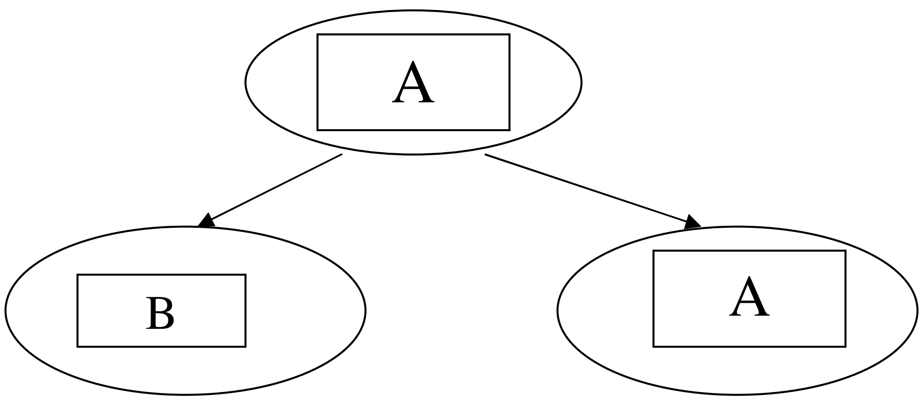
DEMERGER

Demerger

'Demerger' has not been defined in the Companies Act, 1956. It is covered under the expression arrangement, as defined in Section 390(b) of the Companies Act, 1956.

Demerger can be understood as:-

- Part of its undertaking is transferred to a newly formed company or an existing company and the remainder of the first company's division/undertaking continues to be vested in it; and
- Shares are allotted to certain of the first company's shareholders.



Advantages of de merger:

The advantage of de merger is that the shareholders get access to better and updated information about the business as separate financial details are provided. Demerger is to revive a company's flagging commercial fortunes, or simply to lift its share price.

Disadvantage of a de merger:

Since the size of the de merged firms are smaller, tapping the credit market may be a difficult task especially for a small company who may not be able to afford the expensive finances.

Procedure For Demerger:

Under the scheme of arrangement with approval of the court U/s 391 of the Companies Act, 1956. The process (checklist) is as follows:-

Sl. No	Activity	Target/Date (Tentative)	Responsibility
1.	Approval by Board		
2.	Intimation to the Stock Exchange immediately after the meeting of the Board (Clause 29 & 36 of the Listing Agreement)		
3.	**Finalisation of:** (i) Draft - Scheme of Arrangement, Demerger and Reconstruction (hereinafter referred as "Scheme") (ii) Statement u/s 393 (iii) Notice and Proxy (iv) Notice for publication (v) Drafts of Application to court and summons for Directions. (vi) Briefing of ________________, Advocate,		
4.	Meeting of Committee of Directors for approval of Scheme		
5.	Application and approval of Mumbai Stock Exchange under clause 24 (f) of the Listing Agreement and its approval to the Scheme		
6.	On approval, copy of Scheme to FIs and Banks		
7.	Filing of Application in concerned High Court for holding meeting(s) of the Members and Creditors.		
8.	Order of court for conducting meetings of Members and Creditors		
9.	Registrar's Court to settle/ approve Drafts of Statement u/s 393 and Form of proxy		
10.	(i) Despatch of Scheme to the Members and Creditors. Simultaneously, to the Stock Exchange/ FIs/ Banks to the scheme. (ii) To obtain NOC of FIs/ Banks to the Scheme.		

11.	Publish Notice of meeting in Newspaper.		
12.	Meetings of the Members and Creditors		
13.	Filing of Reports of Chairman to the court		
14.	Filing of petition to the Court for confirmation of Scheme		
15.	Preliminary hearing of Court to order- Date of hearing of the petition. Service of Notice on Regional Director (RD)/ Registrar of Companies (ROC) Advertisement of Notice in newspapers.		
16.	Service of Notice on RD/ ROC/ OL		
17.	Advertisement of Notice in newspaper		
18.	Follow- up RD/ ROC and obtaining No Objection to sanction of the Scheme by Court		
19.	Final Hearing of the petition		
20.	Getting the formal order approved, by the Registrar in the court, obtaining certified copy of order to the High Court		
21	Filing of the certified copy of the order with ROC		

Tax Aspect:

Definition of demerger U/s Section 2(19AA) of the Income Tax Act: The definition of 'demerger' as given under Section 2(19AA) of the Income Tax Act is very restrictive, and subject to certain conditions. Some of the conditions mentioned are:

- The first condition is that all the property of the undertaking should become the property of the resulting company.
- Conditions of Sec 391 to Sec.394 should be satisfied.
- Similarly, all the liabilities relating to the undertaking immediately before the demerger should become the liabilities of the resulting company.
- Explanation 2 provides that not only identified liabilities should be transferred to the resulting company, but also general borrowings in the ratio of the value of the assets transferred to the total value of the assets of the demerged company.
- Assets and liabilities have to be transferred at book value.

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