

This note is a brief guide to the amalgamation of companies under Guernsey law and should be read in conjunction with the relevant statutory provision which is Part VI of The Companies (Guernsey) Law, 2008 (the “Law”).

1. What is an amalgamation?

An amalgamation is where two or more companies merge and continue as one company.

The Law provides that at least one of the amalgamating companies must be a Guernsey company (that is, i.e. be on the register of Guernsey companies). The continuing company may be one of the original amalgamating companies or a new company.

Cellular companies (protected cell companies (“PCC”) and incorporated cell companies (“ICC”)) and non-cellular companies (such as the standard limited liability company) may amalgamate. However all of the amalgamating companies must be of the same type, meaning a PCC cannot amalgamate with a non-cellular company. Additionally incorporated cells of the same incorporated cell company may amalgamate with each other.

2. What are the types of amalgamation procedure?

There are two procedures which can be used to amalgamate companies: Standard Form (also known as Long Form) and Short Form. The Short Form amalgamation, which as the name indicates, is easier and faster and is available only to companies in the same group. For more details see below. If companies do not fulfil the requirements to allow them to use the Short Form procedure then they must use the Standard Form procedure.

3. What is the Standard Form amalgamation procedure?

3.1 The Standard Form amalgamation proposal

Where it is proposed to amalgamate two or more companies, an amalgamation proposal must be prepared which sets out the terms of the amalgamation.

The Amalgamation Proposal must contain the following information:

- the name of the final amalgamated company;
- where the amalgamated company is to be a Guernsey company, the type of company it is to be (for example guarantee company, mixed liability company etc.);
- the registered office of the amalgamated company;
- the particulars of the directors of the amalgamated company;
- where the amalgamated company is to have a share capital:
 - (i) the number of shares of the amalgamated company;
 - (ii) the aggregate value of those shares (whether on account of the nominal value or by way of premium);

- (iii) the amount to be paid up and the amount (if any) to be unpaid on those shares;
- (iv) the rights, privileges, limitations and conditions attached to the shares;
- and where the amalgamated company is to have more than one class of share, the amalgamation proposal must also state the above matters in respect of each class of share; where the amalgamated company is to have guarantee members:
 - (i) the guaranteed amount of each member; and
 - (ii) the maximum number of guarantee members which the company may have; the manner in which the interest and liabilities of each member of the amalgamating companies are to be converted into interests and liabilities of the amalgamated company or, if they are not to be so converted, the consideration (payment) a member will receive; details of any other payment to be made to a member or director of an amalgamating company in connection with the amalgamation;
- details of any arrangement necessary to complete the amalgamation; and
- the date on which the amalgamation is proposed to become effective.

If the shares of one amalgamating company are held by or on behalf of another of the amalgamating companies then the Amalgamation Proposal must include further provisions.

3.2 What confirmations must the directors give?

The directors of each amalgamating company must resolve that (i) in their opinion the amalgamation is in the best interests of that company and (ii) they are satisfied on reasonable grounds that the amalgamated company will, immediately after the amalgamation becomes effective, satisfy the statutory 'solvency test'. The directors who vote in favour of this resolution must sign a certificate stating that, in their opinion, the conditions set out above are satisfied and the grounds for having that opinion.

3.3 What documents must be circulated?

3.3.1 Notice to members of the amalgamating companies

The directors of each amalgamating company must give to each member of that company, not less than 28 days before the day on which the amalgamation is proposed to take effect:

- a copy of the Amalgamation Proposal;
- copies of the certificates given by the directors of each of the amalgamating companies;
- a summary of the principal provisions of or a copy of the memorandum and articles of the final amalgamated company;
- where a copy of the memorandum and articles of the final amalgamated company has not been sent to each member, a statement that a copy thereof will be supplied to any member who requests it;
- a statement of any material interests of the directors and other officers of the amalgamating company in the proposal, whether in that capacity or otherwise; and
- such further information and explanation as may be necessary to enable a reasonable member to understand the nature and implications for the amalgamating company and its members of the proposed amalgamation.

3.3.2 Notice to creditors

The directors of each amalgamating company must ensure that written notice of the proposed amalgamation is

given to every creditor of that amalgamating company not less than 28 days before the day on which the amalgamation is proposed to take effect.

3.3.3 Documents made available to members and creditors

The directors of each amalgamating company must ensure that copies of the Amalgamation Proposal are available for inspection by:

- any member or creditor of the amalgamating company; or
- any other person to whom that amalgamating company is under any obligation or liability; at the registered office of that amalgamating company (and at such other places as may be specified by the directors) during normal business hours. The directors must also ensure that such people are, upon request, supplied free of charge with a copy of the Amalgamation Proposal.

3.4 Is the members' approval required for an amalgamation?

The Amalgamation Proposal must be approved by a special resolution of the members of each amalgamating company.

If any provision in the amalgamation proposal would, if contained in an alteration to an amalgamating company's memorandum or articles (or otherwise proposed in relation to that company) require the approval of any particular class of members then the amalgamation proposal must be approved by a special resolution of that class.

4. What is the short Form amalgamation procedure?

4.1 Who can use the Short Form amalgamation procedure?

The Short Form Amalgamation procedure is available where:

- (a) the amalgamating companies are either (i) a parent company and its wholly-owned subsidiary or (ii) two or more companies, each of which is a wholly-owned subsidiary of the same parent company;
- (b) all the amalgamating companies are Guernsey companies;
- (c) each amalgamating company is limited by shares; and
- (d) the amalgamation is approved by a resolution of the directors of each amalgamating company (see below).

Under the Short Form procedure, the amalgamating companies do not need to prepare a full amalgamation proposal as they do under the Standard Form procedure.

4.2 What confirmations must the directors give?

The director's resolution referred to above in paragraph 4.1 must include provisions:

- (a) clarifying which shares will be cancelled and that such shares will be cancelled without payment;
- (b) clarifying the memorandum and articles which will apply to the amalgamated company; and
- (c) stating that the directors are satisfied on reasonable grounds that the amalgamated company will, immediately after the amalgamation becomes effective, satisfy the statutory 'solvency test'.

The directors who voted in favour of the resolution must sign a certificate stating that in their opinion the company meets the conditions permitting it to use the Short Form amalgamation procedure and the grounds for having that opinion.

4.3 Does notice need to be given to any third parties?

The directors of each amalgamating company, not less than 28 days before the proposed date of the amalgamation, must give written notice of the proposed amalgamation to every creditor of the company.

No notice needs to be given to the members of the amalgamating companies under the Short Form procedure.

5. Must the Guernsey Financial Services Commission be involved?

The written consent of the Guernsey Financial Services Commission (the "Commission") is needed if any of the amalgamating companies is:

- a supervised company (that is supervised by the Commission);
- a PCC or ICC;
- an incorporated cell of an ICC; or
- an overseas company.

If the consent of the Commission is needed then the application for consent must be made to the Commission accompanied by:

the approved amalgamation proposal, or in the case of a Short Form amalgamation, the directors' resolution approving the amalgamation;

- the directors' certificate;
- a 'declaration of compliance (amalgamation)';
- the name of the amalgamated company (in certain circumstances);
- a copy of the memorandum and articles of the amalgamated company;
- where the proportion of the claims of the creditors of the amalgamated company in relation to the value of the assets of the amalgamated company is greater than the proportion of the claims of creditors of any amalgamating company in relation to the value of the assets of that amalgamating company, a certificate signed by the directors of the amalgamating company and by the directors or proposed directors of the amalgamated company stating that no creditor will be prejudiced;
- a document signed by each person named in the amalgamation proposal as a director of the amalgamated company containing a statement of his consent to be a director thereof; and
- such other information and documents, verified in such manner as the Commission may require.
- In deciding whether to grant any application the Commission will have regard to the protection of the public interest, including the need to:
 - protect the public, in Guernsey and elsewhere, against the effects of dishonesty, incompetence or malpractice;
 - counter financial crime and the financing of terrorism in Guernsey and elsewhere; and
 - protect and enhance the reputation of the Bailiwick as a financial centre.

6. When and how is the application to amalgamate made?

Once the Standard Form or Short Form procedure has been gone through and the approval of the Commission has been obtained (if necessary) then the application to amalgamate can be made to the Guernsey Registrar of Companies.

The application for amalgamation is made to the Registrar by the directors of each amalgamating companies and

must be accompanied by:

- a copy of the Commission's consent (in the case of a supervised company);
- in cases where the amalgamated company will not be one of the amalgamating companies but a new company, the particulars required under the Law in respect of the incorporation of a company;
- a 'declaration of compliance (amalgamation)'; and
- such other information or documents as the Registrar may require.

Upon receiving the application (and all being in order) the Registrar will give notice of the proposed amalgamation (usually on the Registry's website: www.guernseyregistry.com).

Once all the formalities have been completed the Registrar will issue a certificate of amalgamation stating:

- the registration number and name of the amalgamated company;
- the registration numbers (if any) and names of the amalgamating companies; and
- the date upon which the certificate has effect.

The certificate of amalgamation will not be issued until at least 28 days have passed since the day the application for amalgamation was made.

The Registrar will then publish a further notice that the companies have amalgamated and will make any necessary consequential amendments to the Guernsey Register caused by the amalgamation.

7. What is the effect of amalgamation?

Upon amalgamation all property and rights to which the amalgamating companies were entitled immediately before the amalgamation then become the property and rights of the amalgamated company. The amalgamated company is subject to all criminal and civil penalties, and all contracts, debts and other obligations, to which the amalgamating companies were subject immediately before the amalgamation. All actions and other legal proceedings which could have been instituted or continued by or against the amalgamating companies may be instituted or continued by or against the amalgamated company. A conviction, ruling, order or judgment in favour of or against the amalgamating companies may be enforced by or against the amalgamated company.

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