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**भारतीय प्रतिभूति  
और विनिमय बोर्ड  
Securities and Exchange  
Board of India**

CFD/DIL/ARD/PHV/OW/10044/2015  
April 8, 2015

**Mr. Khusro Bulsara**  
**Bombay Stock Exchange Ltd.**  
**P J Towers, Dalal Street.**  
**Mumbai – 400 001**

Dear Sir,

**Sub: Draft Scheme of Arrangement between Som Distilleries & Breweries  
Limited (SDBL) and Legend Distilleries Private Limited (LDPL)**

1. This has reference to your letter No. LIST/LO/SEBI/PS/78/2014-15 received by SEBI on January 19, 2015, whereby you have forwarded the application of Draft Scheme of Arrangement between Som Distilleries & Breweries Limited (SDBL) and Legend Distilleries Private Limited (LDPL) filed in accordance with SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013 and SEBI Circular No. CIR/CFD/DIL/8/2013 dated May 21, 2013 (hereinafter referred to as 'the Circulars') for our comments on the draft Scheme of Arrangement (hereinafter referred to as 'Draft Scheme').
2. The matter has been examined by SEBI in the light of the provisions under Part A, Annexure I of the aforesaid Circular. Accordingly, SEBI's comments on the draft Scheme are placed at **Annexure 1**. In addition to the same, the following may also be complied with:
  - a. Stock Exchange(s) to ensure that "fairness opinion" submitted by the Company Som Distilleries & Breweries Limited, as forwarded by BSE, vide letter received by SEBI on January 19, 2015, is displayed from the date of receipt of this letter on the websites of the listed company and the Stock Exchange(s) along with various documents submitted pursuant to the Circulars.
  - b. Stock Exchange(s) to ensure compliance with the said Circulars.
  - c. The company shall duly comply with various provisions of the Circulars.
3. Please note that the submission of documents/information in accordance with the Circulars to SEBI should not in any way be deemed or construed that the same has been cleared or approved by SEBI. SEBI does not take any responsibility either for the financial soundness of any scheme or for the correctness of the statements made or opinions expressed in the documents submitted.

Yours faithfully

  
Pranav H. Variava

CC :

1. Company Secretary,  
Som Distilleries & Breweries Limited  
23, Zone – II, M. P. Nagar, Bhopal – 462011
2. Mr. Hari K  
Exchange Plaza, Plot no. C/1, G Block,  
Bandra-Kurla Comp., Bandra (E)-400051

सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400 051.

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**Annexure 1**

**I. Facts of the Case In brief**

**1. The parties relevant to this case are as under:**

- 1.1. Legend Distilleries Private Limited ("LDPL") – transferor company, Unlisted  
1.2. Som Distilleries & Breweries Limited ("SDBL") – transferee company and listed on BSE & NSE.

Both the above companies are controlled by same promoter group.

**2. The scheme envisages the following:**

**2.1. Amalgamation of LDPL into SDBL**

Upon coming into effect of the scheme, the undertaking of LDPL shall be transferred to and vested in SDBL as a going concern. No consideration is proposed to be paid for the said amalgamation. In consideration of the said transfer, SDBL shall allot 0.447790 equity share of Rs. 10/- for each 1 equity share of Rs. 10/- each held in LDPL.

**2.2. Dissolution of LDPL**

Upon coming into effect of the scheme, LDPL shall stand dissolved without winding up.

**3. The pre and post scheme shareholding pattern in summarized form is given as under:**

Share Holding Pattern	LDPL (Pre-Scheme)		
	No. of shareholders	No. of shares	%
Promoter	6	3237100	100.00
Public	0	0	0.00
Total	6	3237100	100.00

Share Holding Pattern	SDBL (Pre-Scheme)			SDBL (Post-Scheme)		
	No. of shareholders	No. of shares	%	No. of shareholders	No. of shares	%
Promoter	10	6208172	22.56	10	7657713	26.43
Public	6658	21314228	77.44	6658	21314228	73.57
Total	6668	27522400	100.00	6668	28971941	100.00



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4. In para 31 of the draft scheme, it is mentioned that the approval of members of the SDBL shall be obtained through a special resolution passed through Postal Ballot and e-Voting. The special resolution shall be acted upon only if the votes cast by the public shareholders in favour of the scheme amount to at least two times the number of votes cast by public shareholders against the scheme.
5. In view of the above, SDBL has made application to SEBI (through BSE, the designated Stock Exchange) as per the provisions of SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013.

**II. SEBI's observations with regard to Scheme of Arrangement**

6. The Scheme, which involves amalgamation of transferor entity with the transferee entity, certain concerns are observed with regard to the following:

6.1 Achieving Listing benefit – An attempt to circumvent requirements of Securities Contracts (Regulation) Rules, 1957 (SCRR) and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR).

6.2 Substantial acquisition and Change in control of SDBL without providing an exit opportunity - an attempt to circumvent the obligations under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations).

6.3. Increasing shareholding through Share Swap - an attempt to bypass the Preferential Issue guidelines under ICDR.

**6.1. Achieving Listing benefit – An attempt to circumvent requirements of SCRR and ICDR**

6.1.1. An unlisted company, in order to get listed, is required to go through Initial Public Offer (IPO) route by complying with the provisions of rule 19(2)(b) of SCRR and ICDR.

6.1.2. The said IPO process involves a due diligence process conducted by a SEBI registered merchant banker, filing of a draft offer document with SEBI/Stock Exchange/Merchant Banker, disseminating of the draft offer document on the websites of SEBI/Stock Exchanges/Merchant Banker



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for public comments, in-principle approval by Stock Exchange, processing of the same by SEBI to ensure adequacy of disclosures, issuance of observations by SEBI, filing of prospectus with RoC, issuance of advertisements in newspapers, allotment of shares and listing of the same on the Stock Exchange.

6.1.3. The offer document is required to contain disclosures on:

- Background of the Promoters
- Capital Structure including share capital built up
- History of the company
- Past financial details including indebtedness, related party transactions, etc.
- Basis for valuation of shares vis-a-vis peer group
- Management of the company
- Government and other statutory approvals required for the business
- Pending litigations against the company, its directors, promoters, etc.
- Risk factors associated with the business carried out by the company

6.1.4. The unlisted companies are required to go through the aforesaid process which would provide adequate and accurate information to the investors to take an informed decision with regard to their investment.

6.1.5. Listing provides an exclusive privilege to securities in the Stock Exchange. Only listed shares are quoted on the Stock Exchange. Stock Exchange facilitates transparency in transactions of listed securities in perfect equality and competitive conditions. Listing is beneficial to the company, to the investor, and to the public at large.



6.1.6. Some of the important advantages of listing are enumerated below:

- **Fund Raising**

Listing provides an opportunity to the corporates/entrepreneurs to raise capital to fund new projects/undertake expansions/diversifications and for acquisitions.

- **Ready Marketability of Security**

Listing brings in liquidity and ready marketability of securities on a continuous basis adding prestige and importance to listed companies.

- **Ability to raise further capital**

An initial listing increases a company's ability to raise further capital through various routes like preferential issue, rights issue, Qualified Institutional Placements and ADRs/GDRs/FCCBs, and in the process attract a wide and varied body of institutional and professional investors.

- **Supervision and Control of Trading in Securities**

The transactions in listed securities are required to be carried uniformly as per the rules and bye-laws of the exchange. All transactions in securities are monitored by the regulatory mechanisms of the Stock Exchange, preventing unfair trade practices. It improves the confidence of small investors and protects them.

- **Fair Price for the Securities**

The prices are publicly arrived at on the basis of demand and supply; the Stock Exchange quotations are generally reflective of the real value of the security. Thus listing helps generate an independent valuation of the company by the market.

- **Timely Disclosure of Corporate Information**

The listing agreement signed with the exchange provides for timely disclosure of information relating to dividend, bonus



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and right issues, book closure, facilities for transfer, company related information etc. by the company. Thus providing more transparency and building investor confidence.

- **Collateral Value of Securities**

Listed securities are acceptable to lenders as collateral for credit facilities. A listed company can also borrow from financial institutions easily as it is rated favorably by lenders of capital.

- **Benefits to the Public**

The data daily culled out by the Stock Exchange in the form of price quotations and others, provide valuable information to the public which can be used for project and research studies. The Stock Exchange prices can be an index of the state of the economy. Financial institutions, NRI, individual investor's etc. can take wise decisions before making investments.

- **Subdivision and Consolidation of Holdings**

Stock Exchange bye-laws provide for explicit rules for sub division and consolidation of securities as desired by the investors. There is special trading sessions in the exchange for conversion of odd lots into market lots arranged by financial and institutional investors. Thus listing helps to provide flexibility to investors in the subdivision and consolidation of their holdings with speed and earnestness.

6.1.7. When listing is being achieved through a scheme of arrangement, the unlisted companies do not offer at least 25% of the shares of the companies in terms of rule 19(2)(b) of SCRR.

6.1.8. The scheme of arrangement, envisaged in the instant case does not provide adequate information of the unlisted company with regard to background of the Promoters, Capital Structure, history of the company, financial details, management of the company, government



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and other statutory approvals required for the business, litigations, risk factors associated with the business carried out by the company as no prospectus is prepared.

6.1.9. Even if the aforementioned disclosures are made, the adequacy, authenticity and relevance of the same cannot be ensured in the absence of due-diligence by a SEBI registered Merchant Banker and/or examination by SEBI.

6.1.10. Without complying with the aforesaid regulatory requirements, the unlisted transferor company may enjoy the benefits of listing as stated above, which they are not entitled to.

6.1.11. Further, due to the unavailability of required disclosures pertaining to the unlisted transferor company, once listed, the investors trading in the secondary market may be deprived of the critical information for taking informed investment decisions. If such backdoor listing is allowed unchecked, it may jeopardize and tarnish the image of the securities market as a transparent and efficient way of raising capital shaking the very foundation of capital raising in India. It may also affect the development of a strong, transparent and credible securities market which is an important prerequisite for the economic development of the country.

**6.2. Substantial Acquisition of SDBL without providing an exit opportunity - an attempt to circumvent the obligations under Takeover Regulations**

6.2.1. The promoters of SDBL holds 22.56% of paid up capital of transferee company. Pursuant to the scheme, shareholding / voting rights of the promoters in the transferee company is likely to increase from 22.56% to 26.43% Such an acquisition along with existing shareholding and persons acting in concert may entitle them to exercise 25% or more voting rights in the target company. This would otherwise be



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considered as substantial acquisition in terms of Takeover Regulations and may trigger an open offer obligations the promoters.

6.2.2. SEBI, in order to protect the interest of investors, has put in place Takeover Regulations which seek to ensure that the substantial acquisition of shares and/or change of control over a listed company in the securities market takes place in a fair, equitable and transparent manner. Takeover Regulations are based on the following principles:

- Equality of treatment and opportunity to all shareholders.
- Protection of interests of shareholders.
- Fair and truthful disclosure of all material information by the acquirer in all public announcements and offer documents.
- Availability of sufficient time to shareholders for making informed decisions.
- An offer to be announced only after most careful and responsible consideration.
- The acquirer and all other intermediaries professionally involved in the offer, to exercise highest standards of care and accuracy in preparing offer documents.
- All parties to an offer to refrain from creating a false market in securities of the target company.

6.2.3. Takeover Regulations require an acquirer along with persons acting in concert to make an open offer/ give exit opportunity to incumbent shareholders before making substantial acquisition and/or taking over the control of the target company.

6.2.4. However, it may be argued that such substantial acquisition due to scheme of arrangement pursuant to the sanction of Hon'ble High Court is exempt from the applicability of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 under regulation 10(1)(d)(ii).





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- 6.2.5. In the instant case, substantial acquisition appears to be taking place without any exit opportunity to the public shareholders of the listed entity.
- 6.2.6. Substantial acquisition appears to be achieved without going through the transparent mechanism of open offer process envisaged in the Takeover Regulations. Thus, the principles underlying the regulations appears to have been defeated because of this non-transparent method adopted through the Scheme of Arrangement.
- 6.2.7. The present Scheme appears to have been designed as an artifice to circumvent the compliance with the provisions of the Takeover Regulations and surreptitiously claiming exemption from the applicability of the Takeover Regulations under reg. 10(1)(d)(ii).

**6.3. Increasing shareholding through Share Swap - an attempt to bypass the Preferential Issue guidelines under ICDR**

- 6.3.1. Preferential Allotment is the process by which allotment of securities/shares is done on a preferential basis to a select group of investors which is neither a rights issue nor a public issue.
- 6.3.2. A listed company going for preferential allotment has to comply with the requirements contained in Chapter VII of ICDR, in addition to the requirements specified in the Companies Act.
- 6.3.3. In the instant case, the shares of the listed company will be reportedly issued to the shareholders of the unlisted company as consideration for the amalgamation. Such a transaction is akin to preferential allotment. The unlisted company is used as a conduit through which shares of the listed company (SDBL) are allotted to the shareholders of the unlisted company through the scheme without following the requirements laid down for preferential allotment.
- 6.3.4. However, it may be argued that preferential allotment would be exempt from the applicability of Chapter VII of SEBI (ICDR) Regulations, 2009 under regulation 70 (1) (b). The exemption is provided where the



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preferential allotment is made pursuant to a scheme approved by the High Court u/s 391-394 of the Companies Act, 1956. In the instant case, the consideration for merger of the assets of the unlisted company with the listed company is paid through the preferential allotment of shares as part of the scheme in order to avail the exemption under the said regulations.

## 7. Conclusion on the Scheme of Arrangement

7.1. As listing of the unlisted company is being achieved through backdoor as part of the Scheme, it may jeopardize and tarnish the image of the securities market as a non-transparent and inefficient way of raising capital and listing. It may also affect the development of a strong, transparent and credible primary securities market, which is an important prerequisite for the economic development of the country. Further, the promoters of the unlisted company by virtue of getting the 'listed' status would derive the benefits of 'listing' which they otherwise are not entitled to, as they are not complying with the necessary regulatory framework.

7.2. The Scheme of Arrangement in its current form resulting in substantial acquisition in the listed company may be detrimental to the public shareholders of SDBL as the substantial acquisition is being achieved through a non-transparent, inequitable and unfair method.

7.3. As part of the Scheme, the shareholders of the unlisted company are receiving shares of the listed company as consideration. Such an acquisition is being done as a share swap, which is akin to preferential allotment without complying with the regulatory requirements. The shareholders of the unlisted company are receiving marketable shares of the listed company in lieu of the shares of the unlisted company which may not be marketable which tantamount to undue enrichment.

The above comments/observations do not preclude the company from filing the draft scheme with the Hon'ble High Court for sanction.