



Consultation Paper

Review of certain provisions related to Superior Voting Rights Shares Framework

1. Objective:

To solicit views on the proposal to review the following provisions related to Superior Voting Rights Shares (SR shares) framework pertaining to:-

- i. net-worth requirements of SR shareholder,
- ii. issuance of SR shares to trusts/ entities on behalf of founders/ promoters,
- iii. timing of issuance of SR shares.

2. Net-worth requirements on superior voting rights (SR) shareholders

2.1. Current Regulatory Framework

Regulation 6(3)(ii) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (hereafter referred as ICDR regulations) states as follows:

(3) If an issuer has issued SR equity shares to its promoters/ founders, the said issuer shall be allowed to do an initial public offer of only ordinary shares for listing on the Main Board subject to compliance with the provisions of this Chapter and these clauses

(i).....

(ii) the SR shareholder shall not be part of the promoter group whose collective net worth is more than rupees 500 crores:

Explanation: While determining the collective net worth, the investment of SR shareholder in the shares of the issuer company shall not be considered.

(iii)...

2.2. Background:

Promoters/ founders of new age tech companies may have the necessary vision and skills to take the company forward, however, such individuals may lack the ability to infuse capital. Thus, promoters/ founders of new age tech companies undergo significant shareholding dilution in order to raise capital at early stages. One of the reasons for introduction of SR shares was to encourage such promoters/ founders who have an executive position in the company to retain certain amount of control for a limited period (Sunset Clause- 5 years, extendable by another 5 years) with checks and balances.



SEBI has received feedback from market participants on the current requirement that, *an SR shareholder shall not be part of promoter group whose collective net worth is more than Rs. 500 crores*, is too onerous to comply and is keeping prospective SR shareholders away from utilizing the SR shares framework.

2.3. Concerns:

2.3.1. The definition of promoter and promoter group under the ICDR Regulations, is very broad and can include a large set of relatives/entities. Therefore the investments/ net worth of such relatives/entities would also be considered for determining the collective net worth.

2.3.2. Further, there could be multiple founders and the set of promoter group may become very large, thereby complicating the matter.

2.3.3. While the explanation to the regulation clarifies that the investment of the SR shareholder in the issuer company shall not be considered for computation of collective net worth, there may be a situation where some family members of the SR shareholder are also holding shares in the issuer company. As per the current regulatory framework such investment would not be excluded for computation of collective net worth. Also, exclusion of proceeds from sale of shares in Issuer Company by an SR shareholder is not clearly mentioned in the explanation.

2.4. Matter for Public Consultation

Primary Market Advisory Committee (PMAC) deliberated the matter and considered mandating net-worth requirement of SR shareholder on an individual basis. The threshold for such net-worth requirement can also be enhanced. PMAC also considered excluding proceeds of sale of shares of the issuer company by an SR shareholder for the purpose of determining net-worth. Views are sought on the following points:

- i. *Whether net-worth requirement for SR shareholder be determined individually or as part of promoter group?*
- ii. *Whether the net-worth threshold for SR shareholder should be retained at Rs 500 crores or enhanced? If it is to be enhanced, what should be the new threshold?*



iii. *Whether the proceeds from sale of shares of the issuer company should be excluded while determining net-worth?*

3. Issuance of SR shares to trusts/ entities on behalf of founders/ promoters in executive position

3.1. Current Regulatory Framework

Regulation 6(3)(iii) of the ICDR Regulations states as follows:

“(3)If an issuer has issued SR equity shares to its promoters/ founders, the said issuer shall be allowed to do an initial public offer of only ordinary shares for listing on the Main Board subject to compliance with the provisions of this Chapter and these clauses

(i)...

(ii)...

(iii) The SR shares were issued only to the promoters/ founders who hold an executive position in the issuer company.”

3.2. Background:

3.2.1. The rationale for granting SR shares only to promoters/founders was to reflect on these individuals’ unique and significant contribution to the present and future prospects of a business.

3.2.2. In the prospective issuer companies, the shareholding of founders/ promoters (including in executive capacity) may be structured through either holding companies or family trusts or limited liability partnerships (LLPs). It is argued that this is done mostly for the purposes of operational efficiencies, long term succession planning and tax planning. The decision making in issuer company is by founders/ promoters, but the ownership is through various entities.

3.2.3. It is argued that the holding companies, wherever applicable, would mostly be held by the founders and, at best, their family members holding minority shares in the company – this is usually done only for the purposes of holding shares in the issuer.

3.2.4. These trusts/ holding companies/ LLPs are merely ownership vehicles where the trustees/ shareholders/ partners are the founders/ promoters and the beneficiaries are also primarily such founders or promoters and in their absence, their descendants



3.3. Concerns:

3.3.1. Current Regulations would require unwinding of these structures to enable direct holding of SR shares by founders/ promoters. This may have various implications, including from a taxation perspective and may even impact the ability of the Issuer company to do an offer for sale in the IPO (as the holding period before the Draft Red Herring Prospectus-DRHP would be less than one year).

3.3.2. However, allowing Trust, LLPs, Holding companies to hold SR shares raises concerns as such vehicles may have ineligible non-SR shareholders as beneficiaries or as shareholders. Some of these structures such as Trusts are opaque in nature and make it difficult to identify wherein the voting power arises.

3.4. Matter for Public Consultation

- Whether holding companies/ registered family trust/ partnerships where promoters/ founders are in control or sole trustees, can also be permitted to hold SR shares as long as such promoters/ founders/ trustee continue to hold executive positions in the issuer company?

4. Timing Of Issuance Of SR Shares

4.1. Current Regulatory Framework

Regulation 6(3)(v) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 states as follows:

(3) If an issuer has issued SR equity shares to its promoters/ founders, the said issuer shall be allowed to do an initial public offer of only ordinary shares for listing on the Main Board subject to compliance with the provisions of this Chapter and these clauses

(i)...

...

(v) The SR equity shares have been held for a period of atleast 6 months prior to the filing of the red herring prospectus

4.2. Background:

4.2.1. Currently, Regulation 6(3)(v) of ICDR Regulations stipulates that SR shares should have been held for a period of atleast 6 months prior to the filing of the Red Herring Prospectus.(RHP)



4.2.2. The consultation paper issued prior to introduction of Regulations on SR shares, had suggested that SR shares are to be held by promoters for atleast 1 year prior to filing of DRHP. Based on comments received, this was modified to 6 months prior to filing of RHP.

4.2.3. The issuance of SR shares is a relatively new concept in Indian companies proposing a public issue. The instances of founder led companies/ tech start-ups gearing to access public markets in India and preparing for IPOs are also on the rise.

4.2.4. SEBI has received feedback from market participants that requirement is onerous which delays such issuer companies from raising funds from capital market.

4.3. Concerns

4.3.1. It is argued that preparing for an IPO in itself takes considerable time and evaluating, structuring and issuing SR shares, though done in parallel, also take time.

4.3.2. Issuance of SR shares includes, aspects such as understanding the SR construct, sensitising the shareholders and seeking board and shareholders' approval, enabling authorised capital for SR shares with required corporate actions, higher compliance in terms of constitution of the board and committees, and meeting other conditions relevant for SR shares, which are also time consuming.

4.4. Matter for Public Consultation

- Whether the requirement of holding SR shares for a period of 6 months prior to the date of RHP should be deleted?

5. Considering the implications of the said matter on the market participants including issuer companies and investors, public comments are invited on the matters at Para 2.4 (i), (ii) and (iii), 3.4 and 4.4 above. Comments may be sent by email or through post, in the following format:

Name of entity / person :			
Contact Number & Email Address :			
Sr. No.	Reference Para of the consultation paper	Suggestion/ Comments	Rationale



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

While sending email, kindly mention the subject as **"Review of certain provisions related to Superior Voting Rights Shares Framework"**

The comments may be sent by email to Smt. Yogita Jadhav, GM at (yogitag@sebi.gov.in), and Shri Abhishek Rozatkar, AGM (abhishekr@sebi.gov.in) latest by July 30, 2021

Comments can also be sent through post (latest by July 30, 2021) to the following address:

*Smt. Yogita Jadhav
General Manager, SSE and Policy Cell,
Corporation Finance Department,
Securities and Exchange Board of India,
SEBI Bhavan, C4-A, G-Block,
Bandra Kurla Complex, Bandra(East),
Mumbai 400706*
