
CAPITAL ISSUES (EXEMPTION) ORDER, 1969

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CAPITAL ISSUES (EXEMPTION) ORDER, 1969

S.O. 558, dated the 1st February, 1969.1-In exercise of the powers conferred by sub-section (1) of Sec. 6 of the Capital Issues (Control) Act, 1947 (29 of 1947), and in supersession of Capital Issues (Exemption) Order, 1961 and Capital Issues (Exemption) Order, 1966, published with the notifications of the Government of India in the Ministry of Finance (Department of Economic Affairs) 2 No. S.O. 1234, dated the 23rd May, 1961 and 3 No. G.S.R. 1705, dated the 4th November, 1966, respectively the Central Government hereby makes the following order, namely :

1. Short title and commencement :-

- (1) This order may be called the Capital Issues (Exemption) Order, 1969.
- (2) It shall come into force on the date of its publication in the official Gazette.

2. Interpretation :-

In this order, unless the context otherwise requires,-

(a) "Act" means Capital Issues (Control) Act, 1947 ;

(b) "banking institution" means any institution carrying on the business of banking to which Banking Regulation Act, 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 Companies Act, 1956 ;

(e) "banking company", "insurer" and "provident society" shall have the meanings respectively assigned to them in Cl. (c) of S.5 of the Banking Regulation Act, 1949, and in Cl. (9) of Section 2 and sub-section (1) of Section 65 of the Insurance Act, 1938 ;

(f) words and expressions used in this order and not defined but defined in the Act, shall have the meanings respectively assigned to them in the Act.

3. Certain issue of securities exempted from certain provisions of the Act :-

(1) ¹[²Subject to the provisions of Cl. 9 of the following issue of Securities] irrespective of the value consideration involved, by the following categories of companies shall be exempt from the provisions of Section 3 , Section 4 and Section 5 of the Act, namely] :

(i) a private company as defined in Section 3 of the Companies Act, 1956 ³[and which is not registered under Section 26 of the Monopolies and Restrictive Trade Practices Act, 1969 ;

(ii) a Government Company as defined in Section 617 of the Companies Act, 1956 , provided that no portion of the issue of securities is made to the general public;

(iii) a banking company or an insurance company or a provident society ⁴[one crore], the above-mentioned companies shall as soon as the issue has been made, send a report thereon in duplicate to the Controller of Capital Issues, to the extent applicable ⁵ [in Form I as specified in the Schedule annexed to this Order] to be followed by reports as on the 31st March, the 30th June, the 30th September and the 31st December until the securities have been got fully paid-up, together with a copy of the audited and published, balance sheet immediately after the securities have been fully paid-up.

1. Subs. by S.O. 3604, dated 1st October, 1971.
2. Subs. by S.O. 577 (E), dated 30th September, 1974.
3. Ins. by S.O. 3604, dated 1st October, 1971.
4. Subs. by S.O. 165(E), dated 22nd February, 1985.
5. Subs. by S.O. 3604, dated 1st October, 1971.

4. Issue of securities by ³[certain] public limited companies ⁴[and private companies] wholly exempted from certain provisions of the Act :-

The following issues by public limited companies ¹[public limited companies and by private companies registered under Section 26 of the Monopolies and Restrictive Trade Practices Act, 1969] shall be exempt from the provisions of Section 3 , Section 4 and Section 5 of the Act, namely:

(i) the issue of securities by a ²[company other than the one registered under Section 26 of the Monopolies and Restrictive Trade Practices Act, 1969] 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 ³[one crore of rupees] ;

Explanation.-The aforesaid limit of one crore 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;

(ii) the issue 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;

(iii) the issue of securities in a case where,-

(a) 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 ; or

(b) an amalgamation of two or more banking companies has been approved by the Reserve Bank of India under S.44A of the Banking Regulation Act, 1949, and the total paid up capital of the amalgamated company or the amalgamated banking company after the issue of securities under this provision is not greater than the total paid-up capital of the amalgamating companies or the amalgamating

(iv) the loans granted or debentures taken up or bonds or promissory notes issued by ⁴[the Central Government, a state Government], ⁵[Scheduled Banks as defined under Sec. 2 (e) of Reserve Bank of India Act, 1934], ⁶[the National Housing Bank established under National Housing Bank Act, 1987] , ⁷[the Industrial Development Bank of India established under Industrial Development Act, 1964, the Industrial Finance Corporation established under Industrial Finance Corporation Act, 1948 , ⁸[Tourism Finance Corporation of India Ltd.], ⁹[Risk Capital and Technology Finance Corporation Ltd.], a State Financial Corporation established under State Finance Corporations Act, 1951, the Madras Industrial Investment Corporation Limited, ¹⁰[the Financial Institution notified under the sub-clause (i) of Cl. (a) and Cl. (c) of sub-section (i) of Section 9 of the Industrial Development Bank of India Act, 1964], ¹¹[the Export Import Bank of India established under Export Import Bank of India Act, 1981], the Industrial Credit and Investment Corporation India Limited, ¹²[the Housing Development Finance Corporation Limited], the Unit Trust of India established under Unit Trust of India Act, 1963 , the National Industrial Development Corporation of India Limited, ¹³[the Industrial Re- construction Bank of India], ¹⁴[International Finance Corporation (Washington)], the National Textile Corporation and a State Textile Corporation, ¹⁵[the Shipping Credit and Investment Company of India Limited], the Life Insurance Corporation of

India,¹⁶[the General Insurance Corporation of India and its subsidiaries, namely the National Insurance Company Limited, the New India Assurance Company Limited, the Oriental Fire and General Insurance Company Limited and the United India Fire and General Insurance Company Limited],¹⁷[Army Group Insurance Fund], the Rehabilitation Industrial Corporation of India Limited, a State Electricity Board constituted under Electricity (Supply) Act, 1948],¹⁸[Karnataka Power Corporation Limited, the State Trading Corporation of India. Limited],¹⁹[the Employees State Insurance Corporation set up under Employees State Insurance Act, 1948], the Regional Provident Fund Commissioner appointed under Employees Provident Fund and Family Pension Fund Act, 1952 or the Minerals and Metals Trading Corporation of India Limited.

²⁰[Explanation.-In this sub-clause "debentures" includes any debentures

(v) the guarantees given by the Industrial Development Bank of India under Cl. (e) or Cl. (f) or Cl. (g) of sub-section (1) of Section 9 of the Industrial Development Bank of India Act, 1964 ²¹[or by the National Housing Bank under Cl. (d) of Section 14 of the National Housing Bank Act, 1987] ²²[or by the Export-Import Bank of India established under sub-section (2) of S.10 of the Export-Import Bank of India Act, 1981] or by the Industrial Finance Corporation under Cl. (b) of sub-section (1) of Section 23 of the Industrial Finance Corporation Act, 1948 ²³[or Tourism Finance Corporation of India Ltd.] ²⁴[Risk Capital and Technology Finance Corporation Ltd.] or by the Central Government or a State Government under sub-section (2) of the said Section 23 of the Industrial Finance Corporation Act, 1948 , or any other guarantees given or furnished by any other body or institution specified in sub-clause (iv) ; -

(vi) 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;

(vii) instruments "executed by the Central Government or a State Government guaranteeing advances or overdrafts referred to in sub-clause (vi) or guaranteeing the payments due to a banking

institution arising out of any guarantee furnished by that banking institution ;

(viii) 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 preceding such issue does not exceed **25** [one crore] of rupees ;

(ix) third party guarantee on behalf of a company in respect of -

(a) the loans granted or debentures taken up by the institutions specified in sub-clause (iv) : and

(b) the advances, overdrafts or guarantees, referred to in sub-clause (vi) granted or furnished or to be granted or furnished by a banking institution, an insurance company, managing agents of a company, or the managing director or director of a company ;

(x) charges made underlining leases by the lessees in favour of the lessor charging the assets of a company for the due payment of rents and royalties reserved by the instrument of lease.

1. Subs. by S.O. 25(e), dated 11th January, 1972.
2. S.O. 25(e), dated 11th January, 1972 .
3. Subs. by S.O. 165 (E), dated 22nd February, 1985.
4. Susb. by S.O. 577 (E), dated 30th September, 1974.
5. Subs. by S.O. 888 (E), dated 5th October, 1987.
6. Ins. by S.O. 506 (E), dated 28th June, 1989.
7. Ins. by S.O. 862 (E), dated 22nd December, 1982.
8. Ins. by S.O. 1027 (E), dated 6th December, 1989.
9. Ins. by S.O. 75 (E), dated 15th December, 1989.
10. Ins. by S.O. 863 (E), dated 22nd December, 1977.
11. Ins. by S.O. 862 (E), dated 22nd December, 1982.
12. Susb. by S.O. 864 (E), dated 22nd December, 1979.
13. Subs. by S.O. 292 (E), dated 20th March, 1985.
14. Ins. by S.O. 482 (E), dated 15th May, 1987.
15. Subs. by S.O. 1016 (E), dated 24th November, 1987.
16. Ins. by S.O. 645 (E), dated 31 st August, 1977.
17. Ins. by S.O. 142 (E), dated 17th February, 1989.
18. Ins. by S.O. 862 (E), dated 22nd December, 1982.
19. Subs. by S.O. 577 (E), dated 30th September, 1974.
20. Ins. by S.O. 222 (E), dated 22nd May, 1975.
21. Ins. by S.O. 506 (E), dated 28th June, 1989.
22. Ins. by S.O. 862, dated 22nd December, 1982.
23. Ins. by S.O. 1027 (E), dated 6th December, 1989.

24. Ins. by S.O. 75 (E), dated 15th December, 1989.

25. Subs. by S.O. 165 (E), dated 22nd February, 1985.

5. Issue of 6[securities, other than debentures, by certain public limited companies] exempted from certain provisions of the Act, 5 subject to observance of criteria :-

¹[The issue of securities, other than debentures, for consideration exceeding ²[one crore of rupees] proposed to be made by a public company [not including a company registered under Section 26 of the Monopolies and Restrictive Trade Practices Act, 1969], but including] a Government company as defined in Section 617 of the Companies Act, 1956 , which proposes to make an offer of the securities to the public by prospectus, shall be exempt from the provisions of Section 3 , Section 4 and Section 5 of the Act:

Provided that-

(i) the issue does not comprise or include preference shares carrying rights or participation over and above the fixed amount or an amount calculated at a fixed rate in the profits or conversion into equity shares or debentures carrying right of conversion into equity shares or payable to bearer ;

(ii) as a result of the proposed issue, the quiry of the company is not less than one-half of its debt;

Explanation 1.-"debt" includes all borrowings repayable not earlier than five years from the date of borrowing (whether debentures, loans or deferred payments including interest thereon, for the purchase of capital equipment) and preference shares redeemable not later than twelve years from the date of issue;

Explanation 2.-"equity" includes paid-up equity share capital, share premium, free reserves irredeemable preference shares and preference shares redeemable not earlier than twelve years from the date of issue ;

(iii) as a result of the proposed issue the total paid-up preference share capital will not be more than one-third of the total paid-up equity share capital :

(iv) where the securities issued by the company, or a part thereof, is for the purpose of taking over an existing business or asset, the take-over is effected at the book value of such business or asset;

(v) where a public company is formed on conversion of a private

company or for taking over the business of a partnership or a proprietorship or an association of persons, the consideration for issue of securities by the public company to the shareholders of such private company, or to the members of such partnership, proprietorship or an association of persons, as the case may be, for taking over the same as a going business and any part of the assets of such private company, partnership, proprietorship or an association of persons, does not exceed the book value of the net assets so taken over of the private company, partnership, proprietorship or an association of persons;

(vi) no securities are issued in consideration of revaluation of assets or creation of any intangible or fictitious assets ;

(vii) the issue price of the securities to be issued is at par ³[***] ;

(viii) any offer of securities for public subscription is such as to make the securities eligible for listing on a recognised stock exchange ;

(ix) ⁴[***] the rate of dividend on preference shares does not exceed the rate notified by the Central Government from time to time as applicable to such securities and the timing of the offer of securities proposed to be issued is in conformity with the directions notified by the Central

(x) where the issue of equity capital involves an offer for subscription by the public for the first time, the value of equity capital subscribed privately by the promoters, directors and their friends is not less than fifteen per cent. of the total issued equity capital, if it does not exceed one crore of rupees, twelve and a half per cent. if it does not exceed two crores of rupees, and ten per cent. if it is in excess of two crores of rupees ;

(xi) in a public offer of shares no reservation is to be made in favour of any person or class of persons except with the prior approval of the Controller of Capital Issues;

(xii) ¹[***];

(xii) if the consideration for the issue of securities is proposed to be got fully paid-up by making calls' such calls shall be made on a uniform basis on all securities falling under the same class and completed within a period of five years from the date of the offer: Provided further that-

(i) a company satisfying the criteria under the above proviso shall file with the Controller of Capital Issues a statement of its capital issue proposals in the form specified in the Schedule annexed to Capital Issues (Application for Consent) Rules, 1966, notified under No. G.S.R. 600, dated the 29th March, 1966, together with the enclosures mentioned therein, except the treasury chalan, at least 30 days before a prospectus is issued, a statement in lieu of prospectus is filed or any offer relating to the whole or part of the issue is made;

Explanation- the statement of proposals referred to in this proviso need not be accompanied by any fee;

(ii) ²[the company shall obtain an acknowledgement in Form II as specified in the schedule annexed to this Order duly signed by the Controller of Capital Issues or an Officer authorised by him in this behalf] ;

(iii) the company shall State in a prominent place in its prospectus or statement in lieu of prospectus or letter of offer to its share holders, as the case may be that the issue of securities is being made in terms of the provisions of this order;

(iv) as soon as the issue of capital has been made, a report thereon is sent in duplicate to the Controller of Capital Issues, to the extent applicable, ³ [in Form I as specified in the schedule annexed to this Order] to be followed by reports as on the 31st March, the 30th June, the 30th September and the 31st December until the securities have been got fully paid-up, together with a copy of the audited and published balance sheet immediately after the securities have been fully paid-up.

1. Ins. by S.O. 506 (E), dated 28th June, 1989.
2. Ins. by S.O. 862, dated 22nd December, 1982.
3. Ins. by S.O. 1027 (E), dated 6th December, 1989.
4. Ins. by S.O. 75 (E), dated 15th December, 1989.

6. Exemption of public offer for sale of certain securities from certain provisions of the Act :-

The following shall be exempt from the provisions of Section 4 of the Act in so far as such provisions relate to any documents publicly offering for sale, namely :

(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

7. Exemption of certain securities the issues of which have been regularised :-

The following shall be exempt from the provisions of sub-section (2) of Section 5 of the Act, namely:

(a) securities the issue of which has involved a contravention of sub-sections (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.

8. Saving :-

Nothing contained in this order :

(i) shall apply to any issue of securities irrespective of the amount involving the capitalisation of profits or reserves for the purpose of issuing additional capital or conversion of partly paid-up shares into fully paid- up shares or for the increase of the paid-up value or par value of shares already issued by any company private or public including a banking company or an insurance company, or a provident society incorporated as a company; .

(ii) shall affect or be' deemed to affect the power of the Central Government to modify in the public interest any proposal for the issue of securities by a public company desiring to avail itself of the exemption under this order; .

(iii) shall be deemed to exempt any public company from obtaining the consent of the Central Government under the Act in respect of issues of all securities the terms of which for whatever reasons, do not satisfy the provisions of Cl. 5.

(iv) ¹ [***]

1. Ins. by S.O. 506 (E), dated 28th June, 1989.

9. Clarification :-

It is hereby clarified that all issues of securities not covered by this order and, in particular, the following issues of securities are not exempt from the provisions of Section 3 , Section 4 and Section 5 of the Act, namely :

(i) bonus issues as referred to in Cl. 8(1) of this order by any company whatsoever-private company, banking and insurance company, Government company and public company-irrespective of the amount of consideration involved;

(ii) issue of preference shares, carrying participating or conversion rights ; ¹(ii-a) issue of securities by a private limited company in which an amount exceeding twenty per cent. is subscribed by a public limited company or companies];

(iii) issue of debentures carrying conversion rights ²[other than those mentioned in sub-section (iv) of Cl. 4] or issue of debentures not payable to registered holders;

(iv) issue of securities at a premium or discount ;

(v) issue of securities involving relaxation of any or all the conditions mentioned in. Cl. 5 above ³ [by a person or Company other than the subsidiaries of any nationalised Bank, State Bank of India, Unit Trust of India or any other Mutual Fund public (financial institutions or any

1. Ins. by S.O. 862, dated 22nd December, 1982.

2. Ins. by S.O. 1027 (E), dated 6th December, 1989.

3. Ins. by S.O. 75 (E), dated 15th December, 1989.