

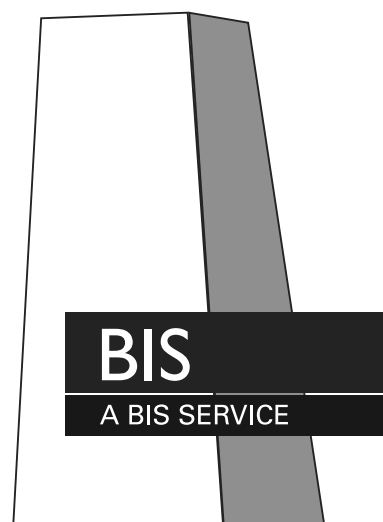
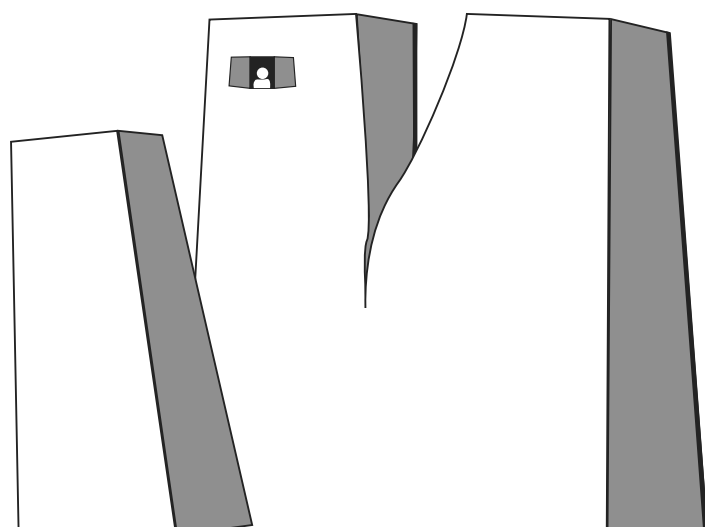
Companies Act 2006



Companies House
— for the record —

cross border mergers

GPO7- August 2011



BIS

A BIS SERVICE

This guidance is available in alternative formats which include Braille, large print and audio tape. For further details please see our website – www.companieshouse.gov.uk or email our enquiries section at enquiries@companieshouse.gov.uk or telephone our contact centre on 0303 1234 500.

Is this guidance for you?

This guide will be relevant to you if:

you are a director of a merging company and looking for basic guidance on filing requirements in the UK.

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Introduction

This guide answers many frequently asked questions and provides information on completing the most commonly used filings relating to this area. The guide is not drafted with unusual or complex transactions in mind. Specialist professional advice may be needed in those circumstances.

This is a guide only and should be read with the relevant legislation, the Companies (Cross-Border Mergers) Regulations 2007/2974.

This guidance only refers to the procedures that need to be completed in relation to the Registrar of Companies at Companies House. It does not cover other requirements as set out in the relevant legislation (which includes contact with the court and other internal obligations that a company will need to carry out). We recommend seeking advice from a solicitor when considering a cross-border merger.

For more detailed guidance on the cross-border merger regulations, please see the BIS guidance note which can be found at www.berr.gov.uk/bbf/eu-company-law/directives/page19528.html.

Chapter 1 Background

1. What is a cross-border merger?

The Companies (Cross-Border Mergers) Regulations 2007/2974 implement the European Directive on Cross-Border Mergers of Limited Liability Companies (Directive 2005/56/EC). This makes it possible for a transferor company to transfer assets and liabilities to a transferee company, without the transferor company needing to go into liquidation. The merger must involve at least one company formed and registered in the UK and at least one company formed and registered in an EEA state other than the UK.

It is also possible for a limited liability partnership (LLP) to carry out a cross border merger. The relevant legislation is part 10 of The Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009. This legislation applies certain modifications to The Companies (Cross-Border Mergers) Regulations 2007, to take into account the different structure of an LLP and a company. The information in this guidance booklet can be read as if it were applied to both companies and LLPs.

2. What is a transferor and a transferee company?

Transferee company – this is the company to which assets and liabilities are to be transferred. This is the remaining company once the merger is complete.

Transferor company – this is the company from which the assets and liabilities are to be transferred. This company will cease to exist on completion of the merger.

3. What are the different types of merger?

a. Merger by absorption

This is where one or more companies transfer all their assets and liabilities to another existing company. Every transferor company is dissolved without going into liquidation.

b. Merger by absorption of a wholly owned subsidiary

This is where a company transfers all its assets and liabilities to another company which holds all the shares or other securities representing its capital. The transferor company is dissolved without going into liquidation.

c. Merger by formation of a new company

This is where two or more companies transfer all their assets and liabilities to a new company formed for the purposes of the merger. The transferor companies are dissolved without going into liquidation.

Chapter 2 Procedure to complete a cross-border merger

1. What are the pre-merger requirements?

A UK merging company should apply to the court (in the UK this will be the High Court or the Court of Session) for an order certifying that the company has properly completed the pre-merger acts and formalities for the cross-border merger. The court may also, at the request of a creditor or member of a UK merging company, require the UK company to seek the approval of creditors or members to the terms of the merger. There are also obligations to inform employees of the details of the merger.

Other requirements may apply depending on the type of merger taking place.

2. What needs to be delivered to Companies House?

The directors of a UK merging company must deliver to the Registrar:

- A completed cross-border mergers form CB01, enclosing either a copy of the draft terms of merger or confirmation that the draft terms are available on a website.
- A copy of any court order summoning a meeting of members or creditors made under regulation 11 of the Companies (Cross-Border Mergers) Regulations 2007

These documents must be delivered to the Registrar at least 2 months before the first meeting of the members (for England and Wales the Cardiff office; for Scotland the Edinburgh office; for Northern Ireland the Belfast office).

3. What information is needed on the cross-border mergers form?

The cross-border merger form asks for a number of details which will have to be completed for *each* merging company. These are:

- full company name;
- registered number;
- registered office address,
- legal form and law by which the company is governed, and
- name of the member state, and the name and address of the registry where company documents are filed.

4. What do I need to do if I want to publish draft terms of merger on a website?

In order to publish draft terms of merger on a website the following conditions must be met:

- The website is maintained by or on behalf of the UK company and identifies the company

- There is no fee payable to access the draft terms on the website
- Details of the website where the draft terms are available are included on the CB01 form
- The draft terms remain available on the website throughout the period beginning one month before, and ending on, the date of the first meeting of members

5. Is there a fee for filing the cross-border mergers form?

There is no fee payable for registration of this form.

6. In which language does the form need to be filed?

The form must be completed in English.

7. Where can I obtain a cross-border mergers form?

The cross-border mergers form CB01 or LL CB01 are available on our website at www.companieshouse.gov.uk

8. What happens to the documents sent to the Registrar?

The Registrar will publish notice of the receipt of the documents in the London Gazette at least one month before the date of any meeting of the company summoned for the purpose of approving the scheme and make the documents available to the public on the companies register.

9. How is the merger approved?

Once a pre-merger certificate has been issued a joint application should be made to the 'competent authority' in the jurisdiction of the transferee. If the company resulting from the merger is a UK company this will be the High Court or the Court of Session. Where a UK court makes an order, the UK transferee company and every UK transferor company must send to Companies House:

- a copy of the court order, not more than 7 days after the date on which it was made;
- details of the transferor company(ies) from outside the UK. Details must include the register in which the company is entered and the registration number in that register.

If the company resulting from the merger is in another EEA state, an order is made by the relevant competent authority to approve the completion of the merger. Every transferor company which is a UK company must deliver to Companies House:

- a copy of the order, not more than 14 days after the date on which it was made;

Any order in a foreign language must be accompanied by a certified translation.

10. What will Companies House do when it receives an order approving a merger?

When Companies House receives a court order from the High Court or the Court of Session approving a cross-border merger, it will:

- send notification of the order to the register of each transferor company from another EEA state;
- dissolve any UK transferor company from the UK register and place a note in the register stating that as from the date on which the consequences of the merger took effect the assets and liabilities of the UK transferor company were transferred to the transferee company.

When Companies House receives notice from the registry of another EEA state of an order approving the completion of a cross-border merger, it will:

- dissolve every UK transferor company from the UK register and place a note in the register stating that as from the date on which the consequences of the merger took effect the assets and liabilities of the transferor company were transferred to the transferee company.

11. Further guidance

Our staff are happy to give you guidance on general matters, such as the completion of the statutory forms. We are unable to advise on the suitability of a cross-border merger for your company.

If you are unsure about any aspect of forming a cross-border merger, please seek professional advice from a solicitor.

Chapter 3 Further Information

1. How do I send information to Companies House?

You may deliver documents to the Registrar by hand (personally or by courier), including outside office hours, bank holidays and weekends to Cardiff, London, Belfast and Edinburgh.

You may also send documents by post, by the Document Exchange service (DX) or by Legal Post (LP) in Scotland. If you send documents, please address them to:

For England & Wales:	For Scotland:	For Northern Ireland:
The Registrar of Companies	The Registrar of Companies	The Registrar of Companies

Companies House Crown Way Cardiff CF14 3UZ DX33050 Cardiff 1	Companies House Fourth Floor Edinburgh Quay 2 139 Fountainbridge Edinburgh EH3 9FF DX ED235 Edinburgh 1 LP – 4 Edinburgh 2	Companies House Second Floor The Linenhall 32-38 Linenhall Street Belfast Northern Ireland BT2 8BG DX 481 N.R. Belfast 1
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If you are sending documents by post, courier or Document Exchange (DX) and would like a receipt, Companies House will provide an acknowledgement if you enclose a copy of your covering letter with a pre-paid addressed return envelope. We will barcode your copy letter with the date of receipt and return it to you in the envelope provided.

Please note: an acknowledgement of receipt does not mean that a document has been accepted for registration at Companies House.

Please note: Companies House does not accept statutory documents by fax.

how to contact us

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contact centre: **0303 1234 500**

(For training and quality purposes your call may be monitored)

mini-com: 029 2038 1245

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Fourth Floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, EH3 9FF
- London:** Companies House
21 Bloomsbury Street, London, WC1B 3XD
- Belfast:** Companies House,
Second Floor, The Linenhall,
32-38 Linenhall Street, Belfast, BT2 8BG

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www.companieshouse.gov.uk



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