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# **AN ANALYSIS OF SEBI'S AMENDMENT ON ADVANCING MARKET ACCESSIBILITY: EMPOWERING ENTITIES THROUGH EXPANDED PROMOTER CONTRIBUTIONS AND CCS INCLUSION**

AUTHORED BY - GOURI MAHABALSHETTI

## **INTRODUCTION:**

An Expert Committee of the Securities and Exchange Board of India (hereinafter referred to as "SEBI") was established to review the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "LODR Regulations") and the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (hereinafter referred to as "ICDR Regulations"). The Committee's mandate was to identify ways to facilitate ease of doing business by examining and recommending improvements to these regulations. Pursuant to the SEBI's press conference held on October 4th 2023, SEBI invited suggestions from public and regulated entities on amending the LODR Regulations and the ICDR Regulations.<sup>1</sup> This would facilitate ease of doing business and reduce the cost of compliance under the above-mentioned SEBI regulations for companies set to go public.

The proposed changes in the paper address several critical areas of regulatory reform. Some of the proposals floated in this regard are: Firstly, the inclusion of equity shares received from the conversion or exchange of fully paid-up Compulsory Convertible Securities (CCS) and depository receipts will now count towards the Minimum Promoters' Contribution (MPC). Additionally, non-individual shareholders and promoter group entities will be allowed to contribute to the MPC without being identified as promoters. The thresholds for changes in issue size that necessitate a fresh filing of the draft offer document will be updated.<sup>2</sup>

In addition, under the LODR Regulations, changes will include the applicability of provisions based on average market capitalisation, requirements for filling critical managerial personnel vacancies, timelines for prior intimation of board meetings, and the interval between meetings of the Risk Management Committee.

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<sup>1</sup> [https://www.sebi.gov.in/sebi\\_data/meetingfiles/mar-2024/1711019079991\\_1.pdf](https://www.sebi.gov.in/sebi_data/meetingfiles/mar-2024/1711019079991_1.pdf)

<sup>2</sup> Id.

## I. INCLUSION OF CCS FOR THE PURPOSE OF MINIMUM PROMOTER CONTRIBUTION

### A. The existing regime:

The ICDR Regulations state that the promoters must contribute either twenty per cent of the proposed issue size or twenty per cent of the post-issue capital, which is subject to a lock-in period.<sup>3</sup>

Furthermore, only fully paid-up equity shares that have been held by the sellers for at least one year before the draft offer document can be offered for sale to the public. If equity shares received through the conversion or exchange of fully paid-up CCS, including depository receipts, are being sold, the holding period for both the convertible securities and the resulting equity shares will be combined to calculate the one-year requirement.<sup>4</sup> This one-year holding period must be satisfied at the time of filing the draft offer document.

Additionally, specified securities acquired within the preceding three years under certain conditions, such as non-cash consideration involving asset revaluation or bonus issues funded by revaluation reserves or unrealised profits, are ineligible. Additionally, specified securities acquired by promoters, alternative investment funds, foreign venture capital investors, scheduled commercial banks, public financial institutions, insurance companies, or non-individual public shareholders at a price lower than the issue price within the past year are also ineligible unless the price difference is paid to the issuer.

However, specified securities meeting certain exemptions are eligible, including those acquired through court-approved schemes under the Companies Act, 2013 or those held for over one year before the draft offer document, provided full conversion or exchange details are disclosed. Securities pledged with creditors are categorically ineligible.

### B. Proposed Amendment:

The Committee proposed including equity shares obtained from converting fully paid-up compulsory convertible securities in the Minimum Promoters' Contribution. The recommendation was that conversion should occur between the filing of the draft red herring prospectus (DRHP) and the red herring prospectus (RHP), allowing flexibility for shareholders if the Initial

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<sup>3</sup> SEBI (ICDR) Regulations, 2018.

<sup>4</sup> Id.

Public Offer (IPO) does not proceed. Previously, under the old ICDR Regulations, CCSs held for over a year before filing the DRHP were not eligible for MPC. However, recent amendments will now allow CCS that are held for more than a year before the DRHP filing to count towards MPC, provided that the DRHP fully discloses the conversion terms and the conversion into equity shares occurs before filing the RHP. This change aligns the eligibility of shares for an offer for sale (OFS) with those required for MPC.<sup>5</sup>

## **II. EXPANDING THE AMBIT OF MINIMUM PROMOTER**

### **CONTRIBUTION:**

Prior to the 2024 amendment, in cases where eligible equity shares for Minimum Promoter Contribution (MPC) fell short, only alternative investment funds (AIFs), foreign venture capital investors, scheduled commercial banks, public financial institutions, and insurance companies could contribute to cover this shortfall up to a maximum of 10% of post-issue share capital without being classified as "promoters".<sup>6</sup> Following the amendment, SEBI now allows other members of the promoter group (individual or corporate) and non-individual shareholders holding at least 5% of the post-issue capital to contribute towards MPC in case of a shortfall.<sup>7</sup>

A 5% threshold was set for non-individual shareholders to ensure that significant investors remain committed to the company after its listing. This measure aims to assure public investors that these shareholders will continue to have a stake in the company post-listing. The proposal also allows promoter group entities to fulfil any Minimum Promoters' Contribution (MPC) shortfall without being classified as promoters. This provision offers flexibility to companies where identifiable promoters may lack sufficient equity share capital to meet MPC requirements.<sup>8</sup>

## **III. THRESHOLD FOR FRESH FILING OF DRAFT OFFER**

### **DOCUMENT:**

The existing regulation under the ICDR Regulations outlines conditions requiring a fresh filing of a draft offer document after its initial submission. For fresh issues, any adjustment exceeding a 20% increase or decrease from the estimated issue size necessitates a new draft offer document.

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<sup>5</sup> *supra* note 01.

<sup>6</sup> Yash J Ashar and Gokul Rajan, "Recommendations on Changes to SEBI ICDR Regulations for Ease of Doing Business – Missing the Point", Cyril Amarchand Mangaldas, 18.01.2024

<sup>7</sup> *supra* note 01.

<sup>8</sup> *Id.*

Similarly, for offer for sale (OFS) scenarios, changes exceeding a 50% increase or decrease in either the number of shares offered or the estimated issue size trigger the requirement for a fresh filing. In cases where an issue combines both fresh issue and offer for sale components, the respective thresholds mentioned above apply accordingly. These provisions aim to ensure transparency and regulatory compliance in the process of public offerings.<sup>9</sup>

However, the proposed amendment clarified that any increase or decrease in the estimated issue size by more than 20% for a fresh issue would necessitate the refiling of the draft red herring prospectus. In contrast, for an offer for sale, changes are assessed based on the unit value, allowing a 50% variation without requiring refiling. This change aims to provide clarity and predictability for both issuers and selling shareholders. It is also recommended that adjustments to the estimated issue size be quantified in rupee value, given its impact on the purpose of the issue.<sup>10</sup>

Additionally, the amendment removed regulations where the company was required to set aside a refundable security deposit amounting to 1 per cent of the offer size and revised the minimum extension period for bidding in case of force majeure events, banking strikes, or similar circumstances from "three working days" to "one working day." These updates are designed to streamline regulations and enhance flexibility in the issuance process.<sup>11</sup>

#### **IV. CONCLUSION:**

The recent amendments proposed by SEBI to the ICDR and LODR Regulations mark a significant step towards enhancing the ease of doing business for companies seeking to go public in India. These amendments, driven by the recommendations of public, regulated entities along with the expertise of the Expert Committee, aim to streamline regulatory requirements, increase flexibility, and reduce compliance costs, thereby fostering a more conducive environment for capital markets.

One of the pivotal changes introduced is the inclusion of equity shares obtained from the conversion of fully paid-up Compulsory Convertible Securities (CCS) towards Minimum Promoters' Contribution (MPC). This amendment aligns with market practices and provides greater flexibility to promoters in structuring their contributions. By allowing CCS held for over a year before the filing of the draft offer document to count towards MPC, SEBI has recognised

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<sup>9</sup> *supra* note 03.

<sup>10</sup> Ravi Dubey Arjun Dabola, "Summary of Key Amendments to the SEBI ICDR Regulations", Infoplex Newsalert, May 2024

<sup>11</sup> *Id.*

the evolving nature of corporate finance structures and sought to incentivise long-term capital commitment from promoters.

Moreover, the expansion of MPC contributors beyond traditional promoters to include other members of the promoter group and significant non-individual shareholders holding at least 5% post-issue capital is a progressive move. It addresses practical challenges faced by companies where equity ownership might be dispersed among various entities within the promoter group or held by substantial institutional investors. This change not only broadens the pool of contributors but also ensures that there is a continued stake in the company post-listing, reassuring public investors. Moreover, the amendment also includes rationalising thresholds for fresh issues and offers for sale size changes to balance oversight with flexibility, enhancing transparency.

In conclusion, while these amendments represent a positive step towards enhancing India's regulatory framework for capital markets, their successful implementation will depend on effective communication, robust enforcement, and continued dialogue between regulators, industry stakeholders, and investors. It's crucial for SEBI to maintain transparency in its regulatory processes and ensure robust enforcement to uphold investor confidence. Moreover, continuous monitoring and periodic review of these reforms will be essential to address any emerging challenges and refine regulations further. By fostering an environment that encourages capital formation and innovation while prioritising investor protection, SEBI can strengthen India's position as a dynamic hub for global investments in the long term."

Moving forward, it will be crucial for SEBI to monitor the impact of these reforms closely, ensuring they achieve the intended objectives of promoting investor confidence, facilitating capital formation, and sustaining the competitiveness of India's capital markets on the global stage.

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