



Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009

(A) Significant Changes

The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations¹, 2009 ('the Regulations') has been notified on 10 June 2009. The Regulations apply to delisting of equity shares of a company from all or any of the recognised stock exchanges.

The significant changes brought in by the Regulations are as follows:

- In case company decides to opt for voluntary delisting, company can act upon special resolution through which delisting is approved by shareholders, only if votes cast by the public shareholders in favour of the resolution are twice the number of votes cast by public shareholders against it.
- Offer made by Promoter shall be deemed to be successful if post-offer, the shareholding of Promoters along with persons acting in concert² ('PAC') taken together is higher of –
 - 90% excluding the shares held by custodian against depository receipts; or
 - The aggregate percentage of pre-offer Promoters shareholding along with PAC and 50% of offer size

E.g. Say pre-offer, the Promoters/PAC hold 84% of the issued equity share capital and make an offer for the balance 16%. In order

¹ Notified in the Gazette of India vide notification no. LAD-NRO/GN/2008-2009/09/165992

² As defined under Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 1997

to be a successful offer, the Promoters should acquire at least 50% of the 16% i.e.8% hence 92% (84% + 8%).

- If the offer is successful, remaining public shareholders can tender their shares to the promoter upto period of 1 year from the date of delisting and Promoters shall accept such shares at same price at which acceptance of shares in delisting has been made
- Where companies have opted for voluntary delisting, equity shares which have been delisted shall not be relisted for a period of 5 years from delisting.

Our Comments

It is obvious that intention of the Regulator behind the new Regulations is to bring transparency in the entire process and allow larger role for the minority shareholders in the delisting process.

(B) Other Provisions of the Regulations

i. Non Applicability of the Regulations

The Regulations will not be applicable where delisting is made under a scheme sanctioned by the Board for Industrial and Financial Reconstruction or National Company Law Tribunal and such scheme:

- iterates a specific manner in which delisting is to be effected; or
- provides an exit option to public shareholders at a specified rate

ii. Delisting not Permitted

Company is not permitted to delist shares of the company,

- by way of buy back of equity shares, preferential allotment;
- where such class of equity shares have been listed on any stock exchange for less than 3 years; or
- where it has outstanding instruments convertible into the same class of equity shares sought to be delisted

Further, the Regulations prohibit the delisting of convertible securities.

iii. Voluntary Delisting

A company may voluntarily delist its equity shares from all recognised stock exchanges provided that all public shareholders are given an exit opportunity as prescribed under the Regulations. Where, after the

proposed delisting, the equity shares continue to remain listed on any recognised stock exchange which has nationwide trading terminals, no exit opportunity needs to be given to the public shareholders.

iv. Voluntary Delisting Process

In case an exit opportunity is given to all public shareholders:

- approval is required from the Board of Directors;
- approval is required through special resolution by shareholders through postal ballot;
- total votes cast by public shareholders in favour is required to be twice the number of votes cast by public shareholders against the resolution;
- an in-principle approval is to be obtained from the concerned recognised stock exchange;
- upon receipt of in-principle approval for delisting from the recognised stock exchange, a public announcement is to be made in at least one English national daily, one Hindi national daily and one regional language newspaper to discover the offer price.

v. Voluntary Delisting Offer Price

The offer price would be determined by the book building mechanism, after fixation of the floor price. The floor price, in case of frequently traded equity shares, shall not be less than higher of-

- average of closing high and low for preceding 26 weeks; or
 - average of closing high and low for preceding 2 weeks
- prior to the board meeting approving the delisting.

Where the equity shares are not frequently traded, the floor price shall be determined based on the following factors:

- highest price paid by the Promoters for acquisition of equity shares, in a public or rights issue or preferential allotment, during 26 weeks prior to the board meeting approving the delisting and after that date upto the date of the public announcement; and
- other parameters w.r.t. equity shares such as net worth, book value, EPS, P/E multiple etc., vis-à-vis the industry average

The final offer price shall be determined as the price at which the maximum number of equity shares are tendered by the public shareholders. If the final price is accepted, the Promoter shall accept all

shares tendered where the corresponding bids placed are at the final price or at a price which is lesser than the final price.

vi. Non participation by Promoters/ PAC/Custodian

The Promoters/PAC shall not make a bid under the book building process. Further, any holder of depository receipts issued on the basis of underlying shares held by a custodian shall not be entitled to participate in the offer unless such depository receipts are exchanged for equity shares.

vii. Right of the Promoters to Reject Offer Price

The Promoters are not bound to accept the offer price determined under the book building process. Where the Promoters do not accept the price discovered under the book building mechanism and the public shareholding at the opening of the bidding period was less than the minimum level shareholding³, the Promoters would be required to raise the public shareholding to the minimum required level, via fresh issue of shares or sale of Promoters' stake, within a period of 6 months from the close of the bidding period.

viii. Time frame

Activity	Time frame
Approval from shareholders	Special resolution through postal ballot
In-principle approval to be obtained from stock exchange	Application to be disposed off by the stock exchange within 30 days
Public announcement	Upon receipt of in-principle approval from recognised stock exchange
Specified date for determining names of shareholders	At least 30 working days from the date of public announcement
Dispatch of letter of offer	Within 45 working days from date of public announcement
Bid opening date	Within 55 days from date of public announcement
Bid to remain open	Minimum 3 working days and Maximum 5 working days

³ As required under Clause 40A of the Listing Agreement

Payment of consideration	Within 10 working days of closure of offer
Final application to Stock Exchanges	Within 1 year from passing of special resolution
Tendered shares to be returned in case Promoters do not accept offer price determined under book building	Within 10 working days of close of bidding period

ix. Compulsory Delisting

The Regulations provide for recognised stock exchanges, in conformity with section 21A⁴ of the Securities Contracts (Regulation) Act, 1956, to compulsorily delist equity shares by an order to that effect after having given the company a reasonable opportunity of being heard.

Under compulsory delisting, the concerned recognised stock exchange would appoint an independent valuer, who would determine the fair value of the equity shares. The Promoters of the company shall acquire delisted equity shares from the public shareholders by paying them the value determined by the valuer, subject to their option of retaining their shares.

x. Special Provisions for Small Companies

A company is considered to be a Small Company when-

- it has a paid-up capital upto Rs.1 crore and its equity shares have not been traded in one year preceding such decision; or
- number of public shareholders does not exceed 300 and paid-up value of their shareholding does not exceed Rs. 1 crore

Such Small company need not give an exit opportunity to the public shareholders as prescribed under the Regulations. However, they would need to fulfil certain conditions such as:

⁴ Sec. 21A “(1) A recognised stock exchange may delist the securities, after recording the reasons therefore, from any recognised stock exchange on any of the ground or grounds as may be prescribed under the Securities Contracts (Regulation) Act, 1956

- Promoters to determine the exit price in consultation with a merchant banker which shall be the minimum price to be offered to the public shareholders;
- Promoters to write individually to all shareholders with regard to the delisting intention, justification for the same, exit price etc.;
- at least 90% of the public shareholders should provide their consent in writing to the delisting proposal and consent either to sell their equity shares or avail the option to continue as shareholders;
- written consent to be obtained and proposal to be finalised within 75 days of first communication; and
- consideration to be paid within 15 days from expiry of 75 days

xi. Application for Re-Listing

An application for re-listing can be made by delisted companies only after passing of cooling period which will depend upon the category of initial delisting.

Category	Timeline
Voluntary delisting	After 5 years
De-recognition of stock exchange, winding up of company	
Compulsory delisting	After 10 years

Disclaimer

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