

**REWRITING THE LAWS ON LISTED COMPANY MERGERS?**  
**SEBI's latest circular on M&A**

The Securities and Exchange Board of India (“SEBI”) has through a circular dated February 4, 2013, revised the norms applicable to listed companies for schemes of mergers and arrangements under Sections 392, 304 and 100 of the Companies Act, 1956 (“Act”). Rule 19(2)(b) Securities Contract (Regulation) Rules, 1957 (“SCR”) prescribes certain conditions to be met for listing of shares by a company. Such conditions are applicable even in the case of a merger of a listed company with an unlisted company, pursuant to which the unlisted transferee company seeks listing. Under Rule 19(7) of the SCR, companies may apply for exemption from the provisions of the aforesaid Rule 19(2)(b). The present circular issued by the SEBI seeks to increase the requirements for considering applications seeking exemption as stated above.

The reason for such amendment as stated in the circular is that the exemption applications received by SEBI have inadequate disclosures, convoluted schemes of arrangement and exaggerated valuations. SEBI is of the opinion that granting exemption from the requirements of Rule 19(2)(b) of the SCR on the basis of such applications may not be in the interest of minority shareholders.

Listed below are some of the key revisions:

(i) *Additional Disclosures from the Listed Company* – In addition to the filing of the draft scheme of merger (“**Scheme**”) with the stock exchanges, listed companies seeking to merge are also required to file the following documents: (a) valuation report from an independent chartered accountant along with a report from the Audit Committee recommending the Scheme after taking into consideration the said valuation report, (b) fairness opinion by a merchant banker, (c) complaints report in the prescribed format containing details of all complaints/comments received by the listed merging entities, and (d) other financial and related information. Listed companies are also required to disclose the Scheme and the documents listed above on their website immediately after filing of the Scheme with the stock exchange.

(ii) *NOC and observation letter from stock exchange*: The stock exchange designated by the listed company for coordinating with SEBI will forward the Scheme to SEBI within 3 days of receipt of such Scheme. The designated stock exchange shall also forward their objection/no-objection letter on the Scheme to SEBI within 30 days from date of application or within 7 days from date of receipt of satisfactory reply on clarifications sought from company/chartered accountant. The stock exchange shall issue observation letter to the relevant listed companies seeking to merge, incorporating comments received from SEBI (as discussed below) within 7 days of receipt of comments from SEBI. Such observation letter will be required to be included

in the notice sent to shareholders seeking approval of the Scheme. The relevant listed companies will also be required to bring the observation letter issued by the stock exchange to the notice of the High Court at the time of seeking approval of the Scheme. The observation letter has to be submitted to the High Court within a period of 6 months from date of its issuance.

(iii) *Processing of draft scheme by SEBI:* Upon receipt of objection/no-objection letter from the stock exchange, SEBI shall provide its comments on the Scheme to the stock exchange within 30 days from receipt of objection/no objection letter from the stock exchange or opinion from the independent chartered accountant or satisfactory reply on clarifications sought by SEBI, if any, whichever is later.

(iv) *Approval of public shareholders:* The Scheme is required to provide that the special resolution approving the Scheme will be acted upon only if the number of votes cast by public shareholders in favour of the Scheme is at least twice the number of votes cast by 'public shareholders' against it. This means that in addition to the special resolution requirements under the Act, the Scheme must also receive the approval of 2/3<sup>rd</sup> of the public shareholders. Further, the shareholders' approval for special resolution may be obtained through postal ballot or e-voting.

**IndusLaw Quick View:** *The revisions brought forth by this circular seek to further enhance the scope of interference/supervision of SEBI when the Scheme involves a listed company. The circular requires listed companies to provide detailed information to SEBI on the basis of which SEBI would provide its comments on the Scheme to the stock exchange. The circular does not provide any power to SEBI or the stock exchange to deal with situations where recommendations under the Observation Letter are not complied with by the listed company.*

*The requirement of approval by at least 2/3<sup>rd</sup> of the public shareholders in addition to the approval by 3/4<sup>th</sup> of each class of shareholders imposes a further burden on listed companies to take consent from public shareholders. Even though this requirement does not dilute the powers of the High Court in sanctioning a Scheme, it does effectively add a further ingredient to the statutory framework of the Act and coupled with the power of SEBI to seek clarifications makes the process substantively more cumbersome for listed companies. It remains to be seen how the High Courts will deal with these additional conditions which are not expressly mandated under the Act.*



**BANGALORE**  
101, I Floor, "Embassy  
Classic"  
# 11, Vittal Mallya Road,  
Bangalore -560001,  
India  
Tel: +91 80 4072 6600  
Fax: +91 80 4072 6666  
[bangalore@induslaw.com](mailto:bangalore@induslaw.com)

**DELHI**  
A-4, Sector 26  
Noida -201301  
NCR of Delhi, India  
Tel: +91 120 472 8100  
Fax: +91 120 472 8114  
[delhi@induslaw.com](mailto:delhi@induslaw.com)

**MUMBAI**  
1002A, 10<sup>th</sup> Floor, Tower  
2  
Indiabulls Finance Centre  
Senapati Bapat Marg,  
Elphinstone Road  
Mumbai 400 013  
[mumbai@induslaw.com](mailto:mumbai@induslaw.com)

**HYDERABAD**  
302, Apurupa Classic  
Apartment  
Road No.1, Banjara Hills  
Hyderabad - 500034,  
India  
Tel : +91 40 4026 4624  
Fax: +91 40 4004 0979  
[hyderabad@induslaw.com](mailto:hyderabad@induslaw.com)