

## Institutional Placement Programme – A brief



**By Harshil Dalal and  
Vineet Nalawalla**

In August 2010, the Government of India amended the Securities Contract Regulation (Rules), 1957 (SCRR) so as to require listed companies (not being Public Sector Companies) to achieve and maintain a minimum public shareholding of 25 percent by June 2013 so as to provide more depth to the promoter dominated market. The SCRR also requires the Securities and Exchange Board of India (SEBI) to specify the manner in which the aforesaid can be achieved.

SEBI had, therefore, prescribed mechanisms to enable companies to increase their public shareholding. Recently, SEBI has introduced an additional disinvestment route, the Institutional Placement Programme, by way of an amendment to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (the IPP Regulations). Under IPP Regulations, fresh shares can be issued by a company or the promoters and the promoter group can sell/offload their shares (Eligible Sellers) only to Qualified Institutional Buyers (QIBs), in order to achieve the minimum public shareholding prescribed under the SCRR. However, the promoter and promoter group intending to sell their shares, have been barred from transacting in securities of the company 12 weeks prior to or after the offer.

A company intending to adopt the IPP route is required to pass a special resolution under section 81(1A) of the Companies Act, 1956 approving the IPP. The company is, thereafter, required to appoint a merchant banker who shall carry out the requisite due diligence and file the offer document with the Registrar of Companies (ROC), SEBI and the Stock Exchanges. The offer document shall contain such disclosures as specified in Schedule XVIII to the SEBI ICDR. In the event, the company intends to issue fresh shares under IPP, an in-principle approval of the stock exchange(s) on which the company's shares are listed would be required.

With a view to making the shareholding pattern of the listed companies more diverse, a minimum of 25 percent of the shares offered are required to be allotted to mutual funds and insurance companies, however, in case the said portion of 25 percent is not subscribed by such mutual funds and insurance companies, the spillover of the under-subscribed portion can be made to the other QIBs. Furthermore, there must be at least 10 allottees, and no single allottee can be allotted more than 25 percent of the offer size.

In order to ensure that the Promoters or the Company do not allot the shares under IPP to related entities, the IPP Regulations prohibit allotment of shares to any QIBs related to the promoters including QIBs having (i) veto rights or (ii) a right to appoint a nominee director or (iii) any other rights under a shareholders agreements/ voting agreements. The IPP Regulations also provides that once a QIB has made a Bid the same cannot be withdrawn or revised downwards.

One would wonder whether the general public should have been made a part of IPP. However, in this event, it would amount to a public issue under the provisions of the Companies Act which may warrant comprehensive disclosures leading to frustration of the entire objective sought to be achieved.

The IPP route appears to be more expeditious than Further Public Offers since the Promoters may offload their shares by mere filing of the offer document with the ROC, SEBI and the Stock Exchanges simultaneously, without obtaining any approvals/ observations from the SEBI.

However, since more than 10 percent of the promoter shareholding cannot be offloaded through IPP, in the event, the Promoter shareholding is 85 percent or more, IPP may be required to be coupled with some other methods to achieve the required minimum public shareholding.

### **Kanga & Co.**

Readymoney Mansion  
 43, Veer Nariman Road  
 Mumbai 400 001, India  
 Tel: (91) 22 6623 0000

**Email:** [harshil.dalal@kangacompany.com](mailto:harshil.dalal@kangacompany.com)  
[vineet@kangacompany.com](mailto:vineet@kangacompany.com)  
[www.kangacompany.com](http://www.kangacompany.com)