

## TOOLBOX

### FOR CROSS-BORDER REORGANIZATIONS

The world is getting smaller everyday. We can meet people from other countries via social media just by using our phones, eat fruit in Germany that was grown in Indonesia and fly non-stop around the world in 67 hours (and one minute, but who's counting?). The boundaries of countries are fading. This continues in law. Cross-border reorganizations are becoming more common everyday. Business opportunities or change in demand require companies to go abroad. They are setting up new companies in other countries, moving companies or merging companies with companies from other countries.

In the Netherlands we make sure that Dutch law is continuously changing in order to create flexibility and meet the above demand. In the past twenty years Dutch law has changed dramatically. We have gone from being able to merge companies nationally for the first time to cross-border mergers and conversion of companies to date. This news letter provides

for an overview on the current possibilities for such cross border reorganizations from a Dutch point of view.

#### Why The Netherlands?

Historically, the Netherlands has been a country of innovation and trade. It is often considered that with the Dutch East India Company (VOC) we created the first multinational corporation in the world and the first company to issue stocks. We have brought that experience forward to the present time. At the moment we are among the strongest economies in the world. We have a first-class logistics infrastructure (the Port of Rotterdam and Schiphol Airport are among the biggest in the world), excellent technology infrastructure (e.g. the largest security cluster and one of the most advanced markets of data centres in Europe), a supportive corporate tax structure and highly educated and multilingual people. Our legal system is trusted, our law firms reputable and our courts and commercial register work as they should so that you are sure you are in safe hands. All this, combined in a country that is centrally located in the world, makes it safe to say that the Netherlands is the place where you want to be, start and relocate your business to and/or via which to invest.

### So, what are your possibilities in (re) locating your business in The Netherlands?

#### Cross-border merger

Firstly, you may consider the possibility of a cross-border merger. Under Dutch and EU law it is possible for any company in a member state of the European Union and European Economical Area (the "Member State") to merge with a company from another Member State. Pursuant to the merger all of the assets and liabilities of a company (which will cease to exist) shall automatically be transferred to the acquiring company. Consequence: no separate transfer of each asset or liability is required (which will save you time and costs), it is not needed to enter into a (lengthy and costly) liquidation process of a company plus you are sure nothing is left behind (which is also a nice feeling to have). An effective way to restructure your company from one Member State to another. At HVK Stevens we are very experienced in cross-border mergers, having assisted companies from all over Europe on mergers into or out of the Netherlands.

**And, not unimportantly when crossing borders, we know the right professionals from other Member States to assist us.**

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The merger procedure can be relatively straight-forward so that a cross-border merger can take effect within 2- 3 months.

### **Cross-border conversion**

Secondly, you may consider the possibility of a cross-border conversion. By such conversion a company governed by the laws of a Member State is converted into a company governed by the laws of another Member State. This is done by transferring the company's registered office and/or effective place of management. The company does not cease to exist but only changes its legal form. As a consequence, no contracts or assets have to be transferred. In essence: your company simply relocates to another country. It is a simple way to move business activities from one Member State to another.

There is no Dutch or EU law specifically providing for the possibility of cross-border conversion of companies (although Dutch legislation is being prepared). Cross-border conversion was created by European case law (i.e. the Sevic-case, the Vale-case and Cartesio-case). Even though there were initially discussions about whether the cross-border conversion was possible, it is getting more and more agreed this is the case. And because

business activities can be relocated from one Member State to another relatively smoothly, the cross-border conversion is being used more frequently every day. HVK Stevens has assisted numerous companies on cross-border conversions, both where companies come to the Netherlands (for obvious reasons) or move out of the Netherlands (sometimes, this happens).

### **Our legal professionals are among the first in the Netherlands to have assisted on cross-border conversions since the above case law made them possible.**

A cross-border conversion can take effect within 3 - 4 months.

### **Cross-border division**

The third possibility of how to effect a relocation of your business is by a cross-border legal division. By such division assets and liabilities are automatically transferred from one company governed by the laws of a Member State to another. You may designate yourself which assets and liabilities are to be transferred. Further, the dividing company may cease to exist pursuant to the division, saving you (again) a liquidation process. Just like the cross-border conversion, EU law nor Dutch law

specifically provides for the possibility of cross-border legal division of companies. Consequently, there are discussions in the Netherlands about whether such cross-border legal division would be possible. Based on the same European case law applicable to the cross-border conversion (i.e. the Sevic-case and Vale-case) we believe that a cross-border legal division should also be possible in the Netherlands.

In contrast to the cross-border conversion, the cross-border legal division is not very popular yet. The result of a cross-border legal division can also be achieved without a division, for example via the separate transfer of assets and liabilities or via the incorporation of a new company and subsequent merger. However, this may be more time and cost consuming.

### **We may outline the possibilities that are best applicable for your business relocation, both from a tax and legal point of view.**

The division procedure can be relatively straight-forward so that a cross-border division can take effect within 2-3 months.

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## European Company (Societas Europaea – SE)

A fourth possibility to be considered is incorporating an SE, a European company. The SE was initially created to better facilitate cross-border restructuring so that a company could move easier within the EU. This can be effected through the transfer of the SE's seat to other Member States or merger with companies from other Member States. The SE also grants flexibility with respect to its internal structure as well as offers a European corporate identity. However, due to its rather complex legal framework the SE is rarely used. The SE has been overhauled by other options such as the cross-border conversion and merger. In practice, these are easier ways to achieve the same result. Of course we are happy to assist you on creating and restructuring an SE. However, we may also show you alternative (and perhaps easier) routes to achieve the same.

## Cross-border mergers and conversions with non-Member State companies

And now the really fun part. Even though Dutch companies can only cross-border merge, divide or convert with companies that are governed by the laws of other Member States, it is possible to take this international. Simply by working through a Member State that allows the concept of international cross-border mergers

or conversions a relocation from and to any country in the world is possible. For example, if you would like to move your company from Curaçao to the Netherlands, this can be done via a simple stop in Luxembourg. With our extensive experience, knowledge and contacts all over the world we can ensure such transactions run smoothly.

## At HVK Stevens we have professionals who have worked in both Luxembourg and Curaçao for years.

### Creation of hybrid companies

We may even create a so-called “hybrid” company. This is a company governed by the laws of more than one Member State. For tax reasons it is, for example, common practice to move the effective place of management of a Dutch B.V. to Luxembourg. Because of the way the laws of the Netherlands and Luxembourg are structured, both laws are applicable to such company, thus creating a hybrid B.V. / S.à r.l. Of course such company should comply with both laws once the move takes effect. This may be a reason not to choose a hybrid company.

### Fiscal rules regarding cross-border reorganizations

From a Dutch tax perspective, there are rules to

prevent unnecessary and/or double taxation as a result of a cross border reorganization.

## Our tax professionals are happy to assess the tax consequences of an envisaged reorganization and optimize the structure from a fiscal perspective.

### Why HVK Stevens?

We know you are not that interested in the procedure to be followed to effect a cross-border merger or conversion. You are not looking for theoretical solutions or extensive memoranda full of legal jargon. You just want the best advice, simple, clear and of the highest legal quality. And subsequently an efficient and practical implementation thereof.

## With HVK Stevens you found the right partner to assist you.

We are a trusted and independent advisor with extensive experience and knowledge in respect of cross-border reorganizations. We have an excellent network of reputable, independent professionals from all over the world who can assist us on cross-border reorganizations. This combined with our legal, consultancy and tax departments we can provide tailor-made advice for your entire business structure and shift

easily between the disciplines needed for the restructuring. But, most important of all, we put our clients first. We find it important to invest in the relationship with our clients, zoom in on what their business needs and look further than just the legal or tax issues to be dealt with. We offer more than advice.

## We offer a partner to share your vision with.

### WHO ARE WE?

HVK Stevens Legal focuses on national and international corporate legal advisory, restructuring, corporate maintenance and notarial services to companies and individuals. Through our work for international corporate clients, we have extensive experience in mergers and acquisitions, private equity, setting up investment funds, national and international reorganizations, including cross border mergers and conversions, transfer of seats, corporate governance and employee benefit plans.

HVK Stevens Tax's specialisms are wide-ranging and include all facets of Dutch and international tax law, including corporate income tax, personal income tax, VAT, payroll tax, gift and inheritance tax, transfer tax and dividend tax. Our work ranges from

international restructuring, business succession, estate structures, tax incentives for innovation and the optimization of your VAT position.

**HVK Stevens Consultancy** assists and advises high-net-worth families, individuals and businesses on structuring and deploying their assets. Quality, a focus on service and personal attention are central to what we do.

## At HVK Stevens we have a special focus on entrepreneurs, their businesses, high net worth individuals and families, charities, trusts and foundations.

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