



Conyers Dill & Pearman

Amalgamation of Bermuda Exempted Insurance Companies

Foreword

This memorandum has been prepared for the assistance of those who are considering the amalgamation of Bermuda exempted companies which are also licensed as insurers. It deals in broad terms with the requirements and procedures under Bermuda law for effecting such an 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 an 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.

This memorandum has been prepared on the basis of the law and practice as at the date referred to below.

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INTRODUCTION

This memorandum outlines the steps necessary under the Companies Act 1981 of Bermuda (the “Act”) for Bermuda exempted insurance companies to amalgamate and continue as a Bermuda exempted insurance company. A separate procedure exists under Bermuda law for the merger of Bermuda exempted companies, whereby their undertaking, property and liabilities vest in a single surviving company. A publication on mergers is available upon request.

2. AMALGAMATION OF BERMUDA EXEMPTED INSURANCE COMPANIES

2.1 Amalgamation Agreement

The Act requires that each company proposing to amalgamate must enter into an agreement which sets out the terms and means of effecting the amalgamation. In addition, the Act specifies matters which must be dealt with in any amalgamation agreement. Other matters not required by the Act may be included in the agreement, and indeed particular transactions may require additional issues be addressed in the amalgamation agreement.

Any amalgamated insurance company having a share capital must meet the minimum paid up share capital requirements as required under the Insurance Act 1978 (the “Insurance Act”) and the regulations promulgated thereunder.

2.2 Shareholder Approval

The directors of each Bermuda 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 agreement. If the amalgamation agreement contains provisions which would constitute a variation of the rights of any class of shares of a Bermuda 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 relevant 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 at least holding or representing by proxy more than one-third of the issued shares of the company or the class and that any holder of shares present in person or by proxy may demand a poll. The amalgamation agreement is deemed to have been adopted when it has been approved in accordance with these requirements.

2.3 Shareholder Notice

The notice to the shareholders 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 his shares.

A shareholder that did not vote in 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 for his shares within one month of the giving of the notice to shareholders.

2.4 Bermuda Monetary Authority Approval

In order to register the amalgamated company as an insurer under the Insurance Act, an application must be made to the Insurance Division of the Bermuda Monetary Authority (the "Insurance Division") to obtain approval for the amalgamation. This application will be in the form of a cover letter setting out, *inter alia*, the following information:

- (a) a brief description of the business currently conducted by the companies;
- (b) the reason why the companies are amalgamating; and

- (c) confirmation of the type of insurance business that the amalgamated company will be pursuing.

The Insurance Division should also be provided with confirmation from the insurance manager/principal representative of each of the amalgamating companies stating that they are each currently in compliance under the Insurance Act and that the amalgamated company will be in compliance under the Insurance Act upon amalgamation. The latest management accounts of the amalgamating companies would also need to be provided and pro-forma financial projections will need to be produced for the amalgamated company so that the Insurance Division can readily gauge the financial strength of the amalgamated company.

Usually the process of obtaining the Insurance Division's approval takes two to three weeks. However, where an application is urgent, the time frame may be condensed and in this connection, it has been our experience that the government authorities co-operate as much as possible to meet deadlines.

2.5 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 share capital of all classes; and
- (c) either that no creditor of the Bermuda company 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.

Application for registration of the amalgamated company must be made to the Registrar of Companies and include:

- (a) a certified copy of the members' resolutions of each amalgamating company;
- (b) the memorandum of association of the amalgamated company;
- (c) the address of the registered office of the amalgamated company;
- (d) the statutory declarations referred to above; and
- (e) the required application fee.

3. INTER-GROUP AMALGAMATIONS

3.1 Procedure

An alternative "short form" method of amalgamation is available where the amalgamating companies are a Bermuda holding company and one or more wholly-owned Bermuda subsidiary companies, or two or more wholly-owned Bermuda subsidiaries of the same holding company. Companies amalgamating by this method need not enter into an amalgamation agreement or obtain shareholder approval. The amalgamation may be effected by a resolution of directors of each amalgamating company. A director or officer of each such company is still required to sign the statutory declaration described above, and the application for registration of the amalgamated company takes place as described above.

Note that the Insurance Division approval process outlined in 2.4 above would still need to be complied with for a short-form amalgamation.

3.2 Amalgamation of Holding Company and Subsidiary

In the case of a short form method of amalgamation between a Bermuda holding company and one or more of its wholly-owned Bermuda 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 of the amalgamated company shall be the same as that of the amalgamating holding company; and
- (c) no securities shall be issued by the amalgamated company in connection with the amalgamation.

3.3 Amalgamation of Two or More Subsidiaries

In the case of a short form method of amalgamation between two or more wholly-owned Bermuda subsidiaries of the same Bermuda holding company, the directors' resolutions of each amalgamating company must provide that:

- (a) the shares of all but one of the amalgamating subsidiary companies shall be cancelled without any repayment of capital in respect thereof; and
- (b) the memorandum of association of the amalgamated company shall be the same as that of the amalgamating subsidiary company whose shares are not cancelled.

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

Where this short form method of amalgamation is available, consideration should still be given to preparing an amalgamation agreement and obtaining shareholder approval, as the time commitment and cost would not be greatly impacted.

4. EFFECTS OF AMALGAMATION

On the date shown in a certificate of amalgamation:

- (a) the amalgamation of the amalgamating companies and their continuance as one company shall become effective;
- (b) the property of each amalgamating company shall become the property of the amalgamated company;
- (c) the amalgamated company shall continue to be liable for the obligations of each amalgamating company;
- (d) an existing cause of action, claim or liability to prosecution shall be unaffected;
- (e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating company may be continued 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 shall be deemed to be the certificate of incorporation of the amalgamated company, however, the date of incorporation of a company is its original date of incorporation and its amalgamation with another company does not alter its original date of incorporation.

This publication is not a substitute for legal advice nor is it a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

About Conyers Dill & Pearman

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