

amalgamating company as well as a projected balance sheet of the amalgamated company.

What are the filing fees relative to seeking amalgamation?

The fees payable on filing are as follows:

- Request for Name Search and Reservation Form (Form 26) where reservation is requested - \$25.00
- Notice of Directors (Form 9) - \$50.00
- Notice of Registered Office (Form 4) - \$50.00
- Certificate of Amalgamation
 - 2 companies - \$750.00
 - each additional company - \$100.00
- Special resolution of the shareholders - \$50.00

No separate fee is charged for filing Articles of Amendment, directors' resolutions or an Amalgamation Agreement where required.

Where do I obtain statutory forms and submit company filings?

The Companies Act is administered by the Registrar of Companies, who is the Registrar of the Commerce and Intellectual Property Office (CIPO). Statutory forms and specimen documents are available from CIPO on request and filings relative to domestic companies must be lodged there. CIPO is located on the Ground Floor of the Methodist Building at Granby Street, Kingstown. **Our email address is ciposvg@vincysurf.com**

How are the filings submitted for amalgamation processed?

Following receipt of the prescribed documents in duplicate original and the prescribed filing fees, a *formality examination* is conducted to ensure that the documents have been prepared in accordance with the statutory instructions as to form and a *substantive examination* carried out to ensure compliance with legal requirements.

In the event of any material deviation from the statutory requirements, this is noted on a pending file, which should be checked by persons filing documents in the days following their submission.

Where a document conforms to all requirements, it will be registered in duplicate and endorsed with the date of registration. One registered copy of each supporting document is made available to the company for its records along with the Certificate of Amalgamation and the duplicate supporting documents and certificate are placed on the company's file. The names of companies that applied for amalgamation are then removed from

the *Register of Companies* and a record made of the formation of a new company by amalgamation. The *Companies' Index* is updated accordingly.

What is the legal effect of amalgamation?

Section 225 of the Companies Act provides that on the date stated in the *Certificate of Amalgamation* issued by the Registrar:

- each amalgamating company ceases to exist;
- the joining of the amalgamating companies and their continuance as one company becomes effective;
- the property of each amalgamating company becomes the property of the amalgamated company;
- the amalgamated company becomes liable for the obligations of each amalgamating company;
- any existing cause of action, claim or liability to prosecution is unaffected;
- a civil, criminal or administrative action or proceeding pending by or against an amalgamating company may be continued by or against the amalgamated company;
- 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
- the articles of amalgamation are the articles of incorporation of the amalgamated company.

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This brochure outlines the procedure for the amalgamation of domestic companies under the Companies Act, No. CAP. 143, Revised Edition, 2009 of the Laws of St. Vincent and the Grenadines. For a more complete understanding of the provisions referenced in this document, the Act should be consulted.

What is amalgamation?

A amalgamation is the joining of two or more companies to form a single new company. Section 219 of the Companies Act, provides that two or more companies, including holding and subsidiary companies, may amalgamate and continue as one company.

What are the different types of amalgamation procedures provided for under the Companies Act?

The Companies Act sets out three procedures for effecting company amalgamations. These are as follows:

- *Long-form amalgamation* - amalgamation of two unaffiliated companies under section 221 in accordance with the terms of an Amalgamation Agreement approved by a Special Resolution of the Shareholders;
- *Vertical short-form amalgamation* - amalgamation of a holding company and one or more of its wholly owned subsidiaries under section 222; and
- *Horizontal short-form amalgamation* - amalgamation of two or more wholly owned subsidiaries of the same parent/holding company under section 223.

What are the statutory pre-conditions to seeking long-form amalgamation?

Section 221 of the Companies Act governs the procedures to be followed to effect a long-form amalgamation. Before filing Articles of Amalgamation for a long-form amalgamation with the Registrar of Companies, the directors of each amalgamating company must enter into an Amalgamation Agreement setting out the terms and means of effecting the amalgamation and, in particular, setting out the minimum statutory particulars identified in section 221(1) of the Act. The Amalgamation Agreement must be adopted by special resolution of the shareholders of each of the amalgamating companies and by the holders of each class or series of shares of an amalgamating company who are entitled to vote on the amalgamation in accordance with section 221(5) of the Act.

What are the statutory pre-conditions to seeking vertical short-form amalgamation?

Section 222 of the Companies Act governs the procedures to be followed to effect a vertical short-form amalgamation. Before filing Articles of Amalgamation for a vertical short-form amalgamation, approval for the proposed amalgamation must be evidenced by a

resolution of the directors of each amalgamating company. This resolution must require that the shares of each amalgamating subsidiary company will be cancelled without repayment of capital in respect of the cancellation, that the articles of amalgamation will be the same as the articles of incorporation of the amalgamating holding company and that no shares or debentures will be issued by the amalgamated company in connection with the amalgamation.

What are the statutory pre-conditions to seeking horizontal short-form amalgamation?

Section 223 of the Companies Act governs the procedures to be followed to effect a horizontal short-form amalgamation. Before filing Articles of Amalgamation for a horizontal short-form amalgamation, the proposed amalgamation must have been approved by a resolution of the directors of each amalgamating company. That resolution must provide that the shares of all but one of the amalgamating subsidiary companies will be cancelled without repayment of capital in respect of the cancellation, that the articles of amalgamation will be the same as the articles of incorporation of the amalgamating subsidiary company whose shares are not cancelled and that the stated capital of the amalgamating subsidiary companies whose shares are cancelled will be added to the stated capital of the amalgamating subsidiary company whose shares are not cancelled.

When the statutory pre-conditions for amalgamation are met, what documents must be filed?

Section 224 of the Companies Act provides that following the adoption of an amalgamation under section 221 (long-form), or under section 222 (vertical short-form) or section 223 (horizontal short-form), the following documents must be sent to the Registrar in duplicate together with the prescribed fees:

- Articles of Amalgamation (Form 15);
- Request for Name Search and Reservation Form (Form 26). If a proposed name is not reserved under section 515 of the Act, the Articles of Amalgamation must be accompanied by a statement setting out the main types of business to be carried on by the amalgamated company;
- Statutory Declaration by a director or officer of each amalgamating company establishing to the satisfaction of the Registrar the matters identified in section 224(2) of the Act;
- Notice of Directors (Form 9);
- Notice of Registered Office (Form 4);
- If the amalgamation is a long-form amalgamation effected under section 221 of the Act, the Articles of Amalgamation must be accompanied by a copy of the

Amalgamation Agreement and a copy of the required special resolution of shareholders of each amalgamating company;

- If the amalgamation is a vertical or horizontal short-form amalgamation effected under section 222 or 223, the Articles of Amalgamation must be accompanied by a copy of the required directors' resolution of each amalgamating company.

Notwithstanding the shareholders' approval of the amalgamation agreement, a long form amalgamation agreement may be terminated by the directors at any time before a Certificate of Amalgamation is issued (s.221(6)).

What facts should be included in the directors' statutory declaration?

Section 224(2) of the Companies Act requires that the statutory declaration accompanying the Articles of Amalgamation should establish the following "to the satisfaction of the Registrar":

- that there are reasonable grounds for believing that each amalgamating company is, and the amalgamated company will be able to pay its liabilities as they become due;
- that there are reasonable grounds for believing that the realisable value of the amalgamated company's assets will not be less than the aggregate of its liabilities and the stated capital of all classes;
- that there are reasonable grounds for believing that no creditor will be prejudiced by the amalgamation or that there are reasonable grounds for believing that adequate notice has been given to all known creditors of the amalgamating companies, and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

In essence, section 224(2)(a) of the Act prescribes a solvency test which may be fulfilled by the directors of each of the amalgamating companies laying out in a Statutory Declaration the factual basis of their belief that the amalgamating companies and the amalgamated company are solvent and will be able to pay its liabilities, and that the realisable value of the assets of the amalgamated company will not be less than the aggregate of its liabilities and the stated capital of all classes. In practice, the solvency test is satisfied by the director asserting in the Statutory Declaration that he has reviewed the financial affairs of the company and has satisfied himself as to its solvency. A specimen declaration may be obtained from CIPO on request. The director should annex to the Statutory Declaration certified copies of the balance sheet of each