

Key amendments in relation to IPO under SEBI (ICDR) Reg. 2018

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SEBI in order to align its provisions under ICDR Regulations with Companies Act, 2013 and allied regulations, had come with its consultation paper on May 04, 2018¹ detailing the suggestive changes under various fund raising options by listed issuers. In continuation to the same, SEBI vide its notification dated 11th September, 2018 issued SEBI (ICDR) Regulations, 2018² ('ICDR, 2018') which is effective from 60th day of its publication in Official Gazette.

The applicability and flow of the Regulations are as under:

Chapter No. under ICDR, 2018	Particulars	Corresponding Chapter No. under ICDR 2009
I.	Preliminary	I
II.	Initial Public Offer (IPO) on Main Board	II, III
III.	Rights Issue	II
IV.	Further Public Offer	II, III
V.	Preferential Issue	VII
VI.	Qualified Institutions Placement	VIII
VII.	IPO of Indian Depository Receipts (IDR)	X
VIII.	Rights Issue of IDR	XA
IX.	IPO by Small and Medium Enterprises (SME)	XB
X.	Institutional Trading Platform	XC
XI.	Bonus Issue	IX
XII.	Miscellaneous	XII

- **Applicability of Regulations**

- in case of Rights issue: The Regulations shall apply to rights issue by a listed issuer, where the aggregate value of the issue is 10 cr rupees (*formerly 50 lakh rupees*);
- The list provided in Reg. 3 has been reviewed and made more comprehensive and detailed.

¹ https://www.sebi.gov.in/reports/reports/may-2018/consultation-paper-on-review-of-sebi-issue-of-capital-and-disclosure-requirements-regulations-2009_38859.html

² <https://www.sebi.gov.in/legal/regulations/sep-2018/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-regulations-2018-40328.html>

- Public issue has been split into IPO by unlisted issuer and FPO by listed issuer, IPO by SME;
- Issue of IDRs has been split into IPO of IDR and rights issue of IDRs;
- Listing on the ITP through an issue or without an issue has also been added.

Key amendments in chapter relating to Initial Public offer

- In case promoters or directors of the issuer / any other company are undergoing debarment period, issuer is ineligible. *[Reg. 5 (1) (b)]*
 - Where the debarment period is completed, the ineligibility shall not apply. Previously, the ineligibility extended to past defaults as well.
- One of the eligibility conditions now provides that the promoters or directors of the issuer shall not be a fugitive economic offender³. *[Reg. 5 (1) (d)]*
- One of the eligibility conditions now mandates that the selling shareholder⁴ should not be a person who is debarred by SEBI from accessing the market. *[Reg. 5 (1) (a)]*
 - ICDR, 2009 referred to ‘persons in control of the issuer’.
- Under ICDR, 2009 one of the eligibility conditions provided under Reg 26 (1) (d) stated that the aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size shall not exceed five times its pre-issue net worth as per the audited balance sheet of the preceding financial year.
 - There is no such condition under ICDR, 2018 as there is no relation between the issue size and net worth.
- One of the general conditions for IPO now mandates that all the specified securities held by the promoters shall be in dematerialized form prior to filing of the offer document. *[Reg.7 (1) (c)]*
- In case of conversion of OCDs into equity shares, limit has been increased from 50 lakhs to ten crore rupees. Accordingly, the holders of OCD shall be given the option of not converting the convertible portion into equity, the value of the convertible portion of any listed convertible debt instruments issued by an issuer exceeds ten crore rupees and the issuer has not determined the conversion price of such convertible debt instruments at the time of making the issue. *[Reg 11 (2)]*

³ As per Fugitive Economic Offenders Act, 2018, fugitive economic offender means any individual against whom a warrant for arrest in relation to a **Scheduled Offence** has been issued by any Court in India, who—

(i) has left India so as to avoid criminal prosecution; or
 (ii) being abroad, refuses to return to India to face criminal prosecution;

“Scheduled Offence” means an offence specified in the Schedule, if the total value involved in such offence or offences is one hundred crore rupees or more

⁴ means any shareholder of the issuer who is offering for sale the specified securities in a public issue in accordance with these Regulations;

- In case of warrants, the restriction of having one warrant attached to one specified security has been done away with. a specified security may have one or more warrants attached to it. *[Reg 13 (1) (b)]*
- In case of warrants in IPO, in case the warrant holder does not exercise the option to take equity shares against any of the warrants held by the warrant holder, **within three months from the date of payment of consideration**, such consideration made in respect of such warrants shall be forfeited by the issuer. *[Reg 13 (d)]*
- In case the post-issue shareholding of the promoters is less than twenty per cent., alternative investment funds or **foreign venture capital investors or scheduled commercial banks or public financial institutions or insurance companies registered with Insurance Regulatory and Development Authority of India** may contribute to meet the shortfall in minimum contribution as specified for the promoters, subject to a maximum of ten per cent. of the post-issue capital without being identified as promoter(s). *[Proviso to Reg 14 (1)]*
 - **Corresponding insertions made in Reg 15 (1) (b) dealing with securities ineligible for minimum promoters' contribution; Reg. 16 (1) (a) dealing with lock in requirements.**
 - The intent was to expand the list as those are also regulated entities.
- In relation to exemption from lock in of specified securities held by persons other than promoters, following has been added in *Reg. 17 (1)* :
 - equity shares held by an employee stock option trust or transferred to the employees by an employee stock option trust pursuant to exercise of options by the employees, whether currently employees or not, in accordance with the employee stock option plan or employee stock purchase scheme.

Provided that the equity shares allotted to the employees shall be subject to the provisions of lock-in as specified under the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014.
- In case of pledge of locked-in specified securities, pledge is permitted in favour of NBFC-SI and HFCs as collateral security for loan granted by it. This is an addition to existing comprising of scheduled commercial bank or a public financial institution. *[Reg. 21 (1)]*
 - As such NBFCs are an important avenue for financing for issuers and the proposed exemption will provide flexibility in creating security over shares held by the issuer.
- In relation to appointment of merchant banker, it has been expressly provided that at least one lead manager to the issue shall not be an associate of the issuer. *[Reg. 23 (3)]*

- Issuer shall file three copies of the draft offer document with the concerned regional office of SEBI under the jurisdiction of which the registered office of the issuer company is located. [Reg. 25 (1)]
- Certificate is now required from statutory auditor (earlier Chartered Accountant) certifying that promoters' contribution has been received. [Reg. 25 (9)(d)]
- Where the issuer opts not to make the disclosure of the floor price or price band in the red herring prospectus, the issuer shall announce the floor price or the price band at least two working days (*earlier five working days under ICDR, 2009*) before the opening of the issue in the same newspapers in which the pre-issue advertisement was released. [Reg. 29 (4)]
 - Volatility in the global markets has a direct impact on market sentiments and market prices of the listed peer group companies. Announcement of the price band five working days prior to the issue opening date many a times means that issuers have to decide the price band at least 8 calendar days prior to issue opening, which is a too long period of market exposure.
- In case of differential pricing, discount, if any, shall be expressed in rupee terms in the offer document. [Reg. 30(2)]
- In case of an allocation in the net offer in an issue made through book building process by an issuer meeting the eligibility requirement under Reg. 6 (1), while the limits remain same for each category {(a) atleast 35% to retain individual investors, (b) atleast 15% to non-institutional investors, (c) maximum 50% to QIBs 5% of which shall be for MFs} it has been expressly provided that unsubscribed portion in either of the categories specified in clauses (a) or (b) may be allocated to applicants in any other category. [First proviso to Reg. 32(1)]
- Reservation on a competitive basis, amongst others, in case of shareholders is now permitted only for shareholders (other than promoters and promoter group) of listed subsidiaries (*earlier listed group companies*) or listed promoter companies.[Reg.33 (1) (b)]
- Reservation for persons who as on the date of filing the draft offer document with the Board, have business association as depositors, bondholders and subscribers to services with the issuer making an initial public offer, as was provided in Reg. 42 (4) (c) of ICDR, 2009 has not been included in ICDR, 2018.
 - As they are not defined anywhere.
- Timeline for refund of application monies has been kept constant at not later than 15 days from closure of the issue has been prescribed. [Reg. 45 (1)]
 - earlier 15 days from closure in case of non-underwritten issue and 70 days of closure of issue in case of an underwritten issue where minimum subscription

including devolvement obligations paid by the underwriters is not received within sixty days of the closure of the issue. [Reg 14 (2) of ICDR, 2009]

- Aligned with Rule 11 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 without distinguishing between underwritten and non-underwritten issues and uniformly provide for 15 days for any public issue.
- In relation to application, as per *Reg. 41 (1)*, A person shall not make an application in the net offer category for a number of specified securities that exceeds the total number of specified securities offered to the public.

Provided that the maximum application by non-institutional investors shall not exceed total number of specified securities offered in the issue less total number of specified securities offered in the issue to qualified institutional buyers.

- While the period of subscription remains same, express provision introduced in relation to force majeure under *Reg. 46 (3)*.
 - In case of force majeure, banking strike or similar circumstances, the issuer may, for reasons to be recorded in writing, extend the bidding (issue) period disclosed in the red herring prospectus (in case of a book built issue) or the issue period disclosed in the prospectus (in case of a fixed price issue), for a minimum period of three working days, total bidding (issue) period not exceeding ten working days.
- The maximum application by non-institutional investors shall not exceed total number of specified securities offered in the issue less total number of specified securities offered in the issue to qualified institutional buyers. [*Proviso to Reg. 47(1)*]
 - It is proposed to cap NII application size to the NII's eligibility, i.e total issue size less QIB portion.
- The lead manager(s) shall ensure that the allotment, credit of dematerialised securities and refund or unblocking of application monies, as may be applicable, are done electronically. [*Reg. 50 (2)*]
- In case the issuer fails to obtain listing or trading permission from the stock exchanges where the specified securities were to be listed, it shall refund through verifiable means the entire monies received within seven days of receipt of intimation from stock exchanges rejecting the application for listing of specified securities, and if any such money is not repaid within eight days after the issuer becomes liable to repay it, the issuer and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at the rate of fifteen per cent. per annum. [*Reg 53 (2)*]