

Law Debenture

Dual Listed Company Structures

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*For advantages of the DLC structure
see overleaf*

A dual-listed company structure is essentially a synthetic merger. It relies on contractual rights and obligations to achieve a merger notwithstanding that the two companies continue as separate companies and maintain their separate listings on their respective stock exchanges. Law Debenture has been involved in many of the recent DLCs. These have included RTZ/CRA – the first DLC of recent times (Rio Tinto) – as well as the more recent DLCs of Billiton/BHP and Brambles Industries/GKN's support services arm. Although DLCs are topical, the structure is not new with an early example dating back to 1907.

BHP/Billiton illustrates how the DLC structure works

BHP was an Australian company listed on the Australian stock exchange while Billiton was listed in London. The DLC structure involved no actual transfer of shares or assets. Instead BHP and Billiton entered into various contracts so that, in effect, the shareholders of BHP and shareholders of Billiton were in the same position as if they all held shares in a single entity. The shares in both BHP and Billiton have equal rights to capital and income.

Law Debenture's role

Special voting shares are held by Law Debenture in BHP and Billiton. These are held through dedicated Law Debenture subsidiaries established for the purpose, which hold the special voting shares. One company is in the UK and the other in Australia: each is tax resident in its country of incorporation. Since both are Law Debenture group companies, to ensure that the Australian one is tax resident in Australia, the majority of its directors are Australian.

A voting agreement between BHP, Billiton and Law Debenture's two subsidiaries sets out Law Debenture's obligations in respect of the administration of the two special voting companies. The agreement also restricts Law Debenture's ability to deal with the shares in the voting companies.

Law Debenture, through these special companies, votes on all joint electorate resolutions so that votes cast by both sets of shareholders count in determining whether those resolutions have been passed. Law Debenture does not exercise any discretion in how the two subsidiaries vote but simply replicates the way the shares were voted at the respective general meetings. Law Debenture appoints a representative to attend each meeting and vote the shares according to the way votes were cast at the other meeting. The polls are kept open at the first meeting (say in Australia) until Law Debenture has exercised the special votes at the meeting in London and vice-versa. Only then do both meetings close, with the respective resolution passed at both meetings.

Where the two bodies of shareholders may have divergent interests, each set of shareholders is given a right of veto at the other company's general meeting in respect of what are called Class Rights Resolutions. The Law Debenture company holding the special voting share either does not vote (if the holders in the first country have passed the resolution) or exercises a vote to defeat the resolution where the shareholders in the other company have voted against the Class Rights Resolution.

The legal arrangements ensure that the groups are managed as a single economic enterprise and both companies enter into cross guarantees to guarantee amounts owed to future creditors of the other.

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Advantages of the DLC structure

- Both participants retain their separate stock exchange listings.
- As there is no transfer of assets or shares, implementing a DLC does not result in a tax liability for the companies or their shareholders. Shareholders in both companies can continue to receive their dividends in accordance with local tax treatments.
- By having a separate listing both companies can raise finance in their own name
- As there is no actual acquisition by either company the merger is more likely to be regarded as a nil premium merger of equals.
- The structure avoids any flowback of shares that sometimes occurs on cross-border acquisitions. This is avoided because shareholders continue to hold their shares in the same company as before. So share price reductions should be avoided.
- Each company retains its national identity – this can be particularly important in countries where certain undertakings are restricted to nationally-incorporated and listed entities