

EXECUTIVE PROGRAMME

(NEW SYLLABUS)

UPDATES FOR

SECURITIES LAWS AND CAPITAL MARKETS

(Relevant for students appearing in June, 2019 Examination)

MODULE 2- PAPER 6

Disclaimer-

This document has been prepared purely for academic purposes only and it does not necessarily reflect the views of ICSI. Any person wishing to act on the basis of this document should do so only after cross checking with the original source.

Students appearing in June 2019 Examination shall note the following:

Students are also required to update themselves on all the relevant Notifications, Circulars, Clarifications, etc. issued by the SEBI, RBI & Central Government on or before six months prior to the date of the examination.

It may also be noted that for June 2019 Examination the following new Regulations shall be applicable:

- 1. SEBI ((Issue of Capital and Disclosure Requirements) Regulations, 2018*
- 2. SEBI (Buy-Back of Securities) Regulations, 2018*
- 3. SEBI (Depositories and Participants) Regulations, 2018*

IMPORTANT

In the study material, wherever the words SEBI (ICDR) Regulations 2009 is reflecting, it shall be replace with the words SEBI (ICDR) Regulations, 2018.

These Updates are to facilitate the students to acquaint themselves with the amendments in securities laws upto November, 2018, applicable for June, 2019 Examination. The students are advised to read the updated Study Material (April 2018 Edition) along with these Updates.

In the event of any doubt, students may write to the Institute for clarifications at academics@icsi.edu

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LESSON 2
SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

Page No. 48

Appeal to Supreme Court

Replace para 1 with the following:

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 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.

LESSON 3
DEPOSITORIES ACT, 1996

Page No. 69

SEBI (Depositories and Participants) Regulations, 1996

Replace para 2 with the following:

The SEBI, on October 3, 2018, issued the SEBI (Depositories and Participants) Regulations, 2018 ('New DP Regulations'), replacing 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.

LESSON 4

AN OVERVIEW OF SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009

Replace the lesson heading with the following:

“An overview of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018”

Replace the following from Page No 76 –94 till the heading Procedure for issue of securities

Introduction

Management of a public issue involves coordination of activities and cooperation of a number of agencies such as managers to the issue, underwriters, brokers, registrar to the issue; solicitors/legal advisors, printers, publicity and advertising agents, financial institutions, auditors and other Government/Statutory agencies such as Registrar of Companies, Reserve Bank of India, 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. SEBI was given the mandate to regulate issuance of securities, which was earlier done by vide its order dated 11.6.1992 called the Guidelines for Disclosure and Investor Protection, 1992. Later, SEBI issued a compendium containing consolidated Guidelines, circulars, instructions relating to issue of capital effective from January 27, 2000. The compendium titled SEBI (Disclosure and Investor Protection) Guidelines, 2000 replaced the original Guidelines issued in June 1992 and clarifications thereof. On August 26, 2009 SEBI rescinded the SEBI (DIP) Guidelines, 2000 and notified SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

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

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

- a) To simplify the language and complexities in the regulations;
- b) To incorporate changes/ new requirements which have occurred due to change in market practices and regulatory environment;
- c) To make the regulations more readable and easier to understand.

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

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

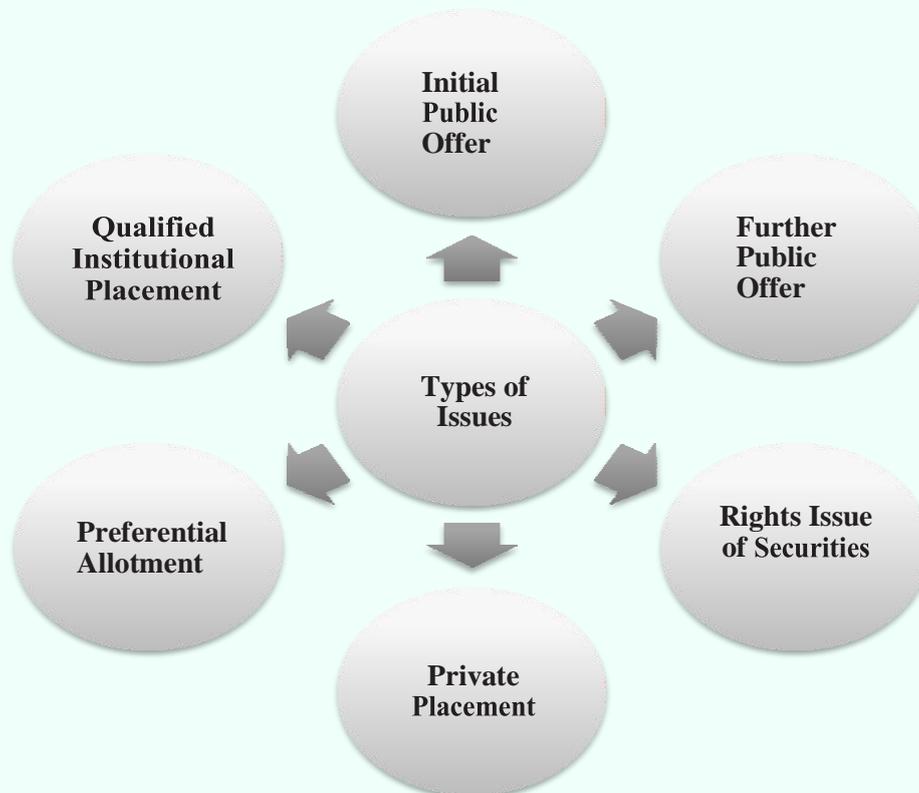
In continuation to the same, SEBI vide its notification dated 11th September, 2018 issued SEBI (ICDR) Regulations, 2018 ('ICDR, 2018') which is effective from 60th day of its publication in Official Gazette.

Chapter No. under ICDR 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 Institutional Placement
VII.	IPO of Indian Depository Receipts
VIII.	Rights Issue of IDR
IX.	IPO by Small and Medium Enterprises (SME)
X.	Institutional Trading 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 SEBI (ICDR) Regulations, 2018 it is called a preferential allotment. The issuer is required to comply with various provisions which *inter alia* include pricing, disclosures in the notice, lock in etc., in addition to the requirements specified in the Companies Act.

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

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.

ELIGIBILITY REQUIREMENTS TO BE COMPLIED WITH FOR IPO

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

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

- a. If the issuer, any of its promoters, promoter group, selling shareholders are debarred from accessing the capital market by SEBI.
- b. If any of the promoters or directors of the issuer is a promoter or a director of any other company which is debarred from accessing the capital market by SEBI.
- c. If the issuer or any of its promoters or directors is a willful defaulter.
- d. If any of the promoters or directors of the issuer is a fugitive offender.
- e. If there are any outstanding convertible securities or any other right which would entitle any person with any option to receive equity shares of the issuer except outstanding options granted to the employees under an employee stock option scheme and fully paid-up outstanding convertible securities which are required to be converted on or before the date of filing of the Red Herring Prospectus or the Prospectus.

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

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

Non- applicability

Outstanding options granted to employees, whether currently an employee or not, pursuant to an employee stock option scheme in compliance with the Companies Act, 2013, the relevant Guidance Note or accounting standards, if any, issued by the Institute of Chartered Accountants of India or pursuant to the Companies Act, 2013, in this regard.

Fully paid-up outstanding convertible securities which are required to be converted on or before the date of filing of the red herring prospectus (in case of book-built issues) or the prospectus (in case of fixed price issues), as the case may be.

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 networth of atleast Rs.1 crore in each of the preceding three full years, calculated on a restated and consolidated basis.
- d. in case the issuer has changed its name within the last one year, atleast 50% of the revenue calculated on a restated and consolidated basis, for the preceding one full year has been earned by it from the activity indicated by the new name.

The above eligibility conditions are explained by the following

Example: Eligibility Condition No: 1

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

Applicability

Shares must be fully paid-up.

Shall be held by the sellers for a period of at least one year prior to the filing of the draft offer document.

The holding period of such convertible securities, including depository receipts, as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period.

Further, such holding period of one year shall be required to be complied with at the time of filing of the draft offer document.

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

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

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

Non-Applicability

The offer for sale of a government company or statutory authority or corporation or any special purpose vehicle set up and controlled by any one or more of them, which is engaged in the infrastructure sector;

Equity shares offered for sale were acquired pursuant to any scheme approved by a High Court under the sections 391 to 394 of Companies Act, 1956, or approved by a tribunal or the Central Government under the sections 230 to 234 of Companies Act, 2013, as applicable, in lieu of business and invested capital which had been in existence for a period of more than one year prior to approval of such scheme;

If the equity shares offered for sale were issued under a bonus issue on securities held for a period of at least one year prior to the filing of the draft offer document with the Board and further subject to the following:

Such specified securities being issued out of free reserves and share premium existing in the books of account as at the end of the financial year preceding the financial year in which the draft offer document is filed with SEBI;

AND

Such equity shares not being issued by utilisation of revaluation reserves or unrealized profits of the issuer.

Explanation:

(i) Partnership Firms

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

- a) adequate disclosures are made in the financial statements as required to be made in the format prescribed under the Companies Act, 2013;
- b) the financial statements are duly certified by a Chartered Accountant stating that:
 - (i) the accounts and the disclosures made are in accordance with the provisions of Schedule III of the Companies Act, 2013
 - (ii) the accounting standards of the Institute of Chartered Accountants of India have been followed;
 - (iii) the financial statements present a true and fair view of the firm's accounts.

(ii) Spinning off of a division

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

Eligibility Condition No: 3

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

(Rs. in lacs)

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

Assets					
Networth	1448.56	2304.52	2576.57	3595.47	4703.63

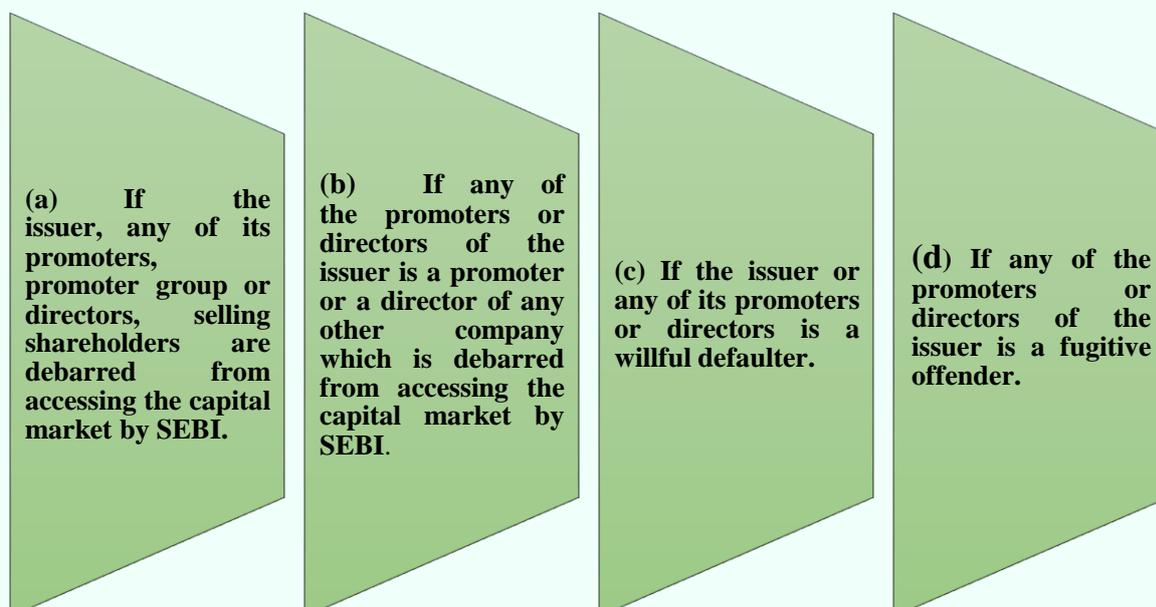
Since the all the above eligibility conditions are satisfied in the example and there is no change in the name of the company, this company is eligible to make an Initial Public Offering.

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

Eligibility requirements for FPO [Regulation 103]

- An issuer may make a FPO if it has changed its name within the last one year and atleast 50% of the revenue in the preceding one full year has been earned from the activity suggested by the new name.
- If an issuer does not satisfy the above mentioned conditions, it may make a FPO only, if, the issue is made through the book-building process and the issuer undertakes to

allot at least 75% of the net offer, to qualified institutional buyers and to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers.

General Conditions for FPO [Regulation 104]

An issuer making an FPO shall ensure that :

- a. An application is made for listing of the specified securities to one or more of the recognized stock exchanges and choose one of the exchanges as the designated stock exchange.
- b. An agreement is entered into with a depository for dematerialization of specified securities already issued or proposed to be issued.
- c. All the specified securities held by the promoters are in dematerialized form prior to the filing of the offer document.
- d. All its existing partly paid up equity shares have either been fully paid up or have been forfeited. *In other words, if a company has partly paid up equity shares, they shall not be permitted to make a public issue.*
- e. The issuer should make firm arrangements of finance through verifiable means towards 75% of the stated means of finance excluding the amount to be raised through the proposed public issue or through existing identifiable internal accruals.
- f. The amount for General Corporate Purposes as mentioned in objects of the issue in the draft offer document and the offer document shall not exceed twenty five per cent of the amount being raised by the issuer.

ISSUE OF WARRANTS [REGULATION 13]

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

- a) the tenure of such warrants shall not exceed eighteen months from the date of their allotment in the initial public offer;
- b) a specified security may have one or more warrants attached to it;
- c) the price or formula for determination of exercise price of the warrants shall be determined upfront and disclosed in the offer document and at least 25 per cent of the consideration amount based on the exercise price shall also be received upfront;

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

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

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

- The issuer shall appoint one or more merchant bankers, which are registered with SEBI, as lead manager(s) to the issue.
- Where the issue is managed by more than one lead manager, the rights, obligations and responsibilities, relating *inter alia* to disclosures, allotment, refund and underwriting obligations, if any, of each lead manager shall be predetermined and be disclosed in the draft offer document and the offer document.
- At least one lead manager to the issue shall not be an associate as defined under the SEBI (Merchant Bankers) Regulations, 1992 of the issuer.
- If any of the lead manager is an associate of the issuer, it shall disclose itself as an associate of the issuer and its role shall be limited to marketing of the issue.
- The issuer shall, in consultation with the lead manager(s), appoint other intermediaries which are registered with SEBI after the lead manager(s) have independently assessed the capability of other intermediaries to carry out their obligations.
- The issuer shall enter into an agreement with the lead manager(s) and enter into agreements with other intermediaries as required under the respective regulations applicable to the intermediary concerned.
- Such agreements may include such other clauses as the issuer and the intermediaries may deem fit without diminishing or limiting in any way the liabilities and obligations of the lead manager(s), other intermediaries and the issuer under the Act, the Companies Act, 2013 or the Companies Act, 1956 (to the extent applicable), the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the rules and regulations made thereunder or any statutory modification or statutory enactment thereof.
- In case of ASBA process, the issuer shall take cognizance of the deemed agreement of the issuer with the self-certified syndicate banks.
- The issuer shall, in case of an issue made through the book building process, appoint syndicate member(s) and in the case of any other issue, appoint bankers to issue, at centres.
- The issuer shall appoint a registrar to the issue, registered with SEBI which has connectivity with all the depositories.
- If the issuer itself is a registrar, it shall not appoint itself as registrar to the issue.
- The lead manager shall not act as a registrar to the issue in which it is also handling the post-issue responsibilities.

Disclosures in and Filing of Offer Documents

- 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 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.
- SEBI may specify changes or issue observations, on the draft offer document filed with it within a period of 30 days from the later of the following dates:
 - a) the date of receipt of the draft offer document filed with SEBI; or
 - b) the date of receipt of satisfactory reply from the lead merchant bankers, where SEBI has sought any clarification or additional information from them; or
 - c) the date of receipt of clarification or information from any regulator or agency,

where SEBI has sought any clarification or information from such regulator or agency; or

- d) the date of receipt of a copy of in-principle approval letter issued by the recognised stock exchanges.
- If SEBI specifies any changes or issues observations on the draft offer document filed with it, the issuer and the lead merchant banker shall carry out such changes and comply with the observations issued by SEBI before registering the prospectus, the red-herring prospectus or the shelf prospectus as the case may be with the Registrar of Companies or an appropriate authority, as applicable.
 - If there are any changes in the draft offer document in relation to the matters specified in these regulations, an updated offer document or a fresh draft offer document, as the case may be, shall be filed with SEBI.
 - Copy of the offer documents shall also be filed with SEBI and the stock exchanges through the lead manager(s) promptly after registering the offer document with the Registrar of Companies.
 - The draft offer document and the offer document shall also be furnished to SEBI in a soft copy.

Filing of 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 SEBI under the jurisdiction of which the registered office of the issuer company is located, along with fees as specified, through the lead manager(s).

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

- a) 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 SEBI shall be made public for comments, if any, for a period of at least twenty one days from the date of filing, by hosting it on the websites of SEBI, stock exchanges where specified securities are proposed to be listed and lead manager(s) associated with the issue.
- The issuer shall, within two days of filing the draft offer document with SEBI, make a public announcement in one English national daily newspaper with wide

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

- The lead manager(s) shall, after expiry of the period stipulated above, file with SEBI, details of the comments received by them or the issuer from the public, on the draft offer document, during that period and the consequential changes, if any, that are required to be made in the draft offer document.
- The issuer and the lead manager(s) shall ensure that the offer documents are hosted on the websites as required under these regulations and its contents are the same as the versions as filed with the Registrar of Companies, SEBI and the stock exchanges, as applicable.
- The lead manager(s) and the stock exchanges shall provide copies of the offer document to the public as and when requested and may charge a reasonable sum for providing a copy of the same.

ASBA [Regulations 35 & 132]

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

Availability of issue material [Regulations 36 & 133]

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

Prohibition on payment of incentives [Regulations 37 & 134]

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

Security Deposit [Regulations 38 & 135]

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

IPO Grading – Applicable to IPO only [Regulation 39]

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

Opening of the Issue [Regulations 44 & 140]

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

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

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

Underwriting [Regulations 40 & 136]

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

However, at least 75% of the net offer to the public is proposed to be compulsorily allotted to the QIBs, and such portion cannot be underwritten.
 - b) the issuer shall, prior to filing the prospectus, enter into an underwriting agreement with the lead manager(s) and syndicate member(s) which shall indicate the number of specified securities which they shall subscribe to at the predetermined price in the event of under-subscription in the issue.
 - c) if the syndicate member(s) fail to fulfill their underwriting obligations, the lead manager(s) shall fulfill the underwriting obligations.
 - d) the lead manager(s) and syndicate member(s) shall not subscribe to the issue in any manner except for fulfilling their underwriting obligations.
 - e) in case of every underwriting issue, the lead manager(s) shall undertake minimum underwriting obligation as specified in the SEBI (Merchant Bankers) Regulations, 1992.
 - f) where the issue is required to be underwritten, the underwriting obligations should at least to the extent if minimum subscription.

Minimum Subscription [Regulations 45 & 141]

The minimum subscription to be received in an issue shall be not less than 90% of the

offer through offer document except in case of an offer for sale of specified securities. In case of an IPO, the minimum subscription to be received shall be subject to allotment of minimum number of specified securities, as prescribed in sub-clause (b) of clause (2) of rule 19 of Securities Contracts (Regulation) Rules, 1957, which stipulates that 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 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, 2016 on a quarterly basis, till at least ninety five per cent. of the proceeds of the issue excluding the proceeds raised for general corporate purposes, have been utilized.

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

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

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

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

Issue-related Advertisements [Regulations 43 & 139]

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

However, the disclosures in relation to price band or floor price and financial ratios contained therein shall only be applicable where the issuer opts to announce the price band or floor price along with the pre-issue advertisement, if the issuer opts not to make disclosures of price band in the RHP.

- The issuer may release advertisements for issue opening and issue closing, which shall be in the formats specified in Parts B and C of Schedule X of SEBI ICDR Regulations, 2018.
- During the period the issue is open for subscription, no advertisement shall be released giving an impression that the issue has been fully subscribed or oversubscribed or indicating investors' response to the issue.

Application and Minimum Application Value [Regulations 47 & 143]

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

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

- The issuer shall stipulate in the offer document the minimum application size in terms of number of specified securities which shall fall within the range of minimum

application value of ten thousand rupees to fifteen thousand rupees.

- The issuer shall invite applications in multiples of the minimum application value, as per Part B of Schedule XIV of SEBI ICDR Regulation 2018.
- The minimum sum payable on application per specified security shall be at least twenty five per cent. of the issue price:

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

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

Manner of Calls [Regulations 48 & 144]

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

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

- The issuer shall not make an allotment pursuant to a public issue if the number of prospective allottees is less than one thousand.
- The issuer shall not make any allotment in excess of the specified securities offered through the offer document except in case of oversubscription for the purpose of rounding off to make allotment, in consultation with the designated stock exchange.
- The allotment of specified securities to applicants other than to the retail individual investors and anchor investors shall be on a proportionate basis within the respective investor categories and the number of securities allotted shall be rounded off to the nearest integer, subject to minimum allotment being equal to the minimum application size as determined and disclosed in the offer document.

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

- The allotment of specified securities to each retail individual investor shall not be less than the minimum bid lot, subject to the availability of shares in retail individual investor category, and the remaining available shares, if any, shall be allotted on a proportionate basis.

- The authorised employees of the designated stock exchange, along with the lead manager(s) and registrars to the issue, shall ensure that the basis of allotment is finalised in a fair and proper manner in accordance with the procedure as specified in Part A of Schedule XIV.

Illustration explaining the procedure of allotment

Example A

- (1) Total number of specified securities on offer@ Rs. 600 per share: 1 crore specified securities.
- (2) Specified securities on offer for retail individual investors' category: 35 lakh specified securities.
- (3) The issue is over-all subscribed by 2.5 times, whereas the retail individual investors' category is oversubscribed 4 times.
- (4) The issuer has fixed the minimum application/bid size as 20 specified securities (falling within the range of ten thousand to fifteen thousand rupees) and in multiples thereof.
- (5) A total of one lakh retail individual investors have applied in the issue, in varying number of bid lots i.e. between 1 – 16 bid lots, based on the maximum application size of up to two lakh rupees.
- (6) Out of the one lakh investors, there are five retail individual investors A, B, C, D and E who have applied as follows: A has applied for 320 specified securities. B has applied for 220 specified securities. C has applied for 120 specified securities. D has applied for 60 specified securities and E has applied for 20 specified securities.
- (7) As the allotment to a retail individual investor cannot be less than the minimum bid lot, subject to availability of shares, the remaining available shares, if any, shall be allotted on a proportionate basis.

The actual entitlement shall be as follows:

Sl. No.	Name of Investor	Total Number of specified securities applied for	Total number of specified securities eligible to be allotted
1.	A	320	20 specified securities (i.e. the minimum bid lot) + 38 specified securities $[\{35,00,000 - (1,00,000 * 20)\} / \{140,00,000 - (1,00,000 * 20)\}] * 300$ (i.e. 320-20)
2.	B	220	20 specified securities (i.e. the minimum bid lot) + 25 specified securities $[\{35,00,000 - (1,00,000 * 20)\} /$

			{140,00,000 - (1,00,000 * 20)} * 200 (i.e. 220-20)
3.	C	120	20 specified securities (i.e. the minimum bid lot) + 13 specified securities [{35,00,000 - (1,00,000 * 20)} / {(140,00,000 - (1,00,000 * 20))} * 100 (i.e. 120-20)
4.	D	60	20 specified securities (i.e. the minimum bid lot) + 5 specified securities [{(35,00,000 - 1,00,000 * 20)} / {(140,00,000 - (1,00,000 * 20))} * 40 (i.e. 60-20)
5.	E	20	20 specified securities (i.e. the minimum bid lot)

Example B

- (1) Total number of specified securities on offer @ Rs. 600 per share: 1 crore specified securities.
- (2) Specified securities on offer for retail individual investors' category: 35 lakh specified securities.
- (3) The issue is overall subscribed by 7 times, whereas the retail individual investors' category is over- subscribed 9.37 times.
- (4) The issuer has decided the minimum application/bid size as 20 specified securities (falling within the range of ten thousand to fifteen thousand rupees) and in multiples thereof.
- (5) A total of two lakh retail individual investors have applied in the issue, in varying number of bid lots i.e. between 1-16 bid lots, based on the maximum application size of up to two lakh rupees.
- (6) As per the allotment procedure, the allotment to retail individual investors shall not be less than the minimum bid lot, subject to availability of shares.
- (7) Since the total number of shares on offer to the retail individual investors is 35,00,000 and the minimum bid lot is 20 shares, the maximum number of investors who can be allotted this minimum bid lot should be 1,75,000. In other words, 1,75,000 retail applicants shall get the minimum bid lot and the remaining 25,000 retail applicants will not get any allotment.

The details of the allotment shall be as follows:

No. of lots	No. of shares at each lot	No. of retail investors applying at each lot	Total no. of shares applied for at	No. of investors who shall receive minimum bid-lot (to be selected by a lottery)
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			each lot	
A	B	C	D= (B*C)	E
1.	20	10,000	2,00,000	8,750=(1,75,000/2,00,000)*10,000
2.	40	10,000	4,00,000	8,750
3.	60	10,000	6,00,000	8,750
4.	80	10,000	8,00,000	8,750
5.	100	20,000	20,00,000	17,500
6.	120	20,000	24,00,000	17,500
7.	140	15,000	21,00,000	13,125
8.	160	20,000	32,00,000	17,500
9.	180	10,000	18,00,000	8,750
10.	200	15,000	30,00,000	13,125
11.	220	10,000	22,00,000	8,750
12.	240	10,000	24,00,000	8,750
13.	260	10,000	26,00,000	8,750
14.	280	5,000	14,00,000	4,375
15.	300	15,000	45,00,000	13,125
16.	320	10,000	32,00,000	8,750
Total		2,00,000	328,00,000	1,75,000

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

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

Post-issue Advertisements [Regulations 51 & 147]

- The lead manager(s) shall ensure that an advertisement giving details relating to:
 - subscription,
 - basis of allotment,
 - number, value and percentage of all applications including ASBA,
 - number, value and percentage of successful allottees for all applications including ASBA,
 - date of completion of despatch of refund orders, as applicable, or
 - instructions to self-certified syndicate banks by the registrar,
 - date of credit of specified securities and date of filing of listing application, etc. is released within ten days from the date of completion of the various activities in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where registered office of the issuer is situated.
- The above mentioned details shall also be placed on the websites of the stock exchange(s).

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

- The responsibility of the lead manager(s) shall continue until completion of the issue process and for any issue related matter thereafter.
- The lead manager(s) shall regularly monitor redressal of investor grievances arising from any issue related activities.
- The lead manager(s) shall continue to be responsible for post-issue activities till the applicants have received the securities certificates, credit to their demat account or refund of application monies and the listing agreement is entered into by the issuer with the stock exchange and listing or trading permission is obtained.
- The lead manager(s) shall be responsible for and co-ordinate with the registrars to the issue and with various intermediaries at regular intervals after the closure of the issue to monitor the flow of applications from syndicate member(s) or collecting bank branches and/ or self-certified syndicate banks, processing of the applications including application form for ASBA and other matters till the basis of allotment is finalised, credit of the specified securities to the demat accounts of the allottees and unblocking of ASBA accounts/ dispatch of refund orders are completed and securities are listed, as applicable.
- Any act of omission or commission on the part of any of the intermediaries noticed by the lead manager(s) shall be duly reported by them to SEBI.
- In case there is a devolvement on the underwriters, the lead manager(s) shall ensure

that the notice for devolvement containing the obligation of the underwriters is issued within ten days from the date of closure of the issue.

- In the case of undersubscribed issues that are underwritten, the lead manager(s) shall furnish information in respect of underwriters who have failed to meet their underwriting devolvement to SEBI.

Release of subscription money [Regulations 53 & 149]

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

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

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

Post-issue reports [Regulations 55 & 151]

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

Restriction on Further Capital Issues [Regulations 56 & 152]

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

- In case of a fast track issue, during the period between the date of registering the offer document (in case of a book built issue) or prospectus (in case of a fixed price issue)

with the Registrar of Companies and the listing of the specified securities offered through the offer document or refund of application monies; or

- in case of other issues, during the period between the date of filing the draft offer document and the listing of the specified securities offered through the offer document or refund of application monies;

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

Face Value of Equity Shares [Regulations 27 & 125]

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

Pricing

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

Differential Pricing [Regulations 30 & 128]

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

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

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

- (b) in case of a book built issue, the price of the specified securities offered to an anchor investor shall not be lower than the price offered to other applicants;
- (c) In case the issuer opts for the alternate method of book building as specified under ICDR Regulations, 2018, the issuer may offer specified securities to its employees at a price not lower by more than 10% of the floor price.

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

Price and Price Band [Regulations 29 & 127]

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

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

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

Promoters' Contribution

In Case of IPO

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

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

Non applicability

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

Minimum Promoters' Contribution

The minimum promoters' contribution shall be as follows:

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

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

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

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

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

Promoters' Contribution to be brought in before Public Issue Opens [Regulation 14(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.

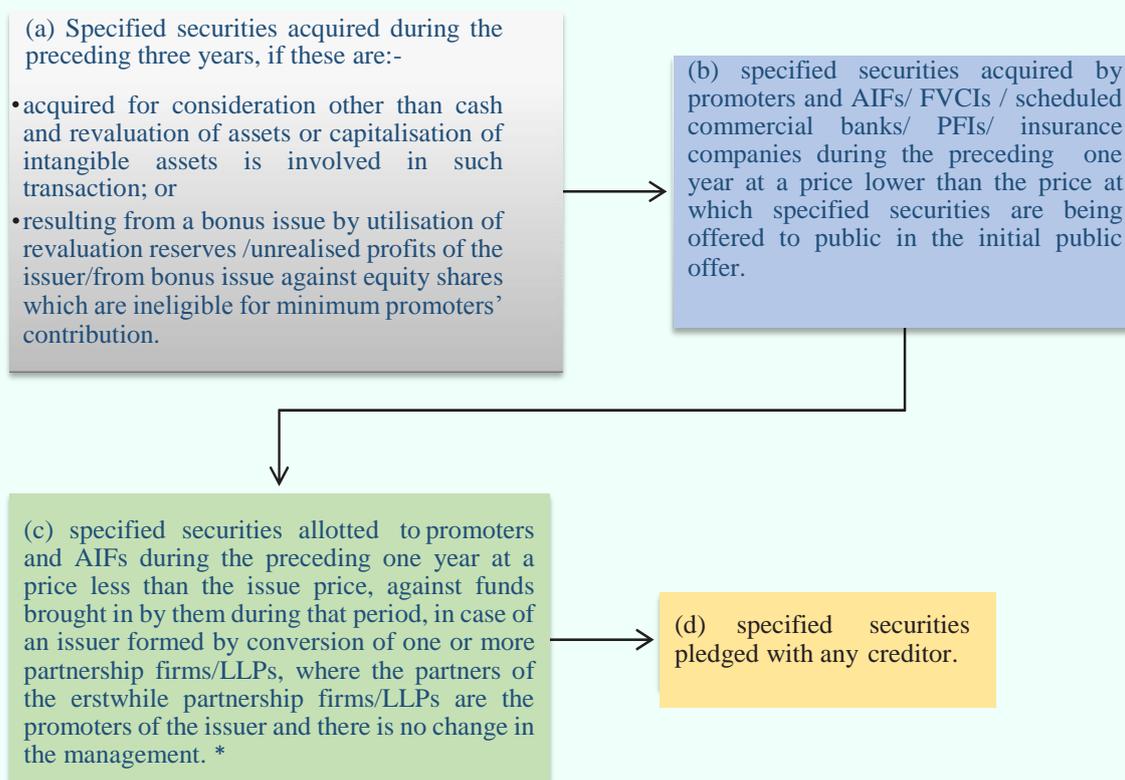
However, where the promoters' contribution has already been brought in and utilised, the issuer shall give the cash flow statement disclosing the use of such funds in the offer document;

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 Board and in case of a fast track issue, the date of filing the offer document with the Registrar of Companies, and before opening of the issue.

Minimum Promoters' Contribution [Regulation 113]

- The promoters shall contribute in the public issue as follows:
 - a) either to the extent of twenty per cent. of the proposed issue size or to the extent of twenty per cent. of the post-issue capital;
 - b) in case of a composite issue (i.e. further public offer cum rights issue), either to the extent of twenty per cent. of the proposed issue size or to the extent of twenty per cent. of the post-issue capital excluding the rights issue component.
- In case of a public issue or composite issue of convertible securities, the minimum promoters' contribution shall be as follows:
 - a) the promoters shall contribute twenty per cent., as the case may be, either by way

of equity shares or by way of subscription to the convertible securities.

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

- b) in case of any issue of convertible securities which are convertible or exchangeable on different dates and if the promoters' contribution is by way of equity shares (conversion price being pre-determined), such contribution shall not be at a price lower than the weighted average price of the equity share capital arising out of conversion of such securities.
- In case of a further public offer or composite issue where the promoters contribute more than the stipulated minimum promoters' contribution, the allotment with respect to excess contribution shall be made at a price determined in terms of the provisions relating to pricing of frequently trading shares or the issue price, whichever is higher.
- In case the promoters have to subscribe to equity shares or convertible securities towards promoters' contribution, the promoters shall satisfy the requirements of at least one day prior to the date of opening of the issue and the amount of promoters' contribution shall be kept in an escrow account with a scheduled commercial bank and shall be released to the issuer along with the release of the issue proceeds:

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

“Weighted average price”:

- (a) “weight” means the number of equity shares arising out of conversion of such specified securities into equity shares at various stages;
- (b) “price” means the price of equity shares on conversion arrived at after taking into account predetermined conversion price at various stages.

Securities ineligible for minimum promoters' contribution [Regulation 114]

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

- (a) specified securities acquired during the preceding three years, if these are:
 - i) acquired for consideration other than cash and revaluation of assets or 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.

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

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

Securities held by persons other than Promoters [Regulation 17]

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

employee stock purchase scheme.

- (iii) Equity shares held by a venture capital fund or AIF of category I & II or a FVCI and such equity shares shall be locked-in for a period of at least one-year from the date of purchase by the venture capital or AIF or FVCI.

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

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

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

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

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

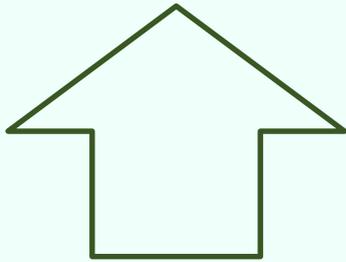
If the specified securities which are subject to lock-in are partly paid-up and the amount called-up on such specified securities is less than the amount called-up on the specified securities issued to the public, the lock-in shall end only on the expiry of three years after such specified securities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

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

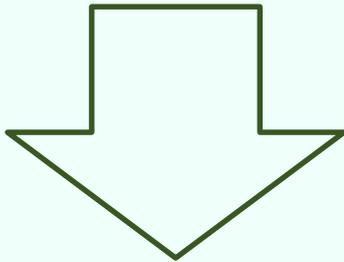
The certificates of specified securities which are subject to lock-in shall contain the inscription “non-transferable” and specify the lock-in period and in case such specified securities are dematerialised, the issuer shall ensure that the lock-in is recorded by the depository.

Pledge of Locked In Shares [Regulations 21 & 119]

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



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



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

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

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

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

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

MINIMUM OFFER TO PUBLIC AND RESERVATIONS

Minimum Offer to Public [Regulation 31]

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

Reservation on Competitive Basis [Regulations 33 & 130]

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

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

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

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

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

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

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

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

However, in the event of under-subscription in the employee reservation portion, the unsubscribed portion may be 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 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.

LESSON 5

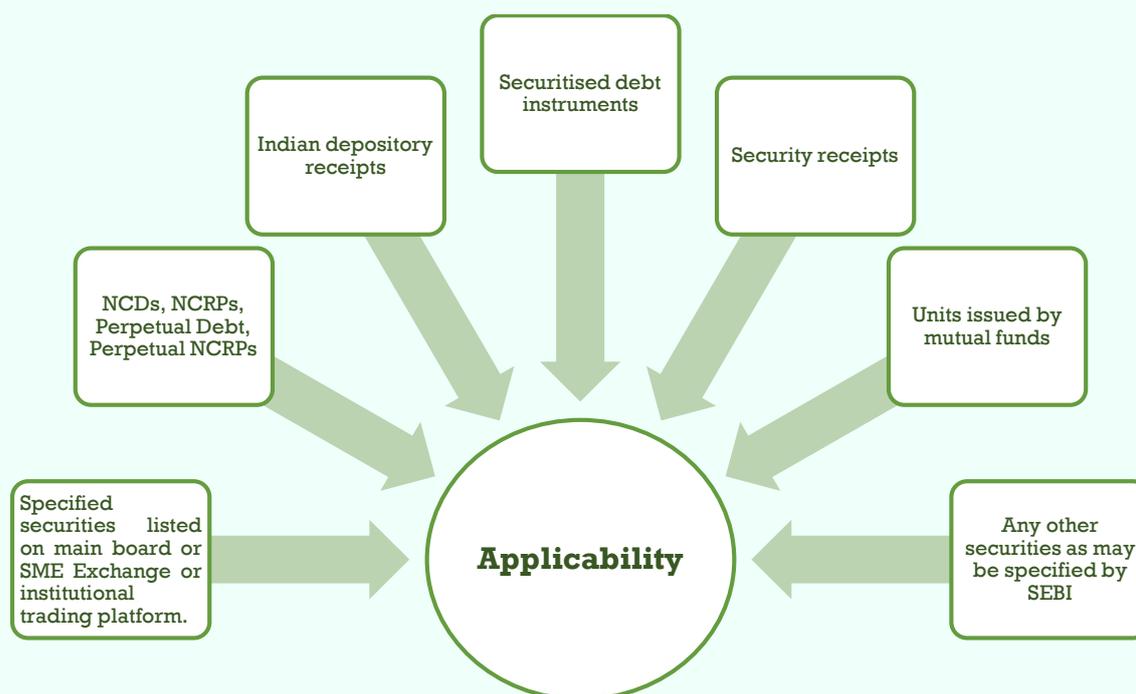
AN OVERVIEW OF SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

Page No 104

Applicability

Replace with the following

These regulations shall apply to the listed entity who has listed any of the following designated securities on recognised stock exchange(s):



Page No. 108

Event Based Compliances

In the table after Regulation 37 (2), insert the following tab:

39(3)	Loss of share certificates and issue of the duplicate certificates	Within two days of getting information.
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In the table after Regulation 45 (3), insert the following tab:

46	Website	The listed entity shall maintain a functional website containing the basic information about the listed entity.
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CORPORATE GOVERNANCE UNDER SEBI (LODR) REGULATIONS, 2015

Replace the table with the following:

Sl. No.	Particulars	Listing Regulation
1.	Related Party	Clause 2(zb)
2.	Board Composition	17(1)
3.	Appointment of Woman Director	17(1)(a)
4.	Size of the Board	17(1)(a)
5.	Maximum age of non-executive directors	17 1A
6.	Succession planning	17(4)
7.	Code of Conduct of Board of Directors & Senior Management	17(5)
8.	Prohibited Stock options for IDs	17(6)(d)
9.	Performance evaluation of IDs	17 (10)
10.	Maximum number of directorships	17A
11.	Constitution of Audit Committee	18
12.	Constitution of Nomination & Remuneration Committee	19
13.	Constitution of Stakeholders Relationship Committee	20
14.	Constitution of Risk management Committee	21
15.	Formulation of Vigil mechanism	22
16.	Related party transactions	23(1)
17.	Secretarial Audit	24A
18.	Maximum number of directorship of IDs.	25(1)
19.	Maximum tenure of IDs	25(2)
20.	Separate meeting of IDs	25(3)
21.	Liability of IDs	25(5)
22.	Filing of Casual Vacancy of IDs	25(6)
23.	Familiarisation Programme for Independent Director	25(7)
24.	Corporate Governance Report	27(2) (a)

Page No. 109

Exceptions

Insert the following after Point no. 2

Regulation 17 shall not be applicable during the insolvency resolution process period in respect of a listed entity which is undergoing corporate insolvency resolution process under the Insolvency Code.

The role and responsibilities of the board of directors as specified under regulation 17 shall be fulfilled by the interim resolution professional or resolution professional in accordance with sections 17 and 23 of the Insolvency Code.

Regulations 18, 19, 20 and 21 shall not be applicable during the insolvency resolution process period in respect of a listed entity which is undergoing corporate insolvency resolution process under the Insolvency Code.

Page No. 110

Related Party Definitions under different laws

Under Listing Regulations, 2015- The following proviso shall be inserted after the definition

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).

Policy on materiality of related party transactions

The words “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” shall be inserted after the words “related party transactions” and before the symbol “:”

Insert the following

Explanation. - A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

When will a transaction with a related party be material?

Insert the following after the first para-

Notwithstanding the above, 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 two percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

Approval of the shareholders

The words “the related parties shall abstain from voting on” shall be substituted with the words “no related party shall vote to approve”.

Insert the following proviso after the para

Provided that 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.

Other provisions

Bullet point 2

The words “abstain from voting” shall be substituted with the words “not vote to approve the relevant transaction.

Add bullet point 4

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.

ROLE OF COMPANY SECRETARY

After the bullet point insert the following:

- 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.

SEBI (LODR) Regulations, 2015

Insert the following at the end of the page

Secretarial Audit Report

Regulation 24A mandates that every listed entity and its material unlisted subsidiaries incorporated in India shall undertake Secretarial Audit and shall annex with its Annual

Report, a Secretarial Audit Report, given by a Company Secretary in Practice, in such form as may be specified with effect from the year ended March 31, 2019.

Certification regarding Director's Disqualification

As per Schedule V, Part C , Clause 10 (i), a certificate from a Company Secretary in Practice that none of the directors on the board of the company have been debarred or disqualified from being appointed or continuing as Directors of Companies by the Board/ Ministry of Corporate Affairs or any such Statutory Authority.

Page No. 113

Bombay Stock Exchange Limited

Delete the content under this portion from the study material.

LESSON 6
AN OVERVIEW OF SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

Page No. 119

Frequently traded shares

Replace the first para of the definition with the following:

“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.

Page No. 123

Delisting Offer

Substitute Point No.1 & 3 with the following:

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.
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.

Page No. 129

Provisions of Escrow

After Point No. (c), insert the following:

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.

Page No. 128

Dispatch of Letter of Offer

Insert the following after Para 1

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.

Page No. 131

Withdrawal of open offer

Insert the following after point 1(c)-

Provided that 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.

Page No 135

Regulation 10 - Automatic Exemptions

The words “listing agreement”, in point no. 1 (a) (ii) (iv) & (v) wherever occurring, shall be substituted by the words “listing regulations.

Insert the following after point no. (iii)

Explanation: For the purpose of this sub-clause, the company shall include a body corporate, whether Indian or foreign.

Page No. 142

Disclosures under Regulation 29(1) and 29(2) of SAST Regulations has been extended to non- promoters also

For the purpose of system driven disclosure, the requirement specified under Regulation 29(4) of SAST Regulations shall not be applied to a scheduled commercial bank or public financial institution as pledgee irrespective of whether such a pledge is for securing indebtedness in the ordinary course of business or not.

LESSON 7

SEBI (BUY-BACK OF SECURITIES) REGULATIONS, 1998

Replace the heading of the lesson with the following:

SEBI (BUY-BACK OF SECURITIES) REGULATIONS, 2018

Page No 146

Replace with the following from Page No. 146- 157

Introduction

The corporates adopts various tools, viz., mergers, amalgamations and takeovers for restructuring the business. All these activities, in turn, impacted 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.

In order to revive the capital markets and protect companies from hostile takeover bids, the SEBI had notified the SEBI (Buy-Back of Securities) Regulations, 1998 and repealed by New Regulation the “**SEBI (Buy-Back of Securities) Regulations, 2018**”. The SEBI at its meeting held on March 28, 2018 had approved the proposal of undertaking a public consultation process for reviewing the **SEBI (Buy-Back of Securities) Regulations, 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, FAQs, informal guidance in the regulations. Thereafter, the SEBI vide its Notification dated September 11, 2018, has 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 for.

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 Companies Act, 2013 and Rule 17 of Companies (Share Capital and Debentures) Rules, 2014. Listed companies have to comply with the rules laid down by SEBI also in this behalf.

Conditions for Buy Back pursuant to section 68(2) of the Companies Act, 2013

- Securities offered for buy-back must be fully paid-up.
- The buy-back must be authorized by the articles of association of the company.
- There must be a gap of at least one year between two buy back offers by the company.
- 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.
- A company can buy-back up to 25% of the aggregate of paid-up capital and free reserves of the company. However, in case of buy back of equity shares the limit of 25% of paid up capital shall be construed as 25% of Equity paid up capital.
- The company shall complete buy-back within a period of one year from the date of passing of special resolution, or board resolution as the case may be.

Applicability

SEBI (Buyback 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.

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 : <ul style="list-style-type: none">• 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

$$= \text{Rs. } 600000 * 25\%$$

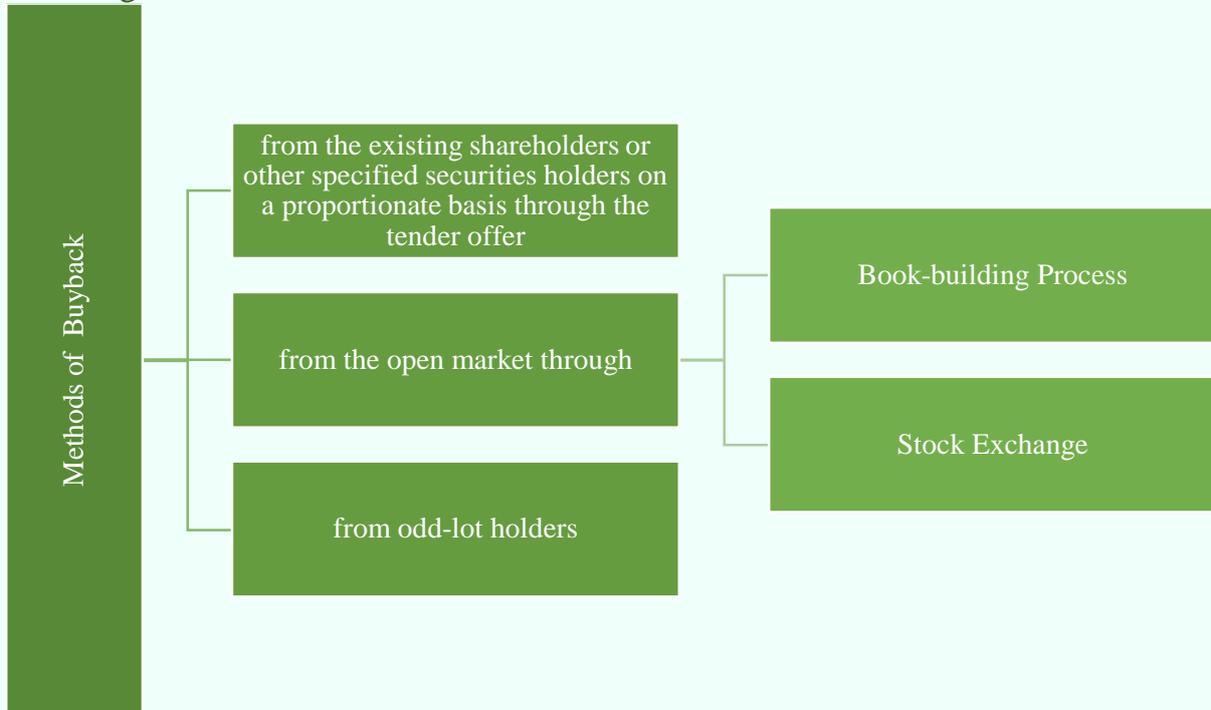
$$= \text{Rs. } 1,50,000$$

(ii) Maximum number of equity shares that can be bought back

=Rs. 1,50,000/10
= 15000 equity shares

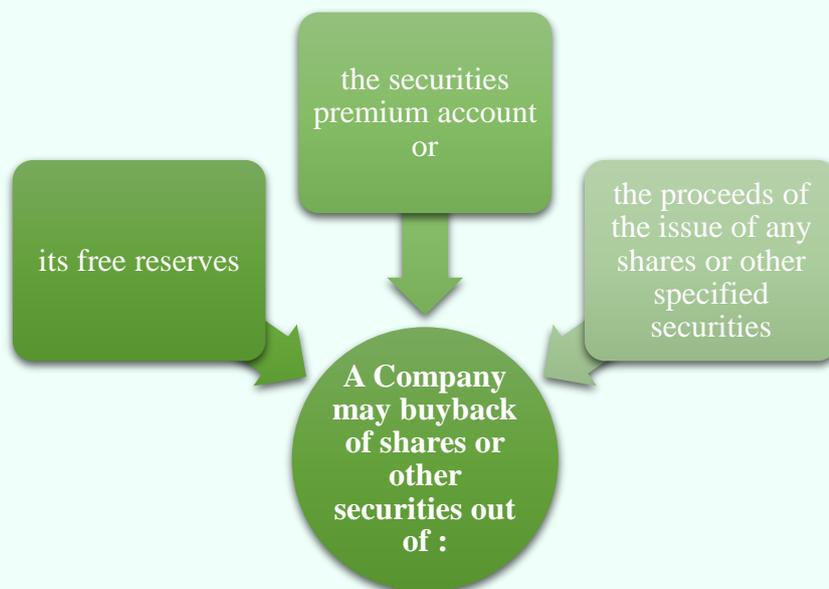
Methods of buy-back

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.

Sources for buy-back



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

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.

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 buy-back in the Articles of the Company.

In case no authorisation in the articles, 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.

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 shall contain mandatory disclosures 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** under these regulations, in addition to disclosure mentioned above under sub section 3 of section 68 of the Companies Act, 2013. These disclosures as 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 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 this 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 of the 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.

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 <i>within two working days</i> 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.
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		<ul style="list-style-type: none"> • 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.

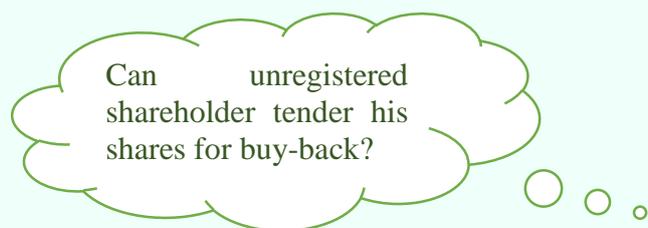
Note:

- *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 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 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.



Yes, unregistered shareholder may also tender his shares for buy-back by submitting the duly executed **Transfer Deed** for transfer of shares in his name, along with the offer form and other relevant documents as required for transfer, if any.

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

- 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

- 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

- 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

- 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 ensures 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.

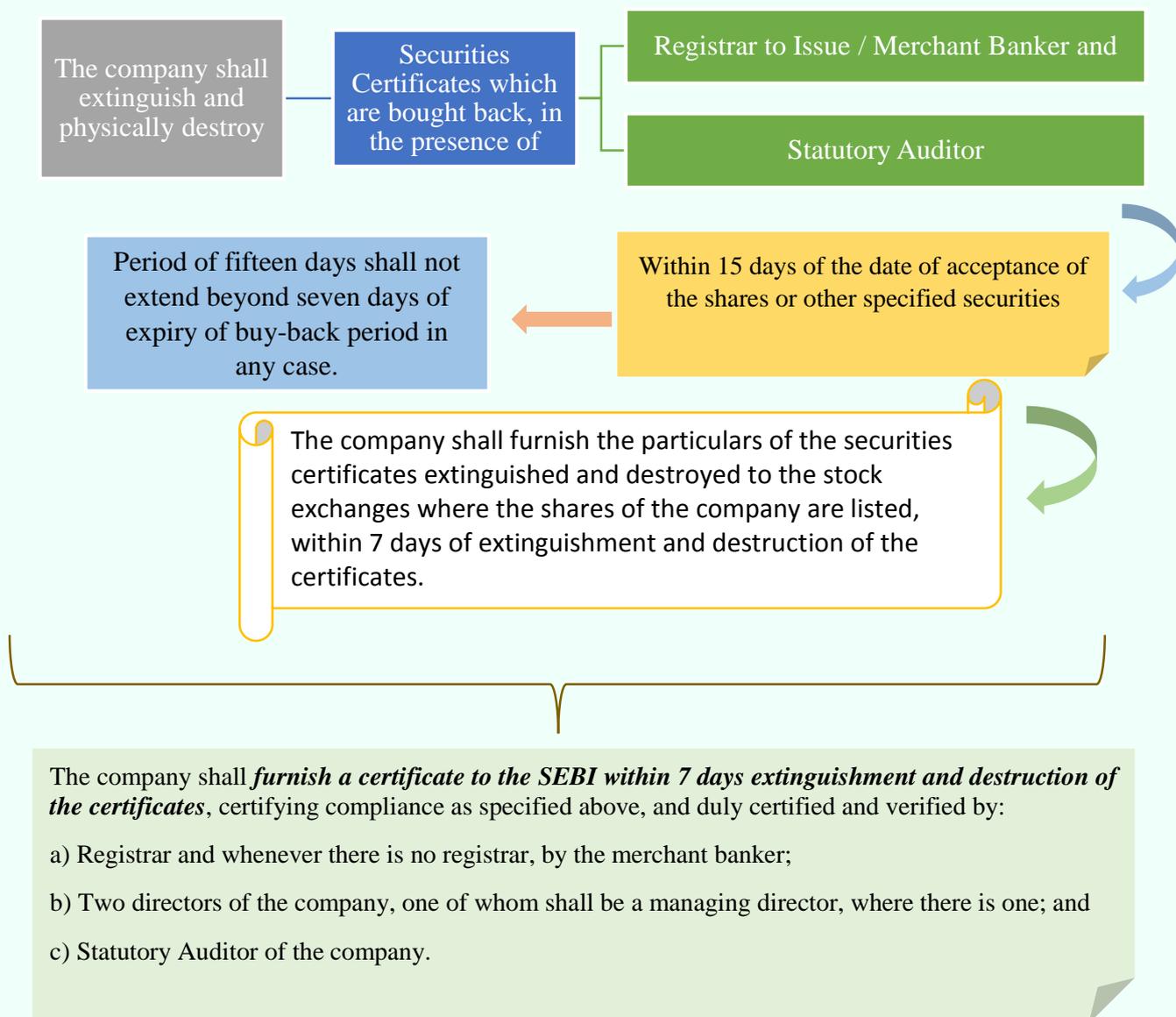
Closure and payment to securities holders

- 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.

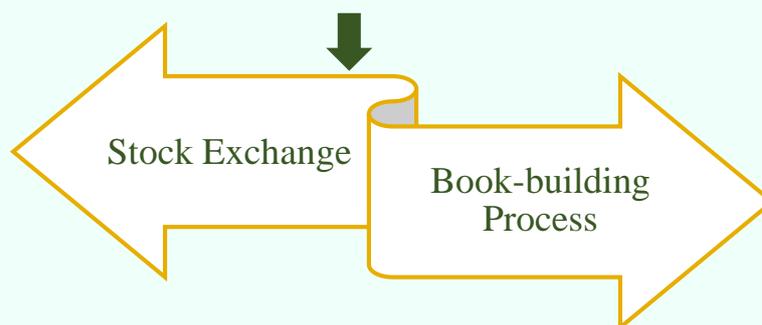
- Where a company buys back its shares or other specified securities under these regulations, it shall maintain a register of the shares or securities so bought, in Form SH. 10 in pursuance of section 68(9) of the Companies Act, 2013.

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.

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.

		<ul style="list-style-type: none"> • 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><i>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.</i></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><i>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.</i></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 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.
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>

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 this chapter.
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.

		<ul style="list-style-type: none"> • 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. • 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; 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>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; • 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

<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 	<p>from the date of expiry of buyback period.</p>
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<p>specified securities exceeding one per cent of total shares or other specified securities were bought back; and</p> <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 shareholder's 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 8
SEBI (DELISTING OF EQUITY SHARES) REGULATIONS, 2009

Page No. 164

Non- applicability

The following shall be inserted after the first para-

Nothing in these regulations shall apply 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.

Page No. 165

Circumstances where delisting is not permissible

Box No. 3

Before the words “promoter group”, the words “an acquirer” shall be inserted.

After the words “promoter group” and before the words “or their”, the words “**or persons acting in concert**” shall be inserted.

Page No. 166

1. Procedure for voluntary delisting from all the stock exchanges

Line 1

The word “would” shall be substituted with the word “do”.

Page No. 167

Note

Line 1

The word ‘if and’ shall be deleted.

While considering an application seeking in-principle approval for delisting, the recognised stock exchange satisfy itself on the following grounds – [Regulation 8(4)]

In clause (d), the words “listing agreement” shall be substituted with the words “SEBI Listing Regulations, 2015”.

Appointment of Merchant Banker [Regulation 10 (4)]

After para 1, the following shall be inserted:

Explanation - The merchant banker conducting due diligence on behalf of the company may also act as the manager to the delisting offer.

Opening of Escrow account [Regulation 11]

After para 1, the following shall be inserted:

Explanation - The cash component of the escrow account may be maintained in an interest bearing account, provided that the merchant banker ensures that the funds are available at the time of making payment to shareholders.

Determination of Offer Price (Regulation 15)

After para 1, the following shall be inserted:

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 the delisting proposal would be considered.

Page No. 169

Specified date [Regulation 10 (3)]

The words ‘thirty working days’ shall be substituted by the words “one working day”.

Dispatch of Letter of offer [Regulation 12]

After para 1, the following shall be inserted:

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.

Minimum number of equity shares to be acquired [Regulation 17]

- Line No 1

The word “An” shall be omitted and in its place, the words “If a counter offer has not been made by the acquirer or promoter in accordance with regulation 16 (1A), an” shall be inserted.

- After clause (b) and before the explanation, the following explanation shall be inserted, -

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.
- The existing Explanation shall be numbered as Explanation II.
 - The following new para shall be inserted after the Explanation 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 per cent. 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.

Page No. 170

Public Announcement after closure of offer [Regulation 18]

Insert the following after the word “acquirer” and before the symbol “.” in the last line of the para:

or the failure of the offer in terms of regulation 19.

Payment of consideration [Regulation 20]

Line No. 1

The words “on ascertaining” shall be substituted with the word “upon”.

Right of remaining shareholders to tender equity shares [Regulation 21]

Line No. 2

The word ‘atleast’ shall be substituted by the word “minimum”.

Page No. 171

Line No. 2

The word “paragraphs” shall be substituted with the word “clauses”.

Page No. 172**Points to Remember:-**

Line 1

The word ‘if and’ shall be deleted.

Page No. 174

Public notice before delisting order [Regulation 22 (3)]

Line 1

The word “making” shall be substituted with the word “passing”.

Page No. 173**Consent of the Public Shareholders [Regulation 27 (3)(d)]**

Line 1

The words “At least 90% of such public shareholders give their positive consent” shall be substituted with the words “the public shareholders, irrespective of their numbers, holding 90 % or more of the public shareholding give their consent”.

Page No. 175**Public notice after Delisting Order [Regulation 22 (6)]**

Clause (b)

The words ‘and the surrounding circumstances’ shall be deleted.

Exit Price Determination by an Independent Valuer [Regulation 23 (1)]

- Delete the word (1) from the heading.
- Insert the following as the second bullet point after the first:
 - 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.
- In Bullet point 3, insert the following:

The words “the valuer” and before the symbol “,”, the words “within three months of the date of delisting from the recognised stock exchange” shall be inserted.

LESSON 11
SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

Page No. 214

Disclosures of interest by Certain Persons

The CEO and upto two levels below CEO of a company shall be deemed as employees for the purpose of system-driven disclosures in respect of Regulation 7(2) (b) of PIT Regulations.

LESSON 15 STRUCTURE OF CAPITAL MARKET

Page No. 279

Indian Depository Receipts

Para 3, replace with the following:

Apart from this a company has to comply with Chapter VII & VIII of SEBI (ICDR) Regulations, 2018 to issue IDRS or to issue IDRS on rights basis.

Page No 281

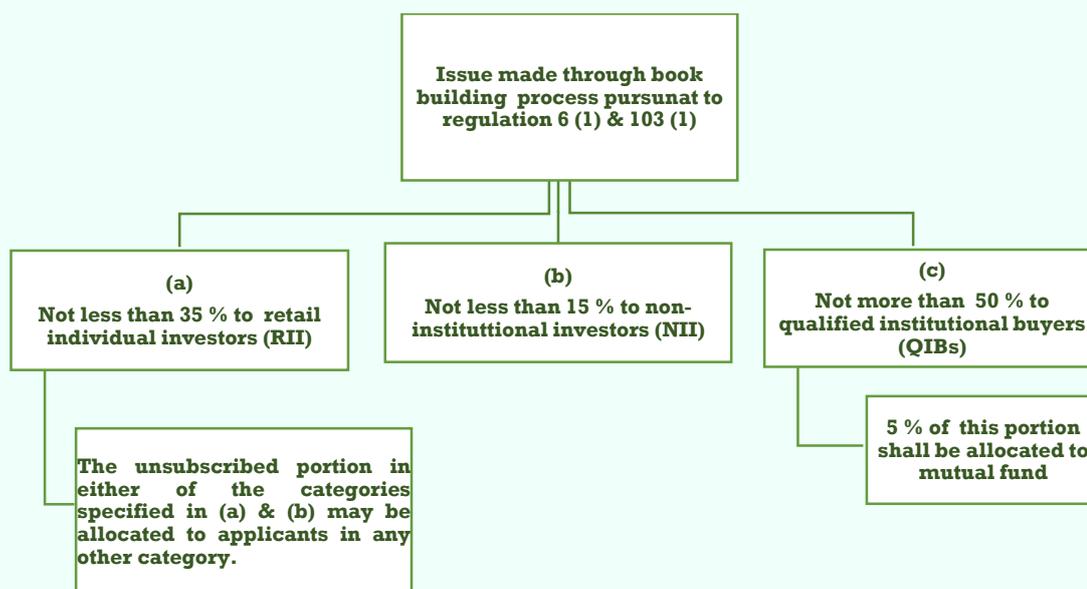
Book Building

- The words “SEBI (ICDR) Regulations, 2009” shall be substituted with the words “SEBI (ICDR) Regulations, 2018”.
- The flow chart shall be substituted with the following :

Allocation in Net Offer

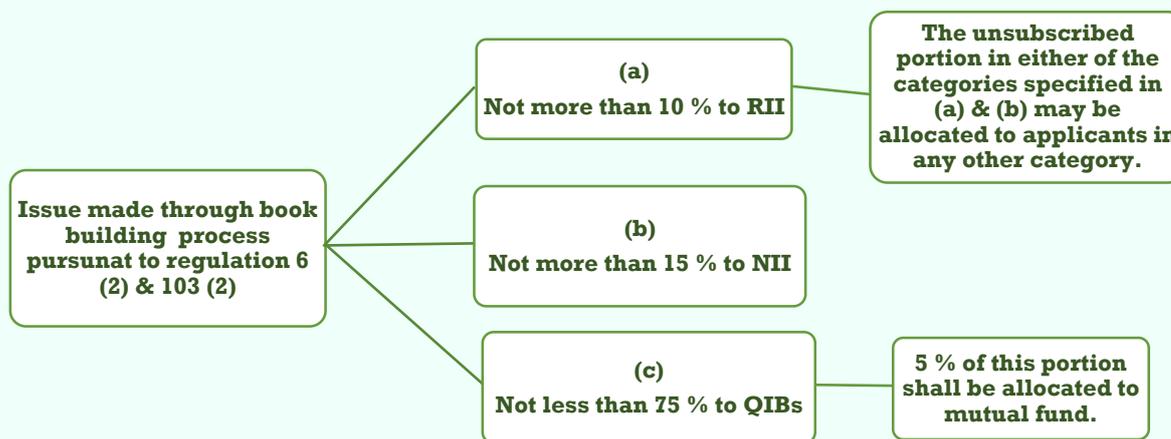
(1) Regulations 32(1) & 129(1)

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



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

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

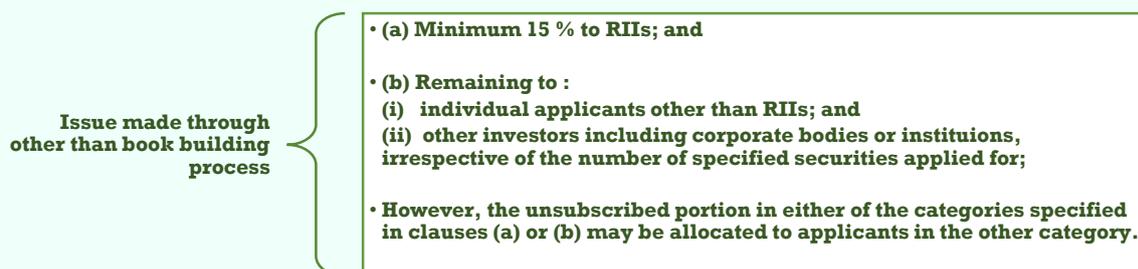


(3) Regulations 32(3) & 129(3)

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

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

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



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

Page No. 283

Anchor Investors

Insert the following after Para 1

An anchor investor shall make an application of a value of at least ten crore rupees in a public issue on the main board made through the book building process or an application for a value of at least two crore rupees in case of a public issue on the SME exchange.

Insert the following after the last point in the existing para 2:

- The anchor investors shall pay on application the same margin which is payable by other categories of investors and the balance, if any, shall be paid within two days of the date of closure of the issue.

Application Supported by Block Amount (ASBA)

The following shall be substituted with the content under the heading “Process”

As per the SEBI circular no CIR/CFD/POLICY CELL/11/2015 dated November 10, 2015. All shall mandatorily use only Application Supported by Blocked Amount (ASBA) facility for all issues opening from 01 January, 2016 onwards.

ASBA Process

Insert the following after the last para:

Streamlining the Process of Public Issue of Equity Shares and convertibles

As per SEBI Cir no SEB/HO/CFD/DIL2/CIR/P/2018/138 dated November 01, 2018, in order to further streamline the public issue process, SEBI has introduced the use of Unified Payment Interface (UPI) as a payment mechanism with Application Supported by Block Amount (ASBA) for application in public issues by retail investors through intermediaries (Syndicate members, Registered Stock Brokers, Registrar and Transfer agent and Depository Participants).

The proposed process would increase efficiency, eliminate the need for manual intervention at various stages, and will reduce the time duration from issue closure to listing by upto 3 working days.

Considering the time required for making necessary changes to the systems and to ensure complete and smooth transition to UPI payment mechanism, the proposed alternate payment mechanism and consequent reduction in timelines is proposed to be introduced 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.

Green Shoe Option

Para 1, Line 2

The words “regulation 45 of the SEBI (ICDR) Regulations, 2009” shall be substituted with the words “regulations 57 & 153 of the SEBI (ICDR) Regulations, 2018”.

LESSON 16
SECURITIES MARKET INTERMEDIARIES

Page No. 310

Internal Audit of Intermediaries by a Company Secretary in Practice

SEBI has mandated that RTA has to undergo for compulsory internal audit for which a PCS is authorised by SEBI to carry out the internal audit at par with other professionals.
