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Amendments to the SEBI ICDR Regulations and SEBI LODR Regulations – A Step Towards Easing Fund-Raising in India

INTRODUCTION

The Securities and Exchange Board of India (SEBI) has amended the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (SEBI ICDR Regulations) on and effective from 17 May 2024, by way of the [Securities and Exchange Board of India \(Issue of Capital and Disclosure Requirements\) \(Amendment\) Regulations, 2024](#) (ICDR Amendment), to facilitate ease of raising capital in India by allowing minimum promoters' contribution to be met by certain persons other than the promoters of the issuer company undertaking an initial public offering (IPO) and reducing the minimum extension of the offer period in exigencies, amongst others, as further detailed below.

SEBI has also amended the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR Regulations) on 17 May 2024¹, by way of the [Securities and Exchange Board of India \(Listing Obligations and Disclosure Requirements\) \(Amendment\) Regulations, 2024](#) (LODR Amendment), to waive the requirement for issuers to intimate the stock exchanges two days prior to Board meetings for the determination of the issue price in qualified institutions placements (QIPs) and provide a framework for the effect of material price movements due to market rumours from the pricing formulae for equity shares offered in preferential issues and QIPs by listed companies, amongst others, as further detailed below.

1. MINIMUM PROMOTERS' CONTRIBUTION

Regulation 14 of the SEBI ICDR Regulations required promoters of issuer companies undertaking an IPO to hold at least 20% of the post-IPO share capital of the issuer, referred to as the 'minimum promoters' contribution'. Pursuant to Regulation 16 of the SEBI ICDR Regulations, the minimum promoters' contribution is required to be locked-in for a period of 18 months from the

date of allotment in the IPO, or, in case more than 50% of the proceeds from the fresh issue of the IPO is proposed to be utilised towards capital expenditure, for a period of 3 years from the date of allotment in the IPO.

Before the ICDR Amendment, issuers with promoters holding less than 20% of the post-IPO share capital had two avenues through which shortfalls in minimum promoters' contribution could be met:

- (i) Alternative investment funds, foreign venture capital investors, scheduled commercial banks, public financial institutions, or insurance companies registered with the Insurance Regulatory and Development Authority of India could contribute to meet minimum promoters' contribution. However, each entity's contribution was required to be less than 10% of the post-issue capital. Contributions exceeding this threshold would result in the relevant entity being required to be named a promoter of the issuer.
- (ii) Promoters could subscribe to additional equity shares or convertible securities to meet minimum promoters' contribution in compliance with the conditions set out under the SEBI ICDR Regulations in this regard. This would need to be undertaken at least one day prior to the date of the opening of the IPO.

In certain IPOs where alternatives (i) or (ii) above were not feasible for various reasons, certain other pre-IPO investors provided shares towards minimum promoters' contributions after being classified as promoters of the issuer, thereby attracting all obligations of promoters under law.

Pursuant to the ICDR Amendment, shortfalls in minimum promoters' contribution can now be met by an additional two categories of persons: (i) any non-individual public shareholders holding at least 5% of the post-issue capital, or (ii) any entity (whether an individual or non-individual) forming part of

¹ The LODR Amendment is effective from 17 May 2024. While the amendments detailed in this article are effective from 17 May 2024, the amendments to

Regulations 3, 17, 21(5), 25, 34, 43A and 44, and the omission of the explanation to Regulation 30(11) will be effective from 31 December 2024.

the promoter group, other than the promoter(s).

Previously, non-public shareholders could only contribute towards meeting minimum promoters' contribution if they were alternative investment funds, foreign venture capital investors, scheduled commercial banks, public financial institutions, or registered insurance companies. Other institutional investors were not permitted to contribute to minimum promoters' contribution unless they were named promoters of the issuer for the purposes of the IPO and thereafter, requiring them to take on the legal responsibilities and obligations that attach to promoters of to-be-listed and listed companies. This posed a practical challenge to minimum promoters' contribution being met by such institutional investors. The ICDR Amendment now allows for any non-individual public investors who will continue to hold a significant stake in the issuer post-listing (i.e., more than 5% of the post-issue capital) to contribute towards minimum promoters' contribution without needing to be named as promoters of the issuer.

Further, members of the promoter group, constituted by relatives of the promoters of the issuers or entities in which the promoters or their relatives hold significant direct or indirect interest, can now contribute towards minimum promoters' contribution.

The minimum promoters' contribution requirement offers public investors in an IPO an assurance that the promoters of the issuer will be 'locked-in' as investors with a stake in the issuer following its listing. That the promoters are required to maintain at least 20% of their shareholding for 18 months (or 3 years, as applicable) post-listing ensures that the promoters remain interested in the issuer's performance following the IPO as well and continue to have 'skin in the game'. The changes brought about by the ICDR Amendment remove a barrier to listing for companies with promoters that hold less than 20% of the post-IPO capital (which is quite common in new age companies that have raised capital through one or more rounds of fund-raising) while also ensuring that major stakeholders in the issuer, whether the promoters, members of the promoter group or institutional investors holding a significant

stake, continue to have skin in the game post-listing, without such institutional investors attracting the liabilities of being classified as promoters of the issuer.

2. WAIVER OF TWO-DAY INTIMATION FOR ISSUE PRICE DETERMINATION IN QIPS

Regulation 29 of the SEBI LODR Regulations requires listed entities to provide the stock exchanges with two working days' prior intimation of board meetings in which certain specified agenda items are due to be considered by the board. Prior to the LODR Amendment, pursuant to Regulation 29(d), listed entities were required to intimate the stock exchanges two working days in advance of meetings in which the determination of the issue price for any fund-raising are to be discussed, excluding the date of the intimation and date of the meeting. This required entities undertaking a QIP to keep the issue open for at least three working days, as, practically, this intimation could only be provided by issuers upon the launch of the QIP.

Pursuant to the LODR Amendment, a proviso has been introduced to Regulation 29(d), which clarifies that the intimation of two working days is not required for the determination of the issue price specifically for a QIP undertaken in compliance with the SEBI ICDR Regulations. As a result, entities undertaking a QIP now have the flexibility to keep the issue open for a period shorter than three working days should they wish to, since intimation is no longer required to be provided two working days in advance for the determination of the issue price of the QIP, thereby allowing for the length of the QIP process to be shortened.

3. OTHER KEY CHANGES PURSUANT TO THE ICDR AMENDMENT

- (i) Reduction of minimum extension of the offer period for IPOs, further public offers (FPOs), and initial public offerings and rights issues of Indian depository receipts in case of certain exigencies

Prior to the ICDR Amendment, issuers could extend the offer period disclosed in the offer documents in case of force majeure, banking strikes or similar circumstances, by a minimum period of three additional working days. Considering the potential disadvantage

to investors that subscribe early in an IPO assuming a certain offer closing date, there have been recent instances of issuers that have needed to modify their offer period due to unforeseen circumstances, such as unforeseen modifications to banking holidays, seeking an exemption (and being granted such exemption by SEBI) from the requirement to extend the offer period by a minimum of three working days. Pursuant to the ICDR Amendment, issuers can now extend the offer period by a minimum period of one working day, instead of three working days, in case of force majeure, banking strike or similar *unforeseen* circumstances.

(ii) **Waiver of Security Deposit for IPOs, rights issues, FPOs, and initial public offerings and rights issues of Indian depository receipts**

The SEBI ICDR Regulations required issuers to deposit with the stock exchanges a refundable amount equal to 1% of the issue size available for subscription. The ICDR Amendment has omitted the requirement for a security deposit to be made with the stock exchanges, increasing procedural ease and reducing related compliance obligations.

4. FRAMEWORK FOR CONFIRMATION OF RUMOURS AND IMPACT ON PRICING

The SEBI LODR Regulations, pursuant to amendments made last year, required listed entities to (a) on their own, identify market rumours pertaining to them which are not general in nature and reported in the mainstream media, and (b) confirm, deny or clarify the content of such rumours. Based on representations from the industry,² SEBI had deferred its implementation of these amendments to 1 June 2024, for the top 100 listed entities and 1 December 2024, for the top 250 listed entities. The LODR Amendment has now further modified the regulatory framework in this regard, to link such rumour verification requirements to material price movement and provide a

framework for addressing and verifying such rumours.

The ICDR amendment has excluded the effect of such material price movements from the pricing formulae for equity shares being offered in preferential issues and QIPs by listed companies and has provided a framework for this exclusion.

In connection with the LODR Amendment, SEBI has also published its circulars titled '[Framework for considering unaffected price for transactions upon confirmation of market rumour](#)' and '[Industry Standards on Verification of Market Rumours](#)' on 21 May 2024. For further details on this modified framework and its impact, please see our analysis published [here](#).

CONCLUDING REMARKS

The amendments detailed above go a long way in facilitating the ease of raising capital in India and reducing procedural delay, without compromising investor protection.

The changes made to the framework for minimum promoters' contribution retain the original intent of ensuring (and assuring to public investors) that major stakeholders in the issuer (whether the promoters, members of the promoter group and institutional investors with significant stake) will continue to have skin in the game post the IPO. At the same time, these amendments make the pathway to listing more accessible to entities where promoter shareholding is under 20%, by allowing for minimum promoters' contribution to be met by institutional investors without them needing to be named promoters, or without the promoters having to subscribe to additional shares.

Further, the reduction of the minimum extension of the offer period in exigencies and the waiver for the requirement of two days' prior intimation to the stock exchanges of meetings for the determination of the issue price in QIPs allow issuers the flexibility to shorten these respective issue periods, thereby reducing the length of the fund-raising processes. In addition, the waiver of the security deposit for IPOs eliminates the

² Haigreve Khaitan (Partner, Khaitan & Co) is a member of the Industry Standards Forum (ISF). Members of

Khaitan & Co actively participated in the discussions of the ISF.

additional step of issuers obtaining refunds of the deposit post-listing.

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