The New European Company:
The "Societas Europaea"

Expert knowledge means success

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Introduction

The EC Regulation and Directive providing for the European Company or 'Societas Europaea (SE) came into force on 8 October 2004. The European Company Statute has created the legal framework for a new corporate entity - the European Company or "Societas Europea" (SE), available to businesses operating in more than one member state.

Legislation, published in draft in October 2003, has transposed the European Company Statute into national law.

The Statute offers benefits to British companies by creating a framework by which they will be able to engage in cross-border mergers or wishing to establish a joint venture with companies from other Member States. At present, there are no harmonised rules in the EU governing cross-border mergers.

The Government sought view (by consultation) on its proposals for legislation and, in particular, on the Member State options in the Regulation and the transposition of the Directive regarding employee involvement.

History

The European Company Statute Regulation (Council Regulation (EC) No 2157/2001) was adopted on 8 October 2001 and is binding in its entirety and directly applicable in all Member States with effect from 8 October 2004.

After long discussions on the creation of a European business company – discussions which began in the 1960s – the Council Regulation on the Statutes for a European Company became effective on 8 October 2004 and creates the legal framework to establish a European business company – the "Societas Europea" (SE). An SE is established as a public, limited liability company, an analogy to a joint-stock company. Coming from the nature of the Council's Regulation, the laws regarding SE's will be directly applicable in all Member States.

In the late 1980s, the European Economic Interest Grouping structure, governed by Community law, came into existence, but this structure is not primarily intended for business purposes. A Regulation establishing the European Cooperative Society took effect in 2006. Discussions are also under way to establish the "European private company." This business entity is envisioned for medium-sized companies and should take the form of a private, limited liability company. It should be possible for natural persons to participate in the establishment of a European private company.

The Regulation includes a number of options and new domestic legislation will be required to ensure the effective application of the Regulation where a decision on a specific option in the Regulation has to be made, and also to provide for sanctions and penalties for contraventions of the Regulation. The accompanying Directive (Council Directive 2001/86/EC), was also adopted on 8 October 2001 and is transposed by the implementing Regulations.

How will it work in practice?

SEs will be subject to the requirements set out in the Regulation:

- British company law will apply in full where the Regulation does not impose its own obligations or processes;
- An SE will be registered in an individual member state and its registered office must be in the same member state as its head office;
- All SEs must have employee involvement arrangements, but there is some choice as to the nature of those arrangements.

As part of the EU integration process, Member States are harmonizing their national laws to facilitate the existence and functioning of business entities within the EU. They are also introducing new legal regulations regarding business companies established under EU law.

The Societas Europaea

This new form of company may make it easier for businesses to structure and carry out cross-border activities within the EU.

Essentially, the idea behind the European Company Statute is to create a new form of company which will be available to commercial bodies with operations in more than one member state. Its use will be entirely voluntary and it may be formed by merging existing companies from at least two member states; or by creating an SE as a holding company or as a subsidiary company, or by the transformation of an existing company.

Potential Benefits

The SE potentially offers benefits to UK companies by creating a framework by which they will be able to engage in cross-border mergers with companies from other Member States. Other advantages include:

- Reduced administration, legal and possibly accounting and audit costs;
- The ability to react to business opportunities as and where they arise;
- Operating in the EU with one set of rules.

Hitherto, there were no harmonised rules in the EU governing cross-border mergers. If the resulting SE were to be registered in the UK, it will be subject, in large measure, to existing legislation and the common law applying to UK public companies. A UK company wishing to take over a company from another Member State, or wishing to establish a joint venture with a company in another Member State, might find it easier to reach agreement with the overseas company if it decided to form a joint holding company or joint subsidiary in the form of an SE. A UK public company wishing to operate in several Member States simultaneously might consider that there were presentational advantages in adopting the SE name and form.

What is a Societas Europaea?

Features of a Societas Europaea (SE), or European business company are:

- It is a public, limited liability company;
- It has a subscribed capital of not less than EUR 120,000, divided into shares;
- The business name of a European company shall be preceded or followed by an addendum stating the legal form. It will be possible to choose between the full wording of the addendum "societas europea" and its abbreviation "SE".

The statutes relating to how an SE is formed and governed are set down in Council Regulation (EC) No. 2157/2001.

Where expressly authorized by the regulation, SE's are to be governed by the provisions of the regulation and its statutes. Matters not regulated by this regulation shall be governed by the relevant provisions of the laws of the Member State where the SE has its registered office (adopted by the Member State in the implementation of the Community regulation on SE's) or by the general provisions of the Member State's laws applicable to a public limited liability company.

Registration

An SE must register in one of the EEA Member States. As a general rule, an SE formed by any means (other than transformation) may register in any Member State it chooses. Thus, French and German companies could merge to form an SE registered in GB, or could set up a joint holding company or joint subsidiary registered in GB. SEs formed by transformation must register in the same Member State as the transforming company, though they could subsequently transfer their registered office under Article 8 of the Regulation.

Creating an SE is expected to reduce significantly the administrative and legal costs of setting up and running a pan-European business. It will also mean 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. This will thus avoid the need to establish a network of subsidiaries and/or branches governed by different national laws – a complex, costly and administratively time-consuming exercise.

Ways to form a Societas Europaea

An SE can be formed by:

- The merger of two or more PLCs from two or more EU member states.
- The formation of a holding company by limited companies or PLCs from two or more EU member states.
- The formation of a subsidiary company by companies from two or more EU member states.
- The conversion of existing PLCs which, for at least two years, had a subsidiary in another member state.

The Regulations

The European Company Statute Regulation (Council Regulation (EC) No 2157/2001) ("the Regulation") was adopted on 8 October 2001 and will enter into force and be binding in its entirety and directly applicable in all Member States with effect from 8 October 2004 (Article 70).

The essential purpose of the Regulation is to create a new form of company, available to commercial bodies with operations in more than one Member State. Its use will be entirely voluntary. The corporate form that will emerge by registration under the Regulation will be a European public limited liability company (Societas Europaea or "SE"), registered in one of the Member States, with capital divided into shares and having legal personality (Articles 1 - 3).

Impact on SMEs

Small and medium-sized enterprises (SMEs) are likely to come across new SEs - either as suppliers, customers, competitors and advisors. An understanding of how SEs work will be important to many SMEs in future.

All SEs will have to provide for employee involvement in their management structures. But taxation, employment and directors' liability for SEs will be subject to the domestic laws and regulations applicable in each of the jurisdictions in which an SE operates.

Meetings of Shareholders

The General Meeting of all shareholders forms the supreme body of the European company.

Shareholders are entitled to elect other bodies of the European company pursuant to either the one-tier or two-tier system. The two-tier system is based on the continental law model (e.g., Germany, the Czech Republic) and consists of a supervisory body (the Supervisory Board) and a management body (the Board of Directors).

The one-tier system is based on the Anglo-Saxon law model and consists of an administrative body only. In general, the powers of the above-mentioned bodies of the SE, together with the requirements for participation in these bodies and related rights and obligations, correspond with the legal provisions regulating the bodies of public limited liability companies.

UK Taxation Position[1]

The European Company Statute that came into effect on 8 October 2004 has created a new European company called a Societas Europaea (SE). The tax law of the Member State in which the SE is based applies to the SE.

Section 561A stops any allowances or charges arising where an asset is transferred as part of the formation of an SE by merger.

EC launches consultation on how European Company Statute (SE) works

On 23 March 2010, Europa announced that the European Commission (EC) has launched a consultation on how the European Company Statute (SE) works.

An SE gives companies operating in more than one Member State the possibility to reorganise their cross-border business under one European label. This enables them to work within a stable legal framework, reduce the internal costs of operating in several countries and hence be more competitive in the Internal Market. The SE has proved to be very popular in some Member States but it has not taken off in others. In order to determine whether changes are needed to make the SE Statute work better, the EC has launched a public consultation. With the review of the SE Statute, the Commission is aiming to increase the use of the SE across the European Union.

The European Company Statute, commonly known by its Latin name of 'Societas Europaea' or SE, was adopted on 8 October 2001. Well known examples of successful SEs are Allianz, BASF, Porsche, Fresenius and MAN from Germany, SCOR from France, Elcoteq from Luxembourg and Strabag from Austria.
The questionnaire, together with more information on the SE, is available at: http://ec.europa.eu/internal_market/company/se/index_en.htm
FAQs on the European Company Statute consultation are available at: MEMO/10/97

Detail

Section 561A applies to transfers of assets made on or after 1 April 2005. It applies where:

- an SE is formed by the merger of two or more companies where not all the merging companies are resident in the same member State,
- an asset qualifying for capital allowances is transferred as part of the formation of the SE by merger, and
- the asset is within the scope of UK tax after the formation of the SE.

This will happen if the SE is resident in the UK or the asset is an asset of a permanent establishment in the UK of an SE.

Where these conditions are satisfied:

- Section 561A stops any allowances arising or charges being made as a result of the formation of the SE,
- anything done by the transferor to the assets transferred is treated after the transfer as having been done by the transferee, and
- the company reconstructions without change of ownership provisions of ICTA88/S343 CA15400 do not apply.

This means that the transferee gets the same allowances and suffers the same charges as the transferor would have got if it had continued to carry on the qualifying activity.

Example

Company Z Plc, which is resident in the UK, and Company Z AG, which is resident in Germany, merge to form Company Z SE.

All of Z Plc's assets are transferred to Z SE as part of its formation.

Those assets are treated as if they had been acquired by Z SE when Z Plc acquired them and as if everything done to them by Z Plc had been done by Z SE.

A detailed technical note issued by HMRC is available at: www.hmrc.gov.uk/drafts/imp-ecs-tech-note.pdf

Control of SE Company Names

There are certain restrictions on the choice of name, which are similar to the controls applied to other companies registered in Great Britain.

Company type designators

The name of an SE must be preceded or followed by the abbreviation SE.

Use of the term "SE" at the beginning or end of the name designates that the company is a European Company. It must be in the exact form, SE, as laid down by Article 11(1) of the Regulation. It will not be acceptable to use, for example, S.E. or se or (SE) as the designator at the beginning or end of the name, although all these would be acceptable if they appeared within the name (i.e. not as the company type designator).

Other company type designators cannot be used by an SE. This means that an SE may **not** include anywhere in its name any of the following:

- "limited", "unlimited", "public limited company", their Welsh equivalents or any abbreviation of those words or expressions;
- "investment company with variable capital" or "open-ended investment company" or their Welsh equivalents;
- "limited liability partnership" or its Welsh equivalent.

'Same as' names

As with other companies, an SE cannot register with a name which is the same as a name already on the Company Names Index.

In determining whether one name is the same as another, 'the' is disregarded at the beginning of a name. The type and case of letters, accents, spaces between letters and punctuation marks are ignored. Use of 'and' or '&' are taken to be the same.

In addition, all designations at the end of company names (e.g. 'limited', 'public limited company'), their Welsh equivalents and abbreviations, together with words like 'company' or 'and company' are disregarded. The designator 'SE' where it precedes or follows the name of an SE company will be disregarded but 'SE' used elsewhere in the name will not.

Offensive names

The proposed name of an SE may also be refused if it is offensive or if its use would be a criminal offence.

Sensitive words

Some names need the approval of the Secretary of State for Trade and Industry before they can be registered. These are names that suggest a connection with central or local government and names that include words or expressions that have been prescribed by regulations as needing approval. These are called 'sensitive words' and a full list is available at: www.companieshouse.gov.uk

Are there other considerations when choosing the name of an SE?

Although the name of an SE may be sufficiently different from a name already on the Index to allow it to be registered, the name may be so alike another name that it may cause confusion between the two. In this event, the Secretary of State has the power to require a company to change its name. Each case is considered on its merits, taking into account representations from both companies involved before a decision is reached. In order to avoid this happening, our advice is to check before you register the company that the chosen name is unlike any other company name already on the Index.

When an SE transfers its place of registration to GB, do the same restrictions on its name apply?

Every SE's name will be subject to the rules of the jurisdiction in which it first registered. On transfer to GB, an SE may choose to retain its existing name or it may choose to change its name. If it wishes to change its name, it will then be subject to the GB rules over company names.

What effect does the SE designator have on the names of bodies other than SEs?

Bodies other than SEs (ie companies, firms, and other legal entities registered in the Member State) cannot use the abbreviation SE in their names unless they were already using the abbreviation in their name before 8 October 2004. This includes using the abbreviation bracketed as (SE) or with other punctuation marks before or after the abbreviation, for example, .SE. (with full stops before and after the abbreviation). However, other bodies may continue to use other abbreviations such as S.E., se or (S.E.) in their names. They may also use the letters 'SE' linked to other letters or words such as 'Service' or 'SE10' or 'SSE' or 'S East'.

Further Information

We have another publication on this topic: 267-Proposal for a European Private Company, which is available on request.

The European Public Limited-Liability Company Regulations 2004 are available at: http://www.opsi.gov.uk/si/si2004/20042326.htm

The registration form SE4, can be found at: http://www.delni.gov.uk/annexb_registration_forms-2.pdf

The main provisions of the statute are summarised conveniently at: http://en.wikipedia.org/wiki/European_Company_Statute#Main_provisions_of_the_statute

This guide is for general interest - it is always essential to take advice on specific issues. We believe that the facts are correct as at the date of publication, but there may be certain errors and omissions for which we cannot be responsible.

The Companies House website has a downloadable file at: http://www.companieshouse.gov.uk/about/pdf/gpo6.pdf

If you would like to receive further information about this subject or other publications, please call us – see our contact details on the next page.

Acknowledgement:

[1] As extracted from a note at: www.hmrc.gov.uk/manuals/camanual/CA15570.htm on the HMRC website. Crown copyright therein is duly acknowledged.

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