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Bank

news flash

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SEBI amends the ICDR and Takeover Regulations

In order to aid banks to recover their bad loans the Reserve Bank of India (**"RBI"**), in March this year, had proposed the strategic debt restructuring ("**SDR**") scheme which would enable banks in India to take control of distressed listed companies.

In view of the above, Securities and Exchange Board of India ("**SEBI**") was required to make the relevant changes to the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009 **("ICDR")** and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011 **("SAST")**.

SEBI has issued a notifications dated 5 May 2015 **("Notification")** whereby an addition is made to the exemption list in ICDR and the SAST. The relevant excerpts of the Notification are as follows:-

A. Amendment under ICDR regulations

Chapter VII of ICDR stipulates the regulations for the preferential issue of shares. SEBI has relaxed its norms by adding a new sub-regulation 70(5) and 70(6). These sub-regulations state that:-

- The provisions of Chapter VII of ICDR will not apply if the preferential issue of equity shares is made to the consortium of banks and financial institutions pursuant to conversion of its debt, as part of the SDR scheme in accordance with the RBI guidelines. However, the above exemption is subject to the following conditions:-

    - the conversion price of debt into equity has to be determined in accordance with the SDR scheme specified by RBI and which shall not be less than the face value of the equity shares;

    - the conversion price shall be certified by two independent qualified valuers;

    - equity shares allotted under the SDR scheme shall be locked-in for a period of one year from the date of trading approval. Provided that for the purposes of transferring the control, the consortium of banks and financial institutions may transfer their shareholding to an entity before completion of the lock-in period subject to continuation of the lock-in on such shares for the remaining period with the transferee;

    - The company issuing shares have to comply with applicable provisions of Companies Act, 2013, including the requirement of passing special resolution.

- The provisions of Chapter VII of ICDR will not apply when any other secured lenders opt to join the SDR scheme in accordance with the guidelines specified by the RBI for converting their debt into equity share.

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B. Amendment under SAST

Regulation 10(1) of SAST stipulates the general exemptions to which the obligation to make an open offer under regulation 3 and regulation 4 of SAST does not apply.

SEBI has inserted another exemption to the list by inserting new sub-regulation 10(1)(h). This sub-regulation states that the open offer is not required to be made if acquisition of equity shares by the consortium of banks, financial institutions and other secured lenders is pursuant to conversion of their debt as part of the SDR scheme in accordance with RBI guidelines. However such exemption will be subject to the conditions specified under regulation 70(5) and 70(6) of ICDR as stated above.

Conclusion

SEBI has relaxed its norms under ICDR and SAST for helping banks and financial institutions to convert the debt into equity of the listed company without complying with the regulations of preferential issue under ICDR and open offer requirements under SAST. However, this exemption will be available to consortium of banks and financial institutions only under SRD, which is yet to be issued by RBI. SDR exemption shall not apply when any other secured lenders opt to join the strategic debt restructuring scheme and convert their debt into equity share.

Though regulations of preferential issue of ICDR will not apply if the debt is converted into equity under SDR scheme it is subject to certain conditions pertaining to the conversion price of debt into equity, lock-in period etc..

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