

GENERAL CIRCULAR NO. 16/2011

F.No. 51/16/2011/CL-III
Government of India
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi
Dated the 20th April, 2011

**All Regional Directors
All Registrar of Companies
All Official Liquidators**

SUBJECT: AMALGAMATION OF GOVERNMENT COMPANIES.

**Simplified Procedure for amalgamation of Government Companies U/s
396 of the Companies Act, 1956.**

Sir,

The Ministry of Corporate Affairs have been dealing with the amalgamation of Government Companies in the Public Interest under section 396 of the Companies Act, 1956 by following the procedures prescribed under Companies (Court) Rules, 1959 which are applicable to amalgamation under Sections 391-394 of the Companies Act, 1956. Without prejudice to the generality of Section 396, it has now been decided that, in appropriate cases, simpler procedures shall be adopted for the amalgamation of Government Companies under section 396 of the Companies Act, 1956 as given below :-

- (1) (a) Every Central Government Company which is applying to the Central Government for amalgamation with any other Government Company or Companies under the simplified procedure prescribed in this circular, shall obtain approval of the Cabinet i.e. Union Council of Ministers to the effect that the proposed amalgamation is essential in the 'public interest'.
 - (b) In the case of State government companies, the approval of the State Council of Ministers would be required.
 - (c) Where both central and state government companies are involved, approval of both State Cabinet(s) and Central Cabinet shall be necessary.
- (2) (i) A Government Company may, by a resolution passed at its general meeting decide to amalgamate with any other Government Company, which agrees to such transfer by a resolution passed at its general meeting;
 - (ii) Any two or more Government Companies may, by a resolution passed at any general meetings of its Members, decide to amalgamate and with a new Government Company.

(3) Every resolution of a Government Company under this section shall be passed at its general meeting by members holding 100% of the voting power and such resolution shall contain all particulars of the assets and liabilities of amalgamating government companies.

(4) Before passing a resolution under this section, the Government Company shall give notice thereof of not less than 30 days in writing together with a copy of the proposed resolution to all the Members and creditors.

(5) A resolution passed by a Government Company under this section shall not take effect until (i) the assent of all creditors has been obtained, or (ii) the assent of 90% of the creditors by value has been received and the company certifies that there is no objection from any other creditor.

(6) The resolutions passed by the transferor and transferee companies along with written confirmation of the Cabinet decision referred to in para (i) shall then be submitted to the Central Government which shall, if it is satisfied that all the requirements of Section 396 and of this circular, have been fulfilled, order by notification in the Gazette that the said amalgamation shall take effect.

(7) The order of the Central Government shall provide:-

- a) for the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of any transferor company
- b) that the amalgamation of companies under the foregoing sub-sections shall not in any manner whatsoever affect the pre-existing rights or obligations and any legal proceedings that might have been continued or commenced by or against any erstwhile company before the amalgamation, may be continued or commenced by, or against, the concerned resulting company, or transferee company, as the case may be.
- c) for such incidental, consequential and supplemental matters as are necessary to secure that the amalgamation shall be fully and effectively carried out

(8) The Cabinet decision referred to in para (1) above may precede or follow the passing of the resolution referred to in para (2).

(9) When an order has been passed by the Central Government under this section, it shall be a sufficient conveyance to vest the assets and liabilities in the transferee.

(10) Where one government company is amalgamated with another government company, under these provisions, the registration of the first-mentioned Company i.e. transferor company, shall stand cancelled and that Company shall be deemed to have been dissolved and shall cease to exist forthwith as a corporate body.

(11) Where two or more Government Companies are amalgamated into a new Government Company in accordance with these provisions and the Government Company

so formed is duly registered by the Registrar, the registration of each of the amalgamating companies shall stand cancelled forthwith on such registration and each of the Companies shall thereupon cease to exist as a corporate body.

(12) The amalgamation of companies under the foregoing sub-sections shall not in any manner whatsoever affect the pre-existing rights or obligations, and any legal proceedings that might have been continued or commenced by or against any erstwhile company before the amalgamation, may be continued or commenced by, or against, the concerned resulting company, or transferee company, as the case may be.

(13) The Registrar shall strike off the names of every Government Company deemed to have been dissolved under sub-sections (10) to (11).

(14) Nothing in this Circular shall prevent government companies from applying for amalgamation before the Central Government under Sections 391-394 of the Companies Act.

Sd/-

(Rita Dogra)

Under Secretary to the Govt. of India