

Merging foreign jurisdiction companies with a BVI Company*September 2011***I. Introduction**

This advice constitutes general advice only on the merger of a BVI Business Company with a company incorporated or registered outside the jurisdiction of the British Virgin Islands ("foreign company") where the surviving company will be the BVI Business Company.

The Act permits mergers between a BVI Business Company and a foreign company, provided that the merger is permitted by the relevant foreign law.

The foreign company must comply with the laws of its jurisdiction in relation to the merger.

The BVI Business Company must be in good standing at the Registry of Corporate Affairs, having paid all of its annual licence fees to date.

II. Documents and Procedure**Plan of Merger**

The directors of the BVI Business Company must approve a written Plan of Merger.

The Plan of Merger is required to contain the following information:

1. the names of each constituent company and the name of the surviving company.
2. with respect to each constituent company:
 - the designation and number of outstanding shares of each class of shares, specifying each such class entitled to vote on the merger; and
 - a specification of each such class, if any, entitled to vote as a class
3. the terms and conditions of the proposed merger, including the manner and basis of canceling, reclassifying, or converting shares in each constituent company into shares, debt obligations or other securities in the surviving company, or money or other assets or a combination thereof; and
4. a statement of any amendment to the memorandum or articles of the surviving BVI Business Company to be brought about by the merger.

III. Resolutions

The Plan of Merger must then be authorised by a resolution of shareholders and the outstanding shares of every class or shares that are entitled to vote on the merger as a class if the memorandum or articles so provide or if the Plan of Merger contains any provisions that, if contained in a proposed amendment to the memorandum or articles, would entitle the class to vote on the proposed amendment as a class.

If a meeting of the shareholders is to be held for the purposes of the resolutions, notice of the meeting, accompanied by a copy of the Plan of Merger, must be given to each shareholder, whether or not entitled to vote on the merger.

If the resolutions are to be passed by consent in writing of the shareholders, a copy of the Plan of Merger is to be given to each shareholder whether or not entitled to consent to the Plan of Merger.

IV. Articles of Merger

After approval of the Plan of Merger by the directors and shareholders, the Articles of Merger must be executed by each constituent company.

The Articles of Merger must contain:

- the Plan of Merger
- the date on which the memorandum and articles of the BVI Business Company was registered by the Registrar of Corporate Affairs; and
- the manner in which the merger was authorised with respect to each constituent company

V. Filings with the Registrar of Corporate Affairs

The following documents must then be filed with the Registrar of Corporate Affairs:

- the Articles of Merger; and
- any resolution to amend the memorandum and articles of the surviving BVI Business Company

Once the Registrar of Corporate Affairs is satisfied that the requirements of the Act have been complied with, he will register the aforesaid documents and will issue a Certificate of Merger.

Since it is intended that the surviving company shall be the BVI company, the merger will be effective on the date of registration of the Articles of Merger (or some other date, not later than 30 days thereafter, as may be stated in the Articles of Merger).

IV. Merger with a subsidiary company

The Act also permits a merger between a parent company and its subsidiary. For the purposes of merger under the Act, a “subsidiary company” is a company in which at least 90% of its outstanding shares of each class of shares are owned by another company. A “parent company” is a company that owns at least 90% of the outstanding shares of each class of shares of another company.

LEGAL NOTE:

We made no investigation of and expressed no opinion in relation to the laws of any jurisdiction other than the British Virgin Islands. This opinion is to be governed by and construed in accordance with the laws of the British Virgin Islands and is limited to and is given on the basis of the current law and practice in the British Virgin Islands. We assume no obligation to notify you on a continuing basis of any change in our opinions or of applicable law after the date hereof.

NOTES:

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained. Totalserve Trust Company Ltd will be glad to assist you in this respect. Please do not hesitate to contact us.