

## ERGO

*Analysing developments impacting business*

### SEBI APPROVES AMENDMENTS TO REGULATIONS GOVERNING LISTED COMPANIES

30 June 2020      The Securities and Exchange Board of India (SEBI), at its board meeting held on 25 June 2020, approved several significant changes to regulations governing listed companies. The amendments to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations), the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations), and the SEBI (Prohibition of Insider Trading) Regulations, 2015 (Insider Trading Regulations), are discussed in this Ergo.

#### Revised pricing guidelines for preferential issues

The minimum price at which a listed company can undertake a preferential issue is guided by the formula set out in the ICDR Regulations considering historical share prices prior to a relevant date. In case of listed companies whose shares are frequently traded, the formula specifies the minimum price per share to be the *higher of*: average of the weekly high and low of the volume weighted average price (VWAP), during preceding 26 weeks and 2 weeks. As a result, although the securities market has seen a significant downtrend during the last few months, the price at which a preferential issue could be undertaken would invariably be at a premium over the prevailing market price.

Basis numerous representations, SEBI has decided to relax this requirement by providing an alternate formula for determining the pricing of preferential issues proposed to be undertaken between 1 July 2020 (or the date when the amendment is notified, if later than 1 July 2020) and 31 December 2020. As per this relaxation, the look back period of 26 weeks has been reduced to 12 weeks, thereby reducing the impact of the higher market prices preceding the downturn. In lieu of the pricing relaxations and in an effort to discourage short term investments, the applicable lock-in period has been set to 3 years.

#### Comment:

Given the prevailing market conditions and the continuing uncertainties, the premium payable for preferential issues made it harder for listed companies to raise capital. The introduction of the new formula is expected to enable preferential issues at valuations which are more current. Further, it attempts to strike a balance between the company's requirement of seeking capital during these troubling times and the aggregate uptake of the allottee. The increased lock-in period is also likely to bring in more stability for the years to come.

#### Key amendments to the Takeover Regulations

SEBI has approved the following amendments to the Takeover Regulations:

- Bulk/block deals during open offers: SEBI has decided to put to rest the existing ambiguity on acquisition of shares through a bulk/ block deal during the open offer process. The amendments propose to clarify that such acquisitions would be permissible, subject to the shares being placed in an escrow account and the acquirer refraining from exercising voting rights pertaining to the shares. Such conditions will cease to be applicable after a period of 21 days from the publication of the detailed public statement pertaining to the open offer, provided the acquirer deposits the entire open offer consideration in an escrow account.

*Comment:*

The prevailing provisions made it implausible for an acquirer to acquire underlying shares through a stock exchange mechanism, during an open offer. Consequently, most transactions were concluded using the off-market mode to avoid any potential challenges. This imposed various limitations on structuring control transactions, and also had an impact on deal timing and overall valuation (on account of tax inefficiencies caused by off-market trades). This amendment provides much needed clarity and enables contracting parties to structure deals in a more efficient manner.

- Enhanced escrow funding requirements for offers triggered by indirect acquisitions: Where an open offer is triggered by an indirect acquisition, i.e. when a controlling stake is acquired in a company which in turn holds a substantial shareholding in or control over a listed company, acquirers are given an option to complete such acquisition before proceeding with the open offer. The Takeover Regulations presently require an acquirer to deposit only 25% of the total open offer consideration in an escrow account for proceeding with such open offers. SEBI has decided to increase the escrow funding requirement to 100% of the total open offer consideration.

*Comment:*

The Takeover Regulations presently treat open offers triggered by direct acquisitions and indirect acquisitions differently. In open offers triggered by direct acquisitions, the transaction may be completed prior to the completion of the open offer only if the acquirer deposits 100% of the total open offer consideration in an escrow account. The amendment effectively aligns the treatment of open offers triggered by indirect acquisitions with that of open offers triggered by direct acquisitions. This amendment will result in an additional direct financial burden on the acquirer, and such costs / obligation would need to be factored-in during the early stages of the indirect acquisition.

- Payment of interest to shareholders in case of delays: While the Takeover Regulations prescribe strict timelines for completion of an open offer, there are various factors such as statutory approvals, litigation, etc. which result in delays. In such cases, as a matter of practice, SEBI has regularly required acquirers to pay interest at the rate of 10% per annum to the shareholders who tender their shares in the open offer. SEBI has decided to incorporate this requirement in the Takeover Regulations whereby such interest payment will be triggered if there are any delays attributable to acts of omission or commission of the acquirer.

*Comment:*

Without a clear provision on imposition of interest within the Takeover Regulations, it was often unclear when it would be deemed appropriate to require payment of interest. The amendment is expected to clarify the instances when interest would become payable to the shareholders and is expected to bring in a greater degree of certainty for all stakeholders. As in most cases, the devil lies in the details to be specified in the amendment(s) to the Takeover Regulations.

## Various minor amendments to the Insider Trading Regulations

SEBI has approved *inter alia* the following amendments to the Insider Trading Regulations:

- Enhanced structured digital database: While the Insider Trading Regulations presently require listed companies to maintain a structured digital database containing details of persons with whom unpublished price sensitive information is shared, SEBI has decided to further enhance this requirement. Listed companies will be additionally required to include details of the nature of information that has been shared and the names of the persons who shared the information.
- Automation of disclosures: While the Insider Trading Regulations presently require listed companies to forward all disclosures they receive under the Insider Trading Regulations to the stock exchanges within 2 working days, SEBI has decided to introduce automation into the filing process.
- Reporting of non-compliances to the stock exchanges: SEBI has decided to require listed companies to disclose non-compliances of the code of conduct on insider trading to the stock exchanges.

### Comment:

The amendments appear to be geared towards improving oversight over compliance with the Insider Trading Regulations and assist SEBI's investigation process – this is being gradually and increasingly tightened by SEBI over the years. The full extent of the amendments and their implications will be clear only once they are notified.

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