

All the amendments already done in the Class

On request we have uploaded SEBI ICDR Some More Recent Amendments in 2015 2016

- (1) No issuer shall make
 - (a) A public issue of equity securities, if the issuer or any promoters or directors is a willful defaulter ; or
 - (b) A public issue of convertible debt instruments if,
 - (i) The issuer or any or any of its promoter or directors is a willful defaulter , or
 - (ii) It is in default of payment of interest or repayment of principal amount in respect of debt instruments
- (2) An issuer share making a rights issue of specified securities, shall make disclosures as specified in part G of schedule VIII, in the offer document and abridged letter of offer, if the issuer or any of it's the issuer or any of its promoters or directors is a willful defaulter.
- (3) In case of a rights issue of specified securities referred to in sub – regulation (6) above, the promoters or promoter group of the issuer , shall not renounce their rights except to the extent of renunciation within the promoter group
In all –
 - (i) Public issues, the issuer shall accept bids using only ASBA facility in the manner specified by the Board;
 - (ii) Rights issues, where not more than one payment option is given, the issuer shall provide the facility of ASBA in accordance with the procedure and eligibility criteria specified by the Board:
Provided that in case of qualified institutional buyers and non – institutional investor the issuer shall accept bids using ASBA facility only.

Post–issue reports

- (1) In public issue, the lead merchant banker shall submit final post – issue report as specified in part C of Schedule XVI, within seven days of the date of finalization of basis of allotment or within seven days of refund of money in case of failure of issue.
- (2) In rights issue, the lead merchant banker shall submit post – issue reports as follows :-
 - (a) Initial post – issue report as specified in part B of schedule XVI, within three days of closure of the issue ;
 - (b) Final post – issue report as specified in part D of schedule XVI, within fifteen days of the date of finalization of basis of allotment or within fifteen days of refund of money in case of failure of issue

Statement of deviation (s) or variation(s)(Clause 32 of SEBI LODR Regulations)

1. The listed entity shall submit to the stock exchange the following statements(s) on a quarterly basis for public issue, rights issue, preferential issue etc., -
 - (a) Indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable ;
 - (b) Indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilization of funds made by it in its offer document or explanatory statement statements to the notice for general meeting, as applicable and the actual utilization of funds.
2. The statement(S) specified in sub – regulation (1), shall be continued to be given till such time the issue proceed have been fully utilized or the purpose for which these proceeds were raised has been achieved
3. The statement(s) specified in sub – regulations (1), shall be placed before the audit committee for review, shall be submitted to the stock exchange(s).
4. The listed entity shall furnish an explanation for the variation specified in sub – regulation (1), in the directors' report in the annual report.
5. The listed entity shall prepare an annual statement of funds utilized for purpose other than those stated in the offer document/prospectus/notice, certified by the statutory auditors of the listed entity, and place it before the audit committee till such time the full money raised through the issue has been fully utilized.
6. Where the listed entity has appointed a monitoring agency to monitor utilization of proceeds of a public or rights issue, the listed entity shall submit to the stock exchange(s) any comments or report received from the monitoring agency.

7. Where the listed entity has appointed a monitoring agency to monitor the utilization of proceeds of a public or rights issue, the monitoring report of such agency shall be placed before the audit committee on an annual basis, promptly upon its receipt.

In all –

- (i) Public issues, the issuer shall accept bids using only ASBA facility in the manner specified by the Board;
- (ii) Rights issues, where not more than one payment option is given, the issuer shall provide the facility of ASBA in accordance with the procedure and eligibility criteria specified by the Board: Provided that in case of qualified institutional buyers and non-institutional investor the issuer shall accept bids using ASBA facility only.

“CHAPTER VI-A CONDITIONS AND MANNER OF PROVIDING EXIT OPPORTUNITY TO DISSENTING SHAREHOLDERS”

Applicability 69A

- (1) The provisions of this Chapter shall apply to an exit offer made by the promoters or shareholders in control of an issuer to the dissenting shareholders in terms of section 13(8) and section 27(2) of the Companies Act, 2013, in case of change in objects or variation in the terms of contract referred to in the prospectus.
- (2) The provisions of this Chapter shall not apply where there are neither identifiable promoters nor shareholders in control of the listed issuer.

Definitions

69B. For the purpose of this Chapter:

- (a) “Dissenting shareholders” means those shareholders who have voted against the resolution for change in objects or variation in terms of a contract, referred to in the prospectus of the issuer;
- (b) “Frequently traded shares” shall have the same meaning as assigned to it in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
- (c) “Relevant date” means date of the board meeting in which the proposal for change in objects or variation in terms of a contract, referred to in the prospectus is approved, before seeking shareholders’ approval.

Conditions for exit offer

69C. The promoters or shareholders in control shall make the exit offer in accordance with the provisions of this Chapter, to the dissenting shareholders, if:

- (a) the public issue has opened after April 1, 2014; and
- (b) the proposal for change in objects or variation in terms of a contract, referred to in the prospectus is dissented by at least ten per cent. of the shareholders who voted in the general meeting; and
- (c) the amount to be utilized for the objects for which the prospectus was issued is less than seventy five per cent. of the amount raised (including the amount earmarked for general corporate purposes as disclosed in the offer document).

Eligibility of shareholders for availing the exit offer

69D. Only those dissenting shareholders of the issuer who are holding shares as on the relevant date shall be eligible to avail the exit offer made under this Chapter.

Exit offer price

69E. The ‘exit price’ payable to the dissenting shareholders shall be the highest of the following: (a) the volume-weighted average price paid or payable for acquisitions, whether by the promoters or shareholders having control or by any person acting in concert with them, during the fifty-two weeks immediately preceding the relevant date; (b) the highest price paid or payable for any acquisition, whether by the promoters or shareholders having control or by any person acting in concert with them, during the twenty-six weeks immediately preceding the relevant date; (c) the volume-weighted average market price of such shares for a period of sixty trading days immediately preceding the relevant date as traded on the recognized stock exchange where the maximum volume of trading in the shares of the issuer are recorded during such period, provided such shares are frequently traded;

(d) where the shares are not frequently traded, the price determined by the promoters or shareholders having control and the merchant banker taking into account valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such issuers.

Manner of providing exit to dissenting shareholders

69F. (1) The notice proposing the passing of special resolution for changing the objects of the issue and varying the terms of contract, referred to in the prospectus shall also contain information about the exit offer to the dissenting shareholders.

(2) In addition to the disclosures required under the provisions of section 102 of the Companies Act, 2013 read with rule 32 of the Companies (Incorporation) Rules, 2014 and rule 7 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 and any other applicable law, a statement to the effect that the promoters or the shareholders having control shall provide an exit opportunity to the dissenting shareholders shall also be included in the explanatory statement to the notice for passing special resolution.

(3) After passing of the special resolution, the issuer shall submit the voting results to the recognized stock exchange(s), in terms of the provisions of regulation 44(3) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

(4) The issuer shall also submit the list of dissenting shareholders, as certified by its compliance officer, to the recognized stock exchange(s).

(5) The promoters or shareholders in control shall appoint a merchant banker registered with the Board and finalize the exit offer price in accordance with these regulations.

(6) The issuer shall intimate the recognized stock exchange(s) about the exit offer to dissenting shareholders and the price at which such offer is being given.

(7) The recognized stock exchange(s) shall immediately on receipt of such intimation disseminate the same to public within one working day.

(8) To ensure security for performance of their obligations, the promoters or shareholders having control, as applicable, shall create an escrow account which may be interest bearing and deposit the aggregate consideration in the account at least two working days prior to opening of the tendering period.

(9) The tendering period shall start not later than seven working days from the passing of the special resolution and shall remain open for ten working days.

(10) The dissenting shareholders who have tendered their shares in acceptance of the exit offer shall have the option to withdraw such acceptance till the date of closure of the tendering period.

(11) The promoters or shareholders having control shall facilitate tendering of shares by the shareholders and settlement of the same through the recognized stock exchange mechanism as specified by SEBI for the purpose of takeover, buy-back and delisting.

(12) The promoters or shareholders having control shall, within a period of ten working days from the last date of the tendering period, make payment of consideration to the dissenting shareholders who have accepted the exit offer.

(13) Within a period of two working days from the payment of consideration, the issuer shall furnish to the recognized stock exchange(s), disclosures giving details of aggregate number of shares tendered, accepted, payment of consideration and the post-offer shareholding pattern of the issuer and a report by the merchant banker that the payment has been duly made to all the dissenting shareholders whose shares have been accepted in the exit offer.

Offer not to exceed maximum permissible non-public shareholding.

69G. In the event, the shares accepted in the exit offer were such that the shareholding of the promoters or shareholders in control, taken together with persons acting in concert with them pursuant to completion of the exit offer results in their shareholding exceeding the maximum permissible non-public shareholding, the promoters or shareholders in control, as applicable, shall be required to bring down the non-public shareholding to the level specified and within the time permitted under Securities Contract (Regulation) Rules, 1957.”

PAST YEAR QUESTIONS FOR PRACTICE

Based on SEBI EXIT OPPORTUNITY REGULATIONS

- Q. 1 A company "issuer" was in the process of making an offer of Right issue of the specified securities. All the process was completed and the arrangement was complete. Mr. M, a director of the company was categorized as a 'Willful Defaulter' by a Bank in accordance with the guidelines issued by the RBI. Advise the "Issuer" whether it can proceed to offer the securities through the right issue. Will your answer differ, had it been a public issue?
- Q. 2 Res Lab Ltd. With an object to expand its production capacity, offered a public issue of Rs. 200 Crore to the public which was fully subscribed. Out of the said amount, a sum of Rs. 170 crore was spent in project "A" and the balance of Rs. 30 crore earlier envisaged for buying a machinery could not be materialized and as such the said amount of Rs. 30 crore remained unutilized. In the mean while a team of consultants suggested the company to go for establishing Research Labs at different part of the country which would be more beneficial to the company. The Chairman of the company approach you to advise the company as to whether the un – utilized amount of Rs. 30 crore collected from Public Issue can be diverted in the manner as suggested by the consultants with reference to the provision of the Companies Act or SEBI Act.
- Q3. Som Ltd. wants to make 'rights issue' of shares. As a Company Secretary, advise on the following issues.
- (i) The aggregate value of securities offered is 85 lakh.
 - (ii) The record date for rights issue is 30th June, 2015. The company desires to withdraw rights issue on 2nd July, 2015.
 - (iii) The rights issue is open for subscription from 30th June, 2015 to 10th July, 2015.
 - (iv) The letter of offer is dispatched through courier to all existing shareholders on 29th June, 2015 when the issue is open for subscription on June, 2015.
 - (v) The record date is 30th June, 2015. On 2 July, 2015, the issue price of shares is decided.
- Q4.
- (i) Suresh is an employee on a contract basis. His contract is renewed every year. Can he participate in ESOS?
 - (ii) Lakshya, an employee, is granted option under ESOS by the company. He writes a letter to his friend Mukesh for transferring the off er. But he dies. With whom will the option vest?
 - (iii) Akhil, a director and his wife Beena together hold more than 15% of the equity shares of the company. Can the director Akhil participate in ESOS?
 - (iv) The ESOS in Mini Ltd. is a part of public issue and the shares are issued to employees at the same price as in the public issue. What is the duration of the lock-in-period to which these shares are subject to?
 - (v) Anil has acquired shares under ESOS in Simi Ltd. Now, Mini Ltd. acquires Simi Ltd. fully. Mini Ltd. allots shares to Anil in lieu of shares which he has under ESOS in Simi Ltd. In Simi Ltd., he has undergone 5 months of lock-in-period. How many minimum months of lock-in-period he has to undergo in Mini Ltd.?
- Q5. Convertible debt instruments
- Q6. Examine the implications of the following in the context of bonus issue and suitably advise the Board of directors:
- i. The Board approved the bonus issue in its meeting held on 30th January, 2008. Bonus issue is to be made in August, 2008 after the audited accounts for the year 2007-08 are available.
 - ii. A ration of 3 bonus shares for every 10 shares held was originally approved. It is proposed to change it for 2 shares for every 10 shares held.
 - iii. As on 31st January, 2008 there was some unpaid shares.
 - iv. There are fully convertible debentures (FCDs) and partly convertible debentures (PCDs) due for conversion after July, 2009.
 - v. There are defaults in the repayment of certain matured deposits.
 - vi. Rights issue was made in September, 2007.
 - vii. Articles of association have no provision for capitalization of reserves.
 - viii. Consequent to the bonus issue, the subscribed capital and paid up capital exceeds the authorized capital.
- Q7. Pratham Ltd. issued convertible debentures during the financial year 2013-14. Now it wants to alter the terms of redemption. Is it permissible under the provisions of the SEBI (Issue of Capital and Disclosure Requirements Regulations, 2009)? Give reasons.