

De Jure

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Relaxation of Listing Norms for Scheme Matters



The Securities and Exchange Board of India ("**SEBI**") is constantly striving to bring reforms in the sphere of capital markets with a view to regulate its activities and to ensure protection of genuine market stakeholders in a better manner. One of the means by which SEBI regulates and governs the capital market and its participants is by providing robust disclosure and compliance norms. At the same time, SEBI also tries to ensure the progress of capital markets by granting certain relaxations as over-regulations/ compliances may strangle the development of certain market participants.

In order to protect the rights and interests of the shareholders, SEBI has brought under its ambit the transactions pertaining arrangement/merger/demergers involving listed companies. SEBI has, time and again, modified the requirements for the matters of schemes of arrangement/merger/demergers wherein one of the entities is a listed company. By this, SEBI intends to provide the optimal disclosure of relevant information pertaining to the scheme transactions to the shareholders, regulators and other stakeholders, as SEBI wants to empower the stakeholders so that they arrive at well informed decisions. Any scheme which involves a listed entity as part of any scheme arrangements/ amalgamations has to comply with various regulations including the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and SEBI Circular No CFD/DIL3/CIR/2017/21 dated March 10, 2017, which has been further amended (the "**Circular**").

The Circular in furtherance to all earlier circulars issued by SEBI in this respect, lays down detailed requirements to be complied with by listed entities while undertaking certain schemes of arrangements under the provisions of the Companies Act, 2013. The Circular also provides regulatory norms for entities seeking relaxation from the stringent compliances with respect to listing of securities (as issued in terms of a scheme) prescribed under the Securities Contracts (Regulation) Rules, 1957 ("**SCRR**").

The Circular states that for any entity to be eligible for the waiver/ relaxation under SCRR, one of the conditions is that post scheme, the public shareholders of the Transferor Company should hold at least twenty five percent (25%) of the paid up share capital of the Transferee Company (*Clause III (A)(1)(b) of Annexure I of the Circular*). SEBI has now further relaxed the aforesaid condition *vide* its recent Circular No. CFD/DIL3/CIR/2017/105 dated September 21, 2017 (the "**Recent Circular**").

SEBI through its Recent Circular has tried to align the requirements specified for listing under schemes of arrangement under the Circular with those specified under the SCRR. The Recent Circular by amending Clause III (A)(1)(b) of Annexure I of the Circular has provided a leeway for

companies who are unable to comply with the aforesaid requirement of twenty five percent (25%) shareholding, by giving them an option to satisfy alternate conditions for listing their securities. Thus, where the companies are not able to comply with the said requirements of twenty five percent (25%) shareholding to be held by public, they can alternatively fulfil the following conditions:

- (i) The entity has a valuation in excess of Rs.1600 crore as per the valuation report;
- (ii) The value of post-scheme shareholding of public shareholders of the listed entity in the transferee entity is not less than Rs.400 crore;
- (iii) At least ten percent (10%) of the post-scheme paid-up share capital of the transferee entity comprises of shares allotted to the public shareholders of the transferor entity; and
- (iv) The entity increases the public shareholding to at least 25% within a period of one year from the date of listing of its securities and an undertaking to this effect is incorporated in the scheme.

OUR VIEW

By way of the Recent Circular, SEBI has tried to bring harmony between the requirements of SCRR and the conditions laid down by SEBI circulars, issued from time to time, as applicable for scheme related matters involving a listed company and thereby providing much needed relaxation. It can be understood that the relaxations provided under the Recent Circular cannot be availed by concerned transferee company whose valuation is not in excess of Rs.1600 crores and such company also should have the valuation of post scheme shareholding of public shareholders of not less than Rs.400 crores. According to us, the Recent Circular is pragmatic in approach and can surely assist in structuring the transaction where unlisted transferee company can seek listing of its shares on relevant stock exchange(s) pursuant to sanction of the scheme even if public shareholding in such company is less than 25% of post scheme paid up share capital subject to compliance of other conditions as set out in the Recent Circular. Overall, the Recent Circular seems to be good news for mergers/demergers and may propel scheme related transaction activities.

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