# LAW NOTES FOR CA-FINAL



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## Compromises, arrangements and amalgamation of co.'s

### 391, 393, 394A Procedure for compromise or arrangement:

1. Application to court: by co, member, creditor, liquidator (in case co is wound up) along with scheme. Parties are co with creditors/members or class of these.
2. Directions by court: to hold meeting if it is satisfied that scheme is workable & reasonable. Court can't dispense with requirement of meeting even if scheme is unanimously approved by shareholders.
3. Notice to CG: by Court, to make representation. Court to consider representations but not bound.
4. Notice for meeting: to members/creditors by post. *Contents: terms & effects of compromise, intt of debenture trustees and director/manager along with nature and type of intt they have.*
5. Approval of scheme by members/creditors: To be approved by majority + by 3/4$^{th}$ value holders present and voting. Must be approved by equity as well as preference shareholders.
6. Scheme to be bonafide: court to be satisfied that scheme if fair, reasonable, workable, feasible, financially viable, in intt of public/co. parties. All material facts have been disclosed to court.
7. It is the discretion of court to sanction or reject the scheme.
8. Scheme to be effective after filing order of court with registrar. Scheme can't be varied or amended by agreement b/w parties.

### 391, 392 Powers of the court:

1. To give directions to co wrt holding of meeting.
2. To stay any suit or proceedings after application is made and it is disposed off
3. To sanction scheme
4. To modify and supervise the carry out of scheme to make it workable
5. To order winding up (deemed u/s 433) of co if after sanctioning it is still unworkable.

**394 Reconstruction/amalgamation by sale of undertaking:** (demerger)

1. Application to court: along with scheme of amalgamation or recons.
   - For demerger of one or more undertaking of co, above procedure is also to be followed.
   - Scheme to provide for t/f of assets/liab. to transferee co along with terms and details of calculation of exchange ratio.
   - Transferee must be co and transferor may be any body-corporate whether co or not. No need of specific power in MOA.
2. Duties of court before making order: court should be satisfied that scheme is approved by requisite majority (i.e. same as above), CG representations are considered, scheme is bonafide, scheme not to cause any obstruction in growth of industry & economy. Valuation of shares and exchange ratios are reasonable and fair.
3. Order of the court: for the t/f of property & liabilities not contracts of personal service (i.e. workers can claim compensation for premature termination).
   - Order may also require discharge of purchase consideration & dissenting shareholders, legal proceedings filed by/ against to be continued, such other necessary orders.
   - Court may also order dissolution without winding up on report of official liquidator if affairs are not conducted in a manner detrimental to intt of public/ members.
4. Filing with registrar: Order of the court to be filed within 30 days.

**395 recons by sale of shares/takeover:**

1. Offer to acquire shares: is given to the shareholders of transferor co by transferee co at stated price within mentioned period (max 4 months)
2. Acceptance of offer: to be given by atleast 90% holders excld. those shares which are already held by transferee co
3. Transferee co's right to acquire shares of dissenting shareholders: within 2 months after the expiry of the offer. It is a right not obligation.
4. Dissenting shareholder's application to court: within 1 month of receipt of notice for compulsory acquisition from transferee co. Only those shareholders can apply who have recd such notice.

5. Orders of the court: generally court not to intervene except when scheme is unfair and amount offered to shareholders is inadequate. To be proved by dissenting shareholders.
6. Decision: if application not made or rejected then original terms to prevail but if application sustained then transferee co shall not any right to acquire shares of dissenting.

**396 Amalgamation of co in public interest:**

1. Preparation of draft order of the scheme: Order by CG only if amalgamation is in public intt. Section 394/395 not to apply. Rights and interests of all parties shall remain same.
2. Determination of compensation: amalgamated co shall pay compensation if rights are less than before. It is to be prescribed by CG's authority. Amount and parties entitle to compensation shall be published on OG.
3. Appeal against compensation: to CLB within 30 days of issue of notification.
4. Opportunity of being heard to co's: draft order of amalgamation to be sent by CG for suggestions & objections of co's and consider then. Atleast 2 months shall be given.
5. Final order of amalgamation: only if no appeal lies against compensation by notification
6. Terms of final order: shall specify all rights, privileges, property, liabilities, suits etc and others.

**396A preservation of books of accounts:**

- Prior approval of CG is required for disposing books & papers of amalgamating or takeover co.
- CG shall conduct examination by appointing an officer.
- Officer shall check whether any offence was committed in formation/promotion, mgt **or** during amalgamation/takeover of co.

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