

Exposure draft
MERGER AND DEMERGER GUIDELINES FOR CMA FIRMS

In exercise of the powers conferred by Section 15 (2) (ja) of the Cost Accountants Act, 1959, as amended from time to time, the Council of the Institute of Cost Accountants of India hereby makes the following Guidelines, namely:-

MERGER AND DEMERGER GUIDELINES FOR CMA FIRMS

*(As applicable to the Firms registered with
The Institute of Cost Accountants of India)*

1. Short Title, Commencement and Applicability

- 1.1 These Guidelines are called the “Merger and Demerger Guidelines for CMA Firms”
- 1.2 These guidelines are applicable to the firms as defined in section 2(ea) of the Cost Accountants Act, 1959 as amended from time to time.
- 1.3. These guidelines shall be effective from the date of its notification in the gazette of India.

2. Definitions

Unless the context otherwise requires, the expressions used in these Guidelines shall have the meanings respectively assigned to them hereunder:

- a) **"Act"** means the Cost Accountants Act, 1959 (No. 23 of 1959).
- b) **"Committee"** shall mean Membership Facilities Committee of the Council as constituted under Section 17 of The Cost Accountants Act, 1959
- c) **"Council"** means the Council of the Institute constituted in accordance with Section 9 of the Cost Accountants Act, 1959.
- d) **"Demerger"** shall mean restructuring of a Firm, resulting into two or more separate Firms.
- e) **"Firm" / "CMA Firm"** shall have the meaning assigned to it in section 2(ea) of the Act.
- f) **"Institute"** or **"ICMAI"** shall mean the Institute of Cost Accountants of India constituted by The Institute of Cost Accountants Act 1959 (23 of 1959).
- g) **"Merger"** shall mean coming together of two or more Firms to form a single Firm consolidating assets and liabilities.

3. Procedure for Merger

- 3.1 A merger shall be carried out by entering into a written Merger Agreement, a copy of which shall be submitted to the Institute within 30 (thirty) days of the date of

execution. The relevant details of the Merger Agreement shall be provided to the Institute in Form No. MA (Annexed).

3.2 The reconstituted firm shall also file the revised partnership deed or LLP Agreement, as the case may be, with the Registrar of Firms or Registrar of Companies, in accordance with the applicable law.

3.3 Upon effecting the merger:

1. The Institute shall freeze the name(s) of the merging firm(s) as of the effective date of merger.
2. Freezing of the name(s) implies recording the same in the Institute's database and prohibiting its re-allotment for a period of seven (7) years from the date of merger.
3. The partners/proprietor of the frozen firm shall not undertake any professional activity in the name of such firm (Firm Registration Number) during the frozen period.
4. The frozen name may be restored (unfrozen) in the event of a valid demerger in accordance with these Guidelines.

3.4 The Merger Agreement shall compulsorily incorporate the terms and conditions governing a prospective demerger, which may be amended with the consent of all concerned partners at the relevant time.

3.5 Upon the merger of the firm registered with the ICMAI, the Name, Firm Registration Number and date of establishment shall be determined as per below :

Firm 1	Firm 2	Merged firm Name & Year	FRN & Date of Establishment	Firm Name Freeted
ABC & Co., FRN: - 101 DOE: 1962	XYZ & Co. FRN : - 201 DOE : 2011	ABC & Co., 2025	FRN: - 101 DOE: 1962	XYZ & Co.
ABC & Co., FRN: - 101 DOE: 1962	XYZ & Co. FRN : - 201 DOE : 2011	XYZ & Co., 2025	FRN: - 201 DOE: 2011	ABC & Co.
ABC & Co., FRN: - 101 DOE: 1962	XYZ & Co. FRN : - 201 DOE : 2011	ABCXYZ & Co., 2025	FRN: - 101 DOE: 1962	ABC & Co. XYZ & Co.
ABC & Co., FRN: - 101 DOE: 1962	XYZ & Co. FRN : - 201 DOE : 2011	SUVW & Co., 2025	FRN: - 101 DOE: 1962	ABC & Co. XYZ & Co.

4. Procedure for Demerger

- 4.1 A demerger shall be permitted only in cases where the merger has been previously approved and effected under these Guidelines.
- 4.2 A request for demerger may be made any time after completion of one (1) year but before seven (7) years from the effective date of merger, subject to compliance with other applicable provisions. Necessary intimation of Demerger should be given within 30 days from the date of demerger to the Institute in Form No. DM (Annexed)
- 4.3 The Merger Agreement shall include pre-agreed clauses pertaining to demerger. Accordingly, no further consent shall be required from the continuing partners of the merged firm at the time of demerger.
- 4.4 If 75% or more of the continuing partners of one of the erstwhile merging firm(s) elect to demerge, they shall be permitted to do so by giving written notice to the other partners and to the Institute. Compliance with applicable provisions of the LLP Act, 2008 or other allied laws shall be the responsibility of the firm(s).
- 4.5 Upon such demerger by 75% or more of the continuing partners of an erstwhile firm:
1. The merger arrangement shall be deemed to have ceased.
 2. If the remaining partners intend to continue, they shall execute a fresh Merger or Partnership Agreement.
- 4.6 The demerged firm shall be entitled to resume practice under its original trade name and Firm Registration Number that existed prior to merger.
- 4.7 Upon demerger, the trade name of the Merged Firm will remain frozen in the records of the Institute for a period of 3 years from the date of demerger and can not be used any other firm during this period.
- 4.8 The Institute shall issue a Constitution Certificate to the demerged firm specifying:
1. The original date of establishment
 2. The date of merger
 3. The date of demerger
- 4.9 For the purpose of determining the seniority of the firm, the total duration shall be **reckoned** from its original date of establishment.

5. Miscellaneous Provisions

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- 5.1 In the event of death, insolvency, voluntary surrender of Certificate of Practice, or any other circumstances referred to in Section 20 of the Cost Accountants Act, 1959, the merged entity shall not ipso facto be deemed to have been demerged.
- 5.2 If any difficulty arises in giving effect to the provisions of these Guidelines, the Council may, by general or special-order issue necessary clarifications by circulars which is not inconsistent with provisions of the Act as considered necessary or expedient for the purpose of removing the difficulty.

INTIMATION OF MERGER AGREEMENT

[See clause 3 of the Merger and Demerger Guidelines for CMA Firms]

We, (1)& (2), partners of (1)M/s & (2) M/s..... have executed a Merger Agreement on this day of at.....

1. M/s, a Partnership/Proprietorship Firm of Cost Accountants having its registered Head Office at duly registered with the Institute of Cost 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
- (iii) Membership Nos.

2. M/s, a Partnership/Proprietorship firm of Cost Accountants having its registered Head Office at duly registered with the Institute of Cost 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
- (iii) Membership Nos.

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

- (i) That the name of the merged firm will be..... and the firm registration number will be and the date of establishment of the merged firm is
- (ii) That this merger will come into force w.e.f. 20XX, whereafter, the merging firm i.e. M/s and M/s will cease to exist and, accordingly, a separate partnership deed has been executed on amongst the partners of the merged firm.

4. That the following persons are the partners of the merged firm:

1. CMA Membership No.

2. CMA Membership No.
3. CMA Membership No.
4. CMA Membership No.
5. CMA Membership No.
6. CMA Membership No.

We, 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 demerged firm shall submit Form DM as prescribed 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 decide to continue, then they should enter into a fresh Merger/Partnership Agreement and shall submit fresh Form MA as prescribed, to the Institute within the prescribed period.
6. That the demerger in the manner hereinbefore mentioned can be demanded only within a period of 7 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.
- 2.

PARTNERS OF:

- (i)
- (ii)
- (iii)
- (iv)
- (v)
- (vi)

INTIMATION FOR DEMERGER

[See clause 3 and 4 of the Merger and Demerger Guidelines for CMA Firms]

1. We the following persons

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

being partners of M/s, the firm formed as per Merger Agreement dated..... now willing to demerge with effect from

2. We are the partners of the erstwhile merging firm/s, M/s merged with M/s & constitute the merged firm with effect fromvide, the Merger Agreement dated and Form MA, 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 7 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