Global Private M&A Guide - Limited External Content - Luxembourg

Common deal structures

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# What are the key private M&A deal structures?

In Luxembourg, a business can be acquired by way of either a share deal, under which part or all of the target's shares are transferred, or an asset deal, consisting of the purchase of some or all of the target's assets.

Most of the transactions undertaken in Luxembourg are privately negotiated ones, usually between a seller and a preferred buyer. However, recently there has been a move towards more sellers opting to run an auction process.

To enhance its favorable legal environment, Luxembourg has also implemented the various EU merger directives (a draft bill on the transposition of EU Directive 2019/2121 of 27 November 2019, amending EU Directive 2017/1132 regarding cross-border conversions, mergers and divisions ("**Mobility Directive**") into Luxembourg, has already been prepared and awaits approval) . Besides purely domestic mergers, Luxembourg provides for a regulatory framework for cross-border mergers in line with its characteristically open-market approach.

Cross-border mergers are possible for any merger of a Luxembourg and foreign company, and are not restricted to EU companies, as long as the foreign jurisdiction does not prohibit the merger and the foreign company complies with the requirements and formalities of its domestic law. A merger will entail the universal transfer of all assets and liabilities of the absorbed company to the absorbing company, except in certain cases. The Mobility Directive's implementation is expected to bring further changes to the applicable regime in terms of scope and applicable procedure.

# Which entity is likely to be the target company (on a share sale) or the seller (on an asset sale)?

The most widely used private company in Luxembourg is the private limited liability company (société à responsabilité limitée (SARL)), which is used by around two-thirds of companies in Luxembourg.

# What are the different types of limited liability companies?

SARL

public limited liability company (société anonyme) — S.A.

simplified joint-stock company (société par actions simplifiée) — S.A.S.

corporate partnership limited by shares (société en commandite par actions) — S.C.A.

common limited partnership (société en commandite simple) — S.C.S.

# Is there a restriction on shareholder numbers?

The number of shareholders of a SARL is limited to 100.

# What are the key features of a share sale and purchase?

In principle, the shares are freely transferable. However, the articles of association of the company, an agreement entered between the shareholders or the law (i.e., the approval right of the shareholders in a SARL) can limit the transferability of the shares. At a minimum, a sale and purchase agreement needs to include the parties that consent to enter into the transaction, the object, the applicable price. The agreement will also record the agreement of the parties on their respective rights, obligations and liabilities in connection with the transaction. No specific form of agreement is prescribed under Luxembourg law, although it is generally accepted that the drafting principles are heavily influenced by the anglo-saxon legal drafting principles.

In the case of the transfer of shares in a SARL to a non-existing shareholder, the Luxembourg law on commercial companies provides that such transfer requires the prior approval of the current shareholders representing 75% of the company's share capital. It is possible to reduce this majority to 50% in the articles of association.

# What are the key features of an asset sale and purchase?

When a business is transferred by way of an asset purchase, each individual asset needs to be transferred in accordance with the formalities for a transfer applicable to that type of asset. For some assets, this will simply be a case of delivering the asset to the buyer, but in other cases, the formalities are more cumbersome (e.g., requiring filing the transfer in respect of trademarks and patents; or for real estate the additional step of executing the purchase agreement before a notary public in Luxembourg, updating the land registry (cadastre) and filing the notarial deed with the mortgage registry (conservation des hypothèques)). The assignment of contracts under an asset purchase could also raise issues of third-party consent, while in a share deal, third-party consent is needed only for agreements that have a change of control clause. It is, therefore, necessary to include a provision, either in the purchase agreement or in separate agreements, requiring those formalities to be complied with. There will usually be an asset purchase agreement to record the respective rights, obligations and liabilities of the parties.

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