

# Amalgamations under Guernsey Company Law

Service area / [Corporate](#)

Location / [Guernsey](#)

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This briefing note provides an outline of the processes and requirements to amalgamate a Guernsey company with another body corporate under the Companies (Guernsey) Law, 2008 (as amended) (the “Companies Law”).

## The process

Amalgamation is the process which allows two or more bodies corporate (the “Amalgamating Bodies Corporate”) to amalgamate and continue as one body corporate (the “Amalgamated Body Corporate”) which may be one of the Amalgamating Bodies Corporate or a new body corporate.

## Types of bodies corporate which can amalgamate

The Amalgamating Bodies Corporate may be any of, or a combination of, the following:

- protected cell companies;
- incorporated cell companies;
- incorporated cells of the same incorporated cell company; or
- non-cellular companies,

and may be either companies incorporated in Guernsey or companies incorporated outside of Guernsey provided that at least one of the Amalgamating Bodies Corporate is incorporated in Guernsey.

## Effect of Amalgamation

Upon amalgamation, all property, rights, contracts, debts, criminal and civil penalties and other obligations to which the Amalgamating Bodies Corporate were entitled or subject to immediately before the amalgamation become the property, rights, contracts, debts, criminal and civil penalties and other obligations of the Amalgamated Body Corporate.

In addition, all actions and other legal proceedings which could have been instituted or continued by or against the Amalgamating Bodies Corporate may be instituted or continued by or against the Amalgamated Body Corporate.

Finally, the Companies Law provides that an amalgamation shall not 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.

## Stages of amalgamation

### Preliminary steps

The Amalgamating Bodies Corporate must prepare an amalgamation proposal which sets out the terms of the amalgamation (including the date on which it is intended to become effective (the "Amalgamation Date")) and confirms the particulars of the Amalgamated Body Corporate (the "Amalgamation Proposal").

The directors of each Amalgamating Body Corporate must:

- resolve that, in their opinion, the amalgamation is in the best interests of the Amalgamating Body Corporate;
- resolve that they are satisfied on reasonable grounds that, immediately after the amalgamation becomes effective, the Amalgamated Body Corporate will satisfy the solvency test (the "Directors' Resolutions"); and
- sign a certificate stating that, in their opinion, the conditions described in the previous two bullet points are satisfied and the grounds for that opinion (the "Directors' Certificate").

A company satisfies the "solvency test" if:

- the company is able to pay its debts as they become due;
- the value of the company's assets is greater than the value of its liabilities; and
- in the case of a "supervised company", the company satisfies any other requirements as to solvency imposed in relation to it by or under any of Guernsey's regulatory laws (broadly speaking "supervised companies" are companies which: (a) hold or formerly held a license under any of Guernsey's regulatory laws; or (b) hold or formerly held an authorisation or registration as a collective investment scheme).

### Notification and approval

Three notification requirements dominate the amalgamation timetable:

- the requirement for the Guernsey Registrar of Companies (the "Registrar") not to issue a certificate of amalgamation until at least 28 days have passed since the day on which he gave notice of the proposed amalgamation on his website;
- the requirement for the directors of each Amalgamating Body Corporate to give written notice of the proposed amalgamation to every creditor of such Amalgamating Body Corporate, not less than 28 days before the Amalgamation Date; and
- the requirement for the directors of each Amalgamating Body Corporate to provide each member of such Amalgamating Body Corporate, not less than 28 days before the Amalgamation Date with: (a) the Amalgamation Proposal; (b) the Directors' Certificates; (c) a copy of the memorandum and articles of the Amalgamated Body Corporate; and (d) a statement of the material interests of the directors and other officers of the Amalgamating Body Corporate in the proposal.

With appropriate handling, these three 28 day time lines can run concurrently.

The amalgamation proposal must also be approved by a special resolution of the members of each Amalgamating Body Corporate (the "Special Resolution").

Where any of the Amalgamating Bodies Corporate is:

- a "supervised company";
- a cell company;
- an incorporated cell; or
- an overseas company,

it cannot amalgamate unless it has the written consent of the Guernsey Financial Services Commission (the "GFSC") to the amalgamation. The application shall be made in such form as the GFSC shall require and must include:

- the Amalgamation Proposal as approved by the Special Resolution;
- the Directors' Certificate;
- the declarations of compliance (i.e. a declaration signed by a director of the company that all the requirements of the Companies Law in respect of the amalgamation of a body corporate have been fulfilled) (the "Declarations of Compliance");
- the particulars of the Amalgamated Body Corporate (including its memorandum and articles);
- a written consent from each person named as a director of the Amalgamated Body Corporate in the Amalgamation Proposal containing a statement of his consent to be a director thereof (the "Directors' Consents");
- where the creditor/asset ratio of the Amalgamated Body Corporate is greater than the creditor/asset ratio of any Amalgamating Body Corporate, a certificate signed by the directors of the Amalgamating Body Corporate and by the directors or proposed directors of the Amalgamated Body Corporate stating that no creditor will be prejudiced by that fact; and
- the prescribed fee (currently £2,220).

### Short form amalgamations for subsidiary bodies corporate

A body corporate and any other body corporate which is a wholly-owned subsidiary of it or two or more bodies corporate, each of which is a wholly-owned subsidiary of the same body corporate, may amalgamate and continue as one body corporate without having to:

- prepare an Amalgamation Proposal;
- give notice to the members; or
- have the Amalgamation Proposal approved by Special Resolution,

if the simplified amalgamation conditions prescribed by the Companies Law are satisfied and the amalgamation is approved by a resolution of the directors of each Amalgamating Body Corporate.

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## Application

When the above steps have been completed, an application for the amalgamation shall be made to the Registrar by the directors of each Amalgamating Body Corporate.

The amalgamation application shall be in such form as may be required by the Registrar and must include:

- a copy of the GFSC's consent (if applicable);
- the particulars of the Amalgamated Body Corporate (where it is to be a new company);
- the Directors' Resolutions;
- the Shareholder Resolutions;
- the Declarations of Compliance; and
- the prescribed fee (currently £1,000).

Assuming that the Registrar has been notified that an application for the proposed amalgamation will be made in due course (as described above – and that the other 28 day notice periods have run concurrently) and that the Registrar has given notice of the proposed amalgamation on the Registry's website, the application to the Registrar can be timed to coincide with the end of that 28 day notice period. At the end of that 28 day period, the Registrar will issue a certificate of amalgamation stating the registration numbers (if any) and names of the Amalgamated Body Corporate and all Amalgamating Bodies Corporate and that certificate shall be conclusive evidence that the bodies corporate are duly amalgamated.

## Power of the court to modify Amalgamation Proposal

If the Royal Court of Guernsey (the "Court") is satisfied that the implementation of an Amalgamation Proposal would unfairly prejudice a member or creditor of an Amalgamating Body Corporate (or any other person to whom an Amalgamating Body Corporate is under any obligation or liability), the Court may, on the application of that person made at any time before the amalgamation becomes effective, or within such further time as the Court may in any particular case allow, make such order as it thinks fit in relation to the Amalgamation Proposal, including, without prejudice to the generality of the foregoing an order:

- directing that effect shall not be given to the Amalgamation Proposal;
- modifying the Amalgamation Proposal in such manner as may be specified in the order; or
- directing the body corporate or its directors to reconsider the Amalgamation Proposal or any part of it.

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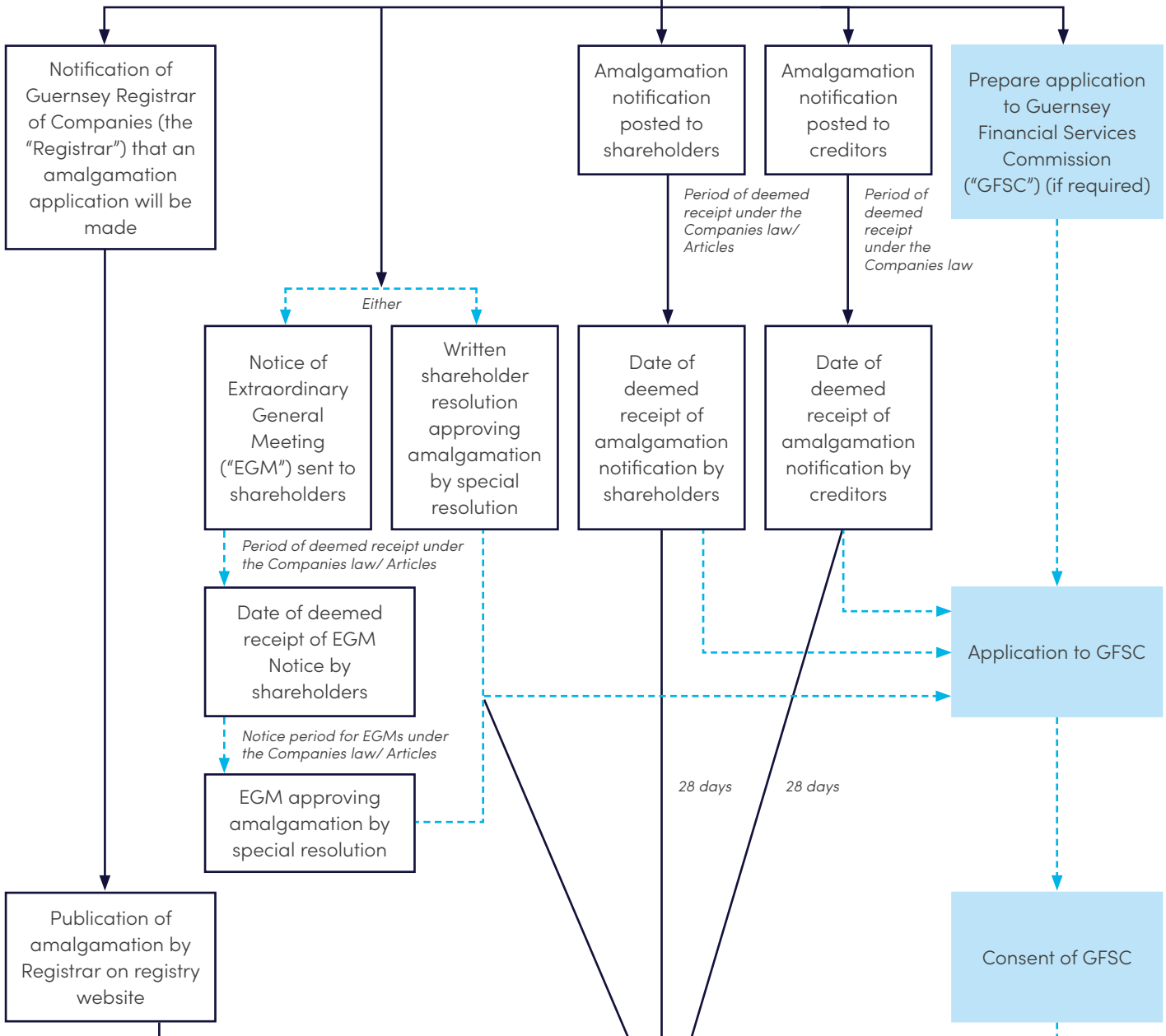
# Amalgamation flow diagram

## 1. Preliminary steps

Amalgamation proposal prepared

Amalgamation proposal approved by Board

## 2. Notification and approval



## 3. Application

Amalgamation approved

Application to Registrar

Certificate of Amalgamation issued

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