

Cross border mergers of limited liability companies

October 2011

I. Introduction

On 26th October 2005, Directive 2005/56/EC on cross-border mergers of limited liability companies was approved. 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.

II. Types of Merger

- a. One or more limited liability companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company in exchange for the issue of shares in the acquiring company to their members and if applicable a cash payment not exceeding 10% of the nominal value and where they have no nominal value, of their accounting par value.
- b. Two or more limited liability companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another new limited liability company that they incorporate, in exchange for the issue of shares of the new company to their members and if applicable a cash payment not exceeding 10% of the nominal value and where they have no nominal value, of their accounting par value.
- c. A limited liability company on being dissolved without going into liquidation, transfers all of its assets and liabilities to a limited liability company which is the holder of all the shares representing its share capital.

III. Steps to be Taken

The directors of each of the Cyprus companies taking part in the cross border merger must draft the cross border common merger plan which 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.

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 this will 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.

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 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.

IV. 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 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.

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.

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.

V. 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.

IV. 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:

- all the assets and liabilities of the company being acquired shall be transferred the acquiring company;
- the members of the company being acquired shall become members of the acquiring company;
- the company being acquired 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:

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

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.