

Overview of SEBI Takeover Regulations, 2011





SEBI TAKEOVER REGULATIONS, 2011





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

- Enactment of SEBI (SAST) Regulations, 2011





Overview of Regulations

SEBI Takeover Regulations, 2011

Chapter I – Preliminary

Key Definitions

Regulation 1-2

Chapter II – Substantial Acquisition of Shares, Voting Rights or Control

Provides threshold limit for open offers and exemptions

Regulation 3 - 11

Chapter III - Open Offer Process

Deals with Concepts related to open offer

Regulation 12 - 23

Chapter IV - Other Obligations

Obligations of Acquirer, TC, Merchant Banker

Regulation 24 - 27

Chapter V - Disclosure of Shareholding and Control

Provides limits for making disclosure

Regulation 28 - 31

Chapter VI - Miscellaneous

Deals with power of the Board to issue directions

Regulation 32 - 35





BASIC CONCEPT





The Takeover Regulations
are applicable on the acquisition
of Voting Rights or
Control over the Listed
Company





Shares

Voting Rights

Control





KEY DEFINITIONS





ACQUIRER



Who

Directly

Or

Indirectly

Acquires

Or

Agrees to Acquire

Whether

By Himself

Or through

Or with

With PACs

Shares

Or

Voting rights

Or

Control

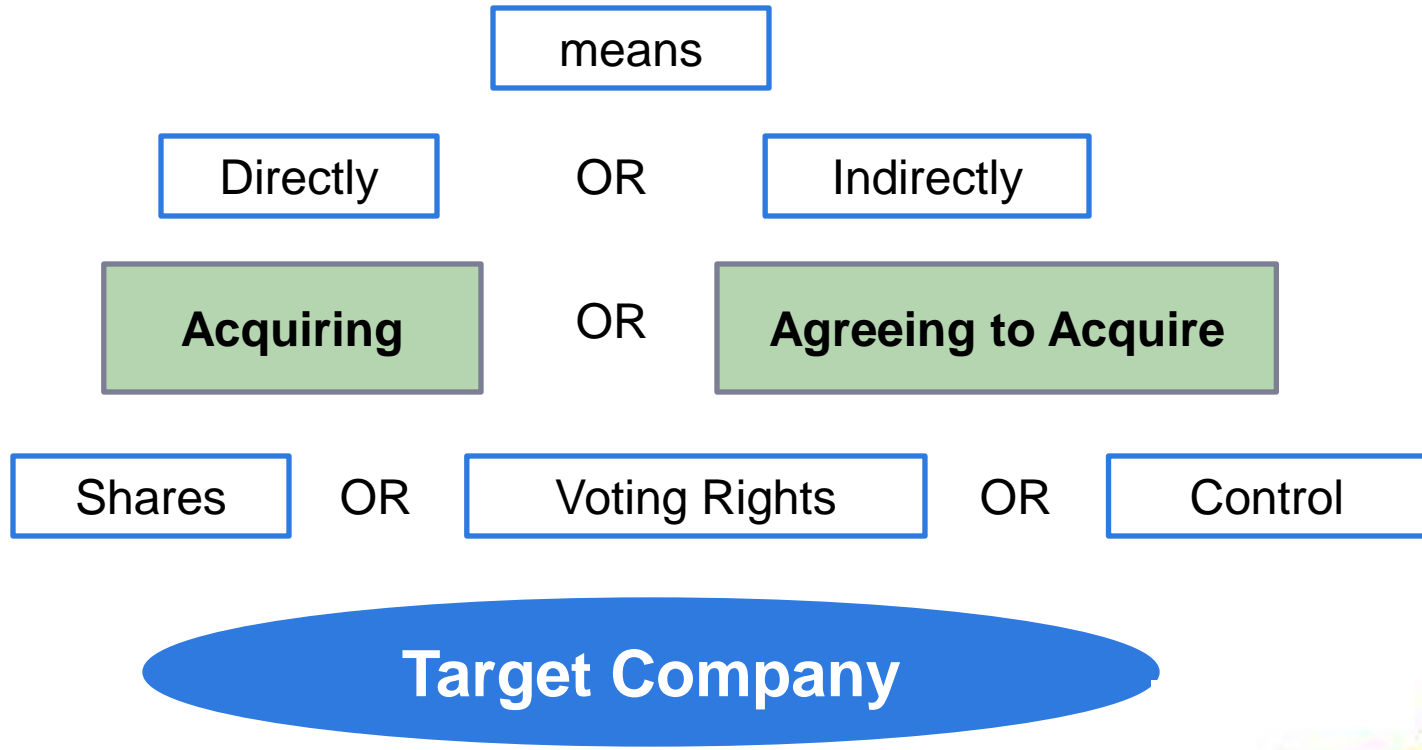
Over

Target Company



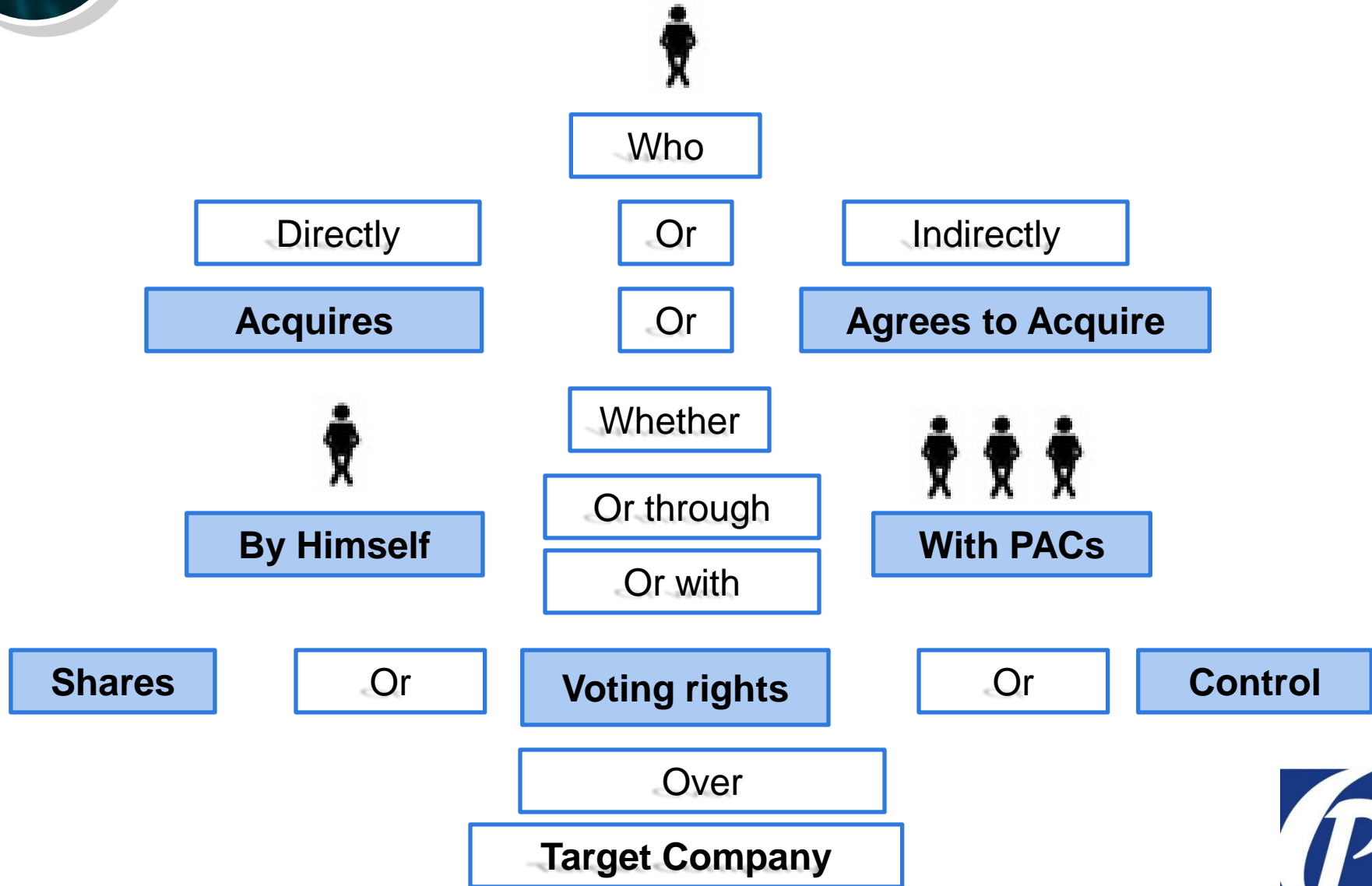


ACQUISITION



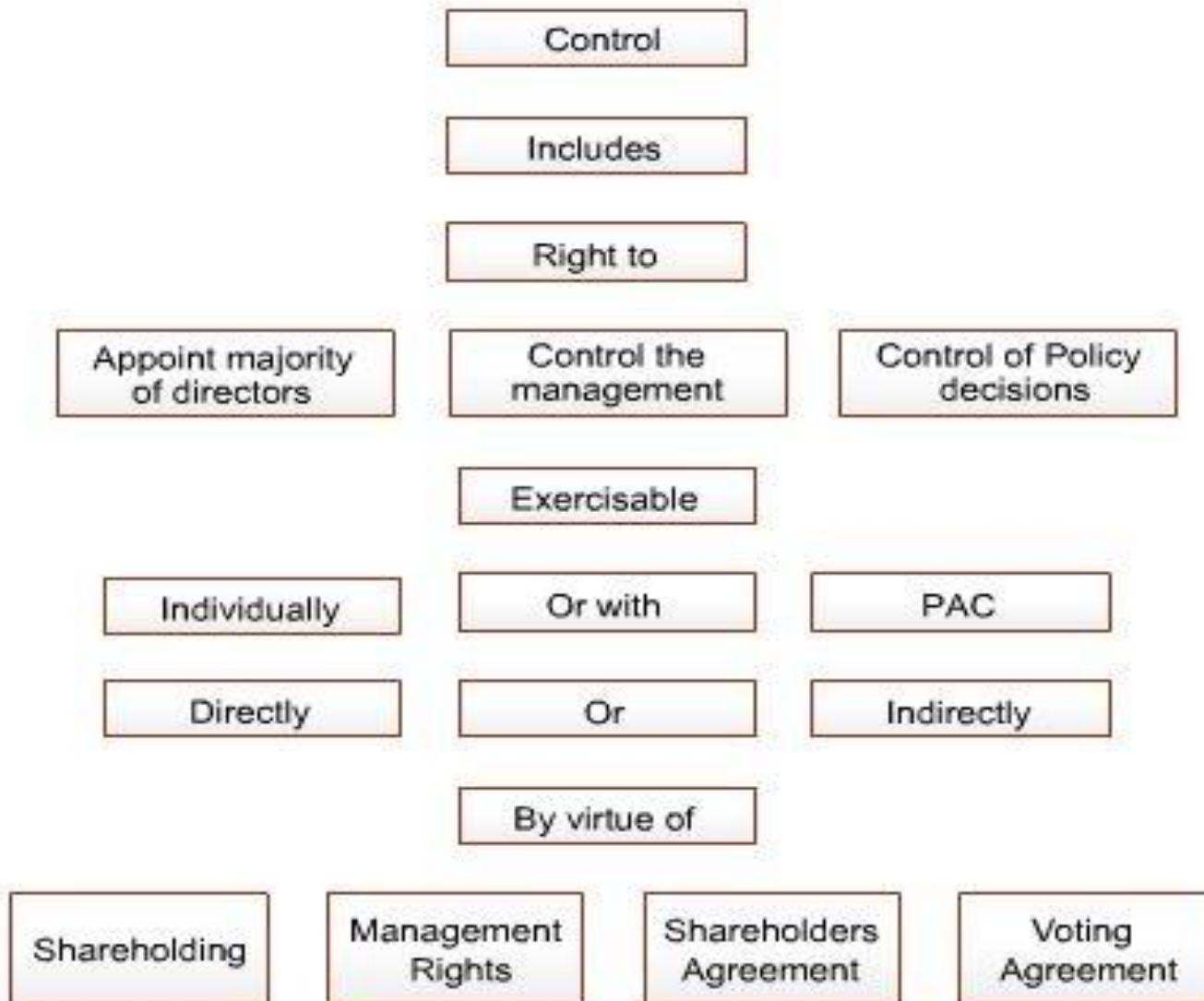


ACQUIRER





CONTROL





UNANSWERED ISSUE

Meaning of Term Negative Control and the applicability of SEBI Takeover Regulations on the same?

Exemption Rejected in the matter of acquisition of shares of Daikaffil Chemicals India Limited (Order dated 14.02.2007)

- Acquirer Proposes to acquire **25.10%** voting rights through **Preferential Allotment**.
- Increase in shareholding from **Nil to 25.10%**.
- **Exemption Rejected** as the acquirer will acquire **Negative Control** over the Company.





SHARES

Means

- **Equity Share** capital carrying voting rights

Includes

- **Security** which entitles the holder to **exercise voting rights**
- **Depository receipts** carrying an entitlement to exercise voting rights





FREQUENTLY TRADED SHARES

Trading Turnover

- 10%
- 12 calendar months preceding the calendar month in which the PA is made

For instance:

Month of PA: September 2012

Trading Turnover: September 2011 to August 2012





IDENTIFIED DATE

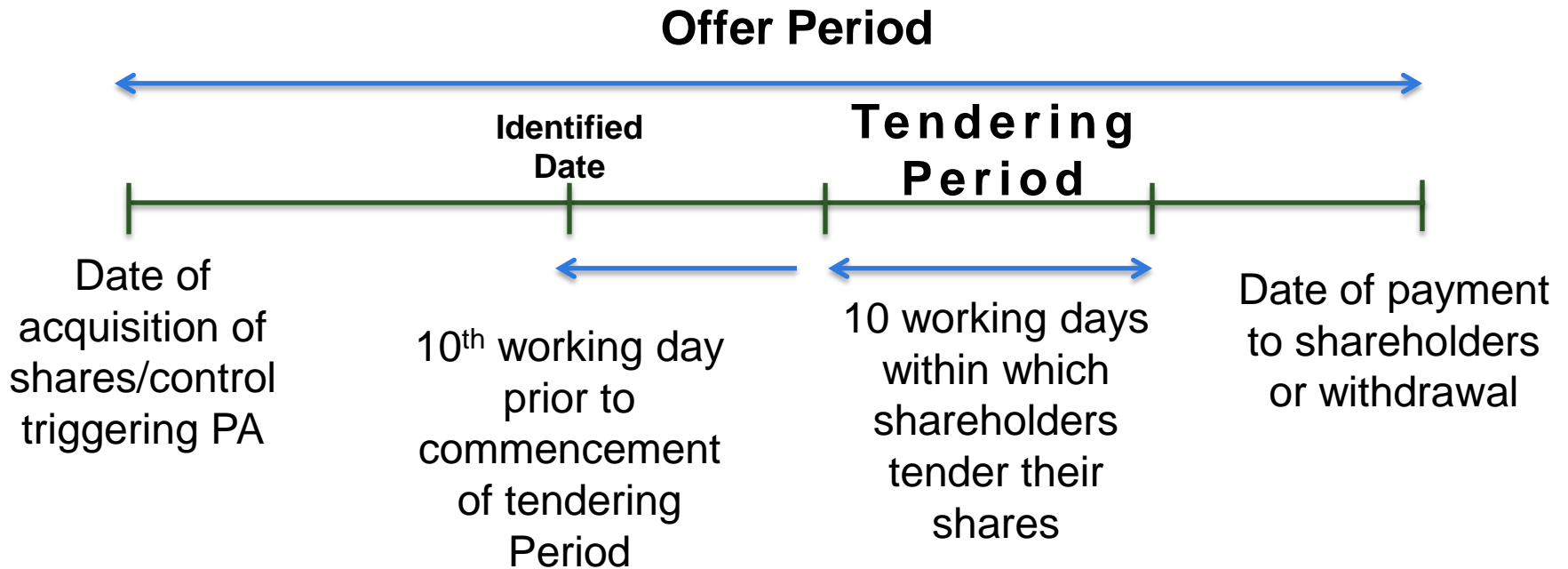
Identified Date

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





IMPORTANT EVENTS





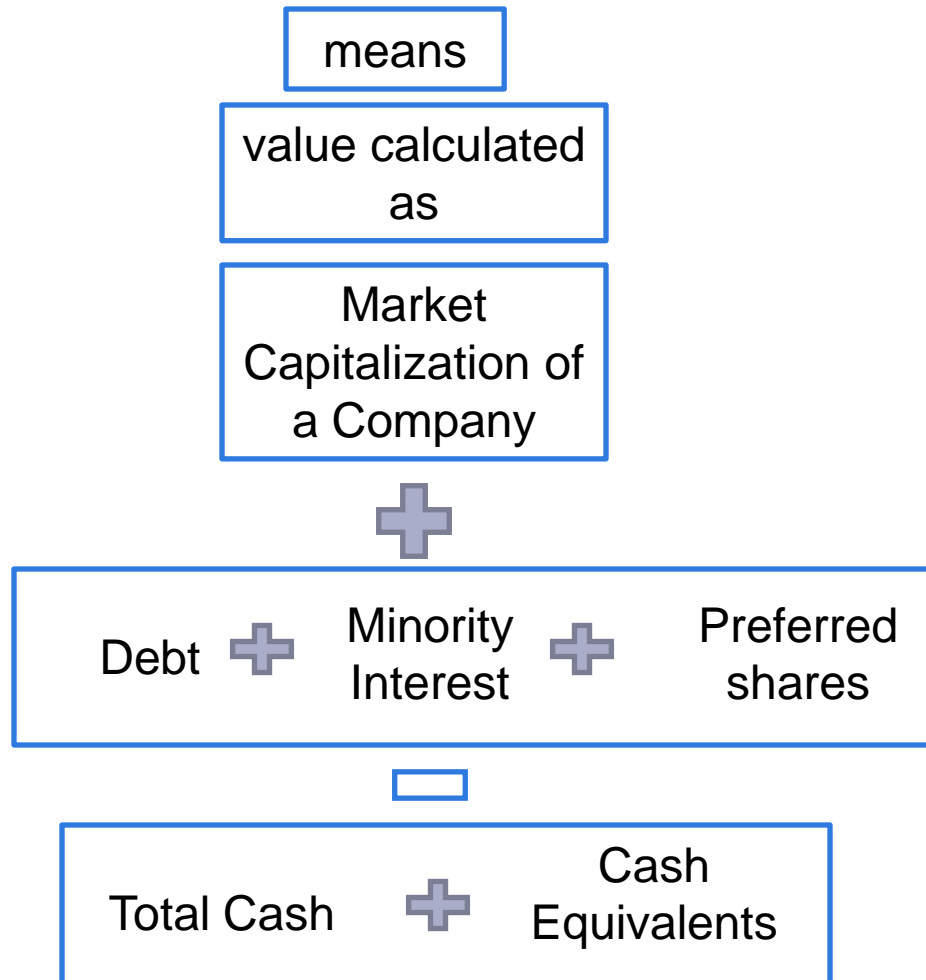
PERSON ACTING IN CONCERT

Persons who for a **common objective** acquire
shares or voting rights or control
over Target Company,
pursuant to an agreement or understanding,
formal or informal,
directly or indirectly
co-operate for acquisition of shares or voting
rights or control over the Target Company.





ENTERPRISE VALUE*



* Reference given in Indirect acquisition of shares or control





ENTERPRISE VALUE

1

Minority Interest

A significant but non-controlling ownership of less than 50% of a company's voting shares by either an investor or another company.

2

Cash equivalent

Investment securities that are short-term, have high credit quality and are highly liquid.

3

Preferred stock

Capital stock which provides a specific dividend that is paid before any dividends are paid to common stock holders, and which takes precedence over common stock in the event of a liquidation. E.g. Preference Shares





ENTERPRISE VALUE

Paid up capital (No. of shares) (1)	10,000
Closing Price of preceding day (2)	10
Market Capitalization (3=1*2)	1,00,000
Debt (4)	5,000
Minority Interest (5)	25% (2500*10)
	25,000
Preferred shares (1000*10) (6)	10,000
Cash and Cash equivalents (7)	4,000
Enterprise Value (3+4+5+6-7)	1,36,000





VOLUME WEIGHTED AVERAGE MARKET PRICE

“Volume weighted average market price” means the product of the number of equity shares traded on a stock exchange and the price of each equity share divided by the total number of equity shares traded on the stock exchange;

Number of shares traded on the Stock Exchange on a particular day: **X**

Market Price: **Y**

$$\text{Volume weighted Average Market Price} = \frac{X_1*Y_1+X_2*Y_2+X_3*Y_3\dots\dots}{X_1+X_2+X_3\dots\dots}$$





VOLUME WEIGHTED AVERAGE PRICE

“Volume weighted average price” means the product of the number of equity shares bought and price of each such equity share divided by the total number of equity shares bought;

Number of shares bought on a particular day: **A**

Market Price: **B**

$$\text{Volume weighted Average Price} = \frac{A1*B1+A2*B2+A3*B3\dots\dots}{A1+A2+A3\dots\dots\dots}$$





WEIGHTED AVERAGE NUMBER OF TOTAL SHARES

“Weighted average number of total shares” means the number of shares at the beginning of a period, adjusted for shares cancelled, bought back or issued during the aforesaid period, multiplied by a time-weighting factor;

	01.04.2011	01.06.2011	01.10.2011	As on Date
Capital	100	120	90	90
WAN	$100 \times \frac{61}{365}$ 16.71	Preferential allotment of 20 shares $120 \times \frac{122}{365}$ 40.11	Reduction of share capital 10 shares $90 \times \frac{182}{365}$ 44.88	101.70



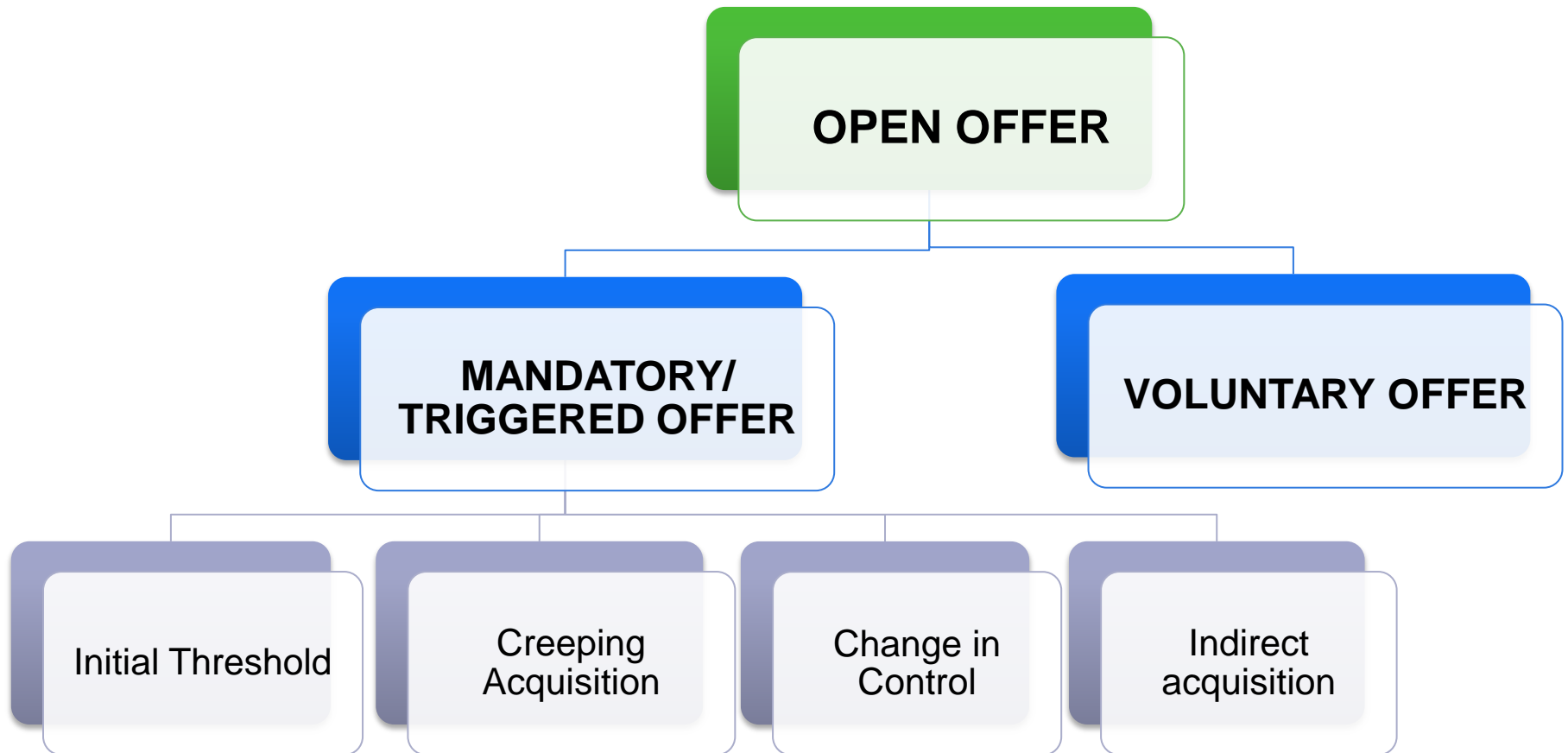


***TRIGGERED POINTS
FOR
OPEN OFFER***





TYPES OF OFFER





INITIAL THRESHOLD & CREEPING ACQUISITION

3(1)



Acquirer along with PAC



25% or more shares or voting rights

3(2)



Acquirer with PAC holding 25% - 75%



Creeping Acquisition - 5% in each F.Y.





CHANGE IN CONTROL

- Through Shareholder Approval

SEBI (SAST) Regulations, 2011



- Through Shareholder Approval

SEBI (SAST) Regulations, 1997



Through Open Offer Only

Irrespective of acquisition of shares or voting rights





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***



Trigger Open Offer





VOLUNTARY OPEN OFFER

1

Separate provisions for voluntary Open Offer

2

Minimum Offer Size is 10%

3

Subject to certain eligibility criteria's, conditions and restrictions



VOLUNTARY OPEN OFFER

Eligibility

- Prior holding of atleast **25% or more** shares;
- No acquisition during the **preceding 52 weeks** without attracting the obligation to make a public announcement.

Condition

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

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.





***OPEN OFFER
AND ITS
RELATED CONCEPTS***



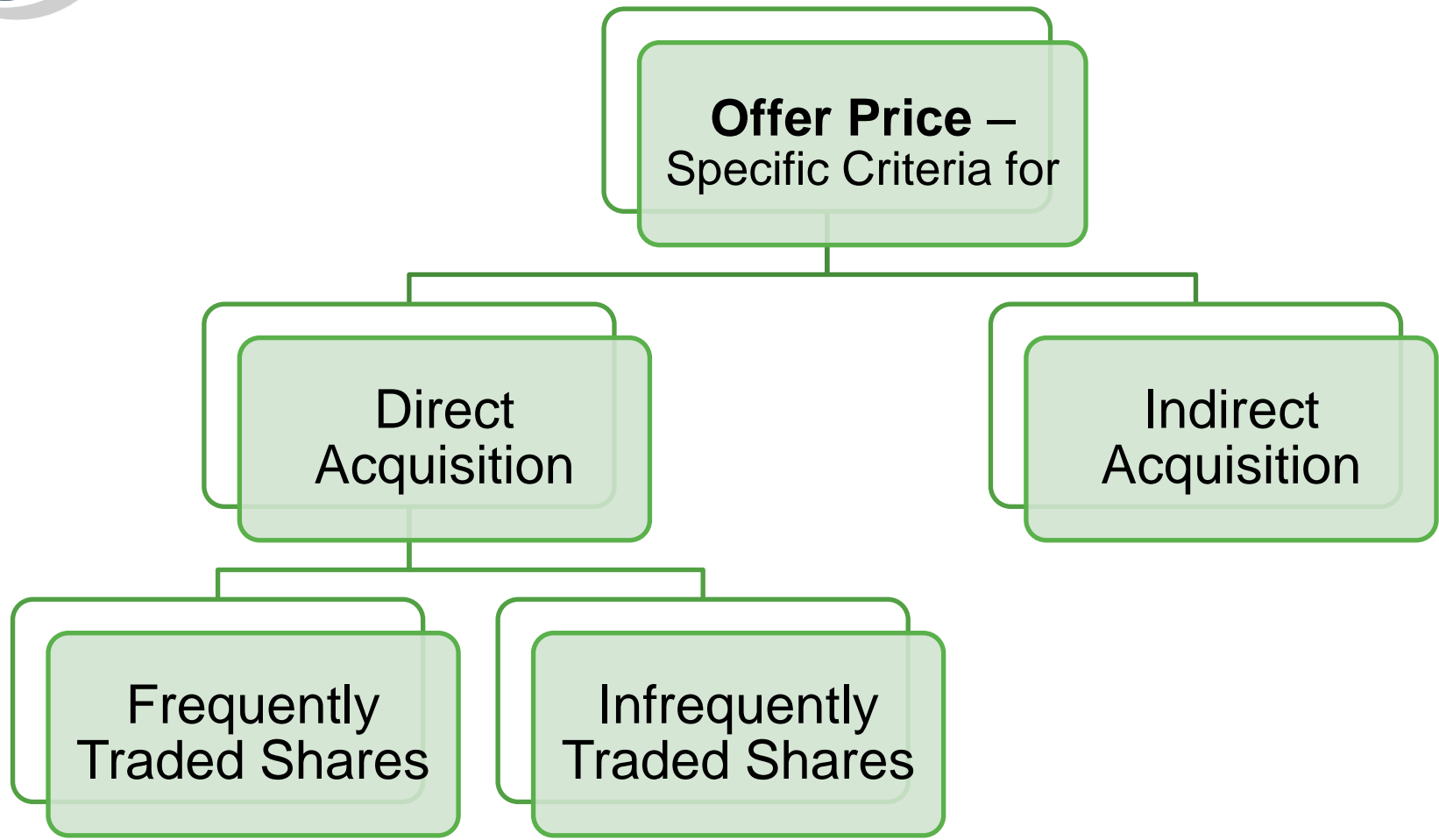


MINIMUM OFFER SIZE





OFFER PRICE





OFFER PRICE

New Regulations



60 trading days



Volume-weighted
average market
price

Old Regulations



26-weeks and 2
weeks average



Simple Average





NON COMPETE FEES

Control Premium / Non-Compete Fees

To be included in
the Offer Price





ESCROW ACCOUNT

Opening of Escrow Account – Not later than two working days prior to the date of DPS

Amount of Escrow Deposit

On first Rs. 500 Crores	25% of the consideration
On balance amount	Additional 10% of balance consideration

Forms of Escrow Account

- ✓ Cash
- ✓ Bank Guarantee
- ✓ Freely transferable equity shares or securities





INCREASE IN SHAREHOLDING BEYOND MAXIMUM PERMISSIBLE NON PUBLIC SHAREHOLDING AFTER THE OPEN OFFER

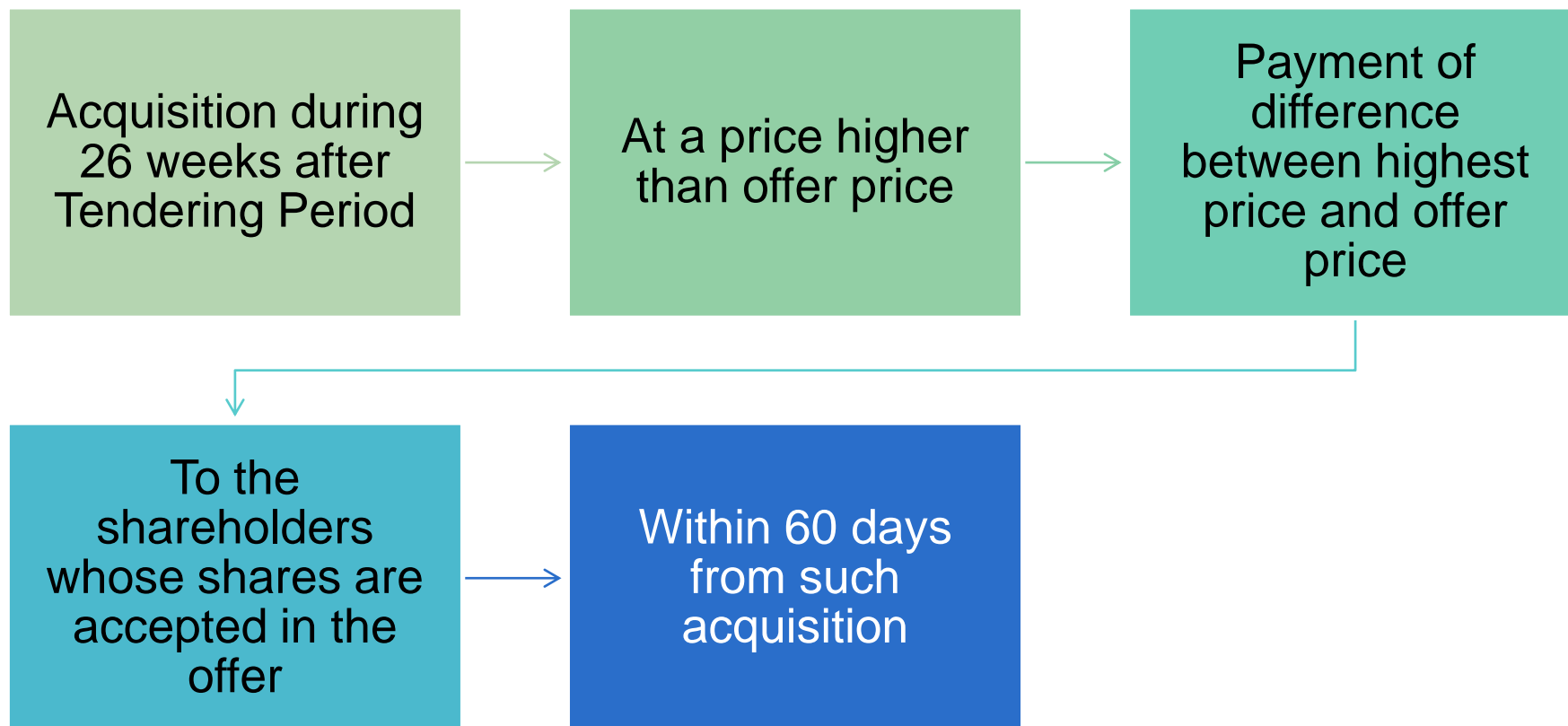
Obligation to bring down
the shareholding

Ineligibility to make
voluntary delisting offer
for a period of 12 months
from the completion of
Offer Period





ACQUISITION AFTER THE TENDERING PERIOD





TIMING OF MAKING OPEN OFFER

Public Announcement

- On the same day or as specified under the Regulation 13

Detailed Public Statement

- Within 5 working days from PA



RECOMMENDATION ON THE OFFER BY BOARD

Recommendation on Offer by the Committee of Independent Directors

- Mandatory

- Constitution of Committee of Independent Directors (IDC).
- Recommendation on the Open offer, as to whether the offer , is or is not, fair and reasonable.
- **Publication** of the recommendations in newspapers **at least two working days before the commencement of the tendering period.**





KEY POINT

Once a **shareholder has tendered his shares** in the open offer made by the Acquirer, than he/ she **CANNOT WITHDRAW or REVISE** his/her request.





COMPETING OFFER

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.





WITHDRAWAL OF OPEN OFFER

Offer once made cannot be withdrawn **EXCEPT** in the following circumstances

Statutory Approvals required have been refused.

Acquirer, being natural person, has died.

Any condition in the agreement is not met for reasons outside the reasonable control of the acquirer

Circumstances as in the opinion of the Board, merit withdrawal





NO APPOINTMENT OF ACQUIRER ON THE BOARD OF TARGET COMPANY

Offer Period

X No induction of Acquirer or his representative on Board of Target Company

Exception:

- After 15 working days from DPS, and
- Deposit 100% consideration in the Escrow Account





EXEMPTION FROM OPEN OFFER





EXEMPTION FROM OPEN OFFER

Exemptions from Open Offer/ Procedural Requirements relating to Open Offer

Regulation 10-
Automatic Exemption

Regulation 11-
Exemptions by the Board

Regulation 11(1)
Exemption from the Open Offer obligations

Regulation 11(2)
Relaxation from Procedural Requirements of Open Offer





OPEN OFFER REQUIREMENT

Reg. 3 (1)

- Open Offer on crossing initial threshold, i.e. 25%.

Reg. 3 (2)

- Open offer for crossing creeping acquisition limit, i.e. 5%

Reg. 4

- Change in Control



AUTOMATIC EXEMPTIONS FROM OPEN OFFER

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





DISCLOSURES LIMITS





DISCLOSURES LIMITS

Event Based Disclosure



Continual Disclosures



Encumbered Shares

No obligation on the Target Company to give the disclosure to Stock Exchange.





IMPACT

- 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.





ISSUES UNADDRESSED

- **Negative Control**
- **Applicability of regulations on acquisition of partly paid up shares**
- **Exemption from open offer on account of forfeiture of Shares**





THANK YOU..

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