

## ERGO

*Analysing developments impacting business*

### CROSS-BORDER MERGERS AND AMALGAMATIONS: An Update on Rule 25A of The Companies Merger Rules

11 September 2024

#### **Background**

Section 234 of the Companies Act 2013 (Companies Act) and Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (Companies Merger Rules) permit mergers and amalgamations between Indian companies and companies incorporated in certain jurisdictions outside India.

Under the Companies Merger Rules, a foreign company incorporated outside India is permitted to merge into an Indian company after complying with the provisions of sections 230 to 232 of the Act including, seeking approval of the National Company Law Tribunal (Tribunal). The Companies Merger Rules also mandate that prior approval should be obtained from the Reserve Bank of India (RBI) for any such cross-border mergers.

On 20 March 2018, the RBI separately issued the Foreign Exchange Management (Cross Border Merger) Regulations, 2018 (Cross Border Merger Regulations) to address various issues that may arise in relation to cross border mergers from an exchange control perspective. The Cross Border Merger Regulations provide that any transaction undertaken in relation to a cross-border merger in accordance with the Cross Border Merger Regulations shall be deemed to be approved by the RBI (as required in terms of Rule 25A of the Companies Merger Rules).

#### **Amendment to Rule 25A of the Companies Merger Rules**

The Ministry of Corporate Affairs vide its notification dated 9 September 2024 (Amendment), amended the Companies Merger Rules, and introduced specific sub-rules under Rule 25A of the Companies Merger Rules, recognizing a scheme of arrangement whereby a foreign holding company seeking to amalgamate into its Indian wholly owned subsidiary may do so under the fast-track merger route under Section 233 of the Companies Act. The Amendment will be effective from 17 September 2024.

Other material changes to Rule 25A of the Companies Merger Rules pursuant to the Amendment are detailed below:

- Both, the Indian transferee wholly owned subsidiary and the foreign transferor holding company, will be required to obtain prior approval of the RBI
- A declaration in prescribed form (Form No. CAA 16) is required to be submitted in case of a merger between an Indian company and any other company/ body corporate incorporated in a country which shares a land border with India (e.g.,

China, etc.), should now be filed with the Central Government through the office of the jurisdictional Regional Director

### Comments

Several Indian companies, particularly in the technology space (including fintech) were held as wholly owned subsidiaries of an offshore parent company. Gradually, with the Government introducing relaxations meant to increase ease of doing business in India, coupled with increasing investor comfort of investing directly in an Indian company, several companies are contemplating a 'reverse flip', i.e., shifting their parent holding entities back to India. This Amendment is a welcome step by the Ministry of Corporate Affairs and will help promote and facilitate such transactions.

The Amendment strikes a good balance to make the process of amalgamation of foreign holding company into the Indian wholly owned subsidiary, smooth and efficient but at the same time ensuring that all regulatory aspects are in order. By permitting such mergers under the fast track route, this provides businesses a simplified and streamlined process of simply obtaining approval from the Central Government (through the office of the Regional Director) and bypasses the cumbersome Tribunal approval process. The said Amendment would primarily result in faster closure of merger schemes and transactions and reduce burden on Tribunals and overall costs.

Interestingly, the Amendment provides for seeking prior approval from the RBI, by both the entities, i.e. Indian wholly owned subsidiary and the foreign holding company. In terms of the Cross Border Merger Regulations, the RBI has granted deemed approval to scheme transaction(s) in the nature of cross-border mergers provided that such merger is in compliance with the extant Cross Border Merger Regulations.

As the Amendment is made to Rule 25A of the Companies Merger Rules, the merger schemes which are in conformity with the Cross Border Merger Regulations, will not require prior approval of the RBI unless otherwise clarified by it.

- Mehul Shah (Partner); Aman Yagnik (Counsel); and Jamsheed Dadachanji (Principal Associate)

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)