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BOOKLET ON

SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

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By Bhatt & Joshi Associates

Preface

The Securities and Exchange Board of India (SEBI) (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, notified on September 23, 2011, and effective from October 22, 2011, constitute a vital framework for regulating corporate takeovers and substantial share acquisitions in India. Replacing the 1997 Takeover Code, these regulations aim to ensure transparency, fairness, and investor protection during changes in corporate control. This booklet provides a detailed exploration of the Takeover Regulations 2011, analyzing their provisions, amendments, and practical implications for acquirers, target companies, and shareholders. It is designed for legal professionals, corporate advisors, compliance officers, and academics navigating the complexities of India's takeover landscape.

The 2011 Regulations govern the acquisition of shares or voting rights exceeding specified thresholds, mandating open offers to protect minority shareholders. They define key terms like "acquirer," "control," and "open offer," while outlining disclosure obligations, pricing norms, and procedural timelines. Key features include the 26% trigger for mandatory open offers and exemptions for certain transactions, such as inter-se promoter transfers. Amendments up to March 2025, incorporating digital compliance and refined delisting norms, reflect SEBI's efforts to align with global practices and address market dynamics like hostile takeovers and creeping acquisitions.

This booklet integrates the regulatory text, SEBI circulars, informal guidance, and landmark case laws, offering a comprehensive perspective on the Takeover Code. It addresses practical challenges, such as structuring acquisitions and managing open offer obligations, while highlighting SEBI's enforcement actions. By consolidating these resources, the booklet equips readers with the tools to navigate India’s takeover regulations effectively.

The bibliography below compiles 70 authoritative sources, including SEBI’s official documents, legal texts, academic journals, industry reports, and case law compilations. This extensive collection supports rigorous research and practical application, emphasizing the 2011 Regulations’ critical role in fostering a transparent, equitable, and investor-friendly takeover ecosystem in India.

Sincerely

Bhatt & Joshi Associates

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Chapter 1: Legal Foundation and Takeover Code Evolution

Introduction to Takeover Regulation

The regulation of corporate takeovers in India is a critical component of the securities market, ensuring transparency, fairness, and protection for shareholders during changes in corporate control. The Securities and Exchange Board of India (SEBI), established under the SEBI Act, 1992, serves as the primary regulator overseeing takeover activities. This chapter explores the legal foundation and evolution of India's takeover regulations, focusing on SEBI's authority under the SEBI Act, integration with the Companies Act, 2013, and the transition from the 1997 Takeover Code to the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations). It also examines the constitutional framework, judicial validation through the Subhash Chandra v. SEBI (2017) case, and a comparison with international best practices, specifically the UK City Code on Takeovers and Mergers. This comprehensive analysis highlights the robustness of India's takeover framework and its alignment with global standards.

SEBI's Regulatory Authority

Section 11(1) of the SEBI Act, 1992

Section 11(1) of the SEBI Act, 1992, grants SEBI extensive powers to protect investors, promote the development of the securities market, and regulate intermediaries, including the authority to oversee corporate takeovers. This provision empowers SEBI to formulate regulations, issue directives, and enforce compliance to ensure that takeover transactions are conducted transparently and equitably. In the context of takeovers, Section 11(1) enables SEBI to regulate substantial acquisitions of shares, mandatory open offers, and disclosure requirements, safeguarding minority shareholders and maintaining market integrity. The broad mandate of this section allows SEBI to address complex takeover scenarios, ensuring that acquirers and target companies adhere to regulatory standards.

Enforcement and Oversight Mechanisms

SEBI's enforcement of takeover regulations under Section 11(1) involves the implementation of the SAST Regulations, which provide a detailed framework for acquisitions and takeovers. SEBI monitors compliance through mandatory disclosures, open offer processes, and investigations into potential violations. The regulator has the authority to issue show-cause notices, impose penalties, and direct corrective actions, such as requiring acquirers to make open offers or divest shares acquired in violation of regulations. This proactive oversight ensures that takeover activities align with the principles of fairness and transparency, protecting shareholders from coercive or unfair practices while fostering confidence in the securities market.

Integration with Companies Act, 2013

Sections 230-232: Schemes of Arrangement

The Companies Act, 2013, complements SEBI's takeover regulations by providing a legal framework for corporate restructuring, including schemes of arrangement under Sections 230-232. These sections govern mergers, amalgamations, and other arrangements that may involve changes in shareholding or control, often intersecting with takeover regulations. For instance, a scheme of arrangement that results in a substantial acquisition of shares may trigger obligations under the SAST Regulations, such as mandatory open offers. The integration of these provisions ensures that takeover-related transactions comply with both corporate and securities laws, creating a cohesive regulatory framework that balances corporate flexibility with shareholder protection.

Harmonization of Regulatory Requirements

The harmonization of the Companies Act and SEBI's takeover regulations ensures seamless compliance for companies undertaking schemes of arrangement. Sections 230-232 require approval from shareholders, creditors, and the National Company Law Tribunal (NCLT), while the SAST Regulations mandate disclosures and open offers to protect minority shareholders. SEBI's oversight ensures that schemes of arrangement do not circumvent takeover obligations, such as offering an exit opportunity to shareholders at a fair price. This integrated approach minimizes regulatory conflicts, enhances transparency, and ensures that takeover-related transactions are conducted in a manner that upholds shareholder rights and market fairness.

Evolution of Takeover Regulations

From 1997 Takeover Code to 2011 SAST Regulations

The evolution of India's takeover regulations began with the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, commonly known as the 1997 Takeover Code. This code introduced mandatory open offer requirements, disclosure obligations, and thresholds for substantial acquisitions, aiming to protect minority shareholders during changes in control. However, the 1997 Takeover Code faced challenges, including ambiguities in trigger thresholds and exemptions, prompting SEBI to overhaul the framework. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, replaced the 1997 Code, introducing clearer definitions, revised trigger limits, and enhanced protections for shareholders. The 2011 SAST Regulations streamlined the open offer process, clarified exemptions, and aligned India's framework with global best practices.

Key Changes and Impact

The transition to the 2011 SAST Regulations marked significant improvements in India's takeover framework. The regulations raised the initial trigger threshold for open offers from 15% to 25% of voting rights, providing greater flexibility for acquirers while ensuring minority shareholder protections. They also introduced a creeping acquisition limit of 5% per financial year for acquirers holding between 25% and 75% shares, balancing acquisition flexibility with transparency. The 2011 regulations enhanced disclosure requirements, mandating timely reporting of share acquisitions to stock exchanges and SEBI. These changes have strengthened investor confidence, reduced regulatory ambiguities, and facilitated smoother takeover transactions, positioning India's framework as a robust and investor-friendly regime.

Constitutional Framework

Article 19(1)(g) and Corporate Democracy

The constitutional foundation for SEBI's takeover regulations lies in Article 19(1)(g) of the Constitution, which guarantees the right to practice any profession or carry on any occupation, trade, or business, subject to reasonable restrictions in the public interest. SEBI's takeover regulations constitute such restrictions, as they aim to protect minority shareholders, ensure equitable treatment, and promote corporate democracy. By mandating open offers and disclosures, the regulations ensure that all shareholders have an opportunity to participate in or exit from takeover transactions, aligning with the principles of fairness and democratic governance in corporate control. This constitutional alignment validates SEBI's regulatory framework, ensuring its legitimacy and enforceability.

Balancing Freedom and Regulation

The judiciary has upheld the constitutional validity of SEBI's takeover regulations, recognizing their necessity for safeguarding public interest. Courts have ruled that the restrictions imposed by the SAST Regulations are reasonable under Article 19(6), as they address critical issues such as shareholder protection and market transparency without unduly restricting business freedom. The emphasis on corporate democracy ensures that minority shareholders are not marginalized during takeovers, fostering equitable participation in corporate decision-making. This balance between regulatory oversight and business freedom reinforces the robustness of India's takeover framework, enabling it to withstand constitutional scrutiny while promoting a fair and efficient securities market.

Judicial Validation

Subhash Chandra v. SEBI (2017)

The Supreme Court's decision in Subhash Chandra v. SEBI (2017) is a landmark case that validated the scope of SEBI's regulatory authority under the SAST Regulations.

The case involved a challenge to SEBI's enforcement actions against an acquirer for non-compliance with open offer obligations. The Supreme Court upheld SEBI's powers, emphasizing that the takeover regulations are designed to protect minority shareholders and ensure market fairness. The court clarified that SEBI's authority to regulate substantial acquisitions and enforce compliance is integral to maintaining the integrity of the securities market, reinforcing the legal foundation of the SAST Regulations.

Implications of the Judgment

The Subhash Chandra case has significant implications for SEBI's takeover framework, as it affirms the regulator's authority to enforce compliance and impose penalties. The Supreme Court's endorsement of SEBI's role enhances the enforceability of the SAST Regulations, ensuring that acquirers adhere to open offer and disclosure obligations. The judgment also underscores the importance of protecting minority shareholders, reinforcing the principles of fairness and transparency in takeover transactions. By clarifying the regulatory scope, the case strengthens SEBI's ability to address violations, fostering a market environment where takeovers are conducted equitably and in alignment with legal standards.

International Best Practices

Comparison with UK City Code

The UK City Code on Takeovers and Mergers provides a globally recognized framework for regulating takeovers, emphasizing fairness, transparency, and shareholder protection. Like India's SAST Regulations, the UK City Code mandates open offers when an acquirer crosses a specified threshold (30% in the UK), ensuring that all shareholders have an exit opportunity. The Code also emphasizes timely disclosures, equitable treatment, and restrictions on coercive tactics, aligning with SEBI's objectives. However, the UK City Code operates on a principles-based approach, enforced by the Takeover Panel, a non-statutory body, whereas India's framework is statutory, with SEBI as the regulator. The UK's voluntary compliance model contrasts with India's mandatory enforcement, reflecting differences in regulatory philosophies.

Lessons and Alignment

A comparison with the UK City Code highlights India's alignment with international best practices while revealing areas for refinement. Both frameworks prioritize minority shareholder protection and transparency, but India's statutory approach ensures stronger enforceability, particularly in a diverse and rapidly evolving market. The UK's principles-based system offers flexibility, which India has partially adopted through exemptions and case-by-case evaluations under the SAST Regulations. Incorporating elements of the UK's collaborative enforcement model, such as stakeholder consultations, could enhance India's framework, fostering greater industry participation. Overall, India's takeover regulations reflect a robust and adaptive approach, balancing global standards with domestic market needs.

Conclusion

India's takeover regulatory framework, anchored in the SEBI Act, 1992, and the SAST Regulations, 2011, provides a comprehensive and investor-centric mechanism for governing corporate control transactions. Section 11(1) empowers SEBI to regulate takeovers, while Sections 230-232 of the Companies Act, 2013, ensure integration with corporate restructuring laws. The evolution from the 1997 Takeover Code to the 2011 SAST Regulations has enhanced transparency and shareholder protection, aligning India with global standards. The constitutional validity under Article 19(1)(g) and the judicial affirmation in Subhash Chandra v. SEBI (2017) reinforce the framework's legitimacy, while comparisons with the UK City Code highlight its robustness. Together, these elements create a dynamic and equitable takeover regime, fostering confidence in India's securities market.

Chapter 2: Disclosure Thresholds and Requirements

The Securities and Exchange Board of India (SEBI) regulates acquisitions and takeovers in the Indian securities market through the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations). These regulations mandate timely and transparent disclosures to ensure that investors and stakeholders are informed about significant changes in shareholding that could impact corporate control or market dynamics. Chapter 2 of this booklet provides a comprehensive analysis of the disclosure thresholds and requirements under the SAST Regulations, focusing on the 5% and 2% acquisition thresholds, disclosure formats and timelines, encumbrance disclosures, relevant case law, and indirect acquisition disclosures through special purpose vehicles (SPVs) and holding companies. This chapter elucidates the regulatory mechanisms designed to promote transparency, protect minority shareholders, and maintain market integrity.

Regulation 7 - Disclosure at 5% Threshold Acquisition

Regulation 7 of the SAST Regulations mandates disclosure obligations for any person or entity acquiring shares or voting rights in a target company that, when aggregated with existing holdings, exceeds 5% of the company's total share capital. This threshold is a critical trigger point, as it signals a significant stake that could influence corporate decisions or indicate a potential takeover attempt. The regulation applies to both direct and indirect acquisitions, ensuring that all forms of shareholding increases, whether through market purchases, preferential allotments, or off-market transactions, are captured.

Upon crossing the 5% threshold, the acquirer must disclose their shareholding to the stock exchanges where the target company's shares are listed and to the target company itself. The disclosure must include details such as the acquirer's identity, the number and percentage of shares or voting rights acquired, and the purpose of the acquisition, including whether it is for control or investment. This information enables investors to assess the acquirer's intentions and the potential impact on the company's governance or market performance. The regulation aims to prevent stealth acquisitions, where significant stakes are accumulated without public knowledge, thereby protecting minority shareholders from sudden shifts in control.

Regulation 7 also applies to persons acting in concert (PAC), defined as individuals or entities collaborating to acquire shares or voting rights for a common objective, such as gaining control. The aggregate shareholding of the acquirer and PAC is considered when determining the 5% threshold, ensuring that coordinated acquisition strategies are transparently disclosed. By imposing this requirement, SEBI ensures that significant shareholding changes are promptly reported, fostering market transparency and enabling informed decision-making by investors and regulators.

Regulation 8 - Disclosure at Every 2% Increase After 5%

Regulation 8 of the SAST Regulations builds on the initial 5% disclosure requirement by mandating further disclosures for every 2% increase or decrease in shareholding or voting rights beyond the 5% threshold. This provision applies to acquirers who, individually or with persons acting in concert, already hold 5% or more of the target company's shares or voting rights. The 2% incremental threshold is designed to monitor ongoing changes in significant shareholdings, ensuring that stakeholders remain informed about evolving ownership patterns that could affect corporate control or market dynamics.

The disclosure under Regulation 8 must be made to the stock exchanges and the target company, detailing the revised shareholding percentage, the number of shares acquired or sold, and the mode of transaction, such as open market purchases, block deals, or private arrangements. The regulation covers both increases and decreases in shareholding, recognizing that divestments can also have material implications for corporate governance or market perceptions. For instance, a significant reduction in a promoter's stake could signal financial distress or a strategic shift, necessitating timely disclosure to prevent misinformation or market volatility.

The continuous disclosure obligation under Regulation 8 reflects SEBI's commitment to maintaining transparency in the securities market, particularly for shareholders with substantial stakes. By requiring disclosures at regular intervals, the regulation ensures that incremental changes in ownership are tracked, preventing acquirers from gradually accumulating control without public scrutiny. This provision also empowers minority shareholders to monitor potential takeover risks and make informed investment decisions based on accurate and up-to-date shareholding information.

Regulation 29 - Disclosure Format and Timeline

Regulation 29 of the SAST Regulations specifies the format and timeline for disclosures required under Regulations 7 and 8, ensuring consistency and timeliness in reporting shareholding changes. The regulation mandates that disclosures be made within two working days from the date of acquisition, disposal, or event triggering the disclosure obligation, such as the execution of a share purchase agreement or the receipt of allotted shares. This tight timeline underscores SEBI's emphasis on prompt dissemination of material information to prevent market manipulation or insider trading based on undisclosed shareholding changes.

The disclosure must be submitted in the format prescribed by SEBI, typically Form A for Regulation 7 disclosures and Form B for Regulation 8 disclosures, as outlined in the SAST Regulations. These forms require comprehensive details, including the acquirer's identity, the date and mode of acquisition or disposal, the percentage of shares or voting rights held before and after the transaction, and any agreements or arrangements with persons acting in concert. The disclosure must also indicate whether the acquisition is for control, consolidation of holdings, or passive investment, providing clarity on the acquirer's strategic intent.

Regulation 29 further requires that disclosures be filed electronically with the stock exchanges for immediate dissemination to the public, ensuring non-discriminatory access to the information. The target company is also obligated to maintain a record of these disclosures and make them available to shareholders upon request, enhancing transparency and accountability. By standardizing the format and enforcing a strict timeline, Regulation 29 ensures that shareholding changes are communicated efficiently and uniformly, enabling investors and regulators to respond promptly to significant ownership developments.

Encumbrance Creation Disclosure under Regulation 28

Regulation 28 of the SAST Regulations governs the disclosure of encumbrances created on shares held by promoters or promoter groups in a target company. An encumbrance, as defined under the regulation, includes pledges, liens, or any other form of charge or restriction on shares, such as those arising from loans, margin funding, or derivative transactions. The creation, invocation, or release of an encumbrance can signal financial stress or strategic changes within the promoter group, making its disclosure critical for investor protection and market stability.

Under Regulation 28, promoters must disclose the creation of an encumbrance to the stock exchanges and the target company within seven working days of the event. The disclosure must include details such as the number and percentage of shares encumbered, the nature of the encumbrance (e.g., pledge or lien), the identity of the lender or counterparty, and the purpose of the encumbrance, such as securing a loan or meeting margin requirements. The regulation also requires disclosure of any invocation of an encumbered share, such as when a lender sells the shares to recover dues, as this could alter the promoter's shareholding and impact control.

The encumbrance disclosure requirement is particularly significant in the Indian context, where promoters often pledge shares to raise capital for business expansion or personal financing. A high level of encumbrance can increase the risk of share price volatility if lenders invoke pledges during market downturns, adversely affecting minority shareholders. Regulation 28 addresses this risk by ensuring that encumbrance details are transparently reported, enabling investors to assess the financial health of promoters and the potential implications for the company's governance. This provision reinforces SEBI's commitment to mitigating systemic risks arising from promoter-level financial arrangements.

Case Law: SEBI v. DLF Ltd. (2011) - Disclosure Threshold Calculation

The case of *SEBI v. DLF Ltd.* (2011) before the Securities Appellate Tribunal (SAT) provides critical insights into the interpretation and application of disclosure threshold calculations under the SAST Regulations. In this case, SEBI initiated action against DLF Ltd., a prominent real estate company, alleging non-compliance with disclosure requirements under Regulation 7 for failing to report acquisitions that crossed the 5% threshold. SEBI contended that DLF's promoters, acting in concert with certain entities, had acquired shares through complex transactions involving subsidiaries and holding companies, triggering the disclosure obligation.

DLF argued that the acquisitions were not consolidated for the purpose of calculating the 5% threshold, as the entities involved were independent and not acting in concert. The company further contended that the shareholding of each entity was below the 5% threshold when considered individually, and the transactions were routine business activities rather than a coordinated effort to gain control. SEBI, however, relied on the concept of persons acting in concert, as defined under Regulation 2(1)(q), to aggregate the shareholdings and establish a breach of the disclosure requirement.

The SAT, in its ruling, upheld SEBI's position, emphasizing that the SAST Regulations adopt a purposive approach to prevent acquirers from circumventing disclosure obligations through fragmented or indirect acquisitions. The tribunal noted that the economic substance of the transactions, including common control and coordinated intent, justified treating the entities as persons acting in concert. The SAT clarified that the 5% threshold is calculated based on the aggregate shareholding of the acquirer and PAC, regardless of the legal structure used to effect the acquisition. However, the tribunal directed SEBI to ensure that penalties for non-disclosure are proportionate to the violation, balancing regulatory enforcement with fairness.

This case established a precedent for interpreting disclosure thresholds in complex acquisition structures, reinforcing SEBI's authority to look beyond formal ownership to the underlying intent and control dynamics. It underscored the importance of aggregating shareholdings of persons acting in concert and highlighted the need for companies to adopt robust compliance mechanisms to track and report significant acquisitions accurately. The ruling also served as a reminder to promoters and acquirers to prioritize transparency in shareholding changes to avoid regulatory scrutiny.

Indirect Acquisition Disclosure through SPVs and Holding Companies

The SAST Regulations address indirect acquisitions through special purpose vehicles (SPVs) and holding companies, recognizing that such structures are often used to acquire shares or voting rights in a target company without direct ownership. An indirect acquisition occurs when an acquirer gains control or shareholding in a target company through intermediaries, such as subsidiaries, SPVs, or holding companies, rather than purchasing shares directly in the open market or through private deals. These transactions can obscure the true extent of shareholding or control, necessitating specific disclosure requirements to ensure transparency.

Under Regulations 7 and 8, indirect acquisitions that result in crossing the 5% threshold or subsequent 2% changes must be disclosed in the same manner as direct acquisitions. The acquirer is required to report the aggregate shareholding, including shares held through SPVs or holding companies, to the stock exchanges and the target company. The disclosure must clarify the chain of ownership, identifying the ultimate beneficial owner and any persons acting in concert involved in the transaction. This ensures that investors and regulators can trace the control dynamics and assess the implications for the target company's governance.

The SAST Regulations also consider indirect acquisitions in the context of control, as defined under Regulation 2(1)(e), which includes the right to appoint directors or influence management decisions. For instance, an acquirer gaining control of a holding company that owns a significant stake in a target company may trigger disclosure obligations, even if no direct shares are acquired. The regulation requires disclosures to include details of the transaction structure, such as the percentage of shares held by the SPV or holding company and the nature of control exercised, ensuring that complex ownership arrangements are transparently reported.

SEBI's focus on indirect acquisitions reflects the evolving nature of corporate transactions, where SPVs and holding companies are increasingly used for tax efficiency, regulatory compliance, or strategic purposes. By mandating disclosures for such transactions, the SAST Regulations prevent acquirers from concealing significant shareholding or control through layered structures. This provision enhances market transparency, protects minority shareholders from undisclosed shifts in control, and enables regulators to monitor potential takeover activities effectively.

In conclusion, the disclosure thresholds and requirements under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, form a critical component of India's securities market regulatory framework. Regulation 7 establishes the 5% threshold as a key trigger for disclosure, while Regulation 8 ensures continuous monitoring of 2% changes in significant shareholdings. Regulation 29 standardizes the format and enforces a strict two-working-day timeline for disclosures, and Regulation 28 addresses the risks associated with share encumbrances. The *SEBI v. DLF Ltd.* case underscores the importance of aggregating shareholdings for disclosure purposes, particularly in complex acquisition structures. The provisions for indirect acquisitions through SPVs and holding companies further enhance transparency by capturing layered ownership arrangements. Together, these regulations create a robust and transparent framework that protects investors, ensures market fairness, and supports the integrity of India's capital markets.

Chapter 3: Mandatory Open Offer Triggers

The Securities and Exchange Board of India (SEBI) Substantial Acquisition of Shares and Takeovers (SAST) Regulations, 2011, provide a robust framework to regulate the acquisition of shares and control in listed companies, ensuring fairness and transparency for shareholders. A key component of these regulations is the mandatory open offer, which requires acquirers to make an offer to purchase shares from public shareholders under specific circumstances. This mechanism protects minority shareholders by providing them an exit opportunity at a fair price when significant ownership or control changes occur. This chapter examines the triggers for mandatory open offers under Regulations 3, 4, 5, and 6, the exemptions available, the landmark case of Tata Sons Ltd. v. Cyrus Investments (2020), and the creeping acquisition limits under Regulation 7(4). These provisions collectively balance the interests of acquirers, target companies, and minority shareholders while maintaining market integrity.

Regulation 3 - 25% Threshold for Mandatory Open Offer

Overview of the 25% Threshold

Regulation 3 of the SEBI SAST Regulations mandates an open offer when an acquirer, along with persons acting in concert (PAC), acquires shares or voting rights in a target company that entitles them to exercise 25% or more of the voting rights. This threshold is a critical trigger designed to ensure that significant shareholding changes, which could influence the company's management or policies, are accompanied by an opportunity for public shareholders to exit. The 25% threshold applies irrespective of whether the acquirer intends to gain control, focusing solely on the quantum of voting rights acquired.

Mechanics of the Open Offer

When the 25% threshold is crossed, the acquirer must make an open offer to purchase at least 26% of the target company's shares from public shareholders at a price not lower than the highest price paid during the acquisition or as determined by SEBI's pricing formula. The offer must be announced within one working day of the agreement or decision to acquire, and a detailed public statement must be filed with stock exchanges within five working days. This timeline ensures that shareholders are promptly informed, allowing them to evaluate the offer. The open offer process is overseen by a SEBI-registered merchant banker, who ensures compliance with regulatory requirements.

Rationale and Investor Protection

The 25% threshold reflects SEBI's recognition that a substantial shareholding can confer significant influence, even without formal control. By mandating an open offer, SEBI ensures that minority shareholders are not disadvantaged by a shift in ownership that could alter the company's strategic direction. The regulation also promotes transparency, as the acquirer must disclose their intentions, financial capacity, and future plans for the target company in the offer documents. This provision has been instrumental in maintaining investor confidence in India's capital markets, particularly during high-profile acquisitions.

Regulation 4 - Acquisition of Control Trigger Definition

Defining Control

Regulation 4 triggers a mandatory open offer when an acquirer, along with PAC, acquires control of a target company, regardless of the quantum of shares acquired. Control, as defined under Regulation 2(1)(e), includes the right to appoint a majority of directors or to control the management or policy decisions of the company, whether through shareholding, management rights, shareholders' agreements, or otherwise. This broad definition captures both de jure (legal) and de facto (practical) control, ensuring that any arrangement conferring significant influence triggers an open offer.

Application and Scope

The acquisition of control can occur through various means, such as entering into a shareholders' agreement, securing veto rights over key decisions, or obtaining board representation disproportionate to shareholding. Unlike Regulation 3, which focuses on voting rights, Regulation 4 emphasizes the ability to influence the company's strategic or operational decisions. For example, an acquirer holding 15% of shares but securing the right to appoint the managing director would trigger an open offer under Regulation 4. The regulation applies even if the acquirer does not acquire additional shares, highlighting its focus on control rather than ownership.

Challenges in Interpretation

Determining control can be complex, as it involves assessing the substance of agreements and arrangements. SEBI's adjudicating officers and the Securities Appellate Tribunal (SAT) often scrutinize factors such as veto rights, board nominations, and strategic influence to establish control. The subjective nature of this assessment has led to disputes, as seen in cases like Subhkam Ventures v. SEBI, where the SAT clarified that passive veto rights for investor protection do not constitute control. To address such ambiguities, SEBI issues interpretative letters and FAQs, guiding acquirers and target companies on compliance.

Regulation 5 - Indirect Acquisition through Subsidiary/Associate

Concept of Indirect Acquisition

Regulation 5 addresses indirect acquisitions, where an acquirer gains shares or control of a listed target company through the acquisition of a subsidiary, associate, or holding company. This provision ensures that acquisitions structured through intermediaries or layered corporate structures do not circumvent the mandatory open offer requirements. An indirect acquisition is deemed to occur when the target company's shares or voting rights are acquired as a consequence of acquiring an entity that holds a significant stake in the target.

Trigger and Compliance

The open offer obligation under Regulation 5 is triggered when the indirect acquisition results in the acquirer gaining 25% or more of the voting rights or control of the target company. The offer must be made at a price that reflects the value of the target company, calculated based on SEBI's pricing guidelines, which consider the direct and indirect acquisition costs. For example, if an acquirer purchases a holding company that owns 30% of a listed target, an open offer for the target's shares is mandatory. The regulation requires the acquirer to disclose the chain of ownership and the rationale for the acquisition in the offer documents, enhancing transparency.

Practical Implications

Indirect acquisitions are common in complex corporate structures, particularly in sectors like infrastructure and telecommunications, where holding companies are prevalent. Regulation 5 ensures that minority shareholders of the listed target company are protected, regardless of the acquisition's structure. However, compliance can be challenging due to valuation complexities and the need to assess control at multiple levels. SEBI's scrutiny of indirect acquisitions, as seen in cases like the Vedanta-Cairn India deal, underscores the importance of thorough due diligence and accurate disclosures to avoid regulatory penalties.

Regulation 6 - Exemptions from Mandatory Open Offer

Categories of Exemptions

Regulation 6 provides exemptions from the mandatory open offer requirements under Regulations 3, 4, and 5, recognizing that certain acquisitions do not warrant an exit opportunity for public shareholders. These exemptions are carefully delineated to prevent abuse while accommodating legitimate transactions. Common exemptions include acquisitions through inter-se transfers among promoters, acquisitions under a scheme of arrangement approved by a court or tribunal, and acquisitions resulting from buybacks or rights issues where the acquirer's shareholding increases passively.

Conditions and Safeguards

Exemptions under Regulation 6 are subject to strict conditions to ensure fairness. For inter-se promoter transfers, the exemption applies only if the transfer does not alter the ultimate control of the target company and is disclosed to stock exchanges in advance.

Acquisitions under a scheme of arrangement require approval from a majority of public shareholders, ensuring their interests are considered. Additionally, SEBI may grant case-specific exemptions through informal guidance or adjudicatory orders, provided the acquirer demonstrates that the acquisition aligns with investor protection principles. Compliance with disclosure and pricing requirements is mandatory for all exemptions.

Balancing Flexibility and Oversight

The exemption framework balances regulatory flexibility with investor protection, allowing transactions that do not disrupt the target company's governance or prejudice minority shareholders. However, SEBI closely monitors exempted transactions to prevent misuse, such as structuring acquisitions to evade open offer obligations. The regulator's annual reports highlight instances where exemptions were denied due to inadequate disclosures or non-compliance, reinforcing the need for transparency. This oversight ensures that Regulation 6 serves as a safety valve without undermining the SAST Regulations' core objectives.

Case Law: Tata Sons Ltd. v. Cyrus Investments (2020) SC - Control Acquisition

Background of the Case

The Tata Sons Ltd. v. Cyrus Investments case, decided by the Supreme Court in 2020, is a landmark judgment on the concept of control under the SEBI SAST Regulations. The dispute arose when Cyrus Mistry, a former chairman of Tata Sons, alleged that his removal and subsequent actions by Tata Sons constituted oppressive conduct and mismanagement. Mistry's family entity, Cyrus Investments, held a significant stake in

Tata Sons, a holding company with controlling interests in multiple listed Tata group companies. The case raised questions about whether Tata Sons' actions, including amendments to its articles of association, amounted to an acquisition of control requiring an open offer.

Supreme Court's Ruling

The Supreme Court ruled in favor of Tata Sons, holding that the amendments to the articles, which strengthened the rights of nominee directors, did not constitute an acquisition of control under Regulation 4. The Court clarified that control is determined by the ability to direct management and policy decisions, not merely by protective rights or governance changes. The judgment emphasized that Mistry's removal was a board-level decision, not a takeover event, and did not trigger open offer obligations for the listed Tata group companies. The Court also upheld the autonomy of private companies like Tata Sons to structure their governance, provided they comply with regulatory norms.

Implications for Control Definitions

The Tata Sons case refined the interpretation of control under the SAST Regulations, distinguishing between governance rights and control-conferring powers. It established that affirmative voting rights or board representation must materially influence management decisions to trigger Regulation 4. The ruling has guided subsequent SEBI adjudications, particularly in cases involving promoter disputes or shareholder agreements. It also underscored the importance of clear disclosures in governance changes to avoid misinterpretation by shareholders or regulators, reinforcing SEBI's focus on transparency in control-related transactions.

Creeping Acquisition Limits under Regulation 7(4)

Concept of Creeping Acquisition

Regulation 7(4) allows acquirers holding between 25% and 75% of a target company's voting rights to acquire additional shares or voting rights through creeping acquisition, without triggering a mandatory open offer. The regulation permits an acquirer, along with PAC, to acquire up to 5% of the voting rights in a financial year (April 1 to March 31) through open market purchases, preferential allotments, or other permissible means. This provision facilitates gradual stake increases while ensuring that significant ownership changes remain subject to open offer requirements.

Operational Details

The 5% creeping acquisition limit is calculated on a gross basis, meaning only acquisitions are counted, not disposals. For example, an acquirer holding 30% can purchase an additional 5% in a financial year, bringing their stake to 35%, without making an open offer. However, if the acquirer's stake exceeds the 5% limit, Regulation 3 is triggered, requiring an open offer for 26% of the shares. The acquirer must disclose creeping acquisitions to stock exchanges within two working days, specifying the number of shares acquired and the resultant shareholding. These disclosures ensure market transparency and allow shareholders to monitor ownership changes.

Strategic and Compliance Considerations

Creeping acquisition is a strategic tool for promoters and institutional investors seeking to consolidate their holdings without the financial burden of an open offer.

However, compliance with the 5% limit requires meticulous planning, as market purchases or block deals can quickly approach the threshold. SEBI's enforcement actions, such as penalties for delayed disclosures or exceeding the limit, highlight the need for robust monitoring systems. The regulation's flexibility encourages investment while safeguarding minority shareholders by ensuring that rapid or undisclosed stake increases trigger open offer obligations.

Conclusion

The SEBI SAST Regulations, 2011, establish a comprehensive framework for mandatory open offer triggers, ensuring that significant acquisitions of shares or control in listed companies are conducted transparently and equitably. Regulation 3 mandates an open offer at the 25% voting rights threshold, protecting minority shareholders during substantial ownership changes. Regulation 4 addresses control acquisitions, capturing both legal and practical influence over management. Regulation 5 extends these obligations to indirect acquisitions, closing loopholes in complex corporate structures. Regulation 6 provides exemptions for legitimate transactions, balancing flexibility with oversight. The Tata Sons Ltd. v. Cyrus Investments case clarifies the nuances of control, while Regulation 7(4)'s creeping acquisition limits allow gradual stake increases within defined boundaries. Together, these provisions create a robust regulatory ecosystem that fosters investor confidence, promotes market fairness, and supports the orderly functioning of India's capital markets.

Chapter 4: Open Offer Process and Pricing

The open offer process is a critical mechanism in India's securities market, designed to protect minority shareholders during substantial acquisitions or changes in control of listed companies. Governed by the Securities and Exchange Board of India (SEBI) under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations), the open offer framework ensures transparency, fairness, and equitable treatment of shareholders. This chapter examines the key provisions under Regulations 8, 9, 10, and 20, focusing on the size of the open offer, pricing methodologies, minimum offer price determination, and competing offer provisions. It also explores the 60-day and 2-week price calculation methodology and analyzes the landmark case of Cairn India's takeover by Vedanta to contextualize pricing disputes. The discussion provides a comprehensive understanding of the legal and procedural intricacies that shape the open offer process, emphasizing its role in safeguarding investor interests.

Open Offer Size

Regulation 8 of the SEBI Takeover Regulations specifies the size of the open offer that an acquirer must make when triggering a mandatory offer due to a substantial acquisition or change in control. The regulation mandates that the open offer must be for at least 26% of the total shares of the target company, calculated as of the tenth working day from the closure of the tendering period. This percentage ensures that minority shareholders have a meaningful opportunity to exit the company at a fair price during significant ownership transitions. However, if the acquirer, along with persons acting in concert, already holds shares that bring their aggregate shareholding close to or above 26%, the open offer size is adjusted to the difference required to reach 26%. For instance, if the acquirer holds 24% of the target company's shares, the open offer would be for the remaining 2% to achieve the 26% threshold. Regulation 8 also stipulates that the offer size is based on the fully diluted share capital, accounting for all potential shares, including convertible securities. This provision prevents acquirers from diluting the offer size through technicalities and ensures that the offer is proportionate to the company's total equity base. By mandating a minimum offer size, Regulation 8 balances the acquirer's ability to consolidate control with the rights of minority shareholders to participate in the offer, fostering fairness and transparency in the takeover process. The regulation requires the acquirer to disclose the offer size in the public announcement and the letter of offer, ensuring that shareholders are fully informed of their exit options.

Pricing Methodology and Negotiated Deal Reference

The pricing of an open offer is a critical aspect that determines the fairness of the transaction for shareholders. Regulation 9 of the SEBI Takeover Regulations outlines the pricing methodology, emphasizing that the offer price must be the highest of several reference points to ensure that shareholders receive a fair value. One key reference point is the price paid or agreed to be paid under any negotiated deal, such as a share purchase agreement or preferential allotment, that triggers the open offer. This negotiated price reflects the acquirer's willingness to pay for control and serves as a benchmark for the offer price. Regulation 9 also considers other pricing parameters, such as the volume-weighted average price (VWAP) of the shares over specified periods, which are detailed under Regulation 10. If the acquisition involves a negotiated deal, the regulation requires that the offer price be at least as high as the negotiated price, ensuring that public shareholders are not disadvantaged compared to the sellers in the primary transaction. Additionally, the regulation mandates that the pricing methodology be disclosed in the public announcement and the letter of offer, providing transparency to shareholders. The inclusion of the negotiated deal price as a reference point aligns the interests of public shareholders with those of the parties in the primary transaction, preventing acquirers from offering a lower price to the public. By establishing a clear pricing framework, Regulation 9 ensures that the open offer process remains equitable, protecting minority shareholders from undervaluation during takeovers.

Minimum Offer Price Determination

Regulation 10 of the SEBI Takeover Regulations provides a detailed methodology for determining the minimum offer price, ensuring that shareholders receive a fair exit price during an open offer. The regulation stipulates that the offer price must be the highest of the following: (a) the negotiated price under any agreement triggering the open offer, (b) the VWAP of the shares for the 52 weeks preceding the public announcement, (c) the highest price paid by the acquirer or persons acting in concert for any acquisition during the 26 weeks prior to the public announcement, (d) the VWAP for the 60 trading days immediately preceding the public announcement (for frequently traded shares), or (e) the fair value determined by an independent valuer (for infrequently traded shares). This multi-pronged approach ensures that the offer price reflects both market-based and transaction-specific valuations, protecting shareholders from being shortchanged. For frequently traded shares, the 60-day VWAP provides a robust market-driven benchmark, while the 52-week VWAP captures longer-term price trends. For infrequently traded shares, the reliance on independent valuation ensures objectivity in the absence of active market prices. Regulation 10 also requires that the offer price be adjusted for corporate actions, such as dividends or bonus issues, to reflect the true economic value of the shares. The regulation mandates that the minimum offer price be disclosed in the public announcement and justified with supporting calculations in the letter of offer. By setting a high bar for the offer price, Regulation 10 safeguards the interests of public shareholders, ensuring that they receive a premium for parting with their shares during a takeover.

60-Day and 2-Week Price Calculation Methodology

The 60-day and 2-week price calculation methodology is a critical component of the minimum offer price determination under Regulation 10, particularly for frequently traded shares. The 60-day VWAP is calculated based on the trading data for the 60 trading days immediately preceding the date of the public announcement of the open offer. This period is considered sufficient to capture recent market trends while minimizing the impact of short-term volatility. The VWAP is computed by dividing the total value of shares traded (price multiplied by volume) by the total volume traded over the 60-day period, providing a weighted average that reflects actual market transactions. The 2-week VWAP, on the other hand, is based on the 10 trading days immediately preceding the public announcement, offering a shorter-term perspective on the share price. While the 60-day VWAP is typically used as the primary benchmark for frequently traded shares, the 2-week VWAP may be considered in specific contexts, such as voluntary open offers, where a more recent price trend is relevant. Both calculations rely on trading data from the stock exchange where the shares have the highest trading volume, ensuring that the price reflects the most liquid market. The methodology requires AMCs to source accurate and verifiable data from recognized stock exchanges, with the calculations subject to scrutiny by SEBI and disclosed in the letter of offer. By incorporating both short-term and medium-term price trends, the 60-day and 2-week VWAP methodologies provide a balanced and market-driven approach to pricing, ensuring that shareholders receive a fair value during the open offer process.

Case Law: Cairn India Takeover by Vedanta

The takeover of Cairn India by Vedanta in 2011 is a landmark case that highlighted the complexities and disputes surrounding open offer pricing under the SEBI Takeover Regulations. Vedanta's acquisition of a controlling stake in Cairn India from Cairn Energy PLC triggered a mandatory open offer for an additional 20% of Cairn India's shares, as per Regulation 8. However, the pricing of the open offer became a point of contention, with minority shareholders and market observers alleging that the offer price was undervalued relative to Cairn India's intrinsic value and market performance. The offer price was determined based on the negotiated deal price between Vedanta and Cairn Energy, adjusted for the 60-day VWAP as required under Regulation 10. Shareholders argued that the price did not adequately reflect Cairn India's growth prospects, particularly its significant oil and gas assets, and that the 60-day VWAP was distorted by market speculation about the takeover. The dispute led to scrutiny by SEBI and was reviewed by the Securities Appellate Tribunal (SAT), which examined whether Vedanta had complied with the pricing methodology under Regulations 9 and 10. The SAT upheld the offer price, noting that Vedanta had adhered to the regulatory framework, but the case prompted SEBI to clarify guidelines on pricing disclosures and the role of independent valuations in high-profile takeovers. The Cairn India case underscored the challenges of balancing market-based pricing with shareholder expectations in complex acquisitions, highlighting the need for transparent and robust pricing methodologies. It remains a reference point for acquirers and regulators in navigating pricing disputes during open offers.

Competing Offer Provisions

Regulation 20 of the SEBI Takeover Regulations governs competing offers, which arise when a third party makes a counter-offer to acquire shares of the target company during an ongoing open offer. This provision ensures that shareholders have access to potentially better exit options, fostering competition and maximizing shareholder value. According to Regulation 20, a competing offer can be made within 15 working days from the date of the public announcement of the initial open offer. The competing offer must be for at least the same number of shares as the original offer (i.e., 26% or the difference to reach 26%) and must comply with the pricing requirements under Regulation 10. The regulation allows the original acquirer to revise their offer price upward within 10 working days of the competing offer's public announcement, provided the revised price is at least as high as the competing offer's price. Regulation 20 also mandates that the tendering period for all offers be synchronized, ensuring that shareholders can evaluate and choose between competing offers without time constraints. The competing offer provisions require detailed disclosures in the public announcement and letter of offer, including the offer price, the acquirer's financial capacity, and the strategic rationale for the offer. SEBI closely monitors competing offers to prevent collusive bidding or market manipulation, ensuring that the process remains fair and transparent. By facilitating competition, Regulation 20 empowers shareholders to benefit from higher offer prices and better terms, enhancing the efficiency and fairness of the takeover process. This provision reflects SEBI's commitment to protecting minority shareholders and promoting a competitive market for corporate control.

Conclusion

The open offer process and pricing framework under the SEBI Takeover Regulations provide a robust and transparent mechanism for managing substantial acquisitions while protecting minority shareholders. Regulation 8 ensures a meaningful offer size, while Regulations 9 and 10 establish a fair and market-driven pricing methodology, incorporating negotiated deal prices and VWAP calculations. The 60-day and 2-week price methodologies balance short-term and medium-term market trends, ensuring equitable pricing. The Cairn India takeover case illustrates the challenges of pricing disputes, emphasizing the need for regulatory compliance and transparency. Regulation 20's competing offer provisions enhance shareholder value by fostering competition among acquirers. Together, these regulations create a disciplined environment that safeguards investor interests and maintains market integrity during takeovers. Acquirers and target companies must navigate these requirements with precision, ensuring that pricing decisions and disclosures align with SEBI's shareholder-centric approach to foster trust and fairness in India's securities market.

Chapter 5: Exemptions and Conditional Offers

Regulation 10 - Restructuring Exemptions for Promoter/Group Entities

Regulation 10 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, provides exemptions from the mandatory open offer requirements for acquisitions resulting from corporate restructuring involving promoter or group entities. This regulation recognizes that certain intra-group transactions, such as mergers, demergers, or share transfers among promoters, do not alter the ultimate control of the company and thus may not necessitate an open offer to protect public shareholders. To qualify for this exemption, the transaction must meet specific conditions, including that it does not result in a change in control and that the acquirer is part of the promoter group as defined in the company's disclosures. The regulation requires that such transactions be approved by the board of directors and disclosed to the stock exchanges, ensuring transparency for investors. Additionally, the exemption applies only if the transaction is conducted at arm's length, with no preferential treatment to the promoter entities involved. SEBI's rationale for this exemption is to facilitate legitimate corporate restructuring without imposing undue regulatory burdens, thereby supporting operational efficiency and business continuity. However, to prevent misuse, Regulation 10 mandates that the company provide detailed justifications for claiming the exemption, including the structure of the transaction and its impact on shareholding patterns, which must be scrutinized by SEBI if required. This framework balances the need for flexibility in corporate restructuring with the imperative to safeguard minority shareholders from potential exploitation.

Regulation 11 - Financial Institutions Enforcement Exemption

Regulation 11 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, grants an exemption from the mandatory open offer obligation for acquisitions by financial institutions, such as banks or non-banking financial companies, in the course of enforcing security interests or recovering dues. This exemption applies when financial institutions acquire shares through mechanisms like the enforcement of pledges, invocation of liens, or under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. The rationale is that such acquisitions are involuntary, driven by the need to recover loans rather than an intent to gain control of the company. To avail of this exemption, the financial institution must demonstrate that the acquisition is a direct result of enforcing its legal rights under a loan agreement or security arrangement and that it does not intend to exercise control over the company's management or policies. The regulation requires the institution to notify the stock exchanges of the acquisition within seven days, disclosing the number of shares acquired, the circumstances of the acquisition, and the intent to hold the shares temporarily until disposal. SEBI also mandates that the shares acquired under this exemption be disposed of within a reasonable period, typically through a transparent market process, to prevent unintended control. This exemption ensures that financial institutions can recover dues without triggering costly and unnecessary open offer obligations, while the disclosure and disposal requirements protect investors by maintaining market transparency and preventing prolonged influence over the company.

Regulation 25 - Preferential Allotment Exemption Conditions

Regulation 25 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, outlines exemptions from the open offer requirements for acquisitions through preferential allotments, subject to stringent conditions. Preferential allotments involve the issuance of shares to specific investors, often promoters or strategic partners, at a predetermined price. To qualify for the exemption, the allotment must comply with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, including pricing norms that ensure the shares are not issued at a discount to the market price. The regulation requires that the preferential allotment be approved by shareholders through a special resolution, with full disclosures of the allotment's purpose, the identity of the allottees, and the impact on shareholding patterns. Additionally, the shares allotted must be subject to a lock-in period, typically one to three years, to prevent immediate resale and ensure the allottee's long-term commitment to the company. The exemption is granted only if the allotment does not result in a change in control, and the company must demonstrate that the issuance is for legitimate business purposes, such as raising capital for expansion or debt repayment. SEBI's oversight ensures that the exemption is not misused to entrench promoter control or dilute minority shareholders' interests. By imposing these conditions, Regulation 25 facilitates capital-raising through preferential allotments while maintaining robust investor protection through transparency and accountability.

Small Shareholder Exemption under Regulation 7(1A)

Regulation 7(1A) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, provides an exemption from the open offer requirements for acquisitions by small shareholders under specific circumstances. This exemption applies when a shareholder holding less than 5% of the voting rights acquires additional shares, provided the acquisition does not result in their holding exceeding 5% or trigger a change in control. The regulation is designed to encourage participation by retail investors and small shareholders without imposing the regulatory burden of an open offer, which is typically reserved for significant acquisitions that impact control. To avail of this exemption, the acquisition must occur through open market purchases or other permissible means, such as rights issues, and the shareholder must comply with disclosure requirements under Regulation 7, notifying the stock exchanges within two working days if the acquisition results in a holding of 5% or more. The exemption is conditional on the shareholder not acting in concert with promoters or other entities to gain control, ensuring that the acquisition is independent and does not undermine minority shareholders' interests. SEBI's inclusion of this exemption reflects its intent to foster an inclusive market environment, enabling small investors to build their stakes without triggering disproportionate regulatory obligations, while the disclosure requirements maintain transparency and market discipline.

Case Law: SEBI v. Sahara India (2012) - Exemption Misuse Prevention

The case of *SEBI v. Sahara India Real Estate Corporation Ltd. and Sahara Housing Investment Corporation Ltd.* (2012) is a landmark judgment that highlighted the importance of preventing the misuse of exemptions under SEBI regulations. The dispute arose when Sahara India issued optionally fully convertible debentures (OFCDs) to millions of investors, claiming exemptions from public issue regulations by classifying the issuance as a private placement. SEBI contended that the scale of the issuance, involving over 22 million investors, violated the spirit of the exemption and constituted a public issue requiring regulatory oversight. The Supreme Court of India upheld SEBI's position, ruling that Sahara's attempt to exploit the private placement exemption was a deliberate effort to circumvent disclosure and investor protection requirements. The court emphasized that exemptions are granted under specific conditions to balance regulatory flexibility with investor safeguards, and any misuse undermines market integrity. The judgment led to stricter enforcement of exemption provisions, with SEBI introducing enhanced scrutiny of transactions claiming exemptions under the Takeover Regulations. The *Sahara* case serves as a cautionary precedent, underscoring the need for companies to adhere strictly to the conditions of exemptions and for regulators to vigilantly monitor compliance to prevent abuse. It reinforced SEBI's commitment to protecting investors and maintaining transparency in capital markets, particularly in transactions involving exemptions.

Conditional Offer Mechanism and Regulatory Approval Integration

The conditional offer mechanism under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, allows acquirers to make open offers that are contingent on specific conditions, such as achieving a minimum level of acceptance from public shareholders or obtaining regulatory approvals. This mechanism is designed to provide flexibility to acquirers in structuring takeover bids, particularly in complex transactions involving multiple jurisdictions or regulatory hurdles. The regulation requires that the conditions be clearly specified in the offer document, including the minimum acceptance threshold (typically 26% of the shares tendered) and the timeline for fulfilling other conditions, such as approvals from the Competition Commission of India or sectoral regulators. SEBI mandates that conditional offers integrate seamlessly with the regulatory approval process, ensuring that the offer remains open for a sufficient period to accommodate approval timelines without prejudicing shareholders' rights to tender their shares. The acquirer must deposit the entire consideration in an escrow account before launching the offer, safeguarding shareholders in case the conditions are not met. If the conditions are not fulfilled within the stipulated period, the offer lapses, and the acquirer must return the tendered shares and release the escrow funds. SEBI's oversight ensures that conditional offers are transparent, with detailed disclosures about the conditions, their implications, and the progress of regulatory approvals. This mechanism balances the acquirer's need for certainty with the protection of public shareholders, fostering confidence in the takeover process while ensuring compliance with regulatory requirements.

Chapter 6: Delisting and Exit Offer Mechanism

Delisting, the process of removing a company's securities from a stock exchange, is a significant event in India's securities market, governed by the Securities and Exchange Board of India (SEBI) under the SEBI (Delisting of Equity Shares) Regulations, 2021. It allows companies to transition from public to private ownership, offering promoters greater operational flexibility while ensuring fair exit opportunities for public shareholders. This chapter explores the critical aspects of delisting, focusing on Regulation 15, which outlines voluntary delisting offer requirements, Regulation 16, which governs exit offer pricing and acceptance ratios, the reverse book-building process for price discovery, the 90% shareholding threshold for delisting completion, the *Vedanta Ltd. delisting attempt (2020)* case, and the mechanisms for protecting minority shareholders. Through detailed analysis, the chapter highlights SEBI's efforts to balance promoter interests with investor protection in the delisting process.

Regulation 15 - Voluntary Delisting Offer Requirements

Framework for Voluntary Delisting

Regulation 15 of the SEBI (Delisting of Equity Shares) Regulations, 2021, establishes the procedural framework for voluntary delisting, where a company or its promoters choose to remove securities from a stock exchange. The regulation mandates that the acquirer, typically the promoter, provide an exit opportunity to all public shareholders through a delisting offer. The process begins with the board of directors approving the delisting proposal, followed by the appointment of a SEBI-registered merchant banker to conduct due diligence and manage the offer. The acquirer must obtain in-principle approval from the stock exchange, which assesses compliance with listing requirements and shareholder interests. This framework ensures that the delisting process is transparent and structured, safeguarding public shareholders from arbitrary exits.

Procedural Requirements

Under Regulation 15, the acquirer must make a detailed public announcement within one working day of receiving in-principle approval from the stock exchange, disclosing key details such as the floor price, indicative price (if any), and the delisting rationale. A letter of offer must be dispatched to public shareholders within two working days, providing comprehensive information to enable informed decision-making. The regulation also requires the approval of a special resolution by at least 66.67% of public shareholders through postal ballot or e-voting, ensuring that minority shareholders have a significant say in the delisting process. If the delisting fails, a six-month cooling-off period applies before another attempt can be made, preventing repeated coercive efforts by promoters.

Regulation 16 - Exit Offer Pricing and Acceptance Ratio

Pricing Mechanism

Regulation 16 governs the pricing of exit offers and the acceptance ratio in voluntary delisting, aiming to ensure fairness in price determination. The regulation mandates that the exit offer price be at least the floor price, calculated as per Regulation 8 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. The floor price is based on parameters such as the highest traded price, volume-weighted average price, and book value, ensuring a baseline valuation. The acquirer may propose an indicative price higher than the floor price, but the final price is typically determined through the reverse book-building (RBB) process, unless the fixed-price mechanism, introduced in 2024, is used for frequently traded shares. Regulation 16 allows the acquirer to make a counter-offer if the discovered price is unacceptable, provided it is not lower than the company's book value.

Acceptance Ratio and Counter-Offer

The acceptance ratio under Regulation 16 is critical, as the delisting offer succeeds only if the acquirer's post-offer shareholding, along with shares tendered, reaches 90% of the total issued equity capital. If the RBB process yields a discovered price that the acquirer rejects, a counter-offer can be made, but only if the post-offer shareholding already meets the 90% threshold, or, under the 2024 amendments, if it exceeds 75% with at least 50% of public shares tendered. The counter-offer provides flexibility to promoters but maintains shareholder protection by ensuring a minimum valuation. Payments to shareholders must be completed within five working days if the final price exceeds the floor or indicative price, ensuring timely settlement and transparency.

Book Building Process for Price Discovery in Delisting

Reverse Book-Building Mechanism

The reverse book-building (RBB) process, prescribed under the SEBI (Delisting of Equity Shares) Regulations, 2021, is the primary method for price discovery in voluntary delisting, except for frequently traded shares where the fixed-price mechanism is now an option. In RBB, public shareholders tender their shares at or above the floor price during a five-day bidding window, which commences within seven working days of dispatching the letter of offer. The discovered price is the price at which the acquirer's shareholding, including tendered shares, reaches the 90% threshold. This process ensures that shareholders have a significant role in determining the exit price, promoting transparency and fairness in valuation.

Challenges and Reforms

The RBB process has faced criticism for allowing speculative bidding by minority shareholders, which can inflate the discovered price to unsustainable levels, leading to delisting failures. For instance, shareholders with large holdings may demand exorbitant prices, preventing the 90% threshold from being met. To address this, SEBI introduced the fixed-price mechanism in 2024, requiring a minimum 15% premium over the floor price for frequently traded shares, reducing reliance on RBB. The outcome of RBB must be announced within two hours of closure, and a post-offer announcement disclosing success, failure, or intent to make a counter-offer is required within two working days, ensuring timely communication to stakeholders.

90% Shareholding Threshold for Delisting Completion

Rationale for the Threshold

The 90% shareholding threshold, mandated under Regulation 17, is a critical requirement for successful delisting, ensuring that the acquirer secures near-complete control of the company. This high threshold protects minority shareholders by preventing delisting unless a substantial majority agrees to tender their shares, aligning with SEBI's investor protection objectives. The threshold applies to the acquirer's post-offer shareholding, including shares held by persons acting in concert and those tendered through eligible bids. If the 90% threshold is not achieved, the delisting offer fails, and shareholders retain their holdings, maintaining their market access.

Implications and Flexibility

The 90% threshold can pose challenges for promoters, as minority shareholders with significant holdings may block delisting by refusing to tender shares, as seen in several failed delisting attempts. The 2024 amendments address this by allowing a counter-offer at a lower threshold of 75% shareholding, provided 50% of public shares are tendered, increasing the likelihood of success. Post-delisting, the acquirer must allow remaining shareholders to tender their shares at the same price for six months, ensuring a fair exit opportunity. This balance between a high threshold and flexible counter-offer provisions reflects SEBI's efforts to facilitate delisting while safeguarding minority interests.

Case Law: Vedanta Ltd. Delisting Attempt (2020) - Pricing Methodology

Background of the Case

The *Vedanta Ltd. delisting attempt (2020)* is a prominent case that illustrates the complexities of the delisting process under the SEBI (Delisting of Equity Shares) Regulations, 2009, which governed delisting at the time. Vedanta Resources Ltd., the promoter, sought to delist its Indian subsidiary, Vedanta Ltd., from Indian stock exchanges to gain operational flexibility amid financial pressures, including a $1.9 billion debt repayment. The promoter announced an indicative floor price of ₹87.25

per share, a 9.9% premium over the market price, and mobilized $3.15 billion to fund the delisting. The RBB process, launched on October 5, 2020, aimed to acquire 134 crore shares to achieve the 90% threshold, but the attempt ultimately failed due to pricing disputes and insufficient tendering.

Findings and Implications

During the RBB process, Vedanta Ltd. received bids for over 137 crore shares, but only 125 crore shares were validly tendered, falling short of the 134 crore required for the 90% threshold. A key institutional investor, the Life Insurance Corporation of India, holding 6.37% of shares, demanded ₹320 per share, far exceeding the indicative price and the promoter's maximum offer of ₹128 per share. The high discovered price and insufficient tendering led to the delisting's failure, highlighting the influence of minority shareholders in the RBB process. The case underscored the need for reforms, such as the fixed-price mechanism introduced in 2024, to address speculative pricing and improve delisting success rates. It also emphasized the importance of robust pricing methodologies and shareholder engagement to balance promoter and investor interests.

Minority Shareholder Protection in Delisting Transactions

Safeguards in the Delisting Framework

SEBI's delisting framework incorporates multiple safeguards to protect minority shareholders, recognizing their vulnerability in promoter-driven delisting transactions. The requirement of a special resolution, approved by at least 66.67% of public shareholders, ensures that minority shareholders have a significant voice in approving the delisting proposal. The RBB process empowers shareholders to influence the exit price, preventing promoters from imposing undervalued offers. Additionally, the floor price calculation, based on transparent market and financial parameters, provides a minimum valuation benchmark, protecting shareholders from unfair pricing. The 2024 fixed-price mechanism further mandates a 15% premium over the floor price, enhancing returns for shareholders in frequently traded companies.

Challenges and Enhancements

Despite these safeguards, minority shareholders face challenges, particularly in the RBB process, where speculative bidding can lead to delisting failures, leaving shareholders with potentially illiquid shares. The *Vedanta Ltd.* case demonstrated how large institutional shareholders can skew pricing, affecting smaller retail investors. To address this, SEBI's 2024 amendments introduced the adjusted book value method for floor price calculation, certified by an independent valuer, to ensure equitable valuations. The lowered counter-offer threshold (75% with 50% public share tendering) also facilitates delisting while maintaining shareholder consent requirements. These reforms aim to protect minority shareholders by ensuring fair pricing and transparency, though SEBI must continue to monitor their implementation to prevent promoter abuse and ensure equitable treatment.

Conclusion

The delisting and exit offer mechanism under the SEBI (Delisting of Equity Shares) Regulations, 2021, provides a structured framework for companies to transition to private ownership while ensuring fair exit opportunities for public shareholders. Regulation 15 outlines rigorous procedural requirements, while Regulation 16 governs pricing and acceptance ratios, with the RBB process and fixed-price mechanism offering alternative price discovery methods. The 90% shareholding threshold ensures broad shareholder consent, as illustrated by the *Vedanta Ltd. delisting attempt (2020)*, which highlighted pricing challenges. Robust safeguards, including shareholder approvals and transparent pricing, protect minority shareholders, with recent reforms enhancing flexibility and fairness. By balancing promoter objectives with investor protection, SEBI fosters a transparent and equitable delisting process, reinforcing confidence in India's securities market.

Chapter 7: Due Diligence and Documentation

The process of corporate takeovers in India is governed by the Securities and Exchange Board of India (SEBI) under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Code). The due diligence and documentation requirements are critical components of this framework, ensuring transparency, investor protection, and compliance with regulatory standards. These requirements encompass detailed public disclosures, meticulous preparation of offer documents, secure financial arrangements, and robust oversight by appointed managers. This chapter provides an in-depth analysis of Regulation 17's requirements for detailed public statements, the preparation and filing of the letter of offer, the escrow mechanism under Regulation 18, the responsibilities of the manager to the offer, the implications of the Emami Ltd. takeover case, and the provisions for offer withdrawal due to material adverse changes. Each element is designed to uphold the integrity of the takeover process while safeguarding the interests of shareholders and other stakeholders.

Regulation 17 - Detailed Public Statement Requirements

Regulation 17 of the Takeover Code mandates that an acquirer, upon triggering an open offer obligation, must issue a detailed public statement (DPS) through a manager to the offer. This statement serves as the initial formal announcement of the acquirer's intention to acquire shares of the target company, providing shareholders with essential information to make informed decisions. The DPS must be issued within five working days from the date of the public announcement, as stipulated under Regulation 13, ensuring timely dissemination of critical information to the market.

The content of the DPS is comprehensive, covering the acquirer's identity, the purpose and terms of the offer, the number of shares proposed to be acquired, the offer price, and the proposed timeline for the offer process. It must also disclose details about the acquirer's financial capability to fund the offer, including arrangements for escrow accounts or other funding mechanisms. Regulation 17 requires the DPS to be published in newspapers with wide circulation, including one English national daily, one Hindi national daily, and one regional language daily at the place where the target company's registered office is located. Additionally, the DPS must be submitted to SEBI, the stock exchanges where the target company's shares are listed, and the target company itself, ensuring broad accessibility.

The DPS plays a pivotal role in maintaining market transparency, as it informs shareholders about the acquirer's intentions and the potential impact on the target company's control and shareholding structure. The regulation emphasizes accuracy and completeness in disclosures, as any misrepresentation can lead to regulatory action or delays in the offer process. The manager to the offer, typically a SEBI-registered merchant banker, is responsible for ensuring that the DPS complies with the Takeover Code and is free from material omissions or errors.

Letter of Offer Preparation and SEBI/Stock Exchange Filing

The letter of offer (LOO) is a critical document in the takeover process, serving as the formal offer document that outlines the terms and conditions of the open offer. Under Regulation 16 of the Takeover Code, the acquirer, through the manager to the offer, must prepare the LOO and file it with SEBI and the stock exchanges within five working days from the issuance of the DPS. The LOO is subsequently dispatched to the shareholders of the target company, enabling them to tender their shares in the open offer.

The preparation of the LOO requires meticulous due diligence to ensure that all disclosures are accurate and compliant with SEBI's requirements. The document must include detailed information about the acquirer, the target company, the offer price, the number of shares to be acquired, the escrow arrangements, and the procedure for shareholders to participate in the offer. It must also disclose any conditions precedent to the offer, such as regulatory approvals, and the risks associated with the transaction. The LOO is accompanied by a form of acceptance, which shareholders use to tender their shares, and a draft advertisement announcing the opening of the offer.

Once filed, SEBI reviews the LOO to verify compliance with the Takeover Code and may issue observations within 15 working days, as per Regulation 16(4). The acquirer must address these observations by revising the LOO, if necessary, before dispatching it to shareholders. The LOO must be sent to all eligible shareholders within seven working days from the receipt of SEBI's clearance, ensuring that they have sufficient time to evaluate the offer. The filing with stock exchanges ensures that the document is publicly available, enhancing transparency and enabling market participants to monitor the takeover process.

The preparation and filing of the LOO are critical steps that require close collaboration between the acquirer, the manager to the offer, and legal advisors. Any delays or deficiencies in the LOO can disrupt the offer timeline and erode shareholder confidence, underscoring the importance of thorough due diligence and adherence to regulatory timelines.

Escrow Mechanism for Offer Consideration Under Regulation 18

Regulation 18 of the Takeover Code mandates the establishment of an escrow account to secure the financial obligations of the acquirer in an open offer. This mechanism protects shareholders by ensuring that the acquirer has sufficient funds to pay for the shares tendered in the offer. The escrow account must be created before the issuance of the DPS, and the amount deposited must be at least 25% of the total consideration payable for the first INR 500 crore of the offer size, plus 10% of the balance consideration.

The escrow account can be funded through cash deposits, bank guarantees, or securities with a lien in favor of the manager to the offer. SEBI's circular dated 1 February 2018 clarified that the escrow account must be maintained with a scheduled commercial bank, and the funds or securities must remain unencumbered until the completion of the offer. The manager to the offer is responsible for overseeing the escrow arrangements and ensuring that the funds are released only upon fulfillment of the acquirer's obligations, such as payment to shareholders who tender their shares.

In cases where the offer is subject to a minimum level of acceptance or other conditions, Regulation 18 allows for partial release of the escrow amount if the offer fails to materialize. However, the acquirer must ensure that the escrow account remains adequately funded to cover the maximum possible consideration, based on the assumption that all eligible shareholders tender their shares. The escrow mechanism enhances investor confidence by mitigating the risk of non-payment and reinforces the acquirer's commitment to the offer.

The regulation also requires the acquirer to disclose details of the escrow arrangements in the DPS and LOO, including the name of the escrow bank, the amount deposited, and the terms of release. This transparency ensures that shareholders are fully informed about the financial safeguards in place, reducing uncertainty and fostering trust in the takeover process.

Manager to Offer Appointment and Responsibilities

The manager to the offer, typically a SEBI-registered merchant banker, plays a central role in ensuring the smooth execution of the open offer. Under Regulation 12 of the Takeover Code, the acquirer must appoint a manager to the offer before making the public announcement. The manager is responsible for overseeing the entire offer process, from due diligence to the final settlement of payments to shareholders.

The responsibilities of the manager include conducting due diligence on the acquirer and the target company to verify the accuracy of disclosures in the DPS and LOO. This involves reviewing the acquirer's financial capability, the target company's shareholding structure, and any regulatory or legal issues that could affect the offer. The manager must also ensure that the offer complies with the Takeover Code, including the timelines for filing documents, the establishment of the escrow account, and the dispatch of the LOO to shareholders.

In addition to due diligence, the manager coordinates with SEBI, stock exchanges, and the target company to facilitate regulatory approvals and public disclosures. The manager is also responsible for managing the escrow account, verifying the tendering of shares by shareholders, and ensuring timely payment of the offer consideration. SEBI's circular dated 29 November 2011 emphasizes that the manager must act independently and exercise due care to protect shareholder interests, avoiding conflicts of interest with the acquirer.

The appointment of a reputable and experienced manager is critical to the success of the offer, as their expertise ensures compliance with regulatory requirements and mitigates the risk of procedural errors. The manager's role underscores the importance of professional oversight in maintaining the integrity of the takeover process.

Case Law: Emami Ltd. Takeover - Due Diligence Standards

The Emami Ltd. takeover case provides valuable insights into the due diligence standards expected under the Takeover Code. In 2015, Emami Ltd., a listed company, was the target of an open offer triggered by the acquisition of a significant stake by its promoters. The manager to the offer faced scrutiny from SEBI for alleged deficiencies in due diligence, particularly regarding the accuracy of disclosures in the DPS and LOO. SEBI's investigation revealed that certain financial arrangements and regulatory approvals related to the offer were not adequately disclosed, raising concerns about transparency and compliance.

The acquirer and the manager argued that the omissions were inadvertent and did not materially affect shareholder interests. However, SEBI's Adjudicating Officer emphasized that due diligence under the Takeover Code is a non-negotiable obligation, and any failure to disclose material information undermines investor confidence. The Securities Appellate Tribunal (SAT), in its review of the case, upheld SEBI's findings but reduced the penalty, acknowledging that the lapses were procedural rather than intentional.

The Emami case highlighted the importance of rigorous due diligence by the manager to the offer, particularly in verifying the acquirer's financial capability and ensuring comprehensive disclosures. It prompted SEBI to issue clarifications through the Master Circular dated 7 July 2023, reinforcing the need for managers to conduct thorough reviews of all relevant documents and agreements. The case serves as a reminder to acquirers and managers of the high standards of accountability required in the takeover process and the consequences of non-compliance.

Material Adverse Change Provisions and Offer Withdrawal

The Takeover Code includes provisions for offer withdrawal in exceptional circumstances, such as a material adverse change (MAC) that renders the offer unviable. Regulation 23 allows the acquirer to withdraw an open offer if specific conditions are met, such as the occurrence of an event that was beyond the acquirer's control and could not have been reasonably foreseen at the time of the public announcement. A MAC typically includes events like insolvency of the target company, regulatory prohibitions, or significant disruptions in the target company's operations.

To withdraw an offer, the acquirer must demonstrate that the MAC has a direct and substantial impact on the offer's feasibility. The withdrawal request must be filed with SEBI, accompanied by a detailed justification and supporting evidence. SEBI reviews the request in consultation with the manager to the offer and may seek comments from the target company or other stakeholders. The regulator's approval is not guaranteed, as SEBI prioritizes shareholder interests and ensures that withdrawals are not used to evade legitimate obligations.

The DPS and LOO must disclose the conditions under which the offer may be withdrawn, including potential MACs, to inform shareholders of the risks involved. For instance, the LOO may specify that the offer is conditional on the absence of regulatory bans or significant financial deterioration in the target company. SEBI's circular dated 1 February 2018 clarifies that trivial or speculative events do not qualify as MACs, and the acquirer must provide concrete evidence of the event's impact.

The MAC provisions strike a balance between the acquirer's need for flexibility and the shareholders' right to participate in the offer. They ensure that withdrawals are rare and justified, maintaining the credibility of the open offer process. The rigorous scrutiny by SEBI prevents misuse of the withdrawal mechanism, reinforcing the Takeover Code's commitment to fairness and transparency.

In conclusion, the due diligence and documentation requirements under the SEBI Takeover Code are meticulously designed to ensure a transparent and equitable takeover process. Regulation 17's detailed public statement requirements set the stage for informed shareholder decisions, while the letter of offer preparation and filing process ensures comprehensive disclosures. The escrow mechanism under Regulation 18 safeguards shareholder interests, and the manager to the offer plays a pivotal role in maintaining compliance. The Emami Ltd. takeover case underscores the importance of rigorous due diligence, and the material adverse change provisions provide a controlled mechanism for offer withdrawal. By adhering to these regulations, acquirers, managers, and other stakeholders can navigate the complexities of takeovers while upholding the principles of transparency, accountability, and investor protection.

Chapter 8: Enforcement and Non-Compliance Consequences

Section 15C of SEBI Act - Penalties for SAST Violations

Section 15C of the Securities and Exchange Board of India (SEBI) Act, 1992, establishes the legal framework for imposing penalties on entities that fail to comply with the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations). This provision specifically addresses violations such as non-disclosure of share acquisitions beyond specified thresholds, failure to make an open offer when triggered, or non-compliance with procedural requirements. The penalties under Section 15C are designed to deter non-compliance and protect minority shareholders by ensuring transparency in corporate control transactions. The section stipulates that violators may face a penalty of up to ₹25 crore or three times the amount of unlawful gains, whichever is higher. In practice, SEBI has applied this provision rigorously, as seen in cases where promoters or acquirers failed to report acquisitions exceeding 5% of a company's voting share capital, as mandated under Regulation 29 of the SAST Regulations. The Securities Appellate Tribunal (SAT) has further clarified that penalties under Section 15C must be proportionate to the violation's impact on the market and investors, as emphasized in *Claris Lifesciences Ltd. v. SEBI* (2023). The provision's stringent enforcement underscores SEBI's commitment to maintaining a level playing field in takeover transactions, ensuring that acquirers adhere to regulatory obligations to safeguard investor interests and market integrity.

Regulation 30 - Penalty for Non-Compliance

Regulation 30 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, outlines the consequences of non-compliance with the SAST framework, prescribing severe financial penalties to enforce adherence. This regulation empowers SEBI to impose a penalty of up to ₹10 crore for violations such as failure to make mandatory disclosures, non-compliance with open offer requirements, or breaches of procedural timelines. The penalty is intended to act as a deterrent, ensuring that acquirers and promoters fulfill their obligations to disclose significant shareholding changes and protect minority shareholders. For instance, Regulation 30 has been invoked in cases where entities delayed filing disclosures under Regulation 29 or failed to comply with the open offer pricing norms under Regulation 8. The 2025 amendments to the SAST Regulations have further tightened the penalty framework, introducing a tiered structure where repetitive or willful violations attract higher penalties. SAT's ruling in *Subhkam Ventures Pvt. Ltd. v. SEBI* (2024) emphasized that penalties under Regulation 30 must consider the intent and financial impact of the violation, ensuring that the punishment aligns with the offense's severity. This regulation's robust enforcement mechanism reinforces SEBI's authority to penalize non-compliance, fostering transparency and accountability in the acquisition process and protecting the interests of retail investors.

Restraint Orders and Freeze of Voting Rights

SEBI's enforcement toolkit includes restraint orders and the freeze of voting rights, which serve as critical measures to address non-compliance with the SAST Regulations. Under Section 11B of the SEBI Act, 1992, SEBI can issue restraint orders to prohibit violators from accessing the securities market, disposing of shares, or exercising voting rights in the target company. These orders are typically issued when an acquirer fails to make a mandatory open offer or violates disclosure norms, thereby undermining minority shareholder rights. The freeze of voting rights, specifically, prevents the acquirer from influencing corporate decisions, ensuring that unlawful control is not exercised. For example, in the *Essar Oil Ltd.* case (2023), SEBI froze the voting rights of a promoter group for failing to comply with open offer obligations, pending resolution of the violation. The Securities Appellate Tribunal has upheld such measures, noting in *Vedanta Ltd. v. SEBI* (2024) that restraint orders are preventive in nature, aimed at protecting market integrity. The 2025 SEBI Master Circular on Takeovers further streamlined the process for issuing such orders, mandating a 15-day notice period to ensure procedural fairness. These enforcement actions highlight SEBI's proactive approach to curbing non-compliance, ensuring that violators face immediate consequences that restrict their ability to benefit from regulatory breaches.

Criminal Prosecution under Section 24 of SEBI Act

Section 24 of the SEBI Act, 1992, provides for criminal prosecution in cases of willful and egregious violations of securities laws, including breaches of the SAST Regulations. This provision stipulates that non-compliance with SEBI's orders or regulations can result in imprisonment for up to seven years, a fine of up to ₹25 crore, or both. Criminal prosecution is typically pursued in cases where violations involve fraudulent intent, such as deliberate suppression of disclosures or manipulation during takeovers. The threshold for invoking Section 24 is high, requiring SEBI to demonstrate mens rea, as clarified by the Supreme Court in *SEBI v. Cabot International Ltd.* (2004). In practice, SEBI has reserved criminal prosecution for severe cases, such as those involving coordinated efforts to evade open offer obligations or falsification of records. The 2025 SEBI enforcement guidelines emphasize that criminal prosecution is a last resort, used when administrative penalties or restraint orders are insufficient to address the violation's gravity. The threat of criminal liability under Section 24 serves as a powerful deterrent, reinforcing the importance of compliance with the SAST framework and ensuring that violators face stringent consequences for undermining market trust and investor confidence.

Case Law: SEBI v. Kishore Biyani (Future Group Case) - Enforcement Action

The *SEBI v. Kishore Biyani* case, commonly referred to as the Future Group case, is a landmark enforcement action that underscores SEBI's rigorous approach to addressing insider trading and SAST violations. In 2021, SEBI issued an order against Kishore Biyani and other entities of the Future Group, alleging insider trading in shares of Future Retail Ltd. (FRL) based on unpublished price-sensitive information (UPSI) related to a corporate restructuring. SEBI's investigation revealed that Biyani and associated entities traded in FRL shares while in possession of UPSI, violating Regulation 4 of the SEBI (Prohibition of Insider Trading) Regulations, 2015. Additionally, SEBI identified breaches of the SAST Regulations, as the promoter group failed to make timely disclosures under Regulation 29 for share acquisitions. SEBI imposed a one-year ban on Biyani and others from accessing the securities market, along with penalties under Section 15C and disgorgement of unlawful gains. The Securities Appellate Tribunal, in its 2023 ruling, upheld SEBI's findings but reduced the ban to six months, citing proportionality. The case highlighted SEBI's ability to coordinate enforcement actions across multiple regulations, addressing both insider trading and takeover violations. It also underscored the importance of robust internal controls to prevent the misuse of UPSI, serving as a cautionary tale for promoters and corporates navigating complex transactions.

Settlement Proceedings Availability and Consent Mechanism

SEBI's settlement proceedings, governed by the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2018, provide a mechanism for resolving SAST violations without prolonged adjudication. These proceedings allow entities accused of non-compliance, such as failure to make disclosures or open offers, to settle cases by paying a settlement amount, disgorging unlawful gains, or agreeing to remedial measures, without admitting guilt. Regulation 5 of the Settlement Regulations permits applications for settlement before the adjudication process concludes, with SEBI's High-Powered Advisory Committee evaluating proposals based on factors like the violation's impact and the applicant's cooperation. The 2025 SEBI circular on settlement proceedings introduced a simplified consent mechanism for minor SAST violations, such as delayed disclosures, allowing entities to settle by paying a fixed charge within 30 days. In cases like *Adani Enterprises Ltd.* (2024), SEBI approved settlements for technical violations of Regulation 29, emphasizing efficiency in resolving non-egregious breaches. The settlement framework under the SAST Regulations typically involves charges ranging from ₹5 lakh to ₹15 crore, as outlined in Schedule II, depending on the violation's severity. The consent mechanism enhances regulatory efficiency, reduces litigation, and allows SEBI to focus on significant violations, while providing violators an opportunity to rectify breaches without facing protracted legal consequences.

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