

SUBSIDIARY LEGISLATION 452.103

**EMPLOYEE INVOLVEMENT (CROSS-BORDER
MERGERS OF LIMITED LIABILITY COMPANIES)
REGULATIONS**

1st July, 2008

LEGAL NOTICE 165 of 2008.

1. (1) The title of these regulations is the Employee Involvement (Cross-Border Mergers of Limited Liability Companies) Regulations. Title and scope.

(2) These regulations establish the arrangements for the involvement of employees in cross-border mergers of limited liability companies hereby giving effect to the relevant provisions of Directive 2005/56/EC of the European Parliament and of the Council of the 26th October 2005 on cross-border mergers of limited liability companies, hereinafter referred to as "the Directive".

2. (1) For the purpose of these regulations: Definitions.

"the Act" means the Employment and Industrial Relations Act; Cap. 452.

"company" and "merger" have the same meaning assigned to them by the Companies Act and by regulations issued thereunder; Cap. 386.

"cross-border merger" has the same meaning assigned to it by the Companies Act and by regulations issued thereunder and includes any merger of companies formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community, provided at least two of such companies are governed by the laws of different Member States; Cap. 386.

"involvement of employees" means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within an undertaking;

"Maltese employee" means an employee employed by an undertaking established in Malta;

"Member State" means a member state of the European Union or the European Economic Area;

"merging companies" has the same meaning assigned to it by the Companies Act and by regulations issued thereunder and includes all the companies taking part in a cross-border merger, including an acquiring company; Cap. 386.

"participation" means the influence of the body representative of the employees or the employees' representatives, or both, in the affairs of a legal entity by way of -

(a) the right to elect or appoint some of the members of

the legal entity's supervisory or administrative organ,
or

- (b) the right to recommend or oppose, or both, the appointment of some or all of the members of the legal entity's supervisory or administrative organ.

(2) Subject to the provisions of subregulation (1), terms and expressions used in these regulations shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

(3) In the absence of a definition given in these regulations, words and expressions used in these regulations which are also used in the Directive shall have the same meaning as they have in the same Directive.

Applicability.

3. These regulations shall apply to mergers of companies formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community, provided at least two of such companies are governed by the laws of different Member States and provided further that at least one of the merging companies, or the company resulting from the merger, is registered in Malta.

Report.

4. Representatives of employees are entitled to receive, by the board of directors of the Maltese merging company, and to deliver, within a reasonable time, an opinion on, the report of the board of directors of the Maltese merging company drawn up in terms of regulation 8 of the Cross-Border Mergers of Limited Liability Companies Regulations, issued under the Companies Act.

S.L. 386.12
Cap. 386.

Transfer of rights
and obligations.
S.L. 452.85

5. Without prejudice to article 38 of the Act and to the Transfer of Business (Protection of Employment) Regulations, the rights and obligations arising from contracts of employment or employment relationships between employees of the merging companies and the merging companies and existing at the date on which the cross-border merger takes effect shall, by reason of that cross-border merger taking effect, be transferred to the company resulting from the cross-border merger on the date on which the cross-border merger takes effect.

Information and
consultation rights.

S.L. 452.80
S.L. 452.85
S.L. 452.96
S.L. 452.86

6. In a cross-border merger of limited liability companies, employees' rights to information and consultation shall remain subject to the Collective Redundancies (Protection of Employment) Regulations, article 38 of the Act, the Transfer of Business (Protection of Employment) Regulations, the Employee (Information and Consultation) Regulations, and the European Works Council Regulations.

Participation
rights.

7. (1) Subject to sub-regulation (2), the company resulting from the cross-border merger shall be subject to the rules in force concerning employee participation, if any, in the Member State where it has its registered office.

(2) Notwithstanding sub-regulation (1), the rules in force concerning employee participation, if any, in the Member State where the company resulting from the cross-border merger has its registered office, shall not apply:

- (a) where at least one of the merging companies has, in the six months before the publication of the draft terms of the cross-border merger in accordance with the directive, an average number of employees that exceeds five hundred and is operating under an employee participation system; or
- (b) where the national law applicable to the company resulting from the cross-border merger does not provide for at least the same level of employee participation as operated in the relevant merging companies:

Provided that the level of employee participation is measured by reference to the proportion of employee representatives amongst the members of the administrative or supervisory organ or their committees or of the management group which covers the profit units of the company, subject to employee representation; or

- (c) where the national law applicable to the company resulting from the cross-border merger does not provide for employees of establishments of the company resulting from the cross-border merger that are situated in other Member States the same entitlements to exercise participation rights as is enjoyed by those employees employed in the Member State where the company resulting from the cross-border merger has its registered office.

(3) In the cases mentioned in sub-regulation (2)(a), (b) and (c), the participation of employees in the company resulting from the cross-border merger and their involvement in the definition of such rights shall be regulated in accordance with the principles and procedures laid down in article 12(2), (3) and (4) of EC Regulation No. 2157/2001 on the Statute for a European Company and in accordance with the following provisions of the Employee Involvement (European Company) Regulations: S.L. 452.94

- (a) regulation 3(1), (2), (3) and (4), regulation 4(1), regulation 5, regulation 6(1), (2), (3)(a), (4), (5) and (6), and regulation 8(3);
- (b) regulation 8(1), (4)(a), (g), and (h), and (5);
- (c) regulation 8(2);
- (d) regulation 9;
- (e) regulation 10(1), (2)(b) and (3):

Provided that for the purposes of these regulations, the percentages required by regulation 10(2)(b) for the application of the Standard Rules on Participation set out in the Schedule shall be $33\frac{1}{3}\%$;

- (f) regulations 11, 13, 15, 17;
- (g) regulation 16(4); and
- (h) paragraph 4(b) of Part 3 of the Schedule.

S.L. 452.94

- (4) In the cases where sub-regulations (2) and (3) apply -
- (a) the relevant organs of the merging companies have the right to choose without any prior negotiation to be directly subject to paragraph 4(b) of Part 3 of the Schedule in the Employee Involvement (European Company) Regulations, and to abide by the same from the date of registration;
 - (b) the special negotiating body has the right to decide, by a majority of two thirds of its members representing at least two thirds of the employees, including the votes of members representing employees in at least two different Member States, not to open negotiations or to terminate negotiations already opened and to rely on the rules on participation in force in the Member State where the registered office of the company resulting from the cross-border merger will be situated.

(5) When at least one of the merging companies is operating under an employee participation system and the company resulting from the cross-border merger is to be governed by such a system in accordance with sub-regulation (2), that company shall be obliged to take a legal form allowing for the exercise of participation rights.

(6) When the company resulting from the cross-border merger is operating under an employee participation system, the company shall take measures to ensure that its employees' participation rights are protected in the event of subsequent domestic mergers for a period of three years after the cross-border merger has taken effect by applying this regulation.

Penalties.

8. Any person who fails to comply with any obligation imposed on such person under these regulations shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69) and not more than eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11,646.87).
