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Regulatory Alert

Tracking change

Mechanics for acquisition of shares through Stock Exchange

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Background

SEBI had on 24 March 2015, amended the SEBI (Delisting of Equity Shares) Regulations, 2009; SEBI (Buy Back of Securities) Regulations, 1998 and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 to facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism.

To implement the above amendments, SEBI has on 13 April 2015 laid down procedural mechanism for acquisition of shares through Stock Exchange pursuant to tender offers under Delisting, Buy Back and Take-over.

Procedure for tendering and settlement of shares through Stock Exchange

Applicability

- The procedure shall be applicable to all offers for which Public Announcement is made on or after 1 July 2015. For all impending offers, acquirer / Promoter Company shall have the option to acquire the shares through the stock exchange mechanism or the existing ‘tender offer method’.
- In case an acquirer or any person acting in concert with the acquirer who proposes to acquire shares under the offer is not eligible to acquire shares through stock exchange due to operation of any other law, such offers would follow the existing 'tender offer method'.
- In case of competing offers under Takeover Regulations, if one of the acquirers is ineligible to acquire shares through stock exchange mechanism, then all acquirers shall follow the existing 'tender offer method'.

Acquisition Window

- The facility for acquisition of shares through stock exchange mechanism is available on stock exchanges having nationwide trading terminals through the separate Acquisition Window.

- The recognised stock exchanges having nationwide trading terminals would facilitate acquirers of companies exclusively listed on regional stock exchanges.
- The acquirer would have to appoint a stock broker registered with SEBI for the offer. Such broker may also undertake transactions on behalf of sellers.

Placing, settlement and execution of orders

- The SEBI announcement has provided a detailed procedure for placing of orders, its execution through a separate acquisition window and settlement thereof.

Others

- Additional disclosures are to be provided in Detailed Public Statement, Letter of Offer for Takeover Regulations, in Public Announcement for Buyback Regulations and Delisting Regulations

Conclusion

Currently, investors are liable to capital gains tax liability on the shares tendered under the delisting, buy back and takeover offers, if such transactions are not executed on the stock market. This results in lower cash flow in the hands of investors.

Now, in relation to shares tendered pursuant to the said offers for which Public Announcement is made on or after 1 July 2015, there would be savings in capital gains tax liability. However, the investors will be liable to pay securities transaction tax on such transactions.

This is a welcome move and will encourage wider participation of investors in delisting, buy-back and takeover offers in the future.

Source: SEBI Notification dated 13 April 2015 **–** Mechanics for acquisition of hares through Stock Exchange pursuant to Tender-Offers under Takeovers, Buy Back and Delisting

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Contacts

Ahmedabad
Heritage, 3rd Floor,
Near Gujarat Vidyapith,
Off Ashram Road,
Ahmedabad – 380 014.
Tel: + 91 (079) 2758 2542
Fax: + 91 (079) 2758 2551

Bangalore
Deloitte Centre, Anchorage II,
100/2, Richmond Road,
Bangalore 560 025.
Tel: +91 (080) 6627 6000
Fax: +91 (080) 6627 6010

Chennai
No.52, Venkatanarayana Road,
7th Floor, ASV N Ramana Tower,
T-Nagar,
Chennai 600 017.
Tel: +91 (044) 6688 5000
Fax: +91 (044) 6688 5050

Coimbatore
Shanmugha Manram
41, Race Course,
Coimbatore
Tamil Nadu - 641018
Tel: + 91 (0422) 439 2801
Fax: +91 (0422) 222 3615

Delhi/Gurgaon
Building 10,
Tower B, 7th Floor,
DLF Cyber City,
Gurgaon 122 002
Tel : +91 (0124) 679 2000
Fax : + 91 (0124) 679 2012

Hyderabad
1-8-384 and 385, 3rd Floor,
Gowra Grand S.P.Road,
Begumpet,
Secunderabad – 500 003.
Tel: +91 (040) 6603 2600
Fax:+91 (040) 6603 2714

Kolkata
Bengal Intelligent Park Building Alpha,
1st floor, Block EP and GP Sector V,
Salt Lake Electronics Complex,
Kolkata - 700 091.
Tel : + 91 (033) 6612 1000
Fax : + 91 (033) 6612 1001

Mumbai
Indiabulls Finance Centre,
Tower 3, 28th Floor,
Elphinstone Mill Compound,
Senapati Bapat Marg, Elphinstone (W),
Mumbai – 400013
Tel: + 91 (022) 6185 4000
Fax: + 91 (022) 6185 4101

Pune
106, B-Wing, 7th Floor,
ICC Trade Tower,
Senapati Bapat Road,
Pune – 411 016.
Tel: + 91 (020) 6624 4600
Fax: +91 (020) 6624 4605

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