Stay in step with changes in world's takeover codes

By Sambhav Ranka & Nishchal Joshipura

GLOBALLY, mergers and acquisitions (M&As) have progressively become significant channels of industrial reformation and restoration. In the past few years, Indian and UK companies have gathered synergies by engaging into numerous top-notch M&As.

While acquiring listed companies in the UK, it becomes extremely important to understand the City Code on Takeovers and Mergers of the UK ("The UK City Code"). While large portion of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("Indian Code") and its principles have been derived from the UK City Code, some of the differences between the two are as follows:

Making an offer:

Interestingly, the UK City Code requires any acquirer intending to acquire control over a UK company to make an offer to the board of directors of the target UK company ("Board"), which would, in turn, recommend or reject the offer of the acquirer based on independent financial advice sought by the board in that regard. If the board does not recommend such an offer to the shareholders, the offer is regarded as a 'hostile bid'. In contrast, the Indian Code does not require an acquirer to approach the board for making an acquisition, and is free to directly deal with the shareholders.

Quantum of open offer: Unlike the Indian Code, which mandates a public offer of at least 20% additional shares upon the acquirer crossing 15%, the UK City Code requires an acquirer to buy all remaining shares of the target company, if, at any time, its voting rights in the company aggregate to 30% or more.

Inducement fee:

Under a contractual arrangement, the target company may agree to pay to the initial acquirer certain stipulated percentage of the offer price offered by such initial acquirer, when the board of the target company recommends another higher competing offer to its shareholders.

Inducement fee is paid to compensate the initial outbid acquirer for galvanising a higher bid. The UK City Code states that inducement fee should normally be no more than 1% of the offer price offered by the initial outbid acquirer. Axon paid an inducement fee of GBP 4.07 million to Infosys on Axon's acquisition by HCL. Such a provision for inducement fee has not been covered in the Indian Code.

Reaction window to a counter offer:

As a practice in the UK, the target company may agree with the acquirer to provide the acquirer a window of 60 hours ("Reaction Window") to react to any counter offer. During the Reaction Window, the board of the target company may be prohibited from revoking or amending any agreement or undertaking it has already concluded. After the Reaction Window lapses, the option lies with the board of the target company to choose between the offer and the counter offer. Under the Indian Code, a

timeline of a maximum of 21 days from the public announcement is provided to make a competitive offer.

Scheme of Arrangement ("Scheme"):

A UK company can be acquired through a scheme, which provides for a company to propose an arrangement to its shareholders or creditors and get it approved from a high court. A parallel procedure is also provided under the Indian Companies Act, 1956. A scheme is a preferred route in the UK because of the quick turnaround by courts in the UK compared with Indian courts, which usually take 4-6 months to sanction. Further, there is no stamp duty reserve tax payable under a particular type of scheme in the UK, whereas there is heavy stamp duty payable on the High Court order sanctioning the scheme in India.

Having roots in the UK City Code, it may be vital for Indian regulators to keep a regular check on changing trends in the UK City Code and takeover codes of other emerging and developed economies to import the best practices for creating a conducive environment for cross border M&As.

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