

SEBI

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SEBI has issued a consultation paper dated 11th May 2021 seeking views on an important set of proposed changes. These include substantially overhauling the concept of Promoters and Promoter Group in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("the ICDR Regulations") and some related matters. While the proposed changes relate to only the ICDR Regulations, the implications of some will be far reaching including on other Regulations including Insider Trading Regulations, Takeover Regulations and even the Companies Act.

The following are some important changes proposed.

Decrease in lock in period for Promoters

The lock in period following an offer for sale or after an issue for financing other than for capital expenditure for a project is proposed to be reduced to one year from the present three years. This is for the basic 20% shareholding. For the excess above 20%, the lock in period is proposed to be reduced from the present one year to six months. This is for the Promoters. In respect of persons other than Promoters, the lock in is proposed to be reduced from the present one year to six months.

If there is a need to achieve compliance with minimum public shareholding norms, the lock in is proposed to be reduced to six months.

Changes in definition of Promoter Group

Presently, group of entities acting in concert that hold at least 20% in a body corporate and at least 20% in the listed company results in that body corporate deemed to be part of the Promoter Group. It is proposed to drop this category and thus they would not be part of the Promoter Group. The rationale is that this would end up including unrelated entities merely because there are common financial investors.

Disclosures of 'group companies'

Entities with which a proposed issuer has had related party transactions in the last three years are for limited purpose of disclosures in the offer documents are treated as 'group companies'. Extensive disclosures are required of various items of data of certain of such 'group companies' in the offer document. The Paper says that this concept of 'group companies' does not continue after listing and does not find place in any other SEBI Regulations. It is proposed that the disclosures in the offer document may be pruned for such 'group companies' and the remaining disclosures may be continued to be given in the website of the listed company.

Shifting from concept of Promoters/Promoter Group to 'Persons in control'/'Controlling shareholders'

The concept of Promoters/Promoter Group can be said to be unique to Indian context arising out of typically family holding and control of a company. However, it is observed that the shareholding pattern is changing with Promoters holding reducing generally. Institutional shareholding is on other hand rising, particularly of those shareholders who have special rights including right of appointing nominees. The definition of Promoters/Promoter Group is detailed and becomes increasingly difficult to apply as the shareholding/company structure becomes more complex. There are many companies that do not have any particular family holding. Further, there is a slow and steady shift to expect accountability more from the Board of Directors generally. All in all, there is a need now to redefine who are the persons really in control and hold them into account, along with the Board in general. However, this shift would mean implications under several other SEBI Regulations and the Companies Act, 2013 too. Hence, SEBI has sought inputs of how this shift can be done as also the time frame for such shift.

Comments sought

SEBI has sought comments on these proposed changes and may, after considering these comments, amend the law.