

MCA PROPOSES EXPANSION OF THE FAST TRACK MERGER FRAMEWORK

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The Ministry of Corporate Affairs (the “**MCA**”) has recently issued a public notice inviting comments on the draft Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2025 (the “**Draft Amendment Rules**”). The Draft Amendment Rules aim to widen the scope of fast-track mergers under Section 233 of the Companies Act, 2013 (the “**CA Act**”) to increase corporate restructuring efficiency. This move follows the announcement made in the Union Budget 2025–26 to simplify and expand the process of fast-track mergers to more classes of companies.

Background

Largely from a tax perspective, mergers are a common tool for corporate restructuring; however, the National Company Law Tribunal (the “**NCLT**”) often takes 9 (nine) to 12 (twelve) months or even longer to approve merger schemes.

In order to expedite the process, the fast-track merger route is available under Section 233 of the CA Act. Section 233 of the CA Act currently allows fast-track mergers between (i) small companies; (ii) a holding company and its wholly owned subsidiary; (iii) start-up companies; and (iv) a start-up company and a small company. The Draft Amendment Rules propose to extend eligibility for availing the fast-track merger route to additional classes of companies. These include:

- (i) mergers between two (2) or more unlisted companies (excluding Section 8 companies) with borrowings from banks, financial institutions or any other body corporate below INR500,000,000 (Indian Rupees Five Hundred Million), and there being no defaults in repayment of such borrowings, along with an auditor’s certificate confirming that the foregoing conditions have been met;
- (ii) mergers between a holding company (listed or unlisted) and one (1) or more of its unlisted subsidiaries, even if not wholly owned.

Presently, in the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 (the “**Merger Rules**”), mergers of only wholly owned subsidiaries with their holding company are permitted under the fast-track merger route. It is now proposed in the Draft Amendment Rules that an unlisted subsidiary even if not a wholly owned subsidiary may also be allowed to merge with its holding company under the fast-track merger route;

- (iii) mergers between one (1) or more subsidiaries of a holding company with one (1) or more other subsidiary of the same holding company, where the transferor company or companies are unlisted; and

- (iv) mergers between foreign holding companies with and into their Indian wholly owned subsidiaries as per Rule 25A(5) of the Merger Rules.

Issues with the Draft Amendment Rules

The intent behind the fast-track merger route is speedy approval of mergers by doing away with the requirement of NCLT approval. However, Section 233 of the CA Act prescribes high thresholds of securing approval, i.e., from at least nine-tenths in value of creditors and shareholders holding at least 90% of the total number of shares. Obtaining approvals in companies with diverse shareholders or multiple creditors can be cumbersome and time-consuming.

Also, the Central Government has the power to refer a scheme of merger to the NCLT if it is of the opinion that the scheme of merger is not in public interest or in the interest of creditors. Given that the term “public interest” is open to wide interpretation in the absence of any criteria in the CA Act or the Merger Rules, this can delay approvals of schemes of mergers, thereby defeating the intent of a fast-track merger.

Separately, the MCA has missed the opportunity to facilitate mergers under the fast-track route of not-for-profit companies by excluding them from the expanded scope.

Our comments

Despite these shortcomings, the Draft Amendment Rules are a step in the right direction. The MCA has responded to the industry demands for greater flexibility and efficiency in mergers and amalgamations by making an effort to address the long-standing challenges associated with the NCLT merger route. The inclusion of more classes of companies to be eligible for fast-track mergers will improve corporate restructuring. The fast-track route is beneficial especially for mergers among intra-group entities, which is often low risk, without having the need to go through the lengthy and cumbersome NCLT approval route.

Another positive inclusion is enabling foreign companies to merge with their wholly owned Indian subsidiaries through the fast-track route which paves way for timely global restructurings.

As highlighted in our earlier [discussion on fast-track mergers](#), the MCA has prescribed definite timelines within which the steps required for fast-track mergers can be completed to avoid undue delays. Schemes of mergers filed through the fast-track route should be approved in a timely manner without unnecessary delays or discretion to facilitate the ease of doing business in India.