

# TAKE OVERS

## GENESIS OF TAKEOVER CODE

The concept of takeover emerged in late 19th century in some countries like US, UK etc. when the first wave of mergers and acquisitions started.

### The genesis of present stage of takeover can be studied in five waves

- ✚ **1st Merger & Acquisition Wave** - 1897-1904 - Merging and acquiring for Monopoly.

Underlying factors-

- ✚ Technological developments
- ✚ Innovations in production process
- ✚ Rapid Economic Expansion
- ✚ Corporation laws relaxed
- ✚ Voluntary code of ethical behavior
- ✚ Characteristics of 1st wave mergers:
  - ✚ Horizontal mergers
  - ✚ Heavy manufacturing industry

### Reasons for ending 1st wave

- ✚ Majority of mergers failed - didn't achieve increase in efficiency
- ✚ Economic recession in 1903
- ✚ Stock market crash in 1904

- ✚ **2nd Merger & Acquisition Wave** - 1916-1929 - Merging and acquiring for Oligopoly.

Underlying Factors-

- ✚ Post-World War I economic boom
- ✚ Technological developments
- ✚ Characteristics of 2nd wave mergers and acquisitions:
  - ✚ Produced fewer monopolies, rather oligopolies, vertical mergers, and conglomerates (usually related)
  - ✚ Used significant proportion of debt to finance deals

- ✚ Investment banks played central role in financing (as in 1st wave)

### Reasons for ending 2nd wave

- ✚ October 29, 1929 stock market crash
- ✚ Great depression

### ✚ 3rd Merger & Acquisition Wave - 1965-1969 - Conglomerate Mergers

#### Underlying Factors -

- ✚ Booming economy
- ✚ Rising stock prices
- ✚ High interest rates
- ✚ Financial manipulations
- ✚ Price-earnings game
- ✚ Pooling of interests method of accounting
- ✚ Characteristics of 3rd wave:
  - ✚ Primarily conglomerate mergers
  - ✚ Some bidders smaller than targets
  - ✚ Primarily equity-financed-investment banks did not play central role
  - ✚ CEOs with vision to create conglomerates

### Reasons for ending 3rd wave-

- ✚ Market eventually saw through financial manipulations
- ✚ Many of conglomerates performed poorly

### ✚ 4th Merger & Acquisition Wave - 1981-1992 - The Megamerger.

#### Underlying Factors-

- ✚ Expanding economy
- ✚ Technological developments
- ✚ International competition
- ✚ Deregulation
- ✚ Financial innovations
- ✚ Investment banking industry much more competitive

- ✚ Failure of conglomerates

### **Characteristics of 4th wave**

- ✚ Size and prominence of acquisition targets much greater than before
- ✚ Oil and gas industries dominant in early 1980s, while pharmaceuticals most common in late 1980s; airlines and banking also common
- ✚ Foreign takeovers became common
- ✚ Heavy use of debt to pay for acquisitions
- ✚ Junk bonds
- ✚ More hostile takeovers
- ✚ Corporate raiders
- ✚ Arbitrageurs
- ✚ Investment banks and law firms active

### **Reasons for ending 4th wave-** Initiation of policy of industrialisation

- ✚ **5th Merger & Acquisition Wave** – 1992-till date – Strategic restructuring

### **Underlying Factors-**

- ✚ Expanding economy, rising stock prices
- ✚ Technological developments
- ✚ Globalization
- ✚ Deregulation

### **Characteristics of 5th wave**

- ✚ Emphasized longer-term strategy rather than immediate financial gains
- ✚ More often financed with equity than debt
- ✚ Consolidation in the telecommunications and banking industries
- ✚ Legislation
- ✚ Enactment of SEBI Act, 1992

- ✚ Enactment of SEBI (Substantial acquisition of shares and takeover) Regulations, 1992
- ✚ Merger & Acquisition Trends in Current Scenario
- ✚ Uncommon before 1990s, especially hostile takeovers
- ✚ Takeovers increasing, despite antitakeover legislation

However, in India it was only in 20th century that the concept of takeover took birth but even then the concept of hostile takeovers was not known to anybody. This concept emerged when Swaraj Paul started efforts to takeover Escorts Ltd. and DCM Ltd. He was the first hostile raider among the raiders of Indian stock market. Although Paul could not succeed in his efforts because the incumbents fend him off by using the technicalities of rules governing non-residents but this created a need for a takeover code.

This need was further accentuated in 1990s when the government initiated the policy of liberalization and globalization which resulted in growth of Indian economy at an increased pace, and it created a highly competitive business environment, which motivated many companies to restructure their corporate strategies by including the tools of mergers and takeovers.

In the meantime, **SEBI was established in 1992 as a body corporate under the SEBI Act, 1992 with the main objectives to-**

- ✚ protect the interest of investors in securities market, and
- ✚ to provide for the orderly development of securities market. Thus while the possibility of takeover of a company through share acquisition is desirable in new competitive business environment for achieving strategic corporate objectives, there has to be well defined regulation so that the interest of all concerned are not jeopardized by sudden takeover threats.

In the light of then present circumstances, the need for some law to regulate takeover was strongly felt. Moreover to achieve its objectives as stated in SEBI Act, 1992, SEBI enacted SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1994 in exercise of powers conferred under section 30 of the Act which laid down a procedure to be followed by an acquirer for acquiring majority shares or controlling in another company, so that process of takeover is carried out in a fair and transparent manner.

Thereafter, these regulations have been amended a number of times to address the changing circumstances and needs of corporate sector. In 1997 SEBI Takeover Code has been rechristened by enacting SEBI (Substantial Acquisition of Shares and

Takeover) Regulations, 1997 substituting SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1994.

In September 2009, the Takeover Regulations Advisory Committee (TRAC) under the chairmanship of Mr. C Achuthan was constituted by SEBI with the mandate to examine and review the SEBI (SAST) Regulations, 1997 and to suggest suitable amendments, as deemed fit. Thereafter in June 2010, the Committee came out with the TRAC Report proposing some sweeping changes on critical issues, including the open offer triggering event, offer size, indirect acquisitions, exemptions from open offer obligations, offer price calculations and competing offers which was then open for public comments. After considering the public comments and further to discussion, the report has been modified to the present form i.e. SEBI (SAST) Regulations, 2011 substituting the SEBI (SAST) Regulations, 1997.

### **Necessity of Takeover Code**

The twentieth century began with the process of transformation of entire business scenario. The economy of India which was hitherto controlled and regulated by the Government was set free to seize new opportunities available in the world. With the announcement of the policy of globalization, the doors of Indian economy were opened for the overseas investors. But to compete at the world platform, the scale of business was needed to be increased. In this changed scenario, mergers and acquisitions were the best option available for the corporates considering the time factor involved in capturing the opportunities made available by the globalization.

This new weapon in the armory of corporates though proved to be beneficial but soon the predators with huge disposable wealth started exploiting this opportunity to the prejudice of retail investor. This created a need for some regulation to protect the interest of investors so that the process of takeover and mergers is used to develop the securities market and not to sabotage it. In the year 1992, with the enactment of SEBI Act, SEBI was established as regulatory body to promote the development of securities market and protect the interest of investors in securities market. Further it got the power to make regulations for the above objectives. Thus SEBI appointed a committee headed by P.N. Bhagwati to study the effect of takeovers and mergers on securities market and suggest the provisions to regulate takeovers and mergers.

**The committee stated the necessity of a Takeover Code on the following grounds-**

- ✚ The confidence of retail investors in the capital market is a crucial factor for its development. Therefore, their interest needs to be protected.

- ✚ An exit opportunity shall be given to the investors if they do not want to continue with the new management.
- ✚ Full and truthful disclosure shall be made of all material information relating to the open offer so as to take an informed decision.
- ✚ The acquirer shall ensure the sufficiency of financial resources for the payment of acquisition price to the investors.
- ✚ The process of acquisition and mergers shall be completed in a time bound manner.
- ✚ Disclosures shall be made of all material transactions at earliest opportunity.

Thereafter, these regulations have been amended a number of times to address the changing circumstances and needs of corporate sector. In 1994 SEBI came out with SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1994.

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### **The fundamental objectives of the Takeover Regulations were-**

- ✚ To provide a transparent legal framework for facilitating takeover activities;
- ✚ To protect the interests of investors in securities and the securities market, taking into account that both the acquirer and the other shareholders or investors and need a fair, equitable and transparent framework to protect their interests;
- ✚ To balance the conflicting objectives and interests of various stakeholders in the context of substantial acquisition of shares in, and takeovers of, listed companies.
- ✚ To provide each shareholder an opportunity to exit his investment in the target company when a substantial acquisition of shares in, or takeover of a target company takes place.

- ✚ To provide acquirers with a transparent legal framework to acquire shares in or control of the target company and to make an open offer;
- ✚ To ensure that the affairs of the target company are conducted in the ordinary course when a target company is subject matter of an open offer;
- ✚ To ensure that fair and accurate disclosure of all material information is made by persons responsible for making them to various stakeholders to enable them to take informed decisions;
- ✚ To regulate and provide for fair and effective competition among acquirers desirous of taking over the same target company; and
- ✚ To ensure that only those acquirers who are capable of actually fulfilling their obligations under the Takeover Regulations make open offers.

After considering the public comments and further to discussion, the report has been modified to the present form i.e. SEBI (SAST) Regulations, 2011 substituting the SEBI (SAST) Regulations, 1997.

### **New Takeover Code - Highlights**

Vide Notification dated September 23, 2011, Market watchdog SEBI has notified the much awaited New Takeover Regulations namely **SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "SEBI (SAST) Regulations, 2011")** which will replace the existing **Takeover (SAST) Regulations, 1997**. The new Regulations shall come into force on the 30th day from the date of their publication in the Official Gazette i.e. w.e.f. October 22, 2011, any acquisition or sale of shares of Listed Company shall be governed by provisions of **SEBI (SAST) Regulations, 2011**.

**Highlights of New Takeover Regulations are as under-**

- ✚ **Increase in Initial Threshold Limit from 15% to 25%.**

The Initial Threshold limit provided for Open Offer obligations is increased from 15% to 25% of the voting rights of the Target Company. Since SEBI (SAST) Regulations, 2011 will be applicable from October 22, 2011, thus it's a last opportunity for all the Promoters holding less than 25% but more than 20% to come within bracket of Creeping Acquisition. Otherwise even the existing Promoters of these Companies have to give offer to consolidate their holding.

- ✚ **Creeping Acquisition Limit raised from 15%-55% to 25%-75%**

Now there will be a single and clear creeping acquisition bracket. This will be available to all persons holding 25% or more but up to 75% i.e. maximum permissible non-public holding shall be eligible for creeping acquisition of 5% each financial year.

### **✚ Open Offer Trigger Point based on Individual Holding**

Now the Individual Acquirer Shareholding shall also be considered for determining the Open Offer Trigger Points apart from consolidated promoter shareholding. (Regulation 3(3) of SEBI (SAST) Regulations, 2011).

### **✚ Increase in Offer Size from 20% to 26%**

The Offer Size is increased only up to 26% instead of TRAC Recommendation of 100%. It's a good move from the point of view of domestic acquirers on account of lack of proper bank funding options available in India.

### **✚ New Provisions in case of increase in shareholding beyond the maximum permissible non-public shareholding due to Open Offer**

- ✚ Obligation on the acquirer to bring down the non-public shareholding to the level specified and within the time permitted under Securities Contract (Regulation) Rules, 1957;
- ✚ Ineligibility to make a voluntary delisting offer under SEBI (Delisting of Equity Shares) Regulations, 2009, unless a period of twelve months has elapsed from the date of the completion of the offer period.

### **✚ Abolition of Non-compete fees**

SEBI has accepted the TRAC Recommendation of scrapping the non-compete fee or control premium. Any amount paid to the Promoters/Sellers whether as consideration, non-compete fee or control premium or otherwise, shall be added in Offer Price and hence public shareholders shall be given offer at the highest of such prices.

### **✚ Definition of "Control" modified**

A new definition of Control has been introduced in the new Regulation which is similar to recommendation of TRAC Report with an exception that the word "Ability" has been removed. The definition is as under:

“**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.

### **Change in Control**

Any change in control of the listed company shall be only after Open Offer. The exemption from Open Offer available in case of change in control without acquisition of substantial shares, through a special resolution by postal ballot process, has been withdrawn and now the only route available for change in management and control is through the Open Offer to the shareholders of the Target Company. This is in contrast with the Regulation 12 of the SEBI (SAST) Regulations, 1997 which provides for the change in control through the special resolution passed by way of postal ballot.

### **No Exemption in case of acquisition from other competing acquirer**

### **Frequently Traded Shares**

For determining the frequency of trading in shares, the trading turnover during the 12 months preceding the month in which the Public Announcement is made will be considered. Further, the volume of trading for frequently traded company increase from 5% to 10% to have a more realistic picture.

### **New Definitions Introduced**

-  **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.
-  **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** 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** 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.

✚ **New Formats Introduced for PA, LOO, and Disclosures, Exemptions, Recommendation on the Open Offer by the Board of Directors and so on.**

✚ **Detailed provisions for Voluntary Open Offer**

The concept of voluntary open offer has been separately dealt in the SEBI (SAST) Regulations, 2011.

<b>Eligibility</b>	<ul style="list-style-type: none"><li>• Acquirer along with the PAC should be <u>holding at least 25% or more</u> shares in the Target Company.</li><li>• Acquirer or PACs <u>has not acquired any shares</u> of the Target Company in the <u>preceding fifty-two weeks without attracting</u> the obligation to make a <u>public announcement</u>.</li></ul>
<b>Condition</b>	<ul style="list-style-type: none"><li>• Their aggregate shareholding after completion of the open offer does <u>not exceeds the maximum permissible non-public shareholding</u>.</li></ul>
<b>Restriction</b>	<ul style="list-style-type: none"><li>• Acquirer <u>will not acquire further shares</u> in the Target Company for a period of <u>six months</u> after completion of the open offer <u>except</u> by way of another <u>voluntary open offer or competing offer</u>.</li></ul>

In case of voluntary open offer, the offer size may be of 10% or more of the voting rights at the will of the Acquirer.

✚ **Detailed provisions relating to Indirect Acquisition**

The New Regulations prescribes detailed provisions relating to Indirect Acquisitions which is a welcome move as there was quite confusion. The New Regulations define the situations which will be deemed as Indirect Acquisition.

✚ **Recommendation on the Open Offer by the Board of Target Company**

A recommendation on the offer by the Board of Target Company has been made mandatory and such recommendations shall be published at least two working days before the commencement of the tendering period in the same newspapers where the public announcement of the open offer was published, and simultaneously, a copy of the same shall be sent to SEBI, Stock Exchange and Manager to the Offer.

- ✚ **Revision in SEBI fees to be given while submitting the draft letter of offer**

- ✚ **Provisions relating to Exemption from Open Offer has been modified**

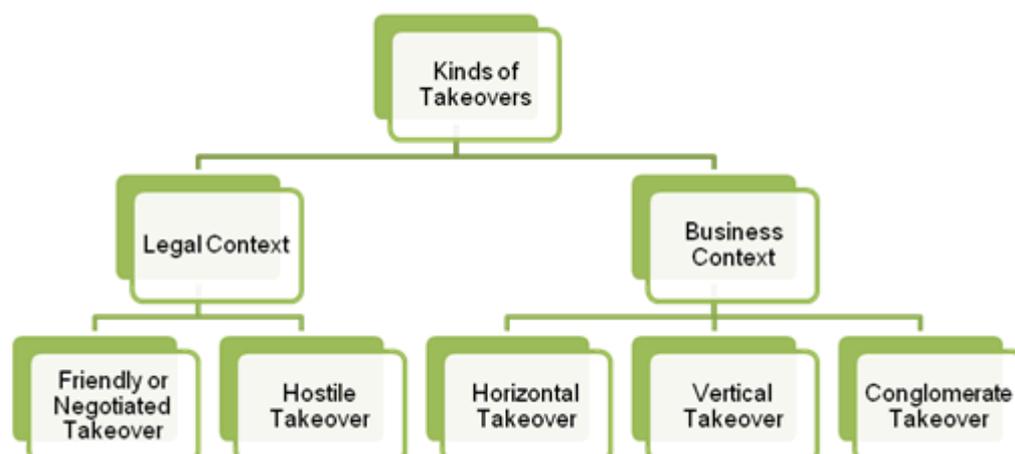
- ✚ **Other Consequential Amendments**

Simultaneously with the amendment in SEBI (SAST) Regulations, 2011, the format of disclosure of shareholding as provided under Clause 35 of the Listing Agreement in respect of following has been replaced-

- ✚ Statement showing holding of securities (including shares, warrants, convertible securities) of persons belonging to the category “Promoter and Promoter Group”,
- ✚ Statement showing holding of securities (including shares, warrants, convertible securities) of persons belonging to the category “Public” and holding more than 1% of the total number of shares;
- ✚ Statement showing holding of securities (including shares, warrants, convertible securities) of persons (together with PAC) belonging to the category “Public” and holding more than 5% of the total number of shares of the company.

# UNDERSTANDING TAKE OVERS - IN DEPTH

## Kinds of Takeover



### ✚ LEGAL CONTEXT

From legal perspective, takeover is of two types:

#### ✚ Friendly or Negotiated Takeover

Friendly takeover means takeover of one company by change in its management & control through negotiations between the existing promoters and prospective investor in a friendly manner. Thus it is also called Negotiated Takeover. This kind of takeover is resorted to further some common objectives of both the parties. Generally, friendly takeover takes place as per the provisions of Section 395 of the Companies Act, 1956.

#### ✚ Hostile Takeover

Hostile takeover is a takeover where one company unilaterally pursues the acquisition of shares of another company without being into the knowledge of that other company. The most dominant purpose which has forced most of the companies to resort to this kind of takeover is increase in market share. The hostile takeover takes place as per the provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011.

### ✚ BUSINESS CONTEXT

In the context of business, takeover is of three types:

#### ✚ Horizontal Takeover

Takeover of one company by another company in the same industry. The main purpose behind this kind of takeover is achieving the economies of scale or increasing the market share. E.g. takeover of Henkel by Jyothy Laboratories, Patni Computers by iGATE.

#### ✚ **Vertical takeover**

Takeover by one company of its suppliers or customers. The former is known as Backward integration and latter is known as Forward integration. E.g. takeover of Sona Steerings Ltd. By Maruti Udyog Ltd.

#### ✚ **Conglomerate takeover**

Takeover of one company by another company operating in totally different industries. The main purpose of this kind of takeover is diversification.

## IMPORTANT DEFINITIONS

**Acquirer** - “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.

**Acquisition** - “acquisition” means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company.

**Control** - “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.

**Convertible security** - “convertible security” means a security which is convertible into or exchangeable with equity shares of the issuer at a later date, with or without the option of the holder of the security, and includes convertible debt instruments and convertible preference shares.

**Disinvestment** - “disinvestment” means the direct or indirect sale by the Central Government or any State Government or by a government company, as the case may

be, of shares or voting rights in, or control over, a target company, which is a public sector undertaking.

**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.

**Financial year** - “financial year” means the period of twelve months commencing on the first day of the month of April.

**Frequently traded shares** - “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** - “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.

**Immediate relative** - “immediate relative” means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse.

**Maximum permissible non-public shareholding** - “maximum permissible non-public shareholding” means such percentage shareholding in the target company excluding the minimum public shareholding required under the Securities Contracts (Regulation) Rules, 1957.

**Offer period** - “offer period” means the period between the date of entering into an agreement, formal or informal, to acquire shares, voting rights in, or control over a target company requiring a public announcement, or the date of the public announcement, as the case may be, and the date on which the payment of

consideration to shareholders who have accepted the open offer is made, or the date on which open offer is withdrawn, as the case may be.

**Persons acting in concert** - “persons 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.

**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 above and associates of such directors;
- ✚ promoters and members of the promoter group;
- ✚ immediate relatives;
- ✚ 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 sub-accounts;
- ✚ 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.

**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;

- ✚ 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.

**“Associate” of a person** means –

- ✚ any immediate relative of such person;
- ✚ trusts of which such person or his immediate relative is a trustee;
- ✚ partnership firm in which such person or his immediate relative is a partner;
- ✚ and members of Hindu undivided families of which such person is a coparcener;

**Shares** - “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** - “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.

**Tendering period** - “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** - “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** - “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** - “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.

## IMPORTANT PROVISIONS AND REGULATIONS

### Regulation 29 - Disclosure of acquisition and disposal

- ✚ **Any acquirer** who acquires 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, aggregating to **5% or more** of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.
- ✚ **Any acquirer, who together with persons acting in concert** with him, holds shares or voting rights entitling them to **5 %** or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing **2% or more** of the shares or voting rights in such target company in such form as may be specified.
- ✚ The disclosures required above shall be made within **2 working days** of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to, –
  - ✚ every stock exchange where the shares of the target company are listed; and
  - ✚ the target company at its registered office.
- ✚ **Note** - For the purposes of this regulation
  - ✚ shares taken by way of encumbrance shall be treated as an acquisition
  - ✚ shares given upon release of encumbrance shall be treated as a disposal
  - ✚ and disclosures shall be made by such person accordingly in such form as may be specified.

**Exception** - Such requirement shall not apply to a scheduled commercial bank or public financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

### **Regulation 3 Substantial acquisitions of shares or voting rights**

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.

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 **25% or more** of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise **more than 5%** 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.

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

- ✚ 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.
- ✚ 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 .

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.

### **Regulation 13 Timing of Public Announcement, Detail Public Statement etc.**

(1) The public announcement referred to in regulation 3 and regulation 4 shall be made in accordance with regulation 14 and regulation 15, on the date of agreeing to acquire shares or voting rights in, or control over the target company.

(2) Such public announcement, —

- a. in the case of market purchases, shall be made prior to placement of the purchase order with the stock broker to acquire the shares, that would take the entitlement to voting rights beyond the stipulated thresholds.
- b. pursuant to an acquirer acquiring shares or voting rights in, or control over the target company upon converting convertible securities without a fixed date of conversion or upon conversion of depository receipts for the underlying shares of the target company shall be made on the same day as the date of exercise of the option to convert such securities into shares of the target company.
- c. Pursuant to an acquirer acquiring shares or voting rights in, or control over the target company upon conversion of convertible securities with a fixed date of conversion shall be made on the second working day preceding the scheduled date of conversion of such securities into shares of the target company.
- d. Pursuant to a disinvestment shall be made on the same day as the date of executing the agreement for acquisition of shares or voting rights in or control over the target company.
- e. in the case of indirect acquisition of shares or voting rights in, or control over the target company where none of the parameters referred to in sub-regulation (2) of regulation 5 are met, may be made at any time within four working days from 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.
- f. in the case of indirect acquisition of shares or voting rights in, or control over the target company where any of the parameters referred to in sub-regulation (2) of regulation 5 are met shall be made on 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.

- g. Pursuant to an acquirer acquiring shares or voting rights in, or control over the target company, under preferential issue, shall be made on the date on which special resolution is passed for allotment of shares under sub-section (1A) of section 81 of the Companies Act, 1956.
- h. the public announcement pursuant to an increase in voting rights consequential to a buy-back not qualifying for exemption under regulation 10, shall be made not later than the ninetieth day from the date of such increase in the voting rights beyond the relevant threshold stipulated in regulation 3.
- i. the public announcement pursuant to any acquisition of shares or voting rights in or control over the target company where the specific date on which title to such shares, voting rights or control is acquired is beyond the control of the acquirer, shall be made not later than two working days from the date of receipt of intimation of having acquired such title.

(3) The public announcement made under regulation 6 shall be made on the same day as the date on which the acquirer takes the decision to voluntarily make a public announcement of an open offer for acquiring shares of the target company.

(4) Pursuant to the public announcement made under sub-regulation (1) and sub-regulation (3), a detailed public statement shall be published by the acquirer through the manager to the open offer in accordance with regulation 14 and regulation 15, not later than **five working days** of the public announcement:

**Provided** that the detailed public statement pursuant to a public announcement made under clause (e) of sub-regulation (2) shall be made not later than five working days of the completion of the primary acquisition of shares or voting rights in, or control over the company or entity holding shares or voting rights in, or control over the target company.

**Explanation—** It is clarified that in the event the acquirer does not succeed in acquiring the ability to exercise or direct the exercise of voting rights in, or control over the target company, the acquirer shall not be required to make a detailed public statement of an open offer for acquiring shares under these regulations.

**Regulation 14 Publication of Public Announcements, Detail Public Statement etc.**

(1) The public announcement 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.

(2) A copy of the public announcement shall be sent to the Board and to the target company at its registered office **within one working day** of the date of the public announcement.

(3) The detailed public statement pursuant to the public announcement referred to in sub-regulation (4) of regulation 13 shall be published in all editions

- ✚ of any one English national daily with wide circulation,
- ✚ any one Hindi national daily with wide circulation, and
- ✚ any one 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 sixty trading days preceding the date of the public announcement.

(4) Simultaneously with publication of such detailed public statement in the newspapers, a copy of the same shall be sent to, –

- ✚ the Board through the manager to the open offer,
- ✚ 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,
- ✚ the target company at its registered office, and the target company shall forthwith circulate it to the members of its board.

### **Contents of Public Announcements (Regulation 15)**

(1) The public announcement shall contain such information as may be specified, including the following, –

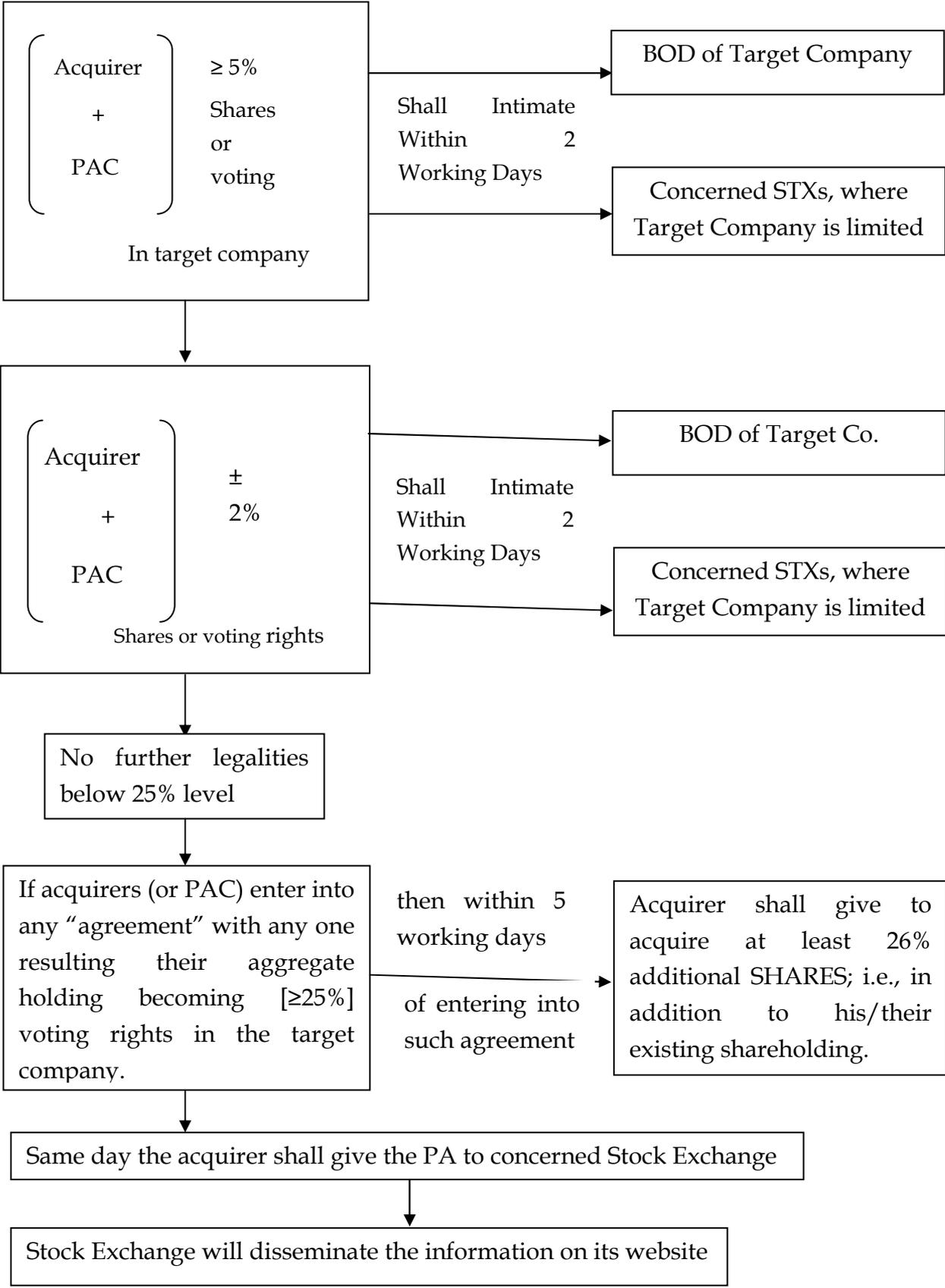
- a. name and identity of the acquirer and persons acting in concert with him;
- b. name and identity of the sellers, if any;
- c. nature of the proposed acquisition such as purchase of shares or allotment of shares, or any other means of acquisition of shares or voting rights in, or control over the 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.

(2) 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.

(3) 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.

# DISCLOSURE CHART

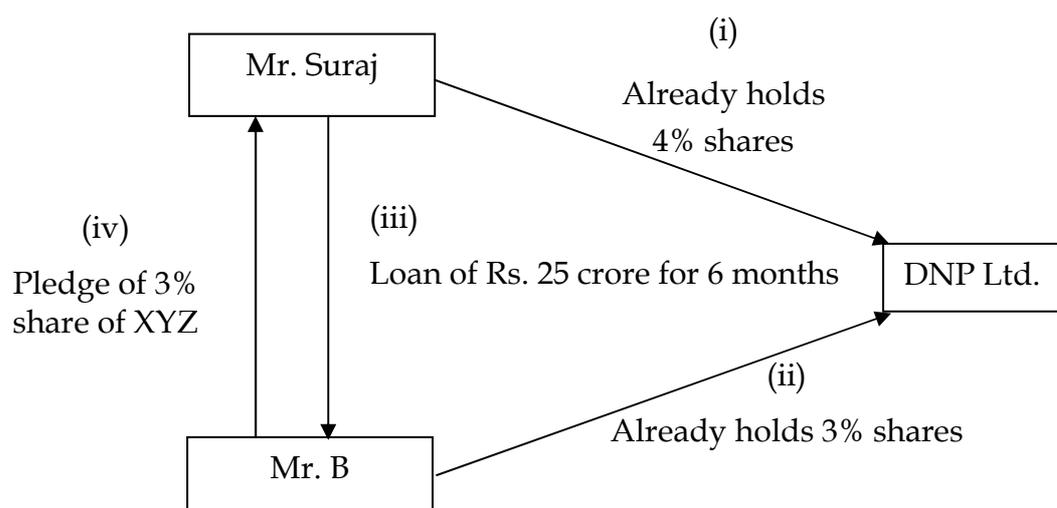


## EXAMPLE OF DISCLOSURE REQUIREMENTS

Mr. A's (Acquirer) shareholding in the target company.	% Shareholding	Whether Mr. A is required to make disclosure? (Yes/No)
Initial shareholding as on - 08.09.2011	4%	No
Shares acquired by Mr. A on 14.01.2012	1.0%	Yes
<b>Total</b>	<b>5.0%</b>	<b>Yes</b>
Shares acquired by Mr. A on 23.02.2012	+ 3.5%	Yes
Shares acquired by Mr. A on 13.06.2012	1.5%	No
Shares acquired by Mr. A on 18.06.2012	+ 1.2%	Yes [+ 2.7%]
Shares acquired by Mr. A on 12.07.2012	0.5%	No
Shares acquired by Mr. A on 31.08.2012	+ 1.7%	Yes [+ 2.2%]
Shares acquired by Mr. A on 11.10.2012	11.29%	Yes
<b>Total</b>	<b>24.99%</b>	

### Situation 1: Is Pledgee required to make disclosure?

**Question** ⇒ On receipt of pledge, the total shareholding in possession of pledge (Mr. Suraj) becomes 7% of XYZ Ltd. Whether Mr. Suraj is required to make disclosure to Board of Directors of DNP Ltd. and to Stock Exchange?

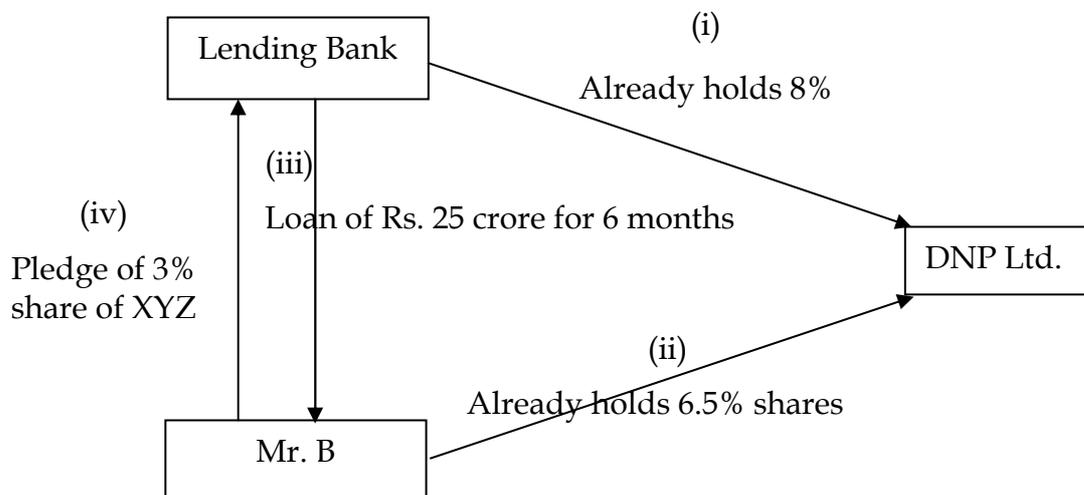


**Answer** ⇒ Yes. It is compulsory.

When Mr. B makes full repayment of loans and Mr. Suraj gives back 8% shares to Mr. B then also the Mr. Suraj shall disclose the same.

## Situation 2: Is pledge required to make disclosure?

Question ⇒ On receipt of pledged shares, the total shareholding in possession of pledge (Lending bank) becomes 14.5% of DNP Ltd. Is lending bank required to make disclosure to Broad of Directors of DNP Ltd. and to Stock Exchange?

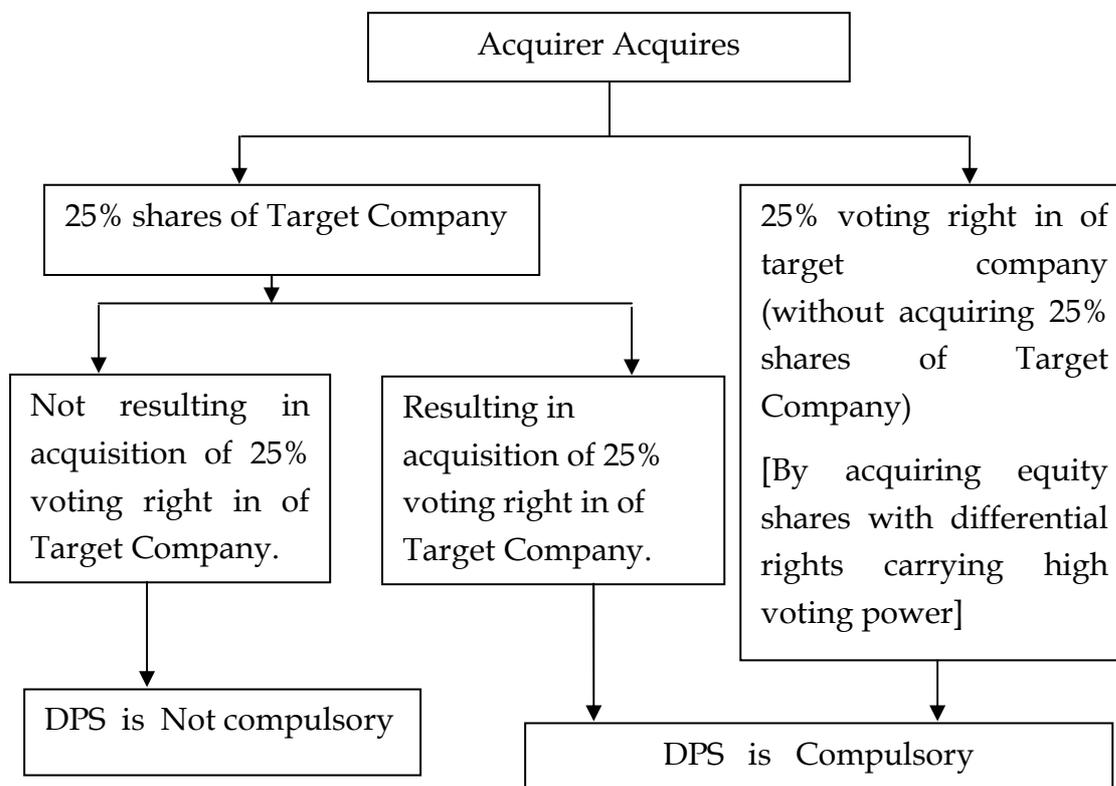


Answer ⇒ No. It is Exempt.

As per proviso to regulation 29(4), Banks and financial institutions receiving the shares by way of pledge are specifically exempted.

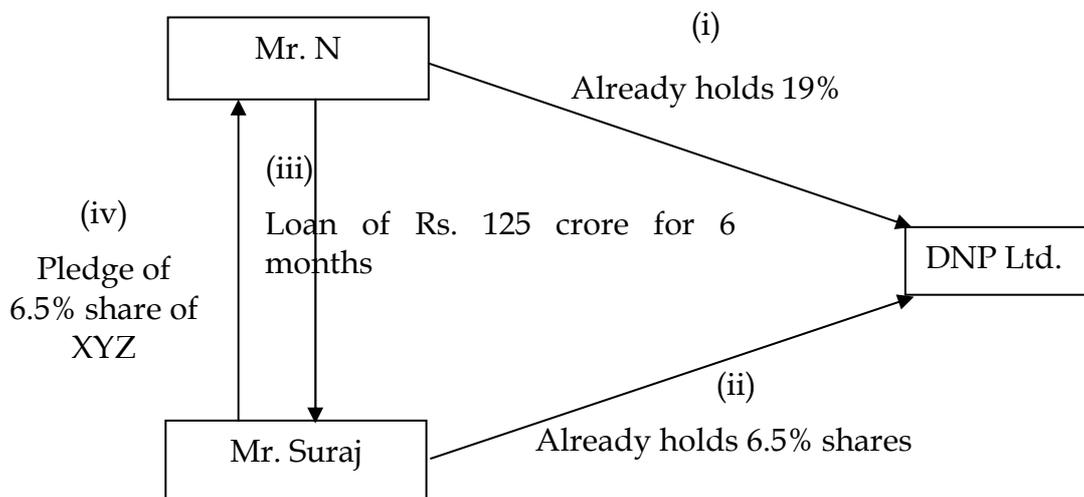
Pledger is not required to make any disclosure.

### Flow chart of regulation 3(1)



## Is pledgee required to make DPS?

**Question** ⇒ On receipt of pledge from Mr. Suraj, the total shareholding in possession of pledgee (Mr. N) becomes 25.5% of DNP Ltd. Whether Mr. N is required to make DPS to acquire additional 26% shares of DNP Ltd.?



**Answer** ⇒ No. It is not required, because Mr. N has acquired only possession of 6.5% the shares in the target company without acquiring corresponding voting rights.

### Offer Size (Regulation 7)

(1) The open offer for acquiring shares to be made by the acquirer and persons acting in concert with him under regulation 3 and regulation 4 shall be for at least **26%** of total shares of the target company, as of **tenth working day** from the closure of the tendering period.

Provided that the total shares of the target company as of tenth working day from the closure of the tendering period shall take into account all potential increases in the number of outstanding shares during the offer period contemplated as of the date of the public announcement:

Provided further that the offer size shall be proportionately increased in case of an increase in total number of shares, after the public announcement, which is not contemplated on the date of the public announcement.

(2) The open offer made under regulation 6 shall be for acquisition of at least such number of shares as would entitle the holder thereof to exercise an additional ten per cent of the total shares of the target company, and shall not exceed such number of shares as would result in the post-acquisition holding

of the acquirer and persons acting in concert with him exceeding the maximum permissible nonpublic shareholding applicable to such target company.

Provided that in the event of a competing offer being made, the acquirer who has voluntarily made a public announcement of an open offer under regulation 6 shall be entitled to increase the number of shares for which the open offer has been made to such number of shares as he deems fit:

Provided further that such increase in offer size shall have to be made within a period of fifteen working days from the public announcement of a competing offer, failing which the acquirer shall not be entitled to increase the offer size.

(3) Upon an acquirer opting to increase the offer size under sub-regulation (2), such open offer shall be deemed to have been made under sub-regulation (2) of regulation 3 and the provisions of these regulations shall apply accordingly.

(4) In the event the shares accepted in the open offer were such that the shareholding of the acquirer taken together with persons acting in concert with him pursuant to completion of the open offer results in their shareholding exceeding the maximum permissible non-public shareholding, the acquirer shall be required to bring down the non-public shareholding to the level specified and within the time permitted under Securities Contract (Regulation) Rules, 1957.

(5) The acquirer whose shareholding exceeds the maximum permissible non-public shareholding, pursuant to an open offer under these regulations, shall not be eligible to make a voluntary delisting offer under the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, unless a period of twelve months has elapsed from the date of the completion of the offer period.

(6) 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 and the parties to any underlying agreement including persons deemed to be acting in concert with such parties, for the sale of shares of the target company.

### **Offer Price (Regulation 8)**

(1) The open offer for acquiring shares under regulation 3, regulation 4, regulation 5 or regulation 6 shall be made at a price not lower than the price determined in accordance with sub-regulation (2) or sub-regulation (3), as the case may be.

(2) 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 a 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 **52 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 **26 weeks** immediately preceding the date of the public announcement;
- d. the volume-weighted average market price of such shares for a period of **60 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.

(3) In the case of an **indirect acquisition** of shares or voting rights in, or control over the target company, where the parameter referred in regulation 5(2) 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 under the agreement attracting the obligation to make a public announcement 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 **52 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 **26 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;
- 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 **60 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).

(4) In the event the offer price is incapable of being determined under any of the parameters specified in sub-regulation (3), without prejudice to the requirements of sub-regulation (5), 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.

(5) In the case of an indirect acquisition and open offers under sub-regulation (2) of regulation 5 where, –

- a. the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired;
- b. the proportionate sales turnover of the target company as a percentage of the consolidated sales turnover of the entity or business being acquired; or
- c. the proportionate market capitalization of the target company as a percentage of the enterprise value for the entity or business being acquired; is in excess of fifteen per cent, on the basis of the most recent audited annual financial statements, the acquirer shall, notwithstanding anything contained in sub-regulation (2) or sub-regulation (3), be required to compute and disclose, in

the letter of offer, the per share value of the target company taken into account for the acquisition, along with a detailed description of the methodology adopted for such computation.

**Explanation—** For the purposes of computing the percentages referred to in clause (c) of this sub-regulation, the market capitalisation 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 sixty trading days 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.

(6) For the purposes of sub-regulation (2) and sub-regulation (3), 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 under sub-regulation (2) and sub-regulation (3).

(7) For the purposes of sub-regulation (2) and sub-regulation (3), 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.

(8) Where the acquirer has acquired or agreed to acquire whether by himself or through or with persons acting in concert with him any shares or voting rights in the target company during the offer period, whether by subscription or purchase, 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 working day prior to the commencement of the tendering period and until the expiry of the tendering period.

(9) The price parameters under sub-regulation (2) and sub-regulation (3) may be adjusted by the acquirer in consultation with the manager to the offer, for corporate actions such as issuances pursuant to rights issue, bonus issue, stock consolidations, stock splits, payment of dividend, de-mergers and reduction of capital, where the record date for effecting such corporate actions falls prior to three working days before the commencement of the tendering period.

**Provided that no adjustment shall be made for dividend declared with a record date falling during such period except where the dividend per share is more than fifty per cent higher than the average of the dividend per share paid during the three financial years preceding the date of the public announcement.**

(10) Where the acquirer or persons acting in concert with him acquires shares of the target company during the period of twenty-six weeks after the tendering period at a price higher than the offer price under these regulations, the acquirer and persons acting in concert shall pay the difference between the highest acquisition price and the offer price, to all the shareholders whose shares were accepted in the open offer, within sixty days from the date of such acquisition.

**Provided** that this provision shall not be applicable to acquisitions under another open offer under these regulations or pursuant to the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, or open market purchases made in the ordinary course on the stock exchanges, not being negotiated acquisition of shares of the target company whether by way of bulk deals, block deals or in any other form.

(11) Where the open offer is subject to a minimum level of acceptances, the acquirer may, subject to the other provisions of this regulation, indicate a lower price, which will not be less than the price determined under this regulation, for acquiring all the acceptances despite the acceptance falling short of the indicated minimum level of acceptance, in the event the open offer does not receive the minimum acceptance.

(12) In the case of any indirect acquisition, other than the indirect acquisition referred in sub-regulation (2) of regulation 5, 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 earlier of the date on which the primary acquisition is contracted or 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 detailed public statement, provided such period is more than five working days.

(13) 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 including calls remaining unpaid with interest, if any, thereon.

(14) The offer price for equity shares carrying differential voting rights shall be determined by the acquirer and the manager to the open offer with full disclosure of justification for the price so determined, being set out in the detailed public statement and the letter of offer.

**Provided** that such price shall not be lower than the amount determined by applying the percentage rate of premium, if any, that the offer price for the equity shares carrying full voting rights represents to the price parameter computed under clause

(d) of sub-regulation 2, or as the case may be, clause (e) of sub-regulation 3, to the volume-weighted average market price of the shares carrying differential voting rights for a period of sixty trading days computed on the same terms as specified in the aforesaid provisions, subject to shares carrying full voting rights and the shares carrying differential voting rights, both being frequently traded shares.

(15) In the event of any of the price parameters contained in this regulation not being available or denominated in Indian rupees, the conversion of such amount into Indian rupees shall be effected at the exchange rate as prevailing on the date preceding the date of public announcement and the acquirer shall set out the source of such exchange rate in the public announcement, the detailed public statement and the letter of offer.

(16) For purposes of clause (e) of sub-regulation (2) and sub-regulation (4), the Board may, at the expense of the acquirer, require valuation of the shares by an independent merchant banker other than the manager to the open offer or an independent chartered accountant in practice having a minimum experience of ten years.

### **Mode of payment (Regulation 9)**

(1) The offer price may be paid –

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

**Provided** that where any shares have been acquired or agreed to be acquired by the acquirer and persons acting in concert with him during the fifty-two weeks immediately preceding the date of public announcement constitute more than ten per cent of the voting rights in the target company and has been paid for in cash, the open offer shall entail an option to the shareholders to require payment of the offer price in cash, and a shareholder who has not

exercised an option in his acceptance shall be deemed to have opted for receiving the offer price in cash: Provided further that in case of revision in offer price the mode of payment of consideration may be altered subject to the condition that the component of the offer price to be paid in cash prior to such revision is not reduced.

(2) For the purposes of clause (b), clause (d) and clause (e) of sub-regulation (1), the shares sought to be issued or exchanged or transferred or the shares to be issued upon conversion of other securities, towards payment of the offer price, shall conform to the following requirements –

- a. such class of shares are listed on a stock exchange and frequently traded at the time of the public announcement;
- b. such class of shares have been listed for a period of at least two years preceding the date of the public announcement;
- c. the issuer of such class of shares has redressed at least ninety five per cent. of the complaints received from investors by the end of the calendar quarter immediately preceding the calendar month in which the public announcement is made;
- d. the issuer of such class of shares has been in material compliance with the listing agreement for a period of at least two years immediately preceding the date of the public announcement.

**Provided** that in case where the Board is of the view that a company has not been materially compliant with the provisions of the listing agreement, the offer price shall be paid in cash only;

- e. the impact of auditors' qualifications, if any, on the audited accounts of the issuer of such shares for three immediately preceding financial years does not exceed five per cent. of the net profit or loss after tax of such issuer for the respective years; and
- f. the Board has not issued any direction against the issuer of such shares not to access the capital market or to issue fresh shares.

(3) Where the shareholders have been provided with options to accept payment in cash or by way of securities, or a combination thereof, the pricing for the open offer may be different for each option subject to compliance with minimum offer price requirements under regulation 8.

**Provided** that the detailed public statement and the letter of offer shall contain justification for such differential pricing.

(4) In the event the offer price consists of consideration to be paid by issuance of securities, which requires compliance with any applicable law, the acquirer shall ensure that such compliance is completed not later than the commencement of the tendering period.

**Provided** that in case the requisite compliance is not made by such date, the acquirer shall pay the entire consideration in cash.

(5) Where listed securities are offered as consideration, the value of such securities shall be higher of:

- a. the average of the weekly high and low of the closing prices of such securities quoted on the stock exchange during the **6 months** preceding the relevant date;
- b. the average of the weekly high and low of the closing prices of such securities quoted on the stock exchange during the **2 weeks** preceding the relevant date; and
- c. the volume-weighted average market price for a period of **60 trading days** preceding the date of the public announcement, as traded on the stock exchange where the maximum volume of trading in the shares of the company whose securities are being offered as consideration, are recorded during the six-month period prior to relevant date and the ratio of exchange of shares shall be duly certified by an independent merchant banker (other than the manager to the open offer) or an independent chartered accountant having a minimum experience of ten years.

**Explanation**— For the purposes of this sub-regulation, the “relevant date” shall be the thirtieth day prior to the date on which the meeting of shareholders is held to consider the proposed issue of shares under subsection (1A) of Section 81 of the Companies Act, 1956.

### **Conditional offer (Regulation 19)**

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

Provided that 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.

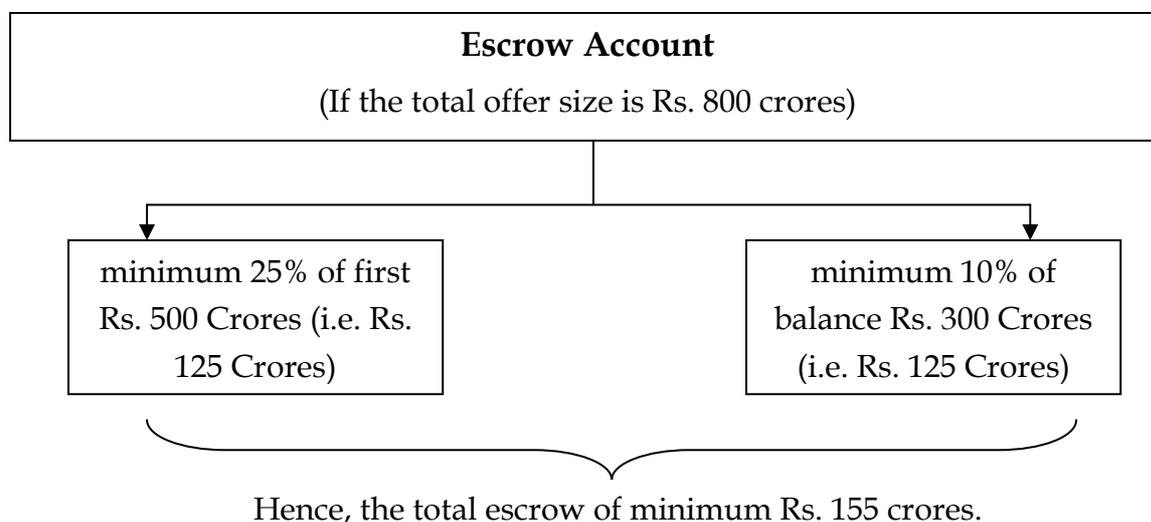
(2) Where an open offer is made conditional upon minimum level of acceptances, the acquirer and persons acting in concert with him shall not acquire, during the offer period, any shares in the target company except under the open offer and any

underlying agreement for the sale of shares of the target company pursuant to which the open offer is made.

### Provision of ESCROW ACCOUNT (Regulation 17)

(1) Not later than **two working days** prior to the date of the detailed public statement of the open offer for acquiring shares, the acquirer shall create an **ESCROW** account towards security for performance of his obligations under these regulations, and deposit in **ESCROW** account such aggregate amount as per the following scale:

Consideration payable under the Open Offer	Amount in ESCROW Account
On the first five hundred crore rupees	an amount equal to 25% of the consideration
On the balance consideration	an additional amount equal to 10% of the balance consideration

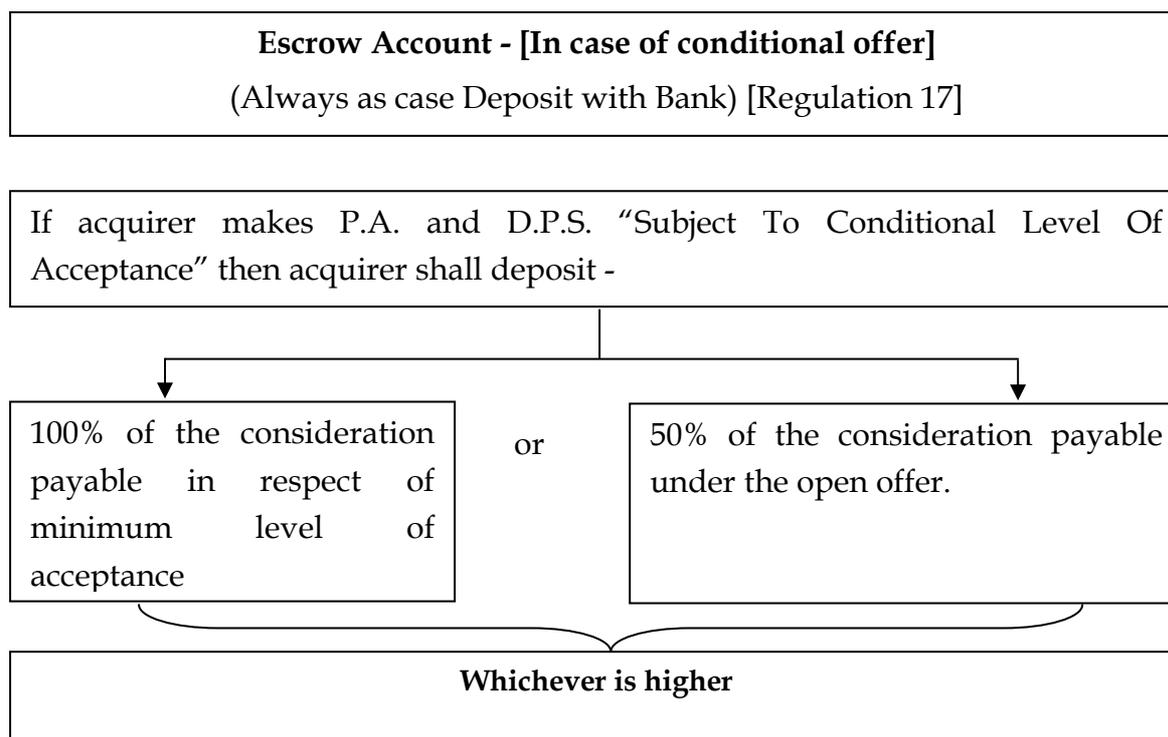


**Where an open offer is made conditional upon minimum level of acceptance**

- ✚ 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.



(2) The consideration payable under the open offer shall be computed as provided for in sub-regulation (2) of regulation 16 and 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 the additional amount shall be brought into the escrow account prior to effecting such revision.

(3) **The escrow account referred to in sub-regulation (1) may be in the form of, –**

- a. cash deposited with any scheduled commercial bank;
- b. bank guarantee issued in favour of the manager to the open offer by any scheduled commercial bank; or
- c. deposit of frequently traded and freely transferable equity shares or other freely transferable securities with appropriate margin.

**Provided** that securities sought to be provided towards escrow account under clause (c) shall be required to conform to the requirements set out in sub-regulation (2) of regulation 9.

(4) In the event of the escrow account being created by way of a bank guarantee or by deposit of securities, the acquirer shall also ensure that at least one per cent of the total consideration payable is deposited in cash with a scheduled commercial bank as a part of the escrow account.

(5) For such part of the escrow account as is in the form of a cash deposit with a scheduled commercial bank, the acquirer shall while opening the account, empower the manager to the open offer to instruct the bank to issue a banker's cheque or demand draft or to make payment of the amounts lying to the credit of the escrow account, in accordance with requirements under these regulations.

(6) For such part of the escrow account as is in the form of a bank guarantee, such bank guarantee shall be in favour of the manager to the open offer and shall be kept valid throughout the offer period and for an additional period of thirty days after completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer.

(7) For such part of the escrow account as is in the form of securities, the acquirer shall empower the manager to the open offer to realise the value of such escrow account by sale or otherwise, and in the event there is any shortfall in the amount required to be maintained in the escrow account, the manager to the open offer shall be liable to make good such shortfall.

(8) The manager to the open offer shall not release the escrow account until the expiry of **thirty days** from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, save and except for transfer of funds to the special escrow account as required under regulation 21.

(9) In the event of non-fulfilment of obligations under these regulations by the acquirer the Board may direct the manager to the open offer to forfeit the escrow account or any amounts lying in the special escrow account, either in full or in part.

**(10) The escrow account deposited with the bank in cash shall be released only in the following manner, –**

- a. the entire amount to the acquirer upon withdrawal of offer in terms of regulation 23 as certified by the manager to the open offer: **Provided** that in the event the withdrawal is pursuant to clause (c) of sub-regulation (1) of regulation 23, the manager to the open offer shall release the escrow account upon receipt of confirmation of such release from the Board;
- b. for transfer of an amount not exceeding ninety per cent of the escrow account, to the special escrow account in accordance with regulation 21;
- c. to the acquirer, the balance of the escrow account after transfer of cash to the special escrow account, on the expiry of thirty 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;

- d. the entire amount to the acquirer upon the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, upon certification by the manager to the open offer, where the open offer is for exchange of shares or other secured instruments;
- e. **the entire amount to the manager to the open offer, in the event of forfeiture for non-fulfilment of any of the obligations under these regulations, for distribution in the following manner, after deduction of expenses, if any, of registered market intermediaries associated with the open offer, –**
- i. one third of the escrow account to the target company;
  - ii. one third of the escrow account to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009; and
  - iii. one third of the escrow account to be distributed pro-rata among the shareholders who have accepted the open offer.

### **Filing of letter of offer with SEBI (Regulation 16)**

(1) **Within five working days** from the date of the detailed public statement made under sub-regulation (4) of regulation 13, the acquirer shall, through the manager to the open offer, file with the Board, a draft of the letter of offer containing such information as may be specified along with a non-refundable fee, as per the following scale, by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board, –

<b>Consideration payable under the Open Offer</b>	<b>Fee (Rs.)</b>
✚ Upto ten crore rupees	Five lakh rupees (Rs. 5,00,000)
✚ More than ten crore rupees but less than or equal to one thousand crore rupees	0.5 per cent of the offer size
✚ More than one thousand crore rupees	Five crore rupees (Rs. 5,00,00,000) plus 0.125 per

	cent of the portion of the offer size in excess of one thousand crore rupees (1000,00,00,000).	

(4) The Board 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 and in the event of no comments being issued by the Board within such period, it shall be deemed that the Board does not have comments to offer:

**Provided** that in the event the Board 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.

**Provided further** that in the event the Board 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.

(5) In the case of competing offers, the Board shall provide its comments on the draft letter of offer in respect of each competing offer on the same day.

(6) In the event the disclosures in the draft letter of offer are inadequate the Board may call for a revised letter of offer and shall deal with the revised letter of offer in accordance with sub-regulation (4).

### **Competing offers (Regulation 20)**

(1) 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 the acquirer who has made the first public announcement.

(2) The open offer made under sub-regulation (1) shall be for such number of shares which, when taken together with shares held by such acquirer along with persons acting in concert with him, shall be at least equal to the holding of the acquirer who has made the first public announcement, including the number of shares proposed to be acquired by him under the offer and any underlying agreement for the sale of shares of the target company pursuant to which the open offer is made.

(3) Notwithstanding anything contained in these regulations, an open offer made within the period referred to in sub-regulation (1) shall not be regarded as a voluntary open offer under regulation 6, and the provisions of these regulations shall apply accordingly.

(4) Every open offer made under sub-regulation (1) and the open offer first made shall be regarded as competing offers for purposes of these regulations.

(5) No person shall be entitled to make a public announcement of an open offer for acquiring shares, or enter into any transaction that would attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations, after the period of fifteen working days referred to in sub - regulation (1) and until the expiry of the offer period for such open offer.

(6) Unless the open offer first made is an open offer conditional as to the minimum level of acceptances, no acquirer making a competing offer may be made conditional as to the minimum level of acceptances.

(7) No person shall be entitled to make a public announcement of an open offer for acquiring shares, or enter into any transaction that would attract the obligation to make a public announcement of an open offer under these regulations until the expiry of the offer period where, –

- a. the open offer is for acquisition of shares pursuant to disinvestment, in terms of clause (d) of sub-regulation (2) of regulation 13; or
- b. the open offer is pursuant to a relaxation from strict compliance with the provisions of Chapter III or Chapter IV granted by the Board under sub - regulation (2) of regulation 11.

(8) The schedule of activities and the tendering period for all competing offers shall be carried out with identical timelines and 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.

(9) 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.

**Provided** that the acquirers making the competing offers shall be entitled to make upward revisions of the offer price at any time up to three working days prior to the commencement of the tendering period.

(10) Except for variations made under this regulation, all the provisions of these regulations shall apply to every competing offer.

## **Payment of consideration (Regulation 21)**

(1) For the amount of consideration payable in cash, the acquirer shall open a special escrow account with a banker to an issue registered with the Board and deposit therein, such sum as would, together with cash transferred under clause (b) of sub-regulation (10) of regulation 17, make up the entire sum due and payable to the shareholders as consideration payable under the open offer, and empower the manager to the offer to operate the special escrow account on behalf of the acquirer for the purposes under these regulations.

(2) Subject to provisos to sub-regulation (11) of regulation 18, the acquirer shall complete payment of consideration whether in the form of cash, or as the case may be, by issue, exchange or transfer of securities, to all shareholders who have tendered shares in acceptance of the open offer, within ten working days of the expiry of the tendering period.

(3) Unclaimed balances, if any, lying to the credit of the special escrow account referred to in sub-regulation (1) at the end of seven years from the date of deposit thereof, shall be transferred to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009.

## **Other procedures (Regulation 18)**

(1) Simultaneously with the filing of the draft letter of offer with the Board under sub-regulation (1) of regulation 16, 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.

(2) 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 seven working days from the receipt of comments from the Board or where no comments are offered by the Board, within seven working days from the expiry of the period stipulated in sub-regulation (4) of regulation 16.

**Provided** that where local laws or regulations of any jurisdiction outside India 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, and the shareholders resident in such jurisdiction hold shares entitling them to less than five per cent of the voting rights of the target company, the acquirer may refrain from dispatch of the letter of offer into such jurisdiction.

**Provided further** that every person holding shares, regardless of whether he held shares on the identified date or has not received the letter of offer, shall be entitled to tender such shares in acceptance of the open offer.

(3) Simultaneously with the dispatch of the letter of offer in terms of sub-regulation (2), the acquirer shall send the letter of offer to the custodian of shares underlying depository receipts, if any, of the target company.

(4) 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.

(5) 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 account under regulation 17 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; and
- c. simultaneously with the issue of such an announcement, inform the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.

(6) The acquirer shall disclose during the offer period every acquisition made by the acquirer or persons acting in concert with him of any shares of the target company in such form as may be specified, to each of the stock exchanges on which the shares of the target company are listed and to the target company at its registered office within twenty-four hours of such acquisition, and the stock exchanges shall forthwith disseminate such information to the public.

**Provided** that the acquirer and persons acting in concert with him 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.

(7) The acquirer shall issue an advertisement in such form as may be specified, one working 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.

**Provided** that such advertisement shall be, –

- a. published in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and
- b. simultaneously sent to the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.

**(8) The tendering period shall start not later than twelve working days from date of receipt of comments from the Board under sub-regulation (4) of regulation 16 and shall remain open for ten working days.**

(9) Shareholders who have tendered shares in acceptance of the open offer shall not be entitled to withdraw such acceptance during the tendering period.

**(10) The acquirer shall, within ten 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.**

(11) 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.

**Provided** that 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, the Board 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.

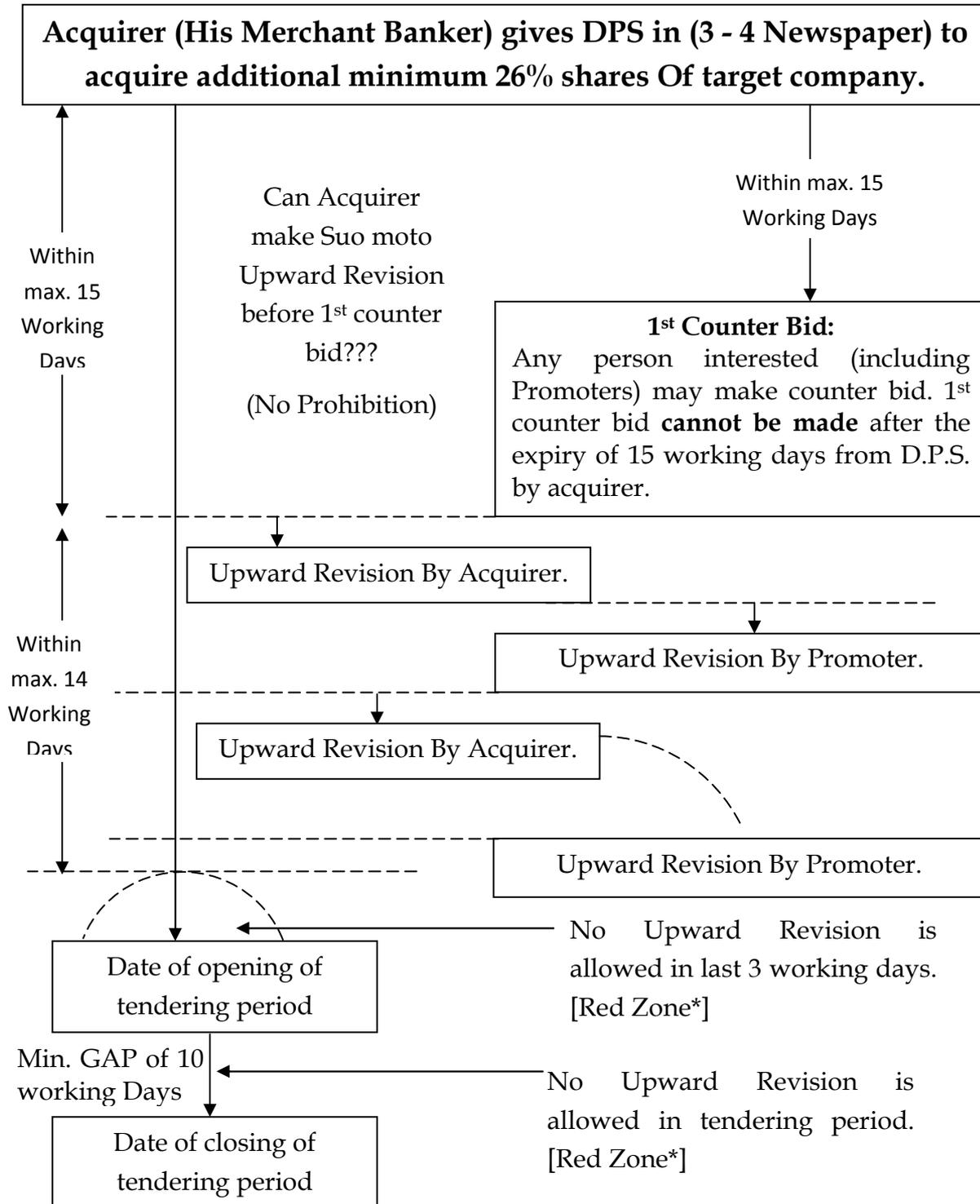
**Provided further** that where the statutory approval extends to some but not all shareholders, the acquirer shall have the option to make payment to such shareholders in respect of whom no statutory approvals are required in order to complete the open offer.

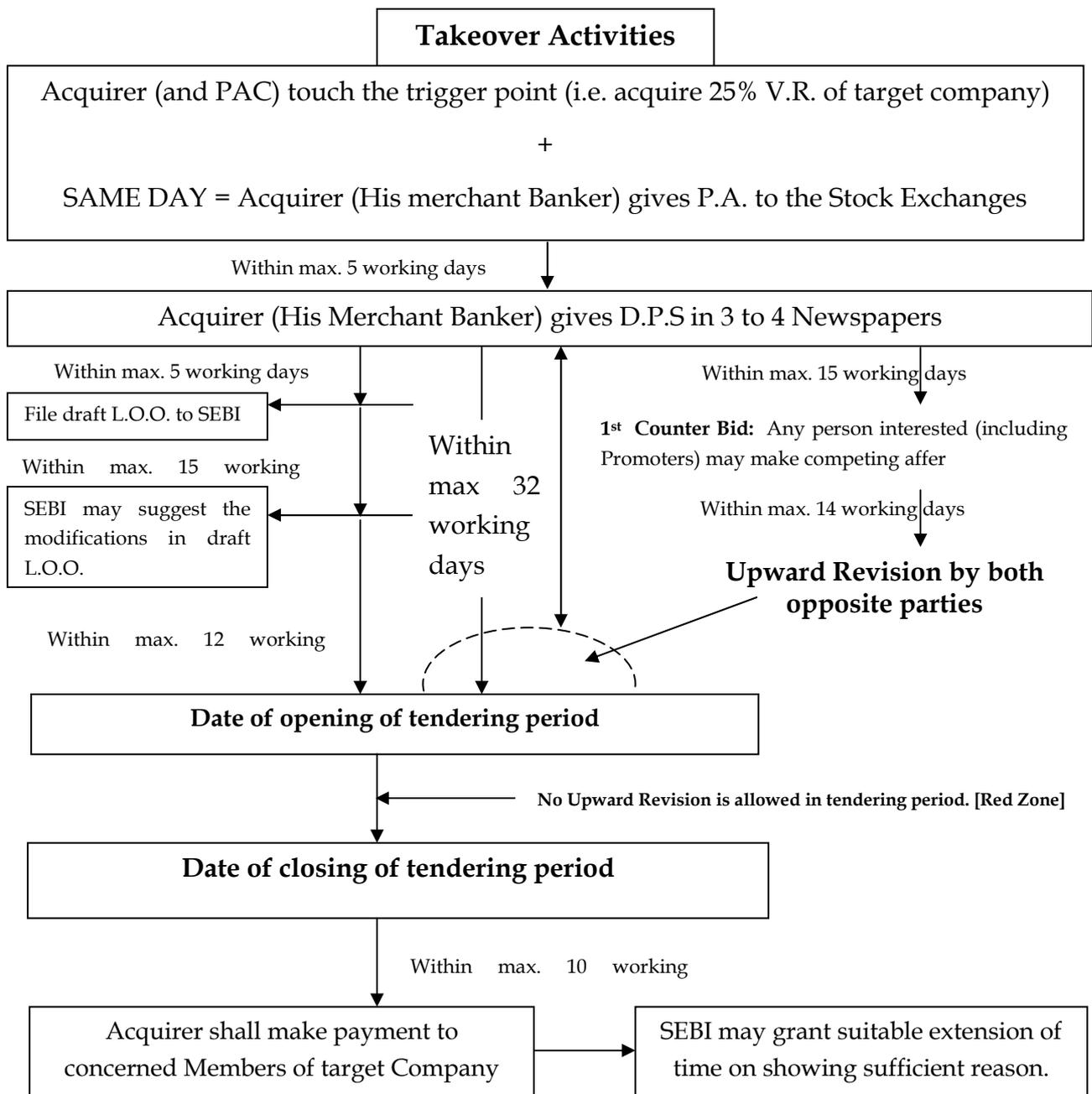
(12) (a) The acquirer shall issue a post offer advertisement in such form as may be specified within five working days after the offer period, giving details including aggregate number of shares tendered, accepted, date of payment of consideration.

(b) Such advertisement shall be, –

- i. published in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and
- ii. simultaneously sent to the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.

# 1<sup>st</sup> counter Bid and Upward Revisions (3 - 4 Newspaper)





### Creeping Acquisition

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 **25% or more** of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise **more than 5%** 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.

### EXAMPLE OF CREEPING ACQUISITION

Acquirer's initial holding in the target company at the time of marking PA	25% (i.e. trigger point)
Shares acquired through PA (public offer)	22%
Shares acquired after the closure of public offer in same FY.	5%
Shares acquired in the subsequent FY - 1	5%
Shares acquired in the subsequent FY - 2	5%
Shares acquired in the subsequent FY - 3	5%
Shares acquired in the subsequent FY - 4	5%
Shares acquired in the subsequent FY - 5	MAX 3%
<b>TOTAL</b>	75%

### Continual disclosures (Regulation 30)

(1) Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

(2) 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 thirty-first day of March, in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) 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 target company at its registered office.

### Voluntary Offer (Regulation 6)

(1) An acquirer, who together with persons acting in concert with him, holds shares or voting rights in a target company entitling them to exercise twenty-five per cent 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 in accordance with these regulations, subject to their aggregate shareholding

after completion of the open offer not exceeding the maximum permissible non-public shareholding.

**Provided** that where an acquirer or any person acting in concert with him has acquired shares of the target company in the preceding fifty-two 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.

**Provided further** that during the offer period such acquirer shall not be entitled to acquire any shares otherwise than under the open offer.

(2) An acquirer and persons acting in concert with him, who have made a public announcement under this regulation to acquire shares of a target company, shall not be entitled to acquire any shares of the target company for a period of six months after completion of the open offer except pursuant to another voluntary open offer.

**Provided** that such restriction shall not prohibit the acquirer from making a competing offer upon any other person making an open offer for acquiring shares of the target company.

(3) Shares acquired through bonus issue or stock splits shall not be considered for purposes of the dis-entitlement set out in this regulation.

#### **EXAMPLE OF VOLUNTARY OFFER**

Acquirer initial holding in the target company at the time of making PA	25% (i.e. trigger point)
Shares acquired through PA (public offer)	22%
Shares acquired after the closure of public offer in same FY.	5%
Shares acquired in the subsequent FY - 1	5%
Shares acquired in the subsequent FY - 2	NIL
Acquirer wants to make voluntary offer in the subsequent FY - 3	Min. 10% to max. 18%
<b>TOTAL</b>	<b>75%</b>

**If an acquirer intends to acquire any shares beyond 25% level, more than by creeping acquisition of 5% voting rights p.a., then he has to make DPS for**

**additional 26% shares of the target company, or such lesser number of shares which ensures that the acquirer total shareholding does not exceed 75% level in the target company**, because as per SEBI delisting norms it is mandatory for every listed company to maintain a minimum market float of 25%. [Rule 19(2)(b) of Securities Contracts (Regulation) Rules, 1957].

## **DELISTING ZONE**

If acquirer acquires more than 75% shares (or 90%) of target company, then, either he shall off load the extra shareholding back into the market **within max 12 months**, or otherwise he shall pick up the remaining shares of the target company from the market as per SEBI (Delisting of equity shares) Regulations, 2009 by way of reverse book building.

## **INDIRECT ACQUISITION OF SHARES OR CONTROL (Regulation 5)**

(1) For the purposes of regulation 3 and regulation 4, acquisition of shares or voting rights in, or control over, any company or other entity, that would enable any person and persons acting in concert with him to exercise or direct the exercise of such percentage of voting rights in, or control over, a target company, the acquisition of which would otherwise attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations, shall be considered as an indirect acquisition of shares or voting rights in, or control over the target company.

(2) Notwithstanding anything contained in these regulations, in the case of an indirect acquisition attracting the provisions of sub-regulation (1) where—

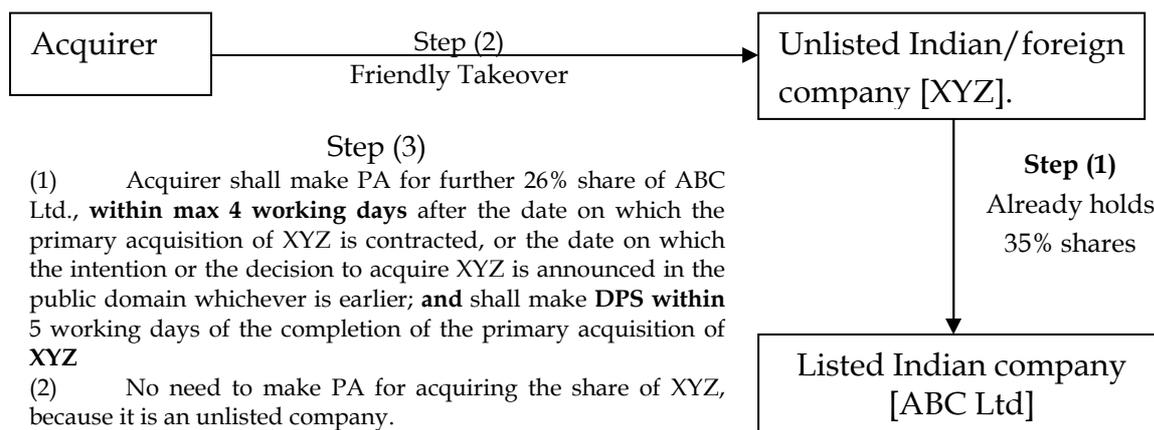
- a. the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired;
- b. the proportionate sales turnover of the target company as a percentage of the consolidated sales turnover of the entity or business being acquired; or
- c. the proportionate market capitalisation of the target company as a percentage of the enterprise value for the entity or business being acquired; is in excess of 80 %, on the basis of the most recent audited annual financial statements, such indirect acquisition shall be regarded as a direct acquisition of the target company for all purposes of these regulations including without limitation, the obligations relating to timing, pricing and other compliance requirements for the open offer.

**Explanation—** For the purposes of computing the percentage referred to in clause (c) of this sub-regulation, the market capitalisation 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 sixty trading days preceding the earlier of, the date on which the primary

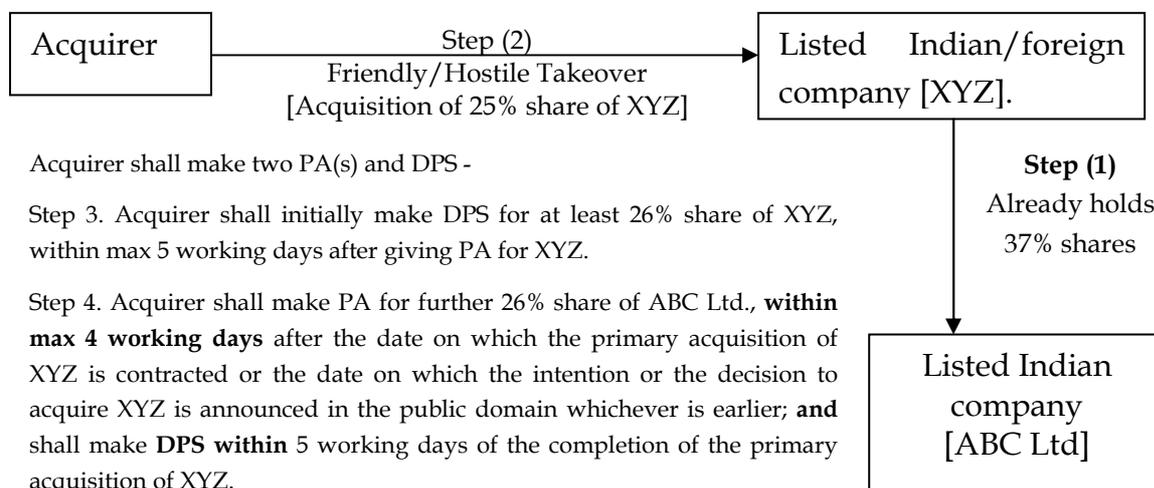
acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period.

## INDIRECT ACQUISITION OF SHARES - where none of the parameters referred to in regulation 5(2) are met

### ✚ Situation 1

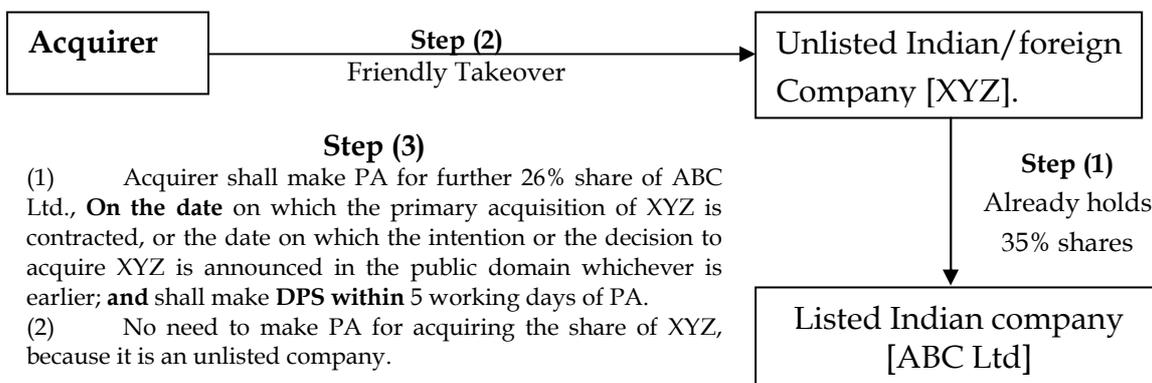


### ✚ Situation 2

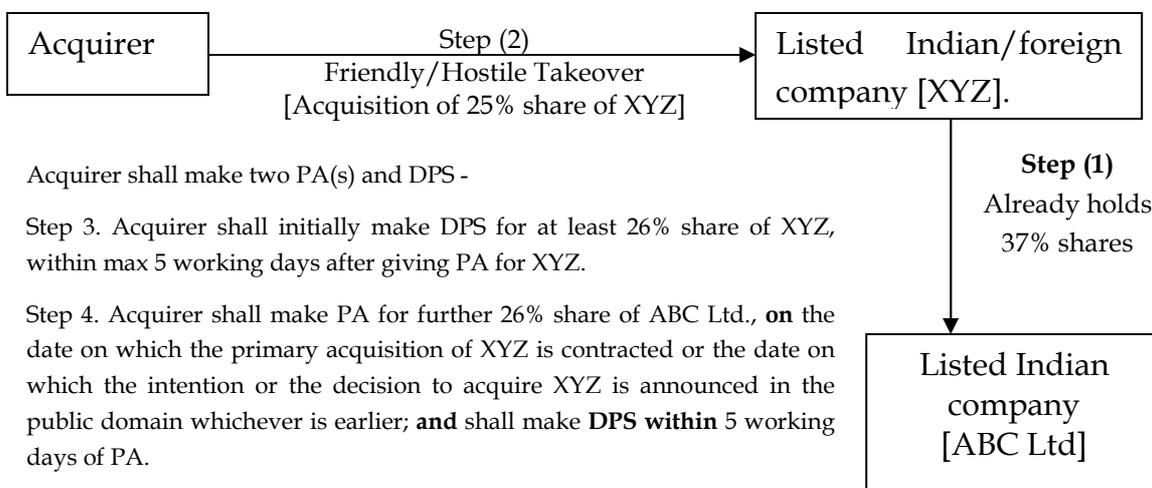


## INDIRECT ACQUISITION OF SHARES - where the parameters referred to in regulation 5(2) are met

### ✚ Situation 1



### ✚ Situation 2



### Completion of Acquisition (Regulation 22)

(1) The acquirer shall not complete the acquisition of shares or voting rights in, or control over, the target company, whether by way of subscription to shares or a purchase of shares attracting the obligation to make an open offer for acquiring shares, until the expiry of the offer period.

**Provided** that in case of an offer made under sub-regulation (1) of regulation 20, pursuant to a preferential allotment, the offer shall be completed within the period as provided under sub-regulation (1) of regulation 74 of Securities and Exchange Board of India (Issue of Capital and Disclosure) Regulations, 2009.

(2) Notwithstanding anything contained in sub-regulation (1), subject to the acquirer depositing in the escrow account under regulation 17, cash of an amount equal to one hundred per cent of the consideration payable under the open offer assuming full acceptance of the open offer, the parties to such agreement may after the expiry of twenty-one working days from the date of detailed public statement, act upon the agreement and the acquirer may complete the acquisition of shares or voting rights in, or control over the target company as contemplated.

(3) The acquirer shall complete the acquisitions contracted under any agreement attracting the obligation to make an open offer not later than twenty-six weeks from the expiry of the offer period.

**Provided** that in the event of any extraordinary and supervening circumstances rendering it impossible to complete such acquisition within such period, the Board 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 open offer (Regulation 23)**

(1) An open offer for acquiring shares once made shall not be withdrawn except under any of the following circumstances –

- a. statutory approvals required for the open offer or for effecting the acquisitions attracting the obligation to make an open offer under these regulations having been finally refused, subject to such requirements for approval having been specifically disclosed in the detailed public statement and the letter of offer;
- b. the acquirer, being a natural person, has died;
- c. 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, and such agreement is rescinded, subject to such conditions having been specifically disclosed in the detailed public statement and the letter of offer; or
- d. such circumstances as in the opinion of the Board, merit withdrawal.

**Explanation** – For the purposes of clause (d) of sub-regulation (1), the Board shall pass a reasoned order permitting withdrawal, and such order shall be hosted by the Board on its official website.

**(2) In the event of withdrawal of the open offer, the acquirer shall through the manager to the open offer, within two working days –**

- a. make an announcement in the same newspapers in which the public announcement of the open offer was published, providing the grounds and reasons for withdrawal of the open offer; and
- b. simultaneously with the announcement, inform in writing to,—
  - i. the Board;
  - 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.

### **Obligation 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.

**Provided** that after an initial period of fifteen working days from the date of detailed public statement, appointment of persons representing the acquirer or persons acting in concert with him on the board of directors may be effected in the event the acquirer deposits in cash in the escrow account referred to in regulation 17, one hundred per cent of the consideration payable under the open offer.

**Provided further** that where the acquirer has specified conditions to which the open offer is subject in terms of clause (c) of sub-regulation (1) of regulation 23, no director representing the acquirer may be appointed to the board of directors of the target company during the offer period unless the acquirer has waived or attained such conditions and complies with the requirement of depositing cash in the escrow account.

(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 referred to regulation 17, 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.

(3) During the pendency of competing offers, notwithstanding anything contained in these regulations, and regardless of the size of the cash deposited in the escrow account referred to in regulation 17, by any acquirer or person acting in concert with

him, there shall be no induction of any new director to the board of directors of the target company.

**Provided** that in the event of death or incapacitation of any director, the vacancy arising there from may be filled by any person subject to approval of such appointment by shareholders of the target company by way of a postal ballot.

(4) In the event the acquirer or any person acting in concert 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.

### **Obligations of the acquirer (Regulation 25)**

(1) Prior to making the public announcement of an open offer for acquiring shares under these regulations, 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.

(2) In the event 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 two years after the offer period.

**Provided** that in the event 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.

(3) The acquirer shall ensure that the contents of the public announcement, the detailed public statement, the letter of offer and the post-offer advertisement 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.

(4) The acquirer and persons acting in concert with him shall not sell shares of the target company held by them, during the offer period.

(5) The acquirer and persons acting in concert with him shall be jointly and severally responsible for fulfilment of applicable obligations under these regulations.

## Obligations of the target company

(1) Upon a public announcement of an open offer for acquiring shares of a target company being made, the board of directors of such target company shall ensure that during the offer period, the business of the target company is conducted in the ordinary course consistent with past practice.

(2) During the offer period, unless the approval of shareholders of the target company by way of a special resolution by postal ballot is obtained, the board of directors of either the target company or any of its subsidiaries shall not –

- a. alienate any material assets whether by way of sale, lease, encumbrance or otherwise or enter into any agreement therefor outside the ordinary course of business;
- b. effect any material borrowings outside the ordinary course of business;
- c. issue or allot any authorised but unissued securities entitling the holder to voting rights.

**Provided** that the target company or its subsidiaries may –

- i. issue or allot shares upon conversion of convertible securities issued prior to the public announcement of the open offer, in accordance with pre-determined terms of such conversion;
  - ii. issue or allot shares pursuant to any public issue in respect of which the red herring prospectus has been filed with the Registrar of Companies prior to the public announcement of the open offer; or
  - iii. issue or allot shares pursuant to any rights issue in respect of which the record date has been announced prior to the public announcement of the open offer;
- d. implement any buy-back of shares or effect any other change to the capital structure of the target company;
  - e. enter into, amend or terminate any material contracts to which the target company or any of its subsidiaries is a party, outside the ordinary course of business, whether such contract is with a related party, within the meaning of the term under applicable accounting principles, or with any other person; and
  - f. accelerate any contingent vesting of a right of any person to whom the target company or any of its subsidiaries may have an obligation, whether such

obligation is to acquire shares of the target company by way of employee stock options or otherwise.

(3) In any general meeting of a subsidiary of the target company in respect of the matters referred to in sub-regulation (2), the target company and its subsidiaries, if any, shall vote in a manner consistent with the special resolution passed by the shareholders of the target company.

(4) The target company shall be prohibited from fixing any record date for a corporate action on or after the third working day prior to the commencement of the tendering period and until the expiry of the tendering period.

(5) 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 containing names, addresses, shareholding and folio number, in electronic form, wherever available, and a list of persons whose applications, if any, for registration of transfer of shares are pending with the target company:

**Provided** that the acquirer shall reimburse reasonable costs payable by the target company to external agencies in order to furnish such information.

(6) Upon receipt of the detailed public statement, the board of directors of the target company shall constitute a committee of independent directors to provide reasoned recommendations on such open offer, and the target company shall publish such recommendations:

**Provided** that such committee shall be entitled to seek external professional advice at the expense of the target company.

(7) The committee of independent directors shall provide its written reasoned recommendations on the open offer to the shareholders of the target company and such recommendations shall be published in such form as may be specified, at least two working days before the commencement of the tendering period, in the same newspapers where the public announcement of the open offer was published, and simultaneously, a copy of the same shall be sent to –

- i. the Board;
- 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. to the manager to the open offer, and where there are competing offers, to the manager to the open offer for every competing offer.

(8) The board of directors of the target company shall facilitate the acquirer in verification of shares tendered in acceptance of the open offer.

(9) 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.

(10) Upon fulfilment by the acquirer, of the conditions required under these regulations, the board of directors of the target company shall without any delay register the transfer of shares acquired by the acquirer in physical form, whether under the agreement or from open market purchases, or pursuant to the open offer.

### **Obligations of the manager to the open offer**

(1) Prior to public announcement being made, the manager to the open offer shall ensure that,—

- a. the acquirer is able to implement the open offer; and
- b. firm arrangements for funds through verifiable means have been made by the acquirer to meet the payment obligations under the open offer.

(2) The manager to the open offer shall ensure that the contents of the public announcement, the detailed public statement and the letter of offer and the post offer advertisement 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 the requirements under these regulations.

(3) The manager to the open offer shall furnish to the Board a due diligence certificate along with the draft letter of offer filed under Regulation 16.

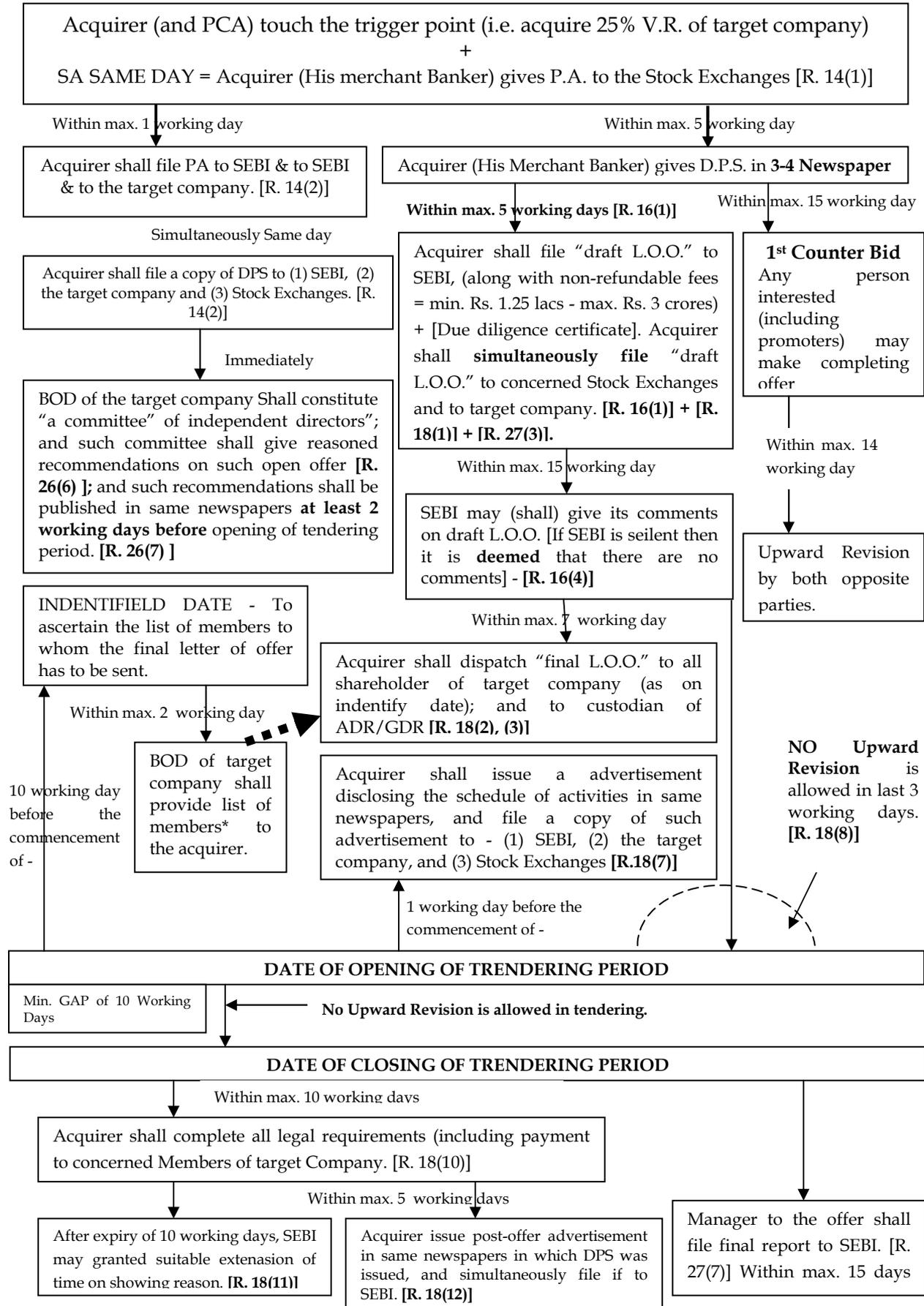
(4) The manager to the open offer shall ensure that market intermediaries engaged for the purposes of the open offer are registered with the Board.

(5) The manager to the open offer shall exercise diligence, care and professional judgment to ensure compliance with these regulations.

(6) The manager to the open offer shall not deal on his own account in the shares of the target company during the offer period.

(7) The manager to the open offer shall file a report with the Board within fifteen working days from the expiry of the tendering period, in such form as may be specified, confirming status of completion of various open offer requirements.

## Hostile Take Over Process



## EXEMPTIONS

### General exemptions (Regulation 10)

**(1) The following acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfilment of the conditions stipulated therefore –**

- a. acquisition pursuant to inter se transfer of shares amongst qualifying persons, being, –
  - i. immediate relatives;
  - ii. persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or these regulations for not less than three years prior to the proposed acquisition;
  - iii. a company, its subsidiaries, its holding company, other subsidiaries of such holding company, persons holding not less than fifty per cent of the equity shares of such company, other companies in which such persons hold not less than fifty per cent of the equity shares, and their subsidiaries subject to control over such qualifying persons being exclusively held by the same persons;
  - iv. persons acting in concert for not less than three years prior to the proposed acquisition, and disclosed as such pursuant to filings under the listing agreement;
  - v. shareholders of a target company who have been persons acting in concert for a period of not less than three years prior to the proposed acquisition and are disclosed as such pursuant to filings under the listing agreement, and any company in which the entire equity share capital is owned by such shareholders in the same proportion as their holdings in the target company without any differential entitlement to exercise voting rights in such company.

**For purposes of availing of the exemption under this clause –**

**✚ If the shares of the target company are frequently traded**

the acquisition price per share shall not be higher by more than twenty-five per cent of the volume-weighted average market price for a period of sixty trading days preceding the date of issuance of notice for the proposed inter se transfer under sub-regulation (5), as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, and

✚ **if the shares of the target company are infrequently traded**

the acquisition price shall not be higher by more than twenty-five percent of the price determined in terms of clause (e) of sub-regulation (2) of regulation 8;

**and**

✚ the transferor and the transferee shall have complied with applicable disclosure requirements.

b. acquisition in the ordinary course of business by, –

- i. an underwriter registered with the Board by way of allotment pursuant to an underwriting agreement in terms of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
- ii. a stock broker registered with the Board on behalf of his client in exercise of lien over the shares purchased on behalf of the client under the bye-laws of the stock exchange where such stock broker is a member;
- iii. a merchant banker registered with the Board or a nominated investor in the process of market making or subscription to the unsubscribed portion of issue in terms of Chapter XB of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
- iv. any person acquiring shares pursuant to a scheme of safety net in terms of regulation 44 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
- v. a merchant banker registered with the Board acting as a stabilizing agent or by the promoter or pre-issue shareholder in terms of regulation 45 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
- vi. by a registered market-maker of a stock exchange in respect of shares for which he is the market maker during the course of market making;
- vii. by a registered market-maker of a stock exchange in respect of shares for which he is the market maker during the course of market making;
- viii. a Scheduled Commercial Bank, acting as an escrow agent; and

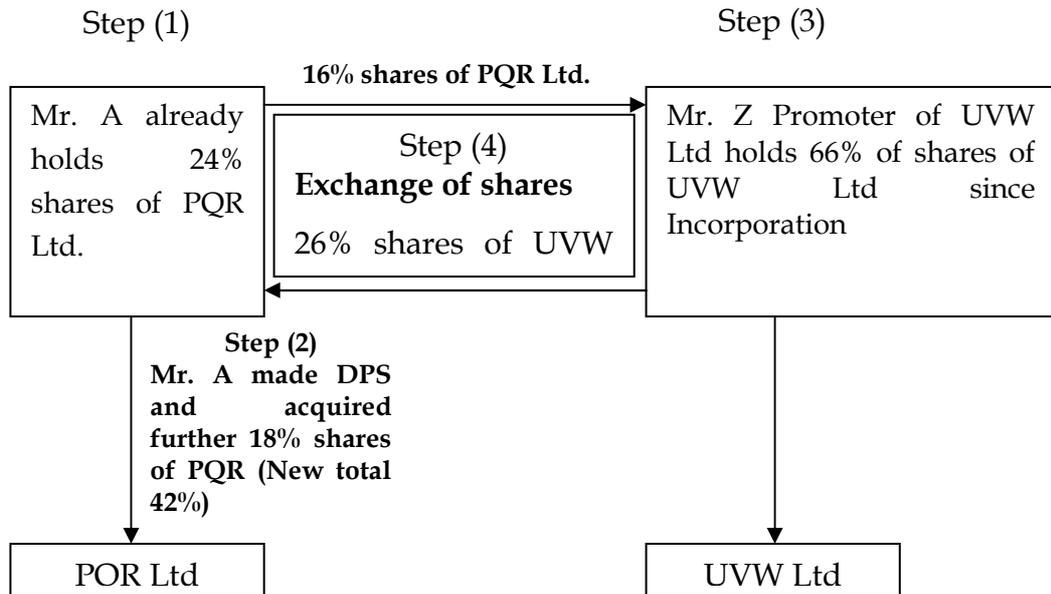
- ix. invocation of pledge by Scheduled Commercial Banks or Public Financial Institutions as a pledgee.
- c. acquisitions at subsequent stages, by an acquirer who has made a public announcement of an open offer for acquiring shares pursuant to an agreement of disinvestment, as contemplated in such agreement.

**Provided that, –**

- ✚ both the acquirer and the seller are the same at all the stages of acquisition; and
  - ✚ full disclosures of all the subsequent stages of acquisition, if any, have been made in the public announcement of the open offer and in the letter of offer.
- d. acquisition pursuant to a scheme –
  - i. made under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) or any statutory modification or re-enactment thereto;
  - ii. of arrangement involving the target company as a transferor company or as a transferee company, or reconstruction of the target company, including amalgamation, merger or demerger, pursuant to an order of a court or a competent authority under any law or regulation, Indian or foreign; or
  - iii. of arrangement not directly involving the target company as a transferor company or as a transferee company, or reconstruction not involving the target company's undertaking, including amalgamation, merger or demerger, pursuant to an order of a court or a competent authority under any law or regulation, Indian or foreign, subject to, –
    - [i] the component of cash and cash equivalents in the consideration paid being less than twenty-five per cent of the consideration paid under the scheme and
    - [ii] where after implementation of the scheme of arrangement, persons directly or indirectly holding at least thirty-three per cent of the voting rights in the combined entity are the same as the persons who held the entire voting rights before the implementation of the scheme.

## Example of Regulation 10(1) (d)

### Situation 1



**Question [1] ⇒** In the above situation, whether Mr. A is required to make PA and DPS to acquire the further 26% shares of UVW?

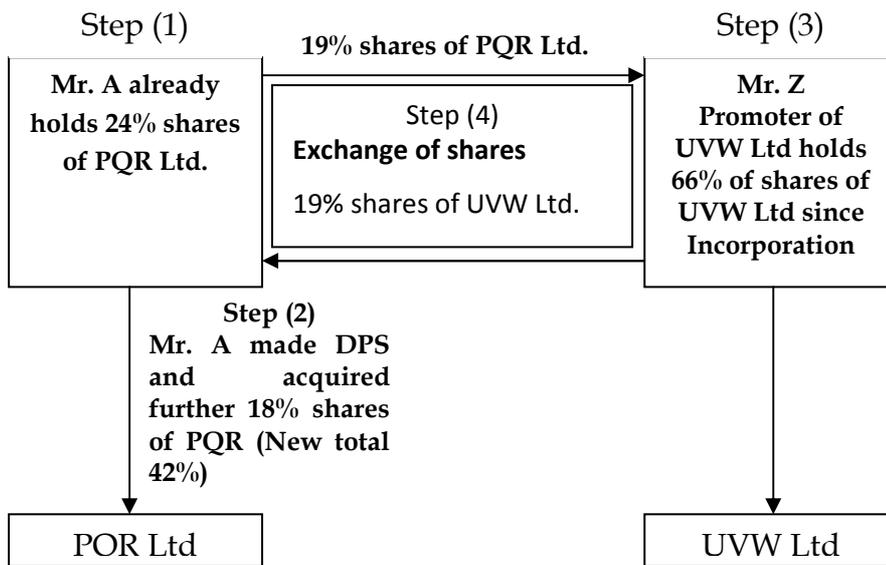
**Answer ⇒** No, Mr. A is not required to make PA and DPS because he is exempted under Regulation 10(1) (d), as he is giving only 16% shares out of 18% shares of PQR which were acquired by him pursuant to the public offer under these regulations, in exchange for 16% shares of UVW.

**Question [2] ⇒** Whether Mr. Z is required to make PA to acquire the further 26% shares of PQR of Mr. Z already holding 9% shares of PQR before swap transaction.

**Answer ⇒** Yes, Mr. Z is required to make PA because he is not exempted under Regulation 10(4) (d), as he did not acquire 26% shares Of UVW Ltd. (being tendered by him in the exchange) pursuant to the public offer under these regulations, and he was holding such 26% shares of UVW from the very incorporation of UVM.

Total holding of Z = 9 + 16 = 25%

## Situation 2



**Question [1] ⇒ In the above situation, whether Mr. A is required to make PA and DPS to acquire the further 26% shares of UVW of Mr. A was already holding 6% shares in UVW before swap?**

**Answer ⇒ Yes, because he is not exempted under Regulation 10(4) (d).**

**Question [2] ⇒ Whether Mr. Z is required to make PA to acquire the further 26% shares of PQR of Mr. Z already holding 6% shares of PQR before swap transaction.**

**Answer ⇒ Yes, because he is not exempted under Regulation 10(4) (d).**

- e. acquisition pursuant to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- f. acquisition pursuant to the provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009;
- g. acquisition by way of transmission, succession or inheritance;
- h. acquisition of voting rights or preference shares carrying voting rights arising out of the operation of sub-section (2) of section 87 of the Companies Act, 1956.

(2) The acquisition of shares of a target company, not involving a change of control over such target company, pursuant to a scheme of corporate debt restructuring in terms of the Corporate Debt Restructuring Scheme notified by the Reserve Bank of India vide circular no. B.P.BC 15/21.04, 114/2001 dated August 23, 2001, or any modification or re-notification thereto provided such scheme has been authorised by shareholders by way of a special resolution passed by postal ballot, shall be exempted from the obligation to make an open offer under regulation 3.

(3) An increase in voting rights in a target company of any shareholder beyond the limit attracting an obligation to make an open offer under sub-regulation (1) of regulation 3, pursuant to buy-back of shares shall be exempt from the obligation to make an open offer provided such shareholder reduces his shareholding such that his voting rights fall to below the threshold referred to in sub-regulation (1) of regulation 3 within **90 days** from the date on which the voting rights so increase.

### Example

SKL Limited (Listed on NSE) has total issue equity share capital of 100 shares. Mr. A holds 24 shares out of such 100 shares. SKL Limited made PA for buy back of 20 equity shares from the open market, but Mr. A does not sell his shares to the company in buy back offer.
Company destroyed 20 equity shares after buy-back, and share capital base got reduced to 80 shares.
Post buy back % Voting Right of Mr. A increases to the level of = $[(24/80) * 100] = 30\%$
Increase is above the limit of 25%.
Now, within 90 Days of such increase in Voting Right, Mr. A shall sell off his more than 4 shares to bring his level below 25% once again; Or otherwise on 90 <sup>th</sup> days, Mr. A shall make PA and DPS as per these regulations.

(4) The following acquisitions shall be exempt from the obligation to make an open offer under sub-regulation (2) of regulation 3, —

- a. acquisition of shares by any shareholder of a target company, upto his entitlement, pursuant to a rights issue;
- b. acquisition of shares by any shareholder of a target company, beyond his entitlement, pursuant to a rights issue, subject to fulfilment of the following conditions, —

- i. the acquirer has not renounced any of his entitlements in such rights issue; and
- ii. the price at which the rights issue is made is not higher than the ex-rights price of the shares of the target company, being the sum of,—

A. the volume weighted average market price of the shares of the target company during a period of sixty trading days ending on the day prior to the date of determination of the rights issue price, multiplied by the number of shares outstanding prior to the rights issue, divided by the total number of shares outstanding after allotment under the rights issue.

**Provided** that such volume weighted average market price shall be determined on the basis of trading on the stock exchange where the maximum volume of trading in the shares of such target company is recorded during such period; and

B. the price at which the shares are offered in the rights issue, multiplied by the number of shares so offered in the rights issue divided by the total number of shares outstanding after allotment under the rights issue.

- c. increase in voting rights in a target company of any shareholder pursuant to buy-back of shares.

**Provided** that,—

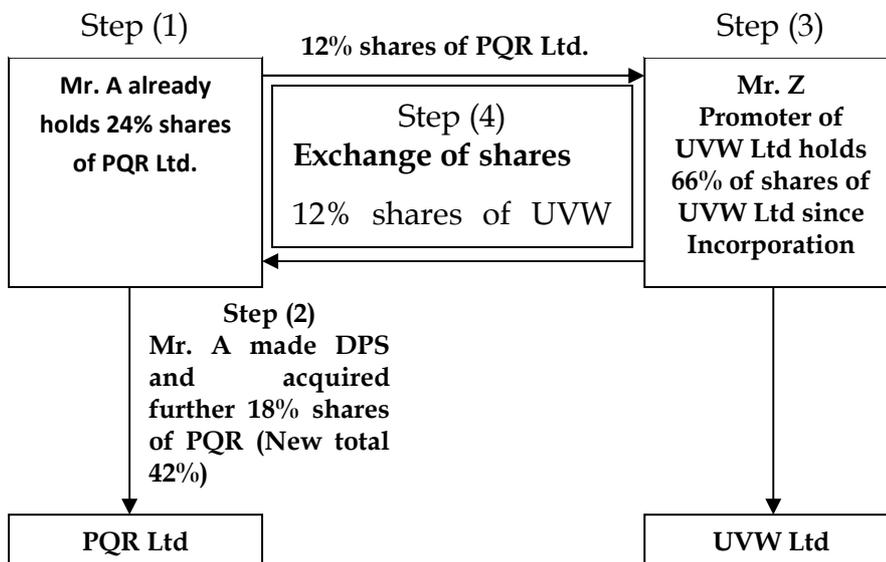
- i. such shareholder has not voted in favour of the resolution authorising the buy-back of securities under section 77A of the Companies Act, 1956;
- ii. in the case of a shareholder resolution, voting is by way of postal ballot;
- iii. where a resolution of shareholders is not required for the buyback, such shareholder, in his capacity as a director, or any other interested director has not voted in favour of the resolution of the board of directors of the target company authorising the buy-back of securities under section 77A of the Companies Act, 1956 (1 of 1956); and
- iv. the increase in voting rights does not result in an acquisition of control by such shareholder over the target company.

**Provided** further that where the aforesaid conditions are not met, in the event such shareholder reduces his shareholding such that his

voting rights fall below the level at which the obligation to make an open offer would be attracted under sub-regulation (2) of regulation 3, within ninety days from the date on which the voting rights so increase, the shareholder shall be exempt from the obligation to make an open offer;

- d. 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)



**Question [1] ⇒** In the above situation, whether Mr. A was already holding 14% shares of UVW, and subsequent to the aforementioned share exchange, his total shareholding in UVW becomes 26%, then whether he is required to make DPS to acquire the further 26% shares of UVW?

**Answer ⇒** No, Because he is exempted under Regulation 10(4) (d).

**Question [2] ⇒** Mr. Z was already holding 14% shares of PQR, and subsequent to the aforementioned share exchange, his total shareholding in PQR becomes 26%, then whether he is required to make DPS to acquire the further 26% shares of PQR?

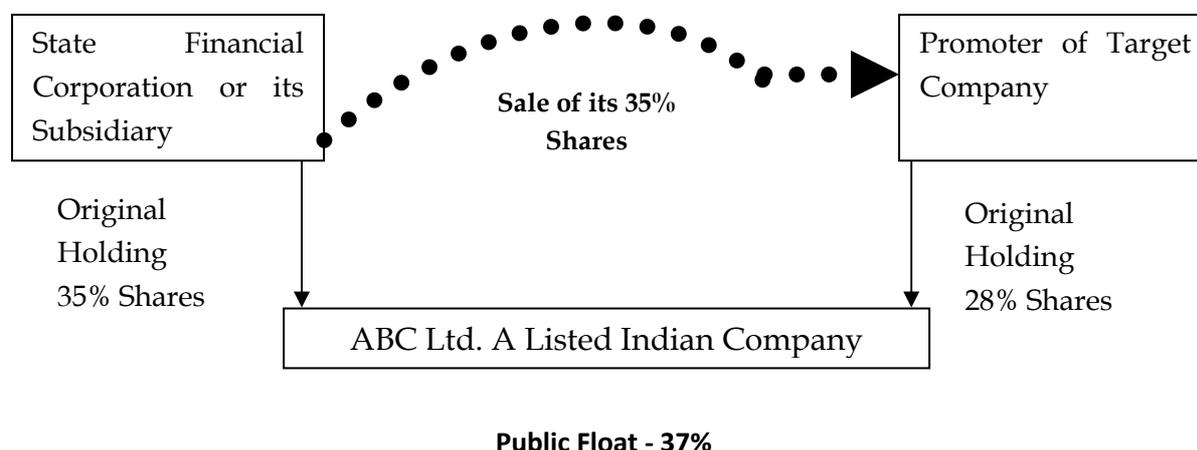
**Answer ⇒** Yes, because he is not exempted under Regulation 10(4) (d).

**Question [1] ⇒ If Mr. A was already holding 14% shares of UVW, and subsequent to the aforementioned share exchange, his total shareholding in UVW becomes 26%, then whether he is required to make DPS to acquire the further 26% shares of UVW? If he would have actually given 19% shares of PQR to Mr. Z?**

**Answer ⇒ Yes, because he is not exempted under Regulation 10(4) (d).**

- e. acquisition of shares in a target company from state-level financial institutions or their subsidiaries or companies promoted by them, by promoters of the target company pursuant to an agreement between such transferors and such promoter;

**Example of Regulation 10(4) (e)**

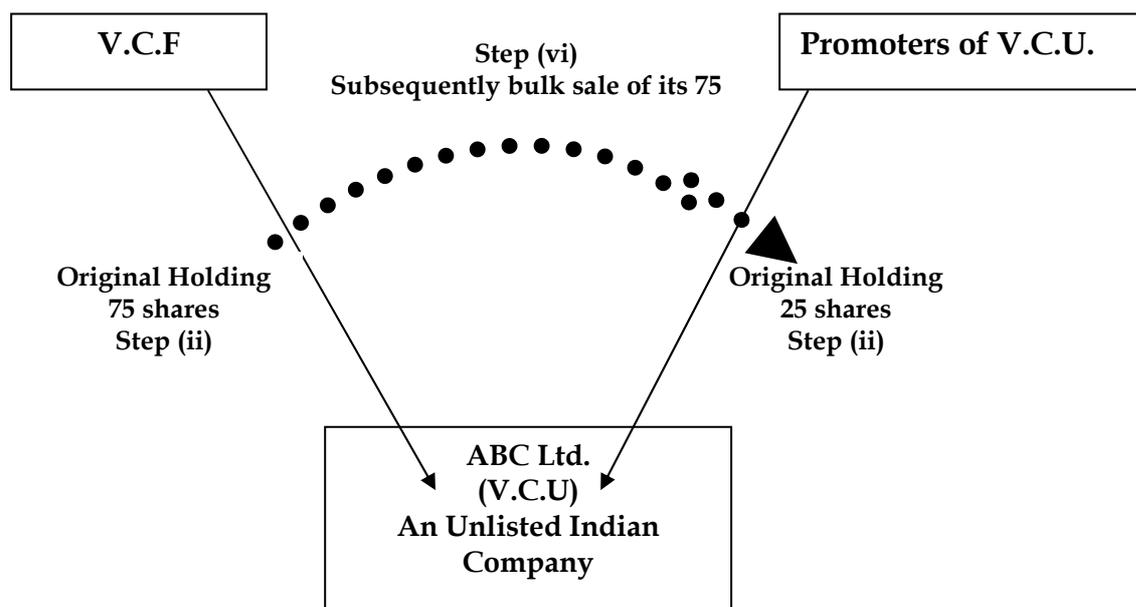


On acquisition of 35% shares from State financial corporation, promoters’ aggregate holding becomes 63%, But there is no need give DPS.

Even though the acquisition is more than the 5% of voting rights in one financial year.

- f. acquisition of shares in a target company from a venture capital fund or a foreign venture capital investor registered with the Board, by promoters of the target company pursuant to an agreement between such venture capital fund or foreign venture capital investor and such promoters.

## Example of Regulation 10(4) (f)



Step (iii) - Subsequently, (say after 5 years), VCU made public issue of 100 shares. Out of such 100 shares, promoters acquired 25 new shares. VCF did not acquire any new shares voluntarily.

Step (iv) - As a result -

1. Promoters % shareholding =  $[(50/200) * 100] = 25\%$ .
2. VCF's shareholding =  $[975/200) * 100] = 37.5\%$ .
3. Public shareholding =  $[975/200) * 100] = 37.5\%$ .

Step (v) - Finally, ABC Ltd got itself listed on stock exchange.

Step (vi) - Later on, VCF sold their 75% shares to promoters of VCU. And, Hence promoters' aggregate holding became 62.5% [25% + 37.5%], but there is no need to give PA. Even though new acquisition by promoters is more than 5% voting rights in one financial year.

(5) In respect of acquisitions under clause (a) of sub-regulation (1), and clauses (e) and (f) of sub-regulation (4), the acquirer shall intimate the stock exchanges where the shares of the target company are listed, the details of the proposed acquisition in such form as may be specified, at least four working days prior to the proposed acquisition, and the stock exchange shall forthwith disseminate such information to the public.

(6) In respect of any acquisition made pursuant to exemption provided for in this regulation, the acquirer shall file a report with the stock exchanges where the shares

of the target company are listed, in such form as may be specified not later than four working days from the acquisition, and the stock exchange shall forthwith disseminate such information to the public.

(7) In respect of any acquisition of or increase in voting rights pursuant to exemption provided for in clause (a) of sub-regulation (1), sub-clause (iii) of clause (d) of sub-regulation (1), clause (h) of sub-regulation (1), sub-regulation (2), sub-regulation (3) and clause (c) of sub-regulation (4), clauses (a), (b) and (f) of sub-regulation (4), the acquirer shall, within twenty-one working days of the date of acquisition, submit a report in such form as may be specified along with supporting documents to the Board giving all details in respect of acquisitions, along with a non-refundable fee of rupees twenty five thousand by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.

**Explanation** – For the purposes of sub-regulation (5), sub-regulation (6) and sub-regulation (7) in the case of convertible securities, the date of the acquisition shall be the date of conversion of such securities.

### **Exemptions by the SEBI (Regulation 11)**

(1) The Board may 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 the Board deems fit to impose in the interests of investors in securities and the securities market.

(2) The Board may for reasons recorded in writing, grant a relaxation from strict compliance with any procedural requirement under Chapter III and Chapter IV subject to such conditions as the Board deems fit to impose in the interests of investors in securities and the securities market on being satisfied that, –

- a. the target company is a company in respect of which the Central Government or State Government or any other regulatory authority has superseded the board of directors of the target company and has appointed new directors under any law for the time being in force, if –
  - 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. the 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.

(3) For seeking exemption under sub-regulation (1), the acquirer shall, and for seeking relaxation under sub-regulation (2) the target company shall file an application with the Board, supported by a duly sworn affidavit, giving details of the proposed acquisition and the grounds on which the exemption has been sought.

(4) The acquirer or the target company, as the case may be, shall along with the application referred to under sub-regulation (3) pay a non-refundable fee of rupees fifty thousand, by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.

(5) The Board may after affording reasonable opportunity of being heard to the applicant and after considering all the relevant facts and circumstances, pass a reasoned order either granting or rejecting the exemption or relaxation sought as expeditiously as possible.

**Provided** that the Board may constitute a panel of experts to which an application for an exemption under sub-regulation (1) may, if considered necessary, be referred to make recommendations on the application to the Board.

(6) The order passed under sub-regulation (5) shall be hosted by the SEBI on its official website.

## Practice Questions Answer

### Understandings TAKE OVERS in Question - Answer form

#### 1. Please provide details as to how the regulatory framework governing Takeovers has evolved over a period?

- ✚ The earliest attempts at regulating takeovers in India can be traced back to the 1990s with the incorporation of Clause 40 in the Listing Agreement.
- ✚ While, the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994 which were notified in November 1994 made way for regulation of hostile takeovers and competitive offers for the first time; the subsequent regulatory experience from such offers brought out certain inadequacies existing in those Regulations. As a result, the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 were introduced and notified on February 20, 1997, pursuant to repeal of the 1994 Regulations.
- ✚ Owing to several factors such as the growth of Mergers & Acquisitions activity in India as the preferred mode of restructuring, the increasing sophistication of takeover market, the decade long regulatory experience and various judicial pronouncements, it was felt necessary to review the Takeover Regulations 1997. Accordingly, SEBI formed a Takeover Regulations Advisory Committee (TRAC) in September 2009 under the Chairmanship of (Late) Shri. C. Achuthan, Former Presiding Officer, Securities Appellate Tribunal (SAT) for this purpose. After extensive public consultation on the report submitted by TRAC, SEBI came out with the SAST Regulations 2011 which were notified on September 23, 2011. The Takeover Regulations, 1997 stand repealed from October 22, 2011, i.e. the date on which SAST Regulations, 2011 come into force.

#### 2. What is the significance of the notification related to SAST Regulations, 2011 published on September 23, 2011?

Vide the said notification dated September 23, 2011, the SAST Regulations, 2011 were notified to replace SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, since repealed..

SAST Regulations, 2011 come into force with effect from October 22, 2011.

#### 3. When the Takeover Regulations, 2011 have come in to force?

October 22, 2011 i.e. 30th day from the date of notification. (September 23, 2011 i.e. date of notification has been taken as the first day for computing 30 days).

#### **4. What is meant by Takeovers & Substantial acquisition of shares?**

When an “acquirer” takes over the control of the “Target Company”, it is termed as Takeover. When an acquirer acquires “substantial quantity of shares or voting rights” of the Target Company, it results into substantial acquisition of shares.

#### **5. Who is an ‘Acquirer’?**

Acquirer means any person who, whether by himself, or through, or with persons acting in concert with him, directly or indirectly, acquires or agrees to acquire shares or voting rights in, or control over a target company. An acquirer can be a natural person, a corporate entity or any other legal entity.

#### **6. What is meant by Persons acting in Concert or ‘PAC’ in the context of SAST Regulations, 2011?**

PACs are individual(s)/company (ies) or any other legal entity (ies) who, with a common objective or purpose of acquisition of shares or voting rights in, or exercise of control over the target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly cooperate for acquisition of shares or voting rights in, or exercise of control over the target company.

SAST Regulations, 2011 define various categories of persons who are deemed to be acting in concert with other persons in the same category, unless the contrary is established.

#### **7. What is a ‘Target Company’?**

The company / body corporate or corporation whose equity shares are listed in a stock Exchange and in which a change of shareholding or control is proposed by an acquirer, is referred to as the ‘Target Company’.

#### **8. What is an open offer under the SAST Regulations, 2011?**

An open offer is an offer made by the acquirer to the shareholders of the target company inviting them to tender their shares in the target company at a particular price. The primary purpose of an open offer is to provide an exit option to the shareholders of the target company on account of the change in control or substantial acquisition of shares, occurring in the target company.

## **9. Under which situations is an open offer required to be made by an acquirer?**

If an acquirer has agreed to acquire or acquired control over a target company or shares or voting rights in a target company which would be in excess of the threshold limits, then the acquirer is required to make an open offer to shareholders of the target company.

## **10. Can the acquisitions, resulting from any agreement attracting the obligation to make an open offer, be completed by way of transactions settled on stock exchange such as bulk/block deals?**

No. Regulation 22(1) of Takeover Regulations 2011 specifically provides that the acquirer shall not complete the acquisition of shares and voting rights in, or control over, the target company, whether by way of subscription of shares or a purchase of shares attracting the obligation to make an open offer for acquiring shares, until the expiry of the offer period. In cases where acquisitions, resulting from any agreement triggering open offer are sought to be completed through transactions such as bulk/block deals, settled on a recognized stock exchange, the same would get completed/settled on T+2 basis i.e. within 2 days after the date of such transaction. Therefore such acquisitions, if done, will not be in line with the provisions of Regulation 22(1) since the same would result in completion of the triggering acquisition before the expiry of the offer period. Hence the acquisition resulting from any agreement attracting the obligation to make an open offer cannot be executed through transactions such as block/ bulk deal.

## **11. What are the threshold limits for acquisition of shares / voting rights, beyond which an obligation to make an open offer is triggered?**

- ✚ Acquisition of 25% or more shares or voting rights:

An acquirer, who (along with PACs, if any) holds less than 25% shares or voting rights in a target company and agrees to acquire shares or acquires shares which along with his/ PAC's existing shareholding would entitle him to exercise 25% or more shares or voting rights in a target company, will need to make an open offer before acquiring such additional shares.

- ✚ Acquisition of more than 5% shares or voting rights in a financial year:

An acquirer who (along with PACs, if any) holds 25% or more but less than the maximum permissible non-public shareholding in a target company, can acquire additional shares in the target company as would

entitle him to exercise more than 5% of the voting rights in any financial year ending March 31, only after making an open offer.

## **12. How is the maximum permissible non-public shareholding in a listed company defined?**

Maximum permissible non-public shareholding is derived based on the minimum public shareholding requirement under the Securities Contracts (Regulations) Rules 1957 ("SCRR"). Rule 19A of SCRR requires all listed companies (other than public sector companies) to maintain public shareholding of at least 25% of share capital of the company. Thus by deduction, the maximum number of shares which can be held by promoters i.e. Maximum permissible non-public shareholding) in a listed companies (other than public sector companies) is 75% of the share capital.

## **13. What is the basis of computation of the creeping acquisitions limit under Regulation 3(2) of Takeover Regulations 2011?**

For computing acquisitions limits for creeping acquisition specified under regulation 3(2), gross acquisitions/ purchases shall be taken in to account thereby ignoring any intermittent fall in shareholding or voting rights whether owing to disposal of shares or dilution of voting rights on account of fresh issue of shares by the target company.

## **14. Whether for the purpose of the creeping acquisition in terms of the Takeover Regulations, 2011, the Creeping Acquisition made during the period 01.04.2011 to 22.10.2011 will be considered?**

The Takeover Regulations, 2011 have clearly defined the financial year as the period of 12 months commencing on the first day of the month of April.

Thus, for the purpose of the creeping acquisitions under Regulation 3(2) of Takeovers Regulations 2011, shares acquired during 1/4/2011 to 22/10/2011 will be taken in to account.

## **15. Whether hostile offers/bids are permitted under the new regulations?**

There is no such term as hostile bid in the regulations. The hostile bid is generally understood to be an unsolicited bid by a person, without any arrangement or MOU with persons currently in control.

Any person with or without holding any shares in a target company, can make an offer to acquire shares of a listed company subject to minimum offer size of 26%.

## 16. What is a voluntary open offer?

A voluntary open offer under Regulation 6, is an offer made by a person who himself or through Persons acting in concert ,if any, holds 25% or more shares or voting rights in the target company but less than the maximum permissible non-public shareholding limit.

## 17. What are the restrictions on acquirers making a voluntary open offer?

A voluntary offer cannot be made if the acquirer or PACs with him has acquired any shares of the target company in the 52 weeks prior to the voluntary offer. The acquirer is prohibited from acquiring any shares during the offer period other than those acquired in the open offer. The acquirer is also not entitled to acquire any shares for a period of 6 months, after completion of open offer except pursuant to another voluntary open offer.

## 18. Can a person holding less than 25% of the voting rights/ shares in a target company, make an offer?

Yes, any person holding less than 25% of shares/ voting rights in a target company can make an open offer provided the open offer is for a minimum of 26% of the share capital of the company.

## 19. How is the voluntary offer made by a person holding less than 25% of shares/ voting rights in a target company different from the voluntary offer made by a person holding more than 25% of shares/ voting rights of the target company?

Voluntary offer by a person holding less than 25%	Voluntary offer by a person holding more than 25%
Minimum offer size of 26%	Minimum offer size of 10%
Maximum can be for entire share capital of the target company	The maximum offer size is linked to maximum permissible non public shareholding permitted under Securities Contracts (Regulations) Rules 1957
No such conditions	<ul style="list-style-type: none"><li>✚ Acquirer should not have acquired any shares during 52 weeks period prior to Public Announcement.</li><li>✚ Acquirer is not entitled to acquire any shares of the target company for a</li></ul>

	period of 6 months after the completion of the open offer except for a voluntary open offer.
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**20. Proposed acquisition of which type of securities, beyond the stipulated thresholds, leads to an obligation of making an open offer?**

Acquisition of equity shares carrying voting rights or any security which entitles the holder thereof to exercise voting rights, beyond the prescribed threshold limits, leads to the obligation of making an open offer. GDR (Global Depository Receipts) which by virtue of depository agreement or otherwise, carrying voting rights is an example of a security which entitles the holder to exercise voting rights but is not an equity share.

**21. Do all acquisitions of shares in excess of the prescribed limits and / or control lead to an open offer?**

No. In respect of certain acquisitions, SAST Regulations, 2011 provide exemption from the requirements of making an open offer, subject to certain conditions being fulfilled. For example, acquisition pursuant to inter se transfer of shares between certain categories of shareholders; acquisition in the ordinary course of business by entities like Underwriter registered with SEBI, stock brokers, merchant bankers acting as stabilizing agent, Scheduled Commercial Bank (SCB), acting as an escrow agent; etc. For more details, please refer to regulation 10 of SAST Regulations, 2011.

**22. Does SEBI have the power to grant exemption to an acquirer from making an open offer or grant relaxation from the strict compliance with prescribed provisions of the open offer process, even if the proposed acquisition of shares or control is not covered under the exemptions prescribed in SAST Regulations,2011?**

Yes. In the interest of the securities market, upon an application made by the acquirer, SEBI has the power to grant exemption from the requirements of making an open offer or grant a relaxation from strict compliance with prescribed provisions of the open offer process. Before undertaking such acquisition, SEBI may at its discretion refer the application to a panel of experts constituted by SEBI. The orders passed in such matters would be uploaded on SEBI's website.

**23. Do only direct acquisitions of shares or control of the target company lead to the requirement of making an open offer?**

No. The requirement to make an open offer arises even if there is an indirect acquisition of shares and / or control of the target company. An indirect acquisition would be the acquisition of shares or control over another entity by an acquirer that would enable the acquirer to exercise or direct to exercise voting rights beyond the stipulated thresholds or control over the target company.

#### **24. What is a competitive offer?**

Competitive offer is an offer made by a person, other than the acquirer who has made the first public announcement. A competitive offer shall be made within 15 working days of the date of the Detailed Public Statement (DPS) made by the acquirer who has made the first PA.

#### **25. What happens if there is a competitive offer?**

If there is a competitive offer, the acquirer who has made the original public announcement can revise the terms of his open offer provided the revised terms are favorable to the shareholders of the target company.

Further, the bidders are entitled to make revision in the offer price up to 3 working days prior to the opening of the offer. The schedule of activities and the offer opening and closing of all competing offers shall be carried out with identical timelines.

#### **26. What is a conditional offer?**

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

#### **27. What is meant by the term 'minimum level of acceptance'?**

'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.

#### **28. If the minimum level of acceptance is not reached, can the acquirer acquire shares under the Share Purchase Agreement, which triggered the offer?**

In a conditional offer, if the minimum level of acceptance is not reached, the acquirer shall not acquire any shares in the target company under the open offer or the Share Purchase Agreement which has triggered the open offer.

### **29. What is the stipulated size of an open offer?**

An open offer, other than a voluntary open offer under Regulation 6, must be made for a minimum of 26% of the target company's share capital. The size of voluntary open offer under Regulation 6 must be for at least 10% of the target company's share capital. Further the offer size percentage is calculated on the fully diluted share capital of the target company taking in to account potential increase in the number of outstanding shares as on 10th working day from the closure of the open offer.

### **30. What is 'offer price' and can the acquirer revise the offer price?**

Offer price is the price at which the acquirer announces to acquire shares from the public shareholders under the open offer. The offer price shall not be less than the price as calculated under regulation 8 of the SAST Regulations, 2011 for frequently or infrequently traded shares.

Acquirer can make an upward revision to the offer price at any time up to 3 working days prior to the opening of the offer.

### **31. How do you determine whether the shares of the target company are frequently traded or infrequently traded?**

The shares of the target company will be deemed to be frequently traded if the traded turnover on any stock exchange during the 12 calendar months preceding the calendar month, in which the PA is made, is at least 10% of the total number of shares of the target company. If the said turnover is less than 10%, it will be deemed to be infrequently traded.

### **32. How is the offer price calculated in case shares are frequently traded on the Stock Exchange?**

If the target company's shares are frequently traded then the open offer price for acquisition of shares under the minimum open offer shall be highest of the following:

- Highest negotiated price per share under the share purchase agreement ("SPA") triggering the offer;

- ✚ Volume weighted average price of shares acquired by the acquirer during 52 weeks preceding the public announcement (“PA”);
- ✚ Highest price paid for any acquisition by the acquirer during 26 weeks immediately preceding the PA;
- ✚ Volume weighted average market price for sixty trading days preceding the PA.

### **33. How is the offer price calculated in case shares are infrequently traded on the stock exchange?**

If the target company’s shares are infrequently traded then the open offer price for acquisition of shares under the minimum open offer shall be highest of the following:

- ✚ Highest negotiated price per share under the share purchase agreement (“SPA”) triggering the offer;
- ✚ Volume weighted average price of shares acquired by the acquirer during 52 weeks preceding the public announcement (“PA”);
- ✚ Highest price paid for any acquisition by the acquirer during 26 weeks immediately preceding the PA;
- ✚ The price determined by the acquirer and the manager to the open offer after taking into account valuation parameters including book value, comparable trading multiples, and such other parameters that are customary for valuation of shares of such companies.

It may be noted that the Board may at the expense of the acquirer, require valuation of shares by an independent merchant banker other than the manager to the offer or any independent chartered accountant in practice having a minimum experience of 10 years.

### **34. Will the promoter be entitled to non-compete or any other fees other than the offer price?**

As per the SAST Regulations, 2011, all shareholders will be given equitable treatment and no Promoter or shareholder can be paid any extra price, by whatever name it may be called.

### **35. Are there special provisions for determining the offer price in case of open offer arising out of indirect acquisition of a target company?**

Yes. Since indirect acquisitions involve acquiring the target company as a part of a larger business, SAST Regulations, 2011 have prescribed additional parameters to be taken into account for determination of the offer price. If the size of the target company exceeds certain thresholds as compared to the size of the entity or business being acquired then the acquirer is required to compute and disclose in the letter of offer, the per share value of the target company taken into account for the acquisition, along with the methodology. (Kindly refer to Regulation 5).

Further, in indirect acquisitions which are not in the nature of deemed direct acquisition, the offer price shall stand enhanced by an amount equal to a sum determined at the rate of 10% per annum for the period between the date on which primary acquisition was contracted and the date of Detailed Public Statement.

### **36. What is the difference between 'offer period' and 'tendering period'?**

The term 'offer period' pertains to the period starting from the date of the event triggering open offer till completion 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.

### **37. Who are eligible shareholders?**

All shareholders of the target company other than the acquirer, persons acting in concert with him and the parties to underlying agreement which triggered open offer including persons deemed to be acting in concert with such parties, irrespective of whether they are shareholders as on identified date or not.

### **38. What are the typical steps and corresponding timelines, in an open offer process?**

Under most scenarios (except in certain types of indirect acquisitions) on the day of the triggering event, the acquirer is required to make a Public Announcement to the stock exchanges where shares of Target Company are listed and to SEBI. Within 5 working days thereafter, the acquirer is required to publish a Detailed Public Statement (DPS) in newspapers and also submit a copy to SEBI, after creation of an escrow account.

Within 5 working days of publication DPS, the acquirer through the manager to the offer is required to file a draft letter of offer with SEBI for its observations. The letter

of offer is dispatched to the shareholders of the target company, as on the identified date, after duly incorporating the changes indicated by SEBI, if there are any.

The offer shall open not later than 12 working days from the date of receipt of SEBI's observations. The acquirer is required to issue an advertisement announcing the final schedule of the open offer, one working day before opening of the offer. The offer shall remain open for 10 working days from the date of opening of the offer. Within 10 working days after the closure of the offer, the acquirer shall make payments to the shareholders whose shares have been accepted. A post offer advertisement, giving details of the acquisitions, is required to be published by the acquirer within 5 working days of the completion of payments under the open offer.

### **39. What is 'identified date' in the context of SAST Regulations, 2011?**

Identified date means the date 10 working days prior to the commencement of the tendering period, for the purposes of determining the shareholders of the target company to whom the letter of offer along with the form of acceptance shall be sent.

### **40. What is the purpose of the escrow account in the open offer process?**

The acquirer is required to deposit some percentage of the offer price, in an escrow account before issuing a Detailed Public Statement. This serves as a security for performance of acquirer's obligations under the open offer.

### **41. At what point of time in the process does a Merchant Banker need to be appointed and what is its role in the open offer process?**

The Acquirer is required to appoint a Merchant Banker, registered with SEBI, as manager to the open offer before making the PA. The PA is required to be made through the said manager to the open offer.

The manager to the open offer has to exercise due diligence and ensure compliance with SAST Regulations, 2011. The manager to the open offer has to ensure that the contents of the PA, DPS, letter of offer and the post offer advertisement are true, fair and adequate in all material aspects and are in compliance with the requirements of SAST Regulations, 2011.

Further, the manager to the open offer has to ensure that the acquirer is able to implement the open offer and firm arrangements for funds through verifiable means have been made by the acquirer to meet the payment obligations under the open offer.

#### **42. What is a letter of offer? Does SEBI approve the draft Letter of Offer?**

The letter of offer is a document which is dispatched to all shareholders of the target company as on identified date. This is also made available on the website of SEBI.

Prior to dispatch of letter of offer to shareholders, a draft letter of offer is submitted to SEBI for observations. SEBI may give its comments on the draft letter of offer as expeditiously as possible, but not later than 15 working days of the receipt of the draft letter of offer. SEBI may also seek clarifications and additional information from the manager to the offer and in such a case the period for issuance of comments shall be extended to the fifth working day from the date of receipt of satisfactory reply to the clarifications or additional information sought.

Filing of draft Letter of Offer with SEBI should not in any way be deemed or construed to mean that the same has been cleared, vetted or approved by SEBI. The draft Letter of Offer is submitted to SEBI for the limited purpose of overseeing whether the disclosures contained therein are generally adequate and are in conformity with the Regulations. SEBI does not take any responsibility either for the truthfulness or correctness of any statement, financial soundness of acquirer, or of PACs, or of the Target Company, whose shares are proposed to be acquired or for the correctness of the statements made or opinions expressed in the Letter of Offer.

#### **43. How do I find the status of the draft letter of offer filed with SEBI?**

SEBI updates the processing status of draft letter of offers filed with it on its website on a periodic basis under the section “offer documents”.

#### **44. What are the disclosures required under the Public Announcement?**

Public Announcement contains minimum details about the offer, the transaction that triggered the open offer obligations, acquirer, selling shareholders (if any), offer price and mode of payment. SEBI has prescribed format of Public Announcement, which is available in the SEBI website.

#### **45. What are the disclosures required under the Detailed Public Statement?**

Detailed Public Statement contains disclosure in more detail about the acquirer/PACs, target company, financials of the acquirers/PACs/target company, the offer, terms & conditions of the offer, procedure for acceptance and settlement of the offer, escrow account etc. SEBI has prescribed the format for Detailed Public Statement. The same is available in the SEBI website.

#### **46. What are the disclosures required under the Letter of offer?**

Letter of offer contains details about the offer, background of Acquirers/PACS, financial statements of Acquirer/ PACs, escrow arrangement, background of the Target Company, financial statements of the target company, justification for offer price, financial arrangements, terms and conditions of the offer, procedure for acceptance and settlement of the offer. SEBI has prescribed the format for Letter of offer, which enumerates minimum disclosure requirements. The Manager to the offer/ acquirer is free to add any other disclosures which in his opinion are material for the shareholders. The format is available in the SEBI website.

#### **47. Is the financial disclosure standard as outlined in the Format for Detailed Public Statement (DPS) to the Shareholders of the Target Company (TC) in terms of Regulation 15(2) in point I(A) applicable to PACs too since the above clause refers just to the Acquirer ?**

Yes, as clearly indicated in the format, the details of financial disclosure are required to be given for the acquirer as well Persons acting in concert with Acquirers.

#### **48. If an acquirer enters into a SPA and triggers an open offer, when can the acquirer acquire shares proposed to be transferred under the SPA?**

The acquirer can acquire shares under the SPA only after payment in respect of shares accepted under the open offer is complete but not later than 26 weeks from the expiry of the offer period.

#### **49. What is the role of the target company in the open offer process?**

- ✚ Once a PA is made, the board of directors of the Target Company is expected to ensure that the business of the target company is conducted in the ordinary course. Alienation of material assets, material borrowings, issue of any authorized securities, announcement of a buyback offer etc. is not permitted, unless authorized by shareholders by way of a special resolution by postal ballot.
- ✚ The target company shall furnish to the acquirer within two working days from the identified date, a list of shareholders and a list of persons whose applications, if any, for registration of transfer of shares, in case of physical shares, are pending with the target company.

- ✚ After closure of the open offer, the target company is required to provide assistance to the acquirer in verification of the shares tendered for acceptance under the open offer, in case of physical shares.
- ✚ Upon receipt of the detailed public statement, the board of directors of the target company shall constitute a committee of independent directors to provide reasoned recommendations on such open offer, and the target company shall publish such recommendations and such committee shall be entitled to seek external professional advice at the expense of the target company. The recommendations of the Independent Directors are published in the same newspaper where the Detailed Public Statement is published by the acquirer and are published at least 2 working days before opening of the offer. The recommendation will also be sent to SEBI, Stock Exchanges and the Manager to the offer.

### 50. What is the manner in which the acquirer decides the acceptances from each shareholder?

The registrar to the open offer validates all the tenders in the open offer and creates a basis of acceptance in consultation with the manager to the open offer detailing validly and invalidly tendered shares received in the open offer.

In case, the valid shares tendered are less than the offer size, all the valid tendered shares are accepted. If the validly tendered shares in the open offer are more than the offer size, then the valid tenders are accepted on a proportionate basis. This is illustrated as below:

The company has a paid up share capital of Rs, 10,000/- (1000 shares of Rs. 10/- each) and shareholder A is holding 50 shares totaling to Rs. 500. In case an open offer is made for 26% of the share capital and the shares tendered are 300 which are in excess of the 26% shareholding, the shares will be accepted by the acquirer on a proportionate basis.

$$\text{No. of shares of A accepted} = \frac{\text{Total No. of shares offered in the open offer} \times \text{No. of shares tendered by A}}{\text{Total shares tendered in the Open offer by all investors}}$$

$$= 260 \times 50 / 300 = 43.33 \text{ shares} \sim 43 \text{ shares}$$

Shares which are invalid or are rejected due to the valid acceptances being more than the offer size are subsequently returned to the respective shareholders within 10 working days of the closure of the open offer.

### **51. What are the modes of payment under the open offer?**

Payment considerations by the acquirer under the open offer can be made by cash and / or by issue of equity shares and / or secured debt instruments (investment grade) and / or convertible debt instruments (convertible to equity shares) of acquirer (or PACs, if any) if such equity shares and secured debt instruments are listed.

The chosen mode of payment is required to be disclosed in the open offer document meant for shareholders of the target company.

### **52. Can an acquirer withdraw the open offer once made?**

An open offer once made cannot be withdrawn except in the following circumstances:

- ✚ Statutory approvals required for the open offer or for effecting the acquisitions attracting the obligation to make an open offer have been refused subject to such requirement for approvals having been specifically disclosed in the DPS and the letter of offer;
- ✚ Any condition stipulated in the SPA attracting the obligation to make the open offer is not met for reasons outside the reasonable control of the acquirer, subject to such conditions having been specifically disclosed in the DPS and the letter of offer;
- ✚ Sole acquirer being a natural person has died;
- ✚ Such circumstances which in the opinion of SEBI merit withdrawal of open offer.

### **53. If post open offer the shareholding of the acquirer goes beyond the maximum permissible non public shareholding limit, can the acquirer immediately make a delisting offer in terms of Delisting Regulations. ?**

No. The acquirer cannot launch a voluntary delisting offer in terms of Delisting Regulations of SEBI, unless a period of twelve months has elapsed from the date of the completion of the offer period.

### **54. I was not holding shares on the identified date but acquired shares subsequently. Am I eligible to participate in the open offer?**

Yes. Shareholders who acquire shares after the identified date are eligible to participate in the open offer provided they submit their valid tenders before the end of the tendering period.

You may send a request to the registrar to the open offer or manager to the open offer for obtaining the letter of offer including the form of acceptance.

Alternately, you can make an application on plain paper giving certain specific details. Please refer to the Detailed Public Statement of the acquirer for instructions in this regard.

**55. How will shareholder of the target company know that an open offer is made by the acquirer?**

SAST Regulations, 2011 provides for wide dissemination of the information related to an open offer. The DPS and pre-offer announcements before commencement of the tendering period are published in national newspapers as well as in one newspaper of the regional language of the place where registered office of the target company is located.

The final letter of offer is required to be dispatched to all shareholders whose names appear as shareholders as on the identified date. Further, the PA, the DPS and other announcements are also filed with the stock exchange and SEBI, and are uploaded on their respective websites for information dissemination.

**56. For how many days is an open offer required to be kept open?**

The offer is required to be kept open for ten working days.

**57. How do I get the Letter of Offer and tender my shares under the open offer?**

The letter of offer along with form of acceptance is sent to all eligible shareholders of the target company, who are shareholders of the target company as on the identified date. The eligible shareholder has to fill in the form of acceptance sent along the letter of offer and submit the same to the registrar to the open offer or the manager to the open offer. In case the shareholder has not received the letter of offer, such shareholder can request the registrar to the open offer or manager to the open offer for the same. Further, the letter of offer along with the form of acceptance will also be available on SEBI's website.

**58. What are the documents that the shareholders should go through before tendering their shares pursuant to the open offer?**

Before tendering their shares pursuant to the open offer, the shareholders are advised to go through the Detailed Public Statement, Letter of offer and also the recommendations and observations of the Committee of Independent Directors on the offer. It may be noted that all the aforesaid documents are available on SEBI website. Further the recommendations of the Independent Directors are published in the same newspaper where the Detailed Public Statement is published by the acquirer and are published at least 2 working days before opening of the offer.

**59. Do I need to convert my physical shares into demat before tendering in the open offer?**

Shareholders need not convert their physical shares into demat form before tendering shares in the open offer. Physical shares can be tendered in an open offer along with the form of acceptance and such documents as mentioned in the section 'Procedure for acceptance and settlement of the Offer' in the letter of offer.

**60. Can I withdraw or revise my tender?**

No. Once a shareholder has tendered his shares in the open offer made by the acquirer, he/ she cannot withdraw/ revise his/her request.

**61. Can I tender my shares after the closure of the tendering period?**

No. Your acceptance for tendering shares in the offer should reach the collection center on or before the last date of tendering period.

**62. I hold shares which are partly paid-up. Can I tender these shares in the open offer?**

Yes, partly paid-up shares can be tendered in the open offer. The letter of offer contains the offer price of the partly paid up share, which can be different from the offer price for fully paid up share.

**63. When will the shareholder receive (i) intimation about acceptance/rejection of his shares tendered under the open offer or (ii) consideration for shares accepted by the acquirer?**

The shareholder shall receive (i) intimation about acceptance/ rejection of his shares tendered under the open offer or (ii) consideration for shares accepted by the acquirer, within 10 working days of the closure of the open offer.

#### **64. What happens if regulatory approvals are delayed?**

If the regulatory approvals required for completing the open offer and acquisition are delayed, the acquirer may be unable to make the payment within 10 working days of closure of open offer. In such an event, SEBI may grant extension of time for making payments, subject to the acquirer agreeing to pay interest to the shareholders of the target company for the delay at such rate as may be specified by SEBI.

If statutory approvals are required for some but not all shareholders, the acquirer can make payment to such shareholders in respect of whom no statutory approvals are required in order to complete the open offer.

#### **65. If the payment is delayed beyond 10 working days of the closure of the tendering period (closure of open offer), will the acquirer be required to compensate the public shareholders who have participated under the offer?**

Acquirer is required to complete the payment of consideration to shareholders who have accepted the offer within 10 working days from the date of closure of the open offer. If there is a delay in payment of consideration (not due to non receipt of statutory approvals), it would be treated as a violation of the SAST Regulations, 2011 and SEBI may issue direction to such acquirer including direction to pay interest.

#### **66. Whom do I approach if I have any grievance in respect of the open offer, delay in receipt of consideration/ unaccepted shares etc.?**

The shareholder of the target company should approach the manager to the open offer or the registrar to the open offer for any grievance. However, if the shareholder is not satisfied or does not receive a satisfactory response to his / her grievance, he may approach SEBI through online SEBI Complaint Redressal System (SCORES) at [www.scores.gov.in](http://www.scores.gov.in).

In case, during the open offer or before the starting of the open offer, any investor has any comment/ complaint about the disclosures given by the acquirer in Public Announcement or in Detailed Public statement or in draft Letter of offer information, he can write to Corporate Finance Department, Division of Corporate Restructuring at SEBI Bhavan, Plot No.C4-A, 'G' Block, Bandra Kurla Complex,

Bandra (E), Mumbai 400 051. Please note that PA/DPS, Draft Letter of offer are also available on website of SEBI.

### **67. Where can an investor get more information related to the SAST Regulations, 2011?**

An investor can get more information related to the SAST Regulations, 2011 from the SEBI website and from the Investors website of SEBI.

### **68. What are the disclosures (other than the ones given in PA/ DPS/ Letter of offer for the open offer) required to be made in terms of SAST Regulations, 2011, by whom, when and to whom?**

#### **Event based Disclosures**

- ✚ Any person, who along with PACs crosses the threshold limit of 5% of shares or voting rights, has to disclose his aggregate shareholding and voting rights to the Target Company at its registered office and to every Stock Exchange where the shares of the Target Company are listed within 2 working days of acquisition as per the format specified by SEBI.
- ✚ Any person who holds 5% or more of shares or Voting rights of the target company and who acquires or sells shares representing 2% or more of the voting rights, shall disclose details of such acquisitions/sales to the Target company at its registered office and to every Stock Exchanges where the shares of the Target Company are listed within 2 working days of such transaction, as per the format specified by SEBI.

Continual disclosures of aggregate shareholding shall be made within 7 days of financial year ending on March 31 to the target company at its registered office and every stock exchange where the shares of the Target Company are listed by:

- ✚ Shareholders (along with PACs, if any) holding shares or voting rights entitling them to exercise 25% or more of the voting rights in the target company.
- ✚ Promoter (along with PACs, if any) of the target company irrespective of their percentage of holding.

#### **Disclosures of encumbered shares**

The promoter (along with PACs) of the target company shall disclose details of shares encumbered by them or any invocation or release of encumbrance of shares

held by them to the target company at its registered office and every stock exchange where shares of the target company are listed, within 7 working days of such event.

## 69. How to compute trigger limits specified above for disclosures.

The word “shares” for disclosure purposes include convertible securities also. Hence for computation of trigger limits for disclosures given above, percentage w.r.t shares shall be computed taking in to account total number of equity shares and convertibles and the percentage w.r.t voting rights shall be computed after considering voting rights on equity shares and other securities (like GDRs, if such GDRs carry voting rights).

An illustration is provided below for the calculation of trigger.

### Total Shares/ voting capital of the company

- ✚ Company A has 100 equity shares, 50 partly convertible Debentures (PCDs) and 10 GDRs. 1 GDR carries 1 voting right.
- ✚ Total shares of company A=  $100+50+10 = 160$
- ✚ Total voting capital of Company A=  $100+10=110$

### Persons B’s holding of shares and voting rights

- ✚ Person B has 8 equity shares, 7 PCDs and 1 GDR.
- ✚ Person B has  $8+7+1 =16$  shares (shares for disclosure purpose includes convertible securities)
- ✚ Person B’s holding in terms of shares=  $16/160=10\%$  of shares
- ✚ Person B’s voting rights=  $8+1= 9$  voting rights
- ✚ Person B’s holding in terms of voting rights =  $9/110=8\%$  of voting rights

Since person B is holding more than 5% of shares or voting rights, he is required to make disclosures for any acquisition/ sale of 2% or more of shares or voting rights.

### Acquisition by Person B

#### Scenario I

- ✚ Person B acquires 2 equity shares and 2 PCDs.
- ✚ In terms of shares, person B has acquired  $4/160=2.5\%$  of shares
- ✚ In terms of voting rights, person B has acquired  $2/110= 1.8\%$  of voting rights

Since acquisition done by person B represents 2 % or more of shares, the disclosure obligation as stated at Reply of Q-13(b) is triggered.

## Scenario II

Person B acquires 20 PCDs

In terms of shares, person B has acquired 20 shares, i.e. 20/160 i.e. 12.5% shares.

In terms of voting rights, he has not acquired a single voting right i.e. 0 voting right

However, since acquisition done by person B represents 2% or more of shares (though no voting rights), the disclosure obligations are triggered.

### **70. Whether promoters are required to disclose details of arrangements which place encumbrances on shares like lock-in stipulations, non- disposal undertaking, right of first refusal etc?**

As per Regulation 28(3), the term “encumbrance” shall include a pledge, lien or any such transaction, by whatever name called.” The promoters have to understand the nature of encumbrance and those encumbrances which entail a risk of the shares held by promoters being appropriated or sold by a third party, directly or indirectly, are required to be disclosed to the stock exchanges in terms of the Takeover Regulations, 2011.

### **71. If the shares of the holding company of a target company are pledged, whether the same would be covered under disclosures of “Encumbered shares” by promoters of the Target Company?**

Yes, details of such pledge would be covered under disclosure of “encumbrance” as required under the Regulations

### **72 Whether furnishing of a Non Disposal Undertaking (NDU) by promoters to the lenders would be covered under disclosures of “Encumbered shares” by promoters of the Target Company?**

No, mere NDU by promoters will not be covered under the scope of disclosures of “Encumbrance” under the Regulations. However if NDUs are given along with side-agreements which may entail the risk of shares held by the promoters being appropriated or sold by a third party, directly or indirectly, the same needs to be disclosed.

### **73. What happens if the Acquirer / Target Company / Merchant Banker or the Manager to the open offer violates the provisions of the SAST Regulations, 2011?**

SAST Regulations, 2011 have laid down the general obligations of acquirer, Target Company and the manager to the open offer. For failure to carry out these obligations as well as for failure / non-compliance of other provisions of these Regulations, penalties have been laid down there under. These penalties include:

- ✚ directing the divestment of shares acquired;
- ✚ directing the transfer of the shares / proceeds of a directed sale of shares to the investor protection fund;
- ✚ directing the target company / any depository not to give effect to any transfer of shares;
- ✚ directing the acquirer not to exercise any voting or other rights attached to shares acquired;
- ✚ debarring person(s) from accessing the capital market or dealing in securities;
- ✚ directing the acquirer to make an open offer at an offer price determined by SEBI in accordance with the Regulations;
- ✚ directing the acquirer not to cause, and the target company not to effect, any disposal of assets of the target company or any of its subsidiaries unless mentioned in the letter of offer;
- ✚ directing the acquirer to make an offer and pay interest on the offer price for having failed to make an offer or has delayed an open offer;
- ✚ directing the acquirer not to make an open offer or enter into a transaction that would trigger an open offer, if the acquirer has failed to make payment of the open offer consideration;
- ✚ directing the acquirer to pay interest of for delayed payment of the open offer consideration;
- ✚ directing any person to cease and desist from exercising control acquired over any target company;
- ✚ directing divestiture of such number of shares as would result in the shareholding of an acquirer and persons acting in concert with him being limited to the maximum permissible non-public shareholding limit or below.

**74. What is the procedure for a company or an intermediary in case it needs clarification or an interpretation of some provisions of SAST Regulations, 2011?**

For seeking interpretation of a particular provision or a no action letter pertaining to a particular transaction, the applicant is needed to apply under the provisions of SEBI (informal Guidance) Scheme, 2003.

## 75. Discuss in detail the Penal provision under SEBI (SAST Regulations), 2011?

### Penal Provisions

#### ✚ Regulation 32: Power of the Board to issue direction

- ✚ Directing the Acquirer to divest the shares acquired in violation of the regulations and directing appointment of Merchant Banker for such divestiture;
- ✚ Directing the Acquirer to divest the shares acquired in violation of the regulations and directing appointment of Merchant Banker for such divestiture;
- ✚ Transfer the shares or any proceeds of a directed sale of shares acquired in violation of the regulations to Investor Protection and Education Fund;
- ✚ Directing not to exercise any voting or other rights attached to shares acquired in violation of the regulations;
- ✚ Debarring any person who has violated these regulations from accessing the capital market or dealing in securities;
- ✚ Directing the acquirer to make an open offer at an offer price determined by the Board;
- ✚ Not to dispose off the assets of the Target Company or any of its subsidiaries contrary to the contents of letter of offer;
- ✚ To cease and desist from exercising control acquired over any Target Company;
- ✚ Directing divestiture of such number of shares as would result in the shareholding of an acquirer and persons acting in concert with him being limited to the maximum permissible non-public shareholding;
- ✚ Initiate enquiry proceedings against the intermediary registered for failure to carry out the requirement of these regulations.
- ✚ **Power to impose penalties and initiate adjudication proceedings**<sup>15H</sup>. **Penalty for non-disclosure of acquisition of shares and takeovers.**

If any person, who is required under this Act or any rules or regulations made there under, fails to,-

- ✚ disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or
- ✚ make a public announcement to acquire shares at a minimum price;
- ✚ make a public offer by sending letter of offer to the shareholders of the concerned iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer

he shall be liable to a penalty **twenty-five crore rupees or three times the amount of profits made out of such failure**, whichever is higher.

#### ✚ Criminal prosecution under section 24 of the SEBI Act

In addition to any award of penalty by the Adjudicating Officer under the Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations thereof, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine which may extend to twenty-five crore rupees or with both. Further, for the non compliance of the directions of the Adjudicating Officer, the person shall be punishable with imprisonment for a term which shall **not be less than one month, but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.**

#### ✚ Directions under section 11B of the SEBI Act

The Board may, in the interest of securities market, give directions, without prejudice to its right to prosecute under section 24 of the SEBI Act including:

- ✚ Directing the person concerned not to further deal in securities.
- ✚ Prohibiting disposal of securities acquired in violation of these regulations.

- ✚ Direct sale of securities acquired in violation of these regulation

#### ✚ **Directions under section 11(4) of the Act**

The authority may give the directions to the person in default & the directions may include the following:

- ✚ Suspend the trading of any security in a recognised stock exchange;
- ✚ Restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
- ✚ Suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;
- ✚ Impound and retain the proceeds or securities in respect of any transaction which is under investigation
- ✚ Attach bank accounts of persons involved in violation for a period not exceeding one month.
- ✚ Direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation.

#### ✚ **Cease and desist order in proceedings under section 11D of the Act**

A Cease and desist order can also be passed under section 11D of the SEBI Act from committing or causing any violation of the SEBI Takeover Regulations.

#### ✚ **Adjudication proceedings under section 15HB of the Act**

A residual clause has been provided in the Act, wherein whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board there under for which no separate penalty has been provided, he shall be liable to a penalty which may extend to one crore rupees.