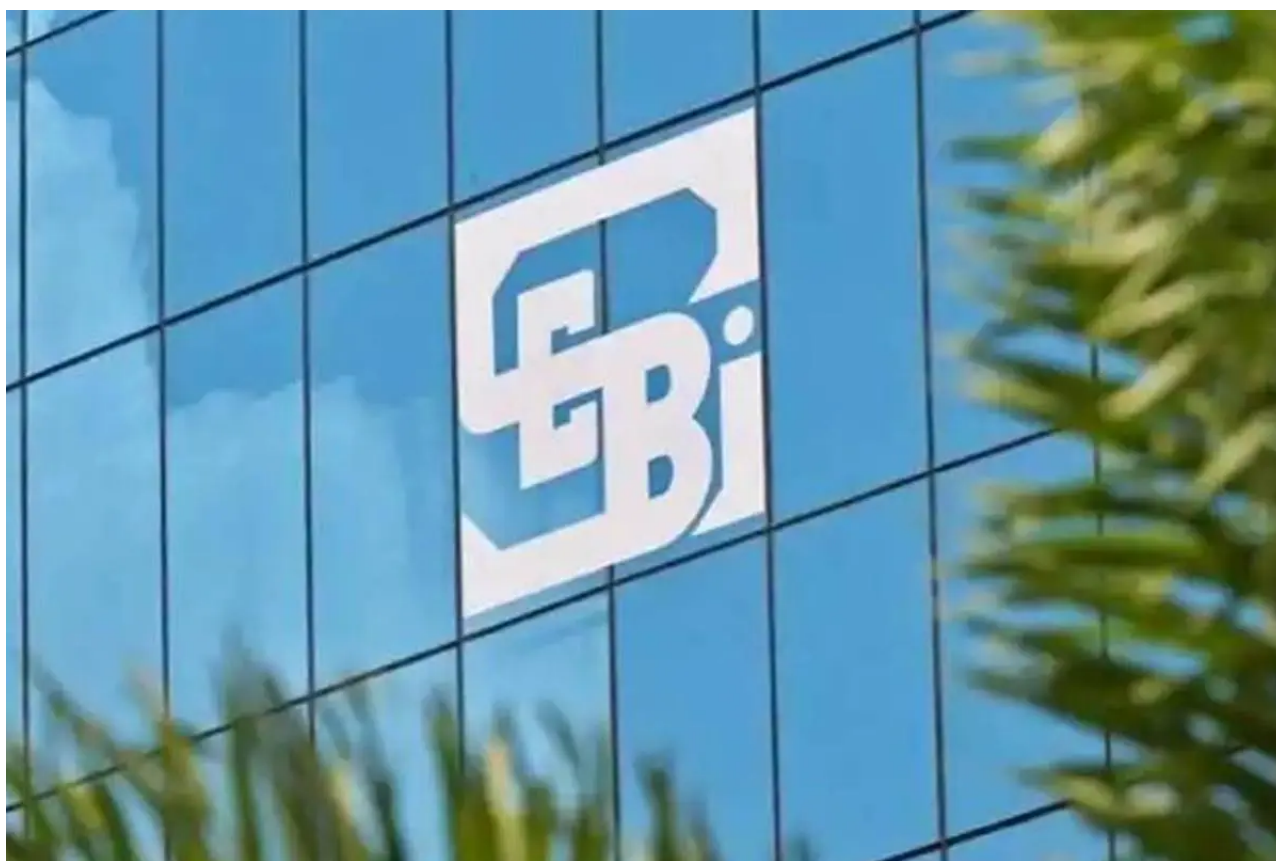


SEBI wants to eliminate ‘promoters’; proposes changing corporate ownership terminology | EXPLAINED

Capital markets regulator SEBI (Securities and Exchange Board of India) has proposed changing the concept of company ‘promoters’, and moving towards the idea of ‘person in control’.



As per a separate order, Sebi has levied a fine of Rs 10 lakh on 7 entities which needs to be paid jointly and severally by them in a matter pertaining to fraudulent trading in the shares of PMC Fincorp Ltd.

Capital markets regulator SEBI (Securities and Exchange Board of India) has proposed changing the concept of company ‘promoters’, and moving towards the idea of ‘person in control’. The move comes as an increasing number of companies adopt corporate structures where there are more than just a single owner. Some firms also have institutional investors and private equity players holding more sway than those listed as promoters. Further, SEBI has also proposed changes to the lock-in periods, streamlining disclosures of group companies, and rationalising the ‘Promoter Group’ definition. Experts explain and analyse how SEBI’s proposed change will work and how it will impact promoter ownership of companies.

Makarand Joshi, founding partner, MMJC and Associates LLP: “The discussion paper is a step towards empowering the regulator (SEBI) as the Indian bourses are about to see listing of start-ups with Zomato being the first among the several such unicorns. According to one estimate, these Indian unicorns are valued close to \$150-160 billion and unlike conventional shareholding patterns, promoters do not hold a substantial controlling stake in such entities. Invariably,

institutional investors collectively holding larger stakes in such unicorns calls for the regulator to play a more proactive role with some of these institutions that may be beneficially owned by neighbouring countries.”

Jyoti Prakash Gadia, Managing Director, Resurgent India: “The concept of Promoters needs a change as in many instances persons holding minority interest continues to be called as promoters and also immediate relatives of promoters are counted as promoters which actually may not be the case. Hence shifting the promoter definition to purely on the basis of control is logical and good for the markets. The person who actually runs or controls the business only should be called as promoters. For Non-promoter holding the lock period requirement is being proposed to be reduced to six months from 1 year will surely boost pre-IPO investments, which is good for the Markets, as investors can encash their returns or have early exit route.”

Manan Lahoty, Partner, IndusLaw: “The proposed changes aim to rationalize and simplify roles and responsibilities of promoters and seek to align the Indian law with the international practices. The paper aims to cover various grounds which will all affect the IPO candidates favourably. There will be a lesser disclosure burden on promoter group and group companies, even though a lot more could have been targeted in this round. Similarly, a reduced lock-up for promoters will bring in commercial convenience and improve viability for IPOs. Lastly, the move towards controlling persons and away from non-controlling promoters will help reduce the compliance burden and will make relevant information easier for investors to process. However, the big miss here is the definition of “control” itself — without which, any change in this field will have little impact.”

Abhimanyu Bhattacharya, Partner, Khaitan & Co: “The recently released SEBI consultation paper proposes significant changes to the IPO framework such as reduction in post IPO lock-in requirements, reviewing the concept of promoters amongst others. The proposed changes recognise the ground realities for new age issuers and make it conducive for their Indian founders and their investors to consider listing in India.”

Anand Lakra, Partner, J Sagar Associates: “If implemented, the proposals will reduce disclosures in IPO documents and provide liquidity to pre-IPO shareholders (including promoters) by reducing the lock-in period. SEBI’s proposal to shift from promoter to persons in control is a welcome change from the existing stand of ‘once a promoter, always a promoter. Under current norms, until reclassification, promoter shareholders who are not in control continue to bear the burden which promoters are subject to. However, given that the concept of the promoter is widely legislated, SEBI would need to make necessary amendments to the impacted SEBI regulations and in particular, such amendments may warrant a re-look at the definition of control.”

Dhaval Jariwala, Partner, PNDJ & Associates LLP: “The Indian securities market has evolved over the years though it may not be as mature as the other international markets like the USA, UK, Singapore etc. with a constant change in the mindset of the investors. Nowadays, we see a lot of private equity funds and institutional investors invest in unlisted companies and take control of such companies by acquiring a substantial stake. In many companies these investors also appoint a director on board to safeguard their investment. This shows that the focus of these investors is more on the quality of the board and management than on the promoter. Thus, there is an absolute need/ necessity to move away or shift from the concept of ‘promoter’ to concept of ‘person in control’ as recommended by the Primary Markets Advisory Committee.”

Sandeep Parekh, Founder, Finsec Law Advisors (on Twitter): “So the concept of promoter is an easy concept – but wrong. Because it attaches accountability often to random people. And if you want to be disassociated from the co after you have sold your stakes, it is often impossible to declassify. You will be responsible for acts of strangers.”