



Domestic mergers becoming more popular in the UK

Cross-border mergers, with the concept of a transfer by operation of law, became part of UK legislation in 2007 when the UK enacted the European Directive on Cross-Border Mergers.

However, domestic mergers have always proved more difficult to undertake. Historically, a domestic merger had to follow Part 26 of the UK Companies Act, commonly known as a UK Scheme of Arrangement (a "Scheme"). The difficulty is that UK courts do not generally recognize the concept of universal succession or transfer by operation of law. The UK courts can order that the business of the transferring company is moved to the surviving company and that the transferring company is dissolved without going into liquidation. But if a particular asset has a restriction, it will not transfer.

UK courts have recently begun to recognize flaws in the law, and a few intragroup domestic mergers have been undertaken using a Scheme. The courts will approve such a transfer when there is a compelling reason, such as availing oneself of the ability to have the court order the transfer of the assets and liabilities to the surviving entity and the dissolution without liquidation of the transferring entity in a domestic rather than cross-border situation.

However, the onus is on the parties to demonstrate that the assets will transfer as part of the Scheme and that they have no restrictions. It may be advisable to transfer restricted assets before effecting the Scheme.

This may be seen as a major development in UK corporate law, but it is unclear how popular these transactions will become, especially since the transferring company's assets require due diligence.

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