



news flash

January 2017



Rules changed For Compromises, Arrangements and Amalgamations

The Ministry of Corporate Affairs (“MCA”) has recently notified the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (“Rules”) setting out the procedure for the compromise, arrangement and amalgamations under the Companies Act, 2013 (“Act”).

BACKGROUND

The provisions relating to Merger and Amalgamations were not notified under the Act and were governed under Section 391-394 of the Companies Act, 1956. The MCA has notified Chapter XV of the Act relating to Compromise, Arrangements and Arrangements pursuant to which the Rules would have to be complied. The Rules provide the procedure to be followed by a company in case of compromise, arrangement and amalgamation; relevant provisions of the Rules are stated as follows:

1. Filing of application

Companies have to *inter alia* file (i) an application, (ii) an affidavit, (iii) a copy of the Scheme of compromise, merger, amalgamation or arrangement (“the Scheme”) etc., with disclosures of certain material facts such as pendency of any proceedings against the company with the National Company Law Tribunal (“the Tribunal”) etc. In case of multiple entities involved under the Scheme, the companies may file a joint application at the discretion of the companies which are a party to the said Scheme.

2. Hearing of the application at the Tribunal

The Tribunal may *inter alia* give directions to convene or dispense with the meeting of shareholders/ creditors, fix the time and place of the meeting, appoint a chairperson and a scrutinizer for the meeting etc.

3. Notices to members/creditors

The notice of meeting, explanatory statement and the Scheme should be sent to each of the members/creditors of the companies at least 1 month before the date of the meeting. The explanatory statement should *inter alia* state the summary of the valuation report, appointed date, effective date, benefits of the compromise or arrangement etc.

4. Advertisement

The company must, 30 days before the date fixed for the meeting, publish the notice for the meetings in 2 newspapers (i.e. English newspaper and vernacular newspaper), place the notice on the website of the company; and in case of listed companies on the website of the Securities and Exchange Board of India (“SEBI”) and the recognised stock exchange where the securities of the company are listed.

5. Notices to statutory authorities

The notice, explanatory statement and the Scheme should be sent to regulatory authorities like the Central Government (“CG”), Registrar of Companies (“ROC”), Income-tax authorities (in all cases), Reserve Bank of India, SEBI, Competition Commission of India, stock exchanges, as applicable and other sectoral regulators directed by the Tribunal.

The aforesaid regulatory authorities shall make a representation within 30 days of receipt of notice and other documents.

6. Affidavit of Service

The Chairperson appointed for the meeting shall, 7 days before the date of the meeting, file an Affidavit with the Tribunal stating that all the directions regarding issue of notices and the advertisements for convening meeting are complied with.

7. Voting

The recipient of the notice shall vote either at the meeting by poll or through electronic means or by proxy within 1 month of the receipt of the notice.

8. Filing of Report and Petition

The Chairperson of the meeting has to submit to the Tribunal, a report of the result of the meeting within the time fixed by the Tribunal and if no time is fixed; then within 3 days of conclusion of the meeting.

The proposed compromise or arrangement agreed by the members/ the creditors must be filed by the Chairperson with the Tribunal within 7 days of the filing of the report by the Chairperson; failing which any member/ creditor may present the petition to the Tribunal itself.

9. Hearing of the petition

The Tribunal shall –

- fix a date for the hearing of the Petition. The notice of the hearing shall be advertised in the same newspaper in which the notice of the meeting was advertised, at least 10 days before the date fixed for the hearing.
- also serve notices of hearing of Petition to members/ creditors who have objected to the Scheme and to CG and other regulators/ statutory authorities who have made representation.

The Tribunal shall order directions at the final hearing with such modifications in the compromise or arrangement, as the Tribunal may think fit. The order shall direct that it shall be filed with the ROC for registration, within 30 days of the date of receipt of the order or such other time as the Tribunal may direct.

10. Procedure after final hearing

Within 210 days of the end of the financial year, every company shall file a statement with the ROC, stating whether the Scheme is being complied with in accordance with the orders of the Tribunal or not.

Report of working of compromise or arrangement

The Tribunal may on its own or on request of an interested person direct the company at any time after issuing an order sanctioning the compromise or arrangement to submit a report on the working of the said compromise or arrangement.

Liberties of parties after passing of order

The Company, their creditors or members or liquidator may at any time after the passing of the order, apply to the Tribunal for determination of any question relating to the working of the compromise or arrangement.

11. Merger or amalgamation of certain companies

In case of a merger between two or more small companies or between a holding company and its wholly owned subsidiary company or such other class or classes of companies as may be prescribed under Section 233 of the Act (Fast track merger), the following procedure have to be followed:

- (a) A Notice of the proposed scheme inviting objections or suggestions, if any, within 30 days from the date of issue of notice, to be sent by ROC, Official Liquidator (“OL”) and any other affected persons of the Transferor Company and Transferee Company and the Company shall consider the same in their respective general meetings. The scheme has to be approved by members holding 90 percent of the total number of shares.
- (b) The Transferee and Transferor Company shall be required to file declaration of solvency with ROC before convening meeting of members and creditors for the approval of scheme.
- (c) 21 days prior to the meeting of the members and/or creditors to approve the Scheme; the notice and explanatory statement accompanied with a (i) statement disclosing facts of the companies, (ii) capital structure, details of promoters, directors etc., (iii) copy of Scheme and (iv) declaration of solvency, shall be sent to the members/ creditors, as the case may be.
- (d) The Transferee Company shall within 7 days of conclusion of meeting of members/creditors file the following documents with CG:
 - (i) copy of Scheme as approved by members and creditors and

- (ii) report of the result of each of the meetings.

A Copy of the Scheme along with relevant forms shall also be filed with the ROC and OL.

- (e) Where no objection/suggestion is received from ROC and OL for the Scheme or objection is deemed to be non-sustainable and the CG is of the opinion that the Scheme is in the public interest or in the interest of creditors, the CG shall issue a confirmation order of such Scheme of merger or amalgamation.
- (f) The Confirmation order shall be filed with ROC within 30 days of receipt of confirmation order.

CONCLUSION

The rules are meant to simplify the procedure but the extent and manner of disclosures prescribed are numerous. The burden of the High Court with respect to Company Law procedure is almost entirely shifted to the Tribunal. This is a major shift and indeed a great relief. It is likely to ease the process by removing the reporting requirement from the Central Government. The fast-track merger of certain companies is also a welcome step but its success would largely depend on the Central Government's expeditious action. It is expected that this important change in law would bring in substantial efficiency in the manner in which amalgamation, compromise, arrangement, liquidation, winding up, etc. are to be carried out. Overall the provisions are a welcome step and it is expected that Mergers & Amalgamation activities will receive time-bound closure.

DISCLAIMER

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