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LEGAL INFORMATION NEWSLETTER

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We are pleased to provide you with the new issue of our legal information newsletter.

Topical legal questions are discussed and those related to issues that you might encounter.

We hope that you will find it of interest. We would welcome any comment you might have.

THE EUROPEAN COMPANY – SOCIETAS EUROPAEA (SE)

EU Council Regulation n. 2157/01
EU Council Directive 2001/86/CE

INTRODUCTION

After roughly 30 years of debate among the EU Member States, eventually a common European statutory regulation has been adopted for the European Company. On October 8 2004 Council Regulation No. 2157/2001 on the Statute for a European Company, or *Societas Europaea* (SE) will enter into force. This Regulation was passed on 8 October 2001 after a EU's highest political compromise was reached during the European Council at Nice. It also became part of the EEA (European Economic Area) agreement in 2002. Thus, the European company will exist in all EU Member States and in all State that are parties to the EFTA (European free Trade Association), which means Switzerland, Norway, Iceland and Liechtenstein. The SE Regulation establishes a new legal instrument based on EU Law that gives companies the option of forming a European company - or SE. A SE will be able to operate on a European-wide basis and be governed by Community Law directly applicable in all Member States.

ADVANTAGES

The incorporation of a SE will mean in practical terms that companies established in more than one Member State will be able to merge and operate throughout the EU on the basis of a single set of rules and a unified management and reporting system. They will therefore avoid the need to set up a financially costly and administratively time-consuming complex network of subsidiaries governed by different national laws. In particular there will be advantages in terms of significant reductions in administrative and legal costs, a single legal structure and unified management and reporting systems. By setting up as a European Company a business can restructure fast and easily to take advantage of the trading opportunities of the Internal Market. European Companies with commercial interests in several Member states will be able to move across borders easily as the need arises in response to the changing needs of their business. This is possible because the Statute will allow a European Company registered in a Member State to move its registered office without the prior burden of winding up the Company in the State where it comes from, in order to re-register in the other Member State. The chance of transferring their registered office will enable SE to choose their seat in accordance with the best fiscal conditions and the most advantageous national law. In addition it will be possible to exercise corporate governance establishing an Administrative Body (one-tier system) instead of the Managing Board and Supervisory Board (two-tier system), traditional system of central Europe Countries.

STATED CAPITAL

The capital of an SE shall be expressed in Euro. According to Article 4 of the EU Regulation the subscribed capital shall not be less than € 120,000.00.=. the laws of a Member State requiring a greater subscribed capital for companies carrying on certain types of activity shall apply to SEs with registered offices in that Member State.

FORMATION

In accordance with provision of Article 15 of the EU Regulation n.2157/01, the formation of an SE shall be governed by the Law applicable to public limited-liability companies in the Member State where the SE establishes it own registered office. An SE shall enjoy legal personality upon its filing within the domestic Companies' Register of the Member State where its registered office is situated. The registration of each SE will however be published in the EC's Official Journal. Only business entities formed in accordance with the Law of a Member State and having either their registered office or their head office within the EU and the EEA can be incorporated as a SE.

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A European Company can be set up in one of the following ways:

(1) By merger or consolidation of two or more existing public limited companies from at least two different EU or EEA Member States. Such a merger shall be carried out in accordance with the third Council Directive (78/855/EEC) of 9.10.1978 and specifically with the procedure laid down in:

- Article 3(1) in case of merger by acquisition

- Article 4(1) in case of merger by formation of a new company.

In case of a merger by acquisition, the acquiring company shall take the form of an SE when the merger takes place. In the case of a merger by formation of a new company, the SE shall be the newly formed company. The management or administrative bodies of each merging companies must draw up the merger plan in detailed terms fulfilling certain minimum requirements regarding its content. Certain particulars of each merging company have to be published in the Official Gazette of the respective Member State. Expert Reports examining the terms of the merger to be submitted to the Shareholders of each participant company are required.
The General Meeting of each of the merging companies has to approve the merger plan. The Law of the Member State governing each merging company shall apply as in the case of a merger of public limited-liability companies, taking into account the cross-border nature of the merger, with regard to the protection of the interests of creditors, holders of securities or bonds of the merging companies. The legality of a merger shall be scrutinized in accordance with the law on mergers of the Member State to which the merging company is subject. In each Member State the competent Authority (e.g. Notary, Court etc.) shall issue a certificate conclusively attesting to the completion of the pre-merger acts and formalities.
A merger and the simultaneous formation of an SE shall take effect on the date the SE is registered in accordance with article 12 of the EU Regulation. The SE may not be registered until the above formalities have been completed.

(2) By formation of a holding company promoted by public or private limited companies from at least two different Member States. According to article 2(2) of the EU Regulation, public and private limited-liability companies may set up an holding SE, provided that each or at least two of them is governed by the law of a different Member States, have had a subsidiary governed by the Law of a Member State, or a branch situated in another Member State for at least two years. The Management or Administrative Body of the Companies promoting the set up of an SE shall draw up, using the same terms, draft terms for the formation of the holding SE. Among some other particulars, the draft terms shall include a report explaining and justifying the legal and economic aspects of the formation and indicating the implications for the shareholders and for the employees of the adoption of the form f a holding SE.
The draft terms shall also fix the minimum proportion of the shares in each of the companies promoting the operation, which the shareholders must contribute to the formation of the holding SE. That proportion shall be shares conferring more than 50% of the permanent voting rights.
The draft terms must be publicised at least one month prior to the date of the General Meeting called to pass resolution thereon. One or more independent experts, appointed or approved by a judicial or administrative authority in the Member state of the participant companies shall examine the draft terms and draw up a report for the shareholders of each company indicating any particular difficulties or valuation and stating whether the proposed share exchange ratio is fair and reasonable.
By agreement among the participant companies, a single comprehensive written report may be drawn up for all the shareholders of the participating companies. SE formation must be approved at the general Meeting of each company promoting the formation.
The shareholders of the companies promoting the formation must inform the company within three months whether they intend to contribute their shares to the formation of the SE. the SE may not be registered until the shareholders of the participating companies have contributed, within the mentioned time limit, the minimum proportion of the shares established for each company and all other conditions have been fulfilled.

(3) By formation of a subsidiary of companies from at least two different Member States. According to Article 2(3) of the EU regulation, companies and firms within the meaning of Article 48 of the Treaty and other legal bodies governed by public or private law of a Member State may set up a subsidiary SE by subscribing its shares, provided that each or at least two of them is governed by the law of a different Member State, has had a subsidiary governed by the law of another Member State, or a branch situated in another Member State for at least two years.
Legal entities participating in such an operation shall be subject to provisions governing their participation in the formation of a subsidiary in the forma of a public limited-liability company under domestic law.

(4) By reorganization (conversion) into SE of an existing public limited-liability company, which has had a subsidiary in another Member State for at least two years. The Management or Administrative Body of the company has to draw up draft terms of reorganization and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications of the adoption of the form of an SE for the shareholders and for the employees.

The registered office may not be transferred from one Member State to another at the same time pursuant to Article 8 of the EU Regulation as the conversion is effected. The draft terms shall be publicised one month at least before the General Meeting called upon to pass resolution thereon.
The draft terms has to be examined by experts who must certify that the company has net assets at least equivalent to its capital plus those reserves which may not be distributed. The General Meeting must approve the draft terms of conversion together with the statutes of the SE.

CORPORATE GOVERNANCE
EU Regulation n. 2157/01establishes two alternative system of corporate governance for the SE.
The key structure elements of the European Company are the general meeting of shareholders and either a supervisory body and a management body (two-tier system) or an administrative body (one-tier system) depending on the form adopted by the SE.

Shareholder Meetings - Provisions on General Meetings of the SE mainly make reference to rules applicable in the Member State where the registered office of the company is situated. Unless the Law of a Member State provides otherwise, an SE shall hold its AGM within six months running from the end of its financial year.
General Meetings may be convened at any time by the management or the administrative body, by the supervisory body in accordance with provisions of national Law, and by 10% of the SE's subscribed capital. Save for different provisions that the EU Regulation or domestic Law set forth, resolutions of the General Meeting shall be passed by a majority of the votes validly cast. Unless domestic Law provides otherwise, amendments to the Statutes of an SE shall be taken by the General Meeting with a majority which may not be less than two thirds. Amendments shall be published in accordance with Article 13 of the EU Regulation.
Where the SE has two or more classes of shares, every decision by the General Meeting shall be subject to a separate vote by each class of shareholders whose rights are affected thereby.
Members of companies bodies must be appointed for the period that the Statutes set forth, not exceeding six years. Save for different provision of the Statutes, members may be reappointed. Domestic rules shall apply to the matter of liability for breach of duties by members of bodies during their office.
If domestic Law where the SE registered office is located does not prevent it, the Statutes may allow the appointment of companies and legal entities as members of SE bodies. A natural person must be designated as representative of a legal entity, which is member of a body of an SE.

Dualistic System (Two-Tier)- Statutes may provide that the governance of the company is exercised by the Management Board, which is appointed and removed by the Supervisory Board, unless domestic Law provides that this latter power must be attributed to the General Meeting. Management Board can assign specific executive powers to one or more of its members.
The Supervisory Board, which exercises general supervision over the work of the Management Board and in general over the activity of the company, is elected by the General Shareholders' Meeting.
It is not possible to hold office as member of the Management and of the Supervisory Board at the same time. Once every three months the Board reports to the Supervisory Board.

Monistic System (One-Tier) - Statutes may set forth that an Administrative Board of Directors have the duty of corporate management. Save for the first appointment, which may be effected by mean of the Statutes, the Administrative Board is appointed by the general Meeting.
The Administrative Board manages the business of the company and has the duty of supervision over the business. Its members are subject to extensive reporting obligations.
Domestic rules of the Member State where the registered office of the SE is located may provide that a managing director or managing directors shall be responsible for the day-to-day business under the same conditions established for public limited-liability companies.
Whereas employee participation is regulated in accordance with Directive 2001/86/EC the Administrative Board shall consist of three members at least. The Administrative Board shall meet at least once every three months to discuss about the SE's business.
The Board shall elect a chairman from among its members. If half of the members are appointed by employees, only a members appointed by the General Meeting may be elected Chairman.

ANNUAL ACCOUNTS AND TAX TREATMENT
Save for specific rules which apply when an SE is either a credit/financial institution or an insurance undertaking, an SE shall be governed by the rules applicable to public limited-liability companies under the Law of the Member State in which its registered office is located.
Domestic rules will therefore apply to the preparation of its annual and, where appropriate, consolidated accounts, including the accompanying annual report and the auditing and publication of the accounts.
Since the SE tax treatment is as the same as the tax treatment of multinationals, tax domestic rules and regulations shall apply as well to the SE and to its subsidiaries. Thus, income of an SE shall be taxable income in accordance with provisions of Law of any Member State where the SE has a permanent establishment.

TRANSFER OF THE REGISTERED OFFICE OF A EUROPEAN COMPANY TO ANOTHER MEMBER STATE

The transfer of the registered office to another EU Country is considered as a fundamental corporate change and will follow rules regarding the amendments to the Statutes. The transfer shall not result in the winding up of the SE or in the creation of a new legal entity.

The Management or Administrative Body shall draw up a transfer proposal and publicise it.

The management shall then draw up a report explaining and justifying the legal and economic aspects of the transfer and explaining the implications of the transfer for shareholders, creditors and employees. A shareholder of the SE shall be entitled, at least one month before the General Meeting set for passing resolution on the transfer, to examine and to obtain copies of the transfer proposal and the report. No decision to transfer may be taken for two months after publication of the proposal. Before the competent Authority (e.g. Notary, Court etc.) of each Member State issues the certificate conclusively attesting the completion of the acts and formalities necessary to effectuate the transfer, the SE shall satisfy the competent Authority that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights against the SE (including those of public bodies) have been adequately protected in accordance with requirements laid down by the Member State where the SE has its registered office prior to the transfer.

The General meeting must approve the transfer. Quorum majority shall be no less than two-thirds of the votes cast, unless the applicable law in the State where the SE has its registered office either requires a large majority or provides that a simple majority of the votes representing at least half of the stated capital shall be sufficient.

EMPLOYEE INVOLVEMENT IN THE EUROPEAN COMPANY

EU Council Directive 2001/86/CE is designed to ensure that employees have a right of involvement in issues and decisions affecting the life of their SE.

Other social security and labour law issues, in particular the right of an employee to information and consultation are governed by domestic regulations of Member States.

The right of involvement of the employees is not referred either to the current management or to the decision-making process of an SE, which is of exclusive competence of its Management Board or Administrative Board.

Rather, the right of involvement pertains to the areas of supervision and development of the company's strategies.

Different alternative levels of participation are provided for: the model where the employees are integrated in the Supervisory Board or even in the Management Board, the model where a specific body – SE works council - is established in order to represent the SE's employees and also other models to be agreed upon between the management or administrative Board of the founding companies and the employees of such companies, as far as duties of information and consultation of the SE works council model are observed.

The General Meeting cannot pass a resolution of incorporation of an SE until one of the above models has been chosen. The procedure for setting up an SE works council or for the establishment of another appropriate procedure starts by informing the employees of the companies participating to the formation of an SE.

After that, a so-called special negotiating body must be established, in order to represent the employees of the participating companies during negotiations. The goal of negotiation is to enter an agreement on the involvement of the employees in the SE, by choosing one of the above models of involvement. If the parties do not reach an agreement, standard principles that the annex to the EU directive sets forth shall be observed.

The costs for the SE works council – if any – as well as those for the execution of the information and consultation procedure must be borne by the SE.

In case of a European Company formed by merger or consolidation, standard principles regarding the participation of the employees shall apply, whenever 25% at least of the employees enjoyed the right to participation before the merger of their companies.

WINDING UP, LIQUIDATION AND INSOLVENCY

Domestic Law of the Member State where the SE has its own registered office, and which would apply to a public limited-liability company, will govern any matter referred to winding up, liquidation, insolvency or similar proceedings of an SE.

The commencement of such proceedings must be publicised on the EU Official Journal.

The transfer of the registered office of an SE to another Member State does not lead to the winding up of the SE, or the creation of a new legal entity.

If vice-versa, the registered office of the SE is transferred outside the Community, anyone can claim the dissolution of the SE itself.