

New Developments in Capital Market



AGENDA



New SEBI Takeover
Regulations

Insider Trading
Regulations

Buy Back of
Securities

New SEBI Takeover Regulations



NEED OF SEBI TAKEOVER REGULATIONS



Announcement of Policy of Globalisation

- Opportunity for Overseas Investors

Change in India Capital Market Scenario

- Need for some regulations to protect the interest of Investors

1994

- Enactment of SEBI (SAST) Regulations, 1994

1997

- Enactment of SEBI (SAST) Regulations, 1997

2011

- New SEBI Takeover Regulations (Yet to be notified)

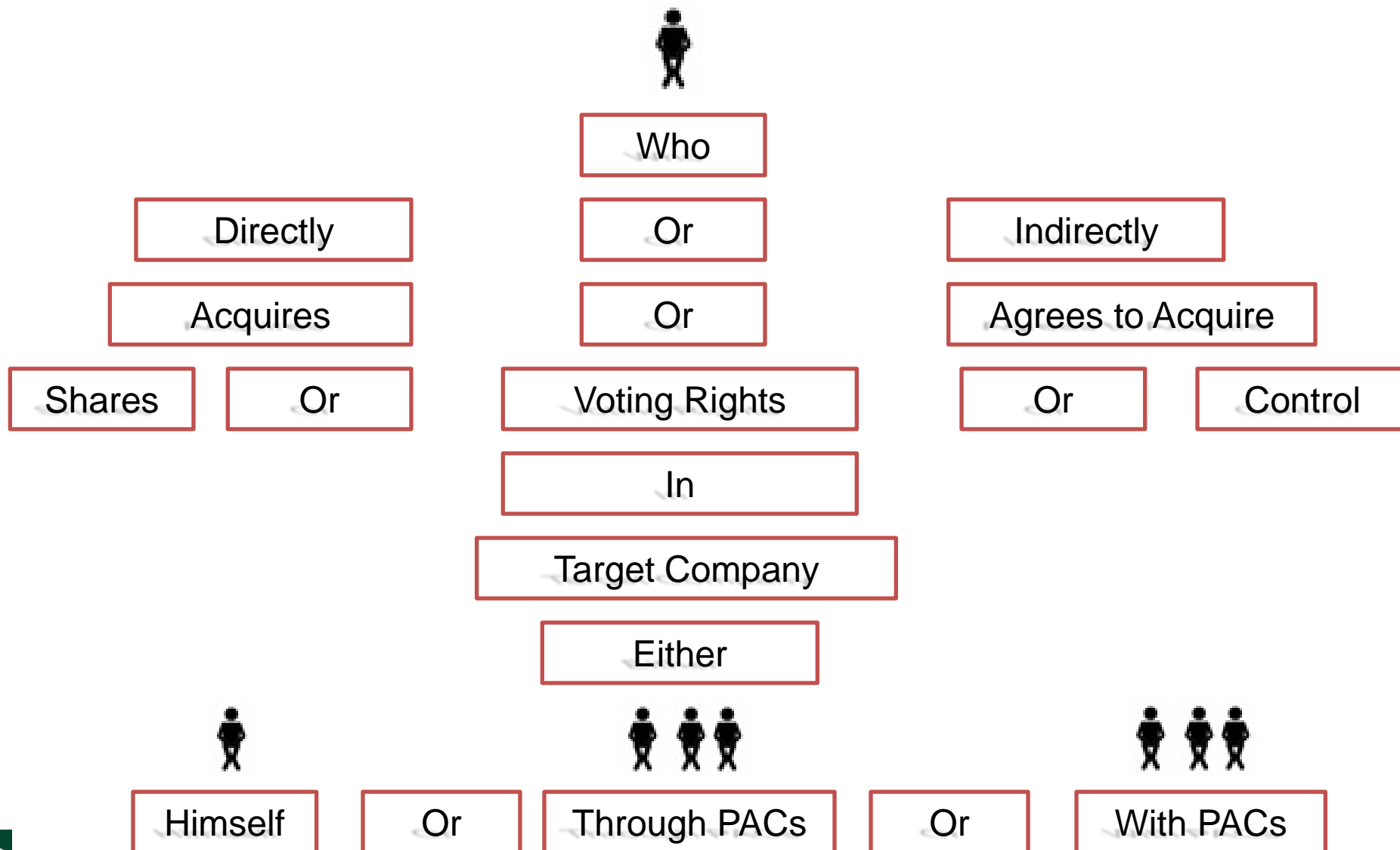
SALIENT FEATURES AND Impact



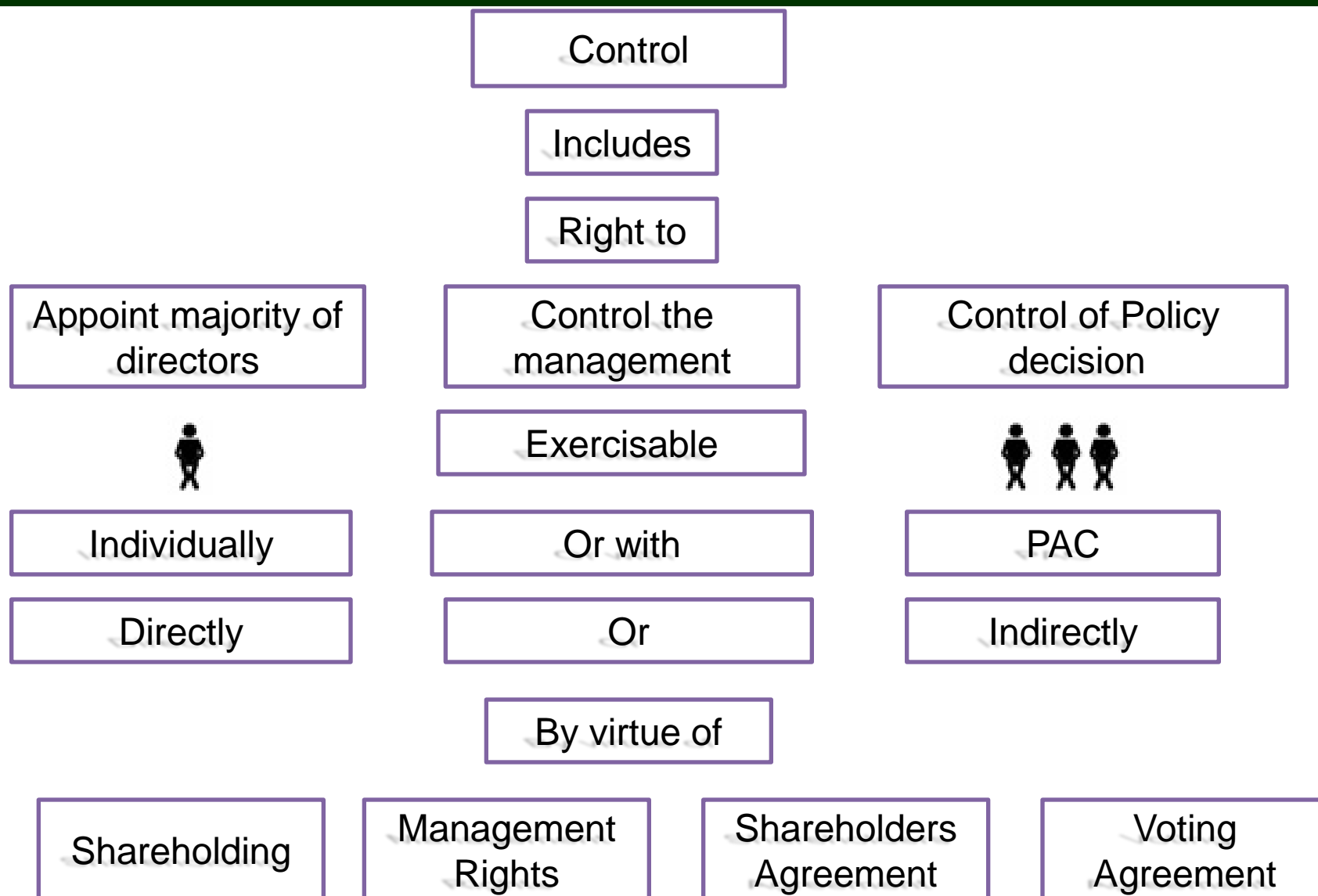
KEY DEFINITIONS



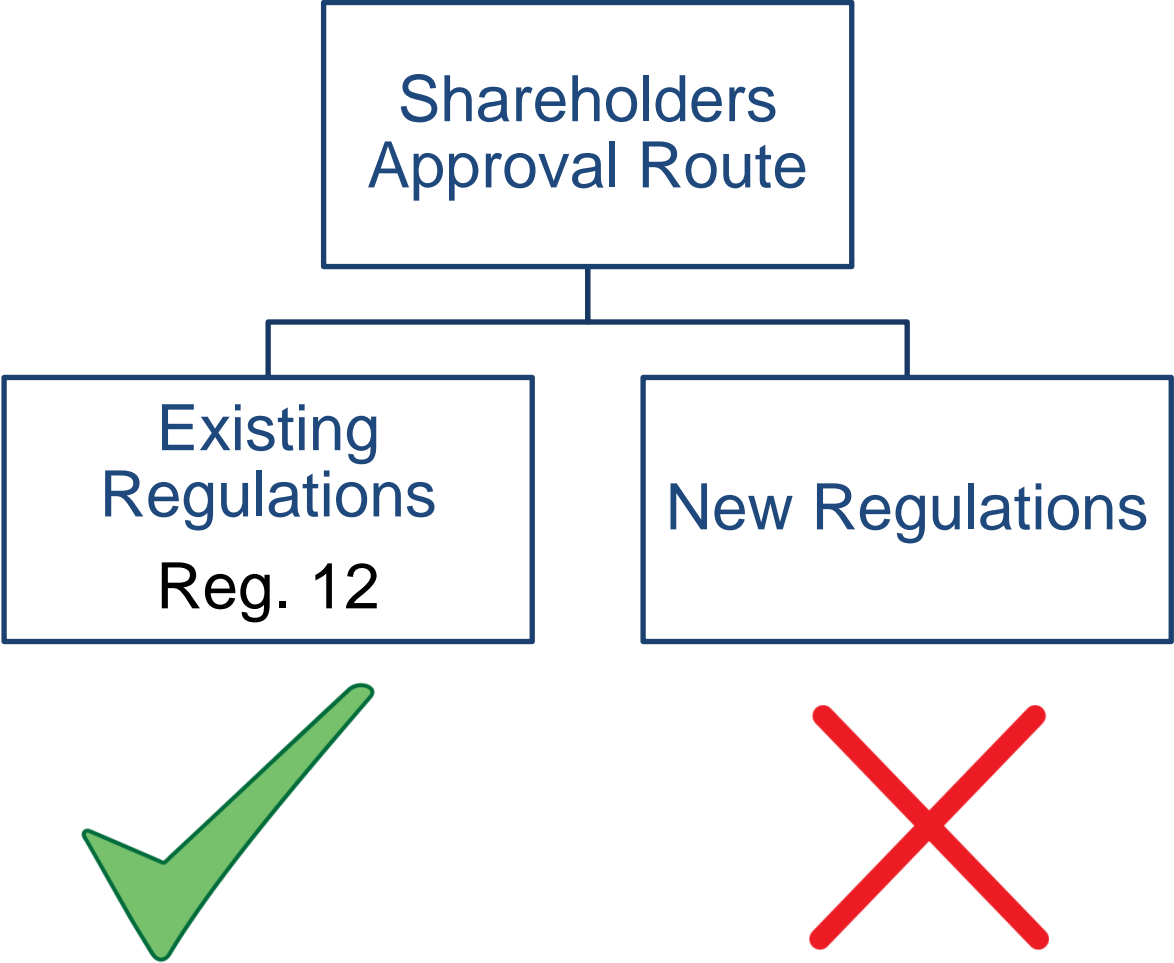
ACQUIRER



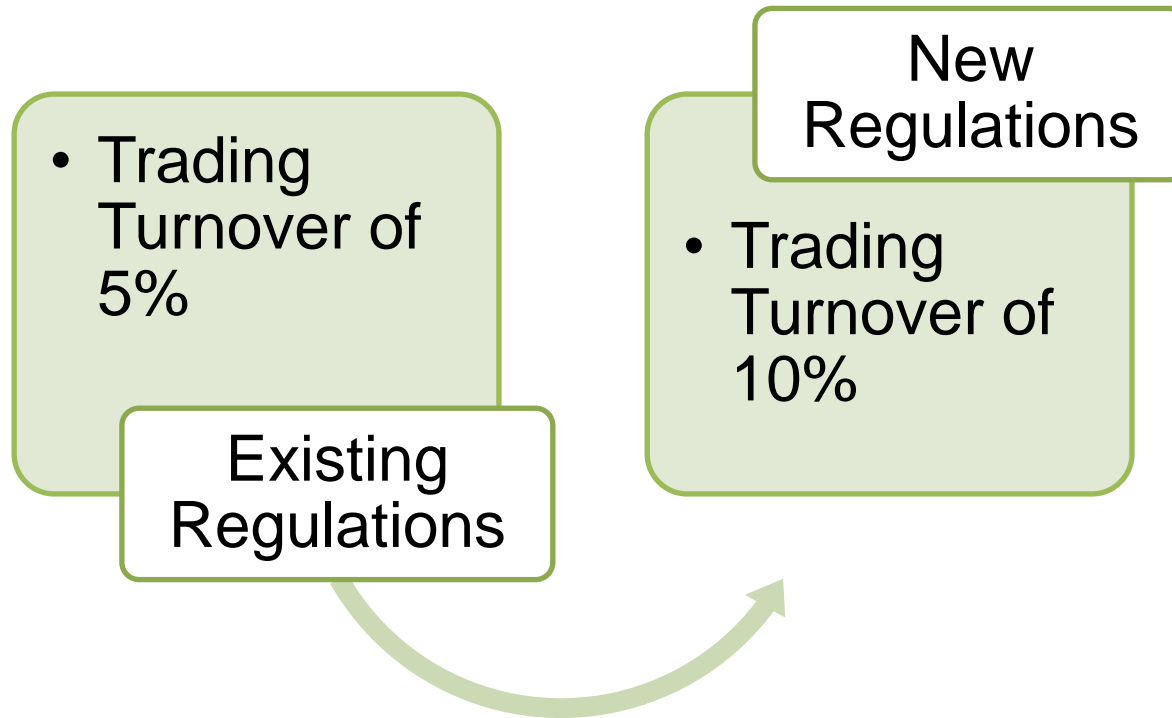
CONTROL



CHANGE IN CONTROL



FREQUENTLY TRADED SHARES



SHARES



- The scope of definition has been Broadened;
- **Inclusion of Depository Receipts** within the ambit of term shares.
- **Holder of the depository receipts** is treated at par with the one who acquired the **Equity Shares carrying voting rights.**

IDENTIFIED DATE

Specified Date

A date not later than the **30th day** from the date of the **PA**



Identified Date

A date falling on the **10th business day** prior to **tendering period**

INITIAL THRESHOLD AND CREEPING ACQUISITION



INCREASE IN THRESHOLD



INITIAL THRESHOLD			
Malaysia	Hong Kong	Australia	U.K.
33	30	20	30



IMPACT

- A welcome step and aligns more closely with global practices in other countries;
- Beneficial for the Private Equity Players and Investors;
- No Transitional Provision for the promoters holding less than 25%;
- Hostile takeover threat to the listed companies with lower promoter shareholding.;
- Negative Control - Any large investor can acquire some shares from the market to keep his holding upto 25% which is sufficient to block any Special Resolution and keep a check on the management;

CREEPING ACQUISITION

Existing Regulations

- Pre Holding 15-55%- 5% in each FY.
- Pre Holding 55-75%- Not allowed except under second proviso to reg. 11(2)

Proposed Regulations

- Pre Holding 25-75%-5% in each FY.

IMPACT

- It will help the promoters in the consolidation of holdings;
- Flexibility to acquire 10% shares or voting rights within 2 days without triggering the Open Offer requirement.

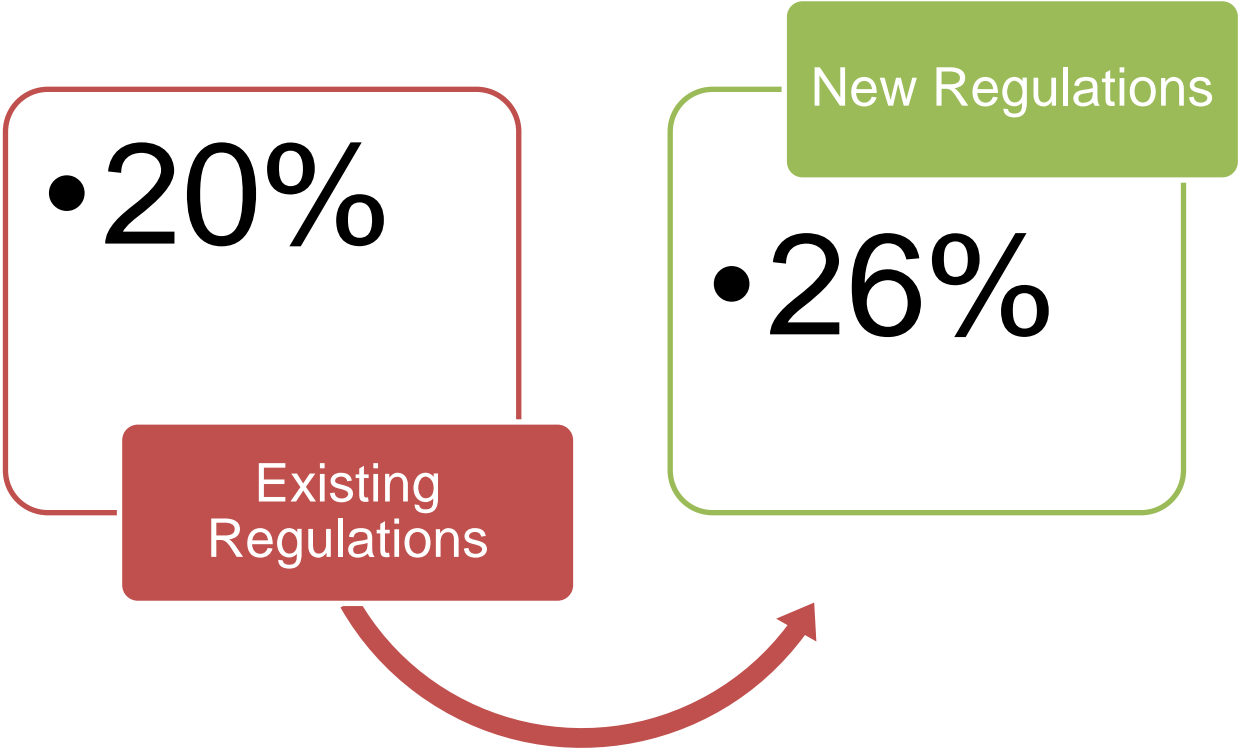
PROMOTER HOLDING IN LISTED COMPANIES

Market Cap Range (Rs. Mn)	No. of Companies	Total Promoter Holding (%)		Companies With Promoter Holding Between			
		Mean	Median	0-15%	15-20%	20-25%	25-30%
0-500	2,477 (61.1%)	45.50%	46.40%	274 (11.1%)	87 (3.5%)	97 (3.9%)	138 (5.6%)
500-2,000	649 (16.0%)	52.60%	54.90%	34 (5.2%)	19 (2.90%)	12 (1.8%)	19 (2.9%)
2,000-5,000	312 (7.7%)	54.30%	55.00%	10 (3.2%)	8 (2.6%)	1 (0.3%)	10 (3.2%)
5,000-10,000	157 (3.9%)	52.20%	54.50%	5 (3.2%)	1 (0.6%)	3 (1.9%)	8 (5.1%)
10,000 and above	459 (11.3%)	55.20%	54.30%	15 (3.3%)	5 (1.1%)	11 (2.4%)	16 (3.5%)
Overall	4,054 (100%)	48.90%	50.50%	340 (8.4%)	120 (3.0%)	124 (3.1%)	191 (4.7%)

OPEN OFFER AND ITS RELATED CONCEPTS



INCREASE IN OFFER SIZE



OFFER SIZE ANALYSIS

		Offer size (% of total equity capital of Target Company)	
FY	Total	<=20%	>20%
2006-07	89	77	12
2007-08	118	100	18
2008-09	113	95	18
2009-10	75	65	10
Total	395	337	58
% of Cases	100%	85.32%	14.68%

FREEDOM TO COMPLETE ACQUISITION UNDER SPA

Existing Regulations	Proposed Regulations
Not allowed Until the completion of offer formalities.	Allowed •After a period of 21 days from the date of PA and •Subject to acquirer depositing 100% consideration payable under the Open Offer in Escrow Account.

This provision will allow the acquire to have the representation in the Target Company even before the completion of open offer and to exercise the control over it.

ACQUISITION FROM OTHER COMPETING ACQUIRER

Simplified Rules-An ease for Competitive Bidder for control change

Keeping in view the increasing trend of competitive biddings in India this may be taken as an imperative step as compelling two warring groups to continue in a company may not be in the interest of the company and smooth passage to one of the competitive bidders is desirable.



NON COMPETE FEES

Existing



Upto 25% of the Offer Price

New



Not Allowed

More beneficial for the shareholders as they will be entitled to get the same price as have been received by the promoters/sellers from the acquirer.

IMPACT



Thus, Payment of Non compete fees or control premium should be allowed.

REDUCTION IN TIME LINE

The timeline for
completion of the open offer
has been reduced from
95 calendar days
To
57 Business Days

EXEMPTIONS



NEW EXEMPTIONS INTRODUCED

Increase in shareholding pursuant to Buy Back

Pre Holding less 25%

- Exemption subject to the acquirer reducing its shareholding below the threshold within a period of ninety days from the date of such increase.

Pre Holding between 25-75%

- In case of shareholder resolution, approval of shareholders by way of postal ballot.
- In case of Board Resolution, such shareholder as a director has not voted.
- No change in control.

NEW EXEMPTIONS INTRODUCED

Increase in shareholding pursuant to CDR Scheme

- Approval of the scheme by shareholders by way of Special Resolution passed by Postal Ballot; and
- No Change in control.

NEW TAKEOVER REGULATIONS-A WIN WIN SITUTAION

- Beneficial for Private Equity Players and Investors.
- More protection for the small shareholders.
- Simplification in the provisions.
- More transparency and removal of ambiguity.
- At par with Global Practices prevalent for M&As.

Insider Trading Regulations



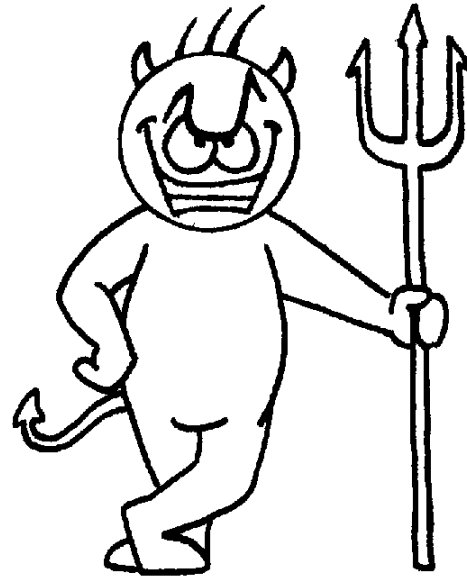
What is Insider Trading?



INSIDER TRADING

It is dealing in the securities
by a Insider,
who has the knowledge of
material “inside” information
which is not known
to the general public

How BAD It Is ???



HOW BAD IT IS ???

- Used to make profit at the expense of other Investors;
- Leads to loss of confidence of investor in stock market;
- The process corrupts the 'Level Playing Field';
- It is easier to identify the beneficiaries of insider dealing.
But the extent of losses occurred is impossible to calculate.

Who is Insider?



INSIDER



IS

WHO

WAS

OR

CONNECTED WITH THE COMPANY

OR

DEEMED TO HAVE BEEN CONNECTED

AND

WHO IS REASONABLY EXPECTED TO HAVE

ACCESS

OR

HAS RECEIVED

OR

HAS HAD ACCESS

TO

UNPUBLISHED PRICE SENSITIVE INFORMATION



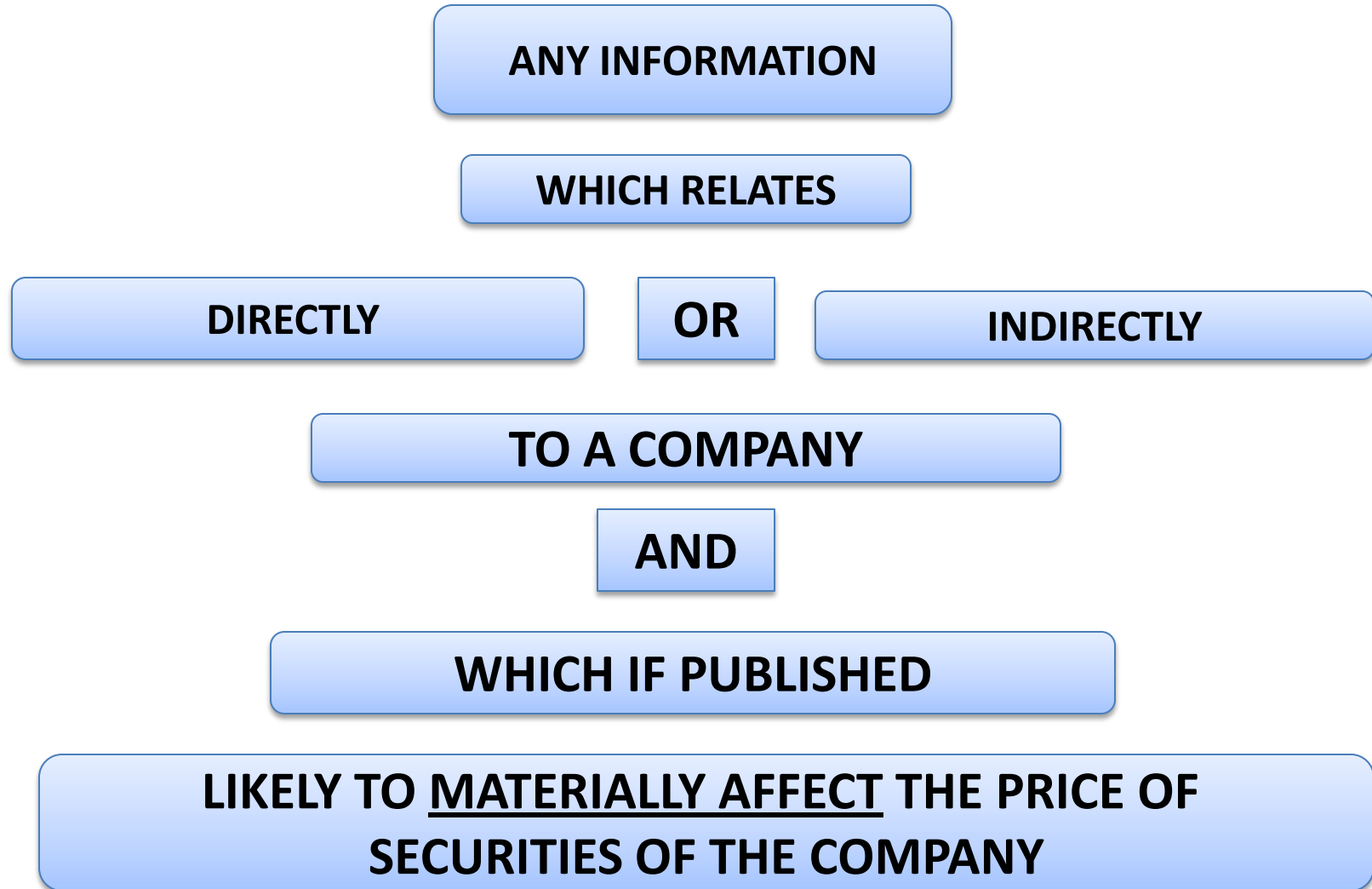
Whether the Auditor and Chartered Accountant (CA) also come within the ambit of term “Insider”?

Yes

Price Sensitive Information



PRICE SENSITIVE INFORMATION



DEEMED PRICE SENSITIVE INFORMATION

- ✓ Periodical Financial Results of the company;
- ✓ Intended declaration of dividends;
- ✓ Issue of securities or buy-back of securities;
- ✓ Expansion Plans / New projects;
- ✓ Amalgamation, mergers or takeovers;
- ✓ Disposal of undertaking;
- ✓ Changes in policies of the company.

DISCLOSURE REQUIREMENT

1. On the acquisition of >5% shares and Whenever there is a change of 2% in shareholding after the acquisition of 5%.
2. On becoming the director or officer and whenever there is a change in holding in excess of Rs.5 Lakh in value or 25,000 shares or 1% of total shareholding or voting rights.

Recent Development

On becoming the promoter or part of promoter group and whenever there is a change in holding in excess of Rs.5 Lakh in value or 25,000 shares or 1% of total shareholding or voting rights.



Buy Back of Securities

GOVERNING PROVISIONS

- Section 77A, 77AA, 77B of Companies Act, 1956;
- SEBI (Buy Back of Securities) Regulations, 1998 (For Listed Companies)
- Private Limited Company and Unlisted Public Limited Company (Buy-Back of Securities) Rules, 1999

REASON FOR BUY BACK

Surplus Cash

To Increase the value of shares in the market

To encourage faith in the minds of shareholders at the time of slump in the market

Defense Mechanism for Hostile Takeover

To Increase the promoters stake in the Company

BUY BACK AT A GLANCE

- Authorization in **AOA**;
- **Board Resolution** - In case the fund utilization in buy back is $\leq 10\%$ total paid up equity capital and free reserves;
- **Special Resolution** - In case the fund utilization in buy back is $> 10\%$ and $\leq 25\%$ of the paid up capital (equity plus preference shares) and free reserves;
- **Debt equity ratio** should not be more than the **2:1** after such buy-back;

BUY BACK AT A GLANCE

- Filing of **Declaration of Solvency** with the Registrar and SEBI.
- All the shares or other specified securities for buy-back are **fully paid-up**;
- Buy-back shall be **completed within twelve months** from the date of passing the SR or BR

SOURCES OF FUNDS

Section 77A (1) of Companies Act, 1956 states that:

A company may purchase its own shares or other specified securities out of—

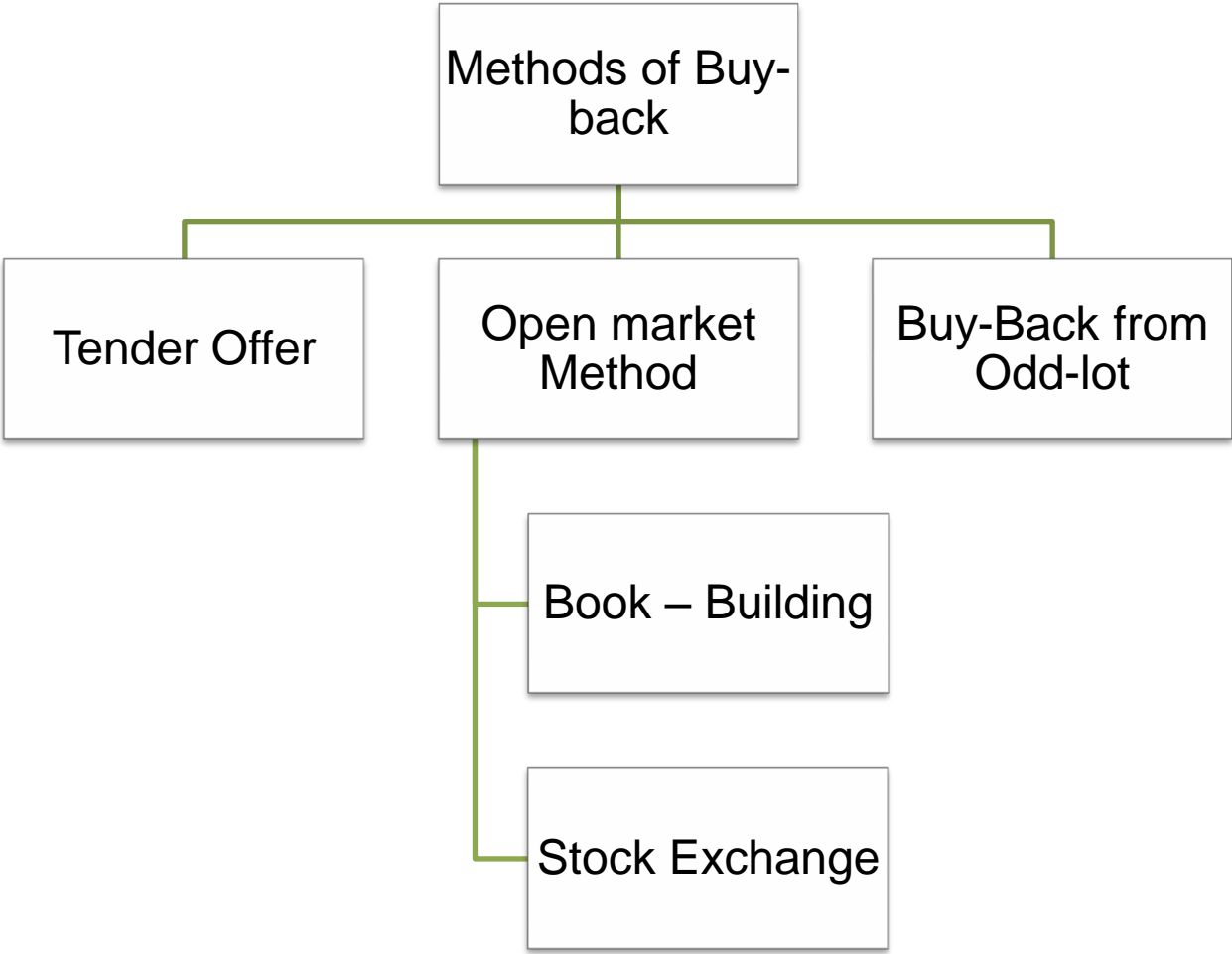


Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

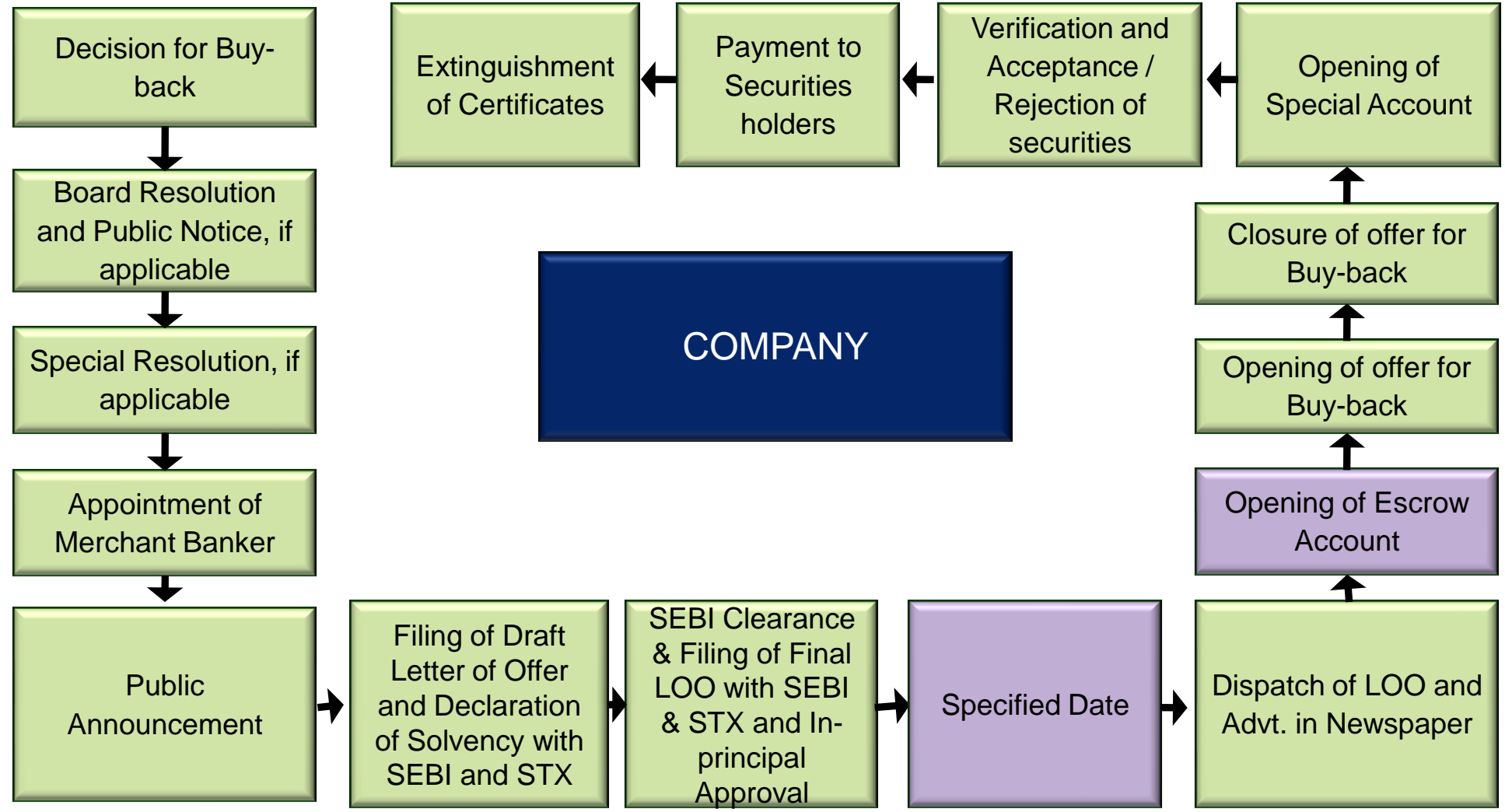
RESTRICTIONS IN BUY-BACK

- Buy-back of shares shall not be done for delisting of securities from the stock exchange.
- Buy-back shall not be done from any person through
 - Negotiated Deals
 - Spot Transactions
 - Private Arrangements
- No insider trading in securities on the basis of unpublished information relating to buy-back of securities.

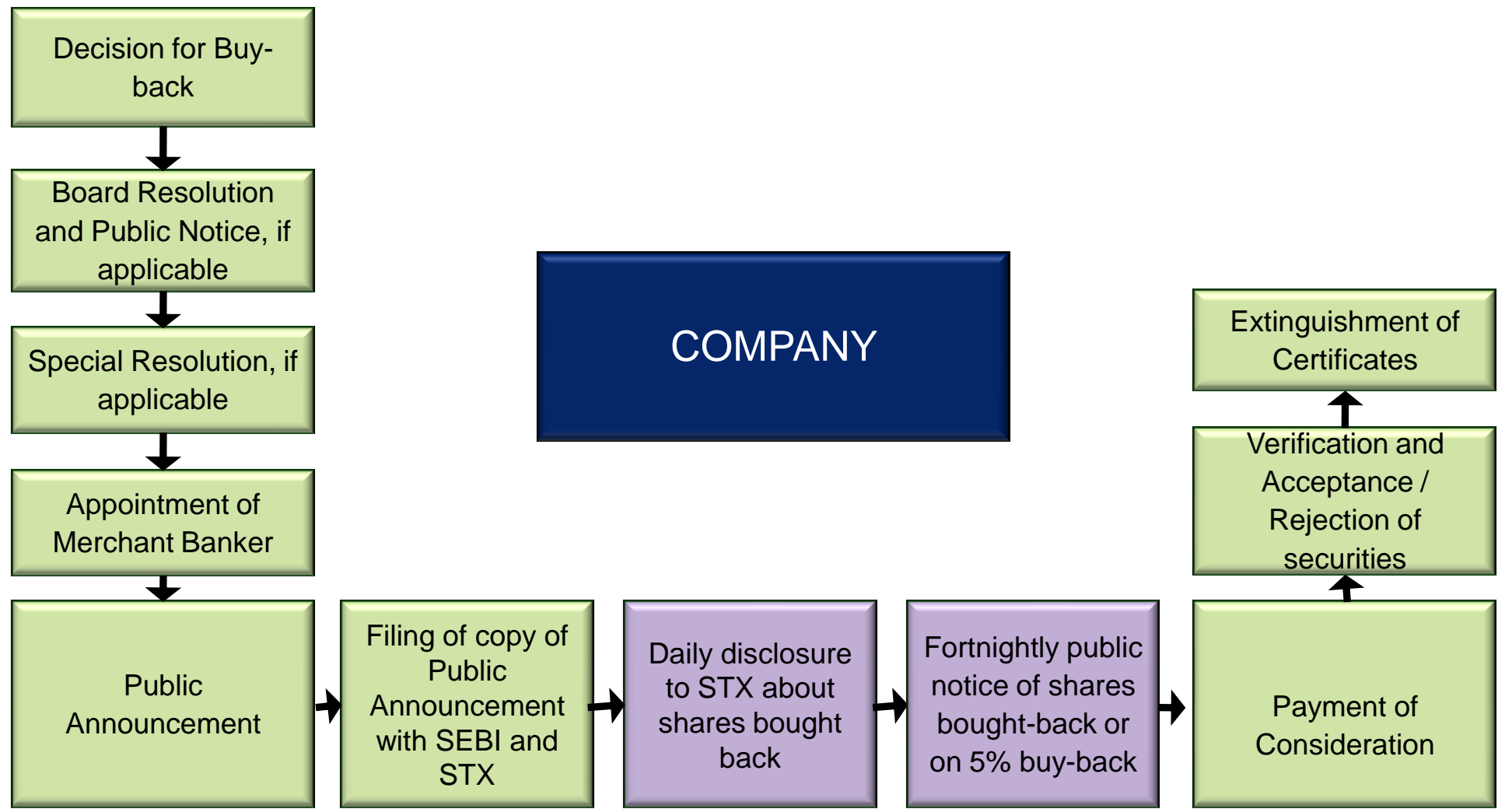
METHODS OF BUY-BACK



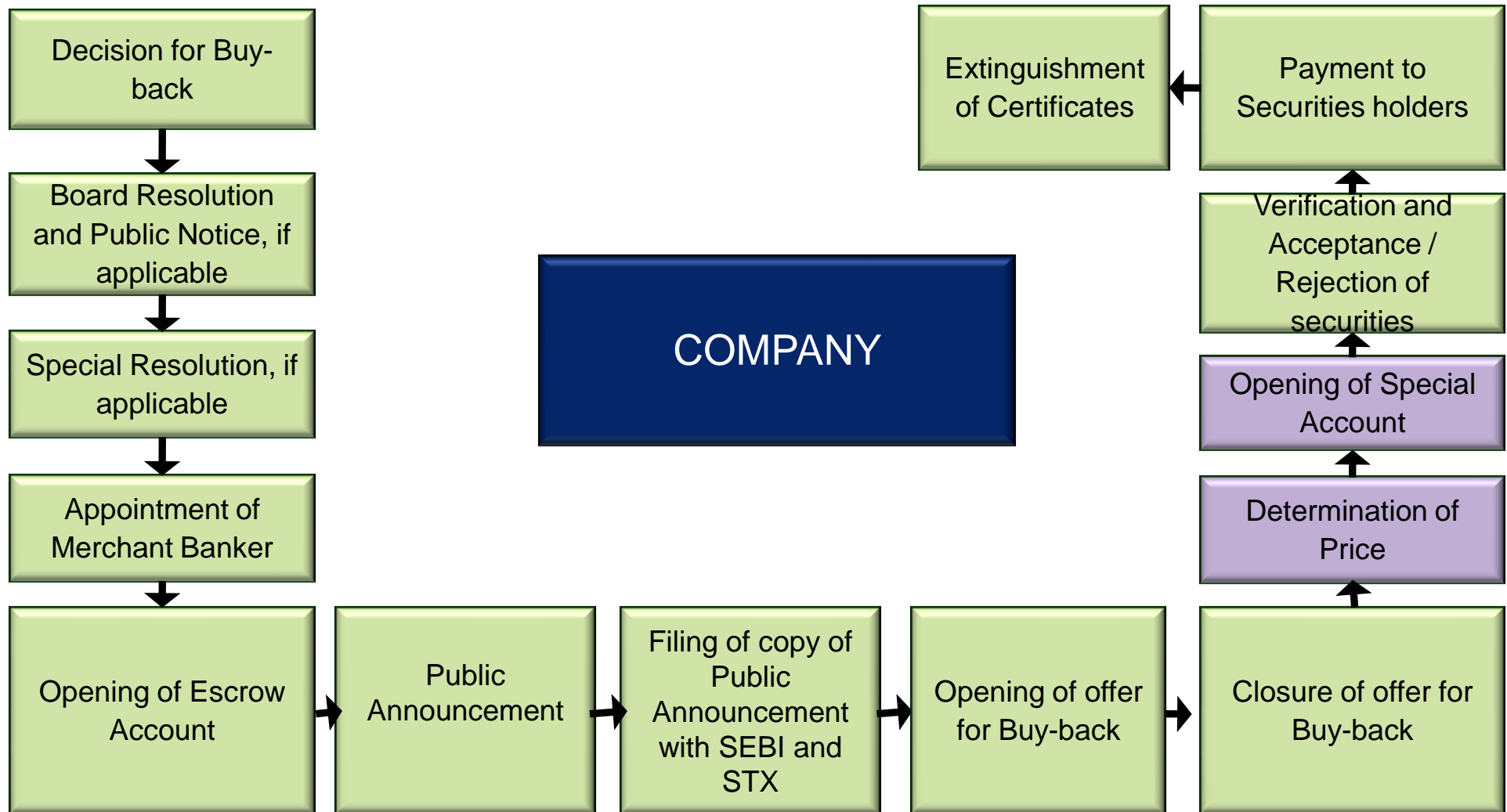
PROCESS OF BUY-BACK – TENDER OFFER/ODD -LOT



PROCESS OF BUY-BACK – OPEN MARKET PURCHASE THROUGH STOCK EXCHANGE METHOD



PROCESS OF BUY-BACK – OPEN MARKET PURCHASE THROUGH BOOK-BUILDING METHOD



THANK YOU



Pavan Kumar Vijay

Managing Director

Corporate Professionals Capital Private Limited

SEBI Registered Merchant Banker

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