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Mergers & Acquisitions

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MCA Expands the Scope of Merger and Demerger through Fast-Track Route

Background & Context

Section 233 of the Companies Act, 2013 ("CA'13") provides that in certain cases, merger will be approved by Central Government [delegated powers to Regional Director] and eliminating intervention of the Honourable National Company Law Tribunal ("NCLT"), thereby curtailing timelines and complex process (normally referred as "Fast Track Merger" or "FTM").

Existing provisions of Section 233 of CA'13 read with Rule 25 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ("CAA Rules") covered cases of merger between:

(a) two or more small companies[1],
(b) a holding company and wholly owned subsidiary company ("WOS"),
(c) two or more start-up companies[2]; and
(d) one or more start-up company(ies) and one or more small company(ies).

The Honourable Minister of Finance, in her Budget Speech of Union Budget 2025-26, mentioned to rationalize the requirements and procedures for Fast Track Mergers along with widening its scope. As a result, the Ministry of Corporate Affairs ("MCA") vide a public notice dated 4th April 2025 issued a draft notification proposing amendments to Rule 25 of CAA Rules proposing inclusion of more classes of companies for Fast Track Mergers.

[1] "Small company" means a private company (other than a holding company, subsidiary company, section 8 company and company or body corporate governed under any special statute) having paid-up capital up to INR 4 crore (~ USD 0.45 million) and turnover up to INR 40 crore (~ USD 4.54 million) as per profit and loss account for immediately preceding financial year.

[2] "Start-up company" means a private company recognized to be a 'start-up' in accordance with G.S.R. 127(E) dated 19th February 2019 issued by the Department for Promotion of Industry and Internal Trade

Modification to the FTM rules

MCA has now notified[3] amendment to Rule 25 of CAA Rules with effect from 8th September 2025. The notification provides for expanding scope of FTM to merger between certain class of companies and rationalizing or relaxing existing procedures of Fast Track Mergers.

Expanding scope of FTM

Rule 25(1A) of CAA Rules is now amended to cover following cases of merger between:

(a) two or more unlisted companies (each of which not being company referred to in section 8 of the CA'13), where every company involved in such merger fulfils following conditions:
- aggregate of outstanding loans, debentures or deposits is not exceeding INR 200 crore (~ USD 22.68 million), and
- company has not defaulted in repayment of loans, debentures or deposits referred above.

Above both conditions are required to be met on:

- on a day not before thirty days from the notice inviting suggestions / objections is filed with Registrar of Companies ("ROC"), Official Liquidator ("OL") and sector regulators; and
- on the date of filing scheme with Regional Director, ROC and OL.

Statutory auditor of the company to provide a certificate [in Form CAA-10A] that company fulfils above both conditions on each of the above dates.

[3] Notification Number G.S.R. 603(E) dated 4th September, 2025

(b) a holding company and a subsidiary company, where transferor company(ies) is not listed while transferee company may be listed or unlisted;
(c) one or more fellow subsidiary company(ies) of same holding company, where transferor company(ies) is not listed while transferee company may be listed or unlisted;
(d) transferor foreign holding company incorporated outside India with its Indian WOS;
    - while Rule 25A(5) of CAA Rules already covers that merger in above scenario will be through FTM route, the same is now explicitly covered under Rule 25 to ensure that such Rule 25 becomes a self-contained code for FTM route.

Section 233(12) of CA'13 prescribes that FTM is also applicable in case of demergers. The amendment prescribes for insertion of new sub-rule (9) in Rule 25 of the CAA Rules to specifically provide that entire Rule 25 for FTM scope and procedure is also applicable in case of demergers between specified class of companies.

KCM Analysis

The notified amendment is a positive step towards relaxing the process and timelines required for various cases of mergers, clarifying any ambiguity towards applicability of FTM route for demergers and other procedural requirements.

Opening the doors of FTM to various companies

The FTM umbrella is now widened to cover various companies making them eligible to opt for FTM route and avoiding a mandatory approval of NCLT. Various categories of companies will be benefitted as result of such amended rules. Certain noteworthy emerging benefits are:

- Earlier public company was not largely eligible to opt for FTM, the amended provisions now make all public companies eligible to opt for FTM (subject to transferor company is not listed and applicable threshold);
- Earlier two subsidiary companies of an Indian or foreign parent company were not eligible to opt for FTM though the size was relatively less and none of them was listed. Amended rules now enable merger or demerger between such companies through simplified process under quicker timelines;
- Earlier only private, small or start-up companies were permitted to opt for FTM. The amended rules are now places no restrictions on size of company (except overall threshold for debt in case of external group restructurings) to avail the FTM;
- Expansion of scope to merger or demerger between holding company and subsidiary company (earlier only WOS was covered) or between fellow-subsidiary companies would entail more companies to undergo business restructurings in comparatively eased timelines and simplified process;
- While listed companies are still prohibited from opting FTM, in following scenarios, even internal group restructurings can go for FTM though it involves a listed company
    - merger or demerger between holding company and WOS; and
    - merger or demerger between holding and subsidiary company, or two fellow subsidiary companies, if transferor company is not listed.

While the expansion of scope is a welcome move and instill stakeholders' confidence to the mission of government in achieving 'ease of doing business', the critical requirements of mandatory approval of at least 90% shareholders and creditors (secured and unsecured) both, may yet create a bottleneck for various companies as no relaxation is provided to that extent, specifically in case where transferor or transferee company is listed.

On the other hand, various merger or demerger schemes earlier filed with the NCLT due to restrictive conditions for FTM may now substantially reduce and as a result, NCLT may have lesser petitions to deal with thereby easing the timelines for such merger or demerger schemes where NCLT approval is mandatorily required.

It seems that the approach and intention is that unless substantial public interest is involved, merger or demerger can be undertaken under FTM in a simplified process and quicker timelines, without intervention of NCLT. Broadly, NCLT approval will be mandatorily required only under following scenarios:

(a) In case of internal business restructurings (merger or demerger between two group companies), if,
- transferor company is listed *[except in case of merger or demerger between holding company and WOS, which can still opt for FTM]*; or
- either transferor company or transferee company is a foreign company *[except in case of merger or demerger between foreign holding company and Indian WOS, which can still opt for FTM]*.

(b) In case of external business restructurings, if,
- either of the company is listed, or,
- either of the company has aggregate of outstanding loans, debentures or deposits is not exceeding INR 200 crore (~ USD 22.68 million), or, defaulted in its repayment.

Various merger or demerger schemes pending with the NCLT may get withdrawn and filed before RD if eligible under FTM depending on which stage it is pending. Also, new merger or demerger schemes only if FTM route if not opted. Hence, overall volume of merger or demerger schemes getting filed with NCLT may now substantially reduce and as a result, NCLT may have lesser petitions to deal with thereby easing the timelines for such merger or demerger schemes where NCLT approval is mandatorily required.

Clarifying the applicability of FTM to demergers

While Section 233(12) of CA'13 provided that FTM was open for demergers and various precedents are already available where demergers are approved by Regional Director, different school of thoughts was prevailing, and an ambiguity always remained on applicability of FTM to demergers. The amended rules clear all the ambiguity with insertion of a specific provision and amending all the forms to cover demerger cases. The amendment grants statutory sanction to the quicker and simpler process driven hive-off or segregation of businesses through demergers.

Modifications to the procedural requirements

The table provided below shows a comparative analysis of procedural requirements between the pre-amendment provisions and the amended provisions of Rule 25 of CAA Rules:

Sr. No.	Particulars	Pre-amendment provisions	Amended provisions
1.	Notice to sectoral regulators	Earlier, notice to invite objections or suggestions of the scheme proposed under FTM was sent to Registrar and Official Liquidator or persons affected by the scheme	Though the phrase 'persons affected by the scheme' was broad enough to cover the sector regulators, the amendment now categorically stipulates to issue notice inviting objections or suggestions of the scheme proposed under FTM to applicable sectoral regulators (viz. Reserve Bank of India, Securities and Exchange Board of India, Stock exchange(s), Insurance Regulatory and Development Authority of India, Pension Fund Regulatory and Development Authority etc.)
2.	Relaxation in timeline to file report covering result of shareholders / creditors meetings (in Form CAA-11 as an attachment to e-Form RD-1)	The transferee company was required to file a copy of the scheme as agreed to by the members and creditors, along with a report of the result of each of their meetings, within a period of **seven** days after conclusion of such meetings.	The amendment has relaxed the timeline of filing such report from seven days to **fifteen** days after conclusion of meetings.
3.	Filing a statement where notice is issued to sector regulators	No such provision existed	Where notice is issued to applicable sector regulator, a statement is to be filed covering the manner in which objections / suggestions received from sector regulators have been addressed.
4.	File Valuation Report obtained from Registered Valuer	No specific provision to submit valuation report	While practically, Regional Director used to call for valuation report basis which share exchange ratio was supposed to be determined, a specific provision is now inserted to submit valuation report obtained from registered valuers.
5.	New Form CAA-10A issued	-	Format of the certificate to be issued by the statutory auditor of the company is prescribed
6.	Amendment in Forms CAA-9, CAA-10, CAA-11 and CAA-12	-	Modified to cover specifically cover demerger as well as new scenarios under the expanded scope

KCM Analysis

Surge expected in schemes filed before RD

While the amended rules will benefit the stakeholders at large, it may result in a surge in the schemes filed before RD under FTM, including certain cases of schemes pending before NCLT being withdrawn and filed before RD to avail benefit of quicker timelines and simplified process. Consequently, the volume of work is naturally going to get stretched with RD and practical challenge may arise in upcoming times in achieving the existing quicker timelines by which RD is clearing the schemes presently.

Filing valuation report obtained from Registered Valuer

The amended rules specifically provide for submitting valuation report obtained from registered valuer. In various cases of business restructurings, viz. merger of WOS with holding company where no consideration is to be paid, demerger of business undertakings resulting in mirror shareholding etc., requirement of valuation report may not have commercial bearing, however, the said requirement may still need to be complied with.

For further analysis and discussion, you may please reach out to us.

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