SEBI Updates

- Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2009

RBI Updates

- Lending under Consortium Arrangement / Multiple Banking Arrangements
- “Reserve Bank of India (Non-Banking Financial Companies) Specifications 2009”

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SEBI UPDATES

- Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2009
PUBLISHED BY AUTHORITY
NEW DELHI, FEBRUARY 13, 2009
SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION
MUMBAI, the 13th February, 2009
Securities and Exchange Board of India
(Substantial Acquisition of Shares and Takeovers)
(Second Amendment) Regulations, 2009

No. LAD/NRO/GN/2008-09/34/154082. In exercise of the powers conferred by Section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to amend the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, namely:-

1. (i) These regulations may be called the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2009.

(ii) These regulations shall come into force on the date of their publication in the Official Gazette.

2. In the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 –

(i) in regulation 25, after sub-regulation (2A) the following sub-regulation shall be inserted, namely: -

“(2B) No public announcement for a competitive bid shall be made after an acquirer has already made the public announcement pursuant to relaxation granted by the Board in terms of regulation 29A.”

(ii) after regulation 29, following regulation shall be inserted, namely:-

“Relaxation from the strict compliance of provisions of Chapter III in certain cases.

29A. The Board may, on an application made by a target company, relax any or more of the provisions of this Chapter, subject to such conditions as it may deem fit, if it is satisfied that –

(a) the Central Government or State Government or any other regulatory authority has removed the board of directors of the target company and has appointed other persons to hold office as directors thereof under any law for the time being in force for orderly conduct of the affairs of the target company;

(b) such directors have devised a plan which provides for transparent, open, and competitive process for continued operation of the target company in the interests of all stakeholders in the target company and such plan does not further the interests of any particular acquirer;

(c) the conditions and requirements of the competitive process are reasonable and fair;
(d) the process provides for details including the time when the public offer would be made, completed and the manner in which the change in control would be effected;
(e) the provisions of this Chapter are likely to act as impediment to implementation of the plan of the target company and relaxation from one or more of such provisions is in public interest, the interest of investors and the securities market.”

C. B. BHAVE
CHAIRMAN

Footnote:
1. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (the said Regulations) were published in the Gazette of India on 20th February 1997, vide S.O. No. 124(E).
2. Subsequently a Corrigendum was published in the Gazette of India, Extra- Ordinary on 6th February 1998 vide S.O. No. 106(E).
3. The said Regulations were subsequently amended by –
   (a) SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 1998 published in the Official Gazette vide S.O. 930(E) dated 28th October 1998.
   (c) SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2000 published in the Official Gazette vide S.O. 1178 (E) dated 30th December 2000.
   (d) SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2001 published in the Official Gazette vide S.O. 791 (E) dated 17th August 2001.
   (e) SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2001 published in the Official Gazette vide S.O. 875 (E) dated 12th September 2001.
   (f) SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2001 published in the Official Gazette vide S.O. 1058 (E) dated 24th October 2001.
   (g) SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2002 published in the Official Gazette vide S.O. 127(E) dated 29th January 2002.
   (h) SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002 published in the Official Gazette vide S.O. 954(E) dated 9th September 2002.
   (i) SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2002 published in the Official Gazette vide S.O.1328 (E) dated 18th December, 2002.
   (k) SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2004 published in the Official Gazette vide S.O. 5 (E) dated 30th December, 2004 and effective from 03.01.05. (l) SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2006 published in the Official Gazette vide S.O. 807 (E) dated 26th May, 2006.
   (m) SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2006 published in the Official Gazette vide S.O. 1330 (E) dated 21st August, 2006.

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• Lending under Consortium Arrangement / Multiple Banking Arrangements
• “Reserve Bank of India (Non-Banking Financial Companies) Specifications 2009”
The Chairman & Managing Directors / Chief Executive Officers of All Scheduled Commercial Banks (Excluding RRBs and LABs)

Dear Sir,

Lending under Consortium Arrangement / Multiple Banking Arrangements

Please refer to Paragraph 2(iii) of our circular RBI/2008-09/183/DBOD.No.BP.BC.46/08.12.001/2008-09 dated September 19, 2008 on the captioned subject.

2. In terms of Paragraph 2(iii) of the above circular, in order to strengthen the information sharing system among banks in respect of the borrowers enjoying credit facilities from multiple banks, the banks are required to obtain regular certification by a professional, preferably a Company Secretary, regarding compliance of various statutory prescriptions that are in vogue, as per specimen given in Annex III to the above circular.

3. In this context it is clarified that in addition to Company Secretaries, banks can also accept the certification by a Chartered Accountants & Cost Accountants. Further, on the basis of suggestions received from Indian Banks Association, Annex III - Part I & Part II (copy enclosed) has also been modified.

Yours faithfully,

(P. Vijaya Bhaskar)
Chief General Manager.
Encl: As above.
Part : I

DILIGENCE REPORT

To,
The Manager,
___________________ (Name of the Bank)

I/We have examined the registers, records, books and papers of ____________ Limited
having its registered office at………………………………………………………………………, as required
to be maintained under the Companies Act, 1956 (the Act) and the rules made
thereunder, the provisions contained in the Memorandum and Articles of Association of
the Company, the provisions of various statutes, wherever applicable, as well as the
provisions contained in the Listing Agreement/s, if any, entered into by the Company with
the recognized stock exchange/s for the half year ended on………………. In my/our
opinion and to the best of my/our information and according to the examination carried
out by me/us and explanations furnished to me/us by the Company, its officers and
agents. I/We report that in respect of the aforesaid period:

1. The management of the Company is carried out by the Board of Directors comprising
   of as listed in Annexure …., and the Board was duly constituted.

   During the period under review the following changes that took place in the Board of
   Directors of the Company are listed in the Annexure …., and such changes were carried
   out in due compliance with the provisions of the
   Companies Act, 1956.

2. The shareholding pattern of the company as on ------- was as detailed in
   Annexure …………:

   During the period under review the changes that took place in the shareholding pattern of
   the Company are detailed in Annexure…….:

3. The company has altered the following provisions of

   (i) The Memorandum of Association during the period under review and has complied
       with the provisions of the Companies Act, 1956 for this purpose.

   (ii) The Articles of Association during the period under review and ha complied with the
        provisions of the Companies Act, 1956 for this purpose.

4. The company has entered into transactions with business entities in which directors of
   the company were interested as detailed in Annexure……. 

5. The company has advanced loans, given guarantees and provided securities
   amounting to Rs. ______________ to its directors and/or persons or firms or companies in
   which directors were interested, and has complied with Section – 295 of the Companies
   Act , 1956.

6. The Company has made loans and investments; or given guarantees or provided
   securities to other business entities as detailed in Annexure ….and has complied with the
   provisions of the Companies Act, 1956.

7. The amount borrowed by the Company from its directors, members, financial
   institutions, banks and others were within the borrowing limits of the Company. Such
borrowings were made by the Company in compliance with applicable laws. The break up of the Company's domestic borrowings were as detailed in Annexure .....

8. The Company has not defaulted in the repayment of public deposits, unsecured loans, debentures, facilities granted by banks, financial institutions and nonbanking financial companies.

9. The Company has created, modified or satisfied charges on the assets of the company as detailed in Annexure.... Investments in wholly owned Subsidiaries and/or Joint Ventures abroad made by the company are as detailed in Annexure ......

10. Principal value of the forex exposure and Overseas Borrowings of the company as on ............. are as detailed in the Annexure under"

11. The Company has issued and allotted the securities to the persons-entitled thereto and has also issued letters, coupons, warrants and certificates thereof as applicable to the concerned persons and also redeemed its preference shares/debentures and bought back its shares within the stipulated time in compliance with the provisions of the Companies Act,1956 and other relevant statutes.

12. The Company has insured all its secured assets.

13. The Company has complied with the terms and conditions, set forth by the lending bank/financial institution at the time of availing any facility and also during the currency of the facility

14. The Company has declared and paid dividends to its shareholders as per the provisions of the Companies Act, 1956.

15. The Company has insured fully all its assets.

16. The name of the Company and or any of its Directors does not appear in the defaulters' list of Reserve Bank of India.

17. The name of the Company and or any of its Directors does not appear in the Specific Approval List of Export Credit Guarantee Corporation.

18. The Company has paid all its Statutory dues and satisfactory arrangements had been made for arrears of any such dues.

19. The funds borrowed from banks/financial institutions have been used by the company for the purpose for which they were borrowed.

20. The Company has complied with the provisions stipulated in Section 372 A of the Companies Act in respect of its Inter Corporate loans and investments.

21. It has been observed from the Reports of the Directors and the Auditors that the Company has complied with the applicable Accounting Standards issued by the Institute of Chartered Accountants in India.

22. The Company has credited and paid to the Investor Education and Protection Fund within the stipulated time, all the unpaid dividends and other amounts required to be so credited.
23. Prosecutions initiated against or show cause notices received by the Company for alleged defaults/offences under various statutory provisions and also fines and penalties imposed on the Company and/or any other action initiated against the Company and/or its directors in such cases are detailed in Annexure…….

24. The Company has (being a listed entity) complied with the provisions of the Listing Agreement.

25. The Company has deposited within the stipulated time both Employees' and Employer's contribution to Provident Fund with the prescribed authorities.

Note: The qualification, reservation or adverse remarks, if any, are explicitly stated may be stated at the relevant paragraphs above place(s).

Place:                                                                             Signature:  
Date:                                                                             Name of Company Secretary/Firm:  
C.P. No.:
Part II

CERTIFICATIONS OF BORROWAL COMPANIES
BY CHARTERED ACCOUNTANTS / COMPANY SECRETARIES/
COST ACCOUNTANTS

i. Terms of reference for stock audit are to be spelt out clearly by the Banks, so that the Chartered Accountants can give focused attention to such areas.

ii. End-use verification of funds lent, if certified by Statutory Auditors, will be a good comfort to the Banks.

iii. As Banks quite often deal with unlisted companies, disclosure requirements for such companies above a specific turnover may be made akin to those for listed companies, viz. consolidated balance sheet, segmental reporting etc. Information on large shareholding also will be useful.

iv. Further, the following additional certification either from Chartered Accountant or Company Secretary or Cost Accountants may also be thought of :-

(a) Company Directors not figuring in defaulters list (RBI/ECGC)/willful defaulters list etc.)

(b) Details of litigation above a specified cut off limit.

(c) A specific certificate, probably from the Company Secretary, regarding compliance with Sec. 372 (a) of the Companies Act.

(d) Details of creation/ modification/satisfaction of charges on the assets of the company, position regarding insurance, show cause notices received, finds and penalties awarded.

v. As regards rotation of Auditors, for the sake of operational convenience, it is suggested they may be changed once every 5 years instead of every 3 years.

vi. In order to avoid concentration, group companies may have different Statutory/ Internal Auditors in case group turnover exceeds Rs.100 crores
To
The Chairman/CEOs of all Non-Banking Financial Companies (accepting public deposits) [Excluding RNBCs]

Dear Sir,

"Reserve Bank of India (Non-Banking Financial Companies) Specifications 2009"

Please refer to Notification No.DFC.121/ED(G)-98 dated January 31, 1998 (hereinafter called the Directions). It has been since decided to amend the Directions so as to allow of investments in fixed deposits of SIDBI and NABARD for meeting the requirements of Section 45IB of Reserve Bank of India Act, 1934.


3. After amendment, paragraphs (1) and (2) of the Directions shall read as under.

"(1) every non-banking financial company, other than a residuary nonbanking company governed by the provisions of Residuary Non-Banking Companies (Reserve Bank) Directions, 1987, contained in Notification No.DFC.55/DG(O)-87, dated 15th May, 1987, shall invest and continue to invest in India in unencumbered approved securities valued at the price not exceeding the current market price of such securities an amount which shall, at the close of business on any day –

(i) -----
(ii) -----

(iii) On and from February 13, 2009 be not less than 15 per cent of the public deposit as defined under paragraph 2(1)(xii) of the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, outstanding at the close of business on the last working day of the second preceding quarter, and

(2) all other provisions of section 45-IB shall mutatis mutandis be applicable to the above requirement as if the expression "public deposit" is the same as the expression "deposit" as contemplated under the said provision.

Provided howsoever that such Non-Banking Financial Companies shall be entitled to invest an amount equal to or in excess of ten percent of public
deposits, in unencumbered approved securities and the remaining in unencumbered (a) term deposits in any scheduled commercial bank, Small Industries Bank (SIDBI) or National Bank for Agriculture and Rural Development (NABARD) or (b) bonds issued by SIDBI or NABARD.

Provided further that, the aggregate of the amount invested in unencumbered approved securities, term deposits and the bonds as aforesaid shall not be less than 15 percent of public deposits.

Yours faithfully,

(P. Krishnamurthy)
Chief General Manager In-Charge
RESERVE BANK OF INDIA

DEPARTMENT OF NON-BANKING SUPERVISION
CENTRAL OFFICE
CENTRE 1, WORLD TRADE CENTRE
CUFFE PARADE, COLABA
MUMBAI - 400 005

Notification No. DNBS (PD).205 / CGM (PK)-2009 dated February 13, 2009

In exercise of the powers conferred under Section 45NC read with sub-section

(1) of Section 45-IB of the Reserve Bank of India Act, 1934 (2 of 1934), the Reserve Bank of India having considered and being satisfied that it is necessary so to do, hereby directs that the directions contained in Notification No.DFC.121/ED(G)-98 dated January 31, 1998, shall stand amended with immediate effect, as follows, namely –

2. In paragraph (1), clauses (i) and (ii) shall be deleted.

3. In paragraph (1), for clause (iii), the following clause (iii) shall be substituted

(iii) On and from February 13, 2009 be not less than fifteen per cent

4. After paragraph (2), the following provisos shall be inserted.

“Provided howsoever that such Non-Banking Financial Companies shall be entitled to invest an amount equal to or in excess of ten percent of public deposits, in unencumbered approved securities and the remaining in unencumbered (a) term deposits in any scheduled commercial bank, Small Industries Bank (SIDBI) or National Bank for Agriculture and Rural Development (NABARD) or (b) bonds issued by SIDBI or NABARD.

Provided further that, the aggregate of the amount invested in unencumbered approved securities, term deposits and the bonds as aforesaid shall not be less than 15 per cent of public deposits.

(P. Krishnamurthy)

Chief General Manager In-Charge