

CORPORATE BRIEFING: Special Edition

Legal Framework for Cross-border Mergers, Divisions and Conversions

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A. Transposition of EU Directive into Greek Law

1. The recently introduced Law 5055/2023 (the **Implementation Act**), transposed into national law EU Directive 2019/2121 (the **Mobility Directive**)¹ and sets out the rules for cross-border transformations.
2. The Implementation Act sets the rules for cross-border transformations, ie mergers, divisions and conversions, repeals Law 3777/2009, which set the previous framework only as regards cross-border mergers, and supplements and amends Law 4601/2019 on Corporate Transformations (**Corporate Transformations Act**).
3. The incorporation of the provisions of the Implementation Act within the Corporate Transformation Act has resulted in the introduction of a uniform legal framework for all types of transformations, both domestic and cross-border.

B. Corporate Transformations Covered by Implementation Act

1. The Implementation Act covers:
 - a. cross-border mergers by way of acquisition and incorporation;

- b. full, partial and by separation cross-border divisions by way of incorporation; and
 - c. cross-border conversions.
2. It does not cover cross-border divisions by way of acquisition in line with the Mobility Directive.

C. Company Types Covered by Implementation Act

1. The Implementation Act covers only limited liability companies in the following forms:
 - a. Société Anonyme (*Ανώνυμη Εταιρεία*);
 - b. Limited Liability Companies (*Εταιρεία Περιορισμένης Ευθύνης*);
 - c. Private Companies (*Ιδιωτική Κεφαλαιουχική Εταιρεία*);
 - d. Limited Partnership by Shares (*Ετερόρρυθμη κατά Μετοχές Εταιρεία*);
 - e. European Companies (*Ευρωπαϊκή Εταιρεία*); and
 - f. any other company in the form listed in Annex II of Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (the **CLD**).
2. For the purposes of the Implementation Act, a domestic company is defined as a company with its registered seat in Greece that has been incorporated according to the laws of an EU Member State.
3. A foreign company is defined as a non-domestic company which has been incorporated according to the laws of an EU Member State and has its registered seat, headquarters or main establishment within the EU.

D. Cross-Border Transformation Procedure

1. In general, and with some deviations, the Implementation Act's standard procedure for cross-border transformations aligns with the standard procedure prescribed by the CLD, as amended by the Mobility Directive. A simplified procedure is provided for only in the case of intra-group cross-border mergers and divisions, not cross-border conversions.

¹ *Of the European Parliament and of the Council of 27th November 2019 amending EU Directive 2017/1132.*

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E. Shareholder Rights

1. Cross-border Mergers or Divisions

Shareholders of a domestic company have the right to:

- a. dispose of their shares for adequate cash compensation;
- b. submit claims to the competent court in the event that any dispute arises in relation to these rights; and
- c. in certain cases, dispute the share exchange ratio and request additional cash compensation.

2. Cross-border Conversions

Shareholders of a domestic company that voted against the approval of the draft terms have the right to dispose of their shares for the adequate payment mentioned in the draft terms. Any dispute which arises in relation to these rights entitles the shareholders of the domestic company to submit a claim to the competent courts.

F. Creditor Rights

1. Cross-border Mergers

Creditors of domestic companies have the right to request (and domestic companies are under the obligation to provide) appropriate collateral for claims that have been

born before the conclusion of the publication formalities, but have not yet become due, insofar as they can adequately prove that:

- a. due to the cross-border merger their claims are at risk of not being satisfied; and
- b. they have not yet obtained adequate guarantees.

2. Cross-border Divisions

The framework for the protection of creditors is the same as for cross-border mergers, but applicable only to creditors of the domestic company being divided.

3. Cross-border Conversions

The protection framework is also the same as that of cross-border mergers.

4. All Cross-border Transformations

In all cross-border transformations:

- a. in the event that any dispute arises in relation to the above rights, creditors are entitled to submit claims to the competent courts;
- b. the Implementation Act has adopted the requirement for the administrative or management body to submit a solvency declaration in line with the Mobility Directive.

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