

Takeover Code amended: Bulk / block deals permitted during open offer | Escrow required in case of indirect acquisitions | 10% interest for delayed payment

ICDR Regulations amended: Optional pricing implemented for preferential issues between July 1 - December 31, 2020

July 02, 2020

SEBI has carried out changes in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**Takeover Code**) and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (**ICDR Regulations**), which were proposed in its [meeting on June 25, 2020](#):

<p>Takeover Code</p>	<p>Bulk / block deals permitted during open offer Escrow required in case of indirect acquisitions 10% interest for delayed payment - Takeover Code amended</p> <ul style="list-style-type: none"> ▪ Bulk / Block deal permitted during the open offer: Acquisition through stock exchange settlement process through bulk and/or block deals are permitted during the open offer, subject to conditions mentioned in regulation 22(2A) of Takeover Code. Regulation 22(2A) provides that an acquirer may acquire shares of the target company through preferential issue or through the stock exchange settlement process, subject to (i) such shares being kept in an escrow account, (ii) the acquirer not exercising any voting rights over such shares kept in the escrow account: Provided that such shares may be transferred to the account of the acquirer, subject to the acquirer complying with requirements specified in Regulation 22(2) (which inter alia deals with deposit of entire consideration amount in the escrow account); ▪ Escrow in case of indirect acquisitions: In case of indirect acquisitions where none of the parameters referred to in regulation 5(2) are met, and public announcement of an open offer has been made, an amount equivalent to 100% of the consideration payable under the open offer must be deposited 2 working days before the date of detailed public statement. The escrow account shall be in the form of cash and/ or bank guarantee, and escrow creation in the form of deposit of securities has been denied; ▪ 10% interest p.a. for delay in making payment to the shareholders: In case the acquirer is unable to make payment to the shareholders who have accepted the open offer, the acquirer shall pay interest for the period of delay to all such shareholders whose shares have been accepted in the open offer, at the rate of 10% per annum. SEBI is empowered to grant waiver of such interest in case the delay was not attributable to any act of omission or commission of the acquirer, or due to the reasons or circumstances beyond the control of acquirer. Power to levy interest is in addition to any other action that SEBI may take under regulation 32. <p>Aforementioned changes have been enforced with effect from July 1, 2020, vide the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2020, dated July 1, 2020 (available here).</p>
<p>ICDR Regulations</p>	<p>SEBI implements optional pricing for preferential issues between July 1 - December 31, 2020</p> <p>Following are the changes implemented w.e.f. July 1, 2020:</p> <ul style="list-style-type: none"> ▪ Introduces a new Regulation 164B providing for optional pricing; ▪ The said option in pricing will be available for the preferential issues made between July 1, 2020 and December 31, 2020; ▪ The newly inserted optional pricing vide provides that in case of frequently traded shares, the price of the equity shares to be allotted pursuant to the preferential issue shall be determined either under Regulation 164 or Regulation 164B, as opted for by the issuer company; ▪ The price under Regulation 164B shall not be less than higher of the following:

	<ul style="list-style-type: none">– the average of the weekly high and low of the volume weighted average price of the related equity shares quoted on the recognised stock exchange during <u>the twelve weeks preceding the relevant date</u>; or– the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during <u>the two weeks preceding the relevant date</u>. <ul style="list-style-type: none">▪ The specified securities allotted on preferential basis using the above pricing formula shall be locked-in for a period of three (3) years;▪ All allotments arising out of the same shareholders' approval shall follow the same pricing method. <p>Aforementioned changes have been enforced vide SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2020, dated July 1, 2020 (available here).</p>
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