

# First Notes



## SEBI relaxes norms governing schemes of arrangements by listed entities

18 January 2018

### First Notes on

Financial reporting  
Corporate law updates  
**Regulatory and other information**  
Disclosures

### Sector

**All**  
Banking and insurance  
Information, communication, entertainment  
Consumer and industrial markets  
Infrastructure and government

### Relevant to

**All**  
Audit committee  
CFO  
Others

### Transition

**Immediately**  
Within the next three months  
Post three months but within six months  
Post six months  
Forthcoming requirement

### Background

The listed entities that desire to undertake a scheme of arrangement or are involved in a scheme of arrangement need to follow the regulations laid down by the Securities and Exchange Board of India (SEBI). On 10 March 2017, SEBI issued a circular number CFD/DIL3/CIR/2017/21 which laid down a revised regulatory framework for schemes of arrangements by listed entities and relaxation under Rule 19(7) of the Securities Contract (Regulation) Rules, 1957.

### New development

The SEBI received representations to improve the existing framework governing schemes of arrangements. Additionally, SEBI wanted to expedite the processing of draft schemes and prevent misuse of schemes to bypass regulatory requirements. Therefore, on 3 January 2018, SEBI issued a circular number CFD/DIL3/CIR/2018/2 (the circular) to make certain amendments to the circular dated 10 March 2017.

The recent circular is applicable from the date of its issue i.e. 3 January 2018. Some of the key relaxations provided in the circular relate to the following topics:

- Submission of documents to stock exchanges
- Relaxations with respect to locked-in promoter's shares
- Extended time period for listing of specified securities.

In this issue of First Notes, we have provided an overview of the key amendments/relaxations given in the circular.

### Overview of the circular

Following are the key amendments/relaxations made in the circular dated 3 January 2018:

- **Applicability of the circulars:** These circulars (3 January 2018 and 10 March 2017) would not apply to schemes which solely provide merger of a wholly-owned subsidiary or its division with the parent company. However, for disclosure purposes, draft schemes should be filed with the stock exchanges and stock exchanges should host the same on their websites. (Earlier, the 10 March 2017 circular did not scope out merger of a division of a wholly-owned subsidiary with the parent company).
- **Submission of documents:** For any scheme of arrangement, amalgamation, merger, reconstruction, reduction of capital, etc. certain documents have to be submitted to a stock exchange. These documents include the following:
  - Draft scheme of arrangement, amalgamation, merger, reconstruction, reduction of capital, etc.
  - A valuation report
  - Fairness opinion by a SEBI registered merchant banker on valuation of assets/shares done by the valuer for the listed entity and unlisted entity

- Report from the audit committee recommending the draft scheme
- Pre and post amalgamation shareholding pattern of unlisted entity
- An auditor's certificate
- Detailed compliance report as per the specified format.

The 3 January 2018 circular clarifies that the valuation report and the fairness opinion should be provided by an *independent* Chartered Accountant (CA) and *independent* SEBI registered merchant banker respectively.

It is further clarified that the CA and SEBI registered merchant banker would not be treated as independent in case of existence of any material conflict of interest among themselves or with the company, including that of common directorships or partnerships.

- **Conditions for scheme of arrangement involving unlisted entity:** When there is a scheme of arrangement between listed and unlisted entities, the 10 March 2017 circular required certain conditions to be fulfilled. Those conditions are as follows:

- *Information as per abridged prospectus:* The listed entity should include the applicable information pertaining to the unlisted entity involved in the scheme in the format specified for abridged prospectus (as provided in Part D of Schedule VIII of the ICDR Regulations), in the explanatory statement or notice or proposal accompanying resolution to be passed sent to the shareholders while seeking an approval of the scheme.
- *Certificate from a SEBI registered merchant banker:* The accuracy and adequacy of the above disclosures as per the abridged prospectus would be required to be certified by a SEBI registered merchant banker (after following the due diligence process).
- *Disclosures to be submitted to the stock exchanges:* Such disclosures should also be submitted to the stock exchanges for uploading on their websites.
- *Shareholding pattern of public shareholders and Qualified Institutional Buyers (QIBs) in the merged entity:* The percentage of shareholding of pre-scheme public shareholders of the listed entity and the QIBs of the unlisted entity, in the post scheme shareholding pattern of the 'merged' entity should not be less than 25 per cent.
- *Stock exchange with nationwide trading terminals:* Unlisted entities can be merged with a listed entity only if the listed entity is listed on a stock exchange having nationwide trading terminals.

The 3 January 2018 circular clarifies that:

- The percentage of the shareholding of pre-scheme public shareholders of the listed entity and the QIBs of the unlisted entity, in the post scheme shareholding pattern of the 'merged' company on a *fully diluted basis* should not be less than

25 per cent. All other conditions remain unchanged.

- **Lock-in requirements for a scheme for hiving-off of a division from a listed entity to an unlisted entity:** In such a case, the 10 March 2017 circular provided that the pre-scheme share capital of the unlisted issuer would be locked-in in the following manner:

- Shares held by promoters up to the extent of 20 per cent of the post-merger paid-up capital of the unlisted issuer, should be locked-in for a period of three years from the date of listing of the shares of the unlisted issuer.
- The remaining shares should be locked-in for a period of one year from the date of listing of the shares of the unlisted issuer.
- No additional lock-in should be applicable if the post scheme shareholding pattern of the unlisted entity is exactly similar to the shareholding pattern of the listed entity.

The 3 January 2018 circular has amended this clause. In case of a scheme involving *merger of a listed company or its division* into an unlisted entity, the entire pre-scheme share capital of the unlisted issuer seeking listing should be locked-in as follows:

- Shares held by promoters up to the extent of 20 per cent of the post-merger paid-up capital of the unlisted issuer, should be locked-in for a period of three years from the date of listing of the shares of the unlisted issuer.
- The remaining shares should be locked-in for a period of one year from the date of listing of the shares of the unlisted issuer.
- No additional lock-in should be applicable if the post scheme shareholding pattern of the unlisted entity is exactly similar to the shareholding pattern of the listed entity.

The SEBI has allowed that the shares locked-in under this clause can be pledged with any scheduled commercial bank or public financial institution as collateral security for loan granted by such bank or institution if pledge of shares is one of the terms of sanction of the loan.

Additionally, the shares locked-in under this clause can be transferred 'inter-se' among promoters in accordance with the conditions specified in Regulation 40 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

Shares presently under lock-in as per the provisions of earlier circulars would also be governed by the provisions of this clause.

- **Requirement for submission of documents after the scheme is sanctioned by NCLT:** The circular dated 10 March 2017 required listed entities to submit certain documents to stock exchanges post sanction of scheme of arrangement by High Court (HC) or National Company Law Tribunal (NCLT). Such documents include:
  - A copy of the HC/NCLT approved scheme
  - Result of voting by shareholders for approving the scheme

- Statement explaining changes, if any, and reasons for such changes carried out in the approved scheme versus the draft scheme arrangement
- Status of compliance with the observation letter or no objection letter of the stock exchange
- The application seeking exemption from Rule 19(2)(b) of SCRR, 1957, wherever applicable, and
- Report on complaints in the prescribed manner.

The 3 January 2018 circular does not require submission of the above documents to HC/NCLT. This requirement has been repealed.

• **Time period for completion of formalities for listing of specified securities:** The circular dated 10 March 2017 provided that:

- The listed entity and/or transferee entity (unlisted entity), as applicable, should ensure that it has completed steps for listing of its specified securities within 30 days of receiving the order of the HC/NCLT sanctioning the scheme, simultaneously on all the stock exchanges where the equity shares of the listed entity (or transferor entity) are/were listed.
- Trading in securities commences within 45 days of the order of the HC/NCLT.

- Before commencement of trading, the transferee entity should give an advertisement in one English and one Hindi newspaper having nationwide circulation and one regional newspaper in the manner prescribed giving details such as name and address of registered office, details of change of name and/or subject clause, capital structure, shareholding pattern, etc.

The 3 January 2018 circular has amended this clause. The new requirements are as follows:

- Steps for listing of specified securities are completed and trading in securities should commence within *60 days* of receiving the order of the HC/NCLT simultaneously on all the stock exchanges where the equity shares of the listed entity (or transferor entity) are/were listed.
- Before commencement of trading, the transferee entity should give an advertisement in one English and one Hindi newspaper having nationwide circulation and one regional newspaper in the manner prescribed giving details such as name and address of registered office, details of change of name and/or subject clause, capital structure, shareholding pattern, etc.

### Our comments

The SEBI in its circular dated 3 January 2018 has widened its scope of relaxations. Some of the key relaxations are as follows:

- Schemes which solely provide merger of a wholly-owned subsidiary or its division with the parent company are exempt from the provisions of these circulars
- Promoters can now pledge their locked-in shares with any scheduled commercial bank or public financial institution as collateral securities and such shares can inter-se be transferred amongst promoters
- Extension of time period for listing of specified securities from 30 days to 60 days
- Listed entities are no longer required to submit certain documents to stock exchanges post sanction of scheme of arrangement by High Court/NCLT.

The relaxations are expected to expedite the processing of draft schemes of arrangements. However, there is a change in one of the conditions for the schemes of arrangements between listed and unlisted entities. The SEBI now requires the post scheme shareholding pattern of the 'merged' company on a 'fully diluted basis' to be not less than 25 per cent. This particular condition would require a closer evaluation especially when promoters would be issued convertible instruments as part of the scheme of arrangement.

### The bottom line

The amendments are expected to make the regulatory framework relating to the schemes of arrangements by listed companies more robust and are likely to help in ease of doing business in India.



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The website provides information and resources to help board and audit committee members, executives, management, stakeholders and government representatives gain insight and access to thought leadership publications that are based on the evolving global financial reporting framework.



## ICAI issues an exposure draft of amendments to Ind AS 20, Accounting for Government Grants and Disclosure of Government Assistance

12 January 2018

On 5 January 2018, the Accounting Standards Board (ASB) of the Institute of Chartered Accountants of India (ICAI) issued an Exposure Draft (ED) proposing amendments to certain provisions of Ind AS 20.

Comments on the amendments may be submitted to the ASB on or before 24 January 2018.

This issue of IFRS Notes provides an overview of the amendments proposed to Ind AS 20.

## Missed an issue of Accounting and Auditing Update or First Notes



Issue no. 17 – December 2017

The topics covered in this issue are:

- Ind AS 115 - Impact on technology sector
- Reaping the potential benefits of data and analytics in audit
- Interaction between derecognition and business model assessment for NBFCs
- Private companies – Relaxations under the Companies Act, 2013
- Decommissioning costs
- Regulatory updates.



## Companies (Amendment) Act, 2017 received Presidential assent

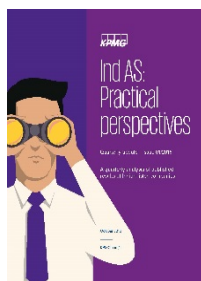
16 January 2018

After much deliberation, on 19 December 2017, Rajya Sabha passed the Companies (Amendment) Bill, 2017 and on 3 January 2018, the Companies (Amendment) Act, 2017 (Amendment Act, 2017) received the assent of the President of India.

The Amendment Act, 2017 will come into force on such date as the Central Government (CG) may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of the 2013 Act and any reference in any provision to the commencement of the 2013 Act should be construed as a reference to the coming into force of that provision.

The Amendment Act, 2017 makes significant changes to the 2013 Act which are aimed at ease of doing business, better corporate governance and enforcement of stringent penal provisions for defaulting companies.

In this issue of First Notes, we aim to provide an overview of the significant changes made to the 2013 Act by the Amendment Act, 2017.



## Ind AS - Practical perspectives

KPMG in India's Ind AS - Practical perspectives through aims to put a finger on the pulse of India Inc's adoption of Ind AS and capture emerging trends and practices.

Our impact assessment is based on Nifty 50 companies which would be the first group of companies to report Ind AS results. The Nifty 50 companies have released their financial results for the year ended 31 March 2017.

Out of the companies comprising Nifty 50 index, eight companies are banks, two are Non-Banking Financial Companies (NBFCs) and two companies follow a different date of transition to Ind AS. Therefore, our analysis would comprise the remaining 38 companies.

This can be accessed on KPMG in India website - '[Ind AS- Practical perspectives](#)' webpage

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