

Central Government notifies key amendments to the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016

The Ministry of Corporate Affairs (“MCA”), *vide* notification dated September 9, 2024, (“**Notification**”) has introduced a significant development in reverse flipping regulations under the Companies (Compromises, Arrangements, and Amalgamations) Amendment Rules, 2024, (“**Amendment**”). This Amendment establishes new compliance guidelines for merger where the transferor foreign company, incorporated outside India, is a holding company, and the transferee company, incorporated in India, is its wholly owned subsidiary. Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, (“**Principal Rules**”) allowed overseas companies to merge with Indian companies, provided they obtain prior approval from the Reserve Bank of India (“**RBI**”) and the National Company Law Tribunal (“**NCLT**”). However, with the introduction of Rule 25A(5) through this Amendment, the requirement for obtaining approval of the NCLT is not required and the merger can be undertaken as per fast track merger process under Section 233 of the Companies Act, 2013 (“**CA 2013**”). Therefore, the inclusion of the new clause (5) in Rule 25A of the Principal Rules through this Amendment allows for a more seamless and expeditious merger or amalgamation of a foreign holding company with its wholly owned Indian subsidiary in accordance with the fast-track merger scheme outlined in Section 233 of the CA 2013.

Key amendments under the Notification

1. **Approval of RBI:** Both the foreign holding company and the Indian wholly owned subsidiary is required to obtain prior approval from RBI before initiating any merger or amalgamation process.
2. **Compliance with Section 233 of the CA 2013:** The merger can now be undertaken under the fast track merger process as provided under Section 233 of CA 2013. This is a positive step as the holding company and its subsidiary(ies) can now fast track its merger and not follow the earlier mandated approval of the NCLT which is more time consuming comparatively.
3. **Application to the Central Government:** The transferee Indian company must submit an application to the Central Government under Section 233 of the CA 2013, following the procedures specified in Rule 25 of the Principal Rules. This step involves the submission of necessary documents and declarations for approval. As per sub-section (3) of Section 233 of the CA 2013, the powers of the Central Government have been delegated to Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong.
4. **Declaration for holding company incorporated in a country sharing a land border with India:** If the holding company is incorporated in a country that shares land border with India, then the transferee company at the stage

of making an application under Section 233 of the CA 2013, must provide a declaration as specified under sub-clause (4) of Rule 25A of the Principal Rules.

Conclusion

This Amendment marks a significant shift in regulatory practices, aimed at simplifying the reverse flipping process between a foreign holding company and its wholly owned subsidiary company incorporated in India. By removing the need for NCLT clearance, the new rules provide clarity on compliance requirements while ensuring necessary oversight through approvals from the RBI and the Central Government. This move not only alleviates the burden of lengthy approvals but also signals a commitment to fostering a more conducive environment for investments in India.

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