

SEBI notifies new Listing Regulations

December 3, 2015

In brief

The Securities and Exchange Board of India (SEBI) has recently issued circulars prescribing additional requirements and disclosures to be made under specified clauses of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations), and to avail exemption under rule 19(7) of Securities Contract (Regulations) Rules, 1957 (SCRR).

In detail

The SEBI notified Listing Regulations on 2 September 2015. The Listing Regulations became operative from 1 December 2015.

On 30 November 2015, the SEBI issued a circular prescribing additional requirements and disclosures to be made under specified clauses of the Listing Regulations, and to avail exemption under rule 19(7) of SCRR. All the circulars are expected to be effective from 1 December 2015. These circulars are summarised below.

A. Scheme of Arrangement by Listed Companies¹.

Basic requirements relating to Scheme of Arrangement are covered under clauses 11, 37 and 94 of the Listing Regulations.

Schemes already submitted to the stock exchange under erstwhile circular CIR/CFD/DIL/5/2013 dated 4 February 2013 read with CIR/CFD/DIL/8/2013 dated 21 May 2013 should be governed by

the requirements of this circular.

Requirements before submission of Scheme of Arrangement to the High Court (HC)

I. To be fulfilled by the listed entity

- a. A listed entity may submit a draft Scheme of Arrangement under rule 19(7) for seeking relaxations from strict enforcement of rule 19(2)(b) of the SCRR for listing of its equity shares without making an Initial Public Offer, if it complies with the following conditions:
 - The equity shares sought to be listed are proposed to be allotted by the unlisted issuer (transferee) to the holders of security of a listed entity (transferor) pursuant to a Scheme sanctioned by the HC under section 391-394 of the Companies Act, 1956 or relevant provisions of the Companies Act, 2013.
 - At least 25% of the post-

Scheme paid-up share capital of the transferee entity shall be held by public shareholders of the transferor.

- The transferee will not issue/ reissue any shares not covered under the Scheme.
- On the date of making application, there should be no outstanding warrants/ instruments/ agreements which give right to any person to acquire equity shares in the transferee entity. If there are any such instruments stipulated in the Scheme, the above limit of 25% would be calculated after giving effect to the increase in capital on the assumption that these would be fully converted into equity.
- The shares of the transferee-entity issued in lieu of the locked-in shares of the transferor entity will be subject to lock-in for the remaining period.

¹ CIR/CFD/CMD/16/2015

- b. Designated Stock Exchange
 - Listed companies shall choose one of the stock exchanges having nationwide terminals for coordinating with SEBI.
- c. Submission of Documents
 - Listed companies shall submit specified documents to the stock exchanges, including the following:
 - Draft Scheme
 - Valuation report (Also refer to requirements relating to valuation report given in para (d) below).
 - Auditor's certificate (Please refer to details given in para (e) below).
 - Report of Audit Committee recommending the draft Scheme
 - Pre and post amalgamation shareholding pattern
 - Fairness opinion by the merchant banker etc.
- d. Valuation Report
 - All listed entities are required to submit a valuation report from an Independent Chartered Accountant, except where there is no change in the shareholding pattern of the listed/ resultant entity.
 - Change in shareholding pattern means :
 - change in proportion of existing shareholders in the resultant entity,
 - new shareholder being allotted equity shares of resultant company, or
 - existing shareholders exiting the company pursuant to the Scheme
- Few illustrations of Schemes resulting in “no change in shareholding pattern” as given in the circular are (a) Scheme of demerger leading to mirror image of shareholding in the transferor and transferee entity, and (b) a merger of Wholly Owned Subsidiary into its parent.
- For all other cases, it would be necessary to file a valuation report from an independent chartered accountant.
- e. Auditor's Certificate
 - An auditor's certificate will need to be filed to the effect that the accounting treatment contained in the Scheme is in line with the accounting standards (ASs) specified by the Central Government under section 133 of the Companies Act, 2013 or the ASs issued by ICAI, as applicable, and other generally accepted accounting principles.
 - In case where sectoral regulatory authorities have prescribed norms for accounting treatment contained in the Scheme, the requirements of these authorities shall prevail.
 - Mere disclosure of deviations in the accounting treatment shall not be deemed as compliance with the above. Format of the certificate has been prescribed, and is attached to the circular.
- f. Redressal of Complaints
 - The listed entity shall submit to the stock exchanges a ‘Complaint Report’, in prescribed format within 7 days from the expiry of 21 days from the date of filing of the draft Scheme with the stock exchange and hosting the same along with specified documents on the website of stock exchanges and listed entity. The Complaint Report will be in the format prescribed in the Annexure III to the circular, and shall contain details of complaints/ comments received by the listed entity on the draft Scheme.
- g. Disclosure on the website
 - The company shall, immediately upon filing of the Draft Scheme with the stock exchanges, disclose the Draft Scheme and the prescribed documents on its website.
 - It shall also disclose the Observation Letter received from the stock exchange within 24 hours of receiving the same.
- h. Notice/ Explanatory statement sent to shareholders
 - Documents to be attached along with/ included in the notice sent to shareholders:
 - Observation Letter
 - Pre- and post-capital structure and shareholding pattern
 - Fairness opinion
 - Complaints report
- i. Approval of shareholders through Postal Ballot and e-Voting
 - In cases where (a) additional shares are proposed to be allotted to, or (b) the Scheme involves merger of an entity belonging to, or (c) the Scheme involves merger of subsidiary earlier acquired from, promoter/ promoter group or related parties of promoter of the listed entity, then the Scheme shall provide for voting by public shareholders through postal ballot and e-voting after disclosure of material facts. The Scheme

shall be effective only if the votes cast by the public shareholders in favour of the Scheme are more than the votes cast against it.

- For all other cases, the above requirements will not be applicable. In such cases, the listed company will be required to furnish an undertaking, clearly stating the reason for not being covered by any of the three scenarios described above, as approved by its Board and certified by its auditor. Such an undertaking will be displayed on the websites of stock exchange and of the listed company. Any misstatement or furnishing of false information would lead to severe punitive actions.

II. Obligations of the Stock Exchange(s)

- Upon receipt of the Draft Scheme, the designated stock exchange shall forward it, along with the prescribed documents, to SEBI within 3 working days, and also disclose the same on its website.
- The compliant report shall be forwarded by the exchange to SEBI in the prescribed format.
- The stock exchanges shall also disclose the Observation Letter on its website immediately upon issuance.

III. Processing of the Draft Scheme by SEBI

- Upon receipt of Observation Letter or No Objection Letter from the exchanges, SEBI shall provide its comments on the Draft Scheme after seeking clarifications from any person relevant to the Scheme, and seeking opinion from an independent chartered accountant, if necessary. SEBI shall endeavour to provide its comments on the draft

Scheme to the stock exchanges within 30 days from the receipt of all clarifications from the listed entity, or opinion of independent chartered accountant, or observations letter from the stock exchanges, or copy of in-principle approval of listing from designated stock exchange in case of entities solely listed on regional exchanges, whichever is later.

After sanction of the Scheme by the HC (Approved Scheme)

I. To be fulfilled by the listed/unlisted company

a. Application under rule 19(7) of the SCRR

The unlisted issuer shall file an application under rule 19(7) of SCRR if it satisfies the following conditions:

- Observation Letter or No Objection Letter has been issued;
- The equity shares sought to be listed have been allotted by the unlisted issuer to the holders of securities of a listed entity in terms of the Approved Scheme;
- Names of allottees have been entered as beneficial owners in the records of depositories, or shares certificates have been dispatched.

b. Submission of Documents

- Upon sanction of the Scheme, the prescribed documents shall be submitted to stock exchanges. Some of these are:
 - Copy of the approved Scheme
 - Result of voting by shareholders for approving the Scheme
 - Explanation of changes made in the approved

Scheme *vis-à-vis* the draft Scheme, etc.

- c. In case of demerger with a newly formed or existing unlisted entity, there would not be any additional lock-in if the paid-up share capital is only to the extent required for incorporation.
- d. If the capital of the unlisted company is more than required for incorporation, the promoters' share, to the extent of 20% of the post-merger paid up capital of the unlisted issuer, will be locked in for 3 years from the date of listing. The balance of the entire pre-merger capital of the unlisted issuer shall also be locked-in for a period of 3 years from the date of listing of the shares of the unlisted issuer.
- e. The listed entity and/ or the transferee (unlisted entity) shall confirm that it has taken steps for listing of its specified securities, on all exchanges where shares of the transferor company were listed, within 30 days of the court's order. The formalities for commencement of trading have to be completed within 45 days of the court order.
- f. Before commencement of trading, the transferee entity shall give advertisements in prescribed newspapers consisting of prescribed details, including capital structure, shareholding pattern, reason for amalgamation, audited financials as on a date within 6 months from listing date, etc.

II. Application for Listing of Equity Shares with Differential Rights without making IPO

- Application under rule 19(7) of the SCRR can be made, subject to the following conditions:

- Such equity shares are issued to all existing shareholders as on record date by way of rights or bonus issue.
- Regulation 38 of the Listing Regulations on minimum public shareholding requirements have to be complied with.
- Regulation 31 on disclosure of shareholding pattern will have to be complied with.

III. Application for Listing of warrants offered along with Non-Convertible Debentures (NCDs) without making IPO

- Application under rule 19(7) of the SCRR can be made, subject to the following conditions:
 - Warrants are issued as combined offering of NCDs and warrants through qualified institutional placement under Chapter VIII of the SEBI ICDR Regulations, 2009, and all the provisions thereof are duly complied with.
 - NCDs and warrants shall be traded in the minimum trade lot of INR 0.1 million.

IV. Requirements to be fulfilled by Stock Exchange(s)

The designated stock exchange shall forward the documents and the application under rule 19(7) to SEBI along with its recommendations.

V. Processing of the Scheme by SEBI

- The SEBI, while granting relaxation under rule 19(7), may stipulate any other conditions as may be deemed necessary in the interest of investors and securities market, considering the facts of the case.
- SEBI shall endeavour to

intimate its comments/ approval, wherever applicable, to the designated Stock Exchange within 30 days of receipt of complete information, including the No Objection Certificate from the exchange.

B. Manner of Achieving Minimum Public Shareholding²

Manner of achieving minimum public shareholding is covered under clause 38 of the Listing Regulations.

To achieve the minimum level of public shareholding specified in Rule 19(2)(b) and/ or Rule 19A of the SCRR, the following modes are prescribed:

- Issuance of shares to public through prospectus
- Offer for sale of shares held by promoters to the public through prospectus
- Sale of shares held by promoters through the secondary market in terms of SEBI circular CIR/ MRD/ DP/05/2012 dated 1 February 2012
- Institutional Placement Programme in terms of Chapter VIIIA of SEBI ICDR Regulations, 2009
- Rights issue to public shareholders, with promoter/ promoter group shareholders forgoing their entitlement to equity shares that may arise from such issue
- Bonus issues to public shareholders, with promoter/ promoter group shareholders forgoing their entitlement to equity shares, that may arise from such issue
- Any other method as may be approved by SEBI on a case-to-case basis. For this purpose, listed entities may approach the SEBI with appropriate details,

after which the SEBI would endeavour to communicate its decision within 30 days from the date of receipt of proposal or additional information sought from the company.

The takeaways

- The aforesaid requirements of the circular are substantially in consonance with the erstwhile circular CIR/CFD/ DIL/5/2013 dated 4 February 2013 read with circular CIR/CFD/DIL/8/2013 dated 21 May 2013.
- All the circulars are effective from 1 December 2015.
- More importantly, Schemes already submitted to the Stock Exchanges, prior to 1 December 2015, shall also be governed by the requirements specified in this circular.
- The application for relaxation in relation to DVR and warrants though covered in this circular on Scheme of Arrangement, seem to be in relation to issues otherwise than a Scheme also.
- Besides the above circulars, SEBI has issued other circulars prescribing applicable formats for disclosures.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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