Qualified Institutions Placement

Paras Kumar Jain, General Manager & Company Secretary, Pokarna Limited, Secunderabad.

India Inc., in order to fuel its growth plans had been banking heavily on GDR/FCCB route as a preferred mode for raising long term resources owing to shorter time frame and low cost structure. Though the year 2005-06 witnessed 139 companies accessing Indian primary market mobilising Rs. 27,000 crores through public/rights issue, yet the pace at which GDR/FCCB grew during the same period was much higher than the primary market offerings. Preference of GDR/FCCB to primary market offering has resulted in gradual export of the domestic market and has also impacted the depth of the domestic markets. In this backdrop, SEBI thought it is prudent to provide more efficient and competitive alternative to the GDR/FCCB route to listed companies to raise funds from the domestic market in the form of Qualified Institutions Placement.

In addition to the existing modes of investment for institutional investors, a new mode has been introduced by SEBI called qualified institutional placement. The law and procedure relating to QIP are outlined here.

SEBI vide circular no. SEBI/CFD/DIL/DIP/22/2006/8/5 dated 8th May 2006, amended Disclosure and Investor Protection {DIP} Guidelines, 2000. Vide this amendment a new Chapter under the heading "Chapter XIII-A" was added to the said guidelines detailing provisions relating to Qualified Institutions Placement. Private placement by way of QIP to Qualified Institutional Buyers (QIBs) would allow the listed companies to raise funds from the domestic market at the ease of GDR/FCCB. As the placement would be made to a set of informed investors, the disclosure and procedural requirement would be relatively less when compared to the public/rights issue offerings. Guidelines for Qualified Institutions Placement (QIP) have been discussed in this article.

ELIGIBLE ISSUER AND TYPE OF SECURITIES

A listed company whose equity shares are listed on a stock exchange having nation wide trading terminals, and, which has been complying with the stipulation of minimum public shareholding as provided under Clause 40A of the listing agreement shall be eligible to issue securities by way of QIP. The securities which can be issued by way of QIP are as under :

- equity shares (of the same class as are listed on a stock exchange) ;
- fully convertible debentures ;
- partly convertible debentures ; or
- any securities other than warrants which are convertible into or exchangeable with equity shares at a later date

e-mail : companysecretary@pokarna.com

The word 'securities' is not defined under the DIP Guidelines, 2000 and, thus, meaning of the same has to be imported from the Securities Contract (Regulation) Act, 1956. The term 'securities' is very widely defined under the said Act consequently any security convertible into equity shares is eligible for issue under QIP route.

ELIGIBLE INVESTORS/CLASS OF INVESTORS AND NO. OF ALLOTTEES

(a) Issue by way of QIP is restricted only to QIBs. QIBs have been defined under Clause 2.2.2B(v) of DIP Guidelines, 2000 to mean:

- public financial institution as defined in section 4A of the Companies Act, 1956 ;
- scheduled commercial banks ;
- mutual funds ;
- foreign institutional investor (FII) registered with SEBI ;
- multilateral and bilateral development financial institutions ;
- venture capital funds (VC) registered with SEBI ;
- foreign venture capital investors (FVC)registered with SEBI ;
- state industrial development corporations ;
- insurance companies registered with the Insurance Regulatory and Development Authority (IRDA) ;
- provident funds with minimum corpus of Rs. 250 million ;
- pension funds with minimum corpus of Rs. 250 million.

(b) No allotment should be made either directly or indirectly, to QIBs being a promoter or any other person related to promoter(s). For the purpose of this clause, QIB who has all or any of the following rights shall also be deemed to be a person related to promoter(s) :

- rights under a shareholders' agreement or voting agreement entered into with promoters or persons related to the promoters ;
- veto rights ; or

- right to appoint any nominee director on the board of the issuer.

Thus, FIIs, VC funds and Foreign VC funds can be issued securities on QIP basis only if they have no special arrangements in the form of shareholder agreements including, veto rights, power to nominate directors with the issuing company.

(c) There shall be atleast two allottees for issue upto the size of Rs. 2500 million and at least five allottees in case issue size exceeds Rs. 2500 million.

(d) No single allottee shall be allotted in excess of 50 per cent of the issue size.

(e) Of the total issue size, a minimum of 10% of the securities shall be allotted to mutual funds. If no mutual fund is agreeable to take up the minimum portion of 10% or any part thereof, such minimum portion of 10% or any part thereof may be allotted to other class of investors.

(f) No QIB shall withdraw bid/application after the closure of the issue.

PRICING OF THE ISSUE AND TENOR OF CONVERTIBLE SECURITY

(a) The QIP issue shall be priced higher of the following : -

(i) The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding the relevant date ;

OR

(ii) The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the two weeks preceding the relevant date.

(b) The pricing of the issue shall be adjusted in case of corporate actions such as bonus issue, rights issue, share splits, reclassification of shares into other securities, etc.

(c) The securities convertible into equity shares shall be converted or exchanged for equity shares of the Company within a period of 60 months from the date of allotment.

(d) The issue should be made fully paid up at the time of allotment itself.

(e) There should be a gap of at least six months between each placement in case placements are made in different tranches (if the Company is using the same shareholders' Resolution).

APPROVALS, DISCLOSURES AND PROCEDURAL REQUIREMENTS

(a) As the issue would be to a select few class of investors, the compliance of section 67 of the Companies Act would be warranted and consequently number of investors should be less than fifty.

(b) A Special Resolution under section 81 (1A) of the Companies Act, 1956 shall be passed by the members of the Company authorizing specific securities to be issued to the QIBs on QIP basis. The Resolution so passed shall be valid for a period of 12 months from the date of passing and on expiry of said period a fresh Resolution would be required to be passed.

(c) Issuer shall prepare a placement document containing all the relevant information and requisite disclosures. Placement document is required to be filed post issue and as such there is no requirement for pre-issue filing of the placement document with SEBI. Placement document is required to be filed with SEBI within a period of 30 days for records. The placement document will be placed on the websites of the Stock Exchanges and the issuer, with a disclaimer that the placement is meant only for QIBs on private placement basis and should not be construed as offering to the public.

(d) The issue of securities through QIP route shall be managed by a registered merchant banker with SEBI and it shall be the responsibility of merchant banker to exercise due diligence and issue certificate to Stock Exchanges stating that the issue complies with all the requirements of these guidelines.

TRANSFERABILITY

There is no lock in on the securities issued under QIP route. However for a period of one year from the date of allotment, securities should not be sold except on a recognised stock exchange or in a bulk/block transaction in accordance with the procedures prescribed by SEBI. Thus investors would be free to exit even immediately after allotment.

Having analysed the provisions for issue of securities on QIP basis, let us now note key differences between the GDR/FCCB and issue of securities on QIP basis.

Particulars	GDR/FCCB	QIP
Applicable Guidelines	The issue of GDR/ADR is governed by Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) Scheme, 1993 and guidelines issued by the Central Government thereunder from time to time and various notifications and regulations issued by Reserve Bank of India under the Foreign Exchange Management Act 1999.	The issue of securities under QIP route is governed by the provisions of Chapter XIII-A of SEBI Disclosure and Investor Protection Guidelines, 2000 and in some cases notification and regulations issued by Reserve Bank of India under Foreign Exchange Management Act 1999.
Type of Issuer	Listed Companies can issue GDR/FCCB. Unlisted	Only Listed Companies Can issue securities

	Companies accessing global markets vide GDR/FCCB would require prior or simultaneous listing in the domestic market.	under QIP route.
Track Record	The Company should have a consistent track record (both financial and otherwise) for a period of atleast three years. However for infrastructure projects financial track record is not a prerequisite.	No track record is prescribed under the guidelines. If the Company has a positive networth, it can issue shares under QIP route.
Issue Size	There is no restriction on the amount which the issuer company can raise through GDR/FCCB however it should be eligible to raise foreign equity under the FDI policy in force.	The issue size in one financial year shall not exceed five times of the net worth of the issuing Company at the end of its previous financial year.
Denomination	GDR/FCCB are denominated in a foreign currency.	QIP issue is denominated in Indian Rupee.
Listing	It is issued abroad and is listed and traded on foreign stock exchanges. In case of FCCB, converted shares are listed on the Indian Stock Exchange.	QIP securities are listed on Indian Stock Exchanges.
Lock in Period	There is no lock-in period for the GDR/FCCB issue under the Scheme. GDRs can be freely transferred or sold between non-residents outside India and converted equity shares can be sold on the Stock Exchanges. As per the terms of the issue, FCCB's can be converted into underlying equity shares or redeemed on the redemption date.	There is no lock in period on the securities issued under QIP route. However for a period of one year from the date of allotment, securities should not be sold except on a recognised stock exchange or in a bulk/block transaction in accordance with the procedures prescribed by SEBI.
No. of Allottees	There is no restriction on no. of allottees in case of GDR/FCCB.	There shall be atleast two allottees for issue upto size of Rs. 2,500 million and at least five allottees incase issue size exceeds Rs. 2,500 million. In any case allottees cannot exceed 49 nos.
Auditors	The Company is required to appoint an auditor and also include auditor's report in the offer document. The auditor should also provide requisite consent and comfort letters and reconcile the Issuer's accounts with International accounting standards.	No such requirement is prescribed under the guidelines
Currency of Resolution	Special Resolution is valid for a period of three months from the date of passing.	Special Resolution is valid for a period of twelve months from the date of Passing.

PROCEDURE FOR ISSUE OF EQUITY SHARES UNDER QIP ROUTE

- Intimate Stock exchange about the Board meeting at which proposal for issue of securities under QIP route is to be considered.
- On completion of Board meeting inform Stock Exchange about the proposal giving details of the issue of securities under QIP route.
- Appoint a SEBI registered Merchant Banker as the Lead Manager to the proposed issue and finalise the modalities of the issue.
- Hold a General Meeting and pass a Special Resolution under Section 81(1 A) of the Companies Act, 1956. If required, authorised capital should be altered and accordingly compliance of Sections 94, 16 and 31 of the Companies Act to be done.
- Intimate the out come of the General Meeting to the Stock Exchanges.
- File necessary forms with the Registrar of Companies.
- Lead Manager in consultation with the Company should prepare the placement document and circulate consecutively numbered placement document to the QIBs. The Placement document should also be made available on the website of the Company and the Stock Exchanges.
- Interested QIBs should deposit applications indicating offer price with the Lead Manager.
- The Company in consultation with the Lead Manager should decide about the price and intimate the Stock Exchanges about the same.
- QIBs to be notified about the allocation vide a confirmation allocation note.
- On the specified date QIBs should deposit application monies in escrow account and send all the requisite documents/information as indicated in the confirmation allocation note to the Lead Manager.
- After receipt of monies from the QIBs the Company should

issue and allot the security and simultaneously inform the Stock Exchanges about the same.

- In terms of clause 24 of the Listing Agreement, apply for inprinciple approval from the Stock Exchanges with the following : -
  - Listing application duly filled with Distinctive numbers of the securities issued if in physical from. Distribution Schedule pre and post allotment together with such supporting documents as have not been filed previously with the Exchange.
  - Certified true copy of the Board Resolution in which the securities were allotted.
  - List of allottees together with addresses and the number of securities allotted to them should be filed with the Exchange.
  - Security Pattern Form duly completed with relevant enclosures giving details before and after the issue.
  - Certified true copy of the final Placement Document along with soft copy in pdf format.
  - Details of each of the Promoter/Board of Directors of company as per format.
  - Processing fee and additional listing fee to be paid on the enhanced capital as per the exchange guidelines.
  - Auditor's Certificate giving the following two confirmations :

    A. That the issue price has been arrived at as per the pricing formula stipulated under Chapter XIIIA of SEBI (Disclosure and Investor Protection) Guidelines, 2000, along with the workings for arriving at such issue price.

    B. The receipt of funds against the said issue :
  - Certificate from the Company Secretary confirming that :

    A. All the legal and statutory formalities have been complied with and no Statutory Authority has restrained the Company from issuing and allotting securities towards the placement made to QIBs pursuant to Placement document.

    B. Equity shares issued to QIBs in terms of the Placement document shall rank *pari passu* in all respects including dividend entitlement with the existing equity shares of the Company.
  - Due diligence certificate from the Merchant Bankers confirming compliance with Chapter XIIIA of SEBI (Disclosure and Investor Protection) Guidelines, 2000.
- Within 30 days of allotment file placement document with SEBI for record purpose.
- After grant of in principle approval from the Stock Exchanges credit the securities into the depository participant accounts of the QIBs. Please note that allotment of securities can be made only in electronic from. However, allottees, if they desire, have an option to rematerialise the securities in accordance with the provisions of Depositories Act.
- The Company should then apply for the final trading and listing permissions, along with the following : -
  - Certified true copy of the Resolation passed by the Board of Directors of the Company approving the placement of securities with QIBs under Chapter XIIIA of SEBI (DIP) Guidelines, 2000.
  - Copy of the notice sent to the shareholders' of the company.
  - Certified true copy of the Resolution passed by the shareholders' of the Company in accordance with the requirements of Chapter XIIIA of SEBI (Disclosure and Investor Protection) Guidelines, 2000.
  - Draft placement document for issue of specified securities to QIBs.
  - Latest shareholding pattern of the company in the revised Clause 35 format.
  - Networth Certificate by the Statutory Auditors of the Company based on the audited figures of the previous financial year.
  - Confirmation from the Merchant Banker that the issue is being made in compliance with Chapter XIIIA of SEBI (Disclosure and Investor Protection) {DIP} Guidelines, 2000.
  - The Managing Director of the company should confirm that :

    A. The Company complies with the prescribed requirements of minimum public shareholding as required under Clause 40A and Clause 35 of the Listing Agreement

    B. The aggregate funds that is being raised through QIPs in the relevant financial year has not exceeded five times of the net worth of the company as at the end of its previous financial year.

    C. The placement of specified securities to the QIBs shall be made in accordance with Chapter XIIIA of SEBI (Disclosure and Investor Protection) {DIP} Guidelines, 2000.

    D. The equity shares arising pursuant to the QIP, shall rank *pari passu* in all respects including dividend entitlement with the existing equity shares of the Company.
- After receipt of final trading and listing permissions from the Stock Exchanges, intimate the same to the QIBs.

SEBI has made a commendable effort to align the provisions of QIP with that of GDR/FCCB. Through QIP guidelines, SEBI has unfolded a new avenue for companies to raise funds on the one hand and on the other it has provided domestic investors, especially mutual funds with a widened investment opportunity. ❑