

LINZG20705

**Guideline for transmission
following amalgamation of
companies**

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TERMS AND DEFINITIONS

Term/Abbreviation	Definition
CA	Companies Act 1993
LINZ	Land Information New Zealand
LTA	Land Transfer Act 1952
Register	a land transfer Register constituted under the Land Transfer Act 1952
RGL	Registrar-General of Land

FOREWORD

Part 13 of the Companies Act 1993 (CA) allows for companies to amalgamate. Following amalgamation, the amalgamated company may wish to deal with estates or interests that are still registered in the name of an amalgamating company. This guideline supplements those statutory provisions and provides guidance as to how the amalgamated company may deal with registered estates or interests in those circumstances.

Purpose of guideline

The purpose of this guideline is to

- (a) outline the two methods by which estates or interests in land may reflect the amalgamation of companies under Part 13 of the CA, ie transmission or instrument recital,
- (b) provide information to assist the making of applications for transmission or instrument recital, and
- (c) provide support for the processing of those applications.

Rationale for new guideline

Land Information New Zealand (LINZ) is tasked with meeting the Government's desired economic, social, and environmental outcomes in relation to its mandated subject areas. Accordingly, end outcomes, intermediate outcomes, objectives, and sub-objectives have been developed to clearly articulate the regulatory framework for each subject area.

A risk-based approach is then used to determine the optimum level of intervention. If there is a high risk of not achieving an objective or sub-objective, then generally a higher level of intervention is required. Similarly, a low risk of not achieving an objective or sub-objective means a low level of intervention is necessary. The desired intervention is then developed to manage the identified risks and thereby achieve the relevant sub-objectives, objectives and, therefore, the outcome.

This guideline has been developed by the Registrar-General of Land (RGL) to mitigate the risk of not achieving the following intermediate outcomes and objectives.

Intermediate outcomes	Objectives
The register correctly records the state of every title and legal substance of every transaction	Transactions are completely and accurately entered and maintained in the register.
All transactions entered into the register are, prima facie, materially correct and legally valid	Only legally valid types of transactions are submitted.

The outcomes and objectives developed by the RGL for the land transfer system also reflect the objectives stated in s 4(3) of the Land Transfer Act 1952 (LTA).

Brief history of guideline

This guideline supersedes LINZ 2002, *RGL Guideline 6.1: Guidelines for a National Transmission following Amalgamation of Companies*, Registrar-General of Land, LINZ, Wellington.

References

This guideline should be read in conjunction with Part 13 of the Companies Act 1993 and ss 122 and 123 of the Land Transfer Act 1952.

1 INTRODUCTION

This guideline supports the statutory requirements in Part 13 of the CA and ss 122 and 123 of the LTA.

1.1 Scope

This guideline provides information to assist when preparing and then registering a transmission application that is suitable for nationwide use following amalgamation of companies under Part 13 of the CA.

This guideline also provides guidance regarding how such an amalgamation can be recognised without it having to be formally recorded on the Register.

1.2 Intended use of guideline

This guideline is intended to be used when applying for and processing applications for transmission or amalgamation of companies.

This guideline is not intended to be mandatory in nature. It provides further detail to support the statutory provisions.

2 TRANSMISSION

2.1 Type of estate or interest

A transmission can deal with any registered estate or interest.

2.2 Documents

An application for transmission should include the documents set out at paragraphs 2.2.1 to 2.2.3.

2.2.1 Application

An application for transmission should be executed in accordance with s 180 of the CA.

An example of a suitable application is contained in Appendix A.

An application can be made either for multiple estates and interests or for individual estates and interests.

2.2.2 Statutory declaration

An application for transmission should be supported by a statutory declaration. The statutory declaration should be executed by a director or the secretary of the applicant or some other suitably authorised officer of the company.

An example of a suitable statutory declaration is contained in Appendix B.

2.2.3 Certificate of amalgamation or incorporation

2.2.3.1 Certificate of amalgamation

A copy of the certificate of amalgamation should accompany an application for transmission.

The copy should be certified as a true copy by a solicitor and attached as an exhibit to the statutory declaration referred to at paragraph 2.2.2.

2.2.3.2 Certificate of incorporation

A copy of the certificate of incorporation is also required if the amalgamated company is:

- (a) a new company, or
- (b) the same as one of the amalgamating companies and has changed its name.

The copy should be certified as a true copy by a solicitor and attached as an exhibit to the statutory declaration referred to at paragraph 2.2.2.

2.3 Approval by Registrar-General of Land

The draft documents referred to in paragraph 2.2 should be forwarded to the RGL for approval prior to registration.

2.4 Registration

The documents referred to in paragraph 2.2 and the RGL's approval letter can be lodged with LINZ once they have been approved and correctly executed.

3 INSTRUMENT RECITAL/CERTIFICATE

3.1 Section 225A of the Companies Act 1993

Section 225A of the CA provides for legal recognition of the vesting of property of an amalgamating company in the amalgamated company provided the latter executes the instrument and adds a statement in terms of s 225A(2)(c) of the CA.

The statement required by that provision can be a recital in the instrument or can be incorporated into a certificate endorsed on the instrument.

3.2 Registration not required

An amalgamated company may register an instrument affecting an estate or interest still registered in the name of an amalgamating company but may elect not to have the vesting recorded on the Register. Examples of this may be when the estate or interest is:

- (a) transferred by transfer instrument, or
- (b) extinguished by discharge of mortgage.

4 CAVEATS

If a caveat is entered in the name of an amalgamating company, no vesting is capable of being noted on the Register. This is because a caveat is merely notice of an interest rather than a registered estate or interest.

Any withdrawal of such a caveat may, however, be executed by the amalgamated company provided that document has either:

- (a) evidence in the form of a transmission application (which will not be registered) attached to it, or
- (b) a recital in terms of s 225A(2)(c) of the CA endorsed on it.

Appendix A: Application for transmission

Application for transmission - amalgamation of companies pursuant to Part 13 of the Companies Act 1993

TO: The Registrar-General of Land

[*insert name of amalgamated company*] does hereby apply to be registered as proprietor of the estates and interests of [*insert name(s) of amalgamating company/companies*] described in the attached declaration on the grounds set out in the attached declaration.

DATED this [*insert day*] of [*insert month*] of [*insert year*]

EXECUTED by the said)	
[<i>insert name of amalgamated company</i>])
in the presence of: *)	(director/authorised signatory/attorney)
)	
)
)	(director/authorised signatory/attorney)

.....
Name:

Occupation:

Address:

Correct for the purposes of the Land
Transfer Act 1952

.....
Solicitor for the applicant

***The execution may not need witnessing. This depends on how execution is effected for the company. Refer to section 180 of the Companies Act 1993 for the execution requirements for companies.**

Appendix B: Statutory declaration for transmission

Statutory declaration for transmission - amalgamation of companies pursuant to Part 13 of the Companies Act 1993

I, *[name of declarant]*, *[place of abode and occupation]* solemnly declare that:

1. I am a *[director/authorised signatory]* for *[name of amalgamated company]* (“the company”) and am authorised to make this declaration and have full knowledge of the matters set out below.
2. On *[insert date]* *[names of amalgamating companies]* were amalgamated pursuant to Part 13 of the Companies Act 1993 (“the Act”) to form *[insert name of amalgamated company]*. Annexed hereto and marked “A” is a certified copy of the Certificate of Amalgamation *[*and Certificate of Incorporation]* issued under section 224 of the Act by the Registrar of Companies.
3. *[insert name of an amalgamating company]* is registered as proprietor of the land/mortgage(s) described in Schedule 1 below.
4. *[**insert name of another amalgamating company if appropriate]* is registered as proprietor of the land/mortgage(s) described in Schedule 2 below.
5. By virtue of section 225(c) and (d) of the Act with effect on *[insert date of amalgamation from Certificate of Amalgamation]* *[insert name(s) of amalgamating company/companies]* is/are deemed to be dissolved and *[insert name of amalgamated company]* is deemed to have succeeded to (amongst other things) all of the property (including the land/mortgages described in the Schedules below) of those amalgamating companies.
6. To the best of my knowledge, information and belief no person holds or is entitled to any estate or interest at law or equity affecting the said land/mortgages of which *[insert name(s) of amalgamating company/companies]* was/were registered as proprietor.

Schedule 1

- (a) an estate in fee simple/leasehold in *[insert description which must include computer freehold or computer interest register references]*
- (b) mortgagee under mortgage(s) *[insert mortgage and computer register reference numbers]*

Schedule 2

- (a) an estate in fee simple/leasehold in *[insert description which must include computer freehold or computer interest register references]*

(b) mortgagee under mortgage(s) [*insert mortgage and computer register reference numbers*]***

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Declared at [*insert location*] this [*insert day*])
of [*insert month*] [*insert year*])
before me:)

Solicitor of the High Court of New Zealand
(*or other person authorised to take a statutory declaration*)

***If the amalgamated company is a new company its certificate of incorporation should also be annexed to the declaration. If the amalgamated company is a continuing company that is also changing its name the certificate of incorporation should also be annexed and the declaration modified accordingly.**

****This clause can be deleted if there is only one amalgamating company. If there are more than two amalgamating companies an additional clause or clauses should be added.**

*****The Schedules are indicative only and can be adapted to fit the circumstances.**