

SEBI amends circular on Scheme of Arrangement by listed companies

January 9, 2018

In brief

The Securities Exchange Board of India (SEBI) recently issued circular¹ amending the existing circular² providing framework for the Scheme of Arrangement involving listed companies. The amendments were carried out considering various representation made, to expedite the processing of the draft Scheme of Arrangement (Scheme) and prevent misuse to bypass regulatory requirements.

In detail

Demerger of a division of WOS into Parent Company

- In order to bring ease in internal restructuring by way of demerger from Wholly Owned Subsidiary (WOS) to its parent company, the exemption has been granted to such Schemes from compliance with the framework provided in existing circular. However, such Scheme is required to be filed with stock exchanges for disclosure purposes.
- Earlier, the exemption was available only in case of merger of WOS with the parent company, which is now extended even in case of demerger.

Pledge of locked-in shares

- Some relief has been provided for raising funds by allowing locked-in shares to be pledged. As per the amendment, the locked-

in shares may be pledged with any scheduled commercial bank or public financial institution as collateral security for loans granted by such bank or institution. However, such pledge is permitted only if pledging of shares is a condition for sanctioning the loan.

Post Scheme shareholding pattern to be on fully diluted basis

- In case of any Scheme between a listed company and an unlisted company, the existing circular provided that the shareholding of pre-scheme public shareholders and the Qualified Institutional Buyers of the unlisted company shall not be less than 25% in the post scheme shareholding pattern of the merged entity.
- It is now amended to clarify that the 25% limit will be

computed on a fully diluted basis. Thus the impact of convertible instruments held by the promoters as well as non-promoter shareholders will be built into the computation.

Scope of locked-in shares enhanced

- The existing circular provided that in case division of the listed company is hived-off into an unlisted company through Scheme, the entire pre-scheme share capital of the unlisted issuer (who is seeking listing) will be subject to lock-in conditions (i.e. 20% of promoters for three years and balance for one year).
- The circular now expands the scope to cover Scheme involving merger of listed company into unlisted company, which seems to have been missed out in the existing circular

¹ CFD/ DIL3/ CIR/ 2018/ 2 dated 3 January, 2018

² CFD/ DIL3/ CIR/2017/ 21 dated 10 March, 2017

Inter-se transfer of locked-in shares between promoters

- The circular, now allows transfer, of shares locked-in under the existing circular (as amended), “*inter-se*” among the promoters in accordance with the conditions specified under regulation 40 of the ICDR Regulations.
- Clarification on independence of chartered accountant and merchant banker.
- The existing circular required the listed company to submit a valuation report from an independent chartered accountant and fairness report from a merchant banker to the stock exchange.
- The circular seeks to clarify that the valuation report and the fairness opinion shall be provided by independent chartered accountant and Independent SEBI Registered Merchant Banker respectively. It is further clarified that a chartered accountant or merchant banker shall not be treated as independent in case

there is any material conflict of interest among themselves or with the company, including that of common directorships or partnerships.

Extension of time limit for listing of shares

- The existing circular required that the listed entity and/ or unlisted entity (transferee entity) should ensure that steps for listing of specified securities is completed within 30 days from the receipt of the order of the High Court/ NCLT. Further, it required the parties to ensure that trading in securities commences within 45 days of order of the High Court/ NCLT.
- It is amended to provide that both the parties should ensure that steps for listing of specified securities are completed and trading in securities commences within 60 days of receipt of the order of the High Court/ NCLT.
- Relief from submission of documents post approval from the High Court/ NCLT.

- The existing circular required the listed entity to submit certain documents (such as copy of High Court/ NCLT order, result of voting by shareholders etc.) to the stock exchanges, post sanction of the Scheme.
- It is now amended to remove the requirement of submitting such documents to stock exchanges.

The takeaways

The proposed amendments seem to be in line with the objective of ease of doing business and to prevent misuse of the Scheme to bypass regulatory provisions. The “*inter-se*” transfer between promoters, of the locked-in shares and ease in fund raising by allowing pledge of locked-in shares will be providing much needed flexibility to the promoters.

Let’s talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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