

Cross border mergers of limited liability companies**Introduction**

On 26th October 2005, Directive 2005/56/EC on cross-border mergers of limited liability companies was approved. The Directive aimed to simplify the procedures of cross border mergers between limited liability companies which are incorporated under the laws of a Member State and which have their registered office, central administration or principal place of business within the European Community, provided that at least two of these companies are governed by the law of different Member States.

In 2007, Cyprus, with Law N. 186(I)/2007, implemented in the Companies Law, Cap 113 the Directive, facilitating in this way cross border mergers with Cyprus companies. Under the Law, a cross border merger may only take place between companies for which merger is permitted in accordance with the provisions of the national law of the member state in which they are incorporated. In Cyprus any company may take part in a cross border merger, except companies with limited liability by guarantee and companies under dissolution.

Steps to be taken**1. Merger Plan**

The directors of each of the Cyprus companies taking part in the cross border merger must draft the cross border common merger plan. This plan must include at least the following:

- (a) the form, name and registered office of each of the merging company and the details of the limited liability company resulting from the cross border merger
- (b) the share exchange ratio of the share capital and if relevant, the amount of any cash payment in settlement
- (c) the terms of allotment of shares of the share capital of the resulting from the cross border company
- (d) any possible consequences of the cross border merger on employment
- (e) the date from which the shares will have a right to dividends and any conditions regarding this right
- (f) the date from which the transactions of the merging limited liability companies will be treated for accounting purposes as being those of the limited liability company resulting from the cross border merger
- (g) the rights conferred by the limited liability company resulting from the cross border merger on members enjoying special rights or on holders of securities other than shares representing the company capital, or the measures proposed concerning them
- (h) any special advantages given to the experts who have examined the cross border merger plan or members of the board of directors of the management or supervisory organs of the merged companies

- (i) the memorandum and articles of association of the company resulting from the cross border merger
- (j) if necessary, information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the limited liability company resulting from the cross border merger are determined
- (k) information on the value of the assets and liabilities which are transferred to the resulting liability company;
- (l) the dates of the accounts of the merged companies which were used to set down the terms of the cross border merger.

The proposed merger plan must be approved by a board of directors meeting whereby a general meeting of the shareholders will be called.

The directors of the merging Cyprus companies shall ensure that the proposed merger plan is submitted to the Registrar of Cyprus Companies and published by the Registrar of Cyprus Companies in the Official Gazette of the Republic for each of the merging companies at least one month before the date of the general meeting.

2. **Directors Report**

The Directors of each of the merging Cyprus companies must prepare a written report explaining and justifying the legal and economic aspects of the cross border merger and explaining what impact will this have on the members, creditors and employees. This report shall be made available to the members and to the representatives of the employees at least one month before the date of the general meeting.

3. **Expert Report**

The cross border merger plan and the directors' report must be examined by an independent expert. This expert is appointed by the Court upon a request by the merging Cyprus company. Merging Cyprus companies are allowed to appoint a joint expert. The expert can request any information and documents to help him draw up the report to the shareholders. The report must include the method adopted to arrive at the exchange ration proposed, whether such method is adequate and any valuation difficulties which may have arisen.

If the members of each of the companies involved in the cross border merger agree to it then no such expert report needs to be drawn up.

4. **General Meeting**

The common cross border merger plan will be approved by a special resolution at the general meeting of each of the merging Cyprus Companies after taking into consideration the directors' report and the expert's report.

The general meeting may reserve the right to make implementation of the cross border merger conditional on express ratification by it, of the arrangements decided, on with respect to the participation of employees in the limited liability company resulting from the cross border merger, once the cross border merger is approved, the general meeting must expressly state whether its accepts the possibility for the members of any other merging non Cyprus company to use the procedure envisaged by the national legislation of such

other merging company, which permits the examination and amendment of the share exchange ratio or compensation to minority shareholders, without preventing the filing of the cross border merger.

The decision resulting from the application of this procedure will be binding on the limited liability company resulting from the cross border merger and on all of its members.

Court Procedure

After the cross border merger has been approved by a special resolution of the general meeting, each merging Cyprus Company shall apply to the Court for the issue of a certificate which will expressly state that the pre-merger acts and formalities have been fulfilled. This is the pre-merger certificate and the Court that has jurisdiction is the Court of the place where the registered office of each merging company is situated.

This certificate may be issued by the Court irrespective if a procedure has commenced from any other merging limited liability non Cyprus company for the examination and modification of the share exchange ratio or compensation to minority shareholders. In such case, the Court must state in the Court Order that such procedure is pending.

If the resulting limited liability company is in Cyprus, then the District Court where its registered office is situated, is competent to examine the legality of the cross border merger in relation to its completion and, where suitable, the formation of a new company resulting from the cross border merger.

The Court in particular will examine whether the merging companies approved the common cross border merger plan under the same terms and if the arrangements of the participation of the employees in relation to each merging Cyprus Company have been followed in accordance with the Law and in accordance to the national legislation for every merging non Cyprus Company.

For the Court to examine the above, within 6 months of the issue of the Pre-Merger Certificate, each merging Cyprus company shall submit to the Court a second application together with the pre-merger certificate or the equivalent of a pre-merger certificate issued for the non Cyprus merging company, as well as the common cross border merger plan approved at the general meeting by each of the Cyprus merging companies and non Cyprus merging companies.

If the Court is satisfied, it will issue a Court Order approving completion of the merger and fixing a date on which the cross border merger is considered to be effective.

Registration

The above Court Order must be delivered to the Registrar of Cyprus Companies by each of the merging Cyprus companies for registration and publication in the official Gazette of the Government, together with a copy of the memorandum of the new company which is incorporated upon completion of the cross border merger.

Upon receipt of the Court Order, the Registrar of Cyprus Companies will inform, in respect of each merging company of another member state, the registry kept according to the national legislation in the member state and in which registry each of the said merging companies was required to submit the documents showing that the cross border merger has taken effect.

Upon receipt by the Registrar of Cyprus Companies of the consent and approval of the completion of the cross border merger by the authorised body of the other member state, the Registrar of Cyprus Companies will register and publish this in its records and in the Official Gazette of the Government.

Results

The Registrar of Cyprus Companies will remove from its registry the Cyprus Companies which were absorbed in the merger.

If the merger occurred by acquisition of one or more companies by another company, it takes effect from the date set by the Court in the above Court Order, with the following consequences:

- a) all the assets and liabilities of the company being acquired shall be transferred to the acquiring company;
- b) the members of the company being acquired shall become members of the acquiring company;
- c) the company being acquired shall cease to exist;

If the merger occurred by registration of a new company it takes effect from the date set by the Court in the above Court Order, with the following consequences:

- a) all the assets and liabilities of the merging companies shall be transferred to the new company;
- b) the members of the merging companies shall become members of the new company;
- c) the merging companies shall cease to exist;

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