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Key amendments to the SEBI Delisting Regulations – Introduction of a fixed price offer in voluntary delistings

The Securities and Exchange Board of India (Delisting of Equity Shares) (Amendment) Regulations, 2024 (“**Delisting Amendment Regulations**”) have been published by the Securities and Exchange Board of India (“**SEBI**”) on 25 September 2024. Prior to the publication of the Delisting Amendment Regulations, the delisting price computation for a voluntary delisting could be undertaken only through the reverse book building process (“**RBB**”) that was benchmarked against a floor price or an indicative price (i.e., the upfront price declared by the acquirer, being higher than the floor price, at which the acquirer is willing to undertake the delisting bid). The Delisting Amendment Regulations have introduced the concept of a fixed price mechanism for delisting of a listed company in addition to the RBB, subject to certain conditions.

The key amendments under the Delisting Amendment Regulations for a voluntary delisting have been set out below:

Eligibility for fixed price delisting

The shares of the company proposed to be delisted needs to be “frequently traded” as set out under the SEBI (Delisting of Equity Shares) Regulations, 2021 (“**SEBI Delisting Regulations**”) to avail the option of the fixed price mechanism for delisting. The SEBI Delisting Regulations refer us to the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**SEBI Takeover Regulations**”) to understand what qualifies as “frequently traded”.

Minimum fixed price

The ‘fixed price’ needs to be at least 15% more than the “floor

price” calculated in terms of the SEBI Delisting Regulations.

Determination of floor price

The floor price (irrespective of whether RBB or fixed price delisting is elected by the acquirer) will be the higher of: (i) volume weighted average price paid or payable for acquisitions by the acquirer along with persons acting in concert, during the 52 weeks immediately preceding the reference date; (ii) the highest price paid or payable for any acquisition by the acquirer along with persons acting in concert during the 26 weeks immediately preceding the reference date; (iii) adjusted book value (considering consolidated financials) as determined by an independent registered valuer; (iv) the volume weighted average market price for a period of 60 trading days immediately preceding the reference date on the stock exchange where the maximum trading volume of the equity shares is recorded, provided such shares are frequently traded; or (v) the price determined by an independent registered valuer taking into account valuation parameters such as the book value, comparable trading multiples and any other customary valuation metrics for valuation of shares of companies in the same industry where the shares are not frequently traded.

Prior to the Delisting Amendment Regulations, floor price for shares of a company under a delisting bid was calculated in the same manner in which the open offer price under the SEBI Takeover Regulations would have been computed for the shares of such a listed company. In accordance with the Delisting Amendment Regulations, the various price related



scenarios/methodologies have now been expressly set out in the SEBI Delisting Regulations itself.

While majorly the pricing scenarios provided in the Delisting Amendment Regulations do mirror the SEBI Takeover Regulations related pricing parameters relevant for a listed company having frequently traded shares, an additional pricing parameter has been provided which is exclusive to a delisting scenario involving frequently traded shares i.e., the price computed in accordance with the adjusted book value (considering consolidated financials) as determined by an independent registered valuer (adjusted book value method will not be applicable for delisting bids involving public sector undertakings) and the formula for determination of adjusted book value has been provided in great detail as well. It is interesting to note that this valuation methodology broadly tracks the Rule 11UA valuation method as provided under the Income Tax Rules, 1962 which is used, *inter alia*, for the purposes of determining deemed income.

As and when the “adjusted book value” method is practically implemented, it will be interesting to observe SEBI’s reaction on how the market is applying this formula. In the event there is lack of consensus, then delisting bids may get stalled due to SEBI/stock exchanges directing revision in valuation for the delisting bid which may also lead to increase in securities law related adjudication with respect to the delisting offers.

Determination of reference date

The reference date to determine the floor price means: (i) the date of initial public announcement made by the acquirer, if such an announcement was made before the close of market hours; or (ii) the trading day next to the date of the initial public announcement, if such an announcement was made after the close of market hours or on a non-trading day.

As the initial public announcement is the first statutorily required document to be issued by an acquirer when a delisting process is launched, linkage of reference date to such a document will provide absolute clarity on the floor price calculations at the outset itself which was missing prior to the Delisting Amendment Regulations.

With this amendment, another step of parity between the SEBI Takeover Regulations and SEBI Delisting Regulations has been achieved.

Escrow account deposit

25% of the total consideration to be paid by the acquirer under the delisting offer needs to be deposited in an interest-bearing escrow account within 7 working days from the date of obtaining the shareholders’ approval for the delisting process. Such total consideration is calculated as follows: (i) in case of RBB, the total consideration will be the number of equity shares outstanding with the public shareholders multiplied with the floor price or the indicative price, whichever is higher; and (ii) in case of fixed price process, the total consideration will be calculated on the basis of the number of equity shares outstanding with the public shareholders multiplied with the fixed delisting price offered under the Delisting Amendment Regulations. The pending 75% consideration needs to be deposited in the escrow account before making the detailed public announcement (which needs to be issued by the acquirer within 1 working day from the receipt of the in-principle approval from the stock exchanges on which the respective company is listed).

It is important to highlight that the amendment with respect to the escrow account deposit is predominantly clarificatory in nature making it clear that how escrow related computation needs to be undertaken since, post the Delisting Amendment Regulations, we have two types of prices available for a delisting bid i.e., a “fixed price” under “fixed price delisting” and a “floor price or indicative price” under the RBB.

Counter offer in the RBB process

A counter offer may be made by the acquirer in case of delisting by the RBB process, and the price of such counter offer will need to be the higher of: (i) volume weighted average price of the shares tendered/offered in the RBB process; or (ii) the indicative price, if any, offered by the acquirer.¹ Such counter offer needs to be made within 2 working days of the closure of the bidding period. However, this counter offer may be made only if: (i) the post-offer shareholding of the acquirer, along with the shares tendered by public shareholders, is 75%

¹ **SAMCO note:** If the cumulative shareholding of the acquirer, along with the shares tendered or offered by the public shareholders is less than 90%, the volume weighted average price will be calculated taking into account all the shares tendered or offered and if the cumulative shareholding is equal to or higher than 90%, the volume weighted average price will be calculated taking into account the shares tendered or offered up to 90%.



of the total shareholding of the company; and (ii) not less than 50% of the public shareholding has been tendered.

Consequences

We notice there may be possibly two consequences of the Delisting Amendment Regulations with respect to the hybrid transaction of “open offer and delisting” under Regulation 5A of the SEBI Takeover Regulations:

- the expression “suitable premium” under Regulation 5A of the SEBI Takeover Regulations (which is otherwise not defined or clarified) has been indirectly or by way of implication clarified to mean that the price for delisting (in an open offer and delisting) should be at least 15% more than the open offer price (that will be calculated for the open offer limb of the hybrid transaction) in terms of the SEBI Takeover Regulations and this may aid in being a justifiable benchmark for determining the premium for the delisting price in an “open offer and delisting” scenario; and
- an acquirer who undertakes the “open offer and delisting” scenario with respect to a listed company which has frequently traded shares (not, *inter alia*, being a promoter of such listed company) will effectively get at least two chances at delisting without having to follow RBB price discovery process. The first attempt at delisting under “open offer and delisting process” is at the fixed delisting

price (at a premium) under the “open offer and delisting” scenario and, similarly, if the delisting bid under the open offer and delisting transaction fails but minimum public shareholding levels for the listed company are breached, then such acquirer can make another delisting attempt within 12 months under the “fixed price process” in accordance with the SEBI Delisting Regulations (as opposed to previously, when the second delisting attempt could only be made at the RBB discovered price).

For any delisting attempt to be successful, the acquirer needs to acquire at least 90% of the shareholding of the listed company. This provides the minority shareholders with the unrestricted ability to drive up the discovered price of the voluntary delisting bid under the SEBI Delisting Regulations through the RBB which makes most delisting attempts (even the few ones which are attempted) unviable for the acquirer. The introduction of the Delisting Amendment Regulations should lead to considerable relief for the stakeholders and promoters who wish to take a company private for commercial considerations.

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