

NEWSALERT

SEBI INCREASES OPEN OFFER TRIGGER LIMITS AND OFFER SIZE

The Securities and Exchange Board of India (SEBI) approved on July 28, 2011 the proposals for raising the trigger limit for open offer and size of the open offer. As per the information released by SEBI, it has accepted most of the recommendations of Takeover Regulations Advisory Committee (TRAC). The following constitute the significant features of the amended Takeover regulations:

Initial threshold limit for open offer raised to 25% from the existing 15%;

Minimum size of the open offer raised from the existing 20% of the total issued capital to 26%.

No separate provision for payment of non-compete fees to promoters and all shareholders to be offered exit at the same price.

In cases of competitive offers, successful bidder can acquire shares of other bidder(s) after the offer period without attracting open offer obligations.

Voluntary offers introduced subject to certain conditions.

Recommendation on the offer to the shareholders by the Board of Target Company has been made mandatory.

No change in the definition of the term "Control".

Under the existing SEBI Takeover regulations, initial trigger limit for open offer is 15% of shares/voting rights which SEBI has increased to 25%. Going forward an investor can acquire up to 25% stake in a listed company without being required to make a public offer for the purchase of shares from the public. Another major recommendation approved by SEBI is that the size of open offer has been enhanced from the present level of 20% to 26%. Any person who acquires 25% has to make an offer for at least 26% as against the existing minimum 20% of total issued capital of Target Company. The cumulative effect of these amendments would be that a new investor can acquire up to 51% of the total issued capital of the listed company. SEBI has not accepted TRAC's recommendation of raising offer size up to 100%, probably for the reason that it would increase the cost of acquisitions substantially. This recommendation was contested by the domestic industry because unlike foreign acquirers, domestic companies are prohibited from bankrolling their acquisitions. This places domestic acquirers in a discriminatory position vis-a-vis acquirers in overseas markets.

Another significant amendment by SEBI is the doing away of payment of non-compete fee to the promoters. Going forward, the acquirer would not be able to give any non-compete fee to the promoters and has to treat all shareholders at par. Consequently, the price at which the shares are purchased from the majority/promoter shareholders has also to be offered to the other/minority shareholders. However, scrapping non-compete fee will prove a disincentive to the promoters, especially those who have nurtured the company and expect a premium at the time of exiting the company.