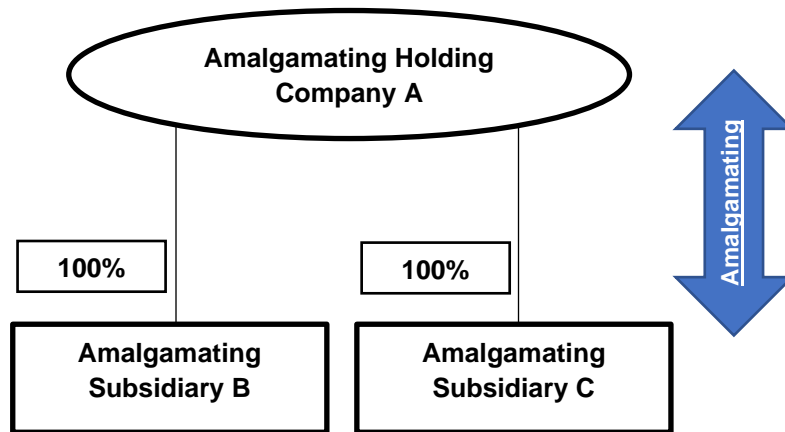


## Short Form Amalgamations under the Singapore Companies Act 1967

There are 2 methods of achieving a fusion of companies under Singapore law - standard amalgamation and short form amalgamation. This article outlines the salient features of a short form amalgamation and its usefulness in mergers and acquisitions of companies in Singapore.

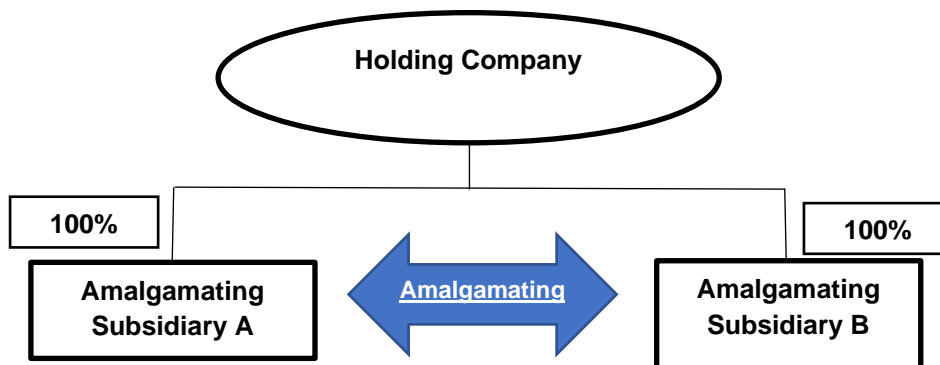
A short form amalgamation may take two forms. Option 1 involves the amalgamation between a holding company with 1 (or more) of its wholly owned subsidiaries. Option 2 involves the amalgamation between 2 or more wholly-owned subsidiaries of the same company.

### Option 1: Amalgamation between a holding company with 1 (or more) of its wholly owned subsidiaries



After amalgamation, the holding company and its wholly-owned subsidiary will continue as one amalgamated company. The amalgamated company may be either the amalgamating holding company or one of the amalgamating subsidiaries.

### Option 2: Amalgamation between 2 (or more) of its wholly owned subsidiaries





After amalgamation, the two (or more) subsidiaries will continue as one amalgamated company. The amalgamated company may be either one of the amalgamating subsidiaries or a new company.

### Short form amalgamation procedure

Steps	Explanation
1. Directors of the amalgamating companies to pass a board resolution to convene a general meeting. The general meeting is for members to approve the amalgamation.	The following notices must be sent prior to the general meeting: <ul style="list-style-type: none"> <li>(a) A written notice of the proposed amalgamation must be sent <u>to every secured creditor</u> of the amalgamating companies at least 21 days before the general meeting approving the amalgamation.</li> <li>(b) A written notice of the general meeting held to approve the amalgamation must be sent to <u>members</u> of the amalgamating companies at least 14 days in the case of a private company (or 21 days in the case of a public company) before the general meeting.</li> </ul>
2. Directors of the amalgamating companies to pass a board resolution to approve the execution of solvency statements (described below).	The respective boards of each amalgamating company are required to make a solvency statement. <ul style="list-style-type: none"> <li>(a) A solvency statement is a written declaration by the board of directors that the amalgamated company will be solvent after the amalgamation becomes effective.</li> <li>(b) The test for making such a solvency statement is as follows<sup>1</sup>: (a) the amalgamated company will be able to pay its debts that are due as at the date on which the amalgamation is to become effective; and (b) the value of the amalgamated company's assets will not be less than the value of its liabilities (including contingent liabilities).</li> </ul>
3. Each director of the amalgamating companies who voted in favour of the respective resolutions and the making of the solvency statement is to sign a declaration.	The declaration should state: <ul style="list-style-type: none"> <li>(a) that in the director's opinion, the conditions for making the solvency statements in relation to the amalgamated company are satisfied; and</li> <li>(b) the reasons for the director's opinion.</li> </ul>
4. Members of the amalgamating companies to approve the amalgamation by way of special	In the case of an amalgamation between a holding company with one (or more) of its wholly-owned subsidiary(ies) ( <b>Option 1</b> ), the special resolution must contain the following terms:

<sup>1</sup> Section 215J(1) of the Companies Act.



resolution (75% of voting members) at the general meeting.

- (a) After amalgamation,
  - (i) if the amalgamated company is the amalgamating subsidiary, the shareholders of the amalgamating holding company are to be issued the same number of shares in the amalgamated company as they hold in the amalgamating holding company.
  - (ii) The shares of each amalgamating company (except for the shares in the amalgamated subsidiary company which are issued to the shareholders of the amalgamating holding company) will be cancelled without any payment;
  - (iii) if the amalgamated company is the amalgamating holding company, the shares of each amalgamating subsidiary company will be cancelled
- (b) the constitution of the amalgamated company will be the same as the constitution of the amalgamating company whose shares are not cancelled;
- (c) the directors of the amalgamating companies are satisfied that the amalgamated company will be able to pay its debts as they fall due as at the date on which the amalgamation is to become effective; and
- (d) persons named as director in the will be the directors of the amalgamated company.

In the case of an amalgamation between two (or more) wholly-owned subsidiaries of the same company (**Option 2**), the special resolution must contain the following terms:

- (a) the shares of the amalgamating companies (except the amalgamating company which will continue to survive and form the amalgamated company) will be cancelled without any payment;
- (b) the constitution of the amalgamated company will be the same as the constitution of the amalgamating company whose shares are not cancelled;
- (c) the directors of the amalgamating companies are satisfied that the amalgamated company will be able to pay its debts as they fall due during the period of 12 months immediately after the date on which the amalgamation is to become effective; and
- (d) persons named in the resolution will be the directors of the amalgamated company.



5. Filing the amalgamation with Accounting and Corporate Regulatory Authority of Singapore ("ACRA")	The amalgamation will take effect after it has been filed with ACRA and a notice of amalgamation has been issued by ACRA.  The amalgamation will take effect on the date shown in the notice of amalgamation.
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### **Effect of amalgamation**

The following will take effect after the amalgamation has been completed:

- (a) the amalgamated company shall have the name specified in the amalgamation proposal;
- (b) all the property, rights and privileges of each of the amalgamating companies shall be transferred to the amalgamated company, except for contracts with the following:
  - (i) a prohibition against the amalgamation or merger of an amalgamating company;
  - (ii) a prohibition on the rights or obligations of the amalgamating companies transferring or vesting by operation of law;
  - (iii) a provision that rights or obligations of the amalgamating companies will not be binding on their respective successors or will not survive an amalgamation or merger; and
  - (iv) a governing law that is not Singapore law may require third party consents and/or foreign counsel advice to ascertain if and how they may be transferred (a due diligence exercise should be conducted by the amalgamating companies to determine, for example, whether the proposed merger of the companies pursuant to the short form amalgamation process would be prohibited or whether the counterparties to the agreements would have any additional rights if the amalgamation takes place);
- (c) all the liabilities and obligations of each of the amalgamating companies shall be transferred to the amalgamated company;
- (d) all proceedings pending by or against any amalgamating company may be continued by or against the amalgamated company;
- (e) any conviction, ruling, order or judgment in favour of or against an amalgamating company may be enforced by or against the amalgamated company; and
- (f) the shares and rights of the shareholders in the amalgamating companies shall be converted into the shares and rights provided for in the amalgamation proposal.

***Note: The information in this publication is intended to provide a brief overview of the short form amalgamation process under the Companies Act 1967 of Singapore. It is not intended as, and should not be relied upon as, legal advice on the subject matter.***