

Ireland Update: New Conversion and Division Options for EU Limited Companies

Introduction

Directive (EU) 2019/2121 (the "EU Mobility Directive") has been transposed into Irish law in a notable development for domestic and EU company law.

The European Union (Cross-Border Conversions, Mergers & Divisions) Regulations 2023 (the "Mobility Regulations") transposing the EU Mobility Directive into Irish law took effect on 24 May 2023 (with the exception of a small number of stated provisions which did not take effect until 26 May 2023).

The Mobility Regulations update the current cross-border merger regime and, for the first time, allow limited liability companies to 'convert' into another company type in other European Economic Area ("EEA") countries while retaining their legal personality and introduce new rules around divisions of limited liability companies.

Aim of New Legislation

The enhancement of cross-border mobility together with the facilitation of freedom of establishment across the European Union is at the heart of the EU Mobility Directive.

This new legislation aims to reduce the administrative cost for companies, while safeguarding other legitimate public interests such as the protection of employees, creditors and minority shareholders along with the introduction of an anti-abuse provision.

Key Points

- Procedures in respect of cross-border conversions, mergers and divisions now have a shared framework.
- The Mobility Regulations revoked, in their entirety, the Irish legislation governing cross-border mergers, European Communities (Cross Border Merger) Regulations 2008 (SI 157/2008) (except in relation to ongoing mergers for which common draft terms were filed with the CRO before 24 May 2023) and introduced "simplified formalities" for certain non-complex mergers.
- Migration of Irish limited liability companies to other EEA countries without changing their legal personality is now possible. It is also possible for limited liability companies from other EEA countries to migrate into Ireland.
- Irish limited liability companies now have the ability to divide their assets and liabilities between companies across EEA countries. There are different options available: full division and partial division. New Irish companies may also be formed by way of cross-border divisions carried out by limited liability companies in other EEA countries.
- The High Court is the competent authority under the Mobility Regulations; it is required to determine the legality of the cross-border operation (i.e. determine whether the transaction is being carried out for abusive or fraudulent purposes) and to issue the pre-transaction certificate, if appropriate. How

this process will be dealt with by the High Court remains unclear and guidance is awaited on this issue.

- The deadline for transposition was 31 January 2023, however, many EEA countries have yet to implement the EU Mobility Directive. Accordingly, there remains some uncertainty as to how the new regime will work in relation to transactions involving a country which has not yet transposed this legislation.

How the Maples Group Can Help

The Mobility Regulations are a welcome development which will enhance options available with regard to EU cross-border structuring of migrations, divisions, consolidations and reorganisations of limited liability companies.

If you require assistance or have any queries in relation to this, please reach out to your usual Maples Group contact or any of the persons listed below.

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