

Contents

List of frequently used abbreviations	VII
1. Introduction to Cross-Border Corporate Mobility	1
2. Why is Corporate Mobility Important? The Rationale for Mobility	3
3. National Approaches to Corporate Mobility: Private International Law & Beyond	13
3.1. Real Seat Theory	13
3.2. Incorporation Theory	15
3.3. Implementing Real Seat vs. Incorporation Theories	16
3.3.1. Illustration 1.	17
3.3.2. Illustration 2.	17
3.3.3. Illustration 3.	18
3.3.4. Illustration 4.	18
3.3.5. Illustration 5.	19
3.3.6. Illustration 6.	20
3.3.7. Illustration 7.	20
4. Freedom of Establishment in Europe (EU/EEA)	23
4.1. Historical Background	23
4.2. The Current Position on Freedom of Establishment	28
4.2.1. Interpreting the Freedom of Establishment Articles	35
4.2.1.1. What is an Establishment?	35
4.2.1.2. What Constitutes a Limitation on the Freedom of Establishment?	38
4.2.2. Limitations on the Freedom of Establishment	39
4.2.2.1. Treaty provisions justifying limitations on the Freedom of Establishment	40
4.2.2.1.1. Official Authority	41
4.2.2.1.2. Public Policy/Order.	42
4.2.2.1.3. Public Health	43
4.2.2.1.4. Public Security	43
4.2.2.2. The Gebhard Test	44
4.2.2.3. Imperative/Overriding Requirements in the General Interest	46
5. Current Mechanisms for Cross-Border Mobility	49
5.1. Exercising Freedom of Establishment without changing nationality	50
5.1.1. Outbound Movement without changing nationality.	50
5.1.1.1. Daily Mail	50
5.1.1.2. Cartesio	52
5.1.1.3. Indus	54
5.1.1.4. Marks & Spencer	58
5.1.2. Inbound Movement without changing nationality	59

5.1.2.1.	Centros	60
5.1.2.2.	Inspire Art	62
5.1.2.3.	Überseering	65
5.1.2.3.1.	The Impact of the Centros Trilogy.	68
5.1.2.4.	Kornhaas.	70
5.2.	Exercising Freedom of Establishment and changing nationality	74
5.2.1.	Outbound Movement with a change of nationality	74
5.2.1.1.	VALE	76
5.2.1.2.	Polbud	79
5.2.2.	Inbound Movement with a change of nationality	84
5.2.2.1.	Cross-Border Conversions in lieu of Secondary Legislation.	84
5.3.	Cross-Border Mergers under the Freedom of Establishment	88
5.3.1.	SEVIC	91
5.4.	Secondary Legislation on Cross-Border Mergers.	94
5.4.1.	CBM Directive and the Protection of Stakeholders.	97
5.4.1.1.	Protection of Creditors	97
5.4.1.2.	Protection of Minority Shareholders	97
5.5.	Moving across Borders with the SE Regulation.	99
5.5.1.	Transfer of Registered Office with the SE	106
5.6.	Cross-Border Divisions and Spin-Offs	113
5.7.	Looking to the Future: A Legislative Framework for Cross-Border Divisions and Cross-Border Conversions	118
6.	Brexit and Corporate Mobility	123
7.	Conclusion.	127