

nor any indication when further details are likely to be released. However, the measures will require extensive consultation given the degree of change proposed. It will therefore be important for industry participants to stay close to their industry associations and Government contacts to be able to participate fully in any "private" consultation that occurs.

The FFA Reforms will have a wide ranging impact on every part of the industry. Significant resources will therefore be required to assess that impact and to develop appropriate responses. While the full details are yet to be seen, the overall thrust of the FFA Reforms appears unlikely to change.

The FFA Reforms mean that the financial services industry is about to undergo another round of deep structural change. For advisers in particular, it will fundamentally alter established practices for marketing, sales and remuneration. At a more general level, issuers and advisers will need to consider impacts in areas such as distribution strategies, relationships with adviser groups, product disclosure, IT and systems and internal compliance, conflicts and risk management processes.

Further information about the Government's Future of Financial Advice reforms is available at <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2010/036.htm&pageID=003&min=ceba&Year=&DocType>.

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INDIA

IPO Regulations Amended, Lower Thresholds Set For SMEs

By Harshita Srivastava, Alap Yadav, and Diptee Deshpande, of Nishith Desai Associates, Mumbai.

In a landmark move that could impact the Indian industrial landscape, the Securities and Exchange Board of India ("SEBI") recently amended the SEBI (Issue of Capital and Disclosure Requirements) Regulation, 2009 ("SEBI ICDR Regulations"), and added a new chapter that provides for separate and reduced thresholds for the listing of securities of small and medium enterprises ("SMEs").

Though attempts had been made in the past to address the fund-raising issues faced by SMEs, including the development of BSE IndoNext, such efforts failed to generate adequate investor interest. In view of the aforementioned concerns, there was an indispensable requirement to set up a dedicated stock exchange/platform for the issuance/trading of securities of SMEs. Accordingly, SEBI, through the introduction of a new Chapter XA in the SEBI ICDR Regulations, provides for ease of entry and less onerous disclosure requirements with a minimum level of regulation for the SMEs. (Regulation 106B (1) (c) defines an SME Exchange to mean a trading platform of a recognized stock exchange having nationwide terminals permitted by SEBI to list the specified securities in accordance with the terms of this

new Chapter XA, and includes a stock exchange granted recognition for this purpose.)

The salient features of the new Chapter XA providing for relaxed criteria for SMEs are summarized below:

Salient Features of Chapter XA

Reduced Paid-Up Capital Threshold

An issuer company whose post-issue paid-up capital is not more than Rs. 100 million shall be eligible to list its securities on the SME Exchange. Those issuer companies whose post-issue paid-up capital lies between Rs. 100 million and Rs. 250 million have the option to list their securities either under the provisions of this Chapter XA or else comply with the terms and conditions prescribed for the purpose under the existing chapters of SEBI ICDR Regulations. (In case the issuer company desires to list its securities on the main boards of the National Stock Exchange (NSE) or the Bombay Stock Exchange (BSE), it shall have to comply with Regulation 6(1), 6(2), 6(3), Regulation 7, Regulation 8, Regulation 9, Regulation 10, Regulation 25, Regulation 26, Regulation 27 and Regulation 49(1) of the SEBI ICDR Regulations.) As per the provisions of the SEBI ICDR Regulations, a minimum paid-up capital of Rs. 100 million is required for the listing of securities on any of the main boards of the NSE and the BSE (collectively referred to as the "Stock Exchanges").

Filing of the Offer Document

The offer document is required to be submitted to the merchant banker, who in turn will file it with SEBI along with the new Form H. (A new Form H has been introduced by the recent amendment which contains certain additional confirmations to be provided to SEBI at the time of filing the offer documents.) A prospectus in relation to the issue shall also be filed with the SME Exchange and the Registrar of Companies. It has been specifically mentioned that SEBI will not scrutinize the offer document, since investors are expected to make informed investment decisions. This is contrary to the current practice where the offer document is filed with SEBI and the recognised stock exchanges where the issuer company seeks listing.

Underwriting

Underwriters to the issue under Chapter XA shall ensure that the issue is 100 percent underwritten and that a disclosure to that effect is made to SEBI, one day prior to the opening of the issue. A minimum of 15 percent of the issue size is mandated to be underwritten by the merchant bankers. Certain Nominated Investors may be permitted to enter into contractual arrangements with the merchant bankers to share the burden of devolvement of underwriting obligations; however, such contractual arrangements shall be subject to the prior approval of the SME Exchange. In case the underwriters or the Nominated Investors fail to achieve the minimum subscription, the merchant banker shall be required to fulfill its underwriting obligations. (Regulation 106B (1) (b) defines "Nominated Investor" to mean a qualified institutional buyer or private equity fund who enters

into an agreement with the merchant banker to subscribe to the issue in case of under-subscription or to receive or deliver the specified securities in the market-making process.)

Application Size

The minimum issue application size is fixed at Rs. 100,000 per application, as opposed to the minimum application value ranging from Rs. 5,000 to Rs. 7,000 per application under the existing Regulation 49(1) of Chapter III of the SEBI ICDR Regulations. Further, the minimum number of allottees should be at least 50.

Migration to SME Exchange

A listed issuer whose post-issue paid-up capital is less than Rs. 250 million has an option to migrate to the SME/main boards of the Stock Exchanges, as the case may be, subject to the approval of its shareholders and compliance with the eligibility criteria laid down by the SME Exchange or the main boards, respectively.

Migration from SME Exchange

Companies listed on the SME Exchange shall compulsorily migrate to the main board of the Stock Exchanges if their post-issue share capital is in excess of Rs. 250 million. Upon the performance of any rights issue/preferential issue/bonus issue which results in triggering of the above limit, such company would have to compulsorily migrate to the main board. Such companies shall therefore be required to comply with the provisions of the Listing Agreement of the main exchange and all regulatory requirements, including compliance with SEBI ICDR Regulations, for the purposes of the same.

Market-Making

The merchant banker to the issue shall bear the responsibility of compulsory market-making for a minimum period of three years. The securities being bought and sold as part of the market-making shall ultimately get transferred to the Nominated Investor. During the compulsory market-making period, the market makers are restricted from buying any securities from the promoters/promoter group of the issuer or any other acquirer. The promoters may therefore be allowed to dilute their shareholding either through offer for sale or through sale to an acquirer. However, the promoters' shareholding which is not locked in may be traded with the prior permission of the SME Exchange. In case the value of the shareholding of the Nominated Investors falls below Rs. 1 lakh, for any reason whatsoever, the market maker is obligated to buy the entire shareholding of such investor in a single lot.

Additional Amendments

In addition to the above, significant changes have also been affected in other chapters of the SEBI ICDR Regulations, some of which are as follows:

Definition of the Term 'Employee' (Regulation 2 (1) (m))

The amendment seeks to broaden the ambit of the definition of "employee" by including therein an employee of the holding company or subsidiary company or that of the material associates of the issuer company whose financial statements are consolidated with those of the issuer company according to Accounting Standards 21. Consequent changes to the term "employee" have been made in other applicable provisions of the SEBI ICDR Regulations in order to reflect the change in this definition.

Implication: By virtue of this amendment, an employee of the holding, subsidiary and material associates will also be able to benefit from an employee stock option plan/scheme and the employee allocation portion of the issue.

Preferential Issue (Amendment to Regulation 70)

In the light of the proposed amendments, it has been clarified that the lock-in provisions as stipulated herein shall be applicable only to a preferential issue of equity shares pursuant to a rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction.

Implication: This amendment brings welcome relief to the public shareholders of the resultant amalgamated company which will not be subject to the lock-in provisions.

Conditions for Issue of Indian Depository Receipt (IDR) (Regulation 98)

Regulation 98 (e) of the SEBI ICDR Regulations as it stands today requires that a minimum of 30 percent of the total 50 percent (which may be allocated among the non-institutional investors and retail individual investors) of the IDR issued shall be allocated to retail individual investors. As opposed to this, the new amendment requires a mandatory allotment of 30 percent of the total IDR issue to the retail individual investors.

Implication: This amendment will facilitate an enhanced retail participation in SMEs for investors having a high-risk appetite.

Consequential Changes Made in Other Legislation

In line with the amendment to the ICDR Regulations, a new provision has been added to the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2000 ("Takeover Code") as Regulation 3(1)(f)(vii) with effect from April 13, 2010. The new Regulation envisages that the provisions of the Takeover Code shall not be applicable to the acquisition of shares by the merchant bankers/market makers, provided that such merchant bankers/market makers do not have the intention of taking over the management and there is no resultant change in control (direct or indirect) of the issuer company.

The text of SEBI's amendments is available at <http://>

www.nishithdesai.com/New_Hotline/Capital/icdrthirdamendapr2010.pdf.

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NEW ZEALAND

Single Regulator Planned To Oversee Financial Markets

By a BNA Special Correspondent.

MELBOURNE—The New Zealand government announced April 28, 2010, it will establish a new single regulator, the Financial Markets Authority (FMA), to oversee financial services and securities markets.

The FMA will consolidate functions currently fragmented across the Securities Commission, the Ministry of Economic Development, and the New Zealand Stock Exchange (NZX).

Legislation to establish the new authority will be introduced to parliament this year, with the aim of having it up and running by early 2011.

“Over the past year, it has become increasingly clear to me that one of the missing pieces in the regulatory landscape is a single regulator focused on proactively monitoring and enforcing securities law,” Commerce Minister Simon Power said April 28.

The new agency will have “a clear focus on visible, proactive, and timely enforcement,” he said.

The FMA will be responsible for approving NZX conduct rules and will have the power to request changes to existing rules. It will also have the authority to require NZX to provide it with information for market surveillance purposes, including real-time trading information.

The FMA’s responsibilities will also include regulating auditors and licensing trustees.

Proposed Changes Regarding Financial Advisers

Meanwhile, proposed changes to the laws regulating financial advisers will be introduced through amendments to the Financial Advisers Act 2008, which does not take full effect until July 2011, and to partner legislation called the Financial Service Providers (Registration and Dispute Resolution) Act 2008, the government announced May 3.

The changes will augment amendments already proposed in a Financial Service Providers (Pre-Implementation Adjustments) Bill that is currently under consideration by parliament’s select committee on commerce. The committee is scheduled to report on that bill by May 24.

These latest proposed changes include adjustments so that obligations imposed on those advising wholesale cli-

ents, such as institutional investors and large companies, are not as onerous as those imposed on those advising small investors.

They will also increase the powers of the Securities Commission to grant limited exemptions from the legislative regime and increase the government’s power to provide total exemptions from the regime through regulations.

The government has asked parliament’s commerce select committee to expand its current inquiry to encompass the latest proposed changes.

A Cabinet paper on the proposed changes to the two laws regulating financial advisers is available at http://www.med.govt.nz/templates/MultipageDocumentTOC___43197.aspx.

SINGAPORE

Court Of Appeal Rules On Case Of Minority Oppression

By Loong Tse Chuan and William Ong, of Allen & Gledhill LLP, Singapore.

In *Over & Over v Bonvests and Richvein* [2010] SGCA 7, the Singapore Court of Appeal considered Section 216 of the Companies Act (“Section 216”), which deals with the oppression of minority shareholders. It held that, when oppression is alleged, the court must have regard to all of the circumstances and consider the cumulative effect of the alleged oppressive conduct. The key consideration in any oppression action is fairness.

Background Facts

Over & Over Ltd. (“Over”) was a minority shareholder in Richvein Pte. Ltd. (“Richvein”), a joint venture company with Bonvests Holdings Ltd. (“Bonvests”). Richvein’s sole business venture was the construction and management of a hotel. At the time of Richvein’s incorporation, the joint venture parties were both privately held family companies. The majority shareholders’ interest was transferred to Bonvests, a public listed company, at a later date.

Richvein’s incorporation process was very informal and based on mutual trust between the parties. Their agreement was not formally documented in either a shareholders’ agreement or Richvein’s memorandum and articles of association. However, the relationship was underpinned by a number of key understandings.

The Alleged Oppressive Conduct

Relations between the two families began to steadily deteriorate and, in 2007, Over brought a claim for relief against oppressive and/or unfairly prejudicial conduct under Section 216. Over claimed that it had been subject to oppressive conduct on the following three occasions:

- **Related party transactions:** Richvein entered into waste disposal, cleaning and hotel management contracts with three companies in which Bonvests and/or