

April, 2024

EU CROSS-BORDER MERGERS (CYPRUS LAW)

The EU's cross-border merger initiative through Cyprus' integrative legislative amendment

Introduction

The *Companies Law amendment of 2024* (the 'Law') was passed by the Cypriot parliament on 29 February. The purpose of the law is to achieve harmonization with the provisions of *Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 to amend Directive (EU) 2017/1132 regarding cross-border conversions, mergers and divisions* (the 'Directive').

1. Applicability and Restrictions of the New Amended Law

The main law applies to cases where at least one of the merging companies is Cypriot, or if the resulting company from a cross-border merger is Cypriot and at least one of the other companies is governed by the law of different Member State and the Cypriot company is being absorbed.

However, the amended Article 201I includes limitations on companies, restricting their ability to merge:

- a) company which is undergoing liquidation;
- b) company which is subject to recovery tools and mechanisms;
- c) company which is undergoing insolvency proceedings or preventive restructuring, and;
- d) company which is subject to crisis prevention measures.

These restrictions aim to maintain the integrity of the internal market and ensure that cross-border mergers are conducted responsibly and transparently, in line with EU principles of corporate governance and competition law.

2. Joint Cross-border Merger Plan

Under Article 201IB of the Law, the directors of each Cypriot company involved in the cross-border merger must jointly create a merger plan (the '*Merger Plan*'). The Merger Plan must include, between others:

- a) the legal form, name, the registered office of each merging company and resulting company;
- b) the exchange ratio of the securities or shares representing the share capital;
- c) the memorandum and articles of association of the resulting company, and;
- d) the details of the cash compensation offer for employees and any safeguards provided to creditors.

The Merger Plans of all merging companies involved must align with each other, utilising the same terms.



3. Publication of Merger Documents

Under the amended Article 201IC, the following documents must be submitted to the Registrar of Companies by each merging Cypriot company and made publicly available:

- a) the joint Cross-border Merger Plan;
- b) a notification informing shareholders, creditors, and employees that they may submit comments on the joint cross-border Merger Plan to the merging Cypriot company no later than five working days before the general meeting (the '*General Meeting*'), and;
- c) independent expert report (if applicable).

The merging Cypriot company is not required to comply with the above criteria when it publicly and freely provides the documents specified above on its website. The amendment introduces the electronic completion of the requirements specified, thus promoting the digitisation.

4. Report of the Board of Directors to Shareholders and Employees

As per amended Article 201ID, the directors of the merging Cypriot company should prepare a report (the '*Directors Report*') for the shareholders and employees, removing the obligation to address the creditors, which explains and justifies the legal and economic aspects of the cross-border merger on the employees and shareholders:

- I. the shareholder section provide details on cash compensation, stock exchange ratio, cross-border merger consequences, shareholder rights, and legal protection measures.
- II. the employee section discusses the impact of a cross-border merger on employment relationships, outlines measures to protect these relationships, and outlines any significant workplace changes.

The Director's Report may not be necessary under some circumstances.

5. Independent Expert Report

The amended Article 201IE requires the preparation of an independent expert report (the '*Expert Report*'), addressing legal and economic aspects, for shareholders and employees. The Expert Report ensures that stakeholders are informed about the merger's implications and financial aspects. The independent expert bares liability for damages under the Law.

The Expert Report it is not required if all shareholders of the Cypriot company agree on the Merger terms.

6. Approval by the General Meeting

The General Meeting of shareholders of the merging Cypriot company, having reviewed the Directors and Expert Reports and the observations submitted decides by special resolution whether to approve the Merger Plan and whether to amend the company's memorandum and articles of association.



Under Article 201IF (4) the approval of the cross-border merger by the General Meeting cannot be contested solely on the grounds that the share exchange ratio or cash compensation is inadequate.

7. Protection of Shareholders

Article 201IFA addresses a legal gap, allowing shareholders of a merging Cypriot company to dispose of their shares for adequate cash compensation. If insufficient compensation is offered, shareholders can claim additional compensation by applying to a competent court.

The above-mentioned amendment provides a balance between protecting minority shareholder interests and maintaining the efficiency of the merger process.

8. Protection of Creditors

Under Article 201IFB, creditors whose claims pre-date the publication of the Merger Plan may seek adequate safeguards by submitting a request to the competent Court within three months of the publication of the Merger Plan. However, they must demonstrate that their claims are jeopardised by the cross-border merger and they have not received adequate assurances from the merging Cypriot company.

This provision mandates the Court to provide assurances before a cross-border merger's validity can commence, potentially causing a delay in the merger process.

9. Pre-Merger Certificate – First Application

First, it should be underlined that the Court is the body responsible for the issuance of the pre-merger certificate (the '*Certificate*'). The certificate is issued after the court is satisfied that there is compliance with all relevant terms and procedures and formalities in the Republic.

Article 201IZ requires a pre-merger Certificate application, accompanied by the joint Merger Plan, Reports, shareholder, creditors, and employee comments, and an affidavit verifying the facts. Once the Certificate is issued it should be forwarded to the resulting company's member state authority.

10. Validity Check and Final Merger Approval – Second Application

Each merging company should submit to the competent Court of its Member State the joint Merge Plan as approved by the General Meeting. The Court checks whether the merging companies approved the joint cross-border Merger Plan under the same conditions and terms. This Certificate serves as proof of completing pre-merging procedures in the absorbed company's Member State.

The merger takes effect from the commencement date specified by the District Court or the competent Court of the other Member State.



Conclusion

It is clear that the amendment promote digitalisation during mergers process, which improves communication between Member States and parties involved. Moreover, it is evident that employees have their own safeguards and voice, which are moderated by the Court. This creates an employer-employee environment of trust. Further to employee consultation, the amendment introduce mechanisms for shareholder and creditor protection. The two Court applications procedure enhance the integrity and legality of mergers while providing safeguards against potential abuses.

By integrating the Directive into local law, Cyprus aims contribute to the growth and stability of the EU internal market. Cross-border merger process will now become more straight-forwarded and moderated. However, it is only time that will prove the validity of these amendments and whether they truly serve their intended purpose.

The purpose of this legal briefing is to provide a general guideline on the subject and not to be considered, in any way, as legal advice. It is advisable to seek professional and legal advice on this subject before proceeding with any general information provided to you. For further clarifications and advice please contact us at legal@economideslegal.com.

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