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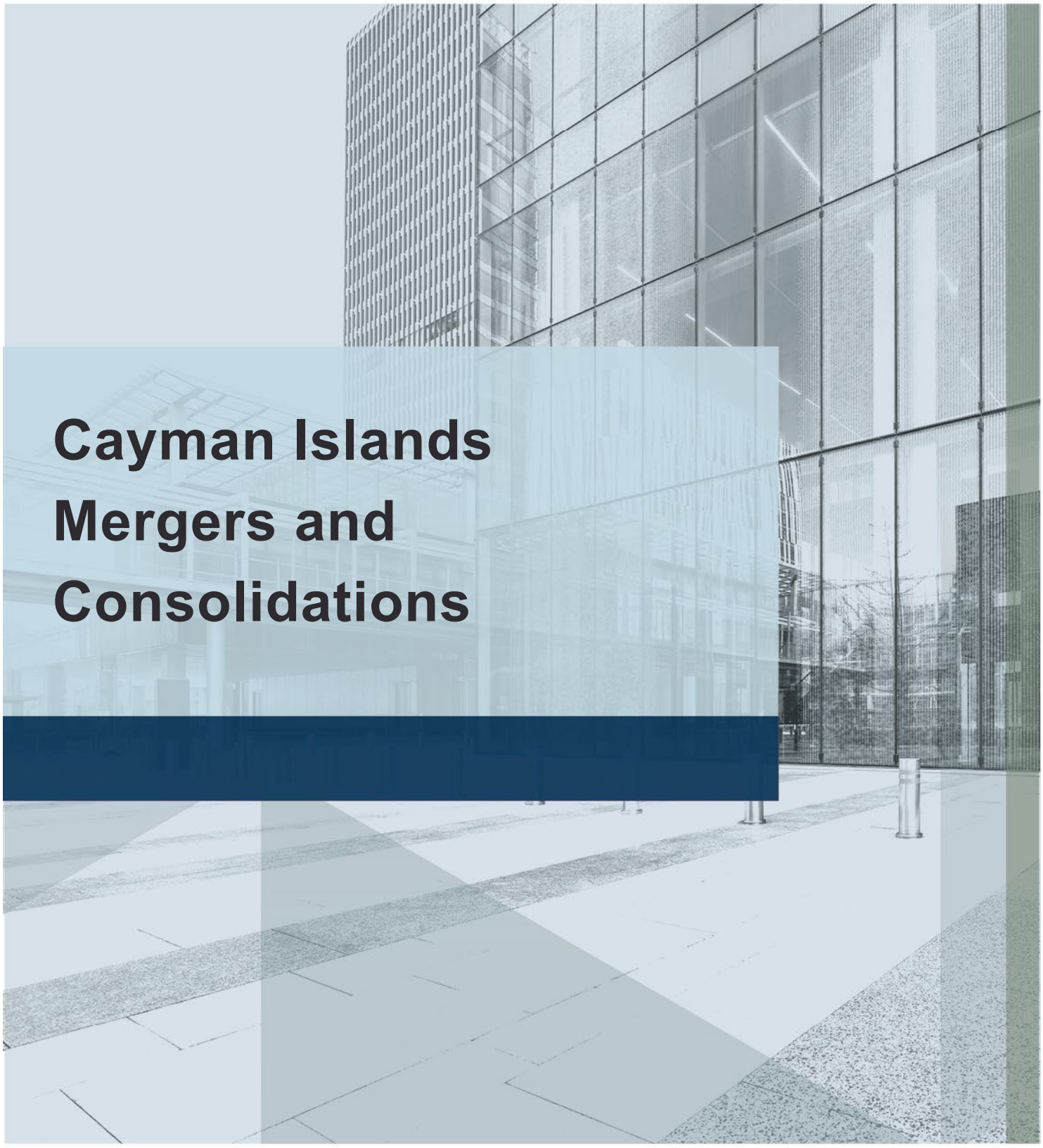

Cayman Islands Mergers and Consolidations

Preface

This publication has been prepared for the assistance of those who are considering a merger or consolidation between Cayman Islands companies or between Cayman Islands companies and foreign companies. It deals in broad terms with the requirements of Cayman law concerning such transactions. 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 the Cayman Islands on their specific proposals before taking steps to implement them.

Before proceeding with a merger or consolidation involving a Cayman Islands company, persons are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

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1. INTRODUCTION

Modern company, trust, banking, insurance and other related laws have made the Cayman Islands ("**Cayman**") a leading offshore financial centre. The government's attitude towards and open communication with the private sector encourages the promotion and maintenance of the Cayman's offshore business. Cayman enjoys a sophisticated telecommunications system, an abundance of professional service providers, as well as economic and political stability.

The principal statute governing the formation and operation of Cayman companies is the Companies Act (the "**Act**").

Cayman law distinguishes between those companies which are owned predominantly by Cayman residents (Ordinary (Local) Resident Companies) and those which are owned predominantly by non-residents (Exempted Companies). With rare exceptions, only local companies can carry on and compete for business in Cayman. Exempted companies carry on business external to Cayman unless appropriate licensing is obtained to conduct business in Cayman. In practice, the activities of most international companies are unlikely to infringe this requirement.

2. MERGER AND CONSOLIDATION

"Merger" means the merging of two or more constituent companies and the vesting of their undertaking, property and liabilities in one of such companies as the surviving company. "Consolidation" means the combination of two or more constituent companies into a consolidated company and the vesting of the undertaking, property and liabilities of such companies in the consolidated company. The essential difference between mergers and consolidations is that a consolidation produces a new company different from either of its constituent companies, while in a merger, one of the constituent companies will continue to exist as the other is merged into it.

Mergers and consolidations in the Cayman Islands are simple, cost-effective mechanisms for straightforward restructuring transactions. The Act permits the surviving company to be a foreign company and shareholder approval is not required for a merger between a Cayman parent and its subsidiary. Court approval is not required except in circumstances where there are dissenting shareholders and a price of shares cannot be agreed.

3. PROCEDURE

The procedure to implement a merger or consolidation is outlined briefly below.

3.1. Plan of Merger or Consolidation

The directors of each constituent company must approve a written plan of merger or consolidation ("**Plan**"). Particulars of a Plan must include:

(i) the name of each constituent company;

(ii) the name of the surviving or consolidated company;

(iii) the registered office of each constituent company;

(iv) the designation and number of each class of shares in respect of each constituent company;

(v) the date on which the intended merger or consolidation is to take effect;

(vi) the terms and conditions of the proposed merger or consolidation, including the manner and business of converting shares;

(vii) the rights and restrictions attaching to the shares in the consolidated or surviving company;

(viii) in the case of a merger, any proposed amendment to the memorandum and articles of association of the surviving company or a statement that no change is required;

(ix) in the case of a consolidation, the proposed new memorandum and articles of association of the consolidated company;

(x) any amount or benefit paid or payable to any director of a constituent company, a consolidated company or a surviving company consequent upon the merger or consolidation;

(xi) the name and address of any secured creditor of a constituent company and the nature of the secured interest held; and

(xii) the names and addresses of the directors of the surviving or consolidated company.

3.2. Approvals and Consents

(a) Shareholders

The Plan must be authorised by special resolution of the members of each constituent company and such other authorisation as may be specified in the articles of association of the respective companies.

Shareholder approval is not required for a merger of a Cayman parent with a Cayman subsidiary if a copy of the Plan is given to every member of each subsidiary company to be merged unless that member agrees otherwise. For these purposes, a parent is a company that owns at least 90% of issued shares of each class in subsidiary that are entitled to vote.

(b) Creditors

Each holder of a fixed or floating security interest in a constituent company must consent to the Plan unless the court waives consent (on the application of a constituent company that has issued the security). If a secured creditor does not consent, a constituent company may apply to court to waive the consent requirement. Secured lenders may require a specific arrangement as to priorities as a condition of consent.

(c) **Regulator**

Where a constituent company is licensed or regulated by the Cayman Islands Monetary Authority ("**CIMA**"), the Plan of merger or consolidation must be consented to by CIMA. Where a constituent company is licensed by CIMA, the continuing company (if not licensed) or the consolidated company will require a license.

3.3. Dissenting Shareholders

Any dissenting shareholder of a constituent company is entitled to payment of the fair value of shares held upon dissent to the merger or consolidation. Where the parties cannot agree on price, either party may file a petition to determine the fair value. Note, however, that dissenting rights are generally not available if the shares are listed on a recognized stock exchange.

The rights of dissenting shareholders do not delay or impede the effective date of a merger or consolidation but rather run concurrently and may well extend past the effective date.

Shares of dissenting shareholders acquired by a company are to be cancelled and, if they are shares of the surviving company, are available for re-issue.

4. POST-APPROVAL

The Plan must be signed by a director on behalf of each constituent company and filed with the Registrar of Companies together with the applicable fees, a certificate of good standing and a director's declaration or affidavit that:

(i) the constituent company is, and the consolidated or surviving company will be, immediately after the merger or consolidation, solvent;

(ii) the merger or consolidation is bona fide;

(iii) there is no other similar proceeding outstanding or any order to wind up the constituent company;

(iv) no administrator, receiver or trustee is acting in respect of the constituent company;

(v) no scheme, order or compromise has been made whereby the rights of creditors of the constituent company have been suspended or restricted;

(vi) the assets and liabilities of the constituent company at the latest practicable date;

(vii) in the case of a non-surviving constituent company, that the constituent company retired from any fiduciary duties; and

(viii) where relevant, that the constituent company has complied with any applicable requirements under the regulatory acts.

A director must also give an undertaking that copy of the certificate of merger or consolidation will be given to the members and creditors of the constituent company and that notification of the merger or consolidation will be published in the Gazette.

5. CONSEQUENCES OF REGISTRATION

A certificate of merger or consolidation issued by the Registrar of Companies constitutes prima facie evidence of compliance with all statutory requirements.

The rights and property of each constituent company immediately vest in the surviving or consolidated company and the surviving or consolidated company immediately becomes liable for all the debts, contracts, obligations and liabilities or each constituent company. Any existing claims, proceedings or rulings of each constituent company are automatically continued against the surviving or continued company.

In the case of a consolidation, the new memorandum and articles of association filed with the plan of consolidation immediately become the memorandum and articles of association of the consolidated company.

Upon a merger or consolidation becoming effective, the Registrar will strike off the register any constituent company that is not the surviving company in a merger and any constituent company that participates in a consolidation.

6. CONCLUSION

Mergers and consolidations in the Cayman Islands are, as outlined above, simple, cost-effective mechanisms for straightforward restructuring transactions. While the timing of any particular transaction is dependent on factors such as the notice period specified in the relevant articles of association to call a shareholders meeting, the overall time from commencement of a merger or consolidation to receipt of the certificate of a merger is generally in the range of two to three months.