REGULATING REVERSE MERGERS IN INDIA

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Abstract

There has been an increasing number of reverse merger deals involving Indian companies in the last few years. Among these, there have been multiple instances of cross border reverse mergers between Indian companies and U.S. companies wherein Indian companies have circumvented the extant domestic law and entered the U.S. capital market through the back-door route. Against this backdrop, this paper seeks to critically analyze the efficacy of the regulatory framework governing reverse mergers in India and highlight the critical issues and lacunae in this regard. After evaluating the extant regulatory framework, the author argues that it does not adequately protect public shareholders and further exposes the capital market to corporate governance fiascos.

This paper further explores international developments in cross border reverse mergers, with emphasis on emerging markets and identifies key drivers and challenges responsible for this phenomenon. The paper concludes with a note of caution to Indian companies undertaking cross border reverse mergers based on lessons learnt from the collapse of Chinese reverse mergers in the U.S. and lastly outlines necessary regulatory reforms for the road ahead.

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I. INTRODUCTION

Mergers and acquisitions (**"M&A"**) has become a popular method for corporates across the globe to achieve rapid inorganic growth. As a result of globalization and other catalysts, emerging markets such as India have also witnessed their fair share of M&A activity in various sectors such as pharmaceuticals, automobiles, finance, telecom etc. In order to achieve better synergies, various types of strategic corporate restructuring mechanisms are adopted to effect schemes of mergers and amalgamations. One such type of restructuring mechanism is known as reverse mergers or reverse takeover (**"RTO"**).

An RTO is a form of corporate restructuring in which a smaller private company acquires control over a larger public company. Typically, the public company is a mere shell[1] and the shareholders of the private company acquire majority shares and board control in the public company. The private company's shareholders exchange their shares in the private company for shares in the public company, thereby effectively making the private company a publicly traded company without undergoing the process of initial public offer (**"IPO"**).

This paper seeks to examine the key drivers and challenges of RTO from a global perspective. It also analyzes the efficacy of the regulatory framework governing RTO in India and throws light on the contemporary legal concerns surrounding this regulatory framework. This paper further aims to identify the current trends and problems prevalent in cross border RTOs and scrutinizes the issue from a global perspective.

II. KEY DRIVERS AND CHALLENGES

A. DRIVERS

1. Backdoor IPO: While the process of going public and raising capital is combined in an IPO; in case of RTO, these two functions are separate and distinct. A company can go public without raising additional capital thereby simplifying the process and making it time and cost effective.[2]
2. Market conditions: The amalgamated company becomes less susceptible to market conditions compared to a company undertaking a conventional IPO because the RTO is

1 Ishita Das, *Shell Companies and Their Role in Corporate Restructuring* SSRN (2014) https://ssrn.com/abstract=2315455 (Last viewed on 19.02.2017).

2 Troy Pollard, *Sneaking in the back door? An evaluation of reverse mergers and IPOs*, 47 Review of Quantitative Finance and Accounting, 305 (2016).

executed solely between those controlling the private and public companies. This resilience to external market conditions, gives RTOs an upper hand over IPOs.[3]

3. Tax exemptions: In several jurisdictions, the amalgamated company is entitled to various tax exemptions and rebates if the public shell company has been declared as a financially weak company.[4]

B. CHALLENGES

1. Shareholder risks: International experience shows that shareholders of the public company often tend to sell off their stocks with *mala fide* intentions. These may include intentional non-disclosure of huge liabilities such as pending lawsuits, improper accounts, fraudulent corporate governance, etc. Additional due diligence is required to safeguard against this type of risk.

2. Difficulties associated with organizational restructuring: The private company must undergo intense reorganization to become compliant with public listing requirements. Further, the management of the unlisted company may have little or no experience with managing the affairs of a listed company. Hence, new internal and external challenges will be faced by the management at the post-merger integration phase.[5]
3. Skewed share swap ratio: Listed companies have to comply with stringent guidelines while undertaking valuation. However, unlisted companies have significant latitude and flexibility and often end up exaggerating the valuation of their stock. Post-merger, the original shareholders of the public company become the minority shareholders, whereas the promoters of the private company become the majority shareholders in the merged entity. During a share swap transaction, the original shareholders are often undercompensated because the share swap ratio determined by the unlisted company is often skewed in favor of the promoters.[6]
4. Inadequate Public Disclosure: While opting for an RTO, an unlisted private company can circumvent several public disclosure obligations mandated by the regulatory

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3 *Ibid.*

4 Syed Burhanur Rahman, *Reverse Merger,* Yourstory, Apr. 6, 2009 https://yourstory.com/2009/04/reverse-merger-2/ (Last viewed on 19.02.2017).

5 Susan Cartwright, Richard Schoenberg, *Thirty Years of Mergers and Acquisitions Research: Recent Advances and Future Opportunities*, 17 British Journal of Management, 1467 (2006).

6 *Back-Door Listing and its regulation in India,* LawDecoded https://lawdecodedblog.wordpress.com/2015/07/16/back-door-listing-and-its-regulation-in-india/ (Last viewed on 19.02.2017).

authorities and stock exchanges, in case of IPO. In case of RTOs, complying with these disclosure requirements could reduce management flexibility and may harm the company by leaking valuable information to competitors, suppliers, customers and business partners and hence promoters of the merged entity try to dodge the bullet as far as feasible. However, on the flip side, due to incomplete due diligence and disclosures, public stakeholders are exposed to high risks and uncertainties.[7]

III. AN OVERVIEW OF RTO DEALS IN INDIA

Although reverse mergers are quite common in some mature markets such as the U.S., China[8] and U.K., it has been infrequent in the Indian market. In the last few decades, there have only been a handful of RTOs in India, whereas the U.S. witnesses approximately 200 RTOs each year[9]. However, evidence shows that there has been an upsurge in RTOs in India in recent years.

In the past, ICICI Personal Financial Services Limited and ICICI Capital Services Limited had merged with ICICI Bank on 30th March 2002 via reverse merger and created the second largest bank in India. The deal was driven by changes in the global banking climate as ICICI wanted to expand and become a universal bank and the only feasibly way of doing this was to merge with its banking subsidiary.[10]

A cross border reverse merger occurs when an unlisted private company in one country tries to get listed on a foreign stock exchange by merging with a public listed company in that foreign company.[11] This trend is quite prevalent in rapidly emerging markets such as China where Chinese companies get listed on U.S. stock exchanges to gain access to the U.S. capital

7 Aden R. Pavkov, *Ghouls and Godsends - A Critique of Reverse Merger Policy*, 3 Berkeley Business Law Journal, 477 (2006).

8 Edmund L. Andrews Andrews, *Charles Lee: How Well Do Chinese Reverse Mergers Perform?*, Stanford Graduate School of Business, Nov. 14, 2013 https://www.gsb.stanford.edu/insights/charles-lee-how-well-do-chinese-reverse-mergers-perform (Last viewed on 19.02.2017).

9 Bill Meagher, *Year in Review: Deal Flow, APOs Grow Significantly,* The Reverse Merger Report, Jan. 13, 2011.

10 *ICICI Board To Consider Reverse Merger On Oct 25,* BS, Sept. 29, 2001 http://www.business-standard.com/article/finance/icici-board-to-consider-reverse-merger-on-oct-25-101092901035_1.html (Last viewed on 19.02.2017).

11 Jordan Siegel Yanbo Wang, *Cross-Border Reverse Mergers: Causes and Consequences*, Harvard Business School Strategy Unit Working Paper No. 12-089 (2013).

market and make other strategic investments.[12] India has also witnessed a few significant cross border reverse mergers in recent years.

On December 19th, 2016, Yatra Online Inc. (**"Yatra"**), a prominent Indian online travel company announced its merger with U.S. based Terrapin3 Acquisition Corp (**"Terrapin"**), a special purpose acquisition company formed for this purpose[13]. Under this scheme, all shares of Terrapin (Class A Common Stock) will be automatically exchanged for Yatra's ordinary shares on a one-for-one basis and all warrants to purchase shares of Class A Common Stock will automatically become warrants to purchase Yatra's ordinary shares on the same terms. The present deal was structured in the form of an RTO. An RTO is essentially a scheme of amalgamation through which a private company acquires shares of a public company. Prior to this merger, Yatra was an unlisted private company, however after the merger it will be able to list its shares in the U.S. stock exchange because Terrapin was a public listed company prior to merger and the new entity will retain the status of a public listed company. In essence, Yatra will be able to list its shares on NASDAQ without undergoing the cumbersome process of an IPO.[14]

In 2015, Videocon d2H Ltd. sold 33.5% of its equity shares to American blank check company Silver Eagle Acquisition Corp (a company listed on the U.S. stock exchange), thereby becoming eligible to list its shares on the U.S. stock exchange.[15] Strand Life Sciences Pvt. Ltd., a Bangalore based healthcare firm which specializes in clinical genomics and biotechnology also undertook a reverse merger with U.S. based Venaxis Inc. in 2016 thereby getting listed on NASDAQ. Other Indian companies who have undertaken schemes to effect cross border reverse mergers include Sify, Rediff and Dr Reddy's Laboratories Ltd.[16] The 2016 Ambuja-

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12 Jan Jindra, et. al., *Reverse Mergers: The Chinese Experience*, Menlo College Research Paper Series Working Paper No. 2012-18 (2012).

13 Payal Ganguly, *Yatra to merge with NASDAQ listed Terrapin 3 Acquisition Corp, valuing co at $218 million*, E.T., Jul. 14, 2016 http://economictimes.indiatimes.com/small-biz/money/yatra-to-merge-with-nasdaq-listed-terrapin-3-acquisition-corp-valuing-co-at-218-million/articleshow/53202299.cms (Last viewed on 19.02.2017).

14 Biswarup Gooptu, *Yatra completes reverse merger; to start trading on Nasdaq*, E.T. Tech, Dec. 21, 2016 http://tech.economictimes.indiatimes.com/news/internet/yatra-completes-reverse-merger-to-start-trading-on-nasdaq/56094792 (Last viewed on 19.02.2017).

15 Bhavna Gupta, *Videocon d2h inks $375M deal with US blank cheque co; on track for NASDAQ listing*, VCC, Jan. 6, 2015 http://www.vccircle.com/news/media-entertainment/2015/01/06/videocon-d2h-inks-375m-deal-us-blank-cheque-co-track-nasdaq (Last viewed on 19.02.2017).

16 Joseph Rai, *Strand Life Sciences to list on NASDAQ via reverse merger,* VCC, Jan. 29, 2016 http://www.vccircle.com/news/pharmaceuticals/2016/01/29/strand-life-sciences-get-listed-nasdaq-through-reverse-merger (Last viewed on 19.02.2017).

Holcim merger is yet another example of a complex but yet successful cross border reverse merger by an Indian company.[17]

IV. THE CASE OF CROSS BORDER CHINESE REVERSE MERGERS

The U.S. capital market witnessed a huge influx of Chinese companies entering via RTO route in the few years preceding 2011. These firms aimed to gain quick and cheap access to the U.S. capital markets instead of undergoing IPO, thereby avoiding SEC scrutiny for share registration, etc. as the public company they merged with had already undergone IPO.[18]

In 2011, the U.S. stock exchange was hit by the Chinese reverse merger fraud crisis. The disaster was due to fraudulent financial reporting by these Chinese firms as they exaggerated their financial health and duped investors. The period 2010- 2012 saw an increase in class action lawsuits in the U.S. as a direct result of the Chinese reverse merger fraud. In 2012, 31 class action lawsuits were filed by U.S. shareholders against Chinese reverse merger companies based on allegations pertaining to fraud, misrepresentation, violation of federal securities laws and GAPP. More than 50 Chinese companies listed in U.S. were delisted or suspended from trading as a result and billions of dollars in market capitalization were lost in the U.S. securities markets.[19]

Since 2011, NASDAQ has introduced several new policies and enhanced existing laws and procedures for listing and regulating reverse merger companies in order to prevent such corporate governance failures in the future.[20]

The problem with cross border RTOs is that there exists a gap in the regulatory supervision. In most equity markets, investors take high standards of due diligence and regulatory supervision for granted. In a case of cross border RTO of an Indian entity, the foreign investors are exposed to high risks arising out of lack of public disclosure and inadequate due

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17 *Ambuja proposal to buy 24% in Holcim gets nod,* B.S., Jul. 21, 2016 http://www.business-standard.com/article/economy-policy/ccea-clears-ambuja-cements-proposal-to-acquire-24-in-holcim-116072100025_1.html (Last viewed on 19.02.2017).

18 David Cogman, Gordon Orr**,** *How they fell: The collapse of Chinese cross-border listings*, Mckinsey & Company Strategy & Corporate Finance http://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/how-they-fell-the-collapse-of-chinese-cross-border-listings (Last viewed on 19.02.2017).

19 Brittany Lang, John R. McGowan, *Chinese Reverse Mergers: Accounting Fraud and Stock Price Collapse*, 5 JFIA (2013).

20 Francine Mckenna, *After China fraud boom, Nasdaq steps up scrutiny of shady listings*, Marketwatch, Jun. 20, 2016 http://www.marketwatch.com/story/after-china-fraud-boom-nasdaq-steps-up-scrutiny-of-shady-listings-2016-06-20 (Last viewed on 19.02.2017).

diligence. The international equity market is not adequately prepared to regulate such transactions as it lacks stringent control mechanisms.

V. AN ANALYSIS OF THE REGULATORY FRAMEWORK IN INDIA

A. THE COMPANIES ACT, 2013 AND SEBI REGULATIONS

The Companies Act 1956[21] (**"CA 1956"**) did not impose any prohibitions on RTO and hence RTOs were treated at par with ordinary mergers. However, Section 232 (h) of the Companies Act 2013[22] (**"CA 2013"**) expressly states that in case of amalgamation between a listed company and an unlisted company, the resultant entity will be treated as an unlisted company. Therefore, CA 2013 seeks to indirectly prohibit RTOs by placing restrictions on listing by specifically disallowing backdoor IPOs (which is the main driver behind RTOs). In essence, CA 2013 aims to stop private unlisted companies from reaping the benefits of a public listed company by going public through the backdoor.

Another significant change in the regulatory landscape of RTOs are the enhanced SEBI regulations. Under the provisions of CA 2013; listed companies undergoing mergers only required Court approval and in principle approval from stock exchanges. However, *vide* SEBI's 2013 Circular dated February 4, 2013[23]; listed companies undergoing mergers need to obtain mandatory approval from SEBI. Further, *vide* Circular dated May 21, 2013 [24], SEBI has been vested with the powers to regulate schemes which are to the detriment of public/ minority shareholders due to inadequate disclosures and exaggerated valuations. The impugned Circulars[25] impose stringent requirements for listed companies undergoing mergers. Therefore, any scheme of merger or amalgamation (including RTO) between a private unlisted company and a public listed company will be open to SEBI's scrutiny.

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21 Companies Act, 1956, No. 1, Act of Parliament, 1956 (India), § 391.

22 Companies Act, 2013, No. 18, Act of Parliament, 2013 (India), § 232 (h).

23 SEBI Scheme of Arrangement under the Companies Act, 1956 – Revised requirements for the Stock Exchanges and Listed Companies, 2013 http://www.sebi.gov.in/cms/sebi_data/attachdocs/1359986006632.pdf (Last viewed on 19.02.2017).

24 SEBI Scheme of Arrangement under the Companies Act, 1956 – Revised requirements for the Stock Exchanges and Listed Companies - Clarification, 2013 http://www.sebi.gov.in/cms/sebi_data/attachdocs/1369139160079.pdf (Last viewed on 19.02.2017).

25 *Ibid.*

SEBI has subsequently disallowed quite a few companies attempting to undertake backdoor IPO through reverse mergers such as Emami Realty and Zandu Realty[26]. SEBI has also raised objections on all such schemes, where, it has observed that, shares of listed public company are issued in a manner that it skewed in favor of promoters of unlisted private company. Therefore, currently although RTOs are not prohibited, they are stringently regulated by the new Companies Act as well as the SEBI circulars.

B. RTO FROM A TAX PERSPECTIVE

Contrary to the Companies Act, 2013, the Income Tax Act, 1961 (**"IT Act"**) seeks to encourage reverse mergers by granting such entities tax incentives.[27] Prior to the insertion of Section 72A[28] in 1977, a company created as a result of amalgamation with a sick company was precluded from availing the tax benefits accruing to the sick company. However, after the insertion of Section 72A *vide* the Finance Act, 1977, an entity created as a result of amalgamation of a sick company can benefit from the accumulated loss and allowance for depreciation accrued to the sick company.[29] Section 72A supplements the Sick Industrial Companies (Special Provisions) Act, 1985 (**"SICA"**) by stimulating revival of financially unviable companies. Hence, healthy companies were motivated to undertake reverse mergers with sick companies in order to mitigate their tax liabilities.

Section 72A uses the term 'amalgamation' which is defined under Section 2 (1B) of the IT Act. In order to fall within the ambit of Section 2 (1B), the scheme must comply with the following prerequisites:

All the property and liabilities of the amalgamating company before the amalgamation is transferred to the amalgamated company as a result of the scheme.

Shareholders holding not less than ninety percent in value of shares in the amalgamating company become shareholders of the amalgamated company as a result of the scheme.[30]

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26 *Emami calls off merger between two group firms,* The Hindu B.L., Nov. 13, 2014 http://www.thehindubusinessline.com/news/emami-calls-off-merger-between-two-group-firms/article6595707.ece (Last viewed on 19.02.2017).

27 Mohd Aadil Khan, Assim Hasan, *A study on Reverse Merger in India: Tax Implications,* 2 IOSR-JEF, 24-26 (2014).

28 Income Tax Act, 1961, No. 43, Act of Parliament, 1961 (India), § 72A.

29 Vinod George Joseph, *Tax Implications of Reverse Mergers,* 10 NLS Student Bar Review,38-41 (1998).

30 Income Tax Act, 1961, No. 43, Act of Parliament, 1961 (India), § 2 (1B).

Further, since the overarching objective of Section 72A is to assist in the revival and rehabilitation of sick companies, the Central Government has to be satisfied that the amalgamating company is financially unviable[31] and that the amalgamation is done in public interest[32] and in order to facilitate revival and rehabilitation of the business of the amalgamating (sick) company.[33] Companies who wish to avail of the tax benefits under this section also need to furnish a certificate from the specified authority which states that adequate steps have been taken by the company to revive and rehabilitate the business of the sick company.[34]

Hence although Section 72A appears conducive to reverse mergers, it primarily seeks to aid in the revival of sick industrial units in public interest. As the scheme is subject to extensive scrutiny by the Central Government, there is relatively less latitude for abuse of this provision. However, there still exists the possibility of a demerger, wherein a healthy company would acquire a sick company solely for the purpose of tax evasion[35] and after a couple of years of enjoying the tax benefits, it would demerge from the sick company thereby defeating the objective of Section 72A. In order to prevent such malpractices, the Central Government must stringently scrutinize the amalgamated entity at the post-merger integration[36] phase and impose further conditions and penalties to ensure speedy revival of the business of the sick unit.

C. THE CURIOUS CASE OF BACKDOOR DELISTING

Listed companies sometimes voluntarily opt to delist their securities for commercial reasons in order to eliminate ongoing listing expenses and avoid cumbersome compliances under listing agreements. Other drivers behind voluntary delisting include lack of trading on stock exchanges and promoter's seeking to acquire full control over the company. Delisting of securities in India is regulated by SEBI (Delisting of Equity Shares) Regulations 2013; read with SEBI (Delisting of Equity Shares) (Amendment) Regulations, 2015 (collectively referred to as **"SEBI Delisting Regulations"**)[37].

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31 *Id.* at § 72A (1 a).

32 *Id* at § 72A (1 b); Duncan Agro Industries Ltd. v. Secretary, Department of Industrial Development [1983] 144 ITR 94 (Cal.) (India).

33 CIT v. Mahindra and Mahindra Ltd [1983] 15 Taxman 1 (SC) (India).

34 Income Tax Act, 1961, No. 43, Act of Parliament, 1961 (India), § 72A (2 ii).

35 Mc Dowell and Co. Ltd. v. Commercial Tax Officer, (1985) 3 SCC 230 (India).

36 Rosabeth Moss Kanter, *Mergers That Stick*, Harvard Business Review, Oct. 2009 https://hbr.org/2009/10/mergers-that-stick (Last viewed on 19.02.2017).

37 SEBI (Delisting of Equity Shares) (Amendment) Regulations, 2015 http://www.sebi.gov.in/cms/sebi_data/attachdocs/1427261684807.pdf (Last viewed on 19.02.2017).

Admittedly, the 2015 Amendment made to the 2009 Regulations has simplified the delisting process to a certain extent. However, it is still extremely complex, time consuming and costly. Various steps involved in voluntary delisting include obtaining approvals from board of directors, shareholders and stock exchanges. In addition, there are several overhead costs and complex procedures such as, appointment of merchant banker, opening escrow account, public announcement, tendering shares and issuing letter of offer, etc. which have to be followed.

Although CA 2013 restricts RTO by regulating backdoor IPOs, it raises another serious concern, i.e. backdoor delisting. Section 232 (h) disallows unlisted companies from acquiring the status of a listed company via RTO. However, it does not place any restriction on the converse scenario, i.e. when a public listed company seeks to delist from the stock exchange via RTO with an unlisted company, thereby acquiring the status of an unlisted company. Companies seeking refuge in this apparently grey area can effectively bypass SEBI Delisting Regulations when they opt for voluntary delisting of shares.

Interestingly enough, the Companies Amendment Bill, 2016[38] which overhauled several provisions of CA 2013 has overlooked this lacuna which can lead to backdoor delisting and has failed to plug the ostensible loophole in the law.

D. SEBI's 2017 Regulations: A panacea?

In light of the increasing number of mergers and amalgamations involving Indian companies which seek to circumvent the extant laws and in order to protect public shareholders, SEBI has recently tightened merger and amalgamation norms for listed companies and unlisted companies *vide* resolutions passed at a board meeting held on 14 January 2017.[39] These resolutions were passed in order to revise and streamline the rules for mergers and amalgamations between listed and unlisted entities.[40]

The salient features of the resolutions have been analyzed below:

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38 The Companies (Amendment) Bill, 2016, No. 23, Lok Sabha, 2016 (India) http://www.prsindia.org/uploads/media/Companies,%202016/Companies%20bill,%202016.pdf (Last viewed on 19.02.2017).

39 SEBI Board Meeting 2017 http://www.sebi.gov.in/cms/sebi_data/pdffiles/35602_t.pdf (Last viewed on 19.02.2017).

40 Mehul Shah, Aayush Misra, *India: New SEBI Proposals On Merger Of Unlisted & Listed Companies*, Mondaq, Jan. 18, 2017 http://www.mondaq.com/india/x/560882/Securities/New+SEBI+Proposals+On+Merger+Of+Unlisted+Listed+Companies (Last viewed on 19.02.2017).

The unlisted company is required to submit an abridged prospectus containing all material information in compliance with the prescribed disclosure standards. This heightened disclosure obligation is designed to better safeguard public shareholders from scrupulous schemes.

The pre-merger shareholding of public shareholders in the listed company and the Qualified Institutional Buyers (QIBs) in the unlisted company must not fall below 25% in the post-merger shareholding pattern. This threshold limit aims to protect the interests of the pre-merger shareholders and investors and ensures that they are not unfairly prejudiced due to the scheme.

An unlisted company can *only* be merged with a listed company if it is listed on a stock exchange having nationwide trading terminals. Section 232 (h) of the Companies only applied to schemes of mergers and amalgamations between Indian companies. The Yatra deal exposes this glaring loophole as there is no law prohibiting an unlisted Indian entity from merging with a listed foreign entity. Now, an unlisted Indian entity can merger *only* with an entity listed in India and cannot merge with an entity listed on a foreign stock exchange.

In order to prevent preferential treatment to certain classes of shareholders/ promoters and to bring parity in shareholder rights, the pricing formula specified under the ICDR Regulations must be complied with in such schemes. This seeks to mitigate the problems associated with skewed swap ratios and brings in the concept of fair valuation.

In order to bring in greater participation of public shareholders, e-voting rights have been extended to certain types schemes. This allows wider participation of public shareholders and gives them more latitude to voice their dissent to any proposed scheme.

Companies would also be required to submit a compliance report confirming compliance with the circular and Accounting Standards duly certified by a Company Secretary, CFO and Managing Director. This is an additional compliance requirement designed to improve transparency and accountability standards.

VI. THE ROAD AHEAD

The need for a comprehensive regulatory mechanism for domestic as well as cross border reverse mergers has been felt in emerging capital markets over the last decade. The proposed multi-layered cross border reverse triangular merger between Johnson Controls Inc.

and Tyco International Plc. which has been approved by the Competition Commission of India in 2016[41] evidences the fact that reverse merger structures are rapidly evolving in India.

SEBI's 2017 circular is a step in the right direction towards regulating reverse mergers as SEBI has been vested with the powers of regulating schemes of mergers and amalgamations between listed and unlisted companies. It can exercise its powers by preventing RTOs where the main intent is to dodge disclosure requirements and other listing compliances to the detriment of the public stakeholders. However, there are still several critical grey areas such as delisting and cross border reverse mergers, which need to be ironed out at the earliest. A more specific and less ambiguous legal framework which harmonizes CA 2013 and the SEBI Regulations is required in order to effectively regulate RTOs in India.

The recent spate of cross border RTOs between Indian companies and U.S. companies by circumventing existing laws is symptomatic of the Chinese model and must be stringently regulated to avoid yet corporate governance debacle at the global level. At the international level, gaps in regulatory supervision need to be plugged and uniform international disclosure and transparency standards should be adopted by capital markets across the world.

41 *Competition Commission approves Johnson-Tyco deal*, B.S., Jul 1, 2016 http://www.business-standard.com/article/pti-stories/competition-commission-approves-johnson-tyco-deal-116070100871_1.html (Last viewed on 19.02.2017).