 <p>BARRISTERS SOLICITORS TRADEMARK AGENTS</p>	<p><b>Reaching for New Not-For-Profit Operating Models in a Covid-19 World (GTA Chapter)</b> February 3, 2021</p>
<p><b>Mergers, Amalgamations, and Consolidations</b></p> <p>By Theresa L.M. Man, B.Sc., M.Mus., LL.B., LL.M.</p> <p>tman@carters.ca 1-877-942-0001</p> <p>© 2021 Carters Professional Corporation</p>	
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<p><b>Overview</b></p> <ul style="list-style-type: none"><li>• What do mergers, amalgamations, and consolidations mean?</li><li>• How to choose which one to do?</li><li>• Brief high-level overview points</li><li>• Comments focused on non-share membership sector</li></ul> <p>www.charitylaw.ca <span style="float: right;">www.carters.ca</span></p>	

## A. Choice of Options

### “Structural” Options

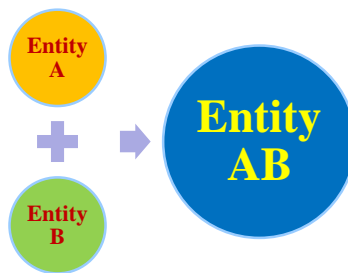
- Amalgamation
- Asset transfer
- Consolidation

### “Non-structural” Options (examples)

- Partnerships
- Joint venture

## B. Amalgamation

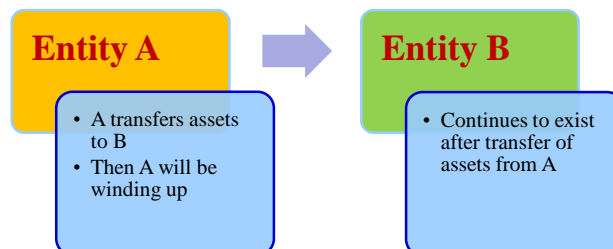
- Amalgamation is a corporate procedure which allows two or more corporations to continue as one corporation under the applicable corporate legislation
- A and B would be “amalgamated” to form entity AB
- Everything (including memberships, programs, assets, liabilities) of A and B would be transferred to AB



- Must work within limitations in corporate legislation, e.g. CNCA only permits amalgamation of CNCA corporations
- If amalgamation between two registered charities, charity A and charity B do not cease to exist or dissolve from the Canada Revenue Agency's perspective
  - CRA will need to be informed of the amalgamation and approval obtained
  - Charity A and charity B may choose which charitable registration number to keep for the amalgamated entity, and then discontinue the use of the other charitable registration number
- In general, it is not possible for a registered charity to be amalgamated with a non-registered charity

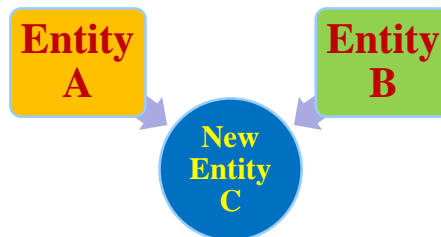
## C. Asset Transfer

- Also referred to as an asset merger, asset acquisition or simply a merger
- A transfers assets to B, then dissolve A
- If transfer is between two registered charities, transferor charity would also need to voluntarily revoke its charitable status before dissolution



## C. Consolidation

- Form new entity C, transfer assets and operations of both A and B to C, then wind up and dissolve A and B
- If a consolidation is between two registered charities, then the new corporation must obtain charitable status before it can receive the assets from the two charities



## D. Decision Factors

- No one-size-fits all option
- Depends on many factors, for example:
  - Can the option chosen be achieved under the applicable corporate legislation?
  - What is the income tax status of the entities?
  - Would the process expose the entities to any risks or tax liability?
  - What would the eventual board and membership structure look like?
  - Is third party approval or consent required?
  - How to bring the two administrations together?
  - Are there employees to let go?

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## E. Key Considerations

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## F. Process

- Seeking a suitable partner
- Choose an appropriate option
- Identify key objectives, road blocks, and deal breakers
- Conduct thorough due diligence - full disclosure of assets and current and potential liabilities, AND review documents (e.g., governing documents, contracts, insurance, employment, real property)
- Take inventory (e.g., cash, investments, contracts, policies, intellectual property)
- Prepare a strategic plan and transition plan
- Engage stakeholders and communications plan
- Takes time
- Leave time for the lawyer to do the legal work

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