



Corporate and M&A

Spain Implements EU Directive 2019/2121 with New Regulations on Corporate Structural Modifications

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This post briefly explains Spain's implementation of EU Directive 2019/2121 and the corresponding new regulations concerning corporate structural changes in mergers by the Royal Decree-Law, which amends Law 3/2009 on structural changes of capital companies (LME).

The Royal Decree-Law, effective from June 29, 2023 incorporates Directive (EU) 2019/2121, issued by the European Parliament and the Council on November 27, 2019, which focuses on cross-border conversions, mergers, and divisions, and modifies various aspects of the existing structural change regime.

The newly enacted regulations under the LME, hereinafter referred to as the "New LME," govern both internal and cross-border structural changes in capital companies, including transformations, mergers, spin-offs, and global transfers of assets. It should be noted that the New LME applies to structural changes of companies whose projects have not been approved by the involved parties before July 29, 2023.

1.- Structural Changes

The New LME introduces significant structural changes to the previous law. It consists of a general part that applies to all types of structural changes, both internal and cross-border, and a special part that specifically regulates each type of corporate structural change.

2.-Main Procedural Innovations

While the general procedure remains unchanged, additional documents are required for the operations, including:

[Project](#)

(i) For all structural change operations, including transformations, a comprehensive structural change project must be prepared. (ii) This project should be accompanied by

certificates that demonstrate the company's compliance with tax and social security obligations. (iii) The board of directors has the authority to make modifications to the project.

Publicity Requirements: Except for structural changes adopted through a unanimous general meeting, in addition to the project, a report must be prepared to inform shareholders, creditors, and employee representatives about the proposed operation. This report provides an opportunity for them to submit observations on the operation within 5 working days prior to the general meeting. Furthermore, the company is obligated to publish the information on its website or file it with the Commercial Registry.

c. Reporting by the Management Body

The directors' report plays a crucial role and must include sections dedicated to shareholders and employees. While the shareholders' section may not require publication, the section concerning employees must outline the impact on employment relationships, substantial changes to employment conditions, workplace changes, and the effects on controlled companies. The management body is responsible for making the project and report available to shareholders, employee representatives, or the employees themselves, as applicable.

d. Independent Expert Report

In most structural change operations, an independent expert report is necessary. This report provides an opinion on the adequacy of the consideration offered to shareholders who are entitled to sell their shares or participations. At the request of the directors, the report may also assess any guarantees offered to creditors.

3.- Protection Mechanisms

a. Shareholder Protection

Shareholders who vote against the structural change agreement have the right to sell their shares or participations, especially in cases of internal (national) transformations where directors' and experts' reports are not prepared. Additionally, in cross-border operations subject to foreign law, shareholders retain the right to seek additional compensation from the court if they disagree with the compensation offered by the company.

b. Employee Protection

Employees, along with creditors and shareholders, have the right to submit observations on the project for structural change, which the general meeting must consider during the approval process.

c. Creditor Protection

The traditional right of opposition to mergers and spin-offs is replaced by a system of adequate safeguards. Directors must indicate in the structural change project whether the operation has implications for creditors and disclose any personal or real guarantees offered to them. In the presence of an independent expert report, the expert is authorized to opine on the adequacy of the guarantees offered. Furthermore, the New LME establishes a procedure enabling creditors to exercise their right to obtain adequate guarantees, if necessary.

Please refer to the BOE at the following link: [access](#)