



CIRCULAR

SEBI/HO/CFD/DCR1/CIR/P/2017/131

December 22, 2017

To

**All Recognized Stock Exchanges**

Dear Sir / Madam,

**Sub: Exemption application under Regulation 11 (1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011**

1. Regulation 11(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations), gives power to the Board to grant exemption from the obligation to make an open offer for acquiring shares. Further, as per Regulation 11(3) of SAST Regulations, the acquirer shall file an application with the Board, supported by a duly sworn affidavit, giving details of the proposed acquisition and the grounds on which the exemption has been sought.
2. In order to ensure uniformity of disclosures in such applications, it has been decided to provide a standard format for filing of application with SEBI. The instructions and details in this regard are given at **Annexure - A**.
3. This circular shall be applicable to all the applications that are filed with SEBI after the date of this circular.
4. This circular is issued in exercise of the powers conferred under Section 11 read with Section 11A of the Securities and Exchange Board of India Act, 1992.
5. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories "Legal Framework" and "Takeovers".

Yours faithfully,

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**STANDARD FORMAT OF APPLICATION UNDER REGULATION 11(1) OF SEBI  
(SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS,  
2011 (SAST REGULATIONS)**

**I. Instructions**

1. The application should be made by the acquirer. If it is made by a person other than the acquirer, the letter of authority granted by the acquirer (including all the PACs) must be enclosed with the application.
2. The application must be supported by a duly sworn affidavit by the acquirer confirming that the details stated in the application are true and correct and in accordance with the standard format prescribed by SEBI.
3. If the acquirer is a body corporate, a true copy of the resolution of its Board of Directors or the Governing Body authorizing filing of the application, must be enclosed with the application.
4. If the acquirer is a Trust, executed trust deed(s) must be submitted and the acquirer should endeavour to comply with the guidelines outlined at the 'Schedule' to this Annexure.
5. The application filed with SEBI should be complete in all respects and only complete application would be processed.
6. In addition, soft copy of the said documents in pdf format should be emailed to SEBI at [sastexemptionapplication@sebi.gov.in](mailto:sastexemptionapplication@sebi.gov.in)
7. All the information given in the application should be as of the date of application unless otherwise specified therein.

**II. General Details**

1. Date of the application:
2. Name, PAN and address of the acquirer(s) and PACs (including telephone number, email etc.)
3. If the applicant is a person other than the acquirer, then state name, address, telephone number, email etc., of the applicant and state whether letter of authority given by the acquirer and persons acting in concert, is enclosed.
4. State the details of the filing fees as specified in regulation 11(4) of the SAST Regulations.
5. State whether the acquirer/ PACs are part of the promoter/ promoter group.
6. If any application was filed under regulation 11(1) of SAST Regulations with SEBI in the past, give details including name of target company, pre and post acquisition shareholding, regulation triggered, exemption granted or not, conditions for exemption granted, if any, whether the said conditions were fulfilled, etc.



7. Details of any directions by SEBI subsisting against the acquirers including PAC.
8. Details of any pending proceedings before SEBI.

### III. Details of the Target Company

1. Name and address of the Target Company (include phone, email etc )
2. Brief history of the Target Company stating *inter-alia*, date of incorporation, address of registered office, main business activities, etc.)
3. Details of Board of Directors stating the total number of directors, their names and status namely whether Executive Director, Promoter Director, Nominee Director and Independent Director, etc.
4. Details of share capital of the target company.
  - I. No. of equity shares issued / subscribed and paid up and face value of each equity share.
  - II. No. of preference shares issued, subscribed and paid up and face value of each preference share.
  - III. Whether all equity shares have uniform voting rights, if not, then the details of voting rights attached to equity shares.
  - IV. Total paid up Equity Share Capital (number of shares x face value), showing separately, calls in arrears, if any.
  - V. Total paid up Preference share Capital (number of shares x face value), showing separately calls in arrears, if any.
5. Total equity share capital / voting rights of the target company before and after the proposed acquisition. State the following financial parameters of the target company for the immediately preceding financial year
  - I. Net-worth - Rs.....
  - II. Book value per equity share - Rs.
  - III. Return on Net-worth %
  - IV. Earnings per share - Rs.
6. Name of Stock Exchanges where shares of Target Company are listed / permitted to trade and the date of listing.
7. Indicate opening and closing prices of its shares as on a date prior to the date of the application.
8. Clarify whether the shares of the target company are frequently or infrequently traded in terms of regulation 2(j) of SAST Regulations, taking the date of application as the reference date.
9. Calculate and indicate the minimum offer price of the shares of the target company, in accordance with regulation 8 of SAST Regulations (taking date of application as the reference date) considering all the parameters laid down therein,



as may be applicable (depending upon the frequency of trading in shares of the target company).

**IV. Details of the Proposed Acquisition**

1. Number and percentage of equity shares / voting rights proposed to be acquired.
2. Acquisition price to be paid per share of the shares proposed to be acquired.
3. Names, PAN and address of the entities from whom the above shares are proposed to be acquired.
4. Date(s) since the entities from whom the above shares are proposed to be acquired have been disclosed as promoters in the shareholding pattern filed with the stock exchanges
5. Shareholding pattern of the target company before and after the proposed acquisition in the following format:

Particulars	Shareholding before the proposed acquisition		Proposed Transaction		After the proposed acquisition	
	No. of shares	% holding	No. of shares	% holding	No. of shares	% holding
<b>Promoters &amp; Promoter Group other than Acquirers</b>						
<b>Acquirers and PAC</b>						
<b>Public</b>						
<b>Total</b>						

6. State which provision(s) of SAST Regulations would be triggered on account of the proposed acquisition.
7. If the proposed acquisition would result into change of control of the target company, the manner and relevant details of such acquisition of control inter- alia details like nature of approvals required for such acquisition, status of such approvals, etc. shall be furnished.
8. Detailed grounds for seeking exemption
9. Details of relevant precedence, if any



**Schedule**

**Cases involving Trust as acquirer**

SEBI in the recent past has received a number of applications pertaining to transfer of shares from promoters to Trusts which were referred to the panel of experts (Takeover Panel) as per Regulation 11 (5) of SAST Regulations. Based on the recommendations of the Takeover Panel, SEBI had passed orders granting / not granting exemption to the applicants. In the recent past, grant of exemption were considered if the following conditions were met by the applicants, expressly in trust deed:

- i. The Trust is in substance, only a mirror image of the promoters' holdings and consequently, there is no change of ownership or control of the shares or voting rights in the target company.
- ii. Only individual promoters or their immediate relatives or lineal descendants are Trustees and beneficiaries;
- iii. The beneficial interest of the beneficiaries of the trust has not been and will not in the future, be transferred, assigned or encumbered in any manner including by way of pledge/mortgage;
- iv. In case of dissolution of the Trust, the assets will be distributed only to the beneficiaries of the trust or to their legal heirs;
- v. The Trustees will not be entitled to transfer or delegate any of their powers to any person other than one or more of themselves.

In addition, the following undertakings were part of the trust deed:

- vi. Any change in the trustees / beneficiaries and any change in ownership or control of shares or voting rights held by Trust shall be disclosed within 2 days to the concerned stock exchanges with a copy endorsed to SEBI for its record;
- vii. As far as the provisions of the SEBI Act and the regulations framed thereunder are concerned the ownership or control of shares or voting rights will be treated as vesting not only with the Trustees but also indirectly with the beneficiaries ;
- viii. The liabilities and obligations of individual transferors under the SEBI Act and the regulations framed thereunder will not change or get diluted due to transfers to the Trust ;
- ix. The Trust shall confirm, on an annual basis, that it is in compliance with the exemption order passed by SEBI. The said confirmation shall be furnished to the company which it shall disclose prominently as a note to the shareholding pattern filed for the quarter ending March 31 each year, under regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015;



- x. The Trust shall get its compliance status certified from an independent auditor annually and furnish the certificate to the Stock Exchanges for public disclosure with a copy endorsed to SEBI for its records.

Further, exemptions were granted when the following conditions were complied:

- xi. The proposed acquisition is in accordance with the provisions of the Companies Act, 2013 and other applicable laws;
- xii. The transferors are disclosed as promoters in the shareholding pattern filed with the Stock Exchanges for a period of at least 3 years prior to transfer (except for holding on account of inheritance);
- xiii. There is no layering in terms of trustees / beneficiaries in case of Trusts;
- xiv. The Trust deed agreement does not contain any limitation of liability of the trustees / beneficiaries in relation to the provisions of the SEBI Act and all regulations framed thereunder.

The Takeover Panel and SEBI will continue to scrutinise exemption application based on the above conditions. It is further clarified that while the above conditions / undertaking are broad and general in nature, compliance with the above conditions does not guarantee automatic exemption from open offer and all applications will be considered by the Takeover Panel and SEBI on a case to case basis. However, the processing time of applications where the above conditions are complied could be significantly faster.

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