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LISTED COMPANIES - REQUIRMENTS FOR SCHEMES OF ARRANGEMENTS

In continuation to our write up on “Compromises and Arrangements under Companies Act” published in the February 2013 edition of this enewsletter, in the current write up we have tried to bring forth requirements for listed companies with respect to schemes of arrangements. These requirements, to be followed by listed companies, are in addition to the requirements enunciated under the Companies Act, 1956.

As per Clause 24(f) of the Listing Agreement, all schemes of arrangements like mergers/demergers/reduction of capital etc. involving listed companies require a “No Objection” from the Stock Exchanges before the schemes/petitions can be filed before the Honourable High Court for its approval. Thereafter, approval is required for listing of securities to be issued pursuant to the scheme of arrangement.

Rule 19(2)(b) of the Securities Contract Regulations Rules, 1957 (SCRR), which provides for requirements with respect to the listing of securities on a recognised stock exchange, interalia, contains that at least 10 per cent of each class or kind of securities issued by a company be offered to the public for subscription through advertisement in newspapers and that applications received in pursuance of such offer were allotted subject to fulfillment of certain contains mentioned therein failing which companies shall offer at least 25 per cent of each class or kind of securities to the public for subscription through advertisement in newspapers.

Rule 19(7) of the SCRR permits SEBI to waive or relax the strict enforcement of any or all of the requirements with respect to listing prescribed by these rules at its own discretion or on the recommendation of a recognised stock exchange.In the year 2009, SEBI issued a circular (Circular No. SEBI/CFD/SCRR/01/2009/03/09 dated 03rd September 2009) whereby companies could apply under Rule 19(7) to SEBI for relaxing strict enforcement of Clause (b) to sub-rule 19 and SEBI was granting this exemption on case to case basis.

Recently, on 4th February 2013, SEBI has come out with another circular (circular no. CIR/CFD/DIL/5/2013 dated 4th February, 2013) whereby SEBI has taken a paradigm shift in its approach and has laid out a tighter road map for listed companies contemplating schemes of arrangements.

NEED FOR AMENDMENT

SEBI, in the February 2013 Circular, has observed that in the recent past, SEBI has received applications, seeking exemption, from certain entities containing, *inter alia*, (a) inadequate disclosures, (b) convoluted schemes of arrangement, (c) exaggerated valuations, etc. SEBI is of the view that granting listing permission or exemption from the requirements of Rule 19(2)(b) of SCRR, 1957 based on such applications may not be in the interest of minority shareholders. At the same time, if listing permission or such an exemption is delayed or denied, it would add to the uncertainty and would deprive shareholders of an exit opportunity. In order to avoid such situations, the existing requirements have been revised to provide for approval of SEBI both before and after approval of Scheme by Honourable High Court. The Circular clearly articulates requirements for listed companies as well as stock exchanges and the time lines permitted for execution at each stage.

APPLICABILITY

The revised requirements shall be applicable to listed companies which:

⇒ on the date of this Circular **(04.02.2013)**, have not submitted the Scheme with the Hon'ble High Court,

⇒ have submitted the Draft Scheme with the stock exchanges under Clause 24(f) of Listing Agreement and the same is pending approval.

➢ have submitted the Draft Scheme with the stock exchanges and have already received approval under Clause 24(f) of Listing Agreement but who have not yet submitted to the Hon'ble High Court.

All such companies shall be required to resubmit the documents to stock exchanges in accordance with the revised requirements mentioned in this circular.

REVISED PROCEDURE AND REQUIREMENTS IN DETAIL

For the sake of understanding, the requirements have been split into three stages -

A. Before the Scheme is submitted for sanction of the Hon'ble High Court
B. On receipt of observation letter from stock exchanges
C. After sanction of scheme by the Hon'ble High Court

It is once again clarified that these requirements, to be followed by listed companies, are in addition to the requirements enunciated under the Companies Act, 1956.

A. REQUIREMENTS BEFORE THE SCHEME IS SUBMITTED FOR SANCTION OF THE HON'BLE HIGH COURT

i) FOR LISTED COMPANIES

- Filing of Draft Scheme of Arrangement along with enclosures (mentioned below), with the Stock Exchange in terms of Clause 24 (f) of the Listing Agreement.

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

- Choosing one of the stock exchanges as the designated stock exchange for the purpose of coordinating with SEBI having nation-wide trading terminals.

- Disclosing the application submitted to Stock Exchanges along with necessary enclosures on its website

- Listed company shall submit to stock exchanges a 'Complaints Report' which shall contain the details of complaints/comments received by it on the Draft Scheme from various sources prior to obtaining Observation Letter from stock exchanges on Draft Scheme.

- Complaints Report shall be as per format given below and should be submitted to stock exchange within 7 days of expiry of 21 days from filing of draft scheme and before SEBI communicates its comments on scheme.

FORMAT OF COMPLAINTS REPORT TO BE SUBMITTED BY LISTED COMPANIES

Part A

Sr. No.	Particulars	Number
1.	Number of complaints received directly	
2.	Number of complaints forwarded by Stock exchanges	
3.	Total Number of complaints/comments received (1+2)	
4.	Number of complaints resolved	
5.	Number of complaints pending	

PART B

Sr. No	Name of complainant	Date of Complaint	Status (Resolved/pending)
1.			
2.			

DOCUMENTS TO BE SUBMITTED AS PER CLAUSE 24(F)

Listed Company shall submit the following documents to the Stock Exchanges along with its application under Clause 24 (f)

a. Draft Scheme of arrangement/ amalgamation/ merger/ reconstruction/ reduction of capital, etc.;

b. Valuation Report from Independent Chartered Accountant;

c. Report from the Audit Committee recommending the Draft Scheme, taking into consideration, inter alia, Valuation Report. The Valuation Report mentioned above is required to be placed before the Audit Committee of the listed company. **(New requirement)**

d. Fairness opinion by merchant banker (New requirement)

e. Pre and post amalgamation shareholding pattern of unlisted company;

f. Audited financials of last 3 years (financials not being more than 6 months old) of unlisted company;

g. Compliance with Clause 49 of Listing Agreement (New requirement)

h. Complaints Report as explained above

ii) FOR STOCK EXCHANGES

- The designated stock exchange will forward the draft scheme and documents submitted by the company to SEBI within 3 working days.

- Stock exchange can seek clarification from Listed Company and / or opinion from an Independent Chartered Accountant and process the Draft Scheme **(previously stock exchanges could seek clarification from Listed company only whereas they are now empowered to seek clarifications from chartered accountant who is providing valuation)**

- Forward their "Objection/No objection" letter (within 30 days from the date of application or within 7 days of date of receipt of satisfactory reply on clarifications raised by the stock exchange) on the draft scheme to SEBI.

- Stock exchanges, upon receipt of comments from SEBI, shall issue Observation Letter to the listed company after suitably incorporating the comments received from SEBI.

- Stock exchanges shall provide 'Observation Letter' to listed company within 7 days of receipt of comments from SEBI on the Draft Scheme.

ii) FOR SEBI

- Upon receipt of "Objection/No-Objection" letter from the stock exchanges, SEBI may seek clarifications from Listed Company or the stock exchanges and opinion from Independent Chartered Accountant and process the Draft Scheme. (previously SEBI could seek clarification from Listed company only whereas they are now empowered to seek clarifications from independent chartered accountant)

- All complaints/comments received by SEBI on the Draft Scheme shall be forwarded to the designated stock exchange, for necessary action and resolution by the listed company.

- SEBI shall provide its comments on the Draft Scheme to the stock exchanges within 30 days from the later of the following:

  - date of receipt of **satisfactory reply on clarifications**, if any sought from the company by SEBI; or
  - date of receipt of opinion from Independent Chartered Accountant, if sought by SEBI; or
  - date of receipt of "Objection/No-Objection" letter from the stock exchanges.

Now, SEBI has power to issue comments on the Draft Scheme after receipt of satisfactory reply on clarifications sought by SEBI from company.

COMPARISON OF PROCEDURE BEFORE AND AFTER CIRCULAR

	OLD PROCEDURE	NEW PROCEDURE
STEP 1	Approval of Scheme by Board of Directors of the Listed Company	**Audit Committee** of the listed Companies to furnish a report recommending the Draft Scheme
STEP 2	File the Draft Scheme with the Stock Exchange for approval, atleast a month before it is presented to the Court or Tribunal.	Approval of Scheme by Board of Directors of the Listed Company
STEP 3	No Objection letter from stock exchanges	Listed Company shall file the Draft Scheme and other required documents with the Stock Exchange
STEP 4	File the Draft Scheme before the any Court for approval along with the copy of No objection letter received from stock exchanges	Listed Company and Stock Exchange to **publish** the draft scheme and required documents **in their websites**
STEP 5	-	Stock Exchange shall forward Draft Scheme to SEBI within 3 working days
STEP 6	-	**Complaints Report** to be filed by Listed Company to Stock Exchange within 7 days of expiry of 21 days from filing of draft scheme and before SEBI communicate its comments on scheme
STEP 7	-	Stock Exchange shall forward their **Objection / No-Objection Letter** to SEBI within 30 days from the date of application or 7 days from date of receipt of reply for clarification
STEP 8	-	SEBI can seek explanation from the company / chartered accountant and after that, it will give its comments on the scheme to stock exchange
STEP 9	-	The stock exchanges shall provide **Observation Letter** to the listed company within 7 days of receipt of comments from SEBI on the draft scheme.

VALIDITY OF OBSERVATION LETTER ISSUED BY STOCK EXCHANGES

The 'Observation Letter' issued by stock exchanges shall be valid for **SIX MONTHS** from the date of issuance, within which the Scheme shall be submitted to the Hon'ble High Court. Previously there was no such limitation.

B) REQUIREMENTS ON RECEIPT OF OBSERVATION LETTER FROM STOCK EXCHANGES

- Disclose the Observation Letter of the stock exchanges on its website within 24 hours of receiving the same.
- Bring the same to the notice of the Hon'ble High Court at the time of seeking approval of the Scheme.
- Include the Observation Letter of the Stock Exchange in the notice sent to the shareholders under section 393 of the Companies Act, 1956.
- Companies shall also include the 'Complaints Report' in the notice sent to the shareholders while seeking approval of the Scheme.
- Listed Companies should provide for postal ballot and e-voting facility for approval of scheme by shareholders.
- The scheme should contain a clause that the resolution approving the scheme will be acted upon only if 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.

C) REQUIREMENTS AFTER THE SCHEME IS SANCTIONED BY THE HON'BLE HIGH COURT

- Listed Companies shall submit the following documents to the Stock Exchanges for listing of new equity shares to be issued pursuant to the scheme of arrangement:

  a. Copy of the Scheme (approved by Hon'ble High Court) and other relevant documents as required by stock exchanges
  b. Result of voting by shareholders approving the Scheme. **(New requirement)**
  c. Statement explaining changes, if any, and reasons for carrying out the changes in the Approved Scheme vis-à-vis the Draft Scheme **(New requirement)**
  d. Status of compliance with the Observation Letter/s of the stock exchanges **(New requirement)**
  e. The application seeking exemption from Rule 19(2)(b) of SCRR, 1957, wherever applicable; and
  f. Complaints Report. **(New requirement)**

- Companies shall also follow other procedures like issue of advertisement, submission of information memorandum to stock exchanges, minimum promoter holding, percentage of lock-in etc., as required before issuance of this circular.
- The designated stock exchange shall forward its recommendations to SEBI on the documents submitted by the listed company after satisfying itself on the following points.
  - Observation letter has been issued by stock exchanges to the draft scheme
  - The listing of equity shares of transferee entity is in terms of scheme sanctioned by the honourable High Court order or its order whereby the scheme is sanctioned
  - Equity shares are issued by unlisted issuer to holders of securities of listed entity
  - Pursuant to the scheme, share certificates have been dispatched to the allottees or their names have been entered as beneficial owners in the records of depositories
- SEBI shall endeavor to offer its comments/approval, wherever applicable, to the designated stock exchange within 30 days.