



Takeover Code

A Study



**Major Changes
Wide amendment
done on
30.12.2004**

Change in definition of promoter

Promoter defined differently for Inter se transfers

Meaning of Public Shareholding Revised

Code put in line with delisting guidelines

Indirect Preferential allotment allowed upto 55%

The range for creeping acquisition slashed 75% - 55%

Exemptions U/r 3 made subject to delisting gdlines

Penalty provisions U/r 45 widened



What is meant by Takeovers & Substantial Acquisition ?





When an
"acquirer"
takes over the **"control"** of the
"target company",
it is termed as Takeover.

When an acquirer acquires
"substantial quantity of shares or voting rights"
of the
Target Company,
it results into substantial acquisition of shares.

**Who
is an
ACQUIRER ?**



ANY PERSON

WHO

DIRECTLY

OR

INDIRECTLY

ACQUIRES

OR

AGREES TO ACQUIRE

SHARES

OR

VOTING RIGHTS

OR

CONTROL

IN

TARGET COMPANY

EITHER

HIMSELF

OR

WITH PAC

MATTER OF DEBATE

WHETHER A PERSON WHO AGREES TO ACQUIRE SHARES WILL BE TERMED AS “ACQUIRER”?

HELD

IT WAS HELD THAT THE MOMENT THE ACQUIRER SETS INTO MOTION THE PROCESS OF ACQUIRING SHARES OR CONTROL, ACQUISITION WITHIN THE MEANING OF THE REGULATION TAKES PLACE.

B.P Amoco PLC VS SEBI

ACQUIRER

1. In context of takeover code, when are the shares said to be acquired –

- **Whether on instruction for purchase order; or**
- **On payment of consideration; or**
- **On receipt of shares; or**
- **On registration of shares in the name of acquirer.**

**What
is termed as
CONTROL ?**



CONTROL

INCLUDES

Right to Appoint
Majority of Directors

Control of
Management

Control of
Policy Decisions

EXERCISABLE

INDIVIDUALLY

OR

+ PAC

DIRECTLY

OR

INDIRECTLY

BY VIRTUE OF

Shareholding

MGT Right

S/H Agmt

Voting Agmt

IRRESPECTIVE OF ACQUISITION OF SHARES OR VOTING RIGHTS

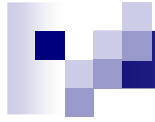
NO ACQUIRER SHALL ACQUIRE CONTROL

WITHOUT PUBLIC ANNOUNCEMENT

EXEMPTION FROM THE ABOVE:

**NOTHING ABOVE WILL APPLY TO ANY CHANGE IN CONTROL IF IT HAS
TAKEN PLACE IN PURSUANCE TO A SPECIAL RESOLUTION**

SPECIAL RESOLUTION SHOULD BE PASSED BY POSTAL BALLOT ONLY



Difference Between Acquiring control & Acquiring shareholding

**Who are
Persons
Acting
in Concert**



PERSONS

who for a

COMMON OBJECTIVE

OR

PURPOSE OF

SUBSTANTIAL ACQUISITION
OF SHARES OR VOTING RIGHTS

OR

GAINING CONTROL
OVER THE TARGET COMPANY

PURSUANT TO AN

AGREEMENT

OR

UNDERSTANDING

DIRECTLY

OR

INDIRECTLY

FORMALLY

OR

INFORMALLY

CO-OPERATE

By Acquiring

OR

By Agreeing to Acquire

A

A Co, Its Holding or Subsidiary or Co. under Same Mgmt either individually or together with each other.

A Co with any of its directors/ Financial Head

Director & their associates of Co's mentioned in **A**

Mutual Fund with Sponsor / Trustee / AMC

FII's with sub-accounts

Merchant Bankers with their Clients

Portfolio Managers with their Cleints

Venture Capital Funds with Sponsors

Banks with Financial Advisors

Stock Brokers of the Acquirer

Holding, Subsidiary or Relative of the acquirer

**Investment Companies with Interested Directors,
Fund Managers & Trustees**

MATTER OF DEBATE

WHETHER INFORMAL AGREEMENT IS SUFFICIENT TO
CONSTITUTE PAC

HELD

IT WAS HELD THAT EVEN AN INFORMAL AGREEMENT
BETWEEN PERSONS TO ACT COLLECTIVELY WILL
COVER THEM IN THE DEFINITION OF PAC.

AASTHA BROADCASTING NETWORK LTD VS SEBI

MATTER OF DEBATE

WHETHER A PROMOTER CAN PARTICIPATE IN THE PUBLIC OFFER BY THE ACQUIRER.

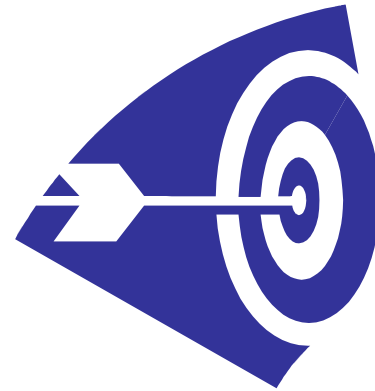
HELD

IT WAS HELD THAT YES, A PROMOTER NOT INVOLVED IN ACQUISITION & SELLING HIS STAKE IN THE PUBLIC OFFER, CANNOT BE TREATED AS PAC & HENCE CANNOT BE BARRED.

MODI SPG & WVG MILLS CO LTD VS SEBI



What is a Target Company?



A LISTED COMPANY

WHOSE

SHARES

OR

VOTING RIGHTS

OR

CONTROL

IS

DIRECTLY

OR

INDIRECTLY

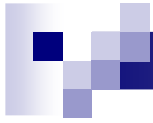
ACQUIRED

OR

IS BEING ACQUIRED

BY

THE ACQUIRER



Who
is a
PROMOTER ?



W.e.f 30.12.2004

Any person who
Directly OR Indirectly
is in control
of the company

Who is named as Promoter
in any
Offer Document OR Shareholding Disclosure
Whichever is later

Any person named as PAC
with Promoter
in any disclosure Document

Where person is an individual

A

His Spouse, parents, Brothers, Sisters or Children

B

Any Co in which $\geq 26\%$ is held by him or with **A**

C

Any FIRM or HUF in which **He** or **A** is partner or member

D

Any CO. in which **B** holds $> 50\%$ Shares

E

Any FIRM in which **HE with A** holds $> 50\%$ Shares

Where person is a Body Corporate **X**

A

Its Holding & Subsidiary Co.

B

Any Co **in which X** holds $\geq 26\%$ shares

C

Any Co **which holds X's** $\geq 26\%$ shares

D

Y Co. in which Common PAC holding $\geq 26\%$ in both Y & X

E

A Co. under Same Mgmt U/s 370 (1B) of Co. Act

MATTER OF DEBATE

WHETHER A PROMOTER IS AN 'ACQUIRER'?

HELD

**IT WAS HELD THAT EVEN IF PROMOTER IS ALREADY
HAVING CONTROL IF ACQUIRER FURTHER SHARES, HE
WILL TREATED AS ACQUIRER.**

NAAGRAJ GANESHMAL JAIN VS SEBI

Promoter

Definition Before 30.12.2004	Definition After 30.12.2004
1. Person in control directly or indirectly	No Change
2. Person or Persons named as promoter in any offer document of offer of securities to the public or existing shareholder.	Who is <u>named as Promoter</u> in any Offer Document OR Shareholding Disclosure Whichever is <u>later</u>

Definition Before 30.12.2004	Definition After 30.12.2004
When person is individual	
His relatives as Defn u/s 6 of Co. Act 1956.	His Spouse, parents, Brothers, Sisters or Children
Any company controlled by P/R	Any Co. 26% stake hold by promoter + relative
Firm or HUF in which P/R is partner or coparcener ; stake not < 50%	No Change

Definition Before 30.12.2004	Definition After 30.12.2004
When person is body corporate	
Holding & Subsidiary	No Change
Any company controlled by P/R	Any Co. 26% stake hold by promoter + relative
Firm or HUF in which P/R is partner or coparcener ; stake not < 50%	No Change

**What is
included in
the term
SHARES ?**



Shares carrying **voting rights**

Security which would
entitle to receive shares with voting rights

BUT

Shall Not Include Preference Shares

MATTER OF DEBATE

WHETHER PARTLY PAID UP SHARES ARE CONSIDERED AS SHARES IN TAKEOVER CODE?

HELD

IT WAS HELD THAT PARTLY PAID SHARES ARE ALSO SHARES UNDER TAKEOVER CODE AS VOTING RIGHTS IS EMBEDDED IN THOSE PARTLY PAID UP SHARES.

LUXURY FOAMS & OTHERS VS SEBI

Shares

A company whose share call money is pending on certain shares and it wants to forfeit shares for non-payment of the amount called. Further it wants to reissue these forfeited shares. But finds no takers for such shares. Consequently Board decides to reissue it to any promoter. Shall such transaction amount to acquisition of shares and subject to takeover code? The number of shares to be forfeited is more than 5%.

SHARES

In case where partly paid shares are to be transferred from one promoter to another, what shall be the voting right attached to shares? Would it be voting rights attached to the paid up portion of the share value only. And during such transfer how the acquisition % of shares shall be counted?

**How
Substantial
Quantity
is
Defined?**





Substantial Quantity of shares or voting rights is defined distinctly for two different purposes:

**(I) Threshold of disclosure to be made by acquirer (s)
(Reg 6,7& 8)**

**(II) Trigger point for making an open offer by an acquirer
(Reg 10,11 & 12)**



OBJECTIVE

TO PROTECT THE INTEREST OF INVESTORS

**TO MAKE BULK ACQUISITION OF SHARES AND
TAKEOVER TRANSPARENT**

**TO ENSURE THAT THE BENEFITS THEREOF
ARE AVAILABLE TO OTHER SHAREHOLDERS
IN THE TARGET COMPANY.**

Initial Disclosures by Persons

By whom	Particulars of disclosure	To whom	Time Period
<u>Any Person</u> holding more than 5% of shares or voting rights in the company	His aggregate shareholding in that company	COMPANY	Within 2 months i.e. (by 20.04.97) of notification of these Regulations (20.02.97)
Promoter / Person having control over a company	No. & % of shares / voting rights held by him with PAC	COMPANY	

Initial Disclosures by Company

By whom	Particulars of disclosure	To whom	Time Period
<u>Company</u> in which any person holds more than 5% of its shares/ voting rights	Aggregate number of shares held by each such person	<u>All Stock Exchanges</u> , where its shares are listed	Within 3 months i.e. (by 20.05.97) of notification of these Regulations (20.02.97)
<u>Company</u> whose shares are listed on a stock exchange	Names, add, No & % of shares or voting rights of promoters and persons having control	<u>All Stock Exchanges</u> , where its shares are listed	

Yearly Disclosures by Persons

By whom	Particulars of disclosure	To whom	Time Period
<u>Every Person</u> (including those mentioned u/r 6) who holds more than 15% of shares or voting rights in the company	His shareholding in that company As on 31 st March	COMPANY	Within 21 Days from the financial year ending March 31 st
Promoter / Person having control over a company	No. & % of shares / voting rights held by him with PAC	COMPANY	Within 21 Days from the financial year ending March 31 & Record Date for the purpose of Dividend.

Yearly Disclosures by Company

By whom	Particulars of disclosure	To whom	Time Period
<p><u>Every Company</u> whose shares are listed on a Stock Exchange</p>	<ol style="list-style-type: none"> 1. Changes if any, in the holdings of persons holding 15% 2. Changes if any in the holdings of the promoters or persons having control. 	<p><u>All Stock Exchanges,</u> where its shares are listed</p>	<p><u>Within 30 Days</u> from the financial year ending March 31 & <u>Record date</u> for the purpose of Dividend.</p>

Reg 6& 8

In case of violation of Regulation 6 & 8 of SEBI (SAST) Regulations 1997;

a) Where default has been done by the company under Regulation 6(2) & 6(4) regarding non-disclosure of information to stock exchanges, what shall be the remedy available to the Company?

b) What is the procedure to be followed to avail the remedy?

By whom	Particulars of disclosure	To whom	Time Period
<p>Acquirer whose acquisition entitles him to exercise more than <u>5%, 10%, 14%</u> (54% or 74%) of shares or voting rights</p>	<p>Aggregate of his shareholding or voting rights in that Company</p>	<p>Target Company & the Stock exchanges where shares of the target Company are listed.</p>	<p>Within 2 days of every stage of acquisition</p>
<p>Acquirer as in Regulation 11(1A) (15%- 55%)</p>	<p>Sale/ Purchase aggregating 2% or more of the share capital of the target Company</p>	<p>Target Company & the <u>Stock Exchanges</u>, where its shares are listed</p>	<p>Within 2 days of Such sale/purchase.</p>

By whom	Particulars of disclosure	To whom	Time Period
<p>Stock Exchanges</p>	<p>Information received from the Acquirer</p>	<p>On its Notice Board & Website (Company must ensure the same)</p>	<p>Immediately</p>
<p>Target Company whose shares are acquired u/r 7(1) & 7(1A)</p>	<p>Aggregate number of shares.</p>	<p><u>Stock Exchanges,</u> where its shares are listed</p>	<p><u>Within 7 days of Receipt of information u/r 7(1) & 7(1A)</u></p>

MATTER OF DEBATE

WHETHER COMPLIANCE OF REGULATION 7(1) IS ONE TIME COMPLIANCE?

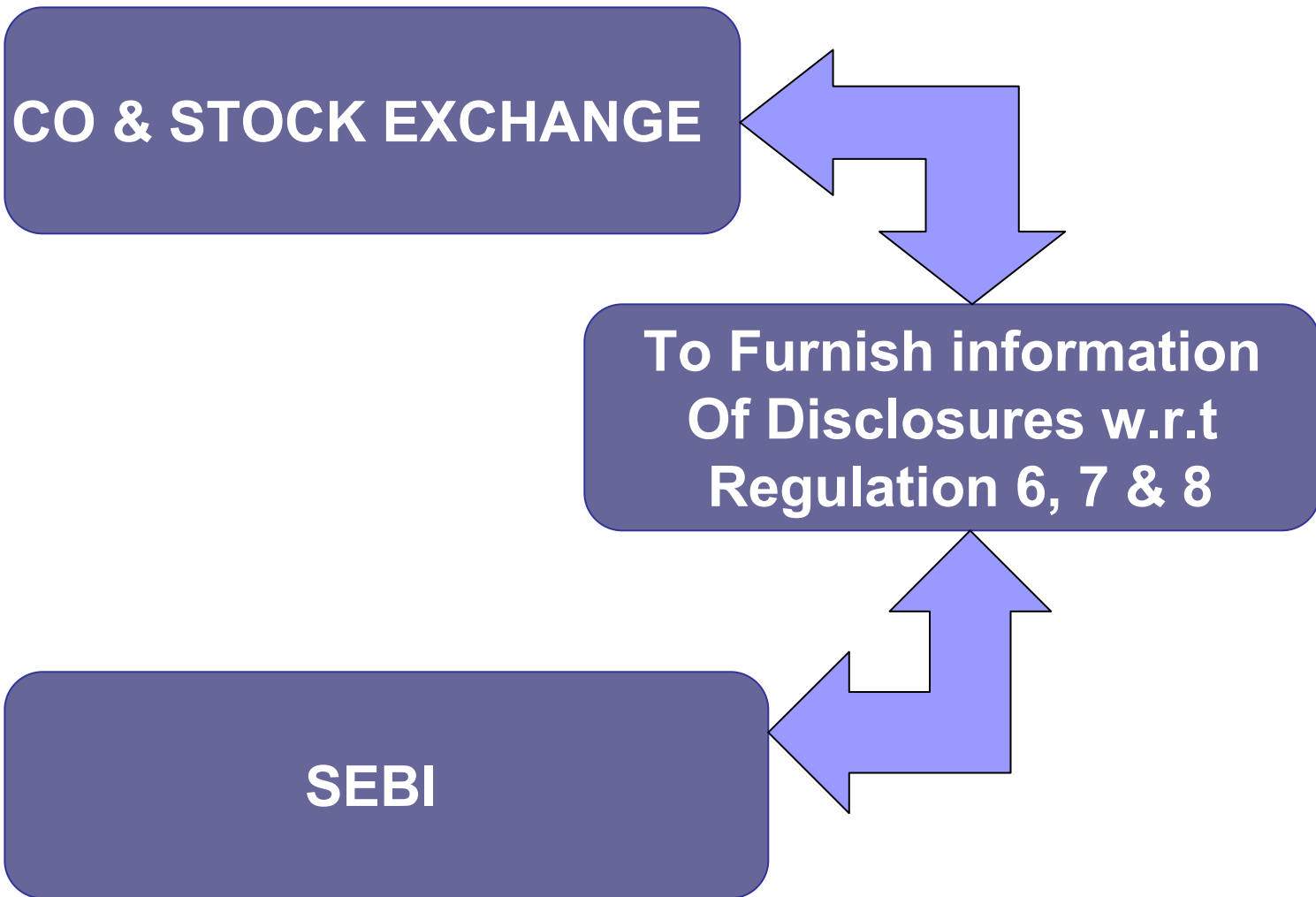
HELD

IT WAS HELD THAT IT IS NOT ONE TIME. COMPLIANCE HAS TO BE DONE AS PER THE VARIATIONS OCCURRED.

RELIANCE INDUSTRIES VS SEBI

REGULATION 7(1A)

- 1. Where a company is in a process of merging with another company and in process, there is change in the control and in shareholding pattern of the Company. Would it have to comply with regulation 7(1A) of the SEBI takeover code.**
- 2. Does a person who has got the exemption from the Takeover Panel constituted under regulation 4 have to comply with regulation 7(1A)?**
- 3. Whether non- disclosure of information as required under regulation 7(1A) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, a continuing offence or one time offence?**





**TRIGGER POINT
FOR PUBLIC OFFER**

ACQUISITION OF 15% OR MORE OF SHARES/ VOTING RIGHTS

- Acquirer who intends to acquire shares (including his previous holding)
- Which entitle him to exercise 15% or more voting rights,
- Can acquire such additional shares only after making
- public announcement (PA)
- to acquire at least additional 20% of the voting capital of target company from the shareholders through an open offer.

CREEPING ACQUISITION

- An acquirer who holds 15% or more but less than 55% of shares or more of the voting rights.
- Can acquire such additional shares as would entitle
- To exercise more than 5% of the voting rights in any financial year ending March 31st
- After making a Public Announcement to acquire at least additional 20% shares of target company from the shareholders through an open offer.

- **NO ACQUIRER SHALL ACQUIRE SHARES OR VOTING RIGHTS**
- **THROUGH PREFERENTIAL ALLOTMENT OR MARKET PURCHASES**
- Which entitles him to Exercise 55% of Voting Rights / Shares (either
 - individually or individually (+) PAC.

IF VIOLATION OF ABOVE CONDITION

PERSON HAS TO DISINVEST FORWITH THE HOLDINGS BEYOND 55%

AND

SHALL BE LIABLE FOR ACTION

CONSOLIDATION OF HOLDINGS

- An acquirer who holds 55%(w.e.f 30.12.2004) shares or voting rights of target company,
- Can acquire further shares or voting rights only
- After making a public announcement
- To acquire at least additional 20% shares of target company from the Shareholders through an open offer.

**UNLESS OTHERWISE PROVIDED IN REGULATIONS
IF THE PROPOSED ACQUISITION REDUCES THE LIMIT REQUIRED TO BE
MAINTAINED FOR LISTING OF SECURITIES
THEN THE ACQUISITION SHALL BE IN ACCORDANCE WITH
SEBI (DELISTING OF SECURITIES) GUIDELINES, 2003**

EXEMPTION:

**THE ABOVE-MENTIONED WILL NOT BE APPLICABLE TO
ACQUISITION BY VIRTUE OF GLOBAL ARRANGEMENT**

REGULATION 11

Regulation 11(1) allows a person holding (15% -75 %) of shares of a company, to further acquire upto 5% of the shares of that Company in a particular year. If in a particular year a person acquires 5% according to the above regulations and further plan to acquire certain shares inter se (which are exempted from the regulation of 10,11,12). Is it valid according to the regulations?

Where a person makes Public Announcement pursuant to regulation 11(1), is he further required to give disclosures pursuant to regulation 7(1A) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations 1997?

**EXEMPTIONS
FROM
REGULATION
10, 11 & 12**



**ALLOTMENT IN PURSUANCE OF AN APPLICATION
MADE TO A PUBLIC ISSUE.**

**Except Firm Allotment – exempt only if full disclosure is
made in the prospectus.**

DISCLOSURE REQUIRED TO AVAIL EXEMPTIONS:

ACQUIRER  **STOCK EXCHANGE**
{Report as in prescribed format
within 21 days of date of acquisition}

**Disclosure is required only if the acquisition exceeds 15%
of voting shares capital of the company.**

**Fees of Rs 10,000/-
shall be accompanied along with the report.**

**ALLOTMENT IN PURSUANCE OF AN APPLICATION
MADE TO A RIGHT ISSUE.**

- Upto extent of his entitlement
- Upto % in Regulation 11.

DISCLOSURE REQUIRED TO AVAIL EXEMPTIONS:

ACQUIRER  **STOCK EXCHANGE**
{Report as in prescribed format
within 21 days of date of acquisition}

Disclosure is required only if the acquisition exceeds **15%**
of voting shares capital of the company.

Fees of Rs 10,000/-
shall be accompanied along with the report.

ALLOTMENT

TO THE

UNDERWRITERS

PURSUANT TO ANY

UNDERWRITING AGREEMENT.

**ACQUISITION OF SHARES IN THE
ORDINARY COURSE OF BUSINESS BY**

- A registered **Stock Broker** on behalf of the client.
- A Registered **Market Maker**
- By **Public Financial Institution** on their own account
- By **Banks** & Public financial institutions as pledgee
- By **International** Financial Institutions.
- By Merchant Banker or a Promoter of the target Company pursuant to a **scheme of safety net.**

Acquisition of shares

by a

Person

in exchange of shares

received under a

Public offer

made under these guidelines

Acquisition of shares

by way of

Transmission

ON

Succession

OR

Inheritance.

MATTER OF DEBATE

WHETHER TRANSFER AMONG PROMOTERS BE TREATED AS SUCCESSION, WHEN THERE IS NO CHANGE IN THE CONTROL?

HELD

IT WAS HELD THAT EVEN IF THERE IS NO CHANGE IN THE CONTROL BUT IT WILL BE TREATED AS INTER-SE TRANSFER BECAUSE IN THIS CASE THE TRANSFER WAS DONE WITH CONSIDERATION.

**J.M. FINANCIAL& INVESTMENT
CONSULTANTS VS SEBI**

Acquisition of shares by
Government Companies
within the meaning of Section 617 of Companies Act.

Except acquisition through
Competitive Bidding Process
of Listed PSU Shares in Disinvestment.

DISCLOSURE REQUIRED TO AVAIL EXEMPTIONS:

ACQUIRER  **STOCK EXCHANGE**

{Details of proposed acquisition
4 Working Days in advance Reg 3(3)}

Disclosure is required only if the acquisition exceeds **5%**
of voting shares capital of the company.

Transfer of shares from State Level Financial Institution including their subsidiaries to Co-Promoters, Acquirer pursuant to an agreement.

ACQUIRER  **STOCK EXCHANGE**

{Details of proposed acquisition

4 Working Days in advance }

Disclosure is required only if the acquisition exceeds **5%** of voting shares capital of the company.

ACQUIRER  **STOCK EXCHANGE**

{Report as in prescribed format within
21 days of date of acquisition Reg 3(4)}

Disclosure is required only if the acquisition exceeds **15%** of voting shares capital of the company.

Fees of Rs 10,000/- be enclosed along with the report.Reg3(5)

Transfer of shares
from
Venture Capital Funds
or
Foreign Venture Capital Investors
to
the Promoters
of the
Venture Capital Undertaking.

*Acquisition under
Scheme or Arrangement*

Section 18 of SICA

Reconstruction

*Including
Amalgamation,*

*Merger or De-merger
under any law.*

Acquisition of shares in companies

whose shares are not listed on any stock exchange.

*Exemption **NOT** available if by virtue of such acquisition,*

the acquirer acquires

Shares OR Voting Rights OR Control

over a listed company.

*Acquisition of shares in terms of
guidelines or regulations regarding*

Delisting of Securities

specified or framed by the

Acquisition of shares by a

Person in exchange of shares received

under a Public offer made under these guidelines.

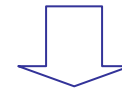
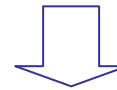
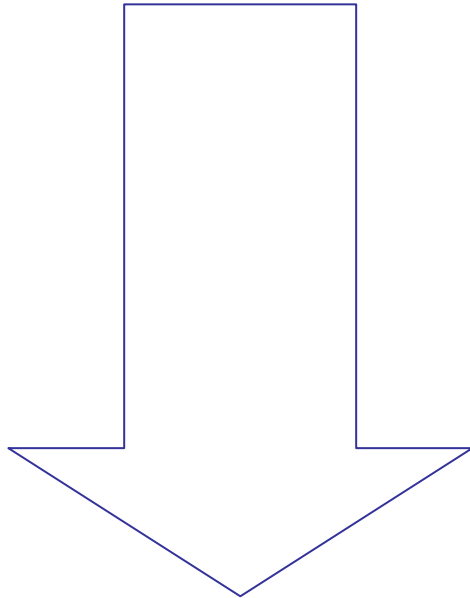
*** W.e.f 30.12.2004**

Group

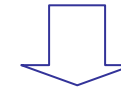
Relatives

**Promoters &
Foreign
Collaborators**

**Acquirer
&
PAC**



**Exemption not available if
transfer is at a price > 25% of
the price determined in terms of
Reg 20(4) & 20(5)**



PROVIDED THAT REG 6, 7 & 8 HAVE BEEN COMPLIED.

3 yrs holding of shares by Transferee & transferor

DISCLOSURE REQUIRED TO AVAIL THIS EXEMPTION:

ACQUIRER  **STOCK EXCHANGE**

{Details of proposed acquisition

4 days in advance Reg 3(3)}

Disclosure is required only if the acquisition exceeds **5%** of voting shares capital of the company.

ACQUIRER  **STOCK EXCHANGE**

{Report as in prescribed format within
21 days of date of acquisition Reg 3(4)}

Disclosure is required only if the acquisition exceeds **15%** of voting shares capital of the company.

Fees of Rs 10,000/-

shall be accompanied along with the report. Reg 3(5)

Inter se Transfers

1. Where A & B, promoters of a company, are the joint shareholders, A being the first joint holder, holds voting rights and the benefits attached to those shares. In case B wants to transfer his joint share holding to A. Would it be treated as transfer inter se for the purpose of takeover code.

2. And if they are simple shareholders instead of promoters and one of them wants to transfer shares to other, in that case will it amount to acquisition so as to attract takeover code

Inter se Transfers

1. In case of a company going for merger and the transferor company's shareholders become the promoter, Can they go for the inter se transfer of shares, so as to avail exemption under Regulation 3?

2. Two promoters A & B of the company hold 20% shares each in a company. A acquires 5% every year so as his acquisition becomes 51% in a particular year. Now A wants to remove B from the Board in the coming AGM. Whether A can exercise such power?

MATTER OF DEBATE

Whether Reporting under Regulation 3(4) is one time reporting?

HELD

Regulation 3(4) is applicable to all cases wherever the acquisition exceeds the limit prescribed in the regulations irrespective of the existing holding of the acquirer.

NAAGRAJ GANESHMAL JAIN
VS P.SRI SAI RAM, THE SAT

MATTER OF DEBATE

Whether the belated filing of report should not be considered as commission of offence when there is no substantial loss to the investors?

HELD

It was held that when the belated filing of the report under 3(4) does not resulted in any gain to the appellant & also no loss to the invested, the imposition of the penalty is not justified.

SAMRAT HOLDINGS VS SEBI

REGULATION 3

A company brings out preferential issue as per SEBI guidelines, and promoters acquire 12% of the preferential issue. But their post equity shareholding % is same as pre issue shareholding. Can they further acquire 5 % through creeping route in that year, without violating takeover code?

GENERAL

- 1. In complying with the provisions of 11 of the Regulation, the promoters acquired more than 15% of shareholding and gave a public offer of 20%, while in due process the some other persons secretly acquired 24% assuming that compliance has been made by the promoters. What shall be the consequences and the violation on such acquisition?**

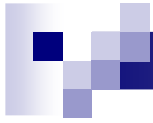
- 2. In case of takeover of a loss making company, whose net worth is negative and business is closed, can the offer price for the shares be as minimum as, 10 paisa /share?**



Last but not the least...

**TAKEOVER CODE'S MAIN OBJECTIVE IS TO ENSURE
EQUALITY OF TREATMENT & OPPORTUNITY TO ALL
SHAREHOLDERS & AFFORD PROTECTION TO THEM
IN THE EVEN OF SUBSTANTIAL ACQUISITION OF
SHARES & TAKEOVERS**

**Punjab State Industrial Development Corporation Ltd
Vs. SEBI**



Thanks