

CHAPTER

8

DELISTING OF SECURITIES

Covering-

- Delisting of Securities
- Distinction between voluntary and compulsory delisting
- SEBI (Delisting of equity shares) Regulations, 2021
- Agencies involved in delisting process and their role
- Voluntary delisting
- Compulsory delisting

**EXPECTED
MARKS COVERAGE
(5 to 10)**

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DELISTING OF SECURITIES

The term “delisting” of securities means permanent removal of securities of a listed company from a stock exchange. As a consequence of delisting, the securities of that company would no longer be traded at that stock exchange.

SUSPENSION Vs. DELISTING

1. ‘Suspension’ of trading in securities means that **no trade can take place in the securities of the company suspended for a temporary period.**
2. Suspension is **not done at the instance of company** but it is **action taken by the Stock Exchanges** against the company, generally for non-compliance of listing conditions as stipulated under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations).
3. Once, the company makes good the compliance of the listing conditions under the LODR Regulations, **stock exchange withdraw suspension and permits trading.**
4. ***On the other hand***, ‘delisting’ of securities means removal of the name of the company from the stock exchange and **no trade can take place in the securities of the company delisted.**
5. Delisting of securities can be done **either by company voluntarily or by the stock exchange, compulsorily.**
6. Generally stock exchange, in order to **impose severe punishment** on companies compulsorily delists securities of any company, **as a last resort.**

TYPE OF DELISTING

Delisting can be

1. **VOLUNTARY** or
2. **COMPULSORY**

DISTINCTION BETWEEN VOLUNTARY AND COMPULSORY DELISTING

| <u>VOLUNTARY DELISTING</u> | <u>COMPULSORY DELISTING</u> |
|--|---|
| Voluntary delisting is a wish of a company for permanent removal of trading of its shares from the stock market. | Compulsory delisting is a penalty imposed on company which has complied with provisions of listing agreement requirement. |
| It is an action taken by the company on its own to permanently remove its securities trading from a stock exchange. | Compulsory delisting means permanent removal of securities trading on of listed company from stock exchange penalizing measure at behest of stock exchange for not making submissions/comply with requirements set out in the listing agreement within prescribed time frames. |
| In Voluntary delisting, a company has to follow SEBI (Delisting of equity shares) Regulations, 2021. | The Stock Exchanges have power under the provision of the Securities Contracts (Regulation) Act, 1956 to delist the trading of any securities of a listed company. SEBI (Delisting of equity shares) Regulations, 2021 also applies. |

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SEBI (DELISTING OF EQUITY SHARES) REGULATIONS, 2021

DEFINITIONS

- **ACQUIRER**

“Acquirer” includes a person -

(i) who decides to **make an offer** for delisting of equity shares of the company along with the persons acting in concert in accordance with **regulation 5A of the Takeover Regulations** as amended from time to time ; or

(ii) who is **the promoter or part of the promoter group** along with the **persons acting in concert**.

- **PEER REVIEW COMPANY SECRETARY**

"Peer Review Company Secretary" means a **Company Secretary in practice**, who is either practicing **individually** or as a **sole proprietor** or as a **partner of a Peer Reviewed Practice Unit** , **holding a valid certificate of peer review** issued by the Institute of Company Secretaries of India;

APPLICABILITY

Reg 3(1)

Delisting of equity shares of a company including equity shares having superior voting rights **from all or any** of the recognised stock exchanges where such shares are listed.

NON-APPLICABILITY

Reg 3(2)

Nothing contained in these regulations shall apply to the delisting of equity shares of a listed company—

(a) that have **been listed and traded** on the **innovators growth platform** of a recognised stock exchange **without making a public issue**;

(b) made pursuant to a **resolution plan approved under section 31** of the **Insolvency Code, if such plan provides for:**

(i) delisting of such shares; or

(ii) an exit opportunity to the existing public shareholders at a specified price:

CONDITIONS FOR DELISTING

REGULATION 4

Neither any company shall apply for nor any recognised stock exchange shall permit delisting of equity shares of a company:-

(a) **unless a period of three years has elapsed** since the listing of that class of equity shares on any recognised stock exchange;

(b) if any **instrument issued by the company, which is convertible** into the same class of equity share(s) that is sought to be delisted, **is outstanding**;

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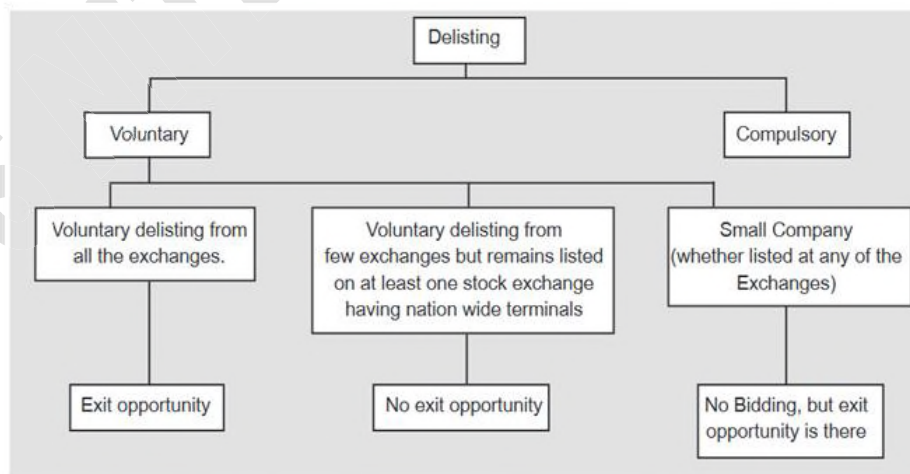
(c) ***pursuant to a buyback of equity shares*** by the company, including a buyback pursuant to consolidation or division of all or part of the equity share capital of the company, ***unless a period of six months has elapsed from the date of completion of such buyback;***

(d) ***pursuant to a preferential allotment*** made by the company ***unless a period of six months has elapsed from the date of such allotment;***

AGENCIES INVOLVED IN DELISTING PROCESS AND THEIR ROLE

| Agencies | Functions |
|--|--|
| <u>Merchant Banker to the Offer</u> | <ul style="list-style-type: none"> (a) Determines exit price. (b) Makes public announcements. (c) Finalises schedule of delisting. (d) Manages escrow account. (e) Assist the acquirer in determining the final exit price. (f) Interacts with regulatory authorities / stock exchange for the delisting process |
| <u>Registrar to the Offer</u> | <ul style="list-style-type: none"> (a) Completes dispatch of notice, letter of offer and payment / rejection intimation to the shareholders of the Company (b) Holds equity shares tendered under the offer post settlement of equity shares |
| <u>Professionals involved</u> | <ul style="list-style-type: none"> (a) Intimates stock exchange. (b) Manages the special resolution approval process and resolution filed with ROC on approval. (c) Assists the company in preparation of various documents required for the process |

VOLUNTARY DELISTING



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(A) DELISTING FROM ONLY SOME OF THE RECOGNISED STOCK EXCHANGES

Regulation 5

A company may **delist its equity shares** from one or more recognised stock exchanges where they are listed and **continue their listing** on one or more other recognised stock exchanges, if after the proposed delisting the equity shares would –

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| (a) remain listed on any recognised stock exchange which has nationwide trading terminals, no exit opportunity needs to be given to the public shareholders; and, |
| (b) not remain listed on any recognised stock exchange <u>having nationwide trading terminals, exit opportunity shall be given</u> to all the public shareholders holding the equity shares sought to be delisted. |

PROCEDURE FOR DELISTING WHERE NO EXIT OPPORTUNITY IS REQUIRED

Regulation 6

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| (1) Any company desirous of delisting its equity shares under the provisions of regulation 5 of these regulations shall - |
| (a) obtain the prior approval of its Board of Directors ; |
| (b) make an application to the relevant recognised stock exchange(s) for delisting its equity shares; |
| (c) issue a public notice of the proposed delisting from the relevant stock exchange(s) in at least one English national newspaper with wide circulation, one Hindi national newspaper with wide circulation in their all India editions and one vernacular newspaper of the region where the relevant stock exchange(s) is located; |
| (d) disclose the fact of delisting in its first annual report post delisting . |
| (2) The public notice shall mention the <i>name(s) of the recognised stock exchange(s)</i> from which the equity shares of the company are intended to be delisted, <i>the reasons for such delisting</i> and <i>the fact of continuation of listing of equity shares</i> on the recognised stock exchange(s) having nationwide trading terminals. |
| (3) An application for delisting made under clause (b) of sub-regulation (1) shall be disposed of by the recognised stock exchange(s) within a period not exceeding thirty working days from the date of receipt of such application that is complete in all respects. |

B. DELISTING FROM ALL RECOGNISED STOCK EXCHANGES

Regulation 7

A company may delist its equity shares from all or from the only recognised stock exchange where they are listed. However, all **public shareholders** holding equity shares of the class which are sought to be delisted are **given an exit opportunity** in accordance with these regulations.

PROCEDURE

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| the acquirer shall appoint a merchant banker registered with the Board as the Manager to the offer. |
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Acquirer shall make an **initial public announcement** to **all the stock exchanges** on which the shares of the company are listed and the **stock exchanges shall forthwith disseminate** the same to the public

The company shall obtain the **approval of its Board of Directors** in respect of the proposal of the acquirer to delist the equity shares of the company, **not later than twenty one days from the date of the initial public announcement.**

The **Board of Directors of the company, before considering the proposal** of delisting, shall **appoint a Peer Review Company Secretary** for carrying out due-diligence

The company shall obtain the approval of the shareholders through a special resolution, *not later than forty five days from the date of obtaining the approval of Board of Directors.*

The special resolution shall be passed through **postal ballot and / or e-voting**

The **special resolution** shall be acted upon only if the votes cast by the **public shareholders in favour** of the proposal are **at least two times** the number of votes cast by the public shareholders **against it**

The company shall make an application to the relevant recognised stock exchange for **in-principle approval of the proposed delisting**

Such application seeking in-principle approval for the delisting of the equity shares shall be **disposed of by the recognised stock exchange within a period not exceeding, fifteen working days** from the date of receipt of such application

EXIT OPPORTUNITY

Applicability of Chapter IV

The provisions of this Chapter shall apply to the proposal for delisting of equity shares of a company **from all the recognised stock exchanges. Regulation 13**

The acquirer shall **open an interest bearing escrow account** with a Scheduled Commercial Bank, not later than **seven working** days from the **date of obtaining the shareholders' approval**, and **deposit** therein an amount equivalent to **twenty five percent of the total consideration** Regulation 14

The acquirer shall, **within one working day from the date of receipt of in-principle approval for delisting of equity shares** from the recognised stock exchange, **make a detailed public announcement** in at least **one English** national newspaper with wide circulation, one **Hindi** national newspaper with wide circulation in their all India editions and one **vernacular newspaper** of the region where the relevant recognised stock exchange is located.

The detailed public announcement shall contain all material information including the information specified in **Schedule I** of these regulations Regulation 15

The acquirer shall **dispatch the letter of offer to the public shareholders** not later **than two working days from the date of the detailed public announcement** Regulation 16

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| The bidding period shall start <i>not later than seven working days from the date of the detailed public announcement</i> and shall remain open for five working days . |
| The acquirer shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism as specified by the Board. |
| The Manager to the offer shall ensure that the outcome of the reverse book building process is announced within two hours of the closure of the bidding period . |
| Within two working days from the closure of the bidding period, the acquirer shall, through the Manager to the offer, make a public announcement in the same newspapers in which the detailed public announcement disclosing the success or failure of the reverse book building process, along with the discovered price |
| The acquirer shall have the option to provide an indicative price in respect of the delisting offer, which shall be higher than the floor price determined in terms of regulation 8 of Takeover Regulations |
| The acquirer may, if it deems fit, pay a price higher than the discovered price <i>Regulation 17</i> |
| All the public shareholders, whose bids are accepted, shall be paid the discovered price or a higher price, if any , offered by the acquirer <i>Regulation 24</i> |
| Within five working days from the date of making the payment to the public shareholders the acquirer shall make the final application for delisting |
| The final application for delisting shall be disposed of by the recognised stock exchange(s) within fifteen working days from the date of receipt of such application |
| Upon disposal of the final application for delisting by the stock exchange the equity shares of the company shall be permanently delisted from the stock exchange(s). <i>Regulation 25</i> |
| The remaining public shareholders , whose shares were <i>either not accepted or were not tendered</i> at all during the bidding period, shall have a right to tender their equity shares for a minimum period of one year from the date of delisting . <i>Regulation 26</i> |

VOLUNTARY DELISTING BY SMALL COMPANIES

Chapter VI Regulation 35

Small Company means

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| (a) A company has a <u>paid up capital</u> not exceeding ten crore rupees and <u>net worth</u> not exceeding twenty five crore rupees as on the last date of preceding financial year; |
| (b) The number of equity shares of the company traded on each such recognised stock exchange during the twelve calendar months immediately preceding the date of board meeting is less than ten per cent of the total number of shares of such company . |
| (c) the company has not been suspended by any of the recognised stock exchanges having nationwide trading terminals for any non-compliance in the preceding one year ; |

PROCEDURE

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| (a) acquirer(s) appoints a Manager to the offer and decides an exit price after consultation; |
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- (b) the exit price offered to the public shareholders shall **not be less than the floor price** determined in terms of regulation 8 of the Takeover Regulations;
- (c) the acquirer writes **individually to all the public shareholders** of the company **informing them of its intention to get the equity shares delisted**, the exit price together with the **justification therefor** and **seeking their consent** for the proposal for delisting;
- (d) the **public shareholders**, irrespective of their numbers, holding **ninety percent or more of the public shareholding** give their **consent in writing** to the **proposal for delisting**.
- (e) the acquirer **completes the process of inviting the positive consent** and finalisation of the proposal for delisting of equity shares **within seventy five working days of the first communication made under clause (c)**;
- (f) the acquirer makes **payment of consideration in cash** within **fifteen working days** from the date of **expiry of seventy five working days** mentioned in clause (e).

COMPULSORY DELISTING

Regulation 32

Compulsory Delisting means permanent removal of securities of a listed company from a stock exchange as a penalizing measure **at the behest of the stock exchange** for **not making submissions/ complying with various requirements set out in the Listing agreement** within the time frames prescribed.

PROCEDURE FOR DELISTING BY STOCK EXCHANGE

- (1) A **recognised stock exchange may, by order**, delist any equity shares of a company on any ground prescribed in the rules made under **Securities Contracts (Regulation) Act, 1956**.
- (2) However, **no order** shall be made under this sub-regulation unless the company concerned has been given a **reasonable opportunity of being heard**.
- (3) **Constitution of Panel**
- The decision on delisting shall be taken by a panel to be constituted by the recognised stock exchange consisting of –
- (a) **two directors** of the recognised stock exchange (one of whom shall be a public representative);
 - (b) **one representative** of the investors;
 - (c) **one representative** of the Ministry of Corporate Affairs or Registrar of Companies;
 - (d) the **Executive Director or Secretary** of the recognised stock exchange.
- (4) **Before making an order** the **recognised stock exchange shall give a notice** in one English national daily with wide circulation and **one regional language** newspaper of the region where the concerned recognised stock exchange is located, of the proposed delisting, giving a **time period of not less than fifteen working days from the notice**, within **which representations may be made to the recognised stock exchange by any person** who may be **aggrieved by the proposed delisting** and shall also **display** such notice **on its trading systems and website**.

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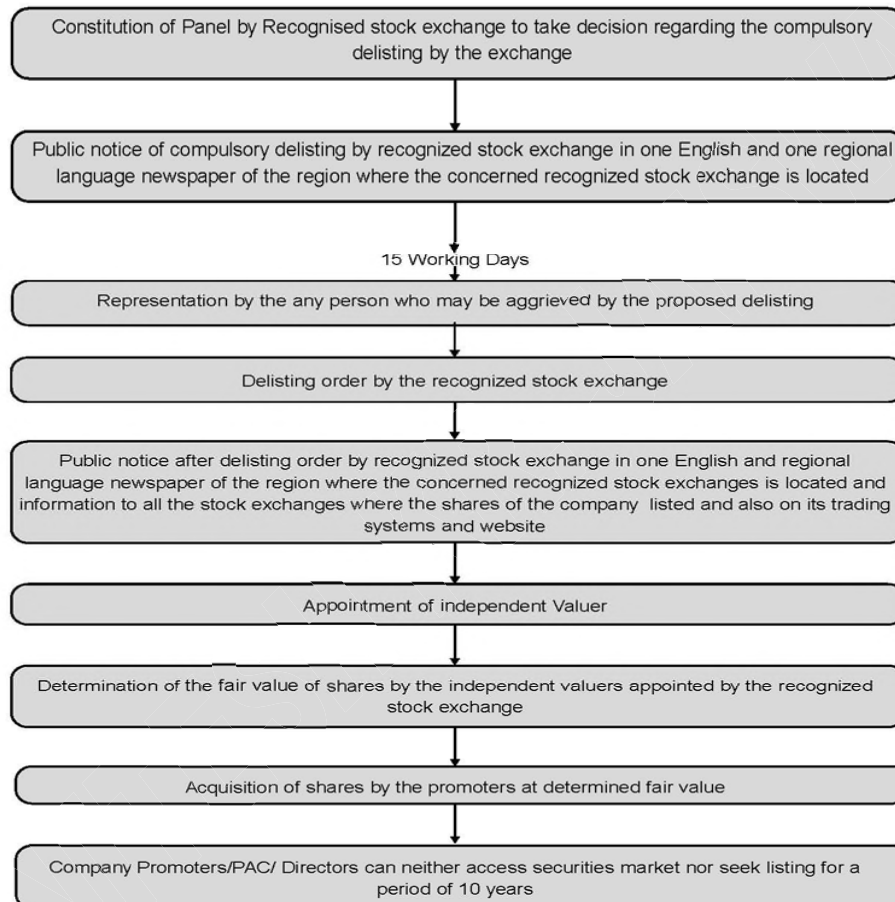
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(5) The recognised stock exchange shall *while passing any order* consider the representations, if any, made by the company as also any representations received in response to the notice given and shall comply with the criteria specified in **Schedule III**

PROCESS FLOW CHART FOR COMPULSORY DELISTING



LISTING OF DELISTED EQUITY SHARES

Regulation 40.

No application for listing shall be made in respect of equity shares of a company,-

(a) which have been delisted under Chapter III (*voluntary*) or under **Chapter VI** (*small company*) of these regulations, **for a period of three years from the delisting;**

(b) which have been delisted under Chapter V (*compulsory*) of these regulations, **for a period of ten years from the delisting.**



Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

Lined area for writing the answer to Question No. 1.

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

A series of horizontal lines provided for writing the answer to Question No. 2. A large, diagonal watermark reading 'CS NITESH KR. JAISWAL' is overlaid across the entire answer area.