is transferred by an endorsement and a contract on the transfer of securities upon their handover. Such a contract may be concluded in any form, including in implied form (as confirmed by the Supreme Court of the Czech Republic). The endorsement must be unconditional and must be written on a security or on a sheet associated with it (pendant). The endorsement must be signed by the person transferring the security by endorsement. However, the person to whom the security is transferred (blank endorsement) does not have to be stated on the endorsement. The endorsement may also be made by the mere signature of the endorser, but in order to be valid in this case, it must be written on the back of the security or on a security pendant.

Their transferability cannot be ruled out but may be limited (eg, transfers of registered shares may be subject to the consent of a company body; the contract to transfer such shares will not become effective until this consent is granted).

Registered security/security au nom (cenný papír na jméno)

This security contains the name of the first authorised person. The right of ownership in *au nom* securities is transferred by the contract itself upon its effective date. Even though such a contract may be concluded in any form, it is highly recommended to conclude such contracts in writing, as the transferee of the security is not registered on the instrument and must therefore prove his/her ownership through the contract.

H. Denmark

Sale and purchase

Generally, no form requirements exist for the purchase and sale of securities, unless the parties have agreed otherwise. The sale and purchase is, in principle, completed *inter partes*, and the title to the securities is transferred from the seller to the purchaser as soon as both parties agree on the object and price of the sale. However, it should be noted that a security transaction may be subject to specific requirements.

To prove that the transfer has taken place, the parties should, however, consider putting their agreement in writing. Furthermore, the transfer of the securities should be reflected in the company's securities' register.

Issuance

Issuances of shares that are governed by the Danish Act on Capital Markets No 1767 of 27 November 2020 are required to be recorded in the company's articles of association and in the company's share register.

In the case in which securities are issued pursuant to an agreement, the principle as explained in regards to 'sale and purchase' applies with respect to the issuance of securities (ie, the issuance will be completed and the securities will be issued as soon as the parties agree on the object, price, etc).

Transfer

In general, no specific form requirements exist for the transfer of securities, unless the law or the title to the securities determines otherwise. Therefore, the transfer of securities is completed as soon as the parties reach a consensus (orally or in writing).

However, the following exceptions apply:

- Transfer of certificated securities cannot be transferred, unless the company is not listed, and the terms and conditions of the certificates explicitly state that the underlying securities are transferable.

- To the extent the parties agree in *writing* to transfer profit certificates (or any other type of securities that entitle its holder to profit certificates), such a written agreement should specify the nature, issuance date and conditions of the transfer.

Listing

The listing of securities on Nasdaq Copenhagen A/S ('Nasdaq Copenhagen') requires compliance with the applicable laws, including the Danish Executive Order on the Conditions for Official Listing and the rules set out in Nasdaq Copenhagen's Main Market Rulebook. Further, the listing of securities is subject to EU laws and regulations, and generally requires an elaborate and relatively formal admission/approval process. This may imply publishing a prospectus and obtaining approval for admission to listing and trading of the securities from the relevant market authority (ie, Nasdaq Copenhagen).

I. England

This response focuses on equity securities or shares rather than any debt security. There is no legal requirement for a contract for the sale and purchase of shares to have a particular form or be made in writing, although it is common practice for the buyer and seller to decide to use a written share purchase agreement, especially in a commercial context. Only for very low-value and low-risk transactions will the delivery to the buyer of a duly executed stock transfer form and the payment of the purchase price to the seller, as a minimum, be appropriate.

The Companies Act 2006 prohibits the registration of a transfer of certified shares unless a proper written instrument of transfer has been delivered to the company. However, there are certain limited exceptions to this general rule. For example, listed companies whose shares are admitted to the electronic settlement system 'CREST', where a shareholder holds shares in uncertified form, can effect share transfers electronically, and there is no requirement for this to be done in writing. A stock transfer form is the usual form of transfer for fully paid certified shares, although the articles of association of the company may permit an alternative form. Subject to an exemption applying or the consideration being £1,000 or less, stamp duty will be payable on the transfer. Legal title to the transfer will occur once the transferee is registered in the company's register of members as the owner of the shares. As a precondition to the registration, a company will often require that a share certificate relating to the transferred shares (and other evidence acceptable to the directors) be delivered to it along with the stock transfer form.

The allotment of securities also has certain form requirements. First, the necessary resolutions must have been passed affording the company authority to allot securities, or there must be an equivalent provision in the company's articles of association. For public companies with a premium listing, additional requisite written documentation in connection with the issuance may include a circular, prospectus, announcements and notification to the Financial Conduct Authority, unless the size of the issue is small enough to be covered by existing authority obtained from shareholders at an annual general meeting. Under the Companies Act 2006, a company must issue a share certificate within two months of an allotment. Again, there are exceptions to this requirement, for example, where the allotment is in respect of uncertified shares held in CREST. Post-allotment filing requirements will also apply. The Registrar of Companies must receive a copy of: the necessary resolution of authority to allot; a return of the allotment accompanied by a statement of capital on Form SH01 (for limited companies); where applicable, a valuation

report for any non-cash consideration; and notice of a new entry in or change to the register of persons with significant control.

The documentation to be submitted in connection with the listing of securities is set out in the Listing Rules. Listing Rule 3.3.2R details the requirement for: an application for admission of securities to the Official List; a prospectus; any circular; and written confirmation of the number of shares to be allotted.

J. Finland

There are no specific form requirements for the purchase, sale or transfer of securities, unless stipulated by the parties. However, with respect to shares, the acquirer of a share is not able to exercise shareholder rights in the company before the acquirer has been entered into the shareholder register or before the acquirer has declared the acquisition to the company and produced reliable evidence of the transfer.

Where the shares of a Finnish limited liability company have not been incorporated into the book-entry system, the board of directors of the company may issue share certificates for the shares. Where share certificates have been issued, the transfer of ownership can be demonstrated by transferring the share certificate to the acquirer or with a separate document, for example, minutes of a compulsory auction.

Purchase, sale or other transfers of shares incorporated into the book-entry system, but not admitted to trading on a regulated market or multilateral trading facility (MTF), requires that a document evidencing the transfer between parties is presented to an account operator of the book-entry system (which is maintained by Euroclear Finland). Purchasing, selling or transferring shares incorporated into the book-entry system and admitted to trading, such as shares listed on the official list of Helsinki Stock Exchange, is typically executed by a broker.

The issuance of shares in a Finnish limited liability company is subject to relatively strict form requirements, which shall be complied with in order for a share issue to be valid. The general meeting of shareholders shall make a written decision on share issues, which is subject to specific content requirements set out in the Finnish Limited Liability Companies Act (the 'Finnish Companies Act'). These requirements depend on whether the shares are issued against payment or without payment and whether the shares are issued to all shareholders according to their pre-emptive rights or in a direct share issue in deviation of such pre-emptive rights. The general meeting of shareholders may also authorise the board of directors to decide on a share issue. The authorisation for the board of directors shall be in writing and include the amount or the maximum amount of shares to be issued, broken down by share class. A share issue authorisation shall be registered with the Finnish Trade Register without undue delay, and in any event no later than one month after the decision of the general meeting of shareholders.

The subscription for a share in a share issue shall be verifiable. The subscription shall indicate the subscriber, the share issue decision on which the subscription is based and the shares subscribed for. If share certificates have been issued for the shares, the requirements for the content of a share certificate must also be fulfilled.

In general, listing securities on a regulated market or MTF and offering securities to the public requires publishing a written prospectus. However, if the company is listed on an MTF, the aggregate consideration for securities offered does not exceed the threshold prescribed by law and a written company description is kept available during the offer period, there is no obligation to publish a prospectus.

K. France

Unless otherwise provided for by the parties, the agreement with respect to the purchase or sale of securities is not subject to specific form requirements. In principle, securities are transmitted by account-to-account movement or by a modification of the inscription in distributed ledger technology (DLT or *Dispositif d'enregistrement électronique partagé*), such as blockchain.

The procedure to be followed depends on whether or not the securities are transferred on a regulated market or an MTF.

The transfer of securities on a regulated market (eg, Euronext Paris) or an MTF is subject to the operating rules fixed, after French Financial Markets Regulator's (Autorité des marchés financiers (AMF)) approval, by the market operator (in France, Euronext) that operates that market.

Otherwise, the transfer of securities is carried out by means of a movement order (*Ordre de mouvement*) signed by the seller or by his or her qualified representative, and containing an indication of the number and nature of the securities transferred. The company shall record the transaction in the securities movement register (*Registre des mouvements de titres*) and transfer the securities from the seller's account to the buyer's account.

Regarding the listing of securities, the relevant listing rules may require the written form for certain documents.

L. Germany

Under German law, the purchase, sale, issuance, transfer or listing of securities is not subject to a uniform regulation. The formal requirements rather depend on the form and type of security. Generally, a distinction can be made between bearer securities, order papers and registered securities.

Bearer papers, including bearer shares, are securities for which the respective holder can assert the attested right. They do not contain the name of the beneficiary. Bearer papers are negotiable and can be transferred without specific formal requirements.

Order papers, in turn, are securities issued naming a specific payee. The transfer of an order paper requires endorsement, that is, a legally required written transfer note on the order paper. Order papers are only negotiable under certain conditions.

Registered shares are generally transferred by endorsement. The registration of the new shareholder in the share register is not necessary for a valid transfer. However, the registration is necessary for the new shareholder to have shareholders' rights.

Rektapapiere are also securities in a specific name, but cannot be transferred by endorsement. The transfer depends on the type of attested right and can generally be made informally by assignment of the right concerned. There are, however, individual exceptions where, for example, the underlying assignment requires the written form. This is the case with an accessory mortgage, for example, if it is granted by means of a mortgage deed.

M. Hong Kong

There are no specific form requirements for the transaction documentation for the purchase and sale of securities in Hong Kong.

However, the issuance and transfer of certain securities is subject to specific form requirements. To effect a valid transfer of shares in a Hong Kong company, the law requires the transferor and transferee to execute an instrument of transfer and deliver the same to the company for registration. The transferor and transferee are also required to execute contract notes with respect to the transfer and submit them for stamping within the prescribed time limit after execution.

For the listing of securities on the Hong Kong Stock Exchange, a prospectus in compliance with the requirements set out in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (the 'Companies Winding Up Ordinance') is required if the offer is made to the public. The prospectus requirement could be dispensed with if the offer falls within any of the safe harbour exemptions provided under the Companies Winding Up Ordinance, such as offers to professional investors and offers in connection with underwriting agreements, takeovers, mergers and share repurchases made in compliance with the relevant codes. While the exempted offers do not need to comply with the said prospectus requirement, many of them are required to include a warning statement prominently in their offering document.

N. Hungary

In Hungary, we differentiate between printed securities on the one hand and dematerialised securities on the other hand. Printed securities may be individual issues or securities issued as part of a series, in the form of bearer securities or registered securities. The latter feature is of high importance regarding the transfer and the legal effects of formalities relating to securities.

The essential purpose of securities is to mobilise the rights attached to them. The rules of purchase, sale and transfer are in accordance with this objective. For the transfer of bearer securities – securities that do not indicate the holder's name, or which indicate the holder's name, but the securities are of a type that contains instructions to render them payable on demand to the bearer – whether or not the actual holder is the registered holder, only the transfer of possession under a contract for transfer is needed. In the case of registered securities – printed securities that indicate the holder's name and do not contain instructions for the obligor to render them payable on demand to the bearer – the transfer of possession under a contract for transfer with express or blank endorsement is needed. As regards express endorsement, the bearer specifies the name of the transferee, while in case of blank endorsement, the holder's signature on the back of the security or on the attachment is enough.

The type of act that can be issued depends on the type of security (eg, share, bond, promissory note, bill of exchange and investment note), but generally, this has to be put in writing, and in

the case of a public offering, a prospectus may need to be approved by the financial supervisory authority.

O. Indonesia

In general, no specific forms are required in respect of the purchase and sale of securities in Indonesia. However, in the context of non-listed shares, the purchase and sale of shares must be made through a deed (notarial or privately drawn-up deed). In connection with the issuance of securities, form requirements may arise depending on the type of securities (eg, the issuance of shares has to be made in the form of a notarial deed and be approved/reported to the Ministry of Law and Human Rights).

Depending on its form, the transfer of securities may be subject to separate requirements, as follows:

1. Directly held certificated securities in 'bearer' form: This 'bearer' form is not common in Indonesia and is rarely come across in practice these days. The bearer securities are transferred by handover.
2. Uncertificated (registered) securities: Under Indonesian law, the assignment/transfer of registered securities requires two separate events or agreements (although it is possible for these two separate events/agreements to be incorporated into a single document), namely:
 - (i) the underlying agreement for the transfer (*Obligatoire Overeenkomst* or obligatory agreement) as governed under Article 584 of the Indonesia Civil Code; and
 - (ii) the agreement delivering/transferring the title/right of ownership of the securities (in rem, or *Zakelijke Overeenkomst* or property agreement) implementing the obligatory agreement, as governed under Article 613 of the Indonesia Civil Code.

Although there is no specific format for the obligatory agreement, the Article 613 requirement is fulfilled via a written deed delivering/transferring the title/right of ownership of the receivables ('levering') (or is commonly called the Cessie Deed – which can be in the form of either a notarial or privately executed deed). This Cessie Deed contains specific language formalities.

With respect to the listing of securities in the Indonesian Stock Exchange, the relevant listing rules may require the written form for certain documents, including the prospectus.

P. Ireland

Yes. Depending on the nature of the securities and the parties involved, different considerations arise. For example:

Equity securities

- The transfer of shares in an Irish company requires the execution of a 'proper instrument of transfer' by the transferor in favour of the transferee. An instrument of transfer executed by a natural person should be executed under hand; and an instrument of transfer executed by a body corporate should be executed under seal (though there is an argument that a body corporate may also execute under hand). Public limited companies can also have dematerialised shares (see the response to the next question for details).
- The issuance and listing of shares in an Irish company would need to follow any prescribed requirements of the company's constitutional documents, the relevant contractual documentation and the rules/procedures of the exchange where the shares are to be listed.

Debt securities

- For an assignment of a 'chose in action' (eg, a receivable) to constitute a legal (as opposed to equitable) assignment, it must meet prescribed criteria in the Supreme Court of Judicature (Ireland) Act 1877, including a requirement for the assignment to be in writing, and for express written notice to be given to the debtor.
- For issuance and listing, an Irish company would need to follow any prescribed requirements of the company's constitutional documents, the relevant contractual documentation and the rules/procedures of the exchange where the securities are to be listed. Public debt securities are typically held in bearer or registered form and usually as a global security. The global security is signed by the issuer on closing, authenticated by the issuer's agent and delivered to a common depository or common safekeeper for safekeeping on behalf of the clearing system. In certain limited circumstances, a noteholder may ask for a definitive note to be issued to it with respect to the notes held by it.
- While not specifically relevant to the formal validity of transactions in relation to securities, it is worth noting that different types of securities may give rise to different content and notification requirements. For example, the Central Bank of Ireland has published a notice that provides the issuers of 'commercial paper' (being paper or other securities that could constitute 'banking business' but have an original maturity of less than one year) with an exemption from the obligation to hold a banking licence in Ireland, provided the criteria in the notice are met.

Q. Italy

Listed securities cannot be represented by paper certificates and, thus, they are issued and circulate in accordance with the rules better clarified under question III below; also, non-listed companies may issue dematerialised shares that are subject to the different rules described below.

With reference to the listing of securities, section 4 of the Issuers Regulation No 11971/1999 (as subsequently updated) adopted by Commissione Nazionale per le Società e la Borsa (Consob)

(ie, the Italian authority supervising financial markets) requires issuers to submit applications for the public offering of securities, including the prospectus and all the requested information, in electronic format. In particular, the official correspondence to be sent to Consob can be transmitted, via certified email addresses, or by ordinary email. Correspondence received by email assumes formal relevance for Consob if the file transmitted is signed with a qualified electronic signature or digital signature, through the use of a qualified certificate issued by one of the accredited certifiers, or according to Legislative Decree 7 March 2005, No 82 (so-called 'Digital Administration Code').

Agreements for the provision of investment services must be in written form, including documents signed with digital or qualified electronic signature according to section 23 of Legislative Decree 58/1998 (ie, the Italian Consolidated Act on Finance (Testo Unico della Finanza or TUF)) and to section 37 of Regulation No 16190/2007 (as amended by resolutions Nos 20307/2018 and 21466/2020) adopted by Consob. In this respect, it has to be underlined that, pursuant to the emergency regulation adopted with the Law Decree of 19 May 2020, until the Covid-19 state of emergency is revoked (currently up to 31 January 2021), investment agreements may be accepted by clients via ordinary email, provided that, inter alia, a copy of the identity card of the client is attached.

R. Malaysia

No, an agreement in respect of the purchase or sale of securities is not subject to specific form requirements.

Depending on the specific type of securities, the transfer of securities may be subject to form requirements. As an example, in relation to the transfer of shares in private companies incorporated under the Malaysian Companies Act 2016 (the 'Malaysian Companies Act'), an instrument of transfer in a specified form is required to be lodged with the company under section 105 of the Malaysian Companies Act. In practice, 'wet-ink' signatures are required by the company for the instrument of transfer.

In relation to the listing of securities, different form requirements may be applicable depending on the trading venue (eg, the Main Market of Bursa Malaysia), the type of applicant in relation to the listing (eg, an applicant that is a closed-end fund and a management company of a real estate investment trust (REIT), as well as a REIT, a special purpose acquisition company) and the type of securities. For example, Rule 3.02 of the Main Market Listing Requirements (MMLR) issued by Bursa Malaysia Securities Berhad requires an applicant to submit its listing application through a principal adviser in the manner set out in Practice Note 21 (Listing Procedures for Initial Admission). An applicant is required to submit to Bursa Malaysia Securities Berhad, among other things, the application in a specified form together with certain supporting documents.

S. Myanmar

Unless stipulated by the parties, the agreement with respect to the purchase, sale, issuance or transfer of securities is not subject to specific form requirements.

For the listing of securities on the Yangon Stock Exchange, the relevant listing rules of the respective trading venue may require the written form for certain documents, for example, the listing application, listing agreement or the written oath from the issuer. Further, the prospectus for public offerings is to adhere to a specific format as prescribed under Instruction 5/2016 issued by the Securities and Exchange Commission of Myanmar on the 'Use of Prospectus Format for Public Offering'.

T. The Netherlands

The purchase and sale of securities is, in principle, not subject to specific form requirements and is generally based on an oral or written contract. However, non-listed registered shares in a Dutch company¹ must be transferred by means of a notarial deed of transfer executed before a Dutch civil law notary. Once the deed of transfer is executed, the transfer becomes valid and binding on the transferor and transferee. For the transferee to exercise any rights regarding the shares against the company, such a company must acknowledge the transfer, unless the company itself was a party to the deed of transfer. A notarial deed is also required for the issuance of non-listed registered shares in a Dutch company. The title for the execution of such notarial deed is a resolution of the general meeting of shareholders of the company or its management board (with the approval of the company's supervisory board) who has been authorised by the general meeting to issue shares up to a certain maximum for a period of (usually) 18 months.

The listing of securities must comply with the listing requirements of the trading venue where the securities are to be listed. In the case of a listing on Euronext Amsterdam, for instance, a written application form, including certain information and documents, must be submitted. Assuming listing takes place on a regulated market in the EEA, the prospectus requirements provided for in Prospectus Regulation ((EU) 1129/2017) must also be taken into account. The settlement of transactions of securities listed on the regulated market of Euronext Amsterdam, in principle, takes place through the book-entry system of Euroclear Nederland. Transfer takes place by moving the securities from the securities account of the transferor to the securities account of the transferee, without a notarial deed of transfer being required.

U. Norway

No specific form requirements exist in connection with the purchase or sale of securities, unless such specific requirements are stipulated by the parties. It is also worth noting that Norwegian law does not distinguish between the sale and purchase of securities and the assignment of securities.

In order to validly issue shares, warrants, convertible bonds and other securities that may be converted to equity, companies need to comply with specific requirements in the Private Limited Liability Companies Act (Aksjeloven) for private companies and the Public Limited Liability Companies Act (Allmennaksjeloven) for public companies. No specific form requirements exist

¹ Bearer shares are not discussed as most shares are registered shares in the Netherlands and bearer shares (with the exception of listed bearer shares included in a book-entry deposit) are expected to be abolished in the near future.

for debt securities that are not convertible to equity. Debt securities do, however, need to be registered in a central securities depository.

There are specific requirements for the listing of securities in Norway, and such requirements are set out in the rules of the relevant marketplace. Separate rules apply to the listing of equity securities and debt securities.

V. Nigeria

All securities must be registered with the Securities Exchange Commission, the Nigerian securities market regulator, under terms and conditions contained in the Investment and Securities Act (ISA) and cannot be issued, transferred, sold or offered for subscription without such registration.

For the issuance of securities, the issuer of the securities shall file, with the Securities Exchange Commission, a registration statement that shall be signed by each issuer, its chief executive officer, its principal financial officer and every person named as a member of the board of directors or persons performing similar functions.

The purchase, sale or transfer securities on the Nigerian Stock Exchange (NSE) are undertaken electronically. An investor must select a stockbroker and open an account with the Central Securities Clearing System Plc (CSCS), the licensed central securities depository for all securities transacted in the Nigerian capital market. The purchase, sale and transfer of securities are undertaken upon instruction to stockbrokers by the holders of the securities,

The Companies and Allied Matters Act 2020 (the 'CAMA') provides that the transfer of shares of a company is to be by an instrument of transfer (including electronic instruments of transfer) to be executed by or on behalf of the transferor or transferee of the shares, and the transferor is deemed to be the holder of the shares until the name of the transferee is entered in the register of members of the company.

The NSE has qualifications for the listing of securities on the stock exchange, which are provided in the Rulebook of the NSE which contains requirements for new listings and subsequent listings of securities.

W. Poland

Provisions on the required form for actions to alienate securities rest on two primary criteria: (1) type of securities; and (2) form in which they exist, that is, dematerialised or documentary.

Below, is a discussion of requirements that apply to the three types of securities that are most commonly used on the market: shares, bonds and investment certificates in closed-end investment funds. The note does not include bills of exchange (*weksel*).

Shares

Shares of Polish non-listed joint-stock companies or limited joint-stock partnerships issued prior to 1 March 2021 exist in the form of a document. Requirements on the transfer of documentary shares depend on whether they are registered or bearer shares, and are as follows:

- registered shares: written statement in simple written form submitted either on a share document itself or in a separate document (eg, agreement) and transfer of possession of a share document (as the handover of a share document or contractual transfer of possession); and
- bearer shares: transfer (handover) of a share document.

As of 1 March 2021, all shares issued by Polish joint-stock companies or limited joint-stock partnerships are to be dematerialised. In order to transfer ownership of shares in dematerialised form, it will be required to maintain the simple written form and make an entry in the register of shareholders kept for the company by a selected investment firm.

Shares in listed companies are dematerialised and are recorded in the deposit of securities operated by the National Depository for Securities (Krajowy Depozyt Papierów Wartościowych). For transactions concluded outside the trading venue, such as the Warsaw Stock Exchange, it will suffice to proceed in simple written form and make an entry in the securities account maintained for the purchaser of securities by a custodian being a member of the National Depository for Securities.

Bonds and investment certificates

As of 1 July 2019, bonds and investment certificates issued by closed-investment funds shall also be in dematerialised form. In order to dispose of bonds and investment certificates in dematerialised form, it is required to keep the simple written form of an agreement and make an entry in the securities account maintained for the purchaser of securities by a custodian being a member of the National Depository for Securities.

Other rules may apply to bonds issued before this date. If bonds or investment certificates exist in the form of a document, the procedure will be similar as that for shares in the form of a document. However, if securities have a form of entry in the register of such securities kept by an authorised financial institution, a contract in simple written form and entry in the register will be required.

Listing

For a listing of securities on a Polish trading venue, relevant listing rules of a respective trading venue may require the written form for certain documents, for example, a listing application or so-called issuer's declaration. The listing application shall be delivered to the Management Board of the Stock Exchange in ordinary written form using a special template. An application for approval of a prospectus can be submitted to the Polish Financial Supervision Authority (Komisja Nadzoru Finansowego) in paper or electronic form.

X. Singapore

Unless otherwise stipulated by the parties, the agreement with respect to the purchase or sale of securities is not subject to specific form requirements. However, the form of transfer at completion of the purchase or sale will be determined based on the nature of the securities transferred. For effecting transfers of unlisted securities of a private company, the form of transfer is typically in the form specified under the constitution of the company or as approved by the board. For effecting transfers of securities listed on the Singapore Exchange, the form is stipulated by the Singapore Exchange if the transfer is made between direct accounts held with the Central Depository (which is the custodian and clearing house of the scripless securities for the Singapore Exchange). For a transfer between securities accounts with intermediaries, this will be determined by way of the forms of instructions to the intermediaries and other forms prescribed by the intermediaries. Such forms typically allow for electronic signatures.

For the listing of securities on the Singapore Exchange, the listed entity is required to submit, in the prescribed form, an application for the listing of such securities together with supporting documentation. The form requires a signature by the issuer, and the Singapore Exchange has accepted electronic signatures.

Y. Spain

A contract regulating the sale and purchase of securities does not generally have to take a specific form. However, in the case of the transfer of securities that are represented by nominative certificates (*títulos nominativos*), these certificates must be endorsed by the seller to the acquirer. The transfer of shares must also be registered in the company's shareholder register. If the shares are to be transferred through an assignment of credits (which should be the case if the certificates representing them have not been printed and delivered), a notarial deed is also required.

The most common types of limited liability companies in Spain are the *sociedad anónima* (SA or public limited company) and the *sociedad limitada* (SL or limited liability company). The share capital of both is divided into shares (*acciones* in the case of the SA and *participaciones* in case of the SL). The Spanish Companies Law states that the shares in an SL are not securities (*valores*) and, therefore, cannot be represented by means of certificates (*títulos*) or book entries, or be listed on a stock exchange. Thus, the transfer of SL shares must be formalised in a public deed.

The issuance of equity or equity-linked securities (eg, convertible notes) by Spanish companies requires the execution of a public deed, which must be filed at the commercial registry.

A public deed is also required to issue debt securities, unless: (1) the securities are to be admitted to trading on a Spanish regulated market (eg, AIAF) or are subject to a public offering for which a prospectus approved and registered by the Spanish National Securities Exchange Commission (Comisión Nacional del Mercado de Valores or CNMV) is needed; or (2) the securities are to be admitted to trading on a Spanish MTF (eg, MARF). If formalisation in a public deed is required, the deed must be filed at the commercial registry.

Furthermore, the formation of a syndicate of noteholders and the appointment of a commissioner in connection with a debt securities issuance is mandatory when the following requirements are met (cumulatively): (1) the securities are to be offered publicly (ie, the issuance qualifies as a public offering); (2) the terms and conditions of the issuance are governed by Spanish law or by the law of a non-EU Member State or a non-Organisation for Economic Co-operation and Development (OECD) member country; and (3) the issuance takes place in Spain or the securities are admitted to trading on a Spanish regulated market or MTF.

The listing of securities on a Spanish regulated market, such as Spanish Stock Exchanges or the AIAF fixed-income market, or on an alternative multilateral facility, such as BME Growth or the alternative fixed-income market (MARF), is subject to compliance with certain requirements and formalities, including the preparation of a prospectus or information document on the company and the securities being listed, as set forth in Regulation (EU) 2017/1129 of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and in the BME Growth and MARF regulations. These documents must be executed by a duly empowered attorney of the issuer.

Finally, the transfer and purchase of listed securities, which shall necessarily be represented by book entries, is not subject to compliance with any specific form, but it requires the corresponding instruction to the entity (eg, a financial institution, typically a bank) where the securities are deposited and registration of the transaction, once settled, in the relevant book-entries registry.

Z. Sweden

The purchase, sale or transfer of shares in a Swedish limited liability company (*aktiebolag*) is a transaction between the seller and the buyer, and does not require the involvement of the SCRO or any other Swedish authority. Hence, no form requirements apply for the actual purchase or sale other than documentation supporting the buyer's right to be entered in the shareholder register of the company (which is presented to the board of directors), such as a signed share purchase agreement, deed of gift or similar. The purchase, sale or transfer of shares in a Swedish listed public limited liability company (*börsnoterat publikt aktiebolag*), not performed on a marketplace through a bank, nominee, over-the-counter (OTC) or otherwise, will also require an issuer agent, registered with the central security depository (CSD) in Sweden, Euroclear Sweden, to handle the settlement of shares between the parties (usually engaged by one of the parties).

Similar provisions (subject to some variation) apply for other equity instruments issued by Swedish limited liability companies. For other securities, including debt instruments, several provisions and market practices apply. In addition, there are other provisions that may be triggered by the issuer or a party such as, inter alia, prospectus requirements, Market Abuse Regulation (MAR)-reporting and major shareholding notifications.

The issuance of shares in a Swedish limited liability company requires a resolution from the general meeting or the board of directors (following prior authorisation or subsequent approval from the general meeting), including relevant statements from the board of directors, as well as evidence of payment (bank certificate or a report from a certified public accountant in the original). Share issues are registered with the SCRO by providing the necessary documentation in accordance with the above, together with a signed form in the original (executed in wet ink by

the chief executive officer or a board member, preferably in blue ink). The issuance of shares in a Swedish listed public limited liability company will also require an issuer agent, usually engaged by the issuer, to handle settlement of the shares to the subscribers.

When a Swedish private limited liability company plans to list its shares on a regulated market or a MTF, several form requirements apply in relation to the SCRO, Euroclear Sweden and the relevant marketplace (eg, the regulated market Nasdaq Stockholm or the MTF Nasdaq First North Growth Market). The process of listing shares, that is, indirectly listing the issuer, is subject to an approval process from the relevant marketplace which, depending on the marketplace, encompasses various forms requiring execution and documentation being provided. Prior to the application and the admission to trading on a marketplace, the general meeting would first have to resolve to change the company category to a Swedish public limited liability company (*publikt aktiebolag*) and alter the articles of association to align the clauses therein with statutory laws and other relevant guidance which would, inter alia, encompass changes to the limits of the share capital and the introduction of a record clause. These resolutions by the general meeting need to be registered with the SCRO to enter into effect (in a similar manner as described above for share issues).

Once the record clause has been introduced, the company must register its shares with Euroclear Sweden which, besides from a customary know-your-customer (KYC) process, also requires the preparation of documents for Euroclear Sweden to manage the shareholder register, including a signed version of the shareholder register and a report regarding the share certificates in the original, signed by at least half the board members. Once the issuer and its shares are listed on the marketplace, the process of admitting additional shares to the marketplace is less complex, and electronic applications can often be used by the issuer or its advisers.

AA. Switzerland

Unless stipulated by the parties, the agreement with respect to the purchase or sale of securities is not subject to specific form requirements.

Depending on their form and type, however, the issuance and transfer of securities is subject to form requirements. Notably, the transfer of certificated instruments to order (*Ordrepapier, titres à ordre* and *titoli all'ordine*) requires endorsement and that of certificated registered securities requires a written declaration; endorsements and assignments in blank are permissible to facilitate the transfer after issuance. Additionally, while the issuance of securities in uncertificated form (uncertificated securities) is not subject to writing requirements and can be, and typically is, done in mere electronic form (see below), the transfer requires a written assignment. As soon as securities qualify as intermediated securities, they are transferred by means of an instruction by the account holder (without statutory form requirements) and the credit of the relevant intermediated securities to the acquirer's securities account held with a custodian.

For the listing of securities on a Swiss trading venue, the relevant listing rules of the respective trading venue may require the written form for certain documents, for example, the listing application or the so-called issuer's declaration (which also contains an arbitration clause). The prospectus for public offerings and/or admission to trading on a trading venue in Switzerland, however, since 1 January 2020 is governed by the Financial Services Act and, in contrast to the regulations in the former listing rules, no longer requires a signature by the issuer.

BB. US (New York/Delaware)

Yes. The NY UCC contemplates two ways that a person may acquire a security or an interest in a security – by delivery and by acquiring a security entitlement – and provides form requirements for both methods.

When a security is acquired by delivery (ie, a direct holding system), the form of delivery of a security differs depending on whether the security is certificated or uncertificated. In the case of a certificated security, delivery to a purchaser occurs when any of the following conditions are met: (1) the purchaser of the security acquires possession of the security certificate; (2) another person, other than a securities intermediary (eg, a bank or a broker that holds securities in an account for the owner of the security), either acquires or acknowledges possession of the security certificate on behalf of the purchaser; or (3) a securities intermediary acting on behalf of the purchaser acquires possession of the registered security certificate that is: (1) registered in the name of the purchaser; (2) payable to the order of the purchaser; or (3) specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank.

In the case of an uncertificated security, delivery to a purchaser occurs when either: (1) the issuer registers the purchaser as the registered owner of the security, upon original issue or registration of transfer; or (2) another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or acknowledges that it holds for the purchaser.

When a security is acquired by acquiring a security entitlement through a securities intermediary (ie, an indirect holding system), a person acquires a security entitlement if a securities intermediary: (1) indicates by book entry that a financial asset has been credited to the person's securities account; (2) receives a financial asset from the person or acquires a financial asset for the person, and accepts it for credit to the person's securities account; or (3) becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account. The securities intermediary itself does not have to hold the financial asset in order for a person to become entitled to a security if any of the above conditions are met.

For corporations, New York Business Corporation Law (BCL) provides several statutory requirements for share certificates, including that share certificates must be signed by two officers of the corporation and that the signatures may be facsimiles if certain conditions are met. Additionally, each share certificate must state upon its face: (1) the fact that the corporation is formed under the laws of New York; (2) the name of the person or persons to whom the certificate is issued; and (3) the number and class of shares, and the designation of the series (if any) which such certificate represents.

Further, if a corporation is authorised to issue shares of more than one class, each share certificate issued by the corporation must either set forth a full statement of the designation, relative rights, preferences, and limitations of the shares of each class authorised to be issued, or state that the corporation will furnish the above information to any shareholder upon request and without charge.

The board of directors of a corporation may provide by resolution that the corporation's shares be uncertificated shares. The corporation must send a written notice to the registered owners of the shares specifying information that would otherwise be stated on the share certificate. Except as otherwise expressly provided by law, the rights and obligations of holders of uncertificated shares are identical with those of holders of certificates representing shares of the same class and series.

CC. Vietnam

No, there is no specific form requirements explicitly required in connection with the purchase, sale, issuance, transfer (eg, by way of assignment) or listing of securities. However, for those transactions in respect of transfer and issuance of securities which are required to be registered with or notified to competent authorities, regulations require that such documents to be submitted for such registration or notification are required to be in written form and competent authorities, in practice, request the documents to be executed in wet ink only.

III. Does your jurisdiction allow the issuance or conversion of securities in 'dematerialised' form? How are 'dematerialised securities' created and transferred?

A. Australia

Listed securities may be issued and transferred either on-market or off-market. Securities that are approved under the rules of an approved clearing and settlement facility (eg, CHESS, which is operated by the Australian Stock Exchange) may be transferred electronically (unless the transfer involves an off-market transfer to or from a subregister that is not an approved clearing and settlement facility). Both on-market and off-market transfers of securities that are not approved under the rules of an approved clearing and settlement facility must be transferred via paper.

CHESS is an online clearing and settlement facility that authorises participants to settle trades made by themselves or on behalf of their clients. CHESS will facilitate the transfer of title of the securities and the consideration payable and register title of the securities on its sub-register. CHESS security holders are allocated a Holder Identification Number that identifies them as the holder of the securities.

B. Austria

Currently, Austrian law does not allow dematerialised securities. Therefore, the mechanism of security deposit business is very commonly used. This represents the safekeeping, administration and acquisition of securities for others. The securities are deposited as global certificates, which are physically kept by central securities depositories. The securities are transferred without physically moving the actual, materialised securities.

However, the Austrian legislator is currently planning a complete transformation from securities to value rights created in the digital registers and transferable by book entries. For this purpose, the Austrian Federal Ministry of Finance has set up a sub-group of the FinTech Advisory Board

to deal with the issue of the 'dematerialisation of securities'. A relevant legal framework as currently proposed in Germany is still missing in Austria.

C. Belgium

Under Belgian law, dematerialised securities are securities that do not have a palpable or physical title. In case of securities governed by the Belgian Code on Companies and Associations, the title of the securities should generally be recorded by virtue of a booking on a securities account with a CSD or a recognised account holder. All other securities are considered dematerialised, provided their title does not have a palpable/physical form. Under Belgian law, all securities can be issued in or – in a later stage – converted to dematerialised form.

In order to dematerialise securities, a company has to put in place a contract with the CSD (in Belgium: Euroclear). In the company's relevant securities' register, the amount of securities the company or its shareholder(s) wish(es) to dematerialise are debited from the shareholder's name and credited under the name of the CSD. In turn, the CSD will create a securities account in the name of the company which will first reflect the nominative shares. The company subsequently has to file a Demat005 request form and provide it to the CSD in order to dematerialise the amount of nominative shares it wishes to dematerialise (this is registered as such on the company's account balance). The company can then choose to have Euroclear: (1) deliver the dematerialised shares directly to the security holder's securities account; or (2) deliver the dematerialised shares to a registered account holder, retained by the company (mostly financial institutions in the framework of larger capital markets transaction), who in turn delivers the securities to the relevant securities holder's account.

Transfers of dematerialised securities that are listed on a regulated market are registered through the book-entry facilities of the registered account holders where the transferor transfer-ee holds its securities account, and subsequently settled by the CSD. For transfers of dematerialised shares that are not listed on a regulated market, the registered account holders can settle the transaction without the CSD having to interfere, as these securities do not need to be registered with CSD. Belgian law does not impose any form requirements on transfers of dematerialised securities (be it listed on regulated markets or not).

D. Brazil

Yes, the securities issued by publicly held companies are generally in book-entry form. Thus, the securities are held in fiduciary ownership by the central depository through a custodian institution (in which the holder is enrolled). Upon sale of such securities in the stock exchange, the transaction is performed by a brokerage firm (acting on holders' behalf) and are settled via B3's clearing house (*Câmara de Ações e Renda Fixa Privada*).

In that sense, a security is created and registered with a custodian institution and, in a second moment, the fiduciary ownership is transferred to the central depository, which in turn registers transfers of its ownership. The goal of the transfer of the fiduciary ownership of the security to the central depository is to ensure that such security exists and is able to be traded.

E. Canada

Yes, Canada allows the issuance or conversion of securities in 'dematerialised' form, subject to certain limitations in cases of previously issued certificated securities. The Canadian Depository for Securities, Limited (CDS), a clearing agency in Canada, is continuing their work towards the elimination of the delivery of physical certificates in connection with the settlement of new issues through CDS. Since 1 September 2017, CDS no longer accepts physical certificates for new security issuances, subject to certain exceptions.

A transfer agent acts as a liaison between an issuer and its investors and helps to process issuances, cancellations, and transfers of securities. Transfer agents operate a security registration method called the Direct Registration System (DRS), which provides registered shareholders with the option of holding their securities on the books and records of the transfer agent in book-entry form instead of physical stock certificates. DRS allows securities to be transferred between a broker dealer and the transfer agent electronically. Securities held in a brokerage account may be registered in the name of the broker or the name of the investor.

F. Mainland China

Securities in 'dematerialised' form are recognised in China.

Investors may, through a securities company (a 'member' of the Stock Exchange), apply to open a securities account and a cash account at the securities registration and clearing institution and conclude a broker-client entrustment agreement on securities transactions with the securities company. The investors could instruct the securities company in writing or by self-service methods such as telephone, self-service terminal, or internet to buy or sell securities on their behalf. Accordingly, the securities companies shall send buy or sell orders to the trading system of the Stock Exchange through their relevant order routing systems, participant business units, and submission channels. And the transactions shall be executed in accordance with the rules of the Stock Exchange. Meanwhile, the relevant transactions would be cleared and settled at the securities registration and clearing institution.

G. Czech Republic

Securities in dematerialised form (book-entry securities) are regulated by Act No 89/2012 Coll, the Civil Code, as amended (Sections 525 to 544).

According to the current concept, it is a dematerialised security if the security is replaced by a registration in a corresponding register (register kept by the Central Securities Depository and the follow-up records maintained by the so-called Central Securities Depository participants, in particular securities trading participants) and may not be transferred in a manner other than by changing the record in the register (such an entry has a constitutive effect). Therefore, according to Czech legal theory, dematerialised securities are not securities in the sense of Section 514 of the Czech Civil Code, but rather are 'merely' entries in the register. The owner of a dematerialised security is presumed to be the person on whose owner's account the security is registered.

Under Czech law, securities may be converted into dematerialised (book-entry) form under the procedure set out in Section 529 et seq of the Civil Code. This procedure can be divided into two phases: The first phase begins with the issuer's decision to convert securities to dematerialised securities (where the issuer is a legal entity, its legal regulation or internal organisation will govern which body will decide on the conversion, without undue delay after the decision, the issuer shall publish the decision in the commercial bulletin in a manner that allows remote access (ie, on the company's website), in both cases including the time limit within which the owner of the securities must deliver the securities to the issuer. The second phase consists in replacing securities with dematerialised securities at the request of the issuer (an agreement made with the Central Securities Depository Prague will be required). The dematerialised security will then be issued when registered in the relevant account in the central securities register kept by the Central Securities Depository Prague. On the other hand, dematerialised securities may also be converted into material securities. The procedure is also set out in the Civil Code.

Sections 2413 and 2414 of the Civil Code, also regulate immobilised securities. Whereas book-entry securities are issued in dematerialised form without any instrument and exist only as entries in the relevant records, immobilised securities are securities that are placed in a collective deposit by their issuer. In that case, the immobilised securities are issued on the date on which the issuer hands over the instrument to the depository for the benefit of its owner as the initial acquirer. The owner of the deposited securities will then only have the right to claim the securities to be surrendered to him under the conditions set out in the emission terms.

H. Denmark

Under Danish law, all securities can be issued in, or at a later stage be converted to, dematerialised form.

In order to dematerialise securities, a company has to put in place a contract with the Danish Central Securities Depository (CSD), VP Securities A/S. Pursuant to such agreement, the amount of securities the company or its shareholder(s) wish(es) to dematerialise is debited from the shareholder's name and credited under the name of the CSD in the company's relevant securities' register.

In turn, the CSD will create a securities account in the name of the company, which will reflect the nominative shares. The company subsequently has to file a request form and provide it to the CSD in order to dematerialise the relevant amount of nominative shares (this is registered as such on the company's account balance). The company can then choose to have the CSD: (1) deliver the dematerialised shares directly to the security holder's securities account; or (2) deliver the dematerialised shares to a registered account holder (mostly financial institutions in the framework of larger capital markets transaction), retained by the company, who in turn delivers the securities to the relevant security holder's account.

Transfers of dematerialised securities, which are listed on a regulated market are registered through the book-entry facilities of the registered account holders where the transferor and transferee, respectively, holds its securities account and are subsequently settled by the CSD. For transfers of dematerialised shares not listed on a regulated market, the registered account

holders can settle the transaction without the CSD having to interfere, as these securities do not have to be registered with the CSD.

I. England

Yes. The concept of dematerialisation is made possible via CREST, which is an electronic settlement system which allows the holding and transfer of securities in electronic form, as opposed to in the form of a physical share certificate. To be held and traded in CREST, the securities themselves must be admitted to the CREST system and the holders who wish to hold or trade their securities in this way must be a CREST member. CREST can settle legal title to securities in real time and a change in the CREST record represents a change in the legal ownership of the securities. CREST also coordinates payment for the shares acquired through it. In the context of equity capital markets transactions such as primary and secondary issues, new shares can be issued directly to CREST members through the CREST system.

The Uncertified Securities Regulations 2001 (SI 2001/3755), which revoked earlier comparable regulations, provide the legislative framework for allowing title to securities to be evidenced and transferred by means of a computer-based system. Also of note is the Central Securities Depositories Regulation (090/2014) ('CSDR'), which is due to enter into force in February 2021, creating measures which will mark a significant shift away from shares being held in certified form. Article 3(1) of the CSDR sets out the requirement for all transferable securities admitted to trading or trading on trading venues to be dematerialised by 1 January 2023 for transferable securities issued after that date, and from 1 January 2025 for all transferable securities. The Uncertified Securities (Amendment and EU Exit) Regulations 2019 were published last year to reflect the implementation of the CSDR and to ensure that the UK retains an operative regulatory framework for uncertified securities at the end of the Brexit transition period.

There are certain requirements for shares to be held in uncertified form and transferred in a relevant electronic system. The company's articles of association must be consistent with the shares of the relevant class being held and transferred as such. Alternatively, the directors of the company must have resolved that it is permissible for title to the shares of a class issued by it to be transferred by means of the relevant system.

J. Finland

Yes. Securities may be issued in 'dematerialised' form or converted into 'dematerialised' form in the book-entry system operated by Euroclear Finland.

Shares may be incorporated into the book-entry system by the general meeting of shareholders resolving to include a provision in the company's articles of associations regarding the incorporation. A registration period, during which the shares must be incorporated to the system, shall also be decided. The company shall send a notification letter to the shareholders and provide the shareholders with instructions on the transfer of shares into the book-entry system. When the decision of the general meeting of shareholders has been registered with the Finnish Trade Register and the registration period has commenced, a shareholder can request an Issuer Agent to register the shares into the book-entry system.

In order to issue any book-entry securities, the issuer shall first apply for an issuance permission by way of application to Euroclear Finland, including all required details.

K. France

Securities issued under French law are in dematerialised form.

Under French Law, securities are in the form of bearer securities (*titres au porteur*) or registered securities (*titres nominatifs*), except when the registered form is required by law or by the articles of association. In this respect, when the securities account is maintained by the issuer or when the securities are registered by the issuer in DLT, such as blockchain, securities shall be in registered form. When the securities account is maintained by an authorised financial intermediary, the securities shall be in bearer form.

Transfer modalities are detailed in the previous question.

L. Germany

No. As of today, German law does not know dematerialised securities. Therefore, the mechanism of security deposit business is very commonly used. This represents the safekeeping, administration and acquisition of securities for others. The securities are deposited as global certificates, which are physically kept by central securities depositories. The securities are transferred without physically moving the actual, materialised securities.

However, the German legislator is currently planning to introduce electronic securities, which is in a first step limited to electronic bonds.

According to a draft published in August 2020, the electronic bond is conceived as an additional option to issue a security. Paper certificates will not be abolished and securities can still be issued in paper. The draft includes the possibility to convert paperbound securities into electronic securities. The draft further provides for specific legal provisions for the transfer of electronic securities. In essence, however, the rules will be largely equivalent to the rules of the transfer of materialised securities.

M. Hong Kong

Currently, Hong Kong law still requires the use of paper documents to evidence and transfer legal title to certain securities, including in particular shares. Because of this limitation, as well as other practical business and operational considerations, most investors in Hong Kong listed securities hold and transfer their securities through the Central Clearing and Settlement System (CCASS) where the securities are 'immobilised' and held under the name of a single nominee (ie, HKSCC Nominees Limited). CCASS and HKSCC are owned and operated by the Stock Exchange of Hong Kong Limited (HKEx). Investors typically transfer their securities through their brokers via the CCASS electronic system. However, this also means that investors only hold and transfer the beneficial interest in the securities, and not legal title to them. In other words, the securities are not held in the name of the investor concerned.

Being only beneficial owners, investors holding securities through CCASS have no direct relationship with the issuer. In the context of shares, this also means they are not conferred shareholder rights under the law. They must instead rely on the registered legal owner (ie, HKSCC Nominees Limited), and any intermediating entities in between, to exercise these rights on their behalf (such as any voting rights), and to pass on any entitlements (such as dividends and bonuses) to them.

Nevertheless, in April 2020, the Securities and Futures Commission (SFC), HKEx and the Federation of Share Registrars Limited (FSR) of Hong Kong jointly issued consultation conclusions on proposed implementation of a revised operational model for implementing an uncertificated securities market (USM) in Hong Kong, which would: (1) provide investors the option to hold their securities in their own names in uncertificated form; (2) incorporate an electronic linkage between the HKEx system and share registrars' systems to enable efficient and cost-effective transfers into and out of the HKEx system; and (3) improve efficiencies in management, clearing and settlement of securities. SFC will work with the Hong Kong Government on the amendments of the primary legislation to support the USM regime, and revise the various subsidiary legislation and SFC codes and guidelines needed to support the USM regime. In addition, SFC, HKEx and FSR will further develop the model and the regulatory framework to support it with a view to implementing the USM regime from 2022. HKEx has clarified that the paper-based regime will need to be preserved for shares in companies incorporated in jurisdictions whose laws either restrict or prohibit the holding and transfer of shares without paper documents. Also, the USM initiative will cover only Hong Kong listed securities. Shares in private companies in Hong Kong will therefore not be covered.

N. Hungary

Securities can be issued in dematerialised form and printed securities can be converted into dematerialised securities by their issuer. To do so, the issuer has an obligation to notify the holders of the printed securities within 30 days of the date the decision was made. In this notification, the place of the surrender, as well as the date of commencement and length of the conversion procedure have to be specified.

Also, there is a possibility for the contrary, but only in the case of the shares of private limited companies, where the issuer is able to convert the dematerialised securities into printed ones.

Dematerialised securities are a set of data created, recorded, registered and transmitted in securities accounts held with banks/investment enterprises, finally connected with the central securities depository, KELER Központi Értéktár Zrt. According to the Act CXX of 2001 on the Capital Market, the issuer has to attach a single written document with each security, with content laid down by the Act. It is important to note, that this written document is not treated as printed securities. The issuer shall deposit the written document in the central depository. At the same time, the issuer shall order the central depository to produce the security to which it pertains.

Upon the opening of the holder's entitlement to receive the security, the issuer shall inform the central depository, and the latter shall open the central securities account based on the aforementioned written document and notification of the issuer. Based on the issuer's instructions, the central depository credits the securities to the client omnibus accounts at each of the ac-

count manager institutions (banks/investment enterprises), which in turn show the securities in the individual accounts of the specific investors having an account with them.

Dematerialised securities may be securities issued as part of a series, in the form of registered securities. For their transfer, transfer of possession under a contract for transfer, the charging of the transferor's securities account and the crediting of the dematerialised securities to the new holder's securities account are required.

O. Indonesia

Indonesia recognises the issuance or conversion of uncertificated securities (as discussed in point (2) of our response to question II above). The relevant registrar, for example, in the context of listed shares, would be Biro Administrasi Efek (BAE).

The scripless shares are created upon request from the shareholders. The procedure is generally as follows:

- the dematerialisation process is initiated by the relevant shareholders by filling out the appropriate form with BAE;
- BAE will request prior approval from the listed company's management with respect to the shares dematerialisation (and ensuring that these shares are not encumbered for example);
- BAE will register the dematerialised shares into the 'book of uncertificated securities', including the relevant information (number, denomination/nominal value, holders).

The transfer of such uncertificated securities is handled via book entry in the C-BEST system and requires a written transfer order via broker.

P. Ireland

As noted above, save for shares in public companies (and for transfers effected by operation of law) the transfer of a share in an Irish company requires the execution of a proper instrument of transfer by the transferor in favour of the transferee. An instrument of transfer executed by a natural person should be executed under hand; an instrument of transfer executed by a body corporate should be executed under seal (though there is an argument that a body corporate may also execute under hand).

In the case of an Irish public limited company, the Companies Act, 1990 (Uncertificated Securities) Regulations, 1996 (the '1996 Regulations') provide that title to shares may be evidenced and transferred without a written instrument, provided this is done in accordance with the 1996 Regulations. The 1996 Regulations go on to provide that any '... rule of law requiring the execution under hand or seal of a document in writing for the transfer of property, shall not apply (if they would otherwise do so) to any transfer of title to uncertificated units of a security through a relevant system'.

CREST is the 'relevant system' through which dematerialised shares can be transferred. In order for a company to participate in CREST it must satisfy a number of requirements, including

having articles of association that are consistent with holding of shares in uncertificated form, the transfer of title to shares by means of the relevant system, and the requirements of the 1996 Regulations. Alternatively, participation can also be permitted through a process involving a resolution of the board of directors on notice to the shareholders (though this process is not common). The company must also adhere to the rules of CREST itself.

Q. Italy

Pursuant to section 83-bis TUF: 'Securities regulated by Italian law admitted to trading or traded in an Italian or other European Union trading venue with the consent of the issuer can only exist in scriptural form'. Thus, securities are no longer incorporated in paper certificates, but are represented by entries in the accounts of a bank or other authorised financial intermediary (central securities management company).

In particular, according to section 18 of the Regulation jointly adopted by Banca d'Italia (ie, the Italian Central Bank) and Consob on 22 February 2008 (the 'Regulation'), for the dematerialisation of newly issued financial instruments, the issuer shall notify to the central securities management company the expected total amount of the issue, the date set for the placement and the related regulation. At the end of the placement phase, the issuer shall communicate the information envisaged for the opening of the account and the intermediaries to whom the financial instruments issued should be credited.

In Italy, Monte Titoli S.p.A. performs the functions of central depository of dematerialised and non-dematerialised securities and manages the liquidation and settlement services of securities transactions, under the supervision of the Bank of Italy and Consob. Almost all centralised securities are managed in dematerialised form; (non-listed) securities still represented in paper form are grouped in large denomination certificates (global certificates or maxi certificates).

As to the sale and purchase of securities, section 83-quater of the TUF states that: 'The transfer of financial instruments [...] as well as the exercise of the related property rights may only be carried out through intermediaries. The central depositories open, in the name and on request of each of the intermediaries, accounts intended to record the movements of the financial instruments arranged through them'.

R. Malaysia

This is allowed in the case of shares in Malaysian companies which are not listed on the Exchange. The Malaysian Companies Act provides that a company is not required to issue a share certificate unless applied for by the shareholder or otherwise provided by its constitution. Where no share certificate is issued, record of ownership continues to be based on the Register of Members, and for a transfer of the shares, the share certificate is not required to accompany the instrument of transfer.

In relation to securities listed on the Exchange, legal ownership is evidenced by jumbo certificates issued in the name of Bursa Malaysia Depository Sdn. Bhd. (the 'Depository') or its nominee, which are deposited with the Depository. Securities are held on behalf of investors by intermediaries who are participants of the Depository (known as authorised depository members or authorised depository agents) who are typically commercial banks and brokers acting as

custodians. In addition to the settlement process pursuant to trades in shares, a depositor may request an authorised depository agent with whom his securities account is maintained to transfer securities to another account provided that the request is made in accordance with the rules and directions of the Depository (Rule 9.01 of the Rules of the Depository). Transfer of ownership of the securities would be effected by way of entries in the electronic book-entry system operated by the Depository. In 2019, Bursa Malaysia Berhad issued a Consultation Paper (No 1/2019) to seek public feedback on proposed amendments to the Rules of the Depository and the listing requirements for the Main Market and the ACE Market to facilitate 'dematerialisation' of securities listed on the Main Market and the ACE Market. This would involve removal of the requirement for jumbo certificates for the Depository. Since the close of the consultation period, however, there does not appear to have been any further developments in relation to the implementation of the proposals.

Similarly, Malaysian government debt securities and sukuk, as well as corporate debt securities and sukuk are traded in scripless form. Securities transfers are conducted electronically through the Real-Time Electronic Transfer of Funds and Securities System (RENTAS), which is operated by Payments Network Malaysia Sdn. Bhd. (PayNet), the largest shareholder in which is Bank Negara Malaysia (BNM), the Central Bank of Malaysia, with eleven of Malaysia's financial institutions as co shareholders. The securities traded on RENTAS are scripless securities, with the relevant physical certificates (ie, global certificates) in relation to those securities being immobilised with PayNet. The issuer of the securities is required to deliver the global certificate relating to the securities to PayNet, which acts as agent of BNM. For scripless securities transacted on PayNet, PayNet maintains an electronic book-entry system to record holdings of securities and transactions carried out by participants. Proof of ownership of the securities held by the participants is based on entries in such an electronic book-entry system. Transfer of ownership of the securities would be effected by way of entries in the electronic book-entry system.

S. Myanmar

Myanmar law recognises the issuance or conversion of securities in 'dematerialised' form by companies listed on the Yangon Stock Exchange (YSX). As long as the respective entry in the (non-public) 'Transfer Account Book' of the YSX contains the relevant information (name of shareholder, national registration number of shareholder, address of shareholder and the number of shares of the respective issuer), they are validly issued. The transfer of such uncertificated securities need not be in writing but are subject to the specific internal requirement of the respective securities companies that assists with such transfer.

Notification No 1/2015 issued by the Securities and Exchange Commission of Myanmar on 7 August 2015 (the 'Notification') provides that 'Book-Entry Securities' (ie, dematerialised securities) are created when an existing shareholder of scrip shares (ie, physical share certificates) presents the physical share certificate to the 'Book-Entry Transfer Institution' (ie, the Yangon Stock Exchange) or the 'Account Management Institution' (ie, a securities company authorised to conduct transfers of 'Book-Entry Securities') for verification on the initial listing application of the relevant company on the YSX and upon such verification, such shareholders' physical share certificate shall become void pursuant to the Notification and the shareholders' entitlement to such shares shall be evidenced by the entry of their name and the corresponding number of shares held by such shareholder, in the Transfer Account Book of the YSX which is held and maintained by the Book-Entry Transfer Institution and Account Management Institution.

A transfer of Book-Entry Securities becomes effective when the record of an increase in quantity pertaining to such transfer is made in the account of the transferee in the Transfer Account Book of the YSX and the corresponding decrease in the account of the transferor in the Transfer Account Book of the YSX, pursuant to an application submitted to the securities companies to effect a transfer of shares between the transferor and transferee.

T. The Netherlands

Yes, the Dutch Securities Giro Transfer Act (*Wet giraal effectenverkeer*) allows for the issuance and conversion of securities in dematerialised securities (ie, securities that are only administered in a securities account held with an intermediary). All securities listed on the regulated market of Euronext Amsterdam (but also other securities) must be held through the book-entry system of Euroclear Nederland, which is the organisation designated under the Dutch Securities Giro Transfer Act for the settlement of transactions in dematerialised securities.

Dematerialised securities are created by either issuing new securities or transferring existing securities to an intermediary (ie, the Euroclear Agent) by means of deed of issue respectively a deed of transfer. The Euroclear Agent will subsequently request Euroclear Nederland to include the securities in or to transfer the securities to its book-entry deposit and credit the securities accounts of the investors. This is done pursuant to a master deed entered into between the company, the Euroclear Agent and Euroclear Nederland. All (future) transfers in, deliveries to (and withdrawals from) the book-entry system of Euroclear Nederland are also governed by this master deed.

U. Norway

Securities in Norway are issued in dematerialised form and there is no physical certificate that evidences the existence of the securities or the holder of the securities. Shares in private companies are either registered in a shareholder register maintained by the company itself or registered in the central securities depository. Shares in a public company and debt securities issued by private and public companies are registered in the central securities depository. The registered holder of securities will generally be eligible to exercise voting rights with respect to the securities.

V. Nigeria

Securities in 'dematerialised' form are recognised in Nigeria. Nigeria allows for the conversion and issuance of securities in dematerialised form through the CSCS.

Investors in the Nigerian stock market can acquire securities directly from the primary market when there are new offerings by issuers or by trading in existing listed securities via the secondary market platform of the NSE.

To purchase securities in the primary or secondary market, an investor must appoint a securities dealer/stockbroker who is a registered dealing member of the NSE to facilitate account opening and trading. To open trading accounts, investors will need to submit, to their dealers, documents that meet the regulatory KYC requirements.

Investors who wish to trade on the NSE can opt to hold securities domiciled with CSCS directly under their appointed dealer/stockbroker or through a licensed domestic custodian as appointed by them. If an investor wishes to trade through a dealer, the investor sends a mandate to the dealer/stockbroker to execute, the broker sends the investor's orders through trading interface to the NSE Central Order Book and CSCS settles the trades into the investor's account with the dealer/stockbroker.

W. Poland

All securities that are to be publicly offered or admitted to trade in organised trading in Poland (regulated market or mutual trading facility) must be dematerialised and be registered in a central securities depository. The central register of securities is maintained by the National Depository for Securities. To register (ie, dematerialise) securities, an issuer must file an application to the National Depository for Securities in ordinary written form.

For information about transfer of dematerialised securities, see the reply to the previous question.

X. Singapore

Currently, all Singapore incorporated companies are required to issue share certificates, within the prescribed period, to the relevant shareholder after an issuance or transfer of shares. Such share certificates are prima facie evidence of ownership of the shares. In addition, registration in the electronic register of members of the Singapore company is also prima facie evidence of ownership of the shares.

For scripless shares trading on the Singapore Exchange, the share certificate relating to the shares would typically be deposited with the Central Depository. The Central Depository then maintains its own ledger of depositors and the number of shares held by each depositor who holds an account with the Central Depository.

The Accounting and Corporate Regulatory Authority of Singapore issued a consultation paper in July 2020, seeking feedback on discontinuing the requirement for share certificates in relation to a Singapore incorporated company.

Y. Spain

Spanish companies can issue securities in dematerialised form or represented by means of book entries (as opposed to securities represented by certificates). In fact, as a general rule, the admission of securities to trading is subject to them being represented by book entries.

Upon the incorporation of a company or deciding to issue securities other than shares, the founders of the company or the corresponding corporate body (as applicable) decide how the securities will be represented, which, in general, can either be by means of certificates or book entries (ie, in dematerialised form).

The shares of a company that are represented by certificates may be converted into a dematerialised form further to a resolution of the general meeting of shareholders adopted with a rein-

forced majority (as it entails an amendment of the company's articles of association). The resolution approving the conversion must be published in the Commercial Registry Official Gazette and, if applicable, on the website of the issuer. It must stipulate the term the shareholders have to submit their certificates to the entity in charge of the new book-entries registry, which must not be less than one month or greater than one year. The entity in charge of the new book-entries registry will register the shares in favour of those evidencing ownership during that period. This process may be avoided if the shareholders adopt the resolution to convert certificates into book entries unanimously and they expressly waive it.

In any event, if the securities are to be represented by book-entries, the issuer must appoint an entity that will be in charge of the book-entry shareholder register and such appointment shall be accepted.

As regards listed dematerialised securities, Iberclear, as the Spanish Central Securities Depository, is responsible for registering, clearing and settling all transfers carried out on the Spanish Stock Exchanges and BME Growth (as equity markets) as well as on AIAF and MARF (as debt markets).

All trading on these markets, which are connected to the Eurosystem's Target2 Securities (T2S) settlement platform, are settled under a T+2 scheme. Registration and trades of transactions entail a two-step system. The first step is a central registry, managed by Iberclear, which includes the securities' accounts held by Iberclear's participating entities (both in their own name and on behalf of third parties). The second step is the 'detailed registers' (*registros de detalle*), managed by each of Iberclear's participating entities, which include each individual owner's securities account.

Z. Sweden

Initially, there is no requirement in Sweden for the shareholder register to be held in physical form. For this reason, it is common practice in Swedish private limited liability companies, that the board of directors manage the shareholder register using a regular digital medium, such as a PDF file, Word file or equivalent. Furthermore, shares in a Swedish limited liability company are not, by default, issued together with a physical share certificate.

If a Swedish limited liability company wants to become a CSD-registered company (*avstämningsbolag*), which would entail a 'dematerialisation' of the company's shares by being kept in a book-entry form by Euroclear Sweden, this would require, in addition to a customary KYC process and the submittal of documentation to Euroclear Sweden, that any physical share certificates outstanding are retrieved and cancelled. Such cancellation, or the absence of physical share certificates, must be certified by the board of directors prior to the accession of the shares with Euroclear Sweden. This is usually fulfilled by way of a report from the board of directors, signed by more than half of the board members, being provided in original 'wet-ink' format to Euroclear Sweden.

Issuance of electronic securities follows the same procedure (and is generally subject to the same form requirements) as the procedure for issuance described above. If the respective entry in the shareholder register contains the relevant information required by the Swedish Companies Act (*aktiebolagslag* (2005:551)) and Euroclear Sweden (including, eg, the number, the

holder's name/corporate registration, address, date, type and possible transfer restrictions), they are considered validly issued. The transfer of title to the securities is perfected by way of delivery to the transferee. For electronic securities (where physical transfer of share certificates is not possible) the securities are considered delivered when the transferee is recorded as the owner in the company's shareholder register. As described above, no form requirements apply for the actual transfer other than documentation supporting the transferee's right to be entered in the shareholder register.

AA. Switzerland

Swiss law knows the concept of uncertificated securities. As long as the respective entry in the (non-public) 'book of uncertificated securities' contains the relevant information (number, denomination/nominal value, first holder), they are validly issued. The transfer of such uncertificated securities, however, requires a written assignment.

As soon as certificated securities are then held in collective custody with a custodian (typically as permanent global certificates deposited with the Swiss CSD) or as uncertificated securities registered in the main register maintained by the Swiss CSD, and credited to one or more securities accounts of a custodian, they qualify as 'intermediated securities' and can be transferred by means of a mere instruction by the account holder (without statutory form requirements) and the credit of the relevant intermediated securities to the acquirer's securities account.

Additionally, the Swiss Parliament passed new legislation in September 2020 that will introduce so-called register securities, which allow for the issuance and transfer of receivables and financial instruments based on DLT. The new legislation is expected to come into effect in early or mid-2021.

BB. US (New York/Delaware)

As discussed above, New York recognises both certificated and uncertificated (or 'dematerialised') securities. Similarly, under the Delaware General Corporate Law (DGCL),² dematerialised securities may be issued and held.

Most dematerialised securities are deposited with, or on behalf of, the Depository Trust Company (DTC) in book-entry form. In addition to holding securities deposited by its participants, DTC also facilitates the settlement of securities transactions among its participants through electronic book-entry changes in participants' accounts. DTC participants include securities brokers and dealers, banks and trust companies, and clearing corporations. DTC access is also available to indirect participants in DTC, including banks, brokers, dealers and trust companies, which clear through or maintain a custodial relationship with DTC participants. Investors who are not DTC participants may beneficially own securities held by or on behalf of DTC only through DTC participants or indirect participants of DTC. Transfers of beneficial ownership are effected through

² In addition to discussions on New York law, brief discussions on Delaware law has been included, as the vast majority of US corporations are incorporated in Delaware. See also response below on the use of electronic signatures in corporate resolutions.

records maintained by DTC (with respect to interests of DTC participants) and records of DTC participants (with respect to other owners of beneficial interests).

CC. Vietnam

Yes, securities can be 'dematerialised' when deposited at the Securities Depository Center. Vietnamese laws require securities of a public company to be deposited at the Securities Depository Center. The transfer of securities that have been registered at the Securities Depository Center shall be implemented via the system put in place by the Securities Depository Center. The transfer of securities shall be effective on the date on which a book entry is made in the securities depository account at the Securities Depository Center.

IV. Can agreements or transactions requiring the 'written form' be executed in 'wet-ink' only, or are there digital and/or electronic alternatives? If permissible, what are the key requirements under that legislation for digital and/or electronic to be valid?

A. Australia

In some cases, electronic signatures may be used as an alternative to 'wet-ink' signatures, however, this depends on:

- the type of document being executed (ie, agreement, deed or internal corporate document);
- whether the document is being executed by a company or an individual;
- if being executed by a company, whether a party wishes to rely on the statutory assumption under section 129(5) of the Corporations Act 2001 (Cth) (the 'Australian Corporations Act') that the document was duly executed and requires the document to be executed under section 127 of the Australian Corporations Act (the 'Execution Assumption');
- the applicable state or territory law in that jurisdiction; and
- whether there are any specific execution formalities imposed by law on the particular transaction.

Generally:

- companies and individuals can electronically execute agreements (not deeds) (except where a party wishes to rely on the Execution Assumption);
- companies cannot electronically execute agreements (where a party wishes to rely upon the Execution Assumption) and deeds (see the discussion on temporary Covid-19 measures below); and

- individuals cannot electronically execute deeds given the requirement that the execution is witnessed (see the discussion on temporary Covid-19 measures below).

In New South Wales, a pilot scheme has been implemented that will allow individuals to execute deeds electronically, provided that certain conditions are met for the witnessing of documents by video link. The pilot scheme will operate from 28 September 2020 until 31 December 2021.

If a document may be executed electronically, the execution must comply with any requirements or conditions set out in the applicable Electronic Transactions Act.

B. Austria

Insofar as the written form is required by law, it may be replaced by the 'electronic form', unless otherwise provided by law (eg, the last will or statement of a guarantee undertaking).

The legal framework for electronic signatures in Austria is formed by Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (the 'eIDAS Regulation') and the Austrian Signature and Trust Services Act (Signatur- und VertrauensdiensteG or SVG). In accordance with the eIDAS Regulation, the document must contain the name of the issuer and must be provided with a qualified signature. A qualified electronic signature is based on a secure signature creation device, and on a qualified and valid certificate issued by a trust provider. For this purpose, the issuer requires a private security key, that is, an electronic encryption that can be used with a chip card or personal identification number (PIN). The recipient must use a public signature key to verify authenticity. In addition, both parties must sign an identical document electronically.

C. Belgium

No, there are indeed digital and/or electronic alternatives. Article XII15 of the Belgian Code of Economic Law provides for the principle of functional equivalence (section 1) by stating that, as a principle, any legal or regulatory formal requirement for the conclusion of contracts can be fulfilled by electronic means, provided the functional qualities of this requirement are safeguarded.

In applying this principle, it should be considered that (section 2):

- the requirement of a written document is fulfilled by a set of alphabetical characters or any other intelligible characters, placed on a medium that allows access to it for a period of time appropriate to the purpose for which the information may be used, and which protects its integrity, whatever the medium and whatever the means of transmission;
- the explicit or tacit requirement of a signature is fulfilled when the signature meets the conditions of an electronic signature or a qualified electronic signature under the eIDAS Regulation; and
- the requirement of a written mention by the party who commits itself may be met by any process that guarantees that the mention is effectively made by the committing party.

However, competent courts and tribunals may not apply the above principle of functional equivalence to contracts belonging to some specific categories, provided they determine the existence of practical obstacles to the fulfilment of a legal or regulatory formal requirement in the context of concluding a contract by electronic means (Article XII16 of the Belgian Code of Economic Law). These categories are:

- contracts that create or transfer rights in respect of immovable property, with the exception of tenancy rights;
- contracts for which the law prescribes the intervention of the court, authority or profession exercising a public duty;
- contracts for personal and collateral security provided by persons acting for purposes outside their trade or profession; and
- contracts governed by family law or inheritance law.

It is worth noting that the Belgian Law of 16 March 1803 regulating the profession of notary has recently been amended in light of the Covid-19 circumstances (see the Law of 30 April 2020 containing various provisions on justice and notarial services in the context of the fight against the spread of Covid-19). Article 18 *quinquies* of that law now explicitly provides that powers of attorney that must be drawn up in an authentic form, that is, that must be authenticated by a notary, can now also be executed electronically and remotely. For such an execution in electronic form, some additional conditions apply, such as (non-exhaustive list):

- all parties concerned must appear before the notary by videoconference;
- the parties must identify themselves and sign the deed electronically by means of the electronic identity card or via the Belgian 'itsme' application for online identification; and
- the notary must sign the deed with his/her electronic identity card.

D. Brazil

The Provisional Measure 2200-2 (*Medida Provisória*), which dates from 2001 ('PM 2200-2/2001'), has long given preferential treatment to documents produced through the certification process made available by the 'Brazilian Public Keys Infrastructure' (Infraestrutura de Chaves Públicas Brasileira or ICP-Brasil) – a hierarchical chain composed of various entities, which makes it possible to issue digital certificates through procedures designed to show that a given act must have been performed by a given person, or by someone authorised to act on such a person's behalf.

The PM 2200-2/2001 distinguishes ICP-Brasil documents from others; however, not only are documents certified by ICP-Brasil valid but they also benefit from a presumption of authenticity that equates them to documents that have been signed manually. By contrast, documents produced by other digital means may be valid, if recognised as such by their signatories, but they do not benefit from a presumption of authenticity. As a result, their probative value is less than that of certified documents; in practical terms, the evidentiary weight of documents that have not been certified by ICP-Brasil depends on the credibility transmitted by the way they were produced.

Another important aspect of digital documents is their enforceability: the courts' current position is that documents certified by ICP-Brasil are sufficient to bring proceedings for immediate enforcement, which gives creditors access to attachments and other types of freezing orders to obtain payment of debts more quickly. It is unlikely that digital documents that have not been certified by the ICP-Brasil have the same effect.

Following an international trend, Brazil's recently enacted Law 14.063/2020 (which applies to interactions between public entities, interactions between natural persons and public entities, as well as to health professionals) makes a distinction between three types of electronic signatures: *simple signatures*, which allow the signatory to be identified by attaching or associating data to other data of the signatory in an electronic format; *advanced signatures*, which use certificates or other means as proof of the authorship and integrity of electronic documents, so that the document can be associated to a single signatory with a high level of assurance (using data under the signatory's exclusive control) and any subsequent modification of the signed document can be detected; and *qualified signatures*, which use digital certificates issued by ICP-Brasil.

Under this law, persons and private entities: (1) can use *simple signatures* to submit documents to public entities that are considered to have a lesser impact and do not involve confidential information protected by law; (2) can employ *advanced signatures* to produce documents that will be registered with commercial registries and to sign prescriptions for medication that is not subject to special control; and (3) must use *qualified signatures* for documents used for the transfer of real estate, medical certificates, prescriptions for medications that are subject to special control and, with some exceptions, tax invoices.

In short, there is already considerable space for companies to streamline their operations through the use of digital documents, adopting them for a set of acts, including for some large contracts. Therefore, it is necessary to evaluate the implementation of policies that consider the most appropriate forms for each document, in view of their value, risks and specific legal requirements. Thus, it is possible to find solutions that allow companies to redesign their methods of production and storage of documents, taking advantage of the scenario of cultural transition and opening up to the digital environment in which the Brazilian economy finds itself.

E. Canada

In Canada, electronic signatures are generally permitted for documents and records where a 'wet-ink' original signature would be accepted. Canadian courts have indicated a willingness to conclude that a document executed digitally and/or electronically is valid if it satisfies requirements under the applicable law for an enforceable document and signature. In commercial agreements, parties should ensure that the following requirements are met:

- the electronic signature is shown to be reliable (ie, the signature can identify the signatory) and the process by which the signature was added to the document is shown to be reliable; there is reliable evidence that the electronic signature was affixed to the agreement at the relevant time; and
- parties consent to the use of electronic signatures, where consent may be express or implied.

Additionally, contractual relationships in Canada are generally governed by provincial and territorial laws, and most, if not all, provinces and territories have statutes of general application facilitating electronic contracting and signature. These provincial and territorial laws may exempt certain types of documents from the application of their general electronic commerce legislation.

There are four principal statutes that deal in general terms with electronic signatures: the federal and Ontario Evidence Acts, the federal Personal Information Protection and Electronic Documents Act (PIPEDA) and the Ontario Electronic Commerce Act (ECA).

For instance, in the province of Ontario, the ECA sets out certain rules for the use of electronic signatures, but principally facilitates the use of electronic signatures and electronic documents. Section 11(1) of the ECA states that the legal requirement that certain documents be signed is legally satisfied by an electronic signature. This does not apply to wills and codicils, trusts created by wills or codicils, powers of attorney that are in respect of an individual's financial affairs or personal care, or negotiable instruments. However, legislation does not specify that these documents cannot be signed electronically, just that the express provision that an electronic signature meets any signing requirement does not apply to them.

PIPEDA, a federal Act, specifically addresses the use of electronic documents and signatures in relation to certain documents or records within the Canadian federal jurisdiction. PIPEDA requires that signatures satisfy the following criteria in order to be considered 'secure electronic signatures':

- the electronic signature must be unique to the person signing;
- the signature must be created and be under the full control of the person making the signature;
- the technology or processes used to sign can be used to identify the person; and
- the electronic signature can be linked with an electronic document in such a way that it can be used to determine whether the electronic document has been altered since the electronic signature was incorporated in, attached to, or associated with the electronic document.

Such requirements are only mandatory to a narrow range of documents specifically identified in PIPEDA and do not universally apply to all contractual documents. Nevertheless, the definition of 'secure electronic signatures' used in PIPEDA has been incorporated into other federal legislation, such as the Canada Business Corporations Act. The requirements listed above may be more prescriptive than those contained in provincial or territorial legislation, and are generally considered to be a guide to best practices on matters not subject to federal jurisdiction.

The discussion above provides a general overview of the validity of electronic signatures in Canada. Whether a specific type of electronic signature satisfies the criteria may be determined by court on a case-by-case basis.

F. Mainland China

Contracts requiring the 'written form' can be executed in any form that can tangibly express the content contained therein, such as a written contractual agreement, letter and electronic data text (including a telegram, telex, fax, electronic data exchange and email).

In accordance with the Electronic Signature Law of the People's Republic of China (the 'E-Signature Law'), 'reliable' electronic signatures have the same legal validity as handwritten signatures or stamps. The E-Signature Law allows the parties to agree on the use of electronic signatures that satisfy their own reliability requirements. In the absence of any agreement on the reliability requirements, electronic signatures are deemed reliable if all the below four conditions are satisfied:

- data that creates electronic signatures is exclusively owned by the signatory when it is being used for electronic signatures;
- data that creates electronic signatures should be in the sole control of the electronic signatory at the time he/she is creating the signatures;
- any alteration made to the electronic signatures after the signing is detectable; and
- any alteration made to the content and format of the electronic data is detectable.

The 'data that creates electronic signatures' refers to the data of characters, codes and so on that reliably associates the electronic signatures with the electronic signatory in the process of signing.

The E-signature Law as above provides a general criterion. Whether a specific type of electronic signature satisfies the criterion is determined by a court on a case-by-case basis.

G. Czech Republic

Where a written form is required (both by statute or by an agreement), this form is also satisfied in acts made by electronic (computer or mobile phone) or other technical means (fax), provided that two conditions are met. First, the content of the legal act must be captured (PDF, docx, email, text message etc); and second, the actor must be identified. A signature of the actor is always required for a contract in written form to be valid.

Electronic signatures are regulated in statute by Act No 297/2016 Coll, on trust services for electronic transactions, as amended, which adapts the eIDAS Regulation, into Czech law.

Four 'types' of electronic signature are recognised in the Czech Republic:

Electronic signature (simple) (Elektronický podpis (prostý))

This is the most basic and simple type of electronic signature. It is usually used, for example, by inserting an image with a scanned handwritten signature (eg, at the end of a document) or inserting a signature pattern created with an electronic pen or other device.

However, it is disputable whether typing the first and last name (at the end of a document or an email) may be classified as an electronic signature as, pursuant to the definition of 'electronic signature' stated in Article 3(10) of the eIDAS Regulation, 'electronic signature' means data in electronic form that is attached to or logically associated with other data in electronic form and which is used by the signatory to sign. In the light of the above, ticking the 'I agree' box on a website (eg, 'I agree to the terms and conditions') shall not be classified as an electronic signature at all.

This type of electronic signature finds application mainly between private entities, providing that no more qualified form of electronic signature has been agreed. It should, however, be noted that by using a simple electronic signature, evidential issues may arise.

Advanced electronic signature (Zaručený elektronický podpis)

Although this signature guarantees that any subsequent change to data can be detected and allows the signatory to be identified, it does not offer guarantees as to the identity of its author.

Guaranteed electronic signature (Uznávaný elektronický podpis)

The guaranteed electronic signature is based on a qualified certificate for the electronic signature, which must be 'confirmed' by a certification authority (in the Czech Republic, První certifikační autorita, a.s., Česká pošta, s.p., or eIdentity a.s.). This ensures that the recognised electronic signature used is actually associated with the person to whom it was issued.

When addressing an electronic document to a public body, only this guaranteed electronic signature, or a qualified signature may be used.

Qualified signature (Kvalifikovaný podpis)

This is the most advanced form of electronic signature because, in contrast to the guaranteed electronic signature, a qualified means of creating electronic signatures that is on a separate medium and cannot be transferred elsewhere (eg, USB token) must be used. The use of a separate medium in this case has the function of verifying the identity of the signatory, as this type of electronic signature cannot be created without the medium being physically held.

This is the only form of signature that may be used for electronic documents signed by a public body (eg, the state, a territorial unit, a legal person established by law or a legal person established or constituted by a state, and a territorial self-governing unit).

In conclusion, Act No 297/2016 Coll, on trust services for electronic transactions, as amended, gives all types of electronic signature the same effect as a handwritten signature (thus going further than the EU Regulation). Nevertheless, in acts with a public body, only guaranteed and qualified electronic signatures have an equivalent legal effect to 'wet-ink' signatures.

H. Denmark

In general, contracts or transactions requiring the written form can be executed not only in wet ink but also by digital and/or electronic means. This is generally understood as a requirement of 'functional equivalence', meaning formal requirements can be fulfilled by electronic means provided the purpose and functional qualities of the document is satisfied.

If a document is signed by electronic means, the signature must allow unequivocal identification of the sender of the document and show the finality of the document and the sender's approval of the document.

The use of electronic signatures is regulated in the eIDAS Regulation, which has direct effect in Denmark. The eIDAS Regulation stipulates that an electronic signature should not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form. The eIDAS Regulation operates with three types of electronic signatures, which are differentiated by the applied level of security. The highest level of security is provided by 'qualified electronic signatures', which can only be provided by a qualified trust service provider. Currently, one Danish trust service provider (Nets DanID A/S provider of NemID) is registered as a qualified trust service provider on the eIDAS Trusted List.

However, pursuant to Article 9(2) of EU Directive 2000/31/EC on E-commerce (the 'E-commerce Directive'), EU Member States may require contracts falling into certain categories not to be made by electronic means, for example:

- contracts that create or transfers rights in real estate, except for rental rights;
- contracts requiring by law the involvement of courts, public authorities or professions exercising public authority;
- contracts of suretyship granted and on collateral securities furnished by persons acting for purposes outside their trade, business or profession; and
- contracts governed by family law or by the law of succession.

I. England

The eIDAS Regulation, which has had direct effect in EU Member States from 1 July 2016, establishes the EU-wide legislative framework for, among other things, electronic signatures. It distinguishes between three levels of electronic signatures: (1) simple; (2) advanced; and (3) qualified. The latter two constitute a digital signature, which is a more technologically advanced and secure type of electronic signature, and may be more appropriate for high-risk, high-value transactions. Supplementing the eIDAS Regulation, the Electronic Communications Act 2000 (the 'ECA 2000') is the other main legal instrument governing the use of electronic signatures in England and Wales, with section 7(1) providing for their admissibility in legal proceedings. Nevertheless, neither the eIDAS Regulation nor the ECA 2000 deal with the validity of electronic signatures, and no case law or legislation explicitly states that documents executed with simple electronic signatures satisfy formal statutory requirements for documents to be in writing.

In the absence of a court decision or primary legislation, a practice note published by the joint working party of the City of London Law Society (CLLS) in July 2016 and a report by the Law Commission in September 2019, while not carrying the force of law, provide significant comfort and are followed as a matter of common practice. The UK Government endorsed the findings of the Law Commission's 2019 report in March 2020.

The 2016 practice note concluded that a contract (including a deed) executed using an electronic signature is capable of satisfying a statutory requirement to be in writing and/or signed and/or made under hand. This conclusion was reinforced by the Law Commission's 2019 report, which found that an electronic signature is a valid means of executing a document (including a deed), provided that:

- the signatory has an intention to authenticate (ie, an intention to sign and be bound by the terms of the document); and
- the applicable execution formalities (eg, the witnessing of a deed) are satisfied.

In relation to the witnessing requirement, the Law Commission's 2019 report concluded that it is not possible to fulfil this requirement virtually (eg, via video link), and therefore the physical presence of a witness is required, even where both the person executing the deed and the witness are using an electronic signature. The Law Commission recommended an industry working group be established to review the question of video witnessing of electronic signatures.

The Law Commission's 2019 report recognised the wide range of forms that an electronic signature may take, noting that unless the contrary is provided for in the relevant statute, contractual arrangement or case law related to the specific document, common law does not prescribe any particular form or type of signature. For example, the courts have accepted the following as valid electronic signatures: a name typed at the bottom of an email; clicking the 'I accept' tick box on a website; and the header of a SWIFT message. Other forms of electronic signature include the signatory typing his/her name into a contract; scanning a manuscript signature; pasting an image of his/her signature into an electronic version of the contract; using a touchscreen and a finger or stylus to electronically write his/her name in the contract; or signing through an e-signing platform.

J. Finland

There is an electronic alternative to executing agreements in 'wet ink' available in Finland. Pursuant to Article 25(2) of the eIDAS Regulation, a 'qualified electronic signature' shall have the equivalent legal effect of a handwritten signature. Pursuant to Article 3(1)(12), 'qualified electronic signature' means an advanced electronic signature that is created by a qualified electronic signature creation device, and which is based on a qualified certificate for electronic signatures.

Further, Article 26 of the eIDAS Regulation sets out requirements for advanced electronic signature. An advanced electronic signature does not, however, necessarily meet the requirements for a 'qualified electronic signature'. Pursuant to Article 26 an 'advanced electronic signature' shall meet the following requirements:

- it is uniquely linked to the signatory;
- it is capable of identifying the signatory;
- it is created using electronic signature creation data that a signatory can, with a high level of confidence, use under his/her sole control; and
- it is linked to the data signed therewith in such a way that any subsequent change to the data is detectable.

The requirements of the eIDAS Regulation have been implemented in Finland as amendments to the Finnish Act on Strong Electronic Identification and Electronic Trust Services.

K. France

In July 2016, the eIDAS Regulation came into force for most of its provisions. The eIDAS Regulation introduced a new EU-wide legal framework for notably the recognition of electronic signatures.

The eIDAS Regulation defines three categories of electronic signature: (1) (simple) electronic; (2) advanced electronic; and (3) qualified electronic.

(Simple) electronic signature

The (simple) electronic signature is defined as 'any data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign'. The (simple) electronic signature is not secured as it does not require any particular condition to be valid.

Advanced electronic signature

The advanced electronic signature is a more sophisticated and secure form of electronic signature that meets the following requirements: (1) it is uniquely linked to the signatory; (2) it is capable of identifying the signatory; (3) it is created using electronic signature creation data that the signatory can, with a high level of confidence, use under his/her sole control; (4) it is linked to the data signed therewith in such a way that any subsequent change in the data is detectable.

The advanced electronic signature is the most widely used in practice, as there is currently no qualified electronic signature procedure that is effective remotely. In complex M&A transactions, the use of the advanced electronic signature remains limited due to the timestamping of each electronic signature, which makes the signature process difficult to coordinate. Its use has nevertheless increased and has become more common in the context of the Covid-19 crisis.

Qualified electronic signature

The qualified electronic signature is created by using a 'qualified' trust service provider to check the signature and issue a qualified certificate of electronic signature implemented via a qualified electronic signature creation device. This type of electronic signature provides the highest level

of admissibility in EU courts and is automatically granted the equivalent legal effect of a hand-written signature (ie, with a legal presumption of authenticity).

L. Germany

Insofar as the written form is required by law, it may be replaced by the 'electronic form', unless otherwise provided by law (eg, a notice to terminate an employment contract or a statement of guarantee can only be made in written form and not in electronic form).

The electronic form is not just any electronic form. Rather, the document must contain the name of the issuer and must be provided with a qualified signature in accordance with the eIDAS Regulation. A qualified electronic signature is based on a secure signature creation device, and a qualified and valid certificate issued by a trust provider. For this purpose, the issuer requires a private security key, that is, an electronic encryption that can be used with a chip card or PIN. The recipient must use a public signature key to verify authenticity. In addition, both parties must electronically sign an identical document.

M. Hong Kong

Hong Kong law recognises both 'wet-ink' execution and electronic signatures. The use of electronic signatures is governed by the ETO in Hong Kong. Under the ETO, an electronic signature consists of 'any letters, characters, number or other symbols in digital form attached to or logically associated with an electronic record, and executed or adopted for the purpose of authenticating or approving the electronic record'. For an electronic signature to be valid and be assimilated to an actual signature for satisfying form requirements, the following four conditions have to be satisfied:

- neither the person giving nor the person receiving the signature must be a government entity or acting on behalf of a government entity (as contracts involving any governmental entity would require a digital signature that is supported by a recognised certificate issued by a certification authority);
- the signatory attaches the electronic signature to an electronic record for the purpose of identification and indicating his/her authentication or approval of the information contained therein;
- the method used to attach the electronic signature is reliable and appropriate for the purpose for which the information contained in the document is communicated; and
- the recipient consents to the use of such a method.

There are limitations to the use of an electronic signature as certain contracts are expressly excluded from the application of the ETO. Examples include:

- testamentary documents such as wills;
- a trust;

- a power of attorney;
- government conditions of grant and government leases;
- documents concerning land and property transactions (eg, deed, conveyance or other document or instrument in writing, judgments and *lis pendens*);
- floating charges;
- oaths and affidavits; and
- statutory declarations.

Further, electronic signatures are not applicable in any legal (court or tribunal) proceedings unless any specific provision relating to such proceedings provides otherwise. However, with the recent passing of the Court Proceedings (Electronic Technology) Bill, the electronic filing of court documents will soon become permissible.

Although deeds are not excluded from ETO's application, it is not common practice in Hong Kong for deeds to be executed using electronic signatures. Electronic signatures should also be avoided where the documents need to be notarised.

N. Hungary

In accordance with the eIDAS Regulation, electronic identification is available in Hungary. The eIDAS Regulation differentiates between an electronic signature, advanced electronic signature and qualified electronic signature.

As mentioned, a legal statement shall be deemed to be in writing, if it was executed in a way that its unaltered content can be recalled, and the person who made it can be identified, as well as the time when he/she made it. Unfortunately, it is not always clear what actual technological solutions are accepted as meeting these general standards, but courts tend to rule that the advanced electronic signature regulated by the eIDAS Regulation is sufficient to be deemed as 'writing'. Since the eIDAS Regulation, an electronic signature shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic signatures. A qualified electronic signature is equivalent with a 'wet-ink' signature according to the eIDAS Regulation.

According to the Code of Civil Procedure, a document with an advanced electronic signature or a qualified electronic signature, as well as a timestamp, if required by law, shall be deemed as a private deed representing conclusive evidence, which provides a higher level of evidence in civil lawsuits. It should also be mentioned that a document authenticated by the AVDH certification service of the national Client Gateway System (an e-administration interface based on the identification of citizens) is also a private deed with conclusive evidentiary power.

On this page, the National Media and Infocommunications Authority makes available its registers dealing with electronic signatures and related services (trusted lists, trust service providers): <http://webpub-ext.nmhh.hu/esign2016/setLanguageAction.do?lang=en>.

O. Indonesia

Indonesia recognises the use of electronic signatures, provided they satisfy a number of requirements (as discussed below). The use of electronic signatures in Indonesia is governed under Law 11 of 2008 on Electronic Information and Transactions that was amended by Law 19 of 2016 (the 'EIT Law') and Government Regulation 71 of 2019 on the Application of Electronic Systems and Transactions.

There are two types of electronic signatures that are legal, admissible, and enforceable in Indonesia: a certified electronic signature and uncertified electronic signature.

Certified electronic signature, commonly known as a digital signature

A digital signature is the most secure type of electronic signature, as it includes a certificate of authority that verifies the identity of the signatory, including the integrity and authenticity of certain electronic information. A digital signature is created by involving the service of a registered digital certificate provider and is evidenced by a digital certificate. The electronic digital certificate provider must be registered with the Minister of Communications and Informatics (MoCI). Reference should be made to <https://tte.kominfo.go.id/listPSrE/> for the list of registered digital certificate providers.

Uncertified electronic signature

An uncertified electronic signature is created without involving the service of a registered digital certificate provider. This type of electronic signature may simply consist of a digitised version of one's handwritten signature.

Although both the digital signature and uncertified electronic signature are legal, admissible and enforceable in Indonesia, the evidentiary value of a digital signature and uncertified electronic signature is considered different in Indonesian courts. An uncertified electronic signature still has evidentiary value, but it is deemed to be relatively weak. On the other hand, a digital signature issued by a registered digital certificate provider provides stronger evidence that the document was executed by the relevant signatory.

The electronic signature has legal force, and is valid and effective to the extent that it meets the following requirements:

- the data that is the basis of the electronic signature is associated only with the signer;
- the data that is the basis of the electronic signature at the time of the electronic signing process must be controlled solely by the signer;
- any alteration to the electronic signature that occurs after the time of the signing is traceable;
- any alteration to the electronic information associated with the electronic signature after the time of the signing is traceable;

- certain methods are adopted to identify the signer; and
- certain methods are adopted to demonstrate that the signer has given his/her consent to the electronic information associated with the electronic signature.

P. Ireland

The generally accepted position in Ireland is that contracts that are required to be in 'written form' can be executed electronically and exist as electronic originals without a physical counterpart. This conclusion does, however, require a measure of statutory interpretation, and consequently, the position is not capable of being stated with absolute certainty. In addition, the type of contract and the mode of execution (eg, whether a deed or simple contract, whether under hand or under seal and whether witnessed) is relevant to the analysis. Pursuant to section 10 of the ECA 2000 (which transposed Directive 1993/93/EC), the majority of the ECA 2000's enabling provisions (including those that recognise electronic contracts and electronic signatures as equivalent to their physical/wet-ink counterparts) are 'without prejudice' to (among other matters) the laws governing:

- affidavits and statutory or sworn declarations;
- dealings with interests in real property, including leasehold (other than contracts in relation to such dealings); and
- trusts.

It is likely that the 'without prejudice' wording in section 10 does not go so far as to exclude the use of electronic signatures in relation to such documents, but it does require a close analysis of all applicable laws. There are differing views in the Irish legal market as to the effect of section 10 and the extent to which it restricts the use of electronic signatures (and consequently electronic-only contracts) and those are likely to persist until there is clarifying legislation or case law.

It is also worth noting that:

- where an Irish company is required to execute a document under seal (eg, where the document is in the form of a deed), the company will generally appoint a natural person as its attorney to execute the deed instead, due to difficulties with equating the company seal with any electronic equivalent;
- where executed documents are required to be registered with an Irish public registry, that registry may require 'wet-ink' originals for that purpose (eg, this is currently the case with the Property Registration Authority);
- bills of exchange, bearer instruments and other types of document where the existence of a single original document (or set of documents) is fundamental to the operation of the applicable legislative regime, are generally considered as requiring 'wet-ink' signatures.

As mentioned above, while the use of electronic signatures is generally permissible under Irish law (and is becoming increasingly common for high-volume business), it does require careful

consideration by reference to the document type, mode of execution and the applicable fact pattern. Consequently, electronic signatures and electronic-only contracts should not be assumed to be the equivalent of 'wet-ink' signatures, and physical contracts and legal advice should always be obtained.

Q. Italy

The Digital Administration Code governs digital documents, that is, documents executed on digital support and signed electronically.

There are several types of electronic signature:

- *simple electronic signature*: a series of electronic data that is attached or related to other electronic data used by the underwriter to sign the documents;
- *advanced electronic signature*: an electronic signature complying with the requirements set forth by the eIDAS Regulation, when the data used to sign is under the exclusive control of the underwriter, whose identity is ascertained;
- *qualified electronic signature*: an advanced electronic signature that is created by a dedicated tool based on a certificate for the creation of electronic signatures, which shall be valid and not revoked, expired or suspended at the time of the signature; and
- *digital signature*: a qualified electronic signature based on two encrypted keys (one private, owned by the underwriter, and one public, owned by a third party), which are related and enable – by a reverse encrypted signature mechanism – to identify the underwriter, as well as any subsequent modification of the document.

A digital document signed electronically is considered as one unitary document by its own nature. Therefore, it is sufficient to sign a document once; that is, it is not necessary to electronically sign and/or seal each page.

With respect to agreements that shall be executed by means of a written agreement pursuant to section 1350, paragraph 1, No 1-12 of the Italian Civil Code (which lists several types of contracts), such a form requirement is also fulfilled if they are executed by means of a digital document signed with a qualified electronic signature or digital signature. According to section 1350, paragraph 1, No 13 of the Italian Civil Code (referring to 'other agreements specifically indicated by applicable laws' that shall be executed by means of written agreements), contracts may be well executed by means of a digital document, if signed with an advanced electronic signature, qualified electronic signature or digital signature; otherwise, they will be null and void.

R. Malaysia

Where agreements are required under any Malaysian law to be in a written form and signed, the agreements may, subject to certain exceptions, generally be signed electronically or digitally.

Electronic signatures

Where there is an actual legal requirement that a document be in writing, Section 8 of the ECA 2006 provides that the requirement of that law is fulfilled if the information is contained in an electronic message that is accessible and intelligible so as to be usable for subsequent reference. Under Section 5 of the ECA 2006, an 'electronic message' is defined to mean 'information generated, sent, received or stored by electronic means', whereas the term 'electronic' is defined to mean 'the technology of utilizing electrical, optical, magnetic, electromagnetic, biometric, photonic or other similar technology'.

Section 9 of the ECA 2006 provides that where any law requires a signature of a person on a document, the requirement of that law is fulfilled, if the document is in the form of an electronic message, by an electronic signature that:

- is attached to or is logically associated with the electronic message;
- adequately identifies the person and adequately indicates the person's approval of the information to which the signature relates; and
- is as reliable as is appropriate given the purpose for which, and the circumstances in which, the signature is required.

For this purpose, an electronic signature will be considered to be 'as reliable as is appropriate' if:

- the means of creating the electronic signature is linked to and under the control of that person only;
- any alteration made to the electronic signature after the time of signing is detectable; and
- any alteration made to that document after the time of signing is detectable.

For the purposes of the ECA 2006, 'electronic signature' is defined to mean 'any letter, character, number, sound or any other symbol or any combination thereof created in an electronic form adopted by a person as a signature'.

It should be noted that the ECA 2006 does not apply to the transactions or documents specified in the Schedule, which include powers of attorney, the creation of wills and codicils, and the creation of trusts and negotiable instruments.

Digital signatures

In Malaysia, the Digital Signature Act 1997 (the 'DSA') only applies to digital signatures certified by a licensed certification authority in Malaysia (listed on the Malaysian Communications and Multimedia Commission's website: www.mcmc.gov.my/en/sectors/digital-signature/list-of-licensees). Digital signatures that are not accompanied by valid certificates issued by a licensed certification authority or which otherwise do not fulfil the requirements of the DSA could still fall within the broad definition of 'electronic signatures' under the ECA 2006.

Under Section 2 of the DSA, 'digital signature' is defined to mean 'a transformation of a message using an asymmetric cryptosystem such that a person having the initial message and the signer's public key can accurately determine:

- whether the transformation was created using the private key that corresponds to the signer's public key; and
- whether the message has been altered since the transformation was made'.

Section 62(1) of the DSA provides that where a rule of law requires a signature or provides for certain consequences in the absence of a signature, that rule will be satisfied by a digital signature where:

- that digital signature is verified by reference to the public key listed in a valid certificate issued by a licensed certification authority;
- that digital signature was affixed by the signer with the intention of signing the message; and
- the recipient has no knowledge or notice that the signer:
 - has breached a duty as a subscriber; or
 - does not rightfully hold the private key used to affix the digital signature.

S. Myanmar

Electronic signatures are allowed in Myanmar, and this is pursuant to Section 19 of the Electronic Transactions Law 2004 (the 'ETL'). Therefore, generally, electronic signatures may substitute a 'wet-ink' signature and fulfil the requirement of the written form. However, Section 5 of the ETL does not apply to certain agreements/contracts, such as a will, negotiable instrument, trust, power of attorney, documents related to title and instruments prescribed in existing law to be registered, and matters exempted by the relevant ministry by issuing notification with the approval of the government.

Further, the ETL also defines an 'electronic signature' to mean 'any symbol or mark arranged personally or on his behalf by electronic technology or any other similar technologies to verify the authenticity of the source of the electronic record and the absence of amendment or substitution'. Therefore, from a practical perspective, an 'electronic signature' could include a scanned signature or a mark chosen by the signatory, such as a typed name (ie, this involves typing out the signatory's name in Microsoft Word, saving it as an image and then pasting it onto the document as an 'electronic signature'). The addition of the aforementioned to a document would thus constitute execution by the signatory.

T. The Netherlands

With respect to some legal acts under Dutch law (eg, the annulment of an agreement or the waiver of a right of pledge), it is explicitly stated that an electronic alternative equals the 'written

form'. However, where this is not explicitly stated, the electronic agreement or transaction must comply with the following four requirements in order to qualify as a digital or electronic alternative: (1) the agreement is and remains accessible to parties; (2) the authenticity of the agreement is sufficiently guaranteed; (3) the moment the agreement was entered into can be determined with sufficient certainty; and (4) the identity of the parties can be determined with sufficient certainty.

Note that a signature is not required for validly entering into an agreement. However, often a signature is required or desirable to prove the identity of the parties. To assess the legality of an electronic signature, a distinction must be made between three types of electronic signatures. The first is the 'qualified electronic signature', based on the eIDAS Regulation. This signature is the equivalent of a handwritten signature with respect to the legal effect of it. The eIDAS Regulation, however, did not attribute the same legal effect to the 'regular electronic signature' (eg, a scanned signature) or the 'advanced electronic signature' (eg, an electronic signature used in internet banking). The Dutch legislator addressed these two types of signatures in the Dutch Civil Code, where it is stated that an electronic signature and advanced electronic signature have the same legal effect as a handwritten signature, provided that the methods used for its authentication are sufficiently reliable, considering the purpose for which electronic data is used and other relevant circumstances of the case. It should, however, be stressed that this is an open norm. In practice, a Dutch court must determine whether the method used is sufficiently reliable in view of potential identity fraud or fraud in connection with the declaration given. To mitigate this legal uncertainty, parties should contractually agree on the legal effects of the electronic signature used (which can, of course, be disputed before a court).

U. Norway

Generally, 'wet-ink' signatures are not required for agreements and transactions in Norway. Accepted signature methods include electronic signatures, email acceptance, click-to-accept, digital signatures and copying/pasting an image of a 'wet-ink' signature into a legal document. There are, however, certain transactions that require 'wet-ink' signatures for registration purposes, mainly for registering changes of ownership and security interests in public registers, such as the land registry maintained by the Norwegian Mapping Authorities (Kartverket). Documents sent to the Norwegian Mapping Authorities for registration need to be signed in wet ink and witnessed by two witnesses (or one witness if the witness is a lawyer).

Public authorities and financial institutions have historically required 'wet-ink' signatures, but generally accept electronic signatures today. An electronic signature verified through BankID is a qualified signature and will be recognised as equivalent to 'wet-ink' signatures. Electronic identification using BankID meets the official requirements that apply to identity verification and binding electronic signature.

V. Nigeria

The Nigerian Evidence Act recognises electronic signatures as a valid alternative to the execution of written documents in 'wet ink'. Such an electronic signature may be proved in any manner, including by showing that a procedure existed by which it is necessary for a person, to proceed further with a transaction and to have executed a symbol or security procedure to verify that an electronic record is that of the person.

The Nigerian Cybercrimes (Prohibition and Prevention) Act, 2015 also recognises the use of electronic signatures. It provides that electronic signatures in respect of the purchase of goods, and any other transactions, shall be binding. It, however, excludes certain transactions from the categories of valid contractual transactions using electronic signatures, such as for the creation and execution of wills, codicils and other testamentary documents, death and birth certificates; and matters of family law, such as marriage, divorce, adoption and other related issues.

Moreover, in practice, many regulatory bodies/government agencies will only accept documents with 'wet-ink' signatures.

However, there are no principal regulations in Nigeria that set out the technical or procedural requirements to validate electronic signatures, and no question on the requirements for the validity of electronic signatures has come up for consideration before the courts in Nigeria.

It should be noted that there is currently an Electronic Transaction Bill 2017 (the 'Bill'), passed by the Nigerian Senate in 2017, awaiting the assent of the President. In essence, the Bill seeks to provide a legal and regulatory framework for conducting transactions using electronic or related media. It provides for an electronic signature and record, administration or electronic signatures and admissibility of electronic evidence, among other areas.

W. Poland

Yes. Since September 2016, the Polish Civil Code has provided an explicit provision pursuant to which declarations of intent made in electronic form are equivalent to those made in writing. The electronic form is, in turn, observed when an agreement is signed with a qualified electronic signature, that is, an electronic signature compliant with requirements of the eIDAS Regulation. A 'qualified' electronic signature is an electronic signature that is based on a secure signature creation device, and on a qualified and valid certificate. A certificate must be based on a certificate from a recognised certification service provider (eg, Certum by Asseco Data Systems SA). A 'qualified' electronic signature is time-stamped. This makes it possible to establish the moment of signature creation and to prevent fraud. A 'qualified' electronic signature is only available for natural persons, not legal entities. Nevertheless, certain agreements requiring written form only allow for 'wet-ink' signatures, which cannot be replaced by a 'qualified' electronic signature (eg, in relation to bills of exchange).

Although an agreement requiring a written 'wet-ink' signature can be executed using an electronic signature, this rule does not apply in the opposite direction; that is, if an agreement requires a qualified electronic signature (selected by parties), it cannot be effectively substituted with a 'wet-ink' one.

In practice, agreements can sometimes be signed in hybrid written-electronic form. Such a situation occurs when one party places a 'wet-ink' signature, whereas the other executes the agreement with a qualified electronic signature. Although such a configuration appears to have gained acceptance among practitioners, it still has not been elaborated upon by legal scholars and courts.

X. Singapore

Under the Electronic Transactions Act (Cap 88 of Singapore) (the 'ETA'), where a rule of law requires certain information to be in writing, an electronic record satisfies this requirement if the information is accessible so as to be usable for subsequent reference. If the rule of law requires a signature, the requirement is satisfied in relation to an electronic record if a method is used to identify the person and the person's intention, and: (1) the method used is reliable, as appropriate for the purposes for which the record was generated under the circumstances; or (2) proven to be reliable by itself or together with further evidence.

If the electronic signature has been authenticated through an accredited certification authority, the ETA creates a presumption that the document has been signed by the person whose electronic signature has been affixed.

The ETA does not apply to certain classes of documents, for which the relevant statutory or common law requirements continue to apply. The excluded classes of documents include: (1) the creation or execution of a will; (2) negotiable instruments, documents of title, bills of exchange, promissory notes, bills of lading or bearer instruments; (3) creation, performance or enforcement of indentures, trusts and powers of attorney; and (4) sale, disposition or conveyance of immovable property or any interest therein.

The ETA also does not override any specific contractual stipulations agreed between the parties as to the requisite form.

Y. Spain

According to Spanish Law No 59/2003 of 19 December on electronic signatures and the eIDAS Regulation (jointly, the 'Electronic Signature Regulations'), the characteristics and effects of electronic signatures in Spain depend on their security features and their probative value:

- qualified electronic signature, which is an advanced electronic signature based on a recognised certificate and created by a trustworthy signature creation device, which entails the use of the strictest security features;
- advanced electronic signature, which shall be: (1) uniquely linked to the signatory; (2) capable of identifying the signatory; (3) created using electronic signature creation data that the signatory can, with a high level of confidence, use under his/her sole control; and (4) linked to the data signed therewith in such a way that any subsequent change in the data is detectable; and
- simple electronic signature, which is an electronic signature that does not fall into the other two categories (there is no established list of requirements).

The Electronic Signature Regulations only acknowledge a 'qualified electronic signature' as having the same evidentiary value as a handwritten signature in court. The three categories of electronic signature are nonetheless recognised in Spain as being valid to enter into contractual relationships and as admissible before the courts. Thus, as set out by the Electronic Signature Regulations, an electronic signature may not be denied legal effect or deemed inadmissible as

evidence in legal proceedings solely on the grounds that it is electronic or that it does not meet the requirements for qualified electronic signatures. However, as mentioned, the level of evidentiary value of each type of electronic signature is naturally not the same, and will depend generally on the contractual process and ancillary measures that may have been taken to ensure the proper identification of the signatories.

Generally, where the law requires a transaction or agreement to be in writing, this does not mean it has to be a 'wet-ink' signature. Rather, it is a requirement to prevent an agreement or transaction from being entered into with merely verbal consent. Therefore, in these cases an electronic signature should also be valid.

Z. Sweden

In Sweden, an electronic signature can replace 'written form', except where a particular form is explicitly prescribed by law. By reason thereof, electronic signatures are generally considered valid. Currently there does not exist a particular form explicitly prescribed by Swedish law stating that a qualified electronic signature (as defined in the eIDAS Regulation) must be used. Hence, qualified electronic signatures are mainly used in Sweden when required by the home state country of one of the parties to an agreement. In some cases, however, an advanced electronic signature (as defined in the eIDAS Regulation) is explicitly required in Sweden.

A Swedish BankID is the most commonly used electronic identification in Sweden and is used by the majority of the Swedish population (including authorities and companies). The BankID is considered an advanced electronic signature under Swedish and European law, and was created through a cooperation and network between banks established (or with operations) in Sweden. The BankID can, in addition to signing documents, be used as an electronic identification where the person's identification is then guaranteed by the bank that issued the relevant BankID. BankID software can be used on multiple devices, such as computers and mobile phones.

Where the parties to a contract stipulate that subcontracts or amendments to an existing contract must be made in writing in a particular form (eg, 'wet-ink' or using an advanced electronic signature) they are free to do so. However, where a particular form is explicitly prescribed by law (eg, for the transfer of real estate) the parties cannot waive such form requirements.

AA. Switzerland

An 'authenticated' electronic signature that fulfils the requirements of the Federal Act of 18 March 2016 on Electronic Signatures (FAES, Bundesgesetz über Zertifizierungsdienste im Bereich der elektronischen Signatur und anderer Anwendungen digitaler Zertifikate or ZertES) is able to fully substitute a 'wet-ink' signature and to therefore fulfil the requirement of the written form. An 'authenticated' electronic signature is an advanced electronic signature that is based on a secure signature creation device, and a qualified and valid certificate. The certificate must be based on a certificate from a recognised certification service provider (eg, QuoVadis Trustlink Schweiz AG). An 'authenticated' electronic signature is time-stamped. This makes it possible to establish the moment of creation of the signature and to prevent fraud. The 'authenticated' electronic signature is only available for natural persons, not for legal entities. Nevertheless, certain agreements requiring written form only allow for 'wet-ink' signatures, which cannot be

replaced by an 'authenticated' electronic signature (eg, in relation to bills of exchange and cheques).

Finally, some (leading) legal scholars also argue that instead of using an 'authenticated' electronic signature to sign agreements that are required to be in writing by Swiss law, it is also sufficient to: (1) sign an electronic document digitally by hand (eg, using a digital pen or a touchpad), save it locally and add the signature into the actual data stream of the electronic document so it can no longer be interacted with (eg, by 'flattening' the document); or (2) use a pre-scanned, electronically stored signature by inserting it into an electronic document. However, the Swiss Federal Court has not yet decided on such cases and, therefore, some legal uncertainty remains when making use of the modern methods suggested by the more recent legal doctrine.

Where the parties stipulate themselves for a contract, or amendments thereto, to be in written form, they are free to define which form meets these requirements, including using DocuSign or other providers. If the parties do not further specify the stipulated writing requirement (including by means other than in the contract itself), in cases of doubt, the statutory requirements for the written form have to be adhered to.

BB. US (New York/Delaware)

Generally, transactions requiring the written form may be executed without 'wet-ink' signatures. New York has enacted the Electronic Signatures and Records Act (ESRA), which recognises that an electronic signature has the same validity and effect as a handwritten signature. However, the ESRA does not apply to – and 'wet-ink' signatures are thus required for proper execution of – several specific types of transactions. These include transactions that involve wills, trusts, powers of attorney, healthcare proxies, or negotiable instruments and other instruments of title where possession of the instrument confers title. The New York State Office of Information Technology Services also identifies other specific documents that require 'wet-ink' signatures.

Under the ESRA, an 'electronic signature' is defined as an electronic sound, symbol or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record.

When contracts must be written (eg, when required under the statute of frauds (see above)), a valid signature, whether 'wet-ink' or electronic, generally requires intent to authenticate the underlying contract. For example, in the case *Forcelli v Gelco* (NY App Div 24 July 2013), a purposefully typed (as opposed to automatically generated) email signature was held to satisfy this intent requirement and thus constitute a signing.

At the federal level, the Electronic Signature in Global and National Commerce Act (E-SIGN) gives legal effect and validity to electronic contracts and signatures with respect to transactions that are in or affecting interstate or foreign commerce. Where state legislation (eg, the ESRA) is inconsistent with E-SIGN, it is pre-empted by E-SIGN. As a practical matter, this should not change the result that an electronic signature will ordinarily be effective in New York.

Notwithstanding the above, certain documents may still be required to be executed in wet ink. For example, in the context of securities offerings, the DTC requires documents submitted by non-US issuers to be sent with original signatures.

CC. Vietnam

Save for those agreements or transactions that are explicitly prescribed by law that it must be executed in wet ink, and/or those that are required to be registered or notified to competent authorities, and/or notarised at a notary public, Vietnamese laws do permit the execution of agreements or other documents via digital and/or electronic means if they meet the following key requirements:

- the method of creating the electronic signature may identify the signatory and indicate his/her approval of the content of the data message; and
- such a method is sufficiently reliable and appropriate to the purpose for which the data message was created and sent.

By law, an electronic signature shall be deemed to be secure and reliable if it is verified by a security verifying process agreed by the parties to the transaction and satisfies the following conditions:

- the data creating the electronic signature solely attaches to the signatory in the context in which such data is used;
- the data creating the electronic signature is only under the control of the signatory at the time of signing;
- all changes in the electronic signature after the time of signing are detectable; and
- all changes in the content of the data message after the time of signing are detectable.

An electronic signature which has been certified by an organisation providing electronic signature certification services shall be deemed to have satisfied the requirement on security of an electronic signature as mentioned above.

V. If handwritten 'wet-ink' signatures are required, is signing possible by the exchange, or upload on a platform, of scanned/photographed versions (virtual signing)? Do the originals have to be exchanged later on?

A. Australia

The exchange of 'wet-ink' counterparts is permitted via electronic means, provided that all the parties to the transaction consent. In Australia, this will usually involve scanned copies of the 'wet-ink' counterparts being emailed to the other parties.

If the exchange takes place electronically, originals are not required to be formally exchanged later on (as exchange has already taken place); however, it is prudent to provide the other parties with original counterparts for their records.

B. Austria

If the written form is required by law and the electronic form is explicitly excluded, handwritten 'wet-ink' signatures are necessary. The originals have to be exchanged and cannot be replaced by scans or virtual signing.

Unless otherwise provided by law, formal requirements can now also be met mostly by electronic forms. A notarial deed can be established electronically. A file with a qualified electronic signature corresponds to the written form.

However, the exclusion of the electronic form by law is very rare. For instance, last wills cannot be made electronically. A statement of guarantee undertaking that is made outside a person's commercial, business or professional activities, as well as declarations of intent under family law and inheritance law that are bound by the written form or a stricter formal requirement, also require confirmation from a lawyer or notary public that the signatory has been informed of the legal consequences of his/her signature ('qualified electronic signatures').

As the qualified electronic signature is difficult to implement in the daily business, 'wet-ink' signatures are still broadly used whenever the written form is required by law.

However, it is common practice to exchange scanned versions first and exchange the originals later on.

An example when originals and 'wet-ink' signatures are required by Austrian law are securities certificates (in the form of a global or temporary note) to be deposited with the Austrian central securities depository.

C. Belgium

Yes. A scanned or photographed signature constitutes a valid electronic signature. In addition, exchanging or uploading a scanned or photographed version of an agreement, with the possibility of downloading and saving it, constitutes a set of alphabetical characters that can be accessed for as long as required. Therefore, under Belgian law, exchanging or uploading scanned or photographed versions of signed agreements complies with the above requirements, with the exception of agreements resorting under one of the specific categories listed in Article XII16 of the Belgian Code of Economic Law (see above).

D. Brazil

According to PM 2200-2/2001, documents certified by ICP-Brasil have the same legal status of 'wet-ink' signed documents. However, if ICP-Brasil-certified signatures are not an option, or in the very few circumstances that the law may require handwritten signatures, virtual signing would not guarantee the validity of the document, so that the exchange of the original documents later on would be recommendable.

E. Canada

Yes. Signing is possible by the exchange, along with the upload of scanned/photographed versions of documents onto a platform. Generally, there is no explicit requirement with respect to originals, though it may be common practice for the parties to exchange the originals afterwards.

In addition, Canadian securities laws generally support the use and upload of electronic versions as a viable alternative to originals.

F. Mainland China

Yes. Scanning/photographing and then exchanging the signature pages through emails, online platforms or other electronic alternatives is acceptable for the documents that are required to be signed in handwriting. For the originals, though not explicitly required by law, it is common practice for the parties to exchange them afterwards.

G. Czech Republic

In private-law relationships, it is generally accepted as common practice for agreements to be signed and subsequently sent by email in the form of a scan or, for a higher degree of evidentiary reliability, through appropriate contracting platforms (eg, globally recognised DocuSign platforms or the Czech iSmlouva platform). Nevertheless, the current case law of the lower courts in the Czech Republic fluctuates, and any unifying jurisprudence of the Supreme Court and the Constitutional Court of the Czech Republic is still pending. It is therefore recommended to take the more standard route of the guaranteed or qualified electronic signature rather than experimenting with the simple electronic signature.

H. Denmark

Generally, yes. If a 'wet-ink' signature is required as part of an agreement between two private parties, it is accepted and common practice to sign and exchange copies by email or through upload to a separate platform. In relation to the originals, though not explicitly required by law, it is considered good practice to exchange them afterwards.

However, if legislation explicitly requires a 'wet-ink' signature or originals in a given situation, for example, signatures that are subject to notarisation by a public notary, scanned copies of the signature will not be accepted.

I. England

In some instances, it remains advisable to execute documents with a 'wet-ink' signature, and in some circumstances, it is a requirement. For example, there remains uncertainty as to whether negotiable instruments, such as promissory notes, can be executed electronically and still adhere with the applicable statutory formalities given that these must exist in physical form. Some statutory bodies, such as Her Majesty's (HM) Land Registry, still require a 'wet-ink' signature for registration purposes. If a transaction involves an overseas element, for example, an English

law document is to be executed by an overseas company or a document is governed by a law other than English law, it is advisable that local counsel advice should be obtained.

The case of *R (on application of Mercury Tax Group and another) v HMRC* [2008] EWHC 2721 ('*Mercury*') led to widespread discussion about the validity under English law of the use of pre-signed signature pages and virtual signings where signature pages are exchanged by email or fax. In May 2009, a joint working party of the CLLS issued guidance in light of *Mercury*. The CLLS guidance recommended three options for effecting *Mercury*-compliant virtual signings where the documents will be signed with a 'wet-ink' signature, although only the first is recommended for use in relation to deeds:

1. The final execution copies of documents are emailed in PDF or Word format to the signatory (often with the signature page emailed as a separate document for convenience). Each signatory prints and signs the signature page in accordance with the necessary formalities and then returns in a single email to the relevant lawyers both: (i) the complete final version of the document; and (ii) a PDF copy of the completed signature page.
2. As above, but each signatory may email to the relevant lawyers its signed PDF signature page only, together with express authorisation to attach it to the final approved version of the document.
3. In relation to the use of pre-signed signature pages, the lawyers coordinating the signing should send to the signatory the complete current version of the document (making it clear that it is in draft form) together with a separate PDF signature page relating to the document. The signatory executes the signature page and returns it by email (or by courier) to be held to order until authority is given for it to be attached to the document to be signed. Once the document has been finalised, the lawyers email the final version of the document to the signatory and obtain confirmation that they have agreed the final version and authorise the relevant law firm to attach the pre-signed signature page to the final version and to date and release the document.

The Law Commission's 2019 report endorsed the view that documents can be exchanged electronically. Where contracts have been exchanged electronically, the creation of physical copies is not a requirement to give rise to a binding contract as the electronic version will constitute an executed original.

J. Finland

A handwritten 'wet-ink' signature is not generally required, but when used, it is generally accepted and common practice to sign agreements and scan the signature pages and exchange them by, for example, email.

However, in certain situations, only the original documents with wet-ink signatures are accepted. For example, only the original copy of a MOA is accepted by the Finnish Trade Register, if the MOA was originally signed by hand. If a qualified electronic signature was used in signing the MOA, a scanned version is accepted. The Finnish Trade Register also only accepts an original

version of an unlimited power of attorney. In addition, some documents, such as minutes of the boards of directors, are only accepted by the Finnish Trade Register as certified copies.

K. France

Yes. If the aforementioned advanced electronic signature or qualified electronic signature are used, each party will receive an electronic document (with its certificate) equivalent to an original. Accordingly, it is not possible to conduct a 'regularisation' by handwritten signatures and exchanging such originals later on.

Otherwise, the parties may exchange scanned copies of a contract electronically. After the exchange of scanned copies, the relevant hard copies of such contract can be circulated between the parties by registered post or courier for execution. Then, executed originals will be delivered to the parties.

L. Germany

If the written form is required by law and the electronic form is explicitly excluded, handwritten 'wet-ink' signatures are necessary. The originals have to be exchanged and cannot be replaced by scans or virtual signing. However, the exclusion of the electronic form by law is very rare. For instance, a statement of guarantee, a notice to terminate an employment contract or an abstract promise to pay a debt (*abstraktes Schuldversprechen*) need 'wet-ink' signatures and cannot be replaced by the electronic form.

As the qualified electronic signature is difficult to implement in the daily business, 'wet-ink' signatures are still broadly used whenever the written form is required by law. However, it is common practice to exchange scanned versions first and exchange the originals later on.

In a few exceptional cases, a mechanical reproduction of a signature is allowed in order to facilitate mass transactions, such as the subscriptions of shares or order papers.

M. Hong Kong

Yes. Where 'wet-ink' signatures are required, the common practice is that each party to the agreement should first print the document in full and sign on the 'hard copy' paper document. The entire signed document should then be exchanged by sending a scanned PDF version of the document (including signed signature page(s)) to the other party, with the originals to be exchanged later on.

N. Hungary

It is a commonly applied practice, but where a 'wet-ink' signature is really a requirement (eg, real property transfers, last wills and stipulation of contractual penalty), only the originals have the required legal effect. Exchange of originals is required in all cases, even though scanned copies could serve as some form of evidence to prove the agreement/statement, but not that it was made in writing.

O. Indonesia

Yes, virtual signing is possible. Subsequent exchange of the originals is always observed as a matter of best practice.

P. Ireland

Yes. If 'wet-ink' signatures are required, it is accepted and common practice, to sign agreements (including on separate, broken-out signature pages), scan the signature pages and exchange them, together with the execution versions of the signed documents and a set of pre-scribed confirmations, by email with originals exchanged by courier promptly after completion. The use of platforms is less common, but should not, in principle, be treated differently from the usual 'virtual completion' process that uses email. The precise requirements of this process differ depending on the type of contract that is being exchanged and whether the document has been executed as a deed or as a simple contract.

Q. Italy

Under Italian law, parties may choose to execute certain types of contracts by exchange of commercial correspondence, that is, the parties may exchange the proposal and acceptance, duly signed by means of 'wet-ink' or electronic signature (as depicted under question IV above) via ordinary or certified email.

According to the Italian Civil Code, a contract is deemed to be executed when the proponent is aware of the acceptance of the other party; such a requirement is fulfilled when the agreement, duly signed, is received via email.

R. Malaysia

Yes. If 'wet-ink' signatures are required, it is generally an accepted and common practice for parties to sign agreements on separate signature pages, scan the signature pages and exchange them via email, followed by the exchange of the originals.

S. Myanmar

Yes. If 'wet-ink' signatures are required, it is accepted and common practice, to sign agreements (including on separate, broken-out signature pages), scan the signature pages and exchange them by email or upload on platforms and then exchange the originals later on.

T. The Netherlands

Yes, this is possible and often done in practice (including on separate, broken-out signature pages). A scanned signature is considered to be a 'regular electronic signature', which is explicitly attributed the same legal effects as the 'wet-ink' signature. There is, in principle, no requirement to exchange the originals at a later point in time, but it could be wise to keep the originals from an evidential point of view.

U. Norway

No. If handwritten 'wet-ink' signatures are required, signing cannot be done through exchanging copies of the signatures. An alternative to 'wet-ink' signatures is electronic signatures, such as BankID, for certain types of agreements and public registration forms.

V. Nigeria

Yes. If 'wet-ink' signatures are required, it is accepted and common practice to sign agreements, upload them on platforms or exchange them by email and then exchange the original documents later on.

W. Poland

No. If 'wet-ink' signatures are required, they must be placed on a document containing a declaration of intent of a contracting party (no separate signature pages are allowed), and subsequently, a 'wet-ink' signed document must be physically exchanged between contracting parties (exchange of a scanned/photographed version is not satisfactory).

X. Singapore

Yes. If 'wet-ink' signatures are required, it is accepted and common practice, to sign agreements (including on separate, broken-out signature pages), scan the signature pages and exchange them by email or upload on platforms and then exchange the originals later on.

Y. Spain

Yes. Agreements that require a handwritten signature/wet-ink signature may be signed by exchanging (by email) copies of the contract bearing scanned or photographed signatures. Originals do not generally need to be exchanged subsequently, although they would be persuasive evidence of the valid execution of the contract.

Again, in some cases, the law requires contracts to be formalised in a public deed. If so, the parties would generally need to sign the contracts before a notary public.

Z. Sweden

There is no general rule in Sweden and this depends on the parties and the form requirements in question. It is generally accepted to sign documents, scan the signature pages, exchange them by email and subsequently provide the originals. This method is used for, inter alia, the submittal of documents to governmental agencies to facilitate faster processing of applications and similar matters.

AA. Switzerland

Yes. If 'wet-ink' signatures are required, it is accepted and common practice, to sign agreements (including on separate, broken-out signature pages), scan the signature pages and exchange them by email or upload on platforms and then exchange the originals later on.

BB. US (New York/Delaware)

In New York, virtual signing is possible and, indeed, common. In practice, original signatures are rarely exchanged after the virtual signing.

CC. Vietnam

Vietnam does not have regulations on virtual execution of documents. As such, originals should be exchanged for 'wet-ink' signatures to mitigate the risk of any challenge to the valid execution of documents.

VI. Can contractual (stipulated) form requirements be amended by conclusive behaviour? If so, what are the requirements to do so?

A. Australia

Companies are required under the Australian Corporations Act to maintain a members' register. As discussed earlier, the register must contain certain details about the company's members. In the event that the form requirements have not been met in respect of the issue and transfer of securities, the details on the members' register will be proof of those matters in the absence of any evidence to the contrary.

However, the company may be liable to various penalties if it does not comply with the form requirements under the Australian Corporations Act.

B. Austria

As long as the written form is not mandatory and the contract does not provide for form requirements for the waiver/amendment of the form requirements themselves, the contractual form requirements can be changed by implied conduct of the parties. In this case, it must be clear from the overall circumstances that the parties wanted such an amendment. The burden of proof lies then with the party claiming such an amendment.

C. Belgium

Yes. While Belgian courts are, in principle, bound by the contractual requirements laid down by the law or the parties, judges have the authority to, even where contractual form requirements are in place, rule that the contract has been amended on the basis of conclusive behaviour. The burden of proof lies with the party claiming the amendment.

D. Brazil

Yes. There are different hypotheses in which Brazilian legislation indicates that the conclusive behaviour can lead, in practice, to a change in the form requirements for contracts. As an example, Article 330 of the Civil Code provides that payments repeatedly made in another location makes the creditor's waiver presumed in relation to the terms of the contract.

In addition, the Civil Code provides that *objective good faith* should guide the contractual relationship, and affords leeway for the parties to agree on its interpretation – objective good faith is understood as a pattern of behaviour based on the level of trust and diligence one can expect from a reasonable contractual partner. Objective good faith exercises a threefold function: (1) it serves for the interpretation of the contractual intent; (2) it integrates duties of the parties in the context of a contractual relationship, even if said duties are not expressly stated in the agreement; and (3) it limits the exercise of rights. The first function is enshrined in Article 113 of the Civil Code, which provides as follows: 'Art. 113. Legal business must be interpreted according to good faith and the uses of the place of its celebration'. The integrative function can be extracted from Article 422 of the Civil Code, imposing the duty of mutual cooperation between the parties. Finally, with regard to its limiting function, included in Article 187 of the Civil Code, coherent and loyal action is required, classifying the conduct that, although not prohibited by any legal or contractual provision, is contrary to the current ethical standard.

Brazilian case law adopts the theory of *supressio* and *surrectio* as the foundation of the resolution of several current controversies. *Supressio* is the impossibility of demanding a right by one of the parties to a transaction in the case of repeated behaviour different from what has been agreed by the contract. *Surrectio* is the creation of a right, to the adverse party, resulting from the same repeated conduct, and that generated the expectation that it would be kept unchanged. Both figures prevent the abrupt and unreasonable alteration of the factual framework and, in practical terms, can have the same effect of a contractual amendment by conclusive behaviour.

E. Canada

Yes, Canadian courts may consider evidence of the parties' conduct after they enter into a contract as an aid to the interpretation of that contract. However, courts will only do so if there is ambiguity in the original contract. Where evidence of subsequent conduct is admissible in interpreting a contract, courts will assess the weight or cogency of such evidence by considering the following factors:

- Is the conduct a conduct of both parties?
- Is the conduct intentional and consistent over time?
- Is the conduct engaged in by individuals or agents of a corporation?
- Does the conduct occur closer in proximity to the time of the contract's execution?
- Is the evidence unequivocal in the sense of being consistent with only one of the two alternative interpretations of the contract?

F. Mainland China

Yes. Contractual/stipulated form requirements could be amended by parties' behaviour under Chinese law. The party asserting conclusion of contract by behaviour bears the burden of proof. In addition, the court will determine whether the contract has been formed or amended by weighing the evidence.

G. Czech Republic

Generally, if the parties agree to use a particular form of contract, they are presumed not to intend to be bound by such a contract unless the form is satisfied, unless proven otherwise. This also applies where one of the parties expresses its will to conclude the contract in written form.

However, as was recently ruled by the Supreme Court of the Czech Republic, the parties cannot limit themselves in the future in a way that would make it completely impossible for them to reach a different agreement. Their currently expressed will always takes precedence over the will that was expressed earlier, and this also applies to the requirement of form. If the parties wish to abandon the previously agreed form, and if the actual abandonment of the agreed form is to be made in a form other than the agreed form, then the parties must not only enter into the informal legal action itself, but must also abandon the previously agreed reservation form (in any form whatsoever, but the abandonment must be proven and documented).

In other words, if a previously agreed form of legal action is abandoned, it must be clear from the circumstances of the case that the parties wished to leave that form, and at the same time it should be clear that they want to be bound by the new legal action. In a factual sense, this may undoubtedly be part of the same act (eg, an agreement amending the original contract) but, legally, it is two facts – the informal legal action itself and an agreement to abandon the agreed form, for which the subsequent conduct of the parties is also legally relevant (eg, the parties claiming the performance of the contract from each other, or by fulfilling the contract as concluded). This presumption is also rebutted by proving that the purpose of the form was only to provide evidence of a concluded contract.

H. Denmark

Yes, conclusive behaviour is an accepted concept under Danish law. A written contract can be amended as a result of conclusive behaviour, as there are no form requirements in relation to the amendment of a contract under Danish law. Even if a contract stipulates that amendments to the contract have to meet certain form requirements, a valid amendment can be made through conclusive behaviour without observing the agreed form requirements.

Danish courts will determine whether the contract has been amended by weighing the evidence. However, the burden of proof lies with the party claiming the amendment.

I. England

Although the default position is that contracts may be formed informally, it is common for parties to agree that a contract can only be amended by the use of a stipulated formality, for example, by written amendment and signed by all parties. The courts will uphold such a clause. That said, it is possible for contractual form requirements to be amended by conclusive behaviour. This can occur where the conduct of the parties, in reliance upon an oral variation, is such that it triggers the operation of an estoppel that has the effect of preventing a party from relying on the contractual provision that states only an amendment in the stipulated form will be valid. For an estoppel to be effective, at a minimum, there should be some words or behaviour that unequivocally demonstrate that the amendment is valid notwithstanding its informality, and this would require something more than the informal promise itself.

J. Finland

Yes, contractual form requirements can be amended by conclusive behaviour. The sole requirement for such an amendment is that the parties act in a way that can be interpreted as signifying a change of form requirements. However, amendments based on conclusive behaviour are subject to interpretation and may lead to evidential issues if later challenged.

K. France

In principle, a contract may only be amended in writing. In some cases, the party's intent at the time of the contract can be determined by the courts by reference to the parties' subsequent behaviour. However, this will not apply if the terms of the contract are clear and precise. In any case, the burden of proof is on the party claiming such an amendment.

L. Germany

As long as the written form is not mandatory and the contract does not provide for form requirements for the waiver/amendment of the form requirements themselves, the contractual form requirements can be changed by implied conduct of the parties. In this case, it must be clear from the overall circumstances that the parties wanted such an amendment. The burden of proof lies then with the party claiming such an amendment.

However, in the case of consumer contracts, according to the jurisdiction of the Federal Supreme Court (Bundesgerichtshof), contractual form requirements do not meet the standards of consumer protection laws, and are therefore invalid.

M. Hong Kong

The current position in Hong Kong is unclear. Generally, 'no oral modification' (NOM) clauses are often inserted in contracts to preclude attempts to revise contractual terms by informal means. In a recent decision of the UK Supreme Court (*Rock Advertising Limited v MWB Business Exchange Centres Limited* [2018] UKSC 24), the court held that a NOM clause is effective to prevent subsequent modifications to contractual provisions unless formalities are met (ie, the modification is in writing) or if the NOM clause itself is removed by a compliant written variation. Although this case may be of high persuasive value to Hong Kong courts, it takes no precedence in Hong Kong, and the Hong Kong legal position remains unsettled on this issue.

N. Hungary

The acceptance of performance in spite of the fact that the contract did not meet formal requirements can – with certain exceptions – remedy the formal invalidity.

In addition, an amendment or termination of a contract without the stipulated form is also valid if the actual situation aimed by the amendment or termination was reached with the mutual consent of the parties (section 6:94 of the Civil Code).

O. Indonesia

The Indonesian court will respect the parties' expression of intent documented in the written agreement under the freedom of contract principle. If there is a specific contractual provision stating that an agreement may only be amended in writing, the Indonesian court will observe that. The Indonesia Civil Code recognises a conclusive (non-written) behaviour (known as a 'silent agreement') that an agreement can also be binding in regard to matters not expressly stated in the agreement. In relation to this, the parties' continuous action may be used as the basis to prove that there was a binding agreement between the parties. In such a case, a party alleging a claim or argument has the burden to gather and present the evidence to support its claim or argument. Pursuant to Supreme Court Decision No1284K/Pdt/1998, the Supreme Court held that a 'silent agreement' was a legally binding agreement in a context in which the parties fail to renew a contract but continue to implement their respective obligations under the contract for more than a year.

P. Ireland

The position is not necessarily settled as a matter of Irish law. If the question came before an Irish court, it is likely that the court would consider this a question of contractual interpretation, and consequently, the 'factual matrix' surrounding the contract would be important. We note that the English Supreme Court recently affirmed the effectiveness of a clause that stipulated form requirements. This decision (and any other decisions from common law jurisdictions) would be of persuasive value before an Irish court but does not constitute a precedent.

Q. Italy

With regard to contracts that shall be mandatorily executed by written agreements (see question I above), Italian case law requires the parties to comply with the form requirements prescribed by law for the execution as well as for any subsequent modification of the contract. Thus, the conclusive behaviour of the parties does not suffice for the valid amendment of the contract, which may be exclusively carried out in written form, as required with respect to the specific type of contract at stake.

On the other hand, in line with Italian case law on contracts that are not required to be executed in written form by the law but are executed in writing by choice of the parties, a contractual clause requiring the written form for any subsequent amendment of the contract may be tacitly waived by the conclusive behaviour of the parties that is incompatible with such a form requirement. Furthermore, the parties may also terminate the contract by tacit mutual agreement.

R. Malaysia

There are form requirements for the transfer of securities (as indicated in our earlier responses), and these cannot be amended by conclusive behaviour.

In relation to contracts, where a contract is in writing and clearly stipulates that it may only be amended in writing with the agreement of all parties, the courts of Malaysia would generally not interfere with the intention of the parties under the contract. It is possible, however, depending on the specific facts at hand, that the courts may hold that a term of a contract may be amended

orally by all the parties notwithstanding any provisions to the contrary in the contract. In the alternative, the courts might also give effect to any express or implied agreement between the parties as a collateral contract that modifies performance under the original contract. Principles of estoppel may also operate.

S. Myanmar

Yes. Myanmar courts do not consider themselves bound by contractual provisions stating that an agreement may only be amended in writing. Even where such clauses exist, conclusive behaviour can still change/amend the written contract – but the burden of proof then is on the party claiming such an amendment.

T. The Netherlands

Yes. In general, under Dutch law what is agreed upon between the parties will be the guiding principle. However, an agreement also has effects that, according to the nature of the agreement, follow from the law (eg, additional and/or mandatory requirements), custom (eg, parties' behaviour, whether agreed upon expressly or silently), and/or the principle of reasonableness and fairness (*redelijkheid en billijkheid*). This principle of reasonableness and fairness applies irrespective of the specific content or form requirements of an agreement, that is, a court can, take into account all facts and circumstances of a specific case, and set aside certain terms, including form requirements, agreed upon based on this principle.

U. Norway

As a general principle, yes. Pursuant to Norwegian contract law, conclusive behaviour is part of the assessment of whether an agreement has been entered into and on what terms. The threshold for stating that an agreement between professional parties has been amended through conclusive behaviour is, however, high. A written and signed agreement between professional parties will usually be interpreted as binding in accordance with the wording of the agreement and not be subject to amendment based on conclusive behaviour. A party making such a claim would have to substantiate its claim convincingly for the amendment having been made.

V. Nigeria

No. Nigerian courts hold that parties to a contract are bound by the terms and conditions of the contract they signed, and it cannot be amended by conclusive behaviour or any other extrinsic evidence. Therefore, if a contract provides that any alteration of its terms must be in writing, oral agreements or conduct cannot be used to vary or modify such a contract.

W. Poland

In general, conclusively amending a contractual form requirement is not allowed under Polish civil law (although some legal scholars do not exclude such an option in some cases). If contracting parties wish to amend the contractual form requirement, they need to amend their agreement with respect to the contractual form prior to the execution of the contract/amendment to the contract in amended form. If contracting parties elect to execute the contract in a special

form (ie, higher than regular written form), any amendments thereto must be in the same form to be valid.

The only exception to the above rule is when parties conclude the contract in a regular written form and do not specify that non-observance of written form in amendments to such a contract is invalid.

X. Singapore

Even in contracts that stipulate that no amendment is to be effected other than in writing, the Singapore courts may take into account the conduct of parties in determining whether there has been an agreement to amend the agreement. The burden of proof would be on the party claiming such an amendment.

Y. Spain

Yes, but following the *pacta sunt servanda* principle it would be difficult to obtain a Spanish court ruling declaring that the parties' conclusive behaviour supersedes a provision stating that the contract may only be amended in writing. In any event, it will be a matter of being able to evidence that the parties' intention and consent to amend the contract was validly granted, and it will depend on the nature of such conclusive behaviour and other related circumstances (eg, if the behaviour was continuously repeated over time).

Z. Sweden

Yes. Swedish courts do not consider themselves bound by contractual provisions stating that agreements may only be amended in writing. Where such clauses exist, conclusive behaviour (*konkludent handlande*) can affect how a written contract is interpreted. However, the burden of proof in such cases is then commonly on the party claiming such an amendment.

AA. Switzerland

Yes. Swiss courts do not consider themselves bound by contractual provisions stating that an agreement may only be amended in writing. Even where such clauses exist, conclusive behaviour can still change/amend the written contract – but the burden of proof then is on the party claiming such an amendment.

BB. US (New York/Delaware)

Yes, under New York law, when written modification of a contract is required by that contract, an oral modification may nonetheless be enforced if certain evidence is provided.

The party who seeks to enforce the oral modification must establish that the party partly performed the contract and would not have done so without the modification, and that the other party induced justified reliance on that modification. The party must then show that enforcing the modification is in the interest of justice.

CC. Vietnam

Vietnamese law recognises contracts to be made through specific acts, and contractual (stipulated) form requirements can be amended by conclusive behaviour provided the evidentiary burden of proof is on the claiming party who must show evidence of this.

VII. Can corporate resolutions or certificates be executed by using digital and/or electronic signatures?

A. Australia

Certain corporate documents, including corporate resolutions, are required by the Australian Corporations Act to be signed. Currently, there is no judicial authority to support the position that 'signing', as required by the Australian Corporations Act, can include electronic signing (even if the company's constitution authorises electronic signing). As such, the prudent approach would be for these documents to be signed in wet ink.

Share certificates, however, are not required by the Australian Corporations Act to be signed. Accordingly, share certificates may be electronically signed by the issuing company, provided that:

- the company's constitution or constituent documents allows electronic signing; and
- the applicable electronic transaction legislation in the state or territory in which the company is incorporated permits electronic signing.

B. Austria

In principle, yes. However, the specific regulations that apply to the different types of companies contain various form requirements for corporate resolutions in general or for specific decisions.

For example, corporate resolutions by the shareholders of limited liability companies (*Gesellschaft mit beschränkter Haftung* or *GmbHs*) are generally adopted in shareholders' meetings. A shareholders' meeting need not be held if all shareholders declare their consent to the proposal in question in text form or by declaring their consent to a written vote. The articles of association may (and usually do) provide for simplifications of the modalities of passing resolutions (eg, by allowing resolutions to be passed orally, in telephone conferences and via email). On the other hand, corporate resolutions aimed at changing the articles of association of a limited liability company, such as capital increases or reductions, have to be notarised and entered in the commercial register (*Firmenbuchregister*) in order to become valid.

Further form requirements exist for Austrian stock corporations (*Aktiengesellschaften*). Every resolution adopted by the general meeting of a stock corporation is to be recorded in the minutes of the meeting prepared by a notary public. It is sufficient to have the minutes signed by the chairman of the supervisory board. The law also prescribes notarisation for resolutions of the supervisory board, although this is not the responsibility of a notary but of the chairman of

the supervisory board. The law does not require minutes to be taken for resolutions of the management board.

As with limited liability companies, the articles of association of stock corporations usually provide for simplifications of the modalities of passing resolutions to the extent legally permissible (eg, remote voting and voting by letter).

C. Belgium

Yes. Belgian corporate law does not impose specific formal requirements for corporate resolutions or certificates. Consequently, as indicated above, the principle of functional equivalence applies and allows for such resolutions or certificates to be executed in electronic form, using electronic signatures. See the response to question IV for the applicable framework and some specific rules on notarial powers of attorney.

D. Brazil

Yes, under the provisions of Article 8 of Law No 14,063 of 23 September 2020, the digital signatures contained in corporate resolutions of legal entities incorporated under private law listed in Article 44 of the Civil Code (eg, associations, companies, foundations, religious organisations, political parties and limited liability sole proprietorships – *empresa individual de responsabilidade limitada*), must be accepted by legal entities incorporated under public law and by the government's direct and indirect public administration.

Upon due execution of the corporate resolutions in digital form, such corporate resolutions will produce the same effect as one physically executed. Thus, government bodies, such as the Board of Trade, must recognise the validity of the digital signatures, and thereby are not allowed to somewhat hinder the registration of corporate resolutions simply because they were digitally executed.

E. Canada

Yes, corporate resolutions and certificates can be executed using digital and/or electronic signatures under Canadian law.

F. Mainland China

Yes, corporate resolutions and certificates using digital signatures are acceptable under Chinese law. Several provinces and cities, including Beijing and Shanghai, have issued specific rules to encourage the use of electronic stamps in economic and social activities.

G. Czech Republic

Generally, yes. Corporate resolutions or certificates can be executed by using electronic signatures, unless stated otherwise in the articles of association. Note that, in some cases, further conditions may be set, such as for the electronic delivery of labour law documents.

Where voting at general meetings or deciding outside of general meetings ('*per rollam* decision-making') using technical means (especially remotely and electronically) is permitted, a simple or more qualified type of electronic signature may also be used. However, such *per rollam* decision-making must be explicitly accepted by the articles of association of joint stock companies, whereas for limited liability companies, it is sufficient for their articles of association not to explicitly exclude it. The terms of voting or decision-making must be determined in such a way as to enable the company to verify the identity of the person entitled to exercise the voting right and to identify the shares to which the voting right is attached.

Other bodies of the company (the board of directors of the company, supervisory or administrative board of the company, and executives – if they form a collective body) may also decide *per rollam* (ie, outside of meetings of their body), provided that this is permitted by the articles of association of the company. It should be noted that this condition was temporarily suspended by the Covid-19 measures, as stated below. However, regarding a quorum of a collective body, the majority of its members must be present or otherwise in attendance. According to the majority opinion, 'otherwise in attendance' includes participants at a meeting 'at a distance' (ie, electronically via videoconference, teleconference, telephone, Skype, etc), whereas this does not have to be permitted by the articles of association.

H. Denmark

Generally, yes. Under section 8(c)(1) of the Danish Companies Act, signature requirements provided under the Act or under rules issued pursuant to the Act may be fulfilled by use of a technique that ensures the unambiguous identification of the person having issued the document. The same provision is laid down in section 6(b)(1) of Danish Financial Business Act No 1447 of 11 September 2020 (the 'Danish Financial Business Act').

In regard to the signature requirements, the Danish Financial Supervisory Authority has confirmed that electronic signatures are allowed when meeting certain security criteria and fulfilling the purpose of the requirement of a signature under the law. An electronic signature solution is considered adequate if: (1) it confirms the document is real; (2) it confirms the document is final; and (3) it is possible to identify which persons have signed and thereby approved the document. The Danish NemID solution fulfils these requirements.

Nevertheless, under section 8(c)(2) of the Danish Companies Act and section 6(b)(2) of the Danish Financial Business Act, the Danish Business Authority and the Minister of Business and Growth, respectively, have the authority to lay down rules requiring a 'wet-ink' signature on certain types of documents.

I. England

Yes. Board minutes, shareholder resolutions and, for example, directors' certificates may be signed using electronic signatures as described above. This is subject to the caveat that the constitutional documents of the signing corporate entity do not restrict the use of electronic signatures. In the absence of anything in those documents that actively restricts electronic execution, no positive authority to use an electronic method of execution is needed. If it is known in advance that one or more signatories will not be available or have the requisite access to

equipment or the internet to sign, it is possible for that person to appoint another as his/her attorney, but note that this must be executed as a deed.

J. Finland

Yes. An electronic signature, irrespective of its form, shall generally have the equivalent legal effect of a handwritten signature. It should be noted, however, that certain form requirements may follow from the company's corporate documents, such as articles of association and internal guidelines.

K. France

Yes. Advanced electronic signatures (or qualified electronic signatures) can be used for certain corporate documents, such as minutes of shareholders resolutions.

The electronic signature of corporate documents supposes, when such documents are subject to registration formalities to the commercial register (*registre du commerce et des sociétés*), to make sure beforehand that the competent clerk's office will accept to proceed to the relevant registration on the basis of the electronically signed documents. The clerk's office of the Commercial Court of Paris has indicated that it accepts electronically signed documents. Regarding the other clerks' offices, it should be checked on a case-by-case basis.

L. Germany

In principle, yes. However, the specific regulations applying to the different types of companies contain various form requirements for corporate resolutions in general or for specific decisions.

For example, corporate resolutions by the shareholders of limited liability companies (*GmbHs*) are generally adopted in shareholders' meetings. A shareholders' meeting need not be held if all shareholders declare their consent to the proposal in question in text form or by declaring their consent to a written voting. The articles of association may (and usually do) provide for simplifications of the modalities of passing resolutions (eg, by allowing resolutions to be passed orally, in telephone conferences, via email, etc). On the other hand, corporate resolutions aiming at changing the articles of association of a limited liability company, such as capital increases or reductions, have to be notarised and entered in the commercial register (*Handelsregister*) in order to become valid.

Further form requirements exist for German stock corporations (*Aktiengesellschaften*), which differ for listed and non-listed stock corporations. For example, every resolution adopted by the general meeting of a listed stock corporation is to be recorded in minutes of the meeting prepared by a notary public. For non-listed stock corporations, notarial minutes are only required for resolutions for which the law stipulates the majority of three-quarters of the votes cast, or a greater majority ratio. Otherwise, it is sufficient to have the minutes signed by the chairman of the supervisory board. The minutes of the management board's meetings and the management board's resolutions are not subject to any form requirements. The minutes of the meetings of the supervisory board, however, have to be in writing. As with limited liability companies, the articles of association of stock corporations usually provide for simplifications of the modalities of passing resolutions to the extent legally permissible.

M. Hong Kong

Subject to the articles of association of a company, corporate resolutions or certificates could be signed using electronic signatures provided that such signatures comply with the requirements under the ETO.

N. Hungary

Yes, but in some cases an advanced electronic signature or a qualified electronic signature shall be applied to the document. In light of Covid-19, the rules to adopt resolutions without holding a meeting has been eased by the government. In connection to this, the use of electronic signatures for natural persons is not needed when they issue written statements via emails that contain their identifying personal data. However, this is a temporary measure only.

O. Indonesia

In general, yes, documents such as resolutions of the board of directors and minutes of director's meetings, can be executed using digital and/or electronic signatures. However, certain corporate documents, such as articles of association and amendments to the articles of association, have to be made in a notarial deed form.

P. Ireland

Yes, provided the company's constitution does not provide otherwise and, for corporate governance purposes, appropriate safeguards and processes are put in place regarding the use of electronic signatures.

Q. Italy

Corporate resolutions must be signed by the chairman and the secretary (or the notary, as the case may be) of the meeting and recorded in the relevant corporate ledger. Italian law does not provide for any specific form requirements. Thus, it is common practice to print resolutions in a paper ledger that is then 'wet-ink' signed by the aforementioned persons. However, it is now also possible to keep the corporate ledger in a digital format.

In particular, according to section 39 of Legislative Decree No 82 of 7 March 2005, the so-called Digital Administration Code, '[b]ooks, directories and writings, [...] the keeping of which is mandatory, including notarial ones, may be formed and stored in digital format'. In addition, according to section 2215-bis of the Italian Civil Code, '[t]he obligations of progressive numbering and endorsement provided for by the provisions of law or regulations for the keeping of books, directories and records are fulfilled, in case of bookkeeping in digital format, by affixing, at least once a year, the time stamp (certified date) and digital signature of the entrepreneur or other person delegated by the same [...]'.

Moreover, since 2 December 2019, any filing, registration or deposit with the Companies' Register Office of Milano Monza Brianza Lodi must be signed by the directors of the companies with their digital signatures and 'wet-ink' signatures are no longer accepted. The regulation of the Companies' Registers varies from province to province, but the general trend is to incentive the

use of digital signatures within the three-year National Plan for the Digital Transformation of the Public Administration 2020–2022. Since February and March 2020, many other Companies' Registers have adopted such a regime.

There are no legal form requirements on how to sign a director's certificate.

R. Malaysia

Generally, yes. From a practical perspective, however, where a copy of the corporate document concerned is required to be submitted or filed with the Companies Commission of Malaysia (CCM) under the provisions of the Malaysian Companies Act, it may be advisable not to use an electronic signature in order to avoid any issues with the CCM, as the CCM may not be familiar with the use of electronic signatures. We are aware of instances in the past where the CCM raised queries where copies of documents (eg, board resolutions) to be submitted to the CCM were electronically signed. We are also aware that, in practice, some company secretaries ensure that 'wet-ink' signatures are used for any documents that have to be submitted to the CCM.

S. Myanmar

Generally, yes. For board minutes and directors' certificates, from a Myanmar law perspective, the validity of board minutes and directors' certificates is not subject to compliance with any particular written form. However, form requirements may arise from other sources, for example, from the constitution of a company. Further, parties to a transaction may agree on specific form requirements for directors' certificates.

Further, from a Myanmar law perspective, the validity of powers of attorney is not subject to compliance with any particular form either. Therefore, powers of attorney can be in electronic form and can be executed using any type of electronic signature.

T. The Netherlands

In principle, yes. No mandatory statutory requirement applies to use 'wet-ink' signatures for corporate resolutions or certificates. Notwithstanding the foregoing, parties to an agreement may agree upon certain form and/or content requirements as to the use of signatures. In addition, the execution of certain corporate resolutions, such as an amendment of a company's articles of association or the issue of new shares, requires a notarial deed that must be executed before a Dutch civil law notary. Such a deed must be signed by all the parties to such deed (including the civil law notary) using a 'wet-ink' signature.

U. Norway

Yes. Even though the main rule pursuant to Norwegian companies' law is that board meetings and general meetings should be physical, there are alternatives, such as written resolutions and telephone conferences. Resolutions by the board of directors of a company may be executed by digital signatures pursuant to written resolutions. For general meetings, written resolutions may normally only be executed by private companies. Public companies need to arrange for physical general meetings, but they can allow electronic voting by shareholders.

In May 2020, as a consequence of the Covid-19 pandemic, the Norwegian Parliament introduced a temporary Act that gives companies the option of conducting board meetings and general meetings without physical attendance. Further information regarding this temporary Act is included below.

V. Nigeria

The Nigerian Evidence Act provides that electronic signatures are valid. In addition, the CAMA provides that an electronic signature is deemed to satisfy the requirements of signing of documents requiring authentication by the company.

Previously, most agreements and corporate resolutions required to be filed with regulators in Nigeria were acceptable only when executed in 'wet ink'. However, with the new CAMA, it is anticipated that corporate resolutions and agreements executed using digital or electronic signature will finally be accepted for filing.

W. Poland

In most cases, yes. The validity of (supervisory) board minutes and directors' certificates from a Polish law perspective is not subject to compliance with any particular written form. However, form requirements may arise from other sources, for example, articles of association and organisational regulations of a company. Furthermore, parties to a transaction may agree on specific form requirements for directors' certificates. Additionally, certain corporate documents of Polish companies, such as capital increases and changes to articles of association, must be in the form of a notarial deed and executed before a notary.

X. Singapore

Yes, if permitted under the constitution of the company.

Y. Spain

Corporate resolutions are generally recorded in minutes. Those persons with certification powers in the company may issue certificates of the minutes. Therefore, minutes and certificates can only be signed by certain specific persons within the company (chair and secretary of the relevant body, directors, etc).

As indicated above, the Electronic Signature Regulations only acknowledge the 'qualified electronic signature' as having the same value as a handwritten signature. However, an electronic signature may not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is electronic or that it does not meet the requirements to be a qualified electronic signature.

When company certificates must be filed at the commercial registry (eg, when they relate to capital increases, mergers, amendments of the articles of association or director appointments), they generally need to be formalised before a notary public or, at the very least, a notary public must attest that the signatures on the certificate belong to the persons who are said to have signed it. This notarial duty (ie, ability/authority to confirm the identity of the signatories; if appli-

cable, confirm that the signatories have understood the content of the document they are signing and confirm that the signatories have been properly informed, etc) is more difficult if the document has not been signed before a notary. Therefore, a notary public would not be able to confirm that a specific electronically signed document has been signed by the person indicated in the document. Instead, the notary would only be able to confirm that the document has been signed by means of a qualified electronic signature corresponding to a specific person who has assumed responsibility for its appropriate use. That said, in specific circumstances, commercial registries may accept documents that have been executed electronically.

Z. Sweden

In general, most corporate resolutions can be signed using electronic signatures and are not subject to compliance with any particular written form. The SCRO requires that (however, subject to debate), where electronic signatures are used, they must qualify as advanced electronic signatures (as defined in the eIDAS Regulation). Furthermore, from a Swedish law perspective, the validity of powers of attorney is not subject to compliance with any particular form in general. Therefore, powers of attorney can (subject to some certain exceptions) be in electronic form and can be executed using any type of electronic signature. Share certificates and other certificates representing securities in Swedish limited liability companies, such as warrant certificates, can only be validly issued by 'wet-ink' signature.

AA. Switzerland

Generally, yes. For board minutes and directors' certificates, from a Swiss law perspective, the validity of board minutes and directors' certificates is not subject to compliance with any particular written form. However, form requirements may arise from other sources, for example, from the articles of association and the organisational regulations of a company. Further, parties to a transaction may agree on specific form requirements for directors' certificates. Additionally, certain corporate documents of Swiss companies, such as capital increases and changes to the articles of association, have to be in the form of a public deed to be executed by a notary public.

Further, from a Swiss law perspective, the validity of powers of attorney is not subject to compliance with any particular form, either. Therefore, powers of attorney can be in electronic form and can be executed using any type of electronic signature. However, there are certain exceptions, including the form requirements applicable to the contract of surety also apply to the conferral of special authority to enter into a contract of surety and, therefore, in the instances stipulated by the law, the power of attorney needs to be notarised by a notary public; and the power of attorney to exercise the membership rights of shareholders or the voting rights of bondholders must be drawn up in writing. Therefore, the power of attorney needs to bear a 'wet-ink' signature or needs to be signed by an 'authenticated' electronic signature.

BB. US (New York/Delaware)

Yes. The application of Delaware law is discussed below, as the DGCL is the most relevant law governing corporate matters in the US.

The DGCL provides that, whenever a signature is required or permitted by either the DGCL or the corporation's own certificate of incorporation or by-laws, an electronic signature will be ac-

ceptable. Accordingly, a wide variety of corporate documents, including merger agreements, voting agreements, and other documents contemplated by the DGCL, may be executed by means of electronic signatures.

CC. Vietnam

Although Vietnamese laws do not explicitly restrict the use of digital and/or electronic signatures for corporate resolutions or certificates, digital and/or electronic signatures are not allowed in practice.

VIII. If there are digital and/or electronic alternatives to a 'wet-ink' signature, what are the predominant providers in your jurisdiction?

A. Australia

Adobe DocuSign is the predominant provider in Australia.

B. Austria

There are several providers of electronic trust services (eg, providers of qualified electronic signatures) that are recognised by the Telecom-Control-Commission (Telekom-Control-Kommission). The Telecom-Control-Commission, which is supported by the Austrian Regulatory Authority for Broadcasting and Telecommunications (Rundfunk und Telekom Regulierungs-GmbH or RTR-GmbH), is responsible for the admission of providers of qualified electronic signatures and only those listed on the 'Trust List' published by the RTR-GmbH are entitled to provide such trust services. Currently, the following providers of qualified electronic signatures are listed on the Trust List: e-commerce monitoring GmbH, PrimeSign GmbH, Swisscom IT Services Finance SE and A-Trust Gesellschaft für Sicherheitssysteme im elektronischen Datenverkehr GmbH.

C. Belgium

Belgian providers that provide qualified certificates for electronic signatures within the meaning of the eIDAS Regulation are currently the following: Certipost, DigiCert Europe Belgium, Zetes, Portima, Universign, Globalsign and Unifiedpost.

Pursuant to the eIDAS Regulation, which reiterates the EU internal market principle for trusted services, EU Member States can also rely on a trust service provider established in another Member State. Predominant EU providers are, for example, DocuSign and YouSign (both established in France).

D. Brazil

The so-called entities of ICP Brasil are the actors that make up the hierarchical chain of trust. They are the root certification authority, certification authority, registration authority, time certification authority, support service provider and biometric service provider.

Biometric service providers are entities that have the technical capacity to perform biometric identification. The great advantage of having this entity from ICP Brasil in the chain is the possibility of making a registration or applicant unique in all ICP Brasil databases and systems.

This allows for the biometric verification of the applicant for a digital certificate, as well as the comparison of biometry (perennial and univocal characteristic) according to international usage standards. The predominant certifiers are Serviço Federal de Processamento de Dados ('SERPRO'), Caixa Econômica Federal, SERASA EXPERIAN, the Brazilian Federal Revenue Office (Receita Federal do Brasil) and CertiSign.

E. Canada

There is a variety of electronic signature service providers available in Canada, including OneSpan, DocuSign, PandaDoc, HoneyBook, SignRequest, Docsketch, Zoho Sign, SignNow, e-SignLive, RightSignature, eSign+ and Sertifi.

F. Mainland China

Service providers who can issue digital certificates to verify electronic signatures shall obtain licences issued by the Ministry of Industry and Information Technology. A list of the qualified service providers can be found at the website of the Ministry of Industry and Information Technology (<https://zwfw.miit.gov.cn/miit/resultSearch?categoryTreeld=318>).

G. Czech Republic

Several providers have been approved by the Czech Ministry of the Interior. These are První certifikační autorita, a.s.; Česká pošta, s.p.; elidentity a.s.; Software602 a.s.; Správa základních registrů; and SEFIRA spol. s r.o.

H. Denmark

Nets DanID A/S is the provider of NemID, which is the main solution for digital and electronic signatures in Denmark, as it is the solution used by the public authorities for signing and identification. NemID can be used for verification in relation to other digital and/or electronic signature providers such as DocuSign, Penneo and esignatur.

Furthermore, pursuant to the eIDAS Regulation, any approved trust service provider established in another EU Member State will be accepted in Denmark.

I. England

Electronic signature platforms such as DocuSign and Adobe Sign are now widely used in the UK. It can be advantageous to use these platforms as they include built-in processes that minimise the risk of mistakes, confidentiality issues and fraud. For example, both platforms allow real-time visibility into the signature process and generate a digital audit trail, which can track the email and Internet Protocol (IP) address of the signatory, and when and where the document was signed. This audit trail is admissible in legal proceedings and carries substantial evidential weight in proving the signatory's intention to authenticate the document. For additional

security, customers can also opt to use two-factor authentication which, for example, sends a passcode to the signatory's mobile phone.

J. Finland

There are several providers of advanced electronic signatures in Finland. However, the only provider of qualified electronic signatures is currently the Finnish Population Register Centre.

K. France

DocuSign is currently one of the market leaders for advanced electronic signatures.

Regarding qualified electronic signatures, there are several 'qualified trust service providers' for such signatures, who are listed and recognised by the French National Agency for the Security of Information Systems (Agence Nationale de Sécurité des Systèmes d'Information or ANSSI).

L. Germany

There are several providers of electronic trust services (eg, providers of qualified electronic signatures) that are recognised by the Federal Network Agency (Bundesnetzagentur). The Federal Network Agency is responsible for the admission of providers of qualified electronic signatures and only those listed on the 'Trust List' published by the Federal Network Agency are entitled to provide such trust services. Currently, the following providers of qualified electronic signatures are listed on the Trust List: Atos Information Technology GmbH, Bank-Verlag GmbH, Bundesagentur für Arbeit, Bundesnetzagentur, Bundesnotarkammer, Deutsche Post AG, Deutsche Telekom AG, DGN Deutsches Gesundheitsnetz Service GmbH, D-Trust GmbH and medesign GmbH.

M. Hong Kong

It is not necessary for an electronic signature to be in a specific format and parties can apply electronic signatures on documents in any manner (eg, via touchscreen device, pasting image of 'wet-ink' signature or via online platforms) provided the requirements under the ETO are complied with. Currently, the use of encrypted electronic signature platforms such as PandaDoc, DocuSign and Adobe Sign is not yet prevalent in Hong Kong.

N. Hungary

Qualified service providers for electronic signatures are MICROSEC Zrt, NetLock Kft and NISZ Zrt. ID&Trust Kft is also a provider of advanced electronic signature solutions.

The eIDAS Trusted Lists of the Member States and the EU List of eIDAS Trusted Lists are available at <https://webgate.ec.europa.eu/tl-browser/#/>.

The list of the qualified services in Hungary is available at <http://webpub-ext.nmhh.hu/esign2016/setLanguageAction.do?lang=hu>.

O. Indonesia

Electronic digital certificate providers must be registered with the MoCI, and they are available at https://tte.kominfo.go.id/listPSrE/_.

P. Ireland

There are several providers of electronic signatures. Popular service providers that are used in Ireland include DocuSign and Adobe. Each electronic signature provider is likely to offer somewhat different products, but should be able to confirm the types of electronic signature that they provide by reference to the categories in the eIDAS Regulation, namely 'electronic signature', 'advanced electronic signature' and 'qualified electronic signature'.

Q. Italy

There are several providers of electronic signatures approved by the Italian Government, for example, Aruba, Infocert, Namirial and Poste Italiane.

R. Malaysia

Examples of electronic signature platforms typically used in Malaysia include Adobe Sign and DocuSign.

In relation to digital signatures under the DSA, the list of licensed certification authorities in Malaysia is available on the Malaysian Communications and Multimedia Commission's website at www.mcmc.gov.my/en/sectors/digital-signature/list-of-licensees.

S. Myanmar

We are not aware of any established, predominant providers of digital and/or electronic alternatives to a 'wet-ink' signature in Myanmar. Typically, the copying/pasting of an image of a 'wet-ink' signature is utilised in Myanmar.

T. The Netherlands

A qualified electronic signature must be obtained from a Certification Service Provider (CSP). CSPs that provide qualified electronic signatures must be registered with the Radio Communications Agency Netherlands (Agentschap Telecom). The Radio Communications Agency supervises these CSPs. The most predominant providers in The Netherlands are Cleverbase ID BV, KPN BV, Digidentity BV, Quovadis Trustlink BV and CIBG.

U. Norway

There are multiple providers of 'authenticated electronic signatures', but the predominant alternative in Norway is BankID. As mentioned above, this electronic authentication has been developed by Norwegian financial institutions. An electronic signature produced through BankID qualifies as a 'qualified' signature and is recognised as being equal to a 'wet-ink' signature.

V. Nigeria

There are no predominant providers of 'authenticated' electronic signatures in Nigeria as there is no regulator or accreditor of electronic signature providers. However, some of the electronic signature tools used in Nigeria, which are software applications, include HelloSign, AdobeSign, DocuSign, SignEasy and Signable.

W. Poland

There are several providers of a 'qualified' electronic signature, who are recognised by bodies accredited by the National Certification Centre (Narodowe Centrum Certyfikacji). Only these acknowledged providers are allowed to issue 'qualified' electronic signatures that are fully able to substitute a 'wet ink' signature in mere electronic communication. Popular service providers are Certum by Asseco Data Systems SA, Krajowa Izba Rozliczeniowa SA and EuroCert sp z o o.

Electronic signatures are successively becoming more popular in Poland. Since 2019, financial statements have had to be electronically signed by at least one board member. The impact of the Covid-19 pandemic also contributed to the popularisation of this form.

X. Singapore

Currently, the only accredited certification authority under the ETA is Netrust Pte Ltd – electronic signatures that are applied through Netrust Pte Ltd have the benefit of presumption under the ETA.

There are other non-accredited electronic signature providers, such as DocuSign and Adobe.

Y. Spain

'Wet-ink' signatures are more common than digital or electronic signatures in business transactions and for executing corporate documentation.

Z. Sweden

There are multiple providers of electronic signatures in Sweden. Popular service providers include Adobe Sign, DocuSign and Scrive. The most commonly used advanced electronic signature is the Swedish BankID. There are only two providers of qualified electronic signature services (as defined in the eIDAS Regulation), TrustWeaver and ZealiD, that are certified by the Swedish Post and Telecom Authority (Post- och telestyrelsen) under the eIDAS Regulation and are registered on the European Commission's eIDAS Trusted List Browser. Qualified electronic signatures are, however, not commonly used in Sweden.

AA. Switzerland

There are several providers for an 'authenticated' electronic signature, who are recognised by the bodies accredited by the Swiss Accreditation Service (SAS). Only these acknowledged providers are allowed to issue 'authenticated' electronic signatures that are fully able to substitute a

'wet-ink' signature in mere electronic communication. Popular service providers are Quo Vadis Trustlink Schweiz AG and Swiss Sign AG. However, electronic signature platforms are not (yet) commonly used in Switzerland.

BB. US (New York/Delaware)

The most widely used provider of electronic signatures for financial market transactions in New York is DocuSign.

CC. Vietnam

Providers of electronic signature services must be licensed by the Vietnamese authorities. Viettel Military Corporation (Viettel-CA), FPT Information System Company Limited (FPT-CA) and BKAV Joint Stock Company (BKAV-CA) can be considered as predominant service providers in Vietnam.

IX. Would the 'wet-ink' signature be required or beneficial in connection with the enforcement of a claim or in connection with the requirements as to evidence in administrative/civil/regulatory proceedings?

A. Australia

If the law does not permit the relevant document to be executed electronically, then the 'wet-ink' signed document will be required to evidence that a binding agreement exists.

Where the law permits the relevant document to be executed electronically, it is not necessary to also execute and produce a 'wet-ink' signed copy.

B. Austria

In general, Austrian law allows a litigant to use a variety of means to prove the existence of a contract in court, for example, witness statements, documents and emails.

Documents bearing a handwritten signature or a notarial certified stamp provide full evidential value to prove that the statements made in the document were originally made by the submitter. Electronic documents that are provided with a qualified electronic signature have a corresponding evidential value.

If an electronic document is not provided with a qualified electronic signature, the authenticity of the document is subject to the free assessment of evidence by the court.

C. Belgium

The Belgian law of evidence defines a signature as follows: a sign or a sequence of signs, affixed by hand, electronically or by any other process, with which a person identifies himself/herself and from which his/her will is shown. This definition includes both a 'wet-ink' and an electronic signature. According to Belgian legal doctrine, the most reliable is the qualified electronic signature (ie, an electronic signature with certificates of an electronic identity card). This

form of signature has the same evidential value as a 'wet-ink' signature. An ordinary electronic signature has less probative value, including the scan of a 'wet-ink' signature.

D. Brazil

Yes. The use of 'wet-ink' signatures is beneficial – and in some cases even required – for reasons of evidence and in connection with the enforcement of a claim as per the applicable procedural rules. As of today, it is unclear how courts will evaluate the authenticity and evidential value of merely digital signatures without ICP-Brasil's digital certificate, in particular, where the opposing party claims not to have signed the contract and experts have to be consulted.

The most controversial issue is the enforcement of digitally signed documents. The issue was analysed by the Brazilian Superior Court of Justice (STJ) in REsp No 1,495,920/DF, in 2018, having given prestige to the executive effectiveness of documents certified by ICP-Brasil. Despite this guidance, precedents from state courts still cast doubt on two points about the potential for electronic documents to serve as executive titles: (1) whether the certified signatures of two witnesses are required; and (2) whether electronic documents not certified by ICP-Brasil can instruct execution.

Today, the STJ has the opportunity to contribute to clarifying the matter, through two appeals pending judgment:

- REsp No 1,850,676 deals with the execution of bank credit notes with the electronic signatures of the debtor and two witnesses, certified by a platform without the seal of ICP-Brasil. The São Paulo State Court (Tribunal de Justiça Estado de São Paulo or TJSP) denied it the nature of an executive title. The issue under debate, therefore, is the executive effectiveness of an electronic document, signed by the debtor and two witnesses, which uses a certificate not issued by ICP-Brasil.
- REsp No 1,798,828, on the other hand, allows the advance of another debate: the executive effectiveness of an electronic document recognised as authentic by ordinary bodies, but without certification of the signature of the debtor or two witnesses. The appeal is against the decision of the Goiás State Court (Tribunal de Justiça do Estado de Goiás or TJGO), which recognised a certain electronic document as authentic, but due to the absence of a certified signature by the debtor and two witnesses, considered it only capable of instructing a monitory action, denying it executive effectiveness.

As can be seen, the STJ has, in these two instances, an excellent opportunity to guide the interpretation of the executive effectiveness of digital documents, in addition to being able to promote relevant progress in the matter, without having to wait for changes in the law of conduct. In addition, that occasion becomes particularly opportune in view of the fact that Law No 14.063/2020, although it has made the use of electronic signatures more flexible in interactions with public entities, has removed its application to interactions between natural persons or between legal entities under private law, in addition to leaving the legal regime for the executive effectiveness of electronic documents unchanged.

E. Canada

Generally, electronic signatures are equally valid as 'wet-ink' signatures in Canada, and are frequently used in the execution of various contracts, documents and records. However, each province or territory may prescribe certain exclusions on the use of electronic signatures. For instance, in the province of Ontario, the ECA, which governs electronic transactions and generally allows for the use of electronic signatures, does not apply to wills and codicils, trust created by wills or codicils, powers of attorney concerning financial affairs or personal care, or negotiable instruments (subject to certain exemptions). The ECA does not specify that these documents cannot be signed electronically, just that the express provision that an electronic signature meets any signing requirement does not apply to them. Similarly, in the province of Alberta, the Electronic Transactions Act does not apply to wills and codicils, trust created by wills or codicils, enduring powers of attorney and personal directives, records that create or transfer interests in land, guarantees or negotiable instruments. In legal proceedings where any of the aforementioned documents or records are needed, using 'wet-ink' signatures may be required or more beneficial. Certain corporate administrative filings may also be subject to similar restrictions.

In general, Canadian evidence statutes permit the reliance on electronic documents in legal proceedings, provided that standard requirements regarding the authenticity and integrity of the document are met. These requirements may impose an additional burden of proof for the party seeking to establish the authenticity and integrity of electronic signatures in legal proceedings.

F. Mainland China

Yes. Though the E-Signature Law provides that 'reliable' electronic signatures have the same legal validity as handwritten signatures or stamps, such a reliability requirement imposes an extra burden of proof on the parties in administrative/civil/regulatory proceedings.

Third-party certification is not compulsory, but certified electronic signatures are generally easier to be accepted by courts. In practice, courts determine whether an electronic signature is reliable by examining whether the electronic certification service provider has obtained the corresponding qualifications, the way the electronic data was generated, the content of the electronic data and whether the electronic signatory has passed the certification of the certification authority. In addition, courts may also take into consideration whether the electronic data was under the control of the signatory himself/herself during execution, that is, whether the signature reflects the signatory's true intent.

G. Czech Republic

According to Article 25 of the eIDAS Regulation, an electronic signature should not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic signatures.

However, the relationship between this provision and the provisions of Section 565 of Act No 89/2012 Coll, the Civil Code, as amended, enshrining the so-called presumption of authenticity, is disputed. The second sentence of that provision provides that 'where a private instrument is used against a person who has manifestly signed the instrument [...], the authenticity and accu-

racy of the instrument shall be deemed to have been recognized'. Authenticity means the origin (ie, the verification of the identity of the signatory or issuer of the document and the correctness of the truthfulness of the content). According to some experts, the above provision of the regulation should not apply at all to simple electronic signatures, as it does not provide proof of either the authenticity of the signature or the authenticity of the document.

H. Denmark

If a 'wet-ink' signature is not required, for example, by law, a 'wet-ink' signature is not required in connection with the enforcement of a claim and so on.

A 'wet-ink' signature does not necessarily carry greater value as evidence than an electronic signature. Generally, both forms of signature fulfil the same purpose in relation to whether the person had the will to enter into the contract.

Under Article 25 of the eIDAS Regulation, electronic signatures shall not be denied legal effect and admissibility as evidence in legal proceedings on the grounds that they are in an electronic form. Further, a qualified electronic signature shall have the equivalent legal effect of a handwritten signature.

However, a 'wet-ink' signature may be beneficial under certain circumstances, for example, if the party claims not to have signed the document. Under these circumstances, the use of electronic signatures could impose an extra burden of proof.

I. England

Section 7(1) of the ECA 2000 has long recognised electronic signatures as admissible in evidence in legal proceedings in relation to any question regarding the authenticity or integrity of the document. Under the eIDAS Regulation, only qualified electronic signatures are deemed to have the equivalent legal effect of handwritten signatures; however, an electronic signature should not be denied legal effect and admissibility in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic signatures.

The UK's exit from the EU means that the eIDAS Regulation will no longer apply in the UK after the end of the transition period. However, the UK Government intends to incorporate an amended form of the existing rules relating to electronic signatures to replace the eIDAS Regulation.

J. Finland

As the 'wet-ink' signature and the qualified electronic signature have equivalent legal effects, the 'wet-ink' signature would, in general, not be more beneficial compared to the qualified electronic signature. However, compared to other forms of electronic signatures, such as scanned copies or email signatures, the use of a 'wet-ink' signature might be beneficial as, in general, the 'wet-ink' signature can be deemed to have higher probative value than electronic signatures.

K. France

The eIDAS Regulation preserves the legal admissibility of all three categories of electronic signature, stating that an electronic signature shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in electronic form, or that it does not meet the requirements for qualified electronic signatures.

France recognises the electronic signature under Article 1367 of the Civil Code, which states that an electronic signature carries the same evidentiary weight as a handwritten signature, if it uses a reliable process of identification, ensuring that it is linked with the electronic document, and guaranteeing the integrity of the document. At present, only *qualified electronic signatures* meet this standard, and give rise to a presumption of reliability.

In the other cases (simple or advanced electronic signature), the person who invokes the existence of an electronic signature shall demonstrate the reliability of the electronic signature process used, it being specified that such proof is easier for the *advanced electronic signature* by its level of superior legal and technical security.

L. Germany

Generally, under German law, a plaintiff may use a wide range of means to prove the existence of a contract in court, for example, testimonies, documents and emails.

Documents with a 'wet-ink' signature or a notarial certified mark provide the full probative value that the statements made in the document were originally made by the exhibitor. Electronic documents that bear a qualified electronic signature have a corresponding probative value.

If an electronic document does not have a qualified electronic signature, the authenticity of the document is subject to the free assessment of evidence by the court.

M. Hong Kong

Under the ETO, it is expressly provided that, without prejudice to any rules of evidence, an electronic-signed document shall not be deemed inadmissible in evidence in any legal proceeding solely by virtue of being an electronic record; and where an electronic record is used in the formation of a contract, such a contract shall not be denied validity or enforceability on the sole ground that an electronic record was used for that purpose.

N. Hungary

According to the eIDAS Regulation, a qualified electronic signature shall have the same legal effects as a handwritten one. From a Hungarian law perspective, an advanced electronic signature or qualified electronic signature, followed by a timestamp shall be deemed as an alternative to 'wet-ink' signatures; however, as electronic signatures are not so widespread outside the legal and banking sectors, it is still usual to use 'wet-ink' signatures. Electronic communication and the use of digital certification methods are mandatory for legal persons and parties represented by legal counsels in lawsuits and enforcement proceedings, and also most administrative proceedings.

O. Indonesia

Under Article 5 of the EIT Law, digital/electronic signatures are considered valid legal evidence before the court (similar to 'wet-ink' signatures), except for documents required under the law to be made in writing and/or in a notarial deed form (eg, fiduciary deed).

P. Ireland

In circumstances in which the use of electronic signatures is appropriate (as noted above, this is not all circumstances), electronic signatures should be enforceable in the same way as 'wet-ink' signatures. This is supported by certain provisions of the ECA 2000, including section 22 (Admissibility), which confirms the admissibility of electronic contracts and signatures in evidence, and section 9 (Electronic form not to affect legal validity or enforceability). As a practical matter, until litigation and regulatory proceedings involving electronic contracts and signatures have become commonplace, there may be some additional work in clarifying for the relevant court/regulator the reliability of the electronic form used. It should also be noted that the fact that a contract has been signed with an electronic signature may provide some probative advantages versus a 'wet-ink' signature, for example, through the availability of relevant metadata.

Q. Italy

The Italian Civil Code governs the value of written agreements for the purpose of providing evidence in court proceedings.

Pursuant to section 2702 of the Italian Civil Code, statements included in a written document are deemed to have been released by the person who signed the document if the latter recognises his/her signature or the law expressly considers the signature as recognised (ie, the signature is authenticated by a public notary or a public official; note that these officials may authenticate either 'wet-ink' signatures or electronic signatures).

Note, also, that such a provision applies to documents executed with a 'wet-ink' signature as well as with an advanced electronic signature, qualified electronic signature or digital signature. In the event of digital documents signed with a simple electronic signature, the written form as well as its value as evidence in judicial proceedings are discretionarily valued by the judge, in relation to the security, integrity and immutability of the document itself. Unless evidence is given to the contrary, the use of a tool for a qualified electronic signature or digital signature is presumed to be linkable to the owner of such a tool.

R. Malaysia

Yes, it may be beneficial. As mentioned in our response to question I above, at the outset, the question of whether or not a contract is in electronic form, or whether a signature to such a contract is a 'wet-ink' signature, has no impact on the underlying formal validity or formal enforceability of the contract. The main concerns revolve around admissibility in evidence and non-repudiability; that is, being able to prove that the counterparty agreed to the terms in question. Where a 'wet-ink' signature is not done in a certain manner and in the presence of third parties, questions as to whether the signature can be attributed to the party purported to sign, can arise – being an issue similarly arising for electronic signatures.

Generally, the content of documents containing electronic or digital signatures may be proved in court either by way of primary (ie, an original signed document) or secondary evidence (ie, a copy of the original signed document) under the Evidence Act 1950 (the 'Evidence Act'). The content of secondary evidence may, however, only be admissible as evidence in certain cases, for example, when the original has been destroyed or lost, or when the party offering evidence of its content cannot for any other reason not arising from his/her own default or neglect produce it in reasonable time, or when the original is of such a nature as not to be easily movable.

Insofar as compliance with the primary evidence rule and the issue of which document is the 'original' are concerned, for a hard copy document with a 'wet-ink' signature, the 'original' would be the hard copy document that was originally signed by the relevant person.

By contrast, for electronically or digitally signed documents, of the view that the 'original' electronic document concerned would technically be, in the case in which a link is clicked in order for the relevant document to be downloaded from the electronic signature service provider's server, the document that was initially downloaded and 'reassembled' in the relevant temporary folder on the computer.

Unfortunately, it is quite likely that this will not be the electronically or digitally signed version that was finally stored in the relevant electronic repositories or servers. From a technical point of view, the version stored in the relevant electronic repositories or servers is much more likely to be an electronic copy of such an 'original' document, which is materially identical.

In no case would a printed copy technically constitute 'primary evidence' of an electronic document. At best, such a printout would constitute secondary evidence of the content of the original electronic document. In reality, however, this point does not appear to have been raised (or appreciated) in any reported Malaysian case, either by counsel or by the courts themselves.

From a practical point of view, therefore, it appears somewhat likely that this will not prove to be a major obstacle in a court suit, especially if the counterparty agrees to the document being placed in the agreed bundle of documents, and that the 'original' need not be produced.

In any event, even if such a challenge were to be mounted, we are of the view that it would be possible to mount a strong argument that such a printout should be permitted to be adduced as secondary evidence on the grounds that the 'original' is not in human readable format and that either:

- the party offering evidence of its content cannot for any reason not arising from his/her own default or neglect (other than loss or destruction) produce it in a reasonable time; or
- that the original is of such a nature as 'not to be easily movable' and produced to the court, as it resides on a server, and any electronic copy produced to the court onscreen would still be just a copy.

In addition, for the purposes of admitting a document 'produced by a computer', under section 90A(2) of the Evidence Act, it may be proved that a document was produced by a computer in the course of its ordinary use by tendering to the court a certificate signed by a person who

either before or after the production of the document by the computer was responsible for the management of the operation of that computer, or for the conduct of the activities for which that computer was used. Such a certificate may be stated to the best of the knowledge and belief of the person stating it. Where a certificate is tendered, it will be presumed that the computer referred to in the certificate was in good working order and was operating properly in all respects throughout the material part of the period during which the document was produced.

Insofar as electronically or digitally signed documents are concerned, the argument may be raised that such documents are 'produced by a computer'. In such an instance, it might become necessary, in order to have the document admitted as evidence, to tender a certificate under section 90A of the Evidence Act, 'signed by a person who either before or after the production of the document by the computer was responsible for the management of the operation of that computer, or for the conduct of the activities for which that computer was used'.

S. Myanmar

Yes, the use of 'wet-ink' signatures is beneficial – and in some cases even required – for reasons of evidence and in connection with the enforcement of a claim as per the applicable procedural rules. As of today, it is unclear how courts might assess the evidential value of merely digital signatures, in particular where the opposing party claims not to have signed the contract and experts have to be consulted.

It should be noted that where a document is not governed by Myanmar law or needs to be enforced outside of Myanmar, local advice in the foreign jurisdiction should be obtained. If a contract is not governed by Myanmar law, the form is generally subject to the law governing the contract.

T. The Netherlands

Yes, the use of 'wet-ink' signatures is beneficial and, in some cases, even required in connection with the enforcement of a claim or in connection with the requirements as to evidence in legal proceedings. However, we are not aware of any case law in which a suit was lost because an electronic or digital signature was provided instead of a 'wet-ink' signature, assuming a trustworthy method was used for authentication of such a digital or electronic signature.

U. Norway

Wet-ink signatures are not in themselves beneficial in connection with enforcement of claims or as evidence in civil proceedings. The question is rather whether there is a chance that the signature has been forged or in any other way is not valid. If BankID was used, there would normally be no reason to doubt the authenticity of the signature compared to a 'wet-ink' signature. Electronic evidence is also admissible in court, implying that electronic signatures, in principle, have the same evidential value as 'wet-ink' signatures.

V. Nigeria

The use of 'wet-ink' signatures is only required where the document must be executed by deed. As stated earlier, the Nigerian Evidence Act provides that electronic signatures are valid. How-

ever, it is beneficial to use 'wet-ink' signatures because it is common practice in Nigeria. Currently, no case has been determined in Nigeria where the validity of an electronic signature was contended, which is probably because parties would rather err on the side of caution and execute documents with 'wet-ink' signatures. It is thus unclear how courts might assess the evidential value of an electronic signature on a document, in particular, where there is an objection to the validity of such a signature.

Regardless, the Nigerian Evidence Act provides for the admissibility of computer-generated documents as evidence in court. The conditions for the admissibility of such documents are:

- the statement sought to be tendered was produced by the computer during a period when it was in regular use;
- during that period of regular use, information of the kind contained in the document or statement was supplied to the computer;
- the computer was operating properly during that period of regular use; and
- the information contained in the statement was supplied to the computer in the ordinary course of its normal use.

In addition, many regulatory bodies insist that documents be executed using a 'wet-ink' signature before they will be accepted for filing or registration.

W. Poland

The use of 'wet-ink' signatures is beneficial but not necessary for documents to qualify as evidence in legal proceedings.

In general, under Polish law a 'document' is defined as any medium (repository) of information that allows such information to be accessed. This broad definition encompasses traditional paper documents, as well as digital formats such as emails, text files and text messages.

From an evidentiary perspective, a party relying on a document must prove its authenticity unless the same is undisputed by the opposing party. A 'wet-ink' signature is one of the more common and traditional evidence of authenticity, as there is a legal presumption that a signed document's content constitutes a statement originating from the undersigned party. Of course, a party to proceedings is free to prove that a signature has been falsified. In any event, a document's authenticity, timing and origin may be proven by any other form of evidence; hence, a 'wet-ink' signature is not necessary. One of the strongest proofs of authenticity and origin is the use of a qualified electronic signature, which is deemed by law to be tantamount to a 'wet-ink' signature.

In addition, as a general rule, copies may be submitted in proceedings instead of an original. A copy may be certified for compliance with the original by a public notary or by the party's legal adviser. The original (or officially certified copy) only needs to be produced upon request of the court or party if there is justified doubt as to document authenticity.

The above general procedural rules are formally binding (in slightly varying forms) in different types of legal proceedings before Polish authorities. In practice, some authorities, especially

administrative bodies, are strongly accustomed to working with 'wet-ink' signature documents and may require them, even if, strictly speaking, it is not necessary by law. For that reason, whenever it is expected that certain documents may be required by administrative (including regulatory) bodies, it is advisable to seek legal advice on their form and, when in doubt and when practicable, have them executed with 'wet-ink' signatures out of prudence.

X. Singapore

Yes, the use of 'wet-ink' signatures is beneficial – and in some cases even required – for evidentiary purposes and in connection with the enforcement of a claim. In cases in which digital signatures are used without an authentication protocol, it is unclear how courts might assess the evidential value of such digital signatures where the authenticity of the authority to affix such signatures is challenged.

Y. Spain

Where the contracting parties have executed the contract before a notary public, a 'wet-ink' signature is certainly beneficial in connection with evidence requirements in administrative/civil/regulatory proceedings. Notably, the notary public would assume, among others, a duty to identify the signatories of the contract, confirm their legal capacity to sign the documents and confirm that their consent to execute the contract was properly informed.

If the contract or document is signed in 'wet ink' but not before a notary public, its potential benefits over an electronic signature would depend on many other factors, such as the type of electronic signature and whether the signature was witnessed.

Z. Sweden

The probative value of original signed documents is generally higher. By reason thereof, 'wet-ink' signatures and, for example, advanced electronic signatures, are beneficial from an evidentiary perspective. Although not always required to serve as evidence in administrative/civil/regulatory proceedings, where a particular form is explicitly prescribed by law for a relevant document, this aspect becomes more relevant.

AA. Switzerland

Yes, the use of 'wet-ink' signatures is beneficial – and in some cases even required. In terms of evidence, the party relying on a document must prove its authenticity if this is disputed by the opposing party on the basis of sufficient grounds. 'Wet-ink' signatures facilitate such proof, although there is no strict rule. The same applies to 'authenticated' electronic signatures. Furthermore, signed documents tend to be considered to have greater probative value.

With regard to enforcement of monetary claims, Swiss law provides for special summary proceedings if a claim is based on the recognition of debt confirmed by a 'wet-ink' signature. 'Authenticated' electronic signatures may also qualify for such proceedings provided the technical means are provided to verify the signature. These summary proceedings make it much easier to enforce a monetary claim.

As a general rule, copies may be submitted in proceedings in place of the original. The original (or an officially certified copy) only needs to be produced upon request of the court or a party if there is justified doubt as to the authenticity of the document.

BB. US (New York/Delaware)

Under the ESRA (discussed above), 'wet-ink' and digital signatures are considered identical in terms of evidentiary weight, provided the contract is of the type that may be electronically signed.

CC. Vietnam

The Law on E-Transactions regulates that 'the validity of a data message as evidence cannot be disclaimed only because it is a data message' and 'the legal validity of an e-contract cannot be disclaimed only because such e-contract is made in the form of a data message'. This means that digital and/or electronic data can be used as evidence in administrative/civil/regulatory proceedings. However, the claiming party has to prove the validity and reliability of the digital and/or electronic data. Having 'wet-ink' signatures as well would therefore be beneficial in this connection.

X. Did regulators/legislators in your jurisdiction amend, or do they contemplate amending, existing regulations as to form requirements in light of the Covid-19 pandemic?

A. Australia

Temporary measures were introduced in respect of the execution of documents in light of Covid-19 as follows:

- The Commonwealth Government determined that from 6 May 2020 until 21 March 2021, companies may execute agreements and deeds electronically or by split execution (and the Execution Assumption may still apply), provided certain requirements are met.
- The Victorian Government introduced new regulations allowing individuals to execute deeds electronically from 12 May 2020 until 25 October 2020, provided certain requirements are met.
- The Queensland Government introduced new regulations allowing individuals to execute deeds electronically from 22 May 2020 until 31 December 2020.

Split execution involves one officer of the company signing a document with a 'wet-ink' signature and the second officer in a different location signing a counterpart of the document with a 'wet-ink' signature. The end result is that there are two documents, each with one officer's 'wet-ink' signature (but there is no one document with both their 'wet-ink' signatures on the same execution block).

B. Austria

In Austria, a few temporary measures have been adopted to facilitate virtual general meetings and to ease the adoption of corporate resolutions. Originally adopted in March 2020 for the rest of the year, the measures have already been extended until the end of June 2021.

The management board of a stock corporation may decide to hold virtual general meetings and/or require shareholders to exercise their rights by email, electronically or through one of the four independent proxies elected by the company.

For limited liability companies, corporate resolutions can now be adopted outside of shareholders' meetings in text form (eg, by email) or in writing, even without respective provisions in the company's articles of association or the consent of every shareholder. Similar rules apply to cooperatives, associations and foundations.

Otherwise, the existing general regulations concerning form requirements have not been amended and, to our knowledge, neither are such changes contemplated.

C. Belgium

No such (intentions of) amendments have been communicated by the government.

D. Brazil

Yes, due to the pandemic turmoil caused by Covid-19, the Brazilian governmental authorities have been implementing several measures to deal with social distancing, including, but not limited to, amendments to form requirements.

In this regard, Provisional Measure No 931 was drawn up to, among other provisions, grant more flexibility to corporate resolutions, which, until then, had to be physically held. Since Provisional Measure No 931 came into effect, on 30 March 2020, private legal entities have been allowed to hold their corporate resolutions through digital or hybrid form. On 28 July 2020, Provisional Measure No 931 was converted into Law No 14.030, which is currently in force.

Also, Law No 14,010, of 10 June 2020, provides that associations, companies, and foundations must comply with social distancing regarding the holding of physical meetings until 30 October 2020. It is noteworthy, however, that such entities are allowed to hold their meetings in the light of the aforementioned Law No 14.030.

Furthermore, Law No 14.063, of 23 September 2020, provides that the digital signatures contained in corporate resolutions of associations, companies, foundations, religious organisations, political parties and limited liability sole proprietorships (*empresa individual de responsabilidade limitada*) must be accepted by legal entities incorporated under public law and by the government's direct and indirect public administration.

E. Canada

Yes. A number of changes have been made to existing regulations in light of the Covid-19 pandemic. For instance, regulations were adopted in Ontario to allow for the witnessing of a will by videoconference and signed in counterparts. In addition, regulations were adopted to provide that affidavits and statutory declarations may be sworn electronically.

Furthermore, the Covid-19 Response and Reforms to Modernize Ontario Act, 2020, was passed by the province of Ontario on 12 May 2020 in order to address the public health threats of the pandemic while facilitating certain forms of corporate activity. In particular, that Act brought into force the newly enacted Alternative Filing Methods for Business Act, 2020, which permits documents required or permitted to be filed by in-person delivery or mail under certain business statutes to instead be filed by alternative methods, and accepts electronic signatures and electronic copies of certain documents.

In the context of securities transactions, certain types of documents, which traditionally required original 'wet-ink' signatures, can now be completed and submitted electronically.

F. Mainland China

No. China's existing legislation, including the E-Signature Law, Several Provisions of the State Council on Online Government Services and the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases by Internet Courts, already provided a legal framework for electronic signatures, online government services and online court hearings.

During the Covid-19 pandemic, local governments and courts have issued various detailed rules under the existing legislative framework. For example, a number of city and provincial governments have issued proposals on 'Promoting Online Service and Avoiding Gatherings at Government Affairs Service Center during the Epidemic Period'; in addition to the Notice of the Supreme People's Court of Strengthening and Regulating Online Litigation Work during the Period of Prevention and Control of the Covid-19 Outbreak, the higher courts in Shandong, Shanghai, Beijing and multiple intermediate courts also rapidly responded to the Covid-19 outbreak and issued detailed regulations on the online trial/internet trial in February 2020.

G. Czech Republic

Yes, Act No 191/2020 Coll, on certain measures to mitigate the impacts of the SARS CoV-2 coronavirus epidemic on participants, injured persons, victims of crime and legal entities, and on amendments to the Insolvency Act and the Code of Civil Procedure (the 'Lex Covid') was adopted on 24 April 2020 and the relevant part of the Act described below was valid until 31 December 2020; however, its extension was expected.

The Lex Covid lays down the possibility of adopting corporate resolutions in written form or by using technical means (eg, by videoconference via Skype or Webex, teleconference or email with a verified signature) for all bodies of Czech legal entities, even if not previously permitted in the constitutional document of that entity.

If the company's constitutional document does not set out the conditions for *per rollam* decision-making or decision-making using technical means, and if no applicable law sets out these conditions either, then these conditions will be set out by the statutory body (eg, board of directors or executive director) for supreme corporate bodies (eg, general meeting) or by the corporate body itself for other corporate bodies.

H. Denmark

No. The Covid-19 pandemic has not given rise to changes in existing regulations as to form requirements, as Denmark had already implemented the regulation necessary to process digital documents and electronic signatures.

I. England

Yes, a number of statutory bodies have relaxed their requirements in light of the Covid-19 pandemic. While HM Revenue and Customs (HMRC) normally expects to stamp a 'wet-ink' version of a document where stamp duty is payable, such as a stock transfer form, it is temporarily permitting the submission of documents via email, as well as electronically signed documents. HM Land Registry is temporarily accepting deeds that have been virtually signed using the procedures set out in option 1 of the CLLS guidance, as outlined above.

The Covid-19 pandemic has also presented a challenge in relation to fulfilling witnessing formalities. The UK Government announced that it would be introducing new temporary legislation to allow wills to be witnessed via the use of video technology, although this should only be used as a last resort. Notably, the UK Government stopped short of allowing further relaxations, such as allowing a testator to execute a will with an electronic signature, on account of the risks of undue influence or fraud against the person making the will. By contrast, HM Land Registry practice continues to be that it will not accept any form of witnessing other than contemporaneous, physical witnessing.

J. Finland

With respect to the governance of limited liability companies, the most significant amendment due to Covid-19 pandemic is a temporary amendment of the Finnish Companies Act, which allows the board of directors of listed companies to require shareholders to exercise their rights in general meetings of shareholders only in advance of the meeting by mail or electronically and/or through an independent proxy holder. This temporary amendment is in force until 30 June 2021.

Other amendments have been made to laws governing, for instance, bankruptcy, unemployment benefits and public health.

K. France

In France, the government has been authorised to issue, by way of ordinance, provisional economic emergency measures, aiming at, notably, with regard to corporate law, simplifying and adapting the conditions under which general meetings and executive bodies of legal entities governed by private law meet and deliberate.

It also encompasses any measures simplifying and adapting the rules relating in particular to the approval and publication of financial statements, the allocation of profits and the payment of dividends.

L. Germany

In Germany, a few temporary measures have been adopted to facilitate virtual general meetings and to ease the adoption of corporate resolutions. Initially adopted in March 2020 for the rest of the year, the measures have already been extended to 2021.

The management board of a stock corporation can decide to hold virtual general meetings and/or to require the shareholders to exercise their rights by email, electronically or through an independent proxy holder.

For limited liability companies, corporate resolutions can now be adopted outside of shareholders' meetings in text form (eg, by email) or in writing, even without respective provisions in the company's articles of association or the consent of every shareholder. Similar rules apply to cooperatives, associations and foundations.

Otherwise, the existing general regulations concerning form requirements have not been amended and, to our knowledge, neither are such changes contemplated.

M. Hong Kong

As of today, we are not aware of any amendments or proposed amendments on form requirements as a result of the Covid-19 pandemic. Regulators (eg, HKEx and SFC) have from time to time issued guidance to assist listed issuers to cope with the impact of the Covid-19 pandemic on their compliance obligations, such as results announcements and the holding of general meetings.

N. Hungary

Several government decrees have been issued since the beginning of the pandemic. For instance, Governmental Decree No 132 of 2020 laid down less strict rules for security service providers in the certification of clients, as it allowed certification via videoconference. Then Act No LVIII of 2020 added a time limit to this facilitation, saying that these certificates are valid for six months from the day of issue. The form requirements related to the decision-making of legal persons were also relaxed during the spring of 2020 and from 17 November 2020. However, these are provisional measures. It cannot be excluded that a major review of the electronic form requirements will follow, but it is uncertain how and when.

O. Indonesia

No, not that we are aware of in respect of the form requirements. However, we understand that certain measures have been taken in relation to the Covid-19 pandemic, for example, the Financial Services Authority of Indonesia (Otoritas Jasa Keuangan or OJK) issued new regulations allowing public companies to hold their general meeting of shareholders virtually (e-GMS). In implementing this policy, OJK coordinates with the Indonesia Central Securities Depository

(Kustodian Sentral Efek Indonesia or KSEI) in which KSEI launched a platform called eASY.KSEI that enables the holding of e-GMS. The platform has two main features: e-Proxy (allows shareholders to authorise their proxies electronically to vote on the GMS agenda) and e-Voting (allows shareholders to appear virtually in the GMS and cast votes through the platform). Based on the KSEI press release dated 18 May 2020, the e-Proxy platform is up and running, while the e-Voting platform is not yet active.

P. Ireland

In Ireland, there has been a wide variety of interim measures introduced to assist with the disruption caused by Covid-19. In relation to form requirements, the most notable has been the introduction of flexibility regarding execution under seal by an Irish company (through the introduction of a new section 43A into the Companies Act 2014). Section 43A provides that, during the 'interim period' (which was due to expire on 31 December 2020, unless extended), instead of the company seal and authorised signatures being applied to the same physical page, the seal and each of the signatures can appear on 'several documents in like form', which will be taken together to constitute one 'instrument'.

We are not aware of any current proposals to overhaul form requirements as a consequence of the Covid-19 pandemic.

Q. Italy

As Covid-19 started spreading, the Italian legislator adopted temporary measures to address the situation. Pursuant to the new rules, limited liability companies, cooperatives and mutual insurance companies can hold their general meetings by telephone and/or other telecommunication means, even if the articles of association do not contemplate it, and without the need for the chairman and the secretary (or the notary, in case of extraordinary meetings) to be physically present in the same place.

Companies listed on regulated markets or on multilateral trading facilities, and companies whose shares are widely distributed among the public, even in the absence of a provision to such effect in the articles of association, designate a representative and provide that participation in the meeting may take place exclusively through this representative. Proxies must be granted at least two days before the day of the first call of the meeting. Similar provisions apply to banks whose shares are widely distributed among the public, cooperatives and mutual insurance companies. The company may choose any person – an employee or a member of the corporate bodies, or a subject external to the company – as a representative. It is possible that issuers who have chosen the designated representative as an exclusive mode to participate in the meeting may also provide that the latter will participate in the meeting by means of audio/video communication.

With specific reference to cases in which participation in the meeting can only take place through the designated representative, it is not possible to present resolution proposals directly at the shareholders' meeting nor through the designated representative itself. In order to allow shareholders to file resolution proposals, the companies may provide in the notice of call of the meeting an adequate deadline for the presentation of individual resolution proposals on the items on the agenda by those who have the right to vote, to be published on the company's

website, as well as a deadline for the publication of these proposals on the company's website; such deadlines must be identified in such a way so as to allow shareholders to exercise the vote by proxy through the designated representative on each proposed resolution published. The validity of the aforementioned provisions was extended up to 31 December 2020.

R. Malaysia

An example related to execution of documents is in the Securities Commission's Capital Market Frequently Asked Questions Related to Covid-19. To reduce the operational challenges faced during the movement control order in Malaysia, forms (both electronic and physical copies) may be submitted to the Securities Commission without being signed if a declaration that the information contained in the forms are true, complete and accurate, is included in the signed cover letter.

S. Myanmar

No, there were no amendments and we were not aware of any discussions to amend the existing regulations as to form requirements in light of the Covid-19 pandemic.

T. The Netherlands

In the Netherlands, temporary emergency legislation in light of the Covid-19 pandemic applies pursuant to which, among others: (1) virtual shareholders' meetings and electronic voting are allowed if the issuer's board so decides, irrespective of what is provided in the company's articles of association; (2) the board may decide that shareholders cannot attend a shareholders' meeting in person; shareholders should in that case be given the opportunity to follow the meeting virtually (eg, through an audio or video livestream) and to submit questions ahead of or (if reasonably possible) in the meeting which must be addressed during the meeting at the latest; and (3) (i) decisions taken in a virtual shareholders' meeting are considered to be validly taken even if a shareholder is not able to participate in the meeting optimally (eg, when an electronic connection malfunctioned); and (ii) the board may postpone the date the shareholders' meeting is held with a maximum period of four months (shareholders' meetings must, in principle, be held before 30 June in the Netherlands); and (4) the judiciary may use electronic means of communication (eg, video connections) more often in civil and administrative oral proceedings.

These provisions applied until 1 December 2020 (a proposal to extend the provisions until 1 February 2021 was announced) and we are not aware of any intentions to amend existing laws and regulations on a more permanent basis.

U. Norway

Yes, to a certain extent. As mentioned above, the Norwegian Parliament introduced a temporary Act in May 2020 that gives companies and other enterprises the option of holding board meetings and general meetings without physical attendance. The temporary Act currently remains in force until June 2021.

Certain deadlines, such as the deadline for approving the annual accounts, were also extended to give companies enough time to prepare, consider and approve their accounts during a period of lockdown.

Another Act introduced to reduce the negative effects of the Covid-19 pandemic was the Re-construction Act (Rekonstruksjonsloven). This Act introduced a revised judicial debt negotiation process for companies in financial distress making it easier to restructure their balance sheet through a court process.

V. Nigeria

The Corporate Affairs Commission, Nigeria's corporate registry, in a bid to ensure that corporate activities did not completely cease during the lockdown to curb the spread of the Covid-19, issued 'Guidelines on Holding of Annual General Meetings (AGM) of Public Companies Using Proxies'. The objective of the guidelines was to ensure that public companies were able to hold their AGM in a way that complied with the directives of the government restricting mass gathering while complying with corporate laws.

In addition, the Securities and Exchange Commission, issued a 'Circular to Capital Market Stakeholders On Covid-19' covering the electronic filing of applications and returns, and holding of meetings.

In addition, the NSE published the Guideline on Virtual Board, Committee, and Management Meetings for companies, which provided guidance on important points, such as a precise agenda, timely distribution of meeting materials and information security, and listed the responsibilities of participants.

W. Poland

There were some Covid-19-related amendments, especially in the area of corporate law. Members of supervisory and management boards were entitled to attend meetings by direct remote communication without the need to amend company articles of association or other organisational documents. A similar approach was taken with regard to shareholders' meetings in limited liability and joint-stock companies. If a given corporate document must be executed in the form of a notarial deed (eg, changes to the articles of association), attendees can still participate in a meeting remotely, but at least the chairman and notary public must gather physically at one location.

Although not Covid-19-related, it is worth noting the recently adopted Electronic Deliveries Act, which provides a framework for the electronic exchange of documents between state authorities and citizens/private entities. The transition is set to commence in the second half of 2021 and conclude by the end of the decade.

X. Singapore

Certain temporary measures have been taken to allow Singapore companies to require shareholders to exercise their rights – in advance of the general meeting – exclusively by mail (ie, by appointment of a proxy) or electronically (eg, by way of remote voting means). A consultation

paper was also issued in July 2020, which proposes introducing amendments to the provisions of the Companies Act to further allow Singapore companies to employ digital means to hold their shareholders' meetings and/or for the dispatch of shareholder circulars and notices. This is to enable Singapore companies to employ digital means for their shareholder engagements on a more permanent basis moving forward.

Y. Spain

The authorities have very much encouraged the use of electronic options during the Covid-19 pandemic.

For instance, during the state of emergency in Spain, general meetings can be held by telephone or videoconference even if not provided for in the company's articles of association, provided certain circumstances are met. In addition, the management body and committee meetings may be held by telephone or videoconference, subject to certain requirements.

However, no specific rule has been approved in relation to form requirements for contracts.

Z. Sweden

In Sweden, certain temporary legislative measures have been taken to better enable, inter alia, shareholders to exercise their rights. On 3 April 2020, the Swedish Parliament published an Act on temporary exemptions to facilitate shareholders' meetings to be held (lag (2020:198) om tillfälliga undantag för att underlätta genomförandet av bolags- och föreningsstämmor). This Act introduces additional ways to hold shareholder's meetings (eg, using videoconferencing) and relieving measures concerning form requirements when exercising shareholder rights (eg, voting by mail and through proxy). Most of the temporary exemptions concern Swedish limited liability companies, but also introduce additional options for cooperative societies, tenant owners' association and savings banks, among others.

AA. Switzerland

In Switzerland, certain temporary measures have been taken to, for example, allow boards of directors of Swiss companies to require shareholders to exercise their rights – in advance of the meeting – exclusively by mail, electronically and/or through an independent proxy holder. Additionally, the Swiss Federal Council passed a temporary amendment to the Ordinance on Electronic Signatures (VZertES) that provides for a general possibility of video identification when issuing certificates (for the requirement of a valid certificate for 'authenticated' electronic signatures, see question IV above at 'Can agreements or transactions requiring the 'written form' be executed in 'wet ink' only, or are there digital and/or electronic alternatives?').

A general overhaul of the existing regulations as to form requirements are, in our understanding, not contemplated, yet.

BB. US (New York/Delaware)

Yes. In response to the Covid-19 pandemic, the Governor of New York issued an executive order authorising the use of audio/video technology for notarial acts.³ Notaries can notarise over videoconference provided that certain conditions are met. The Governor also issued an executive order authorising the act of witnessing to be performed using audio/video technology for the execution of certain estate planning documents, provided that certain conditions are met.⁴ As of 2 December 2020, the expiration date of both executive orders was extended for a further 30 days to 1 January 2021.⁵

Additionally, the Securities and Exchange Commission (SEC), the federal agency that regulates the US securities industry, has adopted rules to facilitate electronic submission of documents to the SEC, including permitting the use of electronic signatures in signature authentication documents in connection with electronic filings with the SEC through the Electronic Data Gathering, Analysis, and Retrieval system (EDGAR). Under the prior rules, each signatory to an authentication document was required to manually sign a signature page or other document ('authentication document') to authenticate the signature that appears in typed form in the electronic filing. Effective 4 December 2020, the amended rules permit a signatory to execute the authentication document electronically if certain procedures are followed and if the electronic signature meets the requirements specified in the EDGAR Filer Manual.

The first time a signatory uses an electronic signature, this new rule requires the signatory to manually sign a document attesting that the signatory agrees that the electronic signature may be used in lieu of a manual signature for authentication documents. The filer then must retain this manually signed document provided the signatory uses an electronic signature to sign authentication documents and for at least seven years after the date of the most recent electronically signed authentication document. Given the challenges associated with the Covid-19 pandemic, the SEC has provided for temporary relief from this requirement and will not recommend enforcement action if: (1) the signatory retains the manually signed signatory page of the document and promptly provides it to the filer (eg, by sending a photo of the document); (2) the document has a date and timestamp; and (3) the filer establishes and maintains procedures governing this process. The SEC has indicated that it will provide at least two weeks' notice before termination of the relief.

The SEC has further amended certain rules and forms under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 to allow electronic signatures in authentication documents in connection with certain other filings when the filings contain typed, as opposed to manual, signatures. Signatories who choose to use electronic signatures in connection with such filings must follow the retention procedures discussed above.

³ See www.governor.ny.gov/news/no-2027-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency accessed 11 January 2021.

⁴ See www.governor.ny.gov/news/no-20214-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency accessed 11 January 2021.

⁵ See www.governor.ny.gov/news/no-20279-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency accessed 11 January 2021.

CC. Vietnam

There are no contemplated amendments to the existing regulations of the form requirements in light of the Covid-19 pandemic, but the Vietnam Government engages in handling submission through online services more than physical services.

XI. Does your jurisdiction generally accept a choice of law, in particular with respect to securities transactions? If so, does the form requirement follow from the choice of law?

A. Australia

If the securities transaction involves the transfer of securities in an Australian company, the parties are not able to choose the jurisdiction of applicable law and the transaction must comply with Australian securities law (predominantly, the Australian Corporations Act). The parties may choose the relevant state or territory jurisdiction; however, all state and territory jurisdictions are subject to the Australian Corporations Act.

B. Austria

The law governing the obligation to create, issue, underwrite or place securities (eg, the issuance or subscription agreement) or on the legal title for a transfer may be chosen freely between the parties according to Article 3 or the Regulation (EC) No 593/2008 (the 'Rome I Regulation'). Austrian courts would recognise such choice subject to the limitations set out in the Rome I Regulation. Furthermore, the choice of the law of a foreign jurisdiction may not be valid if Austrian public policy (*ordre public*) is violated, and Austrian overriding mandatory provisions (*Eingriffsnormen*) may take priority over international law, if applicable.

The relevant parties may, however, not choose the law governing a valid transfer of ownership title (*modus*) freely. The governing law on the *modus* is mandatorily determined by the Austrian Act on Private International Law (Internationales Privatrechtsgesetz or IPRG). The legal status of the security as a property is determined by the *Wertpapiersachstatut*.

The creation (and transfer) of rights in rem under Austrian law requires: (1) a valid contractual agreement or other obligation to create (or transfer) the security (*titulus*); and (2) a valid transfer of ownership title as perfection. Due to this fact, the law applicable to the *titulus* and the *modus* may differ.

Section 31 of the IPRG stipulates that for the creation and loss of rights in rem (*Rechte an körperlichen Sachen*), in principle, the laws of the state should be applicable where the relevant security is located at the time of completion of the transfer of ownership or the creation of the security interest (*lex cartae sitae*). Note that such applicable substantive law may not be freely chosen by the parties. This means that for non-book-entry securities the actual location of the securities would be decisive.

Much more important because of its applicability to book-entry securities (*im Effektengiro übertragbare Wertpapiere*) is Section 33a of the IPRG, which states that the legal nature and content

of rights in rem (*dinglicher Rechte*), as well as the conveyance of such rights (including possession) in connection therewith, are subject to the law of the state in which the relevant account is maintained (PRIMA, place of the relevant intermediary approach). Section 33a of the IPRG refers to, with respect to both book-entry securities and the relevant account, the relevant definitions of the Austrian Financial Collateral Act (*Finanzsicherheiten-Gesetz*), which gives a statutory description of the relevant account, which is the decisive criterion for the applicable law determining rights in rem. The Act starts with defining eligible financial collateral as tradable financial instruments, title to which is evidenced by entries in a register or account maintained by or on behalf of an intermediary. Pursuant to section 3(1)(8) of the Austrian Financial Collateral Act, the 'relevant account' is the register or securities account on which the entry or booking is made on whose basis the secured party obtains financial collateral as defined in the Austrian Financial Collateral Act.

C. Belgium

Yes, choice of law provisions is generally accepted, including for securities transactions, it being understood that the law governing an agreement is not necessarily determinative of all issues that arise in relation to that agreement in all circumstances. For instance, the Belgian courts may:

- apply provisions of the law of another country which cannot be derogated from an agreement, where all other elements relevant to the situation at the time of the choice of law are located in that other country;
- give effect to the mandatory rules of law or provisions of public policy of another jurisdiction with which the situation has a close connection, if and to the extent that under the law of the latter jurisdiction, those rules must be applied irrespective of the chosen law;
- apply overriding mandatory provisions of Belgian law as the law of the forum;
- give effect to the overriding mandatory provisions of the law of any jurisdiction where performance of the agreement takes place;
- refuse the application of provisions of the laws chosen under the Documents, if such application is manifestly incompatible with Belgian international public policy (*Belgische internationale openbare orde*);
- refuse to recognise or uphold Belgian law if such choice of law is not made bona fide; and
- apply Belgian law if it appears to be manifestly impossible to determine the content of foreign law in time.

With respect to insolvency proceedings, the law governing those proceedings may override the law governing the agreement.

The choice of law in relation to any non-contractual obligations may not be upheld as a valid choice by the courts of Belgium:

- if any non-contractual obligation arising is outside the scope of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (the 'Rome II Regulation');

- a Belgian court may apply provisions of the law of another country which cannot be derogated from by agreement, where all other elements relevant to the situation at the time of the choice of law are located in that other country; and
- if there are particular rules of 'safety and conduct' in force at the time and place of the event giving rise to the liability, account may be taken of those rules.

Lastly, pursuant to (a restrictive reading of) the Belgian Code on Economic Law, retail investors are protected from the applicability of a choice of law provision, to the extent it could result in the consumer losing its protection as provided by the mandatory provisions from the laws of the state in which such a consumer has its residency.

D. Brazil

As a general rule, the parties are free to choose the law, which will govern their rights and obligations. Pursuant to Article 9 of the Law of Introduction to the Civil Code (Lei de Introdução às Normas de Direito Civil or LINDB), agreements shall be governed by the law of the country in which they were constituted.

As regards securities transactions, there is a legal requirement that they are made through the distribution system (ie, it is not possible to choose a forum or applicable law other than Brazilian law). As per Article 15 of Law No 6,385/76, the securities distribution and underwriting system comprises the set of institutions, systems and procedures related to the process of placing and trading securities on the stock exchange or over-the-counter markets.

E. Canada

In Canada, parties may choose the applicable law governing their contractual relationships. However, there are three primary limits to party autonomy with respect to choice of law: the choice of law must be bona fide; the contract must be legal; and there must be no reason for avoiding the choice of law on the grounds of public policy. There are other limits to party autonomy with respect to choice of law, including the need for the express choice of law to have meaning, limitation on the proper law, limitations on the choice of law, and mandatory laws. The general autonomy of choice and limitations apply to securities transactions as well. For instance, in Canada, unless otherwise exempted, a public distribution of securities cannot be carried out without the filing of a prospectus. Parties cannot use the choice of law to evade the Canadian prospectus filing requirement. Generally, the form requirement follows the applicable law.

F. Mainland China

Generally, parties may choose the applicable law governing the civil relation if it has a foreign element. However, if public interests are involved, the parties cannot contract out mandatory rules of Chinese law, such as those on financial security regarding foreign exchange control. As for securities transactions, if the law where the securities rights are realised or the law which has the closest relation with the securities is Chinese law, the parties cannot choose the applicable law by themselves. Generally, the form requirement follows the applicable law.

G. Czech Republic

As far as securities transactions are concerned, the Czech jurisdiction does indeed accept a choice of applicable law, in accordance with Section 87(1) of Act No 91/2012 Coll, the Private International Law Act, as amended. The parties to a securities transaction may choose the applicable law, as well as international court jurisdiction; this choice must either be made expressly or be self-evident from the contract's provisions and/or other circumstances of the contract.

However, the form requirements of a security (ie, validity of its issue, extent of rights, etc) do not follow the aforementioned choice of applicable law. As far as securities themselves (and not their transactions) are concerned, Czech legislation provides a list of several connecting factors usable in order to determine the applicable law in non-transactional security matters. Which particular connecting factor is used to determine the applicable law will depend on the nature of the security in question.

Generally speaking, securities of a participative nature (eg, shares) are regulated by the body of laws governing the internal relations of the legal entity that issued them. According to the Czech Private International Law Act, the internal relations of a legal entity are governed by the body of law according to which it was founded.

H. Denmark

Yes, if the parties have agreed on a choice of law, including for securities transactions, it is generally accepted. The law governing an agreement is not necessarily determinative for all issues that arise in relation to the agreement, for example, Danish courts may apply overriding mandatory provisions.

In regard to insolvency proceedings, the law governing those proceedings may override the law governing the agreement. Further, the choice of law in relation to non-contractual obligations may in certain circumstances not be upheld as a valid choice of law by Danish courts.

In addition, for some specific types of contracts, choice of law clauses may be prohibited or limited, for example, for consumer protection purposes.

I. England

Yes, parties generally have autonomy to choose their governing law, and an express choice is generally upheld as valid. The principle of party autonomy is given statutory recognition in the Rome I Regulation, which applies in the UK, as in all EU Member States (except Denmark), to all contracts entered into on or after 17 December 2009. While the Rome I Regulation governs the law applicable to contractual obligations, the Rome II Regulation allows parties to agree a governing law for non-contractual obligations. Following Brexit, the Rome I and Rome II Regulations will become part of domestic UK law by operation of the European Union (Withdrawal) Act 2018 and will continue to function as they do now in the UK and EU as their operation does not depend on reciprocity. The choice of law should be agreed prior to drafting the contract as, if it is not governed by English law, a lawyer qualified in the relevant jurisdiction will need to advise on, or draft, the contract.

J. Finland

The form requirement does in general follow from the choice of law. The law applicable to contractual obligations in Finland is governed by the Rome I Regulation. According to Article 3(1) of the Rome I Regulation, a contract shall be governed by the law chosen by the parties and, therefore, the Rome I Regulation, in general, allows the choice of law.

However, according to Article 3(3) of the Rome I Regulation, where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement. Article 3(3) is intended to prevent the parties from evading the provisions which cannot be derogated from by agreement in strictly national settings. The regulation also protects parties regarded as being weaker (eg, consumers) by more favourable conflict-of-law rules.

Pursuant to Article 11(1) of the Rome I Regulation, a contract concluded between persons who, or whose agents, are in the same country at the time of its conclusion, is formally valid if it satisfies the formal requirements of the law that governs it in substance under the regulation, or of the law of the country where it is concluded. According to Article 11(2), a contract concluded between persons who, or whose agents, are in different countries at the time of its conclusion is formally valid if it satisfies the formal requirements of the law which governs it in substance under the regulation, or of the law of either of the countries where either of the parties or their agent is present at the time of conclusion, or of the law of the country where either of the parties had his/her habitual residence at that time. There are exceptions to these rules with respect to consumer contracts and real estate.

In securities transactions, however, the provisions in the Finnish Securities Markets Act governing mandatory takeover bids and notifications of major holdings as regards Finnish companies are applied as provisions of law which cannot be derogated from by agreement, if certain thresholds set out in the Securities Markets Act are reached. Therefore, with respect to securities transactions, the choice of law is, to some extent, restricted in Finland.

K. France

In France, a contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract. However, where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country (including France) which cannot be derogated from by agreement. Generally, the form requirement follows from the choice of law and the mandatory applicable provisions of French law (if any).

L. Germany

Generally, the choice of law is accepted in most areas of law in Germany. One of the main objectives of the relevant EU regulations for contractual and non-contractual obligations (the so-

called Rome Regulations) was to maximise the respective parties' freedom to choose the law governing their relations.

The Rome I Regulation applies to contractual obligations in civil and commercial matters. While some obligations arising in connection with negotiable securities are excluded from the application of the regulation, securities transactions in general are governed by the Rome I Regulation.

According to the Rome I Regulation, parties can generally choose the law governing their contract. However, there are several exceptions. For example, if all elements relevant to a situation are located in one single country, the parties' choice of law is limited by the mandatory provisions of law of that country. Further restrictions apply, for example, to consumer contracts or individual employment contracts.

Generally, a contract is formally valid if it satisfies the formal requirements of the law that governs the contract in substance or if it observes the law of the country where it was concluded. Thus, the formal requirements partially follow the choice of law. Exceptions are made for consumer contracts and immovable property.

For other issues relating to (in particular, negotiable) securities that are not subject to the Rome I Regulation, a choice of law is generally not accepted. If, for example, securities are subject to an entry in a register, the law of the country regulating the register governs the securities. For other securities, German law distinguishes between the law applicable to the claim embodied by the security and the law applicable to the possession of the paper itself. While the law applicable to the possession of the paper itself is always the *lex cartae sitae*, the law applicable to the claim embodied by the security depends on the nature of the claim (corporate claims, property claims, etc).

M. Hong Kong

As a general point, parties are at liberty to choose the governing law of their contract provided that their choice of law is bona fide, legal and not against public policy. There is no stipulated exclusion of such general principles for securities transactions, unlike consumer contracts for which specific legal rules apply. Therefore, it is possible for securities transactions to be governed by the law of a foreign jurisdiction, and in such case, the form requirements would follow the choice of law. That said, if Hong Kong entities are involved, the parties should also observe the form requirement imposed by Hong Kong law to the extent applicable.

N. Hungary

Yes, both EU law and Act No XXVIII of 2017 on Private International Law allow the parties to choose the applicable law to the whole, or only a part, of the contract. In accordance with EU law, regarding some contract types – for example, consumer-related contracts – the choice of applicable law is limited.

As regards securities, the formal requirements and types are governed by the law of the state governing the right embodied in the security. The provisions of Act No XXVIII of 2017 on in rem rights shall govern accordingly the legal effects in rem relating to rights of disposition over secu-

rities. This includes the legal effects of transferring or pledging of printed securities, in accordance with the role of the place where these securities are situated.

Obligations under securities shall be governed by the law chosen by the parties or, in the absence thereof, by the law of the place where the securities were issued, or if that cannot be determined either, by the personal law of the issuer.

Membership rights under securities shall be governed by the personal law of the issuer. In rem rights under securities shall be governed by the law of the state where the securities were issued. In the absence of a choice of law, if there are several rights embodied in a security, the law governing the central element of the security shall apply.

O. Indonesia

Yes. In general, Indonesia adopts the principle of freedom of contract, which includes respecting a party's autonomy to choose the governing law for its contract, but subject to certain qualifications. The choice of governing law is important because, among other things, it would influence the interpretation of the agreement. If the agreement is to be enforced in Indonesia, the choice of Indonesian law as the governing law would be helpful because it is familiar to the judges, Indonesian arbitrators and court staff.

On the assumption that the contract will also set an Indonesian court as the forum of choice for dispute settlement, note the following:

- the choice of foreign law may not be accepted by an Indonesian court if any provisions of the chosen foreign law are incompatible with mandatory law or public policy or moral principles in Indonesia, or it constitutes an evasion of law (*penyelundupan hukum*);
- the chosen foreign law should have a nexus with at least one of the parties or the transaction to which the agreement relates; the absence of such a nexus may result in the risk that the Indonesian court may ignore the chosen governing law and apply Indonesian law as a fall back nevertheless; and
- certain Indonesian laws and regulations still apply to Indonesian parties and cannot be avoided by choosing other governing law. For example, the requirement that an agreement must be prepared in the Indonesian language (or in a bilingual version) if it involves an Indonesian party.

It should also be noted that, certain types of contract (eg, an employment contract) must use Indonesian law as the governing law, to the extent that it is prescribed by the prevailing laws and regulations.

P. Ireland

Yes, the Rome I Regulation has force of law in Ireland, and consequently, an express contractual choice of law in a contract will, in respect of contractual obligations that are within the scope of the Rome I Regulation, be valid in accordance with Article 3(1) of the Rome I Regulation.

Consequently, subject to and in accordance with the Rome I Regulation, the chosen law will, upon proof of the relevant provisions of the relevant laws, be applied by Irish courts if any claim to enforce the contract comes under an Irish court's jurisdiction.

With regard to formal requirements and applicable law, the Rome I Regulation provides that, save for consumer contracts (within the meaning of Article 6) and certain contracts regarding immovable property:

- where both parties (or their agents) are in the same country at the time of conclusion of the contract, the court will hold the contract valid if the contract satisfies the formal requirements of either: (1) the law specified by the parties as the governing law of the contract; or (2) the law of the country where the contract is concluded; and
- where the parties (or their agents) are in different countries at the time of conclusion of the contract, the court will hold the contract valid if the contract satisfies the formal requirements of: (1) the law specified by the parties as the governing law of the contract; (2) the law of either country where the parties, or their agents, are present at the time of conclusion; or (3) the law of the country where the place of habitual residence of either party is at the time of execution.

Accordingly, before the Irish courts, Irish law could apply to the formal validity of the contract either as the governing law chosen by the parties or, where Irish law is not specified as the governing law of the agreement, where the relevant party signed the agreement in, or has its habitual residence, in Ireland. Outside of these scenarios, whether an agreement that is not specified to be governed by Irish law has been validly executed will be a matter for the law applicable to the formal validity of the agreement which, in a matter before the Irish courts, will be determined in accordance with the Rome I Regulation as set out above.

Q. Italy

Italian law generally accepts the choice of a law other than Italian law to govern a contract, with some exceptions.

It should be noted that, as highlighted in the Communication issued by the European Commission on 12 March 2018 on the law applicable to securities transactions, two elements of securities transactions are governed by conflict of laws rules: (1) the proprietary element, which refers to the transfer of rights relating to ownership and which involves third parties; and (2) the contractual element, which refers to the reciprocal obligations of the parties in the context of the transaction.

With reference to the proprietary effects, the conflict of laws provisions of the Financial Collateral Directive 2002/47, Settlement Finality Directive 98/26 and Winding Up Directive 2001/24 – all implemented in Italy with appropriate legislative decrees – designate the applicable law on the basis of the location of the corresponding register, account or centralised deposit system, as the case may be.

On the other hand, the contractual elements referred to under point (2) above, which include, for example, the offer, relative acceptance, consideration and certainty of the provisions of the contract, are subject to the conflict of laws rules set forth by the Rome I Regulation.

According to section 3 of the Rome I Regulation – as applied in Italy pursuant to section 57 of Law No 218/1995 (ie, the Italian law on international private law) – a contract is governed by the law chosen by the parties.

Pursuant to section 11 of the Rome I Regulation, a contract concluded between persons who, or whose agents, are in the same country at the time of its conclusion is formally valid if it satisfies the formal requirements of the law that governs it in substance or of the law of the country where it is concluded.

A contract concluded between persons who, or whose agents, are in different countries at the time of its conclusion is formally valid if it satisfies the formal requirements of the law that governs it in substance, or of the law of either of the countries where either of the parties or their agent is present at the time of conclusion, or of the law of the country where either of the parties had his habitual residence at that time.

R. Malaysia

Yes, a choice of law in contracts will generally be accepted or recognised by the courts of Malaysia subject to certain provisos, for example, that the choice was bona fide and legal (ie, not made wholly or mainly for the purpose of avoiding some mandatory provision of Malaysian or other applicable law). In relation to form requirements, the law governing any agreement in respect of securities should be distinguished from the law governing the securities themselves (eg, Malaysian listed shares). In respect of form requirements relating to the transfer and issuance of such assets (eg, transfer formalities), the requirements under Malaysian law would be applicable.

S. Myanmar

We are not currently aware of any restrictions under Myanmar law on the choice of law with respect to securities transactions. For underwriting agreements, for example, the parties can choose a non-Myanmar law jurisdiction; although Myanmar law-governed contracts are normally seen in practice, except where there is no relevant Myanmar connection other than the domicile of the issuer.

From a Myanmar law perspective, a contract is formally valid if it complies with the law applicable to the contract or the law of the place where it was concluded. So, generally, the form requirement follows from the choice of law. If the contract is silent on the choice of law, the Myanmar courts may determine the law applicable to the contract, and are likely to do so by examining the contract and the parties' intention.

T. The Netherlands

Under the Rome I Regulation, a contract shall be governed by the law chosen by the parties. As the Rome I Regulation directly applies in the Netherlands, a choice of law is generally accepted

in the Netherlands, also in respect of securities transactions. However, a choice of law will not prevent effect being given by a country to its overriding provisions of the mandatory law (ie, provisions the respect for which is regarded by a country as crucial for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law) and will not prevent regard being had to the law of the jurisdiction in which performance of the agreement takes place in relation to the manner of performance and the steps to be taken in the event of defective performance.

Under Dutch law, the form requirement for the issue and transfer of registered shares is governed by the law of the company that will issue or has issued such shares. This rule also extends to the exercise of rights attached to the shares (eg, voting and dividend rights), the content of those rights as well as the amendments or lapse of those rights. Different rules apply to bearer shares.

U. Norway

In general, Norwegian law accepts that the parties may choose the governing law for the transaction agreement. This is a natural consequence of the freedom of contract. There are, however, certain exceptions, such as consumer protection for consumer contracts.

V. Nigeria

Generally, parties are free to determine the choice of applicable law to govern their contract, especially one which has an international connection. However, for securities transactions in Nigeria, parties are bound by the provisions of the ISA, which does not grant the freedom of choice of law. The Securities and Exchange Commission has rules and regulations that must be adhered to for securities transactions to be valid in Nigeria.

W. Poland

Yes, Poland generally accepts a choice of law, although the extent to which this is allowed depends on specific subject matter. In this context, the specific question of securities is very complex and multi-faceted. A general outline of the problem is presented below, but a comprehensive and specific response would depend on specific characteristics of the 'security transaction' in question and require case-by-case analysis.

As Poland is a Member State of the EU, its conflict of laws rules is largely governed by common EU legislation, including the Rome I Regulation. EU law generally accepts a choice of law by concerned parties and, in consequence, this is also the approach of Polish law.

At the same time, EU law, particularly the Rome I Regulation, does *not* govern law applicable to securities, with the exception of contracts concerning securities, for example, share purchase agreements. As a consequence, parties are generally free to choose the law applicable to a contract (transaction) dealing in securities. In most cases they are *not* allowed to choose the law governing the security itself, including rights incorporated in the security and the form of action in law required to issue or alienate securities (eg, to sell securities).

The question of law applicable to a security itself is governed by the Polish Private International Law Act of 2011 (the '2011 Act'), with separate statutes concerning cheques and promissory notes that will not be discussed here.

According to the 2011 Act, *equity securities*, such as stock/company shares, are generally governed by the law governing corporate organisation of the issuer company. The law of an equity-type security cannot be selected even by the issuer itself. The only option to 'choose' the law is to reincorporate or reregister the company at another jurisdiction, so that the law applicable to itself changes.

As for *debt securities*, such as debentures/bonds (other than cheques and promissory notes), according to the 2011 Act, they are subject to the laws of the country where the security was issued. This will usually, but not necessarily, be the country where the issuer is seated. As the term of 'issuing' is undefined, there is *arguably* place for forum shopping by having a security 'issued' in a desired jurisdiction. There are also views that, *arguably*, in the case of debt securities, their first parties (ie, issuer and first holder) may choose the applicable law.

The above discussion does not concern the issue of *ownership* of securities or *collateral* (*charges*) on them, which are subject to separate regulations and are *not* subject to a choice of law.

In general, ownership and charges on securities incorporated in 'traditional' *paper documents* are governed by the law of the place where the document is located at any given time. If a charge is created at some point, the law governing the creation of that charge continues to apply, even if the document is subsequently moved to another jurisdiction.

In respect of *dematerialised securities*, laws applicable to ownership and collateral/charges on such securities are governed by the law of the location where the account in the clearing system is kept and in which account securities in question are entered. In addition, in this case, the parties cannot choose the applicable law.

Although a choice of law is not formally allowed for ownership and collateral rights on securities, the question can be controlled by forum shopping, to some extent, especially for document-based securities.

X. Singapore

As a general matter, the Singapore courts respect the parties' choice of applicable law governing contracts. A contract is formally valid if it complies with the law applicable to the contract. So, generally, the form requirement follows from the choice of law. If the law applicable to the contract requires the observance of a form, the validity of the form shall be governed by that law, unless that law permits the application of another law.

Y. Spain

Yes, with some exceptions, the choice of law other than Spanish law to govern a contract is valid and should be recognised by the Spanish courts in accordance with the Rome I Regula-

tion. Therefore, generally, the parties to a sale, purchase, transfer, assignment or pledge of securities may freely agree on the law applicable to their contractual relationship.

For a court to give effect to a choice of law, the foreign law must be evidenced to the Spanish courts pursuant to the Spanish Civil Procedure Law and taking into account Article 33 of Spanish Law 29/2015 of 30 July on international cooperation in civil matters.

Z. Sweden

In general, Swedish law is liberal with respect to the choice of the applicable law governing contracts. For, inter alia, consumer contracts, Swedish consumer protections provisions may in certain situations impose limitations (or inhibit the enforcement of certain clauses) should these have been used in order to circumvent a consumer protection restriction under Swedish law.

From a Swedish law perspective, a contract is considered valid if it complies with the governing law of the contract or the law of the place where it was concluded, depending on the nature of the contract. Consequently, the choice of law dictates the form requirements, subject to some exceptions.

AA. Switzerland

As a general matter, Swiss law is very liberal with respect to the choice of the applicable law governing contracts, including parts of contracts, where there is a relevant international connection. Other than with respect to, for example, consumer contracts, the parties, therefore, can choose the applicable law whenever this is not arbitrary (eg, exclusively done in order to avoid a restriction under Swiss law). For underwriting or note purchase agreements, for example, the parties can choose non-Swiss law; although particularly for Swiss issuers of equity or equity-linked instruments, Swiss law-governed contracts are normally seen in practice, except where there is no relevant Swiss connection other than the domicile of the issuer.

From a Swiss law perspective, a contract is formally valid if it complies with the law applicable to the contract or the law of the place where it was concluded. So, generally, the form requirement follows from the choice of law. If the parties are in different countries at the time of conclusion of the contract, it is sufficient if the form corresponds to the law of one of these countries. If the law applicable to the contract requires the observance of a form for the protection of one of the parties, the validity of the form shall be governed exclusively by that law, unless that law permits the application of another law.

BB. US (New York/Delaware)

Yes. New York generally accepts a choice of law provision, including in a securities transaction, subject to limited exceptions on the grounds of public policy.

While most US states require a 'reasonable relation' between the contract sought to be enforced and the state in which enforcement is sought, New York courts will enforce a New York choice of law provision in cases in which the transaction involves the aggregate at least \$250,000 and does not fall into one of a few limited exceptions (eg, an employment contract), regardless of whether the contract has a 'reasonable relation' to New York.

Contracts that elect to be governed by New York law may thus be signed in ‘wet ink’ or electronically, in accordance with E-SIGN and the ESRA, as discussed above.

CC. Vietnam

Save for certain transactions that are subject to the sole jurisdiction of Vietnamese laws, such as construction agreements and sale and purchase of real estate located in Vietnam, Vietnamese laws generally permit the contractual parties to choose foreign laws as the governing laws of their transactions if the following conditions are satisfied:

- the contractual relationship involving foreign elements, among others, means that at least one of the participating parties is a foreign individual or a foreign legal entity; and
- the application of a foreign law is not against the fundamental principles of the law of Vietnam.

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