

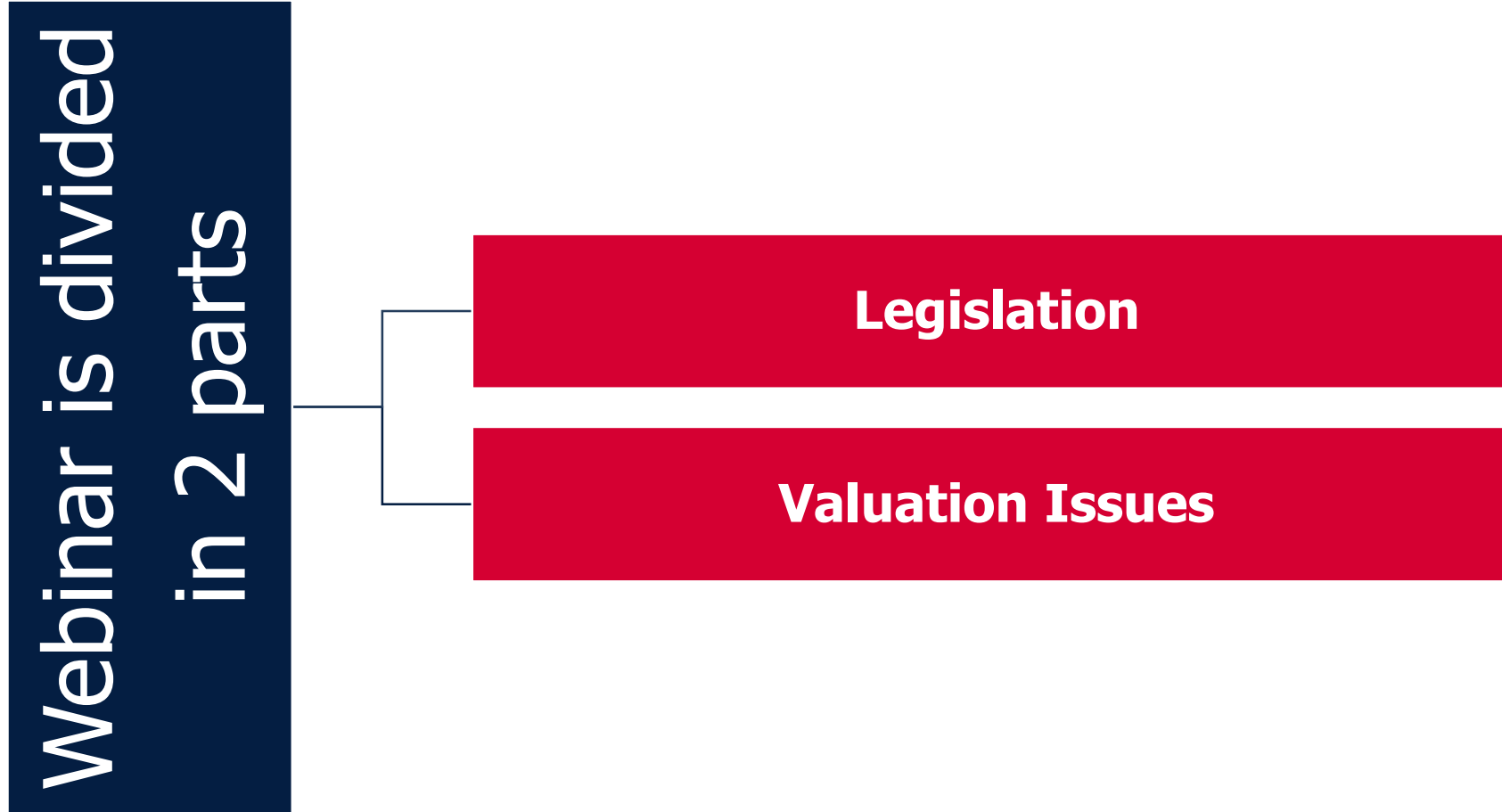


# Preferential Issue of Equity Shares

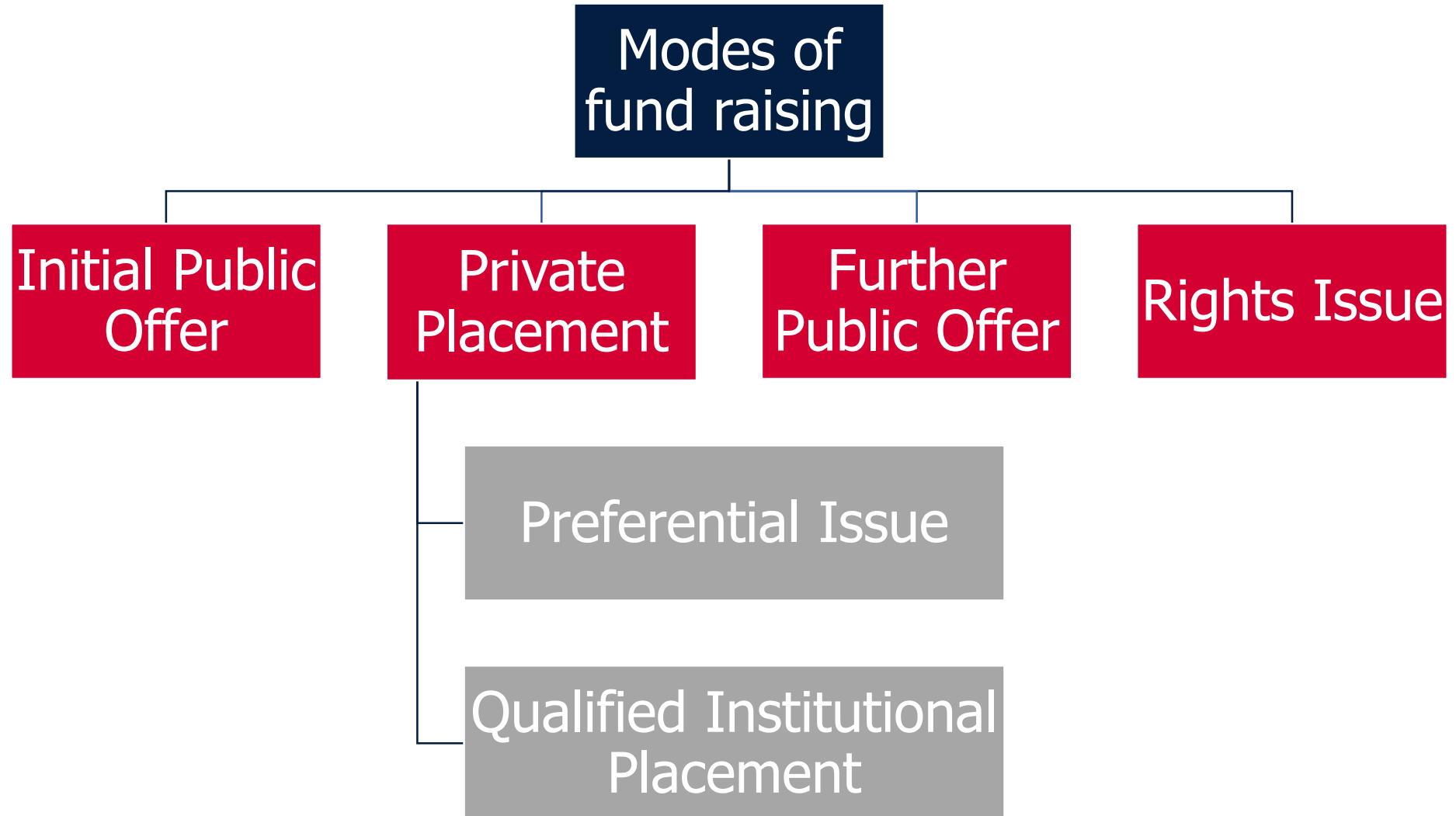
**Ups & Downs in the recent times**

# Parts of Webinar

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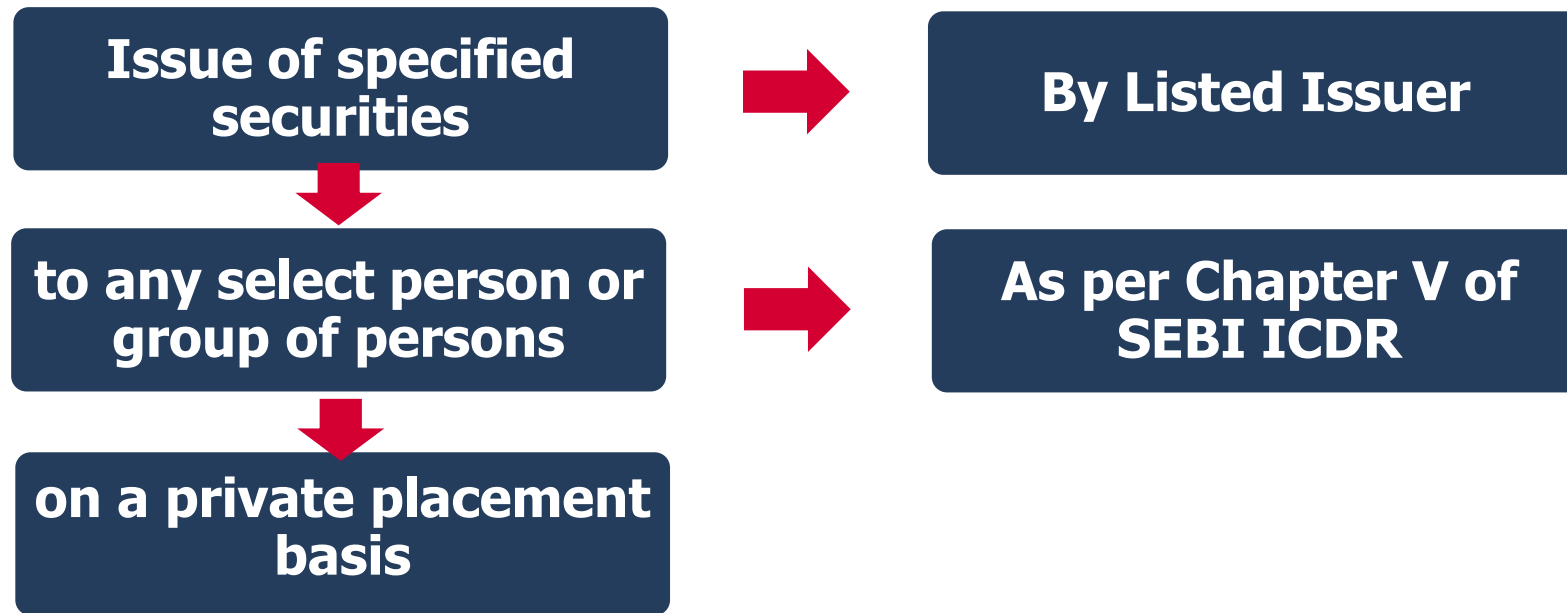
# Modes of fund raising



# What is Preferential Issue

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**Preferential Issue is a sub categorization of Private Placement;  
Preferential Issue=Private Placement of equity shares/convertible securities, to a  
selected group of persons. SEBI ICDR defines it as:**



## **EXCLUDE**

**ESOP/ESPS/Sweat Equity/Depository Receipts issued in a country outside India  
or foreign securities**



# Recent Preferential Issues

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**240 Cr.**



**500 Cr.**



**551 Cr.**



**101 Cr.**



**668 Cr.**



**4800 Cr.**



# LEGISLATION



# **Laws Applicable on a Preferential Issue**

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- **Companies Act, 2013**
- **SEBI ICDR 2018**
- **SCRA, 1956**
- **Depositories Act, 1996**
- **FEMA 1999**
- **FDI Policy**
- **RBI Act**
- **SEBI LODR 2015**
- **SEBI PIT Regulations**
- **SEBI Takeover Code**





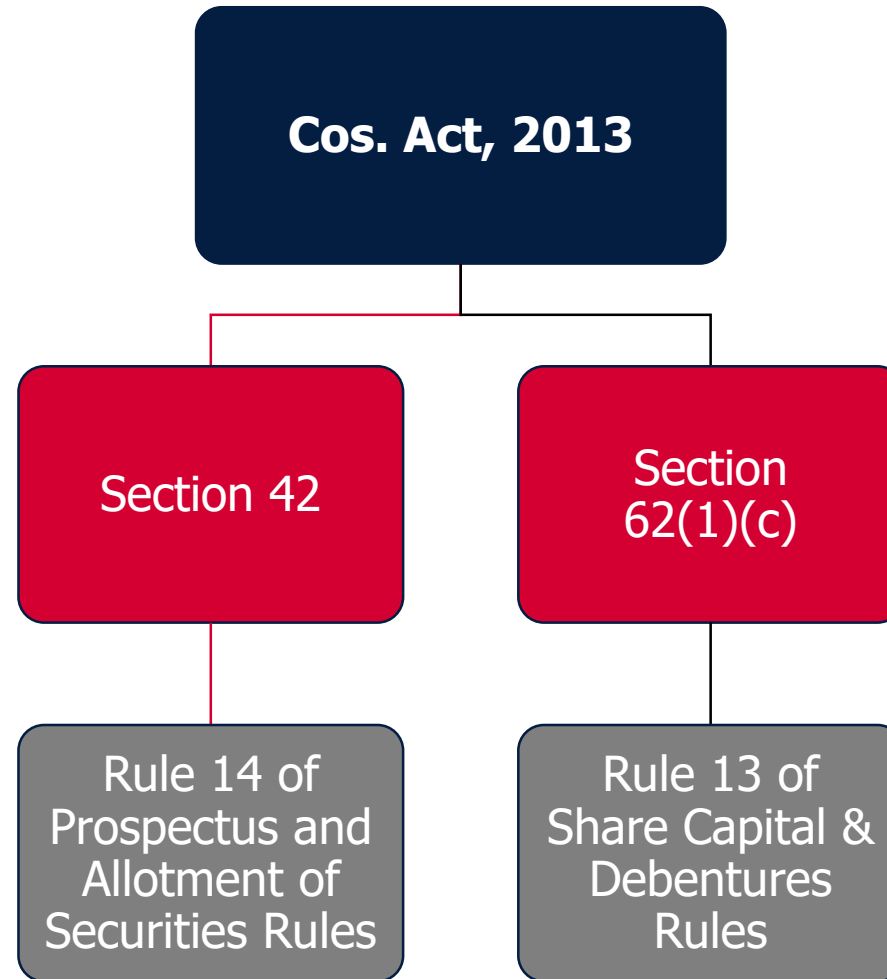
# Preferential Allotment.....under various Laws

PARTICULARS	COMPANIES ACT (SECTION 42)	COMPANIES ACT (SECTION 62)	SEBI LODR	SEBI ICDR
<b>Eligibility</b>	<200 investors	-	-	No Sale by the allottee Within Last 6 months
<b>Issue of</b>	Securities	Shares or other Securities	Specified Securities	Specified Securities
<b>Shareholders Approval</b>	Yes, Special Resolution	Yes, Special Resolution	-	Yes, Special Resolution
<b>Offer Document</b>	Yes	-	-	-
<b>Consideration</b>	Through Banking Channels, No cash	Through Banking Channels or consideration other than cash	-	Banking Channels/Consideration other than cash
<b>Disclosure document</b>	In the Offer Document	In the GM Notice	-	In the GM Notice
<b>Pricing</b>		For Unlisted Companies by Registered Valuer	-	As per pricing methodology, depending upon Frequently Traded/ Infrequently Traded scrip
<b>Valuation report</b>	Not required	Required(for an unlisted co)	-	CA Certificate needed for pricing
<b>Allotment periods</b>	60 days from receipt of money	Within a period of 12 months	-	15days from shareholders' approval/ regulatory approval, whichever is later
<b>Listing Application</b>	-		20 days of allotment	-





# Companies Act, 2013 provisions on Preferential Issue



**Rule 13 is applicable only on unlisted companies**



# Compliances of Companies Act, 2013 (Applicable on all Companies)

*Section 42 read with Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014*



*Bible for all types of issues to a specific group of persons*

*Section 62 read with Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014*

*Section 71 read with Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014*

**Private Placement**

**Preferential Offer**

*Issuance of Redeemable Preference Shares*

*Issuance of Redeemable Debentures*

*Section 55 read with Rule 9 & 10 of the Companies (Share Capital and Debentures) Rules, 2014*



# **SEBI ICDR, 2018 provisions on Preferential Issue**

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## **SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018**

### **Chapter V**

**Regulation 158**

**TO**

**Regulation 170**



# The Preferential Issue transactions OUT OF PURVIEW OF SEBI ICDR Chapter V



Conversion of a loan or an option attached to convertible debt instruments

A scheme approved by a High Court /Tribunal **Except** for pricing norms

Preferential issue under a BIFR scheme/ RP **Except** for lock-in provisions

Qualified Institutions Placement if done as per Chapter VI of ICDR

Pricing and lock-in norms are not applicable on Preferential Issue to financial institution pursuant to Recovery of Debts

Provisions related to EGM Notice Disclosures and Pricing are not applicable if exemption granted as per Regulation 11 of SAST

6 Months No sale of Share and Lock-in of Pre Pref Holding is not applicable for Preferential Issues to Mutual Fund or insurance company or a scheduled commercial bank or a public financial institution.



## Pre requisites

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A listed issuer making a preferential issue of specified securities shall ensure that:

- Equity Shares being allotted to be fully paid up at the time of the allotment;
- a special resolution has been passed by its shareholders;
- allotment in dematerialized form;
- the issuer is in compliance with conditions of continuous listing;
- Disclosures in Notice of General Meeting viz. Objects, No. of Securities, Intent of Promoters etc, Pre & Post, details of Ultimate Beneficial Owners, status of Wilful defaulter and prescribed Undertakings

# Pre requisites

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## **A listed entity shall not make Preferential Allotment to following:**

- A persons who have sold any equity shares of company during last 6 months preceding the relevant date;
- If Sale/ Transfer by any person belonging to Promoter/ Promoter Group,



*Entire Promoter/ Promoter Group will become ineligible, if any shares sold last 6 months preceding the relevant date;*

- No previously unsubscribed/ cancelled warrants of Promoter/ Promoter Group during last 1 year.
- None of the promoters/ directors should be fugitive economic offenders.

# Concept of Relevant Date

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**Relevant date is base date to decide eligibility criteria and pricing of issue.**

## **What it is ?**

A **date 30 days prior to the date of General meeting** to consider the proposed preferential issue.

Eg. Date of GM = 30-07-2021 then Relevant date will be 30-06-2021

## **What if the Relevant Date falls on a weekend or a holiday ?**

*The **DAY PRECEDING** the weekend or the holiday will be reckoned to be the relevant date.*

## **Relevant Date in case of Convertible Securities ?**

Either above or date 30 days prior to the date on which the holders of the convertible securities become entitled to apply for the equity shares.





## Tenure of convertible securities

The tenure of the convertible securities of the issuer shall not exceed **18 months** from the date of their allotment.

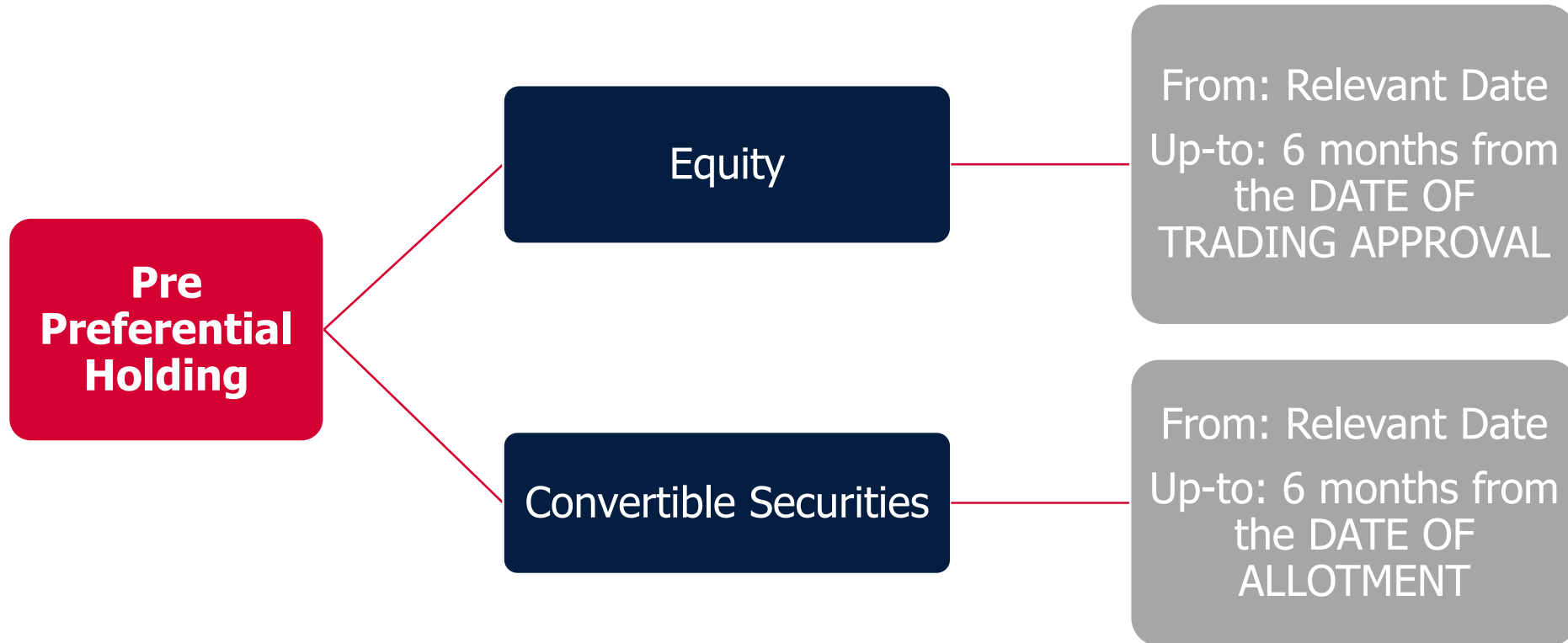




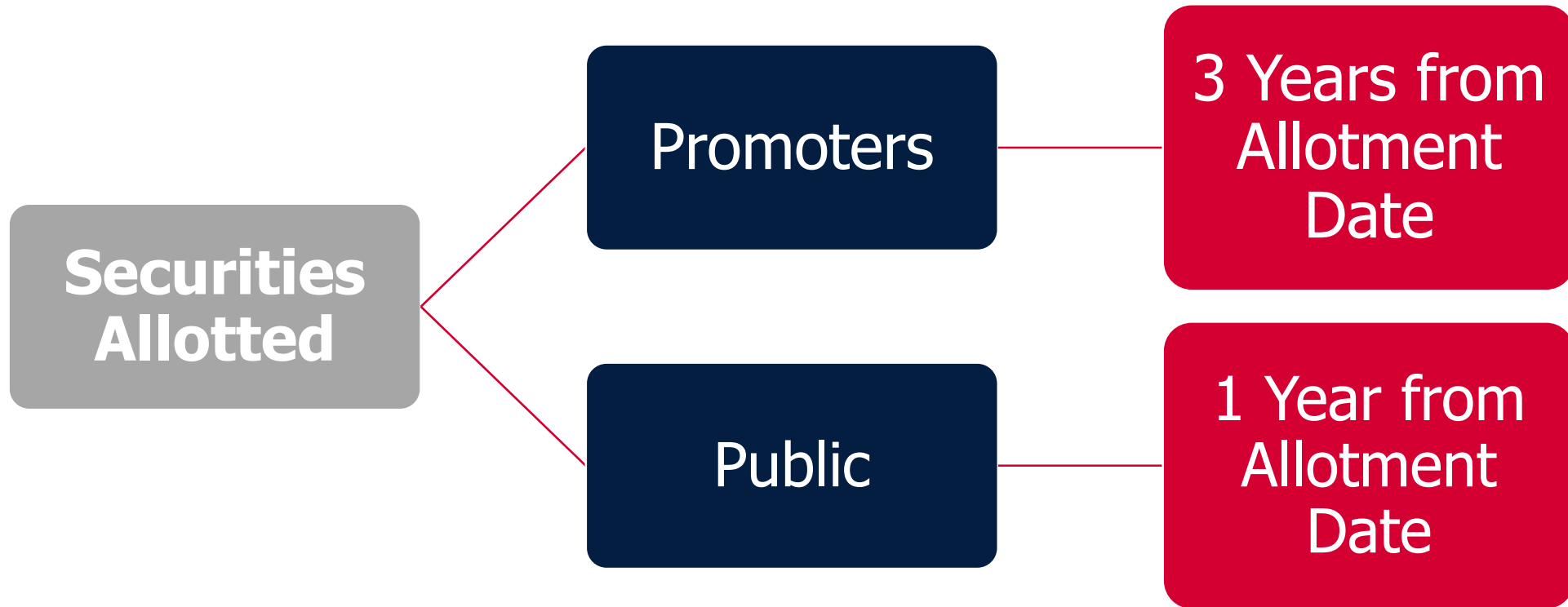
# LOCK-IN PROVISIONS



# Lock-in Provisions



# Lock-in Provisions



# Lock-in Provisions

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**What will be the Lock-in of Equity Shares allotted pursuant to Conversion of Convertible Securities ?**

**It will be reduced to the extent the convertible securities (except Warrants) have already been locked-in prior to conversion.**

**Any situation where Lock-in period extends ?**

**If the amount payable by the allottee, in case of re-calculation of price is not paid till the expiry of lock-in period, Lock In Extends until such amount is paid by the allottee.**

**What will be the Lock-in of Equity Shares allotted pursuant to Resolution of Stressed Assets?**

**1 Year from date of Trading Approval**



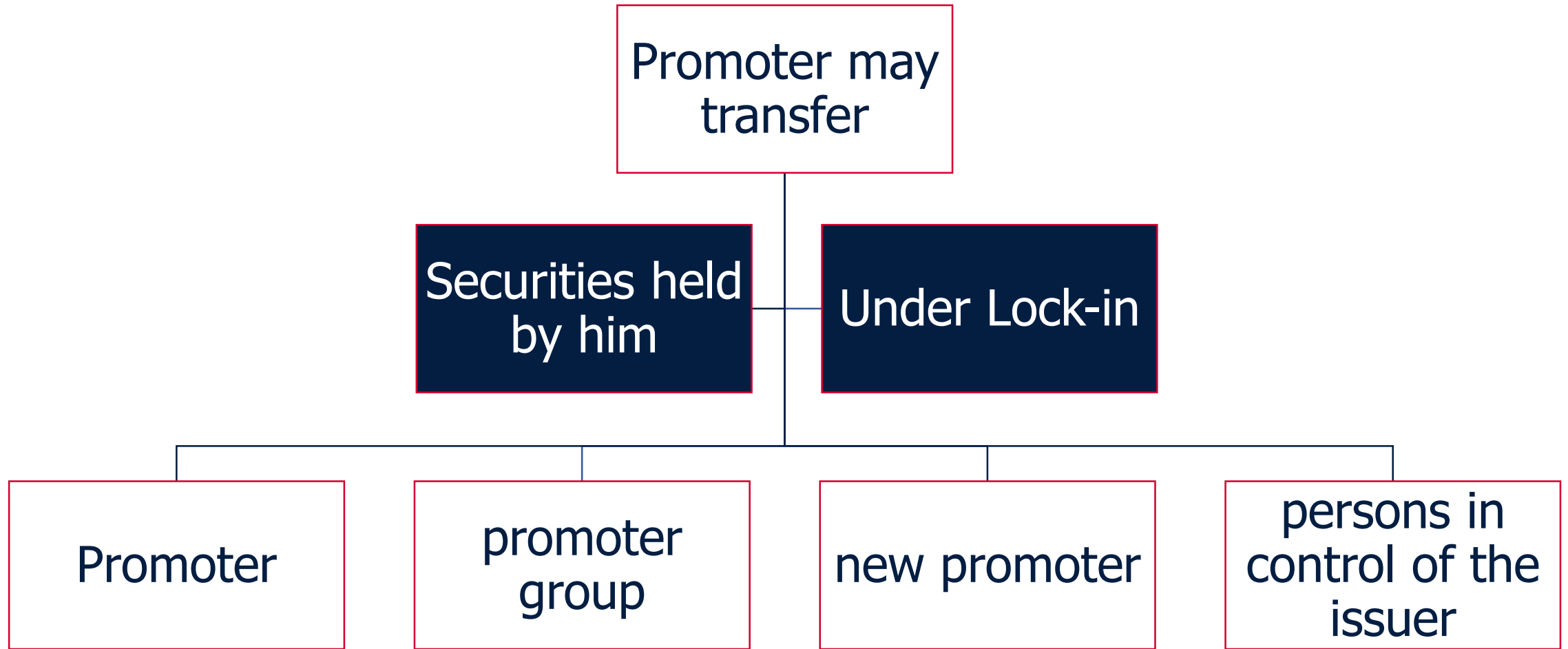
## Query

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The tenure of convertible securities is 18 months, while the lock in only 12 months, does this mean that Warrants/ CCDs/ CCPS are transferable after the lapse of 1 year lock in period??



# Transferability under Lock-in

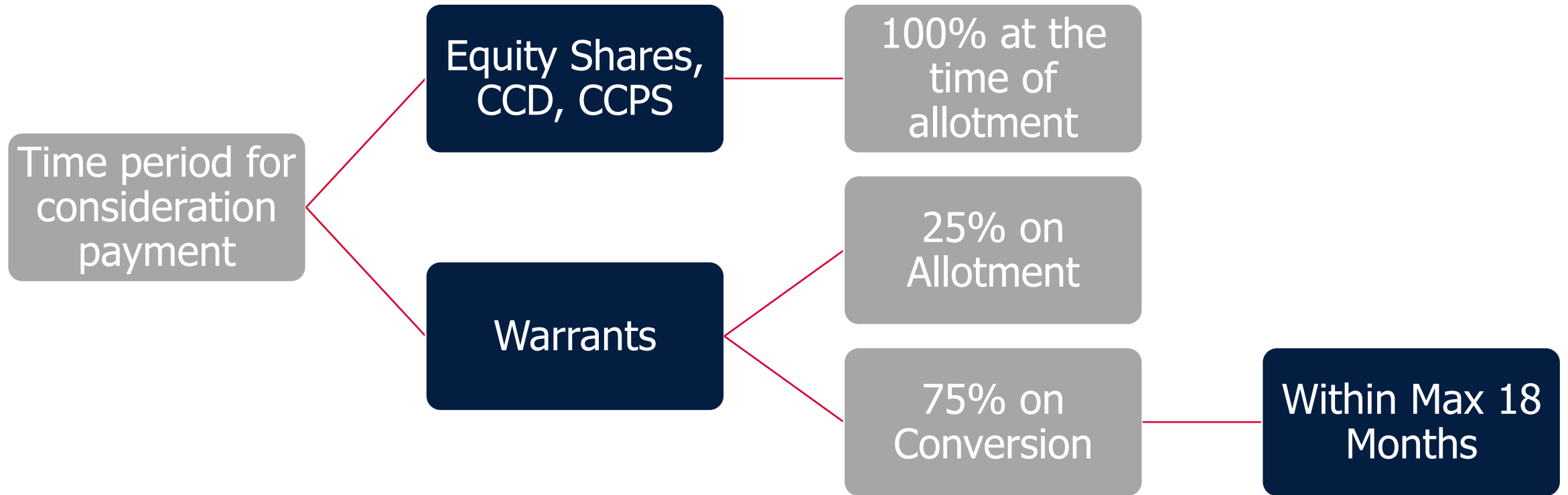


***Provided that the lock-in on such specified securities shall continue for the remaining period with the transferee.***





# Payment of Consideration



***For Pref Issue in case of Stressed Asset resolution - The consideration may be in terms of such scheme specify.***



# Allotment

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**Allotment shall be completed within a period of 15 days from the date of passing of such resolution:**

Exemptions:

- 15 days shall be counted from getting required regulatory approvals
- If there is any SEBI Exemption under SAST, then such time as may be specified in the SEBI Order
- Allotment pursuant to RP for stressed assets.

**What if Issuer fails to make allotment in 15 days ?**

Take Fresh Special Resolution with revised Relevant Date.

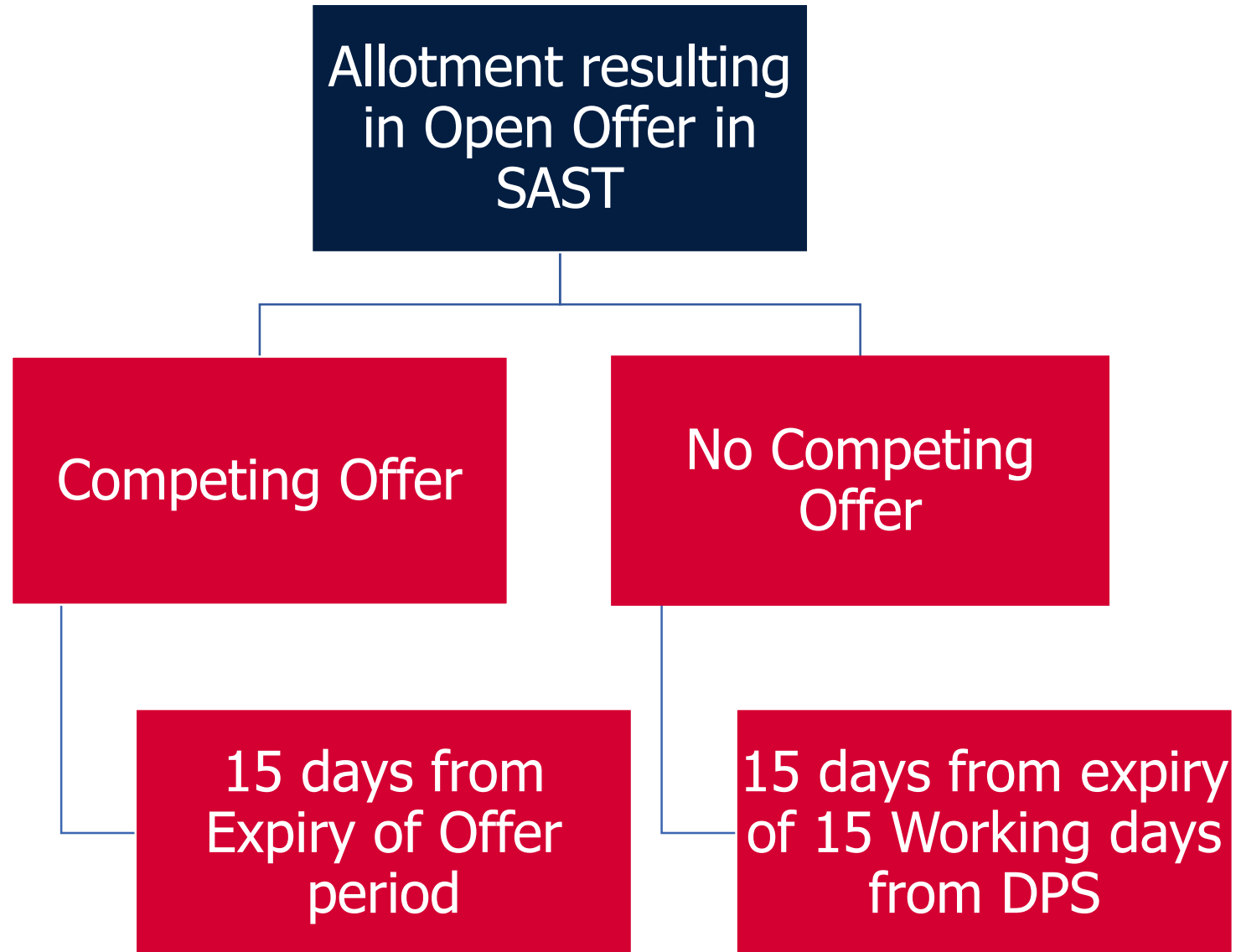
**Can allotment be made in Physical Form ?**

No Allotment shall be in Demat form Only



# Preferential Allotment + Open Offer

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# COMPLIANCE



# Provisions of SAST to be considered during Preferential Issue

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# Preferential issue within the thresholds of Takeover Regulations

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**1**

**Initial Trigger of 25% or more of the voting rights**

**2**

**Creeping acquisition limit of 5% shares in a FY, if shares held are more than 25% but less than 75%**

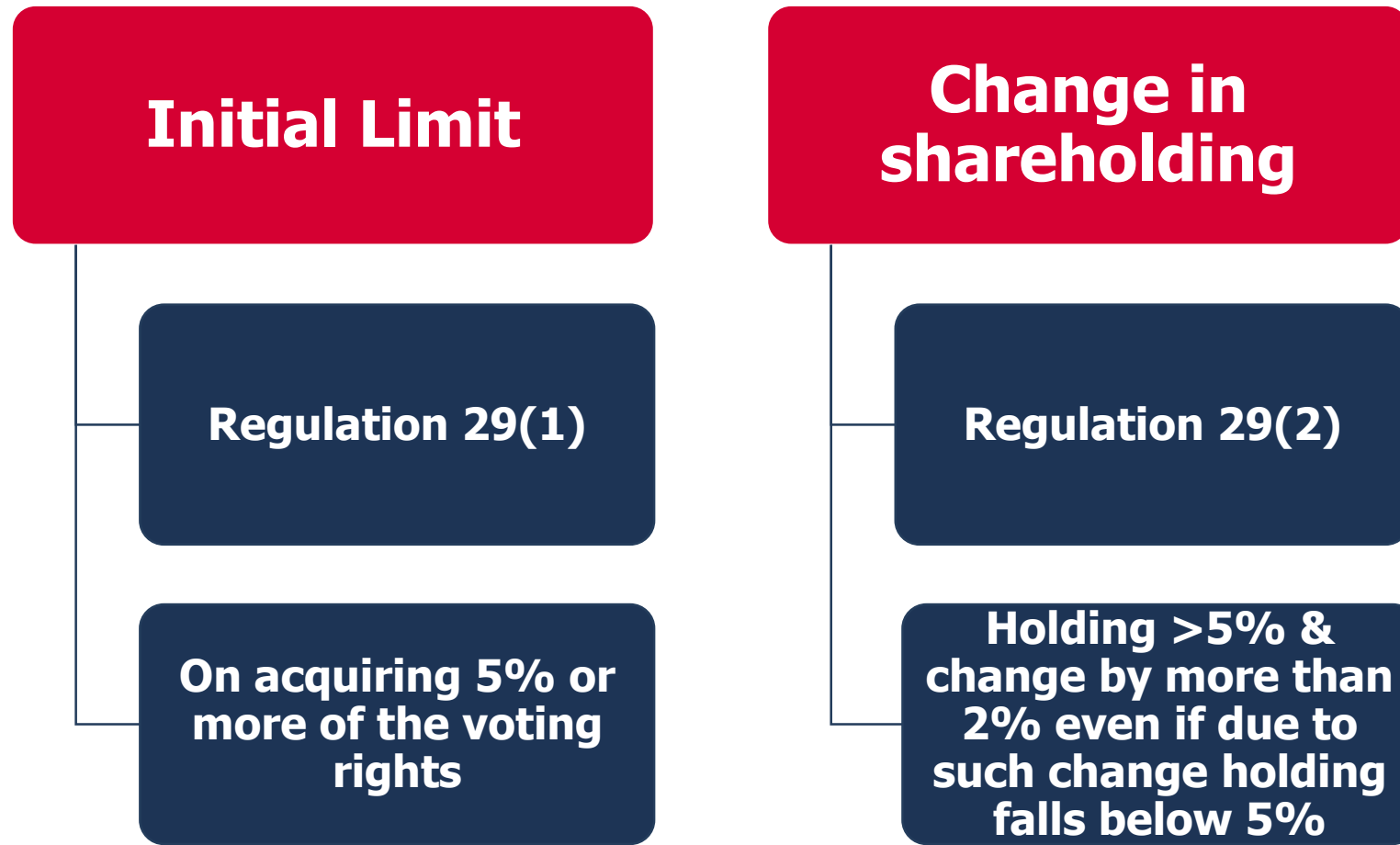
**3**

**Both limits shall be checked on Individual as well as Aggregate basis**



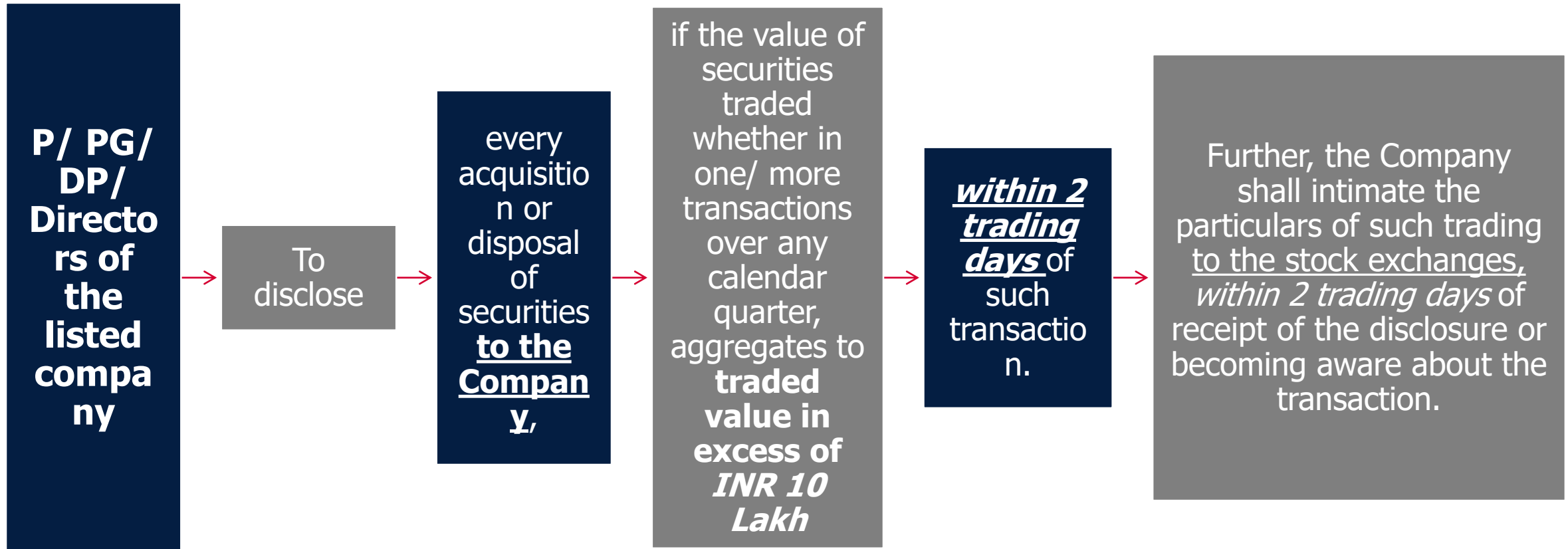
# Regulation 29 – Disclosure Requirements

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## Provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 to be considered during Preferential Issue



## Provisions of SEBI (LODR) Regulations, 2015 to be considered during Preferential Issue

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### **Statement of deviation(s) or variation(s). - Regulation 32**

A listed entity shall submit to the stock exchange a Statement of Variation indicating deviations in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting

**Timeline to file : On quarterly basis** along with the declaration of financial results (within 45 days of end of each quarter / 60 days from the end of the last quarter of the financial year) **until such funds are fully utilised or the purpose for which these proceeds were raised has been achieved.**





# PRICING

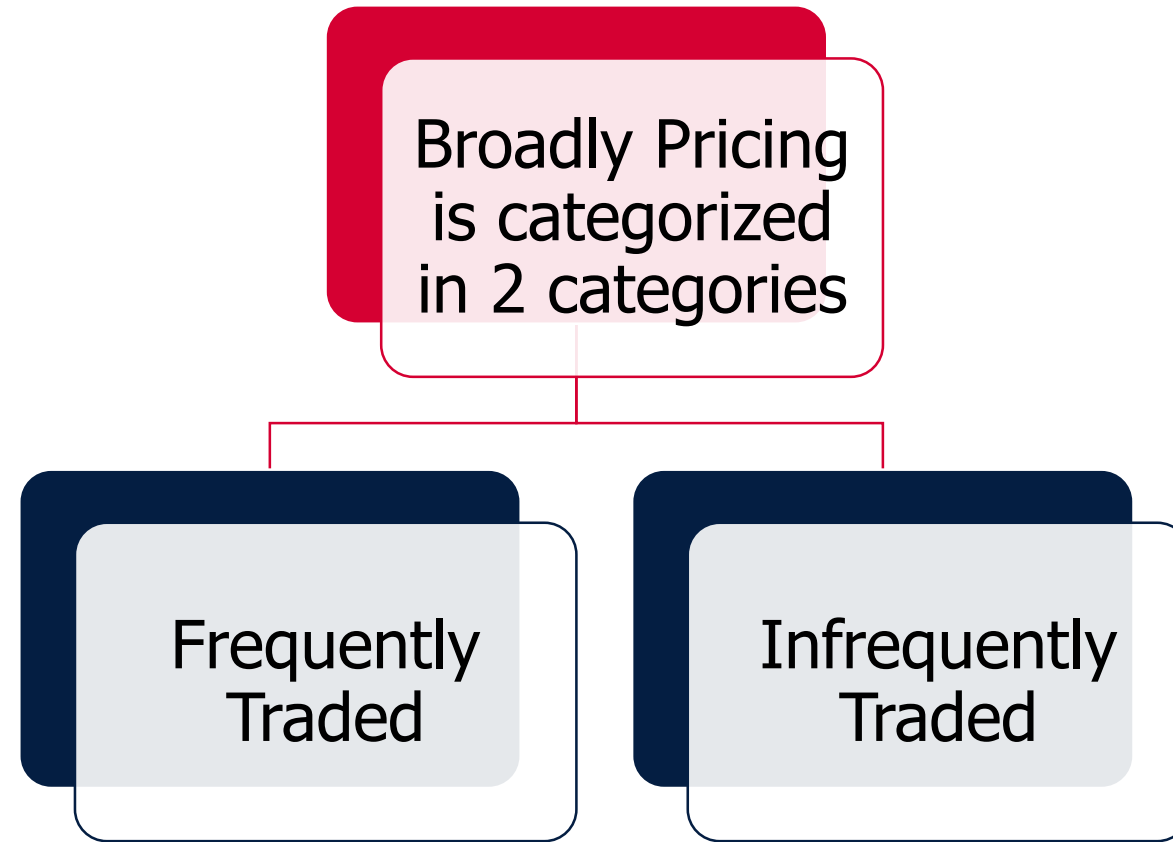


# Regulations Covering Valuation for Preferential Issue

164 (1)	164 (2)	164A	164B	165	166
Frequently traded shares		Pricing in case of stressed assets	Optional pricing in preferential issue	Pricing of infrequently traded shares	Adjustments in pricing - Frequently and Infrequently traded shares
Listed for more than 26 weeks	Listed for less than 26 weeks				
Higher of the Average of weekly high & low of the VWAP for 26 W/2W	Higher of <ul style="list-style-type: none"><li>• IPO Price or Scheme Price</li><li>• Average of weekly high &amp; low of the VWAP since listed</li><li>• Average of weekly high &amp; low of the VWAP for 2W</li></ul>	Higher of the Average of weekly high & low of the VWAP for 2 Weeks	Higher of the Average of weekly high & low of the VWAP for 12 W/2W  *Was available till Pref Issue till December 31, 2020	Independent Valuer's Report	price determined for a preferential issue as per Reg 164 or Reg 165, shall be subject to appropriate adjustments, if the issuer makes Rights Issues, Split of Shares, Consolidate Shares, reclassify etc.



# Pricing Category



# Frequently and In-frequently Traded Shares

**FREQUENTLY TRADED SHARES** means shares , in which the traded turnover on any stock exchange during 12 calendar months preceding the relevant date, is atleast 10% of total number of shares of such class of shares.

**Case- Company has Equity Cap. of Rs. 100 Crores, so for being frequently traded, trading turnover should be atleast Rs. 10 Crores during preceding 12 months, otherwise, it would be infrequently traded shares**



# Pricing of Frequently Traded Shares

164 (1)	164 (2)
FREQUENTLY TRADED SHARES	
Listed for more than 26 weeks	Listed for less than 26 weeks
Higher of the Average of weekly high & low of the VWAP for 26 W/2W	Higher of <ul style="list-style-type: none"><li>• IPO Price or Scheme Price</li><li>• Average of weekly high &amp; low of the VWAP since listed</li><li>• Average of weekly high &amp; low of the VWAP for 2W</li></ul>



**On completing of 26 Weeks, price shall be recalculated and the difference shall be paid by the allottees to the issuer.**





**SEBI ICDR 2018 has  
granted certain  
leniency in pricing  
norms for preferential  
Issue for resolution  
of stressed assets**



# Key Points for cos. Having stressed assets

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Min Issue Price  
(Reg. 164A)

Avg. of Weekly  
High & Low of  
VWAP in 2 weeks  
preceding the  
Relevant Date

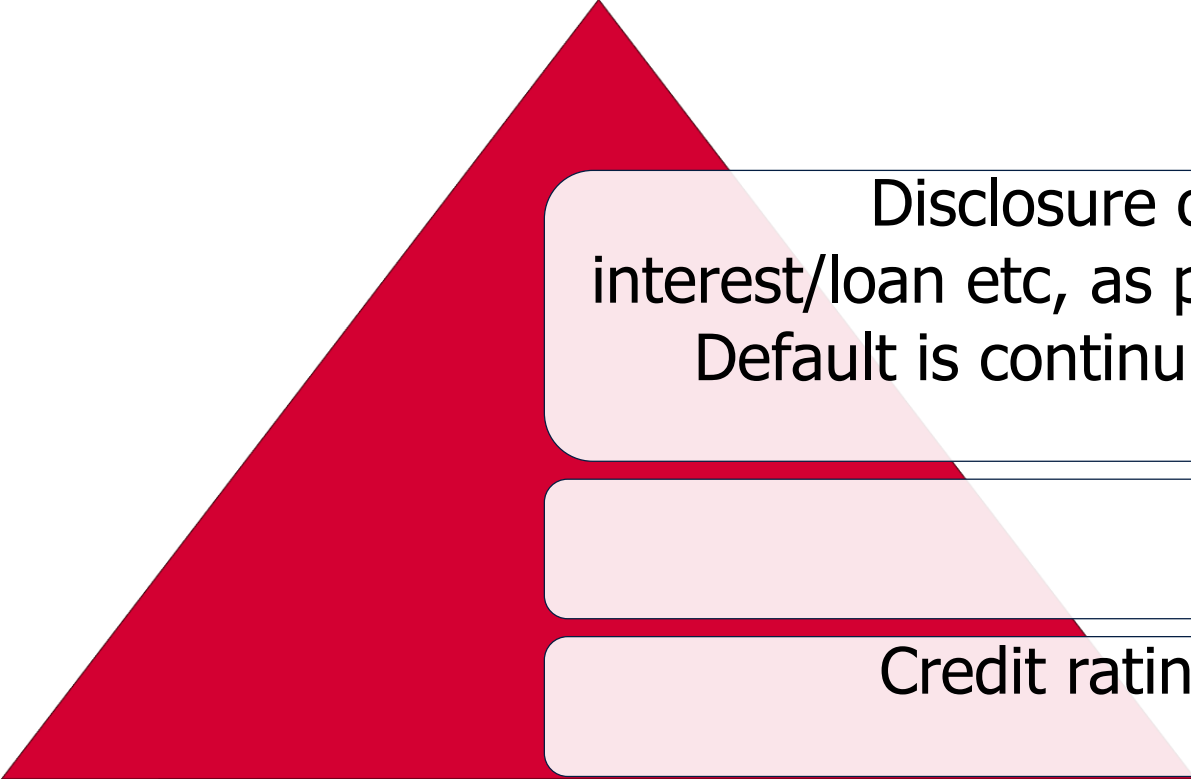
Exemption from  
Open Offer  
(Reg. 10(2B))

Acquisition > 25%  
exempt from Reg  
3(1) & Reg 4



## Allotment under Regulation 164A is allowed only if any 2 of 3 following conditions are met:

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Disclosure of all defaults viz. payment of interest/loan etc, as per Nov 2019 circular and the Default is continuing for a period of at least 90 calendar days

Inter-creditor agreement

Credit rating of the financial instruments downgraded to "D"



**For  
pricing  
under reg  
164A -  
the  
allotment  
cant be  
made to:**

- promoter/promoter group
- undischarged insolvent
- wilful defaulter
- person disqualified to act as a director
- a person debarred from trading
- fugitive economic offender
- person who has been convicted for any offence punishable with imprisonment-
- A person who has executed a guarantee for the issuer and such guarantee has been invoked by the lender

# Pricing of Infrequently Traded Shares

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**Pricing shall be on the basis of Independent Valuer's Report\* on the basis of valuation parameters including Book Value, Comparable Trading Multiples and such other customary parameters.**

*\*Who is Independent Valuer ?*

*Means a person who is registered under section 247 of the Companies Act, 2013 and the relevant rules framed thereunder or as specified by the Board.*







**Corporate  
Professionals**

# Thank you

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