

## Tax Alert | Delivering clarity

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### Schemes of arrangement of listed entities

SEBI has issued a circular on Schemes of Arrangement of listed entities for amendment of certain provisions

#### Background:

On 10 March 2017, SEBI had issued a circular revising the requirement relating to Scheme of Arrangement by listed entities under the Securities Law ('SEBI Circular of 2017'). To further streamline the processing of draft schemes filed with the stock exchanges, SEBI, on 3 November 2020 has issued a circular SEBI/HO/CFD/DIL1/CIR/P/2020/215 ('the SEBI Circular'). This circular aims at ensuring that the recognised stock exchanges refer draft schemes to SEBI only upon being fully convinced that the listed entity is in compliance with SEBI Act, Rules, Regulations and with the circulars issued thereunder.

#### Applicability:

The circular shall be applicable for all the schemes filed with the stock exchanges after 17 November 2020. However, the amendments towards fresh listing of securities will be made applicable to all entities seeking approval from the stock exchanges to list and/or trade after 3 November 2020.

#### Key Highlights:

Following are the amendments listed in the circular:

#### Audit Committee recommendation report –

The audit committee will be additionally required to comment on the following aspects in its report recommending the draft scheme:

- Need for the merger/demerger/amalgamation/arrangement;
- Rationale of the scheme;
- Synergies of business of the entities involved in the scheme;
- Impact of the scheme on shareholders;
- Cost benefit analysis of the scheme.

#### Independent directors' recommendation report -

An additional requirement of submitting a recommendation report of the Committee of Independent directors has been inserted by the SEBI Circular. This report must inter alia take into consideration that the scheme is not detrimental to the shareholders of the listed entity.

## Valuation Report –

The SEBI Circular has now specified that listed entities obtain a valuation report from Registered Valuers, as specified in Section 247 of the Companies Act, 2013 read with the applicable Rules issued thereunder.

## Explanation of the meaning of ‘substantially the whole of the undertaking’ -

The amended explanation of ‘substantially the whole of the undertaking’ has provided reference to provisions of the Companies Act, 2013, wherein the meaning of the term ‘substantially the whole of the undertaking’, is expressed rather than the term ‘undertaking’, which was previously referred to in the SEBI Circular of 2017.

## Requirement of providing ‘No objection letter’ or ‘Observation letter’ -

The SEBI Circular has done away with the requirement of issuing observation letters by stock exchanges to SEBI. Now, the stock exchanges are required to issue only a ‘No-objection letter’ in consultation with each other when they are completely satisfied with the compliances undertaken by the listed entity. On receipt of these ‘No-Objection letters’, SEBI shall issue a Comment letter.

## Listing and trading of securities -

- The time limit for listing of securities and commencement of trading has been extended up to 60 days (from 45 days stipulated earlier) from the receipt of the order of the Hon’ble High Court or NCLT.
- An additional disclosure requirement in form of information document on the website of the stock exchange/s has been prescribed.
- The SEBI Circular has also specified the additional details which need to be disclosed on the website and in newspapers to include the following –
  - Name and details of Board of Directors (experience including current / past position held in other firms);
  - Business Model / Business Overview and Strategy;
  - Restated Audited Financials for the previous three financial years prior to the date of listing;
  - Summary table of contingent liabilities as disclosed in the restated financial statements;
  - Summary table of related party transactions in last 3 years as disclosed in the restated financial statements;
  - Internal Risk Factors (Minimum 5 and Maximum 10);
  - Regulatory Action, if any - disciplinary action taken by SEBI or Stock Exchanges against the Promoters in last 5 financial years;
  - Brief details of any outstanding criminal proceedings against the Promoters.

### Listing of equity shares with Differential voting rights -

The provisions permitting the listed entity desirous of listing its equity shares with differential rights as to dividend, voting or otherwise, without making an initial public offer of such equity shares, have now been removed from the aforesaid SEBI circular.

#### **Conclusion:**

While relaxations have been provided in certain aspects to ensure streamlining of the process of approval by stock exchanges, additional disclosure requirements have also been stipulated by SEBI which are intended to not only improve the governance mechanism but also provide more transparency to the stock exchanges and public at large.

**Source:** SEBI circular SEBI/HO/CFD/DIL1/CIR/P/2020/215 dated 3 November 2020



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