

**SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL
ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011**

Gist of: Acquisition of Shares and Disclosure Requirement

SUBSTANTIAL ACQUISITION OF SHARES, VOTING RIGHTS OR CONTROL

ACQUISITION: Acquisition means directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over a target company.

1. Under Regulation 3(1) **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 twenty-five per cent 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.
2. Under Regulation 3(2) 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 twenty-five per cent 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 five per cent 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.

Exemptions:

1. The following acquisitions shall be exempt from the obligation to make an open offer subject to fulfillment of the conditions stipulated therefor,—
 - (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:

Provided that for purposes of availing of the exemption under this clause,—

(i) 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

(ii) the transferor and the transferee shall have complied with applicable disclosure requirements set out in Chapter V.

(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
- (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
- (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
- (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
- (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) a Scheduled Commercial Bank, acting as an escrow agent; and
- (viii) 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.

(d) acquisition pursuant to a scheme,—

(i) made under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985

(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,

(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

(e) acquisition pursuant to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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 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.

(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 ninety days from the date on which the voting rights so increase.

(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 fulfillment 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.

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

(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;

(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;

(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.

(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.

(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.

(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.

8. The Board may for reasons recorded in writing, grant exemption from the obligation to make an open offer and 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.

(a) For seeking exemption as above, the acquirer shall, and for seeking relaxation 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.

(b) The acquirer or the target company, as the case may be, shall along with the application **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.

(c) 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.

DISCLOSURES OF SHAREHOLDING

The disclosures requirements are provided under Chapter V of the SEBI(Substantial Acquisition of Shares and Takeover) Regulations, 2011.

Regulations **28 to 31** deals with the disclosure of shareholding and voting rights requirements.

Under this Chapter, the acquisition and holding of any **convertible security** shall also be regarded as shares, and disclosures of such acquisition and holdings shall be made accordingly.

For the purpose of disclosure requirements under Chapter V the term **ENCUMBRANCE shall include a pledge, lien or any such transaction, by whatever name called.**

Disclosure of Acquisition and Disposal, Regulation 29

1. 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 **five per cent 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.

(Note: Under this regulation the acquirer including person acting in concert with him is required to disclose the aggregate shareholding after acquisition and not the acquisition only.)

2. Any acquirer, who together with persons acting in concert with him, **holds shares** or voting rights entitling them to **five per cent 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 two per cent or more** of the shares or voting rights 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 two working days** of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—
 - (a) every stock exchange where the shares of the target company are listed; and
 - (b) the target company at its registered office.
4. Encumbrance shall be treated as an acquisition, and shares released from encumbrance shall be treated as disposal and disclosures shall be made by such person accordingly. Provided that such requirement shall not apply to a scheduled

commercial bank or public financial institution as pledgee in connection with a pledge of share for securing indebtedness in the ordinary course of business.

Continual Disclosures. Under 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.

Disclosure of Encumbered Shares under Regulation 31

1. The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.
2. The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares 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 creation or invocation or release of encumbrance, as the case may be to,—
 - (a) every stock exchange where the shares of the target company are listed; and
 - (b) the target company at its registered office.