

## *Amendments to Regulations for Preferential Allotment by Listed Companies*

Vide a Notification dated January 14, 2022 ([available here](#)), the Securities and Exchange Board of India (“SEBI”) has *inter alia* amended the provisions pertaining to preferential allotment in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“ICDR”). The key amendments are as follows:

Earlier Regulation	Amended Regulation
Preferential allotment could not be made to a person who has transferred equity shares of the issuer during the <b><u>six months</u></b> preceding the relevant date	Preferential allotment can not be made to any person who has transferred equity shares of the issuer during the <b><u>90 trading days</u></b> preceding the relevant date
No equivalent provision	An company cannot conduct a preferential issue if it has outstanding dues to SEBI, the stock exchanges or the depositories, unless a proceeding disputing the dues has been admitted.

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Earlier Regulation	Amended Regulation
No timeline was prescribed for dematerialisation of the new shares, or procuring the PAN of the allottees.	The issuer has to dematerialise the new shares and procure the PAN of the allottees (except those who are exempt), <b><u>prior to making an application for in-principle approval for listing to the stock exchanges.</u></b>
No timeline was prescribed for the issuer to make the application for in-principle approval for listing, to the stock exchanges.	The application seeking in-principle approval must be made <b><u>on the day of the notice convening a general meeting</u></b> for approving the issuance.
There was no timeline prescribed for issuance of equity shares, pursuant to exercise of an option to convert any convertible securities.	The issuer is required to allot equity shares pursuant to exercise of any convertible securities <b><u>within 15 days from the date of such exercise.</u></b>

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Earlier Regulation	Amended Regulation
No equivalent provision.	The notice convening the general meeting for approving the issuance must disclose the <b><u>status of the allottee as a promoter/non-promoter</u></b> , both pre and post allotment.
The issuer was required to place a <b><u>compliance certificate from its statutory auditors</u></b> before the general meeting convened for approving the issue, certifying that the issue was compliant with the ICDR.	The compliance certificate shall now be procured from a <b><u>practicing company secretary</u></b> . The certificate has to be hosted on the website of the issuer, and a link provided in the notice for the general meeting convened for approving the issue.
For issue of shares for consideration other than cash, the <b><u>nature of the non-cash consideration was not prescribed</u></b> .	Shares can be issued for consideration other than cash, if the <b><u>non-cash consideration is in the form of swap of shares</u></b> . Further, a valuation report of such shares by an independent registered valuer, shall be submitted to the stock exchanges

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Earlier Regulation	Amended Regulation
<p>Earlier, the pricing of the shares being allotted was determined considering the average of the <b><u>weekly high and low</u></b> of the volume weighted average price for a certain period.</p>	<p>Now, the following provisions apply with respect to pricing of the shares being allotted:</p> <p>(a) The volume weighted average price will be considered. The weekly high and low weighted average has been done away with.</p> <p>(b) The period to be considered for determining the price has been reduced in all cases.</p> <p>(c) <b><u>Methods of determination specified in the articles of association, which results in a higher floor price, must be considered.</u></b></p> <p>(d) For <b><u>allotments of more than 5% of the fully diluted capital, or causing a change in control, the price determined by an independent registered valuer must be considered.</u></b> Such valuation report should take the control premium into consideration, over and above the price.</p>



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Earlier Regulation	Amended Regulation
No equivalent provision	Preferential allotments to QIBs who are promoters or related to the promoters are not permitted. This includes: (a) QIBs who have rights under a shareholders' agreement or voting agreement entered into with promoters or promoter group (b) veto rights; or (c) right to appoint a nominee director. QIBs who have rights as a lender, and don't hold shares, are exempted. <b>Note:</b> It is not clear if this prohibition extends to all preferential allotments, or only allotments under the QIB sub-section.
<i>"Frequently traded shares"</i> meant shares in which the traded turnover on a stock exchange during the <b><u>twelve calendar months</u></b> preceding the relevant date, is at least ten per cent of the total number of shares of such class of shares of the issuer.	<i>"Frequently traded shares"</i> means shares in which the traded turnover on a stock exchange during the <b><u>240 trading days</u></b> preceding the relevant date, is at least ten per cent of the total number of shares of such class of shares of the issuer

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Earlier Regulation	Amended Regulation
For infrequently traded shares, the pricing was to be supported by a compliance certificate from an <b><u>independent valuer</u></b> .	Now, a certificate from an <b><u>independent registered valuer</u></b> must be procured for allotments of infrequently traded shares.
No equivalent provision	For <b><u>allotments of more than 5%</u></b> of the fully diluted capital, or <b><u>causing a change in control</u></b> , a <b><u>valuation report of an independent registered valuer</u></b> must be procured, published on the website, and referred to in the notice of the general meeting for approving the issuance.
No equivalent provision	Allotments resulting in a <b><u>change of control</u></b> shall only be made pursuant to a reasoned <b><u>recommendation from a committee of independent directors</u></b> . All independent directors must attend the committee meeting, and the voting pattern must be disclosed in the notice convening the general meeting for approving the issue



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Earlier Regulation	Amended Regulation
<p>Lock-in period from the trading approval for securities issued pursuant to a preferential allotment was as follows:</p> <p>(a) issued to promoters/ promoter groups – <u>3 years upto 20% of the share capital, and 1 year beyond 20%</u></p> <p>(b) Issued to other persons – <u>1 year</u></p>	<p>Now, the lock-in period from the trading approval for securities issued pursuant to a preferential allotment is :</p> <p>(a) Issued to promoters/ promoter groups – <u>18 months upto 20% of the share capital, and 6 months beyond 20%</u></p> <p>(b) Issued to other persons – <u>6 months</u></p>
<p>Pre-preferential allotment holdings of allottees were locked-in from the relevant date up to a period of <u>six months</u> from the date of trading approval.</p>	<p>Pre-preferential allotment holdings of allottees is now locked-in from the relevant date up to a period of <u>90 trading days</u> from the date of trading approval.</p>
<p>No equivalent provision</p>	<p>Lock-in requirements for an allottee who has become a promoter due to change in control pursuant to the preferential issue shall be the same as the promoters/ promoter group.</p>



## *Amendments to Regulations for Preferential Allotment by Listed Companies*

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No equivalent provision	Locked-in specified securities (except SR equity shares) held by promoters may be pledged as collateral for a loan granted by a scheduled commercial bank or a public financial institution or a systemically important NBFC or a housing finance company if: (a) For a loan to the issuer or its subsidiary for the purpose of financing one or more of the objects of the issue; (b) The pledge is one of the conditions for sanction; and (c) Any transfer pursuant to invocation of the pledge must be made after the lock-in has expired.

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