



SEBI issues amendments to the Listing Regulations - reclassification of promoters and additional disclosure in an annual report

20 December 2018

First Notes on

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Regulatory and other information

Disclosures

Sector

All

Banking and insurance

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Relevant to

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Audit committee

CFO

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Transition

Immediately

Within the next three months

Post three months but within six months

Post six months

Forthcoming requirement

Background

Currently, Regulation 31A of the Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) permits reclassification of promoters¹ of listed entities as public shareholders² in different scenarios, subject to the specified conditions.

The Kotak Committee on Corporate Governance in its report to SEBI³ (Kotak Committee) provided certain recommendations which were aimed towards rationalising the existing norms pertaining to professionally managed entities and to introduce a new requirement which could enable one of the multiple promoters to get reclassified as a public shareholder. However, as several concerns were raised on the recommendations, SEBI decided to revamp the existing provisions governing reclassification of promoters/classification of entities as professionally managed⁴.

Accordingly, on 24 July 2018, SEBI issued a consultative paper and proposed revision to the existing provisions of Regulation 31A of the Listing Regulations.

¹The term 'promoter' includes a person:

- Who has been named in the draft offer document/offer document or is identified by the issuer in the annual return referred to in Section 92 of the 2013 Act
- Who has control over the affairs of the issuer, directly or indirectly whether as a shareholder, director or otherwise or
- In accordance with whose advice, directions or instructions the board of directors of the issuer is accustomed to act.

However, following persons should not be deemed as a promoter:

- A director or officer of the issuer or a person, if acting as such merely in his professional capacity
- A financial institution, scheduled commercial bank, foreign portfolio investor other than category III foreign portfolio investor, mutual fund venture capital fund, alternative investment fund, foreign venture capital investor, insurance company registered with the Insurance Regulatory and Development Authority of India (IRDAI) merely by virtue of the fact that 20 per cent or more of the equity share capital of the issuer is held by such person, unless such person satisfy other requirements prescribed under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations, 2018). (*Regulation 2(1)(oo) of the ICDR Regulations, 2018*)

²The term 'public shareholding' means 'equity shares of the company held by public including shares underlying the depository receipts if the holder of such depository receipts has the right to issue voting instruction and such depository receipts are listed on an international exchange in accordance with the Depository Receipts Scheme, 2014.' (*Regulation 2(e) of the Securities Contracts (Regulation) Rules, 1957*)

³Report of the Committee on Corporate Governance issued by SEBI on 5 October 2017.

⁴SEBI memorandum issued in April 2018

New development

On 16 November 2018, SEBI issued amendments to the Listing Regulations which, *inter alia*, provide revised norms relating to reclassification of promoters/public.

The amendments are effective from 16 November 2018.

This issue of First Notes aims to provide an overview of the amendments made by SEBI to the Listing Regulations.

The amendments can be categorised in the following areas:



Overview of the amendments

Revised norms relating to reclassification of promoters

- **Uniform conditions for reclassification:** Currently, Regulation 31A of the Listing Regulations specifies certain conditions for reclassification of promoters of a listed entity as public shareholders in different scenarios including:
 - a) When a new promoter replaces the previous promoter subsequent to an open offer or in any other manner
 - b) Where an entity becomes professionally managed and does not have any identifiable promoters.

Amendment

The amendments provide a single set of conditions which would be applicable to all situations of reclassification of promoter/person belonging to the promoter group as public. These conditions are as follows:

- a) *Compliant promoter(s) seeking reclassification⁵/ persons related to the promoter(s) seeking reclassification⁶:* The promoter(s) and persons related to the promoter(s) seeking

reclassification as public should not:

- i. Hold together, more than 10 per cent of the total voting rights in the listed entity
- ii. Exercise control (directly or indirectly) over the affairs of the listed entity
- iii. Have any special rights with respect to the listed entity through formal or informal arrangements including through any shareholder agreements
- iv. Be represented on the Board of Directors (BoD) (including by way of a nominee director) of the listed entity
- v. Act as a key managerial person in the listed entity
- vi. Be a willful defaulter as per the Reserve Bank of India (RBI) guidelines
- vii. Be a fugitive economic offender⁷.

⁵'Promoter(s) seeking reclassification' means all such promoters/persons belonging to the promoter group seeking reclassification of status as public.

⁶'Persons related to the promoter(s) seeking reclassification' means such persons with respect to that promoter(s) seeking reclassification who fall under Regulation 2(1)(pp)(ii), (iii) and (iv) of the ICDR Regulations, 2018.

⁷'Fugitive economic offender' means an individual who is declared a fugitive economic offender under Section 12 of the Fugitive Economic Offenders Act, 2018.

b) *Subsequent compliance:* Once reclassified as public, the promoter(s) seeking reclassification is required to ensure compliance with the conditions specified in point (i), (ii) and (iii) above at all times from the date of such reclassification. Further, it should be in compliance with the conditions specified in point (iv) and (v) above for a minimum period of three years from the date of reclassification.

If the promoter(s) fails to comply with them, then he/she would be automatically reclassified as promoter/persons belonging to the promoter group, as the case may be.

c) *Compliant listed entities:* A listed entity is required to comply with the following conditions to be eligible to apply for reclassification:

- i. It is in compliance with the minimum public shareholding requirement as required under Regulation 38 of the Listing Regulations
- ii. Its shares have not been suspended from trading by the stock exchanges
- iii. It does not have any outstanding dues to SEBI, the stock exchanges or the depositories.

- **Process for reclassification:** Currently, an application for reclassification of a promoter as a public shareholder could be filed **either by the listed entity or concerned shareholder** to the stock exchange. Also, there is no specific requirement for the promoter to apply for reclassification through the listed entity.

Amendments

The amendments specifically provide that the status of any person as a promoter or public would be permitted by the stock exchanges only upon receipt of an application from the **listed entity**.

Accordingly, an application for reclassification should be made by a listed entity to the stock exchanges not later than 30 days from the date of approval of the shareholders in the general meeting.

The amendments require a listed entity to comply with a prescribed procedure before making such application to the stock exchange. The procedure is as follows:

a) *Request by promoter(s) seeking reclassification:* A request for reclassification has been made by the promoter(s) seeking reclassification to the listed entity. The request should be accompanied by the rationale for seeking such reclassification and how it has complied with the conditions stipulated in point (a) above (refer section 'compliant promoter(s) seeking reclassification/persons related to the promoter(s) seeking reclassification').

b) *Analysis of request by the BoD:* The listed entity is required to place the request for reclassification from promoter(s) before its BoD. The BoD of the listed entity should analyse the request and provide its views.

Additionally, a listed entity would be required to ensure a time gap of minimum three months and maximum of six months between the date of board meeting and the shareholders' meeting that would consider the request of the promoter(s) seeking reclassification.

c) *Approval by shareholders:* The listed entity is required to place the request for reclassification from promoter(s) before the shareholders for their approval in the general meeting along with the views of the BoD on the request.

The shareholders can approve the request through an ordinary resolution. However, the promoter(s)/person(s) related to the promoter(s) would not be allowed to vote on such a resolution.

- **Listed entities with no promoters:** Currently, Regulation 31A of the Listing Regulations specifies conditions to be complied by a listed entity to be classified as 'professionally managed'.

Amendment

The revised Regulation 31A of the Listing Regulations provides that a listed entity would be considered as a 'listed entity with no promoters' if due to reclassification or otherwise, the entity does not have any promoter. No additional conditions have been prescribed for classification of such entities unlike the present regulation.

- **Disclosure of material events:** The amendments require disclosure of certain events by a listed entity to the stock exchanges as *material* events not later than 24-hours from the occurrence of such event. These are as follows:
 - a) Receipt of request for reclassification from the promoter seeking reclassification by the listed entity
 - b) Minutes of board meeting considering such request which would include the views of the BoD on the request
 - c) Submission of application for reclassification of status as promoter/public by the listed entity to the stock exchanges
 - d) Decision of the stock exchanges on such application as communicated to the listed entity.

- **Applicability of reclassification provisions in case of transfer of shares by way of transmission/succession/inheritance/gift:** The amendments provide certain clarifications in case of transfer of shares (held by a promoter/person belonging to the promoter group) by way of transmission/succession/inheritance/gift. These are as follows:

- a) The recipient of such shares would be classified as a promoter/person belonging to the promoter group immediately on such event
- b) In case the recipient (currently classified as a promoter/person belonging to the promoter group) subsequently proposes to seek reclassification of status as public, it could do so, subject to compliance with the conditions specified above (refer section 'uniform conditions for reclassification')
- c) In case of death of a promoter/person belonging to the promoter group, such person would automatically cease to be included as a promoter/person belonging to the promoter group.

- **Other existing conditions:** The following existing conditions would continue under the revised framework for reclassification:

- a) *Conditions for reclassification of public shareholders as promoters:* If any public shareholder seeks to reclassify itself as a promoter, it would be required to make an open offer in accordance with the provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SEBI Takeover Regulations).
- b) *Relaxations for listed entities where insolvency proceedings have been initiated:* Companies whose resolution plans have been approved under Section 31 of the Insolvency and Bankruptcy Code, 2016 would not be required to comply with the specified conditions relating to reclassification (refer section 'uniform conditions for reclassification'). This is subject to the condition that such promoter(s) seeking reclassification should not remain in control of the listed entity.

Currently, such entities are required to provide disclosure of reclassification along with the underlying rationale to the stock exchanges within one day of the resolution plan being approved. However, under the revised norms, such entities would be required to disclose the following within 24-hours of the occurrence of these events:

- i. Submission of application for reclassification of status as promoter/public by the listed entity to the stock exchanges and
- ii. Decision of the stock exchanges on such application as communicated to the listed entity.

Additional disclosure in an annual report

Schedule V to the Listing Regulations prescribe disclosures to be provided under respective sections of an annual report by a listed entity.

Amendment

The amendments to the Listing Regulations require that every listed entity should provide disclosures in relation to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in the corporate governance section ('other disclosures') of the annual report. The disclosures are as follows:

- a) Number of complaints filed during the financial year
- b) Number of complaints disposed of during the financial year
- c) Number of complaints pending as on end of the financial year.

Clarification for documentations in case of transmission of securities

Schedule VII to the Listing Regulations comprises of procedural requirements to be complied by a listed entity while making a transfer of securities. Schedule VII, *inter alia*, specifies additional documentations required in case of transmission of securities.

Amendment

Certain amendments have been made to the provisions relating to documentations required in case of transmission of securities held in single name without a nominee. These amendments are as follows:

- a) An affidavit from **all legal heirs** would be required on an appropriate non-judicial stamp to the effect of identification and claim of legal ownership to the securities.

However, it has been clarified that in case, the legal heir(s)/claimant(s) is named in the succession certificate/probate of will/will/letter of administration, an affidavit from such legal heir(s)/claimant(s) alone would be sufficient.

- b) Additionally, in case the value of securities is up to INR2 lakh per listed entity as on the date of application for transmission of securities, a succession certificate/probate of will/will/letter of administration/court decree, as may be applicable in terms of Indian Succession Act, 1925 could be submitted. If such documents are not available then, other prescribed documents such as no objection certificate or an indemnity bond could be submitted.

Process for application for relaxation from provisions of Listing Regulations

Currently, SEBI could allow relaxation to a listed entity from enforcement of any provision of the Listing Regulations in the interest of investors/securities market and development of securities market subject to certain conditions.

Amendment

The amendments to the Listing Regulations provide the manner of making an application for such relaxation. According to it, a listed entity seeking relaxation from any of the provisions of the Listing Regulations should make an application to SEBI along with the details and the grounds on which such relaxation has been sought. Such an application should be accompanied by a non-refundable fee of INR1 lakh.

Our comments

The SEBI continues to address the concerns raised by the Kotak Committee. The notification of the revised norms relating to reclassification of promoters is a step in the right direction which is expected to ensure transparent and better corporate governance.

Some of the key points to be considered are as follows:

Reclassification of promoters

- **Revised definition of promoter group:** It is to be noted that the term 'promoter group' under the Listing Regulations has been assigned the same meaning as referred in the ICDR Regulations, 2018. The ICDR Regulations, 2018 incorporates a revised definition of promoter group. As per the revised definition, 'promoter group' includes:
 - a) The promoter
 - b) An immediate relative of the promoter
 - c) In case promoter is a *body corporate*:
 - i. A subsidiary or holding company of such body corporate
 - ii. Any body corporate in which the promoter holds 20 per cent or more (earlier 10 per cent or more) of the equity share capital and/or any body corporate which holds 20 per cent or more (earlier 10 per cent or more) of the equity share capital of the promoter
 - iii. Any body corporate in which a group of individuals or companies or combinations thereof acting in concert, which hold 20 per cent or more (earlier 10 per cent or more) of the equity share capital in that body corporate and such group of individuals or companies or combinations thereof also holds 20 per cent or more (earlier 10 per cent or more) of the equity share capital of the issuer and are also acting in concert.
 - d) In case promoter is an *individual*:
 - i. Any body corporate in which 20 per cent or more (earlier 10 per cent or more) of the equity share capital is held by the promoter, an immediate relative of the promoter or a firm or Hindu Undivided Family (HUF) in which the promoter or any one or more of their relative is a member
 - ii. Any body corporate in which a body corporate as provided in (i) above holds 20 per cent or more (earlier 10 per cent or more) of the equity share capital and
 - iii. Any HUF or firm in which the aggregate share of the promoter and their relatives is equal to or more than 20 per cent of the total capital (earlier 10 per cent or more)
 - e) All persons whose shareholding is aggregated under the heading 'shareholding of the promoter group'.

Accordingly, in case a promoter has less than 20 per cent of the equity share capital/total capital of the above mentioned entities, then such entities may not qualify as part of a promoter group.

- **Single set of conditions for all scenarios of reclassification:** The amendments provide a single set of conditions which would be applicable to all situations of reclassification of promoters including reclassification of a single promoter, where there are multiple/distinct promoters in a listed entity.
- **Subsequent compliance:** It is to be noted that revised Regulation 31A of the Listing Regulations specifically provides that, once reclassified, the promoter seeking reclassification (including persons belonging to the

Our comments (cont.)

promoter group) would have to comply with certain conditions for a minimum period of three years. These are as follows:

- a) They should not be represented on the BoD (including by way of a nominee director) of the listed entity and
- b) They should not act as key managerial person in the listed entity.

However, they need to ensure compliance at all times with the following conditions:

- a) Not to hold more than 10 per cent of the total voting rights in the listed entity
 - b) Do not exercise control (directly or indirectly) over the affairs of the listed entity
 - c) Do not have any special rights with respect to the listed entity through formal or informal arrangements including through any shareholder agreements.
- **Control:** Another condition requires that the promoter(s) and persons related to the promoter(s) seeking reclassification as public should not exercise control over the affairs of the listed entity directly or indirectly. As per Regulation 16(1)(a) of the Listing Regulations, the term 'control' would have the same meaning as defined in Regulation 2(e) of the SEBI Takeover Regulations.

As per the SEBI Takeover Regulations, 'control' includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner. Additionally, it provides that a director or officer of a target entity should not be considered to be in control over such target company, merely by virtue of holding such position.

The definition of control under Indian Accounting Standards (Ind AS) is different from SEBI's definition. However, the definition of control under the SEBI Takeover Regulations and Ind AS are both principle-based and not rule based. The Ind AS definition of control lays emphasis on exercising judgement while assessing the facts and circumstances to determine control. Accordingly, listed entities would be required to apply a holistic approach to analyse the facts and circumstances of each case to conclude whether the control principles are being met under Ind AS and the SEBI Takeover Regulations.

- **Listed entities with no promoters:** Currently, Regulation 31A prescribe conditions for a listed entity to be eligible to qualify as '*professionally managed*'. One of the conditions specifically requires that a person or group along with persons acting in concert taken together should not hold more than *one per cent of the paid-up equity capital* of the entity including any holding of convertibles/outstanding warrants/depository receipts.

The amendments have replaced the term 'professionally managed' with a new term '*listed entity with no promoters*'. Additionally, since single set of conditions have been made applicable for all cases of reclassification, therefore, the current threshold to be eligible to be classified as a professionally managed entity (i.e. holding of a person or group in the said entity should not be more than one per cent of the paid-up equity capital) gets replaced by *10 per cent of the voting rights*. This is expected to allow the shareholders (no more promoters due to reclassification) with voting rights up to 10 per cent to be continued to qualify as public.

- **Restriction on voting:** The amendments require that in all cases of reclassification of promoters (including the views of the BoD) would be required to be placed by a listed entity before the shareholders in a general meeting and approved through an ordinary resolution. However, to avoid conflict of interest, it has been clarified that the promoter(s)/person(s) related to the promoter(s) would not be allowed to vote on such a resolution.

It is to be noted that the Companies (Amendment) Act, 2017 has permitted a related party (who is a member) to vote on a resolution of a company to approve a contract/arrangement entered into by the company in which 90 per cent or more members are relatives of promoters or are related parties. However, no such relaxation has been provided in the amendments to the Listing Regulations.

- **Disclosure of material events:** The amendments specify disclosures of certain events as material events to the stock exchanges. The disclosures are to be made within 24-hour from the occurrence of such events. Such disclosures, *inter alia*, includes receipt of request for reclassification from the promoter seeking reclassification and submission of application for reclassification to the stock exchanges. This is expected to expedite the process of reclassification along with ensuring transparency in the process.

Our comments (cont.)

- **Relaxations where insolvency proceedings have been initiated:** It is to be noted that the existing relaxation from the conditions of reclassification of a promoter/promoter group in case, the reclassification is pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016, would continue. However, a listed entity would need to ensure that the promoter/promoter group seeking reclassification is not in control of the listed entity.

The current requirement to disclose about such reclassification along with the underlying rationale to the stock exchanges within one day of the approval of the resolution plan has not been carried forward under the revised norms. Instead, such entities would be required to disclose the following as material events to the stock exchanges within 24-hours of occurrence of the event:

- a) Submission of application for reclassification of status as promoter/public by the listed entity to the stock exchanges
- b) Decision of the stock exchanges on such application as communicated to the listed entity.

Additional disclosure in an audit report

The amendments have added a disclosure to be made in the corporate governance section of an annual report of every listed entity. The disclosure relates to number of complaints filed, disposed and pending under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The bottom line

Listed entities should carefully consider the revised requirements, in particular the revised norms relating to reclassification of promoters, as they are expected to necessitate a relook of an entity's present process of reclassification.



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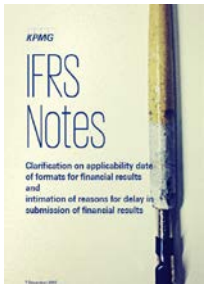
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Clarification on applicability date of formats for financial results and intimation of reasons for delay in submission of financial results

7 December 2018

Schedule III to the Companies Act, 2013 (2013 Act) provides general instructions for presentation of financial statements of a company under both Accounting Standards (AS) and Indian Accounting Standards (Ind AS).

This issue of IFRS Notes provides insights on clarification issued by the National Stock Exchange of India Limited (NSE) and the BSE Limited (BSE) regarding applicability date of the notification on amendments to Schedule III (issued on 11 October 2018). Additionally, the IFRS Notes highlights SEBI's requirement regarding intimation of reasons for delay in submission of financial results.

Missed an issue of Accounting and Auditing Update or First Notes



Issue no. 28 – November 2018

The topics covered in this issue are:

- IFRS 16, *Leases*: Impact on the IT sector
- Impact of the new revenue standard on the healthcare sector
- Accounting for goodwill under Ind AS
- Classification of financial instruments with prepayment features
- Regulatory updates.



NFRA Rules notified

13 December 2018

The Ministry of Corporate Affairs (MCA) appointed 1 October 2018 as the date of constitution of the NFRA.

On 13 November 2018, MCA notified the National Financial Reporting Authority (NFRA) Rules, 2018 (the Rules) and these are effective from 14 November 2018. These Rules lay down the procedure for NFRA to monitor and enforce compliance with both accounting and auditing standards, oversee the quality of service and undertake investigation of the auditors of the companies and bodies corporates that are governed by NFRA.

This edition of First Notes contains a brief summary of the Rules.



Voices on Reporting

KPMG in India is pleased to present Voices on Reporting – a series of knowledge sharing calls to discuss current and emerging issues relating to financial reporting.

In a special session held on 12 December 2018, we discussed significant impact areas of Ind AS 115, *Revenue from Contracts with Customers* and IFRS 16, *Leases* on transport, leisure and sports sector.

Click here to access the [audio recording](#) (mp3) and [presentation](#) (pdf).

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