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## Transposition into Maltese Law of Directive 2005/56/EC on Crossborder Mergers of Limited Companies

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Directive 2005/56/EC on crossborder mergers of limited liability companies was transposed into Maltese law on 15 December 2007 by Legal Notice 415 of 2007. This Legal Notice is subsidiary legislation to the Companies Act (Chapter 386 of Maltese Law). This Act provides for the enactment of Legal Notices (subsidiary legislation) in order to ensure timely implementation of new measures and EU Directives without the need for amendments to the Act itself. In fact, Regulation 3 of the Legal Notice states that:

*Any reference in these Regulations to 'the Act' shall be construed as a reference to the Companies Act, and subject to the provisions of article 2 of the Act shall also apply to these regulations.*

According to Article 67 of this Act:

*a Company is formed by means of capital divided into shares held by its members. The members' liability is limited to the amount, if any, of unpaid on the shares respectively held by each of them.*

A company constituted under this Act has to enter into a memorandum of agreement and be subscribed by at least two persons (Article 68). The contents of the memorandum in the case of a public company shall contain:

*the total amount or an estimate of all costs payable by the company or chargeable to it by reason of its formation up to the time it is authorized to commence business, and of all the costs relating to transactions leading to such authorization. (Article 69.2)*

Thus Regulation 4 (1) of the L.N. transposing the Directive apply to:

*Mergers of companies formed in accordance with the law of a member state and having their registered office, central administration or principal place of business within the Community, provided at least two of such companies are governed by the laws of different member States and provided further that at least one of the merging companies, or the company resulting from the merger, is registered in Malta.*

As regards the applicability of the Act to crossborder mergers, Regulation 5 states that:

*(1) Unless otherwise provided in these regulations a Maltese merging company shall comply with the provisions and formalities of the Act, in particular those concerning the decision-making process relating to the merger, the protection of creditors, debenture holders and holders of securities or shares of the said company, as well as the provisions of any other law in force in Malta concerning the rights of employees.*

*(2) Any law in force in Malta which empowers any authority in Malta to oppose a merger between companies registered in Malta on the grounds of public interest shall also be applicable to a crossborder merger in which a Maltese merging company participates:*

*Provided that this provision shall not prejudice the provisions of article 21 of European Council Regulation 139/2004 of 20 January 2004 on the control of concentrations between undertakings.*

Reference to Article 16 of the Directive is scant, perhaps because in Malta there are no rules in force concerning employee participation. The only reference to employee participation is in Regulation 17 which states that in the scrutiny of the legality of crossborder mergers and the issue of a certificate of Completion of Crossborder Merger, the Registrar

*shall ensure that all the merging companies have approved the common draft terms of the crossborder merger in the same terms and, where appropriate, that arrangements for employee participation have been determined.*

There has been no debate at national level about the transposition of this Directive.