UPDATES

Indian Capital Markets – Legal Milestones Financial Year 2020-21 and a Look Ahead

14 April 2021

This update covers:

1 The Year that Was

The COVID-19 pandemic resulted in a significant slowdown in Indian capital markets in the year 2020. While the total number of initial public offerings (IPOs) in 2020 was comparatively lesser than in 2019, the capital raised through these IPOs was higher than that raised through IPOs in 2019. Companies such as SBI Cards and Payments Services, Computer Age Management Services, Burger King, and Mrs. Bectors Food Specialties undertook highly oversubscribed IPOs in 2020.

With the pandemic having an adverse impact on the global economy and lockdowns imposed by the Indian government to tackle the spread of the virus disrupting normal business, the Securities and Exchange Board of India (SEBI) introduced various measures in 2020 targeted at providing companies with relaxations from various compliance and disclosure burdens and facilitating fundraising for cash-strapped companies.

Indian capital markets witnessed some highs and lows in 2020. While the number of IPOs in 2020 was lower compared to the previous year, the IPO volume was substantially higher this year. 2020 also saw an overall fall in the number of other modes of fund-raising, however, the amount of funds raised through these modes were at a record high. Here we discuss some of the major developments in the financial year 2020-21 along with our expectations for the year ahead.

2 Major Developments in the Financial Year 2020-2021

2.1 Relaxation of Pricing Guidelines and Open Offer Obligations for Preferential Issue by Companies Having Stressed Assets and Introduction of a Temporary Alternate Pricing Option

To enable better access to capital markets by companies having stressed assets, SEBI liberalised regulations governing preferential issues by such companies, by relaxing pricing guidelines under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations) and open offer obligations under the SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations, 2011 (Takeover Code).

For issuer companies meeting the eligibility criteria of a '*stressed issuer*', the pricing of equity shares has been reduced from the higher of, the average weekly high and low of the volume-weighted average price during 26 weeks or 2 weeks preceding the relevant date, to at least the average weekly high and low of the volume-weighted average price during the 2 weeks preceding the relevant date. SEBI also amended the Takeover Code exempting any acquisition of shares or voting rights in a preferential issue by issuers in compliance with the pricing framework applicable to 'stressed issuers', from the obligation to make an open offer under the Takeover Code.

Please click here for a more detailed analysis.

Separately, for issuer companies that do not meet the criteria of a 'stressed issuer', SEBI introduced an additional temporary pricing option valid until 31 December 2020, where pricing of equity shares would be at least the higher of the average weekly high and low of the volume-weighted average price during either 12 weeks or 2 weeks preceding the relevant date.

Please click here for a more detailed analysis.

The 26 weeks' time period led to a wide gap between the price at the beginning of such period and at the time funds were proposed to be raised, making it more expensive for any potential investor to participate in the preferential issue. Additionally, the time period did not allow for pricing to be cognizant of market price post COVID-19 for many companies. These relaxations are intended to lower the price in a preferential issue which would, in turn, incentivise investors to invest in companies.

2.2 Relaxation in Cooling-Off Period between Two Qualified Institution Placements (QIPs)

To facilitate urgent funding requirements of companies, SEBI reduced the cooling-off period between two QIPs by an issuer company from the previous requirement of six months to two weeks. This move is expected to enable cash-strapped companies to carry out fundraising activities with greater frequency, especially since QIPs are less time-intensive and documentation-intensive compared to other modes of fundraising.

Please click here for a more detailed analysis.

2.3 SEBI Advisory on Disclosure of Material Impact of COVID-19 Pandemic on Listed Entities

The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) require companies to disclose material events having a bearing on a company's performance or operations. To this end, SEBI issued an advisory containing an illustrative list of information for listed companies to provide in order to inform investors about the impact of COVID-19. The advisory also recommends specifying the impact of COVID-19 on financial statements which are to be submitted under Regulation 33 of the Listing Regulations.

Please click here for a more detailed analysis.

2.4 Rationalisation of Disclosures in Rights Issue

Through an amendment, SEBI has rationalised disclosure requirements under the ICDR Regulations for companies undertaking a rights issue. A letter of offer was earlier required to either include: (i) exhaustive disclosures of the same nature as required when undertaking an IPO, or (ii) limited disclosures (Part B Disclosures), if the company satisfied certain eligibility criteria.

The amendment has further reduced the limited disclosures by doing away with redundant disclosures (i.e. information of the issuer already available with the public), and has introduced an alternate set of limited disclosures (Part B-1 Disclosures) for companies which do not meet the eligibility criteria to make Part B Disclosures. The Part B-1 Disclosures, while more detailed than Part B Disclosures, are less extensive than disclosures to be made in an IPO.

2.5 Relaxation from Provisions of ICDR Regulations in Respect of Rights Issue

SEBI has provided temporary relaxations to companies from certain provisions of ICDR Regulations in respect of rights issue. These relaxations include, relaxations in eligibility conditions for fast-track rights issue, reduction in the minimum subscription threshold from 90% to 75% and the increase in minimum threshold below which filing draft letter of offer is not required. These relaxations are available for rights issue that open on or before 31 March 2021.

Please click here for a more detailed analysis.

Additionally, as COVID-19 continued to disrupt business operations in 2020, SEBI introduced certain one-time relaxations from the strict enforcement of certain regulations of the ICDR Regulations relating to rights issues.

Please click here for a more detailed analysis.

2.6 Relaxation in Eligibility Conditions for Further Public Offer through Fast Track Route

SEBI has provided temporary relaxations on eligibility conditions for Further Public Offers (FPOs) made through the fast track route. These relaxations are available for FPOs that open on or before 31 March 2021. The relaxations introduced include reduction in pre-requisite market capitalisation, allowing FPOs even if a show-cause notice is pending against the promoter whole-time director or the company (subject to disclosures being made in the offer document), and allowing FPOs even if the promoter or promoter group or director has settled any violation of securities law through consent or settlement mechanism with SEBI.

Please click here for a more detailed analysis.

3 Looking Ahead

In order to mitigate the impact of the COVID-19 pandemic on companies, SEBI has introduced various regulatory relaxations in 2020. Many of these will continue to be available to companies in 2021 and we expect that many companies will avail of these. 2021 is expected to be a strong year for IPOs and is likely to see an increased number of other fundraising activities as well.

For a round -up of some of the key legal developments in the financial year 2020-2021 across other practices and a brief insight on what to expect in the year ahead, please read our practice-wise updates, which can be accessed here.