

## Cross-border mergers after Brexit with Latvia

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This Q&A considers the potential impact of the UK's departure from the European Union on the use of cross-border mergers.

The Cross-Border Merger Regulations 2007, as amended (SI 2007/2974) (UK Regulations) implemented the Directive 2005/56/EC on cross-border mergers of limited liability companies (Cross-border Mergers Directive) in the UK (as repealed and codified with effect from 20 July 2017 by Directive (EU) 2017/1132). The UK Regulations establish a framework for cross-border mergers to occur between companies in the UK and companies from other EEA states.

This Q&A attempts to provide a picture of how Latvia might allow cross-border mergers with UK companies after Brexit without effecting the statutory merger process under the Cross-border Mergers Directive.

### Brexit: cross-border mergers

1. Do you think UK companies would still be able to carry out cross-border mergers with companies in your jurisdiction after the UK leaves the EU?

There are presently no indications from the Latvia government about the rules or even the possibility for UK companies to merge with companies in our jurisdiction post-Brexit.

The lack of suggestions and plans regarding this problem are due to the fact that the transition period in which businesses and others will prepare for the moment when the new post-Brexit rules between the UK and the EU begin is still some months away (29 March 2019 to 31 December 2020), and there may not be sufficient clarity from the EU perspective on what the approach towards this issue should be among member states.

Moreover, Latvia previously did not have its own national regulation on cross-border mergers and had only previously followed the legislation course of the EU. Therefore, we think that UK companies will only be able to carry out cross-border mergers with companies in our jurisdiction if the UK, in its negotiations with EU, comes to an agreement to uphold their relationship in cross-border mergers, and the European Parliament amends Directive 2005/56/EC on cross-border mergers of limited liability companies (Cross-border Mergers Directive).

2. Does your jurisdiction allow for cross-border mergers with non-EEA companies?

Latvian law allows for cross-border mergers of two or more capital companies, of which at least one is registered in Latvia, and provided the others have been established in accordance with regulatory enactments of the EU member states.

A “member state” within the meaning of Latvian Commercial Law cross-border regulation is an EU member state, plus the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein (EU/EEA).

Therefore, Latvia jurisdiction does not allow cross-border mergers with non-EEA companies.

3. If a cross-border merger is structured using the usual rules applicable in your jurisdiction to mergers with non-EEA companies, what would the likely effect be on the merger timetable?

Latvian law does not provide for rules applicable for mergers with non-EEA companies (*see Question 2*).

4. If a cross-border merger is structured using the usual rules applicable in your jurisdiction to mergers with non-EEA companies, are there any other considerations that may be relevant?

Latvian law does not provide for rules applicable for mergers with non-EEA companies (*see Question 2*).

5. Has there been any indication in your jurisdiction as to whether cross-border mergers involving a UK company that commence prior to the Brexit deadline of 29 March 2019 would be unable to complete if the deadline for completion is due to fall after the UK leaves the EU?

There has been no indication from the Latvian government as to whether cross-border mergers involving a UK company that commence prior to the Brexit deadline of 29 March 2019 would be able to complete after the UK leaves EU.

## Contributor profiles

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#### Recent transactions

- Advised First Data Corporation in sale of First Data companies in the Baltic States to Worldline (Atos group).
- Advised Livonia Partners on the acquisition of Santa Monica Networks.
- Advised Konekesko in the sale of a minority interest in its Baltic machinery trade subsidiaries.
- Advised one of the leading alternative investment funds on the establishment of the fund and continuing operations.
- Advised a Scandinavian owned garment manufacturer in relation to the reorganization of a Latvian subsidiary.
- Advised Blackstone real estate fund on Latvian tax aspects of acquisition of Latvian portfolio of the

Obligo transaction.

- Advised Lavazza on the acquisition of coffee brand Merrild.
- Advised GE Capital during its exit from Latvia.

**Professional associations/memberships**

- AmCham Latvia, Board member since 2017.
- International Bar Association (IBA).
- American Bar Association (ABA).
- Latvian Association of Tax Advisers.

**Publications**

- *BNA Bloomberg, Doing Business Guide in the Baltics, 2016.*
- *Take a step towards catering industry, Dienas Bizness, 2018.*
- *Re social responsibility which is not just a buzzword, irir.lv, 2018.*
- *Changes in taxation system in Latvia, Verslo Žinios, 2017.*
- *Expert responds: How to disburse Dividends to Non-Residents?, iFinances, 2016.*
- *Pre-tax deduction in transactions of holding companies, iFinances.lv, 2015.*
- *Are Cash Savings to be explained? Case Law, iFinances.lv, 2015.*
- *State Revenue Service's inspection of taxpayers - court practice, iFinances.lv, 2015.*

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