

# Amendments

## NEWS UPDATE

### SECURITIES LAW

The Securities and Exchange Board of India (“SEBI”) has introduced several relaxations with respect to (i) the pricing for preferential allotment under SEBI (Issue of Capital and Disclosure) Regulations, 2018 (“ICDR Regulations”); and (ii) SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“Takeover Regulations”).

Following are the highlights of the amendments made by SEBI:-

#### HIGHLIGHTS OF THE AMENDMENTS

##### 1. Companies having stressed assets

###### (a) ICDR Regulations<sup>1</sup>:-

A new pricing method for preferential issue for listed company having stressed assets has been introduced, so as to allow for the price to be based on the average of the weekly high and low of the volume-weighted average price of the respective equity shares during two weeks preceding the relevant date as opposed to, subject to the following conditions:-

- (i) The issuer company should meet two out of three criteria to issue securities based on above pricing, which are: (a) disclosures relating to all defaults and such defaults continue for a period of at least 90 days; (b) credit rating of the company is downgraded to a “D”; and (c) execution of an inter creditor agreement in terms of the directions laid by the Reserve Bank of India;
- (ii) The proceeds from such issue cannot be utilized for any repayment of loans taken from promoters, promoter group or group companies, and the proposed use of the proceeds must be disclosed in the explanatory statement;
- (iii) The preferential issue cannot be made to certain persons including persons forming part of promoter or promoter group;
- (iv) The votes cast in favour of the preferential allotment from shareholders in the “public” category must exceed the votes cast against it/ be 3 times in excess of votes against it where the company does not have an identifiable “promoter”;
- (v) The issuer company is required to make arrangements for monitoring the use of the proceeds of the issue by a public financial institution. The Audit Committee too, is required to monitor such utilization;

---

<sup>1</sup>SEBI (ICDR) Second Amendment Regulations, 2020 dated 22 June 2020

- (vi) The allotment made basis the aforementioned pricing shall be locked-in for a period of three years from the last date of trading approval.

**(b) Takeover Regulations<sup>2</sup>:-**

Following the aforementioned changes to the ICDR Regulations, SEBI introduced additional exemptions under Takeover Regulations for exempting the requirement of making an open offer under Regulations 3(1)<sup>3</sup> and 4<sup>4</sup> of the Takeover Regulations in case of preferential allotments of the nature described above.

**2. Additional pricing option for listed companies<sup>5</sup>**

In light of the economic slowdown caused by the COVID-19 pandemic SEBI notified an additional option of pricing for all listed companies with frequently traded shares under the ICDR Regulations, which is available only for preferential allotments made up to 31 December 2020. Below is a summary of the amendment:-

- (a) This pricing would be based on the higher of (i) the average of the weekly high and low of the volume weighted average price of the related equity shares during the twelve weeks preceding the relevant date; or (ii) the average of the weekly high and low of the volume weighted average prices of the related equity shares during the two weeks preceding the relevant date; and
- (b) The allotment made basis the aforementioned pricing shall be locked-in for a period of three years from the last date of trading approval.

The amendment has also clarified that all allotments arising out of the same shareholders' approval must follow the same pricing method.

**3. Takeover Regulations**

**(a) Increase in creeping acquisition limits for promoters<sup>6</sup>**

In light of the economic slowdown resulting from the COVID-19 pandemic, the limit of creeping acquisition has been increased from 5% to 10% for promoters funding the company through preferential issue on or before 31 March 2020. This relaxation is applicable to promoters holding 25% or more but less than maximum permissible non-public shareholding.

- (b) Acquisitions<sup>7</sup>:-** With respect to the indirect acquisitions dealt with under regulation 13(2)(e) of Takeover Regulations, SEBI has tightened the norms as under:-

---

<sup>2</sup>SEBI (Takeover) Second Amendment Regulations, 2020 dated 22 June 2020

<sup>3</sup> Requires open offer to be made incase of acquisition of 25% or more voting rights

<sup>4</sup> Requires open offer to be made incase of direct or indirect control

<sup>5</sup>SEBI (ICDR) Third Amendment Regulations, 2020 dated 1 July 2020

<sup>6</sup>SEBI (Takeover) Amendment Regulations, 2020 dated 16 June 2020

<sup>7</sup>SEBI (Takeover) Second Amendment Regulations, 2020 dated 1 July 2020

- (i) the indirect acquirer will have to deposit 100% of consideration payable in the open offer in the escrow account as opposed to higher of 50% of consideration payable or 100% of minimum level of acceptance;
- (ii) disallowed the option of maintaining the escrow account requirements in the form of a deposit of securities.

With respect to all acquisitions, where the acquirer is unable to make payments to shareholders who have accepted the open offer, the acquirer is now required to pay interest for the period of delay at 10% p.a., provided that SEBI has the right to grant a waiver to such interest in certain circumstances.

- (c) **Acquisitions permitted through bulk deals or block deals:** While earlier acquirers were not permitted to acquire shares of the target company under the Takeover Regulations through bulk or block deals, this restriction has now been deleted.

## **DISCLAIMER**

This news update has been written for the general interest of our clients and professional colleagues and is subject to change. This news update is not to be construed as any form of solicitation. It is not intended to be exhaustive or a substitute for legal advice. We cannot assume legal liability for any errors or omissions. Specific advice must be sought before taking any action pursuant to this news update. For further clarification and details on the above, you may write to Siddhi Ghatlia (Partner) at [sghatlia@almtlegal.com](mailto:sghatlia@almtlegal.com) and/or Prem Jumani (Principal Associate) at [pjumani@almtlegal.com](mailto:pjumani@almtlegal.com).