



Cross-border transformations: what's new?

Greek Parliament recently introduced Law 5055/2023 on the transposition of Directive (EU) 2019/2121 amending Directive (EU) 2017/1132 regarding cross-border conversions, mergers and divisions of limited liability companies into the Greek legal system, providing for a single harmonised legal framework governing such cross-border transformations and repealing Law 3777/2009 (the “New Law”).

In a nutshell:

- A. Codification and systemisation of corporate transformations law into a single statutory toolkit;

Law 4601/2019 has been amended to transpose and include all relevant provisions applicable to cross border mergers, divisions and conversions of limited liability companies as an independent chapter of each respective part of such Law.

- B. Fostering the fundamental principle of freedom of establishment;

The provisions on cross-border conversions constitute henceforth an explicit legal regime for the transfer of a company's seat to another member state, aiming to contribute to the removal of restrictions on the freedom of establishment while at the same time providing adequate protection for stakeholders, creditors and employees.

- C. Capital companies capable to undertake any cross-border transformation;

The scope of the New Law covers any capital companies, and mainly, stock corporations (societes anonymes -SAs), limited liability companies (LLCs), private companies (PCs), limited partnerships by shares (LPs) and European Companies (SEs).

- D. A mandatory draft plan for all cross-border transformations;

The New Law provides for the obligation of preparing a plan in all three cases of cross-border operations (merger, division and conversion), by also reflecting in detail the minimum content as described in the New Law.

E. Introducing a Business Registers Interconnection System (BRIS);

The New Law provides for the utilisation of the General Commercial Registry (GEMI) and the interconnection system of Member States' national business registers in order to (a) facilitate the transmission of the pre-transformation certificate to the authorities competent for the legality check; (b) make all main documents of the cross border transformations publicly available; (c) inform all national business registers on the completion of the transformation. BRIS and relevant provisions aim to promote the interest of easily accessible and free information, transparency and legal certainty across the EU.

F. Submission of remarks on the plan;

In the light of the intended increased protection of stakeholders of the entity under transformation (shareholders, partners, creditors, employees) the New Law provides for the right of the latter to submit remarks on the plan at least five (5) business days prior to the General Meeting of Shareholders approving the transformation. To that end, a relevant announcement calling for such remarks is published with GEMI.

G. Report of the administrative or management body;

The report of the management body on the explanation and justification of the legal and financial aspects of the cross-border transformation and its consequences on the future business activities of the entity, which is addressed to the shareholders or partners and the employees of the domestic entity, may now include two parts, one for the shareholders or partners and one for the employees. Separate reports on the consequences of the transformation on each of the stakeholders may also be provided. Nevertheless, the New Law

introduces for the first time in cross-border transformations the right of the shareholders or partners of the domestic entity to waive the drafting of such report under the specific conditions stipulated by law.

H. Extended Cool-off period;

The New Law provides for a longer cool-off period of three (3) months (as compared to the former one-month period) as of the completion of publicity formalities, during which, the creditors of the domestic entity, whose claims have not become due and payable, are entitled to request adequate guarantees in case they prove that the repayment or settlement of their claims is at stake due to the cross-border transformation.

I. Simplified procedure;

Except for the previously existing simplified process of cross-border mergers according to the model of the simplified formalities of Law 4601/2019 on national mergers (i.e. merger by absorption of a 100% subsidiary by the parent company and merger by absorption of a company by a shareholder that owns 90% or more but not the entirety of its holdings) provisions on the cross-border divisions have also been introduced under the new framework.

J. Scrutiny by the domestic competent authority;

The New Law provides for a stricter scrutiny exercised by the Greek competent authority which monitors the compliance of the domestic entity with the provisions of the law and the observance of the processes and formalities which precede the completion of the cross-border transformation. Compliance with such formalities comprises prior approvals and regulatory

clearance (if required) but also extends to the settlement of or the granting of security for any monetary or non-monetary obligations of the domestic entity towards public authorities indicatively including the Greek State and Social Security Institutions. Under such review the competent authority further examines whether the cross-border transformation is being conducted for any abusive or fraudulent purposes.

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