SUPPLEMENTARY

SEBI ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS (ICDR) REGULATIONS 2018

SEBI ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS (ICDR) REGULATIONS 2018

SEBI ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS (ICDR) REGULATIONS 2018

SEBI vide its notification dated 11th September, 2018 issued SEBI (ICOR) Regulations, 2018 which is effective from 60th day of its publication in the official gazette.

The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 are applicable for public issue, rights issue, (₹10 crores and above) preferential issue, an issue of bonus shares by a listed issuer, qualified institutions placement by a listed issuer and issue of Indian Depository Receipts, IPO by SMEs and listing without any public issue.

Scheme of the Regulations

The regulations are divided into 12 Chapters and 20 schedules as detailed below:

Chapter	Description
I	Preliminary
II	Initial Public Offer on Main Board
III	Right Issue
IV	Further Public Offer
V	Preferential Issue
VI	Qualified Institutional Placement
VII	Initial Public Offer of Indian Depository Receipts
VIII	Right Issue of Indian Depository Receipts
IX	Initial Public Offer by Small and Medium Enterprise
X	Institutional Trading Platform
XI	Bonus Issue
XII	Miscellaneous

The important provisions of the regulations are furnished below:

General conditions for public issues and rights issues

An issuer cannot make a public issue or rights issue of equity shares and convertible securities under the following conditions:

(a) If the issuer, any of its promoters, promoter group or directors or selling shareholders are debarred from accessing the capital market by SEBI, or

(b) If any of the promoters, director of the issuer was or also is a promoter, director of any other company which is debarred from accessing the capital market under the order or directions made by SEBI.

(c) Unless an application is made to one or more recognised stock exchanges for in principles approval of listing of equity shares and convertible securities on such stock exchanges and has chosen one of them as a designated stock exchange. However, in case of an initial public offer, the issuer should make an application for listing of the equity shares and convertible securities in at least one recognised stock exchange having nationwide trading terminals.

(d) If any of its promoters/directors is a fugitive offender the restriction (a) & (b) shall not apply to persons who were debarred in the past and the period is over on the date of filing of prospectus.

(e) Unless it has entered into an agreement with a depository for dematerialisation of equity shares and convertible securities already issued or proposed to be issued.

(f) Unless all existing partly paid-up equity shares of the issuer have either been fully paid up or forfeited.

(g) Unless firm arrangements of finance through verifiable means towards 75% of the stated means of finance, excluding the amount to be raised through the proposed public issue or rights issue or through existing identifiable internal accruals, have been made.

(h) Promoter's holding is in dematerialised form prior to filing of offer document.

(i) The amount for general corporate purposes as mentioned in the objects of the issue in the draft offer document shall not exceeds 25% of the amount raised by the issuer.

(j) At least one year holding of equity shares by the sellers.

(k) a public issue of equity securities, if the issuer or any of its promoters or directors is a wilful defaulter; or

Appointment of Merchant banker and other intermediaries

The issuer should appoint one or more merchant bankers, at least one of whom should be a lead merchant banker. The issuer should also appoint other intermediaries, in consultation with the lead merchant banker, to carry out the obligations relating to the issue. The issuer should in consultation with the lead merchant banker, appoint only those intermediaries which are registered with SEBI. Where the issue is managed by more than one merchant banker, the rights, obligations and responsibilities, relating inter alia to disclosures, allotment, refund and underwriting obligations, if any, of each merchant banker should be predetermined and disclosed in the offer document.

Conditions for Initial Public Offer

(a) An issuer may make an initial public offer (an offer of equity shares and convertible debentures by an unlisted issuer to the public for subscription and includes an offer for sale of specified securities to the public by an existing holder of such securities in an unlisted issuer) if:

(1) The issuer has net tangible assets of at least ₹ 3 crores in each of the preceding 3 years (of 12 months each) of which not more than 50% are held in monetary assets. If more than 50% of the net tangible assets are held in monetary assets, then the issuer has to make firm commitment to utilize such excess monetary assets in its business or project.

(2) it has a minimum average pre-tax operating profit of rupees fifteen crore, calculated on a restated and consolidated basis, during the three most profitable years out of the immediately preceding five years.

(3) The issuer company has a net worth of at least ₹ 1 crores in each of the preceding 3 full years (of 12 months each).

(4) In case of change of name by the issuer company within last one year, at least 50% of the revenue for the preceding one year should have been earned by the company from the activity

indicated by the new name.

(b) Any issuer not satisfying any of the conditions stipulated above may make an initial public offer if:

(1) The issue is made through the book building process and the issuer undertakes to allot at least 75% of the net offer to public to qualified institutional buyers and to refund full subscription monies if it fails to make allotment to the qualified institutional buyers.

(c) An issuer may make an initial public offer of convertible debt instruments without making a prior public issue of its equity shares and listing, provided company has not defaulted payment of principal/ interest for a period of 6 months.

(d) An issuer cannot make an allotment pursuant to a public issue if the number of prospective allottees is less than one thousand.

(e) No issuer can make an initial public offer if there are any outstanding convertible securities or any other right which would entitle any person any option to receive equity shares after the initial public offer.

Conditions for further public offer

(a) An issuer may make a further public offer (an offer of equity shares and convertible securities) if it satisfies the following conditions:

(1) if it has changed its name within the last one year, at least 50% of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.

(b) If the issuer does not satisfy the above conditions, it may make a further public offer if it satisfies the following conditions:

a) the issue is made through the book building process and the issuer undertakes to allot at least 75% of the net offer to public to qualified institutional buyers and to refund full subscription monies if it fails to make allotment to the qualified institutional buyers.

Pricing in Public Issues

The issuer determines the price of the equity shares and convertible securities in consultation with the lead merchant banker or through the book building process. In case of debt instruments, the issuer determines the coupon rate and conversion price of the convertible debt instruments in consultation with the lead merchant banker or through the book building process.

Differential Pricing

An issuer may offer equity shares and convertible securities at different prices, subject to the following condition:

(a) the retail individual investors/shareholders or employees entitled for reservation making an application for equity shares and convertible securities of value not more than ` 2 lakh, may be offered equity shares and convertible securities at a price lower than the price at which net offer is made to other categories of applicants provided that such difference is not more than 10% of the price at which equity shares and convertible securities are offered to other categories of applicants.

(b) in case of a book built issue, the price of the equity shares and convertible securities offered to an anchor investor cannot be lower than the price offered to other applicants.

(c) in case the issuer opts for the alternate method of book building, the issuer may offer specified securities to its employees at a price lower than the floor price. However, the difference between the floor price and the price at which equity shares and convertible securities are offered to employees should not be more than 10% of the floor price.

(d) Face value may be less than 10 but not less than ₹1 if the issue price is ₹ 500 or more per share. If issue price is less than ₹ 500 the face value shall be ₹ 10 /- per share.

Promoters' Contribution

The promoters' minimum contribution varies from case to case. The promoters of the issuer are required to contribute in the public issue as follows:

(a) In case of an initial public offer, the minimum contribution should not be less than 20% of the post issue capital.

(b) In case of further public offer, it should be either to the extent of 20 % of the proposed issue size or to the extent of 20% of the post-issue capital.

(c) In case of a composite issue, either to the extent of 20% of the proposed issue size or to the extent of 20% of the post-issue capital excluding the rights issue component.

Lock-in of specified securities held by promoters.

In a public issue, the equity shares and convertible debentures held by promoters are locked-in for the period stipulated below:

(a) minimum promoters' contribution is locked-in for a period of 3 years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later.

(b) promoters' holding in excess of minimum promoters' contribution is locked-in for a period of 1 year.

However, excess promoters' contribution in a further public offer are not subject to lock-in.

Book Building – Schedule XI

Book Building means a process undertaken to elicit demand and to assess the price for determination of the quantum or value of specified securities or Indian Depository Receipts, as the case may be in accordance with the SEBI (ICDR) Regulations 2018.

(a) In an issue made through the book building process, the allocation in the net offer to public category is made as follows:

    (1) Not less than 35 % to retail individual investors.

    (2) Not less than 15 % to non institutional investors i.e. investors other than retail individual investors and qualified institutional buyers.

    (3) Not more than 50% to Qualified Institutional Buyers; 5 % of which would be allocated to mutual funds.

    Provided that in addition to five per cent allocation available in terms of clause (3), mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.

    In an issue made through the book building process under sub-regulation (2) of regulation 6, the allocation in the net offer to public category shall be as follows:

    (1) not more than ten per cent to retail individual investors;

    (2) not more than fifteen per cent to non-institutional investors;

    (3) not less than seventy five per cent to qualified institutional buyers, five per cent of which shall be allocated to mutual funds:

    Provided further that in addition to five per cent allocation available in terms of clause (3), mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.

    In an issue made through the book building process, the issuer may allocate up to 60% of the portion available for allocation to qualified institutional buyers to an anchor investor in accordance with the conditions specified.

(b) In an issue made other than through the book building process, allocation in the net offer to public category will be made as follows:

(1) minimum 30% to retail individual investors, and

(2) remaining to individual applicants other than retail individual investors and other investors including corporate bodies or institutions, irrespective of the number of equity shares and convertible securities applied for.

(3) the unsubscribed portion in either of the categories specified above (point 1 and 2) may be allocated to applicants in the other category.

If the retail individual investor category is entitled to more than 50% on proportionate basis, the retail individual investors will be allocated that higher percentage.

Indian Depository Receipts

A foreign company can access Indian securities market for raising funds through issue of Indian Depository Receipts (IDRs).

An IDR is an instrument denominated in Indian Rupees in the form of a depository receipt created by a Domestic Depository (custodian of securities registered with the Securities and Exchange Board of India) against the underlying equity of issuing company to enable foreign companies to raise funds from the Indian securities markets.

An issuing company making an issue of IDR is required to satisfy the following:

(a) it should be listed in its home country.

(b) it should not be prohibited to issue securities by any regulatory body.

(c) it should have a track record of compliance with securities market regulations in its home country.

Conditions for issue of IDR.

An issue of IDR is subject to the following conditions:

(a) issue size should not be less than ₹ 50 crore.

(b) procedure to be followed by each class of applicant for applying should be mentioned in the prospectus.

(c) minimum application amount should be ₹ 20,000.

(d) at least 50% of the IDR issued should be allotted to qualified institutional buyers on proportionate basis.

(e) the balance 50% may be allocated among the categories of non-institutional investors and retail individual investors including employees at the discretion of the issuer and the manner of allocation has to be disclosed in the prospectus. Allotment to investors within a category will be on proportionate basis.

Further, at least 30% of the IDRs issued will be allocated to retail individual investors and in case of under-subscription in retail individual investor category, spill over to other categories to the extent of under-subscription may be permitted.

(f) At any given time, there will be only one denomination of IDR of the issuing company.

Institutional Trading Platform

SEBI has simplified the process of fast track issue of securities and revised the Institutional Placement Program (ITP) framework making it easier for startups companies to raise capital. SEBI has also made consequential changes in other regulations due to introduction of ITP. This move of SEBI permitting wider categories of entities to list without going through IPO and granting various exemptions aims at enabling entities to tap capital markets with ease and aims towards ease of doing business in India.

The salient features of the changes are furnished below:

(a) **Fast Track Issue**

(1) Companies which have average market capitalization of ₹ 10 billion in case of public issue and ₹2.5 billion in case of rights issue can make issue under Fast Track Issue route.

(2) Additional conditions prescribed:

a) The issuer, promoter or promoter group or director of the issuer has not settled any alleged violation of securities laws through consent or settlement mechanism with SEBI during 3 years immediately preceding the reference date.

b) In case of rights issue, promoters and promoter group shall mandatorily subscribe to their rights entitlement and shall not renounce except within the promoter group or in order to comply with minimum public shareholding.

c) Equity shares of the issuer have not been suspended from trading as disciplinary measures during last 3 years immediately preceding the reference date.

d) Annualized delivery based trading turnover of the equity shares during 6 calendar months immediately preceding the month of reference date should be at least 2% of the weighted average number of equity shares listed during such period.

e) There should not be any conflict of interest between lead merchant banker and issuer or its group or associate in accordance with applicable regulations.

f) Must have redressed 95% of the investor complaints.

(b) **Interim use of funds**

Prospectus, letter of offer for public, rights issue shall make following disclosure:

(1) Net issue proceeds pending utilization (for the stated objects) shall be deposited only in the scheduled commercial banks for issue made by Indian issuers.

(2) Interim use of funds is restricted to deposit in a bank having credit rating of 'A' or above by an international credit rating agency for IDR issuers.

(c) **Listing on Institutional Trading Platform (ITP)**

SEBI has replaced the existing guidelines for listing of securities on ITP. The guidelines for listing, which were earlier available only for SME, are now made available to wider class of issuers.

(d) **Eligibility**

(1) Following entities are eligible for listing on ITP:

a) Entity which is intensive in use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology to provide products, services or business platforms with substantial value addition and at least 25% of its pre-issue capital is held by QIB.

b) Any other entity in which at least 50% of pre-issue capital is held by QIB as on the date of filing of draft information document or draft offer document with SEBI.

1) No person, individually or collectively with person acting in concert shall hold more than 25% of post-issue capital.

2) Eligibility norms have been substantially diluted to do away with requirements such as condition of no default by company/ promoter/ group company/ director, no reference to BIFR by company or group companies in preceding 5 years, not more than 10 years of existence, paid-up share capital not exceeding ₹ 250 million and turnover not exceeding ₹ 1 billion in any financial year, at least one investment by AIF, VCF, angel investor, QIB etc.

(2) Listing

a) SEBI has now permitted listing on ITP for eligible issuer through public issue without public issue under previous regime, public issue was not permitted. Issue of capital was permitted only through private placement or rights issue without renunciation subject to certain conditions.

b) Minimum trading lot shall be ₹ 1 million

(3) Listing without public issue

a) Eligible entity shall file draft information document along with necessary documents with SEBI along with prescribed fees.

b) Eligible entity shall obtain in-principle approval from the recognized stock exchange. Such in-principle approval shall be deemed to be waiver from compliance with Rule 19(2)(b) of Securities Contract (Regulations) Rules, 1957 (SCRR).

c) Here, the requirement of having minimum public shareholding will not apply.

d) Listing of securities to take place within 30 days from:

1) date of issuance of observations by SEBI.

2) if no observations issued, then after expiry of the period for issuance of observations by SEBI

e) Provisions of ICDR Regulations relating to allotment issue opening / closing, advertisement, underwriting, no IPO pending conversion of convertible securities, pricing, dispatch of issue material, and other such provisions related to offer of specified securities to public will not apply

(4) Listing pursuant to public issue

a) Eligible entity shall file draft offer document along with necessary documents with SEBI along with prescribed fees.

b) Minimum application size ₹ 1 million.

c) Number of allottees shall be more than 200.

d) Allocation of net public offer shall be made as under:

1) 75% to institutional investors (without separate allocation to Anchor Investor).

2) 25% to non-institutional investors.

3) Under subscription in non-institutional investors can be made available to institutional investors.

4) Allotment to non-institutional investors on proportionate basis.

5) Allotment to institutional investors may be on discretionary basis in which case allotment to each institutional investor to be capped at 10% of issue size.

(5) Lock-in Period

a) Entire pre-issue capital of the shareholders shall be locked-in for a period of one year from the date of allotment in case listing pursuant to public issue or date of listing in case of listing without public issue.

b) Lock-in not applicable to equity shares:

1) allotted to employees pursuant to existing ESOP scheme.

2) held by Venture Capital Fund or Category I Alternative Investment Fund or a foreign venture capital investor provided equity shares were locked in for a period of 1 year from the date of purchase).

3) held by persons other than promoters continuously for a period of 1 year prior to the date of listing (in case of listing without public issue).

4) In case of equity shares held pursuant to conversion of convertible securities, holding period pre-conversion as well as post- conversion will be considered.

c) Locked-in securities of promoter shall be eligible for pledge with commercial banks, financial institutions as collateral security.

d) Specified securities allotted on discretionary basis shall be locked in as per lock-in requirements for Anchor Investor.

e) Promoter shareholding post issue at minimum 25% at the time of listing with lock-in of 3 years done away with.

(6) Exit / Migration to main Board

a) Entity listed without making public issue may exit from ITP, if:

1) Shareholders approve by special resolution through postal ballot where 90% of total votes and majority of non-promoter votes have been cast in favour, and.

2) Recognized stock exchange where securities are listed, approves such exit.