

*Practical guide 8:*

# **How to report changes in identity of legal entities**



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***Practical guide 8: How to report changes in identity of legal entities***

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## SUMMARY

This Practical Guide updates, supplements, corrects and replaces the REACH-IT Fact Sheet of 17 April 2009 which briefly outlined the duties of companies that have submitted pre-registrations, registrations or inquiries under Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) that change their name or legal personality. It should specifically be noted that the European Chemicals Agency (ECHA) has reversed its policy on the treatment of asset sales. ECHA has now decided to accept that registrations may be transferred from one legal entity to another legal entity following an asset transfer. Such transfers will be treated as a change of legal personality.

## 1. INTRODUCTION

Article 22(1)(a) of REACH requires a registrant to inform the Agency without delay of any change in his identity, such as his name or address.

Pursuant to Commission Regulation (EC) No 340/2008 (Fee Regulation) a fee is payable for a change in identity of the registrant involving a change in legal personality (see Table 3 of the Fee Regulation). However, pursuant to Article 5(3)(c) of the Fee Regulation no fee is payable where there is a change of identity of the registrant not involving a change of legal personality.

The purpose of this Practical Guide is to mainly describe the legal consequences of a number of different basic scenarios in which a legal entity which has submitted a registration under REACH changes his identity.

These scenarios do not constitute an exhaustive list of situations where a legal entity changes its identity. Moreover, real cases can be more multifaceted involving many legal entities and a number of consecutive (or “chained”) changes in legal personality. It may therefore be advisable in certain cases to contact National Helpdesks for further advice.

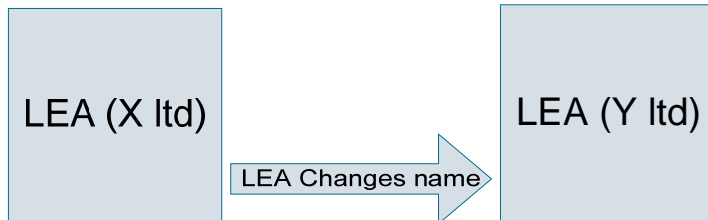
The legal solutions presented in the examined cases focus on the obligations of registrants (in particular, in relation to whether or not a fee should be paid). However, the principles set out below also apply to all companies that are pre-registrants, PPORD notifiers, CLP notifiers and/or inquirers, although in those cases no fee has to be paid for changes of legal personality.

For guidance on determining what actions companies need to carry out in REACH-IT once they have determined which of the above listed cases applies to their particular situation, industry is advised to consult REACH-IT Industry User Manual Part 17 - Legal Entity Change.

## 2. CHANGE OF CORPORATE NAME

### 2.1. Change of corporate name

Legal Entity A (LEA) changes corporate name from X ltd to Y ltd



#### **Consequences under REACH**

- a) LEA needs to inform ECHA of his change of identity.
- b) LEA needs to use REACH-IT change of name functionality to update this change.
- c) Evidence to be provided: Extract from commercial register showing change of name.
- d) No fee is payable pursuant to Article 5(1)(c) of the Fee Regulation

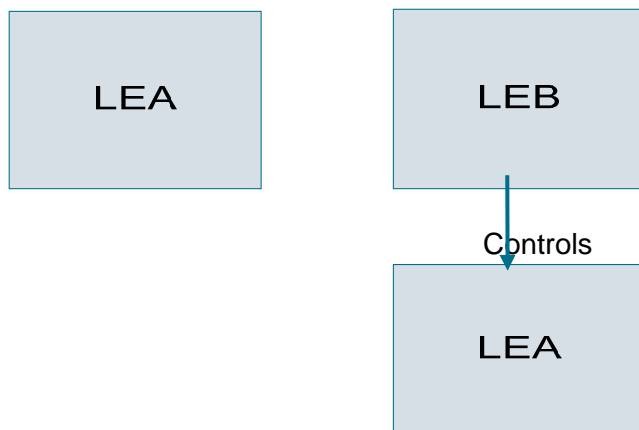
## 3. CHANGE OF QUALITY OF OWNERSHIP OF REGISTRANT

### 3.1. Change of shareholding of registrant

LEA is a registrant under REACH.

Legal Entity B (LEB) acquires control over the management of LEA.

LEA keeps his legal personality and continues to exist.



#### Consequences under REACH

- a) LEA will continue to be the owner of the registration.
- b) No obligation on LEA or LEB to inform ECHA of this change of control

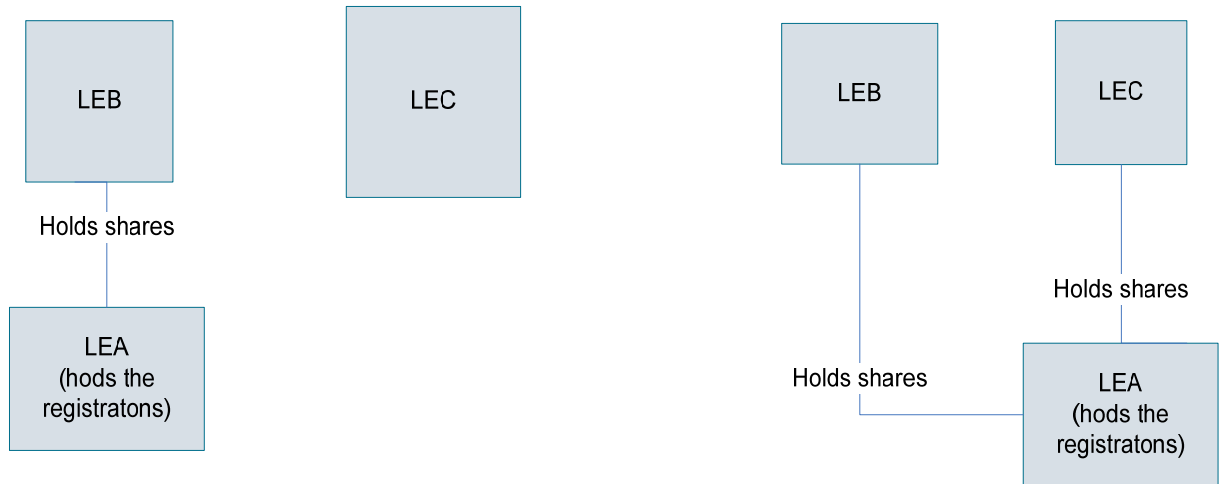
**Remark:** if the corporate name of LEA changes, an update has to be done in the company's data in REACH-IT. Extract from commercial register showing change of name should be provided. No fee is payable.

### 3.2. Change from sole ownership to joint ownership of registrant

LEA is the registrant.

LEB is the sole owner of LEA.

Legal Entity C (LEC) and LEB become joint owners of LEA



#### Consequences under REACH

a) LEA will continue to be the owner of the registration.

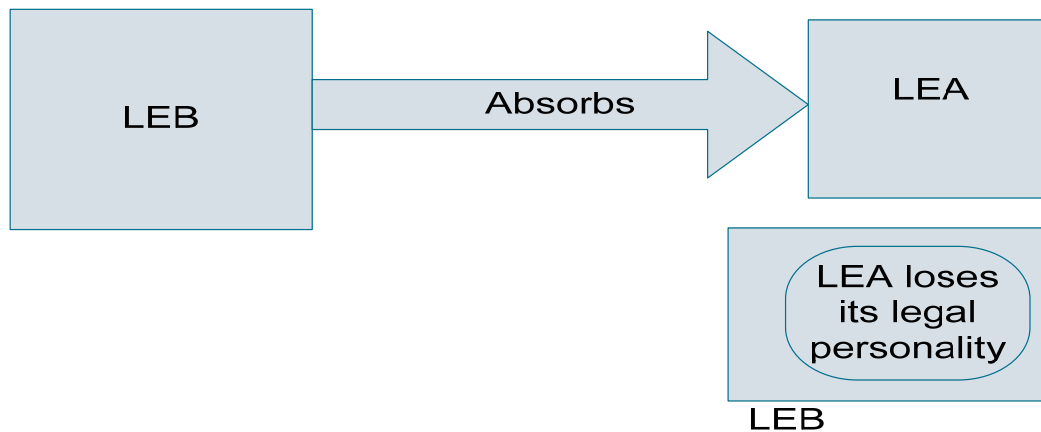
b) No obligation on LEA, LEB and LEC to inform ECHA of this change of control

**Remark:** if the corporate name of LEA changes, an update has to be done by LEA in the company's data in REACH-IT. Extract from commercial register showing change of name should be provided. No fee is payable.

## 4. MERGERS AND TAKEOVERS

### 4.1. Absorption

LEA is the registrant  
LEA is absorbed (or acquired) by LEB.  
LEA ceases to exist.



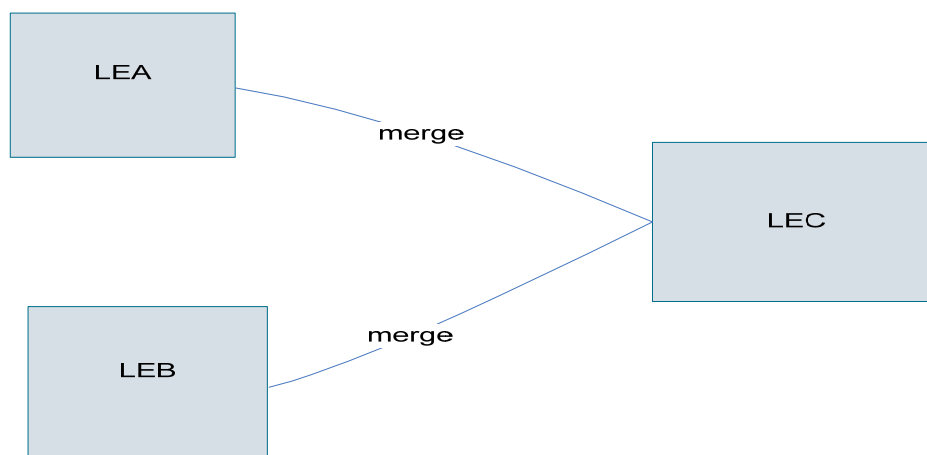
#### Consequences under REACH

- a) LEB is the legal successor of LEA and takes over the registration(s) of LEA. This constitutes a change of legal personality within the meaning of the Fee Regulation.
- b) LEA's change of legal personality needs to be updated in REACH-IT using the legal entity change functionality.
- c) Evidence to be provided: evidence illustrating this development such as the share purchase agreement.
- d) LEB will be charged a single fee described in Table 3 of the Fee Regulation for this change of legal personality irrespective of the number of registrations transferred from LEA to LEB (e.g., if LEA held 5 registrations and they are all transferred to LEB following LEB's acquisition of LEA, LEB only needs to pay one update fee, i.e., €1500 if it is not an SME).



## 4.2. Merger

LEA and LEB merge to form new LEC. LEA and LEB cease to exist



### Consequences under REACH

**In all the cases below** LEC is the legal successor of LEA and LEB. This constitutes a change of legal personality within the meaning of the Fee Regulation.

#### Case 1: where LEA is the only company that has registered under REACH

- LEA's change of legal personality into LEC needs to be updated in REACH-IT using the legal entity change functionality.
- Evidence to be provided: evidence illustrating this development such as the share purchase agreement.
- LEC will be charged a single fee described in Table 3 of the Fee Regulation.

#### Case 2: Where LEA and LEB both hold registrations for different substances

- In order to benefit from both LEA's and LEB's registrations LEA, LEB and LEC will need to update the changes of legal personality of both LEA and LEB in REACH-IT using the legal entity change functionality.
- Evidence to be provided: evidence illustrating this development such as the share purchase agreement.
- LEC will be charged two legal entity change fees, one fee for taking over LEB's registrations and one fee for taking over LEA's registrations.

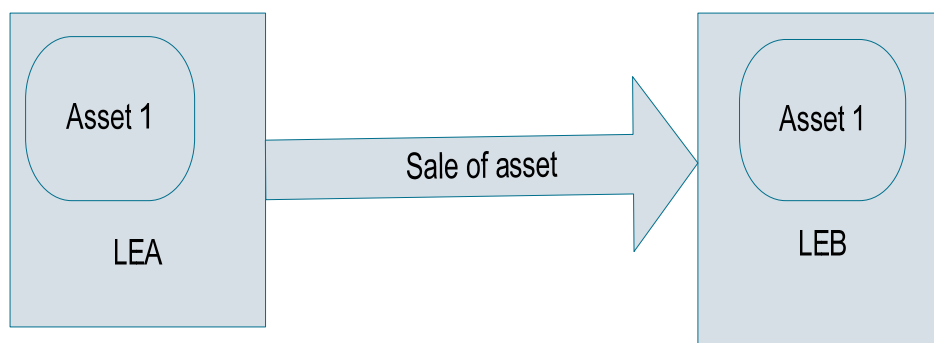
#### Case 3: Where LEA and LEB hold some registrations for the same substance

- As case 2 above. LEC will be charged two legal entity change fees, one fee for taking over LEB's registrations and one fee for taking over LEA's registrations.
- However for those registrations made by LEA and LEB for the same substance LEC will only receive one of the registrations (see REACH-IT Industry User Manual part 18 for further details).
- LEC may need to update registration where acquisition of LEA and LEB may result in a change of tonnage band. An update fee will be charged unless the original registration of either LEA or LEB already covers the relevant tonnage band

## 5. ASSET SALES AND COMPANY SPLITS

### 5.1. Total sale of assets related to registration

LEA is a registrant for the import/ manufacture of a substance. LEA sells to LEB the plant responsible for the import/ manufacture of the registered substance. The plant has no legal personality.



#### Consequences under REACH

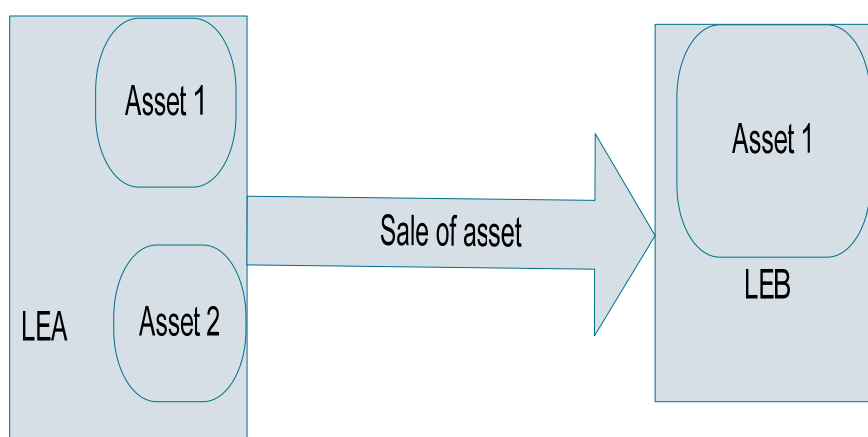
- a) LEA may transfer the ownership of its registration for the substance to LEB. This will be treated as a change of legal personality by ECHA.
- b) LEA and LEB will need to update the change of ownership of the registration using the legal entity change functionality
- c) Evidence to be provided: evidence illustrating this development such as the asset sale agreement
- d) LEB will be charged the fee for change of legal personality described in Table 3 of the Fee Regulation.

**Remark:** If LEA transferred registrations for two or more substances to LEB following an asset sale LEB still would be charged one single legal entity change fee if this transfer is part of the same transaction.

## 5.2. Partial sale of assets related to registration

LEA is a registrant for the manufacture of a substance registered by LEA under REACH. LEA has two plants manufacturing the registered substance. LEA sells to LEB one of the plants but keeps the other plant in which it continues to manufacture the substance

The plants have no legal personality.



### Consequences under REACH

LEA and LEB need to agree who will benefit from the registration

#### Case 1: LEA no longer needs the registration

LEA can transfer ownership of registration to LEB in accordance with the previous scenario

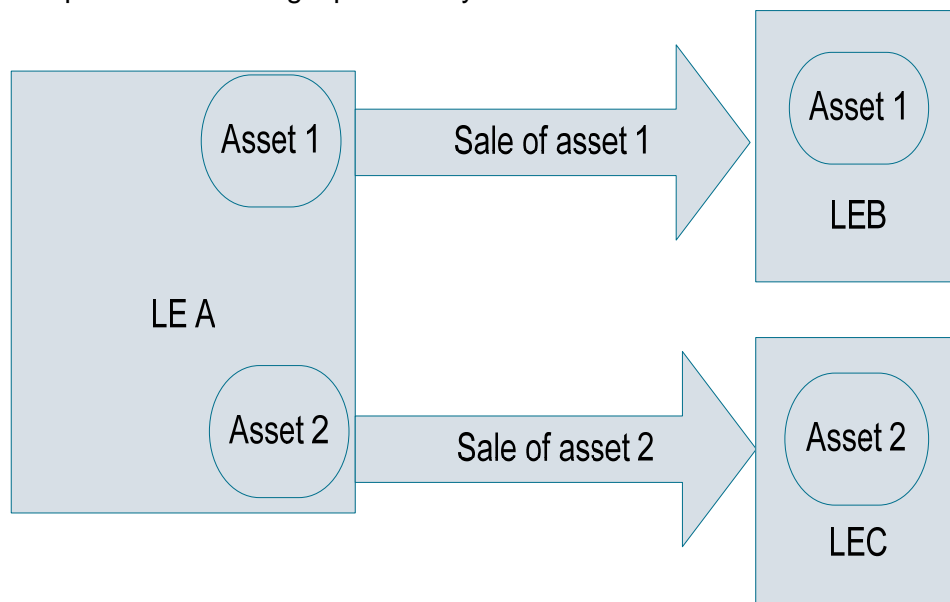
#### Case 2: LEA needs the registration

- a) Only one legal entity can benefit from the registration. In this case LEB cannot benefit from LEA's registration.
- b) LEB will be a first-time manufacturer on the EU market and needs to do the following:
  - (i) submit a late pre-registration for the substance within 6 months of first date of manufacture/ import of the substance and at the latest 12 months prior to the relevant registration date (if the substance is a phase in substance)
  - (ii) submit an inquiry followed by a registration if it concerns a phase-in substance that may no longer be pre-registered or a non-phase in substance
- c) LEA may need to update his registration to indicate change in the annual/ total quantities manufactured by him.

### 5.3. Total sale of assets related to registration to multiple buyers

LEA has registered for the manufacture of substances (a) and (b). LEA has two plants manufacturing the registered substances. LEA sells to LEB the plant manufacturing substance (a) [asset1] and to LEC the plant manufacturing substance (b) [asset 2].

The plants have no legal personality.



#### Consequences under REACH

- a) LEA may transfer the ownership of the registration of substance (a) to LEB and of substance (b) to LEC.
- b) LEA, LEB and LEC will need to update the change of ownership of the registrations using the legal entity change functionality
- c) Evidence to be provided: evidence illustrating this development such as the asset sale agreement
- d) LEB and LEC will each be charged the fee for change of legal personality described in Table 3 of the Fee Regulation.

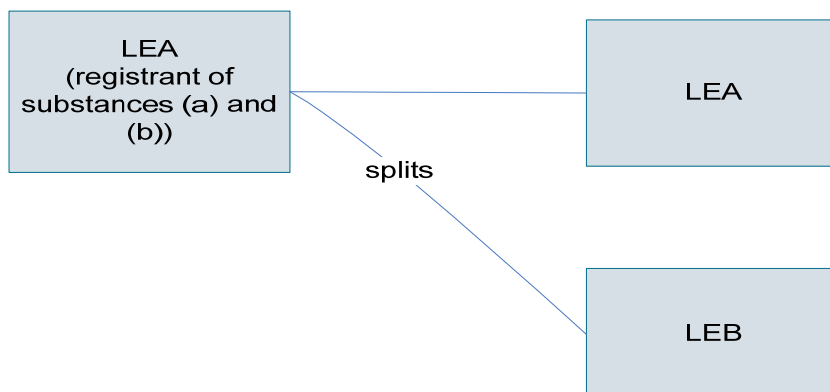
**Remark:** where LEA sells assets relating to the same registration to LEB and LEC, the three entities (LEA, LEB, and LEC) will need to decide which one of them can benefit from the registration. The legal entities not benefiting from the registration will need to submit a new registration.

## 5.4. Spin off

LEA is the holder of a registration for substances (a) and (b).

LEA spins-off (splits) and forms a new LEB.

However, LEA continues to exist.



### Consequences under REACH

#### LEA and LEB need to agree who shall keep the registration numbers

##### Case 1: LEA keeps all its registrations

- a) LEA has no obligations under REACH
- b) LEB cannot benefit from LEA's registrations.
- c) If LEB wants to market substances (a) and (b) LEB will need to submit
  - (i) a late pre-registration at the latest 12 months prior to the relevant registration date (if the substance is a phase in substance )
  - (ii) an inquiry followed by a registration if it concerns a phase-in substance that can no longer be pre-registered or a non-phase in substance

##### Case 2: LEA transfers all its registrations to LEB

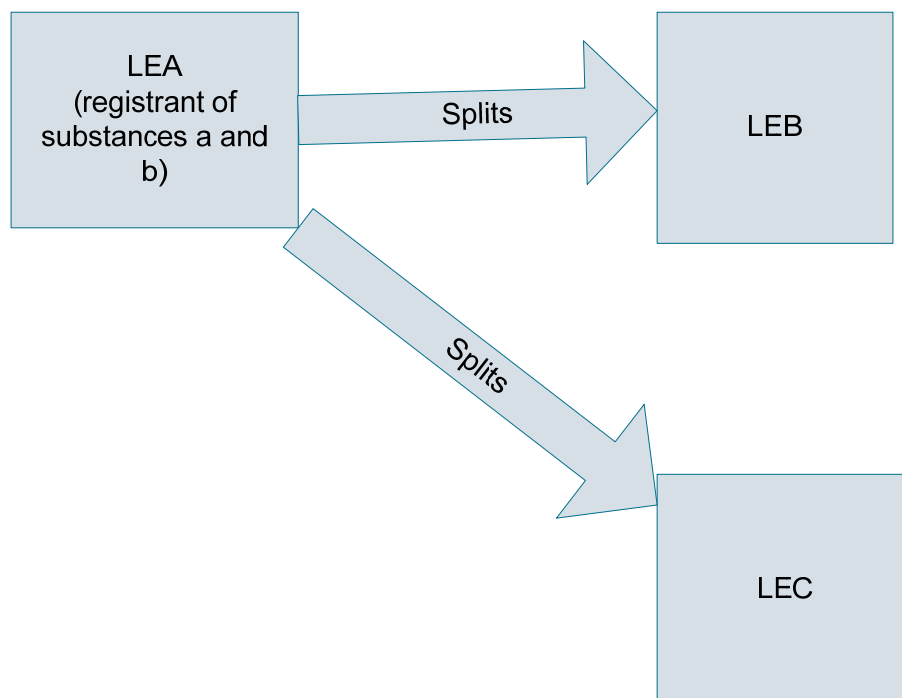
- a) LEB is the legal successor of LEA.
- b) In order for LEB to benefit from LEA's registrations LEA and LEB will need to update the change of legal personality of LEA in REACH-IT using the legal entity change functionality.
- c) Evidence to be provided: evidence illustrating this development.
- d) LEB will be charged one single legal entity fee.

##### Case 3: LEA transfers registration for substance (a) to LEB but keeps registration for substance (b)

- a) The registration for substance (a) can be transferred to LEB.
- b) LEA and LEB will need to update the change of ownership of the registration for substance (a) on REACH-IT using the legal entity change functionality.
- c) Evidence to be provided: evidence illustrating this development such as the share purchase agreement.
- d) LEB will be charged one single legal entity fee.

## 5.5. Company split

LEA is the holder of a registration for substances (a) and (b). LEA splits into two new legal entities LEB and LEC. LEA ceases to exist



### Consequences under REACH

#### Case 1: All registrations are transferred to LEB

- a) LEB will be the legal successor of LEA
- b) LEB will need to update the change of ownership of the registration for substances (a) and (b) on REACH-IT using the legal entity change functionality.
- c) Evidence to be provided: evidence illustrating this development.
- d) LEB will be charged one single legal entity fee.
- e) If LEC wants to market substances it will need to submit
  - (i) a late pre-registration at the latest 12 months prior to the relevant registration date (if the substance is a phase in substance )
  - (ii) an inquiry followed by a registration if it concerns a phase-in substance that can no longer be pre-registered or a non-phase in substance

#### Case 2: Registrations are shared between LEB and LEC

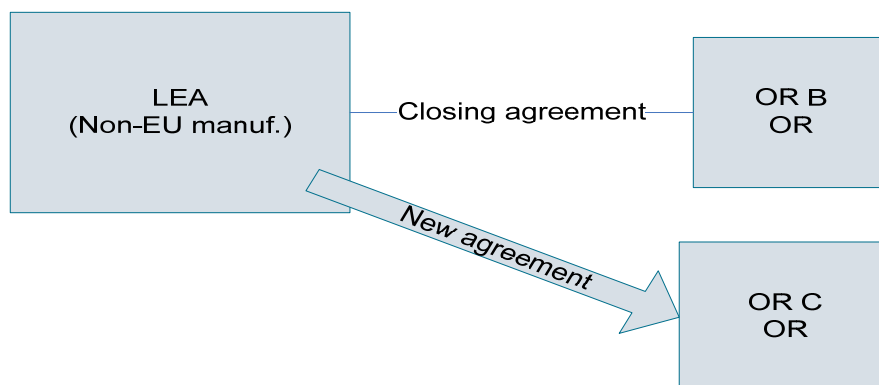
- a) LEB and LEC are the legal successors of LEA
- b) LEA, LEB and LEC will need to update the change of ownership of the registrations using the legal entity change functionality
- c) Evidence to be provided: evidence illustrating this development
- d) LEB and LEC will each be charged the fee for change of legal personality described in Table 3 of the Fee Regulation.

## 6. ONLY REPRESENTATIVES

### 6.1. Change of Only representative

ORB is the only representative of non EU manufacturer LEA. ORB has registered substance x for LEA.

LEA wishes to replace ORB with ORC as its only representative



#### Consequences under REACH

- a) There is a change of legal personality, because the identity of the registrant has changed.
- b) ORC will need to update this change on REACH-IT
- c) ORC will need to provide evidence of (i) the agreement of LEA appointing it as its only representative and (ii) the agreement of ORB to the transfer of the registration to ORC.
- d) ORC will be charged the fee for change of legal personality described in Table 3 of the Fee Regulation. The fee is determined upon the size of LEA.

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