

SOCIETAS EUROPAEA (SE)

INFORMATION LEAFLET NO.19 / December 2020

1. SOCIETAS EUROPAEA

A Societas Europaea (SE) is a European public limited company formed under EU Regulation (Council Regulation 2157/2001) and Statutory Instrument 21 of 2007. SE's can be formed by merger, as a holding company or subsidiary, or by conversion from a plc. Article 3 and 10 of the Regulation requires Member States to treat an SE as if it is a public limited company formed in accordance with the law of the Member State in which it has its registered office. General information regarding public limited companies can be found in Leaflet 1 - Company Incorporation and Leaflet 16 - The Company Secretary. The guidance notes apply only to SE's to be registered in Ireland.

Please seek specialist legal advice or refer to the law governing SE's, if you plan to form a Societas Europaea. Relevant legislation includes the European Communities (European Public Limited Liability Company) Regulations 2007 (Statutory Instrument No. 21/2007), Council Regulation (EC) No 2157/2001 on the Statute for a European company (the 'EC Regulation'), and Council Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees (the 'Directive') as implemented by European Communities (European Public Limited Liability Company)(Employment Investment) Regulations 2006, Statutory Instrument 623 of 2006.

An SE can be formed in several different ways:

- by merger,
- as a holding company,
- as a subsidiary,
- an SE can form a subsidiary SE.
- an SE can be formed by a PLC converting into an SE.

Upon registration, an SE has legal personality. The registered office and the head office must be in the same Member State.

A Societas Europaea has share capital and no shareholder is liable for more than the amount subscribed. The share capital must be expressed in euro. An SE is required to have a minimum amount of subscribed share capital of at least EUR 120,000.

1.1 Management Structure of an SE

An SE can be controlled in either of two ways. An SE may have either a one-tier or two-tier system of administration depending on the form adopted in the statutes.

One-tier system

An 'administrative organ' manages the SE. The administrative organ must meet at least once every three months. A chairman must be appointed from amongst the members. The number of members of the administrative organ, or the rules for determining it, must be laid down in the SE's statutes. However, the SE must have at least two members (unless employee participation is regulated in accordance with Directive 2001/86/EC with regard to the involvement of employees, in which case the minimum number is three). There is no upper limit on the number of members.

Two-tier system

A 'management organ' manages the SE and a separate 'supervisory organ' supervises the work of the management organ.

Members of the management organ may be appointed by the supervisory organ. The supervisory organ may not itself exercise powers to manage the SE. No person can be both a member of the management and supervisory organ at the same time except where a vacancy arises. This person's function on the supervisory organ is then suspended. The members of the supervisory organ are appointed by the shareholders at the general meeting. The members can be appointed by the statutes for the first supervisory organ. The Directive also makes provisions for employees to be involved in the management of an SE.

The supervisory organ must appoint a chairman from amongst its members. The management organ must report to the supervisory organ at least every 3 months. The number of members of each organ or the rules for determining it must be laid down in the company's statutes. However, both the management and supervisory organs must have at least two members of either organ.

2. FORMATION

The registered offices of the commercial bodies forming an SE must be in the EU. A company which is registered in a Member State, but has its head office outside any of the Member States, may participate in the formation of an SE provided there is a real and continuous link with Ireland's economy.

In addition, at least two of the bodies must have a presence in different Member States; the exception being when an SE is itself forming a subsidiary SE. A PLC transforming into an SE must for 2 years have had a subsidiary company governed by the laws of another Member State. Once formed, the SE's registered office and head office must be in Ireland.

An SE cannot be registered until:

- agreement for employee involvement in company decisions has been concluded or;
- the special negotiating body has decided to rely on the rules for employee involvement and consultation in force in the Member States where the SE has employees or;
- the period for negotiations has expired having been concluded without agreement.

2.1 Formation by Merger

Public limited companies or existing SEs may merge to form an SE provided at least two of them are governed by the laws of different Member States.

The merger may be completed by acquisition (with the acquiring company becoming an SE) or by the formation of a new company (with the merging companies ceasing to exist). The management or administrative organs of merging companies must draft terms for the merger and have these presented to general meetings of their shareholders for approval.

Under article 16 of Statutory Instrument 21 of 2007, the Director of Corporate Enforcement may oppose the merger in the public interest. Once all the pre-merger acts and formalities have been completed, the High Court must issue a certificate confirming that fact.

The High Court is responsible for scrutinising the legality of the merger and, if satisfied, approving the merger.

The form to be filed at the CRO is:

For registration of the SE by merger - Form SE1.

2.2 Formation of a Holding SE

A holding SE may be formed by two or more private or public limited companies (including existing SEs) formed under the law of a Member State and with a registered office in a Member State. The companies promoting the formation must become majority owned by the SE. At least two of the companies must be governed by the laws of a different Member State. If not, they must for two years, have had a subsidiary company governed by the laws of another Member State, or had a branch in another Member State.

Draft terms for the formation and an explanatory report must be drawn up by the management or administrative organs of the companies promoting the formation, and presented to general meetings of their shareholders for approval.

The explanatory report must explain and justify the legal and economic aspects of the formation and indicate the implications for the shareholders and for the employees of the adoption of the form of a holding SE.

Any Irish registered company involved in its formation must file the draft terms for its formation at the CRO at least one month before the company's general meeting, even if the holding SE is being formed in another member state.

Shareholders have three months after the draft terms have been approved, to notify the company whether they intend to contribute their shares to the formation of the Holding SE. The SE cannot be formed if the minimum proportion of shares are not assigned within that time. Where the conditions are

fulfilled, a notice to that effect, Form SE11, must be delivered to the CRO within 14 days. Shareholders who have not indicated that they intend making their shares available, have a further month in which to do so for the purpose of forming the holding SE.

The forms to be filed at the CRO are:

For companies promoting the formation:

Draft terms of formation of a holding SE - Form SE11

Notice of satisfaction of conditions for the formation of a holding SE - Form SE13

For registration of the holding SE:

Formation of holding SE - Form SE2.

2.3 Formation of a Subsidiary SE

Companies and firms or other legal bodies formed under the law of a Member State with registered offices and head offices within the Community may form an SE by subscribing for its shares. At least 2 of the companies or firms must be governed by the laws of a different Member State or for 2 years have had a subsidiary company governed by the laws of another Member State or had a branch in another Member State.

Form to be filed at the CRO:

Formation of a subsidiary SE - Form SE3

An existing SE may itself set up one or more subsidiaries in the form of SE's. An existing SE may be the sole shareholder.

Form to be filed at the CRO:

Formation of a subsidiary SE by an SE - Form SE5.

2.4 Formation by conversion of an existing PLC

A PLC formed in Ireland may be converted into an SE registered in Ireland where the PLC has for 2 years had a subsidiary governed by the laws of another Member State. This process does not involve the winding up of the PLC or the creation of a new legal person in the form of an SE. The PLC's registered office may not be transferred, at the same time as the conversion is effected, to another Member State. The PLC must prepare draft terms of conversion and an explanatory report and present them for approval to a general meeting of shareholders.

The explanatory report must explain and justify the legal and economic aspects of the conversion and must also indicate the implications for the shareholders and for the employees of the conversion to an SE.

The forms to be filed at the CRO are:

Draft terms of conversion of a PLC to an SE - Form SE12

Conversion of a PLC to an SE - Form SE4

3. TRANSFER OF SE FROM ONE MEMBER STATE TO ANOTHER

The EC Regulation allows that an SE should be able to transfer its registered office to another Member State without being wound up. Therefore an SE registered in another Member State may transfer its registered office to Ireland and an SE registered in Ireland may transfer its registered office to another Member State.

The management or administrative organ draws up a transfer proposal. The proposal should state the current name, registered office and number of the SE and should cover:

- (a) the proposed registered office of the SE;
- (b) the proposed statutes of the SE including, where appropriate, its new name;
- (c) any implication the transfer may have on employees' involvement;
- (d) the proposed transfer timetable;
- (e) any rights provided for the protection of shareholders and/or creditors.

The management or administrative organ draws up a report explaining and justifying the legal and economic aspects of the transfer and explaining the implications of the transfer for shareholders, creditors and employees. An SE's shareholders and creditors are entitled, at least one month before the general meeting called upon to decide on the transfer, to examine at the SE's registered office, the transfer proposal and the report drawn up and, on request, can obtain copies of those documents free of charge.

No decision to transfer may be taken for two months after publication of the proposal.

In the Member State in which an SE has its registered office the court, notary or other competent authority shall issue a certificate attesting to the completion of the acts and formalities to be accomplished before the transfer. Before the competent authority issues the certificate, the SE shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights in respect of the SE (including those of public bodies) have been adequately protected in accordance with requirements laid down by the Member State where the SE has its registered office prior to the transfer. In the case of Ireland, the Registrar of Companies is the competent authority.

The forms to be filed at the CRO are:

Transfer out of Ireland:

Proposed transfer from Ireland of an SE - Form SE10

Transfer from Ireland of an SE - Form SE7

Statement of solvency by the directors of the SE which is proposing to transfer from ROI - Form SE8

Transfer into Ireland:

Transfer to Ireland of an SE - Form SE6

Every invoice, order for goods or business letter, which, at any time between the date on which the transfer proposal and the SE's registration transfer, shall contain a statement that the SE is proposing to transfer its registered office to another Member State under Article 8 and identifying that Member State.

Objection to transfer

The Director of Corporate Enforcement may exercise the power to oppose the transfer of a registered office. Such opposition may be based only on grounds of public interest. Where an SE is supervised by a national financial supervisory authority according to Community directives, the right to oppose the change of registered office applies to this authority as well. Review by a judicial authority shall be possible. The management or administrative organ of the SE may amend the statutes where they are in conflict with employee involvement arrangements.

Where it is proposed to transfer the registered office of an SE from the State to another Member State, any member or members holding, in the aggregate, not less than 10 per cent in nominal value of the issued share capital of the SE, being persons who did not consent to or vote in favour of the resolution for the transfer, may apply to the Court—

- (a) to have the decision to transfer annulled,
- (b) to require the SE to acquire for cash the securities of the shareholders opposed to the transfer, or
- (c) for such other remedy as the Court considers just.

On an application, the Court may, as it considers appropriate, annul the decision to transfer, require the SE to acquire for cash the securities of the shareholders opposed to the transfer or grant such other remedy as it considers just.

The new registration may not be effected until the certificate has been submitted, and evidence produced that the formalities required for registration in the country of the new registered office have been completed.

The transfer of an SE's registered office and the consequent amendment of its statutes shall take effect on the date on which the SE is registered, in the register for its new registered office. When the SE's new registration has been effected, the registry for its new registration shall notify the registry

for its old registration. Deletion of the old registration shall be effected on receipt of that notification, but not before. An SE may not transfer its registered office if proceedings for winding up, liquidation, insolvency or suspension of payments or other similar proceedings have been brought against it.

An SE which has transferred its registered office to another Member State shall be considered, in respect of any cause of action arising prior to the transfer, as having its registered office in the Member States where the SE was registered prior to the transfer, even if the SE is sued after the transfer.

4. COMPANY NAME

Please see Information Leaflet 1 - Company Incorporation regarding the restrictions on the choice of name, which are the same controls applied to other companies registered in Ireland. The name of an SE must be preceded or followed by the abbreviation SE. Use of the term 'SE' at the beginning or end of a company name designates that it is a European Company.

5. FURTHER REQUIREMENTS

5.1 Statutes

While there is no standard format prescribed for the statutes of an SE, (which will depend to some extent on how the SE is formed), the EC Regulation sets out certain matters concerning the management and administration of the company that must be laid out in the statutes. The statutes can normally only be changed by a decision of the shareholders in a general meeting. In order to be approved, 3/4 of the votes cast must be in favour.

Where there is a conflict between the arrangements made for employee involvement and the statutes of an SE, the statutes may be amended by the management or administrative organ without a decision of shareholders but only to the extent needed to resolve the conflict.

Amendments to the statutes must be sent to the CRO within 14 days of the adoption of the amendment.

The form that needs to be filed at the CRO is:
Amendments of Statutes of SE - Form SE14

5.2 Company Officers

An SE must register the members of its organs, giving details of its directors and secretary. For members of an administrative organ, a supervisory organ or a management organ, the forms that need to be completed are the same as those for a PLC.

Changes in the Details of a Company Officer:
Notice of change in directors or secretaries or their particulars - Form B10

The period of appointment must be set out in the company's statutes but cannot be for a period of more than 6 years. Members may be reappointed for one or more further periods of office, subject to any restrictions imposed by the company's statutes.

The statutes may allow members of the SE's organs to be companies or other legal entities but, in this case, a natural person must be designated to exercise the functions of the organ. Persons disqualified from taking part in the management of a public limited company are, likewise, not permitted to take part in the management of an SE.

See also 1.1 Management Structure.

5.3 Meetings

General meetings may be convened at any time by the administrative organ, management organ or supervisory organ. Shareholders holding at least 10% of the SE's subscribed capital (or some lesser percentage, if this is set down in the statutes) may request the SE to convene a general meeting and draw up the agenda. The request will state the items to be placed on the agenda. Shareholders

holding at least 10% of the SE's subscribed share capital may request that additional items be placed on the agenda of a general meeting. The first general meeting of an SE must be held within 18 months of incorporation.

The Director of Corporate Enforcement has the power to convene a general meeting in accordance with the laws applicable to PLC's and has the power to convene a meeting where a meeting was not held following the request of shareholders holding 10% of the subscribed capital.

5.4 Financial Statements

The financial statements requirements that apply to an SE are the same as those that apply to a PLC. A company is obliged to deliver an annual return at least once in every year to the CRO. An annual return contains details of the company's directors and secretary, its registered office, details of shareholders and share capital. The return is required to be made up to the company's Annual Return Date (ARD) and filed with the CRO within 56 days of that date. A Form B1 can be filed online at www.core.ie for a filing fee of €20. An SE has no entitlement to audit exemption as it is a form of public limited company.

5.5 Change in registered office

Any change in the registered office would be detailed on a Form B2. See also 3 - Transferring of SE from one Member State to another.

An SE must deliver to the CRO, the same forms or documents that a PLC is required to register with the CRO. These would include copies of certain resolutions, charge/mortgage details, the location of certain statutory registers if not kept at the registered office address, change of accounting reference date, changes made to the share capital (e.g. share capital increase, allotment of shares).

5.6 Winding Up

The winding up, liquidation, insolvency, cessation of payment and similar procedures that apply to a PLC also apply to an SE.

The form that needs to be filed with the CRO is:

Notice of Initiation or Termination of Winding-up, Liquidation, Insolvency or Cessation of Payment Procedures and Decision to Continue Operating of SE - Form SE15

The ODCE has the power to petition the Court for an SE to be wound up if it appears that it does not have both its head office and registered office in Ireland.

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