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## Universal Succession of Corporations — Mergers by Way of Transmission of Shares

### *Universal succession and mergers*

The doctrine of universal succession is a legal concept where the law of incorporation recognises a succession of a preceding company's corporate personality by a successor company: see *National Bank of Greece and Athens SA v Metliss*;<sup>[1]</sup> *Jacob Agam and another v BNP Paribas SA*;<sup>[2]</sup> *JX Holdings Inc and another v Singapore Airlines Ltd*.<sup>[3]</sup>

A merger involves two or more legal entities, whereby the successor acquires in its entirety the rights, obligations, assets and liabilities of another by universal succession of title. The law of the forum recognises the changed status of the successor entity. This automatic devolution of title, which takes place by operation of law upon the occurrence of a legally significant event such as a merger, is recognised as a transmission.

It is important to appreciate the distinction between transmission by operation of law and a transfer of shares,<sup>[4]</sup> as prescribed under s 105 (1) of the Companies Act 2016 (“CA 2016”). This distinction is crucial as only the latter requires an executed and stamped instrument of transfer. In contrast to a transmission, a transfer is a voluntary disposition of the legal title of the shares by an active act of a shareholder. Section 105 of the CA 2016 may be viewed [here](#).

### *Companies Act 2016, s 109*

Section 109 of the CA 2016 provides that this section applies if the right to shares/debentures is transmitted to a person by operation of law and the person notifies the company in writing that the person wishes to be registered as a shareholder or debenture holder of the company in respect of the shares or debentures. Section 109 of the CA 2016 may be viewed [here](#).

The High Court recently considered and applied this doctrine of universal succession in *United Renewable Energy Co Ltd v TS Solartech Sdn Bhd* (“URE”).<sup>[5]</sup>

Solartech Energy Corp (**Solartech**) is a foreign shareholder of the defendant, a joint venture company incorporated in Malaysia. The plaintiff was incorporated pursuant to a merger governed by the laws of Taiwan between Solartech and two other Taiwanese companies. The plaintiff requested the defendant to effect the transmission of its shares to the plaintiff (**Shares**). The defendant refused to do so on the basis that:

- (1) the merger, being a voluntary commercial decision, resulted in the transfer of shares requiring an instrument of transfer under s 105 of the CA 2016; and
- (2) s 109 of the CA 2016 is restricted to cases of death and bankruptcy only.

The High Court found in favour of the plaintiff and held that the foreign merger resulted in the devolution of ownership of the Shares from the defendant to the plaintiff via transmission by operation of law. The High Court further clarified that:

- (a) Section 109(1) of the CA 2016 is sufficiently wide in scope to cover a universal succession. The application of a transmission of shares by operation of law is not restricted to cases of death or bankruptcy; and
- (b) the statutory requirement in s 105(1) of the CA 2016 for an instrument of transfer is not applicable in cases dealing with mergers by way of universal succession.

The grounds of judgment of *URE* can be found [here](#).

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[2]

[2017] SGCA(l) 01

[3]

[2016] SGC 212

[4]

See *Ng Chong Wee v Ng Chong Geng & Sons Sdn Bhd* [2018] 1 LNS 967, paras [9] and [10]

[5]

[2019] 8 CLJ 721