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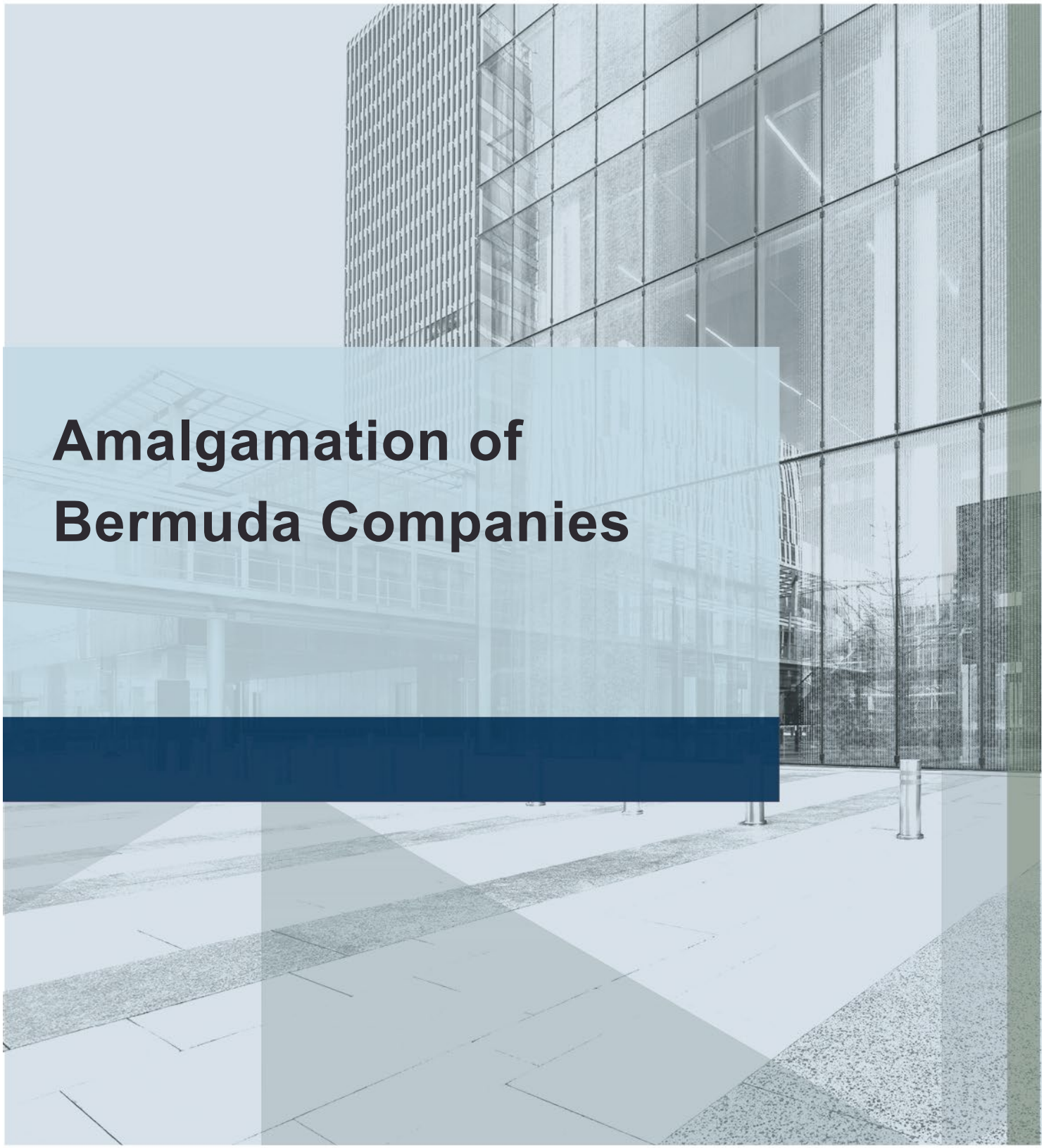

Amalgamation of Bermuda Companies

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Preface

This publication has been prepared for the assistance of those who are considering the amalgamation of Bermuda companies. 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.

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1. INTRODUCTION

This publication outlines the steps necessary under the Companies Act 1981 of Bermuda (the "Act") for Bermuda companies to amalgamate and continue as a single Bermuda company. A separate procedure exists under Bermuda law for the merger of Bermuda 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 COMPANIES

2.1. Amalgamation Agreement

The Act requires that each company proposing to amalgamate must enter into an amalgamation 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 such 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.

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 amalgamation 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.

2.3. Shareholder Notice

The notice to the shareholders of the general meeting 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 their shares.

A shareholder that did not vote in favour of the amalgamation and is not satisfied that he has been offered fair value for his shares, may apply to the court for an appraisal of the fair value of his shares within one month of the giving of the notice of meeting to shareholders.

2.4. 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 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.

2.5. Filing with Registrar of Companies

Once the shareholder resolutions approving the amalgamation of the companies have been adopted, a filing must be made with the Registrar of Companies (the "Registrar"), on the Registrar's online portal, to register the amalgamated company in order for the amalgamation to become effective. The filing must include the following supporting documents:

(a) a statement confirming that the amalgamating companies are to be registered as an amalgamated company pursuant to the amalgamation;

(b) a certified copy of the resolutions of the shareholders of each amalgamating company;

(c) the memorandum of association of the amalgamated company;

(d) the address of the registered office of the amalgamated company;

(e) the statutory declarations referred to above; and

(f) the required filing fee.

The Registrar will register the amalgamated company on or after the date of filing, as requested in the filing, and will issue a Certificate of Amalgamation indicating the date of registration.

3. INTRA-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 approved solely by a resolution of the directors of each amalgamating company. A director or officer of each such company will still have to sign the statutory

declaration described above, and the filing for the registration of the amalgamated company is then made.

3.2. Amalgamation of Holding Company and Subsidiary

Where the amalgamating companies are 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 and bye-laws of the amalgamated company shall be the same as those 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

Where the amalgamating companies are two or more wholly-owned Bermuda subsidiaries of the same holding company, the directors' resolutions of each amalgamating company must provide that:

(a) the shares of each amalgamating subsidiary company other than those of one of the amalgamating subsidiary companies shall be cancelled without any repayment of capital in respect thereof; and

(b) the memorandum of association and bye-laws of the amalgamated company shall be the same as those of the amalgamating subsidiary company whose shares are not cancelled.

In both scenarios of an intra-group amalgamation, the resolutions approving the amalgamation must also state whether or not the amalgamating companies elect to combine their respective 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. CONSEQUENCES OF AMALGAMATION

On the date shown in the Certificate of Amalgamation:

(a) the amalgamation of the amalgamating companies and their continuance as one company will become effective;

(b) the property of each amalgamating company will become the property of the amalgamated company;

(c) the amalgamated company will continue to be liable for the obligations of each amalgamating company;

(d) an existing cause of action, claim or liability to prosecution will 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 an amalgamating company is its original date of incorporation and its amalgamation with another company does not alter its original date of incorporation.