

# TAX FLASH NEWS

31 January 2022

## SEBI (ICDR) (Amendment) Regulations, 2022

Securities and Exchange Board of India (“SEBI”) has recently introduced the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2022 (“ICDR Regulations”) with effect from 14 January 2022 wherein certain amendments have been introduced with a view of increased transparency, monitoring, protection of public investors amongst certain other amendments. Summary of the key amendments introduced by SEBI are as under:

	Before amendment	After amendment
1	<b>Utilisation of proceeds from fresh issue</b>	
	The amount for general corporate purposes (“GCP”), as mentioned in objects of the issue in the draft offer document and the offer document shall not exceed 25% of the amount being raised by the issuer.	As per the amendment, the amount for: (i) GCP, and (ii) such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document shall not exceed 35% of the amount being raised by the issuer.  This is subject to the internal sub-limit of maximum 25% for such objects where the issuer company has not identified acquisition or investment target.
	<i>Our comments: Prior to amendment, the amount allocated towards GCP as mentioned in the objects of the issue was capped at 25% of the amount being raised. The proposed amendment has now also specified a limit of 25% for funding inorganic growth (as per the objects of the issue), where the target is not identified and an overall maximum limit of 35% for GCP as well as funding for inorganic growth.</i>	
2	<b>Monitoring of proceeds from fresh issuance</b>	
	If the issue size, excluding the size of offer for sale by selling shareholders, exceeds INR 1.0 billion, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a public financial institution or by a scheduled commercial bank named in the offer document as bankers of the issuer  The monitoring agency shall submit its report to the issuer in the format specified in Schedule XI on a quarterly basis, till at least 95% of the proceeds of the issue, excluding	As per the amendment, “credit rating agency registered with the Board” will be the monitoring agency instead of public financial institution or by a scheduled commercial bank.  Further, the entire proceeds of the issue shall be monitored including the proceeds raised for GCP.

	the proceeds raised for GCP, have been utilised.	
	<i>Our comments: The amendment has introduced norms for increased monitoring and higher transparency of the utilisation of funds being raised out of fresh issuance i.e. 100% instead of 95% and by including GCP under the ambit of monitoring.</i>	
3	<b>Conditions for offer for Sale ("OFS") to public in an IPO by issuer without appropriate track record i.e. under Regulation 6(2) of ICDR Regulations</b>	
	The only condition in case of an IPO by the companies without appropriate track record, was that at least 75% of the issue size was required to be allotted to qualified institutional buyers ("QIBs").	<p><b>“Additional conditions for an offer for sale for issues under sub-regulation (2) of regulation 6</b></p> <p>For issues under Regulation 6(2) of ICDR Regulations:</p> <p>shares offered for sale to the public by shareholder(s) holding, individually or with persons acting in concert:</p> <p>(a) holding more than 20% of pre-issue shareholding - cannot sell more than 50% of <b><u>their pre-issue shareholding</u></b>;</p> <p>b) holding less than 20% of pre-issue shareholding - cannot sell more than <b><u>10% of pre-issue shareholding of the issuer</u></b>;</p> <p>c) holding more than 20% of pre-issue shareholding - provisions of lock-in as specified under regulation 17 of ICDR regulations shall be applicable, and relaxation from lock-in as provided under regulation 17 (c) of ICDR regulations shall not be applicable.</p>
	<i>Our comments: The amendment seeks to restrict complete exit of existing shareholders holding more than 10% of shares under OFS in case of IPO without appropriate track record in order to protect the interest of the public shareholders by ensuring minimum continued holding is locked-in and retained as skin in the game for promoters and other existing shareholders of such companies. Also, the relaxation available to AIFs (Cat I or II), VCF, FVCI of considering the lock-in period of shares from date of purchase by such investors shall not be applicable and the shares held by such investors shall be subject to lock-in of six months from the date of listing of such shares.</i>	
4	<b>Lock-in condition for AIFs/VCFs/FVCIs in case of bonus issue of shares</b>	
	In respect of AIFs/VCFs/FVCIs, the equity shares held by them shall be locked-in for a period of 6 months from the date of purchase.	In respect of lock-in conditions for AIFs/VCFs/FVCIs, additional explanation has been inserted to clarify that equity shares which have resulted pursuant to a bonus issue, the holding period of such equity shares against which the bonus issue is made as well as holding period of resultant bonus equity shares together shall be considered for the purpose of calculation of 6 months period, subject to the following:
		(a) that the bonus shares being issued out of free reserves and share premium existing in the books of account as at the end of the financial year preceding the financial year in which the draft offer document is filed with the Board; and
		(b) that the bonus shares are not being issued by utilisation of revaluation reserves or unrealized profits of the issuer.
	<i>Our comments: The amendment has inserted an explanation that the holding period of equity shares against which the bonus issue is made and that of resultant bonus equity shares together shall be considered for the purpose of calculation of 6 months lock-in period</i>	

5	<b>Reduction in lock-in for preferential issue of shares</b>	
	<p>A. Lock-in for the following issuances under preferential allotment to the promoters or the promoter group (1) equity shares or convertible securities allotted, (2) equity shares allotted pursuant to exercise of options attached to warrants, shall be locked-in for a period of three years from the date of trading approval granted. The above Lock-in for 3 years shall apply to not more than 20% of the total capital of the issuer.</p> <p>Equity shares allotted in excess of the 20% shall be locked-in for one year from the date of trading approval.</p> <p>B. Equity shares, convertible securities, equity shares allotted pursuant to exercise of options attached to warrants allotted on a preferential basis to persons other than the promoters and promoter group shall be locked-in for a period of one year from the date of trading approval.</p>	<p>As per the amendment, the lock-in for promoters of 20% of the total shareholding has been reduced to 18 Months and the lock-in for the shareholding in excess of 20% is reduced to 6 months from the date of trading approval granted.</p> <p>Further, the lock-in for non-promoters has been reduced to 6 months.</p>
6	<b>Lock-in condition for Anchor investors</b>	
	<p>Shares allotted to anchor investors were subject to lock-in of 30 days from the date of allotment.</p>	<p>Shares allotted to anchor investors are subject to lock-in of 90 days from the date of allotment on the 50% of the shares allotted and a lock-in of 30 days from the date of allotment for the remaining 50%.</p>
	<p><i>Our comments: This amendment has been brought to curb or reduce the volatility in the market immediately post listing.</i></p>	
7	<b>Pricing for preferential issue</b>	
	<p>A floor price for preferential issue of frequently traded shares prescribed by ICDR Regulations was based on the average of the weekly high and low of the volume weighted average price (VWAP) of the shares during the 26 weeks and 2 weeks preceding the relevant date for the issue.</p>	<p>As per the amendment, the floor price for preferential issue of frequently traded shares prescribed by ICDR Regulations has been amended to the higher of (1) the VWAP for 90 trading days, (2) VWAP for 10 trading days preceding the relevant date, and (3) the price as calculated in accordance with the valuation method prescribed in the Articles of Association of the issuer.</p> <p>Further, any preferential issue, which may result in a change in control or allotment of more than 5% of the post issue fully diluted share capital of the issuer, to an allottee or to allottees acting in concert, shall require a valuation report from an independent registered valuer and consider the same for determining the price. The floor price shall be higher of the price specified in ICDR regulations or as per independent registered valuer's report or the price determined in accordance with the provisions of the Articles of Association of the issuer, if applicable.</p> <p>Further, if any preferential issue is likely to result in a change in control of the issuer, the valuation report from the registered valuer shall also cover guidance on control premium, which shall be computed over and above the price determined in terms specified above. Any preferential issue, which may result in a change in control of the issuer, shall only be made pursuant to a reasoned recommendation from a committee of independent directors of the issuer after</p>

		considering all the aspects relating to the preferential issue including pricing, and the voting pattern of the said committee's meeting shall be disclosed in the notice calling the general meeting of shareholders. The meeting of the independent directors shall be attended by all the independent directors on the board of the issuer.
8	<b>Minimum range of price band</b>	
	The cap on the price band shall be less than or equal to 120% of the floor price	As per the amendment, the cap of the price band shall be at least 105% of the floor price.
	<i>Our comments: Given that the difference between the lower and higher end of price band in the recent issuances was very minimal, the amendment has now specified a minimum gap between the lower and higher end of the price band of 5%.</i>	
9	<b>Other key amendments</b>	
a	<p>As per the ICDR regulations, minimum 15% of the net offer in an IPO has been allocated to Non-Institutional Investors ('NIIs'). Amendment has been brought in to provide segregation of the 15% allocated to NIIs has been done based on application size as follows:</p> <p>(a) 1/3 of the portion available to NIIs (i.e. 5% of the net offer) shall be reserved for applicants with application size of more than INR 2 lakh and up to INR 10 lakh;</p> <p>(b) 2/3 of the portion available to NIIs (i.e. 10% of the net offer) shall be reserved for applicants with application size of more than INR 10 lakh:</p> <p>The unsubscribed portion in either of the sub-categories specified in clauses (a) or (b), may be allocated to applicants in the other sub-category of NIIs.</p> <p>Further the allotment shall be on a proportionate basis within the respective investor categories and each investor within NII category and the number of securities allotted shall be rounded off to the nearest integer, subject to minimum allotment being equal to the minimum application size as determined and disclosed in the offer document.</p>	
b	The minimum period for which rights issue shall be kept open for subscription has been reduced to 7 days (from 15 days).	
c	Preferential issue of specified securities shall not be made to any person who has sold or transferred any equity shares of the issuer during the 90 trading days preceding the relevant date. Earlier such issuance was restricted if the securities were sold or transferred during 6 months preceding the relevant date.	
d	Front cover page of the offer document, abridged prospectus and abridged letter of offer shall contain issue and issuer details, details of selling shareholders in tabular format along with their average cost of acquisition and offer for sale details and such other details as may be specified.	
e	<p>Preparation of restated financial statements, proforma financial statements, etc. was earlier required to be prepared by the statutory auditor, which have now been amended and such documents can now be issued by chartered accountants, who hold a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India (ICAI).</p> <p>Where such proforma financial statements / restated consolidated financial statements have been provided by a peer reviewed Chartered Accountants who are not statutory auditor of the Company, the Issuer Company shall put this as a Top 10 Risk Factor in its offer document.</p>	
f	In respect of a preferential issue, the issuer was earlier required to place a copy of the certificate of a statutory auditor before the general meeting of the shareholders considering the proposed preferential issue, certifying that the issue is being made in accordance with the requirements of ICDR regulations, which have now been amended and such certificate is now required from a practicing company secretary.	

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