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# Two Heads are Better than One: An Overview of the Dual Listed Company Structure

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SUMMARY

*The use of a dual listed company (DLC) structure to achieve a synthetic equivalent of a merger has found recent increased application in Australia. An analysis of the unique features of the DLC structure quickly reveals the reasons for its increasing popularity.*

*The implementation of a DLC structure poses its challenges but perhaps no more so than a traditional merger. This paper details the mechanisms that establish the structure and the Australian legal and regulatory processes involved. It also explores the impact such a structure is likely to have on the operations of the merged entity.*

*However, whilst implementation is relatively simple, maintaining a DLC structure is complex and relatively untested in Australia. There are also unresolved issues which may act to nullify the very reasons for which a DLC structure was originally chosen.*

## INTRODUCTION

The dual listed company (DLC) structure has found recent increased application in Australia. Since the first DLC merger between CRA Limited and RTZ plc in 1995, Australia has seen the recently completed BHP Billiton and Brambles-GKN mergers, where both utilised the DLC structure.

The increased use of the DLC merger is partly attributed to increased awareness by many large corporations that their merger

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structure can have a significant impact on the attitudes of the regulators and their own investors, as well as the increased pressure on these companies to maintain their access to global capital markets.

This paper details the mechanisms that set up a DLC structure and the regulatory processes involved. It also aims to identify the reasons why certain companies seeking an alternative to the traditional merger find the DLC structure a refreshing and innovative solution.

## OVERVIEW OF THE DLC STRUCTURE

### Brief History

The DLC concept is relatively new to the Australian market. To date, the only Australian DLC mergers have been between:

(a) CRA Limited and RTZ plc, which merged into the Rio Tinto companies;
(b) BHP Limited and Billiton plc; and
(c) Brambles Limited and GKN plc.

However, elsewhere around the world, particularly Europe[1] with its large number of capital markets, the DLC structure is no new phenomenon.

### Features of a DLC

At the empirical level, a DLC structure is made up of two companies, each with a separate listing on its own stock exchange.

These companies retain their separate legal identities, but operate as a single economic unit. They generally share their assets through a contractual arrangement and their liabilities are guaranteed by each other through cross guarantees. As a result, there is no disposal of shares by the shareholders of either company, and generally no transfer of assets.

The goal of the DLC structure is to achieve a synthetic equivalent of a merger in which contractual agreements rather than legal structure achieve economic equivalence between the two companies.

[1] Examples include mergers between Royal Dutch (Netherlands) and Shell (UK) in 1903; Unilever (Netherlands) and Unilever (UK) in 1930; Euro-Tunnel (UK) and Euro-Tunnel (France) in 1989; Fortis AMEV (Netherlands) and Fortis AG (Belgium) in 1990; Reed International (UK) and Elsevier (Netherlands) in 1993; and Nordbanken (Sweden) and Merita (France) in 1998.

STRUCTURE

From a commercial perspective, the concepts of sharing and equalisation which are so central to the DLC structure revolve around determining a "Merger Ratio" before the merger and maintaining an "Equalisation Ratio" after the merger.

## Merger Ratio

Prior to a DLC merger, the two companies will need to agree on a Merger Ratio that is reflective of the relative economic interest of the shareholders in one company vis a vis shareholders in the other.

The Merger Ratio reflects the relative valuation of the assets and businesses of the two companies in the combined entity. The negotiated Merger Ratio is often contentious when it does not equate the relative market capitalisations of the two companies, as it then implies a premium to the shares of one company over the other.

If the negotiated Merger Ratio mirrors the market's valuation of the two companies, then theoretically, the shares of both companies post merger will trade at similar price levels.

## Equalisation Ratio

Upon completion of the merger, the ratio of economic and voting interest attaching to a share in one company relative to the economic and voting interests attaching to a share in the other company is known as the Equalisation Ratio.

The Equalisation Ratio governs the proportions in which dividends and capital distributions will be paid on the shares in each company and relative to each other. If the merger is to proceed on the basis that the voting rights, dividends and capital distributions paid on the shares of both companies are the same, that is to ensure an Equalisation Ratio of 1:1, a bonus issue of shares to the shareholders of the company contributing a higher value to the merged entity, based on the Merger Ratio, will be required.[2]

[2] For example, a negotiated Merger Ratio of 2:1 suggests that Company A is contributing to the merged entity twice the value being contributed by Company B. To attain an Equalisation Ratio of 1:1, shareholders of Company A must receive a bonus issue of one additional share for every existing share held as compensation for its proportionately larger contribution to the merged entity.

## Implications for Operations

To adopt a DLC structure rather than undertake a traditional merger has unique implications for the operations of the merged entity.

### Legal entity

The companies retain their separate corporate and legal entities and accordingly remain subject to the same laws and regulations post merger. They also maintain their separate stock exchange listings, and remain eligible to participate in the indices of their respective exchanges.

### Assets

The implementation of the DLC structure does not necessarily involve a transfer of assets between the companies. Generally, but dependent on the type of asset structure adopted, assets will be owned by whichever company is most efficient and appropriate to hold those assets.

There are several ways in which the assets of a DLC may be structured.

Around Europe, the most common type of DLC structure is the "combined group" structure where the respective assets of each merging company are grouped under jointly owned intermediate holding companies. These intermediate holding companies are listed on different stock exchanges where each will hold the local operations of the merged entity. To maintain a tax efficient flow of dividends, special income access shares may be issued to channel imputation credits back to the parent company resident in the same jurisdiction.[3]

In Australia, the companies who have undertaken a DLC merger held a substantial part of their assets in joint ventures with third parties and became subject to pre-emptive rights. Accordingly, the preferred choice for these companies is the "separate entities" structure where the two companies remain separate legal entities and the underlying assets stay within the ownership of the pre-merger companies.

[3] See for example, the Reed Elsevier DLC structure, where additional shares carrying only dividend entitlements were issued to the parent resident in the same jursidiction.

### Boards and management

Each company will operate and be managed as if it were part of a single unified entity with the board of directors and senior executive management of both companies comprising of the same persons.

The directors of each company will therefore need to have regard to the interests of the shareholders of both companies in managing the combined entity.

### Share issues and capital reduction

Issues of, and transactions affecting, share capital will, as far as practicable, be undertaken on a matching basis. To the extent they favour one company's shareholders over the other, an adjustment to the Equalisation Ratio will be required.

### Dividends

Dividends will be paid on the basis of the Equalisation Ratio. Where this ratio is 1:1, any dividend paid in respect of a share in one company will be matched by an equivalent dividend in respect of a share in the other company. To the extent that one company has insufficient profits or is otherwise unable to pay the agreed dividend, the companies will be compelled to enter into transactions so they can both pay the same dividend.

### Voting

Whilst the Equalisation Ratio remains 1:1, a share in one company will have the same voting rights as a share in the other company.

Special voting arrangements will be entered into between the shareholders of both companies so they can vote together on matters affecting the shareholders of each company is similar ways, but vote separately where their interests diverge. This is done by classifying all decisions as either a Joint Electorate Action or a Class Rights Action.

#### *Joint Electorate Actions*

Joint Electorate Actions are those that will affect the shareholders of both companies in similar ways, such as the appointment and removal of directors, change of name, significant acquisitions and acceptance of third party takeover offers. Joint Electorate Actions must be submitted to both companies for approval by shareholders voting at separate parallel meetings, but acting as a joint electorate.

To give effect to this procedure, each company will issue to a special purpose voting company (SVC), a special voting share which will carry the number of votes equal to the number of votes cast by the shareholders of the other company. Each SVC will be contractually obliged to mirror the votes cast for and against the resolution at its parallel general meeting. Accordingly, the resolutions in each company will equal the votes cast by the shareholders of that company plus those votes cast by the shareholders of the other company via the SVC.

### *Class Rights Actions*

Class Rights Actions involve those matters on which the interests of the shareholders of the companies are not aligned, such as voluntary liquidation of one company, amendments to the terms of the DLC implementation agreements, action by one company where a matching action is not taken by the other, and in respect of which the boards agree that an adjustment to the Equalisation Ratio would not be appropriate.

Class Rights Actions involve shareholders voting separately at separate meetings. Approval by the shareholders of one company will be defeated (by a deemed vote of the SVC) if the shareholders of the other company fail to pass the resolution. In effect, this requires a Class Rights Action to be approved by both companies separately.

To the extent that an action is neither a Class Rights Action nor a Joint Electorate Action but affects only one of the companies, an ordinary resolution of that company is sufficient.

## Constitutions

Both companies will continue to be governed by their respective constitutions, which will need to be amended to reflect the DLC structure and the principles of equalisation.

To preserve the DLC structure, amendments should also ensure that a person cannot gain control of one company without having made an equivalent offer to the shareholders of the other company.

## Cross guarantees

Cross guarantees between the two companies ensure that creditors of either company will be entitled to the benefit of the guarantees, and effectively treat a debt as being owed by the combined entity. As a result, the combined entity is generally able to attain a more favourable credit rating.

IMPLEMENTING A DLC

A DLC is implemented through entering into series of agreements to regulate the sharing and equalisation arrangements of the companies, and obtaining various approvals to the structure.

## Agreements

The fabric of the DLC structure is constructed and regulated by the series of agreements detailed below.

### Merger Implementation Agreement

This agreement expresses the commitment by both companies to the merger and may provide for liquidated damages to be payable in certain circumstances where one party terminates the merger.[4]

This agreement sets out the terms under which a DLC structure will be implemented including:

- conditions precedent to the merger;[5]
- board composition and other post-merger changes to executive management in the merged entity;
- any bonus issue of shares required to achieve the Equalisation Ratio; and
- the entry into other arrangements to further govern the on-going relationship between the companies.

### Sharing Agreement

The Sharing Agreement is the pivotal document governing the DLC structure. Primarily, it:

- sets out the key principles of the DLC structure and provides for common boards and unified management;
- establishes the Equalisation Ratio to govern the proportion of the voting rights and other economic returns attaching to the shares of one company vis a vis the other;
- requires actions which affect the voting rights or economic returns of the shares of one company (for example, alteration of share

[4] Where such liquidated damages are significant, it may be an effective deterrent to predatory bidders of both companies.
[5] Usually including the approvals listed in s 4.3.

capital) to be matched by an action of the other company so as to maintain equivalence in proportion to the Equalisation Ratio, and where no such matching action is undertaken, provide for an appropriate adjustment to the Equalisation Ratio; and

- governs the voting procedure of both companies, and details the resolutions which require a Joint Electorate Action or Class Rights Action.

### Special voting shares deed

This deed regulates the manner in which the SVC of each company will exercise the votes attaching to the special voting shares of each company.

As detailed above, in Joint Electorate Actions, the SVC of each company must cast a vote at its meeting mirroring the actual votes of the other company's shareholders.

For Class Rights Actions, the SVC may only vote to defeat the resolution at its meeting where the other company has failed to pass the same resolution.

### Deed poll guarantees

Under the guarantee, the companies will guarantee the future obligations of each other with effect from the implementation of the merger. Commonly however, the companies may agree to exclude certain obligations from the guarantee.

Care must be given to drafting the scope of the guarantee. To the extent that creditors perceive that the companies may vary their guarantees with ease, this will adversely affect the improvement expected in the credit rating of the merged entity.

## Amendments to Constitution

To support the DLC structure, substantial amendments will need to be made to the constitutions of both companies.

The nature of these amendments include providing for the scope of, and voting rights and procedures in relation to, the Joint Electorate Actions and Class Rights Actions and mechanisms for calling parallel meetings of shareholders. It must also recognise the concept of equalisation, and provide for mechanisms to adjust the Equalisation Ratio.

The constitutions must require the appointment of separate boards of directors consisting of the same persons.

The constitutions must also provide directors with the authorisation to carry into effect, and continue to abide by, the provisions of the Sharing Agreement. Commonly, the directors are protected by a blanket statement that their actions in doing so will not amount to a breach of their fiduciary duties. The duties of the directors will also need to be expanded so as to have regard to the interests of the merged entity and the shareholders of both companies.

The constitutions will need to regulate the rights attaching to the special voting shares of each company, and prohibit a transfer of these shares without each company's consent.

To the extent that there are tied takeover restrictions, these would have to be clearly reflected in the constitutions, and preferably in identical terms.

## Approvals

### Shareholder approvals

The implementation of the DLC merger including the directors' authorisation to enter into the DLC merger documents and to issue special voting shares will normally require an ordinary resolution of each merging company.

However, amendments to the constitutions and any change of name will require a special resolution of the shareholders of each company.

### Regulatory approvals

There are various regulatory approvals required to implement a DLC merger, depending on the domicile of the two companies. These generally include:

- foreign investment approvals;
- anti-trust and competition clearances;
- securities commission modifications and exemptions in relation to the takeover legislation;
- stock exchange waivers with regard to the operation of its listing rules; and

- tax office rulings as required; for example, that neither company will be regarded as a resident in the jurisdiction of each other.

The ease with which these approvals may be obtained will depend on the circumstances of the companies in each case.

## ADVANTAGES

Aside from realising the strategic benefits of a merger such as economies of scale, enhanced organic growth opportunities, greater financial strength and cash flow generation, a DLC structure offers the additional following benefits.

### Preserving Corporate Identity and Continuity of Domicile

A DLC structure preserves the corporate identity of both companies and is particularly suited to companies with strong national affiliations. Where national pride is attached to a company, it will be difficult to persuade investors from two culturally different nations that a company does not have its centre of gravity in one country or the other. Concerns that many long established Australian companies will disappear from the All Ordinaries Index and become a "branch office" of a merged entity are somewhat abated when a DLC structure is used.[6]

National sensitivities may impact not only on shareholder attitudes, but may affect the likelihood of regulatory consents and foreign investment approvals. As the DLC structure is perceptibly a "merger of equals", it is politically more palatable than a takeover by a foreign company. For the Government, this eases the pressure in granting foreign investment approval and allows the opportunity for conditions to be placed to retain the nationalistic character of a company.[7]

6 Take for example BHP. Dubbed by one commentator as the Australian corporate equivalent of America's "apple pie", the issues of nationalism and the risk of investor sensitivities were on the forefront of the minds of BHP directors who were reportedly insistent during merger discussions that the headquarters of the merged entity remain in Melbourne: Robert Gottliebsen, "Argus the architect of dual listing structure", *The Australian*, 26 April 2001.

7 In the BHP Billiton merger, the conditions of FIRB approval include requiring BHP and the merged entity being headquartered in Melbourne, BHP's top executives having their principal place of residence in Australia, and BHP remaining an Australian resident company listed on the ASX: Treasurer's Office Press Release No 40, 4 June 2001.

## Access to Capital Markets and no "Investor Flowback"

Maintaining listings on different stock exchanges enables the merged entity to have access to different capital markets and will increase the ease with which funds may be raised.

In addition, particularly where the companies involved are eligible to participate in the share indices of their exchanges, the demand for the shares of both companies are likely to rise because of the larger representation on their respective indices. Further, institutional investors who were previously only allowed to invest in local shares can now effectively invest in the other company by buying the shares listed on their local exchange.

As a result of a cross-border listing, the liquidity of the shares of both companies should also increase, not only due to the increased market capitalisation of the combined entity, but particularly if the shares can be traded on exchanges with different opening times. For investors, this reduces the risk at which a position can be taken with respect to the shares of a company as it allows a trade in a theoretically identical security.[8]

Further, as a DLC structure does not require an exchange or disposal of shares, it avoids the selling pressure on the shares of one company as would be the case under a traditional merger when one entity falls out of participation in its stock exchange index.[9]

## Flexibility of Structure

The DLC structure is more conducive to the efficient structuring of future acquisitions. Having two companies operating in two jurisdictions means that future assets may be held in whichever company it is more cost effective to hold those assets.

## Ability to Use Merger Accounting

As Australia's first DLC, Rio Tinto was granted relief by the Australian Securities and Investment Commission (ASIC) from the "Purchase Method" of accounting and was allowed to use "Merger Accounting".

[8] However giving investors access to two different markets may be a two-edged sword as the local market will be influenced by both the positive and negative performance of the shares in the overseas market.

[9] In the BHP Billiton merger, this was a significant factor as several of Billiton's institutional shareholders were restricted from holding shares outside of the FTSE 100.

Under "Merger Accounting" the balance sheets of the two entities are simply added, without adjustment for their fair value and without the need to recognise goodwill.[10]

However, Australian standards require the acquirer to adopt the "Purchase Method" such that acquired assets are measured at cost of acquisition. Any difference in the cost of acquisition and the fair value of the net assets acquired must be recognised as goodwill. Further the assets and liabilities must also be recognised at fair value (usually involving an upward adjustment) and depreciated.[11] The result is higher amortisation and depreciation charges for the merged entity, equating to lower reported profits, lower earnings per share and a deterioration of other key indicators.

If Merger Accounting is available to all DLCs, this will clearly be a significant advantage over the traditional forms of merger.

## Minimised Tax Consequences

As the DLC structure does not necessarily involve the transfer of assets or a disposal of shares, there are no complex stamp duty or capital gains tax consequences that are commonly associated with a traditional takeover.[12] A DLC merger also preserves a company's ability to utilise its losses and bad debts under Australian tax law.

## Preservation of Franking Credits

A DLC structure allows both companies to maintain their level of franking credits in their respective regions, with no risk of the application of "anti-streaming" provisions that are often associated with attempts to maximise the after-tax dividends of a traditional merged entity.

The ability to continue paying franked dividends increases the value attributed by resident investors to the shares of both companies.

[10] This practice is arguably justified on the basis that the entities retain their legal form and no new basis of accountability has arisen. However, readers should be aware that the ASIC is reviewing the moves by the United States regulatory bodies to ban "Merger Accounting" but without requiring the amortisation of goodwill.

[11] Frank Micallef and Ian Eddie, "A case of dirty pool?" Australian CPA, July 2001.

[12] However, since the implementation of the recent Ralph Report recommendations, rollover relief is available for scrip for scrip takeovers.

## Simple Implementation

Whilst DLC mergers are intensive from a documentary and regulatory approvals perspective and are likely to involve substantial negotiation sessions, the concepts reflected by the implementation documents are relatively simple.

Whilst shareholder approval will still be required, there is no need for a court approval as required by a scheme of arrangement, and the special majority approval threshold is easier to achieve than the 90 percent compulsory acquisition threshold required for a takeover.

## No trigger of Pre-emption

Particularly important for the numerous resource companies who hold substantial assets in a joint venture with third parties, a traditional merger may trigger the pre-emptive right and change in control provisions commonly contained in joint venture agreements.

As a DLC merger generally does not involve a transfer of assets or shares, it is unlikely to trigger a change in control provision[13] and has the ability to preserve the full value of the assets of the merged entity.

## Low Premium Merger

Particularly applicable in the current economic environment, Australian companies have little bargaining power when it comes to merging with, or acquiring, foreign companies.

With a volatile exchange rate, potential investors are reluctant to take the shares of an Australian company. Similarly, with the depreciating Australian dollar, our currency struggles with the value required to pay the large premiums usually associated with a takeover.

A DLC structure circumvents both these problems as it does not involve the exchange of shares with, nor require the payment of a premium to, the foreign company.

## Takeover Defence

The requirement for identical offers to be made to both companies in a DLC structure will likely deter many potential acquirers. Not only

[13] This statement is made on the basis that most change of control provisions involve a party to an agreement becoming a subsidiary of another company. However, if the clause is drafted widely to encompass transactions akin to takeovers, a DLC may nevertheless be caught.

will bidders now have to contend with acquiring a much larger entity, they will also have to sort through the complexity of the DLC structure and attribute a value that is consistent with the value of the merged entity.

However, whilst this may be an effective takeover defence strategy for the companies involved, it is unfortunate for the shareholders who may otherwise be entitled to a takeover premium on their shares.

## SHORTFALLS

In addition to the implementation challenges facing any cross-border merger such as increased business risk, exchange rate risk and integration risk, a DLC structure has the following additional drawbacks.

### Inability to Maintain Equalisation Ratio – Share Price Disparity

Theoretically, as the Equalisation Ratio sets the relative economic value of the companies, the shares of the two companies should trade at proportionately similar levels. However, in practice, the shares of one company are likely to outperform the other.

The difference in share performance may be due to the weighting of each company on the major indices of its stock exchange, market specific factors such as the liquidity and depth of the stock markets on which the companies trade or investor habits and exposure to companies in a particular sector.[14] It may also be due to the economic influences of currency and interest rates or the comparative tax regime[15] of the two jurisdictions in which the companies operate.

Share price disparity led to a breakdown in the Allied Zurich (UK) and Zurich Allied (Switzerland) DLC. Due to the persistent 11 percent difference in the share prices of these companies, equality between the shareholders became difficult to sustain and it was felt that the merged entity could achieve a higher value if it was listed on only one stock exchange.

[14] For example, the London Stock Exchange has arguably the most liquid market in resources stock, with sophisticated investors who understand the nature of resource stocks.

[15] For example, Australia's higher withholding tax compared with the United Kingdom's means that for a foreign investor, a company listed on the London Stock Exchange will be, all other things being equal, more attractive than one listed on the Australian Stock Exchange.

## Increased Compliance Costs

As both companies will remain listed on separate exchanges, and remain subject to the legislative requirements of separate jurisdictions, the compliance cost of the DLC merged entity will far exceed that of a traditional merged entity.[16]

This is a significant consideration for those companies operating in heavily regulated industries such as financial services and telecommunications.

## Complexity of DLC Structure and Impact on Valuation

The DLC merged entity will be harder to analyse than the traditional merged entity as it involves not only valuing two companies and reconciling their reported results, but also understanding their interrelationships including their sharing and cross-guarantees arrangements. Difficulties in valuing the DLC merged entity as well as the absence of recognised benchmarks may discourage investment.

Further, to the extent that the market perceives that the contractual arrangements between the companies do not effectively create a merged entity, market analysts are unlikely to attribute a value that recognises the full benefits of a merger.

## Operational Delays and Management Inflexibility

As previously noted, the Equalisation Ratio may need to be adjusted during the life of the DLC structure to maintain economic equivalence between the shares of the two companies. Accordingly, if there are issues of capital or distributions in one company which do not confer equivalent benefits to shareholders of the other company, the Equalisation Ratio will need to be adjusted, failing which, approval by a Class Rights Action will be required.

Accordingly, the maintenance of an on-going DLC structure will involve time delays and create certain management inflexibility which are not evident in a traditional merger structure.

[16] For example, financial reports would be required not only for one company, but for both merging companies, as well as a consolidated version for the DLC merged entity.

ISSUES

Several issues remain unresolved with regard to the operational impact of the DLC structure, and companies who are considering embarking on such a structure need to carefully consider the following.

## Application of Accounting Standards

It is unclear at this stage whether "Merger Accounting" will be available to all DLC merged entities.[17] To the extent that a merged entity may not be granted relief to account in this way, the merging companies will face financial reporting repercussions in the form of lower reported profits and earnings per share, which is likely to have an adverse impact on the level of investment in their shares.

## Corporate Governance

Whilst the constitutions of the DLC entities can require the directors of each board to have regard to the interest of the shareholders of both companies, it is difficult to reconcile such a notion when it is clearly conceivable that the interest of the shareholders of the companies will not always be aligned.

Practically, it will be a question of how the directors can effectively avoid a conflict of duty in making decisions that may favour the shareholders of one company over another.[18]

## Cross Application of Regulatory Framework

Generally, as the companies remain separate legal entities, they remain subject to the legislative and regulatory requirements applicable in their respective jurisdictions. However, there may be instances where one company may be caught by certain regulatory requirements imposed on the other.

[17] See comments of David Knott, Chairman of the ASIC in his address to the Australian Institute of Company Directors, 3 May 2001. A blanket relief for DLCs to use merger accounting creates a disincentive for using conventional merger methods, and provides an unfair advantage that does not reflect substance over form as the fundamentals of a merged entity arguably remains the same.

[18] Arguably this may be akin to the situation where directors sit on both the boards of a parent and that of its subsidiary company. To date, there has been no judicial consideration of directors' duties in the context of a DLC.

For example, accounting standards are likely to be different across jurisdictions. Whilst it is clear that each company will continue to report using the generally accepted accounting principles (GAAP) of its jurisdiction, it is uncertain whether such GAAP may be applied for the other company, and whether consolidated accounts need to be reported on both bases.[19] These uncertainties will undoubtedly increase the administrative costs of the DLC.

Further, as the regulatory framework in the two jurisdictions change over time, it is likely that these same issues will resurface.

## CONCLUSION

For those companies in need of the synergies and commercial benefits of a merger but who are reluctant to lose their existing national or corporate entity, the DLC structure provides a unique solution.

However, whilst the implementation of a DLC is relatively simple, its on-going structure is complex and relatively untested in Australia.

Nevertheless, with Australia's experience in creating the world's two largest mining exploration companies by DLC mergers, it will become easier for companies contemplating a DLC merger to leverage off such experience.

As one commentator suggests, the DLC structure is about the pursuit of scale and expanded growth horizons, the ability to capitalise on the much bigger investor base and access to global capital markets without having to transfer domicile and primary share market listing that would mean the loss of core investor bases.[20]

If the reality is that top tier corporate Australia is actively seeking foreign partners to enter the radar screens of global fund managers and access vital international capital, we are likely to see an increase in the use of the DLC structure. Particularly in an economic climate where there is substantial pressure on resource groups to diversify and mitigate the risk of falling commodity prices, much of this activity is likely to come from the resources industry.

In conclusion, for those who understand and can live with the drawbacks of such a structure, a DLC merger could be the solution for many Australian based internationals to make the transition to global companies.

[19] Even in Australia, the ASIC remains in the process of defining its position on the disclosure and reporting standards for BHP Billiton: ASIC media release 01/145, 4 May 2001.

[20] "Dual-listed companies pointing the way", *Sydney Morning Herald*, 21 April 2001.

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