Corporatisation of Non Corporate Entity, Conversion of Proprietary Concern & Partnership to Company

and

Corporate restructuring

Support notes for presentation by

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Partnership firm into Private/ Public Company

There would be 2 options available to a partnership firm for continuing the business in the form of a company:

- To dissolve the firm and incorporate a new company under the Companies Act, 1956; or
- Incorporate a company which can legally take over the business of the firm and continue the same business under Part IX of the Companies Act, 1956

The firm may be converted into a company by following the provisions of Part IX of the Companies Act, 1956 since there are many benefits which both the company and the firm stand to enjoy.

Sections 565 to 581 prescribes the law and procedure for Companies authorised to register under Part IX of the Companies Act, 1956.

Section 565 of the Companies Act, 1956 provides that any company formed in pursuance of any Act of Parliament or any other Indian Law other than the Companies Act, 1956; consisting of seven or more members may at any time register itself under this Act, either as an unlimited company or as a company limited by shares or limited by guarantee.

Key Benefits: Automatic Transfer

All the assets and liabilities of the firm immediately before the conversion become the assets and liabilities of the company.

No Stamp Duty

All movable and immovable properties of the firm automatically vest in the Company. No instrument of transfer is required to be executed and hence no stamp duty is required to be paid.

No Capital Gain Tax

No Capital Gains tax shall be charged on transfer of property from Proprietorship firm to Company.

Continuation of Brand Value

The goodwill of the Proprietorship firm and its brand value is kept intact and continues to enjoy the previous success story with a better legal recognition.

Carry Forward and Set off Losses and Unabsorbed Depreciation

The accumulated loss and unabsorbed depreciation of Partnership firm is deemed to be loss/ depreciation of the successor company for the previous year in which conversion was effected. Thus such loss can be carried for further eight years in the hands of the successor company.

Key Conditions:

All partners of the partnership firm shall become shareholders of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of the conversion.

The partners receive consideration only by way of allotment of shares in company and the partners share holding in the company in aggregate is 50% or more of its total voting power and continue to be as such for 5 years from the date of conversion.

Key Requirements:

- Registered Partnership firm with minimum 7 Partners
- Minimum Share Capital shall be Rs. 100,000 (INR One Lac) for conversion into a Private Limited Company
- Minimum Share Capital shall be Rs. 500,000 (INR five Lac) for conversion into a Public Limited Co.
- If the above requirement is not fulfilled by the firm, then the Partnership deed should be altered
- Minimum 7 Shareholders
- Minimum 2 Directors (for Private Limited Co.) and 3 Directors (for Public Limited Co.)
- The directors and shareholders can be same person
- DIN (Director Identification Number) for all the Directors
- DSC (Digital Signature Certificate) for two of the Directors

The other formalities procedures as required for incorporating a new company has to be followed, such as Memorandum of Association and Articles of Association is to be drafted, Form 1, 18, and 32 has to be filed subsequent to be approval of the name of Company is obtained after filing of Form IA. Along with the Regular Attachment with Form IA, the following documents are also required to be enclosed.

Letter stating that name application is for conversion of a Partnership firm as a limited company and the application is made in pursuance of Section 565 of the Companies Act:

Copy of the Partnership Deed;

Copy of the last balance sheet;

Copy of the IT Assessment Order:

No objection Certificate signed by all the partners.

A copy of true extracts of Register of Firms from the Registrar of Firms, if not, an affidavit of the partners.

<u>For registration of the Company under Part IX of the Companies Act,1956,</u>

a) Form No.37 along with

  i. Partnership Deed:

  ii. Form No.39

  iii. Form No.40 giving statement of Particulars:

  iv. Form No.41 giving copy of resolution;

b) Original name approval letter;

c) Form No.1

d) Form No.18

e) Form No.32.

f) Letter of authority executed on requisite stamp Paper

g) Details of other directorship of the directors of the company;

h) Three copies of Memorandum of Association and Articles of Associations duly stamped;

i) Pay Order towards filing fees for registration of the above documents viz., Memorandum of Association and Articles of Association, Form 1,18, 32.

j) No filing fee on Form 37, 39, 40 and 41.

k) On Compliance of all the requirements and on payment of fee (Schedule-10), the Registrar of Companies shall incorporate the Company (under 574).

Motives behind M & A

Economies of Scale: This generally refers to a method in which the average cost per unit is decreased through increased production, since fixed costs are shared over an increased number of goods. In a layman's language, more the products, more is the bargaining power. This is possible only when the companies merge/ combine/ acquired, as the same can often obliterate duplicate departments or operation, thereby lowering the cost of the company relative to theoretically the same revenue stream, thus increasing profit. It also provides varied pool of resources of both the combining companies along with a larger share in the market, wherein the resources can be exercised.

Increased revenue /Increased Market Share: This motive assumes that the company will be absorbing the major competitor and thus increase its power (by capturing increased market share) to set prices.

Cross selling: For example, a bank buying a stock broker could then sell its banking products to the stock brokers customers, while the broker can sign up the bank' customers for brokerage account. Or, a manufacturer can acquire and sell complimentary products.

Corporate Synergy: Better use of complimentary resources. It may take the form of revenue enhancement (to generate more revenue than its two predecessor standalone companies would be able to generate) and cost savings (to reduce or eliminate expenses associated with running a business).

Taxes : A profitable can buy a loss maker to use the target's tax right off i.e. wherein a sick company is bought by giants.

Geographical or other diversification: this is designed to smooth the earning results of a company, which over the long term smoothens the stock price of the company giving conservative investors more confidence in investing in the company. However, this does not always deliver value to shareholders.

Resource transfer: Resources are unevenly distributed across firms and interaction of target and acquiring firm resources can create value through either overcoming information asymmetry or by combining scarce resources. Eg: Laying off employees, reducing taxes etc.

MERGER

What Does Merger Mean?

The phrase **mergers and acquisitions** (abbreviated **M&A**) refers to the aspect of corporate strategy, corporate finance and management dealing with the buying, selling and combining of different companies that can aid, finance, or help a growing company in a given industry grow rapidly without having to create another business entity.

The combining of two or more companies, generally by offering the stockholders of one company securities in the acquiring company in exchange for the surrender of their stock.

Basically, when two companies become one. This decision is usually mutual between both firms.

A **merger** is a combination of two companies into one larger company. Such actions are commonly voluntary and involve stock swap or cash payment to the target. Stock swap is often used as it allows the shareholders of the two companies to share the risk involved in the deal. A merger can resemble a takeover but result in a new company name (often combining the names of the original companies) and in new branding; in some cases, terming the combination a "merger" rather than an acquisition is done purely for political or marketing reasons.

Classifications of mergers

Horizontal merger - Two companies that are in direct competition and share similar product lines and markets.

Vertical merger - A customer and company or a supplier and company. Think of a cone supplier merging with an ice cream maker.

Market-extension merger - Two companies that sell the same products in different markets.

Product-extension merger - Two companies selling different but related products in the same market.

Conglomeration - Two companies that have no common business areas.

There are two types of mergers that are distinguished by how the merger is financed. Each has certain implications for the companies involved and for investors:

Purchase Mergers - As the name suggests, this kind of merger occurs when one company purchases another. The purchase is made with cash or through the issue of some kind of debt instrument; the sale is taxable.

Acquiring companies often prefer this type of merger because it can provide them with a tax benefit. Acquired assets can be written-up to the actual purchase price, and the difference between the book value and the purchase price of the assets can depreciate annually, reducing taxes payable by the acquiring company.

Consolidation Mergers - With this merger, a brand new company is formed and both companies are bought and combined under the new entity. The tax terms are the same as those of a purchase merger.

A unique type of merger called a reverse merger is used as a way of going public without the expense and time required by an IPO.

The contract vehicle for achieving a merger is a "merger sub".

The occurrence of a merger often raises concerns in antitrust circles. Devices such as the Herfindahl index can analyze the impact of a merger on a market and what, if any, action could prevent it. Regulatory bodies such as the European Commission, the United States Department of Justice and the U.S. Federal Trade Commission may investigate anti-trust cases for monopolies dangers, and have the power to block mergers.

Accretive mergers are those in which an acquiring company's earnings per share (EPS) increase. An alternative way of calculating this is if a company with a high price to earnings ratio (P/E) acquires one with a low P/E.

Dilutive mergers are the opposite of above, whereby a company's EPS decreases. The company will be one with a low P/E acquiring one with a high P/E.

The completion of a merger does not ensure the success of the resulting organization; indeed, many mergers (in some industries, the majority) result in a net loss of value due to problems. Correcting problems caused by incompatibility—whether of technology, equipment, or corporate culture— diverts resources away from new investment, and these problems may be exacerbated by inadequate research or by concealment of losses or liabilities by one of the partners. Overlapping subsidiaries or redundant staff may be allowed to continue, creating inefficiency, and conversely the new management may cut too many operations or personnel, losing expertise and disrupting employee culture. These problems are similar to those encountered in takeovers. For the merger not to be considered a failure, it must increase shareholder value faster than if the companies were separate, or prevent the deterioration of shareholder value more than if the companies were separate. A Merger company is always limited.

Distinction between Mergers and Acquisitions

Although they are often uttered in the same breath and used as though they were synonymous, the terms **merger** and **acquisition** mean slightly different things.

When one company takes over another and clearly established itself as the new owner, the purchase is called an acquisition. From a legal point of view, the target company ceases to exist, the buyer "swallows" the business and the buyer's stock continues to be traded.

In the pure sense of the term, a merger happens when two firms, often of about the same size, agree to go forward as a single new company rather than remain separately owned and operated. This kind of action is more precisely referred to as a "merger of equals". Both companies' stocks are surrendered and new company stock is issued in its place. For example, in the 1999 merger of Glaxo Wellcome and SmithKline Beecham, both firms ceased to exist when they merged, and a new company, GlaxoSmithKline, was created.

In practice, however, actual mergers of equals don't happen very often. Usually, one company will buy another and, as part of the deal's terms, simply allow the acquired firm to proclaim that the action is a merger of equals, even if it is technically an acquisition. Being bought out often carries negative connotations, therefore, by describing the deal euphemistically as a merger, deal makers and top managers try to make the takeover more palatable. An example of this would be the takeover of Chrysler by Daimler-Benz in 1999 which was widely referred to in the time, and is still now, as a merger of the two corporations.

A purchase deal will also be called a merger when both CEOs agree that joining together is in the best interest of both of their companies. But when the deal is unfriendly - that is, when the target company does not want to be purchased - it is always regarded as an acquisition. This is challengeable. An acquisition can be either friendly or hostile. An example of a friendly takeover was merger of Hindustan Computers Ltd, Hindustan Instruments Ltd, Indian Software Company Ltd and Indian Reprographics Ltd into an entirely new company called HCL Ltd.

Whether a purchase is considered a merger or an acquisition really depends on whether the purchase is friendly or hostile and how it is announced. In other words, the real difference lies in how the purchase is communicated to and received by the target company's board of directors, employees and shareholders. It is quite normal though for M&A deal communications to take place in a so called 'confidentiality bubble' whereby information flows are restricted due to confidentiality agreements (Harwood, 2005).

The distinction between "merger" and "acquisition" is described this way which slightly differs from the above: Corporate Restructuring is all activities involving expansion or contraction of a firm's operations or changes in its assets or financial structure.

Merger: A transaction in which at least one firm ceases to exist and the assets of that firm are transferred to a surviving firm so that only one separate legal entity remains.

Acquisition: A transaction in which both firms in the transaction survive but the acquirer increases its percentage ownership in the target. Consolidation: The combination of two or more firms to form a completely new corporation

Simple Brand valuation example

‘QUENCH’™ a carbonated drink was popular in the country. A brewery ‘SCOTCHFLAV’ who had made super profits continuously over the previous 5 to 6 years decided to diversify. To mitigate the risk of their investment they decided to buy this brand. If they buy the brand, they reckon that they will not have to make special efforts or extra advertising expenditure (other than normal) for the next 5 years. You are requested to advice at what price should they make an offer. Other information given to you is :

‘QUENCH’™drinks are available at Rs. 12 per bottle and the company is able to sell three lac bottles a month. The nearest competitor is able to sell 40 thousand bottles per month at Rs. 10 per bottle for the same flavor. ‘QUENCH’™ had worked hard over the past 20 years and had spent Rs. 2 crores for the each of the first 3 years on advertising. Development of formula was relatively cheap as they had purchased it from Spain at € 20000 only. Setting up stockists and POS Point of sale Freezers cost them another Rs. 1 crore. ‘SCOTCHFLAV’ finds that as per their estimate, operating cost would be 27.8 lacs p.a. The company has a reputation of declaring 20% Dividend on their capital. They aim to distribute even 100% of new profits for the initial period of 5 years as the reputation of high payout company has to be protected. The company does not feel any additional capital is required over and above the Rs. 1 crore since their reserves are currently standing at Rs. 5 crores. They also have sufficient borrowing power with a capacity for a further 3 crores for leverage if needed. Taxation can be assumed to be 30%.

(Exchange rate: € 1 = Rs. 62)

Regulations for Mergers & Acquisitions

Mergers and acquisitions are regulated under various laws in India. The objective of the laws is to make these deals transparent and protect the interest of all shareholders. They are regulated through the provisions of :-

The Companies Act 1956

The Act lays down the legal procedures for mergers or acquisitions :-

- **Permission for merger:-** Two or more companies can amalgamate only when the amalgamation is permitted under their memorandum of association. Also, the acquiring company should have the permission in its object clause to carry on the business of the acquired company. In the absence of these provisions in the memorandum of association, it is necessary to seek the permission of the shareholders, board of directors and the Company Law Board before affecting the merger.
- **Information to the stock exchange:-** The acquiring and the acquired companies should inform the stock exchanges (where they are listed) about the merger.
- **Approval of board of directors:-** The board of directors of the individual companies should approve the draft proposal for amalgamation and authorise the managements of the companies to further pursue the proposal.
- **Application in the High Court:-** An application for approving the draft amalgamation proposal duly approved by the board of directors of the individual companies should be made to the High Court.
- **Shareholders' and creators' meetings:-** The individual companies should hold separate meetings of their shareholders and creditors for approving the amalgamation scheme. At least, 75 percent of shareholders and creditors in separate meeting, voting in person or by proxy, must accord their approval to the scheme.
- **Sanction by the High Court:-** After the approval of the shareholders and creditors, on the petitions of the companies, the High Court will pass an order, sanctioning the amalgamation scheme after it is satisfied that the scheme is fair and reasonable. The date of the court's hearing will be published in two newspapers, and also, the regional director of the Company Law Board will be intimated.
- **Filing of the Court order:-** After the Court order, its certified true copies will be filed with the Registrar of Companies.
- **Transfer of assets and liabilities:-** The assets and liabilities of the acquired company will be transferred to the acquiring company in accordance with the approved scheme, with effect from the specified date.
- **Payment by cash or securities:-** As per the proposal, the acquiring company will exchange shares and debentures and/or cash for the shares and debentures of the acquired company. These securities will be listed on the stock exchange.

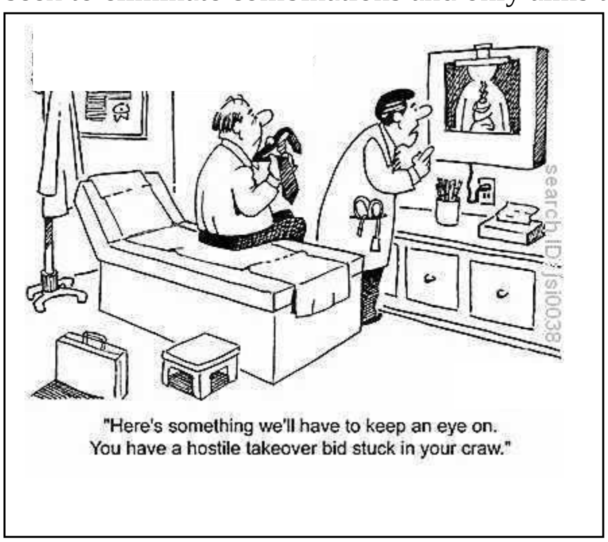
The Competition Act 2002

The Act regulates the various forms of business combination through Competition Commission of India.

Under the Act, no person or enterprise shall enter into a combination, in the form of an acquisition, merger or amalgamation, which causes or is likely to cause an appreciable adverse effect on competition in the relevant market and such a combination shall be void. Enterprises intending to enter into a combination may give notice to the Commission, but this notification is voluntary. But, all combinations do not call for scrutiny unless the resulting combination exceeds the threshold limits in terms of assets or turnover as specified by the Competition Commission of India. The Commission while regulating a 'combination' shall consider the following factors :-

- Actual and potential competition through imports;
- Extent of entry barriers into the market;
- Level of combination in the market;
- Degree of countervailing power in the market;
- Possibility of the combination to significantly and substantially increase prices or profits;
- Extent of effective competition likely to sustain in a market;
- Availability of substitutes before and after the combination;
- Market share of the parties to the combination individually and as a combination;
- Possibility of the combination to remove the vigorous and effective competitor or competition in the market;
- Nature and extent of vertical integration in the market;
- Nature and extent of innovation;
- Whether the benefits of the combinations outweigh the adverse impact of the combination.

Thus, the Competition Act does not seek to eliminate combinations and only aims to eliminate their harmful effects.



Combating Hostile Takeovers

The two terms - ‘mergers’ and ‘acquisition’ represent the ways by strategies used by companies to buy, sell and recombine businesses. In the present day when there exists cut throat competition in every sphere, not all mergers and acquisitions are consensual and peaceful. The concept of takeovers without consent have, therefore been ideally termed “hostile takeovers”. no consented The history of hostile takeovers can be traced to 1980’s, with the US Supreme Court for the first time sat in judgment over the anti-takeover provisions of the Illinois Business Take-Over Act and pronounced them as invalid in their landmark ruling in ***Edgar vs. MITE Corp.***

There was a time some 2 decades back when hostile acquirers struck terror in the hearts of corporate boards.. If wealthy dealmakers wanted to take over a company in a hostile acquisition, bite it into pieces, and then spin those pieces off for a profit, there wasn’t much that the board of a company could do to stop the massacre. It was at that time that ‘poison pills’ and other anti takeover strategies were conceptualized. The anti-takeover strategies developed during that era quickly transformed the takeover law and fortified the pre-emptive defences of companies.

Meaning

When an acquirer takes the control of a company by purchasing its shares without the knowledge of the management it is termed as a hostile takeover. Thus, when an acquirer silently and unilaterally, makes efforts to gain control of a company against the wishes of the existing management, such act amounts to hostile takeover. Hostile takeover is an attempt by outsider to wrest control away from an incumbent management.

Defenses against Hostile Takeovers-Shark Repellents

There are several ways to defend against a hostile takeover. The most effective methods are those where there exist built-in defensive measures that make a company difficult to take over. These methods are collectively referred to as "**shark repellents**".

The classic ‘**poison pill strategy**’ (the shareholders’ rights plan) is the most popular and effective defense to combat the hostile takeovers. Under this method the target company gives existing shareholders the right to buy stock at a price lower than the prevailing market price if a hostile acquirer purchases more than a predetermined amount of the target company’s stock. The purpose of this move is to devalue the stock worth of the target company and dilute the percentage of the target company equity owned by the hostile acquirer to an extent that makes any further acquisition prohibitively expensive for him.

‘White Knight’ is another type of defense mechanism. In this case, a third company makes a friendly takeover offer to the company facing a hostile takeover. This is a common tactics in which the target company finds another company to enter the scene and purchase them out and away from the company making the hostile bid. The several reasons why the companies prefer to be bought out by the third company could be -- better purchase terms, a better relationship or better prospects for long-term success. At times these ‘white knight’ companies only help the target company improve the deal terms with the hostile bidder. A very good example is of

Severstal which acted as a ‘white knight’ in the Arcelor-Mittal deal, and causing a 52.5 % increase in the Mittal offer.

Some other types of defenses which are available to the targeted company are:
Pac-Man Defense – wherein a target company thwarts a takeover bid by buying stocks in the acquiring company, then taking the bidder company over. The Volks Wagon defensive strategy to counteract take over by Porche is a successful example of this tactic.

Staggered Board:-It is used generally in combination with **‘Shareholder’s Rights’** plan and is considered most effective. This method drags out the takeover process by preventing the entire board from being replaced at the same time. The directors are grouped into classes, each group stands for the election at each annual general meeting. It prevents entire board from being replaced at one go.

Golden Parachute is a tactics which works in the manner that it makes the acquisition more expensive and less attractive. It is provision in a CEO's contract, which is worded such that the CEO gets a large bonus in cash or stock if the company is acquired.

Indian Legal and Regulatory Framework

Any takeover in India needs to comply with the provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (“Takeover Code”). It is important to understand the various terms associated with the takeover and there meaning explained in the Takeover Code.

The term ‘Target company’ refers to is a listed company, whose shares or voting rights are acquired/being acquired or whose control is taken over/being taken over by an acquirer either directly or by acquiring control of its holding company or a company which is controlling it, which is not a listed company.

As per regulation 2(1)(b), the term “acquirer” means any person who, directly or indirectly, acquires or agrees to acquire control over the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer. The term acquirer has been given a wide meaning as the definition takes into account not only substantial acquisition of shares by a person, but also takeover of control of the company.

As regards the term “control”, there is no exhaustive definition. It is dependent on the circumstances of the case which determines who has control over the organization. However the term control shall include:

1)The right to appoint majority of the directors or,

2) To control the management or policy decisions exercisable by a person or persons acting individually or in concert directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

An explanation was inserted in the definition of the term “control” vide SEBI (Takeovers) Second Amendment, Regulations, 2002. The explanation provides that transfer from joint control to sole control over a company is not to be considered as change in control if it has been effected in accordance with regulation 2(1)(e), i.e., through inter se transfer of shares among promoters.

The Takeover Code makes it difficult for the hostile acquirer to just sneak up on the target company. It forewarns the company about the advances of an acquirer by mandating that the acquirer make a public disclosure of his shareholding or voting rights to the company if he acquires shares or voting rights beyond a certain specified limit. However, the Takeover Code does not present any insurmountable barrier to a determined hostile acquirer.

The Takeover Code, vide Regulation 23, also imposes a prohibition on the certain actions of a target company during the offer period, such as transferring of assets or entering into material contracts and even prohibits the issue of any authorized but unissued securities during the offer period. However, these actions may be taken with approval from the general body of shareholders.

However, the regulation provides for certain exceptions such as the right of the company to issue shares carrying voting rights upon conversion of debentures already issued or upon exercise of option against warrants, according to pre-determined terms of conversion or exercise of option. It also allows the target company to issue shares pursuant to public or rights issue in respect of which the offer document has already been filed with the Registrar of Companies or stock exchanges, as the case may be.

However this may be of little respite as the debentures or warrants, contemplated earlier must be issued prior to the offer period. Further the law does not permit the Board of Director, of the target company to make such issues without the shareholders approval either prior to the offer period or during the offer period as it is specifically prohibited under Regulation 23.

During a takeover bid, it may be critical for the Board to quickly adopt a defensive strategy to help ward of the hostile acquirer or bring him to a negotiated position. In such a situation, it may be time consuming and difficult to obtain the shareholders’ approvals especially where the management and the ownership of the company are independent of each other.

The Takeover Code is required to be read with the SEBI (Disclosure & Investor Protection) Guidelines 2000 (“DIP Guidelines”), which are the nodal regulations for the methods and terms of issue of shares/warrants by a listed Indian company. They impose several restrictions on the preferential allotment of shares and/or the issuance of share warrants by a listed company. Under the DIP guidelines, issuing shares at a discount and warrants which convert to shares at a discount is not possible as the minimum issue price is determined with reference to the market price of the shares on the date of issue or upon the date of exercise of the option against the warrants. This creates an impediment in the effectiveness of the shareholders’ rights plan which involves the preferential issue of shares at a discount to existing shareholders.

The DIP guidelines also provide that the right to buy warrants needs to be exercised within a period of eighteen months, after which they would automatically lapse. Thus, the target company would then have to revert to the shareholders after the period of eighteen months to renew the shareholders' rights plan.

Without the ability to allow its shareholders to purchase discounted shares/ options against warrants, an Indian company would not be able to dilute the stake of the hostile acquirer, thereby rendering the shareholders' rights plan futile as a takeover deterrent.

Also, the FDI policy and the FEMA Regulations have provisions which restrict non-residents from acquiring listed shares of a company directly from the open market in any sector, including sectors falling under automatic route. There also exist certain restrictions with respect to private acquisition of shares by non-residents, under automatic route, is permitted only if Press Note 1 of 2005 read with Press Note 18 of 1998 is not applicable to the non-resident acquirer. This has practically sealed any hostile takeover of any Indian company by any non-resident.

However, for the poison pill strategy to work best in the Indian corporate scenario certain amendments and changes to the prevalent legal and regulatory framework are required. Importantly, a mechanism must be permitted under the Takeover Code and the DIP Guidelines which permit the issue of shares/warrants at a discount to the prevailing market price. These amendments would need to balance the interests of the shareholders while allowing the target companies to fend off hostile acquirers.

Possibilities in India

The DIP Guidelines do not stipulate any pricing restrictions on the issue of non-convertible preference shares, non-convertible debentures, notes, bonds and certificates of deposit. Thus, companies may consider structuring a poison pill in place whereby backend rights which permit the shareholders to exchange the rights/shares held for senior securities with a backend value as fixed by the Board, are issued to existing shareholders when the hostile acquirer's shareholding crosses a predetermined threshold.

As most takeovers are carried out through borrowed funds, the use of backend rights reduces the profitability of the takeover because of the mounting interest rates on borrowings; thus deterring the hostile acquirer and more importantly sets the minimum takeover price, which is the price at which the shares have been exchanged for senior securities.

Another method is where a company puts a provision in its Articles of Associations to the effect that a hostile acquirer who succeeds in taking control of that company and/or its subsidiaries is prohibited from using the company's established brand name. A live example is of the Tata companies who have put in place a an arrangement with the Tata Sons holding entity, whereby any hostile (or otherwise) acquirer of any of those entities is not permitted to make use of the established "Tata" brand name.

As a consequence, the bidder might be able to take over the target Tata company but will be shortchanged as it will not be entitled to a significant bite of its valuation — the valued brand name!!

Hostility is usually perceived when an offer is made public that is aggressively rejected by the target firm. Consequently, perceptions of hostility are closely linked with takeover negotiations that are far from completion. Often firms engage in confidential negotiations before there is a public announcement of a bid or an intention to bid. In some cases, the first public announcement is of a successfully completed negotiation, which would be perceived to be friendly, even if the early stage private negotiations would have seemed hostile if they had been revealed to the public. In other cases, private negotiations break down and one of the parties decides that public information about the potential bid would enhance its bargaining position.

Conclusion

Indian companies need to shift from desperate defensive play to getting ready on the offensive. The reason for utilizing the poison pill defence is to protect shareholder value and interest while stalling entities such as asset strippers that do not have the best interest of the company in mind or add any value to it. However, companies need to ensure that this defence is not misused by errant management. The need today, obviously, seems not to do away with poison pills, but a change in the attitude and approach of the management towards the poison pills. Not all hostile takeovers are bad; so long as the shareholders reserve the power to exercise the poison pills and take an informed decision, the pills and hostile takeovers can do more good than harm.

Top Indian Brands of 2013 (Economic Times)

1	TATA	10.907 US$ MILLION
2	RELIANCE INDUSTRIES	6.247 US$ MILLION
3	AIRTEL	6.220 US$ MILLION
4	SBI	3.838 US$ MILLION
5	INFOSYS	3.797 US$ MILLION
6	HDFC BANK	3.277 US$ MILLION
7	MAHINDRA	2.576 US$ MILLION
8	ICICI BANK	2.571 US$ MILLION
9	GODREJ	2.456 US$ MILLION
10	L&T	2.320 US$ MILLION
11	WIPRO	2.291 US$ MILLION
12	BAJAJ	2.132 US$ MILLION
13	HERO	1.738 US$ MILLION
14	ONGC	1.671 US$ MILLION
15	MARUTI SUZUKI	1.600 US$ MILLION
16	AXIS BANK	1.481 US$ MILLION
17	ITC	1.354 US$ MILLION
18	RELIANCE ADAG	988 US$ MILLION
19	HCL	943 US$ MILLION
20	BANK OF BARODA	841 US$ MILLION
21	IDEA	815 US$ MILLION
22	ASIAN PAINTS	792 US$ MILLION
23	PUNJAB NATIONAL BANK	752 US$ MILLION
24	ADANI	731 US$ MILLION
25	TANISHQ	670 US$ MILLION
26	ULTRATECH	668 US$ MILLION
27	DABUR	621 US$ MILLION
28	KOTAK	519 US$ MILLION
29	KINGFISHER	444 US$ MILLION
30	UNION BANK	428 US$ MILLION

Top Global Brands of 2013

Rank					Brand Value (USD $ Millions)		Brand Rating	
2013	2012	Logo	Name	Country	2013	2012	2013	2012
1	1		Apple		87,304	70,605	AAA	AAA+
2	6	SAMSUNG	Samsung Group		58,771	38,197	AAA	AAA-
3	2	Google	Google		52,132	47,463	AAA+	AAA+
4	3	Microsoft	Microsoft		45,535	45,812	AAA-	AAA+
5	5	Walmart	Walmart		42,303	38,320	AA+	AA
6	4	IBM	IBM		37,721	39,135	AA+	AA+
7	7		GE		37,161	33,214	AA	AA+
8	10	amazon.com	Amazon.com		36,788	28,665	AAA-	AA+
9	8	Coca-Cola	Coca-Cola		34,205	31,082	AAA+	AAA+
10	12	verizon	Verizon		30,729	27,616	AA+	AA
11	11		AT&T		30,406	28,379	AA+	AA+
12	19		Shell		29,752	22,022	AAA-	AAA-
13	9	vodafone	Vodafone		27,009	30,044	AAA	AAA+
14	16		Wells Fargo		26,044	23,229	AA+	AA+
15	15		Toyota		25,979	24,461	AA+	AA

Terms Relating To Mergers And Acquisitions

Asset Stripping

When a company acquires another and sells it in parts expecting that the funds generated would match the costs pf acquisition, it is known as asset stripping.

Black Knight

The company that makes a hostile takeover is known as the Black Knight.

Dawn Raid

This is a process of buying shares of the target company with the expectation that the market prices may fall till the acquisition is completed.

Demerger or Spin off

During the process of corporate restructuring, a part of the company may beak up and set up as a new company and this is known as demerger. Zeneca and Argos are good examples in this regard that split from ICI and American Tobacco respectively.

Carve –out

This is a case of selling a small portion of the company as an Initial Public Offering.

Greenmail

Greenmail is a situation where the target company purchases back its own shares from the bidding company at a higher price.

Grey Knight

A grey knight is a company that takes over another company and its intentions are not clear.

Hostile Takeover

Hostile bids occur when acquisitions take place without the consent of the directors of the target company. This confrontation on the part of the directors of the target company may be short lived and the hostile takeover may end up being friendly. Most American\n and British companies like the phenomenon of hostile takeovers while there is some more which do not like such unfriendly takeovers.

Macaroni Defense

Macaroni Defense is a strategy that is taken up to prevent any hostile takeovers. The issue of bonds that can be redeemed at a higher price if the company is taken over does this.

Management Buy In

When a company is purchased and the investors bring in their managers to control the company, it is known as management buyout.

Management Buy Out

In a management buy out, the managers of a company purchases it with support from venture capitalists.

Poison Pill Or Suicide Pill Defense

This is a strategy that is taken by the target company to make itself less appealing for a hostile takeover. The bondholders are given the right to redeem their bonds at a premium should a takeover occur.

End of note