# "DEFENSIVE MEASURES AGAINST CORPORATE TAKEOVER BIDS"

A hostile tender offer made directly to a target company's shareholders, with or without previous overtures to the management, has become an increasingly frequent means of initiating a corporate combination. As a result, there has been considerable interest in devising defence strategies by actual and potential targets.

Defences can take the form of fortifying one-self, i.e., to make the company less attractive to takeover bids or more difficult to take over and thus discourage any offers being made.

These include, inter alia, asset and ownership restructuring, anti-takeover constitutional amendments, adoption of poison pill rights plans, and so forth.

Following are the important defensive measures to avoid hostile takeover:

## 1. ADJUSTMENTS IN ASSET AND OWNERSHIP STRUCTURE

- Defence structures that create barriers specific to the bidder. These include **purchase of assets that may cause legal problems**, purchase of **controlling shares of the bidder itself**, and sale to their party of assets which made the target attractive to the bidder and issuance of **new securities with special provisions conflicting with the aspects of the takeover attempt**.

## 2. THE “CROWN JEWEL" STRATEGY

- The **"crown jewel strategy"** means selling the most important part of the company that the bidder wants the most. This stops the hostile bidder from achieving their goal. However, this step can **sometimes hurt the company itself**. It may end up being a harmful and risky decision. Such actions should be taken with caution.

## 3. THE “PACKMAN” DEFENCE

- Under this strategy, the target company attempts to purchase the shares of the raider company. This is usually the scenario if the raider company is smaller than the -target company and the target company has substantial cash or liquid assets.

## 4. TARGETED SHARE REPURCHASE OR "BUYBACK”

- This strategy is one in which the target management uses up a part of the assets of the company on the one hand to increase its holding and on the other it disposes of some of the assets that make the target company unattractive to the raider. The strategy therefore involves a creative use of buyback of shares to reinforce its control and detract a prospective raider

## 5. "GOLDEN PARACHUTES"

- Golden parachutes refer to the "separation" clauses of an employment contract that compensate managers who lose their jobs under a change-of-management scenario. The provision usually calls for a lump-sum payment or payment over a specified period at full and partial rates of normal compensation.

- The provisions which would govern a "golden parachute" employment contract in India would be Sections 318-320 of the Companies Act, 1956 which govern the provisions for compensation for loss of office. Thus, a perusal of the said provisions would show that payment as compensation for the loss of office is allowed to be made only to the managing director, a director holding an office of manager or a whole time director.

- Therefore, a **“golden parachute”** contract with the entire senior management, as is the practice in the U.S., is of no consequence in India.

❖ **ANTI TAKEOVER AMENDMENTS OR "SHARK REPELLANTS"**

An increasingly used defence mechanism being used is anti-takeover amendments to the company's constitution or articles of association, popularly called as **"shark repellents".** This practice consists of changing the **articles of associations, regulations, bye-laws, etc.** to be less attractive to the raider / hostile bidder. This again may not work out in India as any change to the Articles of Association or the Memorandum of Association would require approval of the shareholders.

1. **SUPERMAJORITY AMENDMENTS**

    - These amendments require shareholder approval by at least two thirds vote and sometimes as much as **90% of the voting power of outstanding capital stock** for all transactions involving change of control.

2. **AUTHORIZATION OF PREFERRED STOCK**

    - The Board of Directors is authorized to create a new class of securities with special voting rights. This security, **typically preferred stock**, may be issued to a friendly party **in a control contest**. Thus, this device is a defence against hostile takeover bids, although historically it was used to provide the Board of Directors with flexibility in financing under changing economic conditions.

3. **POISON PILL DEFENSES**

    - A controversial but popular defence mechanism against hostile takeover bids is the creation of securities called "poison pills".

    - These pills provide their holders with special rights exercisable only after a period of time following the occurrence of a triggering event such as a tender offer for the control or the accumulation of a specified percentage-of target, shares.

    - These rights take several forms but all are difficult and costly to acquire control of the issuer, or the target firm.

In conclusion, defensive strategies against hostile takeovers are essential for protecting a company's interests and stability. These tactics, ranging from asset restructuring to legal amendments, aim to make the company less attractive or harder to acquire. However, their implementation should be strategic and carefully aligned with the company's long-term goals.