

## COMPANY LAW UPDATE: FAST TRACK MERGERS NOW HAVE A DEFINITE TIMELINE

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### Background

Section 233 of the Companies Act, 2013 permits fast-track mergers of certain classes of companies such as: (i) start-up companies; (ii) small companies; and (iii) holding companies and their wholly owned subsidiaries.

Even though the fast-track merger process was introduced to offer a cost-effective and quick solution without any intervention of the National Company Law Tribunal (the “**NCLT**”), it never gained popularity as many of the steps linked to actions by relevant regulatory authorities lacked a definite timeline. Companies often opted for regular mergers as they chose the certainty of prescribed timelines of regular mergers over the opacity of timelines of fast-track mergers.

The Ministry of Corporate Affairs, Government of India (the “**MCA**”), has now addressed this issue by amending the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the “**Merger Rules**”) through the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023 (the “**Amendment Rules**”). The Amendment Rules were issued on May 15, 2023 and will come into effect from June 15, 2023. While the Amendment Rules do not specifically clarify this, it is expected that the benefit of the definite timelines introduced by the Amendment Rules will be available to merger schemes filed with the regulatory authorities from June 15, 2023 onwards.

### Steps and timeline of a fast-track merger

The Amendment Rules prescribe definite timelines for the steps linked to actions by relevant regulatory authorities by amending sub-clauses (5) and (6) of Rule 25 of the Merger Rules. Set out below is a comparative analysis of the steps for a fast-track merger, along with timelines involved prior to and post the Amendment Rules. Specifically, steps 7 and 8 below capture the key differences implemented through the Amendment Rules.

## Comparative Analysis

#	Step	Timeline before Amendment Rules	Timeline under Amendment Rules
1.	Board authorization of the scheme	No statutory timeline. Dependent on the parties.	Same as before.
2.	Filing of the draft scheme with the Registrar of Companies (the “RoC”), Official Liquidator (the “OL”) and persons affected by the scheme inviting objections/ suggestions, if any	Within thirty (30) days of board authorization. There is no definite timeline for the RoC and the OL to provide objections/ suggestions to the draft scheme. However, this does not affect the next steps.	Same as before.
3.	Filing of respective declarations of solvency by the merging companies	Needs to be filed before convening meetings and obtaining approvals of the shareholders and creditors to the scheme of merger.	Same as before.
4.	Approval of shareholders	No statutory timeline. Dependent on the parties.	Same as before.
5.	Approval of creditors	No statutory timeline. Dependent on the parties.	Same as before.
6.	Filing of the final scheme with the RoC,	Within seven (7) days of receiving approvals from the shareholders and the creditors.	Same as before.

#	Step	Timeline before Amendment Rules	Timeline under Amendment Rules
	the OL and the Central Government (represented by the relevant Regional Director (the “RD”))		
7.	Objection/ confirmation from the RoC and the OL	<b>No definite timeline.</b>	<b>Within 30 days of receipt of the final scheme under Step 6.</b>
8.	Approval from the RD	<p>(a) <u>If no objection is received under Step 7</u>: <b>No definite timeline for the RD to give its confirmation.</b></p> <p>(b) <u>If objection is received under Step 7 but deemed to be not sustainable by the RD</u>: <b>No definite timeline for the RD to give its confirmation.</b></p> <p>(c) <u>If objection(s) are received under Step 7 and the RD deems that the scheme is not in the interest of the creditors or the public</u>: <b>The RD may file an application before the NCLT within sixty (60) days of receipt of the scheme under Step 6.</b></p>	<p>(a) <u>If no objection is received under Step 7 and the RD deems the scheme to be in the interest of the public/ creditors</u>: <b>The RD needs to provide its confirmation within fifteen (15) days of expiry of the thirty (30) day period set out in Step 7.</b></p> <p>(b) <u>If objection is received under Step 7 but deemed to be not sustainable by the RD</u>: <b>The RD needs to provide its confirmation within thirty (30) days of expiry of the thirty (30) day period set out in Step 7.</b></p> <p>(c) <u>If objection(s) are received under Step 7 and the RD deems that the scheme is not in the interest of the creditors or the public</u>: <b>The RD may file an application before the NCLT within sixty (60) days of receipt of the scheme under Step 6.</b></p>

#	Step	Timeline before Amendment Rules	Timeline under Amendment Rules
			<b>In any case, if the RD does not issue a confirmation within sixty (60) days of the receipt of the scheme under Step 6, it will be deemed that the RD has no objection to the scheme, and a confirmation order is to be issued.</b>
9.	Filing of confirmation order received from the RD under Step 8 with the RoC	Within thirty (30) days of receipt of confirmation order under Step 8.	Same as before.