

# NANGIA M&A ALERT

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Clarifications on appointed date as per section 232(6) of the Companies Act, 2013

**August, 2019**

**The Ministry of Corporate Affairs (MCA)** vide its circular **dated 21st August 2019** has issued the clarification on the much lingering provisions of section 232(6), where the circular has clarified various issues & queries raised by the stakeholders.

## What is Section 232(6) of Companies Act, 2013?

Section 232(6) of the Companies Act, 2013 states that, The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

## Explanation

Every scheme filed under section 230-232 of the Cos Act shall clearly indicate an appointed date from which the scheme shall be effective; and

The scheme shall be deemed to be effective from such appointed date and not on any subsequent date.

In relation to the above queries, the following clarification has been issued:

## Query - 1

Section 232(6) of the Companies Act, 2013 states that, The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

## Case 1: Whether it is mandatory to indicate an appointed date in the scheme of amalgamation.

### Clarification Issued:

Every scheme of amalgamation has to necessarily provide a date with effect from which the amalgamation / transfer shall take place, and that such date may

precede the date of sanctioning of the scheme by the Court.

**[Marshall Sons & Co. India Ltd. v. ITO [223 ITR 809]**

## **Case 2: Whether it is mandatory to indicate a specific calendar date as the appointed date in the scheme of amalgamation.**

### **Clarification Issued:**

The provision of section 232(6) of the Act enables the companies in question to choose and state in the scheme an “appointed date”. This date may be a specific of an event such as grant of license by a competent authority or fulfilment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, etc., which are relevant to the scheme.

## **Case 3: In the absence of the calendar date.**

### **Clarification Issued:**

MCA Clarified that the scheme may identify the 'appointed date' based on the occurrence of a trigger event which is key to the proposed scheme and agreed upon by the parties to the scheme. This event would have to be indicated in the scheme itself upon occurrence of which the scheme would become effective. However in case of such event based date being a date subsequent to the date of filing the order with the Registrar under section 232(5), the company shall file an intimation of the same with the Registrar within 30 days of such scheme coming into force.

## **Query - 2**

**Whether the “acquisition date” for the purpose of IND – AS 103 (Business Combinations) would be same as the “appointed date” mentioned in Section 232(6).**

### **Clarification Issued:**

The circular clarifies that the 'appointed date' identified under the scheme shall also be deemed to be the 'acquisition date' and date of transfer of control for the purpose of conforming to Accounting Standards (including Ind – AS 103 Business Combinations)

The MCA Circular has provided a clarification that Section 232(6) of the Companies Act 2013 is an enabling provision to allow the companies to decide and agree upon an appointed date from which the scheme shall come in force. The circular clarifies that the appointed date need not necessarily be a definite calendar date but can also be a date linked to the occurrence of an event.

The decision is a welcome step by the stakeholders which shall help in aligning their business & commercial considerations as well as the accounting treatment considering such appointed date (especially, in cases where the appointed date is linked to a future event).

The recent circular brings much needed clarity on the queries when such schemes are executed by regulatory authorities like Regional Directors and National Company Law Tribunal.

# Nangia's Take

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## Our Offices

### NOIDA

A-109, Sector-136,  
Noida (Delhi-  
NCR) 201304,  
INDIA  
T : +91 120 2598000

### DELHI

B-27, Soami  
Nagar, New Delhi  
110017, INDIA  
T: +91 120 2598000

### GURUGRAM

812-814, Tower B, Emaar  
Digital Greens Sector 61,  
Gurugram,  
Haryana- 122102  
T: +0124-4301551/1552/1554

### MUMBAI

11th Floor, B Wing, Peninsula  
Business Park, Ganpatrao  
Kadam Marg, Lower Parel,  
Mumbai – 400 013. INDIA  
T: +91 22 61737000

### DEHRADUN

First Floor, "IDA"  
46 E. C. Road,  
Dehradun – 248001,  
Uttarakhand, INDIA  
T: +91 135 271 6300/301  
/302/303

### BENGALURU

Embassy Square, # 29,  
306, 3rd Floor, 148  
Infantry Road, Bangalore  
– 560001

### PUNE

Office number 3, 1st floor,  
Aditya, Centeegra, Fergusson  
College Road, Next to Mantri  
House, Pune - 411004

### CHENNAI

Suite 118, 31-A, Cathedral  
Garden Road, Nungambakkam,  
Chennai-600034  
T: +91-44-40509200