JUDICIARY OF
ENGLAND AND WALES

PRACTICE NOTE

The purpose of this note is to explain the Court's approach when hearing applications in connection with a cross-border merger pursuant to the Companies (Cross-Border Mergers) Regulations 2007 ("the Regulations"). It applies where one or more of the transferor companies is a UK company (as defined in the Regulations).

Such a merger cannot proceed without a certificate from the High Court certifying that the pre-merger steps in relation to the UK merging company have been properly completed. The final decision to approve the merger is reserved to the member state whose laws govern the transferee company.

In such a case, an applicant may (where appropriate) seek an order from the Court summoning a meeting or meetings of members and/or creditors of the UK merging company under Regulation 11; and the applicant will seek an order certifying that the pre-merger acts and formalities required of the UK merging company have been properly completed under Regulation 6(1).

The practice of the Companies Court is that such applications are heard by an ICC Judge. In an appropriate case the ICC Judge may adjourn the hearing of an application to a High Court Judge.

At the hearing of an application, the Court will consider the question of creditor and employee protection. Creditors for this purpose may include any party who is owed a debt (including prospective and contingent debts), employees, policyholders, those who have pension rights and others. The evidence should address the position of creditors of the UK merging company, the effect of the merger upon them (including issues arising from the UK's departure from the European Union, if any), and any proposals to protect their interests.

Chief Registrar, ICC Judge Briggs

4 October 2018