

COMPANY MERGERS & CONSOLIDATIONS

The Companies Law (2009 Revision) has simplified the mechanism under Cayman law for the merger or consolidation of companies (where one or more of those companies is incorporated in the Cayman Islands).

In addition to the existing method of using a court approved scheme of arrangement under sections 86 or 87 of the Companies Law (2009 Revision), it will now be possible for one or more companies to either:

- “merge” by vesting their undertakings, property and liabilities in one of them as a surviving company; or
- “consolidate” by vesting their undertakings, property and liabilities into a newly established consolidated company.

The costs of restructuring will therefore be significantly reduced in most cases. The procedure, under the new amendments, for either merging or consolidating companies is largely the same.

The Boards of Directors of each merging / consolidating company must approve, and file with the Registrar of Companies, a written plan of merger / consolidation which must include, amongst other things:

- the trigger event or date on which the merger is to take effect (which must be within 90 days of the filing of the Plan with the Registrar);
- the terms and conditions of the merger / consolidation (including the manner and basis of converting shares in one company into those of the consolidated or surviving company);
- the terms of issue of the new shares; and
- a declaration of solvency.

Unless the companies are a Cayman parent and its Cayman subsidiaries, there will need to be approval for the merger / consolidation from at least two thirds of the shareholders by value, and in some cases the threshold is raised to 75%.

Dissenting shareholders of unlisted companies are entitled to payment of the fair value of their shares if they object before the shareholder vote to approve the merger / consolidation.

Unless a court waives the requirement, consent will also be needed from each creditor with fixed or floating security.

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