



# YOUR CORPORATE NOTARY

ONDERNEMINGSRECHT NOTARIAAT

## Implementation Cross border Mobility Directive The Netherlands



When? 1 September 2023

## Questions?

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On 1 September 2023 the law implementing the EU cross-border mobility directive entered into force in the Netherlands. New rules were introduced for **cross-border mergers**, **cross-border demergers** and **cross-border conversions** (each a **transaction**). To help you to get quickly up to speed you can find a high-level overview of the new rules for **Dutch limited liability companies** here:



Proposal & Notification	Filing, Publication & start Opposition Period	Resolution	(Pre) Attest & Effectuation
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up to 5 business days before the resolution: comments from stakeholders

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6 weeks before the resolution: proposal available for shareholders and employees

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3 months opposition period

<b>Proposal</b>	Overall, the required content of the proposal for the transaction remains unchanged. Additional information regarding cash compensations, safeguards for creditors (e.g. guarantees or rights of pledge) and a proposed timetable for the transaction should be included in the proposal.
<b>Explanatory notes to the proposal, shareholders section and employee section</b>	<p>Apart from the general required information, the explanatory notes to the proposal must now include <b>a section for shareholders</b> and <b>a section for employees</b>. Separate explanatory notes for shareholders and employees can be prepared as well.</p> <p><b>Shareholders</b> must be informed on the methods of determination of a cash compensation for shares and the consequences of the transaction for shareholders. The explanatory notes for shareholders can be <b>waived</b> under circumstances.</p> <p><b>Employees</b> must be informed on the consequences of the transaction on employment relationships, the methods to safeguard these relationships (where applicable), material changes to the terms and conditions of employment and the effect of these two factors on subsidiaries. The explanatory notes for employees can be <b>waived</b> under circumstances.</p>

<b>Notification, comments stakeholders</b>	The management board notifies <b>creditors, shareholders</b> and <b>the works council</b> (or the employees in case a works council is not installed) that comments to the proposal can be submitted to the company no later than <b>5 business days</b> prior to the date of the resolution of the general meeting on the transaction.
<b>Filing and publication, availability for shareholders and employees</b>	<p>The proposal and the notification shall be filed with the trade register. Such filing must be published in the <b>Dutch National Gazette</b>.</p> <p>The proposal and explanatory notes should be made (electronically) available for <b>shareholders</b> and <b>the works council</b> (or the employees in case a works council is not installed) no later than <b>6 weeks</b> prior to the date of the resolution of the general meeting on the transaction.</p>
<b>Opposition period</b>	<p>Creditors opposition must be filed with the relevant Dutch district court within <b>3 months</b> after the publication of the proposal.</p> <p>It is currently under discussion whether <i><b>the transaction may be effectuated before the end of the opposition period.</b></i></p>
<b>Majority resolution</b>	The resolution by the general meeting on the transaction must be adopted in line with the proposal and with a majority of at least <b>two thirds</b> of the votes cast. Statutory quorum and majority caps must be considered.
<b>Auditor</b>	<p>An auditor is involved in the process of determination of a cash compensation for shareholders, unless such requirement is <b>waived</b> under circumstances.</p> <p>In case of a merger, part of the auditor's declaration in connection with the allocation of shares in the capital of the acquiring company to the shareholder(s) of the disappearing company is not required anymore.</p>
<b>Pre attest</b>	<p>A Dutch civil law notary confirms that all formal requirements with respect to the transaction have been observed and complied with from a Dutch law perspective. When the Netherlands act as the departing member state the Dutch civil law notary will issue a <b>pre attest</b> for this purpose.</p> <p>The pre attest may be issued after the adoption of the resolution of the general meeting on the transaction.</p> <p>For the pre attest, the Dutch civil law notary must perform a <b>fraud test</b> as well.</p>
<b>Effectuation</b>	<p>The legal effective date of the transaction is determined by the receiving member state in case of a merger or conversion. For demergers, the laws of the member state that govern the demerging entity are leading.</p> <p>In <b>the Netherlands</b>, the legal effective date of the transaction is the date following the date of execution of the notarial deed effectuating the transaction.</p>
<b>Transitional provisions</b>	The previous provisions continue to apply to transactions for which the proposal has been <b>filed</b> with the Dutch trade register <b>before 1 September 2023</b> .