

Precursor
The Analysed Update...

A photograph of the SEBI logo, which consists of a stylized 'S' and 'BI' intertwined, mounted on a blue-tinted glass or metal facade of a building. The logo is reflected on the surface below it.

SEBI RUSHES WITH MAJOR AMENDMENTS TO SECURITIES LAW

MARCH 25, 2015

SEBI Rushes With Major Amendments to Securities Law

SEBI has amended five major regulations relating to Takeover, Delisting, Buyback, Issue of Debt Securities and Warrants.

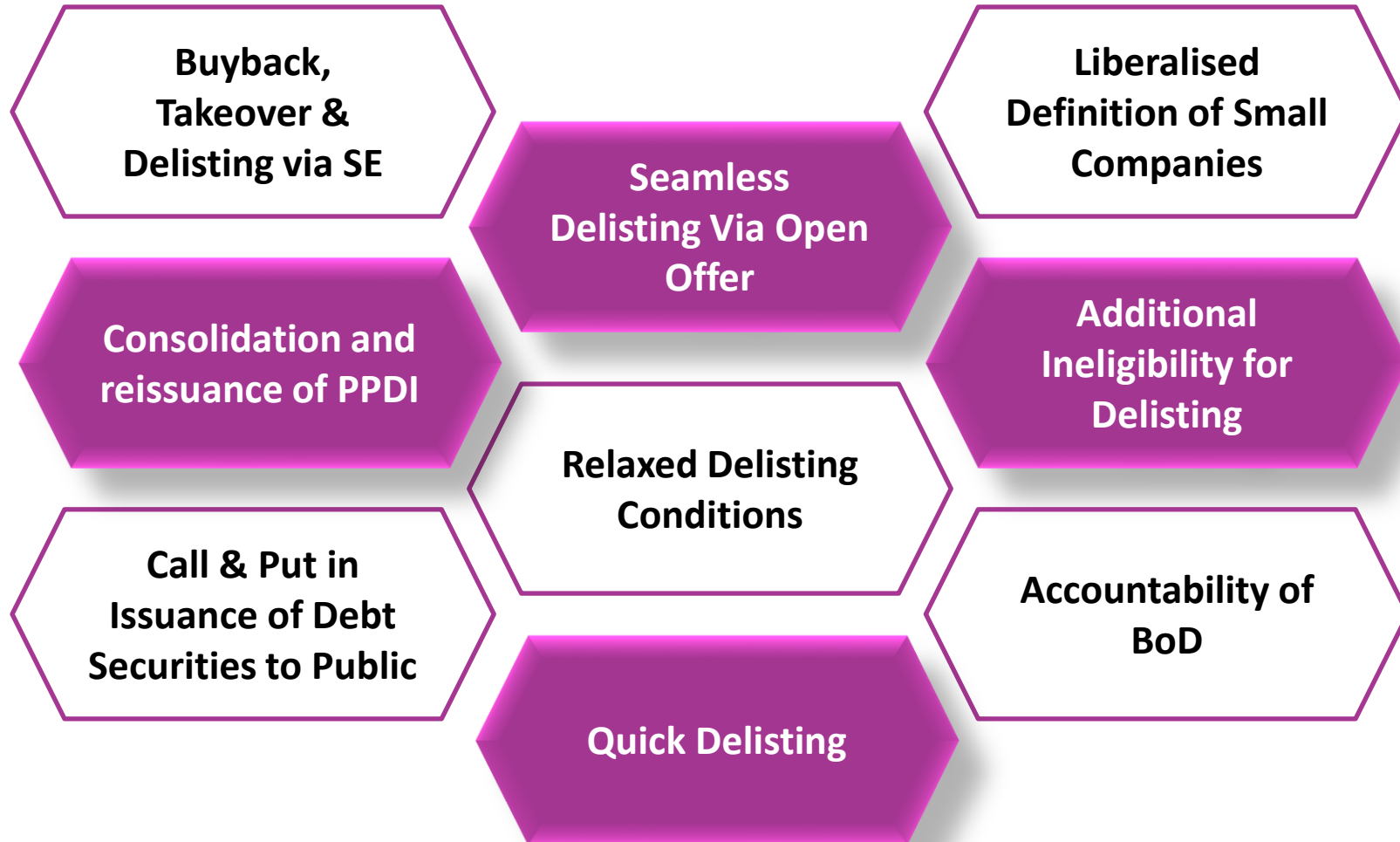
SEBI has brought these much awaited changes which will *inter-alia* make delisting easier and provide shot in arm to M&A activity in Indian

Capital Market.

This Precursor provides first-hand analysis of the broad contours of the changes.



Key Changes in SEBI Laws





Amendments in Delisting Regulations

Amendment to SEBI (Delisting) Regulations, 2009 (1 of 3)


Particulars	Regulation Analysis	Pantomath Remarks
Conditions for Delisting Success	<ul style="list-style-type: none"> A delisting shall be considered successful only when the shareholding of the promoter along with PAC, together with shares tendered by public shareholders, reaches 90 % of the total share capital. At least 25 % of the public demat shareholders need to participate in a reverse book-building process Or The Acquirer & Merchant Banker shall demonstrate to the SE that all the public shareholders have been delivered the letter of offer vide prescribed mode of communication 	<p>Now Delisting can be made once the Non Public Shareholding reaches 90%. However 25% of Public demat shareholders in number should participate.</p> <p>The Acquirer & MB shall provide documentary evidence regarding delivery of LoF to all Public Shareholders where public participation is less than 25%</p>
Determination of Final Offer Price	The final offer price shall be determined as the price at which shares accepted through eligible bids takes the shareholding of the promoter or the acquirer (along with the persons acting in concert) to ninety per cent. The promoter may, if he deems fit, fix a higher final price.	The Price at which cumulative holding of the Promoter/ acquirer reaches 90% would be considered as the final price instead of the price at which Maximum shares are tendered. Thus it will stop investors from tendering their shares at an exorbitant price. Example
Additional Ineligibility for Delisting	The promoter/ promoter group shall be prohibited from making delisting offer if any entity belonging to the said group has sold shares of the company during a period of six months prior to the date of the Board meeting which approves the delisting proposal.	This shall prevent promoter/ promoter group from manipulating the delisting process and defeating the intent of law

Amendment to SEBI (Delisting) Regulations, 2009 (2of 3)

Particulars	Regulation Analysis	Pantomath Remarks
Floor Price	Floor Price will be determined in terms of Regulation 8 of SAST	Pricing formula has been broad based & in line with SAST Regulations
Accountability of the Board of Directors (BoD)	<p>Following additional responsibilities have been casted on BoD prior to approving delisting offer</p> <ul style="list-style-type: none"> • Intimate to SE about intention of delisting by promoter/acquirer • Appoint MB to carry out due diligence and intimate the same to SE • Sourcing trading data of past 2 years (including off market transactions) of top 25 shareholders as on date of board meeting considering delisting and provide the same to MB • Certify on the basis of report of MB that <ul style="list-style-type: none"> ✓ Company is in compliance with Securities Laws ✓ Acquirer/ Promoter or promoter group or their related entites have not carried out any manipulative / fraudulent transactions ✓ Delisting is in the interest of shareholders 	<p>Companies non compliant of MPS cannot make delisting offer</p> <p>This shall prevent promoter/promoter group from manipulating the delisting process and defeating the intent of law</p>
Liberalized definition of Smaller Companies	<p>Small Companies means a Company where :</p> <ul style="list-style-type: none"> • Paid up capital \leq Rs.10 crores and net worth \leq Rs.25 crores as on the last day of the previous financial year • No trading in the shares has taken place in the last one year from the date of the board resolution authorizing the company to go for delisting and • Trading of shares has not been suspended for any non-compliance during the same period. 	<ul style="list-style-type: none"> • Smaller listed Companies shall be exempted from fulfilling stricter exit opportunity norms. • Number of shareholders as one of the criteria to determine smaller companies is dispensed.

Amendment to SEBI (Delisting) Regulations, 2009 (3 of 3)

Particulars	Regulation Analysis	Pantomath Remarks
Timelines for the Process	Timelines for completing the delisting process has been reduced. (See subsequent Table)	Makes the Process acquirer friendly and which may give boost to M&A activity in the Indian capital market
Prohibition on dealing in shares during delisting offer	Acquirer/ Promoter/ promoter Group making the delisting offer prohibited from selling shares from the date of Board meeting considering the delisting proposal till completion of delisting process	
Discretionary power to SEBI	SEBI may, for reasons recorded in writing, relax the strict enforcement of any requirement of the provisions of the Delisting Regulations.	Enables SEBI to grant exemption/relaxation in genuine cases in the interest of investors
Stock Exchange Mechanism	Use of Stock Exchange platform for offers made under Delisting, Buy Back and Takeover Regulations.	Exemption from LTCG possible, which make tendering of shares in Delisting, Buyback and Takeovers attractive for shareholders. Transparent mechanism of tendering shares provided. Requirements are like bidding centers are not applicable if the Delisting process is through Stock Exchange.




Activity Schedule - Delisting

Activity Schedule - Delisting (1/2)

Activity	Old (Working Days)	New (Working Days)	Remarks
Promoter intimates decision to delist the company	NA	X-22	
Intimate Stock Exchange regarding proposal of Promoter to Delist the Company	NA	X-22	
Issue Notice of Board Meeting for considering Delisting proposal and appointment of Merchant Banker to Company for conducting Due Diligence	NA	X-21	
Conduct Board Meeting and communicate outcome to Stock Exchange	NA	X-16	
Merchant Banker submits Due Diligence Report	NA	X-6	
Issue Notice of Board Meeting for Approving Delisting Proposal	NA	X-5	
Conduct Board Meeting and communicate outcome to Stock Exchange	X	X	
Approval of Public Shareholders by way of postal ballot	X+30	X+30	
Application to Stock Exchange for in principle approval for delisting	X+32	X+32	
Receipt of in principle approval of stock exchange	X+62	X+37	
Determination of Floor Price	X+62	X+37	

Activity Schedule - Delisting (2/2)

Activity	Old (Working Days)	New (Working Days)	Remarks
Publication of the Public Announcement	X+63	X+38	Within 1 working day of receipt of in principle approval
Specified Date for determining the names of shareholders whom the Offer Letter shall be sent	X+93	X+39	
Dispatch of Offer Letter / Bid Forms to Public Shareholders as on Specified Date	X+107	X+40	Not later than 2 working days from PA
Bid Opening Date	X+117	X+45	Not later than 7 working days from PA
Bid Closing Date	X+121	X+49	
Announcement of Discovered Price / Exit Price and the Promoter's Acceptance / Non-acceptance of Discovered Price / Exit Price*	X+129	X+54	Within 5 working days from closure of offer
Deposit Additional funds in escrow account, if required	X+129	X+54	Forwith after Post offer PA
Last date of payment of consideration in case of successful Delisting Offer	X+131	X+59	Within 10 working days from closure of offer
Last date of return of Offer Shares to shareholders in case of failure of Delisting Offer / Bids have not been accepted	X+131	X+59	Within 10 working days from closure of offer
Make Final delisting application to stock exchange	X+133	X+62	
Stock Exchange Passes Delisting Order	X+163	X+92	



Amendments in SAST Regulations

Delisting Via Open Offer

Delisting via Open Offer possible subject to compliance with following conditions:

- Delisting via open offer permissible only under Triggered Open offer
- Intention of Delisting shall be declared upfront at the time of making DPS
- On failure of Delisting Offer announcement shall be made within 2 working days of failure and Open Offer process shall be continued
- In case of Competing offer, No delisting can be made
- Offer price shall be enhanced @10% p.a in case of failure of delisting offer till actual date of payment
- Option to withdraw or tender in open offer in case of failure of Delisting Offer
- Transaction triggering Open Offer can be completed only after public announcement of successful Delisting
- Acquirer shall not be required to return the shares tendered in Delisting Offer unless the same is withdrawn by shareholder




Activity Schedule – Open Offer + Delisting

Activity Schedule - Open Offer + Delisting (1/2)

Activity	New (Working Days)	Remarks
Public Announcement of Open Offer	X-27	
Opening of Escrow Account	X-25	2 Working days prior to DPS
Publication of Detailed Public Statement of Open Offer	X-22	5 Working days from PA
Intimate Stock Exchange regarding proposal of Acquirer to Delist the Company	X-22	
Issue Notice of Board Meeting for considering Delisting proposal and appointment of Merchant Banker to Company for conducting Due Diligence	X-21	
Conduct Board Meeting and communicate outcome to Stock Exchange	X-16	
Merchant Banker submits Due Diligence Report	X-6	
Issue Notice of Board Meeting for Approving Delisting Proposal	X-5	
Conduct Board Meeting and communicate outcome to Stock Exchange	X	
Approval of Public Shareholders by way of postal ballot	X+30	
Application to Stock Exchange for in principle approval for delisting	X+32	
Receipt of in principle approval of stock exchange	X+37	
Determination of Floor Price	X+37	
Opening of Escrow Account	X+37	
Publication of the Public Announcement	X+38	Within 1 working day of in principle approval

Activity Schedule - Open Offer + Delisting (2/2)

Activity	New (Working Days)	Remarks
Specified Date for determining the names of shareholders whom the Offer Letter shall be sent	X+39	
Dispatch of Offer Letter / Bid Forms to Public Shareholders as on Specified Date	X+40	Not later than 2 working days from PA
Bid Opening Date	X+45	Not later than 7 working days from PA
Last Date of Revision (upwards) or withdrawal of bids	X+48	
Bid Closing Date	X+49	
Announcement of Discovered Price / Exit Price and the Promoter's Acceptance / Non-acceptance of Discovered Price / Exit Price*	X+54	Within 5 working days from closure of offer
Deposit Additional funds in escrow account, if required	X+54	Forwith after Post offer PA
Open Special Account	X+54	
Last date of payment of consideration in case of successful Delisting Offer	X+59	Within 10 working days from closure of offer
Last date of return of Offer Shares to shareholders in case of failure of Delisting Offer / Bids have not been accepted	X+59	Within 10 working days from closure of offer
Make Final delisting application to stock exchange	X+62	
Stock Exchange Passes Delisting Order	X+92	



Amendments in ICDR Regulations

Amendment to SEBI (ICDR) Regulations, 2011



Terms of warrants issued along with public issue/rights issue made uniform with those issued on preferential basis. Key Changes include the following:-

Particulars	Changes	Pantomath Remarks
Tenure of warrants	Increased to 18 months from 12 months earlier	Tenure of warrants made uniform with that of other convertible securities
Price or conversion formula	Price or conversion formula of the warrants shall be determined upfront	Earlier regulations were silent in this respect which has now been prescribed
Minimum consideration on application	At least 25% of the consideration amount shall also be received upfront	Earlier regulations were silent in this respect which has now been prescribed
Failure to exercise warrants	Failure of exercise of warrants will lead to forfeiture of 25% consideration paid upfront	Earlier regulations were silent in this respect which has now been prescribed



Amendments in ILDS Regulations

Right to recall or redeem prior to maturity

Public issue of callable (callable and puttable) debt securities now possible subject to following conditions:

- Right to recall or redeem debt securities prior to maturity date is exercised in accordance with the terms of issue
- Right may be exercised for all debt securities or part of them
- Such right can be exercised only after expiry of 24 months from date of issue
- Interest at the rate of fifteen per cent. per annum shall be paid for the period of delay, if any
- Notice to be send to all the eligible holders at least 21 days before the date from which such right is exercisable;
- Redemption proceeds along with the interest due shall be paid within fifteen days from the last day for exercise of such rights

Consolidation and re-issuance

Consolidation and re-issuance of privately placed debentures now possible subject to following conditions:

- Same is allowed by AOA
- Fresh credit rating for each re-issuance from at least one credit rating agency
- Such ratings shall be revalidated on a periodic basis
- Appropriate disclosures are made in this regard in the Term Sheet

Let's Take It Forward....



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Example

	Bid Price (Rs.)	Number of Investors	Demand (Number of Shares)	Cumulative Demand (No. of Shares)
	550	5	2,50,000	2,50,000
	565	8	4,00,000	6,50,000
	575	10	2,00,000	8,50,000
	585	4	4,00,000	12,50,000
	595	6	1,20,000	13,70,000
Final Offer Price under new Regulations ←	600	5	1,30,000	15,00,000
	605	3	2,10,000	17,10,000
	610	3	1,40,000	18,50,000
	615	3	1,50,000	20,00,000
Offer Price under old Regulations ←	620	1	5,00,000	25,00,000
	Total	48	25,00,000	

Notes: Assuming floor price of Rs.550/- per share, promoter/ acquirer shareholding at 75% and number of shares required for successful delisting as 15,00,000

