

Inverse-EU-Cross-Border Merger: a Legal First

PRESS RELEASE



Ely Place Chambers

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Liza Zucconi, a partner in Silverman Sherliker's Corporate Commercial department and Italian Desk and Philipp Simon, Barrister at Ely Place Chambers, have just succeeded in completing an inverse cross border merger under the Companies (Cross-Border Mergers) Regulations 2007, the first one to be done in this way.

A cross border merger is a procedure introduced by EU law which is used by group companies to restructure by a cross border merger where an English company can be absorbed into a company from another European Economic Area, without the need of liquidation and ensuring corporate continuity. In the wake of Brexit, EU-Cross-Border-Mergers have significantly gained importance when it comes to considering the future of pan-European corporate structures. Liza and Philipp completed a merger by absorption of a wholly-owned subsidiary.

Under the Regulations a "merger by absorption of a wholly-owned subsidiary" means an operation in which a company transfers all its assets and liabilities to another company which holds all the shares or other securities representing its capital. At the final stage of the merger, the transferor company is dissolved without going into liquidation.

In the case that Liza and Philipp worked on, it should have been that the transferor company is wholly owned by the transferee company, so that the transferor is the subsidiary merging into the parent company as defined in the Regulations and permitted under English Law. In fact Liza and Philipp attempted a cross border merger in the inverse by merging a parent company into a subsidiary, which has been permitted under Italian law but had so far not been permitted under English law. The European Directive has been interpreted in a different way under Italian law.

The final procedure involved a Hearing in the High Court, Queens Bench Division before Registrar Jones in the Companies Court. On Liza's instructions, Philipp successfully argued that such a merger should be permissible.

Liza Zucconi is a specialist company commercial lawyer with particular expertise in multi-jurisdictional transactions. She is recognised in *Chambers Global* as a Leading Individual and Foreign Expert.

Philipp Simon's practice regularly entails commercial and chancery work and he frequently advises on the impact and the consequences of Brexit. As of late, he has helped companies from a range of EU-member states to enter and leave the markets of England & Wales. Philipp is qualified in England & Wales, Germany and Luxembourg, which makes him a unique Member of the Bar.



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