

The onset of Core Investment Companies

The Reserve Bank of India ("RBI") has recently recognized Core Investment Companies ("CIC's") as a separate sect of non-deposit taking Non- Banking Financial Company ("NBFC"). CIC's are basically NBFC's predominantly having their assets as investments in shares of its own group companies for holding stake but not for the purposes of trading. As per the regulations, CIC's having an asset size of over Rs 100 crore and above would be treated as systemically important and would not be permitted to carry out any other financial activity. CIC's are required to be registered with the RBI and obtain a Certificate of Registration ("CoR") under section 45IA of the Reserve Bank of India Act 1934. CIC's with an asset size of less than Rs 100 crore would be granted exemption from the applicability of Section 45IA of the Reserve Bank of India Act 1934, however asset size of all CIC's belonging to a particular group will be aggregated to calculate the 100 crore benchmark. Additionally, CIC's are given exemption from maintenance of net owned funds and exposure norms subject to certain conditions.

As per the regulations, it is mandatory for every Systemically Important CIC to maintain a minimum capital ratio whereby its adjusted net worth is not less than 30% of its aggregate risk weighted assets on balance sheet and the risk adjusted value of off-balance sheet items as on date of the last audited balance sheet as at the end of the financial year. Additionally every Systemically Important CIC shall ensure that its outside liabilities do not exceed 2.5 times its adjusted net worth as on date of the last audited balance sheet as at the end of the financial year.

Companies which presently have an asset size of less than Rs 100 crore would be required to apply to RBI for a CoR within 3 months of the date of achieving a balance sheet of Rs 100 crore.

Whilst CIC's are at the onset on being monitored and regulated by the RBI, the group companies under its umbrella which are in unregulated sectors would still remain unregulated to a certain extent.

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RBI permits zero-coupon NCDs

With effect from 1st August 2010, the Reserve Bank of India (RBI) has allowed companies to issue zero-coupon non-convertible debentures (NCD) at a discount to the face value, according to the final guidelines for issuance of the debt instruments with original maturity of up to one year. In addition, no corporate with a tangible net worth of less than Rs 4 crore will be permitted to issue an NCD. The company will also have to ensure that it has sanctioned working capital limit or term loan by banks or financial institutions and that its borrowal account is classified as a standard asset.

As proposed in the draft guidelines, RBI has barred companies from issuing NCDs with a maturity period of less than 90 days. An eligible corporate intending to issue NCDs will have to obtain a credit rating for issuance of the NCDs from a rating agency and the minimum credit rating shall be P-2 of CRISIL or the equivalent rating by other agencies. The total amount of NCDs proposed to be issued will have to be completed within a period of two weeks from the date on which the corporate opens the issue for subscription. RBI permitted any entity that is registered as a trustee with the Securities and Exchange Board of India (SEBI) to act as a Debenture Trustee for the NCD issue.

SEBI eases listing rules for SMEs

The Securities and Exchange Board of India (SEBI) has relaxed share-listing norms for small and medium enterprises (SMEs) by allowing them to disclose their financial results every six months instead of three months, as is the norm for bigger companies. Companies listed on the SME exchange will not be required to send a full annual report to their shareholders and also need not publish their financial results as required in the main stock exchange. On the contrary companies listed on the SME exchange may send to their shareholders a statement containing the salient features of all the documents. However these companies will have to maintain a public shareholding of at least 25% of

the total number of issued shares at all times i.e. the promoters' stake cannot exceed 75%.

A company listed on the SME exchange, having post-issue capital between Rs 10 crore and Rs 25 crore can migrate to the main exchange provided it meets the listing requirements of the stock exchange. For this purpose, the company must first make a proposal to list the specified securities and obtain the prior approval of its shareholders. "The issue shall be 100% underwritten and the merchant bankers shall underwrite 15% in their own account. The circular also permits Merchant bankers to enter into an agreement with nominated investors to subscribe to the unsubscribed portion of the issue.

RBI relaxes ECB norms for infra finance & service sector companies

The Reserve Bank of India has allowed infrastructure finance companies (IFCs) to raise funds through external commercial borrowings without obtaining its prior approval. IFCs can now raise funds through ECBs up to 50 per cent of their owned funds under the automatic route subject to their compliance with the prudential guidelines already in place. Companies raising more than 50 per cent of their owned funds through the ECB window would continue to require approval from RBI.

Entities in the services sector i.e. Hotel, Hospital and Software sectors can avail of ECB beyond USD 100 million under the Approval Route, for foreign currency and / or Rupee capital expenditure for permissible end-uses however proceeds of the ECB are not permitted to be used for acquisition of land. Earlier, Hotels, Hospitals and Software were allowed to avail ECB's up to USD 100 million per financial year only under the Automatic Route.

RBI allows take-out financing via ECBs for infra projects

The Reserve Bank of India has decided to permit take-out financing arrangement through external commercial borrowings (ECBs) under the approval route for infrastructure projects. The Corporates taking up the project should have a tripartite agreement with domestic banks and overseas recognized lenders for either a conditional or unconditional take-out of the loan within three years of the scheduled commercial operation date. The loan should have a minimum average maturity period of seven years and the domestic bank financing the project should comply with the extant prudential norms relating to take-out financing. It has also been stipulated that the fee payable, if any, to the overseas lender until the take-out should not exceed 100 basis points per annum. The residual loan agreed to be taken out by the overseas lender will be considered as ECB and the loan has to be designated in a convertible foreign currency. Domestic banks or financial institutions will not be permitted to guarantee the take-out finance. Also, the domestic bank will not be allowed to carry any obligation on its balance sheet after the take-out arrangement. All other aspects of ECB policy remain unchanged

SEBI floats new rules to curb price volatility

In order to moderate sharp & destabilizing price movements in shares SEBI has in consultation with Stock exchanges issued a circular to curb price volatility. As per the circular, only companies which have achieved at least 50% of non-promoter holding in dematerialized form by October 31st 2010 would be permitted to trade in the normal segment of the exchange. In all other case, trading shall take place in Trade- for-Trade (TFT) segment. Additionally, trading of shares in case of a merger, demerger, amalgamation, capital reduction, scheme of arrangement, Corporate Debt restructuring etc shall take place in TFT segment for first 10 trading days with applicable price band while keeping the price band open on the first day of trading.

Government relaxes built-up area norms for SEZs in smaller cities

The Government has relaxed the minimum built-up area norms for SEZ's coming up in smaller cities. In a recent notification, the Commerce Ministry has classified all cities into four categories A1 (four

metros, Bangalore and Hyderabad); A (cities such as Pune, Ahmedabad, Coimbatore, Vijayawada, Visakhapatnam), B1 (small cities such as Patna and Ludhiana). Locations which fall outside these three categories have been tagged as B2 cities. For 21 cities which have been categorized as B1 (including Kochi, Agra, Allahabad, Madurai, and Raipur), the Government has pruned minimum built-up area for SEZs to 50 per cent of the current norms. For 'B2' cities, the minimum built-up area has been lowered to just 25 per cent of the present norms.

The current built up requirements range from a minimum 40,000 square meters for bio-technology SEZs to one lakh square metres in case of IT/ITES SEZs. The built up area norms pertain to the processing area where production takes place; this is at least 50 per cent of the total SEZ area. As many as 16 cities – mostly large ones – have been classified as A and A1 and the built up area norms for these cities remain unchanged.

SEBI sets arbitration norms

SEBI has asked stock exchanges to streamline the mechanism for arbitration of disputes between a client and a member across various market segments. Exchanges have been directed to maintain a panel of arbitrators, with their number commensurate with the number of disputes. All arbitration references are to be disposed within the prescribed time.

According to the regulator, an arbitration reference for a claim/counter claim up to Rs 25 lakh will be dealt with by a sole arbitrator. Those above Rs 25 lakh shall be dealt with by a panel of three. The exchange will also have to ensure the process of appointment of arbitrator(s) is completed within 30 days from the receipt of application. Any party aggrieved by an arbitral award may appeal to the appellate panel of arbitrators of the stock exchange within a month from the date of such award.

Each of the parties to arbitration (other than a client with a claim/counter claim up to Rs 10 Lakhs & filing the reference for the same within 6 months) shall deposit an amount as prescribed by the exchange which shall not exceed the amount as indicated below:

Sl. No.	Amount of Claim/counter claim which ever is higher	If claim is filed within 6 months	If claim is filed after 6 months
1	Less than Rs 10 Lakhs	1.3 per cent, subject to a minimum of Rs 10,000	3.9 per cent, subject to a minimum of Rs 30,000
2	Rs 10 Lakhs to Rs 25 Lakhs	Rs 13,000, plus 0.3 percent of the amount above Rs 10 lakh.	Rs 39,000/- plus 0.9% amount above 10 Lakhs
3	More than 25 Lakhs	Rs 17,500, plus 0.2 percent of the amount above Rs 25 lakh, subject to a maximum of Rs 30,000	Rs 53,500/- plus 0.6% amount above Rs 25 Lakhs subject to maximum of Rs 90,000/-.

In all cases, on issue of the arbitral award the stock exchange shall refund the deposit to the party in whose favour the award has been passed. Exchanges having nationwide terminals, such as NSE, BSE, MCX-SX and USE will have to provide arbitration facility (arbitration and appellate arbitration) at all four regional centres (Delhi, Mumbai, Kolkata and Chennai).

E-filing with digital signature mandatory for companies

The Central Board of Direct Taxes amended the rules relating to electronic filing of income tax returns and has made it mandatory for companies to file their income tax returns electronically in Form No ITR-

6, with digital signatures. Earlier, companies could file their returns with or without digital signature. Filing returns electronically has also been made compulsory for all individuals and Hindu Undivided Families, who have to get their accounts audited under section 44AB of the Income Tax Act, 1961. Accounts are required to be audited under the income tax law if turnover or gross receipts from a business exceeds Rs 40 lakh (Rs 60 lakh from 2011-12), or, if the turnover or gross receipts from the profession exceeds Rs 10 lakh (Rs 15 lakh from 2011-12).

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