

Clarification by SEBI on creeping acquisition under Regulation 11 of the Takeover Regulations

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SEBI has on August 6, 2009 issued an interpretive circular clarifying the applicability of the provisions of regulation 11 (2).

SEBI on October 30, 2008 has amended the Takeover Regulations to include second proviso to sub-regulation (2) of Regulation 11 which stated that an acquirer holding 55% or more but less than 75%, may either by himself or with PACs acquire additional shares/voting rights entitling him upto 5% voting rights in the target company without making a public announcement through open market purchase in normal segment on the stock exchange. The post acquisition shareholding of the acquirer together with PACs however shall not increase beyond 75%.

In the aforesaid circular of 6th August 2008, SEBI clarifies as follows:

- An acquirer together with PACs holding 55 % or more but less than 75 % of the shares or voting rights in a target company, may acquire, either by himself or with PACs, additional shares or voting rights entitling him up to 5 % voting rights in the target company **without making a public announcement** under the SAST Regulations.
- The aforesaid acquisition will be of shares or voting rights upto a maximum of 5 % voting rights in the target company in one or more tranches, without any restriction on the time-frame within which the same can be acquired.
- The aforesaid acquisition of 5% shall be calculated by aggregating all purchases, without netting the sales.
- The percentage of shareholding / voting rights of the acquirer, together with persons acting in concert with him, in the target company, shall not increase beyond 75 %. This limit is applicable irrespective of the level of minimum public shareholding required to be maintained by the target company in terms of clause 40A of the Listing Agreement.

The above amendment permits an acquirer to acquire a further 5 % shares or voting rights in the target company in one or more tranches without making any public announcement. The said amendment thus, in effect, increases the threshold limit for making public announcement from 55% to 60% under Regulation 11 of the Takeover Regulations. An acquirer holding 50% or more shares or voting rights in the Target Company can now increase his shareholding upto 60% without being required to make any public announcement.

No time-frame has been set for making acquisition under the newly inserted proviso, thereby allowing the acquirer to acquire share or voting right aggregating to 5 % over a period of any number of years. However, in any case, the said acquisition cannot increase his shareholding beyond 75% of the paid-up capital of the Target Company.