

## Amalgamations in Guernsey



### What is an amalgamation?

Under Part VI of the Companies (Guernsey) Law, 2008 (the “**Law**”) two or more companies (the “**Amalgamating Companies**”) may, subject to shareholder consent, merge or, “amalgamate” to continue as one single body corporate (the “**Amalgamated Company**”). The Amalgamated Company can either take on the name and constitution of one of the Amalgamating Companies or adopt a completely new identity. Only one of the Amalgamating Companies needs to be registered in Guernsey.

It should be noted that whilst Guernsey law recognises a variety of different types of company (protected cell companies, incorporated cell companies and non-cellular companies) the Amalgamating Companies must all be of the same type. It should also be noted that certain kinds of company require the consent of the Guernsey Financial Services Commission (the “**Commission**”) to amalgamate.

### What needs to happen in order to effect an amalgamation?

Amalgamations should not be entered into between hostile parties since they require a great degree of cooperation and coordination between the directors of the Amalgamating Companies.

The directors of each Amalgamating Company will need to:

- i. prepare a joint amalgamation proposal setting out the terms of the proposal amalgamation

(the “**Amalgamation Proposal**”);

- ii. certify that the proposed amalgamation is in the best interests of their respective Amalgamating Companies and that, immediately after the amalgamation becomes effective, the Amalgamated Company will be solvent;
- iii. gain shareholder approval for the proposed amalgamation by way of a special resolution and make the Amalgamation Proposal available to all creditors; and
- iv. where required, obtain the consent of the Commission.

Each of the steps required to achieve an amalgamation are described in more detail below.

### The Amalgamation Proposal

The contents of the Amalgamation Proposal should be carefully considered. Not only will it need to be approved by each Amalgamating Company by way of special resolution but it will also be made available to all creditors of the Amalgamating Companies and, where appropriate, submitted to the Commission for its consideration.

The Amalgamation Proposal must specify, amongst other things, the date of the proposed amalgamation and name, registered office, directors and share capital of the Amalgamated Company.

Importantly, the Amalgamation Proposal must also detail

how the interests of the members of the Amalgamating Companies are going to be treated following the amalgamation; either by transferring them to the Amalgamated Company or by the payment of consideration.

Any shares held by one of the Amalgamating Companies in another of the Amalgamating Companies may not be converted into shares of the Amalgamated Company.

### **Approval of the Amalgamation Proposal**

As stated above, the directors of each Amalgamation Company must resolve and certify that:

- i. in their opinion the proposed amalgamation is in the best interests of their respective Amalgamating Companies; and
- ii. they are satisfied on reasonable grounds that the Amalgamated Company will, immediately after the amalgamation becomes effective, be solvent.

In addition, no later than 28 days before the proposed amalgamation date, the directors of each Amalgamating Company must provide:

- i. the shareholders of the Amalgamating Companies with certain documentation including copies of the two board resolutions mentioned above, the Amalgamation Proposal and a summary of the principal provisions of the Amalgamated Company; and
- ii. the creditors of the Amalgamating Companies with written notice of the amalgamation.

In order for the amalgamation to proceed, the shareholders of the Amalgamating Companies must approve, and the creditors must not object to, the Amalgamation Proposal.

### **When will the consent of the Commission be required?**

The prior written consent of the Commission is required

where supervised companies, cell companies, incorporated cells or overseas companies propose to amalgamate.

In addition to the information provided to the shareholders, the Commission will also require, amongst other details:

- i. a declaration of compliance signed by a director from each Amalgamating Company stating that it has complied with all legal requirements (a “**Declaration of Compliance**”);
- ii. a certificate from the directors of each Amalgamating Company confirming that its creditors will not be prejudiced as a result of the amalgamation where the claims of those creditors would, in proportion to the assets of the new amalgamated entity, be greater than the creditors’ claims of any other company;
- iii. a letter of consent from each proposed director of the Amalgamated Company; and
- iv. a fee of £2,000.

In making its decision about whether to grant permission for the proposed amalgamation, the Commission will have regard to the protection of public interest and may apply terms and conditions to any such permission.

### **Short Form amalgamations for Subsidiaries**

Where the Amalgamating Companies are wholly-owned subsidiaries of the same parent company or the proposed amalgamation is between a company and its wholly-owned subsidiaries, shareholder approval and preparation of an amalgamation proposal are not required. The amalgamation may, instead, be approved by a simple board resolution of each Amalgamating Company.

### **When do Amalgamations become effective?**

Once the shareholders of each of the Amalgamating Companies have approved the amalgamation and, where necessary, the Commission has provided its consent, the directors of each Amalgamating Company can apply to the Registrar of Companies for the amalgamation to take

effect.

Amalgamated Company.

This application to the Registrar will need to be accompanied by:

- i. the Declaration of Compliance;
- ii. consent of the Commission where required;
- iii. where the Amalgamated Company is not adopting the name and constitution of one of the Amalgamating Companies, particulars such as the Amalgamated Company's memorandum and articles of incorporation, a statement of the first directors, registered address, resident agent, members and a statement of initial share capital; and
- iv. a fee of £1,000.

The Registrar will then give notice of the proposed amalgamation and, subject to receiving no objections, will issue a certificate 28 days later.

The amalgamation is effective as of the date of this certificate and the newly created Amalgamated Company will replace the Amalgamating Companies on the Register of Companies in Guernsey.

It is also worth considering that amalgamations do not fall foul of any restrictions on the assignment or transfer of rights or liabilities and will not trigger an event of default or otherwise terminate a contractual, or other, relationship.

Therefore, whilst amalgamations are ideal for intra-group restructurings and companies seeking continuity, they are not appropriate for those looking for a clean slate.

For more specific advice on the amalgamations of Companies in Guernsey, we invite you to contact one of the following:

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## What is the effect of an amalgamation?

The effect of an amalgamation is that:

- i. the Amalgamating Companies automatically transfer their property and rights to the Amalgamated Company;
- ii. the Amalgamated Company is subject to any civil and criminal penalties and all contracts, debts and other obligations of the Amalgamating Companies;
- iii. the Amalgamated Company is open to any legal proceedings that could have been instituted by or against any of the Amalgamating Companies; and
- iv. any convictions, rulings, order or judgements in favour of or against the Amalgamating Companies may be enforced by or against the

Bermuda  
British Virgin Islands  
Cayman Islands

Guernsey  
Hong Kong  
Isle of Man

Jersey  
London  
Mauritius

Seychelles  
Zurich