

New Companies Bill to make M&A easier for companies, empower private equity investors

The new Companies Bill will make acquisitions, mergers and restructuring easier for companies, empower private equity investors to enforce various agreements and check misuse by promoters by increasing transparency, say experts. The bill, passed by the Upper House of Parliament last week, is waiting for the President's stamp of approval. It will replace the 50-year-old Companies Act of 1956 with its 470 clauses. Experts say the bill could potentially trigger a spate of domestic and cross-border mergers and acquisitions and make Indian firms more attractive to PE investors.

The new law says any contract or arrangement between two or more persons on transfer of securities shall be enforceable as a contract. Private equity investors, who until now have been unable to enforce strict conditions in their agreements with promoters, will be able to use clauses such as 'tag along' and 'drag along' mentioned in the shareholder agreement. A 'tag along' clause helps protect a minority shareholder as he can sell his stake along with the majority shareholder, while a 'drag along' clause gives right to a majority shareholder to force a minority shareholder to sell stake. Vikram Hosangady, head of private equity transaction services at KPMG India, says one needs to take the management into confidence before enforcing such clauses. "Though this (clause) will give PE investors a better position, without the support of the promoter and the management, no contract can be exercised," he said.

Many PE investors have been struggling to exit with many clauses in the shareholder agreement not enforceable. The new law also allows an Indian company to merge with a foreign company, making cross-border mergers and acquisitions easier. Earlier, only foreign companies were allowed to merge with Indian companies. Amrish Shah, partner - transaction tax advisory at Ernst & Young India, however, said other laws, too, will have to fall in place to trigger a spate of cross-border M&A deals. "Other regulations such as Foreign Exchange Management Act and Income-Tax Act have to be in tune with this provision for its practical implementation. Otherwise, it will pose a big challenge for companies seeking acquisitions overseas," Shah said. The new law will also make it easier for promoters to restructure, merge or acquire companies because only those shareholders who own more than 10% stake or have more than 5% of the total debt will have the power to oppose any scheme of arrangement.

"This will keep away all those frivolous shareholders who, under the garb of shareholder activism, would oppose a deal," managing director of a global investment bank said on condition of anonymity. The bill also disallows issue of treasury stocks in the name of a transferee company. This means, when there is a gap between the book value and fair market value of a company, the difference will have to be written off over a period of time and cannot be locked as treasury shares. Until now, this difference was treated as goodwill value on the books.

At present, promoters of listed companies often use treasury shares to increase their holding in the company and to have more voting rights. Vivek Mehra, partner, M&A-tax, at

PwC India, said, "Though not very rampant and significant, through this provision, they are trying to rein in the misuse of treasury shares by the promoters of a listed company." The new law also disallows reverse merger of a listed company with that of an unlisted one. According to Clause 232(3)(h), in case of a merger between a listed company with an unlisted one, the transferee company shall remain unlisted after the merger. This will ensure there is no possibility of 'backdoor listing' through reverse mergers. Clause 232 also elaborates an exit option for a shareholder of the listed transferor company, which should be given at a price not less than what may be specified by market regulator Sebi for the purpose.

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