

Mercator Focus

Insights from across the Entity Portfolio Management Industry

Q2 2023



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The Mercator® by Citco (Mercator) team are delighted to bring you the latest edition of the 2023 Mercator Focus newsletter, celebrating some key highlights from an action-packed second quarter.

2023 continues to be an exciting time for the legal services industry. Generative Artificial Intelligence (AI) and other tools are developing rapidly with several budding use cases for implementing transformative functionalities. Like many industries, however, we must ensure technology is used effectively and responsibly with efficient frameworks around data input and availability. We look forward to continuing this journey of innovation as we endeavour to revolutionize the practice of Entity Portfolio Management (EPM).

With events booming once again, it was a personal pleasure to attend ACC Europe Conference (Brussels) and the CLOC National Conference (Las Vegas), as well as hold client meetings across Europe and the US. Elsewhere, our team joined other leading minds from across the legal industry at LACCA Live (Sao Paolo), ALM (Chicago), Society of Corporate Governance National Conference (Salt Lake City) and the Annual Investors' Forum (Vilnius).

It has also been fantastic to roll out live training sessions on Entica™ and collaborate with our clients, receiving invaluable feedback so we can further tailor and evolve

our offering. We're continuing to add further functionalities to Entica™ by enhancing the robustness and reliability of the operational environment via workflow automation. We're committed to investing in our product and client servicing, ensuring we get the most comprehensive insight to help maintain a healthy governance of entities and mitigate risks.

The Mercator Vilnius office hosted our latest international team session dedicated to furthering our work on how we can provide the best results for our clients. The team had the pleasure of hosting our esteemed business partners from Mexico, Turkey, and the UK to discuss the evolution of EPM and how we can continue to provide exceptional services through innovation and ongoing cooperation.

In this newsletter, you'll hear from our Mercator experts on key industry topics and get an exclusive preview of the key findings from our upcoming LATAM EPM: Special Report relating to Brazil and Mexico – the regions' two largest economies.

Finally, we're thrilled to be expanding our local presence in countries around the globe, to optimize our operating model in line with client requirements. We're excited to announce the setup of a local operation in Spain. Next on the list is Delaware where, in response to client needs, we're currently strengthening our local support framework. Stay tuned as we continue to share more developments soon!

We're continuing to add further functionalities to Entica™ by enhancing the robustness and reliability of the operational environment via workflow automation.

Canada's corporate landscape in 2023: more provinces implement Ultimate Beneficial Owner requirements



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Canada began introducing Ultimate Beneficial Owner (UBO) reporting requirements in 2019 with amendments to the Canada Business Corporations Act ("CBCA") for federally registered corporations.

Changes were enacted to provide greater transparency over who owns and controls Canadian businesses, and help law enforcement agencies expose activities like money laundering and tax evasion.

Many provinces have mirrored the requirements of the CBCA with their own legislation, along with the criteria for an individual with significant control – the threshold for reporting a UBO is 25% ownership of shares or voting rights.

PROVINCES THAT HAD UBO REQUIREMENTS GOING INTO 2023:

- Federal Canadian Corporations
- British Columbia
- Manitoba
- New Brunswick
- Newfoundland
- Prince Edward Island
- Saskatchewan

The majority of these provinces have similar UBO requirements. This includes creating and maintaining an internal register of individuals with significant control over a corporation (an "ISC Register"). The ISC Register must be reviewed at least once during each financial year and updated within 15 days of becoming aware of any changes. These ISC Registers aren't required to be filed with the corporate registry and only need to be disclosed to the authorities under certain circumstances.

So far this year a further four provinces have joined the above group.

PROVINCES THAT HAVE IMPLEMENTED UBO REQUIREMENTS IN 2023:

- Ontario (January)
- Quebec (March)
- Saskatchewan (March)
- Nova Scotia (April)

Out of the group above, Ontario, Saskatchewan and Nova Scotia have all recently implemented UBO requirements for companies incorporated in their province. These legislations are similar to the CBCA and don't include a public beneficial ownership registry.

Meanwhile, the UBO requirements introduced in Quebec are unique. Corporations in Quebec must disclose the individuals or companies with significant control as part of their Annual Return filing. The information submitted to the corporate registry, including name, address and type of control exercised over a corporation, will be available to the public via a search of the corporate registry. Quebec has also made these requirements applicable for all companies who carry on business in the province, whether they are incorporated or registered extra-provincially in Quebec.

Alberta, Yukon, the Northwest Territories and Nunavut haven't implemented any UBO legislation or made any announcements on their plans for a beneficial ownership registry.

AMBIGUITIES IN THE LAW

Further guidance on UBO requirements is required as the existing legislations are vague in multiple areas. This includes further clarification on what steps should be taken by a corporation if it doesn't have any individuals with significant control based on the existing criteria, and what

steps should be taken annually to update an ISC Register.

Currently the CBCA and many provincial legislations state only that a corporation shall take reasonable steps to create and maintain its ISC Register. Quebec's legislation goes a step further and states that corporations must go beyond reasonable steps and instead take all necessary means to identify their ultimate beneficiaries. British Columbia's legislation states that in the event of a corporation being unable to identify any individual with significant control, they can instead maintain a blank ISC Register with a statement that there are no individuals who qualify as a UBO.

AMENDMENTS TO EXISTING LEGISLATION AND FUTURE TRENDS

In June 2022, the federal government announced proposed amendments to the CBCA that would require federal corporations to report their UBO information and for ISC Registers to be made publicly available. This amendment has not yet received royal assent. Similarly, in May 2023, British Columbia announced its plans to launch a public beneficial ownership registry by 2025. These proposed amendments represent a general trend across Canada towards enhanced reporting requirements and publicly accessible registries.

With a number of provinces implementing new UBO reporting requirements, the majority of corporations incorporated or registered in Canada now have to either maintain internally, or disclose publicly, their beneficial ownership information. These requirements will likely be expanded on in the coming years, with beneficial ownership information becoming more accessible to the public.

The EU Mobility Directive and implications for Germany, France and the Netherlands



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Flexibility has become increasingly important for businesses in recent years amid the rise of geopolitical uncertainty, most recently with the war in Europe.

Regional security, social differences and changes to legal frameworks at a country-level are making it more important for businesses to be able to relocate to another location if required. Moving the main legal domicile of a company – known as cross-border mobility – has a number of implications, but new rules in Europe have sought to streamline the process.

In order to facilitate the transfer of assets and liabilities without requiring a company to be dissolved, the EU has implemented two directives (Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132) both of which relate to cross-border conversions, mergers and divisions. The deadline for their adoption into national law was 31st January 2023. While the new rules impact the whole of the EU, there are specific regions where these directives will have more significance because of the number of cross-border mobility cases they have.

Germany, followed by the Netherlands and France, are some of the EU countries with the highest number of cross-border mobility cases.

So what implications do the new rules have, and how will they specifically impact these three countries?

KEY POINTS FROM THE DIRECTIVE

Enhanced protection of third-party interests

A key tenet of the Directive is extended protection of all stakeholders to avoid potential abuse. Namely, the shareholders voting against cross-border division, conversion or merger have a right for adequate cash compensation for the disposition of their shares. Employees have a right to be informed and consulted before the common draft terms of the deal are decided. The creditors shall be provided with an adequate safeguard if the satisfaction of their claims isn't met prior to the transaction.

Terms of 'cross-border conversion' and 'cross-border division'

The new Directive introduces regulation of the cross-border conversion and division, meaning more areas are brought into scope, including where the company converts into a legal form of the destination Member State, as well as relocates its seat. Cross-border division, where either all assets and liabilities or part of them are transferred to two or more entities, is also now covered by the new Directive. However, this only applies to active limited liability companies.

Cross-border conversion and division specifics

There are several new conditions introduced, including drafting the terms of conversion or division, which must be published to all stakeholders. The company's administrative or management body must prepare a report with legal and economic justifications, and an independent expert be engaged to review the proposals. There are new tweaks to the rules on when the general meeting can take place post relocation, and certificates are needed to show compliance with relevant legal authorities.

GERMANY, FRANCE AND THE NETHERLANDS

In Germany, the terms and procedures on cross-border conversion/division have been added in full to the merger Act. However, Germany went beyond the cross-border division for the formation of a new entity, allowing cross-border division for admission provided that a certain threshold is fulfilled.

Should the court find abusive or fraudulent purposes in the transaction, then no value is added to the company and the seat remains in Germany. If the domestic conversion takes place within 4 years post the cross-border conversion, the rules to the previous cross-border conversion apply *mutatis mutandis*.

Negotiations on co-determination in an emerging company are already necessary if a participating company has employees equal to at least four fifths of the threshold value for corporate co-determination in a departure Member State.

France also adopted two legal acts; one of which modified the provisions of the Commercial Code related purely to national mergers, such as exemption from exchange of equity securities, the possibility of not transferring liabilities, and simplifying the partial transfer of assets for limited liability companies.

The Netherlands has prepared only the draft Act being reviewed. It's expected that a two thirds majority will be needed at the general meeting resolving the merger, and that the Notary will be obliged to issue an additional certificate for the application to the relevant court.

Data dilemma – is information helping or hurting your compliance?



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The data explosion of the past decade has had major repercussions for companies around the world, both public and private.

From healthcare to finance, data is accruing constantly in every field and is used to shape how industries work now and into the future.

One forecast from Statista predicts that the total amount of data globally will triple between 2020 and 2025, as the volume of information created, captured, and consumed soars.

All this information can be a force for good for multinationals, but it is no straightforward process to get the best out of it.

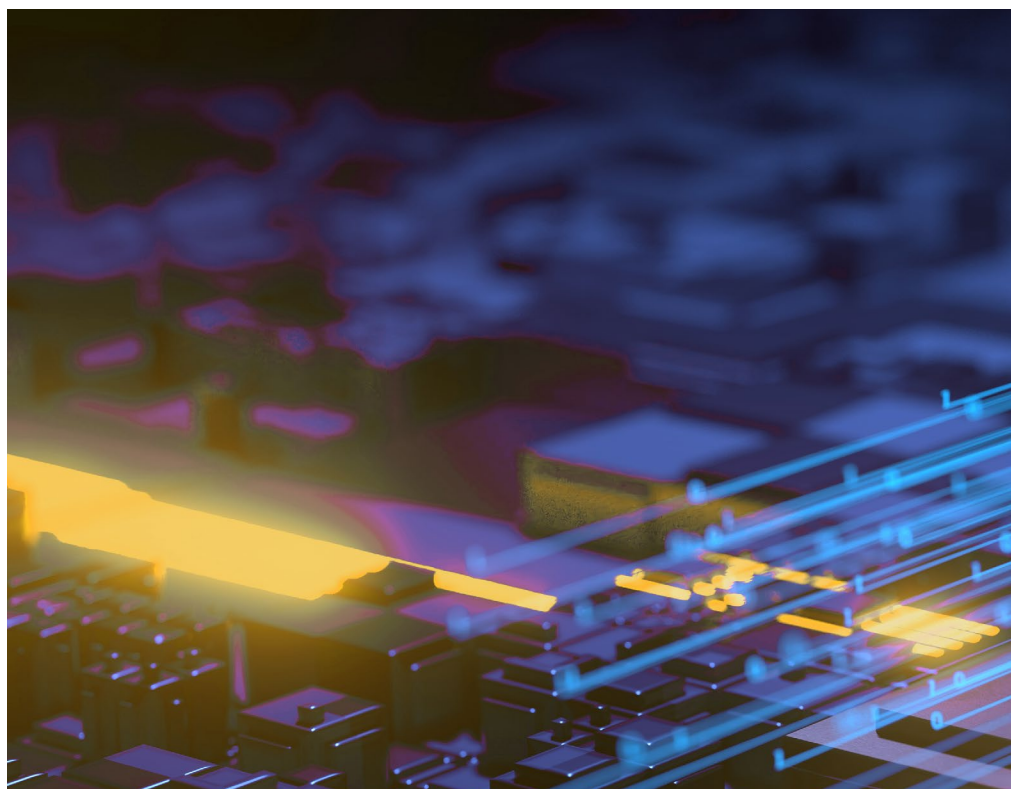
There are many factors to consider when it comes to data and how it can help (or hinder) multinationals' efforts to comply with the rules governing their different entities.

Below are three core areas to focus on:

1. WHERE IS YOUR SUBSIDIARY/ ENTITY PORTFOLIO DATA AND INFORMATION COMING FROM?

It's important to know where your data is coming from, and exactly who in your organization is tracking it. If there are multiple people involved in doing so, are they in close communication, or spread across the globe?

Much of this process may be manual, requiring team members to use up time monitoring and reviewing the information.



Other considerations include whether the data is coming through in a uniform way across jurisdictions, or whether it's being shared in different formats and looking at different time-periods.

How often the data is reviewed for accuracy, and who in your business is handling this, are also key questions, while historical data must not be overlooked – especially when it concerns corporate activity, like mergers and acquisitions.

This also applies to internal data. Your business needs to be able to carry out various activities – such as easily identifying all the subsidiaries a director is appointed to – to ensure continuity if you have personnel changes.

Overall, knowing who is in charge of the data and what the reporting lines are for that person or team is crucial. Without this, access, control and use of data can be challenging.



CONCLUSION

Data is crucial to the smooth running of entities globally, but there are vast amounts of it produced every second.

By engaging with experts who can help handle the data, multinationals can start to harness the full potential of their information, while remaining fully compliant with the many regulations governing this across different jurisdictions.

At Mercator, our outsourced solutions are based on years of experience of working with multinationals to ensure entities can be managed easily and efficiently, saving time and helping to cut costs. Central to our offering is Entica™ – Mercator's proprietary Entity Portfolio Management technology platform – providing complete data transparency and access to insights at a level unseen before in the wider governance services industry.

2. WHO IS MANAGING YOUR DATA?

Is there one centralized person managing this information for the organization and all subsidiaries, or is it handled by several? Are there different people managing by region or country, and who do they report to? Similarly, are some countries/entities outsourced and some handled in-house? When there is an event like a name change, who tracks this?

If any entities have gone through corporate activity, it is also important to consider who monitors this post-acquisition.

Overall, knowing who is in charge of the data and what the reporting lines are for that person or team is crucial. Without this, access, control and use of data can be challenging.

3. HOW SECURE IS YOUR DATA?

Security is critical to all businesses, and the ramifications of a data breach can be devastating. If any of your businesses or subsidiaries are keeping hard copies of data on premises, you need to consider how secure it is, and whether technology could better serve you in future.

Innovations like cloud software are transforming data storage, meaning businesses can do away with mountains of physical files and documents.

That is why outsourced data storage is big business. While no solution is 100% secure, it can be an efficient way to handle and manage your data.

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Cost and Time of Entity Management in Brazil and Mexico



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Latin America (LATAM) offers a rich market full of opportunities for multinationals who are looking to expand their operations. However, historically high levels of bureaucracy and varying levels of political and environmental instability within the region, means it remains one of the most complex regions to operate in when it comes to Entity Portfolio Management (EPM).

In our upcoming special report – part of **Mercator's EPM report series** – we look at how LATAM performs as whole in comparison to other regions worldwide, as well as ranking LATAM jurisdictions by both the cost and time it takes to complete corporate activities. Alongside this, we examine some of the nuances and complexities of navigating entity management in key jurisdictions.

Below we give an exclusive preview of some the key findings from the report relating to Brazil and Mexico – the regions' two largest economies.

ACTIVITY LEVEL

Mexico and Brazil top the rankings in terms of the most overall tasks; however the data shows they are below the LATAM average when it comes to activity per entity.

This is because companies operating in Mexico and Brazil will include as many decisions into one meeting as possible, which reduces the number of documents to be signed and visits to the notary/authority. In addition, in both jurisdictions, there are practically no director's decisions to file due to more active involvement of shareholders and shareholders' representatives in the management and decision making.

TIME

Despite being hot spots for activity, Mexico and Brazil rank as some of the slowest jurisdictions to complete activities: Brazil is 675% slower than the fastest LATAM jurisdiction overall whilst Mexico is 925% slower, the third slowest overall.

In Brazil, this is due to the complexity of the process which involves substantial document collection, execution and translation. In Mexico, the delays are caused by the registration process itself, taking anywhere from six weeks to several months.

Registrations must either be submitted physically, or documents are manually, and in great detail, reviewed by the relevant authorities. Due to local authorities' workload and backlogs, it can take significant time for documents to be

processed. In addition, local authorities do not readily disclose the name of an individual who can be contacted about the status of an application, meaning it is near impossible for companies to chase the authorities for an update.

Slightly lesser, but more consistent, delays are caused by the requirement of wet ink signatures and availability of original documents over digital copies.

COST

Mexico and Brazil rank as two of the costliest jurisdictions within LATAM – Mexico being 106% more expensive than the cheapest jurisdiction, and Brazil being 160% more expensive.

Both jurisdictions have many different states, each with different procedures and operated by different authorities, meaning multiple filings are required for just one





change. In Brazil, there are additional pre-steps to complete before even making a filing. For example, every foreign director or shareholder must be registered with a local tax number.

The majority of multinationals will incur translation costs as both Mexico and Brazil apply requirements for foreign documents. Translated documents must also be apostilled and sworn translated to certify the original source of the document.

In Mexico, most corporate governance tasks are accompanied by strict notarization requirements, meaning additional arrangements must be made locally and additional expenses incurred for notarial work. These requirements necessitate extensive knowledge of the legal framework and experience carrying out the practical aspects of these tasks.

Finally, both Brazil and Mexico are two of the world's leading emerging markets with strong growth potential for investors. The pricing of legal services is therefore higher and more aligned with similarly developed countries, in comparison to smaller LATAM economies.

CONCLUSION

As two of the top economies in LATAM, Brazil and Mexico remain attractive locations for companies who are looking to expand their operations. However, multinationals should be aware of the complexity and deep local knowledge required to set up and maintain entities in these two jurisdictions.

Clearly, working with a specialist EPM partner that has granular experience and insight into the practice and requirements within LATAM is an important factor in the overall successful management of your entity portfolio.

Stay tuned for the complete rankings in Mercator's LATAM EPM: Special Report



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