

Regulatory/legal setup for Mergers / Amalgamations

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- a. A merger or amalgamation is a transaction whereby the assets and liabilities of one company are transferred to another company through a procedure involving sanction of the Court. The transferor company usually gets dissolved in the process thereby losing its existence.
- b. The consideration for the transfer of assets is received not by the transferor company (which would no more be in existence) but the shareholders of the transferor company. The consideration may be in the form of shares of the transferee company, its other securities, cash, or any combination of these.
- c. The following is broadly the procedure involved in carrying out an amalgamation:-

Sr. No.	Procedure	Time In Weeks
1	Review of the memorandum and articles of association of all the amalgamating companies. In particular it should be	1

	<p>checked whether:-</p> <p>I. Power to amalgamate exists. Though there are views that such a power is not necessary, consider amendment of the memorandum to include such powers.</p> <p>II. Objects of the transferee company includes power to carry on the businesses of the transferor company. If not, consider amending the objects of the transferee company. Here again, there are two views as to whether the transferee company needs to have in advance or later the powers to carry on the business of the transferor company.</p> <p>III. Any restrictions exist under the Articles of Association requiring any special procedure to be followed or approvals to be obtained.</p>	
2	<p>Ensure that the audited accounts for the period ending on the appointed date are ready. Here again, there can be two views whether audited accounts are absolutely or</p>	0

	whether accounts approved by the Board of Directors of the transferor company will be adequate.	
3	Hold the Board meetings of the two companies to approve in principle the amalgamation and to approve incidental matters including appointment of a director as authorised person to carry out various matters on behalf of the company.	1
4	Carry out valuation of the shares of each of the two companies.	2
5	Prepare necessary schemes and papers relating to the amalgamation.	1
6	File the necessary papers with the Court through advocates/solicitors.	2
7	Call meetings of shareholders/creditors under directions of the Court and follow other instructions of the Court. Also issue necessary advertisements, where required and applicable.	3
8	Hold the meetings and pass the necessary resolutions approving the amalgamation and related matters.	
9	In parallel, the transferee company may hold an extraordinary general meeting for matters such as approval of issue of shares,	

	increase of authorised share capital, if required, and for other matters. File the resolutions with the Registrar of Companies as required by Section 192.	
10	File report of the Chairman for the meetings held under the Court's Directions within the prescribed time.	2
11	Petition to Court for sanctioning the scheme of amalgamation.	1
12	Give appropriate notices to the Central Government as required by Section 394A.	1
13	Obtain Official Liquidator's report that that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to the public interest.	3
14	Obtain order of amalgamation of the Court under Section 394.	12
15	File certified copy of the order with the Registrar of Companies within 30 days of the date of the order	1
16	Issue shares to the shareholders of the transferee company	1