

Luxembourg, 13th February, 2015

Circular RCSL 15/3

Subject: Update to circular 13/1 with regards to cross-border mergers

Notes presented by the Luxembourg Trade and Companies Register ("RCS"):

- Are of a general nature and are not aimed at a particular situation applicable to any individual person or legal entity;
- Are of a documentary nature and for information only ;
- Are solely aimed at answering a number of questions raised by "RCS" users
- Are of no legal value and do not involve the liability of the "RCS" ;
- Are not necessarily up-to-date, exhaustive or comprehensive ;
- Are not to be used as a substitute for legal or professional advice ;
- Only reflect the opinion of the "RCS" on a number of issues which remain subject to any interpretation by Courts and Tribunals.

The present circular is issued as an update to circular 13/1, following the implementation of mandatory filing with the "RCS" as from November 1st, 2014 and in light of the various amendments made to the presentation of requisitions forms. It replaces circular 13/1.

The present circular aims at clarifying the procedure applicable to cross-border mergers, as per articles 257 onwards of the amended Law of 10th August 1915 concerning commercial companies (hereafter referred to as "LSC")

This circular cancels and replaces circular 09/004 as previously issued by the Luxembourg Trade and Companies Register Manager (hereafter referred to as "RCS").

1) Mergers by way of absorption of a foreign person by a Luxembourg-based person :

- The merger agreement must be filed with the Luxembourg Trade and Companies Register, hereafter referred to as "RCS", for publication within the Memorial, Official Journal of Companies and Associations as per article 262 "LSC", via the "RCS" website. The project must be established in compliance with article 261 "LSC" and with particular

regards to the inclusion of the absorbing company's articles of association, as they are expected to stand upon completion of the merger process.

- The deed approving the merger operation by way of absorption must also be filed with the "RCS" for publication within the Memorial, Official Journal of Companies and Associations as per article 273ter (1) "LSC".
- Indeed, article 237ter "LSC" stipulates that, with regards to third parties, a merger takes effect as from the date of publication of the general assembly minutes of the acquiring or deciding company.
- Furthermore, the merger operation must be registered with the "RCS" within the record of the acquiring company subject to Luxembourgish law, via the relevant requisition form and with particular attention to the section on the merger/demerger operation.
- Upon publication within the Memorial, Official Journal of Companies and Associations, the "RCS" Manager contacts the foreign registers relevant to the merging parties, and informs these institutions, that the merger has come into effect, as per article 273ter (2) "LSC".

2) Mergers by way of absorption of a Luxembourg-based person by a foreign person :

- The merger agreement must be filed with the "RCS" via the "RCS" website, for publication within the Memorial, Official Journal of Companies and Associations as per article 262 "LSC".
- The project must be established in compliance with article 261 "LSC" with particular regards to the inclusion of the absorbing company's articles of association, as they are expected to stand upon completion of the merger process.
- In this context, the absorption deed is not required from the acquired Luxembourg-based company. The presenter may however file such an assembly if they so desire. No particular requirements are in place as to the form of this document, which may either be privately drafted, or issued by a notary.
- Dissolution of the acquired Luxembourgish person by the "RCS" Manager, via the dissolution form, may only be concluded once the merger operation is authenticated as complete via the relevant notification, issued by the foreign registry and addressed to the "RCS" in compliance with article 273ter "LSC".
- Upon receipt of this notification, the "RCS" Manager contacts the person for whom registration of dissolution is required, and requests that they file the dissolution form in order for "RCS" services to record their dissolution.

3) Mergers by way of creation of a new company based in Luxembourg :

- When one of the merged legal entities is under Luxembourgish law, the merger agreement must be filed with the “RCS” for publication within the Memorial, Official Journal of Companies and Associations, as per articles 262 and 277 “LSC”, via the “RCS” website.
- The merger agreement must comply with article 261 “LSC” paying particular attention to including the articles of association, as well all statutory information relevant to the newly created company.
- The act approving the merger must also be filed with the “RCS”, for its publication in the Memorial, Official Journal of Companies and Associations, as per article 273er (1) and 277 “LSC”.
- The registration form of the new Luxembourgish person to be registered with the “RCS”, including the fully completed section transcribing the merger operation, must be attached to the filing request.
- Upon publication of this information within the Memorial, Official Journal of Companies and Associations, the “RCS” Manager notifies the foreign registry in which each of the persons who merge are registered, that the merger has taken effect as per articles 273ter (2) and 277 “LSC”.

4) Singularities applicable to the participation of one or several legal entities under Luxembourgish law, and one or several legal entities under Luxembourgish law with central administration based in Luxembourg and foreign head offices:

- In such a case, any merger operations may be conducted as either a cross-border, or as a straightforward domestic operation.
- In the event that such an operation be approached as a cross-border procedure, the registered person or their agent is responsible for filing the cross-border merger agreement with the “RCS” via the “RCS” website, as per article 262 “LSC”.
- The merger agreement must comply with article 261 “LSC” paying particular attention to including the articles of association, as well all statutory information such as expected to stand upon completion of the merger process.
- The presenter has to fill in the section relevant to the merger/demerger operation on the requisition form with all foreign data on the person based abroad and file the relevant information with the “RCS “ upon completion of this operation. Failing to do this, the operation will be processed as a domestic merger, the particular handling dedicated to cross-border mergers as set out in article 273ter (2) and (3) “LSC” will not apply, and no notification of the foreign company’s dissolution will be issued by the “RCS”.
- In the event that the operation is planned from a purely domestic perspective, the merger agreement must be filed with the “RCS” for publication within the Memorial, Official Journal of Companies and Associations as per article 262 “LSC”, via the “RCS” website.

The annex relevant to the merger/demerger operation must be filled in with all the Luxembourgish data relevant to the participating companies, as it is required for registration of the merger upon completion of the operation.

The special treatment as applied to cross-border mergers as per article 273ter (2) and (3) "LSC" will not apply in this case, whereby the "RCS" manager will not issue any notifications of the foreign company's dissolution.

On behalf of the Manager of the Luxembourg Trade and Companies Register,

(s.) Yves Gonner
Director