

Newsletter for February, 2017
By Amita Desai & Co.



We love to serve and add value to business of our clients



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Greetings and a warm welcome to our February Month's edition of Newsletter!

We are pleased to share our Newsletter for the month of February 2017. The newsletter covers the updates / amendments of [Ministry of Corporate Affairs \(MCA\)](#), [Securities and Exchange Board of India \(SEBI\)](#), [Reserve Bank of India \(RBI\)](#) and [Department of Industrial Policy and Promotion \(DIPP\)](#).

The Newsletter is part of our knowledge sharing initiative. Efforts have been made to share notifications and circular issued by regulatory authorities during the month in concise and in simplified manner. We have tried to provide gist of Fast Track Merger as our Article of the Month.

Please feel free to leave comments, thoughts or suggestions.

We appreciate your support and are so happy to have you as a reader.

With warmest thanks,
Amita Desai & Team



MCA UPDATES:

A. AMENDMENTS IN THE TERRITORIAL JURISIDICION OF NATIONAL COMPANY LAW TRIBUNAL:

Ministry of Corporate Affairs (“MCA”) vide its notification dated February 03, 2017 has made changes in the territorial Jurisdiction of the Benches of National Company Law Tribunal (“NCLT”).

As per the notification the State of Haryana is omitted from NCLT Delhi Bench and is shifted to NCLT Chandigarh Bench.

The link of above notification is as under:

<http://www.egazette.nic.in/WriteReadData/2017/174016.pdf>

B. CLOSURE OF PLACE OF BUSINESS BY FOREIGN COMPANY:

MCA vide its General Circular No. 01/2017 dated February 22, 2017 has issued clarification with respect to provisions of sub-section (2) of section 391 of the Companies Act, 2013 dealing with closure of the place of business of a foreign Company in India, notified recently on December 15, 2016.

With the aforesaid circular MCA has clarified that provisions of sub-section (1) and sub-section (2) of section 391 need to be read harmoniously.

Accordingly, place of business foreign Company can be wound up as if it were a Company incorporated in India on the grounds of misstatement in prospectus only in case if it has issued prospectus or Indian Depository Receipt.

The link of above circular is as under:

http://www.mca.gov.in/Ministry/pdf/GeneralCircular1_2017_23022017.pdf

C. COMPANIES (TRANSFER OF PENDING PROCEEDINGS) RULES, 2017

MCA vide its notification dated February 28, 2017 has amended Companies (Transfer of Pending Proceedings) Rules, 2016.

Ministry has now liberalized the time limit from Sixty days to Six Months for submission of information by petitioner with the NCLT in case of transfer of pending proceeding of Winding Up on the grounds of inability to pay debts from High Court to NCLT.

The link of above notification is as under:

http://www.mca.gov.in/Ministry/pdf/CoTransferofProceedingsAmdtRules_01032017.pdf

D. INVESTOR EDUCATION AND PROTECTION FUND AUTHORITY (ACCOUNTING, AUDIT, TRANSFER AND REFUND) AMENDMENT RULES, 2017

MCA vide its notification dated February 28, 2017 has amended the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer And Refund) Amendment Rules, 2016 (“the Principle rules”).

The Investor Education And Protection Fund Authority (Accounting, Audit, Transfer And Refund) Amendment Rules, 2017 (“IEPF Rules 2017”) are enforced from February 28, 2017.

Following are the Key highlights of the amended IEPF Rules 2017:

- A. Definition of ‘**Company**’ for the purpose of IEPF Rules is amended, **to include the Subsidiary Bank as defined in clause (k) of section 2 of State Bank of India (Subsidiary Bank) Act, 1959.**
- B. Rule 3 relating to amounts to be credited to IEPF Fund, sub rule (2) clause (g) is amended, to **include section 40 (A) of the State Bank of India (Subsidiary Bank) Act, 1959.**
- C. With the above notification, Rule 6 relating to manner of transfer of shares for which dividend has not been paid or claimed for consecutive 7 years or more is amended. Below mentioned are the amendments:
 1. The shares shall be credited **to DEMAT Account of the Authority** to be opened by the Authority for the said purpose, within a period of 30 days of such share becoming due to be transferred to the fund. **Earlier the shares were required to be credited to an IEPF suspense account** (on the name of the Company) with one of the depository participants as may be identified by the Authority.
 2. In case **any dividend which remains unpaid or unclaimed** and period of seven years is completed or being completed during the period commencing from 7th September, 2016 to 31st May, 2017 **the due date of transfer of such shares shall be deemed to 31st May, 2017.**
 3. The Company shall disclose the latest available address, the shareholder concerned regarding transfer of shares 3 months before the due date of transfer of shares and also simultaneously publish a notice in the leading newspaper in English and regional language having wide circulation informing the concerned that the **names of such shareholders and their folio number of DP ID –Client ID** are available on their website duly mentioning the website address. Now the details to disclose are clearly specified.
 4. Now if the shares are pledged or hypothecated under the provisions of Depositories Act, 1996 or shares already been transferred to DEMAT Account of the Authority, the Company shall not transfer such shares to the fund.

5. For the purposes of effecting the transfer, where the shares are dealt with in a depository. Now the Company shall inform the depository by way of **Corporate Action**, where the shareholders have their accounts for the transfer in favour of the Authority. **On receipt of such intimation, the depository shall effect the transfer of shares in favour of DEMAT account of the Authority.** For the purposes of effecting the transfer where the shares are held in **physical form-**

(i) the Company Secretary or the person authorised by the Board shall make an application, on behalf of the concerned shareholders, to the Company, for issue of duplicate share certificates;

(ii) on receipt of the application under clause (a), a duplicate certificate for each such shareholder shall be issued and it shall be stated on the face of it and be recorded in the register maintained for the purpose, that the duplicate certificate is “Issued in lieu of share certificate No for purpose of transfer to IEPF” and the word “duplicate” shall be stamped or punched in bold letters on the first page of the share certificate;

(iii) particulars of every share certificate issued as above shall be entered forthwith in a register of renewed and duplicate share certificates maintained in Form No. SH-2 as specified in the Companies (Share Capital and Debentures) Rules, 2014;

(iv) after issue of duplicate share certificates, the Company shall inform the depository by way of corporate action to convert the duplicate share certificates into DEMAT form and transfer in favour of the Authority.

6. The Company shall make such transfers through corporate action and shall preserve copies for its records.

7. While effecting such transfer, the Company shall send a statement to the Authority in Form No. IEPF 4 containing details of such transfer.

8. The voting rights on shares transferred to the Fund shall remain frozen until the rightful owner claims the shares:

Provided that for the purpose of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the shares which have been transferred to the Authority shall not be excluded while calculating the total voting rights.

9. The Company shall maintain the details of shareholding of each individual shareholders whose shares have been credited to the DEMAT account of the Authority.

10. **All benefits accruing on such shares** e.g., bonus shares, split, consolidation, fraction shares etc., except right issue shall also be **credited to such DEMAT account.**
 11. **The shares held in such DEMAT account shall not be transferred or dealt with in any manner whatsoever except for the purposes of transferring the shares back to the claimant** as and when he approaches the Authority or in accordance with sub-rule (10) and (11) of the amended rules.
- D. Rule 7 relating to Refunds to claimants from fund is also substituted. Following are the changes introduced due to introduction of DEMAT account instead of IEPF Suspense account:
1. After verification of the entitlement of the claimant, the Authority shall issue a refund sanction order with the approval of the Competent Authority and shall **credit the shares to the DEMAT account of the claimant** to the extent of the claimant's entitlement.
 2. In case, claimant is a legal heir or successor or administrator or nominee of any other registered security or in cases where request of transfer or transmission of shares is received after the transfer of shares by company to the Authority, the company shall verify all requisite documents required for registering transfer or transmission and shall issue letter to the claimant indicating his entitlement to the said security and furnish a copy of the same to the Authority while verifying the claim of such claimant.
- E. In form **Forms IEPF-3 and IEPF-5 the word “/bank” and “/Bank Corporate Identification Number (BCIN)” are omitted.**

The link of above notification is as under:

[http://www.mca.gov.in/Ministry/pdf/IEPF Refund Amendment Rules 03032017.pdf](http://www.mca.gov.in/Ministry/pdf/IEPF%20Refund%20Amendment%20Rules%2003032017.pdf)

SEBI UPDATES:

A. INTEGRATED REPORTING BY LISTED ENTITIES:

SEBI vide its circular dated February 06, 2017 mandated requirement of submission of Business Responsibility Report ('BRR') for **top 500 listed entities**. The entities are required to report on key principles pertaining to areas such as environment, governance, stakeholder's relationships, etc.

The International Integrated Reporting Council ('IIRC') has prescribed following Guiding Principles for the preparation of an integrated report, specifying the content of the report and how information is to be presented:

1. **Strategic focus and future orientation:** An integrated report should provide insight of organization's strategy and its relation to the organization's ability to create value in the short, medium and long term.
 2. **Connectivity of information:** An integrated report should show a holistic picture of the combination, interrelatedness and dependencies between the factors that affect the organization's ability to create value over time.
 3. **Stakeholder relationships:** An integrated report should provide picture of nature and quality of the organization's relationships with its key stakeholder and its response to their legitimate needs and interests.
 4. **Materiality:** An integrated report should disclose information about matters that substantively affect the organization's ability to create value over the short, medium and long term
 5. **Conciseness:** An integrated report should be concise
 6. **Reliability and completeness:** An integrated report should include all material matters, both positive and negative, in a balanced way and without material error.
 7. **Consistency and comparability:** The information in an integrated report should be presented: (a) on a basis that is consistent over time; and (b) in a way that enables comparison with other organizations to the extent it is material to the organization's own ability to create value over time.
- The International Integrated Reporting Council ('IIRC') has prescribed Integrated Reporting Framework at following web link:

<http://integratedreporting.org/wp-content/uploads/2015/03/13-12-08-THE-INTERNATIONAL-IR-FRAMEWORK-2-1.pdf>

- Integrated Reporting may be adopted on a voluntary basis from the financial year 2017-18 by top 500 companies which are required to prepare BRR.
- The information related to Integrated Reporting may be provided in the annual report separately or by incorporating in Management Discussion & Analysis or by preparing a separate report.
- The companies may host the Integrated Report on their website and provide appropriate reference to the same in their Annual Report, as a green initiative.

The link of above notification is as under:

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1486375066836.pdf

B. SUBMISSION OF MONTHLY REPORTS BY CUSTODIANS OF SECURITIES:

- SEBI vide its circular dated February 14, 2017 has decided that the custodians shall submit the monthly reports latest by either the end of the third working day of the succeeding month or the 5th of the succeeding month, whichever is later.

The link of above notification is as under:

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1487070339017.pdf

C. INVESTOR GRIEVANCE REDRESSAL MECHANISM:

To enhance the effectiveness of grievance redressal mechanism at Market Infrastructure Institutions (MIIs), SEBI has comprehensively reviewed the existing framework in consultation with the Stock Exchanges and Depositories.

Revamped the Grievance Redressal Mechanism at Stock Exchanges and Depositories provide for following:

1. Investor Grievance Resolution Panel (IGRP)/ Arbitration Mechanism.
2. Investor Protection fund (IPF), Investor Service fund (ISF), Interest on IPF and Interest on ISF.
3. Disciplinary Action Committee, Defaulters' Committee, Investors Service Committee, Arbitration Committee and IPF Trust.

The link of above notification is as under:

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1487844022702.pdf

D. SEBI (FOREIGN PORTFOLIO INVESTORS) (SECOND AMENDMENT) REGULATIONS, 2017:

SEBI vide its notification dated February 27, 2017 has provided SEBI (Foreign Portfolio Investors) (Second Amendment) Regulations, 2017.

The amended regulations shall come into force on the date of their publication in the Official Gazette.

As per the notification:

- **Offshore derivative instrument**" means any instrument, by whatever name called, which is issued overseas by a foreign portfolio investor against securities held by it that are listed or proposed to be listed on any recognised stock exchange in India or or unlisted debt securities or securitised debt instruments, as its underlying
- **Foreign Portfolio Investors** can invest in following two more securities:
 1. Unlisted non-convertible debentures/bonds issued by an Indian Company subject to the guidelines issued by the Ministry of Corporate Affairs, Government of India from time to time and
 2. Securitised debt instruments including:
 - (i) any certificate or instrument issued by a special purpose vehicle set up for securitization of asset/s with banks, financial institutions or non-banking financial institutions as originators; and
 - (ii) any certificate or instrument issued and listed in terms of the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008.

E. SEBI (LISTING OBLIGATION AND DISCLOSURE REQUIREMENTS) ("LODR") (AMENDMENT) REGULATIONS, 2017:

SEBI vide its notification dated February 15, 2017 has provided SEBI (LODR) Amendments Regulations, 2017.

- As per the amendment new sub regulation (6) is inserted in Regulation 37 relating to Draft Scheme of Arrangement and Scheme of Arrangement.
- As per the sub regulation (6) for **merger of Wholly Owned Subsidiary with its Holding Company** regulation 37 shall not be applicable.
- Provided such draft schemes is filed with the stock exchanges for the purpose of disclosures.
- To align LODR with the provisions of section 233 of Companies Act, 2013 pertaining to the Fast Track Merger between two or more small companies or between holding Company and its wholly-owned subsidiary Company the above new sub regulation has been inserted.

RBI UPDATES:

A. POWERS TO THE REGIONAL OFFICES OF THE RESERVE BANK OF INDIA TO COMPOUND THE CONTRAVENTIONS OF FEMA

- RBI vide its notification dated February 02, 2017 has delegated the power of compounding to **Regional Offices of the Reserve Bank Of India** relating to **delay in filing the Annual Return on Foreign Liabilities and Assets (FLA return)**, by all Indian companies which have received Foreign Direct Investment in the previous year(s) including the current year.
- The power to compound the contravention mentioned above have been delegated to all Regional Offices (except Kochi and Panaji) without any limit on the amount of contravention.
- Kochi and Panaji Regional offices can compound the above contraventions for amount of contravention **below Rupees One hundred lakh (Rs.1,00,00,000/-) only**. The contraventions of Rupees **One hundred lakh (Rs.1,00,00,000/) or more** under the jurisdiction of Kochi and Panaji Regional Offices will continue to be compounded at **Central Office**.

The link of above notification is as under:

https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10847

B. REMONETISATION- REMOVAL OF RESTRICTION ON WITHDRAWAL OF CASH

RBI vide its notification dated February 08, 2017 has removed the restriction on cash withdrawals from Current / Cash credit / Overdraft accounts with effect from effective January 31, 2017 and ATMs with effect from February 01, 2017.

In line with the pace of remonetisation, RBI decided to remove the restriction on cash withdrawal from Saving Bank accounts (including accounts opened under Prime Minister Jan Dhan Yagna) in two step process as under:

1. the limits on cash withdrawals from the Savings Bank accounts will be enhanced to **50,000 per week** (from the current limit of 24,000 per week) **with effect from February 20, 2017** and
2. there will be **no limits on cash withdrawals** from Savings Bank accounts **with effect from March 13, 2017**.

The link of above notification is as under:

https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10856

C. MONEY TRANSFER SERVICE SCHEME

RBI vide its notification dated February 22, 2017 has issued Master Directions on Money Transfer Service Scheme (MTSS) under which it allows transfer of personal remittances from abroad to beneficiaries in India.

RBI has the power under section 10(1) of the Foreign Exchange Management Act, 1999, to accord necessary authority to any person to act as an Indian Agent under MTSS who can handle the business of cross- border money transfer to India or any other person who is permitted to do so by RBI.

MTSS envisages a tie-up between reputed money transfer Companies abroad known as Overseas Principals and agents in India known as Indian Agents who would disburse funds to beneficiaries in India at ongoing exchange rates.

The link of the above notification is as under:

<https://m.rbi.org.in/Scripts/NotificationUser.aspx?Id=10868&Mode=0>

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DIPP UPDATES:

A. DIPP PRESS NOTE NO. 1 (2017 SERIES) FOR FDI PERMITTED SECTOR INFRASTRUCTURE COMPANIES SPECIFIED IN CONSOLIDATED FDI POLICY CIRCULAR OF 2016

As the Press Note No. 1 (2017 series) FDI cap/ percentage of equity upto 49% under automatic route is permitted in Infrastructure Companies in Securities Markets namely, stock exchanges, commodity exchanges, depositories, and clearing corporation in compliance with SEBI Regulations.

Conditions for Foreign Direct Investments:

Foreign Investment, including investment by Foreign Portfolio Investors will be subject to the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporation) Regulations 2012, and SEBI (Depositories and Participants) Regulations as amended from time to time and other guidelines issued by Central Government, SEBI and RBI from time to time.

The link of above notification is as under:

http://dipp.nic.in/English/acts_rules/Press_Notes/pn1_2017.pdf

ARTICLE ON FAST TRACK MERGER

➤ **NOTIFICATION OF FAST TRACK MERGER**

Section 233 has been notified by the Ministry of Corporate Affairs vide its notification dated December 7, 2016 and MCA had also notified on December 14, 2016 Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 (**Rules**) which will be effective from December 15, 2016.

The provisions of Section 233 of the Companies Act, 2013 (**The Act**) provides a simplified procedure for Merger and Amalgamation by relieving the Companies from lengthy and complicated procedure as provided under section 230 to 232 of the Act.

➤ **ELIGIBLE COMPANIES:**

The Fast Track Merger as provided under section 233 of the Act is for the following types of Companies only :

1. Merger between two or more Small Companies; or
2. Merger between a Holding Company (HOLDCO) and its Wholly-owned Subsidiary Company (WOS); or
3. Such other prescribed class or classes of Companies (not yet defined).

Note:

If the proposed merger is neither between “Small Companies” nor between HOLDCO with WOS or vice versa, then they could not avail the benefit of this faster route of merger u/s 233 and they need to go under the route of Section 230 to 232 of Act.

➤ **PROCEDURE FOR FAST TRACK MERGER:**

1. BOARD TO DECIDE ON VARIOUS MATTERS

- Financial Statements of the Company
- Declaration of Solvency by the Directors
- Noting of list of creditors and value of total liabilities towards creditors
- Noting of list of employees
- Scheme of fast track merger
- Certificate from Statutory Auditor that the accounting treatment for the proposed merger scheme is as per the Accounting Standards.

2. NOTICE OF PROPOSED SCHEME:

A Notice of the proposed Scheme shall be sent by both the Transferor and Transferee Companies to the Registrar of Companies (RoC), Official Liquidators (OL) where the the Registered Office of the respective companies are situated, or persons affected by the Scheme ,inviting their objections or suggestions on the proposed Scheme. **The Notice of the proposed scheme shall be in Form No. CAA.9**

The RoC and OL shall provide their objections and suggestion, if any **within 30 (thirty) days** of the issue of the notice of the proposed scheme.

3.DECLARATION OF SOLVENCY:

Directors of both the Companies need to give Declaration of Solvency (DOS) to the RoC of the place where the Registered Office of the Company is situated . DOS shall be in the Form No. CAA 10 and it will have a statement of Assets and Liabilities recorded at **Book Value and also estimated realizable Value .**

The Company to file DOS with the following documents

- a) Copy of Board Resolution
- b) Statement of Assets and Liabilities
- c) Auditor's Report on the Statement of Assets and Liabilities

4. APPROVAL OF MEMBERS:

Both the Transferor and Transferee Company shall hold meetings of members to consider objections or suggestions, if any, received from the Registrar and Official Liquidators or any other person. The proposed Scheme to be approved by the members or class of members holding **at least 90% of the total number of shares.**

The Notice for calling the meeting of members shall be accompanied by :

- Proposed Scheme of merger.
- Statement disclosing the details of merger as mentioned in sub rule -3 of rule 6 of the Rules
- Declaration of Solvency in **form No. CAA.10.**
- Details of approvals, sanctions or no-objection, if any from regulatory or any other authority.
- Disclosure about the effect of scheme on Key managerial personnel, Directors, Promoters, non-promoter members, Depositors, creditors, Debenture holders, Deposit trustee and debenture trustee and employees of the Company.
- Disclosure about effect of scheme on **material interests*** of Directors, Key managerial personnel and Debenture trustee. (The term interest extends beyond an interest in the shares of the Company and is with reference to the proposed scheme of Compromise or arrangement)
- Investigation or proceedings if any pending against the Company.
- Details of Documents available for obtaining extracts from or for making or obtaining copies of or for inspection by the members at the Registered Office of the Company.

- Latest audited financial statements of the Company.
- Copy of the Scheme of Merger.
- The Certificate issued by the Statutory Auditors of the Company certifying that the accounting treatment proposed in the Scheme of Merger is in conformity with the Accounting Standard prescribed under Section 133 of the Companies Act, 2013.
- Memorandum and Articles of Association of the Company.

5. APPROVAL OF CREDITORS:

The Transferor and Transferee Companies need to hold the meeting of the creditors or class of creditors of their respective companies by giving a notice of 21 days .The Notice for calling such meeting shall be accompanied by :

- Proposed Scheme of merger.
- Statement disclosing the details of merger as mentioned in sub rule -3 of rule 6 of the Rules
- Declaration of Solvency in **form No. CAA.10**.
- Details of approvals, sanctions or no-objection, if any from regulatory or any other authority.
- Disclosure about the effect of scheme on Key managerial personnel, Directors, Promoters, non-promoter members, Depositors,creditors, Debenture holders, Deposit trustee and debenture trustee and employees of the Company.
- Disclosure about effect of scheme on **material interests*** of Directors, Key managerial personnel and Debenture trustee. (The term interest extends beyond an interest in the shares of the Company and is with reference to the proposed scheme of Compromise or arrangement)
- Investigation or proceedings if any pending against the Company.
- Details of Documents available for obtaining extracts from or for making or obtaining copies of or for inspection by the members at the Registered Office of the Company.
 - Latest audited financial statements of the Company.
 - Copy of the Scheme of Merger.
 - The Certificate issued by the Statutory Auditors of the Company certifying that the accounting treatment proposed in the Scheme of Merger is in conformity with the Accounting Standard prescribed under Section 133 of the Companies Act, 2013.
 - Memorandum and Articles of Association of the Company.

The proposed Scheme of merger need to be approved by the majority representing **9/10th in value of the creditors** or class of creditors of the respective Companies.

6.FILING OF THE APPROVED SCHEME:

Within 7 days from the conclusion of the meeting of the members and creditors, the Transferee Company to file a copy of the Scheme so approved along with the report of the result of members/creditors meeting in **Form No. CAA.11** to Regional Director.(**“RD”**), Registrar of Companies (**“ROC”**)in **form GNL-1** and to **OL** through hand delivery or by registered post or speed post.

Folloiwng documents to be attached with **Form No. CAA.11:**

1. Copy of the Scheme approved by both creditors and members;
2. Notice sent in accordance with section 233(1)(a) to RoC and OL inviting the objections if any,
3. List of Creditors and members
4. Certificate from Statutory Auditor that the accounting treatment in Scheme is in conformity with the Accounting Standards.
5. Minutes of Meeting of creditors and members along with Notice and Explanatory Statement sent for calling this meetings .

7. OBJECTIONS OR SUGGESTIONS TO THE SCHEME:

If ROC or the OL has any objections or suggestions to the scheme of merger, then they shall communicate the same to the RD within 30 (thirty) days of the receipt of the Scheme. And in case if no objections or suggestions are being communicated to RD by RoC or OL, then it shall be presumed that ROC and OL has no objections to the Scheme.

RD either on the basis of such objections raised by RoC or OL or otherwise, is of the opinion that the Scheme is not in the public interest or in the interest of the creditors, it may file an application before the National Company Law Tribunal (“NCLT”) in **Form No. CAA.13** within **60 (Sixty) days of the receipt of the Scheme** stating its objections or opinions and request to consider the Scheme under section 232 of the Act.

Note: If the RD neither has any objection to the Scheme nor file any application before the NCLT, then it shall be deemed that it has no objection to the Scheme.

8. APPROVAL OF RD AND REGISTRATION OF SCHEME:

If ROC or OL has no objections or suggestions to the Scheme and RD is of the opinion that the Scheme is in public interest or in interest of creditors, then RD shall issue confirmation order of such Scheme in **Form No. CAA.12**.

Copy of the approved Scheme of merger and amalgamation will be attached in the order.

9.OBJECTION OF RD AND LATER ORDER OF NCLT:

On receipt of Application from RD or any person, NCLT is of the opinion that the Scheme should be considered as per the procedure laid down under Section 232 of the Act, it may direct accordingly or it may confirm the Scheme by passing such order as it deem fit.

10.FILING OF ORDER TO ROC:

The confirmation order of the scheme issued by RD or NCLT shall be filled within **thirty (30) days of the receipt of the order of confirmation in Form INC-28** with the ROC having jurisdiction over the Transferor and Transferee Company respectively.

11.CONFIRMATION OF ORDER BY ROC :

The ROC having jurisdiction of the Transferee Company shall register the Scheme and issue a confirmation order to the Companies and such confirmation shall be communicated to the RoC having jurisdiction of the Transferor Company .

12.EFFECT OF REGISTRATION OF THE SCHEME:

Registration of the Scheme shall be deemed to have the effect of dissolution of Transferor Company without the process of Winding up.

- All the properties or liabilities of the Transferor Company shall be transferred and become the properties or liabilities of the Transferee Company;
- 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;
- The legal proceedings by or against the Transferor Company pending before any court of law shall be continued by or against the Transferee Company;
- Where the Scheme provides for purchase of shares held by the dissenting shareholders (not for merger of WoS) or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.

13.POST MERGER:

The Transferee Company shall file an application with the Registrar along with the approved Scheme, indicating revised authorized capital. The Transferee Company is not required to pay fee on the revised authorized capital to extent of the fee paid by the Transferor Company before the merger and amalgamation.

The Companies may at their discretion, opt to use the provisions of section 230 to 232 for the approval of the Scheme of merger or amalgamation.

14.CONCLUSION:

Fast Track merger route of Section 233 is time bound process and saving from lengthy process of merger where public interest is not at stake. Regional Director has been given power to overview the process and ensure that the dissenting member or creditors interest is taken care of. This route give flexibility for restructuring between small companies and between holding and its Wholly Owned Subsidiary. This is once again a welcome move by Central Government for Ease of Doing Business in India.

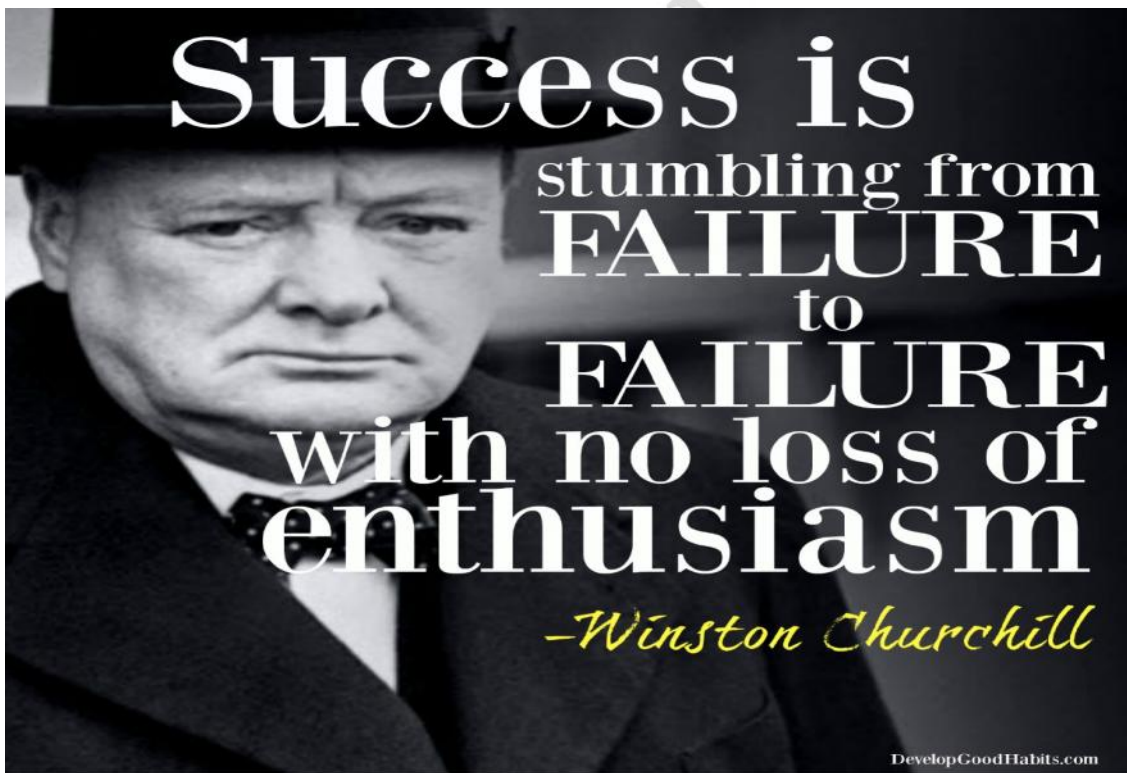
LIST OF FORMS TO BE FILED BY THE TRANSFEROR AND TRANSFEREE COMPANY

The provisions of the Fast Track Merger contained under Section 233 read with rule 25 of Companies (Arrangements And Amalgamations) Rules, 2016. Following forms to be filed for Fast Track Merger:

Forms	Attachments	Responsibility
Form No. CAA.9	Proposed Scheme of Merger or Amalgamation	Transferor and Transferee Company
Form No.CAA.10	Copy of Board Resolution Statement of assets and liabilities Auditor's report on the statement of assets and liabilities * Assets and liabilities should be recorded at Book Value and Estimated Realizable Value	Transferor and Transferee Company
Form No.CAA.11	1. Copy of the Scheme approved by both creditors and members; 2. Notice sent in accordance with section 233(1)(a); 3. List of Creditors and members 4. Certificate from Statutory Auditor that the accounting treatment proposed in Scheme is in conformity with the Accounting Standards. 5. Minutes of meeting of Members and Creditors along with Notice and Explanatory Statement for calling of such meetings.	Transferee Company
Form No. CAA.12	Copy of the approved Scheme of merger and amalgamation will be attached in the order.	Regional Director
Form NO. CAA.13	Application by Regional Director to the Tribunal	Regional Director

Difficulty or poser :

1. Form No. CAA.9 mentions that any person who has any objections or suggestions should send it to Regional Director and Authorised Representative of the Transferor Company.
The Form CAA 9 will be filed by both the Transferor and the Transferee Company, however the objection or suggestion of RoC or OL or any person will be filed only with the Transferor Company and RD and why the same is not to be informed to the Transferee Company.
2. RoC is demanding NoC of Creditors at the time of filing of draft Scheme under Form CAA 9, although RoC and OL will be getting an opportunity for raising any objection if they have, on Transferee Company filing Form CAA 11 with RD, RoC and OL after the meeting of members and creditors.



Disclaimer

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