

# Creeping acquisition limit revised to ease fund infusion into listed company

Analysis of SEBI (substantial acquisition of shares and takeovers) (Amendment), Regulations, 2020 vide Notification dated 16 June 2020

17 June 2020



## ***Executive Summary:***

SEBI has amended the takeover code to increase threshold of creeping acquisition limit of Listed Target company from 5% to 10% (creeping acquisition is applicable on any person holding 25% stake or more in Listed Target company). The relaxation is applicable only in case of increase in holding is pursuant subscription of preferential issue of equity shares by Listed Target Company done during FY 2020-21

Furthermore, a consequential amendment is made to Voluntary open offer provisions, to allow person holding  $\geq 25\%$  stake to make voluntary open offer till 31 March 2021, even if they have subscribed to aforementioned preferential allotment during FY 2020-21 or acquired shares through any other mode

## Overview of Relevant Regulations

- Regulation 3(2) of SEBI Takeover code requires the shareholder acting with Person Acting in concert (PAC) holding 25% or more of the voting rights to make an Open offer in case it acquires additional shares or voting rights of Listed Company exceeding 5% of total shares or voting rights in a Financial Year.
- Regulation 6(1) of SEBI Takeover code entitles a shareholder holding 25% or more of the shares or voting rights to voluntary open offer for acquiring shares of Target Listed Co, even if it does not breach creeping acquisition limit. The First proviso to Regulation 6(1) of SEBI Takeover code prohibits Promoter acting with Person Acting in concert (PAC) to make voluntary open offer in case they have acquired shares of Listed Target Company in the preceding 52 weeks without triggering open offer.

## Amendment

- SEBI has amended takeover code by inserting an additional proviso to Regulation 3(2) of SEBI Takeover code to allow any person holding more than 25% or more stake in Listed Target Company to acquire up to 10% additional stake by subscribing to preferential allotment during FY 2020-21 without being obligated to make an open offer.
- Furthermore, SEBI has inserted an additional proviso after 1st proviso to Regulation 6(1) of SEBI Takeover code, stating that provisions of 1st proviso (prohibiting person who have bought additional stake in Listed Target Company to make voluntary open offer) shall not be applicable till 31 March 2021
- However, in all cases the increase in shareholding or voting rights is subject to Minimum public shareholding criteria of 25% (i.e. promoter stake cannot exceed beyond 75%)

## Our comments

- SEBI has relaxed creeping acquisition limit to allow promoters to infuse funds into Listed Target Company necessary to weather out the fallout of economy due to Covid
- It also provides a unique opportunity to promoters to increase their stake in the Listed Co at relatively cheaper price considering the stocks may be trading at its all-time low
- The promoter who already have acquired some stake in last 1 year without triggering creeping acquisition limit are now allowed to increase further stake in Listed Company by making voluntary open offer till 31 March 2021



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