



Consultation Paper on “Amendment to Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 for Schemes of Arrangement”

Objective

- 1) The objective of this consultation paper is to seek 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 is desirous of getting delisted without following the provisions of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 (Delisting Regulations).

Background

- 2) It is observed that there are listed companies which have listed subsidiaries, and equity shares of both are actively traded on stock exchanges. In a number of these cases, both the listed subsidiary and its listed parent company are in the same or similar business, with significant synergies by working together and creating significant incremental shareholder value for both companies.
- 3) While a full merger of a listed subsidiary with its listed parent entity would help achieve the intended synergies, it may not be favourable for the following reasons:
 - Industry specific constraints (example, license conditions);
 - Value destroying transaction costs (example, transfer costs, stamp duties, state level constraints);
 - Cultural differences (example, where the listed subsidiary was acquired by the listed holding company, and not set up by it organically).

Proposal

- 4) 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. The listed subsidiary shall become an unlisted wholly owned subsidiary of the parent listed entity.
- 5) As per the existing Delisting Regulations, the listed subsidiary desirous of getting delisted would be required to follow the delisting norms in terms of the Delisting Regulations, which include reverse book building process.
- 6) However, in the proposed scenario, the listed subsidiary would be delisted without following the Delisting Regulations. 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.
- 7) The envisaged proposal is explained herein below with an illustrative example:

Parent Company ("P"), say, an integrated steel producer -Listed
Subsidiary Company ("S"), say, flat steel producer - Listed
P holds, say, 60% equity shareholding of S, balance 40% of S is held by public shareholders.

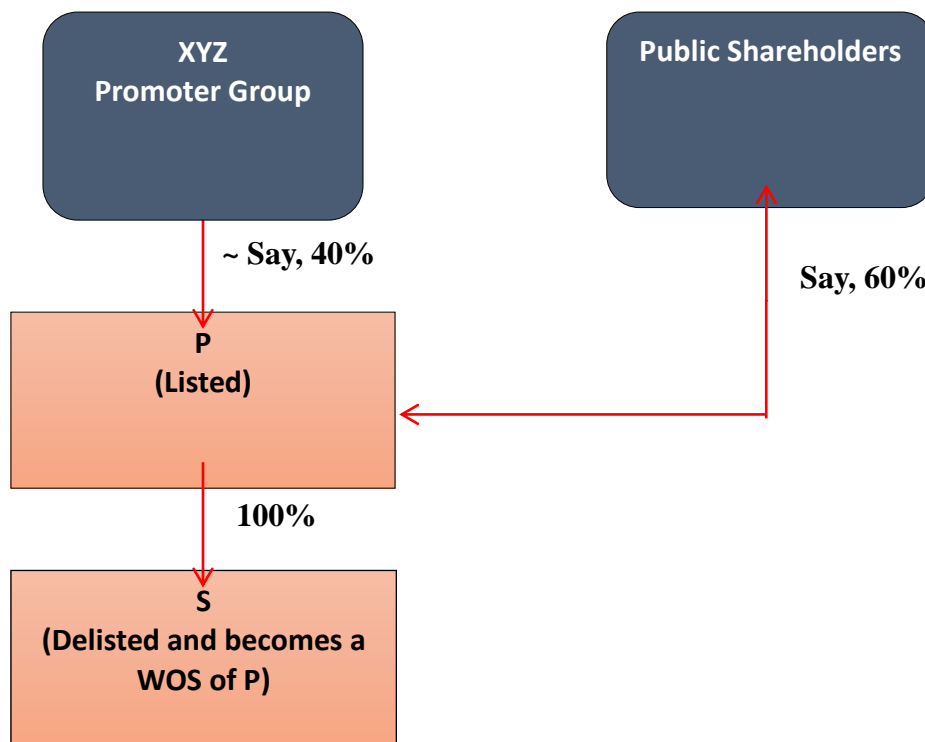
XYZ Promoter Group holds, say, 53% equity shareholding in P, with balance 47% being held by public shareholders.

Through a scheme of arrangement to be approved by NCLT under the Companies Act, all public shareholders of S will be allotted equity shares of P in lieu of their shareholding in S. This allotment would be based on a share swap ratio, on exactly the same lines as in the case of a scheme of arrangement.

On approval of scheme of arrangement, S would become a wholly owned subsidiary of P, and the equity shareholding of XYZ Promoter Group in P would reduce from the current 53% to the extent of the increase in equity shareholding of public shareholder in P on account of allotment of equity shares to the public shareholders of S in lieu of their shareholding in S.

Since S would become a wholly owned subsidiary of P, it would be delisted from the exchanges.

Post Restructuring Structure



Safeguards of the instant proposal

8) To ensure that this route is not taken undue advantage of and is detrimental to the investors, the following safeguards are proposed:

- The exemption from Delisting Regulations, shall be confined to only a scheme of arrangement between a listed subsidiary and its listed parent.
- The process of this proposed scheme shall be identical to a process followed in a merger wherein the holding listed company and the listed subsidiary shall seek no objection from stock exchanges and SEBI for the proposed merger in terms of Regulation 37 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the Circulars issued thereunder.
- Thereafter, the holding listed company and the listed subsidiary company shall file application(s) before the Hon'ble NCLT.
- 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.

- The votes cast by public shareholders in favour of the proposal amount to atleast 2 times the number of votes cast by public shareholders against it.
- A minimum vintage of 3 years of listing of the shares of the listed subsidiary.
- 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.

Proposal Deliberation

9) The matter was deliberated at the Primary Market Advisory Committee (PMAC) meeting. The PMAC has recommended that SEBI may seek public comments whether a specific exemption may be provided in the Delisting Regulations for delisting of the listed subsidiary pursuant to the above scheme of arrangement.

Public Comments

10) Considering the implications of the said scheme of arrangement on the market participants including issuers and investors, public comments are invited on the proposals contained in the discussion paper. Public comments on the aforesaid proposal may be provided in the following format:

Name of entity/ person/ intermediary:			
Name of organization (if applicable):			
Contact details:			
Sr. No.	Proposals	Proposed/ suggested changes	Rationale
	Page No. Para No.		

While sending the email, kindly mention the subject as “Comments on Amendment to Delisting Regulations for Schemes of Arrangement”.

11)Comments may be forwarded by e-mail to komalb@sebi.gov.in or sent by post at the following address latest by April 15, 2020.

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