

MERGERS DIVISIONS AND CONVERSIONS (REDOMICILIATIONS)

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Introduction

Cyprus offers a dynamic and advantageous framework for mergers and reorganisations both within its borders and across the European Union.

There are apparent and well-known advantages of merging two companies: the creation of a stronger entity; the enhancement of their competitive position; expanding market/countries reach; operational efficiency; the avoidance of liquidating group entities; improvement of innovation, by accessing a broader range of financial resources; the transfer of assets and liabilities without the need for the novation of contracts or other cumbersome procedures; and other.

Mergers in Cyprus are also attractive from a tax perspective, as mergers and reorganisations which fall within the scope of the law may well result in a total exemption from tax in Cyprus.

Creating a division of two companies can offer several advantages particularly in the context of organisational efficiency, risk management and compliance with regulatory frameworks.

Redomicilliations and cross-border conversions of companies, in other words, the process of transferring one company's seat/registered office from one jurisdiction to another, while maintaining the company's legal identity, also have obvious advantages, including tax optimisation, more friendly regulatory environment and access to new markets.

Local mergers

Local mergers are not within the scope of the present article, and reference may be made to my previous article on Mergers and Reorganisations – an overview <https://www.lexology.com/library/detail.aspx?g=76d8c13d-9c2f-455c-b03e-0f568db202c6>

Cross-border mergers, divisions and conversions

In March 2024, Cyprus adopted the EU directive 2121 of 2019, also known as the 'Cross-Border Mobility Directive' which, brought significant changes to the whole legal framework for cross-border mergers, conversions, and divisions within the EU. Aiming to establish a harmonised framework, reducing legal uncertainty, mandating increased transparency and public disclosure requirements, but also enhancing cross-border mobility within the EU, the Cross-Border Mobility Directive also introduced enhanced protection for minority shareholders, creditors and employees.

The Cross-Border Mobility Directive, has streamlined and modernised the rules for cross-border mergers, divisions and conversions contained in EU directive 1132 of 2017 relating to certain aspects of company law (the "Company Law Codification Directive"). By implementing the Cross-Border Mobility Directive into Cyprus law, the Companies' Law, Cap.113 (the "Companies' law") was also amended by introducing new provisions and updating and amending existing provisions.

Cross border mergers

For businesses looking to expand across border, cross-border mergers provide an efficient route to growth, allowing companies from different EU member states to unite under a single legal entity. Cross-border mergers can take place between limited liability companies incorporated in accordance with the legislation of an EU member state that have their registered office, central administration or principal place of business in the European Union, provided at least two of them are governed by the laws of different member states.

'limited liability company' is defined as a company of a type listed in Annex II of the Company Law Codification Directive which is performing a cross-border merger.

'merger' is an operation whereby:

- one or more limited liability companies, on being dissolved without going into liquidation, transfer all of their assets and liabilities to another existing company (an acquiring company) in exchange for the issue to their members of securities or shares representing the capital of the other company and, if applicable, a cash payment not exceeding 10% of the nominal value or, in the absence of a nominal value, of the accounting par value of those securities or shares;

- two or more limited liability companies, on being dissolved without going into liquidation, transfer all of their assets and liabilities to a company that they form (a new company) in exchange for the issue to their members of securities or shares representing the capital of that new company and, if applicable, a cash payment not exceeding 10% of the nominal value or, in the absence of a nominal value, of the accounting par value of those securities or shares; or
- a limited liability company, on being dissolved without going into liquidation, transfers all of its assets and liabilities to the company holding all the securities or shares representing its capital; or
- One or more limited liability companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company, the acquiring company, without the issue of any new shares by the acquiring company, provided that one person holds directly or indirectly all the shares in the merging companies or the members of the merging companies hold their securities and shares in the same proportion in all merging companies.

Sections 201IA to 201KA of the Companies' Law, apply to cross-border mergers of limited liability companies, provided that at least one of the merging companies is a Cyprus company or the limited liability company created, is a Cyprus company.

The procedure to carry out a cross-border merger includes:

- The drafting of a common draft terms agreement by each of the merging companies;
- The filing with the Registrar of Companies of the common draft terms as well as of a notice (announcement) informing the members, creditors and employees of the merging company or their representatives that they may submit their comments on the common draft terms. The analogous procedure takes effect in the other EU member state in accordance with applicable law and regulations.
- The drawing up of a report by the board of directors, intended for members explaining and justifying the legal and economic aspects of the cross-border merger and the implications of the same on members, creditors and employees.
- An independent expert's report for each merging company must be obtained if required. This can be dispensed with, if the members of each of the companies involved have so agreed.
- Approval of the cross-border merger by the general meeting of each merging company

- Issuing of a pre-merger certificate by the Court, once satisfied that the cross-border merger is legal, and that compliance with all relevant conditions and proper completion of all procedures were made.

It is worth noting that simplified formalities apply where, for instance, a cross-border merger by acquisition is carried out either by a company holding all voting shares of the company or companies being acquired or by a person who holds directly or indirectly all the shares in the acquiring company and in the company or companies being acquired, and the acquiring company does not allot any shares under the merger.

The consequences for the various types of a cross-border merger, are contained in section 201KA of the Companies' Law. In all cases, all assets and liabilities are transferred without the need for any other action (save for any necessary notifications) and likewise, the company or companies being absorbed or acquired, cease to exist.

Cross-border divisions

Cross-border divisions of limited liability companies are governed by sections 201AA – 201AKA of the Companies' law.

“Division” is an operation whereby:

- (a) a company being divided, on being dissolved without going into liquidation, transfers all its assets and liabilities to two or more recipient companies, in exchange for the issue to the members of the company being divided of securities or shares in the recipient companies and, if applicable, a cash payment not exceeding 10 % of the nominal value, or, in the absence of a nominal value, a cash payment not exceeding 10 % of the accounting par value of those securities or shares ('full division');
- (b) a company being divided transfers part of its assets and liabilities to one or more recipient companies, in exchange for the issue to the members of the company being divided of securities or shares in the recipient companies, in the company being divided or in both the recipient companies and the company being divided, and, if applicable, a cash payment not exceeding 10 % of the nominal value, or, in the absence of a nominal value, a cash payment not exceeding 10 % of the accounting par value of those securities or shares ('partial division'); or

(c) a company being divided transfers part of its assets and liabilities to one or more recipient companies, in exchange for the issue to the company being divided of securities or shares in the recipient companies ('division by separation').

The procedure for a cross-border division of a limited liability company is similar to that of a cross-border merger in that a draft terms document is also required, containing similar information to that contained in a draft merger document (including likely repercussions on employment, and any safeguards to creditors, such as guarantees or pledges), and so is the preparation of detailed reports explaining the implications of the transaction; the approval by the general meeting; as well as scrutiny by the court.

The law of the member state of the company being divided shall govern those parts of the procedures and formalities to be complied with in connection with the cross-border division in order to obtain the pre-division certificate, while the laws of the member states of the recipient companies shall govern those parts of the procedures and formalities to be complied with following receipt of the pre-division certificate.

The consequences of a cross-border division, are the following:

- (a) all the assets and liabilities of the company being divided, including all contracts, credits, rights and obligations, shall be transferred to the recipient companies in accordance with the allocation specified in the draft terms of the cross-border division;
- (b) the members of the company being divided shall become members of the recipient companies in accordance with the allocation of shares specified in the draft terms of the cross-border division, unless they have disposed of their shares
- (c) the rights and obligations of the company being divided arising from contracts of employment or from employment relationships and existing at the date on which the cross-border division takes effect shall be transferred to the recipient companies;
- (d) the company being divided shall cease to exist

Tax exemption

From a tax perspective, an application can be made to the Revenue Department, accompanied by the reorganisation plan and relevant information on the merging entities, or the entities effecting a cross-border division, for a reorganisation certificate, confirming the exemption from taxes. The tax authorities retain the discretion to issue a tax exemption certificate if they take the view that the merger, division or reorganisation is genuine and reflects economic reality.

Cross border conversions (redomicilliations)

What used to be called redomicilliations are now referred to as conversions.

Sections 201HA - 201HK of the Companies Law apply to cross-border conversions of limited liability companies, which were incorporated according to the laws of an EU member state and have their registered office, central management or main establishment within the EU, to limited liability companies governed by the laws of another member state.

‘Cross-border conversion’ is defined as an operation whereby a company, without being dissolved or wound up or going into liquidation, converts the legal form under which it is registered in a departure Member State into a legal form of the destination Member State, as listed in Annex II of the Company Law Codification Directive, and transfers at least its registered office to the destination Member State, while retaining its legal personality.

In compliance with EU law, the law of the departure Member State shall govern those parts of the procedures and formalities to be complied with in connection with the cross-border conversion in order to obtain the pre-conversion certificate, and the law of the destination Member State shall govern those parts of the procedures and formalities to be complied with following receipt of the pre-conversion certificate.

The consequences and results of a cross-border conversion are the following:

- (a) all the assets and liabilities of the company, including all contracts, credits, rights and obligations, shall be those of the converted company;
- (b) the members of the company shall continue to be members of the converted company, unless they have disposed of their shares as referred to in Article 86i(1);
- (c) the rights and obligations of the company arising from contracts of employment or from employment relationships and existing at the date on which the cross-border conversion takes effect shall be those of the converted company.

Protection for creditors, members and employees

Key factor in all cases of cross-border mergers, divisions and conversions, that was taken into account, in introducing the new provisions, was the protection of the rights of creditors, minority shareholders and employees.

In order to avoid abuse of process, the pertinent authorities of member states have the right to scrutinise whether or not the relevant procedure is being carried out for abusive or fraudulent purposes and to extend the period under which it has to take a decision to allow or not allow the merger or division or conversion to take place.

Rights of creditors are protected, as they can request additional safeguards if they believe that their interests are at risk. They have also the right to apply to the competent authority in order to insert provisions into the draft terms ensuring that their claims are preserved.

Rights of employees are emphasised, particularly in relation to pensions and other benefits, which must not be undermined by the relevant procedure. Employees must be adequately informed and consulted.

Dissenting shareholders are further given a 'cash-out right' to compensation if they do not agree with the terms of the reorganisation.

Conclusion

The recent updates to the legal framework governing cross-border mergers, divisions, and conversions in Cyprus represent a significant advancement in facilitating corporate mobility within the EU. These changes not only enhance the protection of creditors, shareholders, and employees but also provide businesses with a clearer, more efficient path to growth and expansion across borders.

If you're considering a merger, division, or conversion, or simply want to explore your options under the new EU and Cyprus legal frameworks, don't hesitate to reach out. Our team at Patrikios Pavlou & Associates LLC is equipped to assist in achieving your corporate objectives. For further information on this topic please contact [Lia Iordanou Theodoulou](mailto:liordanou@pavlaw.com) at Patrikios Pavlou & Associates LLC by telephone (+357 25 87 15 99) or email (liordanou@pavlaw.com). The Patrikios Pavlou & Associates LLC website can be accessed at www.pavlaw.com.



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