

# SEBI tightens Merger & Amalgamation Norms for Listed Cos.

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## Introduction

1. SEBI, in its Board Meeting held on January 14, 2017, deliberated upon and concluded on some crucial aspects of securities laws which included corporate restructuring strategies, investment and marketing strategies by Asset Management Companies under the SEBI (Mutual Fund) Regulations, empowerment of Stock Exchanges for effective regulation of Listed Entities, etc. The decisions taken by the SEBI Board will have an impact on the strategies adopted by companies/market participants and also advisory services provided by the practising professionals. This article gives a summary of the important and crucial decisions taken by the SEBI Board at its recently convened meeting.

## 2. Regulatory Framework on Schemes of Arrangements - Mergers and Demergers

**2.1 Summary of the decision:** The provisions relating to Compromises, Arrangements and Amalgamations (under Chapter XV of Companies Act, 2013) were notified by the Ministry of Corporate affairs with effect from December 15, 2016. Some of the relevant provisions are Section [230](#) (relating to 'Power to compromise or make arrangements with creditors and members'), Section [231](#) (relating to 'Power of Tribunal to enforce compromise or arrangement'), Section [232](#) ('Merger and amalgamations of companies') and Section [233](#) ('Merger and Amalgamation of certain companies'). SEBI had approved the proposals to revise and streamline regulatory framework governing schemes of arrangement for merger of an unlisted company with a listed company and merger of a wholly owned subsidiary company with its listed parent company. The approved proposal for merger of unlisted company with listed company provides for disclosure provisions, pricing formula, shareholders participation, certification for compliance with relevant provisions, etc.

**2.2 Analysis of the decision:** With respect to the transferee-company being listed company, SEBI has clarified that such company shall be listed on stock exchange having nationwide trading terminals (i.e., BSE and NSE). Therefore, company listed on regional stock exchanges would not be considered as 'listed company' for the purpose of the proposed amendment.

For improving the disclosure standards by the unlisted company to its stakeholders, SEBI and public, SEBI Board has approved of the proposal whereby the unlisted company shall comply with the requirement of disclosure of material information as specified in the format for Abridged Prospectus. With an aim to have wider public shareholding and to prevent

very large unlisted companies to get listed by merging with a 'very small companies', SEBI Board has approved of the proposal whereby the holding of pre-scheme public shareholders of the listed entity and Qualified Institutional Buyers ('QIBs') of such unlisted company, in the post scheme shareholding pattern of the 'merged' company shall not be less than 25%. Such proposal ensures that post-merger, the public shareholding in listed company is minimum of 25%, which aligns with the relevant provisions of the Securities Contracts (Regulation) Rules, 1957 and the Securities Contract (Regulation) Act, 1957.

With respect to pricing, SEBI Board has clarified that the pricing formula specified under the SEBI (Issue of Capital and Disclosure Requirements) Regulations shall be applicable in such cases. Such proposal was sanctioned to prevent issue of shares to select group of shareholders instead of all shareholders pursuant to the scheme. With respect to public shareholders' participation in voting for the merger of an unlisted company with a listed company, SEBI Board has approved of the proposal where the public shareholders' approval would be sought through e-voting in certain cases. The cases are as follows:

- (a) Schemes involving merger of an unlisted company resulting in reduction in the voting share percentage of pre-scheme public shareholders by more than 5% of total capital of merged entity,
- (b) Schemes involving transfer of whole or substantially the whole of the undertaking of a listed company and consideration for such transfer is not in the form of listed equity shares,
- (c) Schemes involving merger of unlisted subsidiary with listed holding company where the shares of the unlisted subsidiary have been acquired by the holding company directly or indirectly from the promoters/promoter group.

However, in this case SEBI needs to take into consideration the Bombay High Court's judgment [by Single Judge] in *Scheme of Amalgamation of Wadala Commodities Ltd. with Godrej Industries Ltd.* and their respective shareholders. The High Court had held that "All provisions for compulsory voting by postal ballot and by electronic voting to the exclusion of an actual meeting cannot and do not apply to court-convened meetings. At such meetings, provision must be made for postal ballots and electronic voting, in addition to an actual meeting. Electronic voting must also be made available at the venue of the meeting. Any shareholder who has cast his vote by postal ballot or by electronic voting from a remote location (other than the venue of the meeting) shall not be entitled to vote at the meeting. He or she may, however, attend the meeting and participate in those proceedings". The Bombay High Court has observed that the elimination of all shareholder's, participation at an actual meeting is anathema to some of the most vital of shareholders' rights. Considering the Bombay High Court's, ruling, the SEBI should ensure that appropriate provisions are included in the Regulations for the merger of an unlisted company with a listed company.

The SEBI Board has approved of the submission of Compliance Report confirming compliance with the circular and Accounting Standards duly certified by the Company Secretary, CFO and Managing Director. With an objective to simplify the process, the SEBI Board has clarified that the Schemes which provide for merger of wholly-owned Subsidiary with the Parent Company shall not be required to be filed with SEBI, however, such activity will require filing of the Scheme with the stock exchanges for the limited purpose of disclosures only.

### **3. Empowerment of Stock Exchanges for effective regulation of Listed Entities**

**3.1 Summary of the decision:** The SEBI Board noted that the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 specifically provide for imposition of fines by the stock exchanges, however, a similar provision is not available in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 which contain provisions for companies for raising funds through public issues or rights issues or on preferential basis or bonus issue of securities. SEBI Board has cleared the agenda for imposition of fines and suspension of trading by stock exchanges under the SEBI (Issue of Capital and Disclosure Requirements) Regulations.

**3.2 Analysis of the decision:** With an objective to empower the stock exchanges for effective regulation of listed entities, the SEBI Board has approved to insert similar clause in the SEBI (Issue of Capital and Disclosure Requirements) Regulations for enabling the SEBI to take actions (like imposition of fines, suspension of trading, etc.) by stock exchanges for contravention of the said Regulations. This would be in addition to penal provisions under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. This would mean that companies can be penalised by the SEBI under two sets of Regulations for the same offence in the securities market. The SEBI (Issue of Capital and Disclosure Requirements) Regulations would include penalty provisions relating to non-compliance of several provisions relating to public issue, rights issue, preferential issue, bonus issue, Qualified Institutions Placement, issue of Indian Depository Receipts. SEBI Board has clarified that based on the amended SEBI (Issue of Capital and Disclosure Requirements) Regulations, it would issue appropriate circulars/guidelines providing for standard operating procedure for imposing of fines, etc, on violation of certain provisions of the said Regulations in consultation with Stock Exchanges. SEBI Board, in the Press Release, has justified such proposal as it would reduce cost of undertaking adjudication/quasi-judicial actions in case of minor violations for the listed entities.

### **4. Proposal for alternative to 'Net Worth' for municipalities making public issue of debt securities**

**4.1 Summary of the decision:** The SEBI Board noted that the SEBI (Issue and listing of Debt Securities by Municipalities) Regulations, 2015 provide that Municipality or Corporate Municipal Entity ('CME') making public issue of debt securities, shall not have negative net worth in any of 3 immediately preceding Financial Years. SEBI Board has agreed that Municipalities making public issue of debt securities shall have 'Surplus' as per their Income and Expenditure Statements, in any of the 3 immediately preceding Financial Years. SEBI may prescribe any other financial criteria from time-to-time.

**4.2 Analysis of the decision:** With an objective to facilitate issuance of debt securities under the SEBI (Issue and listing of Debt Securities by Municipalities) Regulations, 2015 by entities, other than CME (i.e, Municipalities), SEBI Board has provided for an alternate criteria for them to raise money making public issue of debt securities, i.e, to 'Surplus' (as per its Income and Expenditure Statement in any of the 3 immediately preceding FYs) from 'Net Worth'. The decision of providing alternate criteria to 'Net Worth' will ease the eligibility factors and help the Municipalities in raising funds from the market, which will further assist the Municipality in investing such money in infrastructure projects.

## **5. Proposed amendments to SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014:**

**5.1 Summary of the decision:** With an objective of streamlining and strengthening settlement process, SEBI Board approved amendments to the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014. It is proposed that the amendments provide for: (i) Charging of interest in case of excessive delays in filing of applications or payment of settlement amount, (ii) Settlement Notice before issuance of a formal Show Cause Notice, (except those which are excluded from settlement), (iii) Re-application of rejected or withdrawn applications in deserving cases (subject to payment of additional fees and interest), (iv) Situations when joint and several liability is taken into account for determining settlement amount and Incentive for defaulters to come clean voluntarily on their own, before initiation of investigation or enforcement action.

**5.2 Analysis of the decision:** By approving of the proposal to amend the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014, the SEBI Board is ensuring that the mechanism of settlement under the Regulations is full-proof and covers all the operational issues faced by the SEBI from the market intermediaries from the perspective of coverage, documentation, fees and liabilities. The SEBI Board, as of now, has decided to provide for amendments for certain events: (i) Charging of interest for excessive delays in filing of applications, (ii) Settlement Notice before issuance of a formal Show Cause Notice, (iii) Re-application of rejected or withdrawn applications, (iv) When joint and several liability is taken into account for determining settlement amount.

## **6. Other decisions taken by the SEBI Board**

Considering the impact of demonetisation w.r.t. making the cashless payments, the SEBI Board approved of the proposal to amend various Regulations to enable the market participants to make payments to the SEBI through digital mode (such as NEFT/RTGS). With an objective to reduce the overall cost of transactions, benefit investors and promote development of securities market, the SEBI Board resolved to reduce the fees payable by broker by 25%, i.e., from Rs. 20/- per crore of turnover to Rs. 15/- per crore of turnover. The SEBI Board has approved of the decision of aligning the fees payable under SEBI (Buy-back of Securities) Regulations, 1998 with the fee payable under Takeover Code. SEBI Board has also resolved to introduce filing fee for draft scheme of arrangement. With an aim to ensure that Mutual Fund performance related information is disclosed in simpler and effective manner to the investors (along with precise & latest information), the SEBI Board also reviewed the provisions relating to advertisement guidelines for Mutual Funds.

### **Conclusion**

7. The provisions relating to the Schemes of Arrangements, Mergers and Demergers under the Companies Act, 2013 are effective from December 15, 2016. However, there is no corresponding updated provision in the Securities Law with respect to the same. Though the Companies Act provisions have been notified, yet listed companies cannot take complete advantage of such provisions, unless SEBI has amended relevant Regulations. It will be interesting to see the implementation of the SEBI Boards' decision of empowering stock exchanges for effective regulation of listed entities, thereby amending the SEBI (Issue of Capital and Disclosure Requirements) Regulations. SEBI Board has approved of the proposal of amending the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 with an objective to streamline and strengthen settlement process. All these key decisions will have a bigger impact on the listed entities and their Legal and/or Corporate Secretarial Department, as they have to ensure effective compliance management mechanism and disclosure requirements.

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