

MERGERS AND AMALGAMATION:

The 2013 Act introduces some new provisions with regard to mergers and acquisitions, apart from incorporating changes to the existing provisions in the 1956 Act. The objective of bringing these changes is to simplify the procedures involved and ensure higher standards of accountability. Some of the key new provisions in this respect are:-

Streamlining requirements: The section dealing with compromises and arrangements, deals comprehensively with all forms of compromises as well as arrangements, and extends to the reduction of share capital, buy-back, takeovers and corporate debt restructuring as well. Another positive inclusion within this section is that objection to any compromise or arrangement can now be made only by persons holding not less than 10% of share holding or having an outstanding debt amounting to not less than 5% of the total outstanding debt as per the latest audited financial statements. [Section 230] Further, currently, under the 1956 Act, an order does not have any effect until the same is filed with the ROC. However, such requirement has been done away with under the 2013 Act. The 2013 Act merely requires filing of the order with the ROC.

Simplifying procedures: The current procedural requirements in case of a merger and acquisition in any form are quite cumbersome and complex. There are no exemptions even in the case of mergers between a company and its wholly owned subsidiaries. The 2013 Act now introduces simplification of procedures in two areas, firstly, for holding wholly owned subsidiaries and secondly, for arrangements between small companies (section 233 of the 2013 Act). Small companies is a new category of companies, introduced within the 2013 Act, with defined capital and turnover thresholds, which has been given certain benefits, including simplified procedures.

One of the significant restrictions proposed in case of these situations is the restriction on the transferee company to hold any shares either in its own name or in the name of a trust, subsidiary or associate, since all shares will need to be cancelled or extinguished on merger or amalgamation. This requirement will stem the practice followed by several companies which have in the past followed this route. Further, in certain cases, it has also rationalized the requirements, for example in the case of the reduction of the share capital, which is part of compromise or arrangement, the company will need to comply with the provisions of this section only, as against the existing requirement under the 1956 Act, where the company is required to comply with the provision of section 108 in case of reduction of share capital as well those relating compromise.

Cross Border Mergers [Section 234]: The 1956 Act, allows the merger of a foreign company with an Indian company, but does not allow the reverse situation of merger of an Indian company with a foreign company. The 2013 Act now allows this flexibility, with a rider that any such mergers can be effected only with respect to companies incorporated within specific countries, the names of which will be notified by the central government. With prior approval of the central government, companies are now allowed to pay the consideration for such mergers either in cash or in depository receipts or partly in cash and partly in depository receipts as agreed upon in the scheme of arrangement. These new provisions can be greatly beneficial to Indian companies which have a global presence by providing them structuring options which do not exist currently.

Listed to Unlisted: In the event of an arrangement between a listed transferor company and an unlisted transferee company, the 2013 Act now permits for the (subject to consent of the tribunal) unlisted company to stay unlisted until it becomes

listed. Further, if the shareholders of the transferor company decide to exit, the exit price cannot be less than the price as provided under Securities Exchange Board of India Regulations.

Squeeze out of minority shareholding [Section 236]: The 2013 Act has introduced new provisions for enabling the acquirer of a company (holding 90% or more shares) by way of amalgamation, share exchange, etc to acquire shares from the minority holders subject to compliance with certain conditions. This has also introduced the requirement for 'registered Valuers', since the price to be offered by majority shareholder needs to be determined on the basis of valuation by a registered valuer.