

LISTINGS, TAKEOVERS & DELISTING

NATIONAL JUDICIAL ACADEMY

BHOPAL

August 27, 2015

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Listing Agreement

- **Once a bilateral contract, now elevated to statutory reference**
 - no specific sanction for breach other than delisting
 - delisting for breach hurts investors
 - SCRA amended to bring reference to listing agreement
- **Maintenance of minimum public shareholding**
 - at least 25% has to be held by the public
- **“Quarter se Quarter Tak” - at times, a bigger *qayamat***
 - short-term financial reporting leads to volatile judgement
- **Continuous disclosures of material developments**
- **Takeover Regulations, Insider Trading & Delisting Regulations**

Takeover Regulations

- **Obligation to make an open offer to buy shares from the public**
 - on holding reaching 25% or more - Reg. 3(1)
 - on holding crossing 5% in a financial year up to maximum non-public limit - Reg. 3(2)
 - available to holders of 25% or more
 - 5% computation is on a gross basis
 - on change of control regardless of acquisition of shares - Reg. 4
- **Indirect Acquisition - ability to exercise or direct exercise of voting rights held - Reg. 5**
 - Every indirect acquisition beyond the thresholds will trigger an open offer
 - Certain indirect acquisition treated as direct acquisitions (80% test)
 - In certain other cases, additional disclosures mandated (15% test)

Offer Terms

- **Minimum offer size regulated**
 - offer at least to buy 26% of the voting capital
 - voluntary offer with minimum size of 10%
 - capped at maximum permissible limit - Reg. 6
- **Minimum offer price regulated**
 - if shares are “frequently traded” recent market movements factored
 - if trading turnover during the preceding 12 calendar months is at least 10% of all shares
 - minimum offer price is the highest of:
 - Deal price
 - VWAP paid in the 52 weeks prior to PA
 - Highest price paid in the 26 weeks prior to PA
 - VWAP for 60 trading days prior to the PA if shares are frequently traded
- **Infrequently traded shares and absence of price values, leads to determination by acquirer and merchant banker**
 - SEBI may commission independent valuation

Offer Price

- Share acquisition price through whatever means paid to be part of the deal price
 - Structures like non-compete fees and consultancy fees would come under closer scrutiny
- Shareholders whose shares are accepted in an offer to be compensated for acquisitions at a higher price made in the next 26 weeks
- Price parameters denominated in foreign currency to be converted at exchange rates prevailing on the date preceding the PA
- Offer price to get adjusted for corporate actions

Exemptions

- Differentiated between takeovers and creeping acquisitions
- Acquisitions between “qualifying parties”
 - Immediate relatives, promoters, shareholders who are PAC, company - subsidiaries - holding companies subject to common control
 - Three year holding
 - Not more than 25% premium to 60-trading day VWAP for frequently traded shares or valuation parameters for infrequently traded shares
 - Compliance with disclosure requirements
- Acquisition of voting rights arising out of preference shares

Exemptions

- **Mergers and Schemes of Arrangement**
 - involving Target Company
 - not involving Target Company
 - components of cash and cash equivalents to be less than 25% of the consideration paid under the scheme
 - persons directly or indirectly holding 33% of the voting rights of the combined entity to be the same persons who held entire voting rights prior to the scheme
- **Buy-back-induced increases exempted subject to conditions**
 - Increase in shareholding not to result in change of control
 - Acquirer should not have voted in favour of the shareholders and board resolutions for the buy-back
 - Shareholder may decrease shareholding within 90 days to avoid an open offer obligation

Offer Process

- An immediate short PA
- Specific timing provisions for specific triggering events
- Detailed public statement
- Letter of Offer
- Timelines linked to SEBI comments
 - deemed approval by SEBI with timeline
- Transaction timeline: 57 Business Days
- ‘Tendering Period’ concept introduced
- Post-offer PA introduced

Other Aspects

- Open offer may be conditional and may be withdrawn if conditions are not met
 - if transaction is not acted upon, offer automatically withdrawn
- Target and subsidiaries to conduct business in ordinary course consistent with past practice
- Board to constitute independent committee
 - mandatory for committee to give recommendations
- Completion of acquisition and appointment of directors
 - provision of full consideration in cash in escrow
 - fulfillment of conditions subject to which offer has been made before appointment of directors
 - no appointment of directors pending competing offers

Other Aspects

- Acquirer cannot appoint directors during the pendency of a conditional offer
- Competing offers to be made within specified timelines
- Acquisitions triggering an offer to be completed within 26 weeks from the expiry of the offer period
- Alienation of material assets not contemplated in offer documents to require a special resolution for two years

Disclosure Obligations

- Reporting of acquisitions that cross 5%
- Reporting of every purchase and sale of 2% or more (where holding > 5%)
- Encumbrances to be reported
- Continuing disclosures by every person holding more than 25% and by promoters
- Equity linked securities to be treated as shares for disclosure obligations

Penalties for Violation

- Failure to make open offer, disclose holding, paying consideration attracts penalty of higher of:
 - Rs. 250 million; or
 - three times the profits made out of such failure
- Directions under Takeover Code:
 - Forced open offer with interest for delay
 - Disgorging of securities / proceeds
 - Cancellation of allotment
 - Debarring access to capital market / dealing in securities
 - Fixing offer price for post-facto open offer
 - Forcible disinvestment

Delisting Regulations

- **Delisting Regulations govern taking a company away from the stock exchange**
 - Voluntary Delisting
 - Compulsory Delisting
- **Shareholders determine exit price**
 - price at which maximum shares are tendered; AND
 - shares tendered take the holding to 90%
- **“Reverse Book Building” electronically**
 - exit price can be rejected
- **Consideration may be paid only in cash**
- **Escrow of 100% of estimated purchase price**

Q&A

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