

**SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS)
REGULATIONS, 2009
[Previously SEBI (Disclosure and Investors Protection) Guidelines 2000]**

PREFERENTIAL ISSUE

Applicability:

Issue of capital by listed companies by way of

- Equity shares
- FCDs/PCDs
- Any other convertible instrument

to select group of persons.

Exemption from applicability of Regulations in following cases:

Where preferential issue of equity shares is made:

- pursuant to conversion of loan or option attached to convertible debt instruments in terms of sections 81 (3) and (4) of the Companies Act, 1956;
- pursuant to a merger/demrger through High Court sanction;
- in terms of the rehabilitation scheme approved by the BIFR under the SICA, 1985:

Meaning of “Relevant date”

- For issue of equity shares,
 - the date 30 days prior to the date on which the meeting of shareholders is held to consider the proposed preferential issue:
- For issue of convertible securities,
 - either the relevant date as stated for issue of equity shares, or
 - a date 30 days prior to the date on which the holders of the convertible securities become entitled to apply for the equity shares.

Compliance required for preferential issue:

- a **special resolution**;
- all the equity shares, if any, held by the proposed allottees in the issuer are in **dematerialised form**;
- the issuer is in compliance with the conditions for **continuous listing** of equity shares as per the listing agreement;
- the issuer has obtained the **Permanent Account Number** of the proposed allottees.
- The proposed allottee has **not sold any equity shares** of the issuer during the six months preceding the relevant date:

Disclosures requirements:

- **Explanatory statement to the notice should contain:**
 - disclosures required under section 173 of the Companies Act, 1956
 - disclosure required under any other applicable law,
 - the objects of the preferential issue;
 - the proposal of the promoters, directors or key management personnel of the issuer to subscribe to the offer;

- the shareholding pattern of the issuer before and after the preferential issue;
- the time within which the preferential issue shall be completed;
- the identity of the proposed allottees, the percentage of post preferential issue capital that may be held by them and change in control, if any, in the issuer consequent to the preferential issue;
- an undertaking that the issuer shall re-compute the price of the specified securities in terms of the provision of these regulations where it is required to do so;
- an undertaking that if the amount payable on account of the re-computation of price is not paid within the time stipulated in these regulations, the specified securities shall continue to be locked- in till the time such amount is paid by the allottees.

Other key points:

- Special resolution shall specify the relevant date
- Full consideration to be paid at the time of allotment
- In case of warrants, at least 25% of the consideration be paid against each warrant on the date of allotment of warrants and balance 75% at the time of allotment of equity shares
- Copy of compliance certificate from statutory auditors to be placed before the general meeting
- In case of allotment for consideration other than cash, the valuation of the assets in consideration for which the equity shares are issued shall be done by an independent qualified valuer

Time frame to complete allotment:

- Allotment to be completed within a period of fifteen days from the date of passing of such resolution, or
- Within fifteen days from the date of obtaining requisite approvals

Consequences of not complying with the time limit:

- Fresh resolution will be required
- Fresh computation of relevant date and price

Tenure of convertible securities.

- Not exceeding eighteen months from the date of allotment.

Pricing of equity shares.

Not less than higher of the following:

- (a) The average of the weekly high and low of the closing prices of the related equity shares quoted on the recognised stock exchange during the six months preceding the relevant date; or
- (b) The average of the weekly high and low of the closing prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

Pricing in case of issue made to QIBs not exceeding five in number:

- Price shall not less than the average of the weekly high and low of the closing prices of the related equity shares quoted on a recognised stock exchange during the **two weeks** preceding the relevant date.

Lock-in of specified securities.

- Securities allotted to promoters to be locked-in for a period of 3 years from the date of allotment
 - i. Only upto 20 % of the total capital of the issuer can be locked-in for 3 years from the date of allotment:
 - ii. Equity shares allotted in excess of the 20 % shall be locked-in for 1 year from the date of their allotment
- Securities allotted to persons other than promoter shall be locked in for a period of one year from the date of their allotment.
- **Lock-in of pre-preferential shareholding-** The entire pre-preferential allotment shareholding of the allottees, if any, shall be locked-in from the relevant date upto a period of six months from the date of preferential allotment.
- Transfer of shares among promoters or promoter group permitted

Exemptions given to issue of shares pursuant to CDR

- **Meaning of “Relevant date”-** For issue of shares under CDR framework of RBI,
 - o the date of approval of the CDR Package
- Time frame of 15 days for completion of allotment not to apply to allotment made pursuant to a CDR scheme
- Issue of shares pursuant to CDR- lock-in for 1 year
- Payment of consideration to be made in terms of the Scheme

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BONUS ISSUE

What is Bonus Issue:

- Capitalization of profits by issuing fully paid up shares
- Given free to the members; no cost
- Not taxable in the hands of receiver

Compliance required for making bonus issue.

- (a) **Authority in the Articles** of Association for issue of bonus shares, capitalisation of reserves, etc.:
- (b) Where no authority give, **alter AOA** to include provision for capitalisation of reserve;
- (c) **No default in payment of interest or principal** in respect of fixed deposits or debt securities issued by it;
- (d) **No default in respect of the payment of statutory dues** of the employees such as contribution to provident fund, gratuity and bonus;
- (e) the partly paid shares, if any outstanding on the date of allotment, are made **fully paid up**

Issue of bonus subject to:

- Issuer having outstanding fully or partly convertible debt instruments at the time of making the bonus issue, has made reservation of equity shares of the same class in favour of the holders of such outstanding convertible debt instruments in proportion to the convertible part thereof.
- The equity shares reserved for the holders of fully or partly convertible debt instruments shall be issued at the time of conversion of such convertible debt instruments on the same terms or same proportion on which the bonus shares were issued.

What can be capitalized?

- Free reserves built out of the genuine profits or
- Securities premium collected in cash only [sec 78(2)(a) of Companies Act, 1956]
- Capital Redemption Reserve account, on redemption of the redeemable preference shares [section 80(5) of Companies Act, 1956]

What cannot be capitalized?

- Revaluation Reserves

Time limit for completion of bonus issue.

- Where bonus issue can be made by approval of Board of Directors
 - within fifteen days from the date of approval of the issue by Board
- Where shareholders' approval is required to be taken,

- within 2 months from the date of the meeting of Board wherein the decision to announce the bonus issue was taken subject to shareholders' approval.
- Once decision to make a bonus issue is announced, the issue can not be withdrawn.

Steps for making bonus issue:

- Ensure:
 - Benefits extended to PCD/FCDs
 - Bonus made out of free reserves
 - No default in repayment of interest or principal, payment of statutory dues
 - Bonus issue not made in lieu of dividend
 - Provision in AOA
- Increase authorized capital, if required
- Partly paid-up shares to be made fully paid up
- Convene Board Meeting
- Fix record date or close Register of Members in compliance with sec 154 of Companies Act, 1956
- Inform Stock Exchange of the BM before 2 days of the meeting
- Approve bonus issue in BM
- Intimate Stock Exchange, the outcome of the BM within 15 minutes
- Implement the decision of the Board as per the time frame
- In case, shareholders approval required for capitalization of profits, convene general meeting
- File return of allotment in e-form 2 within 30 days of allotment
- Apply to SE for listing of shares issued.