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CAPITAL ISSUES CONTROL

A BOOKLET CONTAINING PRINCIPLES AND
POLICY FOLLOWED IN THE ADMINISTRATION
OF THE CAPITAL ISSUES (CONTROL) ACT, 1947

1965



सत्यमेव जयते

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF ECONOMIC AFFAIRS
NEW DELHI

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FOREWORD

This pamphlet is being issued in response to requests from public and on the advice of the Statutory Advisory Committee on Capital Issues Control. It has been written in consultation with the Advisory Committee and incorporates many valuable suggestions made by them. The pamphlet does not claim to be, and indeed cannot be, exhaustive. It attempts to give in broad outline the policies and procedures of control over capital issues evolved on the recommendations of the Advisory Committee, the Chairman and the members of which are well known in business and commercial circles. The control aims at aiding the country's industrial development as envisaged in its Five Year Plans by trying to prevent wasteful investments and to promote sound methods of corporate finance.

S. BHOOHALINGAM

Secretary

Deptt. of Economic Affairs,
Ministry of Finance.

New Delhi.

CAPITAL ISSUES CONTROL

Objects of the Control :

1. The Control has for its objective the fostering of a rational and healthy growth of the corporate sector by ensuring, *inter alia*, that investment does not go into channels which are wasteful and not in accordance with the objectives of the Plan; that companies have capital structure which are sound and conducive to the public interest and that there is no undue congestion of offers for public subscription during any part of the year.

The Control Act :

2. The Capital Issues Control was first introduced in May, 1943 by a Rule framed under the Defence of India Act, 1939. After cessation of the war, it was continued from time to time by an Act of Parliament, viz., the Capital Issues (Continuance of Control) Act, 1947. In 1956 the Act (Appendix I) was placed permanently on the Statute Book.

Administration of the Control :

3.1. The Control is administered by the Ministry of Finance (Department of Economic Affairs) through the Controller of Capital Issues, who is specially appointed for the purpose and who is invested with the powers conferred upon the Central Government under Sections 3, 4, and 6(2) of the Act.

3.2. In terms of section 11 of the Act, Government constitutes an Advisory Committee, whose advice it obtains from time to time, in formulating guiding principles for the administration of the Control. The Advisory Committee consists of five non-officials who are persons of considerable experience and well known in the commercial world. The tenure of the Committee is two years. It normally meets once a quarter. A copy of the Government Notification constituting the present Committee is appended (Appendix II).

Scope of the Control :

4. The Central Government's consent to the issue of capital within the country is necessary in all cases where the company is or would be in the banking or in the insurance field. Where the company is or would be in the industrial or trading field, consent is necessary if the nominal value of the securities (including premium) etc. to be issued within the country during a period of 12 months is more than Rs. 25 lakhs. If any person intends to make a public offer of sale of any securities held by him (a) in a private company or (b) in a company which had previously been issued a consent order containing a condition that the shares of that company should be privately subscribed, the consent of the Central Government is required by that person for making such a public offer of sale.

Since the Act also applies to a company within the meaning of Section 591 of the Companies Act, 1956, the Central Government may, on application, accord recognition to an issue of capital made or to be made outside India by a company not incorporated in India but having an established place of business in India.

There are exemptions granted by Government in regard to loans from banks purely for purposes of working capital etc. The loans taken by companies from financial corporations like the Industrial Development Bank, the Industrial Finance Corporation, Industrial Credit & Investment Corporation of India, State Financial Corporations, National Industrial Development Corporation, Industrial Development Bank of India are also exempt from the scope of the Control. Guarantees given by the Central Government and State Governments and also by all the financial institutions mentioned above are also exempt. There are also a few other exemptions which are embodied in the Capital Issues (Exemption) Order, 1961 and amendments thereto issued in 1963 and 1964 (*vide Appendix III*). The Exemption Order does not cover issues of bonus shares by capitalisation of reserves.

Procedure of application :

5.1. An application for an issue of capital has to be made in quintuplicate, in the manner specified in the Capital Issues (Applications for Consent) Rules, 1954 (*Vide Appendix IV*), giving full particulars in accordance with the rules. Where capital is proposed to be issued to the public by a prospectus, the applicant should send the prospectus in draft for comments and suggestions of the Government. Adequacy of information and promptness in furnishing it help quick disposal of applications.

5.2. An application fee of Rs. 50 is required to be paid for each application either for issue of capital or for amendment or extension of the consent order. The fee should be credited under the head "LII. Miscellaneous—Miscellaneous—Receipts towards issue of capital under the Capital Issues (Control) Act, 1947." The fee is not accepted in cash.

Examination and Disposal of applications :

6.1. An application, when received, is immediately taken up for examination. The applications fall into different categories, e.g. first substantive issue of capital to set up an industry, issue of further capital to meet shortfalls in requirements or for development, conversion of a private into a public limited company, amalgamation of two or more companies etc. The considerations arising for examination are naturally not identical in all cases. The following paragraphs give a resume of the more important aspects which the Controller at present keeps in view :

Consultation with the administrative Ministries/Departments, etc.

6.2. The Controller first of all decides whether other Ministries and Departments should be consulted. This consultation is done to ensure that (a) the objects of the issue are not inconsistent with the policies of the Government; (b) the scheme is technically sound, and (c) the amount of capital proposed to be issued is reasonable and adequate.

Reasonableness of the size of capital :

6.3. Gross over-capitalisation or under-capitalisation are both discouraged. Applicants are expected to set out, in reasonable detail and with a fair degree of precision, what are the full capital needs of the company for the successful completion of the project, and how these needs are proposed to be met. It would also be advisable for applicants to indicate precisely the foreign exchange component of the project and the sources of financing the foreign exchange component and data regarding the profitability of the project. Copies of the industrial licence, or the letter of intent, secured by

the applicant, if any, and also letters of approval by Government of the foreign collaboration terms or of the terms of any foreign loan would greatly help speedy disposal of a capital issues application.

Ratio between equity and debt :

6.4. It is important that a company should have a proper balance between its paid up equity capital and debts and should not have a capital structure unduly geared in favour of debt. A higher ratio than 2 : 1 as between debt and equity is not generally favoured, that is to say, a position where the debts exceed double the equity capital is considered financially not prudent, though for certain types of industries a higher ratio is permitted on merits. For working on the debt/equity ratio in a company, debts are deemed to include all fixed interest bearing securities, e.g. debentures, loans from institutions or parties and also deferred payments including interest thereon for purchase of capital equipment, except purely short term loans; and redeemable preference shares with an outstanding period of less than 12 years. Equity in this context, is deemed to include paid up ordinary shares, free reserves, share premium, irredeemable preference shares and redeemable preference shares with period of redemption of 12 years or more.

Ratio between equity paid up capital and preference paid up capital :

6.5. Importance is also attached to the ratio of paid up preference capital to paid up equity capital in a company. A preference equity ratio of 1 : 4 is considered reasonable, although a higher preference ratio of 1 : 3 may be agreed to in exceptional cases.

Dividend on preference shares and interest on debentures :

6.6. Unduly high rates of dividend on preference shares and of interest on debentures are discouraged. The main consideration in view is that, if rates higher than those really necessary are allowed, the equity holders may suffer. There is no rigid and uniform rate fixed for all companies.

Individual applications for issue of preference shares and debentures are examined on merits, always bearing in mind the going commercial rate and the current prices of and yields on comparable securities already in the market. Attention is also paid to relevant factors like the size of the preference capital/debentures in relation to the paid up equity capital, the terms and the period of redemption, the reputation in the market of the particular concern and the entrepreneurs behind it and the nature and profitability of its business.

In the recent past, the preference dividend generally agreed to has not exceeded 9.5 per cent free of company's tax but subject to deduction of tax at source at the prescribed rates. Interest on debentures has been around 7 per cent.

Prices of further issue of equity capital :

6.7. Where a further issue of equity capital is sought to be made, the issue price is fixed in such a manner that the price of the rights is such that it does not invite unhealthy speculation. The issue price is, however, decided after discussion and agreement with the company, taking into account the market trends of the share, the break up value of the share and the value of the share on the basis of the company's profit earning

capacity, the future growth prospects of the company, the ratio of the rights issues for the total paid up capital, the dividend paying capacity of the company etc. During discussion, the case for a premium is explained to the Company and its views are given full consideration.

The methods used to examine the question of premium on further issues are objective ones and are uniform for all industrial companies.

It is not the intention that existing shareholders who part with their rights should get no renunciation price. The view taken is that the rights price should be reasonably smaller than the premium element in the issue price, in order that the company gets the larger portion of the extra money for productive use in its legitimate business and the shares do not attract unhealthy speculation. This view, which is widely held abroad, involves no financial loss or injustice to the shareholders. It merely aims at reducing the lure of very large windfalls and encouraging the shareholders, to take a long term and steady view of investment. There is, of course, no question of premium when a company makes its first substantive issue of capital. If it proposes to make a further issue before reaching optimum production, the question of premium is examined on merits and whenever necessary, discussed with representatives of the company.

Condition in rights issue :

6.8. In the case of a rights issue, a condition is stipulated that while making the offer of rights, the company should simultaneously offer to all the holders of rights an opportunity to apply for additional shares and that if the rights are not fully taken up, the balance left over should be distributed among the applicants for additional shares.

Stake of promoters, directors and friends in share capital :

6.9. In the case of the floatation of a public limited company attention is paid to the questions whether the promoters and directors accept a reasonable minimum stake in the capital of the company, and also offer a reasonable share of the capital for subscription to the public so that the shares are eligible for listing on the stock exchanges. A wider dispersal of share holding is considered desirable as a matter of policy and in the interest of sound company practice.

- (a) The minimum stake which has been considered reasonable is on a sliding scale;
- (i) for an issue of capital up to Rs. 1 crore, the percentage should be 15 per cent;
 - (ii) for an issue up to Rs. 2 crores, the percentage should be 12½ per cent;
 - (iii) for an issue up to Rs. 5 crores, the percentage should be 10 per cent and
 - (iv) for an issue above Rs. 5 crores, the percentage is fixed on individual merits by the Controller.

In all consent orders, a condition is imposed that the promoters and directors should subscribe the minimum amount of capital in accordance with the above schedule before they can make an offer of shares to the public.

- (b) It is also a requirement that the percentage of paid up capital to the value of the subscribed capital shall be the same both in the case of shares privately allotted and those allotted to the public.

Offer of shares to the public :

6.10. Unless there are good reasons to the contrary companies which are floated as public limited companies, particularly those with good growth prospects, whether falling within Section 3 or Section 43A of the Companies Act, are expected to make a public offer of their shares at least to the extent necessary to qualify their shares for listing on a recognised stock exchange.

Expeditious allotment and return of application money in case of over-subscription :

6.11. To avoid complaints about delay in the return of money to the unsuccessful applicants for the shares in the case of an over-subscription, an assurance is sought from companies that after the issue is made, the allotments will be effected expeditiously and that the money sent in by unsuccessful applicants will be refunded within two months from the date of closing the lists.

In the event of an over-subscription, companies would find it of advantage to seek the advice of the Stock Exchange where the shares would be listed, on the method of allotment to be followed.

Price of issue fixed : no entrance fee :

6.12. It is made clear to companies that the issue of capital consented to should be made at the price indicated and not at a higher or lower price; also that companies should charge no entrance fee or any other fee from the subscribers.

Applications for bonus issue :

6.13. In the case of bonus issue applications, care is taken to see that the company does not get over-capitalised in the process, that the issue is made only out of free reserves built out of genuine profits or share premium or is made in lieu of dividends, and that after the bonus issue a total amount of not less than 20 per cent of the increased paid up capital is left in the residual reserves. Reserves created by revaluation upwards of fixed assets are not permitted to be capitalised. Development Rebate Reserve is considered as a free reserve while calculating the residual reserves test but is not itself allowed to be capitalised. Not more than one application for bonus issue is entertained from a company in one accounting year.

Applications for debenture issues :

6.14. The applications for issue of debentures are examined with reference to the (a) purpose of the issue, (b) whether the debentures would be in reasonable proportion to the paid up equity capital and reserves, (c) whether the security offered would be adequate, and (d) whether the company would be able to service the debentures without difficulty. The issue of bearer debentures is not permitted. Where a company applies for postponement of the date of redemption of debentures already issued and a consent is given, then a condition is made that those debenture holders who

do not agree to the postponement either in person at a meeting of the debentureholders held for the purpose or in writing before such meeting, should be repaid in cash before the due date.

Underwriting Commission and Brokerage :

6.15. Underwriting commission and brokerage are permitted up to 2½ per cent and 1 per cent respectively on the issue of shares and 1½ per cent and 0.5 per cent on the issue of debentures offered for public subscription. Remuneration to Managing Brokers, where appointed, may be allowed in suitable cases at a rate not exceeding 0.5% in case of shares and 0.25% in case of debentures procured.

Promotion Expenses :

6.16. The expenditure incurred in promoting a new company should not normally exceed 2 per cent of the project cost, if the company is managed by a Board of Directors, 1.75 per cent if managed by a Managing Director and 1.5 per cent if managed by a Managing Agent. Actual expenditure in excess of these limits may be allowed if it is certified by the Auditors as having been solely incurred on promoting the company. Expenditure incurred in foreign exchange, if any, shall be limited to what has been permitted by the Exchange Control Department, Reserve Bank of India.

Diversion into unconnected lines :

6.17. Government's attitude in the matter of diversification of a company's business into unconnected lines is that where it is practicable, new companies should be formed for new lines of production.

Period of Validity of consents :

6.18. Consent orders, unless otherwise specified, are valid for a period of 12 months from date of issue. Extensions of time are, however, freely given, if valid reasons are advanced.

Timing of Issue :

6.19. To avoid unhealthy congestion of offers for public subscription in any part of the year, special attention is given to the timing of large issues. If the issue of capital in India, excluding capital subscribed by non-residents, is relatively large, Government's permission is necessary as regards timing of the issue.

Publicity :

7. Since the summer of 1961, Government follow the practice (decided in consultation with the Federation of Indian Chambers of Commerce & Industry) of giving publicity through Press Notes to all the consents given for issue of capital.

Clearance of Prospectus :

8. In all consent orders to public limited companies a condition is imposed that the draft of the prospectus to be issued shall be shown to Government and their comments taken into account and the prospectus suitably modified in accordance with those comments. The draft prospectus is gone into in consultation with the Department of Company Affairs and Insurance. This procedure was adopted solely with a view to helping

companies to comply with all the requirements of Company Law, to ensure that the prospectus contains full and complete disclosure of all the information regarding the scheme of finance for the investing public. The companies are advised to furnish the draft prospectus in duplicate to the Controller for facilitating early clearance.

Tax Credit Concession Scheme :

9. As announced by the F.M. in the Parliament on 24-12-1964 a Tax Credit Concession (Equity Investors) Scheme has been introduced in respect of equity shares subscribed upto specified limits, by individuals and Hindu undivided families in new public Ltd. companies making public offers of capital for the first time. On requests from companies, the Controller issues letters of authorisation authorising companies to make a statement in any prospectus, advertisement or statement in lieu of prospectus, or if none is issued, to send notices to all persons to whom equity shares are proposed to be allotted, to the effect that the provisions of the scheme are applicable to the issue.

Statistics :

10. The Department publishes once a quarter statistics of the disposals of applications received from the companies. Details, such as, names of companies whose applications have been sanctioned or refused, reasons for refusal, if any, the amount involved, foreign participations, type of security, issue price in respect of public as well as private sector are given separately in the statistics. Amendments made in consents granted earlier are also shown separately. Data regarding capital subscribed and paid up against consents are given in the April—June issue of the quarterly statistics on the working of the Capital Issues Control. Details with regard to the amount of capital actually subscribed and paid up every year irrespective of the date of sanction are published in the July—September issue of this quarterly. This information is based on the reports received from companies on the action taken on consent orders as well as from the Registrars of Companies. Co-operation from the companies in the prompt submission of their reports of action taken on consent orders is essential in this regard, so that the information published in quarterly statistics of capital actually raised can be made as complete and up-to-date as possible and more useful to the public. An annual review of the consents granted during the whole year, along with comparative figures for earlier years, is included in the October—December issue of this quarterly. These quarterly publications are nominally priced at Rs. 1.50 a copy, and are available with the Manager, Publications Branch, Delhi and all agents for Government publications.

11. Entrepreneurs and companies would be well advised to obtain consent orders only when they can fairly see their way to raising the capital proposed and not too prematurely in the vague hope of all other factors materialising. It is obvious that a consent should follow and not anticipate an industrial licence. Similarly, it would lead to a waste of effort all round, if the sources of financing a project, particularly its foreign currency component, are not settled with a reasonable degree of certainty before an application is filed with the Controller of Capital Issues. Leaving several loose ends to be tied is a common and fruitful source of delay in processing applications by the Controller of Capital Issues.

APPENDIX I

The Capital Issues (Control) Act, 1947

Act No. XXIX of 1947.

(As amended upto December, 1957)

(Received the assent of the Governor-General on the 18th April, 1947)

An Act to provide for **control** over issues of capital; Whereas it is expedient to provide for **control** over issues of capital;

It is hereby enacted as follows :—

Short title, extent and duration

1. (1) This Act may be called the Capital Issues (Control) Act, 1947.***
- (2) [It extends to the whole of India except the State of Jammu & Kashmir, and it applies also to citizens of India outside India.]*
- (3) ****

Definitions and interpretation

@2. (1) In this Act, unless the context otherwise requires,—

- (a) "company" means a company as defined in section 3 of the Companies Act, 1956, and includes a foreign company within the meaning of Section 591 of that Act;
- (b) "issue of capital" means 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;
- (c) "Private company" means a private company as defined in section 3 of the Companies Act, 1956;
- (d) "prospectus" means any prospectus, notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a company;
- (e) "securities" means any of the following instruments issued or to be issued, or created or to be created, by or for the benefit of a company, namely :—
 - (i) shares, stocks and bonds;
 - (ii) debentures;
 - (iii) mortgage deeds, instruments of pawn, pledge or hypothecation and any other instruments, creating or evidencing a charge or lien on the assets of the company; and
 - (iv) instruments acknowledging loan to or indebtedness of the company and guaranteed by a third party or entered into jointly with a third party;
- (f) "States" means the territories of India to which this Act extends.

(2) Any reference in this Act to offering securities to the public shall be construed as including a reference to offering them to any section of the public, whether selected as members, debenture-holders or holders of any other securities of the company concerned or as clients of the person issuing any prospectus in relation to such securities, or selected in any other manner;

*Substituted by Sec. 2 of Act 6 of 1952.

**The words "the continuance of" were omitted by Sec. 2 of Act VIII of 1956.

***The words "Continuance of" were omitted by Sec. 3(a) of Act VIII of 1956.

****Sub-section (3) was omitted by Sec. 3(b) of Act VIII of 1956.

@Substituted by Sec. 2 of Act 50 of 1957.

Provided that the foregoing provisions shall not be taken as requiring any offer to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result directly or indirectly in the securities becoming available for the subscription or purchase by persons other than those receiving the offer, or otherwise as being a domestic concern of the persons making or receiving it.

Control over issue of capital

3. (1) No company incorporated in % (the States) shall, except with the consent of the Central Government make an issue of capital outside % (the States).

(2) No company, whether incorporated in % (the States) or not, shall except with the consent of the Central Government—

- (a) make an issue of capital in % (the States); or
- (b) make in % (the States) any public offer of securities for sale;
- (c) renew or postpone the date of maturity or repayment of any security maturing for payment in % (the States).

(3) The Central Government may, on application make an order according recognition to an issue of capital made or to be made outside % (the States) by a company not incorporated in % (the States).

(4) The Central Government may qualify any consent or recognition accorded by it under sub-section (2) or sub-section (3) with such condition whether for immediate or future fulfilment, as it may think fit to impose; and where a company acts in pursuance of such consent or recognition, it shall comply with the terms of any condition so imposed.

(5) Where an application for the consent or recognition of the Central Government under any of the provisions of this Section is refused, the Central Government shall, upon the request of the applicant, communicate to him in writing the reasons for such refusal.

(6) The Central Government may by order at any time—

- (a) revoke the consent or recognition accorded under any of the provisions of this section; or
- (b) where such consent or recognition has been qualified with any conditions, vary all or any of those conditions;

Provided that before an order under this sub-section is made the company concerned shall be given a reasonable opportunity of showing cause why such order should not be made.

(7) Where an order has been made under sub-section (6), the Central Government shall, upon the request of the company concerned, communicate to it in writing the reasons for such order.

Control of advertisement of offers of securities for subscription etc.

4. @ (1) No person shall circulate any offer, being a public offer, in the States for the subscription, or purchase of any securities unless consent or recognition has been accorded by the Central Government under this Act to the issue or creation of such securities and a statement has been made to that effect in the offer.

(2) No company shall circulate any offer, being an offer to existing holders of the securities of that company or to existing holders of the securities of any other company specified in the offer, in the States for the subscription or purchase of any securities of such company unless recognition has been accorded by the Central Government under this Act to the issue or creation of such securities and a statement has been made to that effect in the offer.

(3) No person shall without the consent of the Central Government circulate any offer, being a public offer, in the States for the sale of any securities issued or created with the consent or recognition of the Central Government if such issue or creation was made by a private company or if the order according consent or recognition contained a condition that the securities should be privately subscribed.

%Substituted by A.O. 1950.

@Inserted by Sec. 3 of Act No. 50 of 1957.

%Substituted by A.O. 1950.

Purchase and sale of securities

5. (1) No person shall accept or give any consideration for any securities in respect of an issue of capital made or proposed to be made in % (the States) or elsewhere unless the consent or recognition of the Central Government has been accorded to such issue of capital.

(2) No person shall sell or purchase or otherwise transfer or accept transfer of any securities issued by a company in respect of any issue of capital made after the 17th day of May, 1943 in % (the States) or elsewhere unless such issue has been made with the consent or recognition of the Central Government.

Power to exempt and to condone contraventions

6. (1) The Central Government may, by general order which shall be notified in the official gazette, provide for the granting of exemption from all or any of the provisions of Sections 3, 4 and 5.

(2) The Central Government may, by order condone a contravention of any of the provisions of section 3 or section 4 (or section 5@@), and on the making such order the provisions of this Act, shall have effect as if an exemption had been granted under sub-section (1) of this section in respect of the thing done or omitted to be done in contravention of section 3 or section 4 (or section 5@@) as the case may be.

Power to call for information

7. Any officer authorised in this behalf by the Central Government may, for the purpose of inquiring into the correctness of any statement made in an application for consent or recognition to an issue of capital or for the purpose of ascertaining whether or not the requirements of any condition attached to an order according such consent or recognition have been complied with or for the purpose of obtaining particulars as to the total capital issued or for any other purposes of this Act, require any company or any officer of a company to submit and furnish to him within such time as may be specified in the requisition, such accounts, books or other documents and such information as he may reasonably think necessary.

False statement

8. No person shall, when complying with any requisition under section 7 or when making any application for consent or recognition to an issue of capital @@@(or in connection with any other provisions of this Act), give any information or make any statement which he knows, or has reasonable cause to believe, to be false or not true in any material particular.

Prohibition against disclosing information

9. No person who obtains any information by virtue of this Act shall, otherwise than in connection with the execution of the provisions of this Act or of any order made in pursuance thereof, disclose that information to any other person except with the permission of the Central Government.

Power to delegate function

10. The Central Government may by order direct that any power or duty which by or under any of the preceding provisions of this Act is conferred or imposed upon the Central Government shall, in such circumstances and under such conditions, if any, as may be specified in this direction, be exercised or discharged by any officer subordinate to that Government.

Committee to advise Government

11. The Central Government shall, by notification in the Official Gazette constitute an Advisory Committee consisting of not more than five members, and may from time to time refer to it for advice any such matters arising out of the administration of this Act as the Central Government may think fit.

Power to make rules

12. (1) The Central Government may by notification in the Official Gazette make rules for carrying out the purposes of this Act %% (and in particular for the levy of fees on applications made to the Central Government for its consent).

@Substituted by Act No. 50 of 1957.

@@Inserted by Sec. 5 of Act No. 50 of 1957.

%%Inserted by Act 6 of 1952.

@Substituted by Sec. 6 of Act No. 50 of 1957.

@@@Inserted by Sec. 7 of Act No. 50 of 1957.

@@(2) All rules made under this section shall be laid for not less than thirty days before each House of Parliament as soon as possible after they are made and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

Penalties

13. (1) Whoever contravenes, or attempts to contravene, any of the provisions of this Act or of any order made thereunder shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

(2) If the person committing an offence punishable under this section is a company or other body corporate, every director, manager, secretary or other officers thereof shall, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent its commission, be deemed to be guilty of such offence.

Burden of proof in certain cases

14. Where any person is prosecuted for contravening any provision of this Act or of any order made thereunder which prohibits him from doing an act without the consent or permission of any authority the burden of proving that he had the requisite consent or permission shall be on him.

Protection of action taken under the Act

15. No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done under this Act or any rule or order made thereunder.

Continuance of existing orders and savings V of 1947.

16. (1) All orders made or deemed to be made under the provisions of the Capital Issues (Continuance of Control) Ordinance, 1947 and in force immediately before the commencement of this Act shall continue to be in force and be deemed to be orders made under the corresponding provisions of this Act.

(2) Section 6 of the General Clauses Act, 1897, (X of 1897), shall apply upon the expiration of the said Ordinance as if it had then been repealed by this Act.

@@Inserted by Sec. 8 of Act No. 50 of 1957.

APPENDIX II

No. F.16(2)-CCI/65

Government of India

MINISTRY OF FINANCE

Department of Economic Affairs

Office of the Controller of Capital Issues

Room No. 34, 2nd Floor, Bombay Mutual Building,

Parliament Street,

New Delhi, July 17, 1965/Asadh 26, 1887(Saka)

NOTIFICATION

In exercise of the powers conferred by Section 11 of the Capital Issues (Control) Act, 1947 (29 of 1947) and in supersession of the Notification of the Government of India in the Ministry of Finance, Department of Economic Affairs, S.O. 1396, dated the 16th May, 1963, the Central Government hereby reconstitutes the Advisory Committee on Capital Issues Control consisting of the following members:—

1. Shri G. L. Mehta.
2. Shri A. M. M. Murugappa Chettiar.
3. Shri Sachindra Chaudhuri, M.P.
4. Mr. D. Fordwood.
5. Shri C. C. Chokshi.

Shri G. L. Mehta shall be the Chairman of the Advisory Committee.

2. The Advisory Committee shall have a tenure of two years.

Sd- S.S. SHIRALKAR

Addl. Secretary to the Govt. of India

NOTE : The addresses of the members are given below :

- Shri G. L. Mehta, I.C.I.C.I., 163, Back Bay Reclamation, Fort, Bombay.
Shri A. M. M. Murugappa Chettiar, 11/12 North Beach Road, Madras-1.
Shri Sachindra Chaudhuri M.P., 52/5 Ballygange Circular Road, Calcutta-19.
Shri C. C. Chokshi, Mafatlal House, Back Bay Reclamation, Bombay.
Mr. D. Fordwood, 4, Clive Row, Calcutta-1.

APPENDIX III

(PUBLISHED IN THE GAZETTE OF INDIA OF 3-6-1961)

MINISTRY OF FINANCE

Department of Economic Affairs

Office of the Controller of Capital Issues

New Delhi, the 23rd May, 1961
the 2nd Jyaistha, 1883 (Saka)

Exemption Order

S.O. 1234.—In exercise of the powers conferred by sub-section (1) of section 6 of the Capital Issues (Control) Act, 1947, (29 of 1947), and in supersession of the Capital Issues (Exemption) Order, 1949, published with the notification of the Government of India in the Ministry of Finance, No. F.14(1)-CCI/49, dated the 20th January, 1949, the Central Government hereby makes the following orders, namely:—

1. This order may be called the Capital Issues (Exemption) Order, 1961.
2. In this order, unless the context otherwise requires—
 - (a) "Act" means the Capital Issues (Control) Act, 1947, (29 of 1947);
 - (b) "banking institution" means any institution carrying on the business of banking to which the Banking Companies Act, 1949 (10 of 1949), applies whether wholly or in part;
 - (c) "consideration involved" means—
 - (i) in relation to the issue of securities without a nominal value, the amount to be raised by the issue of securities, and, in the case of securities with a nominal value, the sum of the total nominal value and of any premium, entrance fee or other payment which the person subscribing to the securities may be called upon to pay; and (ii) in relation to the borrowing of money, the amount of money to be borrowed.
 - (d) "insurance company" means any insurer being a company which may be wound up under the Companies Act, 1956, (1 of 1956);
 - (e) "banking company", "insurer", and "provident society" shall have the meaning respectively assigned to them in clause (c) of sub-section (1) of section 5 of the Banking Companies Act, 1949 (10 of 1949), and in clause (9) of section 2 and sub-section (1) of section 65 of the Insurance Act, 1938, (4 of 1938).
3. The following shall be exempt from all the provisions of sections 3, 4 and 5 of the Act—
 - (a) the issue of securities by any company, not being a banking company or an insurance company or a provident society incorporated as a company, and all transactions relating to such securities issued by any such company if the value of the consideration involved in such issue together with the value of the consideration involved in any previous issue of securities, made by such company within the twelve months immediately preceding such issue, does not exceed ten* lakhs of rupees :

Provided that the above exemption shall not apply to the capitalisation of profits or reserves for the purpose of issuing additional capital or converting partly paid-up shares into fully paid-up shares, or for increasing the par value of the shares already issued;

*Twentyfive Amended *vide* Capital Issues (Exemption) Second Amendment Order 1963 issued on 17-12-63.

Explanation.—The aforesaid limit of ** lakhs of rupees shall have reference to the total value of all the issues and transactions during any period of twelve months and not to the value of each individual issue or transaction or to any part thereof, or to the value of consideration received from any single party;

- (b) the issue by any company of securities for the purpose of sub-dividing any securities into securities of any smaller denomination, or consolidating any securities into securities of any larger denomination :

Provided that in either case, the transaction does not involve any increase in the total value of the paid-up capital of the company and that the securities sub-divided or consolidated are of the same kind;

- (c) the issue of shares in a case where,
- (i) an amalgamation of two or more companies other than banking companies has been notified by the Central Government by an order under section 396 of the Companies Act, 1956 (1 of 1956); or
 - (ii) an amalgamation of two or more banking companies has been approved by the Reserve Bank of India under section 44A of the Banking Companies Act, 1949 (10 of 1949); and the total paid-up capital of the amalgamated company or the amalgamated banking company after the issue of shares under this provision is not greater than the total paid-up capital of the amalgamating companies or the amalgamating banking companies, as the case may be;
- (d) the loans granted, or debentures taken up, by the Industrial Finance Corporation constituted under the Industrial Finance Corporation Act, 1948 (15 of 1948), any State Financial Corporation constituted under the State Financial Corporation Act, 1951 (63 of 1951), the *Refinance Corporation for Industry Private Limited, the Madras Industrial Investment Corporation, Limited, the Industrial Credit and Investment Corporation of India Limited, or the National Industrial Development Corporation of India Limited;
- (e) the guarantees given by the Industrial Finance Corporation under section 23(1)(b) or by the Central Government or a State Government under section 23(2) of the Industrial Finance Corporation Act, 1948, (15 of 1948), or any other guarantees given or furnished by any of the institutions specified in clause (d);
- (f) the issue and acceptance of securities, other than debentures, being an issue made by a company in the ordinary course of its business and solely for the purpose of that business, to a banking institution or its nominee, in respect of advances or overdrafts, or guarantees from time to time granted or furnished or to be granted or furnished by such banking institution;
- (g) instruments executed by the Central Government or a State Government guaranteeing advances or overdrafts referred to in sub-clause (f), or guaranteeing the payments due to a banking institution arising out of or any guarantee furnished by that banking institution;
- (h) the issue and acceptance of debentures, being an issue made by a company in the ordinary course of its business and for the purposes of that business to a banking institution or its nominee, if the total value of such debentures together with the value of any previous issue of such debentures made by such company within the twelve months immediately proceeding such issue does not exceed ** lakhs of rupees;
- (i) charges made under mining leases by the lessees in favour of the lessors charging the assets of a company for the due payment of rents and royalties reserves by the instrument of lease.

*Industrial Development Bank of India Ltd., substituted by the Order No. F. 14(1)-CCI/64, dated 17th October, 1964.

**Twenty-five lakhs substituted by Order No. F.14(2)-CCI/63, dated 17th December 1963.

4. The following shall be exempt from the provisions of section 4 of the Act in so far as such provision relate to any documents publicly offering for sale :—

- (a) any security issued in the State before the 17th May, 1943; and
- (b) any security issued outside the State before that date, being a security of a class of which no further issue has been made after that date by or on behalf of the same company without the consent or recognition of the Central Government.

5. The following shall be exempt from the provisions of sub-section (2) of section 5 of the Act—

- (a) securities the issue of which has involved a contravention of sub-section (1), (2) and (3) of section 3 or section 4 of the Act if such contravention has been condoned under the provisions of sub-section (2) of section 6 of the Act; and
- (b) any security transferred by the operation of the law of inheritance or succession or by the decree of a competent court.

[No. F. 14(2)-CCI/58-2129].

A. BAKSI

Controller of Capital Issues

No. R. 534-CCI/62

Government of India

MINISTRY OF FINANCE

Department of Economic Affairs

Office of the Controller of Capital Issues

Room No. 33, Second Floor, Bombay Mutual Building
Parliament Street

*New Delhi, the 9th January, 1963
the 19th Pausa, 1884 (Saka)*

ORDER

In exercise of the powers conferred by sub-section (1) of Section 6 of the Capital Issues (Control) Act, 1947 (29 of 1947), the Central Government hereby makes the following order to amend the Capital Issues (Exemption) Order, 1961, published with the order of the Government of India in the Ministry of Finance No. F. 14(2)-CCI/58-2129, dated the 23rd May, 1961, namely :—

1. This order may be called the Capital Issues (Exemption) Amendment Order, 1963.
2. In the Capital Issues (Exemption) Order, 1961, in clause 3, after sub-clause (i) the following sub-clause shall be inserted, namely :—
 - “(i) third party guarantees on behalf of a company in respect of—
 - (i) the loans granted or debentures taken up by the institutions specified in sub-clause (d); and
 - (ii) the advances, overdrafts or guarantees, referred to in sub-clause (f), granted or furnished or to be granted or furnished by a banking institution.”

M. K. VENKATACHALAM
Controller of Capital Issues

No. F. 14(2)-CCI/63

Government of India

MINISTRY OF FINANCE

Department of Economic Affairs

Office of the Controller of Capital Issues

Room No. 34, 2nd Floor, Jeevan Deep Bhavan,
Parliament Street

New Delhi, the December 17, 1963/Agrahayana 26, 1885

ORDER

In exercise of the powers conferred by sub-section (1) of section 6 of the Capital Issues (Control) Act, 1947 (29 of 1947), the Central Government hereby makes the following Order to amend the Capital Issues (Exemption) Order, 1961, namely :—

1. This Order may be called the Capital Issues (Exemption) Second Amendment Order, 1963.
2. In the Capital Issues (Exemption) Order, 1961, in clause 3, for the words "ten lakhs of rupees" wherever they occur, the words "twenty-five lakhs of rupees" shall be substituted.

M. K. VENKATACHALAM
Controller of Capital Issues

No. F. 14(1)-CCI/64

Government of India

MINISTRY OF FINANCE

Department of Economic Affairs

Office of the Controller of Capital Issues

Room No. 34, 2nd Floor, Jeevan Deep Bhavan,
Parliament Street

New Delhi, the October 17, 1964/Asvina 25, 1886

ORDER

In exercise of the powers conferred by sub-section (1) of Section 6 of the Capital Issues (Control) Act, 1947 (29 of 1947), the Central Government hereby makes the following order to amend the Capital Issues (Exemption) Order, 1961, namely :—

1. This Order may be called the Capital Issues (Exemption) Amendment Order, 1964.
2. In the Capital Issues (Exemption) Order, 1961 in clause 3,—
 - (i) in clause (d)—
 - (a) after the words, figures and brackets “the Industrial Finance Corporation Act, 1948 (15 of 1948),”, the words, figures and brackets “the Industrial Development Bank of India constituted under the Industrial Development Bank of India Act, 1964 (18 of 1964),” shall be inserted;
 - (b) the words “the Refinance Corporation for Industry Private Limited,” shall be omitted;
 - (ii) in clause (e), after the words, figures, brackets and letters “the Industrial Finance Corporation under section 23(1)(b)”, the words, brackets, letters and figures “or by the said Industrial Development Bank of India under clause (e) or clause (f) or clause (g) of sub-section (1) of section 9 of the said Industrial Development Bank of India Act, 1964” shall be inserted.

M. K. VENKATACHALAM
Controller of Capital Issues

APPENDIX IV

MINISTRY OF FINANCE

Department of Economic Affairs

New Delhi, the 9th March, 1954

S.R.O. 828.—In exercise of the powers conferred by section 12 of the Capital Issues (Continuance of Control) Act, 1947 (XXIX of 1947), the Central Government hereby makes the following rules, namely :—

1. (i) These rules may be called the Capital Issues (Applications for consent) Rules, 1954.

(ii) The rules shall come into force on the 1st April, 1954.

2. In these rules, unless the context otherwise requires, "the Act" means the* Capital Issues (Continuance of Control) Act, 1947 (XXIX of 1947).

3. All applications for the issue of capital under the Act, other than the securities exempted from the provisions of sections 3, 4 and 5 of the Act by the Capital Issues (Exemption) Order, 1949, published with the Government of India, Ministry of Finance No. F. 14(1)-CCI/49 dated the 20th January, 1949, shall be made, in quintuplicate, to the Controller of Capital Issues, Ministry of Finance, Department of Economic Affairs, New Delhi, in conformity with the requirements laid down in the questionnaire specified in the Schedule annexed to these rules.

4. Every application under these rules shall be accompanied by a treasury receipt for Rs. 50.00 which shall, at Bombay, Calcutta, Delhi, Madras and Bangalore, be deposited in the Reserve Bank of India and at other places in the nearest Government Treasury or in the nearest Branch or an agency of the Reserve Bank. The amount shall be credited to the head "LII—Miscellaneous—Miscellaneous—Receipts towards issue of Capital under the Capital Issues (Control) Act, 1947".

5. An application made under rule 4 shall include a request asking for :—

- (i) The consent of the Central Government to the issue of capital under the provisions of the Act;
- (ii) any alteration in the terms and conditions of a consent previously given by the Central Government or any extension of the period of validity for which such consent was given;
- (iii) the regularisation of the issue of any capital made without the prior consent of the Central Government;
- (iv) the consent of the Central Government under the Act in respect of any matter not specifically mentioned in any of the foregoing clauses of the rule.

6. No application under these rules shall be entertained unless it is accompanied by sufficient proof of the payment of the fee mentioned in rule 4.

*Capital Issues (Control) Act, 1947. The words "continuance of" were omitted by Sec. 3(a) of the Act VIII of 1956.

NOTICE

Control of Capital Issues

Capital Issues (Control) Act, 1947.

Applications for consent to the issue of capital by companies should be addressed to the Controller of Capital Issues, Ministry of Finance, Government of India, New Delhi, and should be made in the form of a letter which should include answers to the questions shown below.

NOTE.—(1) The answers should follow the order of these questions and the short title of each question should be quoted against the corresponding answer. The answer should be so worded that the letter can be read independently of the form. The letter (with enclosures) should be accompanied by two additional copies in the case of banking and insurance companies and five additional copies in the case of other companies. In the case of bonus issues, only two copies need be sent.

(2) Where the capital proposed to be issued is in respect of an industrial undertaking for which a licence has to be obtained under the Industries (Development and Regulation) Act, 1951, an application for the licence should be made simultaneously in the form prescribed for that purpose in the Registration and Licensing of Industrial Undertaking Rules, 1952, to the Secretary, Ministry of Commerce and Industry, Government of India, New Delhi.

1. *Name*.—Present or proposed.

2. *Corporate Status*.—Public or private and date of incorporation in the case of an existing company. Is it intended to alter its status?

3. *Registration*.—Place of Registration and location of Head Office.

4. *Existing capital*.—State the authorised, subscribed and paid-up capital, if the company is an existing one. A copy each of the latest balance sheet and profit and loss account with certified translation in English, if not in that language, may be forwarded. The reasons for not using for the purpose in view any liquid or invested funds which may be, or become available, as an alternative to issuing new securities, may be further explained.

5. *Previous applications*.—Give particulars of any application previously made to the Government of India since the 17th May, 1943 or to any former State Government in this connection by or on behalf of the same parties. In case of a previous application having been made to a former Indian State Government, indicate the concession, if any, given by that Government and whether these concessions are still valid.

6. *Business*.—Describe fully the company's present business, if in operation, and the proposed business for which the capital issue is requested. If a licence has been obtained under the Industries (Development & Regulation) Act, 1951, quote its number and date. Mere reference to the objectives stated in the Memorandum of Association will not be acceptable. Information with regard to the proposed business should include the location

of the plant, availability of raw materials, transport facilities and power. A copy of the Memorandum and Articles of Association may also be enclosed.

7. *Directors.*—Give name, qualification, occupation, nationality and business addresses of directors. Also give names of companies, if any, with which the directors are associated either as Managing Agents or Directors. Say whether the proposed directors have agreed in writing to serve.

In the case of a new company, state who are (a) the promoters, (b) the proposed directors of the company, what are their business addresses, and what is their experience in business.

8. *Managing Agents.*—Give name and address of Managing Agents, if any, appointed or to be appointed. enclosing copies of Managing Agency agreements entered into, if any, and of Treasurers and Secretaries. Give also the names of companies for which the Managing Agents, or any partner of the Managing Agents are also acting in a similar capacity. If the Managing Agent is a company, give the names of Companies on which a Director of the Managing Agent company is also a Director or a Managing Director. Also state the interest of the Managing Agents in the company particularly with regard to the shares held and otherwise.

9. *Interest of Directors.*—State the extent of interest of the Directors (existing or proposed).

10. *Foreign Controlled Companies.*—Is the company one which is controlled either directly or indirectly, by non-residents and is any part of the share capital held by non-residents? If so, please give particulars.

11. *Total amount of issue.*—Indicate the total amount to be issued and state whether it is for cash or not for cash.

12. *Capital Issue :*

(a) *General Provisions :*

- (i) Describe in detail the proposed capital issue (indicating the exact amount) in shares, stocks and bonds, debentures and other instruments creating a charge or lien on the assets of the company, or which acknowledges a loan or indebtedness of the company, and are guaranteed by or entered into jointly with a third party.
- (ii) Differentiate between equity and preference shares. Give the nominal value and the issue price of each also stating the premium and entrance fee to be included in the issue price. The reasons for the issue of shares at a premium, if any, may be stated. The rate of dividend and the terms and conditions of the preference shares may also be given e.g. whether these are tax free, cumulative, redeemable, etc. Describe the voting rights of each class. Indicate the proposed method of payment including cash or other consideration. If for other consideration give details and the name of the parties concerned.
- (iii) In case of issue of bonus shares, a proforma up-to-date statement of accounts should be added stating what appropriations are to be made from the profit and loss account

balance and net balance to be carried forward to next year. Please state whether reserves have been created out of genuine profits (*i.e.* profits actually earned by a company. Profits arising out of a revaluation of fixed assets are not to be taken into account). Also please state the reasons for the proposed capitalisation of profits or reserves.

- (iv) If the capital issue is to include the sale of debentures or bonds, indicate the security offered and the rate of interest and state if these are to be issued at par, premium, or discount and the period of redemption.
- (v) For existing companies, whose shares are not quoted on any stock exchange state the rates at which shares of the same class as that proposed to be issued have recently been transferred; also state the rate of dividend paid on the shares for the preceding five years. In the case of companies whose shares are quoted, the latest quotations of the shares may be given specifying the date and the name of the stock exchange where the shares are listed.
- (vi) *If consent is required for borrowing, please state :*
 - (i) the exact amount of the loan;
 - (ii) from what source(s) the loan will be raised;
 - (iii) particulars of the terms on which the loan will be advanced, *e.g.*, rate of interest, period, how repayable etc., what document of security (*e.g.* mortgage) will be executed, brief particulars of the property or other assets which will be included in the security.

(b) *Nature of issue :*

- (i) State the degree to which the subscription for the capital issue will be public and private. If public, explain the terms of issue, and the names of underwriters, their commissions and the method of payment. Indicate brokerage payable, if any.
- (ii) If a prospectus is to be issued, three copies of the draft prospectus may also be sent along with the application.
- (iii) State the amount and arrangements which the promoters have made for the subscription of capital privately by them or their friends.

(c) *Issue to non-residents :*

- (i) State whether the company has any existing non-resident shareholders. If so, a list of non-resident shareholders showing their nationality and the number of shares held by each may be enclosed.
- (ii) State the number and total value of shares out of the proposed issue which will be allotted to non-resident shareholders.
- (iii) In case of Technical Assistance Agreements, a statement should be made covering the nature of technical assistance, agreed royalty payments and provision for training of the Indian technicians. Copies of the agreement for supply of technical assistance may be enclosed.

13. *Cash Expenditure :*

- (a) State the proposed stages of development and immediate and ultimate capital requirements.
- (b) Explain how the proceeds received from the capital issue will be allocated for the acquisition of land, buildings, machinery, equipment, raw materials and working capital. Buildings, machinery and equipment to be purchased shall be described in detail, showing local and foreign purchase and cost. If one of the objects of the issue is to repay a loan, state the purposes of the borrowing and whether consent was obtained for that borrowing.
- (c) If an existing concern or its assets are to be acquired, give the name, location, ownership and the purchase price. Furnish a set of balance sheets of vendor of the last five years, accompanied by a valuation report, by an independent authority, of the assets proposed to be acquired, and justify amount charged for goodwill, if any.

14. *Miscellaneous Information.*—The application should contain any additional material which will strengthen or substantiate the request for Government's approval of the capital issue.

15. *New Insurance Companies.*—In the case of new insurance companies, give the following information :—

- (i) Copies of agreements, if any, that have been entered into or proposed to be entered into, between the company and any of its officers, including its Managing Director or Manager.
- (ii) Amount of insurance business that is expected to be available to the company in the area of its operation, and the number and names of companies already operating in that area.
- (iii) Reasons, if any, for considering the existing facilities for insurance as inadequate.
- (iv) The experience and technical qualification of the members of the Board of Directors or promoters or other officers of the company.

16. *Enclosures.*—The application should be accompanied by the following enclosures :—

- (a) A treasury Receipt for the application fee of Rs. 50.
- (b) Memorandum and Articles of Association.
- (c) Managing Agency Agreement.
- (d) Latest audited balance sheet, and profit and loss account, and auditors' report to the shareholders, if an existing company.
- (e) Draft prospectus, if issue is through a prospectus.
- (f) Copy of technical assistance agreement, if any.
- (g) Other documents, as required.

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