SORAINEN

BALTIC LAW FIRM OF THE YEAR

Awarded by:
The Lawyer
Financial Times & Mergermarket
International Financial Law Review
PLC Which lawyer?
International Tax Review

# CROSS-BORDER MERGER CARD

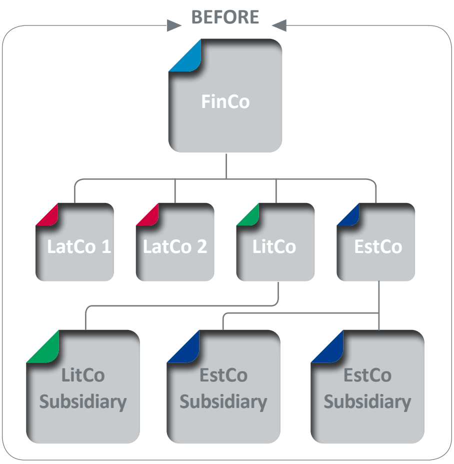
## Summary of scenarios, benefits and issues to consider with cross-border mergers in the Baltics

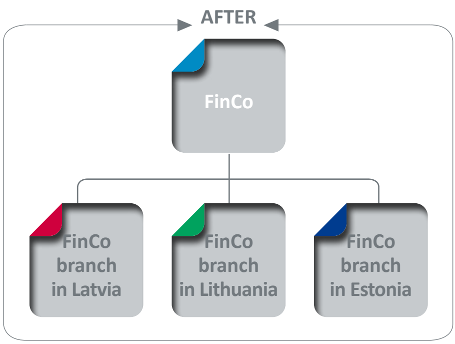
Effective 1 Jan 2014

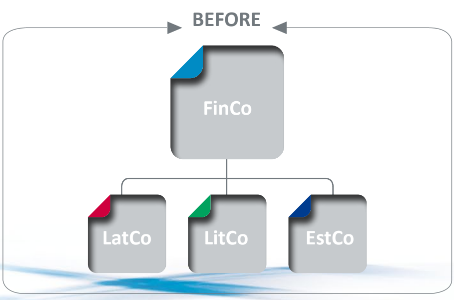
## A CROSS-BORDER MERGER IS:

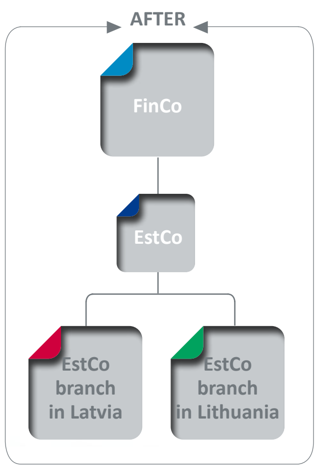
- A special type of merger (reorganisation) available between companies from the European Union (**EU**), Iceland, Norway and Liechtenstein.
- One company (or more) merges with another company (or a new company is created through the merger of at least two companies). The other (acquiring) company takes over all the assets, rights and liabilities of the merged company. As a result of the merger, the merged company ceases to exist and is removed from the commercial register without liquidation. The acquiring company continues its business through its branches in the countries where the merged companies operate.
- A cross-border merger is attractive mostly to businesses operating through group companies that either already have a certain level of functional integration such as unified reporting, matrix management systems, accounting, IT or quality management systems in place so that simplification of the corporate structure is a logical next step, or to companies that plan to increase their efficiency and competiveness in the market through functional, corporate and geographical integration.

## TYPICAL SCENARIOS OF A CROSS-BORDER MERGER:



## COMPANIES QUALIFY FOR A CROSS-BORDER MERGER IF:

- at least two companies are involved in the merger;
- established in different EU Member States (plus Iceland, Norway and Liechtenstein);
- all merging companies are public or private limited liability companies.

| Country | Private limited liability companies | Public limited liability companies |
|---|---|---|
| Estonia | OÜ | AS |
| Latvia | SIA | AS |
| Lithuania | UAB | AB |

## BENEFITS OF MERGER:

- **Tax benefits:**
  - cross-border merger is tax neutral;
  - choice of seat for headquarters (tax benefits depending on centre of main interest (**COMI**)).
- **Business administration costs:**
  - lower equity capital requirements (remain in one country only);
  - more efficient use of capital and possibility to expand investment resources;
  - fewer supervision institutions for regulated business (remain in one country only);
  - simplification of management structure and, if needed, implementation of a matrix management system;
  - simplification and transparency of corporate governance;
  - possibility to review overlapping administrative functions.

  **Corporate image:**
  - more effective know-how sharing;
  - image of a "truly integrated company"/operation in the region;
  - better client service through combined resources;
  - more efficient quality management.

## ISSUES TO CONSIDER BEFORE MERGER:

- **Choice of jurisdiction for the acquiring company considering:**
  - tax planning (phase I of merger structuring is usually a tax analysis);
  - which company is considered as the COMI;
  - choice between a side-step merger (ie merger of sister companies) and an upstream merger (ie subsidiaries are merged into a parent company).

  **Due diligence of transferability of business:**
  - agreements with major partners/creditors may include specific requirement to obtain prior consent of the counterparty;
  - permits for the merger may be needed from supervising institutions (eg, banks, insurance companies);
  - licences may be locked in the merged companies.
- **Analysis of specific procedural rules.** Mandatory requirements of each participating jurisdiction would apply to all merging companies (eg, if an Estonian company participates, the merger agreement must be notarised; if a German company participates, employee participation may be triggered).

## WHAT IS SORAINEN'S ROLE IN CROSS-BORDER MERGERS:

- tax and corporate structuring analysis;
- legal due diligence of transferability of business;
- project management and legal implementation;
- legal support on post-merger issues.

SORAINEN

ESTONIA LATVIA LITHUANIA BELARUS

To date, SORAINEN has advised on cross-border merger transactions in various industries. As a result, SORAINEN is a leader in complex multi-jurisdiction business restructuring.

**Elektroskandia**

Cross-border merger of Baltic operations into an Estonian company with branches in Latvia and Lithuania

Legal Adviser

**HEIDELBERG**

Cross-border merger of Baltic and Finnish subsidiaries into an Estonian company with branches in Latvia, Lithuania and Finland

Legal Adviser

**Seesam**

Cross-border merger of Baltic operations into an Estonian company with branches in Latvia and Lithuania

Legal Adviser

**ERGO**

Cross-border merger of Baltic operations into a European Company (SE) registered in Estonia with branches in Latvia and Lithuania

Legal Adviser

**AON**

Cross-border merger of Baltic insurance brokerage subsidiaries into a Lithuanian company with branches in Latvia and Estonia

Legal Adviser

**SIEMENS**

Cross-border merger of Baltic and Finnish subsidiaries into a Finnish company with branches in Latvia, Lithuania and Estonia

Legal Adviser

**if...**

The first cross-border merger of regulated financial companies in the Baltics after implementation of the EU Cross-Border Merger Directive

Legal Adviser


**ESTONIA**

**Karin Madisson**
Partner

Pärnu mnt 15
10141 Tallinn
ph +372 6 400 900
estonia@sorainen.com

**LATVIA**

**Eva Berlaus**
Office Managing Partner

Kr. Valdemāra iela 21
LV-1010 Riga
ph +371 67 365 000
latvia@sorainen.com

**LITHUANIA**

**Algirdas Pekšys**
Partner

Jogailos 4
LT-01116 Vilnius
ph +370 52 685 040
lithuania@sorainen.com

**BELARUS**

**Maksim Salahub**
Partner

ul Nemiga 40
220004 Minsk
ph +375 17 306 2102
belarus@sorainen.com




ISO 9001 certified
**www.sorainen.com**