



SEBI puts more onus on Stock Exchanges and Independent Directors for M&A Schemes involving listed companies

INSIGHTS

November 4, 2020

In order to ensure that the recognized stock exchanges refer draft schemes to SEBI only upon being fully convinced that the listed entity is in compliance with SEBI Act, rules, regulations and circulars issued thereunder, and to further streamline the processing of draft scheme of arrangement filed with the stock exchanges, SEBI has introduced certain amendments to the SEBI Circular dated March 10, 2017, which lays down the framework for scheme of arrangement by listed entities.

Following are the key changes:

- **Increased role of the audit committee for clearing schemes:** The Audit Committee report is now required to also comment on the following:
 - Need for the merger/demerger/amalgamation/arrangement
 - Rationale of the scheme
 - Synergies of business of the entities involved in the scheme
 - Impact of the scheme on the shareholders.
 - Cost benefit analysis of the scheme
- **New requirement of report from independent directors:** Listed companies are now required to provide a report from the committee of Independent Directors recommending the draft Scheme, taking into consideration, inter alia, that the scheme is not detrimental to the shareholders of the listed entity
- **Valuation report to be given a Registered Valuer instead of Independent Chartered Accountant:** All listed entities are now required to submit a valuation report from a Registered Valuer. Earlier, the valuation report was required from an Independent Chartered Accountant. Registered Valuer will be a person, registered as a valuer, having such qualifications and experience and being a member of an organization recognized, as specified in Section 247 of the Companies Act, 2013 read with the applicable rules issued thereunder
- **Stock exchanges to provide “no-objection” letter, instead of “observation letter”:** Stock Exchanges are now required to provide the ‘No-Objection’ letter to SEBI on the draft scheme; in co-ordination with each other. SEBI shall issue Comment letter upon receipt of “No-Objection” letter from Stock Exchanges having nationwide trading terminals. In other cases, SEBI shall issue Comment letter upon receipt of “No-Objection” letter from the Designated Stock Exchange.
- **Additional Disclosures:** For companies seeking relaxation under Rule 19(7) of the Securities Contracts (Regulation) Rules, 1957, additional details have been prescribed which are to be included in the newspaper advertisement to be issued by the company before the commencement of trading in securities (in addition to disclosing the information in the form of an information document on the website of the stock exchanges), such as, internal risk factors, regulatory action, if any - disciplinary action taken by SEBI or Stock Exchanges against the Promoters in last 5 financial years, brief details of outstanding criminal proceedings against the Promoters.

Requirements mentioned in paragraph 1-4 above, shall be applicable for all the schemes filed with the stock exchanges after November 17, 2020. The amendment indicated at paragraph 4 above shall be applicable for all listed entities seeking listing and/or trading approval from the stock exchanges after November 3, 2020.

Aforesaid amendments have been made vide SEBI Circular dated November 3, 2020 ([available here](#)).

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com

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