

Amalgamation of a Guernsey company with another company

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What is an 'amalgamation'?

In short, an amalgamation involves two or more companies merging to become one. Under the Companies (Guernsey) Law, 2008 (the **Law**), a Guernsey company can be amalgamated with one or more other companies, whether incorporated in Guernsey or overseas. It is immaterial whether the companies involved in the amalgamation are of the same type of company.

Why amalgamate?

The benefits of amalgamation are that the amalgamating companies are effectively consolidated. Therefore an amalgamation can be used to simplify the corporate structure of a group, reduce cost inefficiencies and as an alternative to a business transfer.

What is the effect of an amalgamation?

Upon amalgamation, all or all but one of the amalgamating companies relinquish their individual incorporation and continue under the registered name and number of one continuing company (the **Amalgamated Company**), which may be one of the amalgamating companies or an entirely new company.

The effect of amalgamation is that:

- all property and rights to which the amalgamating companies were individually entitled become the property and rights of the Amalgamated Company
- the Amalgamated Company will be 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 any of the amalgamating companies can be instituted or continued by or against the Amalgamated Company, and
- any conviction, ruling, order or judgment in favour of or against any of the amalgamating companies may be enforced by or against the Amalgamated Company.

What is an amalgamation not?

As a matter of law, an amalgamation is not to be regarded:

- as a breach of contract or confidence or otherwise as a civil wrong
- as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or
- as giving rise to any remedy, by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument or of any obligation or relationship.

Guernsey Financial Services Commission consent

The prior written consent of the Guernsey Financial Services Commission (the **Commission**) is required if any of the amalgamating companies is a supervised company (essentially a company that carries on business of a type which is regulated by the Commission), a protected cell company, an incorporated cell company, an incorporated cell or an overseas company and the amalgamation must be in accordance with the terms and conditions of that consent.

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, the application for consent must include, among other things, 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 by that fact.

In deciding whether to grant consent, the Commission has 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 of Guernsey as a financial centre.

There is a right of appeal to the Royal Court against, among other things, the refusal of an application for the Commission's consent or the imposition of terms and conditions upon that consent.

Restrictions on an amalgamation

Where one of the amalgamating companies is an overseas company, the amalgamation must be lawful under the law of the relevant overseas jurisdiction.

The amalgamation process

Broadly, the procedure for an amalgamation is, as follows:

An amalgamation proposal is prepared setting out the terms of the amalgamation, including without limitation, the manner in which the interests and liabilities of each member in the amalgamating companies are to be converted into interests and liabilities of the Amalgamated Company (or, if not to be converted, the consideration each such member will receive) and the date on which the amalgamation is intended to become effective.

The amalgamation proposal must be approved by the directors of each amalgamating company in terms that the amalgamation is, in their opinion, in the best interests of that amalgamating company and that they are satisfied on reasonable grounds that the Amalgamated Company will, immediately after the amalgamation becomes effective, satisfy the solvency test set out in the Law. Put simply, the solvency test requires that the company will be able to pay its debts as they become due, that the value of its assets will be greater than the value of its liabilities and in the case of a supervised company, any financial resources requirements of the Commission will be satisfied. Each of the directors who vote in favour must sign a certificate to that effect, including the grounds for such opinion.

The amalgamation proposal must be approved by special resolution of the members of each amalgamating company and, if applicable, by class resolution. Not less than 28 days' notice of the proposed amalgamation must be given to all creditors and members of each of the amalgamating companies and the amalgamation proposal must be made available to any member or creditor of an amalgamating company and to any other person to whom an amalgamating company is under any obligation or liability.

Application is then made to the Guernsey Registry in such form as the Registrar may require. The Registrar will rely on a declaration of compliance, signed by a director of each amalgamating company, confirming that all the requirements of the Law in respect of the proposed amalgamation have been fulfilled and is not bound to enquire further as to whether the provisions of the Law have been complied with.

The Registrar will publish notice of the proposed amalgamation on its website and on completion of the notice period, provided that at least 28 days have passed since the day on which the Registrar gave notice of the proposed amalgamation, the Registrar will issue a certificate of amalgamation. Amalgamation is effective from the date stated in the certificate and the certificate is conclusive evidence that the amalgamating companies have been duly amalgamated. The particulars of the amalgamating companies, other than the Amalgamated Company, are at the same time removed from the Register.

What if the amalgamating companies are in the same group of companies?

The Law specifically provides for a shortened amalgamation process where either of the amalgamating companies are a parent and its wholly owned subsidiary (the parent company to be the continuing company) or where the amalgamating companies are each a wholly owned subsidiary of the same company.

This shortened process can only be used where each amalgamating company is a company limited by shares and provided that the shares of each amalgamating company, other than the Amalgamated Company, will be cancelled without payment or other consideration.

Even if the shortened amalgamation process is not followed, if the shares of one of the amalgamating companies are beneficially owned by another of the amalgamating companies, the amalgamation proposal must provide for those shares to be cancelled without payment or other consideration and such shares may not be converted into shares of the Amalgamated Company.

Fees

The Guernsey Registry charges a fee of £1,000 for an amalgamation and the Commission charges an additional £2,440 in respect of applications made for its consent.

Powers of the Royal Court

It is possible for an amalgamation to be prevented or, having already become effective, reversed on application to the Royal Court. If the Royal Court is satisfied that the implementation of an amalgamation proposal would unfairly prejudice a member or creditor of an amalgamating company or any other person to whom an amalgamating company is under any obligation or liability, it may make any order it thinks fit in relation to the proposal, including an order:

- directing that the proposal shall not be given effect
- modifying the proposal in such manner as may be specified, or
- directing the amalgamating company or its directors to reconsider the proposal or any part of it.

Contacts

A full list of contacts specialising in amalgamations can be found [here](#).

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