

AMIT BACHHAWAT TRAINING FORUM

SEBI ICDR REGULATIONS AMENDMENTS

16. Monitoring agency

(1) If the issue size [,excluding the size of offer for sale by selling shareholders,]exceeds[one hundred] crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a public financial institution

or by one of the scheduled commercial banks named in the offer document as bankers of the issuer:

Provided that nothing contained in this clause shall apply to [an issue of specified securities made by a bank or public financial institution[or an insurance company.

(2) The monitoring agency shall submit its report to the issuer in the format specified in Schedule IX on a quarterly basis, till at least ninety five percent of the proceeds of the issue, excluding the proceeds under offer for sale and amount raised for general corporate purposes, have been utilized.

(3) The Board of Directors and the management of the company shall provide their comments on the findings of the monitoring agency as specified in Schedule IX.

(4) The issuer shall, within forty five days from the end of each quarter, publically disseminate the report of the monitoring agency by uploading the same on its website as well as submitting the same to the stock exchange(s) on which its equity shares are listed.

70. (1) The provisions of this Chapter shall not apply where the preferential issue of equity shares is made:

(a) pursuant to conversion of loan or option attached to convertible debt instruments in terms of sub-sections (3) and (4) of sections 81 of the Companies Act, 1956 122[or sub-section (3) and (4) of section 62 of the Companies Act, 2013, whichever applicable];

(b) pursuant to a scheme approved by a High Court under section 391 to 394 of the Companies Act, 1956 114[or a Tribunal under sections 230 to 234 of the Companies Act, 2013, whichever applicable

Provided that the pricing provisions of this Chapter shall apply to the issuance of shares under schemes mentioned in clause (b) in case of allotment of shares only to a select group of shareholders or shareholders of unlisted companies pursuant to such schemes;]

(c) in terms of the rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 114[or 123[the resolution plan approved by] the Tribunal under the Insolvency and Bankruptcy Code, 2016, whichever applicable]

(5) The provisions of this Chapter shall not apply where the preferential issue of specified securities is made to the lenders pursuant to conversion of their debt, as part of a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India, subject to the following conditions:

(a) the guidelines for determining the conversion price have been specified by the Reserve Bank of India in accordance with which the conversion price shall be determined and which shall be in compliance with the applicable provisions of the Companies Act, 2013;

(b) The conversion price shall be certified by two independent qualified valuers, and for this purpose 'valuer' shall be a person who is registered under section 247 of the Companies Act, 2013 and the relevant Rules framed thereunder:

Provided that till such date on which section 247 of the Companies Act, 2013 and the relevant Rules come into force, valuer shall mean an independent merchant banker registered with the Board or an independent chartered accountant in practice having a minimum experience of ten years;

(c) Specified securities so allotted shall be locked-in for a period of one year from the date of their allotment:

Provided that for the purpose of transferring the control, the lenders may transfer the specified securities allotted to them before completion of the lock-in period subject to continuation of the lock-in on such securities for the remaining period, with the transferee;

(d) the lock-in of equity shares allotted pursuant to conversion of convertible securities issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in;

(e) The applicable provisions of the Companies Act, 2013 are complied with, including the requirement of special resolution.

(6) The provisions of this Chapter shall not apply where the preferential issue, if any, of specified securities is made to person(s) at the time of lenders selling their holding of specified securities or enforcing change in ownership in favour of such person(s) pursuant to a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India, subject to the following conditions:

(a) the guidelines for determining the issue price have been specified by the Reserve Bank of India in accordance with which the issue price shall be determined and which shall be in compliance with the applicable provisions of the Companies Act, 2013;

(b) The issue price shall be certified by two independent qualified valuers, and for this purpose 'valuer' shall be a person who is registered under section 247 of the Companies Act, 2013 and the relevant Rules framed thereunder:

Provided that till such date on which section 247 of the Companies Act, 2013 and the relevant Rules come into force, valuer shall mean an independent merchant banker registered with the Board or an independent chartered accountant in practice having a minimum experience of ten years;

(c) The specified securities so allotted shall be locked-in for a period of at least three years from the date of their allotment;

(d) the lock-in of equity shares allotted pursuant to conversion of convertible securities issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in;

(e) A special resolution has been passed by shareholders of the issuer before the preferential issue;

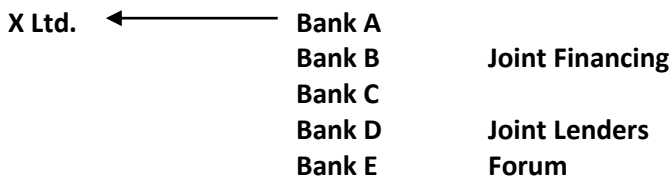
(f) The issuer shall, in addition to the disclosures required under the Companies Act, 2013 or any other applicable law, disclose the following information pertaining to the proposed allottee(s) in the explanatory statement to the notice for the general meeting proposed for passing the special resolution as stipulated at clause (e) of this sub-regulation:

- a.** the identity including that of the natural persons who are the ultimate beneficial owners of the shares proposed to be allotted and/ or who ultimately control the proposed allottee(s);
- b.** the business model;
- c.** a statement on growth of business over the period of time;
- d.** summary of audited financials of previous three financial years;
- e.** track record in turning around companies, if any;
- f.** the proposed roadmap for effecting turnaround of the issuer.

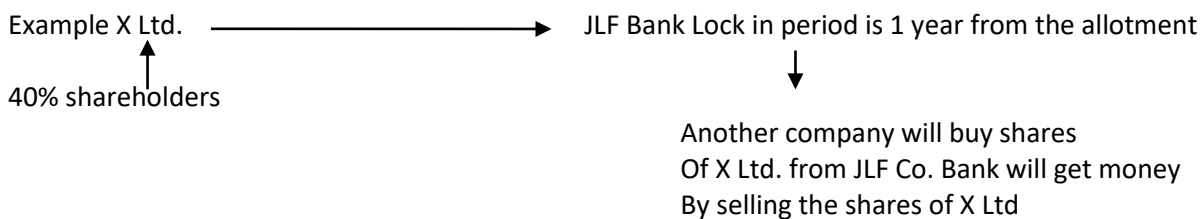
(g) The applicable provisions of the Companies Act, 2013 are complied with.

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CLASS NOTES ON Regulations 70(1) (5) (6) Preferential Issue SEBI ICDR, Reg 16



If X Ltd. is unable to pay the Bank then CDR scheme is planned and if CDR is unsuccessful then SDR will be implemented (Strategic Debt Restructuring) SDR implies convert loan into equity shares RBI has framed CDR/SDR Mechanism, Preferential Issue by X Ltd. to banks under SDR Mechanism will not be required to be comply with Reg 70 of SEBI ICDR. Those pricing provisions as read in preferential Issue will not apply. Due to the conversion of Loan into equity Banks (JLF get majority state)



Example: Banks held the shares of X Ltd. for 8 months
Acquirer will be subject to lock in for 4 months i.e remaining period



There 40% share holders also want to sell their shares to allotment
If X Ltd. also makes fresh allotment to that acquirer – lock in period on fresh allotment is 3 years.

REG 70 will not apply to

Conversion of Convertible Debentures pursuant to Amalgamation scheme pursuant to scheme of NCLT under IBC Code. As per Resolution plan if creditors were given shares then preferential issue SEBI ICDR Regulations will not apply.

SDR Mechanism

- Pricing guidelines of SEBI
- 2 Registered Values u/s 247 will certify the conversion price
- Lock in period 1 year from the date of allotment, If shares are transferred to acquirer then lock in period will be for the balance period. If convertible debentures purchased are convertible into equity then lock in will also apply here
- Special Resolution: If Company allots fresh equity to the acquirer then lock in period is 3 years & all other conditions (RBI guidelines etc. Will be same 2 required valuers, SR Lock in period 3 years

Regulations 16

Monitoring agency ≥ 100 cr

Usually banks act as Monitoring agency

Not required in case of Banks, PFI, Ins Co. till we utilize 95% of the Issue Size MA will monitor

Who will comment on the work of MA?

BOD & Management

Listed Co. Shall within 45 days from the expiry of every Quarter will publicly inform the way in which & the extent to which money is used. Report of MA also uploaded on its website

Definition of QIB Now includes Systematically Important NBFCs (NBFC whose net worth is > 500 crores)