

**Deputy General Manager
Division of Corporate Restructuring
Corporation Finance Department
Phone no: 022-26449232**

CFD/DCR/OW/2018/5098
February 15, 2018

CLSA India Private Limited
8/F Dalamal House,
Nariman Point,
Mumbai - 400021

Dear Sir,

Sub: Request for an interpretive letter under the SEBI (Informal Guidance) Scheme, 2003 {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

1. This has a reference to your letter dated September 28, 2017 seeking guidance by an interpretive letter under the SEBI (Informal Guidance) Regulations, 2003 on the captioned subject.
2. You have, *inter alia*, represented as follows-
 - a. M/s. CLSA India Private Limited ('Applicant') is a private limited company incorporated under the Companies Act, 1956 and a Category I Merchant Banker registered under SEBI (Merchant Bankers) Regulations, 1992.
 - b. Applicant is a wholly owned subsidiary of CLSA B.V., a company in Netherlands. CLSA B.V. is a wholly owned subsidiary of CITIC Securities International Company Limited ('CSICL'), a company in Hong Kong. CSICL is a wholly owned subsidiary of CITIC Securities Company Limited ('CSCL'), a listed company in People's Republic of China ('PRC').
 - c. As on June 30, 2017, CSCL is predominantly held by public shareholders i.e. 83.34% and remaining 16.66% is held by CITIC Corporation Limited ('CCL'), a company in PRC. CSCL is not consolidated in the financial statements of CCL.
 - d. CCL is a wholly owned subsidiary of CITIC Limited, a listed company in PRC. CITIC Limited is 58.13% owned by CITIC Group Corporation and remaining is held by public shareholders.

- e. CITIC Group Corporation is a state-owned enterprise and is ultimately held by the Ministry of Finance, PRC.
- f. Each of CSCL and CITIC Limited operates in strict compliance with the rules governing listed securities, including corporate governance requirements. 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.
- g. Since CITIC Group Corporation holds only 16.66% in CSCL and 58.13% in CITIC Limited, the effective holding of CITIC Group Corporation in the applicant is 9.68%.
- h. The only connect between the applicant and a State Owned Enterprise ('SOE') Entity (ultimately held by PRC) is that the ultimate shareholding of the SOE Entity or, the farthest indirect holding of the applicant or of SOE Entity may be traced to PRC. However, as mentioned above, the applicant 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. Effective holding of CITIC Group Corporation in the applicant is 9.68%.
- i. Since an SOE Entity is not forming a part of the organization structure of the applicant, there is no common management control or representation between the applicant and an SOE Entity. Further, there is no administration connect or overlap between the applicant and an SOE Entity. The applicant has its own board of directors and this board is independent of any SOE Entity. The board of the applicant has no influence from PRC and does not act on the direction of PRC. Given the holding structure of the applicant, it will not be able to either influence or direct the board of a SOE Entity, directly or indirectly.
- j. In light of the above, the applicant 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 the applicant and SOE Entity.

- k. The financial statements of the applicant does not list any SOE Entity as a group entity or related party.
 - l. The applicant shall not act as merchant banker to any transactions involving a SOE Entity which forms part of the group structure of the applicant, except as permitted under and in accordance with the applicable law.
 - m. Further, PRC through its various ministries, is the ultimate shareholder of many state controlled entities in PRC. Such SOE Entities may have a potential interest in acquiring any entity, either in India directly, or in an entity outside India which have a step-down subsidiary or affiliate in India. Prohibiting the applicant 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 the applicant in respect to virtually entire business emanating from PRC in India.
3. In response to the clarifications sought by SEBI, the applicant has further submitted the following vide email dated November 30, 2017:-
- a. The applicant 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 (which is owned and controlled by Ministry of Finance, PRC) holds only 16.66% in CSCL and 58.13% in CITIC Limited, the effective holding of CITIC Group Corporation in the applicant is 9.68%.
 - b. Ministry of Finance, PRC, does not have any right to appoint majority of the directors or to control the management or policy decisions, directly or indirectly, including by virtue of their shareholding or management rights or in any other manner on the applicant. In view thereof, we submit that Ministry of Finance, PRC directly or indirectly does not control the applicant.
 - c. As of date, the applicant is not engaged by a SOE. The interpretative letter is sought to seek clarity that in case a SOE approaches the applicant to act as merchant banker for a transaction then the applicant can act in such capacity.

The applicant shall not act as merchant banker to any transaction involving an SOE entity which forms part of the group structure of CLSA India, except as permitted under the applicable law. Hence, the applicant is not in a position to confirm if there could be a common employee, officer or director amongst the applicant and SOE for which it may act as merchant banker.

- d. Currently all employees and officers of the applicant are the employees of the applicant and are not employees/officer of any SOE. Further none of the directors of the applicant are on board of any other SOE entity, other than the SOE entity which forms part of the group structure of the applicant.

4. **Applicable Regulations:**

- a. The relevant provisions of SEBI (Merchant Bankers) Regulations, 1992 are reproduced below:

Merchant banker not to act as such for an associate.

21A. (1) A merchant banker shall not lead manage any issue or be associated with any activity undertaken under any regulations made by the Board, if he 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 the Board:

Provided that a merchant banker who is an associate of such issuer or person may be appointed, if he is involved only in the marketing of the issue or offer.

Explanation: 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; or

(ii) either of them, directly or indirectly, by itself or in combination with other persons, exercises control over the other; or

(iii) there is a common director, excluding nominee director, amongst the issuer, its subsidiary or holding company and the merchant banker.

- b. The relevant provisions of SEBI (Issue of Capital and Disclosure Requirements), 2009 are reproduced below:

Appointment of merchant banker and other intermediaries.

5.(3) 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.

- c. The relevant provisions of SEBI (Delisting of equity shares) Regulations, 2009 are reproduced below:

10.(6) 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.

- d. The relevant provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 are reproduced below:

Manager to the open offer.

12.(1) 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.

- e. The relevant provisions of SEBI (Buy Back of Securities) Regulations, 1998 are reproduced below:

8.(4) 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.

2. (1) *In these regulations, unless the context otherwise requires :—*

(a) ...

(b) '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;

5. In view of the above, you have sought informal guidance on the following issues:
- a. The applicant may in future act as merchant banker to transactions involving entities, which is a state-owned enterprise (SOE), which is ultimately held by PRC through any of its ministry or otherwise, or is ultimately held by a SOE, but not forming part of the organization structure of the applicant.
 - b. In terms of the reasoning and analysis provided by the applicant, the applicant believes that the applicant and such SOE Entity could not be considered as 'associates' in terms of relevant regulations of SEBI and accordingly, the applicant may not be restricted to manage transactions for such SOE entity.
6. We have considered the submissions made by you in your letter under reference and without necessarily agreeing with your analysis, our interpretation on the above queries is as under:-
- a. From the definition of the expression “**associate**”, *it 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.*
 - b. The applicant is a registered merchant banker with SEBI.

- c. The applicant is a subsidiary of CSCL in which 83.34% shares are held by public shareholders and 16.66% is held by CCL. CSCL is not consolidated in the financial statements of CCL.
 - d. CCL is a wholly owned subsidiary of CITIC Limited, in which 58.13% is owned by CITIC Group Corporation and remaining is held by public shareholders. CITIC Group Corporation is a state-owned enterprise of PRC.
 - e. The board of the applicant has no influence from PRC. It has been submitted by the applicant that PRC does not control the applicant whether directly or indirectly. The applicant also does not influence or direct the board of any SOE Entity.
 - f. The applicant has no conflict of interest in terms of business operations, stakeholder relationship and management of SOE Entity.
 - g. Financial statements of the applicant does not list any SOE Entity as a group entity or a related party.
 - h. None of the employees and officers of the applicant are employees/officer of any SOE. Further none of the directors of the applicant are on board of any other SOE entity, other than the SOE entity which forms part of the group structure of CLSA India.
 - i. The facts submitted by the applicant do not indicate that the applicant is an associate with any SOE Entity (except CITIC Group Corporation) in terms of the definition of 'associate' under SEBI Regulations.
 - j. In view of the foregoing, our view is that the applicant can act as a merchant banker for an SOE Entity other than those forming part of the organisation structure of the applicant as long as it meets the conditions as specified under the specific SEBI Regulations.
7. The above position is based on the information furnished in your letter under reference. Different facts or conditions might lead to a different result. Further, this letter does not express a decision of the Board on the questions referred.

8. Vide your letter dated September 28, 2017, you have requested for confidentiality in respect of your interpretative letter. Acceding to your request, it has been decided that the interpretative letter issued to you in this matter will not be made public for a period of 90 days from the date of issuance of this letter.
9. You may also note that the above views are expressed only with respect to the clarification sought in your letter under reference with the respective regulations and do not affect the applicability of any other law or requirements of any other SEBI Regulations, Guidelines and Circulars administered by SEBI or of the laws administered by any other authority.

Yours faithfully,

Rajesh Gujjar