



CIRCULAR

CIR/CFD/DIL/8/2013

Date: May 21, 2013

To
The Stock Exchanges

Dear Madam / Sir,

Sub: Scheme of Arrangement under the Companies Act, 1956 – Revised requirements for the Stock Exchanges and Listed Companies - Clarification

1. This is with reference to SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013 on the captioned subject.
2. Subsequent to the issuance of the aforesaid Circular, SEBI has received queries/representations from market participants expressing operational difficulties in implementing certain provisions of the said Circular. Accordingly, upon examination of the representations and concerns raised therein, it has been decided to provide clarifications and modify certain provisions of the said Circular as detailed below:
3. **Applicability:**
 - 3.1. SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013 is applicable to all listed companies undertaking a Scheme of Arrangement under Part IV and Chapter V of Part VI of the Companies Act, 1956, (Amalgamation/ Merger/ Reconstruction/ Reduction Of Capital, etc.)
 - 3.2. Thus, it is hereby clarified that the Circular referred to in paragraph 3.1 above and this Circular are applicable even to cases where no exemption from Rule 19(2)(b) of Securities Contracts (Regulation) Rules, 1957 is sought from SEBI.
4. **Requirement of submission of Valuation Report from Independent Chartered Accountant:**
 - 4.1. All listed companies undertaking a Scheme of Arrangement under Part IV and Chapter V of Part VI of the Companies Act, 1956, (Amalgamation/ Merger/ Reconstruction/ Reduction Of Capital, etc.) are required to submit a valuation report in terms of Para (I) (A) read with Part A, Annexure I of the SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013.



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- 4.2. However, 'Valuation Report from an Independent Chartered Accountant' need not be required in cases where there is no change in the shareholding pattern of the listed company / resultant company.
- 4.3. For the limited purpose of this Circular, 'change in the shareholding pattern' shall mean;
- (a) change in the proportion of shareholding of any of the existing shareholders of the listed company in the resultant company; or
 - (b) new shareholder being allotted equity shares of the resultant company; or
 - (c) existing shareholder exiting the company pursuant to the Scheme of Arrangement
- 4.4. Further, a few examples meaning 'no change in shareholding pattern' are illustrated below:
- i. In case a listed entity (say, "entity A") demerges a unit and makes it a separate company (say, "entity B");
 - a. if the shareholding of entity B is comprised only of the shareholders of entity A; and
 - b. if the shareholding pattern of entity B is the same as in entity A; and
 - c. every shareholder in entity B holds equity shares in the same proportion as held in entity A before the demerger.

it will be treated as 'no change in shareholding pattern'.
 - ii. In case a wholly-owned-subsiary (say, "entity X") of a listed entity is merged with the parent listed company (say, "entity Y"), where the shareholders and the shareholding pattern of entity Y remains the same, it will be treated as 'no change in shareholding pattern'.
- 4.5. In all other cases, 'Valuation Report from an Independent Chartered Accountant' shall be required.
- 4.6. For the limited purpose of this Circular, 'resultant company' shall mean a company arising / remaining after the listed company undertakes a Scheme of Arrangement.



5. Para 5.3 of Circular dated February 4, 2013 is modified as follows:

5.3 If a company is listed on any stock exchange having nationwide terminals and/or regional stock exchange, it shall choose the stock exchange having nation-wide trading terminals as the designated stock exchange for the purpose of coordinating with SEBI.

5.3.(a) For companies listed solely on regional stock exchange, wherein exemption from Rule 19(2)(b) of Securities Contracts (Regulation) Rules, 1957 is sought, the company shall obtain in-principle approval for listing of equity shares on any stock exchange having nationwide trading terminals.

5.3.(b) For companies listed solely on regional stock exchange, wherein exemption from Rule 19(2)(b) of Securities Contracts (Regulation) Rules, 1957 is not sought by the company, the following shall apply:

One of the stock exchanges having nationwide trading terminals shall provide a platform for dissemination of information of such Schemes and other documents required under the SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013. For such purpose, stock exchanges having nationwide trading terminals may charge reasonable fees from such companies.

6. Following clause shall be inserted in Para 5.10 of the Circular dated February 4, 2013 in view of 5.3 (a) above:

5.10 (d) Date of receipt of copy of in-principle approval for listing of equity shares of the company seeking exemption from Rule 19(2)(b) of Securities Contracts (Regulation) Rules, 1957 on designated stock exchange, in case the company is listed solely on regional stock exchange.

7. Para 5.16 of the Circular dated February 4, 2013 shall stand replaced as under:

5.16 (a) Listed companies shall ensure that the Scheme submitted with the Hon'ble High Court for sanction, provides for voting by public shareholders through postal ballot and e-voting, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution, in the following cases:

- i. Where additional shares have been allotted to Promoter / Promoter Group, Related Parties of Promoter / Promoter Group, Associates of Promoter / Promoter Group, Subsidiary/(s) of Promoter / Promoter Group of the listed company, or



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- ii. Where the Scheme of Arrangement involves the listed company and any other entity involving Promoter / Promoter Group, Related Parties of Promoter / Promoter Group, Associates of Promoter / Promoter Group, Subsidiary/(s) of Promoter / Promoter Group.
- iii. Where the parent listed company, has acquired the equity shares of the subsidiary, by paying consideration in cash or in kind in the past to any of the shareholders of the subsidiary who may be Promoter / Promoter Group, Related Parties of Promoter / Promoter Group, Associates of Promoter / Promoter Group, Subsidiary/(s) of Promoter / Promoter Group of the parent listed company, and if that subsidiary is being merged with the parent listed company under the Scheme.

Such Schemes shall also provide that the Scheme shall be acted upon only if the votes cast by the public shareholders in favor of the proposal are more than the number of votes cast by the public shareholders against it. The term 'public' shall carry the same meaning as defined under Rule 2 of Securities Contracts (Regulation) Rules, 1957.

5.16 (b) For all other cases, the requirements stated at 5.16 (a) shall not be applicable. In such cases, the listed entities shall furnish an undertaking certified by the auditor and duly approved by the Board of the company, clearly stating the reasons for non-applicability of Para 5.16 (a).

5.16 (c) The undertaking as referred to in Para 5.16 (b) above shall be displayed on the websites of stock exchanges and the listed company along with other documents submitted, as stipulated under Para 2, Part A, Annexure I, of the SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013.

5.16 (d) Any mis-statement or furnishing of false information with regard to the said undertaking would be viewed seriously and liable for punitive action as per the provisions of applicable laws and regulations.

5.16 (e) For the purpose of this Circular, 'Related Party' shall carry the same meaning as defined under AS 18 or IND AS 24.

8. **Applicability of this Circular:** The Circular is applicable to listed companies undertaking Scheme of Arrangement which are governed by the SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013.
9. Stock exchanges are advised to take into account the requirements of this Circular and to bring the requirements of this Circular to the notice of the companies listed therein.



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

10. This Circular is issued in exercise of the powers conferred under section 11 and section 11A of the Securities and Exchange Board of India Act, 1992 read with Rule 19(7) of the Securities Contracts (Regulation) Rules, 1957 and is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework” and “Issues and Listing”.

Yours faithfully,

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