

SEBI issues exemption application format under takeover code

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Securities and Exchange Board of India (SEBI) has been empowered by Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, to grant exemption from the obligation to make an open offer for acquiring shares, as set out under the code. Under Regulation 11(3) of the takeover code, an acquirer that seeks an exemption from the open offer obligation must file an application with SEBI, supported by a duly sworn affidavit and providing details of the proposed acquisition along with the grounds on which the exemption is sought.

SEBI in its circular dated 22 December 2017, prescribed a standard format for filing such an application, so as to ensure uniformity of the disclosures made in the applications.

Under the standard format, instructions for making of the application are provided, followed by a set of general details required in respect of the acquirer/persons acting in concert with the acquirer and in relation to the application/any past applications made by such persons. Thereafter, details required in relation to the target company are set out, including its basic, financial and listing related details, and the minimum offer price of the shares of the target company, in accordance with Regulation 8 of the takeover code (taking the date of the application as the reference date) considering all the parameters laid down (depending upon the frequency of trading in shares of the target company). Further details required in respect of the proposed acquisition, including the shareholding pattern of the target company (before and after the proposed transaction), change of control related details, and the grounds on which the exemption is sought, are also set out.

The schedule to the circular provides guidance for the purposes of cases involving a trust as the acquirer, based on past cases where the exemption had been granted/considered by the takeover panel (a panel of experts constituted in accordance with the takeover code provisions). The schedule clarifies that the takeover panel and SEBI will continue to scrutinise exemption applications based on the conditions set out on a case to case basis, and that while such conditions/undertakings are broad and general in nature, compliance shall not guarantee automatic exemption from open offer.

The business law digest is compiled by Nishith Desai Associates (NDA). NDA is a research-based international law firm with offices in Mumbai, New Delhi, Bengaluru, Singapore, Silicon Valley and Munich. It specializes in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner.