

## Doing Business in India

---

### M&A

#### 1. What is National Company Law Tribunal?

The National Court of Law Tribunal has been formed under the Companies Act, 2013 setup as a quasi-judicial body for corporate law purposes. NCLT is one of the recent reforms undertaken by the government in corporate law. For more information, [click here](#).

#### 2. What are the guidelines for transfer of existing shares from non-residents to residents or residents to non-residents?

In case of transfer of capital instruments by way of sale from non-resident to resident or vice-versa, the transfer is to be reported via Form FC-TRS (except in cases not required). For more information, [click here](#)

#### 3. What are the modes of payment allowed for receiving Foreign Direct Investment in an Indian company?

An Indian company issuing shares/convertible debentures to a person resident outside India shall receive the amount of consideration by: 1) Inward remittance through normal banking channels. 2) Debit to NRE/ FCNR (B) account of a person concerned maintained with an AD Category I bank. 3) Debit to non-interest bearing Escrow account in Indian Rupees in India which is opened with the approval from AD Category – I bank and is maintained with the AD Category I bank on behalf of residents and non-residents towards payment of share purchase consideration. 4) Conversion of royalty/ lump sum/ technical know-how fee due for payment or conversion of ECB. Conversion of pre-incorporation/ pre-operative expenses incurred by the a non-resident entity up to a limit of five percent of its capital or US\$ 500,000 whichever is less. 5) Conversion of import payables/pre incorporation expenses/can be treated as consideration for issue of shares with the approval of FIPB, against any other funds payable to a person resident outside India, the remittance of which does not require the prior approval of the Reserve Bank or the Government of India and swap of capital instruments, provided where the Indian investee company is engaged in a Government route sector, prior Government approval shall be required. If the shares or convertible debentures are not issued

within 180 days from the date of receipt of the inward remittance or date of debit to NRE/FCNR (B)/Escrow account, the amount shall be refunded. Further, Reserve Bank may on an application made to it and for sufficient reasons permit an Indian Company to refund/allot shares for the amount of consideration received towards issue of security if such amount is outstanding beyond the period of 180 days from the date of receipt.

#### **4. What is the way in which maximum permissible non-public shareholding has been derived?**

Maximum permissible non-public shareholding is derived based on the minimum public shareholding requirement under the Securities Contracts (Regulations) Rules 1957 (SCRR). Rule 19A of SCRR requires all listed companies (other than public sector companies) to maintain public shareholding of at least 25% of share capital of the company. Thus, by deduction, the maximum number of shares which can be held by promoters i.e. maximum permissible non-public shareholding in a listed company (other than public sector companies) is 75% of the share capital. For more information, [click here](#).

#### **5. What is the meaning of a voluntary open offer?**

A voluntary open offer under Regulation 6, is an offer made by a person who himself or through persons acting in concert, if any, holds 25% or more shares or voting rights in the target company but less than the maximum permissible non-public shareholding limit. For more information, [click here](#).

#### **6. Do all acquisitions of shares in excess of the prescribed limits and/or control lead to an open offer?**

No, in respect of certain acquisitions, SAST Regulations, 2011 provide exemption from the requirements of making an open offer, subject to certain conditions being fulfilled. For example, acquisition pursuant to inter-se transfer of shares between certain categories of shareholders, acquisition in the ordinary course of business by entities like underwriter registered with SEBI, stock brokers, merchant bankers acting as stabilizing agent, Scheduled Commercial Bank (SCB), acting as an escrow agent, etc. For further details please access following link.

#### **7. What is the validity of an open offer?**

Ten days For more information, click here

#### 8. What does the minimum level of acceptance mean under Sebi takeover code?

'Minimum level of acceptance ' implies minimum number of shares which the acquirer desires under the said conditional offer. If the number of shares validly tendered in the conditional offer are less than the minimum level of acceptance stipulated by the acquirer, then the acquirer is not bound to accept any shares under the offer. For more information, click here.

#### 9. What is the defined size for an open offer to be made under SEBI takeover code?

An open offer, other than a voluntary open offer under Regulation 6, must be made for a minimum of 26% of the target company ' s share capital. The size of voluntary open offer under Regulation 6 must be for at least 10% of the target company ' s share capital. Further the offer size percentage is calculated on the fully diluted share capital of the target company taking into account potential increase in the number of outstanding shares as on 10th working day from the closure of the open offer. For more information, click here.

#### 10. What are hostile bids under SEBI takeover code?

Officially, there is no such term as hostile bid in the regulations. Hostile bid is generally understood to be an unsolicited bid by a person, without any arrangement or MOU with persons currently in control. Any person with or without holding any shares in a target company, can make an offer to acquire shares of a listed company subject to minimum offer size of 26%. For more information, click here.

#### 11. What is a ' Target Company ' ?

A 'Target Company' is the company/body corporate or corporation whose equity shares are listed in a stock exchange and in which a change of shareholding or control is proposed by an acquirer. For more information, click here.

#### 12. Who is an ' Acquirer ' ?

Acquirer means any person who, whether by himself, or through, or with persons acting in concert

with him, directly or indirectly, acquires or agrees to acquire shares or voting rights in, or control over a target company. An acquirer can be a natural person, a corporate entity or any other legal entity. For further details please access following link.

### 13. What is meant by Takeovers & substantial acquisition of shares?

When an ' acquirer ' takes over the control of the ' Target Company ' , it is termed as a Takeover. When an acquirer acquires ' substantial quantity of shares or voting rights ' of the Target Company, it results into substantial acquisition of shares. For further details please access following link.

### 14. When does it become mandatory to notify regarding a combination to CCI?

The Competition Act requires mandatory notification of all combinations within stipulated timelines. Combinations must be notified to CCI within 30 days of a trigger event For more information, click here.

### 15. What does the term combination mean under mergers and acquisitions?

Any Merger or Amalgamation that meets the below threshold limits is considered as combination:  
Enterprise Level India : Assets > Rs 2,000 cr. Or Turnover > Rs. 6,000 Cr Worldwide (India component) : Assets > \$ 1Bn with Rs. 1000 cr in India Or Turnover > \$ 3Bn with Rs. 3,000 Cr in India  
Group Level India: Assets > Rs 8,000 cr. Or Turnover > Rs. 24,000 Cr Worldwide (India Component): Assets > \$ 4Bn with Rs. 1000 cr in India Or Turnover > \$ 12Bn with Rs. 3,000 Cr in India  
For more information, click here.

### 16. Does one need to notify CCI in case they are acquiring less than 25% of equity shares of a listed company from a secondary market?

The acquisition of up to 25% shares where the acquirer does not acquire control and the acquisition is solely as an investment or in ordinary course of business, need not normally be notified to the CCI for prior approval. For more information, click here.

### 17. What are the applicable competition laws/rules/regulations in respect of merger, amalgamations and acquisition transactions?

Following statutory provisions apply to mergers, amalgamations and acquisitions from competition law perspective: 1) Competition Act, 2002. 2) The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. 3) The Competition Commission of India (General) Regulations, 2009: i) Notification No. S.O. 93(E) dated January 8, 2013 ii) Notification No. S.O. 673(E) dated March 4, 2016 iii) Notification No. S.O. 674(E) dated March 4, 2016 iv) Notification No. S.O. 675(E) dated March 4, 2016 v) Notification No. S.O. 988(E) dated March 29, 2017 vi) Notification No. S.O. 2039(E) dated June 29, 2017 For further details please access following link.

### **18. What are the important regulations pertaining to mergers and acquisitions in India?**

The key laws governing M&A in India are: Companies Act, 1956 and 2013 Income Tax Act, 1961 Competition Act, 2002 Foreign Exchange Management Act. The key regulations governing M&A in India are: Securities and Exchange Board of India (SEBI) Takeover code of SEBI. Reserve Bank of India. Competition Commission of India.

### **19. What is an open offer under the SAST Regulations, 2011, Under which situations is an open offer required to be made by an acquirer?**

An open offer is an offer made by the acquirer to the shareholders of the target company inviting them to tender their shares in the target company at a particular price. The primary purpose of an open offer is to provide an exit option to the shareholders of the target company on account of the change in control or Substantial acquisition of shares, occurring in the target company. If an acquirer has agreed to acquire or acquired control over a target company or shares or voting rights in a target company which would be in excess of the threshold limits, then the acquirer is required to make an open offer to shareholders of the target company. For further details please access following link.

### **20. What does the term control entail as per the guidelines of CCI?**

“ Control ” means controlling the affairs or management of a target enterprise or group. For more information, click here.

### **21. Is competition due to Merger and Acquisition covered under any act?**

The competition act 2002 governs the laws and regulations with respect to merger, acquisition and amalgamation transactions. Competition commission of India is the governing body. For more information, [click here](#).

## **22. What is the procedure to report an acquisition that is made in India?**

In respect of acquisitions under clause (a) of sub regulation (1), and clauses (e) and (f) of sub regulation (4), the acquirer shall intimate the stock exchanges where the shares of the target company are listed, the details of the proposed acquisition in such form as may be specified, at least four working days prior to the proposed acquisition, and the stock exchange shall forthwith disseminate such information to the public. For more information, [click here](#).

## **23. What are the threshold limits for acquisition of shares/voting rights, beyond which an obligation to make an open offer is triggered?**

There are two threshold limits for acquisition of shares/voting rights, beyond which an obligation to make an open offer is triggered: Acquisition of 25% or more shares or voting rights (details in link given below) Acquisition of more than 5% shares or voting rights in a financial year (details in link given below) For more information, [click here](#).