

SEBI TAKEOVER CODE

**CS PROFESSIONAL
(CR & CFL)**

&

**CS EXECUTIVE
[Securities Laws]**

By:-

CS NITESH KR. JAISWAL

(COMPANY SECRETARY, FCS, LL.B)

"SENIOR QUALIFIED CS" FACULTY



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CHAPTER

21

ACQUISITION OF COMPANY/BUSINESS -TAKEOVER

Covering-

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- Kinds of takeover
- Legal aspects of takeover
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- Purchase of Minority Shareholding
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**EXPECTED
MARKS COVERAGE
(10 to 15)**

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TAKEOVER



Takeover implies **acquisition of control of a company**, which is already registered, through the purchase or exchange of shares.

Takeovers usually take place **when shares are acquired or purchased from the shareholders** of a company at a specified price to the extent of **at least controlling interest** in order to gain control of that company.

Takeover is a corporate device whereby one company acquires control over another company, usually by purchasing all or a majority of its shares. Ordinarily, a larger company takes over a smaller company. However, in a reverse takeover, a smaller company acquires control over a larger company.

As the motive is to takeover of other business, the acquiring company offers to buy the shares at a very high premium, that is, the gaining difference between the offer price and the market price of the share. This entices the shareholders and they sell their stake to earn quick money. This way the acquiring company gets the majority stake and takes over the ownership control of the target company

The takeover strategy has been conceived to improve corporate value, achieve better productivity and profitability by making optimum use of the available resources in the form of men, materials and machines.



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OBJECTS / BENEFITS OF TAKEOVER

The objects of a takeover may <i>interalia</i> be:-	(a) To effect savings in overheads and other working expenses on the strength of combined resources;
	(b) To achieve product development through acquiring firms with compatible products and technological/manufacturing competence,
	(c) To diversify through acquiring companies with new product lines as well as new market areas
	(d) To improve productivity and profitability
	(e) To create shareholder value and wealth by optimum utilisation of the resources of both companies;

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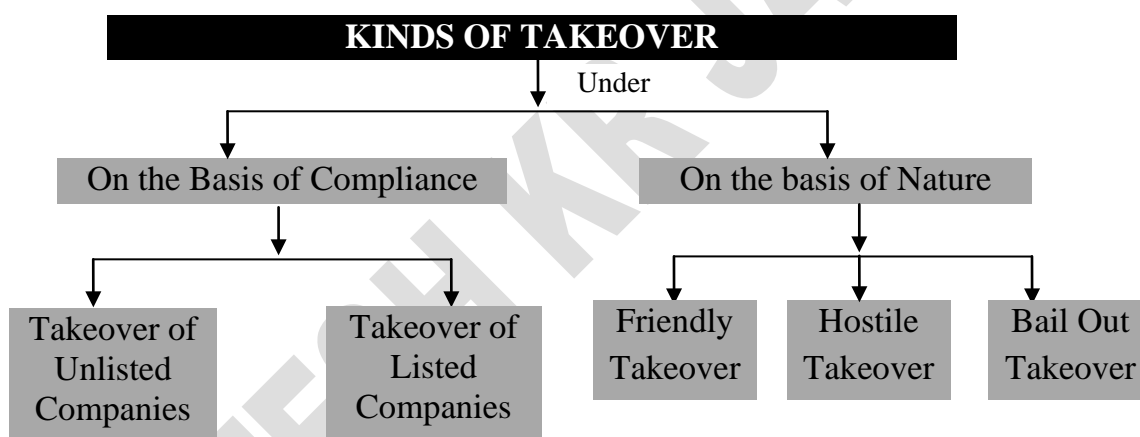
	(f) To eliminate competition;
	(g) To achieve economy of scale
	(h) To increase market share;

FACTOR WHICH MAKE A COMPANY VULNERABLE TO TAKEOVER BIDS

(a) Low stock price with relation to the replacement cost of assets or their potential earning power.
(b) A highly liquid balance sheet with large amounts of excess cash, a valuable securities portfolio and significantly unused debt capacity ;
(c) Good cash flow in relation to current stock prices;
(d) Subsidiaries and properties which could be sold off without significantly impairing cash flow;
(e) Relatively small stockholding under the control of an incumbent management .

KINDS OF TAKEOVER

Takeovers may be broadly classified into three kinds:-



1. FRIENDLY TAKEOVER

Friendly takeover is **with the consent** of taken over company. In friendly takeover, there is an **agreement between the management of two companies** through negotiations and the takeover bid may be with the consent of majority or all shareholders of the target company. This kind of takeover is done through negotiations between two groups. Therefore, it is also called negotiated takeover.

2. HOSTILE TAKEOVER

When an acquirer company does not offer the target company the proposal to acquire its undertaking but silently and **unilaterally pursues efforts to gain control against the wishes of existing management**, such acts of acquirer are known as 'hostile takeover'. Such takeovers are hostile on the management and are thus called hostile takeover.

3. BAIL OUT TAKEOVER

Takeover of a **financially sick company by a profit earning company to bail out the former** is known as bail out takeover. There are several advantages for a profit making company to takeover a sick company.

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The price would be very attractive as **creditors, mostly banks and financial institutions having a charge on the industrial assets, would like to recover to the extent possible**. Banks and other lending financial institutions would evaluate various options and if there is no other go except to sell the property, they will invite bids. Such a sale could take place in the form by transfer of shares. Thus a bail out takeover takes place with the approval of the Financial Institutions and banks.

LEGAL ASPECTS OF TAKEOVER

The regulatory framework for controlling the takeover activities of a company consists of:-	(a) The Companies Act, 2013 (Section 235, 236 & 238),
	(b) SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
	(c) Regulation 38 of SEBI (LOADR) Regulations, 2015

➤ TAKEOVER OF UNLISTED COMPANIES

POWER AND DUTY TO ACQUIRE SHARES OF SHAREHOLDERS DISSENTING FROM SCHEME OR CONTRACT APPROVED BY MAJORITY

SECTION 235

- (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has, **within four months** after making of an offer in that behalf by the transferee company, **been approved by the holders of not less than nine-tenths in value of the shares** whose transfer is involved, *other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies*, the **transferee company may, at any time within two months** after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.
- (2) Where a notice under sub-section (1) is given, the transferee company shall, **unless on an application made by the dissenting shareholder to the Tribunal, within one month** from the date on which the notice was given and the **Tribunal thinks fit to order otherwise, be entitled to and bound** to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.
- (3) Where a notice has been given by the transferee company under sub-section (1) and the **Tribunal has not**, on an application made by the dissenting shareholder, **made an order to the contrary**, the transferee company shall, **on the expiry of one month** from the date on which the notice has been given, or, if an application to the Tribunal by the dissenting shareholder is then pending, after that application has been disposed of, **send a copy of the notice** to the transferor company together **with an instrument of transfer**, to be executed on behalf of the shareholder by any person appointed by the transferor company and on its own behalf by the transferee company, and **pay or transfer to the transferor company the amount or other consideration** representing the price payable by the transferee company for the shares which, by virtue of this section, that company is entitled to acquire, and the transferor company shall—
 - (a) thereupon **register the transferee company as the holder of those shares**; and
 - (b) **within one month of the date of such registration, inform the dissenting shareholders** of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company.

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- (4) Any sum received by the transferor company under this section **shall be paid into a separate bank account**, and any such sum and any other consideration so received **shall be held by that company in trust for the several persons entitled to the shares in respect** of which the said sum or other consideration were respectively received and **shall be disbursed to the entitled shareholders within sixty days**.
- (5) In relation to an offer made by a transferee company to shareholders of a transferor company **before the commencement of this Act**, this section shall have effect with the following modifications, namely:—
- (a) in sub-section (1), for the words “the shares whose transfer is involved other than shares already held at the date of the offer by, or by a nominee of, the transferee company or its subsidiaries,” the words “the shares affected” shall be substituted; and
- (b) in sub-section (3), the words “together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferor company” shall be omitted.

Explanation.—For the purposes of this section, “**DISSENTING SHAREHOLDER**” includes a **shareholder who has not assented** to the scheme or contract and **any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract**.

IMPORTANT INGREDIENTS OF THE SECTION 235

- (a) The proposed transfer of shares by the transferor company must be approved by the holders of 9/10th in value of the shares whose transfer is involved and this approval should be obtained within 4 months of the offer being floated. (Section 235(1))
- (b) In calculating 90%, the shares already held by the transferee company, a nominee for the transferee company and any subsidiary of the transferee company shall be excluded from the total shares. (Section 235(1))
- (c) The transferee company may give notice, within 2 months of the aforesaid 4 months, to the dissentient shareholders, in the prescribed manner for acquisition of their shares. The manner for such notice is prescribed under Rule 26 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 . Rule 26 provides that the transferee company shall send a notice to the dissenting shareholder(s) of the transferor company, in **Form No. CAA.14** , at the last intimated address of such shareholder, for acquiring the shares of such dissenting shareholders. (Section 235(1))
- (d) Unless the dissentient shareholders, within 1 month of the above notice, obtain Court order to the contrary or stipulating certain other conditions, the transferee company is entitled and bound to acquire the shares on the terms as stated in the scheme or contract. (Section 235(2))
- (e) The transferee company shall, on the expiry of 1 month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholders is there pending, after that application has been disposed of, approach the transferor company along with the duly executed transfer deed and pay the transfer consideration to the transferor company and whereupon the transferor company is required to register the transfer and within 1 month inform the dissentient shareholders of this fact. (Section 235(3))
- (f) When the scheme is approved by the holders of not less than nine tenth (90%) in value of the shares of the transferor company whose transfer is involved, it shall be binding on all the shareholders of the transferor company (including dissenting shareholders), unless the Court Orders otherwise.

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CASE LAWS

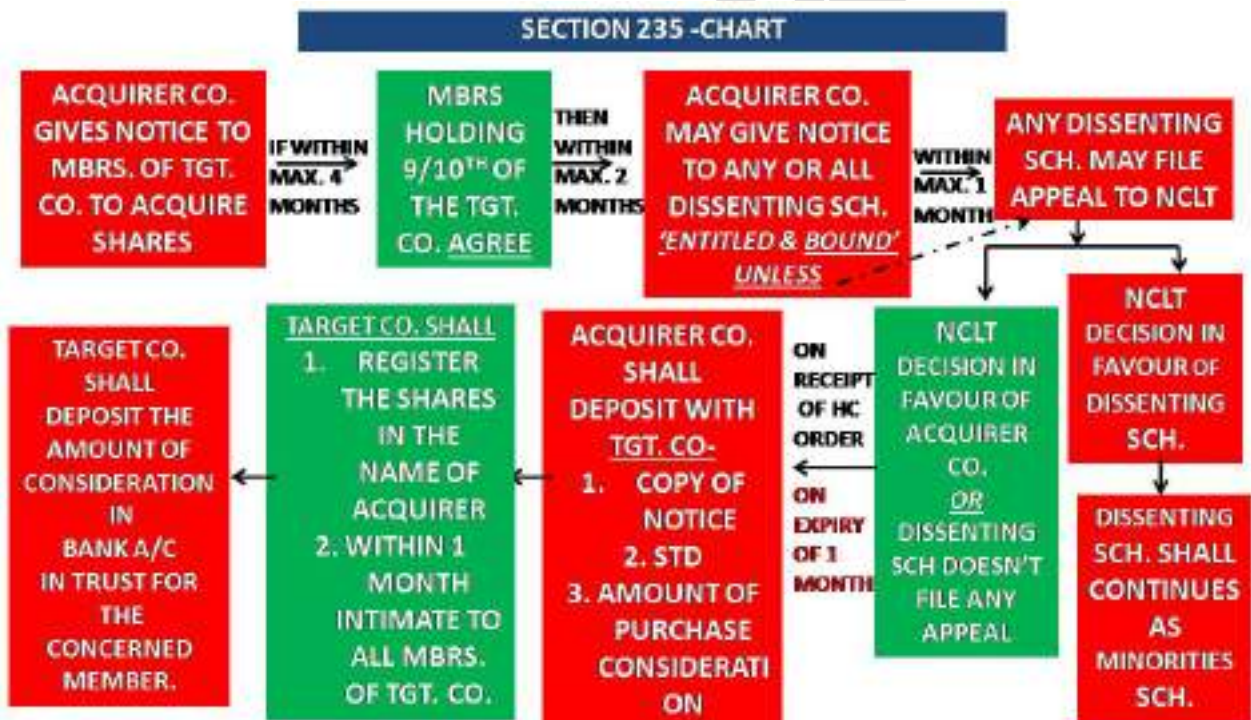
When the scheme is binding on minority shareholders including dissenting shareholders?

When the scheme is approved by the holders of not less than nine tenth (90%) in value of the shares of the transferor company whose transfer is involved, **it shall be binding on all the shareholders** of the transferor company (including dissenting shareholders), unless the Court/NCLT Orders otherwise.

CASE LAW



<p><i>S Viswanathan</i> v. <i>East India Distilleries & Sugar Factories Limited</i></p>	Power of Acquisition of Shares of dissentient minority shareholders is not ultra vires the constitution of India.
<p><i>Benarasi Das Saraf</i> v. <i>dalmia Dadri Cement Ltd.</i></p>	Where the scheme or contract has been approved by 90% of the shareholders, the offer of the transferee company will be treated as prima-facie a fair one and the onus will be on the dissentients to show the contrary.



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PURCHASE OF MINORITY SHAREHOLDING SECTION 236

- (1) In the event of an acquirer, or a person acting in concert with such acquirer, **becoming registered holder of ninety per cent. or more** of the issued equity share capital of a company, or in the event of any person or group of persons becoming ninety per cent majority or holding ninety per cent. of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, **shall notify the company of their intention to buy the remaining equity shares.**

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- (2) The acquirer, person or group of persons under sub-section (1) **shall offer to the minority shareholders** of the company for buying the equity shares held by such shareholders **at a price determined on the basis of valuation by a registered valuer** in accordance with such rules as may be prescribed.
- (3) Without prejudice to the provisions of sub-sections (1) and (2), the minority shareholders of the company may offer to the majority shareholders to purchase the minority equity shareholding of the company at the **price determined in accordance with such rules** as may be prescribed under sub-section (2).
- (4) The majority shareholders **shall deposit an amount equal to the value of shares** to be acquired by them under sub-section (2) or sub-section (3), as the case may be, in a **separate bank account** to be operated by the transferor company for at least one year for payment to the minority shareholders and such amount shall be disbursed to the entitled **shareholders within** sixty days:

Provided that such disbursement shall continue to be made to the **entitled shareholders for a period of one year**, who for any reason had not been made disbursement within the said period of sixty days or if the disbursement have been made within the aforesaid period of sixty days, **fail to receive or claim** payment arising out of such disbursement.

- (5) In the event of a purchase under this section, the **transferor company shall act as a transfer agent for receiving and paying the price** to the minority shareholders and for taking delivery of the shares and delivering such shares to the majority, as the case may be.
- (6) **In the absence of a physical delivery of shares by the shareholders** within the time specified by the company, the **share certificates shall be deemed to be cancelled**, and the **transferor company shall be authorised to issue shares in lieu of the cancelled shares** and complete the transfer in accordance with law and **make payment** of the price out of deposit made under sub-section (4) by the majority in advance to the minority by despatch of such payment.
- (7) In the event of a majority shareholder or shareholders requiring a full purchase and making payment of price by deposit with the company for any shareholder or shareholders **who have died or ceased to exist, or whose heirs, successors, administrators or assignees have not been brought on record by transmission**, the right of such shareholders to make an offer for sale of minority equity shareholding shall continue and be **available for a period of three years** from the date of majority acquisition or majority shareholding.
- (8) Where the shares of minority shareholders have been acquired in pursuance of this section and as on or prior to the date of transfer following such acquisition, the shareholders holding **seventy-five per cent. or more minority equity shareholding negotiate or reach an understanding on a higher price** for any transfer, proposed or agreed upon, of the shares held by them without disclosing the fact or likelihood of transfer taking place on the basis of such negotiation, understanding or agreement, the **majority shareholders shall share the additional compensation so received by them with such minority shareholders on a pro rata basis**.

Explanation.—For the purposes of this section, the expressions “acquirer” and “person acting in concert” shall have the meanings respectively assigned to them in clause (b) and clause (e) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

- (9) When a shareholder or the majority equity shareholder **fails to acquire full purchase of the shares of the minority equity shareholders, then**, the provisions of this section shall continue to apply to the residual minority equity shareholders, even though,—

- | |
|--|
| (a) the shares of the company of the residual minority equity shareholder had been delisted; and |
| (b) the period of one year or the period specified in the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, had elapsed. |

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DETERMINATION OF PRICE FOR PURCHASE OF MINORITY SHAREHOLDING

Rule 27 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

For the purposes of section 236 (2), the registered valuer shall determine the price (hereinafter called as offer price) to be paid by the acquirer, person or group of persons referred to in section 236 (1) for purchase of equity shares of the minority shareholders of the company, in accordance with the following rules:-

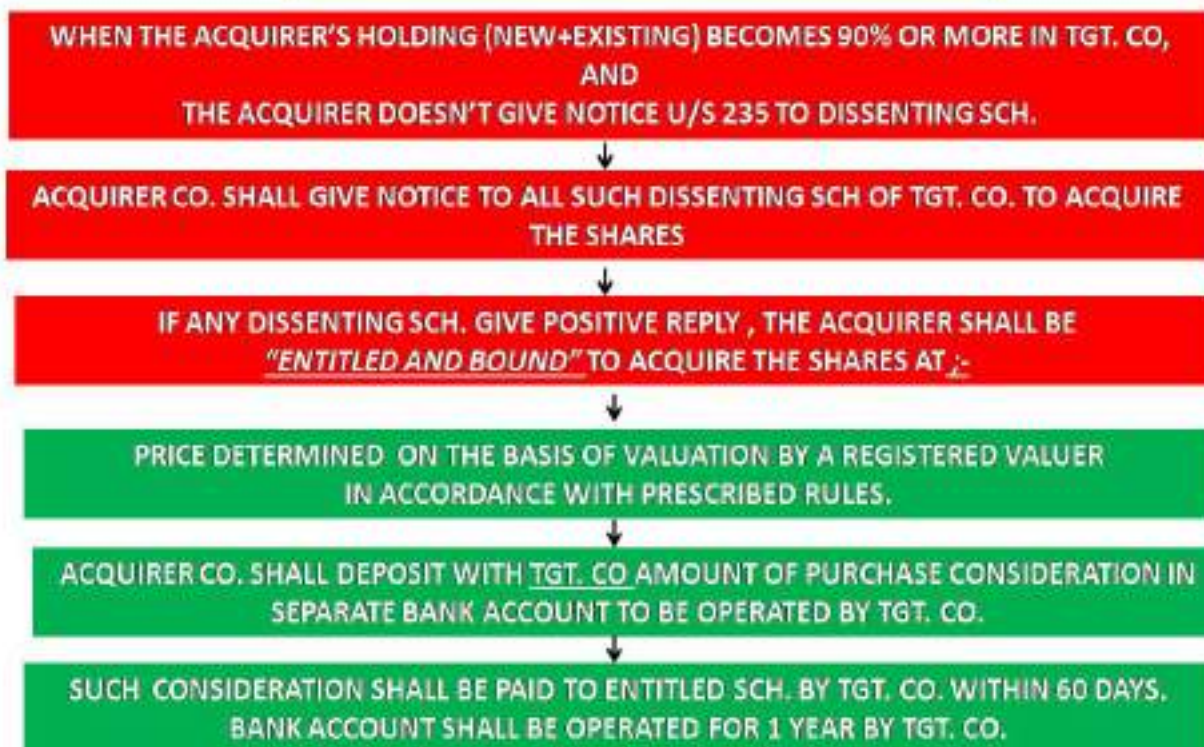
(A) In the case of a listed company,-

- (i)** the offer price shall be determined in the manner as may be **specified by the SEBI** under the relevant regulations framed by it, as may be applicable; and
- (ii)** the **registered valuer shall also provide a valuation report** on the basis of valuation addressed to the Board of directors of the company giving justification for such valuation.

(B) In the case of an unlisted company and a private company,

- (i)** the offer price shall be determined after taking into account the following factors:-
 - (a)** the **highest price paid by the acquirer**, person or group of persons for acquisition during last **twelve months**;
 - (b)** the **fair price of shares** of the company to be determined by the registered valuer after taking into account valuation parameters including return on net worth, book value of shares, earning per share, price earning multiple vis-a-vis the industry average, and such other parameters as are customary for valuation of shares of such companies; and
- (ii)** the registered valuer **shall also provide a valuation report** on the basis of valuation addressed to the board of directors of the company giving justification for such valuation.

SECTION 236- CHART



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REGISTRATION OF OFFER OF SCHEMES INVOLVING TRANSFER OF SHARES

SECTION 238

- (1) In relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company under section 235,—
- (a) every circular containing such offer and recommendation to the members of the transferor company by its directors to accept such offer shall be **accompanied by such information and in such manner as may be prescribed;**
 - (b) every such offer shall **contain a statement by or on behalf of the transferee company**, disclosing the steps it has taken to ensure that necessary cash will be available; and
 - (c) every **such circular shall be presented to the Registrar for registration** and no such circular shall be issued until it is so registered:
- Provided that the **Registrar may refuse**, for reasons to be recorded in writing, to register any such circular which does not contain the information required to be given under clause (a) or which sets out such information in a manner likely to give a false impression, and communicate such refusal to the parties within **thirty days of the application.**
- (2) An **appeal shall lie to the Tribunal** against an order of the Registrar refusing to register any circular under sub-section (1).
- (3) The director who issues a circular which has not been presented for registration and registered under clause (c) of sub-section (1), shall be punishable **with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakhs.**

IMPORTANT INGREDIENTS OF THE SECTION 238

- (a) every such offer or every circular containing such offer or every recommendation to the members of transferor company by its directors to accept such offer shall be accompanied by the information prescribed under Form No. CAA.15 of Companies (Compromises, Arrangements and amalgamations) Rules, 2016.
- (b) Every such offer shall contain a statement by or on behalf to the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available.
- (c) Every such circular shall be presented to the Registrar of Companies for registration and no such circular shall be issued until it is so registered.
- (d) The Registrar may refuse to register any such circular which does not contain the information as prescribed in Form No. CAA.15 of Companies (Compromises, Arrangements and amalgamations) Rules, 2016 or if the circular issued sets out such information in a manner likely to give false impression. The appeal against the refusal of the ROC shall lie before the National Company Law Tribunal.

OTHER ASPECTS

1. AUTHORISATION IN THE MOA

It is **necessary that the** Memorandum of Association of the acquirer company should contain as one of the objects of the company a provision to takeover the controlling shares in another company. However, if the memorandum of a **company does not have such a provision, the company must alter the objects** clause in its memorandum, by convening an extraordinary general meeting of the shareholders of the company and passing a **special resolution under section 13** of the Companies Act, 2013.

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2. DOCUMENTS INVOLVED

(a) Minutes of Board meeting containing consideration and approval of the offer sent to the transferor company.
(b) Offer of a scheme or contract sent to the transferor company.
(c) Notice to dissenting shareholders if any, of the transferor company.
(d) Notice to the remaining shareholders of the transferor company, who have not assented to the proposed acquisition, if any.
(e) Form No. CAA. 15 received from the transferor company.
(f) Minutes of general meeting of the company containing approval of the shareholders to the offer of scheme or contract sent to the transferor company.
(g) Tribunal order, if any.

DRAFTING

1. NOTICE TO DISSENTING SHAREHOLDERS PURSUANT TO SECTION 235 OF COMPANIES ACT, 2013

WHEREAS on the 1st day of January 2017, the transferee company made an offer to the shareholders of the transferor company and whereas within 4 months of the date of making offer, holders of not less than 90% in value of the said shares approve the offer.

FURTHER as per the provision of Section 235 (1) of the Companies Act, 2013, notice is hereby given that Transferee Company is desirous to acquire the shares of dissenting shareholders within the prescribed period.

For.....

Signature.....

Dated this..... day of.....,.....

2. AUTHORISATION TO INVEST IN THE SHARES OF THE INVESTEE COMPANY

"**RESOLVED THAT** pursuant to Section 186 and other applicable provisions, if any, of the Companies Act, 2013 and authorization given by the members of the company at their meeting held on....., unanimous consent of the Board of Directors be and is hereby given to invest upto.....equity shares of M/s ABC Ltd. at a price of.....each."

TRANSFEROR COMPANY (DOCUMENTS ETC. INVOLVED IN THIS PROCESS)

Check that	1. Offer of a scheme or contract from the transferee company
Check that	2. Minutes of Board meeting containing consideration of the offer and its acceptance or rejection
Check that	3. Notice calling general meeting
Check that	4. Form CAA 14 circulated to the members
Check that	5. Minutes of general meeting of the company containing approval of the offer by statutory majority in value and in numbers also, if required
Check that	6. Court order, if any

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Check that	7. Register of Members
Check that	8. Notice sent by the transferee company to dissenting shareholders for acquiring their shares
Check that	9. Duly filled in and executed instrument(s) of transfer of shares held by the dissenting shareholders
Check that	10. Bank Pass Book or Statement of Account in respect of the amount deposited in the special bank account to be kept in trust for the dissenting shareholders
Check that	11. Annual Report Transferee Company (Documents etc. involved in this process): (a) Minutes of Board meeting containing consideration and approval of the offer sent to the transferor company (b) Offer of a scheme or contract sent to the transferor company (c) Notice to dissenting shareholders if any, of the transferor company (d) Notice to the remaining shareholders of the transferor company, who have not assented to the proposed acquisition, if any (e) Form No: CAA14 received from the transferor company, which has been circulated to its members by that company (f) Minutes of general meeting of the company containing approval of the shareholders to the offer of scheme or contract sent to the transferor company (g) Court order, if any (h) Register of Investments

➤ TAKEOVER OF LISTED COMPANIES

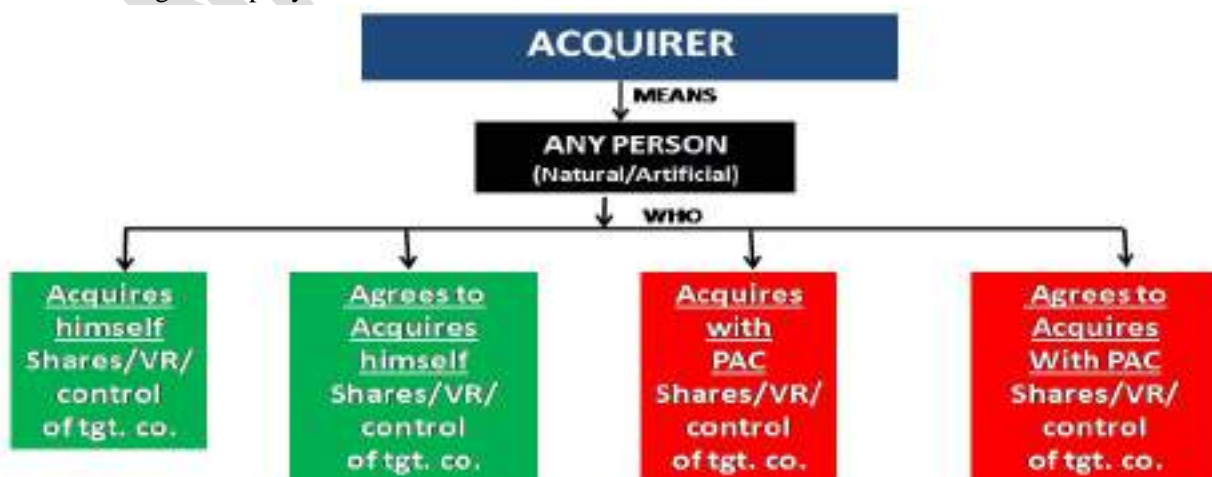
SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

IMPORTANT DEFINATIONS

• ACQUIRER

REG. 2(1)(a)

"Acquirer" means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company.



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ACQUISITION

REG. 2(1)(b)

"Acquisition" means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company.

CONTROL

REG. 2(1)(e)

"Control" includes 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**:

Provided that a director or officer of a target company shall not be considered to be in control over such target company, merely **by virtue of holding such position**.



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ENTERPRISE VALUE

REG. 2(1)(h)

"Enterprise Value" means the value calculated as market capitalization of a-company **plus** debt, minority interest and preferred shares, **minus** total cash and cash equivalents.

FREQUENTLY TRADED SHARES

REG. 2(1)(j)

"Frequently Traded Shares" means shares of a target company, in which the **traded turnover** on any stock exchange **during the twelve calendar** months preceding the **calendar month** in which the public announcement is made, is **at least ten per cent** of the total number of shares of such class of the target company:

Provided that where the share capital of a particular class of shares of the target company **is not identical** throughout such period, the **weighted average number** of total shares of such class of the target company shall represent the total number of shares.

IDENTIFIED DATE

REG. 2(1)(k)

"Identified Date" means the date falling on the **tenth working day prior to the commencement of the tendering period**, for the purposes of determining the shareholders **to whom the letter of offer shall be sent**.

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IMMEDIATE RELATIVE

REG. 2(1)(l)

"Immediate Relative" means

any **spouse of a person**, and

includes parent, brother, sister or

child of **such person or of the spouse**.

PERSON ACTING IN CONCERT

REG. 2(1)(g)

"Person acting in concert" means,—

- (1) persons who, with a **common objective or purpose of acquisition of shares** or voting rights in, or exercising control over a target company, **pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate** for acquisition of shares or voting rights" in, or exercise of control over the target company.
- (2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,—

- | | |
|--------|---|
| (i) | a company, its holding company, subsidiary company and any company under the same management or control; |
| (ii) | a company, its directors, and any person entrusted with the management of the company; |
| (iii) | directors of companies referred to in items (i) and (ii) of this sub-clause and associates of such directors; |
| (iv) | promoters and members of the promoter group; |
| (v) | immediate relatives; |
| (vi) | a mutual fund, its sponsor, trustees, trustee company, and asset management company; |
| (vii) | a collective investment scheme and its collective investment management company, trustees and trustee company; |
| (viii) | a venture capital fund and its sponsor, trustees, trustee company and asset management company; |
| (ix) | a foreign institutional investor and its subaccounts; |
| (x) | a merchant banker and its client, who is an acquirer; |
| (xi) | a portfolio manager and its client, who is an acquirer; |
| (xii) | banks, financial advisors and stock brokers of the acquirer, or of any company which is a holding company or subsidiary of the acquirer, and where the acquirer is an individual, of the immediate relative of such individual; |

Provided that this sub-clause shall not apply to a bank whose sole role is that of providing normal commercial banking services or activities in relation to an open offer under these regulations;

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(xiii) an investment company or fund and any person who has an interest in such investment company or fund as a shareholder or unit holder having **not less than 10 per cent** of the paid-up capital of the investment company or unit capital of the fund, and any other investment company or fund in which **such person or his associate holds not less than 10 per cent** of the paid-up capital of that investment company or unit capital of that fund:

Provided that nothing contained in this sub-clause shall apply to holding of units of mutual funds registered with the Board;

Explanation- For the purposes of this clause "**associate**" of a person means,-

- (a) any immediate relative of such person;
- (b) trusts of which such person or his immediate relative is a trustee;
- (c) partnership firm in which such person or his immediate relative is a partner; and
- (d) members of Hindu undivided families of which such person is a coparcener.

SHARES [REG. 2(1)(Y)]

REG. 2(1)(y)

"Shares" means shares in the **equity share capital** of a target company carrying voting rights, and **includes any security which entitles the holder thereof to exercise voting rights.**

Explanation - For the purpose of this clause, shares will include **all depository receipts** carrying an entitlement to exercise voting rights in the target company.

TARGET COMPANY

REG. 2(1)(z)

"Target Company"

means a **company** and

includes a **body corporate or corporation established under a Central legislation, State legislation or Provincial legislation** for the time being in force,

whose shares are listed on a stock exchange;

VOLUME WEIGHTED AVERAGE MARKET PRICE

REG. 2(1)(zb)

"Volume Weighted Average Market Price" means the **product** of the number of equity shares traded on a stock exchange and the price of each equity share **divided by** the total number of equity shares traded on the stock exchange.

VOLUME WEIGHTED AVERAGE PRICE [REG. 2(1)(ZC)]

REG. 2(1)(zc)

"Volume Weighted Average Price" means the **product** of the number of equity shares bought and price of each such equity share **divided by** the total number of equity shares bought.

WEIGHTED AVERAGE NUMBER OF TOTAL SHARES

REG. 2(1)(zd)

"Weighted Average Number of Total Shares" means the **number of shares at the beginning of a period, adjusted for** shares cancelled, bought back or issued during the aforesaid period **multiplied by a time-weighting factor.**

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DISCLOSURES REQUIREMENT AT VARIOUS STAGES

IMPORTANT POINTS REGARDING DISCLOSURES:-

Regulation 28

- | |
|---|
| 1. The disclosures shall be of the aggregated -shareholding, and voting rights of the acquirer or promoter of the target company and every-person acting in concert with him; |
| 2. The acquisition and holding of any security or instrument that would entitle the acquirer to receive shares in the target company, including warrants and convertible debentures , shall also be regarded as shares, and disclosures of such acquisitions and holdings shall be made accordingly in such form as may be specified; and |
| 3. Upon receipt of the disclosures, the stock exchange shall forthwith disseminate the information so received. |
| 4. Shares taken by way of encumbrance shall be treated as an acquisition; shares given upon release of encumbrance pledge shall be treated as a disposal. However, this requirement shall not apply to a scheduled commercial bank or public financial institution in connection with a pledge of shares for securing indebtedness in the ordinary course of business. |

➤ EVENT BASED DISCLOSURE

REGULATION 29

- (1) Any acquirer who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to **5 % or more** shares or voting rights in a company, in any manner whatsoever, shall disclose the aggregate of his shareholding or voting rights in that company to

the **target company** and

to the **stock exchanges** where shares of the **target company** are listed.

- (2) Any acquirer who has acquired **5 % or more** shares or voting rights of a company shall disclose every purchase or sale aggregating **2% or more** of the **shareholding or voting rights** in the target company, to

the target company and

the stock exchanges where the shares of the target company are listed.

The disclosure required to be made in sub-regulation (1) and (2) shall be made **within 2 days of :-**

(a) the receipt of intimation of allotment of shares.

(b) the acquisition of shares or voting rights, as the case may be.

Innovators Growth Platform (*erstwhile known as 'Institutional Trading Platform'*)

Provided that in case of listed entity which has listed its specified securities on **Innovators Growth Platform**, any reference to “five per cent” shall be read as “ten per cent” and any reference to “two per cent” shall be read as “five per cent”

➤ CONTINUAL DISCLOSURE

REGULATION 30

Any **person**, who holds **25% or more shares** or voting rights in any company is required to make **yearly disclosure** within **7 days** from the financial year ending 31st March, in respect of his **holdings** as on 31st March to

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the **target company** and

to the **stock exchanges** where shares of the target company are listed

The **promoter** of Target Company is required to make **yearly disclosure** within **7 days** from the financial year ending 31st March, in respect of his **holdings** as on 31st March to

the **target company** and

to the **stock exchanges** where shares of the target company are listed.

➤ **DISCLOSURE OF ENCUMBERED (PLEDGED) SHARES**

REGULATION 31

A promoter the target company shall, within **seven working days from the date of creation, invocation or release of encumbered (pledge)** on shares of that company held by him, inform the details of such **creation, invocation or release of encumbered (pledged)** shares to

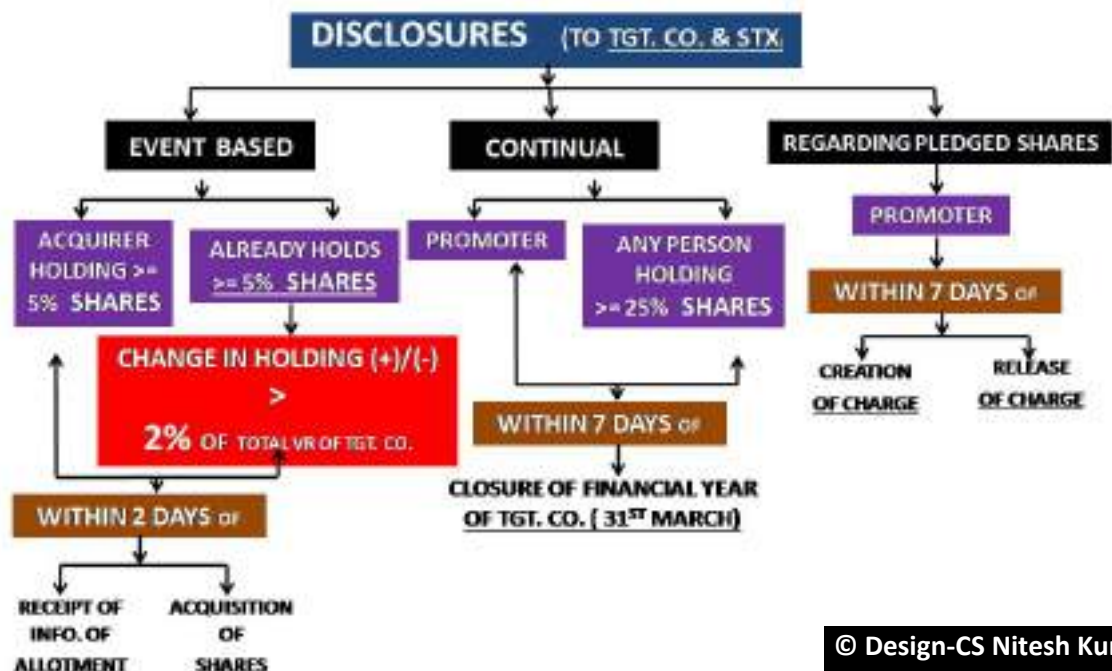
the **target company** and

to the **stock exchanges** where shares of the target company are listed.

The promoter of every target company shall declare **on a yearly basis** that he, along with persons acting in concert, has not made any encumbrance, directly or indirectly, other than those already disclosed during the financial year. The declaration shall be made **within seven working days from the end of each financial year** to –

(a) every stock exchange where the shares of the target company are listed; and

(b) the audit committee of the target company



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SUBSTANTIAL ACQUISITION OF SHARES OR VOTING RIGHTS OR CONTROL

• TRIGGER POINTS FOR PUBLIC ANNOUNCEMENT REGULATIONS 3-9

1. ACQUISITION OF TWENTY FIVE PERCENT (25%) OR MORE OF THE SHARES OR VOTING RIGHTS OF ANY COMPANY

REGULATION 3(1)

(1) No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise **twenty-five per cent or more** of the **voting rights** in such target company unless the acquirer makes a **public announcement** of an open offer for acquiring shares of such target company in accordance with these regulations.

Example

Suppose A Ltd is the target company listed on the BSE and the shareholding pattern as on April 25, 2021 is as under:

Name of the Shareholder	Number of shares held (in number)	Percentage of voting rights (in %)
A (promoter)	5000	50
B (Part of the Public)	500	5
Others (all constituting other Public Shareholders)	4500	45
total Equity Share Capital	10000	100

On April 26, 2021 if B were to acquire 2000 shares by way of a Share Purchase Agreement with A, the promoter, his holding would increase to 2500 shares, which would be 25% of the voting rights of the company and he would therefore under Regulation 3(1) of the SEBI (SAST) Regulations, 2011 be under an obligation to make a public announcement in accordance with the SAST Regulations.

He can proceed with the acquisition only by giving a public announcement of making an open offer for acquiring the shares from the shareholders of the SAST Regulations.

2. CONSOLIDATION OF HOLDINGS /CREEPING ACQUISITION

REGULATION 3(2)

No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise **twenty-five per cent or more** of the voting rights in the target company **but less than the maximum permissible non-public shareholding, (i.e. 75%)** shall acquire within any financial year **additional shares or voting rights** in such target company entitling them to exercise **more than five per cent** of the voting rights, *unless the acquirer makes a public announcement of an open offer* for acquiring shares of such target company in accordance with these regulations:

Provided that such acquirer **shall not be entitled** to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding **(i.e. 75%)**.

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EXPLANATION: *-For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation,-*

- | | |
|-----|---|
| i. | Gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company. |
| ii. | In the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the pre-allotment and the post- allotment percentage voting rights shall be regarded as the quantum of additional acquisition. |

Example

Suppose A Ltd is the target company listed on the BSE and the shareholding pattern as on April 25, 2021 is as under:

Name of the Shareholder	Number of shares held (in number)	Percentage of voting rights (in %)
A (promoter)	5000	50
Others (all constituting other Public Shareholders)	5000	50
total Equity Share Capital	10000	100

In the above example, if A, who is holding 50% of the voting rights of the company, which has been acquired in accordance with the provisions of the SEBI (SAST) Regulations, he can acquire another 5% of the voting rights in the financial year beginning April 01, 2021. This acquisition can be done either by himself or by the other members of the promoter group or partially by him and partially by the other members of the promoter group. Any acquisition beyond 5% of the voting rights of the target company can be made only after making a public announcement of an open offer for acquiring shares of such a target company in accordance with the provisions of the SAST Regulations.

REGULATION 3(3)

For the purposes of sub-regulation (1) and sub-regulation (2), acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert.

EXAMPLE

The Paid up Equity Share Capital of A Ltd is 10000 shares as on April 01, 2014

The promoters hold 4000 shares as on April 01, 2014, which is 40% as on April 01, 2014

The promoters comprise of three shareholders, A who holds 2200 shares (i.e. 22%), B who holds 1500 shares (i.e. 15%) and C who holds 300 shares (i.e. 3%).

The company makes a preferential allotment of 800 shares to A as a result of which the post issue shareholding of A would be 3000 shares.

Let us determine whether there would be a trigger using the methods enumerated in the previous pages: $(4800/10800)\% - (4000/10000)\% = 44.44\% - 40\% = 4.44\%$.

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Since the acquisition by all the promoters together does not exceed 5% in a financial year there is no trigger. However we need to check what would be the post issue holding of A the allottee, who is currently holding 22% of the paid up capital of the company, with respect to the fully expanded capital which works out to $3000/11000 = 27.27\%$, by virtue of which he has crossed the initial threshold limit of 25% as stipulated in Regulation 3(1) of the Takeover Regulations. Therefore A has triggered the Code and is under an obligation to make an public announcement.

REGULATION 3(4)

As per Regulation 3(4), any acquisition of shares made by the promoters of the target company in an offer made by them to the dissenting shareholders pursuant to an exit offer to be given to them in accordance with Chapter VIA of the SEBI (ICDR) Regulations, 2009 shall not be treated as an acquisition under Regulation 3 of the SEBI (SAST) Regulations, 2011. In other words, this acquisition shall be exempt and shall not be required to make an open offer as mandated by the Regulations

Innovators Growth Platform (*erstwhile known as 'Institutional Trading Platform'*)

For the purpose of this regulation, any reference to “**twenty-five per cent**” in case of listed entity which has listed its specified securities on **Innovators Growth Platform** shall be read as “**forty-nine percent**”.

3. ACQUISITION OF CONTROL OVER A COMPANY

REGULATION 4

Irrespective of whether or not there has been any acquisition of shares or voting rights in a company, no acquirer shall acquire **control** over the target company, unless such person makes a **public announcement** to acquire shares and acquires such shares in accordance with the regulations.

PARTIAL BID

Partial Bid covers a bid made for **acquiring part of the shares of a class of capital** where the offer or intends to obtain effective control of the offeree through voting power. Such a bid is made for equity shares carrying voting rights. **Regulation 4** qualifies partial bid in the form of "acquiring control over the target company, irrespective of whether or not, there has been any acquisition of shares or voting rights in a company.

4. INDIRECT ACQUISITION OF SHARES OR CONTROL

REGULATION 5

Regulation 5(1) of the Takeover Regulations, states that any acquisition of shares or voting rights in a target company or control over a company or any other entity **which enables the person or persons acting in concert with him to exercise or direct the exercise of such percentage of voting rights or control over a target company**, such acquisition would be deemed to have attracted the obligation of making a public announcement of an open offer. This is **considered an indirect acquisition** of shares or voting rights or control over a target company.

DELISTING OFFER

Regulation 5A

As per **regulation 5A** of the SEBI Takeover Regulations, 2011 any acquirer who is desirous of delisting the company post the acquisition of the company due to a variety of reasons, **may proceed to voluntarily delist the company under the SEBI Takeover Regulations, 2011 and the SEBI (Delisting of Equity Shares) Regulations, 2021.** The following are the main points:

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1. Acquirer to intimate the Board of Directors.
2. Board to consider the proposal for delisting.
3. Public announcement in case delisting offer fails.
4. File draft letter of offer with SEBI.
5. Minimum details in the tentative schedule of activity.
6. Competing Offer.
7. Withdrawal of shares tendered.
8. Option to tender shares in open offer.

Bombay Swadeshi Stores Ltd., is the only company to have availed this process till this date.

VOLUNTARY OFFER

REGULATION 6

Shareholders holding shares entitling them to exercise **25% or more** of the voting rights in the target company may, without breaching minimum public shareholding requirements under the listing agreement, **voluntarily make an open offer** to consolidate their shareholding subject to their aggregate shareholding after completion of the open offer not exceeding the maximum permissible non-public shareholding.

The facility to voluntarily make an open offer shall not be available if in the proximate past (preceding 52 weeks), such persons (acquire to and PACs holding 25% or more voting rights) have made acquisitions without open offer within the creeping acquisition limit of 5%.

Such an acquirer is prohibited from making acquisitions outside the open offer during the offer period and also prohibited from any further acquisitions for **six months after the open offer** except pursuant to another voluntary open offer.

DIFFERENCE BETWEEN REGULATION 3 AND REGULATION 6

The essential difference between regulation 3 and regulation 6 is that an open offer under the former is always **mandatory** while an offer under the latter is generally **voluntary**.

Under **regulation 3**, he could also acquire shares before, during and outside the open offer process but his open offer would have to be for **atleast 26%**. on the other hand, under **regulation 6**, he can confine his open offer to 10%.

REGULATION 6A - PROHIBITION BY A WIFUL DEFAULTER TO MAKE AN OPEN OFFER

As per the Takeover Regulations, a person who is a **wilful defaulter shall not make a public announcement of an open offer or enter into any transaction** which will create an obligation on him to make a public announcement. **However he can make a competing offer**, in respect of any offer that has been made by any other person.

OFFER SIZE

REGULATION 7

Any open offer would be for **atleast 26%**, of **total shares of the target company**, as of **tenth working day from the closure** of the tendering period.

A **voluntary open offer** can be made for the acquisition of shares representing **atleast 10%** but shall not exceed 'such number of shares which will take the holding of the acquirer and PACs to beyond maximum non-public shareholding permitted under the listing agreement.

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Upon a **competing offer** being made, such an acquirer would be permitted to **increase his offer size** to a normal full-sized open offer within **fifteen working days**.

Any open offer made under these regulations shall be made to **all shareholders of the target company, other than** the acquirer, persons acting in concert with him.

OFFER PRICE

REGULATION 8

1. MINIMUM OFFER PRICE FOR DIRECT ACQUISITIONS AND (INDIRECT ACQUISITIONS DEEMED TO BE DIRECT ACQUISITIONS)

In the case of direct acquisition of shares or voting rights in, or control over the target company, and indirect acquisition of shares or voting rights in, or control over the target company where the **parameters referred to in sub-regulation (2) of regulation 5 are met**, the offer price shall be the highest of:-

(a) the highest negotiated price per share of the target company for any acquisition under the agreement attracting the obligation to make\ public announcement of an open offer,
(b) the volume-weighted average price paid or payable for acquisitions, whether by the acquirer or by any person acting in concert with him, during the fifty-two weeks immediately preceding the date of the public announcement ;
(c) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the twenty six weeks immediately preceding the date of the public announcement ;
(d) the volume-weighted average market price of such shares for a period of sixty trading days immediately preceding the date of the public announcement as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded;
(e) where the shares are not frequently traded, the price determined by the acquirer and the manager to the open offer taking into account valuation parameters including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies; and
(f) the per share value computed under sub-regulation (5), if applicable.

2. MINIMUM OFFER PRICE FOR INDIRECT ACQUISITIONS

In the case of an indirect acquisition of shares or voting rights in, or control over the target company, where the **parameter referred to in sub-regulation (2) of regulation 5 are not met**, the offer price shall be the highest of:-

(a) the highest negotiated price per share, if any, of the target company for any acquisition of an open offer;
(b) the volume-weighted average price paid or payable for any acquisition , whether by the acquirer or by any person acting in concert with him, during the fifty two weeks immediately preceding the earlier of , the date on which the primary acquisition is contracted , and the date on which the intention or the decision to make the primary acquisition is announced in the public domain ;
(c) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the twenty-six weeks immediately preceding the earlier of , the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;

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| (d) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, between the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, and the date of the public announcement of the open offer for shares of the target company made under these regulations; |
| (e) the volume-weighted average market price of the shares for a period of sixty trading days immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain , as traded on the stock exchange where the maximum volume of trading in the shares of the target-company are recorded during such period, provided such shares are frequently traded; and |
| (f) the per share value computed under sub-regulation (5). |

3. Regulation 8(4) provides that if the ***offer price is incapable of being determined under any of the above parameters***, the offer price shall be the **fair price of shares of the target company to be determined by the acquirer and the manager** to the open offer taking into account valuation parameters including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies.

OTHER IMPORTANT POINTS REGARDING OFFER PRICE:-

- | |
|--|
| 1. Where the acquirer or any person acting in concert with him has any outstanding convertible instruments convertible into shares of the target company at a specific price, the price at which such instruments are to be converted into shares , shall also be considered as a parameter. |
| 2. The price paid for shares of the target company shall include any price paid or agreed to be paid for the shares or voting rights in, or control over-the target company, in any form whatsoever, whether stated in the agreement for acquisition of shares or in any incidental, contemporaneous or collateral agreement, whether termed as control premium or as non-compete fees or otherwise. |
| 3. Where the acquirer has acquired or agreed to acquire any shares or voting rights in the target company during the offer period, at a price higher than the offer price , the offer price shall stand revised to the highest price paid or payable for any such acquisition. |
| Provided that no such acquisition shall be made after the third business day prior to the commencement of the tendering period and until the expiry of the tendering period. |
| 4. The price parameters shall be adjusted for corporate actions such as issuances pursuant to rights issue, bonus issue, stock consolidations, stock splits, demergers and reduction of capital; etc. |
| 5. Where the open offer is subject to a minimum level of acceptances , the acquirer may indicate a lower price for acquiring all the acceptances despite the acceptance falling short of the indicated threshold, in the event the open offer does not receive the minimum acceptance . |
| 6. Acquirer and PACs shall not acquire any shares of Target Company for a period of 26 weeks after tendering period at a price higher than the offer price paid under these regulations. |
| 7. The offer price for partly paid up shares shall be computed as the difference between the offer price and the amount due towards calls-in-arrears with interest , if any, thereon. |

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EXEMPTIONS

REGULATIONS 10-11

➤ GENERAL EXEMPTIONS FROM REGULATIONS 3 AND 4 REGULATIONS 10(1)

Sub-regulation (1) of Regulation 10 exempts the following, categories of acquisitions from open offer obligations under Regulations 3 & 4 (*but not from disclosure obligations under Regulations 29/30 & 31*) without SEBI's approval:-

(a) Transfers between qualifying parties such as immediate relatives, group companies, persons named as promoters/PAC in the shareholding pattern filed by the target company for not less than three years prior to the proposed acquisition; etc. [Regulation 10(1)(a)]
(b) Certain acquisitions in the ordinary course of business -of stock broker, underwriter, merchant banker, scheduled commercial bank, etc. [Regulation 10(1)(b)]
(c) Acquisition pursuant to disinvestment in a Government Company . [Reg. 10(1)(c)]
(d) Acquisitions pursuant to Scheme made under section 18 of SICA, 1985 or scheme of arrangement involving transferor company pursuant to order of Court or other statutory authority under any Indian or foreign law [Regulation 10(1)(d)]
(e) acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 ; [Regulation 10(1)(da)]
(f) Acquisition pursuant to SARFAESI Act, 2002 [Regulation 10(1)(e)]
(g) Acquisition under SEBI (Delisting of Equity Shares) Regulations [Reg. 10(1)(f)]
(h) Acquisition by way of transmission, succession or inheritance [Regulation 10(1)(g)]
(i) Voting rights on preference shares under the Companies Act, 1956 [Reg. 10(1)(h)]
(j) Acquisition of shares by the lenders pursuant to conversion of their debt as part of a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India : [Reg. 10(1)(i)]

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| (k) Acquisition of shares by the person(s), by way of allotment by the target company or purchase from the lenders at the time of lenders selling their shareholding or enforcing change in ownership in favour of such person(s), pursuant to a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India : [Reg. 10(1)(iA)] |
| (l) increase in voting rights arising out of the operation of of section 106 of the Companies Act, 2013 (<i>Restriction on Voting Rights</i>) or pursuant to a forfeiture of shares by the target company, undertaken in compliance with the provisions of the Companies Act, 2013 and its articles of association. : [Reg. 10(1)(j)] |

➤ **GENERAL EXEMPTIONS FROM REGULATIONS 3
REGULATIONS 10(2)(3)&(4)**

Sub-regulations (2), (3) & (4) of Regulation 10 exempt the following acquisitions from open offer obligations under Regulation 3 (*but not from open offer obligations under Reg. 4 nor from disclosure obligations under Regs. 28/29 & 31*) without SEBI's approval:-

- | |
|---|
| (a) Acquisition under Corporate Debt Restructuring (as per scheme notified by RBI) not involving change of control provided such scheme authorized by special resolution by postal ballot . [Regulation 10(2)] |
| (b) Increase of voting rights to 25% through buy-back provided <i>shareholder reduces his holding below 25% within 90 days from the date of increase</i> . [Reg. 10(3)]. |
| (c) Acquisition through Rights issue, subject to certain conditions . [Reg. 10(4)(a)&(b)] |
| (d) Increase of voting rights through buy-back in excess of threshold under Regulation 3(2) , subject to certain conditions. [Regulation 10(4)(c)] |
| (e) Acquisition of shares in a target company by any person in exchange for shares of another target company tendered pursuant to an open offer for acquiring shares under these regulations. [Regulation 10(4)(d)] |
| (f) Acquisition of shares in Target Company from state-level financial institutions by promoters of the target company. [Regulation 10(4)(e)] |
| (g) Acquisition of shares in Target Company by promoters from venture capital fund or foreign venture capital investor . [Regulation 10(4)(f)] |

EXEMPTIONS BY SEBI REGULATIONS 11

A. POWER OF SEBI TO GRANT EXEMPTION FROM OPEN OFFER OBLIGATIONS IN INDIVIDUAL CASES

Regulation 11(1) provides that SEBI may, **on the application made by the acquirer**, for reasons recorded in writing, grant exemption **from the obligation to make an open offer** for acquiring shares under these regulations subject to such conditions as SEBI deems fit to impose in the interests of investors in securities and the securities market.

B. POWER OF SEBI TO GRANT RELAXATION FROM STRICT COMPLIANCE WITH ANY PROCEDURAL REQUIREMENT OF CHAPTER III AND CHAPTER IV IN INDIVIDUAL CASES

Regulation 11(2) provides that SEBI may, **on the application made by the target company**, for reasons recorded in writing, **grant a relaxation from strict compliance** with any procedural requirement under **Chapter III (Regulations 12-23)** and **Chapter IV (Regulations 24-27)**, *provided it is satisfied that:*

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(a) the Central Govt. or State Govt. or any other regulatory authority has superseded the board of directors of the target company and has appointed new directors, and,

i. **such board of directors has formulated a plan** which provides for transparent, open, and competitive process for acquisition of shares or voting rights in, or control over the target company to secure the smooth and continued operation of the target company in the interests of all stakeholders of the target company and such plan does not further the interests of any particular acquirer;

ii. conditions and requirements of the **competitive process are reasonable and fair**;

iii. the process adopted by the board of directors of the target company provides for details including the time when the open offer for acquiring shares would be made, completed and the manner in which the change in control would be effected; and

(b) the provisions of **Chapter III and Chapter IV are likely to act as impediment** to implementation of the plan of the target company and exemption from strict compliance with one or more of such provisions is in public interest, the interests of investors in securities and the securities-market.

OTHER REGULATORY REQUIREMENTS

APPOINTMENT OF MERCHANT BANKER FOR MAKING PUBLIC ANNOUNCEMENT

REGULATION 12

Before making any public announcement of offer, **the acquirer is required to appoint merchant banker** holding a certificate of registration granted by the Board, *who is not an associate of or group of the acquirer or the target company.*

TIMING OF PUBLIC ANNOUNCEMENT (PA) AND DETAILED PUBLIC STATEMENT (DPS)

REGULATION 13

A short public announcement should be made **on the same date** as the date of transaction which triggered the open offer.

A detailed public statement should be made within a period of **5 working days** thereafter, so as to accord the acquirer sufficient time to actually work out the logistics of the offer obligations.

PUBLICATION OF PUBLIC ANNOUNCEMENT AND DETAILED PUBLIC STATEMENT

REGULATION 14

PUBLIC ANNOUNCEMENT

Regulation 14(1) provides that the **PA** shall be sent to all the **stock exchanges** on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public. Regulation 14(2) provides that a copy of the PA shall be sent to **SEBI** and to the **target company** at its registered office within **one working day** of the date of the **PA**.

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DETAILED PUBLIC STATEMENT (DPS)

Regulation 14(3) requires that the **DPS** shall be published in all editions of any one **English national daily** with wide circulation, any **one Hindi national daily** with wide circulation, and anyone **regional language daily** with wide circulation, at the place where the **registered office** of the target company is situated and one **regional language daily** at the place of the **stock exchange** where the maximum volume of trading in the shares of the target company are recorded during the 60 trading days preceding the date of the PA.

Regulation 14(4) requires that **simultaneously with publication** of such DPS in the newspapers, a copy of the same shall be sent to:-

(a) SEBI through the manager to the open offer;
(b) all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public; and
(c) the target company at its registered office, and the target company shall forthwith place the same before the board of directors of the target company.

CONTENTS OF THE PUBLIC ANNOUNCEMENT OF OFFER **REGULATION 15**

The public announcement shall contain such information as may be specified, including the following:-

(a) name and identity of the acquirer and persons acting in concert with him;
(b) name and identity of the sellers, if any;
(c) nature of the proposed acquisition such as purchase of shares or allotment of shares, or any other means of acquisition of shares or voting rights in, or control over the target company;
(d) the consideration for the proposed acquisition that attracted the obligation to make an open offer for acquiring shares, and the price per share, if any;
(e) the offer price, and mode of payment of consideration; and
(f) offer size, and conditions as to minimum level of acceptances, if any.

The **detailed public statement** pursuant to the public announcement shall contain such information as may be specified in order to enable shareholders to **make an informed decision** with reference to the open offer.

The public announcement of the open offer, the detailed public statement, and any other statement, advertisement, circular, brochure, publicity material or letter of offer issued in relation to the acquisition of shares under these regulations **shall not omit any relevant information, or contain any misleading information.**

FILING OF LETTER OF OFFER TO BOARD (SEBI) **REGULATION 16**

Within **5 working days from the date of the detailed public statement**, the acquirer shall, through the manager to the open offer, file with SEBI the draft letter of offer in the format prescribed by SEBI along with prescribed fees.

SEBI shall give its **comments** on the draft letter of offer as expeditiously as possible but **not later than fifteen working days** of the receipt of the draft letter of offer. However, in the event SEBI has sought clarifications or additional information from the manager to the open offer, the period for issuance of comments shall be **extended to the five working day** from the date of receipt of satisfactory reply to the clarification or additional information sought.

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In the event SEBI specifies any changes, the manager to the open offer and the acquirer shall **carry out such changes** in the letter of offer before it is dispatched to the shareholders.

LETTER OF OFFER

letter of offer is a document addressed to the shareholders of the target company containing:-

disclosures of the acquirer/PACs, target company, their financials,
justification of the offer price, the offer price,
number of shares to be acquired from the public, purpose of acquisition,
future plans of acquirer, if any, regarding the target company,
change in control over the target company, if any,
the procedure to be followed by acquirer in accepting the shares tendered by the shareholders and
the period within which all the formalities pertaining to the offer would be completed.

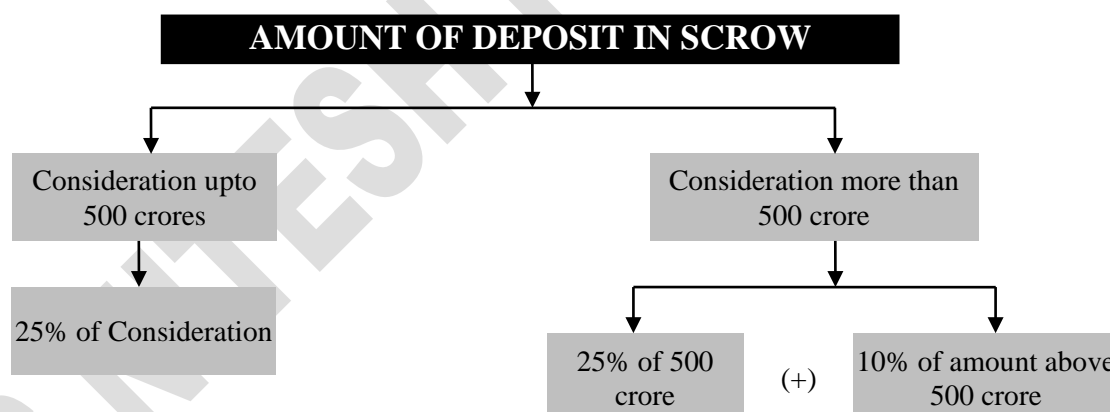
OPENING OF ESCROW ACCOUNT

REGULATION 17

Regulation 17 requires the acquirer to open an escrow account atleast **2 days prior to the date of DPS** as a security for performance of his obligations in terms of the public offer.

The amount will be refunded or used for timely fulfilment of the obligations and forfeited if offer is not completed.

- (a) The value of escrow amount shall be **25% upto ₹ 500 crores** and **10% above ₹ 500 crores**, of the consideration payable under the public offer.



- (b) In case the acquirer has made the offer subject to a minimum level of acceptance, **100% of the consideration payable** in respect of minimum level of acceptance or 50% of the consideration payable under the open offer, *whichever is higher*, shall be deposited in cash in the escrow account.

- (c) In the event of an **upward revision of the offer price** or of the offer size, the value of the escrow amount shall be **computed on the revised consideration calculated at such revised offer price**, and additional amount shall be brought into the escrow account prior to effecting such revision.

- (d) The "consideration payable under the open offer" shall be calculated at the **offer price, assuming full acceptance** of the open offer.

- (e) If the open offer is subject to **differential 'pricing**, shall be computed at the **highest offer price**, irrespective of manner of payment of the consideration.

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Important Points on MODE OF CREATION OF ESCROW :

1. Cash	Acquirer has to authorize the bank to act on any instructions given by merchant banker in respect of said account.
2. Bank guarantee in favour of merchant banker	Bank is valid for a period commencing from the date of public announcement.
3. Approved securities	Deposited with the merchant banker with the authority to realize the value of such escrow account, by sale or otherwise and if any deficit occurs, the merchant banker shall be liable to make good such deficit.

APPLICABLE REGULATION	DETAILS	
17(4)	Bank Guarantee or Deposit of Security	Deposit at least 1% of the total consideration payable in cash with schedule commercial bank as part of Escrow Account.
17(5)	Cash deposit	Empower the manager to the open offer to instruct the bank to issue a bankers' cheque or demand draft or to make payment of the amounts lying to the credit of the escrow account lying to the credit of the escrow account
17(6)	Bank Guarantee	The bank guarantee shall be in the favor of manager to the offer and shall be kept valid throughout the offer period and additional 30days after the payment to the shareholders who have tendered their shares have been made.
17(7)	Securities	Manager to the Open Offer shall be empowered to realize the value of escrow account by way of sale or otherwise of the shares so deposited. Further in case of any shortfall in the amount in the escrow account, such shortfall shall be made good by the Manager.

SAFEGUARDS TO ENSURE SHAREHOLDERS PAYMENTS

- (a) In case, the acquirer fails to make the payment, **Merchant Banker has a right to forfeit the escrow account and distribute the proceeds in the following way:-**

(i)	1/3 of amount to target company
(ii)	1/3 to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009;
(iii)	1/3 to be distributed on pro rata basis among the shareholders who have accepted the offer.

- (b) Besides forfeiture of escrow account, **SEBI can initiate separate action against the acquirer** which may include prosecution/barring the acquirer from entering the capital market for a specified period etc.

OTHER PROCEDURAL REQUIREMENTS

REGULATION 18

The ACQUIRER'S OTHER OBLIGATIONS are as under:

- a. Simultaneously with the filing of the draft letter of offer with SEBI, the *acquirer shall send a copy of the draft letter of offer* to the target company at its registered office address and to all stock exchanges where the shares of the target company are listed.

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b.	The letter of offer shall be dispatched to the shareholders whose names appear on the register of members of the target company -as of the identified date, <u>not later than 7 working days from the receipt of communication of comments from SEBI</u> or <u>where no comments are offered by the Board</u> , within 7 working days from the expiry of the period of 15 working days.
c.	The acquirer and PACs <i>shall not acquire or sell any shares</i> of the target company <u>during, the period between three working days prior to the commencement of the tendering period</u> and <u>until the expiry of the tendering period</u> .
d.	The acquirer shall issue an advertisement in such form as may be specified, one business day before the commencement of the tendering period , announcing the schedule of activities for the open offer, the status of statutory and other approvals, if any, whether for the acquisition attracting the obligation to make an open offer under these regulations or for the open offer, unfulfilled conditions, if any, and their status, the procedure for tendering acceptances and such other material detail as may be specified. <u>Such advertisement shall be,-</u>
	(a) published in all the newspapers in which the DPS was made; and
	(b) Simultaneously sent to SEBI, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.
e.	The acquirer shall, within 10 working days from the last date of the tendering period , complete all requirements under these regulations and other applicable law relating to the open offer including payment of consideration to the shareholders who have accepted the open offer
f.	The acquirer shall be responsible to pursue all statutory approvals required by the acquirer in order to complete the open offer without any default, neglect or delay.
g.	Where the acquirer is unable to make the payment to the shareholders who have accepted the open offer within such period owing to non-receipt of statutory approvals required by the acquirer, SEBI may, where it is satisfied that such non-receipt was not attributable to any willful default , failure or neglect on the part of the acquirer to diligently pursue such approvals, grant extension of time for making payments, subject to the acquirer agreeing to pay interest to the shareholders for the delay at such rate as may be specified by the Board.

REVISION OF OPEN OFFER / UPWARD REVISION

Irrespective of whether a competing offer has been made, **an acquirer may make upward revisions to the offer price**, and subject to the other provisions of these regulations, to the number of shares sought to be acquired under the open offer, at any time prior to the commencement of the last three working days prior to the commencement of the tendering period.

In the event of any revision of the open offer, whether by way of an upward revision in offer price, or of the offer size, the acquirer shall,-

(a)	make corresponding increases to the amount kept in escrow prior to such revision;
(b)	make an announcement in respect of such revisions in all the newspapers in which the detailed public statement pursuant to the public announcement was made;
(c)	simultaneously with the issue of such an announcement, inform SEBI, all the stock exchanges on which the shares of the target company are listed, and the target company , at its registered office;

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TENDERING PERIOD

The tendering period shall start not **later than 12 working days from date of receipt of comments from the SEBI** and shall **remain open for 10 working days**. Shareholders who have tendered shares in acceptance of the open offer shall not be entitled to withdraw such acceptance during the tendering period.

CONDITIONAL OFFER

REGULATION 19

An acquirer may make an open **offer conditional as to the minimum level of acceptance.**

Where the **open offer is pursuant to an agreement,** such agreement shall contain a condition to the effect that in the **event the desired level of acceptance of the open offer is not received the acquirer shall not acquire any shares under the open offer and the agreement attracting the obligation to make the open offer shall stand rescinded.**

Important points

Where an offer is made conditional upon minimum level of acceptances, the acquirer and persons acting in concert with him shall not acquire, during the offer period, any shares in the target company.

In case the acquirer has made the offer subject to a minimum level of acceptance, **100% of the consideration payable** in respect of minimum level of acceptance **or 50% of the consideration payable under the open offer, whichever is higher**, shall be deposited in cash in the escrow account.

Where the open offer is subject to a **minimum level of acceptances**, the acquirer may indicate a **lower price** for acquiring all the acceptances despite the acceptance **falling short** of the indicated threshold, in the event the open offer **does not receive the minimum acceptance**.

COMPETING OFFERS

REGULATION 20

Upon a Public Announcement of an open offer for acquiring shares of a target company being made, **any person other than the acquirer** who has made such public announcement, **shall be entitled to make a public announcement of an open offer within 15 working days of the date of the detailed public statement** made by such acquirer who has made the first public announcement for such target company.

Upon, the public announcement of a competing offer, an acquirer **who had made a preceding "competing offer shall be entitled to revise the terms of his open offer** provided the revised terms are more favourable to the shareholders of the target company. The **acquirers making the competing offers shall be entitled to make upward revisions of the offer price at any time up to 3 working days prior to the commencement of the tendering period.**

The schedule of activities and the tendering period for all competing offers shall be carried out with identical timelines. **The last date for tendering shares in acceptance of the every competing offer shall stand revised to the last date for tendering shares in acceptance of the competing offer last made.**

Pre-requisites for making a competing offer

- | | |
|-----|--|
| (a) | There has to be a subsisting public announcement of an open offer by an acquirer under the Takeover Code. |
| (b) | Any person other than the original acquirer who has made the subsisting open offer can make the competing offer. |
| (c) | Interestingly, the Takeover Code permits all persons other than the original acquirer to make a competing offer and does not restrict even the PACs of the acquirer from making a competing offer. |

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(d)	The Takeover Code does not impose any restriction on the number of competing offers provided all the offers are made within the timeframe prescribed.
(e)	Though a competing offer under the Takeover Code is made by the acquirer voluntarily, a competing offer shall not constitute voluntary offer under the Takeover Code.
(f)	Therefore, the conditions applicable to a voluntary offer under the Takeover Code shall not be applicable to a completion offer.

DIFFERENCE BETWEEN MANDATORY BID AND COMPETITIVE BID

MANDATORY BID	
(a)	Mandatory bid is one of the types of takeover bids.
(b)	Mandatory bid arises due to the regulatory requirement.
(c)	This type of bid requires acquirer to make bids for acquisition of certain levels of holdings.
(d)	Following are the cases <u>when such requirement arises</u> :
(i)	For acquiring 25% or more of the shares or voting rights of the company.
(ii)	For acquiring more than 5% of shares or voting rights in a financial year by acquirer who alongwith persons acting in concert holds 25% or more but less than maximum permissible non public shareholding.
(iii)	For acquiring control over a company.
(iv)	Indirect Acquisition.

COMPETITIVE BID	
(a)	Competitive bid is the one which is made by a person other than the acquirer who has made the first public announcement.
(b)	Such competitive offer can only be made within 21 working days of the detailed public statement made by the original acquirer.
(c)	As per Regulation 20 of the Takeover Code, the original acquirer can revise the terms and price upwards on receiving competitive bid.

PAYMENT OF CONSIDERATION

REGULATION 21

For the amount of consideration payable in cash, the acquirer shall **open a special account** with a Banker to an Issue and deposit therein **such sum as would together with 90% of the amount lying in the escrow account** make up the entire sum due and payable to the shareholders as consideration.

The acquirer shall, within a **period of 10 working days from** the expiry of the tendering period, complete all procedures relating to the offer including payment of consideration to the shareholders who have accepted the offer.

Unclaimed balances in special account shall be transferred to the **SEBI Investor Protection and Education Fund at the end of 7 years.**

It may be noted that the balance of **10% of the escrow account shall be released to the acquirer**, on the **expiry of 30 days from the completion of payment of consideration to shareholders** who have tendered their shares in acceptance of the open offer, **as certified by the manager to the open offer**

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Mode of Payment

The offer price may be paid either:

(a) in cash; or
(b) by issue, exchange or transfer of listed shares in the equity share capital of the acquirer or any person acting in concert with the acquirer; or
(c) by way of an issue, exchange or transfer of listed secured debt instruments issued by the acquirer or any person acting in concert with a rating not below investment grade as rated by a credit rating agency registered with SEBI; or
(d) by issue, exchange or transfer of convertible debt securities entitling the holder thereof to acquirer listed shares in the equity share capital of the acquirer or any person acting in concert with the acquirer; or
(e) a combination of the mode of payment of consideration stated above.

COMPLETION OF ACQUISITION

REGULATION 22

An **agreement that triggered an open offer** obligation would have to be completed within **26 weeks after, the offer period**.

However, in the event of any extraordinary and supervening circumstances rendering **it impossible to complete such acquisition within such period of 26 weeks, SEBI may for reasons** to be published, may **grant an extension** of time by such period as it may deem fit in the interests of investors in securities and the securities market.

The agreement that attracts an open offer obligation **may be acted upon during the pendency** of the open offer **only if 100% of the consideration payable under the open offer is placed in escrow**.

WITHDRAWAL OF THE OPEN OFFER

REGULATION 23

An offer shall be withdrawn in the following cases:-

(1) The statutory approvals required have been refused. The statutory approvals would include approval of shareholders as required by the Regulation or the approval for foreign investment by FBPB or RBI and the like.
(2) Where there is sole acquirer, being an individual has died .
(3) Any condition stipulated in the agreement for acquisition attracting the obligation to make the open offer is not met for reasons outside the reasonable control of the acquirer.
(4) Such circumstance as in the opinion of SEBI merits/requires withdrawal.

An offer can be withdrawn subject to the following conditions:-

(1) The acquirer will have to make a public announcement in respect of such withdrawal of offer in all the newspapers in which the original public announcement was made.
(2) The acquirer shall also simultaneously inform the withdrawal of offer to the SEBI, all the Stock Exchanges where the shares of the company are listed and the target company at its registered office.

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OBLIGATIONS

REGULATION 24 - 27

➤ **OBLIGATIONS OF DIRECTORS OF THE TARGET COMPANY**

REGULATION 24

1. During the offer period, **no person representing the acquirer or any person acting in concert with him shall be appointed as director** on the board of directors of the target company, whether as an additional director or, in a casual vacancy.

Such appointment **may be made only after the deadline** for making competing offers expires (i.e. after an initial period of 15 Working days from the date of detailed public statement) provided:-

- | |
|---|
| (a) the acquirer places in escrow 100% of the consideration under the open offer in cash; and |
| (b) no competing offer has been made. |

2. Where an open offer is made **conditional upon minimum level of acceptances**, the acquirer and persons acting in concert shall **notwithstanding anything contained in these regulations, and regardless of the size of the cash deposited in the escrow account, not be entitled to appoint any director** representing the acquirer or any person acting in concert with him on the board of directors of the target company during the offer period **unless:-**

- | |
|---|
| (a) the acquirer has waived or attained such conditions; and |
| (b) complies with the requirement of depositing cash in the escrow account. |

3. If the **acquirer or any PAC is already represented by a director** on the board of the target company, **such director shall not participate in any deliberations** of the board of directors of the target company **or vote on any matter in relation to the open offer.**
4. **During the pendency of competing offers,** there shall be **no induction of any new director** to the board of directors of the target company. However, **in the event of death or incapacitation** of any director, the vacancy arising therefrom may be filled by any person subject to **approval of such appointment by shareholders of the target company by way of a postal ballot.**

➤ **GENERAL OBLIGATIONS OF THE ACQUIRER**

REGULATION 25

Regulation 25 casts the following obligations on the acquirer:-

- (a) **Prior to making the public announcement** an open offer for acquiring shares, **the acquirer shall ensure that firm financial arrangements** have been made for fulfilling the payment obligations under the open offer and that the acquirer is able to implement the open offer, subject to any statutory approvals for the open offer that may be necessary.
- (b) If the **acquirer has not declared an intention** in the detailed public statement and the letter of offer to alienate any material assets of the target company or of any of its subsidiaries whether by way of sale, lease, encumbrance or otherwise outside the ordinary course of business, **the acquirer, where he has acquired control over the target company, shall be debarred from causing such alienation for a period of 2 years after the offer period.**

However, If the target company or any of its subsidiaries is required to so alienate assets despite the intention to alienate not having been expressed by the acquirer, **such alienation shall require a special resolution passed by shareholders of the target company, by way of a postal ballot** and the notice for such postal ballot shall inter alia contain reasons as to why such alienation is necessary.

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- (c) The acquirer shall ensure that the contents of the public announcement, the detailed public statement and the letter of offer **are true, fair and adequate** in all material aspects and not misleading in any material particular and are based on reliable sources, and state the source wherever necessary.
- (d) If the **shares of a target company stand delisted** under regulation 7(4), the acquirer shall within **15 fifteen working days from the date on which** the shares are delisted from the stock exchange, send out a **written offer** in such form as may be specified to all the other shareholders of the target company, intimating the shareholders of their entitlement to require the acquirer to acquire their shares at the same offer price.
- (e) The **acquirer and persons acting in concert** with him shall be **jointly and severally** responsible for fulfillment of applicable obligations under these regulations.

General obligations under Regulation 25 are directory in nature

The High Court of Andhra Pradesh in the case of M. V. Subramanyam v. Union of India held that Regulation 25 dealing with general obligations of acquirer was **only directory in nature** and there was **no merit** in contention that non-adherence to time schedule would invalidate letter of offer.

➤ **GENERAL OBLIGATIONS OF THE TARGET COMPANY**

REGULATION 26

Regulation 26 casts the following obligations on the target company:-

(a) Upon a public announcement an open offer for acquiring shares of a target company being made, the board of directors of such target company shall ensure that throughout the offer period, the business of the target company is conducted in the ordinary course consistent with past practice.
(b) Material transactions outside the ordinary course of business cannot be undertaken during the offer period, either at the level of the target company or at the level of any subsidiary of the target company without approval of shareholders of the target company by special resolution by postal ballot.
In any general meeting of a subsidiary of the target company in respect of such material transactions, the target company and its subsidiaries, if any, shall vote in a manner consistent with the aforesaid special resolution.
(c) The target company not to fix any record date for a corporate action <i>after the third business day prior to the commencement of the tendering period and until the expiry of the tendering period.</i>
(d) The target company shall furnish to the acquirer within two working days from the identified date, a list of shareholders as per the register of members of the target company and a list of persons whose applications, if any, for registration of transfer of shares are pending with the company. The acquirer shall reimburse reasonable costs payable/by the target company to external agencies in order to furnish such information.
(e) Upon receipt of the detailed public statement, a committee of independent directors of the target company shall be formed to consider and give its reasoned recommendations on the open offer, which shall be published by the target company.
Provided that such committee shall be entitled to seek external professional advice at the expense of the target company

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(f)	The board of directors of the target company shall facilitate the acquirer in verification of shares tendered in acceptance of the open offer.
(g)	The board of directors of the target company shall make available to all acquirers making competing offers, any information and co-operation provided to any acquirer who has made a competing offer.
(h)	Registration without delay of shares acquired in physical form in acquirer's name once all obligations fulfilled by acquirer under these Regulations.

➤ **GENERAL OBLIGATIONS OF THE MERCHANT BANKER/ MANAGER**

REGULATION 27

Regulation 27 casts the following obligations on the manager to the open offer:

- (a) Prior to PA being made, ensure that (i) the **acquirer is able to implement the open** offer; and (ii) **firm arrangements for funds through** verifiable means have been made by the acquirer to meet the payment obligations under the open offer.
- (b) Ensure that the contents of the **PA, the DPS and the letter of offer are true, fair and adequate** in all material aspects, not misleading in any material particular, are based on reliable sources, state the source wherever necessary, and are in compliance with these regulations.
- (c) **Furnish to SEBI a due diligence certificate along** with the draft letter of offer.
- (d) **Exercise diligence, care and professional judgment** to ensure compliance with these regulations.
- (e) **Not to deal on his own account** in the shares of the target company during the offer period.
- (f) **file a report with SEBI within 15 working days from the expiry of the tendering period,** confirming status of completion of various open offer requirements.

APPLICABLE PROVISIONS OF LISTING AGREEMENT/SEBI (LOADR) REGULATIONS, 2015

MINIMUM PUBLIC SHAREHOLDING/CONDITION FOR CONTINUOUS LISTING

REGULATION 38

Every listed entity shall comply with the minimum public shareholding requirements specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957.

*According to Securities Contracts (Regulation) Rules, 1957, all listed company shall maintain a minimum public shareholding (i.e. non-promoters holding) of **25% of total number of issued shares of the company** for the purpose of continuing listing.*

Provided that provisions of this regulation shall not apply to entities listed on institutional trading platform (**Innovators Growth Platform**) **without making a public issue.**

CASE STUDIES

OVERSEAS ACQUISITION – DAIICHI - RANBAXY



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Ranbaxy Laboratories Limited., India's largest pharmaceutical company, is an integrated, research based, international pharmaceutical company producing a wide range of quality, affordable generic medicines, trusted by healthcare professionals and patients across geographies. Ranbaxy's continued focus on R&D has resulted in several approvals in developed markets and significant progress in New Drug Discovery Research. The Company's foray into Novel Drug Delivery Systems has led to proprietary 'Platform technologies' resulting in a number of products under development. The Company is serving its customers in over 125 countries and has an expanding international portfolio of affiliates, joint ventures and alliances, ground operations in 49 countries and manufacturing operations in 11 countries.

Daiichi Sankyo Company was established in 2005 through the merger of two leading Japanese pharma companies. This integration created a more robust organization that allows for continuous development of novel drugs that enrich the quality of life for patients around the world. A central focus of Daiichi Sankyo's research and development are thrombotic disorders, diabetes, hypertension etc.

Ranbaxy and the Singh family, the largest and controlling shareholders of Ranbaxy (the "Sellers"), entered into a binding Share Purchase and Share Subscription Agreement (the "SPSSA") with Daiichi Sankyo, pursuant to which, Daiichi Sankyo to acquire the entire shareholding of the Sellers in Ranbaxy and further seek to acquire the majority of the voting capital of Ranbaxy at a price of ₹737 per share with the total transaction value expected to be between US\$3.4 bn to US\$4.6 bn. On the post closing basis, the transaction would value Ranbaxy at US\$8.5 bn.

Highlights of the Acquisition

(a) To take the Company to a new orbit and a higher growth trajectory
(b) To catapult the combined entity as the World's 15th biggest drug maker
(c) To become the largest generic Company in Japan, the world's second largest pharma market
(d) Complementary business model
(e) Global reach covering mature and emerging markets
(f) Strong growth potential
(g) Cost competitiveness

Acquisition stages

Date	Particulars
June 11, 2008	Signing of Agreement by Daiichi with Ranbaxy and its Promoters
June 14, 2008	Public announcement by Daiichi to the shareholders of Ranbaxy to acquire additional 20% equity shares at ₹737 per share under the Takeover Code.
June 27, 2008	Submission of draft letter of offer by Daiichi to SEBI for its observations.
July 15, 2008	Approval of preferential allotment of equity shares and warrants to Daiichi by the shareholders of Ranbaxy.
August 16, 2008	Opening of open offer
September 4, 2008	Closing of open offer
October 15, 2008	Acquisition of 20% equity stake by Daiichi pursuant to open offer
October 20, 2008	Ranbaxy becomes subsidiary of Daiichi upon increase in Daiichi's stake to 52.5% (including preferential allotment and transfer of 1st tranche shares from Promoters)
November 7, 2008	Daiichi acquires balance 11.42% shares from the Promoters off the stock market and the deal is concluded. Daiichi's equity stake in Ranbaxy reached up to 63.92%.

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DEFENSE STRATEGIES TO TAKEOVER BIDS

1. THE "CROWN JEWEL" STRATEGY

Under this strategy, the target company **sells off the crown jewel (attractive properties)** so as to make the company less attractive. Such a radical step may however be, **self-destructive and unwise in the company's interest**. However, the practice in India is **not so flexible** as Section 180 of the Companies Act, 2013 and the SEBI takeover code makes it difficult for any target company to sell, transfer, encumber or otherwise dispose of assets.

2. THE "PACKMAN" DEFENCE

Under this strategy, the target company attempts to purchase the **shares of the acquirer company**. This is usually the scenario if the **acquirer company is smaller than the target company**.

3. TARGETED SHARE REPURCHASE/ BUYBACK

This strategy is used by the target company to **increase its holding**.

4. GOLDEN PARACHUTES

Golden parachutes refer to the **"separation" clauses of an employment** contract that compensate managers who lose their jobs under a change-of-management scenario. The provision usually calls for a **lump-sum payment or payment** over a specified period at full and partial rates of normal compensation.

The provisions which would govern a "golden parachute" employment contract in India would be Sections 202 of the Companies Act, 2013 which govern the provisions **compensation for loss of office**. Therefore, "golden parachute" contracts with the entire senior management, **is of no consequence in India**.

5. SHARK REPELLANTS

An increasingly used defense mechanism is anti-takeover amendments to the company's constitution or **articles of association**, popularly called "shark repellants".

Anti takeover amendments generally impose new conditions on the transfer of managerial control of the firm through a merger, tender offer, or by replacement of the Board of Directors. In India every company has the clear power to alter its articles of association by a special resolution as provided under Section 14 of the Companies Act.

6. POISON PILL DEFENSES

A controversial but popular defense mechanism against hostile takeover bids is the creation of securities called **"poison pills"**. These pills provide their **holders with special rights** exercisable only after a period of time following the occurrence of a triggering event such as a tender offer for the control or the accumulation of a specified percentage of target shares. These rights take several forms but all are difficult and costly to acquire control of the issuer, or the target firm. These provisions force the acquirer to negotiate directly with the target company's board and allow some takeover bids to go through.

7. WHITE KNIGHT

White Knight is a **company that comes to rescue** of a company targeted for a takeover. The white knight may make an offer to buy all or part of the target company at more favourable terms than the original bidder.

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8. KILLER BEES

Killer bees are firms or individuals that are employed by a target company to fend off a takeover bid; these include **investment bankers (primary) accountants, attorneys, tax specialists, etc.** they help by utilizing various anti-takeover strategies, thereby making the Target Company economically unattractive and acquisition more costly.

9. BANK MAIL PILLS

Bank mail defense wherein the **bank of a target firm refuses financing options to firms with takeover bids** thereby having the triple impact of imposing financial restrictions upon the acquirer, increasing transaction costs in locating another financing option and also buying time for the target company to put more defenses in place.

10. SUPERMAJORITY AMENDMENTS

These amendments require shareholder approval by at least **two thirds vote** and **sometimes as much as 90% of the voting power** of outstanding capital stock for **all transactions involving change of control**.

11. AUTHORIZATION OF PREFERRED STOCK

Vide such provisions; the Board of Directors is authorized to create a **new class of securities with special voting rights**. This security, typically preferred stock, may be issued to a **friendly party in a control contest**. Thus, this device is a defense against hostile takeover bids, although historically it was used to provide the Board of Directors with flexibility in financing under changing economic conditions.

12. CLASSIFIED BOARDS

Another type of anti-takeover amendments provides for a staggered or classified board of directors to delay effective transfer and control in a takeover. The legal position of such classified or staggered boards is quite flexible. An example is **when a 9 member board may be divided into 3 categories, with only 3 members standing for election to a three year term each**, such being the modalities of the retirement by rotation. Thus a **new majority shareholder would have to wait for at least 2 AGMs to gain control of the Board of Directors**.

DRAFTING ASPECTS

1. APPOINTMENT OF A MERCHANT BANKER

"RESOLVED THAT M/S..... be and is hereby appointed as a Merchant Banker for making the public announcement and to forward the same to the SEBI, target company and stock exchanges.

RESOLVED FURTHER THAT terms and conditions of its appointment shall be such as decided by the Board of Directors, in its meeting."

2. OPENING OF AN ESCROW ACCOUNT

"RESOLVED THAT pursuant to the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011, an Escrow account be opened up withBank with theamount.

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Live Lecture



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Additional Writing

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RESOLVED FURTHER THAT M/sbe and is hereby authorised as a 'Manager to the Open Offer' to operate the said escrow account."

3. OFFER BY OFFEROR COMPANY (ACQUIRER)

"RESOLVED THAT an offer be made, to the person who are the members of..... Ltd. As on for acquisition of the total issued capital of the..... Ltd.

RESOLVED FURTHER THAT above said offer shall remain open from..... to..... at a price of..... each.

RESOLVED FURTHER THAT shares be accepted even if such shares in aggregate are less than the limit mentioned above and in case the shares offered exceed the limit, the company shall have an option to accept or reject the same, in consultation with the concerned authorities and offer will be accepted according to the order in which they are received and full shareholding of the members accepting the offer be acquired subject to abovementioned limit."

INTERNATIONAL ACQUISITIONS

Companies go in for international acquisitions for a number of strategic or tactical reasons such as the following :-

(a) <u>Growth orientation:</u> To escape small home market, to extend markets served, to achieve economy of scale.
(b) <u>Access to inputs:</u> To access raw material s to ensure consistent supply, to access technology, to access latest innovations, to access cheap and productive labour.
(c) <u>Exploit unique advantages:</u> To exploit the company's brands, reputation, design, production and management capabilities.
(d) <u>Defensive:</u> To diversity across products and markets to reduce earnings volatility, to reduce dependence on exports, to avoid home country political and economic instability, to compete with foreign competitors in their own territory, to circumvent protective trade barriers in the host country.
(e) <u>Response to client needs:</u> To provide home country clients with service for their overseas subsidiaries, e.g. banks and accountancy firms.

CROSS BORDER TAKEOVER

Cross Border Takeover is a much sort after term in recent years. Competitiveness among the domestic firms forces many businesses to go global takeovers. Apart from personal glory, global takeovers are often driven by market consolidation, expansion or corporate diversification motives. Also financial, accounting and tax related matters inspire such takeovers.

Expansion and diversification are one of the primary reasons to cross as the domestic markets usually do not provide the desired growth opportunities. One has to look outside its boundries and play out in the global arena to seek new opportunities and scale new heights. Such companies have already improved profitability through better cost management and diversification at the national field.

The firms engaged in Cross Borders Takeovers can be of three types:-

(a) Firm incorporated in one country listed in different countries including it own.
(b) Firm incorporated in one country listed exclusively in a foreign country.
(c) Firm incorporated in one country listed in more than one foreign country.

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**PUBLIC ANNOUNCEMENT UNDER REGULATION 3(1) AND 4 READ WITH REGULATION 15(1)
OF SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF
SHARES AND TAKEOVERS) REGULATIONS, 2011**

Open offer for Acquisition of 15,10,800 fully paid up Equity Shares of ₹10 each ("Equity Shares") of Kakatiya Textiles Limited ("KTL"/"Target Company") from the Public Shareholder of the Target Company by Mr. Ravindra Nath Vanka ("Acquirer 1"), Mrs. Raja Kumari Vanka ("Acquirer 2"), Mr. Raghuveer Vanka ("Acquirer 3") and Ms. Ravali Vanka ("Acquirer 4") (hereinafter collectively referred to as "Acquirers").

This Public Announcement ("PA"/"Public Announcement") is being issued by Mark Corporate Advisors Private Limited ("Manager to the Offer") for and on behalf of the Acquirers to the Public Shareholders of the Target Company pursuant to and in compliance with, amongst others, Regulation 3(1) and 4 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and subsequent amendments thereto ["SEBI (SAST) Regulations, 2011"/"Regulations"].

1. OFFER DETAILS:

1.1. Offer Size: The Acquirers hereby make this Open Offer ("Offer") to the Public Shareholders of the Target Company to acquire upto 15,10,800 fully paid-up equity shares of ₹10 each, constituting 26% of the Equity Share Capital and 26.12% of the Voting Capital of the Target Company, subject to the terms and conditions mentioned in this Public Announcement ("PA"), the Detailed Public Statement ("DPS") that will be published and the Letter of Offer ("LoF") that will be sent to the Equity Shareholders of the Target Company, in accordance with the Regulations.

1.2. Offer Price/Consideration: The Offer price of ₹7.00 (Rupees Seven only) per fully paid-up Equity Share of ₹10 each, is in compliance with Regulation 8 of the Regulations ("Offer Price"), aggregating to a consideration of ₹1,05,75,600 (Rupees One Crore Five Lakhs Seventy Five Thousand and Six Hundred only), assuming full acceptance in the Open Offer ("Offer Size"). The Shareholders who are holding partly paid-up equity shares will be eligible to participate in the Offer only upon making the equity shares fully paid-up i.e. after paying the amount due on allotment/calls along with the interest, if any.

1.3. Mode of Payment: The Offer Price will be paid in Cash, in accordance with Regulation 9(1) (a) of the Regulations.

1.4. Type of Offer: This is an Offer in compliance with Regulation 3(1) and 4 of the Regulations.

2. TRANSACTION WHICH HAS TRIGGERED THE OPEN OFFER OBLIGATIONS (UNDERLYING TRANSACTION):

Type of Transaction (Direct/ Indirect)	Mode of Transaction (Agreement/ Allotment/ Market Purchase)	Details of underlying transaction			Total Consideration for Shares/ Voting Rights (VR) acquired (₹ in Crores)	Mode of Payment (Cash/ Securities)	Regulation which has Triggered
		Equity Shares/Voting Rights proposed to be acquired					
		Number	% vis a vis total equity capital	% vis a vis total voting capital			
Direct	Share Purchase Agreement ("SPA") dated May 04, 2015	29,32,812	50.47%	50.70%	1.20	Cash	3(1) and 4



3. DETAILS OF THE ACQUIRERS:

Details	Acquirer 1	Acquirer 2	Acquirer 3	Acquirer 4	Total
Name of the Acquirers	Mr. Ravindra Nath Vanka	Mrs. Raja Kumari Vanka	Mr. Raghuvver Vanka	Ms. Ravali Vanka	4
Address	D. No. 23-7-11, Park Street, Sajjapuram, Tanuku-534 211, Dist.: West Godavari, State: Andhra Pradesh	D. No. 23-7-11, Park Street, Sajjapuram, Tanuku-534 211, Dist.: West Godavari, State: Andhra Pradesh	D. No. 23-7-11, Park Street, Sajjapuram, Tanuku-534 211, Dist.: West Godavari, State: Andhra Pradesh	D. No. 23-7-11, Park Street, Sajjapuram, Tanuku-534 211, Dist.: West Godavari, State: Andhra Pradesh	-
Name(s) of the Persons in control/Promoters of Acquirers where Acquirers are Companies	Not Applicable	Not Applicable	Not Applicable	Not Applicable	-
Name of the Group, if any, to which the Acquirers belongs to	Not Applicable	Not Applicable	Not Applicable	Not Applicable	-
Pre Transaction shareholding					
• Number	500	Nil	Nil	Nil	500
• % of total equity share capital	0.01%	Nil	Nil	Nil	0.01%
• % of total voting capital	0.01%	Nil	Nil	Nil	0.01%
Proposed shareholding after the acquisition of shares which triggered the Open Offer					
• Number	7,33,703	7,33,203	7,33,203	7,33,203	29,33,312
• % of total equity share capital	12.63%	12.62%	12.62%	12.62%	50.48%
• % of total voting capital	12.68%	12.67%	12.67%	12.67%	50.71%
Any other interest in the Target Company	None	None	None	None	-

4. DETAILS OF SELLING SHAREHOLDERS:

Sr. No.	Name & PAN	Part of Promoter Group	Details of Equity Shares/Voting Rights held by the Selling Shareholders				
			Pre Transaction			Post Transaction	
			No of Shares	% vis a vis total equity capital	% vis a vis total voting capital	No of Shares	%
1.	Mr. Sumanth Ramamurthi PAN: ALMPS1683A	Yes	29,32,808	50.47%	50.70%	Nil	Nil
2.	M/s. Elgi Electric and Industries Limited CIN: U31200TZ1963PLC000487	Yes	2	Negligible	Negligible	Nil	Nil
3.	M/s. Super Farm Products Private Limited CIN: U01211TZ1984PTC001522	Yes	2	Negligible	Negligible	Nil	Nil
	TOTAL		29,32,812	50.47%	50.70%	Nil	Nil



5. DETAILS OF THE TARGET COMPANY

5.1.	Name	:	Kakatiya Textiles Limited
5.2.	CIN	:	L18100TZ1981PLC013940
5.3.	Registered Office Address	:	Elgi Towers, Green Fields, 737 D, Pulinakulam Road Coimbatore-641 045, Tamil Nadu, India
5.4.	Stock Exchanges where Listed	:	BSE Limited, Mumbai ('BSE') with Scrip Code 521054

6. OTHER DETAILS

6.1. The details of the Open Offer will be published in the newspapers in terms of the provisions of Regulations 13 (4) and 14 (3) of Regulations vide a Detailed Public Statement on or before May 11, 2015.

6.2. The Acquirers undertakes that they are aware of and will comply with their obligations under the Regulations and have adequate financial resources to meet the Offer obligations in terms of Regulation 25(1) of the Regulations in relation to the Offer.

6.3. In this PA, any discrepancy in any table between the total and sums of the percentage listed is due to rounding off.

6.4. This Offer is not subject to any minimum level of acceptance.

6.5. Competing Offer: This is not a competing offer in terms of Regulation 20 of the SEBI (SAST) Regulations.

Issued by the Manager to the Offer:



Mark Corporate Advisors Private Limited

CIN:U67190MH2008PTC181996

404/1, The Summit Business Bay,

Sant Jambai Road (Service Lane),

Off W. E. Highway, Vile Parle (East),

Mumbai-400 057

Telefax: +91 22 2612 3207/08

Contact Person: Mr. Manish Gaur

Email: openoffer@markcorporateadvisors.com

SEBI Regn No.: INM000012128

For and on behalf of the Acquirers:

Ravindra Nath Vanka ('Acquirer 1')

(For himself and duly constituted Power of Attorney holder for Acquirer 2, Acquirer 3 and Acquirer 4)

Place: Mumbai

Date: May 04, 2015



PUBLIC ANNOUNCEMENT UNDER REGULATION 15(1) OF THE SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

Open Offer for acquisition of up to 19,14,13,630 equity shares of Rs. 10 each of Pipavav Defence and Offshore Engineering Company Limited (the "Target Company") from the Public Shareholders (as defined below) of the Target Company by Reliance Defence Systems Private Limited (the "Acquirer") together with Reliance Infrastructure Limited as the person acting in concert ("Reliance Infra" or the "PAC") with the Acquirer ("Offer"/ "Open Offer").

This public announcement (the "Public Announcement" or "PA") is being issued by JM Financial Institutional Securities Limited (the "Manager") for and on behalf of the Acquirer and PAC, to the public equity shareholders of the Target Company, excluding the parties to the Purchase Agreement (as defined below) and persons acting in concert or deemed to be acting in concert with such parties including the PAC (the "Public Shareholders"), pursuant to and in compliance with Regulations 3(1) and (4) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and subsequent amendments thereto (the "SEBI (SAST) Regulations").

1. Offer Details

- **Size:** The Acquirer and the PAC hereby make this Offer to the Public Shareholders to acquire up to 19,14,13,630 fully paid-up equity shares of face value of Rs. 10 each of the Target Company (the "Offer Shares"), constituting 26.00% of the total fully diluted voting equity share capital (as of the 10th working day from the closure of the tendering period for the Offer) (the "Voting Share Capital") of the Target Company at a price of Rs. 66.00 per Offer Share (the "Offer Price") aggregating to total consideration of Rs. 1,263.3 crores (the "Offer Size"), subject to the terms and conditions mentioned in this Public Announcement, the detailed public statement (the "DPS") and the letter of offer (the "LOF") that are proposed to be issued in accordance with the SEBI (SAST) Regulations.
- **Price/ consideration:** The equity shares of the Target Company are frequently traded in terms of the SEBI (SAST) Regulations. The Offer Price of Rs. 66.00 per Offer Share is in accordance with Regulation 8(2) of the SEBI (SAST) Regulations.
- **Mode of payment:** The Offer Price is payable in cash in accordance with Regulation 9(1)(a) of the SEBI (SAST) Regulations, and the terms and conditions mentioned in this Public Announcement, and in the DPS and LOF that are proposed to be issued in accordance with the SEBI (SAST) Regulations.
- **Type of offer:** This Offer is a mandatory offer in compliance with Regulations 3(1) and 4 of the SEBI (SAST) Regulations.

2. Transaction which has triggered the Open Offer obligations (Underlying Transaction)

This Offer is being made pursuant to the execution of a Purchase Agreement dated March 4, 2015 between Skil Infrastructure Limited ("SIL"), Skil Shipyard Holdings Private Limited ("SSHPL"), Grevek Investment And Finance Private Limited ("Grevek") (SIL, SSHPL and Grevek together referred to as the "Sellers"), Mr. Nidhi Gandhi, Mr. Bhavesh Gandhi, the Target Company, the Acquirer and the PAC (the "Purchase Agreement"), pursuant to which the Acquirer has agreed to purchase 13,00,00,000 equity shares of the Target Company constituting 17.66% of the paid-up equity share capital of the Target Company from SIL and SSHPL, at a price of Rs. 63.00 per equity

share. In terms of the Purchase Agreement and subject to the conditions therein, the Sellers shall sell such number of additional equity shares of the Target Company to the Acquirer at a price of Rs. 63.00 per equity share that would result in the Acquirer acquiring 25.10% of the paid-up equity share capital in the Target Company after taking into account the acquisitions made under the Offer. Since the Acquirer has entered into an agreement to acquire voting rights in excess of 25% of the total voting rights of the Target Company, this Offer is being made under Regulation 3(1) of the SEBI (SAST) Regulations. Upon consummation of the transactions contemplated in the Purchase Agreement, the Acquirer will also acquire control over the Target Company. As such, this Offer is also being made under Regulation 4 of the SEBI (SAST) Regulations. The Purchase Agreement also sets forth the terms and conditions agreed between the Sellers, Mr. Nikhil Gandhi, Mr. Bhavesh Gandhi, the Target Company, the Acquirer and the PAC, and their respective rights and obligations.

Details of underlying transaction						
Type of Transaction (direct/ indirect)	Mode of Transaction (Agreement/ Allotment/ market purchase)	Shares/ Voting rights acquired/ proposed to be Acquired		Total Consideration for shares/ Voting Rights (VR) acquired/ proposed to be acquired (Rs. in Crores)	Mode of payment (Cash/ securities)	Regulation which has triggered
		Number	% vis a vis total equity/ voting capital.			
Direct	<ul style="list-style-type: none"> Purchase Agreement dated March 4, 2015 between the Sellers, Mr. Nikhil Gandhi, Mr. Bhavesh Gandhi, the Target Company, the Acquirer and the PAC. 	<ul style="list-style-type: none"> 13,00,00,000 equity shares with an agreement to acquire upto an additional 5,47,87,774 equity shares in terms of the Purchase Agreement and depending upon the acquisitions made under the Offer. ⁽¹⁾ 	<ul style="list-style-type: none"> 17.66% of the equity share capital with an agreement to acquire upto an additional 7.44% of the equity share capital. ⁽²⁾ 	<ul style="list-style-type: none"> Rs. 819.0 crores for 17.66% of the equity share capital ⁽²⁾, Additional consideration of upto Rs. 345.2 crores for 7.44% of the equity share capital. ⁽³⁾ 	<ul style="list-style-type: none"> Cash 	<ul style="list-style-type: none"> Regulations 3(1) and 4 of the SEBI (SAST) Regulations.

(1) In terms of the Purchase Agreement and subject to the conditions therein, the Sellers shall sell such number of additional equity shares of the Target Company to the Acquirer at a price of Rs. 63.00 per equity share so as to ensure that the Acquirer's shareholding is not less than 25.10% of the Target Company after taking into account the acquisitions made under the Offer.

(2) Purchase price of Rs. 63.00 per equity share multiplied by 13,00,00,000 equity shares, constituting 17.66% of the paid-up equity share capital of the Target Company.

3. Acquirer/ PAC

Details	Acquirer	PAC	Total
Name of Acquirer(s)/ PAC(s)	Reliance Defence Systems Private Limited	Reliance Infrastructure Limited	-
Address	502, Plot no. 91/ 94, Prabhkar Colony, Santa Cruz (East), Mumbai 400 055, India	H Block, 1st Floor, Dhirubhai Ambani Knowledge City, Navi Mumbai 400 710, India	-
Name(s) of persons in control/ promoters of Acquirers/ PAC where Acquirers/ PAC are companies	The Acquirer is a wholly owned subsidiary of Reliance Infrastructure Limited.	The Promoter and Promoter Group of Reliance Infrastructure Limited are given below: <ul style="list-style-type: none"> • Reliance Project Ventures and Management Private Limited • Reliance Big Private Limited • Reliance Innovations Private Limited • Reliance ADA Group Trustees Private Limited • Nishith D. Ambani • Anil D. Ambani • Jaanmol A. Ambani • Tina A. Ambani • Jaanshul A. Ambani 	-
Name of the Group, if any, to which the Acquirer/ PAC belongs to	Reliance Group	Reliance Group	-
Pre Transaction shareholding <ul style="list-style-type: none"> • Number • % of total share capital 	Nil	Nil	Nil
Proposed shareholding after the acquisition of shares (including Offer Shares assuming full acceptance) which triggered the Open Offer	32,14,13,630 equity shares (43.66% of the paid-up equity share capital of the Target Company) ⁽¹⁾	Nil	32,14,13,630 equity shares (43.66% of the paid-up equity share capital of the Target Company) ⁽¹⁾
Any other interest in the Target Company	None	None	None

(1) Assuming full acceptance in the Offer and no sale of additional equity shares by the Sellers to the Acquirer. In case of full acceptance in the Offer, the Acquirer will acquire 13,00,00,000 equity shares of the Target Company constituting 17.60% of the paid-up equity share capital of the Target Company pursuant to the Purchase Agreement.

4. Details of selling shareholders

Names of selling shareholder	Part of promoter group (Yes/ No)	Details of shares/ voting rights held by the selling shareholders			
		Pre Transaction		Post Transaction ^{(1) (2)}	
		No of Shares	Percentage (%)	No of Shares	Percentage (%)
SIL	Yes	25,03,73,648	34.01	15,87,51,334	21.56
SSHPL	Yes	3,83,77,686	5.21		
Grevek	Yes	2,23,49,494	3.04	2,23,49,494	3.04
Total		31,11,00,828	42.26	18,11,00,828	24.60

- (1) Assuming full acceptance in the Offer and no sale of additional equity shares by the Sellers to the Acquirer. In case of full acceptance in the Offer, the Acquirer will acquire 13,00,00,000 equity shares of the Target Company constituting 17.66% of the paid-up equity share capital of the Target Company from SIL and SSHPL.
- (2) In terms of the Purchase Agreement and subject to the conditions therein, the Sellers shall sell such number of additional equity shares of the Target Company to the Acquirer that would result in the Acquirer acquiring 25.10% of the paid-up equity share capital in the Target Company after taking into account the acquisitions made under the Offer. Consequently, in case no equity shares are tendered in the Offer, in terms of the Purchase Agreement and subject to the terms contained therein, the Acquirers will acquire 5,47,87,774 additional equity shares constituting 7.44% of the paid-up equity share capital of the Target Company from the Sellers, and the shareholding of the Sellers will reduce from 31,11,00,828 equity shares constituting 42.26% of the paid-up equity share capital of the Target Company to 12,63,13,054 equity shares constituting 17.16% of the paid-up equity share capital of the Target Company.

5. Target Company

- Name: Pipavav Defence and Offshore Engineering Company Limited.
- Registered Office: Pipavav Port, Post Uchhaiya, Via-Rajula, District Amreli – 365 560, Gujarat, India.
- Exchanges where listed: The equity shares of the Target Company are listed on BSE Limited and National Stock Exchange of India Limited.

6. Other Details

- The DPS to be issued under the SEBI (SAST) Regulations shall be published on or before March 12, 2015 as required by Regulation 13(4) of the SEBI (SAST) Regulations. The DPS shall contain details of the Offer including detailed information on the Offer Price, the Acquirer, the PAC, the Target Company, the background to the Offer, the statutory approvals required for the Offer and details of financial arrangements and other terms of the Offer.
- The Acquirer and the PAC undertake that they are aware of and will comply with their obligations under the SEBI (SAST) Regulations and that they have adequate financial resources to meet their obligations under the Offer.
- The Offer is not conditional upon any minimum level of acceptance pursuant to the terms of Regulation 19 of the SEBI (SAST) Regulations.

- This Offer is not a competing offer under the terms of Regulation 20 of the SEBI (SAST) Regulations.
- The completion of the Offer and the underlying transaction, as envisaged under the Purchase Agreement, is subject to satisfaction of the conditions precedent set out in the Purchase Agreement and receipt of statutory approvals required, if any.

Issued by the Manager to the Offer



JM Financial Institutional Securities Limited
 7th Floor, Energy, Appasaheb Marathe Marg, Prabhadevi,
 Mumbai – 400 025, India.
 Tel. No.: +91 22 6630 3030
 Fax No.: +91 22 6630 3330
 Email: lakshmi.lakshmanan@jmfi.com
 Contact Person: Ms. Lakshmi Lakshmanan
 SEBI Registration Number: INM000010361

On behalf of the Acquirer and the PAC

Reliance Defence Systems Private Limited

Reliance Infrastructure Limited

Place: Mumbai

Date: March 4, 2015

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Journal of Internal Medicine 255: 105–112

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For the purposes of this research, the researchers used a sample of 1000 people who were aged 18 years and over, living in the UK, and who were using the internet at least once a week. The sample was drawn from a population of 1000 people who were using the internet at least once a week. The sample was drawn from a population of 1000 people who were using the internet at least once a week.

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Reynolds

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Model	1000
Year	2000
Color	Black
Material	Steel
Weight	100 lbs
Price	\$1000

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6. OTHER INFORMATION

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<p>Manager in the Office</p> <p>CYNTRUM</p> <p>Executive Assistant 10000 Park 101 Avenue, Suite 1000 Denver, CO 80231 Tel: 303-733-7000 Fax: 303-733-7000 Email: info@cyntrum.com Website: www.cyntrum.com</p>	<p>Registered in the Office</p> <p>LAUREL</p> <p>Executive Assistant 10000 Park 101 Avenue, Suite 1000 Denver, CO 80231 Tel: 303-733-7000 Fax: 303-733-7000 Email: info@cyntrum.com Website: www.cyntrum.com</p>
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*Values are means ± SD; significant differences between groups are indicated by different letters (P < 0.05). The values were calculated from three replicates of each treatment. Data represent the mean of three replicates.

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Faloutsos, Michael; Rost, Ralf	1998	Journal of the ACM	41	5	858-872
Harman, Michael; Rost, Ralf	1998	Journal of the ACM	41	5	873-887
Harman, Michael; Rost, Ralf	1998	Journal of the ACM	41	5	888-902
Harman, Michael; Rost, Ralf	1998	Journal of the ACM	41	5	903-917
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Harman, Michael; Rost, Ralf	1998	Journal of the ACM	41	5	933-947
Harman, Michael; Rost, Ralf	1998	Journal of the ACM	41	5	948-962
Harman, Michael; Rost, Ralf	1998	Journal of the ACM	41	5	963-977
Harman, Michael; Rost, Ralf	1998	Journal of the ACM	41	5	978-992
Harman, Michael; Rost, Ralf	1998	Journal of the ACM	41	5	993-1007
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Harman, Michael; Rost, Ralf	1998	Journal of the ACM	41	5	1248-1262
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Harman, Michael; Rost, Ralf	1998	Journal of the ACM	41	5	1278-1292
Harman, Michael; Rost, Ralf	1998	Journal of the ACM	41	5	1293-1307
Harman, Michael; Rost, Ralf	1998	Journal of the ACM	41	5	1308-1322
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Harman, Michael; Rost, Ralf	1998	Journal of the ACM	41	5	1503-1517
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Harman, Michael; Rost, Ralf	1998	Journal of the ACM	41	5	1548-1562
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Harman, Michael; Rost, Ralf	1998	Journal of the ACM	41	5	1653-1667
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SELF TEST QUESTIONS

FROM PAST CS EXAMS



1. Distinguish between 'Mandatory bid' and 'Competitive bid'.
2. What are the safeguards incorporated in the takeover process so as to ensure that shareholders get their payments under the offer/receive back their share certificates?
3. Can an acquirer withdraw the offer once made? Give reasons.
4. Describe the Cross border takeover.
5. Explain the provisions relating to 'escrow account' under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
6. Explain 'open offer thresholds' under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
7. What do you mean by a mandatory bid and when is it necessary? Describe briefly.
8. Enumerate the reasons inducing companies to go for international acquisitions.
9. Mention the factors which make a company vulnerable to takeover bids.
10. Amilo Exports Ltd., a listed company has opened an escrow account in connection with acquiring another company. The company wants your opinion for the release of amount from escrow account.
11. How is the open offer price for acquisition of shares of a listed target company whose shares are frequently traded determined?
12. Palm Ltd. bought back some shares in compliance with section 68 of Companies Act, 2013. As a consequence, the shareholding of one shareholder, Vaibhav Ltd., increased from 24% to 27%, Palm Ltd. disclosed the changed shareholding pattern to the stock exchange. On receiving the information regarding increase in holding of Vaibhav Ltd. to 27% SEBI has issued a show-cause notice to Vaibhav Ltd. for its failure to make a public offer under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Prepare a reply to the show-cause notice.

FROM ICSI MODULE



Answer the Following:-

1. What do you mean by the term 'Takeover'? What are the objectives which takeover seeks to achieve?
2. Explain the meaning of and different types of takeover bids.
3. Can unlisted companies affect takeovers? If so, how?
4. "SEBI has formulated a comprehensive code for takeover of listed companies" Do you agree?
5. What are the general obligations of 'Acquirer' and 'Merchant Banker' as under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011?
6. What does the term 'offer price' and 'persons acting in concert' mean under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011?

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EXAMPLE OF VOLUME WEIGHTED AVERAGE MARKET PRICE

S. No.	No. of Shares traded (A)	Market Price (B)	Product of A and B
1	200	500	1,00,000
2	300	667	2,00,100
3	500	898	4,49,000
4	700	450	3,15,000
5	600	999	5,99,400
TOTAL	2300		16,63,500

Volume Weighted Average Market price = Product of (A and B) / Total of A
= 1663500/2300 = Rs.723.26

CONDITION FOR INITIAL LISTING

RULE 19 (2) (b) says if a company is coming with public issue (IPO) then its shares will be listed on stock exchange only if company allot to public shares as follows.

If post issue capital	Then minimum allotment to public is
Up to 1600 crore	At least twenty five per cent. of each class or kind of equity shares or debenture convertible into equity shares issued by the company.
>1600 crore up to 4000 crore	Such percentage of each class or kind of equity shares or debentures convertible into equity shares issued by the company equivalent to the value of four hundred crore rupees. (But company has to increase its public shareholding to at least 25% within period of 3 years from the date of listing.)
>4000 crore	Ten per cent. of each class or kind of equity shares or debentures convertible into equity shares issued by the company. (But company has to increase its public shareholding to at least 25% within period of 3 years from the date of listing.)

RULE 19 A CONDITIONS FOR CONTINUOUS LISTING

RULE 19 A says every listed company shall maintain public shareholding of at least 25% so that its shares remain listed on stock exchange.

If Company attain the public shareholding level of 25% and after attaining this level public shareholding in a listed company falls below 25% at any time, such company shall bring the public shareholding to 25% within a maximum period of 12 months from the date of such fall in the manner specified by the Securities and Exchange Board of India.

Where the public shareholding in a listed company falls below 25% in consequence to the Securities Contracts (Regulation) (Amendment) Rules, 2015, such company shall increase its public shareholding to at least 25% in the manner specified by the Securities and Exchange Board of India within a period of three years, as the case may be, from the date of notification of: (a) the Depository Receipts Scheme, 2014 in cases where the public shareholding falls below twenty five per cent. as a result of such scheme; (b) the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 in cases where the public shareholding falls below 25%, as a result of such regulations.]

MINIMUM PUBLIC SHAREHOLDING

Regulation 38 of Listing Regulations 2015

The listed entity shall comply with the minimum public shareholding requirements specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957 in the manner as specified by the Board from time to time: Provided that provisions of this regulation shall not apply to entities listed on institutional trading platform without making a public issue.

Regulation 5A

DELISTING OFFER

1. Notwithstanding anything contained in these regulations, in the event the acquirer makes a public announcement of an open offer for acquiring shares of a target company in terms of regulations 3, 4 or 5, he may delist the company in accordance with provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009: *Provided that the acquirer shall have declared upfront his intention to so delist at the time of making the detailed public statement.*
2. Where an offer made under sub-regulation (1) is not successful,
 - on account of non-receipt of prior approval of shareholders in terms of clause (b) of sub-regulation (1) of regulation 8 of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; or
 - in terms of regulation 17 of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; or
 - on account of the acquirer rejecting the discovered price determined by the book building process in terms of sub-regulation (1) of regulation 16 of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009.

The acquirer shall make an announcement within two working days in respect of such failure in all the newspapers in which the detailed public statement was made and shall comply with all applicable provisions of these regulations.

3. In the event of the failure of the delisting offer made under sub regulation (1), the acquirer, through the manager to the open offer, shall within five working days from the date of the announcement under sub regulation (2), file with the Board, a draft of the letter of offer as specified in sub-regulation (1) of regulation 16 and shall comply with all other applicable provisions of these regulations:

Provided that the offer price shall stand enhanced by an amount equal to a sum determined at the rate of ten per cent per annum for the period between the scheduled date of payment of consideration to the shareholders and the actual date of payment of consideration to the shareholders.

Explanation: For the purpose of this sub-regulation, scheduled date shall be the date on which the payment of consideration ought to have been made to the shareholders in terms of the timelines in these regulations.

VARIOUS DISCLOSURES UNDER SEBI TAKEOVER CODE 2011

Regulation	Made by	Shareholding	Timing	Made to
29(1)	Acquirer	acquiring 5% or more shares of the target company	Within 2 working days	Stock exchange and target company
29(2)	Acquirer	if there has been change in shareholding since last disclosure and such change exceeds 2% of total shareholding or voting rights in the target company by the Acquirer + PAC holding 5% or more shares of the target company.	Within 2 working days	Stock exchange and target company
30(1)	Acquirer	Any Person + PAC holding more than 25% shares or voting rights in the target to disclose their aggregate shareholding and voting rights	Within 7 working days from 31ST march	Stock exchange and target company
30(2)	Acquirer	Promoters + PAC to disclose their aggregate shareholding and voting rights	Within 7 working days from 31ST march	Stock exchange and target company
31(1)	Acquirer	Promoter + PAC pledging or creating encumbrance on the shares of the target company	Within 7 working days from pledge	Stock exchange and target company
31(2)	Acquirer	Invocation or release of the pledge or encumbrance on the shares of the target company	Within 7 working days from invocation	Stock exchange and target company

CONCLUSIVENESS OF CERTIFICATE FOR REDUCTION OF CAPITAL

WALKAR & SMITH LTD.	Where the Registrar had issued his certificate confirming the reduction, the same was held to be conclusive although it was discovered later that the company had no authority under its articles to reduce capital.
LADIES'S DRESS ASSN. V. PULBROOK	Similarly, in a case where the special resolution for reduction was an invalid one, but the company had gone through with the reduction, the reduction was not allowed to be upset.

DISTINCTION REDUCTION OF CAPITAL AND ALTERATION OF CAPITAL

Basis	REDUCTION OF CAPITAL (SEC 66) of Companies Act 2013	ALTERATION OF CAPITAL (SEC 61) Companies Act 2013
Change in capital	It amounts to decrease in the existing share capital of the Company.	It may amount to increase or decrease in the share capital of the Company.
Resolution	Special Resolution in a General meeting	Ordinary resolution in a General meeting
Confirmation of Tribunal	Tribunal confirmation is required	Tribunal confirmation is not required.
Method	Reduction of capital can be made by <ul style="list-style-type: none"> Extinguishing or reducing liability 	Alteration in share capital may be made by: <ul style="list-style-type: none"> (a) Increase in authorized shares capital,

	of members in respect of unpaid capital. • Writing off or cancellation of any paid up capital which is lost, or IS not represented by available assets. • Paying off any paid up share capital in excess of the Company's needs.	(b) Consolidation or division of all or any of its share capital into shares of larger denomination. (c) Conversion of fully paid up shares into stock and vice versa. (d) Sub-division of its shares into shares of smaller amount. (e) Cancellation of shares not taken up and diminishing the amount of its share capital by amount of shares so cancelled.
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Comment on the in terms of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, 'offer period' and 'tendering period' are one and the same.

In terms of the SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 2011, 'offer period' are different.

The term 'offer period' pertains to the period starting from the date of the event triggering open offer till competition of payment of consideration to shareholders by the acquirer or withdrawal of the offer by the acquirer as the case may be.

The term 'tendering period' refers to the 10 working days period falling within the offer period, during which the eligible shareholders who wish to accept the open offer can tender their shares in the open offer.

Comment on the acquirer can opt out of the open offer process at any point of time by informing stock exchange wherein the shares of the target company are listed and furnishing a copy of the communication to the target company.

According to **Regulation 23 of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011**, an open offer once need cannot be withdrawal except in the following circumstances:

- (a)** Statuary approval required for the open offer or for effecting the acquisition attracting the obligation to make an open offer have been refused subject to such requirements for approvals having been specially disclosed in the DPS and the letter of offer
- (b)** Any condition stipulated in the SPA attracting the obligation to make the open offer is not met for reasons outside of reasonable control of the acquirer, subject to such conditions having been specially disclosed in the DPS and the letter of offer.
- (c)** Sole acquirer being is natural person has died
- (d)** Such circumstance which is in the opinion of SEBI merit withdrawal of open offer.

Comment on the revision of offer price can be made by the acquirer upward but that can be exercise only in the event of their being a competing offer.

According to **Regulation 18 of the SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 2011**, irrespective of whether a competing offer has been made, an acquirer may make upward revisions to the offer price and subject to the other provisions of these regulations, to the number of shares sought to be acquired under the open offer, at any time prior to the commencement of the last three working days before the commencement of the tendering period.

Thus revision of offer price can be made irrespective of whether a competing offer has been made.

Comment on the acquisition pursuant to a scheme made under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 or any statutory modification thereto shall be automatically exempt from the obligation to make an open offer under Regulation 3 and 4 of the SEBI (Substantial of Shares and Takeover) Regulation, 2011 but not the acquisition made pursuant to the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Regulation 10 of the SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 2011 provides that certain acquisitions shall be exempt from the obligation to make an open offer under **Regulation 3** and **Regulation 4**.

The exemption included acquisition pursuant to scheme made under **section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985** and also acquisition pursuant to the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Thus, both acquisition pursuant to a scheme made under **section 8 in of the Sick Industrial Companies (Special Provisions) Act, 1985** as well as acquisition pursuant to the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are exempt from the obligation to make an open offer under **Regulation 3** and **Regulation 4**.

Comment on the acquisition of shares resulting from invocation of pledge by a public financial institution is exempt from open offer obligation.

Regulation 10 of the SEBI (Substantial Acquisition of Shares and Takeover) Regulation 2011, provides that certain acquisition shall be exempt from the obligation to make an open offer under **Regulation 3** and **Regulation 4**.

The exemption include acquisition in the ordinary course of business by invocation of pledge by Scheduled Commercial Banks or Public Financial Institution as a pledge.

Thus, the acquisition of shares resulting from invocation of pledge by a public financial institution is exempt from open offer obligation.

Comment on in the event of forfeiture of the amount lying in the escrow account, the acquirer shall be paid one-third of the amount forfeited in terms of Regulation 17(10) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011.

Regulation 10 in the event of forfeiture of amount, the entire amount is distributed in the following manner:

- One third of the amount of Target Company
- One third of the escrow account to the Investor Protection and Education Fund established under SEBI (Investor Protection and Education Fund) Regulation, 2009;
- Residual one third is to be distributed to the shareholders who have tendered their shares in the offer.

Comment on an offer in which the acquirer has stipulated a minimum level of acceptance is known as 'conditional offer'.

An offer in which the acquirer has stipulated a minimum level of acceptance is known as a 'conditional offer'.

'Minimum level of acceptance' implies minimum number of shares which the acquirer desires under the said conditional offer.

If the number of shares validly tendered in the conditional offer, are less than the minimum level of acceptance stipulated by the acquirer, then the acquirer is not bound to accept any shares under the offer.

In case of conditional offer, the acquirer and PACs with him shall not acquire, during the offer period, any shares in the target company except under the open offer and any underlying agreement for the sale of shares of the target company pursuant to which the open offer is made **Regulation 19.**