
STUDY MATERIAL

EXECUTIVE PROGRAMME

**SECURITIES LAWS
AND CAPITAL MARKETS**

MODULE 2
PAPER 6



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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EXECUTIVE PROGRAMME

SECURITIES LAWS AND CAPITAL MARKETS

The securities markets are vital to the growth, development and strength of market economies and the maturity of an economy are decided based on the robustness of securities market of an economy. Considering that the Securities market is the core area of practice for the Company Secretaries, it becomes very important for the professionals to be fully aware of various laws and regulations, both for practice and guiding the Board of Directors on securities laws related matters. The securities market is governed by various regulations enacted in the course of time by the competent legislative body and regulating bodies. This study is divided into two Parts, Part I deals with Securities Laws and Part II deals with Capital Market & Intermediaries.

Part I of the Study provides an in depth analysis of the legal principles applicable to listed companies in addition to the Companies Act, 2013. The Regulatory Body Securities Exchange Board of India (SEBI) having extended SEBI's jurisdiction over corporates in the issuance of capital and transfer of securities, during the course of time has come out with several regulations for smooth functioning of the market, thereby also giving paramount importance to the stakeholders. Therefore, this study discusses various legislative and regulatory guidance such as Securities Contracts (Regulation) Act, 1956, Depositories Act, 1996, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, SEBI (Prohibition of Insider Trading) Regulations, 2015, etc.

Part II of the study deals with analyses of the secondary market or the capital market, which is the bridge between the investors and the corporates. There are several intermediaries and institutions involved in dealing with the capital market. SEBI has also jurisdiction over all such intermediaries and persons associated with the securities market. In connection with the same, SEBI has regulated their functioning through various regulations, which have been discussed in this part.

In the era of plethora of legislations, rules, and regulations, a Company Secretary professional is expected to be well aware of these rules and principles, as these compliances make the functioning of the markets smooth while violations leads to severe penalties.

This study material is published to aid the students in preparing the paper on Securities Laws and Capital Markets for Executive Programme. It is part of the educational kit and takes the students step by step through each phase of preparation emphasizing key concepts, principles, legal fundamentals and procedures. Company Secretaryship being a professional course, the examination standards are set very high, with focus on knowledge of concepts, their application, procedures and case laws, for which sole reliance on the contents of this study material may not be enough. This study material may, therefore, be regarded as the basic material and must be read alongwith the Bare Acts, Rules, Regulations, Case Law.

The legislative changes made upto 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.

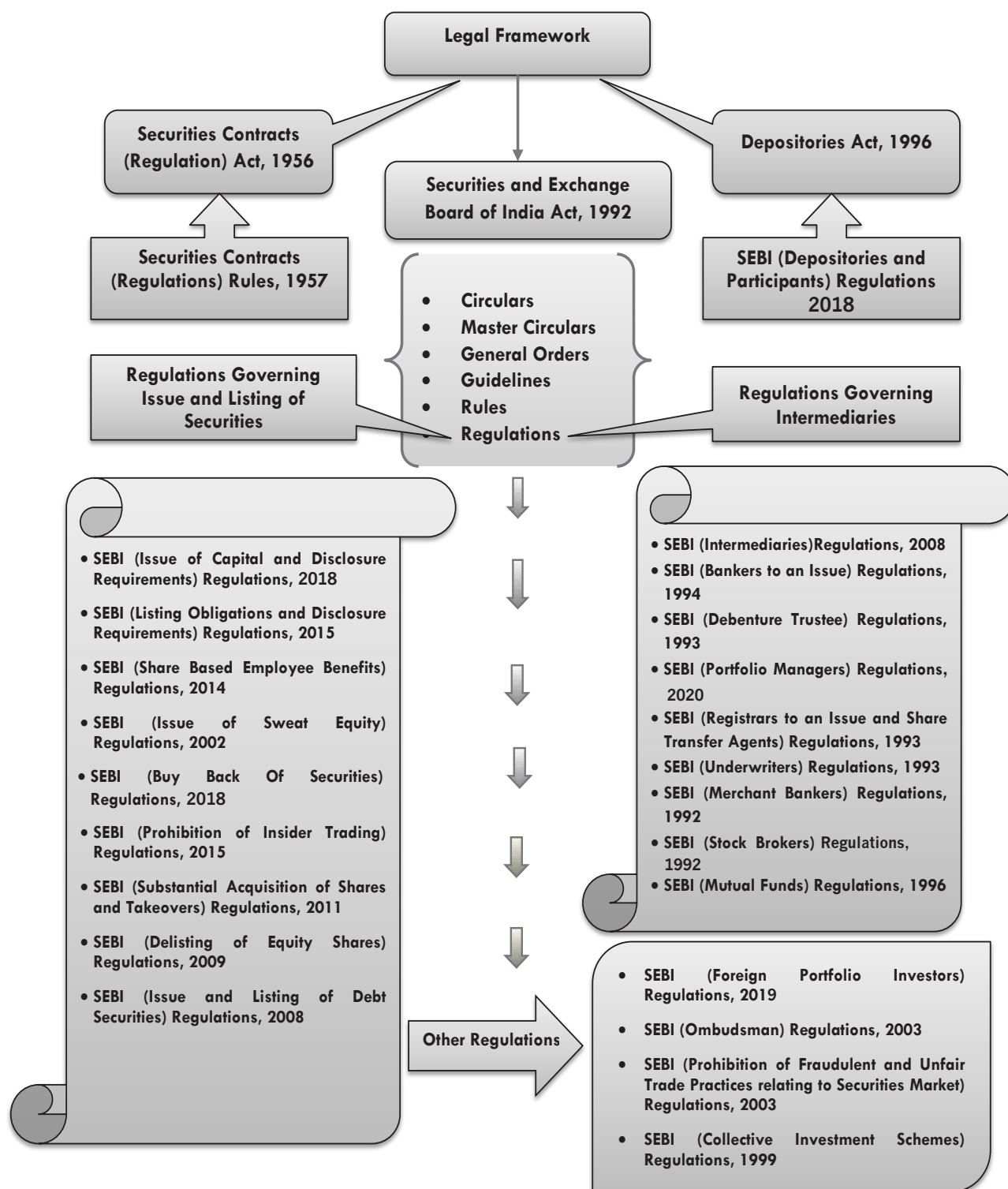
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Should there be any discrepancy, error or omission noted in the study material, the Institute shall be obliged if the same is brought to its notice for issue of corrigendum in the e-bulletin 'Student Company Secretary'.

LEGAL AND REGULATORY FRAMEWORK

The Legal and Regulatory Framework of Securities Laws and Capital Markets in India is given below :



EXECUTIVE PROGRAMME

Module 2

Paper 6

SECURITIES LAWS AND CAPITAL MARKETS (MAX MARKS 100)

SYLLABUS

Objective

Part I To provide expert knowledge in the legislations, rules and regulations governing the entities listed on the stock exchanges.

Part II To provide the basic understanding of the working of capital markets in India.

PART I : SECURITIES LAWS (70 MARKS)

Detailed Contents

1. **Securities Contracts (Regulation) Act, 1956** : Objectives of the SCR Act, Rules and Regulations made there under; Important Definitions; Recognized Stock Exchange, Clearing Corporation; Public issue and listing of securities; Rules relating to Public Issue and Listing of Securities under Securities Contracts (Regulation) Rules, 1957.
2. **Securities and Exchange Board of India Act, 1992**: Objective; Powers and functions of SEBI; Securities Appellate Tribunal; Penalties and appeals.
3. **Depositories Act, 1996** : Depository System in India; Role & Functions of Depositories; Depository Participants; Admission of Securities; Dematerialization & Re-materialisation; Depository Process; Inspection and Penalties; Internal Audit and Concurrent Audit of Depository Participants.
4. **An Overview of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.**
SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 rechristened as **SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.**
5. **An Overview of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.**
6. **An Overview of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.**
7. **SEBI (Buyback of Securities) Regulations, 1998** : Conditions of buy-back; Buy back Methods: Tender Offer, Open Market (Book building and Stock Exchange); General obligations; Penalties.
SEBI (Buyback of Securities) Regulations, 1998 rechristened as **SEBI (Buyback of Securities) Regulations, 2018.**
8. **SEBI (Delisting of Equity Shares) Regulations, 2009** : Delisting of Equity Shares; Voluntary Delisting; Exit Opportunity; Compulsory Delisting.
9. **An Overview of SEBI (Share Based Employee Benefits) Regulations, 2014.**
10. **An Overview of SEBI (Issue of Sweat Equity) Regulations, 2002.**

11. **SEBI (Prohibition of Insider Trading) Regulations, 2015** : Unpublished price sensitive information (UPSI); Disclosures; Codes of fair disclosure and conduct; Penalties and Appeals.
12. **Mutual Funds** : Types of Mutual Funds and Schemes; Key players in Mutual Funds: Sponsor, Asset Management Company, Trustee, Unit holder, Evaluating performance of Mutual funds- Net Asset Value, Expense Ratio, Holding Period Return.
13. **Collective Investment Schemes** : Regulatory Framework; Restrictions on Business Activities; Submission of Information and Documents; Trustees and their Obligations.
14. **SEBI (Ombudsman) Regulations, 2003** : Procedure for Redressal of Grievances; Implementation of the Award; Display of the particulars of the Ombudsman, SCORES, SEBI (Informal Guidance) Scheme, 2003.

Case Laws, Case Studies & Practical Aspects

PART II: CAPITAL MARKET & INTERMEDIARIES (30 MARKS)

15. STRUCTURE OF CAPITAL MARKET

I. Primary Market

- (a) Capital Market Investment Institutions-Domestic Financial Institutions (DFI), Qualified Institutional Buyers (QIB), Foreign Portfolio Investors (FPI), Private Equity, Angel Funds, HNIs, Venture Capital, Pension Funds, Alternative Investment Funds.
- (b) Capital Market Instruments-Equities, Preference Shares, Shares with Differential Voting Rights, Corporate Debt, Non-Convertible Debentures (NCD), Partly, Fully and Optionally Convertible Debentures, Bonds, Foreign Currency Convertible Bonds (FCCB), Foreign Currency Exchangeable Bonds (FCEB) Indian Depository Receipts (IDR), Derivatives, Warrants;
- (c) Aspects of Primary Market- book building, ASBA, Green Shoe Option.

II. Secondary Market

Development of Stock market in India; Stock market & its operations, Trading Mechanism, Block and Bulk deals, Grouping, Basis of Sensex, Nifty; Suspension and Penalties; Surveillance Mechanism; Risk management in Secondary market, Impact of various Policies on Stock Markets such as Credit Policy of RBI, Fed Policy, Inflation index, CPI, WPI, etc.

16. **Securities Market Intermediaries** : Primary Market and Secondary Market Intermediaries: Role and Functions, Merchant Bankers, Stock Brokers, Syndicate Members, Registrars and Transfer Agents, Underwriters, Bankers to an Issue, Portfolio Managers, Debenture Trustees, Investment Advisers, Research Analysts, Market Makers, Credit Rating Agencies; Internal Audit of Intermediaries by Company Secretary in Practice.

Case Laws, Case Studies & Practical Aspects.

LESSON WISE SUMMARY

SECURITIES LAWS AND CAPITAL MARKETS

PART I – SECURITIES LAWS

Lesson 1 – Securities Contracts (Regulation) Act, 1956

Stock Market plays a significant role in the development of Economy. Stock Market facilitates mobilization of funds from small investors and channelizes these resources into various development needs of various sectors of the economy. The Securities Contracts (Regulation) Act, 1956 (“SCRA”) is an important piece of legislation which regulates the stock exchanges and contracts in securities.

The SCRA was enacted to prevent undesirable exchanges in securities and to control the working of stock exchange in India. It came into force on February 20, 1957. This Act gives powers to regulate and govern the stock exchanges and their working. There are certain powers which are delegated to SEBI under this Act.

The Government of India promulgated the Securities Contracts (Regulations) Rules, 1957 (“SCRR”) for carrying into effect the objects of the SCRA.

The SCRA and SCRR also prescribes the conditions for listing of securities on the stock exchanges. It also provides for amount of public holding required in every public company seeking listing.

This lesson will give an insight into the various Powers of Central Government, Stock Exchange and SEBI under the SCRA Act, the penal provisions, procedures, offences, the procedure for appeal to SAT, Right of Investors and various listing and delisting provisions under Securities Contract (Regulations) Rules, 1957 etc. At the end of this lesson, the student will be able to understand:

- Registration of stock exchange(s);
- Powers of Central Government in various cases;
- Powers of Recognised Stock Exchange to make rules and bye-laws;
- Powers of SEBI under SCRA;
- Clearing Corporation and its functions;
- Issue of securities to the Public;
- Delisting of securities from recognised stock exchange;
- Procedure to file an appeal to Securities appellate tribunal;
- Various penalties for various offences as prescribed under the Act; and
- Requirements for listing of securities with recognised stock exchange;

Lesson 2 – Securities and Exchange Board of India Act, 1992

With an aim to regulate the securities market in India, the Govt. of India set up a regulatory body i.e. Securities and Exchange Board of India (“SEBI”) in 1988. It became an autonomous body by the Government of India on 12 April 1992 and given statutory powers in 1992 with SEBI Act, 1992 being passed by the Indian Parliament.

The Preamble of the Securities and Exchange Board of India is “to protect the interests of investors in securities

and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto”.

The SEBI Act is the main Act from which several other Rules and Regulations have originated. The Act constitutes a Board (“the SEBI”) to protect the investors’ interest in securities and to promote the development and to regulate the securities market. The SEBI replaces the erstwhile Controller of Capital Issues. The SEBI has various powers under the Act including to issue various Regulations to better regulate the securities market and for better investor protection. It governs and regulates the market intermediaries. It has wide powers of investigation, survey, search and seizure, powers to impound documents, take statements on oath, etc. Thus, the powers enshrined in the SEBI are of a very wide amplitude. It also has powers to issue “directions, e.g., cease and desist” orders, by virtue of which, it can prohibit any person or intermediary from carrying out certain operations. The Act provides for stringent penalties for different types of offences and violations.

The objective of this lesson, is to provide a broader information regarding various powers and functions of SEBI, various stringent penalties for protecting the interest of investors and and inspection of various regulated entities, etc. to the students. At the end of this lesson, the student will able to understand :

- Powers and functions of SEBI;
- Conditions for offer of collective investment scheme by a company;
- Investigations procedure by the SEBI;
- Various penalties imposed by the SEBI for various failures, default, non-disclosure and other offenses;
- Procedure & Conditions for registration of an intermediaries; and
- Formation of the Securities Appellant Tribunal, its compositions, tenure, requirements for appeal and its powers.

Lesson 3 – Depositories Act, 1996

A Depository is an organization like a Central Bank where the securities of a shareholder are held in the electronic form at the request of the shareholder through the medium of a Depository Participant. A DP can be a bank, financial institution, a broker, or any entity eligible as per SEBI norms and is responsible for the final transfer of shares from the depository to investors. The investor, at the end of a transaction receives a confirmation from the depository.

In India, there is Depository System for securities trading in which book entry is done electronically and no paper work is involved. The physical form of securities is extinguished and shares or securities are held in an electronic form. Before the introduction of the depository system through the Depository Act, 1996, the process of sale, purchase and transfer of securities was a huge problem, and there was no safety at all.

The Depositories Act, 1996 provides a legal framework for establishment of depositories to facilitate holding of securities including shares in the demat form (electronic form) and to effect transfer of securities through book entry. The Act establishes the depository system in India by providing for setting up of one or more depositories to enable the investors to hold securities in non-physical form (known as dematerialized form) and to affect transfer of securities by way of book entries in accounts maintained by the depository.

Every depository is required to be registered with SEBI and will have to obtain a Certificate for commencement of business on fulfillment of the prescribed conditions. There are two types of depositories in India, namely National Securities Depository Limited (NSDL) and Central Depository Services Limited (CDSL). The functioning of Depository and its constituents in India is primarily governed by the Depository Act 1996, SEBI (Depository & Participant) Regulations, 2018, Bye-laws and business rules of respective depositories.

The operational and functional issues relating to depository system have been discussed in this lesson to

give an idea of the practical implications of various statutory and regulatory provisions. Further, a Practising Company Secretary has been recognised by SEBI for various types of Audit of Depository participants.

At the end of this lesson, the student will be able to understand :

- Basics of depository and its benefits;
- Models of depository and its functions;
- Process of dematerialisation and rematerialisation of securities;
- Securities which are eligible to be issued in depository mode;
- The concept of fungibility and rights of depository & beneficial owner;
- The applicability of SEBI (Depositories and Participants) Regulations, 2018;
- Audit of depositories i.e., Internal Audit and Concurrent Audit by a Practising Company Secretary; and
- Audit of Reconciliation of Share Capital by a Practising Company Secretary.

Lesson 4 – An Overview of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

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 modifying certain provisions on account of changes necessitated due to market design.

The SEBI in order to align its provisions under ICDR Regulations with the 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. The SEBI constituted a committee named “ICDR Committee” under the chairmanship of Sri Prithvi Haldea in June, 2017 to review the ICDR Regulations which suggested certain policy changes in continuation to the same, the SEBI on September, 11, 2018 notified the SEBI (ICDR) Regulations, 2018 effective from the 60th day of its publication in official Gazette. SEBI (ICDR) Regulations, 2018, lay down various provisions and procedures for various types of issue including public and rights issue.

SEBI's emphasis on disclosure based regulation has witnessed a proliferation of disclosure norms for various types of capital raising activities by Indian companies. SEBI has gradually expanded the disclosure norms and prospectus requirements, culminating in the presently applicable SEBI ICDR Regulations. It lay down guidelines relating to conditions for various kinds of issues including public and rights issue. The ICDR Regulations provide detailed 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.

At the end of this lesson, the student will be able to understand:

- Types of Issue;
- Concept of draft offer document, letter of offer and red herring prospectus;
- Contribution of promoters in case of Public Issue & exemption from the same;
- Concept of underwriting, Opening of Public issue & Minimum Subscription;
- Minimum number of share applications and application money;
- Pre-issue advertisement & Post issue advertisement;

- Restriction on further issue of capital & Reservation on competitive basis; and
- Detailed procedure for issue of securities by companies.

Lesson 5 – An Overview of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Listing agreement means where the securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange. It is a basic document which is executed between companies and the stock exchange when companies are listed on the stock exchange. Listing Agreement entered into by listed companies with the stock exchanges prescribes initial and continuous disclosure norms. The modifications to provisions of Listing Agreement are prescribed by SEBI. The Listing Agreement has been modified from time to time to align with the regulatory requirements arising out of the dynamic changes in the capital market.

With a view to consolidate and streamline the provisions of existing listing agreements for different segments of the capital market and to align the provision relating to listed entities with the Companies Act 2013, SEBI has notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 hereinafter referred as 'Listing Regulations'.

The SEBI Listing Regulations lay down the broad principles for periodic disclosures to be given by the listed entities operating in different segments of the capital markets. The Listing Regulations have been structured to provide ease of reference by consolidating into one single document across various types of securities listed on the Stock Exchanges.

This lesson will give an overview of :

- Obligations of listed entities;
- Various compliances & disclosures required to be made by the listed entities;
- Types of Board committee under listing regulations;
- Concept of Vigil Mechanism and Related Party Transactions; and
- Role of Company Secretary as a compliance officer as per listing regulations.

Lesson 6 – An Overview of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

One of the most popular modes of corporate expansion is by the acquisition of an existing company. However, when the company being acquired is a listed company, then along with the promoters' stake, there are a lot of other interests, such as, public shareholders, financial institutions, foreign shareholders, etc. It is essential that all these shareholders also get a fair deal in case of an acquisition. To address all such concerns, SEBI has framed the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 which have evolved significantly over the years and notified the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 ('SAST Regulations') repealing the old regulation, providing for Acquisition of shares and takeover of listed companies popularly known as "Takeover Code".

Takeover code prescribes a systematic framework for acquisition of stake in listed companies. By these laws the regulatory system ensures that the interests of the shareholders of listed companies are not compromised in case of an acquisition or takeover. It also protect the interests of minority shareholders, which is also a fundamental attribute of corporate governance principle.

After going through this lesson, the students will have the knowledge about the various procedural aspects of takeover by an acquirer and target company with respect to acquisitions and takeover. At the end of this lesson, the student will have the conceptual clarity about the following aspects of SEBI Takeover Code:

- Triggering point while making an open offer by an acquirer;
- Open offer to the public;
- Concept of Public announcement i.e., timing of Public announcement & Detailed Public announcement;
- Procedural compliances related to letter of offer, opening of the offer etc.;
- Obligations of the acquirer and target company;
- Various disclosures requirements;
- Exemptions available to the acquirer in case of open offer; and
- Practical aspects of takeover.

Lesson 7 – SEBI (Buy-Back of Securities) Regulations, 2018

Buy-back of securities is a corporate financial strategy which involves capital restructuring and is resorted to by companies to achieve the varied objectives of increasing earnings per share, averting hostile takeovers, improving returns to stakeholders and realigning the capital structure.

Buy-back of securities, like any other transaction of corporate restructuring, brings into play several issues, both financial and non-financial, and the process of buy-back needs to be structured in a way that all the issues are taken care of favourably.

The concept of buy-back was introduced in the Companies Act, 1956 by the Companies (Amendment) Act, 1999 by the insertion of Sections 77A, 77AA and 77B. Consequently, SEBI also issued the SEBI (Buy-Back of Securities) Regulations, 1998 (“Old Regulation”) on 14th November 1998 with an objective of simplifying the language, removing redundant provisions and inconsistencies updating the references to the Companies Act, 2013/other new SEBI Regulations and incorporating the relevant circulars, FAQ’s informal guidance in the regulations, the SEBI notified the SEBI (Buyback of Securities) Regulations, 2018 on September 11, 2018 repeal the old Regulation. These regulations are applicable to the buyback of securities of a company listed on a stock exchange. Under the Companies Act, 2013 buyback is governed by sections 68, 69 and 70 and listed companies are governed by the SEBI (Buy-Back of Securities) Regulations, 2018.

This lesson will give an insight to the students into various methods of buy back available, prohibitions, objectives and process of buy back etc. At the end of this lesson, the student will be able to understand:

- Methods of buy back of securities;
- Procedure for buyback of securities from existing or security shareholders, from open market and from odd-lot holders;
- Compliances related to extinguishing of bought back securities; and
- Obligations of the company and Merchant Banker.

Lesson 8 – SEBI (Delisting of Equity Shares) Regulations, 2009

With the new trends towards regulatory simplification to facilitate growth of businesses, barriers to free entry and exit to companies could ultimately prove to be prohibitive in terms of loss of Capital, resources and expertise. Internationally, stock exchanges do not impose any restriction on de-listing and allow de-listing subject to certain conditions such as minimum notice period for the company, exit offers to investors, etc.

Similarly in India, SEBI (Delisting of Equity Shares) Regulations, 2009 (“the delisting regulations”) gives an option to the listed company to either get itself delisted from all the recognised stock exchanges where it is listed through reverse book building or only from some of the stock exchanges and continue to be listed on the exchanges having nationwide terminals through a simplified process. Additionally, these regulations provide

simplified procedure for delisting of shares of smaller companies.

In order to provide a statutory backing for the delisting framework, the Government has also notified delisting rules under Rule 21 of Securities Contract (Regulations) Rules, 1957 (the SCR Rules) dealing primarily with substantive aspect on delisting. The Delisting Regulations deal with the delisting of equity shares exclusively, as against the erstwhile Delisting Guidelines which dealt with securities generally.

This lesson will make the student acquainted with the various provisions of delisting, reasons for delisting and the various requirements to be complied with. At the end of this lesson, the student will be able to understand:

- Agencies involved in delisting process and their Role;
- Concept of voluntary delisting and its different modes;
- Comprehensive procedure for delisting of equity shares from all the stock exchanges or few stock exchange;
- Meaning of small companies and how it can voluntarily delist its equity shares;
- Compulsory delisting of shares and its detailed procedure; and
- Special powers of the recognised stock exchange in case of delisting of equity shares.

Lesson 9 – SEBI (Share Based Employee Benefits) Regulations, 2014 – An Overview

In this very dynamic era, most of the organisations are faced with a persistent challenge of attracting and retaining talented employees. Equity based compensation or stock based incentive schemes are widely used by the organisations in India and across the globe for their perceived benefits to both employer and employees in the long run.

The SEBI, in the year 1999, had framed “the SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999” (hereinafter “existing guidelines”) which provides for the stock based incentive schemes to employees. On 28th October, 2014, the SEBI had notified the **SEBI (Share Based Employee Benefits) Regulations, 2014** (hereinafter “Regulations”) repealing the existing guidelines. These Regulations apply to ESOS, ESPS, General Employee Benefit Schemes (GEBS), Retirement Benefit Schemes (RBS) and SAR Schemes of the listed companies.

This lesson will enable the students to learn the various provisions of SEBI (Share Based Employee Benefits) Regulations, 2014. At the end of this lesson, the student will be able to:

- Understand the provisions of Companies Act, 2013 with respect to Employee stock option;
- Specify the companies eligible to issue ESOP/ESPS/GEBS/RBS/SARS;
- Familiarize with the types of schemes offered by the listed company;
- Understand the full procedure for issue of fresh shares for ESOPs;
- Determine the implementation of scheme through trust;
- Understand the concept of compensation committee & cases where shareholders' approval required;
- Explain the administration of specific schemes like ESOS/ESPS/GEBS/RBS/SARS;
- Specify the provisions of SEBI LODR which is applicable to ESOP/ESPS; and
- Role of company secretary in issue of ESOP/ESPS/GEBS/RBS/SARS.

Lesson 10 – SEBI (Issue of Sweat Equity) Regulations, 2002 – An Overview

Sweat equity shares refers to equity shares given to the company's employees on favourable terms, in recognition

of their work. Sweat equity shares is one of the modes of making share based payments to employees of the company. The issue of sweat equity shares allows the company to retain the employees by rewarding them for their services.

Further, Sweat equity shares enables greater employee stake and interest in the growth of an organization as it encourages the employees to contribute more towards the company in which they feel they have a stake.

Issue of sweat equity is governed by the provisions of section 54 of the Companies Act, 2013, relevant rules and SEBI (Issue of Sweat Equity) Regulations, 2002. These regulations applicable to issue of sweat equity shares by the listed companies. At the end of this lesson, the student will able to:

- Correlate the provision of Companies Act with SEBI Issue of Sweat Equity Regulations;
- Specify the eligible person for issue of sweat equity shares;
- Understand the requirement of shareholders' approval by passing special resolution;
- Determine the pricing of sweat equity shares and its accounting treatment & valuation IPRs; and
- Enumerate the ceiling on Managerial remuneration & Lock-in of sweat equity shares.

Lesson 11 – SEBI (Prohibition of Insider Trading) Regulations, 2015

In India, insider trading is not only a tort i.e. a civil wrong but also a crime. The SEBI Act does not define the term by itself although it refers to the term “insider trading” in many provisions. However, using the powers to make regulations and in discharge of its functions, SEBI has made regulations prohibiting insider trading in the form of the PIT Regulations, 1992. The PIT Regulations, 1992 have had their challenges in their drafting, interpretation and reach. So, SEBI notified and issued SEBI (Prohibition of Insider Trading) Regulations, 2015 repealing the SEBI (Prohibition of Insider Trading) Regulations, 1992. The objective of these regulations is to strengthen the legal and enforcement framework, align Indian regime with international practices, provide clarity with respect to the definitions and concepts, and facilitate legitimate business transactions.

At present, insider trading of securities by directors and key managerial personnel shall be administered by the SEBI Regulations. These regulations are comprehensive and covering all the provisions of insider trading of securities. At the end of this lesson, the student will be able to:

- Understand the important definitions i.e., Connected person, Person deemed to be connected person, Insider, Unpublished price sensitive information;
- Explain the information/communication related to company which shall not be provide to any person;
- Elucidate trading when in possession of Unpublished price sensitive information;
- Understand the concept of trading plans;
- Specify the disclosures of trading and interest by certain persons;
- Familiarize with the code of Fair disclosure and conduct; and
- Understand the various penalties for violations under SEBI Act.

Lesson 12 – Mutual Funds

A mutual fund allows a group of investors to pool their money together with a predetermined investment objective. The mutual fund will have a fund manager who is responsible for investing the gathered money into specific securities (stocks or bonds). When an investor, invest in a mutual fund, buying units or portions of the mutual fund and thus on investing becomes a shareholder or unit holder of the fund.

Mutual funds are considered as one of the best available investments as compare to others they are very cost

efficient and also easy to invest in, thus by pooling money together in a mutual fund, investors can purchase stocks or bonds with much lower trading costs than if they tried to do it on their own. But the biggest advantage to mutual funds is diversification, by minimizing risk & maximizing returns. A mutual fund is the most suitable investment scope for common people as it offers an opportunity to invest in a diversified, professionally managed basket of securities at a relatively lower cost.

The mutual fund industry in India began in 1963 with the formation of the Unit Trust of India (UTI) as an initiative of the Government of India and Reserve Bank of India. Much later, in 1987, SBI Mutual Fund became the first non-UTI mutual fund in India. In 1996, SEBI had formulated the regulation on Mutual Fund i.e., SEBI (Mutual Fund) Regulations, 1996, which for the first time, established a comprehensive regulatory framework for the mutual fund industry. Since then, several mutual funds have been set up by the private and joint sectors.

Mutual fund provides the information about the investment particulars of the corpus (company and sector-wise), credit ratings, market value of investments, NAVs, returns, repurchase and sale price of the schemes. At the end of this lesson, the student will be able to:

- Familiarize with the structure of mutual fund and understand the risks associated with Mutual fund;
- Specify the types of Mutual fund in India;
- Determine the key players of the Mutual Fund;
- Understand the concept of Sponsor, Asset Management Company (AMC), Trustee and Unit Holder;
- Meaning of Net Asset Value, Expense Ratio and Holding Period Return; and
- Correlate the compliances of SEBI Mutual Funds Regulations with SEBI LODR.

Lesson 13 – Collective Investment Schemes

A CIS is any scheme or arrangement which pools funds from investors and involves a corpus amount of ₹100 crore or more. Every CIS has to compulsorily register itself with SEBI, file offer documents for its schemes and obtain a credit rating from a recognised rating agency, before it launches a scheme.

Collective Investment Scheme are regulated by SEBI (Collective Investment Scheme) Regulations, 1999 which was notified on October 15, 1999. These regulations define Collective Investment Management Company to mean a company incorporated under the Companies Act, 2013 and registered with SEBI under these regulations, whose object is to organize, operate and manage a collective investment.

This lesson will give an overview of collective investment scheme, listing of schemes and its winding up etc. At the end of this lesson, the student will be able to:

- Understand the business activities which are restrictions under CIS regulation;
- Understand the compliances related to quarterly report of CIS;
- Determine the obligations of collective investment management company (CIMC), trustee;
- Understand the conditions of the termination of the agreement with the CIMC; and
- Specify the procedure for allotment, transfer of units and winding up of scheme.

Lesson 14 – SEBI (Ombudsman) Regulations, 2003

Ombudsman in its literal sense is an independent person appointed to hear and act upon citizen's complaint about government services. In this regard, SEBI had notified the SEBI (Ombudsman) Regulations, 2003 on August 21, 2003 which deals with establishment of office of Ombudsman, powers and functions of Ombudsman, procedure for redressal of Grievances and implementation of the award. This lesson also covers provisions related to SEBI Complaints Redress System (SCORES), and SEBI (Informal Guidance) Scheme, 2003.

SCORES is a web based centralized grievance redress system of SEBI which enables investors to lodge and follow up their complaints and track the status of redressal of such complaints online from the above website from anywhere.

SEBI (Informal Guidance) Scheme, 2003 deals with various aspects such as the nature of request fees to be accompanied along with letter disposal of requests, SEBI discretion not request and certain types of request and confidentiality of requests, etc.

In this lesson, a student will be able to know about SCORES, SEBI Ombudsman Regulations and Informal Guidance Scheme, etc. At the end of this lesson, the student will be able to know:

- How to file a complaint in SCORES site;
- When a case can be referred for arbitration;
- Concept of Ombudsman and its powers & functions;
- Procedure for redressal of grievance; and
- Concept of Informal Guidance.

PART II – CAPITAL MARKET AND INTERMEDIARIES

Lesson 15 – Structure of Capital Market

Capital is one of the important factors of production in any economy. A well organized financial system provides adequate capital formation through savings, finance and investments. An investment depends upon Savings and in turn Savings depends upon earnings of an individual or profits of the organization. This system may be viewed as a set of sub-systems with so many elements which are interdependent and interlinking with each other to produce the purposeful result within the boundary. Hence, the term system in the context of finance means a set of complex and closely connected financial institutions, instruments, agents, markets and so on which are interdependent and interlinking with each other to produce the economic growth within the country.

In any economy, financial Institutions play an important role because all the financial dealings and matters are handled and monitored by such Institutions. In the primary market, there are four key players: corporations, institutions, investment banks, and public accounting firms. Institutions invest capital in corporations that seek to expand and grow their businesses, while corporations issue debt or equity to the institutions in return for their capital investment. Investment banks are hired to match institutions and corporations based on their risk profile and investment style. Finally, public accounting firms are responsible for the preparation, review, and auditing of financial statements, tax work, consulting on accounting systems, M&A, and capital raising.

A second important division falls between the stock markets is capital market instruments. Capital Market Instruments are responsible for generating funds for companies, corporations and sometimes governments. These are used by the investors to make a profit out of their respective markets.

Secondary Market refers to a market where securities are traded after being initially offered to the public in the primary market and/or listed on the Stock Exchange. Majority of the trading is done in the secondary market. Secondary market comprises of equity markets and the debt markets. There are many other factors also such as integration with global financial market, policy decision which affect the working of stock markets.

At the end of this lesson, the student will be able to understand:

- Different categories of Investment Institutions in detail;
- Various Capital Markets Instruments;
- Book building, Application Supported by Block Amount, Green Shoe Option etc.; and
- Concept of Secondary Market & its trading mechanism etc.

Lesson 16 – Securities Market Intermediaries

Intermediaries are service providers and are an integral part of any financial system. The objective of these intermediaries is to smoothen the process of investment and to establish a link between the investors and the users of funds. The Market Regulator, i.e., SEBI regulates various intermediaries in the primary and secondary markets through its Regulations for these respective intermediaries. These Regulations also empower SEBI to inspect the functioning of these intermediaries and to collect fees from them and to impose penalties on erring entities.

At the end of this lesson, the student would have an overview about various types of intermediaries operating in Capital Market and its role & responsibility, Internal Audit of Intermediaries by Company Secretary in Practice, etc.

LIST OF RECOMMENDED BOOKS

PAPER 6 : SECURITIES LAWS AND CAPITAL MARKETS

READINGS

1. Sanjeev Aggarwal : Guide to Indian Capital Market; Bharat Law House, 22, Tarun Enclave, Pitampura, New Delhi – 110034.
2. M.Y. Khan : Indian Financial Systems; Tata McGraw Hill, 4/12, Asaf Ali Road, New Delhi – 110002.
3. S. Suryanarayanan & V. Varadarajan : SEBI – Law, Practice & Procedure; Commercial Law Publishers (India) Pvt. Ltd., 151, Rajindra Market, Opp. Tis Hazari Court, Delhi - 110054
4. Taxmann : SEBI Manual
5. Shashi K Gupta : Financial Institutions and Markets ; Kalyani Publishers, 4863/2B, Bharat Nishja Aggarwal Ram Road, 24, Daryaganj, New Delhi -110002
Neeti Gupta

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2. Website : www.sebi.gov.in
www.nseindia.com
www.bseindia.com
www.rbi.org.in
www.mca.gov.in

JOURNALS

1. SEBI and Corporate Laws : Taxmann, 59/32, New Rohtak Road, New Delhi-110005.
2. Corporate Law Adviser : Corporate Law Adviser, Post Bag No. 3, Vasant Vihar, New Delhi-110052.
3. SEBI Monthly Bulletin : SEBI, Mumbai.
4. NSE News : National Stock Exchange of India Ltd., Mahindra Towers, Worli, Mumbai-400018.

Note : Students are advised to read relevant Bare Acts and Rules and Regulations relating thereto. E-Bulletin 'Student Company Secretary' and 'Chartered Secretary' should also be read regularly for updating the knowledge.

ARRANGEMENT OF STUDY LESSON

Module-2 Paper-6

Securities Laws and Capital Markets

PART I – SECURITIES LAWS

S.No.	Lesson Tittle
1.	Securities Contracts (Regulations) Act, 1956
2.	Securities and Exchange Board of India Act, 1992
3.	Depositories Act, 1996
4.	An Overview of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018
5.	An Overview of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
6.	An Overview of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
7.	SEBI (Buy-Back of Securities) Regulations, 2018
8.	SEBI (Delisting of Equity Shares) Regulations, 2009
9.	SEBI (Share Based Employee Benefits) Regulations, 2014 – An Overview
10.	SEBI (Issue of Sweat Equity) Regulations, 2002 – An Overview
11.	SEBI (Prohibition of Insider Trading) Regulations, 2015
12.	Mutual Funds
13.	Collective Investment Schemes
14.	SEBI (Ombudsman) Regulations, 2003

PART II – CAPITAL MARKET AND INTERMEDIARIES

S.No.	Lesson Tittle
15.	Structure of Capital Market
16.	Securities Market Intermediaries

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Lesson 1

Securities Contracts (Regulation) Act, 1956

LESSON OUTLINE

- Introduction
- Securities Contracts (Regulation) Act, 1956
- Non-applicability
- Definitions
- Recognition of Stock Exchanges
- Withdrawal of Recognition
- Powers of Central Government
- Powers of Recognised Stock Exchange
- Clearing Corporation
- Punishments for Contraventions
- Powers of SEBI
- Public Issue and Listing of Securities
- Exclusion of Spot Delivery Contracts
- Contracts in Derivatives
- Conditions for Listing
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- Right of Appeal to SAT
- Penalties
- Factors to be taken into account by the Adjudicating Officer
- Crediting sum realised by way of penalties to Consolidated Fund of India
- Offences
- Composition of Certain Offences
- Offences by Companies
- Certain Offences to be Cognizable
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- Special provisions related to Commodity Derivatives
- Securities Contracts (Regulations) Rules, 1957
- LESSON ROUND UP
- GLOSSARY
- SELF-TEST QUESTIONS

LEARNING OBJECTIVES

Stock Market plays a significant role in development of a country's Economy. Stock Market facilitates mobilization of funds from small investors and channelizes these resources into various development needs of various sectors of the economy. In order to prevent undesirable transactions in securities by regulating the business of dealing therein, and by providing for certain other matters connected therewith, the Securities Contracts (Regulation) Act, 1956 was enacted by Parliament. The Government promulgated the Securities Contracts (Regulations) Rules, 1957 for carrying into effect the objects of the Securities Contracts (Regulation) Act.

After going through this lesson, the student will be able to know about the Powers of Central Government, Stock Exchange and SEBI under the SCRA Act, the penal provisions, procedures, offences, procedure for appeal to Securities Appellate Tribunal, Right of Investors, and Securities Contracts (Regulations) Rules, 1957 etc.

INTRODUCTION, GENESIS AND OBJECTIVES OF SECURITIES CONTRACTS (REGULATION) ACT, 1956

The object of Securities Contracts (Regulation) Act, 1956 is to provide for the regulation of stock exchanges, and of transactions in securities dealt on them with a view to preventing undesirable speculation in them. The Act also seeks to regulate the buying and selling of securities outside the limits of stock exchanges, through the licensing of security dealers.

The stock market helps in the mobilization of the funds from the small savings of the investors and channelizes such resources into different development needs of various sectors of the economy. The stock market is the platform of securities trading. But the stock exchanges also suffer from certain limitations and require strict control over their activities in order to ensure safety in dealings thereon. Hence, in 1956, the Securities Contracts (Regulation) Act was passed which provided for recognition of stock exchanges by the Central Government. The provisions of this Act came into force with effect from February 20, 1957.

The Securities Contracts (Regulation) Act, 1956 ('SCRA') provides for direct and indirect control of all aspects of the securities trading including the running of stock exchanges which aims to prevent undesirable transaction in securities by regulating the business of dealing therein. It gives the Central Government regulatory jurisdiction over:

- (a) Stock exchanges through a process of recognition and continued supervision,
- (b) contracts in securities, and
- (c) listing of securities on stock exchanges.

As a condition of recognition, a stock exchange complies with the requirements prescribed by the Central Government. The stock exchanges frame, their own listing regulations in consonance with the minimum listing criteria set out in Securities Contracts (Regulations) Rules, 1957.

The Government promulgated the Securities Contracts (Regulation) Rules, 1957 ('SCRR') for carrying into effect the objects of the Securities Contracts (Regulation) Act. These rules provide among other things, for the procedure to be followed for recognition of Stock Exchanges; Submission of periodical returns and annual reports by recognised stock exchanges; inquiry into the affairs of stock exchanges and their members ; and requirements for listing of securities. The rules are statutory and they constitute a code of standardised regulations uniformly applicable to all the recognised stock exchanges.

Under the SCRR, the Government and the Securities and Exchange Board of India (SEBI) issue notifications, guidelines, and circulars which need to be complied with by market participants. Most of the powers under the SCRA are exercisable by Department of Economic Affairs (DEA) while a few others by SEBI. The powers of the DEA under the SCRA are also concurrently exercised by SEBI. The powers in respect of the contracts for sale and purchase of securities, gold related securities, money market securities and securities derived from these securities and carry forward contracts in debt securities are exercised concurrently by Reserve Bank of India (RBI).

I. SECURITIES CONTRACTS (REGULATION) ACT, 1956

The Securities Contracts (Regulation) Act, 1956, extends to the whole of India and came into force on February 20, 1957. The Act defines various terms in relation to securities and provides the detailed procedure for the stock exchanges to get recognition from Government/SEBI, procedure for listing of securities of companies and operations of the brokers in relation to purchase and sale of securities on behalf of investors.

NON-APPLICABILITY

Section 28 provides that the provisions of this Act shall not apply to –

- (a) the Government, the Reserve Bank of India, any local authority or any corporation set up by a special law or any person who has effected any transaction with or through the agency of any such authority as is referred to in this clause;
- (b) any convertible bond or share warrant or any option or right in relation thereto, in so far as it entitles the person in whose favour any of the foregoing has been issued to obtain at his option from the company or other body corporate, issuing the same or from any of its shareholders or duly appointed agents, shares of the company or other body corporate, whether by conversion of the bond or warrant or otherwise, on the basis of the price agreed upon when the same was issued.

If the Central Government is satisfied that in the interest of trade and commerce or the economic development of the country, it is necessary or expedient so to do, it may, by notification in the Official Gazette, specify any class of contracts as contracts to which this Act or any provision contained therein shall not apply, and also the conditions, limitations or restrictions, if any, subject to which it shall not so apply.

DEFINITIONS

Section 2 of this Act contains definitions of various terms used in the Act. Some of the important definitions are given below:

Securities

Securities include

- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or body corporate;
- (ii) derivative;
- (iii) units or any other instrument issued by any Collective Investment Scheme to the Investors in such schemes;
- (iv) security receipt as defined in clause (zg) of Section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (v) units or any other such instrument issued to the investors under any Mutual Fund Scheme;

Explanation : “Securities” shall not include any unit linked insurance policy or scripts or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such person and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938;

- (vi) any certificate or instrument (by whatever name called) issued to an investor by any issuer being a special purpose distinct entity which possess 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;
- (vii) government securities;
- (viii) such other instruments as may be declared by the Central Government to be securities; and
- (ix) rights or interests in securities.

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Contract

“Contract” means a contract for or relating to the purchase or sale of securities.

Spot Delivery Contract

Spot delivery contract means a contract which provides for –

- (a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;
- (b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository.

Stock Exchange

Stock Exchange means –

- (a) any body of individuals, whether incorporated or not, constituted before corporatisation and demutualisation under Sections 4A and 4B, or
- (b) a body corporate incorporated under the Companies Act, 2013 (erstwhile Companies Act, 1956) whether under a scheme of corporatisation and demutualisation or otherwise,

for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.

Recognised Stock Exchange

Recognised Stock Exchange means a stock exchange which is for the time being recognised by the Central Government.

Government security

Government security means a security created and issued whether before or after the commencement of this Act, by the Central Government or a State Government for the purpose of raising a public loan and having one of the forms specified in clause (2) of section 2 of the Public Debt Act, 1944.

Derivative

Derivative includes –

- (a) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;
- (b) a contract which derives its value from the prices or index of prices, of underlying securities;
- (c) Commodity derivatives; and
- (d) such other instruments as may be declared by the Central Government to be derivatives.

Securities Appellate Tribunal

Securities Appellate Tribunal means a Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992.

MEMBER

Member means a member of a recognised stock exchange;

RECOGNITION OF STOCK EXCHANGES

Section 3 lays down that any stock exchange, desirous of being recognized for the purposes of this Act may make an application in the prescribed manner to the Central Government. Every application shall contain such particulars as may be prescribed, and shall be accompanied by a copy of the bye-laws of the stock exchange for the regulation and control of contracts and also a copy of the rules relating in general to the constitution of the stock exchange and in particular to –

- (a) the governing body of such stock exchange, its constitution and powers of management and the manner in which its business is to be transacted;
- (b) the powers and duties of the office bearers of the stock exchange;
- (c) the admission into the stock exchange of various classes of members, the qualifications, for membership, and the exclusion, suspension, expulsion and re-admission of members therefrom or thereinto;
- (d) the procedure for the registration of partnerships as members of the stock exchange in cases where the rules provide for such membership; and the nomination and appointment of authorized representatives and clerks.

Section 4 lays down that if the Central Government is satisfied (powers are exercisable by SEBI also) after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require;

- (a) that the rules and bye-laws of a stock exchange applying for registration are in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors;
- (b) that the stock exchange is willing to comply with any other conditions (including conditions as to the number of members) which the Central Government, after consultation with the governing body of the stock exchange and having regard to the area served by the stock exchange and its standing and the nature of the securities dealt with by it, may impose for the purpose of carrying out the objects of this Act; and
- (c) that it would be in the interest of the trade and also in the public interest to grant recognition to the stock exchange;

It may grant recognition to the stock exchange subject to the conditions imposed upon it as aforesaid and in such form as may be prescribed.

The conditions which the Central Government (powers are exercisable by SEBI also) may prescribe for the grant of recognition to the stock exchanges may include, among other matters, conditions relating to,—

- (i) the qualifications for membership of stock exchanges;
- (ii) the manner in which contracts shall be entered into and enforced as between members;
- (iii) the representation of the Central Government on each of the stock exchange by such number of persons not exceeding three as the Central Government may nominate in this behalf; and
- (iv) the maintenance of accounts of members and their audit by chartered accountants whenever such audit is required by the Central Government.

Every grant of recognition to a stock exchange under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the stock exchange is situated, and such

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recognition shall have effect as from the date of its publication in the Gazette of India.

No application for the grant of recognition shall be refused except after giving an opportunity to the stock exchange concerned to be heard in the matter; and the reasons for such refusal shall be communicated to the stock exchange in writing.

WITHDRAWAL OF RECOGNITION

If the Central Government is of opinion that the recognition granted to a stock exchange should in the interest of the trade or in the public interest, be withdrawn, the Central Government may serve on the governing body of the stock exchange a written notice that the Central Government is considering the withdrawal of the recognition for the reasons stated in the notice and after giving an opportunity to the governing body to be heard in the matter, the Central Government may withdraw, by notification in the Official Gazette, the recognition granted to the stock exchange;

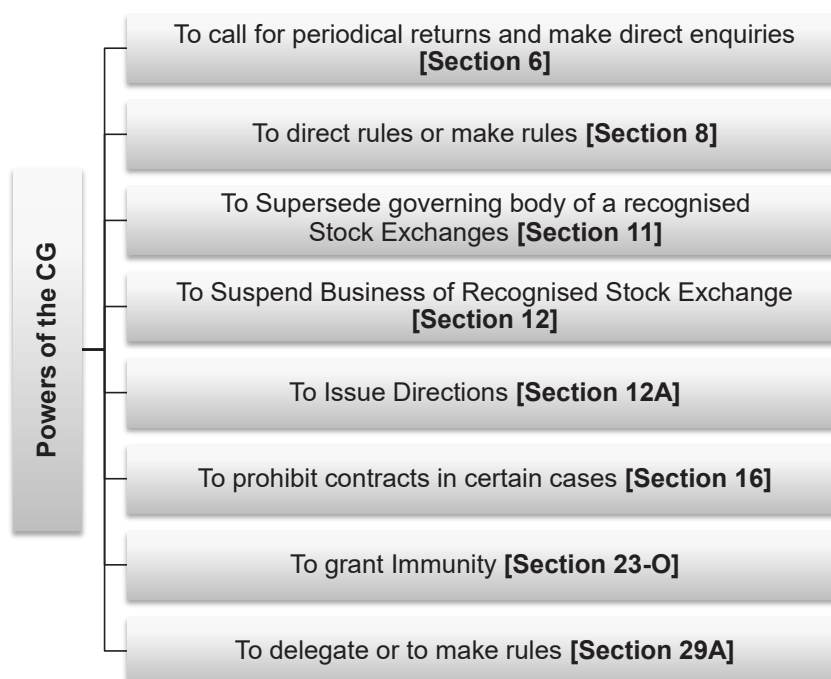
However, the withdrawal shall not affect the validity of any contract entered into or made before the date of the notification, and the Central Government may, after consultation with the stock exchange, make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contracts outstanding on that date.

Where the recognized stock exchange has not been corporatized or demutualised or it fails to submit the scheme within the specified time therefore or the scheme has been rejected by the SEBI, the recognition granted to such stock exchange, shall, stand withdrawn and the Central Government shall publish, by notification in the Official Gazette, such withdrawal of recognition.

However, such withdrawal shall not affect the validity of any contract entered into or made before the date of the notification, and SEBI may, after consultation with the stock exchange, make such provisions as it deems fit in the order rejecting the scheme published in the Official Gazette.

It is to be noted that the powers under Section 4 (3), 4(5) and Section 5 have been delegated concurrently to SEBI also. Hence, SEBI may exercise these powers.

POWERS OF CENTRAL GOVERNMENT



To call for periodical returns and make direct enquiries

Every recognised stock exchange shall furnish to the SEBI, such periodical returns relating to its affairs as may be prescribed.

Every such stock exchange and every member thereof shall maintain and preserve for not exceeding five years such books of accounts, and other documents as the Central Government, after consultation with the stock exchange concerned, may prescribe in the interest of the trade or in the public interest, and such books of account, and other documents shall be subject to inspection to all reasonable times by SEBI.

Every stock exchange shall furnish to the Central Government (powers are exercisable by SEBI also) a copy of its annual report which shall contain such particulars as may be prescribed by Central Government/SEBI.

The Securities and Exchange Board of India, if it is satisfied that it is in the interest of the trade or in the public interest so to do, may, by order in writing,—

- call upon a recognised stock exchange or any member thereof to furnish in writing such information or explanation relating to the affairs of the stock exchange or of the member in relation to the stock exchange as the SEBI may require; or
- appoint one or more persons to make an inquiry in the prescribed manner in relation to the affairs of the governing body of a stock exchange or the affairs of any of the members of the stock exchange in relation to the stock exchange and submit a report of the result of such inquiry to the SEBI within such time as may be specified in the order or, in the case of an inquiry in relation to the affairs of any of the members of a stock exchange, direct the governing body to make the inquiry and submit its report to the SEBI;
- Where an inquiry in relation to the affairs of a recognised stock exchange or the affairs of any of its members in relation to the stock exchange has been undertaken:
 - (a) every director, manager, secretary or other officer of such stock exchange;
 - (b) every member of such stock exchange;
 - (c) if the member of the stock exchange is a firm, every partner, manager, secretary or other officer of the firm; and
 - (d) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (a), (b) and (c), whether directly or indirectly;

shall be bound to produce before the authority making the inquiry all such books of account, and other documents in his custody or power relating to or having a bearing on the subject-matter of such inquiry and also to furnish the authorities within such time as may be specified with any such statement or information relating thereto as may be required of him.

To Direct Rules or make Rules

Section 8 deals with the power of Central Government to make rules or direct rules to be made in respect of recognised stock exchange. Where, after consultation with the governing bodies of stock exchanges generally or with the governing body of any stock exchange in particular, the Central Government is of opinion that it is necessary or expedient so to do, it may, by order in writing together with a statement of the reasons therefor, direct the recognised stock exchanges generally or any recognised stock exchange in particular, as the case may be, to make any rules or to amend any rules already made in respect of all or any of the matters or to amend any rules already made in respect of all or any of the matters as specified, within a period of two months from the date of the order.

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If any recognised stock exchange fails or neglects to comply with any order, within the period specified therein, the Central Government may make the rules for, or amend the rules made by, the recognised stock exchange, either in the form proposed in the order or with such modifications thereof as may be agreed to between the stock exchange and the Central Government.

Where in pursuance of this section any rules have been made or amended, the rules so made or amended shall be published in the Gazette of India and also in the Official Gazette or Gazettes of the State or States in which the principal office or offices of the recognised stock exchange or exchanges is or are situate, and, on the publication thereof in the Gazette of India, the rules so made or amended shall, notwithstanding anything to the contrary contained in the Companies Act, 2013 or in any other law for the time being in force, have effect as if they had been made or amended by the recognised stock exchange or stock exchanges, as the case may be.

To Supersede governing bodies of a recognised stock exchange

Without prejudice to any other powers vested in the Central Government under this Act, where the Central Government is of opinion that the governing body of any recognised stock exchange should be superseded, then, the Central Government may serve on the governing body a written notice that the Central Government is considering the super session of the governing body for the reasons specified in the notice and after giving an opportunity to the governing body to be heard in the matter, it may, by notification in the Official Gazette, declare the governing body of such stock exchange to be superseded, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and, where more persons than one are appointed, may appoint one of such persons to be the chairman and another to be the vice-chairman thereof.

On the publication of a notification in the Official Gazette, the following consequences shall ensure, namely –

- (a) the members of the governing body which has been superseded shall, as from the date of the notification of super session, cease to hold office as such members;
- (b) the person or persons appointed may exercise and perform all the powers and duties of the governing body which has been superseded;
- (c) all such property of the recognised stock exchange as the person or persons appointed may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry on the business of the stock exchange, shall vest in such person or persons.

The governing body of which is superseded, the person or persons appointed shall hold office for such period as may be specified in the notification published and, the Central Government may from time to time, by notification, vary such period.

The Central Government, may at any time before the determination of the period of office of any person or persons appointed call upon the recognised stock exchange to reconstitute the governing body in accordance with its rules and on such re-constitution all the property of the recognised stock exchange which has vested in, or was in the possession of, the person or persons appointed, shall vest or re-vest, as the case may be, in the governing body so re-constituted;

However, until a governing body is so re-constituted, the person or persons appointed, shall continue to exercise and perform their powers and duties.

To Suspend business of Recognised Stock Exchange

If in the opinion of the Central Government, an emergency has arisen and for the purpose of meeting the emergency, the Central Government considers it expedient so to do, it may, by notification in the Official Gazette, for reasons to be set out therein, direct a recognised stock exchange to suspend such of its business for such

period not exceeding seven days and subject to such conditions as may be specified in the notification, and if, in the opinion of the Central Government, the interest of the trade or the public interest requires that the period should be extended, may, by like notification extend the said period from time to time;

However, where the period of suspension is to be extended beyond the first period, no notification extending the period of suspension shall be issued unless the governing body of the recognised stock exchange has been given an opportunity of being heard in the matter.

To Issue Directions

Section 12A provides that if, after making or causing to be made an inquiry, the SEBI is satisfied that it is necessary –

- (a) in the interest of investors, or orderly development of securities market; or
- (b) to prevent the affairs of any recognised stock exchange, or, clearing corporation, or such other agency or person, providing trading or clearing or settlement facility in respect of securities, being conducted in a manner detrimental to the interests of investors or securities market; or
- (c) to secure the proper management of any such stock exchange or clearing corporation or agency or person, referred to in clause (b)

it may issue such directions –

- (i) to any stock exchange or clearing corporation or agency or person referred to in clause (b) or any person or class of persons associated with the securities market; or
- (ii) to any company whose securities are listed or proposed to be listed in a recognised stock exchange, as may be appropriate in the interests of investors in securities and the securities market.

Explanation: The power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contraventions.

Without prejudice to the provisions of section 12 A(1) and section 23-I, the SEBI may, by an order, for reasons to be recorded in writing, levy penalty under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23GA and 23H after holding an inquiry in the prescribed manner.

Section 13 provides that if the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area, that it is necessary so to do, it may, by notification in the Official Gazette, declare that section 13 to apply to such State or States or area, and thereupon every contract in such State or States or area which is entered into after date of the notification otherwise than between members of a recognised stock exchange or recognized stock exchanges in such State or States or area or through or with such member shall be illegal.

However, any contract entered into between members of two or more recognised stock exchanges in such State or States or area, shall –

- (i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of the SEBI;
- (ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of the SEBI.

To Prohibit Contracts in Certain Cases

Section 16 stipulates that if the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

All contracts in contravention of the provisions of sub-section (1) entered into after the date of the notification issued thereunder shall be illegal.

To Grant Immunity

Section 23-O deals with the power to grant immunity.

The Central Government may, on recommendation by the SEBI, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation.

However, no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity.

Further that the recommendation of the SEBI are not binding upon the Central Government.

An immunity granted to a person as mentioned above may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

To Delegate or to Make Rules

Section 29A stipulates The Central Government may, by order published in the Official Gazette, direct that the powers (except the power under section 30) exercisable by it under any provision of this Act shall, in relation to such matters and subject to such conditions, if any, as may be specified in the order, be exercisable also by the Securities and Exchange Board of India or the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934.

Section 30 empowers the Central Government to make rules for the purpose of carrying into effect the objects of this Act by notification in the Official Gazette.

In particular, such rules may provide for,—

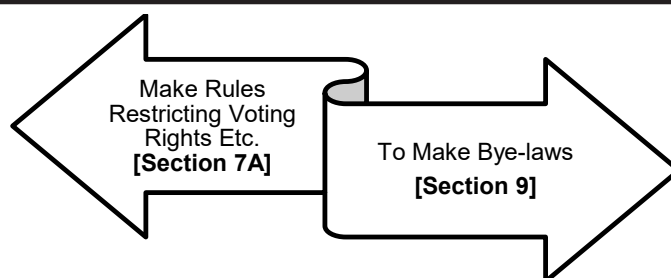
- (a) the manner in which applications may be made, the particulars which they should contain and the levy of a fee in respect of such applications;
- (b) the manner in which any inquiry for the purpose of recognising any stock exchange may be made, the conditions which may be imposed for the grant of such recognition, including conditions as to the admission of members if the stock exchange concerned is to be the only recognised stock exchange in the area; and the form in which such recognition shall be granted;
- (c) the particulars which should be contained in the periodical returns and annual reports to be furnished

to the Central Government;

- (d) the documents which should be maintained and preserved under section 6 and the periods for which they should be preserved;
- (e) the manner in which any inquiry by the governing body of a stock exchange shall be made under section 6;
- (f) the manner in which the bye-laws to be made or amended under this Act shall before being so made or amended be published for criticism;
- (g) the manner in which applications may be made by dealers in securities for licences under section 17, the fee payable in respect thereof and the period of such licences, the conditions subject to which licences may be granted, including conditions relating to the forms which may be used in making contracts, the documents to be maintained by licensed dealers and the furnishing of periodical information to such authority as may be specified and the revocation of licences for breach of conditions;
- (h) the requirements which shall be complied with—
 - (A) by public companies for the purpose of getting their securities listed on any stock exchange;
 - (B) by collective investment scheme for the purpose of getting their units listed on any stock exchange;
- (ha) the grounds on which the securities of a company may be delisted from any recognised stock exchange under sub-section (1) of section 21A;
- (hb) the form in which an appeal may be filed before the Securities Appellate Tribunal under sub-section (2) of section 21A and the fees payable in respect of such appeal;
- (hc) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 22A and the fees payable in respect of such appeal;
- (hd) the manner of inquiry under sub-section (1) of section 23-I;
- (he) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 23L and the fees payable in respect of such appeal;
- (i) any other matter which is to be or may be prescribed.

Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

POWERS OF RECOGNISED STOCK EXCHANGE



To make Rules restricting voting rights etc.

Section 7A of the Act stipulates that a recognised stock exchange may make rules or amend any rules made by it to provide for all or any of the following matters, namely –

- (a) the restriction of voting rights to members only in respect of any matter placed before the stock exchange at any meeting;
- (b) the regulation of voting rights in respect of any matter placed before the stock exchange at any meeting so that each member may be entitled to have one vote only, irrespective of his share of the paid-up equity capital of the stock exchange;
- (c) the restriction on the right of a member to appoint another person as his proxy to attend and vote at a meeting of the stock exchange; and
- (d) such incidental, consequential and supplementary matters as may be necessary to give effect to any of the matters specified in clauses (a) (b) and (c).

Powers have been delegated concurrently to SEBI also.

No rules of a recognised stock exchange made or amended in relation to any matter referred to in clauses (a) to (d) shall have effect until they have been approved by the Central Government (Powers are exercisable by SEBI also) and published by that Government in the Official Gazette.

To make Bye-laws

Section 9 of the Act provides that any recognised stock exchange may, subject to the previous approval of the SEBI, make bye-laws for the regulation and control of contracts.

In particular, such bye-laws may provide for :

- (a) the opening and closing of markets and the regulation of the hours of trade;
- (b) a clearing house for the periodical settlement of contracts and differences thereunder, the delivery of and payment for securities, the passing on of delivery orders and the regulation and maintenance of such clearing house;
- (c) the submission to the Securities and Exchange Board of India by the clearing house as soon as may be after each periodical settlement of all or any of the following particulars as the Securities and Exchange Board of India may, from time to time, require, namely:—
 - (i) the total number of each category of security carried over from one settlement period to another;
 - (ii) the total number of each category of security, contracts in respect of which have been squared up during the course of each settlement period;
 - (iii) the total number of each category of security actually delivered at each clearing;
- (d) the publication by the clearing house of all or any of the particulars submitted to the Securities and Exchange Board of India under clause (c) subject to the directions, if any, issued by the Securities and Exchange Board of India in this behalf;
- (e) the regulation or prohibition of blank transfers;
- (f) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;
- (g) the regulation, or prohibition of budlas or carry-over facilities;
- (h) the fixing, altering or postponing of days for settlements;

- (i) the determination and declaration of market rates, including the opening, closing highest and lowest rates for securities;
- (j) the terms, conditions and incidents of contracts, including the prescription of margin requirements, if any, and conditions relating thereto, and the forms of contracts in writing;
- (k) the regulation of the entering into, making, performance, rescission and termination, of contracts, including contracts between members or between a member and his constituent or between a member and a person who is not a member, and the consequences of default or insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer, and the responsibility of members who are not parties to such contracts;
- (l) the regulation of taravani business including the placing of limitations thereon;
- (m) the listing of securities on the stock exchange, the inclusion of any security for the purpose of dealings and the suspension or withdrawal of any such securities, and the suspension or prohibition of trading in any specified securities;
- (n) the method and procedure for the settlement of claims or disputes, including settlement by arbitration;
- (o) the levy and recovery of fees, fines and penalties;
- (p) the regulation of the course of business between parties to contracts in any capacity;
- (q) the fixing of a scale of brokerage and other charges;
- (r) the making, comparing, settling and closing of bargains;
- (s) the emergencies in trade which may arise, whether as a result of pool or syndicated operations or cornering or otherwise, and the exercise of powers in such emergencies, including the power to fix maximum and minimum prices for securities;
- (t) the regulation of dealings by members for their own account;
- (u) the separation of the functions of jobbers and brokers;
- (v) the limitations on the volume of trade done by any individual member in exceptional circumstances;
- (w) the obligation of members to supply such information or explanation and to produce such documents relating to the business as the governing body may require.

CLEARING CORPORATION

Role of Clearing Corporation

Clearing Corporation is responsible:-

- for clearing and settlement of all trades executed on Stock Exchange and deposit and collateral management and risk management functions;
- to bring and sustain confidence in clearing and settlement of securities;
- to promote and maintain, short and consistent settlement cycles;
- to provide counter-party risk guarantee, and
- to operate a tight risk containment system.

Section 8A(1) provides that a recognised stock exchange may, with the prior approval of the SEBI, transfer the duties and functions of a clearing house to a clearing corporation, being a company incorporated under the

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Companies Act, 2013, for the purpose of –

- (a) the periodical settlement of contracts and differences thereunder;
- (b) the delivery of, and payment for, securities;
- (a) any other matter incidental to, or connected with, such transfer.

Every clearing corporation shall, for the purpose of transfer of the duties and functions of a clearing house to a clearing corporation, make bye-laws and submit the same to the SEBI for its approval.

SEBI may, on being satisfied that it is in the interest of the trade and also in the public interest to transfer the duties and functions of a clearing house to a clearing corporation, grant approval to the bye-laws submitted to it and approve transfer of the duties and functions of a clearing house to a clearing corporation.

PUNISHMENTS FOR CONTRAVENTIONS

Section 9(3) of the Act provides that the bye-laws made may :

- (a) specify the bye-laws, the contravention of which shall make a contract entered into otherwise than in accordance with the bye- laws void.
- (b) provide that the contravention of any of the bye-laws shall render the member concerned liable to one or more of the following punishments, namely;
 - (i) fine,
 - (ii) expulsion from membership,
 - (iii) suspension from membership for a specified period,
 - (iv) any other penalty of a like nature not involving the payment of money.

Any bye-laws shall be subject to such conditions in regard to previous publication as may be prescribed, and, when approved by the SEBI, shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised stock exchange is situated, and shall have effect as from the date of its publication in the Gazette of India.

However, if the SEBI is satisfied in any case that in the interest of the trade or in the public interest any bye-laws should be made immediately, it may, by order in writing specify the reasons therefor, dispense with the condition of previous publication.

POWERS OF THE SEBI



To make or amend Bye-laws of Recognised Stock Exchanges

The SEBI may, either on a request in writing received by it in this behalf from the governing body of a recognised stock exchange or on its own motion, if it is satisfied after consultation with the governing body of the stock

exchange that it is necessary or expedient so to do and after recording its reasons for so doing, make bye- laws, for all or any of the matters specified in section 9 or amend any bye-laws made by such stock exchange under that section.

Where in pursuance of this section any bye-laws have been made or amended, the bye-laws so made or amended shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised stock exchange is situated, and on the publication thereof in the Gazette of India, the bye-laws so made or amended shall have effect as if they had been made or amended by the recognised stock exchange concerned.

Where the governing body of a recognised stock exchange objects to any bye-laws made or amended by SEBI on its own motion, it may, within two months of the publication thereof in the Gazette of India apply to SEBI for revision thereof and SEBI may, after giving an opportunity to the governing body of the stock exchange to be heard in the matter, revise the bye-laws so made or amended, and where any bye-laws so made or amended are revised as a result of any action taken under this sub-section, the bye-laws so revised shall be published and shall become effective as provided in sub-section (2) of Section 10.

The making or the amendment or revision of any bye-laws shall in all cases be subject to the condition of previous publication.

However, if the SEBI is satisfied in any case that in the interest of the trade or in the public interest any bye-laws should be made, amended or revised immediately, it may, by order in writing specifying the reasons therefor, dispense with the condition of previous publication.

To make Regulations

The SEBI may, by notification in the Official Gazette, make regulations consistent with the provisions of this Act and the rules made thereunder to carry out the purposes of this Act.

In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matter namely :

- (a) the manner, in which at least fifty-one per cent of equity share capital of a recognised stock exchange is held, within twelve months from the date of publication of the order under sub-section (7), of Section 4B by the public other than shareholders having trading rights under sub-section (8) of that section;
- (b) the eligibility criteria and other requirements under Section 17A;
- (c) The terms determined by the SEBI Board for settlement of proceeding under sub-section (2) of section 23JA and
- (d) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulation.

Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

To adjudicate

Section 23-I deals with power to adjudicate by the SEBI.

The SEBI may appoint any officer not below the rank of a Division Chief of SEBI to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions, he may impose such penalty as he thinks fit in accordance with the provisions of this Act.

The SEBI may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify. However, no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter.

Further, nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal, whichever is earlier.

LICENSING OF DEALERS IN CERTAIN AREAS

No person shall carry on or purport to carry on, whether on his own behalf or on behalf of any other person, the business of dealing in securities in any State or area to which section 13 has not been declared to apply and to which the Central Government may, by notification in the Official Gazette, declare this section to apply, except under the authority of a license granted by the SEBI in this behalf.

No notification shall be issued with respect to any State or area unless the Central Government is satisfied, having regard to the manner in which securities are being dealt with in such State or area, that it is desirable or expedient in the interest of the trade or in the public interest that such dealings should be regulated by a system of licensing.

The restrictions imposed above in relation to dealings in securities shall not apply to the doing of anything by or on behalf of a member of any recognised stock exchange.

PUBLIC ISSUE AND LISTING OF SECURITIES

Section 17A provides for public issue and listing of securities.

No securities of the nature referred to in sub-clause (ie) of clause (h) of section 2 shall be offered to the public or listed on any recognized stock exchange unless the issuer fulfil such eligibility criteria and complies with such other requirements as may be specified by regulations made by the SEBI.

Every issuer intending to offer the certificates or instruments referred therein to the public shall make an application, before issuing the offer document to the public, to one or more recognized stock exchanges for permission for such certificates or instruments to be listed on the stock exchange or each such stock exchange. Where the permission applied for listing has not been granted or refused by the recognized stock exchanges or any of them, the issuer shall forthwith repay all moneys, if any, received from applicants in pursuance of the offer document, and if any such money is not repaid within eight days after the issuer becomes liable to repay it, the issuer and every director or trustee thereof, as the case may be, 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 percent per annum.

In reckoning the eighth day after another day, any intervening day which is a public holiday under the Negotiable Instruments Act, 1881, shall be disregarded, and if the eighth day (as so reckoned) is itself such a public holiday, there shall for the said purposes be substituted the first day thereafter which is not a holiday.

All the provisions of this Act relating to listing of securities of a public company on a recognized stock exchange shall, *mutatis mutandis*, apply to the listing of the securities of the nature referred to in sub-clause (ie) of clause (h) of section 2 by the issuer, being a special purpose distinct entity.

EXCLUSION OF SPOT DELIVERY CONTRACTS

If the Central Government is of opinion that in the interest of the trade or in the public interest, it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contract for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply.

CONTRACTS IN DERIVATIVES

Notwithstanding anything contained in any other law for the time being in force, contracts in derivative shall be legal and valid if such contracts are –

- (a) traded on a recognised stock exchange;
- (b) settled on the clearing house of the recognised stock exchange, or in accordance with the rules and bye-laws of such stock-exchange;
- (c) between such parties and on such terms as the Central Government may, by notification in the official Gazette, specify.

STOCK EXCHANGES OTHER THAN RECOGNISED STOCK EXCHANGES PROHIBITED

Section 19 of the Act stipulates that no person shall, except with the permission of the Central Government, organise or assist in organising or be a member of any stock exchange (other than a recognised stock exchange) for the purpose of assisting in, entering into or performing any contracts in securities.

CONDITIONS FOR LISTING

Section 21 of the Act provides that where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the SEBI LODR. .

DELISTING OF SECURITIES

Section 21A provides that a recognised stock exchange may delist the securities, after recording the reasons therefor, from any recognised stock exchange on any of the ground or grounds as may be prescribed under this Act.

The securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.

A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal (SAT) against the decision of the recognised stock exchange delisting the securities within fifteen days from the date of the decision of the recognized stock exchange delisting the securities and the provisions of Sections 22B to 22E of this Act, shall apply, as far as may be, to such appeals.

The Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.

A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal (SAT) against the decision of the recognised stock exchange as per the procedure laid down under the Securities Contracts (Regulation) (Appeal to Securities Appellate Tribunal) Rules, 2000.

RIGHT OF APPEAL AGAINST REFUSAL OF STOCK EXCHANGES TO LIST SECURITIES OF PUBLIC COMPANIES

Where a recognised stock exchange acting in pursuance of any power given to it by its byelaws, refuses to list the securities of any public company or collective investment scheme, the company or scheme shall be entitled to be furnished with reasons for such refusal, and may, –

- (a) within fifteen days from the date on which the reasons for such refusal are furnished to it, or
- (b) where the stock exchange has omitted or failed to dispose of, within the time specified in section 40 of the Companies Act, 2013 (hereafter in this section referred to as the “specified time”), the application for permission for the shares or debentures to be dealt with on the stock exchange, within fifteen days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Central Government may, on sufficient cause being shown,

allow, appeal to the Central Government against such refusal, omission or failure, as the case may be, and thereupon the Central Government may, after giving the stock exchange an opportunity of being heard, –

- (i) vary or set aside the decision of the stock exchange, or
- (ii) where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission, and where the Central Government sets aside the decision of the recognised stock exchange or grants the permission, the stock exchange shall act in conformity with the orders of the Central Government.

RIGHT OF APPEAL TO SAT AGAINST REFUSAL TO LIST SECURITIES OF PUBLIC COMPANIES BY STOCK EXCHANGES

Where a recognised stock exchange, acting in pursuance of any power given to it by its bye-laws, refuses to list the securities of any company, the company shall be entitled to be furnished with reasons for such refusal, and may, –

- (a) within fifteen days from the date on which the reasons for such refusal are furnished to it, or
- (b) where the stock exchange has omitted or failed to dispose of, within the time specified in section 40 of the Companies Act, 2013, the application for permission for the shares or debentures to be dealt with on the stock exchange, within fifteen days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Securities Appellate Tribunal may, on sufficient cause being shown, allow

appeal to the Securities Appellate Tribunal having jurisdiction in the matter against such refusal, omission or failure, as the case may be, and thereupon the Securities Appellate Tribunal may, after giving the stock exchange, an opportunity of being heard, –

- (i) vary or set aside the decision of the stock exchange; or
- (ii) where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission,
and where the Securities Appellate Tribunal sets aside the decision of the recognised stock exchange or grants the permission, the stock exchange shall act in conformity with the orders of the Securities Appellate Tribunal.

Every appeal shall be in such form and be accompanied by such fee as may be prescribed. The Securities Appellate Tribunal shall send a copy of every order made by it to SEBI and parties to the appeal. The appeal filed before the Securities Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose off the appeal finally within six months from the date of receipt of the appeal.

The appeal filed before the Securities Appellate Tribunal is as per the procedure laid down under the Securities Contracts (Regulation) (Appeal to Securities Appellate Tribunal) Rules, 2000.

PROCEDURE AND POWERS OF SECURITIES APPELLATE TRIBUNAL

The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

The Securities Appellate Tribunal shall have, for the purpose of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely :—

- (a) summoning and enforcing the attendance of any person and examining him on oath ;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte; and
- (h) any other matter which may be prescribed.

RIGHT TO LEGAL REPRESENTATION

The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

LIMITATION

The provisions of the Limitation Act, 1963 shall, as far as may be, apply to an appeal made to a Securities Appellate Tribunal.

CIVIL COURT NOT TO HAVE JURISDICTION

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Securities Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

APPEAL TO SUPREME COURT

Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order.

However the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

PENALTIES

The Act prescribes various penalties against persons who might be found guilty of offences under section 23 the Act. These offences are listed below –

Any person who –

- (a) without reasonable excuse (the burden of proving which shall be on him) fails to comply with any requisition made under sub-section (4) of section 6; or
- (b) enters into any contract in contravention of any of the provisions contained in section 13 or section 16; or
- (c) contravenes the provisions contained in section 17 or section 17A or section 19; or
- (d) enters into any contract in derivative in contravention of section 18A or the rules made under section 30; or
- (e) owns or keeps a place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes; or
- (f) manages, controls, or assists in keeping any place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act or at which contracts are recorded or adjusted or rights or liabilities arising out of contracts are adjusted, regulated or enforced in any manner whatsoever; or
- (g) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17 willfully represents to or induces any person to believe that contracts can be entered into or performed under this Act through him; or
- (h) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17, canvasses, advertises or touts in any manner either for himself or on behalf of any other person for any business connected with contracts in contravention of any of the provisions of this Act; or
- (i) joins, gathers or assists in gathering at any place other than the place of business specified in the byelaws of a recognised stock exchange any person or persons for making bids or offers or for entering into or performing any contracts in contravention of any of the provisions of this Act.

shall, without prejudice to any award of penalty by the Adjudicating Officer or the SEBI under this Act, on conviction, be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty five crore rupees or with both.

Any person who enters into any contract in contravention of the provisions contained in section 15 or who fails to comply with the provisions of section 21 or section 21A or with the orders of or the Central Government under section 22 or with the orders of the Securities Appellate Tribunal shall, without prejudice to any award of penalty by the Adjudicating Officer under this Act, on conviction, be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty five crore rupees, or with both.

Penalty for Failure to Furnish Periodical Returns Etc.

If a recognised stock exchange fails or neglects to furnish periodical returns or furnishes false, incorrect or incomplete periodical returns to the SEBI or fails or neglects to make or amend its rules or bye-laws as directed by the SEBI or fails to comply with directions issued by SEBI, such recognised stock exchange shall be liable to a penalty which shall not be less than 5 lakh rupees and which may extend to 25

Penalty for contravention where no separate penalty has been provided

Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the SEBI for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than 1 lakh rupees which may extend to one crore rupees.

Penalty for failure to furnish information, return, etc.

Any person, who is required under this Act or any rules made thereunder, fails to furnish any information, document, books, returns or report to a recognised stock exchange or fail to maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange or who furnishes false, incorrect or incomplete information, document, books, return or report, shall be liable to a penalty which shall not be less than 1 lakh rupees but which may extend to 1 lakh rupees for each day during which such failure continues subject to a maximum of 1 crore rupees for each such failure.

To maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange, fails to maintain the same, shall be liable to a penalty which shall not be less than 1 lakh rupees but which may extend to 1 lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for failure by any person to enter into an agreement with clients

Any person, who is required under this Act or any bye-laws of a recognised stock exchange made thereunder, fails to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty, which shall not be less than 1 lakh rupees but which may extend to 1 lakh rupees for each day during which such failure continues subject to a maximum of 1 crore rupees for every such failure.

Penalty for failure to redress investors' grievances

Any stock broker or a company whose securities are listed or proposed to be listed in a recognised stock exchange, after having been called upon by SEBI or a recognised stock exchange in writing, to redress the grievances of the investors, fails to redress such grievances within the time stipulated by the SEBI or a recognised stock exchange, he or it shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of 1 crore rupees.

Penalty for failure to segregate securities or moneys of client or clients

Any person, who is registered as a stock broker with SEBI, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty which shall not be less than 1 lakh rupees but which may extend to one crore rupees.

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds

- If a company or any person managing collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, he shall be liable to a penalty which shall not be less than 5 lakh rupees but which may extend to 25 crore rupees.

Penalty for excess dematerialisation or delivery of unlisted securities

- If any issuer dematerialises securities more than the issued securities of a company or delivers in the stock exchanges the securities which are not listed in the recognised stock exchange or delivers securities where no trading permission has been given by the recognised stock exchange, he shall be liable to a penalty which shall not be less than 5 lakh rupees but which may extend to 25 crore rupees.

Penalty for failure to conduct business in accordance with rules, etc.

Where a stock exchange or a clearing corporation fails to conduct its business with its members or any issuer or its agent or any person associated with the securities markets in accordance with the rules or regulations made by the Securities and Exchange Board of India and the directions issued by it under this Act, the stock exchange or the clearing corporations, as the case may be, shall be liable to penalty which shall not be less than 5 crore rupees but which may extend to 25 crore rupees or three times the amount of gains made out of such failure, whichever is higher.

FACTORS TO BE TAKEN INTO ACCOUNT BY THE ADJUDICATING OFFICER

Section 23J provides for the factors to be taken into account by the adjudicating officer. While adjudging the quantum of penalty under section 12A and section 23-I, the SEBI or adjudicating officer shall have due regard to the following factors, namely –

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default.

Settlement of Administrative and Civil Proceedings

Section 23JA states that any person, against whom any proceedings have been initiated or may be initiated under section 12A or section 23-I, may file an application in writing to SEBI proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

The SEBI may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the SEBI in accordance with the regulations made under the SEBI Act, 1992.

For the purpose of settlement under this section, the procedure as specified by the SEBI under the SEBI Act, 1992 shall apply.

No appeal shall lie under section 23L against any order passed by the SEBI or adjudicating officer, as the case may be, under this section.

All settlement amounts, excluding the disgorgement amount and legal costs, realised under this Act shall be credited to the Consolidated Fund of India.

Recovery of Amounts

Section 23JB deals with recovery of amounts. If a person fails to pay the penalty imposed under this act or fails to comply with any direction of SEBI for refund of monies or fails to comply with a direction of disgorgement order issued under Section 12A or fails to pay any fees due to SEBI, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement

being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:-

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts;
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties,

and for this purpose, the provisions of sections 220 to 227, 228A, 229, 232 the second and third schedule to the Income Tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time in so far as may be, apply with necessary modifications as of the said provisions and the rules thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-Tax Act, 1961.

CONTINUANCE OF PROCEEDINGS.

Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased:

However, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person.

Any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, initiated against the deceased before his death shall be deemed to have been initiated against the legal representative, and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased and all the provisions of this Act shall apply accordingly;

Any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the deceased if he had survived, may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.

Every legal representative shall be personally liable for any sum payable by him in his capacity as legal representative if, while his liability for such sum remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

The liability of a legal representative under this section shall, be limited to the extent to which the estate of the deceased is capable of meeting the liability.

Explanation.—For the purposes of this section “Legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.

CREDITING SUM REALISED BY WAY OF PENALTIES TO CONSOLIDATED FUND OF INDIA

All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

APPEAL TO SECURITIES APPELLATE TRIBUNAL

Any person aggrieved, by the order or decision of the recognized stock exchange or the adjudicating officer or any order made by the Securities and Exchange Board of India under or sub-section (3) of section 23-I, may prefer an appeal before the Securities Appellate Tribunal.

Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order or decision is received by the appellant and it shall be in such form and be accompanied by such fee as may be prescribed.

However the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period. On receipt of an appeal the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Securities Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer.

The appeal filed before the Securities Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

The appeal may be preferred before the Securities Appellate Tribunal as per the procedure laid down under the Securities Contracts (Regulation) (Appeal to Securities Appellate Tribunal) Rules, 2000.

OFFENCES

If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations or byelaws made thereunder, for which no punishment is provided elsewhere in this Act, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

If any person fails to pay the penalty imposed by the adjudicating officer or the SEBI or fails to comply with the direction or order, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both.

COMPOSITION OF CERTAIN OFFENCES

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

CONTRAVENTION BY COMPANIES

Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who, at the time when the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention, and shall be liable to be proceeded against and punished accordingly.

However, any such person shall not be liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he exercised all due diligence to prevent the commission of such contravention.

Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company and is proved that the contravention has been committed with the consent or connivance of, or is attributable to any gross negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly.

The provisions of this section shall be in addition to and not in derogation of, the provisions of section 22A of the Act.

CERTAIN OFFENCES TO BE COGNIZABLE

Notwithstanding anything contained in the Code of Criminal Procedure, 1898, any offence punishable under section 23 shall be deemed to be cognizable offence within the meaning of that Code.

COGNIZANCE OF OFFENCES BY COURTS

No court shall take cognizance of any offence punishable under this Act or any rules or regulations or bye-laws made thereunder, save on a complaint made by the Central Government or State Government or the SEBI or a recognised stock exchange or by any person.

Establishment of Special Courts

Section 26A lays down the provisions for establishment of special courts by Central Government for the purpose of speedy trial.

- (a) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.
- (b) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.
- (c) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

Offences triable by Special Courts

All offences committed under this Act, shall be taken cognizance of and triable by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

Appeal and Revision

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Application of Code to proceeding before special court

The Code of Criminal Procedure, 1973 shall apply to the proceeding before a special court and for the purposes of the said provisions, the special court shall be deemed to be Court of Session and the person conducting prosecution before a special court shall be deemed to be a public prosecutor within the meaning of the Code of

Criminal Procedure, 1973. The persons conducting prosecution should have been in practice as an Advocate for not less than seven years or shall have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

Transitional provisions

Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973.

However, nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section.

Entitlement of the Investors to Dividend declared by the Company

It shall be lawful for the holder of any security whose name appears on the books of the company issuing the said security to receive and retain any dividend declared by the company in respect thereof for any year, notwithstanding that the said security has already been transferred by him for consideration, unless the transferee who claims the dividend from the transferor has lodged the security and all other documents relating to the transfer which may be required by the company with the company for being registered in his name within fifteen days of the date on which the dividend became due.

Explanation. – The period specified in this section shall be extended –

- (i) in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the dividend;
- (ii) in case of loss of the transfer deed by theft or any other cause beyond the control of the transferee, by the actual period taken for the replacement thereof; and
- (iii) in case of delay in the lodging of any security and other documents relating to the transfer due to causes connected with the post, by the actual period of the delay.

Nothing contained in above paragraph shall affect –

- (a) the right of a company to pay any dividend which has become due to any person whose name is for the time being registered in the books of the company as the holder of the security in respect of which the dividend has become due; or
- (b) the right of the transferee of any security to enforce against the transferor or any other person his rights, if any, in relation to the transfer in any case where the company has refused to register the transfer of the security in the name of the transferee.

Right to Receive Income From Collective Investment Scheme

It shall be lawful for the holder of any securities, being units or other instruments issued by collective investment scheme, whose name appears on the books of the collective investment scheme issuing the said security to receive and retain any income in respect of units or other instruments issued and declared by the collective investment scheme in respect thereof for any year, though the said security, being units or other instruments issued by collective investment scheme, has already been transferred by him for consideration, unless the transferee who claims the income in respect of units or other instruments issued by collective investment scheme from the transfer or has lodged the security and all other documents relating to the transfer which may be required by the collective investment scheme with the collective investment scheme for being registered in his name within fifteen days of the date on which the income in respect of units or other instruments issued by the collective investments scheme became due.

Explanation – The period specified in this section shall be extended –

- (i) in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the income in respect of units or other instruments issued by collective investment scheme;
- (ii) in case of loss of the transfer deed by theft or any other cause beyond the control of the transferee, by the actual period taken for the replacement thereof; and
- (iii) in case of delay in the lodging of any security, being units or other instruments issued by the collective investment scheme, and other documents relating to the transfer due to causes connected with the post, by the actual period of the delay.

This shall not affect –

- (a) the right of a collective investment scheme to pay any income from units or other instruments issued by collective investment scheme which has become due to any person whose name is for the time being registered in the books of the collective investment scheme as the registered holder in the books of the collective investment scheme being units or other instruments issued by collective investment scheme in respect of which the income in respect of units or other instruments issued by Collective Investment Scheme has become due; or
- (b) the right of transferee of any security, being units or other instruments issued by collective investment scheme, to enforce against the transferor or any other person his rights, if any, in relation to the transfer in any case where the company has refused to register the transfer of the security being units or other instruments issued by the collective investment scheme in the name of the transferee.

Right to receive Income from Mutual Fund

Section 27B provides that it shall be lawful for the holder of any securities, being units or other instruments issued by any mutual fund, whose name appears on the books of the mutual fund issuing the said security to receive and retain any income in respect of units or other instruments issued by the mutual fund declared by the mutual fund in respect thereof for any year, notwithstanding that the said security, being units or other instruments issued by the mutual fund, has already been transferred by him for consideration, unless the transferee who claims the income in respect of units or other instruments issued by the mutual fund from the transferor has lodged the security and all other documents relating to the transfer which may be required by the mutual fund with the mutual fund for being registered in his name within fifteen days of the date on which the income in respect of units or other instruments issued by the mutual fund became due.

The period specified in this Section may be extended –

- (i) in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the income in respect of units or other instrument issued by the mutual fund;
- (ii) in case of loss of the transfer deed by theft or any other cause beyond the control of transferee, by the actual period taken for the replacement thereof;
- (iii) in case of delay in the lodging of any security, being units or other instruments issued by the mutual fund, and other documents relating to the transfer due to cause connected with the post, by the actual period of the delay.

This shall not affect –

- (a) the right of a mutual fund to pay any income from units or other instruments issued by the mutual fund which has become due to any person whose name is for the time being registered in the books of the mutual fund as the holder of the security being units or other instruments issued by the mutual fund in respect of which the income in respect of units or other instruments issued by mutual fund has become

due; or

- (b) the right of transferee of any security, being units or other instruments issued by the mutual fund, to enforce against the transferor or any other person his rights, if any, in relation to the transfer in any case where the mutual fund has refused to register the transfer of the security being units or other instruments issued by the mutual fund in the name of the transferee.

PROTECTION OF ACTION TAKEN IN GOOD FAITH

No suit, prosecution or other legal proceeding whatsoever shall lie in any court against the governing body or any member, office bearer or servant of any recognised stock exchange or against any person or persons appointed under sub-section (1) of section 11 for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or bye-laws made thereunder.

SPECIAL PROVISIONS RELATED TO COMMODITY DERIVATIVES

Section 30A deals with following special provisions relating to commodity derivatives:-

- (1) This Act shall not apply to non-transferable specific delivery contracts. However, no person shall organise or assist in organising or be a member of any association in any area to which the provisions of section 13 have been made applicable (other than a stock exchange) which provides facilities for the performance of any non-transferable specific delivery contract by any party thereto without having to make or receive actual delivery to or from the other party to the contract or to or from any other party named in the contract.
- (2) Where in respect of any area, the provisions of section 13 have been made applicable in relation to commodity derivatives for the sale or purchase of any goods or class of goods, the Central Government may, by notification, declare that in the said area or any part thereof as may be specified in the notification all or any of the provisions of this Act shall not apply to transferable specific delivery contracts for the sale or purchase of the said goods or class of goods either generally, or to any class of such contracts in particular.
- (3) If the Central Government is of the opinion that in the interest of the trade or in the public interest it is expedient to regulate and control non-transferable specific delivery contracts in any area, it may, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply to such class or classes of non-transferable specific delivery contracts in such area in respect of such goods or class of goods as may be specified in the notification, and may also specify the manner in which and the extent to which all or any of the said provisions shall so apply.

II. SECURITIES CONTRACTS (REGULATION) RULES, 1957

These rules were made by the Central Government in exercise of the powers conferred by Section 30 of the Securities Contracts (Regulation) Act, 1956 and notified on February 21, 1957.

Requirements of Listing of Securities with recognised Stock Exchanges

This is one of the most important provisions of the Securities Contracts (Regulation) Rules, 1957. Rule 19 provides for the complete procedure in this regard. A public company as defined under the Companies Act, 2013, desirous of getting its securities listed on a recognised stock exchange, shall apply for the purpose to the stock exchange and forward along with its application the following documents and particulars:

- (a) Memorandum and articles of association and, in the case of a debenture issue, a copy of the trust deed.
- (b) Copies of all prospectuses or statements in lieu of prospectuses issued by the company at any time.

- (c) Copies of offers for sale and circulars or advertisements offering any securities for subscription or sale during the last five years.
- (d) Copies of balance sheets and audited accounts for the last five years, or in the case of new companies, for such shorter period for which accounts have been made up.
- (e) A statement showing –
 - i. dividends and cash bonuses, if any, paid during the last ten years (or such shorter period as the company has been in existence, whether as a private or public company),
 - ii. dividends or interest in arrears, if any.
- (f) Certified copies of agreements or other documents relating to arrangements with or between –
 - i. vendors and/or promoters,
 - ii. underwriters and sub-underwriters,
 - iii. brokers and sub-brokers.
- (g) Certified copies of agreements with –
 - i. managing agents and secretaries and treasurers,
 - ii. selling agents,
 - iii. managing directors and technical directors,
 - iv. general manager, sales manager, managers or secretary.
- (h) Certified copy of every letter, report, balance sheet, valuation contract, court order or other document, part of which is reproduced or referred to in any prospectus, offer for sale, circular or advertisement offering securities for subscription or sale, during the last five years.
- (i) A statement containing particulars of the dates of, and parties to all material contracts, agreements (including agreements 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.
- (j) A brief history of the company since its incorporation giving details of its activities including any reorganization, reconstruction or amalgamation, changes in its capital structure (authorised, issued and subscribed) and debenture borrowings, if any.
- (k) Particulars of shares and debentures issued (i) for consideration other than cash, whether in whole or part, (ii) at a premium or discount, or (iii) in pursuance of an option.
- (l) A statement containing particulars of any commission, brokerage, discount or other special terms including an option for the issue of any kind of the securities granted to any person.
- (m) Certified copies of –
 - i. acknowledgment card or the receipt of filing offer document with the SEBI;
 - ii. agreements, if any, with the Industrial Finance Corporation, Industrial Credit and Investment Corporation and similar bodies.
- (n) Particulars of shares forfeited.
- (o) A list of highest ten holders of each class or kind of securities of the company as on the date of application along with particulars as to the number of shares or debentures held by and the address of

each such holder.

- (p) Particulars of shares or debentures for which permission to deal is applied for;

However, a recognised stock exchange may either generally by its bye-laws or in any particular case call for such further particulars or documents as it deems proper.

Rule 19(2)

Sub-rule 2 of Rule 19 provides that apart from complying with such other terms and conditions as may be laid down by a recognised stock exchange, an applicant company shall satisfy the stock exchange that;

- (a) Its articles of association provide for the following among others –
- (i) that the company shall use a common form of transfer;
 - (ii) that the fully paid shares will be free from all lien, while in the case of partly paid shares, the company's lien, if any, will be restricted to moneys called or payable at a fixed time in respect of such shares;
 - (iii) that any amount paid-up in advance of calls on any share may carry interest but shall not entitle the holder of the share to participate in respect thereof, in a dividend subsequently declared;
 - (iv) there will be no forfeiture of unclaimed dividends before the claim becomes barred by law;
 - (v) that option or right to call of shares shall not be given to any person except with the sanction of the company in general meeting;

However, a recognised stock exchange may provisionally admit to dealings the securities of a company which undertakes to amend its articles of association at its next general meeting so as to fulfill the foregoing requirements and agrees to act in the meantime strictly in accordance with the provisions of this clause.

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 debenture 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 percent 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.

However, 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 SEBI.

Conditions precedent to submission of application for listing by Stock Exchange

Sub-rule (3) of Rule 19 provides that company while applying for listing shall, as conditions precedent, undertake *inter alia* –

- (a) (i) that letters of allotment will be issued simultaneously and that, in the event of its being impossible to issue letters of regret at the same time, a notice to that effect will be inserted in the press so that it will appear on the morning after the letters of allotment have been posted.
- (ii) that letters of right will be issued simultaneously,
- (iii) that letters of allotment, acceptance or rights will be serially numbered, printed on good quality paper and, examined and signed by a responsible officer of the company and that whenever possible, they will contain the distinctive numbers of the securities to which they relate.
- (iv) that letters of allotment and renounceable letters of right will contain a proviso for splitting and that, when so required by the exchange, the form of renunciation will be printed on the back of or attached to the letters of allotment and letters of right.
- (v) that letters of allotment and letters of right will state how the next payment of interest or dividend on the securities will be calculated;
- (b) to issue, when so required, receipts for all securities deposited with it whether for registration, subdivision, exchange or for other purposes; and not to charge any fees for registration of transfers, for sub-division and consolidation of certificates and for sub-division of letters of allotment, renounceable letters of right, and split consolidation, renewal and transfer receipts into denominations of the market unit of trading;
- (bb) to issue, when so required, consolidation and renewal certificates in denominations of the market unit of trading, to split certificates, letters of allotment, letters of right, and transfer, renewal, consolidation and split receipts into smaller units, to split call notices, issue duplicates thereof and not require any discharge on call receipts and to accept the discharge of members of stock exchange on split, consolidation and renewal receipts as good and sufficient without insisting on the discharge of the registered holders;
- (c) when documents are lodged for sub-division or consolidation (or renewal) through the clearing house of the exchange;
 - (i) to accept the discharge of an official of the stock exchange clearing house on the company's split receipts and (consolidation receipts and renewal receipts) as good and sufficient discharge without insisting on the discharge of the registered holders; and
 - (ii) to verify when the company is unable to issue certificates or split receipt or (consolidation receipts or renewal receipts) immediately on lodgement whether the discharge of the registered holders, on the documents lodged for sub-division or consolidation (or renewal) and their signatures on the relative transfers are in order;
- (d) on production of the necessary documents by shareholders or by members of the exchange, to make on transfers an endorsement to the effect that the power of attorney or probate or letters of administration or death certificate or certificate of the Controller of Estate Duty or similar other document has been duly exhibited to and registered by the company;
- (e) to issue certificates in respect of shares or debentures lodged for transfer within a period of one month of the date of lodgement of transfer and to issue balance certificates within the same period where the transfer is accompanied by a larger certificate;
- (f) to advise the stock exchange of the date of the board meeting at which the declaration or recommendation of a dividend (or the issue of right or bonus share) will be considered;
- (g) to recommend or declare all dividends and/or cash bonuses at least five days before the commencement of the closure of its transfer books or the record date fixed for the purpose and so advise the stock exchange in writing of all dividends and/or cash bonuses recommended or declared immediately after a meeting of the board of the company has been held to finalise the same;

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- (h) to notify the stock exchange of any material change in the general character or nature of the company's business;
- (i) to notify the stock exchange of any change –
 - (i) in the company's directorate by death, resignation, removal or otherwise,
 - (ii) of managing director, managing agent or secretaries and treasurers,
 - (iii) of auditors appointed to audit the books and accounts of the company;
- (j) to forward to the stock exchange copies of statutory and annual reports and audited accounts as soon as issued, including directors' reports;
- (k) to forward to the stock exchange as soon as they are issued, copies of all other notices and circulars sent to the shareholders including proceedings of ordinary and extraordinary general meetings of the company and to file with the stock exchange certified copies of resolutions of the company as soon as such resolutions become effective;
- (l) to notify the stock exchange prior to intimating the shareholders, of any new issue of securities whether by way of right, privilege, bonus or otherwise and the manner in which it is proposed to offer or allot the same;
- (m) to notify the stock exchange in the event of re-issue of any forfeited securities or the issue of securities held in reserve for future issue;
- (n) to notify the stock exchange of any other alteration of capital including calls;
- (o) to close the transfer books only for the purpose of declaration of dividend or issue of right or bonus shares or for such other purposes as the stock exchange may agree and to give notice to the stock exchange as many days in advance as the exchange may from time to time reasonably prescribe, stating the dates of closure of its transfer books (or, when the transfer books are not to be closed, the date fixed for taking a record of its shareholders or debenture holders) and specifying the purpose or purposes for which the transfer books are to be closed (or the record is to be taken) and in the case of a right or bonus issue to so close the transfer books or fix a record date only after the sanctions of the competent authority subject to which the issue is proposed to be made have been duly obtained, unless the exchange agrees otherwise;
- (p) to forward to the stock exchange an annual return immediately after each annual general meeting of at least ten principal holders of each class of security of the company along with particulars as to the number of shares or debentures held by, and address of, each such holder;
- (q) to grant to shareholders the right of renunciation in all cases of issue of rights, privileges and benefits and to allow them reasonable time not being less than four weeks within which to record, exercise, or renounce such rights, privileges and benefits, and to issue, where necessary, coupons or fractional certificates or provide for the payment of the equivalent of the value of the fractional right in cash unless the company in general meeting or the stock exchange agrees otherwise;
- (r) to promptly notify the stock exchange—
 - (i) of any action which will result in the redemption, cancellation or retirement in whole or in part of any securities listed on the exchange,
 - (ii) of the intention to make a drawing of such securities, intimating at the same time the date of the drawing and the period of the closing of the transfer books (or the date of the striking of the balance) for the drawing;
 - (iii) of the amount of securities outstanding after any drawing has been made;

- (s) to intimate the stock exchange any other information necessary to enable the shareholders to appraise the position of the company and to avoid the establishment of a false market in the shares of the company;
- (t) that in the event of the application for listing being granted, such listing shall be subject to the rules and bye-laws of the exchange in force from time to time and that the company will comply within a reasonable time, with such further listing requirements as may be promulgated by the exchange as a general condition for new listings.

Application for listing of new securities

Rule 19(4) stipulates that an application for listing shall be necessary in respect of the following:

- (a) all new issues of any class or kind of securities of a company to be offered to the public;
- (b) all further issues of any class or kind of securities of a company if such class or kind of securities of the company are already listed on a recognised stock exchange.

Suspension or withdrawal of admission to dealings in securities on stock exchange

A recognised stock exchange may suspend or withdraw admission to dealings in the securities of a company or body corporate either for a breach of or non-compliance with, any of the conditions of admission to dealings or for any other reason, to be recorded in writing, which in the opinion of the stock exchange justifies such action;

However, no such action shall be taken by a stock exchange without affording to the company or body corporate concerned a reasonable opportunity by a notice in writing, stating the reasons, to show cause against the proposed action.

Further, where a recognised stock exchange has withdrawn admission to dealings in any security, or where suspension of admission to dealings has continued for a period exceeding three months, the company or body corporate concerned may prefer an appeal to the Securities Appellate Tribunal constituted under section 15K of the SEBI Act, 1992 and the procedure laid down under the Securities Contracts (Regulation) (Appeal to Securities Appellate Tribunal) Rules, 2000 shall apply to such appeal. The Securities Appellate Tribunal may, after giving the stock exchange an opportunity of being heard, vary or set aside the decision of the stock exchange and its orders shall be carried out by the stock exchange. [Rule 19(5)]

A recognised stock exchange may, either at its own discretion or shall in accordance with the orders of the Securities Appellate Tribunal restore or re-admit to dealings any securities suspended or withdrawn from the list. [Rule 19(6)]

All requirements with respect to listing prescribed by these rules shall, so far as they may be, also apply to a public sector company. [Rule 19(6A)]

The SEBI may, at its own discretion or on the recommendation of a recognised stock exchange, waive or relax the strict enforcement of any or all of the requirements with respect to listing prescribed by these rules. [Rule 19(7)]

MINIMUM SHAREHOLDING

Rule 19A (1) stipulates that every listed company other than public sector company shall maintain public shareholding of at least 25%. However, any listed company which has public shareholding below 25%, shall increase its public shareholding to at least twenty five per cent, within a period of four years from the date of commencement of amendment to the said rules in 2014, in the manner specified by the SEBI.

Explanation : For the purposes of this sub-rule, a company whose securities has been listed pursuant to an

offer and allotment made to public in terms of clause (b) of sub-rule (2) of rule 19, shall maintain minimum 25% public shareholding from the date on which the public shareholding in the company reaches the level of 25% in terms of said sub-clause.

Sub-rule (2) provides that where the public shareholding in a listed company falls below 25 % at any time, such company shall bring the public shareholding to 25% within a maximum period of twelve months from the date of such fall in the manner specified by the SEBI.

However every listed public sector company whose public shareholding falls below twenty five per-cent. at any time after the commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2018, shall increase its public shareholding to at least twenty five per-cent, within a period of two years from such fall, in the manner specified by the SEBI.

Where the public shareholding in a listed company falls below 25% in consequence to SCRR (Amendment) Rules, 2015, such company shall increase its shareholding to atleast 25%, in the manner specified by the SEBI within a period of three years, as the case may be, from the date of notification of:

- (a) the Depository Receipts Scheme, 2014, in cases where the public shareholding falls below 25% as a result of such Scheme;
- (b) the SEBI (Share Based Employee Benefits) Regulations, 2014, in cases where the public shareholding falls below 25%, as a result of such regulations.

Sub rule (5) provides that where the public shareholding in a listed company falls below twenty-five per cent, as a result of implementation of the resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016, such company shall bring the public shareholding to twenty-five per cent within a maximum period of three years from the date of such fall, in the manner specified by the Securities and Exchange Board of India.

However, if the public shareholding falls below ten per cent, the same shall be increased to at least ten per cent, within a maximum period of eighteen months from the date of such fall, in the manner specified by the Securities and Exchange Board of India.

Delisting of securities

Rule 21 deals with delisting of securities. A recognized stock exchange may, without prejudice to any other action that may be taken under the Act or under any other law for the time being in force, delist any securities listed thereon on any of the following grounds in accordance with the regulations made by the SEBI, namely:—

- (a) the company has incurred losses during the preceding three consecutive years and it has negative networth;
- (b) trading in the securities of the company has remained suspended for a period of more than six months;
- (c) the securities of the company have remained infrequently traded during the preceding three years;
- (d) the company or any of its promoters or any of its director has been convicted for failure to comply with any of the provisions of the Act or the SEBI Act, 1992 or the Depositories Act, 1996 or rules, regulations, agreements made thereunder, as the case may be and awarded a penalty of not less than rupees one crore or imprisonment of not less than three years;
- (e) the addresses of the company or any of its promoter or any of its directors, are not known or false addresses have been furnished or the company has changed its registered office in contravention of the provisions of the Companies Act, 2013; or
- (f) shareholding of the company held by the public has come below the minimum level applicable to the

company as per the SEBI LODR and the company has failed to raise public holding to the required level within the time specified by the recognized stock exchange.

However, no securities shall be delisted unless the company concerned has been given a reasonable opportunity of being heard.

(2) If the securities is delisted under clause (1),

- (a) the company, promoter and director of the company shall be jointly and severally liable to purchase the outstanding securities from those holders who wish to sell them at a fair price determined in accordance with regulations made by the SEBI, under the Act; and
- (b) the said securities shall be delisted from all recognized stock exchanges.

(3) A recognized stock exchange may, on the request of the company, delist any securities listed thereon in accordance with the regulations made under the Act by the SEBI, subject to the following conditions, namely :

- (a) the securities of the company have been listed for a minimum period of three years on the recognized stock exchange;
- (b) the delisting of such securities has been approved by the two-third of public shareholders; and
- (c) the company, promoter and/or the director of the company purchase the outstanding securities from those holders who wish to sell them at a price determined in accordance with regulations made by SEBI under the Act.

However, the condition at (c) may be dispensed with by the SEBI if the securities remain listed at least on the National Stock Exchange of India Limited or the Bombay Stock Exchange Limited.

LESSON ROUND UP

- The Securities Contracts (Regulation) Act, 1956 ('SCRA') was enacted by Parliament to prevent undesirable transactions in securities by regulating the business of dealing therein, and by providing for certain other matters connected therewith.
- Section 2 of this Act contains definitions of various terms used in the Act.
- Section 17A of the Act provides for public issue and listing of securities.
- The Act prescribes various penalties against persons who might be found guilty of offences under the Act.
- Section 21 of the Act provides that where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the SEBI LODR.
- Section 31 provides that without prejudice to the provisions contained in Section 30 of SEBI Act, 1992, SEBI may, by notification in the Official Gazette, make regulations consistent with the provisions of this Act and the rules made thereunder to carry out the purposes of this Act.
- The Government promulgated the Securities Contracts (Regulation) Rules, 1957 for carrying into effect the object of the Securities Contracts (Regulation) Rules, 1956.
- Rule 19 dealt with the requirement with respect to the listing of securities on a recognised stock exchange.
- Rule 19A provides the detailed provision regarding continuous listing agreement.

GLOSSARY

Admission to Dealing	The process of granting permission to the securities of a company to be listed on a Stock Exchange and to provide trading facilities for the securities in the market.
Appointed date	It means the date which the SEBI may, by notification in the Official Gazette, appoint and different appointed dates may be appointed for different recognized stock exchanges.
Commodity Derivative	It means a contract - (i) for the delivery of such goods, as may be notified by the Central Government in the Official Gazette, and which is not a ready delivery contract; or (ii) for differences, which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified by the Central Government, in consultation with the SEBI, but does not include securities as referred to in sub-clauses (A) and (B) of clause (ac) of Section 2 under Securities Contracts (Regulation) Act, 1956.
Dividend Payable	A current liability showing the amount due to stock holders/shareholders for dividend declared but not paid.
Stock Exchange	Anybody of individuals, whether incorporated or not, constituted for the purpose of assisting, regulating controlling the business of buying, selling or dealing in securities.

SELF TEST QUESTIONS

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

1. Briefly discuss the powers of stock exchange under the Securities Contracts (Regulation) Act, 1956.
2. What is the remedy available a accompany if a stock exchange refuse to list its securities under Securities Contracts (Regulation) Act, 1956?
3. Briefly explain the provision relating to continuous listing requirement under the Securities Contracts (Regulation) Rules, 1957.
4. State the grounds on which a stock exchanges can delist the securities of a company under the Securities Contracts (Regulation) Rules, 1957.
5. What are the provisions relating to listing of securities with a recognised stock exchanges?

Lesson 2

Securities and Exchange Board of India Act, 1992

LESSON OUTLINE

- Introduction
- Objective of SEBI
- SEBI Act, 1992
- Composition of SEBI
- Functions and Powers of SEBI
- Registration of Intermediaries
- Prohibition of Manipulative and deceptive devices, insider trading etc.
- Penalties for failure
- Penalties for adjudication
- Securities Appellate Tribunal
- Powers of Central Government
- Delegation of Powers
- Appeal to the Central Government
- Bar of Jurisdiction
- Public Servants
- Offences & Punishments
- Cognizance of Offences by Courts
- Recovery of Amounts
- Consent Order
- Role of Company Secretary
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

The first statutory regulatory body that the Government of India set up post the reforms of 1991 was the Securities and Exchange Board of India (SEBI). The SEBI has been established with two objectives of protecting the interest of investors and to promote the development of and to regulate the Securities Market. Since its establishment in 1992, a lot of initiatives have been taken to protect the interests of the investors. SEBI under the SEBI Act, 1992 has been empowered to frame subordinate legislation and to investigate wrong doing, impose relevant penalties and to conduct search and seizure operations.

The Company Secretary is recognised to appear as authorised representative under the SEBI Act, 1992, therefore a student pursuing CS course needs to update with the various provisions, penalties and compliances under the SEBI Act. This lesson will describe the students about the functions and powers of SEBI; the legal process at SEBI with a focus in the enforcement process and specifically on the quasi-judicial functions like Powers of Securities Appellate Tribunal (SAT), appeal to Supreme Court, etc.

INTRODUCTION

The SEBI Act, 1992 was enacted to empower SEBI with statutory powers for (a) protecting the interests of investors in securities, (b) promoting the development of the securities market, and (c) regulating the securities market. Its regulatory jurisdiction extends over corporates in the issuance of capital and transfer of securities, in addition to all intermediaries and persons associated with securities market. The SEBI – can specify the matters to be disclosed and the standards of disclosure required for the protection of investors in respect of issues; – can issue directions to all intermediaries and other persons associated with the securities market in the interest of investors or of orderly development for securities market; and – can conduct enquiries, audits and inspection of all concerned and adjudicate offences under the Act. In short, it has been given necessary autonomy and authority to regulate and develop an orderly securities market. As per Section 1 of the Act, this Act may be called the Securities and Exchange Board of India Act, 1992. It extends to the whole of India. It shall be deemed to have come into force on the 30th day of January, 1992.

OBJECTIVE OF SEBI

- To protect the interests of investors in securities; and
- To promote the development of; and
- To regulate, the securities market and for matters connected therewith or incidental thereto.

SEBI ACT, 1992

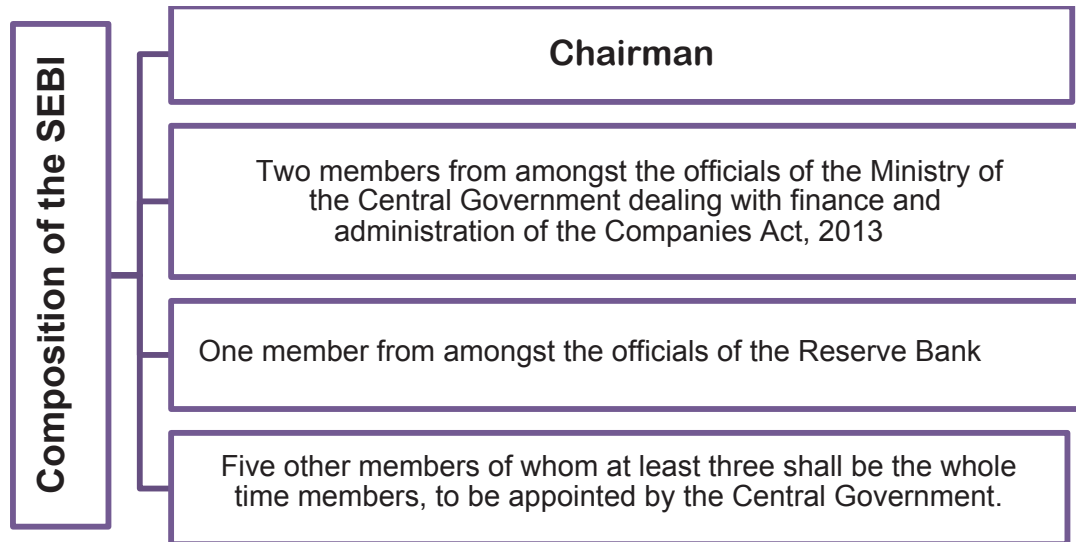
The SEBI Act, 1992 is divided into ten chapters which are discussed below:

SEBI ACT, 1992	Chapter I	Definitions of various terms
	Chapter II	Establishment of SEBI
	Chapter III	Transfer of assets, liabilities, etc., of existing SEBI
	Chapter IV	Powers and Functions of SEBI
	Chapter V	Registration Certificate
	Chapter VA	Prohibition of Manipulative and Deceptive Devices, Insider Trading and Substantial Acquisition of Securities or Control
	Chapter VI	Finance, Accounts And Audit
	Chapter VIA	Penalties and Adjudication
	Chapter VI B	Establishment, Jurisdiction, Authority and Procedure of Securities Appellate Tribunal
	Chapter VII	Miscellaneous

In terms of section 3 of the Act, the SEBI is a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose off property, both movable and immovable and to contract, and shall sue and be sued in its own name. The SEBI has its Head Office at Mumbai and has powers to establish its offices at other places in India.

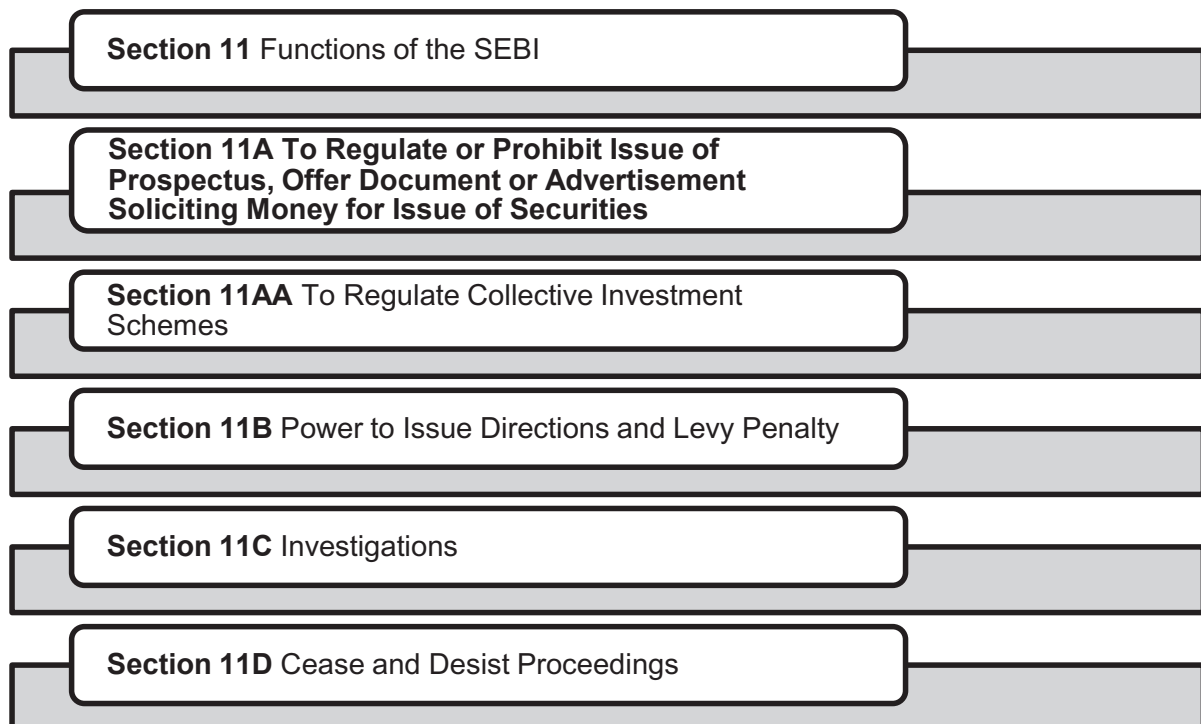
COMPOSITION OF THE SEBI

Section 4(1) of the SEBI Act provides that the SEBI shall consist of the following members, namely:



FUNCTIONS AND POWERS OF THE SEBI

Chapter IV of the SEBI Act, 1992 deals with the powers and functions of SEBI.



Functions of the SEBI

- Section 11 of the Act lays down that it shall be the duty of SEBI to protect the interests of the investors in securities and to promote the development of, and to regulate the securities markets by such measures as it thinks fit.

- Section 11(2) provides that without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for –

Measures

- Regulating the business in stock exchanges and any other securities markets;
- Registering and regulating the working of stock brokers, sub-broker, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;
- Registering and regulating the working of the depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the SEBI, may by notification specify in this behalf;
- Registering and regulating the working of venture capital funds and collective investment schemes, including mutual funds;
- Promoting and regulating self-regulatory organisations;
- Prohibiting fraudulent and unfair trade practices relating to securities markets;
- Promoting investors' education and training of intermediaries of securities markets;
- Prohibiting insider trading in securities;
- Regulating substantial acquisition of shares and takeover of companies;
- Calling for information, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities markets, intermediaries and self regulatory organisations in the securities market;
- Calling for information and records:
 - from any person including any bank or any authority or board or corporation established or constituted by or under any central or state Act, which in the opinion of the SEBI, shall be relevant to any investigation or inquiry by the SEBI in respect of any transaction in securities;
 - to any such agencies, as may be specified by the SEBI, such information as may be considered necessary by it for the efficient discharge of its functions;
 - to other authorities, whether in India, or outside India having functions similar to those of the SEBI, in the matters relating to the prevention or detection of violation in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard.

However, SEBI for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the approval of the Central Government.

- Performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956, as may be delegated to it by the Central Government;
- Levying fees or other charges for carrying out the purposes of this section;
- Conducting research for the above purposes;
- Calling from or furnishing to any such agencies, as may be specified by the SEBI such information as may be considered necessary by it for the efficient discharge of its functions.
- Performing such other functions as may be prescribed.

Section 11(2A) prescribes that SEBI may take measures to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where SEBI has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market.

Section 11(3) of the SEBI Act provides that for carrying out the duties assigned to it under the Act, the SEBI has been vested with the same powers as are available to a Civil Court under the Code of Civil Procedure, 1908 for trying a suit in respect of the following matters:

- (i) the discovery and production of books of account and other documents at such place and such time indicated by SEBI.
- (ii) summoning and enforcing the attendance of persons and examining them on oath.
- (iii) inspection of any books, registers and other documents of any person listed referred in section 12 of the Act at any place.
- (iv) inspection of any book or register or other document or record of any listed company or a public company which intends to get its securities listed on any recognized stock exchange.
- (v) issuing commissions for the examination of witnesses or documents.

As per Section 11(4), the SEBI, may, by an order or for reasons to be recorded in writing, in the interest of investors or securities market take any of the following measures either pending investigation or inquiry or on completion of such investigation or enquiry namely:

- (a) suspend the trading of any security in a recognised stock exchange.
- (b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities.
- (c) suspend any office-bearer of any stock exchange or self regulatory organisation from holding such position.
- (d) impound and retain the proceeds or securities in respect of any transaction which is under investigation.
- (e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder;

However, the SEBI shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply;

Further, only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.

- (f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation.

The SEBI may take any of the measures specified in clause (d) or clause (e) or clause (f) in respect of any listed public company or a public company not being an intermediary which intends to get its securities listed on any recognised stock exchange where the SEBI has reasonable grounds to believe that such company has

been indulging in insider trading or fraudulent and unfair trade practices relating to securities market. Further, SEBI shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.

Without prejudice to the provisions contained in sub-sections (1), (2), (2A), (3) and (4), section 11B and section 15-I, the SEBI may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA, 15HAA and 15HB after holding an inquiry in the prescribed manner.

Section 11(5) of the Act authorises SEBI to disgorge the amount, pursuant to direction issued under section 11B or section 12A of the Securities Contracts (Regulation) Act, 1956 or section 19 of the Depositories Act, 1996, or under a settlement made under section 15JB or section 23JA of the Securities Contracts (Regulation) Act, 1956 or section 19-IA of the Depositories Act, 1996, as the case may be, shall be credited to the Investor Protection and Education Fund established by the SEBI and such amount shall be utilized by the SEBI in accordance with the regulations made under this Act.

Section 11A – To Regulate or Prohibit Issue of Prospectus, Offer Document or Advertisement Soliciting Money for Issue of Securities

Section 11A(1) of SEBI Act, 1992 provides that without prejudice to the provisions of the Companies Act, 2013, the SEBI may, for the protection of investors, –

- (a) specify, by regulations –
 - (i) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and
 - (ii) the manner in which such matters shall be disclosed by the companies;
- (b) by general or special orders –
 - (i) prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities;
 - (ii) specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.

Without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956, the SEBI may specify the requirements for listing and transfer of securities and other matters incidental thereto.

Section 11AA – To Regulate Collective Investment Schemes

11AA (1) of the SEBI Act, provides that any scheme or arrangement which satisfies the conditions referred to in sub-section (2) or sub-section (2A) shall be a collective investment scheme. **(This section has been discussed in Lesson No. 13)**

However, any pooling of funds under any scheme or arrangement, which is not registered with the SEBI or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.

Section 11B – Power to Issue Directions and Levy Penalty

Section 11B of the Act provides that if the SEBI is satisfied after making or causing to be made an enquiry due enquiries, that it is necessary:

- (i) in the interest of investors, or orderly development of securities market; or
- (ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interests of investors or securities market; or

- (iii) to secure the proper management of any such intermediary or person, the SEBI may issue such directions, –
 - (a) to any person or class of persons referred to in section 12, or associated with the securities market; or
 - (b) to any company in respect of matters relating to issue of capital, transfer of securities and other matter incidental thereto, as may be appropriate in the interests of investors in securities and the securities market.

The power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, the SEBI may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.

Section 11C – Investigations

(1) Grounds for Investigation

- Section 11C of the Act provides that where the SEBI has reasonable ground to believe that:
 - the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or
 - any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by SEBI thereunder;
 it may, at any time by order in writing, direct any person specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the SEBI.

(2) Duty of officers to produce Accounts and Records

- It is the duty of every manager, managing director, officer and other employee of the company and every intermediary or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) Powers of Investigating Authority

- The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before it or any person authorized by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.
- The Investigating Authority may keep in its custody any books, registers, other documents and record produced for six months and thereafter shall return the same to any intermediary or any person associated with securities market by whom or on whose behalf the books, registers, other documents and record are produced.

However, the investigating officer may call for buy back, register, other document and record if they are needed again. Further, if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced before the Investigating

Authority, it shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced.

(4) To examine on oath

- Any person, directed to make an investigation may, examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.
- If any person fails without reasonable cause or refuses:
 - to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty to produce; or
 - to furnish any information which it is his duty to furnish; or
 - to appear before the Investigating Authority personally when required to do so or to answer any question which is put to him by the Investigating Authority; or
 - to sign the notes of any examination,

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

(5) To take notes on examination

- Notes of any examination shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(6) Seizure of Records

- Where in the course of an investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to any, any intermediary or any person associated with securities market in any manner may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Magistrate or Judge of such designated Court in Mumbai, as may be notified by the Central Government for an order for the seizure of such books, registers, other documents and records.
- The authorised officer may requisition the services of any police officer or any office of the Central Government, or of both, to assist him for all or any of the purposes specified above and it shall be the duty of every such officer to comply with such requisition.
- After considering the application and hearing the Investigating Authority, if necessary, the Magistrate or Judge of the Designated Court may, by order, authorize the investigating authority –
 - (a) to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept.
 - (b) to search that place or those places in the manner specified in the order and.
 - (c) to seize books, registers and other documents and records, it consider necessary for the purpose of the investigation.

However, the Magistrate or Judge of the Designated Court shall not authorize seizure of books, registers, other documents and record of any listed public company or a public company (not being the intermediary specified under section 12) which intends to get its securities listed on any recognized stock exchange unless such company indulges in insider trading or market manipulation.

- The Investigating Authority shall keep in its custody the books, registers, other documents and record seized under this section for such period not later than the conclusion of the investigation as it considers

necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate or Judge of the Designated Court of such return.

- The Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof.
- Every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures made under that Code.

Cease and Desist Proceedings

Section 11D deals with the cease and desist powers of the SEBI. If the SEBI finds, after causing an inquiry to be made, that any person has violated, or is likely to violate any provisions of this Act, or any rules or regulations made thereunder, it may pass an order requiring such person to cease and desist from committing or causing such violation. However, the SEBI shall not pass such order in respect of any listed public company or a public company which intends to get its securities listed on any recognized stock exchange unless SEBI has reasonable grounds to believe that such company has indulged in insider trading or market manipulation.

REGISTRATION OF INTERMEDIARIES

Chapter V of the Act provides for registration of various intermediaries such as stock broker, sub-broker, share transfer agents etc.

Section 12(1) of the Act provides that the following intermediaries are required to obtain a registration certificate from the SEBI to buy, sell or deal in securities :

- Stock-Broker
- Sub-Broker
- Share Transfer Agent
- Banker to an issue
- Trustee of Trust Deed
- Registrar to an Issue
- Merchant Banker
- Underwriter
- Portfolio Manager
- Investment Adviser
- Depository Participant
- Custodian of Securities
- Foreign Institutional Investor
- Credit Rating Agency
- Such other intermediary
- Above intermediaries are discussed in Chapter 16 of the study

A person shall not sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the SEBI in accordance with the regulations.

It is clarified by the SEBI that a collective investment scheme or mutual fund shall not include any unit linked

insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment besides the component of insurance issued by an insurer.

Every application for registration would in such manner and on payment of such fees as may be determined by the SEBI Regulations. The SEBI may, by order, suspend or cancel a certificate of registration in such manner as may be determined by the SEBI Regulations. However, no such order shall be made unless the person concerned has been given a reasonable opportunity of being heard.

PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING ETC.

Chapter VA of the Act deals with prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

Section 12A of the Act provides that a person shall not directly or indirectly:

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (d) engage in insider trading;
- (e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognized stock exchange in contravention of the regulations made under this Act.

PENALTIES FOR FAILURES

Chapter VIA of the SEBI Act deals with penalties which can be imposed under the Act for various failures, defaults, non-disclosure and other offences.

It may be recalled that Section 11(2)(i) empowers SEBI to call for information and conduct enquiries and audits of the stock exchanges, mutual funds, other persons associated with securities markets, intermediaries and self-regulatory organisations in the security market.

Also Section 11(2)(ia) of the Act requires calling for information and record from any bank or any other authority or SEBI or corporation established or constituted by or under any central, state or provincial Act in respect of any transaction in securities which is under investigation or inquiry by the SEBI.

PENALTIES AND ADJUDICATION

SI No.	Section	Particulars
1.	Section 15A	Failure to furnish information, return, etc.

2.	Section 15B	Failure by any person to enter into agreement with clients.
3.	Section 15C	Failure to redress investors' grievances.
4.	Section 15D	Default in case of Mutual Funds.
5.	Section 15E	Failure to observe rules and regulations by an asset management company.
6.	Section 15EA	Default in case of alternative investment funds, infrastructure investment trusts and real estate investment trusts.
7.	Section 15EB	Default in case of investment adviser and research analyst.
8.	Section 15F	Default in case of stock brokers.
9.	Section 15G	Insider Trading.
10.	Section 15H	Non-Disclosure of Acquisition of Shares and Takeovers.
11.	Section 15HAA	Penalty for alteration, destruction, etc., of records and failure to protect the electronic database of SEBI.
12.	Section 15HA	Fraudulent and unfair trade practices.
13.	Section 15HB	Contravention where no separate penalty has been provided.
14.	Section 15I	Adjudications.
15.	Section 15J-15JA	Factors to be taken into account by the adjudicating officer.
16.	Section 15JB	Settlement of administrative and civil proceedings.

Penalty for failure to furnish information, return, etc.

- Section 15A lays down that if any person who is required under the SEBI Act or any rules or regulations made thereunder:
 - (a) to furnish any document, return or report to the SEBI, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents;
 - (b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents;
 - (c) to maintain books of accounts or records, fails to maintain the same.
 shall be liable to pay a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for failure by any person to enter into an agreement with clients

- Section 15B lays down that if any person who is registered as an Intermediary and is required to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to pay a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for failure to redress investors' grievances

- Section 15C lays down that if any listed company or any person who is registered as an Intermediary, after having been called upon by the SEBI in writing including by any means of electronic communication, to redress the grievances of investor, fails to redress such grievances within the time specified by the SEBI, such company or intermediary shall be liable to pay a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum one crore rupees.

Penalties for default in case of mutual funds

- Section 15D lays down that in case of mutual funds, if any person who is:
 - (a) required to obtain a certificate of registration from the SEBI for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty, which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual fund subject to a maximum of one crore rupees;
 - (b) registered with the SEBI as a collective investment scheme, including mutual funds, for sponsoring or carrying on any investment scheme, fails to comply with the terms and conditions of certificate of registration;
 - (c) registered with the SEBI as a collective investment scheme, including mutual funds, fails to make an application for listing of its schemes as provided for in the regulations governing such listing;
 - (d) registered as a collective investment scheme, including mutual funds, fails to dispatch unit certificates of any scheme in the manner provided in the regulation governing such despatch;
 - (e) registered as a collective investment scheme, including mutual funds, fails to refund the application monies paid by the investors within the period specified in the regulations;
 - (f) registered as a collective investment scheme, including mutual funds, fails to invest money collected by such collective investment schemes in the manner or within the period specified in the regulations,

he shall be liable to a penalty which shall not be less than 1 lakh rupees and which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for failure to observe rules and regulations by an asset management company

- Section 15E lays down that where any asset management company of a mutual fund registered under the SEBI Act fails to comply with any of the regulation providing for restrictions on the activities of such company, it shall be liable to a penalty which shall not be less than one lakh rupees but which may extend one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for default in case of alternative investment funds, infrastructure investment trusts and real estate investment trusts

Section 15EA of the Act lays down that where any person fails to comply with the regulations made by the SEBI in respect of alternative investment funds, infrastructure investment trusts and real estate investment trusts or fails to comply with the directions issued by the SEBI, such person shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees or three times the amount of gains made out of such failure, whichever is higher.

Penalty for default in case of investment adviser and research analyst

Section 15EB of the Act lays down that where an investment adviser or a research analyst fails to comply with the regulations made by the SEBI or directions issued by the SEBI, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalties for default in case of stock brokers

- Section 15F provides if any person registered as a stock broker under the SEBI Act -
 - (a) fails to issue contract notes in the form and in the manner specified by the stock exchange of which such broker is a member, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees for which the contract note was required to be issued by that broker;
 - (b) fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the period specified in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;
 - (c) charges an amount of brokerage which is in excess of the brokerage specified in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

Penalty for Insider Trading

- Section 15G lays down that if any insider:
 - (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or
 - (ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any securities of anybody corporate on the basis of unpublished price sensitive information,

shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

Penalty for Non-Disclosure of Acquisition of Shares and Takeovers

- Section 15H lays down that if any person fails to:

(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or

(ii) make such a public announcement to acquire shares at a minimum price; or

(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or

(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer.

he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

Penalty for fraudulent and unfair trade practices

- Section 15HA provides that if any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Penalty for alteration, destruction, etc., of records and failure to protect the electronic database of SEBI

Section 15HAA provides that any person, who – (a) knowingly alters, destroys, mutilates, conceals, falsifies, or makes a false entry in any information, record, document (including electronic records), which is required under this Act or any rules or regulations made thereunder, so as to impede, obstruct, or influence the investigation, inquiry, audit, inspection or proper administration of any matter within the jurisdiction of the SEBI.

Explanation.—A person shall be deemed to have altered, concealed or destroyed such information, record or document, in case he knowingly fails to immediately report the matter to the SEBI or fails to preserve the same till such information continues to be relevant to any investigation, inquiry, audit, inspection or proceeding, which may be initiated by the SEBI and conclusion thereof;

(b) without being authorised to do so, access or tries to access, or denies of access or modifies access parameters, to the regulatory data in the database;

(c) without being authorised to do so, downloads, extracts, copies, or reproduces in any form the regulatory

data maintained in the system database;

(d) knowingly introduces any computer virus or other computer contaminant into the system database and brings out a trading halt;

(e) without authorisation disrupts the functioning of system database;

(f) knowingly damages, destroys, deletes, alters, diminishes in value or utility, or affects by any means, the regulatory data in the system database; or

(g) knowingly provides any assistance to or causes any other person to do any of the acts specified in clauses (a) to (f)

shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to ten crore rupees or three times the amount of profits made out of such act, whichever is higher.

Penalty for contravention where no separate penalty has been provided

- Section 15HB whoever fails to comply with any provision of this Act, the rules or regulations made or directions issued by the SEBI thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Adjudications

Section 15-I deal with the SEBI's power to adjudicate.

The SEBI may appoint any of its officers not below the rank of Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

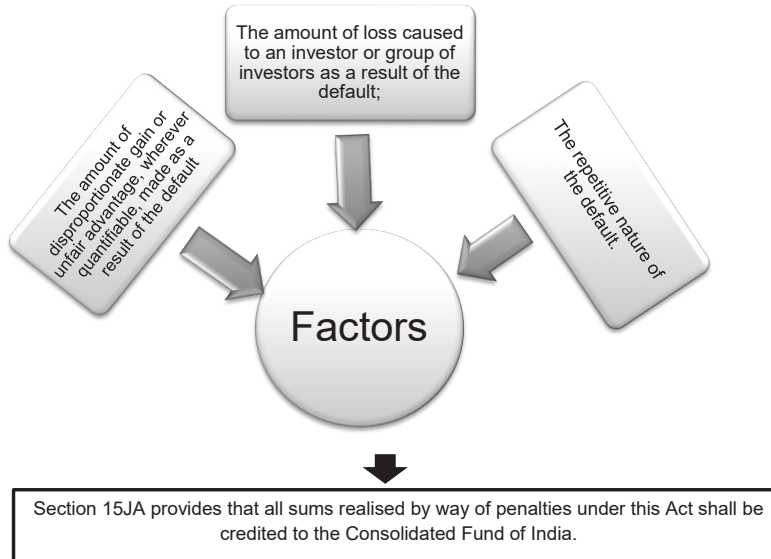
The adjudicating officer has powers to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

The SEBI may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify.

However, no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter. Further, nothing contained in this section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 15-T, whichever is earlier.

Factors to be Taken into Account by the Adjudicating Officer

Section 15J lays down that while adjudging the amount of penalty, the adjudicating officer shall have due regard to the following factors, viz. –



Settlement of Administrative and Civil Proceedings

Section 15JB deals with settlement of administrative and civil proceeding by SEBI. Any person against where any proceedings have been initiated or may be initiated under section 11, Section 11B, section 11D, section 12(3) or section 15-I, may file an application in writing to the SEBI proposing for settlement of proceeding initiated or to be initiated for the alleged defaults. The SEBI, may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the SEBI in accordance with the regulations made under this Act.

The settlement proceedings shall be conducted in accordance with the procedure specified in the regulations made under this Act. No appeal shall lie under section 15T against any order passed by the SEBI or adjudicating officer as the case may be.

All the settlement amounts excluding the disgorgement amount and legal costs, realised under this Act shall be credited to the Consolidated Fund of India.

SECURITIES APPELLATE TRIBUNAL

In order to afford proper appellate remedies, Chapter VIB of the SEBI Act provides for the establishment of the Securities Appellate Tribunals (SAT) to consider appeals against the SEBI's orders, or penalties.

Sl. No.	Section	Particulars
1.	Section 15K	Establishment of Securities Appellate Tribunals
2.	Section 15L	Composition of Securities Appellate Tribunal
3.	Section 15M, 15MA, 15MB, 15MC	Qualification for appointment as Presiding Officer or Member of Securities Appellate Tribunal
4.	Section 15N	Tenure of office of Presiding Officer and other Members of Securities Appellate Tribunal

5.	Section 15O	Salary and allowances and other terms and conditions of service of Presiding Officers
6.	Section 15P, 15 PA	Filling up of vacancies
7.	Section 15Q	Resignation and removal
8.	Section 15R	Orders constituting Appellate Tribunal to be final and not to invalidate its proceedings
9.	Section 15S	Staff of the Securities Appellate Tribunal
10.	Section 15T	Appeal to the Securities Appellate Tribunal
11.	Section 15U	Procedure and powers of the Securities Appellate Tribunal
12.	Section 15V	Right to legal representation
13.	Section 15W	Limitation
14.	Section 15X	Presiding Officer, Members and staff of Securities Appellate Tribunals to be public servants
15.	Section 15Y	Civil Court not to have jurisdiction
16.	Section 15Z	Appeal to Supreme Court

As per Section 15K, the Central Government is empowered to establish a Tribunal, to be known as the Securities Appellate Tribunal to exercise the jurisdiction, power and authorities conferred on it or under the Act or any other law for the time being in force. The Central Government has set up a Tribunal by Mumbai. The Central Government shall also specify in the notification the matters and places in relation to which the Securities Appellate Tribunal may exercise jurisdiction.

Composition of Securities Appellate Tribunal

According to Section 15 L, the Securities Appellate Tribunal shall consist of a Presiding Officer and such number of Judicial Members and Technical Members as the Central Government may determine, by notification, to exercise the powers and discharge the functions conferred on the Securities Appellate Tribunal under this Act or any other law for the time being in force.

Subject to the provisions of this Act,—

- (a) the jurisdiction of the Securities Appellate Tribunal may be exercised by Benches thereof;
- (b) a Bench may be constituted by the Presiding Officer of the Securities Appellate Tribunal with two or more Judicial or Technical Members as he may deem fit;

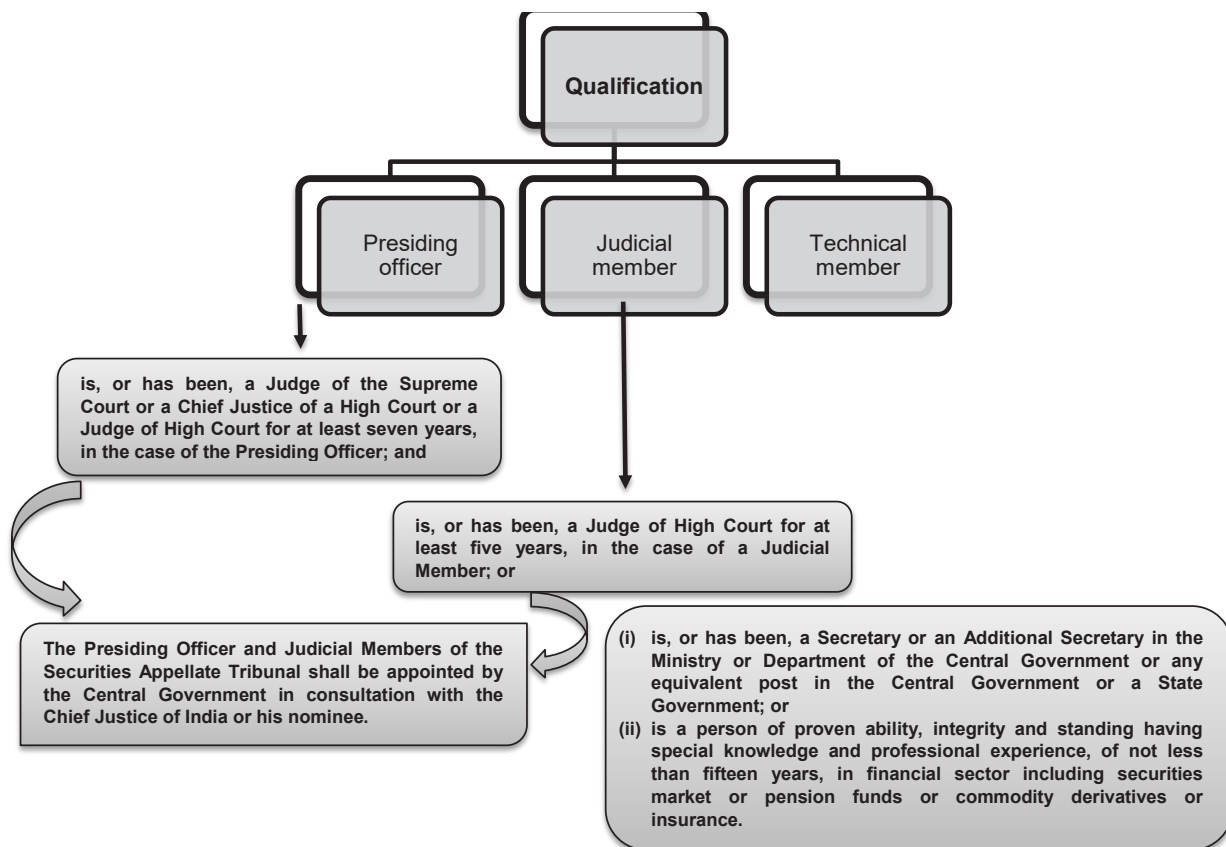
However, every Bench constituted shall include at least one Judicial Member and one Technical Member;

- (c) the Benches of the Securities Appellate Tribunal shall ordinarily sit at Mumbai and may also sit at such other places as the Central Government may, in consultation with the Presiding Officer, notify.

The Presiding Officer may transfer a Judicial Member or a Technical Member of the Securities Appellate Tribunal from one Bench to another Bench.

Qualification for appointment as Presiding Officer or Member of Securities Appellate Tribunal

As per Section 15M of the Act, a person shall not be qualified for appointment as the Presiding Officer or a Judicial Member or a Technical Member of the Securities Appellate Tribunal, unless he:



The Technical Members of the Securities Appellate Tribunal shall be appointed by the Central Government on the recommendation of a Search-cum-Selection Committee consisting of the following, namely:—

- (a) Presiding Officer, Securities Appellate Tribunal – Chairperson;
- (b) Secretary, Department of Economic Affairs – Member;
- (c) Secretary, Department of Financial Services – Member; and
- (d) Secretary, Legislative Department or Secretary, Department of Legal Affairs – Member.

The Secretary, Department of Economic Affairs shall be the Convener of the Search-cum-Selection Committee. The Search-cum-Selection Committee shall determine its procedure for recommending the names of persons to be appointed under sub-section (1).

Validity of appointment

As per Section 15MC, no appointment of the Presiding Officer, a Judicial Member or a Technical Member of the Securities Appellate Tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of the Search cum- Selection Committee.

A member or part time member of the SEBI or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, or any person at senior management level equivalent to the Executive Director in the SEBI or in such Authorities, shall not be appointed as Presiding Officer or Member of the Securities Appellate Tribunal, during his service or tenure as such with the SEBI or with such Authorities, as the case may be, or within two years from the date on which he ceases to hold office as such in the SEBI or in such Authorities.

The Presiding Officer or such other member of the Securities Appellate Tribunal, holding office on the date of commencement of Part VIII of Chapter VI of the Finance Act, 2017 shall continue to hold office for such term as he was appointed and the other provisions of this Act shall apply to such Presiding Officer or such other member, as if Part VIII of Chapter VI of the Finance Act, 2017 had not been enacted.

Tenure of office of Presiding Officer and other Members of Securities Appellate Tribunal

Section 15N lays down that the Presiding Officer or every Judicial or Technical Member of the Securities Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office, and shall be eligible for reappointment for another term of maximum five years;

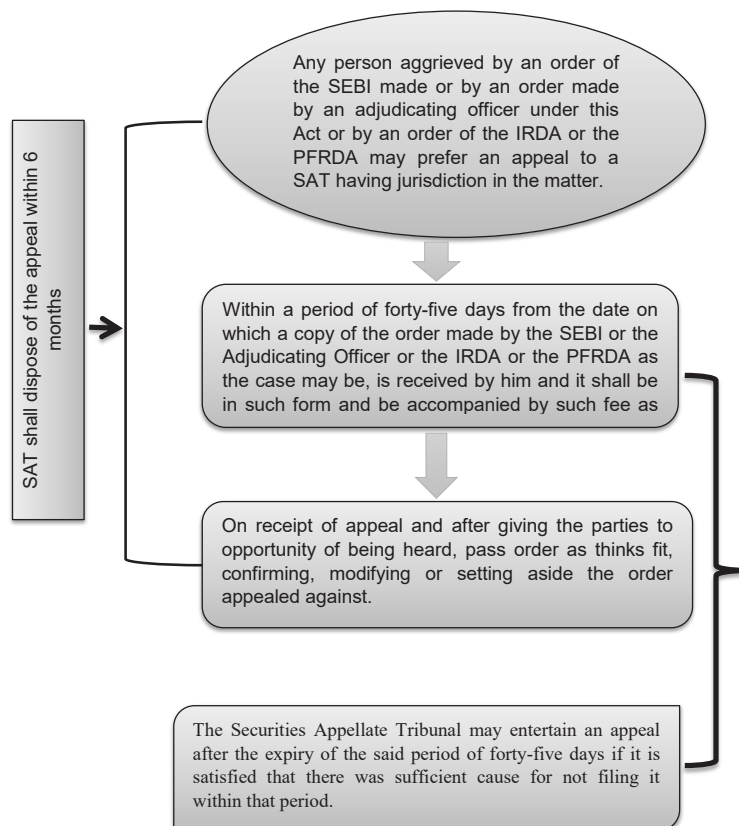
However, no Presiding Officer or the Judicial or Technical Member shall hold office after he has attained the age of seventy years.

Orders Constituting Appellate Tribunal to be Final and not to invalidate its Proceedings

Section 15R makes it clear that no order of the Central Government appointing any person as the Presiding Officer or a member of a Securities Appellate Tribunal shall be called in question in any manner, and no Act or proceeding before a Securities Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of a Securities Appellate Tribunal.

Appeal to the Securities Appellate Tribunal

Section 15T and 15U deal with the appeal procedure and powers of Securities Appellate Tribunal.



- The Securities Appellate Tribunal shall send a copy of every order made by it to the SEBI or the IRDA or the PFRDA, as the case may be, the parties to the appeal and to the concerned Adjudicating Officer.
- The appeal filed before the Securities Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Procedure

Section 15U lays down that the Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

Powers of SAT

The Securities Appellate Tribunals shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- (h) any other matter which may be prescribed.

Every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Where benches are constituted, the Presiding Officer of the Securities Appellate Tribunal may, from time to time make provisions as to the distribution of the business of the Securities Appellate Tribunal amongst the benches and also provide for the matters which may be dealt with, by each bench.

On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Presiding Officer of the Securities Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

If a Bench of the Securities Appellate Tribunal consisting of two members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Presiding Officer of the Securities Appellate Tribunal who shall either hear the point or points himself or refer the case for hearing only on such point or points by one or more of the other members of the Securities Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the members of the Securities Appellate Tribunal who have heard the case, including those who first heard it.

Limitation

As per the Section 15W, the provisions of the Limitations Act, 1963 shall apply to an appeal made to Securities Appellate Tribunal.

Public Servants

As per section 15X, the Presiding Officer and other officers and employees of Securities Appellate Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

Jurisdiction of Civil Court

Section 15Y lays down that no civil court has jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Officer appointed under this Act or a Securities Appellate Tribunal under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Appeal to Supreme Court

Section 15Z lays down that any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order.

It has been provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

What is the time period for filing an appeal with SAT and Supreme Court?

- In case of filing appeal with SAT: Within 45 days from the date of order of the copy made by the SEBI or the adjudicating officer or the IRDA or the PFRDA, as the case may be.
- In case of filing appeal with Supreme Court: Within 60 days from the date of communication of the decision or order of SAT.

POWERS OF CENTRAL GOVERNMENT**(a) To issue directions**

Section 16 empowers Central Government to issue directions in writing to the SEBI on questions of policy as it may deem fit from time to time. However, the Central Government shall as far as practicable, give an opportunity to the SEBI to express its views before any such directions is given by the Central Government. The decision of the Central Government whether a question is one of policy or not shall be final.

(b) To Supersede the SEBI

Section 17 lays down that if at any time the Central Government is of opinion that:

- (a) on account of grave emergency, the SEBI is unable to discharge the functions and duties imposed on it by or under the provisions of this Act; or
- (b) the SEBI has persistently made default in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the SEBI or the administration of the SEBI has deteriorated; or
- (c) circumstances exist which render it necessary in the public interest so to do,

it may, by notification, supersede the SEBI for such period, not exceeding six months, as may be specified in the notification.

Upon the publication of the notification, it will have the following effects:

- (a) all the members shall, as from the date of supersession, vacate their offices as such;
- (b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the SEBI, shall until the SEBI is reconstituted, be exercised and discharged by such person or persons as the Central Government may direct; and
- (c) all property owned or controlled by the SEBI shall, until the SEBI is reconstituted, vest in the Central Government.

On the expiration of the period of supersession specified in the notification, the Central Government may reconstitute the SEBI by a fresh appointment and in such case any person or persons who vacated their offices because of supersession shall not be deemed disqualified for appointment.

However, the Central Government may, at any time, before the expiration of the period of supersession, take action. The Central Government shall cause a notification issued and a full report of any action taken under this section and the circumstances to such action to be laid before each House of Parliament at the earliest.

(c) Power to grant Immunity

As per Section 24B of the Act, the Central Government may on the recommendations by the SEBI, if satisfied that any person who is alleged to have violated any of the provisions of this Act or the rules or regulations made thereunder has made a full and true disclosures in respect of alleged violations, grant to such persons, subject to conditions as it may think fit, immunity from prosecution for any offence under this Act or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation.

However, no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity. It has also been provided that recommendations of the SEBI shall not be binding upon the Central Government.

Further, an immunity granted to a person can be withdrawn by the Central Government, if it is satisfied such person had, in the course of the proceedings not complied with the condition on which the immunity was granted or had given false evidence and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention. He shall also become liable to the imposition of any penalty under this Act to which such person would have been liable had not such immunity been granted.

DELEGATION OF POWERS

In accordance with Section 19 of the SEBI Act, the SEBI may, by general or special order in writing delegate to any member, officer of the SEBI or any other person subject to such conditions, if any as may be specified in the order, such of its powers and functions under the Act as it may deem necessary.

APPEAL TO THE CENTRAL GOVERNMENT

Section 20 of the Act provides that any person aggrieved by an order of the SEBI made under this Act or the rules or regulations made thereunder, may prefer an appeal to the Central Government within such time as may be prescribed. The appeal shall not be admitted if it is preferred after the expiry of the period prescribed therefor.

However, an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

Every appeal made under this section shall be made in prescribed form and shall be accompanied by a copy of the order appealed against by such fees as may be prescribed.

The procedure for disposing of an appeal shall be such as may be prescribed and the appellant shall be given a reasonable opportunity of being heard.

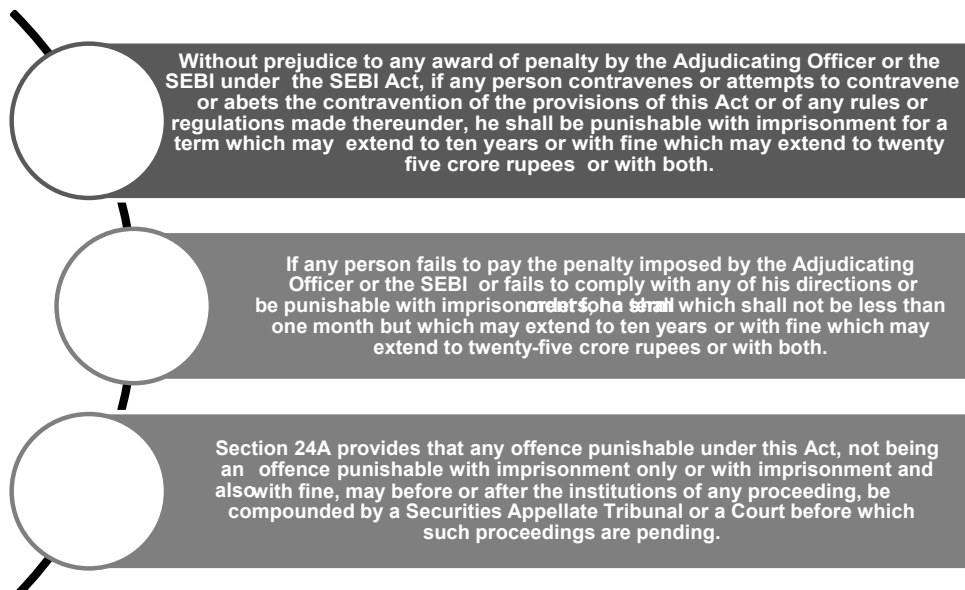
BAR OF JURISDICTION

Section 20A lays down that no order passed by the SEBI or the adjudicating officer under this Act shall be appealable except as provided in section 15T or section 20 and no civil court shall have jurisdiction in respect of any matter which the SEBI (or the adjudicating officer) is empowered by, or under, this Act to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the SEBI or the adjudicating officer by, or under, the SEBI Act.

PUBLIC SERVANTS

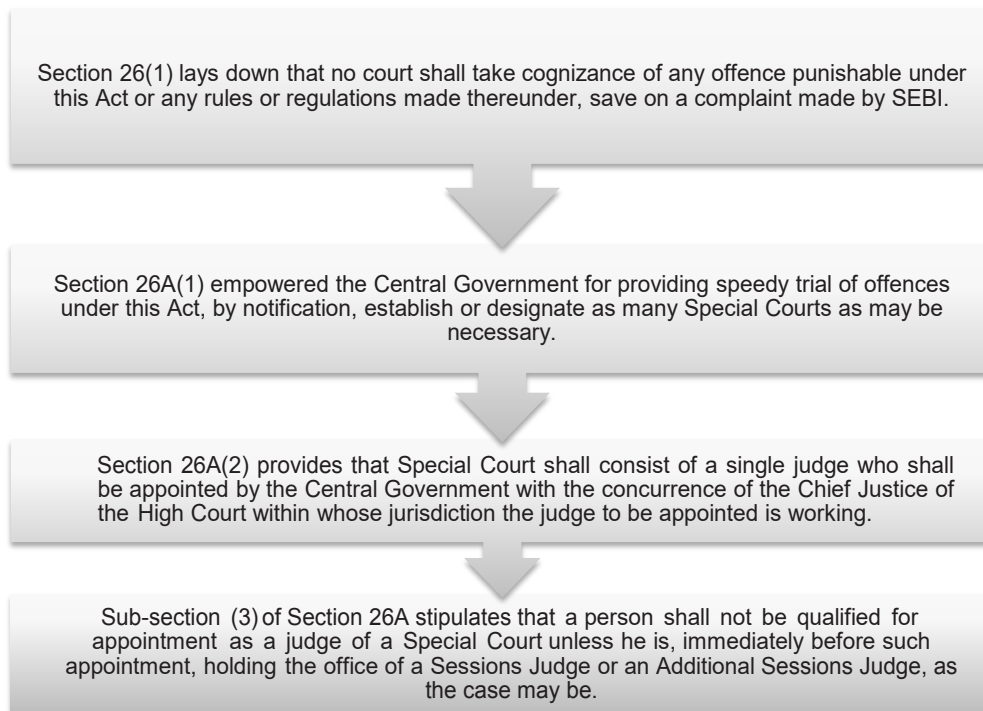
Section 22 of the Act provides that all members, officers and other employees of the SEBI while acting or purporting to act in pursuance of any of the provisions of the Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

OFFENCES AND PUNISHMENTS (SECTION 24)



COGNIZANCE OF OFFENCES BY COURTS

Sl No.	Section	Particulars
1.	Section 26	Cognizance of Offences by Courts
2.	Section 26A	Establishment of Special Courts
3.	Section 26B	Offences triable by Special Courts
4.	Section 26C	Appeal and revision
5.	Section 26D	Application of Code to proceedings before Special Court



Offences triable by Special Courts

- Section 26B stipulates that notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, shall be taken cognizance of and tried by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

Appeal and revision

- Section 23 C provides for appeal and revision. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Application of Code to proceedings before Special Court

- Section 26D (1) provides that the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.

The person conducting prosecution referred to in Section 26D(1) should have been in practice as an advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a state, requiring special knowledge of law.

Transitional provisions

Section 26E provides that any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973.

However, this section shall not affect the powers of the High Court, under section 407 of the Code of Criminal Procedure, 1973 to transfer any case or class of cases taken cognizance by a Court of Session under this section.

Contravention by Companies

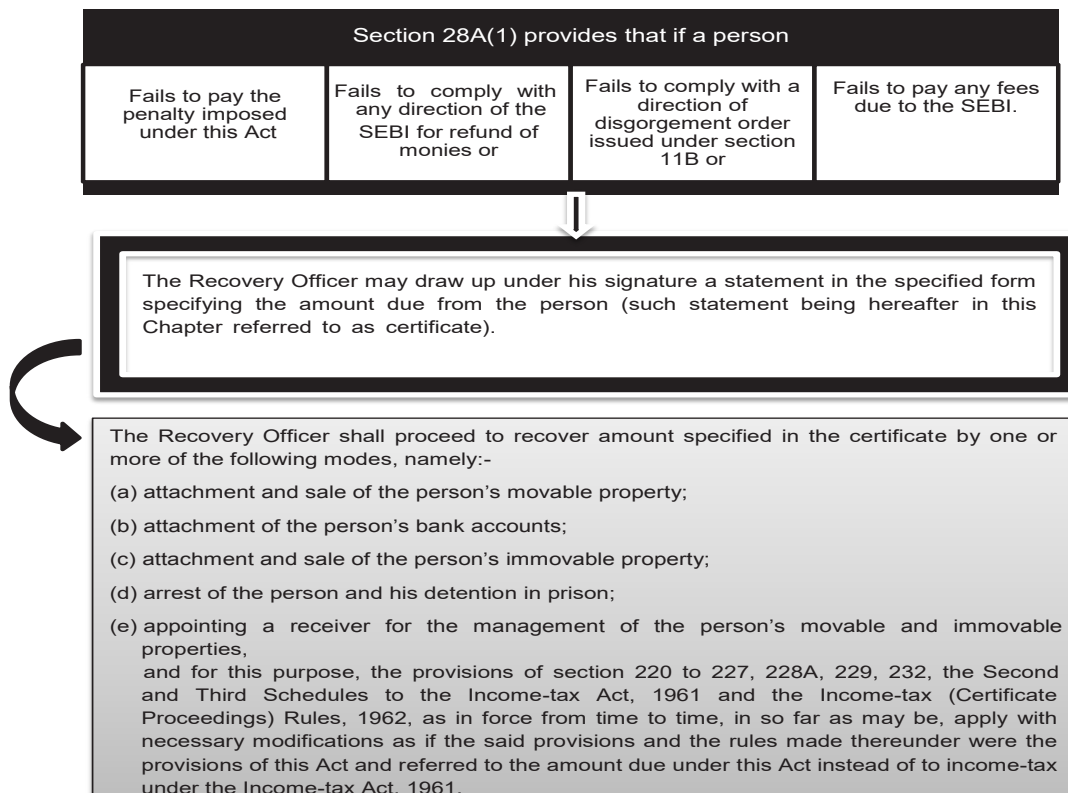
Section 27 lays down that:

- (1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

However, this provision shall not render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

- (2) Where an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

RECOVERY OF AMOUNTS



“Recovery Officer” means any officer of the SEBI who may be authorized, by general or special order in writing, to exercise the powers of a Recovery Officer.

Sub-section (2) empowered the Recovery Officer to seek the assistance of the local district administration while exercising the powers.

The recovery of amounts by a Recovery Officer, pursuant to noncompliance with any direction issued by the SEBI under section 11B, shall have precedence over any other claim against such person.

Explanation 1 - For the purpose of this sub-section, the person’s movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son’s wife or son’s minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son’s minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son’s minor child, as the case may be, continue to be included in the person’s movable or immovable property or monies held in bank accounts for recovering any amount due from the person.

Explanation 2 - Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

Explanation 3 - Any reference to appeal in Chapter XVIII and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under Section 15T of this Act.

Explanation 4 - The interest referred to in Section 220 of the Income-tax Act, 1961 shall commence from the date the amount became payable by the person.

Continuance of proceedings

Section 28B (1) lays down that where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased.

However, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person.

For the purposes of sub-section (1),—

- (a) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, initiated against the deceased before his death, shall be deemed to have been initiated against the legal representative, and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased and all the provisions of this Act shall apply accordingly;
- (b) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the deceased if he had survived, may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.

Every legal representative shall be personally liable for any sum payable by him in his capacity as legal representative if, while his liability for such sum remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

The liability of a legal representative under this section shall be limited to the extent to which the estate of the deceased is capable of meeting the liability.

Explanation.— For the purposes of this section “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who inter-meddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.

POWER TO MAKE RULES

As per Section 29 of SEBI Act, 1992, the Central Government may, by notification, make rules for carrying out the purposes of this Act. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- the term of office and other conditions of service of the Chairman and the members under sub-section (1) of section 5;
- the additional functions that may be performed by the Board under section 11;
- the manner in which the accounts of the Board shall be maintained under section 15;
- the manner of inquiry under sub-section (1) of section 15-I;
- the salaries and allowances and other terms and conditions of service of the 178[Presiding Officers, Members] and other officers and employees of the Securities Appellate Tribunal under section 15-O and sub-section (3) of section 15S;
- the procedure for the investigation of misbehaviour or incapacity of the 179[Presiding Officers, or other Members] of the Securities Appellate Tribunal under sub-section (3) of section 15Q;
- the form in which an appeal may be filed before the Securities Appellate Tribunal under section 15T and the fees payable in respect of such appeal;
- the form and the manner in which returns and report to be made to the Central Government under section 18;
- any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

POWER TO MAKE REGULATIONS

As per Section 30 of SEBI Act, 1992, the SEBI may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act. In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :—

- the times and places of meetings of the Board and the procedure to be followed at such meetings under sub-section (1) of section 7 including quorum necessary for the transaction of business;
- the terms and other conditions of service of officers and employees of the SEBI under sub-section (2) of section 9;

- the matters relating to issue of capital, transfer of securities and other matters incidental thereto and the manner in which such matters shall be disclosed by the companies under section 11A;
- the utilisation of the amount credited under sub-section (5) of section 11;
- the fulfilment of other conditions relating to collective investment scheme under subsection (2A) of section 11AA;
- the conditions subject to which certificate of registration is to be issued, the amount of fee to be paid for certificate of registration and the manner of suspension or cancellation of certificate of registration under section 12;
- the terms determined by the SEBI for settlement of proceedings under sub-section (2) and the procedure for conducting of settlement proceedings under sub-section (3) of section 15JB;
- any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

CONSENT ORDER

Consent Order means an order settling administrative or civil proceedings between the regulator and a person (Party) who may *prima facie* be found to have violated securities laws. Consent Order provides flexibility of wider array of enforcement and remedial actions which will achieve the twin goals of an appropriate sanction, remedy and deterrence without resorting to litigation, lengthy proceedings and consequent delays.

Settlement for securities laws violations, was introduced in India in the year 2007. It has weathered the challenges in their implementation and facilitated the market regulator to provide a more effective mechanism; the essential concomitants of a legal proceeding, without compromising on deterrence or providing equitable remedies to the affected investors.

Prior to the Securities Laws (Amendment) Act, 2014, the SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996, did not contain any express provision specifically empowering SEBI to pass settlement orders.

As per section 15T of the SEBI Act, no appeal shall lie to the Securities Appellate Tribunal from an order made by the SEBI or by an adjudicating officer, with the consent of the parties. Similar provision is provided in the Depositories Act.

This enabled the SEBI to pass consent orders and accordingly, SEBI issued circular dated April 20, 2007 stipulating guidelines for passing of consent orders. This circular was later amended by circular dated May 25, 2012. Thus, SEBI has been settling administrative and civil actions, e.g. proceedings under sections 11, 11B, 11D, 12(3) and adjudication proceedings under section 15-I of the SEBI Act and equivalent proceedings under the SCRA and the Depositories Act and appeals before the Securities Appellate Tribunal / courts arising out of such proceedings. The Amendment circular dated May 25, 2012 had streamlined the settlement procedure and provided guidelines to arrive at the settlement terms in case of each type of alleged defaults under the securities laws.

Subsequently, in order to have an express provision specifically empowering SEBI to pass settlement orders, section 15JB for 'Settlement of administrative and civil proceedings' was inserted in the SEBI Act by the Securities Laws (Amendment) Act, 2014.

The Settlement process was codified and the SEBI (Settlement of Administrative and Civil Proceedings) Regulations were notified on January 9, 2014. In pursuit of the objectives of SEBI (to protect the interests of investors in securities and to promote the development of and to regulate the securities market), as new challenges arise it is important to have a convergence or integration of the quasi-judicial processes within SEBI

with the alternate dispute resolution process of settlement, to bring forth a more effective harmonized scheme to operate without any conflict and delay. The 2014 Regulations were a major advancement in introducing a mathematical and transparent system of calculating the settlement amount, however certain shortcomings were noticed over a period of time. The SEBI constituted a High Level Committee under the Chairmanship of Justice Anil R. Dave (Retd. Judge of the Supreme Court of India) in December, 2017 for revising the SEBI. (Settlement of Administrative and Civil Proceedings) Regulations, 2014.

Accordingly, the Committee recommended the repeal of the existing SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 and issuance of the SEBI (Settlement Proceedings) Regulations, 2018.

Pursuant to this, the SEBI notified the SEBI (Settlement Proceedings) Regulations, 2018 on November 30, 2018 which have come into effect from January 1, 2019.

ROLE OF COMPANY SECRETARY

- Right to Legal Representation (Section 15V of the SEBI Act): Any person aggrieved (the appellant) may either appear in person or authorise one or more chartered accountants or company secretaries (PCS) or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal (SAT).

LESSON ROUND UP

- The SEBI Act, 1992, was notified to protect the interests of the investors and to promote the development of, and to regulate the securities markets by such measures as it thinks fit.
- The SEBI regulates the securities market and the SAT acts as a watchdog to ensure justice.
- The SEBI Act, 1992 empowers an aggrieved person for remedies against the SEBI's order or penalties by establishing Securities Appellate Tribunal.
- Any person aggrieved by any decision or order of the SAT can file an appeal to the Supreme Court.
- Section 15 Y of the SEBI Act provides that no civil court shall have jurisdiction to entertain a suit or proceeding in respect of any matter in which an adjudicating officer ('AO') is appointed under the Act or SAT is empowered by or under the Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act.
- The SEBI is empowered to issue directions under section 11B of the Act.
- The SEBI is further empowered to conduct inspections of registered intermediaries.
- Besides inspection, the SEBI is empowered to conduct investigations in case of breach of any regulation or in case of action detrimental to the interest of investors.

GLOSSARY

Compounding of offences	Compounding of offence allows the accused to avoid a lengthy process of criminal prosecution, which would save cost, time, mental agony, etc. in return for payment of compounding charges.
Injunction	A court order by which an individual is required to perform, or is restrained from performing, a particular act.
Ordinance	An ordinance is an executive order issued by the President of India that holds the same force and effect on an Act passed by the Parliament.

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

1. Discuss the various functions and powers of the SEBI.
2. Explain the role of the SEBI in strengthening regulatory framework and fostering investor confidence.
3. Enumerate the various penalties which can be imposed under the SEBI Act, 1992 for various failures, defaults, non-disclosure and other offences.
4. Explain the procedure for Appeal to the Securities Appellate Tribunal.
5. Discuss the various powers of the Central Government under the SEBI Act, 1992.

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Lesson 3

Depositories Act, 1996

LESSON OUTLINE

- Introduction
- Benefits of Depository System
- Depository System - An Overview
- Models of Depository
- Legal Linkage
- Depository Participant
- Registrar/Issuer
- Dematerialisation
- Rematerialisation
- Electronic Credit in New Issues
- Trading System
- Corporate Actions
- Legal Framework
- Depositories Act, 1996
- Power of SEBI
- Penalties and Adjudication
- Offences and Cognizance
- Membership Rights in respect of securities held by a Depository
- Evidentiary Value of the records of the Depository
- SEBI (Depositories and Participants) Regulations, 2018
- Audit under SEBI (Depositories and Participants) Regulations, 2018
- Internal Audit of operations of Depository Participants
- Concurrent Audit
- Role of Company Secretary
- LESSON ROUND UP
- GLOSSARY
- SELF-TEST QUESTIONS

LEARNING OBJECTIVES

The inception of depository system in the Indian Capital market has been started during the 90's. The erstwhile settlement system on Indian stock exchanges involved movement of paper securities to the issuer for registration, with the change of ownership being evidenced by an endorsement on the security certificate. Theft, forgery, mutilation of certificates and other irregularities provided the issuer right to refuse the transfer of a security. Added costs and delays in settlement, restricted liquidity and made investor grievance redressal time consuming. To obviate these problems, the Depositories Act, 1996 was passed and subsequently the regulations were notified. Depositories are also treated as Infrastructure Institutions. Further, a Company Secretary in Practice is authorised by SEBI to conduct internal/concurrent audit of depositories participants and also to conduct the reconciliation of share capital.

This lesson is designed to enable the student to understand the basic concept of depository, depository participants, its functions, rights and obligations of depositories, benefits of depositories, dematerialisation process, and the regulatory framework for depository in India, etc.

INTRODUCTION

A Depository is an organization like a Central Bank where the securities of a shareholder are held in the electronic form at the request of the shareholder through the medium of a Depository Participant. To utilize the services offered by a Depository, the investor has to open an account with the Depository through a Depository Participant.

According to Section 2(e) of the Depositories Act, 1996, Depository means a company formed and registered under the Companies Act, 2013 and which has been granted a certificate of registration under Section 12(1A) of the SEBI Act, 1992.

Section 2 (g) of the Depository Act, 1996 defines participant as a person registered as such under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992.

A depository cannot act as a depository unless it obtains a certificate of commencement of business from the SEBI. There are two Depositories functioning in India, namely the National Securities Depository Limited (NSDL) and the Central Depository Services (India) Limited (CDSL). Under the provisions of the Depositories Act, these Depositories provide various services to investors and other Participants in the capital market, such as, clearing members, stock exchanges, investment institutions, banks and issuing corporates. These include basic facilities like account opening, dematerialization, settlement of trades and advanced facilities like pledging, distribution of non-cash corporate actions, distribution of securities to allottees in case of public issues, etc.

All the securities held by a depository shall be dematerialized and shall be in a fungible form. To utilize the services offered by a depository, the investor has to open an account with the depository through a participant, similar to the opening of an account with any of the bank branches to utilize services of that bank. Registration of the depository is required under the SEBI (Depositories and Participants) Regulations, 2018 and is a pre-condition to the functioning of the depository. Depository and depository participant both are regulated by the SEBI.

Depository Functions

- Account opening
- Dematerialisation
- Rematerialisation
- Settlement
- Initial Public Offers (IPO's), corporate benefits
- Creation of encumbrance

Difference between Depository and Custodian

Both depository and custodian services are responsible for safe keeping of securities but they are different in the sense that the Depository can legally transfer beneficial ownership, while a custodian cannot. The main objective of a Depository is to minimize the paper work involved with the ownership, trading and transfer of securities.

BENEFITS OF DEPOSITORY SYSTEM

In the depository system, the ownership and transfer of securities takes place by means of electronic book entries. At the outset, this system rids the capital market of the dangers related to handling of paper. The system provides numerous direct and indirect benefits, like:

Elimination of bad deliveries - In the depository environment, once the holdings of an investor are dematerialised, the question of bad delivery does not arise i.e. they cannot be held “under objection”. In the physical environment, buyer of shares was required to take the risk of transfer and face uncertainty of the quality of assets purchased, while in a depository environment good money certainly begets good quality of assets.

Elimination of all risks associated with physical certificates - Dealing in physical securities have associated security risks of theft, mutilation of certificates, loss of certificates during movements through and from the registrars, thus exposing the investors to the cost of obtaining duplicate certificates, loss of certificates and advertisements, etc. This problem does not arise in the depository environment.

Immediate transfer and registration of securities - In the depository environment, once the securities are credited to the investor's account on pay out, he becomes the legal owner of the securities. There is no further need to send it to the company's registrar for registration. If securities are purchased in the physical environment, the investor has to send it to the company's Share Transfer Agent so that the change of ownership can be registered. This process usually takes around three to four months and is rarely completed within the statutory framework of two months thus exposing the investor to opportunity cost of delay in transfer and to risk of loss in transit. To overcome this, the normally accepted practice is to hold the securities in street names i.e. not to register the change of ownership. However, if the investors miss a book closure the securities are not good for delivery and the investor would also stand to lose their corporate entitlements.

Faster disbursement of non-cash corporate benefits like rights, bonus, etc. – Depository system provides for direct credit of non-cash corporate entitlements to an investor's account, thereby ensuring faster disbursement and avoiding risk of loss of certificates in transit.

Reduction in brokerage by many brokers for trading in dematerialized securities – Brokers provide this benefit to investors as dealing in dematerialized securities reduces their back office cost of handling paper and also eliminates the risk of being the introducing broker.

Reduction in handling of huge volumes of paper and periodic status reports to investors on their holdings and transactions, leading to better controls.

Elimination of problems related to change of address of investor, transmission, etc. – In case of change of address or transmission of demat shares, investors are saved from undergoing the entire change procedure with each company or registrar. Investors have to only inform their DP with all relevant documents and the required changes are effected in the database of all the companies, where the investor is a registered holder of securities.

Elimination of problems related to selling securities on behalf of a minor – A natural guardian is not required to take court approval for selling demat securities on behalf of a minor.

DEPOSITORY SYSTEM – AN OVERVIEW

The Depository System functions very much like the banking system. A bank holds funds in accounts whereas a Depository holds securities in accounts for its clients. A Bank transfers funds between accounts whereas a Depository transfers securities between accounts. In both systems, the transfer of funds or securities happens without the actual handling of funds or securities. Both the Banks and the Depository are accountable for the safe keeping of funds and securities respectively.

In the depository system, share certificates belonging to the investors are to be dematerialized and their names are required to be entered in the records of depository as beneficial owners. Consequent to these changes, the investors' names in the companies' register are replaced by the name of depository as the registered owner of the securities. The depository, however, does not have any voting rights or other economic rights in respect

of the shares as a registered owner. The beneficial owner continues to enjoy all the rights and benefits and is subject to all the liabilities in respect of the securities held by a depository. Shares in the depository mode are fungible and cease to have distinctive numbers. The transfer of ownership changes in the depository is done automatically on the basis of delivery vs. payment.

In the Depository mode, corporate actions such as IPOs, rights, conversions, bonus, mergers/amalgamations, subdivisions & consolidations are carried out without the movement of paper, saving both cost & time. Information of beneficiary owners is readily available. The issuer gets information on changes in shareholding pattern on a regular basis, which enables the issuer to efficiently monitor the changes in shareholdings.

The Depository system links the issuing corporates, Depository Participants (DPs), the Depositories and clearing corporations of stock exchanges. This network facilitates holding of securities in the soft form and effects transfers by means of account transfers.

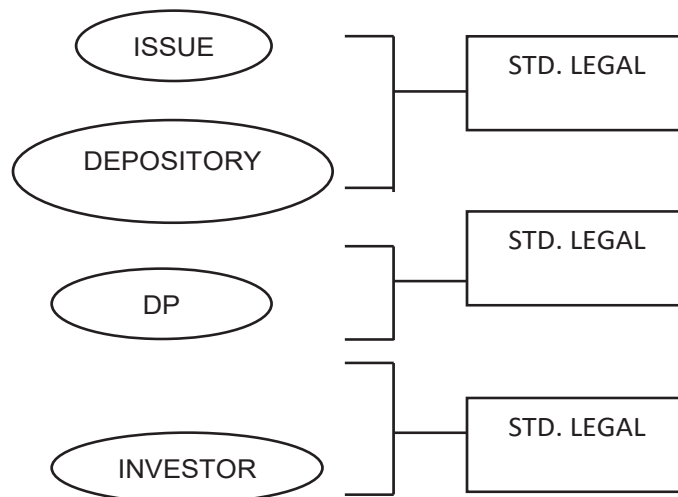
The following paragraphs discuss all about depositories, its concepts, models of depositories, depository functions, Legal linkage, depository participants, Registrars and issuers, dematerialisation, rematerialisation, electronic credit in new issues, trading system and corporate action.

MODELS OF DEPOSITORY

Immobilisation – Where physical share certificates are kept in vaults with the depository for safe custody and all subsequent transactions in these securities take place in book entry form. The actual owner has the right to withdraw his physical securities as and when desired. The immobilization of fresh issue may be achieved by issuing a jumbo certificate representing the entire issue in the name of depository, as nominee of the beneficial owners.

Dematerialisation – No Physical scrip in existence, only electronic records maintained by depository. This type of system is cost effective and simple and has been adopted in India.

LEGAL LINKAGE



DEPOSITORY PARTICIPANT

Just as a brokers act an agent of the investor at the Stock Exchange; a Depository Participant (DP) is the representative (agent) of the investor in the depository system providing the link between the Company and investor through the Depository. The Depository Participant maintains securities' account balances and intimates the status of holding to the account holder from time to time. According to the SEBI guidelines, Financial Institutions like banks, custodians, stock-brokers etc. can become participants in the depository.

**Characteristics
of a DP**

- Transmission requests/nomination
- Acts as an Agent of Depository
- Customer interface of Depository
- Functions like Securities Bank
- Account opening
- Facilitates dematerialisation/rematerialisation
- Instant transfer on pay-out
- Enables off market transfers
- Settles trades in electronic segment
- Pledge/enforcement of pledge etc.

A DP is one with whom an investor needs to open an account to deal in shares in electronic form. While the Depository can be compared to a Bank, DP is like a branch of that bank with which an account can be opened.

REGISTRAR/ISSUER

“Issuer” means person making an issue of securities.

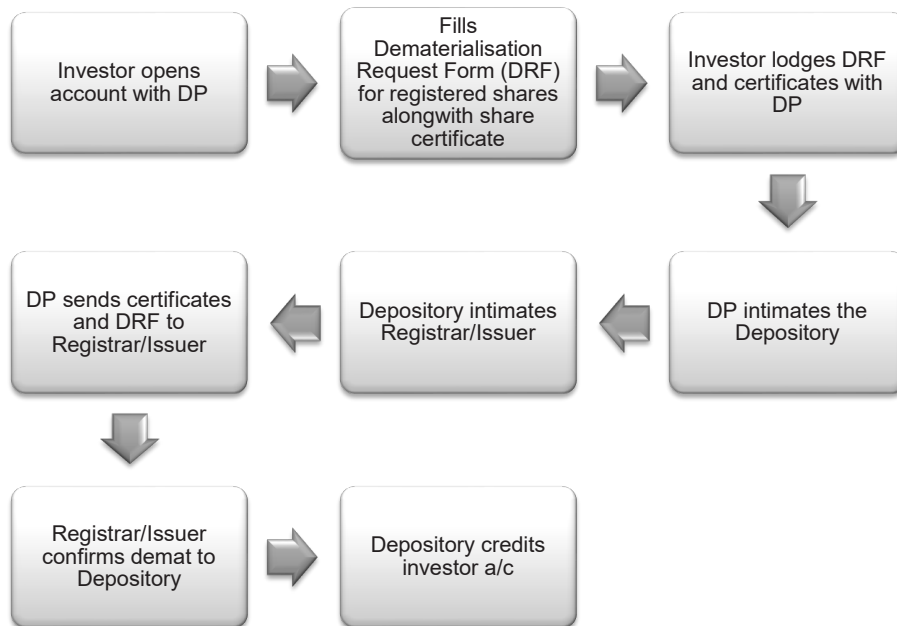
Only those securities, which are admitted into the depository system are available for dematerialisation to the holders of such securities or can be allotted in electronic record form by the issuer. Securities include shares, debentures, bonds, commercial paper (C.P.), certificate of deposits (C.D.), pass through certificates (PTCs), government securities and mutual fund units. Both listed and unlisted securities can be admitted into the depository system.

Functions of Issuer	Dematerialisation
	Confirmation of Beneficiary Holdings
	Corporate Actions – Rights, Bonus, etc.
	Reconciliation of Depository Holdings
	Rematerialisation

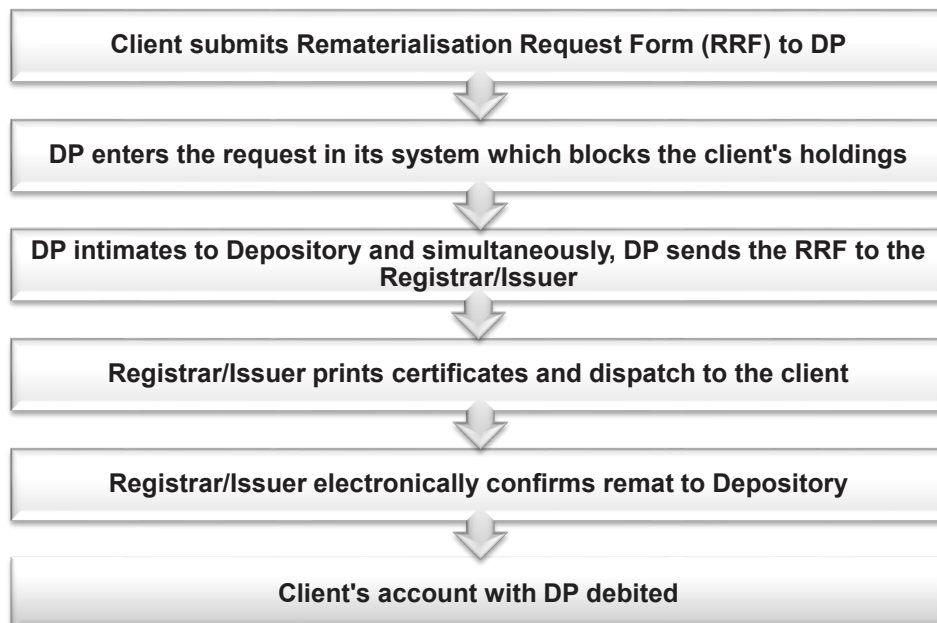
DEMATERIALISATION

Dematerialization is a process by which the physical share certificates of an investor are taken back by the Company and an equivalent number of securities are credited his account in electronic form at the request of the investor. An investor will have to first open an account with a Depository Participant and then request for the dematerialization of his share certificates through the Depository Participant so that the dematerialized holdings can be credited into that account. This is very similar to opening a Bank Account.

Dematerialization of shares is optional and an investor can still hold shares in physical form. However, he/she has to demat the shares if he/she wishes to sell the same through the Stock Exchanges, as physical shares are to be sold through a separate session and are sold at a big discount to the market prices. Similarly, if an investor purchases shares from the Stock Exchange, he/she will get delivery of the shares in demat form. Odd lot share certificates can also be dematerialized. Similarly, in Public Issues/Right Issues, shares are issued only in demat form.

PROCEDURE FOR DEMATERIALISATION**REMATERIALISATION**

Rematerialisation is the process of converting securities held in electronic form in a demat account back in physical certificate form. For the purpose of rematerialisation, the client has to submit the rematerialisation request to the DP with whom he has an account. A client can rematerialise his dematerialised holdings at any point of time. The securities sent for rematerialisation cannot be traded.

PROCEDURE FOR REMATERIALISATION**ELECTRONIC CREDIT IN NEW ISSUES**

- Investor opens account with DP
- Submits application with option to hold securities in depository giving DP-Id and Client-Id

- Registrar uploads list of allottees to Depository
- Depository credits allottee's account with DP
- Refunds sent by Registrar as usual.

TRADING SYSTEM

- Separate quotes in Book Entry
- Trading Member to have Clearing Account with DP
- Settlement as per Settlement Calendar of Stock Exchange
- Trading can be introduced in any Stock exchange if settlement is guaranteed.

CORPORATE ACTIONS

- Dividends/cash benefits, these benefits are directly forwarded to the investors by the company or its registrar and transfer agent.
- Non-cash benefits, viz. Bonus, Rights Issue, etc. these benefits are electronically credited to the beneficial owner's account through Depository.

LEGAL FRAMEWORK

The legal framework for a depository system has been laid down by the Depositories Act, 1996 and is regulated by SEBI. The depository business in India is regulated by –

- The Depositories Act, 1996
- The SEBI (Depositories and Participants) Regulations, 2018
- Bye-laws of Depository
- Business Rules of Depository.

Apart from the above, Depositories are also governed by certain provisions of:

- The Companies Act, 2013
- The Indian Stamp Act, 1899
- Securities and Exchange Board of India Act, 1992
- Securities Contracts (Regulation) Act, 1956
- Benami Transaction (Prohibition) Act, 1988
- Income Tax Act, 1961
- Bankers' Books Evidence Act, 1891

The legal framework for depository system in the Depositories Act, 1996 provides for the establishment of multiple depositories. Anybody to be eligible for providing depository services must be formed and registered as a company under the Companies Act, 2013 and seek registration with SEBI and obtain a Certificate of Commencement of Business from the SEBI on fulfillment of the prescribed conditions. The investors opting to join depository mode are required to enter into an agreement with depository through a participant who acts as an agent of the depository. The agencies such as custodians, banks, financial institutions, large corporate brokerage firms, non-banking financial companies etc. act as participants of depositories. The companies issuing securities are also required to enter into an agreement with the Depository.

DEPOSITORIES ACT, 1996

Objectives

The depositories' legislation as per the Statement of Objects and Reasons appended to the Depositories Act, 1996 aims at providing :

- A legal basis for establishment of depositories to conduct the task of maintenance of ownership records and effecting changes in ownership records through book entry;
- Dematerialisation of securities in the depositories mode as well as giving option to an investor to choose between holding securities in physical mode and holding securities in a dematerialized form in a depository;
- Making the securities fungible;
- Making the shares, debentures and any interest thereon of a public limited company freely transferable; and
- Exempting all transfers of shares within a depository from stamp duty.

Certificate of Commencement of Business by Depositories

No depository shall act as a depository unless it obtains a certificate of commencement of business from the SEBI in such form as may be specified by the SEBI (Depositories and Participants) Regulations, 2018. The SEBI shall not grant a certificate unless it is satisfied that the depository has adequate systems and safeguards to prevent manipulation of records and transactions. However no certificate shall be refused unless the depository concerned has been given a reasonable opportunity of being heard.

Eligibility Condition for Depository Services

Any company or other institution to be eligible to provide depository services must:

- be formed and registered as a company under the Companies Act, 2013.
- be registered with SEBI as a depository under SEBI Act, 1992.
- has framed bye-laws with the previous approval of SEBI.
- has one or more participants to render depository services on its behalf.
- has adequate systems and safeguards to prevent manipulation of records and transactions to the satisfaction of SEBI.
- complies with Depositories Act, 1996 and SEBI (Depositories and Participants) Regulations, 2018.
- meets eligibility criteria in terms of constitution, network, etc.

Any person, through a participant, may enter into an agreement, in such form as may be specified by the bye-laws, with any depository for availing its services.

Eligible Securities required to be in the Demat Mode

Section 8 of the Depositories Act gives the option to the investors to receive securities in physical form or in dematerialised mode.

It is not necessary that all eligible securities must be in the depository mode. In the scheme of the Depositories legislation, the investor has been given supremacy. The investor has the choice of holding physical securities or opts for a depository based ownership record.

However, in case of fresh issue of securities all securities issued have to be in dematerialized form. However, after that investor will also have the freedom to switch from depository mode to physical mode and *vice versa*. The decision as to whether or not to hold securities within the depository mode and if in depository mode, which depository or participant, would be entirely with the investor.

Is dematerialization of securities compulsory?

According to the Depositories Act, 1996, an investor has the option to hold securities either in physical or electronic form. Part of holding can be in physical form and part in demat form. However, SEBI has notified that settlement of market trades in listed securities should take place only in the demat mode.

What type of instruments are available for demat at Depository?

All types of equity/ debt instruments viz. equity shares, preference Shares, partly paid shares, bonds, debentures, commercial papers, certificates of deposit, government securities (G-SEC) etc. irrespective of whether these instruments are listed / unlisted / privately placed can be dematerialized with depository, if they have been admitted with the depository.

SEBI has recently amended relevant provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 to disallow listed companies from accepting request for transfer of securities which are held in physical form, with effect from April 1, 2019. The shareholders who continue to hold shares and other types of securities of listed companies in physical form even after this date, will not be able to lodge the shares with company / its RTA for further transfer. They will need to convert them to demat form compulsorily if they wish to effect any transfer. Only the requests for transmission and transposition of securities in physical form, will be accepted by the listed companies / their RTAs.

This amendment will help in curbing fraud and manipulation risk in physical transfer of securities by unscrupulous persons. Further, with shares held in demat form will improve ease, convenience and safety of transactions for investors.

Fungibility

Section 9 states that securities in depositories shall be in fungible form.

The Act envisages that all securities held in depository shall be fungible i.e. all certificates of the same security shall become interchangeable in the sense that investor loses the right to obtain the exact certificate he surrenders at the time of entry into depository. It is like withdrawing money from the bank without bothering about the distinctive numbers of the currencies.

Rights of Depositories and Beneficial Owner

Section 10 lays down that a depository should be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of a beneficial owner. The depository as a registered owner should not have any voting rights or any other rights in respect of securities held by it. The beneficial owner is entitled to all the rights and benefits and is subject to all the liabilities in respect of his securities held by a depository.

Register of Beneficial Owner

Section 11 provides that every depository is required to maintain a register and an index of beneficial owners in the manner provided in the Companies Act, 2013.

Pledge or Hypothecation of Securities held in a Depository

Section 12 lays down that a beneficial owner may with the previous approval of the depository create a pledge

or hypothecation or any other encumbrance in respect of a security owned by him through a depository. Every beneficial owner should give intimation of such pledge or hypothecation to the depository participant and such depository is required to make entries in its records accordingly. Any entry in the records of a depository should be evidence of a pledge or hypothecation.

Furnishing of Information and Records by Depository and Issuer

Section 13 stipulates that depository shall furnish to the issuer information about the transfer of securities in the name of beneficial owners at such intervals and in such manner as may be specified by the bye-laws. Every issuer shall make available to the depository copies of the relevant records in respect of securities held by such depository.

Option to opt out in respect of any Security

Section 14 of the Act provides that if a beneficial owner seeks to opt out of a depository in respect of any security he shall inform the depository accordingly. After the receipt of intimation the depository should make appropriate entries in its records and also inform the issuer. Every issuer may, within thirty days of the receipt of intimation from the depository and on fulfillment of such conditions and on payment of such fees as may be specified by the regulations, issue the certificate of securities to the beneficial owner or the transferee, as the case may be.

Act 18 of 1891 to apply to depositories

Section 15 lays down that the Bankers' Books Evidence Act, 1891 shall apply in relation to a depository as if it were a bank as defined in section 2 of that Act.

Depositories to Indemnify Loss in certain cases

As per section 16, any loss caused to the beneficial owner due to the negligence of the depository or the participant, would be indemnified by the depository to such beneficial owner. Where the loss due to the negligence of the participant is indemnified by the depository, the depository has the right to recover the same from such participant.

POWER OF THE SEBI

Section 18 of the Act provides that the SEBI in the public interest or in the interest of investors may by order in writing to call upon any issuer, depository, participant or beneficial owner to furnish in writing such information relating to the securities held in a depository as it may require; or authorise any person to make an enquiry or inspection in relation to the affairs of the issuer, beneficial owner, depository or participant, who shall submit a report of such enquiry or inspection to it within such period as may be specified in the order.

Sub-section (2) to Section 18 provides that every director, manager, partner, secretary, officer or employee of the depository or issuer or the participant or beneficial owner shall on demand produce before the person making the enquiry or inspection all information or such records and other documents in his custody having a bearing on the subject matter of such enquiry or inspection.

To Give Directions

Section 19 provides that the SEBI, if after making or causing to be made an enquiry or inspection, the SEBI is satisfied that it is necessary in the interest of investors or the securities market or to prevent the affairs of any depository or participant being conducted in the manner detrimental to the interests of investors or the securities market, it may issue such directions, –

- (a) to any depository or participant or any person associated with the securities market; or
- (b) to any issuer, as may be appropriate in the interest of investors or the securities market.

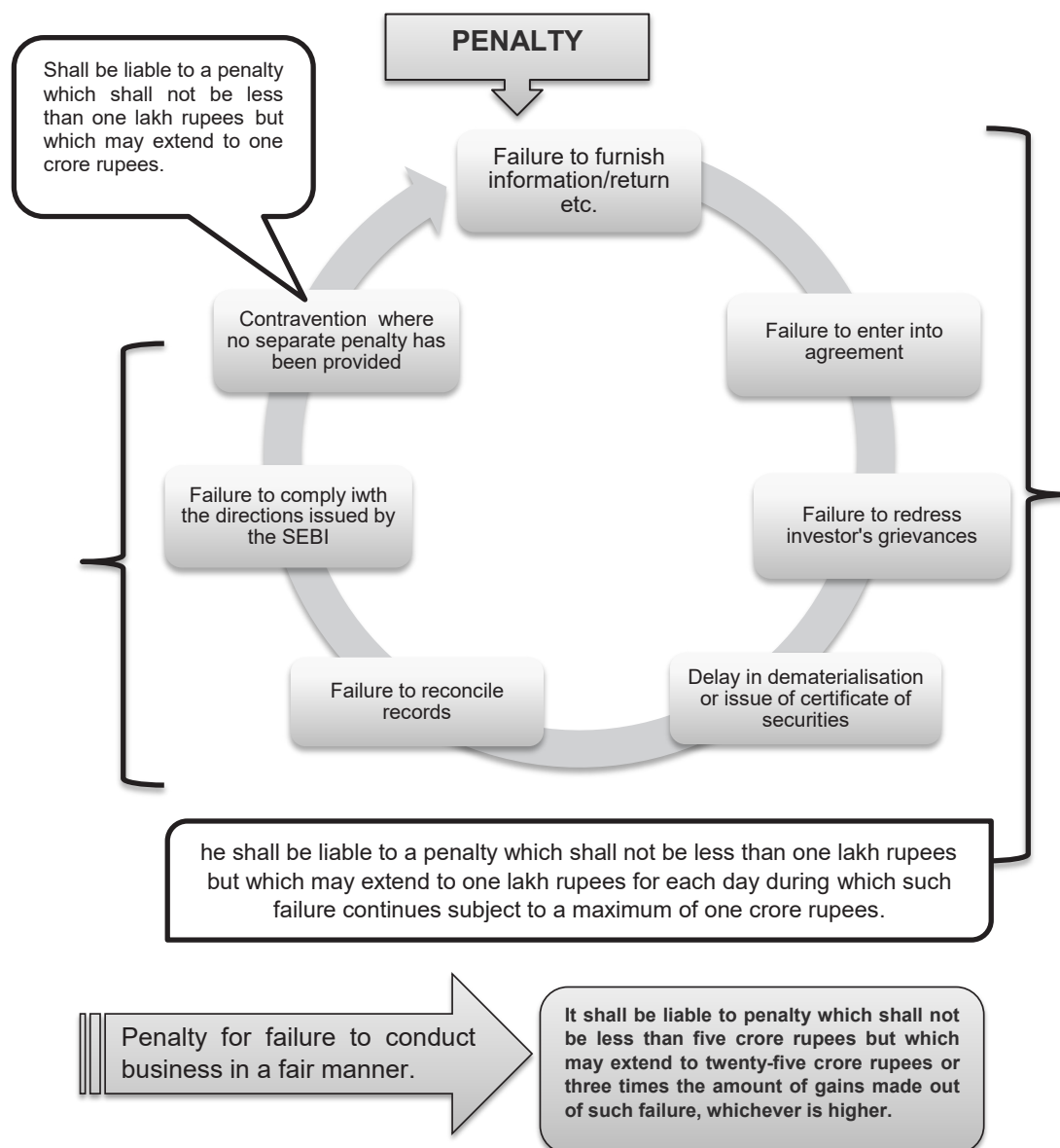
The Board may, by order, for reasons to be recorded in writing, levy penalty under sections 19A, 19B, 19C, 19D, 19E, 19F, 19FA and 19G after holding an inquiry in the prescribed manner.

PENALTIES AND ADJUDICATION

SI No.	Section	Particulars
1.	Section 19A	Failure to furnish information, return, etc.
2.	Section 19B	Failure to enter into an agreement.
3.	Section 19C	Failure to redress investors' grievances.
4.	Section 19D	Delay in dematerialisation or issue of certificate of securities.
5.	Section 19E	Failure to reconcile records.
6.	Section 19F	Failure to comply with directions issued by the SEBI under section 19 of the Act.
7.	Section 19FA	Penalty for failure to conduct business in a fair manner.
8.	Section 19G	Contravention where no separate penalty has been provided.
9.	Section 19H	Power to adjudicate.
10.	Section 19I	Factors to be taken into account by adjudicating officer.
11.	Section 19-IA	Settlement of Administrative Civil Proceedings.
12.	Section 19-IB	Recovery of amounts.
13.	Section 19J	Crediting sums realised by way of penalties to Consolidated Fund of India.

In exercise of the powers conferred by clause (a) of sub-section (2) of section 24 of the Depositories Act, 1996, the Central Government makes the Depositories (Procedure for Holding enquiry and imposing penalties by adjudicating officer) Rules, 2005 for holding inquiry for the purpose of imposing penalty under sections 19A, to 19G of the Depositories Act.

Penalties



Adjudication

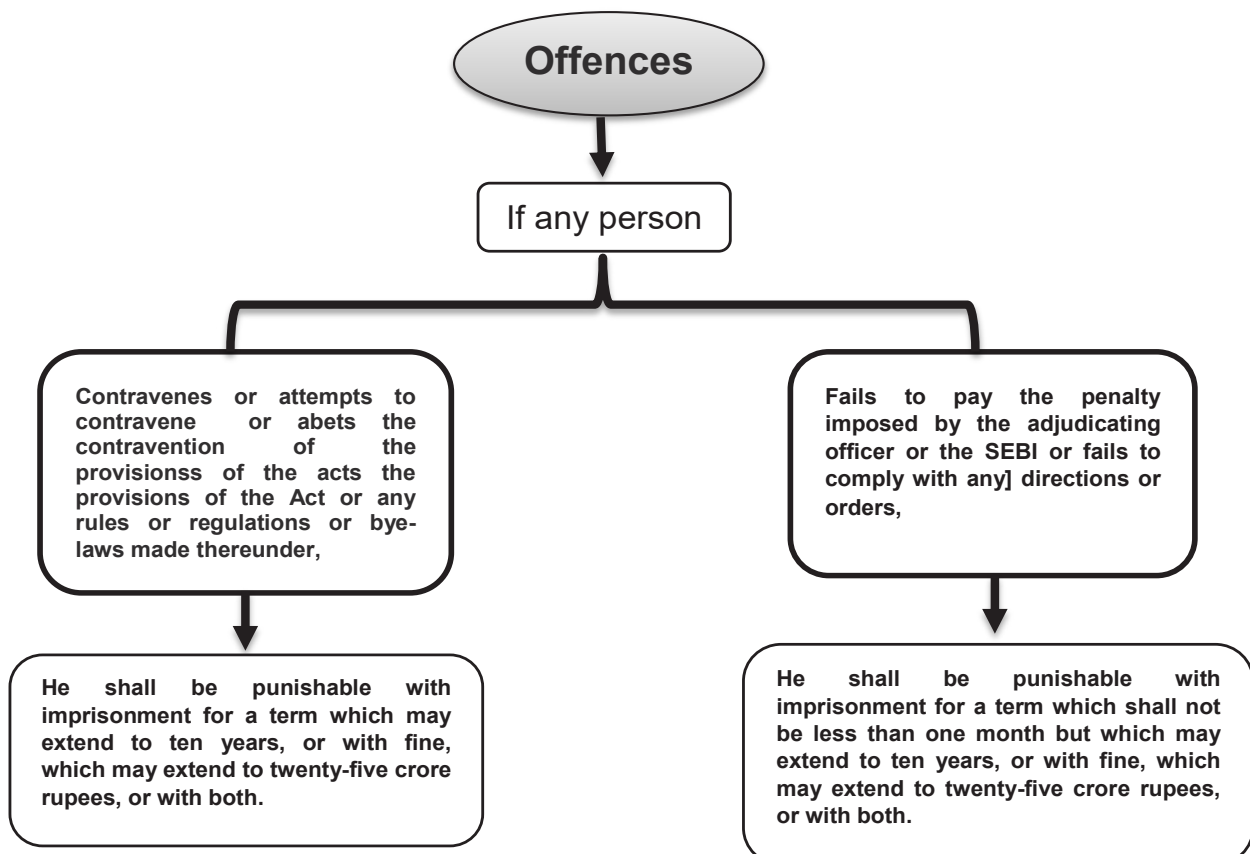
The adjudication procedure as mentioned under Section 19H to 19J of the Depositories Act, 1996 is same as the adjudication procedure prescribed under the SEBI Act, 1992. Hence, student may refer the same.

OFFENCES AND COGNIZANCE

Sl No.	Section	Particulars
1.	Section 20	Offences
2.	Section 21	Contravention by Companies
3.	Section 22	Cognizance of Offences by Courts

4.	Section 22A	Composition of certain Offences
5.	Section 22B	Power to grant immunity
6.	Section 22C	Establishment of Special Courts
7.	Section 22D	Offences triable by Special Courts
8.	Section 22E	Appeal and revision
9.	Section 22F	Application of Code to proceedings before Special Court
10.	Section 22G	Transitional Provisions
11.	Section 23	Appeals
12.	Section 23A	Appeal to SAT
13.	Section 23B	Procedure and powers of Securities Appellate Tribunal
14.	Section 23C	Right to legal representation
15.	Section 23 D	Limitation
16.	Section 23E	Civil court not to have jurisdiction
17.	Section 23F	Appeal to Supreme Court

Offences



Contravention by companies		
Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.	Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.	Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Cognizance of offences by courts

Section 22 provides that no court shall take cognizance of any offence punishable under this Act or any rules or regulations or bye-laws made there under, save on a complaint made by the Central Government or State Government or the SEBI or by any person.

Composition of certain offences

Section 22A provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

Miscellaneous provisions

The Miscellaneous provisions from Section 22B to 23F as mentioned above in the table are same as the provisions as prescribed under the SEBI Act, 1992. The Students may refer the same.

MEMBERSHIP RIGHTS IN RESPECT OF SECURITIES HELD BY A DEPOSITORY

The depository as a registered owner shall not have any voting rights or any other rights in respect of securities held by it on behalf of the beneficial owners. The beneficial owner shall be entitled to all the rights and benefits (including the right to vote) and be subjected to all the liabilities in respect of securities held by a depository.

POWER OF CENTRAL GOVERNMENT TO MAKE RULES

Section 24 of the Act provides that the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- the manner of inquiry under sub-section (1) of section 19H;
- the time within which an appeal may be preferred under sub-section (1) of section 23;

- the form in which an appeal may be preferred under sub-section (3) of section 23 and the fees payable in respect of such appeal
- the procedure for disposing of an appeal under sub-section (4) of section 23;
- the form in which an appeal may be filed before the Securities Appellate Tribunal under section 23A and the fees payable in respect of such appeal.

POWER OF BOARD TO MAKE REGULATIONS

Section 25 of the Act provides that the SEBI may, by notification in the Official Gazette, make regulations consistent with the provisions of this Act and the rules made thereunder to carry out the purposes of this Act. In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

- the form in which record is to be maintained under clause (i) of sub-section (1) of section 2;
- the form in which the certificate of commencement of business shall be issued under sub-section (2) of section 3;
- the manner in which the certificate of security shall be surrendered under sub-section (1) of section 6;
- the manner of creating a pledge or hypothecation in respect of security owned by a beneficial owner under sub-section (1) of section 12;
- the conditions and the fees payable with respect to the issue of certificate of securities under sub-section (3) of section 14;
- the rights and obligations of the depositories, participants and the issuers under subsection (1) of section 17;
- the eligibility criteria for admission of securities into the depository under sub-section (2) of section 17.
- the terms determined by the Board for settlement of proceedings under subsection (2) of section 19-1A;
- any other matter which is required to be, or may be, specified by regulations or in respect of which provision to be made by regulations.

POWER OF DEPOSITORIES TO MAKE BYE-LAWS

A depository shall, with the previous approval of the Board, make bye-laws consistent with the provisions of this Act and the regulations. In particular, and without prejudice to the generality of the foregoing power, such byelaws shall provide for—

- the eligibility criteria for admission and removal of securities in the depository;
- the conditions subject to which the securities shall be dealt with;
- the eligibility criteria for admission of any person as a participant;
- the manner and procedure for dematerialisation of securities;
- the procedure for transactions within the depository;
- the manner in which securities shall be dealt with or withdrawn from a depository;
- the procedure for ensuring safeguards to protect the interests of participants and beneficial owners;
- the conditions of admission into and withdrawal from a participant by a beneficial owner;
- the procedure for conveying information to the participants and beneficial owners on dividend declaration, shareholder meetings and other matters of interest to the beneficial owners;

- the manner of distribution of dividends, interest and monetary benefits received from the company among beneficial owners;
- the manner of creating pledge or hypothecation in respect of securities held with a depository;
- inter se rights and obligations among the depository, issuer, participants, and beneficial owners;
- the manner and the periodicity of furnishing information to the Board, issuer and other persons;
- the procedure for resolving disputes involving depository, issuer, company or a beneficial owner;
- the procedure for proceeding against the participant committing breach of the regulations and provisions for suspension and expulsion of participants from the depository and cancellation of agreements entered with the depository;
- the internal control standards including procedure for auditing, reviewing and monitoring.

Where the SEBI considers it expedient so to do, it may, by order in writing, direct a depository to make any bye-laws or to amend or revoke any bye-laws already made within such period as it may specify in this behalf.

If the depository fails or neglects to comply with such order within the specified period, the SEBI may make the bye-laws or amend or revoke the bye-laws made either in the form specified in the order or with such modifications thereof as the SEBI thinks fit.

SEBI (DEPOSITORIES AND PARTICIPANTS) REGULATIONS, 2018

The Depositories Act, 1996 requires that the registration of the depository, depository participant and the custodian, is mandatory with the SEBI. These market intermediaries can function or commence business only after registration from SEBI has been obtained and requisite fee paid to SEBI. The requirement of registration is a continuing one and the moment the registration is cancelled or revoked or surrendered, the person shall cease to act as such.

The SEBI, on October 3, 2018, notified the SEBI (Depositories and Participants) Regulations, 2018 ('New DP Regulations'), repealing the SEBI (Depositories and Participants) Regulations, 1996 ('Old DP Regulations') introducing amendments largely related to structuring, shareholding and governance of depositories.

These regulations also contain provisions for operations and functioning of depositories, form for application and certificates used and schedule of fees for participants, etc. It also contains provisions for registration of depository and depository participants, rights and obligations of various users and constituents, inspection and procedure for action in case of default.

AUDIT UNDER SEBI (DEPOSITORIES AND PARTICIPANTS) REGULATIONS, 2018

Regulation 76 of SEBI (Depositories and Participants) Regulations, 2018 provides that every issuer shall submit audit report on a quarterly basis to the concerned stock exchanges audited by a practising Company Secretary or a qualified Chartered Accountant, for the purposes of reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, the details of changes in share capital during the quarter and the in-principle approval obtained by the issuer from all the stock exchanges where it is listed in respect of such further issued capital.

The audit report is required to give the updated status of the register of members of the issuer and confirm that securities have been dematerialized as per requests within 21 days from the date of receipt of requests by the issuer and where the dematerialization has not been effected within the said stipulated period, the report would disclose the reasons for such delay.

The issuer is under an obligation to immediately bring to the notice of the depositories and the stock exchanges,

any difference observed in its issued, listed, and the capital held by depositories in dematerialized form.

INTERNAL AUDIT OF OPERATIONS OF DEPOSITORY PARTICIPANTS

The two Depository service providers in India, viz., National Securities Depository Ltd. (NSDL) and Central Depository Services (India) Limited (CDSL) have allowed Company Secretaries in Whole-time Practice to undertake internal audit of the operations of Depository Participants (DPs).

NSDL has vide its circular No. NSDL/SG/II/010/99 dated 26th March 1999 notified amendment of its Bye Law 10.3.1 of Chapter 10 as follows:

10.3.1 “Every Participant shall ensure that an internal audit in respect of the operations of the Depository is conducted at intervals of not more than three months by a qualified Chartered Accountant or a Company Secretary holding a certificate of Practice and a copy of the internal audit report shall be furnished to the Depository.”

CDSL has vide its letter dated September 28, 1999 notified amendment of its Bye Laws 16.3.1 as follows:

16.3.1 “Every Participant shall ensure that an internal audit shall be conducted in respect of the participant’s operations relating to CDSL by a qualified Chartered Accountant in accordance with the provisions of the Chartered Accountants Act, 1949 or by a Company Secretary in practice in accordance with the provisions of the Company Secretaries Act, 1980, at such intervals as may be specified by CDSL from time to time. A copy of Internal Audit report shall be furnished to CDSL.”

Checklist of Internal Audit of Operations of Depository Participants:

- Account opening
- Reporting to BOs
- Dematerialisation of Securities
- Rematerialisation of Securities
- Market Trades
- Off Market Trades
- Transmission
- Returns to Depository
- Grievance Redressal Mechanism
- Collateral Security
- Assignment of Business
- Freezing of Account
- Closure of Account
- Pledge and Hypothecation
- Invocation of Pledge/Hypothecation by Pledgee
- Lending and Borrowing of Securities
- Records to be Maintained by DPs
- Disclosure and Publication of Information
- Supervision by DP

- Code of Ethics for DPs
- Branch of Depository Participants

CONCURRENT AUDIT

National Securities Depository Limited vide its Circular No. NSDL/POLICY/ 2006/0021 dated June 24, 2006 provides for concurrent audit of the Depository Participants. The Circular provides that w.e.f. August 1, 2006, the process of demat account opening, control and verification of Delivery Instruction Slips (DIS) is subject to Concurrent Audit.

Depository Participants have been advised to appoint a firm of qualified Chartered Accountant(s) or Company Secretary(ies) holding a certificate of practice for conducting the concurrent audit. However, the participants in case they so desire, may entrust the concurrent audit to their Internal Auditors. In respect of account opening, the auditor should verify all the documents including KYC documents furnished by the Clients and verified by the officials of the Participants. The scope of concurrent audit with respect to control and verification of DIS cover the areas given below:

(I) Issuance of DIS

The procedure followed by the Participants with respect to:

- (a) Issuance of DIS booklets including loose slips.
- (b) Existence of controls on DIS issued to Clients including pre-stamping of Client ID and unique pre-printed serial numbers.
- (c) Record maintenance for issuance of DIS booklets (including loose slips) in the back office.

(II) Verification of DIS

The procedure followed by the Participants with respect to:

- (a) Date and time stamping (including late stamping) on instruction slips.
- (b) Blocking of used/reported lost/stolen instruction slips in back office system/ manual record.
- (c) Blocking of slips in the back office system/manual record which are executed in DPM directly.
- (d) Two step verification for a transaction for more than Rs. 5 lakh, especially in case of off-market transactions.
- (e) Instructions received from dormant accounts.

The Concurrent Auditor should conduct the audit in respect of all accounts opened, DIS issued and controls on DIS as mentioned above, during the day, by the next working day. In case the audit could not be completed within the next working day due to large volume, the auditor should ensure that the audit is completed within a week's time.

Any deviation and/or non-compliance observed in the aforesaid areas should be mentioned in the audit report of the Concurrent Auditor. The Management of the Participant should comment on the observations made by the Concurrent Auditor. The Concurrent Audit Report should be submitted to NSDL, on a quarterly basis, in a hard copy form. If the Auditor for Internal and Concurrent Audit is the same, consolidated report may be submitted.

ROLE OF COMPANY SECRETARY

- **Right to Legal Representation** (Section 23C of the Act): In case of any decision of the SEBI, **the aggrieved entity/ company** (the appellant) may either appear in person or authorise one or more chartered accountants or **company secretaries (PCS)** or cost accountants or legal practitioners or any of its officers **to present his or its case before the Securities Appellate Tribunal (SAT).**

- **Internal Audit of Depository Participants:** The 2 (two) Depository services providers in India, viz., National Securities Depository Ltd. (NSDL) and Central Depository Services (India) Limited (CDSL) **have allowed Company Secretaries** in Whole-time Practice to **undertake internal audit** of the operations of Depository Participants (DPs). [Ref: NSDL Circular No. NSDL/POLICY/2008/0072 dated October 17, 2008 and CDSL Bye Law 16.3.1]
- **Reconciliation of Share Capital Audit:** Company Secretary is authorised to **issue quarterly certificate** with regard to reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, details of changes in share capital during the quarter, and **in-principle approval obtained by the issuer** from all the stock exchanges where it is listed in respect of such further issued capital under SEBI (Depositories and Participants) Regulations, 2018. [**Regulation 76 of SEBI (Depositories and Participants) Regulations, 2018**]
- **Concurrent Audit of Depository Participants:** Practising Company Secretary is authorized to carry out **concurrent audit of Depository Participants** which covers audit of the process of demit account opening, control and verification of Delivery Instruction Slips (DIS).

LESSON ROUND UP

- The legal framework for depository system in the Depositories Act, 1996 provides for the establishment of single or multiple depositories.
- There are two Depositories functioning in India, namely the National Securities Depository Limited (NSDL) and the Central Depository Services (India) Limited (CDSL).
- All the securities held by a depository are dematerialized and are in a fungible form.
- In the depository system, the ownership and transfer of securities takes place by means of electronic book entries.
- A Depository Participant (DP) is the representative (agent) of the investor in the depository system providing the link between the Company and investor through the Depository.
- The Depository Act, 1996 and SEBI (Depositories and Participants) Regulations, 2018 regulates the function of Depositories and participants.
- Regulation 76 of SEBI (Depositories and Participants) Regulations, 2018 provides that every issuer shall submit audit report on a quarterly basis to the concerned stock exchanges audited by a practising Company Secretary or a qualified Chartered Accountant, for the purposes of reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, the details of changes in share capital during the quarter and the in-principle approval obtained by the issuer from all the stock exchanges where it is listed in respect of such further issued capital.
- Both the Depositories in India have allowed Practising Company Secretaries to undertake internal audit of the operations of Depository Participants (DPs).
- Depository Participants are subject to concurrent audit by a Practising Company Secretary or qualified Chartered Accountant. Concurrent Audit includes audit of process of demat account opening, control and verification of delivery instruction slips.

GLOSSARY

Beneficial owner (BO)	The true owner of a security or property, which may be registered in another name. Means a person whose name appears as such on the records of the depository.
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(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

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Lesson 4

An Overview of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

LESSON OUTLINE

- Introduction
- Types of issues
- Meaning of Draft Offer Document, Letter of Offer and Red Herring Prospectus
- Initial Public Offering/Further Public Offering
- Eligibility Requirements to be complied with for IPO
- General Conditions
- Eligibility Criteria for further public offer (FPO)
- Issue of Warrants [Regulation 13]
- Issue of SR Equity Shares
- Filing of offer Document [Regulations 25 & 123]
- In Case of FPO
- Lock-in Requirements
- Minimum Offer to Public and Reservations
- Fast Track FPO
- Exit Opportunity to Dissenting Shareholders [Scheduled XX]
- Eligibility of Shareholders for Availing the Exit Offer
- Exit Offer Price
- Manner of Providing Exit to Dissenting Shareholders
- Maximum Permissible Non-Public Shareholding
- Procedure for Issue of Securities
- Role of Company Secretary
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

India ushered from a merit based regime (Controller of Capital Act) to disclosure based regime under SEBI. Under CCI issue size and price were approved by CCI after examining the various parameters/ratios. The SEBI (Disclosure and Investor Protection) Guidelines, 2000 were introduced by SEBI which consist of serious of provisions.

Therefore, the DIP Guidelines needed to be strengthened and streamlined. The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 were introduced to address these needs and are more concise and systematic.

Further the SEBI, in order to align its provisions under the ICDR Regulations with the Companies Act, 2013 and allied regulations, notified the SEBI (ICDR) Regulations, 2018 which lay down the guidelines pertaining to various conditions and procedures for raising funds from public.

Keeping the above mentioned pertinent issue, this lesson has touched upon the various provisions of SEBI (ICDR) Regulations, 2018 like prospectus, eligibility criteria, promoter contribution, lock-in requirements etc.

Introduction

Management of a public issue involves co-ordination of activities and co-operation 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. 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 with the purpose of allotting the shares 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. The 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, the SEBI issued a compendium containing consolidated Guidelines, circulars, instructions relating to issue of capital effective from January 27, 2000. The compendium titled the SEBI (Disclosure and Investor Protection) Guidelines, 2000 replaced the original Guidelines issued in June 1992 and clarifications thereof. On August 26, 2009 the SEBI rescinded the SEBI (DIP) Guidelines, 2000 and notified the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

The 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, the 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 the 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, the SEBI (Substantial Acquisition & Substantial Takeover) Regulations, 2011, the SEBI (Share Based Employee Benefits) Regulations, 2014 have been suitably incorporated.

The SEBI in its Board Meeting held on June 21, 2018 approved the proposal for replacing SEBI (Issue of

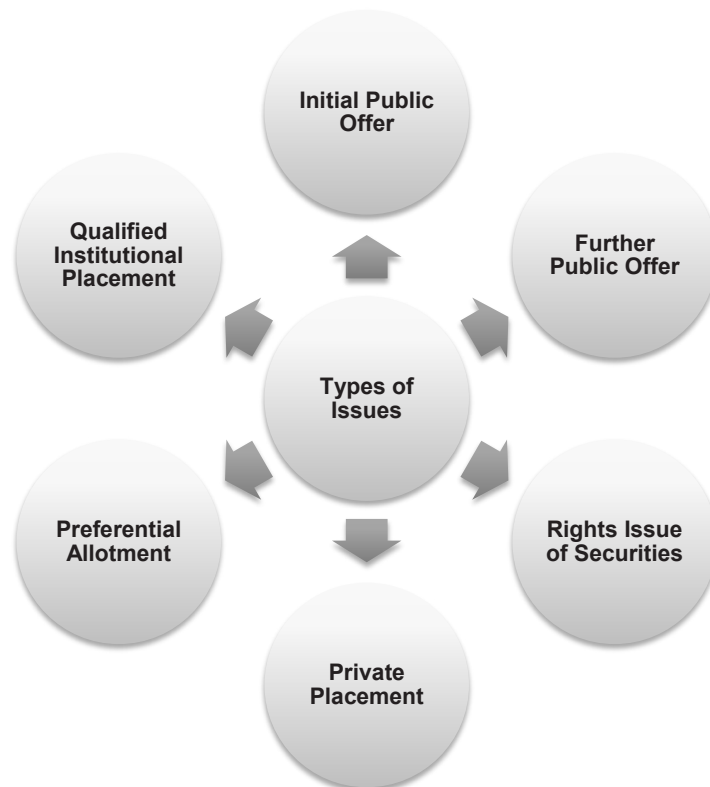
Lesson 4 ■ An Overview of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 **89**

Capital & Disclosure Requirements) Regulations, 2009 with the new the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018.

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

Chapter No. under ICDR Regulations, 2018	Particulars
I.	Preliminary
II.	Initial Public Offer (IPO) on Main Board
III.	Right Issue
IV.	Further Public Offer
V.	Preferential Issue
VI.	Qualified Institutions Placement
VII.	IPO of Indian Depositary Receipts
VIII.	Rights Issue of IDR
IX.	IPO by Small and Medium Enterprises (SME)
X.	Innovators Growth Platform
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 means an offer of specified securities by an unlisted issuer to the public for subscription and includes an offer for sale 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 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 or to a select group of persons 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 the 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, 2013.

Qualified Institutional Placement refers to an issue by a listed entity to only qualified institutional buyers in accordance of Chapter VI of the SEBI (ICDR) Regulations, 2018.

MEANING OF DRAFT OFFER DOCUMENT, LETTER OF OFFER AND RED HERRING PROSPECTUS

Draft Offer Documents

“Draft Offer document” means the offer document in draft stage. The draft offer documents are filed with the SEBI, at least 30 days prior to the filing of the Offer Document with ROC/SEs. The SEBI may specifies changes, if any, in the Draft Offer Document and the Issuer or the Lead Merchant banker shall carry out such changes in the draft offer document before filing the Offer Document with ROC/SEs. The Draft Offer document is available on the SEBI website for public comments for a period of 21 days from the filing of the Draft Offer Document with the SEBI.

Offer Document

“Offer document” means Prospectus in case of a public issue or offer for sale and Letter of Offer in case of a right issue, which is filed with Registrar of Companies (ROC) and Stock Exchanges. An offer document covers all the relevant information to help an investor to make his/ her investment decision.

RHP (Red Herring Prospectus)

“Red Herring Prospectus” is a prospectus, which does not have details of either price or number of shares being offered, or the amount of issue. This means that in case price is not disclosed, the number of shares and the upper and lower price bands are disclosed. On the other hand, an issuer can state the issue size and the number of shares are determined later. An RHP for an FPO can be filed with the ROC without the price band and the issuer, in such a case will notify the floor price or a price band by way of an advertisement one day prior to the opening of the issue. In the case of book-built issues, it is a process of price discovery and the price cannot be determined until the bidding process is completed. Hence, such details are not shown in the Red

Herring prospectus filed with ROC in terms of the provisions of the Companies Act, 2013. Only on completion of the bidding process, the details of the final price are included in the offer document. The offer document filed thereafter with ROC is called a prospectus.

INITIAL PUBLIC OFFERING / FURTHER PUBLIC OFFERING

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. 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) and the time of registering or filing the final offer document (commonly referred to as the Prospectus) with the Registrar of Companies.

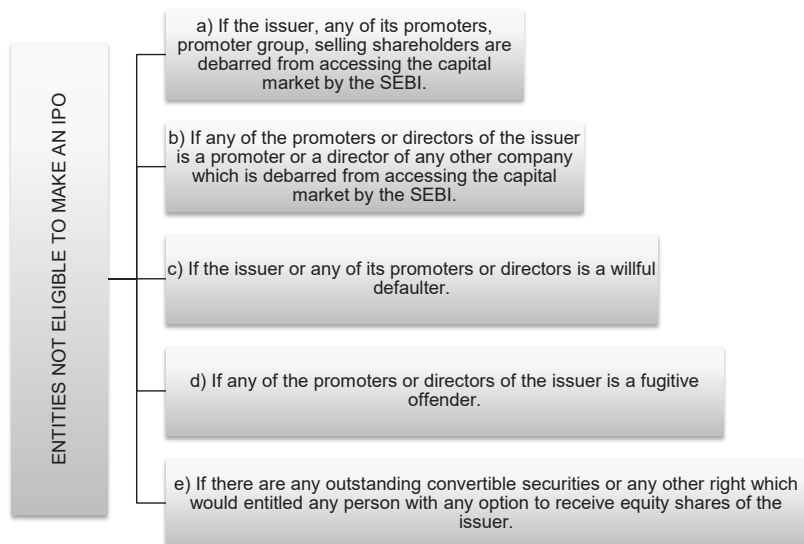
APPLICABILITY OF THE SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018

These regulations shall apply to the following:

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

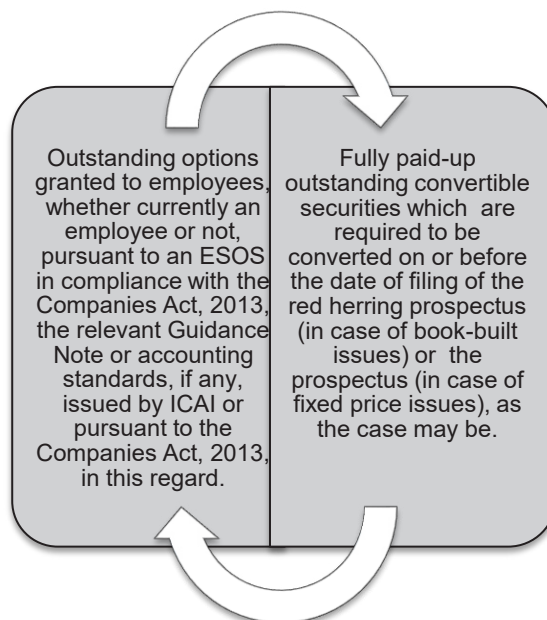
ELIGIBILITY REQUIREMENTS TO BE COMPLIED WITH FOR IPO

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



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 the SEBI and the period of debarment is already over as on the date of filing of the draft offer document with the SEBI.

Non applicability of Regulation 5(1) & (2)



Eligibility requirements for an initial public offer [Regulation 6]

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 network 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.

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

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 these regulations and these clauses -

- 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.

- 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.

- The SR shares were issued only to the promoters/ founders who hold an executive position in the issuer company;
- 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.
- The SR equity shares have been held for a period of atleast 6 months prior to the filing of the red herring prospectus;
- 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;
- The SR equity shares shall have the same face value as the ordinary shares;
- The issuer shall only have one class of SR equity shares;
- The SR equity shares shall be equivalent to ordinary equity shares in all respects, except for having superior voting rights.

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 the 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, 2014, March 31, 2015 and March 31, 2016. 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 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 the 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.

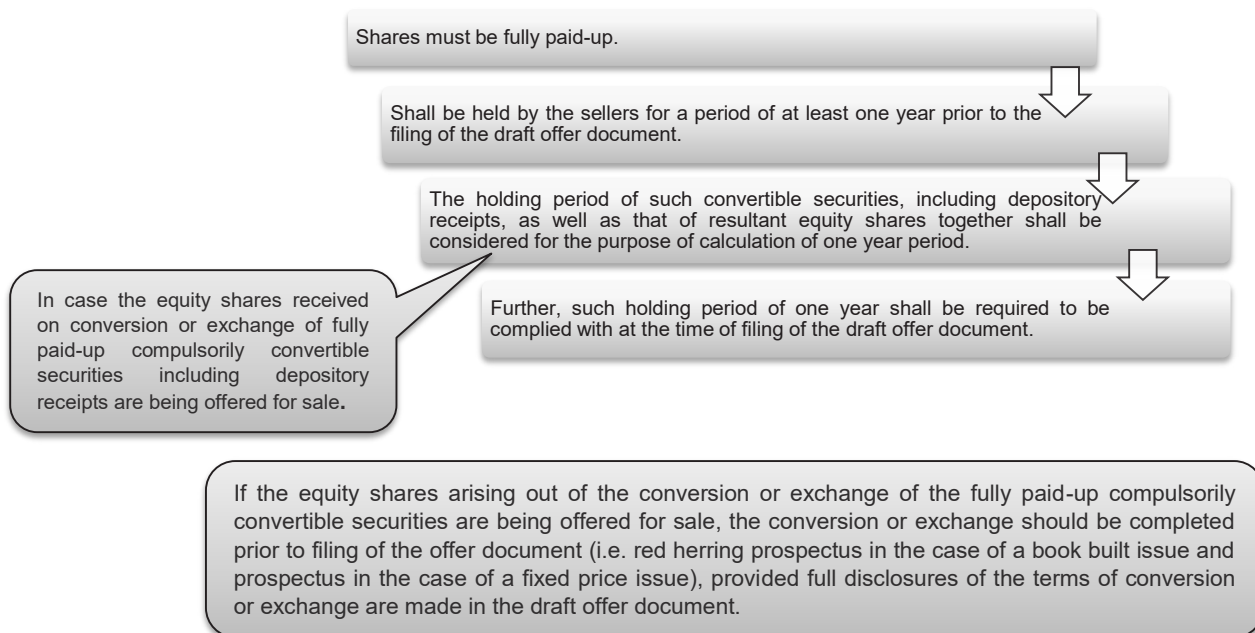
(Rs. in lacs)

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

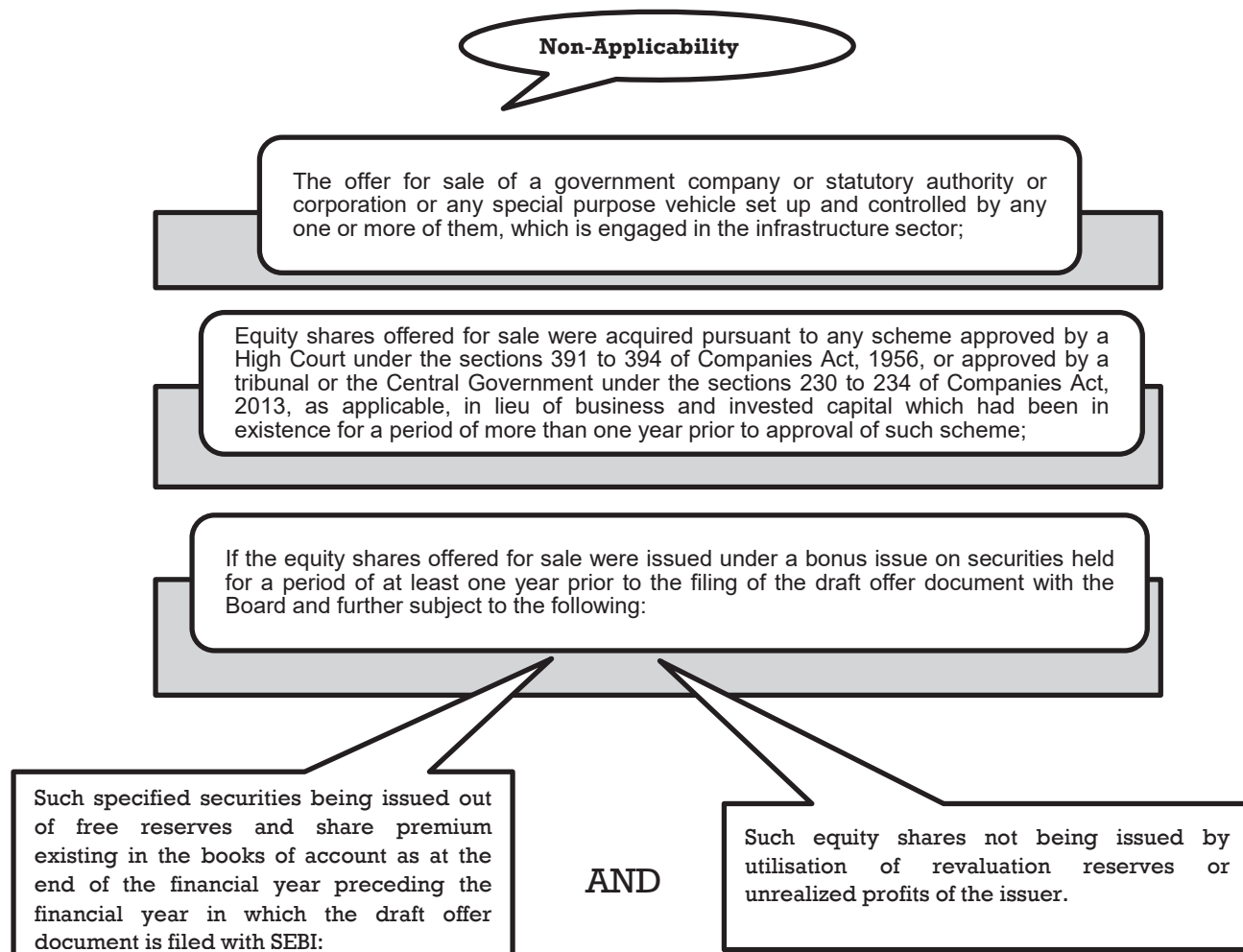
GENERAL CONDITIONS

- 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) 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



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 the 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 the 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

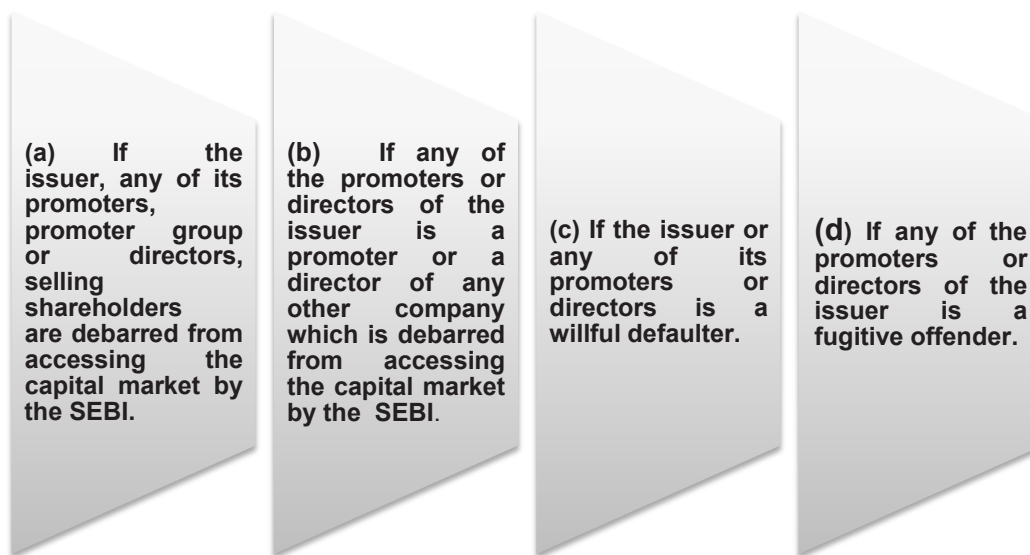
Since the all the above eligibility conditions are satisfied in the example and there is no change in the name of the company, this company is eligible to make an Initial Public Offering.

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

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:



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 the SEBI and the period of debarment is already over as on the date of filing of the draft offer document with the 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 :

- 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.
- An agreement is entered into with a depository for dematerialization of specified securities already issued or proposed to be issued.
- 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.
- 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.
- 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 the 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 the 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 the 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 [Regulation 24 & 122]

Disclosures in the draft offer document and offer document

- 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 the 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.
- The 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 the SEBI; or
 - b) the date of receipt of satisfactory reply from the lead merchant bankers, where the 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 the 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 the 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 changes and comply with the observations issued by the SEBI before filing 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 the SEBI.
- Copy of the offer documents shall also be filed with the SEBI and the stock exchanges through the lead manager(s) promptly after filing the offer document with the Registrar of Companies.
- The draft offer document and the offer document shall also be furnish to the SEBI in a soft copy.

Filing of Draft Offer Document [Regulations 25 & 123]

Prior to making an IPO/FPO, the issuer shall file three copies of the draft offer document with the concerned regional office of the 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 the SEBI along with the draft offer document:

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

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

- The draft offer document filed with the 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 the 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 the 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 the SEBI and inviting the public to provide their comments to the 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 the 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, the 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.

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 the SEBI and the amount so deposited shall be refundable or forfeitable in the manner specified by the 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 the 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 the 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 the SEBI.

An IPO and an FPO shall be opened after at least 3 working days from the date of filing 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.

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 of 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 the Securities Contracts (Regulation) Rules, 1957, which stipulates that at least 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 to 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.

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.

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.

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, 2018 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 the SEBI ICDR Regulations, 2018.

Issue-related Advertisements [Regulations 43 & 139]

- Subject to the provisions of the Companies Act, 2013, the issuer shall, after filing 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 the 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 the 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 the 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:

“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.

However, in case of an offer for sale, the full issue price for each specified security shall be payable at the time of 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 $\left[\frac{\{35,00,000 - (1,00,000 * 20)\}}{\{140,00,000 - (1,00,000 * 20)\}}\right] * 300$ (i.e. 320-20)
2.	B	220	20 specified securities (i.e. the minimum bid lot) + 25 specified securities $\left[\frac{\{35,00,000 - (1,00,000 * 20)\}}{\{140,00,000 - (1,00,000 * 20)\}}\right] * 200$ (i.e. 220-20)
3.	C	120	20 specified securities (i.e. the minimum bid lot) + 13 specified securities $\left[\frac{\{35,00,000 - (1,00,000 * 20)\}}{\{140,00,000 - (1,00,000 * 20)\}}\right] * 100$ (i.e. 120-20)
4.	D	60	20 specified securities (i.e. the minimum bid lot) + 5 specified securities $\left[\frac{\{35,00,000 - 1,00,000 * 20\}}{\{(140,00,000 - (1,00,000 * 20)\}}\right] * 40$ (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 the 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.
- The 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).

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 percent 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 [Regulation 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 filing 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 the 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 filing the prospectus with the Registrar of Companies.

However, the prospectus filing 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

In Case of IPO

The promoters of the issuer shall hold at least twenty percent 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 percent of the post-issue capital without being identified as promoter(s).

Non applicability

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 including SR equity shares held, if any, or by way of subscription to convertible securities. 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 percent of the project cost in the form of equity shares, subject to contributing at least twenty percent 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(4)]

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;

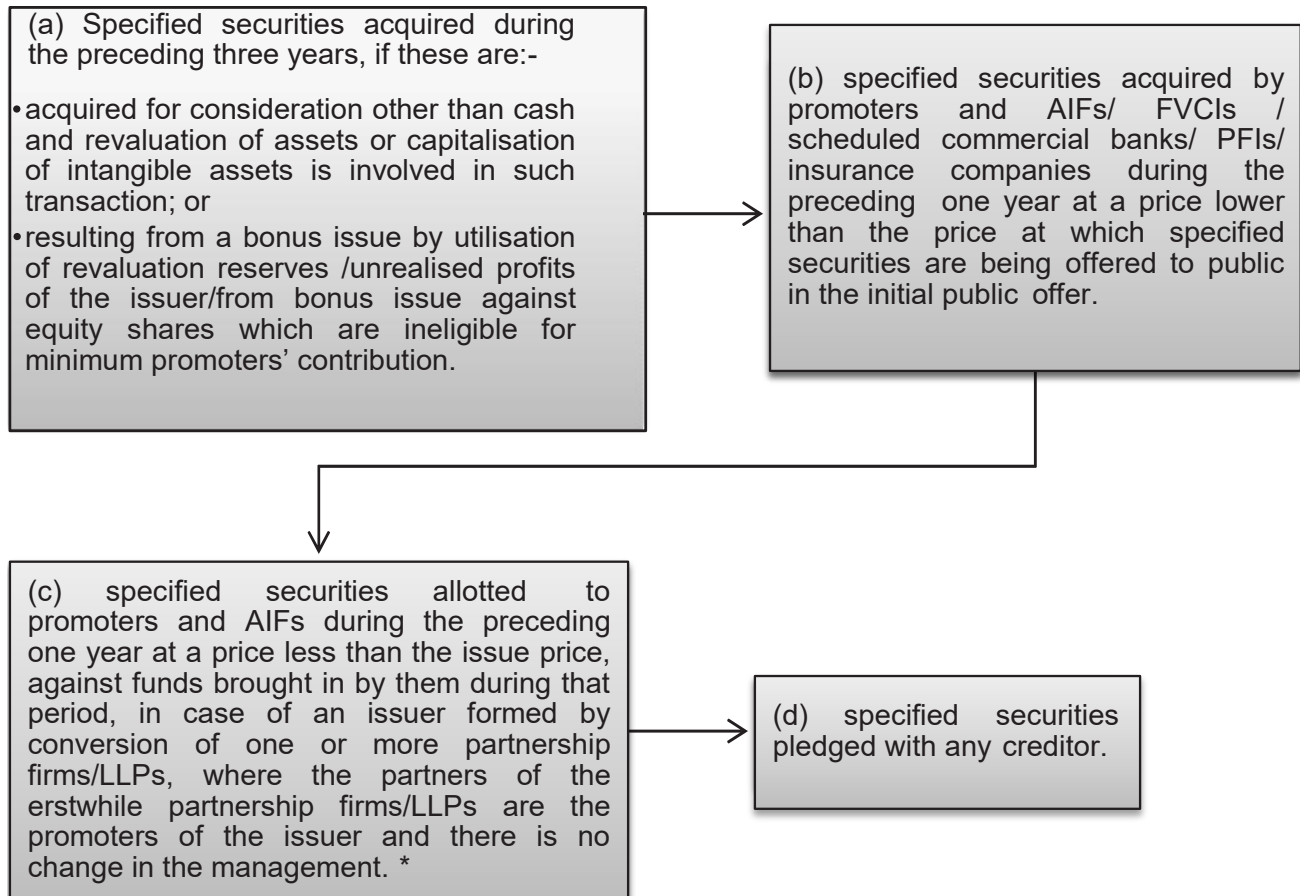
Further, where the minimum promoters' contribution is more than one hundred crore rupees and the initial public offer is for partly paid shares, the promoters shall bring in at least one hundred crore rupees before the date of opening of the issue and the remaining amount may be brought on a pro-rata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

-
- (a) An issuer which does not have any identifiable promoter;
 - (b) In case of a further public offer, where the equity shares of the issuer are frequently traded on a recognised stock exchange for a period of at least three years and the issuer has a track record of dividend payment for at least three immediately preceding years.

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 SEBI 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 percent 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 percent of the proposed issue size or to the extent of twenty percent 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 percent, 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.

- The SR equity shares of promoters, if any, shall be eligible towards computation of minimum promoters' contribution.

"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 capitalisation 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 scheduled commercial

banks 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.

Further, the SR equity shares shall be under lock-in until conversion into equity shares having voting rights same as that of ordinary shares or shall be locked-in for a period specified above, whichever is later.

In case of FPO, the excess promoters' contribution as provides in clause (b) shall be locked - in for a period.

"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 utilized as stated in the offer document, is expected to commence.

The SR equity shares shall be under lock-in until their conversion to equity shares having voting rights same as that of ordinary shares, provided they are in compliance with the other provisions of these regulations.

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 or employee stock purchase scheme 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]

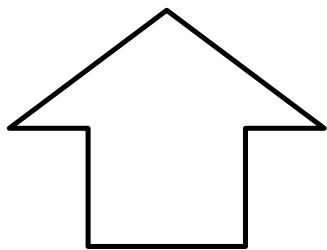
If the specified securities which are subject to lock-in are partly paid-up and the amount called-up on such specified securities is less than the amount called-up on the specified securities issued to the public, the lock-in shall end only on the expiry of three years after such specified securities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

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

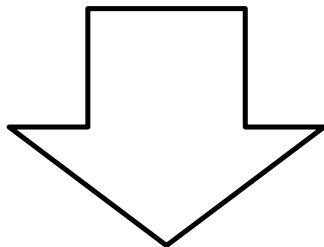
The certificates of specified securities which are subject to lock-in shall contain the inscription “non-transferable” and specify the lock-in period and in case such specified securities are dematerialised, the issuer shall ensure that the lock-in is recorded by the depository.

Pledge of Locked In Shares [Regulations 21 & 119]

Specified securities except SR equity shares, 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 the SEBI (Substantial Acquisition of shares and Takeovers) Regulations, 2011, the specified securities except SR equity shares 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.

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 the 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 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 allotted on a 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.

FAST TRACK FPO

Eligibility

An Issuer Company need not file the draft offer document with SEBI and obtain observations from SEBI, or make a security Deposit with the Stock Exchanges 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 monetary fines by stock exchange on the issuer shall not be a ground for ineligibility for undertaking issuances under these 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 SEBI 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 SEBI 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 for acquisitions, 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 the 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.

PROCEDURE FOR ISSUE OF SECURITIES

In the light of the provisions of the Companies Act and the guidelines issued by Government/SEBI under the Securities Contracts (Regulation) Rules, 1957 and the SEBI Act, 1992, the procedure for issue of securities to be followed by companies is given below. This procedure should be read along with the relevant SEBI regulations and provisions of the other Acts.

I. Issue of Shares to the Public

A company proposing to raise resources by a public issue should first select the type of securities i.e. shares and/or debentures to be issued by it. In case the company has applied for financial assistance to any of the financial/investment institutions, the requirement of the funds to be raised from the public is to be decided in consultation with the said institution while appraising the project of the company. The decision regarding the issue of shares to be made at par or premium should be taken. The various steps involved in public issue of shares are enumerated below:

1. Compliance with the SEBI Regulations

Before making any issue of capital, it is to be ensured that the proposed issue complies with the eligibility norms and other provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

2. Holding of general meeting

A general meeting of the shareholders (annual or extraordinary) is to be convened for obtaining their consent to the proposed issue of shares if the articles so require. In case the proposed issue requires any increase in authorised share capital (Section 61, 62, 64), alteration in capital clause of the Memorandum of Association (Section 13), alteration of the articles of association (Section 14) etc. the approvals for the same should also be obtained at the General Meeting.

3. Appointment of managers to the issue

The Company issuing shares is to appoint one or more Merchant Bankers to act as managers to the public issue.

4. Appointment of various other agencies

The company should in consultation with the Managers to the issue, decide upon the appointment of the following other agencies:

(a) Registrars to the Issue; (b) Collecting bankers to the Issue; (c) Advisors to the Issue; (d) Underwriters to the Issue; (e) Brokers to the Issue; (f) Printers; (g) Advertising Agents, (h) Self Certified Syndicate Banks, etc.

5. Drafting of prospectus

Next step is to draft a prospectus in accordance with Section 26 of the Companies Act, 2013 and an abridged prospectus as required under Section 33(1) of the Companies Act, 2013. The prospectus should contain the disclosures as required by the SEBI Regulations under Schedule VIII.

6. Intimation to Stock Exchange

A copy of the Memorandum and Articles of Association of the company is to be sent to the Stock Exchanges where the shares are to be enlisted, for approval.

7. Approval of prospectus

The draft offer document alongwith the application form for issue of shares should be got approved by the solicitors/legal advisors of the company to ensure that it contains all disclosures and information as required by various statutes, rules, regulations, notifications, etc. The managers to the issue should also verify and approve the draft prospectus. The financial institutions providing loan facilities generally stipulate that the prospectus should be got approved by them. The company should in such a case, forward a copy of the draft prospectus for their verification and approval as well. The approval of underwriters should also be taken if they so require.

A copy of the draft offer document is also to be filed with the SEBI for scrutiny. Merchant Bankers, acting as the Lead Manager to ensure that an offer document contain the disclosure requirements as specified by the SEBI from time to time for the issue of securities. Also to ensure that an offer document provides a true, correct and fair view of the state of affairs of the company which are adequate for the investors to arrive at a well-informed investment decision. The Merchant Bankers are required to submit the draft of the offer document along with Due Diligence Certificate to the SEBI in the form specified within six weeks before the issue is scheduled to open for subscription. Further, they are held responsible for ensuring the compliance with the SEBI Rules, Regulations, Guidelines and requirements for other laws, for the time being in force.

8. Approval of board of directors to prospectus and other documents

After getting observations of the SEBI in the draft prospectus and the application form, the board of directors of the company should approve the final draft before filing with the Registrar of Companies. The company should, therefore, hold the meeting of the board of directors to transact the following business:

- (a) to approve and accept consent letters received from various parties agencies to act in their respective capacities;
- (b) to approve and accept appointment of underwriters, brokers, bankers to the issue registrar to the issue, solicitors and advocates to the issue, etc.
- (c) to accept the Auditors' Report for inclusion in the prospectus;
- (d) to approve the date of opening of subscription list as also earliest and latest dates for closing of subscription list with the authority in favour of any director for earlier closing if necessary.
- (e) to approve draft prospectus/draft abridged prospectus and the draft share application form.
- (f) to authorise filing of the prospectus signed by all the directors or their constituted attorneys with the Registrar of Companies.
- (g) to authorise any officer of the company to deliver the prospectus for registration with the Registrar of Companies and to carry out the corrections, if any, at the office of the Registrar of Companies.
- (h) to approve the format of the statutory announcement.

9. Making application to Stock Exchange(s) for permission to listing

Before filing prospectus with the Registrar of Companies the company should submit an application(s) to the Stock Exchange(s) for enlistment of securities offered to the public by the said issue [Section 40(1) of the Companies Act, 2013]. The fact that an application(s) has/have been made to the Stock Exchange(s) must be stated in the prospectus.

10. Printing and distribution of prospectus and application forms

After receipt of the intimation from Registrar of Companies regarding registration of prospectus, the company should take steps to issue the prospectus within 90 days of its registration with ROC. For the purpose, the first step is to get adequate number of prospectuses and application forms printed. The provisions of Section 33 of the Companies Act, 2013 should be kept in view in this regard which provide that no one shall issue any form of application for shares in or debenture of a company unless the form is accompanied by a memorandum containing such salient features of a prospectus as may be prescribed.

At least 2 weeks before the announcement is made in any newspaper, journal etc. requisite number of copies of the prospectus and application forms accompanied by the abridged prospectus should be distributed to the brokers, underwriters, merchant bankers, lead managers, bankers etc. to the issue.

11. Pricing**12. Promoters contribution and lock-in-period****13. Underwriting****14. Mandatory Collection Centres****15. Certificate relating to promoters' contribution**

The SEBI Regulations require that atleast one day prior to the date of opening of the issue, a certificate from the Chartered Accountant to the effect that the promoters' contribution in its entirety has been brought in advance before the public issue opens should be forwarded to it. The certificate should be accompanied by a list of names and addresses of friends, relatives and associates who have contributed to the promoters' quota, along with the amount of subscription made by each of them. The same shall be applicable if the promoter do not hold shares equivalent to minimum 20% of Post issue paid up capital.

16. Coordination with the bankers to the issue

The date of opening and closing of the subscription list should be intimated to all the collecting and controlling branches of the bank with whom the company has entered into an agreement for the collection of application forms. Further, the company should ensure that a separate bank account is opened for the purpose of collecting the proceeds of the issues as required by Section 40(3) of the Companies Act, 2013 and furnish to the controlling branches the resolution passed by the Board of directors for opening bank account.

17. Minimum subscription**18. Allotment of shares**

A return of allotment in Form PAS-3 of the Companies (Prospectus and Allotment of Securities) should be filed with the Registrar of Companies within 30 days of the date of allotment along with the fees as rules, 2014 specified in the Companies (Registration Offices and Fees) Rules, 2014.

19. Refund orders

The company shall disclose the mode in which it shall made refunds to applicants in the prospectus and abridged prospectus.

ROLE OF COMPANY SECRETARY

SEBI Circular

Certification by practising Company Secretary in case of offer/allotment of securities to more than 49 and up to 200 investors

To issue a certificate regarding issuance of securities to more than 49 and up to 200 investors that the refund procedure as prescribed by the SEBI has been duly complied with [SEBI Circular No. CFD/DIL3/CIR/P/2016/53 dated May 03, 2016]

LESSON ROUND UP

- Public Issue of shares means the selling or marketing of shares for subscription by the public by issue of prospectus.
- All listed companies whose equity shares are listed on a stock exchange and unlisted companies eligible to make a public issue and desirous of getting its securities listed on a recognised stock exchange pursuant to a public issue, may freely price its equity shares or any securities convertible at a later date into equity shares.
- Issue of Securities are regulated by the SEBI (ICDR) Regulations, 2018.
- The SEBI (ICDR) Regulations, 2018 lays down the provisions and procedure for various types of issue, including public and rights issue.
- In case of an IPO, the promoters of the issue shall hold at least twenty per cent of the post issue capital.
- The SR shares shall be issued only to the promoters/ founders who hold an executive position in the issuer company;
- The 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 IPO.
- A merchant banker holding a valid certificate of registration is required to be appointed to manage the issue.
- Every company making a public issue is required to appoint a compliance officer and intimate the name of the compliance officer to SEBI.
- Public issue must be kept open for atleast 3 working days but not more than 10 working days including the days for which the issue is kept open in case of revision in price band.

GLOSSARY

Average market capitalisation of public shareholding	It means the sum of daily market capitalization 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 Board of Directors/ shareholders, as the case may be, divided by the number of trading days.
Basis of allotment	An allotment pattern of an issue among different categories of applicant.
General Corporate Purpose	It include such identified purposes for which no specific amount is allocated or any amount so specified towards General Corporate Purpose or any such purpose by whatever name called, in the draft offer document filed with SEBI.

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

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- This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Lesson 5

An Overview of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

LESSON OUTLINE

- Introduction
- SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
- Applicability
- Obligations of Listed Entities
- Compliances under SEBI Listing Regulations
- Corporate Governance under SEBI (LODR) Regulations, 2015
- In-Principle Approval of Recognized Stock Exchange(s)
- Role of Company Secretary
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Section 21 of the Securities Contracts (Regulation) Act, 1956 ("SCRA") provides that Where the securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange. Pursuant to insertion of these provisions in the SCRA in 1956, the Listing Agreement, although a contract, was made a statutory requirement, thereby making it mandatory for every listed entity in India to comply with the Listing Agreement. In India, the SEBI has been regulating listed companies through the medium of listed agreement entered into between each listed company with the concerned stock exchange. Compliance with the listing conditions is mandatory by virtue of the governing law. The SEBI has revamped its Listing Agreement that the companies need to enter into with the stock exchanges while listing its securities with the new the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('Listing Regulations').

This lesson will give an overview of various time and event based compliances and various disclosure requirements prescribed under the SEBI Listing Regulations, 2015.

INTRODUCTION

Listing of securities with stock exchange is a matter of great importance for companies and investors, because this provides the liquidity to the securities in the market. Any company offering its shares to the public for subscription is required to be listed on the stock exchange and has to comply with the listing requirements prescribed by the Stock Exchange. A company seeking listing of their securities on the Stock Exchange is required to enter into a formal listing agreement with the Stock Exchange.

SEBI has prescribed and also specified all the quantitative and qualitative requirements to be continuously complied with by the issuer for continued listing. The Stock Exchange monitors such compliances and companies who do not comply with the provisions of the listing agreement may be suspended from trading on the Stock Exchange(s).

As per the SEBI Listing Regulations, 2015, “listed entity” means an entity which has listed, on a recognised 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).

“Designated securities” means specified securities, non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares, Indian depository receipts, securitised debt instruments, security receipts, units issued by mutual funds and any other securities as may be specified by the SEBI.

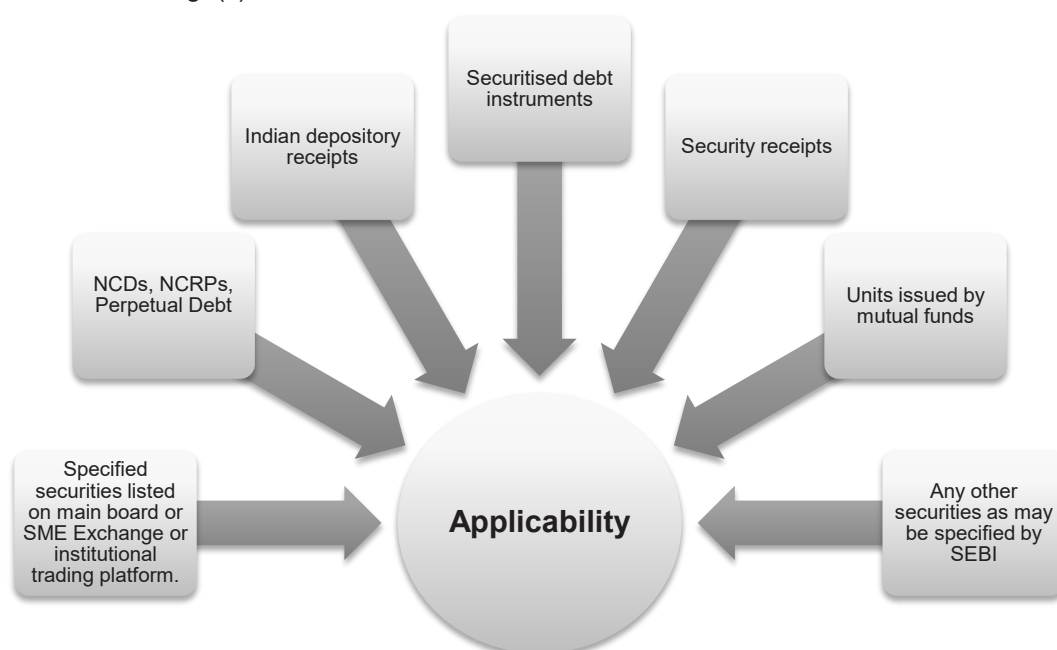
“specified securities” means ‘equity shares’ and ‘convertible securities’ as defined under clause (zj) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

SEBI has notified SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (‘Listing Regulations’) on September 2, 2015 which came into force w.e.f. December 1, 2015 with two objectives, firstly, to align clauses of the listing agreement with Companies Act, 2013 and secondly to consolidate the conditions under different securities listing agreements in one single regulation.

APPLICABILITY

These regulations shall apply to a listed entity who has listed any of the following designated securities on recognised stock exchange(s):



OBLIGATIONS OF LISTED ENTITIES

The obligations of listed entities have been classified under following categories -

Common obligations (Applicable for all listed entities)

Obligations of Listed entity which has listed its Specified Securities.

Obligations of Listed entity which has listed its Non-Convertible Debt Securities or Non-Convertible Redeemable Preference Shares or both.

Obligations of Listed entity which has listed its Specified Securities and either Non-Convertible Debt Securities or Non-Convertible Redeemable Preference Shares or both.

Obligations of Listed entity which has listed its Indian depository receipts.

Obligations of Listed entity which has listed its securitised debt instruments,

Obligations of Listed entity which has listed its Security Receipts.

Obligations of Listed entity which has listed its units issued by mutual funds.

COMPLIANCES UNDER SEBI LISTING REGULATIONS

The Listed entity shall comply with the following compliances under the Listing Regulations :-

- One Time Compliances
- Quarterly Compliances
- Half yearly Compliances
- Yearly Compliances
- Event based Compliances

One-time Compliances

The following are the one time compliances:-

Regulation	Particulars
6(1)	A listed entity shall appoint a Company Secretary as the Compliance Officer
7(1)	<p>The listed entity shall appoint a share transfer agent or manage the share transfer facility in house.</p> <p>However, in the case of in-house share transfer facility, as and when the total number of holders of securities of the listed entity exceeds one lakh, the listed entity shall either register with the SEBI as a Category II share transfer agent or appoint Registrar to an issue and share transfer agent registered with the SEBI.</p>
9	The listed entity shall have a policy for preservation of documents, approved by its Board of Directors.

Quarterly Compliances

Regulation	Particulars	Time Limit
13(3)	The listed entity shall file with the recognised stock exchange, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter	within twenty one days from end of quarter
27(2)	The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by SEBI from time to time to the recognized stock exchange(s)	within fifteen days from close of the quarter
31(1)(b)	The listed entity 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	within twenty one days from the end of each quarter
32(1)	The listed entity shall submit to the stock exchange a statement of deviation or variation (for public issue, rights issue, preferential issue etc.)	Quarterly Basis to the stock exchange till such time the issue proceeds have been fully utilized or the purpose for which these proceeds were raised has been achieved.
33(3)	<p>The listed entity shall submit quarterly financial results to the stock exchange.</p> <p>In case the listed entity has subsidiaries, the listed entity shall also submit quarterly/year-to date consolidated financial results</p>	within forty-five days of end of each quarter, other than the last quarter.

Half Yearly Compliances

Regulation	Particular	Time Limit
7(3)	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	Within one month of end of each half of the financial year.
23(9)	The listed entity shall submit to the stock exchange, disclosures of related party on consolidated basis.	within thirty days from the date of publication of its standalone and consolidated financial results for the half year
33(3)	The listed entity shall also submit as part of its standalone or consolidated financial results for the half year a statement of assets and liabilities and a statement of cash flows by way of a note.	Once in six month
40(9)	The listed entity shall ensure 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

Yearly Compliances

Regulation	Particulars	Time Limit
14	The listed entity shall pay all such fees or charges, as applicable, to the recognised stock exchange(s), in the manner specified by SEBI or the recognised Stock Exchange (s).	within 30 days of the end of financial year
33(3)	<p>The listed entity shall submit annual audited standalone financial results with audit report and Statement on Impact of Audit Qualifications applicable only for audit report with modified opinion to the stock exchange</p> <p>If 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 for audit report with modified opinion.</p> <p>In case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange while publishing the annual audited financial results.</p> <p>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)</p>	within 60 days from the end of the financial year

34	<p>The listed entity shall submit the annual report along with the Notice of the Annual General Meeting to the stock exchange.</p> <p>Amongst others, the annual report shall also consist the following:</p> <ul style="list-style-type: none"> • audited financial statements i.e. balance sheets, profit and loss accounts etc [,and Statement on Impact of Audit Qualifications as stipulated in regulation 33(3)(d), if applicable • business responsibility report by the top one thousand listed entities based on market capitalization (calculated as on March 31 of every financial year), 	Not later than the day of commencement of dispatch to its shareholders.
34(1)(b)	In case any changes to the annual report, the revised copy along with the details of and explanation for the changes shall be sent	within 48 hours after the annual general meeting
36	The listed entity shall send annual report to the holders of securities	Twenty one days before AGM (in soft or hard copy)

Event Based Compliances

Regulation	Particulars	Time Limit
7(5)	The listed entity shall intimate the appointment of Share Transfer Agent, to the stock exchange(s)	Within 7 days of Agreement with RTA
28(1)	The listed entity shall obtain In-principle approval from recognised stock exchange	Prior to issuance of Security
29(1)(a) read along with proviso to 29 (2)	Prior Intimations of Board Meeting for financial Result viz. quarterly, half yearly or annual, to the stock exchange(s)	At least 5 clear days in advance (excluding the date of the intimation and the date of the meeting)
29(1) (b), (c), (d), (e) & (f) read along with 29 (2)	Prior Intimations of Board Meeting for Buyback, Voluntary delisting, Fund raising by way of FPO, Rights Issue, ADR, GDR, QIP, FCCB, Preferential issue, debt issue or any other method, 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, proposal for declaration of Bonus securities etc., to the stock exchange(s)	At least 2 working days in advance (excluding the date of the intimation and date of the meeting)

29(3)	Prior Intimations of Board Meeting for alteration in nature of Securities, alteration in the date on which interest on debentures/bonds/redemption amount, etc. shall be payable to the stock exchange(s)	At least 11 clear working days in Advance
30(6)	Disclosure of all events, as specified in Part A of Schedule III of listing regulations, to the stock exchange(s)	Not later than twenty four hours from the occurrence of the event or information
31(1)(a)	The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and share-holding pattern separately for each class of securities prior to listing of securities	One day prior to listing of Securities
31(1)(c)	The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and share-holding pattern separately for each class of securities in case of Capital Restructuring	Within ten days of any capital restructuring exceeding 2% of the total paid-up share capital.
31A (8)	The listed entity shall disclose to the stock exchange the deemed material events i.e., receipt of request for re-classification by the listed entity from the promoter(s) seeking re-classification; Minutes of the board meeting considering such request which would include the views of the board on the request; etc.	within 24 hours from the occurrence of the event
37(1)	The listed entity shall file draft Scheme of Arrangement to the stock exchange(s)	Prior approval before filing with Court
39(2)	The listed entity shall issue certificates or receipts or advices, as applicable, of subdivision, 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 thirty days from the date of such lodgement
39(3)	The listed entity shall submit information with respect to loss of share certificates and issue of the duplicate certificates to the stock exchange	Within two days of getting information.
40(1) Proviso	Transfer or 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

40(3)	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 fifteen days from the date of such receipt of request for transfer.
	The listed entity shall proceed the transmission request for securities held in dematerialization mode and physical mode	a) In case securities held in Dematerialised Mode - within seven days after receipt of the documents b) In case of Physical Mode – within 21 days after receipt of the documents
42(2)	The listed entity shall intimate the record date or date of closure of transfer books to all the stock exchange(s)	
	a) In case of Right Issue	At least three working days in advance (excluding the date of intimation and record date)
	b) Other than Right Issue	At least 7 clear working days in advance (excluding the date of intimation and record date)
43A	Dividend Distribution Policy by the top five hundred listed entities based on market capitalization (calculated as on March 31 of every financial year)	To formulate a dividend distribution policy which shall be disclosed in their annual reports and on their websites
44(3)	The listed entity shall submit to the stock exchange details regarding voting results in the format specified by SEBI	Within 48 Hours of conclusion of its General Meeting
45(3)	The listed entity shall allowed to change its name	Prior approval from Stock Exchange(s)
46	The listed entity shall maintain a functional website containing the basic information about the listed entity and update any change in the content of its website.	within two working days from the date of change in content

Note: as per Regulation 36(4), the information and documents made by the listed entity-

(a) to the stock exchanges shall be in XBRL; and

(b) to the stock exchanges and on its website, shall be in a format that allows users to find relevant information easily through a searching tool.

CORPORATE GOVERNANCE UNDER SEBI (LODR) REGULATIONS, 2015

The listed entities which has listed its specified securities on any recognised stock exchange(s) either on the main board or on SME Exchange or on institutional trading platform has to comply with certain corporate governance provisions which are specified in Regulations 17 to 27 & 34(3) of the Listing Regulations.

Sl. No.	Particulars	Listing Regulation
1.		
2.	Definitions	16
3.	Board Composition	17(1)
4.	Appointment of Woman Director The Board of directors of the top 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020.	17(1)(a)
5.	Size of the Board	17(1)(a)
6.	The board of directors of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) shall comprise of not less than six directors.	17(1)(c)
7.	Where the listed company has outstanding SR equity shares, atleast half of the board of directors shall comprise of independent directors.	17(1)(d)
8.	Maximum age of non-executive directors	17 (1A)
9.	With effect from April 1, 2022, the top 500 listed entities shall ensure that the Chairperson of the board of such listed entity shall – (a) be a non-executive director; (b) not be related to the Managing Director or the Chief Executive Officer as per the definition of the term “relative” defined under the Companies Act, 2013.	17(1B)
10.	Maximum number of directorships	17A
11.	The quorum for every meeting of the board of directors of the top 1000 listed entities with effect from April 1, 2019 and of the top 2000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director.	17(2A)
12.	Succession planning	17(4)
13.	Code of Conduct of Board of Directors & Senior Management	17(5)
14.	Prohibited Stock options for IDs	17(6)(d)
15.	Performance evaluation of IDs	17 (10)
16.	The statement to be annexed to the notice as referred to in sub-section (1) of section 102 of the Companies Act, 2013 for each item of special business to be transacted at a general meeting shall also set forth clearly the recommendation of the board to the shareholders on each of the specific items.	17(11)
17.	Maximum number of directorships	17A
18.	Constitution of Audit Committee	18
19.	Constitution of Nomination & Remuneration Committee	19

20.	Constitution of Stakeholders Relationship Committee	20
21.	Constitution of Risk management Committee	21
22.	Formulation of Vigil mechanism	22
23.	Related party transactions	23(1)
24.	Corporate governance requirements with respect to subsidiary of listed entity.	24
25.	Secretarial Audit	24A
26.	No person shall be appointed or continue as an alternate director for an independent director (IDs) of a listed entity with effect from October 1, 2018.	25(1)
27.	Maximum tenure of IDs	25(2)
28.	Separate meeting of IDs	25(3)
29.	Liability of IDs	25(5)
30.	Filing of Casual Vacancy of IDs	25(6)
31.	Familiarisation Programme for Independent Director	25(7)
32.	Every ID shall submit a declaration that he meets the criteria of independence	25(8)
33.	The board of directors of the listed entity shall take on record the declaration and confirmation submitted by the IDs.	25(9)
34.	With effect from October 1, 2018, the top 500 listed entities shall undertake Directors and Officers insurance ('D and O insurance') for all their IDs of such quantum and for such risks as may be determined by its board of directors.	25(10)
35.	Obligations with respect to employees including senior management, key managerial persons, directors and promoters.	26
36.	No employee including key managerial personnel or director or promoter of a listed entity shall enter into any agreement for himself or on behalf of any other person, with any shareholder or any other third party with regard to compensation or profit sharing in connection with dealings in the securities of such listed entity, unless prior approval for the same has been obtained from the Board of Directors as well as public shareholders by way of an ordinary resolution.	26(6)
37.	Corporate Governance Report	27(2) (a)
38.	Disclosure of different Accounting standard	34(4)
39.	Disclosure on Remuneration	34(3)

Exceptions

As per Regulation 15(2) of the Listing Regulations, the compliance with the corporate governance provisions as specified in Regulations 17 to 27 and clauses (b) to (i) of Regulation 46(2) and para C, D and E of Schedule V shall not apply, in respect of following -

1.The listed entity having:-

- paid up equity share capital not exceeding rupees 10 crore and
- net worth not exceeding rupees 25 crore, as on the last day of the previous financial year.

(However, If the provisions of the regulations become applicable to a listed entity at a later date, such listed entity shall comply with the requirements those regulations within six months from the date on which the provisions became applicable to the listed entity.)

2. The listed entity which has listed its specified securities on the SME Exchange.

However, for other listed entities which are not companies, but body corporate or are subject to regulations under other statutes, the provisions of corporate governance provisions as specified in regulation 17 to 27 and clauses (b) to (i) of sub-regulation (2) of regulation 46 and para C, D and E of Schedule V shall apply to the extent that it does not violate their respective statutes and guidelines or directives issued by the relevant authorities.

3. The provisions as specified in 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: Provided that 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.

4. 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.

However, the roles and responsibilities of the committees specified in the respective regulations shall be fulfilled by the interim resolution professional or resolution professional.

5. Notwithstanding any provisions under Regulation 15(2) stated above, the provisions of Companies Act, 2013 shall continue to apply, wherever applicable.

Board Committees under the SEBI Listing Regulations



VIGIL MECHANISM [REGULATION 22]

- The listed entity shall formulate a vigil mechanism for directors and employees to report genuine concerns.
- The vigil mechanism shall provide for adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism.
- The vigil mechanism shall also provide for direct access to the chairperson of the audit committee in appropriate or exceptional cases.

RELATED PARTY TRANSACTIONS [REGULATION 23]

Related Party definitions under Different laws

Under Listing Regulations, 2015

Regulation 2(1) (zb) defines “related party” means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards.

Provided that any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall be deemed to be a related party.

Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s).

Under Companies Act, 2013

According to section 2 (76) “related party”, with reference to a company, means –

- (i) a director or his relative;
 - (ii) a key managerial personnel or his relative;
 - (iii) a firm, in which a director, manager or his relative is a partner;
 - (iv) a private company in which a director or manager or his relative is a member or director;
 - (v) a public company in which a director and manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;
 - (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
 - (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act;
- However, nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- (viii) Any body corporate which is –
 - (A) a holding, subsidiary or an associate company of such company;
 - (B) a subsidiary of a holding company to which it is also a subsidiary; or
 - (C) an investing company or the venturer of the company;”

Explanation. – For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

- (ix) a director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

Policy on materiality of related party transactions

The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions including clear threshold limits duly approved by the board of directors and such policy shall be reviewed by the board of directors at least once every three years and updated accordingly.

When will a transaction with a related party be material?

With effect from July 01, 2019 a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed five percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

Approval of Audit Committee

All related party transactions shall require prior approval of the audit committee.

Omnibus Approval: Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity subject to the following conditions-

- (a) the audit committee shall lay down the criteria for granting the omnibus approval in line with the policy on related party transactions of the listed entity and such approval shall be applicable in respect of transactions which are repetitive in nature;
- (b) the audit committee shall satisfy itself regarding the need for such omnibus approval and that such approval is in the interest of the listed entity;
- (c) the omnibus approval shall specify:
 - (i) the name(s) of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into,
 - (ii) the indicative base price / current contracted price and the formula for variation in the price if any; and
 - (iii) such other conditions as the audit committee may deem fit.

However, where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may grant omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.

- (d) the audit committee shall review, at least on a quarterly basis, the details of related party transactions entered into by the listed entity pursuant to each of the omnibus approvals given.
- (e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year.

Approval of the shareholders

All material related party transactions shall require approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not.

However, the requirements specified under this sub-regulation shall not apply in respect of a resolution plan approved under section 31 of the Insolvency Code, subject to the event being disclosed to the recognized stock exchanges within one day of the resolution plan being approved.

Exceptions

The approval of Audit committee and shareholders shall not be required in the following cases:

- (a) transactions entered into between two government companies;

- (b) transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

Government Company(ies) means Government Company as defined in sub-section (45) of section 2 of the Companies Act, 2013.

Other provisions

- The provisions of this regulation shall be applicable to all prospective transactions.
- For the purpose of this regulation, all entities falling under the definition of related parties shall not vote to approve the relevant transaction irrespective of whether the entity is a party to the particular transaction or not.
- All existing material related party contracts or arrangements entered into prior to the date of notification of these regulations and which may continue beyond such date shall be placed for approval of the shareholders in the first General Meeting subsequent to notification of these regulations.
- The listed entity shall submit within 30 days from the date of publication of its standalone and consolidated financial results for the half year, disclosures of related party transactions on a consolidated basis, in the format specified in the relevant accounting standards for annual results to the stock exchanges and publish the same on its website.

IN-PRINCIPLE APPROVAL OF RECOGNIZED STOCK EXCHANGE(S) [REGULATION 28]

The listed entity, before issuing securities, shall obtain an 'in-principle' approval from recognised stock exchange(s) in the following manner:

- (a) where the securities are listed only on recognised stock exchange(s) having nationwide trading terminals, from all such stock exchange(s);
- (b) 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;
- (c) 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.

ROLE OF COMPANY SECRETARY

For CS in Employment

- A listed entity shall appoint a Qualified Company Secretary as the Compliance Officer. The compliance officer of the listed entity shall be responsible for –
 - ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.
 - co-ordination with and reporting to SEBI, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.

- ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations.
 - monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors.
- 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.
- “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.

For Company Secretary in Practice

In addition to the above responsibilities, the following are the recognition to Company Secretary under the SEBI Listing Regulations, 2015 :

Certificate regarding Transfer of Securities

- Certification to the effect that all transfers have been completed within the stipulated time. [Regulation 40(9)]

Certificate Regarding Compliance of Conditions of Corporate Governance under SEBI Listing Regulations

- SEBI listing regulations authorizes Company Secretary in Practice to issue certificate regarding compliance of conditions of Corporate Governance. [Schedule V, clause E]

Certificate Regarding Maintenance of 100% Asset Cover

- To issue half yearly certificate regarding maintenance of 100% security cover in respect of listed non-convertible debt securities. [Regulation 56(1)] (d)]

Secretarial Audit Report

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.[Regulation 24A]

Certification regarding Director's Disqualification

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 the Board/ Ministry of Corporate Affairs or any such Statutory Authority. [Schedule V, Part C, Clause 10 (i)]

CASE STUDIES

1. Hotsun Company is a medium-sized listed company. Mr. Mohan is a wealthy business entrepreneur and the original founder of the company. He owns 28% of the ordinary shares and is the major shareholder, but he is no longer a member of the board of directors, having resigned several years ago when the company obtained its stock market quotation.

Although he is no longer a director, Mohan continues to show considerable interest in the business affairs of the company. Recently he has been demanding that the board should consult him on issues of business strategy and dividend policy. He also believes that at least two non-executive directors should resign because they contribute nothing of value to the board. Two members of the board agree, and argue that Mohan should be consulted regularly on important issues, given his success in leading the company in the past. However, the majority of the board members are hostile and resent Mohan's continual interference.

After a recent argument with the chairman, Mohan has threatened to sue members of the board for gross dereliction of their duties as directors. He has also demanded the resignation of a board member who is the owner of a property company that has just sold a property to Hotsun Company at a price that Mohan considers excessive. The chairman was unaware of this matter.

Required

As company secretary, prepare a report for the chairman advising him about

- (a) the powers of the board under the Companies Act, 2013
- (b) the appropriate measures for dealing with Mohan and responsibility of the board towards Mohan.
- (c) the provisions of RPT considering the allegations made by Mohan.

Suggested Solution -

- (a) **Powers of the Board:** As per Section 179(3) read with Rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014, the Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—
 - to make calls on shareholders in respect of money unpaid on their shares;
 - to authorise buy-back of securities under section 68;
 - to issue securities, including debenture, whether in or outside India;
 - to borrow monies;
 - to invest the funds of the company;
 - to grant loans or give guarantee or provide security in respect of loans;
 - to approve financial statement and the Board's report;
 - to diversify the business of the company;
 - to approve amalgamation, merger or reconstruction;
 - to take over a company or acquire a controlling or substantial stake in another company;
 - to make political contributions;
 - to appoint or remove key managerial personnel (KMP);
 - to appoint internal auditors and secretarial auditor.

- (b) Mr. Mohan was one of the founder directors of the Company and a major shareholder of the company holding 28% of the shares. A responsible business acts with care and loyalty towards its shareholders and in good faith for the best interests of the corporation. Business therefore has a responsibility to:
- Apply professional and diligent management in order to secure fair, sustainable and competitive returns on shareholder investments.
 - Disclose relevant information to shareholders, subject only to legal requirements and competitive constraints.
 - Conserve, protect, and increase shareholder wealth.
 - Respect shareholder views, complaints, and formal resolutions.

- (c) According to Section 2(76) of Companies Act 2013, “related party”, with reference to a company, means—

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager or his relative is a member or director;
- (v) a public company in which a director or manager is a director and holds along with his relatives, more than two per cent. (2%) of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

- (viii) any body corporate which is—
 - (A) a holding, subsidiary or an associate company of such company;
 - (B) a subsidiary of a holding company to which it is also a subsidiary; or
 - (C) an investing company or the venturer of the company;”;

Explanation.— For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

- (ix) a director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

Section 188 (1) of the Companies Act 2013 deals with the related party transactions with respect to:

- Sale, purchase or supply of any goods or materials
- Selling or otherwise disposing of, or buying, property of any kind
- Leasing of property of any kind
- Availing or rendering of any services

- Appointment of any agent for purchase or sale of goods, materials, services or property
- Related party's appointment to any office or place of profit in the company, its subsidiary company or associate company, and
- Underwriting the subscription of any securities or derivatives thereof, of the company.

Also, Section 188(1) of the Companies Act 2013 provides that a company shall enter into any contract or arrangement with a related party with respect to Related party transactions only with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to certain conditions as prescribed under Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014.

Here, one of the board members had sold his property to Hotsun Ltd. at a price which Mohan considers excessive. The board member is related party as per Section 2(76) of Companies Act 2013 and selling property of any kind is a related party transaction as per Section 188(1) of the Companies Act 2013.

The law in India does not prohibit RPTs. Instead, the law puts into place a system of checks and balances, such as requirements for approval from the board of directors/shareholders, timely disclosures and prior statutory approvals, to ensure that the transactions are conducted within appropriate boundaries. RPTs are required to be managed transparently, so as not to impose a heavy burden on a company's resources, affect the optimum allocation of resources, distort competition or siphon off public resources.

Therefore, if the related party transaction has taken place with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to certain conditions as prescribed under Rule 15 of the Companies (Meetings of board and its Powers) Rules, 2014, then it is allowed as per the laws and regulations and the allegations of Mr. Mohan will not hold much significance.

2. Dr. Sen, an industrial chemist with 15 years of experience, has recently been appointed to the post of Chief Executive Officer (CEO) of Pharma Ltd., a listed company. He has previously been employed in the company as Research Director. In preparation for his new assignment he has been trying to get to grips with the concept of corporate governance and all that it entails.

The board of Pharma Ltd. comprises of total ten directors (including one women director), six non-executive directors and five were considered independent. The board is responsible for overseeing strategy, approving major corporate initiatives and reviewing performance. There are three board committees - the Audit Committee, Remuneration Committee and Investors Grievance Committees. However, there is no Nomination Committee.

As the Company Secretary and Compliance Officer of Pharma Ltd, he is seeking your assistance to clarify some issues of concern.

You have been asked to prepare a brief report in which you:

- Provide Dr. Sen with a robust definition of corporate governance and a brief explanation of what you understand corporate governance to be.
- Comment on the board composition of Pharma Ltd. with respect to the Companies Act, 2013 and SEBI LODR Regulations, 2015. Also comment whether Dr. Sen should be Chairman of the Company.

Suggested Solution

(a) Corporate Governance has a broad scope. It includes both social and institutional aspects. Corporate Governance encourages a trustworthy, moral, as well as ethical environment. In other words, the heart of corporate governance is transparency, disclosure, accountability and integrity. It is to be borne in mind that mere legislation does not ensure good governance. Good governance flows from ethical business practices even when there is no legislation.

Good corporate governance promotes investor confidence, which is crucial to the ability of entities listed to

compete for capital. Good corporate governance is essential to develop added value to the stakeholders as it ensures transparency which ensures strong and balanced economic development. This also ensures that the interests of all shareholders (majority as well as minority shareholders) are safeguarded. It ensures that all shareholders fully exercise their rights and that the organization fully recognizes their rights.

Some other good definitions are given hereunder for better understanding:—"Corporate Governance is the application of best management practices, compliance of law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders."

The Institute of Company Secretaries of India

"Corporate Governance is concerned with the way corporate entities are governed, as distinct from the way business within those companies are managed. Corporate governance addresses the issues facing Board of Directors, such as the interaction with top management and relationships with the owners and others interested in the affairs of the company".

(b) Board Composition: Section 149(1) of the Companies Act 2013 provides that every company shall have a Board of Directors consisting of individuals as directors and shall have—

- A minimum number of three directors in the case of a public company,
- At least two directors in the case of a private company, and
- At least one director in the case of a One Person Company; and
- A maximum of fifteen directors provided that a company may appoint more than fifteen directors after passing a special resolution.

Section 149(4) provides that every public listed company shall have at least one third of total number of directors as independent directors.

Regulation 17(1)(a) of SEBI LODR Regulations, 2015 provides that Board of directors shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty per cent of the board of directors shall comprise of non-executive directors.

The board of Pharma Ltd. comprises of total ten directors, six non-executive directors and five were considered independent. The total number of directors is more than the minimum required directors and at least one third of total number of directors are independent directors.

Also as per SEBI Regulations, more than fifty per cent of the board of directors comprises of non-executive directors and one women director. Therefore, the board composition of Pharma Ltd. is optimum as per the laws and regulations.

Separation of Chairman and CEO: First proviso to Section 203(1) of the Companies Act, 2013 provides for the separation of role of Chairman and Chief Executive Officer subject to conditions thereunder.

It specifies that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—

- (a) the articles of such a company provide otherwise;
- (b) the company does not carry multiple businesses:

Regulation 17(1B) of SEBI (LODR) Regulations, 2015 provides that effect from April 1, 2022, the top 500 listed entities shall ensure that the Chairperson of the board of such listed entity shall -

- (a) be a non-executive director;
- (b) not be related to the Managing Director or the Chief Executive Officer as per the definition of the term “relative” defined under the Companies Act, 2013:

Also, it is perceived that separating the roles of chairman and chief executive officer (CEO) increases the effectiveness of a company's board. It is the board's and chairman's job to monitor and evaluate a company's performance. A CEO, on the other hand, represents the management team. If the two roles are performed by the same person, then there is less accountability. A clear demarcation of the roles and responsibilities of the Chairman of the Board and that of the Managing Director/CEO promotes balance of power.

The benefits of separation of roles of Chairman and CEO can be:

Director Communication: A separate chairman provides a more effective channel for the board to express its views on management

Guidance: A separate chairman can provide the CEO with guidance and feedback on his/her performance

Shareholders' interest: The chairman can focus on shareholder interests, while the CEO manages the company

Governance: A separate chairman allows the board to more effectively fulfill its regulatory requirements

Long-Term Outlook: Separating the position allows the chairman to focus on the long-term strategy while the CEO focuses on short-term profitability

Succession Planning: A separate chairman can more effectively concentrate on corporate succession plans.

Therefore, on the basis of abovementioned laws and regulations and the potential benefits of separating Chairman and CEO, Dr. Sen should not be made Chairman of the Company as he is already CEO of the Company.

LESSON ROUND UP

- SEBI has notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('Listing Regulations') on September 2, 2015 after the consultation process. The LODR Regulations came into force w.e.f. December 1, 2015.
- A listed entity shall appoint a Qualified Company Secretary as a Compliance Officer.
- The Listed entity shall comply with the following compliances under Listing Regulations:-
 - One Time Compliances
 - Quarterly Compliances
 - Half yearly Compliances
 - Yearly Compliances
 - Event based Compliances
- The listed entities which has listed its specified securities on any recognised stock exchange(s) either on the main board or on SME Exchange or on institutional trading platform has to comply with certain corporate governance provisions which are specified in Regulations 17 to 27 of the SEBI Listing Regulations.
- The Board of directors shall have an optimum combination of executive and non-executive directors with at least one woman independent director and at least 50% of the board of directors shall comprise of non- executive directors.

- The Board Committees are required to be constituted under Listing Regulations:
 - Audit Committee
 - Nomination and Remuneration committee
 - Stakeholders Relationship Committee
 - Risk Management Committee
- The listed entity shall formulate a vigil mechanism for directors and employees to report genuine concerns.
- The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions including clear threshold limits duly approved by the board of directors and such policy shall be reviewed by the board of directors at least once every three years and updated accordingly.
- All material related party transactions shall require approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not.

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. Briefly explain the applicability of the SEBI LODR Regulations, 2015.
2. Elucidate the obligations of Listed Entities under the SEBI LODR Regulations, 2015.
3. State the conditions for which Omnibus approval of Audit Committee is required under the SEBI LODR Regulations, 2015.
4. Explain the Event based compliances under the SEBI LODR Regulations, 2015.
5. Discuss about the various committees which are required to be mandatorily constituted under the SEBI LODR Regulations, 2015.

Lesson 6

An Overview of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

LESSON OUTLINE

- Introduction
- Background
- SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
- Important Definitions
- Applicability
- Trigger point for making an open offer by an acquirer
- Open Offer
- Conditional Offer
- Public Announcement
- Offer Price
- Submission of Draft Letter of Offer
- Dispatch of Letter of Offer
- Opening of the Offer
- Completion of Requirements
- Restriction on Acquisition
- Provision of Escrow
- Mode of Payment
- Withdrawal of Open Offer
- Obligations of the Target Company
- Obligations of the Acquirer
- Disclosures
- Exemptions
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

A lot has been changed in the corporate world since 1997, the year in which the (SAST) Regulations, 1997 was enacted. In line with the ever changing global scenario this old takeover regulations was replaced with new SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('SAST Regulations' / 'SEBI Takeover Regulations'). The main purpose of the SAST Regulations is to prevent hostile takeovers and at the same time, provide some more opportunities of exit to Shareholders when there is change in control. The SEBI Takeover Regulations will also balance the conflicting objectives and interests of various stakeholders in the context of substantial acquisition of shares in, and takeovers of, listed companies and also regulate and provide for fair and effective competition among acquirers desirous of taking over the same target company.

This lesson provides an overview of the SEBI Takeover Regulations and after going through this lesson, students will be able to understand the various procedural aspects which an acquirer and target company required to be complied with relating to the takeover.

INTRODUCTION

The SEBI Takeover Regulations prescribes a systematic framework for acquisition of stake in listed companies. By these laws the regulatory system ensures that the interests of the shareholders of listed companies are not compromised in case of an acquisition or takeover. It also protect the interests of minority shareholders, which is also a fundamental attribute of corporate governance principle.

The SEBI Takeover Regulations ensures that public shareholders of a listed company are treated fairly and equitably in relation to a substantial acquisition in, or takeover of, a listed company thereby maintaining stability in the securities market. The objective of the takeover regulations is to ensure that the public shareholders of a company are mandatorily offered an exit opportunity from the company at the best possible terms in case of a substantial acquisition in, or change in control of, a listed company.

BACKGROUND

The earliest attempts at regulating takeovers in India can be traced back to the 1990s with the incorporation of Clause 40 in the erstwhile Listing Agreement. While, the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994 which were notified in November 1994 made way for regulation of hostile takeovers and competitive offers for the first time. In 1995, SEBI appointed a committee under the chairmanship of Justice P. N. Bhagwati to review the Takeover Regulation, 1994 and based on the recommendations of the committee. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 were notified in 1997, pursuant to repeal of the 1994 Regulations.

Owing to several factors such as the growth of Mergers & Acquisitions activity in India as the preferred mode of restructuring, the increasing sophistication of takeover market, the decade long regulatory experience and various judicial pronouncements, it was felt necessary to review the Takeover Regulations 1997. Accordingly, SEBI formed a Takeover Regulations Advisory Committee (TRAC) in September 2009 under the Chairmanship of (Late) Shri. C. Achuthan, Former Presiding Officer, Securities Appellate Tribunal (SAT) for this purpose. After extensive public consultation on the report submitted by TRAC, SEBI came out with the SAST Regulations 2011 which were notified on September 23, 2011. The Takeover Regulations, 1997 stand repealed from October 22, 2011, i.e. the date on which SAST Regulations, 2011 come into force.

SAST Regulations aims at protecting interest of the investors in securities of a listed company providing amongst others, an opportunity for the public shareholders to exit where there is a substantial acquisition of shares or voting rights or control over a listed company, consolidation of holdings by existing shareholders and related disclosures and penalties for non-compliance etc. SAST requires an acquirer to make an offer to shareholders of the target company on acquiring shares exceeding stipulated thresholds. It also contains provisions relating to open offer size and price, time bound process for making an open offer, exemption from making an open offer, etc.

SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

1.	Chapter I	Definitions - Regulations 1 and 2
2.	Chapter II	Substantial acquisition of Shares, Voting Rights or Control, Threshold limit for open offer, Exemptions – Regulations 3 to 11
3.	Chapter III	Open offer process- Regulations 12 to 23
4.	Chapter IV	Obligations of Target Company, Acquirer, Manager – Regulations 24 to 27
5.	Chapter V	Disclosures of Shareholding and Control – Regulations 28 to 31
6.	Chapter VI	Powers of SEBI - Regulations 31 to 35

IMPORTANT DEFINITIONS

To understand the concept of the SEBI Takeover Regulations, it would be pertinent to first go through some of the definitions:

Acquirer

“Acquirer” means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company.

Acquisition

“Acquisition” means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company.

Control

“Control” includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

However, a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position.

Enterprise value

Enterprise value means the value calculated as market capitalization of a company plus debt, minority interest and preferred shares, minus total cash and cash equivalents.

Enterprise Value= Market capitalization+ Debt+ Minority Interest + Preferred Shares- Total Cash and Cash Equivalents

Frequently traded shares

Frequently traded shares means shares of a target company, in which the traded turnover on any stock exchange during the twelve calendar months preceding the calendar month in which the public announcement is required to be made under these regulations, is at least ten percent of the total number of shares of such class of the target company.

However, where the share capital of a particular class of shares of the target company is not identical throughout such period, the weighted average number of total shares of such class of the target company shall represent the total number of shares.

“Maximum permissible non-public shareholding” means such percentage shareholding in the target company excluding the minimum public shareholding required under the Securities Contracts (Regulation) Rules, 1957.

Offer period

“Offer period” means the period between the date of entering into an agreement, formal or informal, to acquire shares, voting rights in, or control over a target company requiring a public announcement, or the date of the public announcement, as the case may be, and the date on which the payment of consideration to shareholders who have accepted the open offer is made, or the date on which open offer is withdrawn, as the case may be.

Persons Acting in Concert

“Persons acting in concert” means, –

- (1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising

control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.

- (2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established, –
- (i) a company, its holding company, subsidiary company and any company under the same management or control;
 - (ii) a company, its directors, and any person entrusted with the management of the company;
 - (iii) directors of companies referred to in item (i) and (ii) of this sub-clause and associates of such directors;
 - (iv) promoters and members of the promoter group;
 - (v) immediate relatives;
 - (vi) a mutual fund, its sponsor, trustees, trustee company, and asset management company;
 - (vii) a collective investment scheme and its collective investment management company, trustees and trustee company;
 - (viii) a venture capital fund and its sponsor, trustees, trustee company and asset management company;
 - (ix) an alternate investment fund and its sponsor, trustees, trustee company and manager;
 - (x) a merchant banker and its client, who is an acquirer;
 - (xi) a portfolio manager and its client, who is an acquirer;
 - (xii) banks, financial advisors and stock brokers of the acquirer, or of any company which is a holding company or subsidiary of the acquirer, and where the acquirer is an individual, of the immediate relative of such individual.

However, this shall not apply to a bank whose sole role is that of providing normal commercial banking services or activities in relation to an open offer under these regulations;

- (xiii) an investment company or fund and any person who has an interest in such investment company or fund as a shareholder or unitholder having not less than 10 per cent of the paid-up capital of the investment company or unit capital of the fund, and any other investment company or fund in which such person or his associate holds not less than 10 per cent of the paid-up capital of that investment company or unit capital of that fund.

However, this shall not be applicable to holding of units of mutual funds registered with the SEBI.

Target company

Target Company means a company and includes a body corporate or corporation established under a Central legislation, State legislation or Provincial legislation for the time being in force, whose shares are listed on a stock exchange.

Tendering period

Tendering period means the period within which shareholders may tender their shares in acceptance of an open offer to acquire shares made under these regulations.

Volume weighted average market price

Volume weighted average market price means the product of the number of equity shares traded on a stock exchange and the price of each equity share divided by the total number of equity shares traded on the stock exchange.

Number of shares traded on the Stock Exchange on a particular day: X, Market Price: Y

$$\text{Volume Weighted Average Market Price} = \frac{X1*Y1+X2*Y2+X3*Y3\ldots\ldots\ldots}{X1+X2+X3\ldots\ldots\ldots}$$

Weighted average number of total shares

Weighted average number of total shares means the number of shares at the beginning of a period, adjusted for shares cancelled, bought back or issued during the aforesaid period, multiplied by a time-weighting factor.

Volume weighted average price

Volume weighted average price means the product of the number of equity shares bought and price of each such equity share divided by the total number of equity shares bought.

APPLICABILITY

These regulations shall apply to direct and indirect acquisition of shares or voting rights, in or control over Target Company. However, these regulations shall not apply to direct and indirect acquisition of shares or voting rights in, or control over a company listed without making a public issue, on the Institutional trading platform of a recognized stock exchange.

TRIGGER POINT FOR MAKING AN OPEN OFFER BY AN ACQUIRER

25% Shares or Voting Rights

An acquirer, along with Persons acting in concert (PAC), if any, who intends to acquire shares which along with his existing shareholding would entitle him to exercise 25% or more voting rights, can acquire such additional shares only after making a Public Announcement (PA) to acquire minimum twenty six percent shares of the Target Company from the shareholders through an Open Offer.

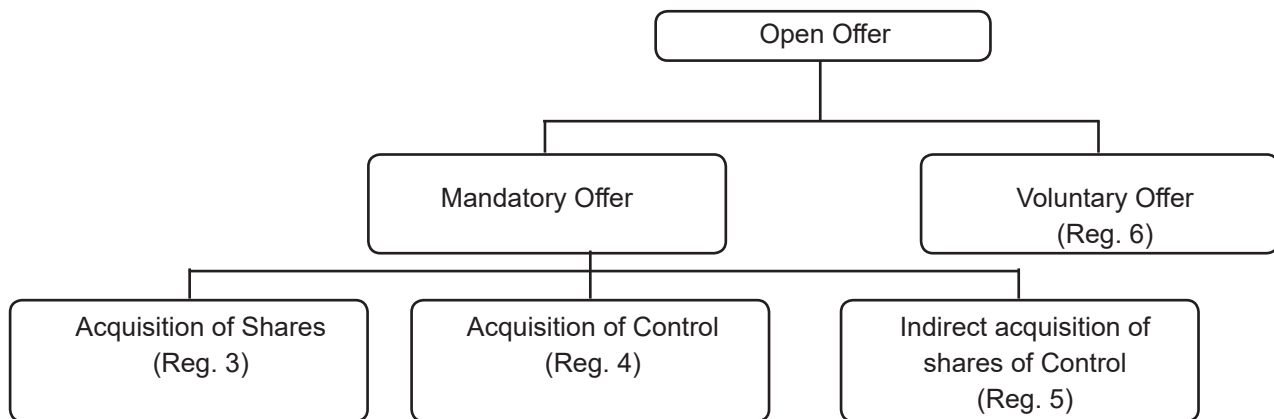
Name	Per Holding	Creeping Acquisition	Post Holding	Applicability of SEBI Takeover Regulation, 2011
A	23%	3%	26%	Open Offer Obligations
B	7%	2%	9%	—

Creeping Acquisition Limit

An acquirer who holds 25% or more but less than maximum permissible non-public shareholding of the Target Company, can acquire such additional shares as would entitle him to exercise more than 5% of the voting rights in any financial year ending March 31 only after making a Public Announcement to acquire minimum twenty six percent shares of Target Company from the shareholders through an Open Offer.

OPEN OFFER

SEBI Takeover Regulations, 2011 provides certain trigger events wherein the Acquirer is required to give Open Offer to the shareholders of the Target Company to provide them exit opportunity.



I. Mandatory Open Offer

SEBI Takeover Regulations, 2011 provides a threshold for mandatory Open Offer. These regulations provide that whenever an acquirer acquires the shares in excess of the threshold as prescribed under regulation 3 and 4 of SEBI Takeover Regulations, 2011, then the acquirer is required to make a public announcement of offer to the shareholders of the Target Company.

Regulation 3 of the SEBI Takeover Regulations, 2011 provides the Acquirer to give an open offer to the shareholders of Target Company on the acquisition of shares or voting rights entitling the Acquirer along with the persons acting in concert with him to exercise 25% or more voting rights in the Target Company.

Further any Acquirer who holds shares between 25%-75%, together with PACs can acquire further 5% shares as creeping acquisition without giving an Open Offer to the shareholders of the Target Company upto a maximum of 75%. The quantum of acquisition of additional voting rights shall be calculated after considering the following:

(a) No Netting off allowed:

For the purpose of determining the quantum of acquisition of additional voting rights, the gross acquisitions without considering the disposal of shares or dilution of voting rights owing to fresh issue of shares by the target company shall be taken into account.

(b) Incremental voting rights in case of fresh issue

In the case of acquisition of shares by way of issue of new shares by the target company, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition. **[Regulation 3(2)]**

What is the basis of computation of the creeping acquisitions limit under Regulation 3(2) of Takeover Regulations 2011?

For computing acquisitions limits for creeping acquisition specified under regulation 3(2), gross acquisitions/purchases shall be taken into account thereby ignoring any intermittent fall in shareholding or voting rights whether owing to disposal of shares or dilution of voting rights on account of fresh issue of shares by the target company.

Acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of where there is a change in the aggregate shareholding with persons acting in concert. **[Regulation 3(3)]**

This shall not apply to acquisition of shares or voting rights of a company by the promoters or shareholders in

control, in terms of the provisions of Schedule XX of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018. **[Regulation 3(4)]**

Regulation 4 of the SEBI Takeover Regulations, 2011 specifies that if any acquirer acquires, directly or indirectly, control over the Target Company irrespective of the fact whether there has been any acquisition of shares or not, then he has to give public announcement to acquire shares from shareholders of the Target Company. **[Regulation 4]**

Indirect Acquisition of Shares or control

The concept of Indirect acquisition of shares has been recognized under Regulation 5 of the SEBI Takeover Regulations, 2011. It explains indirect acquisition as the acquisition of shares, voting rights or control over any other company which would enable the acquirer of shares, voting rights or control to exercise such percentage of voting rights, which would otherwise have triggered an open offer process over which would enable the acquirer to exercise control over a company.

Certain indirect acquisitions are regarded as 'deemed direct acquisitions' if such indirect acquisition satisfy the following conditions such as:

- (a) the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired exceeds 80 percent; or
- (b) the proportionate sales turnover of target company as a percentage of the consolidated sales turnover of the entity or business being acquired exceeds 80 percent; or
- (c) the proportionate market capitalisation of the target company as a percentage of the enterprise value for the entity or business being acquired exceeds 80 percent;

The 'deemed direct acquisition' has to follow the same mandatory open offer related requirements as a direct acquisition of shares, voting rights or control.

Delisting Offer

Regulation 5A deals with delisting in case of certain cases arising out of open offer which is discussed below:

1. In the event the acquirer makes a public announcement of an open offer for acquiring shares of a target company in terms of regulations 3, 4 or 5, he may delist the company in accordance with provisions of the SEBI (Delisting of Equity Shares) Regulations, 2009, but the acquirer shall have declared upfront his intention to so delist at the time of making the detailed public statement and a subsequent declaration of delisting for the purpose of the offer proposed to be made under sub regulation (1) of regulation 5A will not suffice.
2. Where an offer made is not successful-
 - (i) On account of non-receipt of prior approval of shareholders in terms of regulation 8(1)(b) of SEBI (Delisting of Equity Shares) Regulations, 2009; or
 - (ii) In terms of regulation 17 of SEBI (Delisting of Equity Shares) Regulations, 2009; or
 - (iii) On account of the acquirer rejecting the discovered price determined by the book building process in terms of regulation 16(1) of SEBI (Delisting of Equity Shares) Regulations, 2009,

the acquirer shall make an announcement within 2 working days in respect of such failure in all the newspapers in which the detailed public statement was made and shall comply with all applicable provisions of these regulations.

3. In the event of failure of the delisting offer made under sub regulation (1), the open offer obligations shall be fulfilled by the acquirer in the following manner:
 - (i) the acquirer, through the manager to the open offer, shall within five working days from the date of the announcement under sub-regulation (2), file with the SEBI, a draft of the letter of offer as specified in sub-regulation (1) of regulation 16; and
 - (ii) shall comply with all other applicable provisions of these regulations.

However, the offer price shall stand enhanced by an amount equal to a sum determined at the rate of ten per cent per annum for the period between the scheduled date of payment of consideration to the shareholders and the actual date of payment of consideration to the shareholders.

Explanation: For the purpose of this sub-regulation, scheduled date shall be the date on which the payment of consideration ought to have been made to the shareholders in terms of the timelines in these regulations.

4. Where a competing offer is made -
 - (a) the acquirer shall not be entitled to delist the company;
 - (b) the acquirer shall not be liable to pay interest to the shareholders on account of delay due to competing offer;
 - (c) the acquirer shall comply with all the applicable provisions of these regulations and make an announcement in this regard, within two working days from the date of public announcement made, in all the newspapers in which the detailed public statement was made.
5. Shareholders who have tendered shares in acceptance of the offer, shall be entitled to withdraw such shares tendered, within 10 working days from the date of the announcement.
6. Shareholders who have not tendered their shares in acceptance of the offer shall be entitled to tender their shares in acceptance of the offer made under these regulations.

II. Voluntary Offer

Voluntary Offer means the Open Offer given by the acquirer voluntarily without triggering the mandatory Open Offer obligations as envisaged under these regulations. Voluntary Offers are an important means for substantial shareholders to consolidate their stake and therefore recognized the need to introduce a specific framework for such Open Offers.

Regulation 6 of the Takeover Regulations provides the threshold and conditions for making the Voluntary Open Offer which are detailed below:

Prior holding of at least 25 % shares and shareholding of the acquirer and persons acting in concert (PAC) post completion of Open Offer

An acquirer, who together with persons acting in concert with him, holds shares or voting rights in a target company entitling them to exercise twenty-five per cent or more but less than the maximum permissible non-public shareholding, shall be entitled to voluntarily make a public announcement of an open offer for acquiring shares in accordance with these regulations, subject to their aggregate shareholding after completion of the open offer not exceeding the maximum permissible non-public shareholding.

Acquisition of shares prior to the voluntary open offer

However, where an acquirer or any person acting in concert with him has acquired shares of the target company in the preceding fifty-two weeks without attracting the obligation to make a public announcement of an open

offer, he shall not be eligible to voluntarily make a public announcement of an open offer for acquiring shares under this regulation.

Prohibition on the acquisition of shares during the Offer Period

SEBI Takeover Regulations, 2011 prohibits the acquirer who has made a Voluntary Open Offer from further acquiring the shares during the Offer Period otherwise than under the Open Offer.

Restriction of the acquisition of shares during the offer period

An acquirer and persons acting in concert with him, who have made a public announcement under this regulation to acquire shares of a target company shall not be entitled to acquire any shares of the target company for a period of six months after completion of the open offer except pursuant to another voluntary open offer.

Provided that such restriction shall not prohibit the acquirer from making a competing offer upon any other person making an open offer for acquiring shares of the target company.

Shares acquired through bonus issue or stock splits shall not be considered for purposes of the dis-entitlement set out in this regulation.

Wilful Defaulter

Notwithstanding anything contained in these regulations, no person who is a wilful defaulter shall make a public announcement of an open offer for acquiring shares or enter into any transaction that would attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations.

However, this regulation shall not prohibit the wilful defaulter from making a competing offer in accordance with regulation 20 of these regulations upon any other person making an open offer for acquiring shares of the target company.

Fugitive Economic Offender

Notwithstanding anything contained in these regulations, no person who is a fugitive economic offender shall make a public announcement of an open offer or make a competing offer for acquiring shares or enter into any transaction, either directly or indirectly, for acquiring any shares or voting rights or control of a target company.

CONDITIONAL OFFER

An offer in which the acquirer has stipulated a minimum level of acceptance is known as a conditional offer.

Minimum level of acceptance implies minimum number of shares which the acquirer desires under the said conditional offer. If the number of shares validly tendered in the conditional offer, are less than the minimum level of acceptance stipulated by the acquirer, then the acquirer is not bound to accept any shares under the offer. In a conditional offer, if the minimum level of acceptance is not reached, the acquirer shall not acquire any shares in the target company under the open offer or the Share Purchase Agreement which has triggered the open offer.

MINIMUM OFFER SIZE

The minimum offer size for an open offer is as under:

Open offer when triggered	Minimum open offer size	Other conditions
Direct acquisition under Regulation 4 or Indirect acquisition under Regulation 5	26% of the emerging share capital of the Company as on the 10th working day from the closure of the tendering period	If as a result of the open offer, the post offer shareholding of the shareholders other than Acquirers and PACs / Promoters, as the case may be, falls below the minimum permissible public shareholding requirement, as specified from time to time, the Acquirers and PACs must take necessary steps to reduce their holding within one year in such manner as specified by SEBI to achieve the minimum public shareholding norms.
Voluntary under Regulation 6	10% of the total share of the company. The post offer shareholding of the Acquirer and PACs in such case shall not exceed the maximum permissible non-public shareholding.	

PUBLIC ANNOUNCEMENT

SEBI (SAST) Regulation, 2011 provides that whenever acquirer acquires the shares or voting rights of the Target Company in excess of the limits prescribed under these Regulations, Acquirer is required to give a Public Announcement of an Open Offer to the shareholder of the Target Company. During the process of making the Public Announcement of an Open Offer, the Acquirer is required to give Public Announcement and publish Detailed Public Statement. The regulations have prescribed separate timelines for Public Announcement as well as for Detailed Public Statement.

I. Public Announcement

II. Detailed Public Statement

Timing of Pubic Announcement

The Public Announcement shall be sent to all the stock exchanges on which the shares of the target company are listed. Further, a copy of the same shall also be sent to the SEBI and to the target company at its registered office within one working day of the date of the public announcement. The time within which the Public Announcement is required to be made to the Stock Exchanges under different circumstances is tabulated below:

Regulation	Particulars of Compliances	Time frame within which it shall be complied
PUBLIC ANNOUNCEMENT		
13(1)	Agreement to acquire shares or voting rights or control over the Target Company.	On the same day of entering into agreement to acquire share, voting rights or control over the Target Company.

13(2)(a)	Market Purchase of shares.	Prior to the placement of purchase order with the stock broker to acquire the shares.
13(2)(b)	Acquisition pursuant to conversion of Convertible Securities without a fixed date of conversion or upon conversion of depository receipts for the underlying shares of the target company.	On the same day when the option to convert such securities into shares of the target company is exercised.
13(2)(c)	Acquiring shares or voting rights or control pursuant to conversion of Convertible Securities with a fixed date of conversion.	On the second working day preceding the scheduled date of conversion of such securities into shares of the target company.
13(2)(d)	In case of disinvestment.	On the date of execution of agreement for acquisition of shares or voting rights or control over the target company.
13(2)(e)	In case of Indirect Acquisition of shares or voting rights in, or control over the target company where none of the parameters mentioned in Regulation 5(2) are met.	At any time within four working days of the following dates, whichever is earlier: a. When the primary acquisition is contracted; and b. Date on which the intention or decision to make the primary acquisition is announced in the public domain.
13(2)(f)	In case of Indirect Acquisition of shares or voting rights in, or control over the target company where the parameters mentioned in Regulation 5(2) are met.	On the following dates, whichever is earlier: a. When the primary acquisition is contracted; and b. Date on which the intention or decision to make the primary acquisition is announced in the public domain.
13(2)(g)	Acquisition of shares, voting rights or control over the Target Company pursuant to an Preferential Issue.	On the date when the board of directors of the target company authorizes such preferential issue.
13(2)(h)	An increase in voting rights consequential to a buy-back not qualifying for exemption under Regulation 10.	Not later than the 90 th day from the date of closure of the buy-back offer by the target company.
13(2)(i)	Acquisition of shares, voting rights or control over the Target Company where the specific date on which title to such shares, voting rights or control is acquired is beyond the control of the acquirer.	Not later than two working days from the date of receipt of such intimation of having acquired such title.

13(2A)	Pursuant to regulation 3 and regulation 4 for a proposed acquisition of shares or voting rights in or control over the target company through a combination of,— (i) an agreement and any one or more modes of acquisition referred to in sub-regulation (2) of regulation 13, or (ii) any one or more modes of acquisition referred in clause (a) to (i) of sub-regulation (2) of regulation 13.	On the date of first such acquisition. (Provided the acquirer discloses in the public announcement the details of the proposed subsequent acquisition.)
13(3)	Voluntary Offer.	On the same day when the Acquirer decides to make Voluntary Offer.

Timing of Detailed Public Statement

In terms of Regulation 13(4) of SEBI (SAST) Regulations, 2011, a Detailed Public Statement shall be published by the acquirer through the Manager to the Open Offer, not later than 5 working days of the Public Announcement.

However, in case of Indirect Acquisition where none of condition specified in Regulation 5(2) are satisfied, the Detailed Public Statement shall be published not later than five working days of the completion of the primary acquisition of shares or voting rights in or control over the company or entity holding shares or voting rights in, or control over the target company.

Publication of Public Announcement and Detailed Public Statement

Regulation 14 of SEBI (SAST) Regulation, 2011 provides the requirements relating to publication of Public Announcement and Detailed Public Statement which are tabulated below :

Regulation	Particulars of Compliances	Time frame within which it shall be complied
14(1)	Public Announcement shall be sent to all the stock exchanges and same information disseminate to public.	On the same day.
14(2)	Copy of Public Announcement shall also be sent to the SEBI and target company at its Registered Office	Within one working day of the date of the public announcement.
14(3)	Detailed Public Statement pursuant to the public announcement shall be published in all Editions of any one of English Newspaper, any one Hindi Newspaper and any one regional language newspaper, where the registered office of the target company is situated and any one regional language newspaper at place of stock exchange where highest volume of trading in shares of the target company are recorded during the sixty trading days preceding the date of the public announcement.	Within 5 working days from the date of Public Announcement.

14(4)	<p>Within the publication of such detailed public statement in the newspapers, a copy of the same shall be sent to -</p> <ul style="list-style-type: none"> a) SEBI through the manager to the open offer ; b) All the stock exchanges on which the shares of the target company are listed and the stock exchanges shall forthwith disseminate such information to the public; c) the target company at its registered office and the target company shall forthwith circulate it to the members of its board. 	Immediately.
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After the publication of Detailed Public Statement, the acquirer is further required to file with SEBI a Draft of Letter of Offer within five working days from the date of Detailed Public Statement containing such information as may be specified along with non-refundable fees as prescribed by way of banker's cheque or demand draft payable in Mumbai in favour of the SEBI.

OFFER PRICE

Offer price is the price at which the acquirer announces to acquire shares from the public shareholders under the open offer.

- (1) The offer price shall not be less than the price as calculated under regulation 8 of the SAST Regulations, 2011 for frequently or infrequently traded shares.
- (2) In the case of **direct acquisition** of shares or voting rights in, or control over the target company, and **indirect acquisition** of shares or voting rights in, or control over the target company where the parameters referred to in **sub-regulation (2) of regulation 5 are met**, the offer price shall be the highest of,—
 - (a) the highest negotiated price per share of the target company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer;
 - (b) the volume-weighted average price paid or payable for acquisitions, whether by the acquirer or by any person acting in concert with him, during the fifty-two weeks immediately preceding the date of the public announcement;
 - (c) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the twenty-six weeks immediately preceding the date of the public announcement;
 - (d) the volume-weighted average market price of such shares for a period of sixty trading days immediately preceding the date of the public announcement as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded;
 - (e) where the shares are not **frequently traded**, the price determined by the acquirer and the manager to the open offer taking into account valuation parameters including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies; and

- (f) the per share value computed under sub-regulation (5), if applicable.
- (3) In the case of an **indirect acquisition** of shares or voting rights in, or control over the target company, where the parameter referred to in **sub-regulation (2) of regulation 5 are not met**, the offer price shall be the highest of, –
 - (a) the highest negotiated price per share, if any, of the target company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer;
 - (b) the volume-weighted average price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the fifty-two weeks immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;
 - (c) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the twenty-six weeks immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;
 - (d) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, between the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, and the date of the public announcement of the open offer for shares of the target company made under these regulations;
 - (e) the volume-weighted average market price of the shares for a period of sixty trading days immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded; and
 - (f) the per share value computed under sub-regulation (5).
- (4) In the event the offer price is incapable of being determined under any of the parameters specified in sub-regulation (3), without prejudice to the requirements of sub-regulation (5), the offer price shall be the fair price of shares of the target company to be determined by the acquirer and the manager to the open offer taking into account valuation parameters including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies.
- (5) In the case of an indirect acquisition and open offers under sub-regulation (2) of regulation 5 where,–
 - (a) the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired;
 - (b) the proportionate sales turnover of the target company as a percentage of the consolidated sales turnover of the entity or business being acquired; or
 - (c) the proportionate market capitalization of the target company as a percentage of the enterprise value for the entity or business being acquired;

is in excess of fifteen per cent, on the basis of the most recent audited annual financial statements, the acquirer shall, notwithstanding anything contained in sub-regulation (2) or sub-regulation (3), be required to compute and disclose, in the letter of offer, the per share value of the target company taken into account for the acquisition, along with a detailed description of the methodology adopted for such computation.

Explanation. – For the purposes of computing the percentages referred to in clause (c) of this sub-regulation, the market capitalisation of the target company shall be taken into account on the basis of the volume-weighted average market price of such shares on the stock exchange for a period of sixty trading days preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period.

- (6) For the purposes of sub-regulation (2) and sub-regulation (3), where the acquirer or any person acting in concert with him has any outstanding convertible instruments convertible into shares of the target company at a specific price, the price at which such instruments are to be converted into shares, shall also be considered as a parameter under sub-regulation (2) and sub-regulation (3).
- (7) For the purposes of sub-regulation (2) and sub-regulation (3), the price paid for shares of the target company shall include any price paid or agreed to be paid for the shares or voting rights in, or control over the target company, in any form whatsoever, whether stated in the agreement for acquisition of shares or in any incidental, contemporaneous or collateral agreement, whether termed as control premium or as non-compete fees or otherwise.
- (8) Where the acquirer has acquired or agreed to acquire whether by himself or through or with persons acting in concert with him any shares or voting rights in the target company during the offer period, whether by subscription or purchase, at a price higher than the offer price, the offer price shall stand revised to the highest price paid or payable for any such acquisition.

Provided that no such acquisition shall be made after the third working day prior to the commencement of the tendering period and until the expiry of the tendering period.

- (9) The price parameters under sub-regulation (2) and sub-regulation (3) may be adjusted by the acquirer in consultation with the manager to the offer, for corporate actions such as issuances pursuant to rights issue, bonus issue, stock consolidations, stock splits, payment of dividend, de-mergers and reduction of capital, where the record date for effecting such corporate actions falls prior to three working days before the commencement of the tendering period.

Provided that no adjustment shall be made for dividend declared with a record date falling during such period except where the dividend per share is more than fifty per cent higher than the average of the dividend per share paid during the three financial years preceding the date of the public announcement.

- (10) Where the acquirer or persons acting in concert with him acquires shares of the target company during the period of twenty-six weeks after the tendering period at a price higher than the offer price under these regulations, the acquirer and persons acting in concert shall pay the difference between the highest acquisition price and the offer price, to all the shareholders whose shares were accepted in the open offer, within sixty days from the date of such acquisition:

Provided that this provision shall not be applicable to acquisitions under another open offer under these regulations or pursuant to the SEBI (Delisting of Equity Shares) Regulations, 2009, or open market purchases made in the ordinary course on the stock exchanges, not being negotiated acquisition of shares of the target company whether by way of bulk deals, block deals or in any other form.

- (11) Where the open offer is subject to a minimum level of acceptances, the acquirer may, subject to the other provisions of this regulation, indicate a lower price, which will not be less than the price determined under this regulation, for acquiring all the acceptances despite the acceptance falling short

of the indicated minimum level of acceptance, in the event the open offer does not receive the minimum acceptance.

- (12) In the case of any indirect acquisition, other than the indirect acquisition referred in sub-regulation (2) of regulation 5, the offer price shall stand enhanced by an amount equal to a sum determined at the rate of ten per cent per annum for the period between the earlier of the date on which the primary acquisition is contracted or the date on which the intention or the decision to make the primary acquisition is announced in the public domain, and the date of the detailed public statement, provided such period is more than five working days.
- (13) The offer price for partly paid up shares shall be computed as the difference between the offer price and the amount due towards calls-in-arrears including calls remaining unpaid with interest, if any, thereon.
- (14) The offer price for equity shares carrying differential voting rights shall be determined by the acquirer and the manager to the open offer with full disclosure of justification for the price so determined, being set out in the detailed public statement and the letter of offer.

Provided that such price shall not be lower than the amount determined by applying the percentage rate of premium, if any, that the offer price for the equity shares carrying full voting rights represents to the price parameter computed under clause (d) of sub-regulation 2, or as the case may be, clause (e) of sub-regulation 3, to the volume-weighted average market price of the shares carrying differential voting rights for a period of sixty trading days computed on the same terms as specified in the aforesaid provisions, subject to shares carrying full voting rights and the shares carrying differential voting rights, both being frequently traded shares.

- (15) In the event of any of the price parameters contained in this regulation not being available or denominated in Indian rupees, the conversion of such amount into Indian rupees shall be effected at the exchange rate as prevailing on the date preceding the date of public announcement and the acquirer shall set out the source of such exchange rate in the public announcement, the detailed public statement and the letter of offer.
- (16) For purposes of clause (e) of sub-regulation (2) and sub-regulation (4), the SEBI may, at the expense of the acquirer, require valuation of the shares by an independent merchant banker other than the manager to the open offer or an independent chartered accountant in practice having a minimum experience of ten years.

SUBMISSION OF DRAFT LETTER OF OFFER

The Acquirer shall submit a draft letter of offer to the SEBI within 5 working days from the date of detailed public announcement along with a non-refundable fee as applicable. **[Regulation 16(1)]**

Sr. No.	Consideration payable under the Open Offer	Fees (Rs.)
1.	Upto ten crore rupees	Five lakh rupees (Rs. 5,00,000)
2.	More than ten crore rupees but less than or equal to one thousand crore rupees	0.5 per cent of the offer size
3.	More than one thousand crore rupees	Five crore rupees (Rs. 5,00,00,000) plus 0.125 per cent of the portion of the offer size in excess of one thousand crore rupees (1000,00,00,000)

The consideration payable under the open offer shall be calculated at the offer price, assuming full acceptance of the open offer, and in the event the open offer is subject to differential pricing, shall be computed at the highest offer price, irrespective of manner of payment of the consideration.

However in the event of consideration payable under the open offer being enhanced owing to a revision to the offer price or offer size the fees payable shall stand revised accordingly, and shall be paid within five working days from the date of such revision.

Simultaneously, a copy of the draft letter of offer shall be send to the Target Company at its registered office and to all the Stock Exchanges where the shares of the Company are listed. **[Regulation 18(1)]**

DISPATCH OF LETTER OF OFFER

The Acquirer shall ensure that the letter of offer is dispatched to the shareholders whose names appear on the register of members of the Target Company as of the identified date, not later than 7 working days from the date of receipt of communication of comments from the SEBI or where no comments are offered by the SEBI, within 7 working days from the expiry of 15 working days from the date of receipt of draft letter of offer by SEBI.

Explanation

- (i) Letter of offer may also be dispatched through electronic mode in accordance with the provisions of Companies Act, 2013.
- (ii) On receipt of a request from any shareholder to receive a copy of the letter of offer in physical format, the same shall be provided.
- (iii) The aforesaid shall be disclosed in the letter of offer.

However, it is provided that where a shareholder holding less than 5% of the voting rights of the Target Company is resident outside India and local laws or regulations of such jurisdiction may expose the acquirer or the target company to material risk of civil, regulatory or criminal liabilities in the event, then the letter of offer in its final form were to be sent without material amendments or modifications into such jurisdiction, then the acquirer may refrain from dispatch of the letter of offer into such jurisdiction. **[Regulation 18(2)]**

OPENING OF THE OFFER

The tendering period shall start not later than 12 working days from date of receipt of comments from SEBI and shall remain open for 10 working days. **[Regulation 18(8)]**

COMPLETION OF REQUIREMENTS

Within 10 working days from the last date of the tendering period, the acquirer shall complete all requirements as prescribed under these regulations and other applicable law relating to the Open Offer including payment of consideration to the shareholders who have accepted the open offer. **[Regulation 18(10)]**

RESTRICTION ON ACQUISITION

If the acquirer or persons acting in concert (PAC) with him acquires shares of the target company during the period of 26 weeks after the tendering period at a price higher than the offer price, then the acquirer and PAC shall pay the difference between the highest acquisition price and the offer price, to all the shareholders whose shares were accepted in the open offer, within 60 days from the date of such acquisition. However, such provisions shall not be applicable if the acquisition is made through another open offer under these regulations or pursuant to the SEBI (Delisting of Equity Shares) Regulations, 2009 or open market purchase in the ordinary course on the stock exchange not being negotiated acquisition of shares of the target company whether by way of bulk deals, block deals or in any other form. **[Regulation 8(10)]**

PROVISION OF ESCROW

Not later than two working days prior to the date of the detailed public statement of the open offer for acquiring shares, the acquirer shall create an escrow account towards security for performance of his obligations under these regulations, and deposit in escrow account such aggregate amount as per the following scale:

S. No.	Consideration payable under the Open Offer	Escrow Amount
(a)	On the first five hundred crore rupees	An amount equal to twenty-five per cent of the consideration
(b)	On the balance consideration	An additional amount equal to ten per cent of the balance consideration

However, where an open offer is made conditional upon minimum level of acceptance, hundred percent of the consideration payable in respect of minimum level of acceptance or fifty per cent of the consideration payable under the open offer, whichever is higher, shall be deposited in cash in the escrow account.

The escrow account may be in the form of, –

- (a) cash deposited with any scheduled commercial bank;
- (b) bank guarantee issued in favour of the manager to the open offer by any scheduled commercial bank; or
- (c) deposit of frequently traded and freely transferable equity shares or other freely transferable securities with appropriate margin.

Explanation : The cash component of the escrow account as referred to in clause (a) above may be maintained in an interest bearing account, subject to the merchant banker ensuring that the funds are available at the time of making payment to the shareholders.

In the event of the escrow account being created by way of a bank guarantee or by deposit of securities, the acquirer shall also ensure that at least one per cent of the total consideration payable is deposited in cash with a scheduled commercial bank as a part of the escrow account.

For such part of the escrow account as is in the form of a cash deposit with a scheduled commercial bank, the acquirer shall while opening the account, empower the manager to the open offer to instruct the bank to issue a banker's cheque or demand draft or to make payment of the amounts lying to the credit of the escrow account, in accordance with requirements under these regulations.

For such part of the escrow account as is in the form of a bank guarantee, such bank guarantee shall be in favour of the manager to the open offer and shall be kept valid throughout the offer period and for an additional period of thirty days after completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer.

For such part of the escrow account as is in the form of securities, the acquirer shall empower the manager to the open offer to realise the value of such escrow account by sale or otherwise, and in the event there is any shortfall in the amount required to be maintained in the escrow account, the manager to the open offer shall be liable to make good such shortfall.

The manager to the open offer shall not release the escrow account until the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, save and except for transfer of funds to the special escrow account as required under regulation 21.

MODE OF PAYMENT

The offer price may be paid, –

- (a) in cash;
- (b) by issue, exchange or transfer of listed shares in the equity share capital of the acquirer or of any person acting in concert;
- (c) by issue, exchange or transfer of listed secured debt instruments issued by the acquirer or any person acting in concert with a rating not inferior to investment grade as rated by a credit rating agency registered with the SEBI;
- (d) by issue, exchange or transfer of convertible debt securities entitling the holder thereof to acquire listed shares in the equity share capital of the acquirer or of any person acting in concert; or
- (e) a combination of the mode of payment of consideration stated in clause (a), clause (b), clause (c) and clause (d).

However, where any shares have been acquired or agreed to be acquired by the acquirer and persons acting in concert with him during the fifty-two weeks immediately preceding the date of public announcement constitute more than ten per cent of the voting rights in the target company and has been paid for in cash, the open offer shall entail an option to the shareholders to require payment of the offer price in cash, and a shareholder who has not exercised an option in his acceptance shall be deemed to have opted for receiving the offer price in cash.

In case of revision in offer price the mode of payment of consideration may be altered subject to the condition that the component of the offer price to be paid in cash prior to such revision is not reduced.

WITHDRAWAL OF OPEN OFFER

1. An open offer for acquiring shares once made shall not be withdrawn except under any of the following circumstances, –

- (a) statutory approvals required for the open offer or for effecting the acquisitions attracting the obligation to make an open offer under these regulations having been finally refused, subject to such requirements for approval having been specifically disclosed in the detailed public statement and the letter of offer;
- (b) the acquirer, being a natural person, has died;
- (c) any condition stipulated in the agreement for acquisition attracting the obligation to make the open offer is not met for reasons outside the reasonable control of the acquirer, then it should be disclosed in the detailed public statement and the letter of offer; or

However, an acquirer shall not withdraw an open offer pursuant to a public announcement made under clause (g) of sub-regulation (2) of regulation 13, even if the proposed acquisition through the preferential issue is not successful.

- (d) such circumstances as in the opinion of the SEBI, merit withdrawal.

SEBI shall pass a reasoned order permitting withdrawal and such order shall be listed by SEBI on its official website.

2. In the event of withdrawal of the open offer, the acquirer shall through the manager to the open offer, within two working days, –

- (a) make an announcement in the same newspapers in which the public announcement of the open offer was published, providing the grounds and reasons for withdrawal of the open offer; and
- (b) simultaneously with the announcement, inform in writing to,—
 - (i) SEBI;

- (ii) all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public; and
- (iii) the target company at its registered office. **[Regulation 23]**

OBLIGATIONS OF THE TARGET COMPANY

- (1) Upon a public announcement of an open offer for acquiring shares of a target company being made, the board of directors of such target company shall ensure that during the offer period, the business of the target company is conducted in the ordinary course consistent with past practice.
- (2) During the offer period, unless the approval of shareholders of the target company by way of a special resolution by postal ballot is obtained, the board of directors of either the target company or any of its subsidiaries shall not, –
 - (a) alienate any material assets whether by way of sale, lease, encumbrance or otherwise or enter into any agreement therefore outside the ordinary course of business;
 - (b) effect any material borrowings outside the ordinary course of business;
 - (c) issue or allot any authorised but unissued securities entitling the holder to voting rights.

However, the target company or its subsidiaries may, –

 - (i) issue or allot shares upon conversion of convertible securities issued prior to the public announcement of the open offer, in accordance with pre-determined terms of such conversion;
 - (ii) issue or allot shares pursuant to any public issue in respect of which the red herring prospectus has been filed with the Registrar of Companies prior to the public announcement of the open offer; or
 - (iii) issue or allot shares pursuant to any rights issue in respect of which the record date has been announced prior to the public announcement of the open offer;
- (d) implement any buy-back of shares or effect any other change to the capital structure of the target company;
- (e) enter into, amend or terminate any material contracts to which the target company or any of its subsidiaries is a party, outside the ordinary course of business, whether such contract is with a related party, within the meaning of the term under applicable accounting principles, or with any other person; and
- (f) accelerate any contingent vesting of a right of any person to whom the target company or any of its subsidiaries may have an obligation, whether such obligation is to acquire shares of the target company by way of employee stock options or otherwise.
- (3) In any general meeting of a subsidiary of the target company in respect of the matters referred to in sub-regulation (2), the target company and its subsidiaries, if any, shall vote in a manner consistent with the special resolution passed by the shareholders of the target company.
- (4) The target company shall be prohibited from fixing any record date for a corporate action on or after the third working day prior to the commencement of the tendering period and until the expiry of the tendering period.
- (5) The target company shall furnish to the acquirer within two working days from the identified date, a list of shareholders as per the register of members of the target company containing names, addresses, shareholding and folio number, in electronic form, wherever available, and a list of persons whose applications, if any, for registration of transfer of shares are pending with the target company:

However, the acquirer shall reimburse reasonable costs payable by the target company to external agencies in order to furnish such information.

- (6) Upon receipt of the detailed public statement, the board of directors of the target company shall constitute a committee of independent directors to provide reasoned recommendations on such open offer, and the target company shall publish such recommendations.

However, such committee shall be entitled to seek external professional advice at the expense of the target company.

- (7) The committee of independent directors shall provide its written reasoned recommendations on the open offer to the shareholders of the target company and such recommendations shall be published in such form as may be specified, at least two working days before the commencement of the tendering period, in the same newspapers where the public announcement of the open offer was published, and simultaneously, a copy of the same shall be sent to, –

(i) the SEBI;

(ii) all the stock exchanges; and

(iii) to the manager to the open offer, and where there are competing offers, to the manager to the open offer for every competing offer.

- (8) The board of directors of the target company shall facilitate the acquirer in verification of shares tendered in acceptance of the open offer.

- (9) The board of directors of the target company shall make available to all acquirers making competing offers, any information and co-operation provided to any acquirer who has made a competing offer.

- (10) Upon fulfilment by the acquirer, of the conditions required under these regulations, the board of directors of the target company shall without any delay register the transfer of shares acquired by the acquirer in physical form, whether under the agreement or from open market purchases, or pursuant to the open offer.

OBLIGATIONS OF THE ACQUIRER

- (1) Prior to making the public announcement of an open offer for acquiring shares under these regulations, the acquirer shall ensure that firm financial arrangements have been made for fulfilling the payment obligations under the open offer and that the acquirer is able to implement the open offer, subject to any statutory approvals for the open offer that may be necessary.

- (2) In the event the acquirer has not declared an intention in the detailed public statement and the letter of offer to alienate any material assets of the target company or of any of its subsidiaries whether by way of sale, lease, encumbrance or otherwise outside the ordinary course of business, the acquirer, where he has acquired control over the target company, shall be debarred from causing such alienation for a period of two years after the offer period.

However, in the event the target company or any of its subsidiaries is required to so alienate assets despite the intention to alienate not having been expressed by the acquirer, such alienation shall require a special resolution passed by shareholders of the target company, by way of a postal ballot and the notice for such postal ballot shall *inter alia* contain reasons as to why such alienation is necessary.

- (3) The acquirer shall ensure that the contents of the public announcement, the detailed public statement, the letter of offer and the post-offer advertisement are true, fair and adequate in all material aspects and not misleading in any material particular, and are based on reliable sources, and state the source wherever necessary.

- (4) The acquirer and persons acting in concert with him shall not sell shares of the target company held by them, during the offer period.
- (5) The acquirer and persons acting in concert with him shall be jointly and severally responsible for fulfilment of applicable obligations under these regulations.

DISCLOSURES

In the SEBI Takeover Regulations, 2011, the obligation to give the disclosures on the acquisition of certain limits, is only on the acquirer and not on the Target Company. Further as against the Open Offer obligations where the individual shareholding is also to be considered, the disclosure shall be of the aggregated shareholding and voting rights of the acquirer or promoter of the target company or every person acting in concert with him.

EVENT BASED DISCLOSURES

Regulation	Made by	Trigger	Time Period	Made to
Regulation 29(1)	Acquirer	Acquirer + persons acting in concert (PAC) acquiring 5% or more of the shares of the target company shall disclose to their aggregate shareholding and voting rights in such target company.	Within two working days of the receipt of intimation of allotment of shares, or the acquisition or the disposal of shares or voting rights in the target company.	Every Stock Exchange where the shares of the target company are listed and the target company at its registered office.
Regulation 29(2)	Acquirer	Any person + persons acting in concert (PAC), holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five percent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company.	Within two working days of the receipt of intimation of allotment of shares or the acquisition or the disposal of shares or voting rights in the target company.	Every Stock Exchange where the shares of the target company are listed and the target company at its registered office.

Note :

- Shares taken by way of encumbrance shall be treated as an “acquisition”.
- Share given upon release of encumbrance shall be treated as a “disposal”
- The requirement as listed above shall not apply to a Scheduled Commercial bank or public financial institution or a housing finance company or a systematically important non-banking financial company as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of

business.

CONTINUAL DISCLOSURES

Regulation	Trigger	Time Period	Made to
Regulation 30(1)	Every Person + PAC holding more than 25% shares or voting rights in a target company to disclose their aggregate shareholding and voting rights	Within 7 working days from the financial year ending 31st March every year.	Every Stock Exchange where the shares of the target company are listed and the target company at its registered office.
Regulation 30(2)	Promoter +PAC disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company.	Within 7 working days from the financial year ending 31st March every year.	Every stock exchange where the shares of the target company are listed and the target company at its registered office.

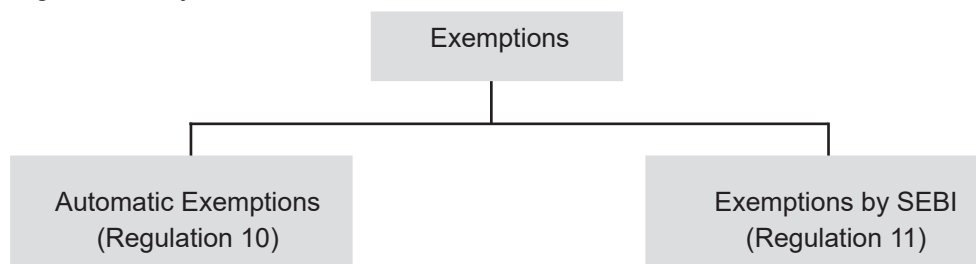
DISCLOSURES OF ENCUMBERED SHARES

Regulation	Made	Trigger	Time Period	Made to
Regulation 31(1)	Promoter	Promoter + PAC creating encumbrance on the shares of the target company.	Within 7 working days from the creation or invocation or release of encumbrance as the case may be.	Every Stock exchange where the shares are listed and target company at its registered office.
Regulation 31(2)	Promoter	Invocation of such encumbrance or release of such encumbrances of the shares of the target company.	Within 7 working days from the creation or invocation or release of encumbrance as the case may be.	Every Stock exchange where the shares are listed and target company at its registered office.

The promoter of every target company shall declare on a yearly basis that he, along with persons acting in concert, has not made any encumbrance, directly or indirectly, other than those already disclosed during the financial year.

EXEMPTIONS

While the fundamental objective of the SEBI Takeover Regulations is investor protection, the SEBI Takeover Regulations like the 1997. Regulations also provides for certain exemptions from the open offer obligation without deviating from its objective.



Regulation 10 - Automatic Exemptions

Regulation 10 of the SEBI Takeover Regulations, 2011 provides for automatic exemptions from the applicability of making Open Offer to the shareholders of the Target Company in respect of certain acquisitions subject to the compliance of certain conditions specified therein.

Further, Regulation 11 of SEBI Takeover Regulations, 2011 provides the provisions whereby the acquirer can apply to SEBI for availing the exemption from the Open Offer obligations and the Target Company can apply for relaxation from strict compliance with any procedural requirement relating to Open Offer as provided under Chapter III and IV of these regulations.

Some of the important exemptions provided therein regulation 10 along with their conditions for exemption is detailed below.

The following acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfillment of the conditions stipulated therefor :

- (1) (a) acquisition pursuant to inter se transfer of shares amongst qualifying persons, being, –
 - (i) immediate relatives;
 - (ii) persons named as promoters in the shareholding pattern filed by the target company in terms of the listing regulations or as the case may be, the listing agreement or these regulations for not less than three years prior to the proposed acquisition;
 - (iii) a company, its subsidiaries, its holding company, other subsidiaries of such – holding company, persons holding not less than fifty per cent of the equity shares of such company, other companies in which such persons hold not less than fifty per cent of the equity shares, and their subsidiaries subject to control over such qualifying persons being exclusively held by the same persons;
 - (iv) persons acting in concert for not less than three years prior to the proposed acquisition, and disclosed as such pursuant to filings under the listing regulations or as the case may be, the listing agreement;
 - (v) shareholders of a target company who have been persons acting in concert for a period of not less than three years prior to the proposed acquisition and are disclosed as such pursuant to filings under the listing regulations or as the case may be, the listing agreement, and any company in which the entire equity share capital is owned by such shareholders in the same proportion as their holdings in the target company without any differential entitlement to exercise voting rights in such company:

However, for purposes of availing of the exemption under this clause, –

- (i) If the shares of the target company are frequently traded, the acquisition price per share shall not be higher by more than twenty-five per cent of the volume-weighted average market price for a period of sixty trading days preceding the date of issuance of notice for the proposed inter se transfer, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, and if the shares of the target company are infrequently traded, the acquisition price shall not be higher by more than twenty-five percent of the price determined; and
- (ii) the transferor and the transferee shall have complied with applicable disclosure requirements set out in these regulations.

- (b) acquisition in the ordinary course of business by, –

- (i) an underwriter registered with the SEBI by way of allotment pursuant to an underwriting agreement in terms of the SEBI (ICDR) Regulations, 2018;
 - (ii) a stock broker registered with SEBI on behalf of his client in exercise of lien over the shares purchased on behalf of the client under the bye-laws of the stock exchange where such stock broker is a member;
 - (iii) a merchant banker registered with SEBI or a nominated investor in the process of market making or subscription to the unsubscribed portion of issue in terms of the SEBI (ICDR) Regulations, 2018;
 - (iv) any person acquiring shares pursuant to a scheme of safety net in terms of the then existing SEBI (ICDR) Regulations, 2009;
 - (v) a merchant banker registered with SEBI acting as a stabilising agent or by the promoter or pre-issue shareholder in terms of the SEBI (ICDR) Regulations, 2018;
 - (vi) by a registered market-maker of a stock exchange in respect of shares for which he is the market maker during the course of market making;
 - (vii) a Scheduled Commercial Bank, acting as an escrow agent; and
 - (viii) invocation of pledge by Scheduled Commercial Banks or Public Financial Institutions as a pledgee.
- (c) acquisitions at subsequent stages, by an acquirer who has made a public announcement of an open offer for acquiring shares pursuant to an agreement of disinvestment, as contemplated in such agreement:
- However, (i) both the acquirer and the seller are the same at all the stages of acquisition; and (ii) full disclosures of all the subsequent stages of acquisition, if any, have been made in the public announcement of the open offer and in the letter of offer.
- (d) acquisition pursuant to a scheme, –
- (i) made under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 or any statutory modification or re-enactment thereto;
 - (ii) of arrangement involving the target company as a transferor company or as a transferee company, or reconstruction of the target company, including amalgamation, merger or demerger, pursuant to an order of a court or a tribunal or a competent authority under any law or regulation, Indian or foreign; or
 - (iii) of arrangement not directly involving the target company as a transferor company or as a transferee company, or reconstruction not involving the target company's undertaking, including amalgamation, merger or demerger, pursuant to an order of a court or a tribunal under any law or regulation, Indian or foreign, subject to, –
 - A. the component of cash and cash equivalents in the consideration paid being less than twenty-five per cent of the consideration paid under the scheme; and
 - B. where after implementation of the scheme of arrangement, persons directly or indirectly holding at least thirty-three per cent of the voting rights in the combined entity are the same as the persons who held the entire voting rights before the implementation of the scheme.
- (da) acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016.

- (e) acquisition pursuant to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (f) acquisition pursuant to the provisions of SEBI (Delisting of Equity Shares) Regulations, 2009;
- (g) acquisition by way of transmission, succession or inheritance;
- (h) acquisition of voting rights or preference shares carrying voting rights arising out of the operation of sub-section (2) of section 47 of the Companies Act, 2013;
- (i) acquisition of shares by the lenders pursuant to conversion of their debt as part of a debt restructuring implemented in accordance with the guidelines specified by RBI;

However, the conditions specified under sub-regulation (6) of regulation 158 of the SEBI (ICDR) Regulations, 2018 are complied with;

- (j) increase in voting rights arising out of the operation of sub-section (1) of section 106 of the Companies Act, 2013 or pursuant to a forfeiture of shares by the target company, undertaken in compliance with the provisions of the Companies Act, 2013 and its articles of association.

(2A) An increase in the voting rights of any shareholder beyond the threshold limits stipulated in sub-regulations (1) and (2) of regulation 3, without the acquisition of control, pursuant to the conversion of equity shares with superior voting rights into ordinary equity shares, shall be exempted from the obligation to make an open offer under regulation 3.

(3) An increase in voting rights in a target company of any shareholder beyond the limit attracting an obligation to make an open offer under sub-regulation (1) of regulation 3, pursuant to buy-back of shares by the target company shall be exempt from the obligation to make an open offer provided such shareholder reduces his shareholding such that his voting rights fall to below the threshold referred to in regulation 3(1) within ninety days from the date of the closure of the said buy back offer.

(4) The following acquisitions shall be exempt from the obligation to make an open offer –

- (a) acquisition of shares by any shareholder of a target company, upto his entitlement, pursuant to a rights issue;
- (b) acquisition of shares by any shareholder of a target company, beyond his entitlement, pursuant to a rights issue, subject to fulfilment of the following conditions, –
 - (i) the acquirer has not renounced any of his entitlements in such rights issue; and
 - (ii) the price at which the rights issue is made is not higher than the ex-rights price of the shares of the target company, being the sum of, –
 - (A) the volume weighted average market price of the shares of the target company during a period of sixty ending on the day prior to the date of determination of the rights issue price, multiplied by the number of shares outstanding prior to the rights issue, divided by the total number of shares outstanding after allotment under the rights issue. However, such volume weighted average market price shall be determined on the basis of trading on the stock exchange where the maximum volume of trading in the shares of such target company is recorded during such period; and
 - (B) the price at which the shares are offered in the rights issue, multiplied by the number of shares so offered in the rights issue divided by the total number of shares outstanding after allotment under the rights issue.

- (c) increase in voting rights in a target company of any shareholder pursuant to buy-back of shares. However:
- (i) such shareholder has not voted in favour of the resolution authorising the buy-back of securities under section 68 of the Companies Act, 2013;
 - (ii) in the case of a shareholder resolution, voting is by way of postal ballot;
 - (iii) where a resolution of shareholders is not required for the buy-back, such shareholder, in his capacity as a director, or any other interested director has not voted in favour of the resolution of the board of directors of the target company authorising the buy-back of securities under section 68 of the Companies Act, 2013; and
 - (iv) the increase in voting rights does not result in an acquisition of control by such shareholder over the target company. However, where the aforesaid conditions are not met, in the event such shareholder reduces his shareholding such that his voting rights fall below the level at which the obligation to make an open offer would be attracted under sub-regulation (2) of regulation 3, within ninety days from the date of closure of the buy-back offer by the target company, the shareholder shall be exempt from the obligation to make an open offer;
- (d) acquisition of shares in a target company by any person in exchange for shares of another target company tendered pursuant to an open offer for acquiring shares under these regulations;
- (e) acquisition of shares in a target company from state-level financial institutions or their subsidiaries or companies promoted by them, by promoters of the target company pursuant to an agreement between such transferors and such promoter;
- (f) acquisition of shares in a target company from a venture capital fund or Category I Alternative Investment Fund or a foreign venture capital investor registered with the SEBI, by promoters of the target company pursuant to an agreement between such venture capital fund or category I Alternative Investment Fund or foreign venture capital investor and such promoters.

(5) In respect of acquisitions under clause (a) of sub-regulation (1), and clauses (e) and (f) of sub-regulation (4), the acquirer shall intimate the stock exchanges where the shares of the target company are listed, the details of the proposed acquisition in such form as may be specified, at least four working days prior to the proposed acquisition, and the stock exchange shall forthwith disseminate such information to the public.

(6) In respect of any acquisition made pursuant to exemption provided for in this regulation, the acquirer shall file a report with the stock exchanges where the shares of the target company are listed, in such form as may be specified not later than four working days from the acquisition, and the stock exchange shall forthwith disseminate such information to the public.

(7) In respect of any acquisition of or increase in voting rights pursuant to exemption provided for in clause (a) of sub-regulation (1), sub-clause (iii) of clause (d) of sub-regulation (1), clause (h) of sub-regulation (1), sub-regulation (2), sub-regulation (3) and clause (c) of sub-regulation (4), clauses (a), (b) and (f) of sub-regulation (4), the acquirer shall, within twenty-one working days of the date of acquisition, submit a report in such form as may be specified along with supporting documents to SEBI giving all details in respect of acquisitions, along with a non-refundable fee of rupees one lakh fifty thousand 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 in Mumbai in favour of SEBI.

Explanation : For the purpose of sub-regulation (5), (6) & (7), in case the convertible securities the date of the acquisition shall be the date of conversion of such securities.

Regulation 11 – Exemption by SEBI

Regulation 11 provides that on an application being made by the acquirer in writing giving the details of the proposed acquisition and grounds on which the exemption is sought along with duly sworn affidavit, SEBI may grant exemption to the acquirer from the Open Offer obligations subject to the compliance with such conditions as it deems fits. For instance, in case where the exemptions is sought from the Open Offer obligations which has been triggered pursuant to the issue of shares by way preferential allotment, SEBI may require that the approval of shareholders should be obtained by way of postal ballot. Further, along with the application, the acquirer is also required to pay a non-refundable fee of Rs.5,00,000, by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by or by way of banker's cheque or demand draft in payable in favour of Mumbai.

However, it is to be noted that the Acquirer is not exempted from making other compliances related to the disclosure requirements as provided under regulation 29, 30 and 31 of the SEBI Takeover Regulations, 2011.

COMPLIANCES UNDER SAST

Regulation	Particulars of Compliances	Time frame within which it shall be complied
PUBLIC ANNOUNCEMENT		
13(1)	Agreement to acquire shares or voting rights or control over the Target Company.	On the same day of entering into agreement to acquire share, voting rights or control over the Target Company.
13(2)(a)	Market Purchase of shares.	Prior to the placement of purchase order with the stock broker to acquire the shares.
13(2)(b)	Acquisition pursuant to conversion of Convertible Securities without a fixed date of conversion or upon conversion of depository receipts for the underlying shares of the target company.	On the same day when the option to convert such securities into shares of the target company is exercised.
13(2)(c)	Acquiring shares or voting rights or control pursuant to conversion of Convertible Securities with a fixed date of conversion.	On the second working day preceding the scheduled date of conversion of such securities into shares of the target company.
13(2)(d)	In case of disinvestment.	On the date of execution of agreement for acquisition of shares or voting rights or control over the target company.
13(2)(e)	In case of Indirect Acquisition of shares or voting rights in, or control over the target company where none of the parameters mentioned in Regulation 5(2) are met.	At any time within four working days of the following dates, whichever is earlier: a. When the primary acquisition is contracted; and b. Date on which the intention or decision to make the primary acquisition is announced in the public domain.

13(2)(f)	In case of Indirect Acquisition of shares or voting rights in, or control over the target company where the parameters mentioned in Regulation 5(2) are met.	On the following dates, whichever is earlier: a. When the primary acquisition is contracted; and b. Date on which the intention or decision to make the primary acquisition is announced in the public domain.
13(2)(g)	Acquisition of shares, voting rights or control over the Target Company pursuant to an Preferential Issue.	On the date when the board of directors of the target company authorizes such preferential issue.
13(2)(h)	An increase in voting rights consequential to a buy-back not qualifying for exemption under Regulation 10.	Not later than the 90 th day from the date of closure of the buy-back offer by the target company.
13(2)(i)	Acquisition of shares, voting rights or control over the Target Company where the specific date on which title to such shares, voting rights or control is acquired is beyond the control of the acquirer.	Not later than two working days from the date of receipt of such intimation of having acquired such title.
13(2A)	Pursuant to regulation 3 and regulation 4 for a proposed acquisition of shares or voting rights in or control over the target company through a combination of,— (i) an agreement and any one or more modes of acquisition referred to in sub-regulation (2) of regulation 13, or (ii) any one or more modes of acquisition referred in clause (a) to (i) of sub-regulation (2) of regulation 13.	On the date of first such acquisition. (Provided the acquirer discloses in the public announcement the details of the proposed subsequent acquisition.)
13(3)	Voluntary Offer.	On the same day when the Acquirer decides to make Voluntary Offer.
14(1)	Public Announcement shall be sent to all the stock exchanges and same information disseminate to public.	On the same day.
14(2)	Copy of the Public Announcement shall also be sent to the SEBI and target company at its Registered Office	Within one working day of the date of the public announcement.
14(3)	Detailed Public Statement pursuant to the public announcement shall be published in all Editions of any one of English Newspaper, any one Hindi Newspaper and any one regional language newspaper, where the registered office of the target company is situated and any one regional language newspaper at place of stock exchange where highest volume of trading in shares of the target company are recorded during the sixty trading days preceding the date of the public announcement.	Within 5 working days from the date of Public Announcement.

14(4)	Simultaneously with the publication of such detailed public statement in the newspapers, a copy of the same shall be sent to - a) SEBI through the manager to the open offer; b) All the stock exchanges on which the shares of the target company are listed and the stock exchanges shall forthwith disseminate such information to the public; c) the target company at its registered office and the target company shall forthwith circulate it to the members of its board.	Immediately.
16	Submission of Letter of Offer to the SEBI with non-refundable fees.	Within 5 working days from the date of detailed public announcement.
17	Opening of Escrow Account	Not later than two working days prior to the date of the detailed public statement of the open offer for acquiring shares.
18(1)	The acquirer shall send a copy of the draft letter of offer to the target company at its registered office address and to all stock exchanges where the shares of the target company are listed.	Immediately.
18(2)	The letter of offer shall be dispatched to the shareholders whose names appear on the register of members of the target company as of the identified date.	Not later than seven working days from the receipt of comments from the SEBI or where no comments are offered by the SEBI, within seven working days from the expiry of the period stipulated in regulation 16(4). <i>Explanation</i> (i) Letter of offer may also be dispatched through electronic mode in accordance with the provisions of Companies Act, 2013. (ii) On receipt of a request from any shareholder to receive a copy of the letter of offer in physical format, the same shall be provided. (iii) The aforesaid shall be disclosed in the letter of offer.
18(3)	The acquirer shall send the letter of offer to the custodian of shares underlying depository receipts, if any, of the target company.	Immediately.
18(8)	Opening of the offer.	Not later than 12 working days from date of receipt of comments from SEBI and shall remain open for 10 working days

18(10)	Completion of requirements relating to the Open Offer tendering period	Within 10 working days from the last date of the tendering period
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LESSON ROUND UP

- The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, aims at protecting interest of the investors in securities of a listed company providing amongst others, an opportunity for the public shareholders to exit where there is a substantial acquisition of shares or voting rights or control over a listed company, consolidation of holdings by existing shareholders and related disclosures and penalties for non-compliance etc.
- The Takeover Regulations, 1997 stand repealed from October 22, 2011, i.e. the date on which SAST Regulations, 2011 came into force.
- The SEBI Takeover Regulations, 2011 provides certain trigger events wherein the Acquirer is required to give Open Offer to the shareholders of the Target Company to provide them exit opportunity.
- Regulation 6 of the Takeover Regulations provides the threshold and conditions for making the Voluntary Open Offer.
- An offer in which the acquirer has stipulated a minimum level of acceptance is known as a conditional offer.
- Regulation 10 & 11 provides for automatic exemptions and exemptions by SEBI.
- The public announcement shall be sent to all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public.
- In SEBI Takeover Regulations, 2011, the obligation to give the disclosures on the acquisition of certain limits is only on the acquirer and not on the Target Company.

GLOSSARY

Competitive Bid	An offer made by a person other than the acquirer who has made the first public announcement.
Control of management	The right to appoint directly or indirectly or by virtue of agreements or in any other manner majority of directors on the Board of the target company or to control management or policy decisions affecting the target company.
Corporate restructuring	Involves making radical changes in the composition of the businesses in the company's portfolio.
Disinvestment	Disinvestment means the direct or indirect sale by the Central Government or any State Government or by a government company, as the case may be, of shares or voting rights in, or control over, a target company, which is a public sector undertaking;
Encumbrance	It shall include a pledge, lien or any such transaction, by whatever name called.
Public Announcement	A public announcement is an announcement made in the newspapers by the acquirer primarily disclosing his intention to acquire shares of the target company from existing shareholders by means of an open offer.
Takeover	Takeover is a corporate device whereby one company acquires control over another company, usually by purchasing all or majority of its shares.

**Weighted
average number
of total shares**

Weighted average number of total shares means the number of shares at the beginning of a period, adjusted for shares cancelled, bought back or issued during the aforesaid period, multiplied by a time-weighting factor.

SELF TEST QUESTIONS

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. What do you mean by Persons Acting in Concert under the SEBI (SAST) Regulations, 2011?
2. What are the conditions for making Voluntary open offer?
3. What are the provisions relating to Public announcement under the Takeover regulations?
4. Discuss about the continuous disclosure required to be made under these regulations.
5. Briefly explain the conditions on which SEBI can grant exemption to an acquirer.
6. What do you mean by creeping acquisition?
7. Briefly explain the provisions relating to Escrow Account.

[illegible]

Lesson 7

SEBI (Buy-Back of Securities) Regulations 2018

LESSON OUTLINE

- Introduction
- Objectives of Buy-back
- Applicability
- Important Definitions
- Conditions for Buyback of Shares or Other Securities
- Methods of buyback
- Sources for buyback
- Prohibitions for buyback
- Authorisation for buyback
- Explanatory Statement
- Additional Disclosures
- Buy-Back from the Existing Shareholders Or Securities Holders through Tender Offer
- Buy-back from the Open Market
- Obligations for all buy-back of shares or other specified securities
- Buyback vis-a-vis compliance under SEBI (SAST) Regulations, 2011
- LESSON ROUND UP
- GLOSSARY
- SELF TEST PAPER

LEARNING OBJECTIVES

There are generally two ways a company can return cash to its shareholders – declaration of dividend or through buyback of shares. A buyback represents a more flexible way of returning surplus cash to its shareholders as it is governed by a process laid down by law, it is carried out through the stock exchange mechanism and is more tax efficient as it does not involve the company to make payment of dividend distribution tax and it has the benefits of long term capital gains. Under the Companies Act, 2013 buyback is governed by sections 68, 69 and 70 and listed companies are governed by the SEBI (Buy-Back of Securities) Regulations, 2018.

Being a Company Secretary of a company it is very important to know about the various procedural requirements of Buy-back by a Company. Because a Company Secretary can only then be able to make the directors understand the real effects of buy back when deciding to return cash to shareholders or to pursue other investment options. A buyback's impact on share price comes from changes in a company's capital structure and, more critically, from the signals a buyback sends. Investors are generally relieved to learn that companies don't intend to do something wasteful such as make an unwise acquisition or a poor capital expenditure with the excess cash.

So this lesson will give an insight into various methods of buy back available, prohibitions, objectives and process of buy back etc.

INTRODUCTION

The corporates adopts various tools, viz., mergers, amalgamations and takeovers for restructuring the business. All these activities, in turn, impacts the functioning of the capital market, more particularly the movement of share prices. As the shares of companies are held by different segments of society, viz., entrepreneurs, institutional investors and individual shareholders including small investors, it is reasonable that there should be equality of treatment and opportunities to all shareholders, transparency, proper disclosure and above all protection of interests of small and minority shareholders.

Similarly, buy-back of securities is a corporate financial strategy which involves repurchase of its outstanding shares by a company. Companies generally buyback shares in order to reorganise its capital structure, return cash to shareholders and enhance overall shareholders' value. Buyback leads to reduction in outstanding number of equity shares, which may lead to improvement in earnings per equity share and enhance return on net worth and create long term value for continuing shareholders.

In India, while buy-back of securities is not permitted as a treasury option under which the securities may be reissued later, a company can resort to buy-back to reduce the number of shares issued and return surplus cash to the shareholders.

BACKGROUND

The objective of notifying the SEBI (Buy-back of Securities) Regulations, 2018 was to simplify the language of Buy-back Regulations, 1998, removing redundant provisions and inconsistencies, updating the references to the new Companies Act, 2013/ other new SEBI Regulations, and incorporating the circulars, FAQs and informal guidance in the Buyback Regulations 1998, wherever possible, without making any policy changes.

Considering that a significant number of provisions as outlined under Section 68 and 70 of the Companies Act, 2013 were proposed to be incorporated in the Buy-back Regulations to make it self-contained and more comprehensive, it was proposed to re-frame an entirely new set of Buyback Regulations in lieu of the extant 1998 version of the regulations. Further, the existing provisions have also been re-structured and re-sequenced to give a better flow in the new Buyback Regulations.

In line with the aforesaid mandate, the SEBI in its Board Meeting held on March 28, 2018 approved the proposal to undertake public consultation process before coming out with new Buyback Regulations for reviewing the SEBI (Buy-Back of Securities) Regulations, 1998.

Thereafter, SEBI vide its Notification dated September 11, 2018, notified the changes proposed by it in the discussion paper, through the SEBI (Buy-Back of Securities) Regulations, 2018.

OBJECTIVES OF BUY-BACK

Buy-back is a process whereby a company purchases its own shares or other specified securities from the holders thereof.

1. •To improve earnings per share;
2. •To improve return on capital, return on net worth and to enhance the long-term shareholder value;
3. •To enhance consolidation of stake in the company;
4. •To prevent unwelcome takeover bids;
5. •To return surplus cash to shareholders;
6. •To achieve optimum capital structure;
7. •To support share price during periods of sluggish market conditions; and
8. •To service the equity more efficient.
9. •To provide an additional exit route to shareholders when shares are under valued or are thinly traded;

The decision to buy-back is also influenced by various other factors relating to the company, such as growth opportunities, capital structure, sourcing of funds, cost of capital and optimum allocation of funds generated.

SECTION 68 OF THE COMPANIES ACT, 2013

Buy back of securities are governed by Section 68 of the Companies Act, 2013 and Rule 17 of Companies (Share Capital and Debentures) Rules, 2014. Listed companies have to comply with the regulations laid down by SEBI also in this behalf. Pursuant to Section 68(1) of the Companies Act, 2013, a company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of –

- (a) its free reserves;
- (b) the securities premium account; or
- (c) the proceeds of the issue of any shares or other specified securities:

However no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Conditions for Buy Back pursuant to section 68(2) of the Companies Act, 2013

- (a) the buy-back is authorised by its articles.
- (b) Buy back must be authorized by a Special Resolution. But if the buy-back amounts to 10% or less of the total paid-up equity capital and free reserves of the company then the Board resolution is enough and the company is not required to pass any special resolution.
- (c) the buy-back is twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the

company.

However in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent in this clause shall be construed with respect to its total paid-up equity capital in that financial year.

- (d) the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and its free reserves.

However the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies.

- (e) all the shares or other specified securities for buy-back are fully paid-up.
- (f) the buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by the Securities and Exchange Board in this behalf.
- (g) the buy-back in respect of shares or other specified securities other than those specified in clause (f) is in accordance with such rules as may be prescribed. However no offer of buy-back mentioned above shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.

The notice of the meeting at which the special resolution is proposed to be passed shall be accompanied by an explanatory statement stating.

Every buy-back shall be completed within a period of one year from the date of passing of the special resolution or Board Resolution as the case may be.

APPLICABILITY

SEBI (Buy-back of Securities) Regulations, 2018 shall apply to buy-back of shares or other specified securities of a company in accordance with the applicable provisions of the Companies Act, 2013.

Explanation: For the purposes of these regulations, the term “shares” shall include equity shares having superior voting rights.

IMPORTANT DEFINITIONS

Associate	It includes a person, – <ul style="list-style-type: none"> • who directly or indirectly by himself or in combination with relatives, exercise control over the company; or • whose employee, officer or director is also a director, officer or employee of company.
Buyback Period	The period between the date of board of directors resolution; or date of declaration of results of the postal ballot for special resolution, as the case may be, to authorize buyback of shares of the company and the date on which the payment of consideration to shareholders who have accepted the buyback offer is made.
Control	It has the same meaning as defined in clause (e) of sub-regulation (1) of regulation (2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;

Small Shareholder	A shareholder of a company, who holds shares or other specified securities whose market value, on the basis of closing price of shares or other specified securities, on the recognised stock exchange in which highest trading volume in respect of such securities, as on record date is not more than two lakh rupee.
Specified Securities	It includes employees' stock option or other securities as may be notified by the Central Government from time to time.
Tender offer	An offer by a company to buy-back its own shares or other specified securities through a letter of offer from the holders of the shares or other specified securities of the company.

CONDITIONS FOR BUYBACK OF SHARES OR OTHER SECURITIES

The maximum limit of any buy-back shall be 25% or less of the aggregate of paid-up capital and free reserves of the company.

The ratio of the aggregate of secured and unsecured debts owed by the company after buy-back shall not be more than twice the paid-up capital and free reserves.

All shares or other specified securities for buy-back shall be fully paid-up.

Note:

- In respect of the buy-back of equity shares in any financial year, the reference to 25% in this regulation shall be construed with respect to its total paid-up equity capital in that financial year.
- If a higher ratio of the debt to capital and free reserves for the company has all shares or other specified securities for buy-back shall be fully paid-up been notified under the Companies Act, 2013, the same shall prevail.

Additional Conditions for Buyback of Shares or Other Securities

- A company shall not buy-back its shares or other specified securities :
 - a) so as to delist its shares or other specified securities from the stock exchange.
 - b) from any person through negotiated deals, whether on or off the stock exchange or through spot transactions or through any private arrangement.
- A company shall not make any offer of buy-back within a period of one year reckoned from the date of expiry of buyback period of the preceding offer of buy-back, if any.
- A company shall not allow buy-back of its shares unless the consequent reduction of its share capital is affected.

Illustration: Extract of Balance Sheet of X Ltd consist of:

Equity Share Capital – Rs. 6,00,000 of Rs. 10 each

12% Preference Share Capital – Rs. 100,000 of Rs. 100 each

14% Debenture Capital – Rs. 300,000 of Rs. 100

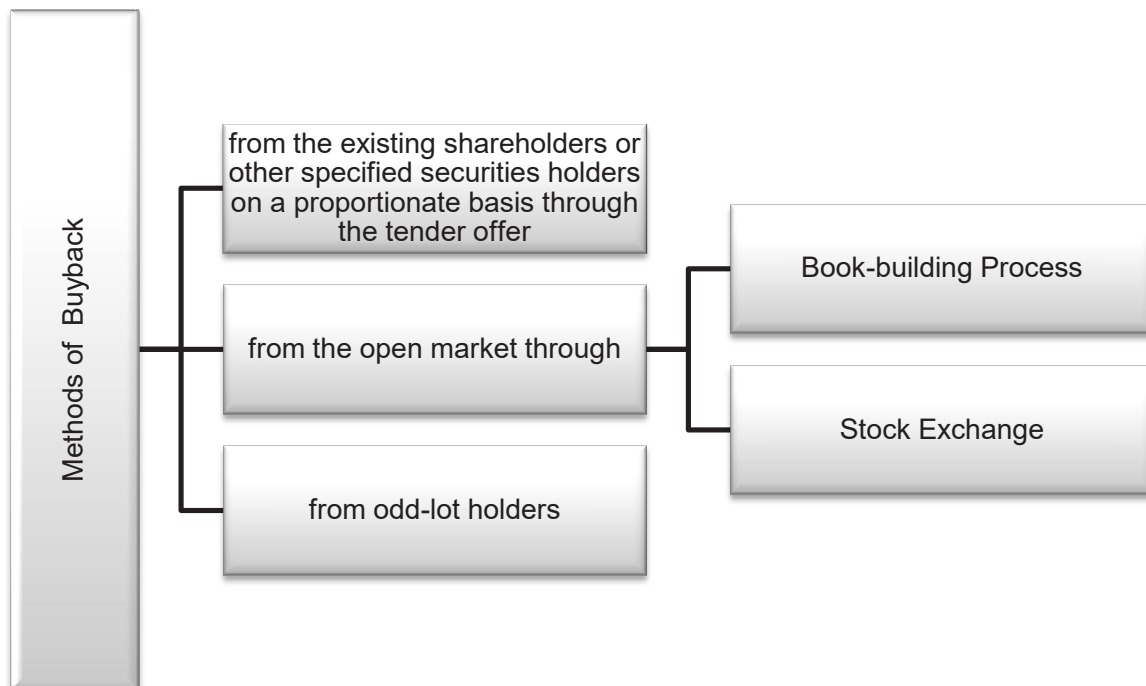
What is the maximum equity share capital and number of equity shares that can be bought back?

Solution:

- (i) Maximum equity share capital that can be bought back
 $= \text{Rs. } 6,00,000 \times 25\%$
 $= \text{Rs. } 1,50,000$
- (ii) Maximum number of equity shares that can be bought back
 $= \text{Rs. } 1,50,000 / 10$
 $= 15,000 \text{ equity shares}$

METHODS OF BUYBACK

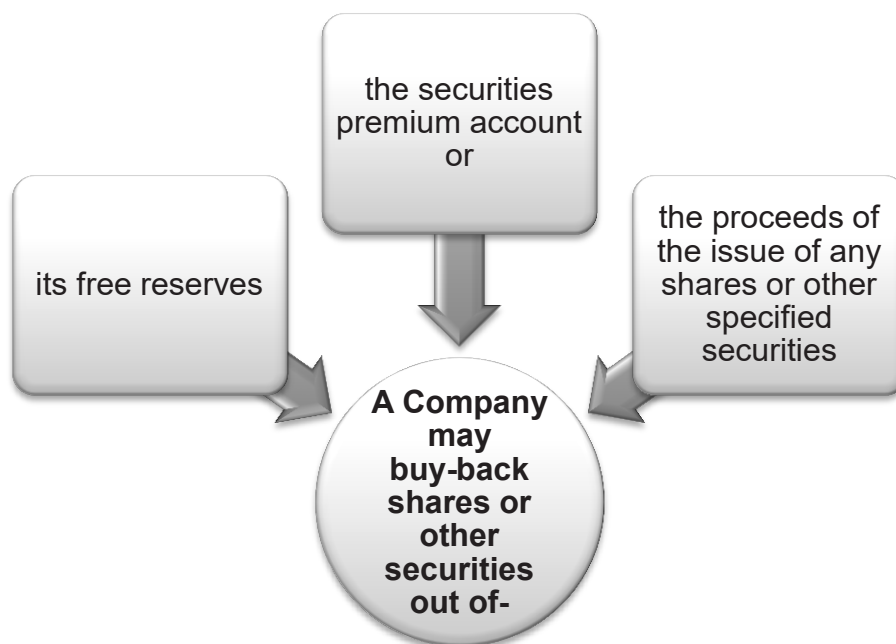
A company may buy-back its shares or other specified securities by any one of the following methods:



No offer of buy-back for fifteen per cent or more of the paid up capital and free reserves of the company shall be made from the open market.

Section 68(5)(c) of the Companies Act, 2013 permits buyback of equity shares by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity. However, no such provision is there under the SEBI Buyback Regulations.

SOURCES OF BUYBACK



Note: Buy-back shall not be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

PROHIBITIONS FOR BUY-BACK

The Company shall not directly or indirectly purchase its own shares or other specified securities:

- through any subsidiary company including its own subsidiary companies;
- through any investment company or group of investment companies; or
- if a default is made by the company in the repayment of deposits accepted either before or after the commencement of the Companies Act, interest payment 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 financial institution or banking company.

The buyback is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

AUTHORISATION FOR BUYBACK

The company shall not authorise for any buy-back whether by way of tender offer or from open market or odd lot unless:

Authorisation for Buyback in the Articles of the Company.

A special resolution is required to be passed at a general meeting of the company for such authorisation.

Where the buy-back is, 10% or less of the total paid-up equity capital and free reserves of the company, then Board resolution is required to be passed in the meeting of the board of directors.

Note:

- In case of Special Resolution, a copy of the resolution passed at the general meeting shall be filed with SEBI and the stock exchanges where the shares or other specified securities of the company are listed, within seven days from the date of passing of the resolution.
- In case of Board Resolution, a copy of Board Resolution passed in the meeting of the Board of Directors, shall file with SEBI and the stock exchanges, where the shares or other specified securities of the company are listed, within two working days of the date of the passing of the resolution.

Every buy-back shall be completed within a period of one year from the date of passing of the special resolution at general meeting, or the resolution passed by the board of directors of the company, as the case may be.

The company shall, after expiry of the buy-back period, file with the Registrar of Companies and SEBI, a return containing such particulars relating to the buy-back within thirty days of such expiry, in the format as specified in the Companies (Share Capital and Debentures) Rules, 2014.

Where the buy-back is from open market either through the stock exchange or through book building, the resolution of board of directors shall specify the maximum price at which the buy-back shall be made. However where there is a requirement for the Special Resolution as specified in clause (b) of sub-regulation 1 of regulation 5 of these Regulations, the special resolution shall also specify the maximum price at which the buy-back shall be made.

No insider shall deal in shares or other specified securities of the company on the basis of unpublished price sensitive information relating to buy-back of shares or other specified securities of the company.

EXPLANATORY STATEMENT

The notice of the meeting at which the special resolution is proposed to be passed shall be accompanied by an explanatory statement pursuant to section 102 of the Companies Act containing mandatory disclosures as specified under sub-section 3 of section 68 of the Companies Act –

- a full and complete disclosure of all material facts;
- the necessity for the buy-back;
- the class of shares or securities intended to be purchased under the buy-back;
- the amount to be invested under the buy-back; and

- the time-limit for completion of buy-back.

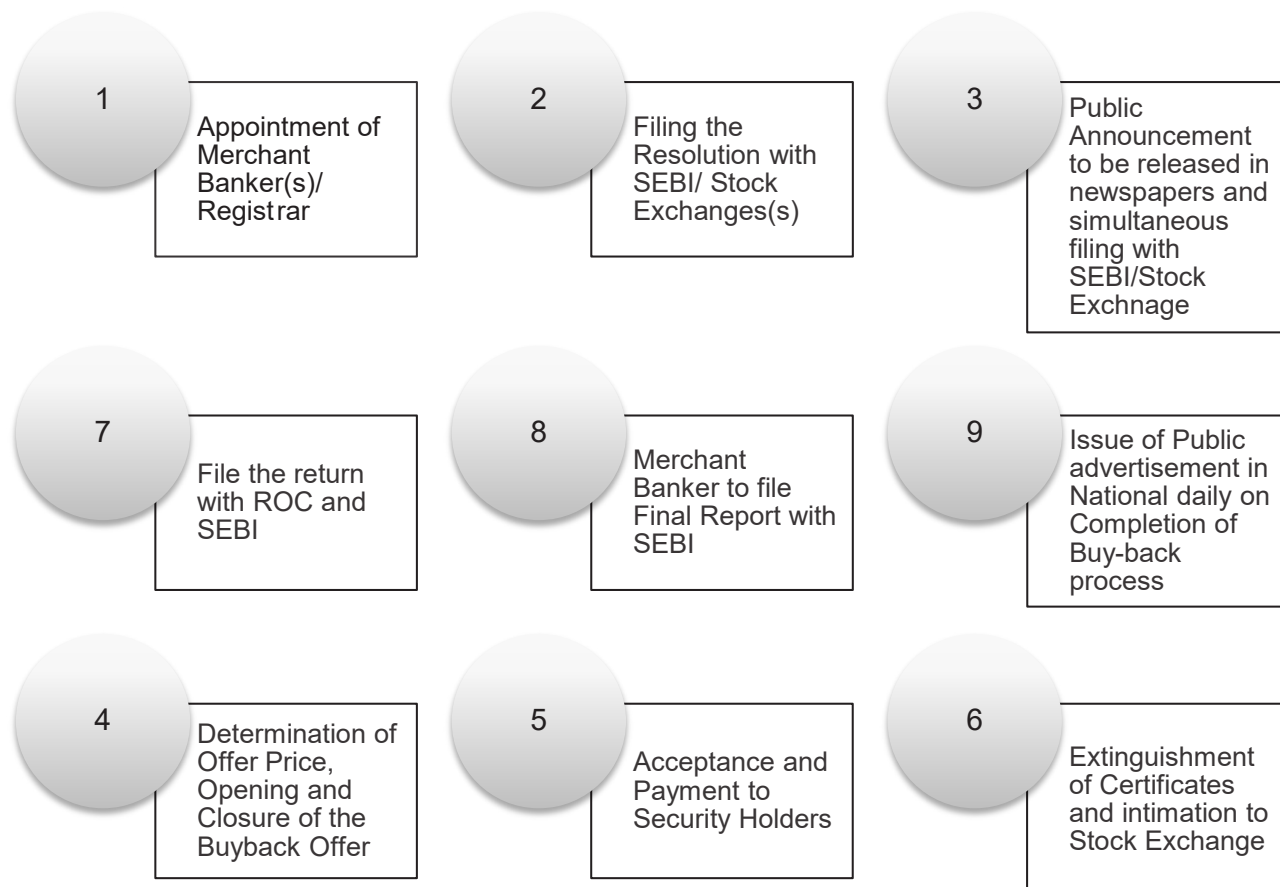
ADDITIONAL DISCLOSURES

The company is required to provide an additional disclosure as per Schedule I to these regulations, in addition to disclosures mentioned above under sub section 3 of section 68 of the Companies Act, 2013 as discussed below:

- i) Date of the Board meeting at which the proposal for buy-back was approved by the Board of Directors of the company;
- ii) Necessity for the buy-back;
- iii) Maximum amount required under the buy-back and its percentage of the total paid up capital and free reserves;
- iv) Maximum price at which the shares or other specified securities are proposed be bought back and the basis of arriving at the buy-back price;
- v) Maximum number of securities that the company proposes to buy- back;
- vi) Method to be adopted for buy-back as referred to in sub-regulation (iv) of regulation 4;
- vii) (a) the aggregate shareholding of the promoter and of the directors of the promoters, where the promoter is a company and of persons who are in control of the company as on the date of the notice convening the General Meeting or the Meeting of the Board of Directors;
 (b) aggregate number of shares or other specified securities purchased or sold by persons including persons mentioned in (a) above from a period of six months preceding the date of the Board Meeting at which the buy-back was approved till the date of notice convening the general meeting;
 (c) the maximum and minimum price at which purchases and sales referred to in (b) above were made along with the relevant dates;
- viii) Intention of the promoters and persons in control of the company to tender shares or other specified securities for buy-back indicating the number of shares or other specified securities, details of acquisition with dates and price;
- ix) A confirmation that there are no defaults subsisting in repayment of deposits, redemption of debentures or preference shares or repayment of term loans to any financial institutions or banks;
- x) A confirmation that the Board of Directors has made a full enquiry into the affairs and prospects of the company and that they have formed the opinion:
 - a) that immediately following the date on which the General Meeting or the meeting of the Board of Directors is convened there will be no grounds on which the company could be found unable to pay its debts;
 - b) as regards its prospects for the year immediately following that date that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company will be able to meet its liabilities as and when they fall due and will not be rendered insolvent within a period of one year from that date; and
 - c) in forming their opinion for the above purposes, the directors shall take into account the liabilities as if the company were being wound up under the provisions of the Companies Act, 1956 or Companies Act, 2013 or the Insolvency and Bankruptcy Code 2016 (including prospective and contingent liabilities);
- xi) A report addressed to the Board of Directors by the company's auditors stating that-

- a) they have inquired into the company's state of affairs;
- b) the amount of the permissible capital payment for the securities in question is in their view properly determined; and
- c) the Board of Directors have formed the opinion as specified in clause (x) on reasonable grounds and that the company will not, having regard to its state of affairs, will not be rendered insolvent within a period of one year from that date.

BUY-BACK PROCESS



Buy-Back from the existing shareholders or securities holders through Tender Offer

A company may buy-back its shares or other specified securities from its existing shareholders/securities holders on a proportionate basis in accordance with the provisions of these regulations. It may be noted that fifteen per cent of the number of securities which the company proposes to buy-back or number of securities entitled as per their shareholding, whichever is higher, shall be reserved for small shareholders.

ADDITIONAL DISCLOSURES

In addition to the disclosures provided in Schedule I to these regulations, the following disclosure are required to be made in the explanatory statement:

- the maximum price at which the buy-back of shares or other specified securities shall be made and whether the board of directors of the company is being authorised at the general meeting to determine subsequently the specific price at which the buy-back may be made at the appropriate time;

- if the promoter intends to offer his shares or other specified securities, the quantum of shares or other specified securities proposed to be tendered and the details of their transactions and their holdings for the last six months prior to the passing of the special resolution for buy-back including information of number of shares or other specified securities acquired, the price and the date of acquisition.

BUY-BACK THROUGH TENDER OFFER

A company may buy-back its shares or other specified securities from its existing securities holders on a proportionate basis in accordance with the provisions of these Regulations.

However fifteen per cent of the number of securities which the company proposes to buy-back or number of securities entitled as per their shareholding, whichever is higher, shall be reserved for small shareholders.

Disclosures, filing requirements and timelines for public announcement and draft letter of offer

1.	Public Announcement	<ul style="list-style-type: none"> • The company shall make a public announcement within two working days from the date of declaration of results of the postal ballot for special resolution/board of directors resolution in at least one English National Daily, one Hindi National Daily and one Regional language daily, all with wide circulation at the place where the Registered Office of the company is situated. • A copy of the public announcement along with the soft copy, shall also be submitted to SEBI, simultaneously, through a merchant banker.
2.	Filing with SEBI	<p>The company shall within five working days of the public announcement file the following :</p> <ul style="list-style-type: none"> • A draft letter of offer, along with a soft copy, containing disclosures as specified in these regulations through a merchant banker who is not associated with the company. • A declaration of solvency in specified form and in a manner provided in Section 68(8) of the Companies Act, 2013. • Prescribed fees as specified in these regulations. <p>SEBI may provide its comments on the draft letter of offer within seven working days of the receipt of the draft letter of offer. Letter of Offer shall be dispatch to the shareholders after making changes suggested by SEBI, if any.</p>

OFFER PROCEDURE

- While making buy-back offer, the company shall announce a record date in the public announcement for the purpose of determining the entitlement and the names of the security holders, who are eligible to participate in the proposed buy-back offer.
- The company shall dispatch the letter of offer along with the tender form to all securities holders which are eligible to participate in the buy-back offer not later than five working days from the receipt of communication of comments from SEBI.

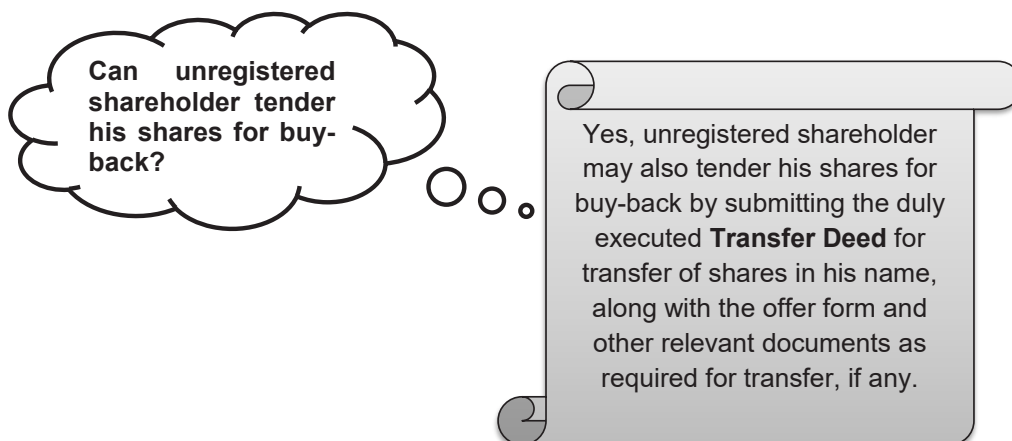
Note:

- Letter of Offer may also be dispatched through electronic mode in accordance with the provisions of the Companies Act, 2013.

- On receipt of a request from any shareholder to receive a copy of the letter of offer in physical form, the same shall be provided.
 - If case an eligible public shareholder does not receive the tender offer/offer form, even though he can participate in the buy-back offer and tender shares in the manner as provided by the SEBI.
 - The date of the opening of the offer shall be not later than five working days from the date of dispatch of the letter of offer. It shall be remain opened for a period of ten working days.
 - The company shall provide the facilities for tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism in the manner as provided by the SEBI.
 - The company shall accept shares or other specified securities from the securities holders on the basis of their entitlement as on record date.
 - The shares proposed to be bought back shall be divided into two categories;
 - a) Reserved category for small shareholders; and
 - b) General category for other shareholders,
 and the entitlement of a shareholder in each category shall be calculated accordingly.

Note: Holdings of multiple demat accounts would be clubbed together for identification of small shareholder if sequence of Permanent Account Number for all holders is matching. Similarly, in case of physical shareholders, if the sequence of names of joint holders is matching, holding under such folios should be clubbed together for identification of small shareholder.

- After accepting the shares or other specified securities tendered on the basis of entitlement, shares or other specified securities left to be bought back, if any in one category shall first be accepted, in proportion to the shares or other specified securities tendered over and above their entitlement in the offer by securities holders in that category and thereafter from securities holders who have tendered over and above their entitlement in other category.



Please note that shareholders holding shares in physical form will not be eligible to tender shares under the offer, unless the shares held by them are dematerialised.

ESCROW ACCOUNT

The company shall as and by way of security for performance of its obligations under the regulations, on or before the opening of the offer, deposit in an escrow account.

The amount in the escrow shall be deposited in the following manner:

Amount of Consideration	% of amount to be deposited
Consideration not more than Rs. 100 crores	25 per cent of the consideration payable;
Consideration exceeds Rupees 100 crores	25 per cent upto Rupees 100 crores and 10 per cent thereafter.

The escrow account referred to above shall consist of

Cash deposited with a scheduled commercial bank, OR	<ul style="list-style-type: none"> The company shall, while opening the account, empower the merchant banker to instruct the bank to make payment the amount lying to the credit of the escrow account, as provided in the regulations.
Bank guarantee in favour of the merchant banker, OR	<ul style="list-style-type: none"> Such bank guarantee shall be in favour of the merchant banker and shall be valid until thirty days after the expiry of buyback period.
Deposit of acceptable securities with appropriate margin, with the merchant banker, OR	<ul style="list-style-type: none"> The Company shall empower the merchant banker to realise the value of such escrow account by sale or otherwise and if there is any deficit on realisation of the value of the securities, the merchant banker shall be liable to make good any such deficit.
A combination of all ABOVE	<ul style="list-style-type: none"> In case the escrow account consists of bank guarantee or approved securities, these shall not be returned by the merchant banker till completion of all obligations under the regulations. Where the escrow account consists of bank guarantee or deposit of approved securities, the company shall also deposit with the bank in cash a sum of at least one per cent of the total consideration payable, as and by way of security for fulfillment of the obligations under the regulations by the company.

Note: The cash component of the escrow account may be maintained in an interest bearing account. However, the merchant banker shall ensure that the funds should be available at the time of making payment to shareholders.

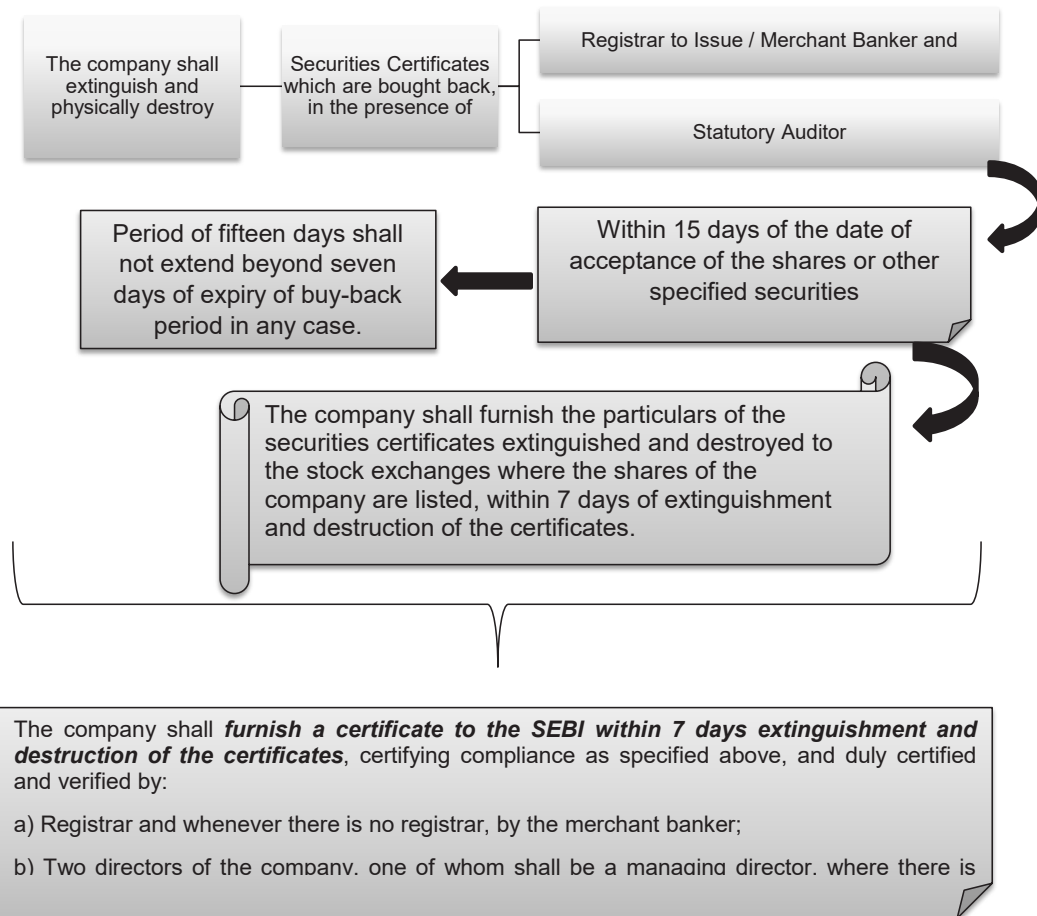
After the payment of consideration to all the securities holders who have accepted the offer and after completion of all formalities of buy-back, the amount, guarantee and securities in the escrow, if any, shall be released to the company.

In case of non-fulfilment of obligations under the regulations, SEBI in the interest of the securities holders may forfeit the escrow account either in full or in part. Such forfeited amount may be distributed amongst the securities holders who accepted the offer and balance, if any, on pro rata which shall be utilised for investor protection.

CLOSURE AND PAYMENT TO SECURITIES HOLDERS

- The company shall open a special account with a banker to an issue, registered with the SEBI immediately after the date of closure of the offer, and deposit therein, such sum as would, together with ninety per cent of the amount lying in the escrow account, make-up the entire sum due and payable as consideration for buy-back in terms of these regulations and for this purpose, may transfer the funds from the escrow account.
- The company shall complete the verification of offers received and make payment of consideration to those holders of securities whose offer has been accepted and return the remaining shares or other specified securities to the securities holders within seven working days of the closure of the offer.

EXTINGUISHMENT OF CERTIFICATE AND OTHER CLOSURE COMPLIANCES



Note:

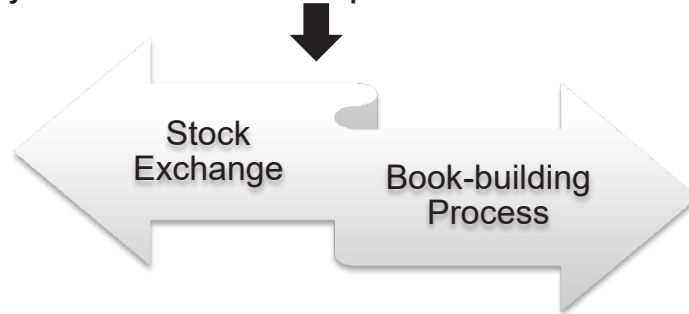
- The company shall ensure that all the securities bought-back are extinguished within seven days of expiry of buy-back period.
- If the shares or other specified securities offered for buy-back is already dematerialised, then it shall be extinguished and destroyed in the manner specified under SEBI (Depositories and Participants) Regulations, 1996, and the bye-laws, the circulars and guidelines framed thereunder.
- Where a company buys back its shares or other specified securities under these regulations, it shall maintain a register of the shares or securities so bought, in Form SH. 10 in pursuance of section 68(9) of the Companies Act, 2013.

ODD-LOT BUY-BACK

The provisions pertaining to buy-back through tender offer as specified above shall be apply mutatis mutandis to odd-lot shares or other specified securities.

BUY-BACK FROM THE OPEN MARKET

The company may buy-back of shares or other specified securities from the Open Market through



The company shall ensure that at least 50% of the amount earmarked for buy-back, as specified in the resolution of the board of directors or the special resolution, as the case may be, is utilized for buying-back shares or other specified securities where buyback is undertaken through stock exchange mechanism.

BUY-BACK OF SHARES THROUGH STOCK EXCHANGE

1.	Pre-conditions	<ul style="list-style-type: none"> The company may buy-back only on stock exchanges having nationwide trading terminals. The buy-back of the shares or other specified securities through the stock exchange shall not be made from the promoters or persons in control of the company The buy-back of shares or other specified securities shall be made only through the order matching mechanism except 'all or none' order matching system.
2.	Disclosures, filing requirements and timelines of public announcement	<ul style="list-style-type: none"> The company shall appoint a merchant banker and make a public announcement in manner as specified in buyback of shares through tender offer. The public announcement shall be made within two working days from the date of passing the board of director's resolution or date of declaration of results of the postal ballot for special resolution, as relevant and shall contain disclosures as specified in these regulations. Simultaneously with the issue of such public announcement, the company shall file a copy of the public announcement with SEBI along with the prescribed fees. The public announcement shall also contain disclosures regarding details of the brokers and stock exchanges through which the buy-back of shares or other specified securities would be made. <p>Note: In case of the buy-back from open market, no draft letter of offer/ letter of offer is required to be filed with SEBI.</p>

3.	Opening of the offer on stock exchange	<ul style="list-style-type: none"> The identity of the company as a purchaser shall be appeared on the electronic screen when the order is placed; The buy-back offer shall be opened not later than seven working days from the date of public announcement and shall be closed within six months from the date of opening of the offer.
4.	Subsequent compliances	<ul style="list-style-type: none"> The company shall submit the information regarding the shares or other specified securities bought-back, to the stock exchange on a daily basis in such form as may be specified by SEBI and the same shall be uploaded immediately on the official website stock exchange and on Company's website.
5.	Procedure for holding of Physical Shares or Other Specified Securities	<ul style="list-style-type: none"> A separate window shall be created by the stock exchange, which shall remain open during the period of buy-back, for buy-back of shares or other specified securities in physical form. The Company shall buyback shares or other securities holding physical shares only through this separate window after verification of identity and address of eligible shareholders by broker. The price at which the shares or other specified securities are bought back shall be the volume weighted average price of the shares or other specified securities bought-back, other than in the physical form, during the calendar week in which such shares or other specified securities were received by the broker. <p>However, the price of shares or other specified securities tendered during the first calendar week of the buy-back shall be the volume weighted average market price of the shares or other specified securities of the company during the preceding calendar week.</p> <p>Note: In case no shares or other specified securities were bought back in the normal market during calendar week, the preceding week when the company has last bought back the shares or other specified securities may be considered.</p>
6.	Escrow Account	<ul style="list-style-type: none"> The company shall, before opening of the offer, create an escrow account towards security for performance of its obligations under these regulations, and deposit in escrow account 25 per cent of the amount earmarked for the buy-back as specified in the resolution of the board of directors or the special resolution, as the case may be. The escrow account may be in the form of a) cash deposited with any scheduled commercial bank or b) bank guarantee issued in favour of the merchant banker by any scheduled commercial bank. For such part of the escrow account as is in the form of a cash deposit with a scheduled commercial bank, the company shall while opening the account, empower the merchant banker to instruct the bank to make payment of the amounts lying to the credit of the escrow account, to meet the obligations arising out of the buy-back. For such part of the escrow account as is in the form of a bank guarantee;

		<p>a) the same shall be in favour of the merchant banker and shall be kept valid for a period of thirty days after the expiry of buyback period of the offer or till the completion of all obligations under these regulations, whichever is later.</p> <p>b) the same shall not be returned by the merchant banker till completion of all obligations under the regulations.</p> <ul style="list-style-type: none"> • Where part of the escrow account is in the form of a bank guarantee, the company shall deposit with a scheduled commercial bank, in cash, a sum of at least 2.5 per cent of the total amount earmarked for buy-back as specified in the resolution of the board of directors or the special resolution, as the case may be, as and by way of security for fulfillment of the obligations under the regulations by the company. • The amount may be released from escrow account for making of payment to the shareholders subject to at least 2.5 per cent of the amount earmarked for buy-back as specified in the resolution of the board of directors or the special resolution, as the case may be, remaining in the escrow account at all points of time. • After utilisation of at least 50 % of the amount earmarked for buyback as specified in the resolution of the Board of Directors or Special Resolution, as case may be, the amount and the guarantee remaining in the escrow account, if any, shall be released to the company. • In the event of non-compliance as specified above, SEBI may direct the merchant banker to forfeit the escrow account, subject to a maximum of 2.5 per cent of the amount earmarked for buy-back as specified in the resolution of the board of directors or the special resolution, as the case may be, except in cases where,- <ul style="list-style-type: none"> a) volume weighted average market price (VWAMP) of the shares or other specified securities of the company during the buy-back period was higher than the buy-back price as certified by the Merchant banker based on the inputs provided by the Stock Exchanges. b) sell orders were inadequate despite the buy orders placed by the company as certified by the Merchant banker based on the inputs provided by the Stock Exchanges. c) such circumstances existed which were beyond the control of the company and in the opinion of SEBI d) merit consideration. e) In the event of forfeiture for non-fulfilment of obligations specified in sub-regulation (viii) of this regulation, the amount forfeited shall be deposited in the Investor Protection and Education Fund of Securities and Exchange Board of India.
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7.	Extinguishment of certificates	<ul style="list-style-type: none"> The provisions pertaining to the extinguishment of certificates for tender offers specified above shall apply for extinguishment of certificates for buy-back from open market. The verification of acceptances shall be completed by the company within fifteen days of the payout. The company shall extinguish and physically destroy the securities certificates so bought back during the month in the presence of a Merchant Banker and the Statutory Auditor, on or before the fifteenth day of the succeeding month. <p>However, the company shall ensure that all the securities bought-back are extinguished within seven days of expiry of buy-back period.</p>
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BUY-BACK THROUGH BOOK BUILDING

1.	Pre-conditions	<ul style="list-style-type: none"> Special resolution or Board Resolution, as the case may be, shall be passed for authorisation of Buy back of shares or other specified securities in the manner as specified under these regulations.
2.	Disclosures, filing requirements and timelines for public announcement	<ul style="list-style-type: none"> The company shall appoint a merchant banker and make a public announcement and made disclosures in public announcement under these regulations. The public announcement shall be made at least 7 days prior to the commencement of buy-back. The public announcement shall also contain the detailed methodology of the book-building process, the manner of acceptance, the format of acceptance to be sent by the securities holders pursuant to the public announcement and the details of bidding centres.
3.	Escrow Account	<ul style="list-style-type: none"> The provisions with respect to deposit of amount in escrow account as specified in buy-back through tenders offers shall also apply to buy back of shares or other specified securities through book building process. The deposit in the escrow account shall be made before the date of the public announcement. The amount to be deposited in the escrow account shall be determined with reference to the maximum price as specified in the public announcement. <p><i>The cash component of the escrow account may be maintained in an interest bearing account. However, the merchant banker shall ensure that the funds should be available at the time of making payment to shareholders.</i></p>
4.	Filing with SEBI	<ul style="list-style-type: none"> A copy of the public announcement shall be filed with SEBI within two days of such announcement along with the prescribed fees.
5.	Offer Procedure	<ul style="list-style-type: none"> The book-building process shall be made through an electronically linked transparent facility. The number of bidding centers shall not be less than thirty and there shall be at least one electronically linked computer terminal at all the bidding centers.

		<ul style="list-style-type: none"> • The offer for buy-back shall remain open to the securities holders for a period not less than fifteen days and not exceeding thirty days. • The merchant banker and the company shall determine the buy-back price based on the acceptances received. • The final buy-back price, which shall be the highest price accepted shall be paid to all holders whose shares or other specified securities have been accepted for buy-back. • The provisions with Closure and payment to securities holders mentioned in this chapter shall be applicable mutatis mutandis.
6.	Extinguishment of certificates	<ul style="list-style-type: none"> • The provisions pertaining to extinguishment of certificates for tender offer shall be applicable mutatis mutandis to the buy-back through book building.

OBLIGATIONS FOR ALL BUY-BACK OF SHARES OR OTHER SPECIFIED SECURITIES


Obligations of the Company	Obligations of the Merchant Banker
<ul style="list-style-type: none"> • The company shall ensure that, – <ul style="list-style-type: none"> a) the letter of offer, the public announcement of the offer or any other advertisement, circular, brochure, publicity material shall contain true, factual and material information and shall not contain any misleading information and must state that the directors of the company accept the responsibility for the information contained in such documents; b) the company shall not issue any shares or other specified securities including by way of bonus till the date of expiry of buyback period for the offer made under these regulations; c) the company shall pay the consideration only by way of cash; d) the company shall not withdraw the offer to buy-back after the draft letter of offer is filed with SEBI or public announcement of the offer to buy-back is made; 	<p>The merchant banker shall ensure that –</p> <ul style="list-style-type: none"> • the company is able to implement the offer; • the provision relating to escrow account has been complied with; • firm arrangements for monies for payment to fulfill the obligations under the offer are in place; • the public announcement of buy-back is made in terms of the regulations; • the letter of offer has been filed in terms of the regulations; • a due diligence certificate along with the draft letter of offer has been furnished to SEBI; • the contents of the public announcement of offer as well as the letter of offer are true, fair and adequate and quoting the source wherever necessary;

<p>e) the promoter(s) or his/their associates shall not deal in the shares or other specified securities of the company in the stock exchange or off-market, including inter- se transfer of shares among the promoters during the period from the date of passing the resolution of the board of directors or the special resolution, as the case may be, till the closing of the offer.</p> <p>f) the company shall not raise further capital for a period of one year from the expiry of buyback period, except in discharge of its subsisting obligations.</p> <ul style="list-style-type: none"> • No public announcement of buy-back shall be made during the pendency of any scheme of amalgamation or compromise or arrangement pursuant to the provisions of the Companies Act, 2013. • The company shall nominate a compliance officer and investors service centre for compliance with the buy-back regulations and to redress the grievances of the investors. • The particulars of the security certificates extinguished and destroyed shall be furnished by the company to the stock exchanges where the shares or other specified securities of the company are listed within seven days of extinguishment and destruction of the certificates. • The company shall not buy-back the locked-in shares or other specified securities and non-transferable shares or other specified securities till the pendency of the lock-in or till the shares or other specified securities become transferable. • The company shall within two days of expiry of buy-back period issue a public advertisement in a national daily, inter alia, disclosing: <ul style="list-style-type: none"> a) number of shares or other specified securities bought; b) price at which the shares or other specified securities bought; c) total amount invested in the buy-back; d) details of the securities holders from whom shares or other specified securities exceeding one per cent of total shares or other specified securities were bought back; and 	<ul style="list-style-type: none"> • due compliance of sections 68, 69 and 70 of the Companies Act and any other laws or rules as may be applicable in this regard has been made; • the bank with whom the escrow or special amount has been deposited releases the balance amount to the company only upon fulfilment of all obligations by the company under the regulations; • a final report is submitted to SEBI in the form specified within fifteen days from the date of expiry of buyback period.
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<p>e) the consequent changes in the capital structure and the shareholding pattern after and before the buy-back.</p> <ul style="list-style-type: none"> • The company in addition to these regulations shall comply with the provisions of buy-back as contained in the Companies Act and other applicable laws. 	
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Buyback vis-a-vis compliance under SEBI (SAST) Regulations, 2011

In case the acquirer's initial shareholding was more than 25% and the increase in shareholding due to buyback is beyond the permissible creeping acquisition limit of 5% per financial year, the acquirer can get an exemption from making an open offer, subject to the following:

- Such acquirer does not vote in favour of the resolution authorising the buy-back of securities under section 68 of the Companies Act, 2013;
- In the case of a shareholders resolution, voting is by way of a postal ballot;
- The increase in voting rights does not result in an acquisition of control by such an acquirer over the target company. In case the above conditions are not fulfilled, the acquirer may, within 90 days from the date of increase, dilute his stake so that his voting rights fall below the threshold which requires an open offer.

LESSON ROUND-UP

- “Buy-back” means the purchase of its own shares or other specified securities by a company.
- Buy-back of securities is a corporate financial strategy which involves capital restructuring and is prevalent globally with the underlying objectives of increasing earnings per share, averting hostile takeovers, improving returns to the stakeholders and realigning the capital structure.
- Buy-back of securities is regulated by the SEBI (Buy-Back of Securities) Regulations, 2018 in case of listed companies.
- The main objective of buy-back may be to improve earnings per share; to improve return on capital, return on net worth and to enhance the long-term shareholder value; to provide an additional exit route to shareholders when shares are undervalued or are thinly traded; to enhance consolidation of stake in the company; to prevent unwelcome takeover bids; to return surplus cash to shareholders; to achieve optimum capital structure; to support share price during periods of sluggish market conditions and to service the equity more efficiently.
- Buy-back of securities may be made :
 - a) from the existing shareholders or other specified securities holders on a proportionate basis through the tender offer; or
 - b) from the open market through book-building and Stock exchange ; or
 - c) from odd lots holders.
- A company may undertake a buy-back of its own shares or other specified securities out of its free reserves or the securities premium account; or the proceeds of the issue of any shares or other specified securities.

- The Company shall not make any buy-back unless it is authorised by the Company's articles. In case of no authorisation, the company may authorise the articles by passing of special resolution in the General Meeting.
- Every buy-back shall be completed within a period of one year from the date of passing of the special resolution at general meeting, or the resolution passed by the board of directors of the company, as the case may be.
- The company shall, after expiry of the buy-back period, file with the Registrar of Companies and SEBI, a return containing such particulars relating to the buy-back within thirty days of such expiry, in the format as specified in the Companies (Share Capital and Debentures) Rules, 2014.

GLOSSARY

Bid	An offer of a price to buy as in an auction. Business on the Stock Exchange is done through bids. Bid also refers to the price one is willing to pay for a security.
Company	A company as defined under the Companies Act, 1956 or 2013 as the case may be, whose shares or other specified securities are listed on a Stock Exchange and which buys or intends to buy such shares or other specified securities in accordance with these regulations;
Earnings per share (EPS)	It is the portion of a company's profit allocated to each outstanding share of common stock and it serves as an indicator of a company's profitability.
Odd Lots	The lots of shares or other specified securities of a company, whose shares are listed on a recognised stock exchange, which are smaller than such marketable lots, as may be specified by the stock exchange;
Open Market	Purchase or sale of government securities by the monetary authorities (RBI in India) to increase or decrease the domestic money supply.
Stakeholder	Any individual or group who has an interest in a firm; in addition to shareholders and bondholders, includes labour, consumers, suppliers, the local community and so on.
Working Day	It means any working day of the SEBI.

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 buy-back of Securities?
2. Explain the provisions for opening of Escrow Account with respect to buy-back of shares through Tender Offer?
3. What are the sources available for buy-back of shares or other specified securities under the SEBI (Buy-back of securities) Regulations, 2018?
4. Elucidate the provisions with respect to Buy back of physical shares under the SEBI (Buy-back of securities) Regulations, 2018?
5. What are the different methods of buy-back of shares?
6. Explain the obligations of a company under the SEBI (Buy-back of Securities) Regulations, 2018?

Lesson 8

SEBI (Delisting of Equity Shares) Regulations, 2009

LESSON OUTLINE

- Introduction
- Background
- Framework of SEBI (Delisting of Equity Shares) Regulations, 2009
- Agencies involved in delisting process and their Role
- Applicability
- Non-Applicability
- Voluntary Delisting
- Compulsory Delisting
- Role of Company Secretary in delisting
- LESSON ROUND UP
- GLOSSARY
- SELF-TEST QUESTIONS

LEARNING OBJECTIVES

Delisting of securities means removal of the name of the company from the stock exchange. Delisting may be voluntary or compulsory.

SEBI has constituted various Committees on delisting of shares, e.g., Chandratre Committee, Pratip Kar Committee, etc., to *inter alia* examine and review the condition for delisting of securities of companies listed on recognised stock exchange. SEBI earlier notified delisting guidelines, 2003. In the year 2009 notified the SEBI (Delisting of Equity Shares) Regulations, 2009 superseding its earlier guidelines. These regulations provide for a simple procedure for delisting by small companies exempting them from certain specific requirements.

A student should be well acquainted with the various provisions of delisting, reason for delisting and the various requirements to be complied with. Keeping this in view, this lesson has been designed to explain the various types of delisting, the various modes of voluntary delisting, consequences of delisting, etc.

INTRODUCTION

Delisting denotes removal of the listing of the securities of a listed company from the Stock Exchange. Delisting differs from suspension or withdrawal of admission to dealings of listed securities, which is for a limited period.

‘Suspension’ of trading in securities means that no trade can take place in the securities of the company suspended for a temporary period. Suspension is not done at the instance of company but it is action taken by the Stock Exchanges against the company, generally for non-compliance of listing conditions as stipulated under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations). Once, the company makes good the compliance of the listing conditions under the LODR Regulations, stock exchange withdraw suspension and permits trading. Stock exchanges may impose fines or freeze promoter/promoter group holding of designated securities, as may be applicable in coordination with depositories at the instances of non-compliance with the LODR Regulations.

On the other hand, ‘delisting’ of securities means removal of the name of the company from the stock exchange and no trade can take place in the securities of the company delisted. Delisting of securities can be done either by company voluntarily or by the stock exchange, compulsorily. Generally stock exchange, in order to impose severe punishment on companies compulsorily delists securities of any company, as a last resort. Compulsory delisting affects reputation of company and to the extent of liquidity in trading those shares.

Delisting of securities may be of two types, namely, voluntary delisting and compulsory delisting. In the case of voluntary delisting, a listed company seeks of its own volition for the delisting of its securities; while in case of compulsory delisting, the Stock Exchange itself delists the securities of such Company.

BACKGROUND

In its continuous endeavor, SEBI in the year 2002 constituted a committee on delisting of shares to *inter alia* examine and review the conditions for delisting of securities of companies listed on recognized stock exchanges and suggest norms and procedures in connection therewith. The Report of the Committee was considered and accepted by SEBI. Pursuant to the same, SEBI issued the SEBI (Delisting of Securities) Guidelines, 2003.

The said Guidelines, although to a great extent, covered the issues involved in Delisting of Securities. Various representations and views, from intermediaries, stock exchanges, shareholders’ associations, chambers of commerce, etc., were given to the Regulators on the operational issues and procedural complications in the guidelines.

SEBI circulated Concept Paper on the proposed SEBI (Delisting of Securities) Regulations, 2006, asking for public comments on the proposed Regulations. SEBI received various comments, opinions and suggestions on the subject and finally, by its publication dated June 10, 2009 in the Official Gazette, the SEBI notified the SEBI (Delisting of Equity Shares) Regulations, 2009.

FRAMEWORK OF SEBI (DELISTING OF EQUITY SHARES) REGULATIONS, 2009

These regulations contain 8 chapters and three schedules dealing with the following:

1.	Chapter I	Preliminary - Regulations 1 and 2
2.	Chapter II	Delisting of Equity Shares - Regulations 3 and 4
3.	Chapter III	Voluntary Delisting - Regulations 5 to 8
4.	Chapter IV	Exit Opportunity - Regulations 9 to 21

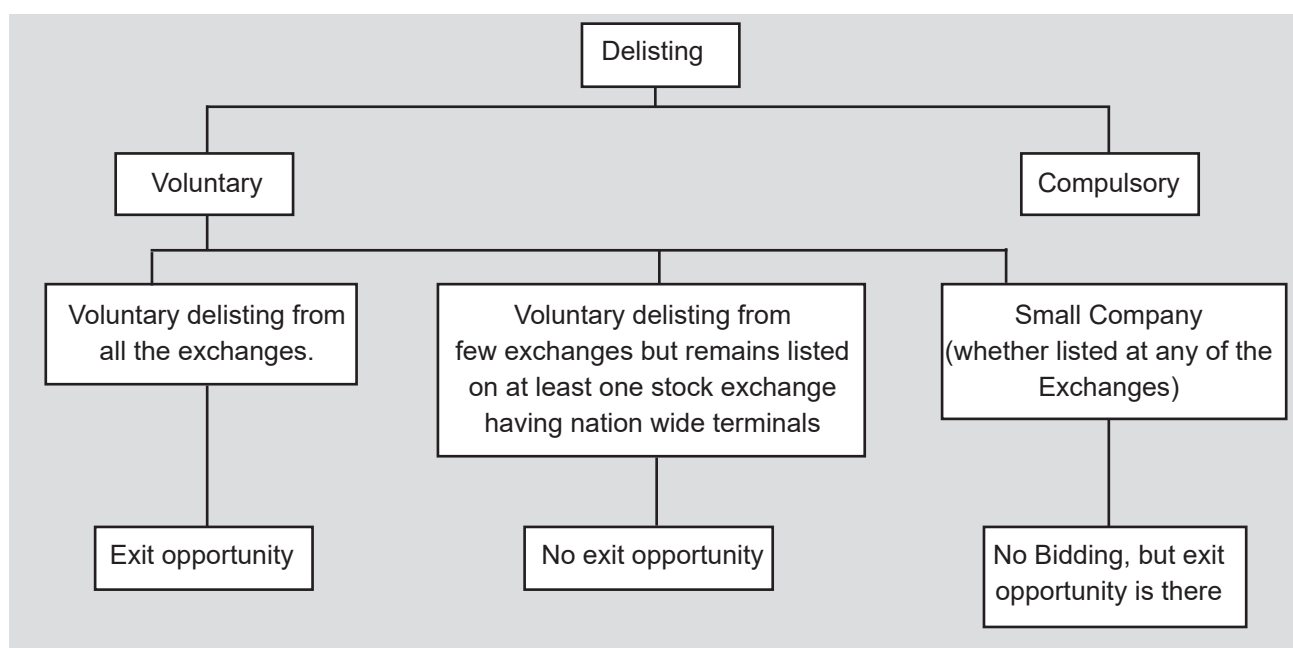
5.	Chapter V	Compulsory Delisting - Regulations 22 to 24
6.	Chapter VI	Powers of the SEBI - Regulations 25, 25A and 26
7.	Chapter VII	Special provisions for small companies and delisting by operation of law-Regulations 27 and 28
8.	Chapter VIII	Miscellaneous - Regulations 29 to 31
9.	Schedule I	Contents of the Public Announcement
10.	Schedule II	The Book building process
11.	Schedule III	Criteria for Compulsory Delisting

AGENCIES INVOLVED IN DELISTING PROCESS AND THEIR ROLE

Agencies	Functions
Merchant Banker to the Offer	<ul style="list-style-type: none"> • Determines exit price. • Makes public announcements. • Finalises schedule of delisting • Manages escrow account • Assist the acquirer in determining the final exit price. • Interacts with regulatory authorities / stock exchange for the delisting process
Registrar to the Offer	<ul style="list-style-type: none"> • Completes dispatch of notice, letter of offer and payment / rejection intimation to the shareholders of the Company • Holds equity shares tendered under the offer post settlement of equity shares
Professionals involved	<ul style="list-style-type: none"> • Intimates stock exchange. • Manages the special resolution approval process and resolution filed with ROC on approval. • Assists the company in preparation of various documents required for the process

APPLICABILITY

These regulations shall be applicable to delisting of equity shares of a company from all or any of the recognised stock exchanges where such shares are listed.



NON-APPLICABILITY

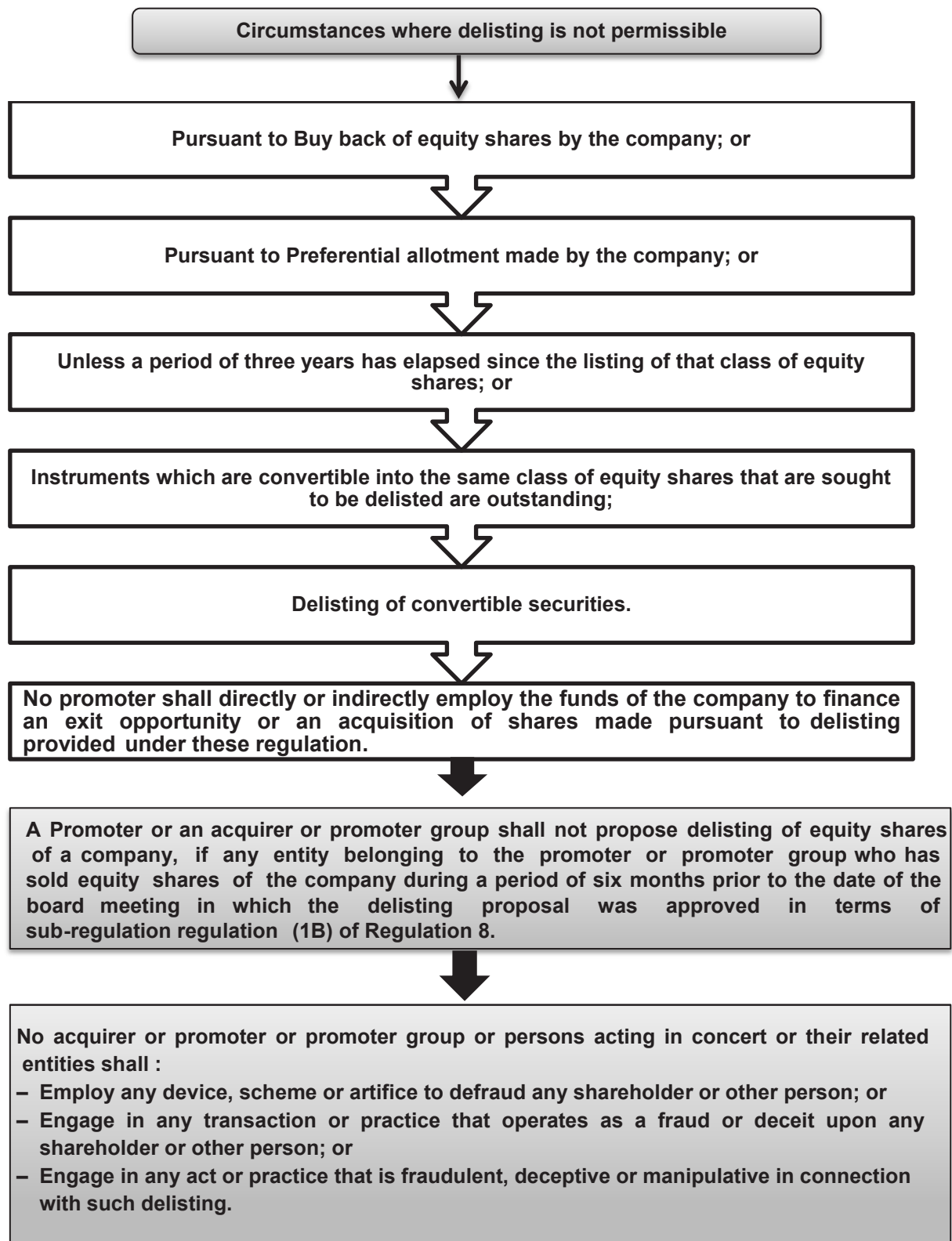
These regulation shall not be applicable to :–

- securities listed without making a public issue, on the institutional trading platform of a recognised stock exchange;
- under a scheme sanctioned by the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 or by the National Company Law Tribunal under section 262 of the Companies Act, 2013, if such scheme lays down any specific procedure to complete the delisting; or provides an exit option to the existing public shareholders at a specified rate.
- to any delisting of equity shares of a listed entity made pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016, if such plan, –
 - (a) lays down any specific procedure to complete the delisting of such share; or
 - (b) provides an exit option to the existing public shareholders at a price specified in the resolution plan:

Provided that, exit to the shareholders should be at a price which shall not be less than the liquidation value as determined under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 after paying off dues in the order of priority as defined under section 53 of the Insolvency and Bankruptcy Code, 2016.

Provided further that, if the existing promoters or any other shareholders are proposed to be provided an opportunity to exit under the resolution plan at a price higher than the price determined in terms of the above proviso, the existing public shareholders shall also be provided an exit opportunity at a price which shall not be less than the price, by whatever name called, at which such promoters or other shareholders, directly or indirectly, are provided exit:

Provided also that, the details of delisting of such shares along with the justification for exit price in respect of delisting proposed shall be disclosed to the recognized stock exchanges within one day of resolution plan being approved under section 31 of the Insolvency and Bankruptcy Code, 2016.



VOLUNTARY DELISTING

In voluntary delisting, the promoters of the listed company decides on their own to permanently remove its securities from a stock exchange.

Chapter III of SEBI (Delisting of Shares) Regulations 2009 gives an option to the listed company to either get itself delisted from all the recognised stock exchanges where it is listed or only from some of the few stock exchanges and continue to be listed on the exchange(s) having nation wide terminals.

The difference between two options is that of giving 'exit opportunity' to the shareholders. This is described as under:

Option I

• **No 'exit opportunity' required to be given** : In this option, if after the proposed delisting from any one or more recognised stock exchanges, the equity shares still remain listed on any recognised stock exchange which has nation-wide trading terminals, no exit opportunity needs to be given to the public shareholders. The procedure for such delisting of shares can be through a board resolution, public notice and application to the concerned exchange.

Option II

• **'Exit opportunity' must be given** : This option requires that if after the proposed delisting, the equity shares do not remain listed on any recognised stock exchange having nation-wide trading terminals, exit opportunity shall be given to all the public shareholders holding the equity shares sought to be delisted, through reverse book building.

Recognised stock exchange having nation wide trading terminals

It means the Bombay Stock Exchange Limited, the National Stock Exchange of India Limited or any other recognised stock exchange which may be specified by the SEBI in this regard.

Different modes of Voluntary Delisting

1. Voluntary delisting from all the stock exchanges.
2. Voluntary delisting from few stock exchanges subject to listing at atleast one stock exchange having nation wide terminal.
3. Voluntary delisting for Small Companies.

1. Procedure for voluntary delisting from all the stock exchanges

If after the proposed delisting, the equity shares do not remain listed on any recognised stock exchange having nationwide trading terminals, exit opportunity shall be given to all the public shareholders holding the equity shares sought to be delisted. [(Regulation 6 (b))]

Convene a Board Meeting [Regulation 8 (1) (a)]

The proposed delisting shall be approved by a resolution of the board of directors of the company in its meeting.

The Company will then appoint a merchant banker who shall carry out due diligence in terms of Regulation 8(1A) of the Delisting Regulations and will submit their due diligence report before the Board of Directors of the Company approves the delisting proposal. The due diligence to cover the following:

- (a) the trading carried out by the entities belonging to acquirer or promoter or promoter group or their related entities was in compliance or not, with the applicable provisions of the securities laws; and

- (b) entities belonging to acquirer or promoter or promoter group or their related entities have carried out or not, any transaction to facilitate the success of the delisting offer which is not in compliance with the provisions of sub-regulation (5) of regulation 4.

Subsequent to receipt of the Due Diligence Report of the Merchant Banker appointed by the Company, the Board of Directors will approve the delisting proposal of the Company and seek approval of the member through postal ballot.

Intimation of Board Meeting to Stock Exchange [Regulation 29(1)(c) of SEBI LODR Regulations]

The decision of the board meeting that the Board of directors has proposed to Delist the company from the exchanges be sent to the exchanges.

Special Resolution through postal Ballot [Regulation 8 (1) (b)]

The prior approval of shareholders of the company is taken by special resolution to be passed through postal ballot, disclosing all material facts in the explanatory statement sent to the shareholders in relation to such resolution.

Note – The special resolution shall be acted upon only if the votes cast by public shareholders in favour of the proposal amount to at least two times the number of votes cast by public shareholders against it.

Application for in principal approval to concerned Stock Exchange [Regulation 8(1) (c)]

The company makes an application to the concerned recognized stock exchange for in-principle approval of the proposed delisting in the form specified by the recognized stock exchange. The application shall be accompanied by an audit report as required under regulation 76 of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 (regulation 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996) in respect of the equity shares sought to be delisted, covering a period of six months prior to the date of the application.

Final Application for delisting to concerned Stock Exchange [Regulation 8(1) (d)]

The company shall make an application to the concerned recognized stock exchange for grant of final delisting approval within one year of passing the special resolution in the form specified by the recognised stockexchange.

Due Diligence by the Merchant Banker [Regulation 8(1A), (1B), (1C), (1D) & (1E)]

(1A) Prior to granting approval under clause (a) of sub-regulation (1), the board of directors of the company shall,-

- (i) make a disclosure to the recognized stock exchanges on which the equity shares of the company are listed that the promoters/acquirers have proposed to delist the company;
- (ii) appoint a merchant banker to carry out due-diligence and make a disclosure to this effect to the recognized stock exchanges on which the equity shares of the company are listed;
- (iii) obtain details of trading in shares of the company for a period of two years prior to the date of board meeting by top twenty five shareholders as on the date of the board meeting convened to consider the proposal for delisting, from the stock exchanges and details of off-market transactions of such shareholders for a period of two years and furnish the information to the merchant banker for carrying out due-diligence;
- (iv) obtain further details in terms of sub-regulation (1D) of regulation 8 and furnish the information to the merchant banker.

(1B) The board of directors of the company while approving the proposal for delisting shall certify that :

- (i) the company is in compliance with the applicable provisions of securities laws;
- (ii) the acquirer or promoter or promoter group or their related entities, are in compliance with sub-regulation (5) of regulation 4;
- (iii) the delisting is in the interest of the shareholders.

(1C) For certification in respect of matters referred to in sub-regulation (1B), the board of directors of the company shall take into account the report of the merchant banker as specified in sub-regulation (1E) of regulation 8.

(1D) The merchant banker appointed by the board of directors of the company under clause (ii) of sub-regulation (1A) shall carry out due-diligence upon obtaining details from the board of directors of the company in terms of clause (iii) of sub-regulation (1A) of regulation 8.

However if the merchant banker is of the opinion that details referred to in clause (iii) of sub-regulation (1A) of regulation 8 are not sufficient for certification in terms of sub-regulation (1E) of regulation 8, he shall obtain additional details from the board of directors of the company for such longer period as he may deem fit.

(1E) Upon carrying out due-diligence as specified in terms of sub-regulation (1D) of regulation 8, the merchant banker shall submit a report to the board of directors of the company certifying the following:

- (a) the trading carried out by the entities belonging to acquirer or promoter or promoter group or their related entities was in compliance or not, with the applicable provisions of the securities laws; and
- (b) any of the acquirer or promoter or promoter group entity or persons acting in concert or their related entities have carried out or not, any transaction to facilitate the success of the delisting offer which is not in compliance with the provisions of sub-regulation (5) of regulation 4.

In principal Approval by the Exchange [Regulation 8 (3)]

The recognized stock exchange shall dispose off the Application of the in-Principal approval complete in all respects within a period not exceeding five working days from the date of receipt of such application.

While considering an application seeking in-principle approval for delisting, the recognised stock exchange satisfy itself on the following grounds – [Regulation 8(4)]

- a. compliance with clause (b) of sub-regulation (1);
- b. The resolution of investor grievances by the company;
- c. Payment of listing fees to that recognised stock exchange;
- d. The compliance with any condition of the SEBI LODR Regulations, 2015 with that recognised stock exchange having a material bearing on the interests of its equity shareholders;
- e. Any litigation or action pending against the company pertaining to its activities in the securities market or any other matter having a material bearing on the interests of its equity shareholders;
- f. Any other relevant matter as the recognised stock exchange may deem fit to verify.

A final application for delisting made shall be accompanied with such proof of having given the exit opportunity in accordance with the provisions of these Regulations as the recognised stock exchange may require.

Appointment of Merchant Banker [Regulation 10 (4)]

The acquirer or promoter shall appoint a merchant banker registered with the SEBI and such other intermediaries as are considered necessary. It should not be an associate of the promoter or acquirer.

Explanation – The merchant banker conducting the due diligence on behalf of the company may also act as the manager to the delisting offer.

Promoter not to sell shares [Regulation 10(7)]

No entity belonging to the acquirer, promoter and promoter group of the Company shall sell shares of the company during the period from the date of the board meeting in which delisting proposal was approved till the completion of the delisting proposal.

Determination of Offer Price (Regulation 15)

The offer price shall be determined through book building process after fixation of floor price and disclosure of the same in the public announcement and the letter of offer. The floor price shall be determined in terms regulation 8 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, as may be applicable.

Opening of Escrow account [Regulation 11]

The acquirer or promoter open an escrow account and deposit therein the total estimated amount of consideration calculated on the basis of floor price and number of equity shares outstanding with public shareholders. The escrow account shall consist of either cash deposited with a scheduled commercial bank, or a bank guarantee in favour of the merchant banker, or a combination of both.

Explanation – The reference date for computing the floor price would be the date on which the recognized stock exchange/s were required to be notified of the board meeting in which delisting proposal would be considered.

Where the escrow account consists of deposit with a scheduled commercial bank, the promoter shall, while opening the account, empower the merchant banker to instruct the bank to issue banker's cheques or demand drafts for the amount lying to the credit of the escrow account, for the purposes mentioned in these regulations, and the amount in such deposit, if any, remaining after full payment of consideration for equity shares tendered in the offer and those tendered under sub-regulation (1) of regulation 21 shall be released to the promoter. Where the escrow account consists of a bank guarantee, such bank guarantee shall be valid till payments are made in respect of all shares tendered under sub-regulation (1) of regulation 21.

Public Announcement [Regulation 10]

The acquirer or promoters of the company within one working day from the date of receipt of in- principle approval for delisting from the recognized stock exchange, make a public announcement in at least one English national daily with wide circulation, one Hindi national daily with wide circulation and one regional language newspaper of the region where the concerned recognized stock exchange is located.

The public announcement contain the material information including the information specified in Schedule I –

1. The floor price and the offer price and how they were arrived at.
2. The dates of opening and closing of the offer.
3. The name of the exchange from which the equity shares are sought to be delisted.
4. The manner in which the offer can be accepted by the shareholders.
5. Disclosure regarding the minimum acceptance condition for success of the offer.
6. The names of the merchant banker and other intermediaries together with the helpline number for the shareholders.

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7. The specified date fixed as per sub-regulation (3) of regulation 10.
8. The object of the proposed delisting.
9. The proposed time table from opening of the offer till the payment of consideration or return of equity shares.
10. Details of the escrow account and the amount deposited therein.
11. Listing details and stock market data:
 - (a) high, low and average market prices of the equity shares of the company during the preceding three years;
 - (b) monthly high and low prices for the six months preceding the date of the public announcement; and,
 - (c) the volume of equity shares traded in each month during the six months preceding the date of public announcement.
12. Present capital structure and shareholding pattern.
13. The likely post-delisting shareholding pattern.
14. The aggregate shareholding of the promoter together with persons acting in concert and of the directors of the promoter where the promoter is a company and of persons who are in control of the company.
15. A statement, certified to be true by the board of directors of the company, disclosing material deviation, if any, in utilisation of proceeds of issues of securities made during the five years immediately preceding the date of public announcement, from the stated object of the issue.
16. A statement by the board of directors of the company confirming that all material information which is required to be disclosed under the provisions of continuous listing requirement have been disclosed to the stock exchanges.
17. A statement by the board of directors of the company certifying that:-
 - a) the company is in compliance with the applicable provisions of securities laws;
 - b) the acquirer or promoter or promoter group or their related entities have not carried out any transaction during the aforesaid period to facilitate the success of the delisting offer;
 - c) the delisting is in the interest of the shareholders.
18. Name of compliance officer of the company.
19. It should be signed and dated by the promoter. Where the promoter is a company, the public announcement shall be dated and signed on behalf of the board of directors of the company by its manager or secretary, if any, and by not less than two directors of the company, one of whom shall be a managing director where there is one.

Specified Date [Regulation 10 (3)]

A date not later than one working days from the date of the public announcement, to be determined on which the names of shareholders to whom the letter of offer shall be sent is determined.

Dispatch of Letter of offer [Regulation 12]

The acquirer or promoter shall dispatch the letter of offer to the public shareholders of equity shares, not later than two working days from the date of the public announcement. The letter of offer shall contain all the disclosures

made in public announcement and such other disclosures as may be necessary for the shareholders to take an informed decision. The letter of offer shall be accompanied with a bidding form for use of public shareholders and a form to be used by them for tendering shares.

Explanation – An eligible public shareholder may participate in the delisting offer and make bids even if he does not receive the bidding form or the tender offer /offer form and such shareholder may tender shares in the manner specified by the SEBI in this regard.

Duration of the Bidding period [Regulation13]

The date of opening of the offer shall not be later than seven working days from the date of the public announcement and shall remain open for a period of five working days during which the public shareholders may tender their bids.

The acquirer or promoter shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism.

The final offer price shall be determined as the price at which shares accepted through eligible bids.

An illustration for arriving at the final offer price is given as under:

Bid Price (Rs.)	Number of investors	Demand (Number of shares)	Cumulative demand (Number of shares)	
550	5	2,50,000	2,50,000	
565	8	4,00,000	6,50,000	
575	10	2,00,000	8,50,000	
585	4	4,00,000	12,50,000	
595	6	1,20,000	13,70,000	
600	5	1,30,000	15,00,000	Final Offer Price
605	3	2,10,000	17,10,000	
610	3	1,40,000	18,50,000	
615	3	1,50,000	20,00,000	
620	1	5,00,000	25,00,000	
	48	25,00,000		

Assuming floor price of Rs.550/- per share, promoter/ acquirer shareholding at 75% and number of shares required for successful delisting as 15,00,000, the final price would be the price at which the promoter reaches the threshold of 90%, i.e., it would be Rs.600/- per share.

If the Final Price is accepted.

Minimum number of equity shares to be acquired [Regulation 17]

If a counter offer has not been made by the acquirer or promoter in accordance with regulation 16(1A), an offer made shall be deemed to be successful only if, –

- (a) the post offer promoter shareholding (along with the persons acting in concert with the promoter) taken

together with the shares accepted through eligible bids at the final price determined as per Schedule II, reaches ninety percent of the total issued shares of that class excluding the shares which are held by a custodian and against which depository receipts have been issued overseas; and

- (b) at least twenty five percent of the public shareholders holding shares in the demat mode as on date of the board meeting had participated in the Book Building Process.

However, this requirement shall not be applicable to cases where the acquirer and the merchant banker demonstrate to the stock exchanges that they have delivered the letter of offer to all the public shareholders either through registered post or speed post or courier or hand delivery with proof of delivery or through email as a text or as an attachment to email or as a notification providing electronic link or Uniform Resource Locator including a read receipt.

Explanation I. -

- a. If the acquirer or the merchant banker send the letters of offer to all the shareholders by registered post or speed post through India Post and is able to provide a detailed account regarding the status of delivery of the letters of offer (whether delivered or not) sent through India Post, the same would be considered as a deemed compliance with the proviso.
- b. If the acquirer or the merchant banker is unable to deliver the letter of offer to certain shareholders by modes other than speed post or registered post of India Post, efforts should be made to deliver the letters of offer to them by speed post or registered post through India Post. In that case, a detailed account regarding the status of delivery of letter of offer (whether delivered or not) provided from India Post would also be considered as deemed compliance with the proviso.

Explanation II. – In case the delisting offer has been made in terms of regulation 5A of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the threshold limit of ninety per cent for successful delisting offer shall be calculated taking into account the post offer shareholding of the acquirer taken together with the existing shareholding, shares to be acquired which attracted the obligation to make an open offer and shares accepted through eligible bids at the final price determined as per Schedule II.

If a counter offer has been made by the acquirer or promoter, an offer made under chapter III shall be deemed to be successful only if the post offer promoter shareholding (along with the persons acting in concert with the promoter) taken together with the shares accepted at the counter offer price reaches ninety percent of the total issued shares of that class excluding the shares which are held by a custodian and against which depository receipts have been issued overseas.

Counter Offer [Regulation 16(1A)]

If the price discovered in terms of regulation 15 is not acceptable to the acquirer or the promoter, the acquirer or the promoter may make a counter offer to the public shareholders within two working days of the price discovered under regulation 15, in the manner specified by the Board from time to time.

However the counter offer price shall not be less than the book value of the company as certified by the merchant banker.

Public Announcement after closure of offer [Regulation 18]

Within five working days of closure of the offer, the promoter/acquirer and the merchant banker shall make a public announcement in at least one English national daily with wide circulation, one Hindi national daily with wide circulation and one regional language newspaper of the region where the concerned recognized stock exchanges are located regarding the success of the offer in terms of regulation 17 alongwith the final price accepted by the acquirer or the failure of the offers in terms of regulation 19.

Payment of consideration [Regulation 20]

The promoter shall immediately upon success of the offer, open a special account with a SEBI registered banker to an issue and transfer thereto, the entire amount due and payable as consideration in respect of equity shares tendered in the offer, from the escrow account. All the shareholders whose equity shares are verified to be genuine shall be paid the final price stated in the public announcement within ten working days from the closure of the offer.

Final Application to Stock Exchange [Regulation 8 (5)]

A final application for delisting be made to the concerned recognised stock exchange accompanied with such proof of having given the exit opportunity in accordance with the provisions of Chapter IV, as the recognised stock exchange may require.

Delisting Order

The recognized stock exchange shall dispose off the application of the delisting complete in all respects and pass the delisting order.

Right of remaining shareholders to tender equity shares [Regulation 21]

Remaining public shareholder holding such equity shares may tender their shares to the promoter upto a period of minimum year from the date of delisting and, in such a case, the promoter shall accept the shares tendered at the same final price at which the earlier acceptance of shares was made. The payment of consideration for shares accepted shall be made out of the balance amount lying in the escrow account.

Release of amount in the escrow account [Regulation 21(1)]

The amount in the escrow account or the bank guarantee be released to the promoter after all payments are made in respect of shares tendered under sub-regulation (1).

If the Final Price is not accepted

Returning of the Equity Shares tendered [Regulation 16 (2)]

Where the acquirer or promoter decides not to accept the offer price so determined, the acquirer or promoter shall not acquire any equity shares tendered pursuant to the offer and the equity shares deposited or pledged by a shareholder pursuant to clauses 7 or 9 of Schedule II shall be returned or released to him within ten working days of closure of the bidding period;

Failure of Offer [Regulation 19]

(1) Where the offer is rejected or is not successful as, the offer shall be deemed to have failed and no equity shares shall be acquired pursuant to such offer.

(2) Where the offer fails –

- (a) the equity shares deposited or pledged by a shareholder shall be returned or released to him within ten working days from the end of the bidding period;

However, the acquirer shall not be required to return the shares if the offer is made pursuant to regulation 5A of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

- (b) no final application shall be made to the exchange for delisting of the equity shares; and
- (c) the escrow account opened shall be closed.

2. Procedure for Voluntary delisting from few stock exchanges subject to listing at atleast one stock exchange having nationwide terminals

If after the proposed delisting from any one or more recognised stock exchanges, the equity shares would remain listed on any recognised stock exchange which has nationwide trading terminals, no exit opportunity needs to be given to the public shareholders. [Section 6 (a)]

➤ Convene a Board Meeting [Regulation 7 (1) (a)]

The proposed delisting shall be approved by a resolution of the board of directors of the company in its meeting.

➤ Outcome of Board Meeting to Stock Exchange [Regulation 29 of the SEBI LODR Regulations]

The decision of the board meeting that the Board of directors has proposed to Delist the company from the exchanges be sent to the exchanges.

➤ Public notice [Regulation 7 (1) (b)]

The company to give a public notice of the proposed delisting in at least one English national daily with wide circulation, one Hindi national daily with wide circulation and one regional language newspaper of the region where the concerned recognized stock exchanges are located.

➤ Details shall mention in Public notice [Regulation 7 (2)]

- (a) The names of the recognized stock exchanges from where the equity shares of the company are intended to be delisted.
- (b) The reasons for such delisting.
- (c) The fact of continuation of listing of equity shares on recognized stock exchange having nation wide trading terminals.

➤ Application to the concerned recognized stock exchange. [Regulation 7 (1)(c)]

The company shall make an application to the concerned recognized stock exchange for delisting its equity shares.

➤ Delisting order by the Exchange. [Regulation 7 (3)]

The recognized stock exchange shall dispose off the Application of the delisting complete in all respects within a period not exceeding thirty working days from the date of receipt of such application.

➤ Disclosure in the Annual report. [Regulation 7 (1)(d)]

In the first Annual report which will be prepared after the delisting, include the names of the recognised stock exchanges from where the company got voluntary delisted during that year and the reason of the delisting there from.

3. Voluntary Delisting by Small Companies

Small Company means

- a) A company has a paid up capital not exceeding ten crore rupees and net worth not exceeding twenty five crore rupees as on the last date of preceding financial year;
- b) The number of equity shares of the company traded on each such recognised stock exchange during the twelve calendar months immediately preceding the date of board meeting is less than ten per cent of the total number of shares of such company.

However, where the share capital of a particular class of shares of the company is not identical throughout such period, the weighted average of the shares of such class shall represent the total number of shares of such class of shares of the company; and

- c) the company has not been suspended by any of the recognised stock exchanges having nationwide trading terminals for any non-compliance in the preceding one year;

Convene a Board Meeting [Regulation 8 (1) (a)]

The proposed delisting shall be placed before the board of directors of the company in its meeting.

The Company will then appoint a merchant banker who shall carry out due diligence in terms of Regulation 8(1A) of the Delisting Regulations and will submit their due diligence report before the Board of Directors of the Company approves the delisting proposal. The due diligence to cover the following:

- (a) the trading carried out by the entities belonging to acquirer or promoter or promoter group or their related entities was in compliance or not, with the applicable provisions of the securities laws; and
- (b) entities belonging to acquirer or promoter or promoter group or their related entities have carried out or not, any transaction to facilitate the success of the delisting offer which is not in compliance with the provisions of sub-regulation (5) of regulation 4.

Subsequent to receipt of the Due Diligence Report of the Merchant Banker appointed by the Company, the Board of Directors will approve the delisting proposal of the Company and seek approval of the member through postal ballot.

The promoter appoint a merchant banker registered with the SEBI. The merchant banker appointed by the Promoters and Company can be the same entity.

Appointment of Merchant Banker [Regulation 27 (3)(b)]

The promoter appoint a merchant banker registered with the SEBI.

Outcome of Board Meeting to Stock Exchange [Schedule III of the SEBI LODR Regulations, 2015]

The decision of the board meeting that the Board of directors has proposed to Delist the company from the exchanges be sent to the exchanges within 30 minutes of the closure of the meeting.

Special Resolution Through postal Ballot (Regulation 8 (1) (b))

The prior approval of shareholders of the company be taken by special resolution to be passed through postal ballot, disclosing all material facts in the explanatory statement sent to the shareholders in relation to such resolution.

Points to Remember:-

The special resolution shall be acted upon only if (i) the same has been passed as special resolution in terms of the Companies Act, 2013 with 3/4th majority; and (ii) the votes casted by public shareholders in favour of the proposal amount to at least two times the number of votes casted by public shareholders against it.

Determination of Exit Price [Regulation 27 (3)(b)]

The exit price offered to the public shareholders shall not be less than the floor price determined in terms of sub-regulation (2) of regulation 15 of these regulations read with clause (e) of sub-regulation (2) of regulation 8 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Application for In Principal Approval to Concerned Stock Exchange [Regulation 8(1)(c)]

The company makes an application to the concerned recognized stock exchange for in-principle approval of the proposed delisting in the form specified by the recognized stock exchange. The application shall be accompanied by an audit report as required under regulation 76 of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018, in respect of the equity shares sought to be delisted, covering a period of six months prior to the date of the application.

In principal Approval by the Exchange [Regulation 8 (3)]

The recognized stock exchange shall dispose off the Application of the in principal approval complete in all respects within a period not exceeding five working days from the date of receipt of such application.

While considering an application seeking in-principle approval for delisting, the recognised stock exchange satisfy itself on the following grounds – [Regulation 8(4)]

- a. compliance with clause (b) of sub-regulation (1);
- b. The resolution of investor grievances by the company;
- c. Payment of listing fees to that recognised stock exchange;
- d. The compliance with any condition of the listing agreement with that recognised stock exchange having a material bearing on the interests of its equity shareholders;
- e. Any litigation or action pending against the company pertaining to its activities in the securities market or any other matter having a material bearing on the interests of its equity shareholders;
- f. Any other relevant matter as the recognised stock exchange may deem fit to verify.

Public notice [Regulation 7(1)(b)]

The company shall give a public notice of the proposed delisting in at least one English national daily with wide circulation, one Hindi national daily with wide circulation and one regional language newspaper of the region where the concerned recognized stock exchanges are located.

Letter to all public Shareholders [Regulation 27 (3)(c)]

The promoters shall write individually to all the public shareholders containing the following particulars:

- i. Intention of delisting the shares.
- ii. Exit price and justification of the exit price.
- iii. Acquisition of shares of the public shareholders / Seeking their positive consent of the shareholders for delisting proposal.

Consent of the Public Shareholders [Regulation 27 (3)(d)]

The public shareholders, irrespective of their numbers, holding 90% or more of the public shareholding give their consent in writing for the delisting of the shares and the shareholders shall have the option to surrender their shares at the exit price determined or to remain the shareholders even if the shares get delisted.

Receiving consent from the Shareholders [Regulation 27(3)(e)]

The process of inviting the positive consent and finalisation of the proposal for delisting of shares to be made within 75 working days of dispatching the Letter to all the shareholder .

Payment to shareholders [Regulation 27 (3)(f)]

The promoters shall make the payment in cash to the public shareholders who have tendered their shares within 15 working days from the date of expiry of 75 working days as mentioned above.

Final Application to Stock Exchange [Regulation 8 (5)]

A final application for delisting be made to the concerned recognised stock exchange accompanied with such proof of having given the exit opportunity in accordance with the above said provisions.

Delisting Order

The recognized stock exchange shall dispose off the Application of the delisting complete in all respects and pass the delisting order.

Can the promoter of a small company, as defined under regulation 27 of Delisting Regulations, be considered to have complied with the condition under regulation 27(3)(d) if the public shareholders holding at least ninety percent of the public shareholding give their positive consent in writing to the proposal for delisting?

Yes, the promoter of a small company would be considered to have complied with the condition under regulation 27(3) (d) if the public shareholders, irrespective of their numbers, holding ninety percent or more of the public shareholding give their positive consent in writing to the proposal for delisting. (Please refer to SAT Order dated November 04, 2011 in the matter of V. T. Somasundaram and M/s. Trichy Distilleries & Chemicals Limited vs. Madras Stock Exchange and SEBI.)

COMPULSORY DELISTING

Compulsory delisting refers to permanent removal of securities of a listed company from a stock exchange as a penalizing measure at the behest of the stock exchange for not making submissions/comply with various requirements set out in the Listing agreement within the time frames prescribed.

As per Regulation 22(1) a recognized stock exchange may, by order, delist any equity shares of a company on any ground prescribed in the rules made under section 21A of the Securities Contracts (Regulation) Act, 1956 .

Constitution of Panel [Regulation 22 (2)]

The decision regarding compulsory delisting shall be taken by a panel to be constituted by the recognized stock exchange consisting of -

- a. Two directors of the recognized stock exchange (one of whom shall be a public representative);
- b. One representative of the investors;
- c. One representative of the Ministry of Corporate Affairs or Registrar of Companies; and
- d. The Executive Director or Secretary of the recognized stock exchange.

Public notice before delisting order [Regulation 22 (3)]

Before passing a delisting order the recognized stock exchange shall give a notice in one English national daily with wide circulation and one regional language newspaper of the region where the concerned recognized stock exchange is located and shall also display such notice on its trading systems and website.

Time period of making representation [Regulation 22 (3)]

Time period of not less than fifteen working days from the notice, be given to any person who may be aggrieved

by the proposed delisting within which he can made representations to the recognized stock exchange which has issued a notice for the delisting.

Delisting Order by the Recognised Stock Exchange [Regulation 22 (4)]

The recognized stock exchange passes an order under sub-regulation (1) after considering the representations, if any, made by the company and any aggrieved person in response to the notice and after considering the following points:-

1. Nature and extent of the alleged non-compliance of the company and the number and percentage of shareholders who may be affected by such non-compliance.
2. The status of compliance of the company with the office of the concerned Registrar of Companies.

Public notice after Delisting Order [Regulation 22 (6)]

Where the recognized stock exchange passes the delisting order, it shall, -

- (a) Forthwith publish a notice in one English national daily with wide circulation and one regional language newspaper of the region where the concerned recognized stock exchange is located.
- (b) Inform all other stock exchanges where the equity shares of the company are listed, about such delisting.

Disclosures to be made in the notice –

- Facts of such delisting;
- The name and address of the company;
- The fair value of the equity shares determined under sub-regulation (1) of regulation 23; and
- The names and addresses of the promoters of the company who would be liable under sub-regulation (3) of regulation 23.

Exit Price Determination by an Independent Valuer (Regulation 23)

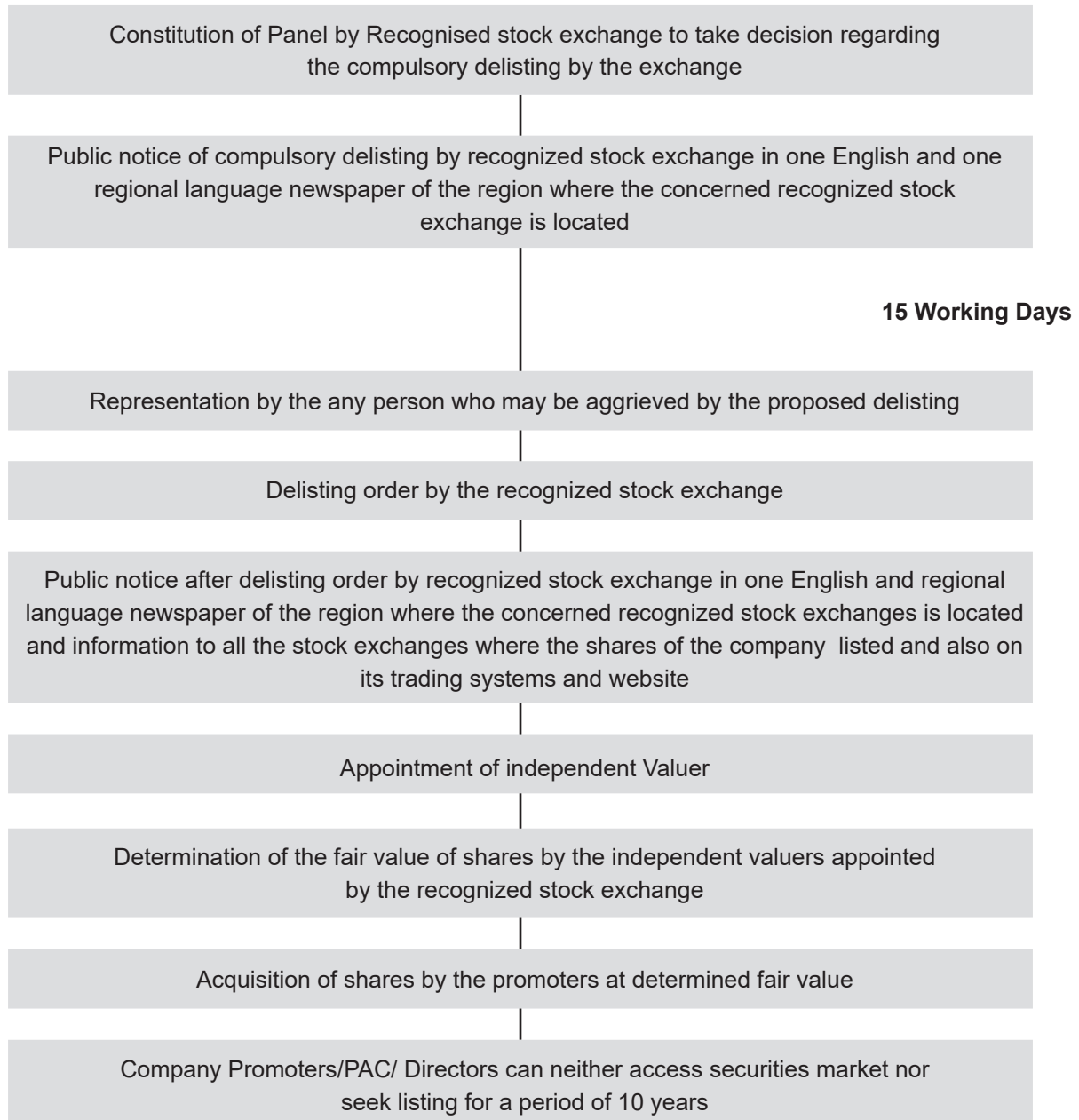
- The recognized stock exchange shall form a panel of expert valuers from whom the valuer or valuers shall be appointed.
- Where equity shares of a company are delisted by a recognised stock exchange under this Chapter, the recognised stock exchange shall appoint an independent valuer or valuers who shall determine the fair value of the delisted equity shares.
- The promoter of the delisted company shall acquire equity shares from the public shareholders by paying them the value determined by the valuer within three months of the date of delisting from the recognised stock exchange, subject to their option of retaining their shares.

Important points:-

1. No open offer is required to be given by the Delisted Company in the case of compulsory delisting made by a recognized stock exchange.
2. Where a company has been compulsorily delisted the company, its whole time directors, its promoters and the companies which are promoted by any of them shall not directly or indirectly access the securities market or seek listing for any equity shares for a period of ten years from the date of such delisting.

Special Powers to the recognized stock Exchanges (SCHEDULE III)

1. The recognised stock exchange can file prosecutions under relevant provisions of the Securities Contracts (Regulation) Act, 1956 or any other law for the time being in force against identifiable promoters and directors of the company for the alleged non-compliances.
2. The recognised stock exchange can also file a petition for winding up the company under section 271 of the Companies Act, 2013 or make a request to the Registrar of Companies to strike off the name of the company from the register under section 248 of the said Act.



Compulsory Delisting – Time-line

Compulsory Delisting	Time-line in Working Days
1. CONSTITUTION OF PANEL [Reg. 22(2)] The recognised stock exchange(s) shall constitute the panel to take the decision regarding the compulsory delisting of the Company.	—
2. PUBLIC NOTICE BEFORE MAKING THE DELISTING ORDER [Reg. 22(3)] The recognised stock exchange (s) shall give the public notice for the compulsory delisting of the company in one English, one Hindi national daily and one Regional language news paper where the concerned stock exchange is located and also on its trading system & website.	X
3. REPRESENTATIONS [Reg. 22(4)] Any person aggrieved by such public notice may give representation within maximum 15 working days from the date of the public notice.	X + 15
4. DELISTING ORDER [Reg. 22(3)] The recognised stock exchange(s) may pass the delisting order after giving the reasonable opportunity of being heard to the concerned person.	X + 30
5. PUBLIC NOTICE AFTER DELISTING ORDER [Reg. 22(6)] The recognized stock exchange(s) shall publish the delisting order in one English, one Hindi national daily newspaper and one Regional language newspaper where the concerned stock exchange is located.	X + 31
6. INTIMATION TO OTHER EXCHANGE(S) [Reg. 22(6)] The recognized stock exchange(s) shall intimate other exchange(s) where the company is listed about the delisting order.	X + 31
7. APPOINTMENT OF INDEPENDENT VALUER [Reg. 23(1)] The recognised stock exchange(s) shall appoint the independent valuer(s) from the panel of expert valuers.	X + 30
8. DETERMINATION OF FAIR VALUE [Reg. 23(1)] The independent valuer(s) shall determine the fair value of the delisted equity shares at which the shares may be tendered by the public shareholders.	X + 30
9. ACQUISITION OF SHARES [Reg. 23(3)] The promoters shall acquire the shares at the fair value from the public shareholders.	—
10. CONSEQUENCE OF COMPULSORY DELISTING (Reg. 24) The company / promoters / person acting in concert/ directors cannot access securities market or seek listing for a period of 10 years.	—

CONSEQUENCES

Where a company has been compulsorily delisted the company, its whole time directors, its promoters and the companies which are promoted by any of them shall not directly or indirectly access the securities market or seek listing for any equity shares for a period of ten years from the date of such delisting.

ROLE OF COMPANY SECRETARY IN DELISTING

The SEBI has widened the area of responsibilities of a Company Secretary by mandating a listed company to appoint Company Secretary to act as compliance officer under the SEBI (LODR) Regulations.

Being a compliance officer it is the responsibility of a Company Secretary to look after and ensure timely compliances of various SEBI regulations. In case of non-compliance with the listing regulation a stock exchange may delist the securities of a company.

Apart from this, a Company Secretary has to appoint and co-ordinate with various intermediaries, regulators, etc. and advise the Board of Directors, the various requirements of Delisting.

LESSON ROUND UP

- Delisting of securities means permanent removal of securities of a listed company from a stock exchange. As a consequence of delisting, the securities of that company would no longer be traded at that stock exchange.
- Delisting can be voluntary or compulsory.
- SEBI has notified the SEBI (Delisting of Equity Shares) Regulations, 2009 by its publication dated June 10, 2009.
- The delisting regulations are applicable to delisting of equity shares of a company from all or any of the recognised stock exchanges where such shares are listed.
- There are certain circumstances as prescribed by the SEBI where delisting is not permissible.
- Chapter III of delisting regulations gives an option to the listed company to either get itself delisted from all the recognised stock exchanges where it is listed or only from some of the few stock exchange(s) having nation wide terminals.
- In voluntary delisting, a company decides its own to permanently remove its securities from stock exchange.
- A recognised stock exchange may by order delist any equity shares of a company on any grounds prescribed under the rules made under section 21 of the SCRA, 1956.
- When a company has been compulsorily delisted the company, its whole time directors, its promoters and the companies which are promoted by any of them shall not directly or indirectly access the securities market or seek listing for any equity shares for a period of ten years from the date of such delisting.

GLOSSARY

Bid	An offer of a price to buy it as an auction. Business on the stock exchange is done through bids. Bid also refers to the price one is willing to pay.
Delisting Exchange	The exchange from which securities of a company are proposed to be delisted.
Offer Price	Price at which units in trust can be bought it often includes an entry fee. It also refers to the price at which securities are offered to the public.
Public Shareholders	It means the holders of equity shares, other than the following: (a) promoters; (b) holders of depository receipts issued overseas against equity shares held with a custodian and such custodian.
Working Days	It means the working days of the SEBI.

SELF TEST QUESTIONS

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

1. Discuss the eligibility criteria for voluntary delisting of shares.
2. What are the rights of security holders in case of compulsory delisting of securities?
3. Can cash component of the escrow account in the delisting offer process be maintained in an interest bearing account?
4. Explain the circumstances where delisting is not permissible under SEBI (Delisting of Equity Shares) Regulations, 2009.
5. How does one tender one's shares for delisting in the tender offer method?

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Lesson 9

SEBI (Share Based Employee Benefits) Regulations, 2014 – An Overview

LESSON OUTLINE

- Background
- Companies Act, 2013
- SEBI (Share Based Employee Benefits) Regulations, 2014
- Schemes – Implementation & Process
- Administration of Specific Schemes
- Directions by SEBI & Action in case of Default
- SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 for ESOP/ESPS
- Role of Company Secretary
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

A company always wants to retain the top talent in the company those working for the future success of the organization. Further, the human capital or the work force is always the vital component of a business organization and those executives who possess the potential to take the organization to newer height need to be remunerated suitably. One of the key non-financial remuneration or incentive may be issued to the employee in form of Employee Stock Option.

Taking into account the wider perspective of employee benefit scheme in India as well as overseas and with the intent to align the provisions of the extant regulations with the Companies Act, 2013, SEBI has notified the SEBI (Share Based Employee Benefits) Regulations, 2014.

As it is of utmost importance to be conversant with the legal dimensions associated with the various employee benefit scheme, this lesson undertakes a holistic approach by focusing in all the significant facets of issue of ESOPs.

This lesson will enable the students to learn the various provisions of SEBI (Share Based Employee Benefits) Regulations, 2014 in respect of various types of Schemes, its applicability, Scheme implementation and process, Administration of Specific Scheme and direction of SEBI etc.

BACKGROUND

SEBI has (i) issued the SEBI (ESOS & ESPS) Guidelines, 1999 (“ESOS Guidelines”) to enable listed companies to reward their employees through stock option schemes and stock purchase schemes; and (ii) notified the SEBI (Issue of Sweat Equity) Regulations, 2002 (“Sweat Equity Regulations”) to regulate issuance of sweat equity shares by listed companies in accordance with Section 79A of the Companies Act, 1956.

Under the ESOS Guidelines, an ESOS/ESPS Trust can only distribute options/shares to its employees issued by the company. However, ESOS Guidelines, till recently, were silent regarding acquisition of shares from secondary market. It came to the notice of SEBI that some listed companies were framing their own employees benefit schemes wherein Trusts were set up to deal in their own securities in the secondary market, which was not envisaged within the purview of the ESOS Guidelines.

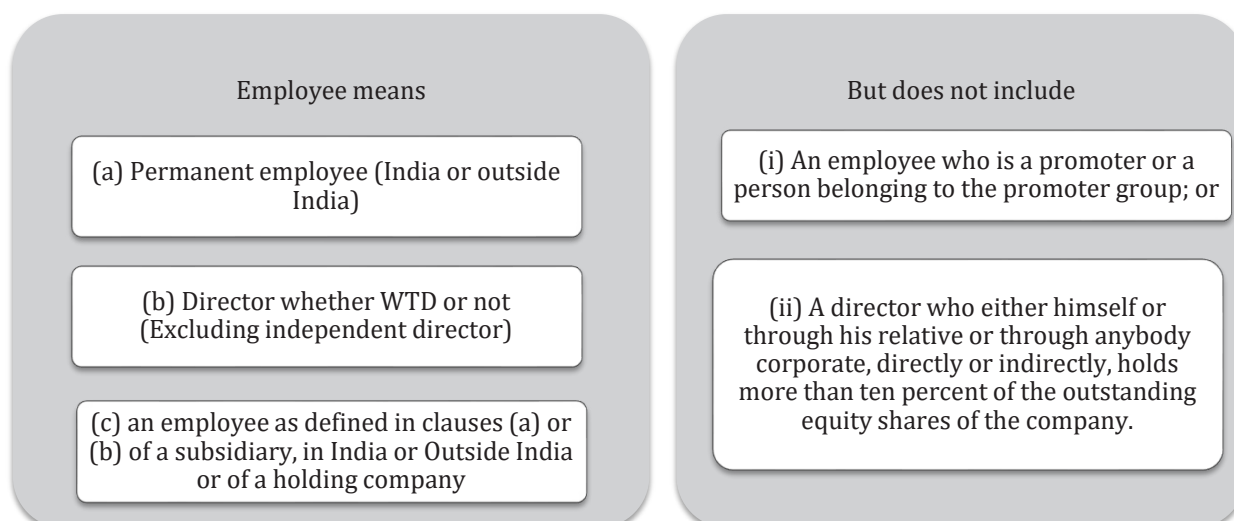
Therefore, to regulate the listed companies from framing any employee benefit scheme involving acquisition of own securities from the secondary market, it was felt that secondary market acquisitions by Trusts being an internationally accepted practice should be considered subject to necessary safeguards to prevent misuse. It was also recognized that there are many kinds of employee benefit schemes involving own securities which being outside the purview of extant ESOS Guidelines are unregulated.

Accordingly, taking into account the wider perspective of employee benefit scheme in India as well as overseas and with the intent to align the provisions of the extant regulations with the Companies Act, 2013, the SEBI notified the SEBI (Share Based Employee Benefits) Regulations, 2014.

COMPANIES ACT, 2013

As per Section 62(1) (b) of Companies Act 2013, a 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. However, pursuant to notification dated 5th June, 2015, the private company can issue said shares to its employee by passing ordinary resolution in the General Meeting.

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 G.S.R. 127(E), dated 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India the conditions mentioned in table point (i) and (ii) shall not apply upto ten years from the date of its incorporation or registration.

In terms of the provisions of the SEBI (Share Based Employee Benefits) Regulations, 2014 and the Companies Act, 2013, independent directors are not entitled to ESOPs. However, prior to commencement of these provisions, independent directors were eligible to receive ESOPs. In light of this, if an independent director has been granted ESOPs before commencement of the said provisions and such options remains to be exercised, can he/she still exercise such ESOPs?

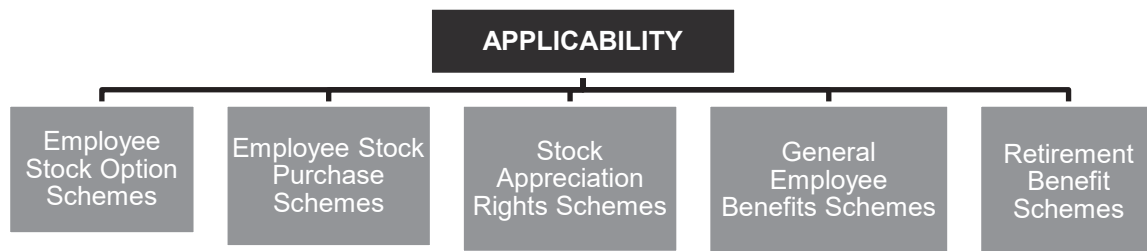
Yes, the restriction on grant of ESOPs to independent director applies only on fresh grants of ESOPs after commencement of the aforesaid provisions. Any grant already made prior to commencement of these provision shall remain valid, i.e., an independent director can exercise such ESOPs subject of fulfillment of terms and conditions of the ESOPs schemes framed by the Companies in terms of the relevant regulations.

SEBI (SHARE BASED EMPLOYEE BENEFITS) REGULATIONS, 2014

The SEBI (Share Based Employee Benefits) Regulations, 2014 provides 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.

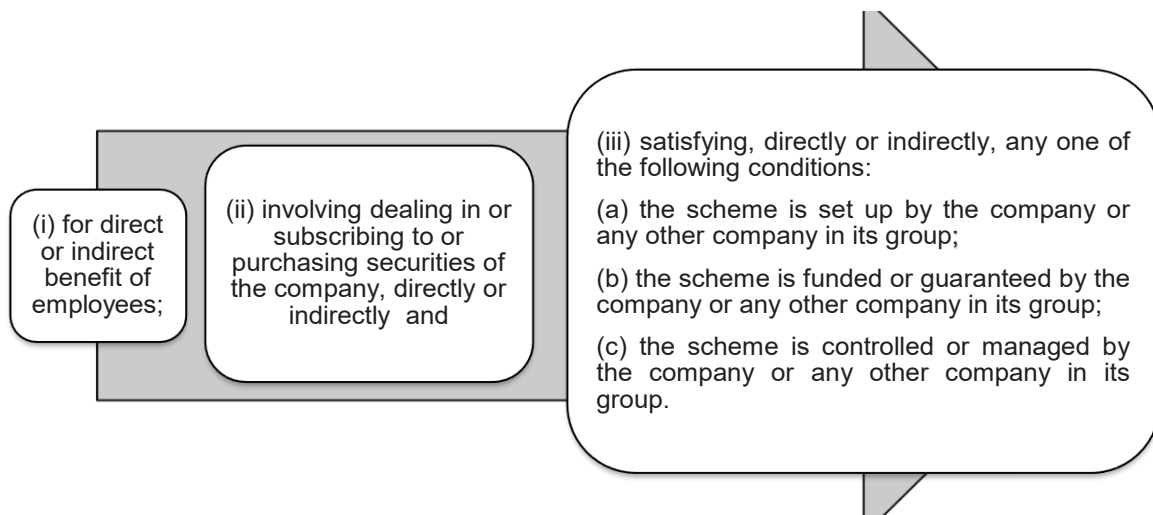
SEBI (Share Based Employee Benefits) Regulations, 2014 comprises of four chapters. Chapter I deal mainly with the preliminary and definition used in regulation. Chapter II provides for implementation and process of scheme. Chapter III deals with administration of specific schemes. Chapter IV deals with miscellaneous provisions.

APPLICABILITY



COMPANIES COVERED

The provisions of these regulations shall apply to any company whose shares are listed on a recognised stock exchange in India, and has a scheme:



NON- APPLICABILITY

- 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.

IMPORTANT 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.

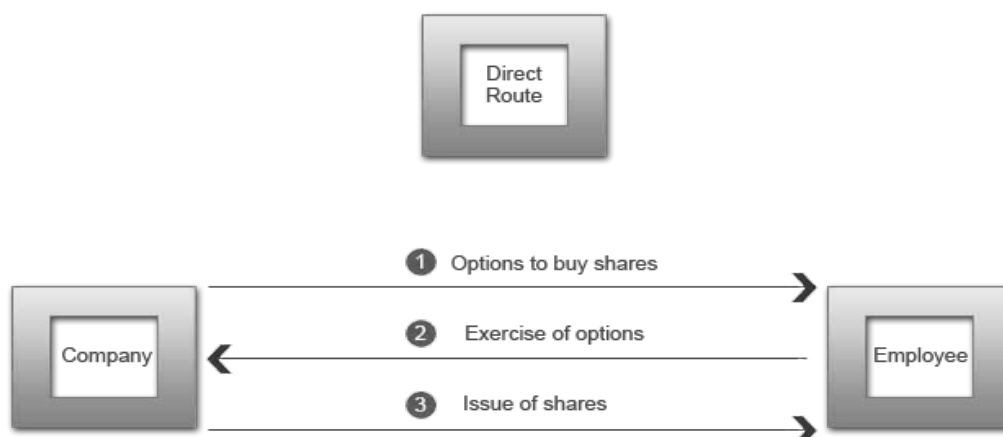
Explanation – An SAR settled by way of shares of the company shall be referred to as equity settled SAR.

“Stock Appreciation Right Scheme” means a scheme under which a company grants SAR to employees.

SCHEMES - IMPLEMENTATION AND PROCESS

A company may implement schemes either :-

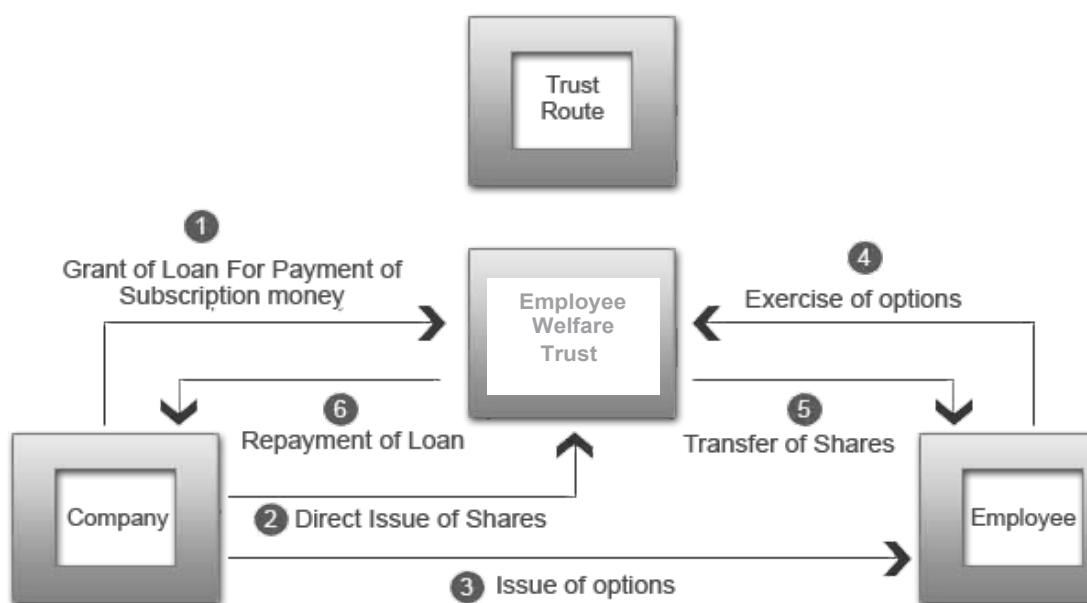
- a) directly or
- b) by setting up an irrevocable trust(s).



Direct Route for ESOP's

- ① Company forms an Compensation committee and define the eligibility criteria of ESOPs
- ② Issue fresh shares for ESOPs.
- ③ After vesting period employees can exercise the option.
- ④ On exercise of an option Company issue the shares to the employees.

Trust Route



Trust Route for ESOP's

- ① Company forms an Employee Welfare Trust.
- ② Company grants Loan to the trust for subscribing shares.
- ③ Company issues fresh shares to the Trust and options to the Employees.
- ④ Employees exercises the options.
- ⑤ Trust Transfers the Shares to the employee upon receipt of exercise price.
- ⑥ Trust repays the loan to the Company.

IMPLEMENTATION OF SCHEMES THROUGH TRUST

1. If a company has implemented the scheme through a trust and 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 single trust shall keep and maintain-

- proper books of account;
- 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 percent as prescribed under the Securities Contracts (Regulations) Rules, 1957

10. Secondary acquisition in a financial year by the trust shall not exceed two percent 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 below mentioned prescribed limits 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 these regulations	5%
B	For the schemes enumerated in Part D, or Part E of Chapter III of these regulations	2%
C	For all the schemes in aggregate	5%

Explanation 1.- The above limits shall automatically include within their ambit the expanded capital of the company where such expansion has taken place on account of corporate action including issue of bonus shares, split or rights issue.

Explanation 2.- If a company has multiple trusts and schemes, the aforesaid ceiling limit shall be applicable for all such trusts and schemes taken together at the company level and not at the level of individual trust or scheme.

Explanation 3.- The above ceiling limit will not be applicable where shares are allotted to the trust by way of new issue or gift from promoter or promoter group or other shareholders.

Explanation 4.- In the event that the options, shares or SAR granted under any of the schemes exceeds the number of shares that the trust may acquire through secondary acquisition, then such shortfall of shares shall be made up by the company through new issue of shares to the trust in accordance with the provisions of new issue of shares under the applicable laws.

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.

Keeping in view point No. 12, for the purpose of clarifying the inventory as un-appropriated, whether the appropriation made to scheme can be considered as compliance?

Appropriation towards ESPS/ESOP/SAR General Employee Benefit Scheme/Retirement Benefit Scheme by October 27, 2015 would be considered as compliance with proviso to regulation 3(12). The company may appropriate towards individual employees or sell in the market during next four years so that no un-appropriated inventory remains thereafter.

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.

Shares have been acquired by the trust from secondary market and held for the minimum period of six months in terms of regulation 3(13) of SEBI (SBEB) Regulations, 2014 pursuant to which the same are transferred to employees under ESPS. Whether the requirement of Lock-in, in terms of regulation 22(2) of these regulations, shall be applicable to shares received by employees?

No, lock-in shall not be applicable to the shares received by employees.

14. The trust shall be permitted to undertake off-market transfer of shares only under the following circumstances:
 - a) transfer to the employees pursuant to scheme(s);
 - b) when participating in open offer under the 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:
 - a) cashless exercise of options under ESOS as prescribed in these regulations;
 - b) on vesting or exercise, as the case may be, of SAR under ESPS as prescribed in these regulations;
 - c) in case of emergency for implementing the General Employee Benefits Scheme (GEBS) and Retirement Benefit Scheme (RBS) as mentioned in these regulations, and for this purpose -
 - (i) the trustee shall record the reasons for such sale; and
 - (ii) money so realised on sale of shares shall be utilised within a definite time period as stipulated under the scheme or trust deed.
 - d) participation in buy-back or open offers or delisting offers or any other exit offered by the company generally to its shareholders, if required;
 - e) for repaying the loan, if the un-appropriated inventory of shares held by the trust is not appropriated within the timeline as provided above.
 - f) winding up of the scheme(s); and
 - g) based on approval granted by the 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 CRITERIA

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 –

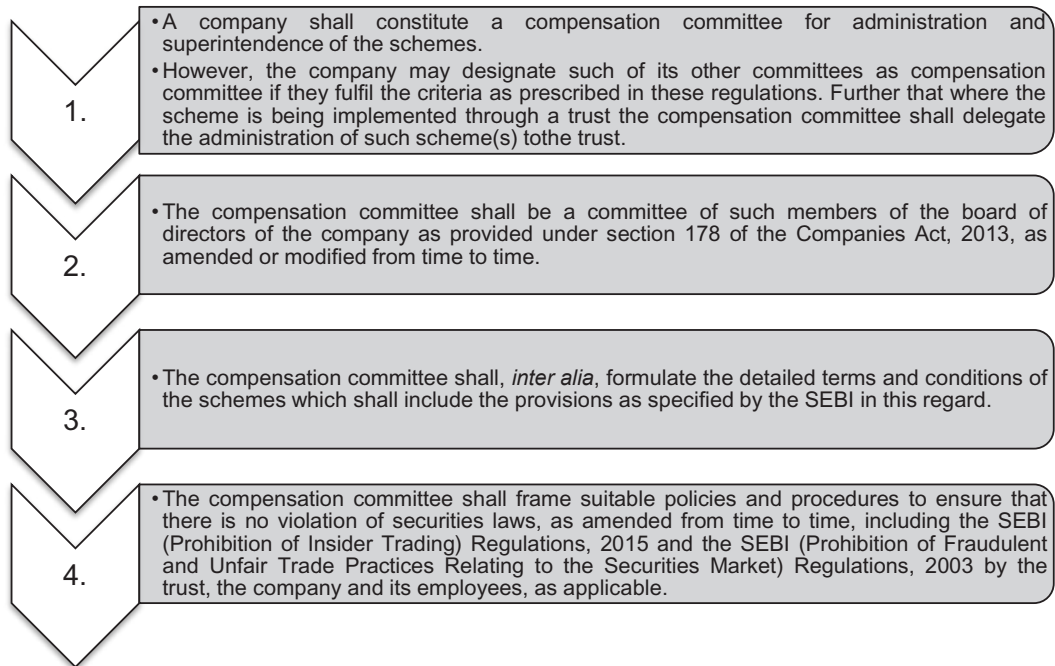
- (i) The contract or agreement entered into between the institution nominating its employee as the director of a company, and the director so appointed shall, inter alia, specify the following:-
 - a. whether the grants by the company under its scheme(s) can be accepted by the said employee in his capacity 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.

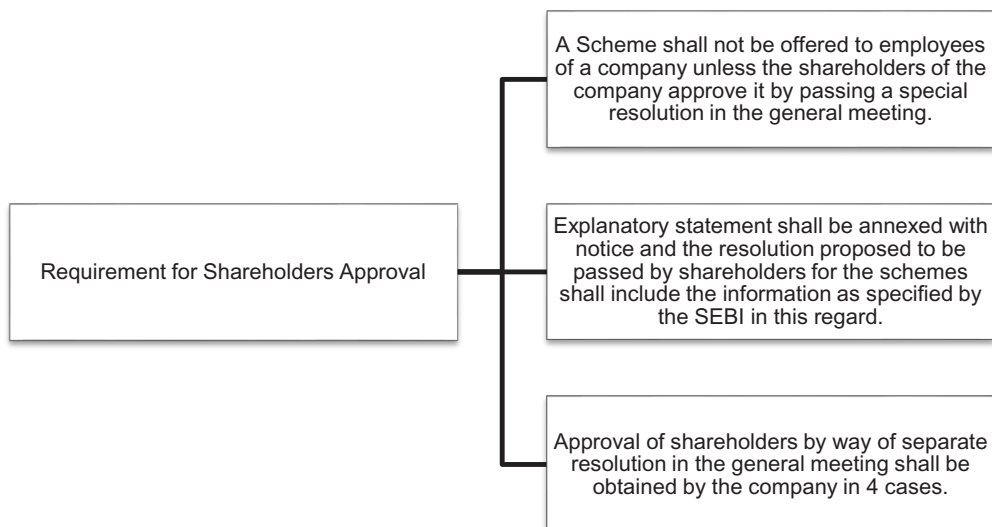
(iii) The director so appointed shall furnish a copy of the contract or agreement at the first board meeting of the company attended by him after his nomination.

COMPENSATION COMMITTEE



Note: In case of Point no. 1,

SHAREHOLDERS APPROVAL

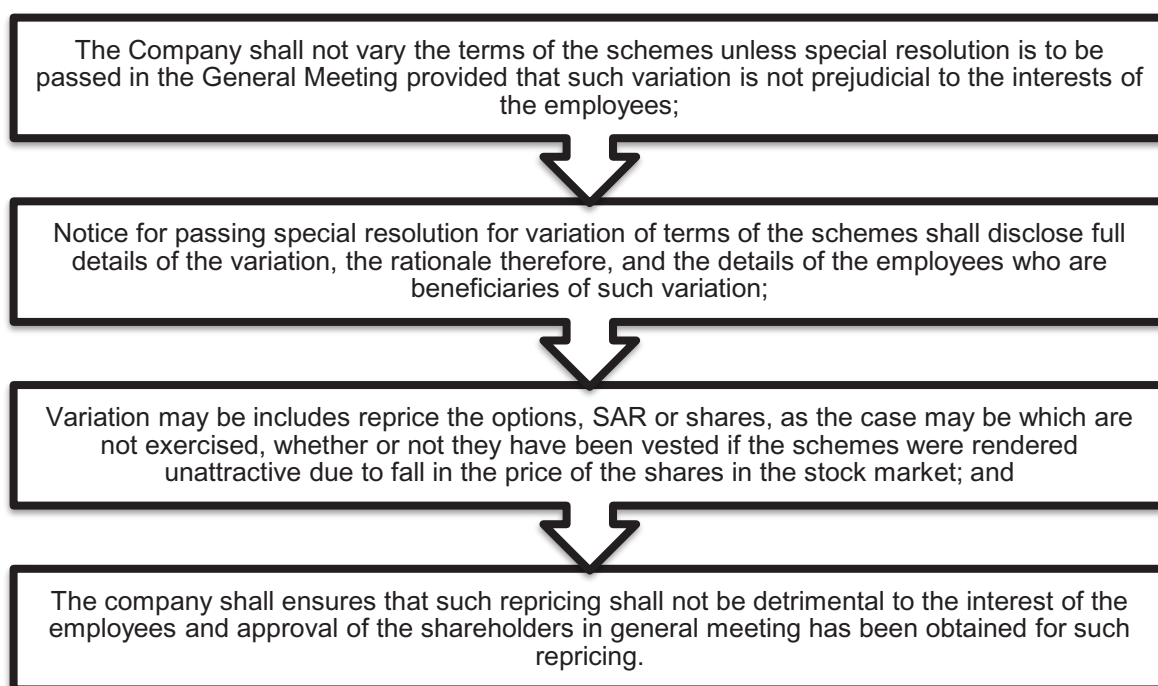


- a) Secondary acquisition for implementation of the schemes.

Such approval shall mention the percentage of secondary acquisition (subject to limits specified under these regulations) that could be undertaken;

- b) 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 percent cap as prescribed in these regulations of such increased capital of the company;
- c) Grant of option, SAR, shares or other benefits, as the case may be, to employees of subsidiary or holding company;
- d) Grant of option, SAR, shares or benefits, as the case may be, to identified employees, during any one year, equal to or exceeding one percent 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 OF THE SCHEMES



Note : 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.

WINDING UP OF THE 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

- Option, SAR or any other benefit granted to an employee under the regulations shall not be transferable to any person.

- 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.

- The option, SAR, or any other benefit granted to the employee shall not be pledged, hypothecated, mortgaged or otherwise alienated in any other manner.
- 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.
- 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.
- 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.

- 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, following conditions need to be fulfilled :-

Scheme is in compliance with these regulations

A statement specified by the 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 the 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 the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

COMPLIANCES AND CONDITIONS

1. 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. However, the ratification under clause (ii) may be done at any time prior to grant of new options or shares or SAR under such pre-IPO scheme.
2. 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.
3. 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.
4. When holding company issues option, share, SAR or benefits to the employee of its subsidiary, the cost incurred by the holding company for issuing such option, share, SAR or benefits shall be disclosed in the 'notes to accounts' of the financial statements of the subsidiary company.
5. In a case, if the subsidiary reimburses the cost incurred by the holding company in granting option, share, SAR or benefits to the employees of the subsidiary, both the subsidiary as well as the holding company shall disclose the payment or receipt, as the case may be, in the 'notes to accounts' to their financial statements.
6. The company shall appoint a registered merchant banker for the implementation of schemes covered by these regulations till the stage of obtaining in-principle approval from the stock exchanges in accordance with clause (b) of regulation 10.

CERTIFICATE FROM 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 the 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 OF SPECIFIC SCHEMES

Employee Stock Option Scheme (ESOS)

Administration and Implementation	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> There shall be a minimum vesting period of one year in case of ESOS. The company may specify the lock-in period for the shares issued pursuant to exercise of option.
Rights of the option holder	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> The amount payable by the employee, if any, at the time of grant of option, - may be forfeited by the company if the option is not exercised by the employee within the exercise period; or 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.

Note : In regards to Vesting period, 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 transferor company were held by him shall be adjusted against the minimum vesting period required under this sub-regulation.

Employee Stock Purchase Scheme (ESPS)

Administration and Implementation	Pricing and Lock-In
<ul style="list-style-type: none"> The ESPS scheme shall contain the details of the manner in which the scheme will be implemented and operated. 	<ul style="list-style-type: none"> 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. 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.

Note : In regards to pricing and Lock-in, 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 under gone in respect of shares of the transferor company shall be adjusted against the lock-in period.

Regulation 22(2) of the SEBI (SBEB) Regulations, 2014 prescribes lock-in of shares issued under ESPS for a minimum period of one year from the date of allotment. Whether the said lock-in is applicable to the Trust, if an ESPS scheme is implemented through Trust Route?

No, the Lock-in requirement is applicable at the level of employee and not at the level of trust. Lock-in in terms of regulation 22(2) shall be applicable from the day shares are received by the employees.

Stock Appreciation Rights Scheme (SARS)

Administration and Implementation

- The SAR scheme shall contain the details of the manner in which the scheme will be implemented and operated;
- A company shall have the freedom to implement cash settled or equity settled SAR scheme;
- No SAR shall be offered unless the disclosures, as specified by Board 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.

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.

Note :

- In Point No. 1, 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.
- In Point No. 2, 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.

General Employee Benefits Scheme (GEBS)

Administration and Implementation

GEBS shall 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 percent 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.

Retirement Benefit Scheme (RBS)

Administration and Implementation

Retirement benefit scheme may be implemented by a company provided it is in compliance 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

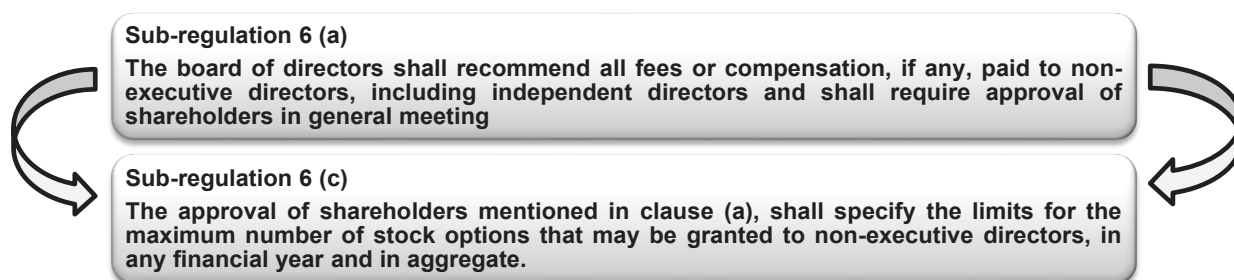
cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of RBS.

DIRECTIONS BY THE SEBI AND ACTION IN CASE OF DEFAULT

The 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 the 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 FOR ESOP/ESPS

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:

- (8) The listed entity shall disclose on its website all such events or information which has been disclosed to stock exchange(s), 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

B. 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

- An advance notice of the Board Meeting at least two working days before to the stock exchange where securities of the company are listed 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 by passing special resolution;
- Outcome of the Board Meeting is also to be notified within 30 minutes of the conclusion of the Board meeting.
- An advance notice of the General meeting at least two working days before to the Stock Exchanges where securities of the Company are listed.

- Hold General Meeting for approval of shareholders;
- Outcome of the General Meeting is also to be notified within 30 minutes of the conclusion of the meeting to the Stock exchange.
- File e-form MGT-14 within 30 days of passing the special resolution with ROC.
- For listing of shares issued pursuant to ESOS, the company shall obtain the in-principle approval of the stock exchanges before issuing shares as per Regulation 28 of LODR where it proposes to list the said shares.
- 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.
- File a return of allotment in form PAS 3 with the ROC within 30 days from the date of allotment.

Does the contra trade restriction (for a period not less than six months) under clause 10 of Schedule B of the SEBI (Prohibition of Insider Trading) Regulation, 2015 also apply to the exercise of ESOPs and the sale of shares so acquired?

Exercise of ESOPs shall not be considered to be “trading” except for the purposes of Chapter III of the Regulations. However, other provisions of the Regulations shall apply to the sale of shares so acquired.

For Example:

- (i) If a designated person has sold/ purchased shares, he can subscribe and exercise ESOPs at any time after such sale/purchase, without attracting contra trade restrictions.
- (ii) Where a designated person acquires shares under an ESOP and subsequently sells/pledges those shares, such sale shall not be considered as contra trade, with respect to exercise of ESOPs.
- (iii) Where a designated person purchases some shares (say on August 01, 2015), acquires shares later under an ESOP (say on September 01, 2015) and subsequently sells/pledges (say on October 01, 2015) shares so acquired under ESOP. The sale will not be a contra trade but will be subject other provisions of the Regulations, however, he will not be able to sell the shares purchased on August 01, 2015 during the period of six months from August 01, 2015.
- (iv) Where a designated person sells shares (say on August 01, 2015), acquires shares later under an ESOP (say on September 01, 2015) the acquisition under ESOP shall not be a contra trade. Further, he can sell/pledge shares so acquired at any time thereafter without attracting contra trade restrictions. He, however, will not be able to purchase further shares during the period of six months from August 01, 2015 when he had sold shares.

ROLE OF COMPANY SECRETARY

For listing of equity shares issued pursuant to exercise of options granted under ESPS/ESOS/SARS/GEBS/RBS basis- Post issue

- A Certificate from Company Secretary for receipt of money.
- A quarterly certificate from the practising Company Secretary specifically certifying that the company has received the application/allotment monies from the applicants of these shares. [Source: www.bseindia.com]

LESSON ROUND-UP

- As per Section 62(1) (b) of Companies Act 2013, a 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 the SEBI (Share Based Employee Benefits) Regulations, 2014.
- SEBI has, on October 28, 2014 notified the 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 schemes 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

Grant	It means issue of option to employees under the scheme.
Option grantee	It means an employee having a right but not an obligation to exercise an option in pursuance of ESOS.
Secondary Market	The market for previously issued securities or financial instruments.
Trustee	Legal Custodian who looks after all the monies invested in a unit trust or mutual fund.
Vesting	The process by which the employee is given the right to apply for shares of the company against the option granted to him in pursuance of ESOS.
Vesting Period	It means the period during which the vesting of option, SAR or a benefit granted under any of the schemes takes place.

SELF TEST QUESTIONS

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

1. What are applicability and non-applicability of the SEBI (Share Based Employee Benefits) Regulations, 2014?
2. Explain the implementation of Scheme through trust.
3. Elucidate the conditions where approval of shareholders shall be obtained by passing of separate resolution in the general meeting under the SEBI (Share Based Employee Benefits) Regulations, 2014.
4. Discuss the procedure for issue of ESOP by a listed company.
5. State briefly the provisions of pricing and lock-in period under ESPS.

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Lesson 10

SEBI (Issue of Sweat Equity) Regulations, 2002 – An Overview

LESSON OUTLINE

- Introduction
- Companies Act, 2013
- SEBI (Issue of Sweat Equity) Regulations, 2002
- Sweat equity shares may be issued to employee and directors
- Special Resolution
- Issue of Sweat Equity Shares to Promoters
- Pricing of Sweat Equity Shares
- Valuation of Intellectual Property
- Accounting Treatment
- Placing of Auditors before Annual General Meeting
- Ceiling on Managerial Remuneration
- Lock-in
- Listing
- Applicability of Takeover
- LESSON ROUND UP
- GLOSSARY
- SELF-TEST QUESTIONS

LEARNING OBJECTIVES

Factors behind the success of any company is its ability to attract top talent while retaining those already working within the company. One of the ways in which companies attract and retain key employees is by rewarding them with equity shares. Traditionally, these types of equity shares are called Sweat Equity Shares which is administered by the SEBI (Issue of Sweat Equity) Regulations, 2002, in case of a listed company and by the Companies Act, 2013, in case of unlisted company respectively.

In this lesson, the students will be able to understand the various provisions of SEBI (Issue of Sweat Equity) Regulations, 2002, its applicability, non-applicability, issuance of Sweat equity shares to employee & directors, Special Resolution, Pricing, Valuation, Ceiling on Managerial Remuneration, Lock-in, Listing etc.

INTRODUCTION

Sweat equity shares refers to equity shares given to the company's employees on favourable terms, in recognition of their work. Sweat equity shares is one of the modes of making share based payments to employees of the company. The issue of sweat equity shares allows the company to retain the employees by rewarding them for their services. Sweat equity shares rewards the beneficiaries by giving them incentives in lieu of their contribution towards the development of the company. Further, Sweat equity shares enables greater employee stake and interest in the growth of an organization as it encourages the employees to contribute more towards the company in which they feel they have a stake.

Section 2 (88) of the Companies Act, 2013 defines "sweat equity shares" which 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.

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 or any committee, like compensation committee, formed for this purpose. 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.

It may be noted that the intellectual property right, know how or value additions arise as of now mainly in the case of Information Technology related companies and Pharmaceutical companies. Categories of industries which are eligible to issue sweat equity shares have not been indicated by the Government either in the Act or otherwise.

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 the rule 8 of Companies (Share Capital and Debenture) Rules, 2014.

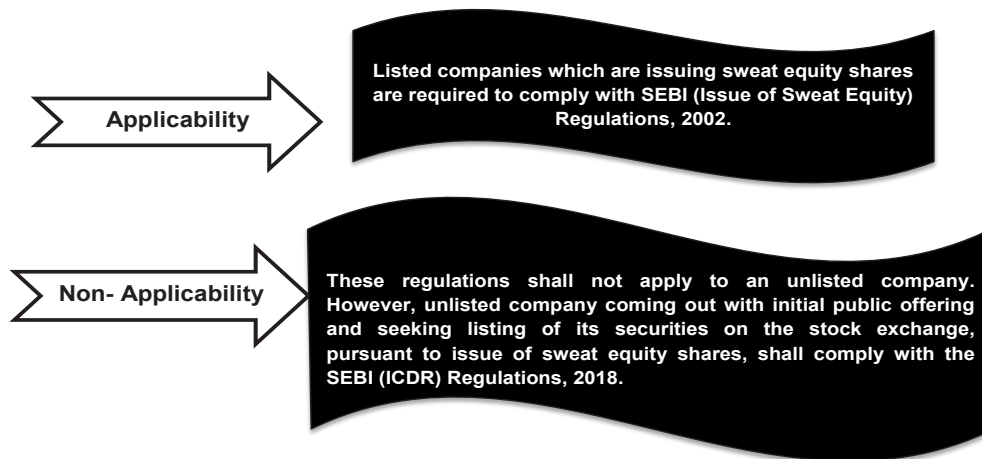
Whether Issue of sweat equity shares can be in the form of preferential Issue?

Issue of Sweat Equity Shares is not a 'preferential issue' as per regulation 2(1)(nn) of SEBI (ICDR) Regulations, 2018 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.

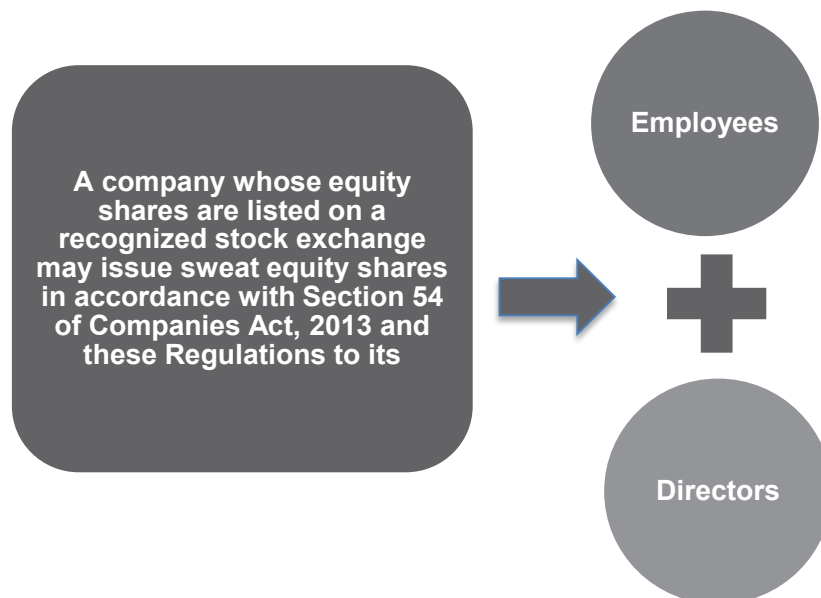
Further Rule 13 of The Companies (Share Capital and Debentures) Rules, 2014, clearly excludes issue of sweat equity shares from the definition of preferential offer.

SEBI (ISSUE OF SWEAT EQUITY) REGULATIONS, 2002

SEBI (Issue of Sweat Equity) Regulations, 2002 has been notified on September 24, 2002 in order to streamline the process of issue of sweat equity shares. These regulations are divided into Four Chapters and a Schedule. Chapter I deals with Preliminary & Important Definitions, Chapter II deals with Issue of Sweat Equity by a Listed Company, Chapter III deals General Obligations of the company and Chapter IV deal with Penalties and Procedure.



SWEAT EQUITY SHARES MAY BE ISSUED TO EMPLOYEE AND DIRECTORS



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:

- The total number of shares to be issued as sweat equity.
- The current market price of the shares of the company.
- 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.
- The names of the employees or directors or promoters to whom the sweat equity shares shall be issued and their relationship with the company.
- The consideration to be paid for the sweat equity.
- The price at which the sweat equity shares shall be issued.

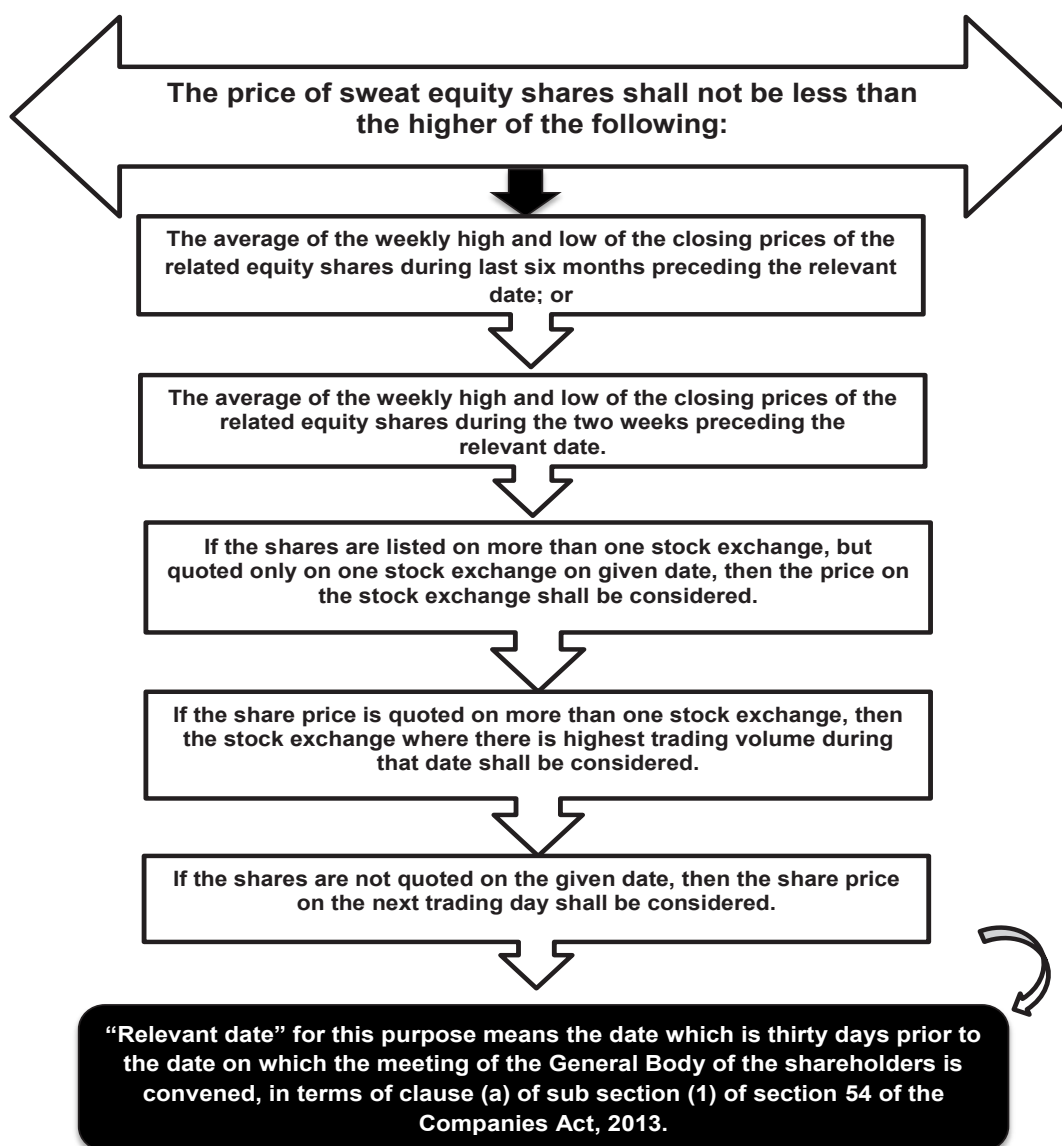
- g) Ceiling on managerial remuneration, if any, which will be affected by issuance of such sweat equity.
- h) A statement to the effect that the company shall conform to the accounting policies as specified by SEBI.
- i) Diluted Earning Per Share pursuant to the issue of securities to be calculated 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.

Further, the promoters to whom such Sweat Equity Shares are proposed to be issued shall not participate in such resolution and separate resolution shall be passed for each transaction of issue of Sweat Equity. Such resolution shall be valid for a period of not more than twelve months from the date of passing of the resolution. For the purposes of passing the resolution, the explanatory statement shall contain the disclosures as specified in the Schedule.

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 the 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:-

1. where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the relevant accounting standards; or
2. where the above clause is not applicable, it shall be expensed as provided in the relevant accounting standards.

PLACING OF AUDITORS 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. The 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 sweat equity.

LISTING

The Sweat Equity issued by a listed company shall be eligible for listing only if such issues are in accordance with these regulations.

APPLICABILITY OF TAKEOVER

Any acquisition of Sweat Equity Shares shall be subject to the provision of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

LESSON ROUND UP

- Section 2 (88) of the Companies Act, 2013 defines “sweat equity shares” which 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 the Securities and Exchange Board of India in this regard.
- These regulations shall not apply to an unlisted company. However, unlisted company coming out with initial public offering and seeking listing of its securities on the stock exchange, pursuant to issue of sweat equity shares, shall comply with the SEBI (ICDR) Regulations, 2009.
- 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.
- The Sweat Equity shares shall be locked in for a period of three years from the date of allotment.
- The Sweat Equity issued by a listed company shall be eligible for listing only if such issues are in accordance with these regulations.

GLOSSARY

Accounting Standard	Accounting Standards are codified or written statements of accounting rules and guidelines for preparation and presentation of financial statements. They are policy documents issued by an expert accounting body or by the Government or other regulatory body.
Diluted Earning Per Shares	EPS is which accrues to the shareholder of the company. Dilution is a reduction in EPS or an increase in loss per share resulting from the assumption, that convertible instruments are converted, that options or warrants are exercised or the ordinary shares are issued.
Intellectual Property	It is a category of property 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 secrets, publicity rights, moral rights, and rights against unfair competition.
Special Resolution	A special resolution is a resolution of a company's shareholders which requires at least 75% of the votes cast by the shareholders in favour of it in order to pass.
Valuer	It means a Chartered Accountant or a merchant banker appointed to determine the value of the intellectual property rights or other value addition.

SELF TEST QUESTIONS

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

1. What are applicability and non-applicability of the SEBI (Issue of Sweat Equity) Regulations, 2002?
2. Explain the requirements for issue of Sweat Equity shares to promoters.
3. Elucidate the Pricing provisions of Sweat Equity Shares.

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Lesson 11

SEBI (Prohibition of Insider Trading) Regulations, 2015

LESSON OUTLINE

- Introduction
- SEBI (Prohibition of Insider Trading) Regulations, 2015
- Communication or Procurement of UPSI
- Trading when in possession of UPSI
- Trading Plans
- Disclosure of trading by insiders
- Disclosure of interest by certain persons
- Codes of Fair Disclosure and Conduct
- Penalty Provisions for violations of the Regulations
- Appeal to Securities Appellate Tribunal
- Role of Company Secretary as Compliance Officer
- LESSON ROUND UP
- GLOSSARY
- SELF-TEST QUESTIONS

LEARNING OBJECTIVES

Shares and other securities of listed companies are freely traded on stock exchanges and the price thereof is determined by the demand supply mechanism by the investors. The decision of investors to buy, hold or sell securities of any company is mainly determined on the basis of the various information available in the public. There are many information which affect the price of the securities when made available to general public. These kind of information are known as price sensitive information and the generally the insiders like employees, Board of Directors, Consultants, Advisors, Auditors etc. who are associated with the business and affairs of the Company are having such information before they are made accessible to the others. If Such insiders buy, sell or deal in the securities of the Company when they are in possession such price sensitive information which is yet to publish in general public, it affects the very fundamental pillar of capital market efficiency by providing opportunity to insiders to make abnormal gain over others. In simple terms 'insider trading' is an act of buying or selling of securities, in breach of a fiduciary duty or other relationship of trust, and confidence, while in possession of material, non-public information about the security. Therefore, preventing such transactions is an important obligation for any capital market regulatory system, because insider trading undermines investor confidence in the fairness and integrity of the securities markets.

SEBI notified the SEBI (Prohibition of Insider Trading) Regulations, 2015 to strengthen the legal and enforcement framework aligning India regime with the international best practices prevailing in this regard.

A Company Secretary, being a professional, and most importantly being a compliance officer plays a pivotal role in a company to prevent Insider Trading by establishment of policies and procedures in this regard. This lesson will enable the students to have the basic understanding of the Insider trading regulations in India, the disclosures required to be made under these regulations by the company, employee, directors, promoters, etc. the duty of compliance officer, Model Code of Conduct, Code of Corporate Disclosure Practices, the Penal provisions prescribed for Insider Trading by the SEBI.

INTRODUCTION

The practice of Insider Trading came into existence ever since the very concept of trading of securities of a company became prevalent among the investors worldwide and has now become a formidable challenge for investors all over the world.

The United State of America was the first country to formally enact a legislation to regulate insider trading. Over the years, most of the jurisdictions around the world have recognized the requirement to restrict insider trading in one form or other and accordingly put in place legal restrictions to this effect so as to maintain investors' confidence in the capital market.

India was not late in recognizing the detrimental impact of insider trading. The history of Insider Trading in India relates back to the 1940's with the formulation of government committees such as the Thomas Committee under the chairmanship of Mr. P.J.Thomas to evaluate restrictions that can be imposed on short swing profit of 1948, which evaluated *inter alia*, the regulations in the US on short swing profits under Section 16 of the Securities Exchange Act, 1934. Thereafter in India provisions relating to Insider Trading were incorporated in the Companies Act, 1956 under Sections 307 and 308, which required shareholding disclosures by the directors and managers of a company. Due to inadequate provisions of enforcement in the companies Act, 1956, the Sachar Committee in 1979, the Patel Committee in 1986 and the Abid Hussain Committee in 1989 proposed recommendations for a separate statute regulating Insider Trading.

The Patel committee in 1986 in India defined Insider Trading as:

"Insider trading generally means trading in the shares of a company by the persons who are in the management of the company or are close to them on the basis of undisclosed price sensitive information regarding the working of the company, which they possess but which is not available to others."

The concept of Insider Trading in India started fermenting in the 80's and 90's and came to be known and observed extensively in the Indian Securities market. As mentioned earlier due to inadequate provisions in the Companies Act, 1956 and rapidly advancing Indian Securities market needed a more comprehensive legislation to regulate the practice of Insider Trading, thus resulting in the formulation of the SEBI (Insider Trading) Regulations in the year 1992, which were amended in the year 2002 after the discrepancies observed in the 1992 regulations in the cases like *Hindustan Levers Ltd. vs. SEBI*, *Rakesh Agarwal vs. SEBI*, etc. to remove the lacunae existing in the Regulations of 1992. The amendment in 2002 came to be known as the SEBI (Prohibition of Insider Trading) Regulations, 1992.

Further, the PIT Regulations, 1992 had their challenges in their drafting, interpretation and reach. Besides, the need felt to ensure a clear regulatory policy that is not only easily comprehensible but is also comprehensive led to this Committee being set up under the chairmanship of Justice N. K. Sodhi, Former Chief Justice of the High Courts of Kerala and Karnataka and a Former Presiding Officer of the Securities Appellate Tribunal. The High Level Committee reviewed the SEBI (Prohibition of Insider Trading) Regulations, 1992 submitted its report to SEBI on December 7, 2013.

The Committee made a range of recommendations to the legal framework for prohibition of insider trading in India and has focused on making this area of regulation more predictable, precise and clear by suggesting a combination of principles-based regulations and rules that are backed by principles. The Committee had also suggested that each regulatory provision might be backed by a note on legislative intent.

SEBI issued and notified the SEBI (Prohibition of Insider Trading) Regulations, 2015 on 15th January, 2015 based on recommendations of Sodhi committee and became effective from **15th May, 2015, by repealing the SEBI (Prohibition of Insider Trading) Regulations 1992.**

These regulations strengthen the legal and enforcement framework, align Indian regime with international practices, provide clarity with respect to the definitions and concepts, and facilitate legitimate business transactions.

Newer definitions have also been incorporated so as to remove ambiguities being experienced in past. The definition of price sensitive information has also been included.

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015	
Five Chapters	Two Schedules
Chapter I	Definitions
Chapter II	Restrictions on communication and trading in securities by insiders
Chapter III	Disclosures of trading by insiders.
Chapter IV	Codes of fair disclosure and conduct to be followed by listed companies and other entities, disclosure requirements
Chapter V	Miscellaneous matters like sanction for violation, power to remove difficulties, repeal and savings

Definitions

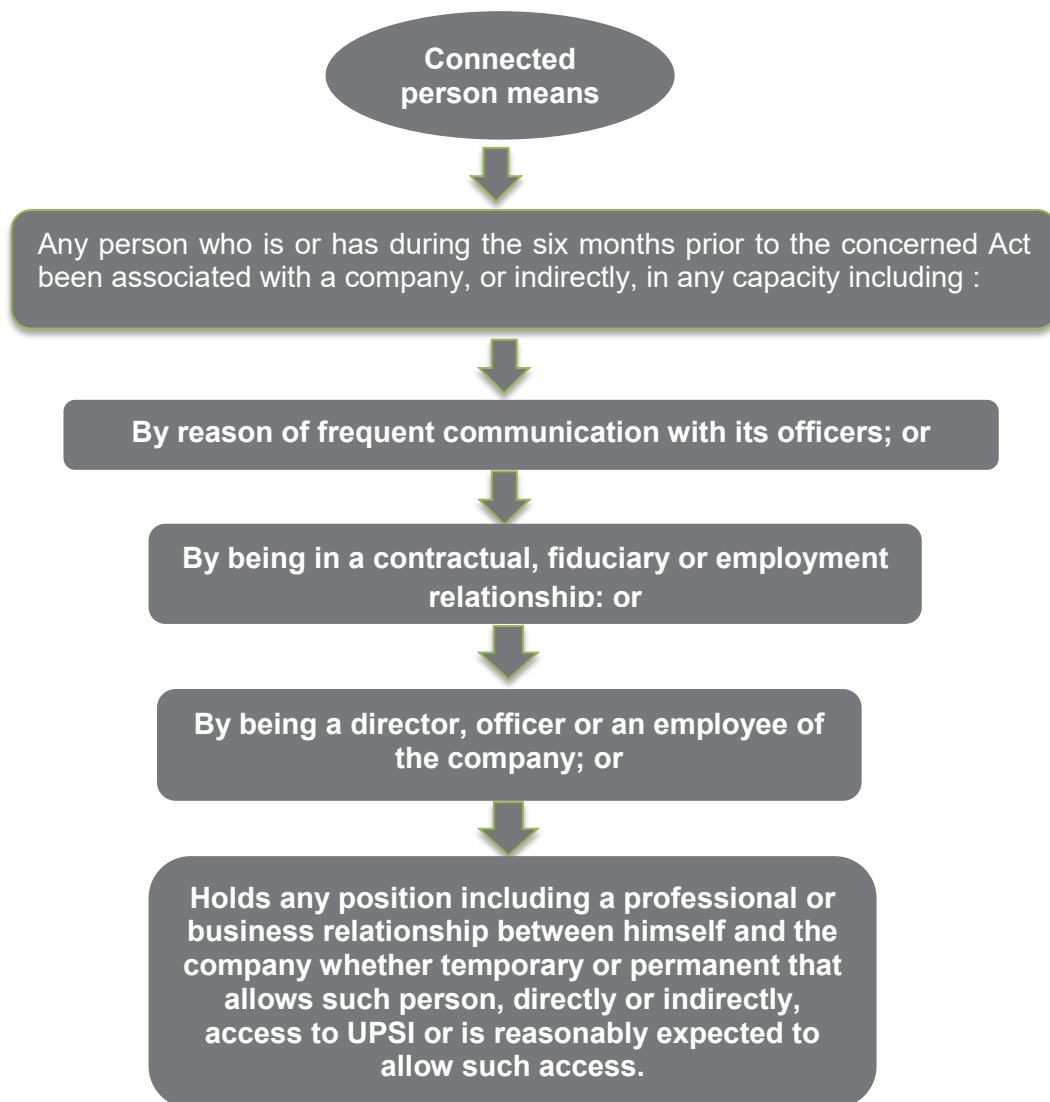
Compliance officer

Compliance Officer means:

- any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there,
- who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and
- who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information,
- monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be.

“Financially literate” shall mean a person who has the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

Connected person



It is important to note that SEBI has in its recent judgments establishes nexus and relationship of various persons through social media networking websites to identify the Connected Persons.

Insider

“Insider” means any person who is:

- i) a connected person; or
- ii) in possession of or having access to unpublished price sensitive information.

Person deemed to be connected person

“Person is deemed to be a connected person” unless the contrary is established, if such person is –

- (a) an immediate relative of connected persons; or
- (b) a holding company or associate company or subsidiary company; or
- (c) an intermediary as specified in section 12 of the SEBI Act or an employee or director thereof; or

- (d) an investment company, trustee company, asset management company or an employee or director thereof; or
- (e) an official of a stock exchange or of clearing house or corporation; or
- (f) a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or
- (g) a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or
- (h) an official or an employee of a self-regulatory organization recognised or authorized by the SEBI; or
- (i) a banker of the company; or
- (j) a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten percent of the holding or interest;

Immediate Relative:

“Immediate Relative” means spouse of a person, and includes parents, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consult such person in taking decisions relating to trading in securities.

If a spouse is financially independent and does not consult an insider while taking trading decisions is that spouse exempted from the definition of ‘immediate relative’?

A spouse is presumed to be an ‘immediate relative’, unless rebutted so.

“Proposed to be listed” shall include securities of an unlisted company:

- (i) if such unlisted company has filed offer documents or other documents, as the case may be, with the SEBI, stock exchange(s) or registrar of companies in connection with the listing; or
- (ii) if such unlisted company is getting listed pursuant to any merger or amalgamation and has filed a copy of such scheme of merger or amalgamation under the Companies Act, 2013.

Trading

“Trading” means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and “trade” shall be construed accordingly.

Unpublished price sensitive information

“Unpublished price sensitive information” means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following—

- (i) Financial results;
- (ii) Dividends;
- (iii) Change in capital structure;
- (iv) Mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and such other transactions;
- (v) Changes in key managerial personnel.

COMMUNICATION OR PROCUREMENT OF UNPUBLISHED PRICE SENSITIVE INFORMATION

Regulation 3 provides that any person shall not :

- communicate, provide, or allow access to any unpublished price sensitive information; or
- procure from or cause the communication by any insider of unpublished price sensitive information;
- relating to a company or securities listed or proposed to be listed except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.
- The board of directors of a listed company shall make a policy for determination of “legitimate purposes” as a part of “Codes of Fair Disclosure and Conduct” formulated under regulation 8.

Explanation – For the purpose of illustration, the term “**legitimate purpose**” shall include sharing of unpublished price sensitive information in the ordinary course of business by an insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations.

- Any person in receipt of unpublished price sensitive information pursuant to a “legitimate purpose” shall be considered an “insider” for purposes of these regulations and due notice shall be given to such persons to maintain confidentiality of such unpublished price sensitive information in compliance with these regulations.
- Notwithstanding anything contained in this regulation, an unpublished price sensitive information may be communicated, provided, allowed access to or procured, in connection with a transaction that would:–
 - (i) entail an obligation to make an open offer under the takeover regulations where the board of directors of the listed company is of informed opinion that sharing of such information is in the best interests of the company;
 - (ii) not attract the obligation to make an open offer under the takeover regulations but where the board of directors of the listed company is of informed opinion that sharing of such information is in the best interests of the company and the information that constitute unpublished price sensitive information is disseminated to be made generally available at least two trading days prior to the proposed transaction being effected in such form as the board of directors may determine to be adequate and fair to cover all relevant and material facts.
- The board of directors shall require the parties to execute agreements to contract confidentiality and non-disclosure obligations and such parties shall keep information so received confidential, except for the purpose specified above and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.
- The board of directors shall ensure that a structured digital database is maintained containing the names of such persons or entities as the case may be with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such databases shall be maintained with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.

TRADING WHEN IN POSSESSION OF UNPUBLISHED PRICE SENSITIVE INFORMATION (UPSI)

Regulation 4 prescribes that an insider shall not trade in securities, which are listed or proposed to be listed on stock exchange when in possession of unpublished price sensitive information.

Explanation – When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.

However, the insider may prove his innocence by demonstrating the circumstances including the following: –

- (i) the transaction is an off-market *inter-se* transfer between insiders who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.

Provided that such unpublished price sensitive information was not obtained under sub-regulation (3) of regulation 3 of these regulations.

Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.

- (ii) the transaction was carried out through the block deal window mechanism between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;

Provided that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of these regulations.

- (iii) the transaction in question was carried out pursuant to a statutory or regulatory obligation to carry out a bona fide transaction.
- (iv) the transaction in question was undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations.

- (v) in the case of non-individual insiders: –

- (a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and
- (b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;

- (vi) the trades were pursuant to a trading plan set up in accordance with regulation 5.

In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the SEBI.

The SEBI may specify such standards and requirements, from time to time, as it may deem necessary for the purpose of these regulations.

Whether creation of a pledge or invocation of pledge is allowed when trading window is closed?

Yes, however, the pledgor or pledgee may demonstrate that the creation of the pledge or invocation of pledge was bonafide and prove this innocence under proviso to sub-regulation (1) of regulation 4.

TRADING PLANS

As per regulation 5, an insider shall be entitled to formulate a trading plan and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such plan.

Such trading plan shall:–

(i) not entail commencement of trading on behalf of the insider earlier than six months from the public disclosure of the plan;

(ii) not entail trading for the period between the twentieth trading day prior to the last day of any financial period for which results are required to be announced by the issuer of the securities and the second trading day after the disclosure of such financial results;

(iii) entail trading for a period of not less than twelve months;

(iv) not entail overlap of any period for which another trading plan is already in existence;

(v) set out either the value of trades to be effected or the number of securities to be traded along with the nature of the trade and the intervals at, or dates on which such trades shall be effected; and

(vi) not entail trading in securities for market abuse.

- The compliance officer shall review the trading plan to assess whether the plan would have any potential for violation of these regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor the implementation of the plan.
- However, pre-clearance of trades shall not be required for a trade executed as per an approved trading plan.
- Further, trading window norms and restrictions on contra trade shall not be applicable for trades carried out in accordance with an approved trading plan.
- The trading plan once approved shall be irrevocable and the insider shall mandatorily have to implement the plan, without being entitled to either deviate from it or to execute any trade in the securities outside the scope of the trading plan.

However, the implementation of the trading plan shall not be commenced if any unpublished price sensitive information in possession of the insider at the time of formulation of the plan has not become generally available at the time of the commencement of implementation and in such event the compliance officer shall confirm that the commencement ought to be deferred until such unpublished price sensitive information becomes generally available information so as to avoid a violation of sub-regulation (1) of regulation 4.

- Upon approval of the trading plan, the compliance officer shall notify the plan to the stock exchanges on which the securities are listed.

Whether contra trade is allowed within the duration of the trading plan?

Any trading plan opted by a person under trading plan can be done only to the extent and in the manner disclosed in the plan, save and except for pledging of securities.

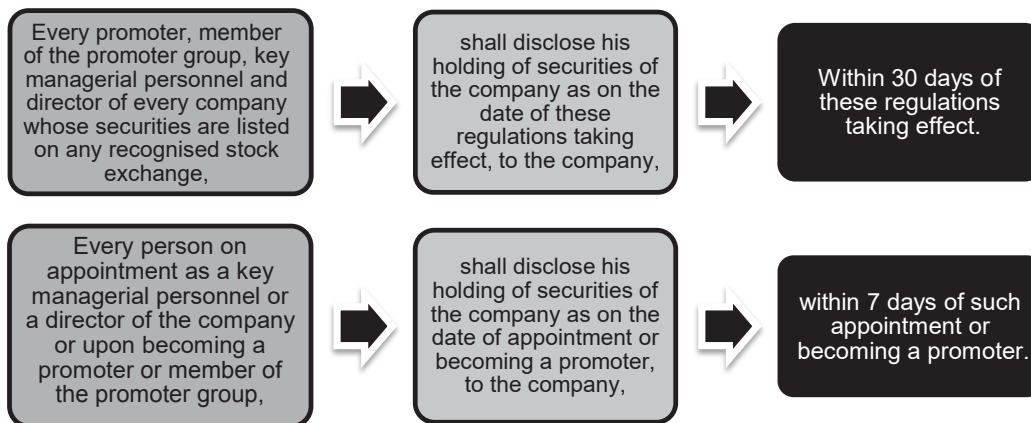
DISCLOSURES OF TRADING BY INSIDERS

Regulation 6 deals with the general provisions relating to disclosures of trading by insiders:

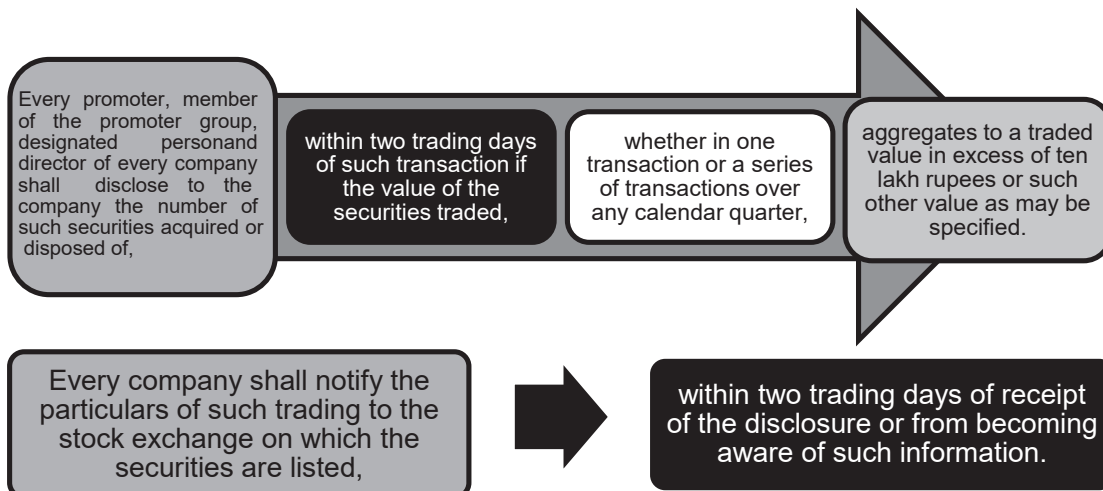
- The disclosures made by person shall also include those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions.
- The disclosures of trading in securities shall also include trading in derivatives of securities and the traded value of derivative shall be taken into account for this purpose. However, trading in derivatives of securities is permitted by any law for the time being in force.
- Such disclosure shall be maintained by the company for a period of minimum five years.

DISCLOSURES OF INTEREST BY CERTAIN PERSONS

Initial Disclosures [Regulation 7 (1)]



Continual Disclosures [Regulation 7 (2)]



Any company whose securities are listed on stock exchange may, at its discretion require any other connected person or class of connected persons to make disclosures of holdings and the company may determine trading in securities of the company in such form and at such frequency as may be determined by the company in order to monitor compliance with these regulations.

INFORMANT INCENTIVES AND REWARDS

A new Chapter IIIA has been prescribed under the Regulation for incentive and reward for the informants who submits to the SEBI a Voluntary Information Disclosure relating to any alleged violation of insider trading laws that has occurred, is occurring or has a reasonable belief that it is about to occur. The new provisions prescribes the manner of submitting information, various forms and procedure for determination of rewards and confidentiality of informants.

Informant

‘Informant’ means an individual(s), who voluntarily submits to the SEBI a Voluntary Information Disclosure Form relating to an alleged violation of insider trading laws that has occurred, is occurring or has a reasonable belief that it is about to occur, in a manner provided under these regulations, regardless of whether such individual(s) satisfies the requirements, procedures and conditions to qualify for a reward.

‘Irrelevant, vexatious and frivolous information’

‘irrelevant, vexatious and frivolous information’ includes, reporting of information which in the opinion of the SEBI –

- (i) Does not constitute a violation of insider trading laws;
- (ii) Is rendered solely for the purposes of malicious prosecution;
- (iii) Is rendered intentionally in an effort to waste the time and resource of the SEBI.

‘Monetary Sanctions’

‘Monetary Sanctions’ shall mean any non-monetary settlement terms or any direction of the SEBI, in the nature of disgorgement under securities laws aggregating to at least Rupees one crore arising from the same operative facts contained in the original information.

‘Original Information’

‘Original Information’ means any relevant information submitted in accordance with these regulations pertaining to any violation of insider trading laws that is:-

- (i) derived from the independent knowledge and analysis of the Informant;
- (ii) not known to the SEBI from any other source, except where the Informant is the original source of the information;
- (iii) is sufficiently specific, credible and timely to –
 - commence an examination or inquiry or audit,
 - assist in an ongoing examination or investigation or inquiry or audit,
 - open or re-open an investigation or inquiry, or
 - inquire into a different conduct as part of an ongoing examination or investigation or inquiry or audit directed by the SEBI;

- (iv) not exclusively derived from an allegation made in a judicial or administrative hearing, in a Governmental report, hearing, audit, or investigation, or from the news media, except where the Informant is the original source of the information; and
- (v) not irrelevant or frivolous or vexatious.

Explanation. – Information which does not in the opinion of the SEBI add to the information already possessed by the SEBI is not original information.

‘Reward’

‘Reward’ means any gratuitous monetary amount for which an Informant is declared eligible as per the provisions of these regulations;

Submission of Original Information to the Board [Regulation 7 (B)]

An Informant shall submit Original Information by furnishing the Voluntary Information Disclosure Form to the Office of Informant Protection of the SEBI in the format and manner set out in Schedule D. The Voluntary Information Disclosure Form may be submitted through informant’s legal representative.

However where the Informant does not submit the Voluntary Information Disclosure Form through a legal representative, the SEBI may require such Informant to appear in person to ascertain his/her identity and the veracity of the information so provided.

Explanation. – Where any information pertaining to any violation of the Securities Laws is received in a manner not in accordance with the manner provided under these regulations, the SEBI may require such information to be filed with it in accordance with these regulations or reject the same.

The legal representative shall,-

- i. Verify the identity and contact details of the Informant;
- ii. Unless otherwise required by the SEBI, maintain confidentiality of the identity and existence of the Informant, including the original Voluntary Information Disclosure Form;
- iii. Undertake and certify that he/she,-
 - (a) Has reviewed the completed and signed Voluntary Information Disclosure Form for completeness and accuracy and that the information contained therein is true, correct and complete to the best of his/her knowledge;
 - (b) Has obtained a irrevocable consent from the Informant to provide to the Board with original Voluntary Information Disclosure Form whenever required by the SEBI; and
 - (c) Agrees to be legally obligated to provide the original Voluntary Information Disclosure Form within seven (7) calendar days of receiving such requests from the SEBI
- iv. Submits to the SEBI, the copy of the Voluntary Information Disclosure Form in the manner provided in Schedule D of these regulations along with a signed certificate as required under clause (iii).

An Informant shall while submitting the Voluntary Information Disclosure Form shall expunge such information from the content of the information which could reasonably be expected to reveal his or her identity and in case where such information cannot be expunged, the Informant may identify such part of information or any document that the Informant believes could reasonably be expected to reveal his or her identity.

Receipt of Original Information by the Board [Regulation 7 (C)]

The Board may designate a division to function as the independent Office of Informant Protection.

The Office of Informant Protection shall perform following as may be specified by the SEBI, including,-

- i. Receiving and registering the Voluntary Information Disclosure Form;
- ii. Making all necessary communications with the Informant;
- iii. Maintaining a hotline for the benefit of potential Informant;
- iv. Maintaining confidentiality of the legal representative of the Informant and act as an interface between the Informant and the officers of the SEBI;
- v. Interacting with the Informant Incentive Committee;
- vi. Issuing press releases and rewards relating to Informant; and
- vii. Submitting an annual report to the SEBI relating to the functioning of the Office of Informant Protection.

On receipt of the Voluntary Information Disclosure Form, the Office of Informant Protection shall communicate the substance of the information along with the evidence submitted by the informant to the relevant department or division of the SEBI for examination and initiation of necessary action, if any.

The SEBI shall not be required to send any intimation or acknowledgement to the Informant or any other person, of the examination or action initiated by the SEBI, if any, pursuant to receipt of the Voluntary Information Disclosure Form or information under these regulations, including rejection thereof.

INFORMANT REWARD [Regulation 7(D)]

Upon collection or substantial recovery of the monetary sanctions amounting to at least twice the Reward, the SEBI may at its sole discretion, declare an Informant eligible for Reward and intimate the Informant or his or her legal representative to file an application in the format provided in Schedule-E for claiming such Reward.

However the amount of Reward shall be ten percent of the monetary sanctions collected or recovered and shall not exceed Rupees One crore or such higher amount as the SEBI may specify from time to time.

The SEBI may if deemed fit, out of the total Reward payable, grant an interim reward not exceeding Rupees Ten lacs or such higher amount as the SEBI may specify from time to time, on the issue of final order by the SEBI against the person directed to disgorge.

In case of more than one Informant jointly providing the Original Information, the Reward, shall be divided equally amongst the total number of Informants. The Reward under these regulations shall be paid from the Investor Protection and Education Fund.

Determination of amount of Reward. [Regulation 7 (E)]

- The amount of the Reward, if payable, shall be determined by the SEBI.
- While determining the amount of Reward the SEBI may specify the factors that may be taken into consideration by the Informant Incentive Committee.
- An Informant may be eligible for a Reward whether or not he reported the matter to his organization as per its internal legal and compliance procedures and irrespective of such organization's compliance officer subsequently providing the same Information to the Board.

Application for Reward [Regulation 7 (F)]

Informants who are considered tentatively eligible for a Reward, shall submit the Informant Reward Claim Form set out in Schedule E to the SEBI within the period specified in the intimation sent by the Board.

Prior to the payment of a Reward, an Informant shall directly or through his or her legal representative, disclose

his or her identity and provide such other information as the SEBI may require.

Rejection of claim for Reward [Regulation 7 (G)]

No Reward shall be made to an Informant:-

- who does not submit original information;
- who has acquired the Original Information, through or as a member, officer, or an employee of:-
 - (i) any regulatory agency constituted by or under any law in India or outside India, including the SEBI;
 - (ii) any self-regulatory organization;
 - (iii) the surveillance or investigation wings of any recognised stock exchange or clearing corporation; or
 - (iv) any law enforcement organization including the police or any central or state revenue authorities.
- against whom the SEBI may initiate or has initiated criminal proceedings under securities laws;
- who wilfully refused to cooperate with the SEBI during its course of investigation, inquiry, audit, examination or other proceedings under securities laws;
- who:
 - (i) knowingly makes any false, fictitious, or fraudulent statement or representation;
 - (ii) uses any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry;
 - (iii) fails to furnish the complete information available with him or accessible by him in relation to the alleged violation.
- who is obligated, under any law or otherwise, to report such Original Information to the SEBI, including a compliance officer under securities laws. Provided that the SEBI may if deemed fit, at its sole discretion, exempt a person from any of these disqualifications.

Informant confidentiality [Regulation 7 (H)]

Sharing of information shall be in accordance with such assurances of confidentiality as the SEBI determines appropriate.

Protection against retaliation and victimization [Regulation 7 (I)]

Every person required to have a Code of Conduct under these regulations shall ensure that such a Code of Conduct provides for suitable protection against any discharge, termination, demotion, suspension, threats, harassment, directly or indirectly or discrimination against any employee who files a Voluntary Information Disclosure Form, irrespective of whether the information is considered or rejected by the SEBI or he or she is eligible for a Reward under these regulations.

Nothing in these regulations shall prohibit any Informant who believes that he or she has been subject to retaliation or victimisation by his or her employer, from approaching the competent court or tribunal for appropriate relief.

Any employer who violates above, may be liable for penalty, debarment, suspension, and/or criminal prosecution by the SEBI. However nothing in these regulations will require the SEBI to direct re-instatement or compensation by an employer.

Nothing in these regulations shall diminish the rights and privileges of or remedies available to any Informant under any other law in force.

CODES OF FAIR DISCLOSURE AND CONDUCT

A. CODE OF FAIR DISCLOSURE [Regulation 8]

The board of directors of listed company shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information.

Every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed.

Principles and Procedures of Fair Disclosure

Schedule A to these regulations lays down the following principles of fair disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information:-

1. Prompt public disclosure of unpublished price sensitive information that would impact price discovery no sooner than credible and concrete information comes into being in order to make such information generally available.
2. Uniform and universal dissemination of unpublished price sensitive information to avoid selective disclosure.
3. Designation of a senior officer as a chief investor relations officer to deal with dissemination of information and disclosure of unpublished price sensitive information.
4. Prompt dissemination of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available.
5. Appropriate and fair response to queries on news reports and requests for verification of market rumours by regulatory authorities.
6. Ensuring that information shared with analysts and research personnel is not unpublished price sensitive information.
7. Developing best practices to make transcripts or records of proceedings of meetings with analysts and other investor relations conferences on the official website to ensure official confirmation and documentation of disclosures made.
8. Handling of all unpublished price sensitive information on a need-to-know basis.

Whether Chief Investor Relations Officer (CIRO) will also be responsible along with compliance officer for not disseminating information or non-disclosure of UPSI?

Regulation 2(c) clearly provides the functions and responsibilities of the compliance officer. Specific responsibilities to deal with dissemination of information and disclosure of UPSI are given to CIRO under clause 30 of Schedule A. It is company's discretion to designate two separate persons as CIRO and compliance officer, respectively for fulfilling specified responsibilities in cases where CIRO and compliance officer have been designated for overlapping functions, they shall be jointly and severally responsible.

B. CODE OF CONDUCT [Regulation 9]

The board of directors of every listed company and the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director,

Shall formulate a code of conduct with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons towards achieving compliance with these regulations,

Adopt the minimum standards set out in Schedule B to these regulations (in case of a listed company) and Schedule C (in case of an intermediary) to these regulations, without diluting the provisions of these regulations in any manner.

Every company whose securities are listed on stock exchanges and every intermediary registered with the SEBI is mandatorily required to formulate a code of conduct governing trading by designated persons and their immediate relatives. The standards set out in the schedules are required to be addressed by such code of conduct.

Explanation: Intermediaries, which are listed, would be required to formulate a code of conduct to regulate, monitor and report trading by their designated persons, by adopting the minimum standards set out in Schedule B with respect to trading in their own securities and in Schedule C with respect to trading in other securities.

- The board of directors or head(s) of the organisation, of every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by their designated persons and immediate relative of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule C to these regulations, without diluting the provisions of these regulations in any manner.

Explanation - Professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies shall be collectively referred to as fiduciaries for the purpose of these regulations.

NOTE: This provision mandate persons other than listed companies and intermediaries that are required to handle unpublished price sensitive information to formulate a code of conduct governing trading in securities by their designated persons. These entities include professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies. Even entities that normally operate outside the capital market may handle unpublished price sensitive information. This provision would mandate all of them to formulate a code of conduct.

- Every listed company, intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.
- The board of directors or such other analogous authority shall in consultation with the compliance officer specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to unpublished

price sensitive information in addition to seniority and professional designation and shall include:-

- (i) Employees of such listed company, intermediary or fiduciary designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors or analogous body;
- (ii) Employees of material subsidiaries of such listed companies designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors;
- (iii) All promoters of listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries;
- (iv) Chief Executive Officer and employees upto two levels below Chief Executive Officer of such listed company, intermediary, fiduciary and its material subsidiaries irrespective of their functional role in the company or ability to have access to unpublished price sensitive information;
- (v) Any support staff of listed company, intermediary or fiduciary such as IT staff or secretarial staff who have access to unpublished price sensitive information.

Minimum Standards for Code of Conduct

Schedule B of these regulations lays down the following minimum standards for Code of Conduct for listed companies to regulate monitor and report trading by designated persons :-

1. The compliance officer shall report to the board of directors and in particular, shall provide reports to the Chairman of the Audit Committee, if any, or to the Chairman of the board of directors at such frequency as may be stipulated by the board of directors but not less than once in a year.
2. All information shall be handled within the organisation on a need-to-know basis and no unpublished price sensitive information shall be communicated to any person except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.
3. The code of conduct shall contain norms for appropriate Chinese Walls procedures, and processes for permitting any designated person to “cross the wall”.
4. Designated persons and immediate relatives of designated persons in the organisation shall be governed by an internal code of conduct governing dealing in securities.
5. Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons.
6. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates.
7. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.
8. Trading restriction period shall be made applicable from the end of every quarter till 48 hours after the declaration of financial results. The gap between clearance of accounts by audit committee and board meeting should be as narrow as possible and preferably on the same day to avoid leakage of material information.
9. The trading window restrictions mentioned above shall not apply in respect of –

- (a) transactions specified in clauses (i) to (iv) and (vi) of the proviso to sub-regulation (1) of regulation 4 and in respect of a pledge of shares for a bonafide purpose such as raising of funds, subject to pre-clearance by the compliance officer and compliance with the respective regulations made by the Board;
 - (b) transactions which are undertaken in accordance with respective regulations made by the SEBI such as acquisition by conversion of warrants or debentures, subscribing to rights issue, further public issue, preferential allotment or tendering of shares in a buy-back offer, open offer, delisting offer.
10. The timing for re-opening of the trading window shall be determined by the compliance officer taking into account various factors including the unpublished price sensitive information in question becoming generally available and being capable of assimilation by the market, which in any event shall not be earlier than forty-eight hours after the information becomes generally available.
 11. When the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate.
 12. Prior to approving any trades, the compliance officer shall be entitled to seek declarations to the effect that the applicant for pre-clearance is not in possession of any unpublished price sensitive information.
 13. He shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate.
 14. The code of conduct shall specify any reasonable timeframe, which in any event shall not be more than seven trading days, within which trades that have been pre-cleared have to be executed by the designated person, failing which fresh pre-clearance would be needed for the trades to be executed.
 15. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to SEBI for credit to the Investor Protection and Education Fund administered by the SEBI under the Act.

However, this shall not be applicable for trades pursuant to exercise of stock options.

16. The code of conduct shall stipulate such formats as the board of directors deems necessary for making applications for pre-clearance, reporting of trades executed, reporting of decisions not to trade after securing pre-clearance, and for reporting level of holdings in securities at such intervals as may be determined as being necessary to monitor compliance with these regulations.
17. The code of conduct shall stipulate the sanctions and disciplinary actions, including wage freeze, suspension recovery, clawback etc. that may be imposed, by the listed company required to formulate a code of conduct for the contravention of the code of conduct.
18. The code of conduct shall specify that in case it is observed by the listed company required to formulate a code of conduct, that there has been a violation of these regulations, it shall inform the SEBI promptly.
19. Designated persons shall be required to disclose names and Permanent Account Number or any other identifier authorized by law of the following persons to the company on an annual basis and as and when the information changes:

- a) immediate relatives
- b) persons with whom such designated person(s) shares a material financial relationship
- c) Phone, mobile and cell numbers which are used by them.

In addition, the names of educational institutions from which designated persons have graduated and names of their past employers shall also be disclosed on a one time basis.

Explanation – The term “material financial relationship” shall mean a relationship in which one person is a recipient of any kind of payment such as by way of a loan or gift from a designated person during the immediately preceding twelve months, equivalent to at least 25% of the annual income of such designated person but shall exclude relationships in which the payment is based on arm’s length transactions.

20. Listed entities shall have a process for how and when people are brought ‘inside’ on sensitive transactions. Individuals should be made aware of the duties and responsibilities attached to the receipt of Inside Information, and the liability that attaches to misuse or unwarranted use of such information.

Whether separate code of conduct can be adopted for listed company and each of intermediaries in a group?

In case of group, separate code may be adopted for listed company and each of intermediaries as applicable to the concerned entity.

Institutional Mechanism for Prevention of Insider trading [Regulation 9A]

- The Chief Executive Officer, Managing Director or such other analogous person of a listed company, intermediary or fiduciary shall put in place adequate and effective system of internal controls to ensure compliance with the requirements given in these regulations to prevent insider trading.

The internal controls shall include the following:

- (a) all employees who have access to unpublished price sensitive information are identified as designated person;
 - (b) all the unpublished price sensitive information shall be identified and its confidentiality shall be maintained as per the requirements of these regulations;
 - (c) adequate restrictions shall be placed on communication or procurement of unpublished price sensitive information as required by these regulations;
 - (d) lists of all employees and other persons with whom unpublished price sensitive information is shared shall be maintained and confidentiality agreements shall be signed or notice shall be served to all such employees and persons;
 - (e) all other relevant requirements specified under these regulations shall be complied with;
 - (f) periodic process review to evaluate effectiveness of such internal controls.
- The board of directors of every listed company and the board of directors or head(s) of the organisation of intermediaries and fiduciaries shall ensure that the Chief Executive Officer or the Managing Director or such other analogous person ensures compliance with these regulations.
 - The Audit Committee of a listed company or other analogous body for intermediary or fiduciary shall review compliance with the provisions of these regulations at least once in a financial year and shall verify that the systems for internal control are adequate and are operating effectively.

- Every listed company shall formulate written policies and procedures for inquiry in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, which shall be approved by board of directors of the company and accordingly initiate appropriate inquiries on becoming aware of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information and inform the Board promptly of such leaks, inquiries and results of such inquiries.
- The listed company shall have a whistle-blower policy and make employees aware of such policy to enable employees to report instances of leak of unpublished price sensitive information.
- If an inquiry has been initiated by a listed company in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, the relevant intermediaries and fiduciaries shall co-operate with the listed company in connection with such inquiry conducted by listed company.

PENALTY PROVISIONS FOR VIOLATIONS OF THE REGULATIONS

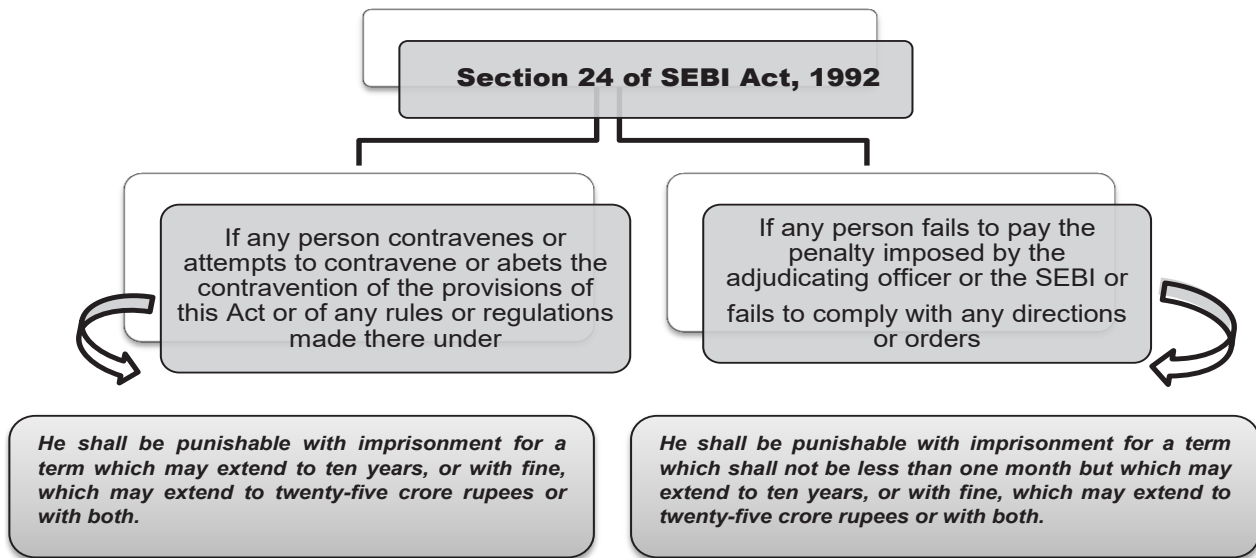
If any person violates provisions of these regulations, he shall be liable for appropriate action under Sections 11, 11 B, 11D, Chapter VIA and Section 24 of the SEBI Act.

Penalty for insider trading under section 15G of the SEBI Act, 1992

If any insider who, –

- either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or
- communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
- counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information.

shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.



APPEAL TO SECURITIES APPELLATE TRIBUNAL

Violation of the provisions of these regulations attract huge monetary penalty and may lead to criminal prosecution. However those aggrieved by an order of SEBI, may prefer an appeal to the Securities Appellate Tribunal within a period of forty-five days of the order.

ROLE OF COMPANY SECRETARY AS COMPLIANCE OFFICER

The obligations cast upon the Company Secretary in relation to insider trading regulations can be summarized as under. The Company Secretary shall:

1. Ensure compliance with SEBI (Prohibition of insider Trading) Regulations, 2015 including maintenance of various documents.
2. Frame a code of fair disclosure and conduct in line with the model code specified in the Schedule A of the regulations, get the same approved by the board of directors of the company and submit to the stock exchanges
3. Frame Code of Conduct for the listed company to regulate, monitor and report trading by designated persons in accordance with the minimum standards as enumerated in the Schedule B to these regulations.
4. Receive initial disclosure from every Promoter, KMP and director or every person on appointment as KMP or director or becoming a Promoter shall disclose its shareholding in the prescribed form within :
 - 30 days from these regulations taking effect or
 - 7 days of such appointment or becoming a promoter
5. Receive from every Promoter, designated persons and director, continual disclosures of the number of securities acquired or disposed of and changes therein, even if the value of the securities traded, exceeds Rs. 10 lakh with single or series of transaction in any calendar quarter in prescribed form within two trading days of :
 - receipt of the disclosure or
 - from becoming aware of such information

Submit the disclosures received as above to the stock exchanges as applicable

6. Pre Clear the trade pursuant to the requests received from the designated persons and also monitor trading in accordance with the regulations.
7. Ensure that no trading shall between 20th day prior to closure of financial period and 2nd trading day after disclosure of financial results.
8. Approve the trading plan and after the approval of the trading plan, as compliance officer shall notify the plan to the stock exchanges on which the securities are listed.
9. Maintain records, as a Compliance Officer, of all the declarations given by the directors/designated employees/partners in the appropriate form for a minimum period of three years.
10. Take additional undertakings, as a compliance officer, from the insiders for approval of the trading plan. Such trading plan on approval will also be disclosed to the Stock Exchanges, where the securities of the company are listed.
11. Monitor trades and the implementation of the code of conduct under the overall supervision of the Board of Directors of the listed company.
12. Frame and then to monitor adherence to the rules for the preservation of "Price sensitive information".
13. Ensure that proper internal control system is in place and continuously monitor and review of its functioning.
14. Suggest any improvements required in the policies, procedures, etc. to ensure effective implementation of the code.
15. Assist in addressing any clarifications regarding the SEBI (Prohibition of Insider Trading) Regulations, 2015 and the company's code of conduct.
16. Maintain a list of all information termed as 'price sensitive information'.
17. Maintain a record of names of files containing confidential information deemed to be price sensitive information and persons in charge of the same.
18. Ensure that files containing confidential information are kept secured.
19. Keep records of periods specified as 'close period' and the 'Trading window'.
20. Ensure that the trading restrictions are strictly observed and all directors/officers/designated employees conduct all their dealings in the securities of the company only in a valid trading window and do not deal in the company's securities during the period when the trading window is closed.
21. Receive and maintain records of periodic and annual statement of holdings from directors/officers/designated employees and their dependent family members.
22. Ensure that the "Trading Window" is closed at the time of :
 - a) Declaration of financial results(quarterly, half-yearly and annual)
 - b) Declaration of dividends("interim and final)
 - c) Issue of securities by way of public/right/bonus etc.,
 - d) Any Major expansion plans or execution of new projects.
 - e) Amalgamation, mergers, takeovers and buy-back
 - f) Disposal of whole or substantially whole of the undertaking

- g) Any change in policies, plans or operations of the company
23. Maintain a structured digital database of names of persons and entities with whom unpublished price sensitive informations are shared alongwith their PAN and other details.
 24. Serve due notices to maintain confidentiality to every such persons with whom informations are shared for legitimate purposes.
 25. Educate the employees, board of directors regarding the provisions of the regulations and amendments from time to time for their better understanding and compliances.
 26. Assist the board of directors to undertake enquiry or investigation in case of any suspected violation of the regulation and advising on taking appropriate disciplinary actions including transfer of all unlawful gain to the SEBI Investor Protection and Education Fund.
 27. Place before the Chief Executive Officer/Partner or a committee notified by the organization/firm, as a Compliance Officer, on a monthly basis all the details of the dealing in the securities by designated employees/directors/partners of the organization/firm.

RECENT JUDGEMENTS AND DEVELOPMENTS:

- During the year 2018 it came to the knowledge of the SEBI that several unpublished price sensitive information were circulated in private social media networking groups about certain companies ahead of their official announcements to the respective stock exchanges. This calls for immediate change in ongoing PIT Regulations with newer requirements like Policy for leak of unpublished price sensitive information, maintaining structured digital database of persons with whom information are shared, reward and incentive system for informants etc.
- In the matter of Insider Trading in the Scrip of Deep Industries Ltd., the SEBI during the investigation goes beyond the prescribed definition of Connected Persons under the regulation and establishes relationships and nexus of persons, leak of information on the basis of social media network websites and KYC documents with intermediaries of suspected persons and entities involved in the insider trading.

LESSON ROUND UP

- To curb insider trading SEBI formulated SEBI (Prohibition of Insider Trading) Regulations, 2015 and which prescribes code of fair disclosure and conduct to be followed by listed companies and entities connected with them.
- The Insider Trading Regulations comprises of five chapters and three schedules encompassing the various regulations relating to Insider Trading.
- Insider means and includes deemed to be a connected person. The definition of deemed to be a connected person is inclusive and very elaborate.
- The regulations not only seek to curb dealing in securities, they also seek to curb communicating or counseling about securities by the insiders.
- The regulations provide for initial as well as continual disclosures by members of the company by the directors/ employees/ designated employees/promoter/promoter group at regular intervals.

GLOSSARY

Book Closure	The periodic closure of the Register of Members and Transfer Books of the company, to take a record of the shareholders to determine their entitlement to dividends or to bonus or right shares or any other rights pertaining to shares.
Chinese Walls	Artificial barriers to the flow of information set up in large firms to prevent the movement of sensitive information between departments.
Contra Trade	Contra trading involves buying and selling the same shares without paying for them.
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.
Punitive	It implies involving or inflicting punishment.

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 insider trading? Enumerate the penalties which can be imposed under the SEBI Act, 1992 for insider trading?
2. What are the restrictions on communication or procurement of unpublished price sensitive information?
3. State the circumstances and conditions subject to which insider trading is permitted under the SEBI (Prohibition of Insider Trading) Regulations, 2015.
4. Explain the disclosure requirements by certain persons under the SEBI (Prohibition of Insider Trading) Regulations, 2015.
5. Discuss the provisions relating to 'Codes of fair disclosure and conduct' as per the SEBI (Prohibition of Insider Trading) Regulations, 2015.

[illegible]

Lesson 12

Mutual Funds

LESSON OUTLINE

- Introduction
- Structure of a Mutual Fund
- Overview of Mutual Fund Industry in India
- Schemes according to Investment Objective
- Advantages of Mutual Funds
- Risks involved in Mutual Funds
- Key Players in Mutual Fund
- Net Asset Value
- Expense Ratio
- Holding Period Return
- Evaluating Performance of Mutual Fund
- SEBI (Mutual Fund) Regulations, 1996
- SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Different investment avenues are available to investors, one of them being Mutual Fund. Mutual fund is a mechanism for pooling the resources by issuing units to the investors and investing funds in securities in accordance with objectives as disclosed in offer document.

Mutual funds offer good investment opportunities to the investors. Like all investments, they also carry certain risks. The investors should compare the risks and expected yields after adjustment of tax on various instruments while taking investment decisions.

The SEBI formulates policies and regulates the mutual funds to protect the interest of the investors. SEBI notified regulations for the mutual funds in 1993. Thereafter, mutual funds sponsored by private sector entities were allowed to enter the capital market. The regulations were fully revised in 1996 and have been amended thereafter from time to time.

Keeping the above in view this lesson is designed to enable the students to understand the trend of mutual funds in India over a period of time. Various schemes of mutual funds, advantages and risk involved in Mutual Fund and SEBI law governing mutual fund pertaining the mutual fund operating in India etc.

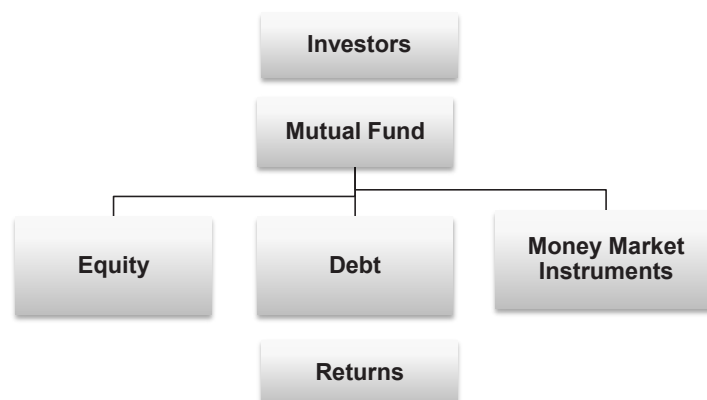
INTRODUCTION

SEBI (Mutual Fund) Regulations, 1996, define mutual fund as a fund established in the form of a trust to raise monies through the sale of units to the public or a section of the public under one or more schemes for investing in securities including money market instruments or gold or gold related instruments or real estate assets.

Mutual fund is a mechanism for pooling the resources by issuing units to the investors and investing funds in securities in accordance with objectives as disclosed in offer document. Investments in securities are spread across a wide cross-section of industries and sectors and thus the risk is reduced. Diversification reduces the risk because all stocks may not move in the same direction in the same proportion at the same time. The mutual funds normally come out with a number of schemes with different investment objectives which are launched from time to time. A mutual fund is required to be registered with SEBI before it can collect funds from the public.

What is a mutual fund?

- A trust that raises money through sale of units
- Gives investors exposure to different segments of markets
- Investors get access to professional management
- Plays an active role in building wealth and generating income for investors
- A key participant in the capital market
- Source for corporates to raise money



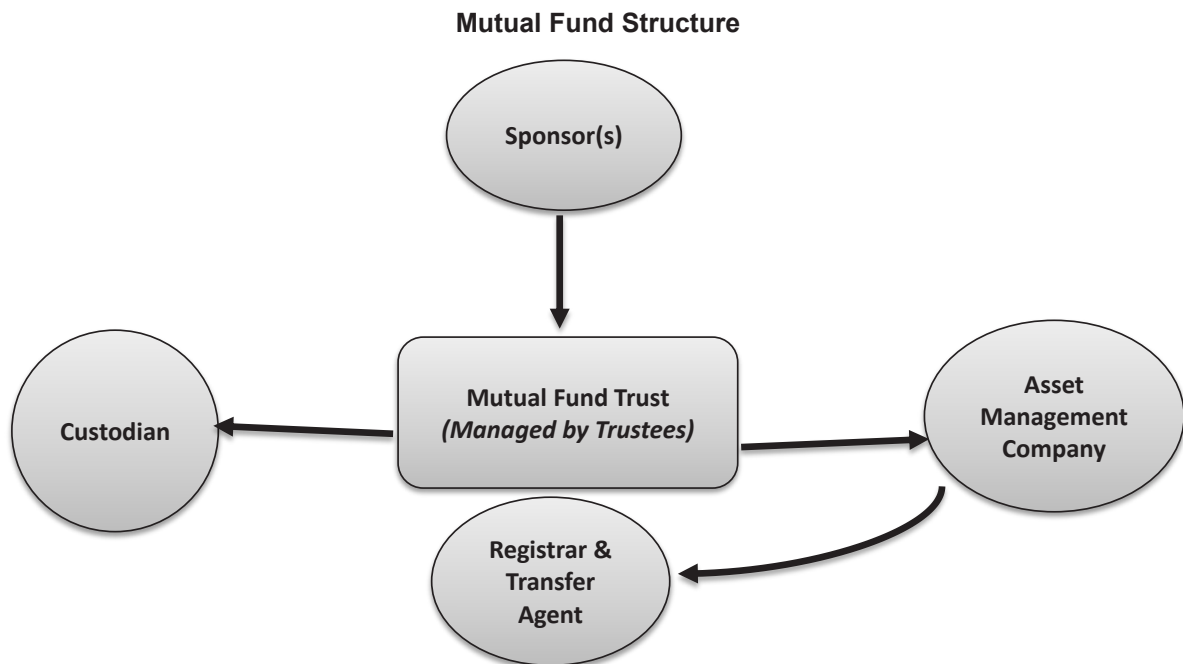
List of all stakeholders in Indian mutual fund industry is as follows:

- Reserve Bank of India (RBI)
- Securities and Exchange Board of India (SEBI)
- Association of Mutual Funds in India (AMFI)
- Ministry of Finance
- Self Regulatory Organisation (SROs)
- Income Tax Regulations
- Investors' Associations

STRUCTURE OF A MUTUAL FUND

A mutual fund is set up in the form of a trust, which has sponsor, trustees, asset management company ("AMC")

and a custodian. The trust is established by a sponsor or more than one sponsor who is like a promoter of a company. The trustees of the mutual fund hold its property for the benefit of the unit-holders. The AMC, approved by SEBI, manages the funds by making investments in various types of securities. The custodian, who is registered with SEBI, holds the securities of various schemes of the fund in its custody. The trustees are vested with the general power of superintendence and direction over AMC. They monitor the performance and compliance of SEBI Regulations by the mutual fund.



Mutual Fund Structure - Example

Description	Entity
Mutual Fund Trust	IDBI Mutual Fund
Sponsor	IDBI Bank Limited
Trustee	IDBI MF Trustee Company Limited
Asset Management Company	IDBI Asset Management Limited
Registrar	Karvy Computershare Private Limited
Custodian	Stock Holding Corporation of India Limited The Bank of Nova Scotia

OVERVIEW OF MUTUAL FUNDS INDUSTRY IN INDIA

- Started with the introduction of Unit Trust of India (UTI) – in 1963.
- Public sector companies started setting up mutual funds, beginning with SBI Mutual Fund in 1987. This was followed by Canbank Mutual Fund, Punjab National Bank Mutual Fund, Bank of Baroda Mutual Fund, etc.
- Private sector mutual funds started in 1993; Franklin Templeton (erstwhile Kothari Pioneer) was the first of its kind.

Regulator & Industry Body

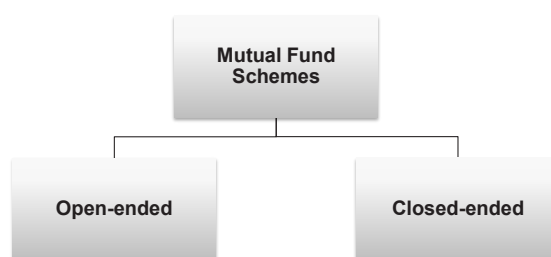
Regulator: Securities and Exchange Board of India (SEBI)

- Regulates mutual funds, custodians and registrars & transfer agents
- The applicable guidelines for mutual funds are set out in SEBI (Mutual Funds) Regulations, 1996; updated periodically

Industry Body: Association of Mutual Funds in India (AMFI)

- All 44 AMCs are members of AMFI (Source : www.amfiindia.com)
- Recommends and promotes best business practices and code of conduct
- Disseminates information and carries out studies/research on mutual fund industry

Types of Mutual Funds



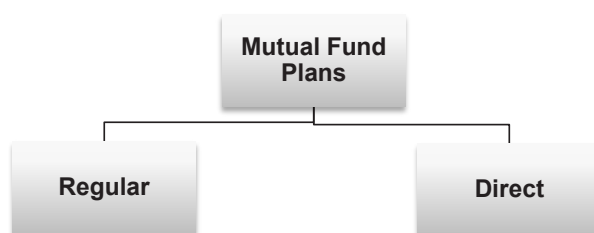
Open Ended

- Can be purchased on any transaction day
 - Can be redeemed on any transaction day
- (Except when units are locked-in in the case of ELSS funds)
- High liquidity

Close Ended

- Can be purchased only during NFO
 - Can be redeemed only at maturity
- Low on liquidity

Types of Mutual Fund Plans

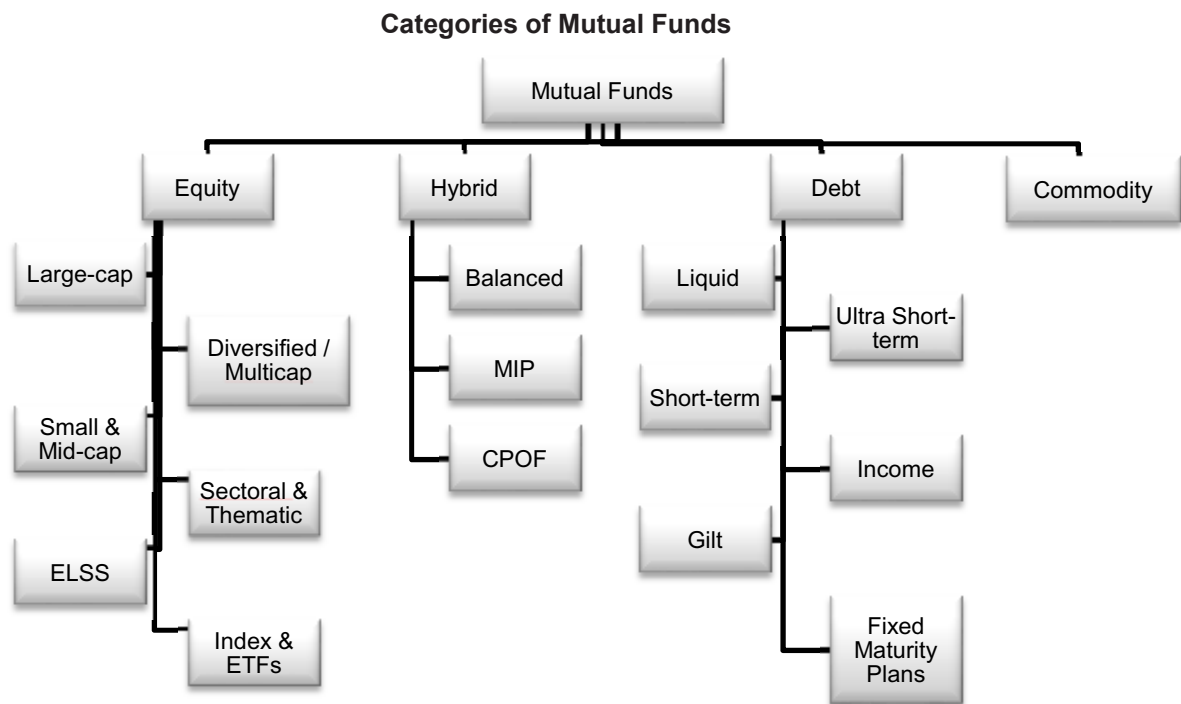


Regular Plans

- Sold through a distributor
 - Higher Expense Ratio
- (Due to commissions paid to distributor)
- Potentially lower returns to the investor
- (Due to higher expenses)

Direct Plans

- Sold directly by the AMC
 - Lower Expense Ratio
- (No commission paid to distributor)
- Potentially higher returns
- (Due to lower expenses)



SCHEMES ACCORDING TO INVESTMENT OBJECTIVE

Besides these, there are other types of mutual funds also to meet the investment needs of several groups of investors. Some of them include the following:

- (a) **Income Oriented Schemes:** The fund primarily offer fixed income to investors. Naturally enough, the main securities in which investments are made by such funds are the fixed income yielding ones like bonds, corporate debentures, Government securities and money market instruments, etc.
- (b) **Growth Oriented Schemes:** These funds offer growth potentialities associated with investment in capital market namely: (i) high source of income by way of dividend and (ii) rapid capital appreciation, both from holding of good quality scrips. These funds, with a view to satisfying the growth needs of investors, primarily concentrate on the low risk and high yielding spectrum of equity scrips of the corporate sector.
- (c) **Hybrid Schemes:** These funds cater to both the investment needs of the prospective investors – namely fixed income as well as growth orientation. Therefore, investment targets of these mutual funds are judicious mix of both the fixed income securities like bonds and debentures and also sound equity scrips. In fact, these funds utilise the concept of balanced investment management. These funds are, thus, also known as “balanced funds”.
- (d) **High Growth Schemes:** As the nomenclature depicts, these funds primarily invest in high risk and high return volatile securities in the market and induce the investors with a high degree of capital appreciation.
- (e) **Capital Protection Oriented Scheme:** It is a scheme which protects the capital invested in the mutual fund through suitable orientation of its portfolio structure.
- (f) **Tax Saving Schemes:** These schemes offer tax rebates to the investors under tax laws as prescribed from time to time. This is made possible because the Government offers tax incentive for investment in specified avenues. For example, Equity Linked Saving Schemes (ELSS) and pensions schemes.

- (g) **Special Schemes:** This category includes index schemes that attempt to replicate the performance of particular index such as the BSE, Sensex or the NSE-50 or industry specific schemes (which invest in specific industries) or sectoral schemes (which invest exclusively in segment such as 'A' Group or initial public offering). Index fund schemes are ideal for investors who are satisfied with a return approximately equal to that of an index. Sectoral fund schemes are ideal for investors who have already decided to invest in particular sector or segment.
- (h) **Real Estate Funds:** These are close ended mutual funds which invest predominantly in real estate and properties.
- (i) **Off-shore Funds:** Such funds invest in securities of foreign companies with RBI permission.
- (j) **Leverage Funds:** Such funds, also known as borrowed funds, increase the size and value of portfolio and offer benefits to members from out of the excess of gains over cost of borrowed funds. They tend to indulge in speculative trading and risky investments.
- (k) **Hedge Funds:** They employ their funds for speculative trading, i.e. for buying shares whose prices are likely to rise and for selling shares whose prices are likely to fall.
- (l) **Fund of Funds:** They invest only in units of other mutual funds. Such funds do not operate at present in India.
- (m) **New Direction Funds:** They invest in companies engaged in scientific and technological research such as birth control, anti-pollution, oceanography etc.
- (n) **Exchange Trade Funds (ETFs)** are a new variety of mutual funds that first introduced in 1993. ETFs are sometimes described as mere "tax efficient" than traditional equity mutual funds, since in recent years, some large ETFs have made smaller distribution of realized and taxable capital gains than most mutual funds.
- (o) **Money Market Mutual Funds:** These funds invest in short- term debt securities in the money market like certificates of deposits, commercial papers, government treasury bills etc. Owing to their large size, the funds normally get a higher yield on such short term investments than an individual investor.
- (p) **Infrastructure Debt Fund:** They invest primarily in the debt securities or securitized debt investment of infrastructure companies.

ADVANTAGES OF MUTUAL FUNDS

The advantages of investing in a mutual fund are:

1. **Professional Management:** Investors avail the services of experienced and skilled professionals who are backed by a dedicated investment research team which analyses the performance and prospects of companies and selects suitable investments to achieve the objectives of the scheme.
2. **Diversification:** Mutual funds invest in a number of companies across a broad cross-section of industries and sectors. This diversification reduces the risk because seldom do all stocks decline at the same time and in the same proportion. Investors achieve this diversification through a Mutual Fund with far less money than one can do on his own.
3. **Convenient Administration:** Investing in a mutual fund reduces paper work and helps investors to avoid many problems such as bad deliveries, delayed payments and unnecessary follow up with brokers and companies. Mutual funds save investors time and make investing easy and convenient.
4. **Return Potential:** Over a medium to long term, Mutual funds have the potential to provide a higher return as they invest in a diversified basket of selected securities.

5. **Low Costs:** Mutual funds are a relatively less expensive way to invest compared to directly investing in the capital markets because the benefits of scale in brokerage, custodial and other fees translate into lower costs for investors.
6. **Liquidity:** In open ended schemes, investors can get their money back promptly at net asset value related prices from the mutual fund itself. With close ended schemes, investors can sell their units on a stock exchange at the prevailing market price or avail of the facility of direct repurchase at net asset value (NAV) related prices which some close ended and interval schemes offer periodically or offer it for redemption to the fund on the date of maturity.
7. **Transparency:** Investors get regular information on the value of their investment in addition to disclosure on the specific investments made by scheme, the proportion invested in each class of assets and the fund manager's investment strategy and outlook.

RISKS INVOLVED IN MUTUAL FUNDS

Mutual funds may face the following risks, leading to non-satisfactory performance:

1. Excessive diversification of portfolio, losing focus on the securities of the key segments.
2. Too much concentration on blue-chip securities.
3. Necessity to effect high turnover through liquidation of portfolio resulting in large payments of brokerage and commission.
4. Poor planning of investment returns.
5. Unresearched forecast on income, profits and Government policies.
6. Fund managers being unaccountable for poor results.
7. Failure to identify clearly the risk of the scheme as distinct from risk of the market.
8. Under performance in comparison to peers.

ELIGIBILITY CRITERIA FOR REGISTRATION OF MUTUAL FUNDS

For the purpose of grant of a certificate of registration, the applicant has to fulfill the following, namely –

- the sponsor should have a sound track record and general reputation of fairness and integrity in all his business transactions.

Explanation: For the purposes of this clause “sound track record” shall mean the sponsor should –

- (i) be carrying on business in financial services for a period of not less than five years; and
 - (ii) the networth is positive in all the immediately preceding five years; and
 - (iii) the networth in the immediately preceding year is more than the capital contribution of the sponsor in the asset management company; and
 - (iv) the sponsor has profits after providing for depreciation, interest and tax in three out of the immediately preceding five years, including the fifth year;
- the applicant is a fit and proper person.
 - in the case of an existing mutual fund, such fund is in the form of a trust and the trust deed has been approved by the Board.
 - the sponsor has contributed or contributes at least 40% to the net worth of the asset management company.

- Provided that any person who holds 40% or more of the net worth of an asset management company shall be deemed to be a sponsor and will be required to fulfill the eligibility criteria specified in these regulations
- the sponsor or any of its directors or the principal officer to be employed by the mutual fund should not have been guilty of fraud or has not been convicted of an offence involving moral turpitude or has not been found guilty of any economic offence
- appointment of trustees to act as trustees for the mutual fund in accordance with the provisions of the regulations
- appointment of asset management company to manage the mutual fund and operate the scheme of such funds in accordance with the provisions of these regulations
- appointment of custodian in order to keep custody of the securities or goods or gold and gold related instrument or other assets of the mutual fund held in terms of SEBI (Mutual Fund) Regulations, 1996 and provide such other custodial services as may be authorised by the trustees.

KEY PLAYERS IN MUTUAL FUND

A mutual fund is a professionally-managed investment scheme, usually run by an asset management company that brings together a group of people and invests their money in stocks, bonds and other securities. It is formed by trust body.

There are five principal constituents and three market intermediaries in the formation and functioning of mutual fund:

Five principal constituents

- *Sponsor*

A sponsor is an **influential investor** who creates demand for a security because of their positive outlook on it. The sponsor brings in capital and creates a mutual fund trust and sets up the AMC. The sponsor makes an application for registration of the mutual fund and contributes at least 40% of the **net worth** of the AMC.

SEBI (Mutual Fund) Regulations, 1996 defines sponsor as any person who, acting alone or in combination with another body corporate, establishes a mutual fund.

- *Asset Management Company*

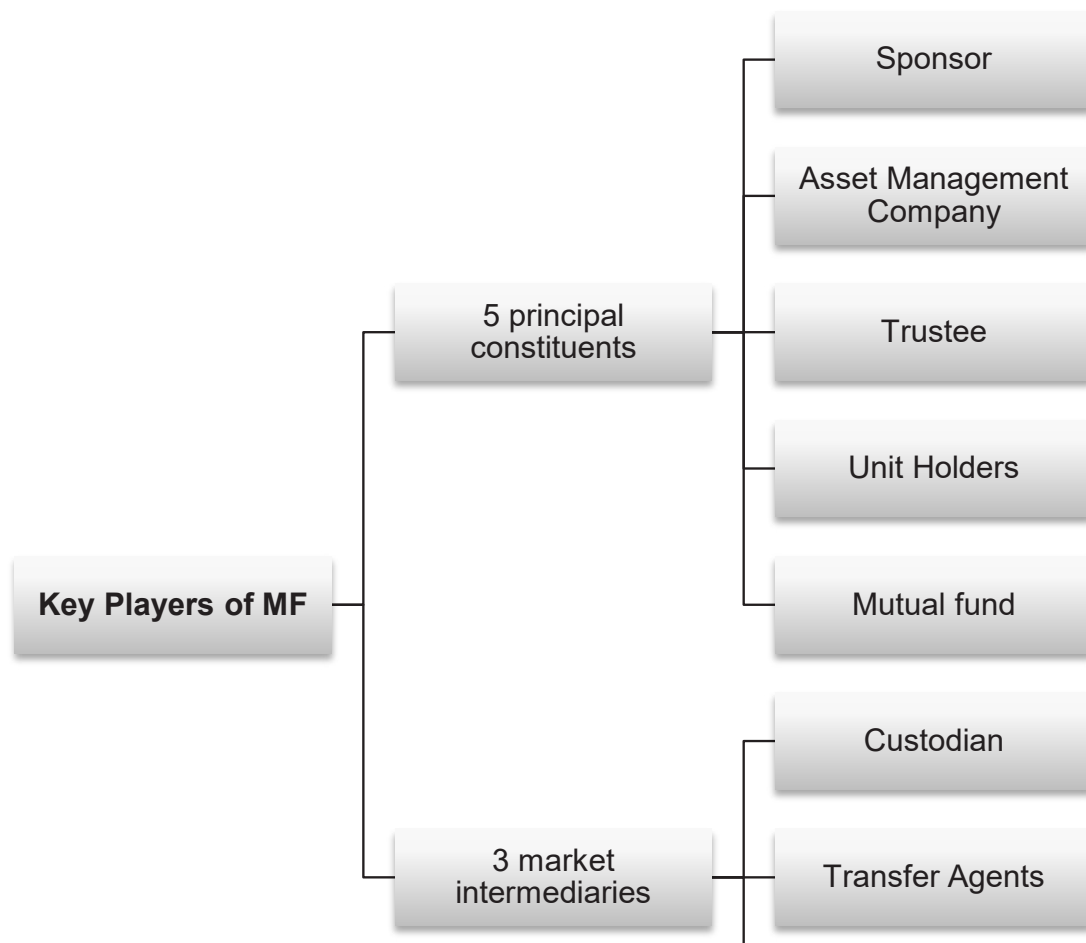
An asset management company (AMC) is a company that invests its **clients' pooled funds** into securities that match declared **financial objectives**. Asset management companies provide investors with more **diversification** and **investing options** than they would have themselves. AMCs manage mutual funds, hedge funds and pension plans, these companies earn income by charging **service fees** or commissions to their clients.

SEBI (Mutual Fund) Regulations, 1996 defines asset management company as a company formed and registered under the Companies Act, 2013 and approved as such by the SEBI under sub regulation (2) of regulation 21.

The sponsor or, if so authorised by the trust deed, the trustee, shall appoint an asset management company, which has been approved by the SEBI. The appointment of an asset management company can be terminated by majority of the trustees or by seventy-five per cent of the unit holders of the scheme. Any change in the appointment of the asset management company shall be subject to prior approval of the SEBI and the unitholders.

ELIGIBILITY CRITERIA FOR APPOINTMENT OF ASSET MANAGEMENT COMPANY

- in case the asset management company is an existing asset management company it has a sound track record, general reputation and fairness in transactions;
- the asset management company is a fit and proper person;
- the directors of the asset management company are persons having adequate professional experience in finance and financial services related field and not found guilty of moral turpitude or convicted of any economic offence or violation of any securities laws;
- the key personnel of the asset management company 41[have not been found guilty of moral turpitude or convicted of economic offence or violation of securities laws] 42[or worked] for any asset management company or mutual fund or any intermediary 43[during the period when its] registration has been suspended or cancelled at any time by the Board;
- the board of directors of such asset management company has at least fifty per cent directors, who are not associate of, or associated in any manner with, the sponsor or any of its subsidiaries or the trustees;
- the Chairman of the asset management company is not a trustee of any mutual fund;
- the asset management company has a networth of not less than rupees fifty crore;



- *Trustee*

A trustee is a person or firm that holds and administers property or assets for the benefit of a **third party**. A trustee may be appointed for a wide variety of purposes, such as in case of bankruptcy, for a

charity, for a trust fund or for certain types of retirement plans or pensions.

SEBI (Mutual Fund) Regulations, 1996 defines trustees as the Board of Trustees or the Trustee Company who hold the property of the Mutual Fund in trust for the benefit of the unit holders.

No person shall be eligible to be appointed as a trustee unless—

- he is a person of ability, integrity and standing; and
- has not been found guilty of moral turpitude; and
- has not been convicted of any economic offence or violation of any securities laws; and
- has furnished particulars as specified.

No asset management company and no director (including independent director), officer or employee of an asset management company shall be eligible to be appointed as a trustee of any mutual fund.

No person who is appointed as a trustee of a mutual fund shall be eligible to be appointed as a trustee of any other mutual fund

Two-thirds of the trustees shall be independent persons and shall not be associated with the sponsors or be associated with them in any manner whatsoever.

In case a company is appointed as a trustee then its directors can act as trustees of any other trust provided that the object of the trust is not in conflict with the object of the mutual fund.

- *Unit Holders*

A unitholder is an investor who owns the **units issued by** a trust, like a real estate investment trust or a master limited partnership (MLP). The securities issued by trusts/MF are called **units**, and investors in units are called unitholders. The unit in turn reflect share of the investor in the Net Assets of the fund.

- *Mutual fund*

A mutual fund established under the Indian Trust Act to raise money through, the **sale of units** to the public for investing in the **capital market**. The funds thus collected as per the directions of asset management company for invested. The mutual fund has to be **SEBI** registered.

Three market intermediaries are:

- *Custodian*

A custodian is a person who carries on the business of providing custodial services to the client. The custodian keeps the custody of the securities of the client. The custodian also provides incidental services such as maintaining the accounts of securities of the client, collecting the benefits or rights accruing to the client in respect of securities.

Every custodian should have adequate facilities, sufficient capital and financial strength to manage the custodial services. The SEBI (Custodian of Securities) Regulations, 1996 prescribe the roles and responsibilities of the custodians.

According to the SEBI the roles and responsibilities of the custodians are to Administrate and protect the assets of the clients; Open a separate custody account and deposit account in the name of each client; Record assets; and Conduct registration of securities.

- *Transfer Agents*

A transfer agent is a person who has been granted a Certificate of Registration to conduct the business of transfer agent under the SEBI (Registrars to an Issue and Share Transfer Agents) Regulations,

1993. Transfer agents' services include **issue** and **redemption** of mutual fund units, preparation of transfer documents and maintenance of updated investment records. They also record transfer of units between investors where depository does not function. They also facilitate investors to get customized reports.

- **Depository**

A depository facilitates the smooth **flow of trading** and ensure the investor's about their investment in securities.

TERMS AND CONDITIONS OF REGISTRATION

- the trustees, the sponsor, the asset management company and the custodian shall comply with the provisions of SEBI (Mutual Fund) Regulations, 1996.
- the mutual fund shall forthwith inform the SEBI, if any information or particulars previously submitted to the SEBI was misleading or false in any material respect.
- the mutual fund shall forthwith inform the SEBI, of any material change in the information or particulars previously furnished, which have a bearing on the registration granted by it.
- payment of fees as specified in the SEBI (Mutual Fund) Regulations, 1996 regulations.

Mutual Fund Terminology

A. Offer Document

- AMC raises money in new schemes through New Fund Offer (NFO)
- Offer document contains key details about the NFO – open and close dates, scheme objective, nature of the scheme, etc.
- Filed with SEBI

Two parts:

1. **Scheme Information Document (SID)** - A document that contains the details of the scheme. SID has to be updated every year

Key Contents:

- Scheme name on the cover page, along with scheme structure (open / closed-ended) and expected scheme nature (equity / debt / balanced / liquid / ETF)
 - Highlights of the scheme
 - Risk factors
 - o Standard
 - o Scheme specific
 - Due diligence certificate issued by the AMC
 - Fees and expenses
 - Rights of unit holders
 - Penalties, litigations, etc.
2. **Statement of Additional Information** - A document that contains statutory information about the fund house offering the scheme. SAI has to be updated the end of every quarter

Key Contents:

- Information about sponsor, mutual fund, trustees, custodian and registrar & transfer agents
- Condensed financial information for schemes launched in the last three financial years
- Information on how to apply
- Rights of unit holders
- Details of the fund managers
- Tax, legal and other general information

B. Key Information Memorandum (KIM)

- Essentially a summary of SID & SAI
- As per SEBI regulations, every application form should be accompanied by the KIM
- The KIM has to be updated at least once a year

Contents

- Name of the AMC, Mutual Fund Trust, Trustee, Fund Manager(s) and Scheme details
- Open and close dates of the issue
- Issue price of the scheme
- Plans and options available in the scheme
- Risk profile of the scheme
- Benchmark
- Dividend policy
- Performance of the scheme and benchmark over last 1, 3, 5 years and since inception
- Loads and expenses
- Contact information and registrars

C. Fact Sheets

Usually provided on a monthly basis by AMCs

Contains the following:

- NAV and AUM
- Expense ratio, exit loads, average maturity, YTM, modified duration
- Benchmark & Fund manager details
- Past performance
- Scheme's allocation & portfolios
- Style box
- Other scheme attributes – like risk category, minimum investment amount, scheme objective, etc.

D. Assets under Management (AUM)**What is AUM?**

It is the total market value of the assets managed by a mutual fund scheme as on a particular date

Periodic AUM Available

- Month-end
- Quarterly average

E. Know Your Client (KYC)**What is KYC?**

- A one-time process made mandatory to invest in mutual funds
- Key details required: PAN, Address proof, contact details, occupation and income details

Where can it be done?

- CDSL Ventures Limited KRA
- CAMS KRA
- Karvy KRA
- NDML KRA (wholly owned subsidiary of NSDL)
- DOTEX KRA (wholly owned subsidiary of NSE)

F. Foreign Account Tax Compliance Act (FATCA)**What is FATCA?**

- Requires that all financial institutions (including Indian mutual funds) need to report financial transactions of US persons and entities in which US persons hold a substantial ownership.
- Enacted to prevent tax evasion through foreign investments.
- Key details required: Country of birth, Country of citizenship, country of tax residence, TIN from such country.
- Currently made mandatory for all investors (existing and new) in Indian mutual funds.
- For non-individual investors, Ultimate Beneficial Ownership (UBO) details have to be provided.

G. Modes of Holding

- Single
- Either or Survivor
 - o Signature of any of the applicants is sufficient for making transactions
- Joint
 - o Signature of all the applicants is required for making transactions

H. Nomination

- Up to 3 nominees can be registered for a folio

- Units get transferred to the nominees (in the proportion specified) in case of the investor's demise
- Nomination can be updated as and when required by the investor
- A minor can also be nominated, provided the guardian is specified
- If nomination is not registered, in case of death of the investor, the legal heir has to produce documents such as Will, Legal Heir Certificate, No-Objection Certificate from other legal heirs, etc.

I. Systematic Investment Plan (SIP) in Mutual Fund

An SIP allows an investor to invest a fixed amount regularly in a mutual fund scheme, typically an equity mutual fund scheme. An SIP helps investor to stagger the investments in equity mutual fund schemes over a period. Most mutual fund advisors do not recommend investing a lumpsum in equity mutual funds.

NET ASSET VALUE

The performance of a particular scheme of a mutual fund is denoted by Net Asset Value (NAV). In simple words, NAV is the market value of the securities held by the scheme.

Mutual funds invest the money collected from investors in securities markets. Since market value of securities changes every day, NAV of a scheme also varies on day to day basis.

The NAV per unit is the market value of securities of a scheme divided by the total number of units of the scheme on any particular date.

For example, if the market value of securities of a mutual fund scheme is INR 200 lakh and the mutual fund has issued 10 lakh units of INR 10 each to the investors, then the NAV per unit of the fund is INR 20 (i.e. 200 lakh/10 lakh). NAV is required to be disclosed by the mutual funds on a daily basis.

Unlike stocks (where the price is driven by the market and changes from minute-to-minute), mutual funds don't declare NAVs through the day. Instead, NAVs of all mutual fund schemes are declared at the end of the trading day after markets are closed, in accordance with SEBI Mutual Fund Regulations. Further, as per SEBI Mutual Fund Regulations, for all mutual fund schemes, other than liquid fund schemes, the mutual fund Units are allotted only at prospective NAV, i.e., the NAV that would be declared at the end of the day, based on the closing market value of the securities held in the respective schemes.

How is it calculated?

$$\text{Net Asset Value} = \frac{\text{Net Asset of the Scheme}}{\text{Number of units outstanding}}$$

Net Asset of the Scheme = Market value of investments + Receivables+ other accrued income+ other assets – Accrued Expenses- Other Payables- Other Liabilities

Net Asset Value (NAV) – Cut-off Timeline

Type of Transaction	Before/ After	Cut-off Time	Applicable NAV
Equity-oriented & Debt funds (except liquid funds)			
Purchase & Switch-in (value < Rs.2 lakhs)	3 pm	Before	Same day NAV
		After	Next business day NAV

Purchase & Switch-in (value > Rs.2 lakhs)	3 pm	Before After	NAV of the business day on which funds are available for utilization
Redemption & Switch-out	3 pm	Before After	Same day NAV Next business day NAV
Liquid Funds			
Purchase & Switch-in	2 pm	Before After	Previous day NAV if funds are realized NAV of the day previous to the funds realized
Redemption & Switch-out	3 pm	Before After	NAV of the day immediately preceding the next business day NAV of the day preceding the second business day from submission

Illustration.

1) The redemption price of mutual fund unit is ₹ 48 while the front end load and back end load charges are 2% and 3% respectively. Compute:

- NAV per unit
- Public offer price of the unit.

Solution:

Redemption Price =	NA	Public Offer Price =	NAV
	(1+ Back End Load)		(1- Front End Load)
	48 = NAV		= 49.44
	(1+0.03)		(1-0.02)
	= 48x1.03		= 49.44
	NAV= ₹ 49.44		0.98
			Public Offer Price = ₹ 50.45

EXPENSE RATIO

- The fees charged by the scheme to manage investors' money.

What does it contain?

- Fees paid to service providers like trustees, Registrar & Transfer Agents, Custodian, Auditor, etc.
- Asset management expenses
- Commissions paid to distributors
- Other selling expenses including advertising expenses
- Expenses on investor communication, account statements, dividend / redemption cheques / warrants
- Listing fees and Depository fees

- Service tax

Under SEBI (Mutual Funds) Regulations, 1996, Mutual Funds are permitted to incur / charge certain operating expenses for managing a mutual fund scheme – such as sales & marketing / advertising expenses, administrative expenses, transaction costs, investment management fees, registrar fees, custodian fees, audit fees – as a percentage of the fund's daily net assets.

This is commonly referred to as 'Expense Ratio'. In short, Expense ratio is the cost of running and managing a mutual fund which is charged to the scheme. All expenses incurred by a Mutual Fund, AMC will have to be managed within the limits specified under Regulation 52(6) & (6A) of the SEBI Mutual Funds Regulations.

The expense ratio is calculated as a percentage of the Scheme's average Net Asset Value (NAV). The daily NAV of a mutual fund is disclosed after deducting the expenses. Thus, the TER has a direct bearing on a scheme's NAV – the lower the expense ratio of a scheme, the higher the NAV.

In terms of Regulation 52(1) of SEBI (Mutual Funds) Regulations, 1996, all scheme related expenses including commission paid to distributors, by whatever name it may be called and in whatever manner it may be paid, shall necessarily be paid from the scheme only within the regulatory limits and not from the books of the Asset Management Companies (AMC), its associate, sponsor, trustee or any other entity through any route. Any expenditure in excess of the limits specified in these regulations shall be borne by the asset management company or by the trustee or sponsors.

HOLDING PERIOD RETURN

Holding period return is the total return received from holding an asset or portfolio of assets over a period of time, generally expressed as a percentage. Holding period return is calculated on the basis of total returns from the asset or portfolio – i.e. income plus changes in value. It is particularly useful for comparing returns between investments held for different periods of time.

Calculation of HPR

$$\text{HPR} = \frac{(\text{Income} + (\text{end of period value} - \text{original value}))}{\text{Original Value}} \times 100$$

Illustration :2 Calculate HPR for a unit holder who bought a unit at ₹ 17.60 and received a dividend of ₹ 2 per unit during the period. Face value of the unit is ₹ 10 and current unit price is ₹19.875

$$\begin{aligned} \text{HPR} &= \frac{\text{Dividend} + (\text{NAV at present} - \text{NAV at purchase})}{\text{NAV at purchase}} \times 100 \\ &= \frac{2 + (19.875 - 17.60)}{17.60} \end{aligned}$$

$$\text{HPR} = 24.29\%$$

EVALUATING PERFORMANCE OF MUTUAL FUND

While looking at a mutual fund scheme's performance, one must not be led by the scheme's return in isolation. A scheme may have generated 10% annualised return in the last couple of years. But then, even the market indices would have gone up in similar way during the same period. Under-performance in a falling market, i.e. when the NAV of the scheme falls more than its benchmark (or the market), is the time when one must review his/her investment.

One must compare the scheme's return as against its benchmark return. It is better to be rid of investment in a scheme that consistently under-performs as compared to its benchmark over a period of time, from one's portfolio. It is important to identify under-performers over the longer time horizon (as also out-performers).

In addition, one may also consider evaluating the 'category average returns' as well. Even if a scheme has outperformed its benchmark by a decent margin, there could be better performers in the peer group. The category average returns will reveal how good (or bad) is one's investment as against its peers which help in deciding whether it is time to shift the investment to better performers.

One may be holding a too little or too much-diversified portfolio. Even the expense ratio of some of the schemes that one could be holding may be high compared to others within the same category.

SEBI (MUTUAL FUND) REGULATIONS, 1996

SEBI (Mutual Fund) Regulations, 1996 has been notified on December 09, 1996 with objective to improve the working and regulation of the mutual fund industry, so that mutual funds could provide a better performance and service to all categories of investors and offer a range of innovative products in a competitive manner to match investor needs and preferences across various investor segments. SEBI (Mutual Funds) Regulations, 1996 deals with 10 Chapters and 12 schedules.

The key provisions of the SEBI Regulations, 1996 include:

- All the schemes to be launched by the AMC needs to be approved by the Board of Trustees and copies of offer documents of such schemes are to be filed with SEBI.
- The offer documents shall contain adequate disclosures to enable the investors to make informed decisions.
- The listing of close-ended schemes is mandatory and they should be listed on a recognised stock exchange within six months from the closure of subscription. However, the listing is not mandatory in case:
 - a) if the scheme provides for monthly income or caters to senior citizens, women, children and physically handicapped;
 - b) if the scheme discloses details of repurchase in the offer document; or
 - c) if the scheme opens for repurchase within six months of closure of subscription.
 - d) if the scheme is a capital protection oriented scheme.
- Units of a close-ended scheme can be opened for sale or redemption at a predetermined fixed interval if the minimum and maximum amount of sale, redemption and periodicity is disclosed in the offer document.
- Units of a close-ended scheme can be converted into an open-ended scheme with the consent of a majority of the unit-holders and disclosure is made in the offer document about the option and period of conversion.
- Units of close-ended scheme may be rolled over by passing a resolution by a majority of the shareholders.
- No scheme other than equity-linked saving scheme can be opened for subscription for more than 15 days. Further, the minimum subscription and the extent of over subscription that is intended to be retained should be specified in the offer document. In the case of over-subscription, all applicants applying up to 5,000 units must be given full allotment subject to over subscription.
- The AMC is required to refund the application money if minimum subscription is not received, and also the excess over subscription within five working days of closure of subscription.

- A close-ended scheme shall be wound up on redemption date, unless it is rolled over, or if 75% of the unit-holders of a scheme pass a resolution for winding up of the scheme; if the trustees on the happening of any event require the scheme to be wound up; or if SEBI, so directs in the interest of investors.

In addition, the SEBI took various measures and issued guidelines to facilitate operations of mutual funds. As part of these measures, mutual funds were allowed to invest in foreign debt securities in the countries with full convertible currencies and with highest foreign currency credit rating by accredited credit rating agencies.

They were also allowed to invest in government securities where the countries are AAA rated. Moreover, guidelines were issued for valuation of unlisted equity shares in order to bring about uniformity in the calculation of NAVs of mutual fund schemes.

In order to allow mutual funds to invest in both gold and gold related instruments, the SEBI amended its regulation in 2006. The amended regulation, Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulation, 2006 permits introduction of Gold Exchange Traded Fund (GETF) Schemes by mutual fund. The new mutual fund scheme can invest primarily in gold and gold related instruments, subject to certain investment restrictions.

SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

The provisions of chapter IX of the SEBI LODR Regulations, 2015 applies to the asset management company managing the mutual fund scheme whose units are listed on the recognised stock exchange(s).

Notwithstanding anything contained in this chapter, the provisions of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 and directions issued thereunder shall apply on the listed entity and to the schemes whose units are listed on the recognised stock exchange(s).

Submission of Documents

The listed entity shall intimate to the recognised stock exchange(s), the information relating to daily Net Asset Value, monthly portfolio, half yearly portfolio of those schemes whose units are listed on the recognised stock exchange(s) in the format as specified under SEBI (Mutual Funds) Regulations, 1996 and directions issued there under.

The listed entity shall intimate to the recognised stock exchange(s) in the manner specified by the recognized stock exchange(s) of:

- (a) movement in unit capital of those schemes whose units are listed on the recognised stock exchange(s);
- (b) rating of the scheme whose units are listed on the recognised stock exchange(s) and any changes in the rating thereof (wherever applicable);
- (c) imposition of penalties and material litigations against the listed entity and Mutual Fund; and
- (d) any prohibitory orders restraining the listed entity from transferring units registered in the name of the unit holders.

Dissemination on the website of stock exchange(s)

The listed entity shall submit such information and documents, which are required to be disseminated on the listed entity's website in terms of SEBI (Mutual Funds) Regulations, 1996 and directions issued thereunder, to the recognized stock exchange for dissemination.

LESSON ROUNDUP

- Mutual fund is a trust that collects money from a number of investors who share a common investment objective and invests the same in equities, bonds, money market instruments and/or other securities.
- Mutual funds are regulated by the SEBI (Mutual Fund) Regulations, 1996.
- Mutual Fund schemes could be ‘open ended’ or close-ended’ and actively managed or passively managed.
- There are five principal constituents and three market intermediaries in the formation and functioning of mutual fund.
- The NAVs of all Mutual Fund schemes are declared at the end of the trading day after markets are closed, in accordance with SEBI Mutual Fund Regulations.
- Holding period return is calculated on the basis of total returns from the asset or portfolio – i.e. income plus changes in value.
- The SEBI LODR Regulations, 2015 is applicable to the AMC managing the mutual fund scheme whose units are listed on the recognised stock exchange.

GLOSSARY

Annual Return	The change in percentage in the Net Asset Value (NAV) of a fund over one year based on the assumption that distributions such as dividend payment and bonuses have been reinvested.
Diversification	The process of investing across different asset classes (equity, debt, property, etc.) and across different investments within each asset class (for instance, investing across equity shares of various companies in case of equity) to reduce risk.
Investment objective	Every mutual fund scheme has an investment objective according to which the fund manager has to make investments for the scheme. For example, in case of an equity fund, the investment objective may be to invest in large cap companies across a range of sectors in order to give investors capital appreciation.
Maturity	Some investments such as close-ended funds have a maturity date, which is the date on which the investor is paid back his principal amount as well as all income due to him on that investment.
Repurchase/ Redemption	When a mutual fund investor wants to exit from his mutual fund investment, he can sell back the units to the mutual fund and receive cash. The mutual fund ‘repurchases’ his units and the investor is said to ‘redeem’ his units.

SELF-TEST QUESTIONS

1. Elucidate the key players of Mutual funds in the formation and functioning of mutual fund.
2. What do you mean by Net Asset Value? How to calculate NAV?
3. Distinguish between Open ended Mutual Funds and Close ended Mutual funds.
4. Write short notes on the followings:
 - a) Asset Management Company
 - b) Holding Period Return
 - c) Expense Ratio

Lesson 13

Collective Investment Schemes

LESSON OUTLINE

- Introduction
- SEBI (Collective Investment Schemes) Regulations, 1999 – An Overview
- Restriction on Business Activities
- Obligations of Collective Investment Management Company (CIMC)
- Submission of information and documents
- Trustees and their obligations
- Contents of trust deed
- Eligibility for appointment as trustee
- Rights and obligations of the trustee
- Termination of trusteeship
- Termination of the agreement with the collective investment management company
- Procedure for launching of schemes
- Disclosures in the offer document
- Allotment of units and refunds of money
- Unit certificates
- Transfer of units
- Investments and segregation of funds
- Listing of schemes
- Winding up of scheme
- Directions by the SEBI
- Penal Provisions
- Role of Company Secretary
- LESSON ROUND UP
- GLOSSARY
- SELF-TEST QUESTIONS

LEARNING OBJECTIVES

The increasing complexity of the financial markets witnessed unravelled financial schemes that defrauded investors by promising exorbitantly high returns on their principal investment. It was in response to these Ponzi Schemes that the SEBI formulated regulations encompassing Collective Investment Schemes (CIS) that specifically characterised a unique manner of financial manipulations.

Considering difficulties in enforcement of the Securities Laws (Amendment) Act, 2014 amends the SEBI Act, 1992 as well as introduces consequential changes in the Securities Contracts Regulation Act, 1956 and the Depositories Act, 1996. Section 11AA of the principal Act was amended to include a new proviso which gave SEBI the power to regulate all pooling of funds under any scheme or arrangement in excess of 100 crores not regulated by any other law, thus slipping into the net of a CIS.

This lesson will briefly explain the student about the CIS and how they are regulated and penal provisions for violations etc.

INTRODUCTION

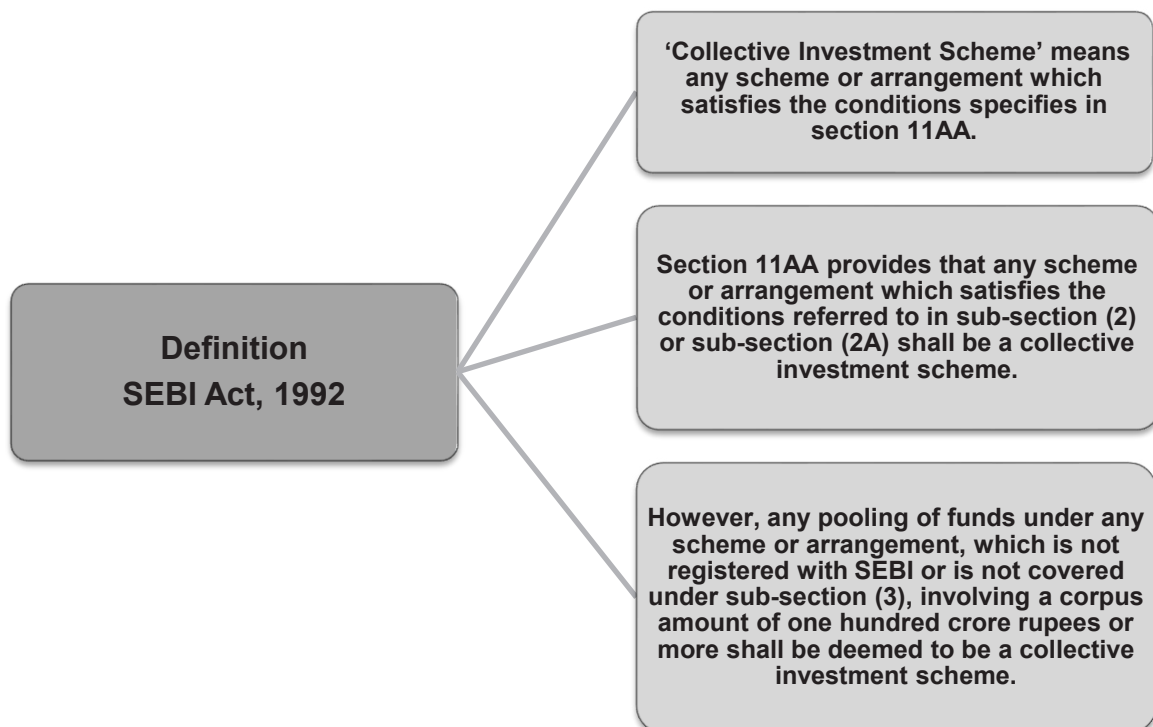
A collective investment scheme is a scheme that comprises a pool of assets that is managed by a collective investment scheme manager and is governed by the Collective Investment Schemes Regulations given by SEBI.

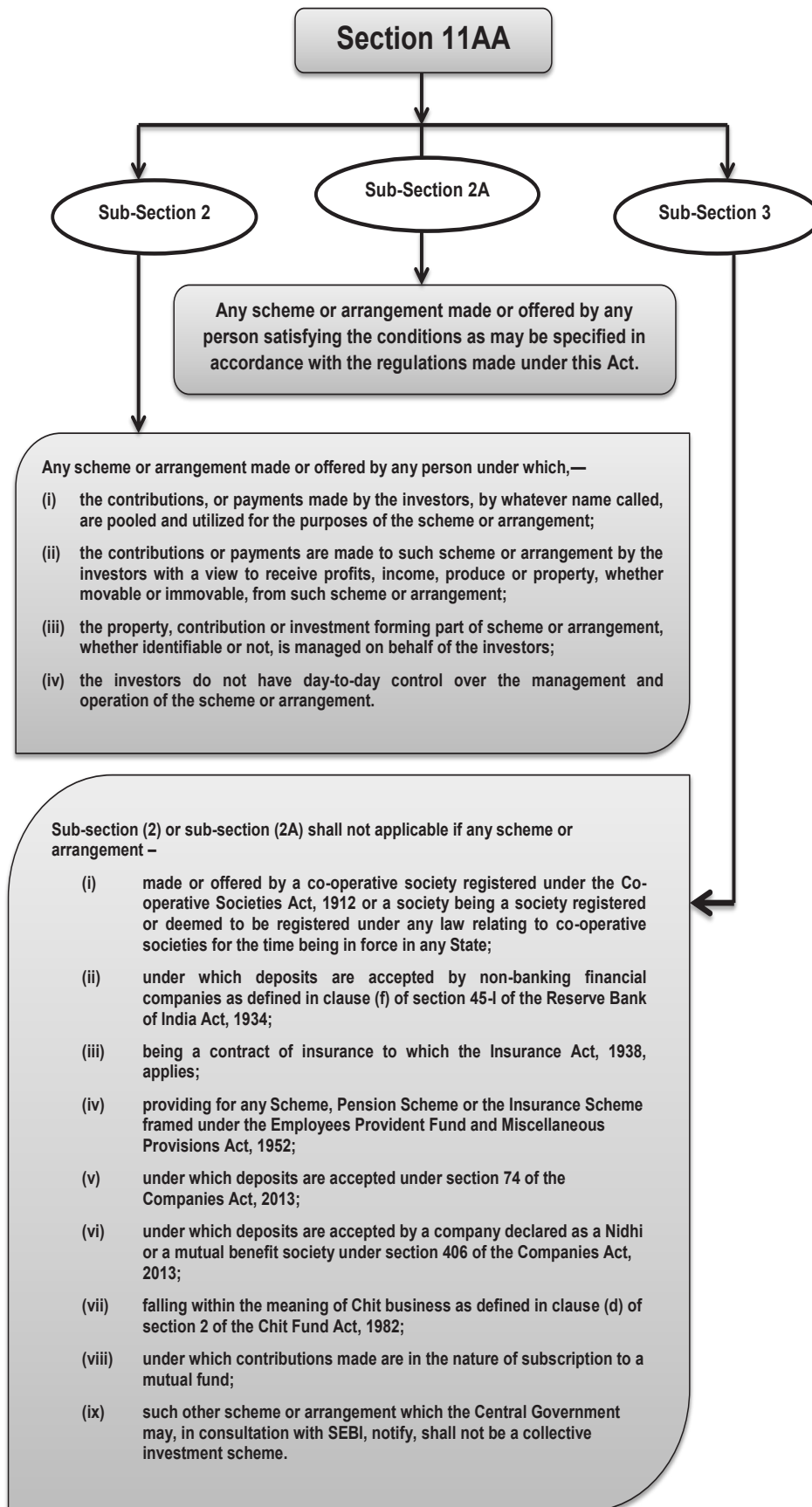
The word 'unit' refers to the portion or part of the CIS portfolio that is owned by the investor. The 'trust' is the financial instrument that is created in order to manage the investment. The trust enables financial experts to invest the money on behalf of the CIS investor.

With a CIS, the money or funds from a group of investors are pooled or collected together to form a CIS portfolio.

In order to strengthen the hands of SEBI to protect interests of investors in plantation companies, the Securities Laws (Amendment) Act, 1999 amended the definition of 'securities' in the Securities Contracts (Regulation) Act, so as to include within its ambit the units or any other instruments issued by any CIS to the investors in such schemes. The Act also inserted a definition of the CIS in the Securities and Exchange Board of India Act, 1992.

The International Organisation of Securities Commission (IOSCO) in its Report on Investment Management of the Technical Committee defined a Collective Investment Scheme (CIS) as an open ended collective investment scheme that issues redeemable units and invests primarily in transferable securities or money market instruments.





SEBI (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 1999 – AN OVERVIEW

SEBI (Collective Investment Schemes) Regulations, 1999 defines Collective Investment Management Company to mean a company incorporated under the Companies Act, 2013 and registered with SEBI under these regulations, whose object is to organize, operate and manage a collective investment.

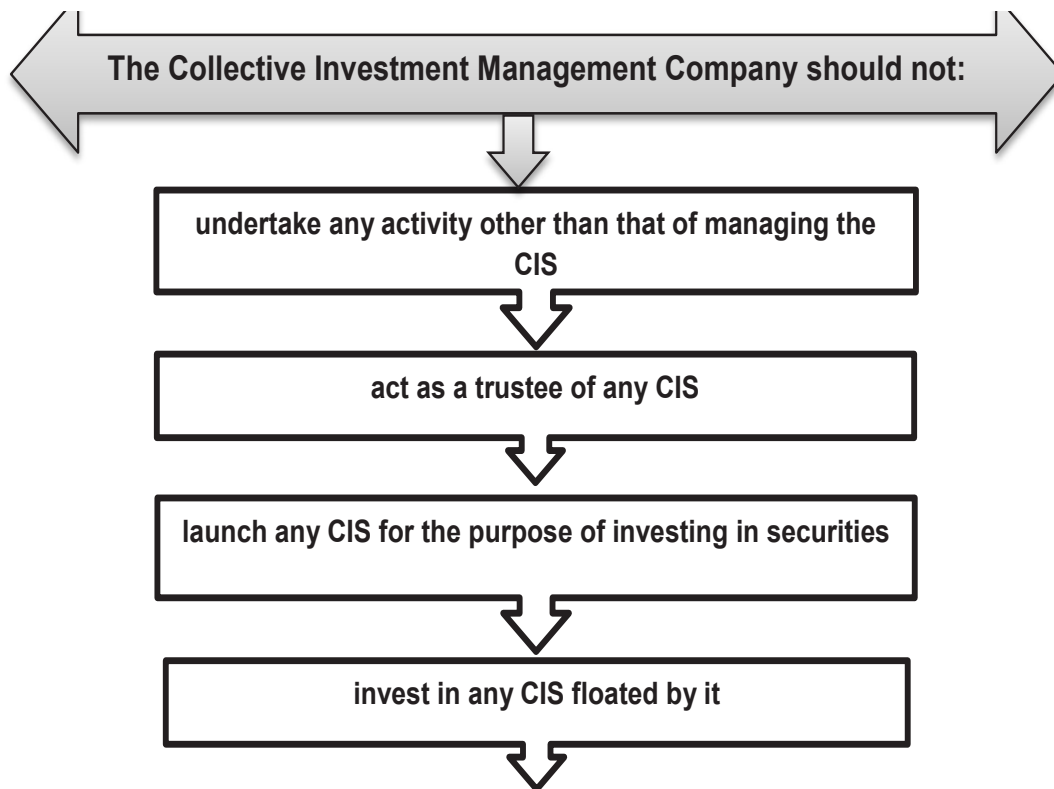
No person other than a Collective Investment Management Company which has obtained a certificate under the regulations should carry on or sponsor or launch a collective investment scheme.

“Close ended collective investment scheme” means any collective investment scheme launched by a collective investment management company. In which the maturity period of the collective investment scheme is specified and there is no provision for repurchase before the expiry of the collective investment scheme.

“Collective investment scheme property” includes:

- (i) subscription of money or money’s worth (including bank deposits) to the collective investment scheme;
- (ii) property acquired, directly or indirectly, with, or with the proceeds of, subscription of money retired to in item (i); or
- (iii) income arising, directly or indirectly from, subscription money or property retired to in item (i) or (ii).

RESTRICTIONS ON BUSINESS ACTIVITIES



However, it has been provided that a CIMC may invest in its own CIS, if it makes a disclosure of its intention to invest in the offer document of the CIS, and does not charge any fees on its investment in that CIS.

OBLIGATIONS OF COLLECTIVE INVESTMENT MANAGEMENT COMPANY

Every Collective Investment Management Company should:

- (i) be responsible for managing the funds or properties of the CIS on behalf of the unit holders and take all reasonable steps and exercise due diligence to ensure that the CIS is managed in accordance with the provisions of these regulations, the offer document and the trust deed;
- (ii) exercise due diligence and care in managing assets and funds of the CIS and also responsible for the acts of commissions and omissions by its employees or the persons whose services have been availed by it;
- (iii) remain liable to the unit holders for its acts of commission or omissions, notwithstanding anything contrary contained in any contract or agreement and be incompetent to enter into any transaction with or through its associates, or their relatives relating to the scheme.
- (iv) be incompetent to enter into any transaction with or through its associates, or their relatives relating to the CIS. However, in case the CIMC enters into any transactions relating to the CIS with any of its associates, a report to that effect shall immediately be sent to the trustee and to SEBI.
- (v) appoint registrar and share transfer agents and should also abide by their respective Code of Conducts as specified in the Third Schedule;
- (vi) give receipts for all monies received and report of the receipts and payments to SEBI, on monthly basis;
- (vii) hold a meeting of Board of Directors to consider the affairs of CIS, at least twice in every three months and also ensures that its officers or employees do not make improper use of their position or information to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the CIS;
- (viii) obtain adequate insurance against the properties of the CIS and comply with such guidelines, directives, circulars and instructions as may be issued by SEBI from time to time on the subject of Collective Investment Scheme.

SUBMISSION OF INFORMATION AND DOCUMENTS

The Collective Investment Management Company should prepare quarterly reports of its activities and the status of compliance of SEBI regulations and submit the same to the trustees within one month of the expiry of each quarter. The Collective Investment Management Company should file with the trustees and the SEBI, particulars of all its directors along with their interest in other companies within fifteen days of their appointment. It should furnish a copy of the Balance Sheet, Profit and Loss Account; a copy of the summary of the yearly appraisal report and such other information as may be required, to the unit holders, to the SEBI and the trustees within two months from the closure of financial year.

TRUSTEES AND THEIR OBLIGATIONS

A scheme should be constituted in the form of a trust and the instrument of trust should be framed in the form of a deed duly registered under the provisions of the Indian Registration Act, 1908 executed by the CIMC in favour of the trustees named in such an instrument. It can appoint a trustee under the deed to hold the assets of the scheme for the benefit of unit holders.

CONTENTS OF TRUST DEED

The trust deed should contain such clauses as are specified and other clauses as are necessary for safeguarding the interests of the unit holders. No trust deed should contain a clause which has the effect of limiting or extinguishing the obligations and liabilities of the Collective Investment Management Company in relation to any scheme or the unit holders; or indemnifying the trustee or the Collective Investment Management Company for loss or damage caused to the unit holders by their acts of negligence or acts of commissions or omissions.

ELIGIBILITY FOR APPOINTMENT AS TRUSTEE

The persons registered with the SEBI as Debenture Trustee under SEBI (Debenture Trustee) Regulations, 1993 are only eligible to be appointed as trustees of collective investment schemes. However, no person is eligible to be appointed as trustee, if he is directly or indirectly associated with the persons who have control over the CIMC. The CIMC shall furnish to SEBI particulars in respect of trustees appointed in the prescribed form. No person should be appointed as trustee of a scheme, if he has been found guilty of an offence under the securities laws or the SEBI or any authority to which the SEBI has delegated its power has passed against such person, an order under the Act for violation of any provision of the Act or of regulations made hereunder.

The trustee and the Collective Investment Management Company should enter into an agreement for managing the schemes' property. The agreement for managing the scheme property should contain clauses as specified and such other clauses as are necessary for the purpose of fulfilling the objectives of the scheme.

RIGHTS AND OBLIGATIONS OF THE TRUSTEE

The trustee have a right to obtain from the CIMC such information as is considered necessary by the trustee and to inspect the books of accounts and other records relating to the scheme. The trustee should ensure that the CIMC has;

- (i) the necessary office infrastructure;
- (ii) appointed all key personnel including managers for the schemes and submitted their bio-data which shall contain the educational qualifications and past experience in the areas relevant for fulfilling the objectives of the schemes;
- (iii) appointed auditors from the list of auditors approved by SEBI to audit the accounts of the scheme;
- (iv) appointed a compliance officer to comply with the provisions of the Act and these regulations and to redress investor grievances;
- (v) appointed registrars to an issue and share transfer agent.
- (vi) prepared a compliance manual and designed internal control mechanisms including internal audit systems;
- (vii) taken adequate insurance for the assets of the scheme;
- (viii) not given any undue or unfair advantage to any associates of the company or dealt with any of the associates in any manner detrimental to the interest of the unit holders;
- (ix) operated the scheme in accordance with the provisions of the trust deed, these regulations and the offer document of the scheme(s);
- (x) undertaken the activity of managing schemes only;
- (xi) taken adequate steps to ensure that the interest of investors of one scheme are not compromised with the object of promoting the interest of investors of any other scheme;
- (xii) minimum networth on a continuous basis and shall inform the SEBI immediately of any shortfall;

(xiii) been diligent in empanelling the marketing agents and in monitoring their activities.

The trustee should forthwith take such remedial steps as are necessary and immediately inform the SEBI of the action taken where the trustee believes that the conduct of business of the scheme is not in accordance with the regulations. The trustee should be accountable for, and act as the custodian of the funds and property of the respective schemes and should hold the same in trust for the benefit of the unit holders in accordance with these regulations and the provisions of trust deed. The trustee should be responsible for the calculation of any income due to be paid to the scheme and also for any income received in the scheme to the unit holders. The trustee is required to convene a meeting of the unit holders on requisition of SEBI or unit holders holding at least one-tenth of nominal value of the unit capital of any scheme or when any change in the fundamental attributes of any scheme which affects the interest of the unit holders is proposed to be carried out. However, no such change should be carried out unless the consent of unit holders holding at least three-fourths of nominal value of the unit capital of the scheme is obtained.

The trustee should review on a quarterly basis i.e. by the end of March, June, September, and December every year :

- all activities carried out by the CIMC;
- periodically all service contracts relating to registrars to an issue and share transfer agents and satisfy itself that such contracts are fair and reasonable in the interest of the unit holders;
- investor complaints received and the redressal of the same.

The trustee should ensure that net worth of CIMC is not deployed in a manner which is detrimental to interest of unit holders and also that the property of each scheme is clearly identifiable as scheme property and held separately from property of the CIMC. Clearances or no objection certificate should be obtained, in respect of transactions relating to property of the scheme from such authority as is competent to grant such clearance or no objection certificate. The trustee should abide by the Code of Conduct as specified in the Third Schedule.

The trustee is required to furnish to SEBI on a quarterly basis every year, a report on the activities of the scheme and a certificate stating that the trustee has satisfied himself that affairs of the Collective Investment Management Company and of the various schemes are conducted in accordance with these regulations and investment objective of each scheme.

The trustee should cause:

- (a) the profit and loss accounts and balance sheet of the schemes to be audited at the end of each financial year by an auditor empanelled with the SEBI.
- (b) each scheme to be appraised at the end of each financial year by an appraising agency.
- (c) scheme to be rated by a credit rating agency.

A meeting of the trustees to discuss the affairs of the scheme should be held at least twice in every three months. The trustee should report to SEBI any breach of these regulations that has, or is likely to have, made materially adverse effect on the interests of unit holders, as soon as they become aware of the breach. The trustee should ensure that the fees and expenses of the scheme are within the limits as specified and the accounts of the schemes are drawn up in accordance with the accounting norms as specified and should comply with accounts of the scheme and the format of the balance sheet and the profit and loss account as specified in these regulation.

TERMINATION OF TRUSTEESHIP

The trusteeship of a trustee should come to an end –

- (a) If the trustee ceases to be trustee under SEBI (Debentures Trustees) Regulations, 1993; or
- (b) if the trustee is in the course of being wound up; or
- (c) if unit holders holding at least three-fourths of the nominal value of the unit capital of the scheme pass a resolution for removing the trustee and SEBI approves such resolution; or
- (d) if in the interest of the unit holders, SEBI, for reasons to be recorded in writing decides to remove the trustee for any violation of the Act or these regulations committed by them or the trustee should be afforded reasonable opportunity of being heard before action is taken under this clause;
- (e) if the trustee serves on the Collective Investment Management Company, a notice of not less than three months expressing intention of not to continue as trustee.

In such cases, another trustee should be appointed by the CIMC on the termination of the trusteeship. The appointment of the new trustee should be completed within three months from the date of termination of the previous trusteeship. If CIMC is unable to appoint trustee in requisite time period of three months, then the SEBI can appoint any person as a trustee from its empanelled list. The new trustee appointed should stand substituted as trustee in all the documents, to which the trustee so removed was a party. A trust deed in the prescribed form as specified in these regulations shall be executed by the CIMC in favour of the trustee so appointed and from the date of such appointment trustees shall be subject to all the rights and duties as specified in these regulations.

The trustees so removed shall from such date be discharged from complying with the obligations under the trust deed but shall remain liable for any action taken by them before such removal. The person appointed by SEBI should apply to the Court for an order directing the CIMC to wind up the scheme.

TERMINATION OF THE AGREEMENT WITH THE COLLECTIVE INVESTMENT MANAGEMENT COMPANY

The agreement entered into by the trustee with the Collective Investment Management Company may be terminated –

- (a) if the CIMC is in the course of being wound up as per the provisions of the Companies Act, 2013 or;
- (b) if unit holders holding at least three-fourth of the nominal value of the unit capital of the scheme pass a resolution for terminating the agreement with the CIMC and the prior approval of SEBI has been obtained, or
- (c) if in the interest of the unit holders, SEBI or the trustee after obtaining prior approval of SEBI, and after giving an opportunity of being heard to the Collective Investment Management Company, decide to terminate the agreement with the CIMC.

Another CIMC registered with SEBI, should be appointed upon the termination of agreement by the trustee within three months from the date of such termination. The CIMC so removed continues to act as such at the discretion of trustee or the trustee itself may act as CIMC till such time as new CIMC is appointed.

The CIMC appointed should stand substituted as a party in all the documents to which the CIMC so removed was a party. The CIMC so removed should continue to be liable for all acts of omission and commissions notwithstanding such termination. If, none of the CIMC, registered under the regulations, consent to be appointed as CIMC within a further period of three months, then the trustee may wind up the scheme. An agreement for managing scheme property should be executed in favour of the new CIMC subject to all the rights and duties as specified in the regulations.

PROCEDURE FOR LAUNCHING OF SCHEMES

No scheme should be launched by the CIMC unless such scheme is approved by the Trustee and rated by a registered credit rating agency and appraised by an appraising agency.

DISCLOSURES IN THE OFFER DOCUMENT

The CIMC shall before launching any scheme file a copy of the offer document of the scheme with the SEBI and pay filing fees as specified. The offer document should contain such information as specified. The offer document should also contain true and fair view of the scheme and adequate disclosures to enable the investors to make informed decision. SEBI may in the interest of investors require the CIMC to carry out such modifications in the offer document as it deems fit. In case no modifications are suggested by SEBI in the offer document within 21 days from the date of filing, the Collective Investment Management Company may issue the offer document to the public.

ALLOTMENT OF UNITS AND REFUNDS OF MONEY

The Collective Investment Management Company should specify in the offer document the minimum and the maximum subscription amount it seeks to raise under the scheme; and in case of oversubscription, the process of allotment of the amount oversubscribed. The CIMC should refund the application money to the applicants, if the scheme fails to receive the minimum subscription amount. Any amount refundable should be refunded within a period of six weeks from the date of closure of subscription list, by Registered A.D. and by cheque or demand draft. In the event of failure to refund the amounts within the period specified, the CIMC has to pay interest to the applicants at a rate of fifteen percent per annum on the expiry of six weeks from the date of closure of the subscription list. A scheme shall not be open for more than 90 days.

UNIT CERTIFICATES

The Collective Investment Management Company should issue to the applicant whose application has been accepted, unit certificates as soon as possible but not later than six weeks from the date of closure of the subscription list. However, if the units are issued through a depository, a receipt in lieu of unit certificate will be issued as per provisions of SEBI (Depositories and Participants) Regulations, 1996 and bye-laws of the depository.

TRANSFER OF UNITS

A unit certificate issued under the scheme should be freely transferable. The CIMC on production of instrument of transfer together with relevant unit certificates, register the transfer and return the unit certificate to the transferee within thirty days from the date of such production. However, if the units are held in a depository such units shall be transferable in accordance with the provisions of the SEBI (Depositories and Participants) Regulations, 1996 and bye-laws of the depository.

The subscription amount received should be kept in a separate bank account in the name of the scheme and utilised for –

- (1) (a) adjustment against allotment of units only after the trustee has received a statement from the registrars to the issue and share transfer agent regarding minimum subscription amount, as stated in the offer document, having been received from the public, or
 - (b) for refund of money in case minimum subscription amount, as stated in the offer document, has not been received or in case of over-subscription.
- (2) The minimum subscription amount as specified in the offer document couldn't be less than the minimum amount, as specified by the appraising agency, needed for completion of the project for which the scheme is being launched.

- (3) The moneys credited to the account of the scheme should be utilised for the purposes of the scheme and as specified in the offer document.
- (4) Any unutilised amount lying in the account of the scheme should be invested in the manner as disclosed in the offer document.

INVESTMENTS AND SEGREGATION OF FUNDS

The Collective Investment Management Company should:

- (a) not invest the funds of the scheme for purposes other than the objective of the scheme as disclosed in the offer document.
- (b) segregate the assets of different schemes.
- (c) not invest corpus of a scheme in other schemes.
- (d) not transfer funds from one scheme to another scheme.

However, it has been provided that inter scheme transfer of scheme property may be permitted at the time of termination of the scheme with prior approval of the trustee and the SEBI.

LISTING OF SCHEMES

The units of every scheme shall be listed immediately after the date of allotment of units and not later than six weeks from the date of closure of the scheme on each of the stock exchanges as mentioned in the offer document.

WINDING UP OF SCHEME

A scheme should be wound up on the expiry of duration specified in the scheme or on the accomplishment of the objective of the scheme as specified in the offer document. A scheme may be wound up :

- (a) on the happening of any event which, in the opinion of the trustee, requires the scheme to be wound up and the prior approval of the SEBI is obtained; or
- (b) if unit holders of a scheme holding at least three-fourth of the nominal value of the unit capital of the scheme, pass a resolution that the scheme be wound up and the approval of SEBI is obtained thereto; or
- (c) if in the opinion of SEBI, the continuance of the scheme is prejudicial to the interests of the unit-holders; or
- (d) if in the opinion of the CIMC, the purpose of the scheme cannot be accomplished and it obtains the approval of the trustees and that of the unit holders of the scheme holding at least three-fourth of the nominal value of the unit capital of the scheme with a resolution that the scheme be wound up and the approval of SEBI is obtained thereto.

Where a Scheme is to be wound up, the trustee shall give notice disclosing the circumstances leading the winding up of the Scheme in a daily newspaper having nationwide circulation and in the newspaper published in the language of the region where the CIMC is registered.

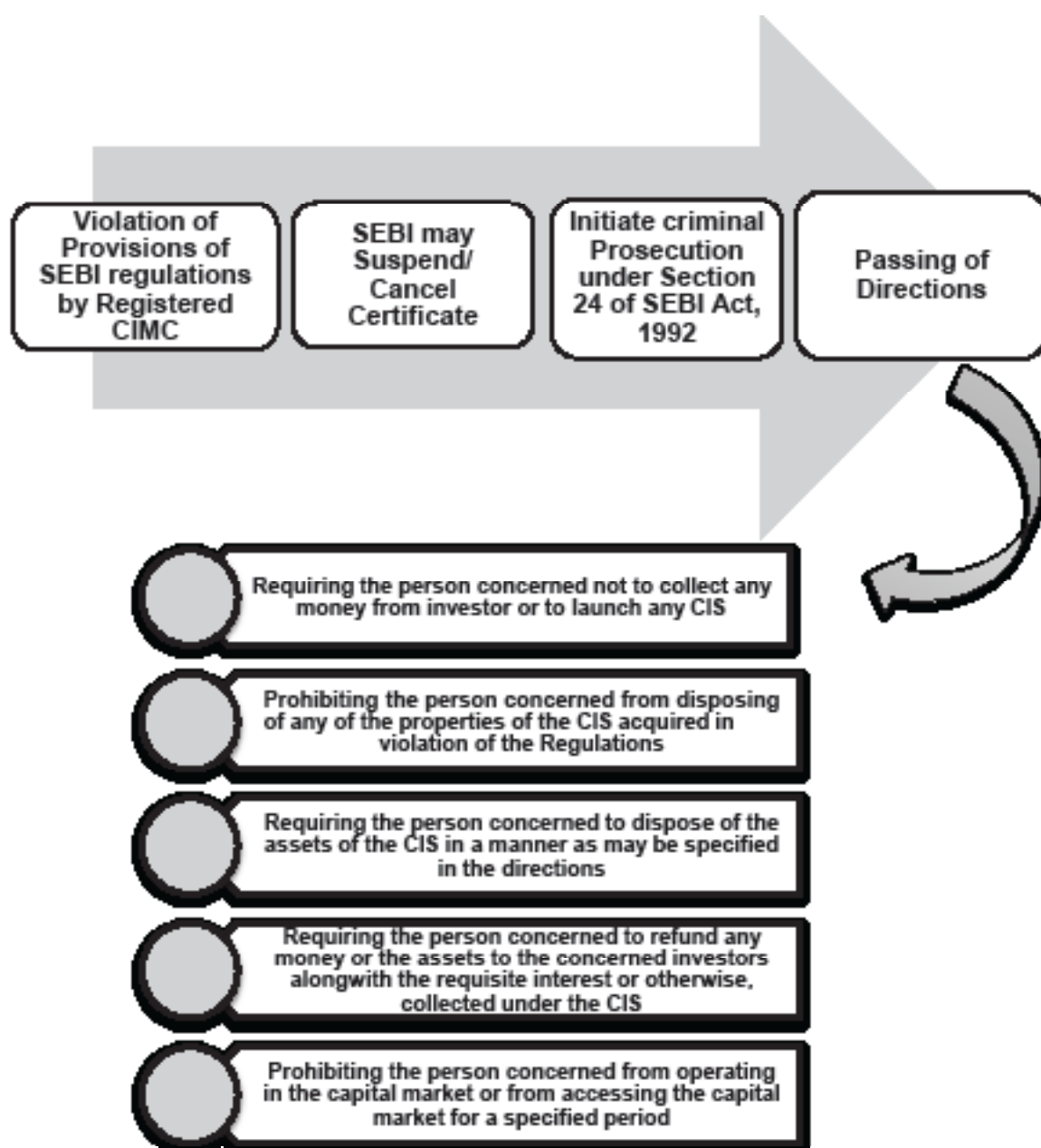
The trustee should dispose of the assets of the scheme concerned in the best interest of the unit holders of that scheme. The proceeds of sale realised, should be first utilised towards the discharge of such liabilities as are due and payable under the scheme and after making appropriate provision for meeting the expenses connected with such winding up, the balance shall be paid to the unit holders in proportion to their unit holding.

After the completion of the winding up, the trustee should forward to SEBI and the unit holders –

- (a) a report on the steps taken for realisation of assets of the scheme, expenses for winding up and net assets available for distribution to the unit holders, and
- (b) a certificate from the auditors of the scheme to the effect that all the assets of the scheme are realised and the details of the distribution of the proceeds.

The unclaimed money, if any at the time of winding up, should be kept separately in a bank account by the trustee for a period of three years for the purpose of meeting investors' claims and thereafter, should be transferred to investor protection fund, as may be specified by the SEBI. On and from the date of the publication of notice, the trustee or the CIMC as the case may be, shall cease to carry on any business activities in respect of the Scheme so wound up.

DIRECTIONS BY THE SEBI



PENAL PROVISIONS

As per Section 15D of the SEBI Act, 1992 –

If any person, who is –

- (a) required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the SEBI for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees;
- (b) registered with the SEBI as a collective investment scheme, including mutual funds, for sponsoring or carrying on any investment scheme, fails to comply with the terms and conditions of certificate of registration, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;
- (c) registered with the SEBI as a collective investment scheme, including mutual funds, fails to make an application for listing of its schemes as provided for in the regulations governing such listing, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;
- (d) registered as a collective investment scheme, including mutual funds, fails to despatch unit certificates of any scheme in the manner provided in the regulation governing such despatch, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;
- (e) registered as a collective investment scheme, including mutual funds, fails to refund the application monies paid by the investors within the period specified in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;
- (f) registered as a collective investment scheme, including mutual funds, fails to invest money collected by such collective investment schemes in the manner or within the period specified in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

ROLE OF COMPANY SECRETARY

The Company Secretary shall ensure that the money mobilization carried out by the company will not trigger the parameters of CIS Regulations.

LESSON ROUND UP

- A collective investment scheme is a trust based scheme that comprises a pool of assets that is managed by a collective investment scheme manager and is governed by the Collective Investment Schemes Regulations given by the SEBI.
- A scheme should be constituted in the form of a trust and the instrument of trust should be in the form of a deed duly registered under the provisions of the Indian Registration Act, 1908 executed by the Collective Investment Management Company in favour of the trustees named in such an instrument.
- Collective Investment Management Company is regulated by the SEBI (Collective Investment Schemes) Regulations, 1999.
- The SEBI (Collective Investment Schemes) Regulations, 1999 defines Collective Investment Management Company to mean a company incorporated under the Companies Act, 2013 and registered with SEBI under these regulations, whose object is to organize, operate and manage a collective investment scheme.

GLOSSARY

Fundamental Attributes It means the investment objective and terms of a scheme.

Pooling Pooling is the basic concept behind collective investments. The money of thousands of individual investors, who share a common investment objective, is pooled together to form a CIS portfolio.

Ponzi Scheme A ponzi scheme is an investment from where clients are promised a large profit in short term at little or no risk at all.

Scheme It means Collective Investment Scheme.

Unit Holders Investors in unit trust/mutual funds.

SELF TEST QUESTIONS

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

1. What are the restrictions imposed on business activities for Collective Investment Management Company?
2. Explain the schemes or arrangements which are not included in collective investment scheme?
3. What are the obligations of Collective Investment Management Company under the SEBI (Collective Investment Scheme) Regulations, 1999?
4. State the provisions relating to allotments of units and refund of money under the SEBI (Collective Investment Scheme) Regulations, 1999.
5. What should be the contents of the trust deed which is required to be executed under the SEBI (Collective Investment Scheme) Regulations, 1999.

Lesson 14

SEBI (Ombudsman) Regulations, 2003

LESSON OUTLINE

- Introduction
- Investor Grievances
- SCORES (SEBI Complaints Redress System)
- When can a case be referred for Arbitration?
- Time line for lodging complaint on SCORES
- When can SEBI take action for non-resolution of investor complaints?
- Ombudsman
- Evidence Act not to apply in the Proceedings before Ombudsman
- SEBI (Informal Guidance) Scheme, 2003
- LESSON ROUND UP
- GLOSSARY
- SELF-TEST QUESTIONS

LEARNING OBJECTIVES

Investor grievance redressal mechanism and protection of retail investor go hand in hand with one another. There is need of transparent, time bound, easier and simpler grievance redressal mechanism for the retail investor.

In order to have resolution of complaints and to have clarity in the minds of investors, the SEBI has clear cut defined mechanism specifying there in the nature of complaint and whom to lodge so the investors are not harassed and at the same time to facilitate a quick resolution of the complaint.

Keeping this in view, a Company Secretaryship student should be aware of various grievance redressal mechanism available to an investor as prescribed by the SEBI. So that while entering the professional arena after completing the CS course they would be able to advise their Board of Directors or clients about the same.

This lesson helps the students to know about SCORES, SEBI Ombudsman Regulations and Informal Guidance Scheme, etc.

INTRODUCTION

The securities market operations promote the economic growth of the country. The more efficient is the securities market, the greater is the promotion effect on economic growth. It is, therefore, necessary to ensure that securities market operations are more efficient, transparent and safe. In this context, the investors need protection from the various malpractices and unfair practices made by the corporate and intermediaries. As the individual investors' community and the investment avenues are on the rise, it is interesting to know how the investors shall be protected through various legislations. Securities market in general are to be regulated to improve the market operations in fair dealings and easy to access the market by corporate and investors.

The desired level of economic growth of a country is dependent upon availability of protection to its investors'. Globally, there is increased evidence to suggest that investor protection has assumed an important role in the economic development of a country. Integrity of the financial markets and economic well being of the country depend on corporate accountability and investors' confidence. The global concern to make capital markets safer and transparent can be achieved by strengthening financial system and managing the crisis efficiently.

The revival of investors' protection in the corporate securities market is necessary to make market more efficient by means of converting savings to investment. If the investors are not protected properly by way of providing fair rate of return and safeguarding their capital, the corporate will not be able to mobilize funds from the market at reasonable rate in times to come. In view of the foregoing with a view to gain the confidence of investors in the securities market it is necessary to provide adequate rate of return on investors' capital by corporates through their operational efficiency. This will enable us to bring more investors to the capital market. This can be done by a series of systematic measures which would build their confidence in the systems and processes and protect the interest of investors.

INVESTOR GRIEVANCES

There will be occasions when an investor has a complaint against, a listed company or an intermediary registered with the SEBI. In the event of such complaint, the investor should first approach the concerned company/ intermediary against whom there is a complaint. Sometimes the response received may not be satisfactory. Therefore, investors should know as to which authority they should approach, to get their complaints redressed.

SCORES (SEBI COMPLAINTS REDRESS SYSTEM)

SCORES is an online platform designed to help investors to lodge their complaints, pertaining to securities market, online with SEBI against listed companies and SEBI registered intermediaries. All complaints received by SEBI against listed companies and SEBI registered intermediaries are dealt through SCORES.

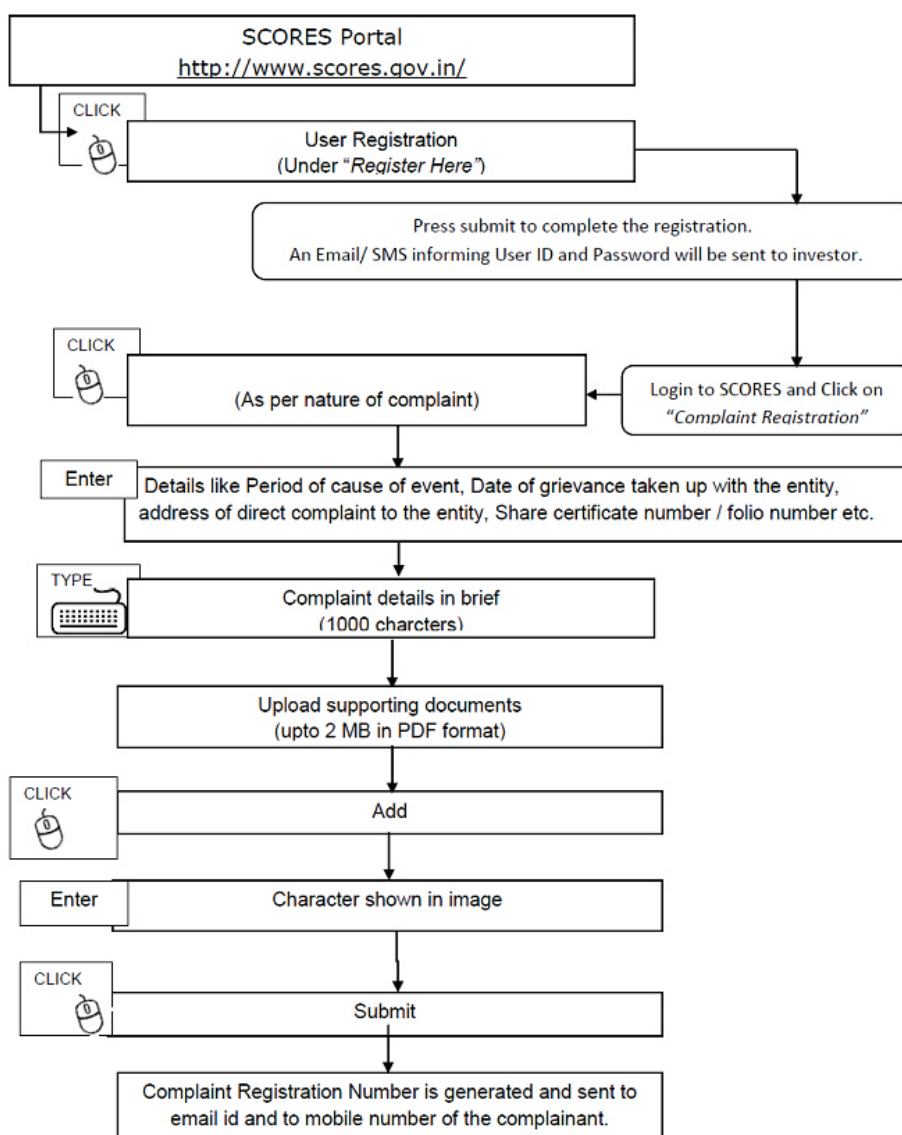
Complaints arising out of issues that are covered under SEBI Act, Securities Contract Regulation Act, Depositories Act and rules and regulation made there under and relevant provisions of Companies Act, 2013 come under the purview of the SEBI.

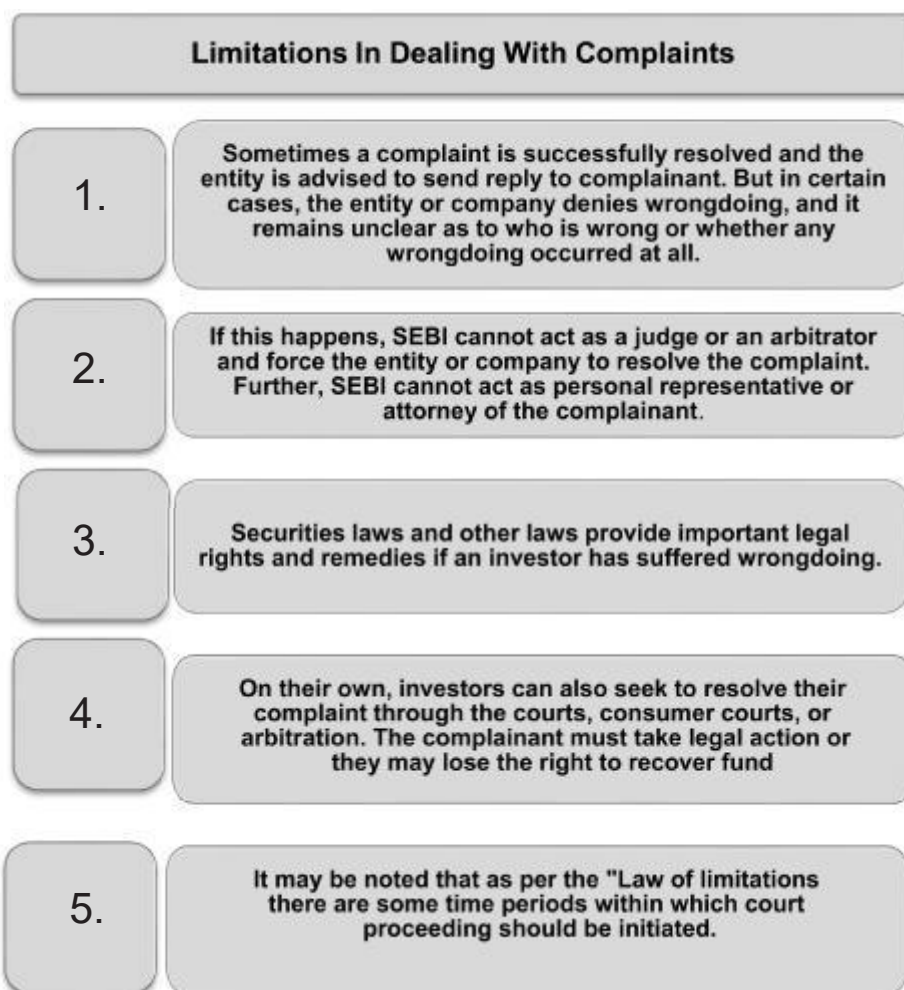
The salient features of SCORES are:

1. SCORES is web enabled and provides online access 24 x 7;
2. Complaints and reminders thereon can be lodged online at the above website at anytime from anywhere;
3. An email is generated instantaneously acknowledging the receipt of complaint and allotting a unique complaint registration number to the complainant for future reference and tracking;
4. The complaint forwarded online to the entity concerned for its redressal;

5. The entity concerned uploads an Action Taken Report (ATR) on the complaint;
6. SEBI peruses the ATR and closes the complaint if it is satisfied that the complaint has been redressed adequately;
7. The concerned investor can view the status of the complaint online from the above website by logging in the unique complaint registration number;
8. The entity concerned and the concerned investor can seek and provide clarification on his complaint online to each other;
9. Every complaint has an audit trail; and
10. All the complaints are saved in a central database which generates relevant MIS reports to enable SEBI to take appropriate policy decisions and/or remedial actions, if any.

With a view to make the complaint redressal mechanism through SCORES more efficient, all stock brokers and depository participants are directed to address/redress the complaint within a period of 15 days from the receipt of the complaint. In case additional information is required from the complaint, the same shall be sought within 7 days from the receipt of the complaint. In such cases, the period of 15 days shall run from the receipt of additional information.





COMPLAINTS THAT COME UNDER THE PURVIEW OF SEBI

Complaints arising out of issues that are covered under SEBI Act, Securities Contract Regulation Act, Depositories Act and rules and regulation made there under and relevant provisions of Companies Act, 2013.

MATTERS NOT CONSIDERED AS COMPLAINTS IN SCORES

- a) Complaint not pertaining to investment in securities market.
- b) Anonymous Complaints (except whistleblower complaints).
- c) Incomplete or un-specific complaints.
- d) Allegations without supporting documents.
- e) Suggestions or seeking guidance/explanation.
- f) Not satisfied with trading price of the shares of the companies.
- g) Non-listing of shares of private offer.
- h) Disputes arising out of private agreement with companies/intermediaries.
- i) Matter involving fake/forged documents.
- j) Complaints on matters not in SEBI purview.

- k) Complaints about any unregistered/ un-regulated activity.

COMPLAINTS AGAINST WHICH TYPE OF COMPANIES CANNOT BE DEALT ON SCORES

Complaints against the following companies cannot be dealt through SCORES even though the complaint may be against a listed entity/ SEBI registered intermediary:-

- a) Complaints against the companies which are unlisted/delisted, placed on the Dissemination Board of Stock Exchange.
- b) Complaints against a sick company or a company where a moratorium order is passed in winding up / insolvency proceedings.
- c) Complaints against the companies where the name of company is struck off from Registrar of Companies (RoC) or a Vanishing Company as per list published by Ministry of Corporate Affairs (MCA).
- d. Suspended companies, companies under liquidation, BIFR etc.
- d) Complaints that are sub-judice i.e. relating to cases which are under consideration by court of law, quasi-judicial proceedings etc.

Complaints against companies, falling under the purview of other regulatory bodies viz. The Reserve Bank of India (RBI), The Insurance Regulatory and Development Authority of India (IRDAI), the Pension Funds Regulatory and Development Authority (PFRDA), Competition Commission of India (CCI), etc., or under the purview of other ministries viz., MCA, etc.

WHEN CAN A CASE BE REFERRED FOR ARBITRATION?

If the grievance is not resolved by the Stock Exchange/Depository due to disputes, an investor can file arbitration subject to the Bye-laws, Rules and Regulations of the exchange / Depository. All claims, differences or disputes between the investors and stock brokers/depository participants can be filed for arbitration. To obtain information about when and how to file an arbitration claim, please visit:

- **Bombay Stock Exchange**
<http://www.bseindia.com/invdesk/Arbitrage.asp>
- **National Stock Exchange**
http://www.nseindia.com/content/assist/asst_investser.htm
- **Central Depository Services Limited**
<http://www.cdslindia.com/downloads/Operating%20Instruction/Chapters-as-of-June-2011.pdf>
- **National Securities Depository Limited**
<https://nsdl.co.in>

Simplified arbitration can be a less costly alternative to legal recourse before the courts of law. If the investor has an account with the broker or a depository participant (DP), he/she can choose arbitration to settle disputes. The investor generally cannot pursue an issue through arbitration if it is barred by limitation prescribed. When deciding whether to arbitrate, the investor has to bear in mind that if the broker or DP goes out of business or declares bankruptcy, he/she might not be able to recover money even if the arbitrator or court rules in his/her favor.

However, with certain restriction to the nature of transactions, Stock Exchanges may settle on case to case basis the claim of an investor up to a limit prescribed in the “Investor protection fund” guidelines of the respective Stock Exchange. The claimant is required to carefully review the rules governing simplified arbitration before filing a claim and should also weigh the costs of arbitrating against the likelihood of being able to collect any

award in favor. An investor, who has a claim / counter claim upto Rs.10 lakh and files arbitration reference for the same within six months, need not make any deposit for filing arbitration.

Time line for lodging complaint on SCORES

From 1st August 2018, an investor may lodge a complaint on SCORES within three years from the date of cause of complaint, where;

- Investor has approached the listed company or registered intermediary for redressal of the complaint and,
- The concerned listed company or registered intermediary rejected the complaint or,
- The complainant does not receive any communication from the listed company or intermediary concerned or,
- The complainant is not satisfied with the reply given to him or redressal action taken by the listed company or an intermediary.

In case investor fails to lodge a complaint within the stipulated time, he may directly take up the complaint with the entity concerned or may approach appropriate court of law.

When can SEBI take action for non-resolution of investor complaints?

For listed companies: SEBI has empowered stock exchanges to levy fine for non-redressal of investor complaints in terms of the relevant provisions of SEBI (Listing and Disclosure Requirements) Regulations, 2015 to be read with SEBI circular SEBI/HO/CFD/CMD/CIR/P/2018/77 dated 03 May, 2018.

If the complaint is not redressed/ fine is not paid, the stock exchanges can direct the depositories to freeze the entire shareholding of the promoter and promoter group in such entity as well as all other securities held in the demat account of the promoter and promoter group. If non-compliance continues, the stock exchanges may refer such cases to SEBI for enforcement actions, if any.

Notwithstanding the above, while the entity is directly responsible for redressal of investor complaints, SEBI can initiate action against recalcitrant entities including registered intermediaries and listed companies on the grounds of their failure to redress investor complaints.

OMBUDSMAN

Ombudsman in its literal sense is an independent person appointed to hear and act upon citizen's complaint about government services. This concept was invented in Sweden and the idea has been widely adopted. For example, various banks, insurance companies have appointed Ombudsman to attend to the complaints of their customers.

The SEBI has issued the SEBI (Ombudsman) Regulations, 2003. Regulation 2(l) of these Regulations defines Ombudsman as under:

"Ombudsman" means any person appointed under regulation 3 of these regulations and unless the context otherwise requires, includes stipendiary Ombudsman.

Regulation 2(n) of the Regulations defines stipendiary Ombudsman as a person appointed under regulation 9 for the purpose of acting as Ombudsman in respect of a specific matter or matters in a specific territorial jurisdiction and for which he may be paid such expenses, honorarium, sitting fees as may be determined by the SEBI from time to time.

The regulations further deal with establishment of office of Ombudsman, powers and functions of Ombudsman,

procedure for redressal of Grievances and implementation of the award.

The term “complaint” under these Regulation means a representation in writing containing a grievance as specified in regulation 13 of these regulations; and “complainant” means any investor who lodges complaint with the Ombudsman and includes an investors association recognised by the SEBI.

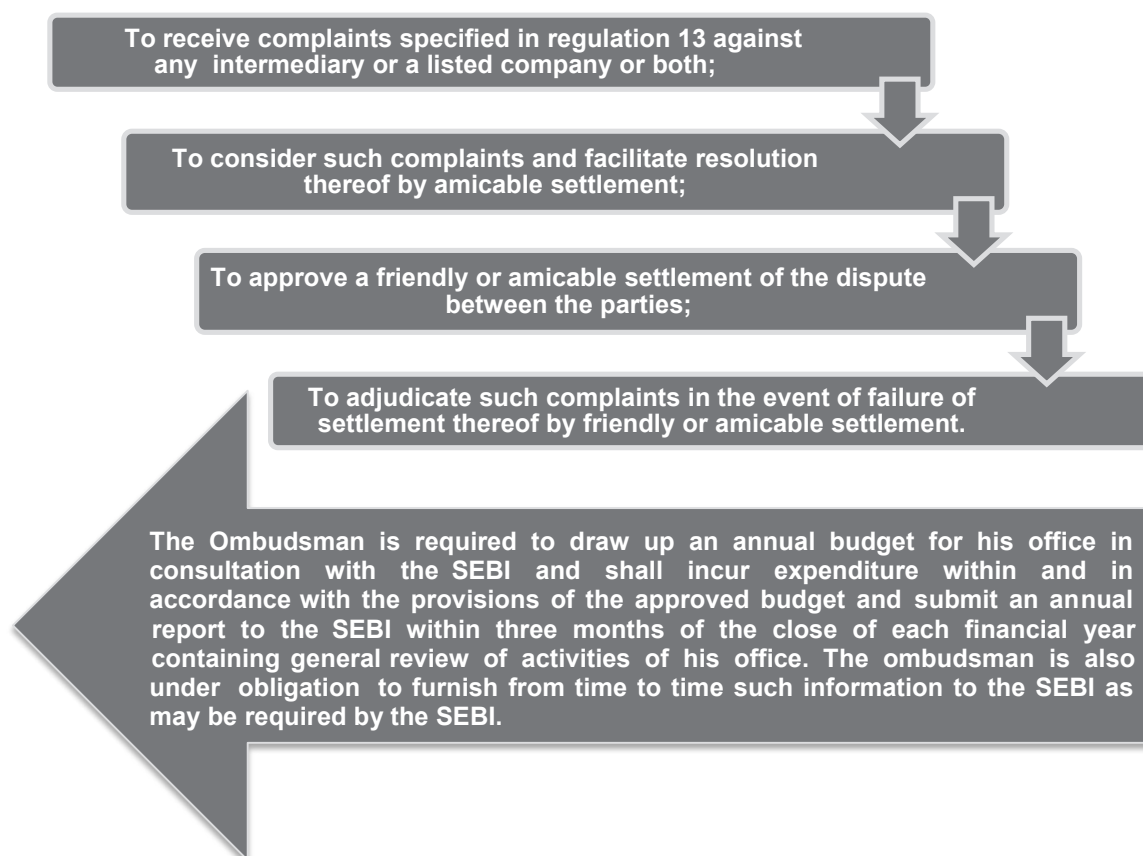
An “investor” means a person who invests or buys or sells or deals in securities.

“Listed company” has been defined in the Regulations to mean a company whose securities are listed on a recognised stock exchange and includes a public company which intends to get its securities listed on a recognised stock exchange.

Territorial Jurisdiction

Every Ombudsman or Stipendiary Ombudsman exercises jurisdiction in relation to an area as may be specified by the SEBI by an order.

Powers and Functions of Ombudsman



Procedure for Redressal of Grievance

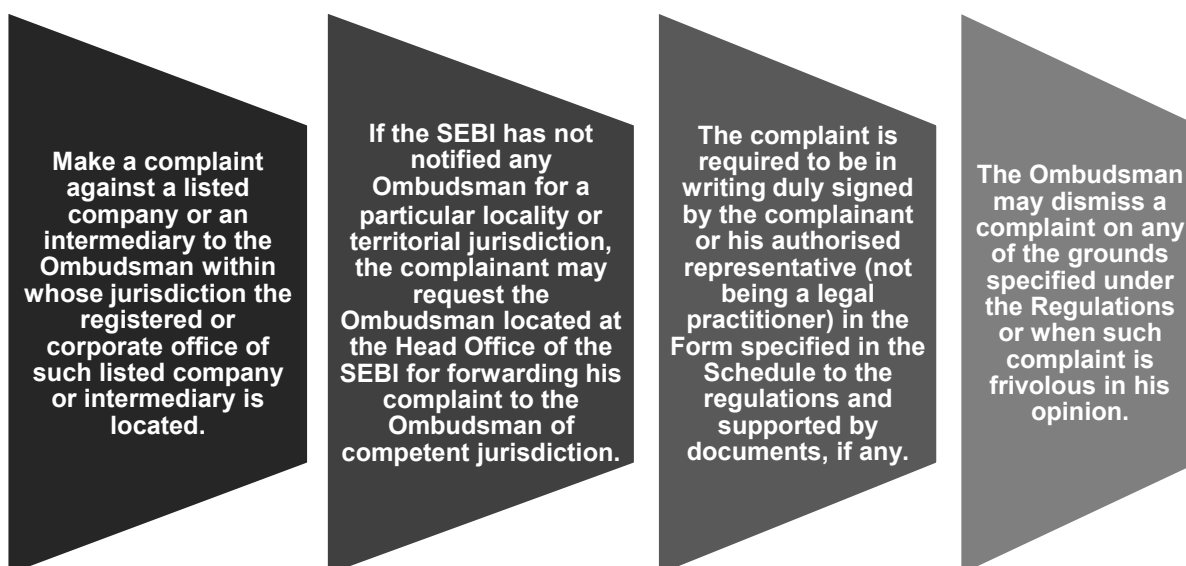
A person may lodge a complaint on any one or more of the following grounds either to SEBI or to the Ombudsman concerned:

- (i) Non-receipt of refund orders, allotment letters in respect of a public issue of securities of companies or units of mutual funds or collective investments schemes.
- (ii) Non-receipt of share certificates, unit certificates, debenture certificates, bonus shares;

- (iii) Non-receipt of dividend by shareholders or unit-holders;
- (iv) Non-receipt of interest on debentures, redemption amount of debentures or interest on delayed payment of interest on debentures;
- (v) Non-receipt of interest on delayed refund of application monies;
- (vi) Non-receipt of annual reports or statements pertaining to the portfolios;
- (vii) Non-receipt of redemption amount from a mutual fund or returns from collective investment scheme;
- (viii) Non-transfer of securities by an issuer company, mutual fund, Collective Investment Management Company or depository within the stipulated time;
- (ix) Non-receipt of letter of offer or consideration in takeover or buy-back offer or delisting;
- (x) Non-receipt of statement of holding corporate benefits or any grievances in respect of corporate benefits, etc;
- (xi) Any grievance in respect of public, rights or bonus issue of a listed company;
- (xii) Any of the matters covered under Section 24 of the Companies Act, 2013;
- (xiii) Any grievance in respect of issue or dealing in securities against an intermediary or a listed company

Procedure for filing a complaint

Any person who has a grievance against a listed company or an intermediary relating to any of the matters specified above may himself or through his authorised representative or any investors association recognised by the SEBI:



No complaint to the Ombudsman shall lie –

- (a) unless the complainant had, before making a complaint to the SEBI or the Ombudsman concerned, made a written representation to the listed company or the intermediary named in the complaint and the listed company or the intermediary, as the case may be, had rejected the complaint or the complainant had not received any reply within a period of one month after the listed company or intermediary concerned received his representation or the complainant is not satisfied with the reply given to him by the listed company or an intermediary;

- (b) unless the complaint is made within six months from the date of the receipt of communication of rejection of his complaint by the complainant or within seven months after the receipt of complaint by the listed company or intermediary under clause (a) above;
- (c) if the complaint is in respect of the same subject matter which was settled through the Office of the SEBI or Ombudsman concerned in any previous proceedings, whether or not received from the same complainant or along with any one or more or other complainants or any one or more of the parties concerned with the subject matter;
- (d) if the complaint pertains to the same subject matter for which any proceedings before the SEBI or any court, tribunal or arbitrator or any other forum is pending or a decree or award or a final order has already been passed by any such competent authority, court, tribunal, arbitrator or forum;
- (e) if the complaint is in respect of or pertaining to a matter for which action has been taken by the SEBI under Section 11(4) of the Act or Chapter VIA or Section 12(3) of the Act or any other regulations made thereunder.

Power to call for information

- An Ombudsman may require the listed company or the intermediary named in the complaint or any other person, institution or authority to provide any information or furnish certified copy of any document relating to the subject matter of the complaint which is or is alleged to be in its or his possession.
- In the event of the failure of a listed company or the intermediary to comply with the requisition made without any sufficient cause, the Ombudsman may, if he deems fit, draw the inference that the information, if provided or copies if furnished, would be unfavourable to the listed company or intermediary.
- The Ombudsman is required to maintain confidentiality of any information or document coming to his knowledge or possession in the course of discharging his duties and shall not disclose such information or document to any person except and as otherwise required by law or with the consent of the person furnishing such information or document.
- The Ombudsman has been empowered to disclose information or document furnished by a party in a complaint to the other party or parties, to the extent considered by him to be reasonably required to comply with the principles of natural justice and fair play in the proceedings.
- However, these provisions shall not apply in relation to the disclosures made or information furnished by the Ombudsman SEBI or to the publication of Ombudsman's award in any journal or newspaper or filing thereof before any Court, Forum or Authority.

Settlement by Mutual Agreement

- As soon as it may be practicable so to do, the Ombudsman shall cause a notice of the receipt of any complaint along with a copy of the complaint sent to the registered or corporate office of the listed company or office of the intermediary named in the complaint and endeavour to promote a settlement of the complaint by agreement or mediation between the complainant and the listed company or intermediary named in the complaint.
- If any amicable settlement or friendly agreement is arrived at between the parties, the Ombudsman may pass an award in terms of such settlement or agreement within one month from the date thereof and direct the parties to perform their obligations in accordance with the terms recorded in the award.
- For the purpose of promoting a settlement of the complaint, the Ombudsman may follow such procedure and take such actions as he may consider appropriate.

Award and Adjudication

- In case the matter is not resolved by mutually acceptable agreement within a period of one month of the receipt of the complaint or such extended period as may be permitted by the Ombudsman.
- He may, based upon the material placed before him and after giving opportunity of being heard to the parties, give his award in writing or pass any other directions or orders as he may consider appropriate.
- Such award shall be made within a period of three months from the date of the filing of the complaint.
- The Ombudsman should send his award to the parties to the adjudication to perform their obligations under the award.
- Within fifteen days from the receipt of the award a party, with notice to the other party, may request the Ombudsman to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award.
- If the Ombudsman considers the request made above to be justified, he shall make the correction within fifteen days from the receipt of the request which shall form part of the award.

Finality of Award

- An award given by the Ombudsman shall be final and binding on the parties and persons claiming under them respectively.
- Any party aggrieved by the award on adjudication may file a petition before SEBI within one month from the receipt of the award or corrected award setting out the grounds for review of the award.

Review of Award

- The SEBI may review the award if there is substantial mis-carriage of justice, or there is an error apparent on the face of the award.
- Where a petition for review of the award, such petition shall not be entertained by the SEBI unless the party filing the petition has deposited with SEBI seventy-five percent of the amount mentioned in the award.
- Further, the SEBI may for reasons to be recorded in writing, waive or reduce the amount to be deposited.
- The SEBI may review the award and pass such order as it may deem appropriate, within a period of forty five days of the filing of the petition for review.
- The party so directed shall implement the award within 30 days of receipt of the order of SEBI on review or within such period as may be specified by the SEBI in the order disposing off the review petition.
- The award passed by the Ombudsman shall remain suspended till the expiry of period of one month for filing review petition or till the review petition is disposed off by the SEBI, as the case may be.

EVIDENCE ACT NOT TO APPLY IN THE PROCEEDINGS BEFORE OMBUDSMAN

In proceedings before the Ombudsman strict rules of evidence under the Evidence Act shall not apply and the Ombudsman may determine his own procedure consistent with the principles of natural justice.

Ombudsman shall decide whether to hold oral hearings for the presentation of evidence or for oral argument or whether the proceeding shall be conducted on the basis of documents and other materials.

However, it shall not be necessary for an investor to be present at the oral hearing of proceedings under these regulations and the Ombudsman may proceed on the basis of the documentary evidence submitted before him.

No legal practitioner shall be permitted to represent the defendants or respondents at the proceedings before the Ombudsman except where a legal practitioner has been permitted to represent the complainants by the Ombudsman.

Cost and Interest

The Ombudsman or the SEBI, as the case may be, have been empowered to award reasonable compensation along with interest including future interest till date of satisfaction of the award at a rate which may not exceed one percent per mensem.

The Ombudsman in the case of an award, or the SEBI in the case of order passed in petition for review of the award, as the case may be, may determine the cost of the proceedings in the award and include the same in the award or, in the order as the case may be. The Ombudsman or the SEBI may impose cost on the complainant for filing complaint or any petition for review, which is frivolous.

Implementation of the Award

The award will be implemented by the party so directed within one month of receipt of the award from the Ombudsman or an order of the SEBI passed in review petition or within such period as specified in the award or order of SEBI. If any person fails to implement the award or order of the SEBI passed in the review petition, without reasonable cause –

- (1) he shall be deemed to have failed to redress investors' grievances and shall be liable to a penalty under Section 15C of the SEBI Act;
- (2) he shall also be liable for –
 - (a) an action under Section 11(4) of the SEBI Act ; or
 - (b) suspension or delisting of securities; or
 - (c) being debarred from accessing the securities market; or
 - (d) being debarred from dealing in securities; or dealing in securities; or
 - (e) an action for suspension or cancellation of certificate of registration; or
 - (f) such other action permissible which may be deemed appropriate in the facts and circumstances of the case.

Display of the Particulars of the Ombudsman

Every listed company or intermediary is required to display the name and address of the Ombudsman as specified by the SEBI to whom the complaints are to be made by any aggrieved person in its office premises in such manner and at such place, so that it is put to notice of the shareholders or investors or unit holders visiting the office premises of the listed company or intermediary. The listed company or intermediary is required to give full disclosure about the grievance redressal mechanism through Ombudsman in its offer document or client

agreement. Any failure to disclose the grievance redressal mechanism through Ombudsman or any failure to display the particulars would attract the penal provisions contained in Section 15A of SEBI Act.

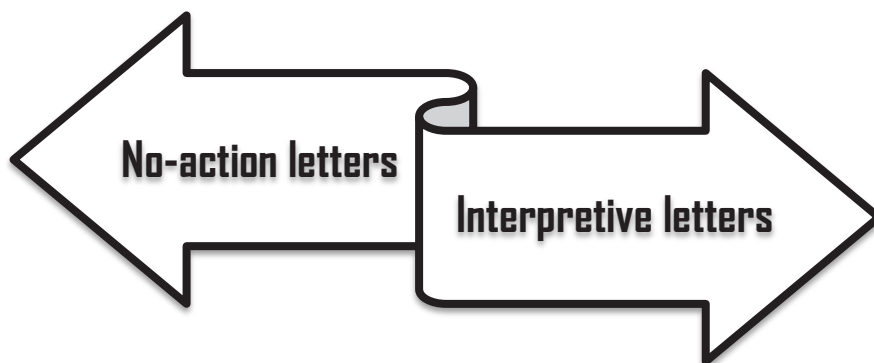
SEBI (INFORMAL GUIDANCE) SCHEME, 2003

In the interests of better regulation of and orderly development of the Securities market, SEBI has issued SEBI (Informal Guidance) Scheme 2003 w.e.f. 24.6.2003. The following persons may make a request for informal Guidance under the scheme:

- (a) any intermediary registered with the SEBI.
- (b) any listed company.
- (c) any company which intends to get any of its securities listed and which has filed either a listing application with any stock exchange or a draft offer document with the SEBI or the Central Listing authority.
- (d) any mutual fund trustee company or asset management company.
- (e) any acquirer or prospective acquirer under the SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1997. (Now the SEBI Takeover Regulation, 2011)

The Guidance Scheme, further deals with various aspects such as the nature of request, fees to be accompanied alongwith request letter, disposal of requests, the SEBI's discretion not to respond certain types of requests and confidentiality of requests etc.

The informal guidance may be sought for and given in two forms:



- **No-action letters:** The SEBI indicates that the Department would or would not recommend any action under any Act, Rules, Regulations, Guidelines, Circulars or other legal provisions administered by SEBI to the Board if the proposed transaction described in a request made under para 6 is consummated.
- **Interpretive letters:** The SEBI provides an interpretation of a specific provision of any Act, Rules, Regulations, Guidelines, Circulars or other legal provision being administered by the SEBI in the context of a proposed transaction in securities or a specific factual situation.

The request seeking informal guidance should state that it is being made under this scheme and also state whether it is a request for a no-action letter or an interpretive letter and should be accompanied with prescribed fees and addressed to the concerned Department of the SEBI.

It should also describe the request, disclose and analyse all material facts and circumstances involved and mention all applicable legal provisions. The SEBI may dispose off the request as early as possible and in any case not later than 60 days after the receipt of the request.

The Department may give a hearing or conduct an interview if it feels necessary to do so. The request or shall

be entitled only to the reply. The internal records or views of the SEBI shall be confidential.

The SEBI may not respond to the following types of requests:

- (a) those which are general and those which do not completely and sufficiently describe the factual situation;
- (b) those which involve hypothetical situations;
- (c) those requests in which the requestor has no direct or proximate interest;
- (d) where the applicable legal provisions are not cited;
- (e) where a no-action or interpretive letter has already been issued by that or any other Department on a substantially similar question involving substantially similar facts, as that to which the request relates;
- (f) those cases in which investigation, enquiry or other enforcement action has already been initiated;
- (g) those cases where connected issues are pending before any Tribunal or Court and on issues which are subjudice; and,
- (h) those cases where policy concerns require that the Department does not respond.

Where a request is rejected for non-compliance, the fee, if any, paid by the requestor shall be refunded to him after deducting therefrom a sum of Rs. 5,000/- towards processing charges. However, SEBI is not be under any obligation to respond to a request for guidance made under this scheme, and shall not be liable to disclose the reasons for declining to reply the request.

Confidentiality of Request

- Any person submitting a letter or written communication under this scheme may request that it receive confidential treatment for a specified period of time not exceeding 90 days from the date of the Department's response.
- The request shall include a statement of the basis for confidential treatment.
- If the Department determines to grant the request, the letter or written communication will not be available to the public until the expiration of the specified period.
- If it appears to the Department that the request for confidential treatment should be denied, the requestor will be so advised and such person may withdraw the letter or written communication within 30 days of receipt of the advise, in which case the fee, if any, paid by him would be refunded to him.
- In case a request has been withdrawn under clause (c), no response will be given and the letter or written communication will remain with the SEBI but will not be made available to the public.
- If the letter or written communication is not withdrawn, it shall be available to the public together with any written staff response.
- A no-action letter or an interpretive letter issued by a Department constitutes the view of the Department but will not be binding on the SEBI, though the SEBI may generally act in accordance with such a letter.
- The letter issued by a Department under this scheme should not be construed as a conclusive decision or determination of any question of law or fact by the SEBI.
- Such a letter cannot be construed as an order of the SEBI under Section 15T of the Act and shall not be appealable.
- Where a no action letter is issued by a Department affirmatively, it means that the Department will not recommend enforcement action to the SEBI, subject to other provisions of this scheme.

- The guidance offered through the letters issued by Departments is conditional upon the requestor acting strictly in accordance with the facts and representations made in the letter.
- The SEBI shall not be liable for any loss or damage that the requestor or any other person may suffer on account of the request not being replied or being belatedly replied or the SEBI taking a different view from that taken in a letter already issued under this scheme.
- Where the Department finds that a letter issued by it under this scheme has been obtained by the requestor by fraud or misrepresentation of facts, notwithstanding any legal action that the Department may take, it may declare such letter to be non est and thereupon the case of the requestor will be dealt with as if such letter had never been issued.
- Where the SEBI issues a letter under this scheme, it may post the letter, together with the incoming request, on the SEBI website in accordance with the Guidance Scheme.

LESSON ROUND UP

- In the developing countries, the growing number of investors, technically advanced financial markets, liberalised economy etc. necessitates imparting of financial education for better operation of markets and economy and in the interest of investor.
- SEBI has also launched a comprehensive securities market awareness campaign for educating investors through workshops, audio-visual clippings, distribution of educative investor materials/booklets, dedicated investor website etc.
- SCORES is a web based centralized grievance redress system of SEBI which enables investors to lodge and follow up their complaints and track the status of redressal of such complaints online from the above website from anywhere.
- SEBI has issued SEBI (Ombudsman) Regulations, 2003 which deals with establishment of office of Ombudsman, powers and functions of Ombudsman, procedure for redressal of Grievances and implementation of the award.
- SEBI (Informal Guidance) Scheme, 2003 deals with various aspects such as the nature of request fees to be accompanied along with letter disposal of requests, SEBI discretion not request and certain types of request and confidentiality of requests, etc.

GLOSSARY

Arbitration	Arbitration is a procedure in which a dispute submitted, by agreement of the parties to one or more arbitrators who make a binding decision on the dispute.
Award	It means a finding in the form of direction or an order of an Ombudsman given in accordance with these regulations.
Complainant	It means any investor who lodges complaint with the Ombudsman and includes an investors association recognised by the Board.
Grievance Redress	Grievance Redress mechanism is part and parcel of the machinery of any administration. The grievance redress mechanism of an organisation is the gauge to measure its efficiency and effectiveness as it provides important feedback on the working of the administration
Petition	A formal written request, typically one signed by many people, appealing to authority in respect of a particular cause.

SELF TEST QUESTIONS

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

1. What is SCORES? Briefly discuss the salient features of SCORES.
2. Who are eligible to make a request under the SEBI (Informal Guidance) Scheme, 2003?
3. Who is an Ombudsman? What is the powers and functions of an Ombudsman?
4. Discuss the various grounds under which a person can lodge a complaint either to the SEBI or to the Ombudsman.
5. Explain the types of requests which is not considered by SEBI under the SCORES.

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Lesson 15

Structure of Capital Market

Part I Primary Market

LESSON OUTLINE

A. Capital Market Investment Institutions

- Introduction
- National Level Institutions
- State Level Institutions
- Qualified Institutional Buyers
- Foreign Portfolio Investor
- Private Equity
- Angel Fund
- High Net Worth Individuals
- Venture Capital
- Pension Fund
- Alternative Investment Funds

B. Capital Market Instruments

- Equity shares
- Shares with Differential Voting Rights
- Preference Shares
- Debentures
- Bonds
- Foreign Currency Convertible Bonds
- Foreign Currency Exchangeable Bonds
- Indian Depository Receipts
- Derivatives
- Warrant

C. Aspects of Primary Market

- Book Building
- Anchor Investors
- Application Supported By Block Amount
- Green Shoe Option

LEARNING OBJECTIVES

Financial Sector plays an indispensable role in the overall development of a country's economy. The impact of financial sector on the economic performance of country is of great importance. Financial sector mobilizes the savings and channelize these savings across sectors. This boost the economy at global platform as well. One of the most important constituent of this sector is the financial institutions. A financial institution is an establishment which conducts financial transactions such as investments, loans and deposits. Almost everyone deals with financial institutions on a regular basis. Everything from depositing money to taking out loans and exchanging currencies must be done through financial institutions. These institutions provide a variety of financial products and services to fulfil the varied needs of the commercial sector. Besides, they also provide assistance to new enterprises, small and medium enterprises as well as to the industries established in backward areas. Financial institutions can be classified in various categories e.g. Insurance Companies, Pension Fund, Mutual Fund, Capital Market Intermediaries etc.

Keeping in view the role played by the institutions in the development of Capital Market, this lesson is designed to give an overview of different categories of Investment Institutions like Venture Capital, Private Equity, Hedge Funds, Qualified Institutional Buyer, Pension Funds, Foreign Portfolio Investor etc. which are active participant in the Financial Market.

A. CAPITAL MARKET INVESTMENT INSTITUTIONS

INTRODUCTION

In any economy, financial Institutions play an important role because all the financial dealings and matters are handled and monitored by such Institutions. The major components of financial Institutions are banks, insurance companies, investment companies, consumer finance companies, and other specialized financial institutes. These institutions provide a variety of financial products and services to fulfil the varied needs of the commercial sector. Besides, they provide assistance to new enterprises, small and medium scale enterprises as well as industries established in backward areas. Thus, they have helped in reducing regional disparities by inducing widespread industrial development.

The Government of India, in order to provide adequate supply of credit to various sectors of the economy, has evolved a well-developed structure of financial institutions in the country. These financial institutions can be broadly categorised into All India institutions and State level institutions, depending upon the geographical coverage of their operations. At the national level, they provide long and medium term loans at reasonable rates of interest and at state level they facilitate project financing..

They subscribe to the debenture of the companies, underwrite public issue of shares, guarantee loans and deferred payments, etc. Though, the State level institutions are mainly concerned with the development of medium and small scale enterprises, but they provide the same type of financial assistance as the national level institutions.

NATIONAL LEVEL INSTITUTIONS

A wide variety of financial institutions have been set up at the national level. These institutions cater to the diverse financial requirements of the entrepreneurs. They include development banks like IDBI, SIDBI, FIs like IFCI, IIBI; TFCL and Insurance Companies like LIC, GIC, UTI; etc.

1. All-India Development Banks (AIDBs):- Includes those development banks which provide institutional credit not only to large and medium scale enterprises but also help in promotion and development of small scale industrial units.

Following are the banks which caters to the need for the growth of different sectors on India :

- **Industrial Development Bank of India (IDBI):-** It was established in July 1964 as an apex financial institution for industrial development in the country. It caters to the diversified needs of medium and large scale industries in the form of financial assistance, both directly and indirectly and also promote institutions engaged in industrial development. Direct assistance is provided by way of project loans, underwriting of and direct subscription to industrial securities, soft loans, technical refund loans, etc. Indirect assistance is provided in the form of refinance facilities to industrial concerns.
- **Industrial Finance Corporation of India (IFCI):-** It was the first development finance institution set up under the IFCI Act 1948, in order to pioneer long-term institutional credit to medium and large scale enterprises. It aims to provide financial assistance to industry by way of rupee and foreign currency loans, underwrites/subscribes the issue of stocks, shares, bonds and debentures of industrial concerns, etc. It has also diversified its activities in the field of merchant banking, syndication of loans, formulation of rehabilitation programmes, assignments relating to amalgamations and mergers, etc.
- **Small Industries Development Bank of India (SIDBI):-** It was set up by the Government of India in April 1990, as a wholly owned subsidiary of IDBI. It is the principal financial institution for promotion, financing and development of small scale industries in the economy. It aims to empower the Micro, Small and Medium Enterprises (MSME) sector with a view to contributing to the process of economic growth, employment generation and balanced regional development.

- **Industrial Investment Bank of India Ltd (IIBI):-** It was set up in 1985 under the Industrial reconstruction Bank of India Act, 1984, as the principal credit and reconstruction agency for sick industrial units. It was converted into IIBI on March 17, 1997, as a full-fledged development financial institution. It assists industry mainly in medium and large sector through wide ranging products and services. Besides project finance, IIBI also provides short duration non-project asset-backed financing in the form of underwriting/direct subscription, deferred payment guarantees and working capital/ other short-term loans to companies to meet their fund requirements.

2. Specialised Financial Institutions (SFIs):- These are the institutions which have been set up to serve the increasing financial needs of trade and commerce in the area of venture capital, credit rating and leasing, etc.

Following institutions are considered as SFIs in our country:

- **IFCI Venture Capital Funds Ltd (IVCF):-** IVCF formerly known as Risk Capital & Technology Finance Corporation Ltd (RCTC), is a subsidiary of IFCI Ltd. It was promoted with the objective of broadening entrepreneurial base in the country by facilitating funding to ventures involving innovative product/process/technology. Initially, it started providing financial assistance by way of soft loans to promoters under its 'Risk Capital Scheme'. Since 1988, it also started providing finance under 'Technology Finance and Development Scheme' to projects for commercialisation of indigenous technology for new processes, products, market or services. Over the years, it has acquired great deal of experience in investing in technology-oriented projects.
- **ICICI Venture Funds Ltd:-** Formerly known as Technology Development & Information Company of India Limited (TDICI), it was founded in 1988 as a joint venture with the Unit Trust of India. Subsequently, it became a fully owned subsidiary of ICICI. It is a technology venture finance company, set up to sanction project finance for new technology ventures. The industrial units assisted by it are in the fields of computer, chemicals/polymers, drugs, diagnostics and vaccines, biotechnology, environmental engineering, etc.
- **Tourism Finance Corporation of India Ltd. (TFCI):-** It is a specialised financial institution set up by the Government of India for promotion and growth of tourist industry in the country. Apart from conventional tourism projects, it provides financial assistance for non-conventional tourism projects like amusement parks, ropeways, car rental services, ferries for inland water transport, etc. It has also expanded the scope of its activities by including financing of real estate projects, infrastructure projects and manufacturing projects.

3. Investment Institutions:- These are the most popular form of financial intermediaries, which particularly catering to the needs of small savers and investors. They deploy their assets largely in marketable securities.

Following are the Investment Institutions established by the Government :

- **Life Insurance Corporation of India (LIC):-** It was established in 1956 as a wholly-owned corporation of the Government of India. It was formed by the Life Insurance Corporation Act, 1956, with the objective of spreading life insurance much more widely and in particular to the rural area. It also extends assistance for development of infrastructure facilities like housing, rural electrification, water supply, sewerage, etc. In addition, it extends resource support to other financial institutions through subscription to their shares and bonds, etc.
- **Unit Trust of India (UTI):-** It was set up as a body corporate under the UTI Act, 1963, with a view to encourage savings and investment. It mobilises savings of small investors through sale of units and channels them into corporate investments mainly by way of secondary capital market operations.

For more than two decades it remained the sole vehicle for investment in the capital market by the Indian citizens. Thus, its primary objective is to stimulate and pool the savings of the middle and low

income groups and enable them to share the benefits of the rapidly growing industrialisation in the country. In December 2002, the UTI Act, 1963 was repealed with the passage of Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002, paving the way for the bifurcation of UTI into 2 entities, UTI-I and UTI-II with effect from 1st February 2003.

- **General Insurance Corporation of India (GIC):-** It was formed by the enactment of the General Insurance Business (Nationalisation) Act, 1972(GIBNA), for the purpose of superintending, controlling and carrying on the business of general insurance or non-life insurance such as accident, fire, etc. Initially, GIC had four subsidiary branches, namely, National Insurance Company Ltd, The New India Assurance Company Ltd, The Oriental Insurance Company Ltd and United India Insurance Company Ltd . But these branches were delinked from GIC in 2000 to form an association known as 'GIPSA' (General Insurance Public Sector Association).

STATE LEVEL INSTITUTIONS

Several financial institutions have been set up at the State level which supplement the financial assistance provided by the all India institutions. They act as a catalyst for promotion of investment and industrial development in the respective States. They broadly consist of 'State financial corporations' and 'State industrial development corporations'.

- **State Financial Corporations (SFCs):-** These are the State-level financial institutions which play a crucial role in the development of small and medium enterprises in the concerned States. They provide financial assistance in the form of term loans, direct subscription to equity/debentures, guarantees, discounting of bills of exchange and seed/ special capital, etc. SFCs have been set up with the objective of catalysing higher investment, generating greater employment and widening the ownership base of industries. They have also started providing assistance to newer types of business activities like floriculture, tissue culture, poultry farming, commercial complexes and services related to engineering, marketing, etc. There are around 18 State Financial Corporations (SFCs) in the country.
- **State Industrial Development Corporations (SIDCs):-** These corporations have been established under the erstwhile Companies Act, 1956, as wholly-owned undertakings of State Governments. They have been set up with the objectives of promoting industrial development in the respective States and providing financial assistance to small entrepreneurs. They are also involved in setting up of medium and large industrial projects in the joint sector/assisted sector in collaboration with private entrepreneurs or wholly-owned subsidiaries. They undertake a variety of promotional activities such as preparation of feasibility reports; conducting industrial potential surveys; entrepreneurship training and development programmes; as well as developing industrial areas and industrial estates.

QUALIFIED INSTITUTIONAL BUYERS

QIBs are investment institutions who buy the shares of a company on a large scale. Qualified Institutional Buyers are those Institutional investors who are generally perceived to possess expertise and the financial proficiency to evaluate and to invest in the Capital Markets.

If the investor is not capable, either by his/her individual financial limit or not permitted, to invest individually till he invests a specified statutorily fixed amount, then he usually participates indirectly through certain institutions, through which he can invest limited sums according to the viability of both, himself and institution.

The institution is usually a collective group of people in which a large number of investors repose faith and the institution collects a whopping investible sum from various investors to invest in the market. When investing through the institution, investors usually have limited control on their investments in comparison to the individual investment as they hand over the amount for investment to the institution and they, in turn, keep experts to have a vigil on the market. Accordingly, experts recommend the investments to be made and thus the institutions in

the spree invest in that market.

There are various types of institutions defined in the rules and regulations, but to qualify as a 'Qualified Institutional Buyer' (QIB), certain regulations formulated by the SEBI needs to be kept in mind. As the name itself suggests, it is in the form of an institution and under the institutionalized mechanism, they invest in the company.

According to Regulation 2(1)(ss) of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Qualified Institutional Buyer comprises of —

- (i) a mutual fund, venture capital fund, Alternative Investment Fund and foreign venture capital investor registered with SEBI;
- (ii) a foreign portfolio investor other than Category III foreign portfolio investor, registered with SEBI;
- (iii) a public financial institution as defined in section 4A of the Companies Act, 1956 [now Section 2(72) of the Companies Act, 2013] ;
- (iv) a scheduled commercial bank;
- (v) a multilateral and bilateral development financial institution;
- (vi) a state industrial development corporation;
- (vii) an insurance company registered with the Insurance Regulatory and Development Authority;
- (viii) a provident fund with minimum corpus of twenty five crore rupees;
- (ix) a pension fund with minimum corpus of twenty five crore rupees;
- (x) National Investment Fund set up by the Government of India;
- (xi) insurance funds set up and managed by army, navy or air force of the Union of India;
- (xii) insurance funds set up and managed by the Department of Posts, India;
- (xiii) systemically important non-banking financial companies.

FOREIGN PORTFOLIO INVESTOR

Foreign Portfolio Investor (FPI) means a person who satisfies the eligibility criteria prescribed under SEBI (Foreign Portfolio Investors) Regulations, 2014 and has been registered under Chapter II of these regulations, which shall be deemed to be an intermediary in terms of the provisions of the SEBI Act, 1992. All existing Foreign Institutional Investors (FIIs) and Qualified Foreign Investors (QFIs) are to be merged into one category called FPI..

Categories of FPI

Category I FPIs include:

- (i) Government and Government related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled or at least 75% directly or indirectly owned by such Government and Government related investor(s);
- (ii) Pension funds and university funds;
- (iii) Appropriately regulated entities such as insurance or reinsurance entities, banks, asset management companies, investment managers, investment advisors, portfolio managers, broker dealers and swap dealers;

- (iv) Entities from the Financial Action Task Force member countries which are –
 - I. appropriately regulated funds;
 - II. unregulated funds whose investment manager is appropriately regulated and registered as a Category I foreign portfolio investor. However the investment manager undertakes the responsibility of all the acts of commission or omission of such unregulated fund;
 - III. university related endowments of such universities that have been in existence for more than five years;
- (v) An entity (A) whose investment manager is from the Financial Action Task Force member country and such an investment manager is registered as a Category I foreign portfolio investor; or (B) which is at least seventy-five per cent owned, directly or indirectly by another entity, eligible under sub-clause (ii), (iii) and (iv) of clause (a) of this regulation and such an eligible entity is from a Financial Action Task Force member country. However such an investment manager or eligible entity undertakes the responsibility of all the acts of commission or omission of the applicants seeking registration under this sub-clause.

Category II FPIs include all the investors not eligible under Category I foreign portfolio investors such as –

- (i) appropriately regulated funds not eligible as Category-I foreign portfolio investor;
- (ii) endowments and foundations;
- (iii) charitable organisations;
- (iv) corporate bodies;
- (v) family offices;
- (vi) Individuals;
- (vii) appropriately regulated entities investing on behalf of their client, as per conditions specified by the Board from time to time;
- (viii) Unregulated funds in the form of limited partnership and trusts;

Explanation: An applicant incorporated or established in an International Financial Services Centre shall be deemed to be appropriately regulated.

ALTERNATIVE INVESTMENT FUNDS

Alternative investment funds (AIFs) are defined in Regulation 2(1)(b) of the SEBI (Alternative Investment Funds) Regulations, 2012. It refers to any privately pooled investment fund, (whether from Indian or foreign sources), in the form of a trust or a company or a body corporate or a Limited Liability Partnership (LLP) which are not presently covered by any Regulation of SEBI governing fund management (like, Regulations governing Mutual Fund or Collective Investment Scheme) nor coming under the direct regulation of any other sectoral regulators in India-IRDA, PFRDA, RBI. Hence, in India, AIFs are private funds which are otherwise not coming under the jurisdiction of any regulatory agency in India.

According to SEBI (AIF) Regulations, 2012, “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,-

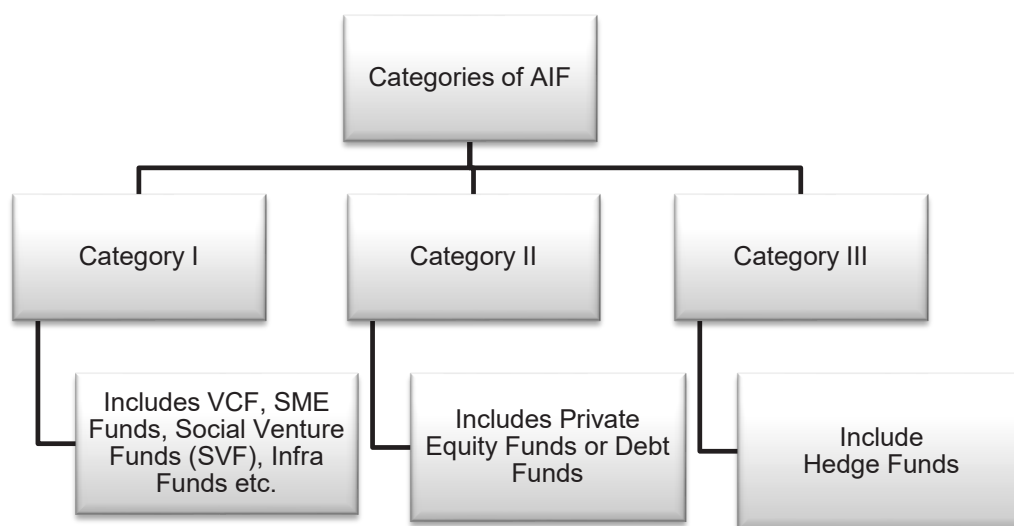
- (i) is a privately pooled investment vehicle which collects funds from investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors; and
- (ii) is not covered under the SEBI (Mutual Funds) Regulations, 1996, SEBI (Collective Investment

Schemes) Regulations, 1999 or any other regulations of SEBI to regulate fund management activities.

However, 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 (Shares 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 within the meaning of Section 2(46) of the 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.
- (vii) Any such pool of funds which is directly regulated by any other regulator in India.

Thus, the definition of AIFs includes venture Capital Fund, hedge funds, private equity funds, commodity funds, Debt Funds, infrastructure funds, etc., while, it excludes Mutual funds or collective investment Schemes, family trusts, Employee Benefit Schemes, employee welfare trusts or gratuity trusts, 'holding companies' within the meaning of Section 2(46) of the Companies Act, 2013, securitization trusts regulated under a specific regulatory framework, and funds managed by securitization company or reconstruction company which is registered with the RBI under Section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.



One AIF can float several schemes. Investors in these funds are large institutions, high net worth individuals and corporates. In India AIF is regulated by the SEBI (Alternative Investment Funds) Regulations, 2012.

PRIVATE EQUITY

Private equity is a type of equity (finance) and one of the asset classes who takes securities and debt in operating companies 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. 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 turn around 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.

ANGEL FUND

Angel fund refers to money pool created by high networth individuals or companies (generally known as Angel Investor), for investing in start up business. Angel fund is defined in SEBI (Alternate Investment Funds) (amendment) Regulations, 2013 as a sub-category of Venture Capital Fund under category-I AIF that raises funds from angel investors and invest in accordance with rules specified by SEBI.

An angel investor or angel (also known as a business angel, informal investor, angel funder, private investor, or seed investor) is an affluent individual who provides capital for a business start-up, usually in exchange for convertible debt or ownership equity. A small but increasing number of angel investors invest online through equity crowd funding or organize themselves into angel groups or angel networks to share research and pool their investment capital, as well as to provide advice to their portfolio companies.

Angel investments are typically the earliest equity investments made in start-up companies. They commonly band together in investor networks. Often these networks are based on regional, industry in investor or academic affiliation. Angel Investors are often former entrepreneurs themselves, and typically enjoy working with companies at the earliest stages of business formation.

The effective Angels help entrepreneurs to shape business models, create business plans and connect to resources - but without stepping into a controlling or operating role. Often Angels are entrepreneurs who have successfully built companies, or have spent a part of their career in coaching young companies.

HIGH NET WORTH INDIVIDUALS

HNI or high net worth individuals is a class of individuals who are distinguished from other retail segment based on their net wealth, assets and investible surplus. While there is no standard put forth for the classification, the definition of HNIs varies with the geographical area as well as financial markets and institutions.

Though there is no specific definition, generally in the Indian context, individuals with over Rs. 2 crore investible surplus may be considered to be HNIs while those with investible wealth in the range of Rs. 25 lac - Rs. 2 crore may be deemed as Emerging HNIs.

If you are applying for a IPO of equity shares in an Indian company for amount in excess of Rs. 2 lakhs, you fall under the HNI category. On the other hand, if you apply for amount under Rs. 2 lakhs, you are considered as a retail investor. There may be so many ways in which HNIs are categorized and defined, there is no single bracket that could put them under.

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.

“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.

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 but these are high risk investments which may give high returns or high loss.

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 many 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 favoured by a lot of venture companies.

PENSION FUND

Pension Fund means a fund established by an employer to facilitate and organize the investment of employees' retirement funds which is contributed by the employer and employees. The pension fund is a common asset pool meant to generate stable growth over the long term, and provide pensions for employees when they reach the end of their working years and commence retirement. Pension funds are commonly run by some sort of financial intermediary for the company and its employees like N.P.S. scheme is managed by UTI AMC (Retirement Solutions), although some larger corporations operate their pension funds in-house. Pension funds control relatively large amounts of capital and represent the largest institutional investors in many nations.

Pension funds play a huge role in development of the economy and it play active role in the Indian equity market. This pension fund ensures a change in their investment attitudes and in the regulatory climate, encouraging them to increase their investment levels in equities and would have a massive impact on capital market and on the economy as a whole.

Pensions broadly divided into two sector:

A-Formal sector Pensions

Formal sector pensions in India can be divided into three categories; viz pensions under an Act or Statute, Government pensions and voluntary pensions

B-Informal sector Pensions

This scheme will cover unorganized workers who are working or engaged as home based workers, street vendors, cobblers, rag pickers, rickshaw pullers, agriculture workers, construction workers, among others.

Legislations

There are three defining Acts for pensions in India.

1. **Pensions under the EPF & MP Act 1952:** These include the Employees Provident Fund, Employees Pension Scheme, and Employees Deposit Linked Insurance Scheme,
2. **Pensions under the Coal mines PF & MP Act 1948:** These include Coal mines provident fund, Coal mines pension scheme & Coal mines linked insurance scheme.
3. **Gratuity under the Payment of Gratuity Act, 1972:** There are other provident funds in India like Assam Tea Plantations PF, J&K PF, and Seamen's PF etc.

Government Pension

Government pensions in India are referred under the Directive Principles of State Policy and are therefore not covered under a Statute. The Government amended the regulations to put in place the new pension system.

The old scheme continues for the existing employees (i.e. those who joined service prior to January 1, 2004). Pensions for government employees would include employees of the central as well as the state governments.

- (A) Central Government Pensions like Civil servants pensions, Defences, Railways, Posts.
- (B) State Government Pensions, Bank pensions like Reserve Bank of India (RBI), Public Sector Banks, National Bank for Agriculture and Rural Development (NABARD) and other banks pensions.

Superannuation schemes are also sold in the market. These are typically the retirement plans sold by Mutual funds and Insurance companies (Life Insurance & Postal Life Insurance).

B. CAPITAL MARKET INSTRUMENTS

EQUITY SHARES

Equity shares, commonly referred to as ordinary share also represents the form of fractional ownership in which a shareholder, as a fractional owner, undertakes the maximum entrepreneurial risk associated with a business venture. The holder of such shares is the member of the company and has voting rights.

According to explanation (i) to Section 43 of Companies Act, 2013 "equity share capital", with reference to any company limited by shares, means all share capital which is not preference share capital. Section 43 further

provides for 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.

Equity capital and further issues of equity capital by a company are generally based on the condition that they will rank *pari passu* along with the earlier issued share capital in all respects. However, as regards dividend declared by the company such additional capital shall be entitled to dividend ratably for the period commencing from the date of issue to the last day of the accounting year, unless otherwise specified in the articles or in the terms of the issue.

Important characteristics of equity shares are given below:

Equity shares, have voting rights at all general meetings of the company. These votes have the affect of the controlling the management of the company.

Equity shares have the right to share the profits of the company in the form of dividend (cash) and bonus shares. However, even equity shareholders cannot demand declaration of dividend by the company which is left to the discretion of the Board of Directors.

When the company is wound up, payment towards the equity share capital will be made to the respective shareholders only after payment of the claims of all the creditors and the preference share capital.

Equity share holders enjoy different rights as members under the Companies Act, 2013 such as:

- (a) The right to vote on every resolution placed before the company – (Section 47)
- (b) The rights to subscribe to shares at the time of further issue of capital by the company (Pre-emptive Right) – (Section 62)
- (c) Right to appoint proxy to attend and vote at the meeting on his behalf – (Section 105)
- (d) Right to receive copy of annual accounts of the company – (Section 136)
- (e) Right to receive notice of the meeting of members – (Section 101)
- (f) Right to inspection of various statutory registers maintained by the company – (Section 94)
- (g) Right to requisition extraordinary general meeting of the company – (Section 100) IAL

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 also specifies that the listed entity shall seek to protect and facilitate the exercise of the following rights of shareholders:

- (a) right to participate in, and to be sufficiently informed of, decisions concerning fundamental corporate changes.
- (b) opportunity to participate effectively and vote in general shareholder meetings
- (c) Being informed of the rules, including voting procedures that govern general shareholder meetings.
- (d) 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.
- (e) Effective shareholder participation in key corporate governance decisions, such as the nomination and election of members of board of directors.
- (f) exercise of ownership rights by all shareholders, including institutional investors.
- (g) adequate mechanism to address the grievances of the shareholders.
- (h) 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.

SHARES WITH DIFFERENTIAL VOTING RIGHTS

Section 43(a)(ii) of the Companies Act, 2013, authorized equity share capital with differential rights as to dividend, voting or otherwise in accordance with rule 4 of Companies (Share Capital and Debentures) Rules, 2014 which prescribes the following conditions for issue of DVRs :

- (a) the articles of association of the company authorizes the issue of shares with differential rights;
- (b) the issue of shares is authorized by ordinary resolution passed at a general meeting of the shareholders.
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 at a general meeting;
- (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 shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;
- (e) the company having consistent track record of distributable profit for the last three years;
- (f) 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;
- (g) 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;
- (h) 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. However, 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;
- (i) 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, Securities and Exchange Board of India Act, 1992, 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;
- (j) 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 of the Companies Act, 2013 shall contain the disclosures as mentioned in the rules;
- (k) The company shall not convert its existing share capital with voting rights into equity share capital carrying differential voting rights and vice-versa;
- (l) The Board of Directors shall disclose in the Board's Report for the financial year in which the issue of equity shares with differential rights was completed, the details as mentioned in the rules;
- (m) 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;
- (n) The register of members maintained under section 88 of the Companies Act, 2013, shall contain all the relevant particulars of the shares so issued along with details of the shareholders.

PREFERENCE SHARES

According to explanation (ii) to Section 43 of Companies Act, 2013 “preference share capital”, with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to –

- (a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and
- (b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;
- (iii) capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:–
 - (a) that in respect of dividends, in addition to the preferential rights to the amounts specified in sub-clause (a) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;
 - (b) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in sub-clause (b) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

In simple terms, the preference shares are those shares which have rights of preference over equity shares in the case of distribution of dividend and distribution of surplus in the case of winding up. They generally carry a fixed rate of dividend and redeemable after specific period of time. According to Section 55 of the Companies Act, 2013, a Company cannot issues preference shares which are irredeemable.

The following kinds of preference shares are issued by the companies:

- Cumulative preference shares
- Non-cumulative preference shares
- Convertible preference shares
- Non-Convertible Redeemable preference shares
- Participating preference share
- Non-participating preference shares

Issuer desirous of making an offer of non-convertible redeemable preference shares to the public is required to list on one or more recognized stock exchanges. Issuer may list its non-convertible redeemable preference shares issued on private placement basis on a recognized stock exchange.

DEBENTURES

Section 2(30) of the Companies Act, 2013 defines debentures. “Debenture” 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;

However

- (a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and

- (b) such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company,

shall not be treated as debenture.

Debenture is a document evidencing a debt or acknowledging it and any document which fulfils either of these conditions is a debenture.

The important features of a debenture are:

1. It is issued by a company as a certificate of indebtedness.
2. It usually indicates the date of redemption and also provides for the repayment of principal and payment of interest at specified date or dates.
3. It usually creates a charge on the undertaking or the assets of the company. In such a case the lenders of money to the company enjoy better protection as secured creditors, i.e. if the company does not pay interest or repay principal amount, the lenders may either directly or through the debenture trustees bring action against the company to realise their dues by sale of the assets/undertaking earmarked as security for the debt.
4. Debentures holders do not have any voting rights.
5. Compulsory payment of interest. The interest on debenture is payable irrespective of whether there are profits made or not.
6. While issuance of debentures, the company shall ensure that the parameters for designation of deposits under Companies (Acceptance of Deposits) Rules, 2014 are not triggered.

Categories of Debentures

Based on convertibility, debentures can be classified under three categories:

1. Fully Convertible Debentures (FCDs)
2. Non Convertible Debentures (NCDs)
3. Partly Convertible Debentures (PCDs)

Fully Convertible Debentures

These are converted into equity shares of the company with or without premium as per the terms of the issue, on the expiry of specified period or periods. If the conversion is to take place at or after eighteen months from the date of allotment but before 36 months, the conversion is optional on the part of the debenture holders in terms of SEBI (ICDR) Regulations. Interest will be payable on these debentures upto the date of conversion as per transfer issue.

Non Convertible Debentures (NCDs)

These debentures do not carry the option of conversion into equity shares and are therefore redeemed on the expiry of the specified period or periods. The issuer is required to list its Public issue of NCDs on stock exchange as per SEBI (ISSUE AND LISTING OF DEBT SECURITIES) REGULATIONS, 2008. NCDs can be also issued on private placement basis.

Partly Convertible Debentures (PCDs)

These may consist of two kinds namely -convertible and non-convertible. The convertible portion is to be converted into equity shares at the expiry of specified period. However, the non-convertible portion is redeemed

at the expiry of the stipulated period. If the conversion takes place at or after 18 months, the conversion is optional at the discretion of the debenture holder.

Optionally Fully Convertible Debenture (OFCD)

The Optionally Fully Convertible Debenture is a kind of debenture which can be converted into shares at the expiry of a certain period at a predetermined price, if the debt holder (investor) wishes to do so. The “securities” as defined u/s 2(81) of Companies Act, 2013 means securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956, and includes hybrids. Hence after analysing the above definitions of “OFCD”, “hybrid” and “securities” it could be rightly concluded that an OFCD being a hybrid security falls under the definition of “securities” as defined u/s 2 (h) of Securities Contract (Regulation) Act, 1956 and u/s 2(81) of Companies Act, 2013 as it inherits the characteristics of debentures initially and also that of the shares at a later stage if the option to convert the securities into shares being exercised by the security holder.

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.

Characteristics of a Bond

1. Bond has a fixed face value, which is the amount to be returned to the investor upon maturity.
2. It has a fixed maturity date, which can range from a few days to 20-30 years or even more.
3. All bonds repay the principal amount after the maturity date.
4. Provides regular payment of interest, semi-annually or annually.
5. Interest is calculated as a certain percentage of the face value known as a ‘coupon payment’.
6. Bonds are generally considered as less risky investment as compared to equity.
7. It helps to diversify and grow investor's money.

Types of Bond

Government Bonds	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • These are the bonds issued by the private corporate companies. Indian corporates issue secured or non secured bonds. However care to be taken to consider the credit rating given by Credit Rating Agencies before investing in these bonds.
Banks and other financial institutions bonds	<ul style="list-style-type: none"> • 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.
Tax saving bonds	<ul style="list-style-type: none"> • 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.

FOREIGN CURRENCY CONVERTIBLE BONDS (FCCBS)

'Foreign Currency Convertible Bond' (FCCB) means a bond issued by an Indian company expressed in foreign currency, and the principal and interest in respect of which is payable in foreign currency.

The FCCBs are unsecured instruments which 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.

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 shares at a discount on prevailing Indian market price. In addition, 25% of the FCCB proceeds can be used for general corporate restructuring.

Example

Suppose a company 'A' issues bonds with following terms –

Issue Price of the Bond Rs. 1000

Coupon rate 2%

Maturity 2 years

Convertible into equity shares @ Rs.800 per share

Now suppose an investor subscribes to 4 of these bonds. Thus the total investment is Rs.4000. On this

investment, he is entitled to get an interest @ 2% for 2 years. On the maturity date, i.e. after 2 years, the investor will have an option – to either claim full redemption of the amount from the company or get the bonds converted into fully paid equity shares @ Rs. 800 per share. Thus if he goes for the conversion he will be entitled to 5 (4000/800) equity shares. The choice he makes will depend on the market price of the share on the date of conversion.

If the shares of the company 'A' is trading at lower than Rs.800, let's say Rs.500, the investor will be better off by claiming full redemption of his bonds and buying the shares from the market. In this case, he will get 8 (4000/500) equity shares as against 5 which he was getting on conversion. Similarly if the market price of the share is higher than Rs. 800, the investor will benefit by getting its shares converted. Thus, on the day of maturity, an investor will seek full redemption if the conversion price is higher than the current market price, and will go for conversion if the conversion price is less than the current market price.

FOREIGN CURRENCY EXCHANGEABLE BONDS (FCEBS)

The FCEB is used to raise funds from the international markets against the security and exchangeability of shares of another company. Foreign Currency Exchangeable Bond (FCEB) means –

- (i) A bond expressed in foreign currency.
- (ii) The principal and the interest in respect of which is payable in foreign currency.
- (iii) Issued by an issuing company, being an Indian company.
- (iv) Subscribed by a person resident outside India.
- (v) Exchangeable into equity shares of another company, being offered company which is an Indian company.
- (vi) Either wholly or partly or on the basis of any equity related warrants attached to debt instruments.

It may be noted that issuing company to be the part of promoter group of offered company and the offered company is to be listed and is to be eligible to receive foreign investment. 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. E.g., 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 Offered Company (OC). Also, relatively, FCEB has an inherent advantage that it does not result in dilution of shareholding at the OC level.

INDIAN DEPOSITORY RECEIPTS

According to Section 2(48) of the Companies Act, 2013 “Indian Depository Receipt” means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts.

Section 390 of the Companies Act, 2013 and rule 13 of Companies (Registration of Foreign Companies) Rules, 2014 lays down the procedure for issue of Indian Depository Receipts.

Apart from this a company has to comply with Chapter VII and VIII of SEBI (ICDR) Regulations, 2018 to issue IDRs or a rights issue of IDRs.

An IDR is an instrument denominated in Indian Rupee in the form of a depository receipt created by a domestic depository (Custodian of securities registered with SEBI) against the underlying equity of issuing company to enable foreign companies to raise funds from Indian Securities Markets.

In an IDR, foreign companies would issue shares, to a domestic (Indian) depository, which would in turn issue depository receipts to investors in India. The actual shares underlying the IDRs would be held by an Overseas Custodian, which shall authorize the Indian depository to issue the IDRs. To that extent, IDRs are derivative instruments because they derive their value from the underlying shares. Standard Chartered PLC is only company to offer IDR in the Indian market. The foreign company issuing IDRs need to comply with the requirements of rules prescribed under Companies Act, SEBI Regulations and RBI notifications/circulars.

DERIVATIVES

A derivative is a financial instrument that derives its value from an underlying asset. This underlying asset can be stocks, bonds, currency, commodities, metals and even intangible, assets like stock indices. Derivatives can be of different types like futures, options, swaps, caps, floor, collars etc. The most popular derivative instruments are futures and options.

The term Derivative has been defined in Securities Contracts (Regulations) Act, as:-

Derivative includes: -

- A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;
- B) a contract which derives its value from the prices, or index of prices, of underlying securities;
- C) commodity derivatives; and
- D) such other instruments as may be declared by the Central Government to be derivatives.

FUTURE

Future refers to a future contract which means an exchange traded forward contract to buy or sell a predetermined quantity of an asset on a predetermined future date at a predetermined price. Contracts are standardized and there's centralized trading ensuring liquidity.

There are two positions that one can take in a future contract:

- Long Position-This is when a futures contract is purchased and the buyer agrees to receive delivery of the underlying asset. (Stock/Indices/Commodities)
- Short Position-This is when a futures contract is sold and the seller agrees to make delivery of the underlying asset. (stock/Indices/Commodities)

OPTIONS

Options Contract give its holder the right, but not the obligation, to take or make delivery on or before a specified date at a stated price. But this option is given to only one party in the transaction while the other party has an obligation to take or make delivery. Since the other party has an obligation and a risk associated with making the good the obligation, he receives a payment for that. This payment is called as option premium.

Option contracts are classified into two types on the basis of which party has the option:

- Call option - A call option is with the buyer and gives the holder a right to take delivery.
- Put option - The put option is with the seller and gives the right to take delivery.

Option Contracts are classified into two types on the basis of time at which the option can be exercised:-

- European Option – European style options are those contracts where the option can be exercised only on the expiration date. Options traded on Indian stock exchanges are of European Style.

- American Option – American style options are those contracts where the option can be exercised on or before the expiration date.

Example

Case 1

Rajesh purchases 1 lot of Infosys Technologies MAY 3000 Put and pays a premium of Rs. 250. This contract allows Rajesh to sell 100 shares of Infosys at Rs. 3000 per share at any time between the current date and the end of May. In order to avail this privilege, all Rajesh has to do is pay a premium of Rs. 25,000 (Rs. 250 a share for 100 shares).

The buyer of a put has purchased a right to sell. The owner of a put option has the right to sell.

Case 2

If an investor is of the opinion that a particular stock say “Ray Technologies” is currently overpriced in the month of February and hence expect that there will be price corrections in the future. However he doesn’t want to take a chance, just in case the prices rise. So the best option for the investor would be to take a Put option on the stock.

Lets assume the quotes for the stock are as under:

Spot Rs. 1040

May Put at 1050 Rs.10

May Put at 1070 Rs. 30

So the investor purchases 1000 “Ray Technologies” Put at strike price of Rs.1070 and Put price of Rs. 30/-. The investor pay Rs. 30,000 as Put premium.

The position of investor in two different scenarios have been discussed below:

1. May Spot price of Ray Technologies = ₹1020
2. May Spot price of Ray Technologies = ₹1080

In the first situation you have the right to sell 1000 “Ray Technologies” shares at Rs.1,070/-the price of which is Rs. 1020/-. By exercising the option the investor earn Rs. (1070-1020) =Rs.50 per Put, which amounts to Rs. 50,000/-. The net income in this case is Rs. (50000-30000) =Rs. 20,000.

In the second price situation, the price is more in the spot market, so the investor will not sell at a lower price by exercising the Put. He will have to allow the Put option to expire unexercised. In the process the investor only lose the premium paid which is Rs. 30,000.

While buyer of an options has limited risk (Premium Amount), seller of an option has very high risk (Market Price- Strike Price or Strike Price - Market Price), as the case may be, depending on whether it is an call or put option.

As of now, all futures and options are Cash settled.

WARRANT

Warrant means an option issued by a company whereby the buyer is granted the right to purchase a number of shares (usually one) of its equity share capital at a given exercise price during a given period.

The holder of a warrant has the right but not the obligation to convert them into equity shares. Thus in the true sense, a warrant signifies optional conversion. In case the investor benefits by conversion of warrant, then he will convert the warrants, else he may simply let the warrant lapse. The companies listed on the Exchange can issue warrants in accordance with SEBI (ICDR) Regulations, 2018.

For example if the conversion price of the warrant is Rs. 70/- and the current market price is Rs.110/-, then the investor will convert the warrant and enjoy the capital gain of Rs.40/-. In case the conversion is at Rs.70/- and the current market price is Rs.40/-, then the investor will simply let the warrant lapse without conversion.

C. ASPECTS OF PRIMARY MARKET

BOOK BUILDING

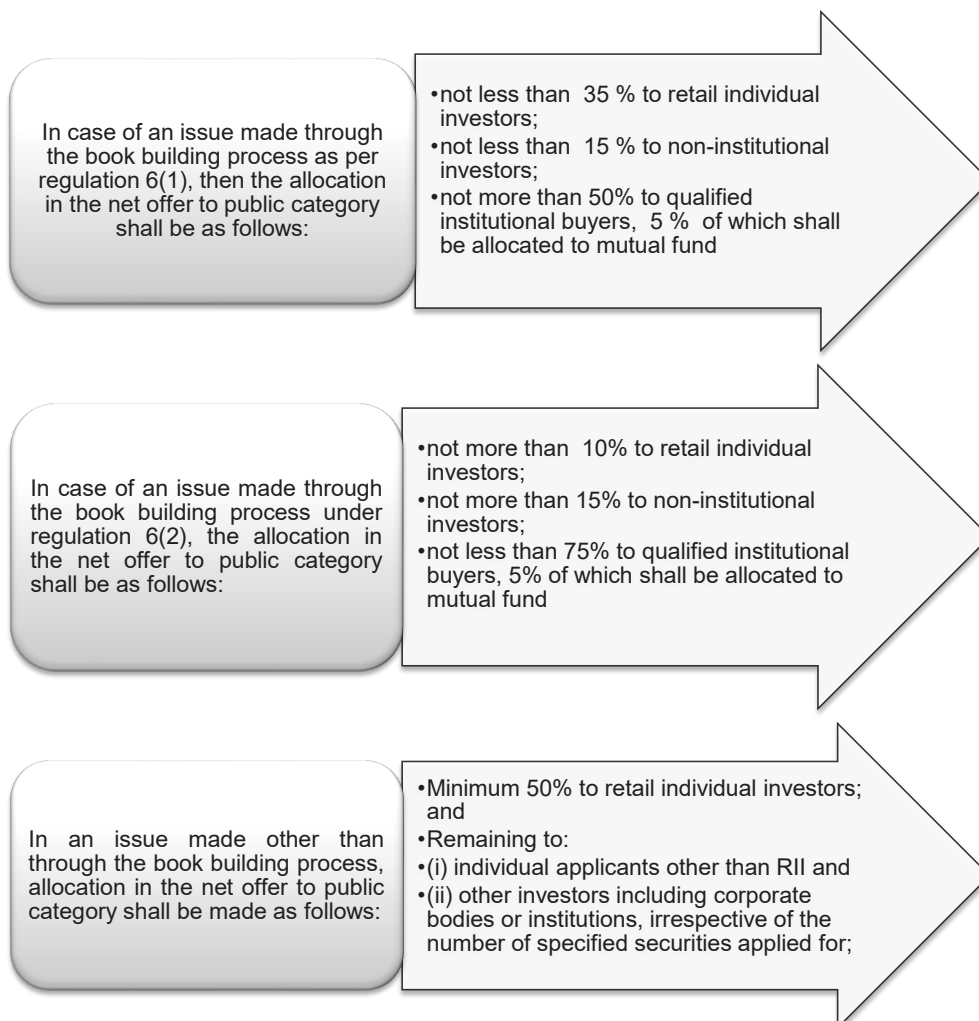
Book building is a systematic process of generating, capturing and recording investor's demand for shares during IPO or other securities during their issuance process in order to support efficient price discovery. This process is also known as price discovery method.

The SEBI (ICDR) Regulations, 2018 defines book building as follows:

Book building means a process undertaken to elicit demand and to assess the price for determination of the quantum or value of specified securities or Indian Depository Receipts, as the case may be, in accordance with the SEBI (ICDR) Regulations, 2018.

The book building process in India is very transparent. All investors including small investors can see demand for the shares of the company at various price points on the website of the Exchange before applying. According to this method, share prices are determined on the basis of real demand for the shares at various price levels in the market.

Offer to Public through Book Building Process



Note: -

1. In case of an issue made through Book Building process under regulation 6(1) and 6(2), addition of 5% allocation available to mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.
2. The issuer may allocate up to 60% of the portion available for allocation to qualified institutional buyers to an anchor investor.
3. For above purpose, if the retail individual investor category is entitled to more than 50% on proportionate basis, the retail individual investors shall be allocated that higher percentage.

Book building Process

- Appoints Lead Book Runners/Co Book Runners, Lead Merchant Banker (LMB) to act as Lead Book Runner. If more than one LBM/LBR, inter-se, allocation of responsibilities to be decided.
- Filing of draft offer document with SEBI for obtaining observation and, Exchanges for in-principle approval for listing
- Filing of Red herring prospectus with SEBI, Stock Exchange and Registrar of Companies (ROC)
- The company shall entered into agreement with stock exchange for online offer of securities and make application for In-principle approval.
- Lead Book Runners (LBR) appoints Syndicate members (SM), to underwrite the issue.
- LBR/SM to finalise bidding/collection centres who are either:
 - (a) SEBI Registered stock broker
 - (b) Self-certified Syndicate Bank (for ASBA facility)
- Pre issue advertisement shall be made.
- Bidding and allocation for anchor investors one day before opening of issue.
- Issue opens and Investor submits forms at bidding centres.
- Electronic Bidding Process and determination of price.
- Registration of final prospectus with ROC.
- Allocation/Manner of Allotment.
- In case of Book Built Issue, the issuer in consultation with merchant banker, fixes the Price band.
- In case of Fixed Price Issue, the issuer in consultation with merchant banker, fixes the price of the shares to be offered (Face Value + Share Premium) and makes on offer. If the investors subscribes minimum 90% of the offer, the issue will be succeeds.

Example

Let's take an example.

Number of shares issued by the company = 100.

Price band = Rs. 30 – Rs. 40.

Now let's check what individuals have bid for.

Bid	Number of shares	Price per share (Rs.)	Cumulative demand
1	20	40	20
2	10	8	30
3	20	37	50
4	30	36	80
5	20	35	100
6	20	33	120
7	20	30	140

The shares will be sold at the Bid 5 price of 20 shares for Rs.35.

Because Bidders 1 to 5 are willing to pay at least Rs. 35 per share. The total bids from Bidders 1 to 5 ensure all 100 shares will be sold (20 + 10 + 20 + 30 + 20). The cut-off price is therefore Bid 5's price = Rs. 35.

Bidders 1 to 5 get allotments at that price. Bidders 6 and 7 don't get an allotment because their bids are below the cut-off price. On allotment, the extra amount paid will be refunded to the investor. Since the cut-off price is Rs. 35, the 10 shares will cost Rs. 350 (10 x Rs. 35). The balance Rs. 50 will be refunded to the investor.

ANCHOR INVESTORS

Anchor investor means a Qualified Institutional Buyer (QIB) who makes an application for a value of 10 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 atleast two crore rupees for an issue made in accordance with Chapter IX of the SEBI (ICDR) Regulations, 2018.

Allocation to anchor investors shall be on a discretionary basis and subject to the following:

(I) In case of public issue on the main board, through the book building process :

- (i) Maximum of 2 such investors shall be permitted for allocation upto Rs.10 crore.
- (ii) Minimum of 2 and maximum of 15 such investors shall be permitted for allocation above Rs.10 crore and upto Rs. 250 crore, subject to minimum allotment of Rs.5 crore per such investor.
- (iii) In case of allocation above Rs.250 crore; a minimum of 5 such investors and a maximum of 15 such investors for allocation upto Rs.250 crore and an additional 10 such investors for every additional Rs.250 crore or part thereof, shall be permitted, subject to a minimum allotment of Rs.5 crore per such investor.

(II) In case of public issue on the SME exchange, through the book building process:

- (i) maximum of 2 such investors shall be permitted for allocation up to two crore rupees
- (ii) minimum of 2 and maximum of 15 such investors shall be permitted for allocation above two crore rupees and up to twenty five crore rupees, subject to minimum allotment of one crore rupees per such investor;
- (iii) in case of allocation above 25 crore rupees; a minimum of 5 such investors and a maximum of 15 such investors for allocation up to 25 crore rupees and an additional 10 such investors for every additional 25 crore rupees or part thereof, shall be permitted, subject to a minimum allotment of 1 crore rupees per such investor.
 - The bidding for anchor investors shall open one day before the issue opening date
 - Allocation to Anchor Investors shall be completed on the day of bidding by Anchor Investors.

- Shares allotted to the Anchor Investor shall be locked-in for 30 days from the date of allotment in the public issue.

Upto 60% of the portion available for allocation to QIB shall be available to anchor investor(s) for allocation/allotment (“anchor investor portion”) and one-third of the anchor investor portion shall be reserved for domestic mutual funds.

APPLICATION SUPPORTED BY BLOCK AMOUNT (ASBA)

ASBA means “Application Supported by Blocked Amount”. ASBA is an application by an investor containing an authorization to Self-Certified Syndicate Bank (SCSB) to block the application money in the bank account, for subscribing to an issue. If an investor is applying through ASBA, his application money shall be debited from the bank account only if his/her application is selected for allotment after the basis of allotment is finalized.

Self-Certified Syndicate Bank

Self-Certified Syndicate Bank (SCSB) is a bank which offers the facility of applying through the ASBA process. A bank desirous of offering ASBA facility shall submit a certificate to SEBI as per the prescribed format for inclusion of its name in SEBI’s list of SCSBs.

A SCSB shall identify its Designated Branches (DBs) at which an ASBA investor shall submit ASBA and shall also identify the Controlling Branch (CB) which shall act as a coordinating branch for the Registrar of the issue, Stock Exchanges and Merchant Bankers. The SCSB, its DBs and CB shall continue to act as such, for all issues to which ASBA process is applicable. The SCSB may identify new DBs for the purpose of ASBA process and intimate details of the same to SEBI, after which SEBI will add the DB to the list of SCSBs maintained by it. The SCSB shall communicate the following details to Stock Exchanges for making it available on their respective websites; these details shall also be made available by the SCSB on its website:

- (i) Name and address of all the SCSB.
- (ii) Addresses of DBs and CB and other details such as telephone number, fax number and email ids.
- (iii) Name and contacts details of a nodal officer at a senior level from the CB.

ASBA Process

An ASBA investor submits an ASBA physically or electronically through the internet banking facility, to the SCSB with whom the bank account to be blocked is maintained, then the SCSB blocks the application money in the bank account specified in the ASBA, on the basis of an authorization to this effect given by the account holder in the ASBA. The application money remains blocked in the bank account till finalisation of the basis of allotment in the issue or till withdrawal/failure of the issue or till withdrawal/rejection of the application, as the case may be.

The application data shall thereafter be uploaded by the SCSB in the electronic bidding system through a web enabled interface provided by the Stock Exchanges. Once the basis of allotment of finalized, the Registrar to the Issue sends an appropriate request to the SCSB for unblocking the relevant bank accounts and for transferring the requisite amount to the issuer’s account. In case of withdrawal/failure of the issue, the amount shall be unblocked by the SCSB on receipt of information from the pre-issue merchant bankers.

A retail investor has the option of making application through ASBA or through cheque. However, non-retail investors i.e. Qualified Institutional Buyers and Non-Institutional Investors, have to mandatorily make use of ASBA facility for making application in public/ rights issue.

USE OF UNIFIED PAYMENTS INTERFACE (UPI) WITH ASBA IN PUBLIC ISSUE PROCESS

UPI

Unified Payments Interface (UPI) is an instant payment system developed by the National Payments Corporation of India (NPCI), an RBI regulated entity. UPI is built over the IMPS (Immediate Payment Service) infrastructure and allows you to instantly transfer money between any two parties' bank accounts. UPI as a payment mechanism is available for all public issues for which Red Herring Prospectus is filed after January 01, 2019.

How is public issue application using UPI different from public issue application using ASBA submitted with intermediaries?

Public issue application using UPI is a step towards digitizing the offline processes involved in the application process by moving the same online. This requires you to have to create a UPI ID and PIN using any of the UPI enabled mobile application. The UPI ID can be used for blocking of funds and making payment in the public issue process. One can accept the request to block the funds for the amount they have bid by entering their UPI PIN in the mobile application.

The money shall be blocked and shall be automatically remitted to the Escrow Bank, in case of allotment. UPI in public issue process shall essentially bring in comfort, ease of use and reduce the listing time for public issues.

“UPI as a payment option” can be used in the public issue process”?

1. UPI as part of bidding :

- Investor will fill in the bid details in the application form as per the existing process along with his UPI ID.
- As per the existing process, investor may submit the application with any of the intermediary (Syndicate Member / Registered Stock Brokers / Registrar and Transfer Agents / Depository Participants), who, on receipt of application will upload the bid details along with UPI id in the stock exchange bidding platform.
- The stock exchange will electronically share the bid details, along with investors UPI id, with the Escrow/ Sponsor Bank appointed by the issuer company.

2. UPI as part of blocking:

- The Escrow / Sponsor Bank will initiate a mandate request on the investor i.e. request the investor to authorize blocking of funds equivalent to applicant amount and subsequent debit of funds in case of allotment.
- The request raised by the Escrow/Sponsor Bank, would be electronically received by the investor as SMS/intimation on his / her bank provided mobile no. linked to UPI ID.
- Upon validation of block request by the investor, the said information would be electronically received by the investors' bank, where the funds, equivalent to application amount, would get blocked in investors account. Intimation regarding confirmation of such block of funds in investors account would also be received by the investor.

3. UPI as part of payment for shares post allocation process:

- The registrar to the issue, based on information of bidding and blocking received from stock exchange, would undertake reconciliation and prepare the basis of allotment.

- Upon approval of such basis the instructions would be sent to sponsor bank to initiate process for credit of funds in the public issue escrow account and unblocking excess money.
- Based on authorisation given by investor using UPI PIN at the time of blocking, the funds, equivalent to the allotment, would be debited from investors account and remaining funds, if any, would be unblocked.

Whether use of UPI, as a payment mechanism in public issues, is mandatory?

The applicability of UPI as a payment mechanism has been prescribed in a Phased manner as under:

- **Phase I:** From January 01, 2019, the UPI mechanism for retail individual investors through intermediaries will be made effective along with the existing process and existing timeline of T+6 days. The same will continue, for a period of 3 months or floating of 5 main board public issues, whichever is later.
- **Phase II:** Thereafter, for applications by retail individual investors through intermediaries, the existing process of physical movement of forms from intermediaries to Self-Certified Syndicate Banks (SCSBs) for blocking of funds will be discontinued and only the UPI mechanism with existing timeline of T+6 days will continue, for a period of 3 months or floating of 5 main board public issues, whichever is later.
- **Phase III:** Subsequently, final reduced timeline will be made effective using the UPI mechanism.

Up to what limit one can apply for a public issue in UPI?

The limit for IPO application is 2 Lakhs per transaction on UPI.

Are all category of investors eligible to apply in public issues using UPI for payment?

No. Only retail individual investors are allowed to use UPI for payment in public issues. Qualified Institutional Buyers and High Net-worth Individuals shall continue to apply as per the existing process.

GREEN SHOE OPTION

Green Shoe Option means an option of allocating shares in excess of the shares included in the public issue and operating a post-listing price stabilizing mechanism in accordance with the provisions of Regulations 57 & 153 of the SEBI (ICDR) Regulations, 2018.

A company desirous of availing this option, should in the resolution of the general meeting authorising the public issue, seek authorisation also for the possibility of allotment of further shares to the 'Stabilising Agent' (SA) at the end of the stabilisation period.

GSO in the system of IPO using book-building method was recognised by SEBI in India through its new guidelines on 14th August 2003 (vide SEBI/ CFD/DIL/DIP/ Circular No. 11). ICICI bank was the first to use Green Shoe Option in its public issue through book building mechanism in India.

ILLUSTRATION

Consider a company planning an IPO of say, 100,000 shares, at a book-built price of Rs. 100/-, resulting in an IPO size of Rs. 100,00,000. As per the ICDR Regulations, the over-allotment component under the Green Shoe mechanism could be up to 15% of the IPO, i.e. up to 15,000 shares, i.e. Green Shoe shares. Prior to the IPO, the stabilising agent would borrow such number of shares to the extent of the proposed Green Shoe shares from the pre-issue shareholders. These shares are then allotted to investors along with the IPO shares. The total shares issued in the IPO therefore stands at 115,000 shares. IPO proceeds received from the investors for the IPO shares, i.e.

Rs.100,00,000–100,000 shares at the rate of Rs.100 each, are remitted to the Issuer Company, while the proceeds from the Green Shoe Shares (Rs.15,00,000/-, being 15,000 shares x Rs.100/-) are parked in a special escrow bank account, i.e. Green Shoe Escrow Account. During the price stabilisation period, if the share price drops below Rs.100, the stabilising agent would utilise the funds lying in the Green Shoe Escrow Account to buy these back shares from the open market. This gives rise to the following three situations:

- **Situation #1** - where the stabilising agent manages to buyback all of the Green Shoe Shares, i.e., 15,000 shares;
- **Situation #2** - where the stabilising agent manages to buyback none of the Green Shoe Shares;
- **Situation #3** - where the stabilising agent manages to buy-back some of the Green Shoe Shares, say 10,000 shares.

Let us examine each of these situations separately:

Situation #1 – Where all Green Shoe Shares are bought back: In this situation, funds in the Green Shoe Escrow Account (Rs.15,00,000, in this case) would be deployed by the stabilising agent towards buying up shares from the open market. Given that the prices prevalent in the market would be less than the issue price of Rs. 100, the stabilising agent would have sufficient funds lying at his disposal to complete this operation. Having bought back all of the 15,000 shares, these shares would be temporarily held in a special depository account with the depository participant (Green Shoe Demat Account), and would then be returned back to the lender shareholders, within a maximum period of two days after the stabilisation period.

Situation #2 – Where none of the Green Shoe Shares are bought back: This situation would arise in the (very unlikely) event that the share prices have fallen below the Issue Price, but the stabilising agent is unable to find any sellers in the open market, or in an event where the share prices continue to trade above the listing price, and therefore there is no need for the stabilising agent to indulge in price stabilisation activities.

In either of the above-said situations, the stabilising agent is under a contractual obligation to return the 15,000 shares that had initially been borrowed from the lending shareholder(s). Towards meeting this obligation, the issuer company would allot 15,000 shares to the stabilising agent into the Green Shoe Demat Account (the consideration being the funds lying the Green Shoe Escrow Account), and these shares would then be returned by the stabilising agent to the lending shareholder(s), thereby squaring off his responsibilities.

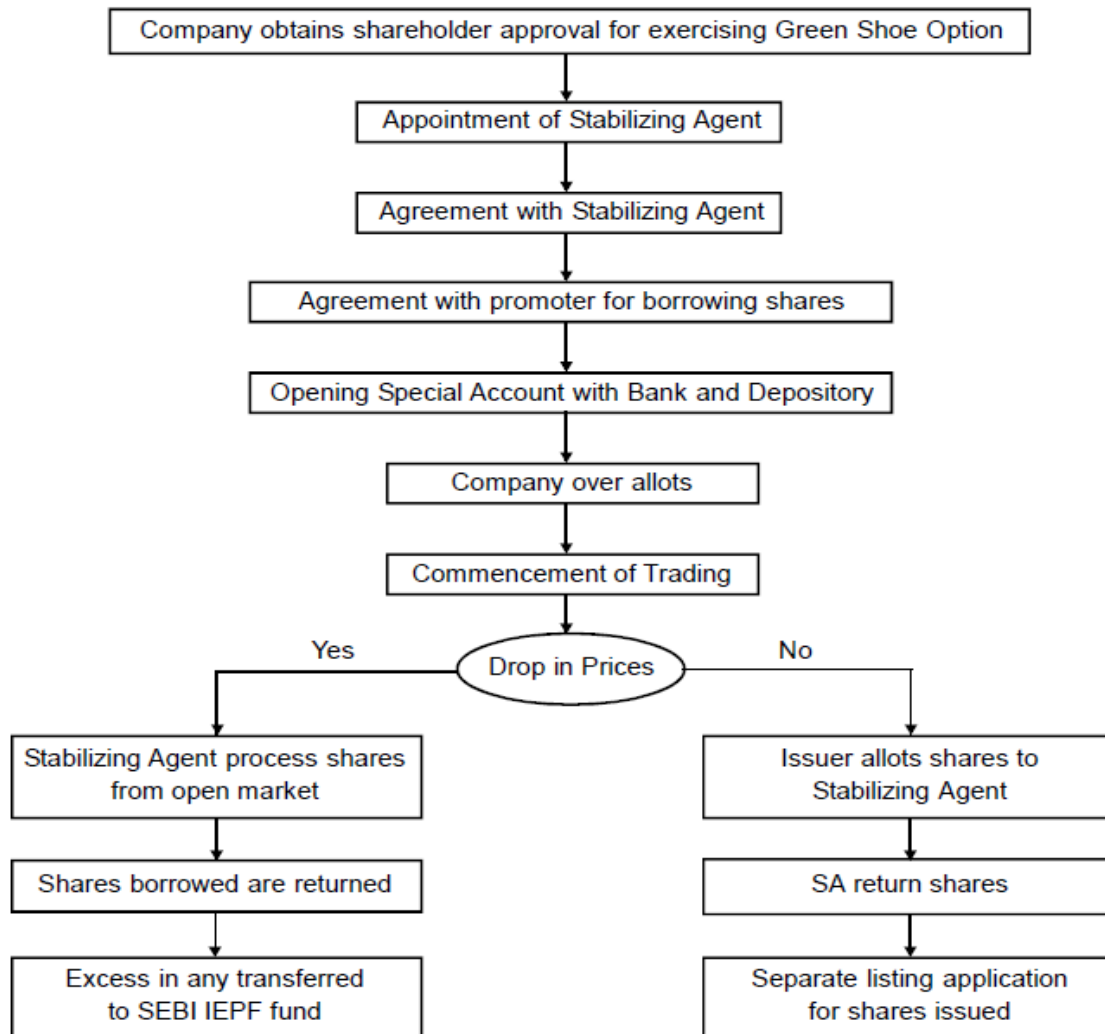
Situation #3 – Where some of the Green Shoe Shares are bought back, say 10,000 shares: This situation could arise in an event where the share prices witness a drop in the initial stages of the price stabilisation period, but recover towards the latter stages.

In this situation, the stabilising agent has a responsibility to return 15,000 shares to the lending shareholder(s), whereas the stabilising activities have yielded only 10,000 shares.

Similar to the instance mentioned in Situation #2 above, the issuer company would allot the differential 5,000 shares into the Green Shoe Demat Account to cover up the shortfall, and the Stabilising Agent would discharge his obligation to the lending shareholder(s) by returning the 15,000 shares that had been borrowed from them.

Both in Situation #2 and #3, the issuer company would need to apply to the exchanges for obtaining listing/trading permissions for the incremental shares allotted by them, pursuant to the Green Shoe mechanism.

Any surplus lying in the Green Shoe Escrow Account would then be transferred to the Investor Protection and Education Fund established by SEBI, as required under ICDR Regulations and the account shall be closed thereafter.

GREEN SHOE OPTION PROCESS

PART II. SECONDARY MARKET**LESSON OUTLINE**

- Stock Exchange
- Trading Mechanism
- Types of Securities
- Margins
- Book Closure and Record Date
- Bulk deal
- Basis of Sensex
- Nifty
- Market Surveillance
- Risk Management in Secondary Market
- Impact of various policies on Stock Markets
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Index of Stock exchange is taken as a barometer of the economy of a country. It is the most dynamic and organised component of capital market. Especially, in developing countries like India, the stock exchanges play a cardinal role in promoting the level of capital formation through effective mobilisation of savings and ensuring investment safety. It is equally important to have the understanding of the governance of Stock Exchanges, and the services they provide to investors.

This part will enable the students to understand the Operation of stock exchanges, Stock Exchange Trading Mechanism, how NIFTY and SENSEX are calculated etc.

STOCK EXCHANGE

Stock exchange is a market place for buying and selling of securities and ensuring liquidity to them in the interest of the investors. The stock exchanges are virtually the nerve centre of the capital market and reflect the health of the country's economy as a whole.

The Securities Contracts (Regulation) Act, 1956, has defined Stock Exchange :

- (a) any body of individuals, whether incorporated or not, constituted before corporatisation and demutualisation under Sections 4A and 4B, or
- (b) a body corporate incorporated under the Companies Act, 2013 whether under a scheme of corporatisation and demutualisation or otherwise,

for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.

Stock exchange as an organized security market provides marketability and price continuity for shares and helps in a fair evaluation of securities in terms of their intrinsic worth. Thus it helps orderly flow and distribution of savings between different types of investments. This institution performs an important part in the economic life of a country, acting as a free market for securities where prices are determined by the forces of supply and demand. Apart from the above basic function it also assists in mobilizing funds for the Government and the Industry and to supply a channel for the investment of savings in the performance of its functions.

The Stock Exchanges in India as elsewhere have a vital role to play in the development of the country in general and industrial growth of companies in the private sector in particular and helps the Government to raise internal resources for the implementation of various development programmes in the public sector. As a segment of the capital market it performs an important function in mobilizing and channelizing resources which remain otherwise scattered. Thus the Stock Exchanges tap the new resources and stimulate a broad based investment in the capital structure of industries.

Indian stock market marks to be one of the oldest stock market in Asia. It dates back to the close of 18th century when the East India Company used to transact loan securities. In the 1830s, trading on corporate stocks and shares in Bank and Cotton presses took place in Bombay. Though the trading was broad but the brokers were hardly half dozen during 1840 and 1850. An informal group of 22 stockbrokers began trading under a banyan tree opposite the Town Hall of Bombay from the mid 1850s, each investing a (then) princely amount of Rupee 1. This banyan tree still stands in the Horniman Circle Park, Mumbai. In 1860, the exchange flourished with 60 brokers.

In fact the 'Share Mania' in India began with the American Civil War broke and the cotton supply from the US to Europe stopped. Further the brokers increased to 250. The informal group of stockbrokers organized themselves as the Native Share and Stockbrokers Association which, in 1875, was formally organized as the Bombay Stock Exchange (BSE). In 1956, the Government of India recognized the Bombay Stock Exchange as the first stock exchange in the country under the Securities Contracts (Regulation) Act. National Stock Exchange of India Ltd. (NSE) was given recognition as a stock exchange under the Securities Contracts (Regulation) Act, 1956 in April 1993, NSE is India's 1st demutualized stock exchange and was demutualized from the date of its inception. NSE commenced operations in the Wholesale Debt Market (WDM) segment in June 1994 and commenced electronic trading in Capital Market 1st time in India in November 1994. NSE is also instrumental in bringing the dematerialization of trading in India.

Since the initiation of the financial liberalisation programme in 1992, there have been substantial regulatory, structural, institutional and operational changes in the securities market of the country. These reforms were carried out with the objective of improving market efficiency, enhancing transparency, preventing unfair trade practices and bringing the Indian securities market up to international standards.

TRADING MECHANISM

In the Indian securities market various products are trading like equity shares, warrants, debenture, etc. The trading in the securities of the company takes place in dematerialised form in India. Dematerialization is the process by which physical certificates of an investor are converted to an equivalent number of securities in electronic form and credited to the investor's account with his Depository Participant (DP). Trading in the securities of the company takes place on the screen based platforms provided by the Exchanges. Currently for equity shares the settlement cycle is (T+2 days) (T means trading day/ Transaction day). Any shares which are traded on the Exchange are required to be settled by the clearing corporation of the exchange on 2 working day.

In electronic trading order received are matched electronically on a strict price/time priority and hence cuts down on time, cost and risk of error, as well as on fraud resulting in improved operational efficiency. It enables market participants, irrespective of their geographical locations, to trade with one another simultaneously. It provides full anonymity by accepting orders, big or small, from brokers without revealing their identity, thus providing equal access to everybody. It also provides a perfect audit trail, which helps to resolve disputes by logging in the trade execution process in entirety.

Regulation 40 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 stipulates that 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.

In accordance with the Rule 9A of The Companies (Prospectus and Allotment of Securities) Rules, 2014, every unlisted public company shall Issue the securities only in dematerialised form and Facilitate dematerialisation of all its existing securities in accordance with provisions of the Depositories Act, 1996 and regulations made there under.

Every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with provisions of the Depositories Act 1996 and regulations made there under.

Every holder of securities of an unlisted public company, who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialised before the transfer or who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018 shall ensure that all his existing securities are held in dematerialized form before such subscription.

TYPES OF SECURITIES

Types of Securities	Listed Securities	The securities of companies, which have signed the listing agreement with a stock exchange, are traded as "Listed Securities" in that exchange.
	Permitted Securities	To facilitate the market participants to trade in securities of such companies, which are actively traded at other stock exchanges in India but are not listed on an exchange, trading in such securities is facilitated as "permitted securities" provided they meet the relevant norms specified by the stock exchange.

MARGINS

An advance payment of a portion of the value of a stock transaction. The amount of credit a broker or lender extends to a customer for stock purchase.

"Initial margin" in this context means the minimum amount, calculated as a percentage of the transaction value,

to be placed by the client, with the broker, before the actual purchase. The broker may advance the balance amount to meet full settlement obligations.

“Maintenance margin” means the minimum amount, calculated as a percentage of market value of the securities, calculated with respect to last trading day’s closing price, to be maintained by client with the broker.

When the balance deposit in the client’s margin account falls below the required maintenance margin, the broker shall promptly make margin calls. However, no further exposure can be granted to the client on the basis of any increase in the market value of the securities.

The broker may liquidate the securities if the client fails to meet the margin calls made by the broker or fails to deposit the cheques on the day following the day on which the margin call has been made or the cheque has been dishonoured.

The broker may also liquidate the securities in case the client’s deposit in the margin account (after adjustment for mark to market losses) falls to 30% or less of the latest market value of the securities, in the interregnum between making of the margin call and receipt of payment from the client.

The broker must disclose to the stock exchange details on gross exposure including the name of the client, unique identification number, name of the scrip and if the broker has borrowed funds for the purpose of providing margin trading facilities, name of the lender and amount borrowed, on or before 12 Noon on the following day.

Stock exchanges disclose scrip wise gross outstanding in margin accounts with all brokers to the market. Such disclosures regarding margin trading done on any day shall be made available after the trading hours on the following day through the website.

BOOK CLOSURE AND RECORD DATE

Book closure is the periodic closure of the Register of Members and Transfer Books of the company, to take a record of the shareholders to determine their entitlement to dividends or to bonus or right shares or any other rights pertaining to shares.

Record date is the 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.

In accordance with Section 91 of the Companies Act, 2013 a company may close the register of members for a maximum of 45 days in a year and for not more than 30 days at any one time subject to giving of previous notice by advertisement at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated. Book closure/record date is necessary for the purpose of paying dividend, rights issue, bonus issue, etc. For the companies whose securities are listed on the Exchange are required to comply with the SEBI (LODR) Regulation 2015. As per SEBI (LODR) Regulation 2015 the companies are required to give 7 working days advance notice of book closure or record date to stock exchange where the securities of the companies are listed.

BLOCK DEAL

The SEBI vide letter MRD/DoP/SE/Cir - 19/05 dated September 02, 2005 and CIR/MRD/DP/118/2017 dated October 26, 2017 guidelines outlining a facility of allowing Stock Exchanges to provide separate trading window to facilitate execution of large trades. The Exchanges have introduced new block window mechanism for the block trades from January 01, 2018.

- Session Timings:

- a) Morning Block Deal Window: This window shall operate between 08:45 AM to 09:00 AM.
- b) Afternoon Block Deal Window: This window shall operate between 02:05 PM to 2:20 PM.
- In the block deal the minimum order size for execution of trades in the Block deal window shall be Rs.10 Crore.
- The orders placed shall be within $\pm 1\%$ of the applicable reference price in the respective windows as stated above.
- The stock exchanges disseminates the information on block deals such as the name of the scrip, name of the client, quantity of shares bought/sold, traded price, etc to the general public on the same day, after the market hours

BULK DEAL

Bulk deal is a trade, where total quantity bought or sold is more than 0.5% of the number of equity shares of a listed company.

Bulk deal can be transacted by the normal trading window provided by brokers throughout the trading hours in a day. Bulk deals are market driven and take place throughout the trading day.

The stock broker, who facilitates the trade, is required to reveal to the stock exchange about the bulk deals on a daily basis.

Bulk orders are visible to everyone. If the bulk deal happens through a single trade, it should be notified to the exchange immediately upon the execution of the order. If it happens through multiple trades, it should be notified to the exchange within one hour from the closure of the trading.

BASIS OF SENSEX

Sensitive Index or Sensex is the stock market index indicator for the BSE. It is also sometimes referred to as BSE S&P Sensex. It was first published in 1986 and is based on the market weighed stock index of 30 companies based on the financial performance. The large, established companies that represent various industrial sectors are a part of this.

The calculation of Sensex is done by a Free-Float method that came into existence from September 1, 2003. The level of Sensex is a direct indication of the performance of 30 stocks in the market. The free-float method takes into account the proportion of the shares that can be readily traded in the market. This does not include the ones held by various shareholders and promoters or other locked-in shares not available in the market.

Steps to calculate Sensex:

- The market capitalization is taken into account. This is done by multiplying all the shares issued by the company with the price of its stock.
- BSE determines a Free-float factor that is a multiple of the market capitalization of the company. This helps in determining the free-float market capitalization based on the details submitted by the company.
- Ratio and Proportion are used based on the base index of 100. This helps to determine the Sensex.

NIFTY

National Stock Exchange Fifty or Nifty is the market indicator of NSE. It is a collection of 50 stocks. It is also referred to as Nifty 50 .it is owned and managed by India Index Services and Products Ltd. (IISL).

Nifty is calculated through the free-float market capitalization weighted method. It multiplies the Equity capital (expressed in terms of number of shares outstanding) with a price, to derive the market capitalization. To

determine the Free-float market capitalization, equity capital (as stated earlier) is multiplied by a price which is further multiplied with IWF (investible weight factors) which is the factor for determining the number of shares available for trading freely in the market. The Index is determined on a daily basis by taking into consideration the current market value (free float market capitalization) divided by base market capital and then multiplied by the Base Index Value of 1000.

MARKET SURVEILLANCE

Market surveillance plays a vital role in ensuring market integrity which is the core objective of regulators. Market integrity is achieved through combination of surveillance, inspection, investigation and enforcement of relevant laws and rules.

Globally market surveillance is either conducted by the Regulators or Exchanges or both. In India, the primary responsibility of market surveillance has been entrusted to Stock exchanges and is being closely monitored by SEBI.

Millions of Orders are transmitted electronically every minute and therefore surveillance mechanisms to detect any irregularities must also be equally developed. Exchanges adopt automated surveillance tools that analyse trading patterns and are installed with a comprehensive alerts management system.

Market Surveillance is broadly categorised in 2 parts viz, Preventive Surveillance and Post trade Surveillance

A. Preventive Surveillance –

- **Stringent On boarding norms for Trading Members** - Stringent net worth, back ground, viability etc. checks while on boarding Trading Members.
- **Index circuit filters** - It brings coordinated trading halt in all equity and equity derivative markets at 3 stages of the index movement, either way viz., at 10%, 15% and 20% based on previous day closing index value.
- **Trade Execution Range** - Orders are matched and trades take place only if the trade price is within the reference price and execution range.
- **Order Value Limitation** - Maximum Order Value limit allowed per order.
- **Cancel on logout** - All outstanding orders are cancelled, if the enabled user logs out.
- **Kill switch** - All outstanding orders of that trading member are cancelled if trading member executes kill switch.
- **Risk reduction mode** - Limits beyond which orders level risk management shall be initiated instead of trade level.
- **Compulsory close out** - Incoming order, if it results in member crossing the margins available with the exchange, such order will be partially or fully cancelled, as the case may be, and further disallow the trading member to create fresh positions.
- **Capital adequacy check** - Refers to monitoring of trading member's performance and track record, stringent margin requirements, position limits based on capital, online monitoring of member positions and automatic disablement from trading when limits are breached
- **Fixed Price Band / Dynamic Price band** - Limits applied within which securities shall move; so that volatility is curbed orderliness is brought about. For non-derivative securities price band is 5%, 10% & 20%. For Derivative products an operating range of 10% is set and subsequently flexed based on market conditions.
- **Trade for Trade Settlement** - The settlement of scrip's available in this segment is done on a trade for trade basis and no netting off is allowed.

- **Periodic call auction** - Shifting the security from continuous to call auction method
- **Rumour Verification** - Any unannounced news about listed companies is tracked on online basis and letter seeking clarification is sent to the companies and the reply received is disseminated

B. Post trade surveillance -

- **End of day alert** – Alerts generated using statistical tools. The tool highlights stocks which have behaved abnormally from its past behaviour
- **Pattern recognition model** – Models designed using high end tools and trading patterns which itself identifies suspects involving in unfair trading practice.
- **Transaction alerts for member** - As part of surveillance obligation of members the alerts are downloaded to members under 14 different heads.

Preventive approach adapted by Stock Exchange / SEBI has been fruitful. However, they are fully aware that the suite of measure in force have to be upgraded, expanded and added to be able to successful in this preventive approach.

SEBI has introduced various market surveillance measure like price band, circuit filter, trade for trade segment.

RISK MANAGEMENT IN SECONDARY MARKET

The performance of secondary market has a vital bearing on the performance of primary market. A number of measures were taken to modernise the stock exchanges in the country. These measures focused on infrastructure development, transparency, efficiency and enhanced investor protection. Risk management was further strengthened during the year by implementing a comprehensive system of margins, exposure limits and improving the efficiency of clearing and settlement systems through the introduction of settlement guarantee funds. With a view to enhancing market safety, SEBI fixed intra-day trading and gross exposure limits for brokers. SEBI continued to maintain a constant interface with the stock exchanges on various issues concerning investor protection, automated market infrastructure and overall improvement in quality of intermediation. SEBI also directed its efforts towards encouraging the stock exchanges to become effective as self-regulatory institutions. Automated screen based trading which was introduced in the country through the setting up of the OTCEI and NSE and subsequently introduced by the BSE had brought about a qualitative improvement in the market and its transparency. Transaction costs and time were also significantly reduced. During the year several of the smaller exchanges also introduced on-line screen based trading. The key risk management measures initiated by SEBI include:-

- Categorization of securities into groups 1, 2 and 3 for imposition of margins based on their liquidity and volatility.
- VaR (value at risk) based margining system.
- Specification of mark to Market margins.
- Specification of Intra-day trading limits and Gross Exposure Limits.
- Real time monitoring of the Intra-day trading limits and Gross Exposure Limits by the Stock Exchanges.
- Specification of time limits of payment of margins.
- Collection of margins on upfront basis.
- Index based market wide circuit breakers.
- Automatic de-activation of trading terminals in case of breach of exposure limits.

- VaR based margining system has been put in place based on the categorization of stocks based on the liquidity of stocks depending on its impact cost and volatility. It addresses 99% of the risks in the market.
- Additional margins have also been specified to address the balance 1% cases.
- Collection of margins from institutional clients on T+1 basis.

IMPACT OF VARIOUS POLICIES ON STOCK MARKETS

1. FED Policy

The Federal Reserve System is the central bank of the United States. It performs five general functions to promote the effective operation of the U.S. economy and, more generally, the public interest. The Federal Reserve:

- conducts the nation's monetary policy to promote maximum employment, stable prices, and moderate long-term interest rates in the U.S. economy;
- promotes the stability of the financial system and seeks to minimize and contain systemic risks through active monitoring and engagement in the U.S. and abroad;
- promotes the safety and soundness of individual financial institutions and monitors their impact on the financial system as a whole;
- fosters payment and settlement system safety and efficiency through services to the banking industry and the U.S. government that facilitate U.S.-dollar transactions and payments; and
- promotes consumer protection and community development through consumer-focused supervision and examination, research and analysis of emerging consumer issues and trends, community economic development activities, and the administration of consumer laws and regulations.

How change in US Fed rate can impact India?

The Fed Funds Rate is the interest rate at which the top US banks borrow overnight money from common reserves. All American banks are required to park a portion of their deposits with the Federal Reserve in cash, as a statutory requirement.

Actually, fed fund rate gives the direction in which US interest rates should be heading at any given point of time. If the Fed is increasing the interest rates, lending rates for companies and retail borrowers will go up and vice versa. In India, hike in repo rate may not impact the countries outside India. On the other hand, US interest rates matter a lot to global capital flows. Some of the world's richest institutions and investors have their base in USA. They constantly compare Fed rates with interest rates across the world to make their allocation decisions.

In the globalised world, markets are connected. An increase in Fed rates will be negative in general for the US stock market and if it leads to another round of sell-offs, it will also have ripple effects on the Indian market.

Any changes in the Fed Fund Rates impact the domestic borrowing market to a large extent. For instance, if the Fed rates go up, it will make the RBI hesitant in cutting rates at that time. The reason is that if RBI cut rates it will lead to heavy pullout of foreign investors from the Indian bond market.

Rupee Vs Dollar:

If the Fed rates are hiked, the value of the dollar would go up, thus weakening Indian rupee in comparison. This might hurt India's forex reserves and imports. However, the weaker rupee is good for India's exports but low global demand and stiff competition would not leave much room for Indian exporters to capitalise the situation. DBS said that India's financing requirements will keep the rupee vulnerable to rising US rates this year.

Bond market pressure:

Due to the higher Fed rates, US' 10-year bond yields are expected to go up, which will also put pressure on India's 10-year government bond yields.

RBI repo rate:

With higher Fed rates weakening the Rupee, India's imports bill is likely to go up putting pressure on the RBI to either increase repo rates or at least refrain from cutting rates in the upcoming monetary policy meetings.

2. Credit Policy of RBI

The Reserve Bank of India has a credit policy which aims at pursuing higher growth with price stability. Higher economic growth means to produce more quantity of goods and services in different sectors of an economy; The term monetary policy is also known as RBI's credit policy or money management policy. It is basically the central bank's view on what should be the supply of money in the economy and also in what direction the interest rates should move in the banking system. It refers to the use of credit policy instruments which are at the disposal of central bank to regulate the availability, cost and use of money and credit to promote economic growth, price stability, optimum levels of output and employment, balance of payments equilibrium, stable currency or any other goal of government's economic policy.

The credit policy aims at increasing finance for the agriculture and industrial activities. When credit policy is implemented, the role of other commercial banks is very important. Commercial banks flow of credit to different sectors of the economy depends on the actual cost of credit and availability of funds in the economy.

The objectives of a monetary policy are similar to the five year plans of our country. In a nutshell it is basically a plan to ensure growth and stability of the monetary system. The significance of the monetary policy is to attain the following objectives.

1. **Rapid Economic Growth:** It is an important objective as it can play a decisive role in the economic growth of country. It influences the interest rates and thus has an impact on the investment. If the RBI adopts an easy credit policy, it would be doing so by reducing interest rates which in turn would improve the investment outlook in the country. This would in turn enhance the economic growth. However faster economic growth is possible if the monetary policy succeeds in maintaining income and price stability
2. **Exchange Rate Stability:** Another important objective is maintaining the exchange rate of the home currency with respect to foreign currencies. If there is volatility in the exchange rate, then the international community loses confidence in the economy. So it is necessary for the monetary policy to maintain the stability in exchange rate. The RBI by altering the foreign exchange reserves tries to influence the demand for foreign exchange and tries to maintain the exchange rate stability.
3. **Price Stability:** The monetary policy is also supposed to keep the inflation of the country in check. Any economy can suffer both inflation and deflation both of which are harmful to the economy. So the RBI has to maintain a fair balance in ensuring that during recession it should adopt an 'easy money policy' whereas during inflationary trend it should adopt a 'dear money policy'
4. **Balance of Payments (BOP) Equilibrium:** Another key objective is to maintain the BOP equilibrium which most of the developing economies don't tend to have. The BOP has two aspects which are 'BOP surplus' and 'BOP deficit'. The former reflects an excess money supply in the domestic economy, while the later stands for stringency of money. If the monetary policy succeeds in maintaining monetary equilibrium, then the BOP equilibrium can be achieved.
5. **Neutrality of Money:** RBI's policy should regulate the supply of money. It is possible that the change in money supply causes disequilibrium and the monetary policy should neutralize it. However this

objective of a monetary policy is always criticized on the ground that if money supply is kept constant then it would be difficult to attain price stability.

Bank Rate: is the rate at which RBI discount bills for commercial banks. This banking system involves commercial and Co-operative Banks, Industrial Development Bank of India, IFC, EXIM Bank and other approved financial institutions. Funds are provided through lending directly or rediscounting or buying money market instruments like Commercial Bills or Treasury Bills. Increase in Bank Rate increases the cost of borrowing by commercial banks which results in the reduction of credit volume to the banks and hence declines the money supply. Increase in Bank Rate means tightening of RBI's Monetary Policy.

Various Quantitative instrument of Credit Policy

Repo Rate: The rate at which the Commercial Banks borrow money from RBI. Reduction in Repo Rate helps the Commercial Banks to get money at a cheaper rate and an Increase in Repo Rate discourages the Commercial Banks to get money as the rate increases and becomes expensive. The increase in the Repo Rate will increase the cost of borrowing and lending of the banks which will discourage the public to borrow money and encourages them to deposit.

Cash Reserve Ratio (CRR) : Cash reserve ratio is the amount which the commercial banks have to maintain as cash deposit with the Reserve Bank of India. RBI may increase the CRR if it thinks that there is large amount of money supply in the economy. Conversely, it will decrease the CRR if it is of the opinion that inflation is in control and the industry needs a monetary boost up. The reduction in CRR will provide more money in the hands of commercial banks which it will pass it on to the industry. More money in the hands of industry will boost up production, consumption and employment.

Statutory Liquidity Ratio (SLR) : Statutory Liquidity Ratio is the amount which commercial banks have to keep it with itself. So, SLR is the amount of money which banks have to keep in its custody at all times. SLR is also a very powerful tool to control liquidity in the economy. To encourage industries to boost up their production, SLR may be decreased to put more money in the hands of commercial banks. An increase in SLR is used as an inflation control measure to control price rise.

Reverse Repo Rate (RRR): is the rate at which the RBI borrows money from the Commercial Banks. An increase in the reverse repo rate will decrease the money supply and vice-versa, other things remaining constant. An increase in Reverse Repo Rate means that Commercial Banks will get more incentives to park their funds with the RBI, therefore decreasing the supply of money in Market. An increase in the Repo Rate and the Reverse Repo rate indicates strengthening of RBI's Monetary Policy.

3. Inflation Index

An index is just a collection of data that serves as a baseline for future reference. We use the index model in all areas of life, from the stock market, to inflation. We index wage levels, corporate profits as a percentage of GDP, and almost anything else that can be measured. We do this to compare where we are now to where we have been in the past.

An inflation index is an economic tool used to measure the rate of inflation in an economy. There are several different ways to measure inflation, leading to more than one inflation index with different economists and investors preferring one method to another, sometimes strongly.

Inflation Indices

In India, Consumer Price Index (CPI) and Wholesale Price Index (WPI) are two major indices for measuring inflation. In United States, CPI and PPI (Producer Price Index) are two major indices.

The Wholesale Price Index (WPI) was main index for measurement of inflation in India till April 2014 when RBI adopted new Consumer Price Index (CPI) (combined) as the key measure of inflation.

a. Wholesale Price Index

Wholesale Price Index (WPI) is computed by the Office of the Economic Adviser in Ministry of commerce & Industry, Government of India. It was earlier released on weekly basis for Primary Articles and Fuel Group. However, since 2012, this practice has been discontinued. Currently, WPI is released monthly.

Salient notes on WPI are as follows:

Base Year

Current WPI Base year is 2004-05=100. It's worth note that the base year for CPI is 2012 currently. This is one reason for increasing difference between CPI and WPI in recent times.

Items

There are total 676 items in WPI and inflation is computed taking 5482 Price quotations. These items are divided into three broad categories viz. (1) Primary Articles (2) Fuel & power and (3) Manufactured Products.

WPI does not take into consideration the retail prices or prices of the services.

b. Consumer Price Index

Consumer Price Indices (CPI) released at national level are:

- CPI for Industrial Workers (IW)
- CPI for Agricultural Labourers (AL)/ Rural Labourers (RL)
- CPI (Rural/Urban/Combined).

While the first two are compiled and released by the Labour Bureau in the Ministry of Labour and Employment, the third by the Central Statistics Office (CSO) in the Ministry of Statistics and Programme Implementation. In India, RBI uses CPI (combined) released by CSO for inflation purpose. Important notes on this index are as follows

Base Year

Base year for CPI (Rural, Urban, Combined) is 2012=100.

Number of items

The number of items in CPI basket include 448 in rural and 460 in urban. Thus, it makes it clear that CPI basket is broader than WPI basket. The items in CPI are divided into 6 main groups.

Key differences between WPI & CPI

- Primary use of WPI is to have inflationary trend in the economy as a whole. However, CPI is used for adjusting income and expenditure streams for changes in the cost of living.
- WPI is based on wholesale prices for primary articles, administered prices for fuel items and ex-factory prices for manufactured products. On the other hand, CPI is based on retail prices, which include all distribution costs and taxes.
- Prices for WPI are collected on voluntary basis while price data for CPI are collected by investigators by visiting markets.
- CPI covers only consumer goods and consumer services while WPI covers all goods including intermediate goods transacted in the economy.
- WPI weights primarily based on national accounts and enterprise survey data and CPI weights are derived from consumer expenditure survey data.

Impact of Policies on Indian Stock Market

Since monetary policies are influenced by inflation and inflationary expectations in the economy it is therefore, critical that inflation index should be able to predict future inflation with reasonable accuracy. Generally, when a country is operating in a low interest rate regime, borrowers can borrow money at a lower interest rate. This aids in increased purchasing power of the consumers. The demand for the goods increase and subsequently sensing a higher demand, the prices will also rise. This condition drives the inflation rates higher. When the inflation rates have raised more than the optimal levels, the Reserve Bank of India (RBI) steps in to increase interest rate to control inflation rate. When inflationary pressure starts building in the economy, RBI hikes the repo rate and/or cash reserve ratio (CRR) to manage the money supply causing higher inflation.

Maintaining an optimal inflation rate is the primary task of Monetary Policy decision makers of any nation. An optimal inflation rate ensures a healthy economy. More often than not, the policy makers tend to spur growth in a stalled economy by slashing the interest rates, thereby increasing the money available in the markets. However, in order to implement such rate cuts the inflation rate should be at an optimal level. So, it becomes a prime responsibility of Reserve Bank to monitor Wholesale Price Index (WPI) and Consumer Price Index (CPI) to ensure that economy is balance.

A rise in the inflation rate impacts market sentiments. A higher inflation rate drives the interest rates higher and hence borrowing becomes costly for the banks, corporates and financial institutions. Therefore, the valuations of capital-intensive companies and sectors may come under pressure as their margins decrease due to the higher interest burden.

However, the markets are governed by many factors and the direction cannot be determined by reading just one factor. Global sentiments and global funds inflows are other crucial factors that impact the direction of stock markets significantly.

LESSON ROUND UP

- A wide variety of financial institutions have been set up at the national level. They include development banks like IDBI, SIDBI, IFCI, IIBI; specialised financial institutions like IVCF, ICICI Venture Funds Ltd, TFCI and investment institutions like LIC, GIC, UTI; etc.
- All FPIs are required to be mandatorily registered into three broad categories i.e. Category I, Category II, Category III under SEBI (Foreign Portfolio Investors) Regulations, 2014
- 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.
- Debenture is a document evidencing a debt or acknowledging it and any document which fulfils either of these conditions is a debenture.
- The FCCBs are unsecured instruments which carry a fixed rate of interest and an option for conversion into a fixed number of equity shares of the issuer company.
- Issue of IDRs is regulated by section 390 of the Companies Act, 2013, Rule 13 of the Companies (Registration of Foreign Companies) Rules, 2014 and Chapter X & XA of SEBI (ICDR) Regulations, 2009.
- Book Building means a process undertaken by which a demand for the securities proposed to be issued by a body corporate is build up and a 'Fair Price' and 'Quantum' of securities to be issued is finally determined.
- ASBA is an application for subscribing to an issue, containing an authorization to block the application money in a bank account.

- Stock exchange is a market place for buying and selling of securities and ensuring liquidity to them in the interest of the investors.
- Securities traded in the stock exchanges can be classified as Listed cleared Securities and Permitted Securities.
- The trading in the securities of the company takes place in dematerialised form in India.
- There are various factors and monetary policies which has a significant impact on the working of stock markets in India like RBI Monetary Policy, Consumer Price Index (CPI) , Wholesale Price Index (WPI) and US FED Policy

GLOSSARY

Circuit Breaker	A system to curb excessive speculation in the stock market, applied by the Stock Exchange authorities, when the index spurts or plunges by more than a specified per cent. Trading is then suspended for some time to let the market cool down.
Clearing	Settlement or clearance of accounts, for a fixed period in a Stock Exchange
Closing Price	The rate at which the last transaction in a security is struck before the close of the trading hours.
Credit Risk	The risk that a counterparty will not settle an obligation for full value, either when due or at any time thereafter. Credit risk includes pre-settlement risk (replacement cost risk) and settlement risk (Principal risk).
Demutualization	Process of transition from “mutually-owned” association to a company “owned by shareholders”. In other words, transformation of the legal structure from a mutual form to a business corporation form and privatisation of the corporations so constituted, is referred to as demutualization.
Fill or Kill (FoK) Order	An order that requires the immediate purchase or sale of a specified amount of stock, though not necessarily at one price. If the order cannot be filled immediately, it is automatically cancelled (killed)
Interest Rate Risk	The risk that movements in the interest rates may lead to a change in expected return.
Liquidity Adjustment Facility (LAF)	Under the scheme, repo auctions (for absorption of liquidity) and reverse repo auctions (for injection of liquidity) will be conducted on a daily basis (except Saturdays). It will be same-day transactions, with interest rates decided on a cut-off basis and derived from auctions on a uniform price basis.
Mark to market margin (MTM)	Collected in cash for all Futures contracts and adjusted against the available Liquid Net worth for option positions. In the case of Futures Contracts MTM may be considered as Mark to Market Settlement.
Market Maker	A member firm who give two way quotation for particular security (ies) and who is under an obligation to buy and sell them subject to certain conditions such as overall exposure, spread etc.
Netting:	A system whereby outstanding financial contracts can be settled at a net figure, i.e. receivables are offset against payables to reduce the credit exposure to a counterparty and to minimize settlement risk.

Screen based trading	Form of trading that uses modern telecommunication and computer technology to combine information transmission with trading in financial markets.
Trading member	A member of the derivatives exchange or derivatives segment of a stock exchange who settles the trade in the clearing corporation or clearing house through a clearing member.

SELF TEST QUESTIONS

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

1. Briefly explain about different types of national level financial institutions.
2. What do you understand by private equity? Discuss about different categories of private equity.
3. What are the conditions for issue of Shares with differential voting rights under Companies Act, 2013?
4. What do you understand by Book Building? Explain briefly the book building process.
5. Briefly explain about the impact of various monetary policies on Indian stock market.

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Lesson 16

Securities Market Intermediaries

LESSON OUTLINE

- Introduction
- Internal Audit of Intermediaries by Company Secretary in Practice
- Role of Company Secretary
- LESSON ROUND UP
- GLOSSARY
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Intermediaries are service providers and are an integral part of any financial system. SEBI regulates various intermediaries in the primary and secondary markets through its various Regulations for these respective intermediaries. SEBI has defined the role of each of the intermediary, the eligibility criteria for granting registration, their functions and responsibilities and the code of conduct to which they are bound. These Regulations also empower SEBI to inspect the functioning of these intermediaries and to collect fees from them and to impose penalties on erring entities.

This lesson will enable the students to know about the role and responsibilities of intermediaries and regulatory framework of the intermediaries operating in the Primary and the Secondary markets. Further, the student will be get to know about the internal audit of various intermediaries where a Company Secretary in practice SEBI is authorised by the SEBI to conduct the audit of such intermediaries.

INTRODUCTION

The capital market intermediaries are vital link between investor, issuer and regulator. The objective of these intermediaries is to smoothen the process of investment and to establish a link between the investors and the users of funds.

Corporations and Governments do not market their securities directly to the investors. Instead, they hire the services of the market intermediaries to represent them to the investors. Investors, particularly small investors, find it difficult to make direct investment. A small investor desiring to invest may be able to diversify across issuers to reduce risk. He may not be equipped to assess and monitor the credit risk of issuers. Market intermediaries help investors to select investments by providing investment consultancy, market analysis and credit rating of investment instruments.

In order to operate in secondary market, the investors have to transact through share brokers. Registrars and Share Transfer Agents, Custodians and Depositories Participants are capital market intermediaries that provide important infrastructure services for both primary and secondary markets.

According to SEBI (Intermediaries) Regulations, 2008, “intermediary” means a person mentioned in clauses (b) and (ba) of sub-section (2) of section 11 and sub-section (1) and (1A) of section 12 of the Act and includes an asset management company in relation to the SEBI (Mutual Funds) Regulations, 1996, a clearing member of a clearing corporation or clearing house and a trading member of a derivative segment or currency derivatives segment of a stock exchange **but does not include foreign institutional investor, foreign venture capital investor, mutual fund, collective investment scheme and venture capital fund.**

SEBI has issued regulations in respect of each intermediary to ensure proper services to be rendered by them to the investors and the capital market.

These Regulations also empower SEBI to inspect the functioning of these intermediaries and to collect fees from them and to impose penalties on erring entities. As per Section 11 of SEBI Act, it is the duty of SEBI to register and regulate the working of stock brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities market in any manner.

The following market intermediaries are involved in the Securities Market:

- Merchant Bankers
- Registrars and Share Transfer Agents
- Underwriters
- Bankers to an issue
- Debenture Trustees
- Stock-brokers
- Portfolio managers
- Custodians
- Investment Advisers
- Research Analysts
- Credit Rating Agencies
- Depository Participant

REGULATORY FRAMEWORK OF INTERMEDIARIES

SI No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
1.	Merchant Banker	'Merchant Banker' means any person engaged in the business of issue management either by making arrangements regarding selling buying or subscribing to securities or acting as manager/consultant/advisor or rendering corporate advisory services in relation to such issue management.	It is necessary for an issuer to appoint a merchant banker for : (a) Managing of public issue of securities; (b) Underwriting connected with the aforesaid public issue management business; (c) Managing/Advising on international offerings of debt/equity i.e. GDR, ADR, bonds and other instruments; (d) Private placement of securities; (e) Primary or satellite dealership of government securities; (f) Corporate advisory services related to securities market including takeovers, acquisition and disinvestment; (g) Stock broking; (h) Advisory services for projects; (i) Syndication of rupee term loans; (j) International financial advisory services	SEBI (Merchant Bankers) Regulations, 1992	Not less than five crore rupees.
2.	Registrars and Share Transfer Agents	'Registrar to an Issue' means the person appointed by a body corporate or any person or group of persons to carry on the following activities on its or his or their behalf : (i) collecting application for investor in respect of an issue;	Pre-issue Activities <ul style="list-style-type: none"> • Sending instructions to Banks for reporting of collection figures and collection of applications. • Providing Practical inputs to the Lead Manager and Printers regarding the design of the Bid cum- • Application form. 	SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993	Capital adequacy requirement (networth) for category I is Rs. 50,00,000 and category II is Rs. 25,00,000.

	<p>(ii) keeping a proper record of applications and monies received from investors or paid to the seller of the securities; and</p> <p>(iii) assisting body corporate or person or group of persons in –</p> <p>(a) determining the basis of allotment of the securities in consultation with the stock exchange;</p> <p>(b) finalising the list of person entitled to allotment of securities;</p> <p>(c) processing and dispatching of allotment letters, refund orders or certificates and other related documents in respect of the issue;</p> <p>‘Share Transfer Agent’ means:</p> <p>(i) any person who on behalf of any body corporate, maintains the records of holders of securities issued by such body corporate and deals with all matters connected with the transfer and redemption of its securities;</p> <p>(ii) the department or division, by whatever name called, of a body corporate performing the activities as share transfer agents if at any time the total number of holders of its securities issued exceed one lakh.</p>	<ul style="list-style-type: none"> • Facilitate and establish information flow system between clients , Banks and Managers to the issue. • Liaison with Regulatory Authorities such as SEBI & Stock Exchanges. <p>Activities during the Issue</p> <ul style="list-style-type: none"> • Collection and Reporting of daily Collection figures. • Collection of Data and Forms from Banks. • Liaising with clients and Intermediaries to the Issue. <p>Post Issue Activities</p> <ul style="list-style-type: none"> • Data capturing & validation • Reconciliation • Provide Allotment Alternatives in consultation with Client / Merchant Banker and Stock Exchanges • Facilitating Listing • Uploading of data to the Depositories for crediting of securities electronically • Dispatch of Refund orders / Share Certificates / Credit Advise • Periodic Report submission to Regulatory Authorities • Reconciliation of Refund payments • Attending to post issue Investor queries • Web-based investor enquiry system for allotment / refund details <p>GENERAL OBLIGATIONS AND RESPONSIBILITIES</p> <ul style="list-style-type: none"> – Every registrar to an issue and share transfer agent holding a certificate shall at all times abide by the Code of Conduct. 	
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			<ul style="list-style-type: none"> - Registrar to an issue shall not to act as such registrar for any issue of securities in case he or it is an associate of the body corporate issuing the securities. - Every registrar to an issue and share transfer agent being a body corporate shall keep and maintain proper books of accounts and records. - the registrar to an issue or share transfer agent shall preserve the books of accounts and other records and documents maintained for a minimum period of three years. - Every registrar to an issue and share transfer agent shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc. issued by the SEBI or the Central Government and for redressal of investors' grievances. 		
3.	Underwriters	<p>Underwriter means a person who engages in the business of underwriting of an issue of securities of a body corporate. Underwriting is an arrangement whereby certain parties assure the issuing company to take up shares, debentures or other securities to a specified extent in case the public subscription does not amount to the expected levels.</p> <p>Underwriting is compulsory for a public issue.</p>	<p>It is the underwriter who agrees to take up securities which are not fully subscribed in a public issue. The Underwriter makes a commitment to get the issue subscribing either by others or by themselves.</p> <p>GENERAL OBLIGATIONS AND RESPONSIBILITIES</p> <ul style="list-style-type: none"> – Every underwriter shall at all times abide by the Code of Conduct. – Every underwriter shall enter into an agreement with each body corporate on whose behalf he is acting as underwriter. – The underwriter shall not derive any direct or indirect benefit from underwriting the issue other than the commission or brokerage payable under an agreement for underwriting. 	SEBI (Under Writers) Regulations, 1993	Not less than the net worth of Rs. 20 lakhs.

			<ul style="list-style-type: none"> – The total underwriting obligations under all the agreements shall not exceed twenty times the net worth. – Every underwriter, in the event of being called upon to subscribe for securities of a body corporate pursuant to an agreement shall subscribe to such securities within 45 days of the receipt of such intimation from such body corporate. – every underwriter shall keep and maintain proper books of account and records. – Every underwriter shall preserve the books of account and other records and documents for a minimum period of five years. – Every underwriter shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions, etc., issued by the SEBI or the Central Government and for redressal of investors' grievances. – The SEBI may at any time call for any information from an underwriter with respect to any matter relating to underwriting business. 		
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4.	Bankers to an issue	<p>Banker to an Issue means a scheduled bank carrying on all or any of the following activities:</p> <p>(i) Acceptance of application and application monies;</p> <p>(ii) Acceptance of allotment or call monies;</p> <p>(iii) Refund of application monies;</p> <p>(iv) Payment of dividend or interest warrants.</p>	<p>Bankers to the issue, as the name suggests, carries out all the activities of ensuring that the funds are collected and transferred to the Escrow accounts. While one or more banks may function as Bankers to the Issue as well as collection banks, others may do the limited work of collecting the applications for securities along with the remittance in their numerous branches in different centres. The banks are expected to furnish prompt information and records to the company and to the lead manager for monitoring and progressing the issue work.</p> <p>GENERAL OBLIGATIONS AND RESPONSIBILITIES</p> <ul style="list-style-type: none"> – Every banker to an issue shall maintain books of account, records and the documents. – Every banker to an issue shall furnish the information to the SEBI when required. – Every banker to an issue shall enter into an agreement with the body corporate for whom it is acting as banker to an issue. – Every banker to an issue shall inform the SEBI forthwith if any disciplinary action is taken by the Reserve Bank against the banker to an issue only in relation to issue payment work. – Every banker to an issue shall abide by the code of conduct. – Every banker to an issue shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions, etc., issued by the SEBI or the Central Government and for redressal of investors' grievances. 	SEBI (Bankers To an Issue) Regulations, 1994	--
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5.	Debenture Trustees	Debenture Trustee' means a trustee of a trust deed for securing any issue of debentures of a body corporate.	<ul style="list-style-type: none"> – Call for periodical reports from the body corporate, i.e., issuer of debentures. – Take possession of trust property in accordance with the provisions of the trust deed. – Enforce security in the interest of the debenture holders. – Ensure on a continuous basis that the property charged to the debenture is available and adequate at all times to discharge the interest and principal amount payable in respect of the debentures and that such property is free from any other encumbrances except those which are specifically agreed with the debenture trustee. – Exercise due diligence to ensure compliance by the body corporate with the provisions of the Companies Act, the listing agreement of the stock exchange or the trust deed. – To take appropriate measures for protecting the interest of the debenture holders as soon as any breach of the trust deed or law comes to his notice. – To ascertain that the debentures have been converted or redeemed in accordance with the provisions and conditions under which they are offered to the debenture holders. – Inform the SEBI immediately of any breach of trust deed or provision of any law. – Appoint a nominee director on the board of the body corporate when required. 	SEBI (Debenture Trustees) Regulations, 1993	Not less than the net worth of Rs. 10 crores
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6.	Stock-brokers	<ul style="list-style-type: none"> • Stock-broker means a member of stock exchange and they are the intermediaries who are allowed to trade in securities on the exchange of which they are members. They buy and sell on their own behalf as well as on behalf of their clients. 	<p>A stock broker plays a very important role in the secondary market helping both the seller and the buyer of the securities to enter into a transaction. The buyer and seller may be either a broker or a client. When executing an order, the stock broker may on behalf of his client buy or sell securities from his own account i.e. as principal or act as an agent. For each transaction he has to issue necessary contract note indicating whether the transaction has been entered into by him as a principal or as an agent for another. While buying or selling securities as a principal, the stock broker has to obtain the consent of his client and the prices charged should be fair and justified by the conditions of the market.</p> <p>GENERAL OBLIGATIONS AND RESPONSIBILITIES</p> <ul style="list-style-type: none"> – Every Stock Broker shall keep and maintain the proper books of account, records and documents. – Every stock broker shall preserve the books of account and other records maintained for a minimum period of five years. – Every stock broker shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions, etc., issued by the SEBI or the Central Government and for redressal of investors' grievances. 	SEBI (Stock Brokers) Regulations, 1992	As specified in Schedule VI of these Regulations.
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7.	Portfolio managers	<p>Portfolio manager means any person who pursuant to contract or arrangement with the client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or the funds of the clients as the case may be.</p> <p>“Discretionary portfolio manager” is defined as portfolio manager who exercises or may exercise, under a contract relating to portfolio management, exercise any degree of discretion as to the investment or the management of the portfolio of the securities or the funds of the client.</p> <p>“Portfolio” means the total holdings of securities belonging to any person.</p>	<p>A portfolio manager plays a pivotal role in deciding the best investment plan for an individual as per his income, age as well as ability to undertake risks. A portfolio manager is responsible for making an individual aware of the various investment tools available in the market and benefits associated with each plan. Make an individual realize why he actually needs to invest and which plan would be the best for him. A portfolio manager is responsible for designing customized investment solutions for the clients according to their financial needs.</p> <p>GENERAL OBLIGATIONS AND RESPONSIBILITIES</p> <ul style="list-style-type: none"> – Every portfolio manager shall abide by the Code of Conduct. – The portfolio manager shall, before taking up an assignment of management of funds and portfolio on behalf of a client, enter into an agreement in writing with such client that clearly defines the inter se relationship and sets out their mutual rights, liabilities and obligations relating to management of portfolio. – The discretionary portfolio manager shall individually and independently manage the funds of each client in accordance with the needs of the client whereas the non-discretionary portfolio manager shall manage the funds in accordance with the directions of the client.. – The portfolio manager shall not accept from the client, funds or securities worth less than fifty lakh rupees. – The portfolio manager shall act in a fiduciary capacity with regard to the client's funds. 	SEBI (Portfolio Managers) Regulations, 2020	Not less than the net worth of Rs. 5 crores.
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			<ul style="list-style-type: none"> – The portfolio manager shall segregate each client's holding in securities in separate accounts. – The portfolio manager shall keep the funds of all clients in a separate account to be maintained by it in a Scheduled Commercial Bank. – The portfolio manager shall transact in securities within the limitation placed by the client himself with regard to dealing in securities under the provisions of the Reserve Bank of India Act, – The portfolio manager shall not derive any direct or indirect benefit out of the client's funds or securities. – The portfolio manager shall not borrow funds or securities on behalf of the client. – The portfolio manager shall not lend securities held on behalf of the clients to a third person except as provided under SEBI (Portfolio Managers) Regulations, 2020. – The portfolio manager shall ensure proper and timely handling of complaints from his clients and take appropriate action immediately. – The portfolio manager shall ensure that any person or entity involved in the distribution of its services is carrying out the distribution activities in compliance with these regulations and circulars issued thereunder from time to time. 		
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8.	Custodians	<p>A custodian is a person who carries on or propose to carry on the business of providing custodial services to the client. The custodian keeps the custody of the securities of the client. The custodian also provides incidental services such as maintaining the accounts of securities of the client, collecting the benefits or rights accruing to the client in respect of securities.</p>	<ul style="list-style-type: none"> • Administrate and protect the assets of the clients. • Open a separate custody account and deposit account in the name of each client. • Record assets. • Conduct registration of securities. <p>GENERAL OBLIGATIONS AND RESPONSIBILITIES</p> <ul style="list-style-type: none"> – Every custodian shall abide by the Code of Conduct. – Where a custodian is carrying on any activity besides that of acting as custodian then the activities relating to his business as custodian shall be separate and segregated from all other activities. – Every custodian shall have adequate mechanisms for the purposes of reviewing, monitoring, evaluating and inspection the custodian's controls, systems, procedures and safeguards. – No custodian shall assign or delegate its functions as a custodian to any other person unless such person is a custodian. – Every custodian shall open a separate custody account for each client, in the name of the client whose securities are in its custody and the assets of one client shall not be mixed with those of another client. – Every custodian shall enter into an agreement with each client on whose behalf it is acting as custodian. 	SEBI (Custodian) Regulations, 1996	Net worth of minimum of Rs. 50 crores.
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			<ul style="list-style-type: none"> – Every custodian shall have adequate internal controls to prevent any manipulation of records and documents including audits for securities, goods and rights or entitlements arising from the securities and goods held by it on behalf of its client. – Every custodian shall maintain the records and documents. – Every custodian shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions, etc., issued by the SEBI or the Central Government and for redressal of investors' grievances. – Where any information is called for by the SEBI, it shall be the duty of the custodian to furnish such information within such reasonable period as the SEBI may specify. 		
9.	Investment Advisers	<p>"Investment Adviser" means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called.</p>	<p>Investment advisers are those, who guide one about his or her financial dealings and investments. Basically Investment adviser give advice and provide services related to the investment management process. The Investment adviser shall done the risk profiling for clients to assess their risks.</p>	SEBI (Investment Advisers) Regulations, 2013	<p>Net worth of not less than Rs. 25 lakhs in case of body corporate and in case of individuals or partnership firm net tangible assets of value not less than one lakh rupees.</p>

			<p>GENERAL OBLIGATIONS AND RESPONSIBILITIES</p> <ul style="list-style-type: none"> – An investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise. – An investment adviser shall not receive any consideration by way of remuneration or compensation or in any other form from any person other than the client being advised, in respect of the underlying products or securities for which advice is provided. – An investment adviser shall maintain an arms-length relationship between its activities as an investment adviser and other activities. – An investment adviser which is also engaged in activities other than investment advisory services shall ensure that its investment advisory services are clearly segregated from all its other activities, in the manner as prescribed hereunder. – An investment adviser shall ensure that in case of any conflict of interest of the investment advisory activities with other activities, such conflict of interest shall be disclosed to the client. – An investment adviser shall not divulge any confidential information about its client, which has come to its knowledge, without taking prior permission of its clients, except where such disclosures are required to be made in compliance with any law for the time being in force. 		
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			<ul style="list-style-type: none"> – An investment advisor shall not enter into transactions on its own account which is contrary to its advice given to clients for a period of fifteen days from the day of such advice. – An investment advisor shall follow Know Your Client procedure as specified by the SEBI from time to time. – An investment adviser shall abide by Code of Conduct. – An investment adviser shall not act on its own account, knowingly to sell securities or investment products to or purchase securities or investment product from a client. – In case of change in control of the investment adviser, prior approval from the SEBI shall be taken. – Investment advisers shall furnish to the SEBI information and reports as may be specified by the SEBI from time to time. – It shall be the responsibility of the Investment Adviser to ensure that its representatives and partners, as applicable, comply with the certification and qualification requirements at all times. 		
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10.	Research Analysts	<p>“Research analyst” means a person who is primarily responsible for,-</p> <ol style="list-style-type: none"> preparation or publication of the content of the research report; or providing research report; or making ‘buy/sell/hold’ recommendation; or giving price target; or offering an opinion concerning public offer, with respect to securities that are listed or to be listed in a stock exchange, whether or not any such person has the job title of ‘research analyst’ and includes any other entities engaged in issuance of research report or research analysis. 	<p>They study Companies and industries, analyse raw data, and make forecasts or recommendations about whether to buy, hold or sell securities. They analyse information to provide recommendations about investments in securities to their clients. Investors often view analysts as experts and important sources of information about the securities they review and often rely on their advice. There are basically three broad types of analysts, viz. sell-side analysts, buy-side analysts and independent analysts.</p> <p>GENERAL OBLIGATIONS AND RESPONSIBILITIES</p> <ul style="list-style-type: none"> – Research analyst or research entity shall maintain an arms-length relationship between its research activity and other activities. – Research analyst or research entity shall abide by Code of Conduct. – In case of change in control of the research analyst or research entity, prior approval from the SEBI shall be taken. – Research analyst or research entity shall furnish to the SEBI information and reports as may be specified by the SEBI from time to time. – It shall be the responsibility of the research analyst or research entity to ensure that its employees or partners, as may be applicable, comply with the certification and qualification requirements at all times. 	<p>SEBI (Research Analysts) Regulations, 2014</p>	<ul style="list-style-type: none"> • Body corporate or limited liability partnership firm – not less than Rs. 25 Lakh. • Individual or partnership firm shall have net tangible assets of value not less than Rs. 1 Lakh.
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			<ul style="list-style-type: none"> – Research analyst or research entity shall maintain the following records: (i) research report duly signed and dated; (ii) research recommendation provided; (iii) rationale for arriving at research recommendation; (iv) record of public appearance. – All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years. – Research analyst or research entity shall conduct annual audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India. – Research analyst or research entity which is a body corporate or limited liability partnership firm shall appoint a compliance officer who shall be responsible for monitoring the compliance of the provisions of the Act, these regulations and circulars issued by the SEBI. 		
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11.	Credit Rating Agencies	<p>“Credit rating agency” means a body corporate which is engaged in, or proposes to be engaged in, the business of rating of securities offered by way of public or rights issue.</p>	<p>Credit rating is extremely important as it not only plays a role in investor protection but also benefits industry as a whole in terms of direct mobilization of savings from individuals. Rating also provide a marketing tool to the company and its investment bankers in placing company's debt obligations with a investor base that is aware of, and comfortable with, the level of risk. Ratings also encourage discipline amongst corporate borrowers to improve their financial structure and operating risks to obtain a better rating for their debt obligations and thereby lower the cost of borrowing.</p> <p>GENERAL OBLIGATIONS AND RESPONSIBILITIES</p> <ul style="list-style-type: none"> – Every credit rating agency shall abide by the Code of Conduct. – Every credit rating agency shall enter into a written agreement with each client whose securities it proposes to rate. – Every credit rating agency shall, during the lifetime of securities rated by it continuously monitor the rating of such securities. – Every credit rating agency shall disseminate information regarding newly assigned ratings, and changes in earlier rating promptly through press releases and websites, and, in the case of securities issued by listed companies, such information shall also be provided simultaneously to the concerned regional stock exchange and to all the stock exchanges where the said securities are listed. 	SEBI (Credit Rating Agencies) Regulations, 1999	Minimum net worth of Rs. 25 crores
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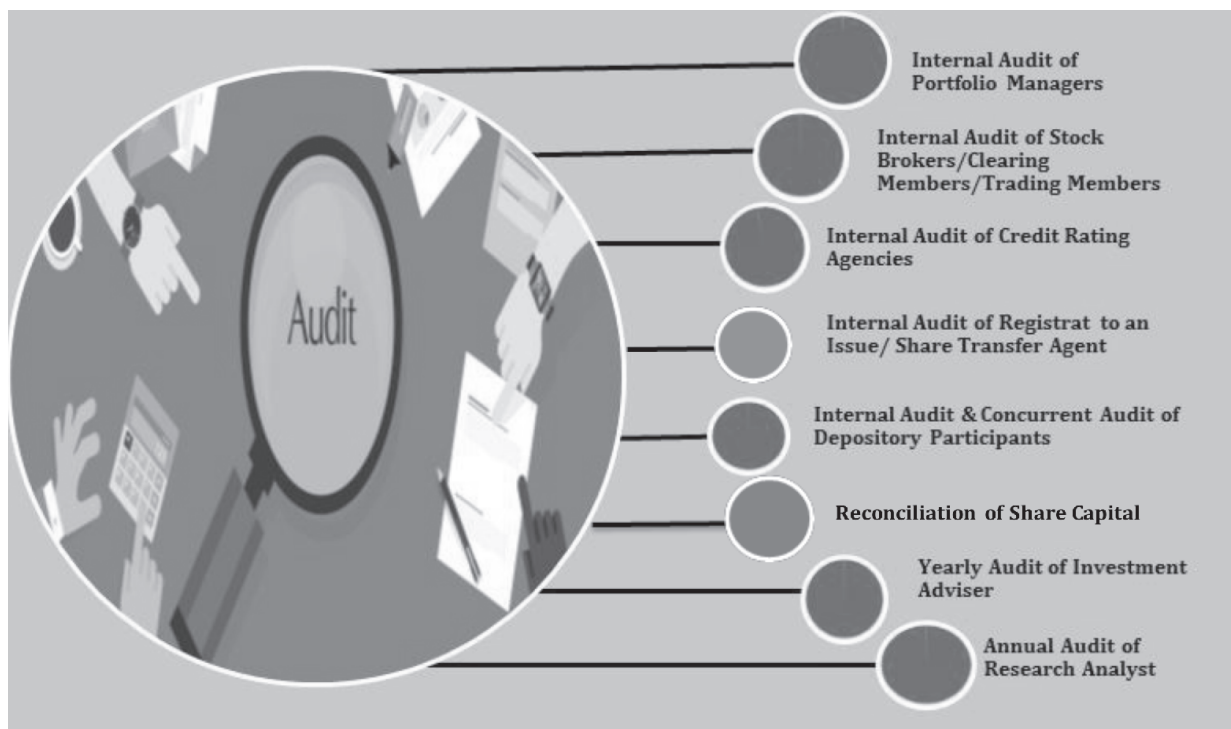
			<ul style="list-style-type: none"> – Every credit rating agency shall disclose Rating Definitions and Rationale. – Where any information is called for by the SEBI from a credit rating agency for the purposes of these regulations, including any report relating to its activities, the credit rating agency shall furnish such information to the SEBI. – Every credit rating agency shall comply with such guidelines, directives, circulars and instructions as may be issued by the SEBI from time to time, – Every credit rating agency shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc. issued by the SEBI or the Central Government. – Every credit rating agency shall keep and maintain books of accounts, records and documents for a minimum period of five years. 		
12.	Depository Participant	A DP is an agent of the depository through which it interfaces with the investor and provides depository services.	<p>Depository Participant (DP) is described as an Agent (law) of the depository. They are the intermediaries between the depository and the investors.</p> <p>They execute pledge requests and off market transfers and on market transfer request of the investors who hold shares in demat form.</p> <p>Further transmission requests of investors shall also be handled. Demat/Remat requests also handled in consultation with RTI/ STAs.</p>	SEBI (Deposit-ories and Participants) Regulations, 2018	Depository participant – As specified in Regulation 35 to these Regulations.

Apart from the above respective SEBI regulations, Intermediaries are also governed by the following regulations:

- SEBI {KYC (Know Your Client) Registration Agency (KRA)}, Regulations, 2011
- SEBI (Intermediaries) Regulations, 2008
- Prevention of Money Laundering Act, 2002 and SEBI master circular on PMLA

INTERNAL AUDIT OF INTERMEDIARIES BY COMPANY SECRETARY IN PRACTICE

Efficient internal control systems and processes are pre-requisite for good governance. The governance being a dynamic concept requires constant evaluation and monitoring of the systems and processes. In the context of Capital Markets, capital markets intermediaries are an important constituent of overall governance framework. Being an important link between regulators, investors and issuers, they are expected to ensure that their internal controls are so efficient that ensure effective investor service at all times and provide regulators comfort as to the compliance of regulatory prescription. In this direction SEBI has authorised Practising Company Secretaries to undertake internal audit of various capital market intermediaries and issue quarterly certificate with respect to reconciliation of share capital audit.



ROLE OF COMPANY SECRETARY

Every market intermediaries shall appoint a company secretary as a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc. issued by SEBI or the Central Government and for redressal of investors' grievances. The compliance officer shall immediately and independently report to SEBI for any non-compliance observed by him.

LESSON ROUND UP

- The role of intermediaries makes the market vibrant, and to function smoothly and continuously. Intermediaries possess professional expertise and play a promotional role in organising a perfect match between the supply and demand for capital in the market.
- As per Section 11 of SEBI Act, it is the duty of SEBI to register and regulate the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisors and such other intermediaries who may be associated with securities market in any manner.
- Merchant Bankers are the key intermediaries between the company and issue of capital. The activities of the Merchant Bankers in the Indian capital market are regulated by SEBI (Merchant Bankers) Regulation, 1992.
- Underwriting is compulsory for a public issue. It is necessary for a public company which invites public subscription for its securities to ensure that its issue is fully subscribed.
- Bankers to the issue, as the name suggests, carries out all the activities of ensuring that the funds are collected and transferred to the Escrow accounts.
- A stock broker plays a very important role in the secondary market helping both the seller and the buyer of the securities to enter into a transaction.
- A portfolio manager with professional experience and expertise in the field, studies the market and adjusts the investment mix for his client on a continuing basis to ensure safety of investment and reasonable returns therefrom.
- Every Portfolio manager is required to appoint a Practising Company Secretary or a Practising Chartered Accountant for conducting the internal audit.
- Custodian means any person who carries on or proposes to carry on the business of providing custodial services.
- Investment adviser means any person, who for consideration is engaged in the business of providing investment advice to clients or other group of persons and includes any person who holds out himself as an investment adviser, by whatever name called.

GLOSSARY

Financial Planning	It includes analysis of client's current financial situation, identification of their financial goals, and developing and recommending financial strategies to realize such goals.
Institutional Investors	Organisations those invest including insurance companies, depository institutions, pension funds, investment companies and endowment funds.
KYC	Know your Client (KYC) means the procedure prescribed by SEBI for identifying and verifying the Proof of Address, Proof of Identity and compliance with rules, regulations, guidelines and circulars issued by SEBI or any other authority for Prevention of Money Laundering from time to time.
Netting	A system whereby outstanding financial contracts can be settled at a net figure, i.e. receivables are offset against payables to reduce the credit exposure to a counterparty and to minimize settlement risk.
Portfolio Investment	A collection of securities owned by an individual or an institution (such as a mutual fund) that may include stocks, bonds and money market securities.

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

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- This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

GLOSSARY

Accounting Standard	Accounting Standards are codified or written statements of accounting rules and guidelines for preparation and presentation of financial statements. They are policy documents issued by an expert accounting body or by the Government or other regulatory body.
Admission to Dealing	The process of granting permission to the securities of a company to be listed in a Stock Exchange and to provide trading facilities for the securities in the market.
Annual Return	The change in percentage in the Net Asset Value (NAV) of a fund over one year based on the assumption that distributions such as dividend payment and bonuses have been reinvested.
Appointed date	It means the date which SEBI may, by notification in the Official Gazette, appoint and different appointed dates may be appointed for different recognized stock exchanges.
Arbitration	Arbitration is a procedure in which a dispute submitted, by agreement of the parties to one or more arbitrators who make a binding decision on the dispute.
Average market capitalisation of public shareholding	It means the sum of daily market capitalization 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 Board of Directors/ shareholders, as the case may be, divided by the number of trading days.
Award	It means a finding in the form of direction or an order of an Ombudsman given in accordance with these regulations;
Basis of allotment	An allotment pattern of an issue among different categories of applicant.
Beneficial owner (BO)	The true owner of a security or property, which may be registered in another name. Means a person whose name appears as such on the records of the depository.
Bid	An offer of a price to buy as in an auction. Business on the Stock Exchange is done through bids. Bid also refers to the price one is willing to pay for a security.
Book Closure	The periodic closure of the Register of Members and Transfer Books of the company, to take a record of the shareholders to determine their entitlement to dividends or to bonus or right shares or any other rights pertaining to shares.
Chinese Walls	Artificial barriers to the flow of information set up in large firms to prevent the movement of sensitive information between departments.
Circuit Breaker	A system to curb excessive speculation in the stock market, applied by the Stock Exchange authorities, when the index spurts or plunges by more than a specified per cent. Trading is then suspended for some time to let the market cool down.
Clearing	Settlement or clearance of accounts, for a fixed period in a Stock Exchange
Closing Price	The rate at which the last transaction in a security is struck before the close of the trading hours.
Commodity Derivative	It means a contract - (i) for the delivery of such goods, as may be notified by the Central Government in the Official Gazette, and which is not a ready delivery contract; or (ii) for differences, which derives its value from prices or indices of

prices of such underlying goods or activities, services, rights, interests and events, as may be notified by the Central Government, in consultation with SEBI, but does not include securities as referred to in sub-clauses (A) and (B) of clause (ac) of Section 2 under Securities Contracts (Regulations) Act, 1956.

Complainant	It means any investor who lodges complaint with the Ombudsman and includes an investors association recognised by the Board.
Compounding of offences	Compounding of offence allows the accused to avoid a lengthy process of criminal prosecution, which would save cost, time, mental agony, etc. in return for payment of compounding charges.
Competitive Bid	An offer made by a person other than the acquirer who has made the first public announcement.
Contra Trade	Contra trading involves buying and selling the same shares without paying for them.
Control of management	The right to appoint directly or indirectly or by virtue of agreements or in any other manner majority of directors on the Board of the target company or to control management or policy decisions affecting the target company.
Corporate restructuring	Involves making radical changes in the composition of the businesses in the company's portfolio.
Credit Risk	The risk that a counterparty will not settle an obligation for full value, either when due or at any time thereafter. Credit risk includes pre-settlement risk (replacement cost risk) and settlement risk (Principal risk).
Delisting Exchange	The exchange from which securities of a company are proposed to be delisted.
Diluted Earning Per Shares	EPS is which accrues to the shareholder of the company. Dilution is a reduction in EPS or an increase in loss per share resulting from the assumption, that convertible instruments are converted, that options or warrants are exercised or the ordinary shares are issued.
Demutualization	Process of transition from "mutually-owned" association to a company "owned by shareholders". In other words, transformation of the legal structure from a mutual form to a business corporation form and privatisation of the corporations so constituted, is referred to as demutualization.
Disinvestment	Disinvestment means the direct or indirect sale by the Central Government or any State Government or by a government company, as the case may be, of shares or voting rights in, or control over, a target company, which is a public sector undertaking;
Diversification	The process of investing across different asset classes (equity, debt, property, etc.) and across different investments within each asset class (for instance, investing across equity shares of various companies in case of equity) to reduce risk.
Dividend Payable	A current liability showing the amount due to stock holders/shareholders for dividend declared but not paid
Earnings per share (EPS)	It is the portion of a company's profit allocated to each outstanding share of common stock and it serves as an indicator of a company's profitability.
Encumbrance	It shall include a pledge, lien or any such transaction, by whatever name called.

Fill or Kill (Fok) Order	An order that requires the immediate purchase or sale of a specified amount of stock, though not necessarily at one price. If the order cannot be filled immediately, it is automatically cancelled (killed)
Financial Planning	It includes analysis of client's current financial situation, identification of their financial goals, and developing and recommending financial strategies to realize such goals.
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.
Fundamental Attributes	It means the investment objective and terms of a scheme.
General Corporate Purpose	It include such identified purposes for which no specific amount is allocated or any amount so specified towards General Corporate Purpose or any such purpose by whatever name called, in the draft offer document filed with SEBI.
Grievance Redress	Grievance Redress mechanism is part and parcel of the machinery of any administration. The grievance redress mechanism of an organisation is the gauge to measure its efficiency and effectiveness as it provides important feedback on the working of the administration
Injunction	A court order by which an individual is required to perform, or is restrained from performing, a particular act.
Intellectual Property	It is a category of property 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 secrets, publicity rights, moral rights, and rights against unfair competition.
Institutional Investors	Organisations those invest including insurance companies, depository institutions, pension funds, investment companies and endowment funds.
Interest Rate	The risk that movements in the interest rates may lead to a change in expected return.
Investing	It means a body corporate whose investment in the company would result in the company
Investment objective	Every mutual fund scheme has an investment objective according to which the fund manager has to make investments for the scheme. For example, in case of an equity fund, the investment objective may be to invest in large cap companies across a range of sectors in order to give investors capital appreciation.
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.
ISIN	International Securities Identification Number (ISIN) is a code that uniquely identifies a specific security, which is allocated at the time of admitting the same in the depository system.

Interim Dividend	A dividend payment made during the course of a companies financial year. Interim dividend, unlike the final dividend does not have to be agreed in a general meeting.
Grant	It means issue of option to employees under the scheme.
Joint Account	It means a bank or a demat account in the names of more than one person (maximum three in case of a demat account). All the account holders must give their signature to operate a demat account held jointly.
Odd Lot	Anything less than the standard unit of trading
Offer for sale	An offer of securities by existing shareholder(s) of a company to the public of subscription, through an offer document.
Open Market	Purchase or sale of government securities by the monetary authorities (RBI in India) to increase or decrease the domestic money supply.
Option grantee	It means an employee having a right but not an obligation to exercise an option in pursuance of ESOS.
Ordinance	An ordinance is an executive order issued by the President of India that holds the same force and effect on an Act passed by the Parliament.
KYC	Know Your Client (KYC) means the procedure prescribed by SEBI for identifying and verifying the Proof of Address, Proof of Identity and compliance with rules, regulations, guidelines and circulars issued by SEBI or any other authority for Prevention of Money Laundering from time to time.
Liquidity Adjustment Facility (LAF)	Under the scheme, repo auctions (for absorption of liquidity) and reverse repo auctions (for injection of liquidity) will be conducted on a daily basis (except Saturdays). It will be same-day transactions, with interest rates decided on a cut-off basis and derived from auctions on a uniform price basis.
Listing Agreement	An agreement which has to be entered into by companies when they seek listing for their shares on a stock exchange. Companies is are called upon to keep the stock exchange fully informed of all corporate developments having a bearing on the market price of shares like dividend, rights, bonus shares, etc.
Mark to market margin (MTM)	Collected in cash for all Futures contracts and adjusted against the available Liquid Net worth for option positions. In the case of Futures Contracts MTM may be considered as Mark to Market Settlement.
Market Maker	A member firm who give two way quotation for particular security(ies) and who is under an obligation to buy and sell them subject to certain conditions such as overall exposure, spread etc.
Maturity	Some investments such as close-ended funds have a maturity date, which is the date on which the investor is paid back his principal amount as well as all income due to him on that investment.
Netting	A system whereby outstanding financial contracts can be settled at a net figure, i.e. receivables are offset against payables to reduce the credit exposure to a counterparty and to minimize settlement risk.
Petition	A formal written request, typically one signed by many people, appealing to authority in respect of a particular cause.

Pooling	Pooling is the basic concept behind collective investments. The money of thousands of individual investors, who share a common investment objective, is pooled together to form a CIS portfolio.
Ponzi Scheme	A ponzi scheme is an investment from where clients are promised a large profit in short term at little or no risk at all.
Pledge	Any person having a demat account can pledge securities against loan / credit facilities extended by a pledgee, who too has a demat account with a DP.
Portfolio Investment	A collection of securities owned by an individual or an institution (such as a mutual fund) that may include stocks, bonds and money market securities.
Price Band	The range within which the price of a security or the index of a currency is permitted to move within a given period.
Profit	Profit which results from the difference between the purchase and selling prices of a security. Trading profit is short term while investment profit is medium or long term.
Public Announcement	A public announcement is an announcement made in the newspapers by the acquirer primarily disclosing his intention to acquire shares of the target company from existing shareholders by means of an open offer.
Public Shareholders	It means the holders of equity shares, other than the following: (a) promoters; (b) holders of depository receipts issued overseas against equity shares held with a custodian and such custodian.
Punitive	It implies involving or inflicting punishment.
RRN	A system generated unique number when a remat request is set up.
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.
Repurchase/ Redemption	When a mutual fund investor wants to exit from his mutual fund investment, he can sell back the units to the mutual fund and receive cash. The mutual fund 'repurchases' his units and the investor is said to 'redeem' his units.
SAT	Securities Appellate Tribunal is a quasi-judicial body established by Central Government by notification to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under SEBI Act or any other law for the time being in force.
Scheme	It means Collective Investment Scheme.
Screen based trading	Form of trading that uses modern telecommunication and computer technology to combine information transmission with trading in financial markets.
Special Resolution	A special resolution is a resolution of a company's shareholders which requires at least 75% of the votes cast by the shareholders in favour of it in order to pass.
Stakeholder	Any individual or group who has an interest in a firm; in addition to shareholders and bondholders, includes labor, consumers, suppliers, the local community and so on.
Stock Exchange	Anybody of individuals, whether incorporated or not, constituted for the purpose of assisting, regulating controlling the business of buying, selling or dealing in securities.

Takeover	Takeover is a corporate device whereby one company acquires control over another company, usually by purchasing all or majority of its shares.
Trading member	A member of the derivatives exchange or derivatives segment of a stock exchange who settles the trade in the clearing corporation or clearing house through a clearing member.
Transmission	Transmission of securities denotes a process by which ownership of securities is transferred to a legal heir or to some other person by operation of law. In case of transmission transfer deed and stamp duty are not required
Tribunal	Article 227 of the Constitution of India defines 'tribunal' as a person or a body other than a Court set up by the State for deciding rights of contending parties in accordance with rules framed for regulation having force of law.
Trustee	Legal Custodian who looks after all the monies invested in a unit trust or mutual fund.
Valuer	It means a Chartered Accountant or a merchant banker appointed to determine the value of the intellectual property rights or other value addition.
Vesting	The process by which the employee is given the right to apply for shares of the company against the option granted to him in pursuance of ESOS.
Vesting Period	It means the period during which the vesting of option, SAR or a benefit granted under any of the schemes takes place.
Unit Holders	Investors in unit trust/mutual funds.
Working Days	It means the working days of the SEBI.
Weighted average number of total shares	Weighted average number of total shares means the number of shares at the beginning of a period, adjusted for shares cancelled, bought back or issued during the aforesaid period, multiplied by a time-weighting factor.

CASE LAWS

Lesson 6

An Overview of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

- I. Autoport Limited (“**Acquirer**”) is an unlisted public company involved in dealing, distributing, repairing and exporting automobile components, spare parts, car accessories, and the like. It is also a part of the promoter group of Genesis Limited (“**Company**”), a company listed on BSE Limited and National Stock Exchange of India Limited, carrying out the manufacturing of automobiles. The Company wishes to restructure its group structure in order to improve its operational efficiency, and hence, the Acquirer has agreed to enter into a scheme of arrangement where the shares held by the promoter group companies will be transferred to it. Post-merger, the shareholding of the Acquirer in the Company will increase from 1.10% to 22.81%. However, the overall promoter shareholding will remain unchanged and no additional shareholding or management rights will be transferred to the Acquirer. Assume that you are the legal advisor to the Acquirer, and accordingly answer the following:
- Will the transfer of shares trigger an obligation to make an open offer under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**SAST Regulations**”) on the Acquirer?
 - Even if we assume that the Acquirer does trigger the obligation to make an open offer, will the Acquirer be permitted to avail of any general exemption (“**Exemption**”) under the SAST Regulations that will in effect exempt the Acquirer from the obligation to make an open offer?
 - If the Acquirer can avail of any Exemption under (b) above, what are the conditions that the Acquirer will be required to comply with in order to avail such an Exemption?
 - Is the Acquirer required to obtain any prior approval from SEBI in order to avail the Exemption for the same?
 - What are the disclosure requirements under the SAST Regulations, if any, that the parties to the scheme will have to comply with?
 - Is there any other possible manner in which the transfer of shares can be effected in favour of the Acquirer without the Acquirer triggering the obligation to make an open offer in accordance with SAST Regulations?

Answer

The above problem is based on the informal guidance dated November 29, 2017 bearing reference number SEBI/HO/CFD/DCR1/OW/P/2017/29408 issued by SEBI in the matter of M/s. Kamat Hotels (India) Limited.

- Regulations 3, 4 and 5 of the SAST Regulations set out the events that trigger an obligation to make an open offer on the acquirer (along with persons acting in concert). The said triggers in brief are as follows:
 - Acquisition (directly or indirectly) of such shares or voting rights in an Indian listed company whereby the acquirer becomes entitled to exercise 25% or more of the voting rights in such Indian listed company;
 - Where an acquirer (along with persons acting in concert with him) is already entitled to exercise 25% or more of the voting rights in an Indian listed company, and acquires (directly or indirectly) additional shares or voting rights entitling an acquirer to exercise more than 5% voting rights in an Indian listed company, in a financial year; and

- Acquisition (directly or indirectly) of control.

Since the Acquirer, in the above facts, does not attract any of the triggers set out above, the transfer of shares will not impose any obligation on the Acquirer to make an open offer under the SAST Regulations.

- b. Even if we assume that the triggers set out above were to be met, still the Acquirer can avail an exemption from making an open offer under Regulation 10(1)(d)(iii) of the SAST Regulations. The provision allows an acquirer to acquire shares/ voting rights/ control in accordance with a scheme of arrangement pursuant to an order of a court, tribunal or a competent authority, such scheme of arrangement not directly involving the target company as the transferor or transferee company, without the need to make an open offer despite triggering an open offer obligation under Regulations 3, 4 and 5 of the SAST Regulations. Therefore, the transfer of shares to the Acquirer pursuant to a merger, being a scheme sanctioned by the National Company Law Tribunal would be exempted from the obligation to make an open offer.
 - c. Regulation 10(1)(d)(iii) of the SAST Regulations provides an exemption from making an open offer to an acquirer subject to the following conditions:
 - The consideration paid in terms of cash and cash equivalents is less than 25% of the consideration paid under the scheme; and
 - Post implementation of the scheme, the persons holding at least 33% of voting rights in the combined entity are the same as the persons who held the entire voting rights before the implementation of the scheme.
 - d. Since the provision under which the Acquirer can avail an exemption from making an open offer falls under Regulation 10, it is not required to apply to SEBI for any grant of exemption, which would be the case only if the Acquirer desires to avail an exemption under Regulation 11 of the SAST Regulations.
 - e. The Acquirer and promoter group companies will be required to make a disclosure of change in shareholding under Regulation 29(2) of the SAST Regulations. According to Regulation 29(3), the disclosure should be made within 2 working days of such acquisition to the Company at its registered office and to BSE Limited and National Stock Exchange of India Limited (stock exchanges where the shares of the Company are listed).
 - f. In the absence of a scheme of arrangement, the transfer of shares would qualify as an inter-se transfer between promoters under Regulation 10(1)(a)(ii) of the SAST Regulations, provided that the Acquirer and promoter group companies have been named as promoters in the shareholding pattern filed by the Company in terms of the listing agreement or under the SAST Regulations, for at least 3 years prior to the acquisition.
- II. ABC Limited ("**Company**") is a SEBI registered debenture trustee providing a wide range of fiduciary trusteeship services to banks, financial institutions, corporate and non-corporate entities. It is mainly involved in acting as a trustee for bonds, debentures, etc. for banks, financial institutions, etc. In its capacity as a trustee, it accepts pledge of shares of listed companies as security offered against the loans granted by such banks and financial institutions. However, the Company can exercise the voting rights in respect of the securities pledged with it only on the instruction of the clients or ultimate beneficiaries, even during invocation of such securities. Such transactions are undertaken by the Company in the ordinary course of its business activities and not for the purpose of substantial acquisition of shares or voting rights or control of the target company. In view of the above facts, answer the following questions:

- a. Is the Company required to make any disclosure (“**Disclosure**”) under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**SAST Regulations**”)?
- b. Is there any exemption (“**Exemption**”) available to acquirers from making the Disclosure under (a) above, that will in effect exempt the acquirer from the obligation to make disclosures on acquisition of shares?
- c. Will the Company qualify for the Exemption from making disclosures on acquisition under (b) above?
- d. Will the Company be required to make an open offer under the SAST Regulations in its capacity as a debenture trustee?

Answer

The above problem is based on the informal guidance dated April 12, 2012 bearing reference number CFD/DCR/IG/SKM/8243/12 issued by SEBI in the matter of IL&FS Trust Company Limited and informal guidance dated April 26, 2012 bearing reference number CFD/DCR/IG/SKM/OW/9400/2012 issued by SEBI in the matter of IDBI Trusteeship Services Limited.

- a. The Company will be required to make a disclosure of acquisition of shares under Regulation 29 of the SAST Regulations, in every instance of accepting a pledge as security on behalf of the bank or financial institution. Such disclosure is required to be made within 2 working days of the acquisition to the target company (i.e. the listed company whose shares are pledged) at its registered office and to the stock exchanges where the shares of the target company are listed.
 - b. The proviso to Regulation 29 of the SAST Regulations exempts scheduled commercial banks and public financial institutions from making disclosures on acquisition of shares in their capacity as a pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.
 - c. The Company will not qualify for the exemption stated in the proviso to Regulation 29 because there is no express provision in the SAST Regulations providing an exemption to debenture trustees acting as a custodian/agent for pledged shares on behalf of lenders.
 - d. Since there is no express provision in the SAST Regulations providing an exemption from making an open offer to debenture trustees acting as a custodian/agent for pledged shares on behalf of lenders, the Company will have to make an open offer if it triggers the threshold limits mentioned in Regulation 3 or on acquisition of control under Regulation 4 or on indirect acquisition of shares or voting rights or control under Regulation 5 of the SAST Regulations.
- III. Pharmatech (“**Target Company**”) is a public limited company, listed on BSE Limited, engaged in the business of manufacturing and marketing of pharmaceutical products. As per the shareholding pattern filed by the Target Company for the quarter ended December 31, 2017 the promoters of the Target Company are Star Pharmaceutical Industries Limited (“**Star Pharma**”) and Daisan Company Limited (“**Daisan**”) which hold 46.84% and 20% of the equity shares of the Target Company respectively. Pursuant to an acquisition of 20% of the total equity share capital of the Target Company in 2011, Daisan was included as part of the promoter and promoter group of the Target Company for the first time in the shareholding pattern filed for the quarter ended December 31, 2012. In the same shareholding pattern, Prax Laboratories Limited (“**Prax**”) was also included as part of the promoter and promoter group of the Target Company. However, pursuant to a merger of Star Pharma and Prax, Prax was replaced by Star Pharma as part of the promoter and promoter group of the Target Company in the shareholding pattern filed for the quarter ended March 31, 2017. Though the merger became effective from April 1, 2016, Star Pharma was included in the shareholding pattern only after receipt of requisite approvals

i.e. March 31, 2017. Star Pharma is now exploring a potential acquisition of 20% equity shares of the Target Company held by Daison. In view of the above facts, answer the following questions:

- a. Would the acquisition of shares by Star Pharma trigger an obligation to make an open offer under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**SAST Regulations**”)?
- b. Can the acquisition of shares by Star Pharma be considered as an inter-se transfer of shares between promoters? Why?
- c. What would be considered as the period of holding of Star Pharma in respect of 46.84% shares of the Target Company?
- d. Can Star Pharma complete its acquisition of 20% equity shares of the Target Company through a creeping acquisition of 5% in each financial year or can such an acquisition under Regulation 3(2) of the SAST Regulations be made only once considering the words ‘any financial year’ in Regulation 3(2)?
- e. If there was a possibility of postponing the acquisition, what date would you suggest as the date for acquisition in view of the SAST Regulations?

Answer

The above problem is based on the informal guidance dated March 27, 2012 bearing reference number CFD/DCR/TO/7197/12 issued by SEBI in the matter of Khaitan Electricals Limited and the informal guidance dated June 1, 2016 bearing reference number CFD/DCR2/OW/2016/15709 issued by SEBI in the matter of Zenotech Laboratories Limited.

- a. As per Regulation 3(2) of the SAST Regulations, an acquisition of shares or voting rights entitling the acquirer to exercise more than 5% of the voting rights in a financial year, where the acquirer (along with persons acting in concert) already holds 25% or more of the voting rights in the target company, triggers an obligation on the part of the acquirer to make a public announcement of an open offer for acquiring such shares. Since Star Pharma already holds 46.84% shares of the Target Company (i.e. more than 25% voting rights), a further acquisition of 20% of equity shares of the Target Company would necessarily require it to make an open offer.
- b. The acquisition of 20% shares by Star Pharma from Daison cannot qualify as an inter-se transfer of shares between promoters because Star Pharma does not fulfil the condition for inter-se transfer under Regulation 10(1)(a)(ii) of the SAST Regulations. This regulation requires the person to be named as a promoter in the shareholding pattern filed by the target company in terms of the listing agreement or under the SAST Regulations for at least 3 years prior to the proposed acquisition. In this respect, even though Daison has been named as a promoter in the filings for the past 5 years, Star Pharma has been named as such only since the quarter ended March 31, 2017 i.e. less than even 1 year. Hence, such transaction, as of date, cannot qualify for an inter-se transfer between promoters under Regulation 10(1)(a)(ii) of the SAST Regulations.
- c. The period of holding of Star Pharma in respect of 46.84% of shares of the Target Company will start only from the date on which it was first included as part of the promoter and promoter group of the Target Company in the shareholding pattern filed by the Target Company i.e. from March 31, 2017. Hence, the period of holding, as of date, would be around 11 months.
- d. Star Pharma can complete its acquisition of 20% shares of the Target Company by way of a creeping acquisition in ‘every’ financial year i.e. it can acquire up to 5% of the shares of the Target Company in every financial year, without attracting the obligation to make a public announcement of open offer under Regulation 3(2) of the SAST Regulations.

- e. In order to avail the exemption from an obligation to make an open offer in terms of an inter-se promoter transfer under Regulation 10(1)(a)(ii) of the SAST Regulations, both Star Pharma and Daison are required to be named as part of the promoter and promoter group of the Target Company in its shareholding pattern for at least 3 years prior to the acquisition. Since Star Pharma was first named as such only for the quarter ending March 31, 2017, it will complete 3 years of being named as a part of the promoter and promoter group of the Target Company in its shareholding pattern filed on March 31, 2020. Hence, to take advantage of the exemption under Regulation 10(1)(a)(ii), the proposed acquisition should ideally take place post March 31, 2020.
- IV. CT Limited ("**Target Company**") is a non-banking finance company registered under the Companies Act, 1956 and listed on BSE Limited. The Company has 2 promoters, namely Mr. X and Mr. Y that hold paid up equity shares representing 30.03% and 42.02% respectively, making the aggregate shareholding of the promoters in the Target Company 72.05%. The board of directors of the Target Company, in its meeting held on January 27, 2017 proposed to issue upto 75,00,000 warrants convertible into equity shares of the Target Company within a period of 18 months, on a preferential basis to Mr. X. On receiving in-principle approval from BSE Limited, the board of directors allotted the said warrants to Mr. X on May 22, 2017. Thereafter, on the request of Mr. X, The board of directors, in its meeting held on July 28, 2017 allotted 10,00,000 equity shares in lieu of conversion of warrants. Pursuant to the conversion, the shareholding of Mr. X increased from 30.03% to 38.26% of the paid up share capital of the Target Company. However, Mr. Y, in the meantime, sold 1,13,698 shares on July 21, 2017 and 70,250 shares on July 28, 2017, thereby reducing the overall promoter shareholding from 72.05% to 71.87% of the paid up share capital of the Target Company. In view of the above facts, answer the following questions:
- Would Mr. X be required to make an open offer under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**SAST Regulations**")?
 - Would the obligation to make an open offer apply to Mr. X in view of the fact that the aggregate promoter shareholding, post conversion, does not breach the stipulated thresholds under the SAST Regulations?
 - What are the disclosure requirements under the SAST Regulations, if any, that Mr. X will have to comply with?

Answer

The above problem is based on the informal guidance dated March 1, 2016 bearing reference number SEBI/HO/CFD/DCR1/OW/P/2016/5575 issued by SEBI in the matter of M/s. Capital Trust Limited.

- Regulations 3, 4 and 5 of the SAST Regulations set out the events that trigger an obligation to make an open offer on the acquirer (along with persons acting in concert). The said triggers in brief are as follows:
 - Acquisition (directly or indirectly) of such shares or voting rights in an Indian listed company whereby the acquirer becomes entitled to exercise 25% or more of the voting rights in such Indian listed company;
 - Where an acquirer (along with persons acting in concert with him) is already entitled to exercise 25% or more of the voting rights in an Indian listed company, and acquires (directly or indirectly) additional shares or voting rights entitling an acquirer to exercise more than 5% voting rights in an Indian listed company, in a financial year; and
 - Acquisition (directly or indirectly) of control.

Since Mr. X, in the above facts, already holds 30.03% shares in the Target Company [which

is above the 25% limit specified in Regulation 3(2)], and by virtue of conversion of warrants, has acquired an additional 8.23% of the paid up share capital of the Target Company [which is above the 5% limit specified in Regulation 3(2)], he is clearly required to make a public announcement of an open offer under Regulation 3(2) of the SAST Regulations.

- b. Regulation 3(3) of the SAST Regulations provides that the requirement to make an open offer under Regulation 3(2) is attracted irrespective of whether there is a change in aggregate shareholding with persons acting in concert. Hence, even though the conversion of warrants by Mr. X does not cause the aggregate promoter shareholding to breach the stipulated thresholds under Regulation 3(2), due to the sale of shares by Mr. Y, Mr. X, in his individual capacity would be required to make an open offer under Regulation 3(2) of the SAST Regulations.
 - c. Mr. X will be required to make a disclosure of change in shareholding under Regulation 29(2) of the SAST Regulations. According to Regulation 29(3), the disclosure should be made within 2 working days of such acquisition to the Target Company at its registered office and to BSE Limited (stock exchange where the shares of the Target Company are listed).
- V. Apex Industries Limited ("**Target Company**") is an Indian company engaged in the business of manufacturing performance emulsion polymers. The equity shares of the Target Company are listed on National Stock Exchange of India Limited and BSE Limited. Sal Investments and Trading Company Private Limited ("**Sal**") owns a 5.46% stake in the Target Company. Dhum Investments and Trading Company Private Limited ("**Dhum**") owns a 16% stake in the Target Company. Triv Investments and Trading Company Limited ("**Triv**") owns a 19.07% stake in the Target Company. Sal, Dhum and Triv have also been classified as promoters of the Target Company in its shareholding pattern for over 3 years and their shareholders are also directly or indirectly shareholders of the Target Company. With a view to consolidate their holdings, Sal, Dhum and Triv are proposed to be amalgamated through a scheme of arrangement, pursuant to which Sal's shareholding in the Target Company will increase from 5.46% to 40.53% as the shares held by Dhum and Triv will be transferred and vested in Sal and their shareholders will become shareholders of Sal. The entire consideration for the amalgamation would be discharged by Sal by issue of its shares. The scheme is likely to be completed and approved by the National Company Law Tribunal sometime during the financial year 2019-2020. In order to further consolidate their holdings into Sal, apart from the scheme of arrangement, the individual promoters, Dhum and Triv, are proposing to transfer all/ part of the shares held by them in the Target Company to Sal in the financial year 2019-2020. In view of the above facts, answer the following questions:
- a. Would the transfer and vesting of shares of the Target Company in Sal, pursuant to the scheme of arrangement, be exempt from open offer obligations ("**First Exemption**") under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**SAST Regulations**")?
 - b. What conditions would it be required to fulfil to avail the First Exemption, under (a) above?
 - c. Would Sal be permitted to avail of any general exemption ("**Second Exemption**") under the SAST Regulations that will in effect exempt it from the obligation to make an open offer with respect to the acquisition of shares from individual promoters of the Target Company? What conditions would it be required to fulfil to avail the Exemption?
 - d. What are the post-acquisition requirements, if any, that Sal would have to comply with in availing the exemptions under (a) and (b) above?
 - e. Whether the proposed transfer of shares from individual promoters to Sal can be undertaken in different tranches?
 - f. Would Sal be permitted to separately acquire up to 5% stake in the Target Company from the

open market in the financial year 2019-2020 through creeping acquisition under Regulation 3(2) of the SAST Regulations?

Answer

The above problem is based on the informal guidance dated January 20, 2016 bearing reference number SEBI/HO/CFD/DCR1/P/2016/712/1 issued by SEBI in the matter of M/s. Apcotex Industries Limited and informal guidance dated January 25, 2016 bearing reference number CFD/DCR1/OW/P/2016/1716 issued by SEBI in the matter of M/s. L T Foods Limited.

- a. Sal is eligible to avail an exemption under Regulation 10(1)(d)(iii) of the SAST Regulations since the acquisition of shares of the Target company is being made pursuant to a scheme of arrangement sanctioned by the National Company Law Tribunal.
- b. Regulation 10(1)(d)(iii) of the SAST Regulations provides an exemption from making an open offer to an acquirer subject to the following conditions:
 - The consideration paid in terms of cash and cash equivalents is less than 25% of the consideration paid under the scheme; and
 - Post implementation of the scheme, the persons holding at least 33% of voting rights in the combined entity are the same as the persons who held the entire voting rights before the implementation of the scheme.

Since the entire consideration is being discharged by Sal by issue of its shares, there is no portion of the consideration being paid in terms of cash and cash equivalents. Additionally, post-merger, since Sal will issue its shares to the shareholders of Dhum and Triv, such shareholders will hold more than 33% stake in Sal. Therefore, Sal would be in compliance with the conditions to avail an exemption under Regulation 10(1)(d)(iii) of the SAST Regulations.

- c. The acquisition of shares would qualify as an inter-se transfer between promoters under Regulation 10(1)(a)(ii) of the SAST Regulations, since all the individual promoters, Sal, Dhum and Triv have been named as promoters in the shareholding pattern filed by the Target Company for at least 3 years prior to the acquisition. Sal is required to intimate National Stock Exchange of India Limited and BSE Limited (stock exchanges where the shares of the Target Company are listed) regarding the details of the proposed acquisition at least 4 working days prior to the proposed acquisition under Regulation 10(5) of the SAST Regulations.
- d. Sal will be required to file a report under Regulation 10(6) of the SAST Regulations with National Stock Exchange of India Limited and BSE Limited (stock exchanges where the shares of the Target Company are listed) not later than 4 working days from the acquisition. Additionally, under Regulation 10(7), it is required to submit a report along with supporting documents to SEBI, providing all details in respect of the acquisitions, along with a non-refundable fee of Rs. 1,50,000 within 21 working days from the date of acquisitions.
- e. The proposed transfer of shares from the individual promoters to Sal can be carried out in different tranches subject to prior intimation to National Stock Exchange of India Limited and BSE Limited under Regulation 10(5) of the SAST Regulations followed by filing of post-acquisition reports stipulated under Regulation 10(6) and 10(7) of the SAST Regulations.
- f. Since the acquisition of shares of the Target Company by Sal are exempt from the obligation to make an open offer under Regulation 10 of the SAST Regulations, Sal would be permitted to additionally acquire upto 5% stake in the Target Company through the creeping acquisition route under Regulation 3(2) of the SAST Regulations.

VI. S Systems International Limited (“**Target Company**”) is an Indian public limited company listed on BSE Limited and National Stock Exchange of India Limited. On December 15, 2016, one of the shareholders of the Company, Mr. Rakesh Sinha (“**Acquirer**”) made a public announcement for an open offer (“**Open Offer**”) for the acquisition of 33,45,242 equity shares of the Target Company, constituting 26% of the expanded equity share capital of the Target Company (i.e. assuming full conversion of outstanding options under ESOP/ESOS schemes of the Target Company). During the period between the date of the public announcement and the issuance of detailed public statement, the Acquirer had acquired 9,24,142 equity shares of the Target Company, constituting 7.18% of the expanded equity share capital of the Target Company. As per the post offer public announcement dated January 21, 2018 issued by the Acquirer, the Acquirer had acquired 590 equity shares of the Target Company in the open offer. The Acquirer continued to acquire shares of the Target Company, as a consequence of which, the Acquirer’s holding in the Target Company increased to 34.82% with the promoter and promoter group holding of 50.17% and the remaining 15.01% being held by other public shareholders. The Acquirer is neither a promoter nor a part of the promoter group nor is a person acting in concert with the promoters of the Target Company. In view of the above facts, answer the following questions:

- a. Would the shareholding of the Acquirer in the Target Company, following all the acquisitions referred above, be treated as part of the non-public shareholding of the Target Company as contemplated under Regulation 7(4) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**SAST Regulations**”)?
- b. Would the Acquirer be required to reduce its shareholding in the Target Company in terms of Regulation 7(4) of the SAST Regulations?
- c. If a person intended to make a competing offer upon the public announcement of the Open Offer, what would be the basis for calculating the minimum size of such competing offer?
- d. Would the competing offer under (c) above have to adhere to the minimum offer size as contemplated under Regulation 7(1) of the SAST Regulations?

Answer

The above problem is based on the informal guidance dated July 10, 2012 bearing reference number CFD/DCR/IG/CB/15173/12 and informal guidance dated January 8, 2014 bearing reference number CFD/PC/AT/KJ/OW/817/2014 issued by SEBI in the matter of M/s. R Systems International Limited.

- a. The term ‘public shareholding’ has been defined under Rule 2(e) of the Securities Contracts (Regulation) Rules, 1957 (“**SCRR**”) as *“equity shares of the company held by public and shall exclude shares which are held by custodian against depository receipts issued overseas”*. Further, the term ‘public’ has been defined under Rule 2(d) of the SCRR as *“persons other than the promoter and promoter group and subsidiaries and associates of the company”*. Since the Acquirer clearly falls within the ambit of the term ‘public’ as defined under the SCRR, and consequently forms part of the public shareholding of the Target Company, the shareholding of the Acquirer will not be treated as the non-public shareholding of the Target Company.
- b. Regulation 7(4) of the SAST Regulations imposes an obligation on an acquirer to bring down its shareholding to the level specified for maximum permissible non-public shareholding within the time permitted under the SCRR, in the event shares accepted in the open offer exceeds the shareholding of the acquirer taken together with persons acting in concert beyond the maximum permissible non-public shareholding. However, Regulation 7(4) will not be applicable in the present case as post offer shareholding of the Acquirer, which forms part of the public shareholding of the Target Company, was 34.82%, and hence the acquisitions by the Acquirer did not breach the maximum permissible non-public shareholding of the Target Company.

- c. Regulation 20(2) of the SAST Regulations provides that in the event of a competing offer, the same shall be for such number of shares which, when taken together with shares held by such competing acquirer along with persons acting in concert with him, shall be at least equal to the holding of the original acquirer including the number of shares proposed to be acquired by such acquirer under the offer and any underlying agreement for sale of shares of the target company pursuant to which such open offer is made.
 - d. Determination of minimum offer size requirement for a competing offer would have to be in accordance with Regulation 20(2) read with Regulation 20(10) of the SAST Regulations. Regulation 20(10) states that except for variations made under Regulation 20, all the provisions of the SAST Regulations are applicable to every competing offer. Since Regulation 20(2) operates as a variation in respect of determination of minimum offer size requirement for a competing offer, such a competing offer is not required to adhere to the minimum offer size of 26% as contemplated under Regulation 7(1) of the SAST Regulations.
- VII. PML Limited ("**Company**") is an Indian public limited company listed on BSE Limited. The Company was initially promoted by Mr. John Gregory, who together with his wife, Mrs. Dina Gregory holds 21.15% of the equity share capital of the Company as on date. The total promoter and promoter group holding, as on date, is 64.31% of the shares of the Company. On March 23, 1995, Mr. Gregory entered into a promotional agreement with M/s. Kerala State Industrial Development Corporation Limited ("**KSIDC**"), which provides that both parties shall support each other during the currency of the agreement on all matters coming up before the general meeting of the Company. The shareholding of Mr. Gregory, Mrs. Gregory and KSIDC, as on date, constitutes 29.91% of the equity share capital of the Company. Mr. Gregory and his wife have entered into a shareholders' agreement with M/s. ALP Paribas SA under which Mr. Gregory, Mrs. Gregory, the Company and M/s. ALP Paribas SA undertook to take such actions as may be necessary to give effect to the provisions of, and comply with their obligations under the shareholders' agreement. Further, it was confirmed in the said shareholders' agreement that the director nominated by KSIDC shall be a promoter director. Another shareholder, Mr. Elton George, who is also a director in the Company and holds 4.27% of its equity shares intends to enter into a shareholders' voting agreement ("**Agreement**") with Mr. Gregory under which both Mr. Gregory and Mr. George intend to support each other on all matters coming up before the board and general meetings of the Company. Mr. George is not related to the promoter, Mr. Gregory, and was de-classified as a promoter of the Target Company on May 6, 2006. In view of the above facts, answer the following questions:
- a. Would Mr. Gregory, Mrs. Gregory and KSIDC be deemed to be persons acting in concert under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**SAST Regulations**")?
 - b. Would the execution of the Agreement attract Regulation 3(1) of the SAST Regulations which will in effect require Mr. Gregory to make a public announcement of an open offer?
 - c. Would the execution of the Agreement attract any other provision of the SAST Regulations that would require Mr. Gregory to make a public announcement of an open offer?

Answer

The above problem is based on the informal guidance dated November 14, 2014 bearing reference number CFD/PC/IG/32340/OW/2014 issued by SEBI in the matter of M/s. Geojit BNP Paribas Financial Services Limited.

- a. Regulation 2(1)(q) of the SAST Regulations include promoters and members of the promoter group under the category of persons deemed to be persons acting in concert. Since Mr. Gregory,

Mrs. Gregory and KSIDC are members of the promoter group, they would be deemed to be persons acting in concert in terms of Regulation 2(1)(q) of the SAST Regulations.

- b. Since Mr. George would be voting with the existing promoters on all matters, he would be deemed to be a person acting in concert with the promoter group, and thus he would become a part of the promoter group. Hence, the promoter and promoter group shareholding would increase from 64.31% to 68.58% of the shares of the Target Company, which is well within the limits specified in Regulation 3(1) of the SAST Regulations (i.e. less than 25% of shares of the target company). Hence, the execution of the Agreement would not attract the provisions of Regulation 3(1) of the SAST Regulations.
- c. Since, by virtue of the Agreement, Mr. George would exercise control with Mr. Gregory and other members of the promoter group, such acquisition of control through the proposed Agreement would attract Regulation 4 of the SAST Regulations. In terms of the same, Mr. George would be required to make a public announcement of an open offer.

VIII. Claris Scientific Limited ("**Company**") is a public limited company whose shares are listed on BSE Limited. The promoters of the Company held 65.35% of the paid up equity share capital of the Company as on March 31, 2017. The promoters hold 74,00,000 convertible warrants which will entitle them to receive 1 equity share against each warrant held by them. On December 2, 2017, some of the entities belonging to the promoter group converted 24,00,000 warrants into shares, as a result of which the promoter shareholding increased by 3.68%. Mr. Amish Kumar ("**Transferor**"), one of the promoters of the Company, holds 19.87% of the equity share capital of the Company and proposes to gift shares constituting 2.30% of the equity share capital of the Company to an immediate relative ("**Transfer**"). In view of the above facts, answer the following questions:

- a. Would the proposed Transfer trigger an obligation upon the Transferor to make an open offer under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**SAST Regulations**")?
- b. Would the proposed Transfer be considered for the purpose of calculating the creeping acquisition limit of 5% under Regulation 3(2) of the SAST Regulations?
- c. Would the promoters be permitted to avail of any general exemption ("**Exemption**") under the SAST Regulations that will in effect exempt the acquirer from making an open offer?
- d. Would the promoters be permitted to avail of any general exemption ("**Exemption**") under the SAST Regulations that will in effect exclude the proposed Transfer for the purpose of the creeping acquisition limit under Regulation 3(2) of the SAST Regulations?

Answer

The above problem is based on the informal guidance dated February 5, 2015 bearing reference number CFD/PC/IG/3997/OW/2015 issued by SEBI in the matter of M/s. Sequent Scientific Limited.

- a. In terms of Regulation 3(2) and 3(3) of the SAST Regulations, an obligation to make an open offer would arise if the acquirer (along with persons acting in concert) is already entitled to exercise 25% or more of the voting rights in an Indian listed company, and acquires additional shares or voting rights entitling it to exercise more than 5% voting rights in an Indian listed company, in a financial year. By virtue of conversion of warrants into shares, the promoter shareholding in the Company has already increased by 3.68%. Therefore, a further transfer (by way of gift) of shares constituting 2.30% of the equity share capital of the Company to an immediate relative in the same financial year would increase the gross acquisition of shares by the promoter group in excess of the 5% threshold under Regulation 3(2) of the SAST Regulations, hence triggering the requirement to make an open offer.

- b. In terms of the explanation to Regulation 3(2) of the SAST Regulations, while calculating the limit of 5% of shares, the gross acquisition alone is to be taken into account regardless of an intermittent fall in shareholding or voting rights. Therefore, the proposed Transfer would be considered for the purpose of calculating the creeping acquisition limit of 5% under Regulation 3(2) of the SAST Regulations.
 - c. The Transfer would qualify as an inter-se transfer between immediate relatives under Regulation 10(1)(a)(i) of the SAST Regulations, and hence is exempt from the requirement to make an open offer under the SAST Regulations.
 - d. The Transfer would qualify as an inter-se transfer between immediate relatives under Regulation 10(1)(a)(i) of the SAST Regulations but it would still be considered for the purpose of calculating the creeping acquisition limit of 5% under Regulation 3(2) of the SAST Regulations.
- IX. Azhurst Limited ("**Company**") is a public company listed on BSE Limited and engaged in carrying out the business of manufacturing and marketing of pharmaceutical products. Dr. A M Shankar ("**Acquirer**"), along with various members of his family and certain entities within their control own and hold equity shares of the Company and have been classified as members of the promoter and promoter group of the Company (collectively "**Group**") in the latest shareholding pattern filed by the Company in terms of Clause 35 of the listing agreement. The Group in exclusion of the Acquirer, together hold 46.04% of the equity share capital of the Company. As part of a voluntary and consensual family understanding, the Group is proposing to enter into an agreement ("**Agreement**") providing for the manner in which the Group will exercise votes in respect of the Company. The Agreement provides that all the parties thereof are required to jointly act as a single unit, subject to and under the direction of the Acquirer during his lifetime, and Dr. P M Shankar after the demise or on the incapacity of the Acquirer to act. The Agreement also provides for a pre-emptive right in case the shareholders choose to transfer their shares. There is no proposed transfer of any shares of the Company and the aggregate voting rights of the Group would not change on account of the Agreement. In view of the above facts, answer the following questions:
- a. Would the Group be considered as persons acting in concert in terms of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**SAST Regulations**")?
 - b. Would the arrangement of voting rights in the manner set out in the Agreement lead to an acquisition of control by the Acquirer, as contemplated under Regulation 4 of the SAST Regulations?
 - c. Would the arrangement of voting rights in the manner set out in the Agreement trigger an obligation on the Acquirer to make an open offer in terms of the SAST Regulations?
 - d. If the answer to the above question under (a) is affirmative, would the Acquirer be permitted to avail of any general exemption ("**Exemption**") under the SAST Regulations that will in effect exempt it from making an open offer?
 - e. Assuming that the Agreement is executed, would the Group be permitted to avail of the Exemption despite the change in member under whose direction the voting would be done pursuant to demise or incapacity of the Acquirer?

Answer

The above problem is based on the informal guidance dated February 2, 2015 bearing reference number CFD/PC/IG/CB/3565/15 issued by SEBI in the matter of M/s. CIPLA Limited.

- a. By virtue of being identified as the promoter and promoter group of the Company in its shareholding pattern, the Group would be deemed to be persons acting in concert under Regulation 2(1)(q)(2) (iv) of the SAST Regulations.

- b. The term 'control' has been defined under Regulation 2(1)(e) of the SAST Regulations to include the right to appoint majority of directors or to control the management or policy decisions exercisable by a person (or persons acting individually or in concert), directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements or in any other manner. Hence, the Agreement would clearly lead to an acquisition of control by the Acquirer since it allows him to control the management and policy decisions in the meetings of the Company by virtue of directing the other parties to act as per his directions.
 - c. The Agreement provides that the Group is required to act jointly and as a single unit on the directions of the Acquirer, implying that the Acquirer would, in effect, be the single largest holder of voting rights in the Company. Therefore, the proposed transaction would lead to an acquisition of voting rights constituting 46.04% in the Company, which is in excess of the threshold under Regulation 3(1) and thus, would entail an acquisition of control of the Company in favour of the Acquirer under Regulation 4 of the SAST Regulations. Thus, the Acquirer will be required to make a public announcement of an open offer under Regulation 3(1) read with Regulation 3(3) and Regulation 4 of the SAST Regulations.
 - d. The acquisition of voting rights pursuant to the Agreement would be exempt in terms of an inter-se transfer between promoters under Regulation 10(1)(a)(ii) and an inter-se transfer between persons acting in concert under Regulation 10(1)(a)(iv) of the SAST Regulations subject to the Group being named as the promoters in the shareholding pattern filed by the Company in terms of the listing agreement or the SAST Regulations for at least 3 years prior to the execution of the proposed Agreement or as persons acting in concert for at least 3 years prior to the execution of the proposed Agreement pursuant to filings under the listing agreement.
 - e. The Agreement stipulates that pursuant to the demise or incapacity of the Acquirer to act, the right to direct the manner in which the Group will exercise votes in respect of the Company will lie with Mr. P M Shankar, in effect implying that there will be an acquisition of voting rights in excess of the triggers under Regulation 3(1) read with Regulation 3(3) and an acquisition of control under Regulation 4 of the SAST Regulations in favour of Mr. P M Shankar. However, Mr. P M Shankar will also be eligible to avail the exemption under Regulation 10(1)(a)(ii) and Regulation 10(1)(a)(iv) of the SAST Regulations subject to Mr. P M Shankar and the Group being named as the promoters in the shareholding pattern filed by the Company in terms of the listing agreement or the SAST Regulations for at least 3 years prior to the acquisition or as persons acting in concert for at least 3 years prior to the acquisition pursuant to filings under the listing agreement.
- X. Silver Coin Limited ("**Target Company**") is a public limited company whose shares are listed on BSE Limited and National Stock Exchange of India Limited. Mr. Pranav Jain and Print Holdings Private Limited (collectively the "**Acquirers**") together with P.J. Financial Services Private Limited (person acting in concert) ("**PAC**") collectively held 6.47% of the equity share capital of the Target Company. On November 12, 2015, the Acquirers, along with PAC made a public announcement of a voluntary open offer to acquire 44,02,201 equity shares constituting 25% of the equity share capital of the Target Company. During the examination of draft letter of offer ("**DLO**"), certain complaints were received by SEBI against the Acquirers and PAC as well as against the Target Company and its promoters, some of which involved disputes which were not within the jurisdiction of SEBI as the proper forum for them was the National Company Law Tribunal. In investigating the same, SEBI had taken over 2 years for offering its comments on the DLO, during which period, the Target Company, by way of a special resolution by postal ballot, had availed huge high cost borrowing from banks and financial institutions against its property including 18.7% shares out of the promoter's shareholding, effectively encumbering material assets of the Target Company and depleting its fixed assets. On August 2, 2017, citing the ground that SEBI had delayed in taking a decision on the DLO during which period the financial position

of the Target Company had deteriorated substantially, which defeated the object of the open offer, the Acquirers sought permission to withdraw the offer under Regulation 27(1)(d) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**SAST Regulations**"). Assume that you are the legal advisor to SEBI, and accordingly answer the following questions:

- a. What is the prescribed time under the SAST Regulations within which SEBI is required to offer its comments on the draft letter of offer?
- b. Is the timeline laid down under the SAST Regulations required to be strictly adhered to by SEBI, in respect of offering its comments on the draft letter of offer?
- c. Was the act of dealing with the property by the Target Company valid in terms of the SAST Regulations?
- d. Can the Acquirers be permitted to withdraw the open offer on the ground that SEBI had delayed in offering its comments on the DLO filed by the Acquirers?
- e. What are the permissible grounds under the SAST Regulations that permit an acquirer to withdraw an open offer?

Answer

The above problem is based on the judgment of the Supreme Court dated November 7, 2016 in the matter of Pramod Jain and Ors. Vs Securities and Exchange Board of India [(2016) 10 SCC 243].

- a. Regulation 16(4) of the SAST Regulations lays down a period of 15 days within which SEBI is required to offer its comments on the draft letter of offer, on the expiry of which period it is deemed that SEBI has no comments to offer. However, if clarifications or additional information is sought by SEBI, such period is extended to the fifth working day from the date of receipt of a satisfactory reply to the clarification or additional information sought.
- b. The timeline prescribed under Regulation 16(4) SAST Regulations may not be adhered to by SEBI when it justifiably takes time in dealing with the complaints, as in the facts of the present case, that SEBI could not look into certain complaints for which the right forum was the National Company Law Tribunal.
- c. In terms of Regulation 26(2) of the SAST Regulations, the act of the Target Company in encumbering its material assets and effecting material borrowings was valid because the Target Company had availed the approval of its shareholders by way of a special resolution by postal ballot.
- d. The general principle under Regulation 23 of the SAST Regulations is that an open offer cannot be withdrawn, unless any of the exceptions specified under the said regulation are met. Hence, a mere delay by SEBI in offering its comments on the DLO would not entitle the Acquirers from withdrawing the open offer.
- e. Regulation 23 states specific grounds under which an acquirer is permitted to withdraw an open offer. They are as follows:
 - Final refusal of statutory obligations required for the open offer/ effecting an acquisition attracting the obligation to make an open offer (provided specific disclosures regarding such requirements for approval were made in the detailed public statement and letter of offer); or
 - Death of the acquirer (being a natural person); or
 - Any condition stipulated in the agreement for acquisition attracting the obligation to make an open offer is not met for reasons outside the reasonable control of the acquirer and such

agreement is rescinded (provided specific disclosures regarding such conditions were made in the detailed public statement and letter of offer); or

- Circumstances that merit withdrawal, in SEBI's opinion (such order permitting withdrawal must be a reasoned order that must be hosted on SEBI's website).

XI. RLL Limited ("**RLL**") is a public limited company listed on BSE Limited. On October 3, 2015, RLL entered into a share purchase and share subscription agreement ("**First Agreement**") jointly with Hypertech Laboratories Limited ("**Hypertech**") and its promoter Mr. Jay Shah. The First Agreement provided for RLL to purchase 78,78,906 equity shares representing 27.35% of the fully paid-up equity share capital of Hypertech from its promoters and to subscribe to 54,89,536 fully paid-up equity shares of Hypertech under a preferential allotment by Hypertech. The share purchase transaction between RLL and the promoters of Hypertech was completed on November 8, 2015 and at the annual general meeting of Hypertech held on the same day, its shareholders approved the preferential allotment of shares to RLL. On November 23, 2015, RLL was duly allotted 54,89,536 fully paid-up equity shares of Hypertech. Having entered into the First Agreement, RLL made an open offer to acquire 26% of the equity shares of Hypertech from its public shareholders on October 5, 2015, post which RLL's shareholding in Hypertech stood at 46.85%. M/s. Storm Company Limited ("**Storm**") intends to enter into a share purchase and share subscription agreement ("**Second Agreement**") jointly with RLL and its promoters, under which Storm would acquire 30.91% of the fully paid-up equity share capital of RLL from its promoters and additionally subscribe to (i) shares representing 11% of the fully paid-up equity share capital of RLL; and (ii) 2,38,34,333 share warrants, each warrant exercisable for 1 share of RLL. Post execution of the Second Agreement, the shareholding of Storm in RLL would increase from 0% to over 50%. Assume that you are the legal advisor to Storm and accordingly answer the following questions:

- Will the acquisition pursuant to the Second Agreement trigger an obligation on Storm to make an open offer to the shareholders of RLL under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**SAST Regulations**")?
- Will the acquisition pursuant to the Second Agreement lead to an indirect acquisition of Hypertech by Storm?
- Will the acquisition pursuant to the Second Agreement trigger an obligation on Storm to make an open offer to the shareholders of Hypertech under the SAST Regulations?
- Will Storm and RLL be considered as persons acting in concert after the execution of the Second Agreement?

Answer

The above problem is based on the judgment of the Supreme Court dated July 8, 2010 in the matter of M/s. Daiichi Sankyo Company vs Jayaram Chigurupati [(2010) 7 SCC 449].

- On allotment of shares pursuant to the Second Agreement, the shareholding (and in turn voting rights) of Storm in RLL would increase from 0% to over 50%, hence exceeding the limits specified under Regulation 3(1) of the SAST Regulations. Thus, such acquisition would trigger an obligation on Storm to make an open offer to the shareholders of RLL under the SAST Regulations.
- On acquiring shares pursuant to the Second Agreement, Storm would effectively acquire over 50% voting rights in RLL. RLL, pursuant to the First Agreement, already holds 46.85% of the equity shareholding of Hypertech. Therefore, the acquisition of RLL's shares (and in turn voting rights) by Storm would lead to an indirect acquisition of voting rights in Hypertech.
- Since the acquisition of shares of RLL by Storm would lead to an indirect acquisition of voting

rights over Hypertech, Storm would be required to make a public announcement of an open offer in terms of Regulation 5 of the SAST Regulations.

- d. As per Section 2(87) of the Companies Act, 2013, on acquisition of over 50% of shareholding in RLL by Storm, RLL would, in effect, become a subsidiary of Storm. Regulation 2(1)(q)(2)(i) of the SAST Regulations states that a holding and subsidiary company are deemed to be persons acting in concert, unless the contrary is established. However, there can be no persons acting in concert unless there is a common objective or purpose of acquisition of shares or voting rights or control over a target company as per Regulation 2(1)(q)(1) of the SAST Regulations. Therefore, Storm and RLL would be considered persons acting in concert, not solely by virtue of the holding company-subsidary company relationship but if they have a common objective or purpose of acquisition of shares or voting rights or control over the target company, being Hypertech in this case.

Lesson 8

SEBI (Delisting of Equity Shares) Regulations, 2009

- I. Oracle Limited (“**Company**”) is a public company which has its shares listed on BSE Limited and National Stock Exchange of India Limited. The engineering business of the Oracle Group is presently held under the Company and Symphony Engineering Limited (“**SEL**”), a subsidiary of the Company. The equity shares of SEL were listed on Ahmedabad Stock Exchange in May, 1965 and were subsequently delisted in June, 2015, in accordance with Chapter III of the SEBI (Delisting of Equity Shares) Regulations, 2009 (“**Delisting Regulations**”). It is proposed to consolidate the engineering business in a single company, for which, the Company will incorporate a wholly owned subsidiary i.e. New Company (“**New Co.**”) and will demerge its engineering undertaking into New Co. It is also proposed to simultaneously either merge SEL into the New Co. or demerge the engineering undertaking of SEL into the New Co. As a reason for the aforesaid demerger, New Co. will issue equity shares to the shareholders of the Company and SEL as a consideration for demerger. In order to implement the identified alternative, the Company, SEL and the New Co. would enter into a scheme of arrangement under Sections 230-232 of the Companies Act, 2013. The equity shares of New Co. are proposed to be listed in accordance with the relevant SEBI laws. In view of the above facts, answer the following questions:
 - a. Is there any restriction on listing of equity shares that have been delisted by voluntary delisting under Chapter III of the Delisting Regulations?
 - b. Would the listing of equity shares issued by New Co. to the shareholders of the Company and SEL be permissible under the Delisting Regulations?
 - c. Is there any restriction on listing of equity shares that have been compulsorily delisted under Chapter V of the Delisting Regulations?

Answer

The above problem is based on the informal guidance dated September 5, 2017 bearing reference number SEBI/HO/CFD/DCR1/OW/P/2017/0000021177/1 issued by SEBI in the matter of M/s. Arvind Limited.

- a. Regulation 30(1)(a) of the Delisting Regulations provides that an application for listing equity shares that have been delisted under Chapter III cannot be made until the expiry of a period of 5 years from the delisting.
- b. Since the issuance of equity shares by New Co. are distinct from the equity shares of SEL that were delisted from the Ahmedabad Stock Exchange in 2015, they can be issued under the Delisting Regulations.

- c. Regulation 30(1)(b) of the Delisting Regulations provides that an application for listing equity shares that have been delisted under Chapter V cannot be made until the expiry of a period of 10 years from the delisting.
- II. Clover Plus Industries Limited ("**Company**") is a company incorporated under the provisions of the Companies Act, 1956. The Company was listed on Delhi Stock Exchange ("**DSE**") for the last fifteen years. However, post de-recognition of DSE by SEBI, the Company was listed with the Metropolitan Stock Exchange of India Limited ("**MSEI**"). The date of listing of the Company on MSEI is February 13, 2017. The Company has been listed on MSEI since then and is not listed on any other stock exchange. The promoters of the Company are now exploring the possibility to voluntarily delist the Company under the SEBI (Delisting of Equity Shares) Regulations, 2009 ("**Delisting Regulations**") by providing an exit opportunity to all the public shareholders. Assume that you are the legal advisor to the Company and accordingly answer the following questions:
- a. What is the minimum period prescribed under the Delisting Regulations, for which the equity shares of the Company should be listed on a recognized stock exchange before the Company can apply for delisting of such shares?
 - b. What are the circumstances/ conditions under which equity shares of a company cannot be delisted as per the Delisting Regulations?
 - c. Is the Company eligible for voluntary delisting in terms of Regulation 4(1)(c) of the Delisting Regulations?

Answer

The above problem is based on the informal guidance dated November 3, 2016 bearing reference number SEBI/HO/CFD/DCR1/OW/P/2016/30240/1 issued by SEBI in the matter of Fiber Plus Industries Limited.

- a. Regulation 4(1)(c) of the Delisting Regulations lays down the minimum period of 3 years for which the class of equity shares of a company should be listed on any recognized stock exchange before an application for delisting such class of shares can be made.
 - b. Regulation 4 of the Delisting Regulations lays down that equity shares of a company cannot be delisted in the following circumstances/ conditions:
 - Pursuant to a buy-back of equity shares by the company
 - Pursuant to a preferential allotment made by the company
 - Unless a period of 3 years has elapsed since the listing of that class of equity shares on any recognized stock exchange
 - If any instruments issued by the company, which are convertible into the same class of equity shares that are sought to be delisted, are outstanding.
 - c. Since the equity shares of the Company were listed on the DSE for the past 15 years, which is well above the minimum time period of listing of 3 years required under Regulation 4(1)(c) of the Delisting Regulations, the Company is eligible for voluntary delisting.
- III. XYZ Limited ("**Company**") is a public company which has its equity shares listed on BSE Limited. The promoters of the Company hold 59.5% shares in the Company and the remainder share capital is held by the public. The public shareholding of the Company includes certain independent non-resident private equity investors ("**PE Investors**") that invested in the Company through primary purchases at different times during the period 2009 and 2010, and currently hold 16.5% of the share capital of the Company. The promoters of the Company are desirous of delisting the Company from all the stock exchanges

on which it is listed by providing an exit opportunity to the public shareholders of the Company. For the sole purpose of financing the delisting of the Company, the promoters are looking to avail of financial assistance from the PE Investors (**“Proposed Arrangement”**). The Proposed Arrangement, if entered into, would only be for the purpose delisting such that in the event the proposed delisting offer of the Company is not successfully completed for any reason whatsoever, no subsisting arrangements or cooperation will continue between the promoters and PE Investors and the parties resume status quo. In view of the above facts, answer the following questions:

- a. Would the promoters and PE Investors be regarded as persons acting in concert (**“PACs”**) in view of the Proposed Arrangement under the SEBI (Delisting of Equity Shares) Regulations, 2009 (**“Delisting Regulations”**)?
- b. Is there any prohibition on the Proposed Arrangement under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**“SAST Regulations”**)?
- c. Which category of persons is the Company required to provide an exit opportunity for voluntary delisting under the Delisting Regulations?

Answer

The above problem is based on the informal guidance dated August 7, 2012 bearing reference number CFD/DCR/TO/IG/SS/OW/17713/12 issued by SEBI in the matter of M/s. IDFC Capital Limited.

- a. As per Regulation 2(2) of the Delisting Regulations read with Regulation 2(1)(q) of the SAST Regulations, persons, who with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding (formal or informal), directly/indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company are considered as PACs. Since under the Proposed Arrangement, the PE Investors would agree to finance the promoters to acquire shares in the delisting offer which would be considered as a direct co-operation for acquisition of shares of the Company, the PE Investors would be treated as PACs with the promoters.
- b. The Proposed Arrangement is prohibited under the proviso to Regulation 3(2) of the SAST Regulations which prohibits a person, holding more than 25% and less than 75% shares (75% being the maximum permissible non-public shareholding for listed companies) from acquiring or entering into an agreement to acquire shares/voting rights which would take the aggregate shareholding of such person beyond 75%. Thus the promoters holding 59.5% shares are prohibited under the SAST Regulations from entering into the Proposed Arrangement with the PE Investors holding 16.5% since it would take their combined shareholding up to 76%.
- c. Regulation 5 of the Delisting Regulations requires the Company to provide an exit opportunity to all public shareholders holding equity shares of the class which are sought to be delisted since the promoters seek to carry out voluntary delisting of the Company from all the recognized stock exchanges where it is listed.

Lesson 11

SEBI (Prohibition of Insider Trading) Regulations, 2015

- I. Morgan Care Limited (**“MCL”**) is a public limited company, which has its equity shares listed on both BSE Limited and National Stock Exchange of India Limited. Carlton Price Private Limited (**“CPPL”**) is a part of the promoter group of MCL since it is closely held by certain promoters of MCL. However, currently CPPL neither holds any equity shares in MCL nor has any role in the management of MCL. The ‘Promoter and Promoter Group’ of MCL collectively hold 65.44% of the total paid-up capital of MCL, as on date. Being a public listed company, MCL has issued a ‘Code of practice and procedures

for fair disclosure of unpublished price sensitive information (“**UPSI**”) and code of conduct to regulate, monitor and report trading by insiders of MCL (“**CoC**”) in accordance with the SEBI (Prohibition of Insider Trading Regulations), 2015 (“**PIT Regulations**”). CPPL now intends to acquire 50,000 equity shares, constituting 0.06% of the paid-up capital of MCL (“**Proposed Acquisition**”), which is beyond the thresholds stipulated by the board of directors of MCL for trading by designated persons. In view of the above facts, answer the following questions:

- a. What category of persons are required to obtain a pre-clearance from the compliance officer of a listed entity prior to trading?
- b. Will CCPL be required to obtain a pre-clearance from the compliance officer of MCL for the Proposed Acquisition?
- c. Does the compliance officer have discretionary powers under the PIT Regulations to reject a pre-clearance request on any reason it deems fit?
- d. Is the compliance officer required to consider certain factors while approving or rejecting an application seeking pre-clearance for a proposed transaction?
- e. Is there any provision in the PIT Regulations that provides for the examination of acts of a compliance officer?

Answer

The above problem is based on the informal guidance dated February 3, 2017 bearing reference number ISD/OW/2700/2017 issued by SEBI in the matter of Kirloskar Chillers Private Limited.

- a. Clause 6 of Schedule B of the PIT Regulations states that pre-clearance is required to be obtained only by ‘designated persons’ (i.e. employees and connected persons designated as such on the basis of their functional role in the organization) if the value of the proposed trades is above such thresholds as stipulated by the board of directors of the listed company.
- b. CCPL will be required to obtain a pre-clearance from the compliance officer of MCL for the Proposed Acquisition only if it is designated as a ‘designated person’ by the board of directors of MCL, in consultation with the compliance officer.
- c. The compliance officer, under the provisions of the PIT Regulations, is entrusted with ensuring adherence to the PIT Regulations and in rejecting a pre-clearance request, the compliance officer is required to ensure compliance in letter and spirit to the PIT Regulations i.e. to ensure that no undue advantage accrues to certain categories of investors on account of their access to UPSI and not for any ulterior motive.
- d. The compliance officer is required to approve or reject a request for pre-clearance after necessary assessment as per the PIT Regulations and the Code of Conduct of the company. Clause 7 of Schedule B of the PIT Regulations requires the compliance officer to maintain a list of such securities as a ‘restricted list’ which is to be used as a basis for approving or rejecting applications for pre-clearance of trades and Clause 8 requires a compliance officer to have regard to whether a declaration (from the applicant seeking pre-clearance to the effect that he is not in possession of UPSI) is reasonably capable of being rendered inaccurate.
- e. Regulation 2(1)(c) of the PIT Regulations lays down that the compliance officer acts under the overall supervision of the board of directors of the listed company or the head of the organization (as the case may be). Additionally, Clause 1 of Schedule B of the PIT Regulations requires the compliance officer to report to the board of directors and provide reports to the Chairman of the audit committee/ board of directors. Hence, any act of the compliance officer may be referred to

the board of directors and the audit committee for examination with the extant laws and relevant facts of the case.

- II. KJF Limited (“**Company**”) is a public limited company, which has its equity shares listed on BSE Limited. Mr. Ram Prakash (“**Promoter**”) holds equity shares constituting 13% of the equity share capital of the Company and has been included in the category of ‘Promoter and Promoter Group’ of the Company in its shareholding pattern filed for the quarter ended December 31, 2017. The total shareholding of the promoter and promoter group of the Company, as per the latest shareholding pattern filed by the Company is 53,34,456 equity shares of the Company constituting 24% of its equity share capital. Ms. Radhika Sharma (“**Director**”) is one of the directors on the board of directors of the Company and currently holds 1.02% of the equity share capital of the Company. The Company intends to enter into a scheme of arrangement pursuant to which the existing shareholders of the Company, including the Promoter, would be allotted bonus shares constituting 35,12,313 equity shares of the Company aggregating to 4% of the Company’s equity shareholding. The details of the scheme have already been disclosed by the Company to the relevant authorities. Further, the Director wishes to transfer, by way of gift, 11,45,632 equity shares belonging to her to an immediate relative. In view of the above facts, answer the following questions:
- Whether the Promoter would be required to make a disclosure under Regulation 7(2) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (“**PIT Regulations**”)?
 - Whether the Director would be required to make a disclosure under Regulation 7(2) of the PIT Regulations, considering that the trade value is nil?
 - In case the answer to (b) above is in the affirmative, what is the time period within which the Director will be required to make a disclosure under Regulation 7 of the PIT Regulations?
 - In case the answer to (b) above is in the affirmative, at what value should the transaction, in the above facts, be disclosed by the Director?

Answer

The above problem is based on the informal guidance dated April 28, 2017 bearing reference number ISD/OW/9966/2017 issued by SEBI in the matter of Kotak Mahindra Bank Limited.

- Since the promoter has no role in the transaction involving the allotment of bonus shares, and the transaction is already in the public domain by virtue of being disclosed by the Company to the relevant authorities, the Promoter would not be required to make a disclosure to the Company under Regulation 7(2) of the PIT Regulations.
- The transaction by the Director involving a gift of shares to an immediate relative would be required to be disclosed to the Company by the Director under Regulation 7(2) of the PIT Regulations, if the value of the shares transferred are in excess of ten lakh rupees, or if such gift along with other transactions executed by the Director in a calendar quarter aggregate to a traded value in excess of ten lakh rupees.
- If the value of the shares transferred or aggregate value of transactions executed by the Director in a calendar quarter are in excess of ten lakh rupees, the time period within which the Director will be required to make a disclosure to the Company regarding the number of shares disposed under Regulation 7(2) of the PIT Regulations is within two trading days of such transaction.
- In the transaction involving the gift of shares by the Director, the value of shares disposed of would be calculated as the prevailing market value of the equity shares of the Company on the day of disposal.

- III. Transient Trading Company (India) Limited (“**TTCL**”) is a company listed on the National Stock Exchange of India Limited and Calcutta Stock Exchange Limited. M/s. Genesis Private Limited (“**GPL**”) is a joint promoter of TTCL and has recently acquired 27.69% of the paid up share capital of TTCL through an open offer. GPL also has two nominees on the board of directors of TTCL. One of the said two nominees is a director in GPL itself and the other is the managing director of M/s. Phoenix Capital Limited (“**PCL**”). PCL has promoted a private equity fund names M/s. Phoenix Capital Growth Fund, which acted in concert with GPL in the aforesaid open offer, which now stands completed. GPL, despite being an insider, now proposes to acquire further shares of TTCL (“**Proposed Acquisition**”) in accordance with the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (“**PIT Regulations**”). In view of the above facts, answer the following questions:
- What are the ways in which GPL can undertake the Proposed Acquisition in terms of the PIT Regulations considering it is an insider in possession of unpublished price sensitive information (“**UPSI**”)?
 - Would a trading plan formulated for the Proposed Acquisition require prior approval of any authority/person?
 - Can a trading plan under the PIT Regulations include a condition of ‘maximum value per share not exceeding a certain amount’ along with the specification of number of shares to be purchased during the trading plan period?
 - Can GPL deviate from the trading plan once it is approved?

Answer

The above problem is based on the informal guidance dated November 1, 2016 bearing reference number ISD/OW/30056/2016 issued by SEBI in the matter of Tide Water Oil Company (India) Limited.

- Despite being an insider in possession of UPSI, GPL can undertake the Proposed Acquisition in the following circumstances under Regulation 4 of the PIT Regulations:
 - An off-market inter-se transfer with another promoter(s) who is in possession of the same UPSI without being in breach of Regulation 3 of the PIT Regulations where both parties have made a conscious and informed trade decision; or
 - When the individuals in possession of UPSI are different from those taking trading decisions and such decision making individuals were not in possession of UPSI when they took the decision to trade, appropriate and adequate arrangements are in place to ensure that the PIT Regulations aren’t violated, there is no communication of UPSI among such individuals and there is no evidence of such arrangements having been breached; or
 - Pursuant to a trading plan set up under Regulation 5 of the PIT Regulations.
 - Regulation 5 of the PIT Regulations requires an insider formulating a trading plan to present it to the compliance officer for approval.
 - Under Regulation 5(2)(v) of the PIT Regulations, the inclusion of a condition on the purchase of shares subject to a certain limit on the price of shares may lead to a deviation from the number of shares that may be specified in a trading plan, thereby defeating the restriction under Regulation 5(4) of the PIT Regulations. Hence, such a condition cannot be included in a trading plan set up under the PIT Regulations.
 - Regulation 5(4) lays down that once a trading plan is approved, it cannot be revoked and the insider is required to mandatorily implement the plan without any deviations.
- IV. ABC Bank Limited (“**Bank**”) is a bank listed on BSE Limited. Some of the employees of the Bank, who

may be in possession of unpublished price sensitive information (“**UPSI**”) of the Bank or other listed companies with whom the Bank deals, are consequently restricted from dealing in securities of the Bank or such other listed companies. Such employees propose to invest their funds in the securities market through portfolio management schemes, which deal in securities with the funds of investors (investors including employees of the Bank and their relatives) as per the portfolio manager’s own discretion with no direct/indirect control/influence of the investor over the investment making decisions (“**Discretionary Portfolio Management Scheme**”). Under such a scheme, the day to day investment discretion for the account(s) are fully delegated to the portfolio manager and are not shared with the investor. The portfolio manager does not discuss any potential investment/disinvestment decision with the investor and the investor does not make any suggestions regarding such investment/disinvestment decisions. The portfolio is standard portfolio and is not altered specifically for an investor and the portfolio manager does not accept specific buy or sell orders of any security at the direction of its client. Further, investments in securities of companies as part of the Discretionary Portfolio Management Scheme are identifiable and the securities in the portfolio are mandatorily held in a separate demat account with power of attorney in favour of the portfolio manager. However, the portfolio manager, while exercising his discretion makes investment/disinvestment decisions in securities which may include securities of the Bank or securities of a listed company for which the employee or his relative may be in possession of UPSI by virtue of being an employee of the Bank, but the employee or his relative has no control directly/indirectly over investment making decisions of the portfolio manager, to which effect the employees even furnish a declaration. In view of the above facts, answer the following questions:

- a. Is there a bar on insiders from trading in securities of a company when in possession of UPSI under the SEBI (Prohibition of Insider Trading) Regulations, 2015 (“**PIT Regulations**”)?
- b. What is the presumption under the PIT Regulations regarding trading in securities by an insider when he is in possession of UPSI?
- c. Are deals under the Discretionary Portfolio Management Scheme on behalf of the employees of the Bank or their relatives in compliance with the provisions of the PIT Regulations?
- d. Whether deals under the Discretionary Portfolio Management Scheme can be undertaken when the trading window of the Bank or the company with which the Bank deals with is closed?

Answer

The above problem is based on the informal guidance dated July 25, 2016 bearing reference number ISD/OW/20812/2016 issued by SEBI in the matter of HDFC Bank Limited.

- a. Regulation 4(1) of the PIT Regulations states that no insider shall deal in securities that are listed or proposed to be listed on a stock exchange when in possession of UPSI.
- b. The explanatory note to Regulation 4 provides a presumption that trades executed by a person in possession of UPSI have been motivated by the knowledge and awareness of such information in his possession.
- c. Regulation 4(1) read with its explanatory note provides that dealing in securities, whether direct or indirect, is not relevant, but that any insider, when in possession of UPSI, should not deal in securities of the company to which the UPSI pertains. Hence, even while dealing in securities through the Discretionary Portfolio Management Scheme, the trades of an insider would be assumed to be motivated by the knowledge and awareness of such UPSI, and therefore such trades will not be in compliance with the provisions of the PIT Regulations.
- d. Clause 4 of Schedule B of the PIT Regulations mandates the operation of a notional trading window as an instrument of monitoring trading by designated persons, which is required to be closed when the compliance officer determines that the designated persons can reasonably be

expected to be in possession of UPSI. Thus Regulation 4(1) read with Clause 4 of Schedule B of the PIT Regulations infers that dealings through the Discretionary Portfolio Management Scheme, when the trading window is closed will also be assumed to be motivated by the knowledge and awareness of UPSI. Therefore, such trades cannot be undertaken in terms of the PIT Regulations.

- V. ABC Capital Markets Limited ("**Intermediary**") is a Category-I Merchant Banker. In accordance with the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("**PIT Regulations**"), the Intermediary is maintaining a restricted list ("**Restricted List**") which includes all the companies in which the Intermediary is handling any assignment or is privy to any unpublished price sensitive information ("**UPSI**"). The Intermediary and its employees are not permitted to trade in the shares of the companies included in the Restricted List. Hence, trading is only allowed in the shares of the companies with which the Intermediary is not connected in any way and about which it does not have any UPSI. In view of the above facts, answer the following questions:
- What is meant by the term 'contra trade'? What is the restriction with respect to executing contra trade under the PIT Regulations?
 - Is the contra-trade restriction under the PIT Regulations applicable on the Intermediary and its employees with respect to trading in shares of listed companies which are not included in the Restricted List?
 - Is there a requirement under the PIT Regulations to impose a contra trade restriction for securities of listed companies where no connection and possession or access to UPSI is envisaged?

Answer

The above problem is based on the informal guidance dated November 25, 2016 bearing reference number SEBI/HO/ISD/ISD/OW/P/2016/32258/1 issued by SEBI in the matter of SBI Capital Markets Limited and the informal guidance dated December 23, 2016 bearing reference number ISD/OW/3644/2016 issued by SEBI in the matter of Prabhudas Lilladher Private Limited.

- Contra trade means opposite trading or reversal of the actual position. Clause 10 of Schedule B of the PIT Regulations imposes a restriction on designated persons to execute a contra trade in those securities of which the designated persons are reasonably expected to have access to UPSI during a period as specified in the code of conduct of a company formulated under the PIT Regulations.
 - The contra trade restriction on the Intermediary and its employees with respect to trading in securities of listed companies which are not included in the Restricted List would depend on the connection the Intermediary or its designated employee has with the concerned listed company and subsequent possession of or access to UPSI. Such restriction would be applicable on the Intermediary and its employees if they are connected persons with the listed company and possess or have access to UPSI.
 - The contra trade restriction on the Intermediary and its employees is not required to be applicable with respect to securities of listed companies where no connection and possession or access to UPSI by the Intermediary or its employees is envisaged.
- VI. Artemis Technologies Limited ("**Company**") is a public company which has its equity shares listed on BSE Limited. The Company has implemented the facility of a cashless employee stock option plan ("**ESOP Plan**") for its employees. This cashless ESOP Plan is operated through a trust, the Artemis Employee Welfare Trust ("**Trust**") in accordance with the SEBI (Share Based Employee Benefits) Regulations, 2014 ("**SBEB Regulations**") which is classified as an insider for the purposes of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("**PIT Regulations**"). The Trust acts as a mechanism for implementing the ESOP Plan by undertaking trades on behalf of the employees. The Trust either

applies for shares to the Company and such shares are issued to it, or the Trust acquires shares through secondary market purchase for the purpose of ESOP plan. However, all sales are undertaken only on the basis of exercise by the relevant employee. In view of the above facts, answer the following questions:

- a. Would the exercise of ESOP by any person, including a designated person, and the sale of the resultant shares attract any contra-trading restrictions under the PIT Regulations?
- b. Would the exercise of ESOPs by the Trust for employees who are not designated persons, attract contra trade restrictions under the PIT Regulations?
- c. Would the acquisition of shares (whether by subscription or secondary acquisition) by the Trust to give effect to ESOPs, be considered as a 'trade' for the purpose of the contra trading restrictions imposed under the PIT Regulations?
- d. Would the restriction on contra trade by designated persons be applicable only in respect of the Company's own securities or for all listed securities?
- e. Would the exemption on applicability of contra trade in respect of buy backs, open offers, rights issues, etc. also be applicable in case of securities subscribed in an initial public offer?

Answer

The above problem is based on the informal guidance dated October 30, 2015 bearing reference number ISD/OW/30679/2015 issued by SEBI in the matter of KPIT Technologies Limited and the informal guidance dated November 2, 2016 bearing reference number ISD/OW/30123/2016 issued by SEBI in the matter of Kotak Mahindra Bank Limited.'

- a. In terms of the guidance note dated August 24, 2015 released by SEBI on the PIT Regulations, exercise of ESOPs is not considered as 'trading' except for the purpose of disclosures under Chapter III of the PIT Regulations. Hence, the exercise of ESOP by any person, including a designated person, and the sale of the shares so acquired would not attract contra trade restrictions.
 - b. Since exercise of ESOPs is not considered as 'trading' except for the purpose of disclosures under Chapter III of the PIT Regulations, the exercise of ESOPs by the Trust for employees who are not designated persons would not attract contra trade restrictions under the PIT Regulations.
 - c. Since the Trust is not undertaking trades in its own capacity but acting solely on behalf of the Company's employees to give effect to the exercise of ESOPs, and the exercise of ESOPs is not considered 'trading' except for the purpose of disclosures under Chapter III of the PIT Regulations, the acquisition of shares by the Trust to give effect to the exercise of ESOPs by employees will not be considered as a 'trade' for the purpose of contra trade restrictions.
 - d. Contra trade restriction under the PIT Regulations is applicable in respect of those securities of which the unpublished price sensitive information is available with the designated persons. Therefore, the restriction on contra trade by designated persons will be applicable to all securities of which the unpublished price sensitive information is available with the designated persons.
 - e. The exemption on applicability of contra trade in respect of buy backs, open offers, rights issues, etc. is not applicable in case of securities subscribed in an initial public offer as there is no provision in the PIT Regulations to this effect.
- VII. Southern Oil Limited ("**Company**") is a public company which has its equity shares listed on BSE Limited and National Stock Exchange of India Limited. Dhruv Trading and Investments Private Limited ("**DTPL**"), a non-banking financial company registered with the Reserve Bank of India, belongs to the

'Promoter and Promoter Group' of the Company. DTPL, along with its two wholly owned subsidiaries, Ornate Holding and Trading Company Private Limited ("**Ornate**") and Casper Holding and Trading Company Private Limited ("**Casper**"), holds 16.29% of the paid up equity share capital of the Company. The aggregate shareholding of the entire promoter and promoter group in the Company, none of which are financial institutions, is 52.79%. DTPL, Ornate and Casper intend to borrow from financial institutions on an ongoing basis, the borrowing generally being in the form of term loans with a tenor of 2 to 3 years which is to be secured by pledging the shares of the Company in favour of the lenders ("**Proposed Action**"). At the time of maturity or call/put option of the term loans, DTPL, Ornate and Casper would have to pledge and de-pledge shares of the Company in favour of the concerned lenders as per the mandate under the loan agreement, which might result in pledging and simultaneously de-pledging of the Company's shares within a period of 6 months. Since DTPL, Ornate and Casper are part of the promoter/promoter group of the Company, they are perpetually in possession of unpublished price sensitive information ("**UPSI**") relating to the Company. In view of the above facts, answer the following questions:

- a. Would the Proposed Action be considered as a 'trade' in terms of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("**PIT Regulations**")?
- b. Is there a prohibition in the PIT Regulations on the Proposed Action being executed when in possession of UPSI?
- c. Is there any way in which the Proposed Action can be undertaken despite the prohibition imposed on it under the PIT Regulations?
- d. Would the Proposed Action be permitted when the trading window of the Company is closed?

Answer

The above problem is based on the informal guidance dated November 9, 2015 bearing reference number ISD/OW/31420/2015 issued by SEBI in the matter of Geetanjali Trading and Investments Private Limited.

- a. Regulation 2(1)(l) of the PIT Regulations defines trading to mean and include subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell or deal in any securities. The explanatory note to Regulation 2(1)(l) clarifies that pledging of securities would also be included within the definition of 'trade' and 'trading' under Regulation 2(1)(l) of the PIT Regulations. Hence, the Proposed Action would be considered as a 'trade' in terms of the PIT Regulations.
- b. Regulation 4(1) of the PIT Regulations prohibits insiders from trading in securities that are listed or proposed to be listed on a stock exchange when in possession of UPSI. Since DTPL, Ornate and Casper are perpetually in possession of UPSI, they would be considered insiders in terms of Regulation 2(1)(g) of the PIT Regulations. Hence, the execution of the Proposed Transaction would constitute trading in listed securities by insiders when in possession of UPSI and will be prohibited under Regulation 4(1) of the PIT Regulations.
- c. The Proposed Transaction can be undertaken in the following circumstances, as laid down in Regulation 4 of the PIT Regulations:
 - When the individuals in possession of UPSI are different from those taking trading decisions and such decision making individuals were not in possession of UPSI when they took the decision to trade, appropriate and adequate arrangements are in place to ensure that the PIT Regulations aren't violated, there is no communication of UPSI among such individuals and there is no evidence of such arrangements having been breached; or
 - Pursuant to a trading plan under Regulation 5 of the PIT Regulations.

- d. The Guidance Note on the PIT Regulations dated August 24, 2015 clarifies that the creation and invocation of pledge for enforcement of security when in possession of UPSI would be allowed when the trading window is closed, if the pledger or pledgee demonstrates that the creation of pledge or invocation of pledge was bona fide and prove their innocence under the proviso to Regulation 4(1) of the PIT Regulations. Hence, the Proposed Action would be permitted even when the trading window of the Company is closed, however the onus to demonstrate the bona fide intention behind such action would lie with DTPL, Ornate, Casper and the financial institution acting as pledgee.

Lesson 13

Collective Investment Scheme

1. *Rose Valley Real Estate and Construction Limited Case (2011)*

In this matter, SEBI had observed that Rose Valley Real Estate and Construction Ltd. ("**Rose Valley**") was mobilizing funds under CIS without obtaining a certificate of registration as required under Section 11AA of the Act. Rose Valley in turn moved the High Court challenging the constitutional validity of the said Act. The Calcutta High Court dismissed the said Writ Petition filed by Rose Valley challenging the constitutional validity of SEBI's power in regulating CIS. Dismissing the Writ Petition, the High Court observed that the Section 11AA of the Act is legal and the provisions provided in it were valid. The High Court also slapped a fine of Rs. 10 lakhs on Rose Valley.

SEBI, held that Rose Valley was raising funds through sale of plots of land and pooling the same to develop the land and providing investors a return on the amount invested at the end of the scheme in the form of credit value. Investors could utilize the credit value to either adjust partly against the cost of land or to get refund for the investments made. "These activities were akin to the features of CISs, specified under the Section 11AA of the Act". SEBI had further directed Rose Valley not to collect any money from investors or to launch any scheme and not to dispose of any of the properties of the scheme. SEBI had also in another case imposed a penalty of Rs. 1 crore on Rose Valley for not providing details sought by the market regulator in a case charging the company with issuing debentures illegally.

SEBI had also barred Rose Valley Hotels and Entertainment from collecting money from investors under its 'holiday membership' schemes alleging that such schemes were CIS in nature and required a certificate of registration. SEBI had begun the investigation of the case after it received a letter in June, 2012 from the Additional Director-General of Police, Guwahati, Assam, alleging that Rose Valley Hotels and Rose Valley Real Estates Constructions Ltd. had collectively raised Rs. 1,006.70 crores until February 2012. It was pointed out that Rose Valley Hotels had launched a scheme called Rose Valley Holiday Membership Plan in 2010. Under the scheme, an investor can book a holiday package by paying monthly installments. Upon maturity or the completion of the installment tenure, the investor can either opt for a holiday, which includes hotel accommodation and services, or a return on the investment with annualized interest.

SEBI had sought various details on the scheme that included the number of individuals who had subscribed to the plan and the total amount refunded by the Company towards principal investment and interest. Rose Valley Hotels, however, contended that it was in the time share business, which did not fall under SEBI's purview. SEBI, in his order stated that the scheme had all the ingredients of a CIS. He added that the contribution made in the form of monthly installments by investors were pooled and utilised for the purpose of the holiday membership plan. Moreover, such contributions are made by the investors with a view to receiving profits or income in the form of returns with annualized interest. It had also directed Rose Valley Hotels not to collect any more money from investors either through existing schemes or via new ones.

2. *Maitreya Services Pvt. Ltd. Case (2013)*

SEBI began the probe against Maitreya Services Pvt. Ltd. ("**Maitreya**") after a reference from the Income Tax

department in September 2010 alleging violation of SEBI regulations by Maitreya. During the inquiry, Maitreya submitted that it carries out the business of real estate and its business includes buying and selling of land, development of the land, construction and other land related activities. SEBI found that Maitreya had launched various schemes under which money was collected from the public. These schemes differed on the basis of the periodic payment to be made by the investor, and the time period for which such investments were to be made. In the course of its inquiry, the SEBI found that the Company had launched and operated CIS without obtaining registration in terms of section 12(1B) of the Act and regulation 3 of the Regulations and an amount of Rs. 804 crores was outstanding with it was to be repaid to investors. In view of the same, a show cause notice was issued to Maitreya and its directors asking them to show cause as to why suitable action should not be initiated against them for the violation of regulation 3 of the Regulations read with section 11AA of Act.

In reply to the show-cause notice by SEBI, Maitreya denied being in CIS operations and refuted all charges leveled against it and requested that the proceedings be terminated and discharged from the show-cause notice. In 2012, Maitreya sought to settle the proceedings through a consent procedure but that was rejected by SEBI. SEBI's probe found that Maitreya had mobilized Rs. 1,332 crores from the public as "advances" as on March 31, 2011 and had repaid Rs. 538 crores as "repayment" to investors, resulting in an amount of Rs. 794 crores as outstanding to be repaid as on that date. SEBI also found that the assets were insufficient to meet the liabilities and its repayment obligations were almost double the value of its total movable and immovable assets.

In view of the foregoing, SEBI ordered for winding up of CIS being run in the garb of real estate business, asking the entity concerned to refund the money to investors within three months. SEBI also barred Maitreya, and its directors from accessing the securities market till the time all its CIS are wound up and decided to initiate prosecution proceedings against them. SEBI also made a reference to the police to register a civil/criminal case against Maitreya and their Directors and persons in charge of the CIS business for "offences of fraud, cheating, criminal breach of trust and misappropriation of public funds".

3. *Alchemist Infra Realty Ltd Case (2013)*

SEBI received an anonymous letter which alleged that Alchemist Infra Realty Ltd. ("**Alchemist**") was mobilizing money from its investors. In order to ascertain whether Alchemist was operating CIS, SEBI initiated an inquiry against it. On perusal of various documents provided by Alchemist and inquiring into its affairs, SEBI found that the scheme/arrangement is in the nature of CIS and issued a show cause notice to Alchemist and its Directors advising them to show cause as to why appropriate action including directions under section 11 and 11B of the Act read with regulation 65 of Regulations should not be issued against all of them for the alleged violations.

The charge against Alchemist, as per show cause notice, is that its scheme/arrangement are in the nature of CIS and that it is offering/launching them without obtaining registration from SEBI for carrying on such CIS in contravention of section 12(1B) of the Act and regulation 3 of Regulations. Meanwhile, Alchemist had filed an application for a consent order which was rejected by SEBI. To stop the illegal business, SEBI issued following directions to safeguard the interests of the investors :

- (a) Alchemist shall not collect any money from investors or launch or carry out any scheme which has been identified as a CIS in the order.
- (b) Alchemist and its Directors shall wind up the existing CIS and refund the money collected by it under the schemes with returns which are due to its investors as per the terms of offer within a period of three months from the date of the order and submit a winding up report to SEBI.
- (c) Alchemist and its Directors are restrained from accessing the securities market till all the CIS are wound up by it and all the monies mobilized through such schemes are refunded to its investors with returns.

SEBI also found that the Investment Application Forms of Alchemist mentioned that it was a part of 'Alchemist Group', which was engaged in diverse activities such as steel, food and beverages, IT, healthcare, media, aviation, realty, hospitality, education and tea estate, among others, with asset base of over Rs 5,000 crores.

Thus, an Investor/Applicant was misled to believe that the company, Alchemist Infra Realty Ltd, is part of the Alchemist Group, whereas the company had contended that it was not associated with the Alchemist Group.

Alchemist and its Directors filed an appeal before the Securities Appellate Tribunal (SAT) challenging the order. The SAT disposed of the appeal by way of common order and granted 18 months to refund the money (estimated Rs. 1000 crores) in view of the “long and tedious process of implementing the scheme of repayment” to 1.5 million investors.

4. Rich Infra Developers India Ltd. Case (2015)

SEBI received a complaint alleging that Rich Infra Developers India Ltd. (“**Rich Infra**”) was giving huge returns to investors towards the investments in the company. As a matter of preliminary examination into whether or not Rich Infra is carrying on the activities of CIS, SEBI sought certain information from the company.

Meanwhile, SEBI received another complaint by email from a person who had invested Rs. 6.2 lakhs in Rich Infra alleging that the company failed to repay the amount on maturity. The complainant also stated there are several other investors from Odisha who had deposited Rs. 12 lakhs in the company and they did not receive repayment.

SEBI informed Rich Infra and its Directors that the information provided by the company did not include schemes seeking deposits from public for farming and development of agricultural land. Meanwhile, SEBI received a complaint alleging that Rich Infra is promising huge returns or an option to take land. The money invested is for the development of the land however, the land could be located anywhere in India. Rich Infra allotted a plot of 4000 sq. ft for a consideration of Rs. 2,00,000/- and at the end of the term, that is, six years, the investor is entitled to an amount of Rs. 4,05,457/- as ‘Consideration value at the time of maturity’. However, there are no specifications as to the plot/the details to identify the property.

The main contention raised by Rich Infra was: “.....*We are not involved in the activities of collecting money from general public. We are dealing in real estate activities i.e., selling of plots/flats/farm houses/commercial shops/agriculture land/residential properties, etc., which are being sold to prospective customers/buyers.*” In this context, Rich Infra has been inviting applications for advance against plot/ land, for agricultural/residential/ commercial purpose. As already mentioned in the preceding paragraph, no plot/land is identified or distinguished by company. Hence, it is apparent that that the schemes offered by Rich Infra are nothing but a ‘collective investment scheme’ clothed in the guise of a real estate scheme. It is pertinent to note that the most essential feature of a real estate transaction which is a clearly distinguishable immovable property say, a flat or plot which is identifiable by its description, etc. is absent in the schemes offered by Rich Infra. Admittedly, Rich Infra had mobilized funds from public in lieu of allotment of property and also claimed repayments made to some of the investors. However, the company has failed to submit the relevant details of amount mobilized from these investors or a list of all its investors, despite being given several opportunities to do so.

Hence, SEBI directed Rich Infra and its Directors :

- (a) not to collect any fresh money from investors under its existing schemes;
- (b) not to launch any new schemes or plans or float any new companies to raise fresh moneys; (c) to immediately submit the full inventory of the assets including land obtained through money raised by Rich Infra;
- (d) not to dispose of or alienate any of the properties/assets obtained directly or indirectly through money raised by Rich Infra; and
- (e) not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of Rich Infra.

EXECUTIVE PROGRAMME
SECURITIES LAWS AND CAPITAL MARKETS

EP-SL&CM

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 download from <http://www.icsi.edu/Portals/0/AGUIDETOCSSSTUDENTS.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".

EXECUTIVE PROGRAMME
SECURITIES LAWS AND CAPITAL MARKETS
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 Mark: 100

PART I – SECURITIES LAWS (70 MARKS)

Question No. 1

- (i) Examine with reference to the provisions of the Securities Contracts (Regulation) Act, 1956 whether it is possible for City Stock Exchange Limited, a company incorporated under the Companies Act, 2013 and a recognized Stock Exchange, to insist that its members should appoint only other members as their proxies to attend and vote at the meeting of the Stock Exchange. **(5 marks)**
- (ii) SEBI received complaints from some investors alleging that Sunaina Ltd. and some brokers are indulging in price manipulation in the shares of Sunaina Ltd. Explain the powers that can be exercised by SEBI under the Securities and Exchange Board of India Act, 1992 in case the allegations are found to be correct. **(5 marks)**
- (iii) Elucidate the eligibility criteria for a depository to provide depository services in India. **(5 marks)**
- (iv) The paid-up capital of Dharma Ltd. is Rs. 10,40,00,000 and through preferential allotment the company wants to raise its capital to 30,00,00,000. Present holding of promoters is 42 %, whether the promoter group can maintain the same holding in new issue also? Critically examine the applicability of SEBI (ICDR) Regulations with respect to the promoter's contribution in a preferential issue of shares? **(5 marks)**

Attempt all parts of either Question No. 2 or 2A

Question No. 2

- (i) What do you mean by Vigil Mechanism? Explain. **(3 marks)**
- (ii) ABC Ltd (Acquirer) along with Person acting in concert (PAC) holds 24% shares in XYZ Ltd. (Target Company). ABC Ltd. planning to acquire 5% shares of XYZ Ltd. Whether above acquisition of shares would attract the provisions of Regulation 3(2) of SEBI (SAST) Regulations, 2011 requiring open offer to the shareholders of the Target Company? **(4 marks)**
- (iii) The position of capital and reserves as on 31st March, 2018 of Nidhi Ltd. are given below:

	Rs.
Equity shares (Fully paid-up of face value Rs.10 each)	1,00,00,000
Equity shares (Rs.5 is paid-up on face value of Rs.10 each)	1,00,00,000
Equity shares with differential voting rights (Fully paid-up of face value of Rs.10 each)	1,00,00,000
Preference shares (Fully paid-up of Rs.100 each)	1,00,00,000
Free reserves	7,50,00,000

The Company wanted to place proposal before the Board for buy-back of its 100% preference share capital. You, as a Company Secretary, advise your Board on the following issues:

- Maximum limit upto which Board can approve buy-back of shares.
- Maximum limit upto which shareholders can approve buy-back of shares.
- Maximum limit upto which company can buy-back its own shares.
- The situation in which further offer of buy-back can be given by the company within a period of 365 days.

(8 marks)

OR

Question No.2A

- (i) PQR Ltd is an unlisted public company who have entered into listing agreement on 20 February, 2018 as per SEBI (LODR), 2015 on National Stock Exchange (NSE). PQR Ltd is planning to conduct Board Meeting of the directors on 20 March, 2018. Whether the company needs to give prior intimation to NSE. If yes, explain the matters for which the prior intimation of board meeting shall be given to NSE. **(4 marks)**

- (ii) On March 20, 2017, ABC Ltd. a company listed on BSE (target Company) had allotted 2,70,00,000 warrants to two promoters viz; PB Private Limited and SN Private Limited and 90,00,000 warrants to non- promoters. On November 27, 2015, the target company allotted 20,00,000 GDRs with 6,00,00,000 underlying shares to non -promoters. Pursuant to the issuance of GDR, the individual shareholding of PB Private Limited reduced from 11.57% to 6.08% and that of SN Private Limited reduced from 1.92% to 1.01%. On March 19, 2018, the target company allotted 5,40,00,000 equity shares to PB Private Limited and SN Private Limited pursuant to conversion of the 2,70,00,000 warrants. Consequent to which the voting rights of PB Private Limited and SN Private Limited individually increased from 11.57% to 24.98% and from 1.92% to 20.36% and the voting rights of the promoter group collectively increased from 50.23% to 62.92% that has resulted into triggering of Regulation 3(2) of SEBI (SAST) Regulations, 2011.

However, the Noticees have failed to make public announcement to the shareholders of Target Company. Keeping in view the above facts, whether the above acquisition of shares on conversion of warrants would be govern by the provisions of SEBI (SAST) Regulations, 2011? If yes, whether the same would attract the provisions of Regulation 3(2) of SEBI (SAST) Regulations, 2011 requiring open offer to the shareholders of the Target Company? **(7 marks)**

- (iii) SB India Limited, a company listed on Bombay Stock Exchange (BSE) with share capital 1,00,00,00 (face value Rs.10 each). The Company is planning to place a proposal before the Board for buy-back of its 50% share capital from existing shareholders. You, as a Company Secretary, elucidate the provisions of Board Resolution with respect to buy-back of securities. **(4 marks)**

Question No. 3

- (i) Briefly explain the agencies involved in delisting process and its functions. **(3 marks)**
- (ii) Mr. Ramesh Virani is appointed as the nominee director on the Board of XYZ Ltd. by Navneet Financial Services Ltd.? XYZ Ltd. has issued ESOS to Mr. Ramesh Virani as its employee. Whether Mr Ramesh Virani is eligible to receive the option granted by XYZ Ltd.? If so, describe the approval and eligibility conditions required to be comply for ESOS under SEBI (Share Based Employee Benefits) Regulations, 2014? **(10 marks)**
- (iii) State the provisions with respect to pricing of sweat equity shares under SEBI (Issue of Sweat Equity) Regulations, 2002. **(2 marks)**

Question No. 4

- (i) Divya is Managing Director of AB Ltd., a wholly owned subsidiary of PEEKAY Ltd., a listed company. AB Ltd. incurred a huge loss of Rs. 125 crore on 31st March, 2017. However, PEEKAY Ltd. informed this loss to stock exchange on 30th April, 2017. Divya's husband Pradeep, who received information of this loss from Divya, sold 2,60,000 shares of PEEKAY Ltd. on 24th April, 2017. Examine the relevant provisions and state is Divya amounting to be held for insider trading? **(8 marks)**
- (ii) If Sahil invests Rs.10,000 in a scheme that charges 2% front end load at an NAV of Rs.10 per unit, what shall be the public offer price? **(3 marks)**
- (iii) What are the restrictions imposed on business activities for CIMC under SEBI (Collective investment Scheme) Regulations, 1999? **(4 marks)**
- (iv) State the powers and functions of the 'Ombudsman' under the SEBI (Ombudsman) Regulations, 2003. **(5 marks)**

Part II- Capital Market and Intermediaries (30 Marks)***Attempt all parts of either Question no. 5 or Question no 5A*****Question No. 5**

- (i) What do you mean by Private equity? Briefly explain the various categories of private equity. **(5 marks)**
- (ii) Mr Aniket holds the equity shares of GKP Limited. Mr. Aniket has requested the company to issue a shares with differential voting rights in respect of the equity shares held by him. What are the conditions required to be fulfilled by GKP Limited. to issue shares with differential voting rights to Mr. Aniket? **(5 marks)**
- (iii) ABC Ltd. issued 15 lakh shares of Rs 100 each. Green shoe option was exercised by the company prior to the issue. After listing, the share prices of ABC Ltd. plunged to Rs. 90. Stabilizing agents decided to buy shares from the market. How many shares can be purchased by the stabilizing agents to arrest the reduction in share prices? **(5 marks)**

OR

Question No. 5A

- (i) Describe the impact of various monetary policies on Indian stock market. **(5 marks)**
- (ii) Define and state the role and responsibilities of Research Analysts. **(5 marks)**
- (iii) Capital market intermediaries are vital link between SEBI and investors in a Public Issue. Comment. **(5 marks)**

Question No. 6

- (i) What do you understand by Market surveillance? Briefly explain the different types of Market surveillance. **(7 marks)**
- (ii) Write short notes on the following:
 - (a) Merchant Banker
 - (b) Registrar and Share Transfer Agent

(4 marks each)

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