Jersey Authorises Cross-Border Corporate Mergers

Legislation has come into force in Jersey which permits companies incorporated in Jersey to merge with foreign companies, foreign incorporated bodies and also bodies that are incorporated in Jersey but are not companies, such as foundations (Jersey companies are already permitted to merge with other Jersey companies). An overseas body corporate is eligible for merger under the merger regulations where the Jersey Financial Services Commission is satisfied that such body is not prohibited under the law of the jurisdiction in which it is incorporated from merging with a Jersey company. Where a merger is effected, the resulting merged body will be either a survivor body (one of the existing merging bodies, which absorbs the others) or a new body created by the merger.

Safeguards will be in place. All merging bodies that are companies must obtain approval from their members and give notice to their creditors. Cross border mergers and mergers involving bodies that are not companies will require the consent of the Jersey Financial Services Commission, which can reject an application, or impose conditions, on any grounds including unfair prejudice to creditors, undesirability of the merger (e.g. in regard to Jersey's best economic interests, its commercial and financial reputation and integrity, to counter financial crime in Jersey and overseas or risk to the public from any financial services involved) or procedural failures. A merger applicant can apply to court against a rejection or condition, on the grounds that the decision was unreasonable. Members and creditors may object to a merger by applying to the court if their interests are unfairly prejudiced.

A merger may still take place where, although the merged body will be solvent, one or more of the merging companies will not meet the test for a solvency statement before the merger. In these circumstances a court application will be required and the court may permit the merger if it will not be prejudicial to creditors. This will ensure that asset rich companies that are temporarily experiencing cash flow difficulties are not unduly excluded from being able to merge if a merger would be in the interests of all concerned.

We are very pleased with this new development which we anticipate will lead to a significant increase in the already popular use of Jersey companies and other bodies corporate in international corporate finance activity. In particular, the ability of bodies corporate established in emerging economies to merge with Jersey companies will enable them to benefit from the flexibility of Jersey companies law, tax neutrality of the jurisdiction and, when combined with admission to trading on an internationally recognised exchange, the strong reputation of Jersey as an investor- and business-friendly location with excellent access to the international capital markets.

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