



Regulatory Alert Stay Ahead...

Scheme of arrangement of listed entities

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Background

On 10 March 2017, SEBI revised the requirements relating to Scheme of Arrangement by Listed Entities under the Securities Laws ('the SEBI Circular'). The SEBI Circular supersedes a circular dated 30 November 2015 which dealt with this matter.

Key highlights of the SEBI Circular

Applicability

Any scheme filed after 10 March 2017 has to follow the SEBI Circular.

Approval of majority of public shareholders

Following are additional situations where approval of majority of public shareholders (public shareholders in favour of the proposal are more than those against it) will be required through e-voting:

- Where the scheme involving merger of an unlisted entity with a listed entity results in reduction of the voting share of pre-scheme public shareholders of such listed entity (transferee / resulting company) by more than 5% of the total capital of the merged entity
- Where the scheme involves transfer of whole or substantially the whole of the undertaking of the listed entity and the consideration for such transfer is not in the form of listed equity shares.

Conditions for schemes of arrangement involving unlisted entities:

In case of schemes of arrangement between listed and unlisted entities, the following conditions shall be satisfied:

- (a) Listed entity shall provide information pertaining to unlisted entity, in the explanatory statement of notice sent to shareholders in specified format. Merchant banker shall certify the accuracy and adequacy of such disclosures, after carrying out necessary due diligence. Such disclosures shall also be submitted to the Stock Exchanges for uploading on their websites.
- (b) Percentage of shareholding of pre-scheme public shareholders of the listed entity and Qualified Institutional Buyers (QIBs) of the unlisted entity (if any), in the post scheme shareholding pattern of the "merged" company, shall not be less than 25%.
- (c) Unlisted entities can be merged with a listed entity only if the listed entity is listed on a Stock Exchange with nationwide trading terminals.

Detailed Compliance Report

Detailed compliance report confirming compliance with various regulatory requirements specified for schemes of arrangement and all Accounting Standards as per prescribed format, is to be provided to the Stock Exchanges which shall be certified by the Company Secretary, Chief Financial Officer and Managing Director of the listed company.

Report on Complaints

The listed entities are now required to upload the Report on Complaints and the Compliance Report on its website and also on the websites of Stock Exchanges, as against earlier requirement of uploading only Complaints report.

Changes in draft scheme

Subsequent to filing of draft scheme with SEBI, no changes to the scheme, except those mandated by regulators / authorities / tribunal, shall be made without specific written consent of SEBI.

Lock-in of pre-scheme share capital of unlisted entity

In case of a scheme involving hiving-off of a division from a listed entity into an unlisted entity which is seeking listing, the entire pre-scheme share capital of the unlisted entity shall be locked-in as follows:

- (a) Shares held by Promoters up to the extent of 20% of the post-merger paid-up capital of the unlisted issuer, shall be locked-in for 3 years from the date of listing of the shares of the unlisted issuer
- (b) The remaining shares shall be locked-in for 1 year from the date of listing of the shares of the unlisted issuer
- (c) No additional lock-in shall be applicable if the post-scheme shareholding pattern of the unlisted entity is exactly similar to the shareholding pattern of the listed entity.

E-voting

Listed entities to provide for voting by public shareholders through e-voting for Scheme of Arrangement filed with NCLT in all cases, as against earlier requirement of providing for Postal Ballot and e-Voting in select situations.

Other clarifications

1. SEBI has clarified that provisions of the SEBI circular shall not apply to schemes which solely provide for merger of wholly-owned subsidiary with the parent company. However, such draft schemes shall be filed with Stock Exchanges for the purpose of disclosures and Stock Exchanges shall disseminate the scheme on their websites.
2. Allotment of shares under schemes only to a select group of shareholders or shareholders of unlisted companies pursuant to such schemes, will have to follow preferential issue pricing guidelines.
3. Listed entities will have to pay fee to SEBI @ 0.1% of the paid-up share capital of the listed / transferee / resulting company, whichever is higher, post sanction of the scheme, subject to a cap of ₹ 5,00,000.

Conclusion

The SEBI Circular provides additional information requiring public shareholders' approval in schemes of arrangements involving listed entities. Mandatory e-voting for all schemes involving listed entities has been introduced. These measures are expected to improve governance mechanisms relating to the schemes of arrangement.

Source: Circular no. CFD/DIL3/CIR/2017/21 dated 10 March 2017 issued by SEBI

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