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News Alert on Companies (Compromises, Arrangements and Amalgamations) Rules, 2016



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A. Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

Ministry of Corporate Affairs (“MCA”) vide its notification dated December 14, 2016 has notified Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 which shall be effective from December 15, 2016.

Earlier, on December 7, 2016 MCA had notified certain section including section 230 (Compromises, Arrangements and Amalgamations) of the Companies Act, 2013 (“the Act”). Both section and Rules relating to section 230 has come into force with effect from December 15, 2016.

KEY HIGHLIGHTS:

Procedure to be followed for Compromise, Arrangement and Amalgamation as per Section 230 of the Act is as follows:

S.NO	PARTICULARS	DESCRIPTION	FORMS/ PROCEDURE
1	Application for order of meeting	If compromise or arrangement proposed – a) Between Company and its creditors or any class or b) Between Company and its members or any class. Application may be submitted in Form no. NCLT-1 Where more than one Company is involved in a scheme then joint application can be filed.	1. Application to be made in Form No. NCLT-1 along with a notice of admission in form. 2. Notice of Admission shall be in Form No. NCLT-2. 3. An affidavit in Form No. NCLT-6. 4. A copy of scheme of compromise or arrangement along with forms. 5. Application shall be accompanied with ₹ 5000 as filing fees
2	Creditors Responsibility Statement	If the scheme of corporate debt Restructuring consented by not less than 75% of the secured creditors, a Creditors Responsibility statement shall be made by creditors.	Form No. CCA.1
3	Directions at hearing of Application	Upon hearing the application, National Company Law Tribunal (“tribunal”) shall give such directions as it may think necessary.	

4	Notice of the Meeting	<p>Where a meeting of any class or classes of creditors or members has been directed to be convened, pursuant to the order of the tribunal, then it shall be given in Form No. CAA.2</p> <p>Notice shall be sent by the Chairperson of the meeting or, if tribunal so directs, then by the Company(or its liquidator) by:</p> <ul style="list-style-type: none"> - Registered post or, - Speed post or, - Courier or, - E-mail or, - hand delivery <p>Which shall be accompanied by a copy of scheme or arrangement.</p>	Form CAA.2
5	Advertisement of the notice of the meeting	<p>The notice of the meeting shall be advertised,not less than30 days before the date fixed for the meeting in at least:</p> <ul style="list-style-type: none"> - one English newspaperand, - one vernacular newspaperor, - Newspaper as may be directed by tribunal.having wide circulation. <p>Andshall also be placed on the website of the Company.</p>	Form No. CCA.2
6	Notice to Statutory Authorities	<p>The notice shall be sent to:</p> <ul style="list-style-type: none"> - The Central Government, Registrar of Companies,the Income tax Authorities, in all cases. - The Reserve Bank of India, the Securities Exchange Board of India, the Competition Commission of India, and the Stock Exchange, as may be applicable. <p>And it shall be accompanied with a copy of scheme of Compromise or arrangement.</p>	Form No. CAA.3
7	Voting	<p>The person who receives the notice shall vote within one month from the date of receipt of the notice in person or proxy to the adoption of scheme of compromise or arrangement.</p>	
8.	Proxies	<p>Voting by proxy shall be permitted.</p>	
9	Copy of compromise or arrangement to be furnished by the Company	<p>Copy of the scheme of the proposed compromise or arrangement shall be furnished by the Company to creditors or members on their requisition,who are entitled to attend the meeting</p>	

10	Affidavit of Service	The Chairperson or the person directed to issue the advertisement shall file an affidavit before the tribunal, not less than 7 days before the date fixed for the meeting , stating that the directions regarding issue of notices and advertisement has been duly complied with.	
11	Result of the meeting to be decided by voting	The meetings held in pursuance of the directions of the tribunal under Rule 5, on all resolutions shall take place by poll or by voting through electronic means. The report of the result of the meeting shall be in Form No.CAA.4	Form CAA.4
12	Report of the result of the meeting by Chairperson	The Chairperson shall submit the report on the result of the meeting to tribunal within 3 days after the conclusion of the meeting.	Form No. CAA.4
13	Petition for confirming compromise or arrangement	If the proposed compromise or arrangement is agreed by the member or creditors or both, then the Company shall present a petition before Tribunal for sanction of the scheme. Where Company fails to present the petition, then it shall be open to any creditor or member to present the petition and the Company shall be liable to cost.	Form No. CAA.5
14	Date and notice of hearing	The tribunal shall fix the date for hearing and notice of hearing shall be advertised, not less than 10 days before the date fixed for the hearing. And it shall also be served to the objectors or their representatives.	

15	Order on petition	Where the tribunal sanctions the compromise or arrangement, the order shall also direct that a certified copy of the same shall be filed with the Registrar of Companies within 30 days from the date of receipt of the order.	Form No. CCA.6
16	Application for directions under section 232 of the Act	Where the matters involved cannot be dealt with or dealt with adequately on the petition for sanction of the compromise or arrangement, an application shall be made to tribunal under section 232(Merger and amalgamation of Companies) of the Act, by a notice of admission supported by an affidavit.	
17	Directions at the hearing of application	Upon hearing of the notice of admission under Rule 18, the tribunal may make such order or give such directions as it may think fit.	
18	Order under section 232 of the Act	Any order under section 232 read with section 230 shall be made in Form No. CAA.7	Form No.CAA.7
19	Statement of compliance in mergers and amalgamations	For the purpose of sub-section-7of section 232, every Company shall file every year with Registrar of Companies a statement in prescribed form until the scheme is fully implemented, duly certified by Chartered Accountant or a cost accountant or a Company Secretary in practice.	Form No. CAA.8
20	Report on working of compromise or arrangement	At any time after issuing order sanctioning scheme, the tribunal may on its own motion or on application of any interested person may obtain report on the working of the said compromise or arrangement.	
21	Liberty to apply	After passing the order sanctioning the compromise or arrangement, the Company, or any creditor or member, or its liquidator may apply to the tribunal for the determination of any question relating to the working of the compromise or arrangement.	

22	Liberty to the tribunal	At any time during the proceedings, if the tribunal is of opinion that the petition or application or evidence or information or statement is required to be filed in the form of affidavit, then the same may be ordered by the tribunal.	
23	Merger or Amalgamation of two or more Small Companies or between a holding and its wholly owned subsidiary	The Notice of the proposed scheme inviting objection or suggestion from Registrar and Official Liquidator or person affected by the scheme shall be in Form No. CAA 9	Form No. CAA 9
		Declaration of solvency to be filed by each of the Companies involved shall be in Form No CAA 10	Form No CAA 10
		The Transferee Company shall file a copy of the scheme with Central Government within 7 days after the conclusion of the meeting of members or class of members and creditors along with the report of the results in Form no CAA 11	Form no CAA 11
		Copy of scheme shall also be filed with Registrar in Form GNL-1 and to the Official Liquidator through hand delivery or by registered post or speed post	Form GNL-1
		After NOC is received from Registrar and Official Liquidator and Central Government is of the opinion that scheme is in public interest, it may issue Confirmation Order in Form CAA 12	Form CAA 12
		If objection or suggestions are received from Registrar or Official Liquidator and Central Government is of the opinion that scheme is not in public interest, it may file an application before the Tribunal in Form No. CAA 13 within 60 days of receipt of scheme.	Form No. CAA 13
		The Confirmation Order has be filed with Registrar within 30 days from the receipt of such order in Form INC-28	Form INC-28

24	Notice to dissenting shareholders for acquiring the shares	For the purpose of sub-section (1) section 235 (Power to acquire shares of shareholders dissenting from scheme or contract approved by the majority), the transferee company shall send a notice to the dissenting shareholders of the transferor Company, for acquiring shares of such dissenting shareholders.	Form No. CAA.14
25	Determination of price for purchase of minority shareholding	The registered valuer shall determine the price to be paid by the acquirer, person or group of persons referred to in sub-section (1) of section 236 of the Act, for purchase of equity shares of the minority shareholders of the Company.	
26	Circular containing scheme of amalgamation or merger	If transfer of shares or any class of shares is involved pursuant to scheme, every circular containing offer shall be accompanied with such information as set out in Form No. CAA 15	Form No. CAA 15
27	Appeal under sub-section (2) of section 238 of the Act	Any aggrieved party may file a petition against the order of the Registrar of Companies refusing to circulate under sub-section (2) of section 238 of the Act.	Form No.NCLT.9

The link of the above Notification is as under:

http://www.mca.gov.in/Ministry/pdf/compromisesrules2016_15122016.pdf

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