Legal Update

Makeover of Takeover Code

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Background

There has been a steady increase in corporate restructuring by Indian companies to adapt to the evolving competitive landscape. This is evident from the number of takeovers of listed companies which increased from an average of 69 a year during the period between 1997 and 2005 to an average of 99 a year during the period 2006 and 2010. Thus existence of an efficient and smooth-functioning market for takeovers plays an important role in the economic development of a country. One of the key elements of a robust Corporate Governance regime in any country is the existence of well administered and efficient set of Takeover regulations.

The Achuthan Committee had adopted an approach of balancing and calibrating the conflictive objectives while drafting the proposed set of Takeover Regulations, to recognize and accord primacy to the goal of protection to the interest of the public shareholders in takeover situations; to ensure that the takeover markets operate in fair, equitable and transparent manner.

As per the recommendations of the Takeover Regulations Advisory Committee, SEBI met on Thursday, the 28th of July, 2011 and took the following decisions:

Key Highlights of the decision of SEBI

Takeover

- On Thursday, the 28th of July, 2011, heralding a new set of rules for takeover of companies, SEBI declared that an entity buying 25 per cent stake in a listed firm will have to mandatorily make an offer to buy additional 26 per cent from public shareholders.

- The new norms mark an increase in the open offer size for public shareholders from 20 per cent currently, while the trigger for such offer has also been raised from 15 per cent in the existing regulations.

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

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- Voluntary offers have been introduced subject to certain conditions.
- Non-compete fee has been scrapped, that acquirers generally pay to the seller in mergers and acquisition deals. Therefore, all shareholders to be given exit at the same price.
- It is understood that bank financing of acquisitions may not happen in the near future.
- The new norms also make it mandatory for the Board of the Target Company to suggest its opinion to shareholders and the rise in minimum limit may benefit private equity investors who can now own more of a listed company without having to invest a substantial sum.

SEBI (Mutual Fund Regulations) 1996

- Transaction charges are kept at a minimal of Rs. 100 per subscription for the distributor to help mutual funds penetrate into retail segment in smaller towns. No charges for investment below Rs. 10000.
- An additional amount of Rs. 50 can be charged to first time Mutual Fund investor.
- No transaction charges on a
    - transaction other than purchases/subscriptions relating to new inflows
    - direct transactions with the Mutual Funds
- AMCs to manage and advise pooled assets such as offshore funds and pension funds etc. that are broad based provided there is no conflict of interest due to differential fees structure. AMCs continue to deal with Portfolio Management Services (PMS)
- Guidelines for advertisement will be suitable modified to include point to point on a standard investment of Rs. 10000 and other performance related disclosures.

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- The IDFs can be set up by any existing mutual fund. Applications from companies which have been carrying on activities or business in infrastructure financing sector for a period of not less than five years and fulfill the eligibility criteria provided in Regulation 7 of Mutual Fund Regulations will also be considered for setting up Mutual Funds exclusively for the purpose of launching IDF Scheme. Salient features of the IDF Scheme are:
    - The IDF would invest 90 per cent of its assets in the debt securities of infrastructure companies or SPVs across all infrastructure sectors.
    - Minimum investment into IDF would be Rs. 1 crore with Rs. 10 lakh as minimum size of the unit.
    - The credit risks associated with underlying securities will be borne by the investors and not by IDF.
    - A firm commitment from strategic investors to the extent of Rs. 25 crore.
    - An infrastructure debt fund scheme shall be launched either as close-ended scheme maturing after more than five years or Interval scheme with lock-in of five years.
    - Fully paid up units of infrastructure debt fund schemes shall be listed on a recognized stock exchange.
    - An Infrastructure debt fund shall have minimum 5 investors and no single investor shall hold more than 50% of net assets of the scheme

Amendment to SEBI (prohibition of Insider Trading) Regulations, 1992

The Board mandates certain disclosures to be made by promoters and persons who are part of promoter group of a listed company. The amendment relates to initial disclosures relating to their shareholding at the time of becoming promoter or part of promoter group; and also continuous disclosures whenever there is a change in their holdings exceeding Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

Presently, similar disclosures are required to be made by the directors and officers of the company.

Other key issues

- NSDL Matter
- Harmonization and Rationalization of KYC in Securities Market
- Amendment to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009
- Simplifying and rationalizing Trading Account Opening Process
- Due diligence records to be maintained by merchant bankers
- Review of net worth for Registrars to an Issue and Share Transfer Agents
- Decentralisation of work to Regional Offices and opening of Local Offices

The text of the Regulations and amendments is yet to come. However, the decisions taken by SEBI on July, 28, 2011 can be read here:

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