Dual listed M&As: Live-in status in corporate world

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If mergers are like marriages, dual-listed companies or DLCs are like live-in relationships. DLC structures have been recognised and blessed by regulators in developed countries since early 20th century, the latest being Thomson-Reuters — the first Canadian-English DLC.

A DLC structure comprises series of contractual arrangements between two listed entities, to achieve economic substance of a traditional merger without the companies forgoing separate identities, separate shareholders and stock exchange listings. This arrangement enables companies to contractually operate as a single economic unit, as though they have executed a traditional merger.

So how does it work? The essence of a DLC is the equalisation agreement entered into between the companies, which determines the legal and economic rights between the shareholders and facilitates achievement of desired economic integration. It is comparable to a unified charter document which lines out the guiding principles for all governance matters right from functioning of board and shareholders' rights till the termination of DLC.

The proportion in which joint voting rights are exercised and profits accrue to the shareholders of both the companies depends on equalisation ratio, which is arrived at after factoring in the relative valuations of the companies at the time of formation of a DLC. This is the most common DLC model and is adopted by majors like Rio Tinto, Unilever and BHP Billiton.

A DLC arrangement enables the companies to pool in their assets, share infrastructure, expand business and operations to new territories, but at the same time avoid drawbacks of a traditional cross-border merger. Since the model does not involve issuance of additional shares or share swap, this arrangement should not give rise to any capital gains tax issues. More importantly, unlike mergers, a DLC arrangement may be terminated anytime.

However, despite its apparent advantages, the number of DLCs have been very low. Critics have attributed the reasons to complexity in operations as compared to a single merged entity, difficulties in achieving synergies in administration due to existence of separate shareholders, listings, etc. But, fortunately, such downsides have not eclipsed the concept of DLC and the recent Thomson-Reuters 'tie-up' has renewed the interest of corporate world in this innovative coalition.

Experts suggest that DLC can be used as a good momentary step before going for a full fledged merger, especially when political conditions and shareholder's hesitation may not warrant an immediate merger. This would give shareholders of both companies time to get acquainted with each other before possible unification.

Is India Inc ready for such alliances? Despite being an epicentre of major cross border M&A, a DLC structure is something that has still not been tested here. This may be because till date, such contractual agreements have no legal standing. Though it has been suggested by Dr JJ Irani Committee on Companies Act, nothing has yet been finalised.

But there are many questions that need to be answered: Can such an arrangement operate within our legal and accounting regime? Will the concept of common voting by shareholders fit within the ambit of our corporate laws?

Will the dilution of voting rights of Indian company's shareholders pursuant to concept of common voting trigger the takeover regulations? With the liquidity in the market drying up and the companies looking for innovative alliances to reduce the cost by sharing the common infrastructure, it's now high time the Indian legislatures bestow legal sanctity to such innovative M&As to help India Inc to take the cross-border alliances to a new level.

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