

ISSUES TO BE EXAMINED BY REGIONAL DIRECTORS

Regional Director should ensure that all requisite statutory procedure for supporting the schemes has been complied with. For this he should examine the following:

- 1) Whether companies forming part of scheme are sensitive sectors categories companies such as, Defence Equipment Manufacturing Companies / Telecommunication / Insurance / Business / Companies / Media News / Channels / Television Broadcasting Companies / Aviation Section / Power, Energy, Natural Gas / Petroleum etc? If so, whether notices served on the concerned Regulatory Authorities / Ministry?
- 2) Whether any of the Transferor/ Transferee Company is listed company at any Stock Exchanges? If so, NOC from Stock Exchange is submitted?
- 3) Whether there is any NRI holding / foreign interest in any of the Transferor or Transferee Company?
- 4) Whether Petitioner Company and / or its director have prima facie contravened any provisions of Companies Act, 1956?
- 5) Whether Transferor and Transferee Company are regular in filing its statutory returns?
- 6) Reports sent by concerned Registrar of Companies should be examined.
- 7) Investors/or other companies regarding affairs of the company should be examined.
- 8) In case of complicated legal/technical issues, opinion of Law Ministry/ Government Advocates should also be obtained.
- 9) Whether Transferor or Transferee Company was inspected u/s.209A of the Companies Act, 1956 by this Directorate and position of latest follow up of penal actions arising out of inspection?
- 10) Whether Valuation Report submitted, if so, whether share exchange ratio in the scheme is as per Valuation Report and as per general accepted accounting principles?
- 11) Whether transfer of Employees and their interest is protected ?
- 12) Whether Accounting Treatment clause is as per Accounting Standard- 14 and in tune with the provisions of sec.211 3A / 3C of the Companies Act, 1956?
- 13) Whether meeting is conducted by the company in respect of equity shareholders/secured creditors/unsecured creditors ? If not, whether any exemption is granted by the Hon'ble High Court ?

- 14)** Whether details of transactions entered with related parties of directors falling u/s.295, 297 and 299 of the Act is furnished?
- 15)** Whether consideration is made in cash other than of shares?
- 16)** Whether provisions of sec.77 in respect of buy back of shares is attracted?
- 17)** Whether any reduction of share capital is involved in the scheme of demerger and provisions of sec.100-104 is complied with?
- 18)** Where no such reduction of capital is involved, it is made sure that necessary adjustment is made in the books of accounts duly incorporating in the scheme?
- 19)** Whether the authorized share capital of the Transferee Company is sufficient for allotment of new shares for the shareholders of the Transferor Company?
- 20)** Whether any foreign entity is involved and if so necessary permission is obtained from Regulatory Authorities?
- 21)** Whether compliance of FEMA/RBI Guidelines has been done wherever applicable?
- 22)** Whether any qualification has been made by the Statutory Auditor, if so, whether company has complied with sec. 217(3) of the Companies Act, 1956?
- 23)** How the qualification and reservations of the Auditors are complied with by the company?
- 24)** Whether a listed company is merging with an unlisted company ? In such a case he should ensure that share of unlisted company also gets listed.
- 25)** Whether consequent to merger, the promoters holding in the listed company is substantially increased ?
- 26)** Whether the companies have come up with schemes to circumvent the Law in the garb of obtaining approval of the Hon'ble High Court under the accepted principle of "Single Window" approval and other grounds laid down by the Courts in its rulings ? If so, the Regional Director should bring out his objection in his statement/report/affidavit irrespective of the fact whether Court accepts it or not.
