

## Cross-border mergers involving Cyprus companies in the EEA

Cyprus companies are regularly used as absorbing or merging entities in cross-border mergers across the European Economic Area, namely the EU Member States and Iceland, Liechtenstein and Norway (the **EEA**).

Cyprus law provides for cross-border mergers of limited liabilities companies in the EEA, where at least one of the merging companies is a Cypriot company or where the company resulting from the cross-border merger is a Cypriot company. A merger is only considered as cross-border if at least two of the participating companies are governed by the laws of different Member States of the EEA.

### ***Types of mergers under Cyprus law***

A merger may occur in one of the following three ways:

#### 1 Merger through an acquisition by an existing company

One or more companies are dissolved without winding-up and transfer all their assets and liabilities to another company, in exchange for equity issued to the shareholders of the merging companies in the acquiring company and, if applicable, a cash payment not exceeding 10% of the value of such shares.

#### 2 Merger through the creation of a new company

Two or more companies are dissolved without winding-up and transfer all their assets and liabilities to a new company, in exchange for equity issued to the shareholders of the merging companies in the new company, if applicable, a cash payment not exceeding 10% of the value of such equity.

#### 3 Merger through a parent company absorbing a subsidiary

A parent company absorbs a subsidiary, its assets and liabilities. The subsidiary dissolves without being wound up.

### ***Procedural aspects***

Each Cyprus company involved in the cross-border merger must ensure it is compliant with all of its statutory obligations and also finalise its statutory accounts up to the contemplated merger coming into effect. Such preparatory work also involves obtaining a tax clearance certificate from Cypriot tax authorities.

Following the issuance of a pre-merger certificate, the merging Cyprus companies must apply to the court for approval of the merger. The court assesses evidence concerning, amongst others, steps taken by the authorities in the EEA Member States where the foreign companies are situated and the corporate authorities of the Cypriot companies. An order issued by the court to conclusively approve the merger must be filed with the Registrar of Companies, for the latter to issue a certificate of completion of the merger.

Simplified procedures are available in cases where a cross-border merger where the absorbing Cyprus company holds all instruments granting voting rights in the general meeting of the merging entity. Special procedures are also provided for cases involving a shareholder that dissents to the merger.

### ***Effects of a cross-border merger***

Upon completion of a cross-border merger:

- the merging companies cease to exist
- the shareholders of the merging companies become shareholders of the absorbing company
- the assets and liabilities of the merging companies are transferred to the absorbing company
- the rights and obligations of the merging companies arising from employment relationships and existing at the date on which the cross-border merger takes effect are transferred to the absorbing company on the date on which the cross-border merger takes effect.

### ***Competition law considerations***

A merger or acquisition between companies that are carrying out independent undertakings may result in a change of control over one of these undertakings (or an undertaking they control) on a lasting basis. A concentration of undertakings shall be deemed to arise where it results in a change of control on a lasting basis.

Cyprus law requires that mergers constituting concentrations of major importance are notified and cleared by the Cypriot competition authority prior to their implementation. A concentration is deemed to be of major importance and therefore meets the jurisdictional thresholds if:

- the worldwide aggregate turnover achieved by at least two of the undertakings concerned exceeds, in relation to each one of them, €3.5 million;
- at least two of the undertakings concerned achieve a turnover in Cyprus; and
- at least €3.5 million of the aggregate turnover of all undertakings concerned (taken together) is achieved in Cyprus.

Gun-jumping may result in the Cypriot competition authority imposing a fine of an amount up to ten per cent (10%) of the aggregate turnover achieved by the notifying undertaking(s) during the preceding financial year and an additional fine of €8,000 for each day the infringement persists. The competition authority may also order the partial or complete dissolution of the concentration.

### ***Employment law considerations***

From a Cyprus employment law perspective, on transfer of all (or part of) a business to which the Preservation and Protection of the Rights of Employees on the Transfer of Undertakings Law, L. 104(I)/2000 (**TUPE**) applies, the undertakings involved are subject to employee notification and consultation obligations.

TUPE will apply to a transfer of an economic entity that retains its identity, meaning an organised grouping of resources having the objective of pursuing an economic activity, whether or not that activity is central or ancillary.

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