



Cross-border corporate transactions (mergers, divisions or conversions)

On 5 December, Decree-Law no. 114-D/2023 was published in the Official Gazette, which transposes into national law Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019, amending Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017, in the part concerning cross-border mergers, cross-border divisions and cross-border conversions (also commonly known as redomiciliations; that is to say, the change of registered office of a company from a country to another country). This legal frame was approved pursuant to the respective legislative authorization in Law no. 58/2023 of 10 October.

This law also partially implements Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on the recovery and resolution of central counterparties, in the part which amends Directive (EU) 2017/1132.

In order to accomplish the above, the law amends the **Portuguese Companies Code** and the **Commercial Registry Code**, as well as **Law no. 1/2009** of 12 May (on cross-border mergers), **Decree-Law no. 24/2019** of 1 February (on electronic communication between European Commercial Registries) and the **Regulation on Registration and Notary Fees**. Naturally, these changes are limited to companies related to the European area.

The implementation of a harmonised legal frame, i.e. the adoption of harmonised rules, contributes significantly to remove restrictions on freedom of establishment, ensuring its full exercise and, at the same time, providing adequate protection for stakeholders in the

European market, i.e. employees, creditors, and shareholders. The aim is to settle a balance between freedom of establishment and legal security, providing a more transparent and fairer business environment. Economic players will now be able to carry out cross-border mergers, cross-border divisions or cross-border conversions in a safer and more expedite manner for all stakeholders and related parties.

Thus, the aim was to broaden the scope of harmonised cross-border mergers with the legal frame for cross-border conversions and cross-border divisions, updating the legal framework for cross-border mergers and introducing specific regimes for cross-border conversions and cross-border divisions.

The new regime introduces prior legal supervision for cross-border operations ensuring that all procedures are carried out in accordance with the highest legal standards, thereby increasing confidence in the system.

The rights of information and consultation of employees' (or their representatives) are established in relation to, among other things, the implications of the operation, changes in working conditions and the influence of these factors on the company's subsidiaries.

There are exceptions to the application of rules on cross-border operations, emphasizing that in case of contributions in kind, loss of half the capital, requirements for a resolution or decision to increase the capital, convening a general meeting, a resolution to reduce the capital and protection of creditors, the provisions of the corresponding articles of the Portuguese Companies Code will not apply within the resolution instruments, powers and mechanisms. Likewise, the provisions relating to the loss of half of the share capital, the requirements for a resolution or decision to increase the share capital, the convening of the meeting to reduce the share capital and the protection of creditors will not be applicable during the ongoing of any company restructuring proceeding provided for in the Portuguese Recovery and Insolvency Code.

Finally, the legal frame now enacted also provides for an exception to its applicability to situations of resolution powers, instruments, and measures, in partial implementation of Regulation (EU) 2021/23.

The new legal framework for cross-border operations comes into force 30 days after publication, i.e. on 4 January 2024.

At last, this is an important change to the national legal framework for the mobility of companies to and from Portugal, and so far, only Bulgaria, Cyprus and Luxembourg have not taken any steps to transpose this Directive.

We remain available for answer any questions you may have.

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