

SUMMARY OF KEY AMENDMENTS TO THE SEBI ICDR REGULATIONS

Securities and Exchange Board of India (“SEBI”) on May 18, 2024 published the amendments to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“SEBI ICDR Regulations”) in the official gazette pursuant to the release of interim recommendations of the expert committee and invitation of comments from the public on January 11, 2024 on ease of doing business and harmonization of the provisions of the SEBI ICDR Regulations and other regulations (“Consultation Paper”) and its board meeting dated March 15, 2024, approving certain amendments. In this [INFOLEX ARTICLE](#), we shared our views on the Consultation Paper.

The following is the summary of the key amendments to the SEBI ICDR Regulations:

1. BROADENING MINIMUM PROMOTER CONTRIBUTION (“MPC”) AMBIT

Prior to the amendment, in case of shortfall in eligible equity shares for MPC, only alternative investment funds, foreign venture capital investors, scheduled commercial banks, public financial institutions, and insurance companies could contribute to such shortfall (subject to a maximum of 10% (ten percent) of post-issue share capital) without being identified as a “promoter”. Pursuant to the amendment, SEBI has now permitted (a) other members of promoter group (individual or non-individual) and (b) non-individual shareholders holding at least 5% (five percent) of the post issue capital, to contribute towards MPC in case of a shortfall.

The amendment is beneficial for companies where instead of concentration of shareholding with the promoters, it is spread across the promoter and other members of promoter group. Given any transfer of shares (even within promoters and other members of promoter group) closer to filing of draft red herring prospectus (“DRHP”) renders them ineligible for the purposes of MPC. Now such a shortfall can be fulfilled by other members of the promoter group or an investor (largely investing through a private equity fund) which until now was not permitted. Further, as indicated in our earlier article¹, locking in shares of promoter group (in addition to the promoters’) help in achieving the regulatory intent without unfairly burdening non-promoter shareholders and plugging any structuring innovation to comply with this requirement.

2. INCLUSION OF COMPULSORY CONVERTIBLE SECURITIES (“CCS”) TOWARDS MPC

Prior to the amendment, CCS held for more than 1 (one) year prior to filing of the DRHP were not considered for inclusion towards MPC, and issuers were required to obtain an exemption from SEBI on a case by case basis. Pursuant to the amendment, given the nature of CCS being compulsory convertible, such CCS have now been categorised as eligible for MPC, provided full disclosures of the terms of conversion is made in the DRHP, and they are converted into equity shares prior to filing of the red herring

¹ See - Ravi Dubey & Arjun Badola, *Committing on Ease of Doing (Listed Company) Business and Fund Raise*, IndusLaw Infolex (February 20, 2024), <https://induslaw.com/publications/pdf/alerts-2024/infolex-article-committing-on-ease-of-doing-listed-company-business-and-fund-raise.pdf>.

prospectus. Further, this amendment also brings parity between eligibility of share for offer for sale (“OFS”) and shares required for MPC.

3. NEW THRESHOLDS FOR REILING OF DRHP

Prior to the amendment, any increase or decrease in estimated issue size (as disclosed in the DRHP) by more than 20% (twenty percent), in case of a fresh issue, and by more than 50% (fifty percent), in case of an offer for sale, triggers refiling of the DRHP. There was a lack of clarity on whether this change would be tested in terms of number of shares or amounts in rupee terms, as disclosures across transactions would vary. Pursuant to the amendment, SEBI has clarified that the change in the fresh issue size will be tested in terms of rupee value i.e., a INR 100 crore (Indian Rupees One Hundred Crores Only) fresh issue size at DRHP stage can increase to INR 120 (Indian Rupees One Hundred and Twenty Crores Only) crore and decrease to INR 80 crore (Indian Rupees Eighty Crores Only), without mandating a refiling. Similarly, in the case of an OFS, it will be determined on the basis of unit value disclosed in DRHP, i.e., 100 (one hundred) OFS shares at DRHP stage (if disclosed as such) can move up to 150 (one hundred and fifty) shares or move down to 50 (fifty) shares irrespective of price per equity share. This change would remove any ambiguity around testing the refiling triggers on both rupee value and number of shares at UDRHP stage, thereby offering some level of certainty to issuers and selling shareholders.

4. EXCEPTION UNDER DETERMINATION OF PRICE IN RELATION TO PREFERENTIAL ALLOTMENT AND QUALIFIED INSTITUTIONAL PLACEMENT

Prior to the amendment, any movement in the share price pursuant to market rumours were not adjusted for determination of the floor price (basis SEBI prescribed formula) for private placements (including preferential allotment). However, SEBI has pursuant to its recent circular dated May 21, 2024, provided a framework to consider the unaffected price for such placements if the market rumours are confirmed by the listed company within 24 (twenty four) hours from trigger of material price movement. Allowing a listed company to consider unaffected price (i.e. to the exclusion of price variation on account of market rumours) would enable successful completion of private placements (including preferential allotment) which earlier were often rendered unviable due to steep hike in the floor price resulting in higher investment amount for same stake in the listed company.

5. FLEXIBILITY IN EXTENDING THE BID/ OFFER CLOSING DATE

Prior to the amendment, there was a minimum of 3 (three) working days extension to bidding period in case of force majeure, or similar event occurring during the initial bidding period. Pursuant to the amendment, the requirement has been reduced to a minimum of 1 (one) working day. The option to extend the bidding period has enabled potential investors to bid even when they have been impacted by such force majeure event. The amendment reduces the mandatory extension of minimum 3 (three) working days to 1 (one) working day which avoids unnecessary delay to the IPO process and also enables unlocking of funds of potential investors without much delay.

6. REMOVAL OF SECURITY DEPOSIT

Prior to the amendment, the issuer company was required to place a refundable security deposit amounting to 1% (one percent) of the issue size, with the designated stock exchange. Pursuant to the amendment, such requirement has been omitted. As investor complaints in relation to refund of

application money have significantly minimized, and major complaints are now linked to the delay in unblocking Application Supported by Blocked Amount funds, doing away with the requirement is a welcome change.

7. CONCLUSION

Current amendments reflect SEBI's business-friendly approach and openness to evolve as per market requirements. The inclusion of CCS towards MPC and expanding the ambit of eligible persons/entities to contribute towards MPC including other members of promoter group entities and non-individual shareholders have been long awaited especially for the new age businesses who constantly depend on funding requirements and investments through convertibles to meet their funding requirements.

Authors: Ravi Dubey | Arjun Badola

Practice Area: Capital Markets & International Offerings

Date: May 24, 2024

DISCLAIMER

This alert is for information purposes only. Nothing contained herein is, purports to be, or is intended as legal advice and you should seek legal advice before you act on any information or view expressed herein.

Although we have endeavoured to accurately reflect the subject matter of this alert, we make no representation or warranty, express or implied, in any manner whatsoever in connection with the contents of this alert.

No recipient or reader of this alert should construe it as an attempt to solicit business in any manner whatsoever.