

# Notification of various sections under the Companies Act, 2013

December 15, 2016

## In brief

Recently, the Ministry of Corporate Affairs (MCA) has notified the much-awaited sections in the Companies Act (CA), 2013 dealing with amalgamation, compromise, arrangement, liquidation and winding up. The notified sections will be effective from 15 December, 2016, and are likely to bring a paradigm shift in the manner in which these important restructurings are implemented. Going forward, the National Company Law Tribunal (NCLT) will have jurisdiction over these matters, which until now were within the jurisdiction of the High Court (HC). NCLT has been setup as a specialised body to deal with Company Law matters.

## In detail

Sr. No.	Sections notified	Key changes (as compared to relevant provisions under CA 1956)
1	Section 66 Reduction of share capital	<ul style="list-style-type: none"> <li>Reduction not allowed if the company is in arrears in the repayment of any deposit accepted by it. <b>(New)</b></li> <li>The process relating to reduction of share capital will now be handled by the NCLT instead of by the HC.</li> <li>NCLT to give notice of proposed capital reduction to the central government, Registrars of Companies (RoCs), SEBI and creditors, who may make any representation within three months. <b>(New)</b></li> <li>Statutory auditor's certificate confirming that accounting treatment is in accordance with Accounting Standards required to be filed with the NCLT. <b>(New)</b></li> <li>Tribunal needs to be satisfied that claim of every creditor has been discharged or determined or has been secured or consent of the creditor is obtained.</li> </ul>
2	Section 48 Variation of shareholders rights	If the variation by one class affects the rights of any other class of shareholders, the consent of three-fourth of such other class of shareholders needs to be obtained.

Sr. No.	Sections notified	Key changes (as compared to relevant provisions under CA 1956)
3	<p>Section 230 [except sub-sections (11) and (12)], sections 231, 232 and 239</p> <p>Power of NCLT to enforce compromise or arrangements with creditors and/ or members, merger and amalgamation</p>	<ul style="list-style-type: none"> <li>The process relating to compromise, amalgamation and arrangement will be within jurisdiction of the NCLT as against HC under CA 1956.</li> <li>Dispensation with creditors meeting allowed if creditor having 90% in value agree to the Scheme and confirm it way of affidavit. <b>(New)</b></li> <li>Meeting of shareholders or creditors can be ordered by the NCLT.</li> <li>Simultaneously with the notice to shareholders/ creditors, notice of proposed arrangement shall also be sent to the central government, income-tax authorities, Reserve Bank of India, RoCs, SEBI and Competition Commission of India, if necessary. All the authorities need to convey their representation within 30 days, else it will be presumed that they have no representation. Hitherto, the notice was required to be given after the admission of the petition by the HC to RD etc. The list of noticees has been enlarged.</li> <li>Statutory auditor's certificate confirming that accounting treatment is in accordance with Accounting Standards is required to be filed with the NCLT. Hitherto, such certificate was necessary in case of listed companies under SEBI regulations.</li> <li>Persons holding at least 10% of shareholding or 5% of the total outstanding debt as per the latest audited financials only can raise objections <b>(New)</b>. This should reduce the unnecessary litigation created by small stakeholders. Scheme of merger/ demerger to clearly indicate appointed date.</li> <li>Enables provision of exit opportunity to shareholders of listed transferor company merging with unlisted company.</li> <li>Enables making takeover offer in a Scheme. However, those provisions are not yet notified.</li> </ul>
4	<p>Section 233</p> <p>Merger or amalgamation of certain companies – Short form merger</p>	<ul style="list-style-type: none"> <li>Option to follow short form of process is provided for merger between small companies and/ or merger between holding company/ wholly owned subsidiary company. The entire process is new, there was no corresponding provision under CA 1956. <b>(New)</b></li> <li>The companies need to file declaration of solvency.</li> <li>The short form process provides for obtaining approvals from shareholders, creditors, liquidator and registrar of companies in a time bound manner without intervention of the NCLT.</li> <li>On receipt of all approvals, the Scheme will be filed with and registered by the central government.</li> <li>The short form process will be converted to normal process under section 232 if the central government finds that the Scheme is not in public interest, or against the interest of creditors, or if anyone else file objections with the NCLT.</li> </ul>
5	<p>Sections 235/ 238</p> <p>Power to acquire shares of shareholders dissenting from Scheme or contract approved by majority</p>	<ul style="list-style-type: none"> <li>The provisions have been relaxed.</li> <li>In case of acquisition of shares of a company, it enables the acquirer company to buy out dissenting shareholders, if the contract or Scheme is approved by shareholders holding 90% in value of the shares proposed to be transferred.</li> </ul>
6	<p>Section 236</p> <p>Purchase of minority shareholding</p>	<ul style="list-style-type: none"> <li>Mechanism to buy-out minority shareholding has been provided. <b>(New)</b></li> <li>Group of shareholders, acting in concert, becoming registered shareholder of 90% or more shares shall notify the company their intention to acquire balance</li> </ul>

Sr. No.	Sections notified	Key changes (as compared to relevant provisions under CA 1956)
		<p>shares. Such shareholders can buy out the minority shares at a price determined on the basis of a valuation report.</p> <ul style="list-style-type: none"> <li>• Similarly, minority shareholders also are allowed to offer their shareholding to majority shareholders.</li> </ul>
7	Section 237 Amalgamation of companies in public interest	The section empowers the central government to provide for amalgamation of companies in public interest in the prescribed manner (similar to corresponding provision of CA 1956).
8	Section 240 Liability of officers in respect of offences prior to merger	The liability of officers in respect of offences committed prior to merger, amalgamation, etc. shall continue after such merger, amalgamation or acquisition.
9	Section 434(1)(c) Transfer of proceedings relating to arbitration, compromise, arrangements, reconstruction and winding up	<ul style="list-style-type: none"> <li>• Pending proceedings relating to arbitration, compromise, arrangements, reconstruction and winding up to stand transferred to the NCLT, which may proceed to deal with such proceedings from the stage before their transfer. Thus, all Scheme matters pending before the HCs on 15 December 2016, at whatever stage they are, will be transferred from the HCs to the NCLT, and will be completed by NCLT. However, those matters which are reserved for orders shall not be transferred.</li> <li>• Winding up matters at certain stage will be completed by the HC and at other stages will be transferred to and completed by the NCLT.</li> </ul>
<b><u>Winding up</u></b>		
10	Section 2(23) Definition of company liquidator	CA 2013: Company Liquidator means person appointed by the NCLT from a panel of insolvency professionals registered under the Insolvency and Bankruptcy Code, 2016 (the Code).
11	Section 7(7)(c) and (d) Furnishing false information for incorporating company	If the company is incorporated by furnishing false information, the NCLT, on an application, and on being satisfied, can directly remove the name of the company from the Register of Companies, or pass an order for winding up of the company.
12	Section 8(9) Surplus from winding up of company formed with charitable objects	On winding up or dissolution of company with charitable objects, if there are any surplus assets, they can either be transferred to another company with similar objects, or the sale proceeds thereof can be credited to the Rehabilitation and Insolvency Fund under the Code.
13	Section 224(2) Actions to be taken in pursuance of inspector's report	Central government may expedite the process for any company liable to be wound up in specified circumstances in the prescribed manner (similar to corresponding provision of CA 1956).
14	Section 226 Winding up of company not to stop investigation proceedings	<ul style="list-style-type: none"> <li>• Winding up proceedings are not a bar to initiating/ continuing the investigation under chapter XIV of the CA 2013.</li> <li>• Even if the winding up order is passed by the NCLT, the inspector has the right to inform the NCLT of any pendency of investigation proceedings, and the NCLT may pass the appropriate order in this regard.</li> </ul>

Sr. No.	Sections notified	Key changes (as compared to relevant provisions under CA 1956)
		<ul style="list-style-type: none"> <li>• Additionally, no part of the winding up order absolves any director or employee of the company from participating in the proceedings before the inspector, or from any liability as a result of the inspector's findings.</li> </ul>
15	Sections 270 to 288 and Sections 290 to 303 Winding up by NCLT	Procedure for winding up will be handled by the NCLT
16	Sections 324, 326 to 365 Provisions applicable to winding up	<ul style="list-style-type: none"> <li>• Procedure for winding up to be monitored by the NCLT</li> <li>• Onus for filing certified copy of order passed by the NCLT for dissolution of company extended to company liquidator (earlier the onus was on the person filing the application).</li> <li>• Failure to comply attracts monetary penalty.</li> </ul>
17	Sections 370, 372 and 373 Certain provisions relating to partnership firms etc. registered as company.	<ul style="list-style-type: none"> <li>• In case of partnership firms etc. registered as company, pending litigation before such registration to continue as if such registration had not taken place.</li> <li>• In the event of property of the company being insufficient, an order may be obtained for winding up the company.</li> <li>• New legal proceedings in relation to company under winding up to be commenced only with the NCLT's approval.</li> </ul>
18	Winding up of unregistered companies under sections 375 to 378	<ul style="list-style-type: none"> <li>• Definition of 'unregistered company' expanded to include limited liability partnership, society and cooperative society.</li> <li>• Petition for winding up of unregistered company will be presented before the NCLT instead of before the HC.</li> <li>• An unregistered company shall be deemed unable to pay its debts if the creditors' demands exceeds INR 100,000 instead of INR 500.</li> </ul>
18	Closure of place of business of a foreign company in India under section 391(2)	The provisions relating to winding up shall equally apply to the closure of the place of business of foreign company in India as if it were an Indian company.

### **The takeaways**

- With the notification of the aforesaid sections, the burden of the HC with respect to Company Law procedure is almost entirely shifted to the NCLT.
- It is expected that this important change in law would bring in substantial efficiency in the manner in which amalgamation, compromise, arrangement, liquidation, winding up, etc. are carried out.

- As regards, winding-up matters, it is important to note that voluntary winding up and winding up proceedings relating to a company's inability to pay debts is now covered under the provisions of the Code, and are deleted from CA 2013. Though the adjudicating authority continues to be the NCLT, the adjudication will be under the Code, and not under the CA 2013. CA 2013 now has only provisions relating to winding up of solvent companies through the NCLT,

and winding up of unregistered companies.

- Thus, with this new notification of sections and deletion of winding-up provisions, very few sections, including merger of foreign companies, remain to be notified under CA 2013.

### **Let's talk**

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor.

## Our Offices

### Ahmedabad

1701, 17th Floor, Shapath V,  
Opp. Karnavati Club,  
S G Highway,  
Ahmedabad – 380051  
Gujarat  
+91-79 3091 7000

### Hyderabad

Plot no. 77/A, 8-2-624/A/1, 4th  
Floor, Road No. 10, Banjara Hills,  
Hyderabad – 500034  
Telangana  
+91-40 44246000

### Gurgaon

Building No. 10, Tower - C  
17th & 18th Floor,  
DLF Cyber City,  
Gurgaon – 122002  
Haryana  
+91-124 330 6000

### Bengaluru

6th Floor  
Millenia Tower 'D'  
1 & 2, Murphy Road, Ulsoor,  
Bengaluru – 560 008  
Karnataka  
+91-80 4079 7000

### Kolkata

56 & 57, Block DN.  
Ground Floor, A- Wing  
Sector - V, Salt Lake  
Kolkata – 700 091  
West Bengal  
+91-033 2357 9101/  
4400 1111

### Pune

7th Floor, Tower A - Wing 1,  
Business Bay, Airport Road,  
Yerwada, Pune – 411 006  
Maharashtra  
+91-20 4100 4444

### Chennai

8th Floor  
Prestige Palladium Bayan  
129-140 Greams Road  
Chennai – 600 006  
Tamil Nadu  
+91 44 4228 5000

### Mumbai

PwC House  
Plot No. 18A,  
Guru Nanak Road (Station Road),  
Bandra (West), Mumbai – 400 050  
Maharashtra  
+91-22 6689 1000

### For more information

Contact us at  
[pwctr.knowledgemanagement@in.pwc.com](mailto:pwctr.knowledgemanagement@in.pwc.com)

## About PwC

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 157 countries with more than 223,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at [www.pwc.com](http://www.pwc.com).

In India, PwC has offices in these cities: Ahmedabad, Bengaluru, Chennai, Delhi NCR (Gurgaon), Hyderabad, Kolkata, Mumbai and Pune. For more information about PwC India's service offerings, visit [www.pwc.com/in](http://www.pwc.com/in)

PwC refers to the PwC International network and/or one or more of its member firms, each of which is a separate, independent and distinct legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details.

©2016 PwC. All rights reserved

## Follow us on:



For private circulation only

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PwCPL, its members, employees and agents accept no liability, and disclaim all responsibility, for the consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it. Without prior permission of PwCPL, this publication may not be quoted in whole or in part or otherwise referred to in any documents.

© 2016 PricewaterhouseCoopers Private Limited. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Private Limited (a limited liability company in India having Corporate Identity Number or CIN : U74140WB1983PTC036093), which is a member firm of PricewaterhouseCoopers International Limited (PwCIL), each member firm of which is a separate legal entity.