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'Takeover proposals are fair to minority shareholders'

Deficits in funding are visible if IFRS is followed: Mazars

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– Mr Nicolas Ribollet of Mazars India

What are your reactions to the proposed takeover code being discussed by SEBI?

The proposed change is fair to minority shareholders. The proposed modifications of the Takeover Code in India, with the new requirement to give an exit opportunity to 100 per cent public shareholders via a public offer as compared to the minimum 20 per cent, is a good thing for minority shareholders and investors, as it is fair for all shareholders to get the same price in that context. Of course, the downside is that acquirers will have to finance a 100 per cent acquisition which means that financing M&A deals under these revised proposals may be more difficult.

In countries that follow IFRS especially in Europe, what percentage triggers an open offer?

In Europe, the equivalent of the Indian open offer is called mandatory bid. The European Directive published in 2004 (Directive 2004/25/EC) stipulates the general principles that the European Member States had to implement in order to coordinate certain safeguards protecting notably the interests of shareholders of listed companies. The principles applicable for the equivalent of mandatory bid are derived from sections 9, 10 and 11 of the directive.

The obligation required from the European Directive is for a person who has acquired control of a company to make an offer to all the holders (i.e. 100 per cent) of that company's securities for all of their holdings at an equitable price in accordance with a common definition.

How are inter-se transfers within the promoter group looked at in Europe? Are they exempt from open offer obligations?

In Europe, you would normally look at the ownership not only held by a person/company but also together with persons/companies acting in concert with it.

The definition of persons acting in concert is provided by the European Directive. It means 'natural or legal persons who cooperate with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid'. This is not significantly different from the Indian definition of Persons Acting in Concert (PACs).

In Europe, the ownership would consequently be looked on a group point of view. Subsidiaries and other group companies would normally be considered as acting in concert with the main company, so the group shareholding as a whole would be the basis for knowing if a mandatory bid (equivalent to the Indian open offer) has to be made.

In Europe, an exemption is suggested in Section 11 of the European Directive published in 2004. The obligation does not apply in the case of the acquisition of securities which do not carry the right to vote at ordinary general meetings of shareholders (although Member States were able to decide not to implement this exemption).

When a company makes an open offer, how are pension liabilities assayed? How are underfunded or unfunded pension liabilities detected?

Deficits in funding are visible if IFRS is followed. In countries like UK, the trustees of the fund handling the pensions of employees have the right to say to the buyer or seller about the commitment towards funding these liabilities, the current deficit and the payout that the seller may have to fund before selling out or the buyer may have to bear as part of the buy out process.

Indian GAAP is more or less compliant with IFRS. It's just that IFRS offers more choices when it comes to actuarial valuation of pension liabilities. In India, the practice is to invest in government securities, whereas elsewhere investments are also done in high quality corporate bonds.

Views on New take over code and IFRS by Mr. Nicholas Ribollet
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