**DITRECTORATE OF DISTANCE EDUCATION**
**NALSAR University of Law, Hyderabad**

**Post-Graduate Diploma in**
**Financial Services & legislations**

# MODULE II

## SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

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# EVOLUTION OF TAKEOVER REGULATIONS

- SEBI enacted SAST Regulations in 1994.
- Then enacted SAST Regulations 1997.
- Then SEBI notified SAST Regulations in 2011.

# WHAT IS TAKEOVER

- Takeover is acquisition of substantial shares and control over the target company to expand or to diversify the business in an inorganic manner.
- Applicable to
  - Listed company.
  - Any person controlling the listed company.
  - Any person holding substantial stake in the listed company.

# ACQUIRER

- Any person who directly or indirectly acquires or agrees to acquire shares or voting rights or control over the target company.

- Person acting in concert
  - Persons who for a common objective or purpose to acquire shares or voting rights or control over the target company.

# TYPES OF ACQUISITION

- Direct acquisition
- Indirect acquisition
- Friendly acquisition
- Hostile acquisition

# DIRECT ACQUISITION

- Initial threshold
  - 25% or more of the voting rights
    - Individually as well as collectively with PACs
- Creeping acquisition
- Change in control

- Initial trigger – individually
  - Mr. A holds 10% of the voting rights
  - Acquires additional 15% or more of the voting rights
  - Triggers regulation 3(1)

- Creeping acquisition
  - Acquirer + PACs holding >25% but <75% of the voting rights can acquire additional 5% in any financial year.
  - If acquires >5% - 2nd trigger
  - Gross acquisition only to be taken into account

# ACQUISITION OF CONTROL

- Includes
  - Right to appoint majority of the directors
  - Right to control the management or
  - Right to control policy decisions directly or indirectly through agreements.

# INDIRECT ACQUISITION

- Acquisition of voting rights or control over the other entity that enables the acquirer to exercise of such % of voting or control over the target company.

*Acquirer enters into agreement to acquire 100% of a body corporate which holds 74% of the voting rights of a listed entity*

# OPEN OFFER

- Mandatory
  - Acquirer has to give an open offer for acquisition of at least 26% of the total shares of the target company.

- Voluntary
  - Acquirer along with PACs should be holding at least 25% or more shares in the target company.
  - Acquirer or PACs have not acquired any shares in the preceding 52 weeks.
  - Acquirer shall nor acquire further shares for six months after completion of open offer except by way of another voluntary open offer.
  - Acquisition my making a competing offer.

# OFFER PRICE

Frequently Traded shares –

- Highest negotiated price under the share purchase agreement – triggering the offer.
- Volume weighted avg. price of shares acquired during the 52 weeks preceding the public announcement.
- Highest price paid for any acquisition during 26 weeks preceding the PA.
- Volume weighted avg. market price for 60 trading days preceding PA.

*Highest of the above

Infrequently traded shares –

- Highest negotiated price under the share purchase agreement – triggering the offer.
- Volume weighted avg. price of shares acquired during the 52 weeks preceding the public announcement.
- Highest price paid for any acquisition during 26 weeks preceding the PA.
- The price determined after taking into account valuation parameters.

*Highest of the above

If shares traded is <10% of the total shares in the 12 months preceding the PA – Infrequently traded shares.

- Offer size should be minimum 26% of the voting capital.
- Offer has to open not later than 12 working days from the receipt of SEBI recommendation.
- Offer to remain for a minimum of 10 days
- Consideration (if in cash) – Escrow account with a banker to be opened and empower the manager to operate the account.
- Consideration (cash/shares) – should be completed within 10 working days of expiry of the tendering period.
- Unclaimed amount in escrow account for 7 years shall be transferred to IPEF.

# DIRECTORS OF TARGET COMPANY

- Acquirer shall not
  - appoint a director on the target board till completion of the offer.
  - If 100% of the consideration is put in escrow, the acquirer can appoint directors on the target's board
- In case of conditional offers -  no appointment of directors.
- During pendency of competing offers – no right to appoint directors

# OBLIGATIONS OF TARGET COMPANIES

- BoD of target company shall run the business as usual.
- Alienation of assets, material borrowings, issue of any securities, announcement of a buyback offer not permitted
- Target to furnish acquirer within 2 working days, a list of shareholders
- After closure of the offer, target to provide assistance in verification of shares tendered (in case of physical shares).

# OBLIGATIONS OF THE ACQUIRER

- Firm financial arrangements for honoring the shares tendered
- To disclose in the offer document - intention to sell or alienate assets of the target.
- If not disclosed – acquirer not to sell such assets for a period of two years after offer period.
- Shareholders approval by way of special resolution needed to alienate such assets.
- To make true and fair statements in the offer document / PA.

# OBLIGATIONS OF MANAGER TO OFFER

- To ensure acquirer is able to implement the offer
- Firm financial arrangements in place provide certificate of due diligence to SEBI
- to ensure the statements in PA and offer document are true and fair.
- To ensure SEBI registered market intermediaries are appointed.
- All compliances are done by acquirer.
- File a report of completion with SEBI within 15 days of completion of the offer

# COMMITTEE OF INDEPENDENT DIRECTORS

- Target company has to constitute a committee of independent directors.
- Committee to review the offer and give its opinion.
- Such opinion/views shall be published in the offer document

# DISCLOSURES

- The acquirer to make following disclosures to stock exchanges –
  - After acquiring 5%
  - after acquiring every additional 2%
  - Within 2 working days post such acquisition
  - Upon crossing 25% annual disclosure of shareholdings as on 31st march – within 7 days

# PUBLIC ANNOUNCEMENT

- Acquirer to make PA to stock exchanges / target company / SEBI on the same day.
- Within 5 working days there after, a detailed PA shall be made.
- File draft letter of offer within 5 working days of publishing detailed public statement.
- SEBI will provide its comments within 15 days of filing of the offer or within 15 days after providing all information sought by SEBI
- Changes/suggestions to the offer document shall be carried out.

# TYPES OF BIDs

- Mandatory bid – 25% +26%
- Voluntary bid - >25% / minimum 10%
- Conditional bid – acceptance is subject to receipt of a certain minimum %.

# TYPES OF TAKEOVER

- Friendly
- Hostile
- Competitive
  - Up to 3 days prior to opening of the offer the price of the share can be revised by competing bidders

# WITHDRAWAL OF OPEN OFFER

- Offer made can be withdrawn –
  - Refusal of statutory approval.  (disclosure in the offer document made as to offer, is subject to statutory approvals.)
  - Death of acquirer (being a natural person)
  - Cancellation of agreement that triggered the offer (non fulfilment of main clauses of the agreement)

# ANTI TAKEOVER DEFENCES

- Poison pill
  - Issue rights, shares at discount.
  - Makes takeover less attractive.
  - Forces acquirer to negotiate with the company for better terms.
- Buyback of shares or Stock repurchase
- Sharp repellants
  - Provision in the charter documents for super majority vote for passing resolutions for merger.
- Golden Parachute
  - Providing huge compensation to top management personnel in case of job loss due to hostile takeover.
- Crown Jewel
  - Sell off an important asset at a lesser price to a friendly third party.
  - Make it absolutely unattractive to the acquirer.
  - Buyback the asset from the friendly third party at a predetermined price later.