



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CIRCULAR

SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2022/156

November 17, 2022

To,

**All entities who have listed their Non-convertible Debt securities/ Non-convertible Redeemable Preference shares
All the recognized Stock Exchanges**

Madam / Sir,

Scheme(s) of Arrangement by entities who have listed their Non-convertible Debt securities (NCDs)/ Non-convertible Redeemable Preference shares (NCRPS)

1. The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "Listing Regulations") was amended vide notification dated November 14, 2022, through insertion of Regulation 59A and 94A with respect to Scheme(s) of Arrangement by entities who have listed their NCDs/ NCRPS.
2. The newly inserted Regulation 59A of the Listing Regulations provides that the listed entity that has listed NCDs or NCRPS, which intends to undertake a scheme of arrangement or is involved in a scheme of arrangement shall file the draft scheme with Stock Exchange(s) for obtaining the No-Objection Letter, before filing such scheme with any court or Tribunal. Regulation 94 of the Listing Regulations requires the designated Stock Exchange to forward such draft schemes to SEBI in the manner prescribed by SEBI.
3. It is pertinent to note that Regulation 11 of the Listing Regulations, *inter-alia*, provides that any scheme of arrangement/ amalgamation/ merger/ reconstruction/ reduction of capital etc. to be presented to any Court or Tribunal, does not in any way violate, override or limit the provisions of securities laws or requirements of the Stock Exchanges.
4. This circular contains the operational aspects with reference to scheme(s) of arrangement by entities who have listed their NCDs/ NCRPS. The details of the requirements to be complied with are given in **Annex-I**.

5. **Applicability:** Chapter XV of the Companies Act, 2013 deals with compromises, arrangements and amalgamations by companies. This circular is applicable to all listed entities that have listed NCDs/ NCRPS and intend to undertake or are involved in a scheme of arrangement as per Chapter XV of the Companies Act, 2013. The provisions of this circular shall be applicable with immediate effect.
6. An entity that has listed only NCDs/ NCRPS, shall file the draft scheme of arrangement in terms of Regulation 59A alongwith fees as specified in Clause 2 of Schedule XI of the Listing Regulations.
7. In case an entity has listed both specified securities and NCDs/ NCRPS, a single filing of the draft scheme of arrangement in terms of Regulations 37 and 59A of the Listing Regulations would suffice. However, fees shall be paid in terms of clause 1 of Schedule XI of the Listing Regulations.
8. The Stock Exchanges are advised to bring the provisions of this circular to the notice of listed entities and also to disseminate the same on their websites.
9. The provisions of this circular shall be inserted as Chapter VIA of the LODR Operational Circular dated July 29, 2022.
10. This Circular is available at www.sebi.gov.in under the link "Legal →Circulars".

Yours faithfully,

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Part I: Requirements to be complied by the “listed entities”¹ which intend to undertake a scheme of arrangement or are involved in a scheme of arrangement

In case of entities that are debt listed and have raised money by way of a public issue or private placement of NCDs/ NCRPS, shall comply with these requirements before the scheme of arrangement is filed with the National Company Law Tribunal (NCLT).

A. Requirements to be fulfilled by listed entities

1. Choosing a Designated Stock Exchange

- 1.1 Listed entities shall choose one of the Stock Exchange(s) having nationwide trading terminals as the designated Stock Exchange for the purpose of coordinating with SEBI.
- 1.2 Entities listed solely on regional Stock Exchange(s), shall obtain in-principle approval for listing of NCDs/ NCRPS on any Stock Exchange having nationwide trading terminals. One of the Stock Exchange(s) having nationwide trading terminals shall provide a platform for dissemination of information of such schemes and other documents required under this circular. For such purpose, Stock Exchange(s) having nationwide trading terminals may charge reasonable fees from such entities.

2. Submission of Documents

The listed entity shall submit the following documents to the Stock Exchange(s):

- (a) Draft scheme of arrangement/ amalgamation/ merger/ reconstruction, etc.
- (b) Valuation Report as per Para (5) below, accompanied by an undertaking from the listed entity stating that no material event impacting the valuation has occurred during the intervening period of filing the scheme documents with the Stock Exchange(s) and period under consideration for valuation.
- (c) Fairness opinion on the valuation of assets done by a registered valuer for the entities involved in the scheme of arrangement from a SEBI registered Merchant Banker.
- (d) Report from the board of directors of the listed entity recommending the draft scheme, taking into consideration, *inter-alia*, the Valuation Report and ensuring that the scheme is not detrimental to the holders of the NCDs/ NCRPS. This report shall also comment on the following:

- (i) Impact of the scheme on the holders of NCDs/ NCRPS.

¹ Listed entities for the purpose of this circular shall refer to all the entities that have listed NCDs/ NCRPS.

- (ii) Safeguards for the protection of holders of NCDs/ NCRPS.
 - (iii) Exit offer to the dissenting holders of NCDs/ NCRPS, if any.
- (e) Audited financials for the last 3 years (financials not being more than 6 months old) of unlisted entity;
- (f) Auditor's Certificate in the format specified in Annex-II as per Para (6) below;
- (g) Detailed Compliance Report as per the format specified in Annex-V duly certified by the Company Secretary, Chief Financial Officer and the Managing Director, confirming compliance with various regulatory requirements specified for scheme of arrangement and all accounting standards.
- (h) Declaration from the listed entity on any past defaults of listed debt obligations of the entities forming part of the scheme.
- (i) Declaration from the listed entity as to whether the listed entity or any of its promoters or directors is a willful defaulter.
- (j) No Objection Certificate (NOC) from the debenture trustee(s).

Provided that if such NOC is obtained from a debenture trustee, then such NOC shall be submitted before the receipt of the No-Objection Letter from Stock Exchange in terms of proposed new Regulations 59A of the Listing Regulations.

3. The registered valuer in charge of valuation referred in para 2(b) above, and the SEBI registered merchant banker referred in para 2(c) above, shall be independent parties. For this purpose, they shall 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.
4. **Conditions for schemes of arrangement involving unlisted entities**
In case of scheme of arrangement between listed and unlisted entities, the following conditions shall be satisfied:
- (a) The listed entity shall include information pertaining to the unlisted entity involved in the scheme in the format specified for abridged prospectus as provided in Part B of Schedule I of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021, in the notice or proposal to be sent to the holders of NCDs/ NCRPS while seeking approval for the scheme.

- (b) The accuracy and adequacy of such disclosures shall be certified by the SEBI registered merchant banker after following the due diligence process. Such disclosures shall also be submitted to the Stock Exchange(s) for uploading on their websites.
- (c) Unlisted entities can be merged with a listed entity only if the listed entity is listed on a Stock Exchange having nationwide trading terminals.

5. Valuation Report

All listed entities are required to submit a valuation report from a Registered Valuer. In case of scheme of arrangement between listed and unlisted entities, the listed entity is required to submit a valuation report on behalf of unlisted entity, from a Registered Valuer.

For the purpose of this clause, the Registered Valuer shall be a person, registered as a valuer, having such qualifications and experience and being a member of an organization recognized, as specified in Section 247 of the Companies Act, 2013 read with the applicable Rules issued thereunder.

6. Auditor's certificate

- 6.1. An auditor's certificate shall be filed certifying the payment/ repayment capability of the resultant entity. This certificate shall also certify that the accounting treatment contained in the scheme is in compliance with all the Accounting Standards specified by the Central Government under Section 133 of the Companies Act, 2013 read with the rules framed thereunder or the Accounting Standards issued by ICAI, as applicable, and other generally accepted accounting principles.

Provided that in case of companies where the regulatory authorities of the respective sector have prescribed norms for accounting treatment of items in the financial statements contained in the scheme, the requirements of such regulatory authorities shall prevail.

Explanation – For this purpose, where the accounting treatment referred above do not comply with the accounting standards, the company shall disclose, the reasons for such deviations and the financial effects, if any, arising out of such deviation. Further, mere disclosure of deviations in accounting treatments as prescribed in the aforementioned Accounting Standards and other generally accepted accounting principles shall not be deemed as compliance with the above.

- 6.2. The standard format for the auditor's certificate would be as per Annex II.

7. Report of Complaints/ Comments received by the listed entity on the draft scheme of arrangement

7.1. The Listed entity shall submit to Stock Exchange(s) a '*Report on Complaints/ Comments*' received by the listed entity on the draft scheme of arrangement which shall contain the details of complaints/ comments received by it on the draft scheme from various sources (complaints/ comments written directly to the listed entity or forwarded to it by the Stock Exchange(s)/ SEBI) as per Annex-III of this Circular prior to obtaining No-Objection Letter from Stock Exchange(s) on draft scheme.

7.2. The Report on Complaints/ Comments received by the listed entity on the draft scheme of arrangement as mentioned above, shall be submitted by the listed entity to the Stock Exchange(s) on the expiry of 10 days from the date of filing of draft scheme with Stock Exchange(s) and hosting the draft scheme along with documents specified under para (2) above on the websites of Stock Exchange(s) and the listed entity.

8. Report on the Unpaid dues/ fines/ penalties

8.1. All listed entities shall ensure that all dues to, and/or fines/penalties imposed by SEBI, Stock Exchange(s) and the Depositories have been paid/ settled before filing the draft scheme with the designated Stock Exchange.

8.2. In case of unpaid dues/ fines/ penalties, the listed entity shall submit to Stock Exchange(s) a '*Report on the Unpaid dues/ fines/ penalties*' which shall contain the details of such unpaid dues/ fines / penalties in the format given in Annex-IV to this Circular, along with the draft scheme.

9. Disclosure on the Website

9.1. The listed entity shall disclose the draft scheme of arrangement and all the documents specified under para (2) above on its website simultaneously while filing it with the Stock Exchange(s).

9.2. The listed entity shall also disclose the No-Objection Letter of the Stock Exchange(s) on its website within 24 hours of receiving the same.

10. Notice or proposal sent to the holders of NCDs/ NCRPS for seeking approval of scheme

10.1. The listed entity shall send by email/ speed post (where e-mail is not available), the No-Objection Letter of the Stock Exchange(s), to the holders of NCDs/ NCRPS seeking approval for the Scheme.

10.2. The listed entity shall ensure that in the notice or proposal, it shall disclose pre and post-arrangement details in respect of the following:

- (a) Expected debt structure; and
- (b) Fairness opinion obtained in terms of para 2(c) mentioned above.

10.3. The listed entity shall upload the Report on Complaints/ Comments received by the listed entity on the draft scheme of arrangement as provided in Para 7 and the Compliance Report as provided in Para 2(g) above, on the company's website and websites of Stock Exchange(s).

11. Disclosures in the draft scheme of Arrangement:

The listed entity shall disclose the following information in the draft scheme of arrangement including but not limited to:-

- (a) Face Value
- (b) Dividend/Coupon: The terms of payment of dividends/ coupon including frequency, etc.
- (c) Credit Rating
- (d) Tenure/ Maturity
- (e) Redemption: The terms of redemption, amount, date, redemption premium/discount, and early redemption scenarios, if any.
- (f) Safeguards for the protection of holders of NCDs/ NCRPS
- (g) Exit offer to the dissenting holders of NCDs/ NCRPS, if any
- (h) Other embedded features (put option, call option, dates, notification times, etc.
- (i) Other terms of instruments
- (j) Latest audited financials along with notes to accounts and any audit qualifications. (Financial statements should not be later than six months prior to the date of listing);
- (k) An auditors' certificate certifying the payment/ repayment capability of the resultant entity.
- (l) Fairness report as mentioned in para 2(c) above
- (m) Any other information/details pertinent for holders of NCDs/NCRPS.

Any misstatement or furnishing of false information with regard to the said information shall make the listed entity liable for punitive action as per the provisions of applicable laws and regulations.

12. Subsequent to filing the draft scheme with SEBI by the Stock Exchanges, no changes to the draft scheme, except those mandated by the regulators/ authorities/ tribunal shall be made without specific written consent of SEBI.

12. Approval of holders of NCDs/ NCRPS to Scheme through e- Voting:

The listed entities shall ensure that wherever the approval by holders of NCDs/ NCRPS for scheme of arrangement submitted with NCLT for sanction is required at any stage, the facility for e-voting shall be provided after the disclosure of all material facts in the notice including No-Objection Letter as referred to in para 10.1 above.

B. Obligations of the Stock Exchange:

1. The designated Stock Exchange, upon receipt of the draft scheme of arrangement and documents referred to at para A(2) above shall:
 - 1.1 Forward the same to SEBI within three working days from the date of receipt of the draft scheme; and
 - 1.2 Send the first set of queries, seeking clarifications, if any, from the registered valuer or the statutory auditors/ listed entity, as applicable within ten working days from the date of receipt of the draft scheme.
2. The Stock Exchange(s) shall provide the '*No-Objection*' Letter to SEBI on the draft scheme of arrangement in co-ordination with each other in terms of Regulation 94A of the Listing Regulations within seven working days from the date of receipt of satisfactory reply from an expert/ entity if any, on clarifications, sought by Stock Exchange(s), as applicable.

The Stock Exchanges shall ensure that the maximum number of days taken for providing the '*No-Objection*' Letter to SEBI shall not exceed thirty days from the date of receipt of the draft scheme of arrangement.

3. The '*Report on Complaints/ Comments*' received on the draft scheme of arrangement in the format specified at Annex-III to this Circular shall be forwarded by the Stock Exchange(s) to SEBI immediately on receipt.
4. The '*Report on the unpaid dues/ fines/ penalties*' shall be forwarded by the Stock Exchange(s) to SEBI along with the draft scheme as per the format specified at Annex-IV.
5. The Stock Exchange(s), shall issue '*No-Objection*' Letter to the listed entity within seven days of the receipt of comments from SEBI, after suitably incorporating such comments in the No-Objection Letter.
6. The Stock Exchange(s), where the NCDs/ NCRPS are listed/ proposed to be listed shall also disclose on their websites, the documents listed at para A(2) above immediately on receipt. They shall also disclose the No-Objection Letter on their websites immediately upon issuance.

C. Processing of the Draft Scheme by SEBI

1. Upon receipt of the '*No-Objection*' Letter from the Stock Exchange(s), SEBI shall provide comments on the draft scheme of arrangement to the Stock Exchange(s). While processing the draft scheme, SEBI may seek clarifications from any person relevant in this regard including the listed entity or the Stock Exchange(s) and may also seek an opinion from an Expert such as Practicing Company Secretary, Practicing Chartered Accountant, Lawyer, etc.

2. SEBI shall provide comments on the draft scheme to the Stock Exchange(s) within thirty days from the later of the following:
 - a. date of receipt of satisfactory reply on clarifications, if any, sought from the listed entity by SEBI; or
 - b. date of receipt of opinion from expert, if sought by SEBI; or
 - c. date of receipt of 'No-Objection' Letter from the Stock Exchange(s).

3. All complaints/ comments received by SEBI on the draft scheme of arrangement shall be forwarded to the designated Stock Exchange, for necessary action and resolution by the listed entity.

PART II: Requirements by listed entity/ resultant entity post sanction of scheme of arrangement by NCLT

1. The listed entity/ resultant entity shall ensure that steps for listing of NCDs/ NCRPS issued pursuant to the scheme of arrangement, are completed and trading commences within sixty days of receipt of the order of the NCLT, simultaneously on all the Stock Exchange(s) where the NCDs/ NCRPS are listed. Before the commencement of trading, the listed entity/ resultant entity, in addition to disclosing the information in the form of an information document on the websites of the Stock Exchange(s) where NCDs/ NCRPS are listed, shall also give an advertisement in an English national daily and a regional daily having wide circulation at the place where the registered office of the transferee entity is situated, giving the following details:

- (a) Name of the Company;
- (b) Address of Registered Office and Corporate Office of Company;
- (c) Details of change of name and/or object clause;
- (d) Capital structure - pre and post scheme of arrangement. This shall provide details of the authorized, issued, subscribed and paid up capital (Number of instruments, description, and aggregate nominal value);
- (e) Debt structure - pre and post scheme of arrangement. This shall provide for details such as face value, coupon, tenure, no. of NCDs/ NCRPS issued etc.
- (f) Name and details of Promoters - educational qualifications, experience, address;
- (g) Name and details of board of directors (experience including current / past position held in other firms);
- (h) Business Model / Business Overview and Strategy;
- (i) Rationale for scheme of arrangement/ amalgamation/ merger/ reconstruction etc.
- (j) Latest restated audited financials along with notes to accounts and any audit qualifications. (Financial statements should not be later than six months prior to the date of listing);
- (k) Outstanding material litigations and defaults of the transferee entity, promoters, directors or any of the group companies;
- (l) Regulatory Action, if any - disciplinary action taken by SEBI or Stock Exchange(s) against the Promoters in last five financial years;
- (m) Brief details of outstanding criminal proceedings against the Promoters;
- (n) Any material development after the date of the balance sheet; and
- (o) Such other information as may be specified by SEBI from time to time.

Any misstatement or furnishing of false information with regard to the said information shall make the listed entity liable for punitive action as per the provisions of applicable laws and regulations.

Format of Auditor's Certificate

To,
The board of Directors,
.....
(Name and address of the Company)

We, the statutory auditors of (name of the listed entity),
(hereinafter referred to as “the Company”), *inter-alia* certify the following:

- i. The resultant entity is capable of payment of interest/ repayment of principal.
- ii. The proposed accounting treatment specified in clause (specify clause number) of the Draft Scheme of (specify the type of Scheme) between (names of the companies/entities involved) is in terms of the provisions of section(s) (specify the relevant section(s)) of the Companies Act, 2013 with reference to its compliance with the applicable Accounting Standards notified under the Companies Act, 2013 and Other Generally Accepted Accounting Principles.

The responsibility for the preparation of the Draft Scheme and compliance with relevant laws and regulations, including applicable Accounting Standards as aforesaid, is that of the boards of directors of the Companies involved. Our responsibility is to examine and report whether the Draft Scheme complies with the applicable Accounting Standards and Other Generally Accepted Accounting Principles. Nothing contained in this Certificate, nor anything said or done in the course of, or in connection with the services that are subject to this Certificate, will extend any duty of care that we may have in our capacity of the statutory auditors of any financial statements of the Company. We carried out our examination in accordance with the Guidance Note on Audit Reports and Certificates for Special Purposes, issued by the Institute of Chartered Accountants of India.

Based on our examination and according to the information and explanations given to us, we confirm that the accounting treatment contained in the aforesaid scheme is in compliance with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and circulars issued thereunder and all the applicable Accounting Standards notified by the Central Government under the Companies Act, 2013 and/or the accounting treatment in respect of (specify the financial statement item(s)) as prescribed by (name of the regulator) vide its Notification (details of the Notification) which prevail over the accounting treatment for the same as prescribed under the aforesaid Accounting Standards (wherever applicable), except the following:

.....

□□.....

This Certificate is issued at the request of the (*name of the Company*) pursuant to the requirements of circulars issued under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for onward submission to the (*name of the Stock Exchange(s)*). This Certificate should not be used for any other purpose without our prior written consent.

For

.....

(*name of the Firm*)

Chartered Accountants

Firm Registration No.:

Signature

(Name of the member)

Designation (Partner or proprietor, as may be applicable):

Membership Number:

Place:

Date:

**Format for Report of Complaints/ Comments received by the listed
entity on the draft scheme of arrangement**

Part A

Sr. No.	Particulars	Number
1	Number of complaints received directly	
2	Number of complaints forwarded by Stock Exchange(s) / SEBI	
3	Total Number of complaints/comments received (1+2)	
4	Number of complaints resolved	
5	Number of complaints pending	

Part B

Sr. No.	Name of complainant	Date of Complaint	Status (Resolved/pending)
1			
2			
3			

Format for report on unpaid dues/ fines/ penalties

Sr. No.	Particulars	Details of dues/ fines/ penalties	Amount	Reason for non-payment
1.	Pending dues/ fines/ penalties of SEBI			
2.	Pending dues/ fines/ penalties of Stock Exchange(s)			
3.	Pending dues/ fines/ penalties of Depositories			

Format of the Compliance Report to be submitted along with the application for obtaining No-Objection Letter from Stock Exchange(s) in terms of Regulation 59A of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

It is hereby certified that the scheme of arrangement involving (Name of the entities) does not, in any way violate, override or limit the provisions of securities laws or requirements of the Stock Exchange(s) and the same is in compliance with the applicable provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended from time to time, including the following:

Sr. No.	Particulars	Whether complied (YES/NO)	Remarks
1	Regulation 11 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 - Compliance with securities laws		
2	Submission of Valuation Report		
3	Submission of Fairness opinion		
4	Submission of documents to Stock Exchange(s)		
5	Disclosures in the Scheme of Arrangement		
6	Provision of approval of holders of NCDs/ NCRPS through e-voting		
7	Grievance redress/ Report on Complaints/ Comments		
8	Conditions for schemes of arrangement involving unlisted entities		
9	Auditor's certificate regarding payment/ repayment capability compliance with Accounting Standards		

Company Secretary

Managing Director

Certified that the transactions/ accounting treatment provided in the draft scheme of arrangement involving (Name of the entities) are in compliance with all the Accounting Standards applicable to a listed entity.

Chief Financial Officer

Managing Director