Eligibility and Process for effectuating a Fast-Track M&A through a scheme of arrangement

Fast track merger route is eligible for (a) merger between two or more small company(ies) or (b) merger between a holding company and its wholly owned subsidiary. Section 2(85) of the Companies Act, 2013 defines Small Company as below:

"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 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 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;

Fast Track merger does not involve NCLT approval but post the approval of the board of directors of the company, notice would be sent to the registrar of companies and official liquidator inviting objections/suggestions to scheme.

An objective threshold of approval from at least 90% shareholders and 90% creditors (value) would be required. This threshold is higher than the approval threshold required in case of a normal NCLT-route merger being that of majority of shareholder(s) and/or creditor(s) present and validly voting and representing ¾ in value. The broad process for scheme under Fast-Track Route is envisaged as below:

Step	Broad Process for scheme under Fast-Track Route
1	**Conceptualisation stage and pre-board meeting preparations**
	• Review of relevant documents and preparation of project activity plan basis of the shortlisted option.
	• Preparation and finalisation of Scheme of Amalgamation / Arrangement.
	• Complete valuation of the companies and obtain valuation reports from Registered Valuer Obtain Fairness Opinion from a merchant banker.
	• Preparation of secretarial documents in relation to calling of a board meeting.

2	**Filing of Notice of the proposed Scheme with the ROC and OL or persons affected by the scheme in Form No CAA.9 for inviting their objections/suggestions to the Scheme along with Proof of Dispatch to the Persons affected by the Scheme**
3	**Filing of Declaration of Solvency by all the Companies with the Registrar of Companies in Form No. CAA.10 after 30 days of Filing CAA-9 as above along with Balance Sheets**
4	**Drafting of Notices of Meeting of Members, Creditors along with Explanatory Statement as per Rule 6 of CAA Rules, 2016;**
5	Convene the Board Meeting for approval of draft notices of Shareholders and Creditors meeting and determination of Record Date (latest possible) for the Shareholders and Creditors
6	Convening Extra Ordinary General Meeting of Members and Obtaining Written Consent from the Creditors for the approval of Scheme.
7	**Filing of Approved Scheme along with results of the Meeting and Written Consent from Creditors in Form CAA.11 with RD, ROC, OL for obtaining their approval – Physically + Electronically through Form GNL-1 within 7 days of the conclusion of the Meeting**
8	**In case there are no objections on the Scheme, the Central Government through RD shall pass the Final Order in Form No. CAA.12**
9	**Stamp Duty Adjudication on RD Order**
10	**Filing of the Final order with the ROC in Form INC-28 within 30 days of receipt of Final order**
11	**Intimation to Stakeholders w.r.t effectiveness of Scheme of Amalgamation and Arrangement**