

Possibility of cross-border mergers in Latvia

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One of the ways of reorganizing a company is by cross-border merger (merging of companies established in different countries).

In Latvia mergers are governed by the Commercial Law, which distinguishes two different types of mergers: merger by acquisition and merger by consolidation. In the case of merger by acquisition, the acquired company transfers all its property to the acquiring company and ceases to exist without a liquidation. When merger by consolidation takes place, two or more companies transfer all of their property to a newly created company and cease to exist – again, without a liquidation.

Both types of merger are made subject to a number of conditions, such as the drawing up of a reorganization contract, preparation of the reorganization prospectus, review of the merger by auditors and adoption of protective provisions in favor of creditors. When all the conditions set forth by the Commercial Law are met, the Register of Enterprises makes entries into the Commercial register regarding the merger.

Even though the Commercial Law does not explicitly state that cross-border mergers are not possible, so far no cross-border merger has been registered by the Register of Enterprises, and it is unlikely that the register would register a crossborder merger.

However, as the result of recent judgment of the European Court of Justice, this may be about to change. In its judgment of Dec. 13, 2005 the ECJ declared that national authorities cannot refuse registration of a cross-border merger by acquisition in general, unless such refusal is justified for imperative reasons in the public interests.

One way of carrying out a cross-border merger already now is by utilization of the Council Regulation on the Statute for a European Company. In accordance with the above mentioned regulation, a public limited liability company established in one of the member states of the EU (e.g., Latvia) may be merged with a public limited liability company established in another member

states of the EU, thus creating a new type of legal person: a European public limited liability company (*Societas Europaea*, or SE).

A cross-border merger establishing an SE is carried out in accordance with the law applicable to the public limited liability companies in the member state in which the registered office of the SE will be located. Therefore, if a public limited liability company established in Latvia is merged with a public limited liability company established in another member state, and a decision is made to locate the registered office of the newly created SE in Latvia, conditions set forth by the Commercial Law that were described above and that are applicable to the national merger will be applied also to the cross-border merger.

At the same time, businessmen must take into account a number of facts with possible negative implications when considering establishing an SE. First of all, only public limited liability companies may be merged to form an SE. Further, rather complicated rules on involvement of employees in the SE must be followed. Finally, the subscribed capital of the SE shall not be less than 120,000 euros.

On the other hand, establishing an SE currently might be the only possibility of conducting a cross-border merger. Unlike typical public limited liability companies, the registered office of an SE may be transferred to another member state of the EU without winding up the existing company, thus allowing the SE to relocate whenever the regulatory framework in one Member State of the EU becomes more favorable than in another.

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