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VOL. XIII- AUGUST 2007 ISSUE 3 www.aralaw.com

CAPITAL MARKETS

TOPICS

» Alternate Investment Market

Luxemburg, U.S. and Singapore are few of the most preferred listing destinations by Indian companies seeking offshore listing. Alternate Investment Market (AIM) has been increasingly gaining popularity amongst Indian companies. The following paragraphs give a brief overview and perspective of AIM listing. AIM was established by the London Stock Exchange in 1995 as a smaller companies□ market, to provide young and growing businesses with a means of raising capital and experiencing a public market in their securities. Issuer Company seeking an issue at AIM needs to: (a) appoint a Nominated Adviser (Nomad) at all times. Nomad is a firm of experienced corporate financiers who are approved by the London Stock Exchange, (b) appoint an AIM broker, and (c) prepare an Admission Document which should include detailed information on the company and its activities, directors and management and historical financial information if appropriate. There are several reasons which give AIM route a preferred option amongst the companies willing to raise funds, such as:

- No minimum public shareholding requirement;
- UK listing authority rules don□t□ apply fully;
- Easy access and simpler documentation;
- Access to globally reputed international market, foreign investors;
- Easier listing rules; and
- No requirement for previous trading record.

In Indian scenario there are some possible structures that could be explored by companies contemplating AIM listing, such as, the Fund Route, Investment/Holding Company Route, GDR Route, etc. Each structure needs to be analyzed in detail considering tax, regulatory, legal & specific business and commercial requirements of each Issuer Company.

Considering the proximity with the Issuer Company, evolving and continued liberalization regime, constant changes in laws, etc. an Indian counsel plays in important role in the listing process. Indian counsel especially helps in: (a) structuring the transaction considering the legal restrictions, tax considerations and objectives of the Issuer Company, (b) conducts legal due diligence required to prepare the necessary disclosures in the Admission Documents, (c) ensure that the disclosures in Admission Document are adequate and there is no misrepresentation of facts and thus helps to alleviate the liability that may arise on directors and Issuer Company, (d) providing legal opinion/comfort letters, (e) interacting with other intermediaries, seamlessly coordinating the process and project managing the issue, (e) review the transaction documents regarding the warranties and indemnities to be given by the company and the directors.

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» Blank Cheque Companies

A blank cheque in the literal sense, is a cheque that has no numerical value written in, but is still signed. On the similar lines the term blank cheque company can refer to a company in development stage that has few or no employees, little or no physical assets, no specific business plan or has indicated its business plan to engage in a merger or acquisition with an unidentified company or companies, other entity, or person. Even after all such uncertainties, the company would still find the investors. The management, in effect, gets a blank cheque from the shareholders to invest. The concept has evolved from US & is gaining strength. A blank cheque company is also known as `special purpose acquisition company (SPAC). These companies raise funds and put them in an escrow account till they find a target company. For instance, the funds may be raised in the US or anywhere else in the world and could be invested in a growing economhy such as India, China, Malaysia, etc.

In SPAC companies, it is generally observed that:

- A company is floated in US by a band of high profile promoters to help them sell the shares to investors who have an appetite to take risks. The company is listed at US exchanges to provide liquidity to the investors.
- The next task of the management is to find a sound, hi-growth potential company that can be acquired. The management generally has 18 to 22 months to spot a viable company and complete the capital transfer processes:
- After narrowing down on a good company the same is presented before the bigger stakeholders. If they approve the selection then the formalities are complied with so as to make them compliant to the listing laws. If the management fails to spot a good company, the pooled-in money is returned to the investors with interest.
- The money is invested to the target destination.

Blank cheque companies have been the latest segment of investors to get active in the Indian financial market. Prior to completing the investments, SPAC companies need to obtain approval from its shareholders and also file ☐proxy statements☐ with Securities and Exchange Commission, US (☐SEC☐) and answer queries raised by SEC. The proxy statements need a great amount of detailing with regards to the business of the companies, its directors, the industry, financials of the company and projected growth, etc. The proxy statements are prepared by the US Counsel with the assistance of the target company and its Indian legal counsel. Indian counsel needs to seamlessly liaise with the SPAC Company and its US Counsel to provide continuous information and documentation required to the satisfaction of SEC.

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» GDR Issue

We are all aware of the growing numbers of GDRs issued by Indian companies. The GDRs are commonly used in global equity offerings to international investors. Depository receipts facilitate cross border trading and settlement, minimize transaction costs and broaden the potential base, especially among institutional investors. Depository receipts are created when a broker purchases the company□s shares on the domestic stock market, and delivers those shares to the depository□s local custodian bank, who then, instructs the depository bank to issue GDRs.

The guidelines for GDR issue indicate that the □price of the GDR□ has to be pursuant to specified formulae based on the average of stock price of the underlying from the □relevant date□. Relevant date is the date when the shareholders of the issuer company approve the preferential allotment and issue of GDRs. The minimum price of GDR has to be higher of the (x) average of weekly high and low of the closing price of the relevant shares on the stock exchange during the 6 months preceding the relevant date, (y) average of weekly high and low of closing price of the relevant shares on the stock exchange during the 2 weeks preceding the relevant date.

Pricing of the GDR was streamlined after amendments in August 2005 and aligned with the SEBI pricing formulas for preferential issue (indicated above). However, the guidelines do not currently contemplate or provide for adjusting the pricing of the GDR pursuant to the changes reflected in the share price due to some corporate actions, such as, bouns, split of shares, dividend, etc that could have a bearing on the underlying share price.

Although, the SEBI Guidelines on preferential allotment pursuant to a Qualified Institutional Placements (□QIPs□) does contemplate such price adjustments, it is believed that such flexibility was consciously not provided by regulators for GDR pricing in order to give a fillip to the domestic fund raising market through QIPs.

It remains arguable whether a literal interpretation could be taken on the regulations which indicate and talk about the □price of GDR□ where the underlying number of shares could be varied which indirectly take care of the adjustments pursuant to the actions, such as, bonus, dividend, split, etc.

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» Review of External Commercial Borrowings (ECB) Policy

The Reserve Bank of India (RBI) has issued A. P. (DIR Series) Circular No. 04, dated August 7, 2007, modifying certain aspects of the External Commercial Borrowings (ECB) policy. The key aspects of the revised policy are:

ECB more than USD 20 million per borrower company per financial year

- Permitted only for foreign currency expenditure for permissible end-uses
- Funds necessarily required to be parked abroad
- ECB upto US$ 20 million for foreign currency expenditure shall be under automatic route
- Restrictions on end-use and parking the funds abroad until required, applicable to ECBs permitted both under Automatic Route & Approval Route

ECB upto USD 20 million

- Permitted only for foreign currency expenditure for permissible end-uses under the automatic route and funds necessarily required to be parked abroad.
- ECB raised for Rupee expenditure for permissible end-uses would require prior approval of the RBI under the Approval Route & such funds shall be continued to be parked overseas until actual requirement in India,

The above conditions would not be applicable on borrowers who have already entered into loan agreement and obtained loan registration numbers from the RBI & have taken verifiable and effective steps wherein the loan agreement has been entered into to avail of ECB in the previous dispensation, and not obtained the loan registration number, may apply to the RBI through the Authorised Dealer.

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» Guidelines for Overseas Investments by Venture Capital Funds

Securities & Exchange Board of India (SEBI) vide circular SEBI/VCF/Cir no. 1/ 98645 /2007, dated August 9, 2007 has notified Guidelines for Overseas Investments by Venture Capital Funds (VCFs). VCFs have been permitted to invest in equity and equity linked instruments only of off-shore venture capital undertakings, subject to overall limit of USD 500 million. SEBI registered VCFs may submit their proposal for investment to SEBI for its prior approval & no separate permission from RBI is necessary in this regard.

Following are the key features of the above notification:

- For the purposes of such investment an ☐Off-shore venture capital undertakings☐ would mean a foreign company whose shares are not listed on any of the recognized stock exchange in India or abroad & such entity must necessarily have an Indian connection
- The above investments should not exceed 10% of the investible funds of a VCF

The allocation of investment limits would be done on ☐first come- first serve☐ basis, within the overall limit of USD 500 million & a VCF shall have a time limit of 6 months for making allocated investments, failing which SEBI may allocate such unutilized limit to other VCFs/applicants whose applications are pending with it.

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» Legal Snapshots

Rising Re could erode competitiveness

The large inflow of remittances & major and sustained spurt in software exports, coupled with capital inflows could possibly overvalue the currency and hence erode the long term competitiveness of traditional & goods sectors. This could possibly harm the large population of people who are employed in goods sector. The inflows in India have been managed so far to prevent inflation & lead to appreciation of rupee. But concerns were raised by RBI Dy. Governor Rakesh Mohan regards the continuance of such a policy.

Companies can invest 300% of net worth abroad

RBI hiked the overseas investment limit from 200% of the net worth to 300% of net worth as on the date of last audited balance sheet for JVs & WOS of Indian entities. But the same has been kept at 200% for the partnership firms. The term □financial commitment□ for overseas investment by Indian companies would mean direct investment by way of contribution to equity, loan, & the total amount of guarantees by the investing companies. Now the 100% of the amount guaranteed will be considered as against 50% guaranteed earlier. The limits on overseas portfolio investment was hiked from 25% of the net worth to 35% of the net worth.

Parekh Panel moots easier exit for core developers

The Deepak Parekh committee on infrastructure financing has called for relaxing norms that stipulate lock-in periods for consortia executing projects in transportation, port and power sectors. It has been suggested that the initial consortium awarded a project should be allowed to exit after a certain period by unlocking its ownership and selling out to some other qualified bidder. If the recommendation is accepted, the provision will have to be included in the model concession agreement (MCA) which do not allow the lead bidder of a consortium to exit the project for the entire period of the concession (ranging from 15-30 years).

It was also recommended that all bidding documents for infrastructure projects should provide a clause for dropping the initial bidders or replacing them by a new entity,if agreed to by all the parties concerned"

Sports good makers feel FDI is a self goal

The allowance of FDI in sports by Central government is giving jitters to sports goods manufacturers across the nation because of which, several sports organizations have come together to protest against this move of the government. Indian sports goods manufacturers are apprehensive that if FDI is allowed, big companies like Adidas, Nike, Reebok, etc, may set up their own manufacturing facilities which are currently sourcing the goods from Jalandhar and Meerut (hubs of the sports good industry). It has been suspected that if they start their own manufacturing facilities, smaller players will be affected adversely. As per the International Sports Committee regulations, companies manufacturing sports goods alone can put their logos on products. Companies like Reebok, Adidas and Nike are not into manufacturing, but have been using their logos on the products. Meerut-based BDM Sports has taken the matter to the consumer forum and a case is going on against them.

Carbon credit trading awaits Government nod

Commodity exchanges NCDEX and MCX are gearing up to launch futures trading in carbon credit but will have to wait till the Parliament passes the Forward Contracts (Regulation) Amendments Bill, 2006. "The proposed amendment would allow commodity exchanges to trade in non-deliverable goods, including carbon credit. The government had last year tabled the amendment bill in Parliament. At present, the exchanges cannot trade in indices, but only in goods that can be actually delivered.

Opportunities in India would increase once all countries sign the Kyoto protocol treaty that has fixed a target for countries to reduce their greenhouse gas emission level within a particular period. US-based Chicago Climate Exchange is the only commodity bourse in the world that offers futures trading in carbon. The current global price for one tonne of carbon dioxide at the exchange hovers around $3.35.

CBDT needs to clear air on PMS investors

Characterisation of income on disposal of securities as business income or capital gains has been a matter of considerable debate, with a host of decisions laying down relevant tests. The issue is relevant as capital gains are subject to concessional taxation regime.

Taking into consideration the subsequent developments and the recent AAR ruling in Fidelity☐s case, CBDT has now issued a circular to supplement the earlier instruction and prescribed parameters viz, substantial nature of transactions, manner of maintaining books of accounts, magnitude of purchases and sales, ratio between purchases/sales and total holding and motive of transaction for determining the characterisation of income.

The AAR has observed in the case of Fidelity that:

- Firstly, it☐s to be verified as to how the shares purchased by FII were valued/held in the books of account i.e. whether they were valued as stock-in-trade at the end of the financial year for the purpose of arriving at business income or held as investment in capital assets;
- Secondly, it☐s to be verified whether there are substantial transactions, their magnitude, etc., maintenance of books of account and finding the ratio between purchases and sales;
- Thirdly, the ordinary purchases and sales of shares with the motive of realizing profit would lead to inference of trade/adventure in the nature of trade; where the object of the investment in shares of companies is to derive income by way of dividends etc., the transactions of purchases and sales of shares would yield capital gains and not business profits.☐

Assessing officers have been therefore advised that the above principles should guide them in determining whether, in a given case, the shares are held by the assessee as investment (and therefore giving rise to capital gains) or as stock-in-trade (and therefore giving rise to business profits). One of the categories of assessees on whom the impact of the circular needs to be considered is an investor in discretionary portfolio management schemes (PMS).

In a discretionary PMS, the decision to manage the portfolio and buy and sell securities is entirely on the portfolio manager;

The investor does not have any control over the decisions of purchase and sale, frequency and magnitude of transactions. The investor is primarily interested in capital appreciation on his overall portfolio. The investor does not participate in the ongoing management of the portfolio under PMS. The investor generally treats the portfolio in discretionary PMS as ☐investment☐ in his books of accounts and not as ☐stock intrade.'

The SEBI regulations indicate the primary intention in a PMS to undertake ☐investments☐ on behalf of the client based on his investment objectives. Similar to mutual funds, in a discretionary PMS there is a genuine case for determining characterisation, considering the PMS as an investment and not based on the underlying conduct of investment activities of the portfolio manager, which are out of the investor☐s control. Considering the peculiar circumstances of a PMS investor, it is important that CBDT issues a suitable clarification to clear any confusion among this class of investors.

RBI asks banks to explain fund source for insurance JVs

interested RBI has asked banks with insurance plans to explain as to how would they organise capital for their proposed joint ventures which have huge funds requirements. RBIs concern emanates from the fact that going forward banks will require more resources to meet capital norms for basel II, which will be implemented from 2008. The Indian Banking sector is expected to require close to 50,000 crore to adhere to the basel II norms. Over and above the banks would require funds to sustain the growing credit demand. Hence the banks, which have applied for the RBI☐s approval to enter the insurance venture, have to convince RBI about how they plan to arrange capital for Basel II and insurance business. Also the regulatory requirement states that banks cannot invest more than 20% of their net-owned funds in non-banking activities

Inc lacks ammunition to counter fake encounters

Indian companies have not been able to make employees☐ verification process and background check strong enough to complement the speed of hiring. Instances show that many companies have employees who haven☐t worked at places they say or haven☐t studied in the colleges they claim in their CVs. The problem Indian companies face is that data on candidates is just not available in digital form. So the verification process which takes 24 hours for a complete background check in the US, takes almost 14-25 days in India. Though the process of verification is strict in case of IT companies but not that stringent in case of other companies & firms.

Regulators to deposit all fines, penalties and fees collected by them in the Consolidated Fund of India (CFI).

SEBI may be the first in line to be directed to deposit to the exchequer all the fees it collects from the the intermediaries and other participants. For RBI this issue was not raked up since there are hardly any fines imposed by them.

Department of Industrial Policy and Promotion (DIPP) told to redefine foreign holdings

Ministry of finance has asked DIPP to redefine foreign holdings in domestic companies to ensure that foreign investment caps are not breached through indirect methods. This guideline would apply to existing companies as well.

Once the foreign holdings are redefined the following will be required:

- An existing company breaching the FDI cap limit, will have to dilute its stake to the meet the cap. Although existing ventures will be given time to sell off surplus holdings.
- the Companies will be required to restructure their holding pattern.
- Indian stakes that cannot be sold post statutory lock-ins are over will be treated as FDI

Global Mergers and Acquisitions in foreign shores may require the blessings of the competition regulator

Global Mergers and Acquisitions in foreign shores may require the blessings of the competition regulator if the merged entity has assets more than Rs 500 crore or more than Rs 1,500- crore turnover in India. The idea is to see whether a merger outside the country will adversely affect competition within. The Ministry of Company Affairs is planning to make it mandatory for companies involved in overseas acquisition or merger to notify the CCI if the combined entity meets the criteria of ☐ territorial nexus☐.

The new law will make it mandatory for companies within India to notify the Competition Commission on Mergers and Acquisitions deals.

Tax relief for trusts to come with riders

The CBDT has issued a notification dated June 13, 2007 providing that all religious trusts and charitable institutions which failed to register with the tax authorities before June 1, 2007 for availing of tax exemptions, would get relief only from the year in which they apply. This new notification has removed the power previously vested with the commissioners for pardoning a delay in registration. Also charitable trusts have been barred from availing of tax exemption on anonymous donations.

The new overhauled Land acquisition Act to disallow states to acquire land on behalf of the private sector

Acquiring cheap land by piggy riding on the government□s shoulders due to Land acquisition Act, 1894 is soon to end. The new overhauled Land Acquisition Act seeks the following:

- To disallow states to acquire land on behalf of the private sector;
- To tighten the definition of acquisition of land for □Public Purpose□
- To confer special powers on the concerned authority wherein passing of award may be dispensed with and permits taking possession of the land notified

Entities issuing securitized paper will have to register with SEBI

SEBI vide draft guidelines dated 20th June, 2007 has provided that entities either companies or trusts issuing securitized paper will have to register with SEBI. Although only publicly issued instruments can be listed.

In it□s draft guidelines issued on □public offer and listing of securitized debt instruments SEBI has proposed to regulate trading in securitised paper. The same would require such entities issuing such paper to be registered with SEBI. The move would widen & expand the country□s debt market making it possible for the retail participants to participate in securitised debts.

Option to certify TDS certificates by way of digital signatures circular under section 119 of the Income-Tax Act, 1961

There has been a request before the IT Department to allow the employers to use their digital signatures to authenticate TDS certificates instead of signing the certificates manually. As the field formations are aware, the requirement of annexing TDS certificates with the return of income has been dispensed with. The TDS certificates are now issued only for the purpose of personal record of the deductees subject to the condition that they may be required to produce the same on demand before the Assessing Officer in terms of Section 139C, inserted by the Finance Act, 2007. The TDS claim made in the return of income is also required to be matched with the e-TDS returns furnished by the deductors. Assessing Officers may, if considered necessary, also write to the deductors for verification of the correctness of the taxes deducted or other particulars mentioned in the certificate.

Amendments to Clause 32 Listing Agreement

Currently, Clause 32 of the Equity Listing Agreement requires listed companies to supply a copy of the complete and full Balance Sheet, Profit and Loss Accountant and Directors' Report to each shareholder and upon application to any member of the Exchange. Vide its Circular No. SEBI/CFD/DIL/LA/2/2007/ 26/4 dated April 26, 2007, SEBI has decided to amend Clause 32 of the Equity Listing Agreement to align it with the provisions of Section 219(iv) of the Companies Act i.e. to permit listed companies to send a statement containing the salient features of the (i) Balance Sheet, (ii) the Profit and Loss

Account and (iii) the Auditors□ Report instead of sending full Balance Sheet and Annual Report. However, the company on receipt of written request from a shareholder would send the complete and full Balance Sheet, Profit & Loss Account and Auditors□ Report to the said shareholder. The revised Clause 32 of Equity Listing Agreement comes into force with immediate effect.

Digital signatures are being used to authenticate most of the e-commerce transactions on the internet. The transmission of information using digital signatures is failsafe. The Central Board of Direct Taxes have, therefore, in exercise of powers under section 119 of the Income-tax Act, 1961 vide circular No. 2/2007, dated 21-5-2007 decided that for the proper administration of this Act to allow the deductors, at their option, in respect of the tax to be deducted at source from income chargeable under the head □salaries□, to use their digital signatures to authenticate the certificates of deduction of tax at source in Form No.16. The deductors need to ensure that TDS certificates in Form No.16 bearing digital signatures have a control No. with log to be maintained by the employer (deductor). The deductor will ensure that its TAN and the PAN of the employee are correctly mentioned in such Form No.16 issued with digital signatures. The deductors will also ensure that once the certificates are digitally signed, the contents of the certificates are not amenable to change by anyone. The income-tax authorities shall treat such certificate with digital signatures as a certificate issued in accordance with Rule 31 of the Income-tax Rules, 1962

Liberalization of Investment by Mutual Funds in Overseas Securities

The RBI vide its circular RBI/2006-2007/433 A.P. (DIR Series) Circular No.72 dated June 8, 2007 provided that in order to tap a larger investible stock overseas, the Mutual Funds may also invest in the following:

- Overseas mutual funds that make nominal investments (say to the extent of 10% of net asset value) in unlisted overseas securities;
- Overseas exchange traded funds that invest in securities; and
- ADRs/GDRs of foreign companies

Revised Guidelines regarding foreign investments in debentures

RBI vide RBI/2006-2007/435 A.P. (DIR Series) Circular No.74 dated June 8, 2007 clarified that only the instruments which are fully and mandatorily convertible into equity, within a specified time would be reckoned as part of equity under the FDI Policy and eligible to be issued to persons resident outside India under the Foreign Direct Investment Scheme in terms of Regulation 5 (1) of Foreign Exchange Management (Transfer and Issue of shares by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000;

FIIs, registered with SEBI, are eligible to invest in listed non-convertible debentures/ bonds issued by Indian companies in terms of RBI/SEBI norms on investment in rupee debt instruments, including the ceilings prescribed from time to time. RBI also clarified that companies which have already received funds from outside India for issue of partially/optionally convertible instruments on or before June 7, 2007 may issue such instruments;

Revised Guidelines for foreign investments in Preference Shares

RBI vide RBI/2006-2007/434 A.P. (DIR Series) Circular No.73 dated June 8, 2007 has provided that Government of India, Ministry of Finance vide Press Note dated April 30, 2007 has notified the revised guidelines for foreign investment in preference shares;

The revised guidelines provide that:

- Foreign investment coming as fully convertible preference shares would be treated as part of share capital and would be included in calculating foreign equity for purposes of sectoral caps on foreign equity, where such caps have been prescribed
- Foreign investment coming as any other type of preference shares (non- convertible, optionally convertible or partially convertible) would be considered as debt and shall require conforming to ECB guidelines / ECB caps;
- Any foreign investment as non-convertible or optionally convertible or partially convertible preference shares as on and up to April 30, 2007 continue to be outside the sectoral cap till their current maturity;
- Issue of preference shares of any type would continue to conform to the guidelines of RBI/SEBI and other statutory bodies and would be subject to all statutory requirements;

It was clarified that with effect from May 1, 2007, only preference shares which are fully and mandatorily convertible into equity within a specified time would be reckoned as part of share capital and eligible to be issued to persons resident outside India under the Foreign Direct Investment Scheme in terms of Regulation 5 (1) of Foreign Exchange Management (Transfer and Issue of shares by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000

Foreign investments in other types of preference shares (i.e. non-convertible, optionally convertible or partially convertible) for issue of which, funds have been received on or after May 1, 2007 would be considered as debt and shall conform to External Commercial Borrowings (ECB) guidelines / caps. Accordingly, all the norms applicable for ECBs, viz. eligible borrowers, recognised lenders, amount and maturity, end use stipulations, etc. would apply. Since these instruments would be denominated in rupees, the rupee interest rate will be based on the swap equivalent of LIBOR plus the spread as permissible for ECBs of corresponding maturity.

Amendments to SEBI (Disclosure and Investor Protection) Guidelines, 2000

SEBI vide its circular SEBI/CFD/DIL/DIP/26/2007/24/5 dated May 24, 2007 has recently amended the SEBI (Disclosure and Investor Protection) Guidelines, 2000 issued vide circular no. SEBI/CFD/DIL/DIP/25/2007/30/4 dated April 30, 2007;

In the circular, the words ☐where the aggregate value of such securities, including premium, if any, exceeds Rs. 50 lacs,☐ were inadvertently omitted in the opening para of the amended clause 2.1.2 of the Guidelines. The said opening para, after inclusion of the aforementioned omitted words, reads as under:

"No listed issuer company shall make any rights issue of securities, where the aggregate value of such securities, including premium, if any, exceeds Rs. 50 lacs, unless a draft letter of offer has been filed with the Board, through a Merchant Banker, at least 30 days prior to the filing of the letter of offer with the Designated Stock Exchange (DSE).☐

Guidelines on declaration of Net Asset Value of Security Receipts issued by Securitization Company/ Reconstruction Company.

does RBI vide its circular RBI/2006-2007/420 DNBS (PD) CC. No. 6 / SCRC / 10.30.049/ 2006-2007 dated May 28, 2007 has provided that in order to enable the Qualified Institutional Buyers (QIBs)to know the value of their investment in the Security Receipts issued by the Securitization

Company/Reconstruction Company, it has been decided that the Securitization Company/Reconstruction Company registered with the RBI under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 should declare Net Asset Value of the Security Receipts issued by it at periodical intervals.not

Risk Weight on Exposures to Commercial Real Estate and Venture Capital Funds raised

Earlier RBI vide Circular No. DBOD. BP.BC. 20 / 21.01.002/ 2005-06 dated July 26, 2005 provided that the risk weight on banks☐ exposure to the commercial real estate had increased from 100 per cent to 125 per cent and was applicable on an on-going basis. As proposed therein, RBI vide its circular RBI.No.2005-06/391 DBOD. BP.BC. 84 / 21.01.002/ 2005-06 dated May 25, 2006 increased the risk weight on banks☐ exposure to the commercial real estate to 150 per cent.

Conditions for remittances towards the cost of equipment to be imported and installed at their overseas sites by BPO Companies

RBI vide RBI/2006-2007/418 A. P. (DIR Series) Circular No. 63 dated May 25, 2007 decided to allow BPO companies in India to make remittances towards the cost of equipment to be imported and installed at their overseas sites:

The remittances are subject to the following conditions:

- The BPO Company should have obtained necessary approval from the Ministry of Communications and Information Technology, Government of India and other authorities concerned for setting up of the ICC;
- The remittance should be allowed based on the AD Category ☐ I banks☐ commercial judgment, the bonafides of the transactions and strictly in terms of the contract;
- The remittance is made directly to the account of the overseas supplier

Revised guidelines on purchase / sale of Non Performing Assets

RBI vide Circular No. DBOD.BP.BC.16/21.04.048/2005-06 dated 13 July 2005 advised banks that the estimated cash flows are normally expected to be realised within a period of three years and not less than 5% of the estimated cash flows should be realized in each half year;

However RBI vide RBI/2006-2007/396 BOD. No. BP. BC.97/21.04.048/2006-07 dated May16, 2007 has decided that at least 10% of the estimated cash flows should be realized in the first year and at least 5% in each half year thereafter, subject to full recovery within three years;

Mutual funds can invest in ADRs/GDRs/Foreign Securities within overall limit of US$4 bn

SEBI vide its circular SEBI/IMD/CIR No.3/93334/07 dated May 14, 2007, pursuant to the enhancement in overseas investment limits by RBI, has now decided that mutual funds can invest in ADRs/GDRs/Foreign Securities within overall limit of US$4 bn. This will be a with a sub-ceiling for individual mutual funds which should not exceed 10% of the net assets managed by them as on March 31 of each relevant year and subject to a maximum of US$200 mn. per mutual fund.

Discontinuation with the requirement of Unique Identification Number (UIN) under the SEBI (Central Database of market Participants Regulations), 2005.

SEBI vide its circular MRD/DoP/Cir- 08/2007 dated June 25, 2007 has provided to discontinue with the requirement of Unique Identification Number (UIN) under the SEBI (Central Database of market Participants Regulations), 2005

Extension of Time for Uploading of NAVs of Fund of Fund Schemes

EBI vide its circular SEBI/IMD/CIR No.5 /96576/2007 dated June 25, 2007 provided that in view of the practical difficulties being faced by the Mutual Funds in uploading the NAV of Fund of Fund Schemes on AMFI□s website and their own website it has been decided that the time limit for uploading of NAV for fund of fund Schemes shall be extended to 10:00 am the following business day.

Reporting Platform for Corporate Bond Transactions

The RBI vide its circular RBI/2007-2008/105 DNBS.PD/ C.C. No. 96/ 03.10.001/2007-08 dated July 31, 2007 has provided that SEBI has permitted FIMMDA to set up its reporting platform for corporate bonds. It has also been mandated to aggregate the trades reported on its platform as well as those reported on BSE and NSE with appropriate value addition. FIMMDA has proposed to go live with its platform, which at present is under trial run, from September 1, 2007.

All NBFCs and Commercial Banks and select AIFIs would be required to report their secondary market transactions in corporate bonds done in OTC market, on FIMMDA□s reporting platform with effect from September 1, 2007

Hedging of Overseas Direct Investments by Residents;

Earlier RBI vide its circular No. 47 dated December 12, 2003, had provided resident entities having overseas direct investments (in equity and loan) to hedge the exchange risk arising out of such investments by entering into forward / option contracts with AD Category □ I banks, subject to verification of such exposure. Such contracts must be completed by delivery or rolled over on the due date and not cancelled;

Now RBI vide its circular RBI/2006-2007/439 A. P. (DIR Series) Circular No. 76 dated June 19, 2007 has provided that AD Category □ I banks may allow cancellation of forward contracts entered into by residents for overseas direct investments (in equity and loan) for hedging the exchange risk. Further, 50 per cent of the cancelled contracts may be allowed to be rebooked;

Dissemination of Information on Debentures

SEBI vide its circular MIRSD/DPS III//Cir- 11/07 dated August 6, 2007 has provided that companies issuing debentures and the respective debenture trustees/stock exchanges shall disseminate the following information to the investors and the general public:

- Default by issuer company to pay interest on debentures or redemption amount;
- Failure to create a charge on the assets;
- Revision of rating assigned to the debentures

Net inflow maths may add 20% to ECB route ceiling

The government is considering hiking the ECB limit for the year 2007-2008 by 10-20% from $22 billion in 2006-07. The finance ministry is considering fixing ECB caps based on the net inflow of foreign funds instead of gross inflows through the year. Fixing the ECB cap based on net inflows follows recent trends that show a significant dip in net inflows of foreign funds.

LLP tax regime likely to repel overseas partners

The government□s plan to levy tax on limited liability partnerships instead of taxing its individual members may put off investors abroad who are keen to forge partnerships in India.

Firstly if the LLP is taxed, the foreign partner may not be able to claim the benefit of any double taxation deal which his home country may have stuck with India. Secondly, if the LLP generates income here and abroad, the entity will have to pay tax here even for the income generated abroad.

SEZ approval validity to be extended on land buy delays

With land becoming a scarce resource after the political furore over land acquisition by states, the central government has decided to extend the validity of approvals provided to SEZ□S. This follows complaints from SEZ developers that projects are being delayed due to problems related to purchase of land. Therefore this means that developers with in-principal approval who are not in possession of the land can get the validity of their approvals extended by two years. However the extension of approval will not be automatic and this facility would be extended only in case of developers who formally apply to the commerce department for extension.

FIIs can soon get deep in debt

The government is examining a proposal to effect a big hike in the ceiling for investments by FIIs in debt. At present there is $3.2 billion cap for FII investments in government securities and $1.5 billion for investment in corporate debt. There are two major strands to the reasoning behind this move. The first is the immediate financing needs of infrastructure. The second has to do with the deepening and widening of the debt market;

Postal Bill not to deliver FDI cut to courier

The proposal of the postal department to restrict FDI in courier services has been put on the back burner. This move comes as a shot in the arm for major players like Federal Express, DHL, TNT & UPS. FDI now in courier services stands at 100%. The feeling within the government is that it is not desirable to disturb a sector which has been attracting FDI in a big way.

Predatory pricing is set to get explicit legal sanctity in the new law on competition

Predatory pricing or the practice of selling a product cheaper than the cost of production will not be regarded as an abuse of a company□s dominance in the market if it is to meet the pressures of a competitive market. It would be an offence only if a company adopts it with the intention to kill the competitor through unsustainable pricing and then hike up prices to recoup earlier losses. This is one of the signal departures of the Competition Act, still to be notified in its entirety from the MRTP Act, which is in force at present

UK□s FSA seeks tougher rules on insider trades

According to FSA firms who handle inside information relating to takeovers should review the robustness of their own controls and tighten up on who gets access to sensitive information during such deals

The regulator urged improved IT controls both within the firms and with third parties (advisers) and introduce formal policies to allow internal reviews to probe whether inside information had leaked

Franchisee ban may hit exports

The Foreign Investment Promotion Board□s (FIPB) plan to impose restrictions on foreign brands entering the Indian market through the franchisee route would affect businesses such as banking and hit exports.

participate Such a ban would lead to discrimination since many foreign brands are already in India and it would deny a level- playing field to those who are waiting to enter the Indian market through the franchisee route.

SEBI to register Hedge Funds as FIIs

Securities market regulator SEBI has decided to allow hedge funds to register directly as FIIs. SEBIs move will discourage the practice of hedge funds investing in Indian equities indirectly through participatory notes (PNs) and reduce transaction costs;

TRAI to lift cap on players, ease M&A norms

TRAI shall recommend no cap on the number of players in a circle and operators to be allowed to offer both CDMA and GSM services under the same licence. It will also propose easing of merger and acquisition norms in the sector. TRAI□s recommendations, which may come under severe criticism from GSM players, are expected to free the telecom sector further. TRAI is of the view that relaxing the M&A norms is the step forward as it will help consolidation in the sector

Also the controversial cross-holding cap, which prevents a telecom company from holding more than 10% stake in two operators in the same circle, is set to be raised or done away with. TRAI is believed to raise the cross-holding cap to 26% or higher because under Company Law, this is the minimum stake one needs in order to have a meaningful say in a company.

Press Note 1 here to stay

The Department of Industrial Policy & Promotion (DIPP) initially toyed with the idea of diluting PN 1 to facilitate an investment-friendly policy. However, DIPP has now decided to take a safer approach by removing all contentious or controversial proposals from the reviewed FDI policy in a bid to avoid political opposition. The policy will focus only on further opening up of select sectors to FDI which are going to meet minimal or no political opposition. The issue may be dealt with when the government goes for comprehensive review to define indirect foreign holding in a company in line with the Foreign Investment Promotion Board□s (FIPB) recommendation.

A substantial number of proposals that go to FIPB are PN 1 cases. Most proposals are accompanied by a no-objection certificate from the Indian partner, and the FIPB has to routinely approve them. However, the real problem lies in the fact that, at times, PN 1 becomes an instrument to wage corporate battles. Some Indian companies have used the PN 1 just to block their foreign venture partner□s entry into the country.

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