

## CAPITAL ISSUES CONTROL IN INDIA

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The capital issues control was first introduced in May, 1943, by a Rule framed under the Defence of India Act, 1939. During the war, control was enforced mainly for the purpose of seeing that capital issues are made only for the purpose of aiding the war effort; hence, issues that had only a remote object connected with defence were not allowed especially in view of the fact that the available savings were not adequate to meet even the immediate needs. After the war, the control was continued first by the issue of an Ordinance and thereafter by the Capital Issues (Continuance of Control) Act passed in April 1947, which provided for the continuance of the control for a further period of three years *i.e.* upto March 1950. The control was again extended twice, first for a further period of two years *i.e.* upto March 1952, and then for four years *i.e.* upto March 1956. In 1956, the Capital Issues control Act, was placed permanently in the Statute Book.

### Administration of the Control

The control is administered through the Ministry of Finance (Department of Economic Affairs) by the *Controller of Capital Issues*, who is appointed for the purpose and who is invested with the powers conferred upon the central government by the Act. In the preamble to the Act it is mentioned that it is an Act to provide for control over issues of capital and "issue of capital" has been defined to mean "the issuing or creation of any securities whether for cash or otherwise, and includes the capitalisation of profits or reserves for the purpose of converting partly paid-up shares into fully paid up shares or increasing the par value of shares already issued." Not all capital issues are subject to control. Small capital issues of less than Rupees five lacs which have progressively been increased to Rupees ten lacs and Rupees twenty five lacs have been exempted from control on the basis of the advice of the *Advisory Committee* consisting of five non-officials. This *Advisory Committee* has been constituted in terms of the Section 11 of Capital Issues (Control) Act and comprises persons of considerable experience and well known in the commercial world. Apart from exempting small issues of capital from the scope of the control, two significant developments in the field are the Capital Issue (Exemption) Order of 4, November 1966 and February 1, 1969.

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**Capital Issues (Exemption) Order of November, 1966 as modified by the order of February, 1969**

Under both the above orders, issue of securities by the following categories of companies, are completely exempt from control irrespective of the value of consideration:

- (i) a private company;
- (ii) A Government company (*i.e.* a company in which not less than 51% of the paid up capital is held by the Central/State Government), provided that no portion of the issue of securities is made to the general public;
- (iii) a banking company or an insurance company or a provident society incorporated as a company.

Although the total exemption to the three categories of companies has been retained in the latest order also, these companies are required to send to the *Controller*, details of their capital issue each quarter, if in any 365 days, their capital issues were to exceed Rs. 25 lakhs. The requirement of this Report was not present in the 1966 order. The quarterly report requires such particulars as the amount offered to public, foreign collaborators, firm allotment, capital subscribed by the public etc. Since the *Controller* is bringing out a *Quarterly Statistical Report* dealing with the administration of the Act, these reports may provide valuable data for compiling the report. Although there may be more than 20,000 companies out of a total of 28,000 companies coming under this general exemption, the number of companies that may be issuing more than Rs. 25 lakhs in any one year may not exceed 300 and so this reporting requirement is likely to affect only a very small number of companies. Moreover, the amount of capital issues by these companies would form a substantial part of the aggregate issues. Hence the reporting requirement would give considerable data to add to our knowledge of the trends in the issue market (especially the total capital issues, public response to capital issue, role of underwriters etc.), without, at the same time requiring the smaller issues to undergo the botheration of filing this information.

In the case of public limited companies, under both the orders, issues not exceeding Rs. 25 lakhs in any one year are completely exempt from control as also the reporting requirement.

In fact it is in the case of issues exceeding Rs. 25 lakhs in any one year by public limited companies, that the order of 1969 is different from that of the order of 1966.

Under the order of 1966, public limited companies could issue capital

exceeding Rs. 25 lakhs in any one year if their capital issue would satisfy the following considerations:

- (i) as a result of the proposed issue the equity of the company is not less than one half of its debt;
- (ii) that as a result of the proposed issue the total paid up preference share capital will not be more than one third of the total paid up equity share capital;
- (iii) where the securities issued by the company or a part thereof is for the purpose of taking over an existing business or asset, the take over is effected at the book value of such business or asset;
- (iv) where a public company is formed on conversion of a private company, the consideration for issue of securities by the public company for taking over the private company as a going business or any part of the assets of the private company does not exceed the book value of the net assets so taken over by the private company;
- (v) no securities are issued in consideration of revaluation of assets or creation of any intangible or fictitious assets;
- (vi) the issue price of the securities to be issued is at par and not at a premium or discount;
- (vii) any offer of securities for public subscription is such as to make the securities eligible for listing on a recognised stock exchange;
- (viii) where the issue of equity capital involves an offer for subscription by the public for the first time, the value of equity capital subscribed privately by the promoters, directors and their friends is not less than 15% of the total issued equity capital, if it does not exceed one crore of rupees, 12½%, if it does not exceed two crores of rupees and 10% if it is in excess of Rs. 2 crores.

To the above eight conditions, the Exemption Order of 1969, adds the following five conditions:

- (ix) where a public company is formed for taking over the business of a partnership or a proprietorship or an association of persons, the consideration for issue of securities by the public company to the members of such partnership, proprietorship or an association of persons, as the case may be for taking over the same as a going business and any part of the assets of such partnership, proprietorship or an association of persons does not exceed the book value of the net assets so taken over of the partnership, proprietorship or an association of persons;
- (x) the rate of interest on debentures or the rate of dividend or preference shares does not exceed the rate notified by the Central

Government from time to time as applicable to such securities and the timing of the offer of securities proposed to be issued is in conformity with the directions notified by the Central Government at the beginning of each calendar year;

- (xi) in a public offer of shares no reservation is to be made in favour of any person or class of persons except with the prior approval of the Controller of Capital Issues;
- (xii) securities issued in the form of debentures or bonds shall be payable to registered holders only;
- (xiii) if the consideration for the issue of securities is proposed to be got fully paid up by making calls, such calls shall be made on a uniform basis on all securities falling under the same class and completed within a period of five years from the date of the offer.

#### *Procedure for Exemption*

The order of 1969, apart from adding five conditions to the exemption order of 1966, in the case of companies issuing a capital exceeding Rs. 25 lakhs, prescribes a somewhat different procedure to avail of the exemption. Under both the orders public limited companies issuing capital above Rs. 25 lakhs have to furnish to the Controller the statement of proposals in the prescribed form which includes such matters as the business of the company, capital structure, loans outstanding, shareholding pattern, object of the issue, project cost, foreign collaboration, source of financing, issue price, allotments, underwriting and enclosures such as two copies of the memorandum and articles of association, balance sheet, list of non-resident shareholders, foreign collaboration agreement, draft prospectus etc. Under the exemption order of 1966, within thirty days after filing all the above matters, the Controller shall communicate in writing to the company as to whether or not he has any objection to the proposed issue. If the Controller has no objection the company can go ahead with the issue. But under the order of 1969, the company should file the statement of proposals at least 30 days before a prospectus is issued and all that the company has to obtain from the Controller before it actually issues capital is an acknowledgement that the company's proposals have been received. The company has also to file with the Controller every quarter a statistical return regarding the progress of the capital issue which was not necessary under the order of 1966.

#### *Issue of Bonus shares*

Both the exemption orders of 1966 and 1969, in one way exempt capitalisation of reserves. All bonus shares, irrespective of the amount and without taking into account the status of a company—be it private or

Government or banking—can be issued only after getting a consent from the Controller.

### Statistical data

An idea of the difficulty experienced by companies in satisfying the Controller can be obtained from the following data relating to applications disposed and approved by the Controller from 1960 to 1967 for non-government companies:

|      | Applications disposed of |                            | (Amount in crores of rupees)<br>Consent granted |                            |
|------|--------------------------|----------------------------|---|----------------------------|
|      | No.                      | Amount                     | No.   | Amount                     |
| 1967 | 389*<br>(87)             | 104.17<br>(131.63)         | 379<br>(87)                                     | 102.99<br>(131.63)         |
| 1966 | 796*                     | 278.70                     | 785   | 277.54                     |
| 1965 | 166                      | 167.79                     | 154   | 166.50                     |
| 1964 | 221                      | 228.02                     | 201   | 224.80                     |
| 1963 | 377                      | 251.38                     | 344   | 237.57                     |
| 1962 | 410                      | 227.39                     | 397   | 219.45                     |
| 1961 | 351                      | 202.06                     | 335   | 185.06                     |
| 1960 | 290                      | 151.96                     | 277   | 150.13                     |
|      | <u>3000</u><br>(87)      | <u>1611.47</u><br>(131.63) | <u>2872</u><br>(87)                             | <u>1564.04</u><br>(131.63) |

Note :—Issue of Capital under "No objection" for the year 1967 is given in bracket.

\*The very large number in 1966 and 1967 is due to bonus issues. Source : Office of the Controller of Capital Issues.

It would be seen from the above data that for the eight years 1960-1967, out of a total applications for Rs. 1611 crores considered by the Controller, for Rs. 1564 crores consent has been granted, leaving only a small amount of Rs. 47 crores, not being consented to. In addition, the entire amount for which "no objection" was asked for in 1967 has been granted. Moreover, since even a part of the consented amount is not actually issued it would appear that the *Controller of Capital Issues* is not standing in the way of companies from issuing capital. All that companies have to do is to see that their capital issue proposals are in conformity with the standards laid down by the Controller. This, in fact, has resulted in the following comments on the working of capital issues control,

**Comments**

Since the companies have not found it difficult to comply with the conditions imposed under the capital issues control, the formal control can be dispensed with altogether. All that is required is to request the companies to comply with the conditions after convincing them of the benefits of these conditions to the company in particular and the corporate sector in general. If this is not done, it may be suspected that the exemptions granted are not really relaxations, but control in another form. This is more so because the Controller is not prepared to accept the postal acknowledgement receipt as an acknowledgement under the exemption order. It is also felt in some circles that before the *Controller* issues the acknowledgement he examines the proposal and only after he is satisfied that the issue satisfies all the conditions, he issues the formal acknowledgement.

It will be possible to convince the companies of the usefulness of the conditions, only if they can be justified in the interest of (1) the company (2) Shareholders (3) Creditors and (4) Capital formation for the economy as a whole. It may be very difficult to justify all the thirteen conditions imposed by the *Controller of Capital Issues* from all these angles. In any case, at present, we do not have adequate statistical evidence to support all the conditions. On the other hand, some contend that these thirteen conditions are not enough and some more conditions, for instance, that all public issues should be got underwritten, the opinions of reputed investment analysts should be published in the prospectus etc., should be added to the conditions.

Since no relaxation has been allowed in the case of bonus issues, it has been felt in certain circles that, some concession can be allowed even here. At least small bonus issues and also those that will form less than half of the accumulated profits of the company could be exempted from control after informing the *Controller of Capital Issues*.

Last and perhaps one of the least important comment made is that it may not be possible to justify the different rates of interest for preference shares (9.5%) and debentures (7.75%) especially in the case of well established companies.