

APPOINTED DATE AND EFFECTIVE DATE IN MERGERS

Picture a neighbourhood grocery store being bought out by a larger chain. The sale agreement often says something like: all profits, losses and stock from the 1st of the month belong to the buyer, purely for accounting purposes, because that happens to be the date the last audited stock-take was done. It is a clean number for the accountant to work with. But the store doesn't actually change hands that day. The old owner keeps running it, keeps paying the staff, keeps the shop's licence in their own name, right up until the day the trade licence transfer and other paperwork actually clears with the municipal authorities, which might be six weeks later. Only from that day can the new owner truthfully say "this is mine," change the signboard, and answer for anything that happens inside the store. For those six weeks, there are two correct answers to "who owns the shop," depending on whether you're asking the accountant closing the books or the municipal officer checking the licence. This is, in essence, the exact confusion that sits underneath most scheme of merger documents, just dressed up in heavier language.

The distinction is not a drafting nicety. It decides which company's books absorb a year of profit or loss, which entity bears tax on income earned in the interim, whether employees are treated as having continuous service, and, increasingly, whether a transaction in a regulated sector can be structured the way the parties originally intended. It is one of the first things a client needs explained in plain terms when a merger is being planned, and one of the last things that should ever be left ambiguous once the scheme document is actually drafted.

Two Dates, Two Different Jobs

Section 232(6) of the Companies Act, 2013 requires every scheme filed under Sections 230 to 232 to specify an appointed date, and states that the scheme shall be deemed effective from that date and not from any later date. Read on its own, this sounds like the appointed date is simply "the" date of the merger, it is not. The appointed date is best understood as an accounting and economic construct the date from which the transferor company's assets, liabilities, income and expenses are treated as belonging to the transferee for valuation, share-exchange-ratio, and bookkeeping purposes. It is almost always anchored to a balance sheet the parties already have in hand, which is precisely why so many Indian schemes still peg the appointed date to the start of a financial year: it lets the valuer work off audited numbers instead of a hypothetical mid-year position.

The effective date performs a different legal function. Under Section 232(5), each company covered by an NCLT order must file a certified copy of that order with the Registrar of Companies within the prescribed time, and the scheme takes effect in accordance with its terms upon the relevant filing and satisfaction of the conditions specified in the scheme and applicable law. From that point, the statutory consequences of the amalgamation, including dissolution of the transferor without winding up and vesting of the undertaking in the transferee, take effect. Until the effective date arrives, the transferor company continues to exist as a separate legal person, with its own board, its own bank accounts, and its own ability to be sued. A scheme may specify an appointed date that precedes the sanction or filing of the order, subject to the statutory and regulatory requirements applicable to such date. The scheme, however, cannot take legal effect before the conditions prescribed under the Companies Act and the scheme itself have been satisfied.

What Marshall Sons Settled, and Why It Still Gets Cited

Almost every scheme note or legal opinion on this subject cites *Marshall Sons & Co (India) Ltd v Income Tax Officer, [1997] 223 ITR 809 (SC)*, and it is worth knowing why the case still carries so much weight nearly three decades on. Marshall Sons & Co (Manufacturing) Ltd, a subsidiary, was to be amalgamated into its holding company with an appointed date of 1 January 1982. Court sanction did not come until early 1984, and the certified orders were filed with the Registrars in Madras and Calcutta only weeks after that. The Income Tax Officer took the position that the subsidiary remained a taxable entity in its own right for the assessment years falling between the appointed date and the date of court sanction, and issued assessment notices accordingly. The Madras High Court agreed with the tax department, calling the 1982 appointed date "artificial and arbitrary" since the amalgamation had not even been contemplated by the boards until the end of that year.

The Supreme Court reversed this. It held that a scheme of amalgamation must specify the date from which the transfer takes effect, that this date may well precede the date of court sanction, the date of filing with the Registrar, or the date of allotment of shares, and that once the scheme is sanctioned without modification of that date, it is given full effect from the appointed date itself. In effect, the sanctioned scheme may operate from the appointed date specified in it: for the purposes governed by the scheme, the transferor's business between the appointed date and the effective date may therefore be treated as having been carried on for the transferee, subject to the terms of the sanctioned scheme and applicable law. This is the doctrinal foundation for

almost every "interim period" clause drafted into schemes today, and it is also why revenue authorities can no longer simply disregard a scheme's appointed date on the ground that it predates the actual sanction.

The Interim Period: Whose Business Is It, Really?

Between the appointed date and the effective date, which may run for several weeks or longer, the transferor remains a separate legal entity until the scheme becomes effective, while the sanctioned scheme may attribute specified economic consequences to the transferee from the appointed date. Well-drafted schemes address this directly: the transferor is stated to carry on its business and hold its assets "in trust for" the transferee from the appointed date onward, is restrained from declaring dividends, altering its capital structure, or entering into transactions outside the ordinary course without the transferee's consent, and any profits earned during this window are treated as accruing to the transferee once the scheme becomes effective. Getting this clause right matters enormously in practice, it is what allows a lender, a landlord, or a regulator to make sense of a set of accounts that otherwise straddle two legal identities, and it is usually the first thing an income-tax or GST officer scrutinises when a scheme lands on their desk years later during an assessment.

The 2019 Circular and the Trigger-Event Appointed Date

For years there was genuine confusion including divergent views taken by different NCLT benches and Regional Directors over whether Section 232(6) mandated a fixed calendar date or permitted something more flexible. The Ministry of Corporate Affairs settled this through ***General Circular No. 09/2019*** dated 21 August 2019, issued after the Madras High Court, ***In re Equitas Finance Ltd (CP Nos. 119 to 121 of 2016)***, held that an appointed date need not be a specific calendar date at all. The circular confirmed two things that now shape almost every scheme structured today. First, an appointed date chosen as a specific calendar date may precede the date of filing the scheme before the NCLT, but if it is ante-dated by more than a year from that filing, the scheme must specifically justify the extended retrospectivity and the justification cannot run contrary to public interest. Second, parties may instead peg the appointed date to the occurrence of a defined trigger event central to the transaction the grant of a specific regulatory licence, for instance, or the last of a set of conditions precedent provided that event is clearly identified in the scheme itself, with an intimation to the Registrar within thirty days if that event occurs after the order has already been filed. The circular also confirmed that whichever appointed date is chosen is deemed to be the "acquisition date" for

accounting purposes under the relevant Ind AS provisions a point that, as explained below, is only half the story.

Two Transactions, Two Approaches

The HDFC Limited–HDFC Bank merger is a good illustration of the trigger-event route in action, and of why banking transactions in particular tend to avoid a wide gap between the two dates. The HDFC Limited–HDFC Bank merger illustrates a different approach: the appointed date and the effective date were structured to converge. The scheme provided for the amalgamation to take effect upon satisfaction of the specified conditions and completion of the required filings, with 1 July 2023 being the effective date. This avoided a prolonged interim period between the economic and legal implementation of the transaction, which was particularly significant given the regulatory framework applicable to the banking business.

Contrast this with the Sun Pharma–Ranbaxy merger. The boards approved the transaction in April 2014, but the deal needed conditional clearance from the Competition Commission of India, which came only in December 2014 and required divestment of seven overlapping brands, followed by sanction from the Punjab and Haryana High Court in March 2015. The merger finally became effective around 24–25 March 2015 nearly eleven months after the boards had signed off. Yet the scheme's capital reduction and reserve adjustments were pegged to Ranbaxy's financial position as it stood on 31 March 2014, close to a full year before the merger's legal effective date. For that entire interim period, Ranbaxy continued to exist, sign contracts, and answer to USFDA inspections in its own name, while economically the scheme treated its business as already run for Sun Pharma's benefit. This is precisely the gap that *Marshall Sons* contemplated, and precisely the gap a compliance team has to track carefully through board resolutions, related-party disclosures, and tax positions for as long as it lasts.

Accounting Implications of the Appointed Date

One nuance that catches even experienced practitioners off guard: the 2019 circular's deeming of the appointed date as the "acquisition date" only really holds where the merger qualifies as a common-control transaction under Appendix C to Ind AS 103. In that scenario, the pooling-of-interests method applies assets and liabilities are carried forward at book value, no fair valuation is done, and prior-period financial statements are restated as though the entities had always been combined. For an arm's-length merger between unrelated parties, however, the main body of Ind AS 103 applies instead, and the "acquisition date" for accounting purposes is the date control is actually, factually obtained which need not be the appointed date fixed in the

scheme at all. Valuation teams and legal teams frequently talk past each other on precisely this point, each assuming the other's date is the operative one for fair-value purposes. It is worth flagging early, before the auditors and the scheme drafters end up working off two different assumptions.

Practical Drafting Considerations

The distinction is straightforward once the relevant dates and consequences are separately identified, but it can be overlooked in a scheme containing numerous operative clauses and schedules. In practice, a few questions are worth asking of every scheme before it goes anywhere near the tribunal: does the appointed date align with an audited or auditable balance sheet; does the scheme clearly say how the transferor is to conduct itself during the interim period; is the appointed date ante-dated by more than a year, and if so, is the justification actually in the document rather than left to be inferred; and does the deal genuinely need, or is it better served by avoiding, a gap between the appointed date and the effective date, given the regulatory approvals it depends on. That question, together with the applicable statutory and regulatory requirements, can materially influence how the scheme is structured. Returning to the grocery-store analogy, the distinction becomes straightforward once the two dates are clearly assigned different functions. The same is true of a scheme of amalgamation it just runs to eighty clauses instead of one sale agreement.