Revised requirements for seeking approval of SEBI / Stock Exchanges for Scheme of Arrangement etc.

1. Earlier the listed companies desirous of getting their equity shares listed after merger/ de-merger/ amalgamation etc. were required to file any such scheme/petition, proposed to be filed before any Court or Tribunal under sections 391, 394 and 101 of the Companies Act, 1956, with the stock exchange, for approval, at least a month before it is presented to the Court or Tribunal. [Clause 24(f) of the Listing Agreement] and seek exemption from SEBI under Rule 19(7) of SCRR, 1957 from the applicability of Rule 19(2)(b).

2. SEBI has issued a circular no. CIR/CFD/DIL/5/2013 dated February 4, 2013, whereby revising the norms for listing of shares pursuant to a scheme of reconstruction or amalgamation being sanctioned by the Hon'ble High Court under sections 391-394 or 101 of the Companies Act, 1956 ("Scheme").

3. The Revised Procedure is applicable to listed companies which, on the date of this Circular, have not submitted the Scheme with the High Court (irrespective whether the scheme is pending with stock exchange or is approved by stock exchanges). Desirous listed companies (DLCo) can file application under 19(7) if it satisfies following:

   a. The equity shares sought to be listed are proposed to be allotted by the unlisted issuer (transferee entity) to the holders of securities of a listed entity (transferor entity) pursuant under section 391- 394 of the Companies Act, 1956. Transferee Co. will not issue any other share not covered in the Scheme;

   b. At least 25% of the post-scheme paid up share capital of the transferee entity shall comprise of shares allotted to the public shareholders in the transferor entity;

   c. As on date of application, there should be no convertible instruments giving any right to take the equity shares at any future date. If there is any such instruments in the Draft Scheme, compliance of 25% minimum public shareholding shall be computed after giving effect to the consequent increase; and

   d. 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.

4. The procedure is as follows:

   - DLCo shall place before its Audit Committee the Valuation Report obtained from an Independent Chartered Accountant. The Audit Committee shall furnish a report recommending the Draft Scheme, taking into consideration, inter alia, the aforementioned valuation report.

   - DLCo shall file the Draft Scheme along with the following documents with the stock exchanges in terms of Clause 24(f) of the Listing Agreement :

     a. Valuation Report from Independent Chartered Accountant;
     b. Report from the Audit Committee recommending the Draft Scheme, taking into consideration, inter alia, the Valuation Report. The Valuation Report is required to be placed before the Audit Committee of the listed company;
     c. Fairness opinion by merchant banker;
     d. Pre and post amalgamation shareholding pattern of unlisted company;
     e. Audited financials of last 3 years (financials not being more than 6 months old) of unlisted company;
     f. Compliance with Clause 49 of Listing Agreement; and
     g. Complaints Report as per prescribed format.

   - DLCo to host aforementioned documents on its website post filing with stock Exchanges.

- DLCo needs to choose one of the stock exchanges having nation wide trading terminals as the designated stock exchange (DSE) for coordinating with SEBI.

- DSE shall display on its website and forward the Draft scheme and documents to SEBI within 3 working days.

- The stock exchanges shall process the Draft Scheme (including seeking clarifications from company and/or Opinion from Independent CA) and forward their "Objection/No-Objection" letter (O/NOC) on the Draft Scheme to SEBI within 30 days from the date of application or within 7 days of date of receipt of satisfactory reply on clarifications.

- Upon receipt of O/NOC, SEBI shall (endeavor to) provide its comments within 30 days from the later of date of receipt of satisfactory reply on clarifications from Company or date of receipt of opinion from Independent CA or date of receipt of O/NOC.

- In the meantime, all the complaints/comments received by SEBI on the Draft Scheme shall be forwarded to DSE for resolution by DLCo. DLCo needs to submit to stock exchanges 'Complaints Report' as per the prescribed format (prior to obtaining ObL) within 7 days of the expiry of 21 days from the date of filing of Draft Scheme and hosting of information on website.

- The stock exchanges, upon receipt of comments from SEBI, shall issue Observation Letter (ObL) to the DLCo within 7 days of receipt of comments from SEBI and display it on their website. The ObL will be valid for 6 months from issuance, within which the Scheme shall be submitted to the High Court.

- DLCo shall upload the ObL on its web site within 24 hrs of the receipt. DLCo should also send the ObL and Complaint Report in the notice sent to the shareholders seeking approval of the Scheme and also bring it to the notice of the Hon'ble High Court at the time of seeking approval of the Scheme.

- DLCo needs to pass Special Resolution for approving the Scheme passed through postal ballot and e-voting, The Scheme shall also provide that the special resolution shall be acted upon only if the votes cast by public shareholders in favor of the proposal amount to at least two times the number of votes cast by public shareholders against it.

- Post approval of Scheme by the High Court, the following documents needs to be submitted to the stock exchanges:

  a. Copy of the High Court approved Scheme;
  b. Result of voting by shareholders for approving the Scheme;
  c. Statement explaining changes & reasons for such changes carried out in the approved Vs Draft Scheme.
  d. Status of compliance with the ObL of the stock exchanges.
  e. The application seeking exemption from Rule 19(2)(b) of SCRR, 1957 (before filing of this application ensure that ObL has been issued, Listing of the shares of Transferee company vide the scheme has been sanctioned by the High Court, shares pursuant to the scheme have been allotted and share certificates dispatched or their names have been entered as beneficial owner in the records of the depositories) and;
  f. Complaints Report.

- The DSE shall send its recommendations to SEBI on the aforesaid documents. SEBI shall endeavour to offer its comments/approval, wherever applicable, to the DSE in 30 days.

- Applications where Warrants along with NCDs and Issuance of Equity shares with Differential Rights are to be issued, needs compliance in terms of Annexure I – Part C and D of the circular.

5. Other provisions:

- The transferee entity shall confirm that it has taken steps for listing of its equity shares, within 30 days of the receipt of the order of High Court on all the stock exchanges where the equity shares of the transferor entity are/were listed.

- The formalities for commencing of trading shall be completed within 45 days of the order.

- Before commencement of trading, the transferee entity shall give an advertisement in one English and one Hindi newspaper with nationwide circulation and one regional newspaper with wide circulation at the place where the registered office of the transferee entity is situated, giving the prescribed details.

- In case of a hiving off of a division of a listed entity (say, "entity A") and its merger with a newly formed or existing unlisted issuer (say, "entity B") there will not be any additional lock-in, if the paid-up share capital of the unlisted issuer 'B' is only to the extent of requirement for incorporation purpose.

- In case of merger where the paid-up share capital of the unlisted issuer seeking listing (say, "entity B") is more than the requirement for incorporation, the promoters' shares shall be locked-in to the extent twenty per cent, of the post merger paid-up capital of the unlisted issuer, for a period of three years from the date of listing of the shares of the unlisted issuer. The balance of the entire pre- merger capital of the unlisted issuer shall also be locked-in for a period of three years from the date of listing of the shares of the unlisted issuer.