



STUDENT PROFESSIONALS TODAY



VOLUME 1

ISSUE 7

October 2017

PAGES 1-20

PRICE: Rs.20



An Initiative by :



**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

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Invitation for Contributing an Article

Readers are invited to contribute article/s for the Journal. The article should be on a topic of current relevance on Corporate Law, Tax Law, or on any other matter or issue relating to Economic or Commercial Laws. The article should be original and of around 7-8 pages in word file (approx. 2500 words). Send your articles at email id : articles@vidhimaan.com along with your student registration number. The shortlisted articles shall be published in the Journal.

Printed and Published by B P Bhargava on behalf of Vidhimaan Publishers Pvt. Ltd. Printed at Delhi Press Samachar Patra Pvt. Ltd., 36-A, UPSIDC, Site-4, Sahibabad and published at 158 Basant Enclave, Palam Road, New Delhi 110057. Editor : B P Bhargava.

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Send your articles at email id : articles@vidhimaan.com

For non receipt of issue email id : notreceived@vidhimaan.com

For any other issue email id : info@vidhimaan.com

Annual subscription price Rs.750/- (January - December, 2017), send your cheque in favour of Vidhimaan Publishers Private Limited, at Krishna Law House, 128, Municipal Market, Super Bazar Compound, Connaught Place, New Delhi-110001. Tel.: 011-23417866, 64566061

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Dear Students,

Abraham Lincoln has once quoted that “the best way to predict the future is to create it”. Indeed, it is the powerful thoughts, effective actions and judicious accomplishments, which create the history.

Friends, with the recent inaugural of the Institute’s Golden Jubilee by the gracious hands of Hon’ble Prime Minister, we, as one of the premier institute of the nation has marked the glorious journey of serving professional excellence in compliance and governance. As the governance professional, we followed a success mantra of “Think It, Do It and Create History.” The real impulse of our golden account serving global standards of Professional Excellence in last 49 years is folded with receiving motivation from the professional comrades. In the long narration of our success and dedication, it has been observed time and again that footprints of success has not only inspired the spirit to work hard for triumph but also paved the ways towards precise direction of the professional accomplishment.

Company Secretaries with the mission of striving professional excellence in the corporate governance are nucleus of vivid professional capabilities and abilities. As the precedent speaks the stories of winning sensation of the profession of Company Secretaries all over the globe, it will be worth to mention that we have explored and server the opportunities at varied fields from stem to stern. The flying colours of our service towards nation building are rewarded with this mammoth celebration of our Golden Jubilee. This further motivates us to keep dedicating our faithful services for an inclusive nation dreamt under Vision New India, 2022.

On this illustrious moment of the Golden Jubilee of our alma mater, I entreat to all of you to come out with innovative, constructive, meaningful and effective initiatives in spreading par excellent governance and compliance culture worldwide.

सी एस (डॉ.) श्याम अग्रवाल
अध्यक्ष, भारतीय कंपनी सचिव संस्थान
Date: 6th October, 2017

PM ADDRESSES COMPANY SECRETARIES AT THE INAUGURATION OF THE GOLDEN JUBILEE YEAR OF ICSI

*Press Release dated 4th October 2017, issued by PIB**

The Prime Minister, Shri Narendra Modi, today addressed Company Secretaries at the inauguration of the Golden Jubilee Year of ICSI – the Institute of Company Secretaries of India.

On this occasion, the Prime Minister congratulated all those associated with ICSI. He said he is happy to be among those who are responsible for ensuring that companies follow the law, and maintain their accounts properly. He said their work helps establish the country's corporate culture. Their advice has a bearing on the country's corporate governance, he added.

The Prime Minister said that there are a few people in our country who attempt to weaken the honesty of our social structures, and lower the nation's dignity. He said that the Government is working towards

cleansing the system of such elements.

The Prime Minister said that as a result of the efforts of the Government, the economy is functioning with less cash. The cash to GDP ratio has come down to 9 per cent, from 12 per cent before demonetization. The Prime Minister cautioned against people who only wish to spread a feeling of pessimism. The Prime Minister recounted instances in the past when the growth rate had fallen below 5.7 per cent, witnessed in the last quarter. He said that low growth rates, on those occasions, had been accompanied by higher Inflation, higher Current Account Deficit and higher Fiscal Deficit.

The Prime Minister said that there was a time when India was considered to be part of the Fragile Five economies, which were

*Available at <http://pib.gov.in/newsite/erelease.aspx>

PM addresses Company Secretaries at the inauguration
of the Golden Jubilee year of ICSI

dragging back global recovery.

Acknowledging the decline in growth in the previous quarter, the Prime Minister said that the Government is committed to reversing this trend. He said several important reform related decisions have been taken and this process will continue. He asserted that the country's financial stability will be maintained. He assured the gathering that the steps taken by the Government will take the country to a new league of development in the years to come. He said that a premium would be placed on honesty, and the interests of the honest would be protected.

The Prime Minister outlined the massive increase in investment and outlays in some key sectors over the last three years. He said that 87 reforms have been carried out in 21 sectors in this period. He presented figures to show the quantum jump in investment.

The Prime Minister said that in the

policy and planning of the Government, care is being taken to ensure that savings accrue to the poor and the middle class, even as their lives change for the better.

The Prime Minister asserted that as he works to empower the people and the nation, even though he faces criticism on some occasions, he cannot mortgage the country's future, for his own present.

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SECURITIES LAWS - ISSUE AND LISTING OF SHARES

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In this article, the author provides a bird's eye view of the issue and listing of shares on stock exchanges under the Securities Laws.

INTRODUCTION

A security is a fungible, negotiable financial instrument that holds some type of monetary value. It represents an ownership position in a publicly-traded corporation (via stock), a creditor relationship with a governmental body or a corporation (represented by owning that entity's bond), or rights to ownership as represented by an option. Securities can be broadly categorised into two distinct types : equities and debts.

Equity Securities

It represents ownership interest held by shareholders in an entity (a company, partnership or trust), realised in the form of shares of capital stock, which includes shares of both common and preferred stock. Holders of equity securities are typically not entitled to regular payments (though equity securities often do pay out dividends), but they are able to profit from capital gains when they sell the securities (assuming they have increased in value, naturally). Equity securities do entitle the holder to some control of the company on a pro rata basis, via voting rights. In the case of bankruptcy, they share only in residual interest after all obligations have been paid out to creditors.

Debt Securities

It represents money that is borrowed and must be repaid, with terms that stipulates the size of the loan, interest rate and maturity or renewal date. Debt securities, which include government and corporate bonds, certificates of deposit (CDs) and collateralised securities

(such as CDOs and CMOs), generally entitle their holder to the regular payment of interest and repayment of principal (regardless of the issuer's performance), along with any other stipulated contractual rights (which do not include voting rights). They are typically issued for a fixed term, at the end of which they can be redeemed by the issuer. Debt securities can be secured (backed by collateral) or unsecured, and, if unsecured, may be contractually prioritised over other unsecured, subordinated debt in the case of a bankruptcy.

Hybrid Securities

Hybrid Securities, as the name suggests, combine some of the characteristics of both debt and equity securities. Examples of hybrid securities include equity warrants (options issued by the company itself that give shareholders the right to purchase stock within a certain time frame and at a specific price), convertible bonds (bonds that can be converted into shares of common stock in the issuing company) and preference shares (company stocks whose payments of interest, dividends or other returns of capital can be prioritised over those of other stockholders). Although preferred stock is technically an equity security, it's often treated as a debt security, because it "behaves like a bond": It offers a fixed dividend rate and is a popular instrument for income-seeking investors. It is essentially fixed-income security.

LISTING OF SECURITIES

Listing means the admission of securities of a company to trading on a stock exchange.

Securities Laws- Issue and Listing of Shares

Listing is not compulsory under the Companies Act, 2013 ('the Act'). It becomes necessary when a public limited company desires to issue shares or debentures to the public. A company, desirous of listing its securities on the stock exchange, shall be required to file an application, in the prescribed form, with the exchange before issue of prospectus by the company, where the securities are issued by way of a prospectus or before issue of 'offer for sale', where the securities are issued by way of an offer for sale. The company shall be responsible to follow all the requirements specified in the Act, the listing norms issued by SEBI from time to time and such other conditions, requirements and norms that may be in force from time to time and included hereafter in these Bye-laws and Regulations to make the security eligible to be listed and for continuous listing on the exchange.

Objectives of Listing

The major objectives of listing are to –

- ❑ provide ready marketability and liquidity of a company's securities.
- ❑ provide free negotiability to stocks.
- ❑ protect shareholders and investors interests.
- ❑ provide a mechanism for effective control and supervision of trading.

Listing Requirements

A company which desires to list its shares in a stock exchange has to comply with the following requirements:

Permission for listing should have been provided for in the memorandum of association and articles of association.

The company should have issued for public subscription at least the minimum prescribed percentage of its share capital (49 percent).

The prospectus should contain necessary information with regard to the opening of subscription list, receipt of share application, etc.

Allotment of shares should be done in a fair and reasonable manner. In case of over subscription, the basis of allotment should be decided by the company in consultation with the recognised stock exchange where the shares are proposed to be listed.

The company must enter into a listing agreement with the stock exchange. The listing agreement contains the terms and conditions of listing. It also contains the disclosures that have to be made by the company on a continuous basis.

MINIMUM PUBLIC OFFER

A company which desires to list its securities in a stock exchange, should offer at least sixty per cent of its issued capital for public subscription. Out of this sixty per cent, a maximum of eleven per cent in the aggregate may be reserved for the Central Government, State Government, their investment agencies and public financial institutions. The public offer should be made through a prospectus and through newspaper advertisements. The promoters might choose to take up the remaining forty per cent for themselves, or allot a part of it to their associates.

Fair Allotment

Allotment of shares should be made in a fair and transparent manner. In case of over subscription, allotment should be made in an

Securities Laws- Issue and Listing of Shares

equitable manner in consultation with the stock exchange where the shares are proposed to be listed. In case the company proposes to list its shares in more than one exchange, the basis of allotment should be decided in consultation with the stock exchange which is located in the place in which the company's registered office is located.

Listing Procedure

The following are the steps to be followed in listing of a company's securities in a stock exchange:

The promoters should first decide on the stock exchange or exchanges where they want the shares to be listed.

They should contact the authorities to the respective stock exchange/exchanges where they propose to list.

They should discuss with the stock exchange authorities the requirements and eligibility for listing.

The proposed memorandum of association, articles of association and prospectus should be submitted for necessary examination to the stock exchange authorities

The company then finalises the memorandum, articles of association and prospectus

Securities are issued and allotted.

The company enters into a listing agreement by paying the prescribed fees and submitting the necessary documents and particulars.

Shares are then and there available for trading.

PREFERENTIAL ALLOTMENT

Securities issued on preferential allotment basis or under the employees stock option scheme by an issuer, whose securities are already admitted to dealings on the exchange, may be granted admission to dealings on the exchange on complying with the listing conditions, requirements and norms, under the Securities Contracts (Regulation) Act, 1956, Securities Contracts (Regulation) Rules, 1956, the Companies Act, 2013 and the Rules made thereunder, and Bye-laws and regulations, as may be prescribed by the governing board or managing director or relevant authority and/or SEBI from time- to- time.

LIQUIDATION OR MERGER

If any issuer, whose securities have been granted admission to dealings on the exchange, is placed in final or provisional liquidation or is about to be merged into or amalgamated with another company, the governing board or managing director or relevant authority may withdraw the admission to dealings on the Exchange granted to its securities. The governing board or managing director or relevant authority may accept such evidence as it/he deems sufficient as to such liquidation, merger or amalgamation. If the merger or amalgamation fails to take place or if any company placed in provisional liquidation be reinstated and an application be made by such company for readmission of its securities to dealings on the exchange, the governing board or managing director or relevant authority shall have the power of considering and of approving, refusing or deferring such application.

Securities Laws- Issue and Listing of Shares

BUY-BACK OF SECURITIES BY COMPANY

A company may buy-back securities issued by it earlier, subject to the conditions, requirements and guidelines governing the scheme of buy-back of securities by a company, issued by SEBI and / or Central Government in that behalf. A company, making an offer to buy-back its securities, shall be required to strictly adhere to the conditions, requirements and guidelines in force in that regard and any non-compliance or violation by the company shall render it liable for such action, as may be deemed fit by the exchange.

DELISTING

Delisting is the process by which a listed security is removed from the exchange on which it trades. A company can voluntarily ask to be delisted to become privately traded. Otherwise, a particular stock may be removed from an exchange because the company for which the stock is issued is not in compliance with the listing requirements of the exchange.

Voluntary Delisting by company

A company may be allowed to get its securities delisted (i.e. withdrawal of admission to dealings) from the exchange, provided the provisions, guidelines, norms and procedures governing the listing/delisting and trading/suspension of trading in securities that may be stipulated by the SEBI/Central Listing Authority are duly complied with.

Withdrawal of Admission to Dealings or Delisting on the Exchange

Subject to the provisions of SCRA and SCRR, the governing board or managing director or relevant authority may, after giving an opportunity to the company to explain, withdraw the admission to dealings on the

exchange granted to its securities, either for breach of or non-compliance with any of the continuous listing requirements for admission to dealings or for any other reason whatsoever to be recorded in writing, and in such manner, as may be provided in relevant regulations from time-to-time.

Right to Appeal Against Delisting

Any person, who may be aggrieved or affected by the decision of the exchange to delist a security of any company admitted to dealings on the exchange, may appeal in writing, to SEBI, within thirty calendar days from the date the exchange has notified the decision to the company.

Readmission to Dealings on the Exchange

The governing board or managing director or relevant authority may readmit to dealings on the exchange the security of a company whose admission to dealings had been previously withdrawn, on the fulfillment of conditions, norms, guidelines or requirements as may be prescribed by the governing board or managing director or relevant authority and / or SEBI from time-to-time.

CENTRAL LISTING AUTHORITY

As and when the Central Listing Authority is constituted by SEBI or any authority under the relevant law in relation to listing / delisting and trading / suspension of trading in securities of companies on a stock exchange, the provisions, guidelines, norms and procedures governing the listing / delisting and trading / suspension of trading in securities that may be stipulated by such Central Listing Authority shall then be incorporated in the bye-laws of the exchange and shall be made applicable *mutatis mutandis* by the Exchange.

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ALTERNATIVE INVESTMENT FUNDS – THE BASICS

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In this article the author discusses about the Alternative Investment Funds and how important it is to understand this investment vehicle.

WHAT IS AN AIF?

Alternative Investment Funds ('AIFS') are the investments which do not happen *via* the traditional modes of investment such as stocks, bonds, cash, property, etc. Some of the alternative investments include the commodities, private equity, hedge funds, venture capital, and financial derivatives as well as assets such as paintings, other arts, wines, antiques, coins and stamps. The gains in these assets would be called capital gains and provisions accordingly would apply to them. Most of the alternative investment funds raise capital from high net worth investors ('HNIs') with a view to investing in accordance with a defined investment policy for the benefit of those investors.

Basically these were investment avenues, which were not formally legislated by the regulators. Avenues such as private equity, venture capital funds, hedge funds, etc., were not regulated by either Securities and Exchange Board of India ('SEBI') or Insurance Regulatory and Development Authority ('IRDA') or Reserve Bank of India ('RBI'). These are generally private tailor-made investment modes. AIFs are primarily aimed at high net worth individuals, and according to the SEBI (Alternative Investment Funds) Regulations, 2012, the minimum investment from an individual is Rs. one crore.

DEFINITION OF AIF

The SEBI, in May 2012, formally notified the SEBI (Alternative Investment Funds) Regulations, 2012 ('Regulations'). Clause (b) of

regulation 2 defines an 'Alternative Investment Fund' as follows:

'(b) Alternative investment fund means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which -

- (i) *is a privately pooled investment vehicle which collects funds from investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors; and*
- (ii) *is not covered under the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 or any other regulations of the Board to regulate fund management activities'*

Thus, SEBI defines an AIF as a privately pooled investment, which is not a mutual fund or is not covered under the Collective Investment Scheme Regulations. The definition of 'AIFs' includes venture capital fund, hedge funds, private equity funds, commodity funds, debt funds, infrastructure funds, etc. The regulations further go on to exclude the following:

- Family trusts
- Employee stock option trust schemes
- Employee welfare trusts for the benefit of the employees
- Holding companies
- Other special purpose vehicles not established by fund managers, including securitization trusts

Alternative Investment Funds - The Basics

- Funds managed by securitisation company or reconstruction company which is registered with the RBI
- Any such pool of funds which is directly regulated by any other regulator.

TYPES OF AIF

Following are the basic types of AIFs :

Venture Capital Fund means an AIF which invests primarily in unlisted securities of start-ups, emerging or early-stage venture capital undertakings mainly involved in new products, new services, technology or intellectual property right based activities or a new business model and shall include angel funds as defined under Chapter III A of the AIF Regulations.

Debt Fund means an AIF which invests primarily in debt or debt securities of listed or unlisted investee companies.

SME Fund means an AIF which invests primarily in unlisted securities of investee companies which are SMEs or securities of those SMEs which are listed or proposed to be listed on a SME exchange or SME segment of an exchange.

Hedge Fund means an AIF which employs diverse and complex trading strategies and invests and trades in securities having diverse risks including listed and unlisted derivatives.

Infrastructure Fund means an AIF which invests primarily in unlisted securities or partnership interest or listed debt or securitised debt instruments of investee companies or special purpose vehicles engaged in or formed for the purpose of operating, developing or holding infrastructure projects.

Private Equity Fund means an AIF which invests primarily in equity or equity linked instruments.

Social Venture Fund means an AIF which

invests primarily in securities or units of social ventures and which satisfies social performance norms laid down by the fund and whose investors may agree to receive restricted or muted returns.

Angel Fund is a sub-category of venture capital funds that collects funds from angel investors and invests in very early stages of a startup venture.

CATEGORIES OF AIF

AIFs are categorised into the following three categories, based on their impact on the economy and the regulatory regime intended for them :

Category I AIF : These AIFs have positive effects on the economy, for which certain incentives or concessions might be considered by SEBI or Government of India. Such funds generally invest in start-ups or early stage ventures or social ventures or SMEs or infrastructure or other sectors or areas which the government or regulators consider as socially or economically desirable. They cannot take leverage except for meeting temporary funding requirements for not more than thirty days, on not more than four occasions in a year and not more than ten per cent of the corpus. For example : venture capital funds, SME funds, social venture funds and infrastructure funds. Giving effect to the announcement by Union Finance Minister on angel investor pools in the Union Budget 2013-14, SEBI in June 2013 has approved a framework for registration and regulation of angel pools under a sub- category called 'Angel Funds' under Category I- Venture Capital Funds.

Category II AIF : These AIFs have no specific incentives or concessions are given. They do not undertake leverage or borrowing other than to meet the permitted day-to-day operational requirements, as is specified for

Alternative Investment Funds - The Basics

Category I AIFs. For example, private equity or debt fund.

Category III AIF: These AIFs are funds that are considered to have some potential negative externalities in certain situations and which undertake leverage to a great extent; These funds trade with a view to make short term returns. These funds are allowed to invest in Category I and II AIFs also. They receive no specific incentives or concessions from the government or any other Regulator. An example of these funds are Hedge Funds, which employ diverse or complex trading strategies and invests and trades in securities having diverse risks or complex products including listed and unlisted derivatives.

INVESTMENT STRATEGY

All AIFs are required to state their investment strategy, investment purpose and its investment methodology in its placement memorandum to the investors and any material alteration to the fund strategy shall be made with the consent of at least two-thirds of unit holders by value of their investment.

INVESTMENT CONDITIONS AND RESTRICTIONS

Funds can be raised only by issue of units, from investors, whether Indian, foreign or non-resident Indian investors

Each scheme shall have minimum corpus of Rs. 20 crore

Minimum investment by an investor shall be Rs. 1 crore (the minimum limit is Rs. 25 lakh in case of employees, directors of the investment fund or the manager).

The manager or sponsor shall have interest in the fund not less than lower of 2.5 per cent of the corpus or Rs. 5 crore. (in case of Category III AIF, the same is 5 per cent or Rs. 10 crore whichever is lower).

There can be a maximum of 1000 investors

AIF cannot solicit or collect funds except by way of private placement by issue of information memorandum or placement memorandum.

TENURE OF THE FUNDS

- Categories I and II AIFs shall be close ended and the tenure should be determined at the time of application, with a minimum of three years
- Category III can be open-ended or close-ended
- Extension of the close-ended AIF may be permitted up to 2 years subject to approval of 2/3rd of the unit-holders by value. If not extended the fund should be liquidated within one year after the expiration of the fund tenure

Listing

After the close of the fund or the scheme, the units may be listed with a minimum tradable lot of Rs. 1 crore.

General Investment Conditions

Investments in companies incorporated outside India are subject to guidelines of SEBI and RBI from time-to-time.

Co-investment by sponsor or manager shall not be on terms more favourable than the fund.

Categories I and II cannot invest more than 25 per cent of the Investible Funds in one investee company (this limit is 10 per cent for category III AIF).

AIF cannot invest in Associates except with the approval of 75 per cent of the investors by value.

Un-invested portion of the investible fund can be kept in liquid assets.

Alternative Investment Funds - The Basics

ANGEL FUNDS

These funds that pool money from many individual 'angels' and make investments in start-ups in their very early stages. SEBI gave various relaxations to these funds. Chapter III-A of the AIF Regulations was introduced for angel funds. These are classified as Category I AIFs

"Angel investor" means any person who proposes to invest in an angel fund and satisfies one of the following conditions :

- Who has net tangible assets of at least two crore rupees excluding value of his principal residence
- Who has early stage investment experience
- Who has experience as a serial entrepreneur
- Who is a senior management professional with at least ten years of experience

Angel funds may accept, up to a maximum period of 3 years, an investment of not less than Rs. 25 lakh from an angel investor. SEBI also relaxed the maximum number of investors to 200 from 49 earlier. In 2016, SEBI lowered the minimum limit to Rs. 25 lakh from erstwhile Rs. 50 lakh in each start-up, with shorter lock-ins of one year, instead of three years. Investments have been allowed in start-ups incorporated in the last five years instead of three years.

TAXATION ASPECTS

The Finance Act, 2015 inserted Chapter XII FB, consisting of section 115UB of the Income-tax Act, 1961, which governs the taxation aspects of an AIF and contains the provisions relating to tax on income of investment funds and income received from such funds. The said section accords a pass through status for the incomes for Category I and Category II AIFs only. The said status is not accorded to a

Category III AIF. The income chargeable under the head business and profession continues to be taxed in the hands of the Fund, as per section 10(23FBA) of the Income-tax Act, 1961. Thus, the said income will be tax exempt in the hands of the investor under section 10(23FBB) of the Income tax Act.

Taxation in the Hands of the Investor

The income from the funds has a pass through status. Thus, the income arising to the unit-holder is the same nature as that arising to the fund. Thus, if the income arises to the fund in the nature of interest from securities and the same is passed on, the income in the hands of the investor shall also be taxed under the same category.

Taxation in the Hands of the Fund under the Income tax Act

No pass through status is available for the losses of the investment funds. The losses are to be carried forward and set-off against the future income of the investment funds in accordance with the provisions of the Act.

The income is chargeable at the applicable rates.

The provisions of Chapter XII D or Chapter XII E – relating to tax on distributed profits and tax on distributed income, do not apply.

The Fund, under section 194LBB of the Act, is required to deduct tax at the rate of 10 per cent on the incomes distributed to the investors.

Investment funds shall be required to file a statement of income distributed with the tax authorities and file return of income.

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MARKET MAKER- ROLE UNDER SECURITIES MARKET

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This article is intended to explain role of the market maker under the securities market in providing liquidity to the securities being listed in stock exchanges

INTRODUCTION

Securities market always engages the attention of not only of the government but the general public as well. The securities market is flooded with so many participants such as brokers, members, merchant bankers, and the general public, of course. Involvement of such large participants is also due to the significant role of share market in the economy, and, therefore, securities market is also considered as a barometer of the economy's financial health. Having said, one must know that the Indices in the securities market such as Nifty or Sensex which comprises of most of the blue chip companies, which only represent shares which are active in trading, meaning thereby those shares having buy order or sell order (In technical terms, this is called high trading volume). These kinds of shares provide more liquidity to their investors. Liquidity of stock means you can easily sell your stock because of large buy order. Unfortunately, it is seen that despite having the good fundamentals most of the companies' securities are not so liquid due to lack of interest from buyer side. It means listing of securities does not automatically provide the liquidity to the securities. So, who and how to decide the fate of these securities. The answer to this question lies with the market maker.

WHO IS MARKET MAKER

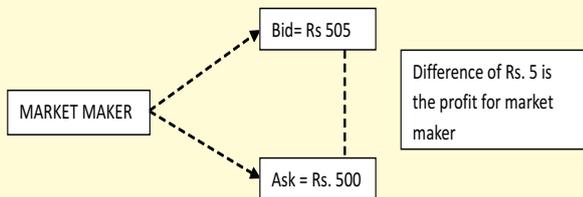
A market maker is an entity who is a member of the stock exchanges such as NSE, BSE, etc. which helps to stabilise the price of the company after listing of securities on the stock

exchange or providing the liquidity to the securities of those companies which are not actively traded. This mechanism is worked by offering the two-way quote, i.e., buying or selling the securities by the market maker. In this way, market maker infuses the liquidity in those securities which are not frequently traded.

MECHANISM

At this stage, we must understand why the need of market makers is realised, or we can say how the present screen based system of trading is not providing the level playing field to those shares which are not frequently traded. Under the screen based system, orders placed by buyers and sellers are matched by a computer system. For example, Mr. A places an order to sell 50 shares of Reliance at Rs. 1000 whereas on the other side Mr. B places an order to buy 50 shares of Reliance at Rs. 1000, so now the computer system of the stock exchange matches both orders and complete the transaction. This is just a hypothetical case wherein we have taken only one buyer and one seller. In reality, order size, price may differ, which is altogether a separate topic to discuss. What we try to explain in this example is that this matching process can easily be done in case of securities which have high trading volume meaning thereby, securities are being kept on transferring by the investor. Now, let's understand how market maker improves the activity level of securities not traded frequently.

Market Maker- Role Under Securities Market



The diagram depicted shows that market maker will buy the particular share at Rs. 500 and sell at Rs. 505, and able to make a profit of Rs. 5. This bid-ask quote is called as a bid-ask quote. Normally, the spread is higher in case of illiquid shares because of the higher risk is borne by the market maker.

REGISTRATION PROCESS

The member-broker, who is interested to act as a market maker on NSE SME platform, can apply for one-time registration. Registration as market maker will require following compliances:

Submit application for registration as market maker as per Annexure 1 (provided in the circular), net worth certificate duly certified by a practicing chartered accountant along with Board resolution;

NSE after it is satisfied that member can act as a market maker can grant approval to act as a market maker;

Approval is only as a registered market maker and does not constitute an approval for carrying out market for any security.

[Refer Circular No. 798/2012 dated 6th August, 2012]

GUIDELINES FOR MARKETMAKERS ON SME

Market making is mandatory in respect of all scrips listed and traded on SME exchange.

SME is a dedicated exchange for providing the trading platform in the shares of SME. Followings are obligations and responsibilities of the market maker :

The market maker shall be required to provide a two-way quote for 75 per cent of the time in a day. The same shall be monitored by the stock exchange. Further, the market maker shall inform the exchange in advance for each and every black out period when the quotes are not being offered by the market maker. Black out period is the duration of time when the market maker is restricted to buy or sell the securities because he may have some price sensitive information through which he can make abnormal profits.

The minimum value of scrip must be 1,00,000 which is being sold. However, an investor with lesser holding can sell.

Execution of the order at the quoted price and quantity must be guaranteed by the market maker, for the quotes given by him.

There would not be more than five market makers for a share.

The market maker may compete with other market makers for better quotes to the investors.

The market maker shall be allowed to deregister by giving one month notice to the exchange.

CONCLUSION

There is no doubt about how significant role is being played by the market maker in the development of securities market, but there must be a constant check on market maker through regulatory intervention so that market will not be distorted.

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TAKEOVER CODE – A REVIEW

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In this article, the author reviews provisions of the Takeover Code pertaining to open offer mechanism.

INTRODUCTION

In corporate world, growth of business can take various forms. One of these is through 'takeover' of one company by another. There are many advantages of this approach. Once a company is taken over, in addition to growth, one also tends to eliminate the competition. Then there are other reasons as well - upward and downward linkages, economies of scale, entry into new markets and so on. In plain and simple terms, 'takeover' signifies wherein an acquirer takes over the control or management of a target company by acquiring the substantial quantity of shares or voting rights of such company.

Considering the fact that takeover is a major tool in the corporate world, it is but essential that there are fair rules of the game, which all the participants are aware of as well as comply - both in letter and spirit. This is where the role of Securities Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ('code') comes into play. Since then the rules have been modified, so as to align with the growing needs and realities of businesses. The aim of the 'Code' was to regulate the acquisition of shares and voting rights in public listed companies in India. With the passage of time, need for amendments in the Code was felt. As such, a Takeover Regulations Advisory Committee was constituted under the chairmanship of Mr. C. Achuthan ("Achuthan Committee") in September, 2009 with the aim of reviewing the Code. Based on the Achuthan Committee

report, SEBI notified the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('Takeover Code') on 23 September 2011. The Code is very expansive and exhaustive. For ease of understanding, some of the key features of the Code are discussed enumerated below.

ACQUISITIONS

Under the Code, 'acquisition' means "directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company". Further, 'Target company' means a public listed company. So acquisition means direct or indirect acquisition of shares or control or voting rights in a public listed company.

Acquirer is any person who either directly or indirectly or with or through persons acting in concert engages in such acquisition. Acquirer includes acquisition by a person through persons acting in concert ("PAC") in addition to such "persons as may be acting in concert with him". Under the Code, a person acting through other persons, or through other controlling entities or entities acting in concert, shall also come within the ambit of Acquirer.

'Persons acting in concert' can be either such persons who with the common objective of acquisition, directly or indirectly, cooperate for acquisition of shares or voting rights in, or exercise of control over the target company or such persons as may be "deemed to be acting in concert". So PAC shall include a company, its holding company, subsidiary company, company under the same management or

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control, its directors and any person entrusted with the management of the company. The Code applies to direct or indirect acquisition of shares or voting rights in or control over any target company. Shares include any security which entitles the holder to voting rights, including depository receipts and preference shares.

WHEN DOES THE OPEN OFFER TRIGGER

Under the Code, an acquirer is mandated to make an open offer if he, alone or through persons acting in concert, is acquiring 25 per cent or more of voting right in the target company.

If an acquirer along with PAC increases its shareholding to more than that of the promoters, it would be considered to be a 'change of control' and such acquirer will need to make an open offer.

Creeping Acquisition : This happens when any acquirer, holding 25 per cent or more but less than the maximum permissible limit for non-public shareholding, can purchase additional shares or voting rights of up to 5 per cent every financial year, without requiring to make a public announcement for open offer.

Indirect Acquisition : Any acquisition of shares or control over a company, business or entity that would enable a person and persons acting in concert with him to exercise such percentage of voting rights or control over the target company, which if directly acquired in the target company would have otherwise necessitated a public announcement for open offer, shall be considered an indirect acquisition of voting rights or control of the target company. If the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired or the proportionate

sales turnover of the target company as a percentage of the consolidated sales turnover of the entity or business being acquired or the proportionate market capitalization of the target company as a percentage of the enterprise value for the entity or business being acquired is more than 80 per cent on the basis of the latest audited annual financial statements, such indirect acquisition shall be regarded as a direct acquisition of the target company and all the obligations relating to timing, pricing and other compliance requirements for the open offer would be same as that of a direct acquisition. An obligation to make an open offer would be triggered in the case of acquisition of shares by any acquirer such that the individual shareholding of such acquirer acquiring shares exceeds stipulated thresholds irrespective of whether there is a change in the aggregate shareholding with the PAC.

Change of Control : Open offer needs to be made when the acquirer intends to acquire, directly or indirectly, control over such target company, irrespective of the acquisition or holding of shares or voting rights in the target company. 'Control' includes the right and ability to appoint majority of the directors on the board of the target company.

Voluntary Offer : In case an acquirer who holds more than 25 per cent but less than the maximum permissible limit for non-public shareholding, he shall be entitled to voluntarily make a public announcement of an open offer for acquiring additional shares subject to the aggregate shareholding of such acquirer along with PAC, after completion of the open offer, not exceeding the maximum permissible non-public shareholding. Such voluntary offer would be for acquisition of a number of shares as would entitle the acquirer

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to exercise a minimum additional 10 per cent of the total shares of the target company. A voluntary offer cannot be made where an acquirer or PAC has acquired shares of the target company in the preceding 52 weeks without attracting the obligation to make an open offer. During the voluntary offer period such acquirer shall not be entitled to acquire any shares otherwise than under the open offer. The acquirer is restricted from acquiring any further shares in the target company for a period of six months after completion of the open offer by way of voluntary open offer or competing offer.

REDUCTION IN HOLDING

In case the shareholding of the acquirer is between 75 per cent to 100 per cent after the open offer, the acquirer would be required to either bring his holding down to ensure compliance with the Listing Agreement, or proportionately reduce both his acquisitions under the agreement that triggered the open offer and the acquisitions under the open offer. If after the open offer the shareholding of the acquirer and PAC is in excess of the maximum permissible non-public shareholding, it must be reduced within one year.

If an acquisition causes the public shareholding in the target company to be reduced below the limits specified in the Listing Agreement with the stock exchanges, any further acquisition of shares of such company must comply with the SEBI (Delisting of Equity Shares) Regulations, 2009.

OPEN OFFER MECHANISM

An open offer mechanism can be explained as follows:

Appointment of Merchant Banker : The acquirer is required to appoint a merchant banker as the manager of the open offer prior to

making the public announcement in relation to same.

Offer Period : The offer period starts on the date of entering into an agreement to acquire shares, voting rights in, or control over a target company requiring a public announcement, or the date of the public announcement, whichever is earlier and ends on the date on which the payment of consideration to shareholders who have accepted the open offer is made.

Offer Size : Under the Code, an acquirer is required to place an offer for at least 26 per cent of the total shares of the target company, as on the 10th working day from the closure of the tendering period. The total shares shall include all potential increases in the number of outstanding shares during the offer period contemplated as on the date of the public announcement.

Offerees : Any open offer is required to be made to all shareholders of the target company, other than the Acquirer, PAC and the parties to any underlying agreement including persons deemed to be PAC with such parties, for the sale of shares of the target company.

Minimum Open Offer Price : Under the Code, the average market price of 60 trading days prior to the date of the public announcement will be taken.

In the case of direct acquisition and deemed direct acquisition of shares, voting rights or control of the target company, the minimum open offer price shall be highest of the following:

Highest negotiated price per share of the target company under the agreement that attracted the open offer.

Volume-weighted average price paid or payable for acquisitions by the acquirer or PAC during 52 weeks preceding the date of the public announcement.

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Highest price paid or payable for any acquisition by the acquirer or PAC during 26 weeks preceding the date of the public announcement.

Where shares are frequently traded - volume weighted average market price of the target company during 60 trading days immediately preceding the date of the public announcement.

Where shares are infrequently traded, the price determined by the acquirer and manager to the open offer taking into account valuation parameters, including, book value, comparable trading multiples and such other parameters as are customary for valuation of shares of such companies.

In the case of deemed direct acquisition where net assets value or sales turnover or market capitalization of the target company is more than 15 per cent of the consolidated net asset or sales turnover or the enterprise value of the entity or business being acquired as per the latest audited annual financial statements, the per share value of the Target Company computed by the acquirer.

Offer price in the case of indirect acquisition of shares, voting rights or control of the target company, the minimum open offer price shall be the highest of the following:

Highest negotiated price per share, if any, of the target company under the agreement that attracted the open offer.

Volume-weighted average price paid or payable for acquisitions by the acquirer or PAC during 52 weeks preceding the earlier of (a) date on which the primary acquisition is contracted, and (b) date on which intention or decision to make primary

acquisition is announced in public domain.

Highest price paid or payable for any acquisition by the acquirer or PAC during 26 weeks preceding the earlier of (a) the date on which the primary acquisition is contracted, and (b) the date on which intention or decision to make primary acquisition is announced in public domain.

Where shares are frequently traded, volume weighted average market price of the target company during 60 trading days immediately preceding the earlier of (a) the date on which the primary acquisition is contracted, and (b) the date on which intention or decision to make primary acquisition is announced in public domain.

Where minimum offer price cannot be computed as per any of the parameters, it shall be fair price determined by the acquirer and the manager to the open offer taking into account valuation parameters, including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies.

Where net assets value or sales turnover or market capitalization of the target company is more than 15 per cent of the consolidated net asset or sales turnover or the enterprise value of the entity or business being acquired as per the latest audited annual financial statements, the per share value of the target company computed by the acquirer.

Highest price paid or payable for any acquisition by the acquirer or PAC during the earlier of (a) date on which the primary acquisition is contracted, (b) the date on which intention or decision to make primary acquisition is announced in

RNI Regd. No. DELENG/2017/71754
 Posted on : 12-14 October 2017
 Published on 9, 10 & 11 October 2017

DELHI POSTAL REGD. NO. DL-SW-1/4199/17-19
 Place of posting : NDPSO, New Delhi
 LICENSED TO POST WITHOUT PRE-PAYMENT No. U(SW)-20/2017-19

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public domain, and (c) the date on which the public announcement is made.

IMPORTANT NOTES

The Code provides for adjustment to the minimum open offer price in the following cases:

If during the offer period, the acquirer directly or through PAC agrees or acquires any shares or voting rights in the target company in any manner at a price higher than the minimum offer price, the minimum offer price shall stand revised to such higher price.

Where the open offer is subject to minimum level of acceptances and the open offer does not receive the minimum acceptance, the Acquirer may indicate lower price for acquiring all the acceptances.

For corporate actions like rights issue/bonus issue/stock splits/ dividend/ de-mergers/ reduction of capital etc. where the record date for effecting the same falls three business days prior to the commencement of the tendering period.

In case the acquirer or PAC has any outstanding convertible instruments convertible into shares of the target company at a specific price, the price at which such instruments are to be converted shall be considered.

Any direct or indirect non-compete fees or control premium paid to the controlling shareholders would be added to the offer price.

In the case of an indirect acquisition, the minimum offer price would stand increased by 10 per cent p.a. for the period commencing on the earlier of (a) the date

on which primary transaction is contracted, or (b) the date on which the intention/decision to make primary acquisition is announced in public domain, and ending on the date of detailed public statement, provided such period is more than five working days.

Where the acquirer or PAC has acquired any shares of the target company during the period of 26 weeks after the tendering period at a price higher than the offer price paid, the Acquirer and PAC shall pay the difference between the highest acquisition price and offer price, to all the shareholders whose shares were accepted in the open offer, within 60 days from the date of such acquisition except where acquisitions are pursuant to the Delisting Regulations or open market purchases made in the ordinary course on the stock exchanges which are not negotiated deals or bulk deals or block deals or in any other form.

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