

# Article



## Pledge under SEBI Takeover Regulations, 2011

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## Introduction

SEBI Takeover Regulations speak about two things, first, making of a public announcement in order to give exit opportunity to the existing shareholders at the time of acquisition of voting rights or control in a company and second, making of disclosures of acquisition/ disposal of shares or voting rights. While the former is applicable in case of acquisition of control to a certain extent, the latter is concerned with acquisition of shares and/ or voting rights. This note is being prepared keeping in mind the provisions of SEBI Takeover Regulations.

## Pledge under Takeover Regulations

Pledge of shares is one of the various means of securing repayment of a financial liability. To analyse the applicability of the aforesaid Regulations, the first thing one need to look into is, the terms of such pledge since the situation may differ based on the voting rights attached to it at the time of creation.

In general, a pledge can be created with or without voting rights. If the clauses of the agreement denote that the pawnee is entitled to the voting rights or the pawnor is accustomed to vote at the direction of the pawnee then the same can be construed as the pledge with voting rights. However, if the agreement only obliges the pawnor to intimate about the votes casted or to be casted by him then the same cannot be construed as pledge with voting rights since, in this case the pawnor is not entitled to act at the instructions of the pawnee.

## Obligations under Takeover Regulations

As the obligation to make open offer gets attracted on acquisition of **voting rights** therefore, the acquirer is not required to make public announcement for an open offer at the time of creation of a pledge if the same was created without voting rights. However, at the time of invocation of pledge, since the same entitles the pawnee to voting rights, the requirement of making an open offer will always arise if such invocation, hits the threshold specified by Reg. 3 and entitles exercising of control as provided in Reg. 4 of the aforesaid Regulations.

As discussed above, the Regulations also require an acquirer to disclose his aggregate shareholding, if the acquisition/ disposal results into the shareholding of such limits prescribed in Reg. 29. At this juncture, it is pertinent to note here that the obligation to make a public announcement for an open offer gets attracted on acquisition of **voting rights** whereas for the purpose of disclosure one has to consider the acquisition of **shares** provided the acquisition hits the threshold prescribed for both the purposes. Further, Reg. 29 includes acquisition and disposal, by way of creation/ invocation of pledge and release of a pledge respectively.

In order to sum up, the applicability of the Takeover Regulations in case of pledge can be

analysed under the following broad heads-

- A. Creation of pledge with voting rights;
- B. Creation of pledge without voting rights;
- C. Invocation of pledge; and
- D. Release of pledge.

#### **A. CREATION OF PLEDGE WITH VOTING RIGHTS**

<b>Situation</b>	<b>Open Offer (Y/N/NA)</b>	<b>Disclosure (Y/N/NA)</b>
Acquisition of shares/voting rights which entitles less than 5% shareholding	<b>N</b>	<b>N</b>
Acquisition of shares/voting rights which entitles shareholding equals to 5% or more	<b>N</b>	<b>Y</b>
Acquisition of shares/voting rights which entitles voting rights of less than 25%	<b>N</b>	<b>Y</b>
Acquisition of shares/voting rights which entitles voting rights upto 25% or more	<b>Y</b>	<b>Y</b>
Acquisition of control	<b>Y</b>	<b>Y</b>

#### **B. CREATION OF PLEDGE WITHOUT VOTING RIGHTS**

<b>Situation</b>	<b>Open Offer (Y/N/NA)</b>	<b>Disclosure (Y/N/NA)</b>
Pledge of shares of less than 5%	<b>N</b>	<b>N</b>
Pledge of shares equals to 5% or more	<b>N</b>	<b>Y</b>
Pledge of shares less than 25%	<b>NA</b>	<b>Y</b>
Pledge of shares upto 25% or more	<b>NA</b>	<b>Y</b>
Acquisition of control	<b>NA</b>	<b>NA</b>

#### **C. INVOCATION OF PLEDGE\***

<b>Situation</b>	<b>Open Offer (Y/N/NA)</b>	<b>Disclosure (Y/N/NA)</b>
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Acquisition of shares/voting rights of less than 5%	N	N
Acquisition of shares/voting rights equals to 5% or more	N	Y
Acquisition of shares/voting rights which entitles voting rights of less than 25%	N	Y
Acquisition of shares/voting rights which entitles voting rights upto 25% or more	Y	Y
Acquisition of control	Y	Y

\* *If voting rights is attached at the time of creation of the pledge only, then the requirement to make an open offer will get triggered at the time of creation of pledge subject to the aforesaid thresholds limit. In such a case, the acquirer will not require to make an open offer once again at the time of invocation.*

#### **D. RELEASE OF PLEDGE**

<b>Situation</b>	<b>Open Offer (Y/N/NA)</b>	<b>Disclosure (Y/N/NA)</b>
Existing shareholding is less than 5% and release of shareholding is less/ more than 2%	N	N
Existing shareholding is more than 5% and release of shareholding is less than 2%	N	N
Existing shareholding is more than 5% and release of shareholding is more than or equal to 2%	N	Y

***Note: The aforementioned analysis is being prepared assuming the acquirers' holding prior to acquisition under a pledge is nil.***