

A Deep Insight of **SEBI Takeover Code**

Uncoding the Code





Contents

- 1 **Disclosure**
- 2 **Open Offer**
- 3 **Important Exemptions**

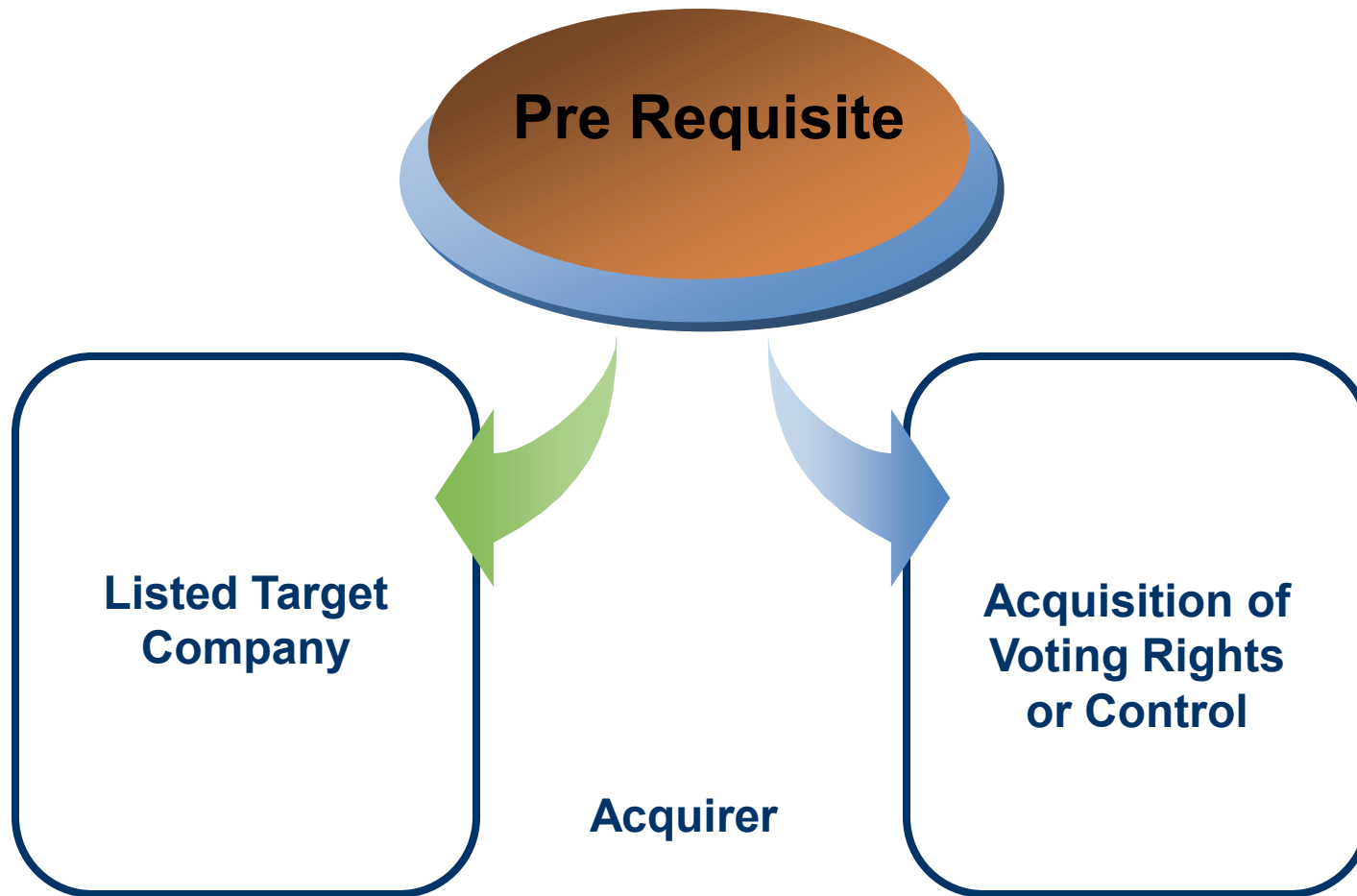


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Pre-Requisite of Takeover Code





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**Event
Based**

Disclosure

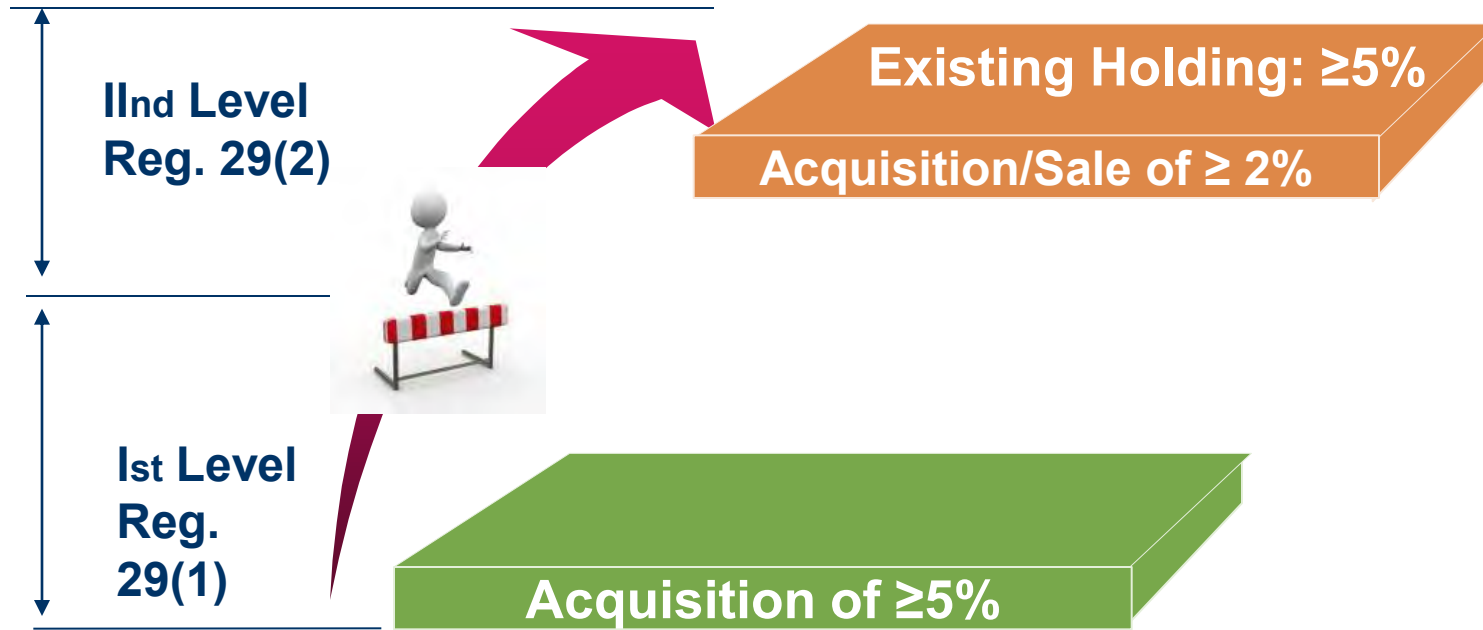
**Annual
Disclosure**

**Encumbered
Shares**





Event Based



Within 2 working days of
Acquisition or receipt of Intimation
of Allotment





Event Based- Important Points

No obligation on the Target Company to give any disclosure

Acquisition includes shares acquired by way of Encumbrance*

Disposal includes shares given upon release of encumbrance*

Disclosure to be given to STX and Target Company

****Not Applicable to Scheduled Commercial Banks or Public Financial Institution as Pledgee***





Annual Disclosure

Any
Person
+ PACs
 $\geq 25\%$

Promoter
+
PACs



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Annual Disclosure-Important Points

Disclosure of shareholding as of 31st day of March

Disclosure to be given within 7 working days from the end of each F.Y.

Disclosure to be given to STX and Target Company

No obligation on Target Company to give any disclosure





Encumbered Shares

Creation
of
Encumbrance

Invocation /
Release
of
Encumbrance

Encumbrance shall include a pledge, lien or any other transaction which entails a risk on the ownership of shares held by promoters.



Encumbered Shares-Important Points

Obligation on Promoters only

Disclosure in respect of shares encumbered by Promoters and PACs

Disclosure to be given to STX and Target Company

No obligation on Target Company to give any disclosure





Important Concepts

Disclosure of Aggregate shareholding of Acquirer or Promoter or PACs



Convertible Securities shall be treated as Shares





Example

Company A	100 equity shares	50 PCDs	10 GDRs	Total Shares: 160	Total Voting Rights: 110	Disclosure
B holding in Company A	8 Shares	7 PCDs	1 GDR	16 Shares (10%)	9 Voting Rights (8%)	
Scenario I						
“B” Acquires	2 Shares	2 PCDs	-	4 Shares (2.5%)	2 Voting Rights (1.8%)	Disclosure under regulation 29(2).
Scenario II						
“B” Acquires	-	20 PCDs	-	20 Shares (12.5%)	-	Disclosure under regulation 29(2)
Scenario III						
“B” Acquires	2 Shares	-	-	2 Shares (1.25%)	2 Voting Rights (1.8%)	No Disclosure under regulation 29(2).



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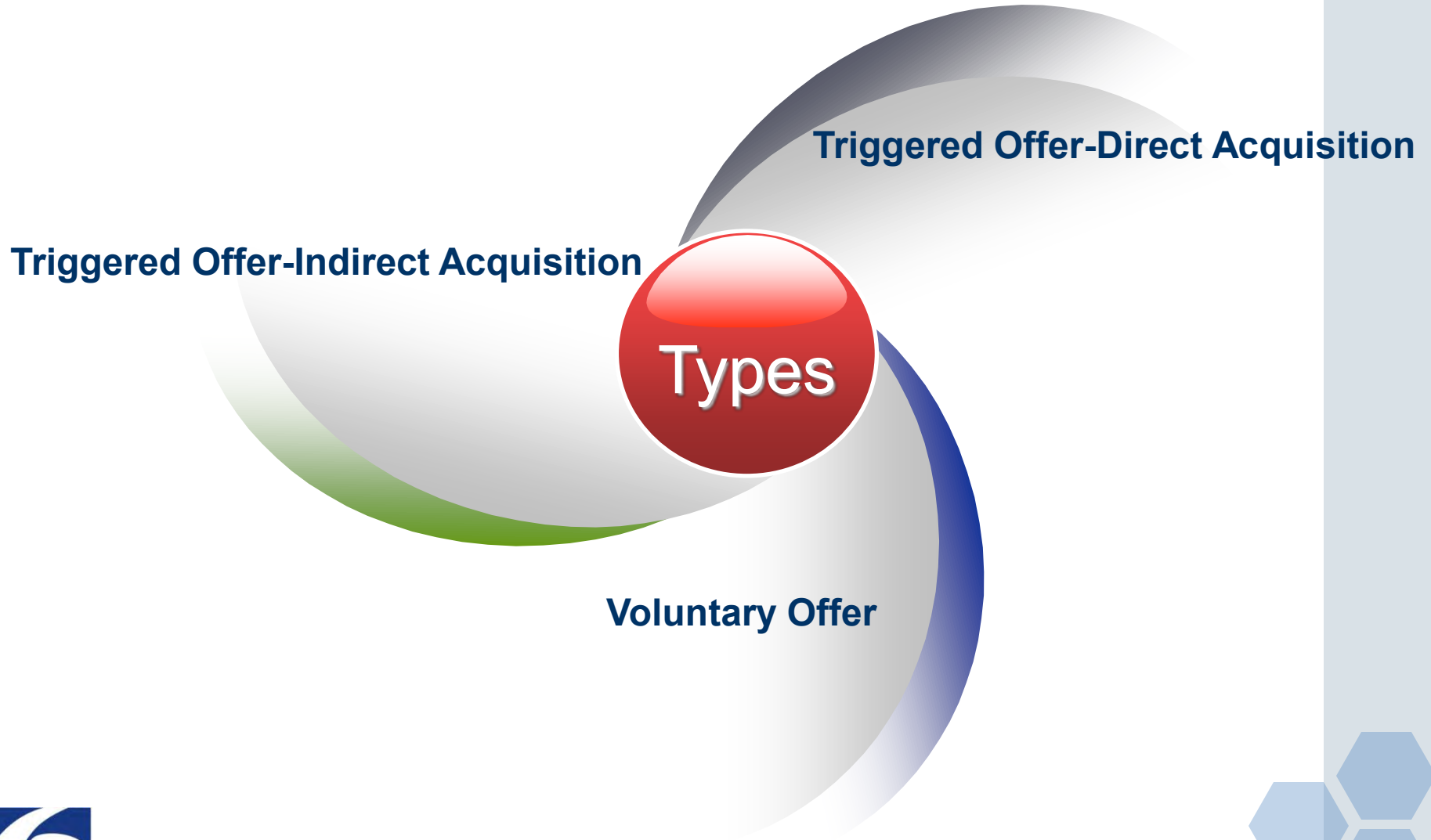


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Types of Offer





Triggered
Offer

Voluntary
Offer





Ist Trigger Point-Regulation 3(1)

0-24.99%

- No Public Announcement Required



25% or more

- Public Announcement Required





Find Trigger Point-Reg. 3(2)

25%-75%

- Acquisition upto 5% voting rights. No Public Announcement Required



25% or more

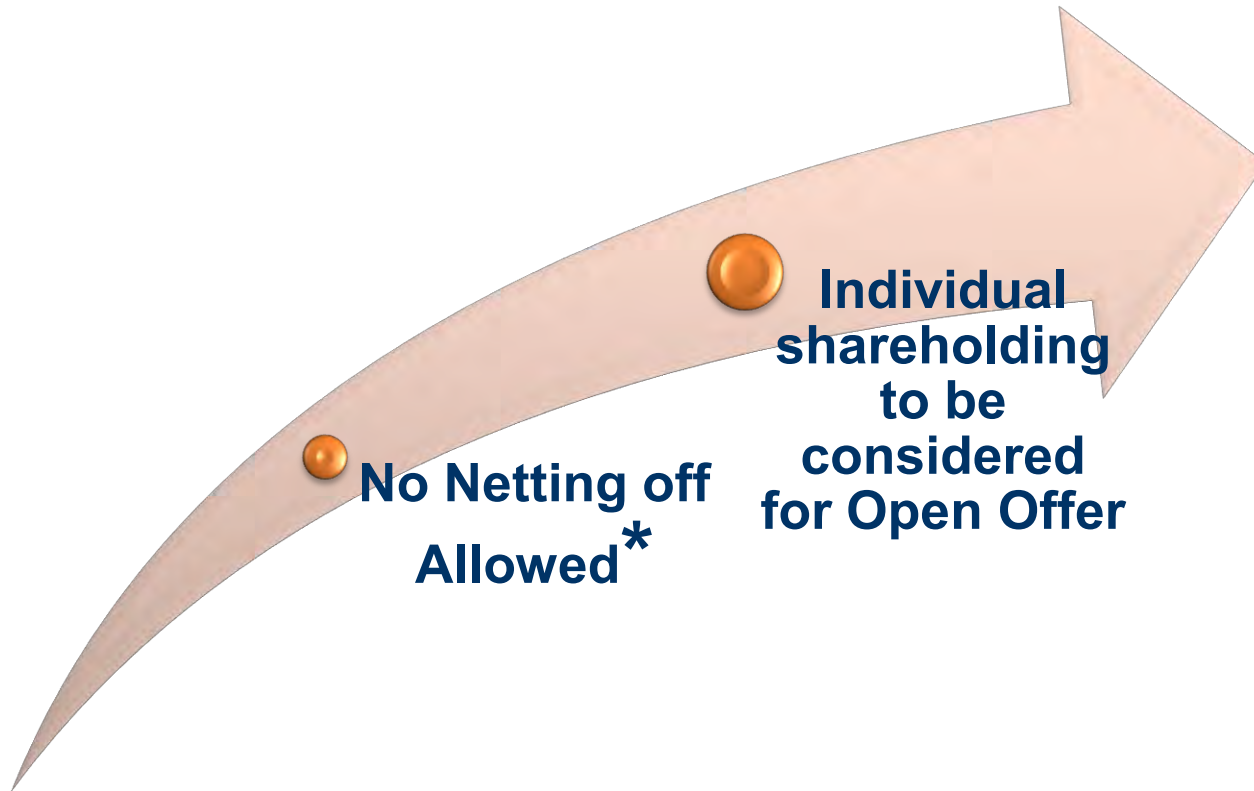
- Acquisition of more than 5% voting rights, Public Announcement Required

Cannot cross the benchmark of Maximum Permissible Non Public Shareholding.





Key Points





No Netting Off Allowed

Dates	Shares /Voting Rights
No. of shares held as on 01.04.2012	35%
Shares acquired on 22.05.2012	4%
Shares sold on 01.09.2012	2%
No. of shares that can be acquired under the Creeping Acquisition during the financial year 2012-13	1%





Individual Shareholding to be considered

Promoter	Pre Holding	Creeping Acquisition	Post Holding	Applicability of SEBI Takeover Regulations, 2011
A	23%	3%	26%	Open Offer Obligations
B	7%	2%	9%	-
Total	30%	5%	35%	-

- Increase in total promoter shareholding- within the creeping acquisition limit.
- However, A's shareholding has goes beyond 25%, resulting into triggering of Open Offer obligation.





Incremental Voting Rights in Fresh Issue

Particulars	Pre shareholding		Shares to be allotted pursuant to preferential allotment		Post shareholding		Changes	
	No. of shares	% *	No. of shares	% ^	No. of shares	% ^	No. of shares	%
Promoters	70	58.33	16	11.99	86	63.33	16	5
Non promoters	50	41.67			50	36.67	0	(5)
Total	120 (X)	100			136 (Y)	100	16	0.00

* - No. of shares / X * 100

^ - No. of shares / Y * 100

In the present case, the incremental increase in voting right is 5%, although the fresh allotment constitutes 11.99% of the expanded capital of the Company.

Accordingly, the incremental increase in voting rights is within the creeping acquisition limit.





Change in Control

- Through Open Offer Only

Irrespective of acquisition of shares or voting rights





Timing of Public Announcement (PA)

Triggering Event	Time
Agreement	On the same day
Market Purchase of shares	Prior to the placement of purchase order with the stock broker.
Conversion of securities without fixed date of conversion	On the same day of exercise of option





Timing of Public Announcement (PA)

Triggering Event	Time
Conversion of securities with fixed date of conversion	Second working day preceding the date of conversion
Disinvestment	On the same day of executing the agreement
Preferential Allotment	Date of passing Special Resolution



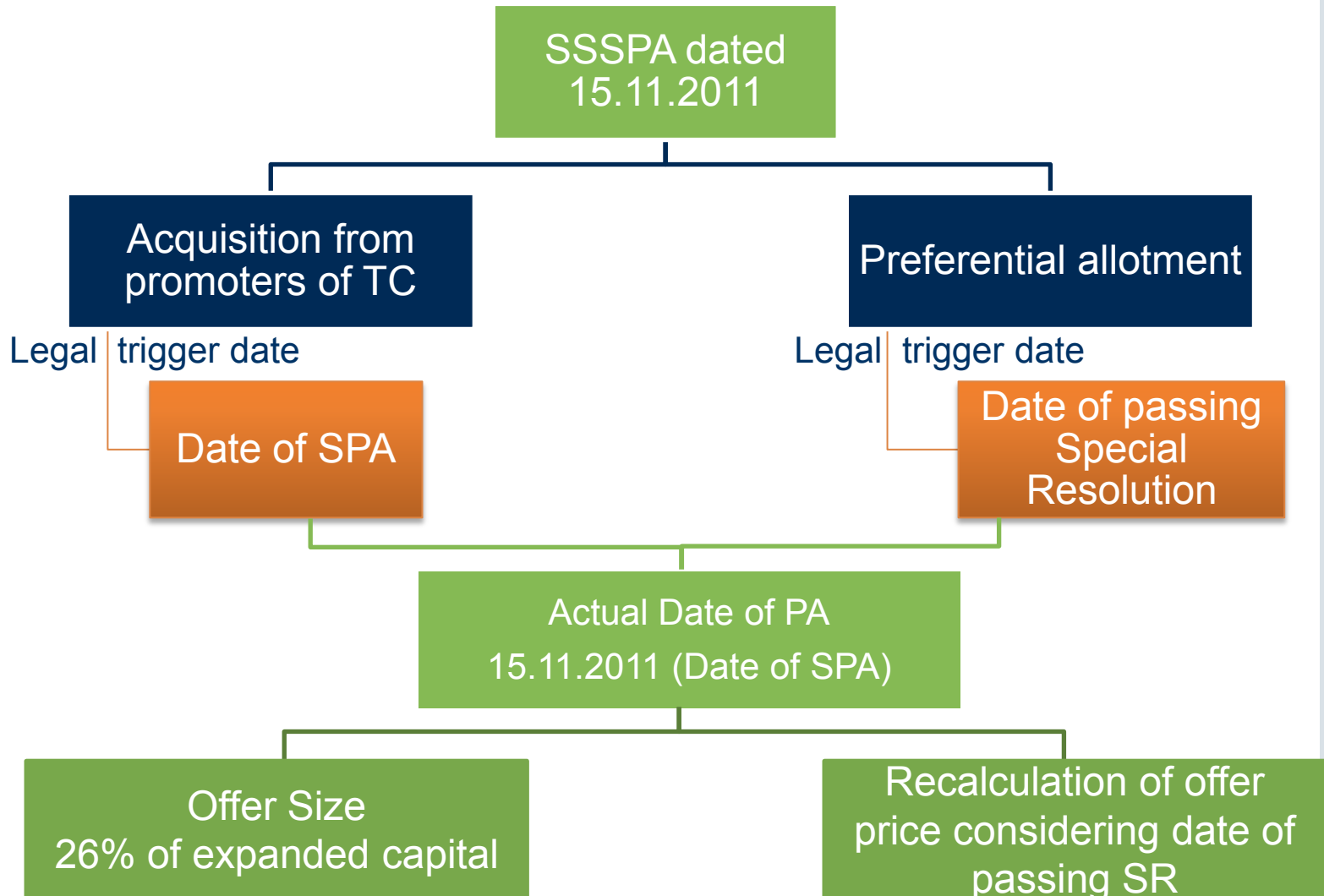


Timing of Public Announcement (PA)

Triggering Event	Time
Buy-back not qualifying for exemption under Regulation 10	Not later than 90th day from the date of increase in voting rights.
Acquisition of shares and control beyond the control of acquirer	Not later than 2 working days from receipt of intimation having acquired such control
Voluntary Offer	On the same day when the Acquirer decides to make Voluntary Offer



Open Offer of Andhra Cements Limited





Open Offer of R System International Limited

Target Company: R Systems International Limited

Acquirer: Mr. Bhavook Tripathi

Prior to making PA	Acquirer was holding 23.82% shares of TC
Prior to placement of order on December 15, 2011	Made PA
After making PA	Place the order with the Broker(Acquired 7.18% shares of TC)
Post Holding after the said acquisition	31%





IMPORTANT CONCEPTS





Completion

COMPLETION OF ACQUISITION UNDER THE AGREEMENT

Regulation 22(1)

- Completion of acquisition of shares, voting rights or control **NOT ALLOWED** until the expiry of offer period.





Exception to Regulation 22(1)

Regulation 22(2)

After a period of 21
working days from
PA

Deposit of 100%
consideration in the
Escrow Account

Informal Guidance in matter of R System International Ltd.

Completion of
Acquisition under
Market Purchase
allowed





SEBI Observation Letter

1

Ensure compliance with regulation 22 (2) by putting 100% of consideration in cash in the escrow account

2

Calculate the offer price as well as interest taking July 29, 2011 as the trigger date





Voluntary Open Offer-Eligibility

Prior holding of
at least **25% or
more** shares;



No acquisition
during the
**preceding 52
weeks** without
attracting the
obligation to make
a public
announcement.





Voluntary Offer by a Person Holding < 25%

Yes.

But the advantage of minimum offer size of 10% is not available and
The minimum offer size should be of 26%





Voluntary Open Offer-Condition

The aggregate
shareholding not
exceeds the maximum
permissible non-
public shareholding.





Voluntary Open Offer-Restriction

No further acquisition of shares for a period of six months after completion of the open offer except by way of another voluntary open offer or competing offer.



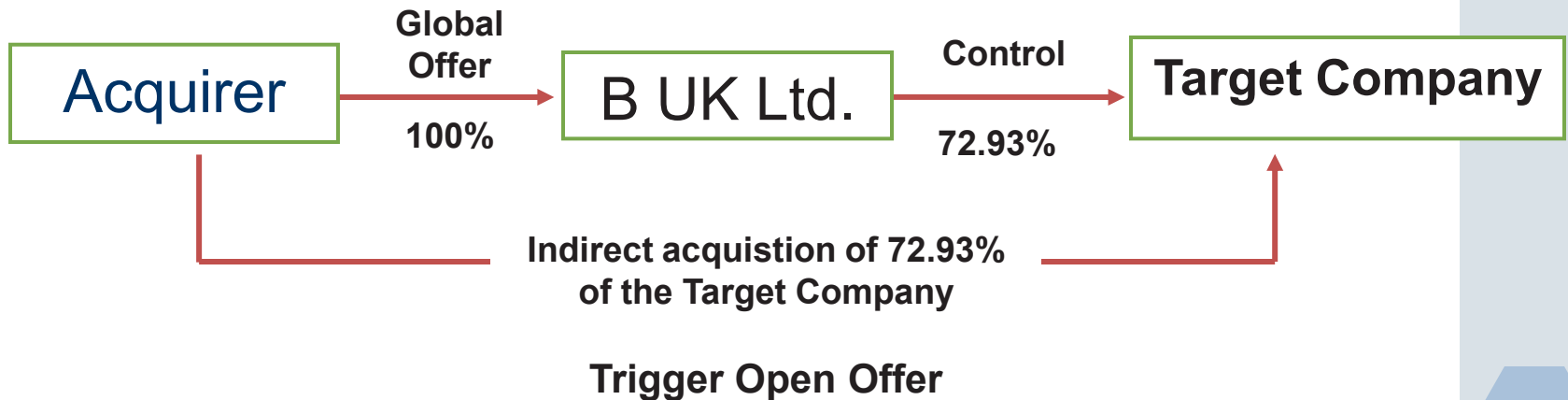
No acquisition during the Offer Period otherwise than under the Offer





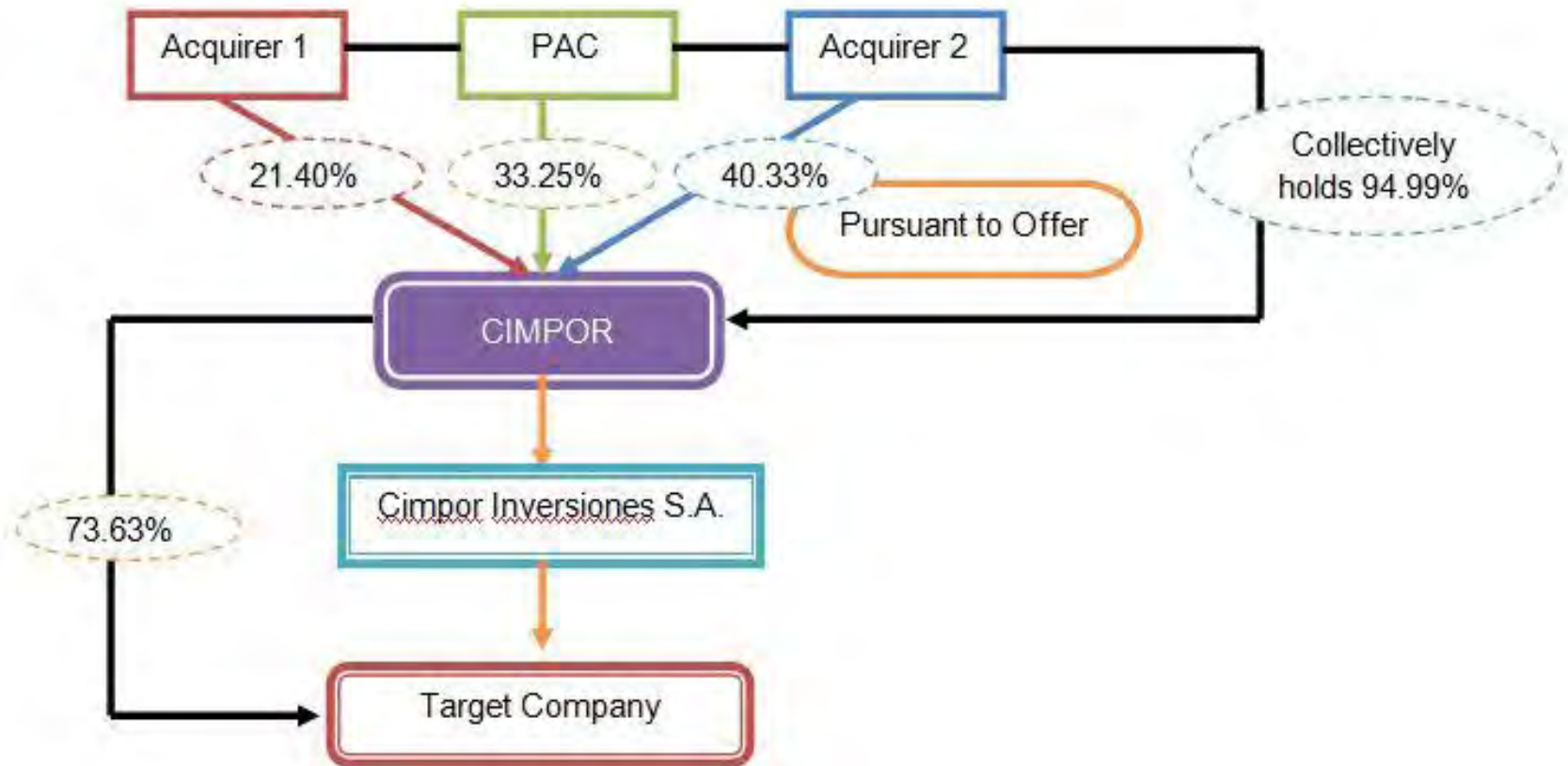
Indirect Acquisition

*Acquisition of **Voting Rights or control over other entity**
that enable the Acquirer
to **exercise of such percentage of**
voting or control **over Target Company***





Pre Holding Structure





Takeover Open Offer of **Shree Digvijay Cement Co. Ltd**

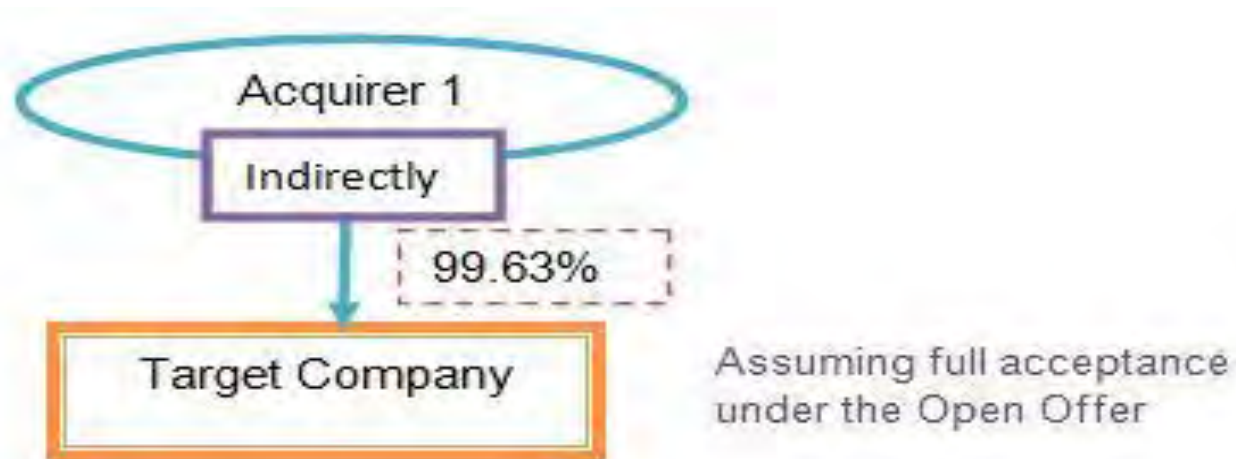
Pursuant to which indirect shareholding (73.63%) of Cimpor in the Target Company will be transferred to and be indirectly held by Acquirer 1 through a holding entity.





Takeover Open Offer of Shree Digvijay Cement Co. Ltd.

- ❖ To acquire 26% of the total paid up share capital of the Target Company
- ❖ Post Open Offer Holding





When Indirect Acquisition be treated as Direct

Proportionate net asset value of the target company

>80%

Consolidated net asset value of the entity acquired

or

Proportionate sales turnover of the target company

>80%

Consolidated sales turnover of the entity acquired

or

Proportionate market capitalization of the target company

>80%

Enterprise value of the entity acquired





Offer Price





Trading Turnover

- 10% of total number of shares of Target Company
- 12 calendar months preceding the calendar month in which the PA is made





Offer Price-Direct Acquisition – Frequently Traded Shares

Highest Price paid per share under the Agreement

Volume-weighted average price for acquisition made during 52 weeks preceding date of PA

Highest price paid for acquisition made during 26 weeks preceding date of PA

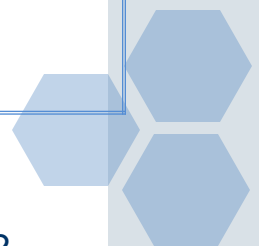
Volume-weighted average market price for 60 trading days preceding date of PA





Volume-weighted average price for acquisition made during 52 weeks preceding date of PA

Date of acquisition	Price per share (1)	No. of shares acquired (2)	Consideration (3=1*2)
-	-	-	-
-	-	-	-
-	-	-	-
10.06.2011	100.33	200	20065.18
22.08.2011	94.55	124	11723.71
06.01.2012	104.70	400	41880.43
05.02.2012	103.09	200	20618.14
16.03.2012	88.50	100	8850
Total		56972	5087440.57
Volume-Weighted Average Price (Total of 3/Total of 2)		89.30	





Highest price paid for acquisition made during 26 weeks preceding date of PA

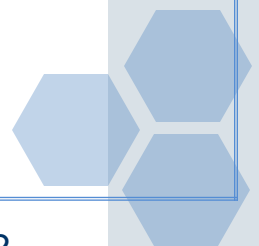
Date of acquisition	Price per share	No. of shares acquired
11.11.2011	94.55	124
20.12.2011	104.70	400
14.02.2012	103.09	200
19.03.2012	88.50	100
Highest Price Paid	104.70	





Volume-weighted average market price for 60 trading days preceding date of PA

Date	WAP	No. of shares Traded	VWAP
-	-	-	-
-	-	-	-
-	-	-	-
04.06.2012	119.87	23,694	2,840,138
05.06.2012	120.09	21,742	2,611,064
06.06.2012	119.47	9,670	1,155,270
07.06.2012	119.64	1,730	206,975
Total of WAP		236,352	24,734,057
Volume-weighted average market price (WAP/60)			104.65





Offer Price-Direct Acquisition – Frequently Traded Shares

Minimum Offer Price shall be highest of	Price
Highest Price paid per share under the Agreement	Rs. 110
Volume-weighted average price for acquisition made during 52 weeks preceding date of PA	Rs. 89.30
Highest price paid for acquisition made during 26 weeks preceding date of PA	Rs. 104.70
Volume-weighted average market price for 60 trading days preceding date of PA	Rs. 104.65
MINIMUM OFFER PRICE	RS. 110





Offer Price-Direct Acquisition–In Frequently Traded Shares

Highest Price paid per share under the Agreement

Volume-weighted average market price for acquisition made during 52 weeks

Highest price paid for acquisition made during 26 weeks

Other Valuation Parameters - Book Value, Comparable trading multiples, Earning per share and other parameters





Offer Price-In Direct Acquisition

- ✓ **Highest Price paid per share under the Agreement**
- ✓ **Volume-weighted average price for acquisition made during 52 weeks preceding earlier of**
 - Date of the primary acquisition
 - Date on which the intention or the decision to make the primary acquisition is announced
- ✓ **Highest price paid for acquisition made during 26 weeks preceding earlier of**
 - Date of the primary acquisition
 - Date on which the intention or the decision to make the primary acquisition is announced





Offer Price-In Direct Acquisition

- ✓ **Highest price paid for acquisition between the earlier of**
 - Date of the primary acquisition
 - Date on which the intention or the decision to make the primary acquisition is announcedand the date of the Public Announcement

- ✓ **Volume-weighted average market price for 60 trading days preceding date of PA preceding earlier of**
 - date of the primary acquisition
 - date on which the intention or the decision to make the primary acquisition is announced





Escrow Account

**Freely transferable
equity shares or
securities**

Forms

Cash Deposit

Bank Guarantee





Escrow Account

❖ **Bank Guarantee –**

- Deposit 1% of total consideration in cash
- Shall be in favour of Manager to the Issue
- Valid throughout the offer period and 30 days after completion of offer period.

❖ **Securities –**

- Manager to offer to realise value of escrow by sale or otherwise
- Manager shall be liable to make good any shortfall

❖ In case of upward revision of offer – simultaneously revise the escrow account deposit

❖ For payment, open a special account





Mode of Payment

Mode of Payment

Cash
(A)

Shares of
acquirer
company
(B)

Secured
debt
instrument
(C)

Convertible
debt
securities
(D)

Combination
of A, B, C or
D
(E)





Competitive Bid

Open Offer by any other person (Competitor Acquirer) after an offer has already been given by an acquirer to the shareholders of the Target Company.

Existing Holding of Competitive Acquirer along with PAC's

+

Number of shares to be acquired through Competitive Offer

Shall at least
equal to

Existing Holding of First Acquirer

+

Number of shares proposed to be acquired under the offer

+

Underlying Agreement for the acquisition of shares





Timing under Competing Offers

Public Announcement

Within 15
Working days
of the date of
DPS issued by
the first
acquirer





Conditional Offer

Conditional
as to the
minimum
level of
acceptance

Conditional
upon
fulfillment of
conditions





Conditional upon minimum level of acceptance

- ❖ Desired level of acceptance not received, than :
 - No acquisition of shares under the open offer
 - Agreement attracting Open Offer stand rescinded

- ❖ No acquisition by Acquirer or PAC during the offer period

- ❖ No appointment of Acquirer on Board of TC during offer period.

- ❖ Deposit in Escrow Account:
 - 100% consideration payable in respect of minimum level of acceptance
 - 50% consideration payable under the open offer

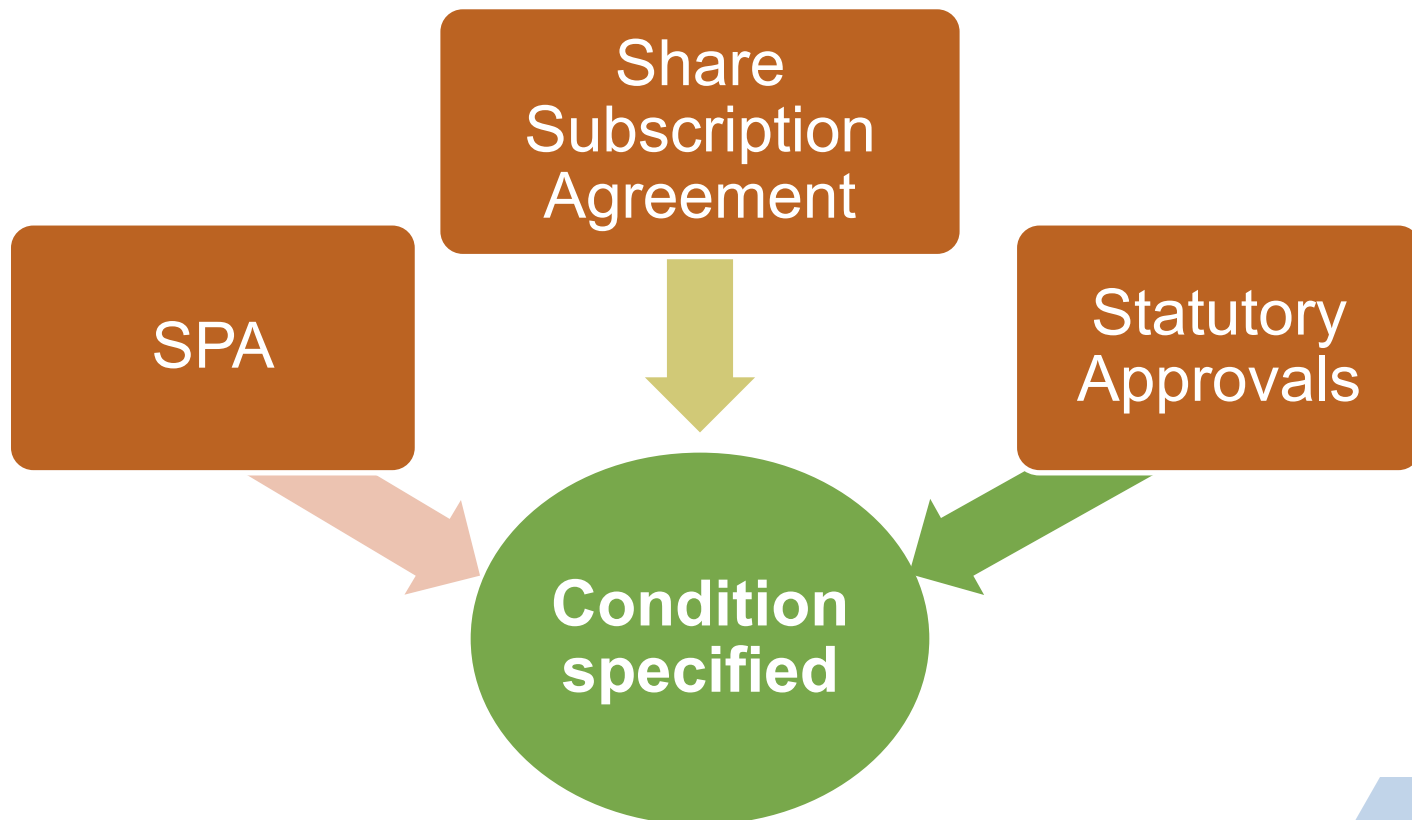
Whichever is **HIGHER**





Conditional upon fulfillment of conditions

Conditions specified, non-fulfillment of which may result in withdrawal of offer





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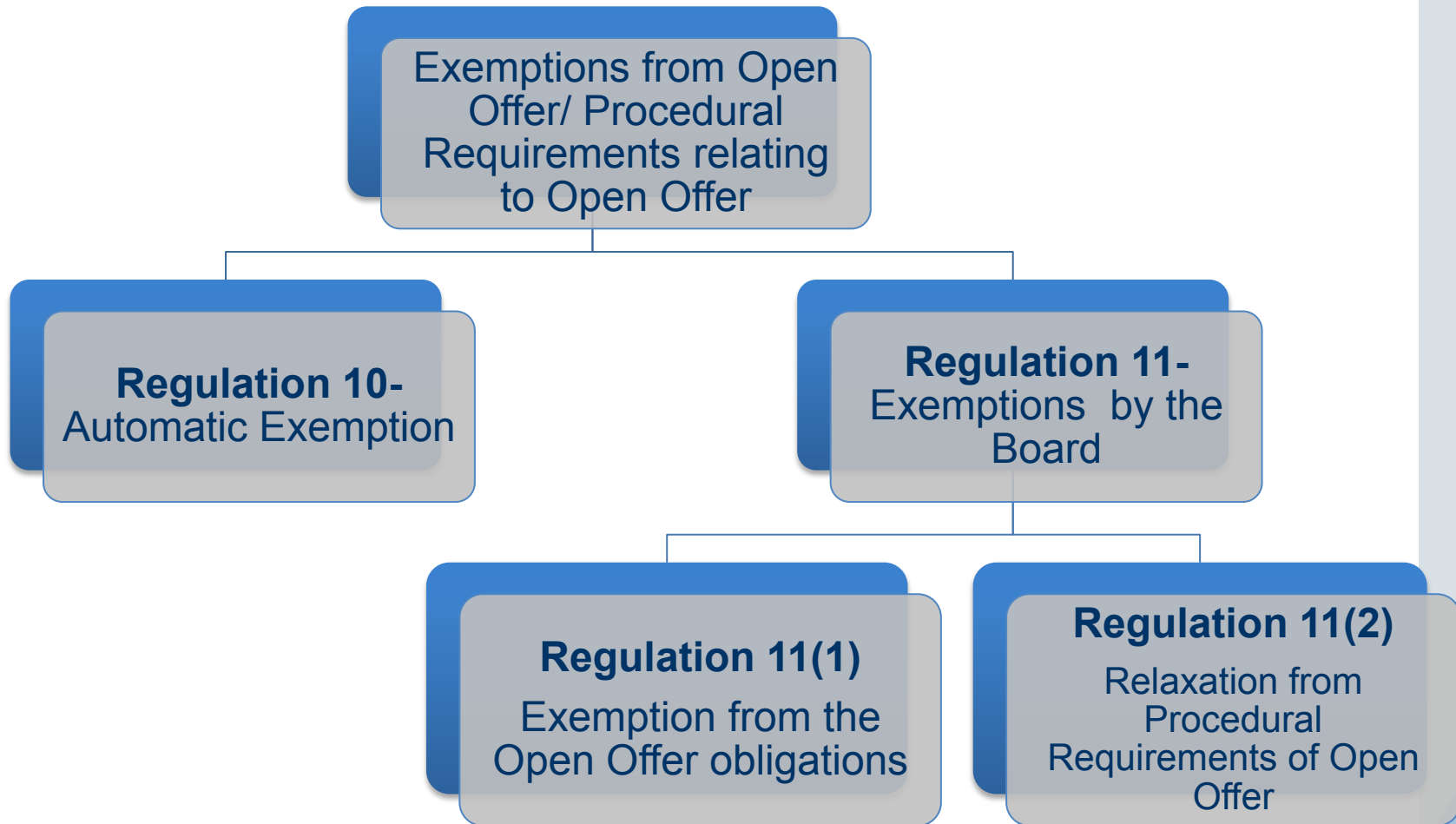


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Exemption from Open Offer





Automatic Exemption

Reg 3 & 4

Inter-se-transfer

Acquisition in the ordinary course of business

Disinvestment agreement

BIFR and Merger Schemes

SARFAESI , Delisting

Transmission, succession or inheritance

Section 87(2) of Companies Act, 1956

Reg 3

CDR Scheme

Reg 3 (1)

Buy Back under Regulation 3(1)

Reg 3(2)

Right Issue

Buy Back

Acquisition in exchange of shares

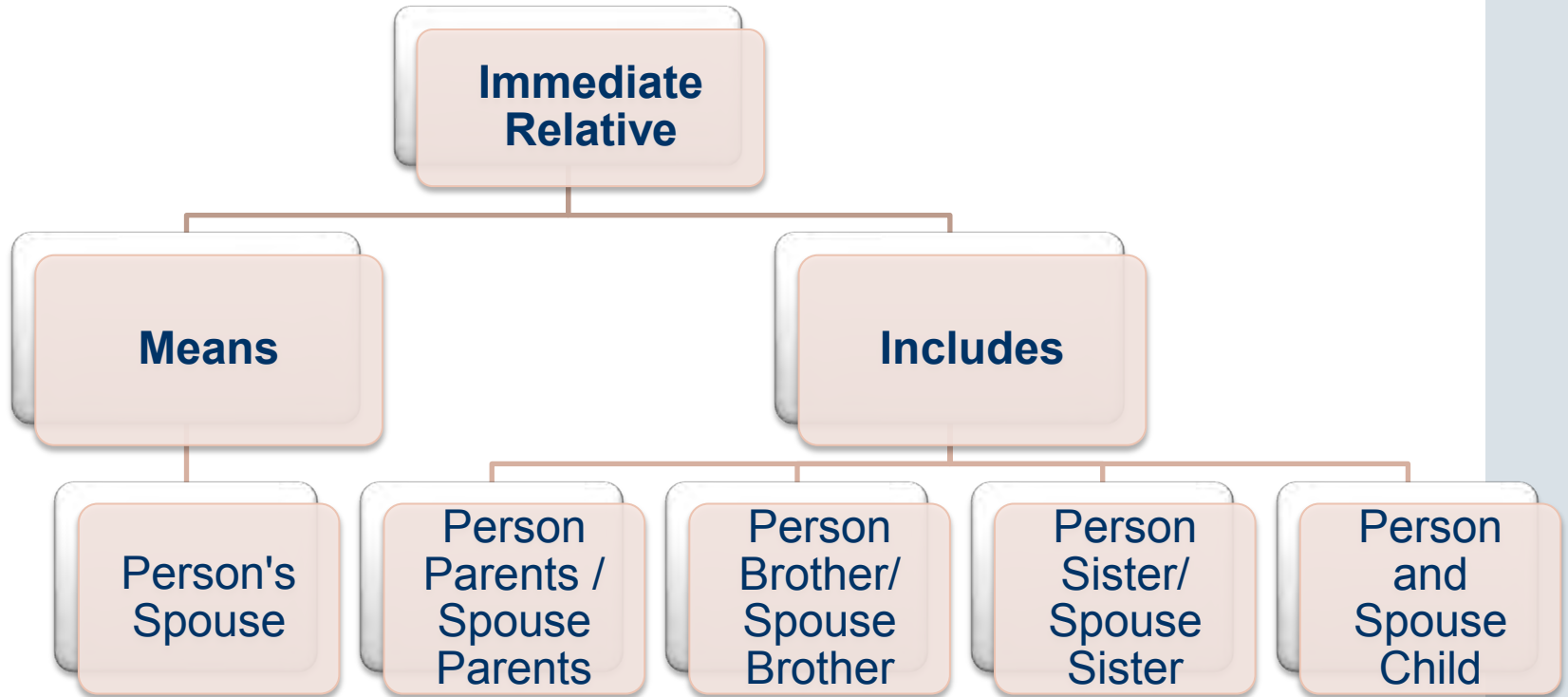
Acquisition from state-level financial institutions

Acquisition from a venture capital fund or a foreign venture capital investor



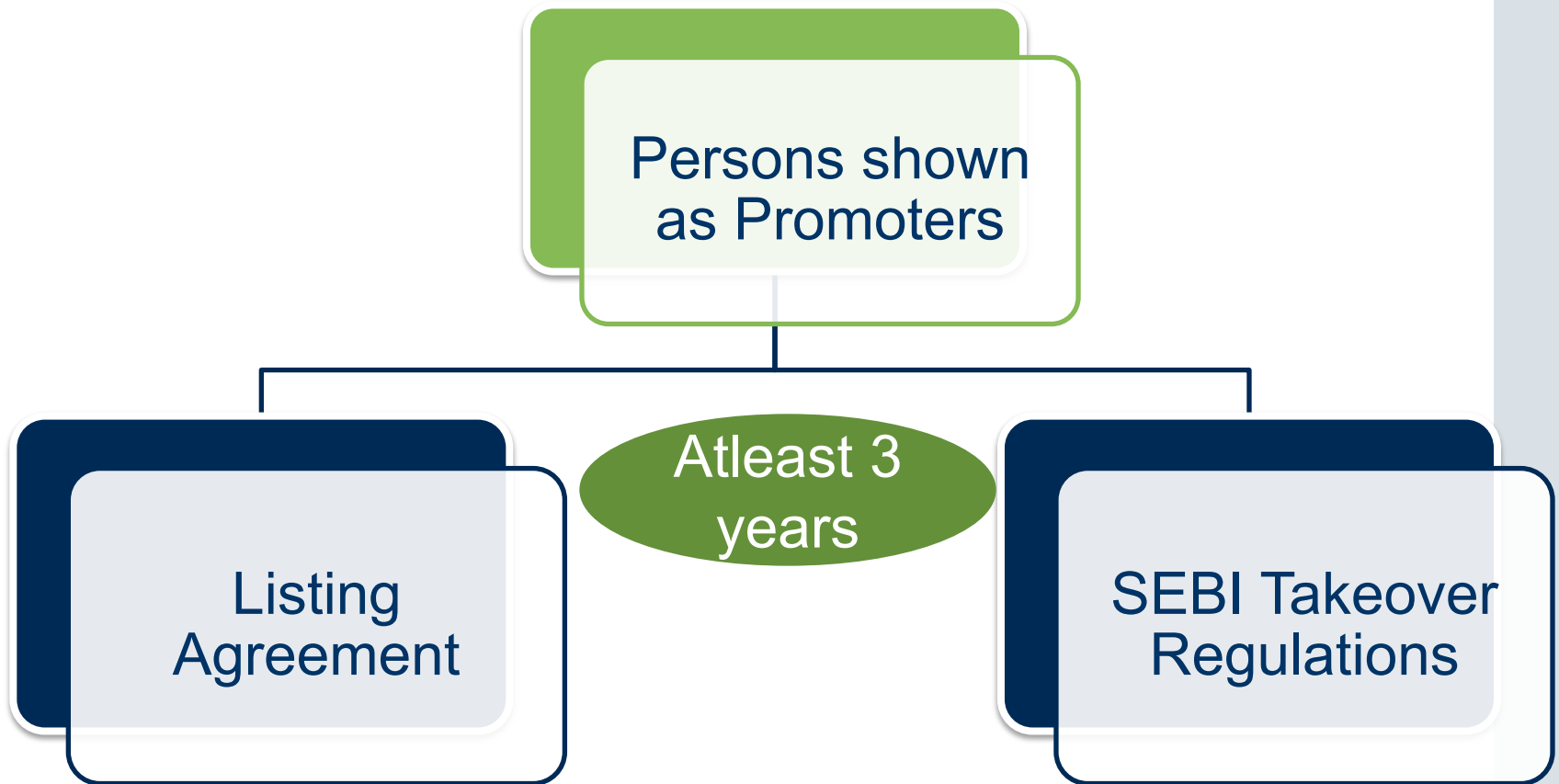
Inter-se transfer amongst Immediate Relatives

• Immediate Relative



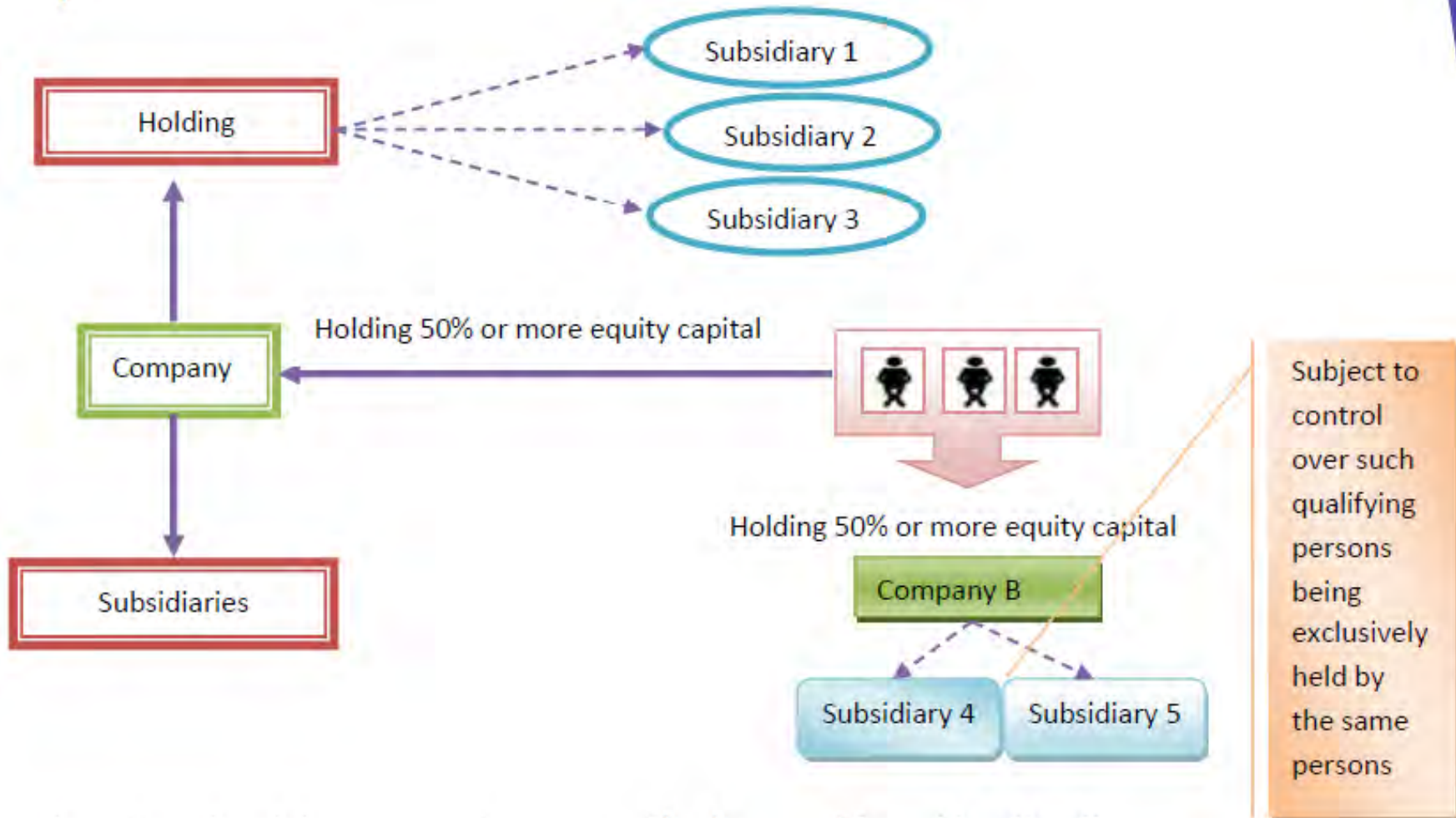


Inter-se transfer amongst Promoters





Inter-se transfer amongst Qualifying Parties





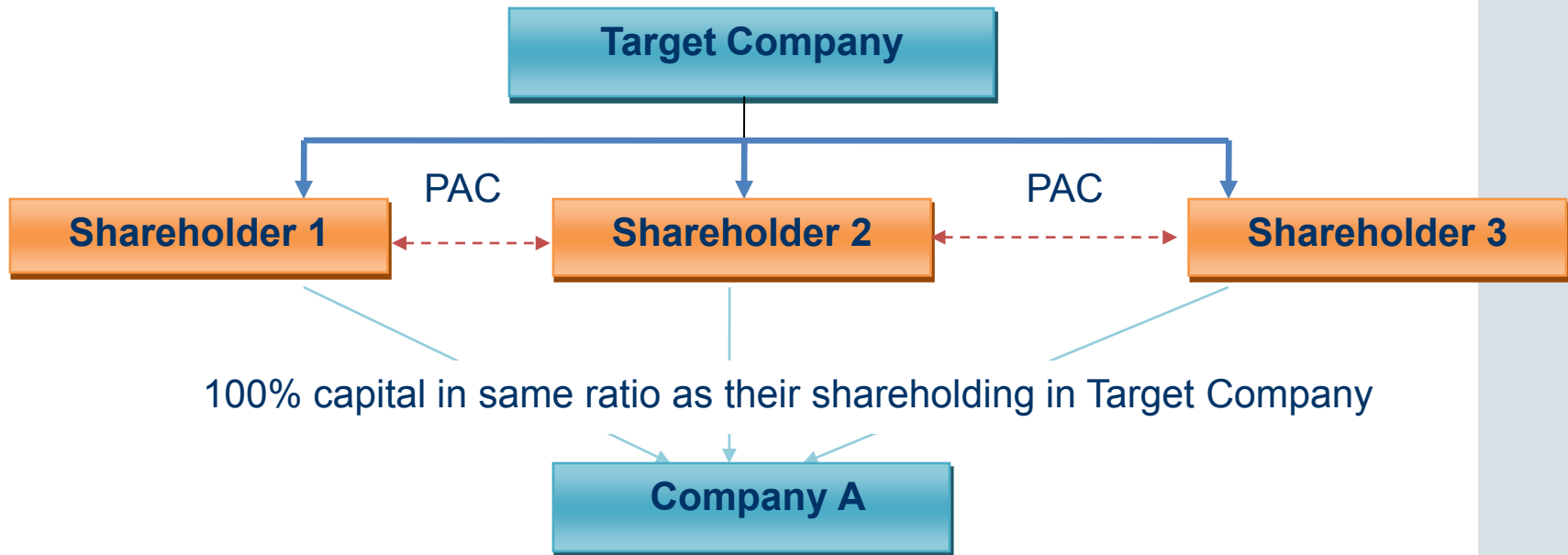
Inter se Transfer amongst PACs

Persons acting in concert
for minimum 3 years
prior to the proposed acquisition,
and
disclosed as such
pursuant to filings under the
listing agreement.





Inter se Transfer amongst Shareholders of the Target Co.





Buy Back of shares

Pre Holding <25%

Exemption

(Subject to Acquirer
Reducing Its
Shareholding Below the
threshold within a period
of Ninety Days from the
date of such increase)

Pre Holding between 25-75%

Shareholders
Resolution/Board Resolution,
as the case may be.

Acquirer not voted in favor of
resolution

No change in control.



Acquisition Pursuant to

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

SEBI Delisting Regulations, 2009

Transmission, succession or inheritance

Voting Rights or of preference shares carrying voting rights under Section 87(2) of the Companies Act, 1956



Acquisition – Corporate Debt Restructuring

Conditions

 No change in control

 Shareholders' Approval by way of Special Resolution passed by Postal Ballot.





Acquisition in the Ordinary Course of Business

Underwriter

Stock Broker

Merchant
Banker or
investor in
market making
process

Scheme of
Safety Net
under Reg 44
of SEBI (ICDR)
Reg, 2009

Merchant Banker
acting as
Stabilisation Agent

Scheduled
Commercial
Bank

Invocation of
pledge by SCB





Acquisition pursuant to agreement of disinvestment

Acquisition at different stages.

Open offer is required only once; provided

Acquirer and the seller are the same at all the stages of acquisition

Acquirer had made disclosures regarding all the stages of acquisitions, if any, in the public announcement and letter of offer





Preference Shares Carrying Voting Rights

Acquisition of
Voting Rights



Preference
shares carrying
voting rights

**In terms of Section 87(2) of
the Companies Act, 1956**

Similar view was also given by Hon'ble SAT in the matter of **Weizmann Ltd. and PACs vs. SEBI** wherein voting rights have been accrued on preference shares on account of non payment of dividend in terms of Section 87 of the Companies Act, 1956.





Compliances for Exemption

Regulation 10(5) – Acquirer shall give advance intimation to the stock exchange atleast 4 working days prior to the proposed acquisition.

Regulation 10(6) – Any acquirer seeking exemption shall file a **report** with the stock exchanges not later than four working days from the acquisition.

Regulation 10(7) - The Acquirer shall file a report to SEBI within 21 working days of the date of acquisition along with supporting documents to the Board giving all details in respect of acquisitions and fee of Rs 25,000.





Compliances for Exemption-Reg. 10(5)

Inter se transfer of shares

Acquisition from State Level Financial Institution

Acquisition from VCF or a foreign venture capital investor





All the automatic exemptions

from the open offer

as specified under Regulation 10





Compliances for Exemption-Reg. 10(7)

Inter se transfer of shares

Scheme of Arrangement not directly involving Target Company

Acquisition of voting rights or of preference shares carrying voting rights

Acquisition through CDR scheme

Buy Back of shares

Acquisition through Right Issue

Acquisition from VCF or a foreign venture capital investor





THANK YOU..

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In case of any query, log on to www.takeovercode.com



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