



Sep 08, 2017

PR No.: 56/2017

Acquisition of 'control' under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

Ascertaining acquisition of 'control' under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Regulations") requires consideration of facts and circumstances of each case. This results in a multitude of opinions. In view of the same, it was decided by the Board, in its meeting held on March 12, 2016, to explore adoption of bright-line tests for acquisition of 'control' under the Takeover Regulations.

In this regard, a discussion paper was issued on March 14, 2016 seeking public comments on certain proposals contained therein.

A number of comments from various stakeholders including industry bodies, intermediaries, advocates and investors were received. A mixed response has been received wherein no particular option has garnered overwhelming support amongst the stakeholders. SEBI also had the benefit of the views of the Ministry of Corporate Affairs and the Reserve Bank of India in this regard.

The Ministry of Corporate Affairs and few other stakeholders have opined that changing the current definition of 'control' may reduce the regulatory scope and may be prone to abuse and that the current definition of 'control' may not be changed and it would be more appropriate to take decisions on a case-to-case basis.

It is also noted that the Justice Bhagwati Committee which was constituted in the year 1995 to review the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994, had recommended a broad definition of control and opined that it should be left to SEBI to decide whether there has been an acquisition of control on the basis of facts of each case. The Takeover Regulations Advisory Committee (TRAC), in its report dated July 19, 2010 also reiterated the view of Justice Bhagwati Committee.

It is felt that any change or dilution in the definition of control would have far reaching consequences since a similar definition of 'control' is used in the Companies Act, 2013 and other laws.

The relevant issues have been examined intensively and in view of the aforesaid comments received and considering the current regulatory environment, it has been decided to continue with the practice of ascertaining acquisition of 'control' as per the extant definition in the Takeover Regulations.