



PROMOTER : A DEBATABLE WORD



*By, ACS Deep Vaghela
Deep Advisory Services*



Literal Meaning

As per Oxford Advanced Learner's Dictionary, Promoter means a person or company that organizes or provides money for performance or an event. Promoter is a person (natural or artificial) who tries to persuade others about the value or importance of something.

From legal definition, Promoter is a person or company that finances or organizes or involved in setting up and funding a new company.

We can say that its an individual or company that, for a fee, helps raise money for some type of investment and operational activity of the company.

Nowadays, in general public, there is a confusion about who is the Promoter of the Company. Though the word Promoter has been defined in Companies Act, 2013 and SEBI (Issue of Capital and Disclosure) Regulations, here I tried to present it for better understanding of the word Promoter.



Companies Act, 2013

According to sub-section 69 of section 2 of the Companies Act, 2013, Promoter means –
“a person:

- (a) *who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; OR*
- (b) *who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; OR*
- (c) *in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.*

Provided that *nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity”*



SEBI (ICDR) Regulations, 2009

According to clause (za) and (zb) of sub-regulation 1 of regulation 2 of the SEBI (ICDR) Regulations, 2009, defines Promoter as –

“(za) “promoter” includes:

- (i) the person or persons who are in control of the issuer;*
- (ii) the person or persons who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public;*
- (iii) the person or persons named in the offer document as promoters:*

Provided that a director or officer of the issuer or a person, if acting as such merely in his professional capacity, shall not be deemed as a promoter:

Provided further that a financial institution, scheduled bank, foreign institutional investor and mutual fund shall not be deemed to be a promoter merely by virtue of the fact that ten per cent or more of the equity share capital of the issuer is held by such person:

Provided further that such financial institution, scheduled bank and foreign institutional investor shall be treated as promoter for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them.

(zb) “promoter group” includes:

- (i) the promoter;*
- (ii) an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse); and*
- (iii) in case promoter is a body corporate:*
 - (A) a subsidiary or holding company of such body corporate;*
 - (B) any body corporate in which the promoter holds ten per cent or more of the equity share capital or which holds ten per cent or more of the equity share capital of the promoter;*
 - (C) any body corporate in which a group of individuals or companies or combinations thereof which hold twenty per cent or more of the equity share capital in that body corporate also holds twenty per cent or more of the equity share capital of the issuer; and*
- (iv) in case the promoter is an individual:*
 - (A) any body corporate in which ten per cent or more of the equity share capital is held by the promoter or an immediate relative of the promoter or a firm or Hindu Undivided Family in which the promoter or any one or more of his immediate relative is a member;*
 - (B) any body corporate in which a body corporate as provided in (A) above holds ten per cent or more, of the equity share capital;*
 - (C) any Hindu Undivided Family or firm in which the aggregate shareholding of the promoter and his immediate relatives is equal to or more than ten per cent of the total; and*
 - (D) all persons whose shareholding is aggregated for the purpose of disclosing in the prospectus under the heading “shareholding of the promoter group”:*

Provided that a financial institution, scheduled bank, foreign institutional investor and mutual fund shall not be deemed to be promoter group merely by virtue of the fact that ten per cent or more of the equity share capital of the issuer is held by such person:

Provided further that such financial institution, scheduled bank and foreign institutional investor shall be treated as promoter group for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them.”

SEBI (SAST) Regulations, 2011

According to clause (s) of sub-regulation 1 of regulation 2 of the SEBI (SAST) Regulations, 2011, defines Promoter as –

““Promoter” has the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and includes a member of the promoter group.”

Cogitate the Interpretation

Getting into deep the various definitions, the Companies Act, 2013 mentions three criteria for Promoter over an above the person or persons who are the subscriber to the Memorandum and Articles of Association of the Company during incorporation.

Now the test starts here about determining the control of affairs of the company whether directly or indirectly. Meaning of control under sub-section 27 of section 2 of the Companies Act, 2013 means the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their **shareholding or management rights or shareholders agreements or voting agreements** or in any other manner. This means that a director or a shareholder having ultimate right to handle the affairs of the business or on whose decision the company is acting will be consider as a Promoter.

The next question comes what does indirect control means? How one can identify that there is an indirect control over the affairs of the company?

The single point of identification is that a person who is neither a director nor a shareholder and if on its direction (not in the capacity as a professional) if a company had to act, then it comes under the indirect control. This point is always challengeable as that person is not giving direction by pointing a gun nor in any professional capacity or as a director but still as an outsider he has control over the business.

The definition of SEBI (ICDR) Regulations, 2015 is much wider as compare to the Companies Act, 2013. In legal parlance, the name of the promoter is so registered in the prospectus of the company and they have majority stake of the business whether they serve as a Board of Directors of the company or not.

Further as per regulation 31 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the shareholding of Promoters and Promoter Group needs to be disclose to the Stock Exchange(s) and as per sub-regulation (2) of regulation 30 of SEBI (SAST)

Regulations, 2011, the Promoters together with persons acting in concert with them shall disclose to the Stock Exchange(s) and the Company about their aggregate shareholding and voting rights as of the 31st day of March of every financial year.

This means that from looking at the prospectus of the company and recently published shareholding pattern, one can easily identify the person who are considered as the Promoter of the Company.

My personal view is that the best way to identify the promoter from all angle is to examine a promoter by focusing on – **“if the Board of Directors and the management of the company acts as per someone’s directions or orders, for whatever reasons, then that person is a Promoter and it does not matter how or which type of control they are having.”**



As per normal belief, a promoter will remain promoter forever based on the reading of the Companies Act, 2013 and SEBI (ICDR) Regulations, 2009, whose words are like “a promoter is someone who has been named” so this is like a marriage which will never end up.

Recently SEBI had come out with the discussion paper on “Re-classification of Promoters as Public” and now they are working on rules to enable a promoter to de-classify themselves as such a public and ceases to be a promoter. Will have to wait for the ultimate notification in this regard from SEBI.

*For any Advice in above matter, feel free to contact **Deep Advisory Services** at **+91-9913803369** or **vagheladeep@gmail.com**. You can also like Facebook Page **Deep Advisory Services** and stay complied.*