



Minority squeeze out : MCA prescribes process for purchase of minority shareholding held in dematerialized form under section 236 | MCA relaxes various requirements for online proficiency self-assessment test by the independent directors

INSIGHTS

December 19, 2020

The Ministry of Corporate Affairs (**MCA**) has introduced important changes in relation to the provisions of minority squeeze out and requirements for online proficiency self-assessment test by the independent directors.

The MCA has laid out the process for purchase of minority shareholding held in dematerialized form, under section 236 of the Companies Act, 2013. Section 236 provides a mechanism requiring a person who becomes 90% majority (**Majority Shareholder**) of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, to notify the company of its intention to buy the remaining equity shares. One of the key conditions requires the Majority Shareholder to deposit the consideration of the shares to be bought in a separate bank account to be operated by the company.

In another important change, various requirements of passing the online proficiency self-assessment test by the independent directors have been relaxed, and certain exclusions have been incorporated.

MINORITY SQUEEZE OUT | MCA PRESCRIBES PROCESS FOR PURCHASE OF MINORITY SHAREHOLDING HELD IN DEMATERIALISED FORM UNDER SECTION 236 OF THE COMPANIES ACT, 2013

The MCA has laid out the process for purchase of minority shareholding held in dematerialized form, under section 236 of the Companies Act, 2013. Section 236 provides a mechanism requiring a person who becomes 90% majority (**Majority Shareholder**) of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, to notify the company of its intention to buy the remaining equity shares. One of the key conditions requires the Majority Shareholder to deposit the consideration of the shares to be bought in a separate bank account to be operated by the company.

The newly introduced process prescribed by the MCA for purchase of minority shareholding held in dematerialized form is summarized below:

- **Verification of details of the minority shareholders:** The company to verify the details of the minority shareholders holding shares in dematerialized form within two weeks from the date of receipt of the amount equal to the price of shares to be acquired by the Majority Shareholder.
- **Notify cut-off date:** Thereafter, the company is required to send notice to the minority shareholders by the prescribed means about a cut-off date, which shall not be earlier than one month after the date of sending of the notice, on which the shares of minority shareholders shall be debited from their account and credited to the designated demat account of the company, unless the shares are credited in the account of the acquirer, as specified in such notice, before the cut-off date. The notice shall also be published simultaneously in two widely circulated newspapers (one in English and one in vernacular language) in the district in which the registered office of the company is situated and also be uploaded on the website of the company, if any.
- **Notice to depository and declarations:** The company is then required to inform the depository immediately after publication of the notice regarding the cut-off date and submit the following declarations stating that:-
 - the corporate action is being effected in pursuance of the provisions of section 236;
 - the minority shareholders whose shares are held in dematerialized form have been informed about the corporate action;
 - the minority shareholders shall be paid by the company immediately after completion of corporate action;
 - any dispute or complaints arising out of such corporate action shall be the sole responsibility of the company.
- **Depository to debit the demat accounts:** The depository is then required to make the transfer of shares of the minority shareholders, who have not, on their own, transferred their shares in favor of the acquirer, into the designated demat account of the company on the cut-off date and intimate the company.
- **Remittance of money to the minority shareholders:** After receiving the intimation of successful transfer of shares from the depository, the company is then required to immediately disburse the price of the shares so transferred, to each of the minority shareholders after deducting the applicable stamp duty, which shall be paid by the company, on behalf of the minority shareholders, in accordance with the provisions of the Indian Stamp Act, 1899.

- **Transfer to demat account of the Majority Shareholder:** Upon successful payment to the minority shareholders, the company shall inform the depository to transfer the shares of such shareholders, kept in the designated demat account of the company, to the demat account of the Majority Shareholder. The company shall continue to disburse payment to the entitled shareholders, where disbursement could not be made within the specified time and transfer the shares to the demat account of Majority Shareholder after such disbursement.
- **Bar on debit by the depository in certain cases:** In case, where there is a specific order of Court or Tribunal, or statutory authority restraining any transfer of such shares and payment of dividend, or where such shares are pledged or hypothecated under the provisions of the Depositories Act, 1996, the depository shall not transfer the shares of the minority shareholders to the designated demat account of the company.

Detailed process is provided under the Companies (Compromises, Arrangements and Amalgamations) Second Amendment Rules, 2020, dated December 17, 2020 ([available here](#)).

MCA RELAXES VARIOUS REQUIREMENTS FOR ONLINE PROFICIENCY SELF-ASSESSMENT TEST BY THE INDEPENDENT DIRECTORS

In another important change, various requirements of passing the online proficiency self-assessment test by the independent directors have been relaxed, and certain exclusions have been incorporated. There are provided below:

- **Exemptions from passing online proficiency test:** Now, an individual will not be required to pass the online proficiency self-assessment test when he has served for a total period of not less than three (3) years as on the date of inclusion of his name in the data bank:
 - A. **Director or KMP of variety of body corporates:** As a director or key managerial personnel, as on the date of inclusion of his name in the databank, in one or more of the following, namely:-
 - listed public company; or
 - unlisted public company having a paid-up share capital of INR 10 crores or more; or
 - body corporate listed on any recognized stock exchange or in a country which is a member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions; or
 - bodies corporate incorporated outside India having a paid-up share capital of USD 2 million or more; or
 - statutory corporations set up under an Act of Parliament or any State Legislature carrying on commercial activities; or
 - B. **Associated with the Government:** in the pay scale of Director or above in the Ministry of Corporate Affairs or the Ministry of Finance or Ministry of Commerce and Industry or the Ministry of Heavy Industries and Public Enterprises and having experience in handling the matters relating to corporate laws or securities laws or economic laws; or
 - C. **Associated with the regulators:** In the pay scale of Chief General Manager or above in the Securities and Exchange Board (SEBI) or the Reserve Bank of India (RBI) or the Insurance Regulatory and Development Authority of India (IRDAI) or the Pension Fund Regulatory and Development Authority (PFRDA) and having experience in handling the matters relating to corporate laws or securities laws or economic laws:

For the purpose of calculation of the period of three (3) years referred above, any period during which an individual was acting as a director or as a key managerial personnel in two or more companies or bodies corporate or statutory corporations at the same time shall be counted only once.

- **2 years' time period allowed to pass online proficiency test:** After inclusion of name in the databank of Indian Institute of Corporate Affairs, subject to the exemptions, every individual was required to pass an online proficiency self-assessment test conducted within a period of one (1) year from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank. This time period has now been extended to two (2) years.
- **Reduction in passing percentage for online proficiency test:** The passing percentage has been reduced from 60% to 50%. Now, an individual who has obtained a score of not less than fifty percent (50%) in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test.

Aforementioned relaxations have been introduced vide the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2020, dated December 18, 2020 ([available here](#)).