



Exemption from the applicability of Open Offer Obligations as envisaged under SEBI Takeover Regulations

– Contributed by CS Ruchi Hans, Associate, Corporate Professionals Capital (P) Ltd., New Delhi

E-mail : ruchi@indiacp.com

Regulation 3 and Regulation 4 of the SEBI Takeover Regulations deals with the provisions relating to the exemption from the applicability of regulation 10, 11 and 12 i.e. from the open offer obligations. Regulation 3 provides the automatic exemption to the acquirer from complying with provision of regulation 10, 11 and 12 of the SEBI Takeover Regulations. However, the exemption as provided under regulation 3 is subject to the compliance with the conditions as prescribed under the said regulation. It is noteworthy to mention here is that regulation 3 provides the exemption only from the requirement of making the open offer as required under regulation 10, 11 and 12 and not from the requirement of making the disclosure as requisite under regulation 6, 7 and 8.

On the other hand; cases which do not fall under regulation 3 are governed by regulation 4 for which the acquirer is required to make an application to the Takeover Panel. Further, the acquirer is required to make an application before the actual acquisition

Regulation 3	Regulation 4
No application to the takeover panel	Application to the takeover panel
Automatic exemption	Exemption subject to the discretion of the takeover panel
Compliance with the condition as may be prescribed under regulation 3.	Compliance with the condition as provided under the exemption order.
Post acquisition compliance to be made except the prior intimation under regulation 3(3)	Exemption to be sought before acquisition of shares.

In this article, we are covering Regulation 3(1) (e) of the SEBI Takeover Regulations i.e. Inter Se transfer of shares and Regulation 4 i.e. exemption from the Takeover Panel

Regulation 3(1) (e) of the SEBI Takeover Regulations provides the automatic exemption from the provisions of regulation 10, 11 and 12 where the acquisition of shares has been made through inter se transfer that is to say acquisition through inter se transfer is not subject to open offer if it complies with the conditions specified in the said sub regulation. The provision of regulation 3(1) (e) of the SEBI Takeover Regulations are interpreted below :

- i. **Group coming within the definition of group as defined in the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) where persons constituting such group have been shown as group in the last published Annual Report of the target company;**

The transferor as well as transferee should come within the ambit of group as defined under MRTPA Act and must have been shown as group in the last published Annual Report of the Target Company.

The exemption is available by complying with the following formalities:

- The benefit of exemption will be available subject to such transferor(s) and transferee(s) having complied with regulation 6, regulation 7 and regulation 8 of the SEBI Takeover Regulations.
- In case the proposed transaction exceeds 5% of the voting share capital of the company, the acquirers have to, for the intimation of public, notify the details of the proposed transaction at least 4 working days in advance of the date of the proposed transaction to the stock exchanges where the shares of the Company are listed. [Regulation 3(3) of SEBI Takeover Regulations]

Example : The companies M/s XYZ Ltd & M/s ABC Ltd are coming in the definition of group as defined in MRTPA Act, 1969. The present paid up equity capital of a Company is 1,00,000 shares. M/s XYZ & M/s ABC Ltd both presently holds 25000 shares each amounting to 25% of the voting capital. M/s ABC intends to acquire further 15000 shares from M/s XYZ Ltd. Here the proposed transaction comes under the category of inter se transfer between groups. The shareholding of M/s ABC Ltd will increase from 25% to 40% i.e. (25000 shares to 40000 shares). This transaction requires the compliance of Regulation 3(3) as it is beyond the prescribed limit under the regulation. The acquirer has to give intimation to the stock exchange where the shares of the target company are listed at least 4 days before the proposed acquisition.

- The acquirer is further required to file a report within 21 days of the date of acquisition to the Securities & Exchange Board of India (SEBI) giving all details in respect of acquisitions. Though the regulation specifies a limit of 15% or more of the voting rights in a company but the limit is of no use as the exemption under the said regulation 3 is sought by the persons who have already crossed the limit of 15%. Further the compliance under regulation 3(4) is not a one-time compliance. The acquirer has to file a report within 21 days of the date of acquisition every time he claims exemption under this regulation. [Regulation 3(4) of SEBI Takeover Regulations]
 - The acquirer has to along with the report under regulation 3(4) deposit fees of Rs 25,000/- to the Board either by a bankers cheque or demand draft in favour of Securities & Exchange Board of India. [Regulation 3(5) of SEBI Takeover Regulations]
 - In case of warrants or any other security convertible into equity shares at a later date, Regulation 3(3) and 3(4) has to be complied with reference to the date of actual conversion into shares. In other words, the acquirer has to at least 4 working days in advance of the date of conversion of warrants/any other security convertible into equity shares, notify the details to the stock exchanges as required under regulation 3(3).
 - The acquirer and seller have to comply with Regulation 7 & 8 as the regulation does not relieve the acquirer from complying with disclosure requirements.
- iii. **Inter se transfer of shares amongst**
 - a) Qualifying Indian promoters and foreign collaborators who are shareholders
 - b) Qualifying Promoters

convertible into equity shares, notify the details to the stock exchanges as required under regulation 3(3).

- The acquirer and seller have to comply with Regulation 7 & 8 as the regulation does not relieve the acquirer from complying with disclosure requirements.
- ii. **Inter se transfer of shares amongst relatives within the meaning of section 6 of the Companies Act, 1956 (1 of 1956);**

The inter se transfer of shares between relatives as mentioned in Schedule IA provided in the companies Act is also exempted from the open offer obligations. However, the acquirers have to comply with the following :

The exemption is available by complying with the following formalities -

- The benefit of exemption will be available subject to such transferor(s) and transferee(s) having complied with regulation 6, regulation 7 and regulation 8 of SEBI Takeover Regulations.
- In case the proposed transaction exceeds 5% of the voting share capital of the company, the acquirers have to, for the intimation of public, notify the details of the proposed transaction at least 4 working days in advance of the date of the proposed transaction to the stock exchanges where the shares of the Company are listed. [Regulation 3(3) of SEBI Takeover Regulations]
- The acquirer is further required to file a report within 21 days of the date of acquisition to the Securities & Exchange Board of India (SEBI) giving all details in respect of acquisitions where the shareholding of the acquirer taken together with shares or voting rights, if any, held by him or by persons acting in concert with him would entitle such person to exercise 15% or more of the voting rights in a company. [Regulation 3(4) of SEBI Takeover Regulations]
- The acquirer has to along with the report under regulation 3(4) deposit fees of Rs 25,000/- to the Board either by a bankers cheque or demand draft in favour of Securities & Exchange Board of India. [Regulation 3(5) of SEBI Takeover Regulations]
- In case of warrants or any other security convertible into equity shares at a later date, Regulation 3(3) and 3(4) has to be complied with reference to the date of actual conversion into shares. In other words, the acquirer has to at least 4 working days in advance of the date of conversion of warrants/any other security convertible into equity shares, notify the details to the stock exchanges as required under regulation 3(3).
- The acquirer and seller have to comply with Regulation 7 & 8 as the regulation does not relieve the acquirer from complying with disclosure requirements.

iii. **Inter se transfer of shares amongst**

- a) Qualifying Indian promoters and foreign collaborators who are shareholders
- b) Qualifying Promoters

