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Cross-Border Merger

A company which is registered in Cyprus can participate in a cross-border merger with the exception of limited liability companies by guarantee and companies under liquidation.

EU Directive 2017/1132/EC ("Directive") provides for cross-borders mergers, namely the merger of two or more limited liability companies incorporated and governed under the laws of different EU member states. Cyprus has incorporated the requirements and procedures of the Directive into articles 201I-201X (Greek 201Θ-201ΚΖ) of the Cyprus Companies Law Cap113 (the "Companies " law)

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;
- (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 represent-

ing 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.

[I] Cross-border merger through which the Cyprus Company is the resulting company

Below is a step-by-step guide to proceed with a cross-border merger where the Cyprus Company is the resulting company.

- i. [Drafting and submission of the common terms of the cross-border merger](#)

The first step to initiate the cross-border merger procedure between companies is the drawing up of the common draft terms of cross-border merger by the Directors of each of the Cyprus companies taking part in the cross-border merger as well as by the competent management body of the company or companies which are registered in members states of the Community (or in the European Economic Area) and take part in the cross-border merger.

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At least one month prior to the date of the general meeting convened for their approval, the form of cross-border merger, a form titled HE66 for each company registered in Cyprus that participates in a cross-border merger can be submitted, along with:

- common draft terms of the cross-border merger
- announcement of the cross-border merger in the Greek
- certified translation of the common terms
- the certificate from the Tax Department that the company does not owe taxes and duties in case the Cypriot company is absorbed or stricken off; and

If the Registrar of Companies is satisfied that all legal requirements, depending on the case, have been met, it shall proceed with the submission of the common draft terms of the cross-border merger, the updating of the companies register, as well as the publication of the common draft terms of the cross-border merger and the relevant notification in the Cyprus Government Gazette.

ii. Approval by the general meeting and issue of a pre-merger certificate

While submitting the common terms at the Registrar of Companies, each of the merging companies draws up a directors' report and an independent expert's report, which are made available not less than one (1) month before the date of the general meeting where the cross-border merger shall be approved.

Provided that the draft terms of the cross-border merger are approved at the general meeting of each merging Cyprus company then each Cyprus company applies to the District Court where its registered office is located, for approval of the procedure to this stage.

At the same time, the merging companies which have been incorporated in member states within the Community or within the European Economic Area must secure a pre-merger certificate which must be delivered to the Cyprus absorbing/acquiring/newly incorporated company.

Then, once the said pre-merger certificates are received, the Cyprus absorbing/acquiring/newly incorporated company submits an application to the District Court where the company's registered office is

located, requesting the issuance of a court order approving the completion of the cross-border merger.

iii. Filing of the court order approving the completion of the cross-border merger

Once the court order approving the completion of the cross-border merger is issued, each merging Cyprus company must file with the Registrar of Companies in the said court order.

The court order must be accompanied by the announcement of the cross-border merger (with reference to its completion), in Greek

It is noted that in the case where the completion of a cross-border merger results in the incorporation of a new company in the Republic of Cyprus, the process of incorporating a Company must also be followed and a copy of the court order must be attached with the new company's memorandum of association.

Following the completion of the filing of the court order the Registrar of Companies shall proceed:

- To publish the notification of completion of the cross-border merger in the Cyprus Government Gazette.
- To issue a certificate of merger, in the case of a cross-border merger by incorporation or a certified memorandum and articles of association along with the court order, in the case of a cross-border merger by absorption or by acquisition.
- To notify the competent authorities of the countries involved for the completion of the cross-border merger.

[II] Cross-Border Merger where the Cyprus Company is the absorbed company

Below is a step-by-step guide to proceed with a cross-border merger where the Cyprus Company is the absorbed company.

i. Drafting and submitting the common draft terms for the cross-border merger

The first step in initiating the process is the drafting of the common draft terms of the cross-border merger by the directors of each of the Cyprus companies participating in the cross-border merger and, by the competent management body of the company or companies registered in member states of the Community (or



in the European Economic Area) and, participating in the cross-border merger.

At least one month prior to the date of the general meeting convened for their approval, the form of cross-border merger for each company registered in Cyprus that participates in a cross-border merger can be submitted, along with:

- common draft terms of the cross-border merger
- announcement of the cross-border merger in the Greek
- certified translation of the common terms
- the certificate from the Tax Department that the company does not owe taxes and duties in case the Cypriot company is absorbed or stricken off; and
- provided that the Registrar of Companies is satisfied that all, relevant to the circumstances, legal requirements have been met, he will proceed with registering the cross-border merger plan, updating the companies register and, publishing the common draft terms and the relevant announcement in the Official Gazette of the Republic of Cyprus.

ii. **Approval by the general meeting and issuance of the court order**

Each of the merging companies prepares a directors' report and an independent expert's report, which are made available to the members of the company at least one (1) month before the date of the general meeting, convened for the approval of the cross-border merger.

Provided that the cross-border merger plan is approved by the members at the general meeting of each of the merging companies, each Cyprus company submits an application to the District Court, where its registered office is located. Once the court

order is issued, it is sent to the absorbing/acquiring/newly-incorporated company of the member state within the Community or the European Economic Area.

At the same time, the merging companies established in member states within the Community or within the European Economic Area must obtain a pre-merger certificate which must be sent to the absorbing/acquiring/newly-incorporated company of the member state within the Community or the European Economic Area.

Then, once the said pre-merger certificates are received the absorbing/acquiring/newly incorporated company of the member state within the Community or the wider European Economic Area submits an application to the District Court where its registered office is located, requesting the issue of a court order approving the completion of the cross-border merger.

iii. **Informing the Registrar of Companies for the completion of the process**

Upon completion of the cross-border merger in the member state within the Community or the European Economic Area, the competent authority of the absorbing/acquiring/newly incorporated company sends a letter or certificate of confirmation that the cross-border merger has been completed.

Subsequently, the Registrar of Companies proceeds to strike off the Cyprus absorbed company from the companies register and publishes its strike off in the Official Gazette of the Republic.