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Legislative Decree No. 19/2023 and Notarial Guidelines on Cross-Border Extraordinary Transactions

Legislative Decree No. 19/2023, which came into force on March 22, 2023, transposed Directive (EU) 2019/2121 into Italian law, amending Directive (EU) 2017/1132 concerning cross-border transformations, mergers, and demergers (so-called cross-border extraordinary transactions). This legislative intervention introduced uniform procedures and protective measures to ensure legal certainty and transparency in these delicate corporate transactions.

Objectives and Context of Legislative Decree No. 19/2023

The primary objective of Legislative Decree No. 19/2023 is to harmonize Italian regulations with European Union directives concerning cross-border corporate restructuring. By creating consistent legal frameworks across EU Member States, the law aims to foster cross-border investments, simplify bureaucratic processes, and enhance protections for shareholders, creditors, and employees.

Directive (EU) 2019/2121 introduces common safeguards to prevent fraudulent use of cross-border transactions for abusive purposes, such as bypassing legal requirements or evading creditor claims. Legislative Decree No. 19/2023 implements these principles by defining specific roles for corporate bodies, legal representatives, and notaries to ensure legitimate and transparent cross-border operations.

Key Themes of Notarial Guidelines

The initial practical applications of the new rules raised some interpretative uncertainties, which recent notarial guidelines have helped clarify, providing essential operational guidance to ensure uniformity in practical applications. The guidelines provide specific insights into procedural aspects, timelines, and compliance requirements to facilitate the smooth implementation cross-border transactions.

Focus on Cross-Border Transformations

Regarding cross-border transformations, the notarial guidelines have clarified several practical aspects related to publication and documentation requirements. These clarifications aim to streamline procedures, ensure accurate filings, and reduce administrative burdens on businesses.

The guidelines emphasize the importance of clear procedural steps for both "inbound" and "outbound" transformations, helping companies to comply effectively with Italian and EU legal frameworks.

Specific recommendations include detailed timelines for filing documentation, as well as best practices for ensuring that both Italian authorities and foreign entities coordinate efficiently.

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various other technical amendments, is expected to be introduced to the New Zealand Parliament around the middle of this year. It is also expected that an updated Ministerial Directive Letter will be issued before the new legislation is enacted to help guide the Overseas Investment Office's decision-making when assessing applications under the national interest assessment.

Ultimately, while no change is being made to the types of investment that require consent, the changes announced are still the most significant reforms to New Zealand's overseas investment regime in at least 20 years.

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The guidelines also highlight potential challenges related to language barriers, documentation discrepancies, and differing corporate frameworks across Member States. To mitigate these risks, companies are encouraged to provide supplementary documentation, such as certified translations, legal opinions, and auditor confirmations, ensuring comprehensive compliance during cross-border procedures.

Additionally, the guidelines suggest adopting digital platforms and electronic filing methods to expedite documentation processing and reduce the risk of errors. This move aligns with broader EU initiatives aimed at improving the efficiency and security of cross-border business operations.

By establishing clear protocols for data integration, documentation accuracy, and stakeholder communication, the guidelines aim to enhance procedural transparency and minimize disputes in complex cross-border transactions.

"Inbound" Transformations

For "inbound" transformations, where a foreign company relocates to Italy while retaining its legal personality, the guidelines outline:

- operational methods for integrating or correcting any missing or inaccurate data required for the company's registration in the Italian business register; and
- coordination between the authorities of the country of origin and Italian authorities to ensure a smooth and transparent transition process.

In "inbound" cases, notaries are tasked with ensuring that documentation meets Italian regulatory standards, particularly for companies from jurisdictions with differing corporate governance frameworks. The guidelines suggest verifying the consistency of governance structures, shareholder rights, and creditor safeguards to align with Italian legal standards.

To facilitate smoother "inbound" transformations, companies are encouraged to prepare comprehensive documentation that demonstrates the continuity of corporate governance practices. This includes submitting detailed organizational charts, corporate policies, and governance frameworks that align with Italian legal standards.

Moreover, the guidelines emphasize the importance of ensuring that shareholder agreements, management structures, and corporate decision-making frameworks comply with Italian legal principles. Where inconsistencies arise, companies are advised to amend their corporate governance framework before initiating the transformation process to reduce administrative delays.

Notaries are also encouraged to liaise closely with the relevant foreign authorities to ensure that all documentation required by the Italian business register is consistent, clear, and complete. Proactive communication with the authorities of the country of origin can help identify discrepancies early in the process, minimizing the risk of rejection or procedural delays.

Additionally, companies undergoing "inbound" transformations are encouraged to provide supplementary documentation to avoid delays during registration. This may include detailed corporate records, updated financial statements, and compliance reports to facilitate a smoother integration process.

"Outbound" Transformations

For "outbound" transformations, where an Italian company relocates to an EU Member State, the guidelines specify:

- the order in which the required documentation should be submitted to complete the transaction, establishing that documents must be progressively registered and published according to precise timelines; and
- the transmission of data required by the destination country to ensure operational continuity and proper registration with the foreign business register.

The guidelines recommend proactive collaboration between Italian authorities and foreign registration bodies to mitigate delays and procedural obstacles. Clear deadlines and documentation standards ensure that transactions are completed efficiently and without undue administrative burdens.

Furthermore, the guidelines emphasize the importance of carefully sequencing document submission to align with the legal frameworks of both Italy and the destination country. Companies are advised to consult with legal experts in both jurisdictions to identify discrepancies in documentation standards, ensuring all filings comply with local requirements.

To allow smooth communication between authorities, the guidelines recommend designating a dedicated liaison officer or legal representative to oversee the transaction. This individual would be responsible for coordinating deadlines, clarifying procedural ambiguities, and promptly addressing any issues raised by foreign registration bodies.

Additionally, companies undergoing "outbound" transformations are encouraged to maintain comprehensive records of the entire procedural timeline, including communications with foreign authorities, submission receipts, and confirmation of completed filings. Such records can provide essential evidence in the event of disputes or delays.

Exemption from Asset Valuation Report

Another clarification concerns cases of exemption from the obligation to provide an asset valuation report for the transforming company. The guidelines specify that this exemption is available in the following cases:

- when the legal system of the country of origin provides valuation rules equivalent to those in Italy; and
- if the transferring company has already satisfied the asset assessment criteria required by Italian or EU law.

This exemption offers substantial relief for companies operating in jurisdictions with comparable accounting standards, reducing compliance costs and avoiding redundant reporting obligations.

Enhanced Protections for Stakeholders

Beyond procedural aspects, Legislative Decree No. 19/2023 emphasizes safeguarding the interests of shareholders, creditors, and employees. The guidelines recommend measures, such as:

- providing shareholders with detailed financial information on the impact of the transaction;
- ensuring creditors have the opportunity to submit claims before the transaction's completion; and
- facilitating employee engagement in cases where workforce restructuring is anticipated.

These protections are intended to minimize disputes and provide stability throughout the transaction process by ensuring that each procedural step is well-documented and follows the appropriate legal framework. Through enhanced transparency, structured communication with authorities, and diligent record-keeping practices, companies can navigate complex cross-border transactions with increased confidence and security.

Conclusions

The notarial guidelines represent an important interpretative and operational tool to ensure the correct execution of cross-border extraordinary transactions, thereby promoting legal stability and consistency in practical applications. In particular, the adopted approach regarding timeline adjustments, the coordination of publication requirements, and the extension of notarial control fit within a framework aimed at combining procedural simplification with legal safeguards.

For companies seeking to leverage the new opportunities offered by Legislative Decree No. 19/2023, it is essential to adopt an approach consistent with the principles outlined in the notarial guidelines to avoid irregularities and disputes during implementation. Careful evaluation of the operational implications of these instructions is therefore crucial for professionals and companies operating in the cross-border environment.