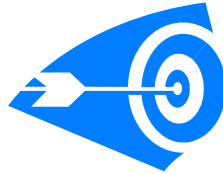


STUDY IV

TAKEOVERS AND ACQUISITIONS

LEARNING OBJECTIVE



The objective of this study lesson is to enable the students to understand

- An overview mergers, amalgamations takeovers
- Concept of takeovers, its kinds etc.
- Regulatory framework governing mergers amalgamations and takeovers
- SEBI (SAST) Regulations, 2011
- Disclosures, exemptions public announcement etc relating to takeovers
- Regulatory checklist for acquirer, target company and merchant banker
- Cultural issues in mergers and takeovers
- Takeover Defenses
- Penalties

CORPORATE RESTRUCTURING THROUGH MERGERS ACQUISITIONS AND TAKEOVERS – AN OVER VIEW

Introduction

Takeovers, mergers and acquisition activities continue to accelerate. From banking to oil exploration and telecommunication to power generation, companies are coming together as never before. Not only this new industries like e-commerce and biotechnology have been exploding and old industries are being transformed. Corporate Restructuring through acquisitions, mergers, amalgamations, arrangements and takeovers has become integral to corporate strategy today.

Mergers

A merger has been defined as 'the fusion or absorption of one thing or right into another'. A merger has also been defined as an arrangement whereby the assets of two (or more) companies become vested in, or under the control of one company (which may or may not be one of the original two Companies), which has as its shareholders all or substantially all, the shareholders of the two companies.

In a merger, one of the two existing companies merges its identity into another existing company or one of more existing companies may form a new company and merge their identities into the new company by transferring their businesses and undertakings including all other assets and liabilities to the new company (hereinafter referred to as the merged company). The shareholders of the company or companies, whose identity/ies has/have been merged (hereinafter referred to as the merging company or companies, as the case may be) will have substantial shareholding in the merged company. They will be allotted shares in the merged company in exchange for the shares held by them in the merging company or companies, as the case may be, according to the shares exchange ratio incorporated in the scheme of merger as approved by all or the prescribed majority of the shareholders of the merging company or companies and the merged company in their separate general meetings and sanctioned by the court.

CATEGORIES OF MERGERS

Mergers may be broadly classified as follows:

- (i) Cogeneric — within same industries and taking place at the same level of economic activity — exploration, production or manufacturing wholesale distribution or retail distribution to the ultimate consumer.
- (ii) Conglomerate – between unrelated businesses

Cogeneric Mergers

Cogeneric mergers are of two types:

Horizontal Merger

This class of merger is a merger between business competitors who are manufacturers or distributors of the same type of products or who render similar or same type of services for profit. It involves joining together of two or more companies which are producing essentially the same products or rendering same or similar services or their products and services directly to compete in the market with each other. Horizontal mergers result into a reduction in the number of competing companies in an industry and increase the scope for economies of scale and elimination of duplicate facilities. However, their main drawback is that they promote monopolistic trend in the industrial sector. The acquisition in 1999 of Mobil by Exxon represented a horizontal merger.

Vertical Merger

In a vertical merger two or more companies are complementary to each other e.g. one of the companies is engaged in the manufacture of a particular product, the other is established and expert in the marketing of that product. In this merger the two companies merge and control the production and marketing of the same product.

A vertical merger may result into smooth and efficient flow of production and distribution of a particular product and reduction in handling and stockholding costs. It also poses a risk of monopolistic trend in the industry.

Conglomerate Merger

A conglomerate merger involves coming together of two companies in different industries i.e., the businesses of the two companies are not related to each other, neither horizontally nor vertically. They lack any commonality either in their end product, or in the rendering of any specific type of service to the society. This is the type of merger of companies which are neither competitors, nor complementaries nor suppliers of a particular raw material nor consumers of a particular product or consumable. A conglomerate merger is one which is neither horizontal nor vertical. In this the merging companies operate in unrelated markets having no functional economic relationship.

Mergers may further be categorised as:

Cash Merger

A merger in which certain shareholders are required to accept cash for their shares while other shareholders receive shares in the continuing enterprise.

Defacto Merger

Defacto merger has been defined as a transaction that has the economic effect of a statutory merger but is cast in the form of an acquisition of assets.

Down Stream Merger

The merger of parent company into its subsidiary is called down stream merger.

Up stream Merger

The merger of subsidiary company into its parent company is called an up stream merger.

Short-form Merger

A number of statutes provide special company rules for the merger of a subsidiary into its parent where the parent owns substantially all of the shares of the subsidiary. This is known as a short form merger. Short form mergers generally may be effected by adoption of a resolution of merger by the parent company, and mailing a copy of plan of merger to all shareholders of subsidiary and filing the executed documents with the prescribed authority under the statute. This type of merger is less expensive and time consuming than the normal type of merger.

Triangular Merger

Triangular merger means the amalgamation of two companies by which the disappearing company is merged into subsidiary of surviving company and shareholders of the disappearing company receive shares of the surviving company.

Reverse Merger

Reverse merger takes place when a healthy company amalgamates with a financially weak company. In the context of the provisions of the Companies Act, 1956, there is no difference between regular merger and reverse merger. It is like any other amalgamation. [For a detailed analysis of the concept of reverse merger, refer to Gujrat High Court judgment in Bihari Mills Ltd. case (1985) 58 Comp Cas 6].

Reverse merger can be carried out through the High Court route, but where one of the merging companies is a sick industrial company under SICA, such merger must take place through BIFR. On the amalgamation becoming effective, the sick company's name may be changed to that of the healthy company.

Reverse merger automatically makes the transferor-company entitled for the benefit of carry forward and set-off of loss and unabsorbed depreciation of the transferee-company. There is no need to comply with Section 72A of Income Tax Act.

Amalgamation

Amalgamation is an 'arrangement' or 'reconstruction'. Amalgamation is a legal process by which two or more companies are joined together to form a new entity or one or more companies are to be absorbed or blended with another and as a consequence the amalgamating company loses its existence and its shareholders become the shareholders of new company or the amalgamated company. In case of amalgamation a new company may come into existence or an old company may survive while amalgamating company may lose its existence.

Takeover

Takeover means acquisition by one company of control over another, usually by buying all or a majority of its shares. A transaction or a series of transactions by which a person acquires control over the assets of a company is generally known as takeover of the company. On the other hand an arrangement whereby the assets of two companies vest in one is known as merger.

Regulatory Aspects

Amalgamations, mergers and takeovers are governed by the following Acts/Regulations/Rules.

1. Section 390-396 A of Companies Act, 1956

2. Companies (Court) Rules, 1959
3. Listing Agreement
4. SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
5. Securities Contracts Regulations Act, 1957
6. Income Tax Act, 1961

TAKEOVERS

Takeover has been defined as a business transaction whereby an individual or a group of individuals or a company acquires control over the assets of a company, either directly by becoming owner of those assets or indirectly by obtaining control of the management of the company. In the ordinary case, the company taken over is smaller but in a 'reverse takeover' a smaller company gains control over the larger company. This is different from 'merger' wherein the shareholding in the combined enterprise will be spread between the shareholders of the two companies. Normally the company which wants to takeover the other company acquires the shares of the target company either in a single transaction or a series of transactions. In case of amalgamation under Section 391-394 of the Companies Act, 1956 the amalgamating as well as amalgamated company have to apply to the High Court(s) for making order of amalgamation. However, the regulatory framework for controlling the takeover activities of a company consists of the Companies Act, 1956, Listing Agreement with Stock Exchanges and SEBI's Takeover Code.

Takeover Bid

In simple language a takeover is acquisition of shares, voting rights in a company with a view to gaining control over the management of the company.

A "takeover bid" is an offer addressed to each shareholder of a company, whose shares are not closely held, to buy his shares in the company at the offered price within the stipulated period of time. It is addressed to the shareholders with a view to acquiring sufficient number of shares to give the offeror company, voting control of the target company. It is usually expressed to be conditional upon a specified percentage of shares being the subject-matter of acceptance by or before a stipulated date.

A takeover bid is a technique, which is adopted by a company for taking over control of the management and affairs of another company by acquiring its controlling shares.

KINDS OF TAKEOVERS

- (1) Friendly takeover;

- (2) Hostile takeover.

Friendly Takeover

A friendly takeover is with the consent of taken over company. There is an agreement between the management of two companies through negotiations and the takeover bid may be with the consent of majority or all shareholders of the target company, which is referred to as friendly takeover bid.

Hostile Takeover

When an acquirer company does not offer the target company the proposal to acquire its undertaking but silently and unilaterally pursues efforts to gain control against the wishes of existing management such acts of acquirer are known as 'takeover raids' or hostile 'takeover bids'. The main distinction between a friendly takeover and hostile takeover is whether there is a mutual understanding between the acquirer and the taken over company. When there is a mutual understanding, it is friendly takeover otherwise it is termed as hostile takeover.

In a takeover, the taking over company has two options, viz., (i) to merge both companies into one and operate both the undertakings as a single entity, and (ii) to keep the takeover company a separate and independent company, with changed management, changed policies or even with a changed name.

Takeover may be of different types depending upon the intention of the management of the taking over company.

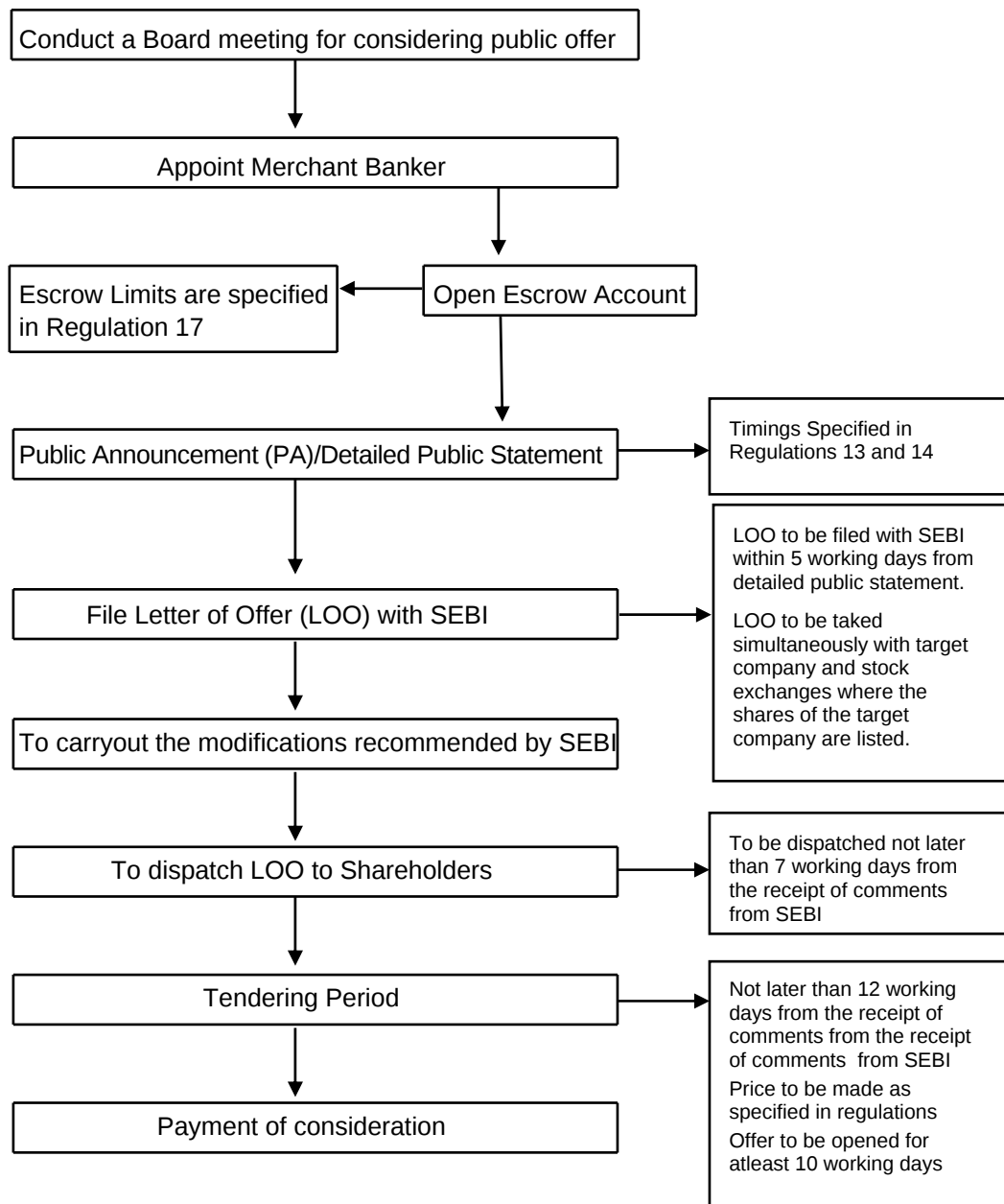
1. A takeover may be a straight takeover which is accomplished by the management of the taking over company by acquisition of shares of another company with an intention to maintain and operate the takeover company as an independent legal entity.
2. Another type of takeover may be with an intention of capturing the ownership of the takeover company in order to merge both companies into one and operate business and undertakings of both the companies as a single legal entity.
3. A third type of take over is the takeover of a sick industrial company for the purpose of revival of its business. This is accomplished by an order of the Board for Industrial and Financial reconstruction (BIFR) under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985
4. Bail out takeover is substantial acquisition of shares in a financially weak company not being a sick industrial company, in pursuance to a scheme of rehabilitation approved by a public financial institution or a scheduled bank (hereinafter referred to as the lead institution). The lead institution is responsible for ensuring compliance with the provisions of the SEBI (Substantial Acquisition and Takeovers) Regulations, 1997, which regulate the bail out takeovers.

An overview of international comparison on Regulatory Process on takeovers.

Particulars	India	Newzealand	Australia	Singapore	UK	USA
Regulators	SEBI	Takeover panel	Australian Securities Commission	Securities Industry Council	Financial Services Authority	Securities and Exchange Commission
Threshold limit	25%	20%	20%	30%	30%	—
Creeping acquisition limit	5% for shareholders holding 25% to maximum permissible non-public shareholding	To acquire 50% or more first and 5% over a 12 month period	3% in 6 months	1% in 6 months applicable to shareholders holding shares between 30% and 50%	—	—
Public announcement	Required	Required	Required	Required	Required	Required
Letter of offer	Required to be sent	Required to be sent	Required to be sent (Target response statement)	Required to be sent	Required to be sent	Required to be sent
Pricing formula	Specified	Not specified	Specified	Specified	Specified	—
Competitive bid	Allowed	Allowed	Allowed	Allowed	Allowed	
Consideration	Cash/ securities	Cash/ securities	Cash/ securities	Cash/ securities	Cash/ cash alternatives	Cash/ securities

TAKEOVER PROCESS UNDER SEBI (SAST) REGULATION 2011 – AN OVERVIEW

The following chart gives an overview of takeover process in India, when there is no competitive bid.



The important terms such as 'target company', 'control', 'Acquirer person acting in concert etc.', open offer process, Disclosure requirements exemptions etc. can be referred at study 4 of the paper "Corporate Restructuring and Insolvency".

IV. CHECKLISTS ON TAKEOVERS

A. Checklist for Acquirer

Preliminary Examination of a target company:

The acquirer has to undertake a preliminary study on the target company, before taking any action for taking over a company. He may consider the following points.

It may be noted that this list is not an exhaustive checklist and it varies depends on size of the company nature of industry

- (a) Information has to be collected on Target Company and to be analysed on financial and legal angle.
- (b) Register of members to be examined to verify the profile of the shareholders.
- (c) Title of the target company with respect to immovable properties may be verified.
- (d) Financial statements of Target Company have to be examined.
- (e) Examination of Articles and Memorandum of Association of the Company.
- (f) Examination of charges created by the Company
- (g) Applicability of FEMA provisions if any relating to FDI has to be looked into.
- (h) Import and Export of technology if any
- (i) Business prospects etc.

List/details of documents to be obtained from target company is enclosed as ***Annexure A.***

A merchant Banker of Category I have to be appointed. It has to be ensured that the merchant banker is not an associate of or group of acquirer or the target company

Escrow Account:

- (i) An escrow account has to be opened and the following sum has to be deposited.
- (ii) The escrow amount shall be calculated in the following manner, as specified in regulation 17,—

For consideration payable under the public offer,—

On the first 500 crores	25 per cent; of the consideration
On the balance consideration	an additional amount equal to 10% of balance consideration.

If, an open offer is made conditional upon minimum level of acceptance, hundred percent of the consideration payable in respect of minimum level of acceptance or fifty per cent of the consideration payable under the open offer, whichever is higher, shall be deposited in cash in the escrow account.

(2) The consideration payable under the open offer shall be computed as provided for in sub-regulation (2) of regulation 16 and in the event of an upward revision of the offer price or of the offer size, the value of the escrow amount shall be computed on the revised consideration calculated at such revised offer price, and the additional amount shall be brought into the escrow account prior to effecting such revision.

(3) The escrow account referred to in sub-regulation (1) may be in the form of,—

- (a) cash deposited with any scheduled commercial bank;
- (b) bank guarantee issued in favour of the manager to the open offer by any scheduled commercial bank; or
- (c) deposit of frequently traded and freely transferable equity shares or other freely transferable securities with appropriate margin:

Provided that securities sought to be provided towards escrow account under clause (c) shall be required to conform to the requirements set out in sub-regulation (2) of regulation 9.

Regulation 9(2) specifies the following requirements.

- (a) such class of shares are listed on a stock exchange and frequently traded at the time of the public announcement;
- (b) such class of shares have been listed for a period of at least two years preceding the date of the public announcement;
- (c) the issuer of such class of shares has redressed at least ninety five per cent. of the complaints received from investors by the end of the calendar quarter immediately preceding the calendar month in which the public announcement is made;
- (d) the issuer of such class of shares has been in material compliance with the listing agreement for a period of at least two years immediately preceding the date of the public announcement:

Provided that in case where the Board is of the view that a company has not been materially compliant with the provisions of the listing agreement, the offer price shall be paid in cash only;

- (e) the impact of auditors' qualifications, if any, on the audited accounts of the issuer of such shares for three immediately preceding financial years does not exceed five per cent. of the net profit or loss after tax of such issuer for the respective years; and
- (f) the Board has not issued any direction against the issuer of such shares not to access the capital market or to issue fresh shares.

(4) In the event of the escrow account being created by way of a bank guarantee or by deposit of securities, the acquirer shall also ensure that at least one per cent of the total consideration payable is deposited in cash with a scheduled commercial bank as a part of the escrow account.

(5) For such part of the escrow account as is in the form of a cash deposit with a scheduled commercial bank, the acquirer shall while opening the account, empower the manager to the open offer to instruct the bank to issue a banker's cheque or demand draft or to make payment of the amounts lying to the credit of the escrow account, in accordance with requirements under these regulations.

(6) For such part of the escrow account as is in the form of a bank guarantee, such bank guarantee shall be in favour of the manager to the open offer and shall be kept valid throughout the offer period and for an additional period of thirty days after completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer.

(7) For such part of the escrow account as is in the form of securities, the acquirer shall empower the manager to the open offer to realise the value of such escrow account by sale or otherwise, and in the event there is any shortfall in the amount required to be maintained in the escrow account, the manager to the open offer shall be liable to make good such shortfall.

(8) The manager to the open offer shall not release the escrow account until the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, save and except for transfer of funds to the special escrow account as required under regulation 21.

(9) In the event of non-fulfillment of obligations under these regulations by the acquirer the Board may direct the manager to the open offer to forfeit the escrow account or any amounts lying in the special escrow account, either in full or in part.

(10) The escrow account deposited with the bank in cash shall be released only in the following manner,—

- (a) the entire amount to the acquirer upon withdrawal of offer in terms of regulation 23 as certified by the manager to the open offer:

Provided that in the event the withdrawal is pursuant to clause (c) of sub-regulation (1) of regulation 23, the manager to the open offer shall release the escrow account upon receipt of confirmation of such release from the Board;

- (b) for transfer of an amount not exceeding ninety per cent of the escrow account, to the special escrow account in accordance with regulation 21;
- (c) to the acquirer, the balance of the escrow account after transfer of cash to the special escrow account, on the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, as certified by the manager to the open offer;
- (d) the entire amount to the acquirer upon the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, upon certification by the manager to the open offer, where the open offer is for exchange of shares or other secured instruments;
- (e) the entire amount to the manager to the open offer, in the event of forfeiture for non-fulfillment of any of the obligations under these regulations, for distribution in the following manner, after deduction of expenses, if any, of registered market intermediaries associated with the open offer,—
 - (i) one third of the escrow account to the target company;
 - (ii) one third of the escrow account to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009; and
 - (iii) one third of the escrow account to be distributed pro-rata among the shareholders who have accepted the open offer.

Undertakings/Authorisation:

Ensure to obtain following undertakings/authorization.

1. A letter duly authorizing Target Company to realize the value of escrow account in terms of Takeover Regulations.

2. An undertaking to Target Company that none of the Acquirer/Persons Acting in Concert have been prohibited by SEBI from dealing in securities, in terms of direction issued under Section 11B of SEBI Act.
3. An undertaking from the sellers, promoters, directors of the Target Company that they have not been prohibited by SEBI from dealing in securities, in terms if direction issued under Section 11B of SEBI Act.
4. An undertaking from the Target Company that it has complied with the provisions of Listing Agreement, and that any non-compliance or delayed compliance has been brought to the notice of Target Company.
5. An undertaking from the Target Company that it has complied with the provisions of SEBI (SAST) Regulations, and that any non-compliance or delayed compliance has been brought to the notice of Target Company.

Public announcement (PA):

1. Public announcement.

SEBI (SAST) Regulation, 2011 provides that whenever Acquirer acquires the shares or voting rights of the Target Company in excess of the limits prescribed under Regulation 3 and 4, than Acquirer is required to give a Public Announcement of an Open Offer to the shareholder of the Target Company. During the process of making the Public Announcement of an Open Offer, the Acquirer is required to give Public Announcement and publish Detailed Public Statement. The regulations have prescribed the separate timeline for Public Announcement as well as for Detailed Public Statement.

(i) Public Announcement

(ii) Detailed Public Statement

Timing of Pubic Announcement

The Public Announcement shall be sent to all the stock exchanges on which the shares of the target company are listed. Further, a copy of the same shall also be sent to the Board and to the target company at its registered office within one working day of the date of the public announcement. The time within which the Public Announcement is required to be made to the Stock Exchanges under different circumstances is tabulated below:

Applicable Regulation	Particulars	Time of making Public Announcement to Stock Exchange
13(1)	Agreement to Acquirer Shares or Voting Rights or Control Over The Target Company	On the same day of entering into agreement to acquire share, voting rights or control over the Target Company.
13(2)(a)	Market Purchase of shares	Prior to the placement of purchase order with the stock broker.
13(2)(b)	Acquisition pursuant to conversion of Convertible Securities without a fixed date of conversion or upon conversion of depository receipts for the underlying shares	On the same day when the option to convert such securities into shares is exercised.
13(2)(c)	Acquiring shares or voting rights or control pursuant to conversion of Convertible Securities with a fixed date of conversion	On the second working day preceding the scheduled date of conversion of such securities into shares.
13(2)(d)	In case of disinvestment	On the date of execution of agreement for acquisition of shares or voting rights or control over the Target Company.

13(2)(e)	In case of Indirect Acquisition where the parameters mentioned in Regulation 5(2) are not met	Within four working days of the following dates, whichever is earlier: a. When the primary acquisition is contracted; And b. Date on which the intention or decision to make the primary acquisition is announced in the public domain.
13(2)(f)	In case of Indirect Acquisition where the parameters mentioned in Regulation 5(2) are met	On the same day of the following dates, whichever is earlier: a. When the primary acquisition is contracted; And b. Date on which the intention or decision to make the primary acquisition is announced in the public domain.
13(2)(g)	Acquisition of shares, voting rights or control over the Target Company pursuant to Preferential Issue	On the date when the Special Resolution is passed for allotment of shares under Section 81(1A) of Companies Act 1956.
13(2)(h)	Increase in voting rights pursuant to a buy-back not qualifying for exemption under Regulation 10	Not later than 90th day from the date of increase in voting rights.

13(2)(i)	Acquisition of shares, voting rights or control over the Target Company where the such acquisition is beyond the control of acquirer	Not later than two working days from the date of receipt of such intimation.
13(3)	Voluntary Offer	On the same day when the Acquirer decides to make Voluntary Offer

Timing of Detailed Public Statement

In terms of Regulation 13(4) of SEBI (SAST) Regulations, 2011, a Detailed Public Statement shall be published by the acquirer through the Manager to the Open Offer within maximum **5 working days from the date of Public Announcement.**

However in case of Indirect Acquisition where none of condition specified in Regulation 5(2) are satisfied, the Detailed Public Statement shall be published not later than five working days of the completion of the primary acquisition of shares or voting rights in or control over the company or entity holding shares or voting rights in, or control over the target company.

Publication of Public Announcement and Detailed Public Statement

Regulation 14 of SEBI (SAST) Regulation, 2011 provides the requirements relating to publication of Public Announcement and Detailed Public Statement which are tabulated below:

Regulation	Particulars	Time	To whom
14(1)	Public Announcement	On the same day	All the stock exchanges on which the shares of the target company are listed. The stock exchanges shall forthwith disseminate such information to the public.

14(2)	Public Announcement	One working day of the date of the public announcement	Board and to the target company at its registered office
14(3)	Detailed Public Statement	5 working days from the date of Public Announcement.	Publication in the following newspaper: (a) One Hindi national language daily with wide circulation (b) One English national language daily with wide circulation (c) One regional national language daily with wide circulation language at a place where registered office of the company is situated. (d) One regional language daily with wide circulation at the place of the stock exchange where the maximum volume of trading in the shares of the target company is recorded during the sixty trading days preceding the date of the public announcement.

14(4)	Detailed Public Statement		A copy of 'Detailed Public Statement shall be sent to followings: (a) Board (b) All the stock exchanges in which the shares of the target company are listed (c) The target company at its registered office
-------	---------------------------	--	--

Contents of Public announcement (Regulation 15)

The public announcement shall contain such information as may be specified, including the following,—

- (a) name and identity of the acquirer and persons acting in concert with him;
- (b) name and identity of the sellers, if any;
- (c) nature of the proposed acquisition such as purchase of shares or allotment of shares, or any other means of acquisition of shares or voting rights in, or control over the target company;
- (d) the consideration for the proposed acquisition that attracted the obligation to make an open offer for acquiring shares, and the price per share, if any;
- (e) the offer price, and mode of payment of consideration; and
- (f) offer size, and conditions as to minimum level of acceptances, if any.

(2) The detailed public statement pursuant to the public announcement shall contain such information as may be specified in order to enable shareholders to make an informed decision with reference to the open offer.

(3) The public announcement of the open offer, the detailed public statement, and any other statement, advertisement, circular, brochure, publicity material or letter

of offer issued in relation to the acquisition of shares under these regulations shall not omit any relevant information, or contain any misleading information.

Filing Draft Letter of offer

Within 5 working days of publication Detailed Public Statement, the acquirer through the manager to the offer is required to file a draft letter of offer with SEBI for its observations.

The Board shall give its comments on the draft letter of offer as expeditiously as possible but not later than fifteen working days of the receipt of the draft letter of offer and in the event of no comments being issued by the Board within such period, it shall be deemed that the Board does not have comments to offer:

Provided that in the event the Board has sought clarifications or additional information from the manager to the open offer, the period for issuance of comments shall be extended to the fifth working day from the date of receipt of satisfactory reply to the clarification or additional information sought.

Provided further that in the event the Board specifies any changes, the manager to the open offer and the acquirer shall carry out such changes in the letter of offer before it is dispatched to the shareholders.

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, 2011 for frequently or infrequently traded shares.

If the target company's shares are frequently traded then the open offer price for acquisition of shares under the minimum open offer shall be highest of the following:

- Highest negotiated price per share under the share purchase agreement ("SPA") triggering the offer;
- Volume weighted average price of shares acquired by the acquirer during 52 weeks preceding the public announcement ("PA");
- Highest price paid for any acquisition by the acquirer during 26 weeks immediately preceding the PA;
- Volume weighted average market price for sixty trading days preceding the PA.

If the target company's shares are infrequently traded then the open offer price

for acquisition of shares under the minimum open offer shall be highest of the following:

- Highest negotiated price per share under the share purchase agreement (“SPA”) triggering the offer;
- Volume weighted average price of shares acquired by the acquirer during 52 weeks preceding the public announcement (“PA”);
- Highest price paid for any acquisition by the acquirer during 26 weeks immediately preceding the PA;
- The price determined by the acquirer and the manager to the open offer after taking into account valuation parameters including book value, comparable trading multiples, and such other parameters that are customary for valuation of shares of such companies.

It may be noted that the Board may at the expense of the acquirer, require valuation of shares by an independent merchant banker other than the manager to the offer or any independent chartered accountant in practice having a minimum experience of 10 years.

The shares of the target company will be deemed to be frequently traded if the traded turnover on any stock exchange during the 12 calendar months preceding the calendar month, in which the PA is made, is at least 10% of the total number of shares of the target company. If the said turnover is less than 10%, it will be deemed to be infrequently traded.

Minimum size:

It has to be ensured that minimum of 26% of voting capital of the company is being offered subject to minimum public holding requirements.

Date of opening of offer:

The date of opening of offer has to be not later than the 12 working days from the date of receipt of recommendation from SEBI.

Period of offer:

The offer to acquire should remain open for a period of minimum 10 days.

Competitive Bid and Revision:

Ensure to revise the offer price in consultation with merchant bankers in case of competitive bid if any.

Consideration-cash:**Payment of consideration (Regulation 21)**

For the amount of consideration payable in cash, the acquirer shall open a special escrow account with a banker to an issue registered with the Board and deposit therein, such sum as would, together with cash transferred under clause (b) of sub-regulation (10) of regulation 17, make up the entire sum due and payable to the shareholders as consideration payable under the open offer, and empower the manager to the offer to operate the special escrow account on behalf of the acquirer for the purposes under these regulations.

(2) Subject to provisos to sub-regulation (11) of regulation 18, the acquirer shall complete payment of consideration whether in the form of cash, or as the case may be, by issue, exchange or transfer of securities, to all shareholders who have tendered shares in acceptance of the open offer, within ten working days of the expiry of the tendering period.

(3) Unclaimed balances, if any, lying to the credit of the special escrow account referred to in sub-regulation (1) at the end of seven years from the date of deposit thereof, shall be transferred to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009.

Directors of the target company (Regulation 24)

(1) During the offer period, no person representing the acquirer or any person acting in concert with him shall be appointed as director on the board of directors of the target company, whether as an additional director or in a casual vacancy:

Provided that after an initial period of fifteen working days from the date of detailed public statement, appointment of persons representing the acquirer or persons acting in concert with him on the board of directors may be effected in the event the acquirer deposits in cash in the escrow account referred to in regulation 17, one hundred per cent of the consideration payable under the open offer:

Provided further that where the acquirer has specified conditions to which the open offer is subject in terms of clause (c) of sub-regulation (1) of regulation 23, no director representing the acquirer may be appointed to the board of directors of the target company during the offer period unless the acquirer has waived or attained such conditions and complies with the requirement of depositing cash in the escrow account.

(2) Where an open offer is made conditional upon minimum level of acceptances, the acquirer and persons acting in concert shall, notwithstanding anything contained

in these regulations, and regardless of the size of the cash deposited in the escrow account referred to regulation 17, not be entitled to appoint any director representing the acquirer or any person acting in concert with him on the board of directors of the target company during the offer period.

(3) During the pendency of competing offers, notwithstanding anything contained in these regulations, and regardless of the size of the cash deposited in the escrow account referred to in regulation 17, by any acquirer or person acting in concert with him, there shall be no induction of any new director to the board of directors of the target company:

Provided that in the event of death or incapacitation of any director, the vacancy arising therefrom may be filled by any person subject to approval of such appointment by shareholders of the target company by way of a postal ballot.

(4) In the event the acquirer or any person acting in concert is already represented by a director on the board of the target company, such director shall be participate in any deliberations of the board of directors of the target company or vote on any matter in relation to the open offer.

Obligation of target company

Once a PA is made, the board of directors of the Target Company is expected to ensure that the business of the target company is conducted in the ordinary course. Alienation of material assets, material borrowings, issue of any authorized securities, announcement of a buyback offer etc. is not permitted, unless authorized by shareholders by way of a special resolution by postal ballot.

- The target company shall furnish to the acquirer within two working days from the identified date, a list of shareholders and a list of persons whose applications, if any, for registration of transfer of shares, in case of physical shares, are pending with the target company.
- After closure of the open offer, the target company is required to provide assistance to the acquirer in verification of the shares tendered for acceptance under the open offer, in case of physical shares.
- Upon receipt of the detailed public statement, the board of directors of the target company shall constitute a committee of independent directors to provide reasoned recommendations on such open offer, and the target company shall publish such recommendations and such committee shall be entitled to seek external professional advice at the expense of the target company. The recommendations of the Independent Directors are published in the same newspaper where the Detailed Public Statement is published by the acquirer and are published at least 2 working days before opening of the

offer. The recommendation will also be sent to SEBI, Stock Exchanges and the Manager to the offer.

Obligations of the acquirer

(1) Prior to making the public announcement of an open offer for acquiring shares under these regulations, the acquirer shall ensure that firm financial arrangements have been made for fulfilling the payment obligations under the open offer and that the acquirer is able to implement the open offer, subject to any statutory approvals for the open offer that may be necessary.

(2) In the event the acquirer has not declared an intention in the detailed public statement and the letter of offer to alienate any material assets of the target company or of any of its subsidiaries whether by way of sale, lease, encumbrance or otherwise outside the ordinary course of business, the acquirer, where he has acquired control over the target company, shall be debarred from causing such alienation for a period of two years after the offer period:

Provided that in the event the target company or any of its subsidiaries is required to so alienate assets despite the intention to alienate not having been expressed by the acquirer, such alienation shall require a special resolution passed by shareholders of the target company, by way of a postal ballot and the notice for such postal ballot shall *inter alia* contain reasons as to why such alienation is necessary.

(3) The acquirer shall ensure that the contents of the public announcement, the detailed public statement, the letter of offer and the post-offer advertisement are true, fair and adequate in all material aspects and not misleading in any material particular, and are based on reliable sources, and state the source wherever necessary.

(4) The acquirer and persons acting in concert with him shall not sell shares of the target company held by them, during the offer period.

(5) The acquirer and persons acting in concert with him shall be jointly and severally responsible for fulfillment of applicable obligations under these regulations

Obligations of the manager to the open offer.

27.(1) Prior to public announcement being made, the manager to the open offer shall ensure that,—

- (a) the acquirer is able to implement the open offer; and
- (b) firm arrangements for funds through verifiable means have been made by the acquirer to meet the payment obligations under the open offer.

(2) The manager to the open offer shall ensure that the contents of the public announcement, the detailed public statement and the letter of offer and the post offer advertisement are true, fair and adequate in all material aspects, not misleading in any material particular, are based on reliable sources, state the source wherever necessary, and are in compliance with the requirements under these regulations.

(3) The manager to the open offer shall furnish to the Board a due diligence certificate along with the draft letter of offer filed under Regulation 16.

(4) The manager to the open offer shall ensure that market intermediaries engaged for the purposes of the open offer are registered with the Board.

(5) The manager to the open offer shall exercise diligence, care and professional judgment to ensure compliance with these regulations.

(6) The manager to the open offer shall not deal on his own account in the shares of the target company during the offer period.

(7) The manager to the open offer shall file a report with the Board within fifteen working days from the expiry of the tendering period, in such form as may be specified, confirming status of completion of various open offer requirements.

Consequences of Violation of obligations SEBI (SAST) Regulations, 2011

SAST Regulations, 2011 have laid down the general obligations of acquirer, Target Company and the manager to the open offer. For failure to carry out these obligations as well as for failure / non-compliance of other provisions of these Regulations, penalties have been laid down there under. These penalties include:

- directing the divestment of shares acquired;
- directing the transfer of the shares / proceeds of a directed sale of shares to the investor protection fund;
- directing the target company / any depository not to give effect to any transfer of shares;
- directing the acquirer not to exercise any voting or other rights attached to shares acquired;
- debarring person(s) from accessing the capital market or dealing in securities;
- directing the acquirer to make an open offer at an offer price determined by SEBI in accordance with the Regulations;

- directing the acquirer not to cause, and the target company not to effect, any disposal of assets of the target company or any of its subsidiaries unless mentioned in the letter of offer;
- directing the acquirer to make an offer and pay interest on the offer price for having failed to make an offer or has delayed an open offer;
- directing the acquirer not to make an open offer or enter into a transaction that would trigger an open offer, if the acquirer has failed to make payment of the open offer consideration;
- directing the acquirer to pay interest of for delayed payment of the open offer consideration;
- directing any person to cease and desist from exercising control acquired over any target company;
- directing divestiture of such number of shares as would result in the shareholding of an acquirer and persons acting in concert with him being limited to the maximum permissible non-public shareholding limit or below.

CULTURAL ISSUES ON MERGERS, ACQUISITIONS AND TAKE OVERS

Accenture and the Economist Intelligence Unit in the first half of 2006, surveyed senior executives in North America, Europe and Asia on their mergers and acquisitions (M&A) activities and their experience in integrating companies. Similar survey was also administered to 156 executives based in India during the fourth quarter of 2006.

Of the total respondents in India, 40% were senior-level. About 64% were from companies that had global annual revenues of US\$100m or more and 36% had revenues of US\$1bn or more. 45% executive mainly played roles in strategy and business development and 42% in general management. Their companies were from a wide range of industries, including financial services (25%), IT and technology (21%) and professional services (13%).

Following are the key findings of the survey on human and cultural factors.

Human and Cultural Factors

Accenture Survey points out that for integrating a cross border company, 43%, respondents found addressing cultural issues as critical. The real challenge, after an acquisition is, therefore, the integration of the two companies. That is why the integration should be given a focused attention. There should be a focus on aligning the acquired company's processes through the business excellence model.

Human Factor

Studies on post-acquisition performance have primarily been a centre of interest of researchers in strategy, economics and finance. The identified factors of performance variations have usually ranged from the industry match (complementary of assets, similarities of markets and products, synergies in production, strategic orientation, etc.), pricing policy, financing and size of the operation and type of the transaction, bidding conditions, etc.

By contrast to quantitative measurements from finance and economics, the research, which has focused on the organizational and human side of M&As, has mostly dealt with identifying factors that might have played a role in the integration process of the merging entities and led to successful outcomes. Despite the absence of a direct causal correlation, several dimensions have been identified as having an important impact on M&A performance, these include psychological, cultural and managerial factors, knowing that the human factor covers at the same time employees and managers of the companies.

Psychological Factors

A large part of the existing research has looked at the psychological effects of M&A on employees. Scholars have pointed out that strong impact that the operations could have on employees, in particular the resulting increase in stress and anxiety due to changes in work practices and tasks, managerial routines, colleagues environment, the hierarchy, etc. Further, merger and acquisitions often introduce an environment of uncertainty among employees about job losses and future career development. It has been pointed out that stress and insecurity may lead to employee resistance to change, absenteeism and lack of commitment to work and the organisation. Employee resistance prevents the building up of a well functioning organisation and constructive cooperative environment. Lack of work commitments have a negative impact on individual and organizational performance measured in terms of productivity, quality, and service. Moreover, a relationship between organizational and financial performance has also been identified which may have consequences for the market value of company.

On the other hand, it has been argued that satisfied employees are presumed to work harder, better, and longer with higher productivity records. Even though a direct relationship between job satisfaction and corporate performance remains to be established with certainty, it appears that lower job satisfaction is a cause of higher absenteeism, which, in turn is shown to have a negative influence on organizational performance.

Cultural factors

Cultural differences look like playing both ways. Although distant cultural

environments make the integration process harder, the lack of culture-fit or cultural compatibility has often been used to explain M&A failure. Cultural differences have also been considered a source of lower commitment to work, making co-operation more difficult, particularly from employees of the acquired company. In this regard, scholars have largely given account of the lack of co-operation momentum stemming from a “we” versus “them” attitude, resulting in hostility among employees.

It is, therefore, no surprise that strong cultural differences are usually associated with a negative impact on M&A performance, since the integration process is less easy and deals with higher employee resistance, communication problems, and lower interest in co-operation. Noticeably, cultural clashes are likely to be more prominent in cross-national than domestic acquisitions, since such mergers bring together not only two companies that have different organizational cultures but also organizational cultures rooted in national diversity. The scholars have identified building up of a common culture as essential for the success of merger and acquisitions. Researchers have found that high levels of employees' social identification with the organization's identity results in increased work effort, higher performance, reduced staff turnover and more frequent involvement in positive organizational citizenship.

TAKE OVER DEFENSES

Hostile takeovers directly made to the shareholders of target company has resulted in a multiple defensive strategies by corporate from being taken over by the company.

Few of the defensive strategies are as follows.

1. *Pac-man Defense*

Under this strategy target company attempts to purchase the shares of acquirer company provided it has substantial cash flow or liquidable asset.

2. *White Knight*

This is seeking another company (called white knight company) seeking merger, for rescuing the target company.

3. *Green Mail*

This is repurchase of the stock by target company at a higher premium to avoid hostile takeovers.

4. *Poison pills*

Creation of securities (which is also called poison pills) which provide their holders with special rights exercisable only after a period of time following the occurrences of triggering event.

5. Refusal by the Board to register a transfer is also being adopted as a defensive strategy.

ANNEXURE A

**DETAILS/DOCUMENTS/INFORMATION REQUIRED FROM
TARGET COMPANY**

S. No.	Documents/Informations	Status
1.	Certified True Copy of Memorandum & Articles of Association	
2.	Address of the Registered office of the Company alongwith Phone and Fax no.(s) (Certified Copy of Form No. 18) along with an undertaking from the Company that the registered office of the Company is situated at _____ as on date.	
3.	Name of the Promoters of the Company as on date as per the definition provided in SEBI (SAST) Regulations.	
4.	The group to which it belongs.	
5.	Details of partly Paid Up Shares of the Company, if any.	
6.	Market Lot of Shares of the Company.	
7.	Composition of Board of Directors of the company along with their designation, date of appointment, education qualification/ Experience in no. of years, No. of shares held in the Company and residential address (Certified Copies of Form No. 32)	
8.	Name of company Promoted by Target Company, if any.	
9.	A note on the business activity of the company.	

10.	Audited Annual A/c's of last three years and latest quarter, if applicable, of the Company.	
11.	Status of stock exchange compliance (To be taken from all the Stock Exchanges where the securities of the Company are Listed) along with the date of suspension, if suspended.	
12.	Stock market data for last 6 months (To be taken from all the Stock Exchanges where the securities of the Company are Listed) and in case of infrequently traded, a certificate from the concerned Stock Exchange regarding the Last Traded Date and Price.	
13.	Status of compliance (Certified Copy of letters addressed to the Company and Stock Exchanges).	
14.	Latest shareholding pattern (Certified Copy of letters addressed to the Stock Exchanges).	
15.	No. of shareholders in public category.	
16.	Prospectus copy, including date of listing, date of permission for trading.	
17.	Details of any other issue (bonus/right/preferential)	
18.	Proof of payment of listing fee with all Stock Exchanges.	
19.	Whether shares are in DEMAT Mode, if yes, name of the Depositories.	
20.	Approvals/NOC from FIs/Banks etc.	
21.	Details of litigations pending against the Company.	
22.	Copy of RBI approval for allotment of Shares to NRI shareholders.	

23.	Undertaking regarding non prohibition from dealing in securities by SEBI.	
24.	Details of merger, De-merger, spin off etc. during last 3 years of Target Company.	
25.	List of shareholders as on date along with their shareholding.	
26.	Copy of Income Tax Return of all the directors & Promoters for the last three years.	
27.	Income Tax Filing of the Company.	
28.	Details of Other Companies promoted by the promoters & directors of the Company alongwith an undertaking from each director stating that no other company other than those specified have been promoted by them.	
29.	Name of Compliance Officer of the company along with his address and contact numbers.	
30.	Figures of the Audited Financial Results of the last 3 years and of the latest Quarter, if applicable in the prescribed Format.	
31.	Complete list of investments by the Target Company.	
32.	Capital Structure of the Company since inception.	
33.	Copy of Disclosure as the case may be filed with the Stock Exchange(s) (after entering into SPA).	
34.	Copy of agreement with the Registrar/DP and his registration details (i.e. certified copy of registration certificate obtained from SEBI and a declaration that they are not prohibited by SEBI from dealing in securities).	
35.	Annual Return along with all annexures (floppy, List of shareholders etc.) filed with ROC.	

36.	Up to date ROC filing including approved DINs for all directors.	
37.	All registrations, regulatory licenses and approvals.	
38.	Nature of Operations and relevant statutory approvals.	
39.	Fixed assets details.	
40.	Listing Compliances and updated stock exchanges files.	
41.	Shareholding of the promoters along with the list of promotes, PACs and their group and any changes in shareholding and disclosures thereof. Whether the applicable provisions of the Chapter II of Takeover Code have been complied with by the Promoters, Directors, Sellers and any other major Shareholder.	
42.	Declarations, confirmations, undertakings and other documents under SEBI.	
43.	Listing confirmation letters from all stock exchanges.	
44.	Details of changes in Board of Directors since inception, DOB, Qualifications, experience, date of appointment.	
45.	Capital Structure since inception of the Company.	
46.	SEBI file and penalties, show-cause notices, and prosecution past and pending.	
47.	Other relevant papers, if any.	

ANNEXURE B

CHECK LIST FOR TAKEOVER**Documents and Details to be furnished:***Acquirer/PAC:*

1. Name, address and phone nos., of all Acquirers and PACs.

2. Present shareholding, if any, of the acquirer/PAC in the Target Company.
3. Brief Background of Acquirer(s) including PAC.

The Acquire is a Company incorporate under Companies Act, 1956 to carry on the business of non banking financial activity and registered with Reserve Bank of India vide Certificate No.....

4. Copy of Agreement if any between acquirers and PACs:
5. In case acquirer(s) is a company(ies):

- (i) Name of its promoters and/or persons having control over it as the case may be, and the group to which they belong.
- (ii) Name and Residential Addresses of Board of Directors of acquirer along with their experience, qualifications, date of appointment.

<i>Name</i>	<i>Address</i>	<i>Qualification</i>	<i>Experience</i>	<i>DOA</i>

- (iii) Name, Address (Registered and Corporate Office) and Phone Nos.
- (iv) Certificate of incorporation, Memorandum and Articles of Association of the Acquirer, in case Acquirer is a company.
- (v) Brief History & Major areas of Operations: Non Banking Finance Company.
- (vi) Identity of promoters and/or persons having control over such company.
- (vii) Whether any Director of the Acquirer is a Director on the Board of Target Company.
- (viii) Please submit the audited accounts of the last three years.
- (ix) In case more than six months have elapsed since the last audited accounts then furnish the un-audited financials duly certified by the Auditor.
- (x) Please give details of the major contingent liabilities and the reasons for rise/all in the total income and Profit After Tax in the relevant years.

- (xi) Whether the Company had become a Sick Industrial Company anytime since its inception, if so, details thereof.
4. In case the acquirer is an individual:
 - (i) Principal areas of business and relevant experience.
 - (ii) Net worth duly certified by a Chartered Accountant.
 - (iii) Positions held on the Board of Directors of any listed company.
 - (iv) Name(s) of the company(ies) where the individual is a full time Director.
 5. If the acquirer made any acquisitions earlier in the target company including acquisitions made through open offers, please furnish the details of changes in Shareholding pattern of the Target Company pursuant to such acquisition. What is the Status of compliance with the applicable provisions of the takeover code and any other statutory requirements?
 6. If the Acquirer was required to comply with applicable provisions of Chapter II of Takeover Regulation (Disclosures), please provide details of the compliance including whether the said provisions were complied with the specified time.
 7. What is the Relationship, if any, between the acquirer and Person acting in concert with it.
 8. A brief write-up on Line of business and experience.
 9. Whether the Acquirers intend to dispose or otherwise encumber any assets of Target Company in succeeding two years except in ordinary course of business of the target company.
 10. What is the future plan about Target Company; please specify the same and how acquirer proposes to implement such future plans. Will be provided.
 11. Any Statutory approvals, which are required for the purpose of acquisition of shares under the offer and also the status of the applications made in that regard.
 12. Whether any approval is required from FIs/Banks for the offer.
 13. Any other details pertaining to the offer or acquisition prior to offer, which is considered relevant from the shareholders' point of view.
 14. Sources of Finance for the acquisition: Internal Resources.

15. Certificate from a Chartered Accountant certifying the adequacy of financial resources of the acquirer for fulfilling all the obligations under the offer.
16. General Risk Factors related to the open offer, and probable risks involved in associating with the Acquirer.
17. Names of One English National Daily, Hindi National Daily and Regional Daily in which the Acquirer wishes to publish Public Announcements.

Documents and Details to be furnished:

Target Company:

1. Name of the Target Company:
2. Recent name changes, if any:
3. Date of incorporation:
4. Address of registered office and corporate office along with its telephone and fax numbers.
5. Brief history & Main areas of operations.

Non Banking Financial Company

6. Certificate of incorporation, Memorandum and Articles of Association.
7. Please provide the locations and other details of the manufacturing facilities:
8. Please provide the Share Capital Structure of the Company in the following format:

<i>Paid up Equity Shares of Target Company</i>	<i>No. of Shares/ voting rights</i>	<i>% of shares/ voting rights</i>
Fully paid up equity shares		
Partly paid up equity shares		
Total paid up equity shares		
Total voting rights in Target company		

9. Details of any partly paid shares:

10. Name of the Stock Exchange where the shares are listed, the category in which the shares are traded.

11. The annualized trading turnover in the respective SE during the preceding Six months in the following format:

<i>Name of stock exchange(s)</i>	<i>Total no. of shares traded during the 6 calendar months prior to the month in which PA was made</i>	<i>Total No. of listed Shares</i>	<i>Annualized Trading turnover (in terms of % to total listed shares)</i>

12. Details of shares in Lock-in:

13. Provide details (as per the format given below) as to how the current capital structure was built since inception. Also disclose the status of compliance with the applicable provisions o Takeover Code

<i>Date of allotment</i>	<i>No. and % of shares issued</i>	<i>Cumulative paid up capital</i>	<i>Mode of allotment</i>	<i>Type of Issue (viz. Rights, Preferential, Public Issue etc.)</i>	<i>Identity of allottees (pro-moters/ ex-pro-moters/ others)</i>	<i>Status o compliance</i>

14. Whether the trading in the shares of the Company has been suspended in any Stock Exchange? Please specify and substantiate the steps taken to regularize the trading:
15. In case of Non-listing of some or all the shares of the Company at any Stock Exchange, please disclose the particulars thereof and the steps taken to regularize the listing. Please provide the copies of Listing Approvals.
16. Details of any outstanding convertible instruments and whether the same has been taken into account for calculating the total voting rights.
17. Shareholding of the promoters along with the list of promoters, PACs and their group and any changes in shareholding and disclosures thereof. Whether the applicable provisions of the Chapter II of Takeover Code (Disclosures) have been complied with by the Promoters, Directors, Sellers and any other major Shareholders within the specified time.
18. Whether the applicable provisions of the Chapter II of Takeover Code have been complied with by the Company within the specified time.
19. Compliance Status with Listing Agreement requirements (details to be provided year-wise since listing). Details of penal actions taken by SE, if any.
20. Give the Composition of the Board of Directors along with details of their qualification, experience, date of appointment, etc.

Composition of Board of Director

<i>Sl. No.</i>	<i>Name</i>	<i>DOA</i>	<i>Experience</i>	<i>Qualification</i>

21. Was there any spin-off, merger or de-merger during the last 3 years.
22. Any change of name since its inception. Converted from Private to Public Co.
23. Dates of listing.
24. Please submit the audited accounts of the last three years.
25. In case more than six months have elapsed since the last audited accounts then furnish the un-audited financials duly certified by the Auditor for the said period.

26. Please give details of the major contingent liabilities and the reasons for rise/fall in the total income and Profit After Tax in the relevant years.
27. Pre and post acquisition shareholding of the target company.
28. Status of corporate governance.
29. Any pending litigations, details thereof.
30. Whether the Company had become a Sick Industrial Company anytime since its inception, if so, details thereof.
31. A brief note on Line of business of Target Company. Non Banking Financial Company.
32. Name and other details of Compliance Officer of the Target Company.
33. Details of Return of Net worth, Book Value, EPS and PE Multiple, PE Multiple of Industry.
34. Market Lot of Shares in physical form.
35. Quotations from stock exchange for last 26 weeks average of weekly high and low of price of Company's shares and last 2 weeks daily average of high and low of the shares, before the date of public announcement, at the Stock Exchanges where the shares of the Company are listed (For this purpose quotations can be directly obtained from the respective Exchanges and copies thereof may be submitted to Merchant Banker).

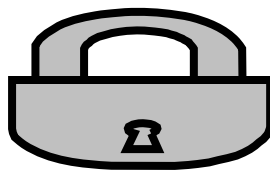
LESSON ROUND UP



- A friendly takeover is with the consent of taken over company. There is an agreement between the management of two companies through negotiations and the takeover bid may be with the consent of majority or all shareholders of the target company, which is referred to as friendly takeover bid.
- When an acquirer company does not offer the target company the proposal to acquire its undertaking but silently and unilaterally pursues efforts to gain control against the wishes of existing management such acts of acquirer are known as 'takeover raids' or hostile 'takeover bids'.

- SEBI (SAST) Regulations, 2011 requires the acquirer to make a public announcement and a public offer on acquisition of a certain percentage of shares or voting rights in a company. However, certain circumstances have been provided in regulation 10, subject to which if an acquirer acquires the specified percentage of shares or voting rights, he would be exempted from the requirement of making an open offer to the existing shareholders of the company
- Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than specified percentage of shares or voting rights, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.
- Trigger point is a point where provisions of SEBI (SAST) Regulations, 2011 i.e. takeover code gets triggered and the acquirer is required to follow public announcement and other requirements as mentioned in the regulations in respect of further acquisition.
- An acquirer who intends to acquire shares which alongwith his existing shareholding would entitle him to exercise 25% or more voting rights, can acquire such additional shares only after making a public announcement (PA) to acquire atleast additional 26% of the voting capital of Target Company from the shareholders through an open offer.
- An acquirer who holds 25% or more but less than maximum permissible non-public shareholdings can acquire such additional shares as would entitle him to exercise more than 5% of the voting rights in any financial year ending March 31 only after making a public announcement to acquire atleast additional 20% shares of target company from the shareholders through an open offer.
- There are several obligations/compliances to be fulfilled by the acquirer, target company and merchant banker at the time of taking over a company.

SELF TEST QUESTIONS



(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation)

1. Briefly explain the takeover process.

2. When an acquirer is required to make a public announcement and what are its contents?
3. Describe the procedure for operation of escrow account?
4. What transactions are exempted from takeover?
5. Draft a check list for the Board of Directors of Acquirer Company in respect of takeover.
6. As a Merchant Banker, describe the Plan of Action for a takeover?
