

FAST TRACK MERGER UNDER COMPANIES ACT, 2013

The Ministry of Corporate Affairs had notified sections 231 (except sub-section 11 & 12) to Section 233 and Section 235 to Section 240 relating to Compromise and Arrangement of Companies vide Notification dated 7th December, 2016 to be effective from 15th December, 2016. Further vide Notification dated 15th December, 2016 the MCA had notified Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

Section 233 of the Companies Act, 2013 provides for **Fast Track Approach** for merger and amalgamation between two small companies* or between holding company and its wholly owned Subsidiary Company.

*Small Company as defined under Section 2 clause 85 of the Companies Act, 2013.

The Ministry vide its Circular No. 30/2014 dated 17th July, 2014 clarified that transactions arising out of Compromises, Arrangements and Amalgamations are dealt with specific provisions of Companies Act, 2013/ 1956, thus will not attract the requirements of Section 188 of the Companies Act, 2013.

Section 233 of the CA, 2013 read with Rule 25 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 provides that

- the companies (Transferor and Transferee Company) shall issue a notice in **Form CAA 9** to invite objections/ suggestions from Registrar of Companies and Official Liquidator or persons affected by the scheme within 30 days of such notice.
- Declaration of Solvency shall also be filed by each company involved in the scheme of merger/ amalgamation in **Form CAA-10** before convening the meeting of members and creditors for the approval of the scheme.
- The scheme shall be approved by the **members of respective companies at a general meeting holding 90% of total number of shares** considering the objections/ suggestions, if any received from Registrar of Companies and Official Liquidator and also be approved by **9/10th in value of the creditors of respective companies**.

The notice of the meeting to the members and creditors shall be accompanied by:

(a) a statement disclosing the details of Merger and Amalgamation, to the extent applicable (as referred in section 230 (3) of the Act read with rule 6 (3) of rule Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

(b) The declaration of solvency in **Form No.CAA.10**

(c) A copy of the scheme.

The **transferee company**, within **seven days** after the conclusion of the meeting of members and creditors, shall file a copy of the approved scheme by the members and creditors, along with a report of the result of each of the meetings in **Form no. CAA.11** with the Central Government (Regional Director)**, along with the fees as provided under the Companies (Registration Offices and Fees) Rules, 2014.

The copy of the scheme shall also be filed along with **Form No. CAA.11** with the Registrar of Companies in **Form No. GNL-1** alongwith requisite fees and to the Official Liquidator through hand delivery / by registered post /speed post.

**Pursuant to notification dated 19th December, 2016, the powers of Central Government in Sub-sections (2), (3), (4), (5) and (6) of section 233 have been delegated to the Regional Director.

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Objections or Suggestions by Registrar of Companies or the Official Liquidator

The Registrar of Companies or the Official Liquidator may communicate any objections or Suggestions to the Regional Director within a period of 30 days of the receipt of the scheme. If the Registrar or the Official Liquidator has no objections or suggestions to the scheme, the Regional Director will register the scheme and issue a confirmation thereof to the companies.

If the Regional Director after receiving the objections or suggestions or for any reason is of the opinion that such a scheme is not in public interest or in the interest of the creditors, it may file an application in **Form CAA 13** before the **Tribunal within a period of sixty days** of the receipt of the scheme stating its objections and requesting that the Tribunal may consider the scheme under section 232.

The confirmation order of the scheme issued by the Regional Director or Tribunal shall be filed, **within thirty days of the receipt of the order of confirmation in Form INC-28** with the Registrar of Companies by the transferor and transferee companies. The Registration of scheme shall be deemed to have effect of dissolution of Transferor Company without process of winding up.

It shall be noted that the companies falling within the purview of section 233 of the Act may opt to undertake such schemes of arrangement or compromise under sections 230 to 232 of the Act including where the condition of obtaining approval from creditors being 9/10th in value as prescribed in section 233(1)(d) of the Companies Act, 2013 has not been met. **(Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016)**

Effects of Registration of Scheme

Section 233(9) states the following effects of Registration of Scheme of Merger or Amalgamation:

- a. transfer of property or liabilities of the transferor company to the transferee company so that the property becomes the property of the transferee company and the liabilities become the liabilities of the transferee company;
- b. the charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company;
- c. legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company; and
- d. where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company

Regulation 37 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Regulation 37 (6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 was inserted by SEBI vide notification dated 15th February, 2017 stating that nothing in the regulation shall apply to draft schemes which solely provide mergers of wholly owned subsidiary with its holding company.

Provided that such draft scheme shall be filed with the Stock Exchanges for the purpose of Disclosures.

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Hence, In case of listed companies the draft scheme which solely provides for merger of wholly owned subsidiary with its holding company shall not be filed with Stock Exchanges for obtaining No- Objection Letter.