

## Cross Border Merger between a Cyprus Company (“CyCo”) and another European Company (“EU-Co”):

### Step Plan and Requirements:

#### (1) MERGER PLAN

The management or administrative organ of each of the merging companies (i.e. the Directors) shall draw up the ‘common draft terms of the cross-border merger’, i.e the Merger Plan. The Merger Plan requires the following information:

- (a) the form, name and registered office of the merging companies, as well as the corresponding information for the 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;
- (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 and any special conditions affecting that entitlement;
- (f) the date from which the transactions of the merging companies will be treated for accounting purposes as being those of the company resulting from the cross-border merger;

- (g) the rights conferred by the 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 administrative, management, supervisory or controlling organs of the merging companies;
- (i) the statutes 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 company resulting from the cross-border merger;
- (k) information on the evaluation of the assets and liabilities which are transferred to the company resulting from the cross-border merger;
- (l) dates of the merging companies' accounts used to establish the conditions of the cross-border merger.

## **(2) FILLING AND PUBLICATION**

The Directors of the merging Companies shall file the Merger Plan at the Registrar of Companies in Nicosia (if in English, has to be translated in Greek) which will be published by the Registrar in the Official Gazette of Cyprus, at least ONE MONTH before the calling of the general meeting of the CyCo to decide on the merger. Also for the said publication, the Directors must provide the following additional information to the Registrar:

- (a) the type, name and registered office of every merging company;
- (b) the register in which the merging documents are filed in respect of each merging company and the number of the entry in that registry (i.e. Registrar of Companies in Cyprus and Registrar in Holland)

- (c) an indication, for each of the merging companies, of the arrangements made for the exercise of the rights of creditors and of any minority members of the merging companies and the address at which complete information on those arrangements may be obtained free of charge.

### **(3) REPORT OF THE BOARD OF DIRECTORS**

The Directors of the emerging Companies shall prepare a report to be presented to their shareholders in order to explain and justify the legal and economic aspects of the cross-boarder merger and explain the implications of such merger on the shareholders, the creditors and the employees (if any). This report is made available to the shareholders and the employees (if any) at least ONE MONTH before the date of the general meeting of the shareholders.

### **(4) INDEPENDENT EXPERT REPORT**

An independent expert report is required to be drawn up, and such expert is appointed by the Court following a petition filed by the merging Company. However, such a report will **NOT** be needed if all the shareholders of the merging companies agree on the merger and agree that this report is not required.

### **(5) GENERAL MEETING OF THE SHAREHOLDERS**

The General Meeting of the Shareholders of the merging Companies will be held at least ONE MONTH after steps 2 and 3 are completed, in order to approve the merger plan.

The decision at the general meetings shall state whether the Companies accepts the capability of the shareholders of the other merging company to use the procedure provided in the national legislation of the country where that company is registered, which allows the resolution and amendment of the relation for the exchange of securities or shares or the compensation of the minority shareholders, without precluding the filing

of the cross-border merger. It is provided that the decision adopted which is related to the merger procedure is binding for the company which results from the cross-border merger (i.e. the CyCo) and for all its shareholders.

#### **(6) COURT PROCEDURE: PRE- MERGER CERTIFICATE AND APPROVAL**

Each Member State shall designate the court, notary or other authority competent to scrutinise the legality of the cross-border merger as regards that part of the procedure which concerns each merging company subject to its national law.

For instance, in the application filed at the District Court, we shall be asking the Court to issue a judgement approving the merger by examining the legality of the cross- border merger, particularly, whether the merging companies have approved the merging plan and that arrangements for the employees (if any) have been made in accordance with the national laws of the merging companies. In order to prove the legality, the District Court will have to be presented with the pre-merging certificates of the merging companies, including the certificate issued by the national authorities of the Dut-Co, and the merger plan which has been approved at the general meeting of the merging companies.

Once the Court is satisfied of the legality of the procedure it shall issue a judgement approving the cross-border merger with effect from the date set by the Court.

#### **(7) REGISTRATION OF JUDGEMENT**

Following Step 6 of this report the law of the Member State to whose jurisdiction the company resulting from the cross border merger is subject (in our case, the law of the Republic of Cyprus) must determine the date on which the cross border merger takes effect and the arrangements for publicising completion of the merger in the public register. Deletion of the old registration, if applicable, shall be effected on receipt of that notification, but not before.

#### **(8) TIMEFRAME**

The estimated time for completing the merger procedure from the moment we receive the Merger Plan until Registration is 2 to 4 months, with the condition that the pre-merger certificate from the Dutch Authorities and the relevant documents from the D-Co are delivered on time. Since the procedure involves assistance from the Registrar of Companies, publications in the Official Gazette which is published every two weeks and the filing of a Court application; the time-frame can vary either way.

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