

**SECURITIES AND EXCHANGE BOARD OF INDIA
(SUBSTANTIAL ACQUISITION OF SHARES AND
TAKEOVERS) REGULATIONS, 1997**

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations, namely :—

CHAPTER I
PRELIMINARY

Short title and commencement.

1. (1) These regulations shall be called the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

(2) These regulations shall come into force on the date¹ of their publication in the Official Gazette.

Definitions.

2. (1) In these regulations, unless the context otherwise requires :—

(a) “Act” means the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(b) “acquirer” means 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 with the acquirer;

(c) “control” shall include 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.

²[*Explanation.*—(i) Where there are two or more persons in control over the target company, the cesser of any one of such persons from such control shall not be deemed to be a change in control of management nor shall any change in the nature and quantum of control amongst them constitute change in control of management :

Provided that the transfer from joint control to sole control is effected in accordance with clause (e) of sub-regulation (1) of regulation 3.

(ii) If consequent upon change in control of the target company in accordance with regulation 3, the control acquired is equal to or less than the control exercised by person(s) prior to such acquisition of control, such control shall not be deemed to be a change in control;]

¹[(cc) “disinvestment” means the sale by the Central Government ²[or by the State Government as the case may be] of its shares or voting rights and/or control, in a listed Public Sector Undertaking;]

(d) “investigating officer” means any person appointed by the Board under regulation 38;

(e) “person acting in concert” comprises,—

(1) 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 (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company,

(2) without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established :

- (i) a company, its holding company, or subsidiary or such company or company under the same management either individually or together with each other;
- (ii) a company with any of its directors, or any person entrusted with the management of the funds of the company;
- (iii) directors of companies referred to in sub-clause (i) of clause (2) and their associates;
- (iv) mutual fund with sponsor or trustee or asset management company;
- (v) foreign institutional investors with sub-account(s);
- (vi) merchant bankers with their client(s) as acquirer;
- (vii) portfolio managers with their client(s) as acquirer;
- (viii) venture capital funds with sponsors;
- (ix) banks with financial advisers, stock brokers of the acquirer, or any company which is a holding company, subsidiary or relative of the acquirer :

Provided that sub-clause (ix) shall not apply to a bank whose sole relationship with the acquirer or with any company, which is a holding company or a subsidiary of the acquirer or with a relative of the acquirer, is by way of providing normal commercial banking services or such activities in connection with the offer such as confirming availability of funds, handling acceptances and other registration work;

- (x) any investment company with any person who has an interest as director, fund manager, trustee, or as a shareholder having not less than 2 per cent of the paid-up capital of that company or with any other investment company in which such person or his associate holds not less than 2 per cent of the paid-up capital of the latter company.

Note : For the purposes of this clause “associate” means,—

- (a) any relative of that person within the meaning of section 6 of the Companies Act, 1956 (1 of 1956); and
- (b) family trusts and Hindu undivided families;

¹[(f) “offer period” means the period between the date of entering into Memorandum of Understanding or the public announcement, as the case may be and the date of completion of offer formalities relating to the offer made under these regulations;]

(g) “panel” means a panel constituted by the Board for the purpose of regulation 4;

²[(h) “promoter”, unless otherwise provided elsewhere, means—

- (i) any person who is directly or indirectly in control of the company; or
- (ii) any person named as promoter in any document for offer of securities to the public or existing shareholders or in the shareholding pattern disclosed by the company under the provisions of the Listing Agreement, whichever is later; or
- (iii) any person named as person acting in concert with the promoter in any disclosure made in terms of the Listing Agreement with the stock exchange or any other regulations or guidelines made or issued by the Board under the Act,

and includes,

(a) where such person is an individual,

- (i) his spouse, parents, brothers, sisters or children;
- (ii) any company in which twenty six per cent (26%) or more of the equity share capital is held by him or by the persons mentioned in sub-clause (i) or any firm or Hindu undivided family in which he or any of the persons mentioned in sub-clause (i) is a partner or member;

- (iii) *any company in which a company specified in sub-clause (ii), holds more than fifty per cent (50%) of the equity share capital;*
- (iv) *any firm in which the aggregate of his holding and the holdings of the persons mentioned in sub-clause (i) is more than fifty per cent (50%);*
- (b) *where such person is a body corporate,*
 - (i) *a subsidiary or holding company of that body corporate;*
 - (ii) *any company in which the said body corporate holds twenty six per cent (26%) or more of the equity share capital;*
 - (iii) *any company which holds twenty six per cent (26%) or more of the equity share capital of the said body corporate;*
 - (iv) *any company in which persons acting in concert hold twenty six per cent (26%) or more of the equity share capital and those persons acting in concert also hold twenty six per cent (26%) or more of the equity share capital in such body corporate;*
 - (v) *any other body corporate under the same management as the said body corporate within the meaning of sub-section (1B) of section 370 of the Companies Act, 1956;*

Explanation I : *A financial institution, scheduled commercial bank, foreign institutional investor, mutual fund and a venture capital fund shall not be deemed to be a promoter merely by virtue of its shareholding.*

Explanation II : *A financial institution, scheduled commercial bank, foreign institutional investor or a venture capital fund shall be deemed to be a promoter of its subsidiary and of the mutual fund sponsored by it, as applicable;]*

- (i) “public financial institution” means a public financial institution as defined in section 4A of the Companies Act, 1956;
- ¹[(ii) “Public Sector Undertaking” means a company in which the Central Government ²[or a State Government] holds 50% or more of its equity capital or is in control of the company;]
- ³[(j) “public shareholding” means shareholding held by persons other than promoters as defined under clause (h);]
- (k) “shares” means shares in the share capital of a company carrying voting rights and includes any security which would entitle the holder to receive shares with voting rights ²[but shall not include preference shares;]
- (l) “sick industrial company” shall have the same meaning assigned to it in clause (o) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), or any statutory re-enactment thereof;
- (m) “State level financial institution” means a State Financial Corporation established under section 3 of the State Financial Institutions Act, 1951, and includes a development corporation established as a company by a State Government with the object of development of industries or agricultural activities in the State;
- (n) “stock exchange” means a stock exchange which has been granted recognition under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (o) “target company” means a listed company whose shares or voting rights or control is directly or indirectly acquired or is being acquired;
- ¹[(p) “working days” shall mean the working days of the Board.]

(2) All other expressions unless defined herein shall have the same meaning as have been assigned to them under the Act or the Securities Contracts (Regulation) Act, 1956, or the Companies Act, 1956, or any statutory modification or re-enactment thereto, as the case may be.

Applicability of the regulation.

3. (1) Nothing contained in regulations 10, 11 and 12 of these regulations shall apply to :

(a) allotment in pursuance of an application made to a public issue :

Provided that if such an allotment is made pursuant to a firm allotment in the public issues, such allotment shall be exempt only if full disclosures are made in the prospectus about the identity of the acquirer who has agreed to acquire the shares, the purpose of acquisition, consequential changes in voting rights, shareholding pattern of the company and in the board of directors of the company, if any, and whether such allotment would result in change in control over the company;

(b) allotment pursuant to an application made by the shareholder for rights issue,

(i) to the extent of his entitlement; and

(ii) up to the percentage specified in regulation 11:

Provided that the limit mentioned in sub-clause (ii) will not apply to the acquisition by any person, presently in control of the company and who has in the rights letter of offer made disclosures that they intend to acquire additional shares beyond their entitlement, if the issue is undersubscribed:

Provided further that this exemption shall not be available in case the acquisition of securities results in the change of control of management;

(c) ²[***]

(d) allotment to the underwriters pursuant to any underwriting agreement;

(e) *inter se* transfer of shares amongst—

¹[(i) group coming within the definition of group as defined in the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) where persons constituting such group have been shown as group in the last published Annual Report of the target company;]

(ii) relatives within the meaning of section 6 of the Companies Act, 1956 (1 of 1956);

(iii) (a) Indian promoters and foreign collaborators who are shareholders;

(b) Promoters :

²[**Provided** that the transferor(s) as well as the transferee(s) have been holding shares in the target company for a period of at least three years prior to the proposed acquisition.]

³[Explanation : For the purpose of the exemption under sub-clause (iii) the term “promoter” means—

(i) any person who is directly or indirectly in control of the company; or

(ii) any person named as promoter in any document for offer of securities to the public or existing shareholders or in the shareholding pattern disclosed by the company under the provisions of the Listing Agreement, whichever is later;

and includes,

(a) where the promoter is an individual,—

(1) a relative of the promoter within the meaning of section 6 of the Companies Act, 1956 (1 of 1956);

(2) any firm or company, directly or indirectly, controlled by the promoter or a relative of the promoter or a firm or Hindu undivided family in which the promoter or his relative is a partner or a coparcener or a combination thereof :

Provided that, in case of a partnership firm, the share of the promoter or his relative, as the case may be, in such firm should not be less than fifty per cent (50%);

(b) where the promoter is a body corporate,—

- (1) a subsidiary or holding company of that body; or
- (2) any firm or company, directly or indirectly, controlled by the promoter of that body corporate or by his relative or a firm or Hindu undivided family in which the promoter or his relative is a partner or coparcener or a combination thereof:

Provided that, in case of a partnership firm, the share of such promoter or his relative, as the case may be, in such firm should not be less than fifty per cent (50%);]

¹[(iv) the acquirer and persons acting in concert with him, where such transfer of shares takes place three years after the date of closure of the public offer made by them under these regulations.]

²[**Explanation.**—(1) The exemption under sub-clauses (iii) and (iv) shall not be available if *inter se* transfer of shares is at a price exceeding 25% of the price as determined in terms of sub-regulations (4) and (5) of regulation 20.

(2) The benefit of availing exemption under this clause, from applicability of the regulations for increasing shareholding or *inter se* transfer of shareholding shall be subject to such transferor(s) and transferee(s) having complied with regulation 6, regulation 7 and regulation 8;]

(f) 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;

¹[(v) the International Finance Corporation, Asian Development Bank, International Bank for Reconstruction and Development, Commonwealth Development Corporation and such other international financial institutions;

(vi) a merchant banker or a promoter of the target company pursuant to a scheme of safety net under the provisions of the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 in excess of limit specified in sub-regulation (1) of regulation 11;]

¹[(ff) acquisition of shares by a person in exchange of shares received under a public offer made under these regulations;]

(g) acquisition of shares by way of transmission on succession or inheritance;

(h) acquisition of shares by Government companies within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), and statutory corporations :

³[**Provided** that this exemption shall not be applicable if a Government company acquires shares or voting rights or control of a listed Public Sector Undertaking through the competitive bidding process of the Central Government ¹[or the State Government as the case may be,] for the purpose of disinvestment;]

(i) transfer of shares from State level financial institutions, including their subsidiaries, to co-promoter(s) of the company ¹[or their successors or assignee(s) or an acquirer who has substituted an erstwhile promoter] pursuant to an agreement between such financial institution and such co-promoter(s);

⁴[(ia) transfer of shares from venture capital funds or foreign venture capital investors registered with the Board to promoters of a venture capital undertaking or venture capital undertaking pursuant to an agreement between such venture capital fund or foreign venture capital investors with such promoters or venture capital undertaking;]

(j) pursuant to a scheme :

- (i) framed under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);
- (ii) of arrangement or reconstruction including amalgamation or merger or demerger under any law or regulation, Indian or foreign;

¹[(ja) *change in control by takeover of management of the borrower target company by the secured creditor or by restoration of management to the said target company by the said secured creditor in terms of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*]

(k) acquisition of shares in companies whose shares are not listed on any stock exchange.

Explanation.—The exemption under clause (k) above shall not be applicable if by virtue of acquisition or change of control of any unlisted company, whether in India or abroad, the acquirer acquires shares or voting rights or control over a listed company;

^{1a}[(ka) *acquisition of shares in terms of guidelines or regulations regarding delisting of securities specified or framed by the Board;*]

(l) ²[***] other cases as may be exempted from the applicability of Chapter III by the Board under regulation 4.

^{1a}[(1A) *The benefit of availing exemption under the relevant clauses of sub-regulation (1), shall be subject to compliance with requirement specified in sub-regulation (2A) of regulation 11.*]

(2) Nothing contained in Chapter III of the regulations shall apply to the acquisition of Global Depository Receipts or American Depository Receipts so long as they are not converted into shares carrying voting rights.

(3) In respect of acquisitions under clauses ³[***] (e), (h) and (i) of sub-regulation (1), the stock exchanges where the shares of the company are listed shall, for information of the public, be notified of the details of the proposed transactions at least 4 working days in advance of the date of the proposed acquisition, in case of acquisition exceeding ⁴[5] per cent of the voting share capital of the company.

(4) In respect of acquisitions under clauses (a), (b), ³[***] (e) and (i) of sub-regulation (1), the acquirer shall, within 21 days of the date of acquisition, submit a report along with supporting documents to the Board giving all details in respect of acquisitions which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him) would entitle such person to exercise ⁵[15] per cent or more of the voting rights in a company.

⁶[*Explanation.*—For the purposes of sub-regulations (3) and (4), the relevant date in case of securities which are convertible into shares shall be the date of conversion of such securities.]

(5) The acquirer shall, along with the report referred to under sub-regulation (4), pay a fee of Rs. 10,000 to the Board, either by a banker's cheque or demand draft in favour of the Securities and Exchange Board of India, payable at Mumbai.

Takeover panel.

4. (1) The Board shall for the purposes of this regulation constitute a panel of majority of independent persons from within the categories mentioned in sub-section (5) of section 4 of the Act.

(2) For seeking exemption under clause (1) of sub-regulation (1) of regulation 3, the acquirer shall file an application ¹[supported by a duly sworn affidavit] with the Board, giving details of the proposed acquisition and the grounds on which the exemption has been sought.

(3) The acquirer shall, along with the application referred to under sub-regulation (2), pay a fee of Rs. 25,000 to the Board, either by a banker's cheque or demand draft in favour of the Securities and Exchange Board of India, payable at Mumbai.

(4) The Board shall within 5 days of the receipt of an application under sub-regulation (2) forward the application to the panel.

(5) The panel shall within 15 days from the date of receipt of application make a recommendation on the application to the Board.

(6) The Board shall after affording reasonable opportunity to the concerned parties and after considering all the relevant facts including the recommendations, if any, pass a reasoned order on the application under sub-regulation (2) within 30 days thereof.

(7) The order of the Board under sub-regulation (6) shall be published by the Board.

Power of the Board.

5. In order to remove any difficulties in the interpretation or application of the provisions of these regulations, the Board shall have the power to issue directions through guidance notes or circulars:

Provided that where any direction is issued by the Board in a specific case relating to interpretation or application of any provision of these regulations, it shall be done only after affording a reasonable opportunity to the concerned parties and after recording reasons for the direction.

CHAPTER II

DISCLOSURES OF SHAREHOLDING AND CONTROL IN A LISTED COMPANY

Transitional provision.

6. (1) Any person, who holds more than five per cent shares or voting rights in any company, shall within two months of notification of these regulations disclose his aggregate shareholding in that company, to the company.

(2) Every company whose shares are held by the persons referred to in sub-regulation (1) shall, within three months from the date of notification of these regulations, disclose to all the stock exchanges on which the shares of the company are listed, the aggregate number of shares held by each person.

(3) A promoter or any person having control over a company shall within two months of notification of these regulations disclose the number and percentage of shares or voting rights held by him and by person(s) acting in concert with him in that company, to the company.

(4) Every company, whose shares are listed on a stock exchange shall within three months of notification of these regulations, disclose to all the stock exchanges on which the shares of the company are listed, the names and addresses of promoters and/or person(s) having control over the company, and the number and percentage of shares or voting rights held by each such person.

Acquisition of 5 per cent and more shares or voting rights of a company.

7. ¹[(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent ^{1a}[or fifty four per cent or seventy four per cent] shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.]

²[(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.]

³[*Explanation.*—For the purposes of sub-regulations (1) and (1A), the term ‘acquirer’ shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.]

(2) The disclosures mentioned in ⁴[sub-regulations (1) and (1A)] shall be made within ⁵[two days] of,—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

³ [(2A) The stock exchange shall immediately display the information received from the acquirer under sub-regulations (1) and (1A) on the trading screen, the notice board and also on its website.]

(3) Every company, whose shares are acquired in a manner referred to in ⁴ [sub-regulations (1) and (1A)], shall disclose to all the stock exchanges on which the shares of the said company are listed the aggregate number of shares held by each of such persons referred above within seven days of receipt of information under ⁴ [sub-regulations (1) and (1A)].

Continual disclosures.

8. (1) Every person, including a person mentioned in regulation 6 who holds more than ¹[fifteen] per cent shares or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March.

(2) A promoter or every person having control over a company shall, 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, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company.

(3) Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub-regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March.

(4) Every company whose shares are listed on a stock exchange shall maintain a register in the specified format to record the information received under sub-regulation (3) of regulation 6, sub-regulation (1) of regulation 7 and sub-regulation (2) of regulation 8.

Power to call for information.

9. The stock exchanges and the company shall furnish to the Board information with regard to the disclosures made under regulations 6, 7 and 8 as and when required by the Board.

CHAPTER III

SUBSTANTIAL ACQUISITION OF SHARES OR VOTING RIGHTS IN AND ACQUISITION OF CONTROL OVER A LISTED COMPANY

Acquisition of ¹ [fifteen] per cent or more of the shares or voting rights of any company.

10. No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise ¹ [fifteen] per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations :

²[*Provided that no acquirer shall acquire shares or voting rights, through market purchases and preferential allotment pursuant to a resolution passed under section 81 of the Companies Act, 1956 or any other applicable law, which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise more than fifty five per cent of the voting rights in the company :*

Provided further that if the acquirer has acquired shares or voting rights through such market purchases or preferential allotment beyond fifty five per cent of the voting rights in the company, he shall forthwith disinvest the shares acquired in excess of fifty five per cent and shall be liable for action under these Regulations and the Act.

Explanation : In case of acquisition through preferential allotment the limit of fifty five per cent voting rights as provided under this regulation shall be reckoned with reference to the increased share capital pursuant to such preferential allotment.]

Consolidation of holdings.

11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, ¹[15 per cent or more but less than ^{1a}[fifty five per cent (55%)]] of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than ²[5] per cent of the voting rights, ³[in any financial year ending on 31st March] unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

⁴[(2) An acquirer, who together with persons acting in concert with him has acquired, in accordance with the provisions of law, fifty five per cent (55%) or more but less than seventy five per cent (75%) of the shares or voting rights in a target company, may acquire either by himself or through persons acting in concert with him any additional share or voting right, only if he makes a public announcement to acquire shares or voting rights in accordance with these regulations :

Provided that no acquirer shall acquire shares or voting rights, through market purchases and preferential allotment pursuant to a resolution passed under section 81 of the Companies Act, 1956 or any other applicable law, which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise more than fifty five per cent of the voting rights in the company :

Provided further that if the acquirer has acquired shares or voting rights through such market purchases or preferential allotment beyond fifty five per cent of the voting rights in the company, he shall forthwith disinvest the shares acquired in excess of fifty five per cent and shall be liable for action under these Regulations and the Act.

Explanation : In case of acquisition through preferential allotment the limit of fifty five per cent voting rights as provided under sub-regulation (ii) shall be reckoned with reference to the increased share capital pursuant to such preferential allotment.]

⁵[(2A) Unless otherwise provided in these regulations, an acquirer, who seeks to acquire any shares or voting rights whereby the public shareholding in the target company may be reduced to a level below the limit specified in the Listing Agreement with the stock exchange for the purpose of listing on continuous basis, may acquire such shares or voting rights, only in accordance with the guidelines or regulations regarding delisting of securities specified by the Board :

Provided that, the provisions of this sub-regulation shall not apply in case of acquisition by virtue of global arrangement which may result in indirect acquisition of shares or voting rights or control of the target company.]

¹[(3) Notwithstanding anything contained in regulations 10, 11 and 12, in case of disinvestment of a Public Sector Undertaking, an acquirer who together with persons acting in concert with him, has made a public announcement, shall not be required to make another public announcement at the subsequent stage of further acquisition of shares or voting rights or control of the Public Sector Undertaking provided:—

- (i) both the acquirer and the seller are the same at all the stages of acquisition, and**
- (ii) disclosures regarding all the stages of acquisition, if any, are made in the letter of offer issued in terms of regulation 18 and in the first public announcement.]**

Explanation.—For the purposes of regulation 10 and regulation 11, acquisition shall mean and include,—

- (a) direct acquisition in a listed company to which the regulations apply;
- (b) indirect acquisition by virtue of acquisition of ²[***] companies, whether listed or unlisted, whether in India or abroad.

Acquisition of control over a company.

12. Irrespective of whether or not there has been any acquisition of shares or voting rights in a company, no acquirer shall acquire control over the target company, unless such person makes a public announcement to acquire shares and acquires such shares in accordance with the regulations:

Provided that nothing contained herein shall apply to any change in control which takes place in pursuance to a ³[special] resolution passed by the shareholders in a general meeting :

³[**Provided further** that for passing of the special resolution facility of voting through postal ballot as specified under the Companies (Passing of the Resolutions by Postal Ballot) Rules, 2001 shall also be provided.]

⁴[*Explanation.*—For the purposes of this regulation, acquisition shall include direct or indirect acquisition of control of target company by virtue of acquisition of companies, whether listed or unlisted and whether in India or abroad.]

Appointment of a merchant banker.

13. Before making any public announcement of offer referred to in regulation 10 or regulation 11 or regulation 12, the acquirer shall appoint a merchant banker in Category I holding a certificate of registration granted by the Board, who is not an associate of or group of the acquirer or the target company.

Timing of the public announcement of offer.

14. (1) The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein :

¹[**Provided** that in case of disinvestment of a Public Sector Undertaking, the public announcement shall be made by the merchant banker not later than 4 working days of the acquirer executing the Share Purchase Agreement or Shareholders Agreement with the Central Government ²[or the State Government as the case may be,] for the acquisition of shares or voting rights exceeding the percentage of shareholding referred to in regulation 10 or regulation 11 or the transfer of control over a target Public Sector Undertaking.]

(2) In the case of an acquirer acquiring securities, including Global Depository Receipts or American Depository Receipts which, when taken together with the voting rights, if any already held by him or persons acting in concert with him, would entitle him to voting rights, exceeding the percentage specified in regulation 10 or regulation 11, the public announcement referred to in sub-regulation (1) shall be made not later than four working days before he acquires voting rights on such securities upon conversion, or exercise of option, as the case may be.

(3) The public announcement referred to in regulation 12 shall be made by the merchant banker not later than four working days after any such change or changes are decided to be made as would result in the acquisition of control over the target company by the acquirer.

²[(4) In case of indirect acquisition or change in control, a public announcement shall be made by the acquirer within three months of consummation of such acquisition or change in control or restructuring of the parent or the company holding shares of or control over the target company in India.]

Public announcement of offer.

15. (1) The public announcement to be made under regulation 10 or 11 or 12 shall be made in all editions of one English national daily with wide circulation, one Hindi national daily with wide circulation and a regional language daily with wide circulation at the place where the registered office of the target company is situated and at the place of the stock exchange where the shares of the target company are most frequently traded.

³[(2) Simultaneously with publication of the public announcement in the newspaper in terms of sub-regulation (1), a copy of the public announcement shall be,

- (i) submitted to the Board through the merchant banker,
- (ii) sent to all the stock exchanges on which the shares of the company are listed for being notified on the notice board,
- (iii) sent to the target company at its registered office for being placed before the Board of Directors of the company.]

(3) ¹[***]

(4) The offer under these regulations shall be deemed to have been made on the date on which the public announcement has appeared in any of the newspapers referred to in sub-regulation (1).

Contents of the public announcement of offer.

16. The public announcement referred to in regulation 10 or 11 or 12 shall contain the following particulars, namely :—

- (i) the paid-up share capital of the target company, the number of fully paid-up and partly paid-up shares;
- (ii) the total number and percentage of shares proposed to be acquired from the public, subject to a minimum as specified in sub-regulation (1) of regulation 21;
- (iii) the minimum offer price for each fully paid-up or partly paid-up share;
- (iv) mode of payment of consideration;
- (v) the identity of the acquirer(s) and in case the acquirer is a company or companies, the identity of the promoters and, or the persons having control over such company(ies) and the group, if any, to which the company(ies) belong;
- (vi) the existing holding, if any, of the acquirer in the shares of the target company, including holdings of persons acting in concert with him;
- ²[(via) *the existing shareholding, if any, of the merchant banker in the target company;*]
- (vii) the salient features of the agreement, if any, such as the date, the name of the seller, the price at which the shares are being acquired, the manner of payment of the consideration and the number and percentage of shares in respect of which the acquirer has entered into the agreement to acquire the shares or the consideration, monetary or otherwise, for the acquisition of control over the target company, as the case may be;
- (viii) the highest and the average price paid by the acquirer or persons acting in concert with him for acquisition, if any, of shares of the target company made by him during the twelve months period prior to the date of public announcement;
- (ix) the object and purpose of the acquisition of the shares and future plans, if any, of the acquirer for the target company, including disclosures whether the acquirer proposes to dispose of or otherwise encumber any assets of the target company in the succeeding two years except in the ordinary course of business of the target company :

Provided that where the future plans are set out, the public announcement shall also set out how the acquirers propose to implement such future plans :

³[**Provided further** that the acquirer shall not sell, dispose of or otherwise encumber any substantial asset of the target company except with the prior approval of the shareholders;

- (ix) an undertaking that the acquirer shall not sell, dispose of or otherwise encumber any substantial asset of the target company except with the prior approval of the shareholders;]
- (x) the “specified date” as mentioned in regulation 19;
- (xi) the date by which individual letters of offer would be posted to each of the shareholders;
- (xii) the date of opening and closure of the offer and the manner in which and the date by which the acceptance or rejection of the offer would be communicated to the shareholders;
- (xiii) the date by which the payment of consideration would be made for the shares in respect of which the offer has been accepted;
- (xiv) disclosure to the effect that firm arrangement for financial resources required to implement the offer is already in place, including details regarding the sources of the funds whether domestic, *i.e.*, from banks, financial institutions or otherwise or foreign, *i.e.*, from Non-Resident Indians or otherwise;
- (xv) provision for acceptance of the offer by person(s) who own the shares but are not the registered holders of such shares;
- (xvi) statutory approvals, if any, required to be obtained for the purpose of acquiring the shares under the Companies Act, 1956 (1 of 1956), the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), the Foreign Exchange Regulation Act, 1973 (46 of 1973), and/or any other applicable laws;
- (xvii) approvals of banks or financial institutions required, if any;
- (xviii) whether the offer is subject to a minimum level of acceptances from the shareholders; and
- (xix) such other information as is essential for the shareholders to make an informed decision in regard to the offer.

Brochures, advertising material, etc.

17. The public announcement of the offer or any other advertisement, circular, brochure, publicity material or letter of offer issued in relation to the acquisition of shares shall not contain any misleading information.

Submission of letter of offer to the Board.

18. (1) Within fourteen days from the date of public announcement made under regulation 10, 11 or 12 as the case may be, the acquirer shall, through its merchant banker, file with the Board, the draft of the letter of offer containing disclosures as specified by the Board.

(2) The letter of offer shall be despatched to the shareholders not earlier than 21 days from its submission to the Board under sub-regulation (1) :

Provided that if, within 21 days from the date of submission of the letter of offer, the Board specifies changes, if any, in the letter of offer (without being under any obligation to do so), the merchant banker and the acquirer shall carry out such changes before the letter of offer is despatched to the shareholders :

¹[**Provided further** that if the disclosures in the draft letter of offer are inadequate or the Board has received any complaint or has initiated any enquiry or investigation in respect of the public offer, the Board may call for revised letter of offer with or without rescheduling the date of opening or closing of the offer and may offer its comments to the revised letter of offer within seven working days of filing of such revised letter of offer.]

(3) The acquirer shall, along with the draft letter of offer referred to in sub-regulation (1), pay a fee of Rs. 50,000 to the Board, either by a banker’s cheque or demand draft in favour of the Securities and Exchange Board of India, payable at Mumbai.

Specified date.

19. The public announcement shall specify a date, which shall be the “specified date” for the purpose of determining the names of the shareholders to whom the letter of offer should be sent :

Provided that such specified date shall not be later than the thirtieth day from the date of the public announcement.

¹[Offer price.

20. (1) The offer to acquire shares under regulation 10, 11 or 12 shall be made at a price not lower than the price determined as per sub-regulations (4) and (5).

(2) The offer price shall be payable—

- (a) in cash;
- (b) by issue, exchange and/or transfer of shares (other than preference shares) of acquirer company, if the person seeking to acquire the shares is a listed body corporate; or
- (c) by issue, exchange and, or transfer of secured instruments of acquirer company with a minimum 'A' grade rating from a credit rating agency registered with the Board;
- (d) a combination of clause (a), (b) or (c) :

Provided that where the payment has been made in cash to any class of shareholders for acquiring their shares under any agreement or pursuant to any acquisition in the open market or in any other manner during the immediately preceding twelve months from the date of public announcement, the letter of offer shall provide an option to the shareholders to accept payment either in cash or by exchange of shares or other secured instruments referred to above :

Provided further that the mode of payment of consideration may be altered in case of revision in offer price or size subject to the condition that the amount to be paid in cash as mentioned in any announcement or the letter of offer is not reduced.

(3) In case the offer price consists of consideration payable in the form of securities issuance of which requires approval of the shareholders, such approval shall be obtained by the acquirer within ^{*}[seven] days from the date of closure of the offer :

Provided that in case the requisite approval is not obtained, the acquirer shall pay the entire consideration in cash.

(4) For the purposes of sub-regulation (1), the offer price shall be the highest of—

- (a) the negotiated price under the agreement referred to in sub-regulation (1) of regulation 14;
- (b) price paid by the acquirer or persons acting in concert with him for acquisition, if any, including by way of allotment in a public or rights or preferential issue during the twenty-six week period prior to the date of public announcement, whichever is higher;
- (c) the average of the weekly high and low of the closing prices of the shares of the target company as quoted on the stock exchange where the shares of the company are most frequently traded during the twenty-six weeks or the average of the daily high and low of the ¹[***] prices of the shares as quoted on the stock exchange where the shares of the company are most frequently traded during the two weeks preceding the date of public announcement, whichever is higher:

²[**Provided** that the requirement of average of the daily high and low of the closing prices of the shares as quoted on the stock exchange where the shares of the company are most frequently traded during the two weeks preceding the date of public announcement, shall not be applicable in case of disinvestment of a Public Sector Undertaking.]

Explanation.—In case of disinvestment of a Public Sector Undertaking, the relevant date for the calculation of the average of the weekly ³[***] prices of the shares of the Public Sector Undertaking, as quoted on the stock exchange where its shares are most frequently traded, shall be the date preceding the date when the Central Government or the State Government opens the financial bid.

(5) Where the shares of the target company are infrequently traded, the offer price shall be determined by the acquirer and the merchant banker taking into account the following factors :

- (a) the negotiated price under the agreement referred to in sub-regulation (1) of regulation 14;

- (b) the highest price paid by the acquirer or persons acting in concert with him for acquisitions, if any, including by way of allotment in a public or rights or preferential issue during the twenty-six week period prior to the date of public announcement;
- (c) other parameters including return on networth, book value of the shares of the target company, earning per share, price earning multiple *vis-a-vis* the industry average :

Provided that where considered necessary, the Board may require valuation of such infrequently traded shares by an independent merchant banker (other than the manager to the offer) or an independent chartered accountant of minimum ten years' standing or a public financial institution.

Explanation.—

- (i) For the purpose of sub-regulation (5), shares shall be deemed to be infrequently traded if on the stock exchange, the annualised trading turnover in that share during the preceding six calendar months prior to the month in which the public announcement is made is less than five per cent (by number of shares) of the listed shares. For this purpose, the weighted average number of shares listed during the said six months period may be taken.
- (ii) In case of disinvestment of a Public Sector Undertaking, the shares of such an undertaking shall be deemed to be infrequently traded, if on the stock exchange, the annualised trading turnover in the shares during the preceding six calendar months prior to the month, in which the Central Government or the State Government as the case may be opens the financial bid, is less than five per cent (by the number of shares) of the listed shares. For this purpose, the weighted average number of shares listed during the six months period may be taken.
- (iii) In case of shares which have been listed within six months preceding the public announcement, the trading turnover may be annualised with reference to the actual number of days for which the shares have been listed.

(6) Notwithstanding anything contained in sub-regulation (5), in case of disinvestment of a Public Sector Undertaking, whose shares are infrequently traded, the minimum offer price shall be the price paid by the successful bidder to the Central Government or the State Government, arrived at after the process of competitive bidding of the Central Government or the State Government for the purpose of disinvestment.

(7) Notwithstanding anything contained in the provisions of sub-regulations (2), (4), (5) and (6), where the acquirer has acquired shares in the open market or through negotiation or otherwise, after the date of public announcement at a price higher than the offer price stated in the letter of offer, then, the highest price paid for such acquisition shall be payable for all acceptances received under the offer :

Provided that no such acquisition shall be made by the acquirer during the last seven working days prior to the closure of the offer :

¹**[Provided further that the shares or voting rights so acquired taken together with the acquisition under the public offer and shares or voting rights, if any, held by him or by persons acting in concert with him, do not result in public shareholding in the target company being reduced to a level below the limit specified in the Listing Agreement with the stock exchange for the purpose of listing on continuous basis.]**

(8) Any payment made to the persons other than the target company in respect of non- compete agreement in excess of twenty-five per cent of the offer price arrived at under sub-regulation (4) or (5) or (6) shall be added to the offer price.

(9) In case where shares or secured instruments of the acquirer company are offered in lieu of cash payment, the value of such shares or secured instruments shall be determined in the same manner as specified in sub-regulation (4) or sub-regulation (5) to the extent applicable, as duly certified by an independent merchant banker (other than the manager to the offer) or an independent chartered accountant of a minimum ten years' standing or a public financial institution.

(10) The offer price for partly paid up shares shall be calculated as the difference between the offer price and the amount due towards calls-in-arrears or calls remaining unpaid together with interest, if any, payable on the amount called up but remaining unpaid.

(11) The letter of offer shall contain justification or the basis on which the price has been determined.

Explanation :

- (i) The highest price under clause (b) or the average price under clause (c) of sub-regulation (4) may be adjusted for quotations, if any, on *cum-rights* or *cum-bonus* or *cum-dividend* basis during the said period.
- (ii) Where the public announcement of offer is pursuant to acquisition by way of firm allotment in a public issue or preferential allotment, the average price under clause (c) of sub-regulation (4) shall be calculated with reference to twenty-six week period preceding the date of the board resolution which authorised the firm allotment or preferential allotment.
- (iii) Where the shareholders have been provided with an option to accept payment either in cash or by way of exchange of security, the pricing for the cash offer could be different from that of a share exchange offer or offer for exchange with secured instruments provided that the disclosures in the letter of offer contains suitable justification for such differential pricing and the pricing is subject to other provisions of this regulation.
- (iv) Where the offer is subject to a minimum level of acceptance, the acquirer may, subject to the other provisions of this regulation, indicate a lower price for the minimum acceptance up to twenty per cent, should be the offer not receive full acceptance.

(12) The offer price for indirect acquisition or control shall be determined with reference to the date of the public announcement for the parent company and the date of the public announcement for acquisition of shares of the target company, whichever is higher, in accordance with sub-regulation (4) or sub-regulation (5).]

¹[Acquisition price under creeping acquisition.

20A. (1) An acquirer who has made a public offer and seeks to acquire further shares under sub-regulation (1) of regulation 11 shall not acquire such shares during the period of 6 months from the date of closure of the public offer at a price higher than the offer price.

(2) Sub-regulation (1) shall not apply where the acquisition is made through the stock exchanges.]

Minimum number of shares to be acquired.

21. ²[(1) The public offer made by the acquirer to the shareholders of the target company shall be for a minimum twenty per cent of the voting capital of the company:]

³[*Provided that where any public offer is made in pursuance of sub-regulation (2) of regulation 11, such public offer shall be for such percentage of voting capital of the target company so that the acquisition does not result in the public shareholding in such company being reduced to a level below the limit specified in the Listing Agreement with the stock exchange for the purpose of listing on continuous basis.*]

¹[(2) *Where an acquirer acquires more than fifty five per cent (55%) shares or voting rights in the target company through an agreement or memorandum of understanding and the public offer made under regulation 10 or sub-regulation (1) of regulation 11 to acquire minimum percentage of voting capital as specified in sub-regulation (1) of regulation 21 results in public shareholding being reduced to a level below the limit specified in the Listing Agreement with the stock exchange for the purpose of listing on continuous basis, the acquirer shall acquire only such number of shares under the agreement or the memorandum of understanding so as to maintain the minimum specified public shareholding in the target company.*]

²[(3) *If consequent to the public offer made in pursuance of global arrangement referred to in proviso to sub-regulation (2A) of regulation 11, the public shareholding falls to a level below the limit specified in the Listing Agreement with the stock exchange for the purpose of listing on*

continuous basis, the acquirer shall undertake to raise the level of public shareholding to the levels specified for continuous listing specified in the Listing Agreement with the stock exchange, within a period of twelve months from the date of closure of the public offer, by

- (i) issue of new shares by the company in compliance with the provisions of the Companies Act, 1956 and the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000; or*
- (ii) disinvestment through an offer for sale in compliance with the provisions of the Companies Act, 1956 and the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000, of such number of shares held by him so as to satisfy the listing requirements; or*
- (iii) sale of his holdings through the stock exchange :*

Provided that in case of acquisition of shares or voting rights or control in a target company where the public shareholding is below the limit specified for the purpose of listing on continuous basis in terms of the Listing Agreement with the stock exchange, the acquirer shall undertake to raise the level of public shareholding to the levels specified for continuous listing in terms of the listing conditions specified in the Listing Agreement with the stock exchange, within the period specified under the Listing Agreement.]

(4) The letter of offer shall state clearly the option available to the acquirer under sub-regulation (3).

(5) For the purpose of computing the percentage referred to sub-regulations (1) ³[***] and (3) the voting rights as at the expiration of ⁴[fifteen] days after the closure of the public offer shall be reckoned.

(6) Where the number of shares offered for sale by the shareholders are more than the shares agreed to be acquired by the person making the offer, such person shall accept the offers received from the shareholders on a proportional basis, in consultation with the merchant banker, taking care to ensure that the basis of acceptance is decided in a fair and equitable manner and does not result in non-marketable lots :

Provided that acquisition of shares from a shareholder shall not be less than the minimum marketable lot or the entire holding if it is less than the marketable lot.

¹[Offer conditional upon level of acceptance.

21A. (1) Subject to the provisions of sub-regulation (8) of regulation 22, an acquirer or any person acting in concert with him may make an offer conditional as to the level of acceptance which may be less than twenty per cent :

Provided that where the public offer is in pursuance of a Memorandum of Understanding, the Memorandum of Understanding shall contain a condition to the effect that in case the desired level of acceptance is not received the acquirer shall not acquire any shares under the Memorandum of Understanding and shall rescind the offer.]

General obligations of the acquirer.

22. (1) The public announcement of an offer to acquire the shares of the target company shall be made only when the acquirer is able to implement the offer.

(2) Within 14 days of the public announcement of the offer, the acquirer shall send a copy of the draft letter of offer to the target company at its registered office address, for being placed before the board of directors and to all the stock exchanges where the shares of the company are listed.

(3) The acquirer shall ensure that the letter of offer is sent to all the shareholders (including non-resident Indians) of the target company, whose names appear on the register of members of the company as on the specified date mentioned in the public announcement, so as to reach them within 45 days from the date of public announcement :

Provided that where the public announcement is made pursuant to an agreement to acquire shares or control over the target company, the letter of offer shall be sent to shareholders other than the parties to the agreement.

Explanation.—(i) A copy of the letter of offer shall also be sent to the Custodians of Global Depository Receipts or American Depository Receipts to enable such persons to participate in the open offer, if they are entitled to do so.

(ii) A copy of the letter of offer shall also be sent to warrant holders or convertible debenture holders, where the period of exercise of option or conversion falls within the offer period.

(4) The date of opening of the offer shall be not later than the ²[*fifty fifth*] day from the date of public announcement.

(5) The offer to acquire shares from the shareholders shall remain open for a period of ³[*twenty*] days.

¹[(5A) The shareholder shall have the option to withdraw acceptance tendered by him up to three working days prior to the date of closure of the offer.]

(6) In case the acquirer is a company, the public announcement of offer, brochure, circular, letter of offer or any other advertisement or publicity material issued to shareholders in connection with the offer must state that the directors accept the responsibility for the information contained in such documents :

Provided that if any of the directors desires to exempt himself from responsibility for the information in such document, such director shall issue a statement to that effect, together with reasons thereof for such statement.

(7) During the offer period, the acquirer or persons acting in concert with him shall not be entitled to be appointed on the board of directors of the target company :

²[**Provided** that in case of acquisition of shares or voting rights or control of a Public Sector Undertaking pursuant to a public announcement made under the proviso to sub-regulation (1) of regulation 14, the provisions of sub-regulation (8) of regulation 23 shall be applicable :]

¹[**Provided further** that where the acquirer, other than the acquirer who has made an offer under regulation 21A, after assuming full acceptances, has deposited in the escrow account hundred per cent of the consideration payable in cash where the consideration payable is in cash and in the form of securities where the consideration payable is by way of issue, exchange or transfer of securities or combination thereof, he may be entitled to be appointed on the Board of Directors of the target company after a period of twenty-one days from the date of public announcement.]

(8) Where an offer is made conditional upon minimum level of acceptances, the acquirer or any person acting in concert with him—

(i) shall, irrespective of whether or not the offer received response to the minimum level of acceptances, acquire shares from the public to the extent of the minimum percentage specified in sub-regulation (1) of regulation 21 :

Provided that the provisions of this clause shall not be applicable in case the acquirer has deposited in the escrow account, in cash, 50 per cent of the consideration payable under the public offer;

(ii) shall not acquire, during the offer period, any shares in the target company, except by way of fresh issue of shares of the target company, as provided for under regulation 3;

(iii) shall be liable for penalty of forfeiture of the entire escrow amount, for the non-fulfilment of obligations under the regulations.

(9) If any of the persons representing or having interest in the acquirer is already a director on the board of the target company or is an “insider” within the meaning of the Securities and Exchange Board of India (Insider Trading) Regulations, 1992, he shall refuse himself and not participate in any matter(s) concerning or “relating” to the offer including any preparatory steps leading to the offer.

(10) On or before the date of issue of public announcement of offer, the acquirer shall create an escrow account as provided under regulation 28.

(11) The acquirer shall ensure that firm financial arrangement has been made for fulfilling the obligations under the public offer and suitable disclosures in this regard shall be made in the public announcement of offer.

(12) The acquirer shall, within a period of ¹[fifteen] days from the date of the closure of the offer, complete all procedures relating to the offer including payment of consideration to the shareholders who have accepted the offer and for the purpose open a special account as provided under regulation 29 :

Provided that where the acquirer is unable to make the payment to the shareholders who have accepted the offer before the said period of ¹[fifteen] days due to non-receipt of requisite statutory approvals, the Board may, if satisfied that non-receipt of requisite statutory approvals was not due to any wilful default or neglect of the acquirer or failure of the acquirer to diligently pursue the applications for such approvals, grant extension of time for the purpose, subject to the acquirer agreeing to pay interest to the shareholders for delay beyond ¹[fifteen] days, as may be specified by the Board from time to time.

(13) Where the acquirer fails to obtain the requisite statutory approvals in time on account of wilful default or neglect or inaction or non-action on his part, the amount lying in the escrow account shall be liable to be forfeited and dealt with in the manner provided in clause (e) of sub-regulation (12) of regulation 28, apart from the acquirer being liable for penalty as provided in the regulations.

(14) In the event of withdrawal of offer in terms of the regulations, the acquirer shall not make any offer for acquisition of shares of the target company for a period of six months from the date of public announcement of withdrawal of offer.

(15) In the event of non-fulfilment of obligations under Chapter III or Chapter IV of the regulations the acquirer shall not make any offer for acquisition of shares of any listed company for a period of twelve months from the date of closure of the offer.

(16) If the acquirer, in pursuance of an agreement, acquires shares which along with his existing holding, if any, increases his shareholding beyond ²[15] per cent, then such agreement for sale of shares shall contain a clause to the effect that in case of non-compliance of any provisions of this regulation, the agreement for such sale shall not be acted upon by the seller or the acquirer :

³[**Provided** that in case of the acquisition of shares of a Public Sector Undertaking pursuant to a public announcement made under the Regulations, the provisions of sub-regulation (8) of regulation 23 shall be applicable.]

⁴[(17) Where the acquirer or persons acting in concert with him has acquired any shares in terms of sub-regulation (7) of regulation 20 at a price equal to or less or more than the offer price, he shall disclose the number, percentage, price and the mode of acquisition of such shares to the stock exchanges on which the shares of the target company are listed and to the merchant banker within 24 hours of such acquisition and the stock exchanges shall forthwith disseminate such information to the public.]

(18) Where the acquirer has not either, in the public announcement, and, or in the letter of offer, stated his intention to dispose of or otherwise encumber any assets of the target company except in the ordinary course of business of the target company, the acquirer, where he has acquired control over the target company, shall be debarred from disposing of or otherwise encumbering the assets of the target company for a period of two years from the date of closure of the public offer.

¹[(19) The acquirer and the persons acting in concert with him shall be jointly and severally responsible for fulfilment of obligations under these regulations.]

General obligations of the board of directors of the target company.

23. (1) Unless the approval of the general body of shareholders is obtained after the date of the public announcement of offer, the board of directors of the target company shall not, during the offer period,—

- (a) sell, transfer, encumber or otherwise dispose of or enter into an agreement for sale, transfer, encumbrance or for disposal of assets otherwise, not being sale or disposal of assets in the ordinary course of business, of the company or its subsidiaries; or
- (b) issue ¹[or allot] any authorised but unissued securities carrying voting rights during the offer period; or
- (c) enter into any material contracts.

²[*Explanation.*—Restriction on issue of securities under clause (b) of sub-regulation (1) shall not affect—

- (i) the right of the target company to issue or allot shares carrying voting rights upon conversion of debentures already issued or upon exercise of option against warrants, as per pre-determined terms of conversion or exercise of option;
- (ii) issue or allotment of shares pursuant to public or rights issue in respect of which the offer document has already been filed with the Registrar of Companies or Stock Exchanges, as the case may be.]

(2) The target company shall furnish to the acquirer, within seven days of the request of the acquirer or within seven days from the specified date whichever is later, a list of shareholders or warrant holders or convertible debenture holders as are eligible for participation under *Explanation (ii)* to sub-regulation (3) of regulation 22 containing names, addresses, shareholding and folio number, and of those persons whose applications for registration of transfer of shares are pending with the company.

(3) Once the public announcement has been made, the board of directors of the target company shall not,—

- (a) appoint as additional director or fill in any casual vacancy on the board of directors, by any person(s) representing or having interest in the acquirer, till the date of certification by the merchant banker as provided under sub-regulation (6) below :

Provided that upon closure of the offer and the full amount of consideration payable to the shareholders being deposited in the special account, changes as would give the acquirer representation on the board on control over the company can be made by the target company;

- (b) allow any person or persons representing or having interest in the acquirer, if he is already a director on the board of the target company before the date of the public announcement, to participate in any matter relating to the offer, including any preparatory steps leading thereto.

(4) The board of directors of the target company may, if they so desire, send their unbiased comments and recommendations on the offer(s) to the shareholders, keeping in mind the fiduciary responsibility of the directors to the shareholders and for the purpose seek the opinion of an independent merchant banker or a committee of independent directors :

Provided that for any mis-statement or for concealment of material information, the directors shall be liable for action in terms of these regulations and the Act.

(5) The board of directors of the target company shall facilitate the acquirer in verification of securities tendered for acceptances.

(6) Upon fulfilment of all obligations by the acquirers under the regulations as certified by the merchant banker, the board of directors of the target company shall transfer the securities acquired by the acquirer, whether under the agreement or from open market purchases, in the name of the acquirer and/or allow such changes in the board of directors as would give the acquirer representation on the board or control over the company.

(7) The obligations provided for in sub-regulation (16) of regulation 22 shall be complied with by the company in the circumstances specified therein.

¹[(8) The restrictions—

- (a) for appointment of directors on the Board of the target company by the acquirer under sub-regulation (7) of regulation 22;
- (b) for acting on agreement for under sub-regulation (16) of regulation 22;
- (c) for appointment of directors by the target company under clause (a) of sub-regulation (3) of this regulation; and
- (d) for on transfer of securities or changes in the Board of Directors of the target company under sub-regulation (6) of this regulation, shall not be applicable, in case of sale of shares of a Public Sector Undertaking by the Central Government ²[or the State Government] and the agreement to sell contains a clause to the effect that in case of non-compliance of any of the provisions of the regulations by the acquirer, transfer of shares or the change of management or control of the Public Sector Undertaking shall vest back with the Central Government ²[or the State Government] and the acquirer shall be liable to such penalty as may be imposed by the Central Government ²[or the State Government].]

General obligations of the merchant banker.

24. (1) Before the public announcement of offer is made, the merchant banker shall ensure that—

- (a) the acquirer is able to implement the offer;
- (b) the provision relating to escrow account referred to in regulation 28 has been made;
- (c) firm arrangements for funds and money for payment through verifiable means to fulfil the obligations under the offer are in place;
- (d) the public announcement of offer is made in terms of the regulations;

¹[(e) *his shareholding, if any in the target company is disclosed in the public announcement and the letter of offer.*]

(2) The merchant banker shall furnish to the Board a due diligence certificate which shall accompany the draft letter of offer.

(3) The merchant banker shall ensure that the ²[***] public announcement and the letter of offer is filed with the Board, target company and also sent to all the stock exchanges on which the shares of the target company are listed in accordance with the regulations.

(4) The merchant banker shall ensure that the contents of the public announcement of offer as well as the letter of offer are true, fair and adequate and based on reliable sources, quoting the source wherever necessary.

(5) The merchant banker shall ensure compliance of the regulations and any other laws or rules as may be applicable in this regard.

³[(5A) *The merchant banker shall not deal in the shares of the target company during the period commencing from the date of his appointment in terms of regulation 13 till the expiry of the fifteen days from the date of closure of the offer.*]

(6) Upon fulfilment of all obligations by the acquirers under the regulations, the merchant banker shall cause the bank with whom the escrow amount has been deposited to release the balance amount to the acquirers.

(7) The merchant banker shall send a final report to the Board within 45 days from the date of closure of the offer.

Competitive bid.

25. (1) Any person, other than the acquirer who has made the first public announcement, who is desirous of making any offer, shall, within 21 days of the public announcement of the first offer,

make a public announcement of his offer for acquisition of the shares of the same target company.

Explanation.—An offer made under sub-regulation (1) shall be deemed to be a competitive bid.

(2) No public announcement for an offer or competitive bid shall be made after 21 days from the date of public announcement of the first offer.

⁴[(2A) No public announcement for a competitive bid shall be made after an acquirer has already made the public announcement under the proviso to sub-regulation (1) of regulation 14 pursuant to entering into a Share Purchase or Shareholders' Agreement with the Central Government ⁵[or the State Government as the case may be,] for acquisition of shares or voting rights or control of a Public Sector Undertaking.]

(3) Any competitive offer by an acquirer shall be for such number of shares which, when taken together with shares held by him along with persons acting in concert with him, shall be at least equal to the ⁶[holding of the first bidder including the number of shares for which the present offer by the first bidder has been made.]

(4) Upon the public announcement of a competitive bid or bids, the acquirer(s) who had made the public announcement(s) of the earlier offer(s), shall have the option to ¹[make an announcement revising the offer] :

Provided that if no such announcement is made within fourteen days of the announcement of the competitive bid(s), the earlier offer(s) on the original terms shall continue to be valid and binding on the acquirer(s) who had made the offer(s) except that the date of closing of the offer shall stand extended to the date of closure of the public offer under the last subsisting competitive bid.

(5) The provisions of these regulations shall *mutatis mutandis* apply to the competitive bid(s) made under sub-regulation (1).

(6) The acquirers who have made the public announcement of offer(s) including the public announcement of competitive bid(s) ²[****] shall have the option to make upward revisions in his offer(s), in respect of the price and the number of shares to be acquired, at any time up to seven working days prior to the date of closure of the offer :

Provided that the acquirer shall not have the option to change any other terms and conditions of their offer ³[except the mode of payment following an upward revision in offer]:

Provided further that any such upward revision shall be made only upon the acquirer,—

- (a) making a public announcement in respect of such changes or amendments in all the newspapers in which the original public announcement was made;
- (b) simultaneously with the issue of public announcement referred in clause (a), informing the Board, all the stock exchanges on which the shares of the company are listed, and the target company at its registered office;
- (c) increasing the value of the escrow account as provided under sub-regulation (9) of regulation 28.

(7) Where there is a competitive bid, the date of closure of the original bid as also the date of closure of all the subsequent competitive bids shall be the date of closure of public offer under the last subsisting competitive bid and the public offers under all the subsisting bids shall close on the same date.

Upward revision of offer.

26. Irrespective of whether or not there is a competitive bid, the acquirer who has made the public announcement of offer may make upward revisions in his offer in respect of the price and the number of shares to be acquired, at any time up to seven working days prior to the date of the closure of the offer :

Provided that any such upward revision of offer shall be made only upon the acquirer—

- (a) making a public announcement in respect of such changes or amendments in all the newspapers in which the original public announcement was made;
- (b) simultaneously with the issue of such public announcement, informing the Board, all the stock exchanges on which the shares of the company are listed, and the target company at its registered office;
- (c) increasing the value of the escrow account as provided under sub-regulation (9) of regulation 28.

Withdrawal of offer.

27. (1) No public offer, once made, shall be withdrawn except under the following circumstances :-

- (a) ¹[***]
- (b) the statutory approval(s) required have been refused;
- (c) the sole acquirer, being a natural person, has died;
- (d) such circumstances as in the opinion of the Board merit withdrawal.

(2) In the event of withdrawal of the offer under any of the circumstances specified under sub-regulation (1), the acquirer or the merchant banker shall, -

- (a) make a public announcement in the same newspapers in which the public announcement of offer was published, indicating reasons for withdrawal of the offer ;
- (b) simultaneously with the issue of such public announcement, inform - (i) the Board; (ii) all the stock exchanges on which the shares of the company are listed; and (iii) the target company at its registered office.

Provision of escrow.

28. (1) The acquirer shall as and by way of security for performance of his obligations under the regulations, deposit in an escrow account such sum as specified in sub-regulation (2).

(2) The escrow amount shall be calculated in the following manner, -

- (a) For consideration payable under the public offer, -

up to and including Rs. 100 crores	25 per cent;
exceeding Rs. 100 crores	25 per cent;
up to Rs. 100 crores and 10 per cent thereafter.	
- (b) For offers which are subject to a minimum level of acceptance, and the acquirer does not want to acquire a minimum of 20 per cent, than 50 per cent of the consideration payable under the public offer in cash shall be deposited in the escrow account.

(3) The total consideration payable under the public offer shall be calculated assuming full acceptances and at the highest price if the offer is subject to differential pricing, irrespective of whether the consideration for the offer is payable in cash or otherwise.

(4) The escrow account referred to in sub-regulation (1) shall consist of, -

- (a) cash deposited with a scheduled commercial bank; or
- (b) bank guarantee in favour of the merchant banker; or
- (c) deposit of acceptable securities with appropriate margin, with the merchant banker; or
- (d) cash deposited with a scheduled commercial bank in case of clause (b) of sub-regulation (2) of this regulation.

(5) Where the escrow account consists of deposit with a scheduled commercial bank, the acquirer shall while opening the account, empower the merchant banker appointed for the offer to instruct the bank to issue a banker's cheque or demand draft for the amount lying to the credit of the escrow account, as provided in the regulations.

(6) Where the escrow account consists of bank guarantee, such bank guarantee shall be in favour of the merchant banker and shall be valid at least for a period commencing from the date of public announcement until ²[twenty] days after the closure of the offer.

(7) The acquirer shall, in case the escrow account consists of securities empower the merchant banker to realise the value of such escrow account by sale or otherwise provided that if there is any deficit on realisation of the value of the securities, the merchant banker shall be liable to make good any such deficit.

(8) In case the escrow account consists of bank guarantee or approved securities, these shall not be returned by the merchant banker till after completion of all obligations under the regulations.

(9) In case there is any upward revision of offer, consequent upon a competitive bid or otherwise, the value of the escrow account shall be increased to equal at least 10 per cent of the consideration payable upon such revision.

(10) Where the escrow account consists of bank guarantee or deposit of approved securities, the acquirer shall also deposit with the bank a sum of at least 1 per cent of the total consideration payable, as and by way of security for fulfilment of the obligations under the regulations by the acquirers.

(11) The Board shall in case of non-fulfilment of obligations under the regulations by the acquirer forfeit the escrow account either in full or in part.

¹[(11A) In case of failure by the acquirer to obtain shareholders' approval required under sub-regulation (3) of regulation 20, the amount in escrow account may be forfeited.]

(12) The escrow account deposited with the bank in cash shall be released only in the following manner,—

- (a) the entire amount to the acquirer upon withdrawal of offer in terms of regulation 27 upon certification by the merchant banker;
- (b) for transfer to the special account opened in terms of sub-regulation (1) of regulation 29 :
Provided that the amount so transferred shall not exceed 90 per cent of the cash deposit made under clause (a) of sub-regulation (2) of this regulation;
- (c) to the acquirer, the balance of 10 per cent of the cash deposit made under clause (a) of sub-regulation (2) of this regulation or the cash deposit made under sub-regulation ²[(10)] of this regulation, on completion of all obligations under the regulations, and upon certification by the merchant banker;
- (d) the entire amount to the acquirer upon completion of all obligations under the regulations, upon certification by the merchant banker, where the offer is for exchange of shares or other secured instruments;
- (e) the entire amount to the merchant banker, in the event of forfeiture for non-fulfilment of any of the obligations under the regulations, for distribution among the target company, the regional stock exchange and to the shareholders who had accepted the offer in the following manner, after deduction of expenses, if any, of the merchant banker and the registrars to the offer—
 - (i) one-third of the amount to the target company;
 - (ii) one-third of the amount to the regional stock exchange for credit of the investor protection fund or any other similar fund for investor education, research, grievance redressal and similar such purposes as may be specified by the Board from time to time;
 - (iii) residual one-third to be distributed *pro rata* among the shareholders who have accepted the offer.

(13) In the event of non-fulfilment of obligations by the acquirer, the merchant banker shall ensure realisation of escrow amount by way of foreclosure of deposit invocation of bank guarantee

or sale of securities and credit proceeds thereof to the regional stock exchange of the target company, for the credit of the investor protection fund or any other similar fund.

Payment of consideration.

29. (1) For the amount of consideration payable in cash, the acquirer shall, within a period of ¹[seven] days from the date of closure of the offer, open a special account with a banker to an issue registered with the Board and deposit therein, such sum as would, together with 90 per cent of the amount lying in the escrow account, if any, make up the entire sum due and payable to the shareholders as consideration for acceptances received and accepted in terms of these regulations and for this purpose, transfer the funds from the escrow account.

(2) The unclaimed balance lying to the credit of the account referred to in sub-regulation (1) at the end of three years from the date of deposit thereof shall be transferred to the investor protection fund of the regional stock exchange of the target company.

(3) In respect of consideration payable by way of exchange of securities, the acquirer shall ensure that the securities are actually issued and despatched to the shareholders.

CHAPTER IV

BAIL OUT TAKEOVERS

Bail out takeovers.

30. (1) The provisions of this Chapter shall apply to a substantial acquisition of shares in a financially weak company not being a sick industrial company, in pursuance of a scheme of rehabilitation approved by a public financial institution of a scheduled bank (herein-after referred to as “the lead institution”).

(2) The lead institution shall be responsible for ensuring compliance with the provisions of this Chapter.

(3) The lead institution shall appraise the financially weak company taking into account the financial viability, and assess the requirement of funds for revival and draw up the rehabilitation package on the principle of protection of interests of minority shareholders, good management, effective revival and transparency.

(4) The rehabilitation scheme shall also specifically provide the details of any change in management.

(5) The scheme may provide for acquisition of shares in the financially weak company in any of the following manner :

- (a) outright purchase of shares, or
- (b) exchange of shares, or
- (c) a combination of both :

Provided that the scheme as far as possible may ensure that after the proposed acquisition the erstwhile promoters do not own any shares in case such acquisition is made by the new promoters pursuant to such scheme.

Explanation.—For the purpose of this Chapter, the expression “financially weak company” means a company, which has at the end of the previous financial year accumulated losses, which has resulted in erosion of more than 50 per cent but less than 100 per cent of its net worth as at the beginning of the previous financial year that is to say of the sum total of the paid-up capital and free reserves.

Manner of acquisition of shares.

31. (1) Before giving effect to any scheme of rehabilitation the lead institution shall invite offers for acquisition of shares from at least three parties.

(2) After receipt of the offers under sub-regulation (1), the lead institution shall select one of the parties having regard to the managerial competence, adequacy of financial resources and technical capability of the person acquiring shares to rehabilitate the financially weak company.

(3) The lead institution shall provide necessary information to any person intending to make an offer to acquire shares about the financially weak company and particularly in relation to its present management technology, range of products manufactured, shareholding pattern, financial holding and performance and assets and liabilities of such company for a period covering five years from the date of the offer as also the minimum financial and other commitments expected of from the person acquiring shares for such rehabilitation.

Manner of evaluation of bids.

32. (1) The lead institution shall evaluate the bids received with respect to the purchase price or exchange of shares, track record, financial resources, reputation of the management of the person acquiring shares and ensure fairness and transparency in the process.

(2) After making evaluation as provided in sub-regulation (1), the offers received shall be listed in order of preference and after consultation with the persons in the affairs of the management of the financially weak company accept one of the bids.

Person acquiring shares to make an offer.

33. The person acquiring shares who has been identified by the lead institution under sub-regulation (2) of regulation 32, shall on receipt of a communication in this behalf from the lead institution make a formal offer to acquire shares from the promoters or persons in charge of the affairs of the management of the financially weak company, financial institutions and also other shareholders of the company at a price determined by mutual negotiation between the person acquiring the shares and the lead institution.

Explanation.—Nothing in this regulation shall prohibit the lead institution offering the shareholdings held by it in the financially weak company as part of the scheme of rehabilitation.

Person acquiring shares to make public announcement.

34. (1) The person acquiring shares from the promoters or the persons in charge of the management of the affairs of the financially weak company or the financial institution shall make a public announcement of his intention for acquisition of shares from the other shareholders of the company.

(2) Such public announcement shall contain relevant details about the offer including the information about the identity and background of the person acquiring shares, the number and percentage of shares proposed to be acquired, offer price, the specified date, the date of opening of the offer and the period for which the offer shall be kept open and such other particulars as may be required by the Board.

(3) The letter of offer shall be forwarded to each of the shareholders other than the promoters or the persons in charge of the management of the financially weak company and the financial institutions.

(4) If the offer referred to in sub-regulation (1) results in the public shareholding being reduced to 10 per cent or less of the voting capital of the company, the acquirer shall either—

(a) within a period of three months from the date of closure of the public offer, make an offer to buy out the outstanding shares remaining with the shareholders at the same offer price, which may have the effect of delisting the target company; or

(b) undertake to disinvest through an offer for sale or by a fresh issue of capital to the public which shall open within a period of six months from the date of closure of the public offer, such number of shares so as to satisfy the listing requirements.

(5) The letter of offer shall state clearly the option available to the acquirer under sub-regulation (4).

(6) For the purposes of computing the percentage referred to in sub-regulation (4), the voting rights as at the expiration of ¹[twenty] days after the closure of the public offer shall be reckoned.

(7) While accepting the offer from the shareholders other than the promoters or persons in charge of the financially weak company or the financial institutions, the person acquiring shares shall offer to acquire from the individual shareholder his entire holdings if such holding is up to hundred shares of the face value of rupees ten each or ten shares of the face value of rupees hundred each.

Competitive bid.

35. No person shall make a competitive bid for acquisition of shares of the financially weak company once the lead institution has evaluated the bid and accepted the bid of the acquirer who has made the public announcement of offer for acquisition of shares from the shareholders other than the promoters or the persons in charge of the management of the financially weak company.

Exemption from the operations of Chapter III.

36. (1) Every offer which has been made in pursuance of regulation 30 shall be accompanied with an application to the Board for exempting such acquisitions from the provisions of Chapter III of these regulations.

(2) For considering such request the Board may call for such information from the company as also from the lead institution, in relation to the manner of vetting the offers evaluation of such offers and similar other matters.

(3) Notwithstanding grant of exemption by the Board, the lead institution or the acquirer as far as may be possible, shall adhere to the time limits specified for various activities for public offer specified in Chapter III.

Acquisition of shares by a State level public financial institution.

37. Where a proposal for acquisition of shares in respect of a financially weak company is made by a State level public financial institution, the provisions of these regulations insofar as they relate to scheme of rehabilitation prepared by a public financial institution, shall apply except that in such a case the Industrial Development Bank of India, a corporation established under the Industrial Development Bank of India Act, 1964 (10 of 1964), shall be the agency for ensuring compliance with these regulations for acquisition of shares in the financially weak company.

CHAPTER V

INVESTIGATION AND ACTION BY THE BOARD

Board's right to investigate.

38. The Board may appoint one or more persons as investigating officer to undertake investigation for any of the following purposes, namely :—

- (a) to investigate into the complaints received from the investors, the intermediaries or any other person on any matter having a bearing on the allegations of substantial acquisition of shares and takeovers ;
- (b) to investigate *suo motu* upon its own knowledge or information, in the interest of the securities market or investors' interest, for any breach of the regulations ;
- (c) to ascertain whether the provisions of the Act and the regulations are being complied with for any breach of the regulations.

Notice before investigation.

39. (1) Before ordering an investigation under regulation 38, the Board shall give not less than 10 days notice to the acquirer, the seller, the target company, the merchant banker, as the case may be.

(2) Notwithstanding anything contained in sub-regulation (1), where the Board is satisfied that in the interest of the investors no such notice should be given, it may, by an order in writing direct that such investigation be taken up without such notice.

(3) During the course of an investigation, the acquirer, the seller, the target company, the merchant banker, against whom the investigation is being carried out shall be bound to discharge his obligation as provided in regulation 40.

Obligations on investigation by the Board.

40. (1) It shall be the duty of the acquirer, the seller, the target company, the merchant banker whose affairs are being investigated and of every director, officer and employee thereof, to produce to the investigating officer such books, securities, accounts, records and other documents in its custody or control and furnish him with such statements and information relating to his activities as the investigating officer may require, within such reasonable period as the investigating officer may specify.

(2) The acquirer, the seller, the target company, the merchant banker and the persons being investigated shall allow the investigating officer to have reasonable access to the premises occupied by him or by any other person on his behalf and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the acquirer, the seller, the target company, the merchant banker or such other person and also provide copies of documents or other materials which, in the opinion of the investigating officer are relevant for the purposes of the investigation.

(3) The investigating officer, in the course of investigation, shall be entitled to examine or to record the statements of any director, officer or employee of the acquirer, the seller, the target company, the merchant banker.

(4) It shall be the duty of every director, officer or employee of the acquirer, the seller, the target company, the merchant banker to give to the investigating officer all assistance in connection with investigation, which the investigating officer may reasonably require.

Submission of report to the Board.

41. The investigating officer shall, as soon as possible, on completion of the investigation, submit a report to the Board :

Provided that if directed to do so by the Board, he may submit interim reports.

Communication of findings.

42. (1) The Board shall, after consideration of the investigation report referred to in regulation 41, communicate the findings of the investigating officer to the acquirer, the seller, the target company, the merchant banker, as the case may be, and give him an opportunity of being heard.

(2) On receipt of the reply, if any, from the acquirer, the seller, the target company, the merchant banker, as the case may be, the Board may call upon him to take such measures as the Board may deem fit in the interest of the securities market and for due compliance with the provisions of the Act and the regulations.

Appointment of auditor.

43. Notwithstanding anything contained in this regulation, the Board may appoint a qualified auditor to investigate into the books of account or the affairs of the person concerned :

Provided that the auditor so appointed shall have the same powers of the investigating authority as stated in regulation 38 and the obligations of the person contained in regulation 40 shall be applicable to the investigation under this regulation.

¹[Directions by the Board.

44. Without prejudice to its right to initiate action under Chapter VIA and section 24 of the Act, the Board may, in the interest of securities market or for protection of interest of investors, issue such directions as it deems fit including :—

- (a) directing appointment of a merchant banker for the purpose of causing disinvestment of shares acquired in breach of regulation 10, 11 or 12 either through public auction or market mechanism, in its entirety or in small lots or through offer for sale;

- (b) directing transfer of any proceeds or securities to the Investors Protection Fund of a recognised stock exchange;
- (c) directing the target company or depository to cancel the shares where an acquisition of shares pursuant to an allotment is in breach of regulation 10, 11 or 12;
- (d) directing the target company or the depository not to give effect to transfer or further freeze the transfer of any such shares and not to permit the acquirer or any nominee or any proxy of the acquirer to exercise any voting or other rights attached to such shares acquired in violation of regulation 10, 11 or 12;
- (e) debaring any person concerned from accessing the capital market or dealing in securities for such period as may be determined by the Board;
- (f) directing the person concerned to make public offer to the shareholders of the target company to acquire such number of shares at such offer price as determined by the Board;
- (g) directing disinvestment of such shares as are in excess of the percentage of the shareholding or voting rights specified for disclosure requirement under regulation 6, 7 or 8;
- (h) directing the person concerned not to dispose of assets of the target company contrary to the undertaking given in the letter of offer;
- (i) directing the person concerned, who has failed to make a public offer or delayed the making of a public offer in terms of these regulations, to pay to the shareholders, whose shares have been accepted in the public offer made after the delay, the consideration amount along with interest at the rate not less than the applicable rate of interest payable by banks on fixed deposits.]

Penalties for non-compliance.

45. (1) Any person violating any provisions of the regulations shall be liable for action in terms of the regulations and the Act.

(2) If the acquirer or any person acting in concert with him, fails to carry out the obligations under the regulations, the entire or a part of the sum in the escrow account shall be liable to be forfeited and the acquirer or such a person shall also be liable for action in terms of the regulations and the Act.

(3) The board of directors of the target company failing to carry out the obligations under the regulations shall be liable for action in terms of the regulations and the Act.

(4) The Board may, for failure to carry out the requirements of the regulations by an intermediary, initiate action for suspension or cancellation of registration of an intermediary holding a certificate of registration under section 12 of the Act :

Provided that no such certificate of registration shall be suspended or cancelled unless the procedure specified in the regulations applicable to such intermediary is complied with.

(5) For any mis-statement to the shareholders or for concealment of material information required to be disclosed to the shareholders, the acquirers or the directors where the acquirer is a body corporate, the directors of the target company, the merchant banker to the public offer and the merchant banker engaged by the target company for independent advice would be liable for action in terms of the regulations and the Act.

(6) The penalties referred to in sub-regulations (1) to (5) may include :—

- (a) criminal prosecution under section 24 of the Act;
- (b) monetary penalties under section 15H of the Act;
- (c) directions under the provisions of section 11B of the Act;
- ¹[(d) directions under section 11(4) of the Act;
- (e) cease and desist order in proceedings under section 11D of the Act;
- (f) adjudication proceedings under section 15HB of the Act.]

Appeal to the Central Government.

²[46. Any person aggrieved by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, (*i.e.*, after 16th December, 1999), under these regulations may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.]

Repeal and saving.

47. (1) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1994, are hereby repealed.

(2) Notwithstanding such repeal,—

- (a) anything done or any action taken or purported to have been done or taken including approval of letter of offer, exemption granted, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the said regulations shall be deemed to have been done or taken under the corresponding provisions of these regulations;
- (b) any application made to the Board under the said regulations and pending before it shall be deemed to have been made under the corresponding provisions of these regulations;
- (c) any appeals preferred to the Central Government under the said regulations and pending before it shall be deemed to have been preferred under the corresponding provisions of these regulations.

Source : SO 124(E), dated 20-2-1997.