

**SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) (THIRD AMENDMENT) REGULATIONS, 2021**

<b>Regulation</b>	<b>Erstwhile</b>	<b>New</b>	<b>Impact</b>
2	-	<p><b>New definition has been introduced</b></p> <p>—(fa) <i>Delisting Regulations means the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021;</i></p>	New definition of Delisting Regulations has been inserted
5A	<p>“Delisting offer.</p> <p>5A. (1) Notwithstanding anything contained in these regulations, in the event the acquirer makes a public announcement of an open offer for acquiring shares of a target company in terms of regulations 3, 4 or 5, he may delist the company in accordance with provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009:</p> <p>Provided that the acquirer shall have declared upfront his intention to so delist at the time of making the detailed public statement and a subsequent declaration of delisting for the purpose of the offer proposed to be made under sub regulation (1) will not suffice.</p>	<p><b>Entire Regulation 5A has been substituted:</b></p> <p><b>Delisting Offer.</b></p> <p><i>5A. (1) Notwithstanding anything contained in these regulations and the Delisting Regulations, in the event the acquirer makes a public announcement of an open offer for acquiring shares or voting rights or control of a target company in terms of sub-regulation (1) of regulation 3, regulation 4 or regulation 5, the acquirer may seek the delisting of the target company by making a delisting offer in accordance with this regulation: Provided that the acquirer shall have declared his intention to so delist the target company at the time</i></p>	In order to widen the scope of delisting, Regulation 5A has been entirely amended.

	<p>(2) Where an offer made under sub-regulation (1) is not successful,-</p> <p>(i) on account of non-receipt of prior approval of shareholders in terms of clause (b) of sub-regulation (1) of regulation 8 of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; or</p> <p>(ii) in terms of regulation 17 of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; or</p> <p>(iii) on account of the acquirer rejecting the discovered price determined by the book building process in terms of sub-regulation (1) of regulation 16 of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009,</p> <p>the acquirer shall make an announcement within two working days in respect of such failure in all the newspapers in which the detailed public statement was made and shall comply with all applicable provisions of these regulations.</p>	<p>of making such public announcement of an open offer as well as at the time of making the detailed public statement. A subsequent declaration of delisting for the purpose of the delisting offer proposed to be made under sub-regulation (1) shall not suffice: Provided further that if the open offer is for an indirect acquisition that is not a deemed direct acquisition under sub-regulation (2) of regulation 5, the declaration of the intent to so delist shall be made initially only in the detailed public statement.</p> <p><i>Explanation 1:</i> The acquirer shall not, in such target company during the preceding two years from the date of the public announcement made under this regulation, be:</p> <p>(i) a promoter / promoter group / person(s) in control, or</p> <p>(ii) directly / indirectly associated with the promoter or any person(s) in control, or</p> <p>(iii) a person(s) holding more than twenty-five percent shares or voting rights.</p>	
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	<p>(3) In the event of failure of the delisting offer made under sub-regulation (1), the open offer obligations shall be fulfilled by the acquirer in the following manner:</p> <p>(i) the acquirer, through the manager to the open offer, shall within five working days from the date of the announcement under sub-regulation (2), file with the Board, a draft of the letter of offer as specified in sub-regulation (1) of regulation 16; and</p> <p>(ii) shall comply with all other applicable provisions of these regulations.</p> <p>Provided that the offer price shall stand enhanced by an amount equal to a sum determined at the rate of ten per cent per annum for the period between the scheduled date of payment of consideration to the shareholders and the actual date of payment of consideration to the shareholders.</p> <p>Explanation: For the purpose of this sub-regulation, scheduled date shall be the date on which the payment of consideration ought to have been made to the</p>	<p><i>Explanation 2:</i> The acquirer shall not acquire joint control along with an existing promoter / person in control of the company.</p> <p>(2) The delisting offer obligations shall be fulfilled by the acquirer in the following manner:</p> <p>(a) the public announcement, the detailed public statement and the letter of offer shall mention the open offer price determined in accordance with regulation 8 of these regulations and the indicative price for delisting:</p> <p>Provided that if the open offer is for an indirect acquisition that is not a deemed direct acquisition under sub-regulation (2) of regulation 5, the open offer price and indicative price shall be notified by the acquirer at the time of making the detailed public statement and in the letter of offer:</p> <p>Provided further that the indicative price shall include a suitable premium reflecting the price that the acquirer is willing to pay for the delisting offer with full disclosures of the rationale</p>	
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	<p>shareholders in terms of the timelines in these regulations.</p> <p>(4) Where a competing offer is made in terms of sub-regulation (1) of regulation 20,-</p> <p>(a) the acquirer shall not be entitled to delist the company;</p> <p>(b) the acquirer shall not be liable to pay interest to the shareholders on account of delay due to competing offer;</p> <p>(c) the acquirer shall comply with all the applicable provisions of these regulations and make an announcement in this regard, within two working days from the date of public announcement made in terms of sub-regulation (1) of regulation 20, in all the newspapers in which the detailed public statement was made.</p> <p>(5) Shareholders who have tendered shares in acceptance of the offer made under sub-regulation (1), shall be entitled to withdraw such shares tendered, within 10 working days from the date of the announcement under sub-regulation (2) .</p> <p>(6) Shareholders who have not tendered their shares in acceptance</p>	<p>and justification for the indicative price so determined that can also be revised upwards by the acquirer before the start of the tendering period which shall be duly disclosed to the shareholders.</p> <p><i>Explanation:</i> Indicative price shall be in accordance with clause (o) of sub-regulation (1) of regulation 2 of the Delisting Regulations and shall not be less than the book value of the company as computed in accordance with the Explanation to sub-regulation (5) of regulation 22 of the Delisting Regulations.</p> <p>(b) in case the response to the offer leads to the delisting threshold as provided under regulation 21 of the Delisting Regulations :</p> <p>(i) being met, all shareholders who tender their shares shall be paid the indicative price;</p> <p>(ii) not being met, all shareholders who tender their shares shall be paid the open offer price.</p> <p>(3) Where a delisting offer made under sub-regulation (1) is not successful:</p>	
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	<p>of the offer made under sub-regulation (1) shall be entitled to tender their shares in acceptance of the offer made under these regulations.”</p>	<p>(a) on account of the non-receipt of the prior approval of shareholders in terms of regulation 11 of the Delisting Regulations; or (b) on account of non-receipt of the prior in-principle approval of the relevant stock exchange in terms of regulation 12 of the Delisting Regulations; or (c) the threshold as specified under Regulation 21 of the Delisting Regulations is not achieved; the acquirer shall, within two working days in respect of such failure, make an announcement in all the newspapers in which the detailed public statement was made and comply with all the applicable provisions of these regulations in relation to completing of the open offer. (4) Where a competing offer is made in terms of sub-regulation (1) of regulation 20 of these regulations: (a) the acquirer shall not be entitled to delist the target company; (b) the acquirer shall not be liable to pay interest to the shareholders on account of delay due to the competing offer; and</p>	
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		<p>(c) the acquirer shall comply with all the applicable provisions of these regulations and make an announcement in this regard, within two working days from the date of public announcement made in terms of sub-regulation (1) of regulation 20, in all the newspapers where the detailed public statement was made.</p> <p>(5) The shareholders who have tendered shares in acceptance of the offer made under subregulation (1), shall be entitled to withdraw such shares tendered, within five working days from the date of the announcement under sub-regulation (3).</p> <p>(6) Where the target company fails to get delisted pursuant to a delisting offer under sub-regulation (1), but which results in the shareholding of the acquirer exceeding the maximum permissible nonpublic shareholding threshold:</p> <p>(a) the acquirer may undertake a further attempt to delist the target company in accordance with the Delisting Regulations during the period of twelve months from the date of completion of</p>	
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		<p>the open offer, subject to the acquirer continuing to exceed the maximum permissible nonpublic shareholding in the target company.</p> <p>(b) such further delisting attempt shall be successful subject to the following conditions:</p> <p>(i) the delisting threshold as provided under regulation 21 of the Delisting Regulations is met; and</p> <p>(ii) fifty percent of the residual public shareholding is acquired.</p> <p>(c) upon failure of the further delisting attempt, the acquirer shall ensure compliance of the minimum public shareholding requirement of the target company under the Securities Contract (Regulation) Rules, 1957 within a period of twelve months from the end of the period referred to at clause (a).</p> <p>(d) the floor price for a further delisting attempt as referred to at clause (a) shall be higher of the following:</p> <p>(i) the indicative price offered under the first delisting attempt;</p>	
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		<p>(ii) the floor price determined under the Delisting Regulations as on the relevant date of the subsequent attempt; and (iii) the book value of the company as computed based on the method stated in explanation to clause (a) under sub-regulation 2. (7) While undertaking delisting for the first or subsequent attempt, all the provisions of the Delisting Regulations shall mutatis-mutandis be applicable, save as otherwise provided in this regulation.</p>	
7 (4)	<p>(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.</p>	<p><b>Two new provisos have been inserted</b>  (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 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.</p>	<p>Two provisos have been inserted after sub-regulation 4. Conditions as to retention of listing of target company have been imposed. Also a the Board Resolution and shareholder resolution shall be appropriately worded, so as to include the effective date of allocation/allotment and the quantum thereof in case of preferential allotment pursuant to a Share Subscription Agreement which may trigger an open offer.  Also restrictions have been introduced as to who can be acquirer as per second proviso.</p>



		<p><b>Provided</b> that if the open offer has been made by an acquirer under sub-regulation (1) of regulation 3, regulation 4 or regulation 5 and the acquirer has stated upfront his intention to retain the listing of the target company in the public announcement and the detailed public statement issued pursuant to an open offer in accordance with these regulations, the acquirer may alternatively undertake a proportionate reduction of the shares or voting rights to be acquired pursuant to the underlying agreement for acquisition/ subscription of shares or voting rights and the purchase of shares so tendered, upon the completion of the open offer process such that the resulting shareholding of the acquirer in the target company does not exceed the maximum permissible non-public shareholding prescribed under the Securities Contract (Regulation) Rules, 1957:</p> <p><b>Provided</b> further that in case of a preferential allotment pursuant to a Share Subscription Agreement which may trigger an open offer as envisaged in the above proviso, the Board Resolution and shareholder resolution</p>	
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		<p>shall be appropriately worded, so as to include the effective date of allocation/allotment and the quantum thereof.</p> <p>Notwithstanding anything contained in regulation 170 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, in case of undertaking a scale down of subscription of shares or voting rights from the agreement, the period of fifteen days for allotment of shares shall be counted from the date of the closure of the tendering period for the open offer.</p> <p><i>Explanation 1:</i> The acquirer who is undertaking a scale down shall not, in such target company during the preceding two years from the date of the public announcement, be:</p> <ul style="list-style-type: none"><li>(i) a promoter / promoter group / person(s) in control, or</li><li>(ii) directly / indirectly associated with the promoter or any person(s) in control, or</li><li>(iii) a person(s) holding more than twenty-five percent shares or voting rights.</li></ul>	
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		<i>Explanation 2: The acquirer who is undertaking a scale down shall not acquire joint control along with an existing promoter / person in control of the company.</i>	
7(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.	<b>Sub-Regulation 5 has been substituted.</b>  Subject to regulation 5A, 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 <b>Delisting Regulations</b> , unless a period of twelve months has elapsed from the date of the completion of the offer period.	The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 have been replaced with Delisting Regulations.
8 (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	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:	The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 have been replaced with Delisting Regulations.

	<p>sixty days from the date of such acquisition:</p> <p><b>Provided</b> 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.</p>	<p><b>Provided</b> that this provision shall not be applicable to acquisitions under another open offer under these regulations or pursuant to the <b>Delisting Regulations</b>, 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.</p>	
10 (1)(f)	acquisition pursuant to the provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009	acquisition pursuant to the provisions of the <b>Delisting Regulations</b>	The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 have been replaced with Delisting Regulations.
15(1)(e)	the offer price, and mode of payment of consideration	the offer price, and mode of payment of consideration <del>and</del>	As a new clause (g) is inserted after (f), the word “and” has been omitted.
15(1)(f)	offer size, and conditions as to minimum level of acceptances, if any and	offer size, and conditions as to minimum level of acceptances, if any <b>and</b>	As a new clause (g) is inserted after (f), the word “and” has been inserted.
15(1)(g)		<p><b>New clause (g) has been inserted</b></p> <p>—(g) intention of the acquirer to either delist the target company or retain the listing of the target company. In case of</p>	

		<p>proposed delisting under regulation 5A, the proposed open offer price and indicative price as required under regulation 5A shall be disclosed along with an explanation setting out the rationale and basis for justifying the indicative price.</p>	
22(1)	<p>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:</p> <p>“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.”</p> <p><b>Provided further</b> that in case of a delisting offer made under regulation 5A, the acquirer shall</p>	<p>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:</p> <p>Provided that in case of an offer made under sub-regulation (1) of regulation 20 of these regulations, pursuant to a preferential allotment, the offer shall be completed within the period as provided under sub-regulation (1) of <i>regulation 170</i> of the Securities and Exchange Board of India (Issue of Capital and Disclosure requirements) Regulations, 2018, subject to the non-obstante clause in sub-regulation (4) of regulation 7 of these regulations.</p>	<p>Now the offer period shall be as per Regulation 170 of Securities and Exchange Board of India (Issue of Capital and Disclosure requirements) Regulations, 2018 instead of Regulation 74 of Securities and Exchange Board of India (Issue of Capital and Disclosure) Regulations, 2009</p>

	<p>complete the acquisition of shares attracting the obligation to make an offer for acquiring shares in terms of sub-regulation (1) of regulation 3, regulation 4 or regulation 5, only after making the public announcement regarding the success of the delisting proposal made in terms of 81[sub-regulation (4) of regulation 17 of the Delisting Regulations</p>	<p><b>Provided further</b> that in case of a delisting offer made under regulation 5A, the acquirer shall complete the acquisition of shares attracting the obligation to make an offer for acquiring shares in terms of sub-regulation (1) of regulation 3, regulation 4 or regulation 5, only after making the public announcement regarding the success of the delisting proposal made in terms of sub-regulation (4) of regulation 17 of the Delisting Regulations</p>	
22(2)	<p>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 the entire 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.</p>	<p><b>A new proviso has been inserted</b></p> <p>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 the entire 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.</p>	<p>Here a new proviso has been inserted which states that in case of proportionate reduction of the shares or voting rights to be acquired, the acquirer shall undertake the completion of the scaled down acquisition of shares or voting rights in the target company.</p>

		Provided that in case of proportionate reduction of the shares or voting rights to be acquired in accordance with the relevant provision under sub-regulation (4) of regulation 7, the acquirer shall undertake the completion of the scaled down acquisition of shares or voting rights in the target company.	
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