



SEBI's Recent Proposal To Ease Delisting Norms Isn't Ambitious Enough, Experts Say

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The market regulator has proposed an easier route for certain companies to delist without following the delisting regulations.

The listed parent entity, the Securities and Exchange Board of India has proposed, can integrate its business with the listed subsidiary by

providing a share swap to all shareholders of the listed subsidiary through a scheme of arrangement.

The proposal comes with certain safeguards like:

- Exemption from delisting regulations to apply to only a scheme of arrangement between a listed subsidiary and its listed parent.
- The scheme will need approval from stock exchanges, SEBI and National Company Law Tribunal.
- Share-swap ratio will need to be determined by independent valuation of shares of the listed subsidiary and the listed parent.
- Votes cast by public shareholders in favour of the proposal should be at least twice the number of votes cast by public shareholders against it.

This is a welcome proposal since it will facilitate more efficient capital markets—the present delisting norms create a hurdle for a willing buyer and willing seller to do a deal at the fair market value because of potential distortion caused by the reverse book building process, Harsh Pais, partner at Trilegal, said.

There have been a number of smaller steps that SEBI and the Ministry of Corporate Affairs have taken to facilitate the delisting process, Pais pointed out.

For instance, SEBI allowed the acquirer to make a counter offer to the book built price, and recently the MCA introduced specific rules for a shareholder of an unlisted company with at least 75 percent holding to buy out the minority via a scheme of arrangement. This was to cover

the period after a delisting to enable the acquirer to gain 100 percent ownership.

So, SEBI's consultation paper is in line with the policy objective of streamlining delistings and buyouts. "But if what the regulator has proposed is good enough for a listed parent and listed subsidiary, why isn't it good enough for a third party?" Pais asked.

"If anything, in case of a third-party acquirer, there is greater basis to support the assumption of an arms' length price. And if it's fair to issue shares, why not an equivalent amount of cash? So, while this proposal is good, it's quite limited in scope and could have been more ambitious."

Harsh Pais, Partner, Trilegal

Ambition aside, the proposal may not be in the best interest of all shareholders.

As per this proposal, valuation will happen for both the companies based on which share swap will be decided, Vyapak Desai, partner at Nishith Desai Associates, said. If delisting process is followed, through reverse book building, public shareholders can get an exit at a price higher than the market value—so that's a concern which SEBI will have take into account, he said.

But more importantly, the biggest hurdle would be tax, Desai pointed out.

“Presently, the public shareholders of the delisted entity cash out and tax is paid on the gains, if any. As per this proposal, they will get shares of the listed parent but gains, if any, may be taxable as accrued income”.

Vyapak Desai, Partner, Nishith Desai Associates

<https://www.bloomberglaw.com/law-and-policy/sebis-recent-proposal-to-ease-delisting-norms-isnt-ambitious-enough-experts-say>

So, there has to be corresponding clarification from the tax department for the proposal to really work, he said.

SEBI has given stakeholders time till April 15 to share comments on its proposal.