

Regulatory Alert

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SEBI amends Delisting Regulations, introduces fixed price delisting and special provisions for delisting of IHCs

On September 25, 2024, SEBI amended the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021 ('Delisting Regulations') to simplify the delisting process. These amendments introduce a fixed price delisting mechanism, a special framework for delisting of investment holding companies, and an additional computation mechanism for determination of floor price for delisting

The key highlights of these amendments are as under:

Floor price and reference date

Previously, the floor price (i.e., the minimum price offered by the acquirer) was computed in accordance with Regulation 8 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

SEBI has now introduced Regulation 19A in the Delisting Regulations, which includes a new computation mechanism for determining the floor price, incorporating provisions from Regulation 8 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Given that a company

ceases to be a listed entity post delisting, SEBI has inserted 'Adjusted Book Value' as an additional parameter for determination of the floor price – it is intrinsically the net-worth of the company based on the fair market value of the assets.

Further, the *reference date* for calculating the floor price was previously the date on which the recognized stock exchange(s) were required to be notified of the board meeting where the delisting proposal was considered and approved. To neutralize the impact of any substantial or abnormal trading activity in



the company's shares following the initial public announcement, the Delisting Regulations have been amended to provide that the *reference date* shall be –

- Date of the initial public announcement, in case such announcement was made before the close of market hours; or
- Trading day next to the date of the initial public announcement, if such announcement was made after the close of market hours / on a non-trading day.

Fixed price delisting

Fixed price delisting has been introduced as an alternative to the Reverse Book Building (“RBB”) process for companies whose shares are frequently traded.

Under this route, the acquirer shall provide a fixed delisting price which shall be at least 15% higher than the floor price determined in accordance with the Delisting Regulations. Further, the acquirer shall be bound to accept the equity shares tendered in the delisting offer, if the post-offer shareholding of the acquirer (along with the shares tendered by the public shareholders) reaches 90% at such fixed price.

Dhruva Comments

The fixed price delisting shall give acquirers and shareholders certainty with respect to pricing of the delisting offer. This would help shareholders to decide upfront whether to participate in the delisting process at the given price and also benefit the acquirer in arranging funds for the delisting offers since the price at which the exit offer will be made is quantifiable in advance.

Counter-offer mechanism

The counter-offer mechanism works in case of delisting undertaken through RBB process.

Under the RBB process, a delisting is considered successful when (a) the post offer shareholding of the acquirer, along with the shares tendered by the public shareholders reaches 90% (*‘90% Threshold’*); and (b) the price discovered pursuant to RBB is acceptable to the acquirer.

Hitherto, where the RBB discovered price is not acceptable to the acquirer, the acquirer can make a counter-offer at a price which should not be lower than the book value of the company, but only if the *90% Threshold* is met.

SEBI has now decided to lower the threshold required to make a counter-offer and provided that a counter-offer can be made by the acquirer only if:

- Post-offer shareholding of the acquirer (including the shares tendered by public shareholders) is not less than 75%; and
 - At least 50% of the public shareholding has been tendered.
- Further, the counter-offer price shall be higher of the following:
- Volume weighted average price of the shares tendered / offered in the RBB process; and
 - Indicative price (if offered by the acquirer).

Dhruva Comments

The lower counter-offer threshold would give the acquirer an opportunity to make a counter-offer that could potentially be accepted by public shareholders and help ensure successful delisting offers where majority of the public shareholders are in favour of the delisting offer.



Introduction of special provisions for delisting of Investment Holding Company ('IHC')

IHCs typically hold investments in listed and unlisted companies or other assets, with their shares often trading at a discount relative to the intrinsic value of their investments. Accordingly, the market price and the price determined as the floor price for the IHC does not reflect the true value of the investments and the RBB mechanism does not provide a fair exit price to the public shareholders. In the absence of any separate framework, listed IHCs were required to be delisted in accordance with the RBB process.

To address this, SEBI has introduced Regulation 38A within the Delisting Regulations, outlining special provisions for delisting IHCs (which are listed for a minimum period of 3 years) where at least 75% of their fair value consists of direct investments in the equity shares of other listed companies. The delisting process can now be executed via a scheme of arrangement involving selective capital reduction. Under this mechanism:

- IHC shall transfer equity shares held by it in other listed companies (value as calculated on a net of pro-rata liabilities) to its public shareholders in proportion to their shareholding; and
- IHC shall make cash payment for underlying unlisted shares and any other assets (value as calculated on a net of pro-rata liabilities) to its public shareholders in proportion to their shareholding.

The fair value of IHC shall be determined pursuant to a joint report of two independent registered valuers.

Further, such delisting proposal of IHC must be approved by public shareholders, with the

number of votes cast in favor being at least twice the number of votes cast against it.

Dhruva Comments

This is a welcome move, as public shareholders of IHC will now receive an exit at fair value. Additionally, for IHCs, there will be lesser outflow of funds, as 75% of the value will be exchanged for shares. Moreover, there is greater certainty in achieving delisting without needing to follow the RBB process.

However, one needs to evaluate tax consequences of such transaction such as deemed dividend/ capital gains tax implications, availability of grandfathered cost etc in the hands of the public shareholders, capital gains tax and withholding tax implications etc in the hands of IHC.

Transition mechanism

It has been provided that the amendments to the Delisting Regulations shall apply to delisting offers where the initial public announcement is made on or after the date these regulations come into force.

However, an acquirer (i.e. the promoter or the promoter group, along with persons acting in concert) may make the delisting offer in accordance with the provisions of the Delisting Regulations (as they existed before the amendments) upto the 60th day from the date of publication of the amendments in the Official Gazette.

Dhruva comments

The amendments mark a significant step in making the delisting process more structured, transparent, and fair for all market participants. They offer flexibility to acquirers by introducing the fixed price delisting option, providing clarity on floor price calculation, and simplifying the delisting process, particularly for IHCs. These changes enhance



transparency and protect public shareholders by mandating a 15% premium on the floor price in fixed-price offers and formalizing counter-offer rules. Hopefully, these provisions will create a more favourable and streamlined regime for delisting in the future.

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