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News Alert  
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## **Revised Circular for requirements for listed companies undertaking scheme of arrangement**

### **In brief**

The Securities and Exchange Board of India (SEBI) issued a circular<sup>1</sup> on 21 May, 2013 (revised circular), clarifying and modifying clauses of the earlier circular<sup>2</sup> dated 4 February, 2013 (original circular) in connection with the requirements for listed companies undertaking a scheme of arrangement for merger, demerger, capital reduction, etc. The revised circular has been introduced with a view to clear ambiguities especially with regards to its applicability and other related operational aspects.

The key clarifications and modifications have been summarised in the table overleaf:

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<sup>1</sup> SEBI Circular No. CIR/CFD/DIL/8/2013 dated 21 May 2013

<sup>2</sup> SEBI Circular No. CIR/CFD/DIL/5/2013 dated 4 February 2013

Sr no	Aspect	As per original circular	As per revised circular
1	<b>Applicability</b>	The language of the original circular suggested that it was applicable only in case of companies seeking an exemption from the SEBI for the strict enforcement of the minimum public offer requirements for listing their securities pursuant to a scheme of arrangement.	It has now been clarified that the requirements of the original circular are applicable to <b>all listed companies</b> undertaking a scheme of arrangement for reduction of share capital, amalgamation, merger, demerger and reconstruction under the Companies Act, 1956, and not only to cases where exemption is sought from the SEBI as to minimum public offer requirements.
2	<b>Valuation report</b>	A valuation report is required for all cases of scheme of arrangement by listed companies, even if there is no change in the shareholding pattern of the listed or resultant company.	It has now been clarified that the valuation report from an independent chartered accountant is <b>not required</b> in cases where there is <b>no change in the shareholding pattern of the listed or resultant company</b> .  For example, where a wholly-owned subsidiary is being merged with a listed parent company or in the case of a demerger, where the shareholding pattern of the demerged and resulting company remains identical and no shares are issued to new shareholders in the resultant company.
3	<b>Approval from public shareholders through postal ballot and e-voting</b>	Listed companies were required to additionally approve the scheme of arrangement by way of a special resolution of public shareholders through postal ballot and e-voting with 2/3rd majority of the public shareholders.	Only such schemes which specifically involve alterations in promoter shareholding (promoters or promoter group entities) will require public shareholder resolution with a simple majority through postal ballot and e-voting.  In all other cases, an undertaking duly certified by the auditor and approved by the board of directors is to be furnished clearly stating the reasons for non-applicability of the voting requirement. Such an undertaking is to be displayed on the website of the stock exchanges as well as the company along with prescribed documents submitted to the SEBI and the stock exchange.
4	<b>Clarification on designated stock exchange</b>	The original circular was silent on the procedure and communication with the SEBI to be followed if the company involved in restructuring is listed only on a regional stock exchange.	In case of companies listed solely on regional stock exchanges seeking exemption as to the minimum public offer <sup>3</sup> , the company shall obtain in-principle approval for listing equity shares on any stock exchange having nation-wide trading terminals.  For companies listed solely on a regional stock exchange not seeking exemption as to minimum public offer <sup>4</sup> , any one stock exchange having nation-wide trading terminals shall provide a platform for dissemination of information of such schemes.

<sup>3</sup> Under Rule 19(2)(b) of the Securities Contract (Regulation) Rules 1957

## **Conclusion**

The revised circular issued by the SEBI has provided much needed clarity on the scope and applicability of the original circular.

Some of the modifications made, including the requirement of the valuation report, and approval by public shareholders by a simple majority in certain cases, will help streamline the approval process.

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<sup>4</sup> Under Rule 19(2)(b) of the Securities Contract (Regulation) Rules 1957

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## Our offices

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<p><b>Ahmedabad</b> President Plaza, 1st Floor Plot No 36 Opp Muktidham Derasar Thaltej Cross Road, SG Highway Ahmedabad, Gujarat 380054 Phone +91-79 3091 7000</p>	<p><b>Bangalore</b> 6th Floor, Millenia Tower 'D' 1 &amp; 2, Murphy Road, Ulsoor, Bangalore 560 008 Phone +91-80 4079 7000</p>	<p><b>Chennai</b> 8th Floor, Prestige Palladium Bayan 129-140 Greams Road, Chennai 600 006, India Phone +91 44 4228 5000</p>	<p><b>Hyderabad</b> #8-2-293/82/A/113A Road no. 36, Jubilee Hills, Hyderabad 500 034, Andhra Pradesh Phone +91-40 6624 6600</p>	<p><b>Kolkata</b> 56 &amp; 57, Block DN. Ground Floor, A- Wing Sector - V, Salt Lake. Kolkata - 700 091, West Bengal, India Telephone: +91-033 - 2357 9101/4400 1111 Fax: (91) 033 - 2357 2754</p>
<p><b>Mumbai</b> PwC House, Plot No. 18A, Guru Nanak Road - (Station Road), Bandra (West), Mumbai - 400 050 Phone +91-22 6689 1000</p>	<p><b>Gurgaon</b> Building No. 10, Tower - C 17th &amp; 18th Floor, DLF Cyber City, Gurgaon Haryana -122002 Phone : +91-124 330 6000</p>	<p><b>Pune</b> GF-02, Tower C, Panchshil Tech Park, Don Bosco School Road, Yerwada, Pune - 411 006 Phone +91-20 4100 4444</p>	<p>For more information contact us at, <a href="mailto:pwctr.knowledgemanagement@in.pwc.com">pwctr.knowledgemanagement@in.pwc.com</a></p>	

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