



CAPITAL MARKETS

# N. A. SHAH BULLETIN

October 2018

N. A. SHAH ASSOCIATES LLP  
Chartered Accountants

## INDEX

|  |   |
|--|---|
| 1. Eligibility conditions for Foreign Portfolio Investors (FPIs) ..... | 4 |
| 2. Key amendments in Takeover Code .....                               | 5 |
| 3. Key Amendments in SEBI (Buy-Back of Securities) Regulations .....   | 5 |
| 4. Key amendments in SEBI (ICDR) Regulations .....                     | 7 |

### EXECUTIVE SUMMARY

- Eligibility of NRIs / OCIs / RIs in case of FPI investments and time limit for ensuring compliance with the same.
- SEBI has notified the changes proposed by it in the Discussion Paper, through the SEBI (Buy-Back of Securities) Regulations, 2018.
- SEBI has amended certain regulations of the Takeover Code.
- SEBI has made several changes in the procedure, reporting and disclosure requirements. The amendments aim to align the regulations in line with the various informal guidance/interpretative letters/FAQs pertaining to interpretation of law.

## **1. Eligibility conditions for Foreign Portfolio Investors (FPIs)**

SEBI vide its circular dated 10<sup>th</sup> April 2018, had issued various norms for KYC compliance for FPIs and non-compliance with the provisions would direct them to unwind their positions.

Amid concerns that overseas funds might face difficulty in ensuring compliance to the said provisions, SEBI has amended the norms in relation to eligibility as given below:

- a. Non Resident Indians (NRI) / Overseas Citizens of India (OCI) / Resident Indians (RI) shall be allowed to be constituents of FPI only if:
  - i. Contributions by NRI/OCI/RI is below 25% from a single NRI/OCI/RI and in aggregate is below 50% to corpus of FPI.
  - ii. Contribution by RIs is made through LRS in global funds whose Indian exposure is less than 50%.
  - iii. NRI/OCI/RI is not in control of FPI.

The above restrictions will not be applicable to FPIs investing only in mutual funds in India.

- b. FPIs can be controlled by investment managers (IMs) which are controlled and / or owned by NRI/OCI/RI if following conditions are satisfied:
  - i. IM is appropriately regulated in its home jurisdiction and has register itself with SEBI as non-investing FPI
  - ii. IM is incorporated or set up under Indian laws and is registered with SEBI
- c. A non-investing FPI maybe directly or indirectly fully owned and/or controlled by a NRI/OCI/RI.

It is further provided that existing FPIs and new applicants shall be given a time period of two years from the date of effect of amended regulations or from date of registration, whichever is later to comply with the regulations and in case of breach additional time period of 90 days will be given to ensure compliance.



## 2. Key amendments in Takeover Code

SEBI on 11<sup>th</sup> September, 2018 has notified the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2018, the following are the key amendments:

a. Delisting offer

It has been emphasized that in case the acquirer has an intention to delist the company at the time of making a public announcement of an open offer, such an intention shall be declared upfront and a subsequent declaration of delisting shall not suffice.

b. Fugitive Economic Offender

The term fugitive economic offender has been now defined. Also such person cannot make a public announcement of an open offer or make a competing offer or enter into any transaction, either directly or indirectly for acquiring shares or voting rights of a target company.

c. Voluntary Offer

In case of a voluntary offer made by an acquirer, the offer size shall be of at least such number of shares as would entitle the holder thereof to exercise additional 10 percent of total voting rights (erstwhile total shares) of the target company.

d. General exemption from open offer obligations

For the purpose of general exemption from open offer obligations in case of inter se transfer of shares amongst a company, its subsidiaries, its holding companies, other subsidiaries of such holding companies. Company shall include a body corporate, whether Indian or foreign.

## 3. Key Amendments in SEBI (Buy-Back of Securities) Regulations

With an objective of simplifying the language, removing redundant provisions and updating the references to the Companies Act, 2013, SEBI vide its notification dated 11<sup>th</sup> September 2018 notified SEBI (Buy-Back of Securities)

Regulations, 2018. Outlined below are the key amendments brought in by the new set of regulations:

a. Buyback period

Buyback period is now defined as the period between date of authorization for buyback by a company and the date on which payment to shareholders is made.

b. Clarification on timeline for public announcement

The time frame of making a public announcement of buyback has been defined to be within two working days from the date of authorization of buyback by shareholders or directors resolution.

c. Participation of an eligible public shareholder, who does not receive the tender offer/offer form

An eligible shareholder may participate in the buy-back offer in a manner prescribed by the Board even if such shareholder does not receive the tender offer/offer form.

d. Rights of an unregistered shareholder to participate in the buy-back process

An unregistered shareholder may tender his shares for buy-back by submitting duly executed transfer deed for transfer of shares in his name along with tender offer/offer form and other relevant documents pertinent for transfer, if any.

e. SEBI's power to allow tendering of shares and settlement of the same, through the stock exchange mechanism

The responsibility for facilitation of tender of shares by the shareholders and its settlement has now been fixed upon the company, earlier such responsibility was limited to the acquirer/promoter.

f. Following provisions are now done away with:

- i. Power of Board to order investigation into the conduct of any person associated with the process of buy-back;

- ii. Duty to produce records by every person in respect of whom investigation is ordered;
- iii. Submission of report to the Board by the investigating officer on completion of the investigation.

The amended regulations have been reframed to incorporate a significant number of provisions as outlined under Section 68 and Section 70 of the Companies Act, 2013.

#### **4. Key amendments in SEBI (ICDR) Regulations**

SEBI vide its notification dated September 11, 2018 has notified Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 with an aim to simplify the structure of the regulations and align the regulations with various informal guidances and interpretative letters. The following are various key amendments brought under the amended regulation:

a. Key developments in definitions:

i. Anchor Investor

The definition is made more comprehensive by including the application made by Anchor Investors in public issue of SME's.

ii. Employee

Employee will now also include:

- person belonging to the promoter group
- director who either himself / herself or through their relatives or through anybody corporate, directly or indirectly, holds more than ten per cent of the outstanding equity shares of the issuer.

iii. Group Companies

Means companies with which there are related party transactions as reported in the financial statements but excludes promoter(s), subsidiaries, & subsubsidiaries.

iv. Infrastructure sector

Now the exhaustive definition of Infrastructure sector has been defined in the regulation.

- v. Institutional investor  
Means qualified institutional buyer (QIB) or family trust or intermediaries registered with the board having networth of more than INR 500 crores.
- vi. Nominated Investor  
For the purpose of IPO by SME, Nominated Investor means QIB or private equity fund (PE fund) who enters into an agreement with the lead manager to subscribe the issue.
- vii. Qualified institutional placement  
Means issue/offer for sale of eligible securities by listed issuer/ promoters/ promoter group to QIB on a private placement basis.

The following definitions are brought in alignment with the given statutes:

| Definition                | Aligned with                  |
|---------------------------|-------------------------------|
| Promoter                  | Companies Act 2013            |
| Promoter Group            |                               |
| Associate                 |                               |
| Relative                  |                               |
| Persons acting in concert | SEBI (SAST) Regulations, 2011 |

b. Initial public offer (IPO) on main board:

- i. Eligibility criteria:
- Now, the following entities also cannot make an IPO:
    - If the issuer or any of its promoters or directors is a wilful defaulter
    - If any of its promoters or directors is a fugitive economic offender as defined under Fugitive Economic Offenders Act, 2018.
    - If any of its promoters, promoter group or directors or selling shareholders are debarred from accessing the capital market.
  - One of the condition that the aggregate size of the proposed issue and all other issues in the same financial year should not exceed five times the pre-issue net worth of the preceding financial year has been deleted.



- Prior to filing of offer document, all the specified securities held by the promoters should be in dematerialized form.
- ii. Issue of convertible debt instruments and warrants:
  - Conversion of optionally convertible debt instruments into equity shares: Now the limit for the convertible portion of any listed convertible debt instrument has been increased from INR 50 lakhs to INR 10 crore. Accordingly, if the conversion price of the instrument is not determined at the time of making the issue and the convertible portion exceeds INR 10 crore, the holders shall be given option of not converting the convertible portion into equity.
  - Issue of warrants:
    - The restriction of having one warrant attached to one specified security has been done away with which means now a specified security may have one or more warrants attached to it.
    - In case of warrants in IPO, if the warrant holder does not exercise the option to take equity shares against the warrants, the issuer shall now forfeit the consideration made in respect of warrants within three months from the date of payment of consideration.
    - The requirement to pay 25% of the consideration upfront shall be computed on the basis of the pricing formula computed using current market price and the balance consideration to be paid at the time of exercise which can be determined at the time of final pricing.
- iii. Promoters' Contribution
  - In the erstwhile regulation, in case of a short-fall in the minimum promoters contribution of 20% of the post-issue capital, only alternative investment funds was allowed to meet the shortfall but as per the amended regulations foreign venture capital investors or scheduled commercial banks or public financial institutions or registered insurance companies are also allowed to meet the shortfall.

- iv. Lock-in and restrictions on transferability
  - Lock-in of specified securities held by persons other than promoters:  
SEBI has extended the exemption to the following:
    - equity shares held by an employee stock option trust;
    - equity shares transferred by the employee stock option trust to the employees subject to employee stock option plan/scheme.
  - Promoters are now allowed to pledge the locked in shares as collateral to Non-Banking Financial Companies.
- v. Disclosures in and filing of offer documents
  - Certificate is now required from statutory auditor (earlier Chartered Accountant) certifying that promoters' contribution has been received.
- vi. Pricing
  - The disclosure about the face value of equity shares (including the statement about the issue price being "X" times of the face value) which was required under existing regulations has been deleted.
  - The time period for announcement of the price band has been reduced from five (5) working days to two (2) working days prior to the issue opening date.
  - Price and price band: The issuer who has opted for not disclosing floor price or price band in the red herring prospectus shall announce the floor price or the price band at least two working days (earlier it was five working days) before the opening of the issue in the same newspapers in which the pre-issue advertisement was released.
- vii. Issuance conditions and procedure
  - Minimum Subscription: The period of refund in case of non-receipt of minimum subscription for underwritten issue has been brought down from 60 days to 15 days.

- Allotment, refund and payment of interest: Earlier in case of underwritten issue timeline from refund where minimum subscription is not received was 70 days which has been cut down to 15 days.

c. Rights issue

- i. The regulations shall apply to, where the aggregate value of the issue is INR 10 crores (erstwhile the limit was INR 50 lakh)
- ii. The record date shall be announced by the listed issuer at least seven working days prior to the record date.

d. Preferential Issue

- i. Eligibility: The restriction of issuing of securities under preferential issue in case of sale of securities 6 months preceding the relevant date shall not apply in the case of transfer of shares by the promoters or promoter group a) inter se or b) on account of invocation of pledge by the lender.
- ii. Disclosures to the Shareholders: Issuer shall also disclose the details of ultimate beneficial owner, if the allottees are institutions/entities.
- iii. An additional adjustment will be required to be made in case of demerger where the equity shares of the resulting company are to be listed post demerger.

e. Qualified Institutional Placement (QIP)

- i. Additional conditions to be complied with for making QIP:
  - No special resolution will be required to be passed by an issuer, in case the QIP is through an offer for sale by promoters to ensure compliance with minimum public shareholding requirements.
  - No subsequent QIP can be undertaken until the expiry of six months from the date of prior QIP made pursuant to one or more special resolutions.

- No issuer is eligible to make QIP if any of its promoter or director is a fugitive economic offender.
- ii. Restrictions on making QIP
  - The restriction clause stating that the aggregate of proposed QIP and all previous QIP made by the issuer in the same financial year shall not exceed five times the net worth of the issuer as per audited balance sheet of the previous financial year has been done away with.
- iii. Minimum number of allottees
  - For the purpose of minimum number of allottees, qualified institutional buyer (QIB) belonging to a same group shall be deemed to be a single allottee. The definition of same group is now clearly spelt out to be:
    - any of them controls directly or indirectly, through its subsidiary or holding company, not less than 15% of the voting rights in the other; or
    - any of them directly or indirectly, by itself, or in combination with other persons exercise control over the others; or
    - there is a common director, excluding nominee and independent directors amongst the investor, its subsidiary or holding company and any other investor.

The contents provided in this newsletter are for information purpose only and are intended, but not promised or guaranteed, to be correct, complete and up-to-date. The firm hereby disclaims any and all liability to any person for any loss or damage caused by errors or omissions, whether such errors or omissions result from negligence, accident or any other cause.

From:

N. A. Shah Associates LLP

Chartered Accountants

Address: B 41-45, Paragon Centre, Pandurang Budhkar Marg, Mumbai – 400013.

Tel: 91-022-4073 3000, Fax: 91-022-4073 3090

E-mail Id: [info@nashah.com](mailto:info@nashah.com)