India | Tax & Regulatory | 21 August 2015

Regulatory Alert
Tracking change

Amendments to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

Issue no: RA/15/2015

In this issue:

Background

SEBI at its board meeting held in June 2015, had taken the decision to introduce new platform for raising of capital by startups. Accordingly, SEBI has amended SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR Regulations) on 11 August 2015 and 14 August 2015 to simplify the process of fast track issue of securities and revised the Institutional Placement Program (ITP) framework making it easier for startups companies to raise capital. SEBI has also made consequential changes in other regulations due to introduction of ITP.

Highlights of the Amendment

Fast Track Issue

- Companies which have average market capitalization of ₹ 10 billion in case of public issue and ₹ 2.5 billion in case of rights issue can make issue under Fast Track Issue route as against earlier requirement of average market capitalization of ₹ 30 billion.
- Levying of monetary penalties by stock exchanges no longer considered as a ground for ineligibility
- Additional conditions prescribed:
  - The issuer, promoter or promoter group or director of the issuer has not settled any alleged violation of securities laws through consent or settlement mechanism with SEBI during 3 years immediately preceding the reference date
  - In case of rights issue, promoters and promoter group shall mandatorily subscribe to their rights entitlement and shall not renounce except within the promoter group or in order to comply with minimum public shareholding
  - Equity shares of the issuer have not been suspended from trading as a disciplinary measures during last 3 years immediately preceding the reference date.
  - Annualized delivery based trading turnover of the equity shares during 6 calendar months immediately preceding the month of reference date should be atleast 10% of the weighted average number of equity shares listed during such period
  - There should not be any conflict of interest between lead merchant banker and issuer

or its group or associate in accordance with applicable regulations

Interim use of funds

- Prospectus, letter of offer for public, rights issue shall make following disclosure:
  - Net issue proceeds pending utilization (for the stated objects) shall be deposited only in the scheduled commercial banks for issue made by Indian issuers.
  - Interim use of funds is restricted to deposit in a bank having credit rating of 'A' or above by an international credit rating agency for IDR issuers.

Listing on ITP

SEBI has replaced the existing guidelines for listing of securities on ITP. The guidelines for listing, which were earlier available only for SME, are now made available to wider class of issuers.

Definitions

- Institutional Investor – means:
  - A QIB (as defined in ICDR Regulations)
  - Following having net worth of more than ₹ 5 billion as per last audited financial statements:
    - Family trust
    - Systemically important NBFC registered with RBI
    - Intermediary registered with SEBI

Eligibility

- Following entities are eligible for listing on ITP:
  - Entity which is intensive in use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology to provide products, services or business platforms with substantial value addition and at least 25% of its pre-issue capital is held by QIB
  - Any other entity in which at least 50% of pre-issue capital is held by QIB as on the date of filing of draft information document or draft offer document with SEBI
- No person, individually or collectively with person acting in concert shall hold more than

25% of post-issue capital

- Eligibility norms have been substantially diluted to do away with requirements such as condition of no default by company/ promoter/ group company/ director, no reference to BIFR by company or group companies in preceding 5 years, not more than 10 years of existence, paid-up share capital not exceeding ₹ 250 million and turnover not exceeding ₹ 1 billion in any financial year, at least one investment by AIF, VCF, angel investor, QIB etc.

Listing

- SEBI has now permitted listing on ITP for eligible issuer through public issue iwithout public issue

  Under previous regime, public issue was not permitted. Issue of capital was permitted only through private placement or rights issue without renunciation subject to certain conditions.

- Minimum trading lot shall be ₹ 1 million

Listing without public issue

- Eligible entity shall file draft information document along with necessary documents with SEBI along with prescribed fees
- Eligible entity shall obtain in-principle approval from the recognized stock exchange. Such in-principle approval shall be deemed to be waiver from compliance with Rule 19(2)(b) of SCRR
- Requirement of having minimum public shareholding will not apply
- Listing of securities to take place within 30 days from:
  - date of issuance of observations by SEBI
  - if no observations issued, then after expiry of the period for issuance of observations by SEBI
- Provisions of ICDR Regulations relating to allotment issue opening / closing, advertisement, underwriting, no IPO pending conversion of convertible securities, pricing, dispatch of issue material, and other such provisions related to offer of specified securities to public will not apply

Listing pursuant to public issue

- Eligible entity shall file draft offer document along with necessary documents with SEBI alongwith prescribed fees
- Minimum application size ₹ 1 million
- Number of allottees shall be more than 200
- Allocation of net public offer shall be made as under:
  - 75% to institutional investors (without separate allocation to Anchor Investor)
  - 25% to non-institutional investors
  - Under subscription in non-institutional investors can be made available to institutional investors
  - Allotment to non-institutional investors on proportionate basis
  - Allotment to institutional investors may be on discretionary basis in which case allotment to each institutional investor to be capped at 10% of issue size

Lock-in

- Entire pre-issue capital of the shareholders shall be locked-in for a period of 6 months from the date of allotment in case listing pursuant to public issue or date of listing in case of listing without public issue
- Lock-in not applicable to equity shares:
  - allotted to employees pursuant to existing ESOP scheme
  - held by Venture Capital Fund or Category I Alternative Investment Fund or a foreign venture capital investor provided equity shares were locked in for a period of 1 year from the date of purchase)
  - held by persons other than promoters continuously for a period of 1 year prior to the date of listing (in case of listing without public issue)
  - In case of equity shares held pursuant to conversion of convertible securities, holding period pre-conversion as well as post- conversion will be considered
- Locked-in securities of promoter shall be eligible for pledge with commercial banks, financial institutions as collateral security
- Specified securities allotted on discretionary basis shall be locked in as per lock-in

requirements for Anchor Investor

- Promoter shareholding post issue at minimum 25% at the time of listing with lock-in of 3 years done away with

Exit / Migration to main Board

- Entity listed without making public issue may exit from ITP, if:
  - Shareholders approve by special resolution through postal ballot where 90% of total votes and majority of non-promoter votes have been cast in favour; and
  - Recognized stock exchange where securities are listed, approves such exit
- Securities can be delisted for non-compliance of applicable listing requirements
- Post exit, any other entity promoted by promoter and directors of such entity shall not be permitted to list on ITP for a period of 5 years. This restriction is not applicable where another entity is promoted by independent directors of such delisted entity
- After 3 years of listing on IPT, the entity may migrate to main board subject to compliance with eligibility requirements
- Earlier mandatory exit within 18 months of completion of (i) 10 years of listing on ITP or (ii) paid-up share capital exceeding ₹ 250 million or (iii) turnover crossing ₹ 3 billion or (iv) market capitalization exceeding ₹ 5 billion, done away with
- SEBI Takeover Regulations not applicable to entities listed on ITP without making public issue hence, the requirements of open offer, disclosures on takeover, etc. not applicable to companies listed on ITP without making public issue
- SEBI Delisting Regulations not applicable to entities listed on ITP without making public issue hence, faster delisting possible as per ITP provisions
- Investment by Category I and II Alternative Investment Fund in securities of entities listed on ITP shall be deemed to be investment in unlisted securities to make more capital available to entities listed on ITP

Conclusion

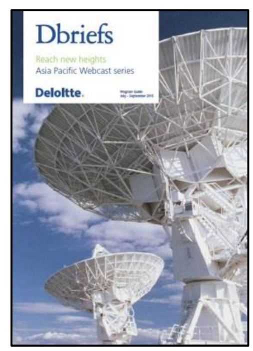
Above move could change the landscape of the country's equity capital markets. The move of permitting wider categories of entities to list without going through IPO and granting various exemptions aims towards enabling entities to tap capital markets with ease and aims towards ease of doing business in India.

Source: SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2015 dated 11 August 2015 and SEBI (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2015, SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015, SEBI (Delisting of Equity Shares) (Second Amendment) Regulations, 2015, SEBI (Alternative Investment Funds) (Amendment) Regulations, 2015, SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2015 – all dated 14 August 2015.

Upcoming Dbriefs - Register

India's New Export Incentive Schemes: A Real Boost for Exporters of Goods and Services

Thursday, 27 August 2015, 11:30 AM – 12:30 PM IST



As a step further to raise the global competitiveness of the Indian manufacturing and service sectors, the new FTP has revamped various export incentives available to the exporters of goods and services. The two new schemes under the FTP, namely Merchandise Export from India Scheme (MEIS) and the Service Exports from India Scheme (SEIS), aim to provide benefits to all exporters doing business in India. For more information, visit the **Dbriefs** page.

Register now

Contacts

Ahmedabad
Heritage, 3rd Floor,
Near Gujarat Vidyapith,
Off Ashram Road,
Ahmedabad – 380 014.
Tel: + 91 (079) 2758 2542
Fax: + 91 (079) 2758 2551

Bangalore
Deloitte Centre, Anchorage II,
100/2, Richmond Road,
Bangalore 560 025.
Tel: +91 (080) 6627 6000
Fax: +91 (080) 6627 6010

Chennai
No.52, Venkatanarayana Road,
7th Floor, ASV N Ramana Tower,
T-Nagar,
Chennai 600 017.
Tel: +91 (044) 6688 5000
Fax: +91 (044) 6688 5050

Coimbatore
Shanmugha Manram
41, Race Course,
Coimbatore
Tamil Nadu - 641018
Tel: + 91 (0422) 439 2801
Fax: +91 (0422) 222 3615

Delhi/Gurgaon
Building 10,
Tower B, 7th Floor,
DLF Cyber City,
Gurgaon 122 002
Tel : +91 (0124) 679 2000
Fax : + 91 (0124) 679 2012

Hyderabad
1-8-384 and 385, 3rd Floor,
Gowra Grand S.P.Road,
Begumpet,
Secunderabad – 500 003.
Tel: +91 (040) 6603 2600
Fax:+91 (040) 6603 2714

Kolkata
Bengal Intelligent Park Building Alpha,
1st floor, Block EP and GP Sector V,
Salt Lake Electronics Complex,
Kolkata - 700 091.
Tel : + 91 (033) 6612 1000
Fax : + 91 (033) 6612 1001

Mumbai
Indiabulls Finance Centre,
Tower 3, 28th Floor,
Elphinstone Mill Compound,
Senapati Bapat Marg, Elphinstone (W),
Mumbai – 400013
Tel: + 91 (022) 6185 4000
Fax: + 91 (022) 6185 4101

Pune
106, B-Wing, 7th Floor,
ICC Trade Tower,
Senapati Bapat Road,
Pune – 411 016.
Tel: + 91 (020) 6624 4600
Fax: +91 (020) 6624 4605

Home | Add Deloitte as a safe sender

Follow us on: