

Navigating IPO Success: A Comprehensive Guide anchored by Company Secretaries in the Indian Financial Seas

Capital markets, a driving force for economic growth, thrive on stability, transparent regulations, and strategic mobilization of savings. Factors such as a stable central government, transparent regulatory systems, and increased domestic savings contribute to the strengthening of Indian capital markets. The process is further fuelled by large IPOs conducted domestically, deepening and fortifying the financial landscape.



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UNDERSTANDING 'LISTING' AND 'LISTED COMPANIES'

'Listing' signifies the admission of securities to recognized stock exchanges, transforming a company into a 'listed company.' While various securities can be issued to the public, this article focuses primarily on equity shares.

WHAT KIND OF SECURITIES MAY BE ISSUED TO THE PUBLIC?

Companies in India have diverse options when it comes to issuing securities to the public. The range includes equity shares, debt instruments, preference shares, and convertible instruments that can be transformed into equity shares. Additionally, non-convertible debt securities of Indian companies can be issued to the public, offering another avenue for fundraising and listing.

TYPES OF PUBLIC ISSUES

Under the guidelines of SEBI Regulations, a public issue of securities arises when an unlisted company initiates an "initial public offer" or a listed company opts for a further public offer, involving equity shares or convertible securities. Additionally, existing security holders can conduct a public issue through an "Offer For Sale," subject to specific conditions. Diverse Public Issue Strategies covers:

(I) Primary IPOs:

- *Nature:* Involves issuing new shares directly to the public.

INTRODUCTION

In the vast expanse of Indian capital markets, the role of Initial Public Offerings (IPOs) stands as a cornerstone for economic growth. As companies set sail on the IPO journey, the expertise of Company Secretaries (CS) becomes paramount. This article sheds light on the crucial navigational role played by CS professionals in guiding businesses through the complexities of listing on the Indian financial seas.

THE SIGNIFICANCE OF INDIAN CAPITAL MARKETS

Capital markets, a driving force for economic growth, thrive on stability, transparent regulations, and

- *Objective:* Infuses fresh capital for company growth.
- *Exemplified by:* Syrma SGS, Venus Pipes.

(II) Offer for Sale (OFS):

- *Nature:* Existing shareholders sell shares to the public.
- *Exemplified by:* LIC.

(III) Mixed IPOs:

- *Nature:* Combination of new share issuance and sale of existing shares.
- *Exemplified by:* Ethos Ltd, Aether Industries Limited.

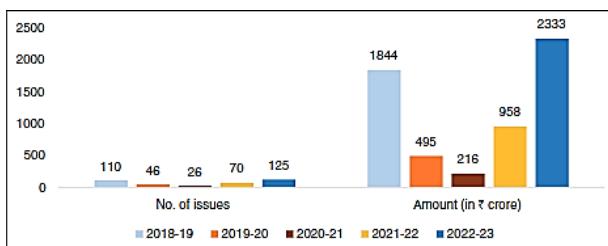
FUNDRAISING TRENDS AND SME IPO SURGE IN INDIA (2022-23)

In the fiscal year 2022-23, there was a notable shift in the landscape of public fundraising in India. The data reveals a nearly 50% decrease in fundraising through public issues compared to the preceding peak year of 2021-22. This moderation is attributed to various factors, including economic uncertainties, inflation, geopolitical tensions, and monetary tightening, impacting companies’ IPO plans and valuations. A standout in the IPO landscape was the listing of LIC, marking the largest IPO in India during the fiscal year 2022-23.

Despite the overall decrease in fundraising, there was a significant upswing in the number of newly listed companies. The count of IPOs surged to 164 in 2022-23, a marked increase from the 120 IPOs recorded in 2021-22. Notably, this rise in listings was driven by an increase in activities on the SME Platform. In October 2023 alone, 30 IPOs were listed at Indian stock exchanges, collectively mobilizing ₹5,158 crore. Among these, 24 issues were SME/start-up listings, contributing ₹680 crore to the total mobilized funds.

The SME platform demonstrated a significant uptrend in both the number of companies listed and the amount raised in 2022-23 compared to the previous fiscal year. During this period, 125 companies were listed on the SME platform, mobilizing ₹2,333 crore, a substantial increase from the ₹958 crore raised through 70 issues in 2021-22.

Here is a breakdown of the resource mobilization through SME IPOs:



Source: SEBI Annual Report for FY 22-23

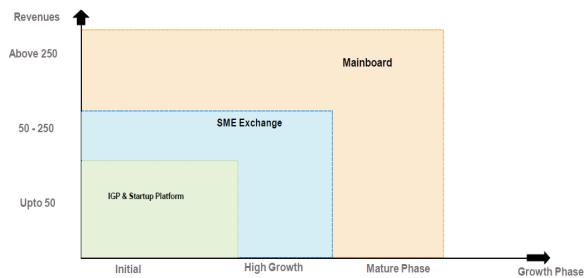
IPO Performance Tracker – 2023



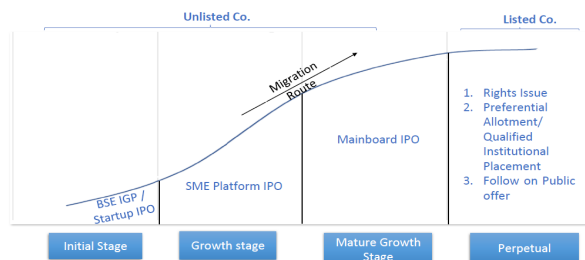
Source: <https://www.bseindia.com/publicissue.html>

STRATEGIC CHOICES FOR COMPANIES EYEING PUBLIC LISTING

In the early stages, companies meticulously weigh the advantages of listing on the Technology Startup platform or the Emerge Institutional Trading Platform (ITP) of NSE & BSE. These platforms offer not only heightened visibility but also serve as a springboard for fundraising opportunities. As companies progress to the growth stage, the SME platforms of both NSE and BSE emerge as a streamlined pathway, facilitating expanded market presence.



For those listed on the SME platform, aspirations often extend to migrating to the main board, unlocking broader market exposure and enhancing credibility. As companies mature into the growth stage, opting for a direct main board IPO becomes a strategic choice, enabling the unlocking of substantial capital. Following the listing, visionary companies deploy a multi-pronged approach to diversify funding sources. Instruments such as Rights Issues, Preferential Allotments, Qualified Institutional Placements (QIBs), and Follow-on Public Offers further fortify their financial standing and establish a resilient presence in the competitive market.



Amidst this dynamic landscape, where financial decisions shape a company’s trajectory, the Social Stock Exchange platform of Exchanges has emerged as an integral player. These platforms offer unique opportunities for organizations with a social impact agenda. As companies embark on the journey of going public, these

specialized avenues align with their commitment to social responsibility, amplifying their reach and influence in the market. The evolving financial ecosystem presents companies with strategic choices that extend beyond traditional fundraising, paving the way for sustainable growth and societal impact.

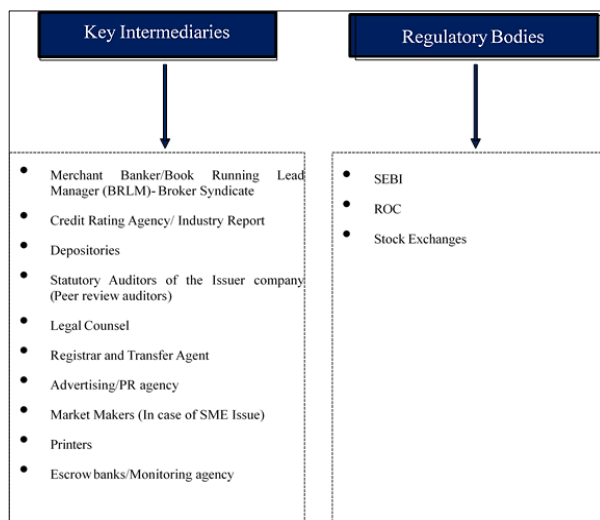
KEY ACTS AND REGULATIONS IN PUBLIC ISSUES

Embarking on the journey of public issues and subsequent listing, companies navigate a comprehensive framework governed by the Companies Act, 2013. As guardians of fairness and transparency, the Securities Contracts (Regulation) Act, 1956, and Securities Contracts (Regulations) Rules, 1957 regulate transactions, ensuring a level playing field.

SEBI, the sentinel in this regulatory ensemble, oversees the entire landscape with its guiding act of 1992. SEBI's detailed regulations, such as the Issue of Capital and Disclosure Requirements Regulations, 2018, illuminate the path for companies, offering clear guidelines and ensuring a transparent and credible journey through the realm of public issues.

The Listing Obligations and Disclosure Requirements Regulations, 2015 act as torchbearers of transparency, ensuring continuous disclosure and corporate governance. Further, sector-specific laws and labor and taxation regulations tailor the legal landscape for different industries.

KEY INTERMEDIARIES AND REGULATORY BODIES IN A PUBLIC ISSUE



SEBI LISTING STANDARDS FOR IPO ELIGIBILITY

In adherence to the SEBI Issue of Capital and Disclosure Requirements Regulations, 2018 (ICDR), an issuer aiming for an Initial Public Offer (IPO) must fulfill specific criteria:

MAIN BOARD ELIGIBILITY (REGULATION 6 OF ICDR)

1. Net Tangible Assets:

- For each of the three consecutive full years prior, the issuer's net tangible assets must have totaled at least three crore rupees.
- The proportion of monetary assets to total assets should not exceed 50%.
- The issuer must have used or committed to using the excess monetary assets in its company or project if more than 50% of net tangible assets are in the form of money.

(Note: The fifty percent limit on monetary assets is not applicable if the IPO is entirely through an offer for sale.)

2. Operating Profit:

- Over the three years prior, the issuer must show an average operational profit of at least fifteen crore rupees.
- For each of the three years prior, this operating profit ought to be computed using a restated and consolidated approach.

3. Net Worth:

- The issuer's net worth should be a minimum of one crore rupees in each of the preceding three full years.
- The calculation is done on a restated and consolidated basis for each of the preceding three years.

4. Name Change Impact:

- In the event that the issuer has renamed itself within the prior year, the activity designated by the new name must account for at least half of the revenue earned during the previous full year on a restated and consolidated basis.

An issuer not satisfying the above conditions, shall be eligible to make an initial public offer only if the issue is made through the book-building process and the issuer undertakes to allot at least seventy five percent. of the net offer to qualified institutional buyers and to refund the full subscription money if it fails to do so.

SME BOARD ELIGIBILITY (REGULATION 229 OF ICDR)

1. Post-Issue Paid-Up Capital:

- If an issuer's post-issue paid-up capital is less than or equivalent to 10 crore rupees, they are qualified for an IPO.

2. Higher Capital Limits:

- An issuer may issue certain securities in accordance with this chapter's rules if its post-issue face value capital is greater than ten crore rupees but not more than twenty-five crore rupees.

3. SME Exchange Eligibility:

- If an issuer satisfies the eligibility requirements and track record of the SME Exchange(s) where the planned listing of the specified securities will take place, then the issuer may proceed with an IPO.
- If the financial statements follow the structure required for Companies by the Companies Act of 2013, the operating profit history of issuers who were previously limited liability partnerships or partnership firms will be taken into account. The financial statements also have to comply with Schedule III of the Companies Act of 2013 and provide sufficient disclosures. b) Possess a valid certificate issued by the ICAI Peer Review Board, attesting to compliance with accounting standards and providing an accurate and impartial assessment of the company's financial statements. These auditors must be duly certified by ICAI-accredited peer reviewers.
- If an issuer is created through a merger or division of an already-existing Company, its performance history will be taken into account, provided that certain financial statement standards are met.

WHAT IS THE MINIMUM DILUTION REQUIRED IN AN IPO?

The Securities Contracts (Regulations) Rules, 1957, Rule 19 (2) (b), specify the minimum dilution required, is a critical aspect in the complex world of Initial Public Offerings (IPOs). This regulation sets out standards based on the company's post-issue capital, influencing the course of initial public offerings. Let's dissect the essential prerequisites:

1. **If the post-issue capital is less than or equal to ₹1,600 crore:**
 - A minimum of 25% of each class or kind of equity shares or convertible debentures must be offered to the public.
2. **If the post-issue capital is more than ₹1,600 crore but less than or equal to ₹4,000 crore:**
 - The company must offer a value equivalent to ₹400 Crore to the public.
3. **If the post-issue capital is above ₹4,000 crore but less than or equal to ₹1 lakh crore:**
 - At least 10% of each class or kind of equity shares or convertible debentures must be offered to the public.
4. **If the post-issue capital is above ₹1 lakh crore:**
 - The company is required to offer equity shares or convertible debentures equivalent to ₹5,000 Crore value, with a minimum of 5% to the public.
 - Furthermore, the company must increase public shareholding to at least 10% within 2 years and 25% within 5 years from the date of listing.

For companies falling under sub-clause (ii) or sub-clause (iii), the mandate is to increase public shareholding to at least 25% within three years from the date of listing. These regulations are pivotal in ensuring a balanced and transparent approach to public share offerings in the financial market.

WHAT ARE THE METHODS OF PRICING UNDER INDIAN LAW?

In the dynamic landscape of Indian securities markets, determining the pricing strategy is a pivotal decision for companies venturing into the public domain. The Securities and Exchange Board of India (SEBI) provides a framework that offers flexibility, allowing issuers to set the price through two primary methods: the Fixed Price Issue and the Book Building Process.

1. Fixed Price Issue:

- In this approach, the issuer collaborates with the lead merchant banker to establish a specific price for shares or convertible debt instruments. This fixed price is then disclosed to the public, offering a transparent and predetermined value for the securities in the Prospectus.
- The fixed price offering follows a two-stage process. Initially, the Draft Red Herring Prospectus is filed with SEBI and Exchanges for comments. Subsequently, the Final Prospectus is filed with the Registrar of Companies, SEBI, and Exchanges.

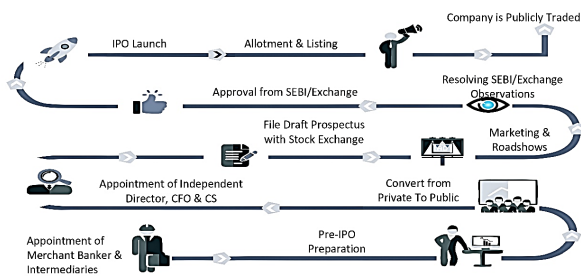
2. Book Building Process:

- Alternatively, issuers can choose the Book Building Process. This method involves determining the price through a bidding mechanism. The issuer, in conjunction with the lead merchant banker, establishes a price range, and investors participate by bidding for shares or debt instruments within that range.
- The final price is determined based on the demand generated during the bidding period, allowing for price discovery through active investor participation.



- The book-built offering unfolds in three stages. It commences with the filing of the Draft Red Herring Prospectus with SEBI and Exchanges for comments. Subsequently, the Red Herring Prospectus is updated based on Comments. Finally, the Prospectus, including the Issue Price, is filed with the Registrar of Companies, SEBI, and Exchanges.

LISTING PROCESS AND THE CRUCIAL ROLE OF COMPANY SECRETARIES



1. Preliminary Phase: Appointment of BRLMs and Legal Counsels

- The journey begins with the strategic appointment of Book Running Lead Managers (BRLMs) and legal counsels, setting the stage for the IPO process.

2. Five Phases of the IPO Process:

a. Pre-DRHP Filing Period:

- **Kick-off Meeting:** Initiate the process by organizing a kick-off meeting where senior management provides an overview of the issuer's business to BRLMs and legal counsels. This session sets the tone for IPO timelines and strategies.
- **Due Diligence Exercise:** Commence due diligence exercises simultaneously with the drafting of the Draft Red Herring Prospectus (DRHP).

b. Filing of the Draft Red Herring Prospectus:

The journey continues with the crucial step of filing the Draft Red Herring Prospectus (DRHP), a pivotal document outlining the company's financial health and prospects. Note that this step may not be applicable in fast-track issues.

- **Execution of Agreements:** Following the DRHP filing, the process advances with the execution of key agreements, including the issue agreement, registrar agreement, and service providers agreement etc.

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- **Due Diligence Certificates and Comfort Letters:** Simultaneously, the issuer, its directors, subsidiaries, promoters, promoter group, group companies, and selling shareholders (if any) contribute to the due diligence process. Executed standard certificates serve as crucial due diligence backup for underwriters. Additionally, comfort letters and certificates from auditors are provided and thoroughly discussed.

- **Submission to SEBI:** The comprehensive package, including the DRHP and due diligence certificate, is submitted to the Securities and Exchange Board of India (SEBI) for review and approval.

- **In-Principle Listing Approval:** Concurrently, applications along with the DRHP are filed with the stock exchanges to obtain in-principle listing approval. This marks a significant milestone in the journey toward a successful IPO. We need to select a designated stock exchange in case the application is filed with NSE and BSE both. The designated stock Exchange is the Exchange where security deposit would be kept at the time of listing and Listing Ceremony would be hosted.

c. Post-SEBI and Stock Exchanges Observation:

- **Reply to Final Observations:** Respond to final observations received from SEBI & Stock Exchanges and update the DRHP.
- **Execution of Agreements:** Execute issue, registrar, and service provider agreements.
- **Filing Red Herring Prospectus:** File the Red Herring Prospectus with the Registrar of Companies (RoC), SEBI and Stock Exchanges at the same time.

d. Issue Period:

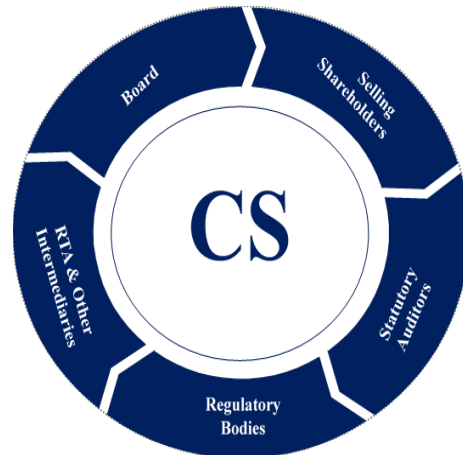
- **Price Band Announcement:** The issuer announces the Price Band at least two working days before opening the bid period.
- **Bidding Process:** Open the IPO for bidding, beginning with Anchor Investors for one day,

followed by a bidding period for all investors (excluding Anchor Investors) for at least three working days.

e. Post-Issue Period:

- **Registrar’s Approval:** Obtain electronic bid details from stock exchanges and submit the final Basis of Allotment to the designated stock exchange for approval along with final Prospectus.
- **IPO Price Finalization:** Finalize the IPO price and execute the underwriting agreement.
- **Listing and Trading Approval:** File listing and trading applications with stock exchanges. Stock exchanges provide final listing and trading approval within T+2 days T being the issue closure date.
- **Funds Transfer Instructions:** Registrars and BRLMs issue funds transfer instructions to collecting banks for the credit of funds into the Public Issue Account.
- **Commencement of Trading:** Trading commences, and equity shares are allotted and credited to the demat accounts of successful bidders.

- **Status Check Due Diligence:** Rigorous due diligence to identify and improve areas before IPO.
- **Intermediary Selection:** CS aids in selecting legal, financial, and regulatory experts aligned with company goals. Following are the parties with whom CS need to deal with in a Public Issue:



WHAT IS FOR “CS IN EMPLOYMENT” & “PRACTICING CS”

In navigating equity challenges and IPO complexities, CS professionals are strategic partners, guiding businesses toward sustainable growth.

1) Advising Equity Fund Raising:

- **Raise Growth Capital:** CS guides on using equity for growth, wealth creation, and unlocking value.
- **Equity for Project Finance:** Strategize equity alongside bank funding for robust project finance proposals.
- **Low-Cost Working Capital:** Utilize equity as a source of cost-effective working capital.
- **Currency for Growth:** Employ funds for inorganic growth, acquisitions, and expansions.
- **Succession Planning:** CS contributes to creating seamless succession plans.
- **Enhance Credit Score:** Advises on equity to boost credit score for favorable debt funding.

2) Pre-IPO Consultation:

- **Rationale Building for IPO:** CS supports in building a strong case for the IPO journey.
- **Management Discussions:** Facilitate meaningful discussions aligning management on IPO objectives.

3) IPO Management:

A. Preparatory Part:

CS professionals engage in a series of preparatory activities, ensuring a robust foundation for the challenges ahead.

1) Time-Consuming Activities:

- **Pre-IPO Due Diligence:** Conducting exhaustive due diligence to evaluate the company’s financial health, compliance status, and potential areas of improvement before entering the IPO landscape.
- **SEBI Compliance and Certification:** Ensuring conformity with SEBI regulations, CS professionals arrange for standard certifications, undertake compliance checks, and assist statutory auditors in issuing necessary deliverables.
- **Finalization of Board Composition:** Preparing a Promoter Matrix for clear identification and understanding of promoters and the promoter group. Additionally, scrutinizing the organization structure and composition of the board and its committees.
- **Capital Restructuring:** Strategizing and implementing capital restructuring initiatives to optimize the company’s financial structure in preparation for the IPO journey.
- **KMP and Strategic Team Formation:** Collaborating with key management personnel (KMP) to form a strategic team, aligning leadership with the company’s objectives and IPO aspirations.

- **Risk Factors Review and Continual Disclosure:** CS professionals review internal and external risk factors, engaging with the board and management. They ensure continual disclosure to statutory and regulatory authorities.

II) Lesser Time-Consuming Activities:

- **Regulatory and Company Secretarial Filings:** Navigating regulatory landscapes with finesse, CS professionals oversee necessary filings and documentation, ensuring compliance with legal requirements.
- **Constitution of Data Room:** Facilitating due diligence, CS professionals coordinate with various departments to make necessary documents available in the Virtual Data Room (VDR).
- **Road Shows and Listing Process:** Assisting in road shows, preparing presentations, and addressing queries, CS professionals play a key role. They also handle the process of filing the Red Herring Prospectus with the Registrar of Companies.
- **Basis of Allocation:** - Playing a key role in the Basis of Allocation process, CS professionals ensure a fair and transparent distribution of shares.
- **T Reporting with Exchanges:** - Managing T reporting, CS professionals navigate the intricacies of the regulatory landscape to provide accurate and timely reports.
- **Listing Assistance:** - CS professionals extend their expertise to facilitate listing, ensuring a seamless transition to the stock exchange.

B. Main IPO process

I) Due Diligence Process:

- **Drafting MOA/AOA, Resolutions, Key Agreements & Policies:** CS professionals contribute to the governance framework by drafting codes and policies, Resolutions, Key Agreements etc. ensuring alignment with corporate governance principles and disclosure requirements.
- **ROC Filings:** Overseeing Registrar of Companies (ROC) filings, CS professionals manage the documentation and submission process with precision.
- **Drafting of Offer Document:** Expertly crafting offer documents, CS professionals ensure comprehensive and accurate representations for potential investors.
- **Legal Due Diligence:** CS professionals identify and track pending litigation involving promoters, Directors, Key Managerial Personnel, subsidiaries, and associates, ensuring a transparent update through a Management Information System (MIS) tracker.

II) **Offer Document:** CS professionals take charge of the offer document, ensuring it complies with regulatory requirements and provides a transparent overview of the company's financial and operational standing.

III) **Filing Process Management:** Coordinating with the Book Running Lead Manager (BRLM), CS professionals actively manage the filing process, addressing queries and ensuring smooth resolution.

IV) Issue Management

- **Issue Advertisements:** - CS professionals contribute to issue management by overseeing the creation and dissemination of issue advertisements.

4) Post-IPO Excellence: Continuous Compliance Guidance and Support

CS professionals provide ongoing counsel on compliance matters, ensuring the company adheres to regulatory requirements and timely filings.

- **SEBI Stock Exchange Matters:** Guiding companies through the intricacies of SEBI and stock exchange matters, CS professionals facilitate smooth interactions and compliance with evolving regulations.
- **Future Fundraising:** CS professionals play a pivotal role in charting out strategies for future fundraising, aligning financial goals with market dynamics and regulatory frameworks.
- **Ongoing Certifications, Audits, and Reports:** CS professionals conduct continuous certifications, audits, and prepare comprehensive reports, ensuring transparency and accountability in post-IPO operations.

CONCLUSION

In summary, the journey of an Initial Public Offering (IPO) involves crucial steps guided by Company Secretaries (CS), who play a pivotal role in both employment and practice. From the preliminary phase to post-IPO excellence, CS professionals contribute significantly, providing strategic guidance, ensuring compliance, and facilitating seamless transitions for companies entering the public domain. As key strategic partners, CS professionals prove indispensable in the dynamic landscape of equity challenges and IPO complexities, guiding businesses toward sustainable growth and success.

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