

**DEPUTY GENERAL MANAGER
DIVISION OF CORPORATE RESTRUCTURING**

CFD/DCR/TO/SS/ 146157/08

December 01, 2008

The IL & FS Financial Center
Bandra Kurla Complex,
Bandra (East), Mumbai 400051

Dear Sir,

Sub.- Request for interpretative letter under the SEBI (Informal Guidance) Scheme, 2003.

1. Please refer your letter dated September 22, 2008, seeking 'interpretive letter' under SEBI (Informal Guidance) scheme, 2003 (Scheme) and further correspondence in this regard.
2. In your letter under reference you have *inter alia* represented as follows:-
 - a. IL & FS is a Non Banking Finance Company, promoted by the Central Bank of India (CBI), Housing Developing Finance Corporation Limited (HDFC) and Unit Trust of India (UTI). Over the years, IL & FS has broad-based its shareholdings and inducted Intuitional shareholders including State Bank of India , Life Insurance Corporation of India, ORIX Corporation , Japan, and Abu Dhabi Investment Authority.
 - b. IL & FS Investment Managers Limited (IIML) is subsidiary of IL & FS and is engaged in the fund management business.
 - c. IIML has issued stock options to its employees and directors, and these would be vested and exercised over the few years. On a fully diluted basis, the equity capital of IIML would increase from Rs.397.87 mn to Rs.419.72 mn. as a result of foregoing, comprising equity shares of Rs.10 per value.
 - d. Due to conversion of the ESOPs into the equity shares, the shareholding of IL & FS would stand diluted and IIML would no longer remain a subsidiary. In order to avoid this IL&FS (Acquirer) intends to increase its shareholding in IIML through purchase of equity shares of IIML in open market.
 - e. IL&FS proposed to acquirer upto 4, 50,000 additional equity shares of IIML through market purchase, which would permit IIML to remain

a subsidiary of IL&FS even after dilution takes place when all ESOPs are vested and exercised.

- f. As per Regulation 2(1)(e)(i) of the Securities of Exchange Board of India (Substantial Acquisitions of Shares and Takeover) Regulation 1997, Persons Acting in Concert (PAC) are those who for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding directly or indirectly co-operate by acquiring or agreeing to acquire the shares or voting rights in the target company or control over the target company.
 - g. Regulation 2(1)(e)(2)(i) and (iii) is a deeming provision which provides that Persons Acting in Concert includes a company , its holding company or subsidiary or such company under the same management either individually or together with each other its subsidiaries and also directors of such companies .
 - h. Accordingly, IL&FS has whole time directors and group Investment officer to be deemed to be persons acting in concert and not the other directors or the directors of its group companies or its subsidiaries as none of them are involved in any manner with the foregoing exercise and there is no agreement or common purpose and the directors concerned are all professionals.
 - i. Further it is also stated that the IL& FS holds 20, 916, 654 shares of (IIML) out of its total paid up capital i.e. 39, 787,221. In percentage the current holding of IL& FS in IIML works out to 52.57% of the current paid up capital and 49.83% of the fully diluted capital . Shareholding of PACs i.e. Mr. Ravi Parthasarathy, Mr. Hari Sankaran, Mr. Vibhav Kapoor and Mr Arun K Saha stand at 645,750 in aggregate. On a fully diluted basis shareholding of IL&FS and the PACs comprise of 51.37% of the capital of IIML and they would like to acquire 320,000 shares so that shareholding of IL& FS in IIML is over 50% on fully diluted basis and IIML remains a subsidiary of IL&FS.
3. In view of the above you have sought the interpretive letter to confirm that only three directors and Group Investment Officer of IL&FS are the persons deemed to be the person acting in concert and not other directors and directors of its group companies or subsidiaries.
4. Without necessarily agreeing with your analysis our views in the matter are as under:-
- a. As per Regulations 2(1)(e) of takeover Regulation ,Person Acting in concert is defined as under :

2(1)(e)	(1) persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company
	(2) Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established : i. A company , its holding company, or subsidiary of such company or company under the same management either individually or together with each other; ii. a company with any of its directors, or any person entrusted with the management of the funds of the company; iii. Directors of companies referred to in sub-clause (i) of clause (2) and their associates.

- b. The concept of deemed PAC under Regulation 2(1)(e)(2) contemplates a rebuttable presumption and therefore, all directors including the directors of group companies, directors of the subsidiary companies and any person entrusted with the management of the funds of the IL & FS would be deemed to be PAC in terms of SEBI (SAST) Regulation, 1997, unless contrary is established.
- c. Further, it is also stated in the application that, the other directors and the directors of its group companies or its subsidiaries are not involved in any manner with the foregoing exercise and there is no agreement or common purpose and the directors concerned are all professionals.

- d. However, this point is a mere statement, and no leading evidences have been provided which would enable us to come to any conclusion in this regard.
 - e. Therefore, considering the above facts & circumstance, all directors including these three directors of the company, Group Investment Officer and the directors of its group companies or its subsidiaries are deemed to be Persons Acting in Concert, unless contrary is established.
5. The position is based on the representation made to the Division in your letter under reference. Different facts or conditions might require a different result. This letter does not express decision of the Board on the questions referred.
6. You may note that the above views are expressed only with respect to the clarification sought on SEBI (Substantial Acquisition and Takeovers) Regulations, 1997 and do not affect the applicability of any other law or requirement.

Yours faithfully

SOMA MAJUMDER