

## **Fast Track Merger of small companies: Within 100days**

1. The provisions of Section 233 of the Companies Act, 2013 read with notified Companies (Compromise, Arrangements and Amalgamation) Rules, 2016 (Rules) provides a simplified procedure for Merger (Fast Track Merger) of certain companies wherein these companies need not follow the lengthy and complicated procedure as provided under Sections 230 to 232 of the Act.

2. BENEFITS. No Mandatory approval of NCLT required. No Need of Issuing Public Advertisement. No Court Convened Meeting. Less Administrative Burden. Series of Hearing may be avoided. Registration of scheme shall be deemed to have effect of dissolution of transferor companies without the process of winding up. Comparatively less cost and time Saving.

3. A scheme of merger or amalgamation under section 233 of the Act may be entered into between any of the following class of companies, namely :—

(i) Two or more start-up companies; or (ii) One or more start-up company with one or more Small Company; (iii) Merger between two or more Small Companies; (iv) Merger between a Holding Company and its Wholly-owned Subsidiary Company.

### **4. Steps Involved in Fast Track Merger (FTM)**

(a) Review of AOA -The need to check whether the companies AOA permits for merger or not. If in case the company AOA does not permit; the AOA needs to be altered first. The companies need to evaluate the exchange ratio based on the valuation .

Following these steps:

(b) Convene Board Meeting

The transferor and transferee company need to conduct a board meeting each to see that:

(i) The draft scheme is approved by the company

(ii) To fix a date, time and place for conducting the shareholder and creditors meeting.

(C) Notice of Proposed Scheme

The notice of the proposed scheme should be posted so that any objection or suggestion can be provided and If there are any suggestion or objections (Form CAA-9) they should be sent to the registrar of Companies (ROC) and official liquidator wherever the registered office is situated.

(d) Filing Declaration of Solvency with ROC in Form CAA-10

(e) Notice of EGM - Notice for EGM must be posted before 21 days along with the following documents:

(i) Declaration of solvency made in the Form CAA-10

(ii) A statement disclosing the details of the fast track merger

(ii) Copy of the latest financial statements of all the companies involved

(ii) Valuation report of the company (copy)

In the EGM the approval of the majority must be taken in writing. The majority must represent 90% of the total shares.

(f) Creditors Approval

Written approval from the creditors is required which can be taken through conducting a creditors meeting by the companies involved.

(g) Filing of the Scheme

A draft scheme that involves a merger must be filed within 7 days of the conclusion of the companies meeting with the creditors and members.

(h) Scheme Approval by Regional Director- If the official liquidator has no issue with the scheme that is filed, he will take notice of the same and then issue a confirmation to the companies that are involved in the merger. If the regional director thinks that the scheme is against the interest of the creditors he will file an application with the tribunal.

(i) Tribunal Intervention - Once the tribunal receives the objections from the Regional Director in writing within 60 days will look into the matter and then record its opinion on the matter.

(J) Approval - If the order passed by the tribunal is acceptable to the regional director, he shall issue a confirmation order of the scheme in Form CAA-12.

(K) Filing of confirmation order with the ROC