

Aatma Capital
Nurturing Relationships



Arrangements, Reconstruction & Amalgamation under Singapore Companies Act- Part II

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A member of



Independent legal & accounting firms

Credits and Acknowledgments

Iswariya BS

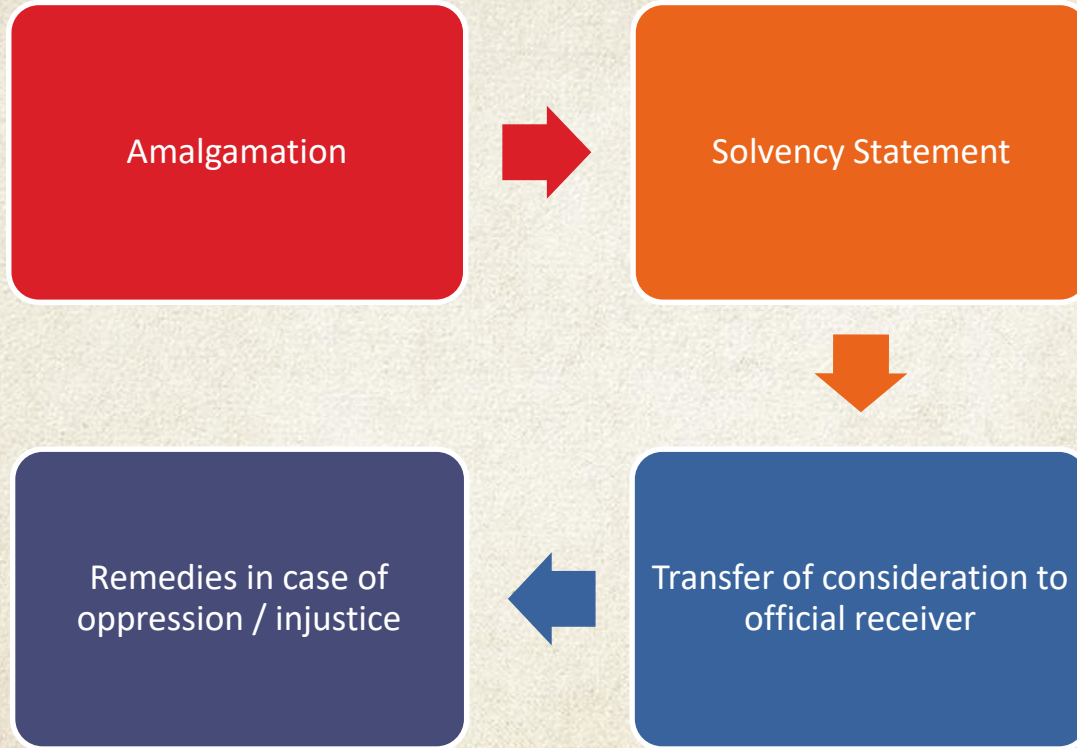


Legends used in the Presentation

Act	Singapore Companies Act
BOD	Board of Directors
GM	General Meeting
HC	Holding Company
SC	Subsidiary Company
Sec.	Section
SGD	Singapore Dollar
u/s	Under section
WOS	Wholly Owned Subsidiary



Presentation Schema





Amalgamation of Companies

Sec. 215A

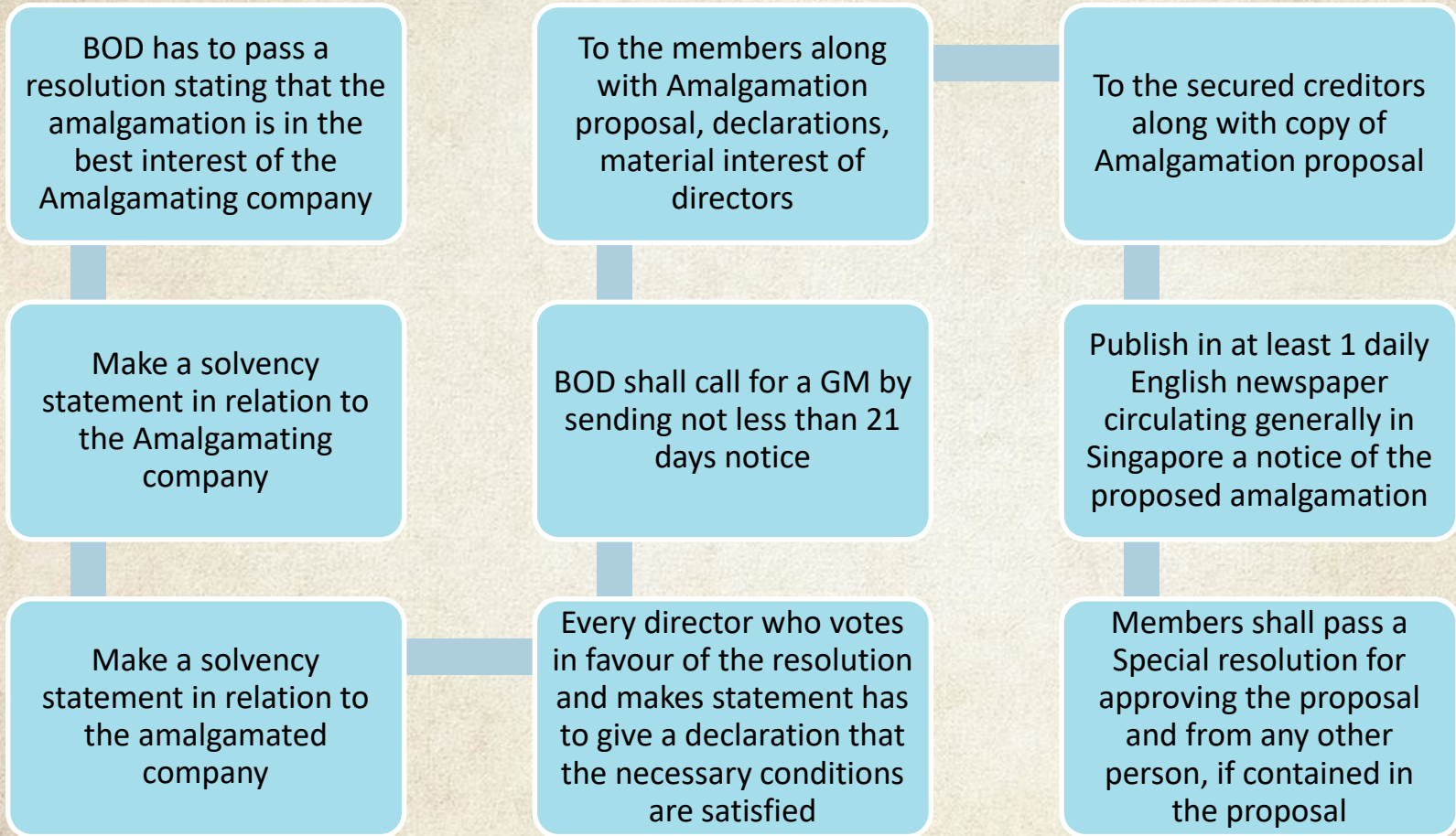
- Amalgamation of 2 or more companies in Singapore is subject to the order of Court u/s 212 of the Act and any other law relating to merger / amalgamation

Sec. 215B

- **Contents of Amalgamation proposal:**
- Terms of amalgamation
- Name of the Amalgamated Company (either one of the Amalgamating Companies name or new name)
- Registered office address and details of Directors of Amalgamated Company
- Constitution of Amalgamated Company
- Manner of conversion of shares of Amalgamating Company to shares of Amalgamated Company, if there is no such conversion the consideration to be paid to the holders of shares
- If shares of one of the Amalgamating companies are held by / on behalf of another of the Amalgamating companies, the manner of cancellation* of those shares without consideration

*Cancellation of shares shall not be deemed to be reduction of share capital

Sec. 215C- Manner of approving Amalgamation proposal



Sec. 215D- Short form Amalgamation

When a HC & SC gets amalgamated, passing of special resolution by members of each Company in the GM is sufficient by agreeing that-

- The shares of each amalgamating SC will be cancelled without payment of consideration, if the amalgamating companies continue as the amalgamated HC
- The shareholders of amalgamating HC shall be issued the same no. of shares in the amalgamated SC without any payment, if the companies continue as an amalgamated SC and the balance shares will be cancelled*

2 or more WOS of the same corporation may amalgamate and continue as 1 company if members of each company by passing of special resolution in the GM agree that-

- The shares of all but one of the amalgamating companies will be cancelled* without consideration
- The constitution of the amalgamated company will be the same as the constitution of the amalgamating company whose shares are not cancelled

Written notice of GM shall be given to the secured creditors not less than 21 days before the date of meeting

BOD has to make a solvency statement before the GM in relation to the Amalgamated company

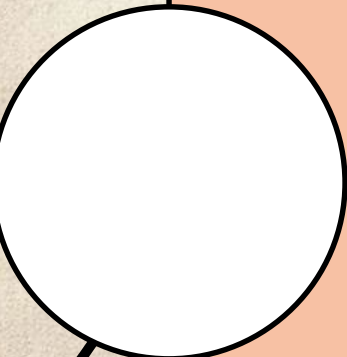
Every director who votes in favour of making the solvency statement has to give a declaration that the necessary conditions are satisfied

*Cancellation of shares shall not be deemed to be reduction of share capital



Sec. 215E- Registration of Amalgamation with Registrar:

List of documents as specified in the Act has to be submitted with the Registrar in such form along with such fees for effecting an Amalgamation



Sec. 215F- Notice of Amalgamation:

→ On receipt of documents, the Registrar shall issue a notice of Amalgamation (if the Amalgamated Company is one among the Amalgamating Companies) and notice of Incorporation (if it is a new Company)

→ If the amalgamation proposal specifies any date on which the amalgamation is intended to be effective, the notice given by the Registrar shall contain such date

→ Upon receiving the application of the amalgamated company, the Registrar shall issue a certificate of confirmation of amalgamation

Sec. 215G- Effect of Amalgamation – The date shown in the notice of amalgamation -

Will be effective the date of amalgamation

Amalgamated company shall have the name as specified in the amalgamation proposal

all the property, rights and privileges

all the liabilities and obligations

all proceedings pending by or against company

any conviction, ruling, order or judgment in favour of / against the company

the shares and rights of the members in the amalgamating companies shall be converted into the shares and rights provided for in the amalgamation proposal

Amalgamating
Companies

Amalgamated
Company

If the Court is satisfied that the giving effect to an amalgamation proposal would unfairly prejudice a member / creditor / a person to whom an amalgamating company is under an obligation, the Court may make the following order if it receives application from such persons before the effective date of amalgamation

**Sec. 215H -
Order of the
Court**

directing that effect must not be given to the amalgamation proposal

directing the amalgamating company or its board of directors to reconsider the amalgamation proposal / any part thereof

modifying the amalgamation proposal in such manner as may be specified in the order



Solvency Statements

Sec. 215I- Solvency statement in relation to Amalgamating Company

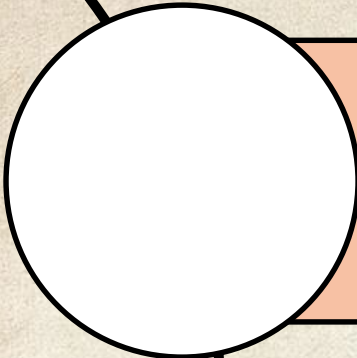
The BOD of the Amalgamating Company has to make a statement that as on the date of statement, the Company has no ground on which the amalgamating company would then be found to be unable to pay its debts and the value of assets are not less than the value of liabilities (including contingent liabilities)

If the Amalgamating Company is a Dormant / Small Company which is exempt from audit, the solvency statement can be in form of a declaration in writing or to be accompanied by Auditor's report stating that he has inquired into the affairs of the Company and he is of the opinion that the statement is not unreasonable given all the circumstances

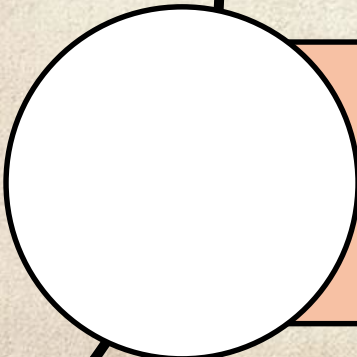
Penal provision: Any director who votes in favour of resolution / causes a solvency statement without reasonable grounds shall be guilty of an offence

Fine: $\leq 1,00,000$ SGD / Imprisonment: ≤ 3 years / both

Sec. 215J- Solvency statement in relation to Amalgamated Company



The BOD of the Amalgamating Company has to make a statement that the **Amalgamated Company** will be able to pay off its debts as they fall due as at the date on which the amalgamation becomes effective and the value of assets are not less than the value of liabilities (including contingent liabilities)



Penal provision: Any director who votes in favour of resolution / causes a solvency statement without reasonable grounds shall be guilty of an offence

Fine: $\leq 1,00,000$ SGD / Imprisonment: ≤ 3 years / both



Transfer of consideration to official receiver

Sec. 215K:

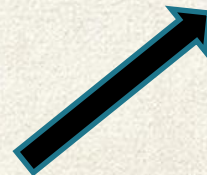
- If the Amalgamation proposal is approved u/s 215C or
- Deemed to be approved u/s 215D,
- provides for any money / other consideration which is held by / on behalf of any party to Amalgamation in trust for any person,
- it shall be transferred to the official receiver after the expiration of 2 years and before the expiration of 10 years from the date of receipt
- Official receiver shall deal with such money / other consideration as per sec. 197 of Insolvency, Restructuring and Dissolution Act, 2018

Treatment of consideration as per section 197 of Insolvency, Restructuring and Dissolution Act, 2018 (Unclaimed assets to be paid to official receiver): Any unclaimed or undistributed money shall be treated as Unclaimed assets which will lie in the hands of official receiver



Personal remedies in case of oppression / injustice

- If the affairs of the company are being conducted / the powers of the directors are being exercised in a manner oppressive to 1 or more of the members / debenture holders (including himself)
- In disregard of his / their interests as members, shareholders / debenture holders of the company or



Any member* / debenture holder of a company / in the case of a declared company under Part IX (Investigations), the Minister may make application to the Court

- Some act of the company has been done / is threatened / that some resolution of the members, debenture holders / any class of them has been passed / is proposed which **unfairly discriminates** against / is otherwise prejudicial to 1 or more of the members / debenture holders (including himself)

*Member – includes a person to whom shares in the company have been transmitted by operation of law

On receipt of such application and if the Court is satisfied, it may issue any of the following orders to the matter to an end / for remedying the matters

direct / prohibit any act / cancel / vary any **transaction / resolution**

regulate the conduct of the affairs of the company in future

authorise civil proceedings to be brought in the name of / on behalf of the company by such person(s) and on such terms as the Court may direct

provide for the **purchase of the shares / debentures** of the company by other members / debenture holders of the company or by the company itself

In the case of a purchase of shares by the company, provide for a reduction accordingly of the company's capital

provide that the **company be wound up** – the provisions of this Act shall apply with such modifications

- **Filing with Registrar:**

A copy of Court's order shall be lodged by the applicant with the Registrar within 14 days after the making of the order



- **Penal provision:** Default in lodging of order copy with the Registrar, the respective person shall be guilty of an offence
- Fine: $\leq 1,000$ SGD and a default penalty



Derivative / Representative actions

Complainant

- any member of a company
- the Minister, in the case of a declared company under Part IX (Investigations) or
- any other person who, in the discretion of the Court, is a proper person to make an application

Rationale for application to Court

- a complainant may apply to the Court
- for leave to bring an action / arbitration in the name and on behalf of the company or
- intervene in an action / arbitration to which the company is a party for the purpose of prosecuting, defending / discontinuing the action / arbitration on behalf of the company

Grounds on which Court has to be satisfied

- complainant has given 14 days notice to the BOD stating his intention to apply to the Court, if they do not bring, diligently prosecute / defend / discontinue the action / arbitration*
- the Complainant is acting in good faith and
- it appears to be prima facie in the interest of the Company

*If the Complainant on an application can establish to the satisfaction of the Court that it is not expedient to give notice to the directors,
The Court may make such **interim order** as it thinks fit pending the complainant giving notice as required

Following (including but not limited to) orders or interim orders can be made by the Court for granting of leave-

→ an order authorising the complainant / any other person to control the conduct of the action / arbitration

→ an order giving directions for the conduct of the action / arbitration by the person so authorised and

→ an order requiring the company to pay reasonable legal fees and disbursements incurred by the complainant in connection with the action / arbitration



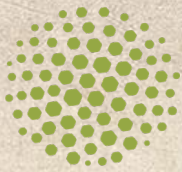
**Evidence of shareholders' approval not decisive —
Court approval to discontinue action u/s 216A**

Sec. 216B- Application made / an action brought / intervened in u/s 216A

- shall **not be stayed / dismissed** by reason only that it is shown that an alleged breach of a right / duty owed to the company has been / may be **approved by the members** of the company
- But, the **evidence of approval by the members may be taken into account** by the Court in making an order

- shall **not be stayed, discontinued, settled / dismissed** for **want of prosecution without the approval of the Court** and
- if the Court determines that the interest of any complainant may be substantially affected by such stay, discontinuance, settlement / dismissal, the Court may order any party to the application / action to give notice to the complainant

- the Court may at any time order the company **to pay to the complainant interim costs, including legal fees and disbursements**
- but the complainant may be accountable for such interim costs upon final disposition of the application / action



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