



ECONOMIC
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An overhead, top-down view of a meeting area. A large, white, circular table is partially visible on the right side of the frame. Three modern, white, upholstered chairs with chrome frames and casters are arranged around the table. The floor is a light-colored, textured concrete or stone. A dark blue horizontal band is overlaid across the middle of the image, containing white text.

Fast-Track Merger made faster | MCA amends M&A rules

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With the objective of facilitating a time bound merger and amalgamation for certain companies as specified in Section 233 of the Companies Act, 2013 (“CA2013”) and accelerating the process of such mergers and amalgamations, the Ministry of Corporate Affairs has notified an amendment to the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (“M&A Rules”).

Section 233 of the CA2013 *inter alia* provides for a fast track process of a scheme of merger or amalgamation between the following companies:

- two or more small companies;
- a holding company and its wholly-owned subsidiary company;
- two or more start-up companies;
- one or more start-up company with one or more small company.

Section 233(2) of CA2013 requires the transferee company to file a copy of the scheme with the Central Government (“CG”), Registrar of Companies (“ROC”) and the Official Liquidator where the registered office of the company is situated. Further, Section 233(3) of CA2013 provides that on the receipt of the scheme, if the ROC or the Official Liquidator has no objections or suggestions to the scheme, then the CG shall register the same and issue a confirmation thereof to the companies. In this regard, Rule 25 of the M&A Rules provides for the process of dealing with any such objections or suggestions, which has now been amended vide the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023 (**M&A Amendment Rules**).

The erstwhile Rule 25 of the M&A Rules, prior to the notification of the M&A Amendment Rules, provided for the circumstances and process of issuing a confirmation order and dealing with objections and suggestions received by the CG. This rule has now been amended to provide for definitive statutory timelines within which actions are to be taken by the CG, whether in issuing confirmation orders or filing an application with the National Company Law Tribunal (“NCLT”):

- ***Issuance of confirmation order where no objection or suggestion is received:***

Where no objection or suggestion is received within a period of 30 days of receipt of copy of scheme, from the ROC and Official Liquidator by the CG, and the CG is of the opinion that the scheme is in the public interest or in the interest of creditors, it may issue a confirmation order of such scheme of merger or amalgamation, within a period of 15 days after the expiry of said 30 days.

- ***Issuance of confirmation order where the CG is in receipt of objections or suggestions from the ROC or Official Liquidator:***

Where objections or suggestions are received within a period of 30 days of receipt of copy of scheme from the ROC or Official Liquidator or both by the CG, and such objections or suggestions are not sustainable and the CG is of the opinion that the scheme is in the public interest or in the interest of creditors, it may issue a confirmation order of such scheme of merger or amalgamation, within a period of 30 days after expiry of 30 days referred to above.

- ***Filing application with NCLT on receipt of objections / suggestions from ROC or Official Liquidator:***

Where objections or suggestions are received within a period of 30 days of receipt of copy of scheme from the ROC or Official Liquidator or both by the CG, and the CG is of the opinion, whether on the basis of such objections or otherwise, that the scheme is not in the public interest or in the interest of creditors, it may within 60 days of the receipt of the scheme file an application before the NCLT in stating the objections or opinion and requesting that NCLT may consider the scheme under Section 232 of CA2013.

▪ **Deemed no objection to the scheme:**

If, within a period of 60 days of the receipt of the scheme, the CG does not issue the confirmation order as per (i) and (ii) above, or file an application with the NCLT as per (iii) above, it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly.

The M&A Amendment Rules have been notified by the MCA vide notification dated May 15, 2023 ([available here](#)) and shall come into force with effect from **June 15, 2023**.



ELP Comments

Timelines are a major factor in mergers & acquisitions, especially where third parties and courts are involved. CA2013 had introduced a commendable provision of fast track mergers for certain companies. In order to strengthen the mechanism, MCA has now tried to streamline the timing within which a confirmation order should be issued. This will help consolidation of companies such as start-ups, small companies, holding and wholly-owned subsidiary companies in a timely manner.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com or write to our authors:

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