

## Timelines for fast-track mergers

The Ministry of Corporate Affairs (“MCA”) *vide* its notification dated May 15, 2023, has notified amendments in the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (“Principal Rules”), *vide* the Companies (Compromises, Arrangement and Amalgamations) Amendment Rules, 2023 (“Amendment Rules”). The Amendment Rules come into effect from June 15, 2023.

Section 233 of the Companies Act, 2013 (“CA 2013”) read with rule 25 of the Principal Rules prescribe the provisions in relation to the scheme of merger or amalgamation of small companies; or between holding and wholly owned subsidiary company; or between some other class of companies as specified under section 233 of CA 2013. The merger and amalgamation process under section 233 of CA 2013 is commonly known as ‘fast-track merger’.

The Amendment Rules imply specific timelines for government authorities such as the registrar of companies and the official liquidator to provide their observations or confirmation to a scheme of merger under section 233 of CA 2013 read with rule 25 of the Principal Rules.

The Amendment Rules substitute the existing sub-rules (5) and (6) of rule 25 of the Principal Rules. The key amendments are as follows:

1. **Sub-rule (5):** In accordance with section 233 (2) and (3) of CA 2013 read with the substituted sub-rule 5, once the registrar of companies and the official liquidator receive the scheme of merger, they are required to object or provide suggestions to the central government (power delegated to the regional director), within 30 (thirty) days from the receipt of the scheme. Where the objection/suggestion is not received from the registrar and the official liquidator within the said period of 30 (thirty) days and the central government is of the view that the scheme is in the interest of the public or creditors, the central government has been empowered to issue a confirmation order on such scheme within 15 (fifteen) days of the expiry of the said period of 30 (thirty) days. Before the said amendment, there were no time limits specified under sub-rule (5) for the registrar and the official liquidator to provide their objections or suggestions to the scheme.

In addition to the above, MCA has also introduced a deemed approval provision under the substituted sub-rule (5), wherein if the central government fails to issue the confirmation order within 60 (sixty) days of the receipt of the scheme, then it will be deemed that the central government has ‘no objection’ to the proposed scheme and accordingly, the central government will be obliged to issue the confirmation order.

2. **Sub-rule (6):** If the central government is of the view that the objection/suggestion received from the registrar and official liquidator is not sustainable and that the scheme is in the interest of public or creditors, then it will issue the confirmation order within 60 (sixty) days of the receipt of the scheme. However, if the central government is of the view that the scheme is not in the interest of the public or creditors (whether on the basis of such objections or otherwise), then it may file an application before the Tribunal, within 60 (sixty) days of the

receipt of the scheme, requesting the Tribunal to move the scheme under section 232 of CA 2013 and not under section 233.

MCA has also introduced a deemed approval mechanism under the substituted sub-rule (6), wherein if the central government does not provide any confirmation order or file an application to the Tribunal within 60 (sixty) days of the receipt of the scheme, then it will be deemed that the central government has 'no objection' to the scheme and accordingly, the central government will be obliged to issue the confirmation order.

With the above amendments to the Principal Rules, it is evident that the MCA is set to expedite the process of fast-track merger, by specifying the time limits to the government authorities for communicating their objections/suggestions in a timely manner, which will enable companies to restructure their businesses swiftly under the fast-track merger process.

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### This Prism has been prepared by:



**Sidharrth Shankar**

Partner



**Sourav Nath**

Principal Associate



**Ashish Baid**

Company Secretary



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