UPDATES

Indian Capital Markets – Legal Milestones in 2019 and a Look Ahead

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This update covers:

1 The Year that Was

The capital markets did not see as many IPOs in 2019 as compared to previous years, however, there was a clear impetus by the regulators towards making alternate funding available in the market. Here we discuss some of the major developments in the past year and provide a glimpse of what to expect in 2020.

The year 2019 was a sombre year for Indian capital markets with fundraising through initial public offerings (IPOs) falling to its lowest in five years. Although the benchmark indices hit record highs, similar sentiments were not echoed by companies seeking to raise funds through an IPO. Only a few companies such as Ujjivan Small Finance Bank, CSB Bank, IRCTC and Sterling & Wilson Solar came out with IPOs in 2019.

The substantial slowdown in capital markets transactions compared to previous years was due to several factors such as changes in the economic scenario, liquidity crunch, uncertainty surrounding the outcome of the general elections in the country and external factors such as the US-China trade dispute. Further, the IL&FS crisis had a far-reaching impact on investor sentiment, which led to a twofold outcome- (i) investors backed quality stocks which were already listed, and (ii)only IPOs of companies having a well-defined and differentiated business model went through. This investor sentiment coupled with the uncertainty surrounding the economic condition of the country led to several potential issuers letting their draft offer documents lapse.

However, even in uncertain economic times, Indian capital markets have historically emerged as a stable, safe and sustainable market. In this regard, the Securities and Exchange Board of India (SEBI) has played an important role in building strong and robust capital markets and has made strides towards strengthening and improving the regulatory framework. Further, the Reserve Bank of India (RBI) has also played a key role in liberalising access to international debt capital markets.

2 Major Developments in 2019

2.1 Amendments to the REIT and InvIT Regulations

To facilitate the growth of real estate investment trusts (REITs) and infrastructure investment trusts (InvITs), SEBI has amended its regulations to relax the applicable norms and increase access of investors to units of REITs and InvITs.

Key changes include reduction of the minimum subscription from any investor and minimum trading lot for publicly issued REITs and InvITs. Further, the leverage limits for InvITs has been increased. Prior to the amendment, the aggregated consolidated borrowings and deferred payments of any InvIT, its holding company and SPVs were capped at a maximum of 49% of the value of the InvIT assets. This cap has been increased to 70% subject to additional compliance requirements. The amendments have also done away with the mandatory listing of privately placed InvITs through the introduction of a framework governing the private placement of unlisted units.

2.2 Issuance of Shares with Differential Voting Rights

SEBI has approved a framework for issuance of shares with superior voting rights (SR shares) by companies making intensive use of technology, information technology, intellectual property, biotechnology etc. This is chiefly aimed at helping promoters of such companies retain decision making powers and rights vis-à-vis other shareholders.

Certain requirements have been introduced through the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 for an IPO of ordinary equity shares by a company having SR shares. Further, the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 have been amended to impose additional corporate governance compliance requirements on companies which have issued SR shares.

2.3 Easing of Restrictions by RBI on Overseas Fund Raising

RBI has issued the Master Directions on External Commercial Borrowings (ECB), Trade Credits and Structured Borrowings to ease restrictions on overseas fundraising and to permit all entities which are eligible to receive FDI, to raise funds through this route.

The limit on raising funds through the automatic route is capped at USD 750 million or its equivalent irrespective of the sector in which the borrowing entity operates. Further, the minimum average maturity period (MAMP) which was different for various tracks has now been changed to three years for all ECBs, barring certain specified categories for which designated MAMPs have been prescribed.

Relaxations have been introduced with respect to end uses for which eligible borrowers are permitted to raise ECBs. Under the new regime, eligible borrowers are now permitted to avail ECBs from recognised lenders for repayment of rupee loans availed domestically for capital expenditure and for purposes other than capital expenditure, subject to certain conditions.

The new ECB regime has led to a spurt in overseas fundraising with companies such as Future Retail, JSW Steel, Renew Power and Adani Transmission, among others, raising funds through this route.

3 Looking Ahead

In order to provide a stimulus to the economy, the government of India has announced a slew of initiatives such as a reduction in corporate taxes and an increase in government spending. This coupled with a decrease in interest rates by the RBI and increased liquidity amongst NBFCs is expected to drive the Indian economy forward, which in turn should provide a positive outlook for the Indian capital markets in 2020-2021. External factors, such as a US-China trade agreement and certainty around Brexit may provide stability to markets globally.

For a round-up of some of the key legal developments across sectors in 2019 and a brief insight on what to expect in 2020, please read our sector-wise updates, which can be accessed at: https://trilegal.com/knowledge-repository/page/2/?title=milestone

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