



IPP: Breather for Capital Markets!

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The Securities and Exchange Board of India ("SEBI") has by a notification dated January 30, 2012 introduced a new Chapter VIII-A to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2012 ("ICDR Regulations"). Chapter VIII-A has notified the contents of the Press Release dated January 3, 2012 by laying down the detailed regulatory framework for Institutional Placement Programme ("IPP"), an alternative method provided to listed companies to facilitate them to comply with the minimum public shareholding requirement in terms of Rules 19 (2) (b) and 19 A of the Securities Contract (Regulations) Rules, 1957.

BACKGROUND

SEBI had provided a long-stop date of June 3, 2013 (1), by which all public listed companies in India (excluding public sector companies) were expected to reduce their promoter holding to a maximum level of 75%. In line with this direction, SEBI vide Press Release dated January 3, 2012, decided to provide alternative methods namely (i) IPP and (ii) Offer for Sale through Stock Exchanges (2) for companies to raise additional capital and/or increase their public shareholding to 25% or more.

INSTITUTIONAL PLACEMENT PROGRAMME ("IPP")

This route is available only for companies which are currently not in compliance with the minimum public shareholding requirements and can be implemented either by way of fresh issue of capital by such companies or by dilution of the promoter shareholding through an offer for sale. Similar to the qualified institutions placement under Chapter VIII of the ICDR

Regulations, any offer, allocation and allotment of securities under the IPP route shall be made only to qualified institutional buyers ("QIBs").

The key provisions of Chapter VIII-A are discussed below:

Public offer of securities

The definition of IPP provided under Chapter VIII A of ICDR Regulations provides that it is a public offer of eligible securities to eligible sellers made only to QIBs. Since the IPP route is available only by way of a public offer, as per the provisions of Section 67(3) of the Companies Act, 1956 ("Companies Act"), the minimum number of offerees under the IPP route would be more than 49 in number.

Eligible securities

Under the IPP route, only equity shares of the same class listed and traded on the stock exchanges can be issued/ offered to sale to public;

Issuers cannot issue any other securities including partly paid-up shares under the IPP route.

Corporate compliances

An offer of securities under the IPP route is required to be backed by a special resolution of the shareholders of the issuer company under section 81(1A) of the Companies Act;

Issuers are required to obtain in-principle approval for listing of the securities from the stock exchanges

Disclosure requirements

Similar to qualified institutions placement ("QIP"), disclosures under the offer documents for IPPs should contain all material information in relation to the issuer, including those specified in Schedule XVIII of the ICDR Regulations. While placement documents under the QIP route are required to be filed only with the stock exchanges, offer documents under the IPP route are required to be filed simultaneously with the registrar of companies and SEBI in addition to the relevant stock exchanges;

Since issuance/ offer of equity shares under the IPP route is considered as a public offer of securities, the disclosure requirements under Schedule II of the Companies Act (3) would also be required to be met by the issuers.

Pricing restrictions

Unlike the QIP route, there are no pricing restrictions for the offer price under the IPP route. Issuer companies are required to declare the price band for issuance under the IPP, at least one day prior to the opening of the issue and allocation shall be made on a pre-defined criteria such as proportionate or priority basis, which is required to be disclosed appropriately in the offer document.

Allotment restrictions

Minimum number of allottees under the IPP route shall be 10 and no single allotment shall exceed 25% of the offer size. It is pertinent to note here that QIBs falling under the same group or having a common controlling entity shall be considered to be single allottee for the purposes of the restriction on single allotment;

The IPP route can be used by non-compliant companies to increase their public shareholding to a maximum of 10% or such lesser percentage as may be required to

comply with the minimum public shareholding of 25%.

Issue period

Issue shall remain open for a period of 1-2 days and the demand schedule (except the price) shall be displayed by the stock exchanges;

Issuer shall have the flexibility to withdraw the offer in case of under subscription.

Lock-in restrictions

Securities allotted under the IPP route shall be locked in for a period of 1 year from the date of allotment, except for sale on a stock exchange.

Differences between Further Public Offer, IPP and QIP

Subject	Further Public Offer	IPP	QIP
<i>Nature of offer</i>	Public offer	Public offer	Private Placement
<i>Eligible companies</i>	All listed companies	Listed companies currently not in compliance with minimum public holding requirements	Listed companies in compliance with minimum public holding requirements
<i>Eligible investors</i>	Retail, QIBs and Non-Institutional	Only QIBs	Only QIBs
<i>Disclosure requirements</i>	Disclosures as per relevant provisions of the ICDR Regulations and Schedule II of Companies Act	Disclosures as per Schedule XVIII of the ICDR Regulations and Schedule II of Companies Act	Disclosures as per Schedule XVIII of the ICDR Regulations
<i>Pricing restrictions</i>	Declare price band at least one day prior to the opening of the issue	Declare price band at least one day prior to the opening of the issue	Issue at a price not less than average of the weekly high and low of the closing prices of the equity shares of the same class quoted on the stock exchange during the preceding two weeks from the date of the meeting in which the board of the issuer or an authorised committee of the issuer decides to open the proposed issue.

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ANALYSIS

The introduction of IPP route should be a welcome move for companies who are struggling to comply with the minimum public holding requirement due to the adverse market conditions and existing stringent regulations. While some of the industry experts have reasoned that the introduction of alternate routes is to facilitate the divestment target of the government, it cannot be denied that this move would also facilitate the larger interest of market to have a more diverse shareholding of publicly listed companies in India and also provide alternate avenues to raise capital. While one of the major objective to increase the threshold of minimum public shareholding requirement, from 10% to 25%, was to ensure more participation of retail investors in listed companies in India, the alternate routes introduced by SEBI (viz, IPP and Offer for Sale through Stock Exchanges) do not provide for retail participation and target only sophisticated investors like QIBs, which may again lead to concentrated holdings in Indian listed companies.

The disclosure requirements for the IPP route under the ICDR Regulations have been restricted only to Schedule XVIII, similar to a QIP, which is a welcome move as it would considerably reduce the burden of issuer companies to provide detailed disclosures. However, since the offer under the IPP route would be considered as a public offer of securities, the issuer companies would still have the obligation to make detailed disclosures as required under Schedule II of the Companies Act. The obligation to make detailed disclosure requirements in addition to liabilities attached to a public offer of securities under the Companies Act, may serve as a major disincentive for eligible companies who intend to make use of the IPP route to increase their public shareholding. To provide more options to companies which are currently not in compliance with the minimum public shareholding requirements, SEBI could have also removed the impediment under Regulation 82 (c) of the ICDR Regulations (4) to allow such non-compliant to access the QIP route.

The flexibility to manage the offer price one day prior to opening of the issue, is indeed a welcome change which would allow issuer companies to manage the risk of fluctuating market prices of securities effectively and not be restricted by stringent pricing restrictions.

By inserting a restriction on the IPP offer size, SEBI has clarified that the route cannot be employed to increase the public shareholding beyond a maximum of 10% of the paid up capital. It is slightly difficult to marry the rationale behind the introduction of the IPP route and the threshold of 10%, especially in view of those companies which currently have a promoter shareholding of 85% or more. As per the extant provisions of law on date, companies having 85% or more of promoter shareholding would not be able to comply with the minimum public shareholding requirement solely by using the IPP route and may have to use alternate avenues to further reduce promoter holding in order to meet the June 2013 deadline.

CONCLUSION

In the background of repressed market conditions globally and the need to improve the liquidity of the Indian capital markets, this alternate avenue, in addition to the offer for sale on the stock exchange, would provide a fillip to not only the divestment target of the government but assist companies to meet the deadline of June 2013 to achieve the minimum public shareholding requirements. While SEBI could have made this route more attractive by allowing non-compliant companies to issue/offer securities to QIBs on a private placement basis without the pricing restrictions, we should expect some of the non-compliant companies to use the IPP route in the near future to raise funds and increase their public holding.

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- (1) The Department of Economic Affairs of the Ministry of Finance by its notifications dated June 4, 2010 and August 9, 2010, had decided to increase the minimum public holding requirement for listed companies from 10% to 25% of their total paid-up capital.
 - (2) SEBI has notified the regulations on Offer For Sale Through Stock Exchange by way of SEBI Circular dated February 1, 2012
 - (3) Please refer to Section 56 of Companies Act, 1956
 - (4) According to Regulation 82 (c) of the ICDR Regulations, a listed issuer (which is not in compliance with minimum public shareholding specified in the SCRR) is ineligible to make qualified institutional placement.