

SEBI releases consultative paper on Revision of Provisions Pertaining to Reclassification of Shareholders

Regulation 31A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR Regulations) provides for conditions with respect to re-classification of shareholders of listed entities. Based on representations received by SEBI, discussions with stakeholders, etc., it was felt that there is a need to re-visit the existing Regulation 31A with an aim to simplify, streamline and bring greater clarity in the provisions specified therein. Based on the recommendations of the Kotak Committee and various representations received by SEBI, it was felt that the existing Regulation 31A may be revised.

Proposal:

In view of the above, it is proposed that the existing Regulation 31A may be revised as under:

1. Simplification of conditions for classification:

- I. Under the current provisions, certain conditions for re-classification of promoters as public shareholders have been specified for different scenarios including:
 - When a new promoter replaces the previous promoter subsequent to an open offer or in any other manner.
 - Where an entity becomes professionally managed and does not have any promoters.

Further, certain general conditions for re-classification of promoters as public shareholders have also been specified.

- II. Further, the Kotak Committee has brought out that the SEBI LODR Regulations do not deal with a situation where there are multiple and distinct parties classified as promoters, and one of them wishes to be reclassified. The Committee was of the opinion that there ought to be a mechanism to enable such reclassification to ensure persons who may have been promoters but are no longer in the day to day control and management and have a low shareholding should have the option to be reclassified as promoters.

Accordingly, the Committee has suggested another new a set of conditions to be introduced as a new sub-Regulation 6A to be made applicable in such situations.

- III. It is felt that having different set of conditions for different scenarios might be confusing. It may also not possible to cover all scenarios within the ambit of this Regulation.
- IV. Hence, in order to simplify the existing provisions, it is proposed to have a single set of conditions applicable to all situations of re-classification of promoters as public shareholders. The object is that reclassification ought to be done in a fair and transparent manner keeping in mind the interests of the public shareholders.

2. Process to be followed for re-classification of promoters as public shareholders:

As stated earlier, under the current provisions, since different conditions are applicable to different scenarios, the process to be followed in each case is different. Further, shareholder approval is required only in certain specified cases and not in all cases. Hence, it is proposed to have a uniform process containing clear stages to be followed by the listed entity and the promoters in all cases of promoter re-classification, as under:

- I. Stage I: Application by the promoter to the listed entity for re-classification as a public shareholder
- II. Stage II: Placing the request of the promoter before the Board of Directors of the listed entity
- III. Stage III: Approval by the shareholders

3. Conditions applicable for promoters to be eligible for re-classification as public shareholders:

- I. Under the current provisions, the conditions for a promoter to get re-classified as public shareholders are different under different scenarios. It is proposed to rationalize the existing conditions and have a single set of criteria for any promoter(s) to get re-classified as public shareholders.
- II. The main concern with respect to outgoing promoters is that they should not be permitted to exercise control over the listed entity, directly or indirectly and cease to be promoters in spirit. Accordingly, the conditions proposed are aimed at addressing this concern.
- III. It is therefore proposed that in all cases of promoter re-classification, the specific promoter seeking reclassification as a public shareholder, its promoter group and the Persons Acting in Concert shall not:
 - hold more than 10% of the total voting power in the listed entity;
 - exercise control over the affairs of the listed entity directly or indirectly;
 - have any special rights with respect to the listed entity through formal or informal arrangements including through any shareholder agreements;
 - be represented on the Board of Directors (including by way of a nominee director) of the listed entity;
 - act as a key managerial person in the listed entity;
- IV. Further, the promoter seeking reclassification shall not be a wilful defaulter as per RBI Guidelines as on the

date of the shareholder's meeting considering the request of the promoter.

- V. It is proposed that the above conditions would also apply where the listed entity has more than one person identified as promoter and one/ some of them are considering reclassification to public shareholders, and where continuing promoter(s) are not related to the outgoing promoter(s).

The detailed Consultative Paper on Revision of Provisions Pertaining to Reclassification of Shareholders released by SEBI is attached for your kind reference. Request you to please provide your inputs (if any) on the consultation paper to Ms. Kritika Bhasin, Research Officer at kritika.bhasin@phdcci.in with a cc to Dr. S P Sharma, Chief Economist at spsharma@phdcci.in and Ms. Surbhi Sharma, Associate Economist at surbhi@phdcci.in, PHD Chamber of Commerce & Industry latest by 8th August 2018.

Warm regards,

Dr. S P Sharma
Chief Economist

PHD Chamber of Commerce and Industry
PHD House, 4/2 Siri Institutional Area
August Kranti Marg, New Delhi-110016
Ph.: + 91-11-26863801-04, 49545454 Ext (135)
Fax: +91- 26855450, 49545451
Email: spsharma@phdcci.in
Website: www.phdcci.in

"We Walk Our Talk"

PHD CHAMBER OF COMMERCE AND INDUSTRY

PHD House, 4/2 Siri Institutional Area, August Kranti Marg, New Delhi - 110 016 (India) • Tel.: +91-11-2686 3801-04, 49545454, 49545400
Fax: +91-11-2685 5450 • E-mail: research@phdcci.in • Website: www.phdcci.in, CIN: U74899DL1951GAP001947

Connect with us:

