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SEBI panel wants open offer trigger set at 25%

MUMBAI: Company takeover rules in India are set to get egalitarian and move closer to global practices, if the market regulator accepts the suggestions of a panel it constituted. (**Watch**
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The recommendations of the group include treatment of all shareholders of the target company, including promoters, on a par, and allowing investors to own up to a fourth of a company without an obligation to buy more from minority shareholders.

The threshold for mandatory offer to buy more should rise to 25%, from 15%, the panel is said to have proposed. Once a buyer or associated persons buy a quarter of a company, they should offer to buy out the remaining 75%, instead of the current rule that says 20% is enough, said a person familiar with the recommendation.

Non-compete fees, a practice of paying the promoters more than other shareholders ostensibly to prevent them from starting the same business again, should go, says the panel.

These key suggestions, among many more from the panel headed by C Achuthan, former head of the Securities Appellate Tribunal , may replace a 13-year-old takeover rule that has created more problems for shareholders and companies than solving them. Numerous litigation by upset minority shareholders and investors attempting to control assets with minimum payments may come to an end.

“It will be a good move to increase the threshold limit for trigger of the Takeover Code and it is more in line with international norms,” says Bahram Vakil, senior partner, AZB & Partners , a leading law firm specialising in M&A-related transactions.

The trigger for mandatory offer in the UK and Singapore is 30%. While the proposals are aimed at creating a level playing field, the number of acquisitions may reduce given that buyers may have to invest at least double of what they would have to with the current regulations.

“It is excellent from the public perspective, but for acquirers, it might be onerous and not financially feasible,” said Mr Vakil.

That may not be true in all cases with global investors chasing assets in emerging markets such as India and China where they are willing to pay exorbitant valuations, some say.

Recently, Abbott Laboratories of the US bought out the formulations business of Piramal Healthcare for more than Rs 17,000 crore, at a valuation unheard of in Indian takeovers, nine times the annual sales.

One of the biggest thorns in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 1997 has been the non-compete fee.

The rules permit a non-compete fee up to 25% of the deal size to the seller, which gives unfair advantage to the promoters.

This provision was used by some buyers to strike a deal with the seller on the fee, and bring down his overall cost of acquisition, by bringing down the payment on price per share, hurting public holders. If the Achuthan panel suggestion, which is to be presented to the regulator on Monday, is accepted, this would end.

The panel may have handed a gift to PE investors by increasing the threshold limit for open offers to 25%. Many private funds were complaining that the obligation to buy 20% more prevents them from taking a substantial stake in listed companies, though they enjoy veto rights. “Financial investors will now get more headroom as they will be able to take a higher stake without having to make an open offer,” says Mehul Savla, director, Ripple Wave Equity.

Other panel members include Koushik Chatterjee, group chief financial offer, Tata Steel; and YM Deosthalee, chief financial officer at engineering firm Larsen & Toubro. The panel has also provided for continuous listing.