

## Key amendments in relation to Rights, Bonus, QIP and Preferential Issue under SEBI (ICDR) Regulations, 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, 2018<sup>1</sup> detailing the suggestive changes under various fund raising options by listed issuers. In continuation to the same, SEBI vide its notification dated 11<sup>th</sup> September, 2018 issued SEBI (ICDR) Regulations, 2018<sup>2</sup> ('ICDR, 2018') which is effective from 60<sup>th</sup> day of its publication in Official Gazette.

### Key amendments in chapter relating to Rights Issue

#### Issue of Convertible Debt Instruments and Warrants

##### Roll over of non-convertible portion of partly convertible debt instruments

The limit for Roll over of non-convertible portion of partly convertible securities issued by and issuer has been increased from Rs.50 Lacs to Rs. 10 Crores. **(Regulation 64 (1))**

##### Issue of warrants

- In the case of Issue of warrants under Rights issue, the flexibility to attach more than one specified security to the warrant has been provided and to clarify that the price or formula for determination of exercise price of the warrants shall be determined upfront and that if the warrant is not exercised, 25% of consideration will be forfeited. **(Regulation 67 (b)(c))**

##### Record Date

- The provision to announce record date is made consistent with the SEBI LODR Regulations i.e. at least seven working days prior to the record date or such period as may be specified in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. **(Regulation 68 (1))**

##### Disclosures in and Filing of Letters of Offer

- Exemption for filing draft letter of offer has been provided in the case of Fast Track Issue although the fee as specified in Schedule III needs to be filled with the Board and Stock exchange. **(Regulation 71 (1))**

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<sup>1</sup> [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](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)

<sup>2</sup> <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>

## Issuance Conditions and Procedure

### ASBA(Regulation 76)

- Application to be made only in ASBA except in the following cases:
  - Applicant is holding equity shares in physical mode;
  - Applicant has renounced entitlement in part or in full; and
  - Applicant is not a renounee.

### Underwriting (Regulation 81 (1))

- Clarification is given that the issue can be underwritten only to the extent of entitlement of shareholders other than the promoters and promoter group.
- Company having qualification in Audit Report will not be eligible to fast track issue.

### Fast Track Rights Issue

#### Eligibility conditions (Regulation 99 (2)(m))

- In order to improve the requirements for fast track issues, a company to be eligible to make a fast track rights issue, it should not have any audit qualifications.

## BONUS ISSUE

### Restrictions on a bonus issue

- Reservation in case of Bonus issue shall also now consider all cases of convertible instruments, warrants and loans convertible into equity. Proposed change may not be flexible considering that every convertible instrument may or may not be opted for conversion. In such cases where the option of conversion is not exercised, bonus issue reserved with respect to such instruments will turn futile.

## Key Amendments in Chapter VIII relating to Qualified Institutions Placement ('QIP')

### Conditions for QIP – Eligibility Conditions

- No shareholder resolution required in case the QIP is made through offer for sale by promoter and promoter group to meet MPS requirement as required under Securities Contracts (Regulation) Rules, 1957 [**Proviso to Reg 172 (1) (a)**].
  - The said change has been made in line with the [SEBI circular](#) dated February 22, 2018 which included QIP as well as one of the modes to comply with the MPS requirements.
  - This change was not recommended in the consultation paper issued earlier.
- Further, the minimum period of listing (1 year prior to the date of passing SR) for the issuer is also not applicable in case QIP is being made for the purpose of complying with MPS requirements [**Second Proviso to Reg 172 (1) (b)**].

- An issuer shall be eligible to make a qualified institutions placement if any of its promoters or directors is not a fugitive economic offender<sup>3</sup> [Reg 172 (1) (c)].
  - This change was also not included in the consultation paper.
- In case of QIP of eligible securities (other than equity shares), the preliminary placement document may contain the fact that the issuer may not want to list such eligible security. [Reg 174 (2) & (3)]
  - Preliminary placement document shall also be required to be prepared by the issuer.
  - The consultation paper discusses that the issuer should have the option of listing (and trading) eligible securities such as CCDs (other than equity shares) issued through the QIP process either at the time of allotment or at the time of conversion. Further, if such securities remain unlisted, a clarification is required whether the listing has to be done at the time of issuance or on conversion of such securities.
- Limits on amount of fund raising through QIP has been removed.
  - Previously the limit was stated under Reg 89 of the SEBI ICDR Regulations, 2009 - *“The aggregate of the proposed qualified institutions placement and all previous qualified institutions placements made by the issuer in the same financial year shall not exceed five times the net worth of the issuer as per the audited balance sheet of the previous financial year.”*
  - The omission of this clause will make QIP issuance, an attractive mode where companies look for large investment.

### Minimum number of allottees

- The definition of QIBs in the same group has been clearly spelt out to mean entities where:
  - any of them controls directly or indirectly, through its subsidiary or holding company, **not less than 15% of the voting rights** in the other; or
  - any of them directly or indirectly, by itself, or in combination with other persons **exercise control over the others**; or
  - there is a common director, excluding nominee and independent directors amongst the investor, its subsidiary or holding company and any other investor. [Reg 180]
  - Considering that the Companies Act, 2013 does not have corresponding provision for Section 372 of the Companies Act, 1956, it is proposed to define ‘same group’ to bring more clarity.

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<sup>3</sup> 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

## Key Amendments in Chapter VII relating to Preferential Issue

### Conditions for Preferential Issue – Eligibility Conditions

- An issuer shall be eligible to make a qualified institutions placement if any of its promoters or directors is not a fugitive economic offender<sup>4</sup> [**Reg 159 (3)**].
  - This change was also not included in the consultation paper.

### Non-applicability of the restriction in becoming eligible issuer

- Restriction for becoming ineligible issuers shall not apply in case of transfer of shares held by the promoters or promoter group on account of invocation of pledge by a scheduled commercial bank or PFI or a SI-NBFC or mutual fund or insurance company registered with the IRDAI. [**Proviso to 159(1)**]
  - The proviso has been brought in to restrict any person from taking benefit of short swing profits which is not applicable in this case. The change was proposed in the consultation paper as invocation of pledge of shares held by the promoters or the promoter group is an involuntary sale by the lender and the promoter is not a party to the sale decision.
  - Who can be a lender was not specifically prescribed in the consultation paper which is now prescribed.

### Adjustments in pricing- Frequently and Infrequently traded shares

- The price determined for a preferential issue in accordance with regulation 164 or regulation 164A, shall be subject to appropriate adjustments, if the issuer makes an issue of equity shares after completion of a demerger wherein the securities of the resultant demerged entity are listed on a stock exchange. [**Reg 166**]
  - The same was discussed in consultation paper.
  - It was proposed that as through a demerger, an undertaking of the company is demerged into a separate company and such resulting company's shares are listed, so as a result post the listing of the resulting company, the value of the demerged company goes down and it trades accordingly. Hence, adjustment for pre-demerger market price is required to be made.

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<sup>4</sup> 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

## **Payment of consideration**

- In case of warrants, clarification provided that amount equivalent to at least 25% of the consideration determined in terms of regulation 164 shall be paid against each warrant on the date of allotment of warrants and the balance 75% of the consideration shall be paid at the time of allotment of the equity shares pursuant to exercise of options against each such warrant by the warrant holder. *[Reg 169(2) and its proviso]*
  - The change was proposed in the consultation paper.
  - The change was proposed to remove the limit of attaching 1 warrant to a specified security to provide flexibility to the issuer.
  - The change clarifies that consideration can be based on the pricing formula computed using the current market price, and the balance consideration can be paid at the time of exercise which can be subsequently determined at the time of final pricing.

## **Conclusion**

It can be summed up on the basis of the above that as the other regulatory laws have been amended substantially, changes in the extant laws of ICDR Regulations, 2009 was much awaited. Certain key amendments as discussed above have been brought up are clarificatory in nature while the others are in order to align it with the other allied laws.