

# How Takeover Code evolved?

01

In year 1992 - Announcement of Policy of Globalisation in India

02

In year 1992 - Change in India's Capital Market Scenario

03

SEBI enacted SEBI (SAST) Regulations, 1994 initially

04

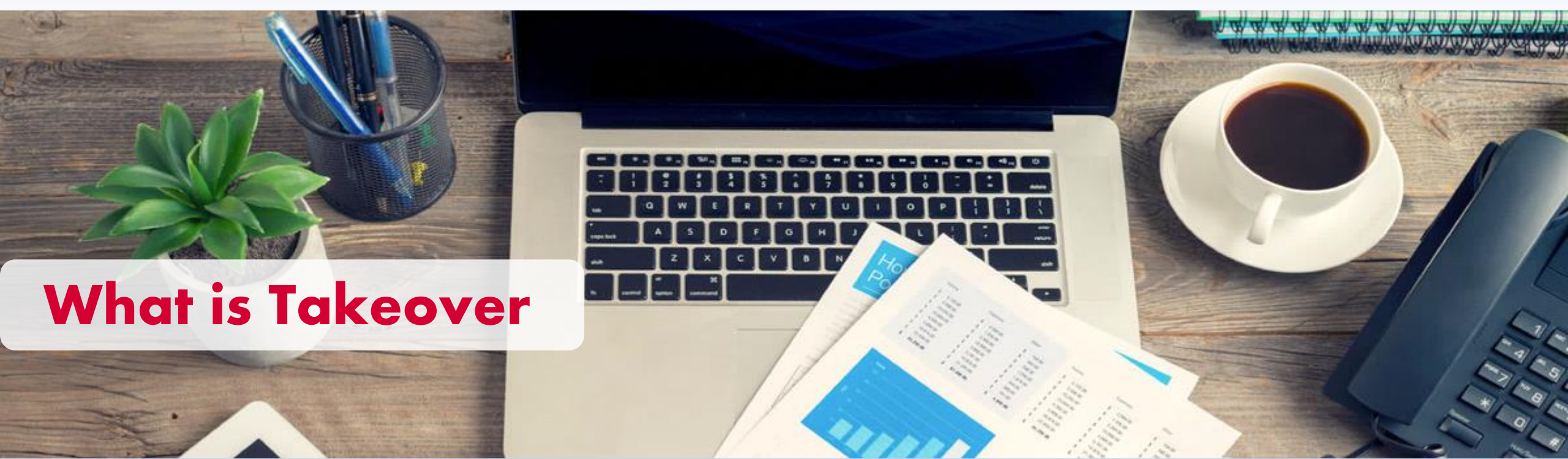
Then, SEBI enacted SEBI (SAST) Regulations, 1997

05

Later, Takeover Regulations Advisory Committee ("TRAC") was formed under the chairmanship of Late C. Achuthan

06

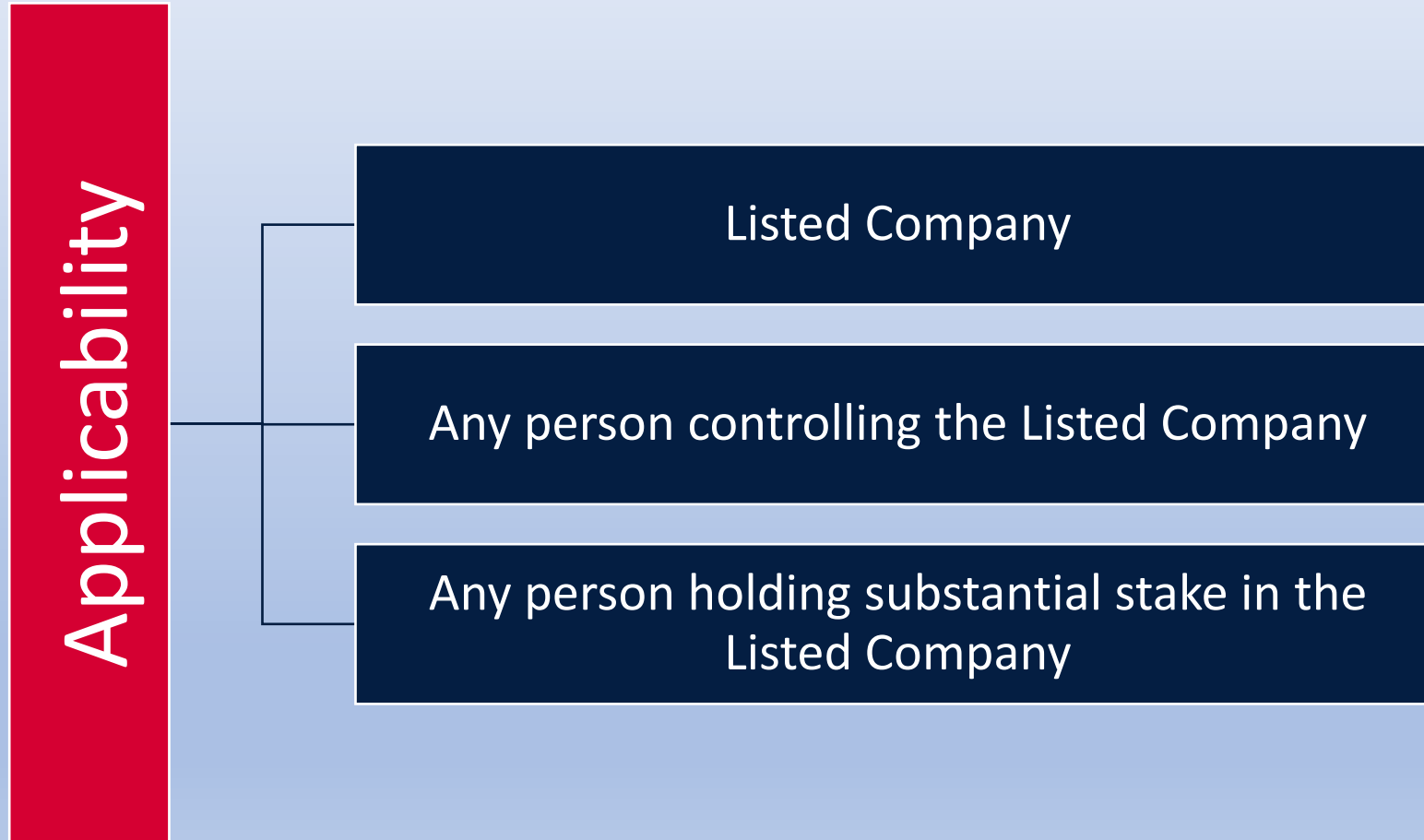
SEBI notified SEBI (SAST) Regulations, 2011

A top-down view of a wooden desk. In the center is a silver laptop with a black keyboard. To the left of the laptop is a small potted plant with green leaves and a black mesh pen holder containing several pens. To the right of the laptop is a white cup of dark coffee on a matching saucer. In front of the laptop, several papers are scattered, one of which features a blue bar chart. A black office telephone is partially visible on the right edge of the desk.

# What is Takeover

Takeover is acquisition of substantial shares and control over the Target Company to expand or to diversify the business in an inorganic manner.

# Applicability of Takeover Code?



# Who can be the Acquirer?

Any person who directly or indirectly acquires or agrees to acquire shares or voting rights or control over the Target Company.

Critical issue – Acquirer also includes a person who intends to acquire shares or voting rights or control over the Company, irrespective of the fact whether actual acquisition is effected or not.

**Q: Merely entering into a Share Purchase Agreement to acquire substantial shares in the Company would determine that person as an Acquirer or not?**

# Who can be Person Acting in Concert?

Persons who for a common objective or purpose to acquire shares or voting rights or control over the Target Company are known as PACs to each other.

Critical Issue – Generally, the term PAC is checked only for the purpose of acquisition and not for sale.

**Q: Merely being the part of promoter group would be considered as being PACs to each other?**

**Q: Whether a deemed Persons acting in concert with Seller are eligible to participate in open offer?**

# Shares?

## Equity Share;

Critical Issue – No voting rights due to certain temporarily embargo

**Q: Partly paid up shares would be excluded for determining total shares?**

**Q: Shares allotted to ESOP trust on which trustee cannot exercise voting rights would be excluded for determining total shares?**

**Q: Shares frozen pursuant to any order of any regulatory authority would be excluded for determining total shares?**

# Shares?

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- Preference Shares carrying voting rights;
- Any securities which entitles the holder to exercise voting rights; and
- All depository receipts carrying entitlement to exercise voting rights

**Q: Due to default of dividend payment, voting rights arose on preference shares would be covered under the definition of Shares or not?**

# In the matter of Capital Trust Limited

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SEBI vide its informal guidance dated December 22, 2016, held:

- Shares proposed to be held by ESOP trust formed under ESOP scheme will not be taken into account for calculating the percentage of voting rights under Takeover Code;
- ESOP shares shall not be considered under the definition of Shares,

## **Critical Issue:**

SEBI's above-said interpretation have effect of squeezing the capital base of the Company due to which shareholding of promoter(s)/other shareholders would increase proportionately and in many companies the requirement of Regulation 3(2) of Takeover Code would be triggered. Thus, open offer obligations will follow.

# In the matter of Capital Trust Limited

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**While interpreting provisions of Reg 3(5) SEBI ought to have considered:**

- That governing law w.r.t 'shares' and 'voting rights' is Companies Act, as per which every share carries voting right. This has also been held by SAT in **'Shri Sharad Doshi Vs. The Adjudicating Officer and Ors'**.
- That SBEB Regulations being sub-ordinate legislation cannot override the provisions of Companies Act.
- That Reg 3(5) of SBEB Regulations only put a temporary restriction on trustee of ESOP trust and did not exclude the shares from total share capital. Nor the SBEB Regulations ever intended so. There was no such inter-play between SBEB and SAST Regulations.
- That such an interpretation would lead to far-reaching absurdities.

# Purpose of Takeover



To ensure Fair Exit Opportunity for the shareholders;



To ensure Fair Play in Exit Opportunity; and



To ensure Fair Disclosure about the change in shareholding & control in the Company.

# Fair Exit Opportunity

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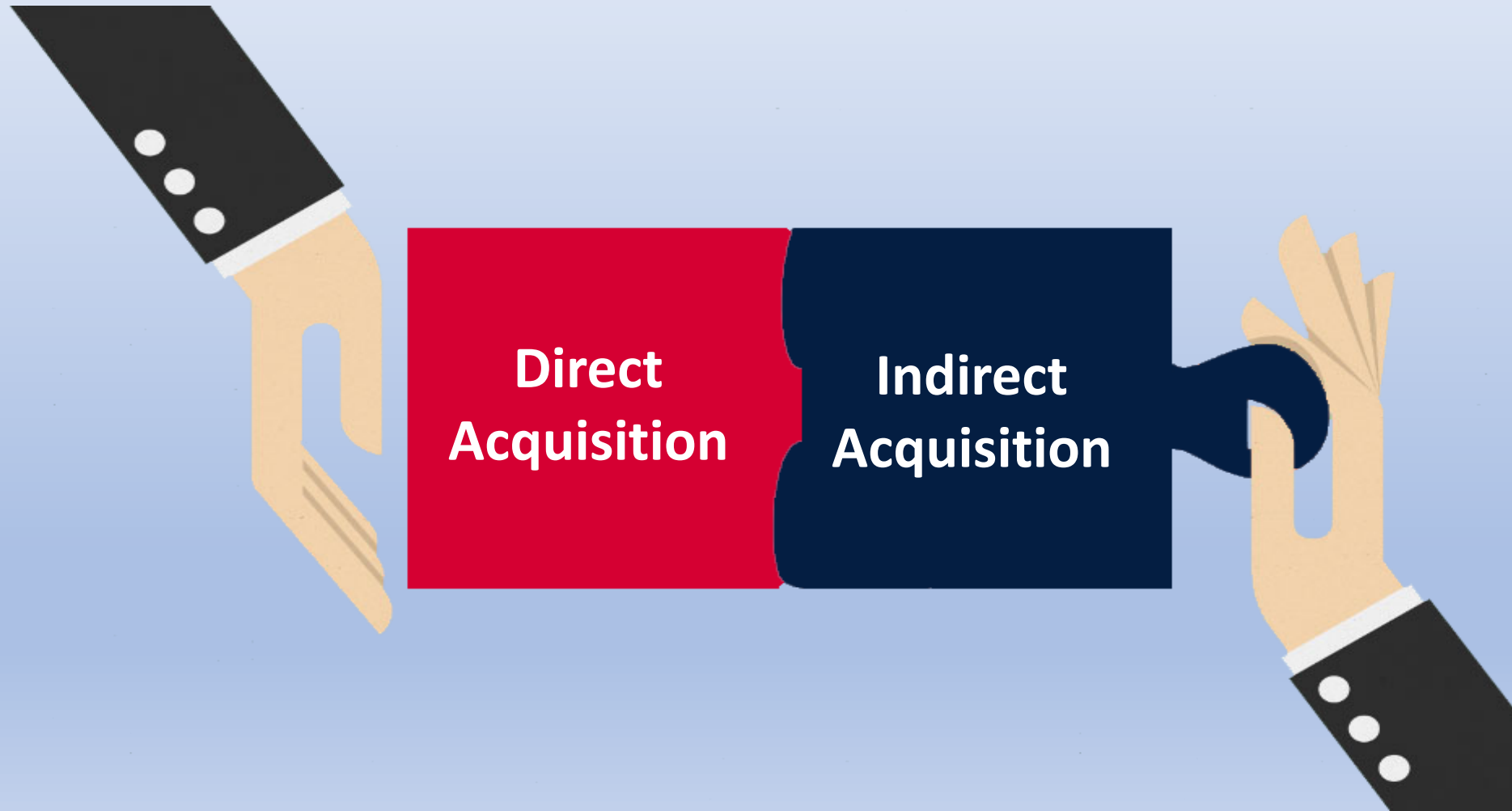
Fair exit opportunity to the shareholders is the Primary Objective of Takeover Code;

**Q: It is mandatory to direct to make an open offer for violation in each of the case even if the violation is erroneously done by Acquirer?**

**Q: What can be the parameters of taking a contrary view and not directing offer?**

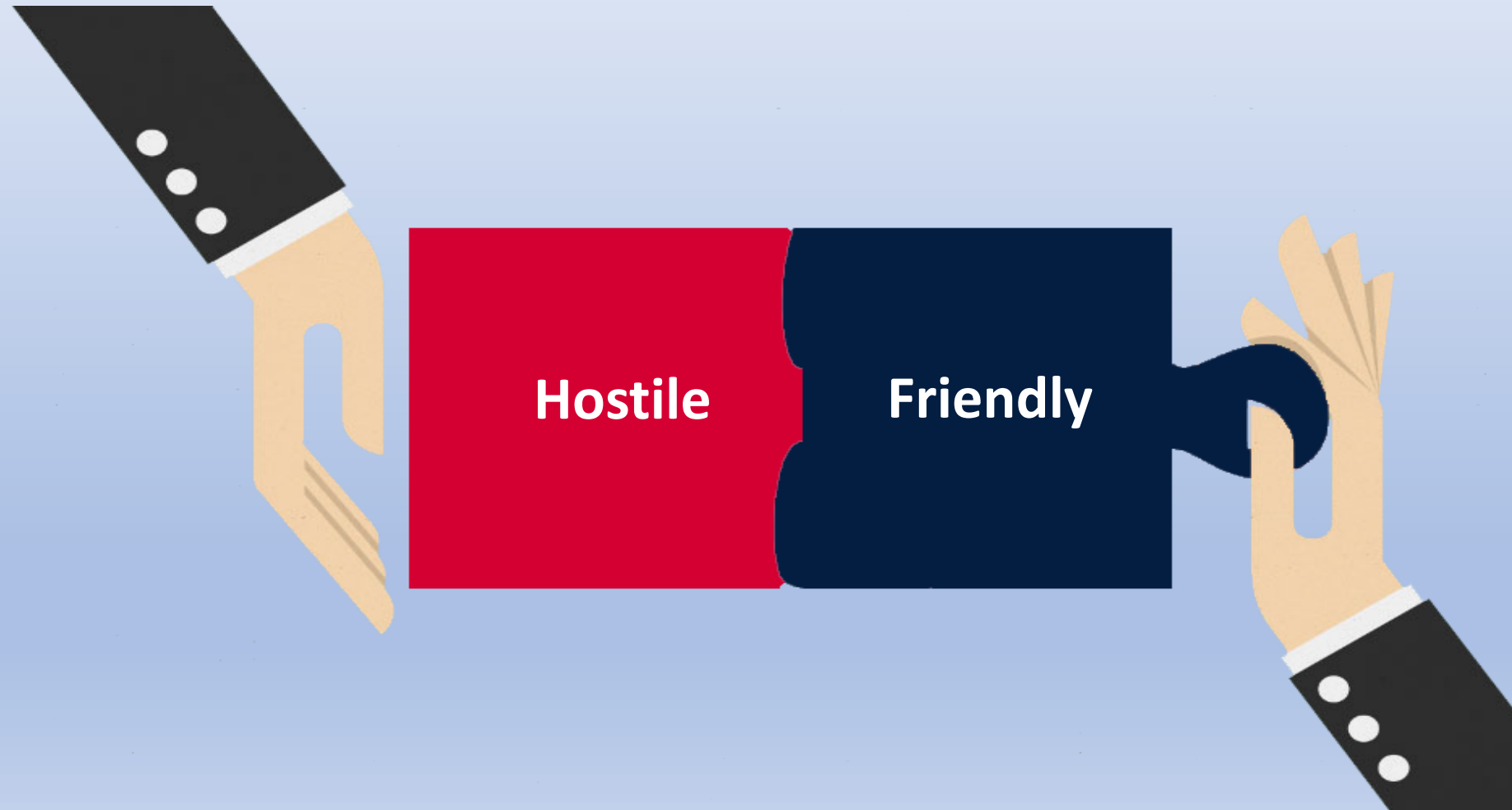
# Types of Acquisition

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# Types of Takeover

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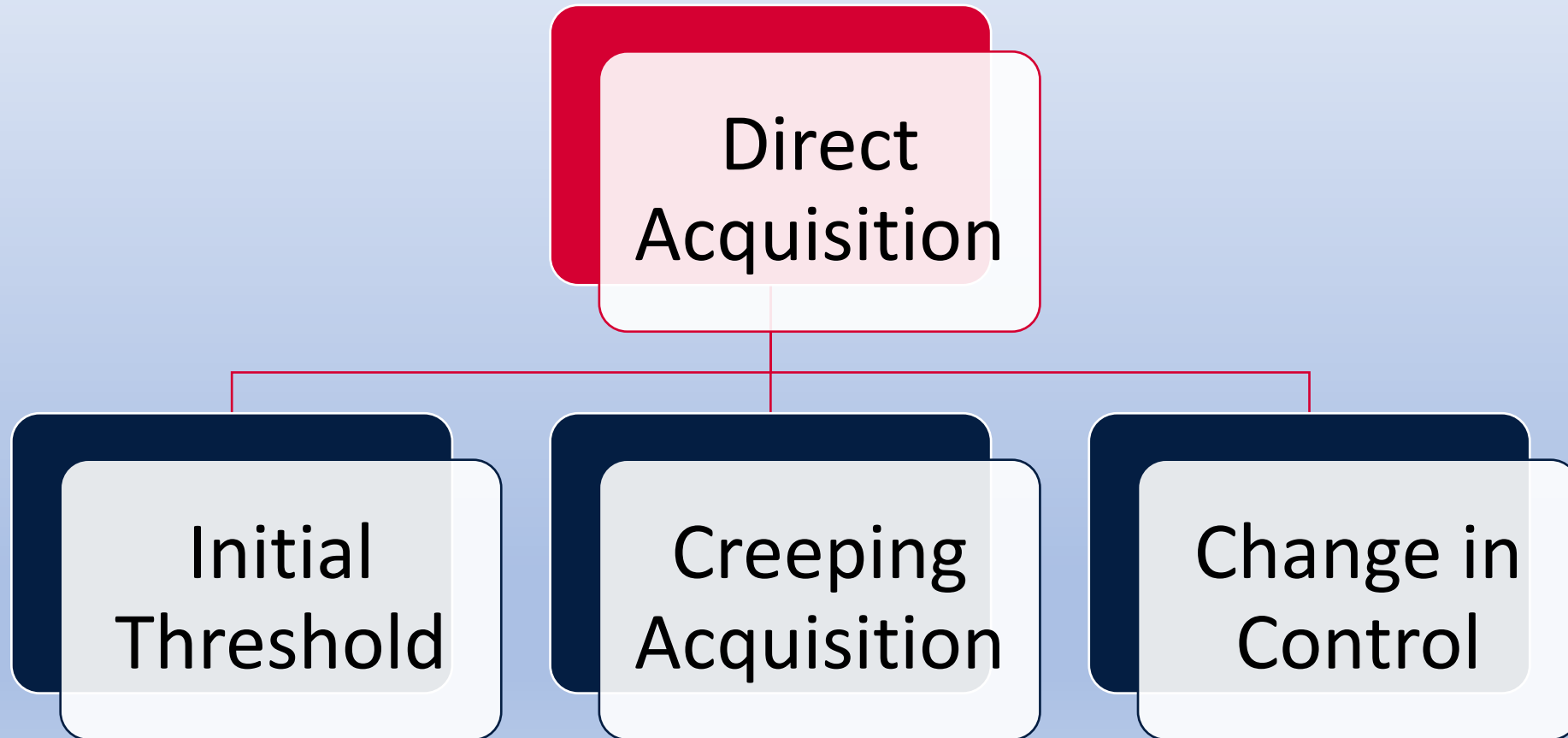


# Types of Offer

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# Direct Acquisition





# **Initial Threshold Regulation 3(1)**

# Initial Trigger – 25% or more of the voting rights

Initial Trigger is at the acquisition of 25% or more of the voting rights of the Target Company.

Critical Issue I – The threshold limit is to be checked individually for Acquirer as well as collectively for the Acquirer + PACs.

Critical Issue II – Shares already held by the Acquirer shall also be considered for calculation of 25% limit.

Critical Issue III – Shareholding of Acquirer as well as PAC is to be considered for the purpose of calculating the limit of 25% of the voting rights.

## Initial Trigger – Individually

### When Regulation 3(1) triggers?

Mr. A holds 10% of the voting rights in the Company

Acquires additional 15% or more of the voting rights in the Company

Triggers Regulation 3(1)

## Initial Trigger – Individually

When Regulation 3(1) triggers?

Mr. A doesn't hold  
any shares in the  
Company

Acquires 25% or  
more of the voting  
rights in the  
Company

Triggers Regulation  
3(1)

## Initial Trigger – Collectively with PACs

### When Regulation 3(1) triggers?

Mr. A holds 10% of the voting rights in the Company and spouse of Mr. A i.e. Mrs. B holds 10% of the voting rights in the Company

Mr. A acquires additional 5% of the voting rights in the Company

Triggers Regulation 3(1)

## Initial Trigger – Individually

### When Regulation 3(1) triggers?

Mr. A along with person acting in concert holds 30% of the voting rights.  
Mr. A holds 24% and rest 6% is held by PACs

Mr. A acquires additional 2% of the voting rights in the Company

Triggers Regulation 3(1)

# Case Law – 'Stone India Limited'

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- Promoter group was holding 44.87%;
- ISG Traders Limited i.e. a promoter exercised his right to convert warrants into Equity Shares;
- Aggregate promoters shareholding increased by 4.84%;
- ISG Traders Limited shareholding increased from 24.57% to 30.66%;
- Regulation 3(1) read with Regulation 3(3) of Takeover Code triggered. Hence, requirement to make open offer followed.
- As the open offer was not made, SEBI imposed a penalty of Rs. 10 Lacs on ISG Traders Limited.



**Creeping  
Acquisition  
Regulation 3(2)**

# Creeping Acquisition – 5% of the Voting Rights

- Acquirer along with PAC already holds 25% or more of the voting rights but holds less than 75% of the voting rights;

+

- Any acquisition of additional 5% or more of the voting rights in any financial year.

Critical Issue - Creeping Acquisition can be done only upto the limit of 75% of the voting rights of the Company

# Creeping Acquisition – Collectively with PACs

## When Regulation 3(2) triggers?

Mr. A along with person acting in concert holds 30% of the voting rights

Mr. A along with person acting in concert acquires additional 5% of the voting rights in the Company in one financial year

Triggered Regulation 3(2)

# Creeping Acquisition – Collectively with PACs

## When Regulation 3(2) triggers?

Mr. A along with person acting in concert holds 74% of the voting rights

Mr. A along with person acting in concert enters into an agreement to acquire additional 5% of the voting rights in the Company in one financial year

As per the proviso of Regulation 3(2), it is stated that any Acquirer shall not acquire or agree to acquire shares or voting rights which exceeds the limit of 75%

# Creeping Acquisition

How to calculate 5% or more of the voting rights?

- Gross Acquisition alone shall be taken into consideration regardless of any intermittent fall in the shareholding or voting rights whether owning to disposal or dilution of voting rights owing to fresh issue of shares by the Target Company;
- In the case of acquisition of shares by way of issue of new shares by the Target Company or where the Target Company has made an issue of new shares in any given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition.

# Creeping Acquisition

| Date       | Particulars                                             | Shareholding (%) |
|------------|---------------------------------------------------------|------------------|
| 01.04.2017 | Shareholding of Acquirer                                | 30.00            |
| 30.04.2017 | On Market Acquisition                                   | 2.50             |
| 01.07.2017 | On Market Sale                                          | 1.50             |
| 07.07.2017 | Increase in shareholding pursuant to preferential issue | 4.00             |

## Whether Regulation 3(2) triggered?

Yes, Regulation 3(2) triggered, as gross acquisition of shares alone shall be taken into consideration irrespective of any intermittent fall in the shareholding pursuant to disposal of shares. Accordingly, gross acquisition is 6.50% in the above case.

# Creeping Acquisition

| Date       | Particulars                                                      | Shareholding (%) |
|------------|------------------------------------------------------------------|------------------|
| 01.04.2017 | Shareholding of Acquirer                                         | 30.00            |
| 30.04.2017 | On Market Acquisition                                            | 2.00             |
| 01.07.2017 | Dilution in the shareholding pursuant to the increase in capital | 1.00             |
| 07.07.2017 | Increase in shareholding pursuant to preferential allotment      | 4.00             |

## Whether Regulation 3(2) triggered?

Yes, Regulation 3(2) triggered, as gross acquisition of shares alone shall be taken into consideration irrespective of any intermittent fall in the shareholding pursuant to dilution of voting rights. Accordingly, gross acquisition is 6% in the above case.

# Creeping Acquisition

| Particulars                    | Shares | Percentage                                                           |
|--------------------------------|--------|----------------------------------------------------------------------|
| Pre-Preferential shareholding  | 10,000 | 10% of pre-preferential share capital i.e. 1,00,000 Equity Shares    |
| Preferential allotment         | 5,000  | -                                                                    |
| Post-Preferential shareholding | 15,000 | 14.29% of post preferential shareholding i.e. 1,05,000 Equity Shares |
| Change                         |        | 4.29%                                                                |

## Whether Regulation 3(2) triggered?

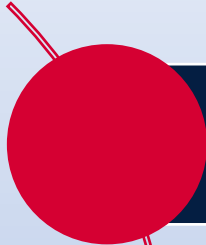
No, Regulation 3(2) didn't triggered, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition, which is 4.29% in the above case.

**Note:** In above illustration it has been presumed that Acquirer + PACs held more than 25% but > 75% voting rights in the Target Company.

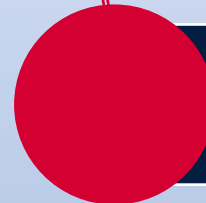


# **Control Regulation 4**

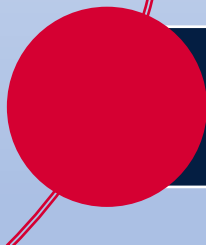
# Acquisition of 'Control' – it Includes:



Right to appoint majority of the directors; or



Right to control the management; or



Right to control policy decisions, directly or indirectly by virtue of shareholding or management rights or agreements and etc.

**Q: Whether a Director or Officer shall be considered in control merely by virtue of holding such position?**

# 'Control' – In matter of 'Subhkam Ventures (I) Pvt. Ltd.

- SEBI observed that rights conferred upon the Acquirer, through the agreements, amounted to 'control';
- Rejecting SEBI's Hon'ble SAT observed that none of the clauses of the agreements, individually or collectively, demonstrated 'control' in the hands of Acquirer.
- Hon'ble SAT had observed that "Control, according to the definition, is a proactive and not a reactive power.
- Hon'ble Supreme Court of India held that "Keeping in view the above changed circumstances, it is in the interest of justice to dispose of the present appeal by keeping the question of law open and it is also clarified that the impugned order passed by the SAT will not be treated as a precedent"

# 'Control' – In matter of 'Kamat Hotels (India) Ltd'

- Clearwater Capital Partners (Cyprus) Limited and Clearwater Capital Partners Singapore Fund III Private Limited (“Noticees”) subscribed to Foreign Currency Convertible Bonds (“FCCB”) issued by the Company and subsequently entered into an agreement with certain shareholders of KHIL in 2010;
- SEBI considering the terms of Agreement observed that there were certain protective rights in the Agreement and Noticees were in ‘**control**’ of the Target Company;
- Whole Time Member of SEBI held that *“It is apparent that the scope of the covenants in general is to enable the Noticees to exercise certain checks and controls on the existing management for the purpose of protecting their interest as investors rather than formulating policies to run the Target Company”.*

# 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.



# Voluntary Open Offer

## ELIGIBILITY

- Prior holding of at least 25% or more shares;
- No acquisition during the preceding 52 weeks without attracting open offer requirements.

## CONDITIONS

- maximum permissible non-public shareholding not to be exceeded

## RESTRICTIONS

- Post offer no further acquisition for a period of six months; except by way of voluntary open offer or competing offer.

# Delisting through Takeovers

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- Regulation 5A of Takeover Code governs Delisting Offer through Takeover;
- Provision was introduced on March 24, 2015 in Takeover Code;
- Acquirer has intent to delist the Target Company;
- Such intent to disclose shall be disclosed in Detailed Public Statement;
- Process of Delisting Regulations shall be followed and not of Takeover Regulations;

# **Delisting through Takeovers**

**Delisting process  
initiated**



**Delisting Offer  
successful**

**No compliance required to be done under Takeover Code**

# Delisting through Takeovers

Delisting process  
initiated



Delisting Offer  
failure

**Certain compliance required to be done under Takeover Code**

Announcement within 2  
working days in the  
newspaper where DPS  
was published;

File draft letter of offer  
with SEBI within 5  
working days from the  
date of announcement;

Acquirer shall comply  
with the provisions of  
Takeover Code;

# Conditional Offer

Acquirer may put a condition as to min level of acceptance in an open offer;

Covenant to be added in offer triggering agreement that if min level not achieved then Acquirer will not acquire any share;

Acquirer shall not acquire any shares other than under the open offer and underlying agreement triggering open offer, If min level achieved

# What is Competing Offer?

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Public Announcement made by any person within 15 working days from the date of DPS published under first open offer is competing offer.

# Completion of Acquisition

## If Offer is triggered through Agreement

- ⑩ After 21 working days from DPS, subject to deposit of 100% of Offer Consideration in Escrow account

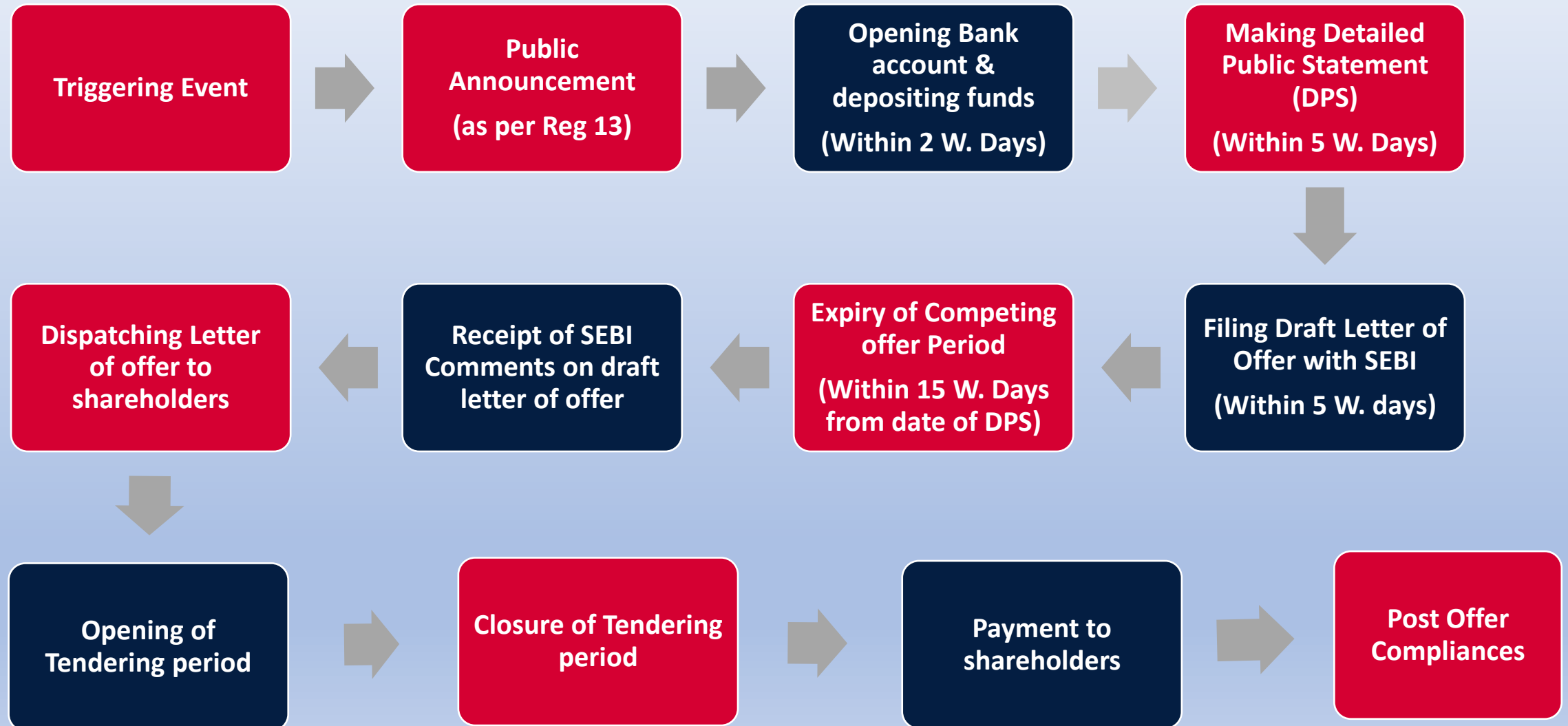
## If Offer is triggered through Pref allotment

- ⑩ Within 15 days from the date of passing shareholders' approval

## If Offer is a Delisting Offer in terms of Regulation 5A

- ⑩ After making public announcement for the success of delisting offer

# Open Offer Process



# Escrow Account

## Opening

- at least 2 working days prior to DPS;

## Objective

- To ensure performance of obligations by Acquirer;

## Form/Types of Escrow:

- Cash
- Bank Guarantee
- Frequently Traded & Free transferable equity shares or other freely transferable securities with appropriate margin

## In case of Bank Guarantee / Deposit of Securities

- Acquirer shall deposit CASH equal to at least 1% of total consideration.

## In case of shortfall in value of securities

- Manager to the open offer shall be liable to make good such shortfall.

# Quantum of Escrow

| CONSIDERATION PAYABLE UNDER THE<br>OPEN OFFER | ESCROW AMOUNT                                                                                              |
|-----------------------------------------------|------------------------------------------------------------------------------------------------------------|
| On First ₹500 Crore                           | 25% of the amount of consideration                                                                         |
| Balance Consideration                         | ₹ 125 Cr.<br>+<br>10% of the consideration above ₹ 500 Cr.                                                 |
| In case of Conditional Offer                  | 100% of the Minimum Level of Acceptance<br>OR<br>50% of the Consideration Payable<br>(Whichever is Higher) |

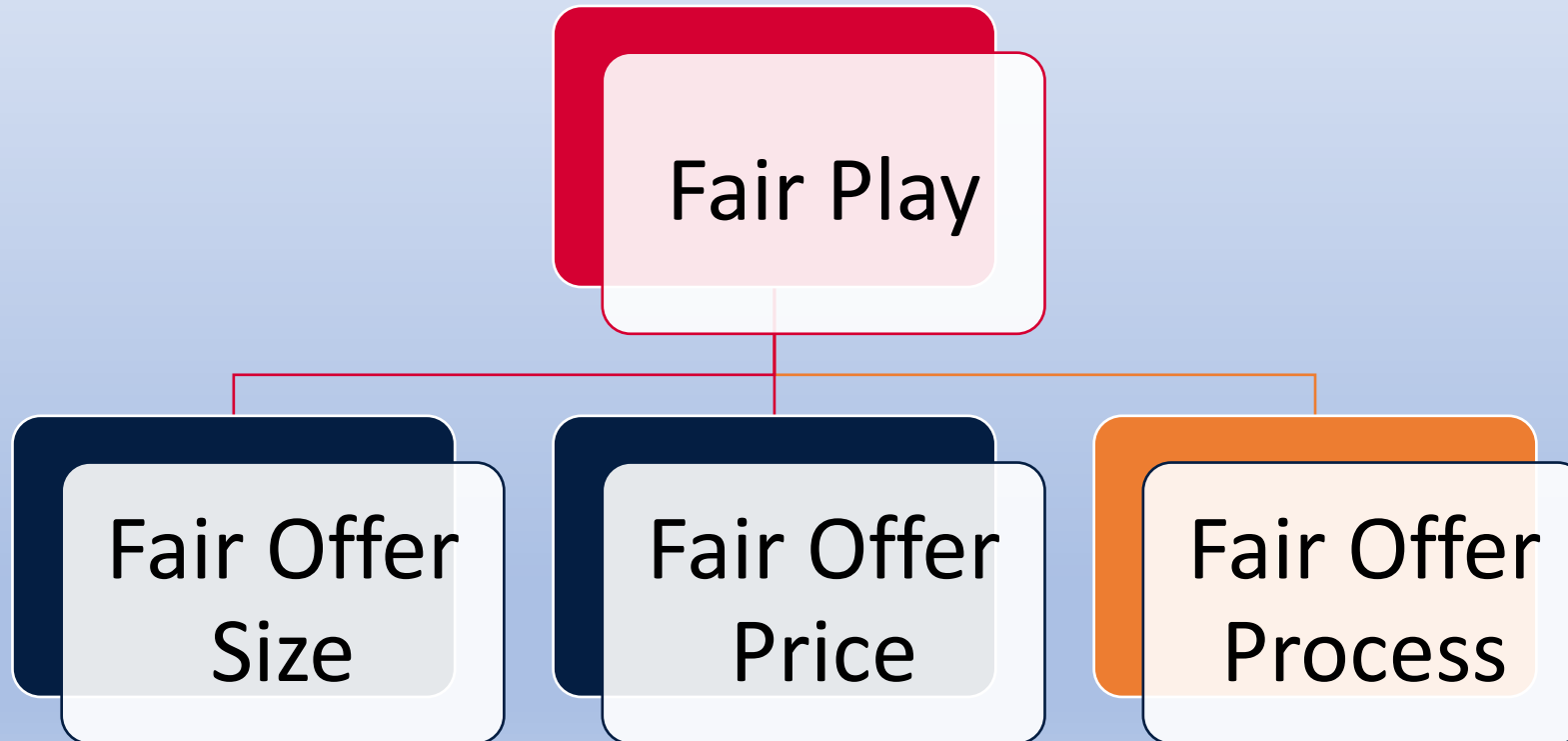
# Release of Escrow

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Not before expiry of thirty days from payment to all shareholders;

# Fair Play in Exit Opportunity

Acquirer shall ensure fair play while providing Exit Opportunity to the shareholders





**Offer Size**

# What should be the Offer Size

7(1)

at least 26%  
of the total  
shares of  
Target Co.

Mandatory  
Offer

7(2)

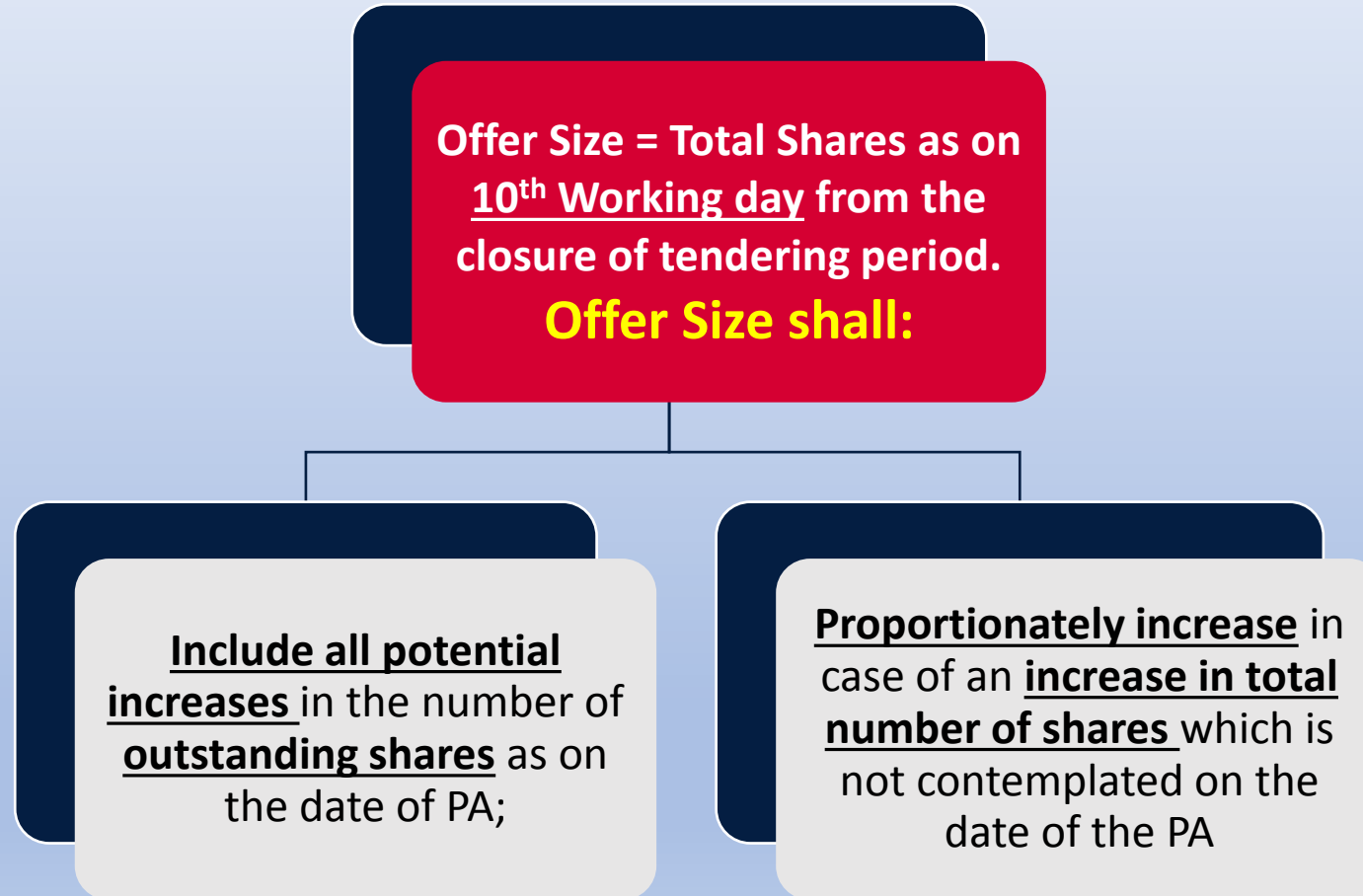
At least 10%  
of the total  
shares of  
Target Co.

Voluntary  
Offer

## What should be the Offer Size

For the purpose of calculation of Offer Size, total shares as on 10<sup>th</sup> Working day from the closure of tendering period shall be taken into consideration;

# What should be the Offer Size





**Offer Price**

# Offer Price

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For the purpose of calculation of Offer Price, firstly Acquirer needs to check whether the Shares of the Company are frequently traded or infrequently traded in terms of Takeover Regulations.

# Frequently Traded Shares

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Frequently Traded shares means shares of a target company, in which the traded turnover on any stock exchange during the twelve calendar months preceding the calendar month in which the public announcement is made, is at least ten per cent of the total number of shares of such class of the target company.

# Infrequently Traded Shares =

The traded turnover on any stock exchange during the twelve calendar months preceding the calendar month in which the public announcement is made, is less than ten per cent of the total number of shares of such class of the target company, then the shares of the Target Company are infrequently traded.

# Offer Price – If Frequently traded

## Highest price of the following:

Highest Negotiated 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

# Offer Price – If Frequently traded

| Volume Weighted Average Price for the acquisition made during 52 weeks preceding the PA |                     |                            |                       |
|-----------------------------------------------------------------------------------------|---------------------|----------------------------|-----------------------|
| Date of acquisition                                                                     | Price per share (1) | No. of shares acquired (2) | Consideration (3=1*2) |
| 10.06.2016                                                                              | 100.33              | 200                        | 20065.18              |
| 22.08.2016                                                                              | 94.55               | 124                        | 11723.71              |
| 06.01.2017                                                                              | 104.70              | 400                        | 41880.43              |
| 05.02.2017                                                                              | 103.09              | 200                        | 20618.14              |
| 16.03.2017                                                                              | 88.50               | 100                        | 8850                  |
| Total                                                                                   |                     | 56972                      | 5087440.57            |
| Volume-Weighted Average Price<br>(Total of 3/Total of 2)                                |                     | 89.30                      |                       |

## Offer Price – If Frequently traded

| Highest price paid for acquisition made during 26 weeks preceding date of PA |                 |                        |
|------------------------------------------------------------------------------|-----------------|------------------------|
| Date of Acquisition                                                          | Price per share | No. of shares acquired |
| 11.11.2016                                                                   | 94.55           | 124                    |
| 20.12.2017                                                                   | 104.70          | 400                    |
| 14.02.2017                                                                   | 103.09          | 200                    |
| 19.03.2017                                                                   | 88.50           | 100                    |
| Highest Price Paid                                                           | 104.70          |                        |

## Offer Price – If Frequently traded

| Volume-weighted average market price for 60 trading days preceding date of PA |        |                      |            |
|-------------------------------------------------------------------------------|--------|----------------------|------------|
| Date                                                                          | WAP    | No. of shares Traded | VWAP       |
| 04.06.2017                                                                    | 119.87 | 23,694               | 2,840,138  |
| 05.06.2017                                                                    | 120.09 | 21,742               | 2,611,064  |
| 06.06.2017                                                                    | 119.47 | 9,670                | 1,155,270  |
| 07.06.2017                                                                    | 119.64 | 1,730                | 206,975    |
| Total of WAP                                                                  |        | 236,352              | 24,734,057 |
| Volume-weighted average market price (VWAP/60)                                |        | 104.65               |            |

## Offer Price – If Frequently traded

| 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     |
| <b>MINIMUM OFFER PRICE</b>                                                              | <b>RS. 110</b> |

# Offer Price – If Frequently traded

## Highest price of the following:

Highest Negotiated 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

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

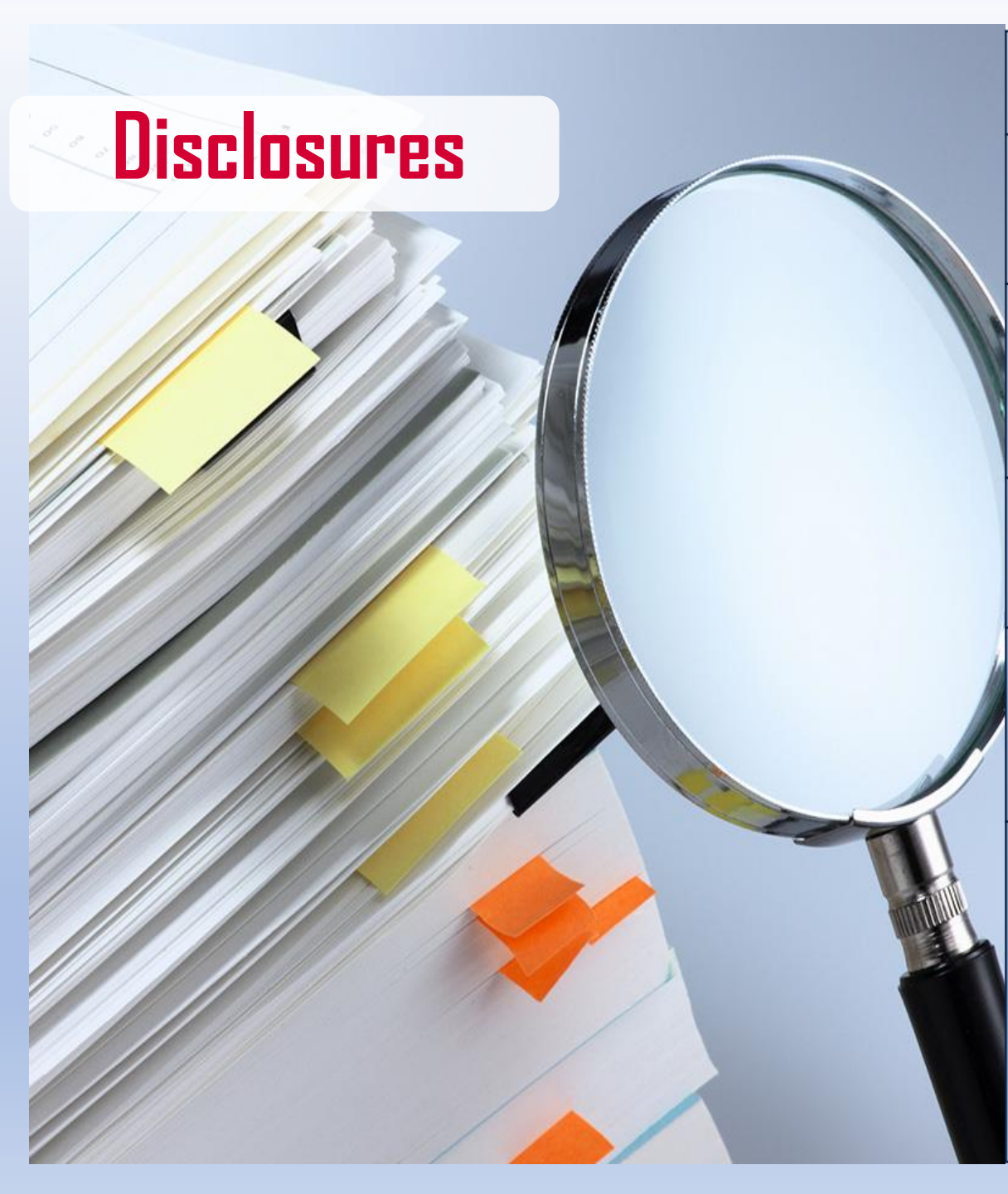
# Fair Disclosure

- Chapter V of Takeover Code deal with disclosure of Shareholding & Control. The Significance of provisions under Chapter V have been best explained by Hon'ble SAT in '***Milan Mahendra Securities Pvt. Ltd. Vs SEBI (Appeal No. 66 of 2003) decided on 15.04.2005***' as follows -

***“the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market.”***



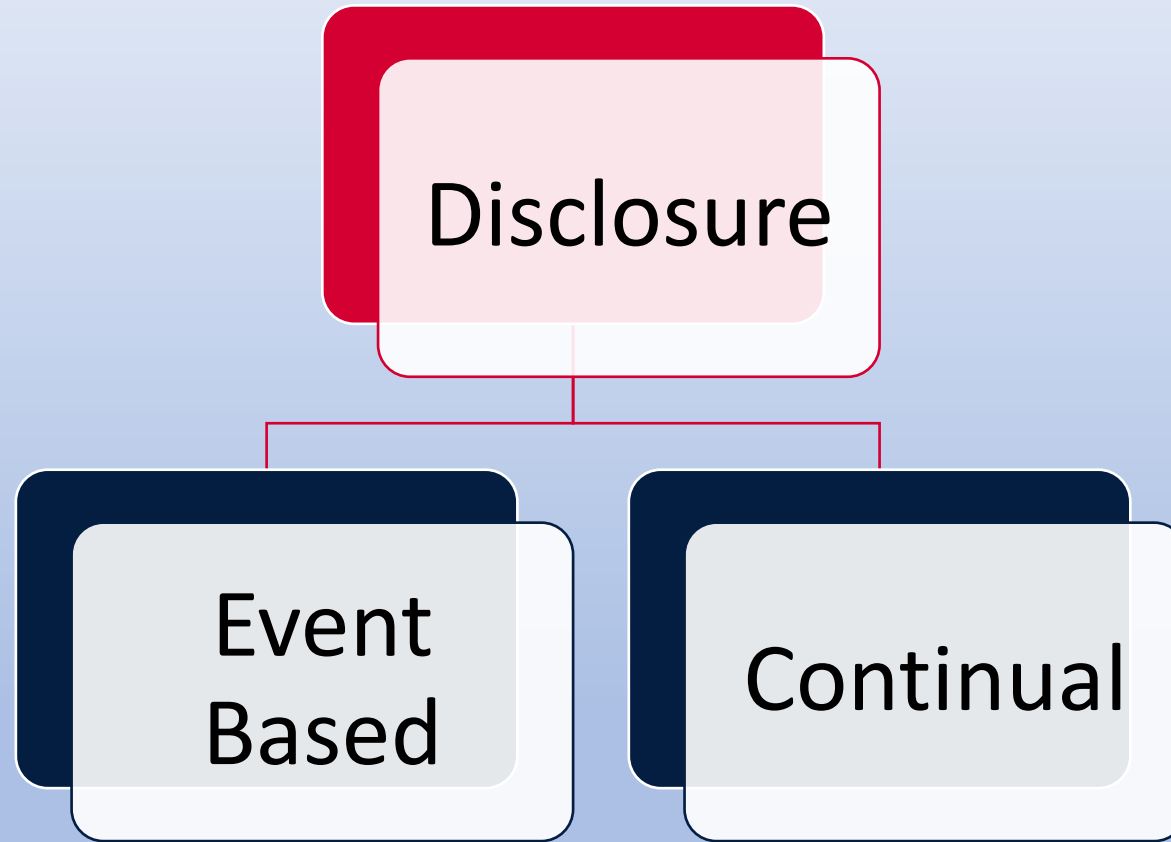
# **Disclosure Requirements**

A magnifying glass with a black handle and a silver rim is positioned over a stack of papers. The papers are white and have several yellow and orange sticky notes attached to them. The background is a light blue gradient.

# Disclosures

| Reg.          | Provisions                                                                    | Triggers                                        | To whom & Duration                                                      |
|---------------|-------------------------------------------------------------------------------|-------------------------------------------------|-------------------------------------------------------------------------|
| 29(1)         | Acquirer along with PAC                                                       | Acquires 5% of shares                           | Stock Exchange;<br>Target Company<br><i>(Within two working days)</i>   |
| 29(2)         | Acquirer along with PAC already holds 5% or more                              | Change in the shareholding exceeds 2%           |                                                                         |
| 30(1)         | Person along PAC already holds more than 25%                                  | As on end of financial year                     | Stock Exchange;<br>Target Company<br><i>(Within seven working days)</i> |
| 30(2)         | Promoter along with PAC shall disclose aggregate shareholding                 | As on end of financial year                     |                                                                         |
| 31(1) & 31(2) | Promoter shall disclose creation, invocation and release of encumbered shares | Immediately on creation, invocation and release | Stock Exchange;<br>Target Company<br><i>(Within seven working days)</i> |

# Disclosure





# **Event Based Disclosure**

# Event Based Disclosures

## Initial Limit

Regulation 29(1)

On acquiring 5% or more  
of the voting rights

## Change in shareholding

Regulation 29(2)

Holding >5% & change by  
more than 2% even if due  
to such change holding  
falls below 5%

# Event Based Disclosures

- Disclosure shall be made within two working days of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights of the triggering of threshold requirement:
  - To every stock exchange where the shares of the Company are listed;
  - To the Target Company

**Q: In what time the disclosure for sale in shares or more than 2% of the voting rights shall be filed?**

# Event Based Disclosures

Hon'ble SAT in '**Mr. Ravi Mohan & Ors. vs SEBI (Appeal No. 97 of 2014 decided on 16.12.2015**', has observed that:

*“disclosure obligation under regulation 7(1A) (now Reg 29(2)) has to be discharged in accordance with regulation 7(1A) i.e. Reg 29(2) read with regulation 7(2) (now Reg 29(3)) and since regulation 7(2) i.e. Reg 29(3) does not contemplate for disclosure relating to sale of shares in excess of the limits set out under regulation 7(1A) i.e. Reg 29(2) no penalty can be imposed on the ground that there is failure to comply with regulation 7(1A) i.e. Reg 29(2) within the time stipulated under regulation 7(1A) read with regulation 7(2) in respect of sale of shares effected in excess of the limits prescribed under regulation 7(1A) i.e. Reg 29(2).”*

# Disclosure Requirements

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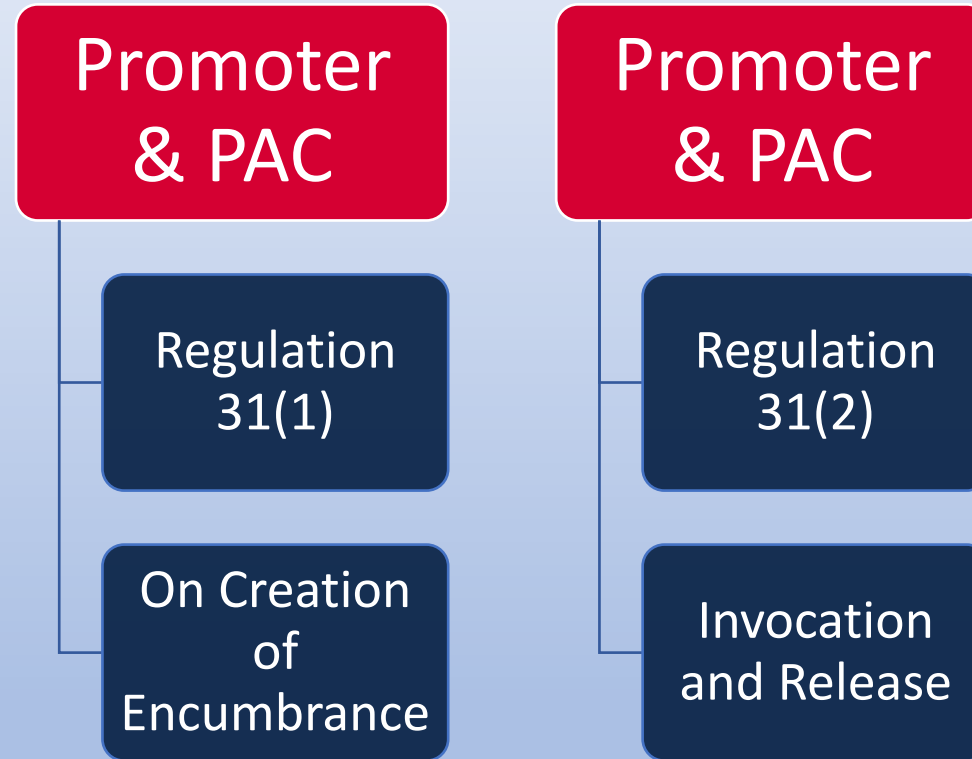
For the purpose of calculating the trigger points for disclosure under Chapter V of Takeover Code - Acquisition and holding of any convertible security shall also be regarded as shares.

# Disclosure Requirements

**AB Limited is a BSE Listed Company having paid up share capital of 100 shares of Rs. 10 each and Mr. Shivam holds 10 shares representing 10% in the Company**

| Case | Pre Shareholding |        | Allotment                                       | Post Shareholding |        | Section Triggered | Disclosure Required |
|------|------------------|--------|-------------------------------------------------|-------------------|--------|-------------------|---------------------|
|      | No. of shares    | %      |                                                 | No. of shares     | %      |                   |                     |
| 1.   | 10               | 10.00% | Preferential issue of 3 Equity Shares           | 13                | 12.62% | 29(2)             | Yes                 |
| 2.   | 10               | 10.00% | 3 Warrant issue                                 | 13                | 12.62% | 29 (2)            | Yes                 |
| 3.   | 10               | 10.00% | Conversion 3 warrants issued into equity shares | 13                | 12.62% | 29 (2)            | Yes                 |

# Event Based Disclosure in case of Encumbered Shares



**Disclosure shall be made within 7 W. Days to the Target Company and Stock Exchange where shares of the Target Company are listed.**

# Disclosure Requirements

Q: Whether 5% shares taken by way of pledge by broker would attract the disclosure requirement?

Q: Whether 5% shares taken by way of pledge by State Bank of India ('Schedule Commercial Bank') would attract the disclosure requirement?

# Disclosure Requirements

“Shares taken by way of encumbrance shall be treated as an acquisition, **shares given upon release of encumbrance shall be treated as a disposal**, and disclosures shall be made by such person accordingly in such form as may be specified:

Provided that such requirement shall not apply to a **scheduled commercial bank** or **public financial institution** as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.”



# **Continual Disclosure**

# Continual Disclosure

| Person                                           | Shareholding as on March 31 <sup>st</sup> | Disclosure                                                                     |
|--------------------------------------------------|-------------------------------------------|--------------------------------------------------------------------------------|
| Every person along with person acting in concert | 25% or more                               | Disclosure shall be filed within 7 working days from the end of financial year |
| Promoter along with PAC                          | Irrespective of shareholding              | Disclosure shall be filed within 7 working days from the end of financial year |

Disclosure shall be filed to the exchange where shares of the Company are listed and to the Target Company.



# **Disclosure under Insider Trading Regulations**

# Disclosures under Insider Trading

## Initial Disclosures:

- Every person on appointment as a KMP or as a Director or upon becoming a Promoter shall disclose his shareholding as on the date of appointment or becoming a promoter, to the company within 7 days of such appointment or becoming a promoter;

## Continual Disclosures:

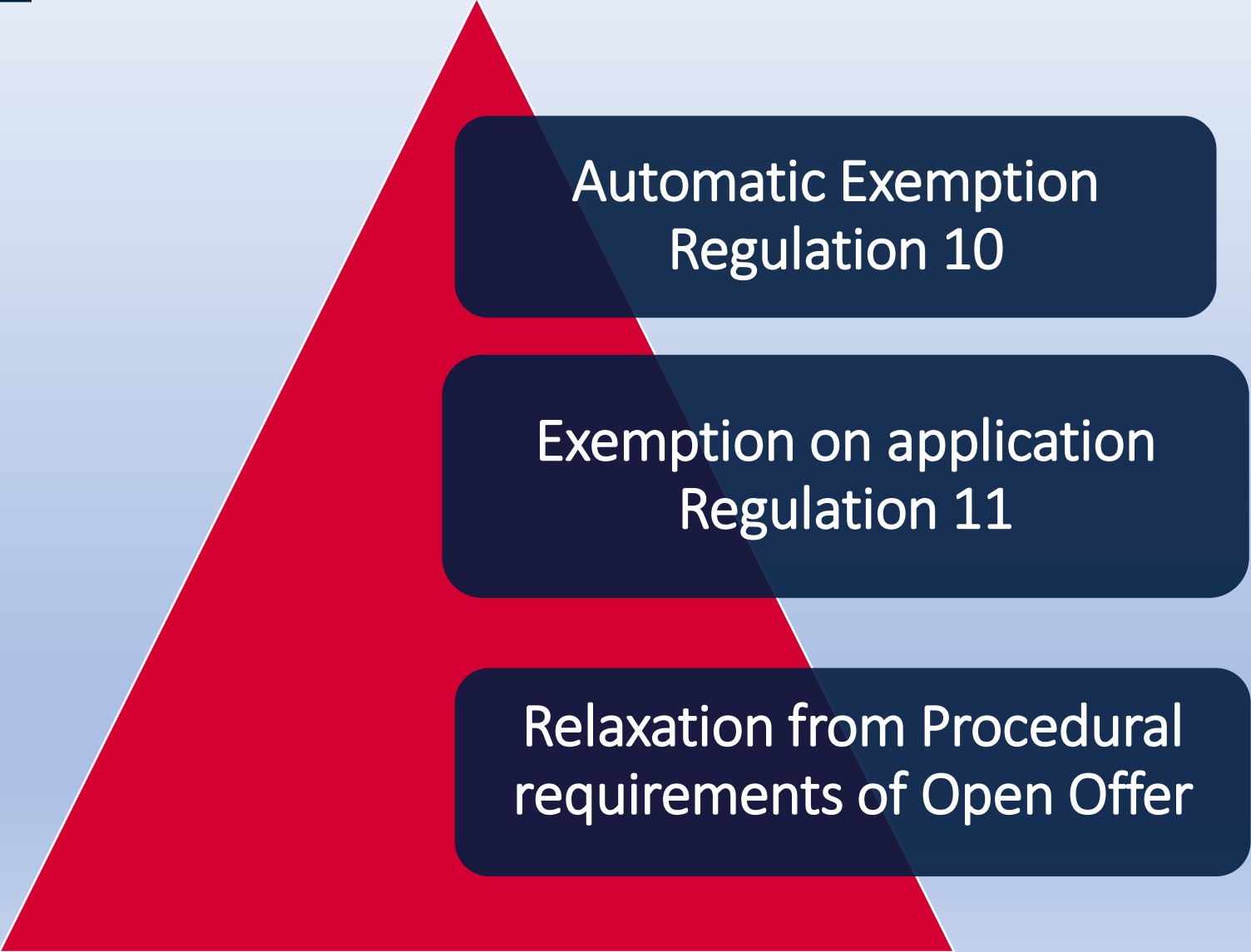
- Every Promoter, KMP and Director of a company shall disclose to the company the number of such securities acquired or disposed of within 2 trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of 10 Lacs Rupees
- Every Company shall further disclose the details of acquisition or disposal to the exchange within two working days.



# **Exemptions under Takeover**

# Exemptions under Takeover Code

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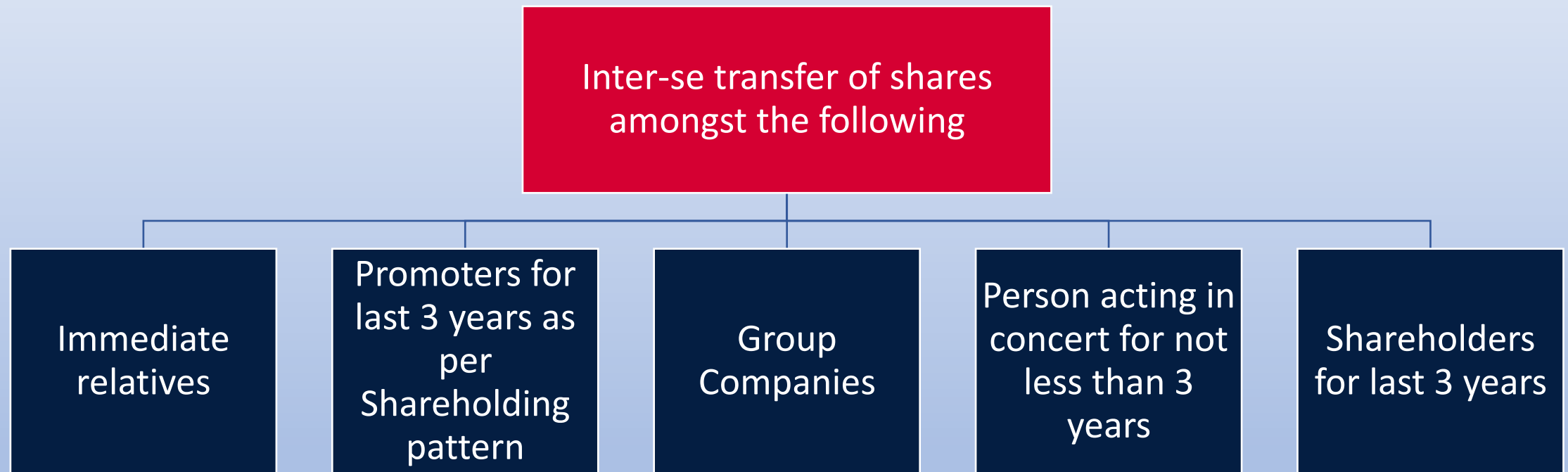


Automatic Exemption  
Regulation 10

Exemption on application  
Regulation 11

Relaxation from Procedural  
requirements of Open Offer

# Exemptions under Open Offer



## Conditions to claim Inter-se Transfer

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graph TD; A[Conditions to claim Inter-se Transfer] --> B[Transferor and Transferee shall have complied with the disclosure requirements under Chapter V for last three years]; A --> C[Inter-se transfer shall be maximum at a price which is not more than 25% of the price calculated in terms of Regulation 8 of Takeover Code];
```

Transferor and Transferee shall have complied with the disclosure requirements under Chapter V for last three years

Inter-se transfer shall be maximum at a price which is not more than 25% of the price calculated in terms of Regulation 8 of Takeover Code

# In the matter of RattanIndia Infrastructure Limited

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**Q: Whether the inter-se promoter transfers made prior to completion of 3 years of listing of the Target Company would be eligible for exemption under Takeover Code?**

- Hon'ble SAT held that the requirement of three years shareholding of promoter group shown in the shareholding pattern is post to the listing of the Company, accordingly, the inter-se transfer done amongst the promoters in year 2014 would not qualify as exempted transaction in terms of Takeover Code;

# Exemptions under Open Offer are available to acquisitions/ increase of voting rights:

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under Ordinary  
Course of Business;

pursuant to a  
scheme;

pursuant to  
Delisting;

Pursuant to  
Conversion of Debt  
into Equity under  
SDR scheme;

Of voting rights  
arising out of non  
payment of dividend  
on preference  
shares;

Upon transmission,  
succession or  
inheritance;

Of voting rights on  
forfeiture of shares

# In the matter of Emmsons International Limited

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- Whether increase in the shareholding or voting rights pursuant to forfeiture of shares would trigger the requirement to make open offer?
- Hon'ble Securities Appellant Tribunal while pronouncing its decision referred to the decision given in case of Mr. Raghu Hari Dalmia & Ors. vs. SEBI (Appeal No. 134 of 2011 decided on 21.11.2011) wherein it was observed that the term 'acquire' and 'acquisition' denote some positive/ active act of the Acquirer to obtain shares or voting rights. Hence, it was held that passive acquisitions for e.g. buybacks, forfeiture of shares would not tantamount to acquisition and thus requirements of open offer would not trigger.

# Regulatory Actions

Open Offer

Delay :

Monetary Penalty by  
AO u/s 15H

Penalty ranges b/w Rs. 25 Lacs to Rs. 50 Lacs.

Recently on 20.07.2017 a penalty of Rs. 50 lacs has been imposed upon Acquirers + PACs in the matter of ***'Symphony Limited'***

No Offer :

WTM's directions u/s  
11 & 11B

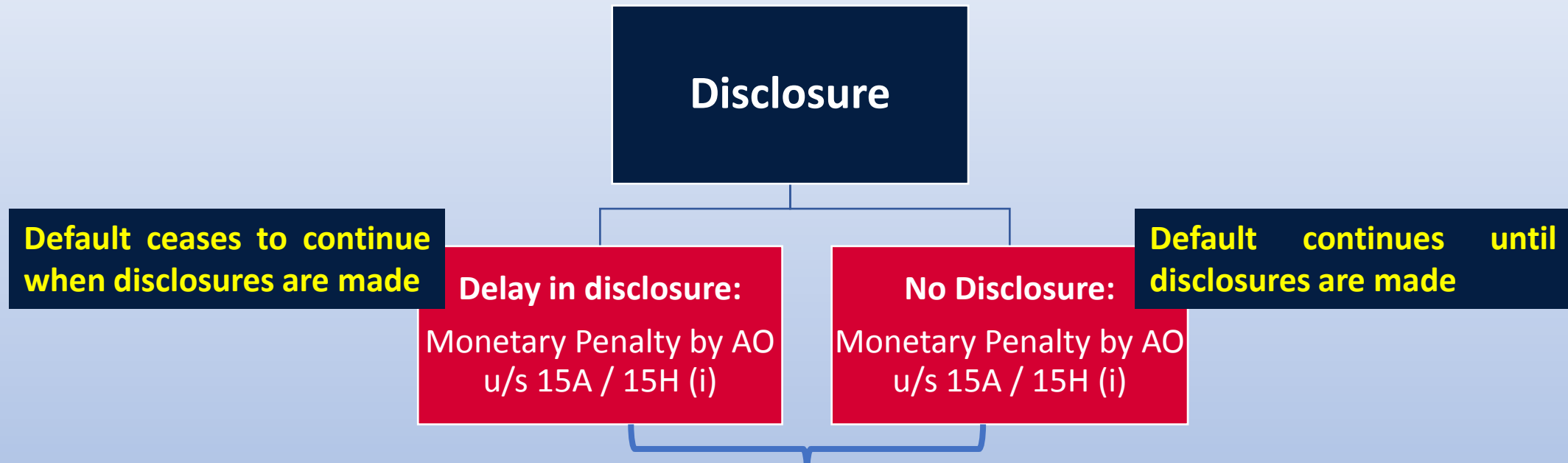
As a normal rule such direction comes in majority of default cases, as direction to make open offer has been called as ***'Mandate of SAST Regulations'*** by Hon'ble SAT in ***'Nirvana Holdings Private Limited vs. SEBI (Appeal no. 31/2011)'***

To make open offer  
(taking price of trigger  
date ) along with  
interest of 10% p.a.

To divest excess shares

Such a direction came for the very first time In the matter of ***'Unique Organics Ltd'*** because ***offer price was lower than the market price of the scrip.***

# Regulatory Actions



Generally, penalties range between Rs 2 Lacs to 10 Lacs. Some of the recent cases on SAST disclosure violations are as follows:

- A penalty of Rs. 17.5 Lacs was imposed in the matter of '*Hydro S & S Industries Ltd, decided on 29.10.2015*';
- A penalty of Rs. 15 Lacs was imposed in the matter of '*United Spirits Ltd decided on 27.11.2015*'.

# Settlement Process

## Settlement

Settlement can done only after making the default good

Delays in Disclosures

Open offer Delay/Defaults

May be settled on application to SEBI. Settlement fee is to be calculated as per formula prescribed in Settlement Regulations.

**Min Settlement Fee = Rs. 2 Lacs**

Cases of open offer delays can be settled only if offer is given (with delay )  
Or  
Open offer becomes infructuous

**Min Settlement Fee = 25 Lacs or  
0.25% of the offer size, higher of two.**

# Recent Developments:

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## SEBI Board Meeting decision dated 21/06/2017:

- To address the issue of bad loans, SEBI decided to ease the rules of acquisition of stressed assets;
- Under the current rules certain exemptions are allowed only to banks while acquiring stressed assets and now has been extended to the investors as well;
- Acquisitions of shares in Stressed assets would be done as per valuation rules of RBI not of Takeover Code or ICDR;
- These exemption will provide waiver from the requirement to make an open offer of a stressed asset;
- Pursuant to resolution plans approved by NCLT under the Insolvency and Bankruptcy Code, 2016 will be exempted from open offer requirements under Takeover Regulations, 2011.