

### **SEBI Delisting Regulations**

The Securities and Exchange Board of India (SEBI) has notified the SEBI (Delisting of Equity Shares) Regulations, 2009, "Regulations", thereby superseding the old SEBI (Delisting of Securities) Guidelines 2003.

These Regulations provide three different set of provisions for delisting of equity shares under different circumstances.

- 'Voluntary delisting' means delisting of equity shares of a company voluntarily on application of the company under these regulations. The main delisting provision pertains to the voluntary delisting sought by the promoters of a company from the only recognized stock exchange giving exit opportunity to all public shareholders
- 'Compulsory delisting' means delisting of equity shares of a company by a recognized stock exchange on any ground prescribed in the rules made under section 21A of the Securities Contracts (Regulation) Act, 1956
- Special provision for delisting of small companies Not frequently traded or with small number of shareholders

'Public shareholders' mean the holders of equity shares, other than the following:

- (a) Promoters;
- (b) Holders of depository receipts issued overseas against equity shares held with a custodian and such custodian;

### **Applicability**

- a. Apply to delisting of equity shares of a company from all or any of the recognized stock exchanges where such shares are listed.
- b. Does not apply to any delisting made pursuant to a scheme sanctioned by the Board for Industrial and Financial Reconstruction under the SICA or by the NCLT under section 424D of the Companies Act, 1956, if such scheme specify procedure to complete the delisting; or provides an exit option to the existing public shareholders at a specified rate.
- c. Delisting not Permitted under certain circumstances: A company cannot apply for delisting of its equity shares pursuant to
  - Buy back of its equity shares, or
  - preferential allotment made by the company; or
  - unless a period of three years has elapsed since the listing of that class of equity shares on any recognised stock exchange; or
  - if any instruments issued by the company, which are convertible into the same class of equity shares that are sought to be delisted, are outstanding.
- d. No delisting of Convertible securities
- e. Exit opportunity not required if after the proposed delisting from a recognized stock exchange the equity shares would remain listed on any recognised stock exchange which has nationwide trading terminals, hence no exit opportunity needs to be given to the public shareholders.

- f. No promoter shall directly or indirectly employ the funds of the company to finance an exit opportunity or an acquisition of shares made by Promoters pursuant to sub regulation (3) of regulation 23
- g. No fraud, deception or manipulation with respect to delisting by promoter or any other person.

### **Voluntary Delisting**

1. Obtain the prior approval of the board of directors
2. Prior approval of shareholders of the company by special resolution passed through postal ballot.
3. Make an application to the concerned recognised SE for in-principle approval & shall be accompanied by an audit report, in respect of the equity shares sought to be delisted, covering a period of six months prior to the date of the application.
4. On receipt of in principle approval for delisting, promoters of the company to make a public announcement in at least one English, Hindi, regional language newspaper of the region.
5. Public announcement to specify a date(called as specified date), being a day not later than thirty working days from the date of the public announcement for determining the names of shareholders to whom the letter of offer shall be sent.
6. Before any public announcement the Promoter has to perform following
  - to appoint a merchant banker & other intermediaries to ensure compliance of provisions.
  - open an escrow account and deposit therein the total estimated amount of consideration calculated on the basis of floor price and number of equity shares outstanding with public shareholders.
  - the escrow account shall consist of either cash deposited with a scheduled commercial bank, or a bank guarantee in favour of the merchant banker, or a combination of both.
7. A letter of offer to be sent to all public shareholders, not later than forty five working days from the date of the public announcement, and to contain all disclosures along with a bidding form.
8. The date of opening of the offer shall not be later than fifty five working days from the date of the public announcement. The offer shall remain open for a minimum period of three working days and a maximum period of five working days, during which the public shareholders may tender their bids.
9. Offer price: All public shareholders of the equity shares which are sought to be delisted shall be entitled to participate in the book building process.
  - a. It shall be determined through book building after fixation of floor price. Floor Price determined on basis of weekly high and low of the closing prices of the equity shares of the company during the twenty six weeks or two weeks preceding the date on which the recognised stock exchanges were notified of the board meeting in which the delisting proposal was considered, whichever is higher; and if the shares are infrequently traded highest price paid by the promoter for acquisitions, during the 26 weeks or net worth, book value of the shares of the company, earning per share
  - b. The promoter shall not be bound to accept the equity shares at the offer price.
10. An offer made, shall be deemed to be successful if post offer, the shareholding of the promoter (along with the persons acting in concert) taken together with the shares accepted through eligible bids at the final price, reaches the higher of –

- (a) 90% of the total issued shares of that class excluding the shares which are held by a custodian and against which depository receipts have been issued overseas;
  - (b) the aggregate percentage of pre offer promoter shareholding (along with persons acting in concert with him) and 50% of the offer size.
11. Within one year of passing the special resolution, make the final application to the concerned SE, shall be accompanied with such proof of having given the exit opportunity.
  12. While considering an application seeking in-principle approval, SE may require the company to satisfy:
    - (a) payment of listing fees to that recognised stock exchange
    - (b) the resolution of investor grievances by the company; etc

### **Compulsory Delisting by SE**

1. Before making an order, the SE shall give a notice in one English & one regional language newspaper of the region of the proposed delisting.
2. The SE appoints an independent valuer or valuers from its panel to determine the fair value of the delisted equity shares.
3. The promoter of the company shall acquire delisted equity shares from the public shareholders by paying them the value determined by the valuer, subject to their option of retaining their shares.
4. Where a company has been compulsorily delisted, the company, its whole time directors, its promoters shall not directly or indirectly access the securities market or seek listing for any equity shares for a period of ten years from the date of such delisting.

### **Special Provision for small companies**

Such provisions are applicable to companies:

- a. where the paid up capital is upto one crore of rupees and the shares are not traded in the one year preceding the decision to delist the shares; or
- b. where the public shareholders are not more than three hundred and the paid up value of the shares held by such shareholders is not more than one crore of rupees.

In case the above conditions are met with, some of the provisions related with the voluntary delisting such as approval of the Board of Directors, seeking in-principle approval of the stock exchange, in addition to the following procedures have to be followed by the promoters for delisting its equity shares:

- A merchant banker has to determine the floor price for the buy back;
- Promoters have to write individually to all public shareholders proposing the buy back and indicating the floor price and the basis for arriving at the same;
- At least 90% of the public shareholders consent to sell or continue to hold equity shares even after delisting;
- Process for completing the buy back is completed within 75 days of first informing the public shareholders and payments are made within 15 days from the date of expiry of 75 days.