

CAPITAL RAISINGS AND LISTINGS FOR TECH START-UPS ON THE INSTITUTIONAL TRADING PLATFORM

THE NEW REGULATORY FRAMEWORK

1. INTRODUCTION

In 2015, the Securities and Exchange Board of India (“SEBI”) framed the regulatory framework for the Institutional Trading Platform (the “ITP”), a stock exchange platform for start ups in the technology sector, by introducing amendments to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (the “ICDR Regulations”).

The objective of these amendments was to enable the listing of new age start-ups in sectors such as e-commerce, data analytics, bio-technology and other technologically driven industries, providing an opportunity for the public to invest in these start-ups, and create an additional source of funding, generally limited to venture capitalists and private equity funds.

Although there was and has been a growing interest among start-ups to list, the framework had a tepid market response as the norms framed therein still required start-ups to comply with the complex requirements under the ICDR Regulations.

Earlier in June, 2018, to address issues relating to the ITP framework, SEBI constituted a group, which included representatives from the Indian Software Product Industry Round Table (ISPIRT), The Indus Entrepreneurs (TIE), the Indian Private Equity and Venture Capital Association (IVCA), law firms, merchant bankers and stock exchanges, to look into and review the ICDR Regulations with the objective to simplify the process for listing start-ups in India.

The group held extensive consultations with stakeholders and submitted its recommendations to the Primary Market Advisory Committee (the “PMAC”) of SEBI and based on those recommendations, SEBI published a consultation paper containing certain proposals for changes to the ITP framework seeking public comments.

Taking into consideration PMAC’s recommendations and public comments on the consultation paper, the board of directors of SEBI (the “Board”) in their board meeting on December 12, 2018, provided its in-principle approval for amendments to the regulations relating to the ITP in the ICDR Regulations as set out below.

2. THE APPROVED AMENDMENTS

2.1 Renaming the Platform

The Board approved the proposal to rename the platform as the 'Innovators Growth Platform' (the "IGP"). The change in name is aimed to provide clarity and position the platform for new age start-ups.

2.2 Eligibility

(a) Existing provision

Regulation 283 of the ICDR Regulations provides for the eligibility conditions for issuers to be listed on the ITP, which essentially included:

- (i) an issuer which intensively uses technology, information technology, intellectual property, data analytics, bio-technology or nano-technology to provide products, services or business platforms with substantial value addition ("**Eligible Start-ups**") and at least 25% (twenty five per cent) of its pre-issued capital is held by qualified institutional buyers as on the date of filing of the draft information document or draft offer document with the Board, as the case may be; or
- (ii) any other issuer in which at least 50% (fifty per cent) of the pre-issued capital is held by qualified institutional buyers as on the date of filing of the draft information document or draft offer document with the Board, as the case may be ("**Other Eligible Start-ups**").

(b) Approved amendment

The Board approved the proposal of retaining the definition of "**Eligible Start-ups**".

Further, the Board approved the proposal to amend the eligibility criteria pertaining to investors in Eligible Start-ups. As per the approved new eligibility norms, for an Eligible Start-up to list on the IGP, 25% (twenty five per cent) of its pre-issued capital, for at least a period of 2 (two) years, should have been held by:

- (i) a Qualified Institutional Buyer;
- (ii) a Family trust with net-worth of more than INR 5,000,000,000 (Indian Rupees Five Billions only);
- (iii) a Category III Foreign Portfolio Investor;
- (iv) a pooled investment fund with minimum assets under management of USD 150,000,000 (United States Dollar One Hundred and Fifty Million) and registered with a financial sector regulator in the jurisdictions where it is resident. The fund should be a resident of a country whose securities market regulator is a signatory to the International Organization of Securities

Commission's Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to a bilateral memorandum of understanding with SEBI and not a resident in a country identified in the public statement of Financial Action Task Force as deficient in anti-money laundering and combating financing of terrorism;

- (v) Accredited Investors ("AIs") for the purpose of the IGP, shall include:
 - (A) any individual with total gross income of INR 5,000,000 (Indian Rupees Five Million) annually and who has a minimum liquid net worth of INR 50,000,000 (Indian Rupees Fifty Million); or
 - (B) Any body corporate with net worth of INR 250,000,000 (Indian Rupees Two Hundred and Fifty Millions only).

However, not more than 10% (ten percent) of the pre-issued capital of the issuer can be held by AIs.

2.3 Cap on holding the post-issued capital

(a) Existing provision

Regulation 283(2) of ICDR Regulations stipulates that no person, individually or collectively with persons acting in concert, shall hold 25% (twenty five percent) or more of the post-issued capital in the company.

(b) Approved amendment

The Board approved the proposal to delete the existing requirement, capping the holding of not more than 25% (twenty five percent) of the post-issued capital by any person, individually or collectively with persons acting in concert, in the company.

2.4 Minimum application and trading lot size

(a) Existing provision

Pursuant to Regulation 286 of the ICDR Regulations, the minimum application size for an issuer to be listed on the ITP shall be INR 1,000,000 (Indian Rupees One Million). Similarly, pursuant to Regulation 289, the minimum trading size lot of the issuer shall be INR 1,000,000 (Indian Rupees One Million only).

(b) Approved amendment

The Board approved to amend Regulation 286 and Regulation 289 of the ICDR Regulations and reduced the minimum application and trading lot size to INR 200,000 (Indian Rupees Two Hundred Thousand) and in multiples of INR 200,000 (Indian Rupees Two Hundred Thousand) thereof.

2.5 Minimum reservation for specific category of investors

(a) Existing provision

For listing pursuant to a public offer, Regulation 287(2)(a) and (b) of the ICDR Regulations mandates that the allocation in the net offer to public category shall be in such manner that 75% (seventy five per cent) of the net public offer should be allocated to institutional investors and the remaining 25% (twenty five per cent) to non-institutional investors.

(b) Approved Amendment

The Board has approved the proposal to remove the need to have a minimum reservation for a specific category of investors in case of a net offer to public and as such there shall not be any requirement of minimum reservation of allocation to specific categories of investors.

2.6 Minimum number of allottees

(a) Existing provision

Regulation 287(1) of the ICDR Regulations stipulates that the number of allottees shall be more than 200 (two hundred) in case of a listing pursuant to a public issue.

(b) Approved Amendment

The Board has approved the proposal to drop the minimum number of allottees from 200 (two hundred) to 50 (fifty) in case of a listing pursuant to a public issue.

2.7 Minimum offer to public

(a) Existing provision

Regulation 31 of ICDR Regulations provides that the minimum offer to the public shall be subject to the provisions of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulations) Rules, 1957 (the "SCRR") requiring a minimum offer size of INR 1,000,000,000 (Indian Rupees One Billion).

(b) Approved Amendment

The Board has approved the proposal, reducing the minimum size of the offer to the public from INR 1,000,000,000 (Indian Rupees One Billion only) to INR 10,000,000 (Indian Rupees Ten Millions only).

However, such minimum net offer by the issuer to the public should be in compliance with the minimum public shareholding requirements mandated under rules 19(2)(b) and 19A of the SCRR read with regulation 38 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (the "LODR Regulations").

Regulation 38 of the LODR Regulations requires a listed entity to comply with the minimum public shareholding requirements as specified in rule 19(2) and rule 19A of the SCRR.

In particular, clause (b) of sub-rule (2) of rule 19 of SCRR lays down limits of minimum offer and allotment to the public and rule 19A lays down requirements for maintaining a minimum public shareholding at 25% (twenty-five per cent).

2.8 Migration to the main board

(a) Existing provision

Under Regulation 292, an entity listed on the ITP may, at its option, migrate to the main board of that after expiry of 3 (three) years from the date of listing, subject to compliance with the eligibility requirements of the stock platform.

(b) Approved Amendment

The Board has approved the proposal that the IGP be designated as the main board platform for start-ups with an option to trade under the regular category after completion of 1 (one) year of listing, subject to compliance with exchange requirements.

3. **INDUSLAW VIEW**

By giving in-principle approval, SEBI has brought about much needed amendments to the provisions of the ICDR Regulations pertaining to the ITP.

However, by retaining the definition of *Eligible Start-ups*, SEBI has lost the opportunity of expanding the scope of Eligible Start-ups who can be listed on the IGP to include all start-ups in India irrespective of their business model or sector that they deal in.

The Board's approval to widen the eligibility norm for investors should provide the opportunity for most Eligible Start-ups to list themselves on the IGP.

The shareholding structure of the majority of Eligible Start-ups in India is generally diverse and there are hardly any Eligible Start-ups that would be funded by institutions falling under the definition of a Qualified Institutional Buyer, to the extent of 25% (twenty-five percent) of the pre-issued capital.

The inclusion of family trusts and accredited investors is a welcome step for angel investors and offshore funds who often constitute the majority investors in the early stages of Eligible Start-ups.

However, the proposed amendments approved by SEBI are *silent* about the applicability of certain relaxations provided to Eligible Start-ups to Other Eligible Start-ups.

Clearly, by reducing the number of allottees, the minimum size of the trading lot and the application size, the Board wants more Eligible Start-ups to list themselves on IGP. The new approved amendments should bring relief to promoters and other investors who want to

retain a majority holding, since they don't have to dilute their shareholding after an issue below 25% (twenty-five percent).

The provisions in relation to migration to the regular board of the stock exchange, with a reduced timeline of 1 (one) year, certainly provides a shot in the arm for the start-up ecosystem in India and the IGP should provide a welcome alternative to those companies who are looking to broaden their potential funding avenues.

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Practice Areas: Capital Markets & International Offerings | Government & Regulatory | Private Equity, Venture Capital and Fund Investment

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