SEBI NORMS MAY STUMP FOREIGN AIRLINES

According to the new takeover guidelines, if they buy 25% or more, they will have to make an open offer for another 26% The airline industry might be feeling relieved after a group of key ministers reached a consensus on allowing foreign airlines to buy up to 49 per cent in domestic carriers. However, the takeover regulations of the Securities and Exchange Board of India (Sebi) may act as a stumbling block. Last year, Sebi notified the Substantial Acquisition of Shares and Takeover Regulations, 2011, in which it specified that any entity acquiring 25 per cent or more in a company would have to mandatorily make an open offer of 26 per cent. That means, if a foreign firm were to pick 25 per cent or above in adomestic carrier, it would have to make an open offer of another 26 per cent. If the issue is fully subscribed, the foreign company may end up holding as much as 51 per cent or more — or a clear majority stake —in a domestic carrier. On the other hand, the government has capped the foreign direct investment (limit) to 49 per cent. Similarly, if a foreign company were to pick 49 per cent, the open offer regulation would still get triggered, according to the existing takeover guidelines. So, on the one hand the government is capping the FDI in aviation at 49 per cent, while, on the other, the takeover code forces the acquirer to make an open offer if they exceed 25 per cent. Legal experts feel foreign players need to structure deals innovatively to fit the requirements of both the FDI policy and takeover rules. Siddharth Shah, head (funds practice), Nishith Desai Associates, said: “Foreign airlines might have to go for a voluntary open offer instead of acquiring an upfront stake. However, this will not satisfy the rationale of allowing foreign airlines to invest, which is infusion of capital. Sebi may give certain exemptions, like allowing higher stake initially with atimeline to bring it down to the permitted levels.” Buying less than 26 per cent stake won’t be attractive for foreign investors, as they require a minimum 26 per cent to block special resolutions, according to the Companies Act, say experts. There was speculation that Sebi might give a special exemption to the sector, but the regulator is said to have rejected such requests. Civil Aviation Minister Ajit Singh today told a TV channel that the Centre wanted to cap the foreign airlines’ investments at 26 per cent itself. “We asked Sebi if an exemption could be given for the open offer requirements under the takeover rules. They refused. So, we decided to allow 49 per cent,” he said. Last year, the Reserve Bank of India had given a special dispensation to the airline sector where it had allowed restructuring of loan once without classifying these as non-performing asset. Somasekhar Sundaresan, partner, J Sagar Associates, said an exemption for a specific sector might not be feasible. “You cannot have sector-wise exemptions. There is law and it will have to play,” he said, adding: “The interplay between sectoral cap and takeover code has always been there and the market structures deals with these accordingly. Either you buy less than 25 per cent or find a person acting in concert to divide the response to the open offer.” Shares of airline companies today continued their upward spiral in an otherwise flat market. Shares of Jet Airways gained the most, 4.96 per cent, followed by SpiceJet, which added 2.46 per cent, and Kingfisher Airlines (KFA), which advanced 0.6 per cent. Jet, Spicejet and KFA have gained 49 per cent, 41 per cent and 20 per cent, respectively, in the past 10 trading sessions. At present, the foreign institutional ownership in these companies is between two per cent and six per cent. - www.economictimes.indiatimes.com