



MERGER OF COMPANIES



BACKGROUND

The purpose of this presentation is to highlight the brief procedure of merger of the Companies as per the relevant sections of Companies Act, 2013 and rules made thereunder along with the other various statutory laws as applicable in India.



BACKGROUND

A merger means absorption of one company by another company, wherein one of the two existing companies loses its legal identity after transferring all its assets, liabilities and other properties to the other company. It implies rearranging the business for increased efficiency and profitability. An application for merger is required to be file with National Company Law Tribunal (“NCLT” or “Tribunal”).



PROCEDURE FOR MERGER

Steps for Merger

- Step 1** *The first step is to draft scheme of merger and hold Meeting of Board of Directors (“BOD”) of the Company for approval of such scheme.*
- Step 2** *The next step is to prepare and file first motion application and other documents with NCLT for direction to convene meeting of members or class of members and creditors or class of creditors or to obtain dispensation.*
- Step 3** *After filing of the first motion application with NCLT, it shall either dispense meeting of the creditors and members or shall give the directions for calling and convening the meeting of creditors and members.*
- Note: The NCLT may dispense with calling of a meeting of creditors, in case consent is received from at least 90% in value of creditors by way of an affidavit.**
- Step 4** *If a meeting of the creditors and members is proposed to be called, notice of such meeting shall be sent by Chairperson appointed by the Tribunal at least 1 month before the date fixed for the meeting to all creditors and members individually and shall also be placed on the website of the Company, if any with the required attachments as prescribed*



Steps for Merger

Step 5

The notice of the meeting of the creditors and members shall be advertised in at least one English newspaper and in one vernacular newspaper in the state where registered office of the company is situated not less than 30 days before the date of meeting and also be sent to Central Government, Registrar of Companies ("ROC"), Income tax authorities and other authorities as directed by the Tribunal and shall require the representations, if any, to be made by them shall be made with in 30 days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations.

Step 6

The Chairperson shall file an affidavit before the Tribunal at least 7 days before the date of the meeting stating that the compliances of advertisement and sending notices have been duly complied with.

Step 7

Convene meeting of the creditors and members as the case may be and the mode of voting on all resolutions shall be by poll or voting through electronic means and file requisite Form with ROC, and the report of result of meeting shall be sent to Tribunal by the Chairman within 3 days of the meeting.



Steps for Merger

Step 8

After confirmation received from members and creditors, the Company shall file a petition within 7 days of the filing of the report by the Chairman with the NCLT for sanctioning of the scheme and NCLT shall fix a date for hearing.

Step 9

The notice of the hearing shall be send to objectors, Central Government and other Authorities.

The notice shall also be advertised in the same newspaper in which the notice of the meeting was advertised or other newspaper as the Tribunal may direct at least 10 days before the date of hearing.

Note: No scheme shall be sanctioned by the Tribunal unless a Certificate by the Company's Auditor has been filed to the effect that the Accounting treatment proposed in the scheme is in conformity with the Accounting Standards.

Step 10

After the hearing, where the Tribunal sanctions the scheme, the final order shall include such directions as the Tribunal may thinks fit.



Steps for Merger

Step 11

The final order shall be filed in requisite Form with the ROC with in 30 days from the date of receipt of the copy of the order.

Ste12

Post Order Formalities:

- *Implementation of the scheme of the merger as approved by the Tribunal.*
- *Issuance and allotment of shares pursuant to the scheme approved by NCLT and file requisite form for allotment with ROC.*
- *Issuance of share certificates for the aforesaid allotment and stamp duty to be paid on the said share certificates*
- *Filing with the ROC a statement, until the scheme is fully implemented, that a scheme is being complied according to the directions of the Tribunal duly certified by practicing CA/CS/CWA with in 210 days from the end of each financial year;*
- *The Tribunal may, either on its own or on the application of any interested person make an order directing Company to submit to the Tribunal a report on the working of the said scheme and on consideration of that report, the Tribunal may pass orders or give directions as it may thinks fit.*



PRECEDENTS

- The transfer to the transferee Company of the whole or any part of the undertaking, property or liabilities of the transferor Company;
- Dissolution, without winding up of transferor Company;
- Where the share capital is held by non-resident/ foreign shareholder, the allotment of shares of the transferee Company to such shareholder shall be in a manner specified in the order;
- The transfer of employees of the transferor Company to the transferee Company;
- Such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger is fully and effectively carried out.

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