

# 4. Rules for Merger & Demerger



# Rules of Merger & Demerger

1. These rules are called Rules of Merger & Demerger amongst the Firms registered with The Institute of Chartered Accountants of India.

2. Concept of Merger & Demerger:

- (i) The Partnership Act has not prescribed merger & demerger of partnerships. In the corporate world, merger and demerger have become universal practices for securing survival, growth, expansion and globalization of enterprise and achieving multitude of objectives. Merger is the fusion of two or more existing companies. On the other hand, demerger signifies a movement in the company just opposite to merger. `Demerger` is also used to describe spinning off of an "undertaking" of a Corporate entity. The concept of `Merger`, `Demerger` & `Acquisition` are arising out of the `Arrangement` under Sections 391-394 of the Companies Act, 1956. Merger and Demerger are natural corollary of globalization.
- (ii) To incorporate the spirit of Corporate World and to imbibe the consolidation creed, the Council used the term `merger` and `amalgamation` of CA firms. The Council in its 198<sup>th</sup> Meeting held from 25<sup>th</sup> to 27<sup>th</sup> February, 1999 and in 223<sup>rd</sup> Meeting held from 2<sup>nd</sup> to 5<sup>th</sup> February, 2002 considered the Seniority and Mergers of the firm and implications of the decisions.
- (iii) In order to have an orderly and sustainable growth of the CA firms, it is desirable that the coming together of the firms begins with networking and then matures to mergers. Networking will enable the firms to develop working relationships with each other. However, it is not to suggest that there cannot be mergers without networking.
- (iv) The mergers should be effected to develop core competencies and to render professional services of a larger range spread over bigger geographical area. A merged big entity will always be superior to a network arrangement.

3. Merger

- (i) To effectuate merger, a merger agreement in **Form 'E'** (enclosed) is to be filed with the Institute within 30 days from the date of the agreement. The re-constitution agreement/partnership deed shall be filed with the Registrar of Firms.
- (ii) Upon the merger of the firms, the Institute will freeze the names of the merging firms and shall not allot the same names to any other firm.

4. Demerger

- (i) The merger has to precede the demerger. The merger agreement itself shall contain the terms and conditions for demerger. Therefore no concurrence/acceptance is required from the continuing partners. The merger agreement shall stipulate that in case 75% or more of the continuing partners of one of the erstwhile firm(s) are willing to demerge then they can do so after



giving due notice in **Form 'F'** (enclosed) to the other partners and to the Institute. **E- 417**

- (ii) In case 75% or more of the continuing partners of one of the erstwhile merging firm have demerged after giving due notice to the other partners, then in such case, the merger shall come to an end and if the remaining erstwhile merging firms/partners of the erstwhile merged firm decided to continue, then they should enter into a fresh Merger/Partnership Agreement.
- (iii) The Demerged Firm is entitled to practice in its old trade name, which existed at the time of merger.
- (iv) The Constitution Certificate issued by the Institute to the demerged firm shall state the original date of establishment, the date of its merger and the date of the demerger. For the purpose of computing the seniority of the firm, the total period will be reckoned from the original date of establishment.
- (v) The demerger can be demanded within a period of 5 years from the date of merger.



**FORMAT OF MERGER AGREEMENT****THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**

[See Rule 3 of Rules of Merger & Demerger amongst the firms registered with The Institute of Chartered Accountants of India]

We, (1)..... (2) ..... (3) ..... partners of (1) M/s. A & Co. (2) M/s. B & Co. & (3) ..... execute this Merger Agreement on this \_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_:

1. M/s A & Co., a Partnership/Proprietorship firm of Chartered Accountants having its registered Head Office at \_\_\_\_\_, duly registered with the Institute of Chartered Accountants of India vide Firm No. \_\_\_\_\_ in \_\_\_\_\_ region (which expression shall include its successors, heirs and assigns).

The date of establishment, name of the partners, their membership nos, are as follows:-

- (i) Date of establishment
- (ii) Name of the Partners                      Membership No.

2. M/s B & Co., a Partnership/Proprietorship firm of Chartered Accountants having its registered Head Office at \_\_\_\_\_, duly registered with the Institute of Chartered Accountants of India vide Firm No. \_\_\_\_\_ in \_\_\_\_\_ region (which expression shall include its successors, heirs and assigns).

The date of establishment, name of the partners, their membership nos, are as follows :-

- (i) Date of establishment
- (ii) Name of the Partners                      Membership No.

3. ....

**Now, therefore, in consideration of mutual promise herein made and the consideration hereunder expressed, the parties hereto mutually covenant and agree as follows:**

1. That the name of the merged firm will be \_\_\_\_\_ and the date of establishment of the merged firm is the date of establishment of the oldest/older firm i.e. \_\_\_\_\_.
2. That this merger will come into force w.e.f. \_\_\_\_\_ 20XX, whereafter, the merging firm i.e. M/s A & Co., and M/s B & Co. cease to exist and a separate partnership deed has been executed on \_\_\_\_\_ amongst the partners of the merged firm.
3. That the following persons are the partners of the merged firm:

1. Mr. \_\_\_\_\_ Membership No. \_\_\_\_\_
2. Mr. \_\_\_\_\_ Membership No. \_\_\_\_\_
3. Mr. \_\_\_\_\_ Membership No. \_\_\_\_\_
4. Mr. \_\_\_\_\_ Membership No. \_\_\_\_\_
5. Mr. \_\_\_\_\_ Membership No. \_\_\_\_\_
6. Mr. \_\_\_\_\_ Membership No. \_\_\_\_\_
7. Mr. \_\_\_\_\_ Membership No. \_\_\_\_\_
8. Mr. \_\_\_\_\_ Membership No. \_\_\_\_\_



We, all the partners of the merged firm ..... understand that this merger has the following consequences in pursuance to the decision of the Council of the Institute: -

1. That the name of the erstwhile merging firms will be frozen by the Institute.
2. And in case 75% or more of the continuing partners of one or more erstwhile merging firm(s) are willing to demerge, they may demerge after giving due notice and will be entitled to the following benefits :
  - (i) They shall be entitled to the total seniority acquired i.e. their earlier pre-merger seniority and the years during which they were in merged firm.
  - (ii) They are entitled to their old firm's name.

Provided in case, 75% is a fraction, then the same shall be rounded off to the next number.

3. That the date of establishment of the new demerged firm shall be the date of demerger.
4. That to effectuate such demerger, no concurrence/acceptance is required from the other continuing partners of the merged firm. The partners of such demerged firm shall execute a partnership deed. The merged firm as well as the demerged firm shall submit fresh Form 18 as prescribed under the Chartered Accountants Regulations, 1988 to the Institute within the prescribed period.
5. In case of 75% or more of the continuing partners of one of the erstwhile merging firm have demerged after giving due notice to the other partners, then in such case, the merger shall come to an end and if the remaining erstwhile merging firms/partners of the erstwhile merged firm decided to continue, then they should enter into a fresh Merger/Partnership Agreement and shall submit fresh Form 18 as prescribed under the Chartered Accountants Regulations, 1988 to the Institute within the prescribed period.
6. That the demerger in the manner hereinbefore mentioned can be demanded only within a period of 5 years from the date of merger.

IN WITNESS WHEREOF, the Partners of the Merged firm M/s..... hereto set their hands on this agreement in the presence of the witnesses.

WITNESSES :

- |    |   |
|----|---|
| 1. | (i) _____<br>(ii) _____<br>(iii) _____<br>(iv) _____<br>(v) _____ |
| 2. | (vi) _____<br>(vii) _____<br>(viii) _____<br>Partners of M/s..... |



## NOTICE FOR DEMERGER

E- 420

### THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

[See Rule 4(i) of Rules of Merger and Demerger amongst the firms registered with The Institute of Chartered Accountants of India]

1. We the following persons

Name(s)	Membership No.(s)
_____	_____
_____	_____

being partners of M/s \_\_\_\_\_ which merged with the firm M/s \_\_\_\_\_ as per merger agreement dated \_\_\_\_\_ willing to demerge with effect from \_\_\_\_\_

2. We are the partners of the erstwhile Merging firms, M/s \_\_\_\_\_ merged with M/s. \_\_\_\_\_ & constitute the merged firm \_\_\_\_\_ with effect from \_\_\_\_\_. The Merger Agreement dated \_\_\_\_\_ and Form 18 were filed before the Institute on \_\_\_\_\_

3. We constitute 75% or \_\_\_\_\_ % of the continuing partners of the erstwhile firm M/s. \_\_\_\_\_

4. This demerger is within a period of 5 years from the date of merger.

5. We desire that our pre-merger name be allotted to us.

Place: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature of all the Partners of the Erstwhile Firm M/s. \_\_\_\_\_ willing to demerge.

Source- Committee for Capacity Building of CA Firms & Small & Medium practitioners

