

SEBI

TAKEOVER

CODE



SEBI (Substantial Acquisition Of Shares And Takeovers)
REGULATIONS, 1997

Takeover code - At a Glance
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In order to promote fairness in the capital market and to protect the Interest of small investors, sebi has Framed regulation, providing for Acquisition of shares and takeover Of listed companies commonly known As " Takeover code". This article explains the significant features of the takeover code



Take over of companies is a very popular and well-established strategy for corporate growth. A take over Bid implies that an acquirer, acquires substantial quantity of shares carrying voting rights in excess of the limits specified in the SEBI (Substantial acquisition of Shares) Regulation, 1997 in a target listed company either in a direct or indirect manner with a view to gain control over the management of such a company.

Any Individual including the person acting in concert or company or other legal entity acquiring the shares or voting power or control over a target company is known as "acquirer" ' person acting in concert' Means Individual or companies or other legal entities acting together for a common purpose of substantial

acquisition of shares or voting rights or gaining control over a target company in pursuance of understanding or agreement.

Target company is a listed company whose shares or voting rights are acquired/ being acquired by an acquirer or whose control is taken over or being taken over by an acquirer.

Based on the limits, the acquirer has to comply with disclosure requirements. He may acquire shares from the public after making public announcements.

THRESHHQLD Disclosure Requirements on acquisition

Acquisition Percentage	Disclosure Requirement	Timeframe	Target comapny obligation
<p>5% and more of shares voting rights</p> <p>(1) Where acquisition of 5% or 10% or 14% or 54% or 74% of share or voting rights</p> <p>(2) Where purchase or sale is 2% or more of shares in target company</p>	<p>At every stage acquirer must disclose his holding to the target company and stock exchange</p>	<p>(1) with in 2 days of acquisition or receipt of intimation of allotment of shares.</p> <p>(2) An acquirer who holds >15%>but<55% of shares or voting rights and who purchase or sell share aggregating to 2% or more shall have to intimate with in 2 days. such event.</p>	<p>It is required to inform the same to the stock exchanges where the shares of target company are listed</p>

II Continual yearly disclosure

Person to Disclose	Time Frame
(1) Any person who holds >15% shares or voting power in a target company	21 days from end of the financial year ending 31 st March. Every year in respect of his holding as on the date and also holding as an record date fixed for the purpose of dividend declaration to the Target company.
(2) Promoters of the company or person having control over a company.	
(3) Target Company to furnish the information to the stock exchange	30 days from the financial year ending 31. March and also holding as on record date fixed for the purpose of dividend declaration of the target company.

Note-

Registers: - Every listed company is need to maintain a register in terms of regulation 7(1), 8(2) of SEBI substantial acquisition of share and takeovers) regulation 1997.

Trigger point for making open offer by
"Public announcement"

Acquisition of 15% or more of shares or voting right:-

Acquisition of shares to get her with existing holding would entitle acquires to exercise 15% or more of voting rights in a target company. He can acquire share after making "Public announcement".

Acquisition by person already holding >15% but 55% :-

Acquisition of shares or voting rights of 5% or more by the person (acquirer/ person acting concert) Holding more than 15% but less than 55%) of shares or voting rights in a target company can do after making "Public announcement" This type of acquisition is called creeping acquisition.

Acquisition by person already holding >55% but 75% :-

Acquisition of shares or voting rights of by the person (acquirer/ person acting concert) Holding more than 15% but less than 55% but less than 75% of shares or voting rights in a target company can do after making "Public announcement" This type of acquisition is called as consolidation of holding.

Acquisition of Control:-

Acquisition of control over a target company with acquisition of shares or voting Rights control may be of right to appoint directly or indirectly majority of directors on the board of target company or to

control the management or policy decision. By a person or person acting individually or person acting in concert by virtue of their share holding or management rights or share holder agreements.

Procedure Involved in takeover

(1) **Appointment of Merchant Banks (regulation-13) :-**

The acquirer shall have to appoint a category I merchant banker who is not associate after member group of the acquirer or the target company, before making public announcement

(2) **Public announcement (regulation-14) :-**

It is an announcement made by the acquirer through a merchant banker disclosing his intention to acquire minimum of 20% of shares/voting rights of the target company from existing shares holding by means of an open offer. Main object of public announcement is to make aware of an exit opportunity available to the shareholders of the target company.

Public announcement must be made in English and also in a vernacular language daily news paper circulating in the state where registered office of the target company is situated and the stock exchange where the shares are most frequently traded. An appointment of merchant banker is mandatory to carry out the process of open offer.

Public announcement must contain the offer price, number of shares to be acquired from the public, identify of acquirer,

purpose, future plans in respect of target company, period within which offer would be completed.

(3) **Filing letter of offer with SEBI (regulation-18):-**

A letter of offer (L.O.) must be filed with SEBI within 14 days from the date of public announcement. A hard and soft copy of public announcement along with application made in news paper and filing fee of Rs. 50000/- By way of bank cheque or DD is to be remitted. The acquirer has to furnish a due diligence certificate and registration details as per SEBI circular No. RMB (G-1) series dated 26 June 1997 within 14 days from the public announcement. The acquirer shall send a copy of the draft L.O. to the target company and all the stock exchange. L.O. must be dispatched to the shareholder within 21 days from its submission to SEBI.

Submission of Lo with SEBI for a purpose of overseeing whether the disclosures contained therein are adequate and are in conformity with the take over regulation. It would facilitate the shareholder to take an informed decision with regard to the offer. SEBI does not take any responsibility as regards correctness of any statement, financial soundness of acquirer or PAC or target company.

(4) **Minimum offer price (regulation-20) :-**

Lo must contain the minimum offer price. While determining minimum offer price, the acquirer in consultation with

merchant banker to take into consideration all parameters listed

below :-

- (a) Negotiated price between acquires and share holder of target company.
- (b) Highest price paid by the acquirer for acquisition of shares by way of allotment in a public or right or preferential issue during 26 weeks prior to public announcement whichever is higher.
- (c) In case shares of target company are frequently traded the average weekly high and low of the closing price of shares of the target company during 26 weeks.
- (d) In case the shares of target company are not frequently traded, fundamentals such as bookvalue, EPS, return on networth, the industry average are the other parameters needs to be considered.

(5) **Minimum public offer (regulation-21) :-**

The public offer made by the acquirer to the share holders of the target company shall be for a minimum of 20% of the voting capital of the company an acquirer has to make an offer for a minimum of 20% of shares and he cannot make on open offer for less than 20% of share..

(6) **Other obligation of the acquirer (regulation-22) :-**

The public announcement shall be made only when the acquirer is able to implement the offer.

During the offer period, the acquirer person acting in concert shall not be entitled to be appointed on board of Target Company once he deposit 100% of consideration in the escrow account he

may be entitled to be appointed on the board of target company after 21 days of public announcement

(7) **Obligation of the board of target company/merchant banker (regulation-23 & 24):-**

After public announcement of offer, the board of directors of the target company, unless approved by the members at the general board meeting, shall not sell, transfer or dispose of assets of the company or its subsidiaries or issue or allot any unissued securities or enter into any material contracts.

The merchant banks shall have to send a final report to SEBI within 45 days from the date of closure of the offer.

(8) **Withdrawal of offer (regulation-27):-**

The Shareholder shall have the option to withdrawal acceptance given by him up to 3 working days prior to the date of closure of the offer.

An acquirer shall have no option to withdrawal a public offer made except under the following circumstances.

- (1) Statutory approvals required have been refused.
- (2) The sole acquirer being a natural person has died.
- (3) Such circumstances as in the opinion of the SEBI board merits withdrawal.

In the event of withdrawal of offer the acquirer of the merchant banks shall make a public announcement in the same news paper in which P.a. of offer was published indicating reasons for withdrawal of offer.

(9) **Escrow account (regulation-28) :-**

The acquires must create an escrow account of 25% of consideration for offer size less than Rs. 100 crore and 10% for the excess consideration above Rs. 100 crores. The Escrow account shall consist of cash deposited with a scheduled commercial bank.

(10) **competitive bids**

Competitive bids is an offer made by a person other than the acquirer who has made the first public announcement. The bid must be equal to the present and proposed share holding of first acquires. The first acquires can revise his offer pursuant to the competitive bid with in 14 days.

Both acquirers can make upward revision in the price and number of shares till 7 days. Before the closure of the offer. The shares holder shall have option to switch his acceptance between different offers to enable him to be in a better position to decide as to which of the subsiting offers is better.

(11) Penalty :-

SEBI (Substantial Acquisition of shares and takeover) Regulation 1997 lay down the obligation of acquires target company and merchant banker failure or non compliance of provision of the regulation by them would entail penal consequences. The penalty may be (i) for future of the escrow account (ii) directing the person concerned to sell the shares acquired in violation of the regulation and not to further deal in securities (iii) Levy of monetary penalties (iv) prosecutions proceeding (v) directing transfer of any proceeds to investor protection fund of a stock exchange, (vi) debarring any person concerned from accessing the capital market or dealing in securities for such a period as may be directed by sebi board.