



Cross-border Mergers

The Ernst & Young corporate legal group is a group of European attorneys involved in the overall legal implementation of world-wide corporate reorganizations and TESCM projects. They have broad experience and assist with matters including but not limited to the following:

- ▶ Project structuring for the purpose of determining the various legal implications and constraints affecting the choice of solutions and their implementation.
- ▶ Implementation of corporate law aspects of the projects, such as setting-up the appropriate corporate structures, converting companies, contributing or selling companies, merging and demerging of companies or dissolving companies.
- ▶ Transfer of assets and liabilities such as IP rights, real estate, shares, receivables, licenses and permits, etc.
- ▶ Assignment, variation or termination of existing contracts, be it intra-group or third parties contracts.
- ▶ Analysis and handling of labor consequences of such business reorganizations, with the assistance of the Ernst & Young employment law specialists.
- ▶ Drafting of the various contracts required by the project such as distribution, manufacturing, licenses, agency, commissionaire, services, financing, re-financing, etc.
- ▶ Project legal coordination serving as a single point of contact for the client and other Ernst & Young workstreams and to ensure the full validity and of all the steps in all jurisdictions, from the initial project structuring phase to the completion of all required legal formalities.

The group's activities depicted above are in its essence cross-border oriented. Therefore, the group has decided to regularly publish brochures and articles dealing with cross-border legal matters, in a practical "10 questions about" format. This first article addresses EU and International merger matters.

10 questions regarding mergers between EU companies ("EU Mergers") and mergers between EU and non EU companies ("International Mergers")

1. Is there a single set of rules within the EU, that deals with EU Mergers?

Directive 2005/56/EC of the European Parliament and of the Council of October 26, 2005 on cross-border mergers of limited liability companies (the "Directive") lays out the legal framework to facilitate cross-border mergers between certain companies within the EU.

These measures are designed to reduce the cost of such operations, to guarantee their legal certainty and to offer this option to the maximum number of companies, particularly those who do not wish to set up a European Company (SE).

The Directive applies to companies:

- ▶ formed in accordance with the laws of the member states of the EU ("Member States"); and
- ▶ who have their statutory seat, central administration or principal place of business within the EU;
- ▶ provided that at least two of them are governed by the laws of different Member States.

2. In which EU countries has the Directive already been implemented?

All 27 EU countries have implemented national laws, regulations and administrative provisions in order to comply with the Directive (the deadline to transpose the Directive expired on December 14th, 2007) i.e.: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Hungary, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom.

3. Being specified that SE and SCE are out-of-scope of the present article, what are the national legal forms eligible to an EU Merger?

Jurisdictions	Eligible company forms
Austria	<ul style="list-style-type: none"> ▶ Aktiengesellschaft (AG) ▶ Gesellschaft mit beschränkter Haftung (GmbH)
Belgium	<ul style="list-style-type: none"> ▶ Société anonyme (SA/NV) ▶ Société en commandite par actions (SCA/CVA) ▶ Société privée à responsabilité limitée (SPRL/BVBA) ▶ Société en commandite simple (SCS/GCV) ▶ Société en nom collectif (SNC/VOF) ▶ Société coopérative à responsabilité limitée (SCRL/CVBA) ▶ Société coopérative à responsabilité illimitée (SCRI/CVOA)
Bulgaria	<ul style="list-style-type: none"> ▶ Дружество с Ограничена Отговорност (ООД) (LLC) ▶ Акционерно Дружество (АД) (JSC) ▶ Командитно Дружество с Акции (КДА) (PLS)
Cyprus	<ul style="list-style-type: none"> ▶ Εταιρείες (public limited liability company (PLC) and private limited liability company (LTD))
Czech Republic	<ul style="list-style-type: none"> ▶ Verejná obchodná spoločnosť (v.o.s.) ▶ Komanditná spoločnosť (k.s.) ▶ Spoločnosť s ručeným obmedzením (s.r.o.) ▶ Akciová spoločnosť (a.s.) ▶ Družstvo (Cooperative)
Denmark	<ul style="list-style-type: none"> ▶ Aktieselskab (A/S) ▶ Anpartsselskab (ApS)
Estonia	<ul style="list-style-type: none"> ▶ Aktsiaselts (AS) ▶ Osahing (OÜ)
Finland	<ul style="list-style-type: none"> ▶ Osakeyhtiö (oy) ▶ Julkinen osakeyhtiö (oyj)
France	<ul style="list-style-type: none"> ▶ Société anonyme (SA) ▶ Société par actions simplifiée (SAS) ▶ Société en commandite par actions (SCA) ▶ Société à responsabilité limitée (SARL)
Germany	<ul style="list-style-type: none"> ▶ Aktiengesellschaft (AG) ▶ Gesellschaft mit beschränkter Haftung (GmbH) ▶ Kommanditgesellschaft auf Aktien (KGaA)
Greece	<ul style="list-style-type: none"> ▶ Ανώνυμη Εταιρία (ΑΕ) (JSC) ▶ Εταιρία Περιορισμένης Ευθύνης (ΕΠΕ) (Ltd) ▶ Ετερόρρυθμη κατά μετοχές Εταιρία (ΕΕ κατά μετοχές) (PLS) ▶ Any company with share capital and having legal personality, possessing separate assets, which alone serve to cover its debts and subject under the national law governing it to conditions concerning guarantees, such as are provided for by Directive 68/151/EEC for the protection of the interests of members and others.
Hungary	<ul style="list-style-type: none"> ▶ Korlátolt felelősségű társaság, (KFT) ▶ Részvénytársaság (RT) ▶ Szövetkezet
Ireland	<ul style="list-style-type: none"> ▶ Public company with limited liability (Plc) ▶ Private company with limited liability (Ltd)
Italy	<ul style="list-style-type: none"> ▶ Società per azioni (SPA) ▶ Società a responsabilità limitata (SRL) ▶ Società in accomandita per azioni (SAPA) ▶ Società cooperativa (SC) ▶ Mutual Insurance Company
Latvia	<ul style="list-style-type: none"> ▶ Sabiedrība ar ierobežotu atbildību (SIA) ▶ Akciju sabiedrība (AS).
Lithuania	<ul style="list-style-type: none"> ▶ Uždaroji akcine bendrove (UAB) ▶ Akcine bendrove (AB)

Jurisdictions	Eligible company forms
Luxembourg	<p>All companies with legal personality i.e.:</p> <ul style="list-style-type: none"> ▶ Société anonyme (SA) ▶ Société à responsabilité limitée (S.à r.l.) ▶ Société en commandite par actions (S.C.A.) ▶ Société en commandite simple (S.C.S.) ▶ Société en nom collectif (S.N.C.) ▶ Société civile immobilière (SCI) ▶ Société Coopérative ▶ Economic interest grouping
Malta	<ul style="list-style-type: none"> ▶ Kumpaniji ta' Responsabilita Limitata (Ltd) ▶ Soċjetajiet en commandite li l-kapital tagħhom maqsum f'azzjonijiet (LLP)
The Netherlands	<ul style="list-style-type: none"> ▶ Naamloze vennootschap met beperkte aansprakelijkheid (NV) ▶ Besloten vennootschap met beperkte aansprakelijkheid (BV)
Poland	<ul style="list-style-type: none"> ▶ Spółka akcyjna (S.A.) ▶ Spółka z ograniczoną odpowiedzialnością (sp. z o.o. or spółka z o.o.) ▶ Spółka komandytowo-akcyjna (S.K.A.) (but this company can not be the absorbing company)
Portugal	<ul style="list-style-type: none"> ▶ Sociedade Anonima (S.A.) ▶ Sociedades Por Quotas (LDA.)
Romania	<ul style="list-style-type: none"> ▶ Societate pe Actiuni (SA) ▶ Societate in Comandita pe Actiuni (SCA) ▶ Societate cu Raspundere Limitata (SRL)
Slovakia	<ul style="list-style-type: none"> ▶ Verejná obchodná spoločnosť (v.o.s.) ▶ Komanditná spoločnosť (k.s.) ▶ Spoločnosť s ručeným obmedzením (s.r.o.) ▶ Akciová spoločnosť (a.s.)
Slovenia	<ul style="list-style-type: none"> ▶ Delniška družba (d.d.) ▶ Komanditna delniška družba (k.d.) ▶ Družba z omejeno odgovornostjo (d.o.o.)
Spain	<ul style="list-style-type: none"> ▶ Sociedad anónima (SA) ▶ Sociedad limitada or sociedad de responsabilidad limitada (SL or SRL) ▶ Sociedad comanditaria por acciones (SComA), registered in Spain
Sweden	<ul style="list-style-type: none"> ▶ Aktiebolag (AB) ▶ Publikt aktiebolag (AB (publ.))
United Kingdom	<ul style="list-style-type: none"> ▶ Public companies (Plc) ▶ Private companies (Ltd, LLP) ▶ Unregistered companies ▶ Companies in administration



4. What are the main applicable rules regarding EU Mergers?

The corporate and labor aspects of EU Mergers are governed by a single set of rules laid out by the Directive, on top of which local rules of the respective national regulations of the Member States apply.

5. What are the main steps within an EU Merger?

Below are the main steps and documents that are required for the execution of an EU Merger pursuant to the Directive:

- ▶ The directors of the merging companies must draw up and sign the common draft terms of the EU Merger, which must be published at least one month before the date of the general meeting which has been called to decide regarding this matter.
- ▶ The directors of the merging companies must also draw up and sign a report explaining and justifying the legal and economic aspects of the merger and its implications for its members, creditors and employees. This report must be made available to the members and to the employees' representatives, or where there are no such representatives, to the employees themselves, at least one month prior to the date of the general members' meeting during which the common draft terms of the EU Merger will be submitted for approval.
- ▶ An independent expert report intended for the members and made available no less than one month before the date of the general meeting must be drawn up, unless all the members of each of the companies involved in the EU Merger agree that such report is not required.
- ▶ The general members' meeting of each of the merging companies must decide on the approval of the common draft terms of the EU Merger.
- ▶ The general members' meeting of any of the merging companies may reserve the right to render the implementation of the EU Merger conditional to the express ratification of the arrangements made with respect to the participation of the employees in the company that will result from the EU Merger.
- ▶ A national court, notary or other authority that is competent to oversee the legality of the EU Merger in each Member State must issue a certificate certifying the proper completion of the pre-merger acts and formalities that are applicable in the respective Member State.
- ▶ The same authority must also review, insofar applicable, the creation of the new company resulting from the EU Merger in the jurisdiction where the company created by the EU Merger is subject to its national law.
- ▶ The resolution approving the EU Merger must be published in the public register in which each of the merging companies is required to file documents.
- ▶ The authority in charge of the registration of the company resulting from the EU Merger must notify the registry in which each of the merging companies is required to file documents that the EU Merger has taken effect.
- ▶ The date on which the EU Merger takes effect is determined by the law of the Member State to whose jurisdiction the company resulting from the EU Merger is subject to.

The Directive also provides a simplified merger procedure if an EU Merger by acquisition is carried out by a company that holds all the shares and other securities that confer the right to vote at general meetings of the company or companies that are being acquired. In certain EU countries, some of the benefits of the simplified merger also apply in the event that the acquiring company directly holds 90% or more but not all of the shares and other securities that confer the right to vote at general meetings of the target companies.

As a result of the EU Merger, all assets and liabilities of the disappearing company will be transferred to the company that will result from the EU Merger.



6. What are the labor law consequences of EU Mergers?

Most of the specific labor-related rules regulating EU Mergers deal with employee participation in the board of directors' or supervisory boards' meetings.

As a general principle, the company resulting from the EU Merger shall be subject, as regards employee participation, to the rules that are applicable in the Member State where its statutory seat is located.

However, the rules in force within this Member State shall not apply if:

- ▶ they do not provide for at least the same level of participation and entitlement for employees as before the merger;
- ▶ at least one of the merging companies employed more than 500 people and used to operate under an employee participation system within the meanings of Article 2(k) of directive 2001/86/EC (i.e., co-management).

In these situations, the negotiation procedure concerning employee participation set out in the Directive shall apply. As a consequence, the employee participation rights will be determined by a collective agreement signed by the merging companies and a “special negotiating body” which comprises staff representatives.

Nevertheless, if no agreement is reached within six months (12 months if agreed by the parties), the employee participation rights are jointly determined by the merging companies and the newly implemented works council.

Moreover, local labor rules governing individual/collective labor relations as well as mergers must be articulated with the specific rules relating to EU Mergers.

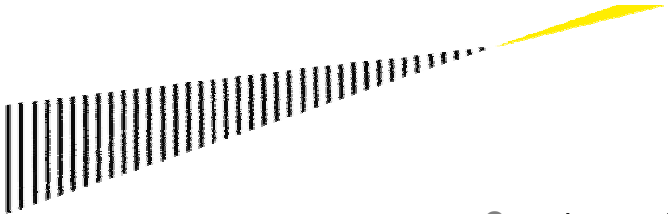
7. Are there any rules governing International Mergers?

Unlike EU Mergers, corporate aspects of International Mergers are not governed by a single set of rules. Rather, the implementation of an International Merger requires complying both with international private law rules and local laws, as further detailed below.

8. What are the national rules governing International Mergers?

The prerequisite for the implementation of International Mergers is either the lack of national regulations related to this matter or the existence of specific rules in the relevant country that set forth the principle of the International Mergers. Please find below the detail for certain jurisdictions:

Jurisdiction	Comments
Belgium	A Belgium company can participate to an International Merger. Article 113 of the Belgian International Private Law Code lays down a rule of conflicts of law whereby each company involved in a merger is governed by the laws of the State governing the company prior to the merger. Where Belgian law is applicable, the common Belgian rules on mergers will apply, i.e. articles 670 to 727 of the Belgian Companies Code.
France	French regulations do not regulate International Mergers, but do not prohibit them either. Indeed, under French law, there is no specific rule which deals with International Mergers.
Germany	Currently, Section 1 paragraph 2 of the German Transformation Act ("Umwandlungsgesetz") forbids International Mergers except EU-Mergers. A discussion is currently underway to revise and implement the International Private Law of Companies, Associations and Corporate Bodies. According to the first draft that was issued, International Mergers (even with companies located outside the EU / EEA member states) and the transfer of the statutory seat to such countries should be facilitated. However, the legislative procedure is only in its early stages.
Greece	Greek law does not specifically authorize International Mergers, but does not prohibit them either. Greek Law No. 2190/1920 on joint stock companies (AE) refers to mergers between AEs in general (either by absorption, or by the incorporation of a new AE), without making any differentiation between Greek or foreign joint stock companies. The same applies to Law No.3190/1955 on Limited Liability Companies (ΕΠΕ), which refers to mergers between Limited Liability companies in general.
Italy	International Mergers are specifically authorized by Leg. Decree no. 108/2008 which came into force on July 2 nd , 2008
Luxembourg	International Mergers are specifically authorized by article 257 of the Luxembourg law on commercial companies dated August 10 th , 1915, as amended (provided however that the law applicable to the foreign companies authorizes such a merger and the companies that intend to merge comply with the requirements set by their respective local law). This type of merger is regulated by the provisions applicable to national mergers (i.e. article 258 to article 284 of the law dated August 10, 1915, as amended).
Romania	As per article 46 of Law 105/1992 on international private law, the merger of companies having different nationality may be performed if the conditions provided by both jurisdictions are cumulatively met, i.e. the Romanian law and the statutory law of the other company(ies).
Spain	Article 9.11 of the Spanish Civil Code and article 27 of the Spanish Law 3/2009, of April 3 rd , 2009, state that International Mergers are to be implemented in accordance with the regulations of the jurisdictions of the merging companies.
Switzerland	Articles 163a and 163b of the Swiss Federal Code on International Private Law allow International Mergers under condition of reciprocity.
The Netherlands	Article 2:308 of the Dutch Civil Code lists the (Dutch and EU) companies to which the Dutch merger regulations apply. Although it has been determined in Dutch case law and doctrine that the list of article 2:308 is not exhaustive, the explanatory notes to article 2:308 indicate that International Mergers are not possible.
Turkey	There is no specific provision that governs International Mergers under Turkish Law. Merger types existing under articles 451 and 452 of the Turkish Commercial Code are only allowed between entities that are duly established in Turkey.



9. What are the typical issues that have to be dealt with when dealing with an International Merger?

Should the principle of International Mergers be permitted (or at least not prohibited) by the applicable jurisdictions, such a transaction may be implemented, even though it involves practical issues, such as the ones listed below.

Companies have indeed to proceed with a comparative study of the laws applicable to the merging entities during a merger process (such as rules related to public order, i.e., protection of shareholders, protection of employees or protection of creditors) so as to ensure that such legislations be fully complied with, in a timely manner. This may raise difficulties and trigger time constraints, for instance, when the legal system of one of the merging companies is more cumbersome than the other.

A typical difficulty is the requirement to have public deeds in some countries, which is likely to be considered as a heavy burden, whereas certain countries may just require private documents.

Another difficulty is the unanimous vote of shareholders that some countries may require for the International Merger to be implemented. Unanimity may be difficult to reach should the company at stake have minority shareholders, thus jeopardizing the implementation of the International Merger.

10. Are there any alternatives to an International Merger for corporate purposes?

Given the practical difficulties of International Mergers, other legal routes, sometimes simpler, can be elected for in certain jurisdictions:

Jurisdiction	Comments
Belgium	<p>a) <i>Contribution or Transfer of universality (i.e., all assets and liabilities) or of a branch of activity</i> Belgian company law allows the universal transfer of all assets and liabilities following a procedure almost identical to the merger procedure and enforceable towards third parties through the publication of the contribution or transfer in the Belgian Official Journal.</p> <p>b) <i>Transfer of the statutory seat followed by a national merger</i> Belgian law recognizes the possibility to transfer the company's statutory seat, both inbound and outbound.</p> <p>c) <i>Other mechanisms</i> Other mechanisms have been developed in practice as a substitute (or surrogate) for International Mergers: e.g., "stapled stock" (or "twinned" shares or "Siamese" shares, i.e. a mechanism by which the shares of two companies are linked, or even merged into one unit), and/or a dual-headed group structure, often combined with several contract clauses regarding, e.g., the distribution of dividends, the appointment of directors, etc.</p>
France	<p>a) <i>Dissolution without Liquidation</i> This transaction is known as a "TUP" (for "universal transfer of assets and liabilities") and is ruled by article 1844-5 of the French Civil Code. This mechanism is carried out in situations where a foreign company holds 100% of the shares of a French subsidiary. A TUP triggers the universal transfer of assets and liabilities of this subsidiary into its parent company. Such an operation is only possible where the parent company's legal system allows it: it is thus required to be certain, beforehand, that the related foreign law does not forbid this operation. This legal route only applies where French assets and liabilities are transferred to a non French company. The opposite situation (i.e., the equivalent of a TUP of a foreign company into a French company) would require to be ruled by the concerned legal system.</p> <p>b) <i>Contribution of non-French assets and liabilities to the benefit of a French company</i> This transaction is often used where a foreign company wishes to "convert" its French branch into a subsidiary or plans to contribute a foreign going-concern to a French company with the same effects than a national, EU Merger or International Merger. A contribution of non-French assets and liabilities, is governed by the French legal system and requires, if there are any, the foreign country's rules to allow the operation and/or take due note of its completion.</p> <p>c) <i>Transfer of the statutory seat followed by a national merger</i> French law recognizes the possibility to transfer a company's statutory seat to foreign countries while preserving its legal personality. The transfer of the statutory seat of a foreign company into France is not provided for by law, but allowed in practice, under certain conditions.</p>
Germany	<p>a) <i>Transfer of all assets and liabilities and subsequent liquidation</i> A German company may transfer / contribute some or all assets and liabilities to a foreign company receiving a consideration (cash / shares). However, unlike a transfer in the course of a merger such transfer would not qualify as a universal conveyance (Gesamtrechtsnachfolge) but as singular conveyance (Einzelrechtsnachfolge). Therefore, additional requirements apply, e.g. third party consents to transfer of agreements. The company would not be automatically dissolved by law, but would be wound up under liquidation procedures (the assets might be transferred prior to or in the course of the winding up). A German company may also acquire / receive some or all assets and liabilities from a foreign company in consideration for cash / shares. A subsequent dissolution / winding up of the transferor would be subject to the foreign law.</p> <p>b) <i>Merger of partnerships by way of accrual (Anwachsung)</i> All interests in the (transferring) German partnership can be transferred / contributed to another (acquiring) company for cash / shares. As a consequence, the transferring company would have only one partner, namely the acquiring company, resulting in any assets and liabilities accruing to the acquiring company.</p> <p>c) <i>Transfer of seat and subsequent national merger</i> Subject to further conditions under German law and foreign law, as well as conflict of laws provisions and transnational treaties, a German company might possibly transfer its principal place of business to a foreign country while preserving its legal personality. A subsequent "national" merger would be subject to the local law. The transfer of the principal place of business or statutory seat from a foreign country to Germany is not explicitly stated in German law, but possible under certain conditions – subject to foreign law as well as conflict of laws provisions and transnational treaties. Subsequently, such a company will be subject to German law and may be merged pursuant to the German Transformation Act subject to further conditions.</p>

Jurisdiction	Comments
Greece	<p>a) <i>Transfer of business</i> According to Greek Civil Law, the transfer of a foreign business in Greece is possible. According to article 479 of the Greek Civil Code “in case of transfer of a business, the transferor is liable against the creditors of the business for an amount equal to the value of the business transferred to him. An agreement to the contrary which is to the detriment of the creditors is null and void”. A “business” may include the group of assets, rights and circumstances, such as real estate, tangible assets, claims, clientele, reputation, confidential information, commercial faith etc, which have been organized in a financial cohesion by the legal company or its operating management within the framework of its scope of business. Article 479 of the Greek Civil Code may also apply in the case where the object of transfer is not the business in its totality, but one or more elements of it, which constitute the core of the transferor’s business activity, in the absence of which, the transferor is unable to continue his normal business activity. In such case, the transferee must be aware that the elements transferred are indeed the core of the transferor’s business.</p> <p>b) <i>Change of nationality of the company</i> Greek Company Law (art. 29 par. 3 of Law 2190/1920) provides that a Greek <i>joint stock company (A.E)</i> may change its nationality. This may be realized by the transfer of the company’s registered seat to a foreign country, on the condition that the laws of the country of reception authorize such transfer and the legal personality of the company is preserved.</p> <p>c) <i>Buy-out</i> Article 79 of Law 2190/1920 provides that one or more A.Es (acquired) may transfer, following their dissolution and without a subsequent liquidation, to another company (acquiring) the total of their property (assets and liabilities) upon payment of consideration to the shareholders of the acquired companies for their rights. It is necessary however that the laws of the other country involved authorize such a transfer.</p>
Italy	<p>a) <i>Contribution of assets, business concerns and/or universality</i> Italian law admits Italian companies to both contribute into and/or sell to either foreign companies or their Italian branches as well as to receive or purchase from the latter any assets or business concerns or even their overall assets and liabilities.</p> <p>b) <i>Transfer of the statutory seat</i> Italian law allows an Italian company’s statutory seat to be transferred abroad.</p>
Luxembourg	<p>a) <i>Contribution of assets, of a branch of activity, of all the assets and liabilities (i.e. universality) or of professional assets</i> Luxembourg law on commercial companies authorizes Luxembourg companies to contribute some of their assets / a branch of activity / all their assets and liabilities / professional assets to a foreign company provided that the law applicable to the transferee authorizes such a contribution. In the same way, a Luxembourg company may receive: some assets / a branch of activity / all the assets and liabilities / professional assets of a foreign company provided that the law applicable to the contributing company authorizes such a contribution.</p> <ul style="list-style-type: none"> ▶ Transfer of assets: this operation consists in the transfer, by a company, of part of its assets to another company in consideration for the issuance of new shares. The contributing company will not be dissolved after this transaction. Such a contribution entails the transfer, to the transferee, of all the assets and liabilities attached to the contributed assets. ▶ Transfer of a branch of activity: this operation consists in the transfer, by a company, of a branch of activity to another company in consideration for the issuance of new shares. The contributing company will not be dissolved after this transaction. Such a contribution also entails the transfer, to the transferee, of all the assets and liabilities attached to the branch of activity transferred. ▶ Transfer of all the assets and liabilities: this operation consists in the transfer of all the assets and liabilities owned by a company to another company in consideration for the issuance of new shares. ▶ The contributing company will not be dissolved after this transaction. ▶ Transfer of professional assets: this operation consists in the transfer, by a company, of some or the entirety of its professional assets to another company. The contributing company will not be dissolved after this transaction. Such a contribution also entails the transfer, to the transferee, of all the assets and liabilities attached to the professional assets transferred. <p>b) <i>Transfer of the statutory seat</i> A company may transfer its statutory seat to Luxembourg provided that</p> <ul style="list-style-type: none"> ▶ the law applicable in the country from which the company intends to migrate authorizes this operation and ▶ such a migration of seat does not cause any breach in the legal personality of the migrating company. This transfer may be followed by a national merger. Similarly, a Luxembourg company may migrate to a foreign country, under the same conditions.

Jurisdiction	Comments
Romania	<p>a) <i>Transfer of business</i> As per the legal requirements in force, a foreign company may transfer, without entering into a dissolution process, its activity, totally or partially (to the extent the foreign country legislation allows it), to a Romanian company, in exchange of an established price. Also, there is no impediment for a Romanian company to transfer totally or partially its activity to a foreign country, without entering into a dissolution process.</p> <p>b) <i>Spin-off</i> A Romanian company, as an effect of the dissolution without liquidation, may transfer its entire assets and liabilities towards two or several existing foreign companies and/or foreign companies that are newly incorporated, in exchange of a prorata distribution of shares issued by the latter, and, if case may be, an in-cash contribution amounting up to a maximum 10% of the nominal value or, in its absence, of the equivalent accounting value of the titles (total spin-off). In addition to the total spin-off, Romanian law also regulates the partial spin-off. As such, a Romanian company, without being dissolved, may transfer one or several activities towards one or several existing and/or newly incorporated foreign companies, in exchange of a pro-rata distribution of shares issued by the latter, and, if case may be, an in-cash contribution amounting up to a maximum 10% of the nominal value or, in its absence, of the equivalent accounting value of the titles. The spin-off may take place between companies having different legal forms and even if the spun-off companies are under liquidation, provided that the distribution of the assets deriving from the liquidation towards the shareholders has not been performed yet.</p> <p>c) <i>Transfer of the registered seat</i> The Romanian legislation does not regulate the cross-border transfer of the registered seat of a foreign company</p>
Spain	<p>a) <i>Cross-border global assignment of assets and liabilities</i> Spanish Law 3/2009, of April 3rd, 2009, expressly allows the cross-border global assignment of assets and liabilities and states that in the event that the assignee and assignor are subject to different jurisdictions, their own domestic regulations apply. The above-referred law provides that if the assignee holds all the shares, participations or quotas of the assignor, the transaction is to be considered a merger instead of a cross-border global assignment of assets and liabilities and be subject to the regulations and formalities applicable to a merger.</p> <p>b) <i>Transfer of the statutory seat followed by a national or EU merger</i> Spanish Law 3/2009, of April 3rd, 2009 provides guidance concerning the required procedures and documentation for both the transfer of the statutory seat of a foreign company to Spain and the transfer of the statutory seat of a Spanish company outside of Spain A company incorporated outside of Spain can transfer its registered seat to Spain and become a Spanish company. Its legal personality will not be affected by the migration. The transfer of a company incorporated in Spain to another jurisdiction is only viable if the recipient state allows the continuance of company's legal personality.</p>
Switzerland	<p>a) <i>Demerger and Transfer of Assets (and Liabilities)</i> Art. 163d of the Swiss Federal Code on Private International Law (CPIL) allows the Demerger as well as the Transfer of Assets and Liabilities under condition of reciprocity. This regulation allows a cross border transfer of various assets and liabilities or an entire business <i>uno actu</i> ("in one act").</p> <p>b) <i>Transfer of the statutory seat</i> Swiss law allows the transfer of seat of a foreign company to Switzerland as well as the transfer of a Swiss company to a foreign jurisdiction under condition of reciprocity. Subsequent to the transfer of seat, the companies may merge according to the national regulations.</p>
The Netherlands	<p>a) <i>Migration out of the Netherlands</i> Dutch law recognizes the possibility for a Dutch company to transfer its principal place of business and to move its 'mind and management' by changing its address and appointing foreign directors. However, due to the Dutch incorporation system, it will remain a company under Dutch corporate law. It depends on the laws of the country where the Dutch company is 'migrating' to whether it (also) becomes a company governed under such laws and can thus be "re-incorporated".</p> <p>b) <i>Migration into the Netherlands</i> A foreign company can in principle be registered with the trade register in the Netherlands. However, similar to above, it will not become a Dutch company from a Dutch corporate law perspective. It depends on the laws of the country where the foreign company is moving out from whether the registration in the Netherlands and/or change of principal place of business to the Netherlands is sufficient to have the company in the exiting jurisdiction de-registered.</p>

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