



TALIADOROS AUDIT FIRM

CHARTERED CERTIFIED ACCOUNTANTS

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CROSS - BORDER MERGER FROM CYPRUS PERSPECTIVE

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Cross - Border Merger from Cyprus Perspective

Nowadays companies are searching for ways of empowering their business and most important to achieve this empowerment in the most cost and time effective way. They try to find new solutions which will result in their 'survival' in the European Union corporate map. More specifically what they are looking for and thus try to achieve, is lower running expenses and of course lower taxation, without affecting in any way the standard of business and/or services they offer.

The European Union, acknowledge this need and trying to offer such opportunity to the European companies, passed in 2005 a Directive (Directive 2005/56/EC) providing directions to the European Member States, with regards to issues on cross-border mergers of limited liability companies and has called upon the European Member States to bring into force laws, regulations and administrative proceedings necessary so as to comply with the Directive.

By this Directive, the European Union gave the opportunity and challenge to all European limited liability companies to be merged with companies registered in accordance with the laws of another Member State with more beneficial national laws and regulations and more beneficial tax regimes. This opportunity of course has been provided by also securing and taking into account the rights of the company involved.

The Republic of Cyprus proceeded by adopting the said Directive into national law (Law N.186(I)/2007), by amending the Companies Law Cap. 113 (Articles 201I – 201X). By such amendment of the relevant Cyprus Companies Law, the Cross-Border Merger between a European limited liability company (the Absorbed Company) and a Cyprus limited liability company (the Acquiring Company) is permissible.

By the aforementioned adoption of the Directive, the Republic of Cyprus provides the option to every European limited liability company, which is capable of merging, to be merged with a Cyprus company and thus to benefit by the following favourable tax regime in Cyprus as well as from the straightforward and effective features of a Cross-Border Merger procedure:

The benefits of Cyprus' lowest corporate tax rate in the European Union (12,50% on the net profits of the Company);

- 45 double tax treaties in force;
- The dissolution of the Absorbed Company(ies) without going into liquidation, which automatically leads to the saving of time and money from the time-consuming process of liquidation;
- Reorganisation of a group of companies in order to become more cost effective and efficient and

- Automatically transferring the assets and the liabilities of the Absorbed Company to the Acquiring Company by operation of the law.

Requirements of a Cross-Border Merger

The essential requirement for a Cross-Border Merger is the provision and thus permission through the national laws of each company involved.

As it concerns the rational question of which types of Cyprus companies have the legal capacity to participate in a Cross-Border Merger, it has to be stated that all Cyprus companies have such legal capacity except for the following companies:

- Limited liability companies by guarantee and
- Companies which are under liquidation.

The essential steps of a Cross-Border Merger procedure

In order for the companies to be able to proceed with a Cross-Border Merger the first steps to be followed is the drafting and agreement of the Terms which will 'lead' to the merger between the merging companies and then the approval of such Terms by the General meeting of the merging companies.

From the time that the Terms of the Cross-Border Merger are confirmed and approved by each merging company, the said companies are ready and thus able to proceed with the procedure of 'union', as the Cross-Border Merger can be defined.

The ways and date of effectiveness

The aforementioned 'union' can be effected in the following ways:

The dissolution of 2 or more companies, without going into liquidation and upon the dissolution all assets and liabilities to be transferred to an existing company (the Acquiring Company, in return for being available to the shareholders of the Absorbed Company(ies), shares in the share capital of the Acquiring Company and possibly cash payment not exceeding 10% of the nominal value or the accounting value of such shares.

The dissolution of 2 or more companies, without going into liquidation and upon their dissolution all assets and liabilities to be transferred to a newly incorporated company, in return for being available to the shareholders of the Absorbed Company(ies), shares in the share capital of the New Company and possibly cash payment not exceeding 10% of the nominal value or the accounting value of such shares.

The dissolution of a company, without going into liquidation (Absorbed Company) and upon its dissolution, all its assets and liabilities to be transferred, to the company that holds 100% of the issued share capital of the Absorbed Company.

The Cross-Border Merger in the Republic of Cyprus is approved and completed by a Court Order of the District Court of the district where the Cyprus Company maintains its registered office, as the competent Authority on Cross-Border Merger in which a Cyprus Company is participating.

The aforementioned Court Order must be submitted for registration with the Cyprus Registrar of Companies in order for the Cross-Border Merger to be in force.

It is important to note that a Cross-Border Merger which has entered into effect in accordance with the aforementioned procedure, cannot be declared null and void. This can also be considered as one of the most crucial benefits of such a procedure, due to the fact that this provides legal certainty.

Results of a Cross-Border Merger

Once the procedure of a Cross-Border Merger has been completed, the outcome is as follows

- The assets and liabilities of the Absorbed Company are transferred to the Acquiring Company;
- The shareholders of the Absorbed Company, become shareholders of the Acquiring Company and
- The Absorbed Company ceases to exist.

The same applies in the cases of Cross-Border Merger by the incorporation of a new company.

The Cross-Border Merger procedure can be classified and considered as a straight forward and 'healthy' procedure, with regards to the most efficient existence and operation of European Companies within the European Union. This very powerful solution that has been offered by the European Union, leading to the achievement of a 'standard of living' of every European Company, must be exploited by every European Company, which intends to operate in its best interest.

The Republic of Cyprus through its national laws and especially through its favourable tax regime, its high standard of professional, legal, accounting and tax planning services, provides this golden opportunity to businessmen around Europe, whereby they will lead their companies into a more profitable jurisdiction and a step further into the challenging economic environment in which we all live at the moment.