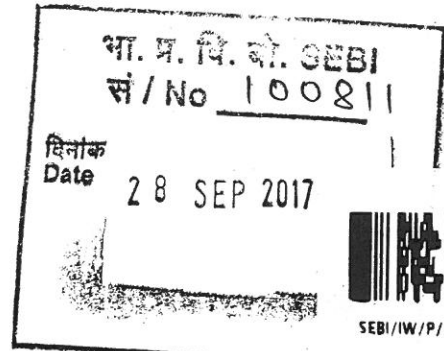


September 28, 2017

Securities and Exchange Board of India
Corporation Finance Department
Plot No. C4 A, 'G' Block
Bandra Kurla Complex, Bandra (East)
Mumbai 400 051

✓ **Kind Attention:** Mr. Amit Tandon, Deputy General Manager

Dear Sir,



Sub: Request for an interpretative letter under the Securities and Exchange Board of India (Informal Guidance) Scheme 2003, as amended (the "SEBI Scheme") in relation to CLSA India Private Limited acting as merchant banker to clients who are state-owned enterprises in the People's Republic of China ("PRC").

1. This is a request for an 'interpretive letter' under clause 5(ii) of the SEBI Scheme, on basis of the factual background and details provided herein below:

2. Factual Background

- 2.1 CLSA India Private Limited ("CLSA India") is a private limited company incorporated under the Companies Act 1956 and a Category I Merchant Banker registered under the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 and having its registered office at 8/F, Dalamal House, Nariman Point, Mumbai 400 021, India.
- 2.2 CLSA India is a wholly owned subsidiary of CLSA B.V., a company incorporated in and under the laws of Netherlands.
- 2.3 CLSA B.V. is a wholly owned subsidiary of CITIC Securities International Company Limited ("CSICL"), a company incorporated in and under the laws of Hong Kong.
- 2.4 CSICL is a wholly owned subsidiary of CITIC Securities Company Limited ("CSCL"), a company incorporated in and under the laws of PRC.
- 2.5 CSCL is a company established under the laws of PRC. CSCL provides securities related services including securities trading, underwriting and sponsoring, proprietary trading, asset management and investment banking advisory services. CSCL is China's first full-service investment bank to have its A shares listed on the Shanghai Stock Exchange ("SSE") and H shares listed on the Main Board of the Stock Exchange of Hong Kong Limited ("SEHK").
- 2.6 As on 30 June 2017, CSCL is predominantly held by public shareholders i.e. 83.34% and the remaining 16.66% is held by CITIC Corporation Limited, a company incorporated in and under the laws of PRC ("CCL"). CSCL is not consolidated in the financial statements of CCL.
- 2.7 CCL is a wholly owned subsidiary of CITIC Limited, a company established under the laws of PRC. The securities of CITIC Limited are listed on the SEHK. CITIC Limited is



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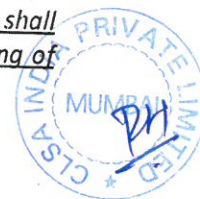
58.13% owned by CITIC Group Corporation and the remaining is held by public shareholders. It is one of the largest companies in the Hang Seng Index.

- 2.8 CITIC Group Corporation is a state-owned enterprise and is ultimately held by the Ministry of Finance, PRC.
- 2.9 Each of CSCL and CITIC Limited operates in strict compliance with the rules governing listed securities on the SEHK and SSE, including the requirements corporate governance, as applicable, which inter-alia require having requisite independent directors, various committees such as for audit and risk management, remuneration and nomination and putting in place various policies such as board diversity and insider information policy. The charter documents of CSCL and CITIC Limited do not contain any special rights granted to Ministry of Finance, PRC, and each of CSCL and CITIC Limited are governed by their respective boards.
- 2.10 As stated above, since CITIC Group Corporation holds only 16.66% in CSCL and 58.13% in CITIC Limited, the effective holding of CITIC Group Corporation in CLSA India is 9.68%.
- 2.11 An illustrative representation of the above holding structure is provided in Annexure I of this letter.
- 2.12 In this request letter, a state-owned enterprise, which is ultimately held by PRC through any of its ministry or otherwise, is referred to as a "SOE".

3. Applicable Regulations

- 3.1 Regulation 21A of the SEBI Merchant Bankers Regulations provide, "a merchant banker shall not lead manage any issue or be associated with any activity undertaken under any regulations made by SEBI, if the merchant banker is a promoter or a director or an associate of the issuer of securities or of any person making an offer to sell or purchase securities in terms of any regulations made by SEBI. For the purposes of this regulation, a merchant banker shall be deemed to be an "associate of the issuer or person" if:
- (i) either of them controls, directly or indirectly through its subsidiary or holding company, not less than fifteen per cent of the voting rights in the other;
 - (ii) either of them, directly or indirectly, by itself or in combination with other persons, exercises control over the other;
 - (iii) there is a common director, excluding nominee director, amongst the issuer, its subsidiary or holding company and the merchant banker."
- 3.2 Regulation 5(3) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2009, as amended ("SEBI ICDR Regulations") provides that "where the issue is managed by more than one merchant banker, the rights, obligations and responsibilities, relating inter alia to disclosures, allotment, refund and underwriting obligations, if any, of each merchant banker shall be predetermined and disclosed in the offer document as specified in Schedule I:

Provided that where any of the merchant bankers is an associate of the issuer, it shall declare itself as a marketing lead manager and its role shall be limited to marketing of the issue."



- 3.3 Regulation 10(6) Securities and Exchange Board of India (Delisting of Equity shares) Regulations 2009, as amended ("**Delisting Regulations**") provides that "no acquirer/promoter shall appoint any person as a merchant banker under sub-regulation (4) if such a person is an associate of the acquirer/promoter".
- 3.4 Regulation 12(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011, as amended ("**Takeover Regulations**") provides that "prior to making a public announcement, the acquirer shall appoint a merchant banker registered with the Board, who is not an associate of the acquirer, as the manager to the open offer. Explanation — For the purposes of this regulation the term 'associate' has the same meaning as in the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992".
- 3.5 Further, Regulation 8(4) of the (Buy Back of Securities) Regulations 1998, as amended ("**Buy Back Regulations**") provides that "the company shall within five working days of the public announcement file with the Board a draft-letter of offer, along with soft copy, containing disclosures as specified in Schedule III through a merchant banker who is not associated with the company". Further, under the Buy Back Regulations, the term 'associate' "includes a person (i) who directly or indirectly by himself or in combination with relatives, exercise control over the company or, (ii) whose employee, officer or director is also a director, officer or employee of another company."
4. **Purpose of Interpretative Letter**
- 4.1 CLSA India may in future act as merchant banker to transactions involving entities, which is a SOE or is ultimately held by a SOE, but not forming a part of the organisation structure of CLSA India ("SOE Entity"). In terms of the reasoning and analysis provided herein below, we believe that CLSA India and such SOE Entity could not be considered as 'associates' in terms of relevant regulations of the Securities and Exchange Board of India ("**SEBI**") and accordingly, CLSA India may not be restricted to manage transactions for such SOE Entity.
5. **Analysis and Reasoning**
- 5.1 Prior to the commencement of the SEBI ICDR Regulations, the disclosure regime for public issues, private placement of listed companies and disclosures in offer documents, amongst others, were guided by the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines 2000 ("**DIP Guidelines**"). As per clause 5.4.1.1 of the DIP Guidelines, a merchant banker was prohibited from managing an issue if it was a promoter or a director or associate of the issuer company.
- 5.2 A committee was constituted in 2003 under the chairmanship of Mr. Y.H Malegam to review the disclosure requirements in offer document ("**Malegam Committee**"). The Malegam Committee in its report, inter-alia, mentioned that the intention behind the clause 5.4.1.1 of DIP Guidelines was to maintain an arm's length relationship between the issuer company and the lead manager associated with the issue.
- 5.3 Similar restriction on a merchant banker, who is an associate of an issuer acquirer/promoter or as the case may be, exists in other SEBI regulations (as discussed in detail in para no. 3 above).



- 5.4 The only common connect between CLSA India and an SOE Entity is that the ultimate shareholding of the SOE Entity or, the farthest indirect holding of CLSA India or of SOE Entity may be traced to PRC. However, as mentioned in para 2 above, CLSA India is held indirectly by CSCL and CITIC Limited, which are in turn predominantly held by public shareholders. CSCL and CITIC Limited are listed, independent and are governed by their respective board which are in compliance with the listing requirements of the respective stock exchanges. Since CITIC Group Corporation holds only 16.66% in CSCL and 58.13% in CITIC Limited, the effective holding of CITIC Group Corporation in CLSA India is 9.68%.
- 5.5 Since an SOE Entity is not forming a part of the organisation structure of CLSA India, there is no common management control or representation between CLSA India and an SOE Entity. Further, there is no administration connect or overlap between CLSA India and an SOE Entity. CLSA India has its own board of directors and this board is independent of any SOE entity. The board of CLSA India has no influence from PRC and does not act on the direction of PRC. Given the holding structure of CLSA India as explained in para 2 above, it will not be able to either influence or direct the board of a SOE Entity, directly or indirectly.
- 5.6 In light of the above, CLSA India and a SOE Entity have no conflict of interest in terms of business operations, stakeholder relationship and management. Accordingly, it would establish arm's length relationship between CLSA India and the SOE Entity.
- 5.7 It is also pertinent to note that the financial statements of CLSA India does not list any SOE Entity as a group entity or a related party.
- 5.8 Further, it may be pertinent to highlight that in past, there have been several capital market transactions in India wherein the ultimate shareholding of the lead managers (being held by a public sector undertaking) and the issuer company (a public sector enterprise) could be traced to the President of India, acting through various Ministries of Government of India and such lead managers and issuers have not been considered as 'associates' in terms of the Merchant Bankers Regulations and SEBI ICDR Regulations. Some of these past transactions are listed below, for your reference:
- Initial public offering of the Shipping Corporation of India Limited (at the time of the issue, majority owned by Government of India) - managed by SBI Capital Markets Limited, which is a wholly owned subsidiary of State Bank of India. As on June 30, 2017, Government of India holds 57.97% equity shareholding in State Bank of India.
 - Initial public offering of National Buildings Construction Corporation Limited (at the time of the issue, wholly owned by Government of India) - managed by IDBI Capital Market Services Limited, which is a wholly subsidiary of IDBI Bank Limited. As on June 30, 2017, Government of India holds 73.56% equity shareholding in IDBI Bank Limited.
 - Further public offering of Engineers India Limited (at the time of the issue, majority owned by Government of India) - managed by SBI Capital Markets Limited, which is a wholly owned subsidiary of State Bank of India. As on June 30, 2017, Government of India holds 57.97% equity shareholding in State Bank of India.
 - Further public offering of Power Grid Corporation of India Limited (at the time of the issue, majority owned by Government of India) - managed by SBI Capital Markets



Limited, which is a wholly owned subsidiary of State Bank of India. As on June 30, 2017, Government of India holds 57.97% equity shareholding in State Bank of India.

- e) Initial public offering of Cochin Shipyard Limited (at the time of the issue, wholly owned by Government of India) – managed by SBI Capital Markets Limited, which is a wholly owned subsidiary of State Bank of India. As on June 30, 2017, Government of India holds 57.97% equity shareholding in State Bank of India.
- 5.9 However, it is pertinent to note that SBI Capital Markets Limited has always been referred to as an 'associate' in public issues of entities forming part of the SBI group, where SBI Capital Markets Limited has acted as a merchant banker.
- 5.10 It is clarified that CLSA India shall not act as merchant banker to any transactions involving a SOE Entity which forms part of the group structure of CLSA India, except as permitted under and in accordance with the applicable law.
- 5.11 Further, PRC through its various ministries, is the ultimate shareholder of many state controlled entities in PRC. Such entities (i.e. SOE Entities) may have a potential interest in acquiring any entity, either in India directly, or in an entity outside India which may have a step-down subsidiary or affiliate in India. Prohibiting CLSA India from engaging with such SOE Entities for the sole reason of having a common ultimate shareholder (i.e. PRC) would tantamount to a blanket restriction on CLSA India in respect of virtually entire business emanating from PRC in India.

6. Request for guidance

- 6.1 In terms of clause 5(ii) of the SEBI Scheme, we hereby request you to kindly issue an interpretive letter with your guidance on whether the restriction under the applicable SEBI regulations is applicable to CLSA India while managing transactions for any SOE Entity and whether the present case is appropriate for interpreting an exception from the applicability of such the restriction under the applicable SEBI regulations, in view of the reasons explained above.

7. Confidentiality

- 7.1 CLSA India is involved in merchant banking activities and in its normal course of business, it intends to advise entities whose ultimate shareholding could be traced to PRC, in India. Since this application deals with CLSA India's intention to act as merchant banker to transactions of SOE Entity(ies), and to ensure that CLSA India retains its competitive edge in this regard, we request SEBI to treat both this application and the response from SEBI as confidential for a period of 90 days from the date of receipt of response from SEBI.

8. Compliance with SEBI Scheme

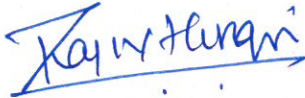
- 8.1 This request for the interpretive letter is accompanied with a cheque of Rs. 25,000 (Rupees twenty-five thousand only) drawn on HDFC Bank bearing no. 012228 dated July 27, 2017, payable at Mumbai, in favour of SEBI.
- 8.2 All material facts, circumstances and legal provisions which, in our opinion, are relevant for the purposes of determination of this request are stated herein.



We are pleased to furnish any additional information as may be required in support of this application for informal guidance in form of an interpretative letter. Requests for clarification, if any, may be addressed to:

Name: Sarika Ramanathan
Designation: Head of Compliance & Legal
Phone: +91-22-6650 5048
Mobile No: +91 982 098 6823
Email: sarika.ramanathan@clsa.com

For and on behalf of CLSA India Private Limited



Rajiv Hingu
Whole-Time Director & Chief Operating Officer

Encl: As above



Group Chart
CITIC Securities Company Limited
as at 30 June 2017

