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CAPITAL MARKETS

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» QIPs VIS-À-VIS EURO ISSUES

Companies in India have the option to raise funds in domestic markets through Initial Public Offerings ("IPO") and Further Public Offerings ("FPO") and from international markets through issue of Foreign Currency Convertible Bonds, Global Depository Receipts and American Depository Receipts ("Euro Issues").

Faced with multifarious requirements, while raising funds via public offerings in the domestic market, listed Indian companies generally prefer raising funds from international markets primarily owing to the comparatively lower interest rate and since under certain circumstances equity dilution may be deferred.

The Securities and Exchange Board of India ("SEBI"), in order to encourage companies already listed on Indian bourses to raise funds from domestic markets, amended the SEBI (Disclosure and Investor Protection) Guidelines, 2000 ("DIP Guidelines") introducing Chapter XIIIA by which provision has been made for raising domestic funds in a comparatively simplified manner from Qualified Institutional Buyers ("QIB") as defined under the DIP Guidelines (including from institutions such as Foreign Institutional Investors, SEBI registered venture capital funds, foreign venture capital investors, mutual funds, insurance companies and other institutional investors). Such offerings to the QIBs is referred to as Qualified Institutional Placements ("QIPs").

Investments

In QIPs, only Equity shares / FCDs / PCDs or any other securities convertible into equity shares can be allotted however it may be prudent to note that warrants cannot be allotted to QIBs. As per the DIP Guidelines, issuers have to allocate a minimum of 10% of such placements to mutual funds. For each QIP, there must be at least 2 allottees for an issue size of up to Rs 2.5 billion and at least 5 allottees for an issue size in excess of Rs 2.5 billion. Further, no single allottee may be allotted in excess of 50% of the issue size. The aggregate funds that can be raised through QIPs in one fiscal year should not exceed five times the net worth of the issuer at the end of the previous year.

Regulatory Euro Issues on the other hand may either represent depository receipts issued based on underlying equity shares of FCCBs, or bonds convertible into shares of the company on the basis of any equity related warrants attached to debt instruments, denominated in foreign currency. Such issues may be made on public or private placement basis. The holder of such instruments further have to conform to the Foreign Direct Investment Policy of the Government of India as announced from time to time and the Reserve Bank of India' s Regulations / directions issued from time to time.

Pricing:

QIPs are similar to Euro Issues in that the pricing of the securities in a QIP also cannot be less than the higher of the average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding the relevant date and the two weeks preceding the relevant date. However, the price will have to be adjusted for corporate actions, such as stock splits, rights/bonus issues, etc.

Conditions relating to Issues:

A distinctive feature of QIPs vis-à-vis Euro Issues, is that Euro Issues can be issued only to foreign investors and Indian investors are thus left out from the benefits of the issue, whereas QIPs may be issued to all categories of QIBs and is listed on Indian bourses. Further, QIPs may be issued by companies already listed on Indian stock exchanges having nation wide trading terminals, subject to maintaining minimum public shareholding and other requirements of the listing agreement thereof, whereas for Euro Issues no such requirements have been specified, provided however in case of unlisted companies opting for Euro Issues the company would have to simultaneously list itself with both domestic and foreign stock exchanges. In case of QIPs there can be more than one placement in a year subject to a gap of at least 6 months between the two placements whereas a company can make multiple placements of Euro Issues under the automatic route subject that to a maximum of USD 500 million under the automatic route raised in a year subject to certain other conditions.

The cost differential of issuing QIPs vis-à-vis Euro Issues in terms of legal fees, process of listing overseas, may be substantial. Moreover, it may, under certain circumstances, be easier to be listed on the domestic stock exchanges vis-à-vis Luxembourg or a Singapore listing.

Convertibility

Under a QIP, a company can place eligible securities, provided the conversion may be effected anytime after allotment but not later than 5 years from allotment date. In the case of a Foreign Currency Convertible Bond however, the issuing company issues the equity linked instruments, which can be redeemed or repurchased prior to the maturity date (minimum maturity of 3 to 5 years depending on the interest rates) provided approval of Reserve Bank of India is obtained. Depository Receipts on the other hand may be converted at the option of the holder thereof and flexibility has been further provided for dual fungability thereof.

In a QIP, the placement document should further contain only the relevant and material disclosures vis-à-vis the placement document under IPO, FPO and Euro Issues. Moreover, QIPs have been exonerated from seeking prior approval from SEBI and have to simply be placed on the websites of the exchanges. Further, the DIP Guidelines makes mandatory provisions for appointment of merchant bankers that enables proper due diligence and other compliances, thus giving comfort to the regulator as well as the investors. Euro Issues may be issued in negotiable form and may be listed on any international stock exchanges for trading outside India. For the purposes of conversion of Euro Issues, the cost of acquisition in the hands of the non-resident investors would be the conversion price determined on the

basis of the price of the shares at the domestic stock exchanges on the date of conversion. The issue related expenses in case of Euro Issues can not exceed 4% of issue of issue size and in case of private placement, shall not exceed 2% of the issue size.

QIPs thus seek to encourage Indian companies to raise funds from domestic markets instead of tapping overseas markets. It is has thus been freed from stringent stipulations, tight time schedules and rigid disclosures. However, QIPs remains, albeit arguably, subject to certain shortcomings such as barring retail investors from participating in such issues.

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» FOLLOW-ON PUBLIC OFFERINGS

A Further Public Offering or Follow-on Public Offering (FPO) is one when an already listed company on a recognized stock exchange makes a fresh issue of securities to the public, through an offer document, subject to satisfaction of listing obligations. This article broadly summarizes the regulatory provisions governing FPOs.

Public issues including FPOs are primarily governed by the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 (“ DIP Guidelines”).

Eligibility Criteria

A listed company is eligible to make a public issue of equity shares or any other security which may be converted into or exchanged with equity shares at a later date if the following conditions are fulfilled:

- The aggregate of the proposed issue and all previous issues made in the same financial year in terms of size shall not exceed 5 times its pre-issue net worth as per the audited balance sheet of the last financial year.
- In case there is a change in the name of the issuer company within the last 1 year, the revenue accounted for by the activity suggested by the new name shall be less than 50% of its total revenue in the preceding 1 full-year period.

A listed company which does not fulfill the above conditions must meet one of the following set of eligibility norms:

- Issue is book built, with at least 50% mandatory allotment to Qualified Institutional Buyers and minimum post-issue face value capital is Rs.10 crore or there is compulsory market-making for at least 2 years.
- The project is appraised and participated up to 15% by Financial Institutions / Scheduled Commercial Banks of which at least 10% comes from appraiser(s) and minimum post-issue face value capital is Rs. 10 crore or there is compulsory market-making for at least 2 years.

Private/public sector banks, certain infrastructure companies and rights issues by listed companies are exempt from the above eligibility criteria.

Offer Document:

A FPO is required to be made through an offer document. If the listed company making an FPO has been filing periodic statements with regard to financial results and shareholding pattern to the relevant

authorities for the last 3 years, has in place an investor grievance handling mechanism, and if the lead merchant banker certifies the same, the company is exempt from making disclosures in the offer document in relation to:

- details in relation to issued share capital,
- details regarding major shareholders,
- key management personnel,
- information for the last three years, based on the audited statements, in respect of all the companies, firms, ventures, etc. promoted by the promoters.

For the above purpose, an undertaking has to be provided to SEBI to the effect that other than the disclosures made in the prospectus, nothing material has changed in respect of disclosures made by the company at the time of their previous issue.

Promoter's Contribution in FPO and Lock-in

In FPOs, promoters have to participate either up to 20% of proposed issue or ensure post-issue share holding up to 20% of post-issue capital. The minimum contribution of promoters is locked in for 3 years. Participation by promoters in excess of the required minimum percentage is also subject to a lock-in for a period of 1 year.

The requirement for the promoter' s contribution is not applicable if (i) the company has been listed for 3 years prior thereto and has a track record of dividend payment for at least 3 immediately preceding years or (ii) where there is no identifiable promoter or promoter group exists, or (iii) if it is a rights issue.

Listing Agreement Compliance

A listed company is required to obtain the in-principle approval of all the stock exchanges where its shares are listed before issuing further share or securities. The company is also required to make adequate and fair disclosures in the offer document in respect of any further issue of shares or securities including any risk factors. Further, the Company is prohibited from issuing any offer document or prospectus unless it has been vetted by SEBI and an ' Acknowledgement Card' has been obtained from SEBI through the lead manager.

Conclusion

Raising funds from international markets through ADRs and GDRs listings involves greater costs and more stringent disclosure norms. Given the current bull run on the Indian stock market an FPO is an attractive route for listed companies looking to raising capital at lower cost and compliance.

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» Pre-Issue Advertising Guidelines (India vis-à-vis USA)

Indian Scenario

Securities and Exchange Board of India (“ SEBI”) has tightened the norms governing pre-issue publicity by companies that are planning to make an issue of securities. It has amended the SEBI (Disclosure and Investors Protection) Guidelines, 2000 (“ DIP Guidelines”) introducing restrictions on pre-issue publicity made during the period prior to the filing of draft offer document with SEBI.

The companies are required to adhere with the following guidelines:

- An issue advertisement shall be truthful, fair and clear and shall not contain any statement which is untrue or misleading.
- Any advertisement reproducing information contained in an offer document shall reproduce it in full and disclose all relevant facts and not be restricted to select extracts.
- Issue advertisement would construe to be misleading if it contains:
    - Statements made about the performance or activities of the company in the absence of necessary explanatory or qualifying statements, giving an exaggerated view.
    - An inaccurate portrayal of past performance or assuring it’ s repetition in the future.
- An issue advertisement shall not contain statements which promise or guarantee rapid increase in profits. Also an issue advertisement shall not contain any information that is not contained in the offer document.
- An issue advertisement shall not contain statements which promise or guarantee rapid increase in profits. Also an issue advertisement shall not contain any information that is not contained in the offer document.
- No models, celebrities, fictional characters, landmarks or caricatures are to be displayed.
- The advertisement shall also not appear in the form of crawlers.
- No advertisement shall include any issue slogans or brand names for the issue except the normal commercial name of the company.
- If any advertisement carries any financial data, it shall also contain data for past three years.
- All issue advertisements shall also contain risk factors giving it equal importance in all respects including the print size. The print size should not be less than point (7) in any case.
- Any advertisement made by an issuer shall be in the format and contain the minimum disclosures as given in the relevant part of Schedule XX – A of the DIP Guidelines.
- Advertising material, promotional activities, communications from the company through meeting, director’ s statements etc. shall be consistent with its past practices.

United States (US) Regulatory Regime

Pre Issue advertising standards in US could be found in the Regulations & Rules framed under Securities Act, 1933. A few of the important provisions are Regulation A- Rule 254, Regulation A- Rule 255, Regulation C- Rule 482.

<u>In light of the above provisions, few of the salient features of the US regulatory regime vis-à-vis the Indian one could be highlighted as under:</u>

- In USA, pre issue advertising is said to be done at 2 stages i.e. before filing of the Offering document or the registration statement & after filing it but before it’ s qualification by the SEC as being ‘ effective’ . Whereas in India the pre issue advertising stage extends till the time of filing the draft offer document with the Board.
- The United States federal securities laws had earlier imposed strict prohibition on ‘ gun-jumping’ . These are the communications that are viewed as constituting offers and are made prior to the filing of the registration statement or are those communications that are made

during the ' quite period' , i.e. the period that extends from the time a company files a registration statement with the SEC until SEC staff declares the registration statement ' effective' .

As compared to Indian regime, the restrictions imposed by SEC on the advertisements in the form of " gun jumping" communications & those made during the " quiet period" were absolute and the United States federal securities laws had imposed strict prohibition on such practices. It was only on June 29, 2005, that the rules were amended and after the said amendment the current position regarding pre-issue communication in the USA is as follows:

- Well-known seasoned issuers are permitted to engage at any time in oral and written communications, including use at any time of a new type of written communication called a ' free writing prospectus' which provides information about the issuer or the offering. (Note: A company will qualify as a well-known seasoned issuer if it has filed all reports required under the Securities Exchange Act of 1934 on a timely basis for at least one year, and has either:
  - $700 million or more of worldwide public securities float, or
  - Subject to certain limitations, issued at least $1 billion of non-convertible securities other than common equity in registered offerings in the preceding three years.
- All reporting issuers may, at any time, continue to publish regularly released factual business information and forward-looking information. ' Factual business information" will include advertisements. This is a safe harbor clause.
- Broader category of routine communications regarding issuers, offerings, and procedural matters, such as communications about the schedule for an offering or account-opening procedures, is allowed without the communications being deemed a prospectus.

Hence, it could be seen that at the prior amendment stage, the SEC regulations on pre issue advertising were absolutely restrictive. Even after the amendments it' s evident that the regulatory regime in US is quite stringent as compared to the Indian one. For instance, unlike US, under SEBI' s DIP Guidelines, there is no requirement to be a " well known seasoned issuer" so as to avail certain additional leverages for the pre issue advertising. The disclosure requirements under the Rules & Regulations framed as per the Securities Act, 1933 are quite rigorous than those contained under the DIP Guidelines.

It would be safe to conclude that the SEBI Guidelines on pre issue advertisements are a bit liberal in comparison to its US counterpart.

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» Limited Liability Partnerships

The Ministry of Company Affairs following the recommendations of the Naresh Chandra Committee and Dr. J.J. Irani Committee has proposed the Limited Liability Partnerships (" LLP") as a new business structure which would bridge the gap between business firms such as sole proprietorship and partnerships which are generally unregulated and limited liability companies which are governed by the Companies Act, 1956.

The Ministry on Company Affairs has introduced the concept paper on LLPs to stimulate public debate and invite suggestions from the general public. Some of the key concepts with respect to the LLPs have been summarized below:

Incorporation:

An LLP would be considered a body corporate with perpetual succession and a legal personality of its own. An LLP requires a minimum of two partners subscribing to an " incorporation document" . Most of the provisions with respect to incorporation of a company under the Companies Act have been replicated with respect to the LLPs. Further the rights and duties of the partners of an LLP towards each other and towards the LLP are governed by an agreement between the partners. However the issues required to be incorporated in this agreement need to be clearly addressed.

Liability of Partners:

Unlike in a partnership firm, each partner of an LLP is an agent of the LLP but not of the other partners and is only responsible for his own wrongful act or omission. He would further not be liable for the obligations of the LLP unless he commits any fraudulent or unlawful act. However, an LLP is liable for the acts of any partner where he has an authority to act. This liability would not exist when the partner acting on behalf of the LLP has no authority to act and the person dealing with the LLP is aware of this or does not know or does not believe that the partner was in fact a partner of the LLP.

Taxation:

The primary disadvantage with respect to an LLP is that although it is treated as a body corporate and the partners have the benefit of limited liability, the partners would still be taxed for the purposes of income tax and capital gains tax as if they were partners carrying on a business in partnership. The property of the LLP would be treated for tax purposes as the property of the partners. However the tax issues may need to be dealt with in further detail for better understanding.

Assignment and Transfer of Partnership Rights:

A partner' s economic rights, which include the right to share profits and losses of the partnership and to receive distributions in accordance with LLP agreement, are freely transferable but the non-economic rights can only be transferred if permitted in the LLP agreement.

It has been felt that LLPs will contribute to the global competitiveness of India and increase the professionalism in small and medium enterprises. A marked improvement has been witnessed in the Indian economy in the past with the advent of limited liability companies. The introduction of LLPs may be a step further in that direction.

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» Legal Snapshots

Government Allows Foreign Investment In Tier I And Tier II Instruments Issued By Banks In India:

The Government has vide A.P. (DIR Series) Circular No.24, permitted foreign institutional investors (FIIs) registered with SEBI and non-resident Indians (NRIs) to subscribe to Perpetual Debt instruments eligible for inclusion as Tier I capital and debt capital instruments as upper Tier II capital.

The foreign investments in these instruments will be subject to the following conditions:

1. The investment by all FIIs in Perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 49% of each issue and investment by individual FII should not exceed the limit of 10% of each issue.
2. The investment by all NRIs in Perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 24% of each issue and investment by single NRI should not exceed the limit of 5% of each issue.
3. The investment by all FIIs in Debt Capital instruments (Tier II) should be within the limits stipulated by SEBI for FII investment in corporate debt.
4. The investment by NRIs in Debt Capital instruments (Tier II) should be in accordance with the extant policy for investment by NRIs in other debt instruments.

Foreign Direct Investment (FDI) In Up-Linking Of TV Channels:

Until now, foreign investment was permitted up to 49% for setting up hardware, Up-linking hub/teleport, etc. subject to compliance with the Broadcasting Code and detailed guidelines issued by Ministry of Information and Broadcasting (MIB). Now, as per the consolidated Guidelines for Uplinking from India, notified by the MIB on 2/12/2005, the Department of Industrial Policy and Promotion has issued Press Note 1 of 2006, which hereby notifies that:

- FDI up to 49% would be permitted with prior approval of the Government for setting up Up-linking HUB/Teleports,
- FDI up to 100% would be allowed with prior approval of the Government for Up-linking Non-news and Current Affairs TV Channel, and
- FDI (including investment by FIIs) up to 26% would be permitted with prior approval of the Government for up-linking a News & Current Affairs TV channel subject to the condition that portfolio investment in the form of FII/NRI deposits shall not be " persons acting in concert" with FDI investors, as defined under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. The Company permitted to uplink the channel shall certify the continued compliance of this requirement through the Company Secretary at the end of each financial year.

Provident Funds Can Invest Part Of Corpus In Equities, ELSS:

The Central Board of Direct Taxes (CBDT) has amended the Income Tax Rules to allow recognized provident funds, approved superannuating funds and approved gratuity funds to invest a part of their corpus in equity shares of companies and equity-linked schemes of mutual funds.

India, Mauritius Sign Preferential Trade Pact:

India and Mauritius have signed a Preferential Trade Agreement (PTA) on 24 October 2005 to increase Mauritius' exports to India and provide India with the opportunity to tap into African markets.

FII Sub-accounts May Come Under 10% Cap:

The Central Government has proposed that all sub-accounts of FIIs would be included within the limit of 10 per cent exposure, which a single foreign portfolio investor can take up in a company. At present there is a separate cap for each sub-account under the aggregate cap for FII investment of 24 per cent in the total issued capital of a company. These are recommendations made by an internal study of the Government. FIIs may however, get more freedom to invest in debt, including a flexibility to switch between equity and debt instruments. To facilitate this, the current cap on FII investments in

Government debt could be relaxed, as per the internal recommendation.

International Insurance Companies Need IRDA Approval For Entry:

Foreign insurance companies prospecting for business opportunities in India would now need the approval of Insurance Regulatory and Development Authority (IRDA) before setting up a liaison office. Until now the Reserve Bank of India granted this permission. The entrant will have to provide IRDA with details such as its shareholding, organizational chart showing its subsidiaries and associated companies, countries in which it operates along with its subsidiaries. It will also need to provide information of its regulator, its paid up capital and its financials for the last three years.

Government Notifies Special Economics Zones Rules, 2006:

The Special Economic Zones (SEZ) Act, 2005 (SEZ Act) was enacted on 23 June 2005 to provide for the establishment, development and management of SEZs for the promotion of exports and for matters connected and incidental thereto.

The Government has also notified the Special Economic Zones Rules, 2006 (SEZ Rules) on 10 February 2006 providing for a single window clearance for SEZ units / developers in terms of the SEZ Act.

Government Allows 49% FDI in Asset Reconstruction Companies:

The government has vide A.P. (DIR Series) Circular No.16, permitted 49% FDI in the equity capital of asset reconstruction companies [ARCs], registered with the RBI. However, FIIs (foreign institutional investors) will be restricted from making such investments. Accordingly, FDI will be open via the prior approval route, i.e after seeking permission from the Foreign Investment Promotion Board (FIPB) subject to the condition that:

1. maximum foreign equity shall not exceed 49% of the paid up equity capital of the ARC.
2. where investment by any individual entity exceeds 10% of the paid up equity capital, the ARC should comply with Section 3(3) (f) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) which lays down the condition that the sponsor should not be a holding company of the ARC or hold any controlling interest in the ARC.

It has also been notified that FIIs can invest upto 49 per cent of each tranche of scheme of Security Receipts (SR) subject to the condition that investment of a single FII in each tranche of scheme of SRs shall not exceed 10 per cent of the issue.

The policy on FDI in ARCs would be subject to review after two years and that of FII investment in SRs would be reviewed after one year.

Companies with Dual Listing Plans Needn’t Follow ADR, FCCB Pricing Rules:

The Central Government has vide Notification No. GSR 671(E) dated 17-11-2005 has introduced the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Amendment Scheme, 2005. In terms of this amendment, companies planning simultaneous domestic and foreign listings have been exempted from the recent American Depository Receipts (ADR) and Foreign Currency Convertible Bonds (FCCB) guidelines, which had brought all such issues in compulsory alignment with SEBI norms for domestic public offers.

Companies going in for such simultaneous or immediate follow on offering (within 30 days) in the ADR/GDR market will have to take SEBI's approval for such issue, which will specify the percentage to be offered in the domestic and ADR/GDR markets.

Government notifies 20% FDI in FM Radio:

Until now, foreign investment was permitted in terrestrial broadcasting upto 20% under the portfolio investment schemes under the Foreign Exchange Management (Transfer or Isue of Security by a Person Resident Outside India) Rules, 2000 and FDI was not permitted by foreign entities.

The Department of Industrial Policy and Promotion has issued Press Note 6 of 2005 which notifies 20% FDI in FM radio broadcasting services. The notification comes in the wake of Phase II of the program for expansion of FM radio broadcasting services for private agencies. The 20% equity includes FDI, NRI and PIO investments and would be subject to conditions issued by the MIB for grant of permission for setting up FM radio stations.

Overseas Citizenship Of India (OCI) Scheme operational from 2.12.2005:

Based on the recommendation of the High Level committee on Indian Diaspora, the Government of India launched the Overseas Citizenship of India (OCI) Scheme, commonly known as 'dual citizenship'.

This facility is available to all Persons of Indian Origin (PIO) of certain category, who migrated from India and acquired citizenship of a foreign country (excluding those who went to Pakistan or Bangladesh) and where their home countries allow dual citizenship under local laws.

Holding dual citizenship will however, not make an individual eligible to take part in elections or hold a constitutional post. The benefits include:-

- a lifetime multiple entry visa,
- permission to buy non-agricultural land,
- exemption from regularly reporting to the police while staying in India.
- economic and educational rights as those of non-resident Indians.

Director Identification Number (DIN):

As part of an e-governance system, the Ministry of Company Affairs will issue mandatory identification numbers to all directors on the boards of companies after a thorough verification of their credentials and antecedents. This is a result of the JJ Irani Committee recommendations, which suggests detailed disclosures about the identity of promoters and directors, at the time of incorporating a company.

This Director Identification Number [DIN] seeks to keep a constant check on number of directorships and incidents of vanishing companies. Besides, the DIN will prove useful in identifying and notifying companies.

SEBI makes it mandatory for investors to quote PAN for trading:

SEBI has made it mandatory for investors with trade value of less than INR 5 Lakh to quote their PAN or UIN obtained under MAPIN and for investors with trade orders above INR 5 Lakh to obtain a UIN in order to facilitate the collection of taxes. The CBDT has directed NSE and BSE to permit investors'

derivatives trading and tax breaks only on quoting the PAN. Prior to this announcement quoting of PAN was necessary only for investments of more than INR 50,000 in IPOs and MFs, opening FD or post savings account, purchasing or selling a house above INR 5 Lakh or a car, cash payments exceeding INR 25,000, availing of credit card facilities, etc.

SEBI Directive on transaction charge on inter-DP transfers by investors:

SEBI has removed the transaction charges on transfer of shares by investors from one DP account to another in order to facilitate the investors in moving securities from one DP to another if such investor is dissatisfied with the service of the DP. The directive is effective from 9 January 2006. NSDL has moved the SAT in response to this directive of SEBI.

Group of Ministers to be constituted to resolve spectrum disputes:

The constitution of a Group of Ministers to resolve disputes relating to the allocation of spectrum between GSM and CDMA operators was approved by the PM. The planning commission and the DoT will collectively frame the terms of reference to this group, which will include resolution of issues regarding vacation of spectrum, upgrading technology and equipment to existing users and funding therefor and spectrum allocation between service providers.

Private sector allowed entry in Railway Container Service:

The railways have done away with their monopoly and permitted the private sector to enter into and run the container train services for import, export and domestic traffic.

Forward Markets Commission directs regional exchanges to float subsidiaries for dealing with National Commodity bourses:

In order to avoid a conflict of interest in regional exchanges with own trading mechanism taking position on national exchanges, the FMC has disallowed the regional exchanges from directly obtaining membership of the national commodity bourses and has directed them to float a WOS for the purpose of acquiring membership rights of the national commodity bourses as is required of any other broker. It was further clarified that the name of the WOS should not contain words like ‘Commodity Exchange’. The present members of such regional exchanges will have to get themselves registered as sub-brokers of such WOS once it is constituted. Such WOS will not be permitted to indulge in proprietary trading. The CEO of such WOS is required to be vetted by FMC. Such WOS shall be responsible for collecting margins from the sub-brokers for depositing margins in the national commodities exchange.

New SEBI norms for reintroducing stock of restructured company in F&O segment:

SEBI has established new eligibility norms for reintroduction of stocks of restructured companies in the F&O segment. As per the new norms the company must have a minimum market capitalization of INR 1,000 crore prior to the restructuring. The new companies will be treated as new stock and must be at least 1/3 of the pre-structuring size in terms of revenues, assets or analyst valuations. Further, the companies are required to have free float eligible for derivatives trading. The exchanges will introduce near month, middle month and far month derivative contracts on the stock of the restructured companies whose stock is reintroduced in the F&O segment in the contract month wherein such companies begin to trade. The SEBI revised position limits for stock based derivatives for trading members, FIIs and MFs for stocks having market-wise position limit (MWPL) of INR 500 crore or more is the lower of 20% of the MWPL or INR 300 crore (combined F&O position limit) and the lower of 10%

of MWPL or INR 150 crore (fututrs position limit). And for stocks having MWPL less than INR 500 crore the combined F&O position limit is 20% of the MWPL.

Amendment to the revised Clause 49 of the Listing Agreement:

Vide the Amendment the maximum time gap between two Board meetings has been increased from three months to four months. The sitting fees paid to non-executive directors as authorized by the Companies Act, 1956 would not require the previous approval of shareholders. Further, certification of internal controls and internal control systems by CEO/ CFO would be for the purpose of financial reporting.

Amendments to the SEBI (Disclosure and Investor Protection) {DIP} Guidelines, 2000:

The amendment provides for various modes of making refunds to the applicants viz ECS (Electronic Clearing Service)/ Direct Credit / RTGS (Real Time Gross Settlement)/ NEFT (National Electronic Funds Transfer). The applicants residing in 15 centres where clearing houses are managed by the Reserve Bank of India (RBI), will get refunds through ECS only except where applicant is otherwise disclosed as eligible to get refunds through direct credit & RTGS. The amendment also provides for details of bank accounts of applicants to be taken directly from the depositories' database for issues required to be made wholly in the dematerialised form. It requires the suitable instructions for refunds through various modes to be incorporated in the application form, abridged prospectus and the prospectus/letter of offer in an appropriate manner.

Amendment to SEBI (Mutual Funds) Regulations, 1996:

The amended Regulations permit introduction of Gold Exchange Traded Fund schemes by a Mutual Fund. Gold Exchange Traded Fund schemes are permitted to invest primarily in Gold and Gold related instruments. Regulation 2(mc) stipulates that gold related instruments are such instruments having gold as underlying, as are specified by SEBI from time to time. It is clarified in accordance with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996 that, as of now, Gold ETF schemes can invest primarily in Gold. They can invest in gold related instruments only after such instruments are specified by SEBI.

Amendment to SEBI (Delisting Of Securities) Guidelines, 2003:

The Amendment seeks to ensure adequate and wide public notice of delisting and disclosure of the fair value through newspapers and notice boards/trading systems of the stock exchange upon delisting of a security, as also to determine the fair value of securities by persons appointed by the stock exchange out of a panel of experts, to be selected by the stock exchange.

Treatment of Income from derivatives trading via stock exchanges:

The government has clarified that derivatives trades routed through recognized stock exchanges will not be treated as speculative transactions under Section 43 (5) of the Income Tax Act, 1961. the CBDT has recognized BSE and NSE for the purposes of this clause vide a notification dated January 25, 2006 and has also stated that such recognition is liable to be cancelled if the stock exchanges act in violation of the income tax rules. Following the clarification the brokers can now treat losses incurred in derivative transactions to reduce net taxable income from other transactions, including cash market transactions.

Government proposes to amend the Factory Act 1948:

The Government proposes to amend the Factories Act, 1948 to increase the working week from 48 hours to 60 hours and daily work-hours from 9 to 12, so that the overtime limit can be extended. This amendment has been proposed in consonance with the National Common Minimum Programme (NCMP). The Government has also proposed to amend the Industrial Disputes Act, 1947 to facilitate the employment of seasonal workforce. Further, the Government is also open to the idea of amending the Contract Labour Act in specified non-core activities to bring it in step with the recent outsourcing activities.

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» Editorial Board

Editor

Rajesh N. Begur
Managing Partner
A.R.A LAW
Advocates & Solicitors
E-mail : **rajesh@aralaw.com**

Contributors

Anooshree Sinha, Partner
Darshan Upadhyay, Senior Associate
Priyanka Dixit,
Associate
Smruti Wagle, Associate

[TOP]

A.R.A. LAW - Advocates & Solicitors

Mumbai Office:
Agra Building, 1st Floor,
121, M. G. Road, Fort,
Mumbai - 400 023.
Tel: (+91 22) 2263 1700
Fax : (+91 22) 2263 1800
E-mail: bom@aralaw.com

Bangalore Office:
237, "Sumitra", 2' C Cross,
1st Main, II Stage, Domlur,
Bangalore - 560 071.
Tel: (+91 80) 535 1619/535 3599
Telefax: (+91 80) 535 2708
Email: blr@aralaw.com

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