

Amalgamation of Ontario Mutual Insurance Companies

Legislation, Considerations and Due Diligence

LEGISLATION:

Corporations Act of Ontario, R.S.O. c. C.38

175 Subject to the approval of the agreement of amalgamation under the Insurance Act, section 113 of the Act applies with necessary modifications to the amalgamation of two or more mutual insurance corporations.

113(2) Amalgamating corporations enter into an “Amalgamation Agreement” prescribing:

- terms and conditions of the amalgamation
- mode of carrying amalgamation into effect
- name of amalgamated corporation
- names and addresses of each of the first directors
- how and when subsequent directors are to be elected

113(3) Agreement to be submitted to meeting of members of each amalgamating company. Amalgamation Agreement must be approved by no less than 2/3rds of votes cast at a special meeting of the members of each of the amalgamating corporations.

113(4) If the Amalgamation Agreement is approved, the amalgamating companies apply jointly to Lieutenant Governor for “Letters Patent of Amalgamation”.

The amalgamation is then effective date Letters Patent are issued.

Insurance Act of Ontario, R.S.O. c. I. 8

421 The entering into of an Amalgamation Agreement must first be approved by the Superintendent.

CONSIDERATIONS:

1. “Political issues” with members, including:
 - (a) Name.
 - (b) Location.
2. “Harmonization Issues” including:
 - (a) Business Harmonization:
 - (i) Do both individual corporations undertake same classes of insurance ?
 - (ii) Do both individual corporations declare refunds from surplus?
 - (iii) Are the investment policies for both individual corporations the same?
 - (b) Board Harmonization:
 - (i) *Corporations Act* requires that Mutuels have a board of 6, 9, 12 or 15. The size of the Board of the amalgamated corporation needs to be agreed upon, and whether it is then to reduce in size over time through attrition.
 - (ii) Are Boards prepared to advocate interests of new amalgamated corporation rather than advocating protection of individual corporations?
 - (iii) Corporations need to determine if Board members must be “members” of the Corporation (as this is no longer required by the *Corporations Act*).
 - (iv) Are Boards of individual Corporations “policy boards” or “hands on boards”?
 - (v) Are processes for nomination of new Board members consistent, or what changes will need to be accepted in amalgamated corporation?
 - (c) Management Harmonization:
 - (i) Need to determine who will be “General Manager/President”
 - (ii) Need to determine senior management needs for amalgamated corporation, and consider if all senior management personnel will have a position in amalgamated corporation.

- (iii) Need to consider costs of severance packages for senior management who will not have a position in amalgamated corporation.
- (d) HR Harmonization:
 - (i) Are salaries and benefits similar, or will adjustments upwards or downwards need to be made in an amalgamated corporation?
 - (ii) Are pay and employment equity policies compatible?
 - (iii) Need to consider costs of severance packages for personnel who will not have a position in amalgamated corporation.
- (e) Adjusting Harmonization:
 - (i) What is position of each corporation with respect to directors adjusting claims for example.
- (f) Sales Harmonization:
 - (i) Agents vs Brokers, or both, in the amalgamated corporation.

Recognize won't be fully "harmonized" until get into one location.

3. Fire Mutuals' Guarantee Fund Agreement. Adjustments to contributions to be made to the Fund as a result of amalgamation.
4. Approval of Superintendent required, for amalgamation.

DUE DILIGENCE:

1. **Due Diligence related specifically to Mutual Insurance Companies, to include:**
 - (a) Review investment policies of each.
 - (b) Determine if both corporations have implemented the new "investment standards".
 - (c) Review investments of each to ensure that they are in compliance with the *Insurance Act*.
 - (d) Ensure required Committees are in place.

- (e) Review all “related party transactions” to ensure in compliance with investment policies and the *Insurance Act*.
- (f) Obtain a complete list of outstanding or potential insurance claims or law suits.
 - (i) Ensure adequate reserves for all open claims.
 - (ii) Review re-insurance contracts to ensure they are sufficient.
- (g) Determine “solvency status” of each, if recommendations to improve solvency have been made through the “solvency protection process” and if such recommendations have been / are being implemented.
- (h) Determine surplus of each.
- (i) Determine if all required “financial ratios” are in compliance with regulations.
- (j) Review any outstanding directives from Superintendent.
- (k) Need approval of Superintendent.
- (l) Determine if any “downstream” companies.

2. **Due Diligence for any amalgamation - relative to the individual corporations and any “downstream” corporations, to include:**

- (a) Asset Searches:
 - (i) Determine assets owned by each.
 - (ii) Perform searches under the following statutes:
 - Registry / Land Titles Acts
 - Ministry of Consumer and Commercial Relations
 - Personal Property Security Act
 - Executions Act
 - Bank Act
 - Bankruptcy and Insolvency Act
- (b) Contracts and Commitments:
 - (i) Review contractual obligations/commitments and ensure all complied with.

- (ii) Ensure all material contracts are disclosed in financial statements/records and have been approved by the Board of Directors.
 - (iii) Review any other agreements or provisions that are out of the ordinary course of business.
- (c) Financing Agreements:

Obtain and review documents and other information pertaining to loans and other credit arrangements including:

 - (i) any agreements or other documents governing loans or lines of credit with banks or other lenders.
 - (ii) All outstanding long term and short term indebtedness.
- (d) Review of Financial Statements:

Review the financial information or statements, including:

 - (i) Annual audited financial statements.
 - (ii) Other matters of a financial nature, including the adequacy of the internal financial controls and accounting methods and procedures.
- (e) Real and Personal Property:
 - (i) Review legal descriptions of any real property owned.
 - (ii) Obtain and review title documents to the real property including any reporting letters and opinions from solicitors and others with respect to the acquisitions of such real property.
 - (iii) Obtain and review all leases for real property and a summary of material terms.
 - (iv) Obtain and review all equipment capital leases and operating leases.
 - (v) Obtain and review copies of all outstanding mortgages and encumbrances.
 - (vi) Obtain and review list of owned equipment and related warranties.
 - (vii) Conduct all appropriate searches.

- (f) Employment Matters:
 - (i) Review all employment contracts and arrangements.
 - (ii) Review pay and employment equity compliance documents.
 - (iii) Review employee policy manuals.

- (g) Pensions and Benefits:
 - (i) Review Benefit plans, including all amendments.
 - (ii) Review funding agreements, including trust agreements and insurance contracts related to any benefit plans.
 - (iii) Review claims history, financial statements, cost certificates and actuarial reports for the last four years and any indication of any unfunded or underfunded plans.
 - (iv) Review data on employees and former employees as it relates to benefit plans.
 - (v) Review details of any surplus withdrawals, overpayment refunds and contribution holidays, present or past.

- (h) Occupational Health and Safety:
 - (i) Review Government inquiries, investigations, inspection reports, orders or prosecutions for violation of the *Occupational Health and Safety Act* or the *Workplace Hazardous Materials Information Act*.
 - (ii) Review corporation health and safety policies.
 - (iii) Review minutes of meetings of the Joint Occupational Health and Safety Committee.
 - (iv) Review employee claims under the *Occupational Health and Safety Act*.

- (i) Workers' Compensation:

If WSIB applicable obtain and review the following:

 - (i) Workers' Compensation Board assessments paid and history of

assessments for the last three years including any penalty assessments or rebates.

- (ii) Employee claims, pensions or awards under the *Workers' Compensation Act*.

(j) Litigation - General:

- (i) Obtain a complete list of outstanding or potential claims or law suits, other than insurance claims.
- (ii) Review lawyers' response to auditors' request for claims internally updated to the present.
- (iii) Ensure adequate reserves have been established or insurance coverage in place, for such claims.