



Regulatory Alert Stay Ahead...

Government notifies provisions relating to cross border mergers and Amalgamations

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Background

The Ministry of Corporate Affairs (MCA), Government of India has, in consultation with Reserve Bank of India (RBI), issued draft notifications related to mergers and amalgamations. Once these are notified in the Official Gazette, they will operationalize Company Law provisions and processes facilitating merger / amalgamation of an Indian company with a Foreign company and *vice versa*.

Highlights

- Under the new regulatory regime relating to cross-border merger / amalgamation, following would be permissible:
 - Merger of a Foreign company with an Indian company
 - Merger of an Indian company with a Foreign company incorporated in any of the following jurisdictions:
 - whose securities market regulator is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding (Appendix A Signatories); or
 - signatory to bilateral Memorandum of Understanding with India's SEBI; or
 - whose central bank is a member of the Bank for International Settlements (BIS)
- and**
- a jurisdiction which is not identified in the public statement of Financial Action Task Force (FATF) as:
 - having strategic Anti-Money Laundering or Combating Financing of Terrorism deficiencies, to which counter measures apply; or
 - that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF to address the deficiencies.
- The transferee company to ensure that valuation for merger is done by valuers who are members of a recognized professional body in the jurisdiction of the transferee, based on internationally-accepted principles of accounting and valuation
 - The merger scheme may provide for consideration to be paid in cash or by issue of depository receipts or any combination to the shareholders of merging entity
 - Such a cross-border merger / amalgamation will require prior approval of Reserve Bank of India (RBI), National Company Law Tribunal (NCLT) and compliance with other provisions of Section 230 - 232 of the 2013 Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

Definition

- "Indian company" means a company incorporated under the 2013 Act or under any previous Indian company law.
- "Foreign company" means any company or body corporate incorporated outside India whether having a place of business in India or not.

Conclusion

The cross-border merger / amalgamation will also have to comply with overseas law of the host country, as applicable. Consequential clarification / amendment under the relevant provisions of the Foreign Exchange Management Act, 1999 and Regulations are expected in due course. One may also have to examine income tax implications of cross border merger.

Aforesaid provisions will come into force once the draft notifications are published in the Official Gazette.

Source: Draft Notifications dated 13 April 2017 available on www.mca.gov.in

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