
ANTI-TAKEOVER DEFENCES

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Introduction

1. What are Anti- Takeover Defences?

- The Management and board of directors of a business utilize anti- takeover safeguards, which are tactics and procedures designed to thwart or discourage undesired control efforts, especially aggressive ones. These mechanisms are pertinent for corporate governance because it has an immediate effect on the distribution of authority among the shareholders¹, administration, as well as directors of a business organisation.²
- Anti-takeover defences³ in such a scenario pose important questions regarding the best way to strike an equilibrium between safeguarding a business from unsolicited takeovers and making certain that management is still answerable to the shareholders. The discussion also encompasses such defences broader consequences for the effectiveness of markets, particularly in relation to the market for corporate control.⁴
- ATD, therefore, constitute an important component of corporate governance, illustrating the intricate relationship between shareholder's right, administrative autonomy, along with the general health and competitiveness of companies in the marketplace. Such kinds of defences assume a pivotal position within the domain corporate governance, serving as a strategic measure employed by a company's leadership to repel unsolicited or hostile takeover endeavours. The implementation of such measures has the utmost importance in delineating

¹ Shareholders and Stockholders as well as shares and stocks are used interchangeably throughout the paper.

² Investopedia, (Anti-Takeover Measure: Overview, Different Types)
<https://www.investopedia.com/terms/a/anti-takeovermeasure>

³ Anti-takeover defenses s hereinafter referred to as ATD.

⁴ Practical Law, (Defending Against Hostile Takeover) <https://uk.practicallaw.thomsonreuters.com/>

the intricate interplay of control and power dynamics within corporate entities, particularly in the context of prospective corporate buyouts.

- The crux of the matter concerning the pertinence of anti-takeover mechanisms within the realm of corporate governance lies in the dichotomy between managerial oversight and independence. From a legal standpoint, it is imperative to acknowledge the significance of these defences as indispensable instruments in safeguarding a company's strategic long-term objectives and vested interests regarding its investors against hostile takeovers attempts that have the capability to pose a threat or disregard the company. Notwithstanding, the implementation of said defensive measures may on occasion give rise to substantial apprehensions regarding governance. A few of the primary concerns at hand pertains to the phenomenon of management entrenchment. Through the implementation of defensive measures aimed at thwarting hostile takeovers, the existing management and boards possess the ability to fortify their positions and impede transformative actions, even in instances where such actions may potentially yield advantageous outcomes for both the shareholders and the overall welfare of the company in the foreseeable future. The aforementioned circumstances may give rise to divergence between the objectives of the corporate management alongside the shareholders, conceivably culminating in decision-making processes that adhere to the safeguarding of managerial pursuits over the enhancement of shareholder value and overall company performance.
- In essence, the incorporation of anti-takeover mechanisms within the realm of corporate governance entails a multifaceted interaction that is aimed secure protecting the longstanding values of a company while simultaneously upholding the concept of managerial accountability to investors. The discussion surrounding these tactics extends beyond their instantaneous efficacy, encompassing their wider ramifications for business well-being, market efficacy, as well as harmonisation towards appealing organisations principal constituents.

2. Thesis Statement

The following presented thesis posits a balanced approach by striking nuanced approach in acknowledging both the perspective merits of safeguarding a strategic business model and mitigating underappreciated acquisition proposals, it is imperative to acknowledge the potential drawbacks linked to these actions, including the peril of managerial entrenchment along with the curtailment of investor influence.

3. Background and Context

ATD encompasses a range of strategic measures implemented by corporations with the aim of impeding or dissuading unsolicited acquisition attempts, especially those initiated by adversarial purchasers. Particular strategies haven been strategically devised with the intention of diminishing the allure and increasing the complexity associated with the actualisation of an acquisition. To attain a profound comprehension of such techniques, it is imperative to undertake an in- depth investigation of they fall into diverse classifications, the underlying rationales behind their being implemented, along side with the intricate regulatory and legal frameworks that regulate them across several countries.

3.1 Types of ATDs and Strategies

1. The discourse surrounding the realm of corporate governance has witnessed a proliferation of strategies aimed at thwarting hostile takeover attempts. These strategies or ATD, entails a diverse array of mechanisms that corporations may employ to. It must be noticed that subject to a board of a particular implementing or executing defensive strategies must also comply with the 'Unocal Test'⁵, that safeguarding of corporate interests through the implementation of protective actions/measures is shielded by the business judgement rule⁶, provided that two

⁵ *Unocal Corp. v. Mesa Petroleum Corp.*, 493 A.2d 946, 955 (Del. 1985):

⁶ Bayless Manning, 'Business Judgement Rule in Overview, The ' (1984) 45 Ohio St LJ, p.617.

conditions are met, firstly, the board must possess rational justifications for perceiving a potential hazard to corporate policy and efficacy, secondly the defensive course of action undertaken must be proportionate and rationale in the light of perceived threat.

- i. **Poison Pills Strategy-** The utilisation of Poison pills as a strategy or as a defensive tactic permits the incumbent shareholders, with the exception of the acquiring party, to procure supplementary shares for reduced price than what it is on the market⁷. The aforementioned circumstance serves to diminish the intrinsic worth of any stock/share procured from the prospective acquirer, thereby rendering the acquisition more costly and less enticing in nature. Which makes it harder for the acquirer⁸ to buyout the⁹ majority shares of the target.¹⁰
- ii. **Staggered Boards Strategy**¹¹- This strategy is also commonly known as classified boards, which is a governance structure employed by particular businesses whereby the board of directors is divided into distinct classes, featuring just a portion of directors standing for election in any given year¹². This particular structure generates heightened challenges with a potential acquiring entity expeditiously attaining influence over its board of directors.
- iii. **Golden Parachutes Strategy-** Also colloquially referred to as management severance agreements, represent a set of highly remunerative upsides that i

⁷ *Yucaipa American Alliance Fund II, L.P. v. Riggio*, C.A. No. 5465-VCS (Del. Ch. Aug. 12, 2010),

⁸ Term used for a company trying to acquire a company.

⁹ The company the acquirer is attempting to acquire.

¹⁰ John Armour and David A. (WHO WRITES THE RULES FOR HOSTILE TAKEOVERS, AND WHY?) *THE PECULIAR DIVERGENCE OF US AND UK TAKEOVER REGULATION*, p.7.

¹¹ Lucian Bebchuk, John Coates, and Guhan Subramanian, (*The Powerful Anti-Takeover Force of Staggered Boards: Theory, Evidence, and Policy*) (NBER Working Paper No. 8974) p.1-4.

¹² Lynn. A Stout, (*Do Antitakeover Defenses Decrease Shareholder Wealth? The Ex Post/Ex Ante Valuation Problem*) p. 846

contractually ensured for top-level company executives within the unfortunate occurrence of a hostile takeover or any other circumstances leading to their involuntary termination from their respective positions within the organisation¹³. The anticipated deterrent effect of the expenditures entailed by golden parachutes on prospective acquirer makes it harder for the acquirer to consider such an acquisition.¹⁴

- iv. **Pac-Man Strategy-** This entails a reversal of roles, wherein the targeted entity endeavours to procure the potential acquirer¹⁵.
- v. **The White knight Defence strategy-** Which entails the proactive response of a targeted firm, which faces the imminent risk of an aggressive acquisition, by actively seeking an alternative acquirer that is additionally amenable to its interests¹⁶.
- vi. **Super Majority Provisions-** Which entails a notable feature in corporate governance, entail the imposition of a voting requirements which exceeds the conventional majority threshold of Fifty plus one. These regulations serve the purpose of augmenting the level of difficulty for potential acquirers in garnering the essential backing of stockholders' requisite to earn the consent of merger and acquisition¹⁷.
- vii. **Greenmail Strategy-**The concept of which pertains to the scenario wherein the subject firm being an objective of an acquisition, opts to repurchase its own shares from the prospective purchaser at a price exceeding the

¹³ Twitters Acquisition of Elon Musk, wherein Elon Musk bought twitter for \$44 Million and had to pay \$57 Million to CEO Parag Aggarwal.

¹⁴ Wade, J., O'Reilly, C. A., & Chandratat, I. (1990). Golden Parachutes: CEOs and the Exercise of Social Influence. *Administrative Science Quarterly*, 35(4), p.587,588

¹⁵ The Pac-Man battle of Martin Marietta and Bendix, <https://www.csmonitor.com/1982/0923/092345.html>.

¹⁶ Reliance Industry's 'Friendly stakeholder' invests in EIH LTD, seen as a 'White Knight', https://www.business-standard.com/article/companies/ril-raises-stake-in-eih-to-18-5-112030300073_1.html

¹⁷ Gilotta, Sergio, (*EU Takeover Law and the Powerful Anti-Takeover Force of Supermajority*) (January 23, 2019). *Columbia Journal of European Law*, Vol. 25, No. 3, Forthcoming, p. 3,4.

prevailing market value.¹⁸ Although it may incur significant costs, this strategy could prove to be efficacious in thwarting an unsolicited acquisition attempt.

- viii. The Crown Jewel Defence Strategy-** Which entails the deliberate act of either selling or indicating the intention to sell extremely significant assets, commonly referred to as the “crown jewels”, by the target organisation. This strategic manoeuvre is employed with the objective of diminishing the desirability of the target company to potential acquirers¹⁹. This tactic may also indicate the departure of the company without any significant assets.
- ix. Dual class share’s structure strategy-** Which entails a corporate arrangement wherein companies allocate distinct classes of stocks, thereby conferring differential voting privileges upon the shareholders²⁰. The aforementioned mechanism serves to maintain authority within the purview of limited cohort, notwithstanding the presence of external interests in terms of involvement²¹.

3.2 Justifications and Reasons for execution of ATDs.

- I. The preservation of corporate strategy** is of paramount importance to the administration, as they have complete efficacy and viability of their longer- term strategic vision. Consequently, any potential acquisition is perceived as an intrinsically detrimental force that may impede the seamless execution and realisation of their strategic objectives²².

¹⁸ Shleifer, Andrei, and Robert W. Vishny. “(Greenmail, White Knights, and Shareholders’ Interest.)” *The RAND Journal of Economics* 17, no. 3 (1986): p.293,294

¹⁹ Dalal, A.S., 2011. (*Analysis of takeover defences and hostile takeover*). NALSAR L. REV., 6, p 89, 90

²⁰ Jason W. Howell, the survival of the U.S. dual class share structure, *Journal of Corporate Finance*, Volume 44,2017, Pages 440-450.

²¹ At Ford, there is a dual-class structure, that allows the member of the ford family to have 40% of the voting power, despite possessing only a small portion of the company’s overall equity. Ford. "2021 Proxy Statement," Page 98.

²² Bhojraj, Sanjeev and Sengupta, Partha and Zhang, Suning, (*Takeover Defences: Entrenchment and Efficiency*) (July 31, 2014), p.1-30.

- II. *The safeguarding of a company's culture and identity* is of paramount importance, particularly in the context of acquisition or takeover, particularly those which are unfriendly in nature.²³
- III. *The context of safeguarding withstanding undervaluation*, it is plausible for administration of a business to adopt a defensive stance towards potential takeovers, with the intention of circumventing the sale of a business's shares at a suboptimal estimation.²⁴
- IV. *The inherent personal interests on management*, executives driven by their personal motivations, may exhibit a propensity to safeguard their roles and mitigate the potential jeopardy of termination in the context of corporate acquisition²⁵.
- V. In certain instances, these defensive measures may coincide alongside the best interests of shareholders as they serve to repel unsatisfactory acquisition proposals that undervalue the firm.

3.3 Regulatory and Legal Framework across different jurisdictions

The regulatory and legal frameworks pertaining to ATDs, exhibit substantial variation throughout diverse jurisdictions.

- **United States-** The legal parameters and scope pertaining to ATD are predominantly regulated by state legislation with particular emphasis on the Delaware state legislation, with owing to its corporate-centric legal framework. The Williams Act,²⁶ a federal statute governs the conduct of tender offers by imposing an obligation upon acquirer to disclose pertinent. The utilisation of 'Poison pill' strategies has been judicially validated, particularly exemplified in

²³ *ibid*

²⁴ *ibid*

²⁵ *ibid*

²⁶ The Williams Act'1968

the seminal legal dispute *Moran v. Household*²⁷ International Inc. within the jurisdiction of Delaware.

- **European Union**²⁸- The regulations promulgated by the EU exhibits a heightened emphasis on safeguarding the interests of stockholders as well as fostering an equitable marketplace. The overarching objective of the EU takeover directive is to achieve harmonisation of takeover regulations amongst the member nations, primarily by safeguarding the interests of minority stockholder's and promoting full disclosure within the realm of corporate takeovers²⁹.
- **United Kingdom**- Adheres to the City Code on Takeovers and Mergers, a comprehensive framework of regulations designed to foster fair and equitable approach of stockholders throughout the process of takeover offers³⁰. The shareholder-centric nature of the UK conduct is notably distinguishable when juxtaposed with the corresponding approach adopted in the United States.
- **Canada**- It is imperative in the Canadian jurisdiction; it is imperative to acknowledge the existence of a comprehensive legal framework comprising a combination of provincial and federal statutes³¹.

In light of the aforementioned arguments and analysis, it can be reasonably concluded that evidence presented supports the proposition at the utilisation of ATDs within the realm of corporate governance, a paramount significance, as it effectively harmonises the competing interests of management, shareholders, and prospective acquirers. While such mechanisms have the potential to safeguard firms against hostile takeovers, they concurrently give rise to inquiries pertaining to the entitlements of shareholders as well as the principles of corporate governance. Regulatory framework pertaining to such

²⁷ *Moran v. Household International, Inc.*, 500 A.2d 1346 (Del. 1985)

²⁸ European Union hereinafter referred to as "EU".

²⁹ The Takeover Directive 2004/25/EC.

³⁰ The City Code on Takeover and Mergers

³¹ National Instrument 62-104 Take-Over Bids and Issuer Bids (NI 62-104) as part of Canadian Securities Administrations.

strategies exhibits considerable heterogeneity throughout various jurisdictions thereby mirroring the manifold legal frameworks and commercial culture prevalent therein. In light of the ever-evolving international economic landscape, it is imperative for corporations to remain vigilant and flexible to the dynamic nature of laws and statutes pertaining to corporate acquisitions and defences.

4. Analysis of Anti-takeover Defences

The rationale for implementing anti-takeover determines frequently depends upon the premise of preserving a corporation's enduring strategic direction along with the welfare of its esteemed stockholders. The implementation of defensive strategies assumes a pivotal function in safeguarding the integrity of a company's strategic vision, meticulously crafted to foster enduring expansion and viability, from being hated by transient acquisition pursuits.

4.1 Arguments for Protection

- I. Safeguarding Strategic Vision-** It is a common practice for corporations to develop and implement comprehensive, well- thought- out long- term plans and strategies with the aim of achieving enduring expansion and maintaining an advantageous edge in the marketplace. This strategic course may be upset by a hostile takeover offer, particularly when the acquirer's goals and methods of conduct diverge from those of the target business.³² Anti-takeover measures act, as a safety net allowing BOD of the target organisation time to explain to the investors and the shareholders the benefits of their long-term course of action for the organisation and possibly bargain for better conditions from the acquirer.
- II. Protecting Against Underestimation-** A company's share price may not adequately represent its projected future performance or intrinsic

³² Ibid at 22

worth in an uncertain market, which makes it a desirable option for buyers searching for a cheap business. A business can safeguard itself against being bought out for less than its true value by putting ATDs in place³³. Preventing stockholders from losing potential prospective profits.

III. Sustaining Corporate Culture and Identity- The ethos and character of an organisation are essential to its viability in the long course. Following a takeover, rapid shifts may result in a decline in staff morale, a deterioration of the reputation of the company, and an interruption of consumer relations. ATD policies function as a buffer to protect a business's distinctive qualities that supports and supplements its long-term survival .³⁴

IV. Safeguarding Shareholder Interest : In situations where legislation is a perception that a takeover offer is opportunistic and not beneficial to the values of the stockholders, such defences, could be considered in line with those objectives ³⁵.The BOD guarantees that shareholders have the chance to get the most out of capital by averting a hostile or hurried takeover.

ATDs can provide these safeguards, but they also have drawbacks and possible hazards.

4.2 Counterarguments and Risks

I. Acquisitions That Could Be Beneficial To Shareholder Could Be Hindered: This constitutes generally one of criticism levelled at these defences. Regardless of the event that it is not requested, a takeover offer may represent a

³³ Lynn. A Stout, (*Do Antitakeover Defenses Decrease Shareholder Wealth? The Ex-Post/Ex Ante Valuation Problem*) p, 847,850.

³⁴ Karpoff, Jonathan M. and Wittry, Michael D., (*Corporate Takeover Defences*) (April 1, 2023). Fisher College of Business Working Paper No. 2022-03-009, Charles A. Dice Center Working Paper No.2022-9, European Corporate Governance Institute – Finance Working Paper No. 843/2022, *The Handbook of Corporate Finance*, edited by David Denis, 2023.

³⁵ Ying Wang, Henry Lahr, (*Takeover Law to Protect Shareholders: Increasing Efficiency or Merely Redistributing Gains*)? P. 7,8

considerable premium over the current stock price, giving stockholders instantaneous and crucial value. ATDs tactics have the potential to deny such advantages to stockholders³⁶.

- II. **Managerial Entrenchment:** In certain cases, such methods work better to safeguard the board's standing rather for the benefit of the shareholders. Overuse of them could result in managerial entrenchment, whereby the present authorities of the company holds onto power against what is most beneficial to the company and its investors³⁷.
- III. **Effect on The Value of The Company:** The stock exchange may view the introduction of ATDs adversely, which could result in a drop in share value of the company implementing such defences. Such impression results is due to the belief that the business is more concerned with repelling off takeovers as opposed to expanding and adding significant value³⁸.
- IV. **Decreased Accountability:** Such tactics may lessen the BOD's duty of care towards investors by protecting the business from a probable merger. The possibility that a takeover may function as a check on management in a setting with sound and good corporate governance, encouraging the board to act in the best interests of the investors³⁹.

In summary, ATDs has advantages and disadvantages, which can be very helpful in defending a company's long term strategy and can cater to the interest of the shareholder's. Such defences have the potential to impede advantageous takeovers, result in managerial entrenchment, lessen administrative accountability, harm firms value. Thus, the choice to put these actions or strategies should be carefully considered in light of both possible advantages and risks involved.

³⁶ Lynn. A Stout, (*Do Antitakeover Defenses Decrease Shareholder Wealth? The Ex-Post/Ex Ante Valuation Problem*) p, 856-861

³⁷ Jonathan M Karpoff, Michael D Wittry, (*Corporate Takeover Defenses*), May 2023, p. 10,11.

³⁸ Ibid

³⁹ Ibid

5. Impact on Management and Corporate Governance

- The influence of ATDs on management and corporate governance is a crucial component of corporate strategy and shareholder relations. Although such are intended to safeguard the organisation against hostile takeovers, they have substantial consequences for management entrenchment and the overall effectiveness of corporate governance.

5.1 Management Entrenchment

It is the situation wherein the top hierarchy in an organisation, involving the board of directors and senior executives, solidify their roles and authority, generally to the detriment of the stockholders' concern⁴⁰. ATDs measures can unintentionally promote such establishment in numerous forms.

- Management Entrenchment can also lead to negative consequences such as decreased productivity, reduced inventiveness, and a general reduction in business effectiveness. If administration fails to be held responsible of whether their interests vary differentially from those of the shareholders, it can result in substandard governance and a decline in investor value⁴¹.

5.1.1 Diminished Accountability- When managers and the board are protected from the possibility of takeovers, they may experience a decrease in the level of scrutiny to act in the utmost interest of investors. The lack of such exterior verification could result in a state of satisfaction or the execution of decisions and favours the best interests of the board rather than those of the shareholders.⁴²

5.1.2 Disruptive Effective Market Control: The market for corporate control functions as a means of eliminating inadequate administration.

⁴⁰ Ibid at 37

⁴¹ SUNDARAMURTHY, C. (1996), (CORPORATE GOVERNANCE WITHIN THE CONTEXT OF ANTITAKEOVER PROVISIONS). *Strat. Mgmt. J.*, 17: 377-394

ATD measures may hinder this process, enabling the current administration to retain their positions even if they are not achieving the best possible results⁴³.

5.1.3 Aligning The Interests Of The Management- Which can be achieved through various strategies, such as ‘poison pill’ or ‘golden parachute’. Such defences also serves to withstand hostile takeovers, although they can occasionally not be in line mitigating corporate objectives of shareholders. This coordination can result in a situation where both the management and the board are motivated to preserve the existing state of affairs.

5.2 Factors to be taken into account in Corporate Governance

- The utilization of ATDs also carries wider ramifications for corporate governance and the entitlements of shareholders.

5.2.1 Governance Quality- Good Corporate Governance entails a striking harmonious equilibrium amongst granting administration the authority to efficiently operate the organisation and guaranteeing responsibility towards shareholders. ATDs can disrupt this equilibrium by excessively arming management. Such asymmetry can exhibit diminished levels of transparency, accountability, and alignment with the interests of the shareholders⁴⁴.

5.2.2 Shareholder Rights and Voice: Efficient corporate governance enables investors to the company to participate in crucial decision- making processes, such as determining the board’s structure and competitive goals. ATDs can reduce shareholder influence especially when tactics such as staggered boards or dual-class stock structures restrict shareholders capacity to bring about changes⁴⁵.

⁴³ Ibid at 41

⁴⁴ 44 SUNDARAMURTHY, C. (1996), (*CORPORATE GOVERNANCE WITHIN THE CONTEXT OF ANTITAKEOVER PROVISIONS*). *Strat. Mgmt. J.*, 17: 377-380

⁴⁵ Sharon Hannes, (*THE HIDDEN VIRTUE OF ANTITAKEOVER DEFENSES*), Harvard Law School Cambridge, MA 02138, Discussion Paper No. 354 03/2002. p, 5-10.

5.2.3 **Risk of Short-Termism:** The absence of ATDs could expose a firm a possibility of succumbing to short-term constraints exerted by activist investors or potential acquirers. This tendency can result in a concentration on immediate profits at the cost of longevity based planning, which is also harmful to effective corporate governance⁴⁶.

5.2.4 **Effect on Board Dynamics:** ATDs can influence the demographics of the boardroom. They could result in a management which is increasingly risk-averse and resistant to innovative concepts, particularly those that entail substantial transformations or potential mergers and acquisitions.⁴⁷

5.2.5 **Regulatory and Legal compliance-** The implementation of ATDs necessitates a cautious approach when contemplating the implementation of ATDs. It is imperative to meticulously navigate the intricate web of corporate laws and regulations, as they exhibit substantial disparities across various jurisdictions. This component necessitates meticulous deliberation of legal and may entail intricate modifications to corporate governance⁴⁸.

In summation, ATDs play a crucial role in safeguarding business firms, but they also have a significant effect on management entrenchment and corporate governance. The aforementioned mechanisms possess the potential to engender diminished duty of care, impede the efficacy of the market regulation, and exert an adverse influence on both the calibre of governance and the entitlements of shareholders. Striking a balance between protecting against hostile takeovers and ensuring effective corporate governance and shareholder empowerment is a complex and crucial element of contemporary corporate strategy.

⁴⁶ Bebchuk, Lucian Arye. ("The Case against Board Veto in Corporate Takeovers.") *The University of Chicago Law Review* 69, no. 3 (2002): p.1011,1012

⁴⁷ LIPTON, MARTIN. ("Takeover Bids in the Target's Boardroom.") *The Business Lawyer* 35, no. 1 (1979): p.101-108

⁴⁸ See sub-heading 3.3 (Regulatory and Legal Framework across different jurisdictions).

6. Financial Implications

- The monetary ramifications of ATDs are substantial and complex, especially in their effect on stock prices and the dynamics of mergers and acquisitions (M&A). These defensive measures have the ability to impact how investors perceive a company and its value, and they are crucial in the negotiation cycle during mergers and acquisitions.

6.1.1 Immediate Market Reaction- The disclosure of ATDs can trigger an instantaneous response in the stock market. Shareholders may interpret these defensive measures as an indication that the company is vulnerable to a takeover, potentially resulting in a rise in the stock values as a result of expected higher acquisition bids⁴⁹. Alternatively, such actions can be perceived in an adverse way, indicating management's desire to solidify their position or prioritise defensive strategies rather than generating value, resulting in a decline in the stock's price.

6.1.2 Perception of a long-Term investor- The existence of ATDs can have a lasting impact on shareholder morale and their estimation of a company's worth. If these actions are perceived as safeguarding ineffective leadership or impeding prospective value-enhancing takeovers, they can result in a prolonged unfavourable perception among investors, manifested in decrease stock value⁵⁰.

6.1.3 Effect on Valuation Metrics- ATDs can also additionally influence the essential evaluation indicators of an organisation,. For Example, if such measures are deemed to diminish forthcoming cash flows (owing to managerial entrenchment or inefficiencies), such perception may engender a diminished pricing⁵¹.

⁴⁹ Bhojraj, Sanjeev and Sengupta, Partha and Zhang, Suning, (*Takeover Defences: Entrenchment and Efficiency*) (July 31, 2014), p.1-30.

⁵⁰ *ibid*

⁵¹ *ibid*

6.2 Assessing the Influence of Negotiating Power In Mergers & Acquisitions.

6.2.1 - Negotiation Advantage: Implementing ATDs can enhance a firm's influence during negotiation situations. If a company has strong defensive measures in place, prospective buyers may need to offer significant premiums in order to convince shareholders to sell or to persuade the board to remove these defensive measures⁵². This can result in more advantageous conditions for the target company.

6.2.2- Deterrence of Hostile Takeovers- Such takeovers can be deterred through the implementation of defensive strategies, which serve to increase the costs and intricacy associated with such attempts. Such measures can be vital for a company that wants to maintain its independence or find a more advantageous merger partner, as they offer essential respite⁵³.

6.2.3- Influence on Acquisition Strategy- The presence of ATDs can influence the strategy of potential acquirers. Acquirers may focus on firms that have limited or less effective defences in order to prevent the challenges and expenses associated with overcoming these safeguards⁵⁴.

6.2.4- Prospects for Value Erosion- Conversely, if these defensive measures become excessively robust or viewed as excessively assertive, they may discourage advantageous acquisition or mergers. This scenario has the potential to result in overlooked opportunities, wherein investors could have attained substantial value through a buyout or merger⁵⁵.

⁵² Aiysha Dey, Joshua T. White, (*Labor Mobility and Antitakeover Provisions*), 2021, p. 12.13.

⁵³ Robert Comment, G. William Schwert, (*Poison, or placebo? Evidence on the deterrence and wealth effects of modern antitakeover measures*), *Journal of Financial Economics*, Volume 39, Issue 1, 1995, p. 24-26.

⁵⁴ Straska M, Waller HG. (*Antitakeover Provisions and Shareholder Wealth: A Survey of the Literature*). *Journal of Financial and Quantitative Analysis*, p.933-950.

⁵⁵ Vicente Cuñat, Mireia Giné, Maria Guadalupe, (*Price and Probability: Decomposing the Takeover Effects of Anti-Takeover Provisions*), 2016, p.19-25.

6.2.5 Impact on Acquisition Premiums- Such premiums are influenced by the level of company's ATDs, with a diametric relationship existing between the strength of the defences and the amount an acquiring party must offer. Robust defensive measures can increase the insurance premiums, possibly yielding short-term advantages for the investors⁵⁶. Nevertheless, exorbitantly high premiums can also deter advantageous acquisitions.

In summation, ATDs can significantly affect a company's financial position, exerting influence over stock prices and the dynamics of mergers and acquisitions. Although these measures can enhance the bargaining power and potentially raise acquisition premiums, they also have a negative impact on investor sentiment and result in decreased stock prices if viewed as a sign of inadequate governance or entrenched administration. Business executives and boards face the challenging task of maintaining positive investor sentiment and being receptive to beneficial mergers and acquisitions, all while effectively safeguarding against hostile takeovers. Achieving this delicate balance requires careful management of defensive measures.

7 Critical Perspectives

The viewpoints on ATDs differ greatly depending on the stakeholder involved, whether it is shareholders, administration, or the overall industry conditions.

Every group possess unique values and concerns, which influence their perspectives on the effectiveness and consequences of these defensive measures.

7.1 Investors Perspective- Shareholder's perception of ATDs can be categorised into two perspectives, Long term and short term perspective viewpoints.

⁵⁶ Ibid

7.1.1 Long term Investors are shareholders who prioritise sustainable growth and stability rather than seeking quick profits. The favourable perception of ATDs stems from their ability to safeguard the firms long-term strategy and shields it from disruptive takeover attempts. These investors may prioritise administration's attention on generating long-term value as opposed to reacting to short-term market fluctuations⁵⁷.

7.1.2 Short term investors, such as activist investors and hedge funds, typically prioritise quick returns. They may perceive ATDs as obstacles that hinder their ability to quickly profit from possible takeovers or mergers. According to their perspective, such defences have the potential to excessively solidify administration's position and hinder actions that could enhance immediate investor value⁵⁸.

The advantageous and disadvantages depend on the duration of the investment and the preferences of the investors. Long-term investors may value the stability and strategic consistency offered by such strategies, while as short-term investors may condemn them for restricting lucrative opportunities.

7.2 Management Perspective- ATDs in a business primarily aims to preserve control and safeguard the company's strategic vision.

7.2.1-Preserving Strategic Orientation: Management may possess a strong conviction in their enduring strategic blueprint and employ defensive measures against takeovers to safeguard this vision from external disturbances, particularly hostile takeovers that could impede or alter the firms concentration⁵⁹.

⁵⁷ Bebchuk, Lucian Arye. ("The Case against Board Veto in Corporate Takeovers.") *The University of Chicago Law Review* 69, no. 3 (2002): p.1019,1120.

⁵⁸ Keum D.D.,2021. (*Innovation, short-termism, and the cost of strong corporate governance*). *Strategic Management Journal* 42, p.3-29.

⁵⁹ Bhojraj, Sanjeev and Sengupta, Partha and Zhang, Suning, (*Takeover Defences: Entrenchment and Efficiency*) (July 31, 2014), p.1-30.

7.2.2- Job Security- Which can be viewed from a pragmatic standpoint rather than a purely selfless one, The board, confronted with a hostile takeover, faces the possibility of losing their positions. Implementing ATDs can serve as a strategy to safeguard their positions within the company⁶⁰.

7.2.3 Negotiation Leverage-Strategically, these defences can grant administration an advantage In negotiations during a takeover attempt, empowering them to negotiate for more favourable conditions or repel inadequate offers. The management's viewpoint is typically focused on maintaining authority and protecting the company's long-term interests, although it can be also influenced by self-preservation motives⁶¹.

8. Market Dynamics

The influence of ATDs on the market for corporate control and overall market efficiency is complex.

8.1 Market for Corporate Control- The implementation of ATDs can have a substantial impact on the dynamics of corporate control⁶². They have the ability to discourage potential buyers, thereby decreasing the occurrence of aggressive takeovers, and potentially resulting in a small number of but more carefully planned and strategic mergers and acquisitions.

⁶⁰ Bhojraj, Sanjeev and Sengupta, Partha and Zhang, Suning, (*Takeover Defences: Entrenchment and Efficiency*) (July 31, 2014), p.1,2.

⁶¹ Bebchuk, Lucian Arye. ("The Case against Board Veto in Corporate Takeovers.") *The University of Chicago Law Review* 69, no. 3 (2002): p.1007-1110

⁶² John Armour and David A. (*WHO WRITES THE RULES FOR HOSTILE TAKEOVERS, AND WHY?*) *THE PECULIAR DIVERGENCE OF US AND UK TAKEOVER REGULATION*, p.1-7

8.2 Market Efficiency- These defences can impede economic productivity by obstructing takeover that have the potential for redistributing funds in an effective way. Conversely, they can enhance productivity by safeguarding companies against obstructive takeovers that are not in line with the company's long-term strategy⁶³.

8.3 Innovation and Competition- The overutilisation of ATDs can potentially diminish corporate innovation and competitiveness. When companies are shielded from the possibility of acquisition, there may be a reduced motivation to operate at maximum efficiency and maintain a competitive edge.

In summation, the diverse goals and concerns of various stockholders significantly shape the critical viewpoints regarding ATDs. Investor's opinion are divided between immediate and long-lasting advantages, with management frequently prioritising the preservation of strategic authority and employment stability. The overall market dynamics demonstrate an equilibrium between effectiveness, ingenuity and steadiness in corporate governance. Gaining a comprehensive in-depth knowledge of these various viewpoints is essential for assessing the significance and influence of anti-takeover measures in corporate environment.

Conclusion

To summarize this comprehensive analysis on ATDs and their complex impact on corporate governance, it is crucial to consolidate the diverse facets and approaches which have been thoroughly examined. ATDs are deliberate tactics used by companies to discourage or prolong unwanted takeover attempts. They involve a sophisticated interaction between corporate governance, shareholder rights, management independence, and market forces. The purpose of this conclusion is to summarize the delicate equilibrium that these defences maintain in safeguarding a company's long-term strategic vision while also considering the prospective risks and consequences they may entail.

⁶³ Ibid at 35

ATDs, play a vital role in protecting a firm's strategic goals from obstructive and aggressive takeover attempts. They provide a safeguard for maintaining the enduring strategic vision, corporate structure, and identity, which are essential for continuous progression and growth. As an illustration- defences such as poison pills and staggered boards create a time delay which allows administration of the firm to bargain more favourable conditions or explain the long-term advantages of their strategies to shareholders. Adopting such a defensive position is crucial in situations where the market fails to accurately assess a firm's true worth, thus safeguarding against speculative acquisitions which may discount the company and harm stockholders.

Nevertheless, the utilisation of ATDs is accompanied by notable disadvantages. A significant issue is the possibility of managerial entrenchment, in which the current BOD employs defensive measures to strengthen their orientations usually to the detriment of the shareholder interest and company performance. This scenario has the potential to result in reduced responsibility, weakened market dominance, and potentially a drop in corporate ingenuity and effectiveness. This entrenched behaviour can lead to an aversion towards reform and a hesitancy to accept prospective and advantageous mergers and acquisitions, consequently impeding the growth and value enhancement for the shareholders.

The financial consequences of ATDs are significant and complex. Although they can bolster a company's ability to negotiate in mergers and acquisition situations and maybe raise the amount paid for an takeover, their existence can also have a

detrimental effect on investor confidence and share prices. When viewed as a symbol of ineffective leadership or a strategy for protecting management's interest ATDs can result in a long-lasting negative perception amongst investors, resulting in a decline in the share value. The presence of various perspectives emphasizes the necessity for a sophisticated comprehension of ATDs and their influence on various parties involved.

ATDs introduce a contradictory aspect in corporate governance by striking a balance between safeguarding a firm's long-term interests and potential dangers of entrenched management, diminished accountability and market inefficiencies. The decisions to utilise ATDs should not be made casually, but rather as a deliberate and strategic choice, taking into account the possible advantages and disadvantages. A prudent evaluation is required that is in line with the overall corporate strategy, shareholder interests, and regulatory compliance. The task for organisations and BOD is utilising ATDs as an efficient means of protecting the firm against hostile takeover, while also establishing a governance system that encourages responsibility, shareholder involvement, and market effectiveness. In order to adapt to the ever-changing corporate landscape, it is crucial to update and refine the strategies and approaches to ATDs, in ensuring their continued relevance and effectiveness in a dynamic business environment.

Thus, ATDs have the potential to serve as advantageous for shareholders and a means of safeguarding entrenched managers.

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