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SEBI ICDR Regulations Amendment of March 2025 :

Key changes from an IPO perspective

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Introduction

The Securities and Exchange Board of India (SEBI) has introduced several changes to the existing framework for initial public offerings as well as rights issues through amendments to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (SEBI ICDR Regulations) which were notified on 3 March 2025 (Amendment).

This Ergo will analyse the impact of the Amendment from an IPO perspective.

The amendments relevant to IPOs were proposed by SEBI in its consultation paper for public comments, '*Recommendations of the Expert Committee for facilitating ease of doing business and harmonization of the provisions of ICDR and LODR Regulations*' released on 26 June 2024 and considered by SEBI in its board meeting on 30 September 2024.

The following key changes, have been made to the SEBI ICDR Regulations by way of the Amendment:

1. Determination of material litigation and disclosure of litigation involving key managerial personnel and members of the senior management in the offer documents:

- *Material litigation*: Prior to the Amendment, for an issuer company (Issuer), disclosures of "material" pending litigations involving the Issuer, its subsidiaries, directors, promoters (collectively, Relevant Parties) was based on the policy of materiality defined by board of directors of the Issuer. Given there was no monetary threshold specified, Issuers retained flexibility to determine the threshold.

  Pursuant to the Amendment, the thresholds prescribed under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) for determining materiality of events/information to be disclosed to the stock exchanges, have been introduced as the minimum threshold to be considered. Such thresholds (Listing Regulations Criteria) are linked to the turnover, net worth and absolute value of profit/loss after tax of the company.[1] While Issuers have been provided with a flexibility to adopt a materiality policy (Materiality Policy), practically such Materiality Policy will have to either incorporate the Listing Regulations Criteria or prescribe a lower threshold.

  Comment: The Listing Regulations Criteria will require Issuers to consider the "expected impact in terms of value" of litigation proceedings. Industry standards for Regulation 30 of the Listing Regulations (Industry Standards) introduced by ASSOCHAM, CII and FICCI in February 2025, have provided

[1] *Litigation where the value or expected impact in terms of value, exceeds the lower of the following: (a) two percent of turnover, as per the latest annual restated consolidated financial statements of the issuer; or (b) two percent of net worth, as per the latest annual restated consolidated financial statements of the issuer, except in case the arithmetic value of the net worth is negative; or (c) five percent of the average of absolute value of profit or loss after tax, as per the last three annual restated consolidated financial statements of the issuer.*

guidance on the computation of the "expected impact in terms of value" by listed entities[2]. It is not entirely clear whether Issuers will be mandatorily required to consider the "expected impact in terms of value" and whether the Industry Standards will guide disclosures under the SEBI ICDR Regulations.

- *Litigations involving key managerial personnel (KMP) and members of the senior management (SMP)*: Issuers will now be required to disclose criminal proceedings and actions by regulatory and statutory authorities involving its KMP and SMP. While the move is aimed at harmonising the requirements under the SEBI ICDR Regulations and Listing Regulations, this amendment results in an increase in disclosure requirements and obligations for the Issuer.

  Comment: The Amendment does not clarify that only outstanding/pending criminal proceedings and actions taken by regulatory or statutory authorities involving KMP and SMP will be required to be disclosed. While reading the newly introduced requirements harmoniously with the existing disclosure requirements, disclosure of only outstanding proceedings can be considered.

2. Flexibility regarding stock appreciation rights granted to employees:

Prior to the Amendment, Regulation 5(2) of the SEBI ICDR Regulations did not provide a carve-out for outstanding stock appreciation rights granted to employees (ESARs) in the manner provided for employee stock options granted under an employee stock options scheme. Accordingly, Issuers typically cancelled their ESAR schemes and substituted these schemes with stock option schemes compliant with Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 prior to the filing of the draft red herring prospectus (DRHP).

The Amendment has introduced:

- *Carve out:* SEBI has amended Regulation 5(2) of the SEBI ICDR Regulations to provide flexibility to Issuers to continue with outstanding ESARs till the filing of the red herring prospectus (RHP), in case of a book-built issue. The ESARs are required to be settled by issuance of equity shares by the Issuer prior to filing the RHP.

- *Disclosure requirements*: Issuers are required to disclose the details of the scheme and outstanding ESARs along with the number of equity shares that will result from the conversion of such ESARs into equity shares in the draft offer document and offer document.

- *Lock-in*: Akin to the equity shares resulting from exercise of stock options, the lock-in of six months on the pre-issue capital held by shareholders (other than promoters) will not be applicable to equity shares resulting from conversion of ESARs to equity shares. Further, SEBI has also clarified that the lock-in will not be applicable to bonus shares allotted against the equity shares allotted pursuant to exercise of stock options and ESARs.

Comment: This is a welcome move by SEBI geared towards facilitating ease of business. The rationale suggested in the underlying expert committee report, for ESARs being converted prior to the filing of the RHP is that the number of equity shares resulting from ESARs is dependent on the appreciation in the price of the equity share, which causes uncertainty in the Issuer's capital structure. Accordingly, ESARs have been placed on the same footing as other convertible securities of Issuers which are permitted to remain outstanding until filing of the RHP. The Amendment does not clarify the position in relation to cash settled options. Whilst, Regulation 5(2) of the SEBI ICDR Regulations should not impact cash settled options, clarification from the regulator on whether cash settled options can remain outstanding post filing of the DRHP will be helpful. Similarly, share purchase schemes for employees have typically been treated on the same footing as stock option schemes but regulator's views in relation to ESARs which resulted in the above amendment could beg the question whether the regulator should also clarify the position on stock purchase schemes.

3. Voluntary proforma financial statements

Pursuant to the Amendment, Issuers are now permitted to voluntarily present proforma financial statements in cases where: (I) thresholds prescribed for proforma financial statements are not met; and (ii)

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[2] *The Industry Standards provide that inter alia the expected impact in the four ensuing quarters is to be considered and that companies could typically place reliance on the principles for measurement set out under the applicable accounting standards.*

acquisition/divestment has been completed prior to the latest period for which financial information has been presented in the offer document. Further, proforma financial statements may be disclosed for the periods determined by the Issuer.

Comment: Issuers being permitted to voluntarily present proforma financial statements where acquisition/divestment was completed within the period of the restated financial statements and the flexibility given to issuers to determine the periods for which proforma financial statements are to be disclosed will help companies better illustrate the impact of such acquisition/divestment.

4. Additional conditions for offer for sale with respect to companies without the "profitability track record":

Prior to the Amendment, an offer for sale (OFS) by shareholders of an Issuer undertaking its IPO under Regulation 6(2) of the SEBI ICDR Regulations (companies without a profitability track record) was subject to the following thresholds:

(i) shareholders holding more than 20% of the pre-issue shareholding along with persons acting in concert (PAC) could not offer more than 50% of their pre-issue shareholding in the OFS; and
(ii) shareholders holding less than 20% of the pre-issue shareholding along with its PAC could not offer more than 10% of the pre-issue shareholding of the Issuer in the OFS.

However, the above thresholds did not restrict the shareholders from divesting their remaining shareholding through a secondary transaction post filing of the DRHP with SEBI. Accordingly, an explanation has been added to Regulation 8A of the SEBI ICDR Regulations to clarify that the above-mentioned thresholds are to be computed with reference to the shareholding as of the date of the DRHP and will include the equity shares sold through secondary transactions post filing of the DRHP till the completion of the IPO.

Comment: This amendment has been introduced with a view to ensure the intent of Regulation 8A of the SEBI ICDR Regulations is achieved by ensuring that the dilution by the selling shareholders during the course of the IPO process does not exceed the prescribed thresholds.

5. Clarifications regarding certification and lock-in of equity shares in case of repayment of loans through utilisation of IPO proceeds

- *Lock-in*: Pursuant to the SEBI ICDR Regulations, if majority of the fresh issue proceeds are utilised for "capital expenditure", a lock-in of three years and one year is imposed on the minimum promoters' contribution and the remaining shares held by the promoters, respectively, as against the default requirement of 18 months and six months, respectively. However, consistent with feedback received from SEBI in recent transactions, the definition of "capital expenditure" has been extended to cover repayment of loans taken for the purpose of capital expenditure.

  Comment: This amendment aligns with feedback received from SEBI on transactions over the last year. Issuers will need to be cautious while deciding the mix of loans proposed to be repaid using the IPO proceeds to avoid an extended lock-in period of their shareholding post IPO.

- *Certification*: Under the SEBI ICDR Regulations, if repayment of loans is an object for the fresh issue, the statutory auditor of the Issuer is required to certify that the utilisation of the loans being repaid were for the purpose availed. Pursuant to the Amendment, flexibility has been introduced for obtaining the certification from a peer reviewed chartered accountant for (i) the period not audited by the current statutory auditor; and (ii) for the loans availed by the subsidiaries in cases where the statutory auditor of the subsidiary is not the statutory auditor of the Issuer.

  Comment: The amendment in relation to certification requirements for loan utilisation is a welcome clarification given practical challenges faced by Issuers in obtaining these certifications from statutory auditors.

6. Financial statements of business or subsidiaries acquired

Pursuant to the Amendment, Issuers are now also permitted to voluntarily disclose the financial statements of the business or subsidiary acquired or divested, provided that such financial statements are certified by the auditor (of the business or subsidiary acquired or divested) or a peer reviewed chartered accountant.

Comment: In addition to disclosure of proforma financial statements whether on a voluntary basis or otherwise, the Amendment now provides issuers with the flexibility to voluntarily disclose financial statements of an entity or business that has been acquired or sold by an Issuer. This flexibility will enable an Issuer to demonstrate the financial performance of an acquired business or entity.

7. Disclosure of agreements impacting management or control in the offer documents

The Listing Regulations require listed entities to disclose to the stock exchange(s), agreements that are entered into by shareholders, promoters, promoter group, related parties, directors, KMP, employees of the listed entity or of its holding, subsidiary or associate company etc. among themselves or with the listed entity or with a third party, which, either directly or indirectly or potentially or whose purpose and effect is to, impact management or control over the listed entity or to impose any restriction or create any liability upon the listed entity. An agreement entered into by the listed entity in its normal course of business (not impacting the management or control) is excluded from the ambit of such disclosure. Pursuant to the Amendment, Issuers are now mandated to disclose such agreements in the offer documents and make such documents available for inspection by the public as material contracts.

Comment: This requirement widens the ambit of agreements to be disclosed in the offer documents. Given the broad scope of this requirement, a case-to-case discussion and analysis will need to be undertaken by Issuers and their advisors to determine disclosures in relation to such agreements.

8. Clarifications regarding issue related advertisements

SEBI has now combined the pre-issue and price band advertisement, which were earlier separately published on the same day with identical information. Further, the Amendment has introduced new formats for the pre-issue and price band advertisement, issue opening advertisement and issue closing advertisement. Additionally, the Amendment has changed the requirement of publishing the advertisement regarding filing of the DRHP from 'two days' to 'two working days'.

9. Disclosure of standalone information for working capital as an object

Issuers intending to utilise IPO process towards funding long-term working capital requirements are required to present information about the working capital estimates and projections of the Issuer on a standalone basis. The Amendment has clarified that the disclosure on such working capital estimates shall be based on audited standalone financial statements. However, the Amendment has stipulated that such audited standalone financial statements shall be restated if there are any adjustments in the restated consolidated financial statements which may have an impact on the numbers included in the audited standalone financial statements.

Comment: The Amendment has clarified that the working capital estimates would need to be disclosed based on the audited standalone financial statements. Issuers should be mindful when determining use of proceeds towards working capital that adjustments to restated consolidated financial information that impact audited standalone financial information will require such standalone information to be restated which may have an impact on filing and deal timelines.

10. Additional amendments

Apart from the key changes mentioned above, through the Amendment, the definitions of 'associate' and 'financial year' have been aligned with the Listing Regulations and it has been mandated that only a qualified company secretary should be appointed as the compliance officer of the Issuer. Further, Issuers will be required to report pre-IPO placement transactions (*disclosed in the DRHP*) to the stock exchanges within 24 hours of such transactions (*in part or in entirety*) and the period of 21 days prescribed for public comments on the DRHP, will now be calculated from the date of publication of the statutory advertisement in terms of Regulation 26(2) of the SEBI ICDR Regulations as against the date of filing of the DRHP.

Remarks

From an IPO standpoint, the intent of a number of these amendments is to harmonize the provisions of the SEBI ICDR Regulations and Listing Regulations, to ensure that uniform disclosures are made by Issuers prior and post listing. However, given due diligence standards in an IPO, the manner in which these amendments will impact disclosures in offer documents in forthcoming transactions remains to be seen.

There are several welcome and well targeted initiatives by SEBI including the flexibility provided regarding ESARs, certification with respect to loan utilisation and voluntary disclosure of proforma financial statements. The conditions prescribed with respect to dilution by selling shareholders in IPOs undertaken by companies without the "profitability track record" and the coverage of loans availed for capital expenditure within the definition of "capital expenditure", may require Issuers and shareholders to reconsider certain commercial decisions.

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