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Reformulation of “Promoters” to “Person-in-Control”

- A far reaching change proposed by SEBI

SEBI has at its board meeting held on 6th August 2021 has decided to make a far reaching change in an important term having rippling effect not just in various Securities Laws but also potentially in other laws such as the Companies Act, 2013, laws regulated by IRDA, RBI, etc. While the decision is said to be an “in-principle” one and will be implemented in a “smooth, progressive and holistic manner”, it is expected that we will soon see major changes in the law. While the change will still follow the consultation process, considering that very recently, vide a consultation paper of 11th 2021, this proposal was mooted in detail and suggestions invited, it is likely that the process may be shorter.

Many of Securities Laws have the “Promoters” as their core focus and many obligations and elaborate requirements are made in respect of them. The concept of Promoters could arguably be said to be unique to India and is reflective of structure and management of companies and businesses in India where a family typically starts a business, holds very significant ownership in it and runs it often over several generations. The reputation of the promoter of a company becomes an important consideration not just in making investment decisions in a company but even in their business company. Typically, the Promoter Group hold at least half of the shares of the listed companies they manage.

Though seemingly easy to explain, it is difficult to define, more so as a law, the term “Promoters”. The result is that SEBI has made elaborate and wide definition of this term. To begin with, the persons who control the company are deemed to be promoters. The family members of such promoters are then included in a specified manner. Then certain group entities connected in specified manner are included.

Elaborate requirements of disclosures are required to be made. Specific rules are made in the insider trading regulations for them. The SEBI Takeover Regulations too make provisions in respect of them. The LODR Regulations which contain rules relating to corporate governance have several specific requirements relating to them. Other laws such as the Companies Act, 2013, etc. too make provisions for them.

However, times are changing and there are important reasons why this term needs a relook. Even otherwise, in terms of law, there have been difficulties and SEBI has been making efforts by way of consultation papers to address the issues. Now, finally, a decision is made and one can expect concrete progress soon.

The major change decided is that the term Promoters will be done away altogether. In its place, a more descriptive and appropriate term “Person In Control” is proposed. This will ensure that some of the difficulties presently faced will be addressed. Today, because of a wide definition, many persons having a specified relation are deemed to be promoters even if the person may not have involvement in the control of the company. Once a person is deemed as a promoter it is very difficult to get out from the term and hence there are continuing obligations.

SEBI has also noted that there are many companies now, particularly in the ‘new age’ sector, where there is largely a professional management having relatively low shareholding. Further, the holding of institutional shareholders has very significantly increased. Large investors often have significant influence, at times backed by shareholder agreements which give them an element of control.

Hence, it is felt that a redefined term will be in tune with the changed times. Also, it will remove many of the difficulties presently faced.

SEBI has not yet shared draft changes including the definition of the new term. However, this can be expected soon and we will be then able to examine the implications of the new scheme and how they address the issues.

Key Circular updates:

- SEBI vide circular dated 09th July, 2021 has prescribed for Valuation of securities by the valuation agency w.r.t. multiple put options present ab-initio and where put option is factored into valuation of the security.
- Subsequent to discussions with various stakeholders, circular dated 16 July 2021 introduced Expected Loss (EL) based rating scale that may be used by Credit Rating Agencies for ratings of projects/instruments associated with infrastructure sector to begin with. Further, CRA's are advised to standardise the usage of rating scales prescribed under the guidelines of respective financial regulator. The CRAs shall ensure compliance with the requirements of this circular, latest by March 31, 2022 and also place the compliance status of this circular before the Board of Directors. Further, the CRAs are advised to confirm compliance of this circular to SEBI latest by April 15, 2022.
- Due to the ongoing pandemic, extension has been allowed to top 100 listed entities on the basis of market capitalization for holding the Annual General Meeting within 6 months from date of closing of financial year.
- SEBI vide its circular dated, July 30, 2021 has allowed asset management company to deploy unclaimed redemption and dividend amounts in Overnight scheme/ Liquid scheme floated by Mutual funds (MF's) and for the development of this facility, MF's can offer Instant Access facility.
- SEBI has issued a circular on August 3, 2021 allowing Non-scheduled Payments banks, having prior approval from Reserve Bank of India, to be eligible to act as 'Bankers to Issue' subject to fulfilment of the prescribed conditions.
- SEBI pursuant to circular dated August 13, 2021 has stated guidelines on issuance of non-convertible debt instruments (NCD) along with warrants in terms of Chapter VI – Qualified Institutions Placement of SEBI (ICDR) Regulations, 2018 wherein Electronic Book provider (EBP) is mandatory for the issue of NCD's and out of the total issue (comprising both NCD and warrants) at least 40% should comprise of Warrant's.

Key outcome of Board Meeting held on 6th August, 2021:

- Amendment to SEBI (AIF) Regulations, 2012 has been carried out to simplify and rationalise compliance for Alternative Investment Fund.
- Amendment has been made to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 pertaining to listed Non-Convertible Debt Securities, Non-Convertible Redeemable Preference Shares, Perpetual Debt Instruments and/or Perpetual Non-Cumulative Preference Shares. These amendments aim to improve transparency, rationalization and removal of redundant provisions so as to provide further robustness to the corporate bond market.
- The Board has decided to do away with certain disclosure obligations for the acquires/promoters, etc. pertaining to acquisition or disposal of shares aggregating to 5 % and any change of 2 % thereafter, annual shareholding disclosures and creation/invocation/release of encumbrance registered in depository systems under takeover Regulations w.e.f. 01 April, 2022.