



Consultation Paper on Amendment to Delisting Regulations for Schemes of Arrangement

The Securities and Exchange Board of India ('SEBI') on March 17, 2020, issued consultation paper on "Amendment to Securities And Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 for Schemes of Arrangement" ('Consultation Paper') seeking comments/views from the public on proposal relating to a scheme of arrangement between a listed holding company and its listed subsidiary wherein the listed subsidiary can be delisted without following the provisions of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 ('Delisting Regulations').

Background

Many listed companies have listed subsidiaries with similar businesses which they may want to merge with themselves so that there is only one listed company in the group. However, it may not be favourable to merge a listed subsidiary with its listed parent entity due to Industry specific constraints, high transaction costs like transfer costs, stamp duties, state level constraints, cultural differences.

Proposal by SEBI

- The listed parent entity shall integrate the business of the listed subsidiary with that of its own by providing a share swap to all shareholders of the listed subsidiary through a scheme of arrangement as a result the listed subsidiary shall become an unlisted wholly owned subsidiary of the parent listed entity.



- The shareholders of the listed subsidiary company will be offered shares of the listed parent company and the listed subsidiary will continue to exist, albeit as a wholly owned subsidiary of the parent company.
- The listed subsidiary would be delisted without following the Delisting Regulations.

Safeguards of the Proposal

SEBI proposes following safeguards to protect the interest of the investors and to ensure that undue advantage is not taken of the proposed route -

- The exemption from Delisting Regulations, shall be confined to only a scheme of arrangement between a listed subsidiary and its listed parent.
- The independent valuation of shares of the listed subsidiary and the listed parent for the share swap will ensure that the share exchange ratio based on which all shareholders of listed subsidiary (except the parent company) receive shares of the listed parent in lieu of the shares they hold in the listed subsidiary.
- No objection from stock exchanges and SEBI needs to be obtained for the proposed scheme of arrangement in terms of Regulation 37 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the Circulars issued thereunder
- Approval from jurisdictional National Company Law Tribunal ('NCLT') and procedure under section 230-232 of the Companies Act, 2013 needs to be followed
- Votes cast by public shareholders in favour of the merger should amount to atleast 2 times the number of votes cast by public shareholders against it
- Subsidiary company has to be listed for a period of 3 years prior to the scheme of arrangement.
- No adverse order or direction from SEBI
- No further restructuring by the listed holding company for a period of 3 years from the date of the NCLT order

Dhruva Comments

This is welcome proposal from SEBI as this would help many such group who wants to reduce number of listed companies in the group. It seems SEBI intends to simplify delisting of companies in specific scenarios.

However, it is pertinent to note that merger of listed subsidiary into listed parent is a tax neutral event whereas the proposed scheme of arrangement will result into tax implications both in the hands of listed parent company as well as shareholders of listed subsidiary. Accordingly, corresponding exemption from tax should be provided for the proposed scheme of



arrangement. In addition to tax implication, stamp duty cost on the proposed arrangement needs to be evaluated.

One of the constraints imposed on the listed holding company is that it cannot do any further restructuring for 3 years. The rationale for the same is not clear and it may act as a dampener.

It is worthwhile to see how the amendments to Delisting Regulations evolve pursuant to this Consultation Paper.



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