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# TAKEOVER REGULATIONS AMENDED TO EASE PROMOTER CONSOLIDATION

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The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations) have been amended, effective 16 June 2020, to grant certain significant relaxations to promoters looking to consolidate their holding in Indian listed companies (ListCos). These are:

- ***Increase in creeping acquisition limit***: Promoters are now permitted to increase their stake in ListCos by up to 10% (increased from the earlier limit of 5%) during financial year 2020-21, without triggering the obligation to launch a mandatory open offer for an additional 26% stake. To avail of such relaxation, the underlying acquisition (beyond 5% and up to 10%) must be through a preferential issue of equity shares – ie through a primary infusion of capital in the ListCo.

- ***Removal of restrictions on voluntary open offer***: The restriction on making a voluntary open offer if shares of a ListCo were acquired in the preceding fifty-two weeks has been temporarily suspended till 31 March 2021. Accordingly, Promoters are now entitled to launch a voluntary open offer to acquire 10% or more stake from public shareholders, even if such promoter has acquired ListCo shares in the preceding fifty-two weeks.

## Key considerations

While the relaxations granted by SEBI are likely to aid and uplift the languishing state of equity markets, a few important nuances are worth considering:

***Eligible Promoters***: The increased creeping acquisition limit is available only to promoters (who together with persons acting in concert (**PAC**)) already hold 25% or more shares in the ListCo. Though this is the norm in most cases, there may be instances where promoters (together with PAC) hold less than 25%.

***Eligible Securities:*** To avail of the increased creeping acquisition limit, the underlying acquisition by the Promoter must be through preferential issue of equity shares – accordingly, a strict reading suggests that the primary infusion can only be through equity shares (to the exclusion of convertible securities). Though it is unclear whether preferential issue of convertible securities which convert into equity shares within FY 2020-21 would qualify for the above benefit – an argument may however be made that convertible securities hardwired with mandatory conversion within the FY are eligible.

***Eligible Non-promoters***: Though in practice the relaxation on voluntary open offers may be useful primarily to promoters, in theory, this relaxation is available to any shareholder who (together with PAC) holds 25% or more stake in a ListCo.

***Pricing***: No relaxation or leeway has been granted with respect to pricing, and the regular pricing metrics prescribed under the Takeover Regulations would continue to apply.

## Conclusion

The relaxation granted by SEBI is expected to play a significant role in stabilizing funding requirements of ListCos, and at the same time grant promoters an opportunity to consolidate their holding through primary and secondary acquisitions. While there is ambiguity in the nature of securities and the absence of any pricing relaxation may be a dampener, overall this appears to be a move in the right direction.

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