

## MCA issues clarification on “Appointed Date” for Mergers

### CIRCULAR

The Ministry of Corporate Affairs (“MCA”) has, vide circular dated August 21, 2019 (“Circular”), issued a clarification on (i) whether it is mandatory to indicate a specific calendar date as “appointed date” in the schemes of mergers and amalgamations undertaken pursuant to Section 232(6) of the Companies Act, 2013 (“Act”); and (ii) whether such “acquisition date” for the purpose of Indian Accounting Standards would be same as the “appointed date” referred to in section 232(6) of the Act.

### OBSERVATION

MCA has observed in the Circular that companies have been filing schemes with the National Company Law Tribunal (“NCLT”) indicating “appointed date” as either a specific calendar date or an event-based date, contingent on occurrence of an event mutually agreed upon by the parties to the scheme. However, there has always been a confusion in respect of whether the “appointed date” in respect of schemes of amalgamation as per the Act was required to always be a fixed date or could also be a date contingent on occurrence of an event. Thankfully, MCA, vide its Circular has clarified this interpretative confusion.

### CLARIFICATION

The MCA has clarified the import of section 232(6) of the Act stating that companies have the freedom to decide and agree upon an “appointed date” from which date, the scheme shall come into force.

The “appointed date” need not necessarily be a definite calendar date but can also include a future event linked date (for example from the date of grant of license by a competent authority or fulfilment of any preconditions agreed upon by the parties or meeting any other requirements agreed upon by the parties which are relevant to the scheme). The Circular further clarifies that the “appointed date” referred to in section 232(6) of the Act will also be deemed to be the “acquisition date” for the purpose of conforming to accounting standards including the Indian Accounting Standard 103 (Business Combinations).

As mentioned above, in the event that the “appointed date” is not a specified calendar date, companies may choose the date to be based on the occurrence of a trigger event which is relevant to the merger/amalgamation and agreed upon by the parties to the scheme, which event would be required to be indicated in the scheme. In the event that such event based date is a date subsequent to the filing of the certified order in respect of the merger/amalgamation with the Registrar of Companies (“ROC”), the company will be required to file an intimation of the same with the ROC within 30 (thirty) days of such scheme coming into force.

Where the “appointed date” is a specified calendar date, it may precede the date of filing of application of merger/amalgamation in the NCLT. However, if the “appointed date” is dated beyond a year from the date of filing, justification for the same will be required to be stated in the scheme and the same cannot be opposed to public interest.

### OUTCOME

rather the NCLT, to evaluate this on a case to case basis.

The MCA clarification has provided much needed clarity on accounting treatment and will result in harmonization of business practices and ease of doing business. Stakeholders will now be able to ascertain the “appointed date” basis business considerations and function independently and not as merged entities till the occurrence of the trigger event. The Circular has succeeded in eliminating the ambiguity surrounding the scope of “appointed date” allowing stakeholders to have better clarity and control over merging of legal entities basis completion of certain pre-conditions. In merger deals, the acquiring entity will be able to impose pre-conditions on the stakeholders of the acquired entity i.e. conditions precedent, for the merger to be effective. Further, in the event any prior regulatory approval is required for the merger, then upon the receipt of such approval, the merger will automatically be deemed to have been effective without the requirement of any separate action by the merging entities. These examples indicate that the clarity in respect of “appointed date” could potentially simplify the merger process to an extent and will also provide better control to the stakeholders. However, in absence of a specified date, there will also exist an avenue of ambiguity as to the actual date of effectiveness of merger. Especially if the preconditions are subjective and not objective, their completion may be disputed between the stakeholders resulting in a disagreement as to the effective date of the merger. In this case, it will be upto the courts or

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