

Regulatory Spotlight on Identification of Promoters

Indian regulations broadly define the term Promoter to include a person who is in "control" of a company, directly or indirectly, or on whose advice, directions, or instructions the board of directors is accustomed to act. "Control" is defined with reference to the right to appoint a majority of the directors or the right to control the management or policy decisions or affairs of a company; however, there is no specific shareholding test for determination of control.

In the past, there have been several instances where companies were able to complete their initial public offerings (IPO) in India without identifying any promoters. One of the factors that helped such companies was that the founders' shareholding (if any) was significantly diluted and further, no shareholder held 25% or more of the post-IPO share capital; this was used to demonstrate that no shareholder had the ability to block a special resolution at a shareholder vote (requires at least 75% voting in favour). If a company has no identified promoters, no person is required to fulfil the applicable promoter obligations, such as a post-IPO lock-in of a minimum 20% shareholding and other prospectus liability-related matters.

Certain listed companies that either had no identifiable promoters or did not identify specific persons as promoters have recently attracted the attention of the Indian securities regulators (SEBI and the stock exchanges). As a result, in the recent past, the Indian securities regulators have increased their scrutiny and insisted in certain cases that persons be identified as promoters, both to maintain "skin-in-the-game" after listing as well as to identify the person(s) who control the affairs or policies of the company. In one instance, a company that had filed a draft offer document with no identifiable promoters was subsequently required to issue an amendment identifying the founders as promoters even though they collectively held less than 20%. The shortfall for the 20% lock-in requirement was contributed by eligible venture capital funds (who are permitted under the current regulations to contribute towards such lock-in without being identified as promoters). In another instance, a company issued an amendment to their draft offer document stating that certain shareholders agreed to voluntarily lock in approximately 15% of the post-IPO equity share



Jabarati Chandra

jchandra@snrlaw.in



Oishika Dasgupta

odasgupta@snrlaw.in

capital for 18 months without the promoter tag. In a related recent development, in March 2024, the SEBI has approved further relaxations on the categories of shareholders that could contribute towards a 10% shortfall in the promoter lock-in without being identified as a promoter.

Even for companies where promoters were identified, the regulators have examined whether any other shareholder or person should also be disclosed as promoters. In certain instances, immediate relatives of the promoters who held 10% or more shares and board or management positions in the company were subsequently classified as additional promoters of such company. The regulators are also not shying away from piercing the corporate veil and reviewing the shareholding of corporate shareholders to test control.

Identification of promoters ahead of an IPO is a critical step given the resultant disclosure requirements, including on the promoter group and other obligations such as prospectus liability, post-listing compliances, implications under the takeover, and insider trading regulations. While there will be cases of companies that have no identifiable promoters, founder-led companies, and their shareholders should be ready for more scrutiny.





Practice Area News

Overseas Direct Listing. In January 2024, the Government of India notified rules to introduce a broad framework for the issue and listing of equity shares of public Indian companies on prescribed international exchanges (currently, only exchanges in the GIFT International Financial Services Centre). The SEBI and the International Financial Services Centre Authority are in the process of reviewing their respective regulations to implement such a framework.

Ease of Doing Business. In March 2024, SEBI approved the proposals for certain amendments to the SEBI ICDR Regulations and the SEBI Listing Regulations to enable ease of doing business. These changes include relaxations for eligible shares for minimum promoters' contribution requirements and to permit certain non-individual shareholders to contribute towards minimum promoters' contribution requirements without being identified as promoters.

Framework to Regulate Short Selling. In January 2024, SEBI specified a broad framework to regulate short selling, which reiterated that naked short selling is prohibited. Stock exchanges are required to issue uniform provisions and take appropriate action against brokers for failure to deliver securities at the time of settlement.

Guidelines for Return of Draft Offer Documents (DRHP). In February 2024, SEBI issued broad guidelines for the return of DRHPs. DRHPs can be returned if, they are not drafted in simple language; there exists pending litigation that impacts the issuer's eligibility; any other regulatory authority/enforcement agencies have expressed material concern about the offer/DRHP; and substantial revision or addenda is required on key disclosures based on clarifications sought on the DRHP.

In the Firm

• **2023 Deals of the Year.** In the India Business Law Journal's Deals of the Year 2023 Awards, two of S&R Associates' representations have been recognized as Capital Markets Deals of the Year:

- Cube Highways Trust's Initial Listing
- Tata Technologies' IPO

• **Law Firm of the Year.** In the VCCircle Awards 2024, S&R Associates won the Private Equity and Venture Capital Law Firm of the Year by Deal Value (Emerging) Award.

