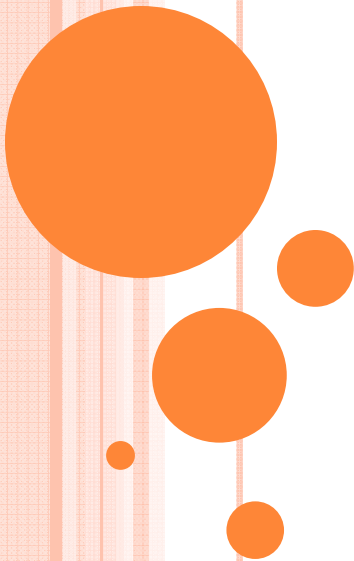


TAKEOVER REGULATION



OVERVIEW

- Types of Takeover
- Term important under the regulation
- Requirement for Open offer
- Indirect Acquisition
- Types of Offer
- Size of an Open Offer
- Price of an Open Offer
- Process for open offer
- Exemption under the Takeover regulations
- Provision for escrow account
- Encumbrance
- Disclosure requirements



TYPES OF TAKEOVER

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graph TD; A[TYPES OF TAKEOVER] --> B[Hostile Takeover]; A --> C[Friendly Takeover]; A --> D[Bailout takeover];
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Hostile Takeover

Friendly Takeover

Bailout takeover



TERMS IMPORTANT UNDER THE REGULATION

- Acquirer
- Control
- Person acting in concert
- Frequently Traded shares
- Identified date
- Offer period
- Tendering period



REQUIREMENT OF OPEN OFFER

An acquirer along with PAC acquires shares or voting rights entailing them to 25% or more voting rights in the target company.

An acquirer along with PAC already holds 25% or more voting rights in the target company and wants to acquire within an financial year additional shares or voting rights entitling them to exercise 5% or more voting rights

Acquirer directly or indirectly acquires control over target company



INDIRECT ACQUISITION

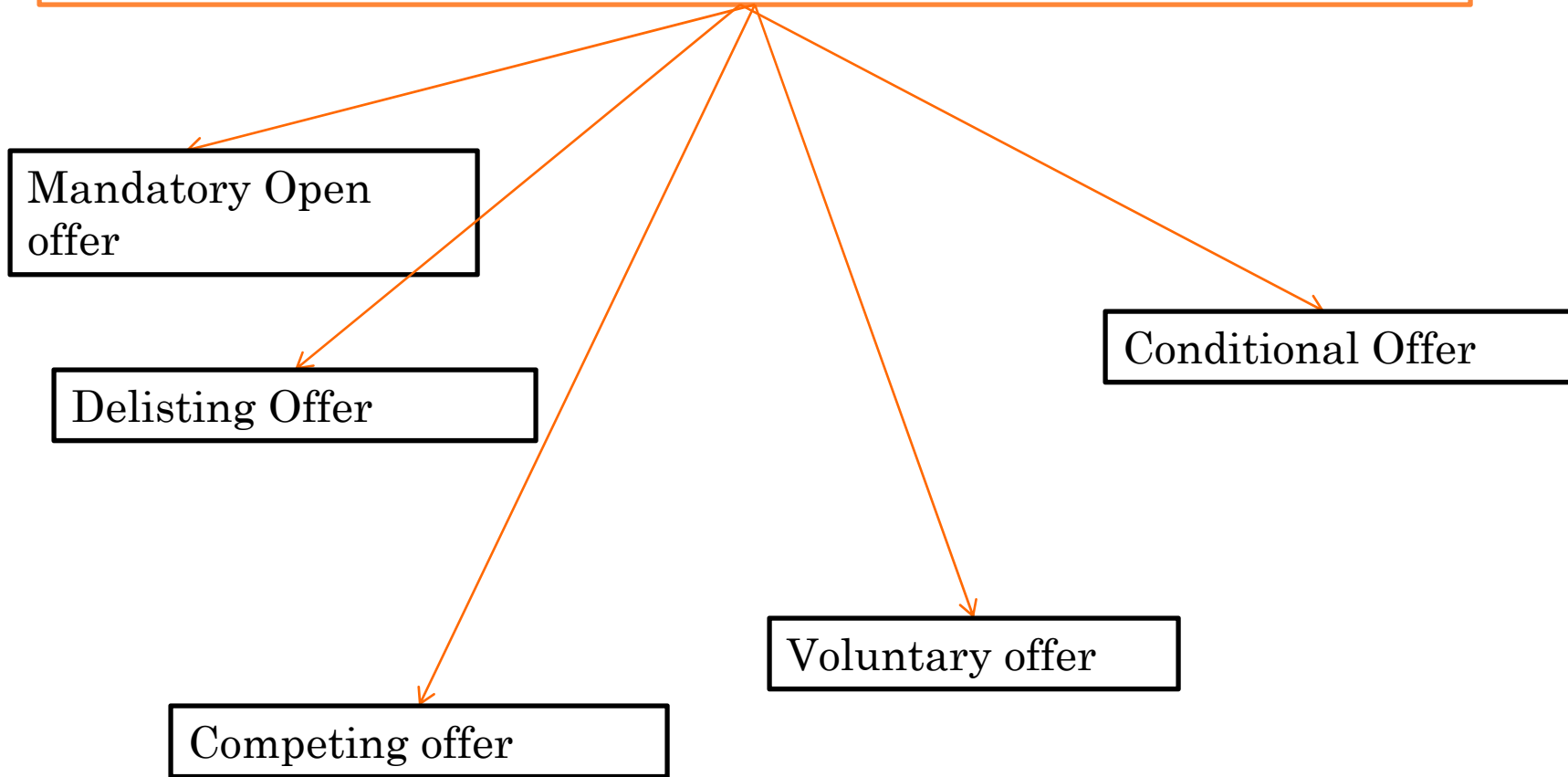
- An acquisition of shares or voting rights in, or control over, any company or other company that would enable any person and PAC to exercise such percentage of voting rights in, or control over the target company.



- In case of satisfying the following conditions are indirect acquisition shall be considered as an direct acquisition:
 - Proportionate net asset value of the target company as percentage to consolidated net asset value of the entity or business being acquired; or
 - Proportionate sales turnover of the target company as a percentage of the consolidated sales turnover of the entity or business being acquired; or
 - Proportionate market capitalization of the target company as a percentage of the entries value for the entity being acquired;
 - Is in excess of eighty per cent, on the basis of the most recent audited annual financial statements



TYPES OF OFFER



SIZE OF AN OPEN OFFER

Mandatory open offer

26% of the
total shares of
the target
company

Voluntary open offer

10% of
voting rights
in the target
company



OFFER PRICE (1/2)

In case of an Direct Acquisition and Indirect acquisition of shares or voting right, the price shall be highest of the following:

1. Highest negotiated price per share of the target company
2. Volume- weighted average price paid or payable during 52 weeks immediately preceding the date of the public announcement;
3. Highest price paid or payable for acquisition during 26 weeks immediately preceding the date of the public announcement
4. Volume-weighted average market price of such shares for a period of sixty trading days preceding the date of public announcement.
5. In case of infrequently traded shares : the price shall be decided in consultation with manger.

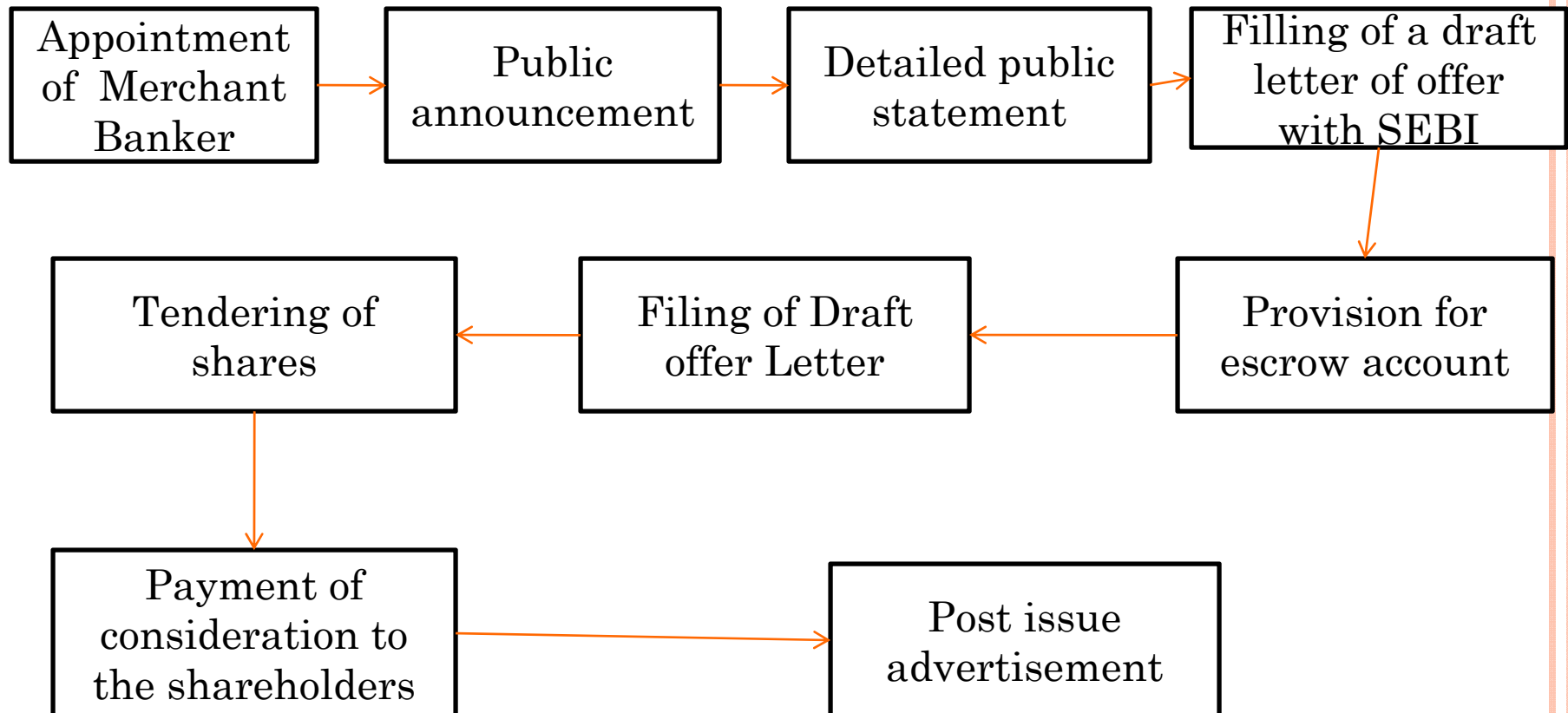


OFFER PRICE (1/2)

- **Incase of where parameters of sub-regulation (2) of regulation 5 are not met:**
 1. highest negotiated price per share
 2. Volume- weighted average price paid or payable during 52 weeks immediately preceding the date of the public announcement;
 3. Highest price paid or payable for acquisition during 26 weeks immediately preceding the date of the public announcement
 4. highest price paid or payable for any acquisition, between the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain



Process for open offer



EXEMPTION FROM MAKING OPEN OFFER

Exemption from the provisions of making open offer are granted in two ways

General Exemption:

General exemption provides for list of acquisition which shall be exempted from complying with the requirement of open offer.

Exemption provided by the Board :

Board may on reasons recorded in writing grant exemption from the obligation to make an offer for acquiring or relax the requirement of the provisions

PROVISION ESCROW ACCOUNT

- Consideration to be deposited in escrow account
 - First 500 crore – 25% of consideration
 - On balance consideration – 10% of the balance consideration

In case of conditional open offer 100% of consideration payable in respect to minimum level of acceptance or 50% consideration under open offer whichever ever is higher shall be deposited in cash in the escrow.

The escrow account may be in the form of :-

- Cash deposit with schedule commercial bank
- Bank guarantee issued in favour of the manager to the open offer
- Deposit of frequently traded and freely transferable equity shares



RELEASE OF ESCROW ACCOUNT

- On withdrawal of open offer
- Transfer to special escrow account.
- Balance of the escrow account to the after to the special escrow account
- After completion of 30 days from the completion of payment of consideration to the shareholders
- In case of forfeiture for non-fulfillement of the regulation:
 - 1/3rd to the target company
 - 1/3rd to the Investor Protection and Education Board of India
 - 1/3rd to the shareholders who accepted the open offer



ENCUMBRANCE

- Encumbrance :-
- Restriction on free and marketable title of shares, whether directly or indirectly
- Pledge, lien, negative lien, non-disposal undertaking;
- Convents, transaction, conditions, arrangement in nature of encumbrance, whether executed directly or indirectly



DISCLOSURES UNDER TAKEOVER REGULATIONS

Regulation 29

Within
2
working
Days

Acquirer along with PACs acquires shares or voting rights in the target company aggregating to 5% or more shares of such target company.

A person along with PAC already holds 5% of shares or voting rights and there has been change in holding from that of past disclosure and such change exceeds 2% of the total shareholding or voting rights in the target company.

Shares encumbered shall be taken into consideration, however such requirement shall not apply in case where pledgee is commercial bank or public financial institution or HFCs or SI-NBFCs .

Regulation 30 (Continual Disclosure)

Within 7
Working
Days

Person along with him holds shares or voting rights entitling him to exercise 25% or more of voting rights in the target company.

The disclosure shall be made to :

- a.) every stock exchange where shares are listed
- b.) target company at its register office



CASE STUDY

:Particulars	Regulation	Whether Disclosure required or Not
1.)Acquisition of 5 % of the shares of the target company.	Regulation 29(1)	Yes
2.) Sale of 1.5% of the shares of the target company	-	-
3.) Sale of 0.7%of the shares of the target company	Regulation 29(2)	Yes



DISCLOSURE OF ENCUMBERED SHARES

- Promoters of the target company shall disclose the shares encumbered within **7 working days** of creation or innovation and release of encumbrance.
- The promoter shall also on early basis declare that he, along with PAC has not made any encumbrance other than mention in the disclosure.
- Such disclosure shall be made to stock exchange and the audit committee.
- Disclosure shall be as specified in Annexure-I of SEBI circular dated 05th August, 2015



ADDITIONAL DISCLOSURE OF REASONS FOR ENCUMBRANCE

The promoter along with the PACs shall specify the reasons of there encumbrance in format as specified in circular dated 07th August, 2019.

The effective date of circular : 1st October, 2019

Threshold Limit of Encumbrance on crossing of which the promoters and PACs shall specify there reasons of encumbrance:

1. 50% of their shareholding in the company;
2. 20% of the total share capital of the company.

Such disclosure shall be made within 2 working days of crossing such limit.



HENIL SHAH

Thank
You

