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Cross-Border Restructurings: New Possibilities with a Brand New Legal Framework

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Corporate restructurings have been a useful tool for the development and expansion of businesses in both domestic and international level for decades, allowing them to merge and create stronger financial units, demerge and allocate their assets and sectors more efficiently, or convert into more flexible and suitable legal entity forms. Aiming to meet these business needs, the EU and notational legislators have been working, in the past few years, to update and reorganize the relevant applicable provisions.

Within this context, more than ten years after the latest relevant legislative act in Greece, new Law 5055/2023 “Transposing of the European Parliament’s and Council’s Directive (EU) 2019/2121 dated 27 November 2019 (the “**Directive**”), amending Directive (EU) 2017/1132 regarding cross-border conversions, mergers and demergers of companies and urgent provisions for the effective operation of the market” entered into force, repealing the previously applicable Articles 1-17 of Law 3777/2009 related to cross-border mergers.

The relevant provisions of Law 3777/2009, on one hand, only governed cross-border mergers, leaving gaps in the regulation of cross-border demergers and conversions, and on the other hand, lacked the consistency and comprehensiveness seen in provisions on domestic operations, and in particular in recent Greek Law 4601/2019, that systematized the national law of corporate restructurings. Law 5055/2023 seeks to fill these gaps, while aiming to remove restrictions on the freedom of establishment of companies in the EU internal

market and emphasizing in the protection of the rights and interests of employees, as well as minority shareholders, during cross-border operations.

Within this context, Law 5055/2023 introduces, for the first time, a **brand new legal framework for cross-border demergers and cross-border conversions, too**, thus rendering them feasible between companies incorporated in different EU Member States.

The Directive and its incorporation into the Greek legal system

The Directive, as a part of the European Union’s broader endeavor to create a harmonized framework for company law in the European Market and to facilitate the mobility of companies across EU Member States, simplifies the engagement of companies incorporated under the law of a Member State and having their registered seat, central administration, or principal place of business within the European Union, in cross – border mergers, demergers, and conversions within the Union.

In a nutshell:

- (i) Cross – border mergers: The Directive outlines the rules and procedures for cross-border mergers between companies governed by the laws of different Member States, ensuring the protection of employees and minority shareholders,
- (ii) Cross – border demergers: The Directive regulates the process of cross – border demergers, allowing a company to divide

into two or more companies governed by the laws of different Member States,

- (iii) Cross – border Conversions: The Directive establishes procedures and safeguards for companies that wish to convert into an entity governed by the laws of another EU Member State while retaining their legal personality.

Law 5055/2023 introduced three new Chapters Law 4601/2019 on corporate restructurings; new Chapter IA' in Part B' of Law 4601/2019, transposing the Directive's provisions on cross-border mergers, new Chapter IB' in Part C' (Γ') of Law 4601/2019, transposing the Directive's provisions on cross-border demergers and new Chapter Z' in Part D' (Δ') of Law 4601/2019, transposing the Directive's provisions on cross-border conversions.

In contrast to Law 4601/2019, however, cross-border restructurings **are only possible between private stock companies**, while companies the object of which is the collective investment of capital provided by the public, operating on the principle of risk-spreading and the shares of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of that company, are expressly excluded from its scope.

Provisions on Cross-Border Mergers

As regards cross-border mergers, Law 5055/2023 establishes several notable innovations and amendments compared to its predecessor, Law 3777/2009.

The key changes are as follows:

- ❖ The definition of “merger” is broadened further than the existing definition of Law 4601/2019 to also include a simplified merger within *company groups*: the transfer of assets and liabilities from one or more companies to another pre-existing company (the absorbing company) without the issuance of new company shares/units by the absorbing

company, provided that a person/entity directly or indirectly, holds all the shares/company units of all companies participating in the cross-border merger, or if the shareholders or members of the cross-border merging companies hold their shares/company units in the same proportion in all the companies participating in the cross-border merger;

- ❖ The reports that are required for the merger process are more strictly regulated. The administration report must be bifurcated into two distinct sections, one intended for the scrutiny of shareholders/partners, and the other dedicated to employees, while the independent expert's report is required to additionally include a conclusive opinion on the sufficiency of the suggested financial compensation and the methodology employed for its calculation;
- ❖ The grounds of contestation of the General Meeting's resolution on the approval of the cross – border merger are limited;
- ❖ Comprehensive provisions for **the protection of shareholders/partners and creditors respectively** are introduced, distinguishing the rights of these two categories of stakeholders in separate articles, contrary to the previous Law, which amalgamated their treatment in a single article without detailed analysis. It is worth noting that the shareholders/partners who voted against the approval of the cross-border merger shall have the right to dispose of their shares for adequate cash compensation, while the deadline for the creditors requesting additional securities from the merging companies is extended to three months (as opposed to one month in domestic mergers);
- ❖ Vital provisions aimed at **protecting the interests of employees** are introduced, instituting the employees' right to submit comments on the Joint Draft Cross-Border Merger Agreement, and a framework for the application of employee notification and consultation provisions, prior to the General's

- Meeting resolution for the approval of the Joint Draft Cross- Border Merger Agreement;
- ❖ For companies operating under an employee participation regime, the period of protection of employees participation rights, in cases of a subsequent merger is extended to four years;
 - ❖ Provisions establishing the date upon which the effects of the cross-border merger enter into force are introduced;
 - ❖ In addition to provisions governing the absorption of a wholly owned company, new provisions are introduced for a simplified procedure in cases where the absorbing company holds 90% or more, but not the entirety, of the company's shares/units.

Provisions on Cross-Border Demergers and Conversions

As mentioned above, Law 5055/2023 establishes the framework for cross-border demergers and conversions. The respective provisions are delineated in newly inserted chapters in the respective parts of Law 4601/2019 on corporate restructurings, thus amalgamated into a unified text.

The provisions on **cross-border demergers** are fully aligned from a procedure perspective and follow the spirit of the respective cross-border merger provisions, including the emphasis on protection of shareholders/partners, of creditors and of employees. It is worth noting that that the recipient company in case of a cross-border demerger is always a newly incorporated company, rather than an existing one.

The provisions on **cross-border conversions** offer the possibility of a company incorporated in an EU member state to be converted into a different legal entity form incorporated in a different EU Member State, thus transferring its registered seat, too, while the same above principles dictated by the Directive are complied with.

Further amendments to Law 4601/2019

Furthermore, Law 5055/2023 has introduced amendments to the existing provisions within Law 4601/2019, updating its text and references to better reflect the latest corporate publicity and legality review framework.

This includes the removal of the (alternative) option to publish Draft Merger Agreements and Draft Demerger Agreements on the websites of the companies involved in the merger or demerger, as well as of the Regional Prefect as the competent authority for the legality review and approval of corporate restructurings.

In conclusion, the enactment of Law 5055/2023 marks a pivotal step in aligning Greece's corporate legal framework with European standards, simplifying cross-border corporate operations, making it easier for companies to expand their reach both outside of and into Greece. This is a significant venture in fostering a more favorable business environment and setting the stage for substantial economic growth and prosperity, and its implementation in practice is highly anticipated.

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