

Procedure for Fast Track Merger between Two (02) unlisted Companies

Sr. No.	Governing Provisions:
1.	Section 61, 96, 100, 101, 102, 108, 117, 179, 233, 239 of Companies Act, 2013 (CA, 2013)
2.	Rule 25 of (Compromises, Arrangements and Amalgamations) Rules, 2016 (CAA Rules) Rule 10, 18, 20, 21, 24 of Companies (Management and Administration) Rules, 2014 (Management Rules) Rule 15 of (Share Capital & Debentures) Rules, 2016 (Share Capital Rules)
3.	Secretarial Standards 1 & 2 (SS-1 and SS-2)
4.	MCA Notifications (Notification)

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Applicability:

The following class of Companies are covered under section 233 of the Companies Act, 2013-

1. Two or more Small Companies
2. Holding Company and its wholly owned subsidiary Company
3. Two or more Start-up Companies
4. One or more Start-up Company with one or more small Company

Definition:

★ **Small Company: Sec. 2(85) read with Rule 2(1)(t) of the Companies (Specification of Definitions Details) Rules, 2014**

"Small Company" means a company, other than a public company:-

- (i) paid-up share capital of which does not exceed fifty Lakh rupees or such higher amount as may be prescribed [4 Crore] which shall not be more than ten crore rupees; and
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed [40 Crore] which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act;

★ **Start-up Company: Sec. 233(1) read with explanation to Rule 25 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016**

For the purposes of this sub-rule, "start-up company" means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 127 (E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade.



Holding Company: Sec. 2(46)

"**Holding Company**", in relation to one or more other companies, means a company of which such companies are subsidiary companies;



Subsidiary Company: Sec. 2(87)

"**Subsidiary Company**" or "**Subsidiary**", in relation to any other company (that is to say the holding company), means a company in which the holding company:-

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.—For the purposes of this clause,-

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (c) the expression "company" includes any body corporate;
- (d) "layer" in relation to a holding company means its subsidiary or subsidiaries;

Transferor Company hereinafter referred as "**The Company**"

Transferee Company hereinafter referred as "**Wholly Owned Subsidiary**"

Procedure of Fast Track Merger

1. Check Articles of Association (AoA) of the Company, Consideration of Statement of Assets and Liabilities and Valuation Report and other financial information etc.

The Company has to check whether the provisions of Merger is contained in AoA or not, Consideration of Statement of Assets and Liabilities and Valuation Report and other financial information etc.

2. Preparation of a Draft Scheme for Fast Track Merger

The Company has to prepare a draft scheme for Fast Track Merger.

3. Issue notice of Board Meeting for consideration of Draft Scheme for Fast Track Merger, alteration of Articles of Association (AoA), if any, [Ref: Section 173(3)& SS-1]

The Company has to issue 7 days' notice (shorter notice if any) for convening a board meeting to pass a board resolution for alteration of Articles of Association (AoA), if required, for consideration and approval of the draft scheme for Fast Track Merger.

4. Convene a Board Meeting:[Ref: Section 174 & SS-1]

The Company has to convene BoD Meeting and pass board resolutions for alteration of Articles of Association (AoA), if required, for consideration and approval of the scheme for Fast Track Merger, Draft Form CAA-9 (Notice of the scheme inviting objections or suggestions), Draft CAA-10 (Declaration of solvency) Statement of assets and liabilities, Auditor's Report on Statement of assets and liabilities and authorize Directors/ KMP/ Any other Person for signing & submission of scheme along with other documents, as may be required from time to time, notice of General Meeting and cut-off date for sending notice of General Meeting etc.

5. Submit/ File Resolutions in e-form MGT-14 with RoC: [Ref: Sec. 117, 179 read with rule 24 of Companies (Management and Administration) Rules, 2014]

The Company has to submit/ file e-form MGT-14, Registrar of Companies (ROC), within 30 days of passing of Board Resolution. [Both Transferor and Transferee Companies have to submit form CAA -10 with their respective RoC.]

6. Prepare a Notice in form CAA-9 and submit an application with Registrar of Companies (RoC) and Official Liquidator (OL): [Ref: Reg. 233(1)(a) read with rule 25 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016]

The Company has to prepare a **Notice in form CAA-9 [inviting objections or suggestions]** and submit an application with Registrar of Companies (RoC) in **e-form GNL-1** and Official Liquidator (OL), of or any other person which may be effected, from the proposed scheme, **within 30 days of issuance of the notice**. **[Both Transferor and Transferee Companies have to submit form CAA -9 with their respective RoC, in e-form GNL-1& OL]**

7. Submit/ File Declaration of Solvency with RoC by each Companies:[Ref: Reg. 233(1)(c) read with rule 25(2) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016]

The Company has to submit/ file **form CAA-10 [Declaration of Solvency]** with RoC in **e-form GNL-2** [where the registered office of the company is situated], **before convening the meeting of members and creditors for approval of the scheme**. **[Both Transferor and Transferee Companies have to submit form CAA -10 with their respective RoC, in e-form GNL-2.]**

8. Advertisement in newspapers regarding GM being held through VC/ OAVM facility& e-voting facility: [Ref: MCA Circulars dated 05.05.2020, 08.04.2020 & 13.04.2020]

The Company has to cause a public notice by way of an advertisement to be published, **before sending the notice of General Meeting** for the meeting, **but at least twenty-one days before the date of general meeting**, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having country-wide circulation.

9. Issue notice of General Meeting (GM):[Ref: Sec. 101, 110 and rule 18 and 20 of Companies (Management and Administration) Rules, 2014][Pdf mode]

The Company has to issue **not less than clear 21 days' notice (shorter notice, if any)** of General Meeting to Members, for obtaining approval of Scheme of Merger along with declaration of solvency, a copy of the scheme and other prescribed details under section 230(3), available as on "Cut off" date decided by the Company. **[Both Companies have to take approval of their Members for the approval of Proposed Scheme of Merger in their respective General Meetings]**

10. Advertisement in newspapers regarding completion of dispatch of notice:[Ref: Sec. 108 read with rule 20 of Companies (Management and Administration) Rules, 2014]

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The Company has to advertise in at least 02 newspapers, once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and once in English language in an English newspaper having country-wide circulation, **immediately on completion of dispatch of notice.**

11. Convene General Meeting:[Ref: SS-2]

After considering the Objections/ suggestions from the RoC and Official Liquidator, the Company has to approve the scheme of Merger from Members holding **at least ninety per cent. (90%) of the total number of shares** and Creditors by **majority in numbers representing nine-tenth (9/10th) in value of total creditors.**

Note: Both Companies have to approve the scheme of Merger from their Members holding at least ninety per cent. of the total number of shares and from Creditors by majority in numbers representing nine-tenth (9/10th) in value of total creditors in their respective General Meetings. However, the requirement of meetings may be dispensed with, if written consents are received from the Members or Creditors, as the case may be, in value/ numbers prescribed.

12. Submission of Voting Results along with Scrutinizer's Report: [Ref: Sec. 108 read with rule 20 of Management Rules]

The Scrutinizer has to submit voting results along with Scrutinizer's Report not later than three days of conclusion of the Chairman of the Meeting.

13. Submit/ File e-form CAA 11 [Approved Scheme] with Central Government (RD): [Ref: Sec. 233(2) read with rule 25(4) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016]

The Company (Transferee Company) has to submit/ file **e-form CAA-11[A Copy of Approved Scheme by Members and Creditors, if any], along with Voting Results** with Central Government (RD) in **e-form RD-1**, within 07 days of conclusion of Meeting of Members and/or Creditors.

14. Submit/ File Resolutions in e-form MGT-14 with RoC: [Ref: Sec. 117 read with rule 24 of Companies (Management and Administration) Rules, 2014]

The Company has to submit/ file **e-form MGT-14**, Registrar of Companies (ROC), within 30 days of passing of resolutions. **[Both Transferor and Transferee Companies have to submit e-form MGT -14 with their respective RoC.]**

15. Submit/ File Approved Scheme with RoC & OL: [Ref: Sec. 233(2) read with rule 25(4) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016]

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The Company (Transferee Company) has to submit/ file **e-form GNL-1 [A Copy of Approved Scheme by Members and Creditors, if any]**, along with Voting Results with RoC and Official Liquidator, through hand delivery or by registered post or speed post.

16. Objections/ Suggestions by RoC & Official Liquidator (OL):

The RoC & OL have to submit their Objections/ Suggestions, if any, to Central Government (RD), within 30 days of receipt of scheme.

Note: If no communication is made by the RoC & OL, it shall be presumed that they have no objection to the scheme.

17. Issuance of "Confirmation Order" by Central Government (RD): [Ref: Sec. 233(2) read with rule 25(5) & (6) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016] [\[Pdf model\]](#)

The Central Government may register the scheme within 30 days after expiry of time allowed to RoC & OL, if the RoC or the Official Liquidator has no objections/ suggestions or their objections/ suggestions are not sustainable, then issue a **Confirmation Order** in **Form CAA-12** to the Company.

Note: If the Central Government does not issue a confirmation order under section 233(6)(a) or does not file any application under section 233(6)(b), within a period of 60 days of the receipt of the scheme, it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly.

18. Submit/ File e-form INC-28 with RoC: [Ref: Sec. 233(7) read with rule 25(7) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016] [\[Pdf model\]](#)

The Company has submit/ file **e-form INC-28** [Confirmation Order], within 30 days of the receipt of the order of confirmation, to the Registrar (RoC) having jurisdiction over the Company (transferee company), and the Registrar (RoC) shall register the scheme and **issue a confirmation** thereof to the Company. **[Both Transferor and Transferee Companies have to submit e-form INC -28 with their respective RoC.]**

19. Deemed Dissolution of Transferor Company: [Ref: Sec. 233(7)]

On registration of Scheme by RoC, it shall be deemed to have the effect of dissolution of the transferor company without following the process of winding-up.

20. Submit/ File e-form SH-7 with RoC: [Ref: Sec. 233(11) read with Sec. 61 & Rule 15 of Share Capital & Debentures Rules, 2014]

The Company has submit/ file an application in e-form SH-7, with the scheme registered, indicating the **Revised Authorised Capital** and pay the prescribed fees due on revised capital with RoC. [However, the fee, if any, paid by the transferor company on its authorised capital prior to its merger or amalgamation with the transferee company shall be set-off against the fees payable by the transferee company on its authorised capital enhanced by the merger or amalgamation.]

Effects of Registration of scheme

Sec. 233(9): The registration of the scheme shall have the following effects, namely:

- (a) transfer of property or liabilities of the transferor company to the transferee company so that the property becomes the property of the transferee company and the liabilities become the liabilities of the transferee company;
- (b) the charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company;
- (c) legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company; and
- (d) where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.

Sec. 233(10): A transferee company shall not on merger or amalgamation, hold any shares in its own name or in the name of any trust either on its behalf or on behalf of any of its subsidiary or associate company and all such shares shall be cancelled or extinguished on the merger or amalgamation.

Links of all circulars mentioned under this assignment:

MCA Circular date 05.05.2020: https://www.mca.gov.in/Ministry/pdf/Circular20_05052020.pdf

MCA Circular dated 08.04.2020: https://www.mca.gov.in/Ministry/pdf/Circular14_08042020.pdf

Thank you so much & best wishes for future

Sharing is caring...

Shree Radhe Krishna...

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