

Business Standard

New takeover code cramps leg room for promoters

N Sundaresha Subramanian / Mumbai October 3, 2011, 2:10 IST

The new Takeover Code is throwing up new surprises. Regulation 3 (3) of the new law, which deals with open offer obligations of persons acting in concert (PAC), has increased the liabilities of promoter group shareholders beyond what was conceived by the Achuthan committee, according to three experts, including two who were part of the committee.

According to sources, the market regulator may come up with clarifications on the point.



The Achuthan committee report and the draft takeover code had limited the open offer obligation to inter-se transfers between persons acting in concert.

But the language of the new code notified by the Securities and Exchange Board of India last week implies that even other modes of stake increases by promoters such as market purchases, creeping acquisition and preferential

allotment will trigger the mandatory open offer at the individual shareholder level, if the 25 per cent limit is breached.

Kumar Desai, advocate, Bombay high court and member of the Achuthan committee, said that the provision will cover modes other than inter-se transfers. "This will cover creeping acquisitions," he said.

CLOSE TO THE TRIGGER

Some prominent companies where single promoters within a group are close to the 25 per cent trigger

Company	Total promoter holding	Individual promoter	
		Name	Holding
Axis Bank	37.15%	Unit Trust of India – UTI – 1 SUUTI	23.60%
Unitech International	48.53%	Dhruv Rajesh Desai	24.08%
Unitech	48.57%	Prakausali Investments India	21.73%
Bhushan Steel	69.15%	Neeraj Singal	22.09%

Source: Companies

For example, if in a company, promoter group holding is 60 per cent, of which the main promoter holds 23 per cent, then, though the promoter group as a whole is entitled buy 5 per cent as creeping acquisition without open offer, the main promoter who holds 23 per cent cannot acquire beyond 1.99 per cent.

Regulation 3 (3) of the new law says, "Acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert."

Experts say the result of this new sub-regulation will be that while taking decisions of consolidation of holdings, promoters have to see both overall as well as holding of individual entities.

Indian companies have multiple entities holding the promoter group shares. For instance, The promoter group shares of Mahindra and Mahindra are held by some 53 entities including companies, trusts and individuals.

Manoj Kumar, Assistant Vice President, Corporate Professionals, a Sebi-registered Merchant banker, said "As a basic principle, in takeover laws, acquirer should always be considered with PACs with him and the prescribed thresholds should be based on collective holding of Acquirer and PAC. But this new Sub-regulation makes threshold individual as well as collective," Kumar added.

The Achuthan committee draft had limited the obligation only to purchases of shares "by any person from other persons acting in concert."

The Regulation 3 (3) under the draft proposed by the Achuthan committee read as follows, "Acquisition of shares by any person from other persons acting in concert with him such that the individual shareholding of the person acquiring shares exceeds the stipulated thresholds shall also be regarded as attracting the obligation to make an open offer for acquiring shares of the target company although the aggregate shareholding along with persons acting in concert may remain unchanged."

This, according to lawyers, covered only inter-se transfers between co-promoters or two or more promoter group shareholders.