

CAPITAL ISSUES (CONTROL) ACT, 1947

29 of 1947

[18th April, 1947]

CONTENTS

1. Short title, extent and duration
2. Definitions of interpretation
3. Control over issues of capital
4. Control of advertisement of offers of securities for subscription etc
5. Purchase and sale of securities
6. Power to exempt and to condone contraventions
7. Power to call for information
8. False statement
9. Prohibition against disclosing Information
10. Power to delegate function
11. Committee to advise Government
12. Power to make rules
13. Penalties
14. Burden of proof in certain cases
15. Protection of action taken under Act
16. Continuance of existing orders and savings

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"The object of this measure is to keep in existencethe control over capital issues which was imposed by Rule 94-A of the Defence of India Rules in May, 1943 and continued in force after the expiry of the Defence of India Act by Ordinance No. XX of 1946. Although there has been an appreciable change in the general conditions which constituted the principal reason for the introduction of the control during war-time, it is thought in the light of experience gained that the control is still necessary to secure a balanced investment of the country's resources in industry, agriculture and the social services". -Gaz. of Ind., 1947, Part V, p. 264. Act 22 of 1950.- The object of this Bill is to continue in force, upto the 31st March, 1952, the provisions of the Capital Issues (Continuance of

Control) Act, 1947, and to extend the scope of the Act to all the territories of India which are under the legislative jurisdiction of Parliament in regard to the subject matter of that Act. Gaz. of Ind., 25-2-1950, Pt. V, p, 60. Act 6 of 1952.- The object of this Bill is to continue in force, upto the 31st March, 1956, the provisions of the Capital Issues (Continuance of Control) Act, 1947, which expires on 31st March, 1952. As suggested by the Planning Commission, it is necessary to continue the control in order to canalise the limited capital resources, available for investment, in (he desired fields. Provision is also being made for the levy of fees in order to make the capital issues organisation self-sufficient as far as possible. Gaz. of Ind., 16-2-1952, Pt. II, S. 2, p. 33. Act 8 of 1956.- The object of this Bill is to continue in force the provisions of the Capital Issues (Continuance of Control) Act, 1947, which expires on the 31st March, 1956, beyond that dale. it is necessary to continue the control in order to canalise the limited capital reasources available for investment in this country in the desired fields. As this Act has had to be extended several times in the past and as in the context of our Five Year Plan it is not possible to forsee at present when the need for the regulating provisions contained in it will disappear, it is proposed to place this Act indefinitely on the Statute Book for the present -Gaz. of Ind., 17-2-1956, Pt. II, S. 2, Ext., p. 14. Act 50 of 1957.- Capital Issues (Control) Act, 1947, does not specify that capitalisation of reserves for the purpose of crediting partly paid shares as fully paid on for increasing the par value of shares already issued, requires prior permission. This Bill, therefore seeks to clarify the position in this regard. 2. It has been the intention, even since the inception of control as capital issues, that the execution of mortgages or hypothications should require prior approval under the Act. As the expression "other instruments" occurring in section 2(b)(iii) of the Act is not sufficiently clear and has given room for doubts, it is proposed to put the matter beyond doubt by amplifying the definition of the term "securities" in section 2(b) so as to cover the transactions mentioned above. Similarly opportunity has now been taken to define the expression "company", "prospectus", etc., which the Act has so far left undefined and also for providing for certain other minor but relevant matters such as taking powers for revoking or varying consent already accorded, condoning offences under section 5 of the Act and prohibition of the giving of false information in connection with any of the provisions of the Act. -Gaz. of Ind., 28-11-1957, Pt. II, S. 2, Ext., p. 887.

1. Short title, extent and duration :-

(1) This Act may be called the Capital Issues[* *] (Control) Act, 1947.

¹[(2) It extends to the whole of India except the State of Jammu and Kashmir, and it applies also to citizens of India outside India.]

² [(3) * * * *].

1. Substituted by the Capita] Issues'Continuance of Control) Amendment Act (22 of 1950). S. 2 (18-3-1950).

2. Sub-section (3). omitted by the Capital Issues (Continuance of Control) Amendment Act (8 of 1956), S. 3 (21-3-1956).

2. Definitions of interpretation :-

(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 holder-, of any other securities of the company concerned or as client of the person issuing any prospectus- in relation to such securities, or selected in any other manner: 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, otherwise as being a domestic concern of the persons making or receiving it.

3. Control over issues of capital :-

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(1) No company incorporated in ²[the States] shall, except with the consent of the Central Government, make an issue of capital outside ²[the States]

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

(a) make an issue of capital in ²[the States]:

(b) make in ²[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 ²[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 ²[the States] by a company not incorporated in ²[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 conditions, 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.

10 [(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.]

1. Industrial Credit and Investment Corporation of India Ltd ..exempted from the provisions of this section as well as S.5. -See Gaz. of India. 1961. Pt. II, S.3 (ii). page 993.

2. Substituted for the word "Provinces" by A. L. O. 1950.

10. Inserted by the Capital Issues (Control) Amendment Act (50 of 1957), S. .1 (21-12-1957)

4. Control of advertisement of offers of securities for subscription etc :-

(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 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.]

5. Purchase and sale of securities :-

(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 ¹ [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.

1. Substituted by A. L. O.. 1950

6. Power to exempt and to condone contraventions :-

(1) The Central Government may, by general order¹ which shall be notified in the Official Gazette, provide for the granting of exemption from all or any of the provisions of section 3 , section 4 and section 5

(2) The Central Government may. by order condone a contravention of any of the provisions. of section 3 or Section 4 [for section 5], and on the making of 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.

1. For the Capital Issues (Exemption) Order. 1969, see Gaz. of Ind.. 1-2-1969, Pt. II, S.3 (ii), Ext.,page 149. By a notification No. S. O. 558, D - 1-2-1969. issued under Cl. 5(ix) of this Order, ceiling on the rate of dividend payable on preference shares has been raised to 11%. In the Union Territory of Dadra and Nagar Haveli,

however. Capital Issue (Exemption) Order, 1961 published in .G. I. 3-6-1961, as S. O 1234, has been extended - See G.I. 13-5-1967, Pt. II, S. 3 (i), page 796. [b] Inserted by the Capital Issues. (Control) Amendment Act (50 of 1957). S. 6 (21:12-1957)

7. Power to call for information :-

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 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.]

8. False statement :-

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 for in connection ¹ [or connection with any of the 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.

1. Inserted by the Capital Issues (Control) Amendment Act (50 of 1957), S. 8 (21-12-1957)

9. Prohibition against disclosing Information :-

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.

10. Power to delegate function :-

The Central Government may by order¹ 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 the direction, be exercised or discharged by any officer subordinate to that Government.

1. For such an order, see Gaz. of Ind., Extra 1947, page 335 and by the Capital Issues (Control) Amendment Act , 1949, .Pt. I, page

1771.

11. Committee to advise Government :-

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.

12. Power to make rules :-

¹[(1) The Central Government may by notification in the Official Gazette make rules²for carrying out the purposes of this Act ³[and in particular for the levy of fees on applications made to the Central Government for its consent].

[⁴(2) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

¹ [(3) 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.]

1. Section 12 renumbered as sub-section (1) thereof and sub-section (2) added thereto by the Capital Issues (Control) Amendment Act (50 of 1957), S. 8 (21-12-1957).
2. For the Capital Issues (Applications for Consent) Rules, 1966, (S. R. O. 600 of.29-3-1966), see Gaz. of Ind., _23-4-1966. Pt. II. S.3 (1). p.
3. Added by the Capital Issues (Continuance of Control) Amendment Act (6 of 1952), S. 3 (23-2-1952)
4. Substituted for sub-sec. (2) by the Delegated Legislation Provisions (Amendment) Act (20 of 1983). S. 2, Sch. (15-3-1984).

13. Penalties :-

(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

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(2) If the person committing an offence punishable under this section is a company or other body corporate, every director, manager, secretary or other officer 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.

14. Burden of proof in certain cases :-

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.

15. Protection of action taken under Act :-

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.

16. Continuance of existing orders and savings :-

(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, shall apply upon the expiration of the said Ordinance as if it had then been repealed by this Act.