



Neutral Citation Number: [2018] EWHC 1445 (Ch)

Case No: CR-2018-004563

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**COMPANIES COURT (ChD)**

Royal Courts of Justice  
Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 12/06/2018

**Before:**

**MR JUSTICE MORGAN**

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**IN THE MATTER OF COUNCIL REGULATION**  
**(EC) NO 2157/2001 OF**  
**8 OCTOBER 2001 ON THE STATUTE FOR A**  
**EUROPEAN COMPANY (SE)**

**- and -**

**IN THE MATTER OF LIBERTY MUTUAL**  
**INSURANCE EUROPE PLC**

**- and -**

**IN THE MATTER OF LSM LUXEMBOURG PLC**  
**SA**

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**Mr Andrew Thornton** (instructed by **DLA Piper LLP**) for the **Applicant Companies**

Hearing date: 8 June 2018  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE MORGAN

**MR JUSTICE MORGAN:**

1. On 8 June 2018, I heard an application pursuant to Article 26 of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE) (“the Regulation”). At the end of the hearing, I indicated the order which I would make and following the hearing I was provided with a draft order in accordance with that indication and I made an order accordingly.
2. This judgment now deals with a number of points which arose in the course of the hearing and also deals with the form of order which it is appropriate to make where the court is satisfied of the matters required by Article 26.
3. I need only refer briefly to the facts of this case. Liberty Mutual Insurance Europe plc (“the Company”) is registered in England and Wales. It was incorporated on 21 December 1972 and has changed its name on a number of occasions over the years. It was re-registered as a public limited company on 1 March 2018. It underwrites insurance and re-insurance business from its registered office in London and its branches across Europe. It is currently planning for the consequences of the United Kingdom leaving the European Union on 29 March 2019. As part of that planning, it wishes to become a Societas Europaea (an SE) in accordance with the Regulation.
4. In order for the Company to become an SE, another company has been incorporated in Luxembourg. The new company is LSM Luxembourg plc SA (“LSM Lux”). LSM Lux was incorporated on 29 December 2017. It has not traded and has limited assets and liabilities. Its present value consists in its initial share capital of €30,000. The intention is that the Company will merge with LSM Lux. The terms of the merger provide for the Company to acquire all of the assets and liabilities of LSM Lux and to become an SE with the name Liberty Mutual Insurance Europe SE. LSM Lux will then cease to exist by operation of law in accordance with the Regulation.
5. The provisions of the Regulation which are of particular relevance in this case are:
  - i) Article 1 providing for the setting up of an SE;
  - ii) Article 2(1) providing for the formation of an SE by merger;
  - iii) Articles 15 and 16 providing for the applicable law and for an SE to have legal personality;
  - iv) Article 17 providing for the formation of an SE by means of a merger in accordance with Article 2(1);
  - v) Articles 20 to 24 which deal with some of the steps to be taken in connection with such a merger;
  - vi) Article 25(1) which provides for the legality of a merger to be scrutinised “as regards that part of the procedure concerning each merging company, in accordance with the law on mergers of public limited-liability companies of the Member State to which the merger company is subject”;

- vii) Article 25(2) which provides for the relevant authority (in this jurisdiction it is the court) to certify conclusively attesting to the completion of the pre-merger acts and formalities;
  - viii) Article 26 which is in these terms:
    - “1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning the completion of the merger and the formation of the SE, by the court, notary or other authority competent in the Member State of the proposed registered office of the SE to scrutinise that aspect of the legality of mergers of public limited-liability companies.
    - 2. To that end each merging company shall submit to the competent authority the certificate referred to in Article 25(2) within six months of its issue together with a copy of the draft terms of merger approved by that company.
    - 3. The authority referred to in paragraph 1 shall in particular ensure that the merging companies have approved draft terms of merger in the same terms and that arrangements for employee involvement have been determined pursuant to Directive 2001/86/EC.
    - 4. That authority shall also satisfy itself that the SE has been formed in accordance with the requirements of the law of the Member State in which it has its registered office in accordance with Article 15.”
  - ix) Article 27 which provides for the date on which the merger and formation of an SE take effect (the date of registration under Article 12); this may not happen until “the formalities” under Articles 25 and 26 have been completed;
  - x) Article 29 which provides for the consequences of a merger carried out as laid down in Article 17.
6. On 23 April 2018, a notary public in Luxembourg issued a certificate under Article 25(2) in relation to the pre-merger acts and formalities in relation to LSM Lux. On 4 May 2018, ICC Judge Briggs (Chief Registrar) issued a certificate under Article 25(2) in relation to the pre-merger acts and formalities in relation to the Company. Those certificates mean that it is now “conclusively attested” that such pre-merger acts and formalities have been completed.
7. The application before me was made under Article 26. I have set out above the wording of Article 26. At the hearing, I had regard to the following features of Article 26 and the following matters:
- i) The function of the court under Article 26 is to scrutinise the legality of the merger “as regards the part of the procedure concerning the completion of the merger and the formation of the SE”; the court is not asked to scrutinise the legality of the merger as regards the part of the procedure involving the pre-

merger acts and formalities because those matters are not within the phrase quoted above and because they have been conclusively attested by the certificates under Article 25(2);

- ii) In accordance with Article 26(2), the applicant companies provided the two certificates under Article 25(2) within the relevant six-month period and also provided the draft terms of merger approved by both companies;
  - iii) As regards Article 26(3), I was satisfied that the merging companies had approved draft terms of merger in the same terms;
  - iv) Further, as regards Article 26(3), I was told that there were no arrangements for employee involvement because neither company had any employees and I took the view that Article 26(3) did not require there to be arrangements for employee involvement where there were no employees;
  - v) As regards Article 26(4), I was satisfied that the Company had been originally formed in accordance with the law of this jurisdiction and that the SE would be formed in accordance with the law of this jurisdiction; Article 26(4) can possibly be read in two ways; one way is to read it as referring to the original formation of the Company and that way presents no problem; the other way is to read it as referring to the formation of the SE but the SE will only be formed following the completion of the formalities under Article 26: see Article 27; if Article 26(4) is to be read as referring to the formation of the SE, then it will have to be read as meaning that the SE “will be” formed in accordance with the law of this jurisdiction;
  - vi) Having satisfied myself as to the requirements of Articles 26 (2), (3) and (4), I returned to consider whether there was any other issue as to “the legality of [the] merger” for the purposes of Article 26(1); in that context I considered whether I should be concerned by the fact that it appeared that LSM Lux had been specifically formed in order to allow the Company to use the merger provisions in the Regulation and become an SE; on that basis, and following the reasoning of the Court of Appeal in Easynet Global Service Ltd v Secretary of State of Business, Energy and Industrial Services [2018] EWCA Civ 10, I considered that even if the involvement of LSM Lux was merely a means to enable the Company to produce the intended result under the Regulation, the steps which had been taken and which would be taken came within the ambit and terms of the Regulation and did not infringe the principle of abuse of rights in accordance with the European jurisprudence.
8. In the way described above, I concluded that all of the requirements of Article 26 were satisfied. I was asked to make an order which stated that the court “approves and sanctions” the merger pursuant to Article 26. I questioned whether the court’s order should be expressed in that way and after discussion with Mr Thornton, counsel for the Company and for LSM Lux, I indicated how the order should be expressed. Mr Thornton then produced a draft to which I made some minor amendments. I then made an order in the following terms:

**“UPON THE APPLICATION** by claim form dated 1 June 2018 of Liberty Mutual Insurance Europe Plc ("**LMIE**") and LSM Luxembourg plc SA ("**LSM Lux**") (together the "**Claimants**")

**AND UPON HEARING** Andrew Thornton on behalf of the Claimants

**AND UPON READING** the witness statement of John Anthony Roberts Dunn dated 31 May 2018 on behalf of LMIE and of Nigel James Davenport dated 31 May 2018 on behalf of LSM Lux (and their relevant exhibits)

**AND UPON COURT HAVING SCRUTINISED** the legality of the merger of the Claimants as regards the part of the procedure concerning the completion of the merger and the formation of a European Company, Liberty Mutual Insurance Europe SE ("**LMIE SE**"), pursuant to Article 26 of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE) ("**SE Regulations**") and, in particular, the Court being satisfied that the Claimants have complied with Articles 26(2), (3) and (4) of the SE Regulations and that no issue arises as to the legality of the merger

**THE COURT HEREBY CONFIRMS AND DECLARES** that the Claimants are free to take steps to bring the proposed merger between them and the formation of LMIE SE into effect, the consequences of which shall take effect upon the registration and formation of LMIE SE by the Registrar of Companies of England and Wales

**AND THE COURT HEREBY DIRECTS** the Claimants to deliver to the Registrar of Companies a copy of this order and such other documents as are necessary to bring the merger between them and formation of LMIE SE into effect”.