

The much-awaited clarification on appointed date as per section 232(6) of the Companies Act, 2013

Background - Appointed Date

- The concept of 'appointed date' relates to the schemes for implementation of merger, demerger etc. in accordance with the provisions of Companies Act, 2013 ('Cos Act'). The appointed date generally refers to a date from which the scheme shall be effective upon sanction by National Company Law Tribunal ('NCLT'). Such appointed date may be determined by the Board of Directors (of the companies involved in the scheme) and mentioned in the scheme or may be a date as directed by the concerned NCLT.
- In this regard, section 232(6) of the Cos Act provides that:
 - 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 any subsequent date.

The Current Ambiguity

In the recent past, there have been various NCLT orders as well as challenges raised by the Regional Directors in relation to the appointed date mentioned in the schemes, which have led to certain ambiguities.

- **Ambiguity 1** - Whether the appointed date in the scheme should mandatorily be a specific calendar date or can it be a date linked to the occurrence of an event (such as business considerations, fulfilling legal requirements such as procurement of license from sectoral regulators, filing of NCLT orders with the Registrar, etc.).



- **Ambiguity 2** - For the purpose of accounting under Ind-AS 103 (Business Combinations), whether the 'acquisition date' would be the appointed date as indicated in the scheme.
- **Ambiguity 3** – Whether the appointed date mentioned in the scheme can be retrospective and if so, how far can it be stretched.

Clarifications

The MCA has received several queries in relation to determination of 'appointed date' based on interpretation of provisions of section 232(6) of the Cos Act. After detailed examination of the matter, the MCA has issued a circular¹ ('MCA Circular') with following clarifications:

- Section 232(6) of the Cos Act enables the companies to select the appointed date to be indicated in the scheme. Accordingly, the appointed date may be a specific calendar date or may be tied to the occurrence of an event which are relevant to the scheme (such as grant of license by a competent authority, fulfilment of any preconditions agreed upon by the parties, meeting any other requirements as may be agreed upon between the parties etc.).
- The 'appointed date' identified under the scheme shall be deemed to be the 'acquisition date' and the date of transfer of control for the purpose of conforming to accounting standards (including Ind-AS 103 Business Combinations).
- The appointed date chosen as a specific calendar date may precede the date of filing of application for the scheme of merger/ arrangement in NCLT. However, if the 'appointed date' is significantly ante-dated beyond a year from the date of filing then the justification for the same should be specifically brought out in the scheme and it should not be against public interest.
- Where the appointed date in the scheme is based on the occurrence of an event, such trigger event should be indicated in the scheme itself. However, in case the appointed date is an event based date which is a date subsequent to the date of filing the order with the Registrar under Section 232(5) of the Cos Act, then the company shall file an intimation of the same with the Registrar within 30 days of such scheme coming into force.

The MCA Circular also makes a reference to the case of Marshall Sons & Co. India Ltd. v. ITO² and Equitas Finance Limited³ in which the Supreme Court and the Madras High Court respectively had dealt with the concept of 'appointed date'.

¹ General Circular No. 09/2019 dated August 21, 2019

² [223 ITR 809]

³ C.P.Nos.119 to 121 of 2016



Dhruva Comments

The MCA Circular provides a much-awaited clarification that Section 232(6) of the Cos Act is an enabling provision to allow the companies to decide and agree upon an appointed date from which the scheme shall come in force. This would mean that the appointed date need not necessarily be a definite calendar date and can also be a date linked to the occurrence of an event.

The welcome flexibility in determination of the appointed date should allow the companies/ stakeholders to clearly determine the appointed date and align 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).

Hopefully, this should bring to rest the prevailing ambiguity in relation to the appointed date in the schemes and give clarity to the Regional Directors and NCLT at the time of examination of schemes.



ADDRESSES

Mumbai

1101, One IndiaBulls Centre,
11th Floor, Tower 2B,
841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400 013
Tel: +91 22 6108 1000 / 1900

Ahmedabad

B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Prahladnagar, Corporate Road,
Ahmedabad - 380 015
Tel: +91-79-6134 3434

Bengaluru

Prestige Terraces, 2nd Floor
Union Street, Infantry Road,
Bengaluru 560 001
Tel: +91-80-4660 2500

Delhi / NCR

101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana - 122 002
Tel: +91-124-668 7000

Pune

305, Pride Gateway, Near D-Mart, Baner,
Pune - 411 045
Tel: +91-20-6730 1000

Kolkata

4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal – 700016
Tel: +91-33-66371000

Singapore

Dhruva Advisors (Singapore) Pte. Ltd.
20 Collyer Quay, #11-05
Singapore 049319
Tel: +65 9105 3645

Dubai

WTS Dhruva Consultants
U-Bora Tower 2, 11th Floor, Office 1101
Business Bay P.O. Box 127165
Dubai, UAE
Tel: + 971 56 900 5849

Bahrain

WTS Dhruva Consultants
2301, Level 23, P.O. Box No. 60570,
Harbour Tower (East), Bahrain Financial Harbour,
Kingdom of Bahrain
Tel: +973 1663 1921

New York

Dhruva Advisors USA, Inc.
340 Madison Avenue, 19th Floor, New York,
New York 10173 USA
Tel: +1-212-220-9494

Silicon Valley, USA

Dhruva Advisors USA, Inc.
5201 Great America Parkway,
Santa Clara, California 95054
Tel: +1-212-220-9494

Disclaimer:

This information contained herein is in summary form and is therefore intended for general guidance only. This publication is not intended to address the circumstances of any particular individual or entity. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. This publication is not a substitute for detailed research and opinion. Before acting on any matters contained herein, reference should be made to subject matter experts and professional judgment needs to be exercised. Dhruva Advisors LLP cannot accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication

KEY CONTACTS

Dinesh Kanabar (Mumbai)

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Vishal Gada (Ahmedabad)

vishal.gada@dhruvaadvisors.com

Ajay Rotti (Bengaluru)

ajay.rotti@dhruvaadvisors.com

Krishan Malhotra (Delhi / NCR)

krishan.malhotra@dhruvaadvisors.com

K. Venkatachalam (Pune)

k.venkatachalam@dhruvaadvisors.com

Rahul Mitra (Kolkata)

rahul.mitra@dhruvaadvisors.com

Mahip Gupta (Singapore)

mahip.gupta@dhruvaadvisors.com

Pratik Shah (Dubai)

pratik.shah@dhruvaadvisors.com

Dhruva Advisors has been named “**India Tax Firm of the Year**” for 2017, 2018 and 2019 by International Tax Review

Dhruva Advisors has been named “**India Disputes and Litigation Firm of the Year 2018**” by International Tax Review

Dhruva Advisors ranked as a **Tier 1 Firm** in India in Tax and Transfer Pricing by International Tax Review.