

M&A Hotline

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SEBI AMENDS APPROVAL REQUIREMENTS FOR CHANGE IN CONTROL AND OWNERSHIP OF INTERMEDIARIES

- SEBI issued a circular on March 26, 2021, laying down the framework for transfer of business and change of control.
- The circular provides clarifications for unlisted body corporate intermediaries, proprietary firms, and partnership firms regarding the transfer of shareholdings among immediate relatives and the transmission of shareholdings.
- The circular also mandates the shareholders/ entities becoming part of the controlling interest of the intermediary to satisfy the fit and proper criteria.

INTRODUCTION

On December 27, 2024, the Securities and Exchange Board of India ("SEBI") had issued a circular¹ ("2024 Circular") to clarify the regulatory framework concerning the transfer of shareholding among relatives and transmission of shareholding of the intermediaries², including Investment Advisers ("IAs"), Research Analysts ("RAs"), and Know Your Customer Registration Agencies ("KRAs").

BACKGROUND

SEBI issued a circular on March 26, 2021³ laying down the framework for transfer of business by an intermediary. According to the circular, any transfer of business from a SEBI registered entity (the transferor) to another legal entity (the transferee) necessitates that the transferee secure fresh SEBI registration in the same capacity before the transfer, provided they are not already registered in that capacity. This requirement applies to change in control arising from both regulatory and non-regulatory processes. The circular also provides that the transferee will be granted the same registration number, post the transfer of business.

Further, SEBI had also issued a circular on March 25, 2021 ("2021 Circular")⁴, to provide the regulatory framework for change in control and the scenarios wherein the prior approval of SEBI will be required for change in control. The 2024 Circular has been in line with the 2021 Circular.

CLARIFICATIONS ON CHANGE IN CONTROL

The 2024 Circular provides specific clarifications for unlisted body corporate intermediaries, proprietary firms, and partnership firms regarding the transfer of shareholdings among immediate relatives and the transmission of shareholdings. The summary of the 2024 Circular is provided below.

A. Unlisted Body Corporate Intermediaries

For unlisted body corporate intermediaries, SEBI has clarified that the transfer of shareholdings among immediate relatives or through transmission does not constitute a change in control. The term "immediate relative" shall be as construed as defined under Regulation 2(1)(l) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011⁵. This definition includes the spouse of the person, any parent, brother, sister, or child of the person, or the spouse's parent, brother, sister, or child.⁶

B. Proprietary Firm Intermediaries

In the case of proprietary firms, SEBI has taken a different approach. The transfer of business/capital through transmission to another individual represents a fundamental change in the legal structure or ownership of the firm. As such, this is considered a deemed change in control. SEBI mandates that the transferee or legal heir must obtain prior approval and subsequently secure fresh registration in their name.⁷

C. Partnership Firm Intermediaries

For partnership firms, SEBI has provided varied guidelines depending on the firm's structure and the nature of the ownership transfer⁸:

- Firms with more than two partners:** Inter-se transfer of ownership interests among the partners in firms shall not constitute a change in control.

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■ **Firms with two partners:** In firms with only two partners, the death of one partner would lead to the dissolution of the partnership. However, if a new partner is inducted, such induction would constitute as change in control and would require SEBI's prior approval and fresh registration.

- **Transmission of ownership:** SEBI also addresses the scenario wherein the partnership deed contains a clause allowing the legal heirs of a deceased partner to be admitted as partners. In such cases, since the partnership firm is reconstituted, the transmission of ownership to legal heirs shall not be considered as change in control.

Finally, the 2024 Circular also mandates the shareholders/ entities becoming part of the controlling interest of the intermediary to satisfy the fit and proper criteria.⁹

ANALYSIS

The 2024 Circular provides critical clarity by distinguishing between substantive control changes and mere ownership transfers within family or partnership structures. For unlisted body corporates, the exclusion of share transfers among immediate relatives from the definition of 'change in control' simplifies the compliance requirement while respecting the underlying principle that familial transfers do not typically alter the entity's operational control. This reflects a pragmatic approach that reduces regulatory burdens without compromising oversight, aligning with broader corporate governance norms.

In contrast, the strict requirements for proprietary and certain partnership firms highlight SEBI's focus on preserving the legal and operational continuity of intermediaries. By mandating fresh registration and prior approval for ownership changes in these entities, SEBI ensures that control transitions are rigorously scrutinized to maintain market integrity. The applicability of the fit and proper criteria further reinforces this by ensuring that new controllers meet the requisite standards of competence and integrity, thereby, safeguarding investor interests and maintaining confidence in the regulatory framework.

CONCLUSION

The 2024 Circular provides critical clarifications to ensure consistency and compliance with regulatory requirements. By addressing the nuances of change in control for unlisted body corporate intermediaries, proprietary firms, and partnership firms, SEBI has provided a clear framework for managing shareholding changes within these entities. The emphasis on fit and proper criteria, dissemination, and immediate implementation further reinforces SEBI's commitment to maintaining the integrity and transparency of the intermediary sector.

Overall, these clarifications are a significant step towards streamlining the regulatory process for shareholding changes, reducing the compliance burden on intermediaries, and safeguarding the interests of investors and other stakeholders.

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You can direct your queries or comments to the relevant member.

¹SEBI Circular, Prior approval for change in control: Transfer of shareholdings among immediate relatives and transmission of shareholdings and their effect on change in control, December 27, 2024, available at https://www.sebi.gov.in/legal/circulars/dec-2024/prior-approval-for-change-in-control-transfer-of-shareholdings-among-immediate-relatives-and-transmission-of-shareholdings-and-their-effect-on-change-in-control_90213.html.

²Section 2 (g) of the SEBI (Intermediaries) Regulations, 2008.

³SEBI Circular, Transfer of business by SEBI registered intermediaries to other legal entity, March 26, 2021, available at https://www.sebi.gov.in/legal/circulars/mar-2021/transfer-of-business-by-sebi-registered-intermediaries-to-other-legal-entity_49678.html.

⁴SEBI Circular, Prior Approval for Change in control: Transfer of shareholdings among immediate relatives and transmission of shareholdings and their effect on change in control, March 25, 2021, available at https://www.sebi.gov.in/legal/circulars/mar-2021/prior-approval-for-change-in-control-transfer-of-shareholdings-among-immediate-relatives-and-transmission-of-shareholdings-and-their-effect-on-change-in-control_49663.html.

⁵SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, available at https://www.sebi.gov.in/legal/regulations/nov-2024/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-regulations-2011-last-amended-on-november-28-2024-_89272.html.

⁶Paragraph 1 of the 2024 Circular.

⁷Paragraph 2 of the 2024 Circular.

⁸Paragraph 3 of the 2024 Circular.

⁹As outlined in Schedule II of SEBI (Intermediaries) Regulations, 2008, available at <https://www.sebi.gov.in/vc/schedule2.pdf>.

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