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Minority Squeeze-outs: The interplay between the Takeover Regulations, the Delisting Regulations and the Companies Act

- Mohammad Nizam Pasha

Reasons for listing

- It allows pre-IPO owners and managers to liquidate their position;
- It provides an exit route to private equity investors;
- It allows the company to raise finance for growth;
- It increases the prestige and visibility of the company;
- The higher disclosure requirement for exchange listing and public trading of stock increases the confidence and trust of investors, creditors, customers, and suppliers in the firm;
- It increases the financing options available to the company and reduces the company's cost of capital by increasing the investor base;

Benefits of 'going private'

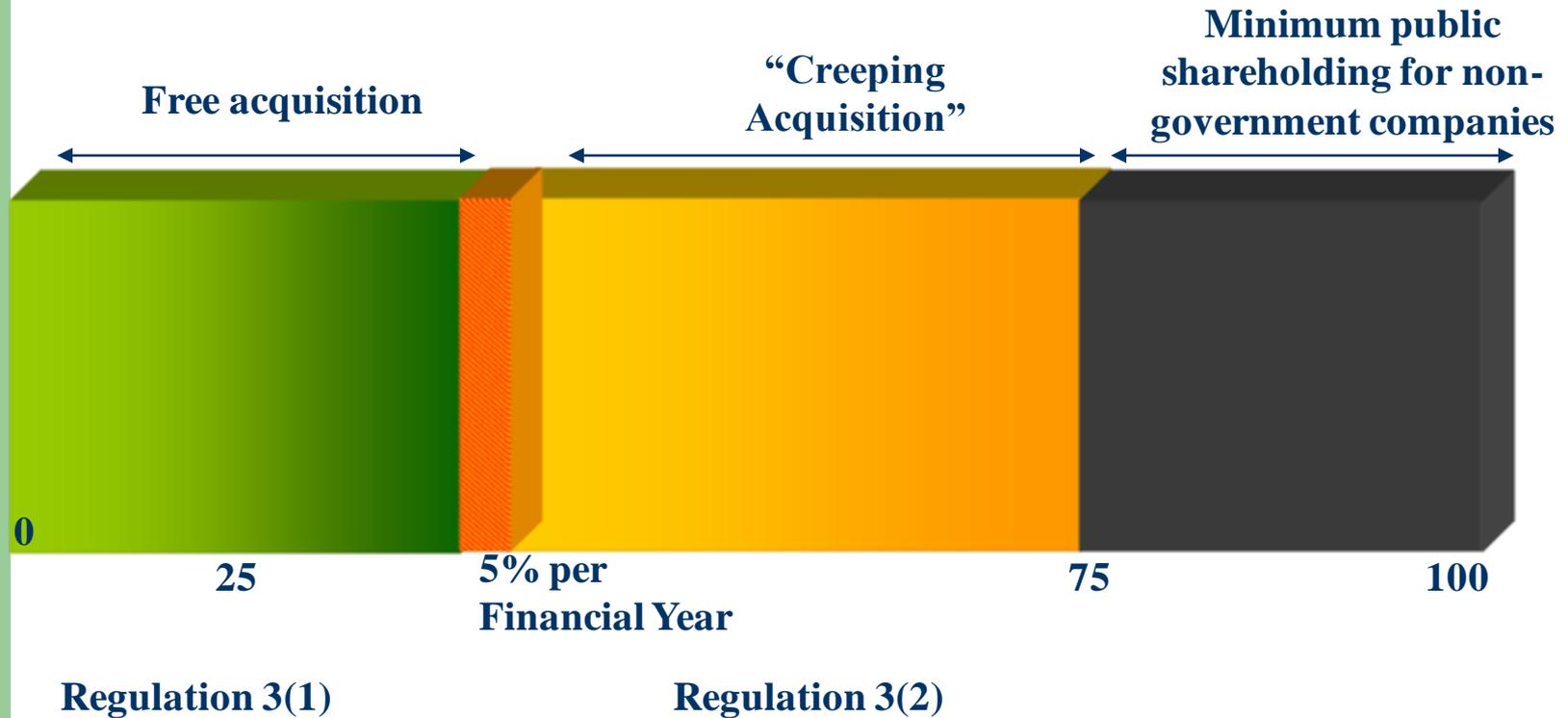
- Elimination of participation cost of minority shareholders;
- Deriving maximum synergies from a group;
- Eliminating the cost of public ownership;

Squeeze-out as appropriation of property

- Constitutional validity
 - *S. Vishwanathan v. East India Distilleries and Sugar Factories Ltd.*, AIR 1957 Mad 341.
- The 'unfairness' and 'loss of faith' argument
 - Majority wisdom
 - Experience in other jurisdictions
- Selective reduction of capital
 - *Sandvik Asia Ltd. v. Bharat Kumar Padamsi*, (2010) 2 Comp LJ 255 (Bom).
 - *In Re: Reckitt Benckiser (India) Ltd.*, [2011] 167 Comp Cas 541 (Delhi)

The cash outflow is from the company rather than the promoter

Takeover Regulations - Trigger Points for Mandatory Offer



Takeover Open Offer

Fixed price offer – Calculation based on market parameters

Mandatory Open Offers

- Offer Size not less than 26% (Regulation 7(1))

Voluntary Offers

- Not less than 10% (Regulation 6 read with Regulation 7(2))
- Maximum so as not to breach minimum public shareholding

If the acquirer's post offer shareholding exceeds 75%, the acquirer is required to sell down in accordance with the Listing Agreement. Such an acquirer is NOT permitted to delist. (Regulations 4 & 5)

Offer Price – Regulation 8

- Highest of:
 - the negotiated price for the triggering acquisition
 - 52 week volume weighted average price paid by the acquirer or PACs
 - Highest price paid by the acquirer or PACs for any acquisition of shares during the previous 52 week period
 - 60-day volume weighted average market price for 60 trading days prior to the public announcement (for frequently traded shares)
 - Price determined by the acquirer and merchant banker taking into account valuation parameters including book value of shares, comparable trading multiples (for infrequently traded shares)

Delisting

- Approval of 2/3rd (of the votes cast) of the public shareholders
- 50% of the public shares or 90% of the share capital
- Price discovery through the reverse book-building process

Price at which shares are tendered	Number of shares tendered
100	1,375
101	23,564
102	5,34,779
103	22,05,430
104	1,45,008
105	3,560

Issues with Reverse Book Building

- Failure of offer on account of unreasonable expectations
- Too much power in the hands of large shareholders
- Problem of the 'shareholder's dilemma'

Section 395 of the Companies Act

- Where there is a “scheme or contract involving the transfer of shares or any class of shares of a company”
- That is approved by holders of 9/10ths in value (and in case the transferee has 10% or more prior holding, 3/4th in number) of the shares within 4 months of the transferee making the offer
- The Transferee may upon giving 2 month’s notice
- And provided that a court does not order otherwise
- The transferee may compulsorily acquire the shares

Section 395 cont...

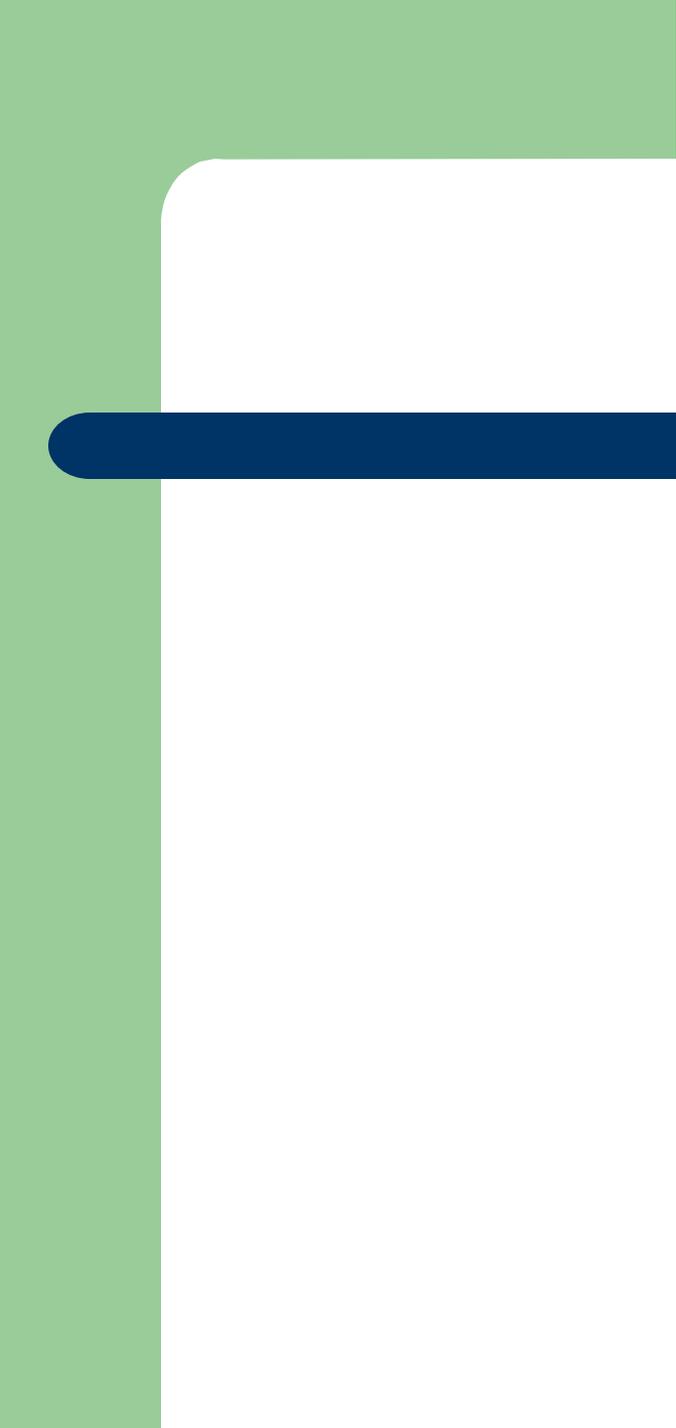
- Very little precedent
- Cannot be invoked in any situation other than in case of an actual transfer
 - *AIG Mauritius v. Tata Televentures*, 103 (2003) DLT 250

Illustration

The Promoter holds 60% stake in the Target. The Acquirer wants to acquire the company with the intention of taking it private.

- Acquirer cannot make a delisting offer since it is not a 'promoter'
- Problem of disclosure and hold back by shareholders.
- Premium over market typically payable in a delisting
- Sell down requirement in a takeover offer. Acquirer's stake may go to 86% and it will then have to sell down 11%.
- Delisting coupled with 395 (raising of standard to 90% in value and 3/4th in number **of the total** - not present and voting)

Comparison with process in other jurisdictions

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THANK YOU