Changing your Legal Structure

There are a number of possible scenarios in which non-profit organisations might want to join together or merge.

The fact sheet below summarises some of the legal issues for a Singaporean incorporated organisation to consider before deciding to amalgamate with another Singaporean incorporated organisation under the Companies Act Cap. 50 (2006 Rev Ed).

Overview on amalgamation

This fact sheet summarises some of the legal issues for a Singaporean incorporated organisation to consider before deciding to amalgamate with another Singaporean incorporated association under the Companies Act Cap. 50 (2006 Rev Ed). ('the Act').

To keep it simple this fact sheet uses the term 'amalgamate' (which is used in the Act). 'Amalgamation' is generally used to describe the combination or union of two or more incorporated organisation.

This usually takes place using either of the following forms:

- Merger, where two or more companies combine to form one company, with the new company being one of the merging companies themselves; or
- Consolidation, where two or more companies unite to form a brand new company which is separate and distinct from any of the consolidating companies.

For easy understanding this fact sheet assumes only two companies are considering amalgamation. Also organisations that are considering working closely together might be able to do so without 'amalgamating' or legally combining their structures. For example, in some situations joint venture arrangements or other contractual agreements can be used to formalise and document close working relationships between two or more organisations without the need for the organisations to change or merge their individual legal structures. (see Related Resources at the end of this document)

Note: The information contained in this fact sheet is intended as a guide only, and is not legal advice. If you or your organisation has a legal problem you should talk to a lawyer before making a decision about what to do. The information in this fact sheet is written for people and organisations resident in, or affected by, the laws that apply in Singapore and is current at 6th Feb 2011.

What is the effect of amalgamation?

The amalgamation process of two incorporated companies is governed by the Companies Act. (sections 215a-h). Under the Act amalgamation is defined as the process by which two or more companies combine as one company which may be one of the amalgamating company or a new company.

The property of the individual incorporated associations becomes the property of the amalgamated incorporated organisation. This includes fixed assets such as office furniture, computers, equipment etc. There is no need for a separate conveyance, transfer or assignment to transfer ownership. However, you may need to fill in paperwork to formalise the transfer, for example complete a 'Transfer of Land' form and lodge with the Land Victoria office for a transfer of land. The property remains subject to any mortgage, charge, etc. which applied immediately before it became the property of the amalgamated incorporated association. All debts and liabilities of the individual incorporated associations become the debts and liabilities of the amalgamated incorporated association.

Is amalgamation the best option for your organisation?

Committee members need to remember when considering an amalgamation that they must act in the best interests of their organisation. If you are approached by another organisation suggesting an

amalgamation you need to ask for details of the proposed amalgamation, the reasons for it and the expected costs and benefits for your organisation and your clients. This information should be provided in writing so that you can obtain your own independent legal advice on the proposal.It may be preferable for the existing structures to remain in place, with the separate organisations entering into an agreement about working together in the future.

Another option may be for your organisation to be wound up (ie. close down – end its services) with the services taken over by another organisation.

Some issues to consider before amalgamating
The Act requires the members of both incorporated associations to approve both the amalgamation and the amalgamated association's rules and statement of purposes. Before proceeding each Committee should consider whether the amalgamation is likely to obtain member approval and whether you should consult your membership.

What will be the impact on your clients? Can your objectives still be met – will you have to compromise?

- If your organisation currently receives preferential tax treatment, will the amalgamated organisation be entitled to receive the preferential tax treatment?
- What is the culture of each organisation? Is a clash of cultures possible, which may be disruptive for employees, volunteers and clients?
- Will there be a loss of existing name and brand recognition?
- What will be the size of the new organisation? What size organisation is best suited to deliver your services?
- Where will the organisation be located and will this impact on service delivery?
- What will be the impact on your existing contracts and funding agreements? What will be the impact on your employees and existing employee agreements? You should find out how the other organisation's agreements will be affected.
- Does the other organisation have any potential or actual liabilities or debts you need to consider?

Do the anticipated benefits of the amalgamation outweigh the likely costs?

Possible benefits of an amalgamation
These include:
- reduced overheads – economies of scale, eliminate duplicated functions;
- shared managerial experience;
- knowledge sharing;
- better able to seek and obtain funding; and
- stronger brand.

Possible costs of an amalgamation
These include:
- accounting fees;
- legal fees for reviewing contracts and agreements etc.;
- management time spent on the amalgamation negotiations eg. negotiating the rules and statement of purposes for the amalgamated incorporated association; negotiating committee representation; deciding the new name and brand; discussions with employees, volunteers and clients;
- loss of existing name and brand recognition;
- impact on employees and volunteers of the change, uncertainty and any staff cuts;
- existing funding arrangements do not continue;

- existing tax endorsements do not continue – impact on funding and concessions, and, for public benevolent institutions and health promotion charities, the ability to salary package; and
- administrative steps post amalgamation (see below).

The amalgamation process
There are two amalgamation processes whether of the merger or consolidation form.
- The general amalgamation, applicable to all types of companies; and
- The abbreviated or short-form amalgamation, applicable only to wholly affiliated or related companies.

We will first discuss the requirements and information regarding general amalgamation before moving on to the abbreviated or short-form amalgamation.

General amalgamation
The amalgamating companies must prepare an amalgamation proposal containing all the relevant consideration and preparation. The amalgamation proposal must contain the terms of the desired amalgamation as well as certain terms listed in the Companies Act (Cap. 50). After the proposal is drafted by the respective governing boards of each company, the members of each companies and, where required under the terms of the proposal, any other involved person must approve the amalgamation proposal by special resolution at a general meeting for that purpose.

It is important that the board of directors are aware of their legal duties regarding the amalgamation proposal under the Companies Act (Cap.50).

Short-Form Amalgamation
This is an alternative method that allows wholly related or affiliated companies to perform amalgamation by providing a separate route than that above. There are different rules to comply with as explained below and is commonly referred to as 'short-form amalgamation'. There are two ways to qualify for short-form amalgamation:
- when a company and one or more of its wholly-owned subsidiaries combine to continue as one company, the latter being the amalgamated holding company; and
- when two or more wholly-owned subsidiaries of the same corporation combine to continue as one company.

For more information, please seek legal advice and refer to the Companies Act (Cap. 50).

Registration of Amalgamation
After the amalgamation proposal is approved and/or the necessary resolutions and declarations passed by the governing boards of the amalgamating companies in a general amalgamation or short-form amalgamation, documents must be filed with the Registrar in the prescribed form and with the required details, together with the prescribed fee.

For more information, please seek legal advice and refer to the Companies Act (Cap. 50)

Effects of amalgamation
It is the duty of the Registrar to remove the amalgamating companies, other than the amalgamated company, from the register as soon as practicable after the effective date of an amalgamation. On the date stated in the Registrar's notice of amalgamation, the legal consequences of the amalgamation ensue as follows:
- the amalgamation takes effect;
- the amalgamated company shall have the name specified in the amalgamation proposalall the property, rights and privileges of each of the amalgamating companies shall be transferred to and vest in the amalgamated company;
- all the liabilities and obligations of each of the amalgamating companies shall be transferred to and become the liabilities and obligations of the amalgamated company;

- all proceedings pending by or against any amalgamating company may be continued by or against the amalgamated company;
- any conviction, ruling, order or judgment in favor of or against an amalgamating company may be enforced by or against the amalgamated company; and
- the shares and rights of the members in the amalgamating companies shall be converted into the shares and rights as provided for in the amalgamation proposal.