

You are here : [Moneycontrol](#) » [News](#) » Business

## Takeover Code amendment plugs loopholes in norms: Expert

Published on Tue, Sep 22, 2009 at 21:22 , Updated at Wed, Sep 23, 2009 at 11:39  
Source : CNBC-TV18

 [Watch Video](#)



Hitesh Jain, Partner, ALMT Legal believes that there was a loophole in the system that has been plugged. According to him, one should view the deal and the regulations independently. "I don't think the regulations have been tweaked or introduced solely for the purpose of the deal," he said.

Vyapak Desai, Head Capital Markets, Nishith Desai Associates said the amendment would definitely affect most of the cross border transactions to the extent they are structured through ADR/GDR routes. "It is very common to have certain customary arrangements for voting rights through the depositories for the underlying equity," he added.

*Here is a verbatim transcript of the exclusive interview with Vyapak Desai and Hitesh Jain. Also watch the accompanying video.*

**Q: You have been hearing into the basic structure of what has really happened today? How are you reading the entire development?**

**Jain:** Two things. We have been reading too much of these regulations from the Bharti-MTN perspective. According to me, we have to view the deal and the regulations independently. First of all, I don't think the regulations have been tweaked or introduced solely for the purpose of the deal. The regulations are very simple. There was a loophole in the system that has been plugged. For example, you are allowing the GDR and ADR the voting rights and at the same time what you have done is brought it on par the regulations with the domestic takeover norms. So, the provision has been rationalised. So, there is nothing wrong in the regulation.

As far as the deal is concerned, what happens is that because of this regulation, there is a concern that it will increase the cost of the acquisition. That is basically the concern from Bharti's perspective that by getting into the open offer whether it will increase the cost of the acquisition or not.

I also read the statement that they will be also making an application for exemption, where it will be interesting to see how the regulators are going to deal with the application for exemption because usually when somebody applies for exemption as is in the case of hostile takeover or something like the Satyam scenario where the situation really demands for exemption. This has been a case of a friendly acquisition. So, how the regulator is going to view the application for exemption, if filed, is going to be an interesting development.

**Q: You have outlined the fact that an exemption in this kind of a case, if the structure remains what we have been reading about so far, and unless it undergoes a dramatic change, are you really saying that in the structure that is there in the informal guidance, as per that structure an open offer will get triggered?**

**Jain:** If the structure, as it stands today, certainly with the introduction of the

revised norms, the open offer is going to be triggered. There is no doubt about that.

**Q: What is the provision that Bharti could actually use to seek an exemption from SEBI? It hasn't said it will seek an exemption. It said that if required it will seek an exemption but what are the provisions under law under which it could seek this exemption if required?**

**Desai:** Takeover Code does provide certain regulations and provisions where the acquirer can go under regulations four of the Takeover Code for certain exemptions of the provisions of the Takeover Code. However, it would be too early for us to comment on it because we have seen this proposed amendment just coming in today.

Also, the manner in which the GDRs are being structured we thought without voting arrangements we are yet to see how they are going to shape up in the whole structuring exercise. On a broader level, I believe this amendment would definitely affect most of the cross border transactions to the extent they are structured through ADR/GDR routes because it is very common to have certain customary arrangements for voting rights through the depositories for the underlying equity.

It has a broader impact on the way cross border transactions would happen and some of the takeovers would happen in the future because this is clarifying certain issues which to my understanding in the recent informal guidance issued by the SEBI were little contrary to this. It was clarified by SEBI that the open offer requirements would trigger only when the ADRs or GDRs are converted into equity shares due to regulation.

**Q: What could the various scenarios be going forward?**

**Desai:** There are quite a few perspectives to the whole structure including some of the issues on dual listing and in some of the issues as to how far they want the control of the company and what kind of voting arrangements they would like to make. So to my understanding it is too early at this stage to comment on some of those structures which the parties could explore.