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Towards recovery: fund raising by Indian corporates in the times of COVID-19

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Main stories

Welcome to this issue of **Insight**.

As corporate India seeks to transition from the 'resilience' phase of the COVID-19 crisis to the beginning of the 'recovery' phase, companies across sectors are looking to raise funds from promoters, as well as domestic and foreign investors to ease liquidity pressures. The Indian Government and regulators being cognizant of the Industry's needs, have made certain relaxations to the process of fund raising. Accordingly, as the lead article in this issue of Insight, we have provided an overview of the recent changes and relaxations made to the fund raising process available to companies in India.

Apart from the above, we have also captured the key notifications and orders issued by the Ministry of Corporate Affairs in relation to the Companies Act, 2013 as well as circulars and notifications issued by the Reserve Bank of India ("**RBI**") and Securities and Exchange Board of India ("**SEBI**") for the period under review, including the various compliance relaxations provided to companies, in the aftermath of the COVID-19 crisis.

Any feedback and suggestions would be valuable in our pursuit to constantly improve *Insight* and ensure its continued success amongst readers. Please feel free to send any feedback, suggestions or comments to cam.publications@cyrilshroff.com.

While we send you this issue, we acknowledge the havoc and pain caused by Covid-19 in nations, homes and families across the world, including in India. Yet, it is in times like this that we must come together to support each other (while staying physically apart), remain optimistic and keep on going. Our best wishes are with you.

Regards,
CYRIL SHROFF

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India's leading law firm

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TOWARDS RECOVERY: FUND RAISING BY INDIAN CORPORATES IN THE TIMES OF COVID-19

INTRODUCTION

Five months into the economic turmoil wreaked by the onslaught of the COVID-19 crisis, many businesses are now digging in for a long 'winter' and charting the roadmap to recovery and are evaluating either divestments or fund-raising in some form or manner. Some others are shoring up finances, both from promoters as well as fresh investors, in order to consolidate and grow inorganically in a time of subdued valuations.

Regulators, for their part, have sought to liberalize the framework for fund-raising to ease the liquidity crunch and enable companies to prevent and better manage financial stress. Following is an overview of the recent regulatory relaxations relating to the various modes of equity fund raising that are generally available to companies in India (rights issue, preferential allotment and qualified institutional placement), introduced in India in the wake of the COVID-19 pandemic.

I. Rights Issue

A rights issue, which involves issue of equity instruments to equity shareholders in proportion to their existing shareholding, provides existing shareholders and promoters an option to increase their exposure to the company at a discounted price, while also ensuring that control of the company remains in hands of the existing shareholders.

The key factors behind companies leaning towards a rights issue have been the absence of requirement to obtain shareholders' approval, flexibility provided in pricing the equity instruments, and the flexibility for shareholders to renounce their entitlement in a rights offer in favor of any other person.

Typically, a rights issue for a closely held company can be completed within 2-3 weeks, assuming availability of headroom in the authorised capital. For a listed company, the process is likely to be completed within 3-4 months (including SEBI review and the time taken for due diligence and drafting the offer document), assuming there are no approvals to be obtained from sectoral regulators. The SEBI framework also provides for a 'fast-track rights issue' process for listed companies meeting the specified criteria, which can typically be completed within 2 months.

In addition to the various reforms introduced earlier this year (such as mandatory application through Application Supported by Blocked Amount (ASBA), demat credit and trading of rights entitlement, and reduction in timeframe for notification of record date), SEBI has provided certain temporary relaxations[1] in relation to rights issue opening on or before March 31, 2021 in order to facilitate fund-raising by companies to cope with the challenges presented by the pandemic. These include:

(a) reduction of minimum subscription threshold for a successful rights issue from 90% to 75%;

(b) increase in offer size threshold below which the draft letter of offer is not required to be filed with SEBI from INR 10 crores to INR 25 crores; and

(c) relaxations in various eligibility requirements for undertaking 'fast-track rights issue' such as minimum average market capitalisation of INR 100 crores (instead of INR 250 crores), minimum listing track record, absence of trading suspension and compliance with SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 ("**Listing Regulations**") for the preceding 18 months (instead of 3 years);[2]

The aforesaid has been supplemented with certain procedural exemptions introduced by SEBI for rights issue opening before July 31, 2020, with the major theme being acceptance of electronic mode for transmission, inspection, payment and signature.[3]

While these relaxations are likely to give a fillip to rights issue, a recent amendment by the Ministry of Finance, Government of India ("**MoF**") to the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 ("**NDI Rules**")[4] has caused some concerns regarding pricing in case of rights issue. Pursuant to the amendment, where the shares are acquired by a non-resident (pursuant to acquisition of rights entitlement renounced by a shareholder resident in India), the same will be subject to the pricing guidelines under the NDI Rules.

II. Preferential Issue:

Preferential issue involves selective issuance of equity instruments to identified persons, which may or may not include promoters/existing shareholders and is a favoured route for control acquisitions and investments pursuant to negotiated deal making. Preferential allotment can also be used by companies to access capital directly from promoters, particularly in the current market context where such fund infusion will also work to raise investor confidence.

Under the existing framework, the floor price of the securities for preferential issues by listed companies having

1 SEBI Circular No. SEBI/HO/CFD/CIR/CFD/DIL/67/2020, dated April 21, 2020; available at https://www.sebi.gov.in/legal/circulars/apr-2020/relaxations-from-certain-provisions-of-the-sebi-issue-of-capital-and-disclosure-requirements-regulations-2018-in-respect-of-rights-issue_46537.html
2 Ibid.
3 SEBI Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 6, 2020; available at https://www.sebi.gov.in/legal/circulars/may-2020/relaxations-relating-to-procedural-matters-issues-and-listing_46652.html
4 FEM (Non-Debt Instruments) (Second Amendment) Rules, 2020, as covered in greater detail in the FEMA Updates section of this issue of Insight.

frequently traded shares, in terms of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**ICDR Regulations**") was set at the higher of the average 26 week volume weighted average price ("**VWAP**") or average 2 week VWAP. Given that the 26 week VWAP factored in the high trading prices of January 2020, the floor price determined by this pricing mechanism became untenable for promoters / investors willing to deploy funds in the past few months, and preferential issues were few and far between.

However, this has since been addressed and SEBI has permitted temporary relaxations in the floor pricing for preferential issues during the transitory period between July 01, 2020 to December 31, 2020. Issuers can opt for undertaking a preferential issue at a floor price which is the higher of the average 12 week VWAP or the 2 week VWAP, albeit at the cost of a longer 3 year lock-in (as against one year earlier).[5] In addition, SEBI has also (a) relaxed the 'creeping acquisition' norms under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**Takeover Regulations**") till March 31, 2021, permitting promoters to acquire up to 10% (as against 5% earlier) of the share capital of the listed company without making an open offer[6]; and (b) permitted companies having stressed assets to raise funds from non-promoter investors by way of preferential issue, with a reduced pricing floor of the average 2 week VWAP, subject to certain conditions.[7]

The abovementioned changes, albeit for a temporary period, are expected to steer in a significant uptick in preferential issuances in the coming months.

Pricing of equity instruments issued by unlisted issuers on preferential basis will continue to be as per the NDI Rules and the Companies Act, 2013 ("**Companies Act**"), at a price not less than the fair value determined as per any internationally accepted pricing methodology on an arm's length by a 'Registered Valuer'.

Typically, preferential allotment of securities of an unlisted company can be completed within 2-3 weeks, subject to 95% of the shareholders granting their consent to holding the shareholders' meeting at shorter notice, and a valuation report specifying the fair value of the securities being readily available. For listed companies, a preferential issue can typically be completed in 45-50 days, excluding the time required for due diligence and negotiation of transaction documents preceding the preferential issue.

III. Qualified Institutional Placement:

Qualified institutional placement ("**QIP**") involves the preferential issue of equity instruments by listed issuers to qualified institutional buyers (such as mutual funds, alternative investment funds, public financial institutions, scheduled commercial banks, insurance companies, provident / pension funds, multilateral and bilateral development financial institutions, systemically important NBFCs, etc.) ("**QIBs**").

QIPs have been a preferred route of fund raising by listed companies in FY20 and the first quarter of FY 2021, primarily on account of favourable pricing mechanism, option to issue at discount, and the reduced disclosure framework.

A QIP is required to be made at a price not less than the average of the weekly high and low of the closing prices during the two weeks preceding the date of board resolution opening the proposed QIP and typically takes around 4 to 6 weeks for completion (including SEBI review and the time taken for due diligence and drafting the placement document). This pricing floor is generally close to the market valuation of the company at issuance and is particularly helpful for companies that have experienced significant share price volatility in the months leading up to the issuance. Additionally, issuers are permitted to offer a 5% discount to the floor price.

Until recently, a listed company could undertake successive QIPs only after providing for a minimum cooling-off period of 6 months. SEBI has recently reduced this period to 2 weeks, thus enabling listed issuers to raise multiple rounds of funding from QIBs in short order.[8] This is also expected to aid urgent fund raising by listed companies, since other fund raising mechanisms are comparatively more time consuming.

Conclusion

Since the current economic slowdown is expected to usher in an era of consolidation, infusion of capital will be crucial for both big and small businesses, whether to navigate through the choppy waters of the next few financial quarters or to build a war-chest to successfully take advantage of the acquisition opportunities that might present themselves in this dynamic economy. The regulators too are making an endeavour to respond to the needs of the industry in a timely manner.

While several modes of fund raising remain available to companies in India, the optimal mode for fund raising will depend upon the particular circumstances of each company and its needs, and also factoring in the trade-offs between significant compliance requirements, pricing flexibility and timeline to funding.

5 Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2020; available at https://www.sebi.gov.in/legal/regulations/jul-2020/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-third-amendment-regulations-2020_46991.html

6 Ibid.

7 Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2020 available at https://www.sebi.gov.in/legal/regulations/jun-2020/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-second-amendment-regulations-2020_46907.html

8 Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2020 available at https://www.sebi.gov.in/legal/regulations/jun-2020/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2020_46885.html

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COVID-19 Related Updates

I. Amendments

1. *Extension of relaxations relating to board meetings conducted through video conferencing (VC)*

   Under the Companies Act, certain actions can only be taken at physical board meetings. In view of COVID-19 pandemic, the Ministry of Corporate Affairs ("**MCA**") has issued various circulars allowing companies to take such decisions at meetings conducted through video conferencing or other audio visual means ("**VC**") until June 30, 2020. The Companies (Meetings of Board and its Powers) Rules, 2014 has been amended to further extend until September 30, 2020, the COVID-19 induced relaxations to companies allowing them to hold board meetings through video conferencing or other audio visual means in respect of matters such as the approval of the annual financial statements, Board's report, prospectus and matters relating to amalgamation, merger, demerger, acquisition or takeover, as well as audit committee meetings for consideration of financial statements.

   (MCA Notification no. G.S.R. 395(E) dated June 23, 2020)

2. *Contribution to PM Cares Fund eligible for computation towards CSR contributions*

   The Schedule VII of Companies Act has been amended to include contributions made to 'Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (**PM CARES Fund**)' as being eligible for computation towards corporate social responsibility ("**CSR**") contributions, effective from March 28, 2020. Further, although the MCA had already clarified vide its circular dated March 23, 2020 that any funds spent in relation to COVID-19 will be covered under the items stipulated in Schedule VII of the Companies Act, however, in order to clear the uncertainty surrounding certain specific aspects MCA also released a set of FAQs dated April 13, 2020 clarifying *inter alia* the following:

   - Contributions made to 'Chief Minister's Relief Fund' or 'State Relief Fund for COVID-19', will not qualify as CSR expenditure. However, contributions made to State Disaster Management Authority will qualify as CSR expenditure.
   - Payment of salary or wages to employees or workers during the lockdown period (including imposition of other social distancing requirements) will not qualify as CSR expenditure.
   - Any ex-gratia payment made to workers, over and above the disbursement of wages, specifically for the purpose of fighting COVID-19, will be admissible towards CSR expenditure as a onetime exception.

   (MCA Notification no. G.S.R. 313(E) dated May 26, 2020 and the MCA General Circular No. 16/2020 dated April 13, 2020)

II. Circulars and Notifications

1. *Relaxation of time for filing forms related to creation or modification of charges*

   Pursuant to receipt of representations from various stakeholders, MCA has notified a scheme for relaxation of time for filing forms CHG-1 and CHG-9 for creation or modification of charges under the Companies Act for the purpose of condoning the delay in filing certain forms related to creation/ modification of charges. The scheme is applicable to instances where (a) although charge was created before March 1, 2020 but timeline for filing the charge form has not expired under the Companies Act as on March 1, 2020; and (b) date of creation/modification of charge falls between March 1, 2020 to September 30, 2020. The extension in relation to (a) is granted till September 30, 2020. In relation to (b), the first day after the date of

creation/modification of charge shall be reckoned as October 1, 2020 for the purpose of counting the number of days within which the form is required to be filed under section 77 or section 78 of the Companies Act.

(MCA General Circular No. 23/2020 dated June 17, 2020)

2. *Holding of EGMs under the Companies Act through VC*

In view of COVID-19 pandemic, the MCA has issued various circulars allowing companies to hold an extra-ordinary general meeting ("**EGM**") through VC until June 30, 2020 (later extended till September 30, 2020).

These circulars provide that all decisions which are urgent in nature and require approval of members of the company, other than items of ordinary business or business where any person has a right to be heard, can be made through the mechanism of postal ballot or e-voting, in accordance with the provisions of the Companies Act, without holding a general meeting. However, in the event that EGM is considered unavoidable the same may be held by way of a VC, for which certain compliances and relaxations have been provided in the circulars. The circulars provide separate procedures for companies which are mandated to provide electronic voting facility (or have opted for it) and those which are not mandated to provide electronic voting. Certain key considerations under the circulars are as below:

- The recorded transcript of the meeting should be accessible on the company's website (if any), in case of a public company.
- Members' attendance at the EGM through VC will be counted for quorum requirements under the Companies Act.
- The meeting should permit two-way participation by members. At least 1,000 members should be able to attend the meeting on a first-come-first-served basis, barring shareholders holding more than 2% of the shareholding, directors etc. who may nevertheless be allowed to attend.
- Facility of proxy appointment is not available. However, body corporates may appoint representatives for e-voting at the EGM.
- Notice for the EGM, to be sent only by e-mail to the e-mail ID registered with the company or the depositories, and should outline the procedure in detail. For companies which are not required to provide e-voting under the Companies Act and do not have registered e-mail address for all members, the company shall contact those members through telephone or other modes.
- At least one independent director (where the company is required to appoint one), and the auditor or his eligible authorised representative should attend such meeting through VC.
- Within sixty days of the meeting, the resolutions passed at the meeting should be filed with the Registrar of Companies.
- If a company is not required to provide electronic voting facility by law or has not opted for it, voting should be through e-mail and the company is required to provide a secure e-mail address to which members can send their votes through their registered e-mail address.

(MCA General Circular No. 14/2020 dated April 8, 2020; MCA General Circular No. 17/2020 dated April 13, 2020; and MCA General Circular No. 22/2020 dated June 15, 2020)

3. *Clarification on dispatch of notice for rights issue by listed companies*

In view of the difficulties faced by companies in sending the notices due to COVID-19 and the lockdown measures, MCA has clarified that for rights issue opening up to July 31, 2020, in case of listed companies which comply with SEBI Circular dated May 6, 2020 (*which is covered below in this Issue*), the inability to dispatch notices pertaining to rights issue through postal/courier services, will not be considered as a violation u/s 62(2) of the Companies Act.

(MCA General Circular No. 21/2020 dated May 11, 2020)

4. *Holding of AGMs under the Companies Act through VC*

For the purpose of holding annual general meeting ("**AGM**") through VCs, the MCA has extended relaxations similar to the ones extended in relation to the EGMs. Certain key considerations as set out in the circular are as follows:

- Companies would be required to comply with the relevant framework as provided in the MCA General Circular No. 14/2020 dated April 8, 2020 on EGMs, and the manner of issuing notices as prescribed under MCA General Circular No. 17/2020 dated April 13, 2020 on EGMs.
- For companies which are required to provide e-voting facilities under the Companies Act or any other company which decides to opt for offering such facility, a public notice by way of newspaper advertisement setting out the relevant details is required to be published. Those companies that have obtained permission for conducting a physical AGM, may still be required to provide the facility of VC and e-voting system for others.
- For other companies that are neither required nor have opted to provide e-voting facility, the AGMs may be conducted via VC only if the company has records and e-mail addresses of at least half of the total members of the company and who (*for companies with share capital of shareholders*) represent not less than seventy-five per cent of such part of the paid-up share capital of the company as gives right to vote at the meeting. In case of

Nidhi companies and companies not having share capital, separate criteria is provided.

- The company, in addition to the ordinary business, is only required to conduct such items of the special business that would be considered unavoidable by its board.
- For the companies whose financial year, excluding the first financial year, ended on December 31, 2019, the deadline for holding AGM has been extended to September 30, 2020. Companies not covered in the foregoing, and unable to hold their AGMs under the above framework are advised to apply to the concerned RoC for extension of AGM.

(MCA General Circular No. 18/2020 dated April 21, 2020 and MCA General Circular No. 20/2020 dated May 5, 2020)

5. *Relaxation of filings under Section 124 and 125 of the Companies Act*

In relation to the procedures for transfer of money remaining unpaid or unclaimed for seven years in terms of the provision of section 124(5) of the Companies Act and transfer of shares under Section 124(6) of the Companies Act to the Investor Education and Protection Fund ("**IEPF**"), the MCA has clarified that insofar as filing of various IEPF e-forms and related e-verification of claims is concerned, filing in MCA-21 registry without additional fees till September 30, 2020 has already been allowed vide its circular dated March 24, 2020.

(MCA General Circular No. 16/2020 dated April 13, 2020)

Other Updates

I. Amendments

1. *Extension of online application timeline for inclusion of independent directors in the data bank*

The Companies (Appointment and Qualification of Directors) Rules, 2014 has been amended to increase the time frame in which the independent director shall apply online to the Indian Institute of Corporate Affairs for inclusion of his/her name in the data bank of independent directors. The time-period has been increased to 10 months, starting from December 1, 2019, from the original deadline of 5 months.

(MCA Notification No. G.S.R. 369 (E) dated June 23, 2020)

2. *Relaxations provided to start-ups in relation to sweat equity shares issuance, and exemption of certain companies from requirement of maintaining Debenture Redemption Fund*

The Companies (Share Capital and Debentures) Rules, 2014 has been amended as follows:

- the relaxation allowing start-ups to issue sweat equity shares, not exceeding fifty per cent of its paid-up capital, has now been made available for a longer duration of ten years from the date of incorporation or registration of the start-up, instead of the earlier duration of five years; and
- listed companies coming up with private placement of debt securities, including listed non-banking financial companies and listed housing finance companies, who were earlier required to either invest or deposit by April 30 each year, a sum of at least 15 per cent of the amount of its debentures maturing during the year ending on March 31 of next year (referred to as "**DRF**"), have now been exempted from such requirement of DRF.

(MCA Notification no. G.S.R. 372(E) dated June 5, 2020)

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FOREIGN EXCHANGE AND RBI UPDATES

COVID-19 Related Updates

I. Notifications

1. *Relaxations in the voluntary retention route for FPI investment in debt*

   In view of the disruptions caused due to COVID-19, the RBI has granted Foreign Portfolio Investors ("**FPIs**") that have been allotted investment limits under the 'Voluntary Retention Route' between January 24, 2020 and April 30, 2020, an additional time of 3 months to invest 75% of their Committed Portfolio Size ("**CPS**"). For FPIs availing the additional time, the retention period for the investments *(as committed by them at the time of allotment of limit)* would be reset to commence from the date that the FPI invests 75% of CPS. This notification thereby amends A.P. (DIR Series) Circular No. 34 dated May 24, 2019 wherein, FPIs were required to invest at least 75% of their CPS within 3 months from the date of allotment.

   (Notification No. RBI/2019-20/239 dated May 22, 2020)

Other Updates

I. Amendments

1. *Restrictions on FDI from neighbouring countries and pricing norms made applicable to rights issue, and relaxations to sectoral conditions for FDI in single brand retail trading and insurance intermediaries*

   The Central Government has amended the NDI Rules in the manner set out below.

   - With effect from April 27, 2020, the following provisions / relaxations have been introduced:
     - ***Applicability of pricing norms to rights shares acquired pursuant to renunciation*** – A new Rule 7A has been inserted to provide that the pricing guidelines specified under Rule 21 of the NDI Rules will be applicable to the acquisition by a person resident outside India of the equity instruments *(other than share warrants)* against rights entitlements acquired by such person, from a resident Indian who has renounced such a right.
     - ***Relaxations in the conditions for foreign direct investment ("FDI") in Single Brand Retail Trading and Insurance Intermediaries***
       - The local sourcing requirement applicable to companies in the Single Brand Retail Trading sector for the initial period of 3 years, will now commence on the opening of the first store or **start of online retail**, whichever is earlier.
       - 100% FDI under automatic route has been permitted in relation to activities pertaining to insurance intermediaries including insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrator, surveyors and loss assessors and such other entities, as may be notified by the Insurance Regulatory and Development Authority of India, subject to sector specific conditions as set out therein.
     - ***Divestment of holdings by FPIs to comply with prescribed ceiling*** – Schedule II has been amended to provide that divestment of holdings by an FPI in order to comply with the prescribed limit for FPIs and the reclassification of FPI investment as FDI (upon failure to so divest) will be subject to further conditions, if any, specified by the SEBI and the RBI in this regard.
   - Pursuant to Press Note 3 issued by Department for Promotion of Industry and Internal Trade extending restrictions on FDI from countries sharing a border with

India under government route (which was earlier only restricted to Bangladesh), the NDI Rules have been amended with effect from April 22, 2020 to provide that:

- An entity of a country, which shares land border with India or the beneficial owner of an investment into India who is a citizen of any such country, can invest only with government approval;
- A citizen of Pakistan or an entity incorporated in Pakistan can invest only under the government route. Such a citizen of or entity incorporated in Pakistan cannot invest in defence, space, atomic energy and such other sectors or activities prohibited for foreign investment; and
- In the event of the transfer of ownership of any existing or future FDI in an Indian entity, directly or indirectly, resulting in the beneficial ownership falling within the abovementioned restrictions, such subsequent change in beneficial ownership will also require government approval.

(MoF Notifications S.O. 1374(E) dated April 27, 2020 and S.O. 1278(E) dated April 22, 2020)

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SECURITIES LAW UPDATES

COVID-19 Related Updates

I. Amendments

1. *Relaxation of norms under ICDR Regulations to facilitate easier fund raising by listed companies with stressed assets through preferential issuance and other listed companies through QIPs and preferential issuance*

   In order to make fund-raising relatively easier for listed companies, SEBI has amended the ICDR Regulations, as follows:

   - The minimum cooling-off period between 2 consecutive QIPs by listed entities, has been reduced from 6 months to 2 weeks, with effect from June 16, 2020.
   - A new regulation has been inserted, viz. Regulation 164A, which relaxes the minimum pricing floor for fund-raising by way of preferential allotment by companies having stressed assets. Following are the key provisions:
     - ***Eligibility of Issuer:*** To be eligible for the relaxed pricing norms, any 2 of the following criteria are required to be met by the issuer company:
       (i) the issuer has disclosed all the defaults relating to the payment of interest/ repayment of principal amount on loans from banks / financial institutions/ Systemically Important Non-Deposit taking Non-banking financial companies/ Deposit taking Non-banking financial companies and /or listed or unlisted debt securities in terms of SEBI Circular dated November 21, 2019 and such payment default is continuing for a period of at least 90 calendar days after the occurrence of such default;
       (ii) there is an inter-creditor agreement in terms of RBI (Prudential Framework for Resolution of Stressed Assets) Directions 2019 dated June 07, 2019;
       (iii) the credit rating of the financial instruments (listed or unlisted), credit instruments / borrowings (listed or unlisted) of the listed company has been downgraded to "D".
     - ***Relaxation provided:*** In case of frequently traded shares, the pricing floor of the equity shares to be allotted by eligible issuers pursuant to the preferential issue shall be the average VWAP during the 2 weeks preceding the relevant date, as opposed to the standard requirement of the higher of the average VWAP for 2 weeks or average VWAP for 26 weeks preceding the relevant date.
     - ***Promoter group and certain persons not eligible to subscribe:*** The issuer company must ensure that the preference issue is made to a person not part of the promoter or promoter group. Further, such an issue must not be made to *inter alia* undischarged insolvent, wilful defaulter, a person disqualified to act as a director, a person debarred from trading in securities or accessing the securities market, a fugitive economic offender, a person who has executed a guarantee in favour of a lender and failed to perform when invoked, a person who has been convicted for any offence punishable with imprisonment for 2 years or more under certain prescribed legislations or for 7 years or more under any other law.
     - ***Majority of Minority shareholder approval:*** The shareholders' resolution for the preferential issue and exemption from open offer must provide that the number of public category votes cast in favour of the proposal is more than the number of votes cast against it. The proposed allottees in the preferential issue that already hold specified securities must not be included in the category of public for this purpose. Where the company does not have an identifiable

promoter, the resolution will be deemed to have been passed if the votes cast in favour are not less than 3 times the number of the votes, if any, cast against it.

- ***End-use of proceeds:*** The proceeds of such preferential issue shall not be used for any repayment of loans taken from promoters/ promoter group/ group companies. Further, the issuer must make arrangements for monitoring, by a public financial institution or by a scheduled commercial bank, which is not a related party to the issuer, in relation to the use of proceeds of the issue.
- ***Lock-in:*** The allotment made shall be locked-in for 3 years from the last date of trading approval, as opposed to the standard 1-year lock-in.

- In order to enable listed companies to raise funds, a new provision has also been added to the ICDR Regulations, viz. Regulation 164B. In case of frequently traded shares, for preferential issues made between July 1, 2020 and December 31, 2020 the minimum price of the equity shares to be allotted shall not be less than higher of the average VWAP during (i) 12 weeks preceding the relevant date, or (ii) 2 weeks preceding the relevant date. The securities allotted on preferential basis using this revised pricing formula shall be locked-in for 3 years.

(SEBI Notification No. No. SEBI/LAD-NRO/GN/2020/17 dated June 16, 2020,

SEBI Notification No. SEBI/LAD-NRO /GN/ 2020/18 dated June 22, 2020 and
SEBI Notification No. SEBI/LAD-NRO/GN/2020/21 dated July 1, 2020)

2. *Relaxation of norms under Takeover Regulations to enable easier fund raising by listed companies from promoters*

In view of the COVID-19 crisis, and with an object of enabling listed companies to raise funds from promoters, SEBI has amended the Takeover Regulations to provide the following:

- ***One time increase in threshold for creeping acquisition:*** With effect from June 16, 2020, promoter of a listed entity, for FY 2020-21, are permitted to acquire beyond 5% and up to 10% of the voting rights in a target company pursuant to a preferential issue of equity shares by the target company, without triggering the mandatory open offer requirement.
- ***Relaxation of restriction on voluntary open offer:*** Under the Takeover Regulations, acquirer or any person acting in concert with him who has acquired shares of the target company in the preceding 52 weeks without attracting the obligation to make a public announcement of an open offer, shall not be eligible to voluntarily make a public announcement of a voluntary open offer for acquiring shares of such listed company. This restriction has been relaxed till March 31, 2021.

- ***Exemption from open offer to companies having stressed assets:*** Acquisition of shares/ voting rights/ control of the target company by way of preferential issue in compliance with regulation 164A of the ICDR Regulations *(which pertains to pricing in preferential issue of shares of companies having stressed assets)* are exempt from the obligation to make an open offer under Regulation 3(1) and Regulation 4 of the Takeover Regulations. The exemption from open offer will also apply to the target company with infrequently traded shares which is compliant with the provisions of specified sub-regulations of Regulation 164A of the ICDR Regulations. The pricing of such infrequently traded shares is required to be in terms of Regulation 165 of the ICDR Regulations.
- ***Amount to be deposited in escrow in case of indirect acquisition:*** In case of indirect acquisitions where open offer announcement has been made, an amount equivalent to 100% of the consideration payable under the open offer is required to be deposited in an escrow account, 2 days prior to the date of detailed public statement.
- ***Interest in case of delay in making payment to the shareholders:*** In case of delays in making payment to the shareholders who have accepted the open offer, when such delays are due to acts/ omissions of the acquirer, the acquirer shall pay 10% interest for the period of delay to all such shareholders.
- ***Acquisition through bulk/block deals:*** Acquisition of shares of the target company through the stock exchange settlement process through bulk/block deals during open offer has been permitted, subject to certain conditions including the requirement to keep such shares in an escrow account and the acquirer not exercising any voting rights over such shares.

(SEBI Notifications No. EBI/LAD-NRO/GN/2020/14 dated June 16, 2020,
SEBI Notification No. SEBI/LAD-NRO /GN/ 2020/19 dated June 22, 2020 and
SEBI Notification No. SEBI/LAD-NRO /GN/ 2020/20 dated July 1, 2020)

II. Circulars and Notifications

1. *Relaxation of time gap between two board/ audit committee meetings of listed entities*

   Through circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/38 dated March 19, 2020, SEBI had relaxed the requirement of the maximum stipulated time gap of 120 days between two meetings of the board and Audit Committees *(held/proposed to be held between the period December 1, 2019 and June 30, 2020)* of listed entities as required under Regulation 17(2) and 18(2)(a) of the Listing Regulations. This relaxation has been further extended till July 31, 2020 provided that the requirement of having at least 4 such meetings in a year, as stipulated under Regulations 17(2) and 18(2)(a) of the Listing Regulations, is adhered to.

   (Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/110 dated June 26, 2020)

2. *Further extension of time for submission of financial results for the quarter/half year/financial year ending March 31, 2020*

   The timeline for submission of financial results under Regulation 33 *(for quarter and the year ending March 31, 2020)* and Regulation 52 *(half yearly and/or annual financial results for the period ending March 31, 2020 for entities that have listed NCDs, NCRPS', CPs, MDS')* of the Listing Regulations, which was earlier extended by SEBI till June 30, 2020, has now been further extended to July 31, 2020.

   (Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/106 dated June 24, 2020)

3. *Temporary relaxation in processing of documents pertaining to FPIs*

   Through Circular No. SEBI/HO/FPI&C/CIR/P/2020/056 dated March 30, 2020, SEBI had prescribed temporary relaxations till June 30, 2020, in processing of documents pertaining to FPIs (including processing of documents by designated depository participants on the basis of scanned versions of signed documents and copies of documents which are not certified), in the event the FPIs were not in a position to send original and/or certified documents as required in terms of the Operational Guidelines for FPIs & Designated Depository Participants issued under SEBI (FPI) Regulations, 2019.

   (Circular No. SEBI/HO/FPI&C/CIR/P/2020/104 dated June 23, 2020. The relaxations have now been extended to August 31, 2020)

4. *Conducting meeting of unitholders of InvITs and REITs through VC*

   SEBI has allowed infrastructure investment trusts ("**InvITs**") and real estate investment trusts ("**REITs**") to conduct meetings of unitholders through VC. This facility will be available for annual meeting of unitholders in terms of Regulation 22(3)(a) of the SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("**InvIT Regulations**") and Regulation 22(3) of the SEBI (Real Estate Investment Trusts) Regulations, 2014 ("**REIT Regulations**"), to be conducted during the calendar year 2020. For meetings, other than annual meeting of unitholders, this facility will be available up to September 30, 2020. Detailed procedure to be followed while conducting meetings through VC has been prescribed by the SEBI in this regard.

(Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2020/102 dated June 22, 2020)

5. *Relaxation in relation to rights issue and fast-track further public offers opening on or before March 31, 2021*

Considering the COVID-19 pandemic, SEBI has granted temporary relaxations from the regulatory provisions specified under the ICDR Regulations for listed entities proposing to undertake rights issue (including fast-track rights issue) or fast track further public offer ("**FPO**") (excluding issuance of warrants) till March 31, 2021. The relaxations are set out as below:

- ***Rights Issue:*** SEBI has relaxed the following conditions in relation to rights issue:
  - The threshold of minimum subscription requirement for a rights issue has been reduced from 90% to 75% of the offer size, subject to certain conditions.
  - The minimum threshold of the aggregate issue size, with respect to compliance with certain conditions for rights issue and filing the letter of offer with SEBI under the ICDR Regulations, has been raised from ₹10 crore to ₹25 crore.
  - Eligibility conditions for fast-track rights issue have been relaxed in the following manner:
    - The minimum average market capitalization of public shareholding of the issuer has been reduced from ₹ 250 crore to ₹ 100 crore;
    - Equity shares of the issuer are now required to be listed for a minimum period of 18 months instead of the earlier requirement of 3 years. Period of compliance with the Listing Regulations has been reduced from 3 years to 18 months. Further, the confirmation for period of suspension of equity shares of the issuer from trading as a disciplinary measure has been reduced from 3 years to 18 months;
    - The condition regarding absence of any pending show-cause notices or prosecution proceedings initiated by the SEBI against the issuer, its promoters or whole-time directors has been modified to allow for (a) show-cause notices issued by the SEBI in adjudication proceedings, or (b) prosecution proceedings initiated by the SEBI, against the issuer or its promoters, directors or group companies, provided that necessary disclosures in relation to such matters, together with any potential adverse impact on the issuer, have been made in the letter of offer;
    - The condition that the issuer or its promoter, promoter group or director should not have settled any alleged violation of securities laws through the consent or settlement mechanism with the SEBI in the last 3 years has been modified to stipulate that in the event there has been such a settlement, the issuer or its promoter, promoter group or director has fulfilled the settlement terms or adhered to the directions of the settlement order; and
    - The issuer is permitted to have audit qualifications in respect of any of the financial years for which the issuer's financial statements are disclosed in the letter of offer as long as the issuer provides the restated financial statements adjusting for the impact of the audit qualifications and if the impact of the qualifications on the financials cannot be ascertained, the same shall be required to be disclosed in the letter of offer.
- ***Fast-track FPO:*** The eligibility conditions in relation to fast-track FPOs have also been relaxed in the manner set out below:
  - The minimum average market capitalization of public shareholding of the issuer have been reduced from ₹ 1,000 crore to ₹ 500 crore.
  - The condition regarding absence of any pending show-cause notices or prosecution proceedings initiated by the SEBI against the issuer, its promoters or whole-time directors has been modified to allow for (a) show-cause notices issued by the SEBI in adjudication proceedings, or (b) prosecution proceedings initiated by the SEBI, against the issuer or its promoters, directors or group companies, provided that necessary disclosures in relation to such matters, together with any potential adverse impact on the issuer, have been made in the letter of offer;
  - The condition that the issuer or its promoter, promoter group or director should not have settled any alleged violation of securities laws through the consent or settlement mechanism with the SEBI in the last 3 years has been modified to stipulate that in the event there has been such a settlement, the issuer or its promoter, promoter group or director has fulfilled the settlement terms or adhered to the directions of the settlement order;
  - Impact of audit qualifications on the audited accounts of the issuer in respect of those financial years for which accounts are disclosed shall be appropriately disclosed in the offer documents. Where impact on financials cannot be ascertained, the same shall be disclosed in the offer documents.

(SEBI Circular No. SEBI/HO/CFD/CIR/CFD/DIL/67/2020 dated April 21, 2020 and SEBI Circular No. SEBI/HO/CFD/CI /CFD/DIL/85/2020 dated June 9, 2020)

6. *Disclosure of material impact of COVID–19 pandemic on listed entities*

   SEBI has issued an advisory on disclosure of material impact of COVID-19 to listed entities under Listing Regulations encouraging them to evaluate the impact of the COVID-19 pandemic on their business, performance and financials, both qualitatively and quantitatively, to the extent possible and disseminate the same to the stock exchanges, to ensure that all the investors have access to timely, adequate and updated information. The listed entity may consider disclosing, *inter alia*, subject to their material policy, the impact of COVID-19 pandemic on their business, their ability to maintain operations, the steps taken to ensure smooth functioning of operations, estimate of future impact of COVID-19 on its operations, and schedule to restart its operations. In addition, listed entities may provide regular updates, as and when there are material developments with respect to impact of COVID-19 on the operations of the company. Further, the listed entities are also advised to include the impact of the COVID-19 pandemic in their financial statements, to the extent possible, while submitting financial statements under Regulation 33 of the Listing Regulations.

   (SEBI Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/84 dated May 20, 2020)

7. *Relaxations relating to procedural matters of takeovers and buy-back*

   Considering the COVID-19 pandemic and the lockdown measures, SEBI has granted one-time relaxation from the strict enforcement of certain provisions pertaining to takeover open offers and buy-back tender offers opening up to July 31, 2020. The relaxations provide for certain conditions to the already existing mechanism of servicing of letter of offer and/or tender form and other offer related material to the shareholders through electronic transmission. The conditions include:

   - Acquirer/company to publish the letter of offer, tender form and the advertisements on the websites of the company, registrar, stock exchanges and the manager to the offer ("**Relevant Websites**").
   - Acquirer/company along with lead manager to undertake adequate steps to reach out to the/its shareholders through other means such as ordinary post, SMS, digital advertisement, etc.
   - Acquirer/company to issue advertisement containing details of dispatch of letter of offer electronically and availability of such letter of offer along with the tender form on the Relevant Website, in the same newspapers in which statutory advertisements were published in terms of the relevant provision of the Takeover Regulations and the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 2018 ("**Buy-Back Regulations**").
   - Acquirer/company to issue advertisements (which can be in the form of crawlers/tickers as well) on television, radio, internet etc. to disseminate information relating to the tendering process.

   Further, the acquirer/company and the manager to the offer shall provide procedure for inspection of material documents electronically.

   (SEBI Circular No. SEBI/CIR/CFD/DCR1/CIR/P/2020/83 dated May 14, 2020)

8. *Relaxation from the applicability of the SEBI circular dated October 10, 2017 on non-compliance with the Minimum Public Shareholding requirements*

   SEBI had issued a circular dated October 10, 2017 ("**MPS Circular**") laying down the procedure to be followed by the stock exchanges/depositories with respect to listed entities and their promoters and directors who are non-compliant with the minimum public shareholding ("**MPS**") requirement. Considering the prevailing business and market conditions, SEBI has now relaxed the applicability of MPS Circular to listed entities for which the deadline to comply with the MPS requirements was falling between the period from March 1, 2020 to August 31, 2020. Further, any penal actions initiated by stock exchanges from March 1, 2020 till date for such non-compliance may be withdrawn.

   (SEBI Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/81 dated May 14, 2020)

9. *Additional relaxations in relation to compliance with certain provisions of the Listing Regulations*

   Due to the COVID-19 pandemic, in addition to the relaxations already provided by SEBI to listed companies in relation to compliance with certain provisions of the Listing Regulations and circulars issued thereunder, SEBI has granted certain additional relaxations in relation to compliance with provisions of the Listing Regulations. Some of the key additional relaxations include:

   - ***Relaxations in consonance with the MCA circulars:*** In line with the MCA circulars dated April 8, 2020, April 13, 2020 and May 5, 2020, SEBI relaxed the following provisions of the Listing Regulations:
     - Sending physical copies of annual report to shareholders: Listed entities conducting their AGMs during the calendar year 2020 (i.e. till December 31, 2020), are not required to send hard copies of the statement containing the salient features and the annual report to the shareholders. This relaxation is also extended to similar requirements provided for entities which have listed their non-convertible debentures ("**NCDs**") and non-convertible redeemable preference shares ("**NCRPS**").

- Proxy for general meetings: The requirement of sending proxy forms to holders of securities in all cases, mentioning that a holder may vote either for or against a resolution, has been dispensed with for listed entities conducting their AGMs through electronic mode during the calendar year 2020 (i.e. till December 31, 2020).
- Dividend warrants/ cheques: In case it is not possible to use electronic modes of payment of dividends, sending 'payable at par' warrants and cheques for dividends exceeding ₹ 1,500, by speed post is required under the Listing Regulations. However, this requirement has been postponed till normalization of the postal services, subject to certain conditions.

- ***Relaxation from publication of advertisements in the newspapers:*** SEBI had provided, for all events scheduled till June 30, 2020, exemption from publication of advertisements in newspapers, as required under Regulation 47 and Regulation 52(8) of the Listing Regulations, due to COVID-19 pandemic.
- ***Relaxation from publishing quarterly consolidated financial results for certain categories of listed entities:*** Listed banking or insurance companies, or listed companies having subsidiaries which are banking or insurance companies, are permitted to submit consolidated financial results under Regulation 33(3)(b) of the Listing Regulations for the quarter ended June 30, 2020 on a voluntary basis, subject to providing reasons to SEBI for not publishing consolidated financial results. However, such companies are required to continue submitting the standalone financial results as required under Regulation 33(3)(a) of the Listing Regulations.
- ***Prior intimation:*** The period of prior intimation to stock exchanges, in relation to meetings of the board of directors under Regulation 29(2) of the Listing Regulations, has been reduced from 5 days (in case financial results are to be considered) and 2 working days (in other cases) to 2 days, for all board meetings held till July 31, 2020.
- ***Delayed Intimation:*** Delay in intimations to stock exchanges, between March 1, 2020 to May 31, 2020, regarding loss of share certificates and issue of duplicate share certificates within 2 days of procuring such information, to not attract penal provisions.
- ***Digital Signature:*** Authentication or certification of any filing or submission made to stock exchanges under the Listing Regulations may be done using digital signature certifications until June 30, 2020.

(SEBI Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/79 dated May 12, 2020 and SEBI Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/63 dated April 17, 2020)

10. *Temporary relaxation in the fees payable under the ICDR Regulations, Buy-Back Regulations and the Stock-Broker Regulations*

SEBI has amended the ICDR Regulations to reduce the fees payable upon filing of the draft offer document / draft letter of offer for the period from June 1, 2020 to December 31, 2020 by 50% from the existing prescribed rates. Similarly, the fees payable under the Buy-Back Regulations while submitting the offer document or a copy of the public announcement to SEBI from June 1, 2020 to December 31, 2020 has also been reduced by 50% amounts from the existing prescribed rates.

SEBI has also amended the SEBI (Stock Brokers) Regulations, 1992 ("**Stock-Broker Regulations**"), whereby it requires every stock broker in cash segment, equity derivatives segment, currency derivatives segment, interest rate derivatives segment and commodity derivatives segment (other than agri-commodity derivative) who are liable to pay fees as a percentage of their turnover, to pay only 50% of fees as calculated therein, including for off-market transactions undertaken by them.

(SEBI Notification No. SEBI/LAD-NRO/GN/2020/011 dated May 8, 2020)

11. *Procedural relaxations pertaining to rights issue opening-up to July 31, 2020*

SEBI has allowed certain one-time relaxations from strict enforcement of certain provisions under the ICDR Regulations pertaining to rights issue that open up to July 31, 2020. Some of the key highlights are set forth below:

- Failure to dispatch issue material through registered post or speed post or courier services due to prevailing COVID-19 related conditions to not be considered as non-compliance. However, the letter of offer, abridged letter of offer and application forms are required to be published on the Relevant Websites and the issuer shall undertake all adequate steps to reach out to shareholders through other means prescribed therein.
- Issue related advertisements to contain additional details for application process by shareholders who have not been served notice electronically and shall be made available on the Relevant Websites. The issuer to issue advertisements on television channels, radio, internet etc., to disseminate information relating to the application process.
- Physical shareholders who have been unable to open a demat account or communicate details of their demat accounts to the issuer or registrar to the issue for credit of rights entitlements within a specified time are permitted to submit their applications, subject to certain prescribed conditions. Such conditions include a specified mechanism to allow physical shareholders to apply in the issue, and such shareholders receiving shares only in demat form and not being eligible to renounce their rights entitlements.
- The issuer along with the lead managers, registrar and other recognised intermediaries to institute an optional mechanism to accept applications from shareholders. Such mechanism shall only be non-cash and no third-party payments shall be allowed.
- SEBI has also allowed relaxations in respect of digital signatures for authentication, certifications or undertakings, and electronic inspection of material documents in respect of offer documents filed until July 1, 2020.

(SEBI Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 6, 2020)

12. *Relaxations in relation to holding of AGMs by top 100 listed entities by market capitalization*

In consonance with Circular No.18/2020 dated April 21, 2020 issued by the MCA providing certain relaxations in relation to AGMs, SEBI has provided a relaxation to the requirement under Regulation 44(5) of the Listing Regulations by allowing the top 100 listed entities by market capitalisation whose financial year ended on December 31, 2019 to hold their AGMs within nine months from the closure of their financial year, i.e., by September 30, 2020.

(SEBI Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/71 dated April 23, 2020)

13. *Reduction in cooling-off period for fund-raising after a buy-back*

Considering the COVID-19 pandemic, SEBI has granted temporary relaxation from Regulation 24(i)(f) of the Buy-Back Regulations which restricts companies from raising further capital for a period of one year from the expiry of the buyback period, except in discharge of their subsisting obligations. Pursuant to the relaxation, the cooling-off period has been reduced from 'one year' to with 'six months', which is in line with Section 68(8) of the Companies Act.

(SEBI Circular No. SEBI/HO/CFD/DCR2/CIR/P/2020/69 dated April 23, 2020)

14. *One-time relaxation with respect to SEBI observations*

Considering the COVID-19 pandemic, SEBI has granted temporary relaxations with respect to the validity of the SEBI observations for a public and rights issue. In terms of ICDR Regulations, public issue/rights issue may be opened within twelve months from the date of issuance of observations by SEBI. SEBI has now extended the validity of the observations which have or will expire between March 1, 2020 and September 30, 2020 for an additional six months from the date of expiry of such observations, provided the lead managers undertake to comply with Schedule XVI of the ICDR Regulations while filing the updated offer document.

Further, SEBI has permitted increase or decrease in the fresh issue size by up to 50% of the estimated issue size (instead of the present limit of 20%) in offer documents without requiring to file a fresh draft offer document. This relaxation is applicable for public offer and rights issue opening before December 31, 2020 and is subject to certain conditions mentioned therein.

(SEBI Circular No. SEBI/HO/CFD/DIL1/CIR/P/2020/66 dated April 21, 2020)

III. Board Meeting/ Press Release

1. *Easing of the Know Your Client (KYC) Process*

SEBI has permitted the use of technological innovations to facilitate online know your client ("**KYC**") and to do away with the requirement of physically visiting the office of the intermediary. Following are the key points in this regard:

- SEBI has enabled the use of eSign, Digilocker and electronic signature as permitted under the Information Technology Act, 2000 and the rules made thereunder. This would facilitate investors to submit their officially valid documents ("**OVDs**") (proof of identity and proof of address), for the purpose of KYC to the SEBI intermediary's online/ digital platform, app, through e-mail or electronic means.
- The intermediary is required to verify the copy of the OVD provided by the investor with the original OVD. However, the OVD will be deemed to be seen and verified with the original, where the investor through the eSign mechanism provides the OVD as a clear photograph/ scanned copy of the original or provides the same as digitally signed document issued to the DigiLocker by the issuing authority.
- SEBI has allowed the investor to complete the KYC process by filling the online KYC form.
- SEBI has enabled the implementation of the apps by the intermediary, which would be used for the purpose of online KYC and video in-person verification.

(SEBI Press Release No. 25 of 2020 dated April 29, 2020)

Other Updates

I. Amendments

1. *Revision of norms in relation to induction and status declassification of sponsors of InvITs and REITs, and removal of perpetual unit lock-in for sponsor and sponsor group of REITs*

   InvIT Regulations and REIT Regulations have been amended by way of the SEBI (Infrastructure Investment Trusts) (Second Amendment) Regulations, 2020 and the SEBI (Real Estate Investment Trusts) (Second Amendment) Regulations, 2020 (collectively, the "**Amendments**"), each notified on June 16, 2020, to provide for, among other things, the declassification of status and induction of sponsors of InvITs and REITs, and removal of perpetual lock-in on sponsor and sponsor group units in case of REITs. The key highlights of the Amendments are set forth below:

   - SEBI has permitted the declassification of an entity as a sponsor of a listed InvIT or REIT, upon the receipt of an application from the InvIT or REIT, subject to compliance with the following conditions: (i) the unitholding of such sponsor and its associates (taken together) not exceeding 10% of the outstanding units of the InvIT or REIT, (ii) the investment manager of the InvIT or the manager of the REIT, as the case may be, not being an entity controlled by such sponsor or its associates, (iii) the units of the InvIT or REIT having been listed for a period of 3 years, and (iv) obtaining approval of unitholders. Corresponding changes have accordingly been introduced in the unitholder approval requirements set out respectively under InvIT Regulations and REIT Regulations. Further, in the case of a REIT, the sponsor or its associates shall not be fugitive economic offenders.
   - The concept of 're-designated sponsor' has been omitted from the REIT Regulations. Instead, in case of both REITs and InvITs, SEBI has introduced the concept of 'inducted sponsor', and the regulations now permit the induction of a new sponsor. SEBI has also clarified that a new sponsor may be inducted with or without the exit of an existing sponsor. Any change of sponsor or change in control of the sponsor or inducted sponsor shall require prior approval of 75% of the unitholders by value, excluding the value of units held by related parties to the transaction. In the case of an InvIT, the inducted sponsor can only be a company, LLP or a body corporate. Further, where the requisite unitholder approval is not received, an exit opportunity will have to be provided to dissenting unitholders in the manner specified by SEBI. In case of change of sponsor or induction of a new sponsor, the proposed inducted sponsor shall provide the exit opportunity and in case of change in control of the sponsor or inducted sponsor, the relevant sponsor shall provide the exit opportunity.
   - SEBI has prescribed that the maximum subscription from any investor (other than the sponsor(s), their related parties and their associates) in the initial offer of Units shall not be more than 25% of the total unit capital of the InvIT or REIT, as the case may be. Further, the requirement of unitholder approval by not less than one and half times the votes cast against the resolution, in the case of further acquisition by a person other than the sponsor and its associates holding (along with its associates) more than 50% of the outstanding REIT units, has been deleted.
   - The perpetual lock-in requirement on the units held by the sponsor and sponsor group in case of REITs has been removed. Consequently, provisions in relation to the permissible transfers of units subject to perpetual lock-in, under Regulation 11(4) and Regulation 11(5) of the REIT Regulations, have also been omitted.
   - New sub-regulations have been introduced to provide that no person (taken together with persons acting in concert), other than the sponsor(s), their related parties and their associates, can acquire units of an InvIT or REIT, which when taken together with units held by such

person and persons acting in concert with such person, would exceed 25% of the value of the outstanding units of an InvIT or a REIT, unless the approval of 75% of the unitholders by value (excluding the value of units held by related parties to the transaction) is obtained. Where such unitholder approval is not received, the proposed acquirer is required to give an exit opportunity to dissenting unitholders to the extent and in the manner specified by SEBI.

- Insurance companies and mutual funds have been included within the definition of 'strategic investor' respectively under InvIT Regulations and REIT Regulations.

(SEBI Notification No. SEBI/LAD-NRO/GN/2020/15 dated June 16, 2020 and SEBI Notification No. SEBI/LAD-NRO/GN/2020/16 dated June 16, 2020)

2. *Widening of scope of Category I FPIs to include entities from additional countries*

SEBI has amended the SEBI (Foreign Portfolio Investors) Regulation, 2019 to provide that Category I FPIs will include entities from not only the Financial Action Task Force member countries but also any country specified by the Central Government by an order or by way of an agreement or treaty with other sovereign Governments.

(SEBI Notification No. SEBI/LAD-NRO/GN/2020/09 dated April 07, 2020)

II. Board Meeting/ Press Release

1. *Approval of amendments to Insider Trading Regulations and Settlement Regulations*

Various key decisions were made by SEBI in the board meeting held on June 25, 2020. In addition to the decisions already implemented till June 30, 2020 through amendments to the ICDR Regulations and the Takeover Regulations, SEBI has *inter alia* taken the following decisions:

- Certain amendments to be made to the SEBI (Prohibition of Insider Trading) Regulations 2015 ("**PIT Regulations**"), pursuant to which a structured digital database is to be maintained containing the nature of unpublished price sensitive information and the names of persons who have shared the information, automation of process for filing disclosures with stock exchanges, restriction on trading window not to be made applicable for transactions as prescribed by SEBI, entities to file the non-compliances of Code of Conduct with the stock exchanges, etc.
- Certain amendments to be made to the SEBI (Settlement Proceedings) Regulations, 2019 ("**Settlement Regulations**"), pursuant to which, promoters are to be included along with the principal officer for calculation of the base amount in terms of Table X of Schedule II; base amount for alleged defaults relating to open offer violations, where the making of the open offer has become infructuous, is to be rationalised, etc.

(SEBI Press Release No. 36 of 2020 dated June 25, 2020)

III. Informal Guidance and Reports

1. *Informal Guidance in respect of reclassification of promoters under the Listing Regulations*

Mirza International Limited ("**Company**") sought an informal guidance on whether married daughters of the Managing Director/Whole Time Director, holding more than 10% of the total voting rights in the Company, living their separate lives and having no involvement in the management of the Company, be reclassified from the 'promoter and promoter group' category to 'public' category under Regulation 31A of the Listing Regulations.

SEBI observed that by virtue of the definition of 'promoter group' under the ICDR Regulations, the daughters of the promoter are immediate relatives of the promoter and form part of the promoter group irrespective of the fact that they are married, living a separate life and having any involvement in the management of the Company. Accordingly, SEBI concluded that the daughters of the promoter are not eligible to seek reclassification from the 'promoter and promoter group' category to 'public' category.

(SEBI Informal Guidance No. SEBI/HO/CMD1/OW/2020 dated June 10, 2020)

2. *Informal Guidance regarding the permissibility of the same entity acting as the investment manager for multiple InvITs*

India Infrastructure Trust ("**IIT**") had sought an interpretive letter from SEBI as to whether (i) an entity which is the investment manager ("**IM**") of an InvIT can be appointed the IM of other InvITs that may be set up and registered with SEBI in the future; and (ii) the restriction under Regulation 4(2)(e)(v) of the InvIT Regulations (i.e. restriction on common independent directors / independent members of the governing boards of two InvITs) is applicable to such an IM.

SEBI has clarified, among other things, that there is no provision in the InvIT Regulations preventing an IM to act as such in respect of more than one InvIT. SEBI has based this clarification on the provisions of Regulation 19(4) of the InvIT Regulations, which states that a transaction between InvITs with common IMs shall be deemed to be related party transactions. Further, the proviso to Regulation 19(4) of the InvIT Regulations states that Regulation 19(4) shall also apply where IMs or sponsors of InvITs are different entities but are associates.

Additionally, SEBI has observed that the prohibition under Regulation 4(2)(e)(v) of the InvIT Regulations, which requires that the independent directors / independent members of the governing board of an IM shall not be directors / members of the governing board of an IM of another InvIT, shall not be applicable in the case of a single entity acting as IM to multiple InvITs.

(SEBI Informal Guidance No. SEBI/HO/DDHS/OW/P/9109/ 2020 dated March 12, 2020)

3. *High level committee report on measures for strengthening the SEBI's enforcement mechanism and incidental issues*

A committee was formed on December 14, 2017 under the Chairmanship of Justice A. R Dave (Retd.) to: (i) review the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014; (ii) review the enforcement mechanism of SEBI, in particular, the recovery mechanism under the securities laws; and (iii) explore means of legislating a methodology for quantification of the factors to be taken into account by the adjudicating officer as indicated in Section 15J of the SEBI Act, 1992, Section 19I of the Depositories Act, 1996 and Section 23J of the Securities Contracts (Regulation) Act, 1956 ("**Committee**"). The Committee has now submitted the Report on Measures for Strengthening the Enforcement Mechanism of the Board and Incidental Issues. The following are the key aspects covered in this report:

- ***Review of Intermediaries Regulations:***
  - The Committee has recommended the streamlining of the processes under the SEBI (Intermediaries) Regulations, 2008 to avoid duplicity of proceedings before the Designated Authority and the Designated Member.
- ***Recovery of monies due under the securities laws:***
  - The Committee has recommended the issuance of comprehensive regulations for recovery, to clarify issues relating to recovery in the context of the securities laws.
  - The Committee has also recommended that the securities laws enactments be amended to clarify the power of SEBI to make regulations relating to recovery.
- ***Quantification of profit and loss and related issues:*** Due to the growing complexities of securities laws violations, the Committee has advocated the use of financial economics as used in other securities jurisdictions and has re-worked the manner of quantification of profit and also provided for quantification of loss caused to the investors along those lines.
- ***Interface between securities laws and insolvency law:***
  - The Committee has looked into the law of trusts that underpins fund raising activities in the securities markets. The Committee suggests that the position of investors in securities as beneficiaries of a trust rather than as mere creditors needs to be recognised by the Insolvency & Bankruptcy Code, 2016 ("**Code**") and the rules and regulations made thereunder.
  - The Committee has highlighted concern in the manner in which the moratorium provisions of the Code are being interpreted, since this has the potential to curtail the ability of SEBI to protect the interest of investors since defaulters of securities laws may use the Code as a refuge from legal proceedings at the cost of public interest.
  - The Committee notes that provisions pertaining to individual insolvency could have a huge impact on the liability of promoters, directors and other individual defaulters of securities laws. Unless certain changes are made in the Code, such individuals may be able to use the Code to defeat public interest.
  - In view of the above concerns, the Committee has examined the insolvency, recovery and securities laws jurisprudence of India and abroad and suggested suitable changes in the Code to ensure that insolvency law is not used as a refuge by defaulters, thereby protecting the interest of investors.

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