

# ***SEBI permits sub-trust structure and grants exemption from making public offer***

July 26, 2018

## ***In brief***

The Securities and Exchange Board of India's (SEBI) Order<sup>1</sup> under Regulation 11 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 (Takeover Code), grants exemption from open offer process to trusts having sub-trusts as beneficiaries (sub-trust structure).

An overview of the facts, observations and ruling are provided in this Insight.

## ***In detail***

### ***Facts***

- The applicant was a private irrevocable trust ("family trust" or "applicant") seeking exemption from the applicability of Regulation 3(1) of the Takeover Code on the proposed acquisition of 49.55% stake in a listed company (target company) from an existing promoter (transferor).
- The aggregate promoter holding in the target company was 74.91%.
- The trustees of the family trust were the transferor and his wife.
- The income beneficiaries of the family trust were the transferor's wife, son and daughter (in the ratio of one third each). The corpus beneficiaries of the family trust were the trusts set up for the families of the transferor's son and daughter (hereinafter referred to as "son trust" and "daughter trust"). The ratio between the son trust and the daughter trust was 80% and 20%, respectively.
- The trustees of the son trust were the transferor, his wife and his son. The beneficiaries were the transferor's son and two grandchildren, in the ratio of 98% and 1% each, respectively.
- The trustees of the daughter trust were the transferor, his wife and daughter. The beneficiaries were the transferor's daughter and wife in the ratio of 99% and 1%, respectively.
- The transferor's wife, son and daughter, being immediate relatives, were part of the promoters group of the target company, holding 2.93%, 1.58% and 0.06% stake, respectively.
- The family trust was already a promoter of the target company, holding 15.67% stake, which was acquired from the transferor pursuant an earlier specific exemption order<sup>2</sup> of SEBI.

### ***Submissions***

- The SEBI had earlier approved exemption application for the transfer of 15.67% shares in the target company.
- The trust was for facilitating family succession and family welfare and provides safeguards for not allowing any outsider to take control of the trust or target company.
- Any change in the trustees/ beneficiaries resulting in any change in ownership or

<sup>1</sup> Order No. – WTM/ GM/ CFD/ 34/ 2018-19 dated 05 July, 2018

<sup>2</sup> Order No. – SEBI/ WTM/ SR/ CFD-DCR/ 19/ 03/ 2017 dated 24 March, 2017

control of shares or voting rights held by the family trust shall be disclosed to the concerned stock exchange, and an undertaking to that effect was given.

- The applicant submitted that the same was for the purpose of having control and flexibility of giving the benefits in the hands of the transferor and providing an appropriate succession mechanism to facilitate the smooth transition of family assets to the next generation of family members and avoid any disputes within the family in future.
- There was no change in control.
- As was evident from the pre and post-acquisition shareholding, being same, there was no acquisition of additional shares by the promoter group.
- In case of death of any of the trustees or upon delineation of rights of the beneficiaries, in view of the condition in the trust deed that only promoters

or their immediate relatives could become trustees/ beneficiaries, the control of the target company could not pass to any third person.

#### **SEBI's order**

- After considering the above, the SEBI granted the exemption, subject to the following considerations/ undertakings:
  - Only the individual promoters, their immediate relatives or their lineal descendants shall be appointed trustees/ beneficiaries of the sub-trusts.
  - SEBI regulations would apply on the basis that the ownership or control of shares or voting rights vests not only with the trustees but also indirectly with the beneficiaries.
  - There shall be no limitation of liability of the trustees/ beneficiaries in relation to the provisions of the SEBI Act/

Regulations.

- The statement/ averments made by the applicant was true and the acquirer honoured the undertakings given.
- The applicant shall comply with the disclosure requirements under the Takeover Code.
- The applicant shall get the compliance status certified, annually, from an independent auditor and file the same with the Stock Exchange and the SEBI.

#### **The takeaways**

This is a welcome decision. In the past, the SEBI had taken a strong stand of not allowing sub-trust structure; however, this decision seems to suggest a dilution in that stand.

#### **Let's talk**

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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