Comprehensive Overview of Section 230 of the Companies Act, 2013

The purpose of mergers under Section 230 of the Companies Act, 2013 is to facilitate corporate restructuring while ensuring fairness, transparency, and protection of stakeholders' interests.

Mergers under this section are usually carried out for the following reasons:

1. Business Growth & Expansion

- Helps companies expand their market presence.
- Increases business scale and competitive advantage.

2. Financial Stability & Debt Restructuring

- Enables companies to restructure debts and liabilities.
- Helps financially distressed companies survive through mergers.

3. Synergies & Cost Efficiency

- Achieves operational efficiency by reducing costs.
- Enhances profitability through shared resources, technology, and expertise.

4. Tax & Legal Benefits

- Allows businesses to take advantage of tax benefits available for merged entities.
- Simplifies compliance and legal structures.

5. Shareholder & Investor Value Enhancement

- Strengthens the financial position of the company, benefiting shareholders.
- Improves stock performance and investor confidence.

6. Regulatory Compliance & Safeguards

- Ensures fairness through approval from the National Company Law Tribunal (NCLT).

- Protects interests of creditors, employees, and minority shareholders.

Chapter XV of the Companies Act, 2013, comprising Sections 230 to 240, deals with Compromises, Arrangements, and Amalgamations. This section regulates the procedures and processes for companies looking to reach compromises or arrangements with their creditors and members, as well as the process for amalgamations (mergers and acquisitions). These provisions, when combined with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, offer a structured legal framework aimed at protecting the interests of all stakeholders while facilitating smoother financial restructurings.

1. Power to Compromise or Make Arrangements with Creditors and Members

Under Section 230, a company, or any creditor or member of the company, can propose a compromise or arrangement between the company and its creditors, or between the company and its members, or any class of creditors or members. If the company is in the process of being wound up, the liquidator can make such an application to the National Company Law Tribunal (NCLT).

Key Points:

- A company or its stakeholders can approach the Tribunal for approval of a compromise or arrangement.
- The Tribunal has the authority to order meetings of creditors or members and direct how those meetings should be conducted.

2. Disclosures to the Tribunal by Applicant

When making an application for a compromise or arrangement, the applicant is required to disclose several material facts to the Tribunal via an affidavit. These disclosures include:

- The company's latest financial position, the latest auditor's report, and any ongoing investigations or proceedings against the company.
- Any reduction in share capital, if included in the arrangement.

- A report by the auditor confirming that the company's post-restructuring funds will meet liquidity requirements.
- A valuation report for the company's assets and shares, prepared by a registered valuer.
- Any corporate debt restructuring plan consented to by at least 75% of the secured creditors.

3. Notice of the Meeting

Once the Tribunal directs the calling of a meeting, a notice must be sent to all creditors or members. The notice must be accompanied by:

- A statement detailing the proposed compromise or arrangement.
- A copy of the valuation report, if applicable.
- An explanation of the effect of the arrangement on creditors, key managerial personnel, and others.
- A disclosure about the effect on any material interests of directors and debenture trustees.

Additionally, such notices must be placed on the company's website and, in the case of listed companies, also on the Securities and Exchange Board of India (SEBI) and stock exchange websites. An advertisement may also be published in newspapers.

4. Voting by Members or Creditors

The notice must provide that the creditors and members can vote either in person, through proxies, or by postal ballot within one month from the date of receipt of the notice.

Important Considerations:

- Any objection to the proposal can only be raised by persons holding at least 10% of the shareholding or 5% of the total outstanding debt.
- The Tribunal may dispense with calling a meeting if at least 90% of creditors agree to the arrangement in writing.

5. Notice to Regulators and Authorities

Notices and related documents must also be sent to key regulators, including:

- The Central Government, Income Tax authorities, RBI, SEBI, and the Competition Commission of India.
- Stock exchanges where the company's securities are listed, and the Official Liquidator, if necessary.

These regulators have a 30-day window to submit their representations on the proposed arrangement.

6. Approval and Sanction of the Scheme

Once the meeting of creditors or members has been convened and a majority (representing three-fourths in value) agree to the scheme, the Tribunal may sanction the arrangement. The sanction, once granted, is binding on the company, all creditors, and members, as well as the liquidator if the company is in the process of being wound-up.

7. Order of the Tribunal Sanctioning the Scheme

The Tribunal's order will specify certain elements, such as:

- Conversion of preference shares into equity shares (if applicable).
- Protection for any class of creditors.
- The variation of shareholders' rights, which must be in compliance with Section 48 of the Companies Act, 2013.
- Exit offers to dissenting shareholders.
- Provisions for any pending proceedings before the Board for Industrial and Financial Reconstruction (BIFR).

8. Filing the Order with the Registrar

Once the Tribunal sanctions the scheme, the company must file the order with the Registrar of Companies within 30 days of receipt.

9. Tribunal's Power to Dispense with Meetings

The Tribunal may dispense with convening meetings if at least 90% of creditors or members, by value, agree to the scheme in writing.

10. Buyback Provisions

If a scheme of compromise or arrangement involves a buyback of securities, the company must comply with the provisions of Section 68 of the Companies Act, 2013. The Tribunal will not sanction any buyback unless it meets the legal requirements.

11. Takeover Offers in Amalgamations

In cases involving a takeover offer, the scheme may include provisions for a takeover offer. Listed companies must ensure that such offers comply with SEBI regulations.

Special Provisions for Listed Companies

Listed companies have additional obligations under SEBI and stock exchange regulations:

1. **Timely Disclosures:**
   - Disclosures on stock exchanges and SEBI platforms are mandatory.
   - Market-sensitive information must be promptly disclose.
2. **Fair Valuation & Independent Review:**
   - Mergers require independent valuation reports and fairness opinions.
   - Audit Committee and Independent Directors must approve the scheme.
3. **Shareholder & Public Participation**:
   - Shareholders of listed companies must approve via postal ballot or e-voting.

- Public shareholders' interests are safeguarded, particularly in related-party transactions.

4. **Regulatory Clearances:**

- SEBI, RBI, Competition Commission of India, and other regulators must approve the scheme.
- Compliance with takeover regulations, if applicable.

5. **Listing & Delisting Requirements:**

- Companies must ensure seamless transition of shareholding structure post-merger.
- If delisting is involved, SEBI's delisting regulations apply.

Steps involved in Merger:

Step 1: Board Meeting

The company's board meets to approve the merger proposal. They:

- Ensure the company's Memorandum of Association allows for mergers.
- Appoint professionals (valuers, accountants, lawyers).
- Plan the merger structure.

Step 2: Independent Directors & Audit Committee Review

- Independent directors review the merger's fairness.
- Audit Committee evaluates the valuation report and the benefits of the merger.
- The Board meets again to approve key aspects like valuation and merger scheme.

Step 3: Filings & Notifications

- Inform the stock exchange within 24 hours.
- File required forms with the Registrar of Companies (ROC).
- Upload merger-related documents on the company website.

- Address any complaints from shareholders or authorities.

Step 4: First Motion Application to NCLT

- Prepare and file the first legal application with the National Company Law Tribunal (NCLT).
- Submit financial statements, valuation reports, and approvals from shareholders and creditors.
- Publish a newspaper notice about the merger.

Step 5: NCLT Order on Application

- NCLT sets a date and conditions for shareholder and creditor meetings.
- Companies must follow NCLT's instructions and file compliance reports.

Step 6: Sending Notices

- Notify shareholders, creditors, and government authorities (SEBI, RBI, Income Tax, etc.).
- Publish a public notice in newspapers.

Step 7: Holding Shareholders & Creditors Meeting

- Meeting is conducted under a court-appointed chairman.
- Voting is done via postal ballot or e-voting for listed companies.
- The chairman submits the meeting results to NCLT.

Step 8: Filing of Second Motion Application with NCLT

- If shareholders and creditors approve the merger, the company files a second application to NCLT for final approval.

Step 9: NCLT Hearing & Public Notice

- NCLT sets a hearing date and orders a final public notice.
- The company must publish this notice and file proof of compliance.

Step 10: Approval from Regulatory Authorities

- Reports from the Registrar of Companies, Regional Director, and Official Liquidator are submitted to NCLT.

Step 11: Final NCLT Order

- If NCLT is satisfied, it approves the merger.
- The order must be filed with the ROC within 30 days.

Step 12: Compliance & Share Issuance

- The merged company allots shares to shareholders.
- Applies for listing of new shares on the stock exchange.
- Completes trading-related formalities and publishes a notice.

Step 13: Certification of Compliance

- The company must file an annual compliance report confirming that the merger is being implemented as per NCLT's order.

Conclusion:

Section 230 of the Companies Act, 2013, plays a crucial role in facilitating corporate restructuring through compromises, arrangements, and mergers. By ensuring regulatory oversight, transparency, and protection of stakeholders' interests, this legal framework supports companies in achieving financial stability, operational efficiency, and business expa