India eases reverse flipping norms: Amendment to the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

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The Ministry of Corporate Affairs (**MCA**) has published the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024 (**Amendment**) with the objective of easing '*reverse flipping*' norms in India. The Amendment is effective from 17 September 2024.

The trend of '*reverse flipping*' has become increasingly popular, particularly amongst start-ups in India. Start-ups which were initially set up overseas due to favourable local tax and regulatory frameworks are returning to India considering the easing regulatory norms, increasing government incentives and the growing IPO markets which provide desirable valuations and exit strategies for investors.

Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (**Merger Rules**) permits companies incorporated overseas to merge with an Indian company by seeking prior approval of the Reserve Bank of India (**RBI**) and the National Company Law Tribunal (**NCLT**). The process of obtaining an approval from the NCLT was often time consuming due to backlog of cases, resulting in a delay in the mergers.

The central government has amended the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 to fast-track the merger and amalgamation process of foreign holding companies and their Indian subsidiaries. The amendment is aimed at streamlining the approval process to support the trend of '*reverse flipping*' transactions.

The Amendment introduces Rule 25A(5) to the Merger Rules, permitting the merger or amalgamation of a foreign holding company into an Indian subsidiary to be undertaken through the fast-track merger scheme set out under Section 233 of the Companies Act, 2013 (**Companies Act**). A fast-track merger would not require an approval from the NCLT, which would streamline the process and significantly reduce the costs and time required for a merger.

Previously, the fast-track merger route was reserved for mergers between Indian holding companies and their subsidiaries, between start-up companies, or between start-up companies with small companies (i.e., companies with a paid-up share capital of less than INR 4,00,00,000 (~USD 476,000) and turnover of less than INR 40,00,00,000 (~USD 4,760,000).

To avail of the fast-track route for a merger between a foreign holding company and an Indian subsidiary, the following conditions must be satisfied:

a. the transferor and transferee entities must obtain prior approval from the RBI;

b. the transferee Indian company must comply with Section 233 of the Companies Act, i.e., the provisions applicable to fast-track mergers;

c. the transferee Indian company must file an application for central government approval under Section 233 of the Act read with Rule 25 of the Merger Rules; and

d. if the foreign company is incorporated in a country which shares a land border with India, a declaration in connection with approvals obtained under the foreign exchange framework, along with a copy of the approval (if any), must be filed with the central government.

However, RBI's approval will not be required if the transaction is being undertaken in accordance with the Foreign Exchange Management (Cross Border Merger) Regulations, 2018.

The Amendment is a welcome change and is in line with the government's attempts to combat regulatory hurdles and create a more business-friendly environment. It seeks to bring reverse flipping transactions under the fast-track route and ease the approval process by permitting such transactions to be undertaken without the time-consuming process of obtaining approval from the NCLT. This may facilitate completion of transactions in time for the ongoing IPO wave in India.

Previously, companies such as PhonePe (Singapore) and Groww (USA), which had set up their companies in foreign markets, have returned to India due to changes in the economic policies, access to capital markets, expanding domestic market, and increasing investor confidence in its startup ecosystem. Various schemes have also been introduced in India to improve the ease of doing business for startups. The Amendment will further incentivise several other start-ups and companies, particularly in the fintech sector, that are looking to undertake similar reverse flipping transactions and bring their parent companies back to India.
