



Regulatory Alert Stay Ahead...

Amendments in SEBI requirements relating to Scheme of arrangement of listed entities

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Background

- Securities and Exchange Board of India (SEBI) had provided the requirements and the framework to regulate Schemes of Arrangement (Schemes) involving listed entities by a Circular dated 10 March 2017 (the Circular). The Schemes (subject to exceptions) require prior approval of SEBI.
- After considering representations received from various stakeholders, SEBI has amended the Circular on 3 January 2018, to expedite the processing of Schemes (January 3 amendment) and prevent misuse of Schemes to bypass regulatory requirements.
- Highlights of these amendments are summarized in this alert.

Highlights of Amendments

1. The January 3 amendment has expanded the scope of exemption contained in the Circular. Accordingly, provisions of the Circular including prior approval of SEBI will not be required for Schemes which solely provide for merger of a wholly owned subsidiary (WOS) or its division with the parent company. Earlier, the provisions of the Circular were not applicable only in respect of schemes involving merger of WOS with Parent Company.
2. The Circular required listed entities to submit valuation report from Independent Chartered Accountant and fairness opinion from Independent SEBI Registered Merchant Banker.

To ensure independence and transparency, the January 3 amendment clarifies that the Chartered Accountant and the Merchant Banker shall not be treated as independent in case of existence of any material conflict of interest among themselves or with the company, including that of common directorships or partnerships.

3. The Scheme has to provide details, amongst other, about pre-Scheme and post-scheme shareholding pattern. The listing regulation stipulates that minimum shareholding of non-promoters should be 25%. Earlier, the requirement for determining post-scheme shareholding was not on fully diluted basis.

To clarify any doubt, the January 3 amendment now provides that the percentage shareholding of pre-Scheme public shareholders of the listed entity and the Qualified Institutional Buyers (QIBs) of the unlisted entity, in the post-Scheme shareholding pattern of the merged company, shall not be less than 25% on fully diluted basis, i.e., one has to also consider convertible instruments while determining post-scheme shareholding.

4. As a measure to simplify processes, listed entities are now not required to submit documents with stock exchanges once the Scheme is sanctioned by the National Company Law Tribunal (NCLT).
5. The January 3 amendment has permitted listing of shares of an unlisted entity when a Scheme provides for merger of a listed company into an unlisted entity. Earlier this facility was available only with respect to hiving-off of a division of a listed company, into an unlisted entity, and the consequential listing of shares of that unlisted entity.

6. In a Scheme involving merger of a listed company or a division into an unlisted entity and consequential listing of the unlisted entity, certain safeguards are available to prevent misuse of *backdoor* listing.

One such safeguard is to *lock-in* the pre-Scheme share capital of the unlisted issuer.

The January 3 amendment has permitted the locked-in shares to be pledged with a scheduled commercial bank or a public financial institution as security, if pledge of shares is one of the conditions for sanction of the loan.

The locked-in shares can now be transferred inter-se amongst promoters subject to conditions.

7. The timelines for listing and trading of shares issued by listed/unlisted entity pursuant to Schemes has been enhanced to 60 days from the date of receipt of the NCLT order sanctioning the Scheme against the earlier requirement of 30 days for listing and 45 days for commencement of trading.

Conclusion

The January 3 amendments to the Circular provide clarity and relief in matter of Scheme. It is aimed at simplifying the Scheme process and eliminate redundant filings. The amendments are likely to ease doing business in India.

Source: SEBI Circular CFD/DIL3/CIR/2018/2 dated 3 January 2018.

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