

Direct Cross-Border Mergers into Jersey Companies

The Companies (Jersey) Law 1991 (as amended) (the "Companies Law") provides a statutory procedure for a Jersey incorporated company (e.g. a limited company ("Ltd") or a limited liability company ("LLC")) to merge directly with bodies corporate incorporated in Jersey or elsewhere in the world. The Jersey Financial Services Commission's ("JFSC") Companies Registry is the authority that approves and registers these mergers in Jersey.

Use of Cross-Border Merger Process

While this corporate law technology has been available for some time, there have been relatively few cross-border mergers completed other than the merger of overseas limited companies with Jersey Ltds.

The Maples Group recently advised on the first Jersey law merger of a Delaware LLC with a Jersey Ltd, the Jersey Ltd being the surviving entity. The Maples Group worked closely with the JFSC in relation to interpretation of the merger provisions in the Companies Law and the practicalities of undertaking and registering such a merger to ensure that the merger was registered on a set date to coincide with the wider transaction completion date.

It is expected that the direct cross-border merger process will be utilised in structured finance (CLO), downstream private equity and corporate reorganisation transactions as an efficient way of merging a foreign body corporate with a Jersey company.

Eligibility for Merger

Jersey incorporated companies can merge directly with a wide range of corporate bodies, including companies and bodies corporate incorporated in other jurisdictions. The Companies Law allows mergers between a 'relevant' Jersey company and:

- (a) any other Jersey incorporated body permitted to merge with a company; or
- (b) any foreign incorporated body provided:
 - (i) it is not an 'excluded body'; and
 - (ii) such body is not prohibited from such merger under the laws of its jurisdiction of incorporation.

A 'relevant' Jersey company is any Jersey company that is not a cell company or a cell or one with unlimited or guarantor members.

Direct Overseas Body Merger

The key to considering whether an overseas entity is eligible to merge with a Jersey company is that the overseas entity is an incorporated body. In other words, the entity has its own separate legal personality and is a body corporate.

In addition, it is important to note that:

- (a) for the purposes of the Companies Law, an 'overseas body' means a body incorporated in a jurisdiction outside Jersey;
- (b) where LLCs:

- (i) are specifically 'bodies corporate' under the relevant overseas legislation; and
- (ii) are not prohibited from such merger under the laws of their jurisdiction of incorporation.

Then an LLC would satisfy the eligibility requirements and be able to merge with a Jersey company under the Companies Law.

By way of example, both Cayman Islands LLCs and Delaware LLCs are bodies corporate under the legislation not prohibited from such merger under the laws of their jurisdiction of incorporation.

Any merger application must be made in the prescribed form and contain the information required by the JFSC.

In particular, where a merging body is an overseas body, evidence will be required of certain matters of the laws of the overseas jurisdiction where that body is incorporated. This includes confirmation that the proposed merger overseas is not prohibited under the law of the merging body and that any required regulatory authorisation has been obtained.

Impact

The ability for an overseas incorporated LLC to merge directly into a Jersey Ltd or LLC will streamline the completion mechanics for numerous cross-border mergers with a Jersey surviving entity.

It will no longer be necessary to utilise workarounds such as converting the overseas-incorporated LLC into an overseas Ltd and then undertaking the merger of that overseas Ltd into

a Jersey private company. While effective, this two-stage process added actions, increased cost for transaction counterparties and had timing implications.

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