
Briefing

Irish Limited Liability Companies can now Migrate within the EU



INSTITUTE OF DIRECTORS
IN IRELAND

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A new law permits limited liability companies that have been incorporated and registered in the EU to convert their legal form to that of a company under the laws of another EU Member State. It is expected that the same arrangements will soon be extended to the European Economic Area (“EEA”). The new law also recasts and updates the existing EU cross-border company merger and divisions regimes, including permitting divisions of EEA companies by the formation of new companies. Some aspects of the recast mergers and divisions regimes are simplified while protections for employees, shareholders and creditors are enhanced.

The European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023¹ (the “**Regulations**”) have transposed Directive (EU) 2019/2121 (commonly known as the “**Mobility Directive**”) into Irish law. The Mobility Directive was due to be transposed by 31 January 2023.

The Regulations anticipate that they will soon be extended to include the wider EEA and not merely the EU.² Soon, therefore, references in this briefing to the EU can be taken as references to the EEA.

¹ *SI 233 of 2023.*

² The EEA is comprised of every EU Member State and Norway, Iceland and Liechtenstein.

Company migrations: Corporates have new freedom of establishment rights in Ireland

The Regulations enable an Irish limited liability company (whether public or private) to carry out a cross-border conversion process pursuant to which, without being dissolved, wound-up or going into liquidation, it converts its legal form under Irish law into that of another EU Member State and transfers at least its registered office to that other EU Member State, while retaining its legal personality.

The effect will be that an Irish limited liability company will be able to re-domicile or migrate to another EU Member State, thus changing its nationality and place of registration, *without any change to, or interruption in, its legal personality*. Following the completion of a conversion, all the assets and liabilities of the company, including all contracts, rights and obligations, become those of the converted company, and the members of the company continue as members of the converted company under the law of the destination Member State. The rights of employees of the company continue in the converted company, under the law of the destination Member State.

Up to now only a *Societas Europaea* (“SE”) could redomicile to another EU Member State (a wider regime exists for certain investment funds). Likewise, Ireland may be the destination Member State for a company that is incorporated in another EU Member State: it will be possible for the first time (excepting an SE) for a limited liability company that is incorporated in another EU Member State to re-domicile to Ireland and to assume Irish nationality and to be registered as an Irish company in the Companies Registration Office in Dublin.

Although cross-border conversions are new to Ireland, the regime shares a common legal framework with that of cross-border mergers (available since 2008) and many features and requirements of the new regime are recognisable and familiar. As mentioned, the Regulations also recast and update the existing cross-border mergers and divisions regimes.

Process and procedures

The procedural requirements for a cross-border conversion include:

- a draft terms of conversion proposal;
- draft explanatory notes;
- filing in the public register;
- a public announcement;
- approval by the company’s general meeting (a majority of not less than two-thirds is required);
- pre-conversion certificates; and
- effectuation and registration of cross-border conversion.

Once the conversion is approved by the competent authority of the destination Member State, it will be registered on the national public registers of the departure and destination Member States and will be legally effective on a date that is specified by the competent authority of the destination Member State.

The High Court is the body designated in Ireland to scrutinise the legality of in-bound and out-bound cross-border conversions. In line with the requirements of the Mobility Directive, it will be possible to undertake this in a wholly online process without the necessity for the applicants to appear in person before the competent authority. How this will work in practice remains to be seen as it is not typically how a High Court process would work. What are the key aspects of DORA to be aware of?

Changes to cross-border merger regime in Ireland

The High Court remains the body designated in Ireland to scrutinise the legality of in-bound and out-bound cross-border mergers. However, as with cross-border conversions, the scrutiny process for cross-border mergers will be capable of being completed fully online without the necessity for the applicants to appear in person before the competent authority. This will make a significant positive change to the process by which cross-border mergers are approved and implemented in Ireland.

Many of the provisions and protections applicable to a cross-border conversion are applied to a cross-order merger.

When scrutinising whether or not to grant a pre-conversion / merger / division certificate, the competent authority is now empowered to assess whether or not the relevant procedure is being carried out for abusive or fraudulent purposes, such as for the circumvention of the rights of employees, social security payments or tax obligations, or for criminal purposes. If any such concern exists, the certificate required to allow the process will be withheld.

Assessment

Corporate migrations are common in civil law jurisdictions and we expect that they will quickly become a common feature of the corporate landscape in Ireland too.

Cross-border mergers have predominantly been used in group reorganisations and it is hoped that these changes will reduce costs and bring greater efficiency to the scrutiny process.

Further information is available from



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