

# **Decoding the “Takeover Code”**

## ***[SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997]***

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### ***Main idea behind the Coding of Takeover Code***

Some group of individuals commonly referred to as “promoters” come together to form a company and offer shares to the public for subscription. Public subscribe to such shares based on the credentials of the promoters. Now is it fair on the part of public shareholders to allow these promoters to dilute their stake in the company leaving the public shareholders in the hands of the new management or substantially change their shareholding in the company?

To protect the investors, the Takeover Code has been codified by the Securities and Exchange Board of India, the regulator of Securities Market, which requires the promoters to give mandatory offer to the public to decide if they wish to continue to be the shareholders of the company in the changed circumstances.

To fulfill the intent as stated above, the Code therefore ensures the following:

- Exit opportunity to the investors if they do not want to continue with the new management.
- Full and truthful disclosure of all material information relating to the open offer to enable the investors to take an informed decision.
- Ensuring the sufficiency of financial resources by the promoters for the payment of acquisition price to the investors.
- Timely completion of takeover formalities.

### ***What is public offer?***

Public offer refers to the exit opportunity given to the public to dilute their shareholding in the Target Company if there is a substantial change in the shareholding pattern as envisaged in the Code or if there is a change in control of the Target Company. The acquirers are compulsorily required to make public offer to acquire 20% of the shares or voting rights from public in cases where the Code is hit which we will discuss in detail hereinbelow.

### ***Understanding the important terms***

“**Acquirer**” - any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert (PACs) with the acquirer;

Thus PACs are included in the definition of Acquirer itself and any reference to Acquirer would therefore include PACs also.

“**control**” includes

- the right to appoint majority of the directors, or
- to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of
  - their shareholding or
  - management rights or
  - shareholders agreements or
  - voting agreements or
  - in any other manner.

“**promoter**” means—

- (a) any person who is in control of the target company;
  - (b) any person named as promoter in any offer document of the target company or any shareholding pattern filed by the target company with the stock exchanges pursuant to the Listing Agreement, whichever is later;
- and includes any person belonging to the promoter group.

“**public shareholding**” means shareholding held by persons other than promoters

“**promoter group**” shall include:

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| <p>(a) in case promoter is a body corporate—</p> <p>(i) a <b>subsidiary or holding</b> company of that body corporate;</p> <p>(ii) any <b>company in which the promoter holds 10 % or more</b> of the equity capital or which holds 10 % or more of the equity capital of the promoter;</p> <p>(iii) any company in which a <b>group of individuals or companies or combinations thereof who holds 20 % or more</b> of the equity capital in that company also holds 20 % or more of the equity capital of the target company; and</p> | <p>(b) in case the promoter is an individual—</p> <p>(i) the <b>spouse</b> of that person, or any <b>parent, brother, sister or child</b> of that person or of his spouse;</p> <p>(ii) any company in which 10 % or more of the share capital is held by the promoter or an immediate relative of the promoter or a firm or HUF in which the promoter or any one or more of his immediate relative is a member;</p> <p>(iii) any company in which a company specified in (i) above, holds 10 % or more, of the share capital; and</p> <p>(iv) any HUF or firm in which the aggregate share of the promoter and his immediate relatives is equal to or more than 10 per cent of the total.</p> |
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## **Events attracting Public Announcement or Open Offer: Regulation 10, 11 and 12**

<b>Under Regulation</b>	<b>Event attracting requirement of PA</b>
10	Acquisition of shares/voting rights which (taken together with shares or voting rights held by him or by PAC), entitle him to exercise <b>15% or more</b> of the voting rights in the Target Company
11(1)	Acquisition by person whose current shareholding together with PAC is between 15 %- 55%, of additional shares entitling him to exercise more than <b>5% of voting rights in one financial year</b>
11(2)	Acquisition by person whose current shareholding together with PAC is between 55 %- 75%, of <b>any additional shares</b>
11(2A)	Person whose current shareholding together with PAC is between 55 %- 75% intends to <b>consolidate</b> his shareholding
12	To <b>acquire control</b> over the Target Co. whether or not there is any acquisition (If is not by Special Resolution carried by Postal Ballot)

### **Creeping acquisition under second proviso to Reg 11(2):**

- An acquirer holding 55 % or more but less than 75 % of the shares or voting rights in a target company, may acquire, either by himself or with PACs, additional shares or voting rights entitling him up to 5 % voting rights in the target company **without making a public announcement** under the SAST Regulations through open market purchase in normal segment on the stock exchange.
- The aforesaid acquisition will be of shares or voting rights upto a maximum of 5 % voting rights in the target company in one or more tranches, without any restriction on the time-frame within which the same can be acquired;
- The percentage of shareholding / voting rights of the acquirer, together with persons acting in concert with him, in the target company, shall not increase beyond 75 %.

## **Disclosure requirement under the Takeover Code**

- Disclosure on happening of certain event – Regulation 7
- Yearly disclosure – Regulation 8

### **Disclosure on happening of certain event – Regulation 7**

<b>Event attracting Compliance</b>	<b>Time Limit</b>	<b>Who shall disclose</b>	<b>Whom to disclose</b>	<b>What to disclose</b>
	<b>Regulation 7(1)</b>			
On acquiring shares or voting rights entitling the acquirer to hold together with shares already held more than <b>5%, 10%, 14%, 54% and 74%</b> shares	On reaching every stage of shareholding, within <b>2</b> days of receipt of intimation of allotment or acquisition of shares	Acquirer	to the target company and the SE where the shares of the Target Co. are listed	His Shareholding
	<b>Regulation 7(1A)</b>			
Purchase or sale aggregating two percent or more of the share capital of the target company	Within <b>2</b> days of receipt of intimation of allotment or acquisition of shares	Acquirer, who has acquired shares or voting rights of a company under sub-regulation(1) of regulation 11	to the target company and the SE where the shares of the Target Co. are listed	purchase or sale aggregating two percent or more, alongwith the aggregate shareholding after such acquisition or sale
	<b>Regulation 7(3)</b>			
Shares acquired in the manner under Reg 7(1) & 7(1A)	Within 7 days of receipt of information under Reg 7(1) & 7(1A)	Target Company	To all SE where the shares of the company are listed	the aggregate number of shares held by each of the persons who have given disclosure to the Target Co

## Yearly disclosures – Regulation 8

### Regulation 8(1)

Event attracting Compliance	Time Limit	Who shall disclose	Whom to disclose	What to disclose
Yearly disclosure of shareholding	Within 21 days from the financial year ending March 31	Person holding more than 15 % shares in any company	To the Company	his holdings as on 31st March

### Regulation 8(2)

Yearly disclosure of shareholding	Within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend	promoter or every person having control over a company	To the Company	disclose the number and % of shares or voting rights held by him and by persons acting in concert with him, in the company
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### Regulation 8(3)

Yearly disclosure of shareholding	Within 30 days from the financial year ending March 31, as well as the record date	Listed Company	To all SE where the shares of the Co are listed	Changes in shareholding of person holding 15 % or more shares; holdings of promoter & persons having control over the company
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### ***Exemptions under the Takeover Code:***

- ✓ Allotment in pursuance of an application made to a public issue.
- ✓ Allotment pursuant to rights issue,
  - (i) to the extent of his entitlement; and
  - (ii) up to the percentage specified in Regulation 11
- ✓ Allotment to the underwriters pursuant to an underwriting agreement
- ✓ Inter- se transfer of shares amongst :-
  - (i) group coming within the definition of group as defined in the M R T P Act, 1969
  - (ii) relatives within the meaning of Section 6 of the Companies Act, 1956
  - (iii) Qualifying Indian promoters and foreign collaborators who are shareholders;
  - (iv) Qualifying Promoters
- ✓ Acquisition of shares in the ordinary course of business by-
  - i. a registered stock-broker of a stock exchange on behalf of clients;
  - ii. a registered market maker of a stock exchange in respect of shares for which he is the market maker, during the course of market making;
  - iii. by Public Financial Institutions on their own account;
  - iv. by banks and public financial institutions as pledgees
- ✓ Acquisition of shares by way of transmission on succession or inheritance
- ✓ Acquisition of shares by government companies within the meaning of Section 617 of the Companies Act, 1956 and statutory corporations
- ✓ Pursuant to a scheme –
  - (i) framed under Section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985;
  - (ii) of arrangement or reconstruction including amalgamation or merger or demerger under any law or regulation, Indian or foreign
- ✓ acquisition of shares in companies whose shares are not listed on any stock exchange

## Open Offer process in a nutshell

