SOUTH INDIAN Bank
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STUDENTS' ECONOMIC FORUM

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Theme 272

TAKE OVER CODE

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Theme No. 272 : TAKE OVER CODE

A well informed customer will make the policy makers as well as organisations which produce goods and services more responsive to the customer needs. This will also result in healthy competition among organisations and improve the quality of goods and services produced.

The "SIB Students' Economic Forum" is designed to kindle interest in economic affairs in the minds of our younger generation. We highlight one theme in every monthly meeting of the "Forum". SEBI came out with the SAST(Substantial Acquisition of Shares and Takeovers) Regulations which were notified on September 23, 2011. This month we discuss on this topic.

What is the significance of the new regulatory framework governing takeovers?
The regulatory framework governing takeovers in India can be traced back to the 1990s with the incorporation of Clause 40 in the Listing Agreement. The SAST Regulations, 1994 were notified in November 1994 and has paved the way for regulation of hostile takeovers and competitive offers for the first time. Further modifications in those Regulations were notified on February 20, 1997. SEBI formed a Takeover Regulations Advisory Committee (TRAC) in September 2009 under the Chairmanship of (Late) Shri. C. Achuthan, Former Presiding Officer, Securities Appellate Tribunal (SAT). Based on the report submitted by TRAC, SEBI came out with the new regulatory framework governing takeovers.

What is a 'Target Company'?
The company / body corporate or corporation whose equity shares are listed in a stock Exchange and in which a change of shareholding or control is proposed by an acquirer, is referred to as the 'Target Company'.

What do you know about Substantial acquisition of shares & takeovers?
When an acquirer (a person, a corporate or a legal entity) takes over the control of the target Company, it is termed as Takeover. When an acquirer acquires a substantial quantity of shares or voting rights of the target Company, it is termed as substantial acquisition of shares.

What is an open offer under the SAST Regulations?
An open offer is an offer made by the acquirer to the shareholders of the target

company inviting them to tender their shares in the target company at a particular price. The primary purpose of an open offer is to provide an exit option to the shareholders of the target company on account of the change in control or substantial acquisition of shares occurring in the target company.

What are the major policy changes in takeover code announced by SEBI?
The major objective of announcing the modified regulations is to strike a balance between the promoters and acquirers. The code provides a lot of relief to those companies seeking to acquire or merge. The distributors of mutual funds are benefitted with the reintroduction of a small entry load. The regulator has simplified the initial public offer (IPO) application and prospectus to benefit the retail investors. Primary Market: The IPO application and prospectus have been simplified. The information document with the IPO form will be modified with information on the track record of merchant bankers and comparison with peers.

SECONDARY MARKET: The KYC requirements have been unified and simplified with Aadhar cards made eligible for KYC. The opening of trading account has been made simple with single signature.

MUTUAL FUNDS: SEBI has allowed common set of fund managers and research analysts for offshore funds, pension funds and all such pooled assets. The mutual fund distributors will now come under SEBI regulations.

TAKE OVER CODE: The open offer trigger has been increased from 15% to 25% and the open offer size increased from 20% to 26%. SEBI has also scrapped the Non-compete fee.

What is meant by the term “Persons Acting in Concert (PAC)”?
PACs are individual(s) /company(ies)/ any other legal entity(ies), acting together for a common objective or for a purpose of substantial acquisition of shares or voting rights or gaining control over the target company pursuant to an agreement or understanding, formal or informal

What is a voluntary open offer?
A voluntary open offer under Regulation 6, is an offer made by a person who himself or through PAC(Persons acting in concert) ,if any, holds 25% or more shares or voting rights in the target company but less than the maximum permissible non-public shareholding limit.

Voluntary offer by a person holding less than 25% : Minimum offer size of 26% &Voluntary offer by a person holding more than 25% : Minimum offer size of 10%. An open offer, other than a voluntary open offer under Regulation 6, must be made for a minimum of 26% of the target company’s share capital.

What is an offer price?
Offer price is the price at which the acquirer announces to acquire shares from the public shareholders under the open offer. The offer price shall not be less than the price as calculated under regulation 8 of the SAST Regulations for frequently or infrequently traded shares.

Who are eligible shareholders?
The eligible shareholders include all shareholders of the target company other than the acquirer, persons acting in concert with him and the parties to underlying agreement which triggered open offer including persons deemed to be acting in concert with such parties, irrespective of whether they are shareholders as on identified date or not.

What is a Public Announcement (PA)?
A public announcement is an announcement made in the newspapers by the acquirer primarily disclosing his intention to acquire shares of the target company from existing shareholders by means of an open offer.

What is the role of a Merchant Banker in the open offer process?
The Acquirer is required to appoint a Merchant Banker, registered with SEBI, as manager to the open offer before making the PA (Public Announcement). The PA is required to be made through the said manager to the open offer. The manager has to exercise due diligence and ensure compliance with SAST Regulations. The manager has to ensure that the contents of the PA, DPS, letter of offer and the post offer advertisement are true, fair and adequate in all material aspects and are in compliance with the requirements of SAST Regulations.

What is a letter of offer?
The letter of offer is a document which is dispatched to all shareholders of the target company as on identified date. SEBI may give its comments on the draft letter of offer as expeditiously as possible, but not later than 15working days of the receipt of the draft letter of offer. SEBI may also seek clarifications and additional information from the manager to the offer and in such a case the period for issuance of comments shall be extended to the fifth working day from the date of receipt of satisfactory reply to the clarifications or additional information sought. SEBI does not take any responsibility either for the truthfulness or correctness of any statement, financial soundness of acquirer, or of a PAC (Person acting in concert), or of the Target Company, whose shares are proposed to be acquired or for the correctness of the statements made or opinions expressed in the Letter of Offer.

What is the manner in which the acquirer decides the acceptance from each shareholder?
The registrar to the open offer validates all the tenders in the open offer and creates

a basis of acceptance in consultation with the manager to the open offer detailing validly and invalidly tendered shares received in the open offer. In case, the valid shares tendered are less than the offer size, all the valid tendered shares are accepted. If the validly tendered shares in the open offer are more than the offer size, then the valid tenders are accepted on a proportionate basis. The DPS (Detailed Public Statement) and PA before commencement of the tendering period are published in national newspapers as well as in one newspaper of the regional language of the place where registered office of the target company is located. The final letter of offer is required to be dispatched to all shareholders whose names appear as shareholders as on the identified date. Further, the PA, the DPS and other announcements are also filed with the stock exchange & SEBI, and are uploaded on their respective websites for information dissemination.

Where does an investor get more information related to the SAST Regulations?
An investor can get more information related to the SAST Regulations, from the SEBI website and from the Investors website of SEBI. Any person, who along with PACs crosses the threshold limit of 5% of shares or voting rights, has to disclose his aggregate shareholding and voting rights to the Target Company at its registered office and to every Stock Exchange where the shares of the Target Company are listed within 2 working days of acquisition as per the format specified by SEBI. Any person who holds 5% or more of shares or Voting rights of the target company and who acquires or sells shares representing 2% or more of the voting rights, shall disclose details of such acquisitions/ sales to the Target company at its registered office and to every Stock Exchanges where the shares of the Target Company are listed within 2 working days of such transaction, as per the format specified by SEBI. Continual disclosures of aggregate shareholding shall be made within 7 days of financial year ending on March 31 to the target company at its registered office and every stock exchange where the shares of the Target Company are listed .The promoter (along with PACs) of the target company shall disclose details of shares encumbered by them or any invocation or release of encumbrance of shares held by them to the target company at its registered office and every stock exchange where shares of the target company are listed, within 7 working days of such event. SAST Regulations have laid down the general obligations of acquirer, Target Company and the manager to the open offer. For failure to carry out these obligations and for failure / non-compliance of other provisions of these Regulations, penalties have been laid down.

AMENDMENTS TO TAKE OVER CODE

Regulation 22(2A): *An acquirer may acquire shares either through preferential issue or stock exchange settlement process other than bulk or block deal subject to fulfilment of the conditions mentioned therein.*

Regulation 13(2): *An acquirer is required to make a public announcement on the date when the board of directors of the target company authorizes such preferential allotment of shares.*

Regulation 13(2A): *In case of more than one mode of acquisition of shares either by way of an agreement and the one or more modes of acquisition of shares as provided under Regulation 13(2) of the Takeover Code or only through one or more modes of acquisition as provided under Regulation 13(2) of the Takeover Code, an acquirer is required to make a public announcement on the date of first such acquisition giving the details of the proposed subsequent acquisition.*

Regulation 23*: An acquirer shall not be permitted to withdraw an open offer made pursuant to the public announcement made as per Regulation 13(2)(g) even if the proposed acquisition through a preferential issue is unsuccessful.*

Regulation 29(2): *As per the new Regulation 29(2), an acquirer along with PAC if he holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure and such change exceeds two per cent of total shareholding or voting rights in the target company.*

Regulation 10(3): *A shareholder is not required to make an open offer in case his voting rights in a company increases beyond the threshold limit pursuant to buy-back of shares provided such shareholder reduces his shareholding such that his voting rights fall to below the threshold within ninety days from the date on which the voting rights so increase.*

Your comments and feedback on this publication may be sent to Staff Training College, The South Indian Bank Ltd., Thrissur 680 001 or by E.mail: ho2099@sib.co.in

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