

Subject:

LAW



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Paper :

CORPORATE LAW

Module :

Listing and delisting of securities and their implications



A Gateway to



Q1: E-TEXT

MODULE ID 8: LISTING AND DELISTING OF SECURITIES AND THEIR IMPLICATIONS

Module Overview: The module on listing and delisting of securities and their implications deals with the necessity of introducing mandatory requirement of listing of securities for any public issue, its benefit for investors. However, promoters of a company may after listing decide to delist its securities. It is necessary for a student of corporate law to understand reasons for a company to list and delist its securities. The module will also elaborate upon the procedure prescribed for the same. Provisions of the Securities Contracts (Regulations) Act, 1956 and Securities and Exchange Board of India Act and its related regulations will also be discussed along with the Companies Act, 2013.

Subject Name: Law

Paper Name: Corporate Law

Module ID: 8

Pre-requisites: Knowledge about different types of companies and their need of companies to raise share capital, methods for raising capital and issue of prospectus and share allotment by public companies

Objectives:

To understand the need for mandatory listing of securities and how it secures investors

To know what is listing agreement and what are its different clauses with their relevance

To understand why securities are delisted and what is the procedure for delisting

Keywords: securities, issue of shares, listing agreement, stock exchanges, delisting of securities, promoters, corporate governance

Learning outcomes:

Students will be able to understand the meaning of listing and delisting of securities. After understanding important clauses of listing agreement they will be able to appreciate that listing is necessary for investors' protection as it binds listed companies to meet requirements of the agreement. Students will also understand the concept of delisting, its need and implications for a company.



INTRODUCTION: Every company is required to make application to one or more recognized stock exchanges to obtain permission for dealing of securities on such stock exchanges. S. 40 of the Companies Act, provides that approval of the stock exchange where application was made by the company for listing of securities is mandatory. Money received for subscription of securities from the public has to be kept in a separately by the company and it can be utilized by the company for the following purposes:

- i. for adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange or exchanges where application was made by the company. Names of such stock exchanges have to be specified in the prospectus issued by the company.
- ii. for repayment of money if company is not able to allot securities for any other reason. Refund of money has to be made within the time limit specified by the Securities and Exchange Board of India (SEBI).

Compliance of the section is necessary for any company and default is punishable with fine between five lakhs to fifty five lakhs.

LISTING AGREEMENT:

Listing agreement is signed by the company with the stock exchange at the time of listing of securities by the company at that stock exchange (SE). Listing of securities is provided by the Securities Contracts (Regulation) Act, 1956 (SCRA, 1956). The Act was brought into force to meet a specific evil of undesirable transactions like speculation in securities¹. S. 21 of SCRA, 1956 provides for conditions for listing of securities and says that where securities are listed on the application of any person in any recognized stock exchange (RSE), such person shall company with the conditions of listing agreement with that RSE.

Important clauses of the listing agreement:

Clause 16 (Closure of Transfer Books):

Clause 19 (Board Meeting):

Clause 21 (Interest on debentures etc):

Clause 24 (In principle approval):

Clause 28 (Changes in the form or nature of securities):

Clause 29 (Change in Nature of Business):

Clause 30 (Changes in directorate etc):

1. Clause 16 (Closure of Transfer Books): the company closes its transfer books for declaration of dividend, rights issue, bonus issue, issues of shares for conversion of

¹ Aims and Objects of the Securities Contracts (Regulations) Act, 1956



debentures etc. by giving a notice of seven working days to the SE. If derivatives are available on stocks of a company, at least seven days notice is required to be given to SE for mergers, demergers, splits and bonus shares.

2. Clause 19 (Board Meeting): The company has to give prior notice to SE of at least 2 working days for Board meeting where proposal for buy-back, declaration of dividend, rights issue, issue of convertible debentures is to be made.

3. Clause 21 (Interest on debentures etc): The Company will notify at least 21 days in advance of the date on and from which interest on debentures, bonds, redemption amount on redeemable shares, debentures or bonds will be payable.

4. Clause 24 (In principle approval): The company will take in-principle approval before further issue of securities from SE where its securities are listed. The company will make true, fair and adequate disclosures in draft prospectus etc. . The company will file a scheme or petition proposed to be filed before any court or tribunal to SE at least a month before. The company is required to ensure that any scheme of arrangement, amalgamation, merger, reconstruction, reduction of capital etc to be presented in any court or tribunal should not violate, override or circumscribe provisions of securities laws or SE. it will also file auditor's certificate that the accounting treatment in scheme is in compliance with the prescribe accounting standards.

5. Clause 28 (Changes in the form or nature of securities): The company will not make any change in the nature or form of listed securities or rights or privileges of their holders without giving a prior notice of at least twenty one days to the SE.

6. Clause 29 (Change in Nature of Business): The company will promptly notify the SE of any proposed change in the nature or general character of its business.

7. Clause 30 (Changes in directorate etc): The company will promptly notify the SE about any changes in directorship of the company or change of Managing director, secretaries etc or auditors.

8. Clause 31: The company will be required to file with the SE without application six copies of Statutory and directors' annual reports, all periodicals and special reports, notices, resolutions and circulars relating to new issue of capital, three copies of all notices, call letters or other circulars sent to shareholders, creditors or debenture-holders in connection with scheme of arrangements, reconstruction mergers or amalgamations etc.

9. Clause 32 (Statement of salient features): The company will send a statement containing salient features of balance sheet, profit & loss account, auditor's report to each shareholder. In case of any name change suggesting any new line of business, the company will disclose continuously turnover and income etc. from such new activities in the annual returns separately for a period of 3 years from the date of change. The company will make disclosures in compliance with accounting standard on related party disclosures, loans, advances and investments in its own shares in the annual report.

10. Clause 35 (Filing of information): The company will file with the SE statement showing shareholding pattern, details of locked-in shares, details of depository receipts and voting patterns of shareholders. Clause 35 B which was amended to meet the requirements of new Companies Act, 2013 provides for e-voting facility to shareholders in respect of shareholders resolutions to be passed at general meetings or through postal ballots. The company is required to continue to provide for postal ballots for shareholders not having access to e-facility².

² Corporate Governance in listed entities - Amendments to Clauses 35B and 49 of the Equity Listing Agreement
(http://www.sebi.gov.in/cms/sebi_data/attachdocs/1397734478112.pdf)



11. Clause 36 (Information about Material Events): The company has to provide information about events like strikes, lockouts, closure on account of power cuts etc both at the time of occurrence and cessation of event. Other material events include change in the general character or nature of business of company, disruption of operations due to natural calamity, commencement of commercial production, developments with respect to pricing or realization arising out of change in regulatory framework, litigation, revision in ratings and any other information having bearing on performance or operations of the company other price sensitive information.

12. Clause 40 A & B (Minimum level of public shareholding & Takeover offer): where issuer company is required to achieve the minimum level of public shareholding, it may issue shares or offer for sale shares held by promoters to the public through prospectus or sell shares of the promoters in the secondary market under clause 40A. The company has to inform the SE about any take offer made or change in the control of the management of the company.

13. Clause 41(Half yearly financial statement): The disclosure of half yearly consolidated financial statements has been made mandatory in case there is a variation in the revenue, total assets or liabilities, profits or loss in the consolidated financial results of 20% or more vis-à-vis the corresponding amounts in the standalone financial results as per the last annual audited financial statements.

14. Clause 41 (Company Secretary): The company has to appoint company secretary to act as a compliance officer who will be responsible for share transfer process and conduct a due diligence survey of Registrar and Share transfer agents and/or in-house transfer facility.

15. Clause 49 (Corporate Governance): The company will comply with the requirements to protect rights of shareholders, defines role of stake holders, composition, code of conduct, compensations and disclosures for independent directors, constitution of qualified and independent audit committee, provisions relating to subsidiary companies, disclosures about related party transactions, accounting treatment, risk management, proceeds from public/preferential/rights issues, management and shareholders, certification by CEO /CFO for review of financial statements , non-violation of code of conduct of company, effectiveness of internal control systems etc. The company has to give a report on corporate governance in the annual report and obtain a certificate of compliance for corporate governance form auditors or practicing company secretaries. Clause 49 has also been amended in view of the Companies Act, 2013³.

16. Clause 53 (Agreements with media companies): After any contract or agreement is entered into with any media company or its associates by the company, it has to disclose shareholding of that media company, nominee of it on the Board of directors, any management control, potential conflict and any other contracts, treaties etc with the media company.

17. Clause 54: The company has to maintain a functional website containing basic information about the company like details of business, shareholding pattern, financial information, compliance with corporate governance, contact information for investor grievances etc.

The above stated few important clauses of listing agreement which every company has to make with the SE in which it wants to list its securities clearly indicate that such information protects investors' interest in the company. Any prospective investor or any existing share holder of the company has full financial information, management and control, shareholding pattern, assets, borrowings, investments of the company. The companies are also required to give reports on corporate governance and risk management etc which will indicate that not

³ ibid



only the business of the companies is conducted ethically with compliance of all relevant laws but also that the company is having a risk management scheme and grievance settlement procedure in place. All this adds to the positive image of the company, creates greater acceptability of stock of the company, increases liquidity for investors, investors feel safe since they can anytime sell their securities besides the fact that the company can raise public finance after listing. The Securities Contracts (Regulation) Rules, 1957 provides rules for listing of securities. Rule 19 provides that at least twenty five percent of each kind of equity share or debentures convertible into equity shares should be offered and allotted to public by the company.

Clause 31: six copies of Statutory and directors' annual reports, all periodicals and special reports

Clause 32 : Statement of salient features

Clause 35 : Filing of information

Clause 36 : Information about Material Events

Clause 40 A & B : Minimum level of public shareholding & Takeover offer

Clause 41: Half yearly financial statement

Clause 41 (Company Secretary):

Clause 49 (Corporate Governance):

Clause 53 (Agreements with media companies):

Clause 54: functional website

DELISTING OF SECURITIES:



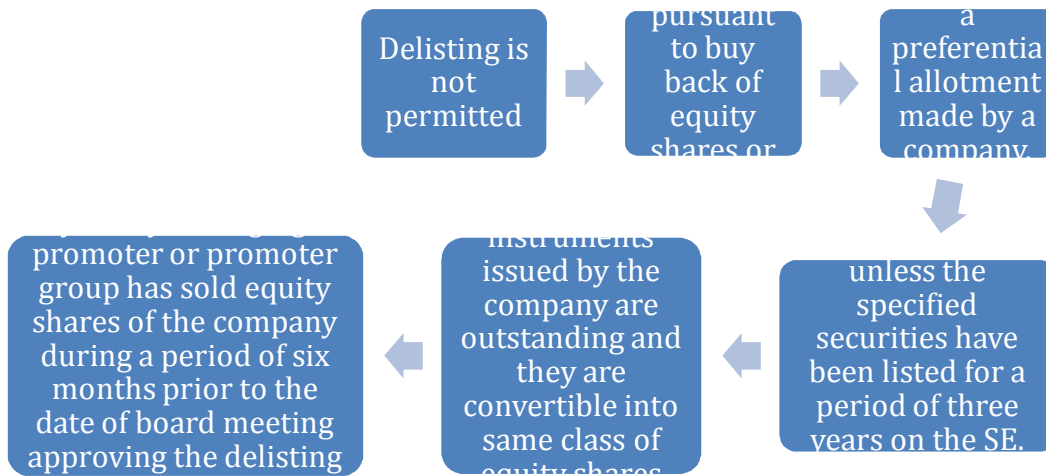
Delisting of securities if withdrawal of securities by the company from the SE where they were listed and dealt in. When the company no longer wants to provide trading opportunity for any of its specified securities on the SE where they were listed, it may opt for delist such securities. As per SEBI, "delisting" of securities means permanent removal of securities of a listed company from a stock exchange as a consequence of which, the securities of the company would no longer be traded at that stock exchange⁴. Delisting may be offered voluntarily by a company (voluntary delisting) or the concerned SE may also direct for delisting of specified securities (compulsory delisting). This is also a continuous listing requirement under Rule 19A. The promoters of the company buy those shares from the public shareholders which are sought to be delisted.

Conditions for delisting:

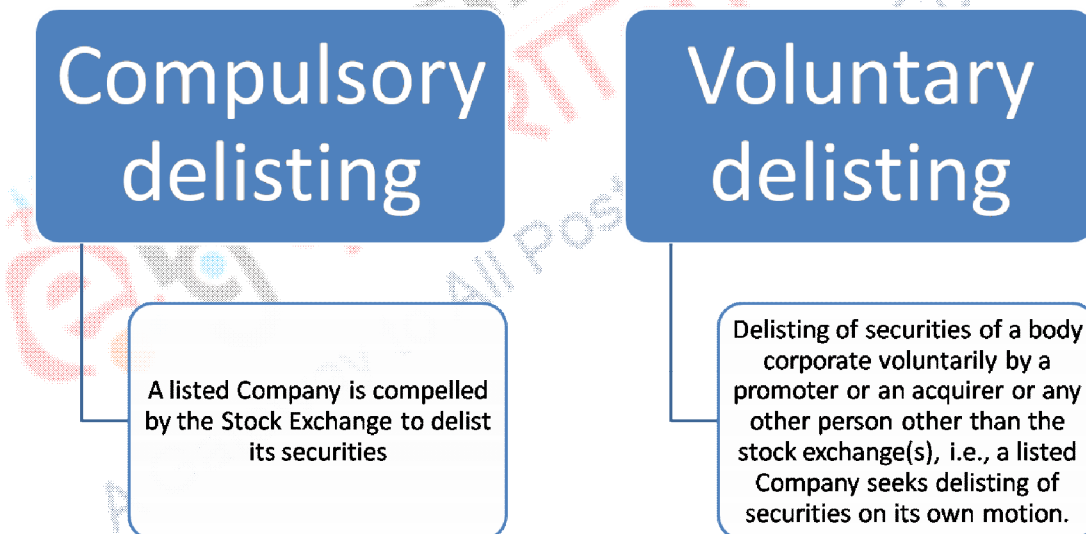
Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 provides the conditions, types and procedure for delisting of shares. Delisting is not permitted pursuant to buy back of equity shares or a preferential allotment made by a company. It is not permitted unless the specified securities have been listed for a period of three years on the SE. A company cannot delist its shares if any convertible instruments issued by the company are outstanding and they are convertible into same class of equity shares that are sought to be listed. New restriction is placed on promoters and promoter group regarding delisting of shares by the SEBI (Delisting of Equity Shares) (Amendment) Regulations 2015. Regulation 4 (IA) provides that in case any entity belonging to promoter or promoter group has sold equity shares of the company during a period of six months prior to the date of board meeting approving the delisting proposal, neither of them will be able to propose delisting of equity shares of a company.

The promoters of any company are restricted from using funds of the company for delisting purposes in providing exit opportunity to shareholders. Promoters or any other person is not allowed to employ device, artifice, or scheme or make any transaction or practice operating as fraud on shareholders or is fraudulent, deceptive or manipulative.

⁴<http://www.sebi.gov.in/faq/faqdelist.html>



Types of Delisting:



a. Voluntary delisting: A company may delist its equity shares for all the RSE or any one or some of the RSE where they are listed. The decision for delisting is taken promoters of the company due to varied reasons which may include avoidance of statutory compliance, trading losses, suspension of business of company, company becoming a sick company or corporate restructuring etc. If a company delists equity shares from only one or few SE and such shares remain listed in other SE having nationwide terminals no exit opportunity is required to be given to share holders of the company. Exit opportunity is required to be given to public shareholders holding the equity shares which are sought to be delisted in case after the proposed delisting shares would not remain listed on any SE having nationwide terminals.

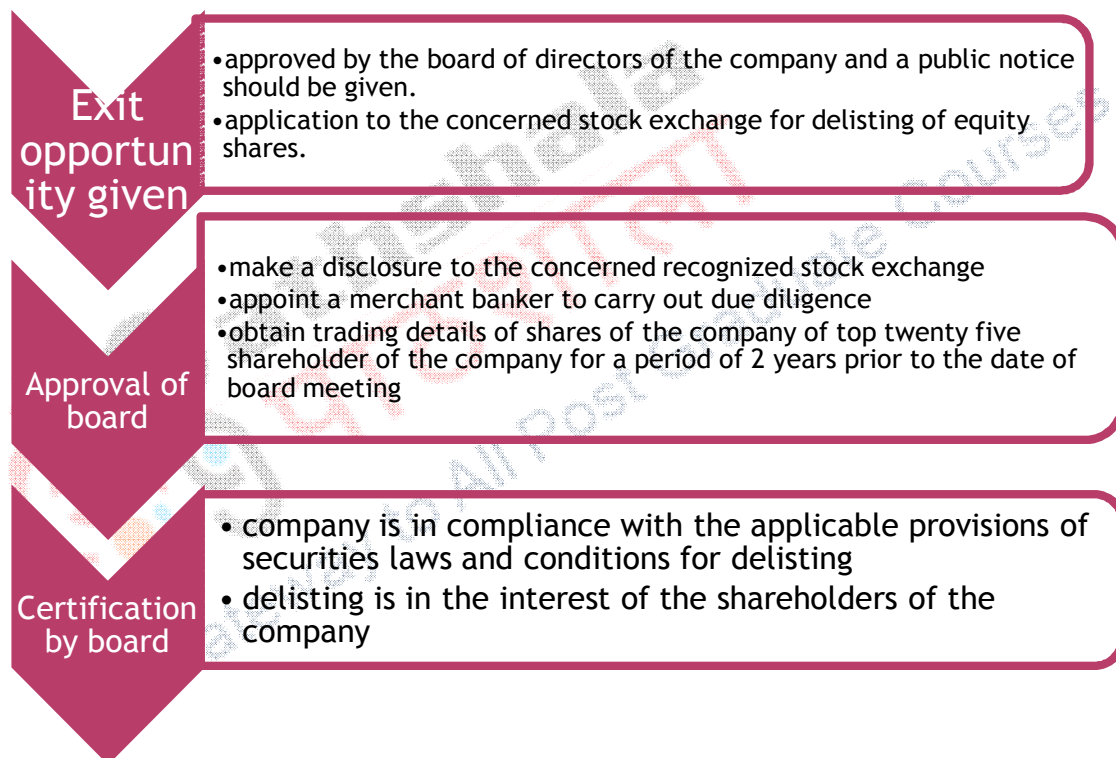
Where no exit opportunity is required to be given, proposed delisting should be approved by the board of directors of the company and a public notice should be given. The company



should also make an application to the concerned stock exchange for delisting of equity shares. Amendments of 2015 require that prior to granting approval, the board of directors shall

- i. make a disclosure to the concerned recognized stock exchange that acquirers or promoters have proposed to delist equity shares.
- ii. they should appoint a merchant banker to carry out due diligence and disclose about it to the concerned recognized stock exchange.
- iii. obtain trading details of shares of the company of top twenty five shareholder of the company for a period of 2 years prior to the date of board meeting.

Board of directors is also required to certify that the company is in compliance with the applicable provisions of securities laws and conditions for delisting and that delisting is in the interest of the shareholders of the company.



The acquirers or promoters of the company within one working day from the date of obtaining in-principle approval from the SE have to make a public announcement for delisting of shares where exit opportunity is required to be given. The acquirers or promoters of any company voluntarily delisting shares is required to open an escrow account for depositing estimated amount of consideration calculated on the basis of floor price and number of equity shares outstanding with the public shareholders. Requirements of Delisting Regulations relating to letter of offer with disclosures to be made have to be followed by the acquirers or promoters. Reverse book building process is adopted and final price is settled.



All public shareholders of the equity shares which are sought to be delisted have the right to participate in the book building process. An acquirer, promoter or person acting in concert with them and holder of depository receipts issued on the basis of underlying securities held by a custodian as well as custodian are not entitled to participate in the offer.

The acquirer or promoter is not bound to accept the offer price determined through reverse book building process. Where he decides not to accept the offer price, he will not acquire any shares, not make any final application for delisting to stock exchange and close the escrow account.

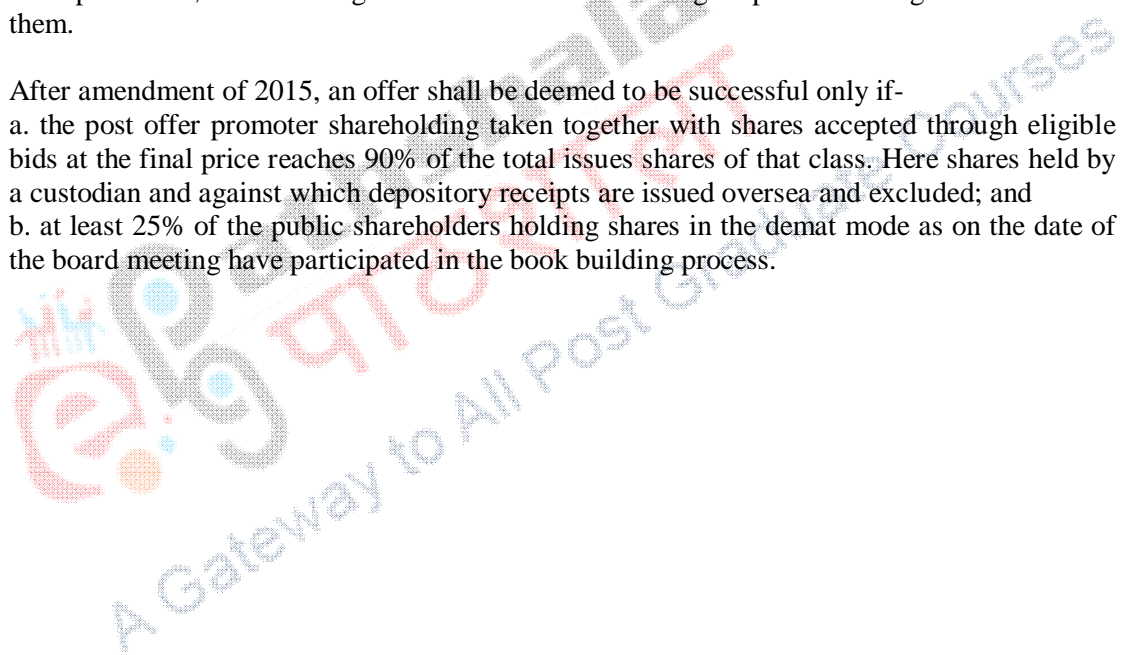
An offer deemed to be successful if post offer, the shareholding of the promoter, taken together with shares accepted through eligible bids at the final price reaches the higher of

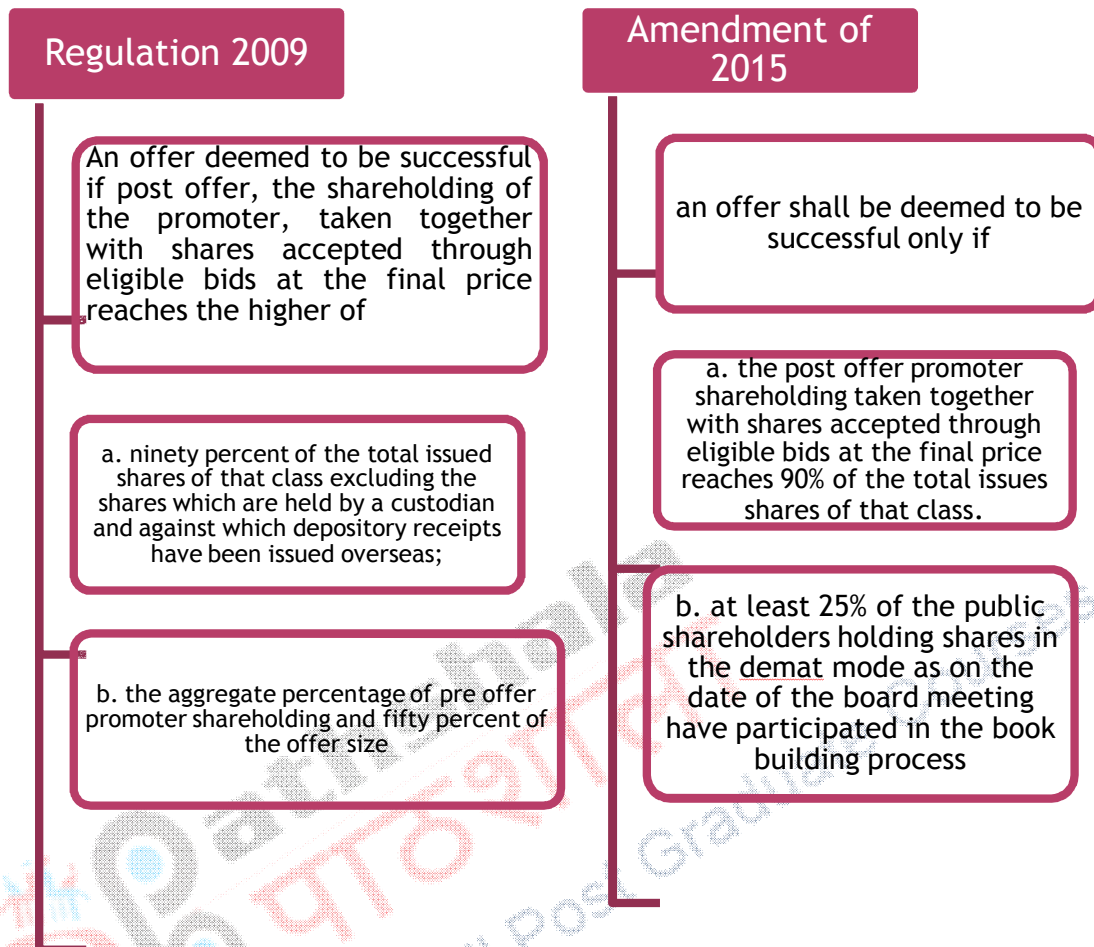
- ninety percent of the total issued shares of that class excluding the shares which are held by a custodian and against which depository receipts have been issued overseas;
- the aggregate percentage of pre offer promoter shareholding and fifty percent of the offer size.

Here promoters' shareholding is inclusive of shareholding of persons acting in concert with them.

After amendment of 2015, an offer shall be deemed to be successful only if-

- the post offer promoter shareholding taken together with shares accepted through eligible bids at the final price reaches 90% of the total issues shares of that class. Here shares held by a custodian and against which depository receipts are issued overseas and excluded; and
- at least 25% of the public shareholders holding shares in the demat mode as on the date of the board meeting have participated in the book building process.





b. Compulsory delisting: Any RSE may delist any securities listed on it on any of the following grounds As per Rule 21 of the Securities Contracts (Regulation) Rules, 1957:

- i. the company incurred losses for preceding three consecutive years and has a negative net worth;
- ii. suspension of trading in securities for more than six months;
- iii. infrequent trading of securities during preceding three years;
- iv. the company, any of its promoters or directors has been convicted for failure to comply with the provisions of SCRA, 1956, SEBI Act, 1992 or the Depositories Act, 1996 and rules, regulations framed there under and awarded a penalty of not less than one crore or imprisonment on not less than three years;
- v. the addresses of the company or any of its promoters or directors are not known or false addresses are furnished or company has changed its registered office;
- vi. public shareholding of the company has come below the minimum level required and the company has not been able to raise it with the prescribed time.

An opportunity of hearing is given to the company for delisting of securities. Decision of delisting has to be taken by a panel constituted by the SE as prescribed. A public announcement of delisting has to be made by the RSE. An independent valuer has to be appointed by the RSE for determining fair value of the delisted equity shares.

Special provisions:



In case of a small company having a paid up capital of up to one crore with no trading of its equity shares in one year immediately preceding the date of decision of delisting or the company has three hundred or less number of public shareholders and paid up value of shares held by them is less than one crore, the company is not required to follow the procedure given for exit opportunity. In the delisting matter of Trichy Distilleries and Chemicals Ltd, the issue was whether 90% of shareholders in number or shareholders holding ninety percent of the public shareholding in value irrespective of their numbers should consent to the delisting proposal. The company was able to get consent of more than ninety percent of shareholders in value but the number of shareholders giving consent did not add up to ninety percent of public shareholders. Therefore, the Madras Stock Exchange declined to delist shares. Securities Appellate Tribunal referred to section 87 of the Companies Act, 1956 on the principle of 'one share, one vote,' and held that these regulations are special provisions that operate against the backdrop of the Companies Act, 1956 and it would lead to absurdities if consent of ninety percent public shareholders in value was not accepted⁵.

Implications of delisting:

When a company decides to delist voluntarily its shares, it has to fully comply with the Regulations and promoters have to maintain sufficient consideration for shares bought back from the shareholders. Where after delisting no trading on nationwide terminals will be possible, exit opportunity needs to be given to equity shareholders whose shares will be delisted. When a company is compulsorily delisted, the company, its whole time directors, promoters and companies promoted by it are restricted from accessing securities market or seek listing for any equity shares for a period of ten years from the date of delisting.

SEBI is working on revising delisting regulations in order to make them strict to avoid possibility of manipulations in delisting but at the same time making it easy for companies to voluntarily delist securities. Listing process is often found difficult by companies and once shares are listed, agreement has to be fully complied with. Delisting process is reported to be more difficult for the companies⁶. Major changes being discussed include reducing the time period from present 250 days to complete the process of delisting in order to reduce price manipulation of stock, price manipulations by non-promoter shareholder groups, suspension of trading after announcement of delisting and minimum buy back of shares from the public.

In the Discussion paper on Review of Delisting Regulations, it has been observed that many issues have been pointed out by market participants regarding delisting irrespective of whether it has been successfully completed or failed. Apprehensions about tacit understanding of promoters with few investors and manipulations or influence in price discovery by reverse book building process by investors have been raised in the discussion paper. Important points which are under discussion include reverse book building process, lack of sufficient demand, time consuming process of delisting and informal arrangements for predetermination of prices by promoters through their own shares etc⁷.

Recent Delisting offers by Indian companies:

⁵ VT Somasundaram and Trichy Distilleries and Chemicals Ltd v. Madras Stock Exchange and SEBI, appeal no. 37 of 2011.

⁶ Anirudh Lasker, Sebi aims to ease delisting rules, check manipulation, Live Mint, Aug 11, 2014 <http://www.livemint.com/Politics/pxLGhoCzBPh8kirIj1YGMP/Sebi-aims-to-ease-delisting-rules-check-manipulation.html> accessed on Aug 11, 2014

⁷http://www.sebi.gov.in/cms/sebi_data/attachdocs/1399633833837.pdf



1. Hira Ferro Alloys Ltd is acquired by Hira Infra-Tek Ltd. Public announcement about exit offer was made by acquirer company through Motilal Oswal Investment Advisors P Ltd on Aug 7, 2014. First public announcement was made on May 16, 2014 in respect of the proposed acquisition and voluntary delisting of full paid up equity shares of the company from Bombay Stock Exchange and Madhya Pradesh SE and National SE. Letter of offer was issued on May 20, 2014 for inviting bids from all public shareholders of the company and post offer public announcement was made on June 26, 2014⁸.

2. Public shareholders of Piramal Glass Ltd were informed through public announcement on July 22, 2014 by Kotak Mahindra Capital Company Ltd on behalf of The Sri Hari Trust acting through its corporate trustee óPEL Management Services Pvt Ltd about the proposed acquisition and voluntary delisting of fully paid up equity shares of Rs 10/- each of the company vide public announcement made on April 25, 2014. Acquirer fixed the exit price of Rs 140/- per share calculated by reverse book building process. All shareholders who tendered their shares through valid bids at or below the final price were paid accordingly. Promoter Group's shareholding increased to 90.85% after the acquisition. The Company applied for delisting to NSE and BSE. The company made an offer to residual shareholders to tender their shares at the same terms and conditions⁹.

⁸<http://www.bseindia.com/stock-share-price/hira-ferro-alloys-ltd/hira-ferro/533256/>

⁹http://www.bseindia.com/corporates/anndet_new.aspx?newsid=d22d97f1-fae4-414c-8480-d5ecef2921be