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Newsflash

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LAW 5055/2023 FOR THE IMPLEMENTATION OF DIRECTIVE (EU) 2019/2121 AMENDING DIRECTIVE (EU) 2017/1132 REGARDING CROSS-BORDER CONVERSIONS, MERGERS AND DIVISIONS OF LIMITED LIABILITY COMPANIES

The new law aims to remove restrictions on the freedom of establishment of limited liability companies within the EU through cross-border transformations (including cross-border divisions and conversions) and to protect stakeholders (employees, creditors, shareholders/members), as well as to gather the law provisions on corporate transformations (national and cross-border) in a single piece of legislation (in Law 4601/2019) and repeal Law 3777/2009.

The provisions of Law 5055/2023 do not apply to companies having as an object the collective

investment of capital raised from the public, which operates on the principle of risk-spreading and whose units are re-purchased or redeemed out of those undertaking's assets. Nevertheless, they apply to limited liability companies which are subject to: a) insolvency proceedings or preventive restructuring frameworks; b) liquidation proceedings, other than those that are in liquidation and have begun to distribute assets to shareholders/members; or c) crisis prevention measures as defined in point 101) of par. 1 of Article 2 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

More specifically:

Cross-border mergers

- A broad definition of "merger" is provided, which includes, in addition to the operations of article 6 of Law 4601/2019, also the operations of subparagraph (d) of para. 2 of Article 119 of Directive (EU) 2017/1132.

- In addition to the particulars already provided for in Article 3 of Law 3777/2009, the common draft terms of the cross-border merger shall also mention particulars concerning, on the one hand, the cash compensation to be offered to shareholders/members who may exercise the exit right due to disagreement with the draft terms of the merger and, on the other hand, guarantees (collateral) to be provided to creditors.
- To satisfy the need to inform the shareholders/members, creditors and employees of the merging companies, in addition to the details already provided for in Article 4 of Law 3777/2009, the notice informing the shareholders/members, creditors and employees that they may submit comments on the common draft terms of the cross-border merger, as well as the expert report, shall also be disclosed and made publicly available.
- The Board of Directors'/Administrators' report shall include a section for shareholders/members and a section for employees. Employees shall be entitled to submit an opinion on the section of the report for employees and that opinion shall be appended to the Board's/Administrators' report and submitted to the General Meeting that will approve the merger.
- A single written expert report may be drawn up. The expert report shall state, inter alia, whether the proposed cash compensation for the exercise of the exit right corresponds to the real value of the shareholdings and whether the proposed share exchange ratio is fair and reasonable.
- When the General Meeting decides on the approval of the merger, any clauses of the Articles of Association requiring a majority of more than 90% shall not apply as to the excess percentage.
- In order to protect the shareholders/members of the merging companies, shareholders/members who voted against the approval of the common draft terms of the cross-border merger shall have the right to exit the company by disposing of their

shareholdings for cash compensation which will correspond to the real value of their shareholdings, otherwise they may dispute in court the share exchange ratio if it is not fair and reasonable and claim additional cash payment.

- A period of three (3) months is provided for the exercise by the creditors of the domestic merging company of their rights and the burden of proof as to the necessity of their protection is shifted to the creditors themselves. For the protection of creditors, the Board of Directors/Administrators of the domestic company shall provide a declaration stating that they are unaware of any reason why the company resulting from the merger would be unable to meet its liabilities when those liabilities fall due. The right to preferential satisfaction of groups of creditors (such as the Greek State, the Social Security Institutions etc.) from the assets of the domestic company may be opposed to any third party, mainly to creditors of the foreign companies participating in the merger.
- The provisions on information and consultation of employees laid down in the current legislation shall also apply to cross-border mergers. The information and consultation of employees shall take place prior to the decision for the drawing up of the common draft terms of the cross-border merger and the report of the Board of Directors/Administrators.
- The conditions for the participation of employees in the management of the domestic company resulting from the cross-border merger are set out.
- The rules for the allocation of the competence for the preventive control of the legality of the cross-border merger between the authorities of the relevant member states are determined and it is provided that a “pre-merger certificate” shall be issued.
- It is provided that a cross-border merger that has taken effect cannot be declared null and void.
- Simplified formalities shall apply where a cross-border merger by absorption is carried out by a company which holds all or more than 90% of the voting rights of the company or companies being acquired.

Cross-border divisions

- “Division” shall also include partial divisions and divisions by separation.
- The part of the procedures and formalities of a cross-border division which shall be governed by Greek law is defined and it is provided that a “pre-division certificate” shall be issued.
- It is provided that where a creditor of the company being divided does not obtain satisfaction from the company to which the liability is allocated, the other recipient companies shall be jointly and severally liable with the company to which the liability is

allocated for that obligation, up to a maximum amount equal to the value of the net assets allocated to that company. In the case of a partial cross-border division and a cross-border division by separation, the company being divided which continues to exist after the completion of the partial cross-border division or division by separation shall also be jointly and severally liable.

- Simplified formalities shall apply if the cross-border division is carried out by means of a division by separation.
- In all other respects (regarding the minimum content of the draft terms of the cross-border division, the disclosure obligations, the report of the Board of Directors/Administrators, the expert report, the opinion of the employees on the draft terms of the cross-border division and their right to participate in the management of the recipient company, the protection of shareholders/members of the company being divided who voted against the approval of the draft terms of the cross-border division and the protection of creditors, etc.), provisions similar to those mentioned above for cross-border mergers shall apply.

Cross-border conversions

- “Cross-border conversion” means an operation whereby a company, without being dissolved or wound up or going into liquidation, converts the legal form under which it is registered in a departure Member State into a legal form of the destination Member State and transfers at least its registered office to the destination Member State.
- The part of the procedures and formalities of a cross-border conversion which shall be governed by Greek law is defined and it is provided that a “pre-conversion certificate” shall be issued.
- As opposed to national conversions, the draft terms of a cross-border conversion shall be mandatorily drawn up.
- The minimum content of the draft terms of a cross-border conversion shall be similar to the draft terms of a cross-border merger, without reference to a share exchange ratio, but with reference to any incentives or subsidies received by the company being converted in the departure Member State in the preceding five (5) years.
- An expert report on the draft terms of the cross-border conversion shall be mandatorily drawn up with a content similar to the expert report on cross-border mergers.
- A period of two (2) years from the date of completion of the cross-border conversion shall apply for the exercise of the claims of the creditors of the company under conversion before the competent court in Greece and such period shall be taken into account by the court ex officio.

- In all other respects (regarding the disclosure obligations, the report of the Board of Directors/Administrators, the expert report, the opinion of the employees on the draft terms of the cross-border conversion and their right to participate in the management of the converted company, the protection of the shareholders/members of the converted company who voted against the approval of the draft terms of the cross-border conversion and the protection of the creditors, etc.), provisions similar to those mentioned above for cross-border mergers shall apply.

Amendments to Law 4601/2019 – Repeal of Law 3777/2009

- It is provided that GEMI shall be the only venue where the draft terms of the merger or the division shall be published and the alternative possibility of publishing the draft terms on the company's website is abolished.
- The requirement of prior approval, by the competent Regional Governor, of the merger, division and conversion of limited liability companies and European companies (S.E.), which have their registered office in the relevant Region, is abolished, since the relevant control competence has been transferred to GEMI.
- Articles 1 to 17 of Law 3777/2009 are repealed.

Extension of the deadline for the General Meeting of 2023

- For the year 2023, the deadlines for holding the General Meetings provided for in Laws 4548/2018, 4072/2012 and 3190/1955 are extended by fifty (50) calendar days. Deadlines associated with the submission to GEMI of shareholders'/members' meeting minutes and of approved financial statements are extended accordingly.

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This Newsletter aims to provide the reader with general information on the above-mentioned matters. No action should be taken without first obtaining professional advice specifically relating to the factual circumstances of each case.

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