



भारतीय प्रतिभूति  
और विनियम बोर्ड  
Securities and Exchange  
Board of India

CHIEF GENERAL MANAGER  
CORPORATION FINANCE DEPARTMENT  
DIVISION OF CORPORATE RESTRUCTURING  
Tel. (Direct): 26449200/26441200  
Email: [sundaresanvs@sebi.gov.in](mailto:sundaresanvs@sebi.gov.in)

CFD/DCR/TO/IG/SS/OW/ 17713 /12  
August 07, 2012

M/s IDFC Capital Limited  
Naman chambers, C-32, G-Block,  
Bandra Kurla Complex ,  
Bandra(East)  
Mumbai-400051

Dear Sir,

**SUB: REQUEST FOR INTERPRETIVE LETTER UNDER THE SEBI (INFORMAL GUIDANCE) SCHEME, 2003 IN CONNECTION WITH SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS ) REGULATIONS, 2011 {TAKEOVER CODE} AND SEBI (DELISTING OF SHARES) REGULATIONS, 2009 {DELISTING REGULATIONS}**

1. Please refer to your letter dated June 08, 2012 and other correspondence exchanged on the captioned matter, wherein you sought an Interpretive Letter under the SEBI (Informal Guidance) Scheme, 2003. (The Scheme).
2. In your letter and other correspondences under reference, you have *inter alia* represented as follows:
  - i. The promoter group (hereinafter referred to as "Promoters") of a *listed company* (the Company) is desirous of delisting the company from all the stock exchanges on which it is listed. The Promoters hold approximately 60% of the share capital of the Company. The remainder share capital of the Company is held by the public (as defined under the Securities Contracts (Regulation) Rules, 1957). The Company has not issued any form of convertible or other such instruments. The shareholding of the Company is as under :

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Category of shareholder	Percentage (%)
<b>Promoter and Promoter Group</b>	
Indian	38.0
Foreign	21.5
<b>Total Promoter and Promoter Group</b>	<b>59.5</b>
<b>Public</b>	
Foreign Institutional Investors	5.0
Domestic Institutional Investors	0.2
Non-Institutions	35.3
<b>Total Public</b>	<b>40.5</b>
<b>Grand Total</b>	<b>100.0</b>

- ii. The public shareholding of the Company includes certain independent non-resident private equity investors ("PE Investors") that invested in the Company through primary purchases at different times during the period 2009 to 2010. The PE Investors hold approximately 16.5% of the share capital of the Company.
- iii. In terms of the Takeover Code including any predecessor legislation thereto, the Promoters have never 'acted in concert' (as the term 'PAC' is defined in the Takeover Code) with the PE Investors in connection with the Company or vice-versa.
- iv. The promoters want to delist the Company from all the stock exchanges where the shares of the Company are listed for the following reasons: (i) to concentrate the ownership of the Promoters in the Company; (ii) to achieve greater operational and administrative efficiencies and flexibility with respect to the business of the Company.
- v. The promoters want to give an exit opportunity to the public shareholders of the Company. The Delisting Regulations only permit the promoters of a listed company to acquire the shareholding from the public in the event of a voluntary delisting. Since, financing from the company's resources is prohibited, the acquirers, being promoters, are obliged to find financiers to assist with the process. Therefore, for the sole purpose of financing the delisting, the Promoters are looking to avail of financial assistance from the PE Investors. In case the PE Investors agree to assist the Promoters with the financing of the delisting of the Company, as a result of this arrangement between the Promoters and the PE Investors, the PE Investors would be regarded as persons acting in concert with the Promoters for the purposes of delisting and accordingly will not be able to tender their shares in the delisting offer.

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- vi. The Delisting Regulations refer to the Takeover Code for the definition of PAC. The proposed arrangement between the Promoters and the PE Investors, if entered into, shall be purely and solely for the purposes of delisting and is proposed to be such that in the event the proposed delisting offer of the Company is not successfully completed for any reason whatsoever, no subsisting arrangements or cooperation will continue between the Promoters and the PE Investors and the parties resume status quo. This arrangement will be with the promoter entity to provide funding for the purpose of delisting and will not involve any change in control with respect to the Company.
3. In view of the above submissions, you have sought an "Interpretive letter" on whether, the promoter and PE investors would be regarded as 'PAC' solely for the purposes of Delisting Regulations pursuant to the financing arrangement and not for the purposes of the Takeover Code.
4. We have considered the submissions and representations made by you and without necessarily agreeing with your analysis, our views on the issue are as under:
- a. The promoters who are holding 59.5% shares in the Company want to delist the shares of the company from all the stock exchanges where the shares are listed and want to acquire the shares of the public through voluntary delisting process. For the aforesaid delisting procedure, the promoters are looking to avail financial assistance from PE investors, who are holding 16.5% shares in the company (under non-promoter category).
- b. As can be seen from the definition of PAC as provided under Regulation 2(1)(q) of the Takeover Code and Regulation 2(2) of the Delisting Regulations, the concept of PAC carries the same definition for the purpose of Takeover Regulations as well as the Delisting Regulations. Further, to ascertain whether the promoters and PE investors would be regarded as Person acting in concert, the factors such as commonality of objective, concerted action of objectives, direct or indirect co-operation with the promoters etc. in the context of each acquisition are required to be taken into account irrespective of the purpose being Takeover or Delisting.
- c. In the instant case, as submitted by you, the PE investors would agree to finance the promoters to acquire shares in the delisting offer which would be nothing but a direct co-operation for acquisition of shares of the company. Hence, the PE Investors would be treated as PAC with the promoters for the purposes of Takeover as well as Delisting.

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- d. Extending the same interpretation, it is noted that the moment the PE Investors enter into the aforementioned arrangement with the promoters thereby becoming a PAC with the promoter, it would attract the provisions of the Takeover Code before any contemplation of Delisting.
- e. It is noted here that the transaction / arrangement proposed in the present matter shall be prohibited by virtue of the proviso to regulation 3(2) of the Takeover Regulations. The said proviso prohibits a person, holding more than 25% and less than 75% shares (75%, being the maximum permissible non-public shareholding for listed companies (except PSUs) as per rule 19A of the SCR Rules, 1957) from acquiring or entering into an agreement to acquire shares which will take the aggregate shareholding of such person beyond 75%. Thus, the promoters holding 59.5% shares would be barred from entering into the arrangement with the PE investors holding 16.5% which would take their combined shareholding up to 76%.
5. This position is based on the representation made to the division in your letter under reference. Different facts or conditions might require a different result. This letter does not express decision of the Board on the questions referred.
6. Vide your letter dated June 08, 2012, you have sought confidentiality treatment in respect of your request for Interpretive Letter. Acceding to your request, it has been decided that the Interpretive Letter issued to you in this matter will not be available to the public for a period of 90 days from the date of issuance of the said letter.
7. You may note that the above views are expressed only with respect to the clarification sought and do not affect the applicability of any of the Acts, Rules or Regulations, Guidelines and Circulars administered by SEBI or any other authority.

Yours faithfully,

V. S. Sundaresan