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Disclosure in Private Placement Memorandum within Banking Sector of India and Investor Protection

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ABSTRACT

This research paper investigates the crucial role of disclosure in private placement memorandum (PPM) within the banking sector of India and its impact on investor protection. As the financial landscape evolves, private placements have become integral to capital-raising strategies for banks, emphasizing the need for comprehensive and transparent disclosure practices to safeguard investor interests.

The study employs a multifaceted approach, combining legal analysis, empirical data, and case studies to assess the current state of disclosure in private placement activities undertaken by banks in India. The research aims to identify key disclosure practices, evaluate their effectiveness, and propose recommendations for enhancing investor protection.

Keywords: Private Placement Memorandum (PPM), Disclosure, Banking Sector, Investor Protection, Securities Regulation.

I. INTRODUCTION

“We will ship them our garbage. We believe in full disclosure.”

-Larry D. Ellison (C.E.O. of Oracle Corporation)

In 21st century the world is developing at accelerated rate both economically and socially, we can't deny the fact that the corporate companies play a major role in that. The banking sector isn't something new to our nation, there is evidence of banks in India from BC but now the dynamics of banks got changed now it is on a bigger scale even deciding the economic stability of the nation. Since it is a financial institution the core function is finance so it's a flow of economy. There are many legislations to support the investors because they are the group who invest huge amount of money in the company as to get a financial profit but there is high probability of risk because though the banks are said to be the back bone of the nation but they

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are highly opaque the public from the shoes of the observer aren't fully aware of the functions of bank though it's a part and parcel of their life. Only the professional of the field do have some knowledge about the mishap. There are many disasters happened in the area of economy of the country like the 2008 economy crisis where it shook the global economy many people lost the jobs and there was a dip in the economy of many countries, it harmed the economic growth throughout the world that is why it is called as Great Regression. So, it is necessary to protect the interest of the investor of the bank in order to protect the economy of the country because both go hand in hand. The flow of the finance in the shares of the banks should be highly studied in order to find the position of the domestic investors

The corporate disclosure is one of the main responsibilities of the board of directors of the company to disclose during the time of inviting the investors to contribute to the capital through private placement "to afford investors in publicly-held companies whose securities are traded over-the-counter the same fundamental disclosure protections as have been provided to investors in companies whose securities are listed on an exchange."⁴

(A) Regulatory frameworks of disclosure practices of banks in India

There are plethora of regulation governs the disclosure practice in India not only by the national framework but also by the international framework like Basel II like

- 1) Regulation 14(2)(a) of Companies (Prospectus and Allotment of Securities) Rules, 2014
- 2) Regulation 5(2) of Schedule I SEBI (Issue and Listing of Debt Securities) (Amendment) Regulations, 2012
- 3) Regulation 175(2) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations)

(B) Research Question

This study is an empirical study where the research tries to investigate the extent of both by banking companies in India and how far they have complied with the laws and regulations laid by the both international and national laws.

1. In order to find the fathom of transparency in the disclosure the research penetrates in the disclosure by private placement of various banks in both public and private sector

⁴ S. REP. No. 379, 88th Cong., 1st Sess. 9-10 (1963). "There is no convincing reason why the comprehensive scheme of disclosure that affords protection to investors in the exchange markets should not also apply to the over-the-counter market. The public should not be asked to buy and sell in darkness.

2. Examine the components of the private placement disclosure and how it helps in protecting the interest of the domestic investor recommendation of further components to be added in the disclosure.
3. Whether present disclosure is sufficient to protect the interest of the investor?

(C) Data And Methods

It is quantitative study by analyzing the ICDR private placement of 2 Private sector banks namely IndusInd bank and Axis bank and ILDS private placement of Two PSU banks namely Central bank and Bank of Baroda. It is carried by the private placement invitation and other secondary reports published by the banks in their respective websites. The data are collected by the help of score board system. The score board is based on the 56 elements in the ICDR regulation and 161 elements in ILDS. To calculate the observation- Non weight age approach is been used so in presence of information pertaining to each statement, a score of “1” is awarded and absence of information, a score “0” is awarded from that the percentage and calculation will be deduced. If there is any difference between the disclosure levels then we use Mann-Whitney method to find the difference between the disclosure level. The null hypotheses are that all banks are in same level of disclosure and helps in investor protection. The analytical part of investor protection is done by referring to the secondary resources and other materials.

(D) Limitations of the study:

The primary limitation of this study is, since it is a quantitative study and the analytical part is done based upon the available factors and list on private placement offer letter and from that it gets interpreted by the outlook of the researcher and so perspective of the person will differ from that of a researcher and the materials used for the study are the private placement of the banking companies and the weight age of the disclosure hasn't been taken into consideration only the mentioning the list has been awarded one point and the important problem is that since this research was carried out during pandemic period so the materials used is so limited, so we can't come to an proper conclusion only with the available materials.

(E) Disposition:

The remainder of this paper is organized as follows: Chapter 1 deals with the corporate disclosure in private placement so as the disclosure being the primary requirement of any listed company and its role in banking sector and how it helps the investors by protecting their information and it also explores the significance of disclosure in banking and the regulatory frameworks of disclosure practices of banks in India. Chapter 2 deals with Comparative

evaluation of private sector banks and public sector banks with respect to many factors will be taken into accounts to derive the parallelism between the private and public bank by observing data. Chapter 3 deals with the major problem found in the PPM- which is the FDI cap in private banks and how it affects the rights of the minority/ domestic investor. Chapter 4 deals with Investor protection from the above-mentioned information we will try to find out whether it helps in protecting investors in banking sector and whether is sufficient investor protection guaranteed by the law. Chapter 5 Recommendations from the outcomes or the factors which is been found in the research and the necessary steps which we have to take from regulatory end for a proper protection towards minority investor.

II. DISCLOSURE IN PRIVATE PLACEMENT MEMORANDUM

1. Disclosure Documents Prepared in conformity with Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008

Public sector bank- Bank of Baroda & Central bank of India

DISCLOSURE	BANK OF BARODA	CENTRAL
NAME & ADDRESS OF THE DIRECTOR OF THE ISSUER	1	1
CHANGE IN DIRECTOR OF THE ISSUER SINCE LAST THREE YEAR	1	1
DETAILS OF STATUTARY AUDITOR	1	1
BRIEF SUMMARY OF BUSINESS/ACTIVITY OF THE ISSUER	1	1
PERFORMANCE OF THE BANK	1	1
BUSINESS		
DEPOSITS	1	1
Total Loans & Advances	1	1
INVESTMENTS	1	1
Asset Classification of Performing and Non-Performing Assets	1	1
Details of Non-Performing Assets	1	1

SUBSIDIAIRES JOINT VENTURE & RRBs	1	1
KEY OPERATIONAL & FINANCIAL PARAMETERS OF THE ISSUER FOR		
Key Financial---29	1	1
DEBT/EQUITY RATIO OF THE ISSUER---6	1	1
SUMMARY OF FINANCIALS---15	1	1
LAST 3 YEAR (AUDITED)	1	1
OBJECT OF THE ISSUE	1	1
BRIEF HISTORY OF ISSUER SINCE INCORPORATION, DETAILS OF activates	1	1
CAPITAL STRUCTURE	1	1
EQUITY SHARE CAPITAL HISTORY OF THE ISSUER AS ON LAST QUARTER END	1	1
CHANGES IN CAPITAL STRUCTURE OF THE ISSUER AS ON LAST QUARTER END FOR LAST FIVE YEARS	1	1
SHAREHOLDING PATTERN OF THE ISSUER	1	1
TOP 10 EQUITY SHAREHOLDERS	1	1
PROMOTER HOLDING IN THE ISSUER	1	1
BORROWINGS OF THE ISSUER	1	1
DEPOSIT	1	1
Capital Status Bonds	0	1
TOP 10 BONDHOLDERS	1	1
AMOUNT OF CORPORATE GUARANTEE	1	1
AMOUNT OF CERTIFICATE OF DEPOSIT	1	1

AUDITED STANDALONE & CONSOLIDATED PROFIT AND LOSS		
INCOME	1	1
EXPENDITURE	1	1
PROFIT AND LOSS	1	1
AUDITED STANDALONE & CONSOLIDATED BALANCE SHEET		
Capital and its breakdown	1	1
Reserve and Surplus and their breakdown	1	1
Deposits and its breakdown	1	1
Other liabilities and provision and their breakdown	1	1
Cash and Balance with RBI and their breakdown	1	1
Borrowing and its breakdown	1	1
Balance with other banks and their breakdown	1	1
Money at call and short notice	1	1
Investments and its breakdown	1	1
Advances and its breakdown	1	1
Fixed assets and their breakdown	1	1
Other assets and their breakdown	1	1
Contingent liabilities and their breakdown	1	1
QUARTERLY/HALF YEARLY STANDALONE FINANCIAL INFORMATION		
SUMMARY TERM SHEET		
Issuer	1	1

Security Name	1	1
Issue Size	1	1
Type of Instrument	1	1
Objects of the Issue	1	1
Nature of Instrument	1	1
Seniority of Claim	1	1
Issuance Mode	1	1
Convertibility	1	1
Credit Rating	1	1
Mode of Issue	1	1
Security	1	1
Manner of Allotment	1	1
Face Value	1	1
Premium/ Discount on Issue	1	1
Issue Price	1	1
Premium/ Discount on redemption	1	1
Maturity	1	1
Coupon Date	1	1
Lock-in-Period	0	1
Minimum Application	1	1
Put Option	1	1
Call Option	1	1
Call Option Price	1	1

Call Notification Time	1	1
Coupon Rate	1	1
Step Up/ Step Down Coupon Rate	1	1
Coupon Payment Frequency	1	1
Day count Basis	1	1
Coupon Type	1	1
Coupon Reset Process (including rates, spread, effective date, interest rate cap and floor etc.)	1	1
Default Interest Rate	1	1
Listing	1	1
Trustees	1	1
Depository		1
Registrars	1	1
Settlement Mode	1	1
Events of Default	1	1
Business Day Convention	1	1
Record Date	1	1
Loss Absorption.	1	1
Eligible Investors	1	1
Non-Eligible classes of Investors	0	1
Transaction Documents	1	1
Conditions precedent to subscription of Bonds	1	1
Conditions subsequent to subscription of Bonds	1	1

Cross Default	1	1
Role and Responsibilities of Trustees	1	1
Governing Law and Jurisdiction	1	1
Applicable RBI Guidelines	1	1
Applicable SEBI Guidelines	1	1
Reporting of Non-payment of Coupons	1	1
Re-capitalization	0	1
Prohibition on Purchase/ Funding of Bonds	1	1
Issue Opening Date	1	1
Issue Closing Date	1	1
Pay In Date/Date of Allotment	1	1
Payment Mode:	1	1
DETAILED TERM SHEET		1
ISSUE SIZE	1	1
ELIGIBILITY TO COME OUT WITH THE ISSUE	1	1
REGISTRATION AND GOVERNMENT APPROVALS	1	1
AUTHORITY FOR THE ISSUE	1	1
OBJECTS OF THE ISSUE	1	1
UTILISATION OF ISSUE PROCEEDS	1	1
MINIMUM SUBSCRIPTION	1	1
UNDERWRITING	1	1
STATUS OF BONDHOLDERS/ SENIORITY OF CLAIM	1	1
Mode of Loss absorption and trigger event:	1	1

LOSS ABSORPTION FEATURES	1	1
APPLICABLE RBI GUIDELINES	1	1
PURCHASE/ FUNDING OF BONDS BY THE BANK	1	1
FACE VALUE, ISSUE PRICE, EFFECTIVE YIELD FOR INVESTOR	1	1
TERMS OF PAYMENT	1	1
DEEMED DATE OF ALLOTMENT	1	1
LETTER(S) OF ALLOTMENT/ BOND CERTIFICATE(S)/ REFUND ORDER(S)/ ISSUE OF LETTER(S) OF ALLOTMENT	1	1
ISSUE OF BOND CERTIFICATE(S)	1	1
DEPOSITORY ARRANGEMENTS	1	1
PROCEDURE FOR APPLYING FOR DEMAT FACILITY	1	1
FICTITIOUS APPLICATIONS	1	1
MARKET LOT	1	1
TRADING OF BONDS	1	1
MODE OF TRANSFER OF BONDS	1	1
COMMON FORM OF TRANSFER	1	1
INTEREST ON APPLICATION MONEY	1	1
INTEREST ON THE BONDS	1	1
COMPUTATION OF INTEREST	1	1
RECORD DATE	1	1
DEDUCTION OF TAX AT SOURCE	1	1
PUT & CALL OPTION	1	1
ADDITIONAL COVENANTS	1	1

REDEMPTION	1	1
SETTLEMENT/ PAYMENT ON REDEMPTION	1	1
EFFECT OF HOLIDAYS	1	1
LIST OF BENEFICIAL OWNERS	1	1
SUCCESSION	1	1
WHO CAN APPLY	1	1
WHO ARE NOT ELIGIBLE TO APPLY FOR BONDS	0	1
DOCUMENTS TO BE PROVIDED BY APPLICANTS	1	1
HOW TO APPLY	1	1
SETTLEMENT MECHANISM:	1	1
FORCE MAJEURE	1	1
APPLICATIONS UNDER POWER OF ATTORNEY	1	1
RIGHT TO ACCEPT OR WITHDRAW THE ISSUE:	1	1
ESTIMATED CUT OFF YIELD:	1	1
PAN/GIR NUMBER	1	1
NOMINATION FACILITY	0	1
RIGHT OF BONDHOLDER(S)	1	1
MODIFICATION OF RIGHTS	1	1
FUTURE BORROWINGS	1	1
BOND/ DEBENTURE REDEMPTION RESERVE (“DRR”)	1	1
NOTICES	1	1
JOINT-HOLDERS	1	1
DISPUTES & GOVERNING LAW	1	1

INVESTOR RELATIONS AND GRIEVANCE REDRESSAL	1	1
CREDIT RATING FOR THE BONDS	1	1
TRUSTEES FOR THE BONDHOLDERS	1	1
Total percentage	96.27	100

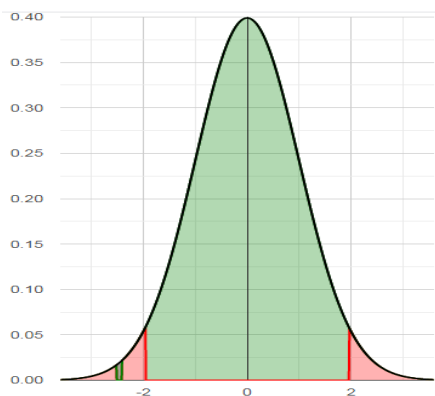
<p>Bank of Baroda</p> <p>Sum of ranks: 25518.5</p> <p>Mean of ranks: 158.5</p> <p>Expected sum of ranks: 26001.5</p> <p>Expected mean of ranks: 161.5</p> <p>U-value: 13443.5</p> <p>Expected U-value: 12960.5</p>	<p>Central bank of India</p> <p>Sum of ranks: 26484.5</p> <p>Mean of ranks: 164.5</p> <p>Expected sum of ranks: 26001.5</p> <p>Expected mean of ranks: 161.5</p> <p>U-value: 12477.5</p> <p>Expected U-value: 12960.5</p>
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(A) Bank Of Baroda & Central Bank Of India Combined

SUM OF THE RANKS: 52003

MEAN OF RANKS: 161.5

STANDARD DEVIATION: 835.288



The U-value is 12477.5

The Z-Score is -0.57764. The p-value is .56192. The result is not significant at $p < .01$.

H0 hypothesis - Since $p\text{-value} < \alpha$, H0 is rejected. So, the null hypothesis that the both banks disclose to the same extent, but it is clear that the amount of disclosure level isn't the same the bank of Baroda missed around 6 elements in the disclosure of the private placement

2. The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018,

Document	AXIS	IndusInd
1. GENERAL INFORMATION	1	1
a. Name, address, website and other contact details of the company	1	1
b. Date of incorporation of the company	1	1
c. Business carried on by the company and its subsidiaries with the details of branches or units, if any.	1	1
d. Brief particulars of the management of the company	1	1
e. Names, addresses, DIN and occupations of the directors	1	1
f. Management's perception of risk factors.	1	1
g. Details of default, if any, including therein the amount involved	1	1
I) Statutory dues	1	1
ii) Debentures and interest thereon	1	1
iii) Deposits and interest thereon	1	1
iv) Loan from any bank or financial institution and interest thereon.	1	1
h. Names, designation, address and phone number, email ID of the nodal/ Compliance officer of the company, if any, for the private placement offer process.	1	1
2. PARTICULARS OF THE OFFER	1	1
a. Date of passing of board resolution.	1	1
b. Date of passing of resolution in the general meeting, authorizing the offer of securities.	1	1
c. Kinds of securities offered (<i>i.e.</i> , whether share or debenture) and class of security.	1	1

d. Price at which the security is being offered including the premium, if any, along with justification of the price.	1	1
e. Name and address of the valuer who performed valuation of the security offered.	1	1
f. Amount which the company intends to raise by way of securities.	1	1
g. Terms of raising of securities:	1	1
(I). Duration, if applicable;	1	1
(ii). Rate of dividend;	1	1
(iii). Rate of interest;	1	1
(iv). Mode of payment; and	1	1
(v) Mode of repayment.	1	1
h. Proposed time schedule for which the offer letter is valid.	1	1
I. Purposes and objects of the offer.	1	1
j. Contribution being made by the promoters or directors either as part of the offer	1	1
k. Principal terms of assets charged as security, if applicable.	1	1
3. DISCLOSURES WITH REGARD TO INTEREST OF DIRECTORS,	1	1
a. Any financial or other material interest of the directors, promoters or key managerial	1	1
b. Details of any litigation or legal action pending or taken by any Ministry	1	1
c. Remuneration of directors (during the current year and last three financial years)	1	1
d. Related party transactions entered during the last three financial years immediately	1	1
e. Summary of reservations or qualifications or adverse remarks of auditors in	1	1

the		
last five financial years immediately preceding the year of circulation of offer	1	1
f. Details of any inquiry, inspections or investigations initiated or conducted under the Companies Act	1	1
g. Details of acts of material frauds committed against the company in the last three	1	1
4. FINANCIAL POSITION OF THE COMPANY	1	1
a. The capital structure of the company in the following manner in a tabular form:	1	1
(I) (a) The authorized, issued, subscribed and paid-up capital	1	1
(b) Size of the present offer;	1	1
(c) Paid up capital	1	1
(A) After the offer	1	1
(B) After conversion of convertible instruments (if applicable);	1	1
(C) Share premium account (before and after the offer)	1	1
Profits of the company, before and after making provision for tax, for the three financial years	1	1
Dividends declared by the company in respect of the said three financial years;	1	1
d. A summary of the financial position of the company as in the three audited balance sheet	1	1
e. Audited Cash Flow Statement for the three years immediately preceding the date of circulation of offer letter.	1	1
f. Any change in accounting policies during the last three years	1	1
5. A DECLARATION BY THE DIRECTORS THAT	1	1
a. The company has complied with the provisions of the Act and the rules made	1	1

there under.		
b. The compliance with Act and rules does not imply that payment of dividend	1	1
c. The monies received under the offer shall be used only for the purposes	1	1
TOTAL	100	100

The disclosure with respect to the ICDR has comparatively less requirement than ILDS and according to the data; it is so visible that the private banking utmost disclose the entire basic list as it is mentioned in the act. So, it gives the full picture of the working nature of the company, this gives the utmost protection to the investor because before investing. These are the primary units that are mandatorily had to disclose by the companies for the protection but there are only the remote parts of the company has been disclosed but the vital concept for the protection of the investor is still the question mark because of the indulgence of the FDI and the foreign entity majority in the board.

III. THE FATHOM OF FOREIGN INVESTMENT IN PRIVATE SECTOR BANK

As we saw in last chapter which gives a numerical magnitude on the disclosure of private bank, All the banks have disclosed at its maximum but the problem lies in the FDI part of the private bank, the center has allowed the foreign investment in private bank up to 74% with government approval but whereas in PSU it is just 49%⁵, so the private banks are vulnerable in the hands of foreign shareholder decision. It is also proved in the disclosure of the private placement

In the disclosure of the private placement memorandum of IndusInd bank, where it has given the disclosure about the foreign investment companies and hoe they adhere to their decisions Because in the aggregate of foreign investment of the bank was 71.56% in 2015 and out of which 43%⁶ of the shareholding constituted only by FPI and FII, this shows that the shareholders are predominately high and the domestic holders are less in the percentage as depicted in the shareholder pattern were the minority holders are in very less percentage, so there can be a gross violation of minority rights. As it is again mentioned in PPM where the investors don't have free rights to sell their shares and they are subjected to caution list as mentioned by the RBI, so they investors don't have much rights to access. The banking regulation act 1949 has already dealt under the sec 12 of the act where it allows the number of shares and corresponding votes only till 10 % of the total share so the majority can't show

⁵ RBI Notification, Foreign Direct Investment (FDI) in the Banking Sector (2002)

⁶ IndusInd Placement Document, 2015, Pg 198

predominance unless there is breakdown and rule mechanism in FDI.

In 2021 the FDI flow has been increased at according to the reports of the NSDL where it shows that recently the China has increased their stakes in Indian companies especially in banks it has raised to 1.08% ⁷because due to the pandemic there was decrease of values of the shares so the China used this situation to usurp the power of the board decision and use it to sweep away power in the decision during board meeting and even in the private placement memorandum where it has mentioned the shareholding pattern from that we can understand that the percentage hold by the foreign investor like FII is above the 45% in the total investment and the government of India or the other domestic investors are in fractional so the representation in the voting mechanism so their representation will not be heard so they should approach to any adjudicating authority for the oppression.

In 2021 the IndusInd along with the other private bank HDFC bank which have been red flagged by the monitoring foreign investor system, this list is a framework utilized for checking foreign portfolio financial investor or FPI limits. Under the surviving principles, any listed company will fall under the category of the Red Flag list when the legroom left for overseas investment is under 3% of the breaking point permitted on that stock because the amount of share has been enormously increased by 31% month to basis and overall has reached 73.1% nearly the cap of 74% of FDI limit.⁸

(A) Single Investor Usurping The Control

In Axis Bank PPM, where it has mentioned about “the single investor taking the control” when there is any relaxation in the ownership norm⁹.so even it is disclaimer but it throws a light on the pre-set mind of the foreign investor in controlling over the company where they have explicitly mentioned about the voting right and the control in the management. In the phrase “There can be no assurance that any future controlling shareholder will have the same interests as any minority shareholder or will pursue the same strategies as the current management” so from this it is clear that the foreign investors will go against the minority shareholders. So, this is the greatest vacuum present where the authorities don’t give much notice on this.

(B) Dilution of the shareholding pattern:

⁷ BFSI.com. 2020. Govt approval needed for FDI from neighboring countries. [ONLINE] Available at: <https://bfsi.economictimes.indiatimes.com/news/policy/govt-approval-needed-for-fdi-from-neighboring-countries/75245685>. [Accessed 3 March 2021].

⁸ Business Standard. 2020. HDFC Bank, IndusInd in 'red flag' list on nearing foreign investment cap. [ONLINE] Available at: https://www.business-standard.com/article/finance/hdfc-bank-indusind-in-red-flag-list-on-nearing-foreign-investment-cap-120111301088_1.html. [Accessed 3 March 2021].

⁹ Axis bank PPM 2019 pg. 78

In the Axis PPM where it speaks about the dilution of the shareholding pattern¹⁰ where it talks about the negotiating factors between the shareholders and the bank because it says that the bank or the company has sole authority in diluting the shareholder's percentage with respect to the decision of the majority shareholder so this is a violation of great degree where the protection given to minority shareholders is very less, when the foreign investor on the upper hand and domestic and other minority shareholder in weak position. There should be a sufficient protection should be given to the investor by the mechanism of including the Anti-dilution clause in the shareholder agreement because of the minority shareholders are vulnerable compared to the foreign investors in the private bank. Due to this pandemic situation the possibility of down round has increased.¹¹

(C) Negotiation in the pre-emptive rights:

In the PPM where it speaks about the negotiation in the further issue of the capital, so according to the company law under the section 62 where it gives a pre-emptive right to the shareholders that when there is issue of capital the shareholders have first right to subscribe for that share but that has been compromised by the bank where it says that according to the board decision it the rights for further issue will be relaxed. So, the protection available to minority shareholder is nil.

(D) Less information available in the market:

In PPM where it has mentioned that the information available in the Indian market is less¹² as it is compared to the markets in the other jurisdiction, so they have explicitly mentioned about the opaqueness of the Indian bank when it comes to the counterpart banks in other jurisdiction or the nation. So, they have just disclosed the list what is demanded by the SEBI. It is important to look into the listing of the SEBI regulation to find of the perquisite in the list in next chapter.

IV. COMPONENTS OF THE PRIVATE PLACEMENT

The banking companies follow the Regulation 5(2) of the schedule 1 which is laid down by the Securities and SEBI (Issue and Listing of Debt Securities) (Amendment) Regulations, 2012, where it deals with most of the requirements that have to be disclosed by the companies which goes for the private placement. It deals with vast degree of disclosure, in order to understand the impact of every list in the disclosure of the private placement is so difficult due to the fact

¹⁰ Axis bank 2019 pg. 90

¹¹ Cyril amarchand blogs. 2020. Down Rounds are Coming: Enforcement of Anti-Dilution Adjustments. [ONLINE] Available at: <https://corporate.cyrilamarchandblogs.com/2020/06/down-rounds-are-coming-enforcements-of-anti-dilution-adjustments/>. [Accessed 2 March 2021].

¹² Axis bank 2019 pg. 92

is it more in numbers for the study,

So, in order to combat the limitation this, study we are focusing on the summary of the terms in the private placement disclosure of central bank because it has scored maximum points with respect to the other banking company of the study and its summaries the major parts of the private placement. The summary of the terms there are primarily 58 components in that list, under the Basel convention which establish the rules for Tier II capital because these are the undisclosed fund of the bank because of they are less reliable and difficult to locate the liquidity of the asset. First in the disclosure which mention the company which issue and the amount or the size of the issue. It also deals about the green shoe option of the issuer so when there is a high demand in the market for their shares in the market so it enlightens about the green shoe option before the investor invest in the capital. This part also gives the detail about the type of the instrument whether it is convertible or taxable. These also deal with the object of the issue; it is very important because object for issuing have to informed to the investor so they will know where their investments are pooling. The seniority of claims is also mentioned when there is a hierarchy of claims it will be pre-decided that how will the dividends will share between the array of investor so this component helps a lot when there is an issue. In most of the cases the issuance mode also be mentioned in the private placement itself and it also have the face value of the share so in this axis it is 10 lakhs per share. There is also the module of par value and discount of the shares so they investor will know the market price of it and moreover the lock-in period for the shares also been mentioned in the offer itself because one of the primary perks of private placement is that there is no lock-in period for the shareholder like 3 years for IPO. The maturity date is mentioned in days from the date of issue of the stock and the put and call option is also given in detail so the investor will know pretty before their mode of exit and how it can be done so they will be well informed before so they will in estoppels position. The share which has been listed is mentioned with the place along with segment. The closing date is also been mentioned. It also gives us a list about the people who are the eligible and non-eligible buyers so the investors will get filtered with respect to it. It also lists the guidelines which it had complied with the RBI and SEBI guidelines which guarantee Investors that they have complied with all the legal frameworks.

With respect to ICDR:

ICDR regulation also lays the mandatory disclosure in the regulation 175(2) in SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations) where the schedule seven deals with disclosing list and mentioned under form Pas-4 prescribed under the companies act, 2013, where it mentions many requirements to study those elements we will

look the Axis bank Private placement offer just like the SEBI(Issue and Listing of Debt Securities) but it is less comparatively but still it cover the basic modules like it starts with the issuer and the face value of the equity share where here it is mentioned as 2. The offer also mentions about the floor price of the equity share, so by mentioning this amount it shows the person or the investor can't go below this price range. When there is an issue of private placement it should be passed in the resolution and it should be confirmed with postal ballot also and that detail should also be present in the private placement. The risk factors in detail with respect to interest risk, credit risk is mentioned in the offer because it helps the investor to analyze the management strategy and potency of the company and then invest in it. The private placement also gives the in-depth information about the taxation and how there will be a deduction.

This data show that they disclose is just with respect to corporate governance but there is less or no disclosure about the corporate finance and about the investor protection or the guaranteed under the law. The national regulation in protecting the domestic investor is very fragile and when it comes to the checking mechanism it lacks severely.

V. RECOMMENDATIONS

The laws should be never static; it should change according to the needs of the society. As we saw in previous section there were many information which were made mandatory to disclose and that helps in the investor protection, but there many aspects which it lags completely, Since our laws with respect to the securities and the market is still evolving still haven't fully developed and that is explicitly shown in this arena because when we see the Schedule 7 it is apparent that there are many aspects which wants the investor to be in safer hand but there is no kind of condition given with respect to the protection of investors and it is mostly built only on the negotiation done by the investors , so it is high time the government takes the necessary steps to restrain the encroachment of foreign entities in the bank.

Though the annual report may form the continuous disclosure to safeguard the shareholders but the same amount of the focus should be given to the investors who are been invited to the private placement as well and since according to the constitution where the directive principle of the state policy speaks about the welfare of the people so that should be incorporated as well and that will be explained in the coming sections.

The other aspect that is missing from the private placement is the ' performance benchmark' as like it is introduced in the alternative investment fund, where the portfolio companies were asked to mandatorily disclosure their performance with respect to that of their competitors, so

it is a primarily a key which will show the bank or the company how far it is working good from that of its competitors bank this will gain the confidence of the investors, hence there will be the high inflow of the investment and that in return develop the efficiency of the bank, It is also fund in the Rule 2a-5 of the investment company act of America. so, it is high time to introduce this section of benchmark for the protection of investors because it has the better coordinate to show at same given time how varies bank work efficiently.

The primary component in the annual report and that is been missing in the private placement is the report of Stakeholder Relationship Committee because the best part when someone's right has been infringed then the person should get the remedy then only the justice has been served or else not. Including the report of the SRC in the disclosure can make remarkable changes because if a company has so many shareholder's complaints or they have a greater number of pending complaints that haven't been exercised so this will alarm the investors before the investment in the bank because they won't get enticed by the progress of the bank if they don't have healthy response to investor's queries.

After this the one of the important resources is their employees or the people who are working in the management and who has different interest than that of the shareholder's pecuniary interest. The data about the employees hasn't been considered in the disclosure of the private placement , the company can work efficiently only when there is sufficient number of employees in the company but that crucial factor is been missing in the disclosure so it is high time that should be included in the disclosure and it should also mention the gender oriented disclosure because it shows that the they acquire work person irrespective of gender and that can impose a positive obligation on the company show the impartiality and the balance in employment process and the number of employees it should be better expressed in range rather than the numbers.

When it comes to the risk disclosure the private placement mentions the market risk exist but that doesn't report in terms of the dollars because the banking sector is international phenomena where the investment flows from the international investors so in terms of banking sector it is better to mention the units in dollar value so the investors will know the inflation risk, it helps to the great extent because in the disclosure there is mention of only the depreciation and non-performing assets but the inflation risk factor isn't present in the disclosure, so it is high time that should be also incorporated in the disclosure list.

Since the fact that most of the banking companies during the time of private placement invite myriads of the people to subscribe to the shares, but that list is very confidential and only the

issuing company or the bank knows that details but during the time of invitation for the private placement the people who are been invited should also be informed about the parties who are been invited other than this person so that will enlighten about the number of shares available and the prospective investors , which will assist the investor in investing the money because things like Sahara scams can be avoided if the person and number of shares in the process, it will show the utmost disclosure for the investors. This will also help in the knowledge for foreign investors. The disclosure about the allotments made during the precedent years should also be incorporated for the barring the cash.

The corporate social responsibilities should be also added in the private placement like the annual report because this will show the investor that to what extent the banking or any company fulfills the necessity laid down by the companies act and how they help in the development of the country when it comes to the national scheme donation or to the private parties and also apart from the companies which are non-financial sector should also show the environmental assessment with respect to their exercise of the company. So, it will induce the investor by showing the dedication of the banking company to comply with the environment and corporate social responsibility. These are the few recommendations when it comes complying with the all laws not just pertaining to the RBI and SEBI guidelines but law as whole and disclosing to the maximum extent so that gives the investor to give their informed consent before, they invest.

VI. CONCLUSION

It is high time that the government or the regulatory body looks on to the investor protection as soon as possible because from the face of private placement memorandum it is clear that it is more like a standard form of contract where the domestic investors had to make extreme compromise and their rights are severely violated and the influence of the foreign investments should be checked on regular basis especially after the pandemic the stock's price has fallen to the great extent and seeing this as opportunity the foreign countries has raised the stock percentage and will eventually dominate in the decision of the company from the back door, which will lead to a chaotic situation. So, its appropriate time that the government should step in and increase about the explicit disclosure about the minority investor and also the negotiating factors should be checked. Moreover the FDI cap should be reduced to the 49% like the public sector banks.

The disclosure of a bank is extremely important during the time of private placement more than in continuous disclosing mechanism because the laws which governs the continuing disclosure deals with more than 250 list but in case of during issue of capital the disclosure level is

comparatively minimum The law deals only with the essential elements but there is no condition about the performance bench or the list related to social welfare, so it is high time the legislation to be amended to be in accordance with the constitution and company law principle as to protect the rights of investors more arduously.

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