



**PSL** Advocates  
& Solicitors

## **PSL Release**

### **Pricing in Preferential Issue of Shares of Companies having Stressed Assets**

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## **Introduction**

The ICDR Amendment is complimented by the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2020 (“SAST Amendment”) issued by SEBI vide notification number No. SEBI/LAD-NRO /GN/2020/19 dated 22.06.2020 to amend the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“SAST Regulations”).

The ICDR Regulations inter alia lay down pricing requirements for preferential issue of frequently and infrequently traded equity shares of listed companies. Additionally, the SAST Regulations specify open offer obligations in case of acquisition of shares exceeding thresholds specified therein. The ICDR Amendment read with SASR Amendment prescribes new and relaxed requirements for pricing of equity shares and open offer obligations in case of a preferential issue by companies having stressed assets. An overview of these requirements is given below:

### **Minimum pricing of frequently trading shares**

The pricing shall not be less than weekly average of high and low of the volume weighted average price of related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date as per the Regulations, in contrast to the earlier period of 26 weeks where it resulted in a higher average.

### **Lock-in Period**

Three years from last date of trading approval.

### **Eligibility conditions for allotment of equity shares**

Issuing company must satisfy any two of the following three criteria:

- a. Issuer has disclosed all the defaults continuing for at least 90 calendar days relating to the payment of interest or repayment of principal amount on loans from banks, financial institutions, NBFC(s) and/or the listed or unlisted debt securities in terms of SEBI’s relevant circular on disclosure of defaults;
- b. There is an Inter-creditor agreement in terms of Reserve Bank of India’s directions for resolution of stressed assets
- c. Credit rating of the financial instruments (listed or unlisted), credit instruments / borrowings (listed or unlisted) of the listed company has been downgraded to “D”.

### **Persons to whom preference issue can be made**

A person who is not a part of the promoter or promoter group as on the date of board meeting for consideration of preferential issue.

### **Persons to whom preference issue cannot be made**

- a. Undischarged insolvents in terms of the Insolvency and Bankruptcy Code, 2016

- b. Wilful defaulters as per Reserve Bank guidelines
- c. Persons disqualified to act as director under the Companies Act, 2013
- d. Persons or entities debarred from trading in securities or accessing security markets by SEBI unless, the period of debarment imposed in the past has already expired as on the date of board meeting for considering preferential issue
- e. Declared fugitive economic offender
- f. Person convicted of an offence punishable with imprisonment:
  - o For two years or more under any Act specified under Twelfth Schedule of the of the Insolvency and Bankruptcy Code, 2016, or
  - o For seven years or more under any other law for the time being in force; unless two years have passed from the date of the person's release from imprisonment
- g. Persons who have executed a guarantee in favour of a lender of the issuer and such guarantee has been invoked by the lender and remains unpaid in full or part.

#### **Approval thresholds for resolution for preferential issue and for exemption from open offer obligations:**

- Simple majority i.e. proposal would be passed when votes cast in its favour are more than votes cast against it, where voters are shareholders of 'public' category not already holding specified securities;
- Three-fourth majority i.e. resolution would be deemed to have been passed if votes cast in its favour are not less than three times the number of votes cast against it, if any, where the promoter is not identifiable.

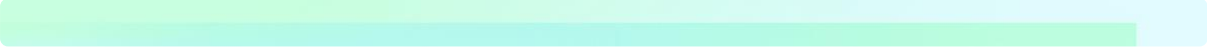
#### **Conditions on use of proceeds of preferential issue:**

- Proposed use has to be disclosed in the explanatory statement sent for the purpose of the shareholders resolution.
- Proceeds cannot be used for any repayment of loans taken from promoters, promoter group and group companies.

#### **Monitoring of use of proceeds of preferential issue:**

- Issuer shall put in place an arrangement with public financial institution or by a scheduled commercial bank, which is not a related party, for monitoring the use.
- Monitoring agency shall submit quarterly reports in the specified format under Schedule XI of the Regulations to the issuer until at least ninety five percent of the proceeds have been utilised.
- Issuer's Board of Directors and management shall then provide their comments on the findings in the report.
- Issuer shall publicly disseminate the report through its website and submit it to the stock exchange where its stocks are listed within forty-five days from end of each quarter.
- The audit committee shall also monitor use of all of the proceeds.

#### **Certify Compliance**



The statutory auditor and the audit committee shall certify that all conditions under points 'A', 'C', 'D', 'E', 'F' and 'G' above are met at the time of dispatch of notice for general meeting proposed for passing the special resolution and at the time of allotment of shares.