

❖ SEBI to make fund raising easier

**M-Cap Threshold of Rs 10k Crore to be Relaxed; Rights Issue Period to be Cut to 15 Days**

The Securities and Exchange Board of India (SEBI) is likely to make it easier for more companies to raise money from the stock market. The board is expected to relax the eligibility criteria for fast-track rights issuance.

Currently, only companies with a market capitalisation of more than Rs 10,000 crore over the last one year are eligible for this route. SEBI plans to lower the M-cap threshold.

This has been necessitated by the steep fall in market capitalisation of companies across the board, due to the ongoing downtrend in the stock market. If the current M-cap rule for fast-track issuance is to be rigidly enforced, only a handful of companies will make the mark.

SEBI is also looking at reducing the issue period for rights issues to 15 days from the current 30 days. Merchant bankers opine that when the issue remains open for a month in volatile market conditions, it is vulnerable to market risk. Many investors subscribe to the issue in the last week, and in case the stock price plunges, the issue price will become unattractive.

In the recent past, rights issues of Tata Motors and Hindalco Industries devolved on the merchant bankers after the respective stock prices fell steeply. Merchant bankers opine that globally, issue pricing is done a few days before the issue opens.

In 2007, SEBI had unveiled norms for fast-track issuance of securities, a simplified process for making public issues.

However, the new mechanism was allowed only for those companies listed on the BSE or NSE for at least three years and having a market capitalisation of at least Rs 10,000 crore over the last one year, companies complying with the listing agreement, and also having shares in the dematerialised form.

These companies were also eligible for rationalised disclosures as well as simplified procedural requirements.

The regulator had made an attempt to save time and cost for such companies. However, only three companies including SBI, Tata Motors and Hindalco availed this route.

Last year, SEBI had announced that the timeline for a rights issue was being reduced from 109 days to 43 days.

SEBI will also shortly increase the margin on preferential share warrants, issued by companies to promoters, to 25% from the present 10%. The move is aimed at increasing promoters' commitment to meet their obligation of pumping funds into the company.

This was recommended by the primary market advisory committee on Monday after it was observed that often promoters did not pay the balance 90% as the stock price of their company had tanked significantly.

## ❖ Foreign Inflows In For Composite Ceiling

The government may simplify its foreign investment policy by allowing Indian companies to club together foreign direct and portfolio investment inflows in a move that would give more flexibility to sectors like aviation, commodity and share trading.

It also plans to allow 49% foreign equity in Indian airlines through the automatic route. The government proposes to do away with the ceiling on portfolio investments by foreign institutional investors (FIIs) and instead prescribe a composite foreign investment cap, said a commerce and industry ministry official.

According to the proposal, foreign investment in a company can be through any route—FII and/or FDI—as long as it is within the composite ceiling. The new rules will be soon discussed by the committee of secretaries, which includes secretaries of ministries such as finance, commerce and industry, telecom, information and broadcasting, and aviation. Once the CoS clears it, the proposal will be sent for Cabinet approval.

Under existing regulations, total FII shareholding in an Indian company cannot exceed 24% of its paid-up capital. Individual companies may relax this limit by passing a board resolution, subject to the sectoral cap, if any. No single FII can hold more than 10%, as per the current regulations.

The new rules will allow FIIs to raise their stake beyond 24% till it reaches the FDI cap. No change is proposed in the 10% rule.

Mooted by the department of industrial policy and promotion (DIPP), the reworked policy will be critical for segments where there are individual caps for FIIs and FDI. These include aviation, commodity exchanges, credit information companies, stock exchanges and direct-to-home broadcasters. Companies in these sectors will now have more flexibility in bringing foreign investment and can opt for either direct equity investment by portfolio investors.

### Conditions to remain

- ✚ Foreign companies would continue to need approval from the Foreign Investment Promotion Board if investment in the sector is not approved automatically.
- ✚ Conditions such as minimum capitalisation, lock-in period in sectors such as real estate, will also have to be followed by foreign investors.

According to the proposal, the company will have to be owned and controlled by resident Indians with management control in sectors where the foreign investment limit is limited to 49%. For example, an Indian company in the commodity exchange business can raise money through any method (FDI or FII) till it reaches the FDI cap of 49%. At present, the government stipulates FDI and FII at 24% and 25%, respectively.

According to the new guidelines, in all industries with sectoral caps, the balance equity, i.e., beyond the foreign investment cap, would be 'beneficially' owned by resident Indians or Indian companies.

The present situation warrants a policy revisit regarding sectoral caps, the entry route for such investments and the guidelines prescribed for such investments, the official said.

## ❖ Global law firms rush to India

### **DLA Piper, Beachcroft, Clifford Chance Partner Local Companies to Beat Entry Ban**

Many international law firms are looking at the Indian legal market with growing interest. After the recent tie-ups between foreign and Indian law firms, another firm, Jyoti Sagar Associates (JSA), has entered into a referral agreement with the US-based law firm DLA Piper. The deal closed on the first week of January.

“We arrived at a referral agreement with JSA in order for referring both domestic and international clients to each other,” said Erik B Wulff, partner, DLA Piper. The firms have agreed on a memorandum of understanding (MoU) and are considering business opportunities in all sectors.

DLA Piper is one of the largest law firms in the world. It is the only firm with more than 3,500 lawyers in 28 countries and 67 offices throughout the world, mainly in North America and Europe. DLA Piper is a legal services organisation whose members and affiliates are separate and distinct legal entities.

Referral agreement is “non-exclusive”, which is termed as a “best friend” relationship since either of the party can have referral agreements with other firms, and “non-financial” as there is no profit sharing involved. Therefore, no violation of the ban on foreign law firms practising in India.

#### New Order

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In another development, the UK-based law firm Beachcroft LLP has entered into a JV in the form of an MoU with the India-based mid-sized law firm, Khaitan Jayakar Sud & Vohra (KJSV). “Insurance sector is the main focus as Beachcroft has 35% market share in insurance and reinsurance practice in Europe. The MoU with Beachcroft will help integrate KJSV with law firms in foreign jurisdictions, forming a part of the Beachcroft International Network spanning most of Europe, the US, Central and South America, Russia and the Far

East,” said Umesh Khaitan, managing partner, KJSV.

Beachcroft is one of the largest national commercial law firms in the UK with over over 800 lawyers and 140 partners in UK and Brussels.

Last week AZB & Partners, a top law firm, forged an alliance with Clifford Chance. Even Indian law firms are growing ambitious FoxMandal Little, the country’s largest law firm – after acquiring a Delhi-based law firm Bhatia & Co – is looking to acquire a foreign law firm. Interestingly, while some Indian firms are finding focused international partners others such as FoxMandal Little, Kochhar & Co have set up independent offices overseas.

Although the debate on the opening up of the legal sector has been doing the rounds for quite sometime now, there has been no major development in this regard. “Except for leaving the Indian law firms to resort to such disguised relationships,” said Raj Ramachandran, partner with Bangalore-based law firm M&C Partners.

## ❖ Promoters will have to disclose pledging of shares

### Regulator to Unveil Fresh Disclosure Norms to Include Pledging Of Shares

The Securities and Exchange Board of India (SEBI) is set to make it mandatory for promoters to report to the stock exchanges, if they pledge their shares to raise funds.

At the primary market advisory committee meeting held on Monday, there was a consensus that irrespective of the quantity of the shares pledged, the promoter group has to disclose the details to shareholders and stock exchanges.

“When the promoter has exhausted all other sources to raise funds, he pledges his holding in the company as a last resort, which is a clear indication that it is not an ideal situation,” said an official who was present at the meeting.

SEBI is likely to come out with new disclosure norms shortly, in a bid to protect the interest of existing and

potential shareholders, as pledging of shares could result in a change of ownership if the promoter is unable to redeem those shares by repaying the loan. This is critical, as many investors consider promoter holding and management structure of the company as a critical aspect of their investment decision.

The capital market regulator's proposal to make pledged shares information public comes in the wake of the recent instances, where most investors did not know that a portion of the promoters' stake were pledged till these stocks were dumped by lenders. Stock prices have been on a downtrend for some time now, due to adverse market conditions. When that happens, lenders ask for either additional shares, or margin payment to cover the shortfall. In the event of promoters being unable to meet these conditions, lenders dump the shares in the market to recover their dues. As the sale of these pledged shares usually happens in huge quantities, it has a cascading impact on the stock price.

In developed markets, the pledging of shares by promoters, or insiders, as collateral for a loan is equivalent to a sale of the stock to the pledgee.

Some of the recent instances in India, where company promoters had pledged shares to financial institutions include Satyam Computer and Orchid Chemicals. In the case of Satyam, the sharp fall in the stock price, following the company's abortive bid to buy a stake in Maytas, led to margin calls getting triggered.

Fund managers and investment bankers said a lot of company promoters, especially in the realty sector, have pledged their shares with financial institutions and finance arms of broking outfits.

However, this information is usually not made public, as there are no rules mandating them to do so. The pledging of shares by promoters was not considered a major issue in the bull market, as nobody thought that the market could slide so rapidly. The non-availability of cheaper money in recent months has made the buying back of the pledged shares by promoters difficult.

## ❖ Airtel to soon launch IPTV

Bharti Airtel, the country's largest cellular operator, will soon become the first private sector company to launch Internet Protocol Television (IPTV) services in India. The company is expected to make an announcement on its IPTV plans this week. This follows the recent launch of its direct-to-home (DTH) services in the country. IPTV and DTH services are separate technologies to deliver television content into the consumer's home.

Companies providing IPTV services send television content to consumers through a broadband Net connection. Both IPTV and DTH are seen as an alternative to the services provided by the local cable operators.

### Go, Get It

- ✚ IPTV is a system where digital television service is delivered using the internet protocol.
- ✚ It can easily be bundled with broadband Internet service and VoIP services to offer what is popularly known as Triple Play
- ✚ Interactivity is much easier to perform with IPTV than a normal cable, satellite or broadcast TV system.
- ✚ New generation IPTV can offer video on demand that allows you to request movies, TV shows and much more at your convenience

A senior executive with a media company told ET that Bharti is also looking at tie-ups with large retailers including Future Group's Big Bazaar for launching retail points that will market and sell both its DTH and IPTV offerings. Bharti will target its 3 million plus broadband customers for this service. The company's broadband services are currently available in 95 cities.

Airtel has already test launched its IPTV services for customers in Gurgaon and the National Capital Region (NCR). The company will soon extend these services in a phased manner to eight of the key cities within the next couple of weeks.

When contacted Bharti Telemedia Services President Atul Bindal refused to divulge any details.

Bharti has roped in US-based networks major UTStarcom as technology partner for its IPTV service. The telco is also working with IBM and last year awarded the IT company a fresh contract worth \$150 million for its IT requirements for its DTH and IPTV services. IBM already provides the IT backbone for Bharti's mobile services in both India and Sri Lanka and also provides solutions to supports the telco's DTH platform in the country. Bharti executives claim that the company has an edge over their rivals in both the DTH and IPTV space as it uses its existing backend for mobile services for these platforms also.

As of now MTNL and BSNL are the only two telcos offering IPTV services in some cities in collaboration with content delivery companies like Aksh Optifibres. Recently Aksh has started offering IPTV connection without a broadband connection to encourage the penetration of IPTV in the masses. Anil Dhirubhai Ambani group is the other player which is expected to launch its IPTV services this year.

### ❖ No liberal use of 'liquid' term: SEBI

In A step to discipline mutual funds' investments in liquid schemes, SEBI on Monday said the tenure of debt securities in portfolios should be the same as the maturity of schemes. Also, the market regulator has asked mutual funds to abstain from using the term 'liquid plus' – schemes that invest in papers with longer tenure than liquid funds – as this could be wrongly perceived by investors as schemes with more liquidity.

✚ Liquid schemes, February onwards, can make investments in debt and money market securities with maturity of up to 182 days.  
✚ From May 1, these schemes can make investments only in debt and money market securities with maturity of up to 91 days

"Investors' time horizon in liquid investments was not more than three months. So, it did not make any sense to put money in papers with longer-tenure," said Taurus Mutual Fund CEO Waqar Naqvi. The move to align the tenure of securities with scheme maturity is expected to boost the market for short-term papers, especially ones with up to three-month maturity. SEBI has said inter-scheme transfers of securities having maturity up to 365 days, and those held in other schemes as on February 1, 2009, shall be permitted till October 31, 2009. From November 1,

such inter-scheme transfers would have to comply with the revised investment guidelines.

Commenting on the move to scrap the term, liquid plus, Mr Naqvi said: "There is not much of difference between liquid and liquid plus schemes, but the different names created unwanted confusion." Separately, the market regulator has asked mutual funds against offering any indicative portfolio or yield in their debt or fixed income products, a move that may restrict demand for fixed maturity plans (FMPs), which was till recently in demand because it hinted at probable returns.

According to a SEBI release, the Advisory Committee of Mutual Funds is of the view that this practice, which many fund houses follow, "should be prohibited" as it may be "misleading" investors. But, mutual fund industry watchers do not expect the restriction to severely impact the demand of a large section of FMPs, as indication of yields and portfolio would continue to remain informal. "Nowadays, the first thing investors demand while investing in a product like FMP is indicative yields and portfolio. No investor wants to have a portfolio dominated by real estate companies. If fund houses implement both these restrictions, then FMPs are as good as history," said a senior official at a private mutual fund.

### ❖ 12 FDI Proposals Approved



Based on the recommendations of Foreign Investment Promotion Board (FIPB) in its meeting held on 22nd January, 2009, Government has approved 12 Proposals of Foreign Direct Investment amounting to Rs. 751.51

crore approximately. The proposals relate to Ministries/Departments, namely, Economic Affairs, Civil Aviation, Food Processing Industry, Information & Broadcasting and Commerce.

## ❖ CERC issued Tariff Regulations for Next Five Years

On January 20, 2009, Central Electricity Regulatory Commission, CERC issued the Tariff Regulations for generation and transmission projects for the period 2009-14. The regulations aim at attracting much desired investment in power infrastructure in the country while ensuring that the consumers get electricity at reasonable cost.

The following are the important features of the new regulations:

- The base rate for allowing return on equity has been raised from 14% to 15.5% keeping in view the need of attracting investment in the current market conditions.
- To incentivise timely completion of projects in the present period of power shortages, an additional return on equity of 0.5% will be available to those projects which are commissioned within the given timelines.
- In addition to increased rate of return on equity of 15.5%, the regulations contain several provisions to boost development of hydro power projects. By modifying the proposal in the draft regulations new hydro power projects have been appropriately insulated from hydrological risk during the first ten years of their operations. The regulations also allow enhanced free power and rehabilitation cost according to the new Tariff Policy, with the objective of expediting project implementation. Tariff for hydro power project has been restructured to incentivise supply of peaking power.
- Return on equity will be now pre-tax for which the base rate of 15.5% would be grossed up by applicable tax rate for the company. This would incentivise investment promotion as the benefit of tax holiday will be now available to the project developer. On the other hand, consumers would not have to bear the burden of income tax on the UI earning, incentive earning and efficiency gains of the projects. This has been a major grievance of the beneficiaries.
- While doing away with the advance against depreciation in line with Tariff Policy, depreciation rates have been reworked to take care of repayment of debt obligations of the new projects. However, once the initial period of 12 years is over, remaining depreciation would be spread over the balance useful life to keep the tariff reasonable.
- Availability target for recovery of fixed cost for thermal power plants has been raised from 80% to 85%. The station heat rate has also been tightened. For the new units, operating margin of only 6.5% would be permitted with respect to the design heat rate. The norm for secondary oil consumption has been slashed from 2 ml per unit to 1 ml per unit. Further, the savings in secondary oil consumption are to be shared with the beneficiaries in ratio of 50:50%.
- The economies of scale available to the developers in operation of expansion projects are to be shared with the beneficiaries as the permissible O&M expenditure will be de-scaled for new expansion units.
- To make the tariff fixation more objective and simple, CERC has decided to set up capital cost benchmarks for thermal power projects and transmission projects. The provisional tariff has been done away with and the companies will get final tariff upfront.
- Companies operating thermal power plants will have now two options. Either they can claim a special allowance on the basis of per MW per year after completion of normative useful life of the project and will be obligated to deliver the norms set for availability and operations. Second option is to go for comprehensive R&M which is to be permitted by Commission on the basis of detailed cost benefit analysis including the efficiency gains to the beneficiaries.
- To incentivise higher availability of power plants, the incentive available to the generating companies will now be available on the basis of declared availability instead of plant load factor because the generators can only declare better availability and actual schedule is not within their control.

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*The editors of this report can be reached at **MAHESHWARI & CO., Advocates and Legal Consultants, B – 7/1, Safdarjung Enclave Extension., New Delhi –110 029, Tel: 91-11-26101906,09910066777 Fax: 91-11-26171201.***

*E.mail:[info@maheshwariandco.com](mailto:info@maheshwariandco.com)*