Corpsec Hotline

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CORPORATE AND SECURITIES LAWS UPDATE

PROPOSED ADR / GDR BY STERLING INFOTECH

The Cabinet Committee on Economic Affairs (CCEA) today permitted the C. Sivasankaran - promoted Sterling Infotech to raise up to US$ 500 million equity by issuing American Depository Receipts (ADRs) or Global Depository Receipts (GDRs) for financing an undersea cable project between Chennai and Guam.

The approval is subject to the condition that the shares held by non-resident Indians (NRIs) would be transferred to resident Indians.

Also, a fresh issue of shares to residents has to precede the ADR/GDR issue to conform with the 49% foreign equity cap. The CCEA has further stipulated that the management control of the company will remain with the Indian shareholders. Also, any investment in broadcasting would require government clearance and will be subject to sectoral guidelines.

The company proposes to set up an eight fibre fully-protected undersea cable from Chennai to Guam, a US territory. The project will provide bandwidth to South Asia in general and India in particular. The system will link Chennai with Singapore, Indonesia and Guam through a ring network.

Source: Business Standard, January 9, 2002

PROPOSED ISSUE OF BONUS DEBENTURES

BY HINDUSTAN LEVER LIMITED

Hindustan Lever Limited (HLL) announced a novel scheme to restructure its capital. Under this scheme, HLL proposed to issue bonus debentures to its shareholders pursuant to which its shareholders would become secured creditors of the company after they subscribed to the bonus issue of debentures.

The shareholders would receive interest payments staggered over a period of three years from the date of the issue of the debentures. Although the shareholders would not receive any upfront payments, substantial payments would be made to the shareholders at the end of the second and third year. It is interesting to note that the interest payable (on the bonus debentures) to the shareholders will be a tax deductible item for HLL.

Prior to issuing bonus debentures, HLL also considered the viability of other methods of capital restructuring and distributing their profits amongst their shareholders such as buy-back of shares, declaration of special dividend, reducing the share capital as well as issuing irredeemable preference shares.

ICICI'S MERGER WITH ICICI BANK

ICICI announced its reverse merger plans with its subsidiary ICICI Bank. Both ICICI and ICICI Bank are currently listed on the New York Stock Exchange in addition to being listed on the stock exchanges in India. This is a maiden case in India, where a financial institution is merging with its subsidiary, a leading and growing private sector bank. With this merger a roadmap for universal banking will be established in India and as a result there may be many more mega restructuring deals in the banking industry.

The Reserve Bank of India has recently given its no objection to the merger of ICICI with ICICI Bank, allowing the institution to go ahead with the high court process required for all mergers between two Indian companies. Following this, ICICI has also filed an application with High Court for its approval relating to the aforesaid merger.

Following are some of the challenges likely to be faced by ICICI by virtue of the proposed reverse merger:

- ICICI will have to mobilise additional funds in order to satisfy the Cash Reserve Ratio (CRR),

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Statutory Liquidity Ratio (SLR) and Capital Adequacy Norms applicable to Indian banks.

- ICICI will have to hive off its retail brokerage arm, ICICI Web Trade, since banks in India are not permitted to have a brokerage arm.

PUBLIC SECTOR DISINVESTMENT AND TAKEOVER REGULATIONS

The following is a summary of the discussions held at the Securities and Exchange Board of India (SEBI) board meeting on December 28, 2001. Please note that these are only proposed changes and that we are not aware of any formal notification in this regard:

a. The SEBI decided that the reference date for calculation of offer price in case of frequently traded Public Sector Undertaking (PSU) shares shall be the date preceding the date when the Central government opens the financial bids instead of the date when Central Government, after receiving the cabinet approval, announces the name of the successful bidder. This would enable the bidders to take into account the price of the shares and also minimize the occasional possibility of the unsuccessful bidders manipulating the market price.

b. The SEBI decided that in case of infrequently traded PSU shares the highest price paid by the successful bidder arrived at after the process of competitive bidding under the share purchase agreement between the strategic partner and the Central government shall be the minimum offer price for the purpose of the public offer in terms of the Takeover Regulations. Other parameters specified in the Takeover Regulations for determination of minimum offer price shall not be applicable for infrequently trades shares of PSU under a PSU disinvestment.

c. The SEBI decided that the six month period for determining whether the shares of a PSU are frequently or infrequently traded, shall be taken with respect to the date when the Central government opens the financial bids, instead of the date when Central Government, after receiving the cabinet approval, announces the name of the successful bidder.

d. Presently, a government company which acquires 15% or more of shares / voting rights or control of a listed company is not required to make an open offer to buy a minimum of 20% of shares from the public shareholders of the target company at a price determined in terms of the Takeover Regulations. The SEBI decided that this provision would continue except where a government company acquires 15% or more of shares / voting rights or control of another listed PSU through the competitive bidding process of the Central Government. In the latter case the government company (acquirer) would be required to make an open offer to buy a minimum of 20% of shares from the public shareholders of the listed PSU at a price determined in terms of the Takeover Regulations. This has been done with a view to provide a level playing field amongst the bidders in a competitive bidding process of a listed PSU by the Central Government.

Source: Minutes of the Board meeting of the Securities an Exchange Board of India held on December 28, 2001.

PROPOSED LABOUR REFORMS

The Group of Ministers (GoM) which was assigned with the specific task of considering the proposed labour reforms has recently finalized its recommendations and the same will shortly be placed for the approval of the Union Cabinet.

The proposed labour reforms include *inter alia* amendments to the Industrial Disputes Act, 1947 (ID Act) the Payment of Wages Act, 1936 (PW Act) and the Contract Labour (Regulation and Abolition) Act, 1970 (CL Act). Set forth below are some of the proposed amendments:

- ID Act

As per the recommendations, establishments employing less than 1,000 workers will not require prior permission of the government before layoffs, retrenchment or closure. As per the provisions of the present ID Act, establishments employing less than 100 workers do not require prior permission of the government before layoffs, retrenchment or closure.

The GoM has also recommended additional benefits to labour to balance the effects of the abovementioned recommendation and has proposed to hike the separation package for workers substantially. The enhanced package has been designed to deter industrial units from going in for retrenchments on a routine basis. As per the GoM recommendations, no employer can retrench or layoff a workman unless such workman has been paid at the time of retrenchment or layoff, a compensation equivalent to 45 days (prior to this recommendation it was 15 days) of average pay for every completed year of continuous service or any part thereof in excess of six months.

- PW Act

As per the proposed amendment the minimum wages payable will be increased from Rs. 1,600 per month to Rs. 6,500 per month.

*Source**:** The Economic Times January 2, 2002*

GUIDELINES FOR PRIVATE PARTICIPATION AND FOREIGN DIRECT INVESTMENT IN THE DEFENCE INDUSTRY

The Government of India, subsequent to allowing 100% private participation and Foreign Direct Investment (FDI) up to 26% in the defence industry, has recently notified detailed guidelines for the aforesaid purpose. Listed below are the important provisions of the guidelines:

- The guidelines provide that the applicant interested in obtaining a license for the production of arms and ammunition must be an Indian company or a partnership firm (the applicant) registered in India. Also the management of the applicant company must be in Indian hands. Furthermore, the majority representation of the Board of directors as well as the chief executives of the applicant must be resident Indians.
- The applications for obtaining license for the production of arms and ammunition must be filed with the Department of Industrial Policy & Promotion (DIPP), in the Ministry of Commerce and Industry. DIPP will grant the aforesaid license after consulting the Ministry of Defence. The application for foreign investment will have to be made to the Foreign Exchange Promotion Board of India (FIPB) of the Ministry of Commerce and Industry. The application should also contain full particulars of the directors and the chief executives.
- The guidelines provide for a three-year lock-in period for transfer of equity from one foreign investor to another foreign investor. This lock-in provision will also be applicable to Non Resident Indians (NRIs) and overseas corporate bodies (OCBs) [i.e. entities that are owned to the extent of 60% or more by NRIs]. Also such transfers would require prior approval of the FIPB and the Reserve Bank of India (RBI).
- According to the guidelines, DIPP after taking into consideration the category of weapons and equipment that are proposed to be manufactured will verify the antecedents of the foreign collaborators and domestic promoters, including their financial standing and credentials. While granting the license, the DIPP will assign precedence to the original equipment manufacturers or design establishments and companies having a good track record of past supplies to armed forces, space and atomic energy sectors along with a established research and development base.
- The guidelines also provide that the arms and ammunition produced by the private manufacturers must primarily be sold to the Ministry of Defence. However the Ministry of Defence may, by virtue of an application made to it, permit the private manufacturers to sell the arms and ammunition produced by them to the para-military organisations and state governments. The guidelines, however, prohibit selling of these items within the country to any other person or entity.
- While the guidelines do not provide for any minimum capitalization for the FDI, the DIPP would satisfy itself about the adequacy of the net worth of the foreign investor taking into account the category of weapons and equipment that are proposed to be manufactured.
- DIPP may permit the licensee to import equipment required for pre-production activities including development of prototype subject to certain conditions.

Source: Press Note no. 2 (2002 Series) dated January 4, 2002.

GUIDELINES FOR FOREIGN DIRECT INVESTMENT IN COMPANIES ENGAGED IN THE BUSINESS OF INTEGRATED TOWNSHIPS

The Government of India has recently notified detailed guidelines for FDI upto 100% in Indian companies engaged in the business of integrated townships. Listed below are the important provisions of the guidelines:

- Foreign companies seeking to set up a 100 per cent subsidiary in India for entering the business of integrated township must bring in at least $10 million as paid-up capital upfront.
- The guidelines provide that only those subsidiaries of foreign companies that are registered as Indian companies under the Companies Act, 1956, can undertake the aforesaid activities.
- In the case of joint venture companies involving an Indian partner, the minimum capitalization requirement for the Indian company would be $5 million that would need to be brought in upfront.
- A minimum lock-in period of three years from completion of minimum capitalization shall apply before repatriation of original investment is permitted.
- Only companies with integrated township development as their core area of business would be allowed to invest in this sector. Also such companies must have a successful track record of executing the aforesaid projects in other countries.
- The guidelines also provide for the minimum area to be developed.
- The guidelines provide that at least 50 per cent of the integrated project development must be completed within a period of five years from the date of possession of the first piece of land. However, if the investor intends to exit earlier due to reasons beyond his control, it shall be decided by the FIPB on a case-to-case basis.
- The FIPB would consider all such projects on the basis of recommendations from the Ministry of Urban Development & Poverty Alleviation and other concerned ministries.
- For companies investing in Special Economic Zones, FIPB may accord exemption to any of the above mentioned conditions on a case-to-case basis.

Source: Press Note no. 3 (2002 Series) dated January 4, 2002.

ROYALTY ON TRADE MARKS

The Government of India vide notification No.8 (2) 2001-FCI dated January 3, 2002 has finalized the rate and the formula for computing royalty for the use of the trade mark and brand name of a foreign collaborator by an Indian entity, without technology transfer, under the automatic route.

As per the notification, payment of royalty (computed as per the formula given below) of upto 2% on exports and upto 1% on domestic sales is permitted on an automatic basis for the use of the trade mark and brand name of a foreign collaborator.

The notification provides for the following formula for computing the royalty payable:

"Royalty on brand name/trade mark shall be paid as a percentage of net sales, viz., gross sales less agents'/dealers' commission, transport cost, including ocean freight, insurance, duties, taxes and other charges, and cost of raw materials, parts, components imported from the foreign licensor or its subsidiary/affiliated company."

In case of technology transfer, payment of royalty subsumes the payment of royalty for use of trademark and brand name of the foreign collaborator.

Source: Press Note no. 1 (2002 Series) dated January 3, 2002