STUDY MATERIAL

PROFESSIONAL PROGRAMME

CORPORATE FUNDING & LISTINGS IN STOCK EXCHANGES

MODULE 3
PAPER 7

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)
ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003
tel 011-4534 1000 **fax** +91-11-2462 6727
email info@icsi.edu **website** www.icsi.edu

© THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

TIMING OF HEADQUARTERS

Monday to Friday
Office Timings – 9.00 A.M. to 5.30 P.M.

Public Dealing Timings
Without financial transactions – 9.30 A.M. to 5.00 P.M.
With financial transactions – 9.30 A.M. to 4.00 P.M.

Phones
011-45341000

Fax
011-24626727

Website
www.icsi.edu

E-mail
info@icsi.edu

Laser Typesetting by AArushi Graphics, Prashant Vihar, New Delhi, and
Printed at SAP Printers, Mumbai/February 2020

PROFESSIONAL PROGRAMME

CORPORATE FUNDING & LISTINGS IN STOCK EXCHANGES

Funding is crucial for corporates, not only to invest and to expand, but also to operate their daily business. Some corporates rely more intensively on internal funds, while others rely more intensively on external funding. The never-ending requirement for funds germinates from the continuous business expansion undertaken by corporates.

Currently, the market offers numerous ways to obtain finance. With each passing day, a different product is getting evolved to meet the requirements of the growing industries. There are a number of ways to finance a business and a range of lenders and investors to choose from when the treasury function is making financing decisions.

Listing refers to the company's shares being traded officially on the board of a Stock Exchange. Each Stock Exchange has its own listing requirements or rules. Only listed shares are quoted on the Stock Exchange. Stock exchange provides transparency in transactions of listed securities and equality and competitive conditions. Listing is beneficial for the company, to the investor, and to the public at large.

When companies get listed at Stock Exchanges, they are required to enter into an agreement which is called the listing Agreement under which they are required to file certain compliances and disclosures which are given by listing Agreement, failing which the company may face some disciplinary action, including suspension/ delisting of securities.

The paper on Corporate Funding & Listing on Stock Exchanges has been introduced to provide knowledge on the various source of finances available to raise funds in the Indian as well international market, the legislative framework for raising such funds and regulatory requirements to list the securities on the Indian as well as foreign Stock Exchanges, issued pursuant to the funds raised.

This Paper is divided into two parts: Part I deals with Corporate Funding and Part II deals with Listings on Stock Exchanges.

Part I elaborates on the conceptual and legal framework of corporate funding like Equity, Debt, Public Funding, Private funding, Fund based, Non-fund based funding & Securitization. Part II explains about the listing on Indian Stock Exchanges, international listing, preparing a company for IPO, documentation and procedural compliances.

A Company Secretary plays a vital role in raising finance for a company. Further the corporates in India looks upon especially Company Secretaries to provide the impetus, guidance and direction for raising funds from different source and to advise the Board on their regulatory compliances while raising funds. The Company Secretary being a Compliance officer of the company and Senior Management Personnel plays a pivotal role in listing of the securities on the Stock Exchanges in India and abroad as well.

The coverage of this subject is "Hybrid" in nature which requires integrated application of several Core / Ancillary areas or references of the other subjects included in the ICSI Syllabus. This study material has covered such topics to a limited context. The students are advised to refer the relevant topics from the bare Acts, Rules & Regulation's and study material of the respective subjects or from the publications such as guidance note, referencer published by the ICSI.

The legislative changes made up to December, 2019 have been incorporated in the study material. The students to be conversant with the amendments to the laws made upto six months preceding the date of

examination. It may happen that some developments might have taken place during the printing of the study material and its supply to the students. The students are therefore advised to refer to the updations at the Regulator's website, Supplement relevant for the subject issued by ICSI and ICSI Journal Chartered Secretary and other publications for updation of study material.

In the event of any doubt, students may write to the Directorate of Professional Development, Perspective Planning & Studies of the Institute for clarification at **academics@icsi.edu.**

Although due care has been taken in publishing this study material, the possibility of errors, omissions and/or discrepancies cannot be ruled out. This publication is released with an understanding that the Institute shall not be responsible for any errors, omissions and/or discrepancies or any action taken in that behalf.

Should there be any discrepancy, error or omission noted in the study material, the Institute shall be obliged if the same is brought to its notice for issue of corrigendum in the e-bulletin 'Student Company Secretary'.

PROFESSIONAL PROGRAMME
CORPORATE FUNDING & LISTINGS IN STOCK EXCHANGES

This study material is divided into two parts with following weightage of marks:

Part I: Corporate Funding (60 marks)

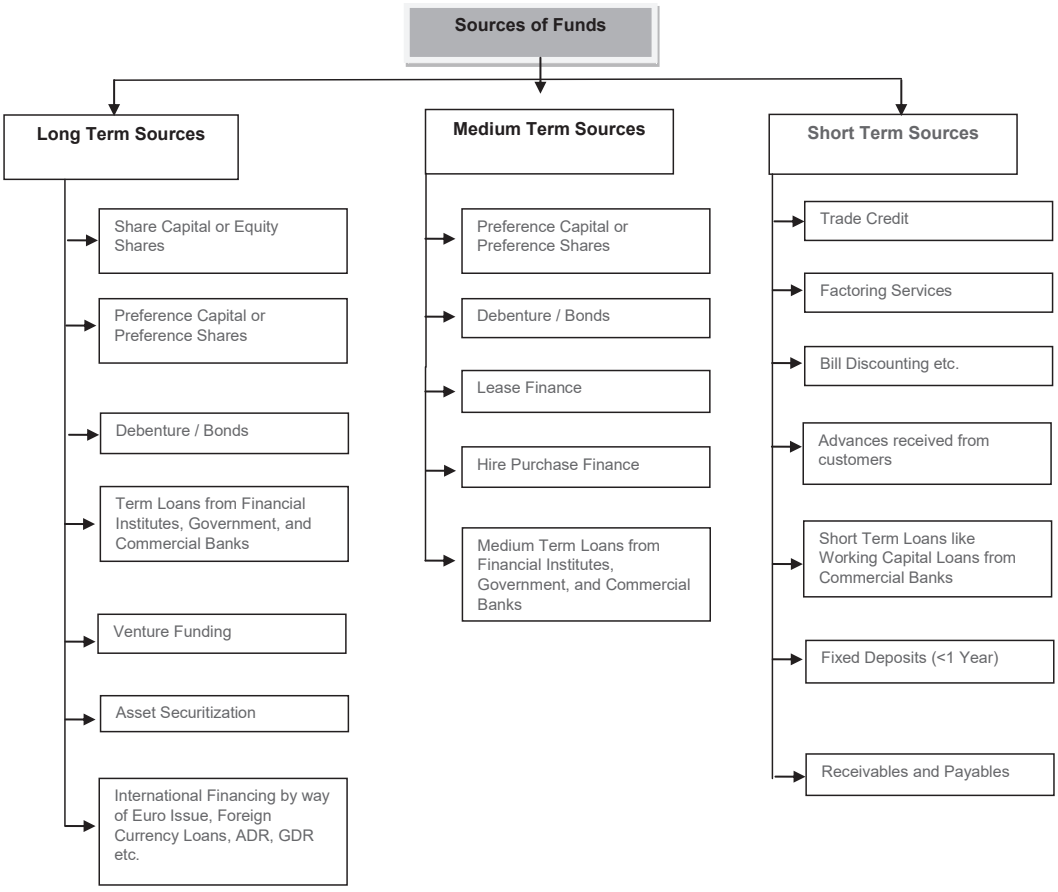
Part II: Listing (40 marks)

Part I : Corporate Funding

Corporate Funding is the area of finance dealing with the sources of funding and the capital structure of corporations, the actions that managers take to increase the value of the firm to the shareholders, and the tools and analysis used to allocate financial resources. The primary goal of corporate finance is to maximize or increase shareholder value.

Traditionally speaking, funds could be in the form of equity or debt. Equity would mean the money provided by shareholders, without any repayment clause or charge creation on the assets, whereas debt would come along with repayment clauses, security for the loan and high finance costs. A well-functioning debt and equity markets allow businesses to fund investment flexibly and at a relatively low cost to existing shareholders, thereby contributing to investment and growth. Striking the right mix of debt and equity would help a company to achieve the optimum capital structure. This would enable the company to fund its business requirements with minimum associated costs.

The treasury function will at first have to understand the financing requirements along with the volume of funds to be raised in order to arrive at a cost-effective method of raising funds. Fund raising can be in the form of non banking fund & Banking fund.



Non-banking funds

Non-banking sources refer to the raising of finance from sources other than banks. These may include raising the money through the capital market, money market, institutional investors, private equity and other.

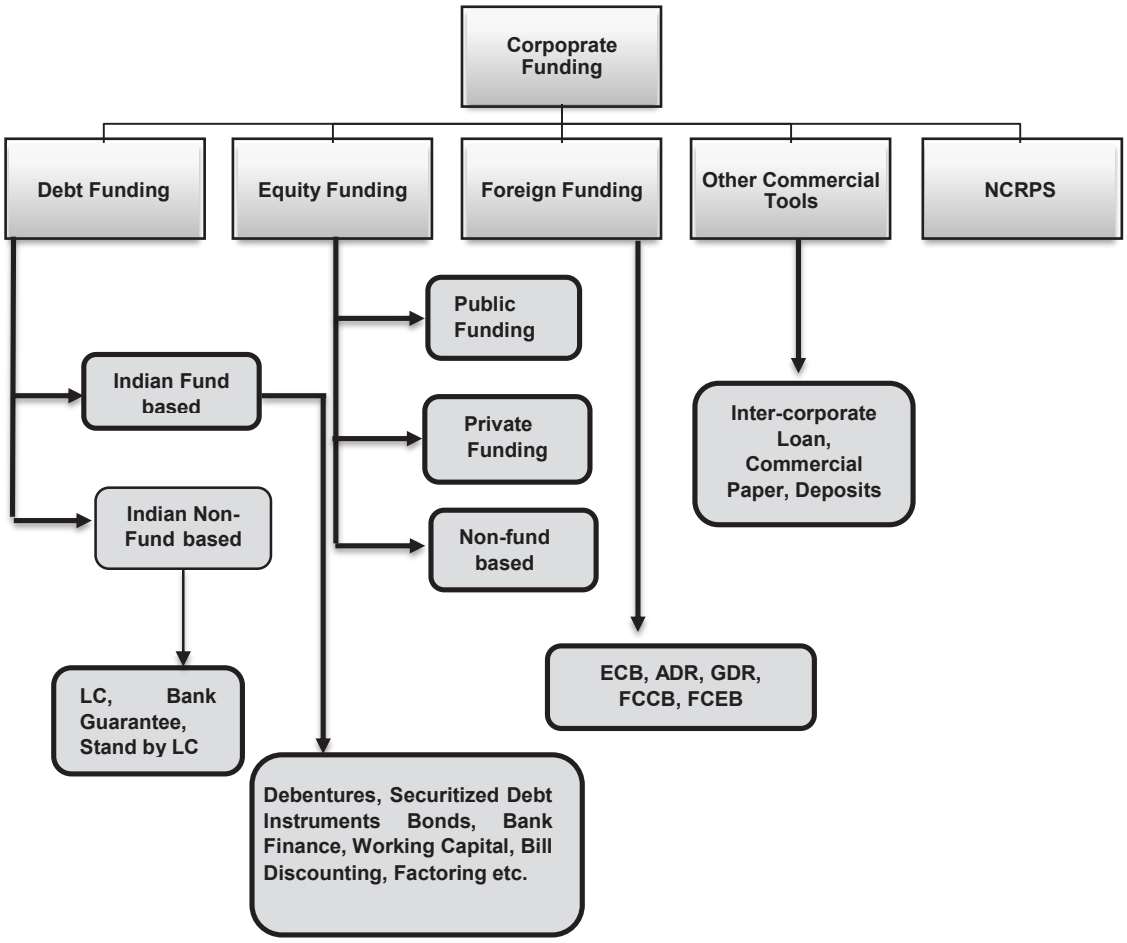
Considering the tightening of loopholes in the lending norms by the banking industry, it is becoming difficult for corporates to rely solely on bank loans. Thus, the non-banking sources of finance are equally important. The continuous stress over banking assets has led to the birth of various non-bank debt sources.

Borrowers can also arrange for funds from private investors, both domestic and foreign, in the form of both equity and debt. Non-banking sources are considered to be more risky as they place greater emphasis on forced closure of businesses or taking up ownership of businesses to recover their funds. The money can be raised through various instruments and products like issue of equity and preference shares, debentures, bonds, commercial papers and corporate deposits.

Bank funding

As the name suggests, bank funding refers to all the sources of funds that a treasurer can access from a banking institution. This may be by way of loans, working capital funding, and fund-based and non-fund based instruments. Banks are essentially those financial intermediaries who accept deposits for the purpose of lending. The second most important function of commercial banks is to lend money to individuals and institutions who need short-term and long-term funds.

This part of the study elaborates the various methods of fund raising, their legislative framework as laid down by the appropriate regulator etc. A tabular chart of the coverage of the same is given below:



Part II : Listing

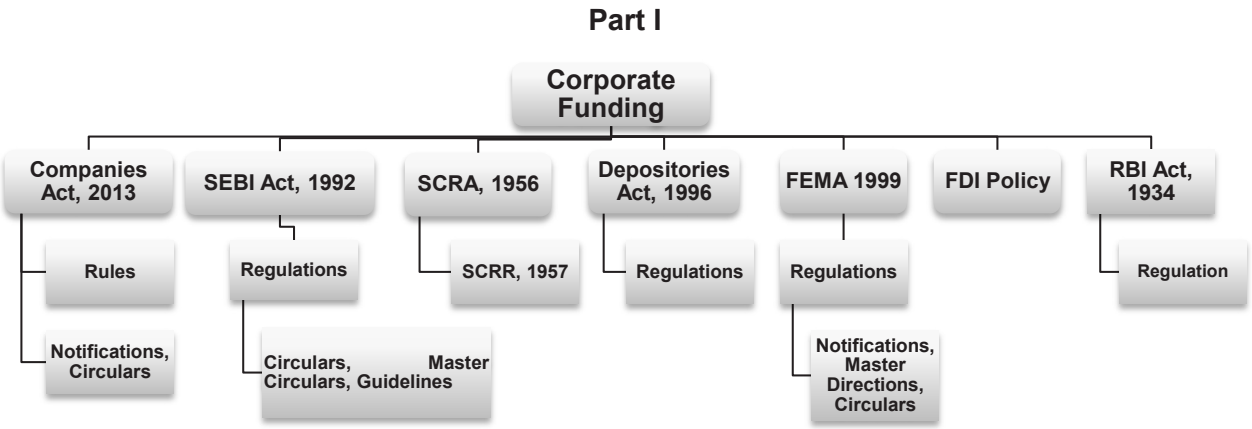
Going public and offering stock in an initial public offering (IPO) represents a milestone for most privately owned companies. A large number of reasons exist for a company to decide to go public, such as obtaining financing outside of the banking system or reducing debt.

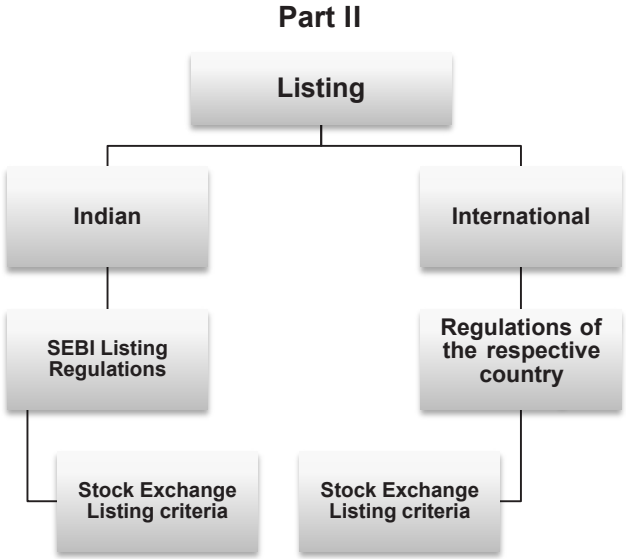
Listing provides an exclusive privilege to securities in the Stock Exchange. Only listed shares are quoted on the Stock Exchange. Stock exchange facilitates transparency in transactions of listed securities in perfect equality and competitive conditions. Listing is beneficial to the company, to the investor, and to the public at large. For trading in the stock market, a company has to list its securities in the Stock Exchange. It means that the name of the company is registered in the Stock Exchange. A company intending to have its securities listed on Stock Exchange has to comply with the listing requirements prescribed by the Stock Exchange.

This part of the study outlines the Listing Requirements to be complied with by a company while listing its securities in Indian Stock Exchanges and international Stock Exchanges. Further, in this part the procedure for preparing a company for IPO, its governance requirements post –IPO, various documentation and compliance requirements etc. has been explained.

Legal and Regulatory Framework

The Legal and Regulatory Framework of Corporate Funding and Listings in Stock Exchanges is given below:





PROFESSIONAL PROGRAMME

Module 3

Paper 7

Corporate Funding & Listing in Stock Exchanges (Max Marks 100)

SYLLABUS

Objective

Part I : To provide practical knowledge of means of finance available to corporates at their various stages of journey, their suitability, pros and cons, process, compliances etc.

Part II : To acquire knowledge of legal & procedural aspects of various types of listing, eligibility criteria, documentation, compliances etc.

Detailed Contents

Part I : Corporate Funding (60 Marks)

1. **Indian Equity – Public Funding :** Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009; Initial Public Offer (IPO)/ Further Public Offer (FPO); Preferential Allotment; Private Placement; Qualified Institutional Placement; Institutional Private Placement; Rights Issue; Fast Track Issue; Real Estate Investment Trust (REIT); Infrastructure Investment Trust (InvIT).
2. **Indian Equity – Private funding :** Venture Capital; Alternative Investment Fund; Angel Funds; Seed Funding; Private Equity.
3. **Indian equity – Non Fund based :** Bonus issue; Sweat Equity, ESOP.
4. **Debt Funding – Indian Fund Based :** Debentures, Bonds; Masala Bonds; Bank Finance; Project Finance including machinery or equipment loan against property, Loan against shares; Working Capital Finance- Overdrafts, Cash Credits, Bill Discounting, Factoring etc. Islamic Banking.
5. **Debt Funding – Indian Non fund Based :** Letter of Credit; Bank Guarantee; Stand by Letter of Credit etc.
6. **Foreign Funding – Instruments & Institutions :** External Commercial Borrowing (ECB); American Depository Receipt (ADR)/Global Depository Receipt (GDR); Foreign Currency Convertible Bonds (FCCB); Foreign Currency Exchangeable Bonds (FCEB); International Finance Corporation (IFC), Asian Development Bank (ADB), International Monetary Fund (IMF).
7. **Other Borrowings Tools :** Inter-corporate Loans; Commercial Paper etc.; Deposits under Companies Act; Customer Advances/Deposits.
8. **Non-Convertible Instruments- Non-Convertible Redeemable Preference Shares (NCRPs) etc.**
9. **Securitization.**

Part II : Listing (40 Marks)

10. **Listing–Indian Stock Exchanges:** Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015; Equity Listing (SME, ITP, Main); Debt Listing; Post listing disclosures.

11. **International Listing :** Applicability of Listing Regulations, Singapore Stock Exchange; Luxembourg Stock Exchange; NASDAQ-NGSM, NCM, NGM; London Stock Exchange-Main, AIM; U S Securities and Exchange Commission.

12. **Various Procedural requirements for issue of securities and Listing.**

13. **Preparing a Company for an IPO and Governance requirements thereafter, Appraising the Board and other functions in the organisations regarding the Post IPO/Listing Governance changes.**

14. **Documentation & Compliances.**

Case studies and Practical aspects.

LESSON WISE SUMMARY
CORPORATE FUNDING & LISTINGS IN STOCK EXCHANGES

PART I – CORPORATE FUNDING

Lesson 1: Indian Equity – Public Funding

With the growth of company form of organisation in India, the demand for equity capital gained steam. With the passage of time, different variants of equity capital emerged in Indian capital market, i.e. Initial Public Offer (IPO), Further Public Offer (FPO), Private Placement, Rights issue etc. So, a need was felt, to institute a regulatory structure that governs the significant angles of issue of capital, especially, the equity shares.

In light of this, the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (the ICDR Regulations) were notified with the objective to bring more clarity to the provisions of the rescinded SEBI DIP Guidelines by removing the redundant provisions and amending certain provisions in order to cope up with the dynamics of capital market.

SEBI in order to align its provisions under ICDR Regulations with Companies Act, 2013 and allied regulations,had come with its consultation paper on May 04, 2018 detailing the suggestive changes under various fundraising options by listed issuers.SEBI constituted the Issue of Capital & Disclosure Requirements Committee ("ICDR Committee") under the Chairmanship of Shri Prithvi Haldea in June, 2017, to review the ICDR Regulations.

The ICDR Committee suggested certain policy changes. In continuation to the same, SEBI vide its notification dated 11th September, 2018 issued **SEBI (ICDR) Regulations, 2018 ('ICDR, 2018')** which is effective from the 60th day of its publication in Official Gazette.

SEBI (Issue of Capital and Disclosure Requirements) Regulations 2018 lay down guidelines relating to conditions for various kinds of issues including public and rights issue.

Keeping the above mentioned pertinent issue, this lesson has touched upon various significant concepts pertaining to raising of funds from the public, various provisions relating to public issue such as conditions relating to an IPO and Further Public Offer (FPO), conditions relating to pricing in public offerings, conditions governing promoter's contribution, restriction on transferability of promoter's contribution, minimum offer to public, reservations, manner of disclosures in offer documents, etc.

Lesson 2: Real Estate Investment Trusts

Real Estate Investment Trust (REIT) has been one of the crucial vehicles for making collective investment in commercial real estate. Emanating in the USA in 1960s as a tax transparent collective investment vehicle, REITs have subsequently been used by several other countries, and have done remarkably well.

In India, the onset of Real Estate Investment Trust took place after SEBI introduced real estate mutual funds pursuant to recommendations of an AMFI Committee, subsequently, it came with draft regulations on REITs in 2008. The introduction of regulatory framework for Real Estate Investment Trusts (REITs) has paved the way for the launch of REIT funds in India.

In view of the importance of REIT, this lesson makes an endeavour to throw light on critical aspects like, SEBI (Real Estate Investment Trust) Regulations, 2014; Issue and Listing of Units; Guidelines for Public Issue of Units of REITs etc.

Lesson 3: Infrastructure Investment Trusts

Infrastructure being one of the critical sectors of Indian economy as it contributes immensely towards economic development; it creates substantial academic interest to explore a vital facet associated with it, i.e. Infrastructure Investment Trusts.

An Infrastructure Investment Trust (InvITs) is like a mutual fund, which enables direct investment of small amounts of money from possible individual/institutional investors in infrastructure to earn a small portion of the income as return. InvITs work like mutual funds or real estate investment trusts (REITs) in features. InvITs can be treated as the modified version of REITs designed to suit the specific circumstances of the infrastructure sector.

As it is a well accepted fact that the gestation period of infrastructure projects tends to be high, in view of this, the infrastructure developers need source of funds to meet financial obligations towards the loans in the shape of repayment of principal and interests. In this regard, Infrastructure Investment Trusts acts as a blessing in meeting out the debt obligations.

This lesson makes an attempt to delve deep into various essential aspects pertaining to SEBI (Infrastructure Investment Trust), Regulations, 2014 Key stakeholder of InvITs; Eligibility Criteria; Guidelines for preferential issue of units by InvITs etc.

Lesson 4: Indian Equity – Private Funding

Finance is life blood of the business and if not available in adequate quantity may jeopardise business growth. In this regard, it is quite often observed that Indian entrepreneurs despite their optimum business plans and models fail to succeed as they are devoid of adequate quantum of capital.

In view of the above, private equity and venture capital acts as a messiah in meeting out the capital requirements of entrepreneurs. The main providers of this form of capital are private equity and venture capital funds which are channelled through Alternative Investment Funds (AIFs). However, as the mentioned source of finance is not in abundance in India it calls for a congenial regulatory environment.

It is to be noted that AIFs in India are regulated by the Securities and Exchange Board of India (SEBI). Other government agencies which play an important role are the Ministry of Finance and sector regulators in the pension and insurance areas as well as the Reserve Bank of India. Previously, SEBI hadframed the SEBI (Venture Capital Funds) Regulations, 1996 (“VCF Regulations”) to encourage investments into start-ups and mid-size companies. Since the arrival of the VCF Regulations, it was observed by SEBI that the venture capital route was being used by several other categories of funds such as private equity funds, real estate funds etc. Further, since registration as a venture capital fund (“VCF”) was not mandatory under the VCF Regulations, not all private equity or other categories of funds were registering with the SEBI.

In light of the soaring significance of private equity and venture capital in India, this lesson aims to throw ample light on various critical issues pertaining to private equity and venture capital, like, SEBI (Alternative Investment Funds) Regulations, 2012; Categories of AIF; Investment in an AIF; Placement Memorandum etc.

Lesson 5 : Indian Equity : Non Fund Based

Any company can attain astral heights if it takes care of its two key stakeholders, one shareholders and other human capital. If shareholders are paid high dividends or additional shares in the form of bonus shares are issued then they remain loyal to the company and even at times of distress they are with the management of the company. Similarly, the work force is vital component of a business organisation and those executives who possess the potential to take the organisation to newer heights needs to be remunerated suitable. Now remuneration or incentives may be financial as well as non-financial. One of the key non-financial incentives may be issues of shares to the employees in the form of ESOP (Employee Stock Option).

But it is also equally important to be conversant with the legal dimensions associated with above mentioned form of equity issues. This lesson undertakes a holistic approach by focusing on all the significant facets of equity issue, i.e. Meaning of Bonus Issue; Provisions pertaining to issue of Bonus shares; ESOP and Sweat Equity Shares covered under Companies Act, 2013; Concept of Employee Stock Option; SEBI (ICDR) Regulations, 2018 etc.

Lesson 6 : Debt Funding – Indian Fund Based (Corporate Debt)

Capital market of any economy act as a fulcrum of economic development, as it ensures supply of capital from the savers to investors through various forms of financial instruments. Mainly there are two kinds of financial assets through which investors can invest in capital market, i.e. Equity and Debt. Generally, most of the investments happen in equity but gradually debt instruments have also gained steam.

Today majority of corporate houses are espousing the debt financing trajectory to finance their business expansion plans; mergers and acquisitions; setting up of new business etc. Currently, in India the debt market in India comprises mainly of two segments viz., the Government securities market consisting of Central and State Governments securities, Zero Coupon Bonds (ZCBs), Floating Rate Bonds (FRBs), T-Bills and the corporate securities market consisting of FI bonds, PSU bonds, and Debentures/Corporate bonds. Government securities form the major part of the market in terms of outstanding issues, market capitalization and trading value.

Keeping in view the rising importance of debt funding in Indian capital market, this lesson aims to cover various important topics pertaining to debt funding- Debt Market in India; Forms of Debentures; Regulatory framework governing debt securities; SEBI (Issue and Listing of Debt Securities by large entities; Electronic Book Mechanism for issuance of securities on private placement basis etc.

Lesson 7 : Debt Funding – Indian Fund Based (Government Debt & Banking Finance)

Corporate finance required for running a corporation or joint-stock company. For survival of a business funds are required. If a corporate is a body then the finance is the blood of that body. Finance is the key for all economic activities of the organization. The organization require the finance throughout the working life of the organization. In IndiaCommercial Banks play an important role in financing the requirements of business concerns.Commercial Banks are one of the popular source of finance in Indian market. The commercial banks give loans to the companies against the security of properties and assets. Banks provide different types of facilities to the borrower depending on requirement of the borrower. Banks provide finance to small scale industries and large scale industries in the form of working capital and term loan.

Lesson 8 : Debt Funding – Indian Non Fund Based

In a business, funds are required for various reasons. Broadly speaking a business require funds to finance its working capital and long-term capital requirements. Working capital is required to finance day to day operations of the business enterprise and long-term capital is required to finance the capital expenditures, i.e. acquisition of fixed assets, like, plant, machinery, furniture and fixtures etc.

Generally, it is observed that whenever there is raising of funds it involves movement of money but there is a form of financing wherein there is no movement of funds from the banks / financial institutions. Such type of funding is called non-fund based credit facilities. In this form of financing or funding, the bank or financial institution do not disburse funds to the borrower directly but it assist its borrowers in managing the business in other ways by issuing Letter of Credit; Stand by Letter of Credit and Bank Guarantees. This form of non fund based funding occupies a significant position in Indian financial ecosystem, and so it generates substantial academic interest to explore various essential dimensions of the mentioned form of funding.

In light of the above, this lesson focuses on the critical facets of Letter of Credit; Documentation under Letter of Credit; Bank Guarantee etc.

Lesson 9 : Foreign Funding – Instruments & Institutions

We are living in the eon of globalisation and opportunities have galore due to it especially, in the form of foreign funding. Financial assistance received from foreign countries assist organisations to foray into cross-border transactions with foreign business partners, such as customers, investors, suppliers and lenders.Various international sources from where funds may be generated include the following. (i) Commercial Banks (ii) International Agencies and Development Banks (iii) International Capital Markets.

It is heartening to note that Government of India have embraced various initiatives in order to assist Indian corporate houses to procure funds from offshore markets. These policy initiatives have lead to the introduction of International Instruments like American Depository Receipts (ADR), Global Depository Receipts (GDR), Foreign Currency Convertible Bonds (FCCBs) and Foreign currency Exchangeable Bonds (FCEBs) etc.

In view of the dynamic global financial ecosystem, it is imperative to explore critical facets of foreign funding. This lesson have amply covered almost all those crucial aspects that influence the foreign funding, i.e. Regulatory framework governing foreign funding in India; External Commercial Borrowings; Depository Receipts and its forms and laws governing them; Foreign Currency Exchangeable Bonds; International Finance Corporation etc.

Lesson 10 : Other Borrowings Tools

A company in its course of operations require funds and it may procure the same from various sources. Apart from mostly discussed sources finance, i.e. term loans, equity share capital, debenture capital etc. the other vital sources are- Inter-corporate loans; Commercial Paper; Deposits under Companies Act etc.

However, it is to be noted that the power to invest the funds of the company is the prerogative of the Board of Directors and this power is derived by the Board under Section 179 of the Companies Act, 2013. However, the Companies Act, 2013 contains provisions for restrictions on investments that a company can make and loans it can provide.

To keep a check on possible malpractices under investments that a company can make, the Companies Act, 2013 has come up with a change in the concept of 'Loan and Investment by Company. The new Act provides that inter-corporate investments not to be made through more than two layers of investment companies. Further, the 2013 Act states that companies can make investments only through two layers of investment companies subject to exceptions which includes company incorporated outside India.

Keeping in view the crucial facets of loans and investments, this lesson delves deep into various significant topics like, meaning of an Investment Company; Limits for Loans / Guarantees / Security / Investment; Disclosures required pertaining to loan, guarantee given and security offered; Approval of Board and Public Financial Institution etc.

Lesson 11 : Non-Convertible Redeemable Preference Shares

There are various sources of raising long term capital and one of them being non-convertible redeemable preference shares. To give a brief about preference shares, they have the right to receive dividend at a fixed rate before any dividend is paid on the equity shares. Further, when the company is wound up, they have a right to return of the capital before that of equity shares.The Preference Shares may carry some more rights such as the right to participate in excess profits, which a specified dividend has been paid on the equity shares or the right to receive a premium at the time of redemption. The preference shares are safer investments than the equity shares.

It is pertinent to note that SEBI issued (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 pertaining to Issue and Listing of Non-Convertible Redeemable Preference Shares which are not convertible, either in whole or part into equity instruments. They provide for rationalized disclosure

requirements and a reduction of certain onerous obligations erstwhile attached to an issue of Non-Convertible Redeemable Preference securities.

Thus being an important source of long-term finance, it generates huge academic interests to know as to why they were launched, the regulatory framework governing their issues, procedures involved in redemption, listing and trading of non-convertible redeemable preferences shares etc.

This lesson has thrown ample light on both above mentioned important topics and more concepts relating to non-convertible redeemable preference shares.

Lesson 12 : Securitization

Securitization a gift of financial engineering has gained prominence in Indian financial environment. It has been existence in India from the early 1990s. Despite being in existence for over two decades securitization market in India continues to be in its nascent stages. The securitization market in India has had several regulatory and taxation concerns in the past which have impacted the securitization volumes and have had lesser impact from external shocks or opportunities.

Securitization is the transformation of financial assets into securities. Securitization is used by financial entities to raise funding other than what is available via the traditional methods of on-balance-sheet funding.

The regulation governing securitized debt instruments in India are- Securitized debt instruments are regulated by the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008 for listing on stock exchanges and the Securitization Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003.

As various renowned corporate houses and financial institutions are embracing the securitization path, it is essential to comprehend the various components associated with the securitization process, like, creation of Special Purpose Vehicle; Eligibility criteria to be fulfilled; Obligations involved to redeem securitized debt instruments; Winding up of schemes; Public Offer of Securitized Debt Instruments etc. This lesson has made an endeavour to include all the areas relating to securitization.

PART II – LISTING

Lesson 13 : Listing – Indian Stock Exchanges

SEBI have launched numerous policy initiatives not only to strengthen the regulatory framework of the Indian Capital market but also align the role of capital market with the international best practices and more importantly to the investing and funding needs of the inspirational Indian population. Broadly, the regulatory framework in India is in compliance with the OECD Principles, an international benchmark worldwide. A step further in this direction has been envisioned through the policy measures when SEBI notified the 'Listing Obligations and Disclosure Requirements' Regulations, 2015.

It is heartening to note that SEBI has recognised the important role played by a Company Secretary as a Governance Professional under the SEBI Listing Regulation. In view of this, it is extremely essential that an in-depth wisdom pertaining to Listed Entity; Principles under the (Listing Obligations and Disclosure Requirements) Regulations, 2015; Principles related to Corporate Governance and protection of Minority Shareholders; Common Obligations for a Listed Entity etc.

Lesson 14 : International Listing

We are living in the era of globalization where capital raising process is not restricted to the geographical frontiers of a country. Today corporate houses in order to meet their financial requirements are also eyeing offshore locations and foraying into foreign capital markets to procure capital.

However, procuring capital from foreign capital market also entails various rules and regulations as the law of one land is different from another. In view of this, after securities or are issued in foreign capital market, an Indian company may opt for listing of its securities in foreign stock exchange.

Today capital raising in foreign capital market and listing of securities in foreign stock exchange is a global phenomenon. In view of this, it is imperative to possess deep knowledge relating to listing rules and regulations prevailing in various foreign countries in order to avert legal hassles.

In light of the above, this study lesson makes an attempt to explore various foreign stock exchanges where listing of securities are generally undertaken and rules and regulations governing the capital market / stock exchange of these countries. For instance, if a company plans to list its securities in US, then it needs to be conversant with the following laws- Securities Act of 1933; Securities Exchange Act of 1934; Trust Indenture Act of 1939 etc.

Lesson 15 : Preparing a Company for an IPO and Governance Requirements

Embracing the IPO (Initial Public Offer) trajectory is an important process of raising long-term capital. The rationales for going public are: Procuring Capital; Finance Mergers & Acquisitions; Financial Leverage; Talent Acquisition & Management; Enhancing Brand Image etc.

Since IPO issue is a critical process, the following significant facets needs to be looked into in order to ensure best governance practices- Regulatory Framework and Scope of Due Diligence; Role of Merchant Banker; Formation of pertinent teams who will take care of the issue of initial public offering, Existing Management Structure etc.

Thus, no doubt IPO despite being the most preferred source of raising long term finance, there are various crucial facets that needs to be focused.

In view of the significance of Initial Public Offer (IPO), this study lesson encompasses concepts pertaining to due diligence, management discussion & analysis, listing regulations etc. It will facilitate a Company Secretary in getting conversant with the various laws / regulations / procedure involved in IPO issue.

Lesson 16 : Documentation

It is not an exaggeration that documentation is the most imperative part of every kind of business. From the viewpoint of businesses, every business needs a set of governing legal documents. For a corporation, these include a certificate of incorporation, bylaws and often a shareholders' agreement. For instance, in case of a limited partnership or limited liability company, they include a formation certificate and either a partnership agreement or operating agreement. The purpose of these documents is to establish rules governing how the business will be managed and the rights and obligations of the owners.

From the outlook of investors, they demand various intimations and various disclosures from time to time about the company where they have invested. It is to be noted that Regulations need timely compliances to be made by a company by filing appropriate documents. If a document is incorrect and delayed while filing it leads to hefty penalty for the corporates for non-compliances.

Thus, in light of the soaring significance of documentation, this study lesson makes an endeavour to delve deep into various vital topics pertaining to documentation, such as, Documentation for IPO / FPO; IPO / FPO Draft Prospectus / Red Herring Prospectus (RHP) Clearance; Basis of Allotment etc.

LIST OF RECOMMENDED BOOKS & OTHER REFERENCES

MODULE 3 – PAPER 7

CORPORATE FUNDING & LISTINGS IN STOCK EXCHANGES

READINGS

1. SEBI Manual
2. SEBI Monthly Bulletin
3. Companies Act 2013 and Rules
4. Corporate Law Adviser
5. SEBI and Corporate Laws
6. Journals (a) ICSI – Chartered Secretary
   (b) ICSI – Student Company Secretary – E-bulletin

REFERENCES

1. SEBI Annual Report : SEBI, Mumbai.
2. Website : www.sebi.gov.in
   www.nseindia.com
   www.bseindia.com
   www.rbi.org.in
   www.mca.gov.in

ARRANGEMENT OF STUDY LESSONS

MODULE 3 – PAPER 7

CORPORATE FUNDING & LISTINGS IN STOCK EXCHANGES

Part I : Corporate Funding

Lesson No.	Lesson Tittle
1	Indian Equity – Public Funding
2	Real Estate Investment Trust
3	Infrastructure Investment Trusts
4	Indian Equity – Private Funding
5	Indian Equity : Non Fund Based
6	Debt Funding – Indian Fund Based (Corporate Debt)
7	Debt Funding – Indian Fund Based (Government Debt & Banking Finance)
8	Debt Funding – Indian Non Fund Based
9	Foreign Funding – Instruments & Institutions
10	Other Borrowings Tools
11	Non-Convertible Redeemable Preference Shares
12	Securitization

Part II : Listing

13.	Listing – Indian Stock Exchanges
14.	International Listing
15.	Preparing a Company for an IPO and Governance Requirements
16.	Documentation

PROFESSIONAL PROGRAMME
CORPORATE FUNDING & LISTINGS IN STOCK EXCHANGES

CONTENTS

LESSON 1
INDIAN EQUITY – PUBLIC FUNDING

Introduction	2
Background	2
Types of Issues	3
Initial Public Offering (IPO) / Further Public Offering (FPO)	4
Eligibility Requirements to be Complied With for IPO under ICDR, 2018	4
Entities not eligible to make an initial public offer [Regulation 5]	4
Eligibility requirements for an initial public offer [Regulation 6(1)]	5
General conditions	6
Additional conditions for an offer for sale [Regulation 8]	7
Eligibility Criteria for Further Public Offer (FPO)	10
Entities not eligible to make a FPO [Regulation 102]	10
Eligibility requirements for FPO [Regulation 103]	10
General Conditions for FPO [Regulation 104]	10
ISSUE OF WARRANTS [REGULATION 13]	11
Appointment of Lead Managers, Other Intermediaries and Compliance Officer [Regulation 23 & 121]	11
Disclosures in and Filing of Offer Documents	12
Filing of Offer Document [Regulations 25 & 123]	12
Draft offer document and offer document to be available to the public [Regulations 26 & 124]	13
ASBA [Regulations 35 & 132]	14
Availability of issue material [Regulations 36 &133]	14
Prohibition on payment of incentives [Regulations 37 & 134]	14
Security Deposit [Regulations 38 & 135]	14
IPO Grading – Applicable to IPO only [Regulation 39]	14
Opening of the Issue [Regulations 44 & 140]	14
Period of Subscription [Regulations 46 & 142]	15

Underwriting [Regulations 40 & 136] 15
Minimum Subscription [Regulations 45 & 141] 15
Oversubscription [Proviso to Regulations 49(2) & 145(2)] 16
Monitoring Agency [Regulations 41 & 137] 16
Public Communications, Publicity Materials, Advertisements and Research Reports [Regulations 42 & 138] 16
Issue-related Advertisements [Regulations 43 & 139] 16
Application and Minimum Application Value [Regulations 47 & 143] 17
Manner of Calls [Regulations 48 & 144] 17
Allotment Procedure and Basis of Allotment [Regulations 49 & 145] 17
Allotment, Refund and Payment of Interest [Regulations 50 & 146] 20
Post-issue Advertisements [Regulations 51 & 147] 20
Post-issue responsibilities of the lead manager(s) [Regulations 52 & 148] 20
Release of subscription money [Regulations 53 & 149] 21
Reporting of transactions of the promoters and promoter group [Regulations 54 & 150] 21
Post-issue reports [Regulations 55 & 151] 21
Restriction on Further Capital Issues [Regulations 56 & 152] 21
Face Value of Equity Shares [Regulations 27 & 125] 22
Pricing 22
Differential Pricing [Regulations 30 & 128] 22
Price and Price Band [Regulations 29 & 127] 22
Promoters' Contribution [Regulations 14 & 112] 23
In Case of IPO 23
Non applicability 23
Minimum Promoters' Contribution 23
Promoters' Contribution to be brought in before Public Issue Opens [Regulation 14(34)] 24
Securities Ineligible for Minimum Promoters' Contribution [Regulation 15] 24
In case of FPO 25
Exemption from Requirement of Promoters' Contribution [Regulation 112] 25
Minimum Promoters' Contribution [Regulation 113] 25
Securities ineligible for minimum promoters' contribution [Regulation 114] 26
Lock in Requirements 27
For Securities Held by Promoters [Regulations 16 & 115] 27
Securities Held by Persons other than Promoters [Regulation 17] 27
Securities Lent to Stabilising Agent under Green Shoe Option [Regulations 18 & 116] 28

Lock-in of party-paid securities [Regulations 19 & 117] 28
Inscription or recording of non-transferability [Regulations 20 & 118] 28
Pledge of Locked In Shares [Regulations 21 & 119] 28
Transferability of locked-in specified securities [Regulations 22 & 120] 28
Minimum Offer to Public And Reservations 29
Minimum Offer to Public [Regulation 31] 29
Reservation on Competitive Basis [Regulations 33 & 130] 29
Allocation in Net Offer 30
Fast Track FPO 31
Eligibility 31
Post-listing exit opportunity for dissenting shareholders 33
Exit Opportunity to Dissenting Shareholders [Scheduled XX] 33
Conditions for Exit Offer 33
Eligibility of Shareholders for Availing the Exit Offer 33
Exit Offer Price 33
Manner of Providing Exit to Dissenting Shareholders 34
Maximum Permissible Non-Public Shareholding 35
Rights Issue 35
Eligibility Conditions 35
General Conditions 35
Record Date 36
Pricing 36
Abridged letter of offer 36
ASBA 36
Availability of letter of offer and other issue materials 36
Conditions for making applications on plain paper 37
Subscription Period 37
Payment Option 37
Pre-Issue Advertisement for Rights Issue 37
Reservations 38
Procedure for making a Rights Issue 38
General Obligations of the Issuer and the Intermediary in Case of Public Issue and Rights Issue 39
Preferential Issue [Chapter V of ICDR of 2018] 40
Applicability 40

Non- applicability 40
Conditions for Preferential Issue 42
Issuers Ineligible to make a Preferential Issue [Regulation 159] 42
Tenure of convertible securities [Regulation 162] 43
Disclosures to Shareholders [Regulation 163] 43
Relevant Date 44
Allotment pursuant to special resolution 44
Pricing 45
Pricing of equity shares - Frequently traded shares 45
Pricing of equity shares – Infrequently traded shares 51
Adjustments in pricing - Frequently or Infrequently traded shares 51
Payment of consideration 51
Lock-in of specified securities 52
Transferability 53
Qualified Institutions Placement [Chapter VI of ICDR of 2018] 53
Qualified Institutional Buyer (QIB) 53
Eligible securities for the purpose of QIP 54
Conditions for QIP 54
Appointment of Lead Managers 56
Placement Document 56
Pricing 56
Partly Paid-Up Eligible Securities 57
Tenure of Convertible Securities 57
Transferability 57
Minimum Number of Allottees 57
Application and Allotment 58
Issue of Specified Securities by Small and Medium Enterprises [Chapter IX] 58
Eligibility requirements for an initial public offer 59
Filing of the offer document 59
Offer document to be made available to public 60
Minimum Application Value and Number of Allottees 60
Migration to SME Exchange 60
Migration to Main Board 60
Market Making 61

Innovators Growth Platform [Chapter X of ICDR of 2018] 61
Eligibility 62
Listing without a public issue 62
Listing Pursuant to an Initial Public Offer 63
Disclosures in draft offer document and offer document 63
Minimum public shareholding norms and minimum offer size 64
Minimum application size 64
Allocation and allotment 64
General Conditions 64
Lock-in 64
Trading lot 65
Migration to the main board 65
LESSON ROUND UP 69
SELF TEST QUESTIONS 70

LESSON 2
REAL ESTATE INVESTMENT TRUSTS

Introduction 72
Background 72
REIT Structure 72
Salient Features of SEBI (REIT) Regulations, 2014 73
Definitions 74
Eligibility Criteria 77
Issue and Allotment of Units 78
Offer Document and Advertisements 81
Listing and Trading of Units 81
Delisting of Units 81
Investment Conditions and Distribution Policy 82
Rights and Meeting of the Unit Holders 86
Disclosures 88
Liability for Action in Case of Default 89
Participation by Strategic Investor(s) in REITs 89
LESSON ROUND UP 90
SELF TEST QUESTIONS 91

LESSON 3
INFRASTRUCTURE INVESTMENT TRUSTS

Introduction	94
How does it benefit investors?	94
Key laws applicable to InvITs	94
Intermediaries involved in an InvIT	94
SEBI (Infrastructure Investment Trusts) Regulations, 2014	96
Definitions	96
Key stakeholders	98
InvIT Structure	98
Eligibility Criteria	98
Offer of Units and Listing of Units	100
Guidelines for Public Issue of Units of INVITS	103
Filing of offer document	103
Allocation in public issue	103
Anchor investors	103
Security deposit	104
Opening of an issue and subscription period	104
Price and price band	104
Bidding process	104
Basis of allotment	104
Public communications, publicity materials, advertisements and research materials	104
Other conditions	105
Guidelines for Preferential Issue of Units by INVITS	105
Placement Document	105
Pricing	106
Restriction on allotment	106
Transferability of Units	106
Listing and Trading of Units	106
Delisting of Units	107
Investment Conditions and Distribution Policy	108
Rights and Meeting of the Unit Holders	111
Maintenance of records	113
LESSON ROUND UP	114
SELF TEST QUESTIONS	115

LESSON 4
INDIAN EQUITY – PRIVATE FUNDING

Introduction	118
Background	118
SEBI (Alternative Investment Funds) Regulations, 2012	118
Important Definitions	118
Categories of AIF	120
Registration of AIF	121
Investment Strategy	121
Investment in an AIF	121
Placement Memorandum	122
Schemes	122
Tenure	122
Listing	123
General Investment Conditions	123
Conditions for Category I AIFs	123
Conditions for Category II AIFs	125
Conditions for Category III AIFs	126
Angel Funds	126
Applicability	127
Registration	127
Investment in an Angel Fund	127
Schemes	127
Investment by Angel Funds	128
Listing	128
Maintenance of Records	128
Process and Documentation required for Listing and Trading Alternative Investment Fund on Stock Exchange	129
Guidelines on Disclosures Reporting and Clarifications under the AIF Regulations	130
Seed Funding	131
Private Equity	131
Venture Capital	132
Stages of Investment Financing	132
A. Early Stage Financing	133
B. Later Stage Financing	133

Foreign Venture Capital Investors 134
LESSON ROUND UP 135
SELF TEST QUESTIONS 136

LESSON 5
INDIAN EQUITY- NON FUND BASED

BONUS ISSUE 138
Provisions of the Companies Act, 2013 138
SEBI (ICDR) Regulations, 2018 139
1. Eligibility 139
2. Rights of FCD/PCD holders 139
3. Bonus out of Free Reserves 139
4. Bonus Issue not to be in lieu of Dividend 140
5. Implementation of Proposal within fifteen days 140
Procedure for Issue of Bonus Shares 140
SEBI Listing Regulations 2015 141
Sweat Equity 142
Provisions of the Companies Act, 2013 142
Sebi (Issue of Sweat Equity Shares) Regulations, 2002 143
Procedure for the Issuance of Sweat Equity Shares 146
Employee Stock Option 147
Equity Shares with Differential Rights 147
Section 43 147
Rule - 4 147
Regulatory Framework – A snapshot 149
SEBI (Share Based Employee Benefits) Regulations, 2014 152
Companies Covered 152
Implementation of the Scheme Through a Trust 154
Eligibility 156
Compensation Committee 156
Shareholders Approval 157
Variation of Terms 157
Winding Up of Schemes 158
Non Transferability of Options Granted 158
Listing 158

Schemes Implemented by Unlisted Companies 159
Compliances and Conditions 159
Certificate from the Auditors 159
Disclosures 159
Accounting Policies 159
Administration and Implementation of Specific Schemes 160
Administration and Implementation of Employee Stock Purchase Scheme 160
Administration and Implementation of Stock Appreciation Rights 161
Administration and Implementation of General Employee Benefit Schemes 161
Administration and Implementation of Retirement Benefit Schemes 161
Directions by SEBI and Action in Case of Default 161
SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 162
Procedure for issuing ESOP by a Listed Company 163
LESSON ROUND UP 164
SELF TEST QUESTIONS 165

LESSON 6
DEBT FUNDING – INDIAN FUND BASED (CORPORATE DEBT)

Introduction 168
Debt Market 168
Debentures 169
Types of Debentures 169
Security 169
Tenure 170
Mode of Redemption 170
Basis of Negotiability 170
Governing Framework for Debt Securities 171
(1) The Companies Act, 2013 & the Companies (Share Capital and Debentures) Rules, 2014 171
(2) SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 171
(3) SEBI (Issue and Listing of Debt Securities) Regulations, 2008 172
(4) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“Listing Regulations”) 172
(5) RBI Guidelines 172
SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 172
SEBI (Issue and Listing of Debt Securities) Regulations, 2008 174
Applicability 175

Conditions 175
Appointment of Intermediaries 175
Disclosures of Material Information 175
Minimum Subscription 175
Filing 175
Responsibilities of Merchant Banker 176
Filing of Shelf Prospectus 176
Mode of Disclosure 177
Advertisements 177
Abridged Prospectus and Application Forms 177
On-line Issuances 178
Issue Price 178
Minimum Subscription 178
Optional Underwriting 178
Prohibition of Mis-statements in the Offer Document 178
Trust Deed 178
Debenture Redemption Reserve 179
Creation of Charge 179
Right to recall or redeem prior to maturity 179
Redemption and Roll-over 180
Mandatory Listing 180
Consolidation and re-issuance 180
International Securities Identification Number 181
Relaxation of strict enforcement of Rule 19 of Securities Contracts (Regulation) Rules, 1957 181
Continuous Listing 181
Trading 181
Information to be displayed on Website 182
Obligations of Debenture Trustee 182
Obligations of the Issuer, Lead Merchant Banker, etc. 182
Procedure for Issue of debt securities under SEBI (ILDS) Regulations, 2008 183
Private Placement Under SEBI (Issue and Listing of Debt Securities) Regulations, 2008 184
Disclosures in respect of Private Placements of Debt Securities 185
Filing of Shelf Disclosure Document 185
Fund raising by issuance of Debt Securities by Large Entities 185

Applicability of Framework 185
Large Corporate (LC) 186
Framework 186
Disclosure requirements for large entities 187
Electronic Book Mechanism for issuance of securities on private placement basis 187
Definitions 187
Streamlining the Process of Public Issue under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ('SEBI ILDS') 189
Indicative Timeline Schedule for Various Activities 190
Green Debt Securities 191
LESSON ROUND UP 193
SELF TEST QUESTIONS 195

LESSON 7
DEBT FUNDING – INDIAN FUND BASED (GOVERNMENT DEBT & BANKING FINANCE)

Bonds 198
Masala Bonds 198
Bank Finance 199
Credit Facilities Provided by the Banks 199
Overdrafts 200
Cash Credit Account (CC A/C) 200
Bills Finance 201
Leasing Finance 201
Hire-Purchase Finance 201
Difference between Hire-Purchase and Hypothecation 202
Credit facilities (Fund based) granted to the exporters by banks 202
Rupee Export Credit 203
Pre-shipment/Packing Credit 203
Post-shipment Credit 203
Rupee Deemed Export Credit 203
Foreign Currency Export Credit 204
Pre-shipment credit in Foreign Currency (PCFC) 204
Post-shipment Credit in Foreign Currency (PSCFC) 204
Project Finance 205
Loan Against Securities 211

Features of Loan Against Securities 212
Loan Against Properties 212
Discounting 212
Factoring 213
Advantages for the Seller 214
Types of Factoring 215
Islamic Banking 216
Islamic Banking in India 216
How to Prepare CMA Data for Different Types of Loans and Credit Facilities 217
Appraisal Methodology for Different Type of Loans and Credit Products 219
I. Working Capital 221
II. Appraisal of Term Loans 223
LESSON ROUND UP 223
SELF TEST QUESTIONS 223

LESSON 8
DEBT FUNDING – INDIAN NON-FUND BASED

Introduction 226
Credit Facilities Provided by the Banks 226
Letter of Credit 227
Types of Letter of Credit 227
Documents handled under Letters of Credit 229
Uniform Customs and Practice for Documentary Credit (UCPDC 600) 231
Examples of Standby Letters of Credit 232
Bank Guarantee 232
Appraisal Methodology for Different Type of Non Fund Based Credit Products 235
Credit Appraisal 235
Assessment of Limit of Letter of Credit 235
Assessment of Limit of Bank Guarantee 236
LESSON ROUND UP 236
SELF TEST QUESTIONS 237

LESSON 9
FOREIGN FUNDING – INSTRUMENTS & INSTITUTIONS

Introduction 240
Regulatory Framework in India 240

Euro Issue 241
External Commercial Borrowings (ECBs) 241
Limit and Leverage 244
Issuance of Guarantee, etc. by Indian banks and Financial Institutions: 244
Procedure of Raising ECB 245
Special Dispensations under the ECB Framework 247
Depository Receipts 249
Depository Receipts Scheme, 2014 249
Depository Receipts Scheme 2014 249
Eligibility for Issue of Depository Receipts 250
Issue of Depository Receipts 250
Rights and Duties 251
Obligations 251
Approval 252
Pricing 252
Issue of FCCBs and Depository Receipts (DRs) 252
ADR/GDR 253
Sponsored ADR/GDR Issue 253
Two-Way Fungibility Scheme 254
Provisions under the Companies Act, 2013 254
Companies (Issue of Global Depository Receipts) Rules, 2014 254
Procedure for Issuance of ADRs/GDRs 256
Approvals Required 256
Approval of Board of Directors 256
Approval of Shareholders 256
Approval of Ministry of Finance – “In Principle and Final” 256
In-Principle Consent of Stock Exchanges for Listing of Underlying Shares 256
In-Principle Consent of Financial Institutions 256
Appointment of Intermediaries 257
Principal Documentation 258
Pre and Post Launch – Additional Key Actions 259
Offering Circular 260
Foreign Currency Convertible Bonds 263
FCCB and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 264

Foreign Currency Exchangeable Bonds 265
What is an FCEB? 265
Foreign Currency Exchangeable Bonds Scheme, 2008 266
International Agencies and Development Banks 267
International Finance Corporation 267
Asian Development Bank 268
Areas of Work 268
International Monetary Fund 269
Mission 269
IMF Lending 269
LESSON ROUND UP 269
SELF TEST QUESTIONS 270

LESSON 10
OTHER BORROWINGS TOOLS

Introduction 274
Inter-Corporate Loans 274
Limits for Loans /Guarantee/Security/Investment [Sec-186(2)] 274
Approval from Members [Section 186(3)] 275
Disclosure of Particulars of Loan, Guarantee given and Security Provided [Section 186(4)] 275
Approval of Board and Public Financial Institution [Section 186(5)] 275
Companies Registered Under Securities Exchange Board of India (SEBI) [Section 186(6)] 276
Rate of Interest on Loan [Section 186 (7)] 276
No Loan by Defaulter Company [Section 186(8)] 276
Register of Loan [Section 186 (9 and 10)] 276
Non-Applicability of Section 186 276
Penalty for contravention of Section 186 277
Meaning of the term investment 277
Procedures Involved In Making Loan, Giving Guarantee and Providing Security 277
Commercial Paper 279
Procedure for Issuance 280
Deposits 282
Provisions of the Companies Act, 2013 283
Customer Advance/Deposits 288
Merits 288

Demerits 288
LESSON ROUND UP 288
SELF TEST QUESTIONS 289

LESSON 11
NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES

Introduction 292
Background 292
Who can Issue Redeemable Preference Shares? 293
Legal Framework 293
SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 295
Important Definitions 295
Requirements for Public Issue of NCRPS 296
General Conditions 296
Disclosures in the Offer Document 297
Filing of the Offer Document 297
Mode of Disclosure of Offer Document 297
Advertisements for Public issues 297
Abridged Prospectus and application forms 298
Electronic Issuances 298
Price Discovery through Book Building 298
Redemption 298
Minimum subscription 298
Underwriting 299
Prohibitions of mis-statements in the offer document 299
Mandatory listing 300
Listing Agreement 300
Issue of NCRPS on a Private Placement Basis 300
Disclosures in respect of private placements of non-convertible redeemable preference shares 300
Listing 301
Continuous Listing Conditions 301
Trading of non-convertible redeemable preference shares 301
Obligations of the Issuer and the Intermediaries 301
Issuance and Listing of Non Equity Regulatory Capital Instruments by Banks 302
Applicability 302

Streamlining the process of public issue under the SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 302

LESSON ROUND UP 302

SELF TEST QUESTIONS 303

LESSON 12
SECURITIZATION

Introduction 306

Background 306

SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008 307

Eligibility 308

Launching of Schemes 309

Obligation to redeem securitized debt instruments 309

Servicers 309

Holding of Originator 310

Maintenance of records 310

Winding Up of Schemes 310

Public Offer of Securitized Debt Instruments 310

Offer to the Public 310

Submission and filing of final offer document 311

Arrangements for dematerialisation 311

Credit rating 311

Offer period 311

Minimum subscription 311

Prohibition of misstatements in the offer document 312

Oversubscription 312

Allotment 312

Refunds 312

Rights of Investors 312

Listing of Securitized Debt Instruments 313

Mandatory listing 313

Application for listing 313

Listing Agreement 313

Minimum public offering for listing 313

Continuous listing conditions 314

Trading of securitized debt instruments 314
Issuance and Listing of Security Receipts 314
Eligibility 314
Sale of security receipts by the existing holders 314
Conditions for Listing of Security Receipts 315
Offer Document 315
Trading of security receipts 315
Streamlining the process of public issue under the SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008 316
LESSON ROUND UP 316
SELF TEST QUESTIONS 317

LESSON 13
LISTING – INDIAN STOCK EXCHANGES

Introduction 322
Applicability of the Regulations 323
Meaning of Listed Entity 323
Principles under the (Listing Obligations and Disclosure Requirements) Regulations, 2015 324
Principles Governing Disclosures [Regulation 4 (1)] 324
Principles governing Corporate Governance and protection of Minority Shareholders [Regulation 4 (2)] 325
Ambiguity – Regulation 4(3) 328
Common Obligations for a listed entity 328
Equity (Main Board) 331
Periodic compliances for a listed entity for Equity Shares 349
Small and Medium Enterprise (SME) 352
For the purpose of those entities, whose equity shares are listed on the Small and Medium Enterprise (SME) Exchange 352
Compliance calendar for listed entities for SME 353
Non-Convertible Debt Securities or Non-Convertible Redeemable Preference Shares 355
Recognition to Company Secretary under the SEBI Listing Regulations 2015 362
LESSON ROUND UP 363
SELF TEST QUESTIONS 364

LESSON 14
INTERNATIONAL LISTING

Introduction 368
Singapore Exchange Limited (SGX) 368

About Main Board 369
About Catalist 369
How to get Listed on SGX Mainboard 369
How to get listed on SGX Catalist 371
National Association of Securities Dealers Automated Quotations (NASDAQ) 372
London Stock Exchange 372
Main Market 373
Alternative Investment Market (AIM) 373
NOMAD 373
Role of Nominated Advisers 373
Professional Securities Market (PSM) 374
Listing OF depository receipts on the PSM 374
Listing a share/GDR on BdL market 375
Listing Shares /GDRs on the Euro MTF 376
US Securities and Exchange Commission 377
Securities Exchange Act of 1934 378
LESSON ROUND UP 378
SELF TEST QUESTIONS 379

LESSON 15
PREPARING A COMPANY FOR AN IPO AND GOVERNANCE REQUIREMENTS

Preparing a Company for an IPO & Governance Requirements 382
Preparing a Company For An IPO 383
Due Diligence – Regulatory framework and scope of due diligence 383
Due Diligence - Procedure 383
Setting up of Relevant Teams 384
Management Structure 384
Data Room 384
Financial Information & Reporting Process 385
Other Regulatory Compliances 385
Industry data 386
Management Discussion & Analysis 386
Publicity & Advertising 386
Road shows 386
Material Contracts & Documents 387

Appraising the Board and other Functions in the Organisation Regarding the Post IPO/Listing Governance Changes 388
Other Compliances 390
Disclosure regarding usage of funds raised in IPO 391
Company Website 391

LESSON 16
DOCUMENTATION

Documentation For IPO/FPO 394
IPO/FPO Draft Prospectus/RHP clearance 394
Basis of Allotment 395
Checklist for listing of IPO 396
Documents to be submitted before T+3 days (i.e. within 3 working days from the closure of the issue) 396
Documents to be submitted on T+4 days (i.e. within 4 working days from the closure of the issue) 397
Documents to be submitted before T+5 days (i.e. within 5 working days from the closure of the issue) 399
Rights Issue 399
Pre Issue Formalities 399
Formalities before Issue Opening- Rights Issue 399
Post Issue Formalities- Rights Issue 400
Checklist of documents for listing of securities issued pursuant to the Rights issue 400
Formalities for obtaining Trading approval 401
Bonus Issue 401
Documents required for listing approval for Bonus equity shares issued by the Companies 402
Preferential Issue 402
Pre-Issue Formalities 402
Post Issue Formalities 404
Qualified Institutional Placement 405
QIPs- Pre Issue 405
QIP- Post Issue 406
ESPS/ESOS/SARS/GEBS/RBS 407
Pre Issue Formalities 407
Post Issue Formalities 408
GDRs/ADRs/FCCBs 409
Pre issue- Formalities 409
Listing on SME Platform 411
Listing and Trading of SME IPO 414
Test Paper **420**

PART I

CORPORATE FUNDING

Lesson 1
Indian Equity – Public Funding

LESSON OUTLINE

- Introduction
- Types of Issues
- Initial Public Offering / Further Public Offering
- General conditions
- Additional conditions for an offer for sale
- Eligibility Criteria for Further Public Offer
- Entities not eligible to make a FPO
- Issue of Warrants
- Filing of Offer Document
- Pricing
- Promoters' Contribution
- Lock in Requirements
- Minimum Offer to Public and Reservations
- Allocation in Net Offer
- Fast Track FPO
- Exit Opportunity to Dissenting Shareholders
- Rights Issues
- Preferential Issues
- Qualified Institutional Buyer
- Issue of Specified Securities by Small and Medium Enterprises
- Listing on the Institutional Trading Platform
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Securities market, including the market for public offerings, is dynamic and needs to keep pace with the evolving economic and technological environment. In order to keep pace with the change, there has been a commensurate change in the regulatory framework governing the primary market. SEBI in its endeavour to provide issuers and investors with an efficient mechanism for raising funds, has been continuously striving to streamline the process and methodologies associated with public issue fund raising process.

With more promoters looking out to raise money by divesting equities, regulations standard are becoming increasingly stringent. SEBI monitors all the dealings of companies who are planning to raise money on the stock exchanges and is quite careful about attempts which try to create artificial demands about upcoming issues. SEBI has come up with ICDR Regulations, 2018 to promote the development of a healthy capital market and to protect investors' interest while they deal with securities.

A student pursuing Company Secretaryship course should have expert knowledge on the various aspects and compliance requirement for making an IPO/FPO.

In the above light, in this lesson, the various provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 in respect of various issues, such as, IPO/FPO, Rights Issue, Preferential Issue, Promoters' Contribution, Lock-in Requirements, exit to dissenting shareholders etc. have been discussed.

INTRODUCTION

Management of a public issue involves coordination of activities and cooperation of a number of agencies such as managers to the issue, underwriters, brokers, registrar to the issue; solicitors/legal advisors, printers, publicity and advertising agents, financial institutions, auditors and other Government/Statutory agencies such as Registrar of Companies, Reserve Bank of India, Stock Exchanges, SEBI etc. The whole process of issue of shares can be divided into two parts (i) pre-issue activities and (ii) post issue activities. All activities beginning with the planning of capital issue till the opening of the subscription list are pre-issue activities while all activities subsequent to the opening of the subscription list may be called post issue activities. Since only the demat shares are being admitted for dealings on the stock exchanges, hence the securities can be issued only in Dematerialised Form.

BACKGROUND

With the repeal of Capital Issues (Control) Act, 1947 all the guidelines, notifications, circulars etc. issued by the office of the Controller of Capital Issues became defunct. SEBI was given the mandate to regulate issuance of securities, which was earlier done by vide its order dated 11.6.1992 called the Guidelines for Disclosure and Investor Protection, 1992. Later, SEBI issued a compendium containing consolidated Guidelines, circulars, instructions relating to issue of capital effective from January 27, 2000. The compendium titled SEBI (Disclosure and Investor Protection) Guidelines, 2000 replaced the original Guidelines issued in June 1992 and clarifications thereof. On August 26, 2009 SEBI rescinded the SEBI (DIP) Guidelines, 2000 and notified SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

SEBI in order to align its provisions under ICDR Regulations with Companies Act, 2013 and allied regulations, had come with its consultation paper on May 04, 2018 detailing the suggestive changes under various fund raising options by listed issuers.

Between 2009-till date, numerous amendments have been made to the ICDR Regulations. Different types of offerings to raise funds in the primary market have been introduced. Further, there have been changes in market practices and regulatory environment over a period of time. A need was thus felt to review and realign the ICDR Regulations with these developments and to ensure that they reflect the best practices adopted globally. In view of the same, SEBI constituted the Issue of Capital & Disclosure Requirements Committee ("ICDR Committee") under the Chairmanship of Shri Prithvi Haldea in June, 2017, to review the ICDR Regulations with the following objectives:

a) To simplify the language and complexities in the regulations;

b) To incorporate changes/ new requirements which have occurred due to change in market practices and regulatory environment;

c) To make the regulations more readable and easier to understand.

The ICDR Committee suggested certain policy changes. These suggestions were also taken to the Primary Market Advisory Committee (PMAC) of SEBI which comprises of eminent representatives from the Ministry of Finance, Industry, Market Participants, academicians, the Institute of Chartered Accountants of India and the Institute of Company Secretaries of India. The recommendations of the PMAC were incorporated in the draft of the proposed ICDR Regulations. In addition to the public consultation, the draft regulations along with the key policy changes were also forwarded to the Ministry of Finance (MoF), Ministry of Corporate Affairs (MCA) and the Reserve Bank of India (RBI) for their comments. The provisions of Companies Act, 1956 (wherever applicable), Companies Act, 2013, SEBI (Substantial Acquisition & Substantial Takeover) Regulations, 2011, SEBI (Share Based Employee Benefits) Regulations, 2014 have been suitably incorporated.

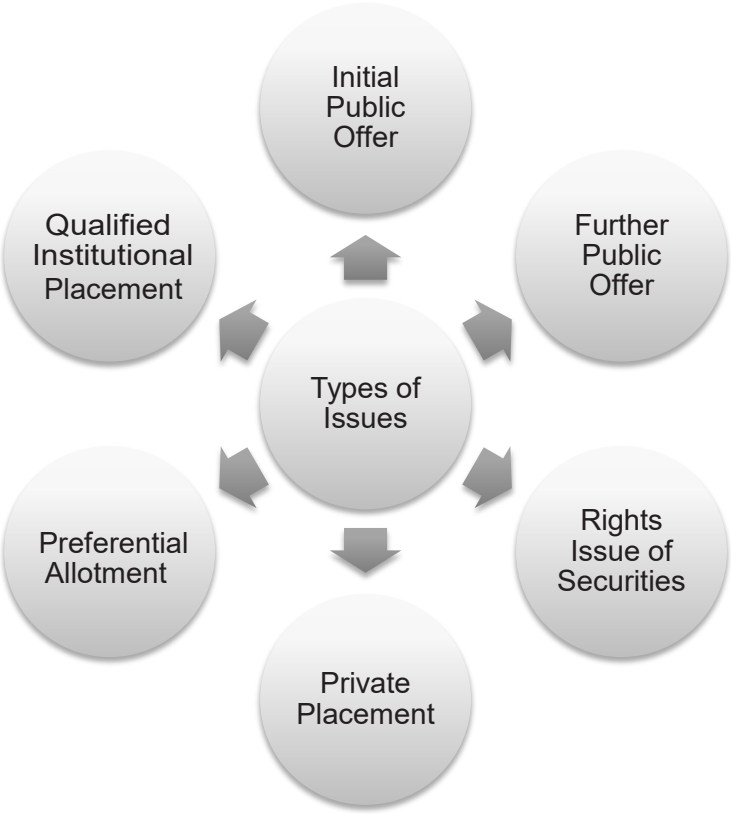
SEBI in its Board Meeting held on 21st June, 2018 approved the proposal for replacing SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 with new SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018.

In continuation to the same, SEBI vide its notification dated 11th September, 2018 issued SEBI (ICDR) Regulations, 2018 ('ICDR, 2018') which is effective from 60th day of its publication in Official Gazette.

Chapter No. under ICDR, 2018	Particulars
I.	Preliminary
II.	Initial Public Offer (IPO) on Main Board
III.	Right Issue
IV.	Further Public Offer
V.	Preferential Issue
VI.	Qualified Institutional Placement
VII.	IPO of Indian Depositary Receipts (IDRs)
VIII.	Rights Issue of IDR
IX.	IPO by Small and Medium Enterprises (SME)
X.	Innovators Growth Platform (IGP)
XI.	Bonus Issue
XII.	Miscellaneous

TYPES OF ISSUES

Primary Market deals with those securities which are issued to the public for the first time. Primary Market provides an opportunity to issuers of securities, Government as well as corporates, to raise financial resources to meet their requirements of investment and/or discharge their obligations.



Initial public offer (*IPO*) means an offer of specified securities by an unlisted issuer to the public for subscription and includes an Offer for Sale (OFS) of specified securities to the public by any existing holder of such securities in an unlisted issuer. In order to qualify as an *Initial public offer,* the offer of securities must be by an unlisted issuer company and such an issue shall be made to the public and not to the existing shareholders of the unlisted issuer company.

Further public offer (*FPO*) means an offer of specified securities by a listed issuer company to the public for subscription. In other words, another issue to the public other than its existing shareholders by the listed persons is referred to as a *Further Public offer.*

Rights Issue of Securities is an issue of specified securities by a company to its existing shareholders as on a record date in a predetermined ratio.

Private placement refers to an issue where an issuer makes an issue of securities to a select group of persons not exceeding 200, and which is neither a rights issue nor a public issue.

Preferential allotment refers to an issue, where a listed issuer issues shares or convertible securities, to a select group of persons in terms of provisions of Chapter V of SEBI (ICDR) Regulations, 2018 it is called a preferential allotment. The issuer is required to comply with various provisions which *inter alia* include pricing, disclosures in the notice, lock in etc., in addition to the requirements specified in the Companies Act.

Qualified Institutional Placement (*QIP*) is another form of Preferential issue which refers to an issue by a listed entity to only Qualified Institutional Buyers (QIBs) in accordance of Chapter VI of SEBI (ICDR) Regulations, 2018.

INITIAL PUBLIC OFFERING (IPO) / FURTHER PUBLIC OFFERING (FPO)

A public issue of specified securities by an issuer can be either an Initial Public Offering (IPO) or a Further Public Offering (FPO). An IPO is done by an unlisted issuer while a FPO is done by a listed issuer. As per the ICDR Regulations, the issuer shall comply with the following conditions before making an IPO of specified securities (Specified Securities means equity shares and convertible securities). The conditions need to be satisfied both at the time of filing the draft offer document (commonly referred to as the Draft Red Herring Prospectus or DRHP) and at the time of registering or filing the final offer document (commonly referred to as the Prospectus) with the Registrar of Companies.

ELIGIBILITY REQUIREMENTS TO BE COMPLIED WITH FOR IPO UNDER ICDR, 2018

Entities not eligible to make an initial public offer [Regulation 5]

An issuer shall not be eligible to make an initial public offer:

a. If the issuer, any of its promoters, promoter group, selling shareholders are debarred from accessing the capital market by SEBI.

b. If any of the promoters or directors of the issuer is a promoter or a director of any other company which is debarred from accessing the capital market by SEBI.

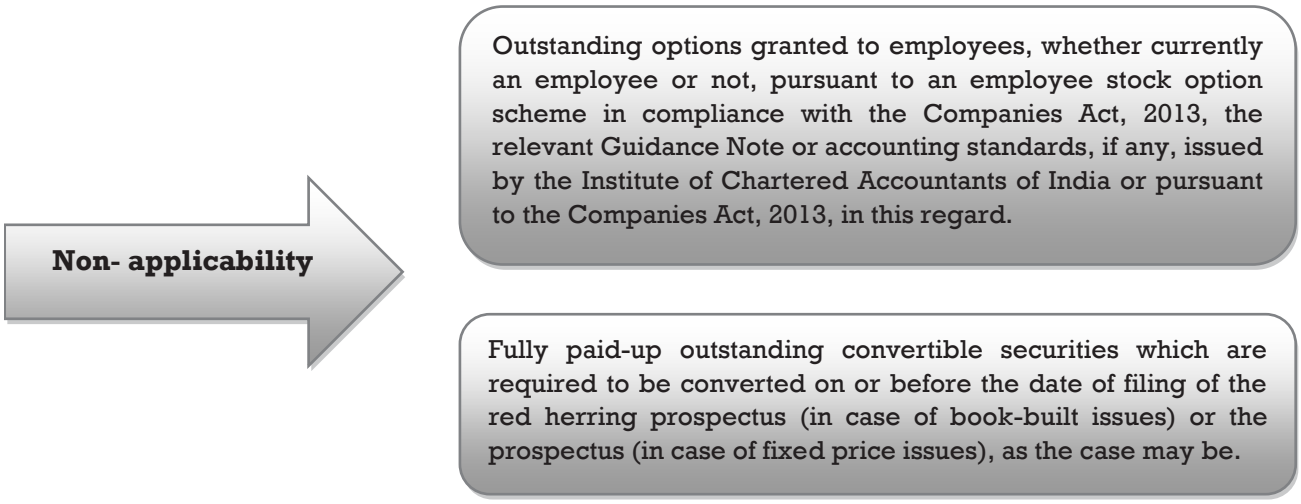
c. If the issuer or any of its promoters or directors is a willful defaulter.

d. If any of the promoters or directors of the issuer is a fugitive offender.

e. If there are any outstanding convertible securities or any other right which would entitle any person with any option to receive equity shares of the issuer except outstanding options granted to the employees under an employee stock option scheme and fully paid-up outstanding convertible securities which are required to be converted on or before the date of filing of the Red Herring Prospectus or the Prospectus.

Note : The restrictions under (a) and (b) above shall not apply to the persons or entities mentioned therein, who were debarred in the past by SEBI and the period of debarment is already over as on the date of filing of the draft offer document with SEBI.

An issuer shall not be eligible to make an IPO, if there are any outstanding convertible securities or any other right which would entitle any person with any option to receive equity shares of the issuer.



Eligibility requirements for an initial public offer [Regulation 6(1)]

An issuer shall be eligible to make an IPO only if:

a. the issuer has net tangible assets of atleast Rs. 3 crores on a restated and consolidated basis, in each of the preceding three full years of (12 months each) of which not more than 50% is held in monetary assets;

   However, if more than 50% of the net tangible assets are held in monetary assets, the issuer has utilized or made firm commitments to utilize such excess monetary assets in its business or project. This limit of 50% shall not apply in case of IPO is made entirely through an offer for sale.

b. the issuer has an average operating profit of at least Rs.15 crores, calculated on a restated and consolidated basis, during the three preceding years with operating profit in each of the three preceding years;

c. the issuer has a networth of atleast Rs.1 crore in each of the preceding three full years, calculated on a restated and consolidated basis.

d. in case the issuer has changed its name within the last one year, atleast 50% of the revenue calculated on a restated and consolidated basis, for the preceding one full year has been earned by it from the activity indicated by the new name.

The above eligibility conditions are explained by the following example:

Eligibility Condition No: 1

In case the issuer is proposing to file its draft offer document with SEBI in August 2018, then the net tangible assets for the last 3 full years of 12 months each shall be atleast Rs.3 crores and not more than 50% of the same shall be held in monetary assets. In the following table, it is seen that the net tangible assets is more than Rs. 3 crores in the year ended March 31, 2016, March 31, 2017 and March 31, 2018. Further monetary assets constitute less than 50% of the net tangible assets in each of the three previous financial years:

(Rs. in lacs)

Year Ended March 31	2014	2015	2016	2017	2018
Net Tangible Assets	1448.56	2275.53	2532.60	3510.33	4657.50
Monetary Assets	292.76	61.97	108.25	302.33	288.17
Monetary Assets as a percentage of Net Tangible Assets	20.21	2.72	4.27	8.61	6.19

"*Net Tangible Assets*" mean the sum of all net assets of the issuer, excluding intangible assets as defined in Accounting Standard 26 (AS 26) or or Indian Accounting Standard (Ind AS) 38, as applicable, issued by the Institute of Chartered Accountants of India.

"Project" means the object for which monies are proposed to be raised to cover the objects of the issue.

Eligibility Condition No: 2

In case the issuer proposes to file its draft offer document with SEBI in August 2018, then the average operating profit for three preceding years shall be atleast Rs 15 crores. Further, the company shall have operating profit in each of the three years. The average of the profits for the 3 preceding years is Rs.15.75 crores which is more than the prescribed average of Rs.15 crores.

(Rs. in lacs)

Year Ended March 31	2016	2017	2018
Operating Profit	1630.31	1232.65	1864.63

GENERAL CONDITIONS

- An issuer making an initial public offer shall ensure that:
  a) it has made an application to one or more stock exchanges to seek an in-principle approval for listing of its specified securities on such stock exchanges and has chosen one of them as the Designated stock exchange;
  b) it has entered into an agreement with a depository for dematerialisation of the specified securities already issued and proposed to be issued;
  c) all its specified securities held by the promoters are in dematerialised form prior to filing of the offer document;
  d) all its existing partly paid-up equity shares have either been fully paid-up or have been forfeited;
  e) all its outstanding convertible securities have been converted into equity shares;
  f) it has made firm arrangements of finance through verifiable means towards seventy five per cent. of the stated means of finance for a specific project proposed to be funded from the issue proceeds, excluding the amount to be raised through the proposed public issue or through existing identifiable internal accruals.
- The amount for general corporate purposes, as mentioned in objects of the issue in the draft offer document and the offer document shall not exceed 25% of the amount being raised by the issuer.

ADDITIONAL CONDITIONS FOR AN OFFER FOR SALE [REGULATION 8]

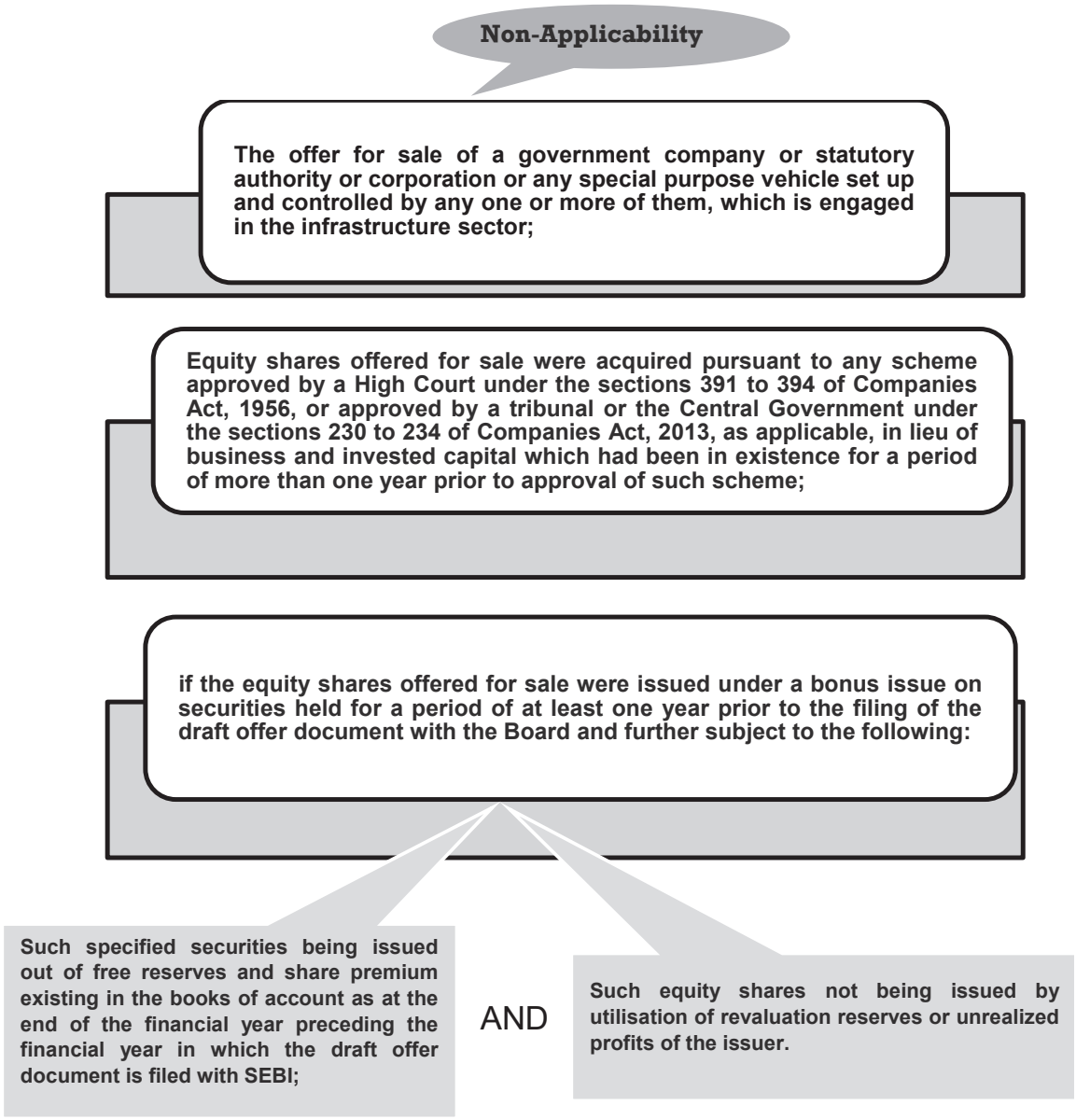
Applicability

In case the equity shares received on conversion or exchange of fully paid-up compulsorily convertible securities including depository receipts are being offered for sale:

- **Shares must be fully paid-up.**
- **Shall be held by the sellers for a period of at least one year prior to the filing of the draft offer document.**
- **The holding period of such convertible securities, including depository receipts, as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period.**
- **Further, such holding period of one year shall be required to be complied with at the time of filing of the draft offer document.**

If the equity shares arising out of the conversion or exchange of the fully paid-up compulsorily convertible securities are being offered for sale, the conversion or exchange should be completed prior to filing of the offer document (i.e. red herring prospectus in the case of a book built issue and prospectus in the case of a fixed price issue), provided full disclosures of the terms of conversion or exchange are made in the draft offer document.

The requirement of holding equity shares for a period of one year shall not apply:



Explanation:

(i) Partnership Firms

In case of an issuer which had been a *partnership firm or a limited liability partnership*, the track record of distributable profits of the partnership firm or the LLP shall be considered only if the financial statements of the partnership business for the period during which the issuer was a partnership firm, conform to and are revised in the format prescribed for companies under the Companies Act, 2013 and also comply with the following:

a) adequate disclosures are made in the financial statements as required to be made in the format prescribed under the Companies Act, 2013

b) the financial statements are duly certified by a Chartered Accountant stating that:

   (i) the accounts and the disclosures made are in accordance with the provisions of Schedule III of the Companies Act, 2013

(ii) the accounting standards of the Institute of Chartered Accountants of India have been followed;

(iii) the financial statements present a true and fair view of the firm's accounts;

(ii) Spinning off of a division

In case of an issuer formed out of a division of an existing company, the track record of distributable profits of the division spun-off shall be considered only if the requirements regarding financial statements as provided for partnership firms and LLPs are complied with.

Eligibility Condition No: 3

In case the issuer proposes to file its draft offer document with SEBI in August 2018 then the networth shall be atleast Rs. 1 crore in each of the last 3 financial years. In the following table, it is seen that the company has a networth of Rs. 1 crore in each of the last three financial years prior to the date of the filing of the draft offer document with SEBI.

(Rs. in lacs)

Year Ending March 31	2014	2015	2016	2017	2018
Equity Share Capital	1448.56	2000.00	2000.00	2000.00	2022.00
Share Application Money	0.00	0.00	0.00	0.00	165.00
Reserves & Surplus	0.00	304.52	590.02	1430.47	2742.71
Total	1448.56	2304.52	2590.02	3595.47	4764.71
Less : Misc Expenses not written off	0.00	0.00	0.00	0.00	0.00
Less: Deferred Tax Assets	0.00	0.00	13.45	0.00	61.08
Networth	1448.56	2304.52	2576.57	3595.47	4703.63

Since all the above eligibility conditions are satisfied in the example and there is no change in the name of the company, this company is eligible to make an Initial Public Offering.

What happens if above mentioned eligibility requirements are not met?

However, in case an issuer does not satisfy the eligibility conditions stipulated above and included in Regulation 6(1) of ICDR, 2018, it may still make an Initial Public Offer but only through the book building process and further undertake to allot atleast 75% of the net offer to the public to qualified institutional buyers (QIBs) and to refund full subscription money if it fails to do so. [Regulation 6(2)]

In case of IPOs under Regulation 6(2), if QIBs does not subscribe to allocated 75% of the net offer to public the issue will fail and the issuer company will have to refund full subscription money even though on overall basis the issue may have been oversubscribed. Therefore, in these cases, 75% subscription from QIBs is must irrespective of subscription by retail investors and non-retail investors.

ELIGIBILITY CRITERIA FOR FURTHER PUBLIC OFFER (FPO)

Entities not eligible to make a FPO [Regulation 102]

An issuer shall not be eligible to make a FPO of specified securities:

(a) If the issuer, any of its apromoters, promoter group or directors, selling shareholders are debarred from accessing the capital market by SEBI.

(b) If any of the promoters or directors of the issuer is a promoter or a director of any other company which is debarred from accessing the capital market by SEBI.

(c) If the issuer or any of its promoters or directors is a willful defaulter.

(d) If any of the promoters or directors of the issuer is a fugitive economic offender.

Note : The restrictions under (a) and (b) above shall not apply to the persons or entities mentioned therein, who were debarred in the past by SEBI and the period of debarment is already over as on the date of filing of the draft offer document with SEBI.

Eligibility requirements for FPO [Regulation 103]

- An issuer may make a FPO if it has changed its name within the last one year and atleast 50% of the revenue in the preceding one full year has been earned from the activity suggested by the new name.
- If an issuer does not satisfy the above mentioned conditions, it may make a FPO only, if, the issue is made through the book-building process and the issuer undertakes to allot at least 75% of the net offer, to qualified institutional buyers and to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers.

General Conditions for FPO [Regulation 104]

An issuer making an FPO shall ensure that :

a. An application is made for listing of the specified securities to one or more of the recognized stock exchanges and choose one of the exchanges as the Designated stock exchange.

b. An agreement is entered into with a depository for dematerialization of specified securities already issued or proposed to be issued.

c. All the specified securities held by the promoters are in dematerialized form prior to the filing of the offer document

d. All its existing partly paid up equity shares have either been fully paid up or have been forfeited. *In other words, if a company has partly paid up equity shares, they shall not be permitted to make a public issue.*

e. The issuer should make firm arrangements of finance through verifiable means towards 75% of the stated means of finance excluding the amount to be raised through the proposed public issue or through existing identifiable internal accruals.

f. The amount for General Corporate Purposes as mentioned in objects of the issue in the draft offer document and the offer document shall not exceed twenty five per cent of the amount being raised by the issuer.

ISSUE OF WARRANTS [REGULATION 13]

An issuer shall be eligible to issue warrants in an initial public offer subject to the following:

a) the tenure of such warrants shall not exceed eighteen months from the date of their allotment in the initial public offer;

b) a specified security may have one or more warrants attached to it;

c) the price or formula for determination of exercise price of the warrants shall be determined upfront and disclosed in the offer document and at least 25 per cent of the consideration amount based on the exercise price shall also be received upfront;

However, in case the exercise price of warrants is based on a formula, 25 per cent consideration amount based on the cap price of the price band determined for the linked equity shares or convertible securities shall be received upfront.

d) in case the warrant holder does not exercise the option to take equity shares against any of the warrants held by the warrant holder, within three months from the date of payment of consideration, such consideration made in respect of such warrants shall be forfeited by the issuer.

Appointment of Lead Managers, Other Intermediaries and Compliance Officer [Regulation 23 & 121]

- The issuer shall appoint one or more merchant bankers, which are registered with SEBI, as lead manager(s) to the issue.
- Where the issue is managed by more than one lead manager, the rights, obligations and responsibilities, relating *inter alia* to disclosures, allotment, refund and underwriting obligations, if any, of each lead manager shall be predetermined and be disclosed in the draft offer document and the offer document.
- At least one lead manager to the issue shall not be an associate as defined under the SEBI (Merchant Bankers) Regulations, 1992 of the issuer.
- If any of the lead manager is an associate of the issuer, it shall disclose itself as an associate of the issuer and its role shall be limited to marketing of the issue.
- The issuer shall, in consultation with the lead manager(s), appoint other intermediaries which are registered with SEBI after the lead manager(s) have independently assessed the capability of other intermediaries to carry out their obligations.
- The issuer shall enter into an agreement with the lead manager(s) and enter into agreements with other intermediaries as required under the respective regulations applicable to the intermediary concerned.
- Such agreements may include such other clauses as the issuer and the intermediaries may deem fit without diminishing or limiting in any way the liabilities and obligations of the lead manager(s), other intermediaries and the issuer under the Act, the Companies Act, 2013 or the Companies Act, 1956 (to the extent applicable), the Securities Contracts (Regulation) Act, 1956, the Depositories

Act, 1996 and the rules and regulations made thereunder or any statutory modification or statutory enactment thereof.

- In case of ASBA process, the issuer shall take cognizance of the deemed agreement of the issuer with the self-certified syndicate banks.
- The issuer shall, in case of an issue made through the book building process, appoint syndicate member(s) and in the case of any other issue, appoint bankers to issue, at centres.
- The issuer shall appoint a registrar to the issue, registered with SEBI which has connectivity with all the depositories.
- If the issuer itself is a registrar, it shall not appoint itself as registrar to the issue.
- The lead manager shall not act as a registrar to the issue in which it is also handling the post-issue responsibilities.
- The issuer shall appoint a compliance officer who shall be responsible for monitoring the compliance of the securities laws and for redressal of investors' grievances.

Disclosures in and Filing of Offer Documents

Disclosures in the draft offer document and offer document [Regulation 24 & 122]

- The draft offer document and the offer document shall contain all material disclosures which are true and adequate to enable the applicants to take an informed investment decision.
- The red-herring prospectus, shelf prospectus and prospectus shall contain:
  - (i) disclosures specified in the Companies Act, 2013; and
  - (ii) disclosures specified in Part A of Schedule VI of ICDR Regulations 2018. In case of FPO the disclosures are subject to the provisions of Parts C and D thereof.
- The lead manager(s) shall exercise **due diligence** and satisfy themselves about all aspects of the issue including the veracity and adequacy of disclosures made in the draft offer document and the offer document.
- The lead manager(s) shall call upon the issuer, its promoters and its directors or in case of an offer for sale, the selling shareholders, to fulfil their obligations as disclosed by them in the draft offer document and the offer document and as required in terms of ICDR Regulations 2018.
- The lead manager(s) shall ensure that the information contained in the offer document and the particulars as per audited financial statements in the offer document are not more than six months old from the issue opening date.

FILING OF OFFER DOCUMENT [REGULATIONS 25 & 123]

- The issuer shall also file the draft offer document with the stock exchange(s) where the specified securities are proposed to be listed, and submit to the stock exchange(s), the Permanent Account Number, bank account number and passport number of its promoters where they are individuals, and Permanent Account Number, bank account number, company registration number or equivalent and the address of the Registrar of Companies (ROC) with which the promoter is registered, where the ROC promoter is a body corporate.

  Prior to making an IPO/FPO, the issuer shall file three copies of the draft offer document with the concerned regional office of SEBI under the jurisdiction of which the registered office of the issuer company is located, along with fees as specified, through the lead manager(s).

The lead manager(s) shall submit the following to SEBI along with the draft offer document:

- ♦ a certificate, confirming that an agreement has been entered into between the issuer and the lead manager(s);
- ♦ a due diligence certificate;
- ♦ in case of an issue of convertible debt instruments, a due diligence certificate from the debenture trustee;

➢ SEBI may specify changes or issue observations, on the draft offer document filed with it within a period of 30 days from the later of the following dates:

a) the date of receipt of the draft offer document filed with SEBI; or

b) the date of receipt of satisfactory reply from the lead merchant bankers, where SEBI has sought any clarification or additional information from them; or

c) the date of receipt of clarification or information from any regulator or agency, where SEBI has sought any clarification or information from such regulator or agency; or

d) the date of receipt of a copy of in-principle approval letter issued by the recognised stock exchanges.

➢ If SEBI specifies any changes or issues observations on the draft offer document filed with it, the issuer and the lead merchant banker shall carry out such changers and comply with the observations issued by SEBI before registering the prospectus, the red-herring prospectus or the shelf prospectus as the case may be with the Registrar of Companies or an appropriate authority, as applicable.

➢ If there are any changes in the draft offer document in relation to the matters specified in these regulations, an updated offer document or a fresh draft offer document, as the case may be, shall be filed with SEBI.

➢ Copy of the offer documents shall also be filed with SEBI and the stock exchanges through the lead manager(s) promptly after registry the offer document with the Registrar of Companies.

➢ The draft offer document and the offer document shall also be furnish to SEBI in a soft copy.

Draft offer document and offer document to be available to the public [Regulations 26 & 124]

➢ **The draft offer document filed with SEBI shall be made public for comments, if any, for a period of at least twenty one days from the date of filing**, by hosting it on the websites of SEBI, stock exchanges where specified securities are proposed to be listed and lead manager(s) associated with the issue.

➢ The issuer shall, within two days of filing the draft offer document with SEBI, make a public announcement in one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated, disclosing the fact of filing of the draft offer document with SEBI and inviting the public to provide their comments to SEBI, the issuer or the lead manager(s) in respect of the disclosures made in the draft offer document.

➢ The lead manager(s) shall, after expiry of the period stipulated above, file with SEBI, details of the comments received by them or the issuer from the public, on the draft offer document, during that period and the consequential changes, if any, that are required to be made in the draft offer document.

➢ The issuer and the lead manager(s) shall ensure that the offer documents are hosted on the websites

as required under these regulations and its contents are the same as the versions as filed with the Registrar of Companies, SEBI and the stock exchanges, as applicable.

- The lead manager(s) and the stock exchanges shall provide copies of the offer document to the public as and when requested and may charge a reasonable sum for providing a copy of the same.

ASBA [Regulations 35 & 132]

The issuer shall accept bids using only the ASBA facility in the manner specified by SEBI.

ASBA stands for "Application supported by Blocked Amount" which means an application for subscribing to a public issue or rights issue, along with an authorization to self-certified syndicate bank to block the application money in a bank account. Under ASBA process instead of moving the application money from the bank account of applicant in an IPO to an escrow account, same is block in applicant's own bank account and if he receives shares in IPO same is released to the issuer company.

Availability of issue material [Regulations 36 &133]

The lead manager(s) shall ensure availability of the offer document and other issue material including application forms to stock exchanges, syndicate members, registrar to issue, registrar and share transfer agents, depository participants, stock brokers, underwriters, bankers to the issue, and self-certified syndicate banks before the opening of the issue.

Prohibition on payment of incentives [Regulations 37 & 134]

Any person connected with the issue shall not offer any incentive, whether direct or indirect, in any manner, whether in cash or kind or services or otherwise to any person for making an application in the initial public offer, except for fees or commission for services rendered in relation to the issue.

Security Deposit [Regulations 38 & 135]

The issuer shall, before the opening of the subscription list, deposit with the stock exchange or stock exchanges an amount calculated at the rate of 1% of the amount of the issue size available for subscription to the public in the manner as may be specified by SEBI and the amount so deposited shall be refundable or forfeitable in the manner specified by SEBI**.**

IPO Grading – Applicable to IPO only [Regulation 39]

The issuer may obtain grading for its initial public offer from one or more credit rating agencies registered with SEBI.

Opening of the Issue [Regulations 44 & 140]

A public issue (both IPO and FPO) may subject to compliance of Section 26(4) of the Companies Act, 2013 may be opened within 12 months from the date of issuance of the observations by SEBI.

In case of a fast track issue, the issue shall open within the period specifically stipulated under the Companies Act, 2013. In case the issuer has filed a shelf prospectus, the first issue may be opened within 3 months of the issuance of observations by SEBI.

An IPO and an FPO shall be opened **after** at least 3 working days from the date of registering the red herring prospectus in case of a book built issue or the prospectus in case of a fixed price issue with the Registrar of Companies.

Period of Subscription [Regulations 46 & 142]

- **An IPO/FPO shall be kept open for at least three working days and not more than ten working days.**
- In case of a revision in the price band, the issuer shall extend the bidding (issue) period disclosed in the red herring prospectus, for a minimum period of three working days.
- In case of force majeure, banking strike or similar circumstances, the issuer may, for reasons to be recorded in writing, extend the bidding (issue) period disclosed in the red herring prospectus (in case of a book built issue) or the issue period disclosed in the prospectus (in case of a fixed price issue), for a minimum period of three working days.

Underwriting [Regulations 40 & 136]

- If an issuer makes a IPO/FPO other than through the book building process, desires to have the issue underwritten, it shall appoint the underwriters in accordance with the SEBI (Underwriters) Regulations, 1993.
- If the issuer makes a public issue through a book building process,

  a) the issue shall be underwritten by lead managers and syndicate members.

  However, at least 75% of the net offer to the public is proposed to be compulsorily allotted to the QIBs, and such portion cannot be underwritten.

  b) the issuer shall, prior to filing the prospectus, enter into an underwriting agreement with the lead manager(s) and syndicate member(s) which shall indicate the number of specified securities which they shall subscribe to at the predetermined price in the event of under-subscription in the issue.

  c) if the syndicate member(s) fail to fulfill their underwriting obligations, the lead manager(s) shall fulfill the underwriting obligations.

  d) the lead manager(s) and syndicate member(s) shall not subscribe to the issue in any manner except for fulfilling their underwriting obligations.

  e) in case of every underwriting issue, the lead manager(s) shall undertake minimum underwriting obligation as specified in the SEBI (Merchant Bankers) Regulations, 1992.

  f) where the issue is required to be underwritten, the underwriting obligations should at least to the extent if minimum subscription.

Minimum Subscription [Regulations 45 & 141]

The minimum subscription to be received in an issue shall be not less than 90% of the offer through offer document except in case of an offer for sale of specified securities.

In case of an IPO, the minimum subscription to be received shall be subject to allotment of minimum number of specified securities, as prescribed in sub-clause (b) of clause (2) of rule 19 of Securities Contracts (Regulation) Rules, 1957, which stipulates that atleast twenty five per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company was offered and allotted to public in terms of an offer document. In other words, the issue is said have received minimum subscription in an IPO if it receives 90% of the offer through offer document and 25% of the post issue capital from the public.

[*Note: in terms of Rule 19 (2)(b) of SCRR, subject to certain conditions, issuers are allowed to issue less than 25% of the post issue capital to public but in this case the issuer has to raise the minimum public shareholding to 25% within a period of three years from the date of listing.*]

In the event of non-receipt of minimum subscription, all application monies received shall be refunded to the applicants forthwith, but not later than fifteen days from the closure of the issue**.**

Oversubscription [Proviso to Regulations 49(2) & 145(2)]

In case of oversubscription, an allotment of not more than one percent of the net offer to the public for the purpose of making allotment in minimum lots.

Monitoring Agency [Regulations 41 & 137]

If the issue size excluding the size of offer for sale by selling shareholders, exceeds Rs.100 crores, the issuer shall ensure that the use of the proceeds of the issue is monitored by a public financial institutions or by one of the scheduled commercial banks named in the offer document as a banker to the issuer.

In case the issuer is a bank or a public financial institution or an insurance company, this provision is not applicable.

The monitoring agency shall submit its report to the issuer in the format specified in the ICDR Regulations, 2016 on a quarterly basis, till at least ninety five per cent. of the proceeds of the issue excluding the proceeds raised for general corporate purposes, have been utilized.

The Board of directors and the management of the issuer shall provide their comments on the findings of the monitoring agency.

The issuer shall, within forty five days from the end of each quarter, publicly disseminate the report of the monitoring agency by uploading the same on its website as well as submitting the same to the stock exchange(s) on which its equity shares are listed.

Public Communications, Publicity Materials, Advertisements and Research Reports [Regulations 42 & 138]

All public communication, publicity materials, advertisements and research reports shall comply with the provisions of Schedule IX of SEBI ICDR Regulations, 2018.

Issue-related Advertisements [Regulations 43 & 139]

- Subject to the provisions of the Companies Act, 2013, the issuer shall, after registering the red herring prospectus (in case of a book built issue) or prospectus (in case of fixed price issue) with the Registrar of Companies, make a pre-issue advertisement in one English national daily newspaper with wide circulation, Hindi national daily newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated.
- The pre-issue advertisement shall contain the disclosures specified in Part A of Schedule X of SEBI ICDR Regulations, 2018.

  However, the disclosures in relation to price band or floor price and financial ratios contained therein shall only be applicable where the issuer opts to announce the price band or floor price along with the pre-issue advertisement, if the issuer opts not to make disclosures of price band in the RHP.
- The issuer may release advertisements for issue opening and issue closing, which shall be in the formats specified in Parts B and C of Schedule X of SEBI ICDR Regulations, 2018.

- During the period the issue is open for subscription, no advertisement shall be released giving an impression that the issue has been fully subscribed or oversubscribed or indicating investors' response to the issue.

Application and Minimum Application Value [Regulations 47 & 143]

- A person shall not make an application in the net offer category for a number of specified securities that exceeds the total number of specified securities offered to the public.

  However, the maximum application by non-institutional investors shall not exceed total number of specified securities offered in the issue less total number of specified securities offered in the issue to QIBs.

- The issuer shall stipulate in the offer document the minimum application size in terms of number of specified securities which shall fall within the range of minimum application value of ten thousand rupees to fifteen thousand rupees.

- The issuer shall invite applications in multiples of the minimum application value, as per Part B of Schedule XIV of SEBI ICDR Regulation 2018.

- The minimum sum payable on application per specified security shall be at least twenty five per cent. of the issue price:

However, in case of an offer for sale, the full issue price for each specified security shall be payable at the time of application.

➡ "Minimum application value" shall be with reference to the issue price of the specified securities and not with reference to the amount payable on application.

Manner of Calls [Regulations 48 & 144]

If the issuer proposes to receive subscription monies in calls, it shall ensure that the outstanding subscription money is called within twelve months from the date of allotment in the issue and if any applicant fails to pay the call money within the said twelve months, the equity shares on which there are calls in arrear along with the subscription money already paid on such shares shall be forfeited. In case the issuer has appointed a monitoring agency, the issuer shall not be required to call the outstanding subscription money within twelve months.

Allotment Procedure and Basis of Allotment [Regulations 49 & 145]

- The issuer shall not make an allotment pursuant to a public issue if the number of prospective allottees is less than one thousand.

- The issuer shall not make any allotment in excess of the specified securities offered through the offer document except in case of oversubscription for the purpose of rounding off to make allotment, in consultation with the designated stock exchange.

- The allotment of specified securities to applicants other than to the retail individual investors and anchor investors shall be on a proportionate basis within the respective investor categories and the number of securities allotted shall be rounded off to the nearest integer, subject to minimum allotment being equal to the minimum application size as determined and disclosed in the offer document.

  However, the value of specified securities allotted to any person, except in case of employees, in pursuance of reservation made under these regulations, **shall not exceed two lakhs rupees for retail investors or up to five lakhs rupees for eligible employees.**

- The allotment of specified securities to each **retail individual investor shall not be less than the minimum bid lot, subject to the availability of shares in retail individual investor category**, and the remaining available shares, if any, shall be allotted on a proportionate basis.
- The authorised employees of the designated stock exchange, along with the lead manager(s) and registrars to the issue, shall ensure that the basis of allotment is finalised in a fair and proper manner in accordance with the procedure as specified in Part A of Schedule XIV.

Illustration explaining the procedure of allotment

Example A

(1) Total number of specified securities on offer@ Rs. 600 per share: 1 crore specified securities.

(2) Specified securities on offer for retail individual investors' category: 35 lakh specified securities.

(3) The issue is over-all subscribed by 2.5 times, whereas the retail individual investors' category is oversubscribed 4 times.

(4) The issuer has fixed the minimum application/bid size as 20 specified securities (falling within the range of ten thousand to fifteen thousand rupees) and in multiples thereof.

(5) A total of one lakh retail individual investors have applied in the issue, in varying number of bid lots i.e. between 1 – 16 bid lots, based on the maximum application size of up to two lakh rupees.

(6) Out of the one lakh investors, there are five retail individual investors A, B, C, D and E who have applied as follows: A has applied for 320 specified securities. B has applied for 220 specified securities. C has applied for 120 specified securities. D has applied for 60 specified securities and E has applied for 20 specified securities.

(7) As the allotment to a retail individual investor cannot be less than the minimum bid lot, subject to availability of shares, the remaining available shares, if any, shall be allotted on a proportionate basis.

The actual entitlement shall be as follows:

Sl. No.	Name of Investor	Total Number of specified securities applied for	Total number of specified securities eligible to be allotted
1.	A	320	20 specified securities (i.e. the minimum bid lot) + 38 specified securities [{35,00,000 - (1,00,000 * 20)} / {140,00,000 - (1,00,000 * 20)}] * 300 (i.e. 320-20)
2.	B	220	20 specified securities (i.e. the minimum bid lot) + 25 specified securities [{35,00,000 - (1,00,000 * 20) / {140,00,000 - (1,00,000 * 20)}] * 200 (i.e. 220-20)
3.	C	120	20 specified securities (i.e. the minimum bid lot) + 13 specified securities [{35,00,000 - (1,00,000 * 20)} / {(140,00,000 - (1,00,000 * 20)}] * 100 (i.e. 120-20)
4.	D	60	20 specified securities (i.e. the minimum bid lot) + 5 specified securities [{(35,00,000 - 1,00,000 * 20)} / {(140,00,000 - (1,00,000 * 20)}] * 40 (i.e. 60-20)

5.	E	20	20 specified securities (i.e. the minimum bid lot)

Example B

(1) Total number of specified securities on offer @ Rs. 600 per share: 1 crore specified securities.

(2) Specified securities on offer for retail individual investors' category: 35 lakh specified securities.

(3) The issue is overall subscribed by 7 times, whereas the retail individual investors' category is over-subscribed 9.37 times.

(4) The issuer has decided the minimum application/bid size as 20 specified securities (falling within the range of ten thousand to fifteen thousand rupees) and in multiples thereof.

(5) A total of two lakh retail individual investors have applied in the issue, in varying number of bid lots i.e. between 1-16 bid lots, based on the maximum application size of up to two lakh rupees.

(6) As per the allotment procedure, the allotment to retail individual investors shall not be less than the minimum bid lot, subject to availability of shares.

(7) Since the total number of shares on offer to the retail individual investors is 35,00,000 and the minimum bid lot is 20 shares, the maximum number of investors who can be allotted this minimum bid lot should be 1,75,000. In other words, 1,75,000 retail applicants shall get the minimum bid lot and the remaining 25,000 retail applicants will not get any allotment.

The details of the allotment shall be as follows:

No. of lots	**No. of shares at each lot**	**No. of retail investors applying at each lot**	**Total no. of shares applied for at each lot**	**No. of investors who shall receive minimum bid-lot (to be selected by a lottery)**
A	**B**	**C**	**D= (B*C)**	**E**
1.	20	10,000	2,00,000	8,750=(1,75,000/2,00,000)*10,000
2.	40	10,000	4,00,000	8,750
3.	60	10,000	6,00,000	8,750
4.	80	10,000	8,00,000	8,750
5.	100	20,000	20,00,000	17,500
6.	120	20,000	24,00,000	17,500
7.	140	15,000	21,00,000	13,125
8.	160	20,000	32,00,000	17,500
9.	180	10,000	18,00,000	8,750
10.	200	15,000	30,00,000	13,125
11.	220	10,000	22,00,000	8,750
12.	240	10,000	24,00,000	8,750
13.	260	10,000	26,00,000	8,750
14.	280	5,000	14,00,000	4,375

15.	300	15,000	45,00,000	13,125
16.	320	10,000	32,00,000	8,750
Total		2,00,000	328,00,000	1,75,000

Allotment, Refund and Payment of Interest [Regulations 50 & 146]

- The issuer and lead manager(s) shall ensure that specified securities are allotted and/or application monies are refunded or unblocked within such period as may be specified by SEBI.
- The lead manager(s) shall ensure that the allotment, credit of dematerialised securities, refunding or unblocking of application monies, as may be applicable, are done electronically.
- Where specified securities are not allotted and/or application monies are not refunded or unblocked within the period stipulated above, the issuer shall undertake to pay interest at the rate of fifteen per cent per annum to the investors and within such time as disclosed in the offer document and the lead manager(s) shall ensure the same.
- SEBI vide Circular dated November 01, 2018 has made an endeavor to reduce listing time to 3 working days from the date of closure of issue and accordingly mandated that the retail individual investors use the **Unified Payments Interface** (UPI). However, till SEBI notifies the same, securities are listed in 6 working days.

Post-issue Advertisements [Regulations 51 & 147]

- The lead manager(s) shall ensure that an advertisement giving details relating to:
  - subscription,
  - basis of allotment,
  - number, value and percentage of all applications including ASBA,
  - number, value and percentage of successful allottees for all applications including ASBA,
  - date of completion of despatch of refund orders, as applicable, or
  - instructions to self-certified syndicate banks by the registrar,
  - date of credit of specified securities and date of filing of listing application, etc.

  is released within ten days from the date of completion of the various activities in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where registered office of the issuer is situated.
- The above mentioned details shall also be placed on the websites of the stock exchange(s).

Post-issue responsibilities of the lead manager(s) [Regulations 52 & 148]

- The responsibility of the lead manager(s) shall continue until completion of the issue process and for any issue related matter thereafter.
- The lead manager(s) shall regularly monitor redressal of investor grievances arising from any issue related activities.
- The lead manager(s) shall continue to be responsible for post-issue activities till the applicants have received the securities certificates, credit to their demat account or refund of application monies and the

listing agreement is entered into by the issuer with the stock exchange and listing or trading permission is obtained.

- The lead manager(s) shall be responsible for and co-ordinate with the registrars to the issue and with various intermediaries at regular intervals after the closure of the issue to monitor the flow of applications from syndicate member(s) or collecting bank branches and/ or self-certified syndicate banks, processing of the applications including application form for ASBA and other matters till the basis of allotment is finalised, credit of the specified securities to the demat accounts of the allottees and unblocking of ASBA accounts/ dispatch of refund orders are completed and securities are listed, as applicable.
- Any act of omission or commission on the part of any of the intermediaries noticed by the lead manager(s) shall be duly reported by them to SEBI.
- In case there is a devolvement on the underwriters, the lead manager(s) shall ensure that the notice for devolvement containing the obligation of the underwriters is issued within ten days from the date of closure of the issue.
- In the case of undersubscribed issues that are underwritten, the lead manager(s) shall furnish information in respect of underwriters who have failed to meet their underwriting devolvement to SEBI.

Release of subscription money [Regulations 53 & 149]

- The lead manager(s) shall confirm to the bankers to the issue by way of copies of listing and trading approvals that all formalities in connection with the issue have been completed and that the banker is free to release the money to the issuer or release the money for refund in case of failure of the issue.
- In case the issuer fails to obtain listing or trading permission from the stock exchanges where the specified securities were to be listed, it shall refund through verifiable means the entire monies received within seven days of receipt of intimation from stock exchanges rejecting the application for listing of specified securities, and if any such money is not repaid within eight days after the issuer becomes liable to repay it, the issuer and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at the rate of fifteen per cent per annum.
- The lead manager(s) shall ensure that the monies received in respect of the issue are released to the issuer in compliance with the provisions of Section 40 (3) of the Companies Act, 2013, as applicable.

Reporting of transactions of the promoters and promoter group [Regulations 54 & 150]

The issuer shall ensure that all transactions in securities by the promoter and promoter group between the date of filing of the draft offer document or offer document, as the case may be, and the date of closure of the issue shall be reported to the stock exchange(s), within twenty four hours of such transactions.

Post-issue reports [Regulations 55 & 151]

The lead manager(s) shall submit a final post-issue report, along with a due diligence certificate as, within seven days of the date of finalization of basis of allotment or within seven days of refund of money in case of failure of issue.

Restriction on Further Capital Issues [Regulations 56 & 152]

The issuer shall not make any further issue of specified securities in any manner whether by way of a public issue, rights issue, bonus issue, preferential issue, qualified institutions placement or otherwise except pursuant to an employee stock option scheme:

- In case of a fast track issue, during the period between the date of registering the offer document (in case of a book built issue) or prospectus (in case of a fixed price issue) with the Registrar of Companies and the listing of the specified securities offered through the offer document or refund of application monies; or
- in case of other issues, during the period between the date of filing the draft offer document and the listing of the specified securities offered through the offer document or refund of application monies;

unless full disclosures regarding the total number of specified securities or amount proposed to be raised from such further issue are made in such draft offer document or offer document, as the case may be.

Face Value of Equity Shares [Regulations 27 & 125]

The disclosure about the face value of equity shares shall be made in the draft offer document, offer document, offer document, advertisements and application forms, along with price band or the issue price in identical font size.

PRICING

An issuer in an IPO and FPO may determine the price of specified securities in consultation with the lead merchant banker or through the book building process.

Differential Pricing [Regulations 30 & 128]

An issuer may offer specified securities at different prices, subject to the following:

(a) retail individual investors or retail individual shareholders or employees entitled for reservation made under regulation 33 & 130 of the ICDR Regulations, may be offered specified securities at a price not lower than by more than ten per cent of the price at which net offer is made to other categories of applicants, other than anchor investors;

> In other words, if the issue price to the other categories of applicants is Rs.100 the price at which the securities can be offered to the reserved categories shall not be less than Rs.90.

(b) in case of a book built issue, the price of the specified securities offered to an anchor investor shall not be lower than the price offered to other applicants;

(c) In case the issuer opts for the alternate method of book building as specified under ICDR Regulations, 2018, the issuer may offer specified securities to its employees at a price not lower by more than 10% of the floor price.

In case of FPO, an additional condition is that in case of a composite issue, the price of the specified securities offered in the public issue may be different from the price offered in rights issue and justification for such price difference shall be given in the offer document; and discount, if any shall be expressed in rupee terms in the offer document.

Price and Price Band [Regulations 29 & 127]

- The issuer may mention a price or price band in the draft prospectus (in case of a fixed price issue) and floor price or price band in the red herring prospectus (in case of a book built issue) and determine the price at a later date before registering the prospectus with the Registrar of Companies.

  However, the prospectus registered with the RoC shall contain only one price or the coupon rate, as the case may be.

- The cap on the price band, and the coupon rate in case of convertible debt instruments, shall be less

than or equal to one hundred and twenty per cent. of the floor price.

- The floor price or the final price shall not be less than the face value of the specified securities.
- Where the issuer opt not to make disclosure of the floor price or price band in the red herring prospectus, the issuer shall be announce the floor price or price band at **least two working days before the opening of the bid (in case of an initial public offer) and at least one working day before the opening of the bid (in case of a further public offer**), in all the newspapers in which the pre issue advertisement was released.
- The announcement referred above shall also contain all the relevant financial ratios computed for both the upper and lower end of the price band and also a statement drawing attention of the investors to the section titled "basis of issue price" of the offer document.
- The announcement and the relevant financial ratios shall be disclosed on the websites of those stock exchanges where the securities are proposed to be listed and shall also be pre-filled in the application forms available on the websites of the stock exchanges.

PROMOTERS' CONTRIBUTION [REGULATIONS 14 & 112]

In Case of IPO

The promoters of the issuer shall hold at least twenty per cent. of the post-issue capital.

However, in case the post-issue shareholding of the promoters is less than twenty per cent., alternative investment funds or foreign venture capital investors or scheduled commercial banks or public financial institutions or insurance companies registered with IRDA may contribute to meet the shortfall in minimum contribution as specified for the promoters, subject to a maximum of ten per cent. of the post-issue capital without being identified as promoter(s).

Non applicability

Provided further that the requirement of minimum promoters' contribution shall not apply in case an issuer does not have any identifiable promoter.

Minimum Promoters' Contribution

The minimum promoters' contribution shall be as follows:

a) the promoters shall contribute twenty per cent., as the case may be, either by way of equity shares or by way of subscription to convertible securities.

   However, if the price of the equity shares allotted pursuant to conversion is not pre-determined and not disclosed in the offer document, the promoters shall contribute only by way of subscription to the convertible securities being issued in the public issue and shall undertake in writing to subscribe to the equity shares pursuant to conversion of such securities.

b) in case of any issue of convertible securities which are convertible or exchangeable on different dates and if the promoters' contribution is by way of equity shares (conversion price being pre-determined), such contribution shall not be at a price lower than the weighted average price of the equity share capital arising out of conversion of such securities.

c) in case of an initial public offer of convertible debt instruments without a prior public issue of equity shares, the promoters shall bring in a contribution of at least twenty per cent. of the project cost in the form of equity shares, subject to contributing at least twenty per cent. of the issue size from their own funds in the form of equity shares.

However, if the project is to be implemented in stages, the promoters' contribution shall be with respect to total equity participation till the respective stage vis-à-vis the debt raised or proposed to be raised through the public issue.

Promoters' Contribution to be brought in before Public Issue Opens [Regulation 14(34)]

The promoters shall bring full amount of the promoters' contribution including premium at least one day prior to the date of opening of the issue. In case the promoters have to subscribe to equity shares or convertible securities towards minimum promoters' contribution, the amount of promoters' shall be kept in an escrow account with a scheduled commercial bank, which shall be released to the issuer along with the release of the issue proceeds.

However, where the promoters' contribution has already been brought in and utilised, the issuer shall give the cash flow statement disclosing the use of such funds in the offer document;

Further, where the minimum promoters' contribution is more than one hundred crore rupees and the initial public offer is for partly paid shares, the promoters shall bring in at least one hundred crore rupees before the date of opening of the issue and the remaining amount may be brought on a pro-rata basis before the calls are made to the public. [Regulation 14 (4)]

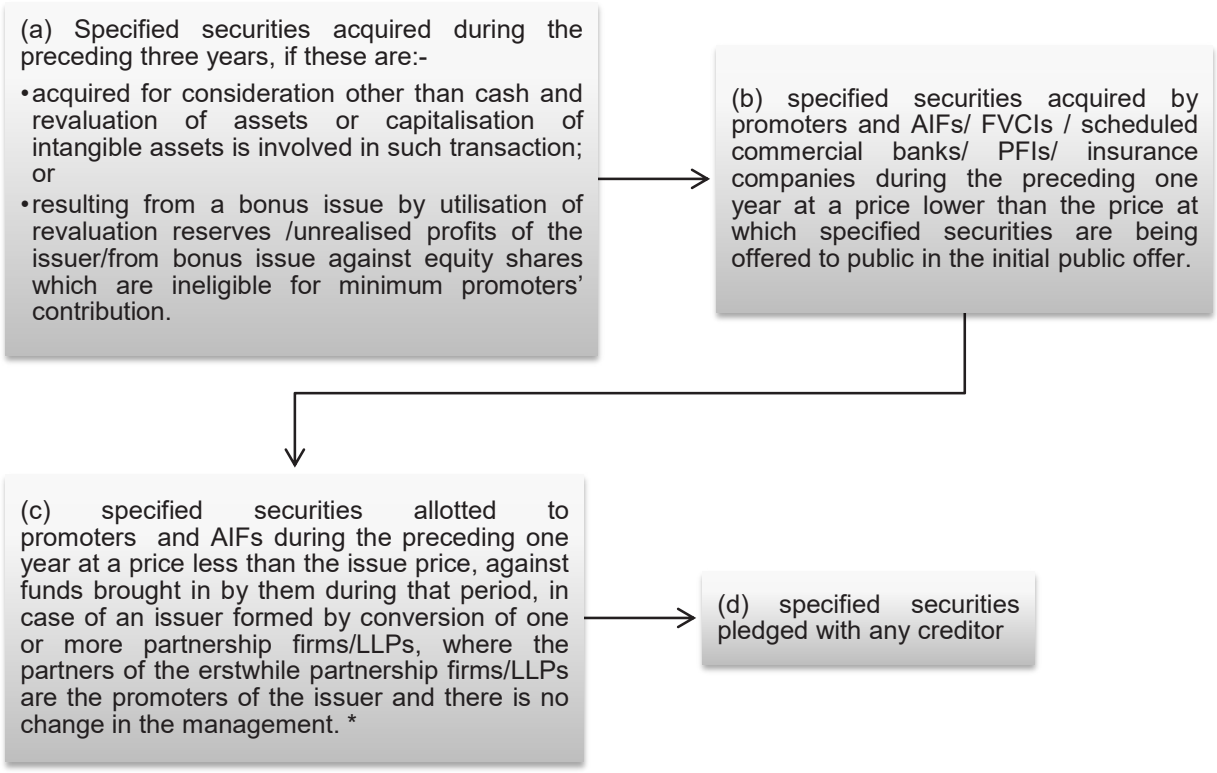
Promoters' contribution shall be computed on the basis of the post-issue expanded capital:

(a) assuming full proposed conversion of convertible securities into equity shares;

(b) assuming exercise of all vested options, where any employee stock options are outstanding at the time of initial public offer.

Securities Ineligible for Minimum Promoters' Contribution [Regulation 15]

For the computation of minimum promoters' contribution, the following specified securities shall not be eligible:



** In clause (c), specified securities, alloted to promoters against capital existing in such firms for a period of more than one year on a continuous basis, shall be eligible.*

However, Clause (b) shall not apply:

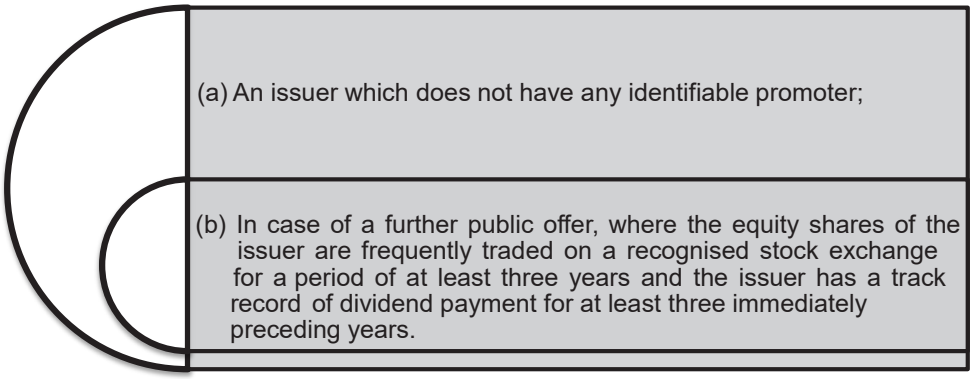
- o if the promoters and AIFs, as applicable pay to the issuer, the difference between the price at which specified securities are offered in the initial public offer and the price at which the specified securities had been acquired;
- o if such specified securities are acquired in terms of the scheme under section 391 to 394 of the Companies Act, 1956 or sections 230-240 of the Companies Act, 2013, as approved by a High Court or a tribunal or the Central Government, as applicable, by promoters in lieu of business and invested capital that had been in existence for a period of more than one year prior to such approval;
- o to an initial public offer by a government company, statutory authority or corporation or any special purpose vehicle set up by any of them, which is engaged in infrastructure sector;

Specified securities referred above shall be eligible for the computation of promoters' contribution, if such securities are acquired pursuant to a scheme which has been approved by a High Court under sections 391-394 of the Companies Act, 1956 or approved by Tribunal or the Central Government under sections 230-240 of the Companies Act, 2013.

IN CASE OF FPO

Exemption from Requirement of Promoters' Contribution [Regulation 112]

The requirements of minimum promoters' contribution shall not apply in case of:



However, where the promoters propose to subscribe to the specified securities offered to the extent greater than higher of the two options available in clause (a), the subscription in excess of such percentage shall be made at a price determined in terms of the provisions of Pricing of frequently traded shares or the issue price, whichever is higher.

Reference date for the purpose of computing the annualised trading turnover referred to in the said Explanation shall be the date of filing the draft offer document with the Board and in case of a fast track issue, the date of filing the offer document with the Registrar of Companies, and before opening of the issue.

Minimum Promoters' Contribution [Regulation 113]

- ➢ The promoters shall contribute in the public issue as follows:
  - a) either to the extent of twenty per cent. of the proposed issue size or to the extent of twenty per cent. of the post-issue capital;

b) in case of a composite issue (i.e. further public offer cum rights issue), either to the extent of twenty per cent. of the proposed issue size or to the extent of twenty per cent. of the post-issue capital excluding the rights issue component.

- In case of a public issue or composite issue of convertible securities, the minimum promoters' contribution shall be as follows:

  a) the promoters shall contribute twenty per cent., as the case may be, either by way of equity shares or by way of subscription to the convertible securities:

     However, if the price of the equity shares allotted pursuant to conversion is not pre-determined and not disclosed in the offer document, the promoters shall contribute only by way of subscription to the convertible securities being issued in the public issue and shall undertake in writing to subscribe to the equity shares pursuant to conversion of such securities.

  b) in case of any issue of convertible securities which are convertible or exchangeable on different dates and if the promoters' contribution is by way of equity shares (conversion price being pre-determined), such contribution shall not be at a price lower than the weighted average price of the equity share capital arising out of conversion of such securities.

- In case of a further public offer or composite issue where the promoters contribute more than the stipulated minimum promoters' contribution, the allotment with respect to excess contribution shall be made at a price determined in terms of the provisions relating to pricing of frequently trading shares or the issue price, whichever is higher.

- In case the promoters have to subscribe to equity shares or convertible securities towards promoters' contribution, the promoters shall satisfy the requirements of at least one day prior to the date of opening of the issue and the amount of promoters' contribution shall be kept in an escrow account with a scheduled commercial bank and shall be released to the issuer along with the release of the issue proceeds:

  Further, where the minimum promoters' contribution is more than one hundred crore rupees and the further public offer is for partly paid shares, the promoters shall bring in at least one hundred crore rupees before the date of opening of the issue and the remaining amount may be brought on a pro-rata basis before the calls are made to the public.

"Weighted average price":

(a) "weight" means the number of equity shares arising out of conversion of such specified securities into equity shares at various stages;

(b) "price" means the price of equity shares on conversion arrived at after taking into account predetermined conversion price at various stages.

Securities ineligible for minimum promoters' contribution [Regulation 114]

For the computation of minimum promoters' contribution, the following specified securities shall not be eligible:

(a) specified securities acquired during the preceding three years, if these are:

  i) acquired for consideration other than cash and revaluation of assets or capitalization of intangible assets is involved in such transaction; or

  ii) resulting from a bonus issue by utilisation of revaluation reserves or unrealised profits of the issuer or from bonus issue against equity shares which are ineligible for minimum promoters' contribution;

(b) specified securities pledged with any creditor other than those for borrowings by the issuer or its subsidiaries.

Specified securities referred shall be eligible for the computation of promoters' contribution, if such securities are acquired pursuant to a scheme which has been approved by the High Court under section 391 to 394 of the Companies Act, 1956 or approved by a tribunal or the Central Government under section 230 to 234 of the Companies Act, 2013.

LOCK IN REQUIREMENTS

For Securities Held by Promoters [Regulations 16 & 115]

In a public issue, the specified securities held by promoters shall be locked-in for the period stipulated hereunder:

(a) The promoters contribution including contribution made by AIFs or FVCIs or shceduled commercial bankes or PFIs or insurance companies registered with IRDA, shall be locked-in for a period of **three years** from the date of commencement of commercial production or from the date of allotment in the IPO/FPO, whichever is later;

(b) promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of one year from the date of allotment in the initial public offer.

In case of FPO, the excess promoters' contribution as provides in clause (b) shall not be subject to lock-in.

"**Date of commencement of commercial production**" means the last date of the month in which commercial production of the project in respect of which the funds raised are proposed to be utilised as stated in the offer document, is expected to commence.

Securities Held by Persons other than Promoters [Regulation 17]

- The entire pre-issue share capital, held by persons other than the promoters, shall be locked-in for a period of **one year** from the date of allotment in the initial public offer.
- The provisions of this regulation shall not apply, in case of:
  - (i) Equity shares allotted to employees under employee stock option prior to initial public offer, if the issuer has made full disclosures with respect to such option and
  - (ii) Equity shares held by an employee stock option trust or transferred to the employees by an employee stock option trust pursuant to exercise of options by the employees, in accordance with the employee stock option plan or employee stock purchase scheme.
  - (iii) Equity shares held by a venture capital fund or AIF of category I & II or a FVCI and such equity shares shall be locked-in for a period of at least one-year from the date of purchase by the venture capital or AIF or FVCI.

    For Point No. (iii), in case such equity shares have resulted pursuant to conversion of fully paid-up compulsorily convertible securities, the holding period of such convertible securities as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period and convertible securities shall be deemed to be fully paid-up, if the entire consideration payable thereon has been paid and no further consideration is payable at the time of their conversion.

- **There is no such requirements as mentioned above in case of a FPO.**

Securities Lent to Stabilising Agent under Green Shoe Option [Regulations 18 & 116]

If the shares held by promoter(s) are lent to the Stabilizing Agent (SA) as prescribed, they should be exempted from the lock-in requirements specified above, for the period starting from the date of such lending and ending on the date on which they are returned to the same lender(s). However, the securities should be locked-in for the remaining period from the date on which they are returned to the lender.

Lock-in of party-paid securities [Regulations 19 & 117]

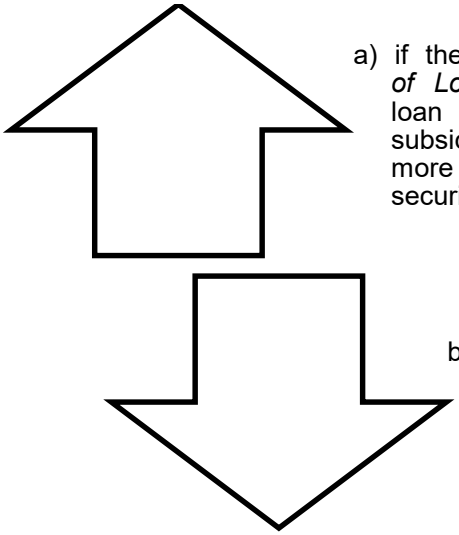
If the specified securities which are subject to lock-in are partly paid-up and the amount called-up on such specified securities is less than the amount called-up on the specified securities issued to the public, the lock-in shall end only on the expiry of three years after such specified securities have become pari passu with the specified securities issued to the public.

Inscription or recording of non-transferability [Regulations 20 & 118]

The certificates of specified securities which are subject to lock-in shall contain the inscription “non-transferable” and specify the lock-in period and in case such specified securities are dematerialised, the issuer shall ensure that the lock-in is recorded by the depository.

Pledge of Locked In Shares [Regulations 21 & 119]

Specified securities held by the promoters and locked in may be pledged as collateral security for a loan granted by a scheduled commercial bank or a public financial institution or a systemically important non-banking finance company or a housing finance company, subject to the following:



a) if the specified securities are locked-in in terms of *clause (a) of Lock-in of specified securities held by the promoters*, the loan has been granted to the issuer company or its subsidiary/subsidiaries for the purpose of financing one or more of the objects of the issue and pledge of specified securities is one of the terms of sanction of the loan

b) if the specified securities are locked-in in terms of *clause (b) of Lock-in of specified securities held by the promoters* and the pledge of specified securities is one of the terms of sanction of the loan.

However, in case of an IPO the provision as mentioned in point (ii) regarding lock-in, such lock-in shall continue pursuant to the invocation of the pledge and such transferee shall not be eligible to transfer the specified securities till the lock-in period stipulated in these regulations, has expired.

Transferability of locked-in specified securities [Regulations 22 & 120]

Subject to the provisions of SEBI (Substantial Acquisition of shares and Takeovers) Regulations, 2011, the specified securities held by the promoters and locked-in as per regulation 115 may be transferred to another promoter or any person of the promoter group or a new promoter or a person in control of the issuer:

However, lock-in on such specified securities shall continue for the remaining period with the transferee and such transferee shall not be eligible to transfer them till the lock-in period stipulated in these regulations has expired.

MINIMUM OFFER TO PUBLIC AND RESERVATIONS

Minimum Offer to Public [Regulation 31]

The minimum net offer to the public shall be subject to the provision of clause (b) of sub-rule (2) of rule 19 of Securities Contracts (Regulations) Rules, 1957 (SCRR)

The provisions of Rule 19(2)(b) of SCRR related to minimum offer to public are as given hereunder:

Rule 19(2)[(b) The minimum offer and allotment to public in terms of an offer document shall be -

(i) At least twenty five per cent. of each class or kind of equity shares or debentures convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is less than or equal to one thousand six hundred crore rupees;

(ii) at least such percentage of each class or kind of equity shares or debentures convertible into equity shares issued by the company equivalent to the value of four hundred crore rupees, if the post issue capital of the company calculated at offer price is more than one thousand six hundred crore rupees but less than or equal to four thousand crore rupees.

(iii) at least ten per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is above four thousand crore rupees:

Provided further that the company, referred to in sub clause (ii) or sub-clause (iii), shall increase its public shareholding to at least twenty five per cent, **within a period of three years from the date of listing** of the securities, in the manner specified by the Securities and Exchange Board of India.

Reservation on Competitive Basis [Regulations 33 & 130]

Reservation on competitive basis means reservation wherein specified securities are allotted in portion of the number of specified securities applied for in respect of a particular reserved category to the number of specified securities reserved for that category.

According to SEBI (ICDR) Regulations, 2018, there are certain persons eligible for reservation on competitive basis.

(1) The issuer may make reservation on a competitive basis out of the issue size excluding promoters' contribution and net offer to public in favour of the following categories of persons:

- employees
- shareholders (other than promoters and promoter group) of listed subsidiaries or listed promoter companies.

However, the issuer shall not make any reservation for the lead manager(s), registrar, syndicate member(s), their promoters, directors and employees and for the group or associate companies (as defined under the Companies Act, 2013) of the lead manager(s), registrar and syndicate member(s) and their promoters, directors and employees.

(2) In case of an FPO, other than in a composite issue, the issuer may make a reservation on a competitive basis out of the issue size excluding promoters' contribution to the existing retail individual shareholders of the issuer.

(3) The reservation on competitive basis shall be subject to following conditions:

- the aggregate of reservations for employees shall not exceed five per cent of the post issue capital of the issuer and the value of allotment to any employee shall not exceed two lakhs rupees;

  However, in the event of under-subscription in the employee reservation portion, the unsubscribed portion may be alloted an proportionate basis, for a value in excess of two lakh rupees, subject to the total allotment to an employee not exceeding five lakh rupees.

- reservation for shareholders shall not exceed ten per cent of the issue size;

- no further application for subscription in the net offer can be made by persons (except an employee and retail individual shareholder of the listed issuer and retail individual shareholders of listed subsidiaries of listed promoter companies) in favour of whom reservation on a competitive basis is made;

- any unsubscribed portion in any reserved category may be added to any other reserved category and the unsubscribed portion, if any, after such inter-se adjustments among the reserved categories shall be added to the net offer category;

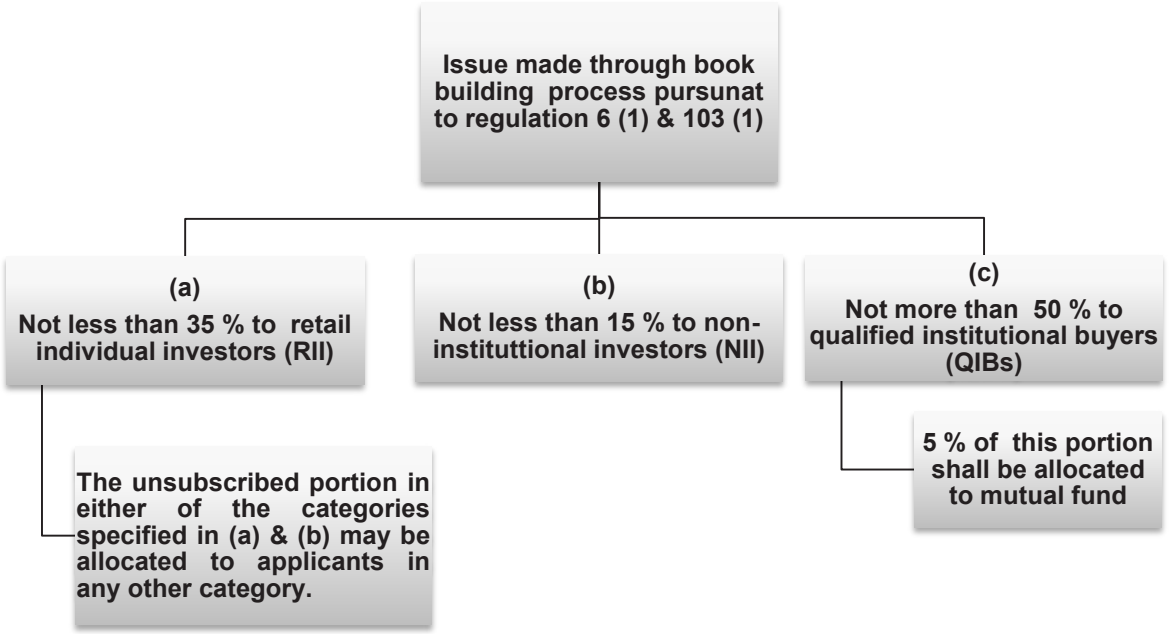
- in case of under-subscription in the net offer category, spill-over to the extent of under-subscription shall be permitted from the reserved category to the net public offer category;

(4) An applicant in any reserved category may make an application for any member of specified securities, but not exceeding the reserved portion for that category.

ALLOCATION IN NET OFFER

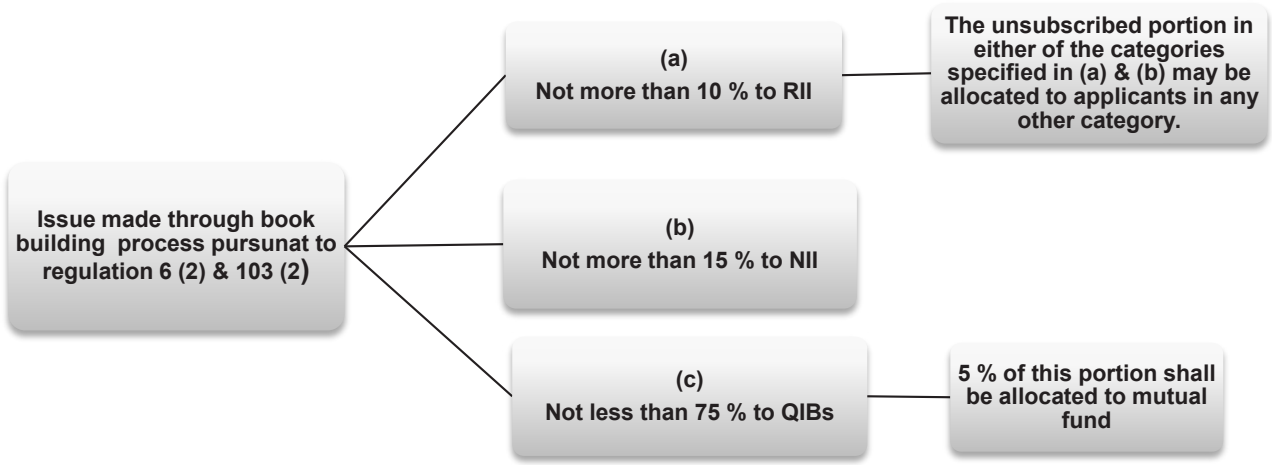
(1) Regulations 32(1) & 129(1)

In an issue made through the book building process pursuant to regulation 6 (1) & 103(1) the allocation in the net offer category shall be as follows:



(2) Regulations 32(2) & 129(2)

In an issue made through the book building process pursuant to regulation 6 (2) & 103(2) the allocation in the net offer category shall be as follows:



(3) Regulations 32(3) & 129(3)

In an issue made through the book building process, the issuer may allocate up to sixty per cent. of the portion available for allocation to qualified institutional buyers to **Anchor Investors** in accordance with the conditions specified in this regard in Schedule XIII of SEBI ICDR Regulations 2018.

[Regulation 2(1)(c) if ICDR, 2018 defines Anchor Investors as - "anchor investor" means a qualified institutional buyer who makes an application for a value of at least ten crore rupees in a public issue on the main board made through the book building process in accordance with these regulations or makes an application for a value of at least two crore rupees for an issue made in accordance with Chapter IX of these regulations]

(4) Regulations 32(4) & 129(4)

In an issue made other than through the book building process, the allocation in the net offer category shall be made as follows:

Issue made through other than book building process

- **(a) Minimum 50 % to Retail Individual Investors (RIIs); and**
- **(b) Remaining to :**
  (i) individual applicants other than RIIs; and
  (ii) other investors including corporate bodies or instituions, irrespective of the number of specified securities applied for;
- **However, the unsubscribed portion in either of the categories specified in clauses (a) or (b) may be allocated to applicants in the other category.**

It may be noted that, if the retail individual investor category is entitled to more than fifty per cent. of the issue size on a proportionate basis, the retail individual investors shall be allocated that higher percentage.

FAST TRACK FPO

Eligibility

An Issuer Company whose shares are already listed, need not file the draft offer document with SEBI and obtain

observations from SEBI, or make a security Deposit with the Stock Exchanges for its follow-on public offer (FPO) if it satisfies the following conditions:

(a) the equity shares of the issuer have been listed on any stock exchange for a period of at least three years immediately preceding the reference date;

(b) entire shareholding of the promoter group of the issuer is held in dematerialised form on the reference date;

(c) the average market capitalisation of public shareholding of the issuer is at least one thousand crore rupees in case of public issue and two hundred and fifty crore rupees in case of rights issue;

(d) the annualised trading turnover of the equity shares of the issuer during six calendar months immediately preceding the month of the reference date has been at least 2% of the weighted average number of equity shares listed during such six months' period. However if the public shareholding is less than fifteen per cent of its issued equity capital, the annualised trading turnover of its equity shares has been at least two per cent of the weighted average number of equity shares available as free float during such six months' period;

(e) annualized delivery-based trading turnover of the equity shares during six calendar months immediately preceding the month of the reference date has been at least ten per cent of the annualised trading turnover of the equity shares during such six months' period;

(f) The issuer has been in compliance with the equity listing agreement or SEBI Listing Regulations, 2015, as applicable, for a period of at least three years immediately preceding the reference date.

However, if the issuer has not complied with the provisions of the listing agreement or SEBI Listing Regulations, 2015, as applicable, relating to composition of board of directors, for any quarter during the last three years immediately preceding the reference date, but is compliant with such provisions at the time of filing of letter of offer, and adequate disclosures are made in the letter of offer about such non-compliances during the three years immediately preceding the reference date, it shall be deemed as compliance with the condition;

Further, imposition of monetory fines by stock exchange on the issuer shall not be a ground for ineligibility for undertaking issuances under this regulations.

(g) the issuer has redressed at least ninety five per cent of the complaints received from the investors till the end of the quarter immediately preceding the month of the reference date;

(h) no show-cause notices have been issued or prosecution proceedings have been initiated by the Board and pending against the issuer or its promoters or whole-time directors as on the reference date;

(i) issuer or promoter or promoter group or director of the issuer has not settled any alleged violation of securities laws through the consent or settlement mechanism with the Board during three years immediately preceding the reference date;

(j) equity shares of the issuer have not been suspended from trading as a disciplinary measure during last three years immediately preceding the reference date;

(k) There shall be no conflict of interest between the lead merchant banker(s) and the issuer or its group or associate company in accordance with applicable regulations.

(l) impact of audit qualifications, if any and where quantifiable, on the audited accounts of the issuer in respect of those financial years for which such accounts are disclosed in the letter of offer does not exceed five per cent of the net profit or loss after tax of the issuer for the respective years.

"***Average Market Capitalisation of Public Shareholding***" means the sum of daily market capitalisation of public shareholding for a period of one year up to the end of the quarter preceding the month in which the proposed issue was approved by the shareholders or the board of the issuer, as the case may be, divided by the number of trading days.

Post-listing exit opportunity for dissenting shareholders

- In case of further public offers, including under the fast track route, the promoters or shareholders in control of an issuer shall provide an exit offer to dissenting shareholders as provided for in the Companies Act, 2013, in case of change in objects or variation in the terms of contract related to objects referred to in the offer document as per conditions and manner is provided in Schedule XX of SEBI ICDR Regulations, 2018;
- The exit offer shall not apply where there are neither identifiable promoters nor shareholders in control of the listed issuer.

EXIT OPPORTUNITY TO DISSENTING SHAREHOLDERS [SCHEDULED XX]

The provisions of this Chapter shall apply to an exit offer made by the promoters or shareholders in control of an issuer to the dissenting shareholders in terms of section 13(8) and section 27(2) of the Companies Act, 2013, in case of change in objects or variation in the terms of contract referred to in the offer document.

However, the provisions of this Chapter shall not apply where there are neither identifiable promoters nor shareholders in control of the listed issuer.

What is Dissenting Shareholders?

"Dissenting Shareholders" mean those shareholders who have voted against the resolution for change in objects or variation in terms of a contract, referred to in the offer document of the issuer;

CONDITIONS FOR EXIT OFFER

The promoters or shareholders in control shall make the exit offer in accordance with the provisions of this Chapter, to the dissenting shareholders, in cases only if a public issue has opened after April 1, 2014; if :

- the proposal for change in objects or variation in terms of a contract, referred to in the offer document is dissented by at least 10 per cent of the shareholders who voted in the general meeting; and
- the amount to be utilized for the objects for which the offer document was issued is less than 75 % of the amount raised (including the amount earmarked for general corporate purposes as disclosed in the offer document).

ELIGIBILITY OF SHAREHOLDERS FOR AVAILING THE EXIT OFFER

Only those dissenting shareholders of the issuer who are holding shares as on the relevant date shall be eligible to avail the exit offer.

EXIT OFFER PRICE

The 'exit price' payable to the dissenting shareholders shall be the highest of the following:

a) the volume-weighted average price paid or payable foracquisitions, whether by the promoters or shareholders having control or by any person acting in concert with them, during the fifty-two weeks immediately preceding the relevant date;

b) the highest price paid or payable for any acquisition, whether by the promoters or shareholders having

control or by any person acting in concert with them, during the twenty-six weeks immediately preceding the relevant date;

c) the volume-weighted average market price of such shares for a period of sixty trading days immediately preceding the relevant date as traded on the recognised stock exchange where the maximum volume of trading in the shares of the issuer are recorded during such period, provided such shares are frequently traded;

d) where the shares are not frequently traded, the price determined by the promoters or shareholders having control and the merchant banker taking into account valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such issuers.

MANNER OF PROVIDING EXIT TO DISSENTING SHAREHOLDERS

- The notice proposing the passing of special resolution for changing the objects of the issue and varying the terms of contract, referred to in the prospectus shall also contain information about the exit offer to the dissenting shareholders.
- In addition to the disclosures required under the provisions of section 102 of the Companies Act, 2013 read with rule 32 of the Companies (Incorporation) Rules, 2014 and rule 7 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 and any other applicable law, a statement to the effect that the promoters or the shareholders having control shall provide an exit opportunity to the dissenting shareholders shall also be included in the explanatory statement to the notice for passing special resolution.
- After passing of the special resolution, the issuer shall submit the voting results to the recognised stock exchange(s), in terms of the provisions of regulation 44(3) of SEBI (LODR) Regulations, 2015.
- The issuer shall also submit the list of dissenting shareholders, as certified by its compliance officer, to the recognised stock exchange(s).
- The promoters or shareholders in control, shall appoint a merchant banker registered with SEBI and finalize the exit offer price in accordance with these regulations.
- The issuer shall intimate the recognised stock exchange(s) about the exit offer to dissenting shareholders and the price at which such offer is being given.
- The recognised stock exchange(s) shall immediately on receipt of such intimation disseminate the same to public within one working day.
- To ensure security for performance of their obligations, the promoters or shareholders having control, as applicable, shall create an escrow account which may be interest bearing and deposit the aggregate consideration in the account at least two working days prior to opening of the tendering period.
- The tendering period shall start not later than seven working days from the passing of the special resolution and shall remain open for ten working days.
- The dissenting shareholders who have tendered their shares in acceptance of the exit offer shall have the option to withdraw such acceptance till the date of closure of the tendering period.
- The promoters or shareholders having control shall facilitate tendering of shares by the shareholders and settlement of the same through the recognised stock exchange mechanism as specified by SEBI for the purpose of takeover, buy-back and delisting.
- The promoters or shareholders having control shall, within a period of ten working days from the last date of the tendering period, make payment of consideration to the dissenting shareholders who have accepted the exit offer.
- Within a period of two working days from the payment of consideration, the issuer shall furnish to the

recognised stock exchange(s), disclosures giving details of aggregate number of shares tendered, accepted, payment of consideration and the post-offer shareholding pattern of the issuer and a report by the merchant banker that the payment has been duly made to all the dissenting shareholders whose shares have been accepted in the exit offer.

MAXIMUM PERMISSIBLE NON-PUBLIC SHAREHOLDING

In the event, the shares accepted in the exit offer were such that the shareholding of the promoters or shareholders in control, taken together with persons acting in concert with them pursuant to completion of the exit offer results in their shareholding exceeding the maximum permissible non-public shareholding, the promoters or shareholders in control, as applicable, shall be required to bring down the non-public shareholding to the level specified and within the time permitted under Securities Contract (Regulation) Rules, 1957.

Under Rule 19A of SCRR, the company has been given one year time to comply with above requirement.

RIGHTS ISSUE

Unless otherwise provided, SEBI (ICDR) Regulations, 2018 shall apply to a rights issue by a listed issuer, where the aggregate value of the issue is ten crore rupees or more.

However, in case of rights issue of size less than ten crore rupees, the issuer shall prepare the letter of offer in accordance with requirements a specified in SEBI (ICDR) Regulations, 2018 and file the same with SEBI information and dissemination on SEBI's website.

Eligibility Conditions

An issuer shall not be eligible to make a rights issue of specified securities:

(a) if the issuer, any of its promoters, promoter group or directors of the issuer are debarred from accessing the capital market by SEBI;

(b) if any of the promoters or directors of the issuer is a promoter or director of any other company which is debarred from accessing the capital market by SEBI;

(c) if any of its promoters or directors is a fugitive economic offender.

It may be noted that the restrictions imposed under (a) & (b) will not apply to the promoters or director of the issuer who were debarred in the past by SEBI and the period of debarment is already over as on the date of filing of the draft letter of offer with SEBI.

General Conditions

- The issuer making a rights issue of specified securities shall ensure that:

  (a) it has made an application to one or more stock exchanges to seek an in-principle approval for listing of its specified securities on such stock exchanges and has chosen one of them as the designated stock exchange,

  (b) all its existing partly paid-up equity shares have either been fully paid-up or have been forfeited and

  (c) it has made firm arrangements of finance through verifiable means towards seventy five per cent of the stated means of finance for the specific project proposed to be funded from issue proceeds, excluding the amount to be raised through the proposed rights issue or through existing identifiable internal accruals.

- The amount for general corporate purposes, as mentioned in the object of the issue in the draft letter of

offer and the letter of offer, shall not exceed twenty per cent of the amount raised by the issuer.

- Where the issuer or any of its promoters or directors is a wilful defaulter, the promoters or promoter group of the issuer shall not renounce their rights except to the extent of renunciation within the promoter group.

Record Date

- A listed issuer making a rights issue shall announce a record date for the purpose of determining the shareholders eligible to apply for specified securities in the proposed rights issue for such period as may be specified in SEBI Listing Regulations, 2015
- The issuer shall not withdraw rights issue after announcement of the record date. If the issuer withdraws the rights issue after announcing the record date, it shall not make an application for listing of any of its specified securities on any recognised stock exchange for a period of twelve months from the record date already announced.
- The issuer may seek listing of its equity shares allotted pursuant to conversion or exchange of convertible securities, ESOPs or exercise of warrants issued prior to the announcement of the record date, on the stock exchange where its securities are listed.

Pricing

- The issuer shall decided the issue price, in consultation with the lead manager(s), before determining the record date, which shall be determined in accordance with the designated stock exchange.
- The issue price shall not be less than the face value of the specified securities.
- The issue shall disclose the issue price in the letter of offer filed with SEBI and the stock exchanges.

Abridged letter of offer

- The abridged letter of offer shall contain the disclosures as specified by SEBI and shall not contain any matter extraneous to the contents of the letter of offer.
- Every application form distributed by the issuer or any other person in relation to the issue shall be accompanied by a copy of the abridged letter of offer.

ASBA

- The issuer shall provide the ASBA facility in the manner specified by SEBI where not more than one payment option is provided.

  However, the applicants in a rights issue shall be eligible to make applications through ASBA facility only if such applicant:

  (i) is holding equity shares in dematerialised mode;

  (ii) has not renounced entitlement in part or in full; and

  (iii) is not a renouncee.

- Further, the payment made for application for any reserved portion outside the issue period can be through electronic banking modes.

Availability of letter of offer and other issue materials

- The lead manager(s) shall ensure availability of the letter of offer and other issue material including

application forms with stock exchanges, registrar to issue, registrar and share transfer agents, depository participants, stock brokers, and underwriters, bankers to the issue, investors' associations and self certified syndicate banks before the opening of the issue.

- The abridged letter of offer, along with application form, shall be despatched through registered post or speed post or by courier service or by electronic transmission to all the existing shareholders at least three days before the date of opening of the issue.
- The letter of offer shall also be provided by the issuer or lead manager(s) to any existing shareholder who makes a request in this regard.

Conditions for making applications on plain paper

- Shareholders who have not received the application form may make an application in writing on a plain paper, along with the requisite application money.
- Shareholders making an application on plain paper shall not be entitled to renounce their rights and shall not utilise the application form for any purpose including renunciation even if it is received subsequently.
- If a shareholder makes an application both in an application form as well as on a plain paper, both applications are liable to be rejected.

Subscription Period

A rights issue shall be open for subscription for a minimum period of fifteen days and for a maximum period of thirty days.

Payment Option

The issuer shall give one of the following payment options to all the shareholders for each type of instrument:

- part payment on application with balance money to be paid in calls; or
- full payment on application,

However, where the issuer has given the part payment option to investors, the part payment on application shall not be less than 25% of the issue price and such issuer shall obtain the necessary regulatory approvals to facilitate the same.

Pre-Issue Advertisement for Rights Issue

- The issuer shall issue an advertisement in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation, at the place where registered office of the issuer is situated, at least three days before the date of opening of the issue, disclosing the following:
  - the date of completion of despatch of abridged letter of offer and the application form;
  - the centres other than registered office of the issuer where the shareholders or the persons entitled to receive the rights entitlements may obtain duplicate copies of the application forms in case they do not receive the application form within a reasonable time after opening of the rights issue;
  - a statement that if the shareholders entitled to receive the rights entitlements have neither received the original application forms nor they are in a position to obtain the duplicate forms, they may make application in writing on a plain paper to subscribe to the rights issue;

- a format to enable the shareholders entitled to apply against their rights entitlements, to make the application on a plain paper specifying therein necessary particulars such as name, address, ratio of rights issue, issue price, number of equity shares held, ledger folio numbers, depository participant ID, client ID, number of equity shares entitled and applied for, additional shares if any, amount to be paid along with application, and particulars of cheque, etc. to be drawn in favour of the issuer's account;
- a statement that the applications can be directly sent by the shareholders entitled to apply against rights entitlements through registered post together with the application moneys to the issuer's designated official at the address given in the advertisement;
- a statement to the effect that if the shareholder makes an application on plain paper and also on application form both his applications shall be liable to be rejected at the option of the issuer.

➢ During the period the issue is open for subscription, no advertisement shall be released giving an impression that the issue has been fully subscribed or oversubscribed, or indicating investors' response to the issue.

➢ An announcement regarding closure of issue shall be made only after the lead manager(s) is satisfied that at least ninety per cent. of the offer through letter of offer has been subscribed and a certificate has been obtained to that effect from the registrar to the issue.

However, such an announcement shall not be made before the date on which the issue is to be closed except for issue closing advertisement made in the format prescribed in these regulations.

Reservations

➢ The issuer shall make a rights issue of equity shares only if it has made reservation of equity shares of the same class in favour of the holders of outstanding compulsorily convertible debt instruments, if any, in proportion to the convertible part thereof.

➢ The equity shares so reserved for the holders of fully or partly compulsorily convertible debt instruments shall be issued to the holder of such convertible debt instruments or warrants at the time of conversion of such convertible debt instruments, on the same terms at which the equity shares offered in the rights issue were issued.

➢ Subject to other applicable provision of these regulations, the issuer may make reservation for its employees along with rights issue subject to the condition that the value of allotment to any employee shall not exceed two lakhs rupees.

However, in the event of under-subscription in the employee reservation portion, the unsubscribed portion may be allotted on a proportionate basis, for a value in excess of two lakhs rupees, subject to the total allotment to an employee not exceeding five lakhs rupees.

Procedure for making a Rights Issue

The various steps involved for issue of rights share are enumerated below:

- Check whether the rights issue is within the authorised share capital of the company. If not, steps should be taken to increase the authorised share capital.
- Notify the stock exchange concerned the date of Board Meeting at which the rights issue is proposed to be considered at least 2 days in advance of the meeting.
- Convene the Board meeting and place before it the proposal for rights issue

- Immediately after the Board Meeting notify the concerned Stock Exchanges about particulars of Board of Directors decision.
- Appoint a merchant banker and file a draft letter of Offer with SEBI
- Obtain Observations an incorporate the same in the Letter offer
- Convene another Board Meeting which shall decide on the following matters:.
    - o Quantum of issue and the proportion of rights shares.
    - o Alteration of share capital, if necessary, and offering shares to persons other than existing holders of shares in terms of Section 62 of the Companies Act, 2013.
    - o Fixation of record date.
    - o Appointment of merchant bankers and underwriters (if necessary).
    - o Approval of draft letter of offer or authorisation of managing director/ company secretary to finalise the letter of offer in consultation with the managers to the issue, the stock exchange and SEBI.
- Rights issue shall be kept open for at least 15 days and not more than 30 days
- File a copy of the letter of offer with the stock exchange where the shares of the company are listed and obtain the In-principle approval for listing of equity shares to be issued under the proposed Rights Issue.
- Despatch letters of offer and the Composite Application Form to shareholders by registered post.
- Check that an advertisement giving date of completion of despatch of letter of offer has been released in at least an English National Daily, one Hindi National Paper and a Regional Language Daily where registered office of the issuer company is situated and that the shareholder can apply on plain paper if he does not receive the application form.
- The advertisement should state that applications of shareholders who apply both on plain paper and also in a composite application form are liable to be rejected.
- Make arrangement with bankers for acceptance of share application forms.
- Finalise the allotment in consultation with Stock Exchange.
- Convene Board Meeting and make allotment of shares.
- Make an application to the Stock Exchange(s) where the company's shares are listed for permission of listing of new shares.

GENERAL OBLIGATIONS OF THE ISSUER AND THE INTERMEDIARY IN CASE OF PUBLIC ISSUE AND RIGHTS ISSUE

- ➢ No person connected with the issue shall offer any incentive, whether direct or indirect, in any manner, whether in cash or kind or services or otherwise to any person for making an application for allotment of specified securities.
- ➢ All public communications, publicity materials, advertisements and research reports shall comply with the requirements as specified in ICDR Regulations, 2018.
- ➢ The lead manager and the Issuer Company shall ensure that the contents of the offer document as hosted on their web sites are the same as the printed versions filed with the Registrar of Companies and shall also ensure that the copies of the same are available to the public

- The post-issue lead merchant banker shall actively associate himself with post-issue activities such as allotment, refund, despatch and giving instructions to syndicate members, Self Certified Syndicate Banks and other intermediaries and shall regularly monitor redressal of investor grievances arising therefrom.
- The Issuer company shall appoint a Compliance Officer, who shall be responsible for monitoring the compliance of the securities laws and for redressal of investors' grievances.

PREFERENTIAL ISSUE [CHAPTER V OF ICDR OF 2018]

Applicability

"Preferential issue" means an issue of specified securities by a listed issuer to any select person or group of persons on a private placement basis in accordance with Chapter V of SEBI (ICDR) Regulations, 2018 and does not include an offer of specified securities made through employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or depository receipts issued in a country outside India or foreign securities.

Non- applicability

- The provisions of Chapter V shall not apply where the preferential issue of equity shares is made pursuant to:

  (a) conversion of a loan or an option attached to convertible debt instruments in terms of sections 81 (3 & (4) of the Companies Act, 1956 or section 62 (3) & (4) of the Companies Act, 2013, whichever is applicable;

  (b) a scheme approved by a High Court under section 391 to 394 of the Companies Act, 1956 or approved by a tribunal or the Central Government under sections 230 to 234 of the Companies Act, 2013, as applicable;

  However, the pricing provisions of preferential issue shall apply to the issuance of shares under schemes mentioned in clause (b) in case of allotment of shares only to a select group of shareholders or shareholders of unlisted companies pursuant to such schemes;

  (c) a qualified institutions placement in accordance with Chapter VI of these regulations.

- The provisions of this Chapter, except the lock-in provisions, shall not apply where the preferential issue of specified securities is made in terms of the rehabilitation scheme approved by the BIFR under the SICA, 1985 or the resolution plan approved under Section 31 of the IBC, 2016, whichever is applicable.
- The provisions of this Chapter relating to pricing and lock-in shall not apply to equity shares allotted to any financial institution within the meaning of sub-clauses (ia) and (ii) of clause (h) of section 2 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.
- The provisions relating to disclosure to shareholders and pricing shall not apply to a preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, where SEBI has granted relaxation to the issuer in terms of regulation 11 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, if adequate disclosures about the plan and process proposed to be followed for identifying the allottees are given in the explanatory statement to notice for the general meeting of the shareholders.
- The provisions relating to issuers ineligible to make a preferential issue and lock-in of pre-preferntial allotment holding, shall not apply to a preferential issue of specified securities where the proposed allottee is a mutual fund registered with SEBI or insurance company registered with IRDA or a scheduled

commercial bank or a public financial institution.

- The provisions of this Chapter shall not apply where the preferential issue of specified securities is made to the lenders pursuant to conversion of their debt, as part of a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India, subject to the following conditions:

  (a) guidelines for determining the conversion price have been specified by the Reserve Bank of India in accordance with which the conversion price shall be determined and which shall be in compliance with the applicable provisions of the Companies Act, 2013;

  (b) conversion price shall be certified by two independent valuers;

  (c) specified securities so allotted shall be locked-in for a period of one year from the date of their allotment

  However, for the purpose of transferring the control, the lenders may transfer the specified securities allotted to them before completion of the lock-in period subject to continuation of the lock-in on such securities for the remaining period, with the transferee;

  (d) the lock-in of equity shares allotted pursuant to conversion of convertible securities issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in;

  (e) the applicable provisions of the Companies Act, 2013 are complied with, including the requirement of a special resolution.

- The provisions of this Chapter shall not apply where the preferential issue of specified securities is made to person(s) at the time of lenders selling their holding of specified securities or enforcing change in ownership in favour of such person(s) pursuant to a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India, subject to the following conditions:

  (a) guidelines for determining the issue price have been specified by the Reserve Bank of India in accordance with which the issue price shall be determined and which shall be in compliance with the applicable provisions of the Companies Act, 2013;

  (b) issue price shall be certified by two independent valuers;

  (c) specified securities so allotted shall be locked-in for a period of at least three years from the date of their allotment;

  (d) lock-in of equity shares allotted pursuant to conversion of convertible securities issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in;

  (e) special resolution has been passed by shareholders of the issuer before the preferential issue;

  (f) issuer shall, in addition to the disclosures required under the Companies Act, 2013 or any other applicable law, disclose the following information pertaining to the proposed allottee(s) in the explanatory statement to the notice for the general meeting proposed for passing the special resolution as stipulated abov-:

    (a) identity, including that of the natural persons, who are the ultimate beneficial owners of the shares proposed to be allotted and/ or who ultimately control the proposed allottee(s);

    (b) business model;

    (c) statement on growth of business over a period of time;

(d) summary of audited financial statements of previous three financial years;

(e) track record, if any, in turning around companies;

(f) proposed roadmap for effecting turnaround of the issuer.

(g) applicable provisions of the Companies Act, 2013 are complied with.

Conditions for Preferential Issue

A listed issuer may make a preferential issue of specified securities, if:

- all equity shares allotted by way of preferential issue shall be made fully paid up at the time of the allotment;
- a special resolution has been passed by its shareholders;
- all the equity shares, if any, held by the proposed allottees in the issuer are in dematerialised form;
- the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognised stock exchange where the equity shares of the issuer are listed, SEBI Listing Regulations, 2015 as amended, and any circular or notifications issued by SEBI thereunder;
- the issuer has obtained the Permanent Account Number of the proposed allottees.

Issuers Ineligible to make a Preferential Issue [Regulation 159]

➢ Preferential issue of specified securities shall not be made to any person who has sold or transferred any equity shares of the issuer during the six months preceding the relevant date.

Further the in respect of the preferential issue of equity shares and compulsorily convertible debt instruments, SEBI may grant relaxation from the requirements of this sub-regulation in terms of sub-regulation (2) of regulation 11 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 to such a preferential allotment.

It may be noted that where any person belonging to promoter(s) or the promoter group has sold/ transferred their equity shares in the issuer during the six month preceding the relevant date, the entire promoter(s) and promoter group should be ineligible for allotment of specified securities on preferential basis and not only that person belonging to promoter(s) or the promoter group who has sold the shares.

The, above restriction shall not apply to any sale of equity shares by any person belonging to promoter(s) of the promoter group which qualifies for inter-se transfer amongst qualifying persons under clause (a) of sub-regulation (1) of regulation 10 of the SEBI (Substantial Acquisition of Shares and Takeover Regulations), 2011 or in case of transfer of shares held by the promoters or promoter group on account of invocation of pledge by a scheduled commercial bank or public financial institution or a systemically important non- banking finance company or mutual fund or insurance company registered with the IRDA.

➢ Where any person belonging to promoter(s) or the promoter group has previously subscribed to warrants of an issuer **but failed to exercise the warrants**, the promoter(s) and promoter group shall be ineligible for issue of specified securities of such issuer on preferential basis for a period of one year from:

(a) the date of expiry of the tenure of the warrants due to non-exercise of the option to convert; or

(b) the date of cancellation of the warrants, as the case may be.

- An issuer shall not be eligible to make a preferential issue if any of its promoters or directors is a fugitive economic offender.

Tenure of convertible securities [Regulation 162]

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

Disclosures to Shareholders [Regulation 163]

(1) The issuer shall, in addition to the disclosures required under the Companies Act, 2013 or any other applicable law, disclose the following in the explanatory statement to the notice for the general meeting proposed for passing special resolution:

(a) the objects of the preferential issue;

(b) Maximum number of specified securities to be issued;

(c) intent of the promoters, directors or key managerial personnel of the issuer to subscribe to the offer;

(d) the shareholding pattern of the issuer before and after the preferential issue;

(e) the time within which the preferential issue shall be completed;

(f) the identity of the natural persons who are the ultimate beneficial owners of the shares proposed to be allotted and/or who ultimately control the proposed allottees, the percentage of post preferential issue capital that may be held by them and change in control, if any, in the issuer consequent to the preferential issue.

However, if there is any listed company, mutual fund, bank or insurance company in the chain of ownership of the proposed allottee, no further disclosure will be necessary.

It may be noted that, for the purpose of identification of the ultimate beneficial owners of the allottees, where the allottees are institution/entities, the identification of such ultimate beneficial owners, shall be in accordance with the guidelines prescribed by SEBI, if any.

(g) an undertaking that the issuer shall re-compute the price of the specified securities in terms of the provision of these regulations where it is required to do so;

(h) an undertaking that if the amount payable on account of the re-computation of price is not paid within the time stipulated in these regulations, the specified securities shall continue to be locked-in till the time such amount is paid by the allottees.

(i) disclosures, similar to disclosures specified in Schedule VI of the ICDR Regulations, 2018 if the issuer or any of its promoters or directors is a wilful defaulter.

(2) The issuer shall place a copy of the certificate of its statutory auditor before the general meeting of the shareholders, considering the proposed preferential issue, certifying that the issue is being made in accordance with the requirements of these regulations.

(3) Where specified securities are issued on a preferential basis for consideration other than cash, the valuation of the assets in consideration for which the equity shares are issued shall be done by an independent valuer, which shall be submitted to the stock exchanges where the equity shares of the issuer are listed.

(4) The special resolution shall specify the relevant date on the basis of which price of the equity shares to be allotted on conversion or exchange of convertible securities shall be calculated.

Relevant Date

'Relevant date' means :

(a) in case of preferential issue of equity shares, the date thirty days prior to the date on which the meeting of shareholders is held to consider the proposed preferential issue.

However, in case of a preferential issue of specified securities pursuant to any resolution of stressed assets under a framework specified by the RBI or a resolution plan approved by the NCLT under the IBC, 2016, the date of approval of the corporate debt restructuring package or resolution plan shall be the relevant date.

(b) in case of preferential issue of convertible securities, either the relevant date referred clause (a) or a date thirty days prior to the date on which the holders of the convertible securities become entitled to apply for the equity shares. [It may be noted that the choice of relevant date shall be informed to the shareholders upfront while seeking approval for the proposed preferential issue]

Explanation*: Where the relevant date falls on a Weekend/Holiday, the day preceding the Weekend/Holiday will be reckoned to be the relevant date.*

For example if the meeting of the shareholders is on November 13, 2018, the Relevant date shall be October 13, 2018. However since October 13, 2018 is a Saturday, the relevant date shall be Friday October 12, 2018.

Allotment pursuant to special resolution

- Allotment pursuant to the special resolution shall be completed within a period of fifteen days from the date of passing of such resolution.
- In case of exemption from the applicability of the SEBI SAST Regulations, 2011 or any approval or permission by any regulatory authority or the Central Government for allotment is pending, the period of fifteen days shall be counted from the date of the order on such application or the date of approval or permission, as the case may be.
- In case of relaxation granted by SEBI in terms of the SEBI SAST Regulations, 2011, the preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, shall be made by it within such time as may be specified by the SEBI in its order granting the relaxation:
- Where a preferential allotment is made that attracts an obligation to make an open offer for shares of the issuer under the SEBI SAST Regulations, 2011, and there is no offer made under regulation 20 (1) of the SEBI SAST Regulation, 2011, the period of fifteen days shall be considered from the expiry of the period specified regulation 20 (1) or date of receipt of all statutory approvals required for the completion of an open offer under the SEBI SAST Regulation, 2011.

  In this case, the period of fifteen days shall be counted from the expiry of the offer period as defined in the SEBI SAST Regulations, 2011.

  However, this above mentioned provision shall not apply to an offer made under regulation 20 (1) of the SEBI SAST Regulation, 2011, pursuant to a preferential allotment."
- The requirement of allotment within fifteen days shall not apply to allotment of specified securities on preferential basis pursuant to any resolution of stressed assets under a framework specified by the RBI or a resolution plan approved by the NCLT under the IBC 2016.
- If the **allotment of the specified securities is not completed within fifteen days** from the date of special resolution, a **fresh special resolution shall be passed** and the relevant date for determining the price of specified securities shall be taken with reference to the date of the latter special resolution.

- Allotment of the specified securities shall be made **only in dematerialised form.**
- The requirement of allotment in dematerialised form shall also be applicable for the equity shares to be allotted pursuant to exercise of option attached to warrant or conversion of convertible securities.

PRICING

Pricing of equity shares - Frequently traded shares

1. Listed for more than 26 weeks

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 equity shares shall be allotted at a price not less than higher of the following:

(a) The average of the weekly high and low of the volume weighted average price (VWAP) 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.

Example : A Ltd., is listed on both the BSE and NSE. The volume of shares traded is highest on the BSE and the relevant date is March 22, 2018. The Volume Weighted the shares of a company are taken for the 26 weeks prior to the relevant date. The average of the maximum and the minimum VWAP is taken for each of the 26 weeks and the average of the same is again obtained. The 26 week average VWAP is as under:

DATE	VWAP	max	min	average
21-Sep-17	414.28			
22-Sep-17	411.1			
25-Sep-17	388.45			
26-Sep-17	389.84	414.28	387.91	401.095
27-Sep-17	387.91			
28-Sep-17	384.13			
29-Sep-17	395.14			
3-Oct-17	394.89			
4-Oct-17	396.88	396.88	384.13	390.505
5-Oct-17	392.18			
6-Oct-17	393.79			
9-Oct-17	400.66			
10-Oct-17	400.87			
11-Oct-17	415.63	415.63	393.79	404.71

12-Oct-17	409.96			
13-Oct-17	408.38			
16-Oct-17	404.98			
17-Oct-17	399.31			
18-Oct-17	399.73	408.38	399.31	403.845
19-Oct-17	409.26			
23-Oct-17	398.49			
24-Oct-17	396.57			
25-Oct-17	388.15	409.26	388.15	398.705
26-Oct-17	388.59			
27-Oct-17	397.92			
30-Oct-17	393.3			
31-Oct-17	398.56			
1-Nov-17	393.78	398.56	393.3	395.93
2-Nov-17	388.31			
3-Nov-17	394.42			
6-Nov-17	404.6			
7-Nov-17	396.26			
8-Nov-17	393.4	404.6	393.4	399
9-Nov-17	385.2			
10-Nov-17	383.46			
13-Nov-17	381.75			
14-Nov-17	384.33			
15-Nov-17	373.31	384.33	373.31	378.82
17-Nov-17	379.18			
20-Nov-17	380.09			
21-Nov-17	375.58			
22-Nov-17	372.16	380.09	372.16	376.125

23-Nov-17	382.83			
24-Nov-17	380.49			
27-Nov-17	390.6			
28-Nov-17	392.92			
29-Nov-17	394.42	394.42	380.49	387.455
30-Nov-17	389.35			
1-Dec-17	392.69			
4-Dec-17	385.57			
5-Dec-17	383.7			
6-Dec-17	384.48	392.69	383.7	388.195
7-Dec-17	377.07			
8-Dec-17	393.35			
11-Dec-17	397.65			
12-Dec-17	399.2			
13-Dec-17	395.75	399.2	377.07	388.135
14-Dec-17	391.22			
15-Dec-17	389.33			
18-Dec-17	389.71			
19-Dec-17	396.32			
20-Dec-17	394.94	396.32	389.33	392.825
21-Dec-17	398.6			
22-Dec-17	396.05			
26-Dec-17	397.55			
27-Dec-17	408.97	408.97	396.05	402.51
28-Dec-17	424.53			
29-Dec-17	421.03			
1-Jan-18	421.21			
2-Jan-18	410.21			
3-Jan-18	402.54	421.21	402.54	411.875

4-Jan-18	402.18			
5-Jan-18	400.14			
8-Jan-18	405.08			
9-Jan-18	418.23			
10-Jan-18	412.53	418.23	400.14	409.185
11-Jan-18	407.12			
12-Jan-18	408.24			
15-Jan-18	412.44			
16-Jan-18	407.87			
17-Jan-18	399.95	412.44	399.95	406.195
18-Jan-18	400.58			
19-Jan-18	401.49			
22-Jan-18	398.11			
23-Jan-18	393.03			
24-Jan-18	380.61	401.49	380.61	391.05
25-Jan-18	379.22			
29-Jan-18	376.84			
30-Jan-18	372.08			
31-Jan-18	371.27	379.22	371.27	375.245
1-Feb-18	380.99			
2-Feb-18	344.34			
5-Feb-18	353.07			
6-Feb-18	337.47			
7-Feb-18	348.42	353.07	337.47	345.27
8-Feb-18	350.69			
9-Feb-18	354.18			
12-Feb-18	350.85			
14-Feb-18	351.6	354.18	350.69	352.435

15-Feb-18	351.96			
16-Feb-18	348.58			
19-Feb-18	346.71			
20-Feb-18	341.93			
21-Feb-18	339.64	348.58	339.64	344.11
22-Feb-18	335.64			
23-Feb-18	335.74			
26-Feb-18	336.92			
27-Feb-18	335.66			
28-Feb-18	335.91	336.92	335.64	336.28
1-Mar-18	339.2			
5-Mar-18	338.44			
6-Mar-18	348.32			
7-Mar-18	347.28	348.32	338.44	343.38
8-Mar-18	340.38			
9-Mar-18	364.04			
12-Mar-18	370.15			
13-Mar-18	360.73			
14-Mar-18	350.84	370.15	340.38	355.265
15-Mar-18	350.7			
16-Mar-18	342.57			
19-Mar-18	337.21			
20-Mar-18	345.57	350.7	337.21	343.955
21-Mar-18	342.04			
average of the 26 VWAP				381.6192
The average of the two weeks prior to the Relevant Date is then taken which is as under				
2 week average				

8-Mar-18	340.38			
9-Mar-18	364.04			
12-Mar-18	370.15			
13-Mar-18	360.73			
14-Mar-18	350.84	370.15	340.38	355.265
15-Mar-18	350.7			
16-Mar-18	342.57			
19-Mar-18	337.21			
20-Mar-18	345.57	350.7	337.21	343.955
				349.610

Since the higher of the two is Rs.381.6192 that would be the price at which the preferential issue will be made.

2. Listed for less than 26 weeks

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 equity shares shall be allotted at a price not less than the higher of the following:

(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

(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 shares have been listed preceding the relevant date; or

(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.

Where the price of the equity shares is determined in terms of point no. 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.

A preferential issue of specified securities to QIBs, 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.

"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 **ten per cent** of the total number of shares of such class of shares of the issuer:

However, 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.

Pricing of equity shares – Infrequently traded shares

Where the shares are not frequently traded, the price determined by the issuer shall take into account valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies. However, the issuer shall submit a certificate stating that the issuer is in compliance of this regulation, obtained from an independent merchant banker or an independent valuer to the stock exchange where the equity shares of the issuer are listed.

Adjustments in pricing - Frequently or Infrequently traded shares

The price determined for preferential issue 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, requires adjustments.

Payment of consideration

Full consideration of specified securities other than warrants shall be paid by the allottees at the time of allotment of such specified securities except in case of shares issued for consideration other than cash.

However, in case of preferential issue of specified securities pursuant to any resolution of stressed assets under a framework specified by RBI or a resolution plan approved by NCLT under the IBC, 2016, the consideration may be in terms of such scheme.

In the case of warrants, an amount equivalent to at least twenty five per cent of the consideration determined in terms of the ICDR Regulations, 2018 shall be paid against each warrant on the date of allotment of warrants. The balance seventy five per cent. of the consideration shall be paid at the time of allotment of equity shares pursuant to exercise of option against each such warrant by the warrant holder.

However, in case the exercise price of the warrants is based on the formula, at least twenty five per cent of the

consideration amount calculated as per the formula with conversion date being the relevant dates shall against each warrant on the date of allotment of warrants and the balance consideration shall be paid at the time of allotment of the equity shares pursuant to exercise of options against each such warrant by the warrant holder.

In case the warrant holder does not exercise the option to take equity shares against any of the warrants held by him, the consideration paid in respect of such warrant (i.e. the 25% paid at the time of the issuance of the warrants) shall be **forfeited** by the issuer.

However, in case the exercise price of the warrants is based on the formula, at least twenty five per cent of the consideration amount calculated as per the formula with conversion date being the relevant date shall be paid against each warrant on the date of allotment of warrants and the balance consideration shall be paid at time of allotment of the equity shares pursuant to exercise of options against each such warrant by the warrant holder.

The issuer shall ensure that the consideration of specified securities, if paid in cash, shall be received from respective allottee's bank account and in the case of joint holders, shall be received from the bank account of the person whose name appears first in the application.

The issuer shall submit a certificate of the statutory auditor to the stock exchange where the equity shares of the issuer are listed stating that the issuer is in compliance of the SEBI (ICDR) Regulations, 2018 and the relevant documents thereof are maintained by the issuer as on the date of certification.

Lock-in of specified securities

- The specified securities allotted on preferential basis to **promoter or promoter group** and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to promoter or promoter group, **shall be locked-in for a period of three years from date of trading approval** granted for the specified securities or equity shares allotted pursuant to exercise of the option attached to warrant, as the case may be.

  However, not more than twenty per cent of the total capital of the issuer shall be locked-in for three years from the date of trading approval. Further, Equity shares allotted in excess of the twenty per cent shall be locked-in for one year from the date of trading approval pursuant to exercise of options or otherwise, as the case may be.

  In case of convertible securities or warrant which are not listed on stock exchanges, such securities shall be locked in for a period of one year from the date of allotment.

- The specified securities allotted on preferential basis to persons **other than promoter and promoter group** and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to such persons shall be **locked in for a period of one year from the date of trading approval.**

  However, in case of convertible securities or warrants which are not listed on stock exchanges, such securities shall be locked in for a period of one year from the date of allotment.

- Lock-in of the equity shares allotted pursuant to conversion of convertible securities other than warrants, issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in.

- The equity shares issued on a preferential basis pursuant to any resolution of stressed assets under a framework specified by the RBI or a resolution plan approved by the NCLT under the IBC 2016, shall be locked-in for a period of one year from the trading approval.

- If the amount payable by the allottee, in case of re-calculation of price is not paid till the expiry of lock-in period, the equity shares shall continue to be locked-in till such amount is paid by the allottee.

- The entire pre-preferential allotment shareholding of the allottees, if any, shall be locked-in from the relevant date up to a period of six months from the date of trading approval.
- However, in case of convertible securities or warrants which are not listed on stock exchanges, the entire pre-preferential allotment shareholding of the allottees, if any, shall be locked-in from the relevant date up to a period of six months from the date of allotment of such securities.

The date of trading approval shall mean the latest date when trading approval has been granted by all the stock exchanges where the equity shares of the issuer are listed, for specified securities allotted as per the provisions of this Chapter.

Transferability

- Subject to the provisions of SEBI SAST Regulations, 2011, specified securities held by promoters and locked-in in, may be transferred among the promoters or the promoter group or to a new promoter or persons in control of the issuer.

  However, the lock-in on such specified securities shall continue for the remaining period with the transferee.
- The specified securities allotted on a preferential basis shall not be transferable by the allottees till the trading approval is granted for such securities by all the recognised stock exchanges where the equity shares of the issuer are listed.

QUALIFIED INSTITUTIONS PLACEMENT [CHAPTER VI OF ICDR OF 2018]

'Qualified Institutions Placement' means allotment of eligible securities by a listed issuer to qualified institutional buyers (QIB's) on private placement basis and includes an offer for sale of specified securities by the promoters and/or promoters group on a private placement basis in terms of SEBI (ICDR) Regulations, 2018.

Qualified Institutional Buyer (QIB)

"Qualified Institutional Buyer" means:

- a mutual fund, venture capital fund, alternative investment fund and foreign venture capital investor registered with SEBI;
- a foreign portfolio investor other than Category III foreign portfolio investor, registered with the SEBI;
- a public financial institution;
- a scheduled commercial bank;
- a multilateral and bilateral development financial institution;
- a state industrial development corporation;
- an insurance company registered with the Insurance Regulatory and Development Authority of India;
- a provident fund with minimum corpus of twenty five crore rupees;
- a pension fund with minimum corpus of twenty five crore rupees;
- National Investment Fund set up by resolution no. F. No. 2/3/2005-DDII dated November 23, 2005 of the Government of India published in the Gazette of India;
- insurance funds set up and managed by army, navy or air force of the Union of India; and
- insurance funds set up and managed by the Department of Posts, India; and

- systemically important non-banking financial companies.

Eligible securities for the purpose of QIP

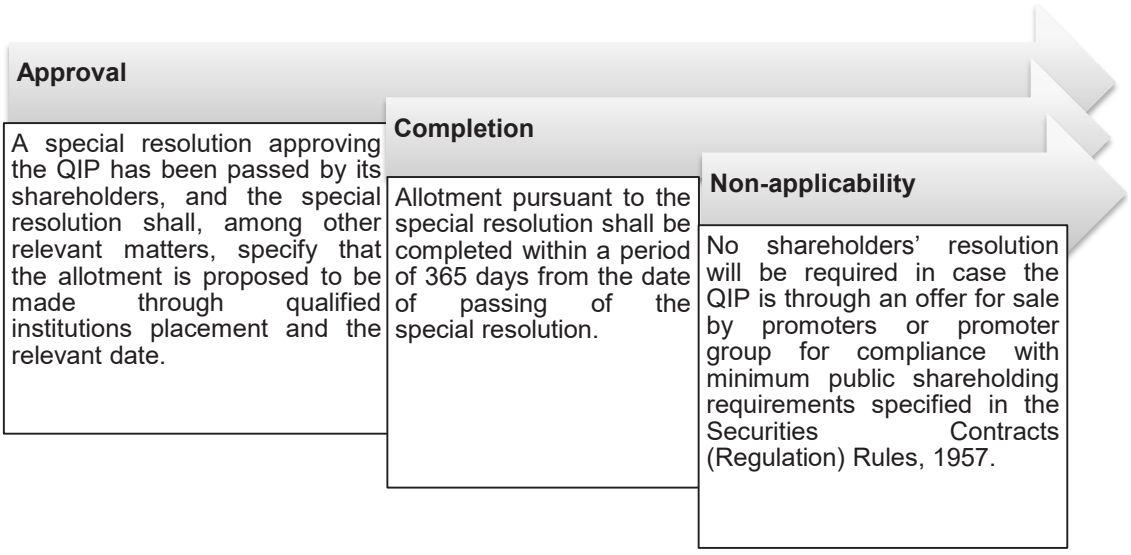
Eligible Securities include equity shares, non-convertible debt instruments along with warrants and convertible securities other than warrants.

Conditions for QIP

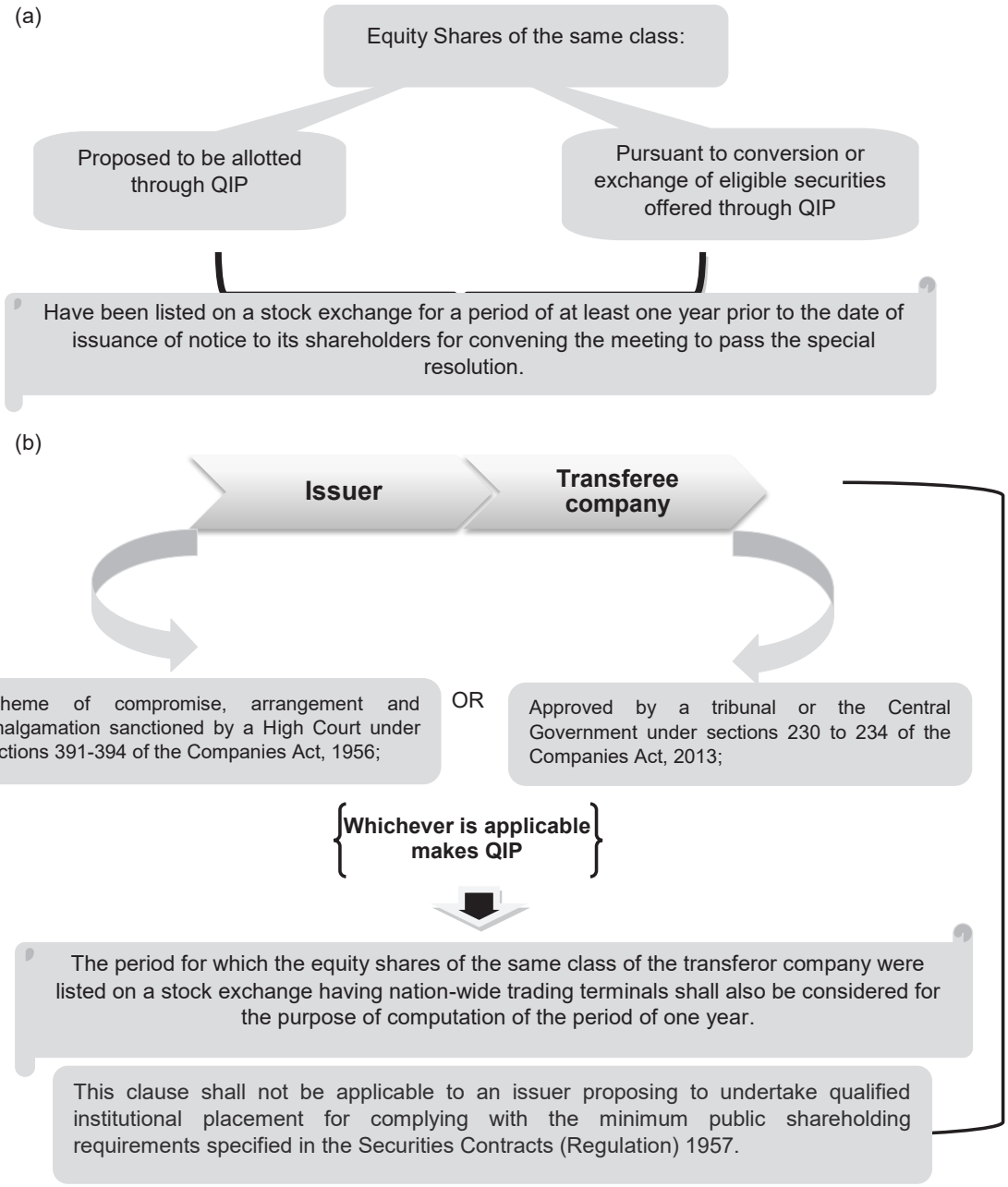
Relevant Date	
In case of allotment of equity shares, the date of the meeting in which the board of directors of the issuer or the committee of directors duly authorised by the board of directors of the issuer decides to open the proposed issue.	In case of allotment of eligible convertible securities, either the date of the meeting in which the board of directors of the issuer or the committee of directors duly authorised by the board of directors of the issuer decides to open the issue of such convertible securities or the date on which the holders of such convertible securities become entitled to apply for the equity shares.

- A listed issuer may make a qualified institutions placement of eligible securities if it satisfies the following conditions:

(i) Special Resolution



(ii) **Equity shares of the same class** – It shall mean equity shares which rank *pari-passu* in relation to rights as to dividend, voting or otherwise.



(c) An issuer shall be eligible to make a qualified institutions placement if any of its promoters or directors is not a fugitive economic offender.

- All eligible securities issued through a qualified institutions placement shall be listed on the recognised stock exchange where the equity shares of the issuer are listed. However, the issuer shall seek approval under rule 19(7) of the Securities Contracts (Regulation) Rules, 1957, if applicable.
- The issuer shall not make any subsequent qualified institutions placement until the expiry of six months from the date of the prior qualified institutions placement made pursuant to one or more special resolutions.

APPOINTMENT OF LEAD MANAGERS

An issuer shall appoint one or more merchant bankers, which are registered with SEBI, as lead manager(s) to the issue.

At least one lead manager to the issue shall not be an associate, as defined under SEBI (Merchant Bankers) Regulations, 1992) of the issuer and if any of the lead manager is an associate of the issuer, it shall disclose itself as an associate of the issuer and its role shall be limited to marketing of the issue.

The lead manager(s) shall, while seeking in-principle listing approval of the stock exchanges for the eligible securities, furnish to each stock exchange on which the same class of equity shares of the issuer are listed, a **due diligence certificate** stating that the eligible securities are being issued under QIP and that the issuer complies with requirements of Chapter VI of SEBI (ICDR) Regulations, 2018, and also furnish a copy of the preliminary placement document along with any other document required by the stock exchange.

Placement Document

- The lead manager(s) shall exercise due diligence and shall satisfy themselves with all aspects of the Issue including the veracity and adequacy of disclosures in the offer document.
- The QIP shall be made on the basis of a placement document which shall contain all material information, including those specified in the Companies Act, 2013, if any, and disclosures as specified in SEBI (ICDR) Regulations, 2018, shall be made, including as specified therein if the issuer or any of its promoters or directors is a wilful defaulter.
- The preliminary placement document and the placement document shall be serially numbered and copies the same shall be circulated only to select investors.
- The preliminary placement document and the placement document shall be placed on the websites of the relevant stock exchange(s) and of the issuer with a disclaimer to the effect that it is in connection with a QIP and that no offer is being made to the public or to any other category of investors.

Pricing

Pricing of QIP		
At a price not less than the average of the weekly high and low of the closing prices of the equity shares of the same class quoted on the stock exchange during the two weeks preceding the relevant date	Issuer may offer a discount of not more than five per cent. on the price so calculated, subject to approval of shareholders.	Except that no shareholders' approval will be required in case of a qualified institutions placement made through an offer for sale by promoters for compliance with minimum public shareholding requirements specified in SCR Rules, 1957

Note: The discount of upto 5% can be offered only if same has been specifically approved by the shareholders while approving QIP issue.

Where eligible securities are convertible into or exchangeable with equity shares of the issuer:

The issuer shall determine the price of such equity shares allotted pursuant to such conversion or exchange taking the relevant date as disclosed in the special resolution.

The issue price 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 a rights issue of equity shares;

(c) consolidates its outstanding equity shares into a smaller number of shares;

(d) divides its outstanding equity shares including by way of stock split;

(e) re-classifies any of its equity shares into other securities of the issuer;

(f) is involved in such other similar events or circumstances, which in the opinion of the concerned stock exchange, requires adjustments.

Partly Paid-Up Eligible Securities

- The issuer shall not issue or allot partly paid-up eligible securities.
- In case of allotment of non-convertible debt instruments along with warrants, the allottees may pay the full consideration or part thereof payable with respect to warrants, at the time of allotment of such warrants.
- However, on allotment of equity shares on exercise of options attached to warrants, such equity shares shall be fully paid-up.

"Stock exchange" means any of the recognised stock exchanges in which the equity shares of the same class of the issuer are listed and in which the highest trading volume in such equity shares has been recorded during the two weeks immediately preceding the relevant date.

Tenure of Convertible Securities

The tenure of the convertible or exchangeable eligible securities issued through qualified institutions placement shall not exceed **sixty months** from the date of allotment.

Transferability

The eligible securities allotted under the qualified institutions placement shall not be sold by the allottee for a period of one year from the date of allotment, except on a recognised stock exchange.

Minimum Number of Allottees

- The minimum number of allottees for each placement of eligible securities shall at least be:
  a) two, where the issue size is less than or equal to two hundred and fifty crore rupees;
  (b) five, where the issue size is greater than two hundred and fifty crore rupees:
- No single allottee shall be allotted more than fifty per cent. of the issue size.
- Qualified institutional buyers belonging to the same group or who are under same control shall be deemed to be a single allottee.

Qualified institutional buyers belonging to the same group" shall mean entities where, - (i) any of them controls directly or indirectly, through its subsidiary or holding company, not less than fifteen per cent. of the voting rights in the other; or (ii) any of them directly or indirectly, by itself, or in combination with other persons exercise control over the others; or (iii) there is a common director, excluding nominee and independent directors amongst the investor, its subsidiary or holding company and any other investor

APPLICATION AND ALLOTMENT

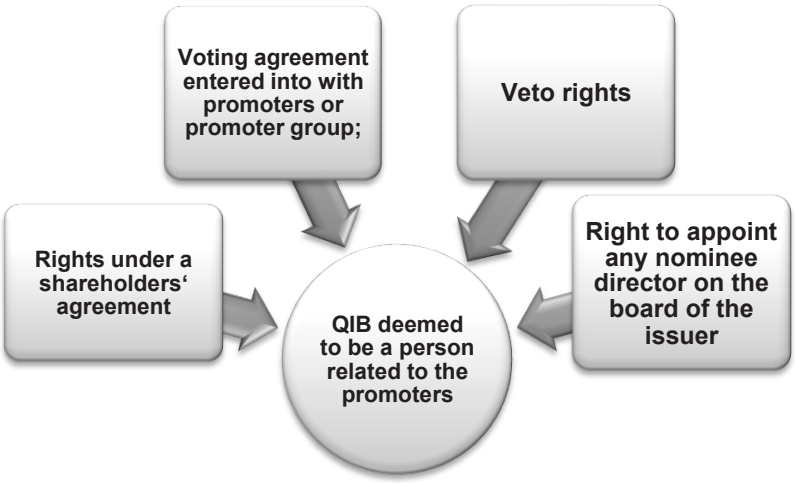
- The applicants in QIP shall not withdraw or revise downwards their bids after the closure of the issue.
- Allotment of specified securities shall be made subject to the following conditions:

  (a) minimum of ten per cent. of eligible securities shall be allotted to mutual funds. However, any unsubscribed portion of the said minimum percentage or any part thereof may be allotted to other qualified institutional buyers;

  (b) no allotment shall be made, either directly or indirectly, to any qualified institutional buyer who is a promoter or any person related to the promoters of the issuer.

However, a qualified institutional buyer who does not hold any shares in the issuer and who has acquired the said rights in the capacity of a lender shall not be deemed to be a person related to the promoters.

A qualified institutional buyer who has any of the following rights shall be deemed to be a person related to the promoters of the issuer:-



(a) rights under a shareholders' agreement or voting agreement entered into with promoters or promoter group;

(b) veto rights; or

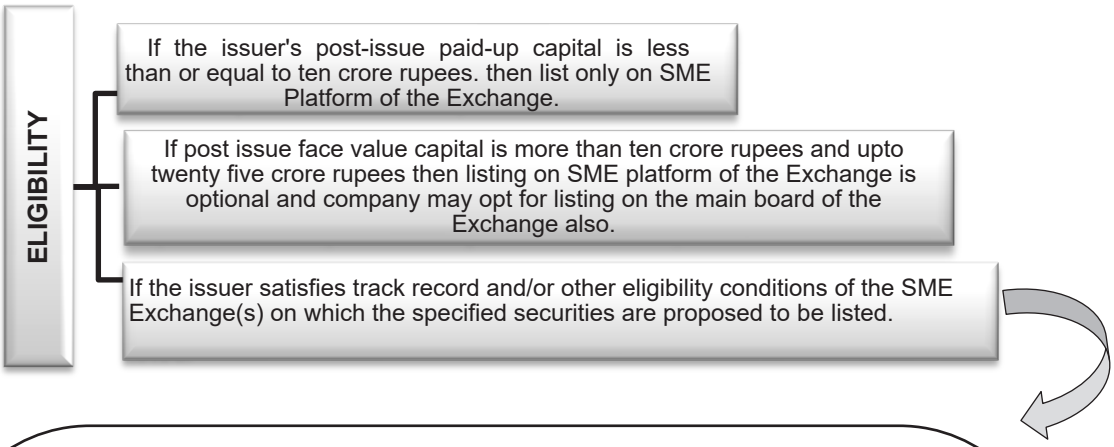
right to appoint any nominee director on the board of the issuer

ISSUE OF SPECIFIED SECURITIES BY SMALL AND MEDIUM ENTERPRISES [CHAPTER IX]

An issuer making an initial public offer of specified securities shall satisfy the conditions of Chapter IX of SEBI (ICDR) Regulations, 2018 as on the date of filing of the draft offer document with the SME Exchange and also as on the date of registering the offer document with the ROC.

> "SME exchange" means a trading platform of a recognised stock exchange having nationwide trading terminals permitted by SEBI to list the specified securities issued in accordance with Chapter IX and includes a stock exchange granted recognition for this purpose but does not include the Main Board.

Eligibility requirements for an initial public offer



In case of an issuer which had been a partnership firm or a limited liability partnership, the track record of operating profit of the partnership firm or the limited liability partnership shall be considered only if the financial statements of the partnership business for the period during which the issuer was a partnership firm or a limited liability partnership, conform to and are revised in the format prescribed for companies under the Companies Act, 2013 and also comply with the following:

(a) adequate disclosures are made in the financial statements as required to be made by the issuer as per Schedule III of the Companies Act, 2013;

(b) the financial statements are duly certified by auditors, who have subjected themselves to the peer review process of the Institute of Chartered Accountants of India (ICAI) and hold a valid certificate issued by the Peer Review Board' of the ICAI, stating that:

i. the accounts and the disclosures made are in accordance with the provisions of Schedule III of the Companies Act, 2013;

ii. the accounting standards prescribed under the Companies Act, 2013 have been followed;

iii. the financial statements present a true and fair view of the firm's accounts;

However, in case of an issuer formed out of merger or a division of an existing company, the track record of the resulting issuer shall be considered only if the requirements regarding financial statements as specified above in the first proviso are complied with.

Filing of the offer document

- The issuer shall file a copy of the offer document with SEBI through the lead manager(s), immediately upon registration of the offer document with the Registrar of Companies.
- **SEBI shall not issue any observation on the offer document.**
- The lead manager(s) shall submit a **due-diligence certificate** including additional confirmations as provided in Form G of Schedule V of SEBI ICDR Regulations 2018along with the offer document to SEBI.

- The offer document shall be displayed from the date of filing on the websites of SEBI, the lead manager(s) and the SME exchange(s) for at least 21 days.
- The draft offer document and the offer documents shall also be furnished to SEBI in a soft copy.

Offer document to be made available to public

- The issuer and the lead manager(s) shall ensure that the offer documents are hosted on the websites as required under these regulations and its contents are the same as the versions as filed with the Registrar of Companies, SEBI and the SME exchange(s).
- The lead manager(s) and the SME exchange(s) shall provide copies of the offer document to the public as and when requested and may charge a reasonable sum for providing a copy of the same.

Minimum Application Value and Number of Allottees

- The minimum application size shall be one lakh rupee per application.

  Here, 'minimum application value' shall be with reference to the issue price of the specified securities and not with reference to the amount payable on application.
- The minimum sum payable on application per specified securities shall at least twenty five per cent of the issue price. In case of offer for sale, the full issue price for each specified security shall be payable on application.

Migration to SME Exchange

A listed issuer whose post-issue face value capital is less than twenty five crore rupees may migrate its specified securities to SME exchange :

- if its shareholders approve such migration by passing a special resolution through postal ballot to this effect; and
- if such issuer fulfils the eligibility criteria for listing laid down by the SME exchange.

However, the special resolution shall be acted upon if and only if the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal.

Migration to Main Board

An issuer, whose specified securities are listed on a SME Exchange and whose post issue face value capital is more than ten crore rupees and upto twenty five crore rupees, may migrate:

- its specified securities to Main Board if its shareholders approve such migration by passing a special resolution through postal ballot to this effect; and
- if such issuer fulfils the eligibility criteria for listing laid down by the Main Board.

However, the special resolution shall be acted upon if and only if the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal which means that resolution shall be approved by majority of minority.

Where the post issue face value capital of an issuer listed on SME exchange is **likely to increase** beyond twenty five crore rupees by virtue of any further issue of capital by the issuer by way of rights issue, preferential issue, bonus issue, etc. the issuer shall first migrate its specified securities listed on SME exchange to Main Board and seek listing of specified securities proposed to be issued on the Main Board subject to the fulfilment

of the eligibility criteria for listing of specified securities laid down by the Main Board.

However, no further issue of capital by the issuer shall be made unless:

- the shareholders of the issuer have approved the migration by passing a special resolution through postal ballot wherein the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal;
- the issuer has obtained in- principle approval from the Main Board for listing of its entire specified securities on it.

Market Making

- The lead manager shall ensure compulsory market making through the stock brokers of SME exchange appointed by the issuer, for a minimum period of **three years** from the date of listing of specified securities or from the date of migration from the Main Board.
- The market maker or issuer, in consultation with the lead manager may enter into agreement with nominated investors for receiving or delivering the specified securities in the market making subject to the prior approval by the SME exchange.
- The issuer shall disclose the details of arrangement of market making in the offer document.
- The specified securities being bought or sold in the process of market making may be transferred to or from the nominated investor with whom the merchant banker has entered into an agreement for the market making.

  However, the inventory of the market maker, as on the date of allotment of the specified securities, shall be at least 5 % of the specified securities proposed to be listed on SME exchange.
- The market maker shall buy the entire shareholding of a shareholder of the issuer in one lot, where value of such shareholding is less than the minimum contract size allowed for trading on the SME exchange.

  However, the market maker shall not sell in lots less than the minimum contract size allowed for trading on the SME exchange.
- Market maker shall not buy the shares from the promoters or persons belonging to promoter group of the issuer or any person who has acquired shares from such promoter or person belonging to promoter group, during the compulsory market making period.
- The promoters' holding shall not be eligible for offering to the market maker during the compulsory market making period. However, the promoters' holding which is not locked-in as per these regulations can be traded with prior permission of the SME exchange.

The lead manager(s) may be represented on the Board of Directors of the issuer subject to the agreement between the issuer and the lead manager(s) who have the responsibility of market making.

INNOVATORS GROWTH PLATFORM [CHAPTER X OF ICDR OF 2018]

"Innovators growth platform" **(IGP)** means the trading platform for listing and trading of specified securities of issuers that comply with the eligibility criteria specified in regulation 283 of ICDR of 2018

Institutional investor" means (i) qualified institutional buyer; or (ii) family trust or intermediaries registered with the Board, with net worth of more than five hundred crore rupees, as per the last audited financial statements, for the purposes of listing and/or trading on 2[innovators growth platform] in terms of Chapter X of ICDR of 2018

Eligibility

An issuer which is intensive in the use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology to provide products, services or business platforms with substantial value addition shall be eligible for listing on the innovators growth platform, provided that as on the date of filing of draft information document or draft offer document with the Board, as the case may be, twenty five per cent of the pre-issue capital of the Issuer Company for at least a period of two years, should have been held by:

I. Qualified Institutional Buyers;

II. Family trust with net-worth of more than five hundred crore rupees, as per the last audited financial statements;

III. Accredited Investors for the purpose of Innovators Growth Platform;

IV. The following regulated entities:

a. Category III Foreign Portfolio Investor;

b. An entity meeting all the following criteria:

i. It is a pooled investment fund with minimum assets under management of one hundred and fifty million USD;

ii. It is registered with a financial sector regulator in the jurisdiction of which it is a resident;

iii. It is resident of a country whose securities market regulator is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to Bilateral Memorandum of Understanding with the Board;

iv. It is not resident in a country identified in the public statement of Financial Action Task Force as:

a) a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or

b) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.

Explanation:

(a) The following entities shall be eligible to be considered as accredited investors for the purpose of innovators growth platform:

(i) any individual with total gross income of fifty lakhs rupees annually and who has minimum liquid net worth of five crore rupees; or

(ii) any body corporate with net worth of twenty five crore rupees.

(b) Not more than ten per cent of the pre-issue capital may be held by Accredited Investors.

(c) For the purpose of accreditation: The persons /corporate bodies who wish to get accreditation for the purpose of innovators growth platform, shall approach the stock exchanges or depositories and follow the procedures prescribed by the Board and / or such stock exchange or depository for the purpose of accreditation as an Accredited Investor, from time to time.]

An issuer shall be eligible for listing on the institutional trading platform if none of the promoters or directors of the issuer company is a fugitive economic offender.

Listing without a public issue

(1) An issuer seeking listing of its specified securities without making a public offer, shall file a draft information

document along with the necessary documents with the Board in accordance with these regulations along with the fee as specified in Schedule III of these regulations.

(2) The draft information document shall contain disclosures as specified for the draft offer documents in these regulations as specified in Part A of Schedule VI.

(3) The regulations relating to the following as stated under the Chapter of Initial Public Offer on Main Board shall not be applicable:

a) allotment;

b) issue opening or closing;

c) advertisements;

d) underwriting;

e) sub-regulation (2) of regulation 5;

f) pricing;

g) dispatch of issue material; and

h) other such provisions related to offer of specified securities to the public.

The issuer shall obtain an in-principle approval from the stock exchanges on which it proposes to get its specified securities listed.

(5) The issuer shall list its specified securities on the recognised stock exchange(s within thirty days:

a) from the date of issuance of observations by the Board; or

b) from the expiry of the period stipulated in sub-regulation (4) of regulation 25, if the Board has not issued any such observations.

(6) The issuer which has received an in-principle approval from the stock exchange for listing of its specified securities, shall be deemed to have been waived by the Board under sub-rule (7) of rule 19 from the requirement of minimum offer to the public as per the provisions of clause (b) of sub-rule (2) of rule 19 of Securities Contracts (Regulation) Rules, 1957 for the limited purpose of listing on the 14[innovators growth platform].

(7) Provisions relating to minimum public shareholding shall not be applicable.

(8) The draft and final information document shall be approved by the board of directors of the issuer and shall be signed by all directors, the Chief Executive Officer, i.e., the Managing Director or Manager within the meaning of the Companies Act, 2013 and the Chief Financial Officer, i.e., the Whole-time Finance Director or any other person heading the finance function and discharging that function.

(9) The signatories shall also certify that all disclosures made in the information document are true and correct.

(10) In case of mis-statement in the information document or any omission therein, any person who has authorized the issue of information document shall be liable in accordance with the provisions of the Act and regulations made thereunder.

Explanation: Under this Part, the phrases ‘pre-issue’ and ‘post-issue’, wherever they occur shall be construed as ‘pre-listing’ and ‘post-listing’, respectively.

LISTING PURSUANT TO AN INITIAL PUBLIC OFFER

Disclosures in draft offer document and offer document

(1) An issuer seeking to issue and list its specified securities shall file a draft offer document along with necessary

documents with the Board in accordance with these regulations along with the fees as specified in Schedule III of these regulations.

(2) The draft offer document shall disclose the broad objects of the issue.

(3) The basis of issue price shall include disclosures, except projections, as deemed fit by the issuer in order to enable the investors to take informed decisions and the disclosures shall suitably contain the basis of valuation.

Minimum public shareholding norms and minimum offer size

(1) The issuer shall be in compliance with minimum public shareholding requirements specified in the Securities Contracts (Regulation) Rules, 1957.

(2) The minimum offer size shall be ten crore rupees

Minimum application size

The minimum application size shall be 16 [two lakh rupees and in multiples thereof].

Allocation and allotment

The number of allottees in the initial public offer shall at least be 17[fifty].

The allotment to institutional investors as well as non-institutional investors shall be on a proportionate basis.

Any under-subscription in the non-institutional investor category shall be available for subscription under the institutional investors' category.

GENERAL CONDITIONS

Lock-in

(1) The entire pre-issue capital of the shareholders shall be locked-in for a period of six months from the date of allotment in case of listing pursuant to a public issue or date of listing in case of listing without a public issue:

Provided that nothing contained in this regulation shall apply to:

a) equity shares allotted to employees, whether currently an employee or not, under an employee stock option or employee stock purchase scheme of the issuer prior to the initial public offer, if the issuer has made full disclosures with respect to such options or scheme in accordance with Part A of Schedule VI;

b) equity shares held by an employee stock option trust or transferred to the employees by an employee stock option trust pursuant to exercise of options by the employees, whether currently employees or not, in accordance with the employee stock option plan or employee stock purchase scheme.

   Provided that the equity shares allotted to the employees shall be subject to the provisions of lock-in as specified under the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014.

c) equity shares held by a venture capital fund or alternative investment fund of Category I or a foreign venture capital investor:

   Provided that such equity shares shall be locked-in for a period of at least one year from the date of purchase by the venture capital fund or alternative investment fund or foreign venture capital investor.

d) equity shares held by persons other than the promoters, continuously for a period of at least one year prior to the date of listing in case of listing without a public issue:

Explanation: For the purpose of clause (c) and (d), in case such equity shares have resulted pursuant to

conversion of fully paid-up compulsorily convertible securities, the holding period of such convertible securities as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period and the convertible securities shall be deemed to be fully paid-up, if the entire consideration payable thereon has been paid at the time of their conversion.

(2) The specified securities held by the promoters and locked-in may be pledged with any scheduled commercial bank or public financial institution or systemically important non-banking finance company as a collateral security for a loan granted by such bank or institution or systemically important non-banking finance company if the pledge of specified securities is one of the terms of sanction of the loan.

(3) The specified securities that are locked-in may be transferable in accordance with regulation 288 of these regulations.

(4) All specified securities allotted on a discretionary basis shall be locked-in in accordance with the requirements for lock-in for the anchor investors on the main board of the stock exchange, as specified under Part A of Schedule XIII.

Trading lot

The minimum trading lot on the stock exchange shall be two lakh rupees and in multiples thereof

Exit of issuers whose securities are trading without making a public offer

An issuer whose specified securities are traded on the innovators growth platform without making a public issue may exit from that platform, if –

a) its shareholders approve such an exit by passing a special resolution through postal ballot where ninety per cent of the total votes and the majority of non-promoter votes have been cast in favor of such proposal; and

b) the recognised stock exchange where its shares are listed approves of such an exit.

Migration to the main board

Granting companies listed on the Innovators Growth Platform pursuant to an initial public offer, an option to trade under the regular category of the main board of the stock exchange

292. (1) A company shall be eligible to trade under the regular category of the main board of the stock exchanges, subject to fulfillment of the conditions of the stock exchanges, if any, and the fulfillment of the following conditions:

(a) It has listed its specified securities for a minimum period of one year on the Innovators Growth Platform of a recognised stock exchange;

(b) It has minimum of two hundred shareholders, at the time of making the application for trading under the regular category;

(c) The company, any of its promoters, promoter group or directors are not debarred from accessing the capital market by the Board;

(d) None of the promoters or directors of the company is a promoter or director of any other company which is debarred from accessing the capital market by the Board;

(e) The company or any of its promoters or directors is not a wilful defaulter; and

(f) None of the promoters or directors of the Company is a fugitive economic offender.

Explanation: The restrictions under (c) and (d) above shall not apply to persons or entities mentioned therein, who were debarred in the past by the Board and the period of debarment is over as on the date of application

for migration of trading to the regular category of the main board of the stock exchange

Eligibility requirements

(2) A company shall be eligible to trade under the regular category of the main board of the stock exchanges, only if:

(a) it has net tangible assets of at least three crore rupees, calculated on a consolidated basis, in each of the preceding three full years (of twelve months each), of which not more than fifty per cent. are held in monetary assets;

(b) it has an average operating profit of at least fifteen crore rupees, calculated on a consolidated basis, during the preceding three years (of twelve months each), with operating profit in each of these preceding three years;

(c) it has a net worth of at least one crore rupees in each of the preceding three full years (of twelve months each), calculated on a consolidated basis; and

(d) in case it has changed its name within the last one year, at least fifty per cent of the revenue, calculated on a consolidated basis, for the preceding one full year has been earned by it from the activity indicated by its new name.

(3) A company not satisfying the conditions laid down under sub-regulation (2) of regulation 292, shall, at the time of applying to trade under the regular category, have seventy five per cent. of its capital, as on date of application for migration, held by Qualified Institutional Buyers

Minimum promoters' contribution

(4) The promoters of the company shall hold at least twenty per cent of the total capital:

Provided that in case the total capital held by the promoters is less than twenty per cent, alternative investment funds or foreign venture capital investors or scheduled commercial banks or public financial institutions or insurance companies registered with Insurance Regulatory and Development Authority of India may contribute to meet the shortfall in minimum contribution as specified, subject to a maximum of ten per cent of the total capital without being identified as promoter(s):

Provided further that the requirement of minimum promoters 'contribution shall not apply in case a company does not have any identifiable promoter

Lock-in period

(5) (a) The minimum promoters' contribution including contribution made by alternative investment funds or foreign venture capital investors or scheduled commercial banks or public financial institutions or insurance companies registered with the Insurance Regulatory and Development Authority of India, shall be locked in for a period of three years from the date on which trading approval in regular category of main board is granted, and any excess over and above the 20% of promoter's holding shall be locked-in for a period of one year.

(b) Wherever the contributions made by such entities had been locked-in for a period of six months at the time of listing of shares of the Company on the Innovators Growth Platform, and the company is desirous of migrating to the regular trade category of the main board aftercompletion of listing on the Innovators Growth Platform for one year, such period shall be deducted from the stipulated lock-in requirement of three years and one year, as may be applicable.

(c) The condition of lock in would not apply to a Company which has been listed on the Innovators Growth Platform for a minimum period of three years or more

Special provisions related to Superior Voting Rights equity shares (SR Equity shares)

The Companies Act, 2013, Section 47 provides for every shareholder of a company to have a right to vote on every resolution presented before the company.

However, as per Section 43(a)(ii) of the Companies Act, 2013, a company incorporated under the laws of India and limited by shares is permitted to have equity shares with differential voting rights as part of its share capital. The differential rights appended to such equity shares may be with respect to dividend, voting (higher or lower) or otherwise. Such equity shares may be issued by a company as per Rule 4 of the Companies (Share Capital & Debentures) Rules, 2014 prescribed under the Companies Act, 2013.

With the apprehension of possible misuse of "superior voting rights" by the issue of shares by the listed companies, SEBI prohibited the issue of such shares in July 21, 2009. The plausible justification for prohibition was the prevention from detriment of the shareholders. However, shares with inferior voting rights are permitted by SEBI.

However, in July 29, 2019 SEBI amended SEBI (ICDR) Regulations, 2018 by incorporating provisions related to "Superior Voting Rights equity shares" and allowed unlisted companies having SR Equity shares to list their ordinary equity shares through IPO subject to compliance with certain conditions.

What is SR Equity shares?

"SR equity shares" means the equity shares of an issuer having superior voting rights compared to all other equity shares issued by that issuer [Regulation 2 (eeea)]

Who are eligible issuers of SR Equity shares?

If an issuer has issued SR equity shares to its promoters/ founders, the said issuer shall be allowed to do an initial public offer of only ordinary shares for listing on the Main Board subject to compliance with the provisions of this Chapter and these clauses –

i. the issuer shall be intensive in the use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology to provide products, services or business platforms with substantial value addition.

ii. the SR shareholder shall not be part of the promoter group whose collective net worth is more than rupees 500 crores:

    Explanation: While determining the collective net worth, the investment of SR shareholder in the shares of the issuer company shall not be considered.

iii. The SR shares were issued only to the promoters/ founders who hold an executive position in the issuer company;

iv. The issue of SR equity shares had been authorized by a special resolution passed at a general meeting of the shareholders of the issuer, where the notice calling for such general meeting specifically provided for -

    a. the size of issue of SR equity shares,

    b. ratio of voting rights of SR equity shares vis-à-vis the ordinary shares,

    c. rights as to differential dividends, if any

    d. sunset provisions, which provide for a time frame for the validity of such SR equity shares,

    e. matters in respect of which the SR equity shares would have the same voting right as that of the ordinary shares,

v. The SR equity shares have been held for a period of atleast 6 months prior to the filing of the red herring prospectus;

vi. The SR equity shares shall have voting rights in the ratio of a minimum of 2:1 upto a maximum of 10:1 compared to ordinary shares and such ratio shall be in whole numbers only;

vii. The SR equity shares shall have the same face value as the ordinary shares;

viii. The issuer shall only have one class of SR equity shares;

ix. The SR equity shares shall be equivalent to ordinary equity shares in all respects, except for having superior voting rights.[Regulations 6(3)]

SR equity shares issued by eligible issuer shall be eligible for minimum promoter's contribution and shall also be subject to lock-in requirements. Suitable amendments have been made in respective regulations under SEBI(ICDR) Regulations, 2018.

Other provisions relating to outstanding SR equity shares [Regulation 41A of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations")]

41A. (1) The SR equity shares shall be treated at par with the ordinary equity shares in every respect, including dividends, except in the case of voting on resolutions.

(2) The total voting rights of SR shareholders (including ordinary shares) in the issuer upon listing, pursuant to an initial public offer, shall not at any point of time exceed seventy four per cent.

(3) The SR equity shares shall be treated as ordinary equity shares in terms of voting rights (i.e. one SR share shall only have one vote) in the following circumstances -

i. appointment or removal of independent directors and/or auditor;

ii. where a promoter is willingly transferring control to another entity;

iii. related party transactions in terms of these regulations involving an SR shareholder;

iv. voluntary winding up of the listed entity;

v. changes to the Articles of Association or Memorandum of Association of the listed entity, except any change affecting the SR equity share;

vi. initiation of a voluntary resolution process under the Insolvency Code;

vii. utilization of funds for purposes other than business;

viii. substantial value transaction based on materiality threshold as specified under these regulations;

ix. passing of special resolution in respect of delisting or buy-back of shares; and

x. other circumstances or subject matter as may be specified by the Board, from time to time.

(4) The SR equity shares shall be converted into equity shares having voting rights same as that of ordinary shares on the fifth anniversary of listing of ordinary shares of the listed entity:

Provided that the SR equity shares may be valid for upto an additional five years, after a resolution to that effect has been passed, where the SR shareholders have not been permitted to vote:

Provided further that the SR shareholders may convert their SR equity shares into ordinary equity shares at any time prior to the period as specified in this sub-regulation.

(5) The SR equity shares shall be compulsorily converted into equity shares having voting rights same as that of ordinary shares on the occurrence of any of the following events -

i. demise of the promoter(s) or founder holding such shares;

ii. an SR shareholder resigns from the executive position in the listed entity;

iii. merger or acquisition of the listed entity having SR shareholder/s, where the control would no longer remain with the SR shareholder/s;

iv. the SR equity shares are sold by an SR shareholder who continues to hold such shares after the lock-in period but prior to the lapse of validity of such SR equity shares.

LESSON ROUND UP

- Management of a public issue involves coordination of activities and cooperation of a number of agencies such as managers to the issue, underwriters, brokers, registrar to the issue; solicitors/ legal advisors, printers, publicity and advertising agents, financial institutions, auditors and other Government/Statutory agencies such as Registrar of Companies, Reserve Bank of India, SEBI etc.
- On August 26, 2009 SEBI rescinded the SEBI (DIP) Guidelines, 2000 and notified SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- SEBI vide its notification dated 11th September, 2018 issued SEBI (ICDR) Regulations, 2018 ('ICDR, 2018') which is effective from 60th day of its publication in Official Gazette.
- Primary Market deals with those securities which are issued to the public for the first time.
- A public issue of specified securities by an issuer can be either an Initial Public Offering (IPO) or a Further Public Offering (FPO). An IPO is done by an unlisted issuer while a FPO is done by a listed issuer.
- In public issue, the company may allot fresh shares that are offered to public. Alternatively, the existing shareholders of the company may offer their shares to public in IPO which is called IPO through offer for sale. (OFS). In OFS kind of IPO the pre and post IPO capital of the company remains the same. Company can also come up with an IPO which is a mix of both, the fresh allotment and OFS.
- Under Rule 19(2)(b) of SCRR, companies coming with IPO are required to offer between 25% to 10% of their post IPO capital to public. If it is less than 25% then they are required to raise the public holding in the company to 25% within three years.
- The minimum subscription to be received in an issue shall be not less than 90% of the offer through offer document except in case of an offer for sale of specified securities.
- The promoters should contribute not less than 20% of post-issue capital, in case of a public issue by an unlisted company.
- The promoters shall bring full amount of the promoters' contribution including premium at least one day prior to the date of opening of the issue, which shall be kept in an escrow account with a scheduled commercial bank, which shall be released to the issuer along with the release of the issue proceeds.
- The issuer may mention a price or price band in the draft prospectus (in case of a fixed price issue) and floor price or price band in the red herring prospectus (in case of a book built issue) and determine the price at a later date before registering the prospectus with the Registrar of Companies.
- If issuer is eligible and has issued SR Equity shares, ensure that provisions of SEBI (ICDR) Regulations, 2018 and SEBI (LODR) Regulations, 2015 related to SR Equity shares have been complied with.
- Rights Issues, Preferential allotment and Qualified Institutions Placement are also governed by ICDR Regulations.

- A rights issue shall be open for subscription for a minimum period of fifteen days and for a maximum period of thirty days.
- Qualified Institutions Placement means allotment of eligible securities by a listed issuer to qualified institutional buyers on private placement basis in terms of these regulations. Eligible Securities include equity shares, non-convertible debt instruments along with warrants and convertible securities other than warrants.
- A SME can issue specified securities in accordance with chapter IX of SEBI (ICDR) Regulations,2018.
- SEBI has stipulated conditions and manner for providing exit opportunity to dissenting shareholders as per Schedule XX of the SEBI (ICDR) Regulations, 2018.

GLOSSARY

Fugitive Economic Offender	It mean an individual who is declared as a fugitive economic offender under section 12 of the Fugitive Economic Offenders Act, 2018.
Nominated Investor	A qualified institutional buyer or private equity fund, who enters into an agreement with the lead manager(s) to subscribe to an issue, made in accordance with ICDR, Regulations, in case of under-subscription or to receive or deliver the specified securities in the market-making process in such an issue.
Retail Individual Shareholder	It means a shareholder who applies or bids for specified securities for a value of not more than two lakhs rupees.
Wilful Defaulter	A person or an issuer who or which is categorized as a wilful defaulter by any bank or financial institution (as defined under the Companies Act, 2013) or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the RBI.
Working Day	Means all days on which commercial banks in the city as specified in the offer document are open for business.

SELF TEST QUESTIONS

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Discuss briefly the eligibility criteria for making an IPO under SEBI (ICDR), Regulations, 2018?
2. Elucidate the entities not eligible for making an FPO of securities under SEBI (ICDR), Regulations, 2018.
3. Briefly explain the Promoter's Contribution in Public Issue of Securities under SEBI (ICDR), Regulations, 2018.
4. What are the provisions required to be complied with by a company for issue shares on a rights basis under SEBI (ICDR), 2018?
5. Who is dissenting shareholders? Explain the manner of providing exit to dissenting shareholders under the SEBI (ICDR) Regulations, 2018.

Lesson 2
Real Estate Investment Trusts

LESSON OUTLINE

- Introduction
- SEBI (Real Estate Investment Trust) Regulations, 2014
- Eligibility Criteria
- Issue and Listing of Units
- Guidelines for Public Issue of Units of REITs
- Investment Conditions, Related Party Transactions, Borrowing and Valuation of Assets
- Rights and Meetings of Unit Holders
- Disclosures
- Liability for Action In Case Of Default
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

REITs are investment vehicles that own, operate and manage a portfolio of income-generating properties for regular returns. These are usually commercial properties (offices, shopping centres, hotels etc.) that generate rental income. An REIT works very much like a mutual fund. It pools funds from a number of investors and invests them in rent-generating properties. SEBI requires Indian REITs to be listed on exchanges and to make an initial public offer to raise money. Just like MFs, REITs are subject to a three-tier structure — the sponsor who is responsible for setting up the REIT, the fund management company which is responsible for selecting and operating the properties, and the trustee who ensures that the money is managed in the interest of unit-holders.

Being a new investment instrument for an Indian investor, it is imperative to study the Real Estate Investment Trusts. A REIT could provide an attractive alternative investment instrument in the Indian financial markets.

Being a student of Company Secretaryship, a student must know about these financial innovations and expand his/her horizon into this new territorial.

In this lesson the regulatory framework for REIT as laid down by SEBI has been explained.

INTRODUCTION

The Real Estate Investment Trust (REIT) is an investment vehicle that invests in rent-yielding completed real estate properties which has the potential to transform the Indian real estate sector.

REIT helps attracting long-term financing from domestic as well as foreign sources. This could improve fund availability to real estate developers and reduce some burden on completed assets by allowing owners of such assets to raise capital from investors against issue of units. Further, for the investors, the REIT can provide a new investment vehicle with ongoing returns, elevated transparency and governance standards.

BACKGROUND

Real estate investment trusts (REITs) has been one of the most important vehicles for making collective investment in commercial real estate. Emanating in the USA in 1960s as a tax transparent collective investment vehicle, REITs have subsequently been used by several other countries, and have done remarkably well.

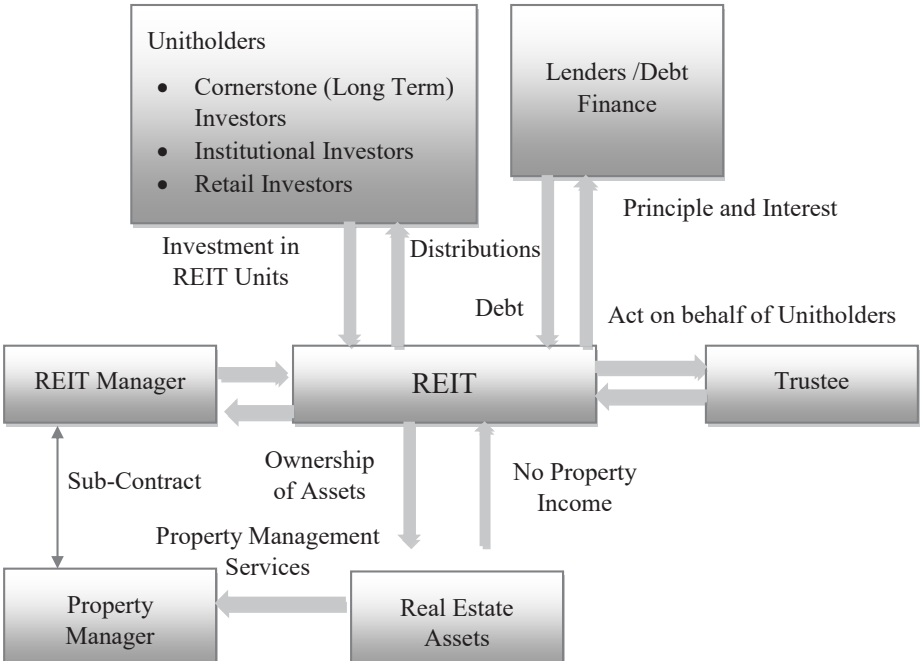
In India, SEBI had introduced real estate mutual funds pursuant to recommendations of an AMFI Committee, and thereafter, it came with draft regulations on REITs in 2008. In 2013, a regulatory framework was once again put on public domain. The major concern surrounding the viability of REITs in India was the non-availability of Tax Pass Through status. However, by virtue of the Finance Act 2014, Ministry of Finance provided tax incentives to the scheme. SEBI acted proactively after the announcement of Budget and SEBI approved the REITs regulation in the Board Meeting held on 10th August, 2014 and issued highlights of the regulations vide Press release No 89/ 2014.

SEBI on 26th September 2014 finally notified the final regulations - SEBI (Real Estate Investment Trust) Regulations, 2014.

The introduction of regulatory framework for Real Estate Investment Trusts (REITs) has paved the way for the launch of REIT funds in India.

REITs in India would issue securities, which would be listed on stock exchanges. REITs will invest predominantly in completed commercial real estate assets, either directly or through SPVs. Initially, REITs are planned to be available only to high net worth individuals and institutions to develop the market. Gradually, they will be available for retail investors as well.

REIT Structure



SALIENT FEATURES OF SEBI (REIT) REGULATIONS, 2014

Governing Code

- SEBI (Real Estate Investment Trusts) Regulations, 2014

Legal Structure

- Trust set up under Indian Trusts Act, 1882

Parties to the REITs

- Sponsor Group, Re-designated Sponsor, Manager and Trustee.

Maximum number of sponsors that REITs can have & Unit holding obligation

- Each sponsor shall hold or propose to hold minimum 5% of units of REITs.
- Collectively to hold minimum of 25% of the units of the REIT for a period of not less than 3 years from the date of listing.
- Sponsor(s) and sponsor group(s)] together hold not less than fifteen per cent of the outstanding units of the listed REIT at all times.

Eligibility for Trustee

- Shall be registered as a Trustee under SEBI (Debenture Trustee) Regulations, 1993 and shall not be an associate of Sponsor/Manager/ principle valuer.

Listing requirement

- LIsting is mandatory for Units

Investment conditions

- At least 80% of the value of the REIT assets needs to be in completed and revenue generating properties;

Other Permissible Investments

- Remaining 20% can be invested in
  - a) Developmental properties
  - b) Listed or unlisted debt of companies/ body corporate in real estate sector;
  - c) Mortgage backed securities;
  - d) Equity shares of companies listed on a recognized stock exchange in India which derive not less than 75% of their operating income from Real Estate activity;
  - e) Government securities;
  - f) Unutilized FSI of a project;
  - g) TDR acquired for the purpose of Utilization
  - h) Money market instruments or Cash equivalents;

Valuation of assets

- Full valuation on a yearly basis and updating the same on a half yearly basis and declare NAV within 15 days from the date of such valuation/updation.

Distribution of Income

- Atleast 90% of the net distributable income after tax of the REIT/Holdcoshall be distributed as dividend to the unit holders atleast on half yearly basis and shall be made not later than fifteen days.

Mode of Investment in properties

- Directly or through SPVs holding atleast 80% of their assets directly in such properties and shall not invest in other SPVs.
- The REIT shall hold controlling interest and not less than 50% of the equity share capital of the Special Purpose Vehicle

Initial offer restrictions

- Minimum offer size should be atleast Rs. 250 crore

Minimum Subscription and unit size

- Under both the initial offer and follow-on offer, rights issue, QIP, minimum subscription size for units of REIT shall be Rs. 50,000.
- The units offered to the public in initial offer shall not be less than 25% of the number of units of the REIT on post-issue basis. Can offer less than 25% subject to certain conditions [Reg.14(2A)]
- Trading lot shall be 100 Units

Borrowings and Deferred payments

- The aggregate consolidated borrowings and deferred payments of the REIT shall never exceed 49% of the value of the REIT assets.
- In case such borrowings/ deferred payments exceed 25%, approval from unit holders and credit rating shall be required.

DEFINITIONS

"Associate" of any person shall be as defined under the Companies Act, 2013 or under the applicable accounting standards and shall also include following:

(i) any person controlled, directly or indirectly, by the said person;

(ii) any person who controls, directly or indirectly, the said person;

(iii) where the said person is a company or a body corporate, any person(s) who is designated as promoter(s) of the company or body corporate and any other company or body corporate with the same promoter(s);

(iv) where the said person is an individual, any relative of the individual;

"Body corporate" shall have the meaning assigned to it in or under sub-section (11) of section 2 of the Companies Act, 2013;

"Bonus issue" means additional units allotted to the unit holders as on the record date fixed for the said purpose, without any cost to the unit holder;

"Change in control" means, –

(i) in case of a company or body corporate, change in control where 'control' shall have the meaning as provided in sub-section (27) of section 2 of the Companies Act, 2013;

(ii) in any other case, change in the controlling interest.

Explanation. — It may be noted that the expression "controlling interest" means an interest, whether direct or indirect, to the extent of not less than fifty percent of voting rights or interest;

"Completed property" means property for which occupancy certificate has been received from the relevant authority;

"Floor Space Index" or "FSI" shall mean the buildable area on a plot of land as specified by the competent authority.

"Follow–on Offer" means offer of units of a listed REIT to the public for subscription and includes an offer for sale of REIT units by an existing unit holder to the public.

"Holdco" or "holding company" shall mean a company or LLP., –

(i) in which REIT holds or proposes to hold not less than fifty per cent of the equity share capital or interest and which it in turn has made investments in other SPV(s), which ultimately hold the property(ies);

(ii) which is not engaged in any other activity other than holding of the underlying SPV(s), holding of real estate/properties and any other activities pertaining to and incidental to such holdings;

"Net asset value" or "NAV" means the value of the REIT assets reduced by the external debt divided by the number of outstanding units as on a particular date.

"Occupancy certificate" means a completion certificate, or such other certificate, as the case may be, issued by the competent authority permitting occupation of any property under any law for the time being in force.

"Real Estate" or "Property" means land and any permanently attached improvements to it, whether leasehold or freehold and includes buildings, sheds, garages, fences, fittings, fixtures, warehouses, car parks, etc. and any other assets incidental to the ownership of real estate but does not include mortgage:

However, any asset falling under the purview of 'infrastructure' as as defined vide Notification of Ministry of Finance dated October, 07, 2013 including any amendments or additions made thereof shall not be considered as 'real estate' or 'property' for the purpose of these Regulations.

Apart from the above, following captured within the above mentioned definition of infrastructure shall be considered under "real estate" or "property",-

(i) hotels, hospitals and convention centers, forming part of composite real estate projects, whether rent generating or income generating;

(ii) common infrastructure" for composite real estate projects, industrial parks and SEZ;

"Real estate assets" means properties held by REIT, on a freehold or leasehold basis, whether directly or through a holdco and/or a special purpose vehicle.

"Re-designated Sponsor" means any person who has assumed the responsibility of the sponsor as provided under regulation 11 from the person as designated under clause (zt) of sub-regulation (1) of REIT Regulations or from any re-designated sponsor thereafter;

"REIT" or "Real Estate Investment Trust" shall mean a trust registered as such under the REIT Regulations;

"REIT assets" means real estate assets and any other assets owned by the REIT on a freehold or leasehold basis, whether directly or through a holdco and /or special purpose vehicle;

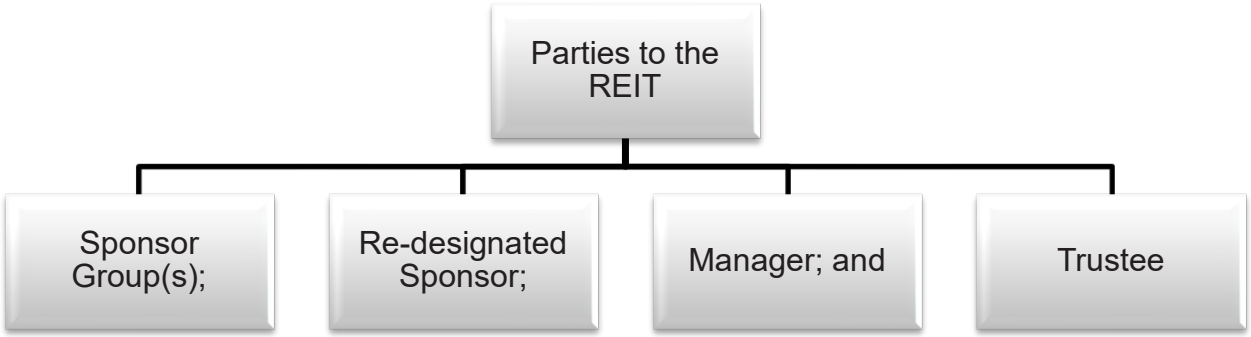
"Related Party" shall be defined under the Companies Act, 2013 or under the applicable accounting standards and shall also include:

(i) parties to the REIT;

(ii) promoters;

(iii) directors; and

(iv) partners of the persons in clause (i).



"Rent generating property" means property which has been leased or rented out in accordance with an agreement entered into for the purpose.

"Special purpose vehicle" or "SPV" means any company or LLP :

(i) in which either the REIT or the holdco holds or proposes to hold not less than fifty per cent of the equity share capital or interest;

(ii) which holds not less than eighty per cent of its assets directly in properties and does not invest in other special purpose vehicles; and

(iii) which is not engaged in any activity other than holding and developing property and any other activity incidental to such holding or development;

"Sponsor" means any person(s) who set(s) up the REIT and designated as such at the time of application made to SEBI.

"Sponsor group" – includes:

(i) the sponsor(s);

(ii) in case the sponsor is a body corporate:

a. entities or person(s) which are controlled by such body corporate;

b. entities or person(s) who control such body corporate;

c. entities or person(s) which are controlled by person(s) as referred at clause b.

(iii) in case sponsor is an individual:

a. an immediate relative of such individual (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse); and

b. entities or person(s) which are controlled by such individual

"Transferable development rights" or "TDR" shall mean development rights issued by the competent authority

under relevant laws in lieu of the area relinquished or surrendered by the owner or developer or by way of declared incentives by the Government or authority.

"Valuer" means any person who is a "registered valuer" under section 247 of the Companies Act, 2013 or as specified by SEBI from time to time.

ELIGIBILITY CRITERIA

No person shall act as a REIT unless it is registered with SEBI under the REIT Regulations. The following conditions shall be considered before grant of registration:

(a) **Applicant**

The applicant must be a sponsor on behalf of trust and Trust Deed shall be duly registered in India under the provisions of the Registration Act, 1908 containing its main objective as undertaking activity of REIT in accordance with the REIT Regulations and includes responsibilities of the Trustee in accordance with of the provisions of REIT Regulations. Persons have been designated as sponsor(s), manager and trustee and all such persons are separate entities.

(b) **Sponsor**

- Each sponsor shall hold or propose to hold not less than five per cent of the number of units of the REIT on post-initial offer basis. Further, each sponsor and sponsor group shall be clearly identified in the application of registration to SEBI and in the offer document/placement memorandum, as applicable.
- For each sponsor group not less than one person shall be identified as a sponsor.
- Out of the entities categorized as sponsor group, only the following entities may be considered:
  a) a person or entity who is directly or indirectly holding an interest or shareholding in any of the assets or SPVs or holdcos proposed to be transferred to the REIT.
  b) a person or entity who is directly or indirectly holding units of the REIT on post-issue basis.
  c) a person or entity whose experience is being utilized by the sponsor for meeting with the eligibility conditions required under REIT regulations.
- The sponsor(s), on a collective basis, have a net worth of not less than one hundred crore rupees:

  However, each sponsor has a net worth of not less than twenty crore rupees; and
- The sponsor or its associate(s) has not less than five years' experience in development of real estate or fund management in the real estate industry;

  However, where the sponsor is a developer, at least two projects of the sponsor have been completed.

(c) **Manager**

- In case, the Manager is a body corporate or a company, the net worth of the manager shall not be less than Rs. 10 crore or in case, the manager is a LLP, the value of net tangible assets shall not be less than ten crore rupees;
- The Manager must have atleast 5 years of experience in fund management/ advisory services/ property management in the real estate industry or in development of real estate and have at least 2 key personnel who each have not less than 5 years of experience in fund management/ advisory services/ property management in the real estate industry or in development of real estate.
- The manager shall not less than half, of its directors in the case of a company or of members

of the governing Board in case of an LLP, as independent and not directors or members of the governing Board of the manager of another REIT; and

- The manager must have entered into an investment management agreement with the trustee which provides for the responsibilities of the manager in accordance with REIT Regulations.

(d) **Trustee**

It should be registered with SEBI under SEBI (Debenture Trustees) Regulations, 1993. It is not an associate of the sponsor(s) or manager and the trustee has such wherewithal with respect to infrastructure, personnel, etc. to the satisfaction of SEBI and in accordance with circulars or guidelines as may be specified by SEBI;

(e) The unit holder of the REIT shall not enjoys superior voting or any other rights over another unit holder and there are no multiple classes of units of REIT. However, subordinate units may be issued only to the sponsors and its associates, where such subordinate units shall carry only inferior voting or any other rights compared to other units.

(f) The applicant has clearly described at the time of application for registration, details pertaining to proposed activities of the REIT.

(g) The REIT and parties to the REIT are fit and proper persons based on the criteria as specified in Schedule II of the SEBI (Intermediaries) Regulations, 2008.

(h) Whether any previous application for grant of certificate by the RIET or the parties to the REIT or their directors/members of governing board has been rejected by SEBI.

(i) Whether any disciplinary action has been taken by SEBI or any other regulatory authority against the REIT or the parties to the REIT or their directors/members of governing board under any Act or the regulations or circulars or guidelines made thereunder.

ISSUE AND ALLOTMENT OF UNITS

1. A REIT shall make an initial offer of its units by way of public issue only.
2. No initial offer of units by the REIT shall be made unless,
   - the REIT is registered with SEBI under the REIT Regulations;
   - the value of the REIT assets owned by the REIT is not less than Rs.500 crores;

     It may be noted that such value shall mean the value of the specified portion of the holding of REIT in the underlying assets or SPVs.

   - the minimum number of unit holders other than sponsor(s), its related parties and its associates forming part of public shall be not less than two hundred; and
   - the offer size is not less than Rs. 250 crores.
3. The requirement of ownership of assets and size of REIT to be not less that 500 crores may be complied at any point of time before allotment of units in accordance with offer document/placement memorandum subject to a binding agreement with the relevant party(ies), that such requirements shall be fulfilled prior to such allotment of units and, a declaration to SEBI and to the designated stock exchanges to that effect and adequate disclosures in this regard in the offer document.
4. For a REIT raising funds through an initial offer, the units proposed to be offered to the public through such initial offer:

   (a) shall be not less than 25% of the total of the outstanding units of the REIT and the units being

offered by way of the offer document, if the post issue capital of the REIT calculated at offer price is less than Rs. 1,600 crores.

However, this requirement shall be complied along with the requirement as specified in Point No. 2.

(b) shall be of the value of at least Rs 400 crore, if the post issue capital of the REIT calculated at offer price is equal to or more than Rs. 1600 crore and less than Rs. 4000 crore;

(c) shall be not less than 10% of the total of the outstanding units of the REIT and the units being offered by way of the offer document, if the post issue capital of the REIT calculated at offer price is equal to or more than Rs. 4000 crore.

However, any units offered to sponsor or the manager or their related parties or their associates shall not be counted towards units offered to the public. Further, any listed REIT which has public holding below 25%, such REIT shall increase its public holding to at least 25%, within a period of three years from the date of listing pursuant to initial offer.

5. Any subsequent issue of units by the REIT may be by way of follow-on offer, preferential allotment, qualified institutional placement, rights issue, bonus issue, offer for sale or any other mechanism and in the manner as may be specified by SEBI.

6. REIT, through the merchant banker, shall file a draft offer document along with the prescribed fees with the designated stock exchange(s) and SEBI, not less than 30 working days before filing offer document with the designated stock exchange and SEBI.

7. The draft offer document filed with SEBI shall be made public, for comments, by hosting it on the websites of SEBI, designated stock exchanges and merchant bankers associated with the issue for a period of not less than 21 days.

8. The draft offer document and/or final offer document shall be accompanied by a due diligence certificate signed by the lead merchant banker.

9. SEBI may communicate its comments to the lead merchant banker and, in the interest of investors, may require the lead merchant banker to carry out such modifications in the draft offer document as it deems fit.

10. The lead merchant banker shall ensure that all comments received from SEBI on the draft offer document are suitably taken into account prior to the filing of the offer document with the designated stock exchanges.

11. In case no observations are issued by SEBI on the draft offer document within 21 working days, then REIT may file the offer document or follow-on offer document with SEBI and the exchange(s).

12. The offer document shall be filed with the designated stock exchanges and SEBI not less than 5 working days before opening of the offer.

13. The initial offer or follow-on offer or right issue shall be made by the REIT within a period of not more than one year from the date of issuance of observations by SEBI.

    However, if the initial offer or follow-on offer or right issue is not made within the specified time period, a fresh draft offer document shall be filed.

14. The REIT may invite for subscriptions and allot units to any person, whether resident or foreign. In case of foreign investors, such investment shall be subject to guidelines as may be specified by RBI and the government from time to time.

15. The application for subscription shall be accompanied by a statement containing the abridged version of the offer document, detailing the risk factors and summary of the terms of issue.

16. Under both the initial offer and follow-on public offer, the REIT shall not accept subscription of an amount less than Rs. 50,000 from an applicant.

17. Initial offer and follow-on offer shall not be open for subscription for a period of more than thirty days.

18. In case of over-subscriptions, the REIT shall allot units to the applicants on a proportionate basis rounded off to the nearest integer subject to minimum subscription amount per subscriber as specified above.

19. The REIT shall allot units or refund application money as the case may be, within 12 working days from the date of closing of the issue.

20. The REIT shall issue units only in dematerialized form to all the applicants.

21. The price of REIT units issued by way of public issue shall be determined through the book building process or any other process in accordance with the circulars or guidelines issued by SEBI and in the manner as may be specified by SEBI.

22. The REIT shall refund money, –

    (a) to all applicants in case it fails to collect subscription amount of exceeding 90% of the fresh issue size as specified in the offer document.

    (b) to applicants to the extent of over subscription in case the moneys received is in excess of the extent of over-subscription as specified in the offer document. The right to retain such over subscription cannot exceed 25% of the issue size. The Offer Document shall contain adequate disclosures towards the utilisation of such over subscription proceeds, if any, and such proceeds retained on account of over subscription shall not be utilised towards general purposes.

    (c) to all applicants in case the number of subscribers to the initial offer forming part of the public is less than 200.

23. If the manager fails to allot, or list the units, or refund the money within the specified time, then the manager shall pay interest to the unit holders at 15% per annum, till such allotment/ listing / refund and such interest shall not be recovered in the form of fees or any other form payable to the manager by the REIT.

24. Units may be offered for sale to public:-

    a) If such units have been held by the existing unit holders for a period of at least one year prior to the filing of draft offer document with SEBI.

       However, the holding period for the equity shares, compulsorily convertible securities from the date such securities are fully paid up or partnership interest in the holdco and/or SPV against which such units have been received shall be considered for the purpose of calculation of one year period.

    b) Subject to other circulars or guidelines as may be specified by SEBI in this regard.

25. The amount for general purposes, as mentioned in objects of the issue in the draft document filed with SEBI, shall not exceed to 10 % of the amount raised by the REIT by issuance of units.

26. If the REIT fails to make its initial offer within three years from the date of registration with SEBI, it shall surrender its certificate of registration to SEBI and cease to operate as a REIT. SEBI if it deems fit, may extend the period by another one year. Further, the REIT may later re-apply for registration, if it so desires.

27. SEBI may specify by issue of guidelines or circulars any other requirements, as it deems fit, pertaining to issue and allotment of units by a REIT.

OFFER DOCUMENT AND ADVERTISEMENTS

The Offer document of the REIT shall contain material, true, correct and adequate disclosures to enable the investors to make an informed decision.

Any advertisement material relating to any issue of units of the REIT shall not be misleading and shall not contain anything extraneous to the contents of the offer document. If an advertisement contains positive highlights, it shall also contain risk factors with equal importance in all aspects including print size.

The advertisements shall be in accordance with the offer document and any circulars or guidelines as may be specified by SEBI in this regard.

LISTING AND TRADING OF UNITS

1. After the initial offer it shall be mandatory for all units of REITs to be listed on a recognized stock exchange having nationwide trading terminals within a period of twelve working days from the date of closure of the offer.
2. The listing of the units of the REIT shall be in accordance with the listing agreement entered into between the REIT and the designated stock exchange.
3. In the event of non-receipt of listing permission from the stock exchange(s) or withdrawal of Observation Letter issued by SEBI , wherever applicable, the units shall not be eligible for listing and the REIT shall be liable to refund the subscription monies, if any, to the respective allottees immediately along with interest at the rate of 15% per annum from the date of allotment.
4. The units of the REIT listed in recognized stock exchanges shall be traded, cleared and settled in accordance with the bye-laws of concerned stock exchanges and such conditions as may be specified by SEBI.
5. Trading lot for the purpose of trading of units of the REIT shall be 100 units.
6. The REIT shall redeem units only by way of a buy-back or at the time of delisting of units.
7. The units of REIT shall remain listed on the designated stock exchange unless delisted under REIT Regulations.
8. The minimum public holding for the units of the listed REIT shall be in accordance with point 4 as discussed under Issue and Allotment of Units of this lesson, failing which action may be taken as may be specified by SEBI and by the designated stock exchange including delisting of units under REIT Regulations.

   However, in case of breach of the conditions specified here, the trustee may provide a period of six months to the manager to rectify the same, failing which the manager shall apply for delisting of units.

   Any person other than the sponsor(s) holding units of the REIT prior to initial offer shall hold the units for a period of not less than one year from the date of listing of the units subject to circulars or guidelines as may be specified by SEBI.
9. SEBI and the designated stock exchanges may specify any other requirements pertaining to listing and trading of units of the REIT by issuance of guidelines or circulars.

DELISTING OF UNITS

1. The manager shall apply for delisting of units of the REIT to SEBI and the designated stock exchanges

if, –

(a) the public holding falls below the specified limit as prescribed under REIT Regulations.

(b) if there are no projects or assets remaining under the REIT for a period exceeding six months and REIT does not propose to invest in any project in future. The period may be extended by further six months, with the approval of unit holders in the manner as specified in REIT Regulations.

(c) SEBI or the designated stock exchanges require such delisting for violation of the listing agreement or these regulations or the Act;

(d) the sponsor(s) or trustee requests such delisting and such request has been approved by unit holders in accordance with the REIT Regulations.

(e) The unit holders may also apply for such delisting in accordance with the provisions as prescribed for rights and meeting if unit holders.

(f) SEBI or the designated stock exchanges require such delisting for violation of the listing agreement, these regulations or the Act or in the interest of the unit holders.

2. SEBI and the designated stock exchanges may consider such application for approval or rejection as may be appropriate in the interest of the unit holders.

3. SEBI, instead of requiring delisting of units, if it deems fit, may provide additional time to the REIT or parties to the REIT to comply with REIT Regulations.

4. SEBI may reject the application for delisting and take any other action, as it deems fit under REIT Regulations or the Act for violation of the listing agreement or REIT Regulations or the Act.

5. The procedure for delisting of units of REIT including provision of exit option to the unit holders shall be in accordance with the listing agreement and in accordance with procedure as may be specified by SEBI and by the designated stock exchanges from time to time.

6. SEBI may require the REIT to wind up and sell its assets in order to redeem units of the unit holders for the purpose of delisting of units and SEBI may through circulars or guidelines specify the manner of such winding up or sale.

7. After delisting of its units, the REIT shall surrender its certificate of registration to SEBI and shall no longer undertake activity of a REIT.

However, the REIT and parties to the REIT shall continue to be liable for all their acts of omissions and commissions with respect to activities of the REIT notwithstanding such surrender.

INVESTMENT CONDITIONS AND DISTRIBUTION POLICY

1. The Investment by a REIT shall only be in holdco and/or SPVs or properties or securities or TDR in India and in accordance with the investment strategy as detailed in the offer document as may be amended subsequently.

2. The REIT shall not invest in vacant land or agricultural land or mortgages other than mortgage backed securities. However, this shall not apply to any land which is contiguous and extension of an existing project being implemented in stages.

3. The REIT may invest in properties through SPVs subject to the following,-

(a) no other shareholder or partner of the SPV shall exercise any rights that prevents the REIT from complying with the provisions of the REIT Regulations and an agreement has been entered into with such shareholders or partners to that effect prior to investment in the SPV.

However, the shareholders' agreement or partnership agreement shall provide for an appropriate mechanism for resolution of disputes between the REIT and the other shareholders or partners in the SPV.

Further, the provisions of REIT Regulations shall prevail in case of inconsistencies between such agreement(s) and the obligations cast upon a REIT under REIT Regulations.

(b) the manager, in consultation with the trustee, shall appoint atleast such number of nominees on the board of directors or the governing board of such SPVs, as applicable, which are in proportion to the shareholding or holding interest of the REIT in the SPV.

(c) the manager, in consultation with the trustee, shall appoint the majority of the Board of directors or governing board of such SPVs, as applicable;

(d) the manager shall ensure that in every meeting including annual general meeting of the SPV, the voting of the REIT is exercised.

4. The REIT may invest in properties through holdco subject to the following,-

(a) the ultimate holding interest of the REIT in the underlying SPV(s) is not less than 26%.

(b) no other shareholder or partner of the holdco or the SPV(s) shall exercise any rights that prevent the REIT, the holdco or the SPV(s) from complying with the provisions of REIT Regulations and an agreement has been entered into with such shareholders or partners to that effect prior to investment in the holdco and/or SPVs;

However, the shareholders' agreement or partnership agreement shall provide for an appropriate mechanism for resolution of disputes between the REIT and the other shareholders or partners in the holder and/or SPV. Further, the provisions of REIT Regulations, shall prevail in case of inconsistencies between such agreement(s) and the obligations cast upon a REIT under REIT Regulations.

Further, the provisions of REIT Regulations shall prevail in case of inconsistencies between such agreement(s) and the obligation cast upont a REIT under REIT Regulations.

(c) the manager, in consultation with the Trustee, shall appoint atleast such members of nominees on the Board of directors or governing board of the holdco and/or SPV(s) in proportion to the shareholding or holding interest in the REIT/holdco in the SPV;

(d) the manager shall ensure that in every meeting including annual general meeting of the holdco and/or SPV(s), the voting of the REIT is exercised.

5. Not less than 80% of value of the REIT assets shall be invested in completed and rent/and/or income generating properties subject to the following,-

(a) if the investment has been made through a holdco and/or SPV, whether by way of equity or debt or equity linked instruments or partnership interest, only the portion of direct investments in properties by such holdco and/or SPVs shall be considered and the remaining portion shall be included as prescribed under clause (6).

(b) if any project is implemented in stages, the part of the project which is completed and rent and/or income generating shall be considered and the remaining portion including any contiguous land as specified under proviso to sub-regulation (2) shall be included under clause (a) of sub-regulation (5) of Investment Conditions and Distribution Policy.

6. Not more than 20% of value of the REIT assets shall be invested in assets other than as provided in clause (5) and such other investment shall only be in,

- properties, whether directly or through company or through LLP which are:

(i) under-construction properties which shall be held by the REIT for not less than three years after completion;

(ii) under-construction properties which are a part of the existing income generating properties owned by the REIT which shall be held by the REIT for not less than three years after completion;

(iii) completed and not rent generating properties which shall be held by the REIT for not less than three years from date of purchase;

- listed or unlisted debt of companies or body corporate in real estate sector.

  However, this shall not include any investment made in debt of the holdco and/or SPVs;

- mortgage backed securities;
- equity shares of companies which are listed on a recognized stock exchange in India which derive not less than 75% of their operating income from real estate activity as per the audited accounts of the previous financial year;
- unlisted equity shares of companies which derive not less than 75% of their operating income from real estate activity as per the audited accounts of the previous financial year.

  However, the investments, made through unlisted equity shares of a company, in under construction properties and/or completed and not rent generating properties, shall be in compliance with clause (1).

- government securities;
- unutilized FSI of a project where it has already made investment;
- TDR acquired for the purpose of utilization with respect to a project where it has already made investment;
- money market instruments or cash equivalents.

6. The investment conditions as specified above shall be complied at the time of Offer document and thereafter.
7. Not less than 51% of the consolidated revenues of the REIT, holdco and the SPV, other than gains arising from disposal of properties, shall be, at all times, from rental, leasing and letting real estate assets or any other income incidental to the leasing of such assets.
8. Conditions specified in above clauses shall be monitored on a half-yearly basis and at the time of acquisition of an asset. Further, if such conditions are breached on account of market movements of the price of the underlying assets or securities or change in tenants or expiry of lease or sale of properties, the manager shall inform the same to the trustee and ensure that the conditions as specified in REIT Regulations are satisfied within six months of such breach.

   The period may be extended by another six months subject to approval from investors.
9. A REIT shall hold any completed and rent generating property, whether directly or through holdco or SPV, for a period of not less than three years from the date of purchase of such property by the REIT or holdco or SPV.
10. For any sale of property, whether by the REIT or holdco or the SPV or for sale of shares or interest in the SPV by the holdco or REIT exceeding 10% of the value of REIT assets in a financial year, the manager shall obtain approval from the unit holders.
11. A REIT shall not invest in units of other REITs.

12. A REIT shall not undertake lending to any person, other than the holding company/Special purpose vehicle(s) in which the REIT has invested in, subject to disclosures specified in REIT Regulations and the investment in debt securities shall not be considered as lending.

13. With respect to investment in leasehold properties, the manager shall consider the remaining term of the lease, the objectives of the REIT, the lease profile of the REIT's existing real estate assets and any other factors as may be relevant, prior to making such investment.

14. In case of any co-investment with any person(s) in any transaction,

    a) The investment by the other person(s) shall not be at terms more favourable than those to the REIT.

    b) The investment shall not provide any rights to the person(s) which shall prevent the REIT from complying with the provisions of these regulations.

    c) The agreement with such person(s) shall include the minimum percentage of distributable cash flows that will be distributed and entitlement of the REIT to receive not less than pro rata distributions and mode for resolution of any disputes between the REIT and the other person(s).

15. With respect to distributions made by the REIT and the holdco and/or SPV,

    - Not less than 90% of net distributable cash flows of the SPV shall be distributed to the REIT or holdco in proportion of its holding in the SPV subject to applicable provisions in the Companies Act, 2013 or the Limited Liability Partnership Act, 2008.

    - With regard to distribution of net distributable cash flows by the holdco to the REIT, subject to applicable provisions in the Companies Act, 2013 or the Limited Liability Partnership Act, 2008, the following shall be complied:

        (i) with respect to the cash flows received by the holdco from underlying SPVs, 100% of such cash flows received by the holdco shall be distributed to the REIT; and

        (ii) with respect to the cash flows generated by the holdco on its own, not less than 90% of such net distributable cash flows shall be distributed by the holdco to the REIT;

    - Not less than ninety per cent of net distributable cash flows of the REIT shall be distributed to the unit holders.

      Such distributions shall be declared and made not less than once every six months in every financial year and shall be made not later than fifteen days from the date of such declaration.

    - If any property is sold by the REIT or holdco or SPV or if the equity shares or interest in the holdco/ SPV are sold by the REIT, then,-

        (i) if the REIT proposes to reinvest sale proceeds, if any, into another property, it shall not be required to distribute any sale proceeds from such sale to the unit holders;

        (ii) if the REIT proposes not to invest the sales proceeds made into any other property within a period of 1 year, it shall be required to distribute not less than ninety per cent of the sales proceeds in accordance with the provisions of Listing and trading of units as prescribed under REIT Regulations.

16. If the distributions are not made within fifteen days of declaration, then the manager shall be liable to pay interest to the unit holders at the rate of 15% per annum till the distribution is made and such interest shall not be recovered in the form of fees or any other form payable to the manager by the REIT.

17. No schemes shall be launched under the REIT.
18. SEBI may specify any additional conditions for investments by the REIT as it deems fit.

RIGHTS AND MEETING OF THE UNIT HOLDERS

1. The unit holder shall have the rights to receive income or distributions as provided for in the Offer document or trust deed.
2. With respect to any matter requiring approval of the unit holders,-
   (a) a resolution shall be considered as passed when the votes cast by unit holders, so entitled and voting, in favour of the resolution exceed a certain percentage, as specified in this regulation, of the votes cast against;
   (b) the voting may also be done by postal ballot or electronic mode;
   (c) a notice of not less than 21 days either in writing or through electronic mode shall be provided to the unit holders;
   (d) voting by any person who is a related party in such transaction as well as associates of such person(s) shall not be considered on the specific issue;
   (e) manager shall be responsible for all the activities pertaining to conducting of meeting of the unit holders, subject to overseeing by the trustee.

   However, In case of issues pertaining to manager such as change in manager including removal of the manager or change in control of the manager, then trustee shall convene and handle all activities pertaining to conduct of the meetings. Further, in case of issues related to trustee such as change in the trustee, the trustee shall not be involved in any manner in the conduct of the meeting.
3. An annual meeting of all unit holders shall be held not less than once a year within 120 days from the end of financial year and the time between two meetings shall not exceed 15 months.
4. With respect to the annual meeting of unit holders,-
   (a) any information which is required to be disclosed to the unit holders and any issue, in the ordinary course of business, may require approval of the unit holders may be taken up in the meeting including,-
      - latest annual accounts and performance of the REIT;
      - approval of auditor and fees of such auditor, as may be required;
      - latest valuation reports;
      - appointment of valuer, as may be required;
      - any other issue including special issues as specified in clause (6).
   (b) For any issue taken up in such meetings which require approval from the unit holders, votes cast in favour of the resolution shall be more than the votes cast against the resolution.
5. In case of, –
   - any approval from unit holders required for investment conditions, related party transactions and valuation of assets under REIT Regulations.
   - any transaction, other than any borrowing, value of which is equal to or greater than 25% of the REIT assets,

- any borrowing in excess of limit as specified under the REIT Regulations.
- any issue of units after initial offer by the REIT, in whatever form, other than any issue of units which may be considered by SEBI under clause (6);
- increasing period for compliance with investment conditions to one year in accordance with the REIT Regulations.
- any issue, in the ordinary course of business, which in the opinion of the sponsor(s) or trustee or manager, is material and requires approval of the unit holders, if any;
- any issue for which SEBI or the designated stock exchange requires approval.

approval from unit holders shall be required where the votes cast in favour of the resolution shall be more than the votes cast against the resolution.

6. In case of, –

(a) any change in manager including removal of the manager or change in control of the manager;

(b) any material change in investment strategy or any change in the management fees of the REIT;

(c) the sponsor(s) or manager proposing to seek delisting of units of the REIT;

(d) the value of the units held by a person along with its associates other than the sponsor(s) and its associates exceeding fifty per cent of the value of outstanding REIT units, prior to acquiring any further units;

(e) any issue, not in the ordinary course of business, which in the opinion of the sponsor(s) or Manager or trustee requires approval of the unit holders;

(f) any issue for which SEBI or the designated stock exchanges requires approval;

(g) any issue taken up on request of the unit holders including:

(i) removal of the manager and appointment of another manager to the REIT;

(ii) removal of the auditor and appointment of another auditor to the REIT;

(iii) removal of the valuer and appointment of another valuer to the REIT;

(iv) delisting of the REIT if the unit holders have sufficient reason to believe that such delisting would act in the interest of the unit holders;

(v) any issue which the unit holders have sufficient reason to believe that acts detrimental to the interest of the unit holders;

(vi) change in the trustee if the unit holders have sufficient reason to believe that acts of such trustee is detrimental to the interest of the unit holders.

approval from unit holders shall be required where the votes cast in favour of the resolution shall be not less than one and half times the votes cast against the resolution.

However, in case of clause (d), if approval is not obtained, the person shall provide an exit option to the unit holders to the extent and in the manner as may be specified by SEBI.

7. With respect to the right(s) of the unit holders,-

(a) not less than 25% of the unit holders by value, other than any party related to the transactions and its associates, shall apply, in writing, to the trustee for the purpose;

(b) on receipt of such application, the Trustee shall require the manager to place the issue for voting in the manner as specified in the REIT Regulations;

(c) with respect to clause (6)(g)(vi) as mentioned above, not less than 60% of the unit holders by value shall apply, in writing, to the manager for the purpose.

8. In case of any change in sponsor or re-designated sponsor or change in control of sponsor or redesignated sponsor:

- prior to such changes, approval shall be obtained from the unit holders wherein votes cast in favour of the resolution shall not be less than three times the votes cast against the resolution;
- if such change does not receive the required approval,-
  (a) in case of change of sponsor or re-designated sponsor, the proposed re-designated sponsor who proposes to buy the units shall provide the dissenting unit holders an option to exit by buying their units;
  (b) in case of change in control of the sponsor or re-designated sponsor, the sponsor or re-designated sponsor shall provide the dissenting unit holders an option to exit by buying their units;
- If on account of such sale, the number of unit holders forming part of the public falls below two hundred or below, the trustee may provide a period of one year to the manager to rectify the same, failing which the manager shall apply for delisting of the units of the REIT in accordance with the REIT Regulations.

DISCLOSURES

1. The manager shall ensure that the disclosures in the offer document are in accordance with Scheldule II of the REIT Regulations and any circulars or guidelines issued by SEBI in this regard.
2. The manager shall submit an annual report to all unit holders of the REIT with respect to activities of the REIT, within three months from the end of the financial year.
3. The manager shall submit a half-yearly report to all unit holders of the REIT with respect to activities of the REIT within forty five days from the end of the half year ending on September 30th.
4. Such annual and half yearly reports shall contain disclosures as specified under Schedule IV of the REIT Regulations.

- The manager shall disclose to the designated stock exchanges, any information having bearing on the operation or performance of the REIT as well as price sensitive information which includes but is not restricted to the following,-
  – Acquisition or disposal of any properties, value of which exceeds 5% of value of the REIT assets;
  – Additional borrowing, at level of holdco or SPV or the REIT, resulting in such borrowing exceeding 5% of the value of the REIT assets during the year;
  – Additional issue of units by the REIT;
  – Details of any credit rating obtained by the REIT and any change in such rating;
  – Any issue which requires approval of the unit holders;
  – Any legal proceedings which may have significant bearing on the functioning of the REIT;
  – Notices and results of meetings of unit holders;
  – Any instance of non-compliance with the REIT Regulations including any breach of limits specified under these regulations;

– Any material issue that in the opinion of the manager or trustee needs to be disclosed to the unit holders.

- The manager shall submit such information to the designated stock exchanges and unit holders on a periodical basis as may be required under the listing agreement.
- The manager shall disclose to the designated stock exchanges, unit holders and SEBI such information and in the manner as may be specified by SEBI.

Liability for Action in Case of Default

A REIT or parties to the REIT or any other person involved in the activity of the REIT who contravenes any of the provisions of the Act or the REIT Regulations, notifications, guidelines, circulars or instructions issued thereunder by the Board shall be liable for one or more actions specified therein including any action provided under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

PARTICIPATION BY STRATEGIC INVESTOR(S) IN REITS

SEBI vide its circular dated 18th January 2018 issued guidelines on participation by the strategic investors in InVIT's and REIT's.

This circular seeks to give clarifications on the participation by the 'strategic investors' in the public issue of the REITs and the InVITs.

'Strategic investor' means:

1. an infrastructure finance company registered with RBI as a NBFC ;
2. a Scheduled Commercial Bank;
3. an international multilateral financial institution;
4. a systemically important NBFC with RBI;
5. a foreign portfolio investors;

who invest either jointly or severally not less than 5 % of the total offer size of the InvIT or such amount as may be specified by SEBI with applicable provisions of the FEMA Act, 1999 and the rules or regulations or guidelines made thereunder.

Participation by the 'strategic investors' in the public issue of the REITs

Holding requirements	Issue price of the units and utilisation of funds	Lock-in period
• Holding by strategic investors – Minimum 5%, maximum 25%. • Holding by public, other than strategic investors and sponsors – Minimum 25% • Holding by sponsor – Minimum 5%, maximum 70%	• The price at which units are offered to the strategic investors must not be less than the price determined in the public issue. • It must be ensured that the subscription amount is kept in the separate account until the public issue is opened.	• The units subscribed by strategic investors, pursuant to the unit subscription agreement, will be locked-in for a period of 180 days from the date of listing in the public issue.

LESSON ROUND UP

- SEBI notified Real Estate Investment Trusts [REITs] Regulations, 2014 to encourage and invests in real estate directly, either through properties or mortgages.
- REITs are set up as trust under the provisions of the Indian Trusts Act, 1882 and are registered with SEBI. It has four parties - Sponsor(s) Group, Re-designated Sponsor, Manager and Trustee to avoid any conflict of interest issues.
- These regulations provides certain eligibility requirements for grant of certificate, if those requirements are satisfied, SEBI shall grant the certificate of registration under these Regulations.
- It is mandatory for all REITs to lists its units on a recognized stock exchange and REITs shall make continuous disclosures in terms of the listing agreement. Trading lot for such units shall be Rs.1 lakh. The units of REITs shall continue to be listed unless delisted in terms of the REIT Regulations.
- A REIT can invest only in SPVs or properties or securities or TDR in India in accordance with these Regulations and in accordance with the investment strategy as detailed in the offer document as may be amended subsequently.
- The REIT shall not invest in vacant land or agricultural land or mortgages other than mortgage backed securities, provided that this shall not apply to any land which is contiguous and extension of an existing project being implemented in stages.
- REIT, through a valuer, shall undertake full valuation on a yearly basis and updation of the same on a half yearly basis and declare Net Asset Value within 15 days from the date of such valuation/updation;
- The manager shall submit an annual report to all unit holders of the REIT with respect to activities of the REIT, within three months from the end of the financial year.
- The manager shall submit a half-yearly report to all unit holders of the REIT with respect to activities of the REIT within forty five days from the end of the half year ending on September 30th.
- SEBI has issued guidelines on participation by the strategic investors in InVIT's and REIT's.
- SEBI vide its circular dated April 13, 2018 issued guidelines for issue of debt securities by InvITs and REITs

GLOSSARY

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

Contract	A contract is a legally binding agreement between two parties, and in order to have a valid Contract of Sale in real estate there must be: an offer, an acceptance, competent parties, consideration, legal purpose, written documentation, description of the property, and signatures of the principals.
Floor Space Index	It means the buildable area on a plot of land as specified by the competent authority.
Leasing	A means of obtaining the physical and partial economic use of a property for a specified period without obtaining an ownership interest.
Mortgage	A mortgage is a pledge of real estate collateral to secure a debt. Also, it is a legal document describing and defining the pledge. The mortgage may also include the terms of repayment of the debt.
Occupancy certificate	It means a completion certificate or such other certificate, as the case may be, issued by the completion authority permitted occupation of any property under any law for the time being in force.

SELF TEST QUESTIONS

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Elucidate the various conditions required to be fulfilled by a person to be registered as trustee under the SEBI (Real Estate Investment Trusts) Regulation, 2014.
2. Explain the major provisions of SEBI (Real Estate Investment Trusts) Regulation, 2014.
3. Discuss the Rights of Unit holders under SEBI (Real Estate Investment Trusts) Regulations, 2014.
4. What do you mean by Strategic Investor? Define.
5. Briefly discuss the disclosures required to be made by a manger under the SEBI (Real Estate Investment Trusts) Regulation, 2014.

Lesson 3
Infrastructure Investment Trusts

LESSON OUTLINE

- Introduction
- SEBI (Infrastructure Investment Trust) Regulations, 2014
- Key Stakeholder
- Eligibility Criteria
- Offer and Lising of Units
- Guidelines for Public Issue of Units of InvITs
- Guidelines for preferential issue of units by InvITs
- Listing and Trading of Units
- Delisting of Units
- Investment Conditions and Distribution Policy
- Rights and Meetings of Unit Holders
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

India's position as one of the fastest growing economies in the world is undisputed today. Infrastructure is one of the important sector that underpin sustained economic growth and development, and have critical importance for India's growth both on economic and social parameters.

InvITs provide an opportunity to participate in infrastructure financing through a stable and liquid instrument and also encourages better governance structures. It also provides smaller and non-institutional investors an opportunity to participate in infrastructure and real estate financing and reap the benefits of growth in these sectors, through a marketable instrument, which would also enable internalization of capital raising. With introduction of InvITs, Indian capital markets have overcome the competitive disadvantage on that front and provided Indian companies with a much needed additional avenue for financing.

The Government has provided a largely favourable tax regime and liberalized the ability to invest in InvITs. SEBI had notified the SEBI (Infrastructure Investment Trusts) Regulations, 2014 and subsequently made amendments to these regulations to introduce several key changes and further streamline these regulations, aligning them with the requirements and challenges of the specific industry sectors, while continuing to make these financial products attractive to investors.

This lesson will enable the students to comprehend the basics of the systems, procedures and rules that are essential for entities seeking to list InvITs in India.

INTRODUCTION

An Infrastructure Investment Trust (InvITs) is like a mutual fund, which enables direct investment of small amounts of money from possible individual/institutional investors in infrastructure to earn a small portion of the income as return. InvITs work like mutual funds or real estate investment trusts (REITs) in features. InvITs can be treated as the modified version of REITs designed to suit the specific circumstances of the infrastructure sector.

Often, infrastructure projects such as roads or highways take some time to generate steady cash flows. Meanwhile, the infrastructure company has to pay interest to banks for the loans taken by it. An InvIT essentially gives the company the leeway to fulfil its debt obligations quickly.

An infrastructure investment trust is a trust formed under the Trusts Act and registered under the Registration Act. In accordance with the Trusts Act, a trust is an obligation attached to the ownership of property. The obligation is created by the author of the trust, accepted by the owner of property and owed to the beneficiaries identified in the Trust Deed. In the context of an InvIT, the trust is created by the Sponsor, the ownership of the property vests in the Trustee and the beneficiaries are the Unit holders of the InvIT.

There is also a project manager which actually executes the projects. It is overseen by the investment manager. Lastly, since the instrument is essentially a trust, the company will also appoint a trustee, who has to ensure that the functions of the InvIT, investment manager and project manager comply with SEBI laws.

How does it benefit investors?

There are certain rules that the InvIT issuers have to follow designed to safeguard the investor :

- First, the sponsor has to hold a minimum 15 per cent of the InvIT units with a lock-in period of three years.
- Second, InvITs have to distribute 90 per cent of their net cash flows to investors.
- And last, the trust is required to invest a minimum of 80 per cent in revenue generating infra assets. Only the rest can be used for under-construction assets. Dividends from the trust will be distributed to the investor depending on its cash flow and there is no dividend distribution tax on InvIT units.

Key laws applicable to InvITs

The key laws applicable to InvITs include the InvIT Regulations 2014, the InvIT Guidelines, the Trusts Act, the Registration Act, the FEMA and the Income Tax Act, 1961.

Intermediaries involved in an InvIT

(a) Merchant Bankers

(b) Registrar to the Issue

(c) Syndicate Members

(d) Public Issue Banks

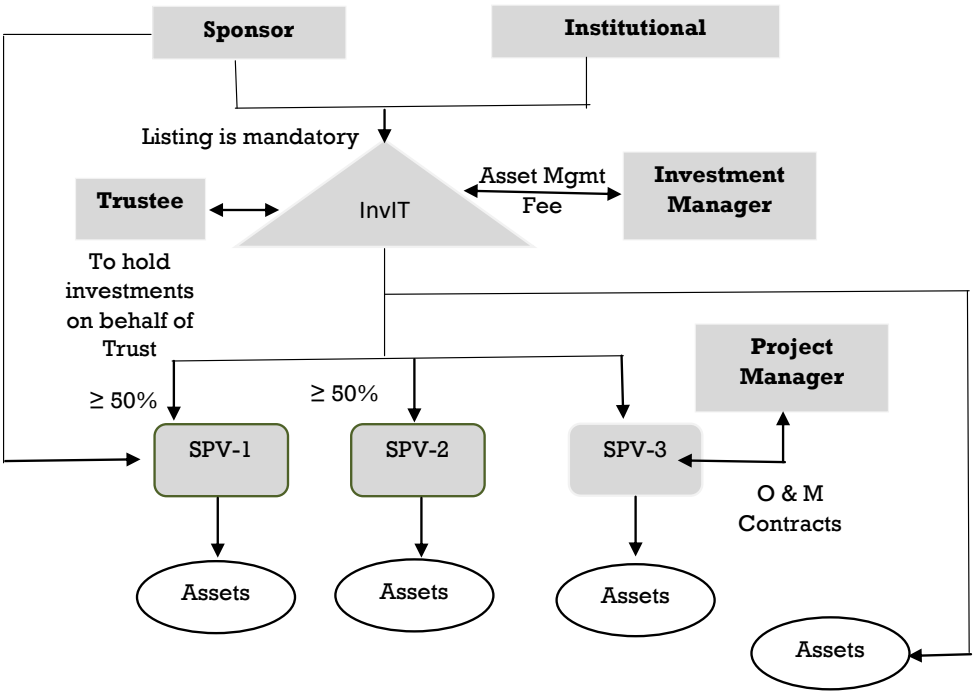
(e) Escrow Collection Banks

(f) Credit Rating Agencies

(g) SCSBs, Registered Brokers, RTAs and Collecting Depository Participants

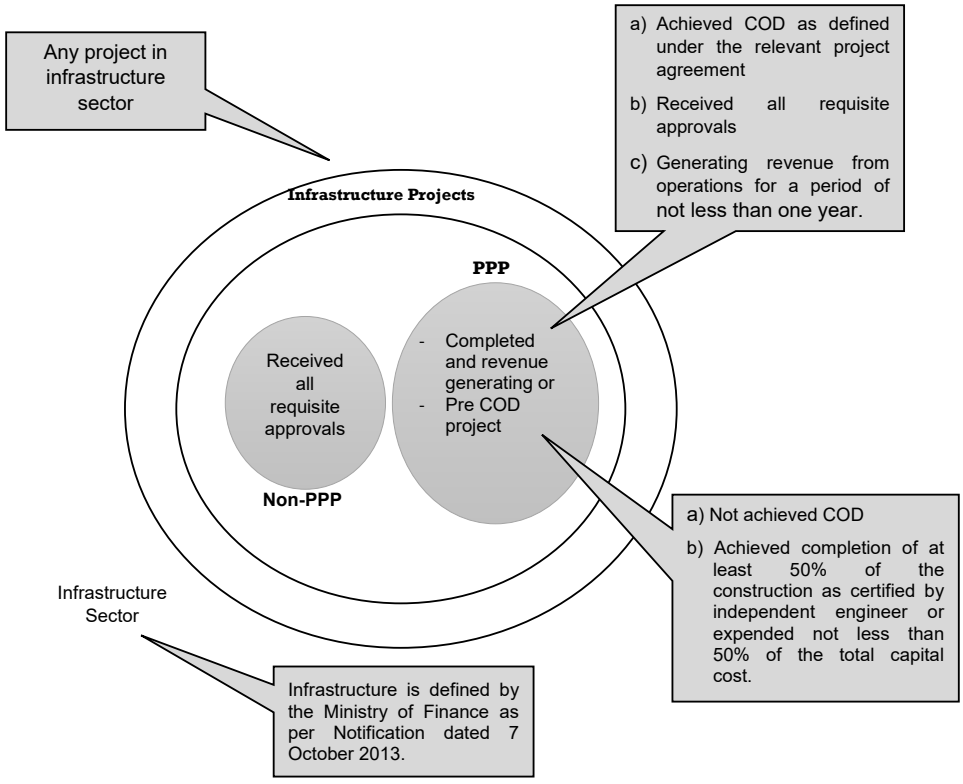
(h) Advertising agency

InvITs Framework*



PM to be appointed for each infra project

Permissible assets*



* (*Source: Infrastructure Investment Trusts- Publication by EY*)

SEBI (INFRASTRUCTURE INVESTMENT TRUSTS) REGULATIONS, 2014

The Securities and Exchange Board of India (SEBI) notified the Infrastructure Investment Trusts (InvITs) Regulations on 26 September 2014, thereby paving the way for introduction of an internationally acclaimed investment structure in India. The Finance Minister has also made necessary amendments to the Indian taxation regime to provide the tax pass through status, which is one of the key requirements for feasibility of InvITs. The Infrastructure Investment Trusts (InvITs) Regulations, 2014, provide a positive push to the Indian Capital Markets and Infrastructure sector. It also creates liquidity to some extent for the Infrastructure players. Further, it would provide investors an opportunity to invest in Indian stabilized assets through an Indian listed platform.

DEFINITIONS

"**Completed and revenue generating project**" means an infrastructure project, which prior to the date of its acquisition by, or transfer to, the InvIT, satisfies the following conditions:

(i) the infrastructure project has achieved the commercial operations date as defined under the relevant project agreement including concession agreement, power purchase agreement or any other agreement of a similar nature entered into in relation to the operation of the project or in any agreement entered into with the lenders;

(ii) the infrastructure project has received all the requisite approvals and certifications for commencing operations; and

(iii) the infrastructure project has been generating revenue from operations for a period of not less than one year;

"**Concession Agreement**" means an agreement entered into a person with a concessioning authority for the purpose of implementation of the project as provided in the agreement.

"**Concessioning Authority**" means the public sector concessioning authority in PPP projects.

"Eligible Infrastructure Project" means an infrastructure project which, prior to the date of its acquisition by, or transfer to, the InvIT, satisfies the following conditions,–

- For PPP projects,–
  a) the Infrastructure Project is a completed and revenue generating project, or
  b) the Infrastructure Project, which has achieved commercial operations date and does not have the track record of revenue from operations for a period of not less than one year; or
  c) the Infrastructure Project is a pre-COD project;
- In non-PPP projects, the infrastructure project has received all the requisite approvals and certifications for commencing construction of the project.

"**Infrastructure**" includes all infrastructure sub-sectors as defined vide notification of the Ministry of Finance dated October 07, 2013 and shall include any amendments or additions made thereof and "Infrastructure project" means any project in the infrastructure sector.

"**InvIT**" shall mean a trust registered as such under the InvIT Regulations.

"**InvIT assets**" means assets owned by the InvIT, whether directly or through a holdco and/ or SPV, and includes all rights, interests and benefits arising from and incidental to ownership of such assets.

"Infrastructure Developer" in case of PPP projects shall mean the lead member of the concessionaire SPV.

"Institutional Investor" means -

(i) a qualified institutional buyer; or

(ii) family trust or systematically important NBFCs registered with RBI or intermediaries registered with SEBI, all with net-worth of more than five hundred crore rupees, as per the last audited financial statements;

"PPP Project" means an infrastructure project undertaken on a Public- Private Partnership basis between a public concessioning authority and a private SPV concessionaire selected on the basis of open competitive bidding or on the basis of an MoU with the relevant authorities.

"**Pre-COD project**" means an infrastructure project which:

a) has not achieved commercial operation date as defined under the relevant project agreements including

(i) the concession agreement;

(ii) power purchase agreement; or

(iii) any other agreement of a similar nature entered into in relation to the operation of a project; or

(iv) any agreement entered into with the lenders; and

b) has

(i) achieved completion of at least fifty per cent of the construction of the infrastructure project as certified by an independent engineer of such project; or

(ii) expanded not less than 50% of the total capital cost set forth in the financial package of the relevant project agreement.

"**Related Parties**" shall be defined under the Companies Act, 2013 or under the applicable accounting standards and shall also include, –

(i) Parties to the InvIT;

(ii) Promoters, directors and partners of the person mentioned in clause (i).

"**Under-Construction Project**" means an infrastructure project whether PPP or non-PPP, which

a) has either not achieved commercial operation date as defined under the relevant project agreements including :

- the concession agreement,
- power purchase agreement or
- any other agreement of a similar nature entered into in relation to the operation of a project or
- in any agreement entered into with the lenders or

b) has achieved commercial operation date and does not have the track record of revenue from operations for a period of not less than one year.

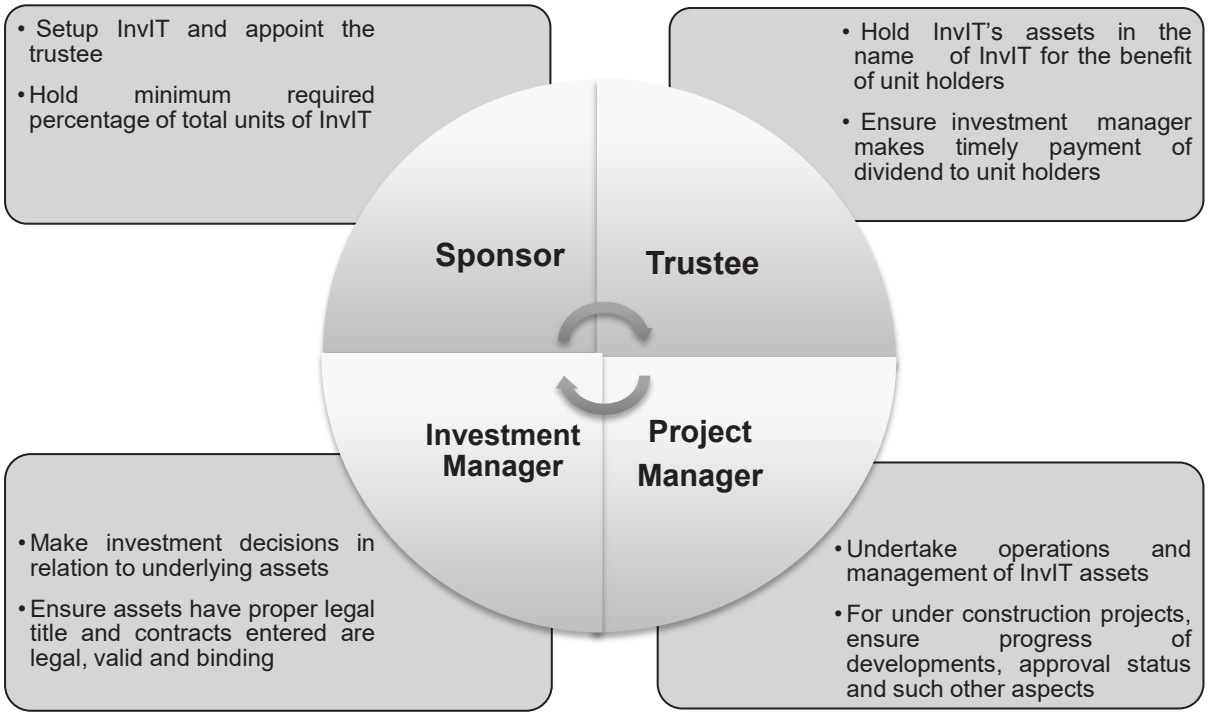
"**Valuer**" means any person who is a "registered valuer" under section 247 of the Companies Act, 2013 or as specified by SEBI from time to time.

"**Value of the InvIT assets**" means value of assets of the InvIT as assessed by the valuer based on value of the infrastructure and other assets owned by the InvIT, whether directly or through holdco and/or SPV.

KEY STAKEHOLDERS

The key stakeholders and typical INvIT structure can be represented by the following chart:

InvIT Structure



ELIGIBILITY CRITERIA

Any person shall not act as an InvIT unless it has obtained a certificate of registration from the SEBI under these regulations. An application for grant of certificate of registration as InvIT shall be made by the sponsor in such form and in such a manner as prescribed in these regulations.

The following conditions shall be considered before grant of registration:

Applicant

The applicant is the sponsor on behalf of the trust and the trust deed must be registered in India under the provisions of the Registration Act, 1908 containing undertaking activity of InvIT as main objective and includes responsibilities of the trustee.

Sponsor

- Net worth of at least INR 100 crores in case of body corporate or a company or netintangible assets of INR 100 crores in case of a Limited Liability Partnership (LLP).
- Minimum experience of at least 5 years and has completed at least two projects.

Investment Manager

- Net worth of at least INR 10 crores in case of body corporate or a company or net intangible assets of INR 10 crores in case of a LLP;
- Minimum experience of 5 years in fund management/ advisory services/ development in infrastructure sector;
- 2 or more key personnel, having more than 5 years' experience in fund management/ advisory services/ development in infrastructure sector;
- 1 or more employee who has at least 5 years' experience in relevant sub-sector in which InvIT proposes to invest;
- Not less than half of its directors / members should be independent and they should not be directors / members of another InvIT;An office in India from where operations pertaining to InvIT is proposed to be conducted;
- The investment manager has entered into an investment management agreement with the trustee which provides for the responsibilities of the investment manager;

Project Manager

- The project manager has been identified and shall be appointed in terms of the project implementation/ management agreement;

  However, the project implementation agreement/ management agreement shall be submitted along with the draft offer document/ or the placement memorandum.

Trustees

- Registered with SEBI and is not an associate of sponsor/ investment manager; and
- Sufficient resources with respect to infrastructure, personnel etc. as specified by SEBI.

Other Conditions

- No unit holder of the InvIT enjoys superior voting or any other rights over another unit holder and there shall not be multiple classes of units of InvITs;
- Notwithstanding the above, subordinate units may be issued only to the sponsors and its associates, where such subordinate units shall carry only inferior voting or any other rights compared to other units;
- The applicant has clearly described at the time of registration, details pertaining to proposed activities of the InvIT;
- The InvIT and parties to the InvIT are fit and proper persons based on the criteria as specified in Schedule II of SEBI (Intermediaries) Regulations, 2008;
- Whether any previous application for grant of certificate made by the InvIT or the parties to the InvIT or their directors/members of governing board has been rejected by SEBI;
- Whether any disciplinary action has been taken by SEBI or any other regulatory authority against the InvIT or the parties to the InvIT or their directors/members of governing board under any Act or the regulations or circulars or guidelines made thereunder.

OFFER OF UNITS AND LISTING OF UNITS

No initial offer of units by an InvIT shall be made unless,–

- The InvIT is registered with SEBI;
- The value of InvIT assets is not less than rupees five hundred crore.

  Explanation - Such value shall mean the value of the specific portion of the holding of InvIT in the underlying assets or holdco or SPVs;

- The offer size is not less than rupees two hundred fifty crore.

  However, the requirement of ownership of assets and offer size may be complied at any point of time before allotment of units in accordance with offer document/placement memorandum subject, to a binding agreement with the relevant party(ies) that such the requirements shall be fulfilled prior to such allotment of units and a declaration to SEBI and to the designated stock exchanges to that effect, where applicable and adequate disclosures in this regard in the offer document or placement memorandum.

The minimum offer and allotment to public through an offer document/placement memorandum shall be, –

(a) atleast twenty five per cent of the total outstanding units of the InvIT, if the post issue capital of the InvIT calculated at offer price is less than rupees one thousand six hundred crore:

  However, this requirement shall be complied along with the requirement as mentioned under bullet point 3 of this para.

(b) of the value of atleast Rs 400 crore, if the post issue capital of the InvIT calculated at offer price is to or more than rupees one thousand six hundred crore and less than rupees four thousand crore;

(c) atleast ten per cent of the total outstanding units of the InvIT, if the post issue capital of the InvIT calculated at offer price is equal to or more than rupees four thousand crore.

  However, any units offered to sponsor or the investment manager or the project manager or their elated parties or their associates shall not be counted towards units offered to the public.

  Further that any listed InvIT which has public holding below twenty five per cent on account of clauses (b) and (c) above, such InvIT shall increase its public holding to at least twenty five per cent, within a period of three years from the date of listing pursuant to initial offer.

If the InvIT, raises funds by way of private placement –

a) it shall do it through a placement memorandum;

b) from institutional investors and body corporate only, whether Indian or foreign.

  However, in case of foreign investors, such investment shall be subject to guidelines as may be specified by RBI and the government from time to time;

c) with minimum investment from any investor of rupees one crore;

  Apart the above, if such an privately placed InvIT invests or proposes to invest not less than eighty per cent of the value of the InvIT assets in completed and revenue generating assets, the minimum investment from an investor shall be rupees twenty five crores;

d) from not less than five and not more than one thousand investors;

e) shall file a placement memorandum with SEBI alongwith the fee as specified in the SEBI InvIT Regulations, atleast 5 days prior to opening of the issue;

However, such opening of the issue shall not be at a date later than 3 months from the receipt of in-principle approval for listing, from exchange(s);

f) it shall file the final placement memorandum with SEBI within a period of ten working days from the date of listing of the units issued therein.

If the InvIT raises funds by public issue InvITs,–

(a) it shall be by way of initial public offer;

(b) any subsequent issue of units after initial public offer may be by way of follow-on offer, preferential allotment, qualified institutional placement, rights issue, bonus issue, offer for sale or any other mechanism and in the manner as may be specified by SEBI;

(c) minimum subscription from any investor in initial and follow-on offer shall be one lakh rupees ;

(d) prior to initial public offer and follow-on offer, the merchant banker shall file the draft offer document along with prescribed fees with the designated stock exchange(s) and SEBI not less than thirty working days before filing the offer document with the designated stock exchange and SEBI;

(e) the draft offer document filed with SEBI shall be made public, for comments, if any, by hosting it on the websites of SEBI, designated stock exchanges, InvIT and merchant bankers associated with the issue for a period of not less than twenty one days;

(f) SEBI may communicate its comments to the lead merchant banker and, in the interest of investors, may require the lead merchant banker to carry out such modifications in the draft offer document as it deems fit;

(g) the lead merchant banker shall ensure that all comments received from SEBI on the draft offer document are suitably addressed prior to the filing of the offer document with the designated stock exchanges;

(h) in case no observations are suggested by SEBI in the draft offer document within twenty one working days from the date of receipt of satisfactory reply from the lead merchant bankers or manager, the InvIT may file the offer document or follow on offer document with SEBI and the stock exchange;

(i) the draft offer document and offer document shall be accompanied by a due diligence certificate signed by the lead merchant banker;

(j) the offer document shall be filed with the designated stock exchanges and SEBI not less than five working days before opening of the offer;

(k) the InvIT may open the initial public offer or follow-on offer or right issue within a period of not more than one year from the date of issuance of observations by SEBI. However, if the initial public offer or follow-on offer or right issue is not made within the prescribed time period, a fresh draft offer document shall be filed;

(l) the InvIT may invite for subscriptions and allot units to any person, whether resident or foreign. However, in case of foreign investors, such investment shall be subject to guidelines as may be specified by RBI and the government from time to time.

(m) the application for subscription shall be accompanied by a statement containing the abridged version of the offer document detailing the risk factors and summary of the terms of issue;

(n) initial public offer and follow-on offer shall not be open for subscription for a period of more than thirty days;

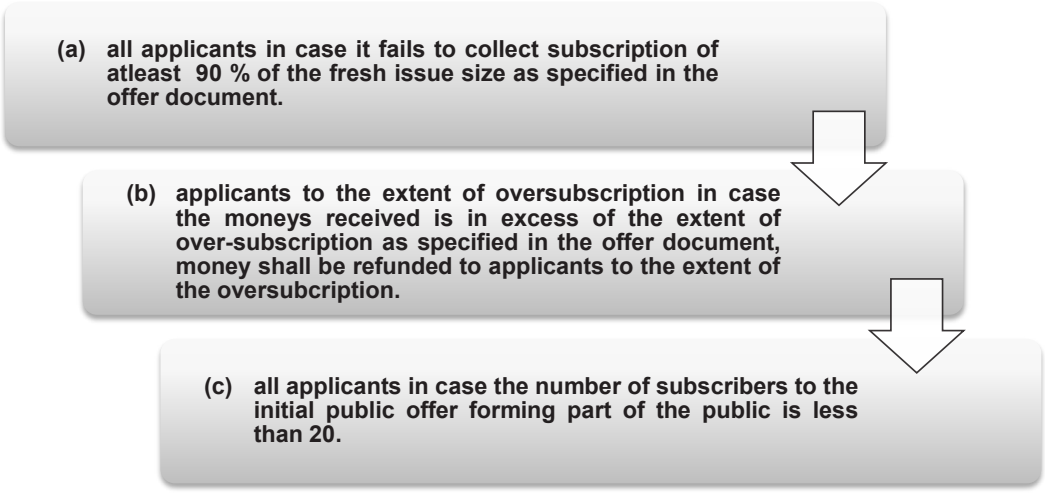
(o) in case of over-subscriptions, the InvIT shall allot units to the applicants on a proportionate basis rounded off to the nearest integer subject to minimum subscription amount per subscriber as discussed above.

(p) the InvIT shall allot units or refund application money, as the case may be, within twelve working days from the date of closing of the issue;

(q) the InvIT shall issue units in only in dematerialized form to all the applicants;

(r) the price of InvIT units issued by way of public issue shall be determined through the book building process or any other process in accordance with the guidelines issued by SEBI and in the manner as may be specified by SEBI;

(t) the InvIT shall refund money, -



Note : - It may be noted that in case of Clause (b), right to retain such over subscription cannot exceed twenty five percent of the issue size. Further, that the offer document shall contain adequate disclosures towards the utilisation of such oversubscription proceeds, if any, and such proceeds retained on account of oversubscription shall not be utilised towards general purposes.

(u) If the investment manager fails to allot or list the units or refund the money within the specified time, then the investment manager shall pay interest to the unit holders at the rate of fifteen per cent per annum, till such allotment or listing or refund and such interest shall be not be recovered in the form of fees or any other form payable to the investment manager by the InvIT;

(v) units may be offered for sale to public,–

i. if such units have been held by the sellers for a period of at least one year prior to the filing of draft offer document with SEBI. The holding period for the equity shares, compulsorily convertible securities (from the date such securities are fully paid-up) or partnership interest in the holdco or SPV against which such units have been received shall be considered for the purpose of calculation of one year period;

Further, the compulsorily convertible securities, whose holding period has been included offer for sale, shall be converted to equity shares of the hold or SPV, prior to filing of offer document.

ii. subject to other guidelines as may be specified by SEBI in this regard;

(w) The amount for general purposes, as mentioned in objects of the issue in the draft offer document filed with SEBI, shall not exceed Ten per cent of the amount raised by the InvIT by issuance of units.

If the InvIT fails to make any offer of its units, whether by way of public issue or private placement, within three years from the date of registration with SEBI, it shall surrender its certificate of registration to SEBI and cease to operate as an InvIT.

However, SEBI, if it deems fit, may extend the period by another one year. Further that the InvIT may later re-apply for registration, if it so desires.

SEBI may specify by issue of guidelines or circulars any other requirements, as it deems fit, pertaining to issue and allotment of units by an InvIT, whether by way of public issue or private placement.

GUIDELINES FOR PUBLIC ISSUE OF UNITS OF INVITS

On May 11, 2016 SEBI had issued detailed guidelines relating to the public issue and allotment of units by an InvIT, and the advertisement relating to the offer. These guidelines are discussed below :

Filing of offer document

- The draft offer document has to be filed with SEBI and the designated stock exchanges (DSE).
- The lead merchant bankers(LMB) have to submit a certificate confirming that the agreement is entered between the investment manager on behalf of the InvIT and LMB, and a due diligence certificate in the prescribed form has to be filed with the draft offer document.
- The draft offer document shall be hosted on the websites of SEBI, DSEs, and merchant bankers, for public comment within ten days of filing.
- SEBI may specify changes or issue observations within the prescribed time, pursuant to which the draft offer document has to be suitably modified and filed with SEBI as offer document.
- After filing offer document with SEBI, LMB shall issue pre-issue advertisement on the websites of sponsor, investment manager. LMB may also issue such advertisement in newspapers.

Allocation in public issue

- Institutional investors shall not be allocated more than75% in a public offering of the InvIT units.
- Other investors, including retail investors, have to be allocated at least 25% of the InvIT units.

Anchor investors

- A strategic investor may participate in an offer as an anchor investor.
- The investment manager, on behalf of the InvIT, may allocate up to 60% of the portion available to institutional investors to anchor investors.
- The anchor investors will have to make an application of a value of at least INR 100 million in the public issue.
- Allocation to anchor investor shall be on a discretionary basis, and subject to the minimum of two investors for allocations of up to INR 2.5 billion and minimum five investors for allocations exceeding INR2.5 billion.
- The bidding for anchor before the issue opening date and the allocation must be completed on the same day.
- The number of units allocated and the allocation price must be disclosed on the websites of the stock exchange(s),sponsor(s), investment manager and merchant banker(s).
- The anchor investor shall have to bring in the deficit between the cut-off price and the allocation price, if any.
- The lock-in period shall be thirty days for anchor investors other than a strategic investor. However, lock-in should be one year for strategic investors investing as anchor investors.

- Neither the merchant bankers nor any person related to the merchant bankers in the concerned public issue can apply under the anchor investor category, except mutual funds, insurance companies and pension funds.

Security deposit

The investment manager, on behalf of the InvIT, will have to deposit before the opening of subscription, and keep deposited with the stock exchanges, an amount calculated at the rate of 0.5%of the amount of units offered for subscription to the public or INR 50 millions, whichever is lower.

Opening of an issue and subscription period

- The issue shall open after at least five working days from the date of filing of the final offer document with SEBI.
- The public issue shall remain open for at least three working days, but not more than thirty working days.
- In case of a price band revision, the bidding period shall be extended for at least one day, provided that the total bidding period does not exceed thirty days.

Price and price band

- The floor price or the price band has to be announced at least five working days before the opening of the issue on the website of the sponsor, investment manager, stock exchanges, InvIT and in all newspapers in which the pre-issue advertisement was released.
- Differential pricing shall not be offered to any investor.
- The final price of the units(“cut-off price”) may be determined in consultation with the LMB or through book building process.

Bidding process

- Bidding through the electronically linked bidding facility of a stock exchange is mandatory. Payment through ASBA facility had been made optional.
- Bids of institutional investors may be rejected by the lead merchant banker at the time of acceptance of bids after providing reason to the bidder and recording the same in writing.
- Withdrawing or lowering the bid size has been prohibited.

Basis of allotment

- The units shall be issued to all bidders at and above the cut-off price.
- Allotment of units other than anchor investors shall be on proportionate basis within the specified investment categories, subject to minimum allotment, as per regulations.
- In case of under-subscription in any investor category, the unsubscribed portion may be allotted to applicants in the other categories.

Public communications, publicity materials, advertisements and research materials

- Public communication shall not contain any matter extraneous to the offer document, and shall be truthful and fair.

Other conditions

- No InvIT can make a public issue of units if it or any of its sponsors, investment managers, or trustees is debarred from accessing the capital market by SEBI, or is on the list of wilful defaulters published by the Reserve Bank of India.
- Investment managers have to appoint a compliance officer for monitoring compliance of securities laws, besides redressing investor grievances.

GUIDELINES FOR PREFERENTIAL ISSUE OF UNITS BY INVITS

- A listed InvIT may make preferential issue of units to an institutional investor as defined in the InvIT regulations, if it satisfies the following conditions:

(a) A resolution of the unitholders of the InvIT approving the preferential issue has been passed.

(b) The InvIT is in compliance with the conditions for continuous listing and disclosure obligations under these regulations and circulars issued thereunder.

(c) The InvIT is in compliance with the minimum public unitholding requirements as stipulated under the InvIT Regulations.

(d) No preferential issue of units by the InvIT has been made in the six months preceding the relevant date.

- Preferential issue pursuant to the unitholders resolution referred above shall be completed within a period of twelve months from the date of passing of the resolution.
- Allotment pursuant to preferential issue shall be completed within 12 days.
- The units shall be issued only in dematerialized form.
- The units to be issued in preferential issue shall be of same class or kind as the units issued in the initial offer by the InvIT.

  Further, such units have been listed on a recognised stock exchange, having nationwide trading terminal for a period of at least six months prior to the date of issuance of notice to its unitholders for convening the meeting to approve the preferential issue.
- The minimum subscription and trading lot for the units to be issued in preferential issue shall be same as that for units issued in the initial offer by the InvIT.
- The units in a preferential issue shall be offered and allotted to a minimum of two investors and maximum of 1000 investors in a financial year.
- Relevant date for the purpose of preferential issue shall mean the date of the meeting in which the board of directors of the investment manager of the InvIT or the committee of directors duly authorised by the board of directors of the investment manager of the InvIT decides to open the proposed issue.

Placement Document

- The InvIT may appoint one or more SEBI registered intermediaries to carry out the obligations relating to the issue.
- The preferential issue of units by an InvIT shall be done on the basis of a placement document, which shall contain disclosures as specified in the InvIT Regulations.
- The placement document shall be serially numbered and copies shall be circulated only to select investors subject to compliance with above mentioned clause.

- The InvIT shall, while seeking in-principle approval from the recognised stock exchange, furnish a copy of the placement document, a certificate issued by its merchant banker or statutory auditor confirming compliance with the provisions of these Guidelines along with any other documents required by the stock exchange.
- The placement document shall also be placed on the website of the concerned stock exchange and the InvIT with a disclaimer to the effect that it is in connection with a preferential issue and that no offer is being made to the public or to any other investor.

Pricing

- The preferential issue shall be made at a price not less than the average of the weekly high and low of the closing prices of the units quoted on the stock exchange during the two weeks preceding the relevant date.

  Explanation: For the purpose of this clause, the term "stock exchange" means any of the recognised stock exchanges on which the units of the InvIT are listed and on which the highest trading volume in such units has been recorded during the two weeks immediately preceding the relevant date.
- The InvIT shall not allot partly paid-up units.
- The prices determined for preferential issue shall be subject to appropriate adjustments, if the InvIT:
  a) makes a rights issue of units;
  b) is involved in such other similar events or circumstances, which in the opinion of the concerned stock exchange, requires adjustments.

Restriction on allotment

- No allotment shall be made, either directly or indirectly, to any party to the InvIT or their related parties except to the sponsor only to the extent that is required to ensure compliance with regulation 12 (3) of the InvIT Regulations.

  Explanation: To determine the "related parties", the term related party as defined under the InvIT Regulations shall be applicable. However, Mutual Funds, Insurance Companies and Pension Funds shall not be treated as related parties.
- The applicants in preferential issue shall not withdraw their bids after the closure of the issue.

Transferability of Units

The units allotted under preferential issue shall not be sold by the allottee for a period of one year from the date of allotment, except on a recognised stock exchange.

LISTING AND TRADING OF UNITS

– It shall be mandatory for units of all InvITs to be listed on a recognized stock exchange having nationwide trading terminals, whether publicly issued or privately placed.

  However, this shall not apply if the initial offer does not satisfy the minimum subscription amount or the minimum number of subscribers as prescribed under the SEBI InvIT Regulations.

– The listing of the units shall be in accordance with the listing agreement entered into between the InvIT and the designated stock exchanges.

– In the event of non-receipt of listing permission from the stock exchange(s) or withdrawal of Observation Letter issued by SEBI, wherever applicable, the units shall not be eligible for listing and the InvIT shall

be liable to refund the subscription monies, if any, to the respective allottees immediately alongwith interest at the rate of fifteen per cent per annum from the date of allotment.

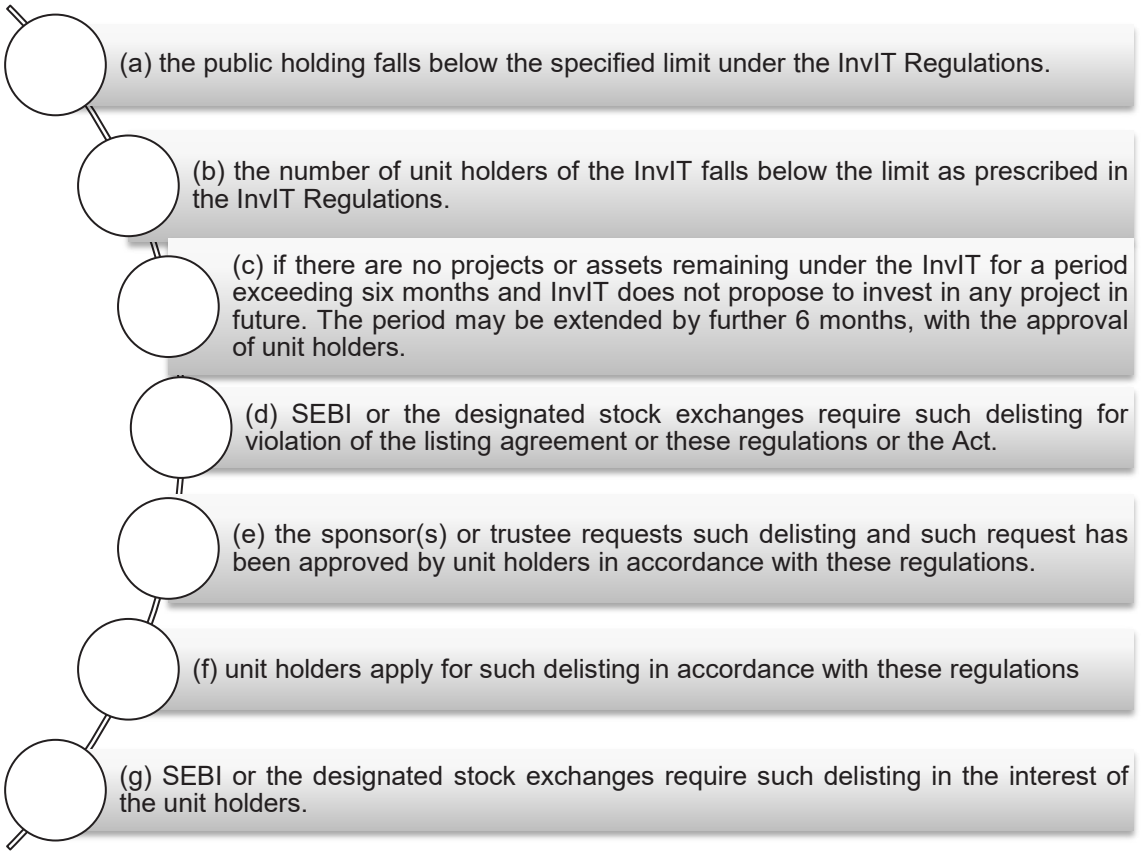
- The units of the InvIT listed in the designated stock exchanges shall be traded, cleared and settled in accordance with the bye-laws of designated stock exchanges and such conditions as may be specified by SEBI.
- The InvIT shall redeem units only by way of a buyback or at the time of delisting of units.
- The units shall remain listed on the designated Stock Exchanges unless delisted under the SEBI InvIT Regulations.
- The minimum public holding for the units of the InvIT after listing shall be in accordance with the provisions of Issue and listing of units, failing which action may be taken as may be specified by SEBI and by the designated stock exchanges including delisting of units under these regulations.
- The minimum number of unit holders in an InvIT other than the sponsor(s), its related parties and its associates ,–
    - o in case of privately placed InvIT, shall be five, each holding not more than 25% of the units of the InvIT.
    - o forming part of public shall be twenty, each holding not more than 25% of the units of the InvIT,

  at all times post listing of the units, failing which action may be taken as may be specified by SEBI and by the designated stock exchanges including delisting of units under these regulations.
- With respect to listing of privately placed units,–
    - o its units shall be mandatorily listed on the designated stock exchange(s) within thirty working days from the date of allotment;
    - o trading lot for the purpose of trading of units on the designated stock exchange shall be rupees one crore.

  Apart from the above, if an InvIT invests not less than eighty per cent of the value of the InvIT assets, in completed and revenue generating assets, the trading lot for the purpose of trading of units on the designated stock exchange of such InvIT shall be rupees two crore;
- With respect to listing of publicly offered units,–
    - o Its units shall be mandatorily listed on the designated stock exchange(s) within 12 working days from the date of closure of the initial public offer. This shall not apply if the initial public offer does not satisfy the minimum subscription amount or the minimum number of subscribers as prescribed under the SEBI InvIT Regulations.
    - o Trading lot for the purpose of trading of units on the designated stock exchange shall be 100 units.
- Any person other than the sponsor(s) holding units of the InvIT prior to initial offer shall hold the units for a period of not less than one year from the date of listing of the units.
- SEBI and designated stock exchanges may specify any other requirements pertaining to listing and trading of units of the InvIT by issuance of guidelines or circulars.

DELISTING OF UNITS

- The investment manager shall apply for delisting of units of the InvIT to SEBI and the designated stock exchanges if,-



Note:-

- o If clause (a) or (b) is breached, the trustee may provide a period of six months to the investment manager to rectify the same, failing which shall apply for such delisting.
- o In case of PPP projects, such delisting shall be subject to relevant clauses in the concession agreement.

– SEBI and the designated stock Exchanges may consider such application for delisting for approval or rejection as may be appropriate in the interest of the unit holders.

– SEBI may, instead of delisting of the units, if it deems fit, provide additional time to the InvIT or parties to the InvIT to comply with above mentioned conditions.

– SEBI may reject the application for delisting and take any other action, as it deems fit, under the SEBI InvIT Regulations or the Act for violation of the listing agreement or these regulations or the Act.

– The procedure for delisting of units of InvIT including provision of exit option to the unit holders shall be in accordance with the listing agreement and in accordance with procedure as may be specified by SEBI and by the designated stock exchanges from time to time.

– After delisting of its units, the InvIT shall surrender its certificate of registration to SEBI and shall no longer undertake activity of an InvIT.

– The InvIT and parties to the InvIT shall continue to be liable for all their acts of omissions and commissions with respect to activities of the InvIT notwithstanding surrender of registration to SEBI.

INVESTMENT CONDITIONS AND DISTRIBUTION POLICY

1. The investment by an InvIT shall only be in Holdco and/or SPVs or infrastructure projects or securities

in India in accordance with the SEBI InvIT Regulations and the investment strategy as detailed in the offer document or Placement memorandum.

2. In case of PPP projects, the InvIT shall mandatorily invest in the infrastructure projects through Holdco and/or SPV.

3. The InvIT may invest in infrastructure projects through SPVs subject to the following,–

   a. no other shareholder or partner of the SPV shall exercise any rights that prevents the InvIT from complying with the provisions of the SEBI InvIT Regulations and an agreement has been entered into with such shareholders or partners to that effect prior to investment in the SPV;

      However, the shareholders' agreement or partnership agreement shall provide for an appropriate mechanism for resolution of disputes between the InvIT and the other shareholders or partners in the holdco and/or the SPV.

      Further, the provisions of the SEBI InvIT Regulations shall prevail in case of inconsistencies between such agreement(s) and the obligations cast upon an InvIT under the SEBI InvIT Regulations.

   b. in case the SPV is a company/LLP, the investment manager, in consultation with the trustee, shall appoint majority of board of directors or governing board of such SPVs as applicable;

   c. the investment manager shall ensure that the in every meeting including annual general meeting of the SPV, the voting of the InvIT is exercised.

4. The InvIT may invest in infrastructure projects through holdcos subject to the following,-

   a) the ultimate holding interest of the InvIT in the underlying SPV(s) is not less than twenty six per cent;

   b) no other shareholder or partner of the holdco or the SPV(s) shall exercise] any rights that prevent the InvIT, the HoldCo or the SPV(s) from complying with the provisions of the SEBI InvIT Regulations and an agreement has been entered into with such shareholders or partners to that effect prior to investment in the holdco/SPV:

      However, the shareholders' agreement or partnership agreement shall provide for an appropriate mechanism for resolution of disputes between the InvIT and the other shareholders or partners in the holdco and/or the SPV.

      Further, the provisions of the SEBI InvIT Regulations shall prevail in case of inconsistencies between such agreement(s) and the obligations cast upon an InvIT under these regulations.

   c) the investment manager, in consultation with the Trustee, shall appoint the majority of the Board of directors or governing board of the holdco and SPV(s);

   the investment manager shall ensure that in every meeting including annual general meeting of the Holdco and SPV(s), the voting of the InvIT is exercised;

5. In case of InvIT as specified under the SEBI InvIT Regulations, the InvIT shall invest not less than eighty per cent of the value of the InvIT assets in eligible infrastructure projects either directly or through holdcos or through SPVs. However, un-invested funds may be invested in instruments as provided under below clause.

6. In case of InvITs as specified above :

   (a) not less than eighty per cent of the value of InvIT the assets shall be invested, proportionate to the holding of the InvITs, in completed and revenue generating infrastructure projects subject to the following;

(i) if the investment has been made through a holdco and/or SPV, whether by way of equity or debt or equity linked instruments or partnership interest, only the portion of direct investments in completed and revenue generating projects by such Holdco and/or SPVs shall be considered and the remaining portion shall be included under clause (b) as mentioned below;

(ii) if any project is implemented in stages, the part of the project which can be categorized as completed and revenue generating project shall be considered and the remaining portion shall be included under clause (b) as mentioned below;

(b) not more than 20% of value of the InvIT assets, shall be invested in,–

i. under-construction infrastructure projects, whether directly or through Holdco and/or SPVs. However, investment in such assets shall not exceed 10% of the value of the InvIT assets;

ii. listed or unlisted debt of companies or body corporate in infrastructure sector. However, this shall not include any investment made in debt of the Holdco and/or SPV.

iii. equity shares of companies listed on a recognized stock exchange in India which derive not less than 80% of their operating income from infrastructure sector as per the audited accounts of the previous financial year;

iv. government securities;

v. money market instruments, liquid mutual funds or cash equivalents;

(c) if the conditions specified in clauses (a) and (b) are breached, the investment manager shall inform the same to the trustee and ensure that the conditions as specified in these Regulations are satisfied within six months of such breach.

However, the period may be extended to one year subject to approval from investors in accordance with these regulations.

7. The investment conditions as specified above, shall be complied at the time of Offer document/ placement memorandum and therafter.

8. With respect to distributions made by the InvIT and the Holdco and/or SPV,-

a) not less than 90% of net distributable cash flows of the SPV shall be distributed to the InvIT/ holdco in proportion of its holding in the SPV subject to applicable provisions in Companies Act, 2013 or Limited Liability Partnership Act, 2008;

b) not less than 90 % of net distributable cash flows of the InvIT shall be distributed to the unit holders;

c) with regard to distribution of net distributable cash flows by the holdco to the InvIT, the following conditions shall be complied:

- with respect to cash flows received by the holdco from underlying SPVs, 100% of such cash flows received by the holdco shall be distributed to the InvIT; and
- with respect to the cash flows generated by the holdco on its own, not less than 90% of such net distributable cash flows shall be distributed by the holdco to the InvIT.

d) such distributions shall be declared and made not less than once every six months in every financial year in case of publicly offered InvITs and not less than once every year in case of privately placed InvITs and shall be made not later than 15 days from the date of such declaration;

e) subject to clause (6), such distribution shall be in the manner as mentioned in the offer document or placement memorandum.

9. If any infrastructure asset is sold by the InvIT or Holdco or SPV or if the equity shares or interest in the Holdco or SPV are sold by the InvIT,–

   - if the InvIT proposes to re-invest the sale proceeds into another infrastructure asset, it shall not be required to distribute any sales proceeds to the InvIT or to the investors;
   - If the InvIT proposes not to invest the sales proceeds into any other infrastructure asset within a period of one year, it shall be require to distribute the same.

10. If the distributions are not made within fifteen days of declaration, then the investment manager shall be liable to pay interest to the unit holders at the rate of 15% per annum till the distribution is made and such interest shall be not be recovered in the form of fees or any other form payable to the investment manager by the InvIT.

11. An InvIT shall not invest in units of other InvITs.

12. An InvIT shall not undertake lending to any person other than the holdco/ SPV(s) in which the InvIT has invested in. However, investment in debt securities shall not be considered as lending.

13. An InvIT shall hold an infrastructure asset for a period of not less than three years from the date of purchase of such asset by the InvIT, directly or through Holdco and/or SPV. However, this shall not apply to investment in securities of companies in infrastructure sector other than SPVs.

14. In case of any co-investment with any person(s) in any transaction,–

    a. the investment by the other person(s) shall not be at terms more favourable than those to the InvIT;

    b. the investment shall not provide any rights to the person(s) which shall prevent the InvIT from complying with the provisions of these regulations;

    c. the agreement with such person(s) shall include the minimum percentage of distributable cash flows that will be distributed and entitlement of the InvIT to receive not less than pro rata distributions and mode for resolution of any disputes between the InvIT and the other person(s).

– No schemes shall be launched under the InvIT.

– SEBI may specify any additional conditions for investments by the InvIT as deemed fit.

RIGHTS AND MEETING OF THE UNIT HOLDERS

1. The unit holder shall have the rights to receive income or distributions as provided for in the offer document or placement memorandum.

2. With respect to any matter requiring approval of the unit holders,-

   - a resolution shall be considered as passed when the votes cast by unit holders, so entitled and voting, in favour of the resolution exceed a certain percentage as specified in these regulations, of votes cast against;
   - the voting may also be done by postal ballot or electronic mode;
   - a notice of not less than twenty one days shall be provided to the unit holders;
   - voting by any person who is a related party in such transaction as well as associates of such person(s) shall not be considered on the specific issue;

- investment manager shall be responsible for all the activities pertaining to conducting of meeting of the unit holder, subject to overseeing by the trustee.

However, in issues pertaining to the investment manager such as change in investment manager including removal of the investment manager or change in control of the investment manager, trustee shall convene and handle all activities pertaining to conduct of the meetings.

Further that in respect of issues pertaining to the trustee including change in the trustee, the trustee shall not be involved in any manner in the conduct of the meeting.

3. For an InvITs,–

- an annual meeting of all unit holders shall be held not less than once a year within one hundred twenty days from the end of financial year and the time between two meetings shall not exceed fifteen months;
- with respect to the annual meeting of unit holders,–
  - any information that is required to be disclosed to the unit holders and any issue that, in the ordinary course of business, may require approval of the unit holders may be taken up in the meeting including,–
    (a) latest annual accounts and performance of the InvIT;
    (b) approval of auditor and fees of such auditor, as may be required;
    (c) latest valuation reports;
    (d) appointment of valuer, as may be required;
    (e) any other issue;
  - for any issue taken up in such meetings which require approval from the unit holders other than as specified in point No. (6) under, votes cast in favour of the resolution shall be more than the votes cast against the resolution;

4. In case of,–

- any approval from unit holders required for investment conditions, related party transactions and valuation of assets;
- any transaction, other than any borrowing, value of which is equal to or greater than twenty five per cent of the InvIT assets;
- any borrowing in excess of specified limit as required under the provision for borrowing and deferred payment as mentioned under the SEBI InvIT Regulations;
- any issue of units after initial public offer by InvIT, in whatever form, other than any issue of units which may be considered by SEBI;
- increasing period for compliance with investment conditions to one year in accordance with these regulations;
- any issue, in the ordinary course of business, which in the opinion of the sponsor(s) or trustee or investment manager, is material and requires approval of the unit holders, if any;
- any issue for which SEBI or the designated stock exchanges requires such approval;

approval from unit holders shall be required where votes cast in favour of the resolution shall be more than the votes cast against the resolution.

5. In case of,–

   - any change in investment manager including removal of the investment manager or change in control of the investment manager;
   - any material change in investment strategy or any change in the management fees of the InvIT.
   - the sponsor(s) or investment manager proposing to seek delisting of units of the InvIT.
   - any issue, not in the ordinary course of business, which in the opinion of the sponsor(s) or investment manager or trustee requires approval of the unit holders;
   - any issue for which SEBI or the designated stock exchanges requires approval;
   - any issue taken up on request of the unit holders including,–
     - removal of the investment manager and appointment of another investment manager to the InvIT;
     - removal of the auditor and appointment of another auditor to the InvIT;
     - removal of the valuer and appointment of another valuer to the InvIT;
     - delisting of an InvIT, if the unit holders have sufficient reason to believe that such delisting would act in the interest of the unit holders;
     - any issue which the unit holders have sufficient reason to believe that is detrimental to the interest of the unit holders;
     - change in the trustee if the unit holders have sufficient reason to believe that acts of such trustee is detrimental to the interest of the unit holders,

   approval from unit holders shall be required where votes cast in favour of the resolution shall not be less than one and half times the votes cast against the resolution.

   However, in case of sub-point No.(4) of point No. (5), if approval is not obtained, the person shall provide an exit option to the unit holder to the extend and in the manner specified by SEBI.

6. With respect to the right(s) of the unit holders under sub-point (6) of point no.(5),–

(a) not less than 25% of the unit holders by value, other than any party related to the transactions and its associates, shall apply, in writing, to the trustee for the purpose;

(b) on receipt of such application, the trustee shall require the issue with the investment manager to place the issue for voting in the manner as specified in these regulations;

(c) not less than 60% Of the unit holders by value shall apply, in writing, to the trustee for the purpose.

Maintenance of records

The investment manager shall maintain records pertaining to the activity of the InvIT, wherever applicable, including,–

(a) all investments or divestments of the InvIT and documents supporting the same including rationale for such investments or divestments;

(b) agreements entered into by the InvIT or on behalf of the InvIT;

(c) documents relating to appointment of persons;

(d) insurance policies for infrastructure assets;

(e) investment management agreement;

(f) documents pertaining to issue and listing of units including placement memorandum, draft and final offer document, in- principle approval by designated stock exchanges, listing agreement with the designated stock exchanges, details of subscriptions, allotment of units, etc;

(g) distributions declared and made to the unit holders;

(h) disclosures and periodical reporting made to the trustee, SEBI, unit holders and the designated stock exchanges including annual reports, half yearly reports, etc.;

(i) valuation reports including methodology of valuation;

(j) books of accounts and financial statements;

(k) audit reports;

(l) reports relating to activities of the InvIT placed before the board of directors of the investment manager;

(m) unit holders' grievances and actions taken thereon includingcopies of correspondences made with the unit holder and SEBI, if any;

(n) any other material documents;

The trustee shall maintain records, wherever applicable, pertaining to,–

(a) certificate of registration granted by SEBI;

(b) registered trust deed;

(c) documents pertaining to application made to the Board for registration as an InvIT;

(d) titles of the infrastructure assets:

However, where the original title documents are deposited with the lender or any other person in respect of any loan or debt, the trustee shall maintain copies of such title documents;

(e) notices and agenda send to unit holders for meetings held;

(f) minutes of meetings and resolutions passed therein;

(g) periodical reports and disclosures received by the trustee from the investment manager;

(h) disclosures, periodically or otherwise, made to SEBI, unit holders and the designated stock exchanges;

(i) any other material documents.

The aforesaid records may be maintained in physical or electronic form. However, where records are required to be duly signed and are maintained in the electronic form, such records shall be digitally signed.

LESSON ROUND UP

– An Infrastructure Investment Trust (InvITs) is like a mutual fund, which enables direct investment of small amounts of money from possible individual/institutional investors in infrastructure to earn a small portion of the income as return.

– SEBI notified the SEBI (Infrastructure Investment Trusts) Regulations, 2014 on September 26,

2014, providing for registration and regulation of InvITs in India. The objective of InvITs is to facilitate investment in the infrastructure sector.

- The key laws applicable to InvITs include the InvITs Regulations, 2014, the InvIT Guidelines. The Trusts Act, the Registration Act, the FEMA and Income-tax Act, 1961.
- The InvITs can raise capital from both domestic and foreign investors. Raising capital from foreign investor pursuant to initial offer of units or follow-on offer can be made.
- The offer document or placement memorandum of the InvIT shall contain material, true, correct and adequate disclosures to enable the investors to make an informed decision.
- The advertisements shall be in accordance with the offer document and any circulars or guidelines as may be specified by SEBI in this regard.
- SEBI has issued the Guidelines for Public Issue & for Preferential Issue of InvITs in pursuance to SEBI (Infrastructure Investment Trusts), Regulations, 2014 .
- The Investment Manager shall submit valuation reports received to the designated stock exchanges within fifteen days from the receipt of such valuation reports.
- The records may be maintained in physical or electronic from. However, if records are maintained in electronic from it shall be digitally signed.

GLOSSARY

Bidder	Any prospective investor, other than an Anchor Investor who makes a Bid in the issue.
Concession Agreement	An agreement entered into by a person with a concessioning authority for the purpose of implementation of the project as provided in the agreement;
IMA	Investment management Agreement is an agreement between the trustee and the investment manager which lays down the roles and responsibilities of the manager towards the InvIT;
Net Worth	In relation to a company or a body corporate shall have the meaning assigned to it under sub-section (57) of section 2 of the Companies Act, 2013.
Unit	It means beneficial interest of the InvIT;

SELF TEST QUESTIONS

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Elucidate the provisions with respect to the issue and listing of units under SEBI (Infrastructure Investment Trusts), Regulations, 2014.
2. What are the guidelines issued for Public issue of units of InvITs by SEBI.
3. Whether the units of InvITs can be issued on preferential basis? If yes, explain the guidelines issued by SEBI with respect to issue of units on preferential basis.
4. What are the investment conditions for an InvIT under the SEBI (Infrastructure Investment Trusts) Regulations, 2014.
5. Explain the provision relating to maintenance of records by an investment manager under the SEBI InvITs Regulations?

Lesson 4
Indian Equity – Private Funding

LESSON OUTLINE

- Introduction
- Background
- SEBI (Alternative Investment Funds) Regulations, 2012
- Categories of AIF
- Registration of AIF
- Investment in an AIF
- Placement Memorandum
- Schemes
- Tenure
- Listing
- General Investment Conditions
- Angel Funds
- Guidelines on Disclosures Reporting and Clarifications under the AIF Regulations
- Seed Funding
- Private Equity
- Foreign Venture Capital Investors
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

SEBI had earlier framed the SEBI (Venture Capital Funds) Regulations, 1996 ("VCF Regulations") to encourage investments into start-ups and mid-size companies. Since the introduction of the VCF Regulations, it was observed by SEBI that the venture capital route was being used by several other categories of funds also such as private equity funds, real estate funds etc. Accordingly, SEBI notified the Alternative Investment Fund (AIF) Regulations, 2012 to govern unregulated entities and create a level playing ground for existing venture capital investors.

Keeping this in view, this lesson is designed to enable the students to have the basic understanding of the Alternative Investment Fund, Regulatory Framework governing AIF in India, Angel Fund and Scheme of Angle Fund, their working mechanism, types of AIF, their winding up etc. and Foreign Venture Capital Investors (FVCI).

INTRODUCTION

Indian entrepreneurs need private equity and debt products to meet the capital needs of their growth, restructuring, turn around or start-up plans. The main providers of this form of capital are private equity and venture capital funds which are channelled through Alternative Investment Funds (AIFs). Given that such capital is in short supply in India, a favourable policy and regulatory environment is essential. AIFs in India are regulated by the Securities and Exchange Board of India (SEBI). Other government agencies which play an important role are the Ministry of Finance and sector regulators in the pension and insurance areas as well as the Reserve Bank of India.

BACKGROUND

SEBI had earlier framed the SEBI (Venture Capital Funds) Regulations, 1996 ("VCF Regulations") to encourage investments into start-ups and mid-size companies. Since the introduction of the VCF Regulations, it was observed by SEBI that the venture capital route was being used by several other categories of funds such as private equity funds, real estate funds etc. Further, since registration as a venture capital fund ("VCF") was not mandatory under the VCF Regulations, not all private equity or other categories of funds were registering with the SEBI.

While these funds did not enjoy certain exemptions that were available to VCFs, they were not subjected to any investment restrictions. SEBI noted the need for comprehensive regulations to deal with investments that are sourced from diverse parts of the private pool of capital. Accordingly, SEBI notified the Alternative Investment Fund (AIF) Regulations to govern unregulated entities and create a level playing ground for existing venture capital investors.

The Securities and Exchange Board of India ("SEBI") has notified the SEBI (Alternative Investment Funds) Regulations, 2012 ('AIF Regulations') on 21 May, 2012 - a comprehensive regulatory framework for regulating private pools of capital or Alternative Investment Funds, thus bringing various funds investing in Indian securities under a unified regulatory umbrella.

The AIF Regulations aim to regulate funds involved in the pooling or raising of private capital from Institutional investors or high net worth investors ("HNI") with a view to invest such funds in accordance with a defined investment policy for benefit of the investors and the manager of such fund, irrespective of their legal domicile. These regulations provide that an entity, seeking to pool and manage such private pool of capital for investing in securities or acting as an Alternative Investment Fund ("AIF"), should be registered with the SEBI under these regulations.

SEBI (ALTERNATIVE INVESTMENT FUNDS) REGULATIONS, 2012

IMPORTANT DEFINITIONS

"*Alternative Investment Fund*" means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which,-

(i) is a privately pooled investment vehicle which collects funds from investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors; and

(ii) is not covered under the SEBI (Mutual Funds) Regulations, 1996, SEBI (Collective Investment Schemes) Regulations, 1999 or any other regulations of the SEBI to regulate fund management activities:

Provided that the following shall not be considered as Alternative Investment Fund for the purpose of these regulations,-

(i) family trusts set up for the benefit of 'relatives' as defined under Companies Act, 2013;

(ii) ESOP Trusts set up under the SEBI (Share Based Employee Benefits) Regulations, 2014 or as permitted under Companies Act, 2013;

(iii) employee welfare trusts or gratuity trusts set up for the benefit of employees;

(iv) holding companies' as defined under sub-section 46 of section 2 of Companies Act, 2013;

(v) other special purpose vehicles not established by fund managers, including securitization trusts, regulated under a specific regulatory framework;

(vi) funds managed by securitisation company or reconstruction company which is registered with the Reserve Bank of India under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; and

(vii) any such pool of funds which is directly regulated by any other regulator in India.

"*Corpus*" means the total amount of funds committed by investors to the Alternative Investment Fund by way of a written contract or any such document as on a particular date.

"*Debt fund*" means an Alternative Investment Fund which invests primarily in debt or debt securities of listed or unlisted investee companies according to the stated objectives of the Fund.

"*Hedge fund*" means an Alternative Investment Fund which employs diverse or complex trading strategies and invests and trades in securities having diverse risks or complex products including listed and unlisted derivatives.

"*Infrastructure fund*" means an Alternative Investment Fund which invests primarily in unlisted securities or partnership interest or listed debt or securitized debt instruments of investee companies or special purpose vehicles engaged in or formed for the purpose of operating, developing or holding infrastructure projects. "Infrastructure"shall be as defined by the Government of India from time to time.

"*Investee company*" means any company, special purpose vehicle or limited liability partnership or body corporate or real estate investment trust or infrastructure investment trust in which an Alternative Investment Fund makes an investment.

"*Investible funds*" means corpus of the Alternative Investment Fund net of estimated expenditure for administration and management of the fund.

"*Manager*" means any person or entity who is appointed by the Alternative Investment Fund to manage its investments by whatever name called and may also be same as the sponsor of the Fund.

"*Private Equity Fund*" means an Alternative Investment Fund which invests primarily in equity or equity linked instruments or partnership interests of investee companies according to the stated objective of the fund.

"*SME*" means Small and Medium Enterprise and shall have the same meaning as assigned to it under the Micro, Small and Medium Enterprises Development Act, 2006 as amended from time to time.

"*SME fund*" means an Alternative Investment Fund which invests primarily in unlisted securities of investee companies which are SMEs or securities of those SMEs which are listed or proposed to be listed on a SME exchange or SME segment of an exchange.

"*Social Venture*" means a trust, society or company or venture capital undertaking or limited liability partnership formed with the purpose of promoting social welfare or solving social problems or providing social benefits and includes, –

(i) public charitable trusts registered with Charity Commissioner;

(ii) societies registered for charitable purposes or for promotion of science, literature, or fine arts;

(iii) company registered under Section 8 of the Companies Act, 2013;

(iv) micro finance institutions;

"*Social Venture Fund*" means an Alternative Investment Fund which invests primarily in securities or units of social ventures and which satisfies social performance norms laid down by the fund and whose investors may agree to receive restricted or muted returns;

"*Sponsor*" means any person or persons who set up the Alternative Investment Fund and includes promoter in case of a company and designated partner in case of a limited liability partnership;

"*Unit*" means beneficial interest of the investors in the Alternative Investment Fund or a scheme of the Alternative Investment Fund and shall include shares or partnership interests;

"*Venture Capital Fund*" means an Alternative Investment Fund which invests primarily in unlisted securities of start-ups, emerging or early-stage venture capital undertakings mainly involved in new products, new services, technology or intellectual property right based activities or a new business model and shall include an angel fund as defined under Chapter III-A of the SEBI (AIF) Regulations,2012.

"*Venture Capital Undertaking*" means a domestic company:

(i) which is not listed on a recognised stock exchange in India at the time of making investment; and

(ii) which is engaged in the business for providing services, production or manufacture of article or things and does not include following activities or sectors:

(1) non-banking financial companies;

(2) gold financing;

(3) activities not permitted under industrial policy of Government of India;

(4) any other activity which may be specified by the Board in consultation with Government of India from time to time;

CATEGORIES OF AIF

There are three categories of Alternative Investments Funds and they are :

(i) Category I Alternative Investment Fund are those which invest in start-up or early stage ventures or social ventures or SMEs or infrastructure or other sectors or areas which the government or regulators consider as socially or economically desirable and shall include venture capital funds, SME Funds, social venture funds, infrastructure funds and such other Alternative Investment Funds as may be specified.

Alternative Investment Funds which are generally perceived to have a positive spillover effect on the economy and for which SEBI or Government of India or other regulators in India might consider providing incentives or concessions shall be included and such funds which are formed as trusts or companies shall be construed as venture capital company or venture capital fund as specified under sub-section (23FB) of Section 10 of the Income Tax Act, 1961.

(ii) Category II Alternative Investment Fund are those which does not fall in Category I and III and which does not undertake leverage or borrowing other than to meet day-to-day operational requirements and as permitted in the AIF Regulations. Alternative Investment Funds such as private equity funds or debt funds for which no specific incentives or concessions are given by the government or any other Regulator shall be included under this category.

(iii) Category III Alternative Investment Fund which employs diverse or complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives. Alternative Investment Funds such as hedge funds or funds which trade with a view to make short term returns or such other funds which are open ended and for which no specific incentives or concessions are given by the government or any other Regulator shall be included in this category.

REGISTRATION OF AIF

All AIFs are required to be mandatorily registered under any of the III categories as mentioned above with SEBI. The AIF Regulations permit AIF to launch multiple schemes under one AIF subject to filing of the placement memorandum with SEBI and the Certificate of Registration shall be valid until the AIF is wound up or the certificate is cancelled by SEBI. An AIF which has been granted registration under a particular category cannot change its category subsequent to registration, except with the approval of SEBI.

Online Filing System for Alternative Investment Funds

In a constant endeavor to facilitate ease of operations in terms of applying for registration, reporting and various compliances under 'AIF Regulations', SEBI has introduced an online system for filings related to (AIF). The online system can be used for application for registration, reporting and filing in terms of the provisions of AIF Regulations and circulars issued thereunder.

All applicants desirous of seeking registration as an AIF are now required to submit their applications online only, through SEBI Intermediary Portal at https://siportal.sebi.gov.in.

Furthermore, all SEBI registered AIFs are now required to file their compliance reports and submit applications for any request under the provisions of AIF Regulations and circulars issued thereunder, through the online system only.

INVESTMENT STRATEGY

All AIFs must state its investment strategy, investment purpose and its investment methodology in its placement memorandum to the investors. In case the AIF decides to alter the fund strategy, it shall be made only with the consent of atleast 2/3rd of the unit holders by value of their investment in the AIF.

INVESTMENT IN AN AIF

The AIF, in all categories, may raise funds from any investor whether Indian, foreign or non-resident Indians only by way of issue of units.

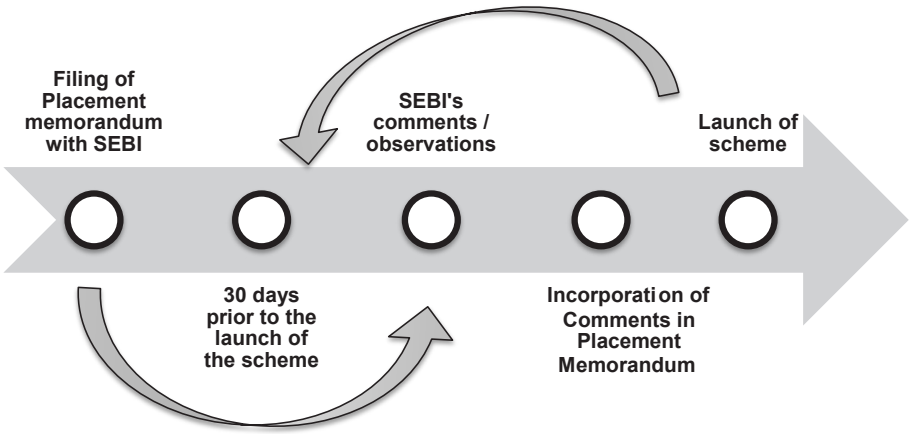
- Each scheme of the AIF shall have corpus of atleast twenty crore rupees and the AIF shall not accept from an investor, an investment of value less than one crore rupees. In case the investors are employees or directors of the AIF Fund or employees or directors of the Manager, the minimum value of investment shall be twenty five lakh rupees.
- The Manager or Sponsor shall have a continuing interest in the AIF Fund of not less than two and half percent of the corpus or five crore rupees, whichever is lower, in the form of investment in the Alternative Investment Fund and such interest shall not be through the waiver of management fees: in Category I and Category II AIFs.
- In the case of Category III AIF, the continuing interest shall be not less than five percent of the corpus or ten crore rupees, whichever is lower. The Manager or Sponsor shall disclose their investment in the Alternative Investment Fund to the investors of the Alternative Investment Fund.
- No scheme of the Alternative Investment Fund shall have more than 1000 investors. Provided that the provisions of the Companies Act, 2013 shall apply to the Alternative Investment Fund, if it is formed as a company.
- The AIF shall collect funds only by way of private placement.

PLACEMENT MEMORANDUM

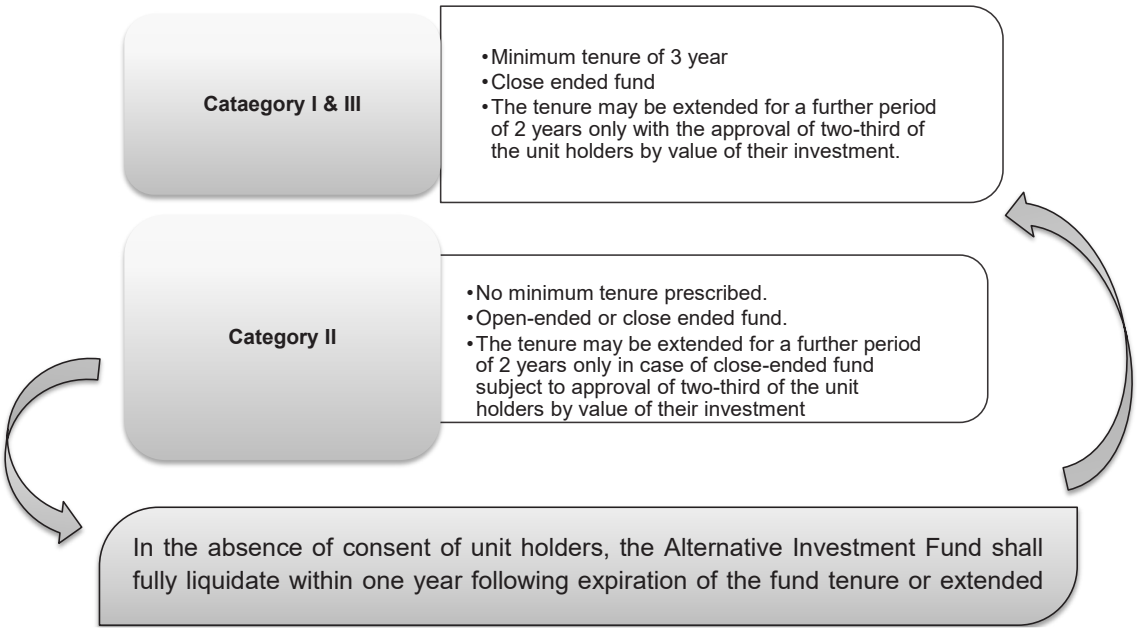
AIF shall raise funds through private placement by issue of information memorandum or placement memorandum, by whatever name called. This document shall contain all material information about the AIF and the Manager, background of key investment team of the Manager, targeted investors, fees and all other expenses proposed to be charged, tenure of the Alternative Investment Fund or scheme, conditions or limits on redemption, investment strategy, risk management tools and parameters employed, key service providers, conflict of interest and procedures to identify and address them, disciplinary history, the terms and conditions on which the Manager offers investment services, its affiliations with other intermediaries, manner of winding up of the AIF or the scheme and such other information as may be necessary for the investor to take an informed decision on whether to invest in the Alternative Investment Fund.

SCHEMES

The AIF Fund may launch schemes after it files its placement memorandum with SEBI, which shall be filed atleast 30 days prior to the launch of the scheme along with the prescribed fees. SEBI shall communicate its comments / observations on the document, if any, to the applicant prior to launch of the scheme and the applicant shall incorporate the comments in placement memorandum prior to the launch of scheme.



TENURE



LISTING

The SEBI (AIF) Regulations, 2012, allow the listing of the units of closed- ended AIFs on a stock exchange i.e. all AIFs, except an open ended-Category III AIF, can be listed on a stock exchange.

Units of close ended Alternative Investment Fund may be listed on stock exchange subject to a minimum tradable lot of one crore rupees. Listing of Alternative Investment Fund units shall be permitted only after final close of the fund or scheme.

GENERAL INVESTMENT CONDITIONS

Investments by all categories of Alternative Investment Funds shall be subject to the following conditions:-

(a) Alternative Investment Fund may invest in securities of companies incorporated outside India subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and the SEBI from time to time;

(b) Co-investment in an investee company by a Manager or Sponsor shall not be on terms more favourable than those offered to the Alternative Investment Fund;

(c) Category I and II Alternative Investment Funds shall invest not more than twenty five percent of the investable funds in one Investee Company;

(d) Category III Alternative Investment Fund shall invest not more than ten percent of the investable funds in one Investee Company

(e) Alternative Investment Fund shall not invest in associates except with the approval of seventy five percent of investors by value of their investment in the Alternative Investment Fund;

(f) Un-invested portion of the investable funds may be invested in liquid mutual funds or bank deposits or other liquid assets of higher quality such as Treasury bills, CBLOs, Commercial Papers, Certificates of Deposits, etc. till deployment of funds as per the investment objective;

(g) Alternative Investment Fund may act as Nominated Investor to SME IPOs.

(h) Investment by Category I and Category II Alternative Investment Funds in the shares of entities listed on institutional trading platform after the commencement of SEBI (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2015 shall be deemed to be investment in unlisted securities for the purpose of the AIF Regulations.

CONDITIONS FOR CATEGORY I AIFS

The following investment conditions shall apply to all Category I Alternative Investment Funds:-

(a) Category I AIF shall invest in investee companies or venture capital undertaking or in special purpose vehicles or in limited liability partnerships or in units of other Alternative Investment Funds as specified in the AIF Regulations;

(b) Fund of Category I Alternative Investment Funds may invest in units of Category I Alternative Investment Funds of same sub-category.

However**,** they shall only invest in such units and shall not invest in units of other Fund of Funds.

Further, the investment conditions as specified for venture capital funds, SME funds, Social Venture Funds, Infrastructure funds as specified in of the AIF Regulations shall not be applicable to investments by such funds.

(c) Category I AIF shall not borrow funds directly or indirectly or engage in any leverage except for meeting temporary funding requirements for not more than thirty days, on not more than four occasions in a year and not more than ten percent of the investable funds.

In case the AIF is a **Venture Capital Fund**, the following additional conditions shall apply:

(a) at least two-thirds of the investable funds shall be invested in unlisted equity shares or equity linked instruments of a venture capital undertaking or in companies listed or proposed to be listed on a SME exchange or SME segment of an exchange;

(b) not more than one-third of the investable funds shall be invested in:

(i) subscription to initial public offer of a venture capital undertaking whose shares are proposed to be listed;

(ii) debt or debt instrument of a venture capital undertaking in which the fund has already made an investment by way of equity or contribution towards partnership interest;

(iii) preferential allotment, including through qualified institutional placement, of equity shares or equity linked instruments of a listed company subject to lock in period of one year;

(iv) the equity shares or equity linked instruments of a financially weak company or a sick industrial company whose shares are listed;

(v) special purpose vehicles which are created by the fund for the purpose of facilitating or promoting investment in accordance with the AIF Regulations.

A financially weak company means a company, which has at the end of the previous financial year accumulated losses, which has resulted in erosion of more than fifty percent but less than hundred percent of its net worth as at the beginning of the previous financial year.

(c) such funds may enter into an agreement with merchant banker to subscribe to the unsubscribed portion of the issue or to receive or deliver securities in the process of market making under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 and the provisions of clause (a) and clause (b) of sub-regulation (2) of Regulation 16 of the AIF Regulations shall not apply in case of acquisition or sale of securities pursuant to such subscription or market making.

(d) such funds shall be exempt from regulation 3 and 3A of SEBI (Prohibition of Insider Trading) Regulations, 1992 in respect of investment in companies listed on SME Exchange or SME segment of an exchange pursuant to due diligence of such companies subject to the following conditions:

(i) the fund shall disclose any acquisition or dealing in securities pursuant to such due-diligence, within two working days of such acquisition or dealing, to the stock exchanges where the investee company is listed;

(ii) such investment shall be locked in for a period of one year from the date of investment.

In case the fund is an **SME Fund**, the following additional conditions shall apply:

(a) atleast seventy five percent of the investable funds shall be invested in unlisted securities or partnership interest of venture capital undertakings or investee companies which are SMEs or in companies listed or proposed to be listed on SME exchange or SME segment of an exchange;

(b) such funds may enter into an agreement with merchant banker to subscribe to the unsubscribed portion of the issue or to receive or deliver securities in the process of market making under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018;

(c) such funds shall be exempt from regulation 3 and 3A of SEBI (Prohibition of Insider Trading) Regulations, 1992 in respect of investment in companies listed on SME Exchange or SME segment of an exchange pursuant to due diligence of such companies subject to the following conditions:

(i) the fund shall disclose any acquisition or dealing in securities pursuant to such due-diligence, within two working days of such acquisition or dealing, to the stock exchanges where the investee company is listed;

(ii) such investment shall be locked in for a period of one year from the date of investment.

In case the fund is a **Social Venture Fund**, the following additional conditions shall apply :

(a) atleast seventy five percent of the investable funds shall be invested in unlisted securities or partnership interest of social ventures.

(b) such funds may accept grants, provided that such utilization of such grants shall be restricted to investing in unlisted securities or partnership interest of social ventures.

However, the amount of grant that may be accepted by the fund from any person shall not be less than twenty-five lakh rupees.

Further, no profits or gains shall accrue to the provider of such grants.

(c) such funds may give grants to social ventures, provided that appropriate disclosure is made in the placement memorandum.

(d) such funds may accept muted returns for their investors i.e. they may accept returns on their investments which may be lower than prevailing returns for similar investments.

In case the fund is an **Infrastructure Fund**, the following additional conditions shall apply:

(a) atleast seventy five percent of the investable funds shall be invested in unlisted securities or units or partnership interest of venture capital undertaking or investee companies or special purpose vehicles, which are engaged in or formed for the purpose of operating, developing or holding infrastructure projects;

(b) notwithstanding the above, such funds may also invest in listed securitized debt instruments or listed debt securities of investee companies or special purpose vehicles, which are engaged in or formed for the purpose of operating, developing or holding infrastructure projects.

CONDITIIONS FOR CATEGORY II AIFS

The following investment conditions shall apply to Category II Alternative Investment Funds:-

(a) Category II Alternative Investment Funds shall invest primarily in unlisted investee companies or in units of other Alternative Investment Funds as may be specified in the placement memorandum;

(b) Fund of Category II Alternative Investment Funds may invest in units of Category I or Category II Alternative Investment Funds.

However, they shall only invest in such units and shall not investing units of other Fund of Funds.

(c) Category II Alternative Investment Funds may not borrow funds directly or indirectly and shall not engage in leverage except for meeting temporary funding requirements for not more than thirty days, not more than four occasions in a year and not more than ten percent of the investable funds.

(d) Notwithstanding this restriction, a Category II Alternative Investment Fund may engage in hedging, subject to guidelines as specified by SEBI from time to time;

(e) Category II Alternative Investment Funds may enter into an agreement with merchant banker to subscribe to the unsubscribed portion of the issue or to receive or deliver securities in the process of market making under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

(f) Category II Alternative Investment Funds shall be exempt from regulation 3 and 3A of SEBI (Prohibition

of Insider Trading) Regulations, 1992 in respect of investment in companies listed on SME Exchange or SME segment of an exchange pursuant to due diligence of such companies subject to the following conditions:

(i) the fund shall disclose any acquisition or dealing in securities pursuant to such due-diligence, within two working days of such acquisition or dealing, to the stock exchanges where the investee company is listed;

(ii) such investment shall be locked in for a period of one year from the date of investment.

CONDITIONS FOR CATEGORY III AIFS

The following investment conditions shall apply to Category III Alternative Investment Funds:-

(a) Category III Alternative Investment Funds may invest in securities of listed or unlisted investee companies or derivatives or complex or structured products;

(b) Fund of Category III Alternative Investment Funds may invest in units of Category I or Category II Alternative Investment Funds.

However, they invest solely in such units and shall not invest in units of other Fund of Funds.

(c) Category III Alternative Investment Funds may engage in leverage or borrow, subject to consent from the investors in the fund and subject to a maximum limit, as may be specified by SEBI.

However, such funds shall disclose information regarding the overall level of leverage employed, the level of leverage arising from borrowing of cash, the level of leverage arising from position held in derivatives or in any complex product and the main source of leverage in their fund to the investors and to SEBI periodically, as may be specified by SEBI.

(d) Category III Alternative Investment Funds shall be regulated through issuance of directions regarding areas such as operational standards, conduct of business rules, prudential requirements, restrictions on redemption and conflict of interest as may be specified by SEBI.

ANGEL FUNDS

As per AIF Regulations , Angel Fund means a sub-category of Venture Capital Fund under Category I Alternative Investment Fund that raises funds from angel investors and invests in accordance with the provisions of Chapter III a of the AIF Regulations.

Angel Investor

Here, 'Angel Investor' means any person who proposes to invest in an angel fund and satisfies one of the following conditions, namely,

(a) an individual investor who has net tangible assets of at least two crore rupees excluding value of his principal residence, and who:

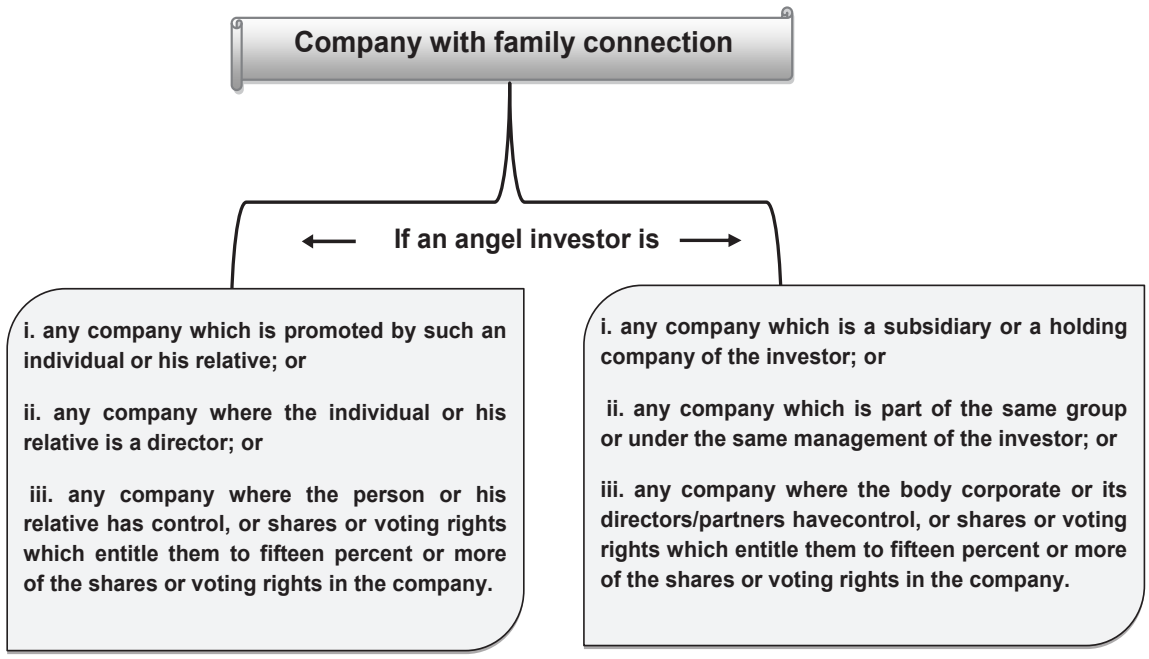
- has early stage investment experience, or
- has experience as a serial entrepreneur, or
- is a senior management professional with at least ten years of experience.

Early stage investment experience shall mean prior experience in investing in start-up or emerging or early-stage ventures and 'serial entrepreneur' shall mean a person who has promoted or co-promoted more than one start-up venture.

(b) a body corporate with a net worth of at least ten crore rupees; or

(c) an Alternative Investment Fund registered under SEBI AIF Regulations or a Venture Capital Fund registered under the SEBI (Venture Capital Funds) Regulations, 1996.

Company with family connection



Applicability

The provisions of Chapter III A of the AIF Regulations, 2012 and the other provisions of the AIF Regulations, except clauses (a), (b), (c), (d) and (f) of regulation 10, regulation 12, regulation 14, clauses (a), (c) and (e) of sub-regulation (1) of regulation 15, clause (b) of sub-regulation (1) of regulation 16 and sub-regulation (2) of regulation 16 of the AIF Regulations, and the guidelines and circulars issued under the AIF Regulations unless specifically excluded, shall apply to angel funds and schemes launched by such angel funds.

Registration

An applicant may apply for registration as a angel fund in accordance with the registration requirements as specified and an Alternative Investment Fund already registered under the AIF, which has not made any investments, may apply for conversion of its category into an angel fund.

Investment in an Angel Fund

Angel funds shall only raise funds by way of issue of units to angel investors. An angel fund shall have a corpus of at least five] crore rupees. Angel funds shall accept, up to a maximum period of five] years, an investment of not less than twenty five lakh rupees from an angel investor and such funds shall be raised through private placement by issue of information memorandum or placement memorandum, by whatever name called. However, the provisions of the Companies Act, 2013 shall apply to the Angel Fund, if it is formed as a company.

Schemes

The angel fund may launch schemes subject to filing of a term sheet with SEBI, containing material information regarding the scheme, in the format and time period as may be specified by SEBI.

No scheme of the angel fund shall have more than two hundred angel investors.

However, the provisions of the Companies Act, 2013 shall apply to the Angel Fund, if it is formed as a company.

Investment by Angel Funds

(1) Angel funds shall invest in venture capital undertakings which:

a. complies with the criteria regarding the age of the venture capital undertaking/startup issued by the Department of Industrial Policy and Promotion under the Ministry of Commerce and Industry, Government of India vide notification no. G.S.R. 180(E) dated February 17, 2016 or such other policy made in this regard which may be in force

b. have a turnover of less than twenty five crore rupees;

c. are not promoted or sponsored by or related to an industrial group whose group turnover exceeds three hundred crore rupees.

For the purpose of this clause, "industrial group" shall include a group of body corporates with the same promoter(s)/promoter group, a parent company and its subsidiaries, a group of body corporates in which the same person/ group of persons exercise control, and a group of body corporates comprised of associates/subsidiaries/holding companies.: For the purpose of this clause, "group turnover" shall mean combined total revenue of the industrial group.

d. are not companies with family connection with any of the angel investors who are investing in the company.

(2) Investment by an angel fund in any venture capital undertaking shall not be less than twenty five lakh rupees and shall not exceed ten crores rupees.

(3) Investment by an angel fund in the venture capital undertaking shall be locked-in for a period of one year.

(4) Angel Funds shall not invest in associates.

(5) Angel funds shall not invest more than twenty-five per cent of the total investments under all its schemes in one venture capital undertaking, the compliance of which shall be ensured by the Angel Fund at the end of its tenure.

(6) An angel fund may also invest in the securities of companies incorporated outside India subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and SEBI from time to time.

Listing

Units of Angel Funds shall not be listed on any recognized stock exchange.

Maintenance of Records

The Manager or Sponsor shall be required to maintain following records describing:

(a) the assets under the scheme/fund;

(b) valuation policies and practices;

(c) investment strategies;

(d) particulars of investors and their contribution;

(e) rationale for investments made.

The records shall be maintained for a period of five years after the winding up of the fund.

PROCESS AND DOCUMENTATION REQUIRED FOR LISTING AND TRADING ALTERNATIVE INVESTMENT FUND ON STOCK EXCHANGE

PROCESS

DOCUMENTATION

A. List of documents to be submitted for seeking In-principle approval for listing units of AIF scheme

Certified true copy of the following Agreements / documents:

- Draft Information / Placement memorandum. Hard as well as soft copy.
- Investment Management Agreement. (In case of 1st Listing)
- Certification of registration of Alternative Investment Fund issued by SEBI. (In case of 1st Listing)
- Custodian Agreement. (In case of 1st Listing)
- R & T Agreement. (In case of 1st Listing)
- Trust Deed (if applicable)
- Memorandum & Articles of Association of the issuer (in case of 1st listing)
- Resolution passed by trustee in case of AIF is established as trust or Board of directors in case AIF is established as Company or by partners in case AIF is established as a Limited Liability partnership at their meeting approving listing of units of close ended AIF on the BSE Ltd.
- An undertaking from the CEO/ compliance officer that AIF is in compliance with SEBI(Alternative Investment Funds) Regulations, 2012 as amended and all the other applicable laws.

Note: The Stock Exchange may ask for documents other than those mentioned above.

B. List of documents to be submitted for Listing of units of AIF (Post allotment of units)

Certified true copy of the following Agreements / documents:

- Letter of Application for listing of units of Scheme.
- Details of the applicant (In case of 1st Issue/Listing) and Issue Details.
- Certified True Copy of observations / comments received from SEBI on the / placement Memorandum / Scheme Information Document (SID)
- Certified true copy of the Final Placement Memorandum / Scheme Information Document (SID) (soft copy also required)
- Unit holding pattern of Unit holders of the Scheme

Scheme Name	Option	Mode of Issue	ISIN	Symbol	Date of allotment	Number of Units	Face Value	Issue Price	Date of Redemption
				Grand Total No. of Units					

- Confirmation from the CEO / Compliance officer regarding allotment of units and the actual no. of units allotted.
- Statement of Collection details.
- Listing Agreement (In case of 1st Listing) as per SEBI LODR Regulations.
- Confirmation from CEO / Compliance officer regarding compliance with the provisions of Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 including subsequent amendments thereof and SEBI circulars issued in this respect.
- Confirmation from NSDL and CDSL (ISIN activation).
- Confirmation from RTA on the final number of units to be allotted with NSDL, to be allotted with CDSL and to be issued under physical form.
- Undertaking from the RTA on the units considered under switches that they have debited the units from the respective schemes and credited the applicable units in this scheme(if applicable).
- Confirmation received from NSDL / CDSL for credit.
- Confirmation from RTA regarding dispatch of Certificates / Account statement/refund order.
- Annual listing fees plus Applicable Taxes.
- The Stock Exchange may ask for documents other than those mentioned above.

GUIDELINES ON DISCLOSURES REPORTING AND CLARIFICATIONS UNDER THE AIF REGULATIONS

SEBI has provided certain clarifications on the AIF Regulations in order to increase transparency to the investors by issuing guidelines on this behalf.

SEBI has prescribed that Category III AIFs should report to the custodian the amount of leverage at the end of the day (based on closing prices) by the end of next working day. SEBI has further clarified that AIFs should include in the placement memorandum detailed disclosures of the fees and charges as applicable to the investors and disciplinary history of the AIFs, sponsors, managers, their Directors/partners/ promoters and associates etc.

In case of changes to the placement memorandum which significantly influences the decision of the investor to continue to be invested in the AIF, the following process should be followed by the AIF:

(1) Existing unit holders who do not wish to continue after the change should be provided an exit option.

(2) If the scheme of the AIF is open ended, the exit option can be provided by either of the following:

- Buying out of units of the dissenting investors by the manger/ someone else arranged by the manager, valuation of which should be based on market price of underlying assets.
- Redemption of units of the investors through sale of underlying assets.

(3) If the scheme of the AIF is close ended, the exit option can be provided as follows :

- Buying out of units of the dissenting investors by the manger/ someone else arranged by the manager.
- Prior to buying out of such units, valuation of those units should be undertaken by 2 independent valuers and exit should be at a value at least as large as average of the two valuations.
- The trustee of AIF (in case AIF is a trust) or sponsor (in case of any other AIF) should be responsible for overseeing the process.

Moreover, all guidelines that are issued by SEBI with respect to KYC requirements, Anti-Money laundering and outsourcing of activities should be applicable to AIFs and the manager of the AIF should be responsible for complying with such guidelines.

SEED FUNDING

Seed funding, taken from the word “seed” is the capital needed to start / expand your business. It often comes from the company founders’ personal assets, from friends and family or other investors. The amount of money is usually relatively small because the business is still in the idea or conceptual stage.

This type of funding is often obtained in exchange for an equity stake in the enterprise, although with less formal contractual overhead than standard equity financing.

Lenders often view seed capital as a risky investment by the promoters of a new venture, which represents a meaningful and tangible commitment on their part to making the business a success.

This would be a type of Venture Capital Funding and hence covered under the provisions of Angel Funding in the AIF Regulations.

PRIVATE EQUITY

Private equity is a type of equity (finance) and one of the asset classes that are not publicly traded on a stock exchange. Private equity is essentially a way to invest in some assets that isn’t publicly traded, or to invest in a publicly traded asset with the intention of taking it private. Unlike stocks, mutual funds, and bonds, private equity funds usually invest in more illiquid assets, i.e. companies. By purchasing companies, the firms gain access to those assets and revenue sources of the company, which can lead to very high returns on investments. Another feature of private equity transactions is their extensive use of debt in the form of high-yield bonds. By using debt to finance acquisitions, private equity firms can substantially increase their financial returns.

Private equity consists of investors and funds that make investments directly into private companies or conduct buyouts of public companies that result in a delisting of public equity. Capital for private equity is raised from retail and institutional investors, and can be used to fund new technologies, expand working capital within an owned company, make acquisitions, or to strengthen a balance sheet. The major of private equity consists of institutional investors and accredited investors who can commit large sums of money for long periods of time.

Private equity investments often demand long holding periods to allow for a turnaround of a distressed company or a liquidity event such as IPO or sale to a public company. Generally, the private equity fund raise money from

investors like Angel investors, Institutions with diversified investment portfolio like – pension funds, insurance companies, banks, funds of funds etc.

Types of Private Equity

Private equity investments can be divided into the following categories:

Leveraged Buyout (LBO): This refers to a strategy of making equity investments as part of a transaction in which a company, business unit or business assets is acquired from the current shareholders typically with the use of financial leverage. The companies involved in these type of transactions that are typically more mature and generate operating cash flows.

Venture Capital: It is a broad sub-category of private equity that refers to equity investments made, typically in less mature companies, for the launch, early development, or expansion of a business.

Growth Capital: This refers to equity investments, mostly minority investments, in the companies that are looking for capital to expand or restructure operations, enter new markets or finance a major acquisition without a change of control of the business.

VENTURE CAPITAL

Venture Capital is one of the innovative financing resource for a company in which the promoter has to give up some level of ownership and control of business in exchange for capital for a limited period, say, 3-5 years.

Venture Capital is generally equity investments made by Venture Capital funds, at an early stage in privately held companies, having potential to provide a high rate of return on their investments. It is a resource for supporting innovation, knowledge based ideas and technology and human capital intensive enterprises.

Essentially, a venture capital company is a group of investors who pool investments focused within certain parameters. The participants in venture capital firms can be institutional investors like pension funds, insurance companies, foundations, corporations or individuals. Unlike banks, which seek their return through interest payments, venture firms seek for capital appreciation. Generally Venture Capital firms look for a return of five to ten times the original investment.

Areas of Investment

Different venture groups prefer different types of investments. Some specialize in seed capital and early expansion while others focus on exit financing. Biotechnology, medical services, communications, electronic components and software companies seem to be the most likely attraction of may venture firms and receiving the most financing. Venture capital firms finance both early and later stage investments to maintain a balance between risk and profitability.

In India, software sector has been attracting a lot of venture finance. Besides media, health and pharmaceuticals, agri-business and retailing are the other areas that are favored by a lot of venture companies.

STAGES OF INVESTMENT FINANCING

Venture capital firms finance both early and later stage investments to maintain a balance between risk and profitability. Venture capital firms usually recognise the following two main stages when the investment could be made in a venture namely:

A. Early Stage Financing

(i) Seed Capital & Research and Development Projects.

(ii) Start Ups

(iii) Second Round Finance

B. Later Stage Financing

(i) Development Capital

(ii) Expansion Finance

(iii) Buy Outs

(iv) Replacement Capital

(v) Turn Arounds

A. EARLY STAGE FINANCING

I. Seed Capital and R & D Projects: Venture capitalists are more often interested in providing seed finance i. e. making provision of very small amounts for finance needed to turn into a business. Research and Development activities are required to be undertaken before a product is to be launched. External finance is often required by the entrepreneur during the development of the product. The financial risk increases progressively as the research phase moves into the development phase, where a sample of the product is tested before it is finally commercialised venture capitalists/ firms/ funds are always ready to undertake risks and make investments in such R & D projects promising higher returns in future.

II. Start Ups: The most risky aspect of venture capital is the launch of a new business after the Research and Development activities are over. At this stage, the entrepreneur and his products or services are still not tried and rested in the market forces. The finance required usually falls short of his own resources. Start-ups may include new industries / businesses set up by the experienced persons in the area in which they have knowledge, specialization and proficiency. Others may result from the research bodies or large corporations, where a venture capitalist joins with an industrially experienced or corporate partner.

III. Second Round Financing: It refers to the stage when product has already been launched in the market but has not earned enough profits to attract new investors. Additional funds are needed at this stage to meet the growing needs of business. Venture Capital Institutions (VCIs) provide larger funds at this stage than at other early stage financing in the form of debt. The time scale of investment is usually three to seven years.

B. LATER STAGE FINANCING

Those established businesses which require additional financial support but cannot raise capital through public issue approach venture capital funds for financing expansion, buyouts and turnarounds or for development capital. This is known as later stage financing. It includes the following :

I. Development Capital: It refers to the financing of an enterprise which has overcome the highly risky stage and have recorded profits but cannot go public, thus needs financial support. Funds are needed for the purchase of new equipment/ plant, expansion of marketing and distributing facilities, launching of product into new regions and so on. The time scale of investment is usually one to three years and falls in medium risk category.

II. Expansion Finance: Venture capitalists perceive low risk in ventures requiring finance for expansion purposes either by growth implying bigger factory, large warehouse, new factories, new products or new markets or through purchase of existing businesses. The time frame of investment is usually from one to three years. It represents the last round of financing before a planned exit.

III. Buy Outs: It refers to the transfer of management control by creating a separate business by separating it from their existing owners. It may be of two types.

i. **Management Buyouts (MBOs):** In Management Buyouts (MBOs) venture capital institutions provide funds to enable the current operating management/ investors to acquire an existing product line/business. They represent an important part of the activity of VCIs.

ii. **Management Buy-ins (MBIs):** Management Buy-ins are funds provided to enable an outside group of manager(s) to buy an existing company. It involves three parties: a management team, a target company and an investor (i.e. Venture capital institution). MBIs are more risky than MBOs and hence are less popular because it is difficult for new management to assess the actual potential of the target company. Usually, MBIs are able to target the weaker or under-performing companies.

IV. *Replacement Capital:* VCIs another aspect of financing is to provide funds for the purchase of existing shares of owners. This may be due to a variety of reasons including personal need of finance, conflict in the family, or need for association of a well-known name. The time scale of investment is one to three years and involve low risk.

V. *Turnarounds:* Such form of venture capital financing involves medium to high risk on a time scale of three to five years. It involves buying the control of a sick company which requires specialised skills in finance. It may require rescheduling of company's all the borrowings, change in management or even a change in ownership.

An active "hands on" approach is required in the initial crisis period where the venture capitalists may appoint its own chairman or nominate its directors on the board.

FOREIGN VENTURE CAPITAL INVESTORS

Foreign Venture Capital Investor (FVCI) means an investor incorporated and established outside India, which proposes to make investment in venture capital fund(s) or venture capital undertakings in India and is registered under the SEBI (Foreign Venture Capital Investors) Regulations 2000 .

Registration

All FVCIs, must get themselves registered with SEBI.

Investment Conditions

All investments to be made by a FVCI should be subject to the following conditions:

(a) it should disclose to SEBI its investment strategy.

(b) it can invest its total funds committed in one venture capital fund or alternative investment fund.

(c) it shall make investments as enumerated below:

(i) atleast 66.67% of the investible funds should be invested in unlisted equity shares or equity linked instruments of venture capital undertaking or investee company.

(ii) not more than 33.33% of the investible funds may be invested by way of:

(a) subscription to initial public offer of a venture capital undertaking or investee company whose shares are proposed to be listed;

(b) debt or debt instrument of a venture capital undertaking or investee company in which the foreign venture capital investor has already made an investment by way of equity;

(c) preferential allotment of equity shares of a listed company subject to lock in period of one year;

(d) It shall disclose the duration of life cycle of the fund;

(e) Special Purpose Vehicles which are created for the purpose of facilitating or promoting investment in accordance with the FVCI Regulations.

The investment conditions and restrictions stipulated, above shall be achieved by the Foreign Venture Capital Investor by the end of its life cycle.

Maintenance of books and Records

Every Foreign Venture Capital Investor is required to maintain for a period of eight years, books of accounts, records and documents which should give a true and fair picture of the state of affairs of the Foreign Venture Capital Investor. Every Foreign Venture Capital Investor should intimate to SEBI, in writing, the place where the books, records and documents are being maintained.

General Obligations

Foreign Venture Capital Investor or a global custodian acting on behalf of the foreign venture capital investor should enter into an agreement with the domestic custodian to act as a custodian of securities for Foreign Venture Capital Investor.

Foreign Venture Capital Investor should ensure that domestic custodian takes steps for:

- monitoring of investment of Foreign Venture Capital Investors in India;
- furnishing of periodic reports to SEBI; and
- furnishing such information as may be called for by SEBI.

Foreign Venture Capital Investor is required to appoint a branch of a bank approved by Reserve Bank of India as designated bank for opening of foreign currency denominated accounts or special non-resident rupee account.

LESSON ROUND UP

- SEBI had earlier framed the SEBI (Venture Capital Funds) Regulations, 1996 ("VCF Regulations") to encourage investments into start-ups and mid-size companies.
- SEBI notified the Alternative Investment Fund (AIF) Regulations to govern unregulated entities and create a level playing ground for existing venture capital investors.
- The AIF Regulation has replaced the existing SEBI (Venture Capital Funds) Regulations, 1996 funds registered under the VCF Regulations shall continue to be regulated by the said regulations till the existing fund or scheme is wound up.
- SEBI has classified AIF into three broad categories i.e., Category I, Category II, Category III.
- All AIFs are required to be mandatorily registered under any one of the III categories as specified by SEBI.
- Alternative Investment Fund shall raise funds through private placement by issue of information memorandum or placement memorandum, by whatever name called.
- Listing of Alternative Investment Fund units shall be permitted only after final close of the fund or scheme.
- SEBI has notified a separate set of provisions for Angel Funds.
- Private equity is essentially a way to invest in some assets that isn't publicly traded, or to invest in a publicly traded asset with the intention of taking it private. Unlike stocks, mutual funds, and bonds, private equity funds usually invest in more illiquid assets, i.e. companies.

- Venture Capital is one of the innovative financing resource for a company in which the promoter has to give up some level of ownership and control of business in exchange for capital for a limited period, say, 3-5 years.
- Venture capital firms finance both early and later stage investments to maintain a balance between risk and profitability.
- Foreign Venture Capital Investor (FVCI) means an investor incorporated and established outside India, which proposes to make investment in venture capital fund(s) or venture capital undertakings in India and is registered under the SEBI (Foreign Venture Capital Investors) Regulations 2000.

GLOSSARY

Buyout	A sector of the private equity industry. Also, the purchase of a controlling interest of a company by an outside investor or a management team.
Corpus	It means the total amount of funds committed by investors to the Alternative Investment Fund by way of a written contract or any other document as on a particulars dated.
Investee Company	It means any company, special purpose vehicle or limited liability partnership or body corporate in which an AIF makes an investment.
Manager	Manager means any person or entity who is appointed by the AIF to manage its investment by whatever name called and may also be same as the sponsor of the fund.
Unit	Unit means beneficial interest of the investors the AIF or a scheme of the AIF and shall include shares or partnership interest.

SELF TEST QUESTIONS

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. What is an Alternative Investment Fund?
2. Explain the different categories of an Alternative Investment Fund?
3. What is placement memorandum? Discuss briefly the contents of placement Memorandum?
4. Explain the provisions with regard to an Angel Fund.
5. What do you understand by private equity? Discuss about different categories of private equity.

Lesson 5
Indian Equity- Non Fund Based

LESSON OUTLINE

- Bonus Issues
- Provisions of the Companies Act, 2013
- SEBI (ICDR) Regulations, 2018
- Procedure for a Bonus Issue
- Sweat Equity
- SEBI (Issue of Sweat Equity Shares) Regulations, 2002
- Employee Stock Option
- Procedure for the Issuance of Sweat Equity Shares
- Regulatory Framework – A snapshot
- SEBI (Shares Based Employee Benefits) Regulations, 2014
- SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Factors to the success of any company is its ability to draw investors to be with the company by issuing various incentives like dividends and bonus shares to them.

Bonus shares are additional shares issued by a company to its existing shareholders for free, based on a ratio of the shares already owned by them. By issuing bonus shares, the number of shares outstanding increases; but while the distribution is made according to the ratio decided by the company, the individual shareholding stake does not change.

At the same time, a company always wants to retain the top talent in the company those already working within the company for the future success of the organization. One of the ways in which companies attract and retain key employees is by rewarding them with equity shares, traditionally, which are called Sweat Equity Shares and through various employee benefits schemes like ESOP. The aim of ESOP or sweat equity is simple: retain your best employees by offering a good enough carrot. So, there is no limit to how discounted the share can be for employees.

In this lesson, we will discuss about the various provisions as laid down by SEBI relating to bonus shares, sweat equity shares and various share based employee benefit schemes.

Being a student of professional programme, a student should know about the various compliances required to be fulfilled from time to time by a company with respect to bonus shares, sweat equity shares and share based employee benefit schemes.

It is pertinent to note that when a student will become a Company Secretary, he/she should be in a capacity to advise the Board of Directors about the various ways to retain the best employee as well as to attract the investors to invest in the company for long run and also advise the Board of Directors with respect to various regulatory compliances with respect to the implementation of these schemes.

BONUS ISSUE

A company may, if its Articles provide, capitalize its profits by issuing fully-paid bonus shares. The issue of bonus shares by a company is a common feature. When a company is prosperous and accumulates large distributable profits, it converts these accumulated profits into capital and divides the capital among the existing members in proportion to their entitlements. Members do not have to pay any amount for such shares. They are given free. The vesting of the rights in the bonus shares takes place when the shares are actually allotted and not from any earlier date.

When a company has accumulated free reserves and is desirous of bridging the gap between the capital and fixed assets, it issues bonus shares to its equity shareholders. Such an issue would not place any fresh funds in the hands of the company. On the contrary, after a bonus issue it would become necessary for the company to earn more to effectively service the increased capital. The shareholder will, however, be benefitted by way of increased return on investment and increased number of shares in their hands.

Advantages of Issuing Bonus Shares

1. Fund flow is not affected adversely.
2. Market value of the Company's shares comes down to their nominal value by issue of bonus shares.
3. Market value of the members' shareholdings increases with the increase in number of shares in the company.
4. Bonus shares is not an income. Hence it is not a taxable income.
5. Paid-up share capital increases with the issue of bonus shares.

Provisions of the Companies Act, 2013

According to section 63(1), a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of –

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account.

No issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Conditions for issue of Bonus Shares

(a) In terms of section 63(2) of the Companies Act, 2013, no company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless – it is authorised by its articles;

(b) It has been authorized by the shareholders in a general meeting of the company, on the recommendation of the Board of Directors;

(c) It has not defaulted in the payment of interest or principal in respect of fixed deposits or debt securities, if any issued by it;

(d) It has not defaulted in respect of the payment of statutory dues of the employees, such as contribution to provident fund, gratuity and bonus;

(e) The partly paid up shares, if any outstanding on the date of allotment have been made fully paid up.

No Bonus shares in lieu of dividend

The bonus shares shall not be issued in lieu of dividend. [Section 63(3)]

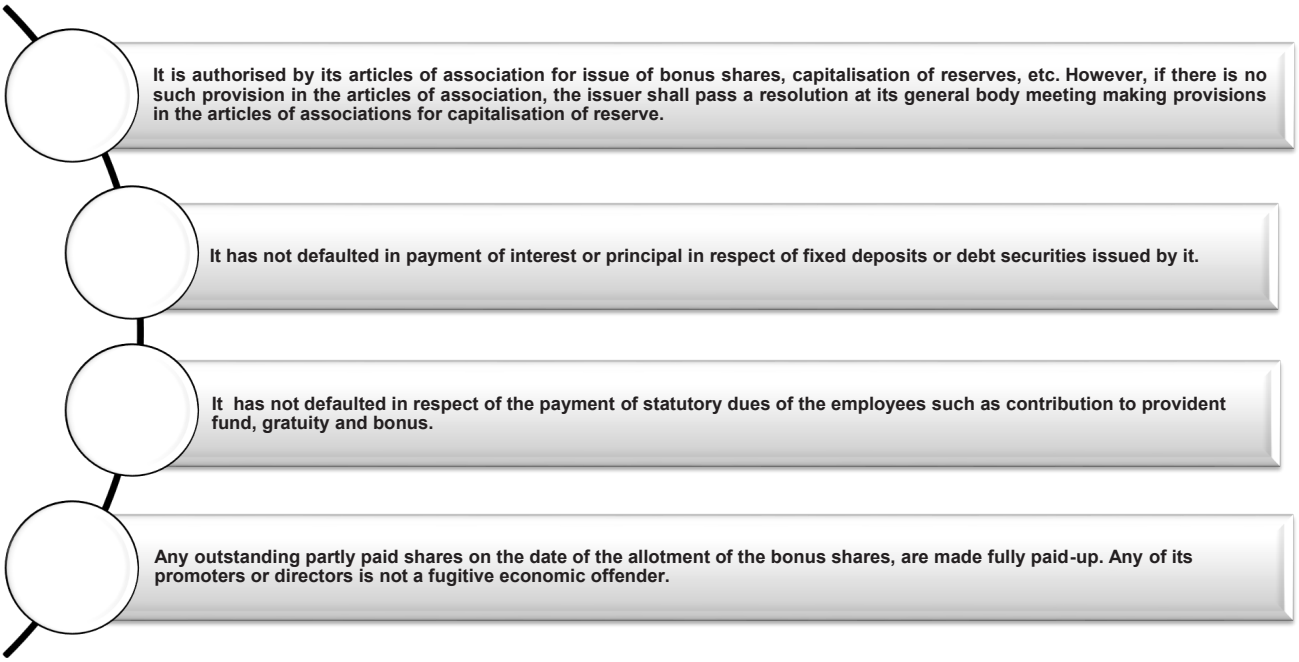
According to Rule 14 of Companies (Share Capital and Debentures) Rules, 2014 states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

SEBI (ICDR) REGULATIONS, 2018

SEBI has issued regulations for Bonus Issue which are contained in Chapter XI of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 with regard to bonus issues by listed companies.

1. Eligibility

Subject to the provisions of the Companies Act, 2013 or any other applicable law, a listed issuer shall be eligible to issue bonus shares to its members if:



2. Rights of FCD/PCD holders

An issuer shall make a bonus issue of equity shares only if it has made reservation of equity shares of the same class in favour of the holders of outstanding compulsorily convertible debt instruments if any, in proportion to the convertible part thereof.

I.e. the proposed bonus issue should not dilute the value or rights of the fully or partly convertible debentures.

The equity shares so reserved for the holders of fully or partly compulsorily convertible debt instruments, shall be issued to the holder of such convertible debt instruments or warrants at the time of conversion of such convertible debt instruments, optionally convertible instruments, warrants, as the case may be, on the same terms or same proportion at which the bonus shares were issued.

3. Bonus out of Free Reserves

Bonus issue shall be made only out of free reserves, securities premium account or capital redemption reserve account and built out of the genuine profits or securities premium collected in cash and reserves created by revaluation of fixed assets shall not be capitalised for this purpose.

4. Bonus Issue not to be in lieu of Dividend

The bonus share shall not be issued in lieu of dividend.

5. Implementation of Proposal within fifteen days

An issuer, announcing a bonus issue after approval by its board of directors and not requiring shareholders' approval for capitalisation of profits or reserves for making the bonus issue, shall implement the bonus issue within fifteen days from the date of approval of the issue by its board of directors.

However, where the issuer is required to seek shareholders' approval for capitalisation of profits or reserves for making the bonus issue, the bonus issue shall be implemented within two months from the date of the meeting of its board of directors wherein the decision to announce the bonus issue was taken subject to shareholders' approval.

Explanation : for the purpose of a bonus issue by a listed entity to be considered as 'implemented' the date of commencement of trading shall be considered

[It may be noted that SEBI has prescribed per day fine if bonus issue is not completed within the above mentioned timeline of fifteen days / two months]

A bonus issue, once announced, shall not be withdrawn.

PROCEDURE FOR ISSUE OF BONUS SHARES

1. To check, if there is a provision in the Articles of Associations (AoA) permitting issue of bonus shares by capitalisation of reserves, etc. If there is no such provision, alter the AoA to permit the issuance of bonus shares. Passing a resolution at the company's general body meeting making provisions in the AoA for capitalisation of reserve.
2. To check and ensure that the expanded capital after the issue is within the authorised share capital of the company. Otherwise, complete the proceedings by increasing the Authorised Capital suitably.
3. To check that there is no default in payment of interest or principal in respect of: (i) fixed deposits or (ii) debt securities issued by your company.
4. To check and ensure that there is no default in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity, bonus etc.
5. In case the share capital of the company consists of any partly paid-up shares, to make it fully paid-up before issue of bonus shares.
6. To ensure that none of the directors or promoters of the company is a fugitive economic offender.
7. To ensure that the Bonus issue is made out of free reserve built out of the genuine profits or share premium collected **in cash only**; that Reserves created by revaluation of fixed assets are not capitalised; and that bonus shares are not issued in lieu of dividend.
8. To ensure that in case the company makes a bonus issue of equity shares if it has outstanding fully or partly convertible debt instruments at the time of making the bonus issue, the company has made reservation of equity shares of the same class in favour of the holders of such outstanding convertible debt instruments in proportion to the convertible part thereof.
9. Issue the equity shares reserved for the holders of fully or partly convertible debt instruments at the time of conversion of such convertible debt instruments on the same terms or same proportion on which the bonus shares were issued.

10. Inform the Stock Exchange atleast 2 working days prior to the date of Board Meeting of the proposal to consider the Bonus Issue.

11. To Convene a Board Meeting to consider the issue of bonus shares and for taking necessary steps in that regard, including fixing the date of closure of books, in consultation with Regional Stock Exchange and to fix up the date, time, place and agenda for holding a General Meeting to pass an Ordinary Resolution, or a Special Resolution, if the Articles so require, to issue bonus shares

12. If the company announcing a bonus issue after the approval of your Board of Directors and does not require shareholders' approval for capitalisation of profits or reserves for making the bonus issue, the Company must implement the bonus issue within 15 days from the date of approval of the issue by Board of Directors.

13. If the Company is required to seek shareholders' approval for capitalisation of profits or reserves for making the bonus issue, the bonus issue must be implemented within 2 months from the date of the meeting of your Board of Directors wherein the decision to announce the bonus issue was taken subject to shareholders' approval.

14. Once the decision to make a bonus issue is announced, the issue cannot be withdrawn.

15. **P**ermission of RBI if any required under Section 6(3)(b) of FEMA, 1999 should be obtained to allot bonus shares to Non-Resident Indians if such issue do not fall under the automatic route.

16. To pass necessary resolution at the General Meeting and to file the same.

17. To fix the record date to determine the shareholders who are eligible to receive bonus shares.

18. To hold a Board Meeting and complete proceeding regarding allotment of the bonus shares in the proportion and in the manner as mentioned in the resolution, and as approved by the Stock Exchange.

19. To obtain necessary listing and trading permission from the stock exchange and file the return of allotment with the ROC in PAS – 3 after paying the requisite fee within 30 days of the allotment of shares.

20. Ensure that the allotment is made within fifteen days of the date on which the Board of directors approved the bonus issue.

21. Submit an application to the Stock Exchange(s) concerned for listing the bonus shares allotted.

SEBI Listing Regulations 2015

As per Regulation 29 of the SEBI Listing Regulations, 2015, the listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in which any of the following proposals is due to be considered -

- The proposal for declaration of bonus securities where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers.

The said intimation is required to be given at least two working days in advance, excluding the date of the intimation and date of the meeting.

However, in case the declaration of bonus by the listed entity is not on the agenda of the meeting of board of directors, prior intimation is not required to be given to the stock exchange(s).

As per Regulation 42 of the SEBI Listing Regulations, 2015, the listed entity shall intimate the record date to all the stock exchange(s) where it is listed for the following purposes-

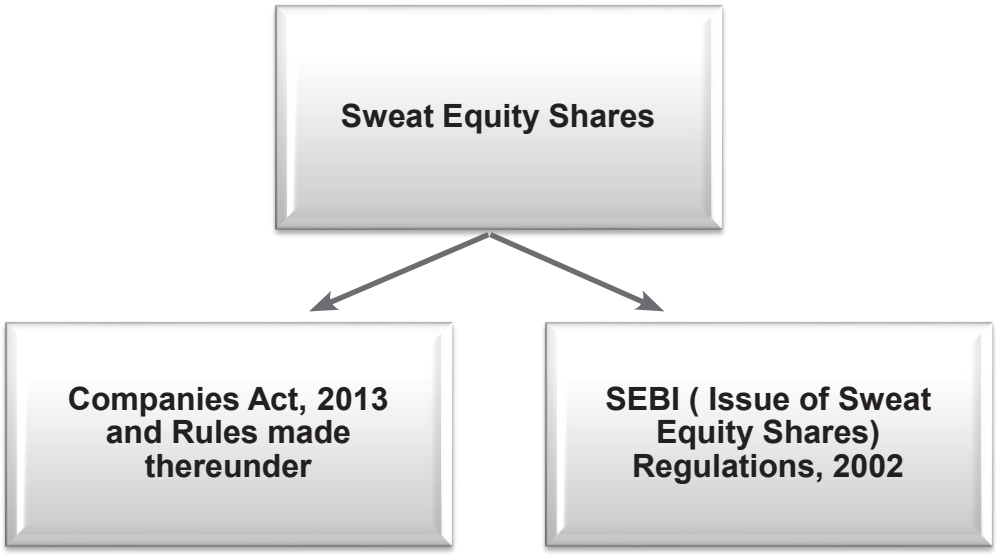
- Issue of right or bonus shares

- The listed entity shall recommend or declare all dividend and/or cash bonuses at least five working days (excluding the date of intimation and the record date) before the record date fixed for the purpose. The listed entity shall disclose to the Exchange(s), within 30 minutes of the closure of the meeting, held to consider the cash bonuses recommended.

SWEAT EQUITY

Section 2 (88) of the Companies Act, 2013 defines "sweat equity shares" means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

The Company issue shares at a discount or for consideration other than cash to selected employees and directors as per norms approved by the Board of Directors of the Company. This is based on the know how provided or intellectual property rights created and given for value additions made by such directors and employees to the company.



Provisions of the Companies Act, 2013

According to Section 54 of the Companies Act, 2013 a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled:

(a) The issue is authorized by a special resolution passed by the company in the general meeting.

(b) The resolution specifies the number of shares, current market price, consideration if any and the class or classes of directors or employees to whom such equity shares are to be issued.

(c) The sweat equity shares of a company whose equity shares are listed on a recognised stock exchange are issued in accordance with the Regulations made by SEBI in this regard and if they are not listed the sweat equity shares are to be issued in accordance with Rule 8 of Companies (Share Capital and Debenture) Rules, 2014.

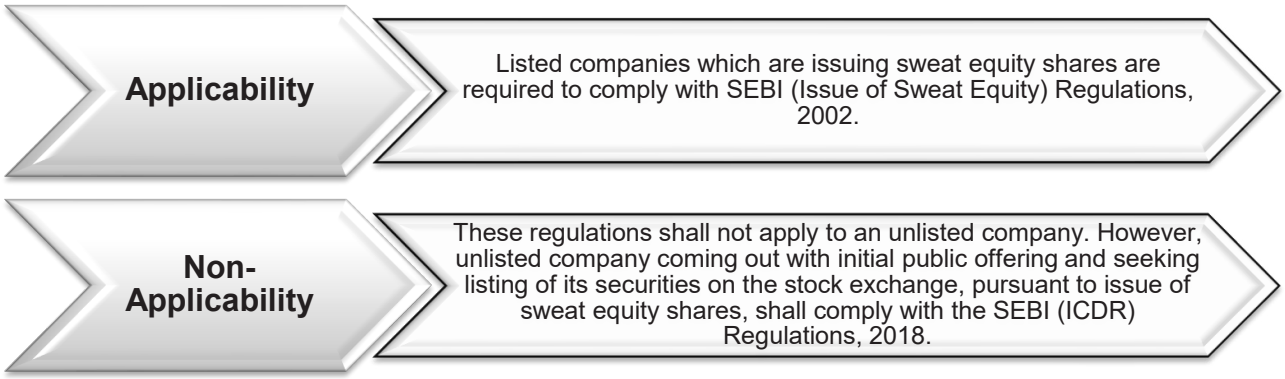
Where the equity shares of the company are listed on a recognized stock exchange, sweat equity shares should be issued in accordance with regulations made by SEBI in this regard.

Whether Issue of sweat equity shares can be in the form of preferential Issue?

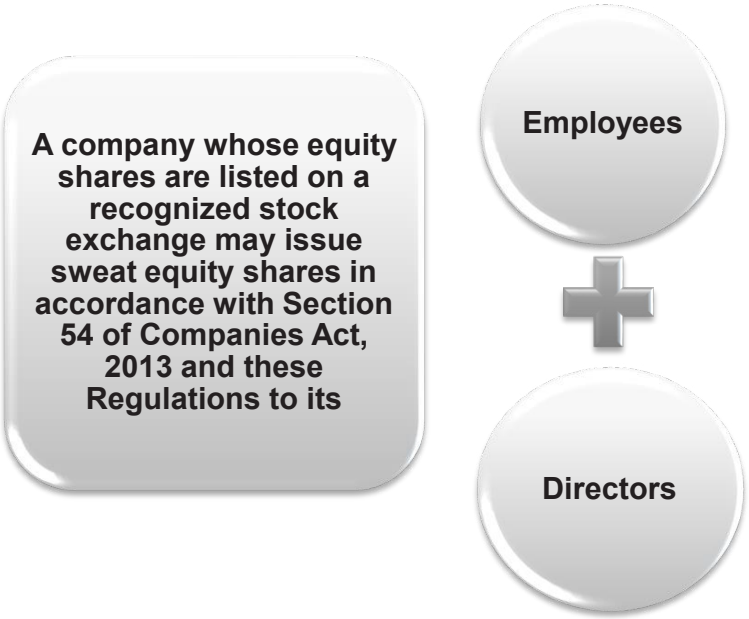
Issue of Sweat Equity Shares is not a 'preferential issue' As per regulation 2(1)(z) of SEBI (ICDR) Regulations, 2009 which gives the meaning of a preferential issue excludes an issue of sweat equity shares there from, which means issue of sweat equity shares is not a preferential issue within the meaning of preferential issue.

Further, Rule 8 (13) of The Companies (Share Capital and Debentures) Rules, 2014, clearly excludes issue of sweat equity shares from the definition of preferential offer.

SEBI (ISSUE OF SWEAT EQUITY SHARES) REGULATIONS, 2002



Sweat equity shares may be issued to employee, director



Special Resolution

For the purposes of passing a special resolution under clause (a) of sub section (1) of Section 54 of the Companies Act, 2013, the Board of Directors at the time of sending notice to the shareholders shall send

additional information for approving the issuance of sweat equity shall, *inter alia*, contain the following information:

a) The total number of shares to be issued as sweat equity.

b) The current market price of the shares of the company.

c) The value of the intellectual property rights or technical know how or other value addition to be received from the employee or director along with the valuation report / basis of valuation.

d) The names of the employees or directors or promoters to whom the sweat equity shares shall be issued and their relationship with the company.

e) The consideration to be paid for the sweat equity.

f) The price at which the sweat equity shares shall be issued.

g) Ceiling on managerial remuneration, if any, which will be affected by issuance of such sweat equity.

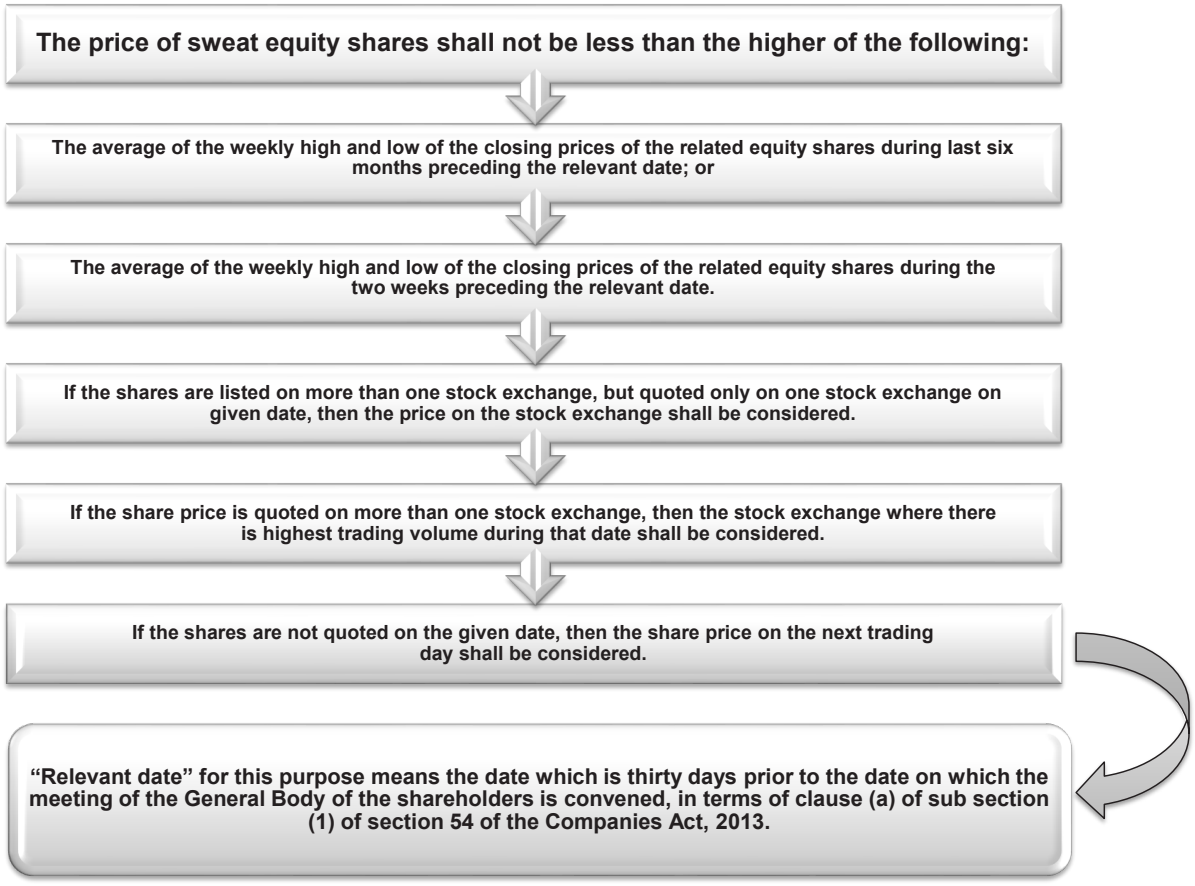
h) A statement to the effect that the company shall conform to the accounting policies as specified by SEBI.

i) Diluted Earning Per Share pursuant to the issue of securities to be calculated in accordance with International Accounting Standards / standards specified by the Institute of Chartered Accountants of India.

Issue of Sweat Equity Shares to Promoters

In case of Issue of sweat equity shares to promoters, the same shall also be approved by simple majority of the shareholders in General Meeting.

Pricing of Sweat Equity Shares

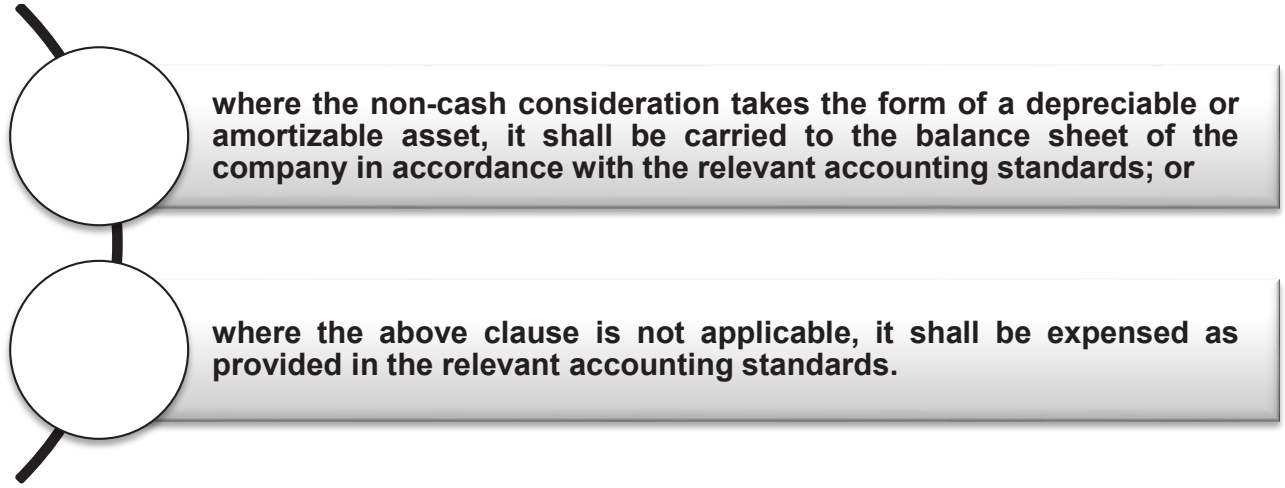


Valuation of intellectual Property

- The valuation of the intellectual property rights or of the know-how provided or other value addition mentioned in Explanation II of sub-rule (1) of Rule (8) of Companies(Share Capital and Debentures) Rules, 2014 shall be carried out by a merchant banker.
- The merchant banker may consult such experts and valuers, as he may deem fit having regard to the nature of the industry and the nature of the property or other value addition.
- The merchant banker shall obtain a certificate from an independent Chartered Accountant that the valuation of the intellectual property or other value addition is in accordance with the relevant accounting standards.

Accounting Treatment

Where the sweat equity shares are issued for a non-cash consideration, such non cash consideration shall be treated in the following manner in the books of account of the company:-



Placing of Auditor's Certificate before Annual General Meeting

In the General meeting subsequent to the issue of sweat equity, the Board of Directors shall place before the shareholders, a certificate from the auditors of the company that the issue of sweat equity shares has been made in accordance with the Regulations and in accordance with the resolution passed by the company authorizing the issue of such Sweat Equity Shares.

Ceiling on Managerial Remuneration

The amount of Sweat Equity shares issued shall be treated as part of managerial remuneration for the purpose of sections 197 of the Companies Act, 2013, if the following conditions are fulfilled:

(i) the Sweat Equity shares are issued to any director or manager; and

(ii) they are issued for non-cash consideration, which does not take the form of an asset which can be carried to the balance sheet of the company in accordance with the relevant accounting standards.

Lock-in

The Sweat Equity shares shall be locked in for a period of three years from the date of allotment. SEBI (ICDR) Regulations, 2018 on public issue in terms of lock-in and computation of promoters' contribution shall apply if a company makes a public issue after it has issued after it has issued sweat equity.

Listing

The Sweat Equity issued by a listed company shall be eligible for listing only if such issues are in accordance with the SEBI Sweat Equity Regulations.

Applicability of Takeover

Any acquisition of Sweat Equity Shares shall be subject to the provision of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

PROCEDURE FOR THE ISSUANCE OF SWEAT EQUITY SHARES

1. To decide before convening a Board Meeting, the number of shares, their current market price and consideration, if any, and the class or classes of directors or employees to whom such of Sweat Equity Shares are proposed to be issued.
2. To convene a Board Meeting to consider the proposal of issue of Sweat Equity Shares and to fix up the date, time, place and agenda for the General Meeting
3. If the sweat equity shares are to be issued by a Listed Company to its promoters the approval of the shareholders shall be obtained by way of a simple majority in the general meeting and through postal ballot. Further, the promoters shall also not participate in the voting process of such a resolution. Each transaction shall be voted by a separate resolution
4. Hold the General Meeting and pass the Special Resolution by three fourths majority and file a copy of the Special Resolution with the ROC.
5. It should be noted that the company cannot issue sweat equity shares for more than 15% of the existing paid up share capital in a year or shares of the issue value of Rs 5 crores, whichever is higher, provided that the issuance of sweat equity shares in the Company shall not exceed 25% of the paid up equity capital of the Company at any time. However if the company is a startup Company, as defined in notification number GSR 180(E) dated 17.02.2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India, it may issue sweat equity shares not exceeding fifty percent of its paid up capital up to five years from the date of its incorporation or registration.
6. The sweat equity shares to be issued to the directors and employees shall be locked in/non transferable for a period of 3 years from the date of allotment
7. The sweat equity shares to be issued shall be valued at a price determined by a registered valuer as the fair price giving justification of such valuation. The valuation of intellectural property rights or of know how or value additions for which sweat equity shares are to be issued shall be carried out by a registered valuer who shall provide a proper report addressed to the Board of Directors with justification for such valuation. A copy of the gist along with critical elements of the valuation report obtained under Clause 6 and Clause 7 of Rule 8 of The Companies (Share Capital and Debentures) Rules, 2014 shall be sent to the shareholders with the notice of the general meeting.
8. To allot the shares within 15 days of the passing of the resolution and file the PAS-3 with the ROC within 30 days of the allotment.
9. In case of a listed company, to apply to the stock exchange and obtain necessary listing and trading approval for the shares so allotted.
10. In case of an issue of sweat equity by a listed company, in the General meeting subsequent to the issue of sweat equity, the Board of Directors shall place before the shareholders, a certificate from the auditors of the Company that the issue of sweat equity shares has been made in accordance with the

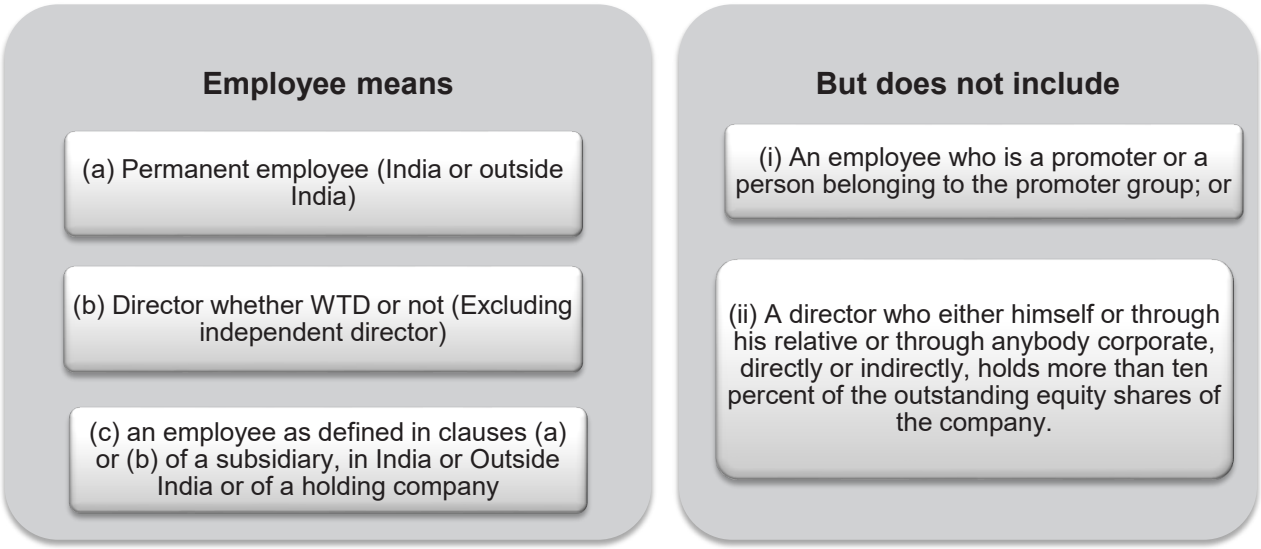
Regulations and in accordance with the resolution passed by the Company authorizing the issue of such Sweat Equity Shares.

11. In case of issue of sweat equity shares by a listed company, the Sweat Equity shares shall be locked in for a period of three years from the date of allotment.

EMPLOYEE STOCK OPTION

As per Section 62(1) (b) of Companies Act, 2013, the Company can offer shares through employee stock option to their employees through special resolution subject to the conditions specified under Rule 12 of Companies (Share Capital and Debentures) Rules 2014.

For the purposes of clause (b) of sub-section (1) of section 62 and this rule ''Employee'' means –



However, in case of Startup Company, as defined in notification number GSR 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry Government of India, Government of India, the conditions mentioned in table point (i) and (ii) shall not apply upto five years from the date of its incorporation or registration.

EQUITY SHARES WITH DIFFERENTIAL RIGHTS

SECTION 43

The share capital of a company limited by shares shall be of two kinds, namely:–

(a) equity share capital –

  (i) with voting rights; or

  (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed in Rule 4 Companies (Share Capital and Debentures) Rules, 2014.

RULE - 4

(1) No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:-

(a) the articles of association of the company authorizes the issue of shares with differential rights;

(b) the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders:

Provided that where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot;

(c) the voting power in respect of shares with differential rights of the company shall not exceed seventy four per cent. of total voting power including voting power in respect of equity shares with differential rights issued at any point of time;

(d) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;

(e) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;

(f) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;

"Provided that a company may issue equity shares with differential rights upon expiry of five years from the end of the financial Year in which such default was made good."

(g) the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.

(d) the company having consistent track record of distributable profits for the last three years.

Note : ***(Omitted by the Companies (Share Capital and Debentures) Amendment Rules, 2019. Dated 16th August, 2019)***

(2) The explanatory statement to be annexed to the notice of the general meeting in pursuance of section 102 or of a postal ballot in pursuance of section 110 shall contain the following particulars, namely:-

(a) the total number of shares to be issued with differential rights;

(b) the details of the differential rights ;

(c) the percentage of the shares with differential rights to the total post issue paid up equity share capital including equity shares with differential rights issued at any point of time;

(d) the reasons or justification for the issue;

(e) the price at which such shares are proposed to be issued either at par or at premium;

(f) the basis on which the price has been arrived at;

(g) (i) in case of private placement or preferential issue –

(a) details of total number of shares proposed to be allotted to promoters, directors and key managerial personnel;

(b) details of total number of shares proposed to be allotted to persons other than promoters, directors and key managerial personnel and their relationship if any with any promoter, director or key managerial personnel;

(ii) in case of public issue - reservation, if any, for different classes of applicants including promoters, directors or key managerial personnel;

(h) the percentage of voting right which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;

(i) the scale or proportion in which the voting rights of such class or type of shares shall vary;

(j) the change in control, if any, in the company that may occur consequent to the issue of equity shares with differential voting rights;

(k) the diluted Earning Per Share pursuant to the issue of such shares, calculated in accordance with the applicable accounting standards;

(l) the pre and post issue shareholding pattern along with voting rights as per clause 35 of the listing agreement issued by Security Exchange Board of India from time to time.

(3) The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice–versa.

(4) The Board of Directors shall, inter alia, disclose in the Board's Report for the financial year in which the issue of equity shares with differential rights was completed, the following details, namely:-

(a) the total number of shares allotted with differential rights;

(b) the details of the differential rights relating to voting rights and dividends;

(c) the percentage of the shares with differential rights to the total post issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;

(d) the price at which such shares have been issued;

(e) the particulars of promoters, directors or key managerial personnel to whom such shares are issued;

(f) the change in control, if any, in the company consequent to the issue of equity shares with differential voting rights;

(g) the diluted Earning Per Share pursuant to the issue of each class of shares, calculated in accordance with the applicable accounting standards;

(h) the pre and post issue shareholding pattern along with voting rights in the format specified under sub-rule (2) of rule 4.

(5) The holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.

(6) Where a company issues equity shares with differential rights, the Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of the shareholders.

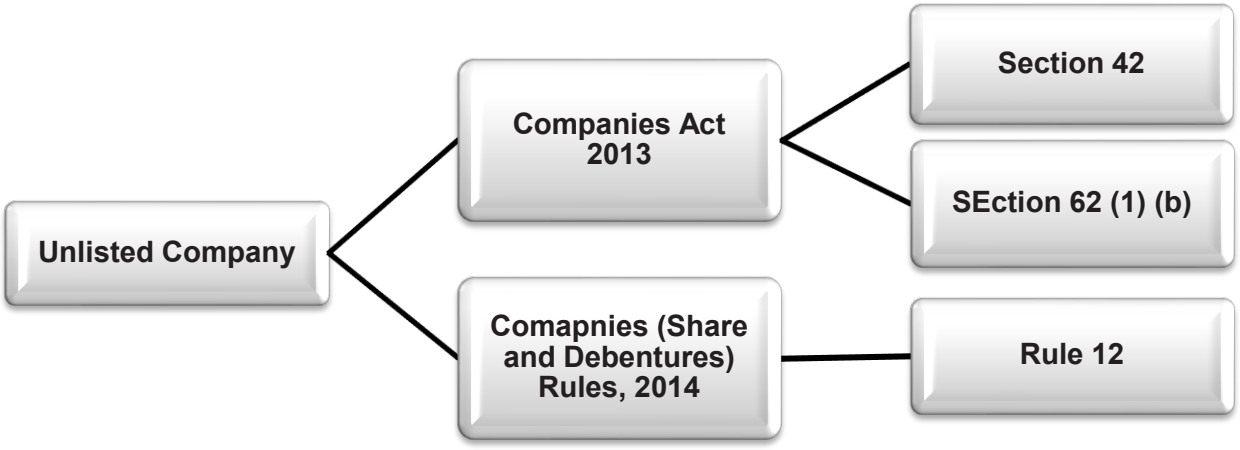
"Explanation.- For the purposes of this rule it is hereby clarified that equity shares with differential rights issued by any company under the provisions of the Companies Act, 1956 (1 of 1956) and the rules made thereunder, shall continue to be regulated under such provisions and rules."

REGULATORY FRAMEWORK – A SNAPSHOT

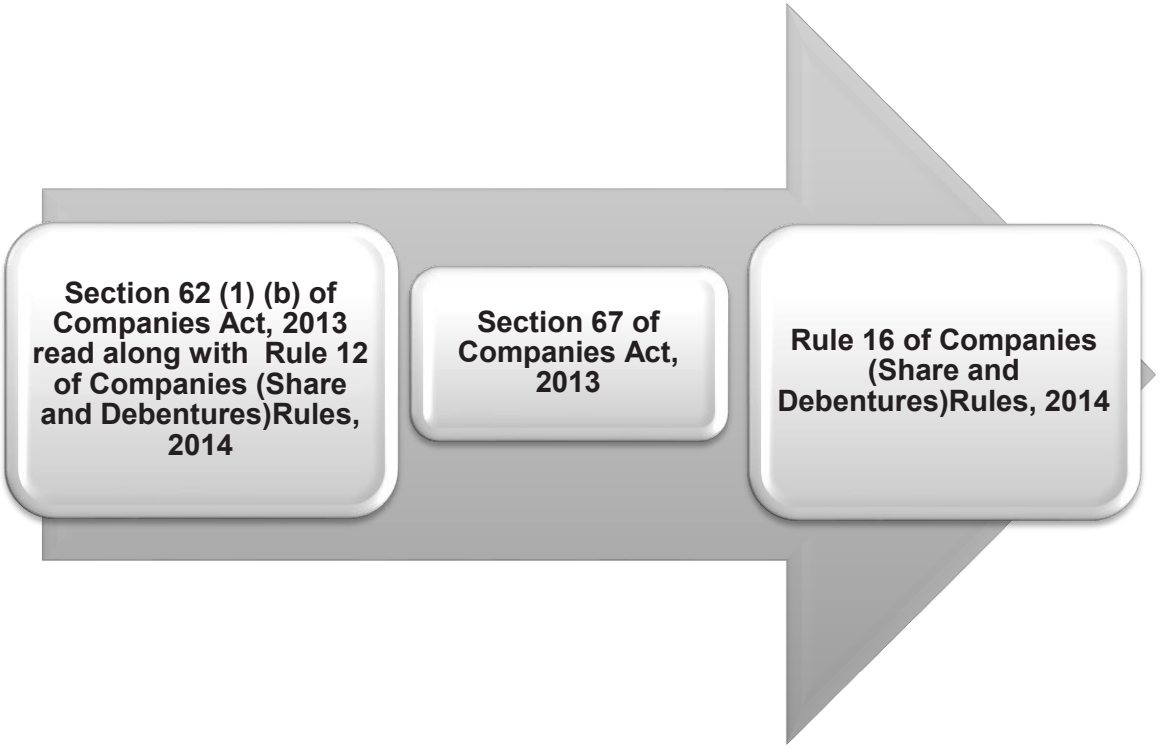
The various legislations governing issuance of ESOP are as under:

1. Companies Act, 2013 and rules made thereunder
2. SEBI (Share Based Employee Benefit) Regulations, 2014 (In case of listed entities only)
3. ICDR Regulations, 2018 (In case of listed companies only)
4. SEBI(Prohibition of Insider Trading) Regulations, 2015 (In case of listed companies only)
5. Income Tax Act, 1961
6. Foreign Exchange Management Act (FEMA), 1999
7. Department of Public Enterprise (DPE) Guidelines (additional Guidelines for PSUs only).

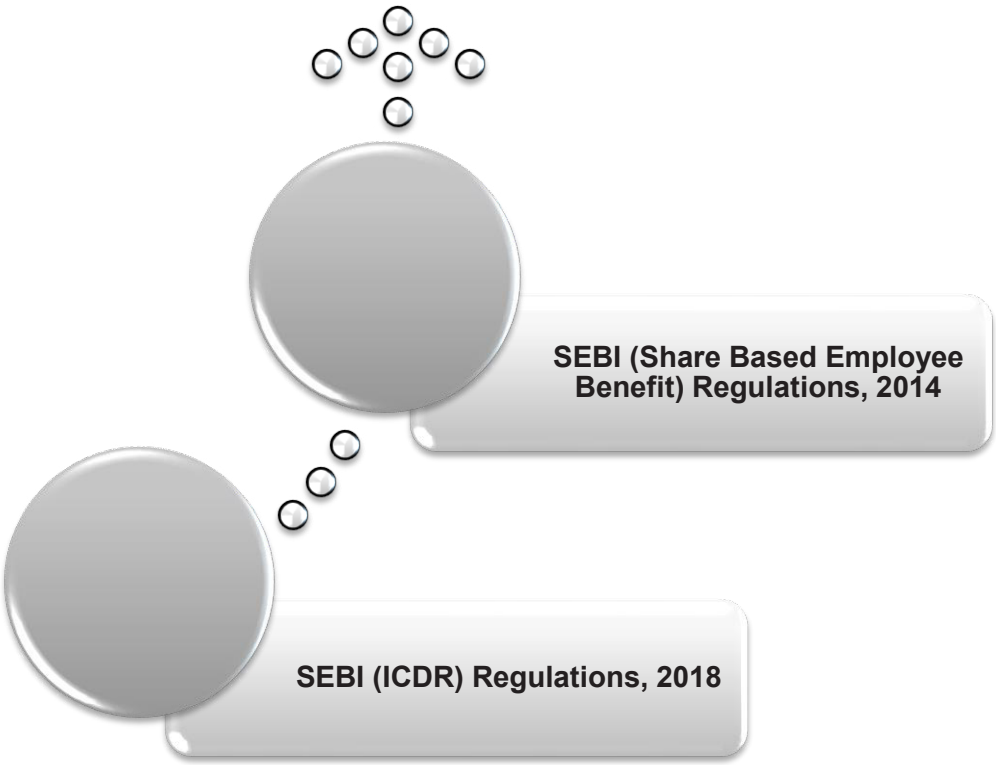
Regulatory Framework - Unlisted Company or Private Company



Regulatory Framework - Unlisted Public Company



Regulatory Framework - Listed Company



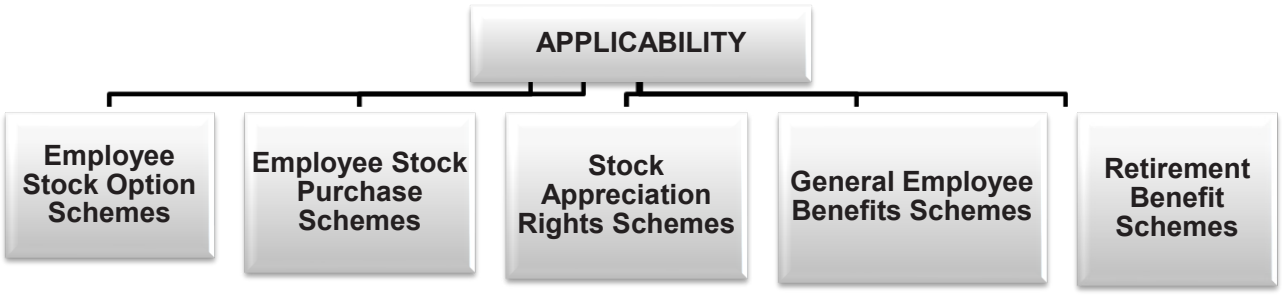
SEBI (SHARE BASED EMPLOYEE BENEFITS) REGULATIONS, 2014

SEBI has, on 28th October 2014 notified the SEBI (Share Based Employee Benefits) Regulations, 2014 to provide for regulation of all schemes by companies for the benefit of their employees involving dealing in shares, directly or indirectly, with a view to facilitate smooth operation of such schemes while preventing any possible manipulation and matters connected therewith or incidental thereto.

The SEBI (Share Based Employee Benefits) Regulations, 2014 comprises of four chapters. Chapter I deal mainly with the preliminary and definition used in regulation. Chapter II provides for implementation and process of scheme. Chapter III deals with administration of specific schemes. Chapter IV deals with miscellaneous provisions.

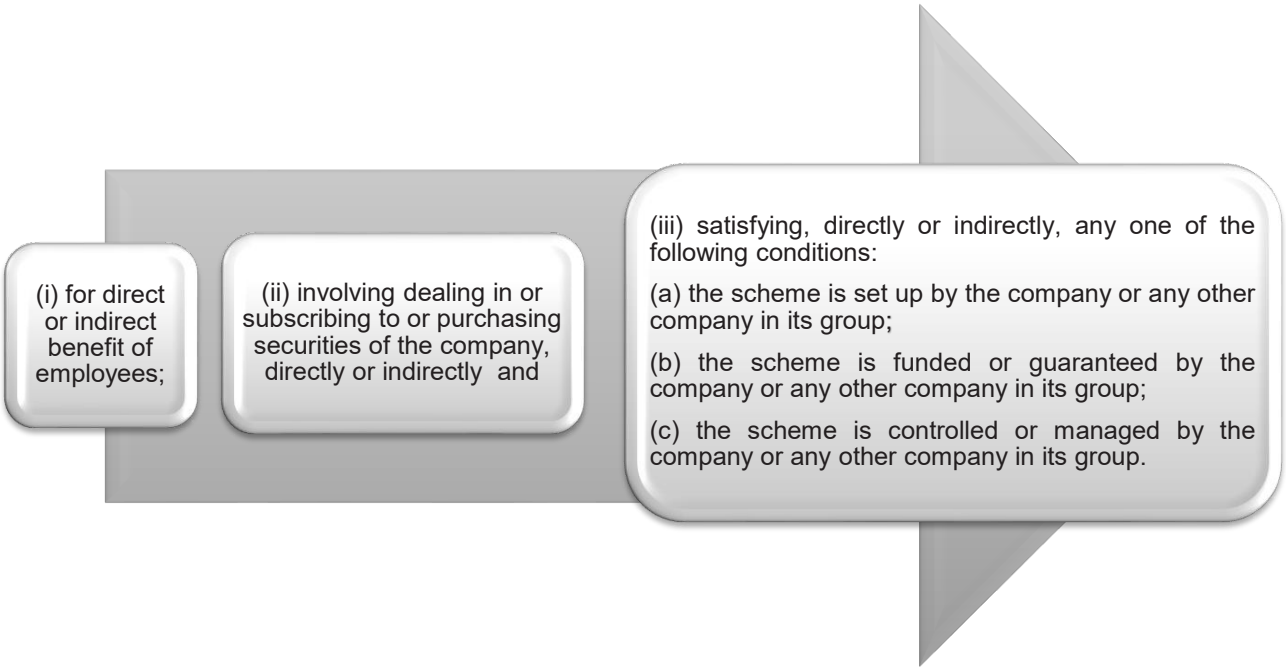
APPLICABILITY

The provisions of these regulations shall apply to following:-



Companies Covered

The provisions of SEBI (SBEB) Regulations shall apply to any company whose shares are listed on a recognised stock exchange in India, and has a scheme:



NON- APPLICABILITY

- SEBI (SBEB) Regulations shall not apply to shares issued to employees in compliance with the provisions pertaining to preferential allotment as specified in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.
- The provisions pertaining to preferential allotment as specified in SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 shall not be applicable in case of a company issuing new shares in pursuance and compliance of these regulations.

Definitions

"***Appreciation***" means the difference between the market price of the share of a company on the date of exercise of stock appreciation right (SAR) or vesting of SAR, as the case may be, and the SAR price.

"***Employee Stock Option Scheme***" means a scheme under which a company grants employee stock option directly or through a trust.

"***Employee Stock Purchase Scheme***" means a scheme under which a company offers shares to employees, as part of public issue or otherwise, or through a trust where the trust may undertake secondary acquisition for the purposes of the scheme.

"***General Employee Benefits Scheme***" means any scheme of a company framed in accordance with these regulations, dealing in shares of the company or the shares of its listed holding company, for the purpose of employee welfare including healthcare benefits, hospital care or benefits, or benefits in the event of sickness, accident, disability, death or scholarship funds, or such other benefit as specified by such company.

"***Relevant Date***" means,-

(i) in the case of grant, the date of the meeting of the compensation committee on which the grant is made; or

(ii) in the case of exercise, the date on which the notice of exercise is given to the company or to the trust by the employee;

"***Retirement Benefit Scheme***" means a scheme of a company, framed in accordance with these regulations, dealing in shares of the company or the shares of its listed holding company, for providing retirement benefits to the employees subject to compliance with existing rules and regulations as applicable under laws relevant to retirement benefits in India.

"***Stock Appreciation Right***" means a right given to a SAR grantee entitling him to receive appreciation for a specified number of shares of the company where the settlement of such appreciation may be made by way of cash payment or shares of the company.

Explanation - An SAR settled by way of shares of the company shall be referred to as equity settled SAR.

"***Stock Appreciation Right Scheme***" means a scheme under which a company grants SAR to employees.

Implementation of the Scheme Through a Trust

1. A company may implement schemes either directly or by setting up an irrevocable trust(s).

   However, if the scheme is to be implemented through a trust the same has to be decided upfront at the time of taking approval of the shareholders for setting up the schemes. However, if the scheme involves secondary acquisition or gift or both, then it is mandatory for the company to implement such scheme(s) through a trust(s).

2. A company may implement several schemes as permitted under these regulations through a single trust. However such a trust shall keep and maintain proper books of accounts, records and documents for each such scheme so as to explain its transactions and to disclose at any point of time the financial position of each scheme and in particular give a true and fair view of the state of affairs of each scheme.

3. SEBI may specify the minimum provisions to be included in the trust deed under which the trust is formed, and such trust deed and any modifications thereto shall be mandatorily filed with the stock exchange in India where the shares of the company are listed.

4. A person shall not be appointed as a trustee, if he-

   (i) is a director, key managerial personnel or promoter of the company or its holding, subsidiary or associate company or any relative of such director, key managerial personnel or promoter; or

   (ii) beneficially holds ten percent or more of the paid-up share capital of the company;

   However, where individuals or 'one person companies' as defined under the Companies Act, 2013 are appointed as trustees, there shall be a minimum of two such trustees, and in case a corporate entity is appointed as a trustee, then it may be the sole trustee.

5. The trustees of a trust, which is governed under these regulations, shall not vote in respect of the shares held by such trust, so as to avoid any misuse arising out of exercising such voting rights.

6. The trustee should ensure that appropriate approval from the shareholders has been obtained by the company in order to enable the trust to implement the scheme(s) and undertake secondary acquisition for the purposes of the scheme(s).

7. The trust shall not deal in derivatives, and shall undertake only delivery based transactions for the purposes of secondary acquisition as permitted by these regulations.

8. The company may lend monies to the trust on appropriate terms and conditions to acquire the shares either through new issue or secondary acquisition, for the purposes of implementation of the scheme(s).

9. For the purposes of disclosures to the stock exchange, the shareholding of the trust shall be shown as 'non-promoter and non-public' shareholding.

> *Explanation: Shares held by the trust shall not form part of the public shareholding which needs to be maintained at a minimum of twenty five per cent as prescribed under Securities Contracts (Regulation) Rules, 1957*

10. Secondary acquisition in a financial year by the trust shall not exceed two per cent of the paid up equity capital as at the end of the previous financial year.

11. The total number of shares under secondary acquisition held by the trust shall at no time exceed the limits prescribed in the Regulations, as a percentage of the paid up equity capital as at the end of the financial year immediately prior to the year in which the shareholder approval is obtained for such secondary acquisition.

Sl. No.	Particulars	Limit
A	for the schemes enumerated in Part A, Part B or Part C of Chapter III of SEBI (SBEB) Regulations	5%
B	for the schemes enumerated in Part D, or Part E of Chapter III of SEBI (SBEB) Regulations	2%
C	for all the schemes in aggregate	5%

12. The un-appropriated inventory of shares which are not backed by grants, acquired through secondary acquisition by the trust under Part A, Part B or Part C of these regulations, shall be appropriated within a reasonable period which shall not extend beyond the end of the subsequent financial year. However, if such trust(s) existing as on the date of notification of these regulations are not able to appropriate the un-appropriated inventory within one year of such notification, the same shall be disclosed to the stock exchange(s) at the end of such period and then the same shall be sold on the recognized stock exchange(s) where shares of the company are listed, within a period of five years from the date of notification of these regulations.

13. The trust shall be required to hold the shares acquired through secondary acquisition for a minimum period of six months except where they are required to be transferred in the circumstances enumerated in this regulation, whether off market or on the platform of stock exchange.

14. The trust shall be permitted to undertake off-market transfer of shares only under the following circumstances:

    - transfer to the employees pursuant to scheme(s);
    - when participating in open offer under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or when participating in buy-back, delisting or any other exit offered by the company generally to its shareholders.

15. The trust shall not become a mechanism for trading in shares and hence shall not sell the shares in secondary market except under the following circumstances:

    - cashless exercise of options under the scheme as prescribed in these regulations;
    - on vesting or exercise, as the case may be, of SAR under the scheme as prescribed in these regulations;

- in case of emergency for implementing the schemes covered under Part D and Part E of Chapter III of SEBI (SBEB) Regulations, and for this purpose -
- the trustee shall record the reasons for such sale; and
- money so realised on sale of shares shall be utilised within a definite time period as stipulated under the scheme or trust deed.
- participation in buy-back or open offers or delisting offers or any other exit offered by the company generally to its shareholders, if required;
- for repaying the loan, if the un-appropriated inventory of shares held by the trust is not appropriated within the timeline as provided above.
- winding up of the scheme(s); and
- based on approval granted by SEBI to an applicant, for the reasons recorded in writing in respect of the schemes covered in these regulations, upon payment of a non-refundable fee of rupees one lakh along with the application by way of direct credit in the bank account through NEFT/ RTGS/ IMPS or any other mode allowed by RBI or by way of a banker's cheque or demand draft payable at Mumbai in favour of SEBI.

16. The trust shall be required to make disclosures and comply with the other requirements applicable to insiders or promoters under the SEBI (Prohibition of Insider Trading) Regulations, 2015 or any modification or re-enactment thereto.

Eligibility

An employee shall be eligible to participate in the schemes of the company as determined by the compensation committee.

Explanation- *Where such employee is a director nominated by an institution as its representative on the board of directors of the company –*

(i) The contract or agreement entered into between the institution nominating its employee as the director of a company, and the director so appointed shall, inter alia, specify the following:-

a. whether the grants by the company under its scheme(s) can be accepted by the said employee in his capacity as director of the company;

b.that grant if made to the director, shall not be renounced in favour of the nominating institution; and

c. the conditions subject to which fees, commissions, other incentives, etc. can be accepted by the director from the company.

(ii) The institution nominating its employee as a director of a company shall file a copy of the contract or agreement with the said company, which shall, in turn file the copy with all the stock exchanges on which its shares are listed.

(iii) The director so appointed shall furnish a copy of the contract or agreement at the first board meeting of the company attended by him after his nomination.

Compensation Committee

A company shall constitute a compensation committee for administration and superintendence of the schemes. However, the company may designate such of its other committees as compensation committee if they fulfil the criteria as prescribed in these regulations. Further that where the scheme is being implemented through a trust the compensation committee shall delegate the administration of such scheme(s) to the trust. The compensation committee shall be a committee of such members of the board of directors of the company as provided under section

178 of the Companies Act, 2013, as amended or modified from time to time. The compensation committee shall, *inter alia,* formulate the detailed terms and conditions of the schemes which shall include the provisions as specified by SEBI in this regard. – The compensation committee shall frame suitable policies and procedures to ensure that there is no violation of securities laws, as amended from time to time, including SEBI (Prohibition of Insider Trading) Regulations, 2015 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003 by the trust, the company and its employees, as applicable.

Shareholders Approval

1. Scheme shall not be offered to employees of a company unless the shareholders of the company approve it by passing a special resolution in the general meeting.
2. The explanatory statement to the notice and the resolution proposed to be passed by shareholders for the schemes shall include the information as specified by SEBI in this regard.
3. Approval of shareholders by way of separate resolution in the general meeting shall be obtained by the company in case of:
    - Secondary acquisition for implementation of the schemes. Such approval shall mention the percentage of secondary acquisition (subject to limits specified under these regulations) that could be undertaken;
    - Secondary acquisition by the trust in case the share capital expands due to capital expansion undertaken by the company including preferential allotment of shares or qualified institutions placement, to maintain the five per cent cap as prescribed in these regulations of such increased capital of the company;
    - Grant of option, SAR, shares or other benefits, as the case may be, to employees of subsidiary or holding company;
    - Grant of option, SAR, shares or benefits, as the case may be, to identified employees, during any one year, equal to or exceeding one per cent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of option, SAR, shares or incentive, as the case may be.

Variation of Terms

1. The company shall not vary the terms of the schemes in any manner, which may be detrimental to the interests of the employees. However the company shall be entitled to vary the terms of the schemes to meet any regulatory requirement.
2. The company may by special resolution in general meeting vary the terms of the schemes offered pursuant to an earlier resolution of the general body but not yet exercised by the employee provided such variation is not prejudicial to the interests of the employees.
3. The provisions of shareholders' approval shall apply to such variation of terms as they apply to the original grant of option, SAR, shares or other benefits, as the case may be.
4. The notice for passing special resolution for variation of terms of the schemes shall disclose full details of the variation, the rationale therefore, and the details of the employees who are beneficiaries of such variation.
5. A company may reprise the options, SAR or shares, as the case may be which are not exercised, whether or not they have been vested if the schemes were rendered unattractive due to fall in the price of the shares in the stock market. However the company shall ensure that such repricing shall not be detrimental to the interest of the employees and approval of the shareholders in general meeting has been obtained for such repricing.

Winding Up of Schemes

In case of winding up of the schemes being implemented by a company through trust, the excess monies or shares remaining with the trust after meeting all the obligations, if any, shall be utilised for repayment of loan or by way of distribution to employees as recommended by the compensation committee.

Non Transferability of Options Granted

1. Option, SAR or any other benefit granted to an employee under the regulations shall not be transferable to any person.
2. No person other than the employee to whom the option, SAR or other benefit is granted shall be entitled to the benefit arising out of such option, SAR, benefit etc., However, in case of ESOS or SAR, under cashless exercise, the company may itself fund or permit the empanelled stock brokers to fund the payment of exercise price which shall be adjusted against the sale proceeds of some or all the shares, subject to the provisions of the applicable law or regulations.
3. The option, SAR, or any other benefit granted to the employee shall not be pledged, hypothecated, mortgaged or otherwise alienated in anyother manner.
4. In the event of death of the employee while in employment, all the options, SAR or any other benefit granted to him under a scheme till such date shall vest in the legal heirs or nominees of the deceased employee.
5. In case the employee suffers a permanent incapacity while in employment, all the options, SAR or any other benefit granted to him under a scheme as on the date of permanent incapacitation, shall vest in him on that day.
6. In the event of resignation or termination of the employee, all the options, SAR, or any other benefit which are granted and yet not vested as on that day shall expire. However, an employee shall, subject to the terms and conditions formulated by the compensation committee, be entitled to retain all the vested options, SAR, or any other benefit covered by these regulations.
7. In the event that an employee who has been granted benefits under a scheme is transferred or deputed to an associate company prior to vesting or exercise, the vesting and exercise as per the terms of grant shall continue in case of such transferred or deputed employee even after the transfer or deputation.

Listing

In case new issue of shares is made under any scheme, shares so issued shall be listed immediately in any recognised stock exchange.

In case of the existing shares are listed, subject to the following conditions :-		
Scheme is in compliance with these regulations.	**A statement specified by SEBI in this regard, is filed and the company has obtained an in-principle approval from the stock exchanges.**	**As and when an exercise is made, the company notifies the concerned stock exchange as per the statement as specified by SEBI in this regard.**

Schemes Implemented by Unlisted Companies

The shares arising after the initial public offering ("IPO") of an unlisted company, out of options or SAR granted under any scheme prior to its IPO to the employees shall be listed immediately upon exercise in all the recognised stock exchanges where the shares of the company are listed subject to compliance with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

Compliances and Conditions

However, the ratification under clause (ii) may be done any time prior to grant of new options or shares or SAR under such pre-IPO scheme.

The company shall not make any fresh grant which involves allotment or transfer of shares to its employees under any schemes formulated prior to its IPO and prior to the listing of its equity shares ('pre-IPO scheme') unless :

- Such pre-IPO scheme is in conformity with these regulations; and

- Such pre-IPO scheme is ratified by its shareholders subsequent to the IPO.

No change shall be made in the terms of options or shares or SAR issued under such pre- IPO schemes, whether by repricing, change in vesting period or maturity or otherwise unless prior approval of the shareholders is taken for such a change, except for any adjustments for corporate actions made in accordance with these regulations.

For listing of shares issued pursuant to ESOS, ESPS or SAR, the company shall obtain the in-principle approval of the stock exchanges where it proposes to list the said shares.

Certificate from the Auditors

In case of company which has passed a resolution for the schemes under these regulations, the board of directors shall at each annual general meeting place before the shareholders a certificate from the auditors of the company that the scheme(s) has been implemented in accordance with these regulations and in accordance with the resolution of the company in the general meeting.

Disclosures

In addition to the information that a company is required to disclose, in relation to employee benefits under the Companies Act, 2013, the board of directors of such a company shall also disclose the details of the scheme(s) being implemented, as specified by SEBI in this regard.

Accounting Policies

Any company implementing any of the share based schemes shall follow the requirements of the 'Guidance Note on Accounting for employee share-based Payments' (Guidance Note)or Accounting Standards as may be prescribed by the Institute of Chartered Accountants of India (ICAI) from time to time, including the disclosure requirements prescribed therein.

Where the existing Guidance Note or Accounting Standard do not prescribe accounting treatment or disclosure requirements for any of the schemes covered under these regulations, then the company shall comply with the relevant Accounting Standard as may be prescribed by the ICAI from time to time.

Administration and Implementation of Specific Schemes

i. EMPLOYEE STOCK OPTION SCHEMES

The ESOS shall contain the details of the manner in which the scheme will be implemented and operated. ESOS shall not be offered unless the disclosures, as specified by SEBI in this regard, are made by the company to the prospective option grantees.

Pricing

The company granting option to its employees pursuant to ESOS will have the freedom to determine the exercise price subject to conforming to the accounting policies as specified in these regulation.

Vesting Period

There shall be a minimum vesting period of one year in case of ESOS. However, in case where options are granted by a company under an ESOS in lieu of options held by a person under an ESOS in another company which has merged or amalgamated with that company, the period during which the options granted by the transfer or company were held by him shall be adjusted against the minimum vesting period required under this sub-regulation.

The company may specify the lock-in period for the shares issued pursuant to exercise of option.

Rights of the option holder

The employee shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to him, till shares are issued upon exercise of option.

Consequence of failure to exercise option

The amount payable by the employee, if any, at the time of grant of option, -

(i) may be forfeited by the company if the option is not exercised by the employee within the exercise period; or

(ii) may be refunded to the employee if the options are not vested due to non-fulfilment of conditions relating to vesting of option as per the ESOS.

Administration and Implementation of Employee Stock Purchase Scheme

The ESPS scheme shall contain the details of the manner in which the scheme will be implemented and operated.

Pricing and Lock-In

The company may determine the price of shares to be issued under an ESPS, provided they conform to the provisions of accounting policies under these regulation. Shares issued under an ESPS shall be locked-in for a minimum period of one year from the date of allotment.

However, in case where shares are allotted by a company under an ESPS in lieu of shares acquired by the same person under an ESPS in another company which has merged or amalgamated with the first mentioned company, the lock-in period already undergone in respect of shares of the transferor company shall be adjusted against the lock-in period required under this sub-regulation.

If ESPS is part of a public issue and the shares are issued to employees at the same price as in the public issue, the shares issued to employees pursuant to ESPS shall not be subject to lock-in.

Administration and Implementation of Stock Appreciation Rights

The SAR scheme shall contain the details of the manner in which the scheme will be implemented and operated. The company shall have the freedom to implement cash settled or equity settled SAR scheme. However, in case of equity settled SAR scheme, if the settlement results in fractional shares, then the consideration for fractional shares should be settled in cash.

SAR shall not be offered unless the disclosures, as specified by SEBI in this regard, are made by the company to the prospective SAR grantees.

Vesting

There shall be a minimum vesting period of one year in case of SAR scheme. However, in a case where SAR is granted by a company under a SAR scheme in lieu of SAR held by the same person under a SAR scheme in another company which has merged or amalgamated with the first mentioned company, the period during which the SAR granted by the transferor company were held by the employee shall be adjusted against the minimum vesting period required under this sub-regulation.

Rights of the SAR Holder

The employee shall not have right to receive dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of SAR granted to him.

Administration and Implementation of General Employee Benefit Schemes

General Employee Benefit Schemes (GEBS) contain the details of the scheme and the manner in which the scheme shall be implemented and operated. At no point in time, the shares of the company or shares of its listed holding company shall exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of GEBS.

Administration and Implementation of Retirement Benefit Schemes

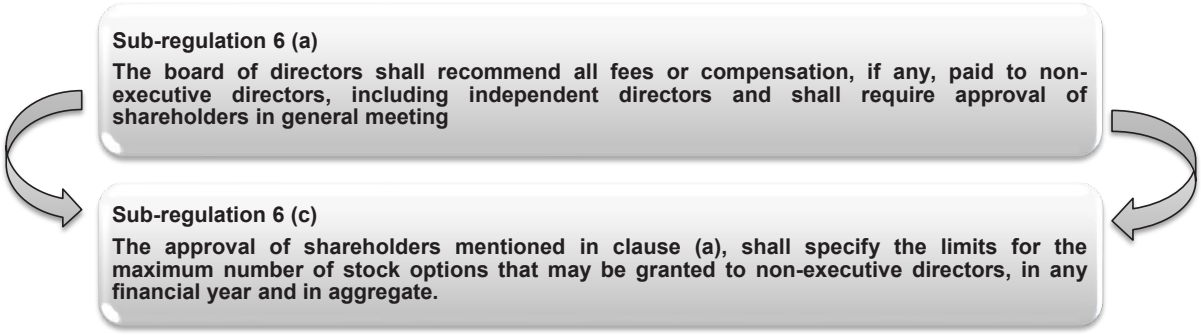
Retirement Benefit Scheme (RBS) may be implemented by a company provided it is incompliance with these regulations, and provisions of any other law in force in relation to retirement benefits. The retirement benefit scheme shall contain the details of the benefits under the scheme and the manner in which the scheme shall be implemented and operated. At no point in time, the shares of the company or shares of its listed holding company shall exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of RBS.

Directions by SEBI and Action in Case of Default

SEBI may issue any direction or order or undertake any measure in the interests of the investors or the securities market, and deal with any contravention of these regulations, in exercise of its powers under SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956 or the Companies Act, 2013 and any statutory modification or re-enactment thereto.

SEBI (LISTING OBLIGATIONS & DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

Regulation 17: Board of Directors



Regulation 30: Disclosure of events or information read with Para B of Part A of Schedule III

(1) Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.

(3) The listed entity shall make disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in sub-regulation (4).

(4) (i) The listed entity shall consider the following criteria for determination of materiality of events/ information:

(a) the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or

(b) the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;

(c) case where the criteria specified in sub-clauses (a) and (b) are not applicable, an event/information may be treated as being material if in the opinion of the board of directors of listed entity, the event / information is considered material.

(ii) The listed entity shall frame a policy for determination of materiality, based on criteria specified in this sub-regulation, duly approved by its board of directors, which shall be disclosed on its website.

(6) The listed entity shall first disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information:

Provided that in case the disclosure is made after twenty four hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanation for delay:

(7) The listed entity shall disclose on its website all such events or information which has been disclosed to stock exchange(s) under this regulation, and such disclosures shall be hosted on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.

SCHEDULE III PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES

Events which shall be disclosed upon application of the guidelines for materiality referred under sub-regulation (4) of regulation (30):

Options to purchase securities including any ESOP/ESPS Scheme.

SEBI circular dated September 09, 2015

Details which a listed entity need to disclose for events on which the listed entity may apply materiality in terms of Para B of Part A of Schedule III of Listing Regulations.

Item No. 10. Options to purchase securities [including any Share Based Employee Benefit (SBEB) Scheme] at the time of instituting the scheme and vesting or exercise of options:

a) brief details of options granted;

b) whether the scheme is in terms of SEBI (SBEB) Regulations, 2014 (if applicable);

c) total number of shares covered by these options;

d) pricing formula;

e) options vested;

f) time within which option may be exercised;

g) options exercised;

h) money realized by exercise of options;

i) the total number of shares arising as a result of exercise of option;

j) options lapsed;

k) variation of terms of options;

l) brief details of significant terms;

m) subsequent changes or cancellation or exercise of such options;

n) diluted earnings per share pursuant to issue of equity shares on exercise of options.

Procedure for issuing ESOP by a Listed Company

- Hold a Board Meeting to consider and approve ESOP and formation of Compensation Committee;
- Compensation committee shall plan draft the scheme of ESOP;
- Hold Board meeting to adopt the final scheme, appoint the Merchant banker and approve the notice of the General meeting for shareholders' approval;
- Hold General Meeting for approval of shareholders;
- Make an application to the stock exchange for obtaining in-principal approval of the stock exchange;
- Issue of letter of grant of option to the eligible employees along with the letter of acceptance of option;
- On receipt of letter of acceptance of option along with upfront payment (if any), from the employee issue the option certificates;
- After expiry of vesting period, not less than one year the options shall vest in the employee.
- At that time, the Company shall issue a letter of vesting along with the letter of exercise of options;
- Receipt to letter of exercise from the employee;
- Hold a Board Meeting at the suitable Interval during the exercise period for allotment of shares on options exercised by the optioness;
- Dispatch of letter of allotment along with the share certificates or credit the shares so allotted with the Depositories;

- Make an application to the Stock exchange for listing of the Shares so allotted; and
- Receipt of Listing of the shares from the Stock exchange.

LESSON ROUND UP

- When a company has accumulated free reserves and is desirous of bridging the gap between the capital and fixed assets, it issues bonus shares to its equity shareholders.
- No issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.
- As per Section 63(3) of the Companies Act, 2013, the bonus shares shall not be issued in lieu of dividend.
- According to Rule 14 of Companies (Share Capital and Debentures) Rules, 2014 states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same
- SEBI has issued regulations for Bonus Issue which are contained in Chapter XI of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 by listed companies.
- Section 2 (88) of the Companies Act, 2013 defines “sweat equity shares” means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.
- Where the equity shares of the company are listed on a recognized stock exchange, sweat equity shares should be issued in accordance with regulations made by SEBI in this regard.
- In case of Issue of sweat equity shares to promoters, the same shall also be approved by simple majority of the shareholders in General Meeting.
- As per Section 62(1) (b) of Companies Act 2013, the Company can offer shares through employee stock option to their employees through special resolution subject to the conditions specified under Rule 12 of Companies (Share Capital and Debentures) Rules 2014.
- Issue of Employee Stock option by a listed entity is regulated by SEBI (Share Based Employee Benefits) Regulations, 2014
- SEBI has, on 28th October 2014 notified SEBI (Share Based Employee Benefits) Regulations, for regulation of all schemes by companies for the benefit of their employees involving dealing in shares, directly or indirectly, with a view to facilitate smooth operation of such schemes while preventing any possible manipulation and matters connected therewith or incidental thereto.
- A company may implement the various schemes as prescribed under SEBI (SBEB) Regulations either :
  - ⇒ directly or
  - ⇒ by setting up an irrevocable trust(s).
- An employee shall be eligible to participate in the schemes of the company as determined by the compensation committee.
- In case of winding up of the schemes being implemented by a company through trust, the excess monies or shares remaining with the trust after meeting all the obligations, if any, shall be utilised for repayment of loan or by way of distribution to employees as recommended by the compensation committee.

GLOSSARY

Ex-bonus	The shares is described as ex-bonus when a potential purchaser is entitled to receive the current bonus, the right to who remains with the seller.
Exercising the option	The act of buying selling the underlying asset via the option contract.
Intellectual Property	It is a category of properly that includes intangible creations of the human intellect and primarily encompasses copyrights, patents and trademarks. It also includes other types of rights, such as trade secret, publicity rights, moral rights and rights against unfair competition.
Voting Rights	The entitlement of a shareholder to exercise vote in the general meeting of a company.
Vesting	The process by which the employee is given rights to apply for shares of the company against the option granted to him in pursuance of ESOS

SELF TEST QUESTIONS

(*These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. Briefly discuss the procedure for issuing bonus shares by listed company.
2. What are applicability and non-applicability of the SEBI (Issue of Sweat Equity) Regulations, 2002?
3. Explain the requirements for issue of Sweat Equity shares to promoters.
4. Explain the implementation of Schemes through trust route.
5. Elucidate the conditions where approval of shareholders shall be obtained by passing of separate resolution in the general meeting under SEBI (Share Based Employee Benefits) Regulations, 2014.

Lesson 6
Debt Funding – Indian Fund Based (Corporate Debt)

LESSON OUTLINE

- Introduction
- Debt Market
- Debentures
- Types of Debentures
- Governing Framework for Debt Securities
- SEBI (Issue and Listing of Debt Securities) Regulations, 2008
- Fund raising by issuance of Debt Securities by Large Entities
- Electronic Book Mechanism for issuance of securities on private placement basis
- Indicative Timeline Schedule for Various Activities
- Green Debt Securities
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

A vibrant capital market, both equity and bond, has to play an increasingly pivotal role to facilitate fund mobilization for sustaining India's projected economic growth momentum.

A debenture being an attractive source of funding, is a long-term debt instrument issued by corporates and Government to secure fresh funds or capital. Coupons or interest rates are offered as compensation to the lender. Company issues non convertible debentures to attract lenders and investors, these come with higher interest rates.

Being a student of professional programme, a student should be aware of various techniques of corporate funding and their compliances and regulatory framework as well. As debentures are very popular source of funding form company's point of view because a debenture represents a creditor to the company and no participation in the management of the company in comparison to equity shares. Further, debenture holders do not enjoy voting rights.

Further SEBI in its continues endeavorer to deepen Debt Market in India, came out with a framework for issuance of debt securities by Large Corporate.

In this lesson, the Regulatory Framework for issue of convertible and non-convertible debentures, issuance of debt securities by large corporates and green debt securities are explained.

INTRODUCTION

A vibrant capital market, both equity and bond, has to play an increasingly pivotal role to facilitate fund mobilization for sustaining India's projected economic growth momentum. The role of corporate bond market becomes even more important now, given the stress on the banking sector.

Keeping in view the larger complementary role that corporate bonds have to play along-side bank credit for financing economic activities, several policy measures have been taken by the Government and the Regulators to develop a vibrant corporate bond market.

Some important measures include:

- Framework for allowing banks to provide Partial Credit Enhancement for enhancing creditworthiness of corporate bonds;
- Information Repositories developed by Exchanges and Depositories to provide consolidated information on primary issuance and secondary market trades in corporate bonds;
- Electronic Book Building mechanism for providing enhanced transparency in issuance of debt securities on private placement basis;
- Enhanced standards for Credit Rating Agencies for timely monitoring of credit quality of bonds;
- Specifications related to International Securities Identification Number (ISINs) for debt securities to encourage liquidity and reduce fragmentation of issues;
- Tri-Party Repo trading on Exchanges to enhance liquidity and price discovery in corporate bonds;
- Time taken for listing of public issue of bonds reduced from 12 days to 6 days; and
- Doing away with the requirement of 1% security deposit for public issue of debt securities.

DEBT MARKET

Debt markets are markets for the issuance, trading and settlement of various types and features of fixed income securities. Fixed income securities can be issued by any legal entity like central and state governments, public bodies, statutory corporations, banks and institutions and corporate bodies.

The debt market in India comprises mainly of two segments viz., the Government securities market consisting of Central and State Governments securities, Zero Coupon Bonds (ZCBs), Floating Rate Bonds (FRBs), T-Bills and the corporate securities market consisting of FI bonds, PSU bonds, and Debentures/Corporate bonds. Government securities form the major part of the market in terms of outstanding issues, market capitalization and trading value.

The trading of government securities on the Stock exchanges is currently through Negotiated Dealing System using members of Bombay Stock Exchange (BSE) / National Stock Exchange (NSE) and these trades are required to be reported to the exchange. The bulk of the corporate bonds, being privately placed, were, however, not listed on the stock exchanges and the trend is changing now. Most of the debt securities which are privately placed are now listed either on both the exchanges or on one of the exchange. Two Depositories, National Securities Depository Limited (NSDL) and Central Depository Services (India) Limited (CDSL) maintain records of holding of securities in a dematerialized form. Records of holding of government securities for wholesale dealers like banks/Primary Dealers (PDs) and other financial institutions are maintained by the RBI.

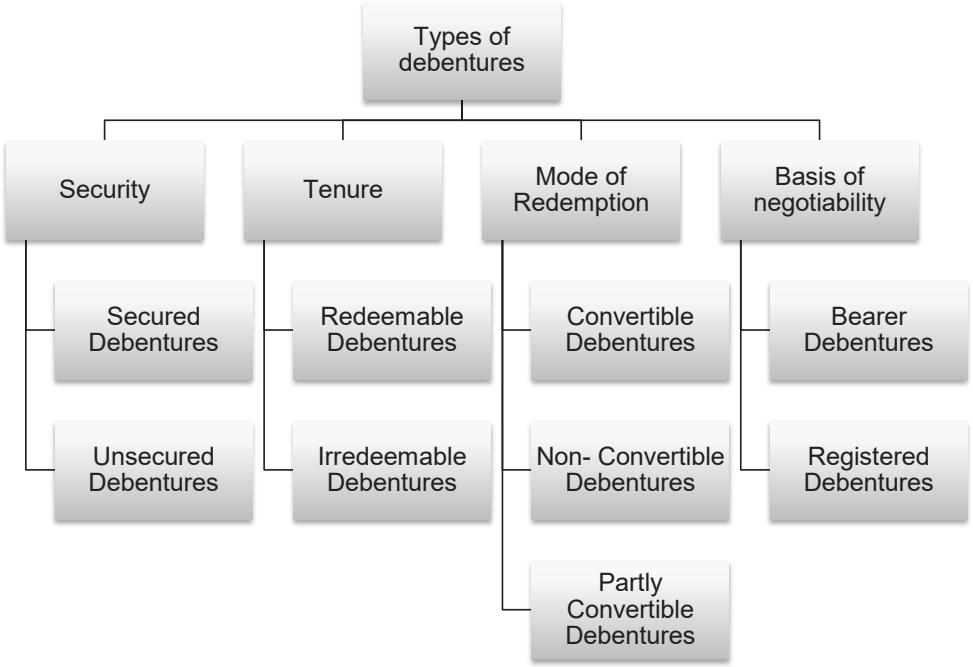
Negotiated Dealing System (NDS) is an electronic platform for facilitating dealing in Government Securities and Money Market Instruments. NDS facilitates electronic submission of bids/application by members for primary issuance of Government Securities by RBI through auction and floatation. It will provide an interface to the Securities Settlement System.

DEBENTURES

Debenture is a document evidencing a debt or acknowledging it and any document which fulfills either of these conditions is a debenture. They can be either convertible or non convertible into equity shares at a later point in time. Debenture is a written instrument acknowledging a debt to the Company. It contains a contract for repayment of principal after a specified period or at intervals or at the option of the company and for payment of interest at a fixed rate payable usually either half-yearly or yearly on fixed dates.

Section 2(30) of the Companies Act, 2013 defines a debenture which includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not.

TYPES OF DEBENTURES



SECURITY

(a) *Secured Debentures*

Secured debentures refer to those debentures where a charge is created on the assets of the company for the purpose of payment in case of default.

The secured debenture holders have greater protection. Holders of secured debentures remain convinced about the payment of interest and payment of principal in the event of redemption.

(b) *Unsecured Debentures*

These debentures are also known as naked debentures. These debentures are not secured by way of charge on the company's assets. Interest rate payable on unsecured debentures is generally higher than that which is payable on secured debentures.

TENURE

Redeemable Debentures

Redeemable debentures are those which are payable on the expiry of the specific period (Maximum period 10 years from the date of issue) either in lump sum or in Installments during the life time of the company. Debentures can be redeemed either at par or at premium.

Irredeemable Debentures

Irredeemable debentures are also known as Perpetual Debentures because the company does not give any undertaking for the repayment of money borrowed by issuing such debentures. These debentures are repayable on the winding-up of a company or on the expiry of a long period. Debentures may be for fixed terms or payable on demand. Debentures may be for fixed term of years or repayable on notice. They can legally be framed as payable to bearer.

MODE OF REDEMPTION

These debentures are issued by a company on the basis of option provided to them for conversion of debenture in the equity shares of the company after a certain period. It may be classified in the following categories:—

a. *Convertible Debenture*

These debentures are converted into equity shares of the company on the expiry of a specified period.

b. *Non- Convertible Debenture*

Non-convertible debentures do not have any option to convert the same into equity shares and are redeemed at the expiry of specified period(s).

c. *Partly Convertible Debenture:*

Partly convertible debentures are divided into two portions, viz., convertible and non-convertible portion. The convertible portion is converted into equity shares of the company at the expiry of specified period. The non-convertible portion is redeemed at the expiry of the specified period in terms of the issue.

BASIS OF NEGOTIABILITY

Debentures issued by a company may be negotiable or non-negotiable. There are following two types of debentures:–

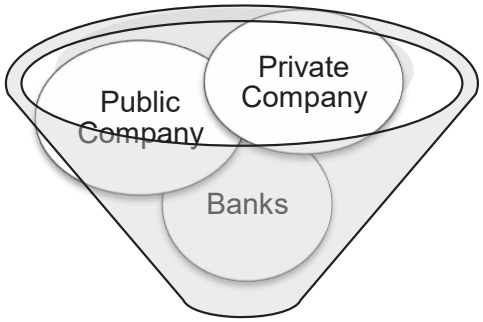
Bearer Debentures

These debentures are payable to bearer of the debentures and transferable by mere delivery. These debentures are also known as unregistered debentures.

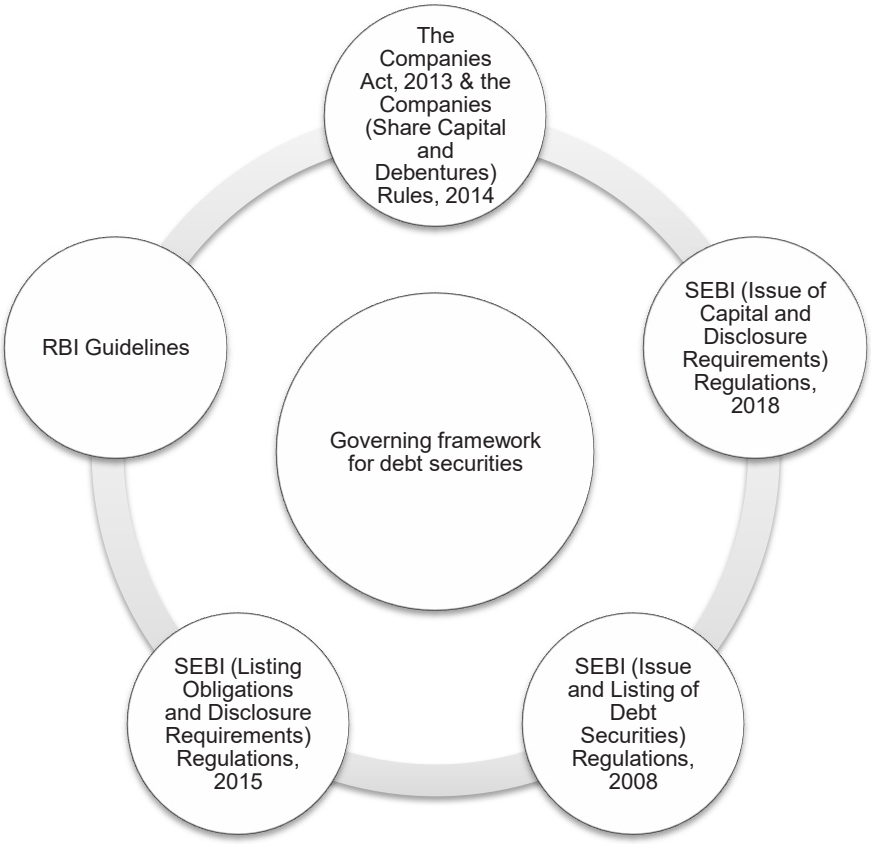
Registered Debentures

These debentures are not transferable by mere delivery of debenture certificates and shall be transferred as per the provisions of the Companies Act, by executing transfer deeds and the transfer registered by the company. Registered debentures are not negotiable instruments. A registered holder of a debenture means a person whose name appears both in the debenture certificate and in the register of debenture holders. Principal and interest amount, when due in respect of these debentures are payable to the registered holders thereof only.

Who can Issue Debt Securities



GOVERNING FRAMEWORK FOR DEBT SECURITIES



(1) The Companies Act, 2013 & the Companies (Share Capital and Debentures) Rules, 2014

Section 71 of the Companies Act, 2013 prescribes the conditions for issue of debentures. A debenture is a legal document that represents a secure means by which a creditor can lend money to the debtor. A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption.

The companies is required to comply with section 71 (Debentures) read with Rule 18 of the Companies (Share Capital and Debentures) Rules 2014.

(2) SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

Debt securities which are convertible, either partially or fully or optionally into listed or unlisted equity shall be

guided by the disclosure norms applicable to equity or other instruments offered on conversion in terms of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

(3) SEBI (Issue and Listing of Debt Securities) Regulations, 2008

SEBI (Issue and Listing of Debt Securities) Regulations, 2008 pertaining to issue and listing of debt securities which are not convertible, either in whole or part into equity instruments. They provide for a rationalized disclosure requirements and a reduction of certain onerous obligations attached to an issue of debt securities.

(4) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations")

The listing of securities is ensured by way of an agreement which is entered into between a stock exchange and the issuing company. This agreement called listing agreement. All Listed entities shall comply with the listing conditions as stipulated in Listing Regulations to provide substantial information about the company to the stock exchanges on a daily basis. The provisions of Chapter V from Regulation 49 to 62 of 'Listing Regulations' shall apply only to a listed entity which has listed its 'Non-convertible Debt Securities' and/or 'Non-Convertible Redeemable Preference Shares' on a recognised stock exchange in accordance with SEBI (Issue and Listing of Debt Securities) Regulations, 2008 or SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 respectively. The provisions of chapter V shall also be applicable to "***perpetual debt instrument" and "perpetual non-cumulative preference share"*** listed by banks.

(5) RBI Guidelines

RBI guidelines allow banks to raise capital by issue of non-equity instruments such as Perpetual Non-Cumulative Preference Shares (PNCPS) and innovative Perpetual Debt Instruments (PDI).These instruments need to be in compliance with the specified criteria for inclusion in Additional Tier I Capital. Further, these instruments inter-alia should be able to absorb loss either through: (i) conversion to common shares at an objective pre-specified trigger point or (ii) a write-down mechanism that allocates losses to the instruments at a pre-specified trigger point.

Whereas RBI vide circular dated September 01, 2014 on the "Implementation of Basel III Capital Regulations in India – Amendments" has *inter-alia* allowed banks to issue Additional Tier 1 (AT1) instruments to retail investors. Further, RBI vide its Master Circular on Basel III Capital Regulations dated July 1, 2015 has also specified additional disclosure requirements for PNCPS and PDIs. Further, to this, RBI vide its notification dated February 02, 2017 amended the Criteria for inclusion of Perpetual Debt Instruments (PDI) in Additional Tier 1 Capital.

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

Issue of debt securities that are convertible, either partially or fully or optionally into listed or unlisted equity shall be governed by the disclosure requirements applicable to equity or other instruments offered on conversion in terms of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

According to SEBI (ICDR) Regulations, 2018, convertible debt instruments means an instrument which creates or acknowledges indebtedness or is convertible into equity shares of the issuer at a later date at or without the option of the holder of the instrument, whether constituting a charge on the assets of the issuer or not.

Issue and listing of non-convertible debt securities, whether issued to the public or privately placed, are required to be made in accordance with the provisions of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

Eligibility

An issuer shall be eligible to make an initial public offer of convertible debt instruments even without making a prior public issue of its equity shares and listing thereof.

However, it is not in default of payment of interest or repayment of principal amount in respect of debt instruments issued by it to the public, if any, for a period of more than six months.

Additional requirements for issue of convertible debt instruments

In addition to other requirements laid down in these regulations, an issuer making an initial public offer of convertible debt instruments shall also comply with the following conditions:

(a) it has obtained credit rating from at least one credit rating agency;

(b) it has appointed at least one debenture trustee in accordance with the provisions of the Companies Act, 2013 and SEBI (Debenture Trustees) Regulations, 1993;

(c) it shall create a debenture redemption reserve in accordance with the provisions of the Companies Act, 2013 and rules made thereunder;

(d) if the issuer proposes to create a charge or security on its assets in respect of secured convertible debt instruments, it shall ensure that:

  (i) such assets are sufficient to discharge the principal amount at all times;

  (ii) such assets are free from any encumbrance;

  (iii) where security is already created on such assets in favour of any existing lender or security trustee or the issue of convertible debt instruments is proposed to be secured by creation of security on a leasehold land, the consent of such lender or security trustee or lessor for a second or pari passu charge has been obtained and submitted to the debenture trustee before the opening of the issue;

  (iv) the security or asset cover shall be arrived at after reduction of the liabilities having a first or prior charge, in case the convertible debt instruments are secured by a second or subsequent charge.

The issuer shall redeem the convertible debt instruments in terms of the offer document.

Conversion of optionally convertible debt instruments into equity shares

- The issuer shall not convert its optionally convertible debt instruments into equity shares unless the holders of such convertible debt instruments have sent their positive consent to the issuer and non-receipt of reply to any notice sent by the issuer for this purpose shall not be construed as consent for conversion of any convertible debt instruments.
- Where the value of the convertible portion of any listed convertible debt instruments issued by an issuer exceeds ten crore rupees and the issuer has not determined the conversion price of such convertible debt instruments at the time of making the issue, the holders of such convertible debt instruments shall be given the option of not converting the convertible portion into equity shares.

  However, where the upper limit on the price of such convertible debt instruments and justification thereon is determined and disclosed to the investors at the time of making the issue, it shall not be necessary to give such option to the holders of the convertible debt instruments for converting the convertible portion into equity share capital within the said upper limit.
- This provision shall not apply if such redemption is as per the disclosures made in the offer document.
- Where an option is to be given to the holders of the convertible debt instruments in terms of and if one or more of such holders do not exercise the option to convert the instruments into equity share capital at a price determined in the general meeting of the shareholders, the issuer shall redeem that part of the instruments within one month from the last date by which option is to be exercised, at a price which shall not be less than its face value.

Issue of convertible debt instruments for financing

An issuer shall not issue convertible debt instruments for financing or for providing loans to or for acquiring shares of any person who is part of the promoter group or group companies.

However, an issuer shall be eligible to issue fully convertible debt instruments for these purposes if the period of conversion of such debt instruments is less than eighteen months from the date of is

However, an issuer shall be eligible to issue fully convertible debt instruments for these purposes if the period of conversion of such debt instruments is less than eighteen months from the date of issue of such debt instruments.

SEBI (ISSUE AND LISTING OF DEBT SECURITIES) REGULATIONS, 2008

When a public company wishes to issue and list its debt securities on stock exchanges, then it has to comply with SEBI (Issue and Listing of Debt Securities) Regulations, 2008 in addition to Companies Act, 2013. SEBI notified these regulations on 19th June, 2008 in order to facilitate development of a vibrant primary market for debt securities in India.

The regulations specifies a simplified regulatory framework for issuance and listing of debt securities issued by public company, public sector undertaking or statutory corporations. The Regulations will not apply to issue and listing of, securitized debt instruments and security receipts for which separate regulatory regime is in place.

These regulations contain 7 chapters and five schedules dealing with the following:

Chapter I - Preliminary - Regulations 1, 2 and 3;

Chapter II - Issue Requirements for Public Issues - Regulations 4 to 18;

Chapter III - Listing of Debt Securities - Regulations 19 to 22;

Chapter IV - Conditions for Continuous Listing and Trading of Debt Securities - Regulations 23 and 24;

Chapter V - Obligations of Intermediaries and Issuers - Regulation 25 and 26;

Chapter VI - Procedure for Action In Case Of Violation of Regulations- Regulation 27, 28 and 29;

Chapter VII - Miscellaneous - Regulations 30, 31, 32 and 33;

Schedule I - Disclosures;

Schedule II - Format for Due Diligence Certificate at the time of filing the offer document with ROCs and Prior to opening of the issue;

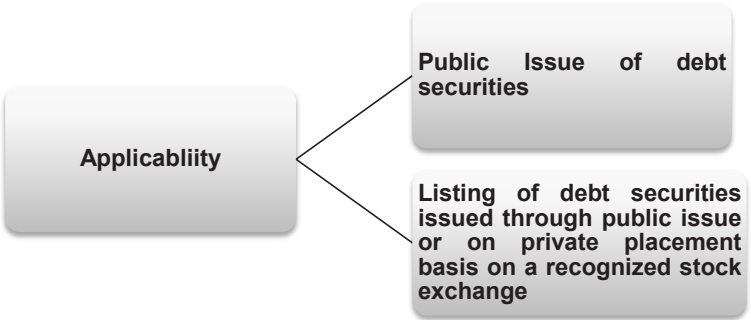
Schedule III - Format of Due Diligence Certificate to be given by the Debenture Trustee before Opening of the Issue

Schedule IV - Format of Issue Advertisements for Public Issues

Schedule V - Regulatory Fees

Applicability

These Regulations are applicable to –



Conditions

- The issuer or the person in control of the issuer or its promoter or its director is restrained or prohibited or debarred by SEBI from accessing the securities market or dealing in securities; or the issuer or any of its promoters or directors is a wilful defaulter or it is in default of payment of interest or repayment of principal amount in respect of debt securities issued by it to the public, if any, for a period of more than six months.
- It has made an application to one or more recognized stock exchanges for listing of such securities therein. If the application is made to more than one recognized stock exchanges, the issuer must choose one of them which has nationwide trading terminals as the designated stock exchange.
- It has obtained in-principle approval for listing of its debt securities.
- Credit rating including the unaccepted ratings obtained from more than one credit rating agencies, registered with SEBI shall be disclosed in the offer document.
- The issuer cannot issue debt securities for providing loan to or acquisition of shares of any person who is part of the same group or who is under the same management.

Appointment of Intermediaries

The issuer is required to appoint a depository, one or more merchant bankers registered with SEBI at least one of whom shall be a lead merchant banker and a Debenture Trustee duly registered with SEBI.

Disclosures of Material Information

The offer document must contain all material disclosures which are necessary for the subscribers of the debt securities to take an informed investment decision. The offer document contains the following:-

- the disclosures specified in Section 26 of the Companies Act, 2013;
- disclosure specified in Schedule I of the SEBI (ILDS) Regulations;
- additional disclosures as may be specified by SEBI.

Minimum Subscription

The amount of minimum subscription which the issuer seeks to raise and underwriting arrangements shall be disclosed in the offer document but there is no compulsion to mention the same.

Filing

The issuer shall file a draft offer document with the designated stock exchange through the lead merchant banker and also forward a copy of the draft & final offer document to SEBI.

Responsibilities of Merchant Banker

The lead merchant banker must ensure that –

- The draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the Company including the postal and email address, telephone and fax numbers.
- All comments received on the draft offer document are suitably addressed and shall also furnish to SEBI a due diligence certificate as per SEBI (ILDS) Regulations prior to the filing of the offer document with the Registrar of Companies.
- The merchant banker shall, prior to filing of the offer document with the Registrar of Companies, furnish to SEBI a due diligence certificate as per Schedule II of SEBI (ILDS) Regulations.

Filing of Shelf Prospectus

The following companies or entities may file shelf prospectus under section 31 of Companies Act, 2013 for public issuance of their debt securities,-

- Public financial institutions as defined under clause (72) of section 2 of the Companies Act, 2013, and scheduled banks as defined under clause (e) of section 2 of the Reserve Bank of India Act, 1934; or
- Issuers authorized by the notification of Central Board of Direct Taxes to make public issue of tax free secured bonds, with respect to such tax free bond issuances; or
- Infrastructure Debt Funds – Non-Banking Financial Companies regulated by Reserve Bank of India;or
- Non-Banking Financial Companies registered with Reserve Bank of India and Housing Finance Companies registered with National Housing Bank complying with the following criteria:
  - having a net worth of at-least Rs.500 crore, as per the audited balance sheet of the preceding financial year;
  - having consistent track record of distributable profit for the last three years;
  - securities issued under the shelf prospectus have been assigned a rating of not less than “AA-” category or equivalent by a credit rating agency registered with SEBI;
  - no regulatory action is pending against the company or its promoters or directors before the Board, Reserve Bank of India or National Housing Bank;
  - the issuer has not defaulted in the repayment of deposits or interest payable thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any public financial institution or banking company, in the last three financial years.

Or Listed entities complying with the following criteria:

- whose public issued equity shares or debt securities are listed on recognized stock exchange for a period of at least three years immediately preceding the issue and have been complying with the listing agreement entered into between the issuer and the recognized stock exchanges where the said securities of the issuer are listed;
- having a net worth of at-least Rs.500 crore, as per the audited balance sheet of the preceding financial year;
- having consistent track record of distributable profit for the last three years;
- securities issued under the shelf prospectus have been assigned a rating of not less than “AA-” category or equivalent by a credit rating agency registered with SEBI;

- no regulatory action is pending against the company or its promoters or directors before the Board, Reserve Bank of India or National Housing Bank;
- the issuer has not defaulted in the repayment of deposits or interest payable thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any public financial institution or banking company, in the last three financial years.

The issuer filing a shelf prospectus shall file a copy of an information memorandum with the recognised stock exchanges and SEBI, immediately on filing the same with the Registrar.

The information memorandum shall contain the disclosures specified in Companies Act, 2013, whichever is applicable and rules made thereunder and shall include disclosures regarding summary term sheet, material updation including revision in ratings, if any along with the rating rationale and financial ratios specified in Schedule I, indicating the pre- and post-issue change.

Not more than four issuances shall be made through a single shelf prospectus.

Mode of Disclosure

- The draft offer document shall be made public by posting it on the website of the designated stock exchange for seeking public comments for a period of seven working days from the date of filing the draft offer document with such exchange.
- The draft offer document can also be displayed on the website of the issuer, merchant bankers and the stock exchanges where the debt securities are proposed to be listed.
- The draft and final offer document shall be displayed on the websites of stock exchanges and shall be available for download in PDF / HTML formats.
- Where any person makes a request for a physical copy of the offer document, the same shall be provided to him by the issuer or lead merchant banker.

Advertisements

(1) The issuer should make an advertisement in a national daily with wide circulation, on or before the issue opening date and such advertisement, amongst other things must contain the disclosures.

(2) An issuer should not issue an advertisement –

- which is misleading in material particular or which contains any information in a distorted manner or which is manipulative or deceptive or extraneous matters.
- which contain a statement, promise or forecast which is untrue or misleading and the advertisement shall be truthful, fair and clear.
- during the subscription period any reference to the issue of debt securities or be used for solicitation.

Abridged Prospectus and Application Forms

The issuer and lead merchant banker shall ensure that:

- Every application form issued is accompanied by a copy of the abridged prospectus and it shall not contain any extraneous matters.
- Adequate space has been provided in the application form to enable the investors to fill in various details like name, address, etc.

The issuer may provide the facility for subscription of application in electronic mode.

On-line Issuances

An issuer proposing to issue debt securities to the public through the on-line system of the designated stock exchange shall comply with the relevant applicable requirements as may be specified by SEBI.

Issue Price

A Company may determine the price of debt securities in consultation with the lead merchant banker and the issue may be at fixed price or the price may be determined through book building process in accordance with the procedure as may be specified by SEBI.

Minimum Subscription

The issuer **may** decide the amount of minimum subscription which it seeks to raise by issue of debt securities and disclose the same in the offer document.

(2) In the event of non receipt of minimum subscription all application moneys received in the public issue shall be refunded forthwith to the applicants.

However, the issuers issuing tax-free bonds, as specified by CBDT, shall be exempted from the above proposed minimum subscription limit.

It may be noted that in any public issue of debt securities, the base issue size shall be minimum Rs 100 crores.

Optional Underwriting

A public issue of debt securities may be underwritten by an underwriter registered with SEBI and in such a case adequate disclosures regarding underwriting arrangement shall be disclosed in the offer document.

Prohibition of Mis-statements in the Offer Document

- The offer document shall not omit disclosure of any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading.
- The offer document or abridged prospectus or any advertisement issued by an issuer in connection with a public issue of debt securities shall not contain any false or misleading statement.

Trust Deed

A trust deed shall –

(1) be executed by the issuer in favour of the debenture trustee within three months of the closure of the issue.

(1A) Where an issuer fails to execute the trust deed within the period specified in the sub-regulation (1), without prejudice to any liability arising on account of violation of the provisions of the Act and these Regulations, the issuer shall also pay interest of at least two percent per annum to the debenture holder, over and above the agreed coupon rate, till the execution of the trust deed.

(1B) A clause stipulating the requirement under sub-regulation (1A) shall form part of the Trust Deed and also be disclosed in the Offer Document.

(2) contain such clauses as may be prescribed under section 71 of the Companies Act, 2013 and those mentioned in Schedule IV of SEBI (Debenture Trustees) Regulations, 1993.

(3) not contain a clause which has the effect of –

- limiting or extinguishing the obligations and liabilities of the debenture trustees or the issuer in relation to any rights or interests of the investors.
- limiting or restricting or waiving the provisions of the Act, these regulations and circulars or guidelines issued by SEBI.
- indemnifying the debenture trustees or the issuer for loss or damage caused by their act of negligence or commission or omission.

Debenture Redemption Reserve

- The issuer shall create a debenture redemption reserve in accordance with the provisions of the Companies Act, 2013 and circulars issued by Central Government in this regard.
- Where the Company has defaulted in payment of interest on debt securities or redemption thereof or in creation of security as per the terms of the issue of debt securities, any distribution of dividend shall require approval of the debenture trustees.

Creation of Charge

The proposal to create a charge or security, if any, in respect of secured debt securities shall be disclosed in the offer document along with its implications.

An undertaking from the Company is given in the offer document that the assets on which charge is created are free from any encumbrances and if the assets are already charged to secure a debt, the permissions or consent to create second or pari passu charge on the assets of the issuer have been obtained from the earlier creditor.

The issue proceeds shall be kept in an escrow account until the documents for creation of security as stated in the offer document, are executed.

Right to recall or redeem prior to maturity

An issuer making public issue of debt securities may recall such securities prior to maturity date at his option (call) or provide such right of redemption prior to maturity date (put) to all the investors or only to retail investors, at their option, subject to the following:

- Such right to recall or redeem debt securities prior to maturity date is exercised in accordance with the terms of issue and detailed disclosure in this regard is made in the offer document including date from which such right is exercisable, period of exercise (which shall not be less than three working days), redemption amount (including the premium or discount at which such redemption shall take place);
- The issuer or investor may exercise such right with respect to all the debt securities issued or held by them respectively or with respect to a part of the securities so issued or held ;
- In case of partial exercise of such right in accordance with the terms of the issue by the issuer, it shall be done on proportionate basis only;
- No such right shall be exercisable before expiry of twenty four months from the date of issue of such debt securities;
- Issuer shall send notice to all the eligible holders of such debt securities at least twenty one days before the date from which such right is exercisable;
- Issuer shall also provide a copy of such notice to the stock exchange where the such debt securities are listed for wider dissemination and shall make an advertisement in the national daily having wide circulation indicating the details of such right and eligibility of the holders who are entitled to avail such right ;

- Issuer shall pay the redemption proceeds to the investors along with the interest due to the investors within fifteen days from the last day within which such right can be exercised;
- Issuer shall pay interest at the rate of fifteen per cent per annum for the period of delay, if any,
- After the completion of the exercise of such right, the issuer shall submit a detailed report to the stock exchange for public dissemination regarding the debt securities redeemed during the exercise period and details of redemption thereof.

It may be noted that retail investor shall mean the holder of debt securities having face value not more than rupees two lakh.

Redemption and Roll-over

(1) The issuer shall redeem the debt securities in terms of the offer document.

(2) An issuer desirous of rolling-over the debt securities issued by it, it shall do so only upon passing of a special resolution of holders of such securities and give twenty one days' notice of the proposed roll over to them.

(3) The notice shall contain disclosures with regard to credit rating and rationale for roll-over.

(4) Prior to sending the notice to holders of debt securities, the issuer must file a copy of the notice and proposed resolution with the stock exchanges where such securities are listed, for dissemination of the same to public on its website.

(5) The debt securities issued can be rolled over subject to the following conditions –

- A special resolution has been passed by the holders of debt securities through postal ballot having the consent of not less than 75% of the holders by value of such debt securities.
- At least one rating is obtained from a credit rating agency within a period of six months prior to the due date of redemption and is disclosed in the notice.
- Fresh trust deed shall be executed at the time of such roll-over or the existing trust deed can be continued if the trust deed provides for such continuation.
- Adequate security shall be created or maintained in respect of such debt securities to be rolled-over.

The issuer shall redeem the debt securities of all the debt securities holders, who have not given their positive consent to the roll-over.

Mandatory Listing

- An issuer desirous of making an offer of debt securities to public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) of section 40 of the Companies Act, 2013.
- It must comply with conditions of listing of such debt securities as specified in the Listing Agreement with the stock exchange where such debt securities are sought to be listed.
- Where of the Company has disclosed the intention to seek listing of debt securities issued on private placement basis, it shall forward the listing application along with the disclosures specified in Schedule I to the recognized stock exchange within fifteen days from the date of allotment of such debt securities.

Consolidation and re-issuance

An issuer may carry out consolidation and re-issuance of its debt securities in the manner as may be specified by SEBI from time to time, subject to the fulfilment of the following conditions:

a) the articles of association of the issuer shall not have any provision, whether express or implied, contrary to such consolidation and re-issuance;

b) the issue is through private placement;

c) the issuer has obtained fresh credit rating for each re-issuance from at least one credit rating agency registered with SEBI and is disclosed;

d) such ratings shall be revalidated on a periodic basis and the change, if any, shall be disclosed;

e) appropriate disclosures are made with regard to consolidation and re-issuance in the Term Sheet.

International Securities Identification Number

Any issuer issuing debt securities on private placement basis, shall comply with the conditions relating to the issue of International Securities Identification Number, as may be specified by the SEBI from time to time.

Relaxation of strict enforcement of Rule 19 of Securities Contracts (Regulation) Rules, 1957

In exercise of the powers conferred by sub-rule (7) of Rule 19 of the Securities Contracts (Regulation) Rules, 1957, SEBI hereby relaxes the strict enforcement of:

(a) sub-rules (1) and (3) of rule 19 the said rules in relation to listing of debt securities issued by way of a public issue or a private placement;

(b) clause (b) of sub-rule (2) of rule 19 of the said Rules in relation to listing of debt securities,

(i) issued by way of a private placement by any issuer;

(ii) issued to public by an infrastructure company, a Government company, a statutory authority or corporation or any special purpose vehicle set up by any of them, which is engaged in infrastructure sector.

Continuous Listing

(1) All the issuer shall comply with the conditions of listing specified in the respective listing agreement for debt securities while making public issues of debt securities or seeking listing of debt securities issued on private placement basis.

(2) Each rating obtained by the issuer shall be periodically reviewed by the registered credit rating agency and any revision in the rating shall be promptly disclosed by the issuer to the stock exchange(s) where the debt securities are listed.

(3) Any change in rating shall be promptly disseminated to investors and prospective investors in such manner as the stock exchange may determine from time to time.

(4) Debenture trustee must disclose the information to the investors and the general public by issuing a press release in any of the following events:

a) default by the issuer to pay interest on debt securities or redemption amount;

b) failure to create a charge on the assets;

c) revision of rating assigned to the debt securities.

Trading

- While issuing debt securities to the public or on a private placement basis, which are listed in recognized stock exchanges, shall be traded and such trades shall be cleared and settled in recognized stock exchanges it should satisfy the conditions as specified by SEBI.

- The trades of debt securities which have been made over the counter shall be reported on a recognized stock exchange having a nationwide trading terminal or such other platform as may be specified by SEBI.
- SEBI may specify conditions for reporting of trades on the recognized stock exchange or other platform.

Information to be displayed on Website

– The disclosures as specified in Schedule-I accompanied by the latest annual report shall be made on the web sites of stock exchanges where such securities are proposed to be listed and shall be available for download in PDF / HTML formats.

– The issuer, the respective debenture trustees and stock exchanges shall disseminate all information and reports including compliance reports filed by the issuers and the debenture trustees regarding the debt securities to the investors and the general public by placing them on their websites.

– The information shall also be placed on the websites, if any, of the debenture trustee, the issuer and the stock exchanges.

Obligations of Debenture Trustee

- The debenture trustee shall prior to the opening of the public issue, furnish to SEBI a due diligence certificate as per of SEBI (ILDS) Regulations.
- The debenture trustee shall be vested with the requisite powers for protecting the interest of holders of debt securities including a right to appoint a nominee director on the Board of the issuer in consultation with institutional holders of such securities.
- The debenture trustee shall carry out its duties and perform its functions under these regulations, the SEBI (Debenture Trustees) Regulations, 1993, the trust deed and offer document, with due care, diligence and loyalty.
- The debenture trustee shall ensure disclosure of all material events on an ongoing basis.
- The debenture trustees shall supervise the implementation of the conditions regarding creation of security for the debt securities and debenture redemption reserve.

Obligations of the Issuer, Lead Merchant Banker, etc.

- The issuer ensure that all the material facts disclosed in the offer documents issued or distributed to the public are true, fair and adequate and there is no mis-leading or untrue statements or mis-statement in the offer document.
- The Merchant Banker shall ensure verify and confirm that the disclosures made in the offer documents are true, fair and adequate and the issuer is in compliance with these regulations as well as all transaction specific disclosures specified in section 26 of the Companies Act, 2013.
- The issuer shall treat the applicant in a fair and equitable manner as per the procedures as may be specified by SEBI.
- In respect of assignments undertaken for issue, offer and distribution of securities to the public the intermediaries shall be responsible for the due diligence.
- A person shall not employ any device, scheme or artifice to defraud in connection with issue or subscription or distribution of debt securities which are listed or proposed to be listed on a recognized stock exchange.

- The issuer and the merchant banker shall ensure that the security created to secure the debt securities is adequate to ensure 100% asset cover for the debt securities.

PROCEDURE FOR ISSUE OF DEBT SECURITIES UNDER SEBI (ILDS) REGULATIONS, 2008

File an application to one or more stock exchange for listing of debt securities and obtain in-principle approval

Obtain Credit Rating including the unaccepted ratings obtained from more than one credit rating agencies shall be disclosed in the offer document

Enter into an agreement with a depository for dematerialization of the debt securities in accordance with the Depositories Act, 1996 and regulations made there under

Appoint one or more Merchant banker and lead merchant bankers and create debenture redemption account under Companies Act, 2013

Draft & Final offer document shall be displayed on websites of stock exchange and shall be available for download in PDF/HTML formats

Make an advertisement in one English national daily newspaper and one Hindi national daily newspaper with wide circulation on or before the issue opening date

Issuer shall decide the price and amount of Minimum subscription of debt securities in consultation with the lead merchant banker and disclose the same in the offer document.

In case of Non-receipt of minimum subscription, all application monies received in the public issue shall be refunded forthwith to the applicants. In the event, the application monies are refunded beyond 8 days, then such amounts shall be refunded together with interest at such rate which shall not be less than 15% per annum.

Day count convention for debt securities issued under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008

SEBI has provided certain clarifications on aspects related to day count convention for debt securities issued under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

(a) If the interest payment date falls on a holiday, the payment may be made on the following working day however the dates of the future coupon payments would be as per the schedule originally stipulated at the timeof issuing the security. In other words, the subsequent coupon schedule would not be disturbed merely because the payment date in respect of one particular coupon payment has been postponed earlier because of it having fallen on a holiday.

For example:

Date of Issue of Corporate bonds: July 01 2016

Date of Maturity: June 30, 2018

Date of coupon payments: January 01 and July 01

Coupon payable: semi-annually

In this case, January 01, 2017 is a Sunday, thus the coupon would be payable on January 02, 2017 i.e. the next working day. However the calculation for payment of interest will be only till December 31, 2016, which would have been the case if January 01, 2017 were not a holiday. Also, the next dates of payment would remain July 01, 2017 and January 01, 2018 despite the fact that one of the interest payment was made on January 02, 2017.

(b) In order to ensure consistency for interest calculation, a uniform methodology shall be followed for calculation of interest payments in the case of leap year, which shall be as follows:

In case of a leap year, if February 29 falls during the tenor of a security, then the number of days shall be reckoned as 366 days (Actual/Actual day count convention) for a whole one year period, irrespective of whether the interest is payable annually, half yearly, quarterly or monthly etc. It is thus emphasized that for a half yearly interest payment, 366 days would be reckoned twice as the denominator; for quarterly interest, four times and for monthly interest payment, twelve times.

This is illustrated with the help of the following example:

Date of issue of corporate bonds: January 01, 2016

Coupon payable : Semi-annually

Date of coupon payments : July 01 and January 01

In the above example, in case of the leap year (i.e, 2016), 366 days would be reckoned as the denominator (Actual/Actual), for payment of interest, in both the half year periods i.e. Jan 01, 2016 to Jul 01, 2016 and Jul 01, 2016 to Jan 01, 2017.

PRIVATE PLACEMENT UNDER SEBI (ISSUE AND LISTING OF DEBT SECURITIES) REGULATIONS, 2008

“Private placement” means an offer or invitation to subscribe to the debt securities in terms of sub-section (1) (b) of section 23 of the Companies Act, 2013.

SEBI has allowed issue of debt securities through private placement under the provisions of SEBI (Issue and Listing of Debt Securities) Regulations, 2008. This is a faster way for a company to raise capital.

Conditions for listing of debt securities issued on private placement basis [Regulation 20] :

- An issuer may list its debt securities issued on private placement basis on a recognized stock exchange subject to the following conditions:

  a) the issuer has issued such debt securities in compliance with the provisions of the Companies Act, 2013, rules prescribed thereunder and other applicable laws;

  b) credit rating has been obtained in respect of such debt securities from at least one credit rating agency registered with SEBI;

  c) the debt securities proposed to be listed are in dematerialized form ;

  d) the disclosures as provided in regulation 21 have been made.

e) where the application is made to more than one recognized stock exchange, the issuer shall choose one of them as the designated stock exchange.

- The issuer shall comply with conditions of listing of such debt securities as specified in the Listing Agreement with the stock exchange where such debt securities are sought to be listed.
- The designated stock exchange shall collect a regulatory fee as specified in Schedule V from the issuer at the time of listing of debt securities issued on private placement basis.

Disclosures in respect of Private Placements of Debt Securities

(1) The issuer making a private placement of debt securities and seeking listing thereof on a recognized stock exchange shall make disclosures in a disclosure document as specified in Schedule I of SEBI (ILDS) Regulations accompanied by the latest Annual Report of the issuer.

(2) The disclosures as provided in above shall be made on the web sites of stock exchanges where such securities are proposed to be listed and shall be available for download in PDF / HTML formats.

Filing of Shelf Disclosure Document

- An issuer making a private placement of debt securities and seeking listing thereof on a recognized stock exchange may file a Shelf Disclosure Document containing disclosures as provided in Schedule I of these regulations.
- The issuer is not required to file disclosure document, while making subsequent private placement of debt securities for a period of 180 days from the date of filing of the shelf disclosure document.
- However, while making any private placement under Shelf Disclosure Document, it shall file with the concerned stock exchange updated disclosure document with respect to each tranche, containing details of the private placement and material changes, if any, in the information provided in Shelf Disclosure Document.

FUND RAISING BY ISSUANCE OF DEBT SECURITIES BY LARGE ENTITIES

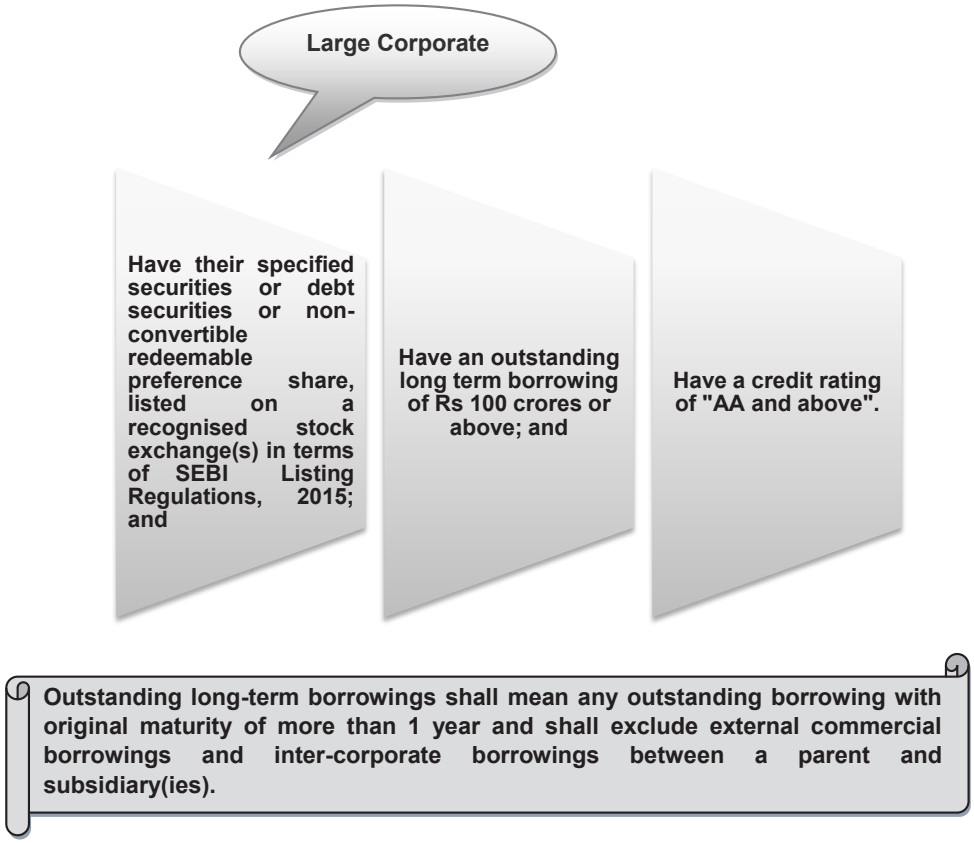
SEBI has been working on operationalizing the 2018-19 Budget announcement which mandates large corporates to raise 25% of their financing needs from the corporate bond market. Naturally, given the nascent stage of development of corporate bond market, such framework has to be relatively soft touch.

SEBI came out with a discussion paper on July 20, 2018. Based on feedback received on the discussion paper and wider consultation with market participants including entities, the detailed guidelines for operationalising the above budget announcement are given below:

Applicability of Framework

- For the entities following April-March as their financial year, the framework shall come into effect from April 01, 2019 and for the entities which follow calendar year as their financial year, the framework shall become applicable from January 01, 2020.
- The framework shall be applicable for all listed entities (except for Scheduled Commercial Banks) which are Large Corporate.

Large Corporate (LC)



Framework

A LC shall raise not less than 25% of its incremental borrowings, during the financial year subsequent to the financial year in which it is identified as a LC, by way of issuance of debt securities, as defined under SEBI ILDS Regulations.

Here “incremental borrowings” shall mean any borrowing done during a particular financial year, of original maturity of more than 1 year, irrespective of whether such borrowing is for refinancing/repayment of existing debt or otherwise and shall exclude external commercial borrowings and inter-corporate borrowings between a parent and subsidiary(ies).

For an entity identified as a LC, the following shall be applicable:

i. For FY 2020 and 2021, the requirement of meeting the incremental borrowing norms shall be applicable on an annual basis. Accordingly, a listed entity identified as a LC on last day of FY 2019 and FY 2020, shall comply with the requirement as laid down under para 3.1, by last day of FY 2020 and FY 2021, respectively.

   However, in case where a LC is unable to comply with the above requirement, it shall provide an explanation for such shortfall to the Stock Exchanges.

ii. From FY 2022, the requirement of mandatory incremental borrowing by a LC in a FY will need to be met over a contiguous block of two years.

Accordingly, a listed entity identified as a LC, as on last day of FY “T-1”, shall have to fulfil the requirement of incremental borrowing for FY “T”, over FY “T” and “T+1”.

However, if at the end of two years i.e. last day of FY "T+1", there is a shortfall in the requisite borrowing (i.e. the actual borrowing through debt securities is less than 25% of the incremental borrowings for FY "T"), a monetary penalty/fine of 0.2% of the shortfall in the borrowed amount shall be levied and the same shall be paid to the Stock Exchange(s).

Disclosure requirements for large entities

A listed entity, identified as a LC under the instant framework, shall make the following disclosures to the stock exchanges, where its security (ies) are listed:

i. Within 30 days from the beginning of the FY, disclose the fact that they are identified as a LC.

ii. Within 45 days of the end of the FY, the details of the incremental borrowings done during the FY.

The disclosures made shall be certified both by the Company Secretary and the Chief Financial Officer, of the LC.

ELECTRONIC BOOK MECHANISM FOR ISSUANCE OF SECURITIES ON PRIVATE PLACEMENT BASIS

SEBI (Issue and Listing of Debt Securities) Regulations, 2008 govern public issue of debt securities and listing of debt securities issued through public issue or on private placement basis, on a recognized stock exchange. Regulation 31(2) of SEBI (ILDS) Regulations, 2008 *inter alia* provides that :

"In particular, and without prejudice to the generality of the foregoing power and provisions of these regulations, such orders or circulars may provide for all or any of the following matters, namely:

(a) Electronic issuances and

(b) other issue procedures including the procedure for price discovery;

In order to streamline procedures for issuance of debt securities on private placement basis and enhance transparency to discover prices, SEBI has laid down a framework for issuance of debt securities on private placement basis through an electronic book mechanism.

Definitions

"*Arranger*" means a SEBI registered Merchant Banker, broker or a RBI registered Primary Dealer, who on behalf of the eligible participants bid on the EBP platform. Provided, that any of the aforesaid entities, prior to acting as an arranger in an issue, shall be authorized by the issuer to act as an arranger for that issue.

"*Electronic Book Provider*" or "EBP" means a recognized stock exchange(s), which pursuant to obtaining approval from SEBI, provides an electronic platform for private placement of securities.

"Eligible participant" means following:

a) Qualified Institutional Buyers (QIBs), as defined under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

b) Any non-QIB investor including arranger(s), who/which has been authorized by the issuer, to participate in a particular issue on EBP Platform.

"*EBP Platform*" or "Electronic Platform" means the platform provided by an EBP for private placement of securities.

"*Estimated cut off yield*" means yield so estimated by the issuer, prior to opening of issue.

Eligible Issuer

The following issuers shall have an option to follow either electronic book mechanism or the existing mechanism:

- a single issue, inclusive of green shoe option, if any, of Rs 200 crore or more;
- a shelf issue, consisting of multiple tranches, which cumulatively amounts to Rs 200 crore or more, in a financial year;
- a subsequent issue, where aggregate of all previous issues by an issuer in a financial year equals or exceeds Rs 200 crore.

Electronic Book Provider and its Obligations

1. The recognized stock exchange and depository are identified to act as an EBP. An EBP:

- shall provide an on-line platform for placing bids;
- shall have necessary infrastructure like adequate office space, equipments, risk management capabilities, manpower and other information technology infrastructure to effectively discharge the activities of an EBP;
- shall ensure that the private placement memorandum/information memorandum, term sheet and other issue related information is available to the eligible participants on its platform immediately on receipt of the same from issuer;
- has adequate backup, disaster management and recovery plans are maintained for the EBP;
- shall ensure safety, secrecy, integrity and retrievability of data.

2. The EBP platform so provided by the EBP shall be subject to periodic audit by Certified Information Systems Auditor (CISA).

3. EBP, shall make information related to the issue available on its website.

Obligations and duties

- EBP shall ensure that all details regarding issuance is updated on the website of the EBP.
- EBPs shall together ensure that the operational procedure is standardized across all EBP platforms and the details of such operational procedure are disclosed on their website.
- Where an issuer has disclosed estimated cut-off yield/range to the EBP, the EBP shall ensure its electronic audit trail and secrecy.
- All EBPs shall ensure coordination amongst themselves and also with depositories so as to ensure that the cooling off period for issuers and debarment period for investors is adhered to.
- EBP shall ensure that bidding is done.
- The EBP shall be responsible for accurate, timely and secured bidding process of the electronic bid by the bidders.
- The EBP shall be responsible for addressing investor grievances arising from bidding process.
- EBP shall ensure that the pay-in of funds towards allotment of securities, placed through EBP platform, are done through clearing corporation mechanism.

Bidding Process

Bidding timings & period

- In order to ensure operational uniformity across various EBP platforms, the bidding on the EBP platform shall take place between 9 a.m. to 5 p.m. only, on the working days of the recognized Stock Exchanges.

– The bidding window shall be open for the period as specified by the issuer in the bidding announcement, however the same shall be open for atleast one hour.

Bidding Announcement

– Issuer shall make the bidding announcement on EBP at least one working day before initiating the bidding process.

– Bidding announcement shall be accompanied with details of bid opening and closing time, and any other details as required by EBP from time to time.

– Any change in bidding time and/ or date by the Issuer shall be intimated to EBP, ensuring that such announcement is made within the operating hours of the EBP, atleast a day before the bidding date.

Provided that such changes in bidding date or time shall be allowed for maximum of two times.

Bidding & Allotment process

– Bidding process on EBP platform shall be on an anonymous order driven system.

– Bid shall be made by way of entering bid amount in Rupees (INR) and coupon/ yield in basis points (bps) i.e. up to four decimal places.

– Modification or cancellation of the bids shall be allowed i.e. bidder can cancel or modify the bids made in an issue, subject to following:

  a) such cancellation/modification in the bids can be made only during the bidding period;

  b) no cancellation of bids shall be permitted in the last 10 minutes of the bidding period;

  c) in the last 10 minutes of the bidding period, only revision allowed would for improvement of coupon/yield and upward revision in terms of the bid size.

– Investors are now permitted to place multiple bids in an issue.

– The bid placed in the system shall have an audit trail which includes bidder's identification details, time stamp and unique order number.

– Further against such bids, EBP shall provide an acknowledgement number.

– All the bids made on a particular issue, should be disclosed on the EBP platform on a real time basis.

– Allotment to the bidders shall be done on yield priority basis in the following manner:-

  a) All the bids shall be arranged in the ascending order of the yields, and a cut-off yield shall be determined.

  b) All the bids below the cut-off yield shall be accepted and full allotment should be made to such bidders.

  c) For all the bids received at cut-off yield, allotment shall be made on pro-rata basis.

STREAMLINING THE PROCESS OF PUBLIC ISSUE UNDER THE SEBI (ISSUE AND LISTING OF DEBT SECURITIES) REGULATIONS, 2008 ('SEBI ILDS')

In order to make the existing process of issuance of debt securities, easier, simpler and cost effective for both issuers and investors under the SEBI (ILDS) Regulations respectively, SEBI has reduced the time taken for listing after the closure of the issue to 6 working days as against the present requirement of 12 working days.

Submission of application form:

All the investors applying in a public issue shall use only Application Supported by Blocked Amount (ASBA)

facility for making payment i.e. writing their bank account numbers and authorising the banks to make payment in case of allotment by signing the application forms.

An investor, intending to subscribe to a public issue, shall submit a completed bid-cum application form to Self-Certified Syndicate Banks (SCSBs), with whom the bank account to be blocked is maintained or any of the following intermediaries:

a) A syndicate member (or sub-syndicate member)

b) A stock broker registered with a recognised stock exchange

c) A depository participant ('DP')

d) A registrar to an issue and share transfer agent ('RTA').

INDICATIVE TIMELINE SCHEDULE FOR VARIOUS ACTIVITIES

Sl. No.	Details of Activities	Due Date (working day*)
1	Issue Closes	T (Issue closing date)
2.	a) Stock exchanger(s) shall allow modification of selected fields (till 01:00 PM) in the bid details already uploaded. b) Registrar to get the electronic bid details from the stock exchanges by end of the day. c) SCSBs to continue / begin blocking of funds. d) Designated branches of SCSBs may not accept schedule and applications after T+1 day. e) Registrar to give bid file received from stock exchanges containing the application number and amount to all the SCSBs who may use this file for validation/ reconciliation at their end.	T+I
3	a) Issuer, merchant banker and registrar to submit relevant documents to the stock exchange(s) except listing application, allotment details and demat credit and refund details for the purpose of listing permission. b) SCSBs to send confirmation of funds blocked (Final Certificate) to the registrar by end of the day. c) Registrar shall reconcile the compiled data received from the stock exchange(s) and all SCSBs (hereinafter referred to as the "reconciled data"). d) Registrar to undertake "Technical Rejection" test based on electronic bid details and prepare list of technical rejection cases.	T+2

4.	a) Finalization of technical rejection and minutes of the meeting between issuer, lead manager, registrar. b) Registrar shall finalise the basis of allotment and submit it to the designated stock exchange for approval. c) Designated Stock Exchange to approve the basis of allotment. d) Registrar to prepare funds transfer schedule based on approved basis of allotment. e) Registrar and merchant banker to issue funds transfer instructions to SCSBs.	T+3
5	a) SCSBs to credit the hinds in public issue account of the issuer and confirm the same. b) Issuer shall make the allotment, c) Registrar/Issuer to initiate corporate action for credit of debt securities, NCRPS, SDI to successful allottees. d) Issuer and registrar to file allotment details with designated stock exchange(s) and confirm all formalities are complete except demat credit. e) Registrar to send bank-wise data of allottees, amount due 011 debt securities, NCRPS, SDI allotted, if any, and balance amount to be unblocked to SCSBs.	T+4
6	a) Registrar to receive confirmation of demat credit from depositories, b) Issuer and registrar to file confirmation of demat credit and issuance of instructions to unblock ASBA hinds, as applicable, with stock exchange (s). c) The lead manager(s) shall ensure that the allotment, credit of dematerialised debt securities, NCRPS, SDI and refund or unblocking of application monies, as may be applicable, are done electronically. d) Issuer to make a listing application to stock exchange(s) and stock exchange (s) to give listing and trading permission. e) Stock exchangers) to issue commencement of trading notice.	T+5
7	Trading commences	T+6
*** Working days shall be all trading days of stock exchanges excluding Sundays and bank holidays in Mumbai.**		

GREEN DEBT SECURITIES

SEBI on 30th May, 2017 came out with a circular stating the disclosure requirements for issuance and listing of Green Debt Securities in India. Earlier in December, 2015, SEBI had come out with a concept paper for issuance of Green Bonds in India (“Concept Paper”). The Concept Paper brought out the need for enhanced disclosures for issuance of green bonds so as to differentiate it from other form of debt securities issued and listed in India and the Circular is largely in line with the concept paper.

Meaning of Green Debt Securities

A Debt Security shall be considered as **“Green or Green Debt Securities”,** if the funds raised through issuance of the debt securities are to be utilised for project(s) and/or asset(s) falling under any of the following broad categories:

a) Renewable and sustainable energy including wind, solar, bioenergy, other sources of energy which use clean technology etc.;

b) Clean transportation including mass/public transportation etc.;

c) Sustainable water management including clean and/or drinking water, water recycling etc.;

d) Climate change adaptation;

e) Energy efficiency including efficient and green buildings etc.;

f) Sustainable waste management including recycling, waste to energy, efficient disposal of wastage etc.;

g) Sustainable land use including sustainable forestry and agriculture, afforestation etc.;

h) Biodiversity conservation;

i) Any other category as may be specified by SEBI, from time to time.

Disclosures in Offer Document/Disclosure Document and other requirements

The issuer of a Green Debt Securities shall make following disclosures:

a) A statement on environmental objectives of the issue of Green Debt Securities;

b) Brief details of decision-making process issuer have followed/would follow for determining the eligibility of project(s) and/or asset(s), for which the proceeds are been raised through issuance of Green Debt Securities. An indicative guideline of the details to be provided is as under:

- process followed/to be followed for determining how the project(s) and/or asset(s) fit within the eligible green projects categories;
- the criteria, making the project(s) and/or asset(s) eligible for using the Green Debt Securities proceeds; and
- environmental sustainability objectives of the proposed green investment.

c) Issuer shall provide the details of the system/procedures to be employed for tracking the deployment of the proceeds of the issue.

d) Details of the project(s) and/or asset(s) or areas where the issuer, proposes to utilise the proceeds of the issue of Green Debt Securities, including towards refinancing of existing green project(s) and/or asset(s), if any.

e) The issuer may appoint an independent third party reviewer/certifier, for reviewing /certifying the processes including project evaluation and selection criteria, project categories eligible for financing by Green Debt Securities, etc. Such appointment is optional and shall be disclosed in the offer document.

Continuous Disclosure

An issuer who has listed its Green Debt Securities, along with compliances as under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, shall provide following disclosures along with its annual report and financial results:

a) Details of utilisation of the proceeds and unutilized proceeds of the issue, as disclosed in offer document/ disclosure document. These details shall be provide along with the half yearly and annual financial results.

However, the utilisation of the proceeds shall be verified by the report of an external auditor, to verify the internal tracking method and the allocation of funds towards the project(s) and/or asset(s), from the proceeds of Green Debt Securities.

b) Other additional disclosures have to be provided along with annual report:

- List of project(s) and/or asset(s) to which proceeds of the Green Debt Securities have been allocated/invested including a brief description of such project(s) and/or asset(s) and the amounts disbursed.

  However, where confidentiality agreements limit the amount of details that can be made available about specific project(s) and/or asset(s), information shall be presented about the areas in which such project(s) and/or asset(s) fall into.

- Qualitative performance indicators and, where feasible, quantitative performance measures of the environmental impact of the project(s) and/or asset(s). If the quantitative benefits/impact cannot be ascertained, then the said fact may be appropriately disclosed along with the reasons for non-ascertainment of the benefits/impact on the environment.

- Methods and the key underlying assumptions used in preparation of the performance indicators and metrics;

Obligations of the issuer

An issuer of Green Debt Securities shall:

- Maintain a decision-making process which it uses to determine the continuing eligibility of the project(s) and/or asset(s). This includes, without limitation a statement on the environmental objectives of the Green Debt Securities and a process to determine whether the project(s) and/or asset(s) meet the eligibility requirements.
- Ensure that all project(s) and/or asset(s) funded by the proceeds of Green Debt Securities, meet the documented objectives of Green Debt Securities.
- Utilize the proceeds only for the stated purpose, as disclosed in the offer document.

An issuer of Green Debt Securities or any agent appointed by the issuer, if follows any globally accepted standard(s) for the issuance of Green Debt Securities including measurement of the environmental impact, identification of the project(s) and/or asset(s), utilisation of proceeds, etc., shall disclose the same in the offer document/disclosure document and/or in continuous disclosures.

LESSON ROUND UP

- Keeping in view the larger complementary role that corporate bonds have to play along-side bank credit for financing economic activities, several policy measures have been taken by the Government and the Regulators to develop a vibrant corporate bond market.
- Debt markets are markets for the issuance, trading and settlement of various types and features of fixed income securities.
- Debenture is a document evidencing a debt or acknowledging it and any document which fulfills either of these conditions is a debenture. They can be either convertible or non convertible into equity shares at a later point in time.
- SEBI (Issue and Listing of Debt Securities) Regulations, 2008 pertaining to issue and listing of debt securities which are not convertible, either in whole or part into equity instruments.
- Debt securities which are convertible, either partially or fully or optionally into listed or unlisted equity shall be guided by the disclosure norms applicable to equity or other instruments offered on conversion in terms of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

- According to SEBI (ICDR) Regulations, 2018, convertible debt instruments means an instrument which creates or acknowledges indebtedness or is convertible into equity shares of the issuer at a later date at or without the option of the holder of the instrument, whether constituting a charge on the assets of the issuer or not.
- SEBI (ILDS) Regulations 2008 is applicable to-
  - Public Issue of debt securities
  - Listing of debt securities issued through public issue or on private placement basis on a recognized stock exchange.
- SEBI has provided certain clarifications on aspects related to day count convention for debt securities issued under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008.
- "Private placement" means an offer or invitation to subscribe to the debt securities in terms of sub-section (1) (b) of section 23 of the Companies Act, 2013.
- SEBI has allowed issue of debt securities through private placement under the provisions of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.
- In order to streamline procedures for issuance of debt securities on private placement basis and enhance transparency to discover prices, SEBI has laid down a framework for issuance of debt securities on private placement basis through an electronic book mechanism.
- In order to make the existing process of issuance of debt securities, easier, simpler and cost effective for both issuers and investors under the SEBI (ILDS) regulations respectively, SEBI has reduced the time taken for listing after the closure of the issue to 6 working days as against the present requirement of 12 working days.
- SEBI on 30th May, 2017 came out with a circular stating the disclosure requirements for issuance and listing of Green Debt Securities in India.

GLOSSARY

Debenture Trustee	A trustee of a trust deed for securing any issue of debentures of a body corporate.
Indenture	Agreement between lender and borrower which details specific terms of the bond issuance. Specifies legal obligations of bond issuer and rights of the bondholder. Document spelling out the specific terms of a bond as well as the rights and responsibilities of both the issuer of the security and the holder.
ISIN (International Securities Identification Number)	A unique identification number allotted for each security in the depository system by SEBI.
Real Time Gross Settlement (RTGS)	Concept designed to achieve sound risk management in the settlement of interbank payments. Transactions are settled across accounts held at the Central Bank on a continuous gross basis where settlement is immediate, final and irrevocable.
Ways and Means Advances (WMA)	It is a mechanism used by RBI under its credit policy to the State, banking with it to help them to tide over temporary mismatches in the cash flow of their receipts and payment.

SELF TEST QUESTIONS

(*These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. Explain rollover of non-convertible portion of partly convertible debt instruments under SEBI (ICDR) Regulations, 2018.
2. Briefly enumerate the various conditions required to be fulfilled for issue of non convertible debentures under SEBI (Issue and Listing of Debt Securities) Regulations, 2008.
3. What do you understand by 'private placement'? State the various conditions prescribed by SEBI for listing of non convertible debt securities issued on private placement basis.
4. Discuss the procedure to be followed for electronic book mechanism for issue of debt securities.
5. What do you mean by 'Green Debt Securities'? Explain.

Lesson 7
Debt Funding – Indian Fund Based (Government Debt & Banking Finance)

LESSON OUTLINE

- Bonds
- Masala Bonds
- Bank Finance
- Overdrafts
- Cash Credits
- Bill Finance
- Hire Purchase
- Project Finance including machinery or equipment loan against property
- Loan against shares
- Bill Discounting
- Factoring
- Islamic Banking
- How to prepare CMA data for different types of loans and credit facilities.
- Appraisal methodology for different type of loans and credit products
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Business is an economic activity heading for acquiring wealth through buying, producing, and selling of goods. Business is a very wide term. Finance is like blood for the business. A business required funds for commencement of business and to carry the business smoothly.

In India, Commercial Banks play an important role in financing the requirements of business commercial banks give loans to the companies against the security of properties and assets. Banks provide different types of facilities to the borrower depending on requirement of the borrower concerns. Commercial Banks are one of the popular source of finance in Indian market. The After going through this chapter, the reader would be able to:

- Understand various types of credit facilities granted by banks.
- Legal frame work and regulatory applications in lending by banks.

BONDS

Bonds are the debt security where an issuer is bound to pay a specific rate of interest agreed as per the terms of payment and repay principal amount at a later time. The bond holders are generally like a creditor where a company is obliged to pay the amount. The amount is paid on the maturity of the bond period. Generally these bonds duration would be for 5 to 10 years.

A bond, whether issued by a government or a corporation, has a specific maturity date, which can range from a few days to 20-30 years or even more. Based on the maturity period, bonds are referred to as bills or short- term bonds and long-term bonds. Bonds have a fixed face value, which is the amount to be returned to the investor upon maturity of the bond. During this period, the investors receive a regular payment of interest, semi-annually

or annually, which is calculated as a certain percentage of the face value and know as a 'coupon payment.'

There are various types of bonds in India:

- **Government Bonds:** These are the bonds issued either directly by Government of India or by the Public Sector Units (PSU's) in India. These bonds are secured as they are backed up with security from Government. These are generally offered with low rate of interest compared to other types of bonds.
- **Corporate Bonds:** These are the bonds issued by the private corporate companies. Indian corporates issue secured or non secured bonds. E.g. IIFL bonds issue which came up during Sep-2012 was unsecured bond and Shriram city union bond issue in Sep-2012 was a secured bond issue.
- **Banks and other financial institutions bonds**: These bonds are issued by banks or any financial institution. The financial market is well regulated and the majority of the bond markets are from this segment. However care to be taken to consider the credit rating given by Credit Rating Agencies before investing in these bonds. In case of poor credit rating, better to stay away from such bonds.
- **Tax saving bonds**: In India, the tax saving bonds are issued by the Government of India for providing benefit to investors in the form of tax savings. Along with getting normal interest, the bond holder would also get tax benefit.

In India, all these bonds are listed in National Stock Exchange and Bombay Stock Exchange in India, hence they can be easily liquidated and sold in the open market.

MASALA BONDS

Masala Bonds are rupee denominated borrowings by Indian companies in the overseas markets. This is different from the other overseas borrowings in the sense that the in the other borrowings, the currency is normally dollar, euro, yen etc.

The advantage of issuing masala bonds is that the company does not have to worry about the depreciation in the rupee in comparison to the other currencies. This is normally a big worry for corporates while raising money in the overseas markets. If the rupee weakens at the time of the redemption of the bonds, the company will have to pay more rupees to repay the dollars. This is a big advantage, as many companies which had raised via the Foreign Currency Convertible Bonds in 2007 found themselves in a great difficulty as the rupee had depreciated very sharply during the global financial crisis.

In order to compensate the risk of currency depreciation, the buyer of the Masala Bond will get a higher coupon rate and therefore earns a higher yield.

HDFC was the first company to issue Masala Bonds for an aggregate amount of Rs.3000 crores and has raised an aggregate of Rs.5000 crores through issuance of Masala Bonds in four tranches. The First issue of Masala bond by HDFC bears a fixed semi-annual coupon of 7.875 percent per annum and has a tenor of 3 years and 1 month. The bonds have been issued at a price of 99.24% of the par value and will be redeemed at par. The

all-in annualised yield to the investors is 8.33 percent per annum. The bonds are traded on the London Stock Exchange and not in India.

Many public and private companies are in the fray to issue masala bonds as the companies can have access to more funds at a marginally higher cost of financing.

The masala bonds were reckoned under both corporate debt and external commercial borrowings for Foreign Portfolio investment. The Reserve Bank of India recently amended the Regulations and currently treates Msala Bonds under the ECB category only, where a borrower just needs to seek the RBI's approval to sell those securities.

Further, the provisions in respect of maturity period, all-in-cost ceiling and recognized lenders (investors) of Masala Bonds as under:

i. **Maturity period:** Minimum original maturity period for Masala Bonds raised upto USD 50 million equivalent in INR per financial year should be 3 years and for bonds raised above USD 50 million equivalent in INR per financial year should be 5 years.

ii. **All-in-cost ceiling:** The all-in-cost ceiling for such bonds will be 300 basis points over the prevailing yield of the Government of India securities of corresponding maturity.

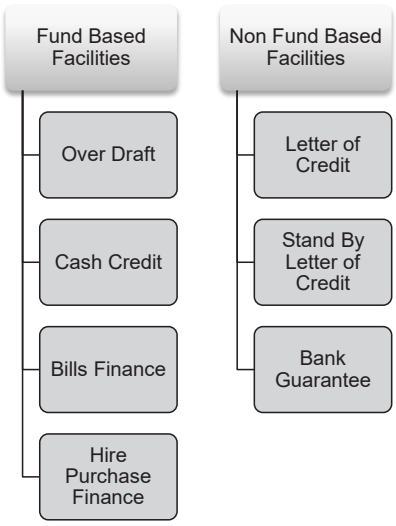
iii. **Recognised investors:** Entities permitted as investors under the provisions of paragraph 3.3.3 of the Master Direction No.5 dated January 1, 2016 but should not be related party within the meaning as given in Ind-AS 24.

BANK FINANCE

Banking Regulation Act 1949 classifies bank finance into secured loans and unsecured loans. Secured loan means loans granted on the backing of some tangible security, while Unsecured loan is one for which the banker has to rely upon the personal security of the borrower. Unsecured advances are not popular in India. Most of the bank advances are secured ones. Only a small portion of about 11% to 15% of the total bank advance is unsecured.

Banks finance their customers not only in the form of loans, but through other types of credit facilities. The other types of bank finance are tailor made to suit the needs of customers. The loans and advances wherein immediate flow of funds available to borrowers, are called funds based facility. In non-fund based facilities like issuance of letter of guarantee, letter of credit etc., banks get fee income and there is no immediate outflow of funds from bank. The nature of credit facilities which are different from loans are described here-under.

Credit Facilities Provided by the Banks



As per RBI directivevide its circular No. RBI/2018-19/87 – BR.BP.BC.No.12/ 21.04.048/2018-19 December 5, 2018 has specified for large borrowers the following:

In respect of borrowers having aggregate fund based working capital limit of Rs. 1500 million and above from the banking system, a minimum level of 'loan component' of 40 percent shall be effective from April 1, 2019. Accordingly, for such borrowers, the outstanding 'loan component' (Working Capital Loan) must be equal to at least 40 percent of the sanctioned fund based working capital limit, including ad hoc limits and TODs. Hence, for such borrowers, drawings up to 40 percent of the total fund based working capital limits shall only be allowed from the 'loan component'. Drawings in excess of the minimum 'loan component' threshold may be allowed in the form of cash credit facility. Working examples for bifurcation of working capital limit are provided in Appendix I. The bifurcation of the working capital limit into loan and cash credit components shall be effected after excluding the export credit limits (pre-shipment and post-shipment) and bills limit for inland sales from the working capital limit. Investment by the bank in the commercial papers issued by the borrower shall form part of the loan component, provided the investment is sanctioned as part of the working capital limit.

OVERDRAFTS

Overdraft means allowing the customer to draw cheques over and above credit balance in his account. Overdraft is normally allowed to Current Account Customers and in exceptional cases Savings bank account holders are also allowed to overdraw their account. High rate of interest is charged on daily debit balance of overdraft account as these are clean advances .i.e. banks do not have any securities to fall back if these facilities are not repaid. There are two types of overdraft accounts are prevalent in Banks i.e. (i) Temporary overdraft or clean overdraft and (ii) Secured overdraft. Temporary overdrafts are allowed purely on personal credit worthiness of the customer concerned and it is meant for the customer to meet some urgent commitments on rare occasions. Allowing a customer to draw against his cheques sent in clearing – known as "against clearing" also falls under this category. Secured overdraft is allowed up to a certain limit against some tangible security like bank deposits, LIC policies, National Saving Certificates, shares and other similar assets. Secured overdraft is most popular with traders as lesser operating cost, simple application and document formalities are involved in this facility.

CASH CREDIT ACCOUNT (CC A/C)

A cash credit facility is a short-term finance to a borrower company, having a tenure of up to one year which can be renewed for further period by the bank on the basis of projected sales and satisfactory operation in the account during the period of finance. Cash credit facility is extended in two forms viz. Open Cash Credit and Key Cash Credit. Open Cash credit account is a running account just like a current account where the borrower is allowed to maintain debit balance in the account up to a sanctioned limit or drawing power whichever is lower.

The Cash Credit facility is offered to a borrowers normally either against pledge (Key Cash Credit) or hypothecation of stocks of raw materials, semi finished goods and finished goods and Book Debts (Receivables). In the case of Key Cash Credit, the borrower lodges the stocks in his godown and the key of the godown will be handed over to the bank. By this process, the goods lodged in the godown are pledged to the bank and the bank will allow the customer to draw funds against the value of the goods less margin. This is known as Drawing Power. The pledged goods are allowed to be removed by the borrower on remitting into his CC account the amount equivalent to value of the goods. The bank would release further funds to the borrower within the Drawing Power (DP)/sanctioned limit on borrower depositing (pledge) more stock in the godown. Therefore, such facility is called Key Cash Credit. Cash Credit limits are also sanctioned to a borrower against security of term deposits, LIC policies, NSCs or Gold Jewels. This type of limit is offered mainly to traders who find it difficult to maintain stock register and submitting periodic stock statements. When the security for the CC facility is jewels, life policies, NSC, Term Deposits; there is no need to submit periodic stock statements. In case of manufacturing units this facility is required for purchase of raw materials, processing and converting them into finished goods. In case of traders, the limit is allowed for purchase of goods which they deal.

BILLS FINANCE

Bills finance is short term and self liquidating finance in nature. The bills can be classified as Demand Bills and Usance Bills. Demand Bill is purchased and Usance bill is discounted by the banks. The credits available to the seller against the bills drawn under Letter of Credit either on sight draft or usance draft are called bills negotiated by the banks. The advantage of bills finance is that the seller of goods (borrower) gets immediate money from the bank for the goods sold by him irrespective of whether it is a purchase, discount or negotiation by the bank. The 'Demand Bills' can be documentary or clean. Usually banks accept only documentary bills for purchase. However, clean bills from good parties also purchased by the banks.

The 'Documentary Bills' may be drawn by a Seller of Goods ('Drawer') on D/P (Delivery against payment) or D/A (Delivery against Acceptance) terms. In case of D/P terms the documents of title to goods are delivered to the buyer of the goods (drawee) against payment of bill amount. In case of D/A bills, the documents to the title of goods are to be delivered to the drawee (Buyer) against acceptance of bills. These types of bills are called "Usance Bills' which means bills are maturing on a future date and payment will be made on due date. In case of 'Usance Bills' bills become clean after it is delivered to drawee on acceptance.

Therefore banks take into consideration the credit worthiness not only of the borrower but also of the drawee.

Loan against shares Banks are permitted to provide loan against shares, convertible bonds& debentures, units of equity oriented Mutual funds to individuals subject to a maximum limit of Rs. 10 lakhs per individual if these securities are held in physical form and Rs. 20 lakhs if the securities are held in Demat form, from the banking system. Banks stipulate high margins including specified minimum cash margins, on these loans as per their credit policy – 50 to 60% in case of physical form & 25 to 40% in case of Demat form.

Loan against shares Banks are permitted to provide loan against shares, convertible bonds& debentures, units of equity oriented Mutual funds to individuals subject to a maximum limit of Rs. 10 lakhs per individual if these securities are held in physical form and Rs. 20 lakhs if the securities are held in Demat form, from the banking system. Banks stipulate high margins including specified minimum cash margins, on these loans as per their credit policy – 50 to 60% in case of physical form & 25 to 40% in case of Demat form.

LEASING FINANCE

A lease is a contract between the owner (lessor) and the user (lessee). There are various types of leases viz. operating lease, finance lease etc. In terms of lease agreement the lessor pays money to the supplier who in turn delivers the article to the lessee. The lessee (hirer of the article) makes periodical payment to the lessor. At the end of lease period the asset is restored to the lessor. Commercial banks in India have been financing the activities of leasing companies, by providing overdraft/ Cash credit account/Demand loan against fully paid new machinery or equipment by hypothecation of security. The repayment should be from rentals of machinery/ equipment leased out. The maximum period of repayment is five years or the economic life of the equipment whichever is lower. The bank is allowed to periodical inspection of the asset. Lease contracts are only for productive purpose and not for consumer durable.

HIRE-PURCHASE FINANCE

Hire-Purchase transactions are very similar to leasing transactions. In the Hire-purchase finance takes place predominantly in automobile sector. Like Leasing Finance, the ownership of the vehicle continues to remain with the Leasing Company till the agreement period ends. However, at the end of the stipulated period, the hirer (lessee) has options either to return the asset to leasing company while terminating the agreement or purchase the asset upon terms set out in the hire-purchase agreement. Since hire-purchase finance takes place predominantly in automobile sector, banks have started direct finance to transport operator as the

nature of advance being classified as priority sector lending. By and large most banks financé vehicles under Hypothecation arrangement instead of Hire-Purchase. HPA is usually resorted to by NBFCs/Credit Societies/ Private Financiers (unorganized sector).

Difference between Hire-Purchase and Hypothecation

For a long time, Hypothecation was not defined legally in India, until it was defined by SARFAESI Act in 2002. It is a charge on any movable asset/property of a borrower for which bank has extended it's finance. It is an equitable charge on the assets in favour of the financing bank where the asset is owned by the borrower as well as possession is with him on behalf of the bank. If a borrower fails to repay the finance extended for the movable asset the bank can repossess the asset with the consent of the borrower. If the borrower surrenders the asset to the bank, bank has a legal right to sell the asset without the intervention of the court and adjust the proceeds towards the loan dues. Under SARFAESI Act bank also has got the right to sell the movable asset of a defaulted borrower without the intervention of a court subject to following rules laid down in this regard.

Under Hire Purchase Agreement, as explained above the ownership of the financed assets remains with the lender till it is purchased by the borrower at the end of the hire purchase period as per agreed terms between the financing agency and the borrower. Under Hire Purchase the financing entity may get the benefit of depreciation as well as ownership of the asset financed.

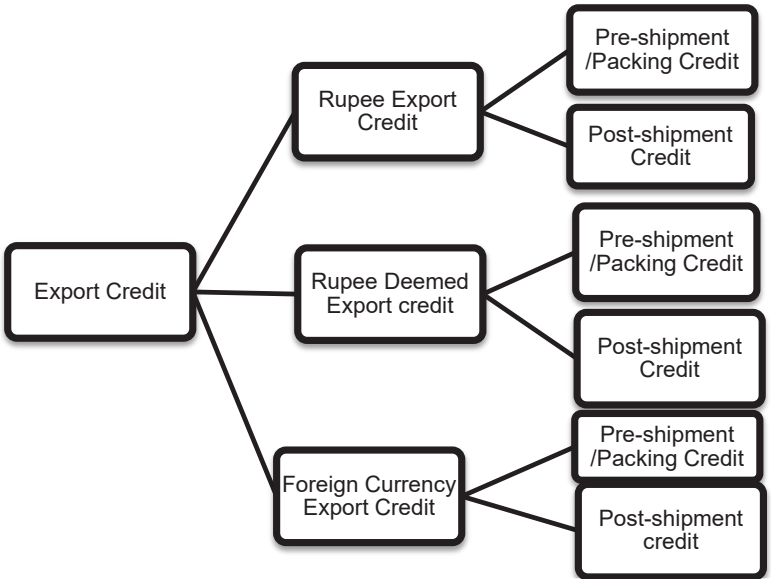
Banks cannot take advantage of Hire Purchase Arrangement, as ownership aspect of the asset will result in violating permitted line of activity under the banking license granted by RBI.

For example if a bank finances a public transport vehicle under Hire Purchase, it implies that the bank as the owner of the public transport vehicle, is involved in the business of public transportation which is against permitted activities under the Banking license. Also in a Hire Purchase arrangement, if an accident takes place, bank will be a party to the claim suit filed by the injured passengers which will involve monetary loss and as well as damage to the image of the bank.

CREDIT FACILITIES (FUND BASED) GRANTED TO THE EXPORTERS BY BANKS

In order to encourage exports and to help exporters financially, RBI introduced Export Credit scheme in the year 1967. As on date, Exporters can avail credit for their export activities either in Rupees or in Foreign Currency as per their choice and subject to RBI directions in this regard.

The following are the broad financing schemes available for exporters:



RUPEE EXPORT CREDIT

Pre-shipment/Packing Credit

A short term advance/loan given to an exporter for procuring, processing, manufacturing/packing goods prior to shipping such goods. Such export credit can be given for working capital purposes also. Banks are at liberty to decide the tenor of such loans (which are usually up to three/six months or in exceptional cases nine months) depending upon individual cases. These loans are given at concessional interest rates. If these loans are not adjusted by submission of export documents within 360 days, banks will charge normal rate of interest on such loans/advances instead of concessional rates. Pre-shipment advances are to be repaid out of finance made available at Post-shipment stage or from eligible resources of the exporting customer as per RBI directions.

The following is an example of Pre-shipment credit.

XYZ Limited, an Exporter of cotton readymade garments in India, has secured a firm export order from UK to supply 100,000 cotton shirts of a particular size. For executing this order the Indian exporter would require to buy raw cloth, get the cloth cut, stitched, ironed, check all shirts for any defects to rectify, labled, packed and shipped. The finance needed for this entire cycle by the exporter is called Pre-shipment finance/Packing credit.

Post-shipment Credit

This is again a short term advance/loan given to an exporter after shipment of goods to the date of realization of proceeds of exported goods. Such credit facility granted to an exporter has to be repaid out of the proceeds of goods exported or from eligible resources of the exporter as permitted by RBI directions. The period of such advance/loan will be as specified by Foreign Exchange Dealers Association of India (FEDAI).

Taking the pre-shipment example of XYZ Limited mentioned above, once XYZ Limited has shipped the goods they can present the Shipping documents along with commercial documents of the transaction to their bankers for availing Post-shipment credit. XYZ's bank can grant them post-shipment credit in any of the following ways :

1. By purchase/discounting/negotiation of Export bills.
2. By providing an advance against the export bills given for collection.
3. By providing an advance against export incentives receivable from Government of India.

The loan amount of the post-shipment will be used by XYZ's bank to close the Pre-shipment advance/loan granted to the company earlier.

The post-shipment advance granted by XYZ Limited's banker will be closed out of the export proceeds that will be received by the Bank from the importer's Bank in UK subsequently.

Rupee Deemed Export Credit

A deemed export transaction is one in which goods are supplied to a project in India itself which are funded by International/ Multilateral agencies or where goods are supplied to units in SEZs or foreign shipping companies calling on Indian ports, Supply of goods to foreign tourists etc., such that the proceeds of such goods supplied will be paid in foreign currencies. Such transactions are treated as prima facie Export transactions and enjoy incentives and other concessions given to normal export transactions.

Pre-shipment and Post-shipment credit facilities granted to Rupee Deemed Export Credit transactions are similar to finance/credit extended under Rupee Export credit - Pre-shipment as well as Post-shipment as described herein. However in Deemed Export transactions the date of supply to the projects/SEZ units/ foreign tourists is taken as date of export. Also the value of the transaction will be based on Free on Rails (FOR) basis instead of usual Free on Board (FOB) basis, usually associated with export transactions.

FOREIGN CURRENCY EXPORT CREDIT

Pre-shipment credit in Foreign Currency (PCFC)

The objective of PCFC facility is to provide an additional source of finance at internationally competitive rates to Indian exporters. Normally this is facility is applicable to **Cash Exports**. Cash exports are those where "payment for goods is received prior to the export".

An exporter can avail PCFC in any one of the following ways:

1. Avail pre-shipment credit in Rupees and convert the same in Foreign currency at the discretion of financing bank.
2. Avail pre-shipment credit in Foreign currency and discount/rediscount export bills in Foreign currency under Export Bill Rediscounting Scheme (EBR).
3. Avail Pre-shipment credit in Rupees and post-shipment credit either in Rupees or in foreign currency by discounting/re-discounting export bills under EBR.

PCFC is normally available for a maximum period of 360 days. Further extension is subject to the financing bank's terms and conditions. PCFC is liquidated by discounting or re-discounting of Export bills under EBR scheme at the post-shipment stage. PCFC is also allowed for Deemed Exports subject to a maximum period of 30 days or up to the date of payment by project authorities whichever is earlier.

PCF is also subject to the overall directions of RBI from time to time in this regard.

Post-shipment Credit in Foreign Currency (PSCFC)

Banks are permitted to extend PSCFC facility to their export customers,(by utilizing their foreign exchange resources held by them or availed by them from foreign banks by way of line of credit in foreign currency etc.) through discounting the usance export bills received from their customers who have availed PCFC or otherwise by rediscounting these bills with foreign banks.

Normally the PSCFC scheme covers export bills of usance period up to 180 days from the date of shipping. If a customer is eligible to draw bills beyond a usance period of 180 days, PSCFC facility is allowed to be provided beyond the period of 180 days too.

Banks can rediscount the export bills abroad and square up the PSCFC.

Import Finance

Apart from the usual financing methods of short term credit facilities, import finance can also be availed by importers in India through **Buyers credit**, **Suppliers Credit** as well as through **External Commercial Borrowings ('ECB')**. A brief overview of the same is as under:

Buyers Credit

Buyers' credit refers to loans for payment of imports into India arranged by the importer from overseas bank or financial institution. Imports should be as permissible under the extant Foreign Trade Policy of the Director General of Foreign Trade (DGFT). For the overseas exporter the transaction becomes a cash sale.

Suppliers Credit

Suppliers' credit relates to the credit for imports into India extended by the overseas supplier. In this case too, imports should be as permissible under the extant Foreign Trade Policy of the DGFT. Usually this type of facility is availed for import of Capital goods. The importer pays an agreed amount of down payment and the balance amounts are paid in instalments over a deferred period. Interest rates for the transactions are decided at the initial contracting stage and are included in the instalments payable by the importer.

External Commercial Borrowings: This is covered in detail under Lesson 9.

Forfaiting

Forfaiting is a mechanism through which exporters can avail finance by discounting their medium term/long term export receivables with a forfaiter. Long term receivable can be as long as 10 years where as medium term can be anywhere between three to five years. Thus receivables on deferred basis evidenced by export bills and commercial documents can be forfeited.

Forfaiting is done on a without recourse basis i.e. if the importer fails to pay, the forfaiter cannot recover the dues from the exporter for whom he has discounted the export receivable. Of course, a forfaiter covers this risk by getting the export documents co-accepted by a importer's bank/ reputable bank from the importer's country.

A brief overview of general working mechanism of Forfaiting is as follows:

1. A foreign importer and an Indian exporter meet and finalize the transaction between them by entering in to a contract.
2. Thereafter the exporter readies goods and ships the same to the importer as per contract terms.
3. Exporter simultaneously prepares set of export documents. (which are in a standardized formats of the forfaiter.)
4. Before hand, the foreign importer agrees to get the co-acceptance the export documents sent by the Indian importer, from his bank/reputed bank in his country as agreed between him and the exporter – this is known as "avalised "document.
5. Once the co-accepted documents reach the exporter he hands over the same to the forfaiter 'forfait' the same - .i.e. discount the same," without recourse" basis to him.
6. The 'forfaiter' discounts the same and credits the amount of the bill after deducting his charges such as Commitment Fee, Discount and Documentation fee.
7. The forfaiter thereafter sends the export documents to the importer's bank/ co-accepted bank for reimbursement on maturity date of the bill.

Forfaiting is an approved method of export financing by RBI. EXIM Bank in India has been authorised to facilitate the forfaiting transactions. The advantage for the exporter is that he can convert the credit sale in to cash sale without recourse to him or his banker.

PROJECT FINANCE

Project Finance is the long-term financing of infrastructure and industrial projects based upon the projected cash flows of the project. Usually, a project financing structure involves a number of equity investors, known as 'sponsors', a 'syndicate' of banks or other lending institutions that provide loans to the operation. They are most commonly loans which are secured by the project assets and paid entirely from project cash flow, rather than from the general assets or creditworthiness of the project sponsors. The financing is typically secured by all of the project assets, including the revenue-producing contracts. Project lenders are given a lien on all of these assets and are able to assume control of a project if the project company has difficulties complying with the loan terms.

Generally, a special purpose entity is created for each project, thereby shielding other assets owned by a project sponsor from the detrimental effects of a project failure. As a special purpose entity, the project company has no assets other than the project. Capital contribution commitments by the owners of the project company are sometimes necessary to ensure that the project is financially sound or to assure the lenders of the sponsors' commitment. Project finance is often more complicated than alternative financing methods. Traditionally, project financing has been most commonly used in the infrastructure industry.

The companies can finance their projects using two ways:

(1) Corporate Financing and

(2) Project Financing.

In Corporate Finance, in order to guarantee the additional credit provided by the lenders. The promoters / sponsors use all the assets and cash flows from the existing firm. So if the project fails these assets and cash flows are used to repay the debt of the creditors, while in Project financing the new project and the existing firm live separate lives so even if the new project fails the creditors cannot claim their debt repayment from the asset and cash flow available in the existing firm. This deal is costlier than corporate financing.

Risk identification and allocation is a key component of project finance. A project may be subject to a number of technical, environmental, economic and political risks, particularly in developing countries and emerging markets. Financial institutions and project sponsors may conclude that the risks inherent in project development and operation are unacceptable (unfinanceable). The patterns of implementation are sometimes referred to as “project delivery methods.” The financing of these projects must be distributed among multiple parties, so as to distribute the risk associated with the project while simultaneously ensuring profits for each party involved. In designing such risk-allocation mechanisms, it is more difficult to address the risks of developing countries› infrastructure markets as their markets involve higher risks.

The features of project finance transactions are:

1. Capital Intensive – They tend to be large scale projects requiring debt and equity in a large amount.
2. Highly leveraged – These transactions have high debt proportion as compared to equity
3. Long Term – The tenor for project financings can easily reach 15 to 20 years
4. Independent Entity With A Finite Life – They form a new legal entity with the sole purpose of executing the project
5. Non-Recourse Or Limited Recourse Financing – It means a the creditor has no or limited claims on the loan in case of default
6. Many Participants – There are many national and international participants involved in a project laying different risk
7. Allocated Risk – There are many risk involved in a project for example Environmental, Country risk, market risk, project risk, Product risk, Supply risk, Funding risk, Currency risk, Interest risk
8. Costly – Raising capital through project finance is generally more costly than through typical corporate finance avenues.

The key participants in a project finance are:

Government – They participate indirectly in the project. Their work includes approval of the project, control of the state company that sponsors the project, etc.

Project Sponsors or Owners.-They are the owners with the equity stake in the project

The sponsors of a project finance deal include:-

- **Industrial sponsors** – these are the industrialist who see some kind of connection of the project with their core business
- **Public sponsors** – These include central or local government, municipalities, or municipalized companies
- **Contractors / Sponsors** –These include individuals who develop, build or run plants.
- **Financial investors**

Project Company –This entity is created solely for the purpose of execution of the project. They are controlled by the project sponsors. They form the center of the project because of its contractual arrangements with operators, contractors, suppliers and customers.

Contractor – The contractor is responsible for constructing the project to the technical specifications outlined in the contract with the project company.

Supplier – They are the input provider for the project

Customer – They are the party who are willing to purchase the projects output

Commercial banks – They source the fund required for project financing. For arranging these large loans banks often form syndicates to sell down their assets.

Project Report

For getting financial assistance from any Bank or Financial Institution for implementation of any business idea, a company is required to prepare a Project Report. A Project Report is a detailed report containing all the details of company. A good project report must present diverse range analytical challenges to its clients and shareholders.

Report covering certain important aspects of the project as detailed below:

- Introductory Page
- Summary of the project
- Details about the Promoters, their educational qualifications, work experience, etc.
- Current Status of the Bank, its products and services, target market, and activities.
- Infrastructure facilities, tools deployed, operational premises, machinery, etc.
- Customers, details about them as well as prospective customers
- Fiscal acquisitions and tie-ups
- Means of Financing
- Profitability projections and Cash flows for the entire repayment period of financial assistance
- Balance Sheet
- Profit and Loss Statements
- Fund Flow Statement
- Chief Ratios
- Break Even Point Evaluations
- Product with capacity to be built up and processes involved
- Project location
- Cost of the Project and Means of financing thereof
- Availability of utilities
- Technical arrangements
- Market Prospects and Selling arrangements
- Environmental aspects

- Employees, details about the top management, their educational qualifications, work experience, etc.
- Conclusions

Specimen of Project Report

PART-I

1. Background of company (Company Profile) and promoters Background.
2. Aim of the project.
3. Profiles of key personnel in the organization.
4. Future plan of the company.
5. Strengths and achievements of the company like potential market for software products project developed by the company and in-house expertise in the area of specialization.
6. Financial arrangements and feasibility of the proposed setup.
7. Marketing strategy, Marketing Arrangements, Marketing tie-up, if any.
8. Export performance for last three years in cases of existing firms & last years Balance Sheet.

   (Only in case of the existing company, Not applicable to new unit)
9. Export Orders in hand / in pipeline / under registration.
10. Export work (As per transfer pricing guidelines in the case of subsidiaries).
11. Brochures of the software products / company or Annual Report for the previous year.
12. Space Requirement / Built up Land.
13. Manpower: Type of people working
    - Project Manager
    - Project Leader
    - Senior Programmer
    - Junior Programmer/Operators
14. Wage Bill.
15. Conclusion.

PART II

PROJECT COST AND MEANS OF FINANCE Rs. In ……

PROJECT COST:

Premises :

Office Equipment :

Hardware :

Software :

Working Capital Requirements :

Total :

MEANS OF FINANCE Rs. In ….

Equity :

– Promoters :

– Indian Public :

Working Capital Loan :

Term Loan From Bank :

Total :

BALANCE SHEET

Particulars	1st Year	2nd Year	3rd Year	4th Year	5th Year
A. Sources of Funds					
Equity Share Capital					
Reserves & Surplus					
- Profit & Loss					
Total Shareholders Funds					
Others (Specify Item Wise)					
Total					
B. Use of Funds:					
Gross Fixed Assets					
Additions					
Less: Depreciation					
Net Fixed Assets					
Others (Specify Item Wise)					
Cash & Bank Balances					
Net Current Assets					
Total					

PROFIT AND LOSS STATEMENT

Particulars	1st Year	2nd Year	3rd Year	4th Year	5th Year	Total
Revenue:						
Exports						
– Onsite Services						
– Offshore						
Total						
Operational Expenditure (Specify Item wise)						
Op. Profit						
Depreciation						
Profit						
Dividend						
Transfer To Reserves						

CASH FLOW STATEMENT

Particulars	1st Year	2nd Year	3rd Year	4th Year	5th Year	Total
Inflow						
Equity						
Loans						
Others (Specify Item wise)						
Profit						
Depreciation						
Total Infow						
Outflow						
Fixed Assets (Specify Details)						
Others (Specify Item wise)						
Dividend						
Total Outflow						
Cash & Bank Balances						
Opening Balance						
Net Inflow						
Closing Balance						

Important Ratios

Particulars	1st Year	2nd Year	3rd Year	4th Year	5th Year	Total
Debt/Equity						
Op. Profit/Income						
Pat/Income						
Return On Total Assets						
RONW						
Dividend Payout Ratio						
Debt Service Coverage Ratio						
(Pat Before Interest/ Interest)						
EPS (Rs.)						
Compounded Annual Growth Rate						

Break Even Point Calculations

Particulars	1st Year	2nd Year	3rd Year	4th Year	5th Year	Total
Gross Revenue						
Variable Expenses (Specify Item wise)						
Contributions						
Fixed Expenses (Specify Item wise)						
PAT						
Break-Even Point						
Cash Break-Even Point						

LOAN AGAINST SECURITIES

Banks and financial institutions come up with innovative ways to fulfill the monetary requirements of every individual as per their credit worthiness and paying capacity. One step in this direction has been Loan against Securities, popularly referred to as LAS. Under “Loan against Securities”, loan is advanced to a customer against pledge of securities or simply put loan against insurance policy, mutual funds, NSC and other securities. The list of approved securities against which LAS can be advanced varies from bank to bank, but primarily the following are considered to be approved securities against which LAS could be given.

1. Non-Convertible Debentures
2. Mutual Fund Units
3. NABARD Bonds

4. Dematerialised Shares
5. National Saving Certificates/Kissan Vikas Patra (Accepted only in Demat form)
6. Insurance Policies

By pledging the securities held by the borrower, a loan against Securities is provided by a bank or a financial institution as an overdraft facility. The value of the overdraft limit that is advanced is determined on the basis of the securities that are pledged. The rate of interest is calculated only on the amount withdrawn and only for the period of utilization.

The advantageous part of pledging your securities is one that the borrower is able to get steady cash easily at the time of need and secondly the borrower need not be devoid of the benefits as a shareholder. This means that the borrower enjoys the rights of receiving dividends and bonuses along with gaining from the price movements in the shares. This facility is ideal to meet short-term financial needs and the interest rates are lesser than that in a personal loan.

Features of Loan Against Securities

1. **Secured Loan -** Loan against securities is a secured loan as the bonds, shares, debentures or mutual funds owned by the borrower are kept as collateral security when this loan is advanced.
2. **Tenure** - The tenure of loan against securities is generally one year.
3. **Rate of Interest** - Generally interest rates at which loan against securities is advanced varies from 12% - 15% p.a.
4. **Processing Fees** - Banks and financial institutions usually charge approximately 2 % as processing fees.
5. **Loan Amount** - The loan amount for which the borrower may be eligible depends upon the type of security that is being offered. For example, in case equity shares are offered then the amount that is eligible would be 50% of the value of such shares.
6. **Prepayment Charges** – There are generally no prepayment charges.

Loan Against Properties

This is a loan, banks grant against property owned by the prospective borrower. Banks take the property as security and based on the valuation of the property, they extend a loan, net of the margin fixed by them. .

The types of Property against which LAP can be availed can range from owned residential properties g, self-occupied property, owned and rented property, owned land, owned commercial property, owned but rented out commercial property. The proceeds from these are used by borrowers for personal, business and consumption purposes. After due appraisal Banks sanction generally anywhere between 50% to 65% of the value of borrower's property. Banks offer repayment period of 10 to 15 years at competitive interest rates. For sanctioning loans against properties banks insist on creating a mortgage in their favour.

DISCOUNTING

Commercial bills are basically negotiable instruments accepted by buyers for goods or services obtained by them on credit. Such bills being bills of exchange can be kept upto the due maturity date and encashed by the seller or may be endorsed to a third party in payment of dues owing to the latter. The most common practice is that the seller who gets the accepted bills of exchange discounts it with the Bank or financial institution or a bill discounting house and collects the money (less the interest charged for the discounting).

The volume of bills both inland and foreign, which are discounted accounted, forms a substantial part of the total scheduled commercial bank credit. Over the years this is coming down. The Reserve Bank has been attempting to develop a market for commercial bills. The bill market scheme was introduced in 1942 and a new scheme called Bill Rediscount Scheme with several new features was introduced in November, 1970. Under the latter scheme the RBI rediscount bills at the bank rates or at rates specified by it at its discretion. Since the rediscounting facility has been made restrictive, it is generally available on a discretionary basis.

The difficulties which stand in the way of bill market development are, the incidence of stamp duty, shortage of stamp paper, reluctance of buyers to accept bills, predominance of cash credit system of lending and the administrative work involved in handling documents of title to goods. To be freely negotiable and marketable, the bills should be first class bills i.e. those accepted by companies having good reputation. Alternatively, the bills accepted by companies should be co-accepted by banks as a kind of guarantee. In the absence of these criteria, bill market has not developed in India as the volume of first class bills is very small.

FACTORING

Factoring is a financial transaction where an entity sells its receivables to a third party called a 'factor', at discounted prices. Factoring is a financial option for the management of receivables. In simple definition it is the conversion of credit sales into cash. In factoring, a financial institution (factor) buys the accounts receivable of a company (Client) and pays up to 80% (rarely up to 90%) of the amount immediately on formation of agreement.

Factoring company pays the remaining amount (Balance 20%-finance cost-operating cost) to the client when the customer pays the debt. Collection of debt from the customer is done either by the factor or the client depending upon the type of factoring. The account receivable in factoring can either be for a product or service. Examples: factoring against goods purchased, factoring for construction services (usually for government contracts where the government body is capable of paying back the debt in the stipulated period of factoring. Contractors submit invoices to get cash instantly), factoring against medical insurance etc.

Parties in Factoring

The factoring transaction involves three parties:

- The Seller, who has produced the goods/services and raised the invoice.
- The Buyer, the consumer of goods/services and the party to pay.
- The Factor, the financial institution that advances the portion of funds to the seller.

Factoring Process

The steps involved in factoring are listed below:

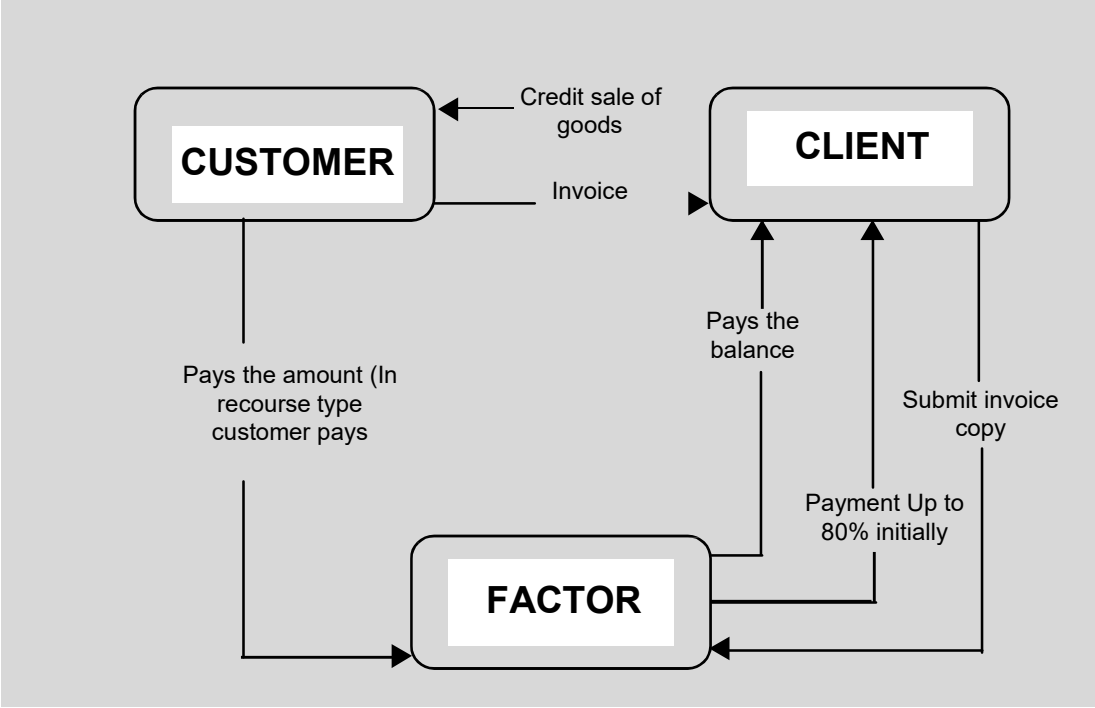
- The seller interacts with the funding specialist/broker and explains the funding needs.
- The broker prepares a preliminary client profile form and submits to the appropriate funder for consideration.
- Once both parties agree that factoring is possible, the broker puts the seller in direct contact with the funder to ask/answer any additional questions and to negotiate a customized factoring agreement, which will meet the needs of all concerned.
- At this point, the seller may be asked to remit a fee with formal application to cover the legal research costs, which will be incurred during "due diligence". This is the process by which the buyer's credit worthiness is evaluated through background checks, using national database services.
- During the next several days, the funder completes the "due diligence" process on the seller, further verifies invoices and acknowledges any liens, UCC filings, judgments or other recorded encumbrances

on the seller's accounts receivables.

- The seller is advised of the facility and is asked to advise the buyers of the Factor by letter and submit an acknowledged copy of the same to the Factor for records.
- A detailed sanction letter is given to the seller and their acceptance on the same taken, with the Required signatories. (Authorized signatories would be mentioned in the "Signing Authorities" section of the Proposal presented by seller).
- Sanction terms must contain the following.
  - All facilities covered under the sanction.
  - The period for which the sanction is valid
  - When the facility comes into effect (e.g. if facility is dated 1/12/13, it can state that invoices raised from or after 15/12/13 only would be Factored).
  - Who the authorized signatories are for signing invoices for factoring.
  - The limits.
  - The seller has to advise the buyer of the Factoring agreement.
  - Copy of such advice acknowledged by the buyer should be submitted to the Factor. Buyer's consent is not required to decide on the Factor.
- The discounting rates, charges fixed.
- In case of discounts given by the seller to the buyer, which value would be financed by the factor (since the factored amount should never exceed the amount actually payable by buyer).
- Usually within 7 to 10 days of the initial contact with the factor, agreements are signed, customers are notified, UCC forms filed and the first advance is forwarded to the company. This advance can vary between 70 - 80% of the face value of the invoices being factored. In the construction industry, the advances may be in the range of 60 - 70%. The remaining amount is called the "reserve" which is held by the factor until the invoices are paid. The factor then deducts his fee and returns the remaining funds to the seller.
- The seller performs services or delivers products, thus creating an invoice.
- The seller sends or faxes a copy of the invoice directly to the factor.
- The funder verifies the invoice and the advance is sent to the seller as per the agreement with the factor. In certain cases, the funder wires the funds to the seller's account for an additional fee.
- The buyer pays the factor. The factor then returns any remaining reserve, minus the fee, which has been predetermined in the negotiated agreement.

Advantages for the Seller

The Seller gets funds immediately after the sale is effected and on presentation of accepted sales invoices and Promissory notes. Major part of paper work and correspondence is taken care of by the factor. The follow-up, for recovery of funds, is done mainly by the factor. The Interest rates are not as high as normal discounting. There is an increased cash flow to meet payroll. There is an Immediate funding arrangement, No additional debt is incurred on balance sheet. Other assets are not encumbered and approval is not based on seller's credit rating.



Types of Factoring

Non-Recourse or Full Factoring

Under this type of factoring the bank takes all the risk and bear all the loss in case of debts becoming bad debts.

Recourse Factoring

Under this type of factoring the bank purchases the receivables on the condition that any loss arising out or bad debts will be borne by the company which has taken factoring.

Maturity Factoring

Under this type of factoring bank does not give any advance to the company rather bank collects it from customers and pays to the company either on the date of collection from the customers or on a guaranteed payment date.

Advance Factoring

Under advance factoring arrangement the factor provides an advance against the uncollected and non-due receivables to the firm.

Undisclosed Factoring

Under this type of factoring, the customer is not informed of the factoring arrangement. The firm may collect dues from the customer on its own or instruct to make remit once at some other address.

Invoice Discounting

Under this type of factoring the bank provide an advance to the company against the account receivables and in turn charges interest rate from the company for the payment which bank has given to the company.

ISLAMIC BANKING

Islamic Banking or Sharia-Compliant Finance is banking or financing activity that complies with sharia (Islamic law) and its practical application through the development of Islamic economics. Some of the modes of Islamic banking/finance include *Mudarabah* (Profit sharing and loss bearing), *Wadiah* (safekeeping), *Musharaka* (joint venture), *Murabahah* (cost plus), and *Ijara* (leasing).

Sharia prohibits *riba*, or usury, defined as interest paid on all loans of money (although some Muslims dispute whether there is a consensus that interest is equivalent to *riba*).Investment in businesses that provide goods or services considered contrary to Islamic principles (e.g. pork or alcohol) is also *haraam* («sinful and prohibited»).

These prohibitions have been applied historically in varying degrees in Muslim countries/communities to prevent un-Islamic practices. In the late 20th century, as part of the revival of Islamic identity, a number of Islamic banks formed to apply these principles to private or semi-private commercial institutions within the Muslim community. Their number and size has grown so that by 2009, there were over 300 banks and 250 mutual funds around the world complying with Islamic principles, and around $2 trillion were sharia-compliant by 2014. Sharia-compliant financial institutions represented approximately 1% of total world assets, concentrated in the Gulf Cooperation Council (GCC) countries, Iran, and Malaysia. Although Islamic Banking still makes up only a fraction of the banking assets of Muslims, since its inception it has been growing faster than banking assets as a whole, and is projected to continue to do so.

The first successful example of an Islamic Bank was perhaps a financial institution called Tabung Haji in Malaysia which originally came into being due to high demand of interest-free money for pilgrimage (Hajj) since this was not possible by way of conventional banking system. Thus, in 1963 Tabung Haji came into being with a total of 1,281 depositors which increased to 8,67,220 depositors and with deposits over one billion Malaysian dollars. This paved the way for creation of more Islamic banks especially in Egypt where small scale Islamic Banks existed in the 1960s, catering primarily to the rural areas. The success of these banks led to the formation of the Naseer Social Bank in Cairo in the year 1972. In the same decade an International Islamic Bank for Trade and Development was proposed, which led to the creation of Islamic Development Bank with a view to promote economic development of the Muslim community in accordance with the *Shariat* laws.

Islamic Banks work on the principles of an interest free banking. *Riba* or interest under Islamic Law basically means anything in “excess” – the investor should not make an “undue” profit from the hard work of the other. But it is permitted to follow a system of reasonable profit and return from investment where the investor takes a risk that is well calculated. Thus, Islamic banks make available accounts which provide profit or loss instead of interest rates. The banks use this money collected by them and invest in something that is *shariat* compliant,that is not *haraam* and does not involve high risks. Thus, businesses involving alcohol, drugs, war weapons etc. as well as all other high risk and speculative activities are prohibited. Islamic Banking, therefore, acts as an agent by collecting the money on behalf of its customers, investing them in *shariat* compliant projects and sharing the profits or losses with them. The Dow Jones Islamic Market Index came into being in the year 1999 for investors willing to invest in *shariat* compliant projects.

There are various products in Islamic Banking that cover the needs and requirements of the consumers. Some of them are *Mudarbah* (profit sharing – one party provides finances, the other provides expertise)*, Musharaka* (joint venture – both parties share everything equally), *Murabaha* (cost plus profit)*, Ijara* (letting on lease)*, Istisna* amongst others

Islamic Banking in India

However, the Indian banking laws will have to be amended so as to incorporate the provisions relating to Islamic banking. For example, the Banking Regulation Act requires payment of interest which is against the principles of Islamic Banking. The Act also specifies “banking” to mean accepting deposits of money from public for lending or investment, thus excluding within its ambit the instruments of Islamic banking that promote profit and loss.

HOW TO PREPARE CMA DATA FOR DIFFERENT TYPES OF LOANS AND CREDIT FACILITIES

CMA refers to Credit Monitoring Arrangement data, which is a report to be presented to a bank to show the company's past financial history, current financial position and future financial planning. It is necessary for a bank loan or a working capital loan or for seeking Cash Credit Limit.

In CMA data there are different parts:

In case of existing units, the data should be for current year estimated) and past 3 years (Audited) and projections for next 5 to 7 years *covering the proposed repayment period of Term loan.*

Operating statement – Profitability statement. In CMA data the expenses are mainly grouped into following categories:

- Raw Material consumed. (Opening stock + Purchases – Closing Stock)
- Other Spares
- Electricity / Power / Fuel
- Factory / Direct wages
- Repairs & Maintenance
- Other overheads

Total of the above expenses **plus** opening stock of Stock in process and Finished goods **Less** closing stock of Stock in process and Finished goods is the **"Total Cost of Sales".**

All other office expenses and indirect expenses related to business **excluding** Interest paid on Bank loan (which is shown separately- for Cash Credit and for Term Loan) are clubbed under the head "**Selling, General & Administrative Expenses".**

Non operating Income and Expenses are to be shown separately in the CMA data. Detailed format of "Operating Statement" generally required by Banks for CMA data is attached for reference.

Balance Sheet – Liabilities: Include following heads:

Current Liabilities:

- Short Term borrowings from "Banks" with sub limit for Bills Discounting.
- Short Term borrowings from "others".
- Sundry Creditors (Trade)
- Sundry Creditors (Capital Expenditure)
- Advance payment from Customers, dealers.
- Provision for taxation.
- Dividend payable in case of Companies.
- Other Statutory liabilities payable within one year.
- Term Loan installments payable within one year are to be treated as Current Liabilities.
- Other Current Liabilities and provisions to be specified.

Term Liabilities:

- Part of Term Loan excluding amount payable within one year.
- Other Term liabilities (Not payable within next one year.)

- Unsecured Loans not repayable in next one year.

Total of Current Liabilities and Term Liabilities represent **"Total Outside Liabilities".**

Net Worth: It includes:

- Capital invested in the business.
- Reserves & Surplus in case of Companies
- Surplus / Deficit in Profit & Loss Account.

Sum of Current Liabilities, Term Liabilities and Net Worth is "**Total Liabilities"**

Balance Sheet - Assets: includes following heads:

Current Assets:

- Cash & Bank Balances excluding Term Deposits in Banks
- Investments in Govt. Securities
- Investment in Bank Deposits
- Receivables
- Expenses receivable including Bills purchased and discounted by Banks.
- Inventory which includes Stock of Raw Material, Spares, Stock in Process and Finished Goods.
- Advance to suppliers for supply of Raw Materials and Spares.
- Advance payment of Taxes
- Other Current assets to be specified.

Sum of the above items represent "**Total Current Assets"**

Fixed Assets:

- Gross Block of Fixed Assets Less Depreciation up to date i.e Net Block. (With detailed working of Depreciation)
- Advance for Capital Expenditure
- Other investments which are not "Current Assets"
- Investments in Associates & Subsidiaries.
- Long term loans & advances
- Security Deposits.
- Staff advances
- Obsolete Stock
- Other non-current assets to be specified.
- Preliminary Expenses to the extent of Not written off and other intangible assets.

Sum of Current Assets and Fixed Assets is "**Total Assets"**

Total Liabilities = Total Assets (to be checked)

Ratio Analysis & Assessment of Bank Finance:

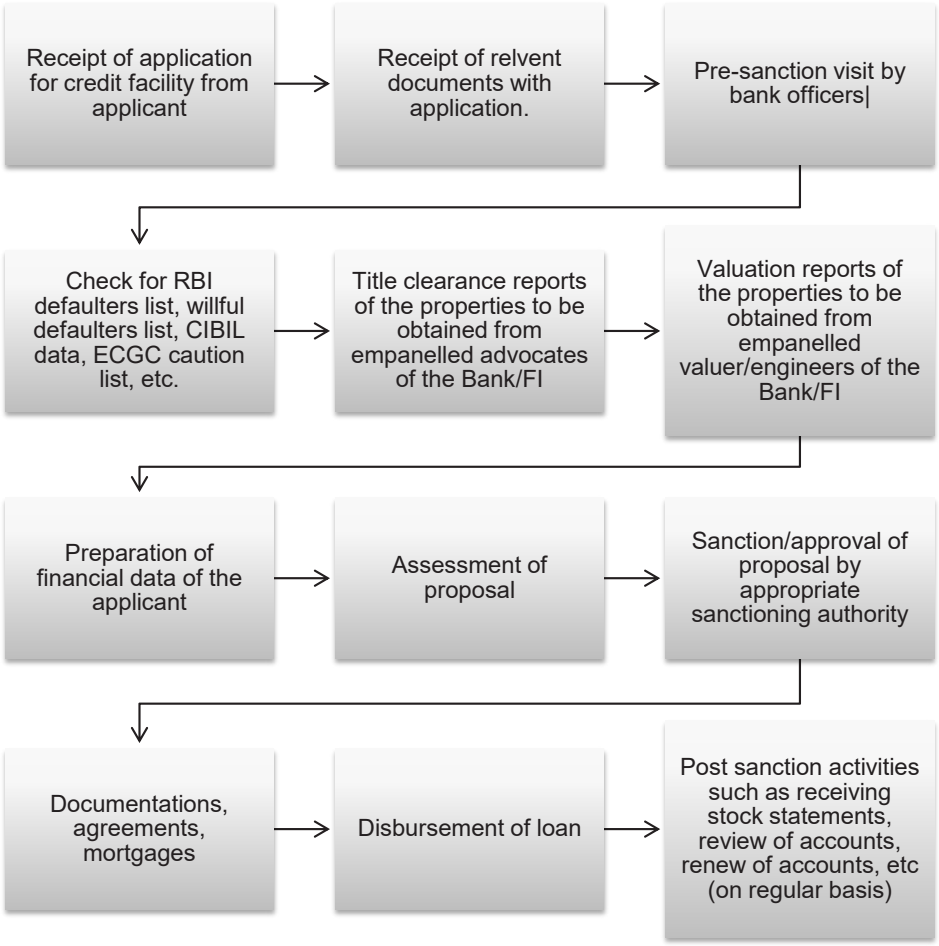
From the available and projected financial statements, important ratios are to be calculated which include:

Liquidity Ratios
Current Ratio; Quick Ratio, Absolute Cash ratio
Capital Structure Ratios
Equity to Total Funds Ratios, Debt Equity Ratio, Capital Gearing Ratio, Fixed Asset to Long Term Fund Ratio and Proprietary Ratios
Coverage Ratios
Debt Service Coverage Ratio, Interest Coverage Ratio and Preference Dividend Coverage Ratio
Turnover Ratios
Capital Turnover Ratio, Fixed Asset Turnover Ratio, Working Capital Turnover Ratio, Finished Goods or Stock Turnover ratio, WIP Turnover Ratio, Debtors Turnover ratio and Creditors Turnover Ratio.
Profitability Ratios Based On Sales
Gross Profit ratio, Operating Profit Ratio, Net Profit Ratio and Contribution Sales Ratio
Profitability Ratios Owners View Point
Return on investment (ROI) or return on capital employed, Return on Equity, Earnings Per Share, Dividend Per Share
Return on Assets

- Cash Flow statement.
- Sensitivity analysis

APPRAISAL METHODOLOGY FOR DIFFERENT TYPE OF LOANS AND CREDIT PRODUCTS

Credit Appraisal is the process by which a lender appraises the technical feasibility, economic viability and bankability including creditworthiness of the prospective borrower. . Appraisal of credit is generally carried by the Banks/financial institutions which are involved in providing financial funding to its customers. Credit appraisal process of a customer lies in assessing if that customer is capable of repaying the loan amount in the stipulated time, or not. The banks have has their own methodology to determine if a borrower is creditworthy or not. It is determined in terms of the norms and standards set by the banks. All banks employ their own unique objective, subjective, financial and non-financial techniques to evaluate the creditworthiness of their customers.



While assessing a customer, the bank needs to know the following information:

Incomes of applicants and co-applicants, age of applicants, educational qualifications, profession, experience, additional sources of income, past loan record, family history, employer/business, security of tenure, tax history, assets of applicants and their financing pattern, recurring liabilities, other present and future liabilities and investments (if any).

Out of these, the incomes of applicants are the most important criteria to understand and calculate the credit worthiness of the applicants. As stated earlier, the actual norms decided by banks differ greatly. Each has certain norms within which the customer needs to fit in to be eligible for a loan. Based on these parameters, the maximum amount of loan that the bank can sanction and the customer is eligible for is worked out.

Apart from the above, the broad tools to determine eligibility remain the same for all banks. The conditions are broadly tabulated below:

Parameter	Documents
Technical Feasibility	Field Investigation, Market Value of Asset
Economic Value	Loan to Value
Bankability	Past Month Bank Statements, Assets and Liabilities of the applicant

Besides the above said process, profile of the customer is studied properly. Their CIBIL (Credit Information Bureau (India) Limited) score is checked.

I. Working Capital

Main objective of running any industry is earning profits. An industry will require funds to acquire "Fixed assets" like land, building, plant, machinery, equipments, vehicles, tools etc., & also to run the business i.e. its day to day operations.

Funds required for day to-day working like for purchase of raw materials/ stores/ fuel, for employment of labour, for power charges etc., for storing finishing goods till they are sold out & for financing the sales by way of sundry debtors/ receivables, are financed through working capital limit.

Capital or funds required for an industry can therefore be bifurcated as fixed capital & working capital. Working capital in this context is the excess of current assets over current liabilities. The excess of current assets over current liabilities is treated as net working capital or liquid surplus & represents that portion of the working capital which has been provided from the long term source.

Thus Working Capital Requirement is dependent on :

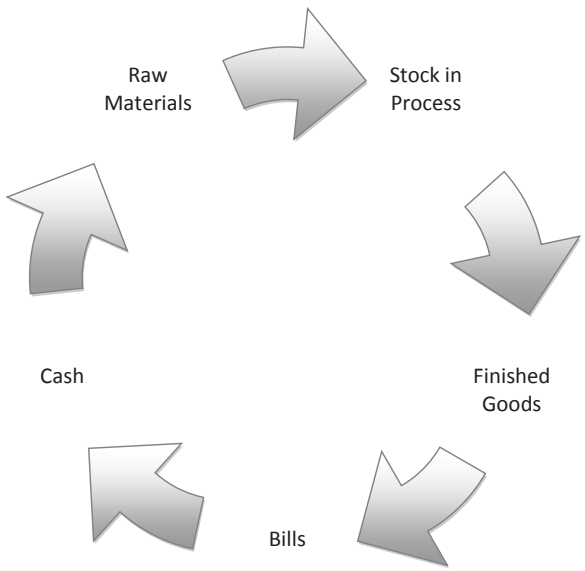
(a) The volume of activity (viz. level of operations i.e. Production & sales)

(b) The activity carried on viz. manufacturing process, product, production programme, the materials & marketing mix.

1. Operating Cycle Method: Any manufacturing activity is characterized by a cycle of operations consisting of purchase of raw materials for cash, converting these into finished goods & realizing cash by sale of these finished goods.

The time gap between cash outlay & cash realization by sale of finished goods & realization of sundry debtors is known as the length of the operating cycle.

Operating cycle is also called the cash-to-cash cycle & indicates how cash is converted into raw material, stocks in process, finished goods, bills (receivables) & finally back to cash. Working capital is the total cash that is circulating in this cycle. Therefore, working capital can be turned over or redeployed after completing the cycle.



a) That is, the operating cycle consists of:

- Time taken to acquire raw materials & average period for which they are in store.
- Conversion process time

- Average period for which finished goods are in store &
- Average collection period of receivables (Sundry Debtors)

2. Turnover Method (Nayak Committee) : This method of assessing working capital requirement of a firm is given by "Nayak Committee". The committee headed by Mr. P.R. Nayak examined the adequacy of institutional credit to SSI sector and gave its recommendations which are as under:

Under this method, bank credit for working capital purposes for borrowers requiring fund based limits up to Rs. 5 crore for Small Scale Industries borrowers and Rs. 2 crore in case of other borrowers, may be assessed at minimum of 25% of the projected annual turnover of which should be provided by the borrower (i.e. minimum margin of 5% of the annual turnover to be provided by the borrower) and balance 4/5th (i.e. 20% of the annual turnover) can be extended by way of working capital finance.

The projected turnover or output value may be interpreted as projected gross sales which will include excise duty also.

Since the bank finance is only intended to support the need based requirement of a borrower, if the available Net Working Capital (net long term surplus funds) is more than 5%of the turnover the former should be reckoned for assessing the extent of bank finance.

3. Maximum Permissible Banking Finance Method (Tandon Committee) : A committee headed by Mr. P.L. Tandon, ex-chairman of PNB, was constituted with view to suggest improvement in the existing ash credit system. It submitted its report on guidelines for follow up of credit in August 1974, suggesting three methods of lending.

These are as follows:

- 1st Method of Lending: 75% of the working capital gap (Working Capital Gap= Total current assets– Total current liabilities other than bank borrowings) is financed by the bank and the balance 25% of the Working Capital Gap considered as margin is to come out of long term source i.e. owned funds and term borrowings.
- 2nd Method of Lending: Bank will finance maximum up to 75% of total current assets (TCA) and borrower has to provide a minimum of 25% of total current assets as the margin out of long term sources. This will give a minimum current ratio of 1.33:1.
- 3rd Method of Lending: This is same as 2nd method of lending, but excluding core current assets from total assets and the core current assets are financed out of long term funds of the company. The term 'core current assets' refers to the absolute minimum level of investment in current assets, which is required at all times to carry out minimum level of business activity.

4. Chore Committee : The R.B.I constituted, in April 1979, a working group under the chairmanship of Sri K.B Chore, to review the system of cash credit with the particular reference to the gap between sanctioned limit and the extent of their utilization. It was also asked to suggest alternative type of credit facilities which would ensure greater credit discipline and enable the banks to relate the credit limits to increase in output or other productive activities.

The committee recommended assessment of working capital requirements have to be mandatorily assessed based on 2nd method of lending suggested by Tandon Committee except for sick/Units under rehabilitation.

5. Cash Budget System : In case of tea, sugar, construction companies, film industries and service sector requirement of finance may be at the peak during certain months while the sale proceeds may be realised throughout the year to repay the outstanding in the account. Therefore, credit limits are fixed on the basis of projected monthly cash budgets to be received before beginning of the season.

II. Appraisal of Term Loans

Appraisal of term loan for an industrial unit is a process comprising several steps. There are four broad aspects of appraisal, namely

- Technical Feasibility - To determine the suitability of the technology selected & the adequacy of the technical investigation & design;
- Economic Feasibility - To ascertain the extent of profitability of the project & its sufficiency in relation to the repayment obligations pertaining to term assistance;
- Financial Feasibility - To determine the accuracy of cost estimates, suitability of the envisaged pattern of financing & general soundness of the capital structure; &
- Managerial Competency – To ascertain that competent men are behind the project to ensure its successful implementation & efficient management after commencement of commercial production.

LESSON ROUND UP

– Bonds which are rupee denominated are called as Masala Bonds which are becoming a very popular instrument.

– Banks also provide other types of finance including overdrafts and cash credit

– Innovative methods of financing like Loan against shares are also available from Banks and financial institutions.

– A new method of method of banking is the Islamic Banking which is in confirmation with the Sharia Laws.

– Cash credit is the main method of lending by banks in India and accounts for about 70 per cent of total bank credit. Under the system, the banker specifies a limit, called the cash credit limit, for each customer, up to which the customer is permitted to borrow against the security of tangible assets or guarantees.

GLOSSARY

CC A/c Cash Credit Account

OD A/c Overdraft Account

DP Drawing Power

D/P Delivery Against Payment

D/A Delivery Against Acceptance

CMA Data Credit Monitoring Arrangement Data

GCC Gulf Cooperation Council (GCC)

ROI Return on investment

CIBIL Credit Information Bureau (India) Limited

SELF TEST QUESTIONS

1. How is the Masala Bond more advantageous to the conventional source of funding from overseas sources?
2. How is project financing different from Corporate financing?
3. What is factoring. What are the advantages of factoring to a seller?
4. What are the factors to be taken into account for credit appraisal?

Lesson 8
Debt Funding – Indian Non-Fund Based

LESSON OUTLINE

- Letter of Credit
  - Sight Credit
  - Acceptance Credit/ Time Credit
  - Revocable and Irrevocable Credit
  - Confirmed Credit
  - Back-to-Back Credit
  - Transferable Credit
  - Red Clause" Credit & "Green Clause" Credit
- Stand by Letter of Credit
- Bank Guarantees
  - Financial Guarantee
  - Performance Guarantee
  - Deferred Payment Guarantee
- Appraisal Methodology for different type of Non-Fund Based Credit Products
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

In non- fund based credit facilities there is no outflow of funds. The bank or financial institution don't give money to the borrower to carry the business directly but it helps the business in other ways.

At the end of the lesson the students should:

- Understand various types of credit facilities granted by banks
- Learn the various non-fund based credit facilities provided by banks.
- Appraisal methodology for different type of non-fund based credit products

INTRODUCTION

In a business, funds are required for various reasons. Traditional areas of need may be for acquiring of capital asset- fixed assets like new machinery or the construction of a new building. For development of new products or to enter in to new markets capital may be required. Normally, small requirement of fund can be arranged in house but in case of acquisition of machinery may come from external sources. There are number of source of funds for raising funds. The cost of the fund may vary from organisation to organisation and also according to purpose. The need for finance may be for long-term, medium-term or for short-term. Financial requirements with regard to fixed and working capital vary from one organisation to other. To meet out these requirements, funds need to be raised from various sources. Some sources like issue of shares and debentures provide money for a longer period.

Credit Facilities Provided by the Banks

Fund Based Facilities and Non Fund Based Facilities

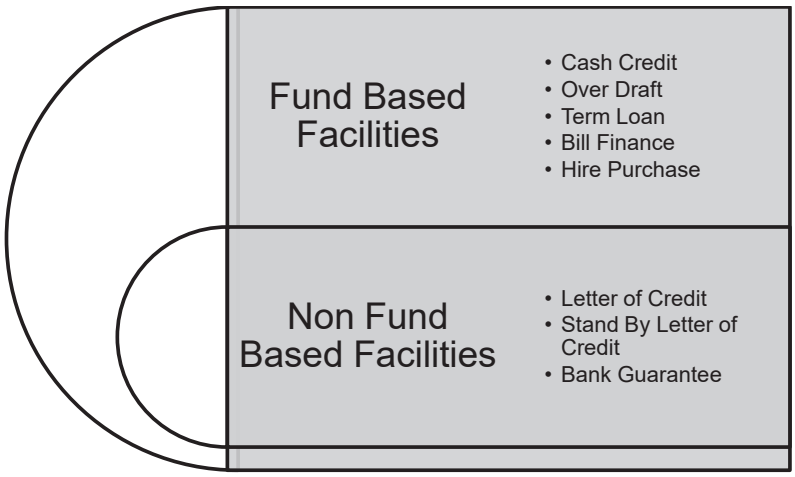
In Funded (Fund based) facility, there is cash outflow right from the initial stage. The examples of funded facility are Term Loan, Cash Credit and Bill Purchased or bill discounting. When a term loan is disbursed, cash credit facility is sanctioned or a bill is purchased or discounted cash flow takes place. The income earned by the banks when they extend funded facilities to the borrowers, is accounted under income head interest (in case of term loans and cash credits) and discount (in case of bill discounting facility).

In Non-funded (Non-fund based) facility, initially there is no cash outflow, later on there may or may not be cash outflow. The examples of non-fun based facility are Bank Gurantees (BGs) including deferred payment guarantees and Letter of Credit (LCs). When BG or LC is issued, there is no cash out flow. However latter on if the guarantee is invoked by the beneficiary, the bank will have to make the payment under the guarantee at times even if there is no balance in the account of customer. Similarly when bills negotiated under LC are due for payment the bank may have to honour the same at times by creating forced loan in the account of the buyer on whose behalf Letter of Credit is issued. The income earned by banks while issuing bank guarantees or LCs is accounted under the income head “commission” .

Non-Fund based credit facilities to non-borrowers of the bank

Banks can grant non-funded facilities including partial credit enhancement to customers, not availing fund based facility from any bank in India under following conditions :

1. Banks are to ensure that the borrower has not availed any fund based facility from any bank operating in India. At the time of granting non-funded facilities, bank to obtain declaration from the customer about the non-funded credit facilities already enjoyed by them from other banks.
2. Banks are to undertake similar credit appraisal as for fund based facilities.
3. Credit information relating to such facility shall be mandatorily be furnished to the Credit Information Companies.



LETTER OF CREDIT

A letter of credit is a document from a bank that guarantees payment. A Letter of Credit is issued by a bank at the request of its customer (importer / buyer) in favour of the beneficiary (exporter / seller). It is an undertaking/ commitment by the bank, advising/informing the beneficiary that the documents under a letter of credit would be honoured, if the beneficiary (exporter) submits all ~~the~~ required documents as per the terms and conditions of the letter of credit.

Types of Letter of Credit

- **Sight Credit** – Under this letter of credit, documents are payable at sight/ upon presentation, i.e., Payment is made to the seller immediately (maximum within 7 days) after the required documents have been submitted.
- **Acceptance Credit/ Time Credit** – The Bills of Exchange which are drawn, payable after a period, are called usance bills. Under acceptance credit usance bills are accepted upon presentation and eventually honoured on due dates. The documents of title to goods (R/R, L/R, MTR, Bill of Lading etc.) are delivered to the applicant (importer / buyer) on acceptance of Bill of exchange drawn under LC by the Seller / exporter. To that extent these LCs are unsecured.
- **Revocable and Irrevocable Credit** – A revocable letter of credit is a credit, in which the terms and conditions of the credit can be amended/cancelled by the Issuing bank, any time and without prior notice to the beneficiaries. If the negotiating bank makes a payment to the beneficiary prior to receiving notice of cancellation / amendments, it is obligatory for issuing bank to make payment to reimburse the negotiating bank. An irrevocable letter of credit is a credit, the terms and conditions of which can neither be amended nor cancelled without the consent of the beneficiary. Hence, the opening bank is bound by the commitments given in the letter of credit. If nothing is stated, the LC is treated as irrevocable.
- **Confirmed Credit** – Only Irrevocable letter of credit can be confirmed. A confirmed letter of credit is one when a banker other than the Issuing bank, adds its own confirmation to the credit. In case of confirmed letter of credits, the beneficiary's bank would forward the LC to the confirming banker with a request to add their confirmation. The liability of the confirming bank is same as the issuing bank.
- **Back-to-Back Letter of Credit** – Back-to-Back Letter of Credit is a negotiable instrument in which the seller gets a Letter of Credit from the buyer and the seller further transfers the Letter of Credit to its supplier. In simple words, the seller first gets the Letter of Credit from the buyer to ensure timely payment and further the same seller hands over the Letter of Credit to someone from whom he buys

goods or materials. There are various advantages and disadvantages of Letter of Credit. Let us take an example to under the concept of Back-to-Back Letter Of Credit.

Example to understand Back-to-Back Letter of Credit

A pen manufacturer DNP Limited sells its product to Mr.Pankaj. In return, Mr.Pankaj did not make the payment. Instead, he gave DNP Limited a Letter of Credit. This Letter of Credit is an assurance to DNP Limited that if Mr.Pankaj fails to make timely payment, DNP Limited can use the negotiable instrument to get its claim from the bank. To process the order of Mr.Pankaj, DNP Limited purchases raw material from its supplier, CS Limited. DNP Limited does not make any payment to it. Instead, it hands over the original Letter of Credit received from Mr.Pankaj after changing the beneficiary name with its intermediary bank. Now CS Limited is assured that it will receive the payment for the material purchased by DNP Limited. This transfer of Letter of Credit from one seller to another seller is Back-to-Back Letter of Credit (BBLC).

- **Transferable Credit** – While a letter of credit is not a negotiable instrument, the Bills of Exchange drawn under it are negotiable. A Transferable letter of credit is one in which a beneficiary can transfer his rights to third party / parties in whole or in part (in that case the unused portion can be treansferred back to the original beneficiary) . Such letter of credit should clearly indicate that it is a 'Transferable' letter of credit. Transferable Letter of Credit is transferrable only once.
- **Red Clause Letter of Credit** – Red clause letter of credit is an advance payment letter of credit. Under the red clause letter of credit, the issuing bank will make an advance payment to the exporter i.e. the seller before the seller ships the goods to the importer i.e. buyer. This is usually done to provide aid to the seller in the form of working capital to purchase raw material, processing and packaging of goods, etc. The advance payment will be done against documentary requirement under the red clause letter of credit. Generally, documents required are written undertaking and receipts.
- **Green Clause Letter of Credit** – Green clause letter of credit is an extension of red clause letter of credit. Which means it provides the advance not only for the purchase of raw materials, processing, and packaging of goods, etc. but also for pre-shipment warehousing at the port of origin and insurance expense. In usual cases, the advance under this letter of credit is granted only after the purchased goods are stored in bonded warehouses. This type of letter of credit is usually used in transactions related to commodity market such as wheat, rice, gold, etc
- **Standby letter of credit** – In certain countries there are restrictions to issue guarantees, as a substitute these countries use standby credit. In case the guaranteed service is not provided, the beneficiary can claim under the terms of the standby credit. In case of Standby letter of credits, the documents required are proof of non-performance or a simple claim form.
- **Revolving Credit** – Here the amount of drawings made would be reinstated and made available to the beneficiary again and again for further drawings during the currency of credit provided. At times an overall turnover cap is also stipulated.

Parties involved in letter of credit finance:

1. **Applicant**: The buyer /importer of goods: This person has to make payment of letter of credit to the issuing bank if the documents are in accordance with the terms and conditions of LC.
2. **Issuing Bank**: Importer's or buyer's bank who lends its name or credit, is issuing Bank. It is liable for payment of LC in case the documents are received by it from the nominated or negotiating bank and the documents are in terms of letter of credit. This bank gets 5 days to check the documents.

3. **Advising Bank**: Issuing bank branch or correspondent in exporter country to whom the letter of credit is sent for onward transmission to the seller or beneficiary, after authentication of genuineness of the credit. Where it is unable to verify he authenticity, it can seek instructions from the opening bank or can advise the LC to the beneficiary, without any liability on its part. This bank has no obligation to negotiate the document.
4. **Beneficiary**: The party to whom the credit is addressed i.e. seller or the exporter or the supplier of the goods. It gets payment against documents as per LC from the nominated bank within validity period of negotiation maximum 21 days from date of shipment.
5. **Negotiating bank**: The bank nominated by the issuing bank to negotiate the documents when submitted by the exporter or alternatively the bank to whom the beneficiary presents the documents for negotiation. It claims payment from the reimbursing bank or opening bank and gets 5 banking days to check the documents.
6. **Reimbursing Bank**: Third bank which repays, settle or funds the negotiating bank at the request of its principal, the issuing bank.
7. **Confirming Bank**: The bank adding confirmation to the credit, which undertakes the responsibility of payment by the issuing bank and on his failure, to pay. The confirmation, is added on request of the opening bank.

Documents handled under Letters of Credit

Documents play a crucial role in trade transactions. Documents are integral part of LCs. The banks involved in LC transactions deal only with documents and on the evidence of the correct and proper documents only the paying banks (opening bank/confirming bank) need to make payment. In view of these factors, banks have to be careful while handling documents/ LCs. At various stages, different banks (Negotiating bank {beneficiary's bank}, confirming bank, opening bank) have to verify whether all the required documents are submitted strictly as per the terms and conditions of credit.

The important documents handled under LCs are broadly classified as

(a) Bill of Exchange:

Bill of exchange, is drawn by the beneficiary (exporter) on the LC issuing bank. When the bill of exchange is not drawn under a LC, the drawer of the bill of exchange (exporter), draws the bill of exchange on the drawee (importer). In such a case, the exporter takes credit risk on the importer, whereas, when the Bill of Exchange is drawn under LC, the credit risk for the exporter is not on the importer but on the LC issuing bank. Banks should be careful in ensuring that the Bill of Exchange is drawn strictly as per the terms and conditions of the credit.

Some others important aspects are:

(i) It should be drawn by the beneficiary on the opening bank

(ii) It should clearly indicate the amount and other details

(iii) Depending upon the LC terms a Bill of Exchange may be drawn as a sight bill or an usance bill

(iv) It should clearly indicate the LC number.

(b) Commercial Invoice:

This is another important document. Commercial invoice is prepared by the beneficiary, which contains

(i) relevant details about goods in terms of value, quantity, weights (gross/net), importer's name and address, LC number

(ii) Commercial invoice should exactly reflect the description of the goods as mentioned in LC.

(iii) Another important requirement is that the commercial invoice should indicate the terms of sale contract (Inco terms) like FOB, C&F, CIF, etc

(iv) Other required details like shipping marks, and any specific detail as per the LC terms should also be covered.

(c) Transport Documents: (Documents of title to the goods)

When goods are shipped from one port to another port the transport document issued is called the bill of lading. Goods can be transported by means of airways, waterways, roadways and railways depending upon the situations. In case goods are transported by means of water ways, the document is called bill of lading (B/L), by airways it is known as airway bills (AWB) and by roadways called as lorry receipt(LR) and by railways it is known as railway receipt (RR). In case of a single transaction, when different modes are used to transport the goods from the beneficiary's country to the importer's destination, a single transport document can be used viz., Multi Modal Transport Document. For ease of reference the most commonly used document i.e., Bill of Lading is discussed here.

(d) Bill of Lading (B/L):

The B/ L is the shipment document, evidencing the movement of goods from the port of acceptance (in exporter's country) to the port of destination (in importer's country). It is a receipt, signed and issued by the shipping company or authorized agent. It should be issued in sets (as per the terms of credit).

Other important features:

As per the terms and conditions of the credit, a bill of lading should clearly indicate:

(i) the description of goods shipped, as indicated in the invoice

(ii) conditions of goods "Clean" or otherwise (not in good condition/ shortage/damaged)

(iii) drawn to the order of the shipper, blank endorsed or in favour of the opening bank

(iv) the gross and net weight

(v) Freight payable or prepaid

(vi) Port of acceptance and port of destination

Insurance Policy/ Certificate: This document is classified as a document to cover risk.

(a) It must be issued by the insurance company or their authorized agents

(b) It should be issued in the same currency in which the LC has been issued

(c) It should be issued to cover "All Risks"

(d) The date of issuance of the policy/ certificate should be on or before the date of issuance of the shipment, and should clearly indicate that the cover is available from the date of shipment

(e) Unless otherwise specified, it should be issued for an amount of 110% of CIF value of goods

(f) The description of the goods in the policy/certificate should be as per the terms of the credit

(g) The other important details like the port of shipment, port of destination etc needs to be clearly indicated

Other documents:

As per the terms of LC, all required documents have to be submitted by the beneficiary. Documents like Certificate of Origin (issued by the Chamber of Commerce), indicates the origin of goods. The origin of goods should not be from any prohibited nations.

Packing list, required certificates, etc. should be drawn as per the terms and conditions of the credit.

Uniform Customs and Practice for Documentary Credit (UCPDC 600)

International Chamber of Commerce (ICC), arranges to issue uniform guidelines to handle documents under Letters of Credit. These guidelines are used by various parties involved in letters of credit transactions like, exporters, importers, their bankers, shipping and insurance companies. These guidelines gives clarity for the persons to draw and handle various documents. The latest guidelines is called as UCPDC 600 and it came into effect in July 2007.Banks, which are involved in LC transactions need to be familiar with UCPDC 600. The overall objective of UCPDC document is to reduce confusions in understanding terminologies involved in international trade and reduce disputes among various parties involved in the transaction.

Example

1. A manufacturer gets an order from a new customer overseas. The manufacturer has no way of knowing if this customer can (or will) pay for the goods after they're produced and shipped.
2. To manage risk, the seller uses an agreement requiring the buyer to pay with a letter of credit as soon as shipment is made.
3. To move forward, the buyer needs to apply for a letter of credit at a local bank. The buyer may need to have funds on hand at that bank or get approval for financing from the bank.
4. The buyer's bank will only release funds to the seller after the seller proves that the shipment happened. To do so, the seller typically provides documents showing how goods were shipped (with details like the exact dates, destination, and contents). In some ways, the buyer also enjoys protection under a letter of credit: Buyers might prefer to pay a bank with a big legal department than send the money directly to an unknown seller.

The bank will only issue a letter of credit if the bank is confident that the buyer will pay. Some buyers have to pay the bank up front or allow the bank to freeze funds held at the bank. Others use a line of credit with the bank, effectively getting a loan from the bank.

Sellers must trust that the bank issuing the letter of credit is legitimate and that the bank will pay as agreed. If sellers have any doubts, they can use a "confirmed" letter of credit, which means that another (presumably more trustworthy) bank will guarantee payment.

Sellers typically get letters of credit confirmed by banks in their home country.

When Does Payment Happen?

A beneficiary only gets paid after performing specific actions and meeting the requirements spelled out in a letter of credit. For international trade, the seller may have to deliver merchandise to a shipyard to satisfy the requirements of the letter of credit. Once the merchandise is delivered, the seller receives documentation proving that he made delivery, and the documents are forwarded to the bank. In many cases, the letter of credit now must be paid—even if something happens to the shipment. If a crane falls on the merchandise or the ship sinks, it's not necessarily the seller's problem.

The bank is not concerned with the quality of goods or other items that may be important to the buyer and seller. That doesn't necessarily mean that sellers can send a shipment of junk: Buyers can insist on an inspection certificate as part of the deal, which allows somebody to review the shipment and ensure that everything is acceptable. Additionally under UCPDC the following provisions are also mentioned for the guidance/benefit of the parties concerned.

- A credit is irrevocable even if there is no such mention in the document.

- The words 'to', 'until', 'from' and 'between' when used to determine a period of shipment include the date mentioned and the words 'before' and 'after' exclude the date mentioned.
- The words 'from' and 'after' when used to determine a maturity date exclude the date mentioned.
- Branches in different countries are considered to be separate banks.
- The date of issuance of the transport documents will be deemed to be the date of dispatch, taking in charge or shipped on board and the date of shipment. If the transport document indicates by stamp or notation, a date of dispatch taking in charge or shipped on on board, this date will be deemed to be the date of shipment.
- Transshipment means unloading from one mode of conveyance during the carriage, from the place of dispatch taking in charge or shipment to the place of final destination stated in the credit.
- A clean transport document is one having no clause of notation expressly declaring a defective condition of the goods or their packaging.

Standby Letter of Credit (SLOC)

A standby letter of credit (SLOC or SBLC), also known as a standby or LOC, is a lender's guarantee of payment to an interested third-party in the event the client defaults on an agreement. Standby letters of credit are formal documents that specify the duties and obligations of each party and serve as an act of good faith. The bank issuing the SLOC performs general underwriting duties to ensure the financial credibility of the party seeking the letter of credit. Then it sends a notification to the bank of the party requesting the letter of credit (typically a seller or creditor).

Examples of Standby Letters of Credit

A financial SLOC, the most common type, is typically used in international trade or other high-value purchase contracts where litigation or other non-payment actions may not be feasible. A financial SLOC guarantees payment to the beneficiary if contract requirements are unfulfilled. For example, an exporter sells goods to a foreign buyer who guarantees payment in 30 days. When no payment is received by the deadline, the exporter presents the SLOC to the buyer's bank to receive payment.

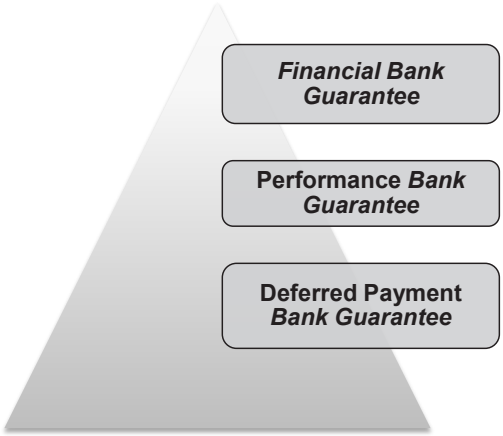
A performance SLOC ensures that time, cost, amount, quality of work, and other criteria are fulfilled in a manner acceptable to the client. The bank pays the beneficiary if any contractual obligations are unmet. For example, a contractor guarantees a construction project will be finished in 90 days. If work remains incomplete after the 90-day period, the client can present the SLOC to the contractor's bank and receive payment.

Standby letters of credit and bank guarantees are both methods of providing assurance to a vendor of payment on credit. A bank guarantee is a commitment by a bank to pay its client's obligation up to a certain amount, while standby letter of credit is a more formal document that details the obligations of both parties.

BANK GUARANTEE

Bank guarantees are part of non-fund based credit facilities provided by the bank to the customers. Bank issue bank guarantee on behalf of his client as a commitment to third party assuring her/ him to honour the claim against the guarantee in the event of the non- performance by the bank's customer. A Bank Guarantee is a legal contract which can be imposed by law. The banker as guarantor assures the third party (beneficiary) to pay him a certain sum of money on behalf of his customer, in case the customer fails to fulfill his commitment to the beneficiary.

Banks issue different types of guarantees, on behalf of their customers, as illustrated below:



- **Financial Guarantee**: The banker issues guarantee in favour of a government department against caution deposit or earnest money to be deposited by bank's client. At the request of his customer, in lieu of a caution deposit/ earnest money, the banker issues a guarantee in favour of the government department. This is an example of a Financial Guarantee. This type of guarantee helps the bank's customer to bid for the contract without depositing actual money. In case, the contractor does not take up the awarded contract, then the government department would invoke the guarantee and claim the money from the bank.
- **Performance Guarantee**: Performance Guarantees are issued by banks on behalf of their clients. In performance guarantee bank issue on behalf of his client to assure the third party to complete some work on time or as per the terms of contact between the parties. If the work is not completed as per the term of contract then the third party can request the bank to invoke the bank guarantee and make payment for default.

  Purpose of issuing Performance Bank Guarantees: Performance Bank Guarantees are issued guaranteeing due performance of contract or obligation of the Borrower under the contract. In the event of non-performance of obligation in terms of contract the bank assumes monetary liability up to the amount specified in the Guarantee.

  Some of the purposes for which Bank Guarantees are issued are:

  i. Due performance of a specific contract undertaken by a customer in favour of Govt. bodies / Others - for e.g. supply of materials, Construction of Roads, Buildings Dams, Civil Work, etc.

  ii. To secure any claims by the buyer on the seller arising from default in delivery or performance of the terms of the contract (e.g. construction, assembly, execution).

  iii. Due performance of an equipment/project after completion for a specific period due to possible defects appearing after delivery during warranty period of the equipments.

  iv. Execution of Long Term Infrastructure Projects such as Seaports, Airports, Road Construction, Bridges, Sanitation and Sewerage Projects, Telecommunication Services, Construction of Educational Institutions and Hospitals, Generation/ Transmission/ Distribution of Power, etc.

- **Deferred Payment Guarantee (DPG)**: It is clear from the name of the Bank guarantee that under this guarantee, the banker guarantees payments of installments spread over a period of time.

  Here the banks undertake to make payment of instalments payable by the buyer of capital goods such as machinery, on long term credit given by the supplier. Normally advance payment of 10 to 15% of the price of the capital goods is made by the borrower (margin). The balance amount with interest is payable in installments spread over may be 1 to 5 years. The supplier accordingly draws bills due on

different dates which are accepted by the borrower and further co-accepted by the banker or bank issues DPG. On every due date the buyer's bank makes payment of the bill to the supplier irrespective of there being balance in the buyer's (borrower's) account or not. Banks secure such guarantees by creating charge over the assets purchased.

- On expiry of the validity period of the guarantee, a registered acknowledgement due notice is to be sent to the beneficiary indicating that the liability of the bank under said guarantee stands discharged. If no reply is received from the beneficiary in reasonable time the entry is reversed in books of account.
- If beneficiary invokes the guarantee, the amount claimed needs to be paid immediately withoutout any delay for whatsoever the reason.
- In the bank guarantee, the extent of monetary liability and the validity period should be specific. The limitation clause is inserted for this purpose. As such even when the period of liability is specified in the guarantee, the beneficiary can claim till the limitation period is alive.
- No bank guarantee should normally have a maturity period of more than 10 years. The bank should have a policy approved by the Board in case guarantee for more than 10 years is to be issued.

A bank guarantee and a letter of credit are similar in many ways but they're two different things. Letters of credit ensure a transaction proceeds as planned, while bank guarantees reduce the loss if the transaction doesn't go as planned.

Example: A purchases a machinery on a long-term credit basis and agrees to pay in installments on specified dates over a period of time. In terms of the contract of sale, B (the seller) draws Bills of Exchange on the customer for different maturities. These bills are accepted by A. The banker (guarantor) guarantees payment of these bills of exchange on the due date. In the event of default by A, the banker need to honour the claim to the seller (beneficiary).

Difference between letter of guarantee and Bank Guarantee:

A letter of credit, sometimes referred to as a documentary credit, acts as a promissory note from a bank. It represents an obligation taken on by a bank to make a payment once certain criteria are met. Once these terms are completed and confirmed, the bank will transfer the funds. The letter of credit ensures the payment will be made as long as the services are performed.

For example, an Indian wholesaler receives an order from a US company. The wholesaler has no way of knowing whether the buyer can fulfill his payment obligations, and requests a letter of credit be provided in their contract. The purchasing company applies for a letter of credit at a bank where it already has funds (LOC). After the goods have been shipped, the bank would pay the wholesaler its due as long as the terms of the sales contract are met, such as delivery before a certain time or confirmation from the buyer that the goods were received undamaged. The letter of credit substitutes the bank's credit for that of its client, ensuring correct and timely payment.

Letters of credit are especially important in international trade due to the distance involved and potentially differing laws in the countries of the businesses involved. In these transactions, it is not always possible for the parties to meet in person. The bank issuing the letter of credit holds payment on behalf of the buyer until it receives confirmation that the goods in the transaction have been shipped.

While letters of credit are used mostly in international trade agreements, bank guarantees are often used in real

estate contracts and infrastructure projects.

Bank guarantees represent a more significant contractual obligation for banks than letters of credit do. A bank guarantee, like a letter of credit, guarantees a sum of money to a beneficiary; however, unlike a letter of credit, the sum is only paid if the opposing party does not fulfill the stipulated obligations under the contract. This can be used to essentially insure a buyer or seller from loss or damage due to nonperformance by the other party in a contract.

Bank guarantees insure both parties in a contractual agreement from credit risk. For instance, a construction company and its cement supplier may enter into a new contract to build a mall. Both parties may have to issue bank guarantees to prove their financial stance and capability. In a case where the supplier fails to deliver cement within a specified time, the construction company would notify the bank, which then pays the company the amount specified in the bank guarantee.

Both bank guarantees and letters of credit work to reduce financial risk. The seller takes on less risk when a letter of credit or bank guarantee is active, and would be more likely to agree to the transaction. These agreements are particularly important and useful in what would otherwise be risky transactions for the seller, such as certain real estate and international trade contracts. Banks, since they are agreeing to take on risk, thoroughly screen buyers interested in one of these transactions. After the bank has determined that the buyer is a reasonable risk, a monetary limit is placed on the agreement. The bank agrees to be obligated up to, but not exceeding, the limit. This protects the bank by providing a specific threshold of risk.

APPRAISAL METHODOLOGY FOR DIFFERENT TYPE OF NON FUND BASED CREDIT PRODUCTS

Credit Appraisal

Credit Appraisal is a process to ascertain the risks associated with the extension of the credit facility. Appraisal of credit is generally carried by the Banks/financial institutions which are involved in providing financial funding to its customers. To ascertain the credit risk associated with every credit proposal appraisal is required. Credit worthiness of a borrower can be assessed by proper credit appraisal.

I. Letter of Credit Limit: Letter of credit (LC) is a method of settlement of payment of a trade transaction and is widely used to finance purchase of raw material, machinery etc. It contains a written undertaking by the bank on behalf of the purchaser to the seller to make payment of a stated amount on presentation of stipulated documents and fulfillment of all the terms and conditions incorporated therein. Letters of credit thus offers both parties to a trade transaction a degree of security. The seller can look forward to the issuing bank for payment instead of relying on the ability and willingness of the buyer to pay .

Assessment of Limit of Letter of Credit

Particulars	
Annual Raw Material Consumption	A
Annual Raw Material Procurement through ILC/ FLC	B
Monthly Consumption	C
Usance	D

Lead Time	E
Total Time	F=D+E
LC Time Required	G=F*C

II. Bank Guarantee Limit: Appraisal of proposals for Bank guarantees is done with same diligence as in the case of fund-base limits. Whenever an application for the issue of bank guarantee is received, Bank examine & satisfy about the following aspects:

a) The need of the bank guarantee & whether it is related to the applicant's normal trade/business.

b) Whether the requirement is one time or on the regular basis.

c) The nature of bank guarantee i.e., financial or performance.

d) Applicant's financial strength/ capacity to meet the liability/ obligation under the bank guarantee in case of invocation.

e) Past record of the applicant in respect of bank guarantees issued earlier; e.g., instances of invocation of bank guarantees, the reasons thereof, the customer's response to the invocation, etc.

f) Present o/s on account of bank guarantees already issued.

g) Margin.

h) Collateral security offered.

Assessment of Limit of Bank Guarantee

Particulars	
Outstanding Bank Guarantee as per Audited Balance Sheet	A
Add Bank Guarantee required during the period	B
Less Estimated maturity or cancellation of Bank Guarantee during the period	C
Requirement of Bank Guarantee	D=A+B-C

LESSON ROUND UP

– Loans and advances are the important segment of the deployment of funds of a bank.

– A Letter of Credit is issued by a bank at the request of its customer (importer) in favour of the beneficiary (exporter).

– It is an undertaking/ commitment by the bank, advising/informing the beneficiary that the documents under a LC would be honoured, if the beneficiary (exporter) submits all the required documents as per the terms and conditions of the LC.

– Companies also avail of the Letter of Credit facility from Banks to fund their trades or purchases.

– Bill of exchange, is drawn by the beneficiary (exporter) on the LC issuing bank.

– Standby letters of credit are formal documents that specify the duties and obligations of each party and serve as an act of good faith.

– A Bank Guarantee is a legal contract which can be imposed by law. The banker as guarantor assures

the third party (beneficiary) to pay him a certain sum of money on behalf of his customer, in case the customer fails to fulfill his commitment to the beneficiary.

GLOSSARY

LC: Letter of Credit

SLC: Stand by Letter of Credit

FOB: Free on Board or Freight on Board

C&F: Cost, Insurance and Freight

CIF: Cost, Insurance and Freight

BG: Bank Guarantee

SELF TEST QUESTIONS

1. What are the Non-based credit facilities provided by the bank?
2. What are the various types of letters of credit?
3. Who are the different bankers involved in letter of credit transactions?
4. What are the Documents handled under Letters of Credit/ Explain.
5. What are the various types of Bank Guarantees?

Lesson 9
Foreign Funding – Instruments & Institutions

LESSON OUTLINE

- Introduction
- Regulatory Framework in India
- External Commercial Borrowings
- Depository Receipts
- ADR & GDR
- Depository Receipts Scheme,
- Provisions of Companies Act, 2013 relating to issue of GDR
- Procedure for Issuance of GDR/ADR
- Foreign Currency Exchangeable Bonds (FCCBs)
- Foreign Currency Convertible Bonds
- International Finance Corporation
- Asian Development Bank
- International Monetary Fund
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Globalisation has opened doors and opportunities that were never explored before. International Financing is also known as International Macroeconomics as it deals with finance on a global level. International finance helps organizations engage in cross-border transactions with foreign business partners, such as customers, investors, suppliers and lenders. Various international sources from where funds may be generated include the following.

(i) Commercial Banks

(ii) International Agencies and Development Banks

(iii) International Capital Markets

With economies and the operations of the business organizations going global, Indian companies have an access to funds in the global capital market.

The Government of India has taken various policies initiatives to allow India companies to raised funds from International Market. These policy initiatives have lead to the introduction of International Instruments like American Depository Receipts (ADR), Global Depository Receipts (GDR), Foreign Currency Convertible Bonds (FCCBs) and Foreign currency Exchangeable Bonds (FCEBs) etc.

Being a student of Company Secretaryship course, a student mus know about the choices of instruments through which a company can mobilise funds from foreign market to have optimum capital structure. Keeping this in view, in this lesson different sources of international fund available for India companies, their different routes of issue and their regulations are discussed.

INTRODUCTION

Increased globalization and investor appetite for investing in India, offer unique opportunity to companies looking to tap a new investor base, awareness or raise capital.

Capital can be raised from international capital market in foreign currency by accessing foreign capital market. Funds raised through foreign currency are called as euro equity or debt.

- **Euro Equity**: Euro equity issue represents shares denominated in dollar terms, issued by non-American and non-European companies to list their shares on American and European stock exchanges by complying the regulations of respective stock exchanges where the shares are intended to be listed. The euro equity issue can be made in different forms like American Depository Receipts and Global Depository Receipts.
- **Euro Debt**: Debts raised from international capital market by complying regulations of the respective country of which the capital market is accessed is called as euro debt. Euro debt can be issued in the form of ECB/FCCB/FCEB etc.

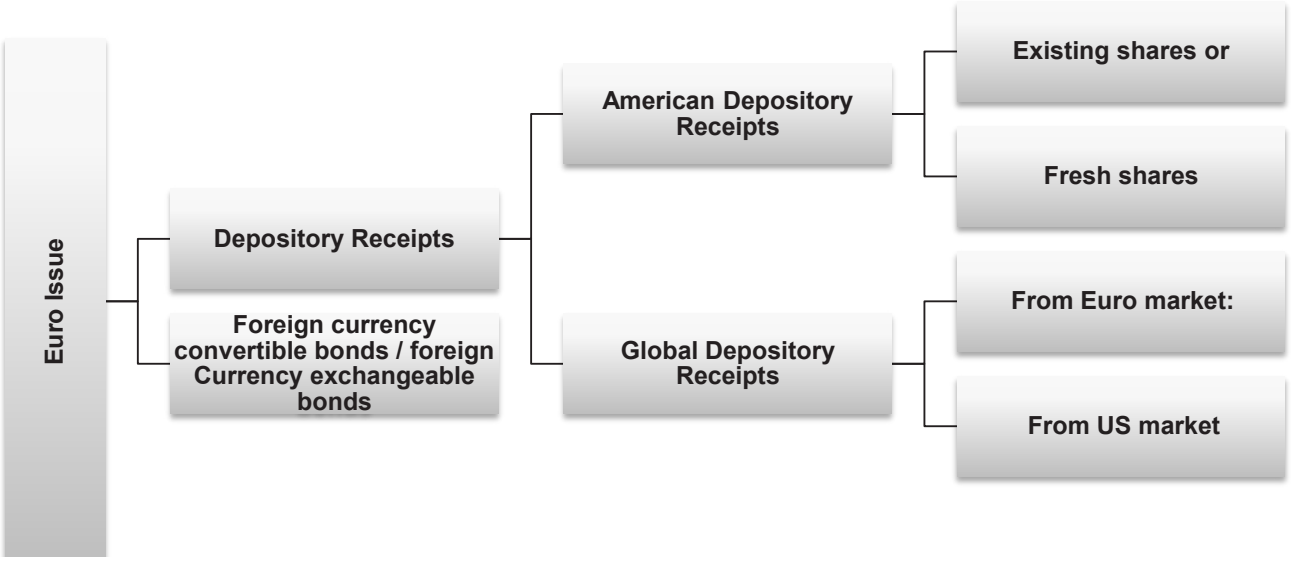
Indian companies are allowed to raise capital in the international market through the issue of GDR/ADR/FCCB/ FCEB and through External Commercial Borrowings.

REGULATORY FRAMEWORK IN INDIA

Issue of ADR/GDR/FCCBs/FCEBs are regulated by the following regulations in India:

EURO ISSUE

Euro issue means modes of raising funds by an Indian company outside India in foreign currency. There are different modes of Euro issue which is as follows:



EXTERNAL COMMERCIAL BORROWINGS (ECBS)

ECBs are commercial loans raised by eligible resident entities from recognised non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc. The parameters apply in totality and not on a standalone basis. The framework for raising loans through ECB comprises the following three tracks:

Track I : Medium term foreign currency denominated ECB with minimum average maturity of 3/5 years,

Track II : Long term foreign currency denominated ECB with minimum average maturity of 10 years and

Track III : Indian Rupee (INR) denominated ECB with minimum average maturity of 3/5 years.

The framework for raising loans through ECB comprises the following two options:

Parameters	FCY denominated ECB	INR denominated ECB
Currency of borrowing	Any freely convertible Foreign Currency	Indian Rupee (INR)
Forms of ECB	Loans including bank loans; floating/ fixed rate notes/ bonds/ debentures (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; FCCBs; FCEBs and Financial Lease.	Loans including bank loans; floating/ fixed rate notes/ bonds/ debentures/ preference shares (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; and Financial Lease. Also, plain vanilla Rupee denominated bonds issued overseas (RDBs), which can be either placed privately or listed on exchanges as per host country regulations.

Eligible borrowers	All entities eligible to receive FDI. Further, the following entities are also eligible to raise ECB: a) Port Trusts; b) Units in SEZ; c) SIDBI; d) EXIM Bank; and e) Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/cooperatives and Non-Government Organisations (permitted only to raise INR ECB).
Recognised lenders	The lender should be resident of FATF or IOSCO compliant country, including on transfer of ECBs. However, a) Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders; b) Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and c) Foreign branches / subsidiaries of Indian banks are permitted as recognised lenders only for FCY ECB (except FCCBs and FCEBs). Foreign branches / subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.
Minimum Average Maturity Period	Minimum average maturity period (MAMP) will be 3 years. However, manufacturing sector companies may raise ECBs with MAMP of 1 year for ECB up to USD 50 million or its equivalent per financial year. Further, if the ECB is raised from foreign equity holder and utilised for working capital purposes, general corporate purposes or repayment of Rupee loans, MAMP will be 5 years. The call and put option, if any, shall not be exercisable prior to completion of minimum average maturity.
All-in-cost ceiling per annum	Benchmark rate plus 450 bps spread.
Other costs	Prepayment charge/ Penal interest, if any, for default or breach of covenants should not be more than 2 per cent over and above the contracted rate of interest on the outstanding principal amount and will be outside the all-in-cost ceiling.
End-uses (Negative list)	The negative list, for which the ECB proceeds cannot be utilised, would include the following: a) Real estate activities. b) Investment in capital market. c) Equity investment.

	d) Working capital purposes except from foreign equity holder. e) General corporate purposes except from foreign equity holder. f) Repayment of Rupee loans except from foreign equity holder. g) On-lending to entities for the above activities.	
Exchange rate	Change of currency of FCY ECB into INR ECB can be at the exchange rate prevailing on the date of the agreement between the parties concerned for such change or at an exchange rate, which is less than the rate prevailing on the date of agreement, if consented to by the ECB lender.	For conversion to Rupee, exchange rate shall be the rate prevailing on the date of settlement.
Hedging provision	The entities raising ECB are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator in respect of foreign currency exposure. Infrastructure space companies shall have a board approved risk management policy. Further, such companies are required to mandatorily hedge 70 per cent of their ECB exposure in case average maturity of ECB is less than 5 years. The designated AD Category-I bank shall verify that 70 per cent hedging requirement is complied with during the currency of ECB and report the position to RBI through Form ECB 2 returns. The following operational aspects with respect to hedging should be ensured: (a) Coverage: The ECB borrower will be required to cover principal as well as coupon through financial hedges. The financial hedge for all exposures on account of ECB should start from the time of each such exposure (i.e. the day liability is created in the books of the borrower).	The overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD Category I banks in India. The investors can also access the domestic market through branches / subsidiaries of Indian banks abroad or branches of foreign banks with Indian presence on a back to back basis.

	(b) Tenor and rollover: A minimum tenor of one year of financial hedge would be required with periodic rollover duly ensuring that the exposure on account of ECB is not unhedged at any point during the currency of ECB. (c) Natural Hedge: Natural hedge, in lieu of financial hedge, will be considered only to the extent of offsetting projected cash flows / revenues in matching currency, net of all other projected outflows. For this purpose, an ECB may be considered naturally hedged if the offsetting exposure has the maturity/ cash flow within the same accounting year. Any other arrangements/ structures, where revenues are indexed to foreign currency will not be considered as natural hedge.	
Change of currency of borrowing	Change of currency of ECB from one freely convertible foreign currency to any other freely convertible foreign currency as well as to INR is freely permitted.	Change of currency from INR to any freely convertible foreign currency is not permitted.

LIMIT AND LEVERAGE

Under the aforesaid framework, all eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year under auto route. Further, in case of FCY denominated ECB raised from direct foreign equity holder ECB liability-equity ratio for ECBs raised under the automatic route cannot exceed 7:1. However, this ratio will not be applicable if outstanding amount of all ECBs, including proposed one, is up to USD 5 million or equivalent. Further, the borrowing entities will also be governed by the guidelines on debt equity ratio issued, if any, by the sectoral or prudential regulator concerned.

Issuance of Guarantee, etc. by Indian banks and Financial Institutions:

Issuance of any type of guarantee by Indian banks, All India Financial Institutions and NBFCs relating to ECB is not permitted. Further, financial intermediaries (viz., Indian banks, All India Financial Institutions, or NBFCs) shall not invest in FCCBs/ FCEBs in any manner whatsoever.

Parking of ECB proceeds:

ECB proceeds are permitted to be parked abroad as well as domestically in the manner given below:

- **Parking of ECB proceeds abroad:**

  ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilization. Till utilisation, these funds can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/ Fitch IBCA or Aa3 by Moody's; (b) Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and (c) deposits with foreign branches/ subsidiaries of Indian banks abroad.

- **Parking of ECB proceeds domestically:**

  ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.

PROCEDURE OF RAISING ECB

All ECBs can be raised under the automatic route if they conform to the parameters prescribed under this framework. For approval route cases, the borrowers may approach the RBI with an application in Form ECB for examination through their AD Category I bank. Such cases shall be considered keeping in view the overall guidelines, macroeconomic situation and merits of the specific proposals. ECB proposals received in the Reserve Bank above certain threshold limit (refixed from time to time) would be placed before the Empowered Committee set up by the Reserve Bank. The Empowered Committee will have external as well as internal members and the Reserve Bank will take a final decision in the cases taking into account recommendation of the Empowered Committee. Entities desirous to raise ECB under the automatic route may approach an AD Category I bank with their proposal along with duly filled in Form ECB.

Reporting Requirements :

Borrowings under ECB Framework are subject to following reporting requirements apart from any other specific reporting required under the framework:

- **Loan Registration Number (LRN):**

  Any draw-down in respect of an ECB should happen only after obtaining the LRN from the Reserve Bank. To obtain the LRN, borrowers are required to submit duly certified Form ECB, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank. In turn, the AD Category I bank will forward one copy to the Reserve Bank of India. Copies of loan agreement for raising ECB are not required to be submitted to the Reserve Bank.

- **Changes in terms and conditions of ECB:**

  Changes in ECB parameters in consonance with the ECB norms, including reduced repayment by mutual agreement between the lender and borrower, should be reported to the RBI through revised Form ECB at the earliest, in any case not later than 7 days from the changes effected. While submitting revised Form ECB the changes should be specifically mentioned in the communication.

- **Monthly Reporting of actual transactions:**

  The borrowers are required to report actual ECB transactions through Form ECB 2 Return through the AD Category I bank on monthly basis so as to reach DSIM within seven working days from the close

of month to which it relates. Changes, if any, in ECB parameters should also be incorporated in Form ECB 2 Return.

- **Late Submission Fee (LSF) for delay in reporting:**

  Any borrower, who is otherwise in compliance of ECB guidelines, can regularize the delay in reporting of drawdown of ECB proceeds before obtaining LRN or delay in submission of Form ECB 2 returns, by payment of late submission fees.

- **Standard Operating Procedure (SOP) for Untraceable Entities:**

  The following SOP has to be followed by designated AD Category-I banks in case of untraceable entities who are found to be in contravention of reporting provisions for ECBs by failing to submit prescribed return(s) under the ECB framework, either physically or electronically, for past eight quarters or more.

Powers delegated to AD Category I banks to deal with ECB cases:

The designated AD Category I banks can approve any requests from the borrowers for changes in respect of ECBs, except for FCCBs/FCEBs, duly ensuring that the changed conditions, including change in name of borrower/lender, transfer of ECB and any other parameters, comply with extant ECB norms and are with the consent of lender(s).

The following changes can be undertaken under automatic route:

- **Change of the AD Category I bank:**

  AD Category I bank can be changed subject to obtaining no objection certificate from the existing AD Category I bank.

- **Cancellation of LRN:**

  The designated AD Category I banks may directly approach DSIM for cancellation of LRN for ECBs contracted, subject to ensuring that no draw down against the said LRN has taken place and the monthly ECB-2 returns till date in respect of the allotted LRN have been submitted to RBI.

- **Refinancing of existing ECB:**

  The designated AD Category I bank may allow refinancing of existing ECB by raising fresh ECB provided the outstanding maturity of the original borrowing (weighted outstanding maturity in case of multiple borrowings) is not reduced and all-in-cost of fresh ECB is lower than the all-in-cost (weighted average cost in case of multiple borrowings) of existing ECB. Further, refinancing of ECBs raised under the previous ECB framework may also be permitted, subject to additionally ensuring that the borrower is eligible to raise ECB under the extant framework. Raising of fresh ECB to part refinance the existing ECB is also permitted subject to same conditions. Indian banks are permitted to participate in refinancing of existing ECB, only for highly rated corporates (AAA) and for Maharatna/Navratna public sector undertakings.

- **Conversion of ECB into equity:**

  Conversion of ECBs, including those which are matured but unpaid, into equity is permitted subject to the following conditions:

  i. The activity of the borrowing company is covered under the automatic route for FDI or Government approval is received, wherever applicable, for foreign equity participation as per extant FDI policy.

  ii. The conversion, which should be with the lender's consent and without any additional cost, should not result in contravention of eligibility and breach of applicable sector cap on the foreign equity holding under FDI policy;

iii. Applicable pricing guidelines for shares are complied with;

iv. In case of partial or full conversion of ECB into equity, the reporting to the Reserve Bank will be as under:

   a. For partial conversion, the converted portion is to be reported in Form FC-GPR prescribed for reporting of FDI flows, while monthly reporting to RBI in Form ECB 2 Return will be with suitable remarks, viz., "ECB partially converted to equity".

   b. For full conversion, the entire portion is to be reported in Form FC-GPR, while reporting to RBI in Form ECB 2 Return should be done with remarks "ECB fully converted to equity". Subsequent filing of Form ECB 2 Return is not required.

   c. For conversion of ECB into equity in phases, reporting through Form FC-GPR and Form ECB 2 Return will also be in phases.

v. If the borrower concerned has availed of other credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, the applicable prudential guidelines issued by the Department of Banking Regulation of Reserve Bank, including guidelines on restructuring are complied with;

vi. Consent of other lenders, if any, to the same borrower is available or atleast information regarding conversions is exchanged with other lenders of the borrower.

vii. For conversion of ECB dues into equity, the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion or any lesser rate can be applied with a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.

Special Dispensations under the ECB Framework

ECB Facility for Oil Marketing Companies:

Notwithstanding the provisions contained Public Sector Oil Marketing Companies (OMCs) can raise ECB for working capital purposes with minimum average maturity period of 3 years from all recognized lenders under the automatic route without mandatory hedging and individual limit requirements. The overall ceiling for such ECBs shall be USD 10 billion or equivalent. However, OMCs should have a Board approved forex mark to market procedure and prudent risk management policy, for such ECBs. All other provisions under the ECB framework will be applicable to such ECBs.

ECB Facility for Startups:

AD Category-I banks are permitted to allow Startups to raise ECB under the automatic route as per the following framework:

i. Eligibility:

   An entity recognised as a Startup by the Central Government as on date of raising ECB.

ii. Maturity:

   Minimum average maturity period will be 3 years.

iii. Recognised lender:

   Lender / investor shall be a resident of a FATF compliant country. However, foreign branches/subsidiaries of Indian banks and overseas entity in which Indian entity has made overseas direct investment as per the extant Overseas Direct Investment Policy will not be considered as recognized lenders under this framework.

iv. Forms:

The borrowing can be in form of loans or non-convertible, optionally convertible or partially convertible preference shares.

v. Currency:

The borrowing should be denominated in any freely convertible currency or in Indian Rupees (INR) or a combination thereof. In case of borrowing in INR, the non-resident lender, should mobilise INR through swaps/outright sale undertaken through an AD Category-I bank in India.

vi. Amount:

The borrowing per Startup will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.

vii. All-in-cost:

Shall be mutually agreed between the borrower and the lender.

viii. End uses:

For any expenditure in connection with the business of the borrower.

ix. Conversion into equity:

Conversion into equity is freely permitted subject to Regulations applicable for foreign investment in Startups.

x. Security:

The choice of security to be provided to the lender is left to the borrowing entity. Security can be in the nature of movable, immovable, intangible assets (including patents, intellectual property rights), financial securities, etc. and shall comply with foreign direct investment / foreign portfolio investment / or any other norms applicable for foreign lenders / entities holding such securities. Further, issuance of corporate or personal guarantee is allowed. Guarantee issued by a non-resident(s) is allowed only if such parties qualify as lender under ECB for Startups. However, issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian banks, all India Financial Institutions and NBFCs is not permitted.

xi. Hedging:

The overseas lender, in case of INR denominated ECB, will be eligible to hedge its INR exposure through permitted derivative products with AD Category – I banks in India. The lender can also access the domestic market through branches/ subsidiaries of Indian banks abroad or branches of foreign bank with Indian presence on a back to back basis.

Note: Startups raising ECB in foreign currency, whether having natural hedge or not, are exposed to currency risk due to exchange rate movements and hence are advised to ensure that they have an appropriate risk management policy to manage potential risk arising out of ECBs.

xii. Conversion rate:

In case of borrowing in INR, the foreign currency - INR conversion will be at the market rate as on the date of agreement.

xiii. Other Provisions:

Other provisions like parking of ECB proceeds, reporting arrangements, powers delegated to AD banks,

borrowing by entities under investigation, conversion of ECB into equity will be as included in the ECB framework. However, provisions on leverage ratio and ECB liability: Equity ratio will not be ap

DEPOSITORY RECEIPTS

A Depository Receipt (DR) is a negotiable financial instrument issued by a company in a foreign jurisdiction. They represent certain securities like bonds, shares etc. DR is an important mechanism for raising funds by tapping foreign investors who otherwise may not be able to participate in the domestic market.

In India, any company, whether listed or unlisted are capable of issuing DRs. The issue of DRs is regulated by Ministry of Finance and by the Depository Receipts Scheme, 2014. Depending upon the location in which DRs are issued, they are called as American Depository Receipt ("ADR") or in general as Global Depository Reciepts (GDRs).

Depository Receipts are generally classified as under:

Sponsored

A sponsored issue of depository receipts is based on a stock agreement, between the foreign depository and the issuer of securities for the creation of the depository receipts. The sponsored depository receipts can be further classified as:

Capital Raising: The Indian issuer deposits the freshly issued securities with the domestic custodian. On the basis of such deposit, the foreign depository then creates/issues depository receipts abroad for sale to global investors. This constitutes a capital raising exercise, as the proceeds of the sale of depository receipts eventually go to the Indian issuer.

Non-Capital Raising: In a non-capital raising issue, no fresh underlying securities are issued. Rather, the issuer gets holders of its existing securities to deposit these securities with a domestic custodian, so that depository receipts can be issued abroad by the foreign depository. This is not a capital raising exercise for the Indian issuer, as the proceeds from the sale of the depository receipts go to the holders of underlying securities.

Unsponsored

Where there is no stock agreement between the foreign depository and the Indian issuer, any person, without any involvement of the issuer, may deposit the securities with a domestic custodian in India. A foreign depository then issues depository receipts abroad on the back of such deposited underlying securities. The proceeds from the sale of such depository receipts go to the holders of the underlying securities. Based on whether a depository receipt is traded in an organised market or in the Over the Counter ("OTC") market, the depository receipts can be classified as listed or unlisted.

Listed: Listed depository receipts are traded on stock exchanges.

Unlisted: The unlisted depository receipts are those which are inter-traded between parties and where such depository receipts are not listed on any stock exchanges.

DEPOSITORY RECEIPTS SCHEME, 2014

Depository Receipts Scheme 2014

The issuance of depository receipt is one of the mechanisms used by Indian companies to get an access to foreign investors. In simple terms, a depository receipt is a foreign currency denominated instrument which is issued by an overseas depository to non-residents against securities of the Indian company.

Hitherto, instruments issued by Indian companies to tap global capital markets, viz. American depository receipts (ADRs) or global depository receipts (GDRs) or convertible debt instruments in the form of foreign

currency convertible bonds (FCCBs) were governed by the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipts Mechanism) Scheme, 1993, which had been amended from time to time.

On October 21, 2014, the Ministry of Finance ("MoF") notified ("Notification"), the Depository Receipts Scheme, 2014 ("DR Scheme") by virtue of which issuance of DRs has been taken out of the 1993 Scheme and is now regulated by the DR Scheme. The 1993 Scheme stands repealed to the extent that it applies to Depository Receipts ('DRs'). It will, however, continue to apply to FCCBs. The DR Scheme has come into effect from December 15, 2014.

The DR Scheme is based on the recommendations of the Sahoo Committee, which under the chairmanship of Mr. M.S. Sahoo undertook a comprehensive review of the 1993 Scheme and proposed significant deregulation and rationalisation of the manner in which Indian companies could tap global capital markets.

DEFINITIONS

Permissible Jurisdiction

'Permissible Jurisdiction' as foreign jurisdiction which is a member of the Financial Action Task Force on Money Laundering and the regulator of the securities market in that jurisdiction is a member of the International Organization of Securities Commission. Schedule I of the scheme gives the list of permissible jurisdiction.

Permissible securities

'Permissible securities' mean 'securities' as defined under section 2(h) of the Securities Contracts (Regulation) Act, 1956 and include similar instruments issued by private companies which:

(i) may be acquired by a person resident outside India under the Foreign Exchange Management Act,1999: and

(ii) is in dematerialised form.

Right to issue voting instruction

'Right to issue voting instruction' means the right of a depository receipt holder to direct the foreign depository to vote in a particular manner on its behalf in respect of permissible securities.

ELIGIBILITY FOR ISSUE OF DEPOSITORY RECEIPTS

Clause 3 of the scheme describes the eligibility of issue of depository receipts. The following persons are eligible to issue or transfer permissible transactions to a foreign depository for the issue of depository receipts:

- Any Indian company, listed or unlisted, private or public;
- Any other issuer of permissible securities;
- Any person holding permissible securities

which has not been specifically prohibited from accessing the capital market or dealing in securities. Unsponsored depository receipts on the back of the listed permissible securities can be issued only if such depository receipts gave the holder the right to issue voting instruction and are listed on an international exchange.

ISSUE OF DEPOSITORY RECEIPTS

- The aggregate of permissible securities which may be issued or transferred to foreign depositories for issue of depository receipts, along with permissible securities already held by persons resident outside India shall not exceed the limit on foreign holding of such permissible securities under the FEMA, 1999;

- The depository receipts may be converted to underlying permissible securities and vice versa;
- A foreign depository may issue depository receipts by way of a public offering or private placement or in any other manner prevalent in a permissible jurisdiction;
- An issuer may issue permissible securities to a foreign depository for the purpose of issue of depository receipts by any mode permissible for issue of such permissible securities to investors;
- The holders of permissible securities may transfer permissible securities to a foreign depository for the purpose of the issue of depository receipt, with or without the approval of issue of such permissible securities through transactions on a recognized stock exchange, bilateral transactions or by tendering through a public platform;
- The permissible securities shall not be issued to a foreign depository for the purpose of issuing depository receipts at a price less than the price applicable to a corresponding mode of issue of such securities to domestic investors under the applicable laws;
- Any approval necessary for issue or transfer of permissible securities to a person resident outside India shall apply to the issue or transfer of such permissible securities to a foreign depository for the purpose of issue of depository receipts. Subject to this the issue of depository receipts shall not require any approval from any government agency, if the issuance is in accordance with the scheme.

RIGHTS AND DUTIES

The following are the rights and duties for the foreign depository:

- The foreign depository shall be entitled to exercise voting rights, if any, associated with the permissible securities whether pursuant to voting instruction from the holder of depository receipts or otherwise;
- The shares of a company underlying the depository receipts shall form part of the public shareholding of the company under Securities Contracts (Regulation) Rules, 1957, if:
  a) the holder of such depository receipts has the right to issue voting instruction; and
  b) such depository receipts are listed on an international exchange;
- In the cases not covered under second point, shares of the company underlying depository receipts shall not be included in the total shareholding and in the public shareholding for the purpose of computing the public shareholding of the company;

A holder of depository receipts issued on the back of equity shares of a company shall have the same obligations as if it is the holder of the underlying equity shares, if it has the right to issue voting instruction.

OBLIGATIONS

Clause 8 of the scheme imposes certain obligations on the domestic custodian which are

- to ensure that the relevant provisions of the scheme related to the issue and cancellation of depository receipts is complied with;
- to maintain records in respect of, and report to, Indian depositories all transactions in the nature of issue and cancellation of depository receipts for the purpose of monitoring limits under the FEMA, 1999;
- to provide the information and data as may be called upon by SEBI, the RBI, Ministry of Finance,
- Ministry of Corporate Affairs and any other authority of law; and
- to file with SEBI a copy of the document by whatever name called, which sets the terms of issue of depository receipts issued on the back of securities, as defined under Section 2(h) of SCRA, 1956, in a permissible jurisdiction.

The following are the obligations imposed on the Indian Depositories that-

- they shall co-ordinate among themselves;
- they shall disseminate the outstanding permissible securities against which the depository receipts are outstanding; and
- they shall disseminate the limit up to which permissible securities can be converted to depository receipts.

A person issuing or transferring permissible securities to a foreign depository for the purpose of the issue of depository receipts shall comply with relevant provisions of the Indian law, including the scheme, related to the issue and cancellation of depository receipts.

APPROVAL

Any approval necessary for issue or transfer of permissible securities to a person resident outside India shall apply to the issue or transfer of such permissible securities to a foreign depository for the purpose of issue of depository receipts. No approval is required if the issue of depository receipt is in accordance with the scheme.

PRICING

Price of permissible securities issued to foreign depository for the purpose of issuing depository receipts shall not be less than price if such security issued to domestic investors.

Explanation I:

A company listed or proposed to be listed on a recognised stock exchange shall not issue equity shares on preferential allotment to a foreign depository for the purpose of issue of depository receipts at a price less than the price applicable to preferential allotment of equity shares of the same class to investors under ICDR.

Explanation II:

Whereas a listed company makes a qualified institutional placement of permissible securities to a foreign depository for the purpose of issue of depository receipts, the minimum pricing norms of such placement is applicable under the SEBI (ICDR) Regulations, 2009 shall be complied with.

Example: XYZ Limited, a listed company makes a Qualified Institution Placement of shares and the Floor price comes at Rs. 60 per share after complying with pricing norms of ICDR Regulations. Now, if same class of shares is being issued to foreign depository for the purpose of issuing DRs, price cannot be less than Rs.60 and minimum price regulation of SEBI (ICDR) Regulations, 2018 shall be complied with.

Issue of FCCBs and Depository Receipts (DRs)

The inward remittance received by the Indian Company vide issuance of DRs and FCCBs are treated as FDI and counted towards FDI.

- FCCBs/DRs may be issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and DR Scheme 2014 respectively, as per the guidelines issued by the Government of India thereunder from time to time.
- DRs are foreign currency denominated instruments issued by a foreign Depository in a permissible jurisdiction against a pool of permissible securities issued or transferred to that foreign depository and deposited with a domestic custodian.

- In terms of Foreign Exchange Management (Transfer or Issue of Security by a person Resident Outside India) Regulations, 2017 as amended from time to time, a person will be eligible to issue or transfer eligible securities to a foreign depository, for the purpose of converting the securities so purchased into depository receipts in terms of Depository Receipts Scheme, 2014 and guidelines issued by the Government of India thereunder from time to time.
- A person can issue DRs, if it is eligible to issue eligible instruments to person resident outside India under Schedule 9 of Foreign Exchange Management Transfer or Issue of Security by a person Resident Outside India) Regulations, 2017 as amended from time to time.
- The aggregate of eligible securities which may be issued or transferred to foreign depositories, along with eligible securities already held by persons resident outside India, shall not exceed the limit on foreign holding of such eligible securities under the relevant regulations framed under FEMA, 1999.
- The pricing of eligible securities to be issued or transferred to a foreign depository for the purpose of issuing depository receipts should not be at a price less than the price applicable to a corresponding mode of issue or transfer of such securities to domestic investors under the relevant regulations framed under FEMA, 1999.
- The issue of depository receipts as per DR Scheme 2014 shall be reported to the Reserve Bank of India by the domestic custodian as per the reporting guidelines for DR Scheme 2014.

ADR/GDR

Typically, companies in India issue securities in the form of depository receipts (DR) viz American Depository Receipts (ADR), Global Depository Receipts (GDR) or Foreign Currency Convertible Bonds (FCCB). While ADR and GDR are equity instruments, FCCB is a convertible debt instrument.

The DR Scheme 2014 is solely applicable to ADR and GDR. The 1993 Scheme continues to govern FCCB.

Regulation 2(c) of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 defines ADR as under:

> "*American Depository Receipt (ADR)" means a security issued by a bank or a depository in United States of America (USA) against underlying rupee shares of a company incorporated in India*."

Regulation 2(i) of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004, defines GDR as under:

> "Global Depository Receipt (GDR)" means a security issued by a bank or a depository outside India against underlying rupee shares of a company incorporated in India.

Difference between American Depository Receipts (ADR) and Global Depository Receipts (GDR)

- ADR are US $ denominated and traded only in US.
- GDRs are traded in various places such as New York Stock Exchange, London Stock Exchange, etc.

SPONSORED ADR/GDR ISSUE

An Indian company can also sponsor an issue of ADR / GDR. Under this mechanism, the company offers its resident shareholders a choice to submit their shares back to the company so that on the basis of such shares, ADRs / GDRs can be issued abroad. The proceeds of the ADR / GDR issue are remitted back to India and distributed among the resident investors who had offered their Rupee denominated shares for conversion. These

proceeds can be kept in Resident Foreign Currency (Domestic) accounts in India by the resident shareholders who have tendered such shares for conversion into ADRs / GDRs.

TWO-WAY FUNGIBILITY SCHEME

A limited two-way Fungibility scheme has been put in place by the Government of India for ADRs / GDRs. Under this Scheme, a stock broker in India, registered with SEBI, can purchase shares of an Indian company from the market for conversion into ADRs/GDRs based on instructions received from overseas investors. Re-issuance of ADRs / GDRs would be permitted to the extent of ADRs / GDRs which have been redeemed into underlying shares and sold in the Indian market.

TERMS ONE SHOULD KNOW

One way fungibility – Here investors could cancel their depository receipt and recover the proceeds by selling the underlying shares in the Indian market; DRs once redeemed could not be converted into shares.

Two way fungibility – It means that the shares so released can be reconverted by the company into DRs for purchase by the overseas investors. It implies that the re-issuance of DRs would be permitted to the extent of DRs that have been redeemed and underlying shares are sold in domestic market.

Sponsor – It is a process of disinvestment by the Indian shareholders of their holding in overseas market.

Provisions under the Companies Act, 2013

The Companies Act, 2013 has laid down provisions for issue of GDRs under Section 41 and The Companies (Issue of Global Depository Receipts) Rules, 2014.

According to Section 2(44) of Companies Act, 2013, "Global Depository Receipt" means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts.

Section 41 provides that a company may, after passing a special resolution in its general meeting, issue depository receipts in any foreign country in such manner, and subject to such conditions, as may be prescribed.

Companies (Issue of Global Depository Receipts) Rules, 2014

Eligibility to issue depository receipts

Rule 3 lays down that a company may issue depository receipts provided it is eligible to do so in terms of the Scheme and relevant provisions of the Foreign Exchange Management Rules and Regulations.

Conditions for issue of depository receipts

Rule 4 lays down the following conditions to be fulfilled by a company for issue of depository receipts:

- The Board of Directors of the company intending to issue depository receipts shall pass a resolution authorising the company to do so.
- The company shall take prior approval of its shareholders by a special resolution to be passed at a general meeting. However, a special resolution passed under section 62 of Companies Act, 2013 for issue of shares underlying the depository receipts, shall be deemed to be a special resolution for the purpose of section 41 of Companies Act, 2013 as well.
- The depository receipts shall be issued by an overseas depository bank appointed by the company and the underlying shares shall be kept in the custody of a domestic custodian bank.

- The company shall ensure that all the applicable provisions of the Scheme and the rules or regulations or guidelines issued by the Reserve Bank of India are complied with before and after the issue of depository receipts.
- The company shall appoint a merchant banker or a practising chartered accountant or a practising cost accountant or a practising company secretary to oversee all the compliances relating to issue of depository receipts and the compliance report taken from such merchant banker or practising chartered accountant or practising cost accountant or practising company secretary, as the case may be, shall be placed at the meeting of the Board of Directors of the company or of the committee of the Board of directors authorised by the Board in this regard to be held immediately after closure of all formalities of the issue of depository receipts.

However, that the committee of the Board of directors referred to above shall have at least one independent director in case the company is required to have independent directors.

Manner and form of depository receipts

Rule 5 deals with the manner and form of issue of depository receipts.

- The depository receipts can be issued by way of public offering or private placement or in any other manner prevalent abroad and may be listed or traded in an overseas listing or trading platform.
- The depository receipts may be issued against issue of new shares or may be sponsored against shares held by shareholders of the company in accordance with such conditions as the Central Government or Reserve Bank of India may prescribe or specify from time to time.
- The underlying shares shall be allotted in the name of the overseas depository bank and against such shares, the depository receipts shall be issued by the overseas depository bank abroad.

Voting rights

Rule 6 provides the provisions for voting rights of depository receipts holder.

- A holder of depository receipts may become a member of the company and shall be entitled to vote as such only on conversion of the depository receipts into underlying shares after following the procedure provided in the Scheme and the provisions of this Act.
- Until the conversion of depository receipts, the overseas depository shall be entitled to vote on behalf of the holders of depository receipts in accordance with the provisions of the agreement entered into between the depository, holders of depository receipts and the company in this regard.

Proceeds of Issue

Rule 7 provides that the proceeds of issues of depository receipts shall either be remitted to a bank account in India or deposited in an Indian bank operating abroad or any foreign bank (which is a Scheduled Bank under the Reserve Bank of India Act, 1934) having operations in India with an agreement that the foreign bank having operations in India shall take responsibility for furnishing all the information which may be required and in the event of a sponsored issue of Depository Receipts, the proceeds of the sale shall be credited to the respective bank account of the shareholders.

Non applicability of certain provisions of the Act

(1) The provisions of the Act and any rules issued thereunder insofar as they relate to public issue of shares or debentures shall not apply to issue of depository receipts abroad.

(2) The offer document, by whatever name called and if prepared for the issue of depository receipts,

shall not be treated as a prospectus or an offer document within the meaning of this Act and all the provisions as applicable to a prospectus or an offer document shall not apply to a depository receipts offer document.

(3) Notwithstanding anything contained under section 88 of the Companies Act, 2013, until the redemption of depository receipts, the name of the overseas depository bank shall be entered in the Register of Members of the Company.

PROCEDURE FOR ISSUANCE OF ADRs/GDRs

APPROVALS REQUIRED

The issue of ADRs/GDRs requires the approval of a Board of Directors, shareholders, "In principle and Final" approval of Ministry of Finance, approval of Reserve Bank of India, In-principle consent of Stock Exchange for listing of underlying shares and In-principle consent of Financial institutions.

APPROVAL OF BOARD OF DIRECTORS

A meeting of Board of Directors is required to be held for approving the proposal to raise money from Euro Capital market. A board resolution is to be passed to approve the raising of finance by issue of GDRs/FCCBs. The resolution should indicate therein specific purposes for which funds are required, quantum of the issue, country in which issue is to be launched, time of the issue etc. A director/Sub- Committee of Board of Directors is also to be authorised for seeking Government approval in connection with Euro issue and signing agreements with depository, organising road shows for fixation of price of GDRs. The Board meeting shall also decide and approve the notice of Extraordinary general meeting of shareholders at which special resolution is to be considered.

APPROVAL OF SHAREHOLDERS

Proposal for making Euro issue, as proposed by Board of Directors require approval of shareholders. A special resolution under Section 62 of the Companies Act, 2013 is required to be passed at a duly convened general meeting of the shareholders of the company.

APPROVAL OF MINISTRY OF FINANCE – "IN PRINCIPLE AND FINAL"

With respect to ADR/GDR, guidelines issued on the subject dated 19-1-2000 brought ADR/GDR under the automatic route and therefore the requirement of obtaining approval of Ministry of Finance, Department of Economic Affairs has been dispersed with.

Further, private placement of ADR/GDR will also not require prior approval provided the issue is managed by investment banker.

IN-PRINCIPLE CONSENT OF STOCK EXCHANGES FOR LISTING OF UNDERLYING SHARES

The issuing company has to make a request to the domestic stock exchange for in-principle consent for listing of underlying shares which shall be lying in the custody of domestic custodian. These shares, when released by the custodian after cancellation of GDR, are traded on Indian stock exchanges like any other equity shares.

IN-PRINCIPLE CONSENT OF FINANCIAL INSTITUTIONS

Where term loans have been obtained by the company from the financial institutions, the agreement relating to the loan contains a stipulation that the consent of the financial institution has to be obtained. The company must obtain in-principle consent on the broad terms of the proposed issue.

APPOINTMENT OF INTERMEDIARIES

The following agencies are normally involved in the Euro issue:

Lead Manager

The company has to choose a competent lead manager to structure the issue and arrange for the marketing. Lead managers usually charge a fee as a percent of the issue. The issues related to public or private placement, nature of investment, coupon rate on bonds and conversion price are to be decided in consultation with the lead manager.

Co-Lead/Co-Manager

In consultation with the lead manager, the company has to appoint co-lead/co-manager to coordinate with the issuing company/lead manager to make the smooth launching of the Euro issue.

Overseas Depository Bank

It is the bank which is authorised by the issuing company to issue Depository Receipts against issue of ordinary shares or Foreign Currency Convertible Bonds of issuing company.

Domestic Custodian Bank

A banking company which acts as custodian for the ordinary shares or Foreign Currency Convertible Bonds of an Indian company, which are issued by it. The function of the domestic custodian bank is to co-ordinate with the depository bank. When the shares are issued by a company the same are registered in the name of depository and physical possession is handed over to the custodian. The beneficial interest in respect of such shares, however, rests with the investors.

Listing Agent

One of the conditions of Euro-issue is that it should be listed at one or more Overseas Stock Exchanges. The appointment of listing agent is necessary to coordinate with issuing company for listing the securities on Overseas Stock Exchanges.

Legal Advisors

The issuing company should appoint legal advisors who will guide the company and the lead manager to prepare offer document, depository agreement, indemnity agreement and subscription agreement.

Printers

The issuing company should appoint printers of international repute for printing Offer Circular.

Auditors

The role of issuer company's auditors is to prepare the auditors report for inclusion in the offer document, provide requisite comfort letters and reconciliation of the issuer company's accounts between Indian GAAP/UK GAAP/US-GAAP and significant differences between Indian GAAP/UK GAAP/US-GAAP.

Underwriters

It is desirable to get the Euro issue underwritten by banks and syndicates. Usually, the underwriters subscribe for a portion of the issue with arrangements for tie-up for the balance with their clients. In addition, they will interact with the influential investors and assist the lead manager to complete the issue successfully.

PRINCIPAL DOCUMENTATION

Subscription Agreement

Subscription Agreement provides that Lead Managers and other managers agree, severally and not jointly, with the company, subject to the satisfaction of certain conditions, to subscribe for GDRs at the offering price set forth. It may provide that obligations of managers are subject to certain conditions precedent.

Subscription agreement may also provide that for certain period from the date of the issuance of GDR the issuing company will not (a) authorise the issuance of, or otherwise issue or publicly announce any intention to issue; (b) issue offer, accept subscription for, sell, contract to sell or otherwise dispose off, whether within or outside India; or (c) deposit into any depository receipt facility, any securities of the company of the same class as the GDRs or the shares or any securities in the company convertible or exchangeable for securities in the company of the same class as the GDRs or the shares or other instruments representing interests in securities in the company of the same class as the GDRs or the shares.

Subscription agreement also provides, an option to be exercisable within certain period after the date of offer circular, to the lead manager and other managers to purchase upto a certain prescribed number of additional GDRs solely to cover over-allotments, if any.

Depository Agreement

Depository Agreement lays down the detailed arrangements entered into by the company with the Depository, the forms and terms of the depository receipts which are represented by the deposited shares. It also sets forth the rights and duties of the depository in respect of the deposited shares and all other securities, cash and other property received subsequently in respect of such deposited shares. Holders of GDRs are not parties to deposit agreement and thus have no contractual rights against or obligations to the company.

The depository is under no duty to enforce any of the provisions of the deposit agreement on behalf of any holder or any other person. Holder means the person or persons registered in the books of the depository maintained for such purpose as holders. They are deemed to have notice of, be bound by and hold their rights subject

to all of the provisions of the deposit agreement applicable to them. They may be required to file from time to time with depository or its nominee proof of citizenship, residence, exchange control approval, payment of all applicable taxes or other governmental charges, compliance with all applicable laws and regulations and terms of deposit agreement, or legal or beneficial ownership and nature of such interest and such other information as the depository may deem necessary or proper to enable it to perform its obligations under Deposit Agreement.

The company may agree in the deposit agreement to indemnify the depository, the custodian and certain of their respective affiliates against any loss, liability, tax or expense of any kind which may arise out of or in connection with any offer, issuance, sale, resale, transfer, deposit or withdrawal of GDRs, or any offering document. Copies of deposit agreement are to be kept at the principal office of Depository and the Depository is required to make available for inspection during its normal business hours, the copies of deposit agreement and any notices, reports or communications received from the company.

Custodian Agreement

Custodian works in co-ordination with the depository and has to observe all obligations imposed on it including those mentioned in the depository agreement. The custodian is responsible solely to the depository. In the case of the depository and the custodian being same legal entity, references to them separately in the depository agreement or otherwise may be made for convenience and the legal entity will be responsible for discharging both functions directly to the holders and the company. Whenever the depository in its discretion determines that it is in the best interests of the holders to do so, it may, after prior consultation with the company terminate, the appointment of the custodian and in such an event the depository shall promptly appoint a successor custodian, which shall, upon acceptance of such appointment, become the custodian under the depository agreement. The depository shall notify holders of such change promptly. Any successor custodian so appointed shall agree to observe all the obligations imposed on him.

Agency Agreement

In case of FCCBs, the company has to enter into an agency agreement with certain persons known as conversion agents. In terms of this agreement, these agents are required to make the principal and interest payments to the holders of FCCBs from the funds provided by the company. They will also liaise with the company at the time of conversion/redemption option to be exercised by the investor at maturity.

Trust Deed

In respect of FCCBs the company enters into a Covenant (known as Trust Deed) with the Trustee for the holders of FCCBs, guaranteeing payment of principal and interest amount on such FCCBs and to comply with the obligations in respect of such FCCBs.

PRE AND POST LAUNCH – ADDITIONAL KEY ACTIONS

Apart from obtaining necessary approvals, appointment of various agencies and proper documentation, the following additional key actions are necessary for making the Euro-issue a success.

(i) Constitution of a Board Sub-Committee; (ii) Selection of Syndicate Members; (iii) Constitution of a task force for due diligence; (iv) Listing; (v) Offering Circular; (vi) Research papers; (vii) Pre-marketing; (viii) Timing, pricing and size of the issue; (ix) Roadshows; (x) Book building and pricing of the issue; (xi) Closing of the issue; (xii) Allotment; (xiii) Investor Relation Programme; and (xiv) Quarterly Statement.

Constitution of a Board Sub-Committee

To launch a Euro-issue, the issuing company has to take a large number of decisions in time. These decisions normally fall within the power of Board of Directors. It is usually difficult to call Board Meetings frequently and to ensure presence of adequate Board Members. Thus, it is normally advisable to constitute a sub-committee

of the Board with full delegation of powers with regard to Euro-issue. The delegation of powers to the Board sub- committee should normally include the following:

- Appointment of agencies;
- Authority to make applications for seeking various approvals;
- Authority to finalise and execute documents and agreements;
- Decisions about the timing, size and pricing of the issue; and
- Allotment of shares.

Selection of Syndicate Members

The success of any Euro-issue depends upon the well planned and coordinated efforts of the syndicate members and the company. The selection of the Syndicate members should be made depending upon the strength and capabilities of each member in different areas of specialisation such as marketing, financial research, distribution etc. The lead manager may be entrusted with the work of selection of syndicate members. The lead manager while selecting the above members, in addition to their strength and capability, should also evaluate their standing, image, reputation, infrastructure, past experience in handling Indian Euro-issue, etc.

Constitution of a task force for due diligence

The due diligence is a process in which a team consisting of legal, technical and financial experts of the lead manager meets top executives of the company and visits the sites of the company in order to understand the strengths, weaknesses, problems and opportunities of the company. The team also studies and analyses the balance sheet of the company and its subsidiaries, its financial arrangement with the group, investment pattern and also the future prospects of the company. It also scrutinize the minutes of the company, various arrangements entered into by the company with regard to marketing, purchase, technology, ancillary units, employment, etc. and analyse the impact of litigations on the profitability of the company.

The purpose of above exercise is to draft the offering circular (prospectus) and work out marketing strategies for the Euro-issue.

Listing

One of the conditions of Euro-issues is that the securities are to be listed on one or more Overseas Stock Exchanges. The issuing company has to fulfill all the requirements particularly disclosure and documentation as prescribed by the Overseas Stock Exchanges. The company shall take the help of the listing agent in getting its Euro-issue instruments listed on the Overseas Stock Exchanges.

The issuing company shall prepare the requisite documents as prescribed by the Overseas Stock exchange authorities and submit the same along with application to it after scrutinizing the application and obtain the formal listing approval shall be issued by the Overseas Stock Exchange.

The underlying shares against GDRs are to be listed on one or more Indian Stock Exchange(s) on which the company's existing shares are already listed. For this purpose, the company has to apply to the stock exchange authorities to get the shares represented by GDRs listed on the Indian Stock Exchanges. Trading of such shares on Indian Stock Exchange(s) will not commence until the period specified in the guidelines after the date of issue of the GDRs.

Offering Circular

Offering Circular is a mirror through which the prospective investors can access vital information regarding the company in order to form their investment strategies.

It is to be prepared very carefully giving true and complete information regarding the financial strength of the company, its past performance, past and envisaged research and business promotion activities, track record of promoters and the company, ability to trade the securities on Euro capital market.

The Offering Circular should be very comprehensive to take care of overall interests of the prospective investor. The Offering Circular for Euro-issue offering should typically cover the following contents:

- Background of the company and its promoters including date of incorporation and objects, past performance, production, sales and distribution network, future plans, etc.
- Capital structure of the company-existing, proposed and consolidated.
- Deployment of issue proceeds.
- Financial data indicating track record of consistent profitability of the company.
- Group investments and their performance including subsidiaries, joint venture in India and abroad.
- Investment considerations.
- Description of shares.
- Terms and conditions of global depository receipt and any other instrument issued along with it.
- Economic and regulatory policies of the Government of India.
- Details of Indian securities market indicating stock exchange, listing requirements, foreign investments in Indian securities.
- Market price of securities.
- Dividend and capitalisation.
- Securities regulations and exchange control.
- Tax aspects indicating analysis of tax consequences under Indian law of acquisition, membership and sale of shares, treatment of capital gains tax, etc.
- Status of approvals required to be obtained from Government of India.
- Summary of significant differences in Indian GAAP, UK GAAP and US GAAP and expert's opinion.
- Report of statutory auditor.
- Subscription and sale.
- Transfer restrictions in respect of instruments.
- Legal matters etc.
- Other general information not forming part of any of the above.

A copy of the Offering Circular is required to be sent to the Registrar of Companies, SEBI and the Indian Stock Exchanges for record purposes.

Research Papers

Research analysts team of lead manager/co-lead manager prepares research papers on the company before the issue. These papers are very important marketing tools as the international investors normally depend a lot on the information provided by the research analysts for making investment decisions.

Pre-marketing

Pre-marketing exercise is a tool through which the syndicate members evaluate the prospects of the issue. This is normally done closer to the issue. The research analysts along with the sales force of the syndicate members meet the prospective investors during pre-marketing roadshows. This enables the syndicate members to understand the market and the probable response from the prospective investors. The pre-marketing exercise helps in assessing the depth of investors' interest in the proposed issue, their view about the valuation of the share and the geographical locations of the investors who are interested in the issue. The response received during pre-marketing provides vital information for taking important decisions relating to timing, pricing and size of the issue. This would also help the syndicate members in evolving strategies for marketing the issue.

Timing, pricing and size of the Issue

After pre-marketing exercise, the important decisions of timing, pricing and size of the issue are taken. The proper time of launching the issue is when the fundamentals of the company and the industry are strong and the market price of the shares are performing well at Indian Stock Exchanges. The timing should also not clash with some other major issues of the Indian as well as other country companies. The decision regarding the size of issue is inversely linked with the pricing i.e. larger the size, the comparatively lower the price or vice-versa.

Roadshows

Roadshows represent meetings of issuers, analysts and potential investors. Details about the company are presented in the roadshows and such details usually include the following information about the company making the issue:

- History
- Organisational structure
- Principal objects
- Business lines
- Position of the company in Indian and international market
- Past performance of the company
- Future plans of the company
- Competition - domestic as well as foreign
- Financial results and operating performance
- Valuation of shares
- Review of Indian stock market and economic situations.

Thus at road shows, series of information presentations are organised in selected cities around the world with analysts and potential institutional investors. It is, in fact, a conference by the issuer with the prospective investors.

Road show is arranged by the lead manager by sending invitation to all prospective investors.

Book building and pricing of the Issue

During road shows, the investors give indication of their willingness to buy a particular quantity at particular terms. Their willingness is booked as orders by the marketing force of lead manager and co-lead manger. This process is known as book building.

Price is a very critical element in the market mix of any product or service. This is more so in case of

financial assets like stocks and bonds and specially in case of Euro issues. The market price abroad has a strong correlation to the near future earnings potential, fundamentals governing industry and the basic economic state of the country. Several other factors like prevalent practices, investor sentiment, behaviour towards issues of a particular country, domestic market process etc., are also considered in determination of issue price. Other factors such as the credit rating of the country, interest rate and the availability of an exit route are important.

Closing of the Issue and Allotment

Closing is essentially an activity confirming completion of all legal documentation and formalities based on which the company issues the share certificate to the depository and deposits the same with the domestic custodian. Once the issue is closed and all legal formalities are over, the allotment is finalised. Thereafter, the company issues shares in favour of the Overseas Depository Bank and deposits the same with the domestic custodian for custody. The particulars of the Overseas Depository Bank are required to be entered into the Register of Members of the company.

Investor Relation Programme

The international investors expect that the issuing company maintains contact with them after the issue. These investors always like to be informed by the company about the latest developments, the performance of the company, the factors affecting performance and the company's plans. It is, therefore, essential for the GDR issuing company to set up an investor relation programme. Good investor relation ensures goodwill towards the company and it would help the company in future fund raising efforts.

FOREIGN CURRENCY CONVERTIBLE BONDS

Foreign Currency Convertible Bonds (FCCBs) are optionally convertible bonds issued in a currency other than Indian Rupees. A convertible bond is a mix between a debt and equity instruments. It acts like a bond by making regular coupon and principal payments, but these bonds also give the bondholders the option to convert the bond into shares at the expiry the term of the Bond.

The FCCBs are unsecured, carry a fixed rate of interest and an option for conversion into a fixed number of equity shares of the issuer company. Interest and redemption price (if conversion option is not exercised) is payable in dollars. FCCBs shall be denominated in any freely convertible Foreign Currency. However, it must be kept in mind that FCCB issue proceeds need to conform to ECB end use requirements.

Apart from the policy of ECB, issue of FCCB is also required to adhere to FEMA Regulations and in accordance with the scheme viz., "Issue of Foreign Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993.

Foreign investors also prefer FCCBs because of the dollar denominated servicing, the conversion option and, the arbitrage opportunities presented by conversion of the FCCBs into equity at a discount on prevailing Indian market price.

In addition, 25% of the FCCB proceeds can be used for general corporate restructuring.

The major drawbacks of FCCBs are that the issuing company cannot plan its capital structure as it is not assured of conversion of FCCBs. Moreover, the projections for cash outflow at the time of maturity cannot be made.

Benefits to the Issuer Company

- Being Hybrid instrument, the coupon rate on FCCB is particularly lower than pure debt instrument there by reducing the debt financing cost.

- FCCBs are book value accretive on conversion. It saves risks of immediate equity dilution as in the case of public shares. Unlike debt, FCCB does not require any rating nor any covenant like securities, cover etc.
- It can be raised within a month while pure debt takes a longer period to raise. Because the coupon is low and usually payable at the time of redeeming the instrument, the cost of withholding tax is also lower for FCCBs compared with other ECB instruments.

Benefits to the Investor

- It has advantage of both equity and debt.
- It gives the investor much of the upside of investment in equity, and the debt portion protects the downside.
- Assured return on bond in the form of fixed coupon rate payments.
- Ability to take advantage of price appreciation in the stock by means of warrants attached to the bonds, which are activated when price of a stock reaches a certain point.
- Significant Yield to maturity (YTM) is guaranteed at maturity.
- Lower tax liability as compared to pure debt instruments due to lower coupon rate.

FCCB AND ORDINARY SHARES (THROUGH DEPOSITORY RECEIPT MECHANISM) SCHEME, 1993

FCCBs are governed by the 'Issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depositary Receipt Mechanism) Scheme, 1993' as amended from time to time and Notification FEMA No.120/RB-2004 dated July 7, 2004.

The issuance of FCCBs was brought under the ECB guidelines in August 2005. In addition to the requirements of:

(i) having the maturity of the FCCB not less than 5 years,

(ii) the call & put option, if any, shall not be exercisable prior to 5 years,

(iii) issuance of FCCBs only without any warrants attached,

(iv) the issue related expenses not exceeding 4% of issue size and in case of private placement, shall not exceed 2% of the issue size, etc.

as required in terms of Notification FEMA No. 120/RB-2004 dated July 7, 2004, FCCBs are also subject to all the regulations which are applicable to ECBs.

Domestic Custodian Bank	It means a banking company which acts as a custodian for the ordinary shares or Foreign Currency Convertible Bonds of an Indian Company which are issued by it against Global Depository Receipts or certificates.
Foreign Currency Convertible Bonds	It means bonds issued in accordance with this scheme and subscribed by a non-resident in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part, on the basis of any equity related warrants attached to debt instruments.
Issuing Company	It means an Indian Company permitted to issue Foreign Currency Convertible Bonds or ordinary shares of that company against Global Depository Receipts.

Overseas Depository Bank	It means a bank authorised by the issuing company to issue Global Depository Receipts against issue of Foreign Currency Convertible Bonds or ordinary shares of the issuing company.
Redemption of FCCBs	Keeping in view the need to provide a window to facilitate refinancing of FCCBs by the Indian companies which may be facing difficulty in meeting the redemption obligations, Designated AD Category - I banks have been permitted to allow Indian companies to refinance the outstanding FCCBs, under the automatic route, subject to compliance with the terms and conditions set out hereunder: • Fresh ECBs/ FCCBs shall be raised with the stipulated average maturity period and applicable all-in- cost being as per the extant ECB guidelines; • The amount of fresh ECB/FCCB shall not exceed the outstanding redemption value at maturity of the outstanding FCCBs; • The fresh ECB/FCCB shall not be raised six months prior to the maturity date of the outstanding FCCBs ; • The purpose of ECB/FCCB shall be clearly mentioned as 'Redemption of outstanding FCCBs' in Form 83 at the time of obtaining Loan Registration Number from the Reserve Bank; • The designated AD - Category I bank should monitor the end-use of funds; • ECB / FCCB beyond USD 500 million for the purpose of redemption of the existing FCCB will be considered under the approval route; and • ECB / FCCB availed of for the purpose of refinancing the existing outstanding FCCB will be reckoned as part of the limit of USD 750 million available under the automatic route as per the extant norms.
Restructuring of FCCBs	Restructuring of FCCBs involving change in the existing conversion price is not permissible. Proposals for restructuring of FCCBs not involving change in conversion price will, however, be considered under the approval route depending on the merits of the proposal.

FOREIGN CURRENCY EXCHANGEABLE BONDS

Indian promoters can new raise money abroad by issuing foreign currency bonds against the value of their investments in shares of listed group company, termed as Foreign Currency Exchangeable Bonds (FCEB). The issue of these bonds helps the promoter to meet the financing requirements within the group. Issue of Foreign Currency Exchangeable Bonds (FCEB) are governed by Foreign Currency Exchangeable Bonds Scheme, 2008 issued by Ministry of Finance, Department of Economic Affairs.

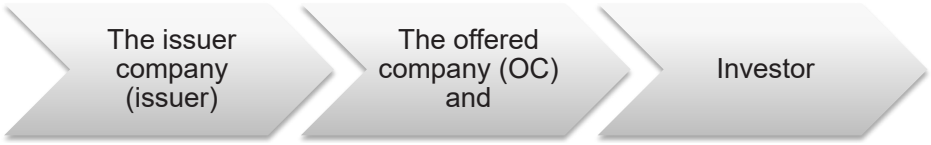
What is an FCEB?

According to the "Issue of Foreign Currency Exchangeable Bonds (FCEBs) Scheme, 2018, FCEB means :

- a bond expressed in foreign currency.
- the principal and the interest in respect of which is payable in foreign currency.
- issued by an issuing company, being an Indian company.
- subscribed to by a person resident outside India.

- Exchangeable into equity shares of another company, being Offered company in any manner .
- Either wholly or partly or on the basis of any equity related warrants attached to debt instruments.
- May be denominated

Parties of FCEB



Under this option, an issuer company may issue FCEBs in foreign currency, and these FCEBs are convertible into shares of another company (offered company) that forms part of the same promoter group as the issuer company.

For example, company ABC Ltd. issues FCEBs, then the FCEBs will be convertible into shares of company XYZ Ltd. that are held by company ABC Ltd. and where companies ABC Ltd. and XYZ Ltd. form part of the same promoter group. Unlike FCCBs that convert into shares of issuer itself, FCEBs are exchangeable into shares of OC. Also, relatively, FCEB has an inherent advantage that it does not result in dilution of shareholding at the OC level.

FOREIGN CURRENCY EXCHANGEABLE BONDS SCHEME, 2008

Issuer Company	The Issuing Company shall be part of the promoter group of the Offered Company and shall hold the equity share/s being offered at the time of issuance of FCEB.
Offered Company	The Offered Company shall be a listed company, which is engaged in a sector eligible to receive Foreign Direct Investment (FDI) and eligible to issue or avail of Foreign Currency Convertible Bond (FCCB) or External Commercial Borrowings (ECB).
Entities not eligible to issue FCEB	An Indian company, which is not eligible to raise funds from the Indian securities market, including a company which has been restrained from accessing the securities market by the SEBI shall not be eligible to issue FCEB.
Eligible subscriber	Entities complying with the FDI policy and adhering to the sectoral caps at the time of issue of FCEB can subscribe to FCEB. Prior approval of the Foreign Investment Promotion Board (FIPB), wherever required under the FDI policy, should be obtained.
Entities not eligible to subscribe to FCEB	Entities prohibited to buy, sell or deal in securities by the SEBI will not be eligible to subscribe to FCEB.
End use of FCEB Proceeds	**Issuing Company** i. The proceeds of the FCEB may be invested in promoter group companies. ii. The proceeds of FCEB can be invested overseas by way of direct investment including in Joint Ventures or Wholly Owned Subsidiaries subject to the existing guidelines on Indian Direct Investment in Joint Ventures or Wholly Owned Subsidiaries abroad. **Promoter Companies** Promoter Companies receiving investments out of the FCEB proceeds may utilise the amount in accordance with end-uses prescribed under the ECB policy.

All-in-cost	The rate of interest payable on FCEB and the issue expenses incurred in foreign currency shall be within the all-in-cost ceiling as specified by Reserve Bank under the ECB policy.
Operational procedure	➢ Prior approval of the RBI shall be required for issuance of FCEB. ➢ The FCEB may be denominated in any freely convertible foreign currency.
Pricing of FCEB	At the time of issuance of FCEB the exchange price of the offered listed equity shares shall not be less than the higher of the following two: (i) The average of the weekly high and low of the closing prices of the shares of the offered company quoted on the stock exchange during the six months preceding the relevant date; and (ii) The average of the weekly high and low of the closing prices of the shares of the offered company quoted on a stock exchange during the two week preceding the relevant date.
Maturity	Minimum maturity of FCEB shall be five years. The exchange option can be exercised at any time before redemption. While exercising the exchange option, the holder of the FCEB shall take delivery of the offered shares. Cash (Net) settlement of FCEB shall not be permissible.
Parking of FCEB proceeds abroad	The proceeds of FCEB shall be retained and/or deployed overseas by the issuing/ promoter group companies in accordance with the policy for the ECB. It shall be the responsibility of the issuing company to ensure that the proceeds of FCEB are used by the promoter group company only for the permitted end-uses prescribed under the ECB policy.

INTERNATIONAL AGENCIES AND DEVELOPMENT BANKS

Many development banks and international agencies have come forth over the years for the purpose of international financing. These bodies are set up by the Governments of developed countries of the world at national, regional and international levels for funding various projects. The more industrious among them include International Finance Corporation (IFC), Asian Development Bank and International Monetary Fund (IMF) etc.

INTERNATIONAL FINANCE CORPORATION

The International Finance Corporation (IFC) is a sister organization of the World Bank and member of the World Bank Group is the largest global development institution focused exclusively on the private sector in developing countries. The Bank Group has set two goals for the world to achieve by 2030:

1. End Extreme Poverty; and
2. Promote shared prosperity in every country.

The International Finance Corporation (IFC) is an international financial institution that offers investment, advisory, and asset-management services to encourage private-sector development in developing countries.

Since 2009, the IFC has focused on a set of development goals that its projects are expected to target. Its goals are to increase sustainable agriculture opportunities, prove healthcare and education, increase access to financing for microfinance and business clients, advance infrastructure, help small businesses grow revenues, and invest in climate health.

The IFC is owned and governed by its member countries but has its own executive leadership and staff that

conduct its normal business operations. It is a corporation whose shareholders are member governments that provide paid-in capital and have the right to vote on its matters. Originally, it was more financially integrated with the World Bank Group, but later, the IFC was established separately and eventually became authorized to operate as a financially-autonomous entity and make independent investment decisions. It offers an array of debt and equity financing services and helps companies face their risk exposures while refraining from participating in a management capacity. The corporation also offers advice to companies on making decisions, evaluating their impact on the environment and society, and being responsible. It advises governments on building infrastructure and partnerships to further support private sector development.

Functions of IFC

- It provides a wide range of investment and advisory services that help businesses and entrepreneurs in the developing world meet the challenges they face in the marketplace.
- It offers innovative financial products to private sector projects in developing countries. These include loans for IFC's own account (also called A-loans), equity financing, quasi-equity financing, syndicated loans (or B-loans), risk management products, and partial credit guarantees. IFC often provides funding to financial intermediaries that on-lend to clients, especially small and medium enterprises.
- It also provides advisory services that help build businesses. Much of IFC's advisory work is conducted by facilities managed by IFC but funded through partnerships with donor Governments and other multilateral institutions. Other sources of funding include donor country trust funds and IFC's own resources.
- It can provide a mix of financing and advisory services that is tailored to meet the needs of each project. But the bulk of the funding, as well as leadership and management responsibility, lies with private sector owners and investors.

ASIAN DEVELOPMENT BANK

The Asian Development Bank (ADB) was conceived in the early 1960s as a financial institution that would be Asian in character and foster economic growth and co-operation in one of the poorest regions in the world.

ADB assists its member and partners, by providing loans, technical assistance, growth and other equity investments to promote social and economic development ADB is composed of 67 members 48 of which are from the Asia and the Pacific region.

Areas of Work

The ADB is committed to achieving a prosperous, inclusive, resilient, and sustainable Asia and the Pacific, while sustaining its efforts to eradicate extreme poverty. It assists its members and partners by providing loans, technical assistance, grants, and equity investments to promote social and economic development.

ADB in partnership with member governments, independent specialists and other financial institutions is focussed on delivering projects in developing member countries that create economic and developments impact.

As a multilateral development finance institution, ADB provides:

- loans
- technical assistance
- grants

ADB maximizes the development impact of its assistance by :

- facilitating policy dialogues,
- providing advisory services, and
- mobilizing financial resources through co-financing operations that tap official, commercial, and export credit sources.

INTERNATIONAL MONETARY FUND

The International Monetary Fund (IMF) is an organization of 189 countries, working to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world. It was created in 1945, the IMF is governed by and accountable to the 189 countries that make up its near-global membership.

The IMF's primary purpose is to ensure the stability of the international monetary system—the system of exchange rates and international payments that enables countries (and their citizens) to transact with each other. The Fund›s mandate was updated in 2012 to include all macroeconomic and financial sector issues that bear on global stability.

Mission

The IMF's fundamental mission is to ensure the stability of the international monetary system. It does so in three ways:

(i) keeping track of the global economy and the economies of member countries;

(ii) lending to countries with balance of payments difficulties; and

(iii) giving practical help to members.

IMF LENDING

The IMF assists countries hit by crises by providing them financial support to create breathing room as they implement adjustment policies to restore economic stability and growth. It also provides precautionary financing to help prevent and insure against crises. The IMF's lending toolkit is continuously refined to meet countries' changing needs.

IMF lending aims to give countries breathing room to implement adjustment policies in an orderly manner, which will restore conditions for a stable economy and sustainable growth. These policies will vary depending upon the country's circumstances. For instance, a country facing a sudden drop in the prices of key exports may need financial assistance while implementing measures to strengthen the economy and widen its export base. A country suffering from severe capital outflows may need to address the problems that led to the loss of investor confidence—perhaps interest rates are too low; the budget deficit and debt stock are growing too fast; or the banking system is inefficient or poorly regulated.

LESSON ROUND UP

- Capital can be raised from international capital market in foreign currency by accessing foreign capital market. Funds raised through foreign currency are called as euro equity or debt.
- Indian companies are allowed to raise equity capital in the international market through the issue of GDR/ADR/FCCB/FCEB.
- ECBs are commercial loans raised by eligible resident entities from recognised non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc.

- The issue of GDRs/FCCBs requires the approval of a Board of Directors, shareholders, "In principle and Final" approval of Ministry of Finance, Approval of Reserve Bank of India, In-principle consent of Stock Exchange for listing of underlying shares and In-principle consent of Financial institutions
- FCCBs/DRs may be issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and Depository Receipts Scheme, 2014 respectively, as per the guidelines issued by the Government of India thereunder from time to time.
- The FCCBs are unsecured, carry a fixed rate of interest and an option for conversion into a fixed number of equity shares of the issuer company.
- International Institutions like the International Finance Corporation, Asian Development Bank and the International Monetary Fund also provide finance to various development activities to its member countries.
- IFC provides a wide range of investment and advisory services and offers innovative financial products to private sector projects in developing countries.
- The Asian Development Bank (ADB) assists its members and partners by providing loans, technical assistance, grants, and equity investments to promote social and economic development.
- The International Monetary Fund (IMF) is an organization of 189 countries, working to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world.

GLOSSARY

Bond A negotiable certificate evidencing indebtedness a debt security or IOU, issued by a company, municipality or government agency. A bond investor lends money to the issuer and, in exchange, the issuer promises to repay the loan amount on a specified maturity date. The issuer usually pays the bondholder periodic interest payments over the life of the loan.

Eurobond Eurobonds are issued in a specific currency outside the currency's domicile. They are not subject to withholding tax and fall outside the jurisdiction of any one country. The Eurobond market is based in London. Not to be confused with euro-denominated bonds.

CEDEL One of the two major organizations in the Eurobond market which clears or handles the physical exchange of, securities and stores securities. Based in Luxembourg, the company is owned by several shareholding banks and operates through a network of agents.

Coupon The interest paid on a bond expressed as a percentage of the face value. If a bond carries a fixed coupon, the interest is paid on an annual or semi-annual basis. The term also describes the detachable certificate entitling the bearer to payment of the interest.

SELF TEST QUESTIONS

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. What do you mean by External Commercial Borrowings (ECBs)? Describe the various forms of ECB as per RBI Guidelines.
2. Elucidate the procedure for the issue of Depository Receipts under Depository Receipts Scheme 2014.

3. Briefly explain the condition required to be fulfilled by a company for issue of depository receipts under the Companies (Issue and Global Depository Receipts) Rules, 2014.
4. What do you mean by Foreign Currency Exchangeable Bond (FCEB)? Explain the Pricing norms for issuing of FCEB under the Foreign Currency Exchangeable Bonds Scheme, 2008
5. Write short notes on :
   (a) Sponsored ADR/GDR issue
   (b) Two Way Fungibility Scheme
   (c) Asian Development Bank
   (d) International Monetary Fund
   (e) International Finance Corporation.

Lesson 10
Other Borrowings Tools

LESSON OUTLINE

- Inter-Corporate Loans
- Loans and investments by a company
- Commercial Paper
- Deposits Under Companies Act, 2013
- Customer Advances/Deposits
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Under the Companies Act, 2013 Inter-Corporate Loans and Investment plays a very vital role for the growth of industries as this results in the flow of funds for the group companies or other companies who are in the need of funds.

This chapter provides an overview of related party transactions, loans and investment by companies, investments made or held by a company in any property, security or other asset shall be made and held by it in its own name.

After going through this lesson, you should be able to understand the procedures relating to intercorporate loans, investments, guarantees and security, commercial papers and deposits under Company Act, 2013.

INTRODUCTION

The power to invest the funds of the company is the prerogative of the Board of Directors. This power is derived by the Board under Section 179 of the Companies Act, 2013. However, the Companies Act, 2013 contains provisions for restrictions on investments that a company can make and loans it can provide. Moreover, giving corporate guarantee or security is also as good as giving a loan, because the person to whom guarantee or security is given can decide to enforce the guarantee or security in certain conditions and in such a situation, the company will have to pay the amount. Thus apart from loan and investments, restrictions are also placed on the guarantees which the company can give or security it can provide for a loan.

Provisions in respect of giving of loans, making investments, giving guarantee or providing security or acquiring securities of any other body corporate have been considerably modified by the Companies Act, 2013. As of now, an overall limit of 60% of paid-up share capital plus free reserves and securities premium account or 100% of free reserves and securities premium account, whichever is more, has been fixed.

INTER-CORPORATE LOANS

The Companies Act 2013 has come up with a change in the concept of 'Loan and Investment by Company. The new Act provides that inter-corporate investments not to be made through more than two layers of investment companies.

Further, the 2013 Act states that companies can make investments only through two layers of investment companies subject to exceptions which includes company incorporated outside India.

In pursuance to the provisions of Section 186(1) of the Act, a Company shall make investment through not more than two layers of investment companies.

'Layer' according to explanation (d) of Section 2(87) of the Act in relation to a holding Company means its subsidiary or subsidiaries.

'Investment Company' means a Company whose principal business is the acquisition of shares, debentures or other securities".

The provisions of Section 186 (1) shall not have effect in the following cases:

- If a company acquires any company which is incorporated outside India and such company has investment subsidiaries beyond two layers as per the laws of such country.
- A subsidiary company from having any investment subsidiary for the purposes of meeting the requirement under any law/ rule/ regulation framed under any law for the time being in force.

Section 186(1) shall not apply on a Specified IFSC public and private company.

Limits for Loans /Guarantee/Security/Investment [Sec-186(2)]

In pursuant to provisions of Section 186(2) of the Act, no company shall directly or indirectly

- give any loan to any person or other body corporate,
- give any guarantee or provide security in connection with a loan to any other body corporate or person and acquire by way of subscription, purchase or otherwise, the securities of any other body corporate exceeding 60% of its paid-up share capital plus free reserves plus securities premium account or 100% of its free reserves plus securities premium account, whichever is more.

This section mandates a company to make investment only through two layers of investment companies. It is the investor company which shall be held liable in case of any violation of the section; therefore, It is prudent and advisable that the investee company to seek a declaration from the investor company whether the investment

made by the investor is coming from more than two layers up.

Section 186(2) shall not apply on Specified IFSC public and private company if a company passes a resolution either at a meeting of the Board of Directors or by circulation.

Approval from Members [Section 186(3)]

Though the Section 186(2) makes restriction as above, Section 186(3), empowers a Company to give loan, guarantee or provide any security or acquisition beyond the limit but subject to prior approval of members by a special resolution passed at a general meeting.

Section 186(3) shall not apply on Specified IFSC public and private company if a company passes a resolution either at a meeting of the Board of Directors or by circulation.

Disclosure of Particulars of Loan, Guarantee given and Security Provided [Section 186(4)]

Section 186(4) of the Act provides that the Company shall disclose following details to the members in the financial statement.

- the full particulars of the loans given,investment made or guarantee given or security provided.
- the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.

The notice of the general meeting for passing resolution shall indicate that

(a) The limits that will be required in excess of the prescribed limits involved in the proposal;

(b) The particulars of the body corporate in which the investment is proposed to be made or to which the loan or guarantee or security proposed to be given.

(c) The purpose of the investment, loan, guarantee or security;

(d) The source of funding for meeting the proposal; and

(e) Other details as may be specified.

Approval of Board and Public Financial Institution [Section 186(5)]

In pursuant to provisions of Section 186(5) of the Act, every company shall take consent of all the directors present at the board meeting before making any investment, giving loan and guarantee and providing security.

Further, the prior approval of a Public Financial Institutions is required in case :-

(a) The aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given exceeds the limit as specified in Section 186(2)

(b) There is a default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.

In case of a Specified IFSC public and private company, the Board can exercise powers by means of resolutions passed at meetings of the Board of Directors or through resolutions passed by circulation.

Exemptions to wholly owned subsidiary company:

(i) Where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of sub- section (3) of section 186 shall not apply.

(ii) In such cases, the company are required to disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub- section (4) of section 186.

Companies Registered Under Securities Exchange Board of India (SEBI) [Section 186(6)]

No company registered under section 12 of the Securities and Exchange Board of India Act, 1992 and also covered under such class or classes of companies which may be notified by the Central Government in consultation with the Securities and Exchange Board, shall take any intercorporate loan or deposits , in excess of the limits specified under the regulations applicable to such company , pursuant to which it has obtained certificate of registration from the Securities and Exchange Board of India.

Rate of Interest on Loan [Section 186 (7)]

No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

No Loan by Defaulter Company [Section 186(8)]

No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.

Register of Loan [Section 186 (9 and 10)]

Section 186(9) of the Act mandates every Company to maintain a register which shall contain particulars of loan or guarantee given or security provided or investment made. Every company giving loan or giving guarantee or providing security or making an acquisition of securities shall, from the date of its incorporation, maintain a register in Form MBP 2 and entered therein separately, the particulars of loan and guarantee given, securities provided and acquisitions made as aforesaid.

MCA vide General Circular No. 15/2014 dated 9th June 2014 clarified that registers maintained by companies pursuant to sub-section (5) of Section 372A of Companies Act, 1956 may continue as per requirements under these provisions and the new format prescribed vide Form MBP2 shall be used for particulars entered in such registers on and from 1.4.2014.

This register shall be kept at registered office of the company and the register shall be preserved permanently and shall be kept in the custody of company secretary of the company or any person authorized by the Board for the purpose.

The entries in the register (either manual or electronic) shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.

The extracts of the register may be opened for inspection and copies may be furnished to members who demands for the same on payment of prescribed fee as mentioned in the Articles which shall not exceed ten rupees for each page.

Non-Applicability of Section 186

The Section 186 (except Sub-Section 1) of the Companies Act, 2013 does not apply to the following:

(a) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;

(b) to any acquisition –

(i) made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities:

Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities;

(ii) made by a company whose principal business is the acquisition of securities;

(iii) of shares allotted in pursuance of clause (a) of sub-section (1) of section 62.

(iv) made by a banking company or an insurance company or a housing finance company, making acquisition of securities in the ordinary course of its business.

As per explanation to Section 186(13), the expression "infrastructure facilities" means the facilities specified in schedule VI.

Section 186 shall not apply to -

(a) a Government company engaged in defence production ;

(b) a Government company, other than a listed company, in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the state Government before making any loan or giving any guarantee or providing any security or making any investment under the section.

Penalty for contravention of Section 186

For Company:

Every Company which contravenes the provisions of this Section shall be liable to a penalty which shall not be less than Rupees twenty five thousand but which may extend to Rupees five lakhs.

For Officers:

Every officer of the Company who is default shall be punishable with imprisonment for a term which may extend to two years and fine which shall not be less than Rupees twenty five thousand but which may extend to Rupees One lakh.

Meaning of the term investment

Meaning of Investment : *Investment* for the purposes of section 186(1) would mean as used in section 186(2)(c) of the Act, 2013. Thus the following will be counted as "investments":

- Subscription or purchase of shares
- Subscription or purchase of share warrants
- Subscription or purchase of debentures bonds or similar debt securities.

The following will not be counted as investments:

- Making of loans or advances
- Any other financial transactions such as leases, purchase of receivables, or other credit facilities

Procedures Involved In Making Loan, Giving Guarantee and Providing Security

Following procedures may be adopted by the company while giving loan to any other body corporate, providing guarantee or security in connection with a loan or acquisition by way of subscription, purchase the securities of any other body corporate.

1. It is to be kept in mind that a company can give any loan or give any guarantee or provide security and acquire securities of any Body corporate through Board resolution up to 60% of its paid up capital, free reserves and security premium account or 100% of its free reserves and security premium whichever is more.
2. On the basis of aforesaid conditions and requirements of the company meeting of Board of Directors is to be convened after giving proper notice and proposals of giving loan or giving guarantee or providing security etc. are to be discussed.
3. No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting.
4. It is to be checked whether there is any existing loan from any public financial institution, If so, prior approval of that public financial institution is also required for any subsequent loan from any other source. However, prior approval of Public Financial Institution shall not be required where the aggregate loan, investment, guarantee and security proposed is within the limits as specified under section 186(2) and there is no default in repayment of loan or interest thereon to the Public Financials Institution.
5. After deciding the source of fund and quantum of requirement, the Board may authorize one of the directors of the company or any other person to apply for the concerned public financial institutions for approval.
6. Arrange to convene a general meeting of shareholders after giving proper notice and to pass special resolution therein, where the giving of any loan or guarantee or providing any security or the acquisition exceeds the limits specified i.e 60% of its paid up capital, free reserves and security premium account or 100% of its reserves and security premium whichever is more.
7. File the copy of special resolution in Form No. MGT-14 along with the fee as provided in Companies (Registration of offices and fees) Rules, 2014 with the Registrar within 30 days of passing the resolution. Necessary documents are required to be attached as per the requirements of the form.
8. Registers are to be maintained in Form MBP-2 by every company giving loan or giving guarantee or providing security or making an acquisition shall, from the date of its registration and the particulars of loan and guarantee given, securities provided and acquisition are to be entered therein.
9. Entries in the register shall be made chronologically in respect of each such transaction within seven days of making such loan or giving guarantee or providing security or making acquisition.
10. The entries in the register (either manual or electronic) shall be authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose.
11. It is to be ensured that no loan shall be given at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan.
12. The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilized by the recipient of the loan or guarantee or security.
13. Scrutinize the repayment history of the company with regards to repayment of any deposits or interest thereon.

No company which is in default in the repayment of any deposits or in payment of interest thereon shall give any loan or give any guarantee or provide any security or make any investment through acquisition of another company till such default is subsisting.

COMMERCIAL PAPER

Commercial Paper (CP) is an unsecured money market instrument issued in the form of a promissory note. CP, as a privately placed instrument, was introduced in India in 1990 with a view to enable highly rated corporate borrowers to diversify their sources of short-term borrowings and to provide an additional instrument to investors. Subsequently, primary dealers (PDs), and all-India financial institutions were also permitted to issue CP to enable them to meet their short-term funding requirements for their operations. The Guidelines for issue of CP are presently governed by various directives issued by the Reserve Bank of India, as amended from time to time.

The guidelines for issue of CP are given below:

Companies, PDs and financial institutions (FIs) are permitted to raise short-term resources under the umbrella limit fixed by the Reserve Bank of India (RBI) are eligible to issue CP.

A company would be eligible to issue CP provided:

(a) the tangible net worth of the company, as per the latest audited balance sheet, is not less than Rs. 4 crores;

(b) the company has been sanctioned working capital limit by bank/s or FIs; and

(c) the borrowal account of the company is classified as a Standard Asset by the financing bank/ institution.

Merits of Commercial Paper

1) It provides more funds compared to other sources.the cost pf commercial paper to the issuing firm is lower than the cost of commercial bank loans.

2) It is freely transferable in nature, therefore it has high liquidity also. Additionally, SEBI vide its circulars dated October 22, 2019 and December 24, 2019 prescribed framework for listing if Commercial Papers which will provide additional liquidity to the investors of CPs.

3) It produce a continuing source of funds. This is because their maturity can be tailored to suit the needs of issuing firm.It is highly secure and doesnot contain any restrictive condition.

Demerits of commercial Paper

1) Only financially secure and highly rated organizations can raise money through commercial papers. New and moderately rated organizations are not in a position to raise funds by this method
2) The amount of money that can be raised through commercial paper is limited to the deductible liquidity available with the suppliers of funds at a particular point.
3) The duration of commercial paper cannot be extended.

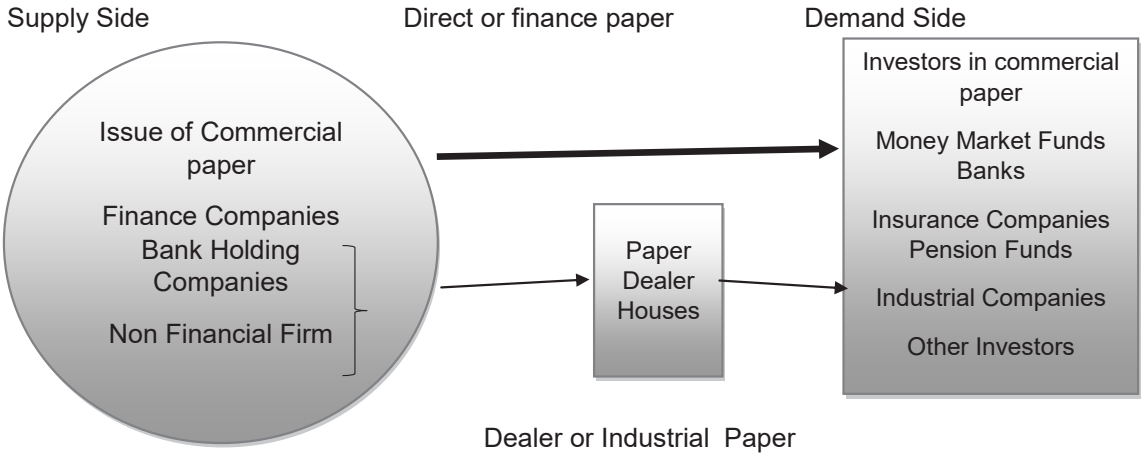
Procedure for Issuance

Credit Rating

All eligible participants shall obtain credit rating for issuance of CP from any one of the SEBI registered Credit Rating Agencies.

The minimum credit rating shall be 'A2' [as per rating symbol and definition prescribed by Securities and Exchange Board of India (SEBI)].

Structure of Commercial Paper Market



Maturity

CP can be issued for maturities between a minimum of 7 days and a maximum of up to one year from the date of issue. The maturity date of the CP should not go beyond the date up to which the credit rating of the issuer is valid.

Denomination

CP can be issued in denominations of Rs. 5 lakh and multiples thereof. The amount invested by a single investor should not be less than Rs. 5 lakh (face value).

Amount

The aggregate amount of CP from an issuer shall be within the limit as approved by its Board of Directors or the

quantum indicated by the CRA for the specified rating, whichever is lower. Banks and FIs will, however, have the flexibility to fix working capital limits, duly taking into account the resource pattern of company's financing, including CPs.

An FI can issue CP shall be within the overall umbrella limit prescribed in the Master Circular on Resource Raising Norms for FIs, issued by Reserve Bank of India, Department of Banking Regulation as prescribed and updated from time-to-time.

The total amount of CP proposed to be issued should be raised within a period of two weeks from the date on which the issuer opens the issue for subscription.

Issue and Paying Agent

Only a scheduled bank can act as an IPA for issuance of CP.

Investment in CP

CP may be issued to individuals, banking companies, other corporate bodies (registered or incorporated in India) and unincorporated bodies, Non-Resident Indians and Foreign Institutional Investors (FIIs). However, investment by FIIs would be within the limits set for them by SEBI and compliance with the provisions of the FEMA 1999, the Foreign Exchange (Deposit) Regulations, 2000 and Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, as amended from time to time.

Trading

All OTC trades in CP shall be reported within 15 minutes of the trade to the reporting platform of Clearcorp Dealing Systems (India) Ltd. (CDSIL).

Additionally, SEBI vide its circular dated October 22, 2019 and December 24, 2019 has prescribed framework for listing of Commercial Papers. Post listing, CPs will be available for trading on stock exchange's trading platform.

Mode of Issuance

CP can be issued either in the form of a promissory note and held in physical form or in a dematerialised form through any of the depositories approved by and registered with SEBI. Provided all RBI regulated entities can deal in and hold CP only in dematerialised form through such depositories. CP will be issued at a discount to

face value as may be determined by the issuer. No issuer shall have the issue of CP underwritten or co-accepted.

Dematerialisation

While option is available to both issuers and subscribers to issue/hold CP in dematerialised or physical form, issuers and subscribers are encouraged to opt for dematerialised form of issue/holding. However, banks, FIs and PDs are required to make fresh investments and hold CP only in dematerialised form.

Payment

The initial investor in CP shall pay the discounted value of the CP by means of a crossed account payee cheque to the account of the issuer through IPA. On maturity of CP, when CP is held in physical form, the holder of CP shall present the instrument for payment to the issuer through the IPA. However, when CP is held in demat form, the holder of CP will have to get it redeemed through the depository and receive payment from the IPA.

Procedure

Every issuer must appoint an IPA for issuance of CP. The issuer should disclose to the potential investors, its financial position as per the standard market practice. After the exchange of deal confirmation between the investor and the issuer, issuing company shall issue physical certificates to the investor or arrange for crediting the CP to the investor's account with a depository. Investors shall be given a copy of IPA certificate to the effect that the issuer has a valid agreement with the IPA and documents are in order.

Role and Responsibilities

The role and responsibilities of issuer, IPA and CRA are set out below:

- Issuer

  With the simplification in the procedures for issuance of CP, issuers would now have greater flexibility. However, they have to ensure that the guidelines and procedures laid down for CP issuance are strictly adhered to.

- Issuing and Paying Agent (IPA)
- The IPA would ensure that the issuer has the minimum credit rating as stipulated by RBI and the amount mobilised through issuance of CP is within the quantum indicated by CRA for the specified rating or as approved by its Board of Directors, whichever is lower.
- The IPA has to verify all the documents submitted by the issuer, viz., copy of board resolution, signatures of authorised executants (when CP is issued in physical form) and issue a certificate to this effect.
- Certified copies of original documents, verified by the IPA, should be held in the custody of IPA.
- All scheduled banks, acting as the IPAs should submit the data pertaining to CP issuances on the Online Returns Filing System (ORFS) module of the RBI within two days from the date of issuance of CP.
- The IPA shall certify that it has a valid agreement with the issuer.
- Credit Rating Agency (CRA)
- The CRA shall be abide by the Code of Conduct prescribed by the SEBI for CRAs for undertaking rating of capital market instruments shall be applicable to CRAs for rating CPs.
- The CRAs would henceforth have the discretion to determine the validity period of the rating dependingupon its perception about the strength of the issuer. Accordingly, they shall, at the time of rating, clearly indicate the date when the rating is due for review.
- The CRAs would have to closely monitor the rating assigned to issuers vis-à-vis their track record at regular intervals and would be required to make their revision in the ratings public through their publications and website.

DEPOSITS

Corporates also have access to another market called the Inter Corporate Deposits (ICD) market. An ICD is an unsecured loan extended by one corporate to another. Existing mainly as a refuge for low rated corporates, this market allows corporates with surplus funds to lend to other corporates facing shortage of funds. Another aspect of this market is that the better-rated corporates can borrow from the banking system and lend in this market to make speculative profits. As the cost of funds for a corporate in much higher than that of a bank, thus, the rates in this market are higher than those in the other markets. ICDs are unsecured, and hence the risk inherent is high. The ICD market is an unorganised market with very less information available publicly about transaction details.

Provisions of the Companies Act, 2013

As per **Section 2(31)** of Companies Act, 2013,"deposit" includes any receipt of money by way of depositor loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.

Company eligible for this purpose:-

As per **Rule 2(1)(e)** of Companies (Acceptance of Deposits) Rules, 2014, a **public company** as referred to in sub-section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a **special resolution** and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits:

Provided that an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of section 180, may accept deposits by means of an ordinary resolution.

What is the prohibition on acceptance of deposits from public?

As per **Section 73(1)** of Companies Act, 2013, no Company shall invite, accept or renew deposits under this act from the public except in a manner provided in the Act and the Rules.

Can a Company accept deposits from its members?

As per **Section 73(2)** of Companies Act, 2013, A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the following conditions, namely:—

(*a*) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;

(*b*) Filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;

(*c*) Depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as **deposit repayment reserve account**;

(*d*) Providing such deposit insurance in such manner and to such extent as may be prescribed;

(*e*) Certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and

(*f*) Providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company:

Provided that in case where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as ''**unsecured deposits**'' and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

As per Rule 4(1) of Companies (Acceptance of Deposits) Rules, 2014,shall issue a circular to all its members by registered post with acknowledgement due or speed post or by electronic mode in Form DPT-1:

Provided that in addition to issue of such circular to all members in the manner specified above, the circular

may be published in English language in an English newspaper and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.

Provisions regarding acceptance of Deposits by 'eligible company'

As per Section 76 of Companies Act, 2013, An eligible company may accept deposits from persons (other than its members) subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe:

Provided that such a company shall be required to obtain the rating (including its net worth, liquidity and ability to pay its deposits on due date) from a recognized credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits:

Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

As per Rule 4(2) & 4(3) of Companies (Acceptance of Deposits) Rules, 2014, such companies shall issue a circular in the form of advertisement in Form DPT-1 for the purpose in English language in an English newspaper and in vernacular language in one vernacular newspaper having wide circulation in the State in which the registered office of the company is situated and upload a copy of the circular on its website, if any.

Who can be a "depositor"?

As per Rule 2(1) (d) of Companies (Acceptance of Deposits) Rules, 2014,"depositor" means-

i) Any member of the company who has made a deposit with the company in accordance with the provisions of Section 73(2) of the Act, or

ii) Any person who has made a deposit with a public company in accordance with the provisions of Section 76 of the act.

Deposit insurance.

As per Rule 5 of Companies (Acceptance of Deposits) Rules, 2014,

(1) Every company referred to in sub-section (2) of section 73 and every other eligible company inviting deposits shall enter into a contract for providing deposit insurance at least thirty days before the issue of circular or advertisement or at least thirty days before the date of renewal, as the case may be. Explanation- For the purposes of this sub-rule, the amount as specified in the deposit insurance contract shall be deemed to be the amount in respect of both principal amount and interest due thereon.

(2) The deposit insurance contract shall specifically provide that in case the company defaults in repayment of principal amount and interest thereon, the depositor shall be entitled to the repayment of principal amount of deposits and the interest thereon by the insurer up to the aggregate monetary ceiling as specified in the contract:

Provided that in the case of any deposit and interest not exceeding twenty thousand rupees, the deposit insurance contract shall provide for payment of the full amount of the deposit and interest and in the case of any deposit and the interest thereon in excess of twenty thousand rupees, the deposit insurance contract shall provide for payment of an amount not less than twenty thousand rupees for each depositor.

(3) The amount of insurance premium paid on the insurance of such deposits shall be borne by the

company itself and shall not be recovered from the depositors by deducting the same from the principal amount or interest payable thereon.

(4) If any default is made by the company in complying with the terms and conditions of the deposit insurance contract which makes the insurance cover ineffective, the company shall either rectify the default immediately or enter into a fresh contract within thirty days and in case of non-compliance, the amount of deposits covered under the deposit insurance contract and interest payable thereon shall be repaid within the next fifteen days and if such a company does not repay the amount of deposits within said fifteen days it shall pay fifteen per cent. interest per annum for the period of delay and shall be treated as having defaulted and shall be liable to be punished in accordance with the provisions of the Act

Security

As per Rule 6 of Companies (Acceptance of Deposits) Rules, 2014,

(1) For the purposes of providing security, every company referred to in sub-section (2) of section 73 and every eligible company inviting secured deposits shall provide for security by way of a charge on its assets as referred to in Schedule III of the Act excluding intangible assets of the company for the due repayment of the amount of deposit and interest thereon for an amount which shall not be less than the amount remaining unsecured by the deposit insurance:

Provided that in the case of deposits which are secured by the charge on the assets referred to in Schedule III of the Act excluding intangible assets, the amount of such deposits and the interest payable thereon shall not exceed the market value of such assets as assessed by a registered valuer.

Explanation. I – For the purposes of this sub-rule it is clarified that the company shall ensure that the total value of the security either by way of deposit insurance or by way of charge or by both on company's assets shall not be less than the amount of deposits accepted and the interest payable thereon.

Explanation. II- For the purposes of proviso to sub-clause (ix) of clause (c) of sub-rule (1) of rule 2 and this sub-rule, it is hereby clarified that pending notification of sub-section (1) of section 247 of the Act and finalization of qualifications and experience of valuers, valuation of stocks, shares, debentures, securities etc. shall be conducted by an **independent merchant banker** who is registered with the Securities and Exchange Board of India or an **independent chartered accountant in practice** having a minimum experience of ten years.

(2) The security (not being in the nature of a pledge) for deposits as specified in sub-rule (1) shall be created in favour of a trustee for the depositors on:

(a) Specific **movable property** of the company, or

(b) Specific **immovable property** of the company wherever situated, or any interest therein.

Trustees

As per Rule 7 of Companies (Acceptance of Deposits) Rules, 2014,

(1) No company referred to in sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors for creating security for the deposits:

Provided that a written consent shall be obtained from the trustee for depositors before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company to be so appointed.

(2) The company shall execute a **deposit trust deed** in Form DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.

(3) No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee –

(a) Is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;

(b) Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

(c) Has any material pecuniary relationship with the company;

(d) Has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;

(e) Is related to any person specified in clause (a) above.

(4) No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board.

Provided that in case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

Duties of Trustees

As per Rule 8 of Companies (Acceptance of Deposits) Rules, 2014, it shall be the duty of every trustee for depositors to-

(a) ensure that the assets of the company on which charge is created together with the amount of deposit insurance are sufficient to cover the repayment of the principal amount of secured deposits outstanding and interest accrued thereon;

(b) satisfy himself that the circular or advertisement inviting deposits does not contain any information which is inconsistent with the terms of the deposit scheme or with the trust deed and is in compliance with the rules and provisions of the Act;

(c) Ensure that the company does not commit any breach of covenants and provisions of the trust deed;

(d) Take such reasonable steps as may be necessary to procure a remedy for any breach of covenants of the trust deed or the terms of invitation of deposits;

(e) Take steps to call a meeting of the holders of depositors as and when such meeting is required to be held;

(f) Supervise the implementation of the conditions regarding creation of security for deposits and the terms of deposit insurance;

(g) Do such acts as are necessary in the event the security becomes enforceable;

(h) Carry out such acts as are necessary for the protection of the interest of depositors and to resolve their grievances.

As per Rule 9 of Companies (Acceptance of Deposits) Rules, 2014, the trustee for depositors shall call a meeting of all the depositors on-

(a) Requisition in writing signed by at least one-tenth of the depositors in value for the time being outstanding;

(b) The happening of any event, which constitutes a default or which, in the opinion of the trustee for depositors, affects the interest of the depositors.

CHECK LIST OF SECRETARIAL COMPLIANCE FOR ACCEPTANCE OF DEPOSITS AS PER COMPANIES ACT 2013:

Check list of secretarial compliance for acceptance of deposits under Companies Act, 2013 are discussed below. The Company Secretary should check:

1. Whether proper Board meeting has been held and the matter of acceptance of deposit has been proposed and issue of notice for holding general meeting for obtaining approval of the shareholder has been taken place.
2. Whether general meeting has been held and approval of the shareholders by means of a special or ordinary resolution has been passed.
3. Whether the said resolution has been filed with Registrar in Form MGT-14 within 30 days of passing of such resolution.
4. Whether Board meeting has been held to obtain the approval for the draft Circular/Form of Advertisement from the Board and the said draft Circular/Form of Advertisement has been signed by majority of the directors of the Company.
5. Whether copy of Circular/Form of Advertisement approved by the Board has been filed with the Registrar of Companies in Form DPT-1 for registration.
6. Whether one or more deposit trustees for creating security for the secured deposits has been appointed and the company has executed a deposit trust deed in Form DPT-2 at least seven days before issuing circular or circular in the form of advertisement.
7. Whether the company has enter into a contract providing for deposit insurance at least thirty days before the issue of circular or advertisement with Insurance Company.
8. Whether the company has obtain the rating (including its net worth, liquidity and ability to pay its deposits on due date) from a recognized credit rating agency for informing the public the rating given to the Company.
9. Whether the company has issued circular/form of advertisement after 30 days from the date of filing of a copy of Circular/Form of Advertisement with the Registrar.
10. Whether the circular has been issued to members by registered post with acknowledgement due or speed post or by electronic mode or publish the circular in the form of an advertisement in Form DPT-1 and in addition to such issue of circular the company has published the same in one English newspaper and one vernacular language in vernacular newspaper having wide circulation in the state of registered office of the company.
11. Whether the company has uploaded the copy of the circular on the Company's website, if any.
12. Whether the company has issued deposit receipt in the prescribed format and under the signature of officer duly authorized by Board, within a period of two weeks from the date of receipt of money or realization of cheques.
13. Whether the company has made entries in the register as per the instruction provided in the rules within seven days from the date of issuance of the deposit receipt and such entries shall be authenticated by a director or secretary of the Company or by any other officer authorized by the Board.

14. Whether the company has filed deposit return in Form DPT-3 by furnishing information contained therein as on 31st day of March duly audited by auditors before 30th June every year.

15. Whether the company has prepared the statement regarding deposits existing as on the date of commencement of the act in Form DPT-4.

CUSTOMER ADVANCE/DEPOSITS

Sometimes businessmen insist on their customers to make some advance payment. It is generally asked when the value of order is quite large or things ordered are very costly. Customers' advance represents a part of the payment towards price on the product (s) which will be delivered at a later date. Customers generally agree to make advances when such goods are not easily available in the market or there is an urgent need of goods. A firm can meet its short-term requirements with the help of customers' advances.

Merits

(a) **Interest free**: Amount offered as advance is interest free. Hence funds are available without involving financial burden.

(b) **No tangible security** : The seller is not required to deposit any tangible security while seeking advance from the customer. Thus assets remain free of charge.

(c) No repayment obligation : Money received as advance is not to be refunded. Hence there are no repayment obligations.

Demerits

(a) **Limited amount** : The amount advanced by the customer is subject to the value of the order. Borrowers' need may be more than the amount of advance.

(b) **Limited period** : The period of customers' advance is only upto the delivery goods. It cannot be reviewed or renewed.

(c) **Penalty in case of non-delivery of goods** : Generally advances are subject to the condition that in case goods are not delivered on time, the order would be cancelled and the advance would have to be refunded along with interest.

LESSON ROUND UP

- The Companies Act, 2013 has come up with a change in the concept of loan and investment by the company, the inter-corporate investments shall not be made through more than two layers of investment companies.
- According to section 186(5) of the companies Act, every company shall take consent of all the directors present at the board meeting before making any investment, giving loan and guarantee and providing security.
- The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.
- Every company shall maintain a register which shall contain particulars of loan or guarantee given or security provided or investment made.

GLOSSARY

SEBI	Securities Exchange Board of India
MCA	Ministry of Corporate Affairs.
CP	Commercial Paper
FII	Foreign Institutional Investors
FEMA	Foreign Exchange Management Act.
IPA	Issuing and Paying Agent
ORFS	Online Returns Filing System
CRA	Credit Rating Agency
ICD	Inter Corporate Deposits
CDSIL	Clearcorp Dealing Systems (India) Ltd.

SELF TEST QUESTIONS

1. Discuss the law relating to loans given by companies
2. What are the particulars to be entered in the register maintained in respect of investments or loan made, guarantee given by the company?
3. Discuss the limits for making inter-corporate Loans/Guarantee/ Security/Investment.
4. What particulars are required to be entered in the Register of Loans and Investments?

Lesson 11
Non-Convertible Redeemable Preference Shares

LESSON OUTLINE

- Introduction
- Background
- Legal Framework
- SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013
- Important Definitions
- Requirements for Public Issue of NCRPS
- Conditions for Private Placement
- Continuous Listing and Trading of Non-Convertible Redeemable Preference Shares
- Obligations of the issuer, lead merchant banker, etc.
- Issuance and Listing of Non-Equity Regulatory Capital Instruments by banks
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

With an aim to bring more transparency in raising funds through non-convertible preference shares, the Capital Market Regulator, SEBI has notified a new set of Regulations to govern issuance and listing of Non-Convertible Redeemable Preference Shares (NCRPS), to be called SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013. Non-convertible preference shares is another instrument for raising fund from public to Indian companies.

This Lesson is design to enable the student to understand Issue and listing of Non-convertible Redeemable Preference Shares, Obligations of the issuer and lead merchant banker, Issuance & Listing of Non-Equity Regulatory Capital Instruments by banks.

INTRODUCTION

Non-Convertible Redeemable Preference Share means a preference share which is redeemable in accordance with the provisions of the Companies Act, 2013 and does not include a preference share which is convertible into or exchangeable with equity shares of the issuer at a later date, with or without the option of the holder.

BACKGROUND

A company can issue two types of shares viz. Equity Shares and Preference Shares. Equity shares are also known as Ordinary Shares. While Preference shareholders enjoy the benefit of receiving their dividend distribution first; the equity shareholders enjoy voting rights in major company decisions, including mergers or acquisitions. Preference shares have the right to receive dividend at a fixed rate before any dividend is paid on the equity shares. Further, when the company is wound up, they have a right to return of the capital before that of equity shares.

The Preference Shares may carry some more rights such as the right to participate in excess profits, which a specified dividend has been paid on the equity shares or the right to receive a premium at the time of redemption. The preference shares are safer investments than the equity shares. In case the company is wound up and its assets (land, buildings, offices, machinery, furniture, etc.) are being sold, the money that comes from this sale is given to the shareholders. After all, shareholders invest in a business and own a portion of it. The preference shares are most commonly issued by companies to institutions. For example, banks and financial institutions may want to invest in a company but do not want to bother with the hassles of fluctuating share prices. In that case, they would prefer to invest in a company's preference shares. Companies, on the other hand, may need money but are unwilling to take a loan. So they will issue preference shares.

As per Section 87 of the Companies Act, 1956, where preference shareholders holding cumulative or non-cumulative preference shares may exercise their respective voting rights on such shares. But this provisions has been removed in Companies Act, 2013 which entitles a preference shareholder to vote on every resolution placed before the company at any meeting if the company has not paid the dividend in respect of a class of preference shareholders for a period of consecutive 2 (two) or more years under Section 47 of the Companies Act, 2013.

(1) Subject to the provisions of section 43 and sub-section (2) of section 50, –

(a) every member of a company limited by shares and holding equity share capital therein shall have a right to vote on every resolution placed before the company; and

(b) his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.

(2) Every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, have a right to vote only on resolutions placed before the company which directly affect the rights attached to his preference shares and, any resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital and his voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company:

Provided that the proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares:

Provided further that where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

While Indian companies have previously issued preference shares, SEBI had not disclosed specific regulations

covering the sale of these securities, which provide dividends and priority over stock investors in recouping investments in cases of defaults, but do not confer voting rights.

In 2009, SEBI issued the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ("ILDS Regulations") with the objective of simplifying debt issuances by Indian companies. Such issuances permitted simplified listing of non-convertible debentures ("NCDs"). With dormant equity capital markets, issuers turned to raising debt by way of listed NCDs. Institutional investors received the instrument with enthusiasm as it allowed them assurance of exit and assurance of return without being qualified as ECB (as in case of FDI) and also allowed collateralization benefits. However, NCDs, even though in many cases linked to cash flows, reflected as debt on the books of the issuer and a need was felt to look for alternative forms of raising 'capital'.

Internationally, mostly issuances of redeemable preference shares are undertaken along the lines of debt issuances. However, keeping in mind the specific legal provisions of Indian laws, including the Companies Act, it is felt that a separate set of regulations would be required for the public issue or listing of redeemable preference shares. The matter to frame comprehensive regulatory framework for issuance and listing of non-convertible redeemable preference shares was taken before Corporate Bonds and Securitization Advisory Committee ("COBOSAC") of SEBI.

The COBOSAC recommended that the draft regulations ("Draft Regulations") for issue and listing of NCRPS be drafted in line with Debt Regulations, yet with some key differences, in view of the distinctive nature of the instrument. COBOSAC *inter-alia* recommended: (i) stricter eligibility criteria for making public issuances of NCRPS; (ii) relatively liberal framework for private placement of NCRPS, which is proposed to be listed and such private placement be restricted to institutional investors and high net-worth individuals; and (iii) comprehensive disclosure requirements for both public issuances and private placement. The Draft Regulations proposed by COBOSAC, however underwent several changes before SEBI notified the NCRPS Regulations

SEBI approved the SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations 2013 to govern issuance and listing of such securities in its SEBI board meeting held on March 08, 2013 and notified the same on June 12, 2013.

SEBI further came out with a consultation paper inviting public comments on proposed Additional disclosure norms for retail/public issuance of Additional Tier 1 (AT1) instruments issued by banks.

Who can Issue Redeemable Preference Shares?

- Private Company
- Public Company
- Banks

Note: NBFCs has to comply with the RBI Guidelines/ Directions in addition to Companies Act, 2013.

LEGAL FRAMEWORK

1. The Companies Act, 2013

Section 43 of the Companies Act, 2013 recognizes two kinds of share capital (a) equity share capital — (i) with voting rights; or (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and (b) Preference share capital. Preference shares carry a preferential right with respect to payment of dividend, and repayment, in the case of a winding up or repayment of capital. This section is essentially in the same form as it was under the 1956 Act, the only difference being that the 1956 Act exempted private companies from the equivalent provision, and the 2013 Act (until recently) did not.

Section 55 of the Companies Act, 2013 provides that Preference shares can be redeemed only out of the distributable profits of the company or out of the proceeds of a fresh issue of shares made for the purposes of

the redemption. This section states that where any such shares are redeemed out of distributable profits, a sum equal to the nominal amount of the shares redeemed shall be transferred out of profits to a reserve fund to be called as the Capital Redemption Reserve Account.

The companies is required to comply Section 55 (Issue and Redemption of Preference Shares) read with Rule 9 and 10 of the Companies (Share Capital and Debentures) Rules 2014.

2. SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 ("NCRPS Regulations")

The Securities and Exchange Board of India ("SEBI") has notified the SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 ("Regulations, 2013") on June 12, 2013. NCRPS Regulations allowing non-convertible preference shares ("NCRPS") as another instrument for public fund raising for Indian companies. This regulation provide a framework for issue and listing of Non-Convertible Redeemable Preference Shares by a public company and issue and listing of Perpetual Non-Cumulative Preference Shares (PNCPS) and Perpetual Debt Instruments (PDIs) issued by banks.

SEBI notified these regulations to oversee the public sale of preference shares and which allows hybrid securities, to be listed on exchanges.

3. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations")

The listing of securities is ensured by way of an agreement which is entered into between a stock exchange and the issuing company. This agreement called listing agreement. All Listed entities shall comply with the listing conditions as stipulated in Listing Regulations to provide substantial information about the company to the stock exchanges within the specified timeline. The Provisions of Chapter V of 'Listing Regulations' shall apply only to a listed entity which has listed its 'Non-convertible Debt Securities' and/or 'Non-Convertible Redeemable Preference Shares' on a recognised stock exchange in accordance with SEBI (Issue and Listing of Debt Securities) Regulations, 2008, SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 respectively. The provisions of Chapter V shall also be applicable to "***perpetual debt instrument" and "perpetual non-cumulative preference share"*** listed by banks.

4. RBI Guidelines

I. Banks

RBI guidelines allow banks to raise capital by issue of non-equity instruments such as Perpetual Non-Cumulative Preference Shares (PNCPS) and innovative Perpetual Debt Instruments (PDI).These instruments need to be in compliance with the specified criteria for inclusion in Additional Tier I Capital. Further, these instruments *inter-alia* should be able to absorb loss either through: (i) conversion to common shares at an objective pre-specified trigger point or (ii) a write-down mechanism that allocates losses to the instruments at a pre-specified trigger point.

Whereas RBI vide circular dated September 01, 2014 on the "Implementation of Basel III Capital Regulations in India – Amendments" has *inter-alia* allowed banks to issue Additional Tier 1 (AT1) instruments to retail investors. Further, RBI vide its Master Circular on Basel III Capital Regulations dated July 1, 2015 has also specified additional disclosure requirements for PNCPS and PDIs.

II. Non -Banking Financial Companies (NBFCs)

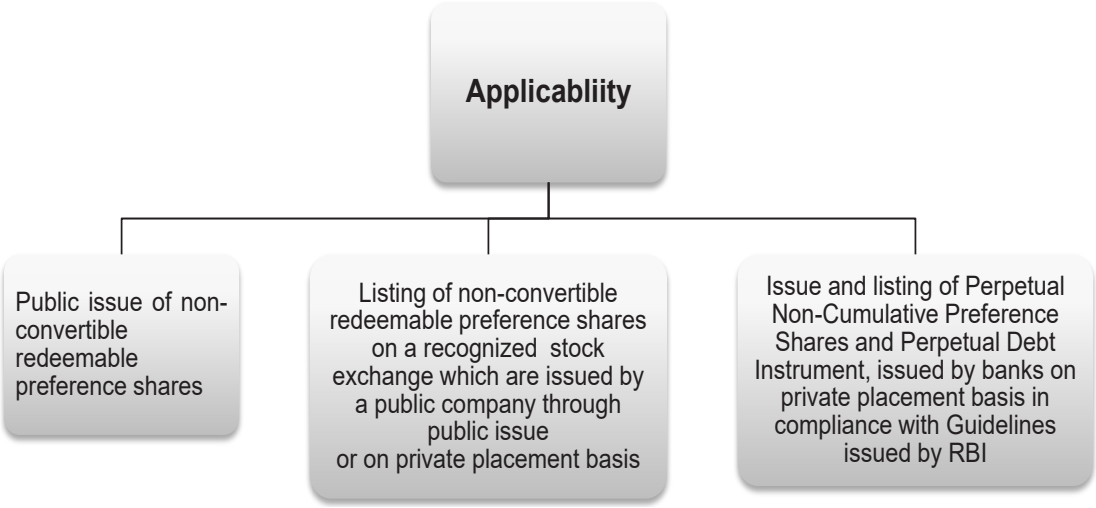
NCRPS does not fall into the category of Tier I Capital because the definition of 'owned funds' as prescribed thereunder includes only equity shares and compulsorily convertible preference shares ("CCPS"). However the definition of Tier II capital includes *inter-alia* preference shares other than those which are compulsorily

convertible into equity and hybrid debt instruments. RBI has issued detailed directions on prudential norms, vide Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007, Non-Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2016 and Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2016.

SEBI (ISSUE AND LISTING OF NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES) REGULATIONS, 2013

SEBI issued (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 pertaining to Issue and Listing of Non-Convertible Redeemable Preference Shares which are not convertible, either in whole or part into equity instruments. They provide for rationalized disclosure requirements and a reduction of certain onerous obligations erstwhile attached to an issue of Non-Convertible Redeemable Preference securities.

Applicability



IMPORTANT DEFINITIONS

“Book building” means a process undertaken prior to filing of prospectus with the Registrar of Companies by means of circulation of a notice, circular, advertisement or other document by which the demand for the non-convertible redeemable preference shares proposed to be issued by an issuer is elicited and the price and quantity of such securities is assessed.

“Innovative perpetual debt instrument” means an innovative perpetual debt instrument issued by a bank in accordance with the guidelines framed by the Reserve Bank of India.

“Non-convertible redeemable preference share” means a preference share which is redeemable in accordance with the provisions of the Companies Act, 2013 and does not include a preference share which is convertible into or exchangeable with equity shares of the issuer at a later date, with or without the option of the holder.

“Perpetual non-cumulative preference share” means a perpetual noncumulative preference share issued by a bank in accordance with the guidelines framed by the Reserve Bank of India.

“Wilful defaulter” means an issuer who is categorized as a wilful defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India and includes an issuer whose director or promoter is categorized as such.

REQUIREMENTS FOR PUBLIC ISSUE OF NCRPS

General Conditions

I. No issuer shall make any public issue of non-convertible redeemable preference shares if as on the date of filing of draft offer document or final offer document,

(a) the issuer or the person in control of the issuer or its promoter or its director is restrained or prohibited or debarred by the Board from accessing the securities market or dealing in securities; or

(b) the issuer or any of its promoters or directors is a wilful defaulter or it is in default of payment of interest or repayment of principal amount in respect of non-convertible redeemable preference shares issued by it to the public, if any, for a period of more than six months.

2. No issuer shall make a public issue of non-convertible redeemable preference shares unless the following conditions are satisfied, as on the date of filing of draft offer document and final offer document:

(a) it has made an application to one or more recognized stock exchanges for listing of such securities being issued and where the application is made to more than one recognized stock exchange, the issuer shall choose one of them as the designated stock exchange. In case any any of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange. The issuer is however free to choose a different stock exchange as a designated stock exchange for any subsequent public issue.

(b) it has obtained in-principle approval for listing of its non-convertible redeemable preference shares on the recognized stock exchanges where the application for listing has been made.

(c) it has obtained a credit rating from at least one credit rating agency registered with SEBI and is disclosed in the offer document. In case the issuer company has obtained credit ratings from more than one credit rating agency, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document.

(d) it has entered into an arrangement with a depository registered with SEBI for dematerialization of the non-convertible redeemable preference shares that are proposed to be issued to the public, in accordance with the Depositories Act, 1996 and regulations made thereunder.

(e) the minimum tenure of the non-convertible redeemable preference shares shall not be less than three years.

(f) the issue has been assigned a rating of not less than AA- or equivalent by a credit rating agency registered with SEBI

(3) The issuer shall create a capital redemption reserve in accordance with the provisions of the Companies Act, 2013.

(4) The issuer shall not issue non-convertible redeemable preference shares for providing loan to or acquisition of shares of any person who is part of the same group or who is under the same management, other than to subsidiaries of the issuer; Explanation: For the purpose of this regulation, the terms “part of the same Group” and “under the same management” shall have the same meaning as provided in the explanation to Regulation 23 of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

(5) In case of public issue of non-convertible redeemable preference shares, the issuer shall appoint one or more merchant bankers registered with SEBI at least one of whom shall be a lead merchant banker.

Disclosures in the Offer Document

1. The offer document must contain all material disclosures which are necessary for the subscribers of the NCRPS to take an informed investment decision. The offer document shall necessarily contain the following:
   (a) the disclosures specified in Section 26 of the Companies Act, 2013;
   (b) disclosure specified in Schedule I of the SEBI (Issue and listing of NCRPS) Regulations;
   (c) additional disclosures as may be specified by SEBI
2. The amount of minimum subscription which the issuer seeks to raise and underwriting arrangements shall be disclosed in the offer document.

Filing of the Offer Document

The issuer shall not make a public issue of NCRPS unless a draft offer document has been filed with the designated stock exchange through the lead merchant banker.

Draft offer document filed with the designated stock exchange shall be made public by posting the same on the website of the designated stock exchange for seeking public comments for a period of seven working days from the date of filing the draft offer document with such exchange.

The draft offer document may also be displayed on the website of the issuer, merchant bankers and the stock exchanges where the non-convertible redeemable preference shares are proposed to be listed. The lead merchant banker shall ensure that the draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the issuer including the postal and email address, telephone and fax numbers.

The lead merchant banker shall ensure that all comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies.

A copy of draft and final offer document shall also be forwarded to SEBI for its records, along with fees as specified in Schedule III of the SEBI (Issue and Listing of NCRPS) Regulations, simultaneously with filing of these documents with designated stock exchange.

The lead merchant banker shall, prior to filing of the offer document with the Registrar of Companies, furnish to SEBI a due diligence certificate in the format specified in Schedule II of the SEBI (Issue and Listing of NCRPS) Regulations.

Mode of Disclosure of Offer Document

The draft and final offer document shall be displayed on the websites of stock exchanges and shall be available for download in PDF /HTML formats. The offer document shall be filed with the designated stock exchange, simultaneously with filing thereof with the Registrar of Companies, for dissemination on its website prior to the opening of the issue. Where any person makes a request for a physical copy of the offer document, the same shall be provided to him by the issuer or lead merchant banker.

Advertisements for Public issues

The issuer shall make an advertisement in one English national daily newspaper and one Hindi national daily newspaper with wide circulation at the place where the registered office of the issuer is situated, on or before the issue opening date and such advertisement shall, amongst other things, contain the disclosures as specified in Schedule I of the SEBI (Issue and Listing of NCRPS) Regulations.

No issuer shall issue an advertisement which is misleading in material particulars or which contains any

information in a distorted manner or which is manipulative or deceptive. The advertisement shall be truthful, fair and clear and shall not contain a statement, promise or forecast which is untrue or misleading.

The credit rating shall be prominently displayed in the advertisement.

Any advertisement issued by the issuer shall not contain any matters which are extraneous to the contents of the offer document. The advertisement shall urge the investors to invest only on the basis of information contained in the offer document. Any corporate or product advertisement issued by the issuer during the subscription period shall not make any reference to the issue of non-convertible redeemable preference shares or be used for solicitation of subscription to the issue of non-convertible redeemable preference shares.

Abridged Prospectus and application forms

The issuer and lead merchant banker shall ensure that, every application form issued by the issuer is accompanied by a copy of the abridged prospectus, the abridged prospectus shall not contain matters which are extraneous to the contents of the prospectus and adequate space shall be provided in the application form to enable the investors to fill in various details like name, address, etc.

Electronic Issuances

The issuer may provide the facility for subscription of application in electronic mode (please refer SEBI Circular dated January 5, 2018 *https://www.sebi.gov.in/legal/circulars/jan-2018/electronic-book-mechanism-for-issuance-of-securities-on-private-placement-basis_37295.html*. An issuer proposing to issue non-convertible redeemable preference shares to the public through the on-line system of the designated stock exchange shall comply with the relevant applicable requirements as may be specified by SEBI, which are as under:.

All the investors applying in a public issue shall use only Application Supported by Blocked Amount (ASBA) facility for making payment i.e. writing their bank account numbers and authorising the banks to make payment in case of allotment by signing the application forms. An investor, intending to subscribe to a public issue, shall submit a completed bid-cum application form to Self-Certified Syndicate Banks (SCSBs), with whom the bank account to be blocked is maintained or any of the following intermediaries:

(a) A syndicate member (or sub-syndicate member)

(b) A stock broker registered with a recognised stock exchange

(c) A depository participant ('DP')

(d) A registrar to an issue and share transfer agent ('RTA')

Price Discovery through Book Building

The issuer may determine the price of non-convertible redeemable preference shares in consultation with the lead merchant bankers and the issue may be at a fixed price or the price may be determined through book building process.

Redemption

The issuer shall redeem the non-convertible redeemable preference shares in terms of the offer document.

Minimum subscription

The issuer may decide the amount of minimum subscription which it seeks to raise by public issue of non-convertible redeemable preference shares in accordance with the provisions of Companies Act, 2013 and disclose the same in the offer document. In the event of non-receipt of minimum subscription, all application monies received in the public issue shall be refunded forthwith to the applicants. In the event the application monies are refunded beyond eight days from the last day of the offer, then such amounts shall be refunded

along with interest at such rate as may be set out in the offer document which shall not be less than fifteen per cent per annum.

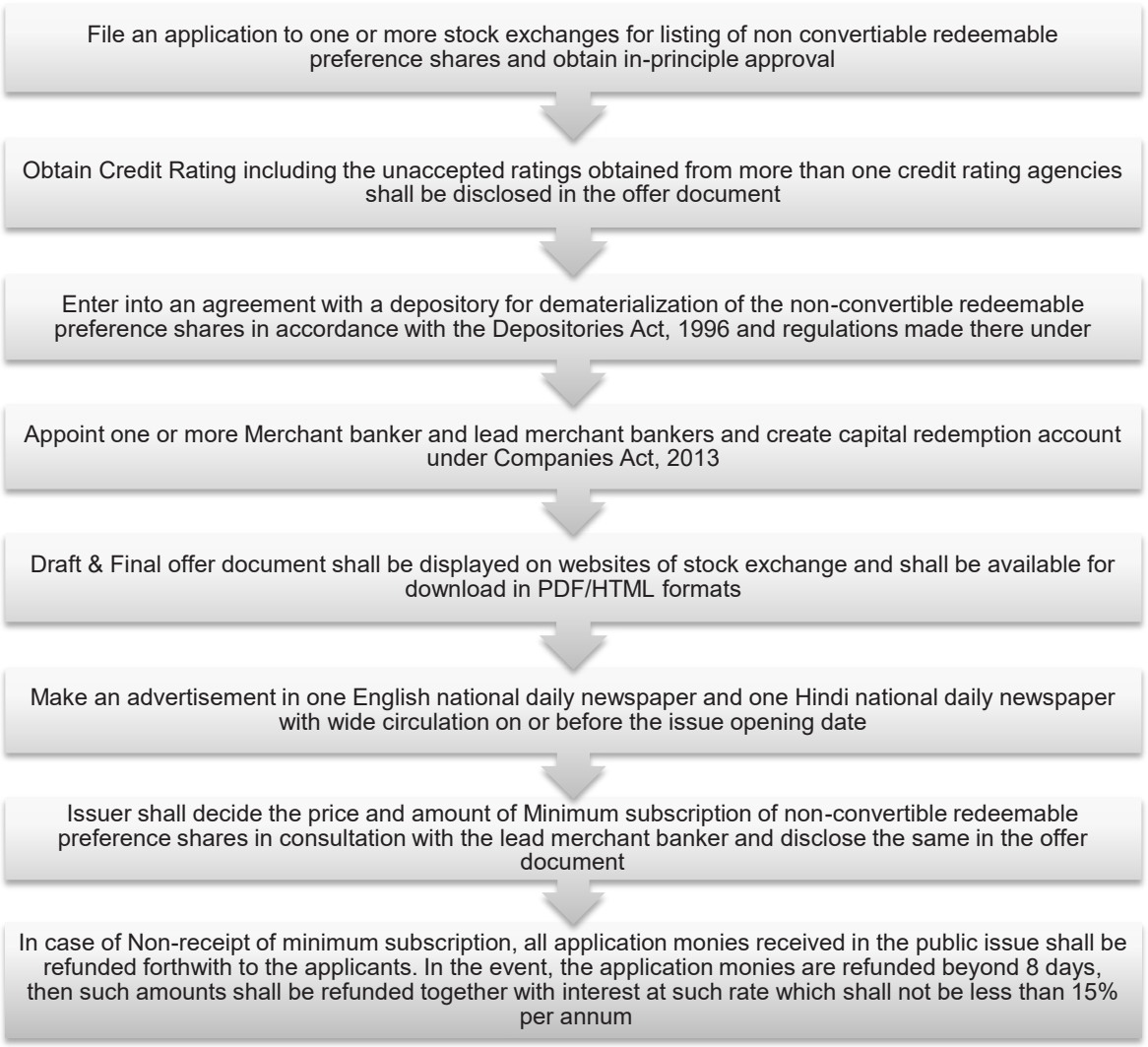
Underwriting

Public issue of non-convertible redeemable preference shares may be underwritten by an underwriter registered with SEBI and in case the issue is underwritten, adequate disclosures regarding underwriting arrangements shall be made in the offer document.

Prohibitions of mis-statements in the offer document

The offer document shall not omit disclosure of any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading. Further, the offer document or abridged prospectus or any advertisement issued by an issuer in connection with a public issue of non-convertible redeemable preference shares shall not contain any false or misleading statement.

Flow Chat for Issuance of Non-Convertible Redeemable Preference Shares under SEBI (Non-Convertible Redeemable Preference Shares) Regulations, 2013 :



Mandatory listing

An issuer desirous of making an offer of non-convertible redeemable preference shares to the public shall make an application for listing to one or more recognized stock exchanges in terms of Section 40 of the Companies Act, 2013. The issuer shall comply with conditions of listing of such non-convertible redeemable preference shares as specified in the Listing Agreement with the stock exchange where such non-convertible redeemable preference shares are sought to be listed.

Listing shall be completed within a period of 6 working days from the date of closing of the Issue.

Listing Agreement

Every issuer which has previously entered into agreements with a recognized stock exchange to list non-convertible redeemable preference shares, or perpetual non-cumulative preference shares or innovative perpetual debt instruments shall execute a fresh listing agreement with such stock exchange within six months of the date of notification of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. Any issue after the notification of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 shall execute a Listing Agreement with the stock exchange in accordance with the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

ISSUE OF NCRPS ON A PRIVATE PLACEMENT BASIS

An issuer may list its non-convertible redeemable preference shares issued on private placement basis on a recognized stock exchange subject to the following conditions:

a. the issuer has issued such non-convertible redeemable preference shares in compliance with the provisions of the Companies Act,2013 rules prescribed thereunder and other applicable laws;

b. credit rating has been obtained in respect of such non-convertible redeemable preference shares from at least one credit rating agency registered with SEBI. where credit ratings are obtained from more than one credit rating agencies, all the ratings shall be disclosed in the offer document;

c, the non-convertible redeemable preference shares proposed to be listed are in dematerialized form;

d. the disclosures as provided in Regulation 18 of the SEBI NCRPS Regulations have been made;

e. the minimum application size for each investor is not less than ten lakh rupees;

f. the issuer shall create a capital redemption reserve in accordance with the provisions of the Companies Act, 2013 ;

g. the issuer shall not issue non-convertible redeemable preference shares for providing loan to or acquisition of shares of any person who is part of the same group or who is under the same management, other than to subsidiaries of the issuer; and

h. where the application is made to more than one recognised stock exchange, the issuer shall choose one of them as the designated stock exchange.

The issuer shall comply with conditions of listing of such non-convertible redeemable preference shares as specified in the Listing Agreement with the stock exchange where such non-convertible redeemable preference shares are sought to be listed.

Disclosures in respect of private placements of non-convertible redeemable preference shares

The issuer making a private placement of non-convertible redeemable preference shares and seeking listing

thereof on a recognized stock exchange shall make disclosures as specified in Schedule I of the SEBI NCRPS Regulations, accompanied by the latest Annual Report of the Issuer.

The disclosures as provided shall be made on the web sites of stock exchanges where such securities are proposed to be listed and shall be available for download in PDF / HTML formats.

Listing

Where the issuer has disclosed the intention to seek listing of non- convertible redeemable preference shares issued on private placement basis, the issuer shall forward the listing application along with the disclosures specified in Schedule I to the recognized stock exchange within fifteen days from the date of allotment of such non-convertible redeemable preference shares.

CONTINUOUS LISTING CONDITIONS

All the issuers making public issues of non-convertible redeemable preference shares or seeking listing of non-convertible redeemable preference shares issued on private placement basis shall comply with the conditions of listing specified in the respective listing agreement for non-convertible redeemable preference shares.

The issuer and stock exchanges shall disseminate all information and reports on non-convertible redeemable preference shares including compliance reports filed by the issuers regarding the non-convertible redeemable preference shares to the investors and the general public by placing them on their websites.

Trading of non-convertible redeemable preference shares

The non-convertible redeemable preference shares issued to the public or on a private placement basis, which are listed in recognized stock exchanges, shall be traded and such trades shall be cleared and settled in recognized stock exchanges subject to conditions specified by SEBI. In case of trades of non-convertible redeemable preference shares which have been made over the counter, such trades shall be reported on a recognized stock exchange having a nation-wide trading terminal or such other platform as may be specified by SEBI. SEBI may specify conditions for reporting of trades on the recognized stock exchange or other platform referred to in the Regulations.

OBLIGATIONS OF THE ISSUER AND THE INTERMEDIARIES

1. The issuer shall disclose all the material facts in the offer documents issued or distributed to the public and shall ensure that all the disclosures made in the offer document are true, fair and adequate and there is no mis-leading or untrue statements or mis-statement in the offer document.
2. The Merchant Banker shall verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the issuer is in compliance with these regulations as well as all transaction specific disclosures.
3. Each rating obtained by an issuer shall be reviewed by the registered credit rating agency atleast once a year and any revision in the rating shall be promptly disclosed by the issuer to the stock exchange(s) where the non-convertible redeemable preference shares are listed. Any change in rating shall be promptly disseminated to investors and prospective investors in such manner as the stock exchange where such securities are listed may determine from time to time.
4. The issuer shall treat the applicants in a public issue of non-convertible redeemable preference shares in a fair and equitable manner as per the procedures as may be specified by SEBI.
5. The intermediaries shall be responsible for the due diligence in respect of assignments undertaken by them in respect of issue, offer and distribution of securities to the public.
6. No person shall employ any device, scheme or artifice to defraud in connection with issue or subscription

or distribution of non-convertible redeemable preference shares which are listed or proposed to be listed on a recognized stock exchange.

ISSUANCE AND LISTING OF NON EQUITY REGULATORY CAPITAL INSTRUMENTS BY BANKS

Applicability

The provisions of Chapter VI of SEBI NCRPS Regualtions may, apply to the issuance and listing of Perpetual Non-Cumulative Preference Shares and Innovative Perpetual Debt Instruments by banks. No issuer other than a bank shall issue these instruments. A bank may issue such instruments subject to the prior approval and in compliance with the Guidelines issued by Reserve Bank of India:

(a) If a bank is incorporated as a company under Companies Act, 1956 / 2013 , it shall, in addition, comply with the provisions of Companies Act, 1956 and/or other applicable statues.

(b) The bank shall comply with the terms and conditions as may be specified by the Board from time to time and shall make adequate disclosures in the offer document regarding the features of these instruments and relevant risk factors and if such instruments are listed, shall comply with the listing requirements.

STREAMLINING THE PROCESS OF PUBLIC ISSUE UNDER THE SEBI (ISSUE AND LISTING OF NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES) REGULATIONS, 2013

In order to make the existing process of issuance of debt securities, NCRPS and SDI easier, simpler and cost effective for both issuers and investors under the SEBI ILDS, SEBI NCRPS and SEBI SDI regulations respectively, it has been decided to reduce the time taken for listing after the closure of the issue to 6 working days as against the present requirement of 12 working days.

Please refer Lesson No. 6 as the same procedure will also be applicable for Non-Convertible Redeemable Preference Share.

LESSON ROUND UP

- Non-Convertible Redeemable Preference Share are a preference share other than a preference share which is convertible into or exchangeable with equity shares of the issuer at a later date, with or without the option of the holder.
- Minimum tenure of the NCRPS shall not be less than three years. The company is required to file draft document with stock exchange through merchant banker and the same shall be displayed on the website of the issuer, merchant bankers and the stock exchanges where the NCRPS are proposed to be listed.
- The issuer shall redeem the NCRPS in terms of the offer document.
- The Companies desirous of making an offer of NCRPS to the public shall make an application for listing to one or more recognized stock exchanges and the company shall enter into listing agreement with the stock exchange where such NCRPS are sought to be listed.
- Perpetual Non-Cumulative Preference Shares and Innovative Perpetual Debt Instruments may issue by banks subject to the prior approval and in compliance with the guidelines issued by RBI.
- SEBI Listing Regulations, 2015 has prescribed certain conditions for a listed entity which has listed its NCRPs on a recognized stock exchange.

GLOSSARY

Face Value	The value that appear on the Face of the scrip, same as nominal or par value of shares/ debentures.
Material	It means anything which is likely to impact an investment decision.
Pari passu	A term used to describe new issue of securities which have same rights as similar issues already in existence.
Underwriting	An agreement with or without conditions to subscribe to the securities of a body corporate when the existing shareholders of such body corporate on the public do not subscribe to the securities offered to them.
Volume of Trading	The total number of shares which changes hands in a particular company's securities. This information is useful in explaining and interpreting fluctuations in share prices.

SELF TEST QUESTIONS

(*These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. Enumerate the applicability of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.
2. Discuss the various conditions required to be fulfilled for listing of non-convertible redeemable preference shares on private placement basis.
3. Briefly explain the obligations of Issuer and Merchant Banker as per SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.
4. What are the conditions for issuance of Innovative Perpetual Debt Instruments ?
5. Discuss the mode of disclosure of offer document for the issue of non-convertible redeemable preference shares.

Lesson 12
Securitization

LESSON OUTLINE

- Introduction
- Background
- SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008
- Public Offer of Securitized Debt Instruments
- Listing of Securitized Debt Instruments
- Issuance and Listing of Security Receipts
- Streamlining the process of public issue under the SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Securitization as a financial instrument has been in existence in India from the early 1990s. Despite being in existence for over two decades securitization market in India continues to be in its nascent stages. The securitization market in India has had several regulatory and taxation concerns in the past which have impacted the securitization volumes and have had lesser impact from external shocks or opportunities.

In India, Securitized debt instruments are regulated by the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008 for listing on stock exchanges and the Securitization Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003.

This lesson gives an insight on SEBI regulations for listing and trading of securitized debt instrument and security receipts. The SEBI regulations states that the securitized debt instruments cannot be listed or offered to public by any person, unless it is constituted as a special purpose vehicle, complies with the provisions of the regulations and has all its trustees registered with SEBI.

The rapid growth in the use of securitization to fund corporate loan assets suggests that this is a form of financing that is here to stay. Therefore, being a professional programme student, a student should be aware of various financing instruments available in the market which are now accessing to capital market through listing such as securitized debt instrument.

INTRODUCTION

Securitization is the transformation of financial assets into securities. Securitization is used by financial entities to raise funding other than what is available via the traditional methods of on-balance-sheet funding.

In other words, Securitization is the process of pooling and repackaging of homogenous illiquid financial assets into marketable securities that can be sold to investors. The process leads to the creation of financial instruments that represent ownership interest in, or are secured by a segregated income producing asset or pool of assets. The pool of assets collateralizes securities. These assets are generally secured by personal or real property (e.g. automobiles, real estate, or equipment loans), but in some cases are unsecured (e.g. credit card debt, consumer loans). There are four steps in a securitization:

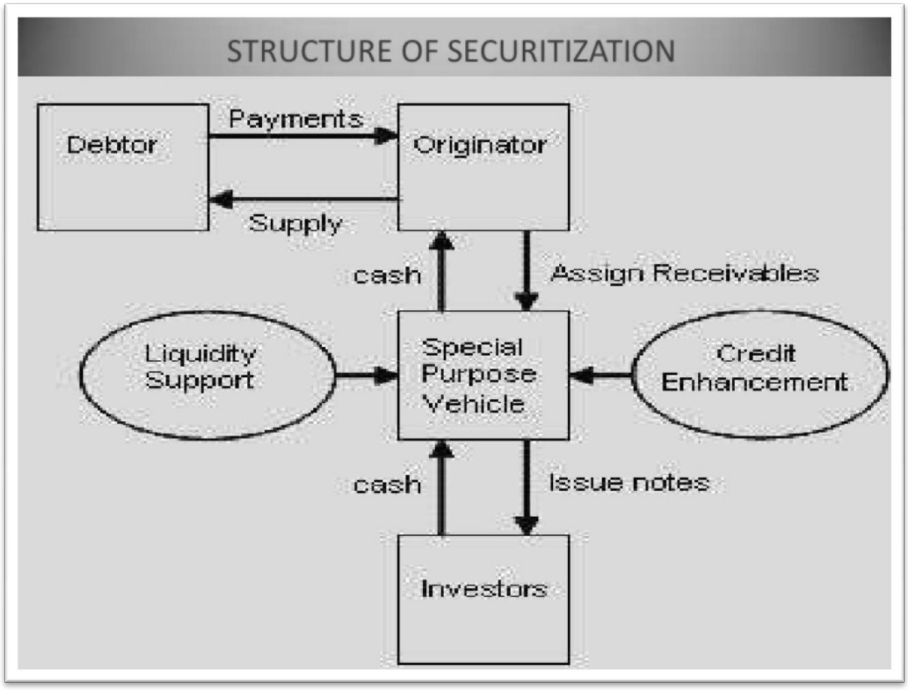
(i) Special Purpose Distinct Entity (SPDE) is created to hold title to assets underlying securities;

(ii) the originator or holder of assets sells the assets (existing or future) to the SPDE;

(iii) the SPDE with the help of an investment banker, issues securities which are distributed to investors; and

(iv) the SPDE pays the originator for the assets with the proceeds from the sale of securities

A securitization structure typically is as under:



BACKGROUND

The Securities Contracts (Regulation) Act, 1956 was amended in 2007 to include under the definition of securities any certificate or instrument (by whatever name it is called) issued to an investor by any issuer who is a special purpose distinct entity possessing any debt or receivable, including mortgage debt assigned to such entity, and acknowledging the beneficial interest of the investor in such debt or receivable, including mortgage debt, as the case maybe.

Securitized debt instruments are regulated by the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, SEBI (Issue and Listing of Securitized Debt Instruments and

Security Receipts) Regulations, 2008 for listing on stock exchanges and the RBI Guidelines on Securitisation of Assets issued in 2012 (Revisions to the Guidelines on Securitisation Transactions - https://rbidocs.rbi.org.in/rdocs/notification/PDFs/FIGUSE070512.pdf)

Initially, SEBI (Issue and Listing of Securitized Debt Instruments) Regulations, 2008 ('SDI Regulations) was applicable to:

(a) public offers of securitised debt instruments;

(b) to listing of securitised debt instruments issued to public or any person(s), on a recognised stock exchange.

'Securitized debt instruments' has been defined to mean any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be.

In Budget Speech 2017-18, the Hon'ble Finance Minister announced that Listing and Trading of Security Receipts issued by a securitization company or a reconstruction company under the SARFAESI Act to be permitted in SEBI registered stock exchanges.

Subsequent to the Budget announcement, SEBI set up a committee consisting of representatives from Reserve Bank of India (RBI), issuers of Security Receipts (SRs), rating agency, law firm, exchanges, securitization experts, merchant bankers. The said committee was set up to provide a framework for listing of SRs on Stock Exchanges.

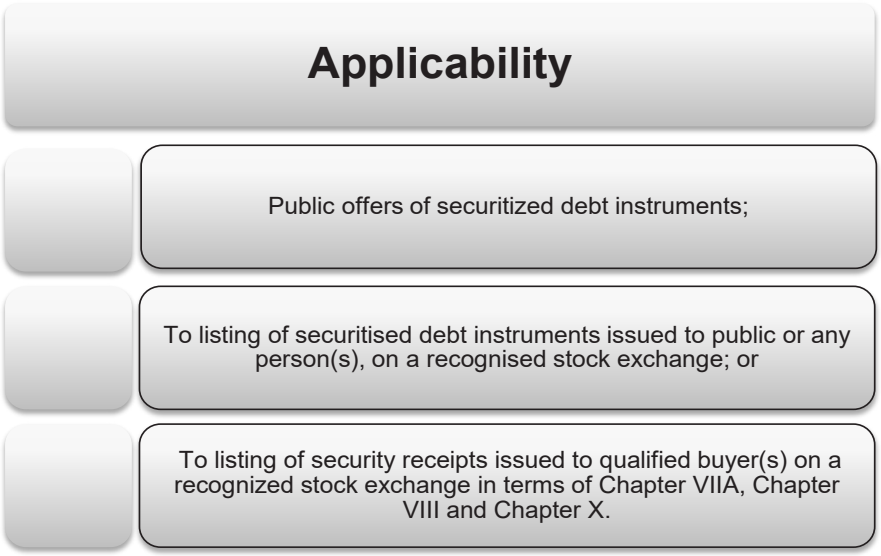
Based on the recommendations received from the Committee and discussions held with RBI, it was proposed to amend SDI Regulations to insert Chapter VIIA dealing with issuance and listing of SRs, by way of SEBI (Public Offer and Listing of Securitized Debt Instruments) (Amendment) Regulations, 2018 notified on June 26, 2018 and amended the title of SEBI (Public Offer and Listing of Securitized Debt Instruments) Regulations, 2008 to 'SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008'.

The Present Amendment incorporates listing of SRs in following manner:

- Definition of designated securities has been amended to include security receipts;
- Definition of 'securitized debt instruments' has been cross referred to SDI Regulations and definition of 'security receipts' has been inserted with corresponding reference to SDI Regulations;
- The applicability of the regulations has been amended to incorporate 'security receipts';
- Chapter VII A inserted specifying the obligations of the listed entity which has listed its SRs.

SEBI (ISSUE AND LISTING OF SECURITIZED DEBT INSTRUMENTS AND SECURITY RECEIPTS) REGULATIONS, 2008

SEBI notified SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008 on May 26, 2008 taking into account the market needs, cost of the transactions, competition policy, the professional expertise of credit rating agencies, disclosures and obligations of the parties involved in the transaction and the interest of investors in such instruments.



Eligibility

A person cannot make a public offer of securitized debt instruments or seek listing for such securitized debt instruments unless –

(a) it is constituted as a special purpose distinct entity;

(b) all its trustees are registered with the SEBI under the SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008; and

(c) it complies with all the applicable provisions of these regulations and the SEBI Act.

The requirement of obtaining registration is not applicable for the following persons, who may act as trustees of special purpose distinct entities:

(a) any person registered as a debenture trustee with SEBI;

(b) any person registered as a securitization company or a reconstruction company with the RBI under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(c) the National Housing Bank established by the National Housing Bank Act, 1987;

(d) the National Bank for Agriculture and Rural Development established by the National Bank for Agriculture and Rural Development Act, 1981.

(e) any scheduled commercial bank other than a regional rural bank;

(f) any public financial Institution as defined under clause (72) of section 2 of the Companies Act, 2013; and

(g) any other person as may be specified by SEBI.

However, these persons and special purpose distinct entities of which they are trustees are required to comply with all the other provisions of the SEBI (Public Offer and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008.

An applicant seeking registration to act as a trustee shall:–

(a) have a networth of not less than two crore rupees.

(b) have in its employment, a minimum of two persons who, between them, have atleast five years

experience in activities related to securitization and atleast one among them shall have a professional qualification in law from any university or institution recognised by the Central Government or any State Government or a foreign university.

The application for registration shall be made by the Trustee in the prescribed format along with the prescribed fees.

Launching of Schemes

(1) A special purpose distinct entity may raise funds by making an offer of securitized debt instruments through formulating schemes in accordance with these regulations.

(2) Where there are multiple schemes, the special purpose distinct entity shall maintain separate and distinct accounts in respect of each such scheme and shall not commingle asset pools or realisations of a scheme with those of other schemes.

(3) A special purpose distinct entity and trustees thereof shall ensure that realisations of debts and receivables are held and correctly applied towards redemption of securitized debt instruments issued under the respective schemes or towards payment of returns on such instruments or towards other permissible expenditure of the scheme.

(4) The terms of issue of the securitized debt instruments may provide for exercise of a clean -up call option by the special purpose distinct entity, subject to adequate disclosures.

(5) No expenses shall be charged to the scheme in excess of the allowable expenses as may be specified in the scheme and any such expenditure, if incurred, shall be borne by the trustees.

Obligation to redeem securitized debt instruments

- The trustee and the special purpose distinct entity shall ensure timely payment of interest and redemption amounts to the investors in terms of the offer document or other terms of issue of the securitized debt instruments out of the realisations from the asset pool, credit enhancer or liquidity provider.
- The trustee shall ensure that the servicer adopts such prudent measures as may be expected under the origination documents to recover the dues from the obligors in the event of any default in any portion thereof.
- The expected period of maturity of each scheme and the possibility of extension or shortening of such period shall be disclosed in the offer document together with the likely circumstances in which such extension or shortening may take place.

Servicers

- A SPDE may appoint either the originator or any other person as servicer in respect of any of its schemes, subject to the following, namely:-

  (a) the trustees shall ensure that the servicer keeps proper accounts in respect of the activities delegated to him;

  (b) the trustees shall ensure that the servicer has adequate operational systems and resources to administer the asset pool in relation to a securitization transaction.

- Servicer may be appointed by the special purpose distinct entity to do all or any of the following, namely:-

  (i) to coordinate with the obligors, manage the asset pool and collections therefrom;

(ii) administer the cash flows of such asset pool, distributions to investors; and

Reinvestment, if any, in accordance with the scheme; and

(iii) manage incidental matters.

- Where a special purpose distinct entity appoints the originator as servicer, it shall adopt internal procedures designed to avoid conflict of interest.

Holding of Originator

- No originator shall at any time subscribe to or hold securitized debt instruments in excess of twenty per cent of the total securitized debt instruments issued by the special purpose distinct entity in a particular scheme.
- This applies only to the classes of securitized debt instruments which are offered to the public or listed.
- Nothing shall apply to the holdings of an originator acquired on account of underwriting of a public issue of securitized debt instruments or in pursuance of an arrangement for credit enhancement.
- Provided that the possibilities of such holdings are disclosed in the offer document or in the listing particulars. These are applicable only to the classes of securitized debt instruments which are offered to the public or listed.

Maintenance of records

- A SPDE shall maintain or cause to be maintained other records and documents, including a register of holders of securitized debt instruments, for each scheme so as to explain its transactions and its accounts.

  However, the register of beneficial owners maintained by a depository in respect of Securitized debt instruments held in dematerialized form with it shall be deemed to be a register of holders of securitised debt instruments for the purposes of these regulations.
- A SPDE shall intimate to SEBI the places where the records and documents maintained and the accounts maintained are kept.
- The SPDE shall maintain its books of account, records and other documents in respect of its schemes for a minimum period of eight years from the redemption of all instruments issued under the scheme.

Winding Up of Schemes

A scheme may be wound up in the event of the following:

- when the securitized debt instruments have been fully redeemed as per the scheme;
- upon legal maturity as stated in the terms of issue of the securitized debt instrument. However, if any debt or receivable is outstanding on legal maturity, the trustees shall dispose off the same in accordance with the scheme and distribute the proceeds;
- by vote of investors by a special resolution.

PUBLIC OFFER OF SECURITIZED DEBT INSTRUMENTS

Offer to the Public

- No offer shall be treated as made to the public, if the offer can properly be regarded, in all the circumstances –

(a) as not being likely to result, directly or indirectly, in the securitised debt instruments becoming available for subscription or purchase by persons other than those receiving the offer;

(b) otherwise as being the domestic concern of the persons making and receiving the offer.

However, above mentioned conditions apply only in respect of securitized debt instruments which belong to the same tranche and which are pari passu in all respects.

- Any offer of securitized debt instruments made to fifty or more persons in a financial year shall always be deemed to have been made to the public.

Submission and filing of final offer document

- A SPDE or trustee thereof shall not make an offer of securitized debt instruments to the public unless it files a draft offer document with SEBI at least fifteen working days before the proposed opening of the issue.
- Such offer document shall be filed along with the minimum filing fee as mentioned in Schedule II of SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008. However, the balance filing fee provided in Schedule II of the Regulations shall be paid to SEBI within seven days of closure of the public offer.
- If SEBI specifies any changes to be made in the offer document within the said period of fifteen working days, the SPDE and trustee thereof shall carry out such changes in the draft offer document prior to filing it with the designated stock exchange or issuing it.
- The final offer document shall be filed with SEBI and with every recognised stock exchange to which an application for listing of the securitized debt instruments is proposed to be made prior to its issuance to public.

Arrangements for dematerialisation

Prior to submitting the draft offer document with SEBI, the SPDE shall enter into an arrangement with a registered depository for dematerialisation of the securitized debt instruments that are proposed to be issued to the public. The SPDE shall give an option to the investors to receive the securitised debt instruments either in the physical form or in dematerialised form. The holders of dematerialised instruments shall have the same rights and liabilities as holders of physical instruments.

Credit rating

A SPDE shall offer securitized debt instruments to the public unless credit rating is obtained from not less than two registered credit rating agencies. All credit ratings obtained by a SPDE on the securitized debt instruments shall be disclosed in the offer document, including unaccepted credit ratings.

Offer period

A public offer of securitized debt instruments shall not remain open for more than thirty days.

Minimum subscription

- No securitized debt instruments shall be allotted under the public offer unless subscriptions have been received in respect of the minimum number of securitized debt instruments which will constitute minimum subscription.
- In the event of non-receipt of minimum subscription or refusal of listing by any recognised stock exchange, all application moneys received in the public offer shall be refunded forthwith to the applicants.

Prohibition of misstatements in the offer document

- An offer document or any report or memorandum issued by a SPDE in connection with an offer of securitized debt instruments shall not contain any false or misleading statement.
- An offer document shall not omit disclosure of any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading.

Oversubscription

No SPDE shall retain any oversubscription received in any public offer. In the event of over-subscription, the allotment shall be made as per the basis of allotment finalized in consultation with the recognized stock exchanges to which an application for listing was made.

Allotment

The securitized debt instruments shall be allotted to the investors within the following time periods:-

(a) in case of dematerialized securitized debt instruments – within five days of closure of the offer;

(b) in case of securitized debt instruments in the physical form – the certificates shall be dispatched within eight days of closure of the offer.

Where the allotment is not made within the time period mentioned or where the certificates are not dispatched within the time, the SPDE and every trustee thereof, and where any such trustee is a body corporate, every director thereof, who is in default shall, on and from the expiry of such period, be jointly and severally liable to pay interest at the rate of fifteen per cent per annum to the concerned applicants.

Refunds

- The SPDE shall dispatch refund orders to unsuccessful or partially successful applicants within eight days of closure of the offer.
- In a case where the issue proceeds become liable to be refunded in accordance with the disclosures made in the offer document, the SPDE shall dispatch refund orders to the applicants within eight days of closure of the offer.

Where the refund orders are not dispatched within the time mentioned, the SPDE and every trustee thereof, and where any such trustee is a body corporate, every director thereof, who is in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at the rate of fifteen per cent per annum. credit to demat accounts of the allottees shall be made by the issuer within two working days from the date of allotment.

Rights of Investors

1. The trust deed or other instrument comprising the terms of issue of the securitised debt instruments issued by a special purpose distinct entity shall provide that investors holding such securitised debt instruments have such beneficial interest in the underlying debt or receivables as may have been conferred by the scheme.
2. In the event of failure of the special purpose distinct entity to redeem any securitised debt instruments offered through an offer document or listed, within the time and in accordance with the conditions stated in the offer document or other terms of issue, the investors holding not less than ten per cent in nominal value of such securitised debt instruments shall be entitled to call a meeting of all such investors.
3. In such meeting, the investors may move a motion to–

(a) call upon the trustee and the special purpose distinct entity to wind up the scheme and distribute the realisations;

(b) remove the trustee;

(c) appoint a new trustee in place of the one removed under clause (b):

However, any such decision shall be taken by means of a special resolution of the investors of the scheme and sections 109 and 114 of the Companies Act, 2013 shall *mutatis mutandis* apply to such special resolution. However, the new trustee appointed is registered with SEBI under these regulations or is exempted from such registration.

4. The trustee and the special purpose distinct entity shall take all reasonable steps to carry out the resolutions passed by the investors.

5. Any reasonable expenses incurred in calling and holding a meeting and any reasonable expenses incurred by the trustee or the new trustee, as the case may be, in winding up the scheme and incidental activities shall be met from or reimbursed out of realisations from the asset pool.

6. The terms of issue of securitised debt instruments shall not be adversely varied without the consent of the investors.

7. The investors shall be deemed to have given their consent to variation if and only if twenty one days notice is given to them of the proposed variation and it is approved by a special resolution passed by them through postal ballot.

8. Sections 114 and 117 of the Companies Act, 2013 and the rules framed thereunder shall *mutatis mutandis* apply to the special resolution referred above.

LISTING OF SECURITIZED DEBT INSTRUMENTS

Mandatory listing

A SPDE desirous of making an offer of securitized debt instruments to the public shall make an application for listing to one or more recognized stock exchanges.

Application for listing

A SPDE to get the securitized debt instruments issued by it listed on a recognised stock exchange or otherwise desirous of getting the securitized debt instruments issued by it so listed shall make an application to the stock exchange in the form specified by it along with the requisite documents and particulars.

Listing Agreement

Every SPDE desirous of listing securitized debt instruments on a recognised stock exchange, shall execute an agreement with such stock exchange.

Every SPDE which has previously entered into agreements with a recognised stock exchange to list securitized debt instruments shall execute a fresh listing agreement with such stock exchange in line with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Minimum public offering for listing

In respect of public offer of securitized debt instruments, the SPDE or trustee thereof shall satisfy the recognised stock exchange to which a listing application is made that each scheme of securitized debt instruments was offered to the public for subscription through advertisements in newspapers for a period of not less than two

days and that applications received in pursuance of the offer were allotted in accordance with these regulations and the disclosures made in the offer document.

In case of a private placement of securitized debt instruments, the SPDE shall ensure that it has obtained credit rating from a registered credit rating agency in respect of its securitized debt instruments.

In case of a private placement of securitized debt instruments, the special purpose distinct entity shall file listing particulars with the recognised stock exchange, along with the application, containing such information as may be necessary for any investor in the secondary market to make an informed investment decision in respect of its securitized debt instruments and the SPDE shall promptly disseminate such information, as prescribed, in such manner as the recognised stock exchange(s) may determine from time to time. All credit ratings obtained including unaccepted ratings, if any, shall be disclosed in the listing particulars filed with the recognized stock exchange.

Continuous listing conditions

The SPDE or trustee thereof shall submit such information, including financial information relating to the schemes, to the stock exchanges and investors and comply with such other continuing obligations as may be stipulated in the listing agreement.

Trading of securitized debt instruments

The securitized debt instruments issued to the public or on a private placement basis, which are listed in recognised stock exchanges, shall be traded and such trades shall be cleared and settled in recognised stock exchanges subject to conditions specified by SEBI.

ISSUANCE AND LISTING OF SECURITY RECEIPTS

Eligibility

An issuer proposing to issue and list security receipts or only list its already issued security receipts shall comply with the provisions of chapter VIIA of SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008. Security receipts proposed to be listed shall;

i. be issued in compliance with the applicable rules and guidelines, as framed by the Reserve Bank of India, from time to time;

ii. be issued on a private placement basis;

iii. comply with the provisions pertaining to issue of security receipts.

Sale of security receipts by the existing holders

- Any existing holder of security receipts, who proposes to sell, whole or part of, its holding of security receipts to the qualified buyers on private placement basis, where such security receipts are proposed to be listed, may do so, in accordance with the provisions of Chapter VIIA of these regulations.

  However, such sale by any holder of security receipts shall be permitted only if the holding is not less than fifty percent of the outstanding security receipts.

- A sale of security receipts by any existing holder of such security receipts under these regulations, shall be subject to the issuer compulsorily listing the security receipts before complying with the provisions of this chapter.

Conditions for Listing of Security Receipts

An issuer may list its security receipts on a recognized stock exchange subject to the following conditions:

(a) the security receipts have been issued on a private placement basis;

(b) the issuer has issued such security receipts in compliance with the applicable laws;

(c) the offer or invitation to subscribe to security receipts shall be made to such number of persons not exceeding two hundred or such other number, in a financial year, as may be prescribed from time to time.

(d) the security receipts proposed to be listed are in dematerialized form;

(e) the disclosures as provided in Regulation 38E of SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008 have been made in the offer document;

(f) the minimum allotment made to the qualified buyers is Rs. 10 lakhs;

(g) such security receipts have been valued prior to listing;

However, such valuation shall not be more than three months old from the date of listing and shall be done by an independent valuer;

(h) the security receipts have been rated by a credit rating agency registered with SEBI.

However, such rating shall not be more than three months old from the date of listing.

The issuer shall comply with the conditions of listing of such security receipts as specified in SEBI Listing Regulations, 2015.

Offer Document

- An issuer seeking listing of security receipts on a recognized stock exchange shall make such disclosures in the offer document as specified by the Reserve Bank of India from time to time, and as specified in Schedule VA of SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008.

  However, the offer document shall not contain any false or misleading statement and shall disclose all material facts.

- The offer document shall be made available for download on the web sites of stock exchanges where such securities are listed.

- In exercise of the powers conferred by sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, SEBI shall waive the strict enforcement of sub-rules (1) to (3) of the said rule in relation to listing of security receipts issued in terms of these regulations, subject to compliance with these regulations.

Trading of security receipts

- The security receipts issued on a private placement basis, which are listed on recognised stock exchanges, shall be traded and such trades shall be cleared and settled in recognised stock exchanges subject to conditions specified by SEBI.
- The trading lot of the security receipts shall not be less than Rs 10 lakh.
- The trades of security receipts which have been made over the counter, shall be reported on a recognized stock exchange having a nation-wide trading terminal or such other platform as may be specified by SEBI.

- SEBI may specify conditions for reporting of trades on the recognized stock exchange or other platform.

STREAMLINING THE PROCESS OF PUBLIC ISSUE UNDER THE SEBI (ISSUE AND LISTING OF SECURITIZED DEBT INSTRUMENTS AND SECURITY RECEIPTS) REGULATIONS, 2008

In order to make the existing process of issuance of debt securities, NCRPS and SDI easier, simpler and cost effective for both issuers and investors under the SEBI ILDS, SEBI NCRPS and SEBI SDI regulations respectively, it has been decided to reduce the time taken for listing after the closure of the issue to 6 working days as against the present requirement of 12 working days.

Please refer Lesson No. 6 as the same procedure will also be applicable for Securitized Debt Instruments.

LESSON ROUND UP

- Securitization is the transformation of financial assets into securities. Securitization is used by financial entities to raise funding other than what is available via the traditional methods of on-balance-sheet funding.
- Securitized debt instruments are regulated by the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, SEBI (Public Offer and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008 for listing on stock exchanges and the Securitization Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003.
- SEBI notified the SEBI (Public Offer and Listing of Securitized Debt Instruments) Regulations, 2008 on May 26, 2008.
- The title of SEBI (Public Offer and Listing of Securitized Debt Instruments) Regulations, 2008 was amended to 'SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008' vide SEBI (Public Offer and Listing of Securitized Debt Instruments) (Amendment) Regulations, 2018 notification dated June 26, 2018.
- A special purpose distinct entity (SPDE) may raise funds by making an offer of securitized debt instruments through formulating schemes in accordance with these regulations.
- A SPDE shall maintain or cause to be maintained other records and documents, including a register of holders of securitized debt instruments, for each scheme so as to explain its transactions and its accounts.
- Any offer of securitized debt instruments made to fifty or more persons in a financial year shall always be deemed to have been made to the public.
- A SPDE or trustee thereof shall not make an offer of securitized debt instruments to the public unless it files a draft offer document with SEBI at least fifteen working days before the proposed opening of the issue.
- Prior to submitting the draft offer document with SEBI, the SPDE shall enter into an arrangement with a registered depository for dematerialisation of the securitized debt instruments that are proposed to be issued to the public.
- A public offer of securitized debt instruments shall not remain open for more than thirty days.
- In the event of non-receipt of minimum subscription or refusal of listing by any recognised stock exchange, all application moneys received in the public offer shall be refunded forthwith to the applicants.

- The SPDE shall dispatch refund orders to unsuccessful or partially successful applicants within eight days of closure of the offer.
- The securitized debt instruments issued to the public or listed on a recognized stock exchange in accordance with these regulations shall be freely transferable.
- An issuer proposing to issue and list security receipts or only list its already issued security receipts shall comply with the provisions of chapter VIIA of SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008.
- An issuer may list its security receipts on a recognized stock exchange subject to certain conditions prescribed under chapter VIIA of SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008.
- The issuer shall comply with the conditions of listing of such security receipts as specified in SEBI Listing Regulations, 2015.
- The trading lot of the security receipts shall not be less than Rs 10 lakh.

GLOSSARY

Asset Baked Securities	Securities backed by assets that are not mortgage loans. Example includes assets backed by automobile loans, credit loan receivables and others.
Book Value	The net amount shown the books or in the account for any asset, liability or owner's equity item. In case of fixed assets, it is equal to the cost revealed amount of the asset less accumulated depreciation. Also called carrying value the book value of a firm is it total net assets, i.e., the excess total assets over total liabilities.
Obligon	It means a person who is liable, whether under a contract or otherwise, to pay a debt or receivables or to discharge obligation in respect of a debt or receivables.
Originator	It means the assignor of debt received to a special purpose distinct entity for the purpose of securitization.
Special Purpose Distinct Entity (SPDE)	SPDE means a trust which acquires debt or receivables out of funds mobilized by it by, issuance of securitzed debt instruments through one or more schemes.

SELF TEST QUESTIONS

(*These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. What do you mean by securitization?
2. Discus the eligibility criteria required to be fulfilled for making a public offer of securitized debt instruments or seek listing for such securitized debt instruments.
3. Enumerate briefly the provisions for servicers as prescribed under SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008.
4. Briefly discuss the various provisions as laid down for trading of security receipts.
5. Describe the allotment procedure for securitized debt instrument.

PART II

LISTINGS IN STOCK EXCHANGES

Lesson 13
Listing – Indian Stock Exchanges

LESSON OUTLINE

- Introduction
- Principles under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
- Common Obligations for a listed entity
- Equity (Main Board)
- Periodic compliances for a listed entity for Equity Shares
- Small and Medium Enterprise (SME)
- Compliance calendar for listed entities for SME
- NCDs or NCRPs
- Recognition to Company Secretary under the SEBI Listing Regulations 2015
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

SEBI has come up with several policy initiatives in order not only to strengthen the regulatory framework of the Indian Capital market but also align the role of capital market with the international best practices and more importantly to the investing and funding needs of the inspirational Indian population. Broadly, the regulatory framework in India is in compliance with the OECD Principles, an international benchmark worldwide. A step further in this direction has been envisioned through the policy measures when SEBI notified the 'Listing Obligations and Disclosure Requirements' Regulations, 2015.

Further, SEBI has recognised the significant role played by a Company Secretary as a Governance Professional under the SEBI Listing Regulations. It is pertinent to note that the same is in line with international best practices, SEBI has made it mandatory for listed entity to appoint a Company Secretary as Compliance Officer.

Keeping this in view, this lesson has been designed to give an expert knowledge to the students about various time and event based compliances and various disclosure requirements as prescribed under the SEBI Listing Regulations with respect to various securities.

Further, the role of Company Secretary as prescribed under the SEBI Listing Regulations has been described.

INTRODUCTION

SEBI vide its Notification dated September 02, 2015 has notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) and these regulations became effective from December 01, 2015 which is the compilation of all previous listing agreements for different securities with suitable amendments and additions / deletions. SEBI has also notified the simplified listing agreement to be executed by companies proposing to list securities as well as existing listed entities. The said agreement is to be signed by the entity and the Exchange on which the securities are proposed to be listed. SEBI Listing Regulations is good mix of principle and rule based regulations. SEBI Regulations also states that in case of any ambiguity or incongruity between principles and relevant regulations, the principles will prevail.

Before the Listing Regulations were notified, there were multiple listing agreements and the responsibility for the enforcement of the various clauses of the Listing Agreement was that of the Stock exchanges on which the securities were listed. In Order to enhance the enforceability of the regulatory provisions contained in the Listing Agreement and also to comply with the mandate of the Parliament given in Section 12A of the SCRA and Section 11A of the SEBI Act, a committee was formed for drafting an all-encompassing umbrella the SEBI Listing Regulations which provides the listing conditions and disclosure requirements for various categories of securities. It was also seen that in various international jurisdictions, the market regulator directly or indirectly scrutinizes or reviews the continuous disclosures.

The Listing Regulations was therefore notified with the twin objectives of :

- having a single listing agreement; and
- ensure greater regulatory enforceability.

The Regulations are consisting of XII chapters and X schedules.

– Chapter I is consisting of Definition part.

– Chapter II provides the broad principles in relation to disclosures and obligations of the listed entities. In the event of absence of specific requirements or ambiguity, these principles would serve to guide the listed entities.

– Chapter specifies common obligations of all listed entities. These include:

  - General obligation of compliance of listed entity;
  - Appointment of compliance officer and his obligations;
  - Appointment of Share Transfer Agent or management of share transfer facility in house;
  - Co-operation with intermediaries registered with SEBI and submission of correct and adequate information within the specified timelines and procedures;
  - Preservation of documents – permanent and for 8 years;
  - Filings on electronic platform;
  - Payment of dividend or interest or redemption or repayment through RBI approved electronic mode;
  - Grievance Redressal mechanism;
  - Mandatory registration on SCORES to handle investor complaints electronically;
  - Quarterly reporting of investor complaints to the Board of directors and recognized stock exchange.

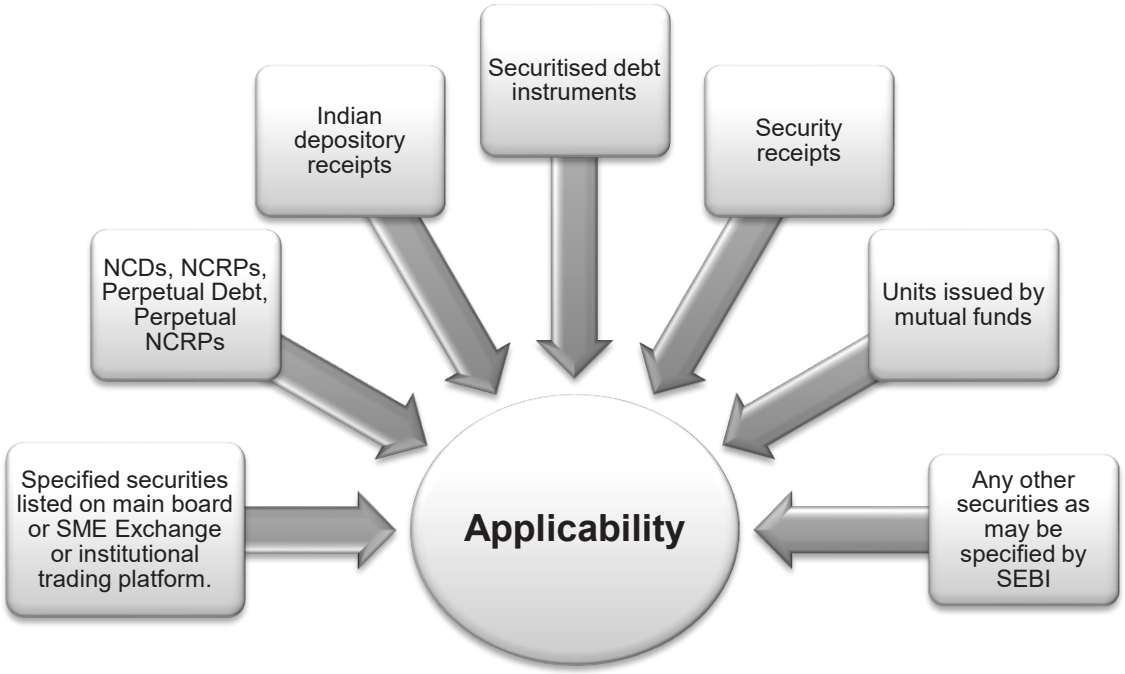
– Chapter IV to IX deals with obligations which are applicable to specific types of securities have been incorporated in various chapters.

– Chapter X and XI list down the responsibilities of the stock exchanges to monitor compliance or adequacy / accuracy of compliance with the provisions of these regulations and to take action for non-compliance.

– Chapter XII containing miscellaneous provisions.

Applicability of the Regulations

These regulations shall apply to the listed entity who has listed any of the following designated securities on recognised stock exchange(s):



Meaning of Listed Entity

According to Section 2 (52) of the Companies Act, 2013, listed company means a company which has **any of its securities listed on any recognised stock exchange**. This means, if a private limited company has its debt securities listed on any recognised stock exchange, then such company is under the ambit of listed company category for complying with the Companies Act, 2013 and rules and regulation made thereunder.

According to SEBI Listing Regulations, 2015, "listed entity" means an entity which has listed, on a recognized stock exchange(s), the designated securities issued by it or designated securities issued under schemes managed by it, in accordance with the listing agreement entered into between the entity and the recognised stock exchange(s).

As per the SEBI Listing Regulations, 2015, "designated securities" means any of the following securities –

- Specified Securities: Specified securities means 'equity shares' and 'convertible securities' as defined under clause (zj) of sub-regulation (1) of regulation 2 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- Non-Convertible Debt Securities: 'Non-convertible debt securities' which is 'debt securities' as defined under regulation 2(1)(e) of the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008.
- Non-Convertible Redeemable Preference Shares: 'Non-convertible redeemable preference shares'

shall have the same meaning as assigned to them in the SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.

- Perpetual Debt Instrument: 'Perpetual debt instrument' or 'innovative perpetual debt instrument' shall have the same meaning as assigned to them in the SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.
- Perpetual Non-Cumulative Preference Shares: 'Perpetual non-cumulative preference share' shall have the same meaning as assigned to them in the SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.
- Indian Depository Receipts: 'Indian depository receipts' means Indian depository receipts as defined in sub-section (48) of section 2 of the Companies Act, 2013.
- Securitized Debt Instruments: 'Securitized debt instruments' as defined in the SEBI (Public Offer and Listing of Securitized Debt Instruments) Regulations, 2008.
- Units issued by mutual funds;
- Any other securities as may be specified by SEBI.

PRINCIPLES UNDER THE (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

The principles have been divided into three groups as under:

a. On Disclosure and transparency

b. On Corporate Governance and protection of the minority shareholders

c. On responsibilities of the Board of Directors

Principles Governing Disclosures [Regulation 4 (1)]

The listed entity shall abide by the following principles, while making disclosures to the stock exchanges or its website or through any other medium:

(a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.

(b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

(c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.

(d) The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.

(e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

(f) Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by investors.

(g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

(h) The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders.

(i) Filings, reports, statements, documents and information which are event based or are filed periodically shall contain relevant information.

(j) Periodic filings, reports, statements, documents and information reports shall contain information that shall enable investors to track the performance of a listed entity over regular intervals of time and shall provide sufficient information to enable investors to assess the current status of a listed entity.

Principles governing Corporate Governance and protection of Minority Shareholders [Regulation 4 (2)]

The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below: (a) The rights of shareholders: The listed entity shall seek to protect and facilitate the exercise of the following rights of shareholders:

(i) right to participate in, and to be sufficiently informed of, decisions concerning fundamental corporate changes.

(ii) opportunity to participate effectively and vote in general shareholder meetings.

(iii) being informed of the rules, including voting procedures that govern general shareholder meetings.

(iv) opportunity to ask questions to the board of directors, to place items on the agenda of general meetings, and to propose resolutions, subject to reasonable limitations.

(v) Effective shareholder participation in key corporate governance decisions, such as the nomination and election of members of board of directors.

(vi) exercise of ownership rights by all shareholders, including institutional investors.

(vii) adequate mechanism to address the grievances of the shareholders.

(viii) protection of minority shareholders from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and effective means of redress.

(b) **Timely information**: The listed entity shall provide adequate and timely information to shareholders, including but not limited to the following:

(i) sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be discussed at the meeting.

(ii) Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership.

(iii) rights attached to all series and classes of shares, which shall be disclosed to investors before they acquire shares.

(c) **Equitable treatment**: The listed entity shall ensure equitable treatment of all shareholders, including minority and foreign shareholders, in the following manner:

(i) All shareholders of the same series of a class shall be treated equally.

(ii) Effective shareholder participation in key corporate governance decisions, such as the nomination and election of members of board of directors, shall be facilitated.

(iii) Exercise of voting rights by foreign shareholders shall be facilitated.

(iv) The listed entity shall devise a framework to avoid insider trading and abusive self-dealing.

(v) Processes and procedures for general shareholder meetings shall allow for equitable treatment of all shareholders.

(vi) Procedures of listed entity shall not make it unduly difficult or expensive to cast votes.

(d) **Role of stakeholders in corporate governance:** The listed entity shall recognise the rights of its stakeholders and encourage co-operation between listed entity and the stakeholders, in the following manner:

(i) The listed entity shall respect the rights of stakeholders that are established by law or through mutual agreements.

(ii) Stakeholders shall have the opportunity to obtain effective redress for violation of their rights.

(iii) (Stakeholders shall have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in corporate governance process.

(iv) The listed entity shall devise an effective whistle blower mechanism enabling stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices.

(e) **Disclosure and transparency**: The listed entity shall ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the listed entity, in the following manner:

(i) Information shall be prepared and disclosed in accordance with the prescribed standards of accounting, financial and non-financial disclosure.

(ii) Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by users.

(iii) Minutes of the meeting shall be maintained explicitly recording dissenting opinions, if any.

(f) **Responsibilities of the board of directors:** The board of directors of the listed entity shall have the following responsibilities:

(i) *Disclosure of information:*

(1) Members of board of directors and key managerial personnel shall disclose to the board of directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed entity.

(2) The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.

(ii) *Key functions of the board of directors :*

(1) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestments.

(2) Monitoring the effectiveness of the listed entity's governance practices and making changes as needed.

(3) Selecting, compensating, monitoring and, when necessary, replacing key managerial personnel and overseeing succession planning.

(4) Aligning key managerial personnel and remuneration of board of directors with the longer term

interests of the listed entity and its shareholders.

(5) Ensuring a transparent nomination process to the board of directors with the diversity of thought, experience, knowledge, perspective and gender in the board of directors.

(6) Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.

(7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

(8) Overseeing the process of disclosure and communications.

(9) Monitoring and reviewing board of director's evaluation framework.

(iii) *Other responsibilities:*

(1) The board of directors shall provide strategic guidance to the listed entity, ensure effective monitoring of the management and shall be accountable to the listed entity and the shareholders.

(2) The board of directors shall set a corporate culture and the values by which executives throughout a group shall behave.

(3) Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.

(4) The board of directors shall encourage continuing directors training to ensure that the members of board of directors are kept up to date.

(5) Where decisions of the board of directors may affect different shareholder groups differently, the board of directors shall treat all shareholders fairly.

(6) The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders.

(7) The board of directors shall exercise objective independent judgement on corporate affairs.

(8) The board of directors shall consider assigning a sufficient number of non-executive members of the board of directors capable of exercising independent judgement to tasks where there is a potential for conflict of interest.

(9) The board of directors shall ensure that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognised or exposes the listed entity to excessive risk.

(10) The board of directors shall have ability to 'step back' to assist executive management by challenging the assumptions underlying: strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the listed entity's focus.

(11) When committees of the board of directors are established, their mandate, composition and working procedures shall be well defined and disclosed by the board of directors.

(12) Members of the board of directors shall be able to commit themselves effectively to their responsibilities.

(13) In order to fulfil their responsibilities, members of the board of directors shall have access to accurate, relevant and timely information.

(14) The board of directors and senior management shall facilitate the independent directors to perform their role effectively as a member of the board of directors and also a member of a committee of board of directors.

Ambiguity – Regulation 4(3)

In case of any ambiguity or incongruity between the principles and relevant regulations, the principles specified in this Chapter shall prevail.

COMMON OBLIGATIONS FOR A LISTED ENTITY

The Listing regulations has specified the generic obligations or common obligations of listed entity with respect to filing of information, responsibilities of compliance officer, fees etc. and these requirements are applicable to all types of listed securities. The Common Obligations includes:-

- **Regulation 5: General obligation of compliance**

  The listed entity shall ensure that key managerial personnel, directors, promoters or any other person dealing with the listed entity, complies with responsibilities or obligations, if any, assigned to them under these regulations.

- **Regulation 6: Compliance Officer and his Obligations**

  Shall appoint a qualified **Company Secretary** as the **Compliance Officer**, who is responsible for:

  - ✓ Ensuring conformity with the regulatory provisions in letter and spirit.
  - ✓ Co-ordination with and reporting to SEBI, recognized stock exchange(s) and depositories.
  - ✓ Monitoring email address of grievance redressal division for the purpose of registering complaint by investors.
  - ✓ Ensuring correctness, authenticity and comprehensiveness of the information, statements and reports filed by listed entities.

  This regulation is not applicable to listing of units of mutual funds.

It may be noted that under this regulation, great responsibility has been cost on the Company Secretary holding the position of Compliance officer in a listed entity.

- **Regulation 7: Share Transfer Agent**
  - ✓ Shall appoint a Share Transfer Agent ("STA") or;
  - ✓ Manage share transfer facility in-house–only if Security holders **< 1,00,000.**
  - ✓ In case the no. of shareholder in in-house registry increase beyond 1 lac then the company can apply for category II STA with SEBI or appoint a STA registered with SEBI.
  - ✓ All activities in relation to share transfer are either maintained in house or by STA registered with SEBI and submit compliance certificate regarding the same on half yearly basis within 1 month of end of each half year duly signed by compliance officer and authorised representative of STA.
  - ✓ Any changes or appoint of new STA listed entity shall intimate to stock Exchange within 7 days of entering into agreement.

  This regulation is not applicable to units of mutual funds listed on recognised stock exchanges.
- **Regulation 8: Co-operation with intermediaries registered with SEBI**
  - ✓ To co-operate with and submit correct and adequate information to the intermediaries registered with SEBI such as credit rating agencies, registrar to an issue and share transfer agents, debenture trustees etc. within timelines and procedures specified under the Act, respective regulations and circulars issued under the Act.

  This regulation is not applicable to units of mutual funds listed on recognised stock exchanges.
- **Regulation 9: Preservation of documents**
  - ✓ Shall have a Policy.
  - ✓ Approved by its Board of Directors.
  - ✓ May keep documents in electronic mode.
  - ✓ Preservation : at least **2 categories of documents** as follows:
    - ■ Documents **permanent** in nature
    - ■ Documents with preservation > **8 years after completion of transaction.**
- **Regulation 10: Filing of information**
  - ✓ To file all reports, statements, documents and other information with the recognized stock exchange(s) on the electronic platform as specified by SEBI or the recognized stock exchange(s).
  - ✓ To put necessary infrastructure in place to comply with this requirement.
- **Regulation 11: Scheme of Arrangement**
  - ✓ To ensure that any scheme of arrangement/ amalgamation/merger /reconstruction /reduction of capital etc. to be presented to any Court or Tribunal does not in any way violate, override or limit the provisions of securities laws or requirements of the stock exchange(s).

  This regulation is not applicable to units of mutual funds listed on recognised stock exchanges.
- **Regulation 12: Payment of dividend or interest or redemption or repayment**
  - ✓ Use Payment facility in electronic mode for payment of dividend, interest, redemption or repayment of amounts.
  - ✓ Approved by the Reserve Bank of India.

- ✓ If electronic mode is not possible to be used.
- ✓ Issue "Payable at Par" warrants or cheques.
- ✓ Speed post to be used for of "Payable at Par" cheques > Rs.1,500/-.

➢ **Regulation 13: Grievance Redressal Mechanism**

- ✓ Adequate steps are taken for expeditious redressal of investors complaints.
- ✓ Ensure that it is registered with SCORES platform or any other platform of SEBI for handing investors complaints electronically as specified by SEBI.
- ✓ Statement on Investor complaints.
- ✓ Submit statement to stock Exchange within **21 days** from the end of quarter.
- ✓ Statement should contain:
  - number of complaints pending at the beginning of the quarter;
  - received during the quarter;
  - resolved/ disposed of during the quarter; and
  - remaining unsolved at the end of the quarter.
  - To be placed before the Board of Directors on quarterly basis.

➢ **Regulation 14: Fees and other charges**

- ✓ Payment of all such fees or charges, as applicable including Listing Fee to Stock Exchanges.

➢ **Regulation 15(2): Non-Applicability**

- ✓ The following regulations are not applicable to :
  - − Regulations 17, 17A, 18, 19, 20, 21,22, 23, 24,24A, 25, 26, 27; and
  - − Clauses (b) to (i) of sub-regulation (2) of regulation 46; and
  - − Para C, D and E of Schedule V**.**
- ✓ For Listed Entities:
  1. Paid-up Equity Share Capital < Rs.10 crores, and
  2. Net Worth <Rs.25 crores
- ✓ The listed entity which has listed its specified securities on the SME Exchange.
- ✓ For other listed entities which are not companies, but body corporate or are subject to regulations under other statues, the provisions of corporate governance provisions as specified shall apply to the extent that it does not violate their respective statutes and guidelines or directives issued by the relevant authorities.
- ✓ Regulation 17 shall not be applicable during the insolvency resolution process period in respect of a listed entity which is undergoing corporate insolvency resolution process under the Insolvency Code.
- ✓ The role and responsibilities of the board of directors as specified under regulation 17 shall

be fulfilled by the interim resolution professional or resolution professional in accordance with sections 17 and 23 of the Insolvency Code.

- ✓ Regulations 18, 19, 20 and 21 shall not be applicable during the insolvency resolution process period in respect of a listed entity which is undergoing corporate insolvency resolution process under the Insolvency Code.

EQUITY (MAIN BOARD)

For the purpose of those entities, whose specified securities are listed on the Main Board of a Stock Exchange:

- ➢ The listed entity has to Comply with the Corporate Governance Requirement as prescribed under Regulation 16 to Regulation 27.

  (Note for students: The students may refer the study material Governance, Risk Management, Compliances and Ethics of Professional Programme- Module 1, Paper 1. The same is covered there.)

- ➢ **Regulation 28: In-Principle approval of the Recognized Stock Exchange(s)**

  The listed entity, before issuing securities, shall obtain an 'in-principle' approval from recognised stock exchange(s) in the following manner:

  - ✓ Where the securities are listed only on recognized stock Exchange having nationwide trading terminals from all such stock exchanges.
  - ✓ Where the securities are not listed on any recognised stock exchange having nationwide trading terminals, from all the stock exchange(s) in which the securities of the issuer are proposed to be listed.
  - ✓ Where the securities are listed on recognised stock exchange(s) having nationwide trading terminals as well as on the recognised stock exchange(s) not having nationwide trading terminals, from all recognised stock exchange(s) having nationwide trading terminals.
  - ✓ The requirement of obtaining in-principle approval from recognised stock exchange(s), shall not be applicable for securities issued pursuant to the scheme of arrangement for which the listed entity has already obtained No-Objection Letter from recognised stock exchange(s) in accordance with regulation 37.

- ➢ **Regulation 29: Prior intimation of Board Meeting to stock exchange**

  Prior intimation of Board Meeting where any of the **following proposals is to be considered**

  - ❖ **At least 5 clear Days (**excluding the date of the intimation and date of the meeting);
    a) financial results viz. quarterly, half yearly, or annual, (Intimation with Date of BM).
  - ❖ **At least 2 clear Working Days** excluding the date of the intimation and date of the meeting):
    a) proposal for buyback of securities;
    b) proposal for voluntary delisting;
    c) fund raising by way of –
       - Further public offer
       - Rights Issue
       - American Depository Receipts

- Global Depository Receipts
- Foreign Currency Convertible Bonds
- Qualified institutions placement
- Debt issue
- Preferential issue and
- Determination of issue price.
- Any AGM or EGM or Postal Ballot proposed to be held for obtaining **shareholder approval for further fund** raising indicating type of issuance.

e) declaration/recommendation of dividend, issue of convertible securities including convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of dividend;

f) the proposal for declaration of bonus securities, if part of Agenda papers.

❖ **At least 11 Working Days before:**

a) Any alteration in the form or nature of any of its securities or in the rights or privileges of the holders thereof.

b) Any alteration in the date on which, the interest on debentures or bonds, or the redemption amount of redeemable shares or of debentures or bonds, shall be payable.

➢ **Regulation 30: Disclosure of Events or Information**

✓ **Disclosures** of **any events or information** which, in the opinion of the Board of Directors of the listed company, is **material.**

✓ Event mentioned in schedule III Part A are deemed to be material and needs to be disclosed irrespective of the opinion of the listed entity regarding its materiality whereas and Part B where test of materiality can be applied by the listed entity.

✓ These events are to be disclosed **promptly** and **not later than 24 hours**. Certain events are required to be disclosed **within 30 minutes** of the conclusion of board meeting.

SCHEDULE III

PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES

The following shall be events/information, upon occurrence of which listed entity shall make disclosure to stock exchange(s):

A. Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30):

− Acquisition(s) (including agreement to acquire), Scheme of Arrangement (amalgamation/ merger/ demerger/restructuring), or sale or disposal of any unit(s), division(s) or subsidiary of the listed entity or any other restructuring.

− Issuance or forfeiture of securities, split or consolidation of shares, buyback of securities, any restriction on transferability of securities or alteration in terms or structure of existing securities including forfeiture, reissue of forfeited securities, alteration of calls, redemption of securities etc.

− Revision in Rating(s).

- **Outcome of Meetings of the board of directors: The listed entity shall disclose to the Exchange(s), within 30 minutes of the closure of the meeting, held to consider the following:**
  (a) dividends and/or cash bonuses recommended or declared or the decision to pass any dividend and the date on which dividend shall be paid/dispatched;
  (b) any cancellation of dividend with reasons thereof;
  (c) the decision on buyback of securities;
  (d) the decision with respect to fund raising proposed to be undertaken
  (e) increase in capital by issue of bonus shares through capitalization including the date on which such bonus shares shall be credited/dispatched;
  (f) reissue of forfeited shares or securities, or the issue of shares or securities held in reserve for future issue or the creation in any form or manner of new shares or securities or any other rights, privileges or benefits to subscribe to;
  (g) short particulars of any other alterations of capital, including calls;
  (h) financial results;
  (i) decision on voluntary delisting by the listed entity from stock exchange(s).
- Agreements (viz. shareholder agreement(s), joint venture agreement(s), family settlement agreement(s) (to the extent that it impacts management and control of the listed entity), agreement(s)/treaty(ies)/contract(s) with media companies) which are binding and not in normal course of business, revision(s) or amendment(s) and termination(s) thereof.
- Fraud/defaults by promoter or key managerial personnel or by listed entity or arrest of key managerial personnel or promoter.
- Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer , Company Secretary etc.), Auditor and Compliance Officer.
- In case of resignation of the auditor of the listed entity, detailed reasons for resignation of auditor, as given by the said auditor, shall be disclosed by the listed entities to the stock exchanges as soon as possible but not later than twenty four hours of receipt of such reasons from the auditor.
- **Resignation of auditor including reasons for resignation:** In case of resignation of an independent director of the listed entity, within seven days from the date of resignation, the following disclosures shall be made to the stock exchanges by the listed entities:
  i. Detailed reasons for the resignation of independent directors as given by the said director shall be disclosed by the listed entities to the stock exchanges.
  ii. The independent director shall, along with the detailed reasons, also provide a confirmation that there is no other material reasons other than those provided.
  iii. The confirmation as provided by the independent director above shall also be disclosed by the listed entities to the stock exchanges along with the detailed reasons as specified in sub-clause (i) above.

  Appointment or discontinuation of share transfer agent.

  Corporate debt restructuring.

  One time settlement with a bank.

➢ Reference to BIFR and winding-up petition filed by any party / creditors.

- Issuance of Notices, call letters, resolutions and circulars sent to shareholders, debenture holders or creditors or any class of them or advertised in the media by the listed entity.
- Proceedings of Annual and extraordinary general meetings of the listed entity.
- Amendments to memorandum and articles of association of listed entity, in brief.
- Schedule of Analyst or institutional investor meet and presentations on financial results made by the listed entity to analysts or institutional investors;
- The following events in relation to the corporate insolvency resolution process (CIRP) of a listed corporate debtor under the Insolvency Code:

  a. Filing of application by the corporate applicant for initiation of CIRP, also specifying the amount of default;

  b. Filing of application by financial creditors for initiation of CIRP against the corporate debtor, also specifying the amount of default;

  c. Admission of application by the Tribunal, along with amount of default or rejection or withdrawal, as applicable ;

  d. Public announcement made pursuant to order passed by the Tribunal under section 13 of Insolvency Code;

  e. List of creditors as required to be displayed by the corporate debtor under regulation 13(2)(c) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

  f. Appointment/ Replacement of the Resolution Professional;

  g. Prior or post-facto intimation of the meetings of Committee of Creditors;

  h. Brief particulars of invitation of resolution plans under section 25(2)(h) of Insolvency Code in the Form specified under regulation 36A(5) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

  i. Number of resolution plans received by Resolution Professional;

  j. Filing of resolution plan with the Tribunal;

  k. Approval of resolution plan by the Tribunal or rejection, if applicable;

  l. Salient features, not involving commercial secrets, of the resolution plan approved by the Tribunal, in such form as may be specified;

  m. Any other material information not involving commercial secrets.

B. Events which shall be disclosed upon application of the guidelines for materiality referred sub-regulation (4) of regulation (30):

- ✓ Commencement or any postponement in the date of commencement of commercial production or commercial operations of any unit/division.
- ✓ Change in the general character or nature of business brought about by arrangements for strategic, technical, manufacturing, or marketing tie-up, adoption of new lines of business or closure of operations of any unit/division (entirety or piecemeal).
- ✓ Capacity addition or product launch.
- ✓ Awarding, bagging/ receiving, amendment or termination of awarded/bagged orders/contracts not in the normal course of business.
- ✓ Agreements (viz. loan agreement(s) (as a borrower) or any other agreement(s) which are binding

and not in normal course of business) and revision(s) or amendment(s) or termination(s) thereof.

- ✓ Disruption of operations of any one or more units or division of the listed entity due to natural calamity (earthquake, flood, fire etc.), force majeure or events such as strikes, lockouts etc.
- ✓ Effect(s) arising out of change in the regulatory framework applicable to the listed entity
- ✓ Litigation(s) / dispute(s) / regulatory action(s) with impact.
- ✓ Fraud/defaults etc. by directors (other than key managerial personnel) or employees of listed entity.
- ✓ Options to purchase securities including any ESOP/ESPS Scheme.
- ✓ Giving of guarantees or indemnity or becoming a surety for any third party.
- ✓ Granting, withdrawal, surrender, cancellation or suspension of key licenses or regulatory approvals.

C. Any other information/event viz. major development that is likely to affect business, e.g. emergence of new technologies, expiry of patents, any change of accounting policy that may have a significant impact on the accounts, etc. and brief details thereof and any other information which is exclusively known to the listed entity which may be necessary to enable the holders of securities of the listed entity to appraise its position and to avoid the establishment of a false market in such securities.

D. Without prejudice to the generality of para (A), (B) and (C) above, the listed entity may make disclosures of event/information as specified by SEBI from time to time.

- ➢ **Regulation 30 (4) Criteria for determination of materiality of events/ information:**
  - ✓ the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or
  - ✓ the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;
  - ✓ an event/information may be treated as being material if in the opinion of the Board of Directors of listed entity, the event / information is considered material.

  Frame Policy for determination of materiality:

  - ✓ based on criteria specified in this regulation;
  - ✓ duly approved by its Board of Directors;
  - ✓ shall be disclosed on its website.
- ➢ **Regulation 30 (5): Authorization by Board of Directors**
  - ✓ *to* one or more Key Managerial Personnel (KMP) for the purpose of determining materiality of an event or information; and
  - ✓ for the purpose of making disclosures to stock exchange(s) under this regulation; and
  - ✓ the contact details of such personnel shall be also disclosed to the stock exchange(s) and as well as on the listed entity's website;
- ➢ The listed entity shall, with respect to disclosures referred under this regulation, make disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations.
- ➢ The listed entity shall disclose on its website all such events or information which has been disclosed

to stock exchange(s) under this regulation, and such disclosures shall be hosted on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.

- The listed entity shall disclose all events or information with respect to subsidiaries which are material for the listed entity.
- The listed entity shall provide specific and adequate reply to all queries raised by stock exchange(s) with respect to any events or information:

  However, the stock exchange(s) shall disseminate information and clarification as soon as reasonably practicable.
- The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange(s).
- In case where an event occurs or an information is available with the listed entity, which has not been indicated in Para A or B of Part A of Schedule III, but which may have material effect on it, the listed entity is required to make adequate disclosures in regard thereof.
- **Regulation31 : Holding of specified securities and Shareholding Pattern**
  - ✓ Submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the SEBI within the following timelines -
    - (a) one day prior to listing of its securities on the stock exchange(s);
    - (b) on a quarterly basis, within twenty one days from the end of each quarter; and,
    - (c) within ten days of any capital restructuring of the listed entity resulting in a change exceeding two per cent of the total paid-up share capital:
  - ✓ Shall ensure that hundred percent of shareholding of promoter(s) and promoter group is in dematerialized form and the same is maintained on a continuous basis.
  - ✓ The listed entity shall comply with circulars or directions issued by SEBI from time to time with respect to maintenance of shareholding in dematerialized form.
  - ✓ All entities falling under promoter and promoter group shall be disclosed separately in the shareholding pattern appearing on the website of all stock exchanges having nationwide trading terminals.
- **Regulation 31A: Conditions for re-classification of any person as promoter / public**
  - **Regulation 31A (2)**
    - ✓ Re-classification of the status of any person as a promoter or public shall be permitted by the stock exchanges only upon receipt of an application from the listed entity along with all relevant documents.
    - ✓ In case of entities listed on more than one stock exchange, the concerned stock exchanges shall jointly decide on the application.
  - **Regulation 31A (3)**

    Re-classification of status of a promoter/ person belonging to promoter group to public shall be permitted only upon satisfaction of the following conditions:

    (a) an application for re-classification to the stock exchanges has been made by the listed entity

later than thirty days from the date of approval by shareholders in general meeting:

(i) the promoter(s) seeking re-classification shall make a request for re-classification to the listed entity which shall include rationale for seeking such re-classification and how the conditions specified in clause (b) below are satisfied;

(ii) the board of directors of the listed entity shall analyze the request and place the same before the shareholders in a general meeting for approval along with the views of the board of directors on the request.

However, there shall be a time gap of at least **three months** but not exceeding six months between the date of board meeting and the shareholder's meeting considering the request of the promoter(s) seeking re-classification.

(iii) the request of the promoter(s) seeking re-classification shall be approved in the general meeting by an ordinary resolution in which the promoter(s) seeking re-classification and persons related to the promoter(s) seeking re-classification shall not vote to approve such re-classification request.

(b) the promoter(s) seeking re-classification and persons related to the promoter(s) seeking re-classification shall not:

i. together, hold more than ten percent of the total voting rights in the listed entity;

ii. exercise control over the affairs of the listed entity directly or indirectly;

iii. have any special rights with respect to the listed entity through formal or informal arrangements including through any shareholder agreements;

iv. be represented on the board of directors (including not having a nominee director) of the listed entity;

v. act as a key managerial person in the listed entity;

vi. be a 'wilful defaulter' as per the Reserve Bank of India Guidelines;

vii. be a fugitive economic offender.

(c) the listed entity shall:

(i) be compliant with the requirement for minimum public shareholding

(ii) not have trading in its shares suspended by the stock exchanges;

(iii) not have any outstanding dues to the SEBI , the stock exchanges or the depositories.

➢ **Regulation 31A (4)**

✓ The promoter(s) seeking re-classification, subsequent to re-classification as public, shall comply with the following conditions:

(a) he shall continue to comply with conditions mentioned at sub-clauses (i), (ii) and (iii) of clause (b) as specified above at all times from the date of such re-classification failing which, he shall automatically be reclassified as promoter/ persons belonging to promoter group, as applicable;

(b) he shall comply with conditions mentioned at sub-clauses (iv) and (v) of clause (b) for a period of not less than three years from the date of such re-classification failing which, he shall automatically be reclassified as promoter/ persons belonging to promoter group, as applicable.

- **Regulation 31A (5)**
  - ✓ If any public shareholder seeks to re-classify itself as promoter, it shall be required to make an open offer in accordance with the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

- **Regulation 31A (6)**
  - ✓ In case of transmission, succession, inheritance and gift of shares held by a promoter/ person belonging to the promoter group:
    - (a) immediately on such event, the recipient of such shares shall be classified as a promoter/ person belonging to the promoter group, as applicable.
    - (b) subsequently, in case the recipient classified as a promoter/person belonging to the promoter group proposes to seek re-classification of status as public, it may do so subject to compliance with conditions specified above.
    - (c) in case of death of a promoter/person belonging to the promoter group, such person shall automatically cease to be included as a promoter/person belonging to the promoter group.

- **Regulation 31A (7)**
  - ✓ A listed entity shall be considered as *'listed entity with no promoters'* if due to re-classification or otherwise, the entity does not have any promoter.

- **Regulation 31A (8)**
  - ✓ The following events shall deemed to be material events and shall be disclosed by the listed entity to the stock exchanges as soon as reasonably possible and not later than twenty four hours from the occurrence of the event:
    - (a) receipt of request for re-classification by the listed entity from the promoter(s) seeking re-classification;
    - (b) minutes of the board meeting considering such request which would include the views of the board on the request;
    - (c) submission of application for re-classification of status as promoter/public by the listed entity to the stock exchanges;
    - (d) decision of the stock exchanges on such application as communicated to the listed entity.

- **Regulation 31A (9)**
  - ✓ The provisions of sub- regulation 3, 4 and clauses (a) and (b) of sub- regulation 8 shall not apply, if re-classification of promoter(s)/ promoter group of the listed entity is as per the resolution plan approved under section 31 of the Insolvency Code, subject to the condition that such promoter(s) seeking re-classification shall not remain in control of the listed entity.

- **Regulation 32: Statement of deviation(s) or variation(s):**
  - ✓ Quarterly statement(s) of the following: For Public Issue, Rights Issue, Preferential Issue etc.
    - (a) indicating deviations, if any, in the use of proceeds from the objects stated
    - (b) indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilisation of funds and the actual utilisation of funds placing before the audit committee for review.
  - ✓ prepare an annual statement of funds utilized for purposes other than those stated in the offer

document/prospectus/notice, certified by the statutory auditors and place it before the audit committee till such time the full money raised through the issue has been fully utilized.

- ✓ In case of funds raised through preferential allotment or qualified institutions placement, the listed entity shall disclose every year, the utilization of such funds during that year in its Annual Report until such funds are fully utilized.

- **Regulation 33: Financial Results**

(1) The financial results shall be prepared on the basis of accrual accounting policy and shall be in accordance with uniform accounting practices adopted for all the period

(a) The financial results shall be prepared on the basis of accrual accounting policy and shall be in accordance with uniform accounting practices adopted for all the periods.

(b) The quarterly and year to date results shall be prepared in accordance with the recognition and measurement principles laid down in Accounting Standard 25 or Indian Accounting Standard 31 (AS 25/ Ind AS 34 – Interim Financial Reporting), as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or as specified by the Institute of Chartered Accountants of India, whichever is applicable.

(c) The standalone financial results and consolidated financial results shall be prepared as per Generally Accepted Accounting Principles in India.

However, in addition to the above, the listed entity may also submit the financial results, as per the International Financial Reporting Standards notified by the International Accounting Standards Board.

(d) The listed entity shall ensure that the limited review or audit reports submitted to the stock exchange(s) on a quarterly or annual basis are to be given only by an auditor who has subjected himself to the peer review process of Institute of Chartered Accountants of India and holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India.

(e) The listed entity shall make the disclosures specified in Part A of Schedule IV.

(2) The approval and authentication of the financial results shall be done by listed entity in the following manner:

(a) The quarterly financial results submitted shall be approved by the board of directors:

However, while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.

(b) The financial results submitted to the stock exchange shall be signed by the chairperson or managing director, or a whole time director or in the absence of all of them; it shall be signed by any other director of the listed entity who is duly authorized by the board of directors to sign the financial results.

(c) The limited review report shall be placed before the board of directors, at its meeting which approves the financial results, before being submitted to the stock exchange(s).

(d) The annual audited financial results shall be approved by the board of directors of the listed entity and shall be signed in the manner specified above.

(3) The listed entity shall submit the financial results in the following manner:

(a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.

(b) In case the listed entity has subsidiaries, in addition to the requirement at clause (a) of sub-regulation (3), the listed entity shall also submit quarterly/year-to-date consolidated financial results.

(c) The quarterly and year-to-date financial results may be either audited or unaudited subject to the following:

(i) In case the listed entity opts to submit unaudited financial results, they shall be subject to limited review by the statutory auditors of the listed entity and shall be accompanied by the limited review report.

(ii) Provided that in case of public sector undertakings this limited review may be undertaken by any practicing Chartered Accountant.

(iii) In case the listed entity opts to submit audited financial results, they shall be accompanied by the audit report.

(d) The listed entity shall submit annualaudited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and Statement on Impact of Audit Qualifications (applicable only]63 for audit report with modified opinion).

However, if the listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and Statement on Impact of Audit Qualifications (applicable only]64 for audit report with modified opinion).

However, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.

(e) The listed entity shall also submit the audited or limited reviewed financial results in respect of the last quarter along-with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year.

(f) The listed entity shall also submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities as at the end of the half-year.

(g) The listed entity shall also submit as part of its standalone and consolidated financial results for the half year, by way of a note, statement of cash flows for the half-year.

(h) The listed entity shall ensure that, for the purposes of quarterly consolidated financial results, at least eighty percent of each of the consolidated revenue, assets and profits, respectively, shall have been subject to audit or in case of unaudited results, subjected to limited review.

(i) The listed entity shall disclose, in the results for the last quarter in the financial year, by way of a note, the aggregate effect of material adjustments made in the results of that quarter which pertain to earlier periods.

(4) The applicable formats of the financial results and Statement on Impact of Audit Qualifications (for audit report with modified opinion) shall be in the manner as specified by SEBI.

(6) The Statement on Impact of Audit Qualifications (for audit report with modified opinion) and the accompanying annual audit report submitted in terms of clause (d) of sub-regulation (3) shall be

reviewed by the stock exchange(s).

- **Regulation 34: Annual Report**
  - ✓ The listed entity shall submit to the stock exchange and publish on its website-
    - (a) a copy of the annual report sent to the shareholders along with the notice of the annual general meeting not later than the day of commencement of dispatch to its shareholders;
    - (b) in the event of any changes to the annual report, the revised copy along with the details of and explanation for the changes shall be sent not later than 48 hours after the annual general meeting.
  - ✓ The Annual Report shall contain:
    - (a) audited financial statements i.e. balance sheets, profit and loss accounts etc.;
    - (b) consolidated financial statements audited by its statutory auditors;
    - (c) cash flow statement
    - (d) directors report;
    - (e) management discussion and analysis report
    - (f) for the top 500 listed entities based on market capitalization:
      - – Business Responsibility Report;
      - – describing the initiatives taken by them environmental, social and governance perspective;
      - – in the format as specified by SEBI from time to time:
  - ✓ Any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V.
- **Regulation 35: Annual Information Memorandum**
  - ✓ Annual Information Memorandum to be submitted to Stock Exchanges in the manner specified by the SEBI from time to time. However, till date SEBI has not specified the format for Annual Information Memorandum.
- **Regulation 36: Documents and information to Holders:**
  - ✓ Soft copies of full annual reports – Registered Email id
  - ✓ Hard copy of statement containing the salient features – Registered Address
  - ✓ Hard copies of full annual reports – On Request
- **Annual report to be sent to shareholders Not less than 21 days before the AGM**
  - ✓ In case of the **appointment of a new director or re-appointment** of a director the shareholders **must be provided with the following information**:
    - (a) a brief resume of the director;
    - (b) nature of his expertise in specific functional areas;
    - (c) disclosure of relationships between directors inter-se;
    - (d) Directorship in Listed Cos. & the membership of Committees of the board; and
    - (e) shareholding of non-executive directors.

- ✓ The disclosure made by the listed companies shall be :
  - (a) To stock exchange shall be in XBRL format as specified by stock exchange;
  - (b) Information to stock exchange and website shall allow user to find relevant information easily through a searching tool.
- ✓ The notice of an annual general meeting, where the statutory auditor(s) is/are proposed to be appointed/re-appointed shall include the following disclosures as a part of the explanatory statement to the notice:
  - (a) Proposed fees payable to the statutory auditor(s) along with terms of appointment and in case of a new auditor, any material change in the fee payable to such auditor from that paid to the outgoing auditor along with the rationale for such change;
  - (b) Basis of recommendation for appointment including the details in relation to and credentials of the statutory auditor(s) proposed to be appointed.

➢ **Regulation 37: Draft Scheme of Arrangement & Scheme of Arrangement**

- ✓ To file the draft scheme of arrangement:
  - − proposed to be filed before any Court or Tribunal;
  - − under sections 391-394 and 101 of the Companies Act, 1956 or under Sections 230-234 and Section 66 of Companies Act, 2013, whichever applicable;
  - − with the stock exchange(s) for obtaining Observation Letter or No-objection letter;
  - − before filing such scheme with any Court or Tribunal, in terms of requirements specified by the SEBI or stock exchange(s).
- ✓ Not to file any scheme of arrangement unless **it has obtained observation letter or No-objection letter from the stock exchange(s).**
- ✓ Place the Observation letter or No-objection letter of the stock exchange(s) before the Court or Tribunal.
- ✓ The validity of the 'Observation Letter' or No-objection letter of stock exchanges shall be six months from the date of issuance, within which the draft scheme of arrangement shall be submitted to the Court or Tribunal.
- ✓ Comply with requirement specified by SEBI.
- ✓ Upon sanction of the Scheme, the listed entity shall submit the documents, to the stock exchange(s), as prescribed by the SEBI and/or stock exchange(s).
- ✓ Nothing contained in this regulation shall apply to draft schemes which solely provide for merger of a wholly owned subsidiary with its holding company.Such draft schemes shall be filed with the stock exchanges for the purpose of disclosures.
- ✓ The requirements as specified under this regulation shall not apply to a restructuring proposal approved as part of a resolution plan by the Tribunal under section 31 of the Insolvency Code, subject to the details being disclosed to the recognized stock exchanges within one day of the resolution plan being approved.

In addition to above requirement, SEBI has also issued its circular No.CFD/DIL3/CIR/2017/21 dated March 10, 2017 which has been amended from time to time, inter alia providing detailed procedure that is required to be followed by Listed entity while seeking Exchange's Observation letter / No-objection letter

- **Regulation 38: Minimum Public Shareholding**
  - Comply with the **minimum public shareholding** requirements.
  - Specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957.
- **Regulation 39: Issuance of Certificates or Receipts/Letters/Advices for securities and dealing with unclaimed securities**
  - ✓ Comply with Rule 19(3) of Securities Contract (Regulations) Rules, 1957 in respect of:
    - Letter/Advices of Allotment;
    - Acceptance or Rights;
    - transfers;
    - subdivision;
    - consolidation;
    - renewal;
    - exchanges;
    - issuance of duplicates thereof; or
    - any other purpose.
  - ✓ To issue certificates or receipts or advices, as applicable, of sub-division, split, consolidation, renewal, exchanges, endorsements, issuance of duplicates thereof or issuance of new certificates or receipts or advices, as applicable, in cases of loss or old decrepit or worn out certificates or receipts or advices, as applicable within a period of thirty days from the date of such lodgment.
  - ✓ To submit information regarding loss of share certificates and issue of the duplicate certificates, to the stock exchange within two days of its getting information.
  - ✓ Comply with the procedural requirements specified in Schedule VI of the Listing Regulations, while dealing with securities issued pursuant to the public issue or any other issue, physical or otherwise, which remain unclaimed and/or are lying in the escrow account, as under by itself or delegate it to a share transfer agent.

SCHEDULE VI

MANNER OF DEALING WITH UNCLAIMED SHARES

The listed entity may delegate the following procedural requirements to a share transfer agent.

a. Reminders to be sent

(1) The listed entity shall send at least three reminders at the address as mentioned below:

(a) For shares in physical form, reminders shall be sent to the address given in the application form as well as last available address as per listed entity's record.

(b) For shares in demat form, reminders shall be sent to the address captured in depository's database or address given in the application form, in case of application made in physical form.

b. Procedure in case of non-receipt of response to reminders

(1) For shares in demat form, the unclaimed shares shall be credited to a demat suspense account with one of the Depository Participants, opened by the listed entity for this purpose.

(2) For shares in physical form, the listed entity shall transfer all the shares into one folio in the name of "Unclaimed Suspense Account" and shall dematerialise the shares held in the Unclaimed Suspense Account with one of the Depository Participants.

(3) The listed entity shall maintain details of shareholding of each individual allottee whose shares are credited to such demat suspense account or unclaimed suspense account, as applicable.

(4) The demat suspense account or unclaimed suspense account, as applicable shall be held by the listed entity purely on behalf of the allottees who are entitled to the shares and the shares held in such suspense account shall not be transferred in any manner whatsoever except for the purpose of allotting the shares to the allottee as and when he/she approaches the listed entity. *Provided* that all such shares, in respect of which unpaid or unclaimed dividend has been transferred under Section 124 (5) of the Companies Act, 2013, shall also be transferred by the listed entity in accordance with Section 124 (6) of the Companies Act, 2013 and rules made thereunder.

c. Procedure in case of claim by allottee

(1) As and when the allottee approaches the listed entity, the listed entity shall, after proper verification of the identity of the allottee either credit the shares lying in the Unclaimed Suspense Account or demat suspense account, as applicable, to the demat account of the allottee to the extent of the allottee's entitlement, or deliver the physical certificates after re-materialising the same, depending on what has been opted for by the allottee, *Provided* that the rematerialising of the physical certificates shall be done only in case where the shares were originally issued in physical form.

d. Dealing with Corporate Benefits (in terms of securities accruing) and Voting Rights on such Unclaimed Shares

(1) Any corporate benefits in terms of securities accruing on such shares viz. bonus shares, split etc., shall also be credited to such demat suspense account or unclaimed suspense account, as applicable for a period of seven years and thereafter shall be transferred by the listed entity in accordance with provisions of Section 124(5) read with Section 124 (6) of the Companies Act, 2013 and rules made thereunder.

(2) The voting rights on such unclaimed shares shall remain frozen till the rightful owner claims the shares.

➢ **Regulation 40 : Transfer or transmission or transposition of securities**

- ✓ Comply with provisions of securities laws or Companies Act, 2013 and rules made thereunder.
- ✓ Comply with the requirements as specified in this regulation for effecting transfer of securities.
- ✓ Except in case of transmission or transposition of securities, requests for effecting transfer of securities shall not be processed unless the securities are held in the dematerialized form with a depository.
- ✓ The board of directors of a listed entity may delegate the power of transfer of securities to a committee or to compliance officer or to the registrar to an issue and/or share transfer agent(s).
- ✓ The board of directors and/or the delegated authority shall attend to the formalities pertaining to transfer of securities at least once in a fortnight.
- ✓ The delegated authority shall report on transfer of securities to the board of directors in each meeting.
- ✓ On receipt of proper documentation, the listed entity shall register transfers of its securities in the name of the transferee(s) and issue certificates or receipts or advices, as applicable, of transfers; or issue any valid objection or intimation to the transferee or transferor, as the case may be, within a period of fifteen days from the date of such receipt of request for transfer.

- ✓ Transmission requests are processed for securities held in dematerialized mode and physical mode within seven days and twenty one days respectively, after receipt of the specified documents.
- ✓ Proper verifiable dated records of all correspondence with the investor shall be maintained by the listed entity.
- ✓ To register transfer when any statutory prohibition or any attachment or prohibitory order of a competent authority restrains it from transferring the securities from the name of the transferor(s).
- ✓ Not to register the transfer of its securities in the name of the transferee(s) when the transferor(s) objects to the transfer.
- ✓ The transferor serves on the listed entity, within sixty working days of raising the objection, a prohibitory order of a Court of competent jurisdiction.
- ✓ The listed entity shall not decline to, register or acknowledge any transfer of shares, on the ground of the transferor(s) being either alone or jointly with any other person or persons indebted to the listed entity on any account whatsoever.
- ✓ The listed entity shall comply with all procedural requirements as specified in Schedule VII with respect to transfer of securities.
- ✓ In case the listed entity has not effected transfer of securities within fifteen days or where the listed entity has failed to communicate to the transferee(s) any valid objection to the transfer, within the stipulated time period of fifteen days, the listed entity shall compensate the aggrieved party for the opportunity losses caused during the period of the delay.
- ✓ The intervening period on account of delay in transfer above, the listed entity shall provide all benefits, which have accrued, to the holder of securities in terms of provisions of Section 126 of Companies Act, 2013, and Section 27 of the Securities Contracts (Regulation) Act, 1956.
- ✓ In case of any claim, difference or dispute under this sub-regulation the same shall be referred to and decided by arbitration as provided in the bye-laws and/or regulations of the stock exchange(s).
- ✓ To ensure that the share transfer agent and/or the in-house share transfer facility, as the case may be, produces a certificate from a practicing company secretary within one month of the end of each half of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies.
- ✓ To ensure that certificate mentioned above shall be filed with the stock exchange(s) simultaneously.
- ✓ In addition to transfer of securities, the provisions of this regulation shall also apply to the following:
  - (a) deletion of name of the deceased holder(s) of securities, where the securities are held in the name of two or more holders of securities ;
  - (b) transmission of securities to the legal heir(s), where deceased holder of securities was the sole holder of securities;
  - (c) transposition of securities, when there is a change in the order of names in which physical securities are held jointly in the names of two or more holders of securities.

➢ **Regulation 41: Other provisions relating to securities**

- ✓ Not to exercise a lien on its fully paid shares and that in respect of partly paid shares it shall not exercise any lien except in respect of moneys called or payable at a fixed time in respect of such shares.
- ✓ In case of any amount to be paid in advance of calls on any shares stipulate that such amount may carry interest but shall not in respect thereof confer a right to dividend or to participate in profits.

- ✓ **Not to issue shares in any manner which may confer on any person, superior rights as to voting or dividend vis-à-vis the rights on equity shares that are already listed. This means that issuance of Differential Voting Rights shares having superior rights to voting or dividend as compared to listed shares is prohibited.**
- ✓ Issue or offer in the first instance all shares (including forfeited shares), securities, rights, privileges and benefits to subscribe pro rata basis , to the equity shareholders, unless the shareholders in the general meeting decide otherwise.
- ✓ Not to select any of its listed securities for redemption otherwise than on pro-rata basis or by lot.

➢ **Regulation 42: Record Date or Date of closure of transfer books**

- ✓ **Advance intimation** of the Record Date for the following purposes:-
- ✓ **Atleast 7 working days' notice for record date or date of closure of transfer books for the purpose of** (excluding the date of intimation and the record date/book closure start date)
  - (a) declaration of dividend
  - (b) issue of right or bonus shares;
  - (c) issue of shares for conversion of debentures
  - (d) shares arising out of rights attached to debentures
  - (e) corporate actions like mergers, de-mergers, splits and bonus shares,
  - (f) such other purposes as may be specified.
- ✓ Recommend or declare all dividend and/or cash bonuses **at least five working days** (excluding the date of intimation and the record date) before the record date fixed for the purpose.
- ✓ Ensure the **time gap of at least 30 days between two record dates/book closures.**
- ✓ For securities held in physical form, may, announce dates of closure of its transfer books in place of record date.

➢ **Regulation 43: Dividends**

- ✓ Declare and disclose the dividend **on per share basis** only.
- ✓ **Shall not forfeit unclaimed dividends** before the claim becomes barred by law and such forfeiture, if effected, shall be annulled in appropriate cases.

➢ **Regulation 43A:Dividend Distribution Policy**

- ✓ Top 500 Listed entities based on market capitalization shall formulate a dividend distribution policy.
- ✓ Dividend Distribution Policy shall be disclosed in their annual reports and on their websites.
- ✓ The dividend distribution policy shall include the following parameters:
  - (a) the circumstances under which the shareholders of the listed entities may or may not expect dividend;
  - (b) the financial parameters that shall be considered while declaring dividend;
  - (c) internal and external factors that shall be considered for declaration of dividend;
  - (d) policy as to how the retained earnings shall be utilized; and
  - (e) parameters that shall be adopted with regard to various classes of shares.

- ✓ If the listed entity proposes to declare dividend on the basis of parameters in addition to clauses (a) to (e) or proposes to change such additional parameters or the dividend distribution policy contained in any of the parameters, it shall disclose such changes along with the rationale for the same in its annual report and on its website.
- ✓ Listed entities other than top 500 may disclose their dividend distribution policies on a voluntary basis in their annual reports and on their websites.

➢ **Regulation 44: Meetings of shareholders and voting**

- ✓ Shall **provide** the facility of remote **e-voting facility to shareholders** in respect of all shareholders resolutions.
- ✓ Comply with the conditions specified under the Companies (Management and Administration) Rule 2014.
- ✓ Submit to the stock exchange:
  - − within 48 hours of conclusion of its General Meeting;
  - − details regarding the voting results in the format specified.
- ✓ Send proxy forms to holders of securities in all cases mentioning that a holder may vote either for or against each resolution.
- ✓ The top 100 listed entities by market capitalization, determined as on March 31st of every financial year shall hold their annual general meetings within a period of five months from the date of closing of the financial year.
- ✓ The top 100 listed entities shall provide **one-way live webcast** of the proceedings of the annual general meetings.

➢ **Regulation 45: Change in Name of the Listed Entity**

- ✓ Listed Entity is **allowed to change its Name**, **subject to** compliance with the following conditions:
  - − at least **01 year** has elapsed from the last Name change;
  - − at least **50% of the Total Revenue** in the preceding **01 year** period has been accounted for by the new activity suggested by the new name; or
  - − the **amount invested** in the new activity/project is at **least 50% of the Assets** of the listed entity.
- ✓ If any listed entity has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months from the change of activities in compliance of provisions as applicable to change of name prescribed under Companies Act, 2013.
- ✓ On receipt of availability confirmation and, before filing the request for change with the Registrar of Companies **(ROC)**.
- ✓ Seek **approval** from Stock Exchange **(SE)** before making final application to ROC for name change.
- ✓ Submit a **certificate from** Chartered Accountant **(CA)** stating compliance with conditions as mentioned above.

➢ **Regulation 46: Website**

- ✓ Maintain a functional website containing the basic information about the listed entity.
- ✓ Disseminate the following information under a separate section in its website:

(a) details of its business;

(b) terms and conditions of appointment of independent directors;

(c) composition of various committees of board of directors;

(d) code of conduct of board of directors and senior management personnel;

(e) details of establishment of vigil mechanism/ Whistle Blower policy;

(f) criteria of making payments to non-executive directors , if the same has not been disclosed in annual report;

(g) policy on dealing with related party transactions;

(h) policy for determining 'material' subsidiaries;

(i) details of familiarization programmes imparted to independent directors including the following details: –

  i. number of programmes attended by independent directors (during the year and on a cumulative basis till date);

  ii. number of hours spent by independent directors in such programmes (during the year and on cumulative basis till date); and

  iii. other relevant details.

(j) the email address for grievance redressal and other relevant details;

(k) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;

(l) financial information including :

  i. notice of meeting of the board of directors where financial results shall be discussed;

  ii. financial results, on conclusion of the meeting of the board of directors where the financial results were approved;

  iii. complete copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report etc;

(m) shareholding pattern;

(n) details of agreements entered into with the media companies and/or their associates, etc;

(o) schedule of analyst or institutional investor meet and presentations made by the listed entity to analysts or institutional investors simultaneously with submission to stock exchange;

(p) new name and the old name of the listed entity for a continuous period of one year, from the date of the last name change;

(q) items relating to:

  (1) notice of meeting of the board of directors where financial results shall be discussed;

  (2) financial results, along-with the modified opinion(s) or reservation(s), if any, expressed by the auditor;

  (3) statements of deviation(s) or variation(s) on quarterly basis, after review by audit committee and its explanation in directors report in annual report;

  (4) notices given to shareholders by advertisement.

(r) all credit ratings obtained by the entity for all its outstanding instruments, updated immediately as and when there is any revision in any of the ratings.

(s) separate audited financial statements of each subsidiary of the listed entity in respect of a relevant financial year, uploaded at least 21 days prior to the date of the annual general meeting which has been called to inter alia consider accounts of that financial year.

- ✓ Ensure the contents of the website are correct.
- ✓ Update any change in the content of its website within two working days from the date of such change in content.

➢ **Regulation 47: Advertisements in Newspapers**

- ✓ To publish the following information in the newspaper:
  a. notice of meeting of the board of directors where financial results shall be discussed;
  b. financial results, along-with the modified opinion(s) or reservation(s), if any, expressed by the auditor;
  c. if the listed entity has submitted both standalone and consolidated financial results, publish consolidated financial results along-with (1) Turnover, (2) Profit before tax and (3) Profit after tax, on a stand-alone basis, as a foot note; and a reference to the places, such as the website of listed entity and stock exchange(s), where the standalone results are available;
  d. statements of deviation(s) or variation(s) on quarterly basis, after review by audit committee and its explanation in directors report in annual report;
  e. notices given to shareholders by advertisement.
- ✓ Reference to be given in the newspaper publication, to link of the website of listed entity and stock exchange(s), where further details are available.
- ✓ Publish the information in the newspaper simultaneously with the submission of the same to the stock exchange(s).
- ✓ Financial results shall be published **within 48 hours of conclusion** of the meeting of board of directors at which the financial results were approved.
- ✓ The information shall be published in at least one English language national daily newspaper circulating in the whole or substantially the whole of India and in one daily newspaper published in the language of the region, where the registered office of the listed entity is situated.

➢ **Regulation 48: Accounting Standards**

- ✓ Comply with all the applicable and notified Accounting Standards from time to time.

PERIODIC COMPLIANCES FOR A LISTED ENTITY FOR EQUITY SHARES[1]

The listed entity shall comply the following compliances under SEBI Listing Regulations 2015:-

- ➢ Quarterly Compliances
- ➢ Half yearly Compliances
- ➢ Yearly Compliances
- ➢ Event Based Compliances

1. Source: https://www.nseindia.com

Quarterly Compliances		**When to comply**			
Regulation reference	Timeline	For the quarter ended June	For the quarter ended September	For the quarter ended December	For the quarter ended March
Regulation 31 (1) (b) - Shareholding Pattern	Within 21 days from the end of the quarter	By 21-July	By 21-October	By 21-January	By 21-April
27(2)(a): Corporate Governance Report	Within 15 days from the end of the quarter.	By 15-July	By 15-October	By 15-January	By 15-April
Regulation 33 (3) (a) - Financial Results along with Limited review report/Auditor's report	Within 45 days from the end of the quarter.	By 14-August	By 14-November	By 14-February	-
Reconciliation of share capital audit report	Within 30 days from the end of the quarter.	By 30-July	By 30-October	By 30-January	By 30-April
Regulation 13 (3) - Statement of Grievance Redressal Mechanism	Within 21 days from the end of the quarter.	By 21-July	By 21-October	By 21-Januar	By 21-April
Regulation 32 (1) - Statement of deviation(s) or variation(s).	-	-	-	-	-

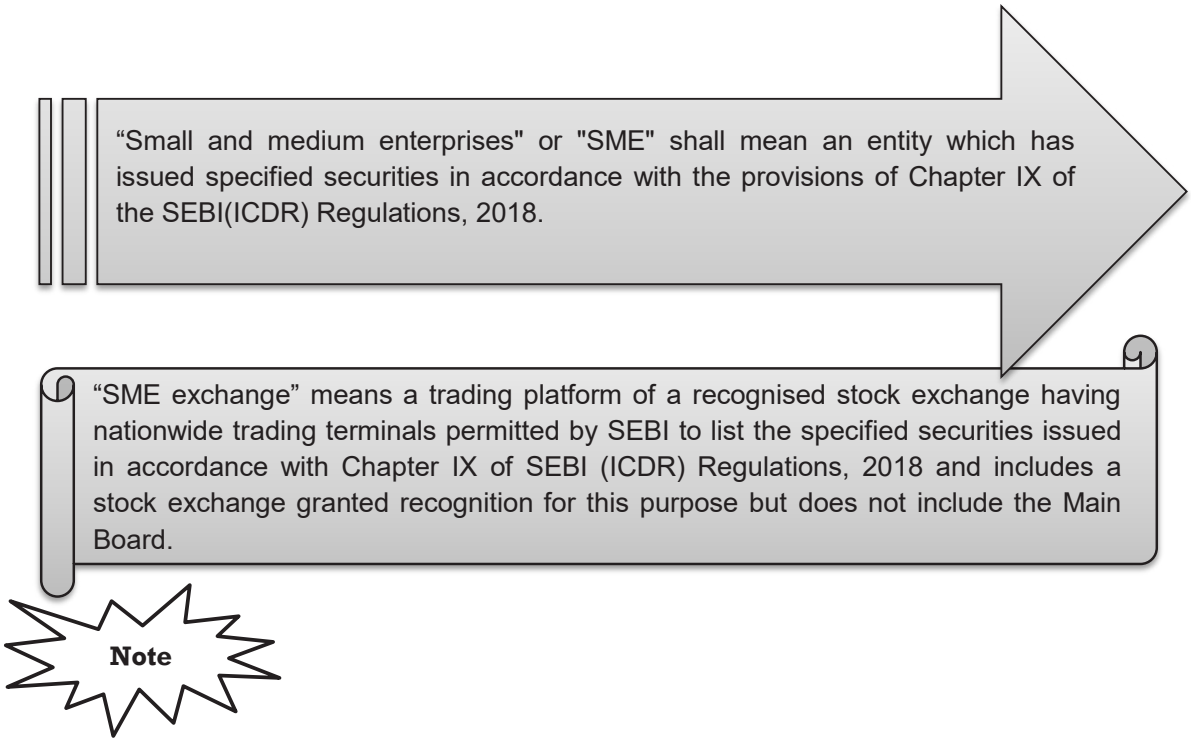
Half Yearly Compliances	**When to comply**
Regulation reference	Timeline
Regulation 7 (3) - Share Transfer Agent	Within 1 month of end of each half of the financial year.
Regulation 40 (10) - Transfer or transmission or transposition of securities	Within 1 month of end of each half of the financial year.

Annual Compliances		**When to comply**			
Regulation reference	**Timeline**	**For the quarter ended June**	**For the quarter ended September**	**For the quarter ended December**	**For the quarter ended March**

Regulation 14 - Fees and other charges to be paid to the recognized stock exchange(s)	Within one month of end of March 31	By 30-April	-	-	-
Regulation 33 (3) (d) - Financial Results along with Auditor's Report	Within 60 days from the end of the financial year	By 29-August	By 29-November	By 29-February	By 30-May
Regulation 34 (1) - Annual Report	On the day of commencement of dispatch to its shareholders.				

Event Based Compliances	
Regulation reference	**Timeline**
Regulation 7(5) – Intimation of appointment of Share Transfer Agent	Within 7 days of Agreement with RTA.
Regulation 28 (1) - In-principle approval of recognized stock exchange(s)	Before issuing securities.
Regulation 29 (2) (b) to (f) - Prior intimation of Board meeting for Buyback, Dividend, Raising of Funds, Voluntary Delisting etc.,	Atleast two working days in advance, excluding the date of the intimation and date of the meeting.
Regulation 29 (2) (a) - Prior intimation of Board meeting for Financial Results	Atleast five days in advance (excluding the date of the intimation and date of the meeting).
Regulation 29(3) –Prior intimation of Board Meeting for alteration in nature of securities etc.	Atleast eleven working days in advance.
Regulation 30 (6) – Disclosure of events or information	Disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information.
Regulation 30 (6) – Disclosure of events or information	Disclosure with respect to events specified in sub-para 4 of Para A of Part A of Schedule III shall be made within thirty minutes of the conclusion of the board meeting.
Regulation 31(1)(a) – Shareholding Pattern prior to listing of securities	One day prior to listing of securities.
Regulation 31(1)(c) – Shareholding Pattern in case of capital restructuring	Within 10 days of any change in capital +/- 2%.
Regulation 37(2) – Draft Scheme of arrangement	Obtain observation letter or No-objection letter from the stock exchange(s) before filing the scheme with any court or tribunal.

Regulation 39(3) - Loss of share certificates and issue of the duplicate certificates	Within two days of getting information.
Regulation 44(3) - Voting Results	Within 48 hours of conclusion of General Meeting.
Regulation 45(3) – Change in name	Prior approval from Stock Exchange before filing application with Registrar of Companies.
Regulation 46 - Website	The listed entity shall maintain a functional website containing the basic information about the listed entity.



SMALL AND MEDIUM ENTERPRISE (SME)

All the provisions as prescribed under chapter I, II, III & IV of SEBI Listing Regulations 2015 will be applicable to an entity listed on SME Exchange except certain provisions which are discussed below.

For the purpose of those entities, whose equity shares are listed on the Small and Medium Enterprise (SME) Exchange

- **Regulation 31: Holding of specified securities and shareholding pattern**

  The listed entities which have listed their specified securities on SME Exchange shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by SEBI from time to time **on a half yearly basis** within twenty one days from the end of each half year as compared to quarterly submission prescribed for companies listed on Main Board of the Exchanges.

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

  The listed entities which have listed their specified securities on SME Exchange shall submit the

statement of deviation and variations as prescribed under this regulation on a **half yearly basis**.

- **Regulation 33: Financial results**

  The listed entity shall submit financial results to the stock exchange within forty-five days of end of **each half year** as compared to quarterly submission prescribed for companies listed on Main Board of the Exchanges.

  The requirement of submitting '**year-to-date' financial results** shall **not be applicable** for a listed entity which has listed their specified securities on SME Exchange.

  Apart from this, rest of all the provision will be same as required for an entity to be listed on Main Board.

- **Regulation 34: Annual Report**

  All the provisions applicable to an entity listed on Main Board will be applicable for a company listed on SME Exchange **except** the following:

  - The listed entities which have listed their specified securities on SME Exchange, may include in the annual report, **the business responsibility reports on a voluntary basis** in the format as specified by SEBI.

- **Regulation 47: Advertisements in Newspapers**

  The requirements of this regulation shall not be applicable in case of listed entities which have listed their specified securities on SME Exchange.

COMPLIANCE CALENDAR FOR LISTED ENTITIES FOR SME [2]

Quarterly yearly compliance

Sr. No.	Regulation Reference	Frequency	Period Covered	Date by which to be filed
1.	13(3) – Statement Grievance Redressal Mechanism	Quarterly	April-June, July-September, October December, January-March	21st July, 21st October, 21st January and 21st April
2.	76 of SEBI (Depositories and Participants) Regulations, 2018	Quarterly	April-June, July-September, October-December, January-March	30th July, 30th October, 30th January and 30th April

Half Yearly Compliance

Sr. No	Regulation Reference	Frequency	Period Covered	Date by which to be filed
1.	31(1) – Shareholding Pattern	Half Yearly	April September October	21st October and 21st April
2.	32(8) – Statement of deviation or variation	Half Yearly	April September October	-

2 Source: https://www.nseindia.com/emerge

3.	33(5) – Financial Results	Half Yearly	April September October	14th November and 30th May
4.	7(3) – Compliance Certificate to the exchange	Half Yearly	April September October	31st October and 30th April
5.	40(10) – Compliance Certificate w.r.t Transfer or transmission or transposition of securities within 30 days	Half Yearly	April September, October March	31st October and 30th April

Annual Compliance

Sr. No	Regulation Reference	Frequency	Period Covered	Date by which to be filed
1.	14 – Listing Fees	Annually	April-March	30th April
2.	34(1) – Annual Report	Annually	April-March	On the day of commencement of dispatch to its shareholders.

Event Based Compliance

Sr. No	Regulation Reference	Frequency	Date by which to be filed
1.	7(5) – Intimation of appointment of Share Transfer Agent	Event Based	Within 7 days of Agreement with RTA
2.	28(1) – In principle approval	Event Based	Prior to issuance of Security
3.	29(1)(a) –Prior Intimations of Board Meeting for financial Result	Event based	At least 5 clear days in advance (excluding the date of the intimation and date of the meeting).
4.	29(1)(b), 29(1) (c), 29(1)(d), 29(1) (e) and 29(1) (f) – Prior Intimations of Board Meeting for Buyback, voluntary delisting etc.	Event based	At least 2 clear working days in advance (excluding the date of the intimation and date of the meeting).
5.	29(3) –Prior Intimations of Board Meeting for alteration in nature of securities	Event based	At least 11 clear working days in Advance.
6.	30(6) – Disclosure of events specified in Part A of Schedule III (Material events)	Event based	Not later than twenty four hours from occurrence of event.

7.	30(6) – Disclosure of events specified in sub-para 4 of Para A of Part A of Schedule III	Event based	Within 30 minutes of conclusion of board meeting.
8.	31(1)(a) – Shareholding Pattern prior to listing of Securities	Event based	One day prior to listing of securities.
9.	31(1)(c) – Shareholding Pattern in case of capital restructuring	Event based	Within 10 days of any change in capital structure exceeding 2%.
10.	31(A)(2) – Disclosure of class of shareholders and conditions for reclassification	Event based	Prior approval
11.	37(2) – Draft Scheme of arrangement & Scheme of arrangement	Event based	Prior approval before filing with Court.
12.	42(2) – Record date or Date of closure of transfer books	Event based	At least 7 clear working days in advance (excluding the date of intimation and the record date).
13.	42(3) – Record date for declaring dividend and / or cash bonus	Event based	At least 5 clear working days in advance (excluding the date of intimation and the record date).
14.	44(3)-Voting results by shareholders	Event based	Within 48 hours of conclusion of AGM.
15.	45(3) – Change in name of listed entity	Event based	Prior approval (before filing request for name change with ROC).

NON-CONVERTIBLE DEBT SECURITIES OR NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES

The following provisions of SEBI Listing Regulations, 2015 shall apply only to a listed entity which has listed its 'Non-Convertible Debt Securities' ('NCDs') or 'Non-Convertible Redeemable Preference Shares' ('NCRPs') on a recognised stock exchange. The provisions of this regulation shall also be applicable to "perpetual debt instrument" and "perpetual non-cumulative preference share" listed by banks.

- **Regulation 50: Intimation to stock exchange(s)**
  - **Prior intimation**
    - ✓ At least 7 working days before the date on and from which interest and/or redemption amount shall be payable
  - **Intimation**
    - ✓ to the stock exchange(s), its intention to raise funds;
    - ✓ through new NCDs or NCRPs it proposes to list either through a public issue or on private placement basis;
    - ✓ prior to issuance of such securities;
    - ✓ intimation may be given prior to the meeting of board of directors wherein the proposal to raise funds through new NCDs or NCRPs shall be considered.

- ✓ Intimation to be given **at least 2 working days in** advance, (while calculating 2 days date of intimation and date of board meeting shall be excluded).

➢ **Regulation 51: Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information**

- ✓ To promptly inform the stock exchange(s) of all information having bearing on:
  - – the performance/operation of the listed entity;
  - – price sensitive information; or
  - – any action that shall affect payment of interest or dividend of non-convertible preference shares; or
  - – redemption of non-convertible debt securities or redeemable preference shares.
- ✓ The listed entity who has issued or is issuing NCDs and/or NCRPs shall make disclosures as specified in these regulations.

The expression 'promptly inform', shall imply that the stock exchange must be informed as soon as practically possible and without any delay and that the information shall be given first to the stock exchange(s) before providing the same to any third party.

SCHEDULE III - PART B

Disclosure of Information Having Bearing on Performance/Operation of Listed Entity And/Or Price Sensitive Information

A. The listed entity shall promptly inform to the stock exchange(s) of all information which shall have bearing on performance/operation of the listed entity or is price sensitive or shall affect payment of interest or dividend of non-convertible preference shares or redemption of NCDS or NCRPs including:

(1) expected default in timely payment of interests/preference dividend or redemption or repayment amount or both in respect of the NCDS or NCRPs and also default in creation of security for debentures as soon as the same becomes apparent;

(2) any attachment or prohibitory orders restraining the listed entity from NCDS or NCRPs from the account of the registered holders along-with the particulars of the numbers of securities so affected , the names of the registered holders and their demat account details;

(3) any action which shall result in the redemption, conversion, cancellation, retirement in whole or in part of any non-convertible debt securities or reduction, redemption, cancellation, retirement in whole or in part of any NCRPs;

(4) any action that shall affect adversely payment of interest on non-convertible debt securities or payment of dividend on NCRPs including default by issuer to pay interest on NCDs or redemption amount and failure to create a charge on the assets;

(5) any change in the form or nature of any of its NCDS or NCRPs that are listed on the stock exchange(s) or in the rights or privileges of the holders thereof and make an application for listing of the securities as changed, if the stock exchange(s) so require;

(6) any changes in the general character or nature of business / activities, disruption of operation due to natural calamity, and commencement of commercial production / commercial operations;

(7) any events such as strikes and lock outs, which have a bearing on the interest payment/ dividend payment / principal repayment capacity;

(8) details of any letter or comments made by debenture trustees regarding payment/non-payment of interest on due dates, payment/non-payment of principal on the due dates or any other matter concerning the security, listed entity and /or the assets along with its comments thereon, if any;

(9) delay/ default in payment of interest or dividend / principal amount /redemption for a period of more than three months from the due date;

(10) failure to create charge on the assets within the stipulated time period;

(11) any instance(s) of default/delay in timely repayment of interests or principal obligations or both in respect of the debt securities including, any proposal for re-scheduling or postponement of the repayment programmes of the dues/debts of the listed entity with any investor(s)/lender(s).

(12) any major change in composition of its board of directors, which may amount to change in control as defined in SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;

(13) any revision in the rating;

(14) the following approvals by board of directors in their meeting:-

(a) the decision to pass any interest payment;

(b) short particulars of any increase of capital whether by issue of bonus securities through capitalization, or by way of right securities to be offered to the debenture holders, or in any other way;

(15) all the information, report, notices, call letters, circulars, proceedings, etc concerning NCRPS or NCDs;

(16) any other change that shall affect the rights and obligations of the holders of NCDS / NCRPs, any other information not in the public domain necessary to enable the holders of the listed securities to clarify its position and to avoid the creation of a false market in such listed securities or any other information having bearing on the operation/performance of the listed entity as well as price sensitive information.

➢ **Regulation 52: Financial Results**

✓ To prepare and submit un-audited or audited financial results on a half yearly basis in the format as specified by SEBI within forty five days from the end of the half year to the recognised stock exchange(s).

✓ The listed entity shall comply with following requirements with respect to preparation, approval, authentication and publication of annual and half-yearly financial results:

- Un-audited financial results shall be accompanied by limited review report prepared by the statutory auditors of the listed entity or in case of public sector undertakings, by any practising Chartered Accountant;
- if the listed entity intimates in advance to the stock exchange(s) that it shall submit annual audited results within sixty days from the end of the financial year, un-audited financial results for the last half year accompanied by limited review report by the auditors need not be submitted.
- Half-yearly results shall be taken on record by the board of directors and signed by the managing director / executive director.
- If the listed entity opts to submit un-audited financial results for the last half year accompanied by limited review report by the auditors, it shall also submit audited financial results for the entire financial year, as soon as they are approved by the board of directors.
- Modified opinion(s) in audit reports that have a bearing on the interest payment/ dividend

payment pertaining to non-convertible redeemable debentures/ redemption or principal repayment capacity of the listed entity shall be appropriately and adequately addressed by the board of directors while publishing the accounts for the said period.

- ✓ The annual audited financial results shall be submitted along with the annual audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion);
  - In case of audit reports with unmodified opinion, the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.
  - The Statement on Impact of Audit Qualifications (for audit report with modified opinion and the accompanying annual audit report submitted, shall be reviewed by the stock exchange(s).
- ✓ The listed entity, while submitting half yearly / annual financial results, shall disclose the following line items along with the financial results:
  - credit rating and change in credit rating (if any);
  - asset cover available, in case of NCDs;
  - debt-equity ratio;
  - previous due date for the payment of interest/ dividend NCRPs/ repayment of principal of NCRPS /NCDs and whether the same has been paid or not; and,
  - next due date for the payment of interest/ dividend of non-convertible preference shares / principal along with the amount of interest/ dividend of non-convertible preference shares payable and the redemption amount;
  - debt service coverage ratio;
  - interest service coverage ratio;
  - outstanding redeemable preference shares (quantity and value);
  - capital redemption reserve/debenture redemption reserve;
  - net worth;
  - net profit after tax;
  - earnings per share:
- ✓ The requirement of disclosures of debt service coverage ratio, asset cover and interest service coverage ratio shall not be applicable for banks or non-banking financial companies registered with the RBI.
- ✓ The requirement of this regulation shall not be applicable in case of unsecured debt instruments issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.
- ✓ While submitting the information as mentioned above, the listed entity shall submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents.
- ✓ The listed entity which has listed its non-convertible redeemable preference shares shall make the following additional disclosures as notes to financials:
  - (a) profit for the half year and cumulative profit for the year;
  - (b) free reserve as on the end of half year;
  - (c) securities premium account balance (if redemption of redeemable preference share is to

be done at a premium, such premium may be appropriated from securities premium account);

(d) disclosure on securities premium account balance may be provided only in the year in which NCRPS are due for redemption;

(e) track record of dividend payment on NCRPS;

(f) Provided that in case the dividend has been deferred at any time, then the actual date of payment shall be disclosed;

(g) breach of any covenants under the terms of the NCRPs.

- ✓ In case a listed entity is planning a fresh issuance of shares whose end use is servicing of the NCRPS (whether dividend or principle redemption), then the same shall be disclosed whenever the listed entity decided on such issuances.
- ✓ The listed entity shall submit to the stock exchange on a half yearly basis along with the half yearly financial results, a statement indicating material deviations, if any, in the use of proceeds of issue of NCDs and NCRPS from the objects stated in the offer document.
- ✓ The listed entity shall, within two calendar days of the conclusion of the meeting of the board of directors, publish the financial results and statement in at least one English national daily newspaper circulating in the whole or substantially the whole of India.

➢ **Regulation 53: Annual Report**

- ✓ To contain disclosures as specified in Companies Act, 2013 along with the following:

(a) Audited Financial Statements;

(b) Cash Flow statement presented only under the indirect method as prescribed in Accounting Standard-3/ Indian Accounting Standard 7, mandated under Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or by the Institute of Chartered Accountants of India, whichever is applicable;

(c) Auditors and Directors Report;

(d) The name of the debenture trustees with full contact details;

(e) Related Party Disclosures.

➢ **Regulation 54: Asset Cover**

❖ **For NCDs**

- ✓ To maintain hundred 100% asset cover sufficient to discharge the principal amount at all times for the NCDs issued.
- ✓ To disclose to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed NCDS.

❖ **Non-applicability**

- ✓ The requirement specified above shall not be applicable in case of unsecured debt securities issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.

- **Regulation 55: Credit Rating**
  - ✓ Each rating obtained by the listed entity with respect to NCDs shall be reviewed at least once a year by a credit rating agency registered by SEBI.
- **Regulation 56: Documents and Intimation to Debenture Trustees**
  - ✓ To forward the following to the debenture trustee promptly:
  - ✓ A copy of the annual report at the same time as it is issued along with a copy of certificate from the listed entity's auditors in respect of utilisation of funds during the implementation period of the project for which the funds have been raised;
  - ✓ In the case of debentures or preference shares issued for financing working capital or general corporate purposes or for capital raising purposes the copy of the auditor's certificate may be submitted at the end of each financial year till the funds have been fully utilised or the purpose for which these funds were intended has been achieved.
  - ✓ A copy of all notices, resolutions and circulars relating to-
    - i. new issue of NCDs at the same time as they are sent to shareholders/ holders of NCDs;
    - ii. the meetings of holders of NCDs at the same time as they are sent to the holders of NCDs or advertised in the media including those relating to proceedings of the meetings;
  - ✓ Intimations regarding :
    - i. any revision in the rating;
    - ii. any default in timely payment of interest or redemption or both in respect of the NCDs;
    - iii. failure to create charge on the assets;
  - ✓ A half-yearly certificate regarding maintenance of 100% asset cover in respect of listed NCDs, by either a **practicing company secretary** or a practicing chartered accountant, along with the half yearly financial results;
  - ✓ Submission of such half yearly certificates is not applicable in cases where a listed entity is a bank or non-banking financial companies registered with Reserve Bank of India or where bonds are secured by a Government guarantee.
  - ✓ The listed entity shall forward to the debenture trustee any such information sought and provide access to relevant books of accounts as required by the debenture trustee.
  - ✓ The listed entity may, subject to the consent of the debenture trustee, send the information, in electronic form/fax.
- **Regulation 57 :Other Submissions to stock exchange**
  - ✓ To submit a certificate within two days of the interest or principal or both becoming due that it has made timely payment of interests or principal obligations or both in respect of the NCDs.
  - ✓ To provide an undertaking on annual basis stating that all documents and intimations required to be submitted to Debenture Trustees in terms of Trust Deed and SEBI (Issue and Listing of Debt Securities) Regulations, 2008 have been complied with.
  - ✓ Any other information in the manner and format as specified by SEBI from time to time

- **Regulation 58: Documents and information to holders of non - convertible debt securities and non-convertible preference shares**
  - ✓ To send the following documents:

    (a) Soft copies of full annual reports to all the holders of NCRPS who have registered their email address(es) for the purpose;

    (b) Hard copy of statement containing the salient features of all the documents, as specified in Section 136 of Companies Act, 2013 and rules made thereunder to those holders of NCRPs who have not so registered;

    (c) Hard copies of full annual reports to those holders of NCDs and NCRPS, who request for the same.

    (d) Half yearly communication, to holders of NCDs and NCRPS. ;
  - ✓ To send the notice of all meetings of holders of NCDS and NCRPs specifically stating that the provisions for appointment of proxy as mentioned in Section 105 of the Companies Act, 2013, shall be applicable for such meeting.
  - ✓ To send proxy forms to holders of NCDs and NCRPs which shall be worded in such a manner that holders of these securities may vote either for or against each resolution.
- **Regulation 59: Structure of NCDs and NCRPs**
  - ✓ Not to make material modification without prior approval of the stock exchange(s) where the NCDS or NCRPs, as applicable, are listed, to:
    - (a) the structure of the debenture in terms of coupon, conversion, redemption, or otherwise.
    - (b) the structure of the non-convertible redeemable preference shares in terms of dividend of non-convertible preference shares payable, conversion, redemption, or otherwise.
  - ✓ The approval of the stock exchange shall be made only after:
    - (a) approval of the board of directors and the debenture trustee in case of NCDs; and
    - (b) after complying with the provisions of Companies Act, 2013 including approval of the consent of requisite majority of holders of that class of securities.
- **Regulation 60: Record Date**
  - ✓ To fix a record date for purposes of payment of interest, dividend and payment of redemption or repayment amount or for such other purposes as specified by the stock exchange.
  - ✓ To give notice in advance of at least seven working days (excluding the date of intimation and the record date) to the recognised stock exchange(s) of the record date or of as many days as the stock exchange(s) may agree to or require specifying the purpose of the record date.
- **Regulation 61: Terms of NCDs and NCRPs**
  - ✓ To ensure timely payment of interest or dividend of non-convertible redeemable preference shares or redemption payment.
  - ✓ Not to declare or distribute any dividend wherein it has defaulted in payment of interest on debt securities or redemption thereof or in creation of security as per the terms of the issue of debt securities.
  - ✓ This requirement shall not be applicable in case of unsecured debt securities issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.

- ✓ Not to forfeit unclaimed interest/dividend and such unclaimed interest/dividend shall be transferred to the 'Investor Education and Protection Fund' set up as per Section 125 of the Companies Act, 2013.
- ✓ Unless the terms of issue provide otherwise, the listed entity shall not select any of its listed securities for redemption otherwise than pro rata basis or by lot.
- ✓ To comply with requirements as specified in regulation 40 for transfer of securities including procedural requirements specified in Schedule VII.

➢ **Regulation 62: Website**

- ✓ To maintain a functional website containing the following information about the listed entity:-
  - (a) details of its business;
  - (b) financial information including complete copy of the annual report including balance sheet, profit and loss account, directors report etc;
  - (c) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;
  - (d) email address for grievance redressal and other relevant details;
  - (e) name of the debenture trustees with full contact details;
  - (f) the information, report, notices, call letters, circulars, proceedings, etc concerning NCRPs or NCDs;
  - (g) all information and reports including compliance reports filed by the listed entity;
  - (h) information with respect to the following events:
    - i. default by issuer to pay interest on or redemption amount;
    - ii. failure to create a charge on the assets;
    - iii. revision of rating assigned to the NCDs.
- ✓ To issue a press release with respect to the events specified above.
- ✓ To ensure that the contents of the website are correct and updated at any given point of time.

RECOGNITION TO COMPANY SECRETARY UNDER THE SEBI LISTING REGULATIONS 2015

SEBI has recognized the significant role played by a Company Secretary as a Governance Professional under the SEBI Listing Regulations and recognized the role to be played by a Company Secretary under various provisions of the SEBI Listing Regulations, 2015, which are discussed below:

1. Regulation 6 provides that a listed entity shall appoint a qualified company secretary as the compliance officer.
2. Regulation 7 (3) requires that the listed entity shall submit a compliance certificate to the exchange, duly signed by both the compliance officer of the listed entity and the authorised representative of the share transfer agent, wherever applicable, within one month of end of each half of the financial year, certifying that all activities in relation to both physical and electronic share transfer facility are maintained either in house or by Registrar to an issue and share transfer agent registered with SEBI.
3. Regulation 16 (1) (d) provides that "Senior Management" shall mean Officers/Personnel of the listed entity who are members of its core management team excluding Board of directors and normally this shall comprise all members of management one level below Chief Executive Officer/ Managing Director/

Whole Time Director/ Manager (including Chief Executive Officer/Manager, in case they are not part of the board) and shall specifically include Company Secretary and Chief Financial Officer.

4. Regulation 24A mandates that every listed entity and its material unlisted subsidiaries incorporated in India shall undertake Secretarial Audit and shall annex with its Annual Report, a Secretarial Audit Report, given by a Company Secretary in Practice, in such form as may be specified with effect from the year ended March 31, 2019.
5. Regulation 40 (9) requires that the share transfer agent and/ or the in-house share transfer facility, as the case may be, produces a certificate from a practising Company Secretary within one month of the end of each half of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies.
6. Regulation 56 (1) (d) provides that a half-yearly certificate regarding maintenance of hundred percent asset cover in respect of listed non-convertible debt securities, by either a practising Company Secretary or a practicing Chartered Accountant, along with the half yearly financial results.
7. Schedule V, Clause E requires compliance certificate from either the auditors or practising Company Secretaries regarding compliance of conditions of corporate governance to be annexed with the directors' report.
8. As per Schedule V, Part C , Clause 10 (i), a certificate from a Company Secretary in practice that none of the directors on the board of the company have been debarred or disqualified from being appointed or continuing as Directors of Companies by SEBI/ Ministry of Corporate Affairs or any such Statutory Authority.

LESSON ROUND UP

- SEBI vide its Notification dated September 02, 2015 has notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) and these regulations became effective from December 01, 2015.
- Before the Listing Regulations were notified, there were multiple listing agreements and the responsibility for the enforcement of the various clauses of the Listing Agreement was that of the Stock exchanges on which the securities were listed.
- These regulations shall apply to the listed entity who has listed any of the designated securities on recognised stock exchange(s).
- According to SEBI Listing Regulations, 2015, "listed entity" means an entity which has listed, on a recognized stock exchange(s), the designated securities issued by it or designated securities issued under schemes managed by it, in accordance with the listing agreement entered into between the entity and the recognised stock exchange(s).
- The listed entity shall comply with the provisions of Corporate Governance as specified in Chapter IV of the Listing Regulations.
- The Listing regulations has specified the generic obligations or common obligations of listed entity with respect to filing of information, responsibilities of compliance officer, fees etc. and these requirements are applicable to all types of listed securities.
- In case of funds raised through preferential allotment or qualified institutions placement, the listed

entity shall disclose every year, the utilization of such funds during that year in its Annual Report until such funds are fully utilized.

- The listed entity shall comply the following compliances under SEBI Listing Regulations 2015 for listing of Equity shares on a recognised stock exchanges:-
  - Quarterly Compliances
  - Half yearly Compliances
  - Yearly Compliances
  - Event Based Compliances
- All the provisions as prescribed under chapter I, II, III & IV of SEBI Listing Regulations 2015 will be applicable to an entity listed on SME Exchange.
- Chapter V of SEBI Listing Regulations, 2015 shall apply only to a listed entity which has listed its 'Non-Convertible Debt Securities' ('NCDs') or 'Non-Convertible Redeemable Preference Shares' ('NCRPs') on a recognised stock exchange. The provisions of this chapter shall also be applicable to "perpetual debt instrument" and "perpetual non-cumulative preference share" listed by banks.
- SEBI has recognized the significant role played by a Company Secretary as a Governance Professional under the SEBI Listing Regulations and recognized the role to be played by a Company Secretary under various provisions of the SEBI Listing Regulations, 2015.

GLOSSARY

Financial year	It means the period of twelve months commencing on the first day of April every year. However, a company may at its option have a financial year commencing on a date other than the first day of April.
Firm Allotment	Allotment on a firm basis in public issues by an issuing company made to Indian and multilateral development financial institutions, Indian mutual funds, foreign portfolio investors including non-resident Indians and overseas corporate bodies and permanent/ regular employees of the issuer company.
Interim Dividend	A dividend payment made during the course of a company's financial year. Interim dividend, unlike the final dividend does not have to be agreed in a general meeting.
Investing Company/ Venture of a Company	It means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.
Record Date	A date on which the records of a company are closed for the purpose of determining the stock-holders to whom dividends, proxies rights etc., are to be sent.

SELF TEST QUESTIONS

(*These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. Explain the various quarterly compliances required to be complied with, by a listed entity which has listed it equity shares on a recognised stock exchanges under the SEBI Listing Regulations 2015.
2. What is the duty of Compliance officer under Regulation 6 of the SEBI Listing Regulations 2015?
3. Explain the various half yearly compliances required to be complied with, by a listed entity whose

shares are listed on the Small and Medium Enterprise (SME) Stock Exchange under the SEBI Listing Regulations 2015.

4. Enumerate the provisions relating to various intimation required to be made by an entity which has listed it NCDs on a recognised stock Exchange under the SEBI Listing Regulations 2015.
5. Briefly describe the various recognitions accorded to a Company Secretary under the SEBI Listing Regulations 2015.
6. Briefly describe the provision with respect to the following in SEBI Listing Regulation 2015:
    - Notice of board meeting as per regulation 29
    - Record date notice
    - Time lines for submission of financial results and limited review report/ audit report
    - Process for reclassification of promoters to the status of public
    - Submission of shareholding pattern
    - Disclosure of information on website.

Lesson 14
International Listing

LESSON OUTLINE

- Introduction
- Singapore Exchange Limited
- London Stock Exchange
- Listing of depository receipts on the PSM
- US Securities and Exchange Commission
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Increased globalization and investor appetite for diversification, offer a unique opportunity to companies looking to tap a new investor base to raise capital. International listing enables companies to trade its shares in numerous time zones and multiple currencies. This increases the issuing company's liquidity and gives it more ability to raise capital.

In this lesson, listing on various multinational Stock Exchanges like London Stock Exchange, Luxemburg Stock Exchange, NASDAQ, Singapore Stock Exchange and US Securities Exchange Commission has been discussed.

INTRODUCTION

A company may choose to list its shares in a stock exchange of a country other than that in which the company is based. Firms may adopt International listing to obtain advantages that include lower cost of capital, expanded global shareholder base, greater liquidity in the trading of shares, prestige and publicity. Decision makers also need to be satisfied that the benefits exceed possible costs, such as listing costs, exposure to legal liabilities, taxes and various trading frictions, and reconciliation of financial statements with varying national standards. Because of the benefits of being cross-border listed, more and more companies are getting themselves listed on stock exchange markets based outside of their home countries. Here are more benefits of such a move.

1. Increased Market Liquidity

International listing enables companies to trade its shares in numerous time zones and multiple currencies. This increases the issuing company's liquidity and gives it more ability to raise capital.

2. Market Segmentation

Market segmentation is the practice of dividing a large market into clear segments with similar needs. International listing enables firms to divide foreign investor markets into segments which are easy to access. Companies seek to list internationally because they anticipate gaining from a lesser cost of capital. This arises because their stocks become more available to foreign investors. Their access to these stocks may otherwise be restricted due to international investment barrier.

3. Capital needs and growth opportunities

Companies in emerging markets need to use international listing to raise capital to continue to grow beyond their home market.

4. Wider shareholder base

International listing provides access to a larger pool of potential investors (both retail and institutional). Wider shareholder base are less risky.

5. Better Investor Protection

Companies need to comply with the provisions of all the regulatory aspects of the listing of those countries, where sought to be listed. Investors will therefore find themselves more protected and comfortable to invest in these companies.

6. Secure Clearing

A stock exchange provides a reliable and secure clearing mechanism. Listing on a foreign stock exchange is possible only after creating robust and advance clearing system.

5. Other benefits

Higher visibility/brand awareness, increased opportunities for mergers and acquisitions, entering markets with better investment protection reduces costs and creates bonding (a signal of corporate governance).

SINGAPORE EXCHANGE LIMITED (SGX)

SGX is Asia's key risk management centre with a wide a range of innovative products and fast-to-market services. Singapore is one of the few Asian countries with an "AAA" rating. As a listing destination for global companies, SGX listing rules provide flexibility for companies with diverse backgrounds to source for public financing in Singapore. While SGX continues to attract more global companies, its listing standards and the quality of listed companies are never compromised.

About Main Board

Singapore operates a predominantly disclosure-based regime for capital markets. SGX's Listing Rules augment the disclosure-based regime with high baseline admission standards and continuing requirements for issuers. A cornerstone of the regime is to require listed issuers to make timely disclosure of all material information to the marketplace. Our requirements are benchmarked against international standards and are in line with best practices from developed jurisdictions.

SGX's regulatory team reviews listing applications to ensure that issuers meet the minimum requirements prescribed. In reviewing listing applications, SGX's regulatory team relies on due diligence carried out by issue managers and their representations to determine the applicants' suitability to list.

About Catalist

Unlike issuers listed on SGX's Main Board, Catalist companies are directly supervised by their sponsors. Sponsors are qualified professional companies experienced in corporate finance and compliance advisory work. They are authorised and regulated by SGX through strict admission criteria and continuing obligations. However, SGX continues to regulate issuers through its rules for admission and continuing obligation. It also retains the power to discipline them when there is a rule breach.

There are Two Listing processes at SGX:

- **Mainboard Listing Process**: caters to the needs of established enterprises. Mainboard-listed companies enjoy the prestige of an established market place and access to the widest range of institutional and retail investors.
- **Catalist Listing Process:** caters to the needs of fast-growing enterprises. Companies seeking a primary listing on the Catalist must be brought to list by authorised Sponsors via an initial public offering (IPO) and reverse take-over.

There are various conditions in respect of Markey Capitalisation, Pre- tax profit, Offer size, Public float etc. which need to be fulfilled by the company desirous to listed at SGX.

How to get Listed on SGX Mainboard

1.	Meet With Accredited Issue Managers*	Meet with accredited Issue Managers to share your company's plans and learn how to get listed. Only an accredited Issue Manager can make submissions for Mainboard listings
2.	Appoint An Accredited Issue Manager	The Issue Manager will manage the listing application for your company, including recommendations on the appointment of other professionals required.
3.	Assessment Period	You will work closely with your mandated Issue Manager to decide on a suitable structure and method of offering of your company's securities. The Issue Manager will guide you in preparing the listing application for your company.

4.	Stage 1: Submission Of Section (A) Of The Listing Admissions Pack	Preparation for the listing application begins. As you will be collaborating with the Issue Manager, you may want to familiarise yourself with the Mainboard Rules available online. The Issue Manager will proceed to submit Section (A) of the Listing Admissions Pack, which includes information of your company and sets out the key issues for SGX's assessment on whether these issues have been adequately resolved. SGX will inform the Issue Manager whether the key issues have been adequately resolved. Please note that applications may be referred to the Listings Advisory Committee (LAC) if SGX is of the view that there are issues which meet the LAC referral criteria. Upon completion of SGX's review of the matters in Section (A) of the Listing Admissions Pack including a review of advice rendered by the LAC, if applicable, SGX will inform the Issue Manager whether it can proceed to Stage 2 of the application.
5.	Stage 2: Submission of Section (B) Of The Listing Admissions Pack	After SGX has informed the Issue Manager that it may proceed with Stage 2 of the application, the Issue Manager can submit Section (B) of the Listing Admissions Pack, together with the full listing application (including the relevant undertakings and confirmations required under the Mainboard Listing Manual and the prospectus/shareholders' circular). SGX is committed to provide an iterative response within four weeks from the commencement of Stage 2. This is subject to the receipt of a complete application and the Issue Manager replying to SGX's comments within a specified period. However, the four-week timeline may not apply if there are new key issues identified which (i) have not been adequately resolved or (ii) adequately resolved but meet the LAC referral criteria.
6.	Approval	Once your submission is approved, SGX will issue an ETL (Eligibility to List) letter, which is valid for three months.
7.	Lodgement Of Documents & Public Exposure	Your company can now lodge the preliminary prospectus on MAS' website (Monetary Authority of Singapore), the Offers and Prospectuses Electronic Repository and Access (OPERA), for public feedback for at least a week. After lodgement of the preliminary prospectus, there are other processes which are undertaken solely by your company and your Issue Managers/other professionals which do not involve SGX such as book building where you may find cornerstone and institutional investors. Your company may work with a public relations agency to prepare your investor relations campaign. Your company may also decide to discuss with your Issue Manager on a suitable underwriting agreement.

8.	Registration Of Documents & Launch Of Offer (IPO)	Your company can now register the final prospectus on OPERA, pending public feedback or changes and approval from MAS. The offer period commences thereafter and applications to subscribe for the company's securities starts.
9.	Confirmation of Allotment & Trading Commences	Once the offer period closes, allocation of the subscriptions will commence and your company's securities will be allotted and credited to successful investors. A welcome ceremony will be held at SGX to commemorate the listing of your company's securities, culminating in a countdown to the first trades of your company's securities.

How to get listed on SGX Catalist

1.	Meet with Authorised Full Sponsors**	Meet with authorised Full Sponsors to share your company's plans and learn how to get listed. Only an authorised Full Sponsor can make notifications for Catalist listings
2.	Appoint an Authorised Full Sponsor	The Full Sponsor will manage the listing application for your company, including recommendations on the appointment of other professionals required.
3.	Assessment period	The Full Sponsor will guide in preparing the listing application for the company.
4.	Pre-Clearance Consultation	Preparation for the listing application begins. Companies and Full Sponsors are encouraged to make use of our pre-clearance consultation for guidance on the listing process, regulatory framework and corporate governance best practices. During the pre-clearance consultation, the Full Sponsor can present major issues and possible solutions to SGX.
5.	Submission of the pre-admission notification	After Once received clearance from SGX for the pre-clearance consultation, an issuer can submit the preadmission notification to apply for a listing.
6.	Lodgement of documents & public exposure	A company can lodge the preliminary offer document on the Catalist website, Catalodge, for public exposure for at least 14 calendar days. After lodgement of the preliminary offer document, there are other processes which are undertaken solely by the company and the Full Sponsor/ other professionals which do not involve SGX such as book building where you may find cornerstone and institutional investors.
7.	Registration of documents & launch of offer (IPO)	The company can register the final offer document on Catalodge, after receiving public feedback and SGX will issue a registration notice. The offer period commences thereafter and applications to subscribe for the company's securities starts.

8.	Confirmation of allotment & trading commences	Once the offer period closes, allocation of the subscriptions will commence and your company's securities will be allotted and credited to successful investors. A welcome ceremony will be held at SGX to commemorate the listing of your company's securities, culminating in a countdown to the first trades of the company's securities.

**Full Sponsors will be involved in bringing a new company to list on Catalist as well as advising the company on its continuing listing obligations and overseeing its compliance with these obligations.

National Association of Securities Dealers Automated Quotations (NASDAQ)

NASDAQ began primarily as a U.S.-based equities exchange. Today, Nasdaq is recognized around the globe as a diversified worldwide financial technology, trading and information services provider to the capital markets, with more than 3,500 colleagues serving businesses and investors from over 50 offices in 26 countries across six continents – and in every capital market.

There are three distinct markets within NASDAQ: the NASDAQ Global Market (NGM), the newly created NASDAQ Global Select Market (NGSM) and the NASDAQ Capital Market (NCM). The NGSM mandates the highest initial listing requirements of any market in the world, while its maintenance requirements are identical to those of the NGM. The NGM, in turn, has more stringent quantitative listing and maintenance requirements than does the NCM. The quantitative listing and maintenance criteria applicable to non-Canadian foreign private issuers for the NGM, NGSM and NCM are identical to those of US domestic and Canadian issuers. Foreign Private Issuers (FPI) (including Canadian issuers) may, however, elect to follow home country practice in lieu of compliance with the NASDAQ corporate governance requirements.

1. **GLOBAL SELECT MARKET (NGSM)**

   The NASDAQ Global Select Market has the highest initial listing standards of any exchange in the world. It is a mark of achievement and stature for qualified companies.

2. **GLOBAL MARKET(NGM)**

   The NASDAQ Global Market lists companies with an overall global leadership and international reach with their products or services.

3. **CAPITAL MARKET (NCM)**

NASDAQ Capital Markets are focused on its core purpose for those companies listed -- capital raising.

LONDON STOCK EXCHANGE

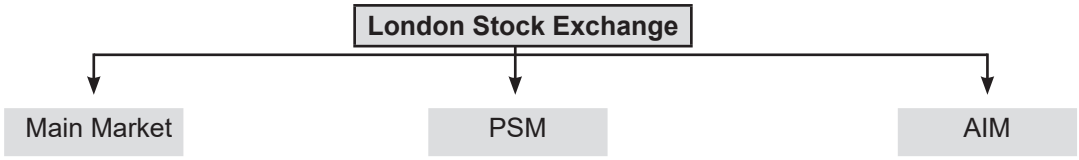
The London Stock Exchange is one of the world's most international capital markets, home to approximately 2,200 companies from more than 70 countries around the world. More than 500 of these companies are international. The markets of the London Stock Exchange put UK and international companies in touch with one of the world's deepest pools of global capital.

London's position at the heart of the global financial community is one of the reasons that so many international companies choose to join our markets. Many of the world's leading investment houses and financial institutions are based here, while London's professional investors are known for their outward-looking approach, offering companies from around the world access to a deep and wide pool of investment capital.

London has become synonymous with 'intelligent regulation' and is recognised globally for its flexible, principles-based approach to regulating its capital markets.

The Exchange provides an active and efficient secondary market for trading in a wide range of securities, via a

number of different trading services. The appropriate platform for the securities will be determined by a number of factors including whether the issuer is UK based or international issuer.



Main Market

The Main Market is the flagship market for larger, more established companies, and is home to some of the world's largest and best known companies. Underpinned by London's balanced and globally-respected standards of regulation and corporate governance, the Main Market represents a badge of quality for every company admitted and traded on it and an aspiration for many companies worldwide. It is an EU Regulated Market.

The Main Market has four segments that cater for a range of businesses and securities.

- **Premium:** Part of the FCA's (Financial Conduct Authority (FCA) is a financial regulatory body in the United Kingdom) Official List, this segment is home to some of the world's largest corporations that are subject to the highest standards of regulation and governance.
- **Standard**: Subject to EU minimum standards and part of the Official List, open to shares and debt securities.
- **Specialist Fund Segment:** Designed for highly specialised investment entities that wish to target institutional, highly knowledgeable investors or professionally advised investors only.
- **High Growth Segment**: A new addition to the Main Market offering, this segment is specifically designed for equity securities of high growth, revenue generating businesses that are over time seeking to become Premium listed companies.

Alternative Investment Market (AIM)

AIM is the London Stock Exchange's international market for smaller growing companies. A wide range of businesses including early stage, venture capital backed as well as more established companies join AIM seeking access to growth capital.

NOMAD

The Nominated Adviser (Nomad), broker and other advisers play a central role in a company's admission to AIM. It is important that a company is confident that it can establish a good working relationship with the appointed Nomad as they will be working closely together at admission and on an ongoing basis. In choosing its advisers, a company will want to ensure that they:

- understand its business
- have appropriate experience in the sector
- share the company's vision for the future.

Role of Nominated Advisers

Nomads are corporate finance advisers approved by the London Stock Exchange to act in this capacity. To obtain approval as Nomad, a firm must meet the eligibility criteria set out in the AIM Rules for Nominated Advisers.

A Nomad is responsible for advising and guiding a company on its responsibilities in relation to its admission to AIM as well as its continuing obligations once on market. To help fulfil this role, the Nomad will:

- undertake extensive due diligence to ensure a company is suitable for AIM
- provide guidance throughout the flotation process
- prepare the company for being on a public market
- help prepare the AIM admission document
- confirm appropriateness of the company to the Exchange
- act as the primary regulator throughout a company's time on AIM.

Professional Securities Market (PSM)

The Professional Securities Market is an innovative, specialised market designed to suit the specific needs of issuers. It facilitates the raising of capital through the issue of specialist debt securities or depositary receipts (DRs) to professional investors.

Companies wishing to raise capital may do so without the additional cost of following a retail or equity regime. As a listed, exchange-regulated market, the Professional Securities Market enables issuers to enjoy the benefits of a flexible and pragmatic approach to regulatory requirements.

Issuers of debt or DRs are not required to report historical financial information to IFRS or an equivalent standard, either in listing documents or as a continuing obligation. Instead, issuers can use their domestic accounting standards.

LISTING OF DEPOSITORY RECEIPTS ON THE PSM

DRs are typically held in US dollars and issued by a depository bank. Several forms of DRs can be listed and traded in London, including Global Depositary Receipts (GDRs) and American Depository Receipts (ADRs).

Admitting DRs to the PSM involves a two-step, simultaneous process. A company submits its 'Listing Particulars' to the UKLA, while also applying to the Exchange for admission of its DRs to trading on the PSM.

Trading platform: All DRs admitted to the PSM are traded on the International Order Book (IOB), the world's leading electronic order book for DRs.

Luxembourg Stock Exchange

The Luxembourg Stock Exchange is well known for its independent and international listing expertise. Instruments that are currently listed are shares, warrants, bonds of many types, depositary receipts and investment funds.

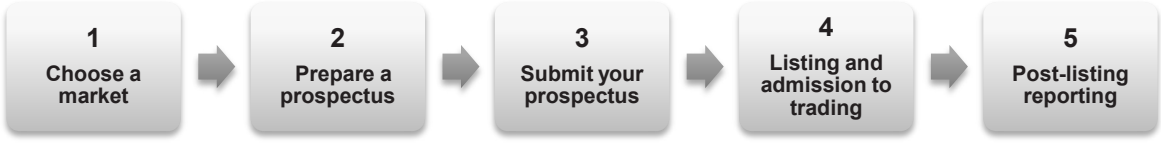
Listing in Luxembourg is both relatively straightforward and flexible. There are three main phases in the process:

– The pre-application and file submission phase.

– The application phase.

– The approval phase.

Listing with the Luxembourg Stock Exchange is a 5-step process:



The Luxembourg Stock Exchange offers a choice of two markets, the main EU-regulated market (called "the BdL market" or the Bourse de Luxembourg market") and an exchange-regulated market (called "the Euro MTF")

When listing on the Euro MTF (Multilateral Trading Facility) market, the Luxembourg Stock Exchange is in charge of prospectus approval and the prospectus is drawn up according to our own rules and regulations. When listing on the BdL market, Luxembourg's financial regulator, the Commission de Surveillance du Secteur Financier (CSSF), reviews and approves a prospectus.

By being outside the scope of EU regulations, issuers on the Euro MTF market benefit from less stringent requirements for financial reporting.

However, only issuers that list on the BdL market have access to EU passporting, meaning that the same prospectus approval can be used to list on other EU exchanges.

BdL market **EU-regulated market**	**Euro MTF market** **Exchange-regulated market**
• The CSSF, Luxembourg's supervisory authority, is in charge of prospectus approval. • Eligible for a European passport. • Entry for issuers is subject to the Prospectus and Transparency Obligation Directives. • Issuers subject to International Financial Reporting Standards (IFRS), or an equivalent, for non-EU issuers.	• The Luxembourg Stock Exchange is in charge of prospectus approval. • No European passport provided. • Outside the scope of the Prospectus and Transparency Obligation Directives . • Financial reporting is in line with IFRS. • However, other accounting standards, such as Generally Accepted Accounting Principles (GAAP), are accepted.

Listing a share/GDR on BdL market

Listing on the Bourse de Luxembourg (BdL) market will require submission of a prospectus to Luxembourg's financial regulator, the Commission de Surveillance du Secteur Financier (CSSF). Once the prospectus has been reviewed and approved, the share or GDR will be listed and admitted to trading.

- **Choose a listing agent (optional):** It is not mandatory to appoint a listing agent. Either the issuer itself or a company acting on its behalf can submit requests for approval.
- **CSSF approval:** Before listing a share or GDR on the BdL market, one must first file a prospectus with the CSSF. Note that some issuers may not fall under the scope of the Prospectus Law and should instead send their prospectus directly to LuxSE.
- **Listing Requirements:**

  In order to list on the BdL market, an issuer must fulfil the following criteria, among others :

  - Minimum capital of €1,000,000, or equivalent value in other currencies
  - Minimum public free float of 25%
  - Securities should be eligible for clearing and settlement
  - Securities should be freely negotiable and fungible.
- **Listing process:**
  - File a prospectus: An issuer must also file an application with LuxSE before being admitted to trading on the BdL market with the following documents:

1. A copy of your prospectus
2. Application form
3. Undertaking letter
4. Articles of association
5. Existing agreements/conventions
6. The last three annual financial reports (if published)

– Final submission: Listing can take place after receipt of the following items:

1. Final version of the prospectus
2. First listing price (current market price)

- **Fees:** Fees related to the approval of a prospectus are to be paid to the CSSF. Listing and maintenance fees are to be paid to LuxSE and are priced in euros. Fees will vary depending on whether or not the company is a "recently established company", i.e. a company that has not published or registered annual accounts for the three previous financial years.
- **Continuing Obligations:** After listing and admission to trading, issuers are required to fulfil certain reporting obligations, as outlined under the Law of January 2008 (as amended), which implements the requirements of the EU Transparency Directive.

  Issuers must also file information and scheduled corporate events with LuxSE (*Part 1, Chapter 9 of the Rules & Regulations*).
- **LEI Code:** In the context of MiFID II / MiFIR and MAR, the LuxSE is obliged to collect a 'Legal Entity Identifier' or 'LEI' code from any issuer operating on its regulated market (Bourse de Luxembourg) and on its Multilateral Trading Facility (Euro MTF) and communicate it to the relevant supervisory authorities.

Listing Shares /GDRs on the Euro MTF

Listing on the Euro MTF will require submission of a prospectus to LuxSE. Once your prospectus has been reviewed and approved, your share or GDR will be listed and admitted to trading.

- **Choose a listing agent (optional):** It is not mandatory to appoint a listing agent. Either the issuer itself or a company acting on its behalf can submit requests for approval.
- **Listing Requirements:** In order to list on the Euro MTF, a security must fulfil the following criteria, among other things:
  - Minimum capital of €1,000,000, or equivalent value in other currencies
  - Minimum public free float of 25%
  - Securities should be eligible for clearing and settlement
  - Securities should be freely negotiable and fungible
- **Listing Process:**
  - *File a prospectus:* To begin the listing process, the following documents to be sent to LuxSE:

    1. A copy of your prospectus;
    2. Application form

3. Undertaking letter
4. Articles of association
5. Existing agreements/conventions
6. The last three annual financial reports (if published)

– *Prospectus review:* A first set of comments on a complete draft prospectus will be sent to you within a maximum period of three business days from the date of receipt of the filed application.

Additional comments following submission of an updated draft prospectus will be provided within a maximum of two business days after submission.

– *Final submission*: Listing can take place after receipt of the following items:

1. Final version of the prospectus
2. First listing price

- **Fees:** All fees are to be paid to LuxSE and are priced in euros. The fee structure will vary depending on whether or not you are a "recently established company", i.e. a company that has not published or registered annual accounts for the three previous financial years.
- **Continuing Obligations:** After listing and admission to trading, issuers must fulfil specific reporting obligations. For example, issuers must file information and scheduled corporate events with LuxSE.
- **LEI Code:** In the context of MiFID II / MiFIR and MAR, the LuxSE is obliged to collect a 'Legal Entity Identifier' or 'LEI' code from any issuer operating on its regulated market (Bourse de Luxembourg) and on its Multilateral Trading Facility (Euro MTF) and communicate it to the relevant supervisory authorities.

US SECURITIES AND EXCHANGE COMMISSION

The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

As more and more first-time investors turn to the markets to help secure their futures, pay for homes, and send children to college, our investor protection mission is more compelling than ever.

The laws and rules that govern the securities industry in the United States derive from a simple and straightforward concept: all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it, and so long as they hold it. To achieve this, the SEC requires public companies to disclose meaningful financial and other information to the public.

The SEC oversees the key participants in the securities world, including securities exchanges, securities brokers and dealers, investment advisors, and mutual funds. Here the SEC is concerned primarily with promoting the disclosure of important market-related information, maintaining fair dealing, and protecting against fraud.

Though it is the primary overseer and regulator of the U.S. securities markets, the SEC works closely with many other institutions, including Congress, other federal departments and agencies, the self-regulatory organizations (e.g. the stock exchanges), state securities regulators, and various private sector organizations. In addition, the Chairman of the SEC represents the agency as a member of the Financial Stability Oversight Council (FSOC).

The laws that govern the Securities Industry in US:

- Securities Act of 1933
- Securities Exchange Act of 1934

- Trust Indenture Act of 1939
- Investment Company Act of 1940
- Investment Advisers Act of 1940
- Sarbanes-Oxley Act of 2002
- Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
- Jumpstart Our Business Startups Act of 2012
- Rules and Regulations

Securities Exchange Act of 1934

With this Act, Congress created the Securities and Exchange Commission. The Act empowers the SEC with broad authority over all aspects of the securities industry. This includes the power to register, regulate, and oversee brokerage firms, transfer agents, and clearing agencies as well as the nation's securities self-regulatory organizations (SROs). The various securities exchanges, such as the New York Stock Exchange, the NASDAQ Stock Market, and the Chicago Board of Options are SROs. The Financial Industry Regulatory Authority (FINRA) is also an SRO.

The Act also identifies and prohibits certain types of conduct in the markets and provides the Commission with disciplinary powers over regulated entities and persons associated with them.

The Act also empowers the SEC to require periodic reporting of information by companies with publicly traded securities.

LESSON ROUND UP

- A company may choose to list its shares in a stock exchange of a country other than that in which the company is based.
- SGX is Asia's key risk management centre with a wide a range of innovative products and fast-to-market services.
- There are Two Listing processes at SGX i) Mainboard Listing Process (ii) Catalist Listing Process.
- NASDAQ began primarily as a U.S.-based equities exchange. Today, Nasdaq is recognized around the globe as a diversified worldwide financial technology, trading and information services provider to the capital markets,
- There are three distinct markets within NASDAQ: the NASDAQ Global Market (NGM), the newly created NASDAQ Global Select Market (NGSM) and the NASDAQ Capital Market (NCM).
- The London Stock Exchange is one of the world's most international capital markets, home to approximately 2,200 companies from more than 70 countries around the world.
- The Main Market is the flagship market for larger, more established companies, and is home to some of the world's largest and best known companies.
- AIM is the London Stock Exchange's international market for smaller growing companies.
- The Nominated Adviser (Nomad), broker and other advisers play a central role in a company's admission to AIM.

- The Professional Securities Market is an innovative, specialised market designed to suit the specific needs of issuers. It facilitates the raising of capital through the issue of specialist debt securities or depositary receipts (DRs) to professional investors.
- The Luxembourg Stock Exchange is well known for its independent and international listing expertise. Instruments that are currently listed are shares, warrants, bonds of many types, depositary receipts and investment funds. The Luxembourg Stock Exchange offers a choice of two markets, the main EU-regulated market (called "the BdL market" or the Bourse de Luxembourg market") and an exchange-regulated market (called "the Euro MTF").
- The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

GLOSSARY

Accredited Issue Manager	An issue manager accredited by SGX, they can advise companies looking to list on the SGX Mainboard in terms of its suitability and ability to comply with the initial and continuing listing requirements.
European Union Law	Any and all European Union laws and regulations operating within Member States.
Home State	The country in which a Person has its registered office or its head office or, in the case of an individual, the country in which such individual has its principal place of business.
LEI	Legal entity identifier, as defined in ISO 17442
Passporting	Passporting refers to the regulation of financial services. If a certain firm is authorised to undertake certain activities by the regulator of one EU member state, it can apply for a 'passport', and it can do business throughout the EU without needing further authorisation.

SELF TEST QUESTIONS

(*These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation*.)

1. Explain the benefits of Listing on International Stock Exchanges.
2. Enumerate the criteria to get listed on SGX mainboard.
3. Enumerate the various segment of Main market of London Stock Exchange.
4. Differentiate between BdL market and Euro MTF market.
5. Briefly discuss about the role of US Securities and Exchange Commission.

Lesson 15
Preparing a Company for an IPO and Governance Requirements

LEARNING OBJECTIVES

Company Secretary being Key Managerial Person under the Companies Act 2013 is an important personnel as far as compliance of various legislation is concerned. Company Secretary assumes a significant importance when he/she is required to be a part of the Company which proposes to attain 'listed' status. Besides complying with provisions of the Companies Act, a Company Secretary of an IPO bound Company is required to be aware and well versed with atleast fundamental requirements as far as preparation for IPO as well as continuation of being listed is concerned.

Therefore, lesson gives a broad idea about preparation for an IPO and appraising post IPO governance requirements. This lesson basically divides between a concept of 'going public' and 'being public'.

The basic understanding of a Company which strives for making an IPO and attaining listed status is covered initially. A professional Company Secretary shall be aware of various reasons for making an IPO as well as steps involved in preparing a Company for an IPO which is covered in the initial part.

This lesson aims at educating a Company Secretary with various requirements such as due diligence, management structure, financial information & reporting process, management discussions & analysis, other regulatory compliances, material documents & other aspects such as setting up of teams, data room, publicity & advertising as well as road shows. The second part aims at making a Company Secretary aware of the requirements of continuous listing process which covers Board procedures, compliance requirements under Listing, Takeover and Insider Trading Regulations. It also aims at preparing the Company Secretary as regards requirements of various policies, contents of website of a listed Company, investor grievance redressal mechanism & other disclosures. Details study & compliance under various regulations are required to be done as per the practice and applicability of various legislations.

Note : This lesson has been given to students for information purpose only.

PREPARING A COMPANY FOR AN IPO & GOVERNANCE REQUIREMENTS

Going public is certainly a very important milestone in the life of a Company. Initial Public Offer (IPO) happens only "once in life cycle" during corporate journey of the Company. It is a complex process. It is time consuming and may be expensive sometime. Some of the advantages of going public and attaining listing include ;

- **Raising capital**

  Companies require funds to finance its needs for expansion/growth, acquisitions & present business operations. IPO is one of the most important ways to access the capital market & raising required equity resources. IPO route is also utilized by existing investors such as Private Equity, Venture/Angel Funds as well as promoters to exit from the company or dilute their stake by making an 'Offer for Sale' and benefits of listing are available to company and its stakeholders.

- **Currency for Mergers & Acquisitions**

  The established publicly traded Companies can use the equity shares as currency to acquire other business. Equity shares of listed Company can be utilized to swap & do a stock deal as a consideration.

- **Leveraging**

  Equity shares listed on Stock Exchanges command a price and liquidity which leads to enhanced market capitalization. Often promoters of the listed company can utilize their existing holding to raise further capital by pledging the equity shares or offering it as a security to the Bank and Financial Institutions to raise further money for growth.

- **Talent Acquisition & Management**

  Listed Companies can offer attractive Employee Stock Option (ESOP) or Employee Share Purchase Schemes (ESPS) to attract required talent pool and also to retain them. Being listed, the ESOP/ESPS may command good price gain and attraction to the employees. ESOP & ESPS are used to attract talent as well as to retain the key employees and managerial personnel which is an important human capital for business. In many Companies employee reservation in the IPO is considered as one of the incentive where employees will be able to acquire shares at a discount to the IPO price. SEBI Regulation, allows keeping specific reservation for employees. These initiatives encourage commitment and long term motivation amongst the talent pool.

- **Enhancing Brand Image**

  Listing a Company definitely enhances Company's image & its profile. Listed stocks get attention of large pool of investors and other stakeholders/market participants which is helpful in creating and enhancing brand awareness. In the sophisticated markets the information of listed Companies is freely available which helps Companies to get international exposure. Generally listed Companies are well received being able to not only raise capital but also complying with stringent listing norms as well as continuous listing requirements. The listing compliances makes these Companies more trustworthy vis-a-vis its unlisted peers and depicts confidence of the management towards the outside community/ world.

- **Higher Valuations**

  Companies that have their shares listed in the stock exchange have investors competing with one another to invest in them. As a result of this competition, the price of the shares is driven higher. Since the stock market makes it possible to put a price tag on public sentiments about a firm's business, many successful businesses watch their valuations rise high when they list on the exchange.

Going public & attaining coveted "listed" status is rewarding. Preparation process/stage is very intense as it is likely to effect many changes in the Company structure.

PREPARING A COMPANY FOR AN IPO

Considering its complexity it is important that every corporate which strives to take the path of attaining 'listed' status should be aware of requirements, regulatory or otherwise. Being 'once a life time' event, miscalculation of any nature can create a hurdle for Company's future growth. It is imperative that planning and proper preparation requires significant spadework to be able to be ready for an IPO. The Regulatory aspects such as eligibility of SEBI and Stock Exchanges i.e. BSE and NSE as well as requirements under the Companies Act are separately covered under various lessons in this module. Besides those some of the important aspects which a Company and its Key Managerial Personnel/Management shall consider while preparing for an IPO are enumerated as follows :

Due Diligence – Regulatory framework and scope of due diligence

- The SEBI Regulations requires a Merchant Banker, amongst other things, to exercise due diligence, ensure proper care and exercise independent professional judgment. Further, it requires Merchant Banker to ensure that adequate disclosures are made to potential investors in a timely manner in accordance with the applicable regulations and guidelines so as to enable them to make a balanced and informed investment decision. The SEBI Regulations requires Merchant Banker to maintain records and documents pertaining to due diligence exercised in pre-issue and post-issue matters. The ICDR Regulations require that Offer Documents[1] should contain all material disclosures, which are true and adequate to enable prospective investors to take an informed decision. Furthermore, the SEBI ICDR Regulations, 2018 require due diligence certificate to be issued by the Merchant Banker.
- Whilst the regulatory framework does not specifically define what constitutes due diligence, as a matter of practice, the objective of due diligence is to collect information about the Issuer company that helps the Merchant Banker draft as well as assess disclosures that are made in the Offer Document. It is pertinent to understand that while the Merchant Banker continues to be responsible for due diligence, external expert assistance is necessary. Whilst under the applicable Code of Conduct, the Merchant Bankers are required to demonstrate that all reasonable steps were taken to exercise due diligence and ensure adequate disclosures were made to potential investors, they should have the flexibility regarding the manner in which the due diligence exercise is conducted as they may not possess the expertise with respect to certain aspects of due diligence, such as technical, legal and accounting matters.
- In terms of the ICDR Regulations, the Merchant Bankers are required to submit due diligence certificate to SEBI and the formats for such certificate have been provided in the ICDR Regulations. An examination of the format of the due diligence certificate provides clarity of expectations from the Merchant Bankers, to a certain extent, and can act as guiding principles for the diligence to be exercised.

Due Diligence - Procedure

A Merchant Banker is expected to :

i. carry out the procedures to demonstrate that it had no reasonable ground to believe and did not believe that there were material misstatements or omissions in the Offer Documents which could have had an impact on an investment decision;

ii. have detailed discussions with the management and key customers, suppliers (where practicable)

1. 'Offer Documents' include Draft Red Herring Prospectus (DRHP)/Draft Prospectus, Red Herring Prospectus (RHP) & Prospectus

and the Issuer's auditors with respect to the business and associated risks and financial reporting statements;

iii. identify procedures such that disclosures in the Offer Document that are material to an investment decision are backed by appropriate documentation, such as corporate and secretarial records or certificates of the Issuer or third parties and independent third party reports; and

iv. inform the Issuer that it may be required to provide documents that have been reviewed for an Issue, post completion of the Issue in instances of receipt of clarifications or questions from SEBI or other regulatory agencies or other persons.

It must be clearly understood that due diligence is the backbone of any primary market offering. The risk that the Merchant Banker runs for any lapse in conducting due diligence is not restricted only to any regulatory action but extends to reputational risk with the investors & Issuers.

Though Merchant Bankers are supposed to carry out diligence and comply with all the requirements of applicable regulations, the Company and the Management is responsible for the contents of offer document and have to declare and certify that all the information in the offer document is true and fair. Offer document being a legal document defined under the Companies Act as well as applicable regulations, responsibility of the management is final. Companies need to prepare and be ready for the process of the diligence. The process of preparation for IPO thus commences with due diligence and further important aspects to be considered are as follows :

Setting up of Relevant Teams

As explained the preparation for IPO is a complex process and requires input from various functionaries within the Company, for e.g. Finance & Account, Secretarial Department, Marketing set up, Production & Manufacturing set up and the Administrative set up. There is a need to identify personnel from each of these functionaries to be available for assembling the required information and data. There is a practice of setting up of transaction team from the end of Issuer Company, Merchant Banker and Legal Advisors which comprises of two layers generally. One team to address routine queries regarding documents/compliances and other being at a policy and decision making level where all the important decisions are to be taken based on the critical inputs from the senior teams. While Company is required to proactively submit the information/documents, the other teams work on assembling the same and putting it in a required manner in the offer document.

Management Structure

Being listed, Companies need to have a proper Board structure comprising of optimum mix of non-executive and executive Directors as well as independent & non independent Directors. Hitherto closely held Companies generally operate in a family structure and effort is needed to invite outside professionals on the Board to be able to follow the required Regulations. Considering that about 50% of the Directors shall be independent, management/promoters will have to take into account background of Directors. Generally professionals from Banking & Finance, Legal Profession, Accounts & Taxation background & lastly persons with relevant industry experience are sought. Even the regulatory committees such as Audit Committee etc also need a composition of people from experience in relevant areas. Investors assign large importance to the promoters and the management structure. It is perceived that better managed Companies command better valuation in the listed space.

Data Room

Preparation for an offer document involves humungous documentation and paper work. At the time of commencement of due diligence Merchant Banker and the Legal Advisor circulate the 'Compliance Manual' enumerating detailed requirements along with various formats and undertakings to be submitted by the Company. Only on assembling majority of documents the process of diligence actually starts. Companies set

up specific location where all the documents and the copies of the same are made available for examination & verification. Such location is popularly known as 'Data Room'. In the present scenario these data rooms are also set up in virtual space and are called as 'Digital Data Room' or 'Virtual Data Room' on various drives such as google drive. All the concerned executives will have access to the Data Room while drafting the offer document.

Financial Information & Reporting Process

Companies are required to incorporate 3 years historical financial information in the offer document and also in respect of a stub period which should not be older than 6 months from the date of filing and date of opening of the IPO. There is a need to assess the suitability of accounting policies and Companies shall also prepare for segment reporting and identify disclosure requirements with applicable accounting standards Indian Gaap/Ind AS. In case the IPO is required to be marketed in overseas geographies like UK, US, Hong Kong, Singapore etc., there is a separate requirement of presentation of financials in "Pro forma Financial Information" format and also a requirement of obtaining 'Legal Wrap' from the overseas auditors and certifications from overseas Legal Advisors. Only on completion of these processes, Company would be able to market their IPO in international jurisdiction.

Management will have to also assess existing IT systems, financial reporting system & management information system in advance to identify weaknesses in the reporting systems and manage the improvement in the same ahead of the IPO.

Other Regulatory Compliances

As discussed elsewhere in the curriculum, Companies need to comply with all the applicable provisions of Securities Contract Regulations Act (SCRA), Securities Contract Regulation Rules (SCRR), Companies Act, 2013, SEBI Regulations particularly SEBI (ICDR) Regulations 2018, SEBI (Listing Obligations & Disclosure Requirements) Regulations 2015, SEBI (Prohibition of Insider Trading) Regulations, 2015. However, compliance with only these Regulations is not sufficient from the point of view of due diligence and disclosure requirement in the offer document. While preparing an offer document, due diligence is required to be conducted by the Merchant Bankers who are assisted by Legal Advisors. While conducting due diligence, compliance with all the other regulatory requirements is also checked thoroughly. Following compliances are included amongst many requirements:

- Filing of various form/returns with Registrar of Companies (ROC), Ministry of Corporate Affairs (MCA) in the past
- Compliance with requirements of factory license & other approvals
- Compliance with requirements of Provident Fund rules, Gratuity rules & other Labour laws
- Filing of Tax Returns and its up-to-date status
- Litigations, disputes, show cause notices etc. of whatsoever nature.

All the above requirements in respect of not only Issuer Company but for all the Group/Associate Companies & Directors of the Company are required to be checked.

The Legal advisors conduct independent search & review from their resources and also from their access to the database of various legal authorities such as Civil Courts, High Courts etc. and also important websites such as 'Watch out investors', 'CIBIL' etc. Said search is not only conducted in respect of the Issuer Company but also in respect of all its Group/Associate Companies, its promoters/directors. Detailed information of all the aspects shall be made available to the Merchant Bankers and Legal Advisors. Companies shall be prepared in this regard in advance.

Industry data

The offer document comprises of an important Chapter on 'Industry Information'. Companies are required to give information about the industry segment in which it operates enabling the Regulators and investors to get a fair idea about the segment. Managements are required to gather information from the authenticated sources and should have a comprehensive information made available. It is observed that reproducing an information from publicly available websites, reports etc. also sometimes need permissions from those entities to be able to publish in the offer document (besides government resources). Industry data to be included in the offer document can also be obtained tailor-made from Rating/Research Agencies such as CARE, CRISIL, ICRA, A C Nielsen etc. Said process shall be commenced in advance to be able to deliver in a timely manner.

Management Discussion & Analysis

Many unlisted Companies may comply with all the requirements under the Companies Act, 2013 and rules made thereunder as far as presentation of Balance Sheet is concerned. However, they have not been putting efforts to include the important information about the Company's business, its progress and future opportunities it may have. It is often advised to the IPO bound Companies that the Annual Report & Balance sheets of the Company for past years be consciously prepared to include the relevant information for the benefits of investors and also to make it neat and attractive. Management is required to consider not only the regulatory requirements of disclosure but also try to meet the expectations of outside investors. Management discussions include comparative analysis of key financial information of the Company for past 3 years. As far as offer document is concerned, it is one of the important Chapters where managements can include and discuss about existing business as well as prospective business. Companies need to prepare for this in advance.

Publicity & Advertising

Companies often have large list of clients, vendors, suppliers & other stakeholders etc. Inclusion of their name in the draft offer document often helps the Companies to market its issue/credentials to the investors at large. However, in many instances, to include their name in the draft offer document there is a need to obtain consent of those entities. It is often a time consuming process and in many cases Companies are not able to obtain the consent of these Companies for inclusion of their name in the offer document. Preparation for the same needs to be done in advance.

Once the offer document is filed with the Regulators, management is required to adhere to the code of advertisement & publicity which basically restricts the management from publicizing anything outside the contents/information included in the offer document. Companies need to also put a disclaimer clause of the regulators in such advertisements. No public information with respect to IPO shall contain any offer of incentives to the investors directly or indirectly. No Advertisement relating to product or services by Issuer Company shall have any reference to the performance of Issuer during the period from Board Resolution approving IPO till allotment in the IPO.

Road shows

Management needs to prepare for proposed Road shows and Investor Meets in advance. Adequate representation of promoters & key managerial person should be available for various meets, Road shows etc. Often there is a need to undergo training for the representatives of the Company about their conduct & behavior during these road shows. IPO bound Companies prepare a 'Corporate Film' which includes brief about the Company, its past and also take investors through the present set up, practices followed by the Company, overview of proposed expansion, brief information of management, financials of the Company including various financial ratios & parameters and basis of IPO price. Besides this a short and concise 'Press Note' about the Company and its IPO is required to be released for publications. The Road show generally comprises of a press

meet and meeting with Brokers and Investors/Analysts. 'Press Conference' is aimed at giving information to the press for publication in their papers/newspapers for dissemination of information to the investors whereas 'Brokers, Investors/Analysts Meet' aims at giving detailed information to the market participants about the Company enabling them to understand the details and take it further to the ultimate investors. Many a times IPO bound Companies also organize 'site/plant visit' for the market participants enabling them to take a view of manufacturing facilities and other administrative set up of the Company. Managements are required to take into consideration all the above factors while preparing for marketing of an IPO.

Material Contracts & Documents

The SEBI Regulations as well as Companies Act, 2013 requires management to certify that all the relevant provisions of the Companies Act and Rules, Regulations & Guidelines issued by Government of India or by SEBI have been complied with and no statement made in the offer document is contrary to the provisions of these Acts, Rules & Regulations. The offer document also requires disclosure of contracts which are or may be deemed material & are not in its ordinary course of business. The copies of these material contracts and documents for inspection are required to be attached to the copy of offer document delivered to ROC and said documents are also required to be made available for inspection at registered office of the Company from draft offer document stage till the closure of the IPO. The standard material contracts & documents for inspection include following :

A. Material Contracts to the Issue

1. Offer/Issue Agreement between Company, the Merchant Banker and Selling Shareholders (if any).
2. Memorandum of Understanding or Agreement between Company and the Registrar to the Issue.
3. Bankers to the Issue Agreement between Company, Merchant Banker and the Banker to the Issue.
4. Underwriting Agreement between Company, Merchant Banker & other Underwriters (if any).
5. Market Making agreement between Company, the Lead Managers and the Marker Maker to the Issue (If applicable).
6. Syndicate Agreement between Company, Merchant Banker & Syndicate Members.
7. Copy of Tripartite agreement entered into between Company, CDSL and the Registrar to the Issue.
8. Copy of Tripartite agreement entered into between Company, NSDL and the Registrar to the Issue.

B. Material Documents

1. Certified copies of the updated Memorandum of Association and Articles of Association of Company, as amended from time to time.
2. Certificate of Incorporation of Company.
3. Certificate of commencement of business.
4. Copies of the Board and shareholders resolutions authorizing the Issue.
5. Report of the Statutory Auditors/Peer Review Auditor on Company's Restated Financial Statements (Standalone) for past 3 financial years and stub period not older than 6 months from the date of filing & opening of IPO.
6. Report of the Peer Review Auditor on Company's Restated Financial Statements (Consolidated) for past 3 financial years and stub period not older than 6 months from the date of filing & opening of IPO.
7. Statement of Tax Benefits from Chartered Accountants.

8. Copies of annual reports of Company for the past three (3) Financial Years.
9. Consents of Statutory Auditors, Peer Review Auditors, Bankers to Company, Merchant Banker, Registrar to the Issue, Legal Advisor to the Issue, Directors of Company, Company Secretary and Compliance Officer, as referred to, in their respective capacities.
10. In-principle approval from the Stock Exchanges for listing of the securities.
11. Due Diligence certificate to SEBI from the Merchant Banker.
12. Observation Letter issued by the Securities and Exchange Board of India and reply to the observation by Merchant Banker.

To Sum Up

Making an IPO is like conducting an Orchestra where all the instruments are required to run in sync with each other to get a desired result. The preparation of offer document though is a complex process, it makes Companies to realize its own potential as well as streamline their internal operations enabling and preparing them to face new investors who will consider investment in their Companies. Obviously when Companies raise money, it's their responsibility to act in a proper and ethical manner and also provide information in a required manner enabling the investors to take an informed decision which is the mandate of Securities & Exchange Board of India (SEBI). Any instance of error of commission or error of omission may lead to a disastrous situation where Companies may not be able to sustain the requirements legal or otherwise & also face reputational risk.

APPRAISING THE BOARD AND OTHER FUNCTIONS IN THE ORGANISATION REGARDING THE POST IPO/LISTING GOVERNANCE CHANGES

If going public is a complex process, being public is all the more complex as it assumes tremendous responsibilities on the managements and promoters of the Company once listed. The reason being, that the new set of shareholders would have acquired the ownership in the Company and the management has more responsibility towards outside shareholders as well as Regulators. Further, being publicly listed ownership of shareholding can change any time without the knowledge of the promoters & Company. In fact once the Companies are listed, responsibility of the management towards the shareholders enhance manifold and managements shall continue to strive for maintaining good governance standards, implementing ethical business practices and continue to comply with applicable Regulations in a sustained manner.

Some of the important functions in the organization after listing can be enumerated as follows :

- **Board Procedure**

  On listing, Companies will have additional responsibility of complying with various disclosure requirements of the stock exchanges besides those required under Companies Act, 2013. The stock exchanges will have a standard list of compliances to be followed by listed Companies at predetermined schedules. Notice of every proposed Board meeting which is likely to consider any decision which is considered as "price sensitive", must be given in advance as prescribed. The outcome of the Board Meeting must be intimated to the stock exchanges within 30 minutes of conclusion of the Board Meeting. Every listed Company must have a qualified Company Secretary holding a certificate from ICSI who besides being Key Managerial Personnel as defined under Companies Act is also a designated 'Compliance Officer'. The Board process should be such streamlined that the calendar of proposed dates of Board Meeting in the financial year is required to be prepared in advance and intimated. The exchanges have developed robust disclosure systems wherein even the time of dissemination of information is mentioned on the stock exchanges.

- **Compliance Requirements**

  The listed Companies are required to comply with continuous listing norms and have to adhere to

periodic disclosures to the stock exchanges. The listed Companies basically will have to comply (besides provisions of Companies Act 2013) with applicable requirements of :

– SEBI (Listing Obligation & Disclosure Requirements) Regulations 2015 (Listing Regulations)

– SEBI (SAST) Regulations 2011 (Takeover Regulations)

– SEBI (Prohibition of Insider Trading) Regulations 2015 (Insider Trading Regulations)

The stock exchanges have standard 'Compliance Calendar' to be followed by the Company Secretaries/ Management of the listed Companies which has been discussed in detail in lesson 13 of this module.

The 'Compliance Calendar' under SEBI (SAST) Regulations 2011 is as under :

Sr. No.	Particulars
1.	**Regulation 30(1) and 30(2)** 30(1) Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a listed company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified. 30(2) The promoter of every listed company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified. The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to; – every stock exchange where the shares of the company are listed; and – the company at its registered office.

The 'Compliance Calendar' under (Prohibition of Insider Trading) Regulations 2015 is as under :

Sr. No.	Particulars	Timeline
1.	**Regulation 7(2)** 7(2) Continual Disclosures : (a) Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified; (b) Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information. (Transaction type include buy/sales/pledge/revoke/Invoke)	**Within 2 trading days of such transaction**

2.	**Regulation 7(1)(b) read with Regulation 6(2) – Disclosure on becoming a director KMP/Promoter** Details of Securities held on appointment of Key Managerial Personnel (KMP) or Director or upon becoming a Promoter of a listed company and other such persons as mentioned in Regulation 6(2)	**Within 7 days of such event**
3.	**Regulation 7(3) – Transactions by Other connected persons as identified by the company** Details of trading in securities by other connected persons as identified by the company.	

Besides these there are many "Event Based" disclosures which Companies will have to make to Stock Exchanges.

Pursuant to Regulation 10 of the Listing Regulations, the listed entity shall file the reports, statements, documents, filings and any other information with the recognised stock exchange(s) on the electronic platform as specified by the SEBI or the recognised stock exchange(s).

Other Compliances

Once equity shares are listed, the information dissemination to the outside world is of utmost importance. The Board of Directors & other Key Managerial Personnel shall always be alert as regards any information related to the Company & the Management as any event vis-a-vis Company and management may fall under the category of 'price sensitive' and may have repercussions on the share price of the Company. The Board of Directors & Key Managerial Personnel are also duty bound to disclose various important matters to the Company and to the stock exchanges in terms of applicable regulations. Some of the important factors the Board of Directors and the Key Managerial Personnel including the Company Secretaries shall comply with can be enumerated as follows :

– **Board Composition**

  Board of Directors of the Company shall always be in compliance with Corporate Governance Requirements and accordingly the composition of Board shall be structured. Any appointment & resignation of Board of Directors shall be promptly informed.

– **Independent Directors**

  While appointing the Independent Directors, Companies will have to satisfy the 'condition of independence' as mentioned in SEBI (LODR) Regulations. All the Independent Directors shall be given the appointment letter and same shall be made publicly available.

– **Code of Conduct**

  Company shall have a code of conduct for the Board of Directors and also a code of conduct as prescribed under SEBI (Prohibition of Insider Trading) Regulations. Companies are required to identify "Designated Employees" as required under the Insider Trading Regulations. Internal procedures which are also to be streamlined to ensure compliance.

– **Board Appointed Committees**

  Every listed Company must have various Committees statutorily required to be formed in terms of the SEBI Listing Regulations. These are Audit Committee, Nomination & Remuneration Committee and Stakeholders Relationship Committee.

– **Auditors**

Statutory auditors of the listed Companies must be 'Peer reviewed' auditors as prescribed under the provisions of Companies Act 2013.

– **Corporate Social Responsibility (CSR)**

As prescribed under the Companies Act 2013, all the listed Companies which fall under the requirements prescribed for CSR applicability shall comply with CSR requirements. Accordingly, a separate Committee looking after CSR activities of the Company is formed.

Disclosure regarding usage of funds raised in IPO

All the listed Companies are under obligation to disclose details of utilization of funds on the objects for which the money was raised after listing. The information related to the utilization of the IPO proceeds must be included in the Quarterly Limited Review Statement. Companies will also have to include the details of funds not utilized for the objects for which it was raised and said funds must be kept in the Bank accounts as disclosed in the offer document. In case Companies wish to utilize the funds raised through an IPO for the objects other than those mentioned in the offer document, this can only be done by obtaining assent of the shareholders by way of special resolution through postal ballot in accordance with Section 13(8) and section 27 of the Companies Act 2013 & applicable rules. The promoters of the Company will be required to provide an exit opportunity to the shareholders who do not agree to the proposal of varying the objects at such price and in such manner as prescribed by SEBI.

Company Website

In today's world website of the Company assumes great importance as it is medium of information about the Company. The managements are conscious about the contents of websites of the Companies as it is a true reflection of Company's philosophy, business, history, background etc. Information dissemination through website assumes significance particularly in respect of listed Companies as Companies are under obligation to comply with various requirements as far as contents of the website is concerned. Various regulations prescribe certain requirements of disclosure on website. Every website of a listed Company must contain statutory disclosures in terms of listing regulations which are enumerated as follows :

– **Financial Information**

Each Company shall upload unaudited financial results for each quarter of the financial year and also the audited financial results for the financial year for past 3 years. Annual accounts of the subsidiary companies are also required to be uploaded. Annual reports of the Company for past 3 financial years also are required to be uploaded.

– **Policies**

Listed Companies shall disclose certain management policies on the website of the Company such as :

- Code of conduct for Board of Directors & Senior Management
- Code of conduct in terms of Insider Trading Regulations
- Code of practices & procedures for fair disclosures of unpublished price sensitive information
- Appointment letters to Independent Directors
- Familiarization programme for Independent Directors
- Whistle Blower Policy
- Policy of Related Party Transaction

- Material subsidiary policy
- Risk Management Policy
- Archival Policy
- Policy for disclosure of material information
- Internal Financial Control
- Dividend Policy (Top 500 Companies with reference to Market Capitalisation)
- Policy against sexual harassment

Other disclosure requirements

Details of unclaimed dividend Scrutinizers Report for the latest financial year Details of compulsory transfer of shares to IEPF Suspense Account Board Committees Board Meeting notice

Investor Grievance Redressal Mechanism

Every listed Company must have in place Investor Grievance Redressal Mechanism to address grievances of any shareholders. A Company must have Shareholders Relationship Committee to look after grievances of any nature against the listed Company. All listed Companies must register themselves on SEBI Complaints Redressal System (SCORES) platform. Any shareholder or aggrieved party can upload its complaint against the listed Company on this platform and listed Company is under obligation to address/redress the same within time bound programme prescribed by SEBI.

Lesson 16
Documentation

LEARNING OBJECTIVES

Documentation is the most important part of every kind of business. From the perspective of businesses, every business needs a set of governing legal documents. For a corporation, these include a certificate of incorporation, bylaws and often a shareholders' agreement. For a limited partnership or limited liability company, they include a formation certificate and either a partnership agreement or operating agreement. The purpose of these documents is to establish rules governing how the business will be managed and the rights and obligations of the owners.

From the perspective of investors, they require various intimations and various disclosures from time to time about the company where they have invested.

Regulations need timely compliances to be made by a company by filing appropriate documents. If a document is incorrect and delayed while filing it leads to hefty penalty for the corporates for non-compliances.

Therefore, documentation is the inevitable part of a business. For example, in respect of listing of securities by a company on recognised stock exchanges, it needs to file a set of documents as required by the stock exchanges for listing of its securities and to be traded on the stock exchanges.

In light of the above, this lesson will give an insight to the students about the documentation part required for listing of securities on a stock exchange arising from various types of issues.

Note: This lesson has been given for only information purpose to make aware the students about the various documentation required for listing of securities on a stock exchange.

DOCUMENTATION FOR IPO/FPO

The stage wise documentation for IPO/FPO is as follows:

- In principal Approval Stage
- Basis of Allotment Stage
- Listing & Trading Approval Stage

IPO/FPO Draft Prospectus/RHP clearance

Along with the application for seeking in-principle approval of the Exchange to use name of the Exchange in the offer document, the following documents/information shall to be filed by the Company with the Exchange:

1. 10 copies of the draft offer document.
2. Copy of resolution passed by the Board of Directors for issue of securities and by the shareholders at the AGM/EGM authorising the issue of securities to the public
3. Copy of the letter vide which the draft Offer Document was filed with SEBI.
4. Latest date/period up to which the information has been incorporated in the draft offer document Date of opening of public issue to be intimated as soon as it is finalized.
5. Certified true copies of Company's relevant statement of bank accounts wherein promoter's contribution, if any, received by the Company is reflected.
6. PAN,TAN, Bank Account Number, Passport Number of the Promoters.
7. Printed Balance Sheets, Profit & Loss Accounts and Cash Flow Statements for the preceding 5 years.
8. A statement containing particulars of the dates of, and parties to all the material contracts, agreements (including agreement for technical advice and collaboration), concessions and similar other documents (except those entered into in the ordinary course of business carried on or intended to be carried on by the company) together with a brief description of the terms, subject matter and general nature of the documents. The copies of the aforesaid material contracts or documents which are received/ executed/ in-hand should be kept ready and be available for inspection. The Company should also state the place, time and date where these documents can be inspected.
9. Name of the exchange which is proposed to be designated by the Company as the lead exchange, for the purposes of approval of the basis of allotment, and for depositing the security deposit as required under the listing conditions of the exchanges.
10. Copy of Form 32/DIR 12 filed with the ROC for appointment of directors and company secretary.
11. Memorandum & Articles of Association of the Company.
12. Confirmation from the Issuer Company confirming that:
    - The Company is in compliance with all the eligibility criteria of the Exchange
    - There are no restrictive clauses in the Articles of Association of the Company
    - The provisions of the Memorandum and Articles of Association are not inconsistent with the clauses of the Listing agreement or any other applicable law, Rules or Regulations
13. A certificate from the statutory auditor/practicing chartered accountant certifying compliance of conditions of Corporate Governance as stipulated SEBI (LODR) Regulations, 2015. The company should also give the composition of various committees as required under the said clause.

14. Complete details of any outstanding ESOP and other employee benefit schemes and a confirmation from Merchant Bankers & Statutory Auditor that said schemes are in compliance with the requirement of the SEBI (Share Based Employee Benefits) Regulations, 2014.
15. The Company shall undertake to inform the Exchange forthwith of any material development which takes place after the filing of the application with the Exchange but prior to the issue of the in-principle approval that may render the information provided to the Exchange (whether in the application or otherwise) incorrect or outdated or which otherwise has a bearing on the proposed issue of securities.
16. Processing Fees
17. Confirmation from BRLM(s) / Lead Manager(s) regarding the applicant Company being in compliance with Regulation 4(2) of SEBI(ICDR) Regulations, 2009
18. Confirmation from BRLM(s)/ Lead Manager(s) stating ***"Neither the Issuer nor any of its Promoters/ Directors are appearing under the list of willful defaulter as defined under SEBI (ICDR) Regulations 2018"*** .
19. Undertaking from MD/ CS/ Compliance Officer of the company stating:

    "We hereby confirm that the company or its promoters or whole time directors are not in violation of the provisions of Regulation 24 of the SEBI Delisting Regulations, 2009."
20. Undertaking from MD/ CS/ Compliance Officer of the company stating:

    "We hereby confirm that the company, its promoters, its directors are not in violation of the restrictions imposed by SEBI under SEBI circular no. SEBI/HO/ MRD/DSA/CIR/P/2017/92 dated August 01, 2017."

Basis of Allotment

1. Copy of Prospectus filed with the ROC (also in soft copy CD) along with letter from all the merchant bankers involved in the issue specifying details of amendments/ changes made in RHP (which were subsequently incorporated in Prospectus). **To submit the same in track changes mode also.**
2. Proceeding details / minutes of basis of allotment, verified and signed by R & T Agent, BRLM (Responsible for post issue) and the Issuer along with the reasons for exception to rejection cases.
3. Category wise, summary of list of "technical rejection" cases Specifying – Application No., Category, Name & Add., Pan #, DP ID, CL ID, Quantity, price Amount and reason for rejection along with photo-copies of Application forms.
4. Confirmation from registrar regarding withdrawal of applications received, considered in the basis, indicating date and time (should not be more than 12 hours from time of submission of basis).
5. Statements giving branch wise/bank wise/city wise/state wise/zone wise details of the total collections with a breakup of ASBA fund received at the various participating bank branches in response to the public issue / offer for sale.
6. Category wise, Bid lot wise, two copies of Calculation sheet of proposed basis of allotment of equity shares to the Qualified Institutional Buyers, Non-Institutional Bidders and Retail Bidders, Reserved category etc. duly signed by RTA, BRLM & Issuer.
7. Photo copy of the final certificate issued by the controlling branch of ASBA bankers giving branch wise details of collections received.
8. Undertakings from the company, lead managers and the registrars & transfer agents in respect of the basis of allotment.

9. Copy of the statutory advertisement released in respect of the public issue / offer for sale, opening and closing of the issue, price revision, if any etc. upto the stage of basis of allotment.
10. Auditors certificate with regard to the promoters contribution, if applicable.
11. Declaration from the Managing Director / Company Secretary that there is no injunction / prohibition order of a competent court of law on the issue or on a part of any particular category of the issue.
12. Confirmation that:
    - Only QIBs as mentioned under the definition in Regulation 2 (zd) of SEBI ICDR, regulation 2009 are proposed to be allotted equity shares under QIB category.
    - No QIB has Bid and proposed to be allotted equity shares under non-QIB or retail category.
13. List of all prospective allottes (valid) along with number of shares applied, amount paid, bank account details, PAN number, Demat account details etc. (in soft copy CD)
14. If Approval from SEBI is sought for relaxation in PAN mismatch applications, then copy of SEBI approval letter as well as the true copy of request letter to SEBI, should be submitted.

Checklist for listing of IPO

Documents to be submitted on T+2 days (i.e. within 2 working days from the closure of the issue)

1. All due diligence certificates filed with SEBI by Merchant banker(s).
2. Observation Letter issued by SEBI pursuant to filing of draft offer document.
3. List of authorized signatories along with their specimen signatures.
4. Confirmation from Lead Managers that devolvement notices have been sent to underwriters (applicable if the issue has devolved).
5. Certificate from the BRLM(s) that the issue has received minimum subscription as specified under Regulation 45 (1) of SEBI (ICDR) Regulations, 2018.
6. Confirmation from the company regarding the email ID for Investor Grievances as per Regulation 46 of SEBI (LODR), Regulations, 2015.
7. Copies of all advertisements published in connection with the issue upto T+1 stage.
8. Confirmation from the company stating that they have obtained authentication for SCORES from SEBI as per Regulation 13 of LODR, Regulations, 2015.

Documents to be submitted before T+3 days (i.e. within 3 working days from the closure of the issue)

The documents as per Basis of Allotment checklist.

The following documents to be submitted before T+4 days (i.e. within 4 working days from the closure of the issue):

1. One Copy of final prospectus filed with ROC alongwith ROC filing acknowledgement copy.
2. Certified true copy of the basis of allotment approved by the Designated Stock Exchange.
3. Copy of Internal Minutes executed in between Lead Manager, Issuer and Registrar.

Documents to be submitted on T+4 days (i.e. within 4 working days from the closure of the issue)

1. Letter of listing application.
2. Listing Agreement as per SEBI (LODR), Regulations, 2015 duly executed on non-judicial stamp paper along with certified true copy of the resolution passed by the Board of Directors for authorizing officer to sign and execute the listing agreement.
3. Certified true copy of the resolution passed by the Board of Directors for allotment of securities (the resolution should specifically make a mention of total number of Securities allotted/allocated by the issuer)
4. Certificate from statutory auditors/practicing chartered accountant/ practicing company secretary stating that:
   a) Allotment has been made as per the basis of allotment approved by the Designated Stock Exchange.
   b) The share certificates corresponding to equity Securities under lock in have been enfaced with non-transferability condition, as per format given below:

Number of securities	**Distinctive numbers range**		**Lock-in Date**	
	From	**To**	**From**	**To**

   c) Allotment of shares from the employees' quota has been made to permanent/regular employees of the company and of the promoter companies, as on the date of the opening of the public issue and who are entitled to such allotment.
5. If Pre-IPO shares are held in physical form, then **confirmation from RTA** to the issue that the Pre-IPO shares held in physical form are locked-in in their system upto the dates mentioned as per the table shown below. Further, the RTA should confirm that as and when the physical share certificates, if received for dematerialization will be locked in upto the dates as mentioned below:

Number of securities	Distinctive numbers range		Lock-in Date	
	From	To	From	To

6. Lock-in confirmation from depositories for pre-IPO equity shares held in dematerialized form
7. In case Securities issued (including anchor investors) in dematerialized form are under lock-in, then a certificate from the depositories must be furnished stating that the Securities are under lock-in confirming the date upto which they are under lock-in (applicable only in cases where the equity Securities issued are under lock in).
8. Shareholding pattern of company (pre issue, issue and post issue) in format given as per Regulation 31 of SEBI (LODR), Regulations, 2015 with PAN. **Also provide Post issue shareholding pattern (without PAN).**
9. Copies of all statutory advertisements published till date
10. Certification of Compliance with Regulation 17-27 of the SEBI (LODR), Regulations, 2015 relating to Corporate Governance and **if there is any change after In-Principle Approval kindly highlight the same.**

11. Details of Current Issue in the format showing category-wise Gross, Valid & Allotted applications & equity shares
12. Initial Listing Fees, Annual Listing Fees
13. Confirmation from the issuer for the following:
    - That the copies of all advertisements published as regards the present issue have been submitted to the Exchange.
    - That the issuer is compliant with the requirement of common agency as specified by SEBI.
    - That all securities required to be under lock-in are subjected to lock-in, as mentioned in Offer Document for the issue.
14. Certified true copy of the additional material contracts and documents (mentioned in the final offer document/Prospectus) which have not been submitted earlier with the Exchange including SEBI observation letter. **(Soft copy for all the material contracts and documents)**
15. Confirmation from the Lead Manager and Issuer confirming that the issue in compliance with all requirements of Companies Act, 2013, SEBI (ICDR) Regulations 2018 and any other applicable law(s), Rules and Regulations and no statutory authority has restrained the Company from issuing and listing of shares pursuant to present issue.
16. Soft copy of total securities issued by the Issuer \ (in MS-Excel & pdf file format only thru email):
17. List of all allottees, addresses, category wise & sub-category wise, (QIB/HNI/Retail/Reserved category) along with number of shares applied, allotted, amount paid, bank account details, PAN number, Demat account details etc.
18. Confirmation from the company stating that they have obtained authentication for SCORES from SEBI as per Regulation 13 of SEBI (LODR), Regulations, 2015
19. Confirmation from RTA on the total quantum of non-syndicate member(NSM) commission payable as per SEBI circular CIR/CFD/14/2012 dated Oct. 4, 2012 in the captioned issue. The calculation format for determining the quantum of commission should be as per the aforesaid SEBI circular.
20. The commission payment instruction - dat file format has to be forwarded from the RTA/Issuer/BRLM once the NSM commission calculation process is completed.
21. Confirmation from the issuer on the transfer of the NSM commission amount to the Bank Account of the Exchange.
22. Date of Listing & Scrip Symbol (max 10 alphabets)
23. Undertaking from MD/ CS/ Compliance Officer of the company stating:
    a) *"We hereby confirm that the company or its promoters or whole time directors are not in violation of the provisions of Regulation 24 of the SEBI Delisting Regulations, 2009."*
    b) *"We hereby confirm that the company, its promoters, its directors are not in violation of the restrictions imposed by SEBI under SEBI circular no. SEBI/HO/ MRD/DSA/CIR/P/2017/92 dated August 01, 2017."*
24. CIN,PAN,TAN & GSTIN of the Company
25. DIN & PAN of Promoters and Directors

Documents to be submitted before T+5 days (i.e. within 5 working days from the closure of the issue)

1. Certified true copy of the letter from Registrars and lead manager regarding dispatch of share/debenture/ warrant certificates, allotment advice, refund orders, underwriting commission, uploading of electronic credit of Securities, uploading of ECS/NEFT/RTGS credits and brokerage warrants.
2. Confirmation from the depositories regarding the credit of beneficiary accounts of the security holders.
3. Confirmation of lock-in of securities from the depositories
4. Certificate from the Registrar reconciling the total securities allotted with the total securities credited, and securities that have failed to be credited.
5. Basis of allotment advertisement.

RIGHTS ISSUE

Pre Issue Formalities

The following document should be submitted to obtain in-principle approval for the proposed Rights issue:

1. Certified true copy of the resolution passed by the Board of Directors for issue of securities under proposed rights issue/ approving the proposed fast track rights issue.
2. Certified true copy of the resolution passed by the Shareholders, if any;
   a. for issue of securities under proposed rights issue/ fast track rights issue.
   b. increase in the authorised share capital (if required).
3. Undertaking from the Company that the entire issued capital of the Company is listed with the Stock Exchange and are fully paid up.
4. Undertaking from the Compliance Officer of the issuer as per the following format :

   "Neither the issuer nor any of its promoters or directors is a wilful defaulter as defined SEBI (ICDR) Regulations, 2018";

   OR

   "<Name of the issuer> / <name>, the promoter(s) of the issuer / <name> the director(s) of the issuer is a wilful defaulter as defined under SEBI (ICDR) Regulations, 2018 and disclosures in this regard has been made at <place of disclosure>.as per the format given in said regulation."
5. Certificate from all Lead Manager/Merchant Banker and Company w.r.t compliance with of SEBI (ICDR) Regulation, 2018 (in case of fast track rights issue).
6. 10 Copies of Draft Letter of Offer along with a soft copy on CD.
7. Processing fees.

Formalities before Issue Opening- Rights Issue

1. 10 Copies of Final Letter of Offer along with Composite Application Form ("CAF").
2. ASBA Fees.
3. 1% Security Deposit .
4. A request letter from Company/LM for activation of Right Renunciation Facility on the Stock Exchange (if required).

Post Issue Formalities- Rights Issue

Checklist of documents for Basis of allotment

Company has to finalise the basis of allotment, and submit the documents as under, within 10 days from closure of the issue:

1. Bid data of Exchanges other than the designated stock exchange.
2. All rejections application along with Summary statement (1 set photocopy to be submitted).
3. Certified copies of all Bank final certificates (ASBA & NON ASBA).
4. Minutes of Basis of allotment duly signed by all the Lead Manager, Registrar and the Company.
5. Basis of allotment sheet for each category.
6. Round summary in case of over subscription, in hard as well as soft format.
7. Copy of post issue initial monitoring report filed with SEBI (3 day monitoring report).
8. Undertaking from Lead Manager, Company and the Registrar.
9. Pre Allotment shareholding and Post proposed Allotment Shareholding pattern as per Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015.
10. The calculation of ex right price by the Statutory Auditor/ Practicing company secretary/ Practicing Chartered Accountant, if not available in the offer document.

Checklist of documents for listing of securities issued pursuant to the Rights issue

The company should submit the letter of application along with the following documents / formalities,:

1. Listing Application for all types of securities issued on rights basis should be submitted**.**
2. Certified copy of the resolution passed by the Board of Directors for allotment of securities on Right Basis.
3. Shareholding pattern for pre and post issue as per the format prescribed under Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 for all types of securities issued on Rights basis.
4. A certified copy of Basis of Allotment as approved by Designated Stock Exchange should be filed.
5. Auditors/Practicing CA/CS certificate that allotment has been done as per basis of allotment approved by the designated stock exchange.
6. The total number of securities allotted in the physical category and in Demat (CDSL & NSDL Separately) with category wise distinctive numbers should be filed.
7. An undertaking from the Managing Director/Compliance Officer certifying that all the documents filed by the Company with the Exchange are same/similar/identical in all respect with the documents filed by the Company with Register of Companies/SEBI/RBI/FIPB in respect of the allotment/enlistment of the aforesaid rights share on the Exchange, and that the company has complied with all the legal and statutory formalities and no statutory authority has restrained the company from issuing and allotting the securities on rights basis.
8. Undertaking from the Compliance Officer of the issuer as per the following format:
    - “The company or its promoters or whole time directors are not in violation of the provisions of Regulation 24 of the SEBI Delisting Regulations, 2009”.

- "We hereby confirm that the company, its promoters, its directors are not in violation of the restrictions imposed by SEBI under SEBI circular no. SEBI/HO/ MRD/DSA/CIR/P/2017/92 dated August 01, 2017."

9. Undertaking from the Compliance Officer of the issuer as per the following format:

   "Neither the issuer nor any of its promoters or directors is a wilful defaulter as defined under SEBI (ICDR) Regulations, 2018";

   OR

   "<Name of the issuer> / <name>, the promoter(s) of the issuer / <name> the director(s) of the issuer is a wilful defaulter as defined under SEBI (ICDR) Regulations, 2018and disclosures in this regard has been made at <place of disclosure>.as per the format given in said regulation."

10. Annual Listing fees

Formalities for obtaining Trading approval

1. A certified true copy of the Certificate/Letter from Registrars to Issue confirming the date of completion of posting of Refund Orders and Share certificate/Debenture Certificates in Physical form (if any).
2. Confirmation from the depositories for crediting of securities to the beneficiary owner's account
3. Copies of Newspaper advertisement of Basis of Allotment.

BONUS ISSUE

Documents required for granting in-principle approval under Regulation 28(1) of the SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015, for the companies proposing Bonus Issue:

1. Certified copy of the resolution passed by the Board of Directors of the Company approving the bonus issue.
2. Certified copy of the notice sent to the shareholders of the company for the proposed bonus issue.
3. Certified copy of the resolution passed by the shareholders of the Company approving bonus issue.
4. Clause in the Articles of Association granting powers to the Board of Directors to capitalize the profits.
5. Copy of the shareholders resolution for increase in authorized capital in case the existing authorized share capital is insufficient to accommodate the bonus issue
6. Confirmation by the Managing Director/ Company Secretary.
7. Statement of total bonus entitlement as per the existing capital, bonus shares to be allotted and shares kept in abeyance, if any to be given by the Company Secretary.
8. Processing fee.
9. Copy of the latest audited annual report.
10. Certified true copy of the amended copy of the Memorandum and Articles of Association of the Company. In case the Memorandum and Articles of Association is not amended, confirmation from the company regarding the same.
11. Name & Designation of the Contact Person of the Company.
    - Telephone Nos. (landline & mobile)
    - Email add.

Documents required for listing approval for Bonus equity shares issued by the Companies

1. Letter of Application (i.e. by Listed companies applying for listing of further issue) duly completed.
2. Certified true copy of the Board resolution in which the equity shares were allotted.
3. Brief particular of the new securities issued.
4. Shareholding Pattern as per the format prescribed under Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 giving details pre and post allotment of bonus shares.
5. Certificate from Statutory Auditors / Practicing Chartered Accountant / Practicing Company Secretary to the effect that the SEBI (ICDR) Regulations, 2018 for bonus issue has been complied with.
6. Confirmation by the Managing Director/ Company Secretary.
7. Details of further listing /processing fee remitted,

PREFERENTIAL ISSUE

Pre-Issue Formalities

1. Certified copy of the resolution passed by the Board of Directors of the company for the proposed preferential issue
2. Printed copy of notice of AGM/EGM
3. Where allotment is :
   - I) for consideration other than cash:
     - a) Certified copy of valuation report
     - b) Certified copy of Shareholders Agreements.
     - c) Certified copy of approval letters from FIPB and RBI if applicable.
   - II) pursuant to CDR Scheme/ Order of High Court/ BIFR:
     - a) Certified copy of relevant scheme/ order
   - III) pursuant to conversion of loan of financial institutions:
     - a) Certified copy of the Loan Agreement executed by the company.
4. Brief particulars of the proposed preferential issue.
5. In case if the prior holding of the allottee is under pledge with banks/ financial institution(s), company needs to provide an undertaking/ confirmations from the banks/ financial institutions, company and allottee(s).
6. Confirmation by the Managing Director/ Company Secretary.
7. Certificate from Statutory Auditors/ Practicing Chartered Accountant/ Practicing Company Secretary.
8. Pricing certificate by Statutory Auditor/ Practicing Chartered Accountant/ Practicing Company Secretary**.** In case the securities of the company are infrequently traded pricing certificate as prescribed under the SEBI (ICDR) Regulation, 2018.
9. Non-refundable processing fees.

Brief particular of the proposed preferential issue are:

I) Company details:

Name of the Company	
Scrip Code	
ISIN No.	
Face Value of the equity shares of the company	
Authorized Capital of the Company (Rs.)	
Nominal value of the equity share capital (Rs.)	
Paid up equity share capital of the Company (Rs.)	
Maximum no. of shares that may be issued (inclusive of convertible instruments) pursuant to the proposed preferential issue	
Paid up equity share capital of the Company post proposed issue (Rs.)	

II) Issue details:

Date of Board Meeting wherein the proposed preferential issue was approved	
Date of General Meeting approving the issue u/s 62	
Date of approval by CDR/ Order passed by the Hon'ble High Court, if applicable	
Relevant date	
Offer Price (Rs.)	
Minimum price as computed under SEBI (ICDR) Regulations, 2018 Regulations	
Consideration (cash/ other than cash/conversion of loan)	
Whether any other regulatory approval is required for the issue. If yes, details thereof	

Details of security proposed to be issued			
	Promoters	**Non-promoters**	**Total**
Equity (Nos.)			
Warrants (Nos.)			
Others (PCD/FCD, preference shares, etc) (Nos.)			
In case of convertible instrument, period when the same can be exercised/ converted			

III) Allottee details:

Name of the Proposed Allottee	Category (Promoter/ Non - Promoter)	Permanent Account Number (PAN)	If allottee is not a natural person, identity of the natural person who are the ultimate beneficial owner of the shares proposed to be issued, if applicable	No. of securities to be allotted	Allottee is: *QIB/ Non QIB

(*) QIB as defined under SEBI (ICDR) Regulations, 2018

IV) Details of pre-preferential shareholding of the allottees:

Name of the Allottee	Pre-preferential shareholding (No. of shares)	Whether pre-preferential shareholding in physical/ demat	Lock in Details		Pledge Details	
			Date From	Date To	No of shares	Name of institution
TOTAL						

In cases where the pre-preferential shareholding of the allottee(s) is in physical form, allotment to such allottee(s) shall be made only if such pre-preferential shareholding is dematerialised before the allotment.

V) Shareholding pattern of the company pre and post proposed preferential issue:

Category	**Pre preferential issue**		**Post preferential issue**	
	No of Shares	**%**	**No of Shares**	**%**
Promoters and Promoter Group (A)		(A) / (A)+(B)		(A) / (A)+(B)
Public (B)		(B) / (A)+(B)		(B) / (A)+(B)
Total (A) + (B)				
Custodian (C)		- -		- -
Grand Total (A) + (B) + (C)				

Post Issue Formalities

Documents required for granting listing approvals, for the equity shares issued on a preferential basis:

1. Letter of Application (i.e. by Listed companies applying for listing of further issue) duly completed.
2. Brief particular of the new securities issued .
3. Certified copy of the resolution passed by board of directors for allotment of equity shares along with

depository confirmation for the credit of securities in dematerialized form.

4. Certified copy of the resolution passed by board of directors for allotment of convertible instrument, applicable only where the allotment of equity shares is pursuant to conversion of convertible instrument.
5. Certified copy of the resolution passed by the shareholders of the Company approving the allotment on preferential basis and the resolution passed for increasing the authorized capital wherever applicable.
6. Shareholding Pattern as per the format prescribed under Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 giving details pre and post allotment.
7. Certified copy of the compliance certificate from the Statutory Auditor placed before the shareholders in the general meeting.
8. Certificate from Statutory Auditor of the company for receipt of funds.
9. Certificate from the Statutory Auditors/ Practicing Chartered Accountant/ Practicing Company Secretary for compliance.
10. Certificate from the Managing Director/Company Secretary of the company.
11. Confirmation for authentication on SEBI for SCORES.
12. Certified copy of the order passed by Hon'ble High Court/ BIFR/ Scheme approved by CDR, if applicable.
13. Details of Processing fee/ Additional listing fee, if applicable, to be paid on the enhanced capital.

QUALIFIED INSTITUTIONAL PLACEMENT

QIPs- Pre Issue

Documents required for granting approvals under Regulation 28(1) of SEBI (LODR), 2015, for the companies coming out with Qualified Institutions Placement (QIPs) - Prior Approval :

Covering letter should mention whether Company intends to give discount to the investors.

1. Copy of the two days prior intimation given by the company to the Exchange about the proposed meeting of the Board of Directors in which fund raising by way of QIP issue is specifically mentioned as required under Regulations 29(1) and (2) of Listing Regulations.
2. Certified true copy of the resolution passed by the Board of Directors of the Company approving the placement of securities with Qualified Institutional Buyers (QIBs) under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.
3. Copy of the notice sent to the shareholders of the company.
4. Certified true copy of the resolution passed by the shareholders of the Company in accordance with the requirements of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.
5. Draft placement document for issue of specified securities to QIBs. The placement document required to be prepared in accordance with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, shall contain disclaimer in bold capital letters to the effect that **"the placement is meant only for QIBs on a private placement basis and is not an offer to the public or to any other class of investors."**
6. Abridged shareholding pattern of the Company at the time of application for in-principle approval.
7. Net worth certificate from PCA/PCS together with related workings of the company based on the audited balance sheet of the previous financial year.

8. Confirmation from the Merchant Banker that the proposed issue of (Name of the Company), is being made in compliance with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 and the (Name of the Company) complies with the requirements of SEBI (ICDR) Regulations, 2018.
9. Confirmation by the Managing Director/ Company Secretary.
10. Processing fee.
11. Undertaking from MD/ CS/ Compliance Officer of the company stating:

    "We hereby confirm that the company or its promoters or whole time directors are not in violation of the provisions of Regulation 24 of the SEBI Delisting Regulations, 2009."
12. Undertaking from MD/ CS/ Compliance Officer of the company stating:

    "We hereby confirm that the company, its promoters, its directors are not in violation of the restrictions imposed by SEBI under SEBI circular no. SEBI/HO/ MRD/DSA/CIR/P/2017/92 dated August 01, 2017."

Documents required for hosting of Preliminary Placement Document on the Website of the Exchange:

After the company decides to open the issue, the company is required to submit the Preliminary Placement Document for uploading on the website of the Stock Exchange before the same is circulated to the QIBs and displayed on the website of the Company.

1. Certified true copy of the resolution in which the Board of the company or the Committee of Directors of the company decided to open the proposed issue.
2. Soft copy of Preliminary Placement document (Not applicable if no changes have been made therein after submission of the same at the time of obtaining prior in-principle approval)
3. Soft copy of the Preliminary Placement Document in pdf format

QIP- Post Issue

Documents required for granting listing approvals, for the securities issued by the companies under Qualified Institutions Placement (QIPs) – Post Allotment:

1. Letter of Application (i.e. by Listed companies applying for listing of further issue) duly completed along with Distribution Schedule pre and post allotment.
2. Certified true copy of the Board resolution in which the securities were allotted.
3. List of allottees and the number of equity shares allotted to them should be filed with the Stock Exchange.
4. List of allottees who have been allotted more than 5% of the securities offered in the issue giving details such as name of the allottees, nos. of equity shares allotted, % of the issue size, etc. and the number of equity shares.
5. Shareholding Pattern Form duly completed with relevant enclosures giving details **before** and **after** the issue.
6. Additional listing fee, if applicable, to be paid on the enhanced capital as per the enclosed schedule of listing fee.
7. Confirmation by the Managing Director/ Company Secretary.
8. PCA/PCS Certificate confirming the floor price and receipt of funds against the placement if securities with QIBs.

9. Due diligence certificate from the Merchant Bankers that the placement of _____ securities issued to QIBs by (Name of the Company) has been made in compliance with Chapter VIII of SEBI (ICDR) Regulations, 2009 and the (Name of the Company) complies with the requirements of SEBI (ICDR) Regulations, 2018.
10. Confirmation from the post-issue Merchant Banker giving summary of bids received and details of allocations made to QIBs.
11. Certified true copy of the final Placement Document along with soft copy in pdf format.
12. Detail terms and conditions of the NCDs/ securities which are convertible into or exchangeable with equity shares, as may be applicable. Also provide the reconciliation of such outstanding securities.
13. Undertaking from MD/ CS/ Compliance Officer of the company stating:

    "We hereby confirm that the company or its promoters or whole time directors are not in violation of the provisions of Regulation 24 of the SEBI Delisting Regulations, 2009."
14. Undertaking from MD/ CS/ Compliance Officer of the company stating:

    "We hereby confirm that the company, its promoters, its directors are not in violation of the restrictions imposed by SEBI under SEBI circular no. SEBI/HO/ MRD/DSA/CIR/P/2017/92 dated August 01, 2017."
15. List of allottees in excel in following format (Clubbing multiple allottees as single allotee **IF** they are under same control or group as per SEBI (ICDR) Regulations, 2018:

S. No.	Name of the allotte	PAN	Category	Shares alloted to total issue size	% of shares alloted to total issue size

ESPS/ESOS/SARS/GEBS/RBS

Pre Issue Formalities

Checklist - Prior In-principle under Regulation 28(1) of the SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 for ESPS/ESOS/SARS/GEBS/RBS:

1. Certified copy of Stock Option/Stock Purchase Scheme/ Stock Appreciation Rights Scheme/ General Employee Benefits Scheme/ Retirement Benefit Schemes, certified by the Company Secretary.
2. Certified copy of statement to be filed with the Stock Exchange as required under Reg 10(b) SEBI (Share Based Employee Benefits) Regulations, 2014
3. Certified true copy of the notice of AGM/EGM for approving the Scheme/for amending the Scheme/for approving grants under Regulation 6 of the SEBI (Share Based Employee Benefits) Regulations, 2014, certified by the company secretary.
4. Certified true copy of resolution passed by the shareholders of the Company approving/ amending the Scheme.
5. Certificate of Auditors on compliance with SEBI (Share Based Employee Benefits) Regulations, 2014.
6. Certificate of Merchant Banker on compliance with SEBI (Share Based Employee Benefits) Regulations, 2014.
7. List of Promoters as defined under the SEBI (Share Based Employee Benefits) Regulations, 2014.

8. Details of employee (wherever applicable) –
    a) Who have been granted options/issued shares in excess of 5% of option/Shares issued in one year.
    b) Who have been granted options/issued shares equal to or exceeding 1% of issued capital during any one year.
9. Copy of latest Annual Report.
10. Specimen copy of Share certificate (where shares are issued in physical form)
11. Confirmation from the Company.
12. Undertakings as required by, SEBI ESOS/ESPS Regulations.
13. Reconciliation statement.
14. Confirmation whether options lapsed / forfeited will re-issued or not.
15. Certified true copy of irrevocable trust deed.
16. Certified true copy of Disclosure document (applicable only for ESOS and SARS).
17. Processing fees.

Post Issue Formalities

Documents required for listing of equity shares issued pursuant to exercise of options granted under ESPS/ ESOS/SARS/GEBS/RBS:

1. Letter of application and listing application.
2. Certified true copy of Notification for issue of shares as per the format prescribed under Regulation 10(c) of (Share Based Employee Benefits) Regulations, 2014.
3. Applicable Additional Listing Fees.
4. A certified copy of the resolution passed by the Board of Directors in which the company has allotted these shares.
5. Certificate from Company Secretary for receipt of money.
6. Certificate for receipt of money from the Statutory Auditors/Practicing Company Secretary/ Practicing Chartered Accountant specifically certifying that the company has received the application/allotment monies from the applicants of these shares. For other than ESPS, in case the company opt to submit the above certificate on a quarterly basis the same should be mentioned in the application. Further, the company should ensure submission of quarterly certificate from the Statutory Auditors/Practicing Company Secretary/ Practicing Chartered Accountant specifically certifying that the company has received the application/allotment monies from the applicants of these shares.
7. List of allottees specifying the name of the allottee, number of shares allotted.
8. NSDL/CDSL credit and/or dispatch of physical certificate confirmation by the R & T agent.
9. Statement of the Compliance Officer/Company Secretary/ Authorised signatory showing number of shares for which the in-principle approval was taken and no. of shares allotted, date of allotment and the balance outstanding.
10. Undertaking from the Compliance Officer/ Managing Director/ Company Secretary of the issuer as per the following:

a) "The company has complied with all the legal and statutory formalities and no statutory authority has restrained the company from issuing and allotting the above referred shares".

b) "The company or its promoters or whole time directors are not in violation of the provisions of Regulation 24 of the SEBI Delisting Regulations, 2009".

c) "We hereby confirm that the company, its promoters, its directors are not in violation of the restrictions imposed by SEBI under SEBI circular no. SEBI/HO/ MRD/DSA/CIR/P/2017/92 dated August 01, 2017."

GDRS/ADRS/FCCBS

Pre issue- Formalities

Documents required for granting approval under Regulation 28(1) of the SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015, for companies proposing to come out with issue of GDRs/ADRs/FCCBs:

1. Certified true copy of the resolution passed by the Board of Directors of the Company approving the issue of the GDRs/ADRs/FCCBs.
2. Copy of the notice sent to the shareholders of the company.
3. Certified true copy of the resolution passed by the shareholders of the Company in the general body meeting approving the issue of the GDRs/ADRs/FCCBs.
4. Draft offering circular for issue of the GDRs/ADRs/FCCBs.
5. Confirmation by the Managing Director and/or Company Secretary.
6. Processing fee.

Documents required for listing approval for equity shares underlying GDRs/ ADRs/ or equity shares allotted upon conversion of FCCBs issued by the Companies:

1. Letter of Application (i.e. by Listed companies applying for listing of further issue) duly completed. (In case of conversion of FCCBs only post allotment distribution schedule is requited to submitted).
2. Brief particular of the new securities issued.
3. Certified true copy of the Board resolution in which the equity shares were allotted.
4. List of allottees and the number of equity shares allotted.
5. In case of GDRs/ADRs the list of GDR/ADR holders and the number of GDRs/ADRs allotted.
6. Shareholding Pattern as per the format prescribed under Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 giving details pre and post allotment.
7. Processing Fee **[Processing fee is not payable on the first conversion, where the company has paid the same at the time of obtaining prior approval under Regln 28(1) of the SEBI (LODR), Regulations, 2015. In case prior approval obtained after 01/04/2017, the aforesaid Processing Fees is not applicable].**
8. Additional Annual Listing Fee, if applicable, on enhanced capital.
9. Confirmation by the Managing Director/ Company Secretary.
10. Certified true copy of letter issued by the overseas Stock Exchange granting listing/ trading permission to the GDRs/ADRs/FCCBs.
11. Certified true copy of the resolution in which the Board of the company or the Committee of Directors of the company decided to open the proposed issue of GDRs/ADRs/FCCBs.

12. Auditor's Certificate confirming the floor price for the proposed issue and receipt of funds against the said issue.
13. A copy of the final offering circular (printed copy as well as pdf file on CD), duly certified by the Managing Director/ Company Secretary.
14. Detailed valuation report with related workings/calculations on the basis of which company proposes to acquire the foreign company.

Documents at Sr. Nos. 9 to 13 are required to be submitted only at the time of filing the first application in respect of any offer document.

Brief particular of the new securities issued:

<table>
<tr><td>Sr. No.</td><td colspan="4">Particulars</td></tr>
<tr><td>1</td><td colspan="2">Name of the Company</td><td colspan="2"></td></tr>
<tr><td>2</td><td colspan="2">Issued and paid up capital
(before allotment)</td><td colspan="2">Rs._____ crores consisting of _____ equity shares of face Value of Rs.____ each fully paid.</td></tr>
<tr><td rowspan="2">3</td><td colspan="4">Details of securities pending for listing, if any</td></tr>
<tr><td>Date of Allotment</td><td>No. of Shares</td><td>Type of Issue</td><td>Dist. No. Range
(From – To)</td></tr>
<tr><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td rowspan="5">4</td><td colspan="4">Details of new shares issued</td></tr>
<tr><td>Date of Allotment</td><td>No. of Shares</td><td>Issue price (Rs.)</td><td>Dist. No. Range
(From – To)</td></tr>
<tr><td></td><td></td><td></td><td></td></tr>
<tr><td></td><td></td><td></td><td></td></tr>
<tr><td></td><td></td><td></td><td></td></tr>
<tr><td>5</td><td colspan="2">Issued and paid up capital
(after allotment)</td><td colspan="2">Rs._____ crores consisting of _____ equity shares of face Value of Rs.____ each fully paid.</td></tr>
</table>

<table>
<tr><td rowspan="3">6</td><td colspan="5">Details of FCCBs</td></tr>
<tr><td>Date of Offering Circular</td><td>Face Value of the FCCBs</td><td>Foreign Exchange Rate</td><td>Conversion Price (Rs.)</td><td>No. of bonds issued</td></tr>
<tr><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td rowspan="4">7</td><td colspan="5">Reconciliation statement of outstanding FCCBs</td></tr>
<tr><td colspan="4">No. of bonds already converted till date</td><td></td></tr>
<tr><td colspan="4">No. of bonds converted under present application</td><td></td></tr>
<tr><td colspan="4">No, of bonds outstanding as on date</td><td></td></tr>
</table>

8	**Details of GDRs / ADRs, if applicable**			
	Date of Offering Circular	No of GDRs/ ADRs issued	Price per GDR/ ADR	No. of underlying shares represented by each GDR/ ADR
9	Name of the Stock Exchange(s) on which GDRs/ADRs/FCCBs of the company are listed			
10	Name of contact person Contact nos. Fax No. Email add.			

LISTING ON SME PLATFORM

Checklist for Basis of Allotment – SME IPO:

1. One Copy of final prospectus filed with ROC alongwith ROC filing acknowledgement copy.
2. Authenticated proceeding details / minutes of basis of allotment, verified and signed by R & T Agent, BRLM (Responsible for post issue) and the Issuer along with the reasons for exception to rejection cases
3. Confirmation from registrar regarding withdrawal of applications received, considered in the basis, indicating date and time (should not be more than 12 hours from time of submission of basis.
4. Category wise, summary of list of "technical rejection" cases Specifying – Application No., Category, Name& Add., Pan #, DP ID CL ID, Quantity, price Amount and reason for rejection along with photo-copies of Application forms.
5. Statement of multiple application and status of its acceptance. (If applicable)
6. Statements giving branch wise/bank wise/city wise/state wise/zone wise details of the total collections with a breakup of ASBA fund received at the various participating bank branches in response to the public issue / offer for sale.
7. Category wise, Bid lot wise, four copies of Calculation sheet of proposed basis of allotment of equity shares to the Qualified Institutional Buyers, Non-Institutional Bidders and Retail Bidders, Reserved category etc. duly signed by RTA, BRLM & Issuer.
8. Photo copy of the final certificate issued by the controlling branch of ASBA bankers giving branch wise details of collections received.
9. Undertakings from the company, lead managers and the registrars & transfer agents in respect of the basis of allotment.
10. Copy of the statutory advertisement released in respect of the public issue / offer for sale, opening and closing of the issue, price revision, if any etc. upto the stage of basis of allotment
11. Auditors certificate for the following.
    a. Receipt of the minimum promoter's contribution, if applicable with date and amount.
    b. If minimum promoter's has been brought in by alternative investment funds or foreign venture

capital investors or scheduled commercial banks or public financial institutions or insurance companies registered with Insurance Regulatory and Development Authority of India, as specified under Regulation 14(1) of SEBI (ICDR) Regulation, 2018, bifurcation of the same shall be provided with date of receipt of the same from each of the party with percentage to the post issue capital. Further, a confirmation that the same is in compliance with the requirement of SEBI (ICDR) Regulations, 2018.

12. Declaration from the Managing Director / Company Secretary that there is no injunction / prohibition order of a competent court of law on the issue or on a part of any particular category of the issue.
13. Confirmation from RTA and Merchant Bankers that:
    i. Only QIBs as mentioned under the SEBI ICDR, regulation 2018 are proposed to be allotted equity shares under QIB category.
    ii. No QIB has Bid and proposed to be allotted equity shares under non-QIB or retail category.
    iii. The basis of allotment has been prepared in compliance with SEBI (ICDR) Regulations 2018 and for its issue the Company has complied with said regulation.
14. List of all prospective allottes (valid) along with number of shares applied, amount paid, bank account details, PAN number, Demat account details etc. (in soft copy CD)
15. If Approval from SEBI is sought for relaxation in PAN mismatch applications, then copy of SEBI approval letter as well as the true copy of request letter to SEBI, should be submitted.

SME IPO Checklist – In Principle Approval:

1. 10 copies of the draft offer document.
2. Soft copy of the Draft Prospectus for uploading on website.
3. Copy of resolution passed by the Board of Directors for issue of securities through IPO.
4. Copy of the shareholders resolution under 62(1)(c) of Companies Act, 2013 approving IPO.
5. Undertaking from BRLM(s) / Lead Manager(s) that:
    a. the offer document contains all material disclosures which are true and adequate to enable the applicants to take an informed investment decision.
    b. The Offer Document contains:
        i. Disclosures specified in the Companies Act 2013
        ii. Disclosures specified in Part A of Schedule VI of SEBI (ICDR) Regulations 2018.
6. Confirmation from the Issuer **Company** and **BRLM (s)/ Lead Manager(s)** confirming that:
    a) The Company is eligible to make an issue under SEBI (ICDR) Regulations, 2018 and is in compliance with Regulation 228 and 230 of said regulations.
    b) For the proposed IPO, the Company is in compliance with the eligibility requirement for an SME to do an IPO as laid down under Regulation 229 of SEBI (ICDR) Regulations 2018.
    c) The Company is in compliance with the eligibility criteria of the Exchange for listing on BSE SME Platform. Point wise compliance with Exchange requirement shall be given as separate Annexure.
    d) There are no restrictive clauses in the Articles of Association of the Company.
    e) The provisions of the Memorandum and Articles of Association are not inconsistent with the

clauses of the Listing agreement or any other applicable law, Rules or Regulations.

f) For the proposed IPO, the company has complied with all the statutory requirements including requirements of The Companies Act, 2013, SEBI Act, RBI Guidelines, SEBI (ICDR) Regulations, 2018 etc. and no statutory authority has restrained the company from issuing its securities to public through IPO.

g) The company has appointed <name > as compliance officer in term of Regulation 244(8) of SEBI (ICDR) Regulations, 2018 and his contact details are given hereunder: <Provide contact details>

7. Copy of all show cause notice(s)/order(s) issued by any regulatory authority (e.g. SEBI, ROC, RBI, CLB, Stock Exchange etc.) & Correspondence there to.
8. Details of Company Directors including their PAN number.
9. PAN and TAN number of Company
10. If the Promoters are Individuals: PAN , Bank Account Number
11. If the Promoters are Body Corporates: PAN , Bank Account Number ,Permanent Account Number, Company Registration Number or equivalent and the address of the ROC with which the promoter is registered.
12. Printed Balance Sheets, Profit & Loss Accounts and Cash Flow Statements for the preceding 5 years (or for such applicable periods)
11. Copies of major orders/contracts/ received/ executed/ in-hand should be kept ready and be available for inspection. A statement of material contracts duly certified by a practicing Chartered Accountant/ practicing Company Secretary should be submitted.
12. Details if the present or any previous application of the Company/Group Company for listing of any securities has been rejected earlier by SEBI or by any stock exchange and reasons thereof.
13. Submit the following details of its listed group companies:
    a) Name of the Company:
    b) ISIN Number:
    c) Name of the Exchange, where it is listed:
    d) Scrip Code/Scrip Symbol:
    e) If under suspension Reason for suspension:
14. Name of the exchange which is proposed to be designated by the Company as the lead exchange, for the purposes of approval of the basis of allotment, and for depositing the security deposit as required under the listing conditions of the exchanges.
15. Copies of agreements and memoranda of understanding between the Company and its promoters/ directors.
16. Memorandum & Articles of Association of the Company.
17. A certificate from the statutory auditor/practicing chartered accountant certifying compliance of conditions of Corporate Governance as stipulated in Companies Act, 2013 and Regulation 17 to 27 of the SEBI (LODR) Regulations and circulars issued by SEBI thereunder. (If Applicable)
18. One Time Listing Processing Fees.
19. Due Diligence Certificate as submitted to SEBI, addressed and submitted to Stock Exchange.

20. Copy of SEBI certificate for Merchant Banking Registration.
21. SEBI scores registration.
22. Confirmation to be submitted by the Statutory Auditors on their letterhead for Compliance with Sec 42(6) of the Companies Act 2013 for the Private placements made by the company on or after 01st April, 2014.
23. Confirmation to be submitted by the Managing Director/Company Secretary on their letterhead for Compliance with Sec 42(6) of the Companies Act 2013 for the Private placements made by the company on or after 01st April, 2014.
24. The Company shall undertake to inform the Exchange forthwith of any material development which takes place after the filing of the application with the Exchange but prior to the issue of the in-principle approval that may render the information provided to the Exchange (whether in the application or otherwise) incorrect or outdated or which otherwise has a bearing on the proposed issue of securities.
25. Undertaking from MD/ CS/ Compliance Officer of the company stating:
    a) "We hereby confirm that the company or its promoters or whole time directors are not in violation of the provisions of Regulation 24 of the SEBI Delisting Regulations, 2009."
    b) "We hereby confirm that the company, its promoters, its directors are not in violation of the restrictions imposed by SEBI under SEBI circular no. SEBI/HO/ MRD/DSA/CIR/P/2017/92 dated August 01, 2017."
26. Contact Details:
    a. From Company.
    b. From BRLMs.

Listing and Trading of SME IPO

Documents to be submitted on T+2 days (i.e. within 2 working days from the closure of the issue)

1. All due diligence certificates filed with SEBI by Merchant bankers.
2. List of authorized signatories along with their specimen signatures.
3. Confirmation from Lead Managers that devolvement notices have been sent to underwriters (applicable if the issue has devolved).
4. The company should inform that the dividend entitlement for the current year for all the existing shares including the shares issued in the public issue shall rank *pari-passu*.
5. Confirmation from the company regarding the email ID for Investor Grievances as per Regulation 46 of SEBI (LODR), Regulations, 2015.
6. Copies of all advertisements published in connection with the issue upto T+2 stage.
7. Confirmation from the company stating that they have obtained authentication for SCORES from SEBI as per SEBI Circular dated April 13, 2012.

Documents to be submitted before T+4 days (i.e. within 4 working days from the closure of the issue)

The following documents to be submitted :

1. Copy of Prospectus (also in soft copy CD).
2. Copy of the RoC filing acknowledgement for filing of Prospectus.
3. Certified true copy of the additional material contracts and documents (mentioned in the final offer document/Prospectus) which have not been submitted earlier with the Exchange. **(Soft copy for all the material contracts and documents)**
4. Certified true copy of Table showing region- wise collection of application money.
5. Certificate from the bankers to the issue regarding the collection of application money.
6. Certified true copy of the basis of allotment approved by the Designated Stock Exchange.
7. Copy of the letter from Registrar addressed to Merchant bankers regarding the details they have verified with the depositories (NSDL/ CDSL).

Documents to be submitted on or before T+4 days (i.e. within 4 working days from the closure of the issue)

1. Clauses relating to Articles of Association.
2. Letter of application
3. Listing Agreement as per SEBI (LODR), Regulations, 2015 duly executed on non judicial stamp paper of Rs. 100/- (2 original sets– 1 to be returned to company) along with Certified true copy of the resolution passed by the Board of Directors for authorizing officer to sign and execute the listing agreement.
4. Certified true copy of the resolution passed by the Board of Directors for allotment of securities (the resolution should specifically make a mention of total number of Securities allotted/allocated by the issuer)
5. Certificate from statutory auditors/practicing chartered accountant/ practicing company secretary stating that :
   a) Allotment has been made as per the basis of allotment approved by the Designated Stock Exchange.
   b) The share certificates corresponding to equity Securities under lock in have been enfaced with non-transferability condition, as per format given below:

Number of Securities	Distinctive numbers range		Lock-in Date	
	From	To	From	To

   c) Allotment of shares from the employees' quota has been made to permanent/regular employees of the company and of the promoter companies, as on the date of the opening of the public issue and who are entitled to such allotment
6. If Pre-IPO shares are held in physical form, then **confirmation from RTA** to the issue that the Pre-IPO shares held in physical form are locked-in in their system upto the dates mentioned as per the table shown below. Further, the RTA should confirm that as and when the physical certificates, if received for dematerialization will be locked in upto the dates as mentioned below:

Number of Securities	Distinctive numbers range		Lock-in Date	
	From	To	From	To

7. Lock-in confirmation from depositories for pre-IPO equity shares
8. In case Securities issued (including anchor investors) in dematerialized form are under lock in then a certificate from the depositories must be furnished stating that the Securities are under lock in confirming the date upto which they are under lock-in (applicable only in cases where the equity Securities issued are under lock in).
9. Shareholding pattern of company (pre issue, issue and post issue) in format with PAN given as per Regulation 31 of SEBI (LODR), Regulations, 2015. **Also provide post issue shareholding pattern without PAN details)**
10. Copies of all advertisements published after till date
11. Specimens of the allotment advice (CAN) marked cancelled
12. Specimens of the allotment advice sent to Qualified Institutional Buyers (QIB)
13. Details regarding compliance with the conditions of Corporate Governance as stipulated in Companies Act, 2013 and Regulation 17 to 27 of the SEBI (LODR) Regulations and Circulars issued by SEBI thereunder. (IF APPLICABLE)
14. **Details of Current Issue**

Category	Valid Shares Received in each category	No. of shares available for Allocation (as per Prospectus)	Spill Over if any	Equity Shares Allotted

15. Annual Fees.
16. Confirmation from the issuer for the following:
    - That the copies of all advertisements published as regards the current issue have been submitted to the Exchange.
    - That the issuer is compliant with the requirement of common agency as specified by SEBI.
    - That all securities required to be under lock-in are subjected to lock-in, as mentioned in Offer Document for the issue.
17. Confirmation from the Lead Manager and Issuer confirming that the issue in compliance with all requirements of Companies Act, 2013, SEBI (ICDR) Regulations 2018 and any other applicable law(s), Rules and Regulations and no statutory authority has restrained the Company from issuing and listing of shares pursuant to present issue.
18. Soft copy of total securities issued by the Issuer.
19. List of all allottees, addresses, category wise (QIB/HNI/Retail/Reserved category) along with number of shares applied, allotted, amount paid, bank account details, PAN number, Demat account details etc. (in soft copy CD)
20. Letter from all the merchant bankers involved in the issue specifying the following:
    i. Details of amendments/ changes made in DRHP (which were subsequently incorporated in RHP) and details of amendments/ changes made in RHP (which were subsequently incorporated in Prospectus).
    ii. Kindly submit the same in track changes mode also.
21. Confirmation from the company stating that they have obtained authentication for SCORES from SEBI as per SEBI Circular dated April 13, 2012 if not given at the time of T+2 documentation.

22. Confirmation from RTA on the total quantum of NSM commission payable as per SEBI circular CIR/ CFD/14/2012 dated Oct. 4, 2012 in the captioned issue. The calculation format for determining the quantum of commission should be as per the aforesaid SEBI circular.
23. Confirmation from the issuer on the transfer of the NSM commission amount to the Bank Account of the Exchange.
24. Confirmation of effective date of listing and Symbol to be used for Scrip ID and BOLT.
25. Undertaking from MD/ CS/ Compliance Officer of the company stating:
    i. "We hereby confirm that the company or its promoters or whole time directors are not in violation of the provisions of Regulation 24 of the SEBI Delisting Regulations, 2009."
    ii. "We hereby confirm that the company, its promoters, its directors are not in violation of the restrictions imposed by SEBI under SEBI circular no. SEBI/HO/ MRD/DSA/CIR/P/2017/92 dated August 01, 2017."
26. CIN,PAN,TAN & GSTIN of the Company
27. DIN & PAN of Promoters and Directors

Documents to be submitted before T+5 days (i.e. within 5 working days from the closure of the issue)

1. Certified true copy of the letter from Registrars and lead manager regarding dispatch of share/debenture/ warrant certificates, allotment advice, refund orders, underwriting commission, uploading of electronic credit of Securities, uploading of ECS/NEFT/RTGS credits and brokerage warrants.
2. Confirmation from the depositories regarding the credit of beneficiary accounts of the security holders.
3. Certificate from the Registrar reconciling the total securities allotted with the total securities credited, and securities that have failed to be credited.
4. Basis of allotment advertisement.

PROFESSIONAL PROGRAMME

CORPORATE FUNDING & LISTINGS IN STOCK EXCHANGES (PAPER 7)

PP-CF&L

TEST PAPER

A Guide to CS Students

To enable the students in achieving their goal to become successful professionals, Institute has prepared a booklet "A Guide to CS Students" providing the subject specific guidance on different papers and subjects contained in the ICSI curriculum. The booklet is available on ICSI website and students may down load from http://www.icsi.edu/Portals/0/AGUIDETOCSSTUDENTS.pdf

WARNING

It is brought to the notice of all students that use of any malpractice in Examination is misconduct as provided in the explanation to Regulation 27 and accordingly the registration of such students is liable to be cancelled or terminated. The text of regulation 27 is reproduced below for information:

"27. Suspension and cancellation of examination results or registration.

In the event of any misconduct by a registered student or a candidate enrolled for any examination conducted by the Institute, the Council or the Committee concerned may suo motu or on receipt of a complaint, if it is satisfied that, the misconduct is proved after such investigation as it may deem necessary and after giving such student or candidate an opportunity to state his case, suspend or debar the person from appearing in any one or more examinations, cancel his examination result, or studentship registration, or debar him from future registration as a student, as the case may be.

Explanation – Misconduct for the purpose of this regulation shall mean and include behaviour in a disorderly manner in relation to the Institute or in or near an Examination premises/centre, breach of any regulation, condition, guideline or direction laid down by the Institute, malpractices with regard to postal or oral tuition or resorting to or attempting to resort to unfair means in connection with the writing of any examination conducted by the Institute".

PROFESSIONAL PROGRAMME

CORPORATE FUNDING & LISTINGS IN STOCK EXCHANGES

TEST PAPER

[*This Test Paper is for recapitulate and practice for the students. Students need not to submit responses/ answers to this test paper to the Institute*.]

Time Allowed: 3 Hours *Maximum Marks: 100*

PART - I

1. (a) Enumerate the various Eligibility requirements required to be fulfilled by a company for making an initial public offer under the SEBI ICDR Regulations 2018. (*5 marks*)

   (b) Is it necessary to being in Promoters' Contribution before the Public Issue Opens? Explain the provisions as applicable in this regard under SEBI ICDR Regulations, 2018. (*5 marks*)

   (c) What is Dissenting Shareholders? Explain the provisions relating to manner of providing dissenting shareholders? (*5 marks*)

   (d) Define' Sweat Equity Shares'. Whether Issue of sweat equity shares can be in the form of preferential Issue? (*5 marks*)

Attempt all parts of either Question No. 2 or Question No. 2A

2. (a) Describe the eligibility criteria to be act as an investment manger under the SEBI (Infrastructure Investment Trusts) Regulations, 2014. (*5 marks*)

   (b) Briefly discuss the provisions for a Real Estate Investment Trust for listing and trading of its units on a stock exchange. (*5 marks*)

   (c) Explain the various categories of Alternative Investment Fund (AIF) as stipulated under the SEBI (Alternative Investment Funds) Regulations, 2012. (*5 marks*)

OR (Alternate Question to Q. No. 2)

2A. Discuss in brief the following:

   (i) Strategic Investor

   (ii) Seed Funding

   (iii) Factoring

   (iv) Standby Letter of Credit

   (v) Depository Receipt (DR)

(*3 marks each*)

3. (a) Enumerate the various conditions required to be fulfilled for issue of depository receipts under the Companies (Issue of Global Depository Receipts) Rules, 2014. (*7 marks*)

   (b) What do you mean by deposit? Discuss briefly the provisions relating to acceptance of deposit under the Companies Act, 2013. (*8 marks*)

   (c) Discuss the various conditions required to be fulfilled for listing of non-convertible redeemable preference shares on private placement basis. (*5 marks*)

   (d) What do you understand by Green Debt Securities? Explain. (*5 marks*)

PART II

Attempt all parts of either Question No. 4 or Question No. 4A

4. With respect to SEBI Listing Regulations 2015, explain the following:

   (*a*) The criteria for determination of materiality of events/ information for an entity whose specified securities are listed on the Main Board of a Stock Exchange. (*5 marks*)

   (*b*) Procedures in case of non-receipt of response to reminders sent to the security holders. (*5 marks*)

   (*c*) Is it mandatory for a listed entity to formulate dividend distribution policy? Describe the provisions relating to dividend distribution policy. (*5 marks*)

   (d) What are the conditions required to be fulfilled by a company, if a promoter/ person belonging to promoter group wants to be re-classified to the status of public? (*5 marks*)

OR (Alternate Question to Q. No. 4)

4A. Discuss in brief the following w.r.t SEBI Listing Regulations:

   (i) Statement of deviation(s) or variation(s)

   (ii) Preservation of documents

   (iii) Grievance Redressal Mechanism

   (iv) Compliance Officer and his Obligations (*5 marks each*)

5. (a) Elaborate the various recognitions conferred upon Company Secretary by SEBI. (*10 marks*)

   (b) Explain the different ways in which a company can list on London Stock Exchange. (*5 marks*)

   (c) What do you mean by ‘Nominated Advisers’? Explain. (*5 marks*)

NOTES