

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

SEBI (Substantial Acquisition of Shares and Takeover) Regulations 2011

1. Evolution of New Code

- Committee formed under chairmanship of Shri Achutan
- Suggested a new set of regulations
- Open for public comments from July 19 to August 31.
- Most of the proposals accepted in SEBI Board meeting on July 28, 2011.
- Regulations Notified on September 23, 2011.

2. Applicability

- To direct and indirect acquisitions.
- To listed companies.
- With effect from October 23, 2011.

3. New and Important Definitions

- ❑ “acquirer” means any person who acquires shares, voting rights, control over a target company
acquirer can be anyone:
 - a natural person
 - corporate entity
 - any other legal entity
 - Even a foreign National
- ❑ Frequently traded Shares. “Frequently traded shares” means shares of a target company, in which the traded turnover on any stock exchange during the 12 calendar months preceding the calendar month in which the public announcement is made, is at least 10% of the total number of shares of such class of the target company. In case share capital not identical , take weighted average
- ❑ Enterprise Value. “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
 - ❑ Identified date.:Date falling on the 10th 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.

❖ Controls means **right to appoint majority of the directors, control the management, policy decisions exercisable by a person or persons acting individually or in concert**

- Immediate Relative: Spouse of a person and includes parent, brother, sister or child of such person or of the spouse.
- Promoters and Promoter Group brought in line with SEBI (ICDR) Regulations.
- Shares: Include Depository receipts with voting rights

4. Initial Acquisition

- Threshold limit increased to 25%.
- Acquires shares which taken together with shares already held is 25% or more-To make a public announcement for an open offer.

- ❖ “Volume weighted average market price” **means (No. of equity shares traded on a stock exchange * Price of each equity share)/ total no. of equity shares traded on the stock exchange**
- ❖ “Wilful defaulter” means any person who is categorized as a wilful defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the **Reserve Bank of India** and includes any person whose director, promoter or partner is categorized as such
- ❖ 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 **25% 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
- ❖ Substantial Acquisition: No acquirer, who has acquired and holds in shares or voting rights in a target company entitling them to exercise **25%** of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquirer within any f.y additional shares or voting rights in such target company entitling them to exercise **5% 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

- ❖ Substantial acquisition of shares or voting rights as contained in regulation 3 of SEBI(SAST) Regulations shall not apply to acquisition of shares of a company by the promoters in terms of the provisions of **chapter VI-A of SEBI (ICDR) Regulations, 2009-Dissenting shareholders in case amount utilized on the objects stated in the Memorandum is less than 75% and at least 10% of the shareholders who voted in the general meeting.**
- ❖ Maximum number of shares which can be held by promoters in a listed company is **75% of share capital**
- ❖ For acquisition or holding of shares or voting rights in a target company, the acquirer have to make **a public announcement of an open offer**

- ❖ The market capitalization of the target company shall be taken into account on the basis of the **volume-weighted average market price** of such shares on the stock exchange for a period of 60 trading days preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decisions to make the primary acquisition is announced in the public domain
- ❖ 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 **SEBI (delisting of equity shares) Regulations, 2009**
- ❖ In the event of the failure of the delisting offer made by the acquirer, through the manager to the open offer, shall **within five working days** from the date of the announcement under regulation 5A(2), file with the board, a draft of the letter of offer
- ❖ An acquirer, who together with persons acting in concert with him, holds share or voting rights in a target company entitling them to exercise **25% or more but less than the maximum permissible non-public shareholding**, shall be entitled to **voluntarily** make a public announcement of an open offer for acquiring shares
- ❖ When an acquirer or any person acting in concert with him has acquired shares of the target company in the preceding **52 weeks** without attracting the obligation to make a public announcement of an open offer, he shall not be eligible to voluntarily make a public announcement of an open offer for acquiring shares under this regulation.

- ❖ An acquirer, who have made a public announcement to acquire shares of a target company shall not be entitled to acquire any shares of the target company for a period of **6 months** after completion of the open offer
- ❖ No persons **who is a wilful defaulter** shall make a public announcement of an open offer for acquiring shares
- ❖ The open offer for acquiring shares to be made by the acquirer shall be for at least **26% of total shares** of the target company, as of 10 working day from the closure of the tendering period
- ❖ Whether partly paid up shares be tendered in the open offer:
 - Yes, partly paid up shares can be tendered in the open offer
 - 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 including calls remaining unpaid with interest, if any, thereon
- ❖ **Conditional offer** an offer in which the acquirer has stipulated a minimum level of acceptance
- ❖ An open offer is required to be kept open for **10 working days**
- ❖ Whether a share holder who once tendered his shares in the open offer made by the acquirer can withdraw his request:
 - No he cannot withdraw

❖ What are the obligations on the part of the manager to the open offer prior to the public announcement being made:

- To ensure that the acquirer is able to implement the open offer
- To ensure that the acquirer have made firm arrangements for funds through verifiable means to meet the payment obligations under the open offer

- Persons Acting in Concert:PAC-Shared Objective

5. Existing Vs Proposed Creeping Acquisition

15% to 55%-5% in a financial year



25% to 75%-5% in a financial year

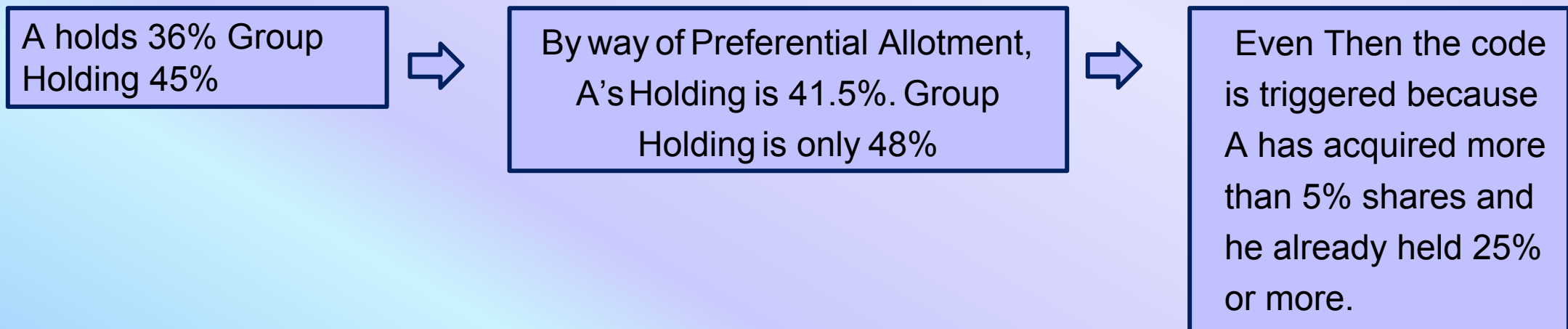
6. Creeping Acquisitions

- From 25% to 75%-Creep by 5% every financial year.
- Only purchase will be considered- No netting off.
- If no change in share capital-How to calculate.
- If change in share capital due to fresh issue difference between pre -issue holding and post issue holding- treated as additional Acquisition.

7. Additional and Creeping

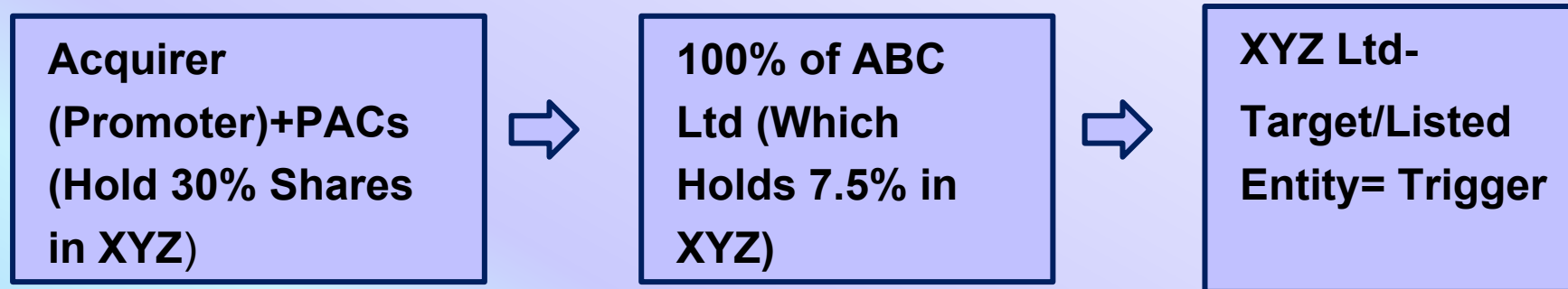
- ❑ Individual acquisitions also will be considered for purpose of trigger, irrespective of aggregate holding of group.
- ❑ Illustration : Promoter Group of 6 persons. Total Holding 38%. An individual holding 22% acquires shares. Holding crosses 25%- will Trigger

8. Illustration



9. Control

- ❑ Acquisition of control with or without acquisition of shares will require open offer.
- ❑ Acquire shares in a company which would help the acquirer and PAC's to exercise or direct the exercise of such percentage of shares as per regulation 3 would require a public announcement –
Indirect Acquisition
- ❑ Current exemption of change in control under regulation 12 done away with.
- ❑ Acquirer + PAC's (Hold no shares in XYZ)



10. Illustration



11. Indirect Acquisitions

- May be indirect but deemed direct acquisition if
 - Target constitutes more than 80% of NAV of the business being acquired.
 - Target constitutes more than 80% of turnover of the business being acquired.
 - Market capitalization of target is more than 80% of the enterprise value of the business being acquired.

12. Voluntary Offers

- ❑ Voluntary offer if holding 25%.
- ❑ Cannot make if any acquisition has been made in the last 52 weeks without triggering the code.
- ❑ Must acquire shares only in the open offer.
- ❑ Cannot acquire any shares for another 6 months after completion of open offer, except through another voluntary open offer.

ADDITIONAL PROVISIONS

- ❖ Voluntary Offer can be made for a minimum of 10% and maximum not to exceed the maximum permissible non-public holding.
- ❖ If a competitive BID is received, then HIKE to such number as the Acquirer deems fit.

OFFER SIZE

- ❖ For a minimum of 26% of the outstanding capital as on 10 days after the closure of the tendering period, shall take into account all pending conversions during this period.
- ❖ Post offer– If the holding of acquirer exceeds the limits specified in SCRR(Securities Contract Regulation Rules), then reduce within the time specified in SCRR.
- ❖ Cannot make a delisting offer for a period of 12 months after closure of offer.

OFFER PRICE

- ❖ Instead of merely taking the closing price volume, weighted market price will be taken
- ❖ Parameters laid down for frequently traded & infrequently traded shares
- ❖ Parameters laid down for direct control & indirect control

Highest of the following	Frequently traded shares	Not frequently traded shares
Share Purchase agreement	Yes	Yes
Volume Weighted Average price during 52 weeks	Yes	Yes
Highest price during 26 weeks	Yes	Yes
Weighted average Market Price in sixty trading days	Yes	Company alongwith Manager shall decide

Mode of Payment

- ❖ By Cash
- ❖ By Issue, Exchange OR Transfer of Listed Equity Shares
- ❖ By Issue, Exchange OR Transfer of Listed Debt Securities
- ❖ By Issue, Exchange OR Transfer of Convertible Securities, entitling the holder to acquire Listed Equity Shares
- ❖ Combination of the above

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Exemptions

Inter-Se Transfer

- ❖ Only Amongst immediate relatives
- ❖ Amongst Promoters – Shown as such in the Shareholding Pattern Filed with Stock Exchanges in the last 3 years
- ❖ Amongst Company & its Holding Company
- ❖ Amongst Company & Its Subsidiaries
- ❖ Amongst Holding Company & Subsidiaries of Holding Companies
- ❖ Amongst the Company & Its Shareholders holding not less 50% of the Share Capital
- ❖ Amongst the Company & Other Companies where the Same Persons hold not less than 50% of the Share Capital
- ❖ Amongst Persons acting in Concert

Other Conditions

- ❖ Acquisitions by Stock Broker, Merchant Banker, Underwriter Etc.
- ❖ Acquisition of Shares by a Commercial Bank & Financial Institution Invocation of Pledge
- ❖ Acquisitions pursuant to;
 - A BIFR Scheme
 - Arrangement, Merger, Amalgamation OR Reconstruction Approved by Court in India & Abroad
- ❖ Acquisition pursuant to Delisting
- ❖ Acquisition pursuant to transmission, succession or inheritance.
- ❖ Acquisition by Operation of Sec.87(2) of the Companies Act, 1956
- ❖ Acquisition under CDR, Provided APPROVED by Shareholders under the Postal Ballot
- ❖ Pursuant to BUY BACK – in Excess of 25% & - in Excess of Creeping Acquisition Limit
- ❖ Pursuant to RIGHT ISSUES – Entitlement – Beyond Entitlement (Not Renounced & subject to Pricing
- ❖ Acquisition from State Level Financial Institution (SLFI)
- ❖ Acquisition by Promoters of target Company from VCF

EXEMPTIONS – PROCEDURE

- ❖ For INTER-SE Transfer, From State Level Financial Institution & VCF – Intimate Stock Exchange 4 working days before
- ❖ For all Exemptions – File a Report with Stock Exchange within 4 working days of Transaction
- ❖ For Certain Transactions – File Report with SEBI within 21 days, mainly INTER-SE, Buy Back, Rights, Acquisition U/s 87(2), CDR with fee of Rs.25,000/-

OPEN OFFER PROCESS

Issue Public Announcement:Public Announcement and Detailed Public Announcement

- ❖ When?
- ❖ On the date of Purchase
- ❖ Fixed Date of Conversion – 2 working days prior
- ❖ No Fixed Date of Conversion – on the same date
- ❖ Indirect Acquisition – 4 working days from Primary Contract

Open ESCROW ACCOUNT – within 2 working days of PA

❖ Other Requirements;

- Issue Detailed Public Statement within 5 working days & file on the same day with SEBI
- File Letter of Offer with SEBI within 5 working days DPS
- SEBI gives Observations within 15 working days
- Dispatch Letter of Offer within 7 working days of receipt of Observations
- Issue Advertisement -1 day before Offer Opens
- Open the Offer – within 12 days of receipt of Observations
- Tendering Period – 10 working days
- Revision of Price – not later than 3 working days before closure
- Shareholders cannot withdraw once Tendered
- Payment within 10 working days of Closure

ESCROW ACCOUNT

- ❖ Up to Rs.500 Crores – 25% upfront (Balance – 10%)
- ❖ Cash
- ❖ Bank Guarantee
- ❖ Securities – Defined the type of Securities

DISCLOSURES

- ❖ Disclosure shall be for the Aggregate Holding of the Promoter & Persons Acting in Concert with him
- ❖ Shall be given for Shares & All Securities Convertible into Equity
- ❖ To Disclose when Acquirer acquires 5%-Event based Disclosure
- ❖ Disclose every Acquisition and Sale exceeding 2%
- ❖ Disclosure within 2 working days
- ❖ Shares acquired by Encumbrance shall be an acquisition and given on release of encumbrance shall be a disposal

- ❖ Disclosure by Persons Holding more than 25% to Stock Exchange & target Company within 7 working days of March 31st-Continual Disclosure.Even if no change.Disclosure has to be done every year.
- ❖ All Disclosure to Company & Stock Exchange
- ❖ Details of Pledge to be disclosed – within 7 working days of Creation, Invocation & Revocation to Company
- ❖ Details of Pledge to be disclosed – within 7 working days of Creation, Invocation & Revocation to Company
- ❖ Requirement of Company to File Information – Done Away With

COMPANY SECRETARY OF AN ACQUIRER COMPANY

- ❖ To be Aware of the Open Offer Process
 - Release Public Announcement (PA) on the date of acquisition
 - A detailed Public Statement – within 5 working days of PA
 - File Letter of Offer with SEBI – within 5 working days of Public Notice through Merchant Banker
 - Ensure Firm Arrangement are made for the Consideration Payable

- Provide for Escrow
- Open Offer is made for 26% of the Outstanding Capital of the Company take into account convertibles.
- Not to Alienate any Assets of the Company, unless Statement of that effect made in the Letter of Offer. If required to Alienate – Get Shareholders Resolution (Postal Ballot)
- To ensure that the Acquirer does not sell any Shares during the Offer Period
- Appointment of Directors

Completion of Acquisition of Shares

- ❖ After the Closure of Offering Period
- ❖ If 100% in Escrow, 21 working days after Detailed Public Statement
- ❖ To be Completed not later than 26 weeks after the closure of offering period
- ❖ Preference Allotment – as per ICDR

Company Secretary of Target Company

- ❖ Conduct the Business in the Ordinary Course
- ❖ Not to issue any Fresh Shares
- ❖ Not to make any Buy Back
- ❖ Not to Alienate any Assets
- ❖ No Fresh Borrowings
- ❖ Participate in the Meetings of Subsidiaries in the Normal Course of Business
- ❖ Not to Fix Record Date for any Corporate Action 3 days of Tendering Period & till the end of Tendering period
- ❖ Appointment of Director of Acquirer
- ❖ Form Committee of Independent Directors – To Form Opinion on the Open Offer
- ❖ Provide List of Shareholders
- ❖ Co-operate with Acquirer
- ❖ After Completion of Offer, Register the Shares in the names of the Acquirer

Company Secretary of Competitive Bidder

- ❖ Competitive Offer – within 15 days of Public Announcement
- ❖ Original Bidder has No Option but to keep Quiet OR Raise Price
- ❖ Escrow Account will be increased
- ❖ All other Provisions shall apply as in Normal Offer

WITHDRAWAL

CANNOT WITHDRAW EXCEPT ON;

- ❖ Non receipt of Statutory Approvals
- ❖ Being a Natural Person, Dies
- ❖ Condition for Open Offer not being met And This is Beyond the Control of the Acquirer
- ❖ Such Other Conditions as approved by SEBI