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In search of lost stock:

accidental loss of UK share ownership during international reorganisations

This is a "tourist trap" I have seen a number of foreign corporations fall into when they have an affiliate in the UK.

Under our law, transfers of shares in a company have to be made by a formal written transfer document, which is then entered in a register to transfer ownership. The register is the definitive record of legal ownership. It is unlawful to change the ownership register without a transfer form and having paid any necessary stamp duty.[1]

English law regards shares in English companies as legally situated in England, so that their transfer is always governed by English law, even in a transaction that otherwise has no connection with the UK. Transfers or changes of ownership by operation of law in other countries are not recognised.

If the owner of shares ceases to exist, for example when the owner dies without heirs or a company is dissolved, the shares are *bona vacantia* and vest in the Crown.[2] Often no-one will notice, and it may be years before anyone spots that the holder has ceased to exist and the legal owner is now the Crown.

That can be a particular problem following the merger of corporate entities under foreign law, where one of them holds shares in a UK company. The UK, unlike many countries, has no legal concept of corporate merger.[3] Companies buy each other and transfer assets between them, but there is no concept of one entity becoming another, or the property of an entity becoming the property of a new merged entity. If groups of UK companies reorganise, they must transfer shares from one holding company to another in the usual way.

[1] Except upon death or bankruptcy, by electronic transfer for listed companies, or by order of the court: Companies Act 2006 section 770, Stock Transfer Act 1963 and Stamp Act 1891 section 17.

[2] ie the government – or the Duchy of Cornwall or Duchy of Lancaster. Medieval, isn't it?

[3] without a court-approved reorganisation or other exceptional process such as a special Act of Parliament.

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If you merge two entities in another jurisdiction, you might assume that all the property of the merging entities becomes the property of the merged body. Some countries allow cross-border mergers in this way – I had this problem arise when a Luxembourg corporation merged into a South African company. You would probably think about land ownership, and make sure that got transferred. But you might not think about formal transfers of shares in subsidiaries. In some countries the idea of a transfer from the old corporation to the new is quite alien – they are conceptually the same legal person. But not in the UK.

So you carry out your merger, and the new entity trades happily for years. The old pre-merger corporation disappears by operation of law or is dissolved, depending on the jurisdiction. Then you undergo due diligence for a financing, disposal or IPO, and someone asks about ownership of the UK subsidiary. The shares are registered in the name of OldCo; there was no transfer document transferring the shares into the name of NewCo. No problem, says your English lawyer. All we need is a transfer from OldCo to NewCo. But OldCo has ceased to exist. In some countries that happens at the moment of merger, so there are no officers able to represent OldCo and sign a transfer even immediately after the merger. The shares are *bona vacantia* and vested in the Crown.

What can be done about this? In the UK, if we discovered that company had been dissolved whilst still owning assets, we could apply to the court to restore the old company – thought there are time limits. That is unlikely to work in jurisdiction in which the pre-merger entity disappears upon merger.

We can try to persuade the Crown to transfer the shares to the intended owner – but the Treasury Solicitor will probably want to be paid the value of the shares.

The best solution, which I have seen missed a number of times by experienced English lawyers, lies in trust law. When someone unconditionally agrees to sell shares, including upon a merger, the new owner becomes the equitable owner of the shares even if no transfer is signed. The old owner holds the shares on trust for the new owner. Equity does not allow a trust to fail for want of a trustee, and the court has power to appoint a new trustee where the old one has been dissolved, and to vest shares in the new trustee.[4] This can often be done in the local county court and need not be expensive. The Crown does not lay claim to property *as bona vacantia* when it was held on trust.

So with the right adviser, the problem can be solved. But it's far better not to let it arise in the first place. When planning a reorganisation it's important to get advice in each country in which the merging entities have assets or operations and to observe any formalities required by local law.

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[4] Sections 41 and 51 Trustee Act 1925.