

Partnership

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EXPECT EXCELLENCE

AUTUMN 2009

Briefing

Cross-Border Mergers

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The European Communities (Cross-Border Mergers) Regulations 2008 (implementing Directive 2005/56/EC on Cross-Border Mergers) facilitate mergers between Irish companies and those located elsewhere in the European Union (and those EEA States that have implemented the Directive). European limited companies that are capable of merger under national law can merge into Irish registered companies or vice versa, with the merging company ceasing to exist on completion of the merger. As a result, the Regulations have permitted true “mergers” for the first time under Irish law providing a new way for Irish companies to make or receive a transfer of assets and liabilities to or from companies in other European/EEA jurisdictions.

What types of merger are permitted?

- » **Merger by Absorption:** where a wholly-owned subsidiary is absorbed into its parent company.
- » **Merger by Acquisition:** where an existing company acquires all the assets and liabilities of one or more transferor companies in exchange for the issue to the shareholders of the transferor companies of shares or securities in the acquiring company (with or without a cash payment).
- » **Merger by Formation of a New Company:** where two or more companies transfer all their assets and liabilities to a successor company formed for that purpose in exchange for the issue to their shareholders of shares or securities in the successor company (with or without a cash payment).

What are the benefits of a cross-border merger?

- » A cross-border merger results in each transferor company being dissolved without going into liquidation, thus avoiding the publicity, delay and expense of a liquidation, and with all of its assets and liabilities (including legal proceedings, employment contracts and other contracts, agreements or instruments) being transferred to the surviving company.
- » The Cross-Border Mergers Directive creates a harmonised and simplified procedure for cross-border mergers eliminating the need for individual transfer documents typical under the traditional business sale and purchase model.
- » A cross-border merger reduces the number of legal entities and can streamline corporate governance obligations and compliance costs within a corporate group.
- » The transfer of assets and liabilities under a cross-border merger should be broadly neutral from an Irish tax perspective and may have the advantage of increasing the possibility of claiming tax relief for losses that might otherwise be unavailable where the losses are losses of an overseas subsidiary.

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

- » In the case of merger by acquisition or by formation of a new company, the shareholders in the transferor companies become shareholders in the surviving company when the merger becomes effective.
- » The merging companies may select a date from which transactions of the transferor companies are to be treated for accounting purposes as being those of the surviving company.
- » To date, cross-border mergers involving Irish companies have involved transactions within corporate groups, but the Regulations are not limited to intra-group transactions and the merger of unconnected companies is permitted.

What steps are involved in a cross-border merger?

The procedures for a cross-border merger vary depending on the type of merger undertaken, but all involve the preparation of common draft terms of merger between the companies involved (the contents of which are prescribed by the Regulations), the drafting of an explanatory report by the directors that must be made available to the Irish company's shareholders, a filing with the Companies Registration Office in Dublin, and advertisement of the proposed merger. The Irish High Court must also review and approve both outbound and inbound mergers involving Irish companies. Where applicable, employee protection provisions must also be observed. In some cases, an auditor's report on the merger will be required.

Contacts

If you are considering such a transaction or would like to discuss any of the issues outlined above, please do not hesitate to contact any of the Arthur Cox people below.



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Why Arthur Cox?

Arthur Cox is one of Ireland's largest law firms and has a long established history of advising on cross-border transactions. Our practice encompasses all aspects of corporate and business law, providing a comprehensive service to an international client base ranging from multinational organisations, banks and financial institutions and established global leaders to government agencies and new players in emerging industry sectors. Our reputation is based on proven professional skills, a thorough understanding of client requirements, sound judgment and a practical approach to resolving commercial problems. We offer breadth and depth across every facet of corporate, financial and business law and have the resources to successfully manage and drive forward transactions on schedule, helping our clients achieve their business objectives. Arthur Cox has advised on the following cross-border mergers:

- » Merger of SachsenLB Europe plc in Ireland into a member of the Landesbank Baden-Württemberg group in Germany, the first cross-border merger completed in Ireland.
- » Merger of Thrombogenics Limited in Ireland into ThromboGenics NV in Belgium.
- » Merger of Eurco Finance Limited in Ireland into Dexia Insurance Belgium S.A. in Belgium.
- » Merger of Georgio Armani Netherlands BV in the Netherlands into GA Corporation Finance Limited in Ireland.