



## MERGER CHECKLIST

### Statutory Reference: Texas Insurance Code, Article 21.25

Texas Business Corporation Act., Articles 5.01B, 5.03A, 5.04A, and 5.16

The requirements listed below are the minimum documentation/information needed when filing a merger between two stock insurance companies where at least one of the insurance companies is domiciled in Texas.

### THE FOLLOWING DOCUMENTS MUST BE FILED WITH THE COMPANY LICENSING & REGISTRATION DIVISION OF THE TEXAS DEPARTMENT OF INSURANCE:

- Please submit two copies of the application, certified by the appropriate officer or officers of the respective companies.
- Certified copies of the Articles of Merger – Should be signed by two officers of the respective Companies.

### The following should be acknowledged and/or addressed in the Articles of Merger:

- A) The merger plan – A Board of Directors Resolution, with original signatures and corporate certification, from **each** company, approving of a plan of merger setting forth the following:
  - 1. The name of each domestic or foreign corporation or other entity that is a party to the merger.
  - 2. The name of each domestic or foreign corporation or other entity that shall survive the merger.
  - 3. A definite or readily ascertainable effective date of the proposed merger (a desirable date would be the last day of the month in which final approval is given by appropriate regulatory authorities).
  - 4. The name of each new domestic or foreign corporation or other entity that may be created by the terms of the plan of merger; and
  - 5. The terms and conditions of the merger including:
    - a. The manner and basis of allocating and vesting the property of each party to the merger among one or more of the surviving entities.
    - b. A statement to the fact that all policies and obligations of the non-survivor entities shall be assumed by the surviving entity on the same terms as if the policies were still being carried by the non-survivor.
    - c. The name of the surviving entity that is to be obligated for the payment of the fair value of any shares held by a shareholder of any domestic corporation that is a party to the merger, for the recovery of the fair value of his/her shares. (NOT APPLICABLE FOR MERGERS INVOLVING AFFILIATED INSURANCE COMPANIES.)

Terms and conditions of merger (cont'd):

- d. The manner and basis of allocating all liabilities and obligations of each entity that is a party to the merger (or making adequate provision for the payment and discharge thereof) among one or more of the surviving entities.
  - e. The manner and basis of converting any of the shares of ownership of each entity that is a party to the merger into shares, evidences of ownership, etc. of the surviving entities, or into cash or other property. (NOT APPLICABLE FOR MERGERS INVOLVING AFFILIATED INSURANCE COMPANIES.)
  - f. Are any shares to be converted in a manner different than any other shares of such class ?
  - g. Provisions relating to a share exchange.
  - h. Any other provisions relating to the merger.
- B) As to each corporation, the number of shares of stock outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.
- C) As to each corporation, the number of shares respectively voted for and against such plan and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against respectively.
- D) If the merger involves a corporation organized under the laws of another state, the plan of merger must specify under whose laws the Survivor is to be governed.
- E) The articles of incorporation of any new corporation to be created by the terms of the plan of merger.
- F) The articles of incorporation of the surviving entity, if the articles are re-stated as a result of the merger.
- G) Any amendments to the articles of incorporation of any surviving corporation.
- Assumption certificate – See attached guidelines.
- Financial information – Please submit a three column pro-forma balance sheet and income statement, representing each party to the transaction, as of the end of the quarter or calendar year, whichever is closest to the effective date of the merger. The 1<sup>st</sup> column should present account balances with an as of date pre-merger, the 2<sup>nd</sup> column presenting the effect (increase, decrease, etc) of the transaction on each account balance, and the 3<sup>rd</sup> column presenting the ending account balances with an as of date post-merger. The adjustments in the 2<sup>nd</sup> column should be footnoted at the bottom of the worksheet describing the adjustment.
- Merger effect on surplus – On the first reporting period subsequent to the execution of the merger, the surviving entity shall provide a summary of changes to surplus, as a note to the financial statement, as a result of the merger.
- Certified copies of the approval of the merger from the respective domiciliary states.

- Original certificate of authority of out company or lost certificate of authority affidavit.
- \$750 filing fee.
- Documentation verifying - That the plan of merger has been submitted to the shareholders of each of the corporations at separate regular or special meetings of the shareholders of each corporation, such meetings having been called in the manner provided by the by-laws of each corporation. (NOT APPLICABLE FOR MERGERS INVOLVING AFFILIATED INSURANCE COMPANIES.)
- Documentation verifying - Written or printed notice of each meeting was given to each stockholder entitled to vote not less than twenty (20) days nor more than fifty (50) days before each meeting. (NOT APPLICABLE FOR MERGERS INVOLVING AFFILIATED INSURANCE COMPANIES.)
- Documentation verifying - The plan of merger was approved by the affirmative vote of the holders of two-thirds (2/3) of the shares of capital stock of each corporation. If any stockholders, of either corporation, have exercised their right of dissent or commenced a derivative action, describe in writing said derivative action. (NOT APPLICABLE FOR MERGERS INVOLVING AFFILIATED INSURANCE COMPANIES.)
- Documentation verifying – That the Company makes full disclosure and identifies all formerly admissible assets that could potentially be rendered non-admissible by the merger; designates the Survivor's home office property; and, specifies whether the Survivor, as a result of the merger, will acquire any of its own shares of stock.
- Documentation from TDI – Written verification from the Texas Department of Insurance Accounting Department that the Texas Overhead Assessment form has been filed and any assessments due have been paid by the Applicant if it is a Texas domestic company. (FOR DOMESTIC INSURERS ONLY. ONLY NECESSARY IF THE SURVIVING ENTITY IS A FOREIGN COMPANY)
- Documentation verifying – That all premium tax and relative fees have been submitted and paid to the Comptrollers Office (ONLY NECESSARY IF THE SURVIVING ENTITY IS A COMPANY NOT LICENSED IN TEXAS).
- Documentation verifying - That all agents of the Applicant have been reappointed.
- Documentation from legal counsel - Representing each party stating that, in his/her opinion, the merger will not violate any of the appropriate state or federal laws dealing with anti-trust or restraint of trade practices.

**INCOMPLETE APPLICATIONS IMPEDE TIMELY REVIEW BY THE DEPARTMENT, THEREFORE, IT IS EXTREMELY IMPORTANT THAT APPLICATIONS ARE COMPLETE. SUBMIT A COMPLETE FILING TO THE TEXAS DEPARTMENT OF INSURANCE, COMPANY LICENSING & REGISTRATION DIVISION, MC 305-2C, P. O. BOX 149104, AUSTIN, TX 78714-9104. FOR QUESTIONS OR MORE INFORMATION, CALL (512) 322-4370.**

THESE GUIDELINES ARE GENERAL IN NATURE AND DO NOT SUPERCEDE STATUTE OR REGULATION. THEY ARE NOT INTENDED TO BE ALL INCLUSIVE AND ADDITIONAL DOCUMENTATION MAY BE REQUESTED.