

Talking Companies

Amalgamations and Mergers in terms of the Companies Act 2008 ("the Act")

Any two or more profit companies, including holding and subsidiary companies, may amalgamate or merge ("merge").

The companies proposing to merge must enter into a written agreement ("the merger agreement"), setting out the terms and means of effecting the merger and, specifically address the following:

- The proposed Memorandum of Incorporation of any new company to be formed by the merger;
- The name and identity number of each proposed director of any proposed, merged company;
- The manner in which the securities of each merging company are to be converted into securities of any proposed merged company, or exchanged for other property;
- If any securities of any of the merging companies are not to be converted into securities of any proposed merged company, the consideration that the holders of those securities are to receive in addition to, or instead of, securities of any proposed merged company;
- The manner of payment of any consideration instead of the issue of fractional securities (refer note below) of a merged company or of any other juristic person the securities of which are to be received in the merger;
- Details of the proposed allocation of the assets and liabilities of the merging companies between, the companies that will be formed or continue to exist, when the merger agreement has been implemented;
- Details of any arrangement or strategy necessary to complete the merger, including the subsequent management and operation of the proposed merged company or companies;
- The estimated cost of the proposed merger;
- If the securities of one of the merging companies are held by or on behalf of another merging company, provision for the cancellation of those securities when the merger becomes effective, without any repayment of capital, or the conversion of those securities into securities, of a merged company.



The board of each merging company must consider whether, upon implementation of the merger agreement, each proposed merged company will satisfy the solvency and liquidity test (to be discussed in Talking Companies 27). Only if the board reasonably believes that each proposed merged company will satisfy the solvency and liquidity test, may the merger agreement be submitted for consideration at a shareholders' meeting of that merging company.

A notice of a shareholders meeting, proposing a special resolution to approve the merger, must be delivered to each shareholder of each respective merging company, and must include or be accompanied by a copy or summary of:

- the merger agreement; and
- the provisions of section 115 and 164 (see Talking Companies 22)

The requirements described above do not apply to any transaction that is pursuant to or contemplated in a business rescue plan which has been adopted by a company.

Note: *fractional shares* arise where there is an allocation which gives rise to parts of a share which cannot be traded (eg in a 3 for 2 allocation, the holder of 1 share gets allocated 1,5 shares) or where batching (say in 100 share "blocks") leaves some shares remaining.

Contact Information

Horwath in Southern Africa (Pty) Ltd
Edwin Selbst
Tel: +27 11 217 8000
talking.companies@horwath.co.za

Johannesburg
Horwath Leveton Boner
Tel: +27 11 217 8000
Email: info@horwath.co.za

Cape Town
Horwath Zeller Karro
Tel: +27 21 481 7000
Email: hzk@horwath.co.za

Durban
Horwath Mahomedy
Omar Paruk
Tel: +27 31 337 3311
Tel: +27 32 551 1111 (Stanger)
Email: hmop@horwath.co.za

Botswana
Horwath Gurugroup
Tel: +267 391 2805
Email: guru@gurugroup.bw

Compiled by Graeme Fraser and Veldra Morris - www.companiesactonline.co.za in association with Horwath in Southern Africa (Pty) Ltd. The advice contained in these newsletters is of general application and is not intended to be legal advice.

Companies Act Online

www.companiesactonline.co.za