

Merger Checklist

Statutory Reference: Texas Insurance Code Ch.824

Texas Business Organizations Code Ch.10

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. If a party to the merger is domiciled in another State, TDI will need documentation evidencing either the other State's approval, or that the other State intends to approve.

The Following Documents **MUST** be Filed with the Company Licensing & Registration Office of the Texas Department of Insurance:

- Cover Letter - It should clearly explain the transaction, and note all parties involved (specify which are affiliated); include time lines, effective date, other domiciliary states. Confirm whether or not year- end approval, or any date certain approval, is needed or is it just the desire of all parties to be able to report the merger effective at that date on relevant financial statement filings. Note the intentions of all parties post transaction. Include the date that any related assumption certificate or endorsement (as applicable) was filed with the Life/Health Division of TDI. Address any notification/reappointment of affected agents. Note any parties that have assets deposited/pledged to TDI and management's expectations related to such deposits. Address any due diligence issues (i.e. disclose any currently owned assets which may be potentially rendered non-admitted as a result of the merger). **The cover letter should be signed by a company officer, and include a phone number and email for the appropriate company contact person.**

- 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 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.
 - 5. 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.
 - 6. 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.
 - 7. 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.)
 - 8. Statement as to 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.)

- 9. Statement as to that 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.)
 - 10. Statement as to that 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. State 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.)
 - 11. 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.
 - 12. Any other provisions relevant to the merger.
- The articles of incorporation of any new corporation to be created by the terms of the plan of merger.
 - The articles of incorporation of the surviving entity, if the articles are re-stated as a result of the merger.
 - Any amendments to the articles of incorporation of any surviving corporation.
 - Financial information - Submit a four column pro-forma balance sheet, formatted in an NAIC blank, 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 1st and 2nd columns represent account balances for the two insurers (one for the company going away; and the other for the survivor of the merger); the 3rd column for the effect (adjusting entries - increases and decreases); and the 4th column for balances post merger.
 - 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.
 - 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 - include 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).

 Email filing to CLRFilings@tdi.texas.gov

► **Questions?**

Email us at CompanyLicense@tdi.texas.gov or call

512-676-6365.