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Analysing developments impacting business

EXEMPTION TO THE MINIMUM PUBLIC SHAREHOLDING REQUIREMENT BY LISTED COMPANIES | MOVE TO MAKE STRATEGIC DIS-INVESTMENTS BY GOVERNMENT MORE

9 January 2023

INTRODUCTION

The Government on 2 January 2023 has amended the Securities Contracts (Regulation) Rules, 1957 (SCR Rules) through the Securities Contracts (Regulation) Amendment Rules, 2022 (Amendment). Pursuant to the Amendment, the definition of a 'government company' and sub-rule (6) in Rule 19A of the SCR Rules has been amended.

The Amendment has come into force on 2 January 2023.

CHANGES

1. Amendment to the definition of "government company"

The definition of a "government company" under the SCR Rules has been amended and now has the meaning as ascribed to the term under the Companies Act, 2013 (Companies Act). Prior to the Amendment, "government company" was defined under the SCR Rules as a company in which not less than 51% of the share capital was held by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.

In-line with the Companies Act, a 'government company' under the SCR Rules now also includes subsidiaries of a government company within the ambit of "government company" and brings further clarity in construing the shareholding of the government, which will have to be basis the "total voting power" as opposed to "the share capital", to take care of instances of shares having been issued by the company with differential voting rights. This essentially resolves any conflict that could have arisen due to differing definitions given under the Companies Act and SCR Rules.

2. Amendment to sub-rule (6) of Rule 19A

Rule 19A of the SCR Rules requires listed companies to maintain minimum public shareholding of at least 25%.

Prior to the Amendment, sub-rule (6) of Rule 19A provided that the Central Government may, in the public interest, exempt any listed public sector company from provisions of Rule 19A.

Now, the Central Government may, in public interest, exempt any listed entity in which the Central Government or State Government or public sector company, either individually or in any combination with other, holds directly or indirectly, majority of the shares or voting rights or control of such listed entity, from provisions of Rule 19A.

Further, a new explanation has been added where it clarifies that such exemption by the Central Government will continue to be valid for the period specified therein, irrespective of any change in control of such listed entity subsequent to issuance of such exemption.

COMMENT

It is clear that the Amendment has been brought about with an eye to ease and boost strategic disinvestments by the Central Government by offering flexibility to the potential acquirer from the minimum public shareholding requirement. What is more striking to note is that such exemption will continue irrespective of the change in control of the listed entity and no specified period has been provided under the Amendment.

With the Central Government having recently announced its intention to sell its stake in public sector undertakings in IDBI Bank, Shipping Corporation of India, and Container Corporation of India, it remains to be seen whether the recent Amendment is used for providing exemption to these entities.

- *Nikhil Jhunjunwala (Partner) and Nabarun Chandra Ray (Associate)*

For any queries please contact: editors@khaitanco.com

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