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LAW FIRM

CROSS-BORDER MERGERS OF LIMITED LIABILITY COMPANIES



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Cyprus Companies Law, Cap. 113, consistent with the relevant provisions of Directive 2017/1132/EC (the “Directive”) of the European Parliament and of the Council of 14 June 2017 shall apply to cross-border mergers of limited liability companies, where at least one of the merging limited liability companies is a Cypriot company or where the limited liability company resulting from the cross-border merger is a Cypriot company.

Cross-border merger of limited liability companies, shall mean the merger of limited liability companies incorporated in accordance with the legislation of a Member State, having their registered office, central administration, or main place of establishment within the community, subject to at least two of these companies being regulated by the laws of different Member States.

Definition

“Merger” shall mean an operation whereby:

(a) one or more limited liability companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company – the acquiring company – in exchange for the issue to their members of securities or shares representing the capital of that acquiring company and, if applicable, a cash payment not exceeding 10% of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities or shares; or

(b) two or more limited liability companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another limited liability company that they form – the new company – in exchange for the issue to their members of securities or shares representing the capital of that new company and, if applicable, a cash payment not exceeding 10% of the nominal value, or in the absence of a nominal value, of the accounting par value of those securities or shares; or

(c) a limited liability company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the limited liability company holding all the securities or shares representing its capital; or

(d) one or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company, the acquiring company, without the issue of any new shares by the acquiring company, provided that one person holds directly or indirectly all the shares in the merging companies or the members of the merging companies hold their securities and shares in the same proportion in all merging companies.

Conditions relating to cross border mergers

Cross-border mergers shall only be allowable between types of companies which may merge under the provisions of the national laws of the relevant Member States.

Every Cypriot company may take part in a cross-border, except, limited liability companies by guarantee and companies under liquidation.

Merger Plan

The directors of each of the Cypriot companies taking part in the cross-border merger, shall draw the terms of the cross-border merger. The common draft terms include at least the following particulars:

- (a) the form, name and registered office of the merging companies, as well as that information proposed for the limited liability company resulting from the cross-border merger;
- (b) the ratio applicable to the exchange of securities or shares representing the company capital and the amount of any cash payment, if applicable;
- (c) the terms for the allotment of securities or shares representing the capital of the company resulting from the cross-border merger;
- (d) the likely repercussions of the cross-border merger on employment;

- (e) the date from which the holding of such securities or shares representing the company capital will entitle the holders to share in profits, as well as any special conditions affecting that entitlement;
- (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 granted to the experts who examine the draft terms of the cross-border merger or to members of the board of directors of the supervisory or controlling organs of the merging limited liability companies;
- (i) the memorandum and articles of association of the company resulting from the cross-border merger;
- (j) where appropriate, 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 evaluation of the assets and liabilities which are transferred to the limited liability company resulting from the cross-border merger;
- (l) dates of the merging companies' accounts used to establish the conditions of the cross-border merger;
- (m) details of the offer of cash compensation for members who voted against the approval of the common draft-terms of the cross-border merger;
- (n) any safeguards offered to creditors, such as guarantees or pledges.

Publication

The proposed terms of the merger plan must be approved by the board of directors of the Cypriot company and shall be presented for approval at a general meeting of the shareholders.

The merger plan must be filed by the directors in a timely manner with the Registrar of Cyprus Companies and published by the Registrar of Cyprus Companies in the Official Gazette of the Republic of Cyprus at least one month before the date of the general meeting.

Director's Report

The directors of each of the merging Cypriot companies shall draw up a report intended for the members, explaining and justifying the legal and economic aspects of the cross-border merger and explaining the implications of the cross-border merger for members, creditors and employees.

The report shall be made available in any case electronically to the members and to the representatives of the employees or, where there are no such representatives, to the employees themselves, not less than six weeks before the date of the general meeting.

Independent Expert Report

For each merging Cypriot company an independent expert report should be prepared and made available to the members not less than one month before the date of the general meeting.

Such independent expert may be either a natural or a legal person.

As an alternative to experts operating on behalf of each of the merging companies, the independent expert may be appointed by the District Court of Cyprus, pursuant to an application by the Cypriot merging company.

The expert report should include at least the following particulars:

- (a) indicate the method or methods used to arrive at the share exchange ratio proposed;
- (b) indicate the method or methods used to determine the cash compensation proposed;
- (c) state whether such method or methods are adequate in the case in question, indicating the values arrived at using each such method and giving at the same time, an opinion on the relative importance attributed to such methods in arriving at the value decided on;
- (d) describe any special valuation difficulties which have arisen.

The necessity of the expert report can be waived, where all the members of the companies involved in the cross-border merger agree to same.

Approval by the General Meeting

Pursuant to the general meeting of the merging companies, they shall consider and approve the merger plan.

Any decision of the general meeting which results from this procedure is binding on the company resulting from the cross-border merger and all its members.

Court Application 1

After the approval at the general meeting of the cross-border merger, each merging company must make an application to the District Court in the district where the registered office of the merging Cypriot Company shall be competent to scrutinise the legality of the cross-border merger as regards that part of the procedure which concerns each merging Cypriot company.

Each merging Cypriot company shall apply to the Court and request the issuance of a certificate conclusively attesting to the proper completion of the pre-merger acts and formalities.

Upon the satisfaction of the District Court that the procedures referred to above have been complied with, the District Court shall issue without delay the pre-merger certificate.

The corresponding pre-merger certificate must be obtained by each non-Cypriot company in its own jurisdiction.

Court Application 2

Within six months from the issuance of the pre-merger certificate a second application must be made to the Court which must be accompanied by the following:

- (a) the pre-merger certificate for the merging Cypriot company;
- (b) the corresponding pre-merger certificate issued for the non-Cypriot merging company;
- (c) the common draft terms of the cross-border merger approved by the general meeting of the shareholders by each merging Cypriot and non-Cypriot company.

If the District Court is satisfied as to the legality of the procedure concerning the completion of the cross-border merger, it shall issue a decision approving the completion of the merger and setting the date of entry into force of the cross-border merger.

Registration

Each merging Cypriot company shall submit an official copy of the Court Order to the Registrar of Cyprus Companies for the purposes of registration and publication in the Official Gazette of the Republic of Cyprus.

After the Registrar of Cyprus Companies receives the copy of the Court Order, they shall notify without delay the relevant Registrar of the member state of each non-Cypriot merging company.

Upon receipt by the Registrar of Cyprus Companies of the notice from the relevant authority of the member state of non-Cypriot merging Company, the Registrar of Cyprus Companies shall effect without delay the registration and publication of the Court Order in the Official Gazette of the Republic of Cyprus.

Consequences of the Cross-Border Merger

Upon the registration of the copy of the Court Order with the Registrar of Cyprus Companies pursuant to the Court Application 2, the Registrar of Cyprus Companies shall delete the Cypriot companies being acquired from the Companies Register, making reference to the date of entry into effect of the consequences of the cross-border merger.

A cross-border merger by acquisition of one or more limited liability companies by an acquiring company, (see Definition (a) above), takes effect from the date set by the District Court in the Court Order, pursuant to Court Application 2 for the conclusion of the cross-border merger.

The following results occur:

- (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, unless they have disposed of their shares for adequate cash compensation;
- (c) the merging companies shall cease to exist.

The limited liability company resulting from the cross-border merger shall carry out the formalities that may be required by the Cyprus Companies Law, Cap. 113 or on the basis of legislation governing any of the merging limited liability non-Cypriot companies with respect to the right to object against third parties before the transfer of certain assets, rights and obligations offered by the merging limited liability companies.

The rights and obligations of the merging limited liability companies arising from contracts of employment or from employment relationships and existing at the date on which the cross-border merger takes effect shall, by reason of that cross-border merger taking effect, be transferred to the limited liability company resulting from the cross-border merger on the date on which the cross-border merger takes effect.

No shares in the acquiring company shall be exchanged for shares in the company being acquired held either:

- (a) by the acquiring company itself or through a person acting in his or her own name but on the company's behalf; or
- (b) by the company being acquired itself or through a person acting in his or her own name but on its behalf.

Simplified Formalities

There are two instances whereby the procedures and conditions in relation to cross-border merger of limited liabilities companies are not applicable thus simplifying the procedures.

Instance 1: Where a cross-border merger by acquisition is carried out by a Cypriot company which holds all the shares and all other securities conferring the right to vote at general meetings of the company or companies being acquired or by a person who holds directly or indirectly all the shares in the acquiring company and in the company or companies being acquired, and the acquiring company does not allot any shares under the merger.

Instance 2: Where a cross-border merger by acquisition is carried out by a limited liability company of another member state which holds 90 % or more, but not all of the shares and all other securities conferring the right to vote at general meetings of the company or companies being acquired.

The following formalities are not applicable:

(a) the following particulars need not be included in the merger plan:

- i. the ratio applicable to the exchange of securities or shares representing the company capital and the amount of any cash payment, if applicable;
- ii. the terms for the allotment of securities or shares representing the capital of the company resulting from the cross-border merger;
- iii. the date from which the holding of such securities or shares representing the company capital will entitle the holders to share in profits, as well as any special conditions affecting that entitlement.

(b) the independent expert report is not required;

(c) the members of the company being acquired shall not become members of the acquiring company;

(d) the general meeting of the company for the purpose of approving the merger plan need not be held by the company being acquired.

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