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DSK Legal Knowledge Center

Update on

- SEBI

SECURITIES AND EXCHANGE BOARD OF INDIA ("SEBI")

SEBI Board Meeting dated October 25, 2010

Capital Market regulator SEBI has taken the following decisions in its meeting held on October 25, 2010.

1. Public issues by Insurance Companies

Quote

The Board noted that the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ["SEBI (ICDR) Regulations 2009"], which are sector neutral, would also apply to insurance companies. The Board also noted and approved the recommendations of SEBI Committee on Disclosures and

Accounting Standards ("SCODA") for the following additional disclosures, having regard to the specific nature of insurance companies:

- Disclosure of risk factors specific to insurance companies;
- Broad headings under which an overview of the insurance industry shall be disclosed;
- Other disclosures specific to insurance companies;
- Formats for disclosure of financial information as specified by Insurance Regulatory and Development Authority ("IRDA");
- Glossary of terms used in the insurance sector;

The Board also approved the two amendments to SEBI (ICDR) Regulations, 2009, viz., exemption from appointment of monitoring agency and disclosure of disclaimer clause of IRDA in the offer documents of insurance companies.

Unquote

According to the investment bankers¹ there are less chances of any significant progress on this unless The Insurance Laws (Amendment) Bill, 2008 (“Insurance Bill”) which proposes to increase the foreign direct investment (FDI) limit from 26% to 49% is passed.

The IRDA will issue the final IPO guidelines after taking SEBI’s recommendations into consideration.

2. Preferential issue of equity shares or convertible securities or warrants to promoters and promoter group

Quote

In order to further tighten the preferential allotment framework, the Board decided that in case of preferential issues, where any

promoter or any promoter group entity has previously subscribed to the warrants of the company but failed to exercise the warrants, the promoters and promoter group shall be ineligible for issue of equity shares or convertible securities or warrants for a period of one year from the date of expiry of the currency /cancellation of the warrants. The Board further decided that if any member of the promoters/ promoter group has sold shares in the previous six months, then the promoters/ promoter group would be ineligible for allotment on preferential basis.

Unquote

As per the existing provisions, there is no ineligibility/restraint on failure to exercise the warrants. Further, according to the existing provisions, it is only the proposed allottee who should not have sold any shares in the company during the preceding six (6) months.

3. Fixed Pay Date

Quote

In order to enable investors to manage their cash/ securities flow efficiently and to enhance process transparency, the Board

¹ Article titled “SEBI clears IPO norms for insure rs” , Mint, October 26, 2010

decided to mandate companies to have a pre-announced fixed pay date for payment of dividends and for credit of bonus shares.

Unquote

4. Enhancement of limit for defining retail individual investors

Quote

The Board decided that the maximum application size for retail individual investors may be increased to Rs.2 lakh across all issues.

Unquote

SEBI's validation behind the move is the huge eagerness for public issues and the representations made by several investor associations to increase the limit. But it is also believed by a section of the market that the increase would mean that investors who apply for shares worth less than Rs 2 lakh may not get allotment at all, if the issue is heavily oversubscribed.

5. Rights issue framework for IDRs

Quote

In order to facilitate simultaneous rights offering by the foreign issuers [who have listed their Indian Depository Receipts ("IDR") in Indian Stock Exchanges] in their home jurisdiction and in India, SEBI has decided to notify the framework for rights issue of Indian Depository Receipts ("IDR"). It is decided that for circulation in India, an additional wrap (disclosing information required in Indian jurisdiction and issue process relevant for the IDR holders) can be attached with the letter of offer, circulated by the overseas issuer in their home jurisdiction. Disclosure requirements for IDR rights would more or less be in line with the reduced disclosure requirements, applicable for domestic rights issues. Further, it is decided that IDR issuers, who are in compliance with the continuous listing requirements, can avail the facility of filing the offer document on fast track basis.

Unquote

6. Public Announcement by Companies proposing to access the capital market

Quote

In order to draw the attention of investors about filing of Draft Offer Document (“DOD”) so as to elicit timely comments without adversely impacting the issue process, the Board decided that the issuer company may make a simultaneous public announcement about filing of DOD.

Unquote

7. News reports appearing in the media after filing of DOD with SEBI

Quote

In order to ensure that the information appearing in media is consistent with the disclosures made in the offer document, the Board decided that the merchant bankers may submit a compliance certificate as to whether the contents of the news reports that appear after filing of DOD are supported by disclosures in the offer document or not. This would apply in

respect of news reports appearing in newspapers stipulated in ICDR for issue advertisements, major business magazines and also in the print and electronic media controlled by any media group where the media group has a private treaty/shareholders’ agreement with the issuer company/promoters of the issuer company.

Unquote

8. Uniform/single payment option in rights issues

Quote

In order to ensure uniform treatment for all classes of investors in rights issues, the Board decided that only one payment option may be given by the issuer to all the investors i.e. either (i) part payment on application with balance money to be paid in calls or (ii) full payment on application. The Board also decided that where the issuer opts for part payment, it shall be incumbent on them to obtain approvals, if any, as may be necessary for the purpose.

Unquote

9. Minimum Promoters' contribution in Further Public Offers (FPOs)

Quote

In order to enable listed issuers to have more flexibility in raising capital through various instruments, the Board decided that the requirement of promoters' contribution shall not be applicable to FPOs where equity shares of the issuer are not infrequently traded in a recognised stock exchange for three years and the issuer has a track record of dividend payment for three years.

Unquote

10. Proforma Financial Statements in Offer Documents

Quote

It has been observed that the company proposing a public issue, at times, acquires an entity just after the end of the latest disclosed financial year and as a result of such acquisition / restructuring, certain companies become direct or indirect subsidiaries of the issuer company. In order to understand the financial impact of such acquisition / restructuring on the

financial statements of the issuer company, the Board decided to mandate the inclusion of a proforma financial statement in Offer Documents in cases where the acquisition is material for the issuer company. Materiality for this purpose would mean:

a) the total book value of the assets of the acquired entity amounts to more than 20% of the pre-acquisition book value of the assets of the issuer company;

OR

b) the total income of the acquired entity amounts to more than 20% of the total income of the issuer company.

Unquote

11. QIB Status to Postal Life Insurance Funds

Quote

The Board decided to accord Qualified Insurance Buyer ("QIB") status to insurance funds set up by Department of Posts such as Postal Life Insurance Fund (PLIF) and Rural Postal Life Insurance Fund (RPLIF).

Unquote

The QIB status will facilitate the participation of these funds in equity offerings. Typically, 50% of an IPO is reserved for QIBs.

For more information please refer to:

<http://www.sebi.gov.in/press/2010/2010231.html>

12. Amendments to SEBI (FVCI) Regulations

Quote

The Board approved amendments to the SEBI (Foreign Venture Capital Investors) Regulations, 2000 with regard to the registration procedure for Foreign Venture Capital Investors (FVCIs). The key amendments include furnishing firm commitment letter from investor for investing at least USD 1 million, (introduced by SEBI vide Circular No.IMD/DOF-1/FVCI/CIR No.1/2009 dated July 03, 2009)². The amendments further provide for furnishing copies of financial statements of the applicant and the investor and furnishing of email address of applicant and the investor.

Unquote

² <http://www.sebi.gov.in/circulars/2009/fvci0109.pdf>

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