Appendix 7.1.

Salient Features of the Draft Legislation for Substantial Acquisition of Shares in Listed Companies. (Code for Takeovers and Mergers)

Objective of the Draft:

The draft is proposed to provide a greater element of transparency in acquisition of shares, equality of treatment and opportunities to all shareholders, and avoid undesirable practices in substantial acquisition of shares and clandestine transactions.

Guiding Principles:

1. Equality of treatment and opportunity to all shareholders.
2. Transparency in acquisition of shares.
3. Fair and truthful disclosure through public announcement.
4. Availability of sufficient time for shareholders to make properly informed judgment.
5. Avoidance of undesirable practices in substantial acquisition of shares and clandestine transactions.
6. Protection of rights of small and minority shareholders.
7. Avoidance of use of price sensicive information concerning a public offer by all persons privy to confidential information for their own profits.

Highlights of the draft:

I. **Scope:** It has widen the reach of the regulation to coverevery segment of the capital market and financial sector bringing under its ambit sales and purchases by investors, non-resident Indians, financial institutions and every corporate entity or otherwise "acting in concert" whether or not it is covered by the Listing Agreement.

II. **Disclosure:** A person holding shares carrying five per cent or more of voting capital of the company, shall disclose his aggregate shareholding to SEBI and all the stock exchanges, within two months.

III. **Negotiated or Open market Purchases:** When a person agree to acquire shares through negotiations, which taken together with shares already held, would carry more than ten per cent of voting capital, he shall not acquire further shares unless he makes public announcement of an offer to the remaining shareholders to acquire further twenty per cent of the floating stock. Similarly, if shareholding of a person exceed ten per cent of voting capital of the company, he shall not acquire further shares unless he makes public announcement of his intention to acquire such additional shares through open market in a manner prescribed by the SEBI.

IV. **Refusal to transfer the shares:** The board of directors shall call an extra ordinary general meeting within six weeks to confirm the refusal of share transfer under Section 22A (3)(c) of Securities Contracts (Regulations) Act, 1956.

V. **Institutional Investors:** The Public Financial Institutions shall not sell any shares exceeding one percent or more of paid up capital of any company by negotiation whether through single transaction or otherwise any same person or persons acting in concert, unless a public announcement of its intention to sell is made stating the number of shares being sold and the price. They will give others a chance to bid for the shares and accept the highest bid. Mutual Funds will also follow the same procedure.

VI. **Bail out Takeovers:** The revival of non-BIFR sick companies through bail out takeovers are exempted from some of the above provisions. The lead financial institutions is vested with the task of evaluating various bids and is given the discretion to accept or reject them.

VII. **Penalties:** The violations of the provisions of this regulation shall be liable to fine or imprisonment or both under the SEBI Act,1992.

Source: The Proposed Draft Legislation for Substantial Acquisition of Shares in Listed Companies (Code for Takeovers and Mergers) circulated by SEBI.

Appendix 7.2

Employees Stock Option Plan (ESOP)

In a typical Employee Stock Ownership Plan (ESOP), the company sets up an independent entity called the ESOP Trust. Trust borrows money from a commercial bank, which is guaranteed by the assets of the company. These funds are used for the purchase of large blocks of shares in the listed companies. These shares are allocated to the employees of the corporation based on their seniority, compensation, and other relevant factors. Every year the company makes a tax deductible contribution from its profits to the Trust. These funds are used to service the bank loan over a period of 3 to 5 years.

An Incentive To Stay With The Company : Vesting Schedule

Normally the ESOP plans carry a provision for a "vesting schedule". A vesting schedule is designed to give the employees incentives to stay for a longer period in the company. For example, some companies use a four year 40 per cent and 100 per cent vesting schedule. It means that if an employee has a total of Rs.100 worth of shares in his ESOP account and if he leaves the company in less than four years of service then his vesting is zero per cent or he will get no benefits from his ESOP. If he leaves after the completion of four years of service he will get Rs.40 (40 per cent) from his ESOP account. Every year if the employee stays in the company after the initial four years, his vesting will increase by 10 per cent per year. Therefore, if he leaves after the completion of seven years, he will be able to get Rs.70 (70 per cent) of his ESOP benefits and in ten years he will be fully vested.

On Termination :

Upon termination of employment the company is obliged to purchase the vested portion of the employee's benefits within a reasonable period of time, which is generally less than five years from termination. The share price is fixed on the basis of either by market price (for publicly held companies) or share valuation is performed by an independent experts for privately held companies.

Source : The Economic Times, 30-11-1993.