Business Standard

New takeover regime from next month

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Promoters of listed firms will have 30 more days to make some smart deals in the market. Company owners who want to charge non-compete fees while exiting or increase their holdings will get this window as the capital market regulator has said new regulations restricting these will take effect only next month.

The Securities and Exchange Board of India (Sebi) notified the new law governing takeover of listed firms on Friday, four days after the chief architect of the code C Achuthan breathed his last. The Sebi (Substantial Acquistion of Shares and takeover) Regulations, 2011 will take effect on October 22.

The notification comes two months after the draft code was cleared by Sebi in July. Under the new law, the size of the open offer to be made by acquirers was increased to 26 per cent from the earlier 20 per cent. The open offer trigger limit has been increased from 15 per cent to 25 per cent. It also expressly bars promoters from charging a non-compete fee in any form. The notification also provided for definitions of key terms like indirect acquisition, enterprise value, volume-weighted average price, etc. It also laid down the procedure for voluntary open offers by promoters.

THE NEW LAW

* New trigger for open offers at 25 per cent

* Open offer size fixed at 26 per cent

* Bar on non-compete fee

* Acquirers to cut stake if it crosses 75 per cent

* 1-year bar on voluntary delisting after open offer

Abhijit Joshi, senior partner and CEO, AZB & Partners, said, “Open offer for 26 per cent will make the deal more expensive as from the current position it is an upward march of six per cent. If due to this, a larger offer exceeds 75 per cent then the implication of down scaling also need to be factored in working out costs.”

The Varkey group, which took control of troubled education company Everonn Solutions last week, on Friday made an open offer of 20 per cent though the Sebi board had decided to increase the open offer size to 26 per cent in July itself. Such deals that are concluded before October 22 will continue to be governed by the existing rules, say experts.

The new regulations provide more clarity on what could tantamount to indirect acquisition and the obligations in an indirect acquisition. “Although the Takeover Code 1997 is repealed from the date the New Regulations come into force, Regulation 35 thereof clarifies any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations,” said Simone Reis, senior associate at Nishith Desai Associates.

Further, promoters who want to increase their stake through the creeping acquisition route can also do so in the next few days. According to data provided by Takeovercode.com, a website that specialises in the takeover law and its application, at least 210 companies had promoter holding above 20 per cent and below 25 per cent as of June 30.

Some of these promoters had already increased stakes through market purchases and deals, driving up share prices of these companies in the weak market.

Some of the prominent names in the category are Mahindra & Mahindra Ltd, in which more than 50 promoter group entities including trusts hold 24.86 per cent, HDFC Bank (23.28 per cent), 3i Infotech (20.33 per cent), Koutons Retail (21.74 per cent) and Edserv (23.75 per cent).

Sandeep Parekh, former ED at Sebi and founder of Finsec Law Advisors, says there may not be any major corporate action in the next 30 days. “The takeover code report has been in the public domain for nearly a year now and that time was enough for corporates to understand and structure their stake holding accordingly. Also, there are no changes in the takeover code from when it was notified.”

Joshi says even under the old laws, getting non-compete fees was not automatic. “It’s unlikely that there will be a rush to get non-compete fees as Sebi has been asking for its justification even if it was within limits. Therefore, it is not a clean home run on the subject even at present.”

The new limits will allow institutional investors, including private equity players, to hold a larger pie in listed firms. It will also give them more say in the company’s affairs and help improve transparency.

Avinash Gupta, head of financial advisory at Deloitte India, said, “Holding 25 per cent stake in a listed company will bring more power to the PE investors. While the PE investors will be next to promoters as far as stakeholding is concerned, they can bargain for more representation in the company, such as a seat on the board, etc.”

Sebi chairman U K Sinha had said the rationale for 26 per cent open offer size was to create a level playing field for all potential acquirers, an issue that was strongly highlighted by representatives of India Inc during a series of meetings with regulatory officials.

“In the absence of acquisition finance in our country, it was felt that (100 per cent offer size) would give outside acquirers an advantage,” said Sinha, while addressing the media. “While it was desirable, the decision was likely to have helped only one set of entities,” he added.