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Inbound Cross-Border Conversion Process

Introduction

Following its transposition into Irish law, and further to **our last update**, the Mobility Directive (Directive (EU) 2019/2121) (the "**Mobility Directive**") has continued to see many applications go through the Irish High Court.

By way of reminder, the new regime enables Irish limited liability companies to participate in cross-border conversions, mergers and divisions involving other EEA limited liability companies, pursuant to the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023 (as amended), transposing the Mobility Directive into Irish law (the "**Mobility Regulations**").

While the cross-border merger ("**CBM**") remains as the most common application to date, we have now also witnessed a number of cross-border conversion ("**CBC**") applications coming before the Irish High Court. This article provides a high-level overview of how a CBC application under the Mobility Regulations operates from the perspective of a non-Irish European Economic Area ("**EEA**") company (the "**Converting Company**") converting into an Irish private limited company (the "**Irish Converted Company**").

What is a Cross-Border Conversion?

A CBC is an operation whereby a limited liability company, without being dissolved or wound up or going into liquidation, converts from its existing legal form under the law of one EEA state into the equivalent legal form under the laws of another EEA state.

A CBC now provides flexibility for companies to move in and out of Ireland in a manner previously only contemplated for a Societas Europaea/SE.

Initial Steps

From a practical perspective, and at the outset, an analysis should be carried out to identify any gating items and timing issues from an Irish perspective and in particular on any issues that may be presented by the laws applicable to the Converting Company, particularly regarding any specific requirements of designated relevant authorities (which is often a notary public) outside Ireland.

In all cases, the Converting Company must draw up a set of common draft terms (the "**Draft Terms**") setting out the proposed terms according to which the CBC will be effected. This includes information on the form, name and registered office of the Converting Company and the proposed form, name and registered office of the Irish Converted Company, the proposed indicative timetable for the CBC, the draft constitution of the Irish Converted Company and the likely repercussions of the CBC on employees, creditors and member(s) of the Converting Company (as applicable).

There will be certain statutory time periods to be adhered to from a local law perspective such as the requirement to make the Draft Terms, as approved at a general meeting of the Converting Company, and other relevant documentation available for inspection at the registered office of the Converting Company for a period of time (depending on the relevant EEA jurisdiction). Once those statutory time periods have been adhered to, the Converting Company can then seek approval from the relevant competent authority to sanction the proposed CBC.

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Approval of the CBC

The Irish High Court (the "**Court**") is the competent Irish authority under the Mobility Regulations. In advance of the Court's scrutiny of the CBC (detailed below), the Converting Company must firstly follow a formal process with the equivalent designated authority in the EEA jurisdiction in which the Converting Company is incorporated, in order to approve the CBC (the "**Pre-Conversion Certificate Application**").

Following the conclusion of the Pre-Conversion Certificate Application and any ancillary steps that may be required from a local law perspective, there are a number of Irish steps that must be adhered to in order to effect an inbound CBC:

Step 1: Court scrutiny of the CBC

The Court will be responsible for: (i) scrutinising the legality of the procedure relating to the completion of the CBC; and (ii) granting an order confirming the legality of the CBC (the "**Court Order**").

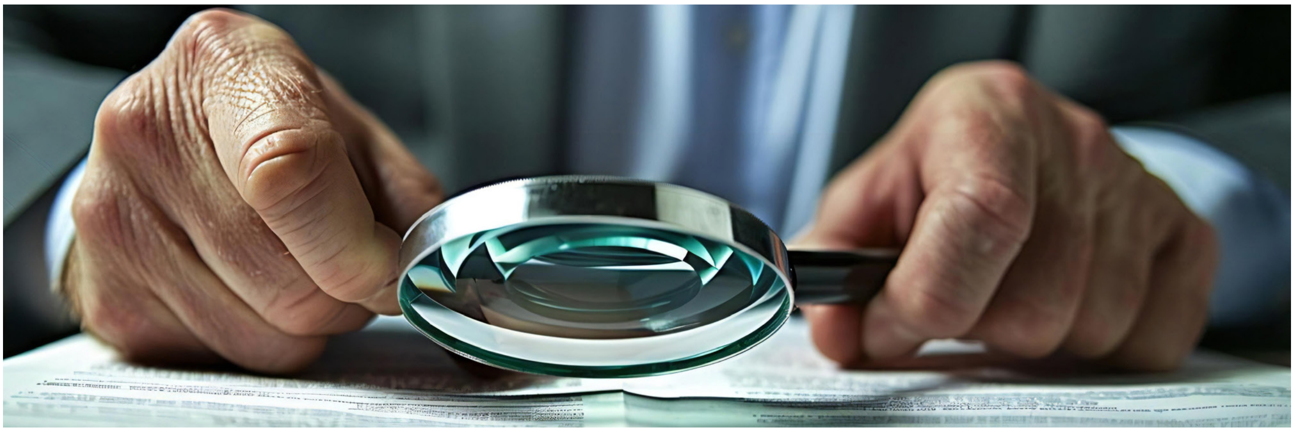
Similar to what we are seeing for CBMs, the Court is tending to adopt a detailed and sophisticated approach in dealing with CBC applications. In that respect, any parties seeking a Court Order will be well advised to place sufficient importance and emphasis on preparing fully to satisfy the Court's requirements as part of the process and anticipating a 'more rather than less' approach by the Court in terms of information sought.

The Court will grant the Court Order if it is satisfied that the following conditions have been complied with:

(a) the pre-conversion certificate has been issued in relation to the Converting Company by the relevant designated authority in the EEA jurisdiction in which the Converting Company is incorporated;

(b) the Draft Terms to which the certificate at (a) relates has been submitted to the Court; and

(c) any arrangements for employee participation (as may be applicable) in the Irish Converted Company have been determined.



Step 2: Registration of the CBC

Upon approval from the Court, the Registrar of the Court will send a copy of the Court Order to the Irish Companies Registration Office ("**CRO**") for registration by the Registrar of Companies. The Registrar of Companies must publish notice of delivery of the Court Order in the CRO Gazette within 14 days of its delivery.

The Registrar of Companies must give notice of the Court Order to the relevant EU authority responsible for maintaining the register in which the file for the Converting Company is kept, pursuant to Article 3 of the First Company Law Directive. Such authority must then record that the Converting Company has ceased to exist in its original state of incorporation.

Step 3: Consequences of the CBC

The final step is to deal with the consequences of the CBC, which take effect from the effective date as specified in the Court Order. The primary consequences are as follows:

(a) all the assets and liabilities of the Converting Company become those of the Irish Converted Company;

(b) all the members of the Converting Company become members of the Irish Converted Company unless they voted their shares against the CBC and made a request for cash compensation;

(c) the Irish Converted Company is substituted as a party in all proceedings in place of the Converting Company;

(d) all contracts in the Converting Company's name are to be read as being in the name of the Irish Converted Company and the Irish Converted Company becomes a party to such contracts; and

(e) all money due and owing to the Converting Company becomes due and owing to the Irish Converted Company.

Conclusion

The Mobility Directive continues to offer enormous potential with expanded cross-border restructuring options and tools such as the above, available within the new framework. From what we are seeing to date, and in particular given the involvement of courts or competent authorities in different jurisdictions, it is clear that the planning phase is more critical than ever and as such, sufficient time needs to be dedicated to this phase of the overall process. It is also clear that, in order to achieve a smooth scrutiny process through the Court, applicants should be fully and properly advised and prepared well in advance of same. For further guidance and advice, please contact a member of the Matheson International Business Group.

Contact details:

Pat English
Corporate Partner
E: Pat.english@matheson.com

Ross Cashell
Corporate Senior Associate
E: Ross.cashell@matheson.com

Cillian Dervan
Corporate Associate
E: Cillian.dervan@matheson.com