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# Procedure for a merger under the Companies (Jersey) Law 1991 (as amended) (the "1991 Law") Briefing

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Since September 2002 it has been possible for two or more Jersey incorporated companies to merge and continue as one company, so long as none of them has unlimited shares or guarantor members. The newly merged company will assume all the obligations, business and assets of the merging companies.

This briefing summarises the process by which a statutory merger is effected.

## **Merger of companies that are not in the same group**

Where unrelated companies propose to merge, all the merging companies must enter into a written agreement (the "Merger Agreement") setting out the terms of the merger.

### Contents of the Merger Agreement

The Merger Agreement must state the terms and means of effecting the merger, including the following information:

- what will constitute the memorandum and articles of the merged company;
- the name and address of each proposed director of the merged company;
- the manner in which the securities (for instance, shares) of each merging company are to be converted into securities of the merged company;
- if any securities of a merging company are not to be converted into securities of the merged company, what the holders (for instance, shareholders of the relevant merging company) are to receive instead and the manner in which and the time at which they are to receive it; and
- details of any arrangements which are necessary to complete the merger.

If so required, the Merger Agreement can provide that it be terminated by the directors of any merging company at any time before the merger becomes effective.

### Approval of the Merger Agreement

The Merger Agreement must be approved by a special resolution of the members of each of the merging companies and, if applicable, of the members of each class of shares of each merging company.

## **Merger of companies in the same group**

The process is more straightforward where the merger is between (i) a Jersey holding company and one or more of its wholly-owned subsidiaries in Jersey or (ii) two or more wholly owned Jersey subsidiaries of the same Jersey holding company. In such cases there is no need for a Merger Agreement, provided the merger is approved by a special resolution of each merging company.

Note that if the merger is of two or more Jersey subsidiaries of a foreign holding company a Merger Agreement will be required.

### Approval of a merger of a holding company and one or more of its wholly-owned subsidiaries

The special resolution must provide:

- that the shares of each merging subsidiary shall be cancelled without any repayment of capital; and
- that the memorandum and articles of the merged company shall be the same as the memorandum and articles of the merging holding company (except as otherwise provided in the special resolution).

It is critical that no securities are issued and no assets are distributed by the merged company in connection with the merger.

### Approval of a merger of two or more wholly-owned subsidiaries of the same holding company

The special resolution must provide that:

- the shares of all but one of the merging subsidiaries shall be cancelled without any repayment of capital;
- the memorandum and articles of the merged company shall be the same as the memorandum

- and articles of the merging subsidiary whose shares are not being cancelled (except as otherwise provided in the special resolution); and
- the issued share capital or stated capital of the merging subsidiary or subsidiaries whose shares are cancelled shall be added to the issued share capital or stated capital or the merging subsidiary whose shares are not cancelled.

#### **Notice to, and objections by, members**

In all cases, the notice of the meeting to consider the special resolution either approving the Merger Agreement or the merger (as the case may be) must contain a copy or summary of the Merger Agreement, where applicable, and a statement of the right of an objecting member to apply to the Jersey court.

Any member of any merging company who votes against the special resolution can apply to the Jersey court within 30 days of the passing of the resolution if they think the merger would unfairly prejudice their interests.

#### **Notice to, and objections by, creditors**

Within 28 days of the passing of the special resolution approving the Merger Agreement or the merger, each merging company must give written notice of its intention to merge to each of its secured and unsecured creditors who has a claim against it exceeding £5,000. A copy of the notice must also be published once in the Jersey Evening Post.

The notice must state that any objecting creditor may give notice of his objection to the relevant company within 30 days of the date of the advertisement. If the creditor's claim is not discharged, the creditor may apply to the court within 30 days of his notice of objection for an order restraining the merger.

#### **Documents to be delivered to the companies registrar**

Not less than 30 days from the notice to creditors of a merger (or after disposal of any application by a creditor or member to the court in relation to the merger), certain documents must be delivered to the registrar, these being:

- a copy of the Merger Agreement (if required);
- a copy of the memorandum and articles of the merged company; and

- a declaration made on behalf of each merging company and signed by each director of that company.

The purpose of the declaration is to confirm that all the merging companies and the merged company are solvent and that the statutory procedures have been followed.

#### **Completion of merger**

The registrar will register the merged company and issue a certificate of incorporation if it is satisfied that the documents are in order and the statutory procedure has been followed.

Under the 1991 Law, upon the issuance of the certificate of incorporation of the merged company, the merged company will become entitled to all of the rights and subject to all of the liabilities of each of the merging companies.

#### **Tax**

Tax advice should be obtained at the outset to ensure that the merger has no adverse tax implications and that the tax treatment of the newly merged company is appropriate.

**This briefing can only provide a general review of this area. Legal advice should be taken with regard to individual circumstances.**

**If you have any queries regarding the information in this briefing or simply wish to discuss your specific needs please contact:**

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