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TAKEOVER CODE – AN OVERVIEW



MEANING AND CONCEPT OF TAKEOVER

The term takeover is not defined in the Companies Act, 2013. Broadly speaking, ***takeover refers to acquisition of company by another company.***

Takeover is an acquisition of shares carrying voting rights in a company in order to gain control over the management of the company. It takes place when an individual or a group of individuals or a company acquires control over the assets of a company either by acquiring majority of its shares or by obtaining control of the management of the business and affairs of the company.

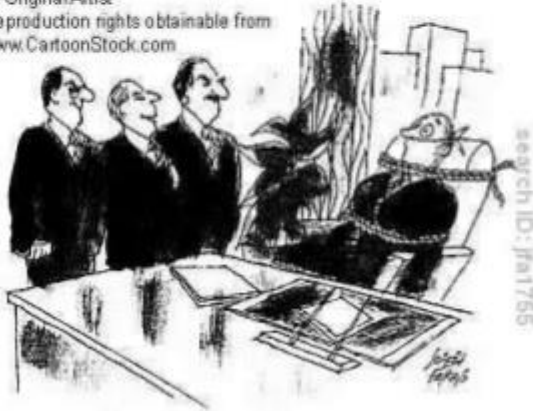
KINDS OF TAKEOVER

Takeover : Types

Hostile Takeover

A takeover attempt that is strongly resisted by the target firm.

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"Consider this an unfriendly takeover, if you wish,
but takeover it is!"

Friendly Takeover

Target company's management and board of directors agree to a merger or acquisition by another company.

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**FRIENDLY TAKEOVER**

Friendly takeover means a takeover done with the consent of board of directors of both the parties ie the Acquirer and the Target 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 the shareholders of the target company. This kind of takeover is done through negotiations between two groups. Therefore, it is also called negotiated takeover.

The word hostile means without the will and intention of the management of the Target Company. When an acquirer company does not offer the target company the proposal to acquire its undertaking but silently takes efforts to gain control against the wishes of existing management, such acts of acquirer are known as 'hostile takeover'. Such takeovers are hostile on management and are thus called hostile takeover. Hostile takeovers directly made to the shareholders of Target Company has resulted in a multiple defensive strategies-by corporate from being taken over by the company

BAILOUT TAKEOVER

Takeover of a financially sick company by a profit earning company to bail out the weak company is known as bail out takeover. A bail out takeover takes place with the approval of the Financial Institutions and banks since the objective is to revive the financially weak company and banks normally have a charge on the assets of the company.

LEGAL ASPECTS OF TAKEOVER

The legislations/regulations that mainly govern takeover is as under:

1. SEBI (SAST) Regulations 2011
2. Companies Act, 2013
3. Listing Agreement

IMPORTANT DEFINITIONS [REGULATION 2]

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.

Thus, acquirer may be "any person "-even a foreign company-i.e. company incorporated outside India. If a foreign company acquires shares of its listed Indian subsidiary company, the acquirer (foreign company) is bound to -make open offer by way of Public announcement before acquiring shares or voting rights in the listed Indian subsidiary company.

Further, the term 'any person' will encompass natural persons as well as artificial persons.

The mere fact that a person is a promoter does not make him an acquirer, unless it is shown that he either intends to acquire or is acting in concert with the acquirer for the acquisition of shares of the target company. The definition of acquirer does not include a promoter, but includes persons acting in concert with an acquirer. The question as to whether a person is acting in concert with the acquirer is essentially a question of fact. A promoter may not act in concert with the acquirer, whereas a stranger might

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.

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 *en 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 4th 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.

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.

It may be noted that grant-parents, father-in-law/mother-in-law/brother-in-law, uncles, nephews, grandparents, great grandparents, etc. are not "immediate relatives".

PERSON ACTING IN CONCERT [REG. 2(1)(G)]**"Person acting in concert" means.—**

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.

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,-

- A company, its holding company, subsidiary company and any company under the same management or control;
- A company, its directors, and any person entrusted with the management of the company;
- Directors of companies referred to in items (i) and (ii) of this sub-clause and associates of such directors;
- Promoters and members of the promoter group;
- A mutual fund, its sponsor, trustees, trustee company, and asset management company;
- A collective investment scheme and its collective investment management company, trustees and trustee company;
- A venture capital fund and its sponsor, trustees, .trustee company and asset management company;
- A foreign institutional investor and its subaccounts;
- A merchant banker and its client, who is an acquirer;
- A portfolio manager and its client, who is an acquirer;

- 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:

TARGET COMPANY [REG. 2(1)(Z)]

"Target Company" means a LISTED INDIAN company/ LISTED INDIAN BODY CORPORATE OR corporation established under a Central legislation, State legislation or Provincial legislation.

TENDERING PERIOD [REG. 2(1)(ZA)]

"Tendering Period" means the period within which shareholders may tender their shares in acceptance of an open offer to acquire shares made under these regulations.

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)]

"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.



CLASSROOM NOTES FOR TAKEOVER LIMITS

CLASSROOM NOTES FOR TAKEOVER LIMITS

SUBSTANTIAL ACQUISITION OF SHARES, VOTING RIGHTS OR CONTROL OR INITIAL TRIGGER THRESHOLD [REGULATIONS 3-9]

- 1) Without giving a public announcement for open offer, no acquirer shall acquire shares or voting rights in a target company along with shares or voting rights, if any, held by him in person or with persons acting in concert, entitle them to exercise **twenty-five per cent or more** of the voting rights of such target company.
- 2) Without giving a public announcement for open offer, any acquirer along with his PAC's, who already holds twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding (75% or 90%), shall **not** acquire any shares or voting rights **more than five percent** within any financial year in such target company.

CREEPING ACQUISITION TRIGGER [REG. 3(2)]

CREEPING ACQUISITION MEANS SLOW AND STEADY ACQUISITION OF SHARES BY THE ACQUIRER IN TARGET COMPANY. IN CREEPING ACQUISITION ACQUIRER CAN ACQUIRE MAX 5% VOTING RIGHTS OF TARGET CO IN EACH FINANCIAL YEAR.

The creeping acquisition route is meant to facilitate consolidation by persons already in control or holding substantial number of shares.

An acquirer who (together with PACs) holds 25% or more voting rights in a target company, but less than the maximum permissible non-public shareholding [i.e., Maximum Permissible Non-Public (Promoters') Shareholding is 75% and Minimum Permissible Public shareholding is 25%], is allowed to acquire additional voting rights in

the target company to the extent of upto 5% within a financial year ending on 31st March, without making an open offer [Regulation 3(2)]. If he acquires more than 5% additional voting rights in a financial year ending on 31st March, he will have to make an open offer. This is subject to their (acquirer and PACs) aggregate post acquisition shareholding not exceeding the maximum permissible non-public shareholding.

Thus, creeping acquisition can be made at the maximum rate of 5% in any one financial year without complying with the requirement of mandatory public offer by way of public announcement, provided that the post-acquisition shareholding of acquirer together with persons acting in concert with him shall not increase beyond 75%.

The open offer obligation would also apply to acquisition of shares by any person from other persons acting in concert with him such that the individual shareholding of the person acquiring shares equals or exceeds the stipulated threshold of 5% although the aggregate shareholding along with persons acting in concert may remain unchanged.
[Reg. 3(3)]

It may be noted that Regulations 3(1) and 3(2) are mutually exclusive so that an acquisition can trigger either regulation 3(1) or (but not and) regulation 3(2). It is the percentage of the acquirer's shareholding before and after an acquisition that determines whether the acquisition triggers regulation 3(1) or regulation 3(2).

ACQUISITION OF CONTROL [REGULATION 4]

Regulation 4 provides the following:

Irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over 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.

EXPLANATION

If any acquirer wants to acquire control over a target company, he has to make public announcement to acquire shares from the shareholders of the target company.

As per Reg. 2(1) (e), Control includes acquisition, directly or indirectly, of any of the following rights by the acquirer:

- 1) Right to appoint majority of the directors;
- 2) Right to control the management;
- 3) Right to control the policy decisions.

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. [Regulation 6(1)]

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%. [The first proviso to Regulation 6(1)]

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. [Regulation 6(2)]

CLASSROOM NOTES – MANDATORY & VOLUNTARY OPEN OFFER

OFFER SIZE [REGULATION 7]

Regulation 7 provides the following:

Any mandatory open offer would be for **at least 26%**, of total shares of the target company, as of tenth working day from the closure of the tendering period [Regulation 7(1)].

A voluntary open offer can be made for the acquisition of shares representing **at least 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. [Reg. 7(2)] 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. [Proviso to Reg. 7(2)].

DISCLOSURE OF ACQUISITION AND DISPOSAL [REGULATION 29]

Regulation 29(1) provides that any acquirer along with any PAC, who acquires shares or voting rights in a target company entitle them to 5% cent or more of the voting rights in such target company shall disclose their aggregate shareholding and voting rights in such target company in a specified form.

Regulation 29(2) provides that any acquirer, who together with PACs holds 5% or more of the voting rights in a target -company, shall disclose every acquisition or disposal of shares of such target company representing 2% or more change of the voting rights in such target company along with their aggregate shareholding and voting rights.

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. The word encumbrance means taking loan against such shares.

Regulation 29(3) provides that the above disclosures shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,-

- a. every stock exchange where the shares of the target company are listed; and
- b. The target company at its registered office.

CLASSROOM NOTES – REGULATION 29

CONTINUAL DISCLOSURES [REGULATION 30]

Regulation 30(1) provides that every person, who together with PACs holds 25% shares or voting rights them to exercise of the voting rights in a target company (substantial shareholder), shall disclose their aggregate shareholding as of 31st of March, in such target company in such form as may be specified. Disclosure shall be made within 7 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 target company at its registered office.

Regulation 30(2) provides that the promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the 31st day of March, in such target company in such form as may be specified. Disclosure shall be made within 7 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 target company at its registered office.

CLASSROOM NOTES FOR REGULATION 30

DISCLOSURE OF ENCUMBERED SHARES [REGULATION 31]

The word encumbrance means loan against a particular asset. Here it means loan obtained or repaid against shares. The promoter of every target company shall disclose the following:

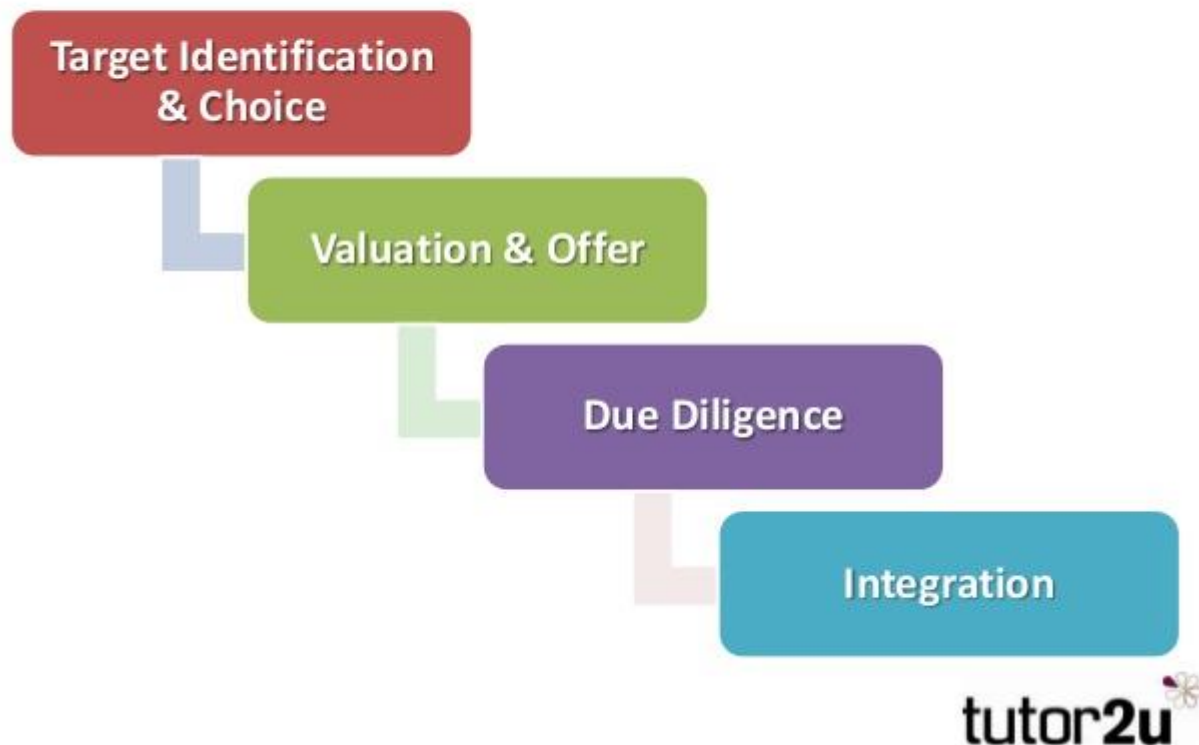
- details of shares in such -target company encumbered by him or by persons acting in concert with him;
- details of any invocation of such encumbrance; and
- Details of release of such encumbrance.

The disclosures required as above shall be made within **seven working days** from the creation or invocation or release of encumbrance, as the case may be to,-

- a. every stock exchange where the shares of the target company are listed; and
- b. The target company at its registered office.

OPEN OFFER PROCESS [REGULATIONS 12-23]

Overview of the takeover process



CLASSROOM NOTES FOR OPEN OFFER

MANAGER TO THE OPEN OFFER [REGULATION 12]

Before making any public announcement of mandatory public offer, the acquirer shall appoint a Merchant Banker, who is not directly or indirectly connected with the acquirer.

The public announcement of the open offer for acquiring shares, required under these regulations shall be made by the acquirer through such manager to the open offer.

TIMING OF PUBLIC ANNOUNCEMENT AND DETAILED PUBLIC STATEMENT [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 (PA) AND DETAILED PUBLIC STATEMENT (DPS) [REG. 14]

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.

Regulation 44(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 to the newspapers, a copy of the same shall be sent to,-

- i. the SEBI through the manager to the open offer;
- ii. 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
- iii. 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 PUBLIC ANNOUNCEMENT OF OFFER [REGULATION 15]

Regulation 15 specifies the contents of the public announcement and detailed public statement.

The public announcement and detailed public announcement of the offer or any other advertisement, circular, brochure, publicity material or letter of offer issued in relation to the acquisition of shares shall not contain any misleading information.

FILING OF LETTER OF OFFER TO 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 soon 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 fifth working day from the date of receipt of satisfactory reply to the clarification or additional information sought.

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.

A 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.

ESCROW ACCOUNT [REGULATION 17]

At least 2 days prior to the date “of the detailed public statement, the acquirer shall, as and by way of security for performance of its obligations, open an escrow account which shall consist of cash deposit with a scheduled commercial bank or bank guarantee in favor of the merchant banker or deposit of acceptable securities with appropriate margin with the merchant banker or a combination of the above.

The escrow amount shall be calculated in the following manner:

a. For consideration payable under the open offer up to Rs. 500 crores	25% of consideration payable
b. For consideration payable under the open offer exceeding Rs. 500 crores	25% of Rs. 500 crores and 10% of the balance amount

ACQUIRERS OBLIGATIONS [REGULATION 18]

The acquirer's other obligations are as under:

- 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.
- 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, not later than 7 working days from the receipt of communication of comments from SEBI or where no comments are offered by the Board, within 7 working days from the expiry of the period of 15 working-days.
- The acquirer and PACs shall not acquire or sell any shares of the target company during, the period between three working days prior to the commencement of the tendering period and until the expiry of the tendering period.
- 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 and such other material detail as may be specified. Such advertisement shall be,-
 - 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.

- 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:
- 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.
- 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 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

An acquirer may make upward revisions to the offer price 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, to 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,-

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| 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;

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.

BUT Regulation 8(11) PROVIDES THAT - 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 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 t lie 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 10 working days prior to the commencement of the tendering period.

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;

COMPLETION OF ACQUISITION [REGULATION 22]

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.

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.

WITHDRAWAL OF THE OPEN OFFER [REGULATION 23]

An offer shall be withdrawn in the following cases:

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| 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 the 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.

OFFER PRICE [REGULATION 8]

Minimum offer price for *direct acquisitions* and *indirect acquisitions deemed to be direct acquisitions*

Regulation 8(2) of the 2011 code provides that 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

EXEMPTIONS [REGULATIONS 10-11]**GENERAL EXEMPTIONS [REGULATION 10]**

Sub-regulation (I) of Regulation 10 exempts the following, categories of acquisitions from open offer obligations under Regulations 3 & 4 (but not from disclosure obligations under Regulations 28/20) without SEBI's approval:

- Transfers between qualifying parties such as immediate relatives, group companies, promoters, etc. [Regulation 10(1)(3)]
- Certain acquisitions in the ordinary course of business-of stock broker, underwriter, merchant banker, scheduled commercial bank, etc. [Regulation 10(1)(b)]
- Acquisition pursuant to disinvestment in a Government Company. [Reg. 10(1)(c)]
- 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)]

- Acquisition pursuant to SARFAESI Act, 2002 [Regulation 10(l)(e)]
Acquisition under SEBI
- Acquisition under SEBI (Delisting of Equity Shares) Regulations [Reg. 10(l)(f)]
- Acquisition by way of transmission, succession or inheritance [Regulation 10(l)(g)]
- Voting rights on preference shares under the Companies Act, 1956 [Reg. 10(l)(h)]
- 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))
- Increase of voting rights to 25% through buy-back provided shareholder reduces his holding below 25% within 90 days from the date of increase, [Reg. 10(3)].
- Acquisition through Rights issue, subject to certain conditions. [Reg. 10(4)(a)&(b)]
- Increase of voting rights through buy-back in excess of threshold under Regulation 3(2), subject to certain conditions. [Regulation 10(4)(c)]
- 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)]
- Acquisition of shares in Target Company from state-level financial institutions by promoters of the target company. [Regulation 10(4)(e)]
- Acquisition of shares in Target Company by promoters from venture capital fund or foreign venture capital investor. [Regulation 10(4)(f)]

EXEMPTIONS BY THE SEBI [REGULATION 11]

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.

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 and a subsequent declaration of delisting for the purpose of the offer proposed to be made under sub regulation (1) will not suffice.

(2) Where an offer made under sub-regulation (1) is not successful,-

- (i) 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
- (ii) in terms of regulation 17 of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; or
- (iii) 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 failure of the delisting offer made under sub-regulation (1), the open offer obligations shall be fulfilled by the acquirer in the following manner:

(i) 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

(ii) 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.

(4) Where a competing offer is made in terms of sub-regulation (1) of regulation 20,-

(a) the acquirer shall not be entitled to delist the company;

(b) the acquirer shall not be liable to pay interest to the shareholders on account of delay due to competing offer;

(c) the acquirer shall comply with all the applicable provisions of these regulations and make an announcement in this regard, within two working days from the date of public announcement made in terms of sub-regulation (1) of regulation 20, in all the newspapers in which the detailed public statement was made.

(5) Shareholders who have tendered shares in acceptance of the offer made under sub-regulation (1), shall be entitled to withdraw such shares tendered,

within 10 working days from the date of the announcement under sub-

(6) Shareholders who have not tendered their shares in acceptance of the offer made under sub-regulation (1) shall be entitled to tender their shares in acceptance of the offer made under these regulations.

FUGITIVE ECONOMIC OFFENDER

Notwithstanding anything contained in these regulations, no person who is a fugitive economic offender shall make a public announcement of an open offer or make a competing offer for acquiring shares or enter into any transaction, either directly or indirectly, for acquiring any shares or voting rights or control of a target company.

DISPATCH OF LETTER OF OFFER

The Acquirer shall ensure that the letter of offer is dispatched to the shareholders whose names appear on the register of members of the Target Company as of the identified date, and to the custodian of shares underlying depository receipts, if any, of the Company, within maximum 7 working days from the date of receipt of communication of comments from SEBI or where no comments are offered by SEBI, within 7 working days from the expiry of 15 working days from the date of receipt of draft letter of offer by SEBI.

However, it is provided that where a shareholder holding less than 5% of the voting rights of the Target Company is resident outside India and local laws or regulations of such jurisdiction may expose the acquirer or the target company to material risk of civil, regulatory or criminal liabilities in the event the letter of offer in its final form were to be sent without material amendments or modifications into such jurisdiction, then the acquirer may refrain from dispatch of the letter of offer into such jurisdiction.

Explanation:

- (i) Letter of offer may also be dispatched through electronic mode in accordance with the provisions of Companies Act, 2013.
- (ii) On receipt of a request from any shareholder to receive a copy of the letter of offer in physical format, the same shall be provided.
- (iii) The aforesaid shall be disclosed in the letter of offer;