



The Operational Playbook: Step-by-Step RTO Execution

A successful reverse merger requires meticulous orchestration across multiple regulatory domains and procedural checkpoints. What follows is a granular walkthrough of the execution sequence, from initial planning through post-merger integration, enabling corporate decision-makers to anticipate timelines, resource requirements, and critical decision gates.

Phase 1: Pre-Deal Planning and Target Identification (Weeks 1-6)

Step 1: Internal Strategic Assessment and Board Approval

The process commences with introspective evaluation within the acquiring private entity. The board of directors must formally adopt a resolution articulating the strategic rationale for pursuing an RTO—whether domicile repatriation, liquidity creation, or cost optimization against traditional IPO pathways. This resolution serves as documentary evidence of considered strategic decision-making, particularly important for subsequent regulatory scrutiny and minority shareholder protection.

Simultaneously, the Memorandum of Association (MOA) and Articles of Association (AOA) of both the private and shell companies must be reviewed to confirm that merger/amalgamation powers exist within their object clauses. If absent, amendments must be initiated immediately, as these clauses form the statutory foundation for NCLT-eligible transactions.

Step 2: Shell Company Identification and Archaeological Due Diligence

The selection of an appropriate shell company represents the transaction's pivotal inflection point. The target shell must satisfy multiple criteria:

- **Clean regulatory history:** No outstanding compliance violations, fraud allegations, or delisting warnings from SEBI or stock exchanges.
- **Minimal liabilities:** Absence of contingent environmental liabilities, pending taxation disputes, or undisclosed litigation.
- **Market capitalization alignment:** Sufficient size to absorb the private entity's business operations without triggering extraordinary valuation distortions.
- **Sector flexibility:** Ideally, sectors without sectoral restrictions (e.g., insurance, banking, aviation) that would impose additional regulatory burdens.



Due diligence must be exhaustive and forensic in character: Engage independent legal counsel to conduct comprehensive searches through SEBI filings, NCLT case databases, and adjudication records. Commission forensic accounting reviews examining the shell company's historical financial statements, tax compliance records, and banking relationships. Investigate potential pending litigation through regional civil courts, income tax benches, and environmental authorities. This archaeological exercise frequently unearths dormant liabilities—outstanding statutory dues, environmental non-compliance, or prior director disqualifications—that trigger post-closing recriminations.

Step 3: Preliminary Commercial Negotiations

Once a shell candidate emerges from due diligence, preliminary commercial negotiations commence with the shell company's board and major shareholders. These discussions establish the share exchange ratio—the fundamental consideration determining private entity shareholder ownership in the merged public entity.

The exchange ratio calculation demands sophisticated valuation rigor. Engage SEBI-registered merchant bankers to prepare independent valuation reports utilizing comparable company analysis, discounted cash flow modeling, and precedent transaction benchmarking. The valuation report becomes central evidence for subsequent NCLT proceedings, with auditors, judges, and regulatory authorities scrutinizing every assumption and calculation.

Step 4: Appointment of Transaction Advisors

Assemble a multidisciplinary transaction team: lead transaction counsel experienced in Companies Act mergers, SEBI regulations, and NCLT procedures; merchant banking advisors; financial auditors; tax specialists; and corporate secretaries. These advisors prove indispensable for navigating the labyrinthine regulatory architecture and coordinating approvals across multiple government bodies.

Phase 2: Transaction Documentation and Internal Approvals (Weeks 7-14)

Step 5: Preparation of the Scheme of Arrangement

The Scheme of Arrangement (typically 30-50 pages) serves as the binding contractual foundation for the entire transaction. This document articulates:

- Parties and registered offices of both merging entities
- Operative date of the merger (typically 60-90 days post-NCLT sanction)



- Share exchange ratio and mechanics (proportion of public shares each private shareholder receives)
- Identification of unlisted company shareholder class eligible for the opt-out provision under Section 232(3)(h)
- Treatment of existing debts, liabilities, and contingencies
- Licenses, approvals, and regulatory clearances and responsibility for obtaining them
- Representations and warranties regarding corporate authority, financial accuracy, and absence of material adverse changes
- Conditions precedent to effectiveness (NCLT sanction, stock exchange NOC, regulatory approvals)
- Dispute resolution mechanisms

The Scheme undergoes iterative refinement with input from transaction counsel, merchant bankers, and both companies' audit committees and independent director committees. This document ultimately forms the centerpiece of NCLT proceedings and requires judicial sanction before operative effectiveness.

Step 6: Board Resolutions and Shareholder Approval

Both the private and shell companies' boards must adopt formal resolutions approving the draft Scheme of Arrangement. The board resolution must be adopted at a duly constituted meeting with proper notice (minimum 7 days pre-notice under Section 173(3) of the Companies Act).

Following board approval, shareholder meetings are convened at both entities. The requisite voting thresholds differ:

- Private company: Typically requires approval from shareholders holding three-fourths (75%) of voting shares.
- Shell company: Requires approval from three-fourths (75%) of voting shares among shell shareholders, plus approval from a majority of public shareholders of the listed shell company (a higher threshold reflecting public shareholder protection).

The shareholder resolutions must be passed by the specified majorities, with detailed meeting minutes documenting voting outcomes. These resolutions demonstrate stakeholder consensus and form critical evidence for subsequent NCLT hearings.



Phase 3: NCLT Application and Scheme Sanction (Weeks 15-30 for Standard Route; 8-12 Weeks for Fast-Track)

Step 7: Filing the NCLT Application (Form NCLT-1)

Once internal approvals are secured, the transferee company (the shell company, in most RTOs) submits a formal application to the appropriate bench of the National Company Law Tribunal under Section 230 of the Companies Act, 2013. The application must be accompanied by:

- Form NCLT-1: The primary application form
- Form NCLT-2: Notice of admission documenting compliance with procedural requirements
- Form NCLT-6: Comprehensive affidavit disclosing:
 - Latest financial statements (typically preceding 3 financial years)
 - Latest auditor's reports
 - Details of pending judicial or quasi-judicial proceedings
 - Information regarding any capital reduction
 - Scheme of Corporate Debt Restructuring (if applicable), with consent from 75%+ of secured creditors
- Copy of the draft Scheme of Arrangement
- Prescribed filing fees

The NCLT bench, upon receipt, reviews the application for procedural completeness and jurisdictional authority.

Step 8: NCLT Directions on Class Meetings

If the tribunal determines the scheme is prima facie appropriate, it directs the company to conduct a class meeting of creditors and shareholders to seek approval. The tribunal simultaneously issues detailed directions specifying:

- Classes of creditors or members eligible to vote (reflecting stakeholder groups with materially differing interests)
- Date, time, and venue of the meeting



- Chairperson appointment and their terms
- Quorum requirements (typically based on number of creditors/shareholders or voting value)
- Voting methodology: in person, by proxy, postal ballot, or electronic means
- Advertisement protocols and timing
- Notices to sectoral regulators and government departments

Step 9: Comprehensive Notice and Advertisement Regime

The tribunal mandates publication of meeting notices in two newspapers (one English, one vernacular, with wide circulation in the shell company's registered jurisdiction) at least 30 days prior to the scheduled meeting date. Simultaneously, formal notices are dispatched to:

- All creditors, members, and debenture holders (via registered post, courier, email, or hand delivery)
- Statutory authorities: Central Government, Registrar of Companies (ROC), Income Tax Department, Reserve Bank of India (if bank-related), Environmental departments, and sectoral regulators
- Court-appointed chairperson receives a detailed notice package including the scheme and disclosure statements

Each notice submission is documented through an affidavit confirming timely and proper service.

Step 10: Sectoral Regulator Representations (T+30 Days)

Statutory authorities and sectoral regulators (RBI for financial institutions, Ministry of Civil Aviation for airline RTOs, etc.) receive 30 days from notice to file written representations with the tribunal regarding transaction compliance with sectoral regulations. These representations become part of the tribunal's record and influence its judicial discretion during subsequent hearings.

Step 11: Shareholder and Creditor Voting (The Class Meeting)

On the tribunal-specified date, the class meeting commences under the chairmanship of the tribunal-appointed chairperson. Eligible creditors and shareholders vote on whether to approve the Scheme of Arrangement. The Scheme typically requires approval from shareholders/creditors representing at least three-fourths (75%) of the voting value present and voting in person, by proxy, or by postal ballot.



A detailed affidavit documenting voting outcomes, including shareholder names, shareholding percentages, and voting positions, is filed with the tribunal within 3-7 days following the meeting conclusion (Form CAA 4).

Step 12: Post-Meeting Petition to NCLT (T+7 Days Post-Meeting)

Following affirmative voting at the class meeting, the acquiring company (or, if the acquiring company defaults, creditors holding requisite standing) files a Petition for Scheme Sanction with the tribunal (Form CAA 5). This petition is accompanied by:

- Affidavit of voting results (Form CAA 4)
- Copies of all shareholder communications and notices
- Auditor's fairness reports
- Merchant banker's valuation reports
- Affidavits addressing any objections raised

The tribunal acknowledges the petition and fixes a date for the sanction hearing, typically 10-14 days following petition filing.

Step 13: Sanction Hearing and NCLT Order

The tribunal conducts a final sanction hearing, during which the companies' counsel present arguments on scheme fairness, shareholder protection, and regulatory compliance. Creditors or shareholders holding contrary positions may present objections. The tribunal, exercising judicial discretion, determines whether the scheme is fair, equitable, and compliant with law. Upon satisfaction, the tribunal issues an Order of Sanction (Form CAA 6), which may incorporate modifications to the scheme as deemed necessary.

Timeline Considerations:

- Standard NCLT Route: 9-12 months from application filing to final sanction order
- Fast-Track Route (Section 233): 3-4 months for wholly-owned subsidiary mergers or inter-group mergers, conditional on absence of ROC or Official Liquidator objections

Step 14: ROC Filing and Operative Date

Within 30 days of the NCLT sanction order, a certified copy of the sanction order must be filed with the Registrar of Companies of the relevant jurisdiction. Upon successful ROC filing, the merger becomes operatively effective, typically on a date specified in the scheme (the "Operative Date"). From this point forward, all assets, liabilities, intellectual property, contracts, and



regulatory approvals of the private company vest automatically in the shell company, now the merged listed entity.

In Part 3, we will discuss how internal audit functions can practically transform themselves—focusing on tools, methodologies, and best practices that enable internal audit to deliver strategic value and meet stakeholder expectations in a dynamic business environment.

Disclaimer: *This article provides general information existing at the time of preparation and we take no responsibility to update it with the subsequent changes in the law. The article is intended as a news update and Affluence Advisory neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this article. It is recommended that professional advice be taken based on specific facts and circumstances. This article does not substitute the need to refer to the original pronouncement.*

