

INDIA

The pros and cons of India's new takeover code

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The New Takeover Code – The SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (New Code) – will take effect on October 22, 2011.

Although the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (1997 Code) is repealed from the date of the New Code coming into force, as per Regulation 35 thereof, any open offer for which a public announcement has been made under the 1997 Code shall be required to be continued and completed thereunder and would therefore not be affected by the New Code.

The highlights of the New Code are:

- Trigger for open offers increased to 25 percent from 15 percent.
- Open offer size increased to 26 percent from 20 percent.
- Acquirers to cut-down their shareholding if it exceeds 75 percent.
- One-year bar on voluntary delisting after open offer.
- Payment of non-compete fee or a control premium charge to the promoter will be considered in calculating open offer price.
- Key terms like indirect acquisition, enterprise value, volume-weighted average price, etc. defined.
- The procedure for voluntary open offer by acquirer together with persons acting in concert with them has been laid down.
- Creeping acquisition by acquirer, the quantum of which continues to be five percent per year, has been simplified by providing a single bracket of 25 percent to 75 percent.
- The offer price under the open offer shall be the highest of the four prices i.e., the negotiated price, volume weighted average price over the 52 weeks immediately prior to the public announcement, the highest price payable or paid in the last 26 weeks before the public announcement, or the vol-

ume weighted average price of 60 trading days prior to the public announcement.

- Indirect acquisition defined as the ability to exercise or direct the exercise of voting rights which would otherwise attract the obligation of making a public announcement of an open offer.
- Any indirect acquisition beyond the prescribed threshold of 80 percent will be regarded as direct acquisition entailing open offer as per the New Code.

The pros and cons

The new limits will allow institutional investors, including private equity players, to hold a larger slice of listed firms. It will also give them more say in the company's affairs and help improve transparency. While these investors will be next to promoters as far as stakeholding is concerned, they can bargain for more representation on the board of directors of the company.

On the other hand, open offers for 26 percent (as against the previous 20 percent) will make the deals more expensive. If due to this, a larger offer exceeds 75 percent then the down scaling requirement (to maintain the public shareholding at a minimum of 25 percent) would further add to the costs. However, since the right to delist the target company under SEBI (Delisting of Equity Shares) Regulations, 2009 having been taken away, the acquirer's only option is to dilute their holding to enable the minimum public shareholding of 25 percent.

In addition to making modifications to several critical aspects of the extant takeover regime, as mentioned above, the securities market regulator has reorganised the presentation of the regulations in the New Code, for which the efforts of the regulator deserve applause.

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