IMPLEMENTATION OF THE MOBILITY DIRECTIVE: SIGNIFICANT CHANGES FOR MERGERS, DIVISIONS AND CONVERSIONS WITH THE INTRODUCTION OF A NEW DUAL REGIME

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Luxembourg Corporate Alert

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On 23 January 2025, Luxembourg enacted a bill implementing the EU Mobility Directive (2019/2121) for cross-border conversions, mergers and divisions, featuring (i) a harmonised legal framework for these transactions across the European Union, and (ii) a distinct set of rules for transactions not covered by the EU special regime.

TRANSPOSITION OF THE EU MOBILITY DIRECTIVE AND INTRODUCTION OF THE EU SPECIAL REGIME

The Luxembourg legislator has leveraged all available options under the EU Mobility Directive to create a favourable regime for company mobility within the transposition of the EU special regime. It applies to cross-border operations involving companies based in at least two EU member states, with the Luxembourg company being an SA (société anonyme), SCA (société en commandite par actions), or SARL (société à responsabilité limitée). This regime enhances consistency and clarity in the applicable EU cross-border operations while ensuring adequate protection, including:

Minority Shareholders Rights

Shareholders who voted against the European cross-border transaction may exercise exit rights and claim cash compensation. Those who did not exercise this right can challenge the share exchange ratio.

Information Rights

Rights to information include detailed explanatory reports from the management body for the benefit of employees and shareholders. Additionally, shareholders, creditors and employee representatives may submit comments on the draft terms.

Role of the Luxembourg Notary

The notary scrutinizes the transaction to ensure the legality of the planned cross-border operations.

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GENERAL REGIME APPLICABLE TO DOMESTIC TRANSACTIONS AND CROSS-BORDER TRANSACTIONS NOT COVERED BY THE EU SPECIAL REGIME

The general regime builds on the existing framework and simplifies procedures for conversions, mergers and divisions. Key points include:

Mergers Between Sister Companies

A simplified merger process has been introduced that does not require the issuance of new shares applicable when one party directly or indirectly owns all shares in both companies or when the same parties hold the same proportion of shares in each of the merging companies.

Domestic and Non-EU Cross-Border Mergers and Divisions

Draft Terms

The draft terms and board report need less-detailed information, and the merger or division might be contingent upon a condition precedent.

Independent Expert's Report

Report is no longer mandatory for single-shareholder companies in case of mergers and divisions.

Non-EU Cross-Border Conversions

Unless there are employees and specific assets involved, only an extraordinary general meeting of the company's shareholders before a Luxembourg notary is required to approve the conversion.

WHEN DO THE NEW REGIMES COME INTO EFFECT?

The new law will come into force on the first day following the month of its publication in the Luxembourg Official Journal. Once the new provisions come into effect, they will apply to all new restructurings. However, the new rules will not affect ongoing projects where the draft terms were published before the first day of the month following the law's entry into force.

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