

TAKEOVER REGULATIONS FACILITATES TAKING COMPANY PRIVATE

The capital market regulator, Securities and Exchange Board of India (“SEBI”) has amended the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (“Takeover Regulations”) on March 24, 2015. The main objective of the amendment is to bring clarity on taking a listed company private. The amendment addresses a loop hole in the takeover and delisting regulations which enabled an acquirer to take company private by delisting the same rather than making a mandatory open offer under the Takeover Regulations. The major amendments are as follows –

- **Delisting offer:** A provision has been provided for acquisition of shares for the purpose of delisting of the company and provides the acquirer, who is required to make an open offer, an option to delist the company from the stock exchange as per SEBI (Delisting of Equity Shares) Regulations 2009, provided such intention to delist the company is declared at the time of making public statement.
- **Failure of Offer:** If the event of failure of delisting offer for the want of special resolution of shareholders, for minimum acquisition of 90% of shares post offer or on rejection by the acquirer of the discovered price determined by the book building process in terms of SEBI (Delisting of Equity Shares) Regulations, 2009, the acquirer will be liable to proceed with the open offer as per the Takeover Regulations. Upon failure of offer the acquirer must:
 - within two working days, make an announcement of such failure in newspapers in which detailed public statement for delisting offer was made.
 - within five working days of the announcement of failure, file with SEBI the draft letter of offer.

The amount of consideration for acquisition through open offer under takeover regulations shall be enhanced by 10% p.a for the period between the date on which the consideration was supposed to be paid and the actual date of payment of consideration to shareholders.

- **Competing Offer:** In the event of a competing offer by a person other than the acquirer, the acquirer will not entitled to delist the company. The acquirer must make public announcement within 2 working days from the date of such competing offer.
The shareholders have the right to withdraw the tendered shares within 10 working days from the date of announcement of the competing offer.
- **Tendering and Settlement:** Tendering of shares and payment of consideration shall be made through stock exchange mechanism.