

## SES View on compliance with AoA in case of Preferential Issue

### **SES Proxy Advisory Guidelines Update: #1/2021-22**

#### **Background:**

Articles of Association (AoA) are internal regulations for the management of the Company. AoA in a sense are procedural guidelines mandated by shareholders for the Board to follow while carrying out their board duties. The AoA have been provided legal force by provisions of law. Every provision of AoA is akin to a shareholder mandated law and is an internal legislation for Company, the same are required to be adhered to in letter and spirit, unless such provisions are repugnant to any other law of the land.

#### **Issue:**

In a recent case, SES observed that a Listed Entity did not adhere to the provisions of articles while raising capital by way of preferential issue. Since SES was not examining compliance with AoA, till the recent case came to its notice, SES is not sure whether it is an isolated case or an industry-wide issue.

Therefore, SES after internal deliberation has decided that to ensure that any resolution for preferential issue is in compliance with the provision under AoA, SES will independently examine AoA and determine compliance.

#### **Proposed procedure:**

Henceforth, SES would request for a copy of AoA of the Company in order to check that the proposed preferential issue is in line with the provisions of AoA and all the requirements are complied with by the Company.

To begin with, since the recent issue was spotted in a preferential issue, therefore, the request shall be made in case of preferential issue. However, going forward, SES may extend such checks for other matters as well depending upon the nature of proposal and underlying transaction.

#### **SES Recommendation basis:**

SES would recommend AGAINST in all such cases where

- In case, the provisions of AoA are not complied with or
- Where the Company does not provide SES with a copy of its AoA within reasonable time (Maximum 48 hours)

#### **Effective Date:**

With immediate effect (i.e. 19th June, 2021)

#### **Circulation:**

All Listed Companies in SES coverage and all SES clients.

#### **Stakeholders Empowerment Services**