



GUIDE

Mergers of companies under Jersey law

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Introduction

The Companies (Jersey) Law 1991 (the **Companies Law**) permits a Jersey company to merge with a non-Jersey company. The ability to undertake cross border mergers may be useful in a variety of cases including where they can be implemented without triggering a disposal for foreign capital gains tax purposes. This guide sets out the principal merger provisions of the Companies Law.

Entities eligible to merge

A Jersey company may merge provided that it is not a cell company, a cell of a cell company, an unlimited company or a guarantee company (an **eligible Jersey company**).

An eligible Jersey company may merge with another eligible Jersey company, any other Jersey incorporated entity which is permitted to merge with a company or a body incorporated in a jurisdiction outside Jersey (an **overseas body**) that is not prohibited under the law of its jurisdiction of incorporation from merging with a Jersey company.

The result of a merger

The result of a merger is that the bodies seeking to merge (the **merging bodies**) continue as a single merged body (the **merged body**) and that the merged body is either (a) one of the merging bodies (a **survivor body**) or (b) a new body created by the merger from which it results (a **new body**) that is an eligible Jersey company or an overseas body that is incorporated under the law of the same jurisdiction as one of the merging bodies.

Merger agreement

The merging bodies must enter into a merger agreement that states the terms and means of effecting the merger and, in particular, must specify:

- details of the merged body including (i) whether it is to be a survivor body or a new body, (ii) whether it is to be a Jersey company or an overseas body and (iii) the names and addresses of its proposed directors or managers;
- details of any arrangements necessary to complete the merger and to provide for the management of the merged body;
- details of any payment proposed to be made to any member or director of a merging company or to a person having a similar relationship to a merging body that is not a company; and
- details of the manner in which securities are to be converted into securities of the merged body or, alternatively, details of what the holders are to receive instead and how and when they are to receive it.

Board approval and directors' certificates

Before submitting the merger agreement for approval by its shareholders, the board of directors of a merging Jersey company must first pass a resolution that, in the opinion of the directors voting in favour of the resolution, the merger is in the best interests of the company (the **Board Resolution**). The Board Resolution must include either a statement to the effect that the directors reasonably believe that the company is, and will remain until the merger is completed, able to discharge its liabilities as they fall due (a **Solvency Statement**) or a statement that the directors are satisfied that there is a reasonable prospect of obtaining the permission of the Jersey court to the merger (a **Permission Statement**).

After the Board Resolution is passed each director who voted in favour of the resolution must sign a certificate containing a Solvency Statement, or, if one cannot be given, a Permission Statement, specifying the grounds for that statement (the **Merging Company Directors' Certificate**).

Before submitting the merger agreement for approval by shareholders, either the proposed directors or managers of the merged body or, if none of the directors of the merging Jersey companies will be a director or manager of the merged body, each director of the merging Jersey companies who voted in favour of the resolution to merge, must sign a solvency certificate stating that in the opinion of the director or manager (as applicable) the merged body will be able to continue to carry on business and discharge its liabilities as they fall due on and immediately after the completion of the merger and, if later, until 12 months after the signing of the solvency certificate (along with the grounds for that opinion) (the **Merged Body Solvency Certificate**).

Approval of merger agreement

The directors of each merging Jersey company must submit the merger agreement for approval by a special resolution of that company and, if necessary, each class of its members separately. The notice must contain or be accompanied by certain specified information and documents and also alert members to their right to apply to the Jersey court to object to the merger. A merger is approved when all of the special resolutions approving the merger agreement have been passed by all of the merging Jersey companies. Any party to a merger agreement that is not a Jersey company would have to approve the merger agreement in accordance with its constitutional requirements and the law of its place of incorporation.

Simplified approval of mergers involving subsidiaries

A merger between a Jersey holding company and one or more of its wholly owned Jersey subsidiaries (a **holding company merger**) and a merger between Jersey companies that are all wholly-owned subsidiaries of the same holding body wherever incorporated (an **inter-subsidiary merger**) may be approved by a special resolution of each merging company without the approval of a merger agreement. A merger is approved for these purposes when all the merging companies have passed special resolutions approving the merger. Unlimited companies and guarantee companies can be the subject of a holding company merger or an inter-subsidiary merger (together a **group merger**). Group mergers require the share capital of the merging companies to be added to the share capital of the surviving company.

Objections by members

A member of a merging Jersey company may apply to the Jersey court within 21 days after the merger is approved requesting relief on the grounds that the merger would unfairly prejudice the interests of the member (a **Member's Application**).

Court application in cases of insolvency

If the Merging Company Directors' Certificate contains a Permission Statement, the merger may not be completed unless an order of the Jersey court has been obtained permitting the merger on the grounds that the merger would not be unfairly prejudicial to the interests of any creditors of any of the merging bodies (the **Court Sanction**). In such case, all the merging Jersey companies whose Merging Company Directors' Certificate contains a Permission Statement must, after the merger is approved, jointly apply for Court Sanction.

Notice to creditors

No later than 21 days after a merger is approved, each merging Jersey company must send written notice of its intention to merge to each of its creditors who have a claim against the company exceeding £5,000 (the **Notice to Creditors**).

If Court Sanction is required for the merger, the Notice to Creditors must state that the merging company has applied or will apply for Court Sanction and any creditor of any of the merging bodies may request the company making the application to send a copy of the application to the creditor. If Court Sanction is not required for the merger, the Notice to Creditors must state that any creditor may object to the merger or require the company to notify the creditor if any other creditor applies to court.

The company must publish the contents of the Notice to Creditors once in a newspaper circulating in Jersey or in such other manner approved by the Jersey Registrar of Companies (the **Registrar**).

Objections by creditors

In the case of a merger not requiring Court Sanction, a creditor of a merging company who objects to the merger may within 21 days of the date of the publication of the Notice to Creditors give notice of the creditor's objection to the company (a **Creditor's Objection**) and may, within 21 days of the date of the notice of the Creditor's Objection, if the creditor's claim against the company has not been discharged, apply to the court for an order restraining the merger or modifying the merger agreement (or the special resolutions in the case of a group merger) (a **Creditor's Application**).

If, on a Creditor's Application, the Jersey court is satisfied that the merger would unfairly prejudice the interests of the applicant or any other creditor of the company, the court may make such order as it thinks fit in relation to the merger, including an order restraining the merger or modifying the merger agreement.

If the Jersey court is considering making an order to modify a merger agreement that does not contain a provision allowing each of the merging bodies to terminate the merger following the modification, the court must not make the order unless the order also inserts such a provision in the merger agreement and the court is satisfied that each merging body will have the opportunity to reconsider whether to proceed with the merger following the modification.

Application to the Jersey regulator

If any of the merging bodies is not a Jersey company, the merging bodies must apply jointly to the Jersey Financial Services Commission (the **JFSC**) for consent to the merger and the merger may not be completed unless the JFSC gives consent and any conditions attached to the consent are complied with. The application must be accompanied by specified information and documents.

The JFSC must be kept informed of the progress of any application for Court Sanction and must be provided with a copy of the court order.

The JFSC must be notified of any Member's Application, Creditor's Objection or Creditor's Application and its outcome or, if no notice of a Creditor's Objection has been given, the date on which the time for doing so has elapsed or will elapse. Evidence must also be provided to the JFSC that the merger would not be unfairly prejudicial to the interests of any creditor of any of the merging bodies.

If any of the merging bodies is an overseas body, the application must also be accompanied by evidence, in respect of each overseas body, that:

- the laws of the jurisdiction of incorporation of the overseas body do not prohibit the proposed merger or, if the merged body is to be a new body incorporated in that jurisdiction, the incorporation of that body as the result of the merger;
- if those laws or the constitution of the overseas body require that an authorisation be given for the application or for the merger, the authorisation has been given; and
- if the overseas body is not to be a survivor body, the overseas body will, after completion of the merger, cease to be a body incorporated under the laws of its jurisdiction of incorporation.

If the merged body will be an overseas body, the application must also be accompanied by evidence that the laws of the jurisdiction of incorporation of the merged body provide that upon the merger:

- the property and rights to which the merging bodies were entitled before the merger will become the property and rights of the merged body;
- the merged body will become subject to any criminal and civil liabilities, and any contracts, debts and other obligations, to which the merging bodies were subject before merger; and
- any actions and other legal proceedings that, before the merger, were pending by or against any of the merging bodies may be continued by or against the merged body.

Decision of the JFSC and appeals

The JFSC can consent to an application with or without attaching conditions or refuse to give its consent on any grounds. In considering the application the JFSC must have particular regard, amongst other things, to the interests of creditors of the merging bodies. If the JFSC refuses consent or gives consent subject to any conditions, the applicant can appeal to the Jersey court.

Pre-registration steps

If all the merging companies are Jersey companies, they must apply jointly to the Registrar to complete the merger. Except where all the members of the companies and all the known creditors of the companies otherwise agree in writing, the application cannot be made until after any Member's Application, any application for Court Sanction, any Creditor's Objection or any Creditor's Application have been disposed of. Certain documents must be provided to the Registrar for these purposes.

If the merged body is not a Jersey company and the JFSC has consented to the merger and any conditions attaching to the consent have been complied with, the merging bodies must take the necessary steps to

complete the merger in accordance with the merger agreement under the laws governing the merged body and those merging bodies that are not Jersey companies. As soon as practicable after completion of the merger, the merged body must inform the JFSC of the fact and date of completion of the merger and provide any document or information that the JFSC may require to establish this. If satisfied that the merger has been completed, the JFSC must instruct the Registrar to register the merger.

Where one or more of the merging bodies is not a Jersey company, the merged body is to be a Jersey company, the JFSC has consented to the merger and any conditions have been complied with, the JFSC must instruct the Registrar to register the merger.

Where the merged body is not a Jersey company, the completion date of a merger is the date notified to the JFSC. Where the merged body is a Jersey company, the completion date of the merger is the date of the last entry on the companies register made by the Registrar in relation to the merger.

Effect of completion of a merger

On the completion date of a merger (a) the merging bodies are merged and continue as one merged body as provided in the merger agreement or, in a group merger, in the special resolutions and (b) any merging company that is not a survivor company ceases to be incorporated as a separate company.

When a merger is completed in which the merged body is a Jersey company:

- all property and rights to which each merging body was entitled before the merger was completed become the property and rights of the merged body;
- the merged body becomes subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which each of the merging bodies was subject before the merger was completed; and
- all actions and other legal proceedings which, before the merger was completed, were pending by or against any of the merging bodies may be continued by or against the merged body.

The operation of the abovementioned provisions of the Companies Law is not regarded:

- as a breach of contract or confidence or otherwise as a civil wrong;
- as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or
- as giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.

Jersey tax

In cases where none of the merging companies or the merged Jersey company have Jersey resident shareholders, no Jersey tax issues should arise.

Demergers

The Companies (Demerger) (Jersey) Regulations 2018 provide a statutory framework for a Jersey company to demerge into two or more Jersey companies. For further information please click [here](#).

Contacts

A full list of contacts specialising in corporate law can be found [here](#).