

What's New

News Flash



August 2018

Exemption from open offer granted in case of conversion of company into LLP

Background

A private limited company ('Company'), holding 18.19% stake in a listed company as a promoter was proposing to convert its status from a private limited company to a limited liability partnership ('LLP').

An informal guidance was sought from Securities Exchange Board of India ('SEBI') on trigger of open offer under Regulation 3 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('Takeover Code') pursuant such conversion and the consequent compliances.

Relevant Takeover Code Regulations

Regulation 3(1) of the Takeover Code provides that no acquirer shall acquire shares or voting rights in a listed company which taken together with persons acting in concert ('PAC') with him entitle him to exercise 25% or more voting power unless the acquirer makes an open offer.

Regulation 10(1)(g) of the Takeover Code exempts acquisitions by way of transmission, succession or inheritance from the obligation to make an open offer.

Informal Guidance under the SEBI (Informal Guidance) Scheme, 2003

SEBI, in its informal guidance¹, observed that Regulation 3(1) would be triggered if the acquisition/transfer of shares entitles the LLP along with PACs to exercise 25% or more voting power in the listed company. However, considering the following aspects, SEBI opined that the proposed conversion would fall within the meaning of 'succession' and therefore qualify for exemption from making an open offer.

- There is no change in nature of business and control of the Company
- There is no change in control of the listed company and shareholding of the Company in the listed company will continue to remain in the LLP
- The LLP would become part of the promoter group entities holding 18.19% shares

Upon conversion, the LLP would be required to make necessary disclosures as promoter under Takeover Code, SEBI (Prohibition of Insider Trading) Regulations, 2011 and other applicable laws and prescribed compliances under Regulation 10 of Takeover Code.

The takeaways

This guidance is definitely welcome for companies who hold listed company shares and seek to convert into LLPs. We may add that the reasoning/basis for granting exemption may also be considered in case of conversion of other entity forms.

¹No. - CFD/DCR2/OW/P/2018/20660/1 dated 23 July, 2018

If your interest lies in a specific area or subject, do advise us so we can send you only the relevant alerts. For any additional information, please reach out to your PwC relationship manager or write in to [***pwctrs.knowledgemanagement@in.pwc.com***](mailto:pwctrs.knowledgemanagement@in.pwc.com)

With Best Regards
PwC TRS Team

About PwC

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 158 countries with more than 236,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com.

In India, PwC has offices in these cities: Ahmedabad, Bengaluru, Chennai, Delhi NCR, Hyderabad, Jamshedpur, Kolkata, Mumbai and Pune. For more information about PwC India's service offerings, visit **www.pwc.com/in**

PwC refers to the PwC International network and/or one or more of its member firms, each of which is a separate, independent and distinct legal entity. Please see www.pwc.com/structure for further details.

©2018 PwC. All rights reserved

Follow us on [Facebook](#), [LinkedIn](#), [Twitter](#) and [YouTube](#).

© 2018 PricewaterhouseCoopers Private Limited. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Private Limited (a limited liability company in India having Corporate Identity Number or CIN : U74140WB1983PTC036093), which is a member firm of PricewaterhouseCoopers International Limited (PwCIL), each member firm of which is a separate legal entity

Our Tax & Regulatory Services **Direct Tax** **Indirect Tax** **Transfer Pricing** **Regulatory** **M & A**
Tax Controversy and Dispute Resolution **Financial Services**

NOTE : If you wish to unsubscribe receiving communications, please send in a blank email as reply to this mail with subject line "Unsubscribe".
