

The Societas Europea

August 2006

Introduction

On 8 October 2004, Council Regulation No 2157/2001 on the Statute for a European Company or *Societas Europea* (SE) (the "Regulation") entered into force in the EU. The Regulation was also integrated into the EEA (European Economic Area) Agreement in 2002 which means that in addition to the 25 Member States, an SE can also operate in the EFTA (European Free Trade Area) states, i.e. Switzerland, Iceland, Norway and Liechtenstein.

Although regulations serve to ensure the uniform application of Community law in all the Member States and apply directly without requiring a national act to transpose them, (unlike directives which are only binding as to the result to be achieved upon the Member States to which they are addressed), a surprisingly few number of Member States (Austria, Belgium, Denmark, Finland, Iceland and Sweden) have to date implemented any regulations at national level enabling the set up of an SE on their territory. It is only a matter of time however for the regulatory and legislative framework of SEs to be put in place in all the Member States, creating for the first time the option for investors operating in more than one member state, to establish a single European company for their operations.

In practical terms, the advent of the SE means that companies established in more than one Member State (or EFTA state), can now merge and operate throughout the EU on the basis of a single set of rules¹ and a unified management and reporting system.

Formation and Structure

In accordance with the provisions of Article 15 of the Regulation, the formation of an SE is governed by the law applicable in the Member State where the SE establishes its registered office and shall enjoy legal personality upon its filing within the domestic Registrar of Companies. The registered office of an SE must be located within an EU or EEA state and may be relocated to another EU or EEA state.

The name of an SE shall be preceded or followed by the abbreviation "SE". The share capital of an SE shall be expressed in EURO and the subscribed capital shall not be less than EURO 120 000. Laws of a Member State imposing higher capital requirements for specific service or industry sectors shall apply.

An SE is for all intents and purposes a separate legal entity and the liability of the shareholders of an SE is limited to the respective subscribed share capital of each.

An SE may be formed in one of the following ways:

1. *By Merger or Consolidation:* Public limited companies with a registered office within the EU may form an SE if at least two of the merged companies are governed by the law of different states;

2. *By Forming a Holding Company:* Public and private limited companies with a registered office in the EU may form a holding SE if at least two of the companies are governed by the law of
3. different states, OR if one of the companies has had a subsidiary governed by the law of another state for at least two years;
4. *By Forming a Subsidiary:* Companies and other legal entities governed by the law of a state with a branch within another state of the EU may form a subsidiary SE;
5. *By Reorganization:* Public limited companies with a registered office within the EU may be transformed into an SE if they have had a subsidiary governed by the law of another state for at least two years.

Annual Accounts and Corporate Taxation

Save in circumstances where the SE is providing specialized services such as financial or insurance services, an SE shall be governed by the rules pertaining to the preparation and submission of accounts and to tax treatment as are applicable to public limited liability companies in the Member State in which the registered office of the SE is located.

Advantages

There are a number of advantages which can be reaped by companies established in more than one EU or EEA state which set up an SE.

The unified management and reporting system of an SE will dispense with the need to create a costly and administratively burdensome network of subsidiaries in various EU or EEA states. By setting up as an SE, a company can restructure efficiently with minimum cost and can move across borders as circumstances may warrant, without the need of winding up and re-registering a new company. The transfer of registered office in these circumstances shall not result in the creation of a new legal entity.

An SE also gives the choice to investors between the common law one-tier board system (where an Administrative Board of Directors appointed by the general Meeting has the duty of corporate management) and the continental two-tier board system (where corporate governance is exercised by a Management Board which is appointed and removed by a Supervisory Board).

Employee Involvement in an SE

Council Directive 2001/86/EC (the "Directive") of 8 October 2001 entered into force simultaneously with the Regulation, and its aim is to ensure that employees have a right of involvement in decisions affecting the SE. According to Article 2 of the Directive, involvement of employees is understood to mean the provision of a "mechanism including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company". The Directive represents a supplement to the Regulation and all Member States must implement this Directive into their domestic legal system.

Company Law Shopping

As the Regulation prescribes minimum requirements which must be met and makes extensive use of the “renvoi” principle which basically applies domestic laws and regulations of the Member State in which the registered office of the SE is situated, it is inevitable that an SE will choose to locate its registered office in a jurisdiction with the most favourable corporate or tax regime. Corporate law and taxation (and particularly direct taxation) are far from harmonized in the EU and there is a wide choice for investors to choose from. A number of factors must of course be taken into consideration but a low corporate rate of taxation for trading activities, a favourable tax treatment of incoming and outgoing dividends and an exemption from taxation on capital gains will be among the principal considerations when deciding where to set up an SE.

Totalserve Management Limited, with an array of legal and tax experts would be pleased to assist you in this respect. Please contact us for further details.

NOTES:

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained. Totalserve Management Ltd will be glad to assist you in this respect. Please do not hesitate to contact us.