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## SEBI eases Takeover Code for buying stressed assets



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### Introduction

1. SEBI Board, in its recent meeting held on June 21, 2017, took some significant decisions. The decisions will have an impact on the securities market and listed companies. With an objective to assist Govt. and RBI in tackling bad loans, SEBI resolved to relax the provisions of Takeover Code. With an objective to assist Govt. in its initiative to check the misuse of black money, SEBI Board also approved of the proposal to tighten norms relating to Participatory Notes by levying fees. On the other side, SEBI Board has eased regulations relating to access norms for investment by Foreign Portfolio Investors ('FPIs'). This article is a compilation and analysis of the significant decisions taken by the SEBI Board and its impact on the securities markets and its intermediaries.

### 2. Restructuring of stressed listed companies

#### 2.1 Summary of the Decision

The SEBI Board approved of a proposal relating to restructuring of stressed listed companies. SEBI Board took into consideration the present legal provision and noted that the relaxations from preferential issue requirements under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and from Open Offer obligations under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 are available for lenders undertaking restructuring of listed companies in distress through Strategic Debt Restructuring ('SDR') Scheme. However, the SDR Scheme is in line with the RBI guidelines. SEBI Board also took into consideration the representation made w.r.t. disinvestment of the acquired shares by the lenders. SEBI Board observed that where the lenders have acquired shares and propose to divest the same to a new investor, they are facing difficulties as the new investor would be under an obligation to make a mandatory Open Offer which would reduce the funds available for investment in the company. SEBI Board took into consideration the entire scenario and resolved to extend the said relaxations to the new investors acquiring shares in distressed companies pursuant to the SDR Scheme. However, SEBI Board has imposed certain conditions, which include (i) Approval by shareholders of the companies by special resolution, (ii) Lock-in of their shareholding for a minimum period of 3 years, (iii) Extension of the said relaxations to the lenders under other restructuring schemes undertaken in accordance with RBI guidelines. SEBI Board has also

approved of the proposal to provide exemption from open offer obligations, under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, for acquisitions pursuant to resolution plans approved by NCLT under the Insolvency and Bankruptcy Code, 2016.

## **Analysis of the Decision**

**2.2** Taking into consideration the dynamic changes in economic scenario, introduction of Insolvency and Bankruptcy Code and steps taken by the RBI for the 'bad loans', SEBI Board deliberated upon and resolved on the restructuring of stressed listed companies. The objective of the decision is to facilitate the turnaround of listed companies in distress which will ultimately benefit its stakeholders - shareholders and lenders. Taking into consideration the extant provisions in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, SEBI noted that the lenders which have acquired shares and who propose to divest the same to new investors would be required to make mandatory Open Offer. Further, if such Open Offer is made (by incurring statutory expenses and legal cost), the new investor, which proposes to turnaround the listed company, would have less funds to run, operate and fund the listed company, whenever required. SEBI proposes relaxations, however, imposes conditions relating to approval by shareholders of the companies by special resolution and lock-in of the shareholding for a minimum period of 3 years. SEBI's rationale of proposing special resolution would be to maintain the rights of public shareholders, as they will be deprived of an exiting option during Open Offer. The important question that needs to be clarified (or will be clarified when SEBI introduces the Amendment Regulations) is that who can vote on the resolution and who cannot vote on the resolution? If SEBI disallows the lenders from voting on the transaction on account of being 'related party', then the erstwhile promoters of the listed company would have the powers to block the transaction or resolution. The SEBI Press Release also does not specify the pricing parameters for the stressed listed company.

## **3. Extension of Lock-in-relaxation to Category II Alternative Investment Funds ('AIF')**

### **3.1 Summary of the Decision**

SEBI Board noted that pursuant to present provisions, in case of an IPO, there are relaxed rules for lock-in provision to Category I AIFs. SEBI Board approved of the proposal for extending such relaxation to Category II AIFs also.

### **Analysis of the Decision:**

**3.2** The Categories of AIF have been defined in the SEBI (AIF) Regulations, 2012. Category I AIFs invest in start-up or early stage ventures or social ventures or SMEs or infrastructure or other sectors or areas which the Govt. or regulators consider as socially or economically desirable. Category I AIFs also include Venture Capital Funds, SME Funds, social venture funds, infrastructure funds. Pursuant to the extant Regulations, the provisions relating to lock-in are not applicable to Category I AIFs. Category III AIFs are funds that employ diverse or complex trading strategies and may employ leverage through investment in listed or unlisted derivatives. The SEBI (AIF) Regulations define Category II AIFs as the funds which do not fall in Category I and III and at the same time do not undertake leverage or borrowing (other than to meet day-to-day operational requirements and as permitted by the Regulations). According to provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009, in case of IPO, there are relaxed rules for lock-in provision to Category I AIFs. According to the SEBI Press Release, the step is taken with an intention to bring uniformity, ease of doing business and expand the investor's base available for capital raising. Such relaxations will make it easier for private equity-backed companies to raise funds through new share sales.

### **4.1 Easing of access norms for investment by FPIs & tightening of P-Note norms**

## **Summary of the Decision**

SEBI Board noted that the FPI regime commenced from June 1, 2014 and such regime was introduced with the objectives to rationalize various FPI routes, simplify the procedures to attract more foreign funds. Some of the proposed changes approved by the SEBI Board are: (i) Expansion of eligible jurisdictions for grant of FPI registration to category I FPIs by including countries having diplomatic tie-ups with India, (ii) Simplification of broad based requirements, (iii) Rationalization of fit and proper criteria, (iv) Permitting FPIs operating under the Multiple Investment Managers (MIM) structure and holding FVCI registration to appoint multiple custodians. SEBI Board considered and approved of the proposal for initiation of public consultation process before implementing the aforesaid proposed changes to said Regulations.

The SEBI Board also resolved to levy a 'Regulatory Fee' of US\$ 1,000 on each ODI subscriber, to be collected and deposited by the ODI issuing FPI of such ODI subscriber, once every 3 years, starting from April 1, 2017. The SEBI Board approved of the proposal of amending the SEBI (FPI) Regulations, 2014. SEBI Board also resolved to prohibit ODIs from being issued against derivatives, except on those which are used for hedging purposes. SEBI has clarified that the necessary Circular will be issued in this regard.

## **Analysis of the Decision**

**4.2** According to the Press Release, the SEBI Board approved of the proposal to carry out appropriate amendment(s) to SEBI (FPI) Regulations, 2014, to further ease the access norms for investments by FPIs in Indian securities market. The provisions relating to FPIs are being amended with the intention to rationalise various FPI routes and simplify the procedures to attract more foreign funds. SEBI Board also resolved to tighten the norms relating to P-Notes. The Board had approved to bar the resident Indians, NRIs and entities owned by them from making investment through P-Notes. SEBI Board's decision to levy a 'Regulatory Fee' on each ODI subscriber, once every 3 years, is with an intention to encourage investment as FPIs. The intention of the SEBI Board would be to relax entry rules for FPIs willing to invest directly, rather than via P-Notes or ODIs, which are often used for laundering black money. SEBI Board's decision of easing access norms for FPI investment & tightening of P-Note regulations is a balancing act with an ultimate objective of encouraging foreign investment in India through indetified and recognizable sources.

## **Summary of the other decisions taken by the SEBI Board**

**5.** SEBI Board took note of the Paper that was presented on "Growth and Development of Equity Derivatives Market in India". SEBI Board decided to have stakeholder consultation on the need to review the Derivatives Market Framework, including product suitability for investors so as to further strengthen the framework in line with the emerging trends and global best practices. SEBI Board also considered and approved of the Annual Report 2016-17. In accordance with the SEBI Act, the Annual Report would be submitted to the Central Government.

## **Conclusion**

**6.** Taking into consideration the changing economy and legislations, the SEBI Board's decision relating to restructuring of stressed listed companies has been one of the most significant ones. This decision will assist RBI is taking policy decisions for stressed assets/NPAs. There is also a proposal to provide exemption from open offer obligations, under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, for acquisitions pursuant to resolution plans approved by NCLT. SEBI Board's decision of easing access norms for FPI investment & tightening of P-Note regulations is also one of the significant decisions, which will have a significant impact on the foreign investment in India.

