Listed Shares in Trust – SEBI Perspective

Contributing a Listed Holding to a Trust,
and the Exemption It Requires

The Vehicle | The Trigger | The Argument | The Route

The Vehicle	The Trigger	The Route
Why the block moves into a trust	Why an exemption is needed at all	Regulation 11, and what it costs

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01

THE HOLDING VEHICLE

Rationale: Why Listed Shares in a Trust?

The Individual Holding Does Not Survive

TRANSMISSION EVENTS

Shares held personally pass by will or intestacy on every death. Each transmission fragments the block across branches, invites dispute at the worst moment, and confers a promoter tag on people who never sought it. A trust holds through the event without a transfer.

The Holding Company Is the Alternative

AND IT LOCKS IN

A holding company gives continuity too, but accumulates reserves it cannot distribute without tax, attracts related party scrutiny, and trades at a discount to what it holds. Migrating out of it later is the harder problem, and it becomes harder every year.

What the Trust Is Actually For

CONTINUITY, NOT TAX

The trust is an ownership and governance institution dealing with succession of both assets and management: one registered holder, a defined beneficiary class, a distribution architecture, and anti-alienation that keeps beneficial interest from becoming collateral in the capital markets.

Three Ways the Block Can Move

WHAT ACTUALLY MOVES

The listed shares may be settled directly, or the shares of the holding company above them, or the partners' interest in a firm above that. Each is an acquisition of the listed company for the takeover code, and each is treated differently under it.

The Trust Is Chosen for Succession Continuity

Every one of the three routes is an acquisition before it is a succession step

02

WHY AN EXEMPTION IS NEEDED

The Settlement Is an Acquisition

The Initial Trigger

REGULATION 3(1)

An acquisition taking the acquirer and persons acting in concert to 25% or more of voting rights requires an open offer. A settled promoter block ordinarily exceeds that on the first day.

The Creeping Trigger

REGULATION 3(2)

Where the acquirer with concert parties already holds 25% or more but less than 75%, a further 5% in a financial year triggers again. Settling the block in tranches is not a way around the first trigger, if the trust does not already hold 25%

Control Alone Is Enough

REGULATION 4

Regulation 4 applies irrespective of shareholding. The trustees direct the exercise of the votes on the block, so the acquisition of control appears on the face of the transaction.

Absence of Consideration Does Not Help

NO PRICE, NO RELIEF

Regulations 3 and 4 test voting rights and control, not price. A gratuitous settlement is an acquisition, and the family relationship between settlor and beneficiary is not a defence to it.

The Inter Se Exemption Does Not Apply

REGULATION 10(1)(a)

Regulation 10(1)(a) exempts inter se transfers of the target’s shares amongst qualifying persons: immediate relatives, three-year named promoters and specified group companies. A new trust is none of them.

The Question Is Not Whether an Exemption Is Needed

It is whether the general exemption reaches the transaction, or only the special one

03

FOR THE INITIATED

The Symmetry Argument, and Why It Fails

The Instrument May Not Be Shares

A TEXTUAL DIFFICULTY

Regulation 10(1)(a), the inter se transfer exemption, is written around shares. Where the shares sits below a partnership firm or an LLP, what is contributed is a partnership interest and not shares at all, so the provision does not engage on its own language.

The Symmetry Argument

THE CONSTRUCTIVE CASE

Regulation 5 derives the open offer obligation on an indirect acquisition from Regulations 3 and 4 themselves. If the trigger reaches the indirect level, the inter se exemption should reach it too. Obligation and relief ought not to sit on different perimeters.

The Textual View Has Prevailed

INFORMAL GUIDANCE 2023

One SEBI Information Guidance in 2023 held that the inter se exemption covers transfers of shares of the listed target alone, and refused it to a gift of holding company shares between spouses. The applicant was directed to the case-specific route instead.

Regulation 11 Is the Only Door

CASE-SPECIFIC EXEMPTION

The argument for symmetry survives as principle, but no precedent supports it and guidance binds no one. On application, mirror-image family settlements have been permitted consistently, direct and indirect alike.

The Argument Is Sound; the Guidance Points the Other Way

Absent a favourable precedent or a clarificatory amendment, the automatic route cannot be relied upon

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WHAT REGULATION 11 ASKS

What the Deed Must Carry, and Keep Carrying

The Disclosure Clock Runs First

THREE YEARS, IN ADVANCE

The transferors, the intermediate entities and the trust itself should sit within the promoter group in the shareholding pattern for three years before the transfer. If that has not begun, it is step one.

The Mirror Image

NO CHANGE IN SUBSTANCE

The trust must be, in substance, a mirror image of the promoters' holdings, so that no change of ownership or control of the shares or voting rights in the target company results from the settlement.

Trustees and Beneficiaries Are Fixed

INDIVIDUALS ONLY

Only individual promoters, their immediate relatives and lineal descendants may be trustees or beneficiaries, and no layering is permitted. Corporate and professional trustees are both excluded.

Interest Is Frozen, Powers Are Not Delegable

NO ALIENATION

Beneficial interest may not be transferred, assigned, encumbered or pledged at any time, and trustees may not delegate their powers to any person other than one or more of themselves.

Compliance Is Annual and Audited

CONTINUING OBLIGATIONS

Any change in trustees, beneficiaries or control must be disclosed within two working days. Compliance is confirmed annually as a note to the shareholding pattern and certified by an independent auditor.

The Exemption Is a Covenant, Not a Clearance

Every condition follows the shares for as long as the trust continues to hold them

05

WHERE IT STRAINS

The Problems the Construct Creates

Governance Is Traded for Eligibility

NO INSTITUTIONAL TRUSTEE

The corporate trustee that gives institutional continuity is unavailable, and so is the professional trustee. Individual trustees import the very succession fragility the trust was meant to remove.

The Deed Is Frozen at Settlement

NO ROOM TO AMEND

Beneficiary class, distribution architecture and anti-alienation are settled once. Even a latent power to admit a person outside the relative class can imperil both the exemption and the tax position.

A Corporate Settlor Pays Full Value

SECTION 56(2)(x)

The relative exclusion is built around an individual settlor. Where the block sits in a promoter holding company, the trust is taxed on market value, and the tax cost could be heavy

The Promoter Tag Becomes Permanent

REGULATION 31A OF LODR

The trust enters the promoter group, and its trustees and beneficiaries enter with it. While the family aggregate stays above the reclassification threshold, none of them has a route out.

Sequence, and a Protector

WHERE IT WORKS

Start the disclosure clock, keep individual family trustees, and carry the institutional governance through a protector or a family advisory committee rather than through the trustee itself.

The Structure Is Designed Backwards From the Conditions

Each condition SEBI imposes is a drafting instruction that belongs in the deed before it is executed

KATALYST
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The Takeaway

A trust is chosen for succession continuity. It is the vehicle that survives the events which break an individual holding, and the takeover code treats the act of putting the block into it as an acquisition to be permitted rather than assumed.

The Vehicle	The trust holds through death, keeps the block undivided across branches, and does so without the trapped reserves, the discount and the migration problem a holding company accumulates
The Trigger	A settled block crosses 25% under Regulation 3(1), or adds 5% in a year under Regulation 3(2), and carries control under Regulation 4. Absence of consideration is no answer to any of them
The Argument	Regulation 5 derives the indirect obligation from Regulations 3 and 4, so the inter se exemption should follow the trigger. The 2023 guidance has not accepted it, and a partnership interest is not shares in any event
The Price	Three-year promoter group disclosure, mirror image, individual trustees and beneficiaries, frozen beneficial interest, no delegation of powers, and annual audited confirmation
The Watch-out	**Regulatory Watch-Out:** Informal guidance binds no one and is not a determination of law, but the stated position points against the automatic route **Practical Watch-Out:** An institutional trustee will not satisfy the conditions, so the disclosure clock should be started now. Practical way out is for the trust to be disclosed for 3 years as promoter/ promoter group with nominal shares and the settlement of the block happens after that, relying on R. 10(1)(a) general exemption