

Amendments for pricing of shares for allotment pursuant to preferential issue under the ICDR Regulations, 2018

Securities and Exchange Board of India (Issue of Capital and Disclosure Requirement [ICDR]) Regulations, 2018 dictate the rules and regulations in relation to issue of capital and its disclosures thereafter. These regulations are applicable to the following entities:

- a) an initial public offer by an unlisted issuer;
- b) a rights issue by a listed issuer; where the aggregate value of the issue is ten crore rupees or more;
- c) a further public offer by a listed issuer;
- d) a preferential issue by a listed issuer;
- e) a qualified institutions placement by a listed issuer;
- f) an initial public offer of Indian depository receipts;
- g) a rights issue of Indian depository receipts;
- h) an initial public offer by a small and medium enterprise;
- i) a listing on the institutional trading platform through an issue or without an issue; and
- j) a bonus issue by a listed issuer

Further, these regulations shall not apply to issue of securities under clause (b), (d) and (e) of sub-regulation (1) of regulation 9 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Section 164 of the ICDR regulations dictates the rules for determining the price of frequently traded shares to be allotted pursuant to the preferential issue of such shares. For the purposes of this section, 'frequently traded shares' means the shares of the issuer, in which the traded turnover on any recognised stock exchange during the twelve calendar months preceding the relevant date, is at least 10 % of the total number of shares of such class of shares of the issuer: Provided that where the share capital of a particular class of shares of the issuer is not identical throughout such period, the weighted average number of total shares of such class of the issuer shall represent the total number of shares.

Section 164A of the ICDR regulations dictates the rules for pricing in preferential issue of shares of companies having stressed assets (inserted on 22 June 2020). Section 164B introduced in the amended regulations acts as an optional pricing mechanism in addition to the mechanism laid down in section 164 and is **valid from 1 July 2020 to 31 December 2020 only**.

As per an amendment to the ICDR regulations notified on 1st July 2020, the pricing mechanism of frequently traded shares has been amended as follows:

Before Amendment	After Amendment
<p>Section 164:</p> <p>1) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of twenty six weeks or more as on the relevant date, the price of the equity shares to be allotted pursuant to the preferential issue shall be not less than higher of the following:</p> <ol style="list-style-type: none"> a) the average of the weekly high and low of the volume weighted average price of the related equity shares quoted on the recognised stock exchange during the twenty six weeks preceding the relevant date; or b) the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date. <p>2) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of less than twenty six weeks as on the relevant date, the price of the equity shares to be allotted pursuant to the preferential issue shall be not less than the higher of the following:</p> <ol style="list-style-type: none"> a) the price at which equity shares were issued by the issuer in its initial public offer or the value per share arrived at in a scheme of compromise, arrangement and amalgamation under sections 391 to 394 of the Companies Act, 1956 or sections 230 to 234 the Companies Act, 2013, as applicable, pursuant to which the equity shares of the issuer were listed, as the case may be; or 	<p>Section 164B (refer below) as an option to section 164 (refer ‘Before Amendment’ column):</p> <ol style="list-style-type: none"> 1) In case of frequently traded shares, the price of the equity shares to be allotted pursuant to the preferential issue shall be determined by regulation 164 or regulation 164B, as opted for. 2) The price of the equity shares to be allotted pursuant to the preferential issue shall not be less than the higher of the following: <ol style="list-style-type: none"> a) the average of the weekly high and low of the volume weighted average price of the related equity shares quoted on the recognised stock exchange during the twelve weeks preceding the relevant date; or b) the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date. 3) Specified securities allotted on a preferential basis using the pricing method determined under sub-regulation (2) shall be locked-in for a period of three years. 4) The pricing method determined at sub-regulation (2) shall be availed in case of allotment by preferential issue made between 1 July 2020 or from the date of notification of this regulation, whichever is later and 31 December 2020. 5) All allotments arising out of the same shareholders approval shall follow the same pricing method.”

Source: Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2020

Before Amendment	After Amendment
<p>b) the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on the recognised stock exchange during the period the equity shares have been listed preceding the relevant date; or</p> <p>c) the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.</p> <p>3) Where the price of the equity shares is determined in terms of sub-regulation (2), such price shall be recomputed by the issuer on completion of twenty six weeks from the date of listing on a recognised stock exchange with reference to the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on the recognised stock exchange during these twenty six weeks and if such recomputed price is higher than the price paid on allotment, the difference shall be paid by the allottees to the issuer.</p> <p>4) A preferential issue of specified securities to qualified institutional buyers, not exceeding five in number, shall be made at a price not less than the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.</p>	

Source: Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2020

Note:

According to Section 166 of ICDR regulations, The price determined for a preferential issue in accordance with regulation 164 or regulation 165, shall be subject to appropriate adjustments, if the issuer:

- a) makes an issue of equity shares by way of capitalization of profits or reserves, other than by way of a dividend on shares;
- b) makes an issue of equity shares after completion of a demerger wherein the securities of the resultant demerged entity are listed on a stock exchange;
- c) makes a rights issue of equity shares;
- d) consolidates its outstanding equity shares into a smaller number of shares;
- e) divides its outstanding equity shares including by way of stock split;
- f) re-classifies any of its equity shares into other securities of the issuer;
- g) is involved in such other similar events or circumstances, which in the opinion of the concerned stock exchange, require adjustments.