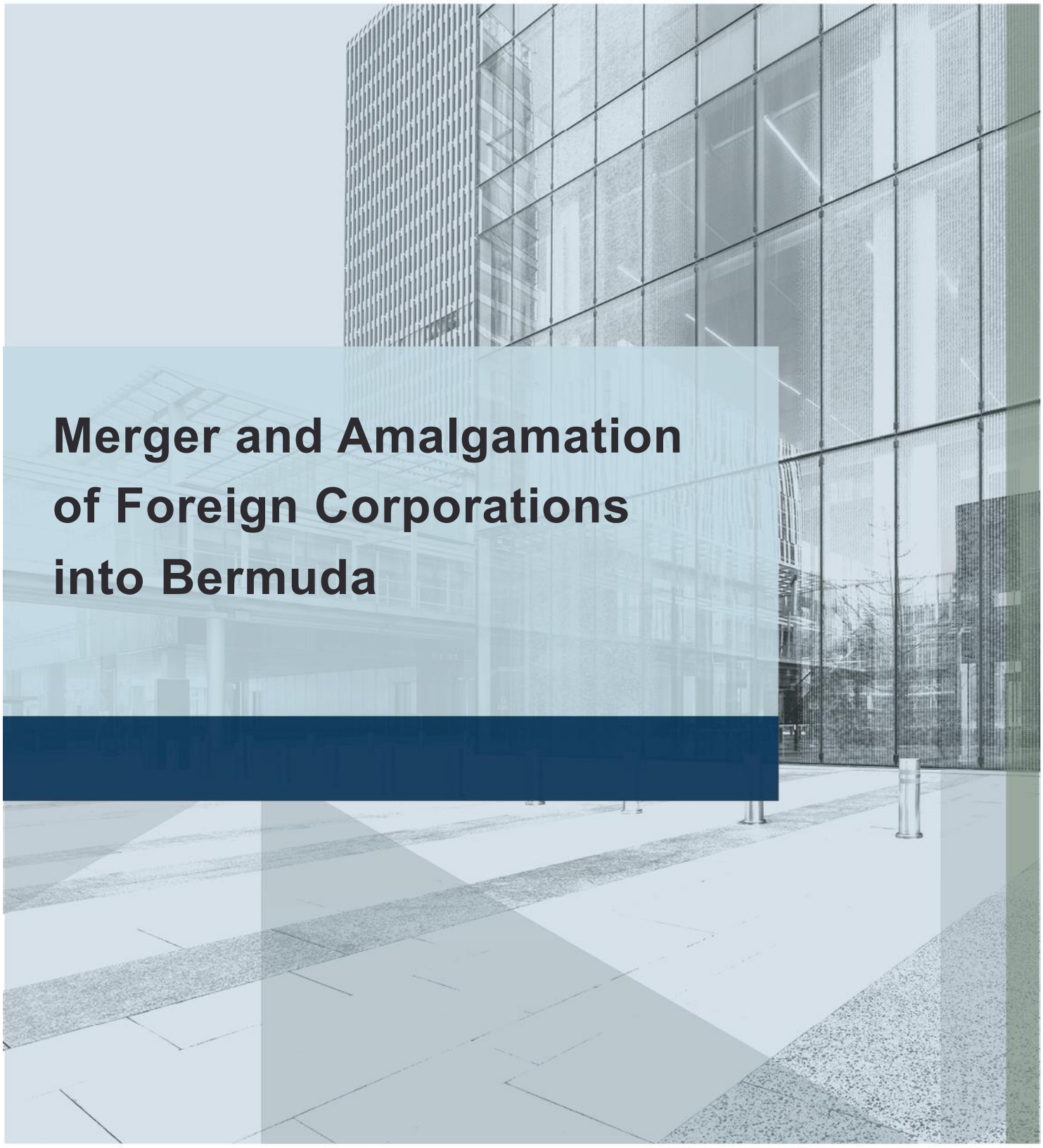
CONYERS



Merger and Amalgamation of Foreign Corporations into Bermuda

Preface

This publication has been prepared for the assistance of those who are considering the merger or amalgamation of a foreign corporation with a Bermuda exempted company where the surviving or amalgamated entity will be, or will become, a Bermuda exempted company. It deals in broad terms with the requirements and procedures under Bermuda law for effecting such merger or amalgamation. It is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients. We recommend that our clients and prospective clients seek legal advice in Bermuda on their specific proposals before taking steps to implement them.

Before proceeding with such a merger or amalgamation, persons are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

Copies of the Companies Act 1981 of Bermuda have been prepared and are available on request.

Conyers Dill & Pearman

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1. INTRODUCTION

This publication outlines the steps necessary under the Companies Act 1981 of Bermuda (the "Act") for a company incorporated outside of Bermuda (a "foreign corporation") to merge or amalgamate with a Bermuda exempted company, with the surviving or amalgamated company continuing as a Bermuda exempted company.

In order to ensure that the merging or amalgamating companies are deemed to merge or amalgamate at the same time under their respective laws of incorporation, it is suggested that before any application is made, all the appropriate documentation first be completed both in Bermuda and in the jurisdiction in which the foreign corporation is registered.

Any foreign corporation may merge or amalgamate into Bermuda in accordance with the procedures set out below.

2. MERGER INTO BERMUDA

2.1. Procedure

Merger Agreement

The Act requires that each company proposing to merge enter into a merger agreement which sets out the terms and means of effecting the merger. In addition, the Act specifies certain matters which must be dealt with in any such merger agreement. This list is not exhaustive and there will likely be other matters which the parties will want to be included in the merger agreement. When merging into Bermuda, the merger agreement should be made subject to the required Bermuda Monetary Authority ("BMA") approval described below.

Shareholder Approval

The directors of each merging company must submit the merger agreement for approval to a general meeting of members of their respective merging company. All shareholders, whether or not their shares have voting rights, are entitled to vote on whether to approve the merger agreement. If the merger agreement contains provisions which would constitute a variation of the rights of any class of shares of a merging company, the holders of shares of that class are entitled to vote separately as a class on the approval of the merger agreement. Unless the company's bye-laws otherwise provide, the resolution of the shareholders or class must be approved by a majority vote of 75 per cent of those voting at the meeting, the quorum for which is two persons, holding or representing by proxy more than one-third of the issued shares of the company or the class.

The notice to the shareholders of the general meeting must be accompanied by a copy or summary of the merger agreement and must state:

(a) the fair value of the shares as determined by each merging company; and

(b) that a dissenting shareholder is entitled to be paid fair value for their shares.

A shareholder that did not vote favour of the merger and is not satisfied that he has been offered fair value for his shares, may apply to the court for an appraisal of the fair value of his shares within one month of the giving of the notice of meeting to shareholders.

BMA Application

An application must first be made to the BMA seeking permission for the shareholders of the foreign corporation to be shareholders of the surviving Bermuda exempted company. This application should include:

(a) a statement of the proposed business of the surviving company;

(b) information concerning the beneficial owners of the surviving company; and

(c) a copy of the legal opinion of foreign counsel referred to below.

If the surviving company is to be an insurance company, a further application must be made to the BMA to obtain approval for its insurance business as a preliminary step to obtaining an insurance licence upon the merger of the companies.

Opinion of Foreign Counsel

Prior to the merger, Conyers Dill & Pearman, the BMA and the Registrar of Companies (the "Registrar") must be supplied with an opinion of counsel in the jurisdiction in which the foreign corporation is registered to the effect that all necessary authorisations under the laws of that jurisdiction have been obtained to allow the foreign corporation to merge with a Bermuda exempted company, with the surviving company being a Bermuda exempted company.

Statutory Declaration

A director or officer of each merging company must sign a statutory declaration confirming that there are reasonable grounds for believing that:

(a) the relevant merging company is, and the surviving company will be, able to pay its liabilities as they fall due;

(b) the realisable value of the assets of the surviving company will not be less than the aggregate of its liabilities and issued capital of all classes of shares; and

(c) either that no creditor will be prejudiced by the merger or that all known creditors of the relevant merging company have been given adequate notice of the merger and no creditor has objected to the merger except on frivolous or vexatious grounds. For this purpose, adequate notice is given if a written notice is sent to each known creditor having a claim against the company in excess of $1,000 and a notice of the intended merger is published in a local newspaper informing creditors that they may object to the merger within 30 days from the date of the notice.

Registrar of Companies Filing

Once the shareholder resolutions approving the merger of the companies have been adopted, and the relevant consent has been received from the BMA, a filing must be made with the Registrar to register the surviving company in order for the merger to become effective. The filing must include the following supporting documents:

(a) a certified copy of the resolutions of the shareholders of the Bermuda exempted company and the foreign corporation approving the merger;

(b) the address of the registered office of the surviving company;

(c) the memorandum of association of the surviving company;

(d) the statutory declarations referred to above;

(e) a statement confirming which merging company is to be registered as the surviving company pursuant to a merger;

(f) a copy of the legal opinion of foreign counsel referred to above; and

(g) the required filing fee.

The Registrar will register the surviving company on or after the date of filing, as requested in the filing, and will issue a Certificate of Merger indicating the date of registration.

2.2. Intra-Group Mergers

An alternative "short form" method of merger is available where the merging companies are a holding company and one or more wholly-owned subsidiaries, or two or more wholly-owned subsidiaries of the same holding company. Companies merging by this method need not enter into a merger agreement or obtain shareholder approval and may approve the merger solely by a resolution of the directors of each merging company. A director or officer of each such company will still have to sign a statutory declaration as described above, and the filing for the registration of the surviving company is then made.

Where the merging companies are a Bermuda exempted holding company and one or more of its wholly-owned subsidiaries, the directors' resolutions of each merging company must provide that:

(a) the shares of each merging subsidiary company shall be cancelled without any repayment of capital in respect thereof;

(b) the memorandum of association and bye-laws of the surviving company shall be the same as that of the merging holding company; and

(c) no securities shall be issued by the surviving company in connection with the merger.

Where the merging companies are two or more wholly-owned subsidiaries of the same holding company, the directors' resolutions of each merging company must provide that:

(a) one of the merging wholly-owned subsidiary companies will be the surviving company;

(b) the shares of each merging subsidiary, other than those of the proposed surviving company shall be cancelled without any repayment of capital in respect thereof; and

(c) the memorandum of association and bye-laws of the surviving company shall be the same as those of the merging subsidiary company proposed to be the surviving company.

In both scenarios of an intra-group merger, the resolutions approving the merger must also state whether or not the merging companies elect to combine their respective authorised share capitals.

2.3. Consequences of Merger

On the date shown in the Certificate of Merger:

(a) the merger of the merging companies and the vesting of their undertaking, property and liabilities in the surviving Bermuda exempted company will become effective;

(b) the surviving company will continue to be liable for the obligations of each merging company;

(c) an existing cause of action, claim or liability to prosecution will be unaffected;

(d) a civil, criminal or administrative action or proceeding pending by or against a merging company may continue to be prosecuted by or against the surviving company;

(e) a conviction against, or ruling, order or judgment in favour of or against a merging company may be enforced by or against the surviving company; and

(f) the Certificate of Merger will be deemed to be the Certificate of Incorporation of the surviving company, however, the date of incorporation of a merging company is its original date of incorporation and its merger with another company will not alter its original date of incorporation.

3. AMALGAMATION INTO BERMUDA

3.1. Procedure

Amalgamation Agreement

The Act requires that each company proposing to amalgamate must enter into an amalgamation agreement which sets out the terms and means of effecting the amalgamation. In addition, the Act specifies certain matters which must be dealt with in any such amalgamation agreement. This list is not exhaustive and there will likely be other matters which the parties will want to be included in the amalgamation agreement. When amalgamating into Bermuda, the amalgamation agreement should be made subject to the required Bermuda Monetary Authority ("BMA") approval described below.

Shareholder Approval

The directors of each amalgamating company must submit the amalgamation agreement for approval to a general meeting of members of their respective amalgamating company. All shareholders, whether or not their shares have voting rights, are entitled to vote on whether to approve the amalgamation agreement. If the amalgamation agreement contains provisions which would constitute a variation of the rights of any class of shares of an amalgamating company, the holders of shares of that class are entitled to vote separately as a class on the approval of the amalgamation agreement. Unless the company's bye-laws otherwise provide, the resolution of the shareholders or class must be approved by a majority vote of 75 per cent of those voting at the meeting, the quorum for which is two persons, holding or representing by proxy more than one-third of the issued shares of the company or the class.

The notice to the shareholders of the general meeting must be accompanied by a copy or summary of the amalgamation agreement and must state:

(a) the fair value of the shares as determined by each amalgamating company; and

(b) that a dissenting shareholder is entitled to be paid fair value for their shares.

A shareholder that did not vote favour of the amalgamation may, if he is not satisfied that he has been offered fair value for his shares, apply to the court for an appraisal of the fair value of his shares within one month of the giving of the notice of meeting to shareholders.

BMA Application

An application must first be made to the BMA seeking permission for the shareholders of the foreign corporation to be shareholders of the amalgamated Bermuda exempted company. This application should include:

(a) a statement of the proposed business of the amalgamated company;

(b) information concerning the beneficial owners of the amalgamated company; and

(c) a copy of the legal opinion of foreign counsel referred to below.

If the amalgamated company is to be an insurance company, a further application must be made to the BMA to obtain approval for its insurance business as a preliminary step to obtaining an insurance licence upon the amalgamation of the companies.

Opinion of Foreign Counsel

Prior to the amalgamation, Conyers Dill & Pearman, the BMA and the Registrar must be supplied with an opinion of counsel in the jurisdiction in which the foreign corporation is registered to the effect that all necessary authorisations under the laws of that jurisdiction have been obtained to allow the foreign corporation to amalgamate with a Bermuda exempted company, with the amalgamated company being a Bermuda exempted company.

Statutory Declaration

A director or officer of each amalgamating company must sign a statutory declaration confirming that there are reasonable grounds for believing that:

(a) the relevant amalgamating company is, and the amalgamated company will be, able to pay its liabilities as they become due;

(b) the realisable value of the assets of the amalgamated company will not be less than the aggregate of its liabilities and issued capital of all classes of shares; and

(c) either that no creditor will be prejudiced by the amalgamation or that all known creditors of the relevant amalgamating company have been given adequate notice of the amalgamation and no creditor has objected to the amalgamation except on frivolous or vexatious grounds. For this purpose, adequate notice is given if a written notice is sent to each known creditor having a claim against the company in excess of $1,000 and a notice of the intended amalgamation is published in a local newspaper informing creditors that they may object to the amalgamation within 30 days from the date of the notice.

Filing with Registrar of Companies

Once the shareholder resolutions approving the amalgamation of the companies have been adopted, and the relevant consent has been received from the BMA, a filing must be made with the Registrar to register the amalgamated company in order for the amalgamation to become effective. The filing must include the following supporting documents:

(a) a certified copy of the resolutions of the shareholders of the Bermuda exempted company and the foreign corporation approving the amalgamation;

(b) the address of the registered office of the amalgamated company;

(c) the memorandum of association of the amalgamated company;

(d) the statutory declarations referred to above;

(e) a statement confirming that the amalgamated companies are to be registered as an amalgamated company pursuant to an amalgamation;

(f) a copy of the legal opinion of foreign counsel referred to above; and

(g) the required filing fee.

The Registrar will register the amalgamated company on or after the date of filing, as requested in the filing, and will issue a Certificate of Amalgamation indicating the date of registration.

3.2. Intra-Group Amalgamations

An alternative “short-form” method of amalgamation is available where the amalgamating companies are a holding company and one or more wholly-owned subsidiaries, or two or more wholly-owned subsidiaries of the same holding company. Companies amalgamating by this method need not enter into an amalgamation agreement or obtain shareholder approval and may approve the amalgamation solely by a resolution of the directors of each amalgamating company. A director or officer of each such company will still have to sign a statutory declaration as described above, and the filing for the registration of the amalgamated company is then made.

Where the amalgamating companies are a Bermuda exempted holding company and one or more of its wholly-owned subsidiaries, the directors’ resolutions of each amalgamating company must provide that:

(a) the shares of each amalgamating subsidiary company shall be cancelled without any repayment of capital in respect thereof;

(b) the memorandum of association and bye-laws of the amalgamated company shall be the same as those of the amalgamating holding company; and

(c) no securities shall be issued by the amalgamated company in connection with the amalgamation.

Where the amalgamating companies are two or more wholly-owned subsidiaries of the same holding company, the directors’ resolutions of each amalgamating company must provide that:

(a) the shares of each amalgamating subsidiary company other than those of one of the amalgamating subsidiary companies shall be cancelled without any repayment of capital in respect thereof; and

(b) the memorandum of association and bye-laws of the amalgamated company shall be the same as those of the amalgamating subsidiary company whose shares are not cancelled.

In both scenarios of an intra-group amalgamation, the resolutions approving an amalgamation must also state whether or not the amalgamating companies elect to combine their respective authorised share capitals.

3.3. Consequences of Amalgamation

On the date shown in a Certificate of Amalgamation:

(a) the amalgamation of the amalgamating companies and their continuance as a single Bermuda exempted company will become effective;

(b) the property of each amalgamating company will become the property of the amalgamated company;

(c) the amalgamated company will continue to be liable for the obligations of each amalgamating company;

(d) an existing cause of action, claim or liability to prosecution will be unaffected;

(e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating company may continue to be prosecuted by or against the amalgamated company;

(f) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating company may be enforced by or against the amalgamated company; and

(g) the Certificate of Amalgamation will be deemed to be the Certificate of Incorporation of the amalgamated company, however, the date of incorporation of an amalgamating company is its original date of incorporation and its amalgamation with another company will not alter its original date of incorporation.