Slovenia: Cross-Border Mergers in Slovenia

Implementation of the Directive 2005/56/EC on cross-border mergers has for the first time enabled Slovenian companies to merge with companies from other member states. But Slovenian courts have little practical experience with cross-border mergers. And the complex interaction of the relatively newly harmonised EC legislation and the older local rules requires a sound knowledge of both regimes. It is particularly important to know how the local rules are applied in practice.

Prerequisites for cross-border mergers

Pursuant to the Slovenian Companies Act (Zakon o gospodarskih družbah; ZGD-1), two or more joint stock or limited liability companies may merge by acquisition (pripojitev), i.e., an existing company (the acquiring company) takes over all assets and liabilities of one or more transferring companies, or by formation of a new company (spojitev), where the acquiring company is only established in the process of the merger. The transferring companies in each case cease to exist upon the effectiveness of the merger without being liquidated. The shareholders of the transferring companies are compensated with shares in the acquiring company. These principles also apply to cross-border mergers.

In Slovenia, Directive 2005/56/EC has been implemented in the Companies Act as well as in the Slovenian Act Regulating Employees Participation in Decision-Making in Cross-Border Mergers of Limited Liability Companies (Zakon o soodločanju delavcev pri čezmejnih združitvah kapitalskih družb; ZSDČZKD), regulating employees’ participation rights. Corporations from other member states can participate in a cross-border merger if they (i) are mentioned in Article 1 of EC Directive 68/151, (eg, a German AG, GmbH, KGaA) or (ii) are separate legal entities with limited shareholder liability and comply with the relevant national laws intended to protect the interests of its members and third persons. In addition, eligible candidates must have their registered office, central administration or a branch, or exercise their main activity in another member state.

Merger documentation

As a first step, the managements of the participating companies must conclude a merger contract. In practice, one (multi-language) document is drawn-up, which covers the legal requirements of all participating jurisdictions in separate sections. This enables each competent authority to “tick boxes” when assessing the merger under the local law requirements. However, depending on the formalities required by the participating member states’ jurisdictions, the merger contract might need to be executed in multiple forms. Under Slovenian law, for example, the merger contract needs to take the form of a Slovenian notarial deed.

The contract must be approved by the general shareholders’ meetings of the participating companies. Further, the management of each participating company must draw up a detailed written report on the merger. This substantially conforms to the documentation required for a purely local merger of two or more Slovenian companies. There are, however, certain peculiarities in detail, especially concerning employee participation.

Procedural aspects

Procedure-wise, the competent authority in the jurisdiction of the transferring company issues a certificate, which confirms the proper completion of the pre-merger acts and formalities. On the basis of this certificate (as well as the other documents...
as required under respective local law), the competent authority in the jurisdiction of the acquiring company registers the merger. Upon registration, the registering authority directly notifies the competent authority in the jurisdiction of the transferring company that the cross-border merger has taken effect. As a last step, the transferring company is deleted from the register of its jurisdiction on the basis of this notification. In Slovenia, such registrations are carried out by the Slovenian Court Register.

**Accounting and tax**

Under certain conditions (which must be carefully analysed with tax counsel), local and cross-border mergers can be effected substantially tax-neutral in Slovenia. Moreover, Slovenian law recognises the retroactive effectiveness of mergers for tax and accounting purposes. It is thus not required to prepare closing balance sheets as of the date of actual registration of the merger. Rather, only the closing balance sheet of the transferring company as of a date not falling more than nine months before the date of the filing for registration with the Slovenian Court Register must be provided.

**Operations post-merger**

If a Slovenian company with operative business in Slovenia was involved in a cross-border merger as transferring company (a so-called “export” merger), consideration needs to be given to how to continue the conduct of the local business. Normally, this will be done by incorporating a local branch office of the acquiring company in Slovenia. Careful planning and timely incorporation of the local branch – ideally ahead of the merger – are important to avoid unnecessary delays or business interruptions.