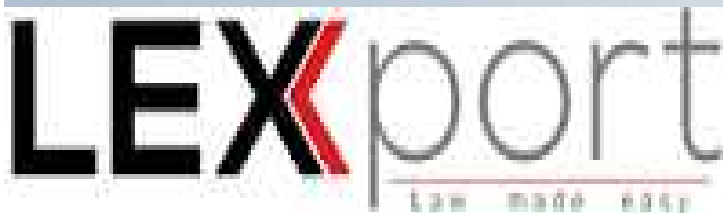


Procedural aspects and process of amalgamation between two Private Limited Companies

- A Court Based Restructuring

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FLOW OF PRESENTATION

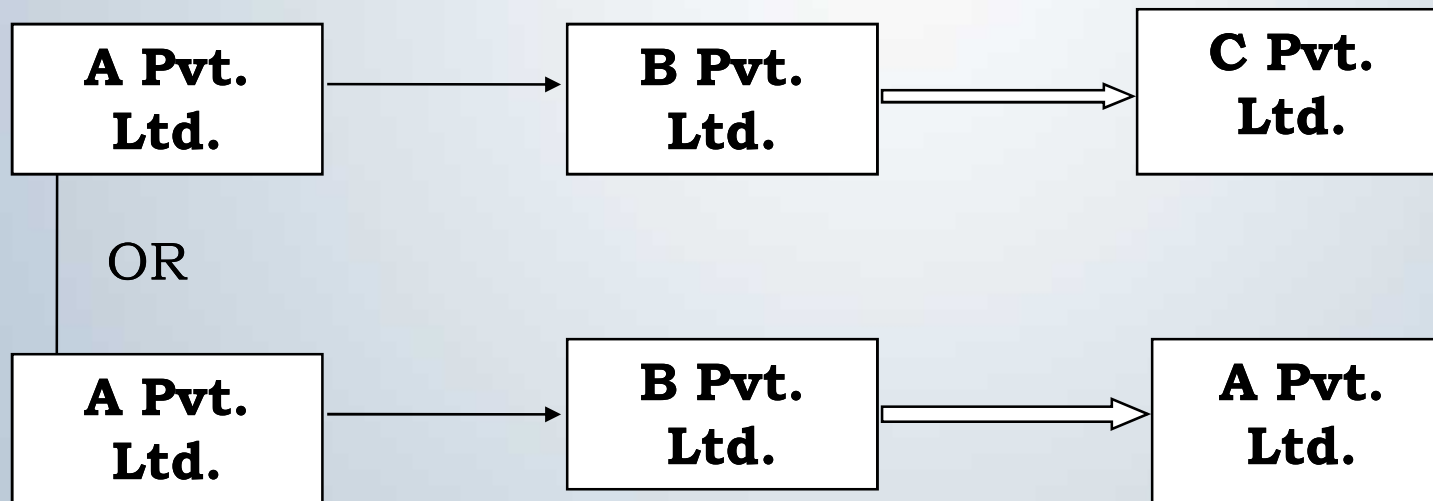
- ❖ Meaning of Amalgamation
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Meaning of Amalgamation

- Amalgamation is a legal process by which two or more companies joined together to form a new entity or one or more companies are to be absorbed or blended with another and as a consequence the amalgamating company loses its existence and its shareholders become the shareholders of new company or the amalgamated company.



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Meaning of Amalgamation

- The shareholders of amalgamating companies get shares of amalgamated company. The shareholders of each amalgamating company become the shareholders in the amalgamated company.
- Therefore, the essence of amalgamation is to make an arrangement thereby uniting the undertakings of two or more companies so that they become vested in, or under the control of one company which may or may not be the original of the two or more of such uniting companies.

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Meaning of Amalgamation

- The companies going into liquidation or merged companies are called vendor companies or transferor companies. The new company which is formed to take over the liquidated companies or the company with which the transferor company is merged is called transferee or vendee.
- In the case of amalgamation the assets and liabilities of transferor company(s) are amalgamated and the transferee company becomes vested with all such assets and liabilities.

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Meaning of Amalgamation

- It is interesting to note that the Companies Act, 1956 and also the Companies Act, 2013, have not defined the term ‘amalgamation’.
- However Section 2(1B) of the Income Tax Act, 1961 defines ‘amalgamation’ as follows:

“Amalgamation in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as amalgamating company or companies and the company with which they merge or which is formed as result of the merger, as the amalgamated company), in such a manner that:-

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Meaning of Amalgamation

- (i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;
- (ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation;
- (iii) shareholders holding not less than three-fourth in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation,

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Meaning of Amalgamation

otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first mentioned company.”

Thus, a merger to qualify as an ‘amalgamation’ for the purpose of the Income Tax Act, the above three conditions have to be satisfied.

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Reasons for Amalgamation

- The Amalgamation must form part of the business and corporate strategies aimed at creating sustainable competitive advantage for the firm. Mergers and amalgamations are strategic decisions leading to the maximisation of a company's growth.
- Mergers and amalgamations are usually intended to achieve any or some or all of the following purposes:
 1. Synergistic operational advantages – Coming together to produce a new or enhanced effect compared to separate effects.
 2. Reduction in production, administrative, selling, legal and professional expenses.

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Reasons for Amalgamation

3. Economies of scale (scale effect) – Reduction in the average cost of production and increase the production so that products can be offered at more competitive price to capture a large market share.
4. Benefits of integration – Combining two or more companies under the same control for their mutual benefit by reducing competition, saving costs by reducing overheads, capturing a larger market share, pooling technical or financial resources, cooperating on research and development, etc.
5. Optimum use of capacities and factors of production.

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Reasons for Amalgamation

6. Tax advantages – Carry forward and set off of losses of a loss-making amalgamating company against profits of a profit-making amalgamated company, e.g. Section 72A of the Income-Tax Act, 1961.
7. To Avoid Financial constraints for expansion – A company which has the capacity to expand but cannot do so due to financial constraints may opt for merging into another company which can provide funds for expansion.
8. Strengthening financial strength.
9. Diversification.

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Reasons for Amalgamation

10. Advantage of brand-equity.
11. Loss of objectives with which several companies were set up as independent entities.
12. Survival and Sustaining growth.
13. Competitive advantage – The factors that give a company an advantage over its rivals.
14. Eliminating or weakening competition.
15. Revival of a weak or sick company.
16. Accelerating company's market power and reducing the severity of competition.

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Governing Statutes (Overview of Legal Provisions)

The process of Amalgamation is governed by the following Statutes:

1. **Companies Act, 1956:** Chapter V containing Sections 390 to 396A of the Companies Act, 1956 is a complete code in itself. It provides for the law and procedure to be complied with by the companies for compromises, arrangements and reconstruction.
2. **Companies (Court) Rules, 1959:** Rules 67 to 87 of the Companies (Court) Rules, 1959 lay down the court procedure for the approval of schemes.

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Governing Statutes (Overview of Legal Provisions)

3. **Companies Act, 2013:** The new Companies Act, 2013 contains the provisions regarding Compromises, Arrangements and Amalgamations under Chapter XV from Section 230 to Section 240. Under the new Act an Indian company can merge with any foreign company whether having a place of business in India or not. It is pertinent to note here that earlier under the Companies Act, 1956 there was no such provisions regarding merger of an Indian company with any foreign company outside India. The Act also contains provisions regarding fast track and simplified procedure for mergers and amalgamations of certain class of companies such as holding and subsidiary, and small companies under section 233.

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Governing Statutes (Overview of Legal Provisions)

Gist of Chapter XV of the Companies Act, 2013 : COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

Section No.	Subject headings
230	Power to compromise or make arrangements with creditors and members
231	Power of Tribunal to enforce compromise or arrangement
232	Merger and amalgamation of companies
233	Merger or amalgamation of certain companies
234	Merger or amalgamation of company with foreign company
235	Power to acquire shares of shareholders dissenting from scheme or contract approved by majority

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Governing Statutes (Overview of Legal Provisions)

Gist of Chapter XV of the Companies Act, 2013 : COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

Section No.	Subject headings
236	Purchase of minority shareholding
237	Power of Central Government to provide for amalgamation of companies in public interest
238	Registration of offer of schemes involving transfer of shares
239	Preservation of books and papers of amalgamated companies
240	Liability of officers in respect of offences committed prior to merger, amalgamation, etc.

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Governing Statutes (Overview of Legal Provisions)

4. **Draft Companies (Compromises, Arrangements and Amalgamations) Rules, 2016:** The Central Government through Ministry of Corporate Affairs has also issued draft Rules on Compromises, Arrangements and Amalgamations. These rules provide for procedures in Compromises, Arrangements and Amalgamations under the Companies Act, 2013.

5. **Income Tax Act, 1961:** Sections 35(5), 35A(6), 35E(7), 41(4) Explanation 2, 43(1) Explanation 7, 43(6) Explanation 2, 43C, 47 (vi) & (vii), 49(1)(iii)(e), 49(2), and 72A of Income Tax Act provides tax benefits in case of merger and amalgamation.

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Governing Statutes (Overview of Legal Provisions)

6. **Accounting Standard-14:** The Institute of Chartered Accountants of India has introduced Accounting Standard -14 (AS 14) on 'Accounting for Amalgamations'. The standard recognizes two types of amalgamation –
- (i) Amalgamation in the nature of merger; and
 - (ii) Amalgamation in the nature of purchase.

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Governing Statutes (Overview of Legal Provisions)

7. **FEMA, 1999:** Where the scheme of amalgamation envisages issue of shares/cash option to Non-Resident Indians (NRIs), the amalgamated company is required to obtain the permission of Reserve Bank of India. Regulation 7 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 contains provisions regarding issue of shares to NRIs under a scheme of amalgamation.

8. **Competition Act, 2002:** Regulation of combinations as provided under Sections 5 and 6 of the Competition Act is also required to be complied by companies, if applicable.

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Governing Statutes (Overview of Legal Provisions)

9. **Indian Stamp Act:** Indian Stamp Act provides for payment of stamp duty. In amalgamation of companies following types of stamp duty is levied:-

- (i) **Stamp duty on the Court Order:** The order of the Court under Section 394 of the Companies Act, 1956 requiring the transfer of assets and liabilities of the transferor company to the transferee company is a conveyance and hence chargeable to stamp duty.
- (ii) **Stamp duty on the other documents:** Usually in an amalgamation of companies, several other documents, agreements, indemnity bonds are executed, depending upon the facts of each case and requirements of the parties. Stamp duty would also be leviable on such documents, agreements, indemnity bonds, as per the nature of the instrument and its contents.

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Governing Statutes (Overview of Legal Provisions)

10. **CENVAT Credit Rules, 2004:** Indian Rule 10 of the CENVAT Credit Rules, 2004 deals with the transfer of credit. It provides that if a manufacturer of the final product shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory. Further, if a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the provider of output service shall be allowed to transfer the CENVAT credit lying unutilized in his account to such transferred, sold, merged, leased or amalgamated business.

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Legal Due diligence Checklist before Amalgamation

- Before Amalgamation, the Transferee Company should have a legal due diligence in the affairs of the Transferor Company(ies).
- A Legal due diligence is undertaken to achieve the following objectives:
 1. To assess the impact of likely results of current and potentially pending litigation and result of recently concluded litigation,
 2. To ensure that the subject company has complied with the provisions of all the relevant statutes and there would be no potential liability on account of non compliance,

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Legal Due diligence Checklist before Amalgamation

3. To assess the current and anticipated future impact of government regulations on the entity's cost level.

The information to be collected in Legal Due Diligence includes:

- Names and addresses of the company's attorneys
- Is a discussion with them appropriate, warranted?
- Make inquiries of the company's management and attorney regarding possible lawsuits, contract problems, etc.
- Does the Company have good legal records? If not, why not? Assess the implications.
- Make inquiries of the company's management and legal concerning the likelihood of an unfavorable law suits. Assess the implications to the extent there might be legal problems, the company's investment risk might be significantly higher.

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List of forms under Companies (Court) Rules, 1959

- There are various forms which are required to be filled up for the purpose of fulfilling all the requirements applicable for filing applications / petition relating to Amalgamation.
- The details of all these forms are given under the Companies (Court) Rules, 1959. Below is the list of such applicable forms:

Form No.	Purpose
Form 33	Summons for Directions to Convene a Meeting under section 391
Form 34	Affidavit in Support of Summons
Form 35	Order on Summons for Directions

List of forms under Companies (Court) Rules, 1959

Form No.	Purpose
Form 36	Notice convening Meeting
Form 37	Form of Proxy
Form 38	Advertisement of the Notice Convening Meeting of Creditors/shareholder, etc.
Form 39	Report by Chairman
Form 40	Petition to sanction compromise or arrangement
Form 41	Order on petition
Form 42	Order under section 394

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Authorities involved in Amalgamation

There are number of authorities and persons involved as required by the statute and specialized nature of activity to be carried out. The tasks categorized in stages like framing, sanctioning and implementation of the scheme of amalgamation among such authorities.

These authorities and persons involved are categorized under the following heads:

1. Judiciary;
2. Government; and
3. Professionals.

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Authorities involved in Amalgamation

1. Judiciary:

- High Court of the State where Registered Offices of Companies involved in Amalgamation are situated.

2. Government Authority:

- Registrar of Companies/ Company Law Board
- Official Liquidators
- Regional Director
- Central Government
- Authorities under respective statutes whose permission / approval is required in the course of Amalgamation.

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Authorities involved in Amalgamation

3. Professionals:

- Advocates
- Chartered Accountants
- Company Secretaries
- Merchant Banker
- Counselors
- Venture Capitalists
- Financial institutions

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Number of Meetings for Amalgamation

There are number of meetings required to be convened before and after the Amalgamation. Below are the meetings required to be convened:

BOARD MEETINGS

1st Board Meeting: The Company (both transferor and transferee) should convene a board meeting and pass the following resolutions in that meeting:

- Approval of the proposal for Amalgamation.
- Appoint valuers, lawyers, solicitors & consultants etc.
- Obtain due diligence certificate, if required.

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Number of Meetings for Amalgamation

BOARD MEETINGS

2nd Board Meeting: Once the Companies get the draft scheme of Amalgamation, board should convene another board meeting & get the following resolutions approved:

- Approval of Draft Scheme of Amalgamation
- Approval of Exchange Ratio & Appointed Date
- Appointment of Counsel to make representation in High Court
- Authorizing one Director / Officer to sign Petition / Application on behalf of the Company

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Number of Meetings for Amalgamation

BOARD MEETINGS

3rd Board Meeting: The board of the transferee Company should take steps to call extraordinary general meeting (EGM) to approve the following:

- Allotment of shares to other than present shareholders in terms of Section 62 of the Companies Act, 2013 (earlier Sec 81(1A) of the Companies Act, 1956).
- Increase in share capital or change in capital structure of authorized capital, if required.
- Change in Object Clause or Name Clause of the MOA, if required.

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Number of Meetings for Amalgamation

BOARD MEETINGS

4th Board Meeting: Once all concerned approves proposed Amalgamation, the Companies should take Amalgamation on record and also complete all the formalities, as this will be the last board meeting in the case of Transferor Company. Following are the steps to be taken:

- **In case of Transferor Company:** The board approves accounts.
- **In case of Transferee Company:** In case of Transferee Company the board should pass resolution making allotment of shares to the shareholders of the Transferor Company(ies) as per the swap ratio.

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Number of Meetings for Amalgamation

SHAREHOLDERS' MEETING

- If the Honorable High Court directs to the Companies (Transferor & Transferee) proposing Amalgamation, to call shareholders' meeting, then said meeting should be called as per the direction of the Court after getting approved all the documents by the Court *i.e.* mode of service of notice, quorum, venue & time, appointment of chairman, name of paper in which the notice of meeting was published.

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Number of Meetings for Amalgamation

SHAREHOLDERS' MEETING

- Here Special Resolution should be passed to approve the Amalgamation (it may be noted that approval has to be in full and cannot be approved in part) and voting is by way of ballot and for approval 75% in value terms and 51% in number terms should vote in favor of the resolution.
- At the meeting, question answer session should be conducted & conduct the voting for the resolution of the approval of the scheme & get the special resolution passed.

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Number of Meetings for Amalgamation

SHAREHOLDERS' MEETING

Transferee Company may conduct any other Extra-ordinary General Meeting to approve the following:

- Increase in share capital or change in capital structure of authorized capital.
- Special resolution authorizing director for issuing shares other than existing shareholders.

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Number of Meetings for Amalgamation

MEETING OF CREDITORS OF COMPANIES

If the Honorable High Court directs to the companies (Transferor & Transferee) proposing Amalgamation to call meeting of the Secured & Unsecured Creditors, then said meeting should be called as per the direction of the Court after getting all the documents approved by the Court *i.e.*

- mode of service of notice,
- quorum,
- venue & time,
- appointment of chairman,
- name of paper in which the notice of meeting was published.

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Documentation in Amalgamation

The documentation in Amalgamation can be divided into two parts *viz.*

(A) Documents required for Statutory Requirements

(B) Documents required by various Parties

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Documentation in Amalgamation

(A) Documents required for Statutory Requirements

1. **Scheme of Amalgamation:** The Scheme of Amalgamation is basically a contract between two companies and the basis of the whole restructuring process. The scheme has to be submitted to all authorities with other documents required.

Clauses of the Scheme of Amalgamation: A Scheme normally contains the following clauses:

- **Definition Clause** providing definitions of Transferor and Transferee Company, Appointed date, Effective date, Undertaking etc.

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Documentation in Amalgamation

(A) Documents required for Statutory Requirements

- **Share Capital Clause** giving details of share capital of both the Companies.
- **Assets and Liabilities Clause** giving details of assets and liabilities getting transferred.
- Clause giving details of **Consideration** to be discharged & **Exchange Ratio**.
- Clause giving details of obligations / liabilities under Contracts, Deeds, Bonds, Trade marks & other instruments getting transferred.

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Documentation in Amalgamation

(A) Documents required for Statutory Requirements

- Pending Legal proceedings.
- Treatment of reserves in the books of Transferee Company.
- Restrictions on Transferor Company to do business until the Effective Date.
- Clause giving details of:
 - (a) operative date of the scheme;
 - (b) provisions for Transferor Company's staff, workmen and employees and terms of their employment in Transferee Company.
- Scheme should provide for continuity of service of employees of Transferor Company and terms should not be less favorable than their existing terms of employment

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Documentation in Amalgamation

(A) Documents required for Statutory Requirements

- Clause giving details of:
 - (a) Expenses incurred to be borne by which Company
 - (b) Any other details required to be disclosed with the scheme.
 - (c) Some special information relating to the scheme

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Documentation in Amalgamation

(A) Documents required for Statutory Requirements

- 2. Application:** The All the companies involved are required to make an application to the High Court to obtain directions for holding meetings of various shareholders & creditors or dispensation thereof for approval of the scheme. The format of the Application is given in **Form No 33** of the Company (Court) Rules, 1959.

Contents of the Application: The application contains the following:

- Name of the Transferor/Transferee Company
- Name of Directors
- Share capital – (Authorized, Issued and Paid up)

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Documentation in Amalgamation

(A) Documents required for Statutory Requirements

- Address of Registered Office
- Date of incorporation
- Date of commencement of business
- Latest Audited Balance Sheet (as Annexure)
- Scheme of arrangement with creditors
- Copy of scheme of Amalgamation (as Annexure)
- Prayer for holding meetings of shareholders and creditors
- The Companies may also pray for not holding the meeting of shareholders / creditors, as the case may be, if all such shareholders/creditors have given their NOC for such Amalgamation.

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Documentation in Amalgamation

(A) Documents required for Statutory Requirements

- 3. Court's Order on Application:** The High Court to which application is made for seeking permission to file the petition passes an order either allowing or rejecting the application. The format of Order is given in **Form No 35**.

Contents of the Order: The Court's order shall contain the following:

- That the MOA of the Companies involved has Amalgamation as an Object.
- That Scheme of Amalgamation has been approved by the Board of Directors of respective Companies & Advertisement of the same has been given.

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Documentation in Amalgamation

(A) Documents required for Statutory Requirements

- That Prayer has been made for the transfer of specific assets.
- That parties have informed the Court about the consideration of transfer.
- That confirmations of Scheme have been taken considering the interests of all the shareholders, the members, creditors etc.
- That Prayer for dispensation of meeting is made (if confirmation from shareholders, secured / unsecured creditors has already been taken); or

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Documentation in Amalgamation

(A) Documents required for Statutory Requirements

- Conveying the meeting of different class of shareholders/creditors;
- Decide upon the time, place, and chairperson of the meeting;
- Publication of notices in two languages. One in English & the other in a vernacular language & also in the Govt. Gazette.

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Documentation in Amalgamation

(A) Documents required for Statutory Requirements

4. **Petition:** After complying with various directions issued by the Honorable High Court, and after the scheme is approved by all of the concerned parties, the Companies are required to file petition to the Court. This petition is in Form No 40.

Contents of the Petition: The contents of the petition are as follows:

- Appointed Date
- Registered Office
- Date of incorporation
- Share Capital - Authorized, Issued and Paid up
- Objects of the Petitioner Company(ies)

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Documentation in Amalgamation

(A) Documents required for Statutory Requirements

- Appointed Date
- Details of shareholders and creditors meetings held
- Prayer for sanctioning the scheme
- Copy of Memorandum and Articles of Association of Transferor and Transferee Companies
- Copy of Audited Accounts of Transferor and Transferee Companies
- Scheme of amalgamation
- Copy of Chairman's Report

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Documentation in Amalgamation

(B) Documents required for Various Parties

1. For the High Court:

I. With Application (first motion)	II. With Petition (second motion)
<ul style="list-style-type: none">• Application (Summons for directions in Form No. 33)• Director's Affidavit (Form No. 34)• Vakalatnama• Memorandum of registered office address• Copy of MOA & AOA (both Companies)• Balance sheet & Profit & Loss Account of Both Companies• Scheme of Amalgamation• Confirmations / NOC of creditors (Secured & Unsecured) [Transferor Company(ies) may also enclose, if possible, to avoid their meetings]• Summons for direction to convene the meeting of the members of the transferor & transferee Companies to approve of the Scheme(Form No. 35)• Minutes of order	<ul style="list-style-type: none">• Petition (Form No. 40)• Vakalatnama• Copy of Balance Sheet & Profit & Loss A/c• Memorandum of registered office address• Copy of MOA & AOA (both companies)• Scheme of Amalgamation with explanatory statement u/s 393• Valuation Report for exchange ratio• Chairman's Report (Form 39)• Director's Affidavit• Copy of Court order on First Motion Application (Form 35)

Documentation in Amalgamation

(B) Documents required for Various Parties

2. For Shareholders:

- Notice convening the meeting of the Equity Shareholders specifying therein date, time and place of meeting and name of person appointed as chairman or alternate chairman by the Court (to be given 21 clear days before the meeting under the authority of chairman appointed by Court through certificate of posting).
- Form of Proxy
- Copy of Scheme of Amalgamation
- Explanatory statements pursuant to Sec 393 of the Companies Act, 1956 including details of shareholding of directors of both the companies in both the companies

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Documentation in Amalgamation

(B) Documents required for Various Parties

3. For Official Liquidator:

- Notice of petition with all enclosures to be served on official Liquidator by Transferor Company and on ROC by both Companies.
- All details required to be furnished are as required by the questionnaire issued upon the Company. Some of them are as under:
 - (i) Whether the Company has complied with all the formalities as required to be done under the law.
 - (ii) Whether all details with regard to documentation have been filed with the R.O.C. etc.

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Documentation in Amalgamation

(B) Documents required for Various Parties

4. For Registrar of Companies:

	After Merger/amalgamation is approved
<ul style="list-style-type: none">• Copy of application and petition should be filed with R.O.C.• R.O.C. looks into whether all requirements are complied and if not satisfied it can file affidavit in the court stating its objections, otherwise gives its NOC.	<ul style="list-style-type: none">• Copy of Order sanctioned by the Hon'ble High Court.• Scheme of Amalgamation.• Changed MOA & AOA (amended through Scheme)• Any other document which has to be filed as per the requirements of the Companies Act, 1956 or Companies Act, 2013 <i>i.e.</i> if, say, change of name or change in object clause is also being done at the same time then procedure for the same etc.

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Steps for Amalgamation

The procedural steps in Amalgamation are as under:

Sr. No.	Points to look into	Steps to followed by the Transferee Company and Transferor Company
1.	Memorandum of Association (MOA)	The MOA must provide the power to amalgamate in its Objects Clause. If MOA is silent, amend the MOA to add Amalgamation as an object.
2.	Board Meeting	Board Meeting shall be convened to consider and pass the following requisite resolutions: - to approve the draft scheme of amalgamation; - to give authorization for filing of application to the Court for directions to convene a general meeting; - to file a petition for confirmation of Scheme by the High Court.

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Steps for Amalgamation

The procedural steps in Amalgamation are as under:

Sr. No.	Points to look into	Steps to be followed by the Transferee Company and Transferor Company
3.	Application to the Court	<p>An application shall be made to the Court for directions to convene a general meeting by way of Judge's summons supported by an affidavit.</p> <p>The proposed Scheme of amalgamation must be attached to such affidavit.</p> <p>Summons - Form No. 33 Affidavit - Form No. 34</p> <p>The summons should be accompanied by:</p> <p>(i) A certified copy of the MOA of both companies</p> <p>(ii) A certified true copy of the latest audited B/S and P&L A/c of transferee company</p>

Steps for Amalgamation

The procedural steps in Amalgamation are as under:

Sr. No.	Points to look into	Steps to be followed by the Transferee Company and Transferor Company
4.	Copy To Regional Director	<p>A copy of application made to concerned HC shall also be sent to the R.D. of the region.</p> <p>(Although, such notice is supposed to be sent by the HC, usually the company sends it without waiting for the HC to send it).</p>
5.	Order of High Court	<p>On hearing of the summons, the HC shall pass the necessary orders which shall include:</p> <ul style="list-style-type: none">Time and place of the meeting;Chairman of the meeting;Fixing the quorum;Procedure to be followed in the meeting for voting by the proxy;Advertisement of notice of the meeting;Time limit for the chairman to submit the report to the court regarding the result of the meeting. <p>Orders in - Form No. 35</p>

Steps for Amalgamation

The procedural steps in Amalgamation are as under:

Sr. No.	Points to look into	Steps to be followed by the Transferee Company and Transferor Company
6.	Notice of the Meeting	<p>The notice of the meeting (Form No. 36) shall be sent to the creditors and/or to the shareholders individually by the chairman so appointed by registered post enclosing:</p> <ul style="list-style-type: none">(i) A statement setting forth the following:<ul style="list-style-type: none">- Terms of amalgamation and its effects- Any material interests of the director, MDs or Manager, in any capacity-Effect of the arrangement on those interests.(ii) A copy of the proposed scheme of amalgamation(iii) A form of proxy (Form No. 37)(iv) Attendance slip(v) Notice of the resolution for authorizing issue of shares to persons other than existing shareholders.

Steps for Amalgamation

The procedural steps in Amalgamation are as under:

Sr. No.	Points to look into	Steps to be followed by the Transferee Company and Transferor Company
7.	Advertisement of Notice of Meeting	The notice of the meeting shall be advertised in an English and Hindi Newspaper as the Court direct. Advertisement in - Form No. 38
8.	Filing of Affidavit for the Compliance	An affidavit not less than 7 days before the meeting shall be filed by the Chairman of the meeting with the Court showing that the directions regarding the issue of notices and advt. have been duly complied with.
9.	General Meeting	The General Meeting shall be held to pass the following resolutions: (i) Approving the scheme of amalgamation by $\frac{3}{4}$ th majority

Steps for Amalgamation

The procedural steps in Amalgamation are as under:

Sr. No.	Points to look into	Steps to be followed by the Transferee Company and Transferor Company
		<p>(ii) Special Resolution authorizing allotment of shares to persons other than existing shareholders or an ordinary resolution be passed subject to getting Central Government's approval for the allotment as per the provisions of Section 62 of the Companies Act, 2013 (earlier Section 81(1A) of the Companies Act, 1956).</p> <p>(iii) The resolution to empower directors to dispose of the shares not taken up by the dissenting shareholders at their discretion.</p> <p>(iv) An ordinary/special resolution shall be passed to increase the Authorized share capital, if the proposed issue of shares exceeds the present authorized capital.</p> <p>Note: The decision of the meeting shall be ascertained only by taking a poll on the resolutions.</p>

Steps for Amalgamation

The procedural steps in Amalgamation are as under:

Sr. No.	Points to look into	Steps to be followed by the Transferee Company and Transferor Company
10.	Reporting of Result of the Meeting	<p>The Chairman of the meeting shall report the result thereof to the Court within the time fixed by the judge or within 7 days, as the case may be.</p> <p>Report in - Form No. 39</p>
11.	Formalities with RoC	<p>The following documents shall be filed with ROC along with the requisite filing fees:</p> <p>Form No. MGT-14 of Companies (Management and Administration) Rules, 2014 +</p> <p>(i) Copy of Special Resolution</p> <p>(ii) Resolution approving the scheme of amalgamation</p> <p>(iii) Special resolution passed for the issue of shares to persons other than existing shareholders (no need in case of Transferor Company (ies).)</p>

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Steps for Amalgamation

The procedural steps in Amalgamation are as under:

Sr. No.	Points to look into	Steps to be followed by the Transferee Company and Transferor Company
12.	Petition	<p>For approval of the scheme of amalgamation, a petition shall be made to the HC within 7 days of the filing of report by the chairman.</p> <p>Report in - Form No. 40</p> <p>Note: If the Regd. Offices of the companies are in same state - then both the companies may move jointly to the High Court.</p> <p>If the Regd. Offices of the Companies are in different states - then each Company shall move the petition in the respective High Court for directions.</p>

Steps for Amalgamation

The procedural steps in Amalgamation are as under:

Sr. No.	Points to look into	Steps to be followed by the Transferee Company and Transferor Company
13.	Sanction of the Scheme	<p>The Court shall sanction the scheme and pass the Orders, on being satisfied that:</p> <ul style="list-style-type: none">(i) The whole scheme is annexed to the notice for convening meeting, (this provision is mandatory in nature).(ii) The scheme has been approved by the company by means of $\frac{3}{4}$th majority of the members present.(iii) The scheme is genuine and bona fide and not against the interests of the creditors, the company and the public interest. <p>Orders in - Form No. 41</p>

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Steps for Amalgamation

The procedural steps in Amalgamation are as under:

Sr. No.	Points to look into	Steps to be followed by the Transferee Company and Transferor Company
14.	Stamp Duty	A scheme sanctioned by the court is an instrument liable to stamp duty.
15.	Filing with RoC	The following documents shall be filed with ROC within 30 days of order: (i) Form No. INC-28 (Notice of order of the Court or other authority) of Companies (Incorporation) Rules, 2014. (ii) A certified true copy of Court's Order

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Steps for Amalgamation

The procedural steps in Amalgamation are as under:

Sr. No.	Points to look into	Steps to be followed by the Transferee Company and Transferor Company
16.	Copy of Order to be Annexed to every copy of MOA	A copy of court's order shall be annexed to every copy of the Memorandum of Association issued after the certified copy of the order has been filed with as aforesaid.
17.	Allotment of Shares	A Board Resolution shall be passed for the allotment of shares to the shareholders in exchange of shares held in the Transferor Company and to fix the record date for this purpose.

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THANK YOU
SO MUCH

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