

Navigating SEBI's revamped delisting framework

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Between 1 January 2018 and 31 May 2024, out of the 40 companies which attempted to delist from the stock exchanges, only 26 companies (and only six companies having market cap of more than INR 500 crore) have successfully delisted themselves. While the Securities and Exchange Board of India (SEBI) has sought to regulate the securities markets to protect the best interests of minority public shareholders, the intention was never to make delisting so difficult.

In an attempt to simplify the delisting regime in India, SEBI notified the SEBI (Delisting of Equity Shares) (Amendment) Regulations, 2024 on 25 September 2024, introducing the following key amendments to the SEBI (Delisting of Equity Shares) Regulations, 2021 (**Delisting Regulations**):

1. Permitting a fixed-price delisting for listed companies whose shares are frequently traded. Prior to the amendments, a delisting offer under the Delisting Regulations could be made exclusively through the reverse book building (RBB) route.
2. Ability for the acquirer to make a counter-offer in an RBB delisting subject to minimum public tendering and a higher revised offer price.
3. Provision for delisting of investment holding companies (IHC) through a scheme approved by the National Company Law Tribunal (NCLT).

These amendments are discussed in detail below.

SEBI has revamped the delisting framework in India by introducing fixed price delisting (for companies with frequently traded shares) as an alternative to the regular reverse book-built price delisting. To determine the floor price for any delisting offer, the 'adjusted book value' of the listed entity must also be taken into account. For a fixed price delisting, the acquirer will be required to offer at least 15% premium to the floor price to the public shareholders.

1 Fixed price delisting

With the introduction of fixed-price delisting, price bidding on shares sought to be delisted has been done away with. (To read our earlier update on SEBI's approval of fixed-price delisting, [click here](#).) SEBI has mandated that the offer price for a fixed-price delisting must include a premium of at least 15% over the floor price (described below). The 15% premium is in line with SEBI's analysis that under the RBB route, the companies that successfully delisted from 1 January 2009 till 31 May 2024, had offered an average and median premium of about 40% and 17% over the floor price.

However, even a fixed-price delisting offer (like an RBB offer) is only successful if the shareholding of the acquirer in the listed entity, taking into account the shares tendered by the public in a delisting offer, reaches 90%.

Floor Price

Prior to the amendments, the floor price was computed as per Regulation 8 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and was primarily linked to the traded price of the stock over a specified trail period.

SEBI has now introduced Regulation 19A under the Delisting Regulations for computation of floor price (applicable to both RBB and fixed-price delisting), which provides that the floor price must be the highest of the following:

- a. volume weighted average price (**VWAP**) paid or payable for acquisitions by the acquirer and persons acting in concert (**PAC**) during 52 weeks prior to the reference date;
- b. the highest price paid or payable for any acquisition by the acquirer and PACs during 26 weeks prior to the reference date;
- c. for frequently traded shares, VWAP (of market price) of 60 trading days prior to the reference date on the stock exchange, with maximum trading volume;
- d. adjusted book value (considering consolidated financials) as determined by an independent registered valuer. The adjusted book value will be computed by including the following:
 - i. book value of all assets;
 - ii. fair value of the jewellery and artistic work basis report of an independent valuer;
 - iii. fair market value of unquoted/infrequently traded shares; and
 - iv. value of immovable property, as assessed for payment of stamp duty. Book value of liabilities in balance sheet will be excluded;
- e. for infrequently traded shares, the price will be determined by an independent registered valuer, after considering the various valuation parameters (this will be applicable only for a delisting carried out through the RBB route. A fixed-price delisting is not permitted in companies with infrequently traded shares).

Prior to the amendment, the reference date for computing the floor price was the date on which the stock exchange was required to be notified of the board meeting approving the delisting proposal. This method contributed to volatility in the stock price because of increase in trading activity of the shares proposed to be delisted. Under the amended Delisting Regulations, the reference date for computing the floor price is the

date of the public announcement for the delisting offer, or the next trading day, if the public announcement is made after market hours or on a non-trading day.

2 Revised counter-offer mechanism under the RBB route

Prior to the amendments, the Delisting Regulations permitted a counter-offer to be made by the acquirer within two working days of the closure of bidding period. SEBI's data indicated that between 1 January 2018 and 31 May 2024, amongst the 14 delisting offers that failed, the acquirer in 11 companies did not have an option to make a counter-offer as the aggregate post-offer shareholding of the acquirer had not reached 90%.

Recognising the need to lower this 90% threshold, SEBI has now provided that an acquirer (under the RBB route) can make a counter-offer if:

- a. the post-offer shareholding of the acquirer and PACs exceeds 75%;
- b. at least 50% of the public shareholders have tendered their shares in the delisting offer; and
- c. the counter-offer price is the higher of the VWAP of the shares tendered during the tendering period of the RBB and any indicative price (which is higher than the floor price), if provided.

The counter-offer mechanism is not available for fixed-price delisting, which does not contemplate any kind of bidding/price discovery mechanism.

3 Delisting of investment holding companies

Supplementing the RBB and fixed-price methods, the amendments enable IHCs to pursue delisting through a scheme approved by the NCLT. An IHC is a company which holds investments in listed or unlisted companies or holds assets other than such investments.

An entity qualifying as an IHC may pursue delisting, subject to the following conditions:

- a. An IHC, where at least 75% of its fair value comprises direct investments in equity shares of other listed companies, may directly delist through a scheme of arrangement sanctioned by the NCLT or a court. The fair value of an IHC is to be determined by a joint report by two independent registered valuers.
- b. The scheme will provide for: (i) pro-rata distribution of listed securities to public shareholders; (ii) cash compensation to public shareholders for investments in unlisted companies and other assets; and (iii) a reduction of the public shareholding in the IHC through a capital reduction process.
- c. The voting requirements for shareholders remain consistent with those for a delisting not involving an NCLT approved scheme. Specifically, the requirement that 2/3rd of the public shareholders must approve the scheme entailing such a delisting continues to apply.

SEBI's decision to introduce fixed-price delisting, lowering thresholds for making counter-offers, and enabling IHCs to pursue delisting through an NCLT approved scheme is a welcome move and can potentially ease the entry and exit barriers to securities markets.

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