NISM CERTIFICATION EXAMINATION WORK BOOK

IX

Merchant Banking

National Institute of Securities Markets
A Capacity Building Initiative of SEBI

Workbook for

NISM-Series-IX: Merchant Banking

Certification Examination

NiSM

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www.nism.ac.in

This workbook has been developed to assist candidates in preparing for the National Institute of Securities Markets (NISM) Certification Examination for Merchant Banking.

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Foreword

NISM is a leading provider of high-end professional education, certifications, training, and research in financial markets. NISM engages in capacity building among stakeholders in the securities markets through professional education, financial literacy, enhancing governance standards, and fostering policy research.

The NISM certification programs aim at enhancing the quality and standards of professionals employed in various segments of the financial sector. NISM develops and conducts certification examinations and Continuing Professional Education (CPE) programs that aim at ensuring that professionals meet the defined minimum common knowledge benchmark for various critical securities market functions.

NISM certification examinations and educational programs serve different securities market intermediaries focusing on varied product lines and functional areas. NISM certifications have established knowledge benchmarks for various market products and functions such as equities, mutual funds, derivatives, compliance, operations, advisory, and research. NISM certification examinations and training programs provide a structured learning plan and career path to students and job aspirants, wishing to make a professional career in the securities markets.

NISM supports candidates by providing lucid and focused workbooks that assist them in understanding the subject and preparing for NISM Examinations. The book covers basics of the commodity derivatives, commodity indices, commodity futures and commodity options, clearing, settlement and risk management as well as the regulatory environment in which the commodity derivatives markets operate in India. It will be immensely useful to all those who want to have a better understanding of various products available in Indian commodity derivatives markets.

Sashi Krishnan
Director, NISM

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NISM gratefully acknowledges the contribution of the Examination Committee for NISM-Series-IX: Merchant Banking Certification Examination, consisting of nominated representatives from the AIBI.

About the Certification Examination for Merchant Banking

In order to create a common minimum knowledge benchmark for employees working with SEBI-registered Merchant Bankers and performing various SEBI-regulated functions, such as those relating to IPO, FPO, Open offer, Buy-back, Delisting, etc., and are involved in, or deal with any of the following:

- The investors, issuers, or clients of intermediaries
- Assets or funds of investors or clients
- Redressal of investor grievances
- Internal control or risk management
- Activities having a bearing on operational risk
- Maintain books and records pertaining to the above activities.

The exam will further seek to ensure basic understanding of various aspects of capital market functions, the processes involved in various functions of registered Merchant Bankers, and the regulatory environment in which it operates.

Examination Objectives

The examination aims to enable a better understanding of various regulations in the Merchant Banking Domain. The examination also covers knowledge competencies related to the understanding of the financial structure in India and the importance of the different rules and regulations governing the Indian securities market.

On successful completion of the examination, the candidate should:

- Know the basics of Merchant Banking in India.
- Understand the functioning of Merchant Bankers related to Issue Management Process, Substantial Acquisition of Equity Shares, Buyback of Equity Shares, and Delisting of Shares.
- Know the regulatory environment in which the Merchant Bankers operate in India.

Assessment Structure

The examination consists of 100 questions of 1 mark each and should be completed in 2 hours. The passing score on the examination is 60%. There shall be negative marking of 25% of the marks assigned to a question.

How to register and take the examination

To find out more and register for the examination, please visit *www.nism.ac.in*

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Chapter 1- Introduction to Capital Market

LEARNING OBJECTIVES:

After studying this chapter, you should know about the:

- Structure of the capital market
- Products available in the Indian securities market
- Participants in the Indian securities market
- Role of different regulators of the market

In this chapter, the structure of the Indian Capital Market, the different products available in the securities market, various participants, and the role of different regulators of the market will be discussed briefly to give an overview of the capital market in India.

1.1 Introduction to Capital Market

Capital Markets play a very important role in the development of the economy. It helps in allocating the unutilized resources, i.e., transfer of funds from savers to their efficient users. It provides channels for the allocation of savings to investments. They consist of investors, who are the backbone of the economy, issuers, regulatory bodies, and intermediaries. The movement of capital in the economy from the savings pool to the investment pool is performed by two main platforms of institutional intervention: (a) the Financial institutions and banking framework, and (b) the capital market framework. The capital market plays the primary role of a facilitator and an intermediary in raising capital and deploying the same in the economy.

1.1.1 Capital Market

Capital Market provides a platform for the issuers and the investors to come together. It helps the issuers to raise capital for productive deployment in creating economic wealth. At the same time, the capital market offers investment avenues to investors with an appetite for higher risks and returns as compared to savings in bank deposits. Capital Market is further divided into the Primary Market and Secondary Market, whereas Money Market is classified into Organized Money Market and Unorganized Money Market.

Primary Market is the new issue market, which provides an opportunity to issuers of securities, the Government, as well as corporations, to raise resources to meet their requirements of investments and/or discharge some obligations. If securities are allotted to the public for the first time for the purpose of listing, it is called an Initial Public Offer (IPO). Once the securities are listed on the Stock Exchanges, the same shares traded will be on the secondary market, between investors themselves. If securities are already listed and the issuer company wants to issue a further class of securities to the investors again, it is called a Further Public Offer (FPO).

The Secondary Market helps in providing liquidity to the securities which has already been issued in the primary market. In this market, an investor liquidates his own investments. Since the securities are traded on the stock exchange and the transactions are between two investors, the issuer does not come into the picture. Secondary Markets operate through two mediums, namely, the Over-The-Counter (OTC) market and the Exchange Traded Market. **OTC markets** are the informal type of markets where trades are negotiated. In this type of market, the securities are traded and settled bilaterally over the counter. The other option of trading is through the **stock exchange route**, where trading and settlement are done through the stock exchanges, and the buyers and sellers may not be in touch with each other. The transaction is carried out through SEBI-registered stock brokers and/or authorised persons.

The money market is a market for financial assets that are close substitutes for money. It is typically a market for short-term funds. The money market deals primarily in securities, such as bankers' acceptances, negotiable certificates of deposit (CDs), repos, and Treasury Bills (T-bills), call/notice money market, and commercial paper.

1.1.2 Products in the Indian Securities Market

Indian securities markets cover a wide range of products depending on the risk appetite of the investors. For example, if an investor wants to invest in risky products, he has the option to invest in products of the equity market, whereas a risk-averse investor can invest in bond markets, which are comparatively less risky. The product portfolio of Indian securities markets can be broadly classified into 3 categories:

a) Equity Market Products
b) Derivative Market Products
c) Debt Market Products

a) Equity Market Products: The equity segment of the stock exchange allows trading in equity shares, convertibles, warrants, mutual funds, and exchange-traded funds (ETFs).

Equity Shares represent a form of fractional ownership in a business venture. Equity shareholders collectively own the company and also bear the risk and enjoy the rewards of ownership.

Preference Shares represent economic interest that has a superior right as compared to equity shares. Preference shareholders have first preference to receive dividends and return of their capital. Preference shares are therefore paid a fixed rate of dividend and are redeemable within a time period not exceeding 20 years.

Convertibles are instruments that can be converted into equity shares of the issuing company. Convertibles can be issued in the form of debt instruments such as fully or partly convertible debentures or bonds. The conversion can also be structured as mandatory or at the option of the investor. Depending on the conversion features, these instruments are known as Fully Convertible Debentures (FCDs), OFCDs (optional FCDs), and PCDs (Partly Convertible Debentures). Convertibles can also be structured through

preference shares, in which case they would be known as CPS (Convertible Preference Share) or CCPS (Cumulative CPS including dividend payable).

Warrants entitle an investor to buy equity shares after a specified time period at a given price. Warrants provide the right but not the obligation to purchase shares or other securities in the company. If the warrant is not exercised, the investor stands to lose the amount paid on acquisition of the warrant.

Mutual Fund pools money from numerous investors who wish to save or make investments having similar investment objectives. The Mutual Fund invests in different types of funds in consonance with the investment objectives. A mutual fund company pools money from many investors and invests the money in stocks, bonds, short-term money-market instruments, other securities or assets, or some combination of these investments, depending on the objectives of the fund. There are funds that invest in equities, better known as equity MF schemes, which are considered riskier than debt mutual funds.

An Exchange Traded Fund is a fund that can invest in either all of the securities or a representative sample of securities included in the index. Importantly, the ETFs offer a one-stop exposure to a diversified basket of securities that can be traded in real time, like an individual stock example gold exchange-traded fund.

b) Derivative Market Products: A Derivative is a product whose value is derived from the value of one or more basic variables, called bases (underlying asset, index, or reference rate), in a contractual manner. The underlying asset can be equity, forex, commodity, or any other asset. The derivatives segment in India allows trading in equities, currency, and commodities. There are two types of derivative instruments, viz., Futures and Options, that are traded on the Indian stock exchanges.

An index/Stock Future is an agreement between two parties to buy or sell an asset at a certain time in the future at a certain price. Futures contracts are special types of forward contracts in the sense that the former are standardized exchange-traded contracts. Futures contracts are available on certain specified stocks and indices.

Index/Stock Options are of two types - calls and puts. Calls give the buyer the right, but not the obligation, to buy a given quantity of the underlying asset at a given price on or before a given future date. Puts give the seller the right, but not the obligation, to sell a given quantity of the underlying asset at a given price on or before a given date.

Currency Derivatives trading was introduced in the Indian financial markets with the launch of currency futures trading in the USD-INR pair on the National Stock Exchange of India Limited (NSEIL) on August 29, 2008. A few more currency pairs have also been introduced thereafter. Currently in India, currency futures contracts are traded on four INR pairs, i.e., USDINR, EURINR, GBPINR, and JPYINR, and on three cross currency pairs, i.e., EURUSD, GBPUSD, and USDJPY, on the recognized stock exchanges.

Commodity Derivatives markets are markets where raw or primary products are exchanged. These raw commodities are traded on regulated commodities exchanges, in which they are bought and sold on the basis of standardized contracts for a specified future date. Commodity markets facilitate the trading of commodities such as gold, silver and various agricultural goods.

Interest Rate Futures trading is based on notional 10-year coupon bearing Government of India (GOI) security. These contracts are settled by physical delivery of deliverable grade securities using electronic book entry system of the existing depository's viz., NSDL and CDSL and the Public Debt Office of the Reserve Bank unlike the cash settlement of the other derivative products.

c) **Debt Market Products**: Debt market consists of Bond markets, which provide financing through the issuance of debentures and bonds, and enable the subsequent trading thereof. These instruments can be traded in OTC or Exchange traded markets. In India, the debt market is broadly divided into government securities (G-Sec) market and the corporate bond market.

Government Securities Market: The Government needs enormous amount of money and one of the important sources of borrowing funds is the government securities market. The government raises short term and long term funds by issuing securities. These securities do not carry default risk as the government guarantees the payment of interest and the repayment of principal. They are therefore referred to as gilt edged securities. Government securities are issued by the central government, state government and semi-government authorities. The major investors in this market are banks, insurance companies, provident funds, state governments, FPIs. Government securities are of two types- treasury bills and government dated securities.

Corporate Bond Market: Corporate bonds are bonds issued by firms, corporate and are issued to meet needs for expansion, modernization, restructuring operations, mergers and acquisitions. The corporate bond/debt market is a market wherein debt securities of corporates are issued and traded therein. The investors in this market are banks, financial institutions, insurance companies, mutual funds, FPIs etc. Corporates adopt either the public offering route or the private placement route for issuing debentures/bonds. Debentures and bonds are pure debt instruments that carry a periodic interest payment (called 'coupon') or a cumulated terminal payment without any periodic interest (called 'zero coupon'). These instruments are redeemed by repayment of the principal amount as per stated terms of issue. Since these instruments need to be repaid by the issuer company, these are usually secured against assets of the company or other collaterals. They are also rated by one or more independent credit rating agencies, especially if they are issued through public offers.

Some of the other instruments available for trading in the debt segment are money market instruments such as Treasury Bills, Commercial Papers and Certificate of Deposits.

1.1.3 Participants in Indian Securities Market

There are different participants who play an important role in the securities market. Entities develop, issue, register and sell securities for the purpose of financing their operations. There are people who invest in these securities and there are some entities that provide the service of intermediation. Some of them are discussed here:

i. **Issuer** means any company/corporate making an offer of securities. They are the persons who actually approach the market stating their specific objectives and collect funds from the general public by offering securities.

ii. **Investors** are the persons who actually invest their funds in the securities offered by the issuer. They are broadly categorised as Retail Investors, Institutional Investors and Non-Institutional Investors. Investors investing upto Rs. Two lakh in a single public issue transaction is termed as Retail investors, whereas institutional investors comprise of domestic financial institution, mutual funds, FPIs etc commonly known as Qualified Institutional Buyers (QIBs).[2]

iii. **Intermediaries:** There are many intermediaries in the Indian securities market. As per the SEBI Act, 1992, intermediaries include stock brokers, share transfer agents, bankers to an issue, self-certified syndicate bank (SCSBs), trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers, mutual funds and such other intermediaries who may be associated with securities markets in any manner, depositories, depository participants, custodians of securities, credit rating agencies and such other intermediaries as SEBI may, by notification, specify in this behalf. Some of them are discussed below:

- ***Stock Brokers***: Stock brokers have been defined as a member of a stock exchange. Stock Brokers are the members of the Stock Exchange and can either be individuals or corporate. They give their advice and recommendations relating to investment opportunities to their clients. Their clients may be retail investors or institutional clients and they execute the trade on their client's behalf on the exchange. Further, SEBI has discontinued the category of sub-broker as a market intermediary and they have been migrated to a category known as Authorized Person and/or Trading member. Authorised Person or "AP" means a person –individual, partnership firm, LLP or body corporate – who is appointed by a stock broker (including trading member) and who provides access to trading platform of a stock exchange as an agent of the stock broker.

- ***Custodians:*** mean any person who carries on or proposes to carry on the business of providing custodial services. Custodial services include safekeeping of the securities. A

[2]CBDT vide Notification No. 59/2015 dated 6th July, 2015 has stated that for the purpose of issue of tax-free, secured, redeemable, and non-convertible bonds, Retail individual Investors means those individual investors, Hindu Undivided Family (through Karta), and Non Resident Indians (NRIs), on repatriation as well as non-repatriation basis, applying for upto Rupees Ten lakhs in each issue and individual investors investing more than Rupees Ten lakhs shall be classified as High Net Worth Individuals.

Custodian is an entity that helps safeguard the securities of its clients. Custodians may also be clearing members like Professional Clearing Members (PCMs) but not trading members. They settle trades on behalf of the clients of the trading members, when a particular trade is assigned to them for settlement.

- **Depositories**: means a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996. Depositories offer various services to their clients, however, the principal function is to provide a facility for investors to hold and transfer securities in dematerialised form. Through a system of paperless securities, depositories have made the going easier to other institutions as well such as Stock Exchanges and its clearing houses, stock broking firms, issuing companies, share transfer agents etc. Currently there are two Depositories in India, Central Depository Services Limited (CDSL) and National Securities Depository Limited (NSDL).

- **Depository Participants (DPs)**: Depository Participant means a person registered as a participant with the SEBI. The Depository provides its services to clients through its agents called depository participants. These agents are appointed by the depository with the approval of SEBI. According to SEBI regulations, amongst others, three categories of entities, i.e. Banks, Financial Institutions and body corporate engaged in providing financial services provided certain conditions are fulfilled can become DPs.

- **Merchant Bankers**: means any entity who is engaged in the business of issue management either by making arrangements regarding selling, buying or subscribing to securities or acting as manager, consultant, adviser or rendering corporate advisory service in relation to such issue management. They need to be registered with SEBI to act and perform as Merchant Banker. They perform a variety of activities including managing capital issues, managing individual funds and advising clients on proper valuation of securities and often the underwriting of issues. Other market participants such as money-market dealers, commercial banks and financial institutions, share brokers and investment funds may also obtain separate registration as Merchant Bankers. Merchant Banks are also involved in conducting due diligence in connection with public offers as also being responsible in compliance matters under SEBI Regulations. Merchant Banks are also eligible to conduct valuation of securities and provide independent opinions for regulatory requirements under SEBI Regulations.

- **Registrars and Transfer Agents**: Registrars to an issue are entities, who on behalf of any Body Corporate collect applications from investors in respect of an issue, keep proper record of applications and monies received from investors and assists body corporate to determine basis of allotment, process and despatch allotment letters, refund orders or certificates in respect of an issue. Share transfer agents maintain the record of holders of securities issued by such body corporate and deal with all matters connected with the transfer and redemption of its securities. Share transfer agent can also be a department

or division (by whatever name called) of a body corporate performing the above activities if, at any time the total number of the holders of securities issued exceed one lakh.

- **Self - Certified Syndicated Bank (SCSBs):** SCSBs are Banker to an Issue registered with the SEBI, which offers the facility of Application Supported by Blocked Amount.

In addition to the Self Certified Syndicate Banks (SCSBs), Syndicate Members and Registered Brokers of Stock exchanges, the Registrars to an Issue and share transfer Agents (RTAs) and Depository Participants (DPs) registered with SEBI are also permitted to accept application forms (both physical as well as online) in public issues.

1.1.4 Regulators in Indian Securities Market

In order to have effective functioning and proper development of the market, there is a need for a regulator. Amongst other tasks, the first and foremost task of the regulator would be to protect the interest of investors and to ensure that there is no violation of rules and regulations. In India, securities markets are regulated by different regulators and hence there may be instances where there is a regulatory overlap.

The Securities and Exchange Board of India (SEBI) is the securities market regulator[3]. As per SEBI Act 1992, it is "responsible for protecting the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto". It also regulates the issue of new securities, has the power to make rules for regulating the stock exchange, provides license to dealers and brokers and deals with frauds and inconsistencies in the capital market.

The money market which deals with bonds and deposits is regulated by the Reserve Bank of India (RBI). It looks at the macroeconomic conditions and decides the rate of interest to be paid on government securities as well as important factors like the Statutory Lending Ratio (SLR) and the Cash Reserve Ratio (CRR). It works with the Government to balance the growth of the country with factors such as inflation, current account deficits and the exchange rates of the rupee vis-à-vis the global currencies.

Ministry of Company Affairs (MCA) through the Registrar of Companies regulates the Corporate Sector. The Ministry is primarily concerned with administration of the Companies Act, 2013, other allied Acts and rules & regulations framed there-under mainly for regulating the functioning of the corporate sector in accordance with law. The Ministry is also responsible for administering the Competition Act, 2002 though regulatory orders in individual cases are passed by the Competition Commission of India.

Insurance Regulatory and Development Authority of India (IRDAI) is the watchdog for the insurance sector. Its mission is "to protect the interests of the policyholders, to regulate, promote

[3]SEBI regulates Commodity derivatives which is included in the definition of derivatives under the Securities Contracts (Regulation) Act, 1956. Commodity derivatives have been defined in the Act. SEBI has also introduced options trading in commodity futures also.

and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto". It regulates the insurance and re-insurance business and has the mandate to register new insurance issuers, deal with issues of policyholders and to specify the code of conduct of the insurance business.

Pension Fund Regulatory and Development Authority (PFRDA) is mandated to regulate the pension sector in India. It was formed through the PFRDA Act of 2003. It is responsible for carrying out the Government of India's effort to find a sustainable solution to providing adequate retirement income to the citizens. Since 2008, the pension contributions of the central government employees are being invested by professional pension fund managers in accordance with Government of India guidelines, under the regulation of the PFRDA.

Ministry of Finance (MOF) works through the Reserve Bank of India to regulate the securities market to the extent of investments into India by foreign or Non-Resident Indian investors. Foreign Exchange Management Act, 1999 came into force in 2000. The Act along with the Regulations and Rules thereunder specify the conditions to be fulfilled and the compliances to be made for investment into India.

All the authorities have an interrelation with each other. For example: If a company is issuing equity shares in the securities market for the first time, the company has to comply with the provisions of the Companies Act which falls within the purview of the MCA and the offices of the Registrar of Companies and the Regional Directors under the MCA. The issue process is regulated under SEBI Regulations. Apart from this, if the issue is subscribed to, by the foreign investors or Non-resident Indians, such investments will be subject to the RBI regulations as well. Further, if a company is a bank or an insurance company, it is primarily regulated by RBI or IRDAI respectively, once the company decides to come with an IPO and lists its shares, thereafter, it also comes within the jurisdiction of SEBI as a listed company.

1.1.5 Role of Investment Banker in Private Equity

Investment bankers are usually appointed by companies seeking to raise capital through private equity sources such as venture capital funds and later stage private equity funds. Such transactions may also include investors seeking to sell their existing stakes in companies to other private equity investors. In such transactions, investment banker's role is primarily of an advisory nature to assist the company or the investor from the sell side. The investment banker plays a key role in identifying the buy side investors and thereafter conducting the whole deal process till the transaction is culminated successfully. More specifically, the following aspects of the investment banker's role are important -

- *Growth Plan Formulation* - Advise the company on the arriving at the growth plan and capital investment required so that the necessary financial forecasts can be furnished to the investors. This would require an extensive study of the company's past performance, growth opportunity, competitor analysis, market trends and other parameters.

- *Transaction Structuring* – To come up with the correct instrument, quantum of capital to be raised and the capital structure of the company pre and post the proposed transaction.

- *Arriving at Pre-Money Valuation* – Investment bankers conduct the valuation of the company for the proposed transaction in order to arrive at the sell side pitch to the investors and arrive at the transaction structure. Valuation should be based on established norms for such transactions and meet necessary regulatory pricing requirements for preferential allotments.

- *Offer Literature, Data Room Assistance* – Investment banks prepare the entire transaction related literature such as the 'teasers' or preliminary information memorandum, the detailed information memorandum, financial models for the business forecast and the proposed transaction. They also assist in compilation of the information and documents for preparation of the data room based on which the potential buyers conduct their pre-investment due diligence on the company. The information memorandum should incorporate the necessary corporate disclosures that are required for investors to make an informed investment decision.

- *Leading the Transaction* – Investment banks handhold the entire transaction from the initial stage till the parties execute definitive agreements to bring the transaction to a close. The process includes conducting meetings, leading negotiations for drawing up the term sheet, ensuring fair valuation for the sellers, co-ordination with the sellers, the company's team and other agencies such as accounting and legal firms for completion of due diligence, audit and necessary certifications, furnishing of disclosure statements, representations and warranties and execution of documents.

Review Questions:

1. In which market, securities are issued to investors for the first time?
   (a) Primary Market
   (b) Secondary Market
   (c) Repo Market
   (d) Currency Market

2. Who are the major investors in government securities market in India?
   (a) Banks and Insurance Companies
   (b) Provident Funds
   (c) Pension Funds
   (d) All of the Above

3. The SLR and CRR rates are decided by which of the following regulatory bodies?
   (a) Securities and Exchange Board of India
   (b) Reserve Bank of India
   (c) Insurance and Regulatory Authority of India
   (d) Competition Commission of India

4. Derivatives in which of the underlying assets are allowed in the Indian Market?
   (a) Equities
   (b) Currency
   (c) Commodities
   (d) All of the above

Chapter 2 Introduction to the Merchant Banking

LEARNING OBJECTIVES:

After studying this chapter, you should know about the:

- Concept and evolution of merchant banking
- Merchant banking scenario in Indian and international market
- Regulatory framework in which the merchant bankers function in India

In the earlier chapter, we have discussed the capital market products and participants in the Indian context. This chapter delves into the evolution of merchant banking, the role of merchant bankers, concept and the regulations governing the activities of merchant banking in Indian context. The merchant banking activities with respect to international markets such as United States and United Kingdom have also been dealt with briefly.

2.1 Concept and Evolution of Merchant Banking

2.1.1 Concept of Merchant Banking

The primary activity of Merchant Banks is to provide fee-based advice to corporates and governments on the issue of securities. Merchant banks differ from commercial banks in the sense that they do not take deposits from individuals or businesses. Merchant banks these days perform a variety of other activities such as financing foreign trade, underwriting of equity issues, portfolio management and undertaking foreign security business as well as foreign loan business, project appraisal etc. However, not all merchant banks offer all these services. Since the functions are very similar to those of Investment Bankers, they are often thought to be the same. However, an investment banker will also provide investment advice and deal with securities in secondary market, unlike a pure Merchant Banker. The difference between merchant banking and investment banking has been highlighted in the following section.

Difference between Merchant Banking and Investment Banking

There is a fine line of distinction between Merchant Banking and Investment Banking, which we try to highlight in this section. 'Merchant Banking' as the term suggests, is the function of intermediation in the capital market. It helps issuers to raise capital by placement of securities issued by the issuers with investors. The merchant banker has an onerous responsibility towards the investors who invest in such securities. The regulatory authorities require the merchant banking firms to promote quality issues, maintain integrity and ensure compliance with the law on own account and on behalf of the issuers as well. Therefore, merchant banking is a fee based service for management of public offers, popularly known as 'issue management' and for private

placement of securities in the capital market. In India, the merchant banker leading a public offer is popularly known as the 'Lead Manager'.

On the other hand, the term 'Investment Banking' has a much wider connotation and is gradually becoming more of an inclusive term to refer to all types of capital market activity, both fund-based and non-fund based. This development has been driven more by the way the American investment banks have evolved themselves over the past century. Investment banking encompasses not merely merchant banking but other related capital market activities such as stock trading, market making and underwriting, stock broking and asset management as well. Besides the above, investment banks also provide a host of specialized corporate advisory services in the areas of project advisory, business and financial advisory and mergers and acquisitions.[4]

2.1.2 Evolution of International Merchant Banking

Merchant banking originated in Italy then came to France in the seventeenth and eighteenth centuries. In France, a merchant banker was a merchant who added the banking business to his various activities and utilized his accumulated profits better.

Merchant bankers' activities differed from those of any other 'money changer' and involved dealing in bills of exchange with correspondents abroad and speculated on the rate of exchange. Merchant banks flourished in the United Kingdom in the late eighteenth and early nineteenth centuries as England became a rich trading nation. Profits from colonial trade were diverted into merchant banking activities and the chief activity was accepting commercial bills for domestic and international trade.

Investment banks as are called in the United States are one of the most important participants in the US capital market. They help businesses and governments sell their new security issues in the debt or equity markets to raise capital, through primary market transactions. Once the securities are sold, they also create the secondary markets for these securities as brokers and dealers. The Glass-Steagall Act of 1933 differentiated the activities between the commercial banks and investment banks and prevented depositories from underwriting.

The Securities Exchange Act (1934) in the United States sought to correct practices in securities trading with the formation of the Securities Exchange Commission (SEC). However, the relaxation of the rules set out in Glass Steagall Act in 1997, led to a wider consolidation in the investment and commercial banking space. Owing to the growing requirements of globalisation and growth of financial markets, the Glass Steagall Act was repealed in 1999 and replaced with a liberal Financial Modernisation Act 1999. After the exponential growth of investment banks in the US during the period 1990- 2007 and the subsequent global financial crisis in 2008, investment banks were brought under tight regulation again with the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010. The Act sought to regulate investment advisers, derivative markets, functioning of credit rating agencies etc. Specific to investment banking, the Act sought to regulate them by segregating banking from proprietary trading and asset

[4]*Reference*: Investment Banking – An Odyssey in High Finance by Pratap Subramanyam.

management (through the Volcker's Rule') as well as to provide for regulatory supervision for capital adequacy, quantitative limits and other restrictions.

2.1.3 Merchant Banking in the International Scenario

In this section we would be discussing the merchant banking activity as it is practiced in the different countries such as United Kingdom and the United States.

Merchant Banking in UK

The primary role of the merchant bankers was to discount bills and to provide safety in transactions for merchants going from country to country. Later on, merchant banks diversified into capital issue, advisory as well as management of funds. They also continued the business of financing foreign trade as well as managing funds for themselves and other wealthy merchants. They all showed characteristics such as a short chain of command, sophistication in services and high liquidity. Merchant banks are expected to be more focused on fee income rather than profits from investing funds.

Merchant Banking in USA

In the United States, merchant banks have evolved in to investment banks. Along with all the functions of a merchant bank, investment banks also risk their own capital and aim to earn profits from their proprietary trading activities. In the United States, commercial banks and investment banks have been separated in terms of the sources of capital as well as allowed activities.

2.2 Merchant Banking in India

The forerunners of merchant banking in India were the foreign banks and they have been created in India in a variety of forms. Nationalized banks have created new subsidiaries to carry out merchant banking activities, other domestic financial institutions have created separate divisions and share brokers and consultancies have registered themselves as public limited companies or partnerships or proprietary firms

Grindlays Bank began merchant banking operations in 1967 with a license obtained from the RBI followed by Citibank in 1970. These two banks were providing services for syndication of loans and raising of equity apart from other advisory services. In 1972, the Banking Commission Report asserted the need for merchant banking services in India to be provided by public sector banks. Based on the Glass Steagall Act of 1933 passed by the US, the commission recommended a separate structure for merchant banks so as to separate them from commercial banks and financial institutions. Following the recommendation of the Banking Commission Report[5], SBI set up its merchant banking division in 1972.

[5]The Banking Commission Report of 1972 has indicated the necessity of merchant banking service in view of the wide industrial base of the Indian economy. The commission was in favour of a separate institution to render merchant banking services. The commission suggested that they should offer investment management and advisory services particularly to the medium and small savers (*Reference: Merchant Banking, Principles and Practice – H R Machiraju, 3rd ed.).*

Other banks such as Bank of India, Syndicate Bank, Punjab National Bank, and Canara Bank also followed suit to set up their merchant banking outfits. ICICI was the first financial institution to set up its merchant banking division in 1973. The later entrants were IFCI and IDBI with the latter setting up its merchant banking division in 1992. The post liberalization era (1991 onwards) brought about a marked transformation in the banking arena. The merchant banking industry during those days was mainly driven by the issue management activity which fluctuated with the trends in the primary markets. In order to stabilise their businesses, several of the banks engaged in merchant banking activity diversified to offer a broader spectrum of capital market services.

The bigger investment banks now have several group entities in which the core and non-core business segments are distributed. Some of them such as SBI, IDBI, ICICI, IL&FS, Kotak Mahindra etc. offer almost the entire gamut of investment banking services permitted in India. SBI set up SBI Capital markets in 1986 and ICICI spin off ICICI Securities as a subsidiary in 1995.

From simply providing issue management and capital raising advisory services, merchant banks have expanded into providing for many other services. The growth of Indian industry has given rise to further opportunities in mergers and acquisitions and takeovers. Merchant banks are also working on asset valuation, investment management and promotion of investment trusts.

2.2.1 Role of Association of Investment Bankers of India (AIBI) in Indian Context

The industry body for merchant bankers in India that acts as a self-regulatory organisation is known as the Association of Investment Bankers of India (AIBI). It was founded in 1993 as the Association of Merchant Bankers of India. It was granted recognition by SEBI to set up professional standards, for providing efficient services and to establish standard practices in merchant banking and financial services. AIBI's primary objective is to ensure that its members render services to all constituents within an agreed framework of ethical principles and practices. AIBI also works towards promoting the interests of the industry and of its members.

AIBI is the thought leader and a nodal point for assimilation and dissemination of information relating to the investment banking industry in India. It is also the industry's sole representative to all statutory authorities, and in particular, to SEBI.

2.3 Regulatory Framework for Merchant Bankers in India

There are various acts, regulations and guidelines which govern the different activities of Merchant Banking in India. These have been discussed below in brief in two categories – (1) Core Regulation and (2) Support Regulation:

<u>CORE REGULATIONS</u>

2.3.1 SEBI Act, 1992

The Securities and Exchange Board of India (SEBI) was established on April 12, 1992 in accordance with the provisions of the SEBI Act, 1992. The preamble of the SEBI describes the basic functions of the SEBI as "...*to protect the interests of investors in securities and to promote the development*

of and to regulate the securities market and for matters connected therewith or incidental thereto..."

As per Section 11(2) of SEBI Act, SEBI is empowered under the various regulations of the SEBI Act to perform functions, some of which are specified below;

a) Regulate the business in stock exchanges and any other securities markets.
b) Register and regulate the working of stockbrokers, share transfer agents, bankers to an issue, debenture trustee, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and others associated with the securities market. SEBI's powers also extend to registering and regulating the working of depositories and depository participants, custodians of securities, foreign portfolio investors, credit rating agencies, and others as may be specified by SEBI.
c) Register and regulate the working of venture capital funds and collective investment schemes including mutual funds.
d) Promote and regulate SROs.
e) Prohibit fraudulent and unfair trade practices relating to the securities market.
f) Promote investors' education and training of intermediaries in the securities market.
g) Prohibit insider trading in securities.
h) Regulate substantial acquisition of shares and takeover of companies.
i) Require disclosure of information, to undertake inspection, to conduct inquiries and audits of stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and SROs in the securities market. The requirement of disclosure of information can apply to any bank or any other authority or board or corporation.
j) Perform such functions and to exercise such powers under the Securities Contracts (Regulation) Act, 1956 as may be delegated to it by the Central Government.
k) Levy fees or other charges pursuant to implementation of this regulation.
l) Conduct research for the above purposes.
m) Calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions.
n) Performing such other functions as may be prescribed.

According to sub-section 3 of Section 11 of the SEBI Act, notwithstanding anything contained in any other law for the time being in force while exercising the powers, SEBI shall have the same powers as are vested in a civil court under the Code of Civil Procedure, while trying a suit in respect of the following matters;

i. The discovery and production of books of account and other documents, at such place and such time as may be specified by the SEBI;

ii. Summoning and enforcing the attendance of persons and examining them on oath;

iii. Inspection of any books, registers and other documents of any person;

iv. inspection of any book, or register, or other document or record of the company;

v. Issuing commissions for the examination of witnesses or documents.

SEBI Act also empowers SEBI to impose penalties and initiate adjudication proceedings against intermediaries who default on the following grounds such as failure to furnish information, return etc. or failure by any person to enter into agreement with clients etc. Some of them have been discussed below:

15A- Penalty for failure to furnish information, return, etc.-

SEBI Act provides for maximum penalty amount for each of the non-compliance of provisions as mentioned in the below mentioned sections.

Section15A prescribes penalty payable by an intermediary for failing to-

a) Furnish any document, return or report to the SEBI.
b) File any return or furnish any information, books or other documents within the time specified as in the regulations.
c) Maintain books of account or records.

15B- Penalty for failure by any person to enter into agreement with clients-

Section 15B prescribes the penalty payable by an intermediary for failing to enter into an agreement with his/her client in violation of such a requirement under the SEBI Act, 1992.

15C-Penalty for failure to redress investors' grievances-

Section 15C prescribes the penalty applicable to a listed company or any person who is registered as an intermediary, for failing to redress investors' grievances after having been directed in writing by SEBI to do so within a specified time period.

15G-Penalty for insider trading -

Section 15G prescribes penalties for the following:

a) When an insider acting on his/her own behalf or on behalf of another deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information.
b) When an insider communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law.
c) When an insider counsels, or procures for any other person to deal in any securities of anybody corporate listed on any stock exchange on the basis of unpublished price-sensitive information.

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

15H-Penalty for non-disclosure of acquisition of shares and take-overs-

Section 15H prescribes penalty for people who fails to:

(a) Disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or
(b) Make a public announcement to acquire shares at a minimum price, or
(c) Make a public offer by sending letter of offer to the shareholders of the concerned company; or
(d) Make payment of consideration to the shareholders who sold their shares pursuant to letter of offer.

Any person indulging in the above mentioned activities shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

15HA-Penalty for fraudulent and unfair trade practices-

Section 15HA prescribes a penalty for people indulging in fraudulent and unfair trade practices relating to securities. Any person indulging in such activities would be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

15HB-Penalty for contravention where no separate penalty has been provided-

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

Role of Appellate Authority -Securities Appellate Tribunal (SAT)

The Securities Appellate Tribunal (SAT) has been set up under the SEBI Act, which looks into the appeal of any person who has been aggrieved by any order of SEBI. This section elaborates on the different regulations under the SEBI which discusses the establishment and the role of SAT. Section 15K (1) of the SEBI Act, 1992, empowers the Central Government to establish Securities Appellate Tribunal (SAT) to exercise jurisdiction, powers and authority under the said act or any other law in force. A SAT shall consist of a presiding officer and two other members, to be appointed by the Central Government. The qualification for appointment is that the person should be a sitting or retired judge of the Supreme Court or a retired Chief Justice of a High Court.

Any person aggrieved by the following may appeal to the SAT, provided the aggrieved person had not granted his consent to the order against which the appeal is being made. The appeal must be filed within a period of 45 days from the date on which a copy of the order is received:

a. An order of SEBI made on or after the commencement of the Securities Laws (Second Amendment) Act, 1999, under the SEBI Act 1992, or related rules and regulations.

OR

b. By an order made by an adjudicating officer under the Act.

As per Section 15U (1) of the SEBI Act, 1992, the SAT shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice. Further, subject to other provisions of the SEBI Act, 1992, and other rules, the SAT shall have powers to regulate its own procedure.

As per Section 15U (2) of the SEBI Act, 1992, the SAT shall have, for discharging its functions, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters:

a) Summoning and enforcing the attendance of any person and examining him on oath
b) Requiring the discovery and production of documents
c) Receiving evidence on affidavits
d) Issuing commissions for the examination of witnesses or documents
e) Reviewing its decisions
f) Dismissing an application for default or deciding it ex-parte
g) Setting aside any order of dismissal of any application for default or any order passed by it ex-parte
h) Any other matter which may be prescribed

According to Section 15U (3) of the SEBI Act, 1992, every proceeding before the SAT shall be deemed to be a judicial proceeding and SAT shall be deemed to be a civil court. Section 15V states that the appellant may either appear in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the SAT.

Section 15W of the SEBI Act, 1992 states that the provisions of the Limitation Act, 1963 shall apply to an appeal made to a SAT. Section 15Y of the SEBI Act, 1992 specifies that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which SAT constituted under the SEBI Act is empowered to decide upon. Further, no injunction shall be granted by any court or an authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the SEBI Act.

Section 15Z of the SEBI Act, 1992 states that any person aggrieved by any decision or order of the SAT may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order of the SAT to him, on any question of law arising out of the order.

2.3.2 Securities Contracts (Regulation) Act, 1956

The Securities Contracts (Regulation) Act, 1956 provides for the definition of “securities” which includes the following:

i. Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

ii. Derivatives; [6]
iii. Units or any other instrument issued by any collective investment scheme to the investors in such schemes;
iv. Security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
v. Units or any other such instrument issued to the investors under any mutual fund scheme;
vi. Units or any other instrument issued by any pooled investment vehicle;
vii. Any certificate or instrument, issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;
viii. Government Securities;
ix. Such other instruments as may be declared by the Central Government to be securities; and
x. Rights or interest in securities.

The Regulations provides for direct and indirect control of virtually all aspects of securities trading and the constitution, recognition and regulatory oversight of stock exchanges. This Act aims to prevent undesirable transactions in securities by regulating the business of dealing therein and by providing for certain other matters connected therewith. It gives the central government the regulatory jurisdiction over (a) stock exchanges through a process of recognition and continued supervision, (b) contracts and options in securities, and (c) listing of securities on stock exchanges. The objective of SCRA is to prevent undesirable speculation and to regulate contracts and transactions in securities. A transaction in securities between two persons is essentially a contract. The law that specifically applies in the case of a securities contracts is the SCRA. The Act also provides for the setting up of clearing corporations by stock exchanges for the purpose of performing the functions of clearing and settlement of various trades conducted on the stock exchange. SEBI has been given explicit powers under the Act to make or amend by-laws of any stock exchange.

Section 17A of the Act stipulated that any issue of securities to the public or listing on a stock exchange shall conform to the regulations prescribed by SEBI. Section 21 and 22 deals with listing of securities, section 21A deals with delisting of securities and sections 23 to 26 provides for the different penalties and procedures to be imposed upon any person / intermediary on non-compliance with any of the provisions given under the various rules and regulations governing the securities market in India.

Section 23 specifies the penalties and the procedures for various non-compliances and failures. Some of them are discussed below:

[6]As per SCRA, derivatives include a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract or differences or any other form of security; a contract which derives its value from the prices, or index prices, of underlying securities; commodity derivatives; and such other instruments as may be declared by the Central Government to be derivatives. [Amended by the Finance Act 2021].

Section 23A of SCRA provides that any person, who is required under the SCRA or any Rules made thereunder–

- to furnish any information, document, books, returns or report to a recognized stock exchange or to the Board, fails to furnish the same within the specified time or who furnishes false, incorrect or incomplete information, document, books, return or report shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
- to maintain books of account or records as per the listing agreements, conditions or bye-laws of the stock exchange, fails to maintain the same, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

2.3.3 Securities Contracts (Regulation) Rules, 1957 (SCRR)

SCRR provides for the actual procedures to be followed by applicants for recognition as a recognised stock exchange and the requirements with respect to listing of securities on a recognised Stock Exchange. It lays down conditions for the percentage of shares which need to be offered to the public in order to get the shares listed and also the percentage of shares which need to remain with public in order to remain listed. SCRR needs to be read in conjunction with SCRA. SCRR are the rules created for compliance of SCRA.

Some of the important rules concerning securities issuances are given hereunder:

- Rule 19(1) states that any public company desirous of getting its securities listed on a stock exchange shall make an application for such listing along with the prescribed documents.
- Rule 19(2)(b) states that the minimum offer and allotment to public in terms of an offer document shall be as per the following sub-rules:
  - Rule 19 (2)(b)(i) specifies that at least 25% of each class or kind of equity shares or debentures convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is less than or equal to one thousand six hundred crore rupees.
  - Rule 19(2)(b)(ii) specifies that at least such percentage of each class or kind of equity shares or debentures convertible into equity shares issued by the company equivalent to the value of four hundred crore rupees, if the post issue capital of the company calculated at offer price is more than one thousand six hundred crore rupees but less than or equal to four thousand crore rupees.
  - Rule 19(2)(b)(iii) specifies that at least ten percent of each class or kind of equity shares or debentures convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is above four thousand crore rupees but less than or equal to one lakh crore rupees.
  - Rule 19(2)(b)(iv) specifies that at such percent of each class or kind of equity shares or debentures convertible into equity shares issued by the company equivalent to the value

of five thousand crore rupees and at least five per cent of each such class or kind of equity shares or debenture convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is above one lakh crore rupees.

Provided that the company referred to in sub-clause (iv) shall increase its public shareholding to at least ten percent within a period of two years and at least twenty-five percent within a period of five years, from the date of listing of the securities, in the manner specified by SEBI.

Provided that the company referred to in sub-clause (ii) or sub-clause (iii) shall increase its public shareholding to at least twenty-five percent within a period of 3 years from the date of listing of the securities in the manner specified by SEBI.

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

  (a) all new issues of any class or kind of securities of a company to be offered to the public;

  (b) all further issues of any class or kind of securities of a company if such class or kind of securities of the company are already listed on a recognised stock exchange.

- Rule 19(5) states that a recognised stock exchange may suspend or withdraw admission to dealings in the securities if a company or body corporate either for a breach of or non-compliance with, any of the conditions of admission to dealings or for any other reason, to be recorded in writing which in the opinion of the stock exchange justifies such action. Provided that no such action shall be taken by a stock exchange without affording to the company or body corporate concerned a reasonable opportunity by a notice in writing, stating the reasons, to show cause against the proposed action.

- Rule 19(6) states that a recognised stock exchange may, either at its own discretion or shall in accordance with the order of the SAT under sub-rule (5) restore or re-admit to dealings any securities suspended or withdrawn from the list.

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

Rule 19A stipulates that every listed company other than public sector company shall maintain public shareholding of at least twenty-five per cent of its issued capital. Companies whose public shareholding falls below this level due to specified reasons are given time to restore the shareholding back to the minimum required under this Rule [Continuous listing requirement].

2.3.4 SEBI (Merchant Bankers) Regulations, 1992

The SEBI (Merchant Bankers) Regulations, 1992 lists out the different criteria for registration of a merchant banker as an intermediary with SEBI. The different on-going compliances such as the capital adequacy requirement, general obligation and responsibilities, conditions of registrations, grant and renewal of certificate etc. which are required to be adhered to by a merchant banker

are detailed out in the Regulation. The SEBI (Merchant Bankers) Regulations, 1992 would be discussed in detail in Chapter 3 of this workbook.

2.3.5 SEBI (Issue of Capital and Disclosure Requirements) Regulations 2018

SEBI (ICDR) Regulations, 2018 requires that an issuer making an issue of securities to public or to QIBs or to its existing shareholders by way of rights issue is required to appoint a Merchant Banker registered with SEBI. Therefore, it would be important to know and understand various provisions of SEBI (ICDR) Regulations which govern the issue process and specifies rights and obligations of various parties involved in the entire process.

SEBI (ICDR) Regulations lays down general conditions for capital market issuances like public and rights issuances, Qualified Institutions Placement (QIP) etc.; eligibility requirements; general obligations of the issuer and intermediaries in public and rights issuances; regulations governing preferential issues, qualified institutional placements and bonus issues by listed companies; Issue of IDRs. SEBI (ICDR) also has detailed requirements laid out with respect to disclosure and process requirements for capital market transactions by listed and unlisted companies which are in the process of listing. The different provisions of the SEBI (ICDR) Regulations have been discussed in detail in the Chapter 3 of this workbook.

2.3.6 SEBI Listing Obligations and Disclosure Requirements (LODR) Regulations 2015

These regulations govern a company which has listed any of its designated securities on a recognised stock exchange. The designated securities mean specified securities, non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares, Indian depository receipts, securitised debt instruments, security receipts, units issued by mutual funds and any other securities as may be specified by the Board.

Regulation 4 lists out the most important disclosure and other compliances required of a listed company in the following areas –

a) Preparation and disclosure of financial information as per applicable accounting standards. Compliance with applicable rules and regulations and timely furnishing of information is also a significant part of the requirements.
b) Compliance with the corporate governance requirements specified in the regulations for the protection of the rights of shareholders ensuring equitable treatment to all shareholders.
c) Recognising the role of stakeholders in corporate governance.
d) Ensuring timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance.
e) The board of directors of a listed company have been given significant responsibilities both in terms of ensuring disclosure of information as well as in their core function of leading the company's strategy, overseeing its performance and operations and ensuring corporate governance.

The company shall also have a grievance redressal mechanism to address investor grievance from time to time and shall also have a full time compliance officer for this purpose and for regulatory compliance.

Some of the other important clauses of the Listing Regulations which every issuer is required to comply with as per the Listing Agreement are mentioned below:

Sr. No.	Regulation Number	Pertaining to
1.	29	Prior intimations
2.	30	Disclosure of events or information
3.	31	Shareholding Pattern
4.	38	Minimum level of public shareholding
5.	6	Appointment of Compliance Officer and his/her obligations
6.	17 to 27, 46(2) (b) to (i) and para C, D, E of Schedule V	Corporate Governance
7.	46	Company website

2.3.7 SEBI (Prohibition of Insider Trading) Regulations, 2015

Any dealing/trading done by an insider based on information which is not available in public domain, gives an undue advantage to insiders and affects market integrity. This is not in line with the principle of fair and equitable markets. In order to protect integrity of the market, the SEBI (Prohibition of Insider Trading) Regulations have been put in place. The Regulations mainly provide for who can be insiders, what all is prohibited for them and the systemic provisions which need to be laid down and followed by listed company as well as intermediaries.

Who are Insiders?

"Insiders" are defined as any person who is, or was, connected with a company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information (UPSI) in respect of securities of a company, or who has received or has had access to such unpublished price. "Any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.

Person is deemed to be a connected person, if such person is:

(a) an immediate relative of connected persons; or
(b) a holding company or associate company or subsidiary company; or
(c) an intermediary as specified in section 12 of the SEBI Act or an employee or director thereof; or
(d) an investment company, trustee company, asset management company or an employee or director thereof; or
(e) an official of a stock exchange or of clearing house or corporation; or
(f) a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or
(g) a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or
(h) an official or an employee of a self-regulatory organization recognised or authorized by the SEBI; or
(i) a banker of the company; or
(j) a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten percent of the holding or interest;

It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know how of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information.

"Generally available information" means information that is accessible to the public on a non-discriminatory basis; and shall not include unverified event or information reported in print or electronic media. Information published on the website of a stock exchange, would ordinarily be considered generally available.

The Regulation defines the term 'immediate relative' as a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities.

SEBI Insider regulations, defines an 'insider' as any person who is:

i) a connected person; or

ii) in possession of or having access to UPSI;

Since "generally available information" is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an "insider" regardless of how one came in possession of or had access to such information. Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information.

The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person leveling the charge after which the person who has traded when in possession of or having access to UPSI may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.

Unpublished price sensitive information is any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

(i) financial results;

(ii) dividends;

(iii) change in capital structure;

(iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;

(v) changes in key managerial personnel.

"trading" means and includes subscribing, redeeming, switching, buying, selling, dealing, or agreeing to subscribe, redeem, switch, buy, sell, deal in any securities, and "trade" shall be construed accordingly;

What is prohibited under SEBI (Prohibition of Insider Trading) Regulations?

Regulation 3(1) is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis. It is also intended to lead to organisations developing practices based on need-to-know principles for treatment of information in their possession. Regulation 3(2) is intended to impose a prohibition on unlawfully procuring possession of unpublished price sensitive information. Inducement and procurement of unpublished price sensitive information not in furtherance of one's legitimate duties and discharge of obligations would be illegal under this provision.

Regulation 3 states that an insider shall not communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. Regulation 3(2) states that no person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

3(2A) The board of directors of a listed company shall make a policy for determination of "legitimate purposes" as a part of "Codes of Fair Disclosure and Conduct".

3(2B) Persons in receipt of unpublished price sensitive information pursuant to a "legitimate purpose" shall be considered an "insider" and shall maintain confidentiality of such unpublished price sensitive information.

Regulation 3(3) further states that an unpublished price sensitive information may be communicated, provided, allowed access to or procured, in connection with transactions that would:

(i) entail an obligation to make an open offer under the takeover regulations where the board of directors of the listed company is of informed opinion that the sharing of such information is in the best interests of the company;
(ii) not attract the obligation to make an open offer under the takeover regulations but where the board of directors of the listed company is of informed opinion that the proposed transaction is in the best interests of the company and the information that constitutes unpublished price sensitive information is disseminated to be made generally available at least two trading days prior to the proposed transaction being effected in such form as the board of directors may determine.
For this purpose Regulation 3(4) states that the board of directors shall require the parties to execute agreements to contract confidentiality and non-disclosure obligations on the part of such parties and such parties shall keep information so received confidential, except for the purpose of sub-regulation (3), and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.

The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that a structured digital database is maintained containing the nature of unpublished price sensitive information and the names of such persons who have shared the information and also the names of such persons with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available.

Such database shall not be outsourced and shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.

Such database is preserved for a period of not less than eight years after completion of the relevant transactions and in the event of receipt of any information from the Board regarding any investigation or enforcement proceedings, the relevant information in the structured digital database shall be preserved till the completion of such proceedings.[7]

As per Regulation 4, no insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information. However, the insider may prove his innocence by demonstrating the circumstances including the following:

(i) the transaction is an off-market inter-se transfer between insiders who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;
Provided that such unpublished price sensitive information was not obtained under sub-regulation (3) of regulation 3 of the SEBI PIT Regulations.
Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.
(ii) the transaction was carried out through the block deal window mechanism between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;
Provided that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of the SEBI PIT Regulations.
(iii) the transaction in question was carried out pursuant to a statutory or regulatory obligation to carry out a bona fide transaction.
(iv) the transaction in question was undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations.
(v) in the case of non-individual insiders: –

(a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and

(b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;

(vi) the trades were pursuant to a trading plan set up in accordance with regulation 5.

Regulation 5 deals with Trading Plans which can be formulated by an insider and the procedure related. It states as under:

[7] Inserted by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2022 (w.e.f. November 1, 2024).

(1) An insider shall be entitled to formulate a trading plan and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such plan.
(2) Such trading plan shall:
(i) not entail commencement of trading on behalf of the insider earlier than one hundred and twenty calendar days from the public disclosure of the plan;
(ii) not entail trading for the period between the twentieth trading day prior to the last day of any financial period for which results are required to be announced by the issuer of the securities and the second trading day after the disclosure of such financial results;
(iii) entail trading for a period of not less than twelve months;
(iv) not entail overlap of any period for which another trading plan is already in existence;
(v) set out following parameters for each trade to be executed:

- (i) either the value of trade to be effected or the number of securities to be traded;
- (ii) nature of the trade;
- (iii) either specific date or time period not exceeding five consecutive trading days;
- (iv) price limit, that is an upper price limit for a buy trade and a lower price limit for a sell trade, subject to the range as specified below:
  a. for a buy trade: the upper price limit shall be between the closing price on the day before submission of the trading plan and upto twenty per cent higher than such closing price;
  b. for a sell trade: the lower price limit shall be between the closing price on the day before submission of the trading plan and upto twenty per cent lower than such closing price.

(vi) not entail trading in securities for market abuse.

(3) The compliance officer shall review the Trading Plan to assess whether the plan would have any potential for violation of these regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor the implementation of the plan. However, pre-clearance of trades shall not be required for a trade executed as per an approved trading plan. It is further stated that trading window norms and restrictions on contra trade shall not be applicable for trades carried out in accordance with an approved trading plan.
(4) The trading plan once approved shall be irrevocable and the insider shall mandatorily have to implement the plan, without being entitled to either execute any trade in the securities outside the scope of the trading plan or to deviate from it except due to permanent incapacity or bankruptcy or operation of law.
However the implementation of the trading plan shall not be commenced if any unpublished price sensitive information in possession of the insider at the time of formulation of the plan has not become generally available at the time of the commencement of implementation.
(5) The compliance officer shall approve or reject the trading plan within two trading days of receipt of the trading plan and notify the approved plan to the stock exchanges on which the securities are listed, on the day of approval.
Further to get the benefit of a trading plan, a cooling-off period of 120 calendar days is necessary.

Provided further that if the insider has set a price limit for a trade as specified in the regulations, the insider shall execute the trade only if the execution price of the security is within such limit. If price of the security is outside the price limit set by the insider, the trade shall not be executed.

Code of Fair Disclosure

Regulation 8 specified that the board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.
Every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed.

Code of Conduct

(1) The board of directors of every listed company and the board of directors or head(s) of the organisation of every market intermediary shall ensure that the chief executive officer or managing director shall formulate a code of conduct with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B [(in case of a listed company) and Schedule C (in case of an intermediary)] to these regulations, without diluting the provisions of these regulations in any manner.
(2) The board of directors or head(s) of the organisation, of every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B (in case of a listed company) and Schedule C (in case of an intermediary) to these regulations, without diluting the provisions of these regulations in any manner.

(3) Every listed company, market intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.

(4) For the purpose of sub regulation (1) and (2), the board of directors or such other analogous authority shall in consultation with the compliance officer specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation and shall include:-

(i) Employees of such listed company, intermediary or fiduciary designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors or analogous body;

(ii) Employees of material subsidiaries of such listed companies designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors;

(iii) All promoters of listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries;

(iv) Chief Executive Officer and employees upto two levels below Chief Executive Officer of such listed company, intermediary, fiduciary and its material subsidiaries irrespective of their functional role in the company or ability to have access to unpublished price sensitive information;

(v) Any support staff of listed company, intermediary or fiduciary such as IT staff or secretarial staff who have access to unpublished price sensitive information.

Chinese Wall

The code of conduct shall contain norms for appropriate Chinese Walls procedures, and processes for permitting any designated person to "cross the wall". All information shall be handled within the organisation on a need-to-know basis and no unpublished price sensitive information shall be communicated to any person except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

The compliance officer is responsible for monitoring adherence to the Chinese Wall policy, investigating potential violations, and ensuring appropriate disciplinary actions are taken.

Individuals classified as "designated persons" under the PIT regulations, typically those involved in market-sensitive functions, are subject to stricter rules regarding trading activities and must comply with the Chinese Wall guidelines
A company's investment banking division working on a new IPO cannot disclose confidential information about the offering to the sales team who might be interacting with potential investors.

An analyst who has access to non-public information about a company's financial performance cannot share that information with a colleague managing client portfolios.

2.3.8 SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 deals with issues such as initial and continual disclosures of shareholding and control, substantial acquisition of shares or voting rights, bailout takeovers and investigation and action by SEBI.

The regulations begin with an explanation of important terms such as "acquirer", "control", "person acting in concert" and "promoter". The same have been defined in Chapter under

The regulations envisage acquisitions for:

- Change in Control of Management
- Consolidation of Holdings
- Substantial Acquisition of shares or voting rights (25% or more)

Some of the Regulations are discussed below, to illustrate the nature and scope of the regulations.

According to Regulation 3(1), no acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise 25% or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

According to Regulation 3(2)an acquirer, who together with persons acting in concert with him, holds shares or voting rights in a target company entitling them to exercise 25% or more but less than the maximum permissible non-public shareholding, shall not acquire within any financial year additional five percent shares or voting rights in such target company, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

An acquirer, who together with persons acting in concert with him, holds shares or voting rights in a target company entitling them to exercise 25% or more but less than the maximum permissible non-public shareholding.

Such acquirer shall further not acquire shares or voting rights, such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

Regulation 4 states that irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

Further Regulation 5 states that for the purposes of regulation 3 and regulation 4, acquisition of shares or voting rights in, or control over, any company or other entity that would enable any

person and persons acting in concert with him to exercise or direct the exercise of such percentage of voting rights in, or control over, a target company, the acquisition of which would otherwise attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations, shall be considered as an indirect acquisition of shares or voting rights in, or control over the target company. It further specifies the obligations of the acquirer in such a case.

Regulation 5A specifies that 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, 2021 provided certain conditions are fulfilled.

Regulation 6 states the requirements to be met by an acquirer for making a public announcement of an open offer. It states that an acquirer together with the persons acting in concert holds shares or voting rights in a target company entitling him to exercise 25% or more, the acquirer is entitled to make a public announcement of an open offer or acquiring shares. An acquirer and persons acting in concert with him, who have made a public announcement under this regulation to acquire shares of a target company shall not be entitled to acquire any shares of the target company for a period of six months after completion of the open offer except pursuant to another voluntary open offer.

Regulation 6A states that no person who is a wilful defaulter shall make a public announcement of an open offer for acquiring shares or enter into any transaction that would attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations

Regulation 6B states that no person who is a fugitive economic offender shall make a public announcement of an open offer or make a competing offer for acquiring shares or enter into any transaction, either directly or indirectly, for acquiring any shares or voting rights or control of a target company.

Regulation 7 deals with the offer size. The open offer for acquiring shares to be made by the acquirer and persons acting in concert with him under regulation 3 and regulation 4 shall be for at least twenty-six percent of total shares of the target company, as of tenth working day from the closure of the tendering period subject to certain conditions.

Regulation 8 deals with the offer price. The open offer for acquiring shares under various regulations (Regulation 3, 4, 5 or 6) shall be made at a price not lower than the price determined in accordance with sub-regulation (2) or sub-regulation (3), as the case may be.

Regulation 9 states the modes of payment as cash or by issue, exchange or transfer of listed shares in the equity share capital of the acquirer or of any person acting in concert or by issue, exchange or transfer of listed secured debt instruments by issue, exchange or transfer of convertible debt securities entitling the holder thereof to acquire listed shares in the equity share capital of the acquirer or of any person acting in concert or a combination of any of the above.

Regulation 10 lay down that certain acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and 4 subject to fulfilment of the conditions stipulated therefor—

(a) acquisition pursuant to inter se transfer of shares amongst qualifying persons, being—

(i) immediate relatives;

(ii) persons named as promoters in the shareholding pattern filed by the target company in terms of the listing regulations or as the case may be, the listing agreement or these regulations for not less than three years prior to the proposed acquisition;

(iii) a company, its subsidiaries, its holding company, other subsidiaries of such holding company, persons holding not less than fifty percent of the equity shares of such company, other companies in which such persons hold not less than fifty percent of the equity shares, and their subsidiaries subject to control over such qualifying persons being exclusively held by the same persons; [The company here shall include a body corporate, whether Indian or foreign.]

(iv) persons acting in concert for not less than three years prior to the proposed acquisition, and disclosed as such pursuant to filings under the listing regulations or as the case may be, the listing agreement;

(v) shareholders of a target company who have been persons acting in concert for a period of not less than three years prior to the proposed acquisition and are disclosed as such pursuant to filings under the listing regulations or as the case may be, the listing agreement, and any company in which the entire equity share capital is owned by such shareholders in the same proportion as their holdings in the target company without any differential entitlement to exercise voting rights in such company:

Provided that for purposes of availing of the exemption under this clause -

(i) If the shares of the target company are frequently traded, the acquisition price per share shall not be higher by more than twenty-five percent of the volume-weighted average market price for a period of sixty trading days preceding the date of issuance of notice for the proposed inter se transfer under sub-regulation (5), as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, and if the shares of the target company are infrequently traded, the acquisition price shall not be higher by more than twenty-five percent of the price determined in terms of clause (e) of sub-regulation (2) of regulation 8; and

(ii) the transferor and the transferee shall have complied with applicable disclosure requirements set out in Chapter V.

(b) acquisition in the ordinary course of business by -

(i) an underwriter registered with the Board by way of allotment pursuant to an underwriting agreement in terms of the SEBI (ICDR) Regulations, 2018;

(ii) a stock broker registered with the Board on behalf of his client in exercise of lien over the shares purchased on behalf of the client under the bye-laws of the stock exchange where such stock broker is a member;

(iii) a merchant banker registered with the Board or a nominated investor in the process of market making or subscription to the unsubscribed portion of issue in terms of Chapter IX of the SEBI (ICDR) Regulations, 2018;
(iv) a merchant banker registered with the Board acting as a stabilising agent or by the promoter or pre-issue shareholder in terms of regulation 279 of SEBI (ICDR) Regulations, 2018;
(v) by a registered market-maker of a stock exchange in respect of shares for which he is the market maker during the course of market making;
(vi) a Scheduled Commercial Bank, acting as an escrow agent; and
(vii) invocation of pledge by Scheduled Commercial Banks or Public Financial Institutions as a pledgee

(c) acquisitions at subsequent stages, by an acquirer who has made a public announcement of an open offer for acquiring shares pursuant to an agreement of disinvestment, as contemplated in such agreement:

Provided that—
(i) both the acquirer and the seller are the same at all the stages of acquisition; and
(ii) full disclosures of all the subsequent stages of acquisition, if any, have been made in the public announcement of the open offer and in the letter of offer.

(d) acquisition pursuant to a scheme —
(i) made under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) or any statutory modification or re-enactment thereto;
(ii) of arrangement involving the target company as a transferor company or as a transferee company, or reconstruction of the target company, including amalgamation, merger or demerger, pursuant to an order of a court or a tribunal or a competent authority under any law or regulation, Indian or foreign; or
(iii) of arrangement not directly involving the target company as a transferor company or as a transferee company, or reconstruction not involving the target company's undertaking, including amalgamation, merger or demerger, pursuant to an order of a court or a tribunal under any law or regulation, Indian or foreign, subject to—
(A) the component of cash and cash equivalents in the consideration paid being less than twenty-five percent of the consideration paid under the scheme; and
(B) where after implementation of the scheme of arrangement, persons directly or indirectly holding at least thirty-three percent of the voting rights in the combined entity are the same as the persons who held the entire voting rights before the implementation of the scheme.

(da) acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016)
(e) acquisition pursuant to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
(f) acquisition pursuant to the provisions of the SEBI (Delisting of Equity Shares) Regulations, 2021;

(g) acquisition by way of transmission, succession or inheritance;
(h) acquisition of voting rights or preference shares carrying voting rights arising out of the operation of sub-section (2) of section 47 of the Companies Act, 2013 (18 of 2013).
(i) acquisition of shares by the lenders pursuant to conversion of their debt as part of a debt restructuring implemented in accordance with the guidelines specified by the Reserve Bank of India:
Provided that the conditions specified under of regulation 158 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 are complied with.

(j) increase in voting rights arising out of the operation of sub-section (1) of section 106 of the Companies Act, 2013 or pursuant to a forfeiture of shares by the target company, undertaken in compliance with the provisions of the Companies Act, 2013 and its articles of association.

2.3.9 SEBI (Delisting of Equity Shares) Regulations, 2021

SEBI (Delisting of Equity Shares) Regulations, 2021 mainly deal with the process of delisting of equity shares of a listed company which can be done in two ways, viz., Voluntary Delisting and Compulsory Delisting. Voluntary delisting is a condition when the issuer company no longer wants to be on the trading platform of the exchange and exits out of the Exchange. Whereas the Compulsory delisting involves delisting by exchanges on account of any disciplinary action initiated by either the Exchanges or by SEBI on non-fulfilment of the listing criteria set by the exchanges. These regulations do not apply to securities listed without making a public issue on the institutional trading platform of a recognised stock exchange

The SEBI delisting regulations shall not apply to any delisting made to a resolution plan approved under section 31 of the Insolvency Code, if such plan provides for:
(i) delisting of such shares; or
(ii) an exit opportunity to the existing public shareholders at a specified price:

Provided that the existing public shareholders shall be provided the exit opportunity at a price which shall not be less than the price, by whatever name called, at which a promoter or any entity belonging to the promoter group or any other shareholder, directly or indirectly, is provided an exit opportunity:

Provided further that the details of delisting of such shares along with the justification for the exit price in respect of the proposed delisting shall be disclosed to the recognized stock exchange(s) where the shares are listed within one day of approval of the resolution plan under section 31 of the Insolvency Code.

1. **Delisting not permissible in certain circumstances and conditions for delisting**

   No company shall apply for and no stock exchange shall permit delisting of equity shares of the company:
   a) Pursuant to Buy Back of equity shares or

b) Pursuant to Preferential Allotment unless a period of six months has elapsed from the date of completion of such buyback or preferential allotment; or
c) Unless a period of 3 years has elapsed since listing or
d) Any instrument(s) which are convertible into shares that are sought to be listed are outstanding

Further it is stated that no promoter or promoter group shall propose delisting of equity shares of a company, if any entity belonging to the promoter or promoter group has sold equity shares of the company during a period of six months prior to the date of the board meeting in which the delisting proposal was approved. Before making a Public Announcement, Merchant Banker is required to be appointed to manage the delisting offer.

2. Voluntary Delisting

- The company may delist equity shares from one or more stock exchanges where they are listed and continue their listing on one or more other exchanges subject to following:

  - If the equity shares continue to be listed on stock exchange which has nationwide trading terminals and is proposed to be delisted from other stock exchanges, exit opportunity need not be given to public shareholders.

  Procedure
  (a) obtain the prior approval of its Board of Directors;
  (b) make an application to the relevant recognised stock exchange(s) for delisting its equity shares;
  (c) issue a public notice of the proposed delisting from the relevant stock exchange(s) in at least one English national newspaper with wide circulation, one Hindi national newspaper with wide circulation in their all India editions and one vernacular newspaper of the region where the relevant stock exchange(s) is located;
  (d) disclose the fact of delisting in its first annual report post delisting

  - If the equity shares are proposed to be delisted & would not remain listed on any of the stock exchanges having nationwide trading terminals, the issuer shall provide an exit opportunity to the existing shareholders.

- In respect of delisting where exit opportunity is required to be given the offer price shall be determined through
- a book building process popularly known as Reverse Book Building (RBB), after fixing of floor price.
- Alternative to RBB the acquirer can specify a fixed price, which shall be at a minimum 15% premium over the floor price determined under the Delisting Regulations. The floor price calculation will now include, among other parameters, the calculation of an adjusted book value certified by an independent registered valuer.

The acquirer can make a counter-offer, if the acquirer's post-offer shareholding at the RBB price is 75% of the company's issued share capital, provided that at least 50% of the public shareholding has been tendered in the RBB process.

The counter-offer price shall not be less than the higher of the volume weighted average price ("VWAP") of the shares tendered/offered during the RBB process and the indicative price, if any, offered by the acquirer (indicative price is a price that may be offered by the acquirer upfront, at which it is willing to delist the company).

Reference date, for calculation of floor price shall be the date of the `initial public announcement' for the delisting offer.

- The final offer price shall be determined at the price at which the maximum number of equity shares is tendered by the public shareholders.

- Acquirers/Promoters shall not be bound to accept the equity shares at the offer price determined by the Reverse Book Building process and promoter may decide not to accept the offer price so determined.

- Issue is considered successful if promoter holding reaches more than 90% of the issued equity share capital.

- The delisting is considered successful if the shares tendered by the public shareholders results in the acquirer's post-offer shareholding being at least 90% of the issued share capital.

- On successful completion of delisting offer and payment of consideration to valid applicants and return of equity shares in respect of invalid applications, Stock Exchange on compliance with the other requirements would delist the equity shares of the company from the exchange.
- The acquirers/promoters shall continue to give post delisting exit offer for a period of 1 year from the date of listing and Escrow account shall continue to be maintained till the said period.

3. Compulsory Delisting by a Stock Exchange

(1) A recognised stock exchange may, by a reasoned order, delist any equity shares of a company on any ground prescribed in the rules made under the Securities Contracts (Regulation) Act, 1956:

Provided that no order shall be made under this sub regulation unless the company concerned has been given a reasonable opportunity of being heard.

(2) The decision regarding compulsory delisting shall be taken by a panel to be constituted by the recognised stock exchange consisting of –(a) two directors of the recognised stock exchange (one of whom shall be a public representative);
(b) one representative of the investors association recognised by the SEBI;
(c) one representative of the Ministry of Corporate Affairs or Registrar of Companies; and
(d) the Executive Director or Secretary of the recognised stock exchange.

(3) Before passing an order under sub-regulation (1), the recognised stock exchange shall give a notice in one English national daily with wide circulation, one Hindi national newspaper with wide circulation in their all India editions and one regional language newspaper of the region where the concerned recognised stock exchange is located, of the proposed delisting, giving a time period of not less than fifteen working days from the notice, within which representations may be made to the recognised stock exchange by any person who may be aggrieved by the proposed delisting and shall also display such notice on its trading systems and website.

(4) The recognised stock exchange shall while passing any order under sub-regulation (1), consider the representations, if any, made by the company and also any representations received in response to the given notice and shall comply with the specified criteria.

(6) Where the recognised stock exchange passes an order under sub-regulation (1), it shall, -

(a) forthwith publish a notice in one English national daily, Hindi national newspaper with wide circulation in their all India editions with wide circulation and one regional language newspaper of the region where the concerned recognised stock exchange is located, of the fact of such delisting, disclosing therein the name and address of the company, the fair value of the delisted equity shares determined under sub-regulation (1) of regulation 33 and the names and addresses of the promoters of the company.

(b) inform all other stock exchanges where the equity shares of the company are listed, about such delisting.

(c) upload a copy of the said order on its website.

4. Rights of public shareholders in case of a compulsory delisting

(1) The recognised stock exchange shall appoint an independent valuer(s) who shall determine the fair value of the delisted equity shares
(2) The recognized stock exchange shall form a panel of expert valuers and from the said panel the valuer or valuers shall be appointed for purposes of sub-regulation (1).

(3) The value of the delisted equity sharesshall be determined by the valuer(s) having regard to the factors mentioned in sub-regulation (2).

(4) The promoter of the company shall acquire delisted equity shares from the public shareholders by paying them the value determined by the valuer within three months of the date of delisting from the recognised stock exchange, subject to their option of retaining their shares.

(5) The promoter shall be liable to pay interest at the rate of ten percent per annum to all the shareholders, who offer their shares under the compulsory delisting offer, if the price payable in terms of sub-regulation (3) is not paid to all the shareholders within the time specified under sub-regulation (4)

Further, in case the delay was not attributable to any act or omission of the acquirer or was caused due to the circumstances beyond the control of the acquirer, the SEBI may grant waiver from the payment of such interest.

5. Consequences of compulsory delisting

(1) Where a company has been compulsorily delisted the company, its whole time directors, person(s) responsible for ensuring compliance with the securities laws, its promoters and the companies which are promoted by any of them shall not directly or indirectly access the securities market or seek listing for any equity shares or act as an intermediary in the securities market for a period of ten years from the date of such delisting.
(2) In case of such companies whose fair value is positive –
(a) such a company and the depositories shall not effect transfer, by way of sale, pledge, etc., of any of the equity shares held by the promoters/ promoter group and the corporate benefits like dividend, rights, bonus shares, split, etc. shall be frozen for all the equity shares held by the promoters/ promoter group, till the promoters of such company provide an exit option to the public shareholders in compliance with the regulations , as certified by the concerned recognised stock exchange;
(b) the promoters, whole-time directors and person(s) responsible for ensuring compliance with the securities laws of the compulsorily delisted company shall also not be eligible to become directors of any listed company till the exit option as stated in clause (a) above is provided.

6. Special provisions for Small Companies & Delisting by Operation of Law

- The company has a paid-up capital not exceeding ten crore rupees and networth not exceeding twenty five crore rupees as on the last date of preceding financial year. The number of equity shares of the company traded on each such recognised stock exchange during the twelve calendar months immediately preceding the date of board meeting is less than ten percent of the total number of shares of such company.

- The company has not been suspended by any of the recognised stock exchanges having nation-wide trading terminals for any non-compliance in the preceding one year.

- In above cases acquirers shall write individually to all the public shareholders informing them about the intention to get the equity shares delisted indicating the exit price together with justification and seeking their consent for the proposal of delisting.

- In such cases atleast 90% of public shareholders shall give positive consent in writing to the proposal of delisting. The process of inviting the positive consent and finalisation of the proposal for delisting of equity shares must be complete, within seventy-five working days of the first communication made. The acquirer shall make the payment of consideration in cash within fifteen working days from the date of expiry of seventy five working days

- In case of winding up proceedings of a company whose equity shares are listed the rights if any of the shareholders of such company shall be in accordance with the laws applicable to those proceedings.

  The application for listing of equity shares of any company which have been delisted under voluntary delisting shall not be made for a period of 3 years from the delisting.

7. Delisting offer under SEBI (SAST) Regulations

Regulation 5A of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations deals with delisting. The Regulations are given below:

(1) Notwithstanding anything contained in these regulations and delisting regulations, 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, 2021:

However, the acquirer should have declared upfront his intention to 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 the regulation shall not suffice.

The acquirer shall not, in such target company during the preceding two years from the date of the public announcement made under this regulation, be:
(i) a promoter / promoter group / person(s) in control, or
(ii) directly / indirectly associated with the promoter or any person(s) in control, or
(iii) a person(s) holding more than twenty-five percent shares or voting rights.

The acquirer shall not acquire joint control along with an existing promoter / person in control of the company.

The public announcement, the detailed public statement and the letter of offer shall mention the open offer price determined in accordance with regulation 8 of these regulations and the

indicative price for delisting, which shall include a suitable premium reflecting the price that the acquirer is willing to pay for the delisting offer with full disclosures of the rationale and justification for the indicative price so determined that can also be revised upwards by the acquirer before the start of the tendering period which shall be duly disclosed to the shareholders.

In case the response to the offer leads to the delisting threshold as provided under regulation 21 of the Delisting Regulations:
(i) being met, all shareholders who tender their shares shall be paid the indicative price;
(ii) not being met, all shareholders who tender their shares shall be paid the open offer price.

(2) Where an offer made under sub-regulation (1) is not successful-

(i) on account of non–receipt of prior approval of shareholders as per the SEBI (Delisting of Equity Shares) Regulations, 2021; or

(ii) on account of non-receipt of the prior in-principle approval of the relevant stock exchange in terms of regulation 12 of the SEBI (Delisting of Equity Shares) Regulations, 2021; or

(iii) the threshold as specified under Regulation 21 of the SEBI (Delisting of Equity Shares) Regulations, 2021 is not achieved,
the acquirer shall make an announcement within two working days in respect of such failure in all the newspapers in which the detailed public statement was made and shall comply with all applicable provisions of these regulations.

(4) Where a competing offer is made;
(a) the acquirer shall not be entitled to delist the company;
(b) the acquirer shall not be liable to pay interest to the shareholders on account of delay due to competing offer;
(c) the acquirer shall comply with all the applicable provisions of these regulations and make an announcement in this regard, within two working days from the date of public announcement in all the newspapers in which the detailed public statement was made.
(5) Shareholders who have tendered shares in acceptance of the offer shall be entitled to withdraw such shares tendered, within 5 working days from the date of the announcement.

(6) Shareholders who have not tendered their shares in acceptance of the offer shall be entitled to tender their shares in acceptance of the offer made under these regulations.

Both the acquisition of shares and payments to be made are required to follow the Stock Exchange mechanism specified in SEBI circulars.[8] This states that transfer of shares of shareholders under the tender offers would be made directly to the account maintained by the clearing corporation. After such transfer of securities, the clearing corporation will be allowed to utilise the securities towards the settlement obligations under such offers. Further, consideration for the accepted shares in the tender offer and shares tendered but not accepted under such offer would be credited directly to shareholders' bank and demat accounts respectively.

(6) Where the target company fails to get delisted pursuant to a delisting offer under sub-regulation (1), but which results in the shareholding of the acquirer exceeding the maximum permissible non-public shareholding threshold:

(a) the acquirer may undertake a further attempt to delist the target company in accordance with the Delisting Regulations during the period of 12 months from the date of completion of the open offer, subject to the acquirer continuing to exceed the maximum permissible non-public shareholding in the target company.

(b) such further delisting attempt shall be successful subject to the following conditions:

(i) the delisting threshold as provided under regulation 21 of the Delisting Regulations is met; and
(ii) fifty percent of the residual public shareholding is acquired.

(c) upon failure of the further delisting attempt, the acquirer shall ensure compliance of the minimum public shareholding requirement of the target company under the Securities Contract (Regulation) Rules, 1957 within a period of twelve months from the end of the period referred to at clause (a).

(d) the floor price for a further delisting attempt as referred to at clause (a) shall be higher of the following:
(i) the indicative price offered under the first delisting attempt;
(ii) the floor price determined under the Delisting Regulations as on the relevant date of the subsequent attempt; and
(iii) the book value of the company as computed based on the method stated in explanation to clause (a) under sub-regulation 2.

(7) While undertaking delisting for the first or subsequent attempt, all the provisions of the Delisting Regulations shall mutatis-mutandis be applicable, save as otherwise provided in this regulation

We will read in detail about the role of merchant banker in the delisting process in the later chapters.

[8] CIR/CFD/POLICYCELL/1/2015 dated April 13, 2015 read with SEBI Circular number CFD/DCR2/CIR/P/2016/131 dated December 9, 2016

2.3.10 SEBI (Buy-Back of Securities) Regulations, 2018

Companies are permitted to buy-back their own securities from the market under specific provisions of Companies Act 2013. In case the company is listed, it is required to also comply with the SEBI (Buy-back of Securities) Regulations, 2018. These regulations prescribe, inter alia, the conditions of buy-back, procedure for buy-back through tender offer, procedure for buy-back from the open market, general obligations from the Company, obligations of the merchant banker and the action that can be taken against intermediaries by SEBI.

Section 8.2 of this workbook deals in detail about the role of Merchant Banker in Buy-Back of Securities.

SUPPORT REGULATIONS

2.3.11 Foreign Exchange Management Act, 1999

The Foreign Exchange Management Act, 1999 (FEMA) was enacted to replace the Foreign Exchange (Regulation Act) 1973 by separating the policy with regard to management of foreign exchange from enforcement provisions relating to serious economic offences involving foreign exchange. The main objective behind the Foreign Exchange Management Act (1999) is to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments. It was also formulated to promote the orderly development and maintenance of foreign exchange market in India. The administrative provisions of foreign exchange management were enacted as FEMA and serious foreign exchange offences (including money laundering and round tripping) were included in the new Prevention of Money Laundering Act 2002 (PMLA).

FEMA is applicable to the whole of India. The act is also applicable to all branches, offices and agencies outside India owned or controlled by a person who is a resident of India. Section 6 of FEMA read with various notifications and circulars issued by RBI as well as regulations issued by SEBI (with regard to foreign investment by entities registered with SEBI) provide an elaborate regulatory framework governing foreign exchange transactions, inbound and outbound investments in foreign exchange (by residents and non-residents), acquisition of property and assets in India by non-residents and acquisition and holding of foreign exchange assets by residents of India. With regard to foreign direct investment (FDI) into India, the policy framework is issued by the Government of India, (Department for Promotion of Industry and Internal Trade) while the operative notifications under FEMA are issued by the RBI.

While the Bare Act is very brief, most of the foreign exchange law as applicable is contained in the FEMA Regulations issued from time to time by the RBI on various matters concerning foreign exchange transactions. These relate to matters such as external commercial borrowings, trade financing in foreign exchange, foreign exchange transactions involving exports, imports and remittances, foreign investment in India, Indian investment abroad, real estate acquisition in India by non-residents, resident Indian acquisition and holding of property and other assets

abroad, bringing in of foreign currency into India, current account income and expenditure in foreign currency and associated matters.

Inbound Foreign Investment Routes under FEMA

1. **FDI Route** – All non-resident investments which are strategic in nature, i.e. for a business or long term investment purpose make use of the Foreign Direct Investment (FDI) route. For the purpose of being classified as FDI, the size of the investment shall not be less than 10% of the post-investment fully diluted paid-up capital of the investee company. As already stated the FDI policy is issued from time to time by the Government of India and is operationalised by the RBI under FEMA through the Foreign Exchange Management (Non- Debt Instrument) Rules ('NDI Rules')[9]. The modalities and operational directions are issued under the FEMA Master Directions.

   The FDI policy read with the NDI Rules and Master Directions deals with prohibited sectors for FDI, permitted sectors with sectoral caps (i.e. the maximum FDI approved in the paid-up capital of an investee company in a given sector), type of securities that can be issued, investments that can be made under automatic route without prior permissions from RBI or the government, investments that require prior government and RBI approval, minimum capitalisation norms in select cases, pricing regulations for the issue of securities by Indian companies to non-resident investors, subsequent sale or transfer of such securities by non-residents and all incidental matters connected to foreign investments.

2. **FPI Route** – The Foreign Portfolio Investment (FPI) route is available to non-resident investors wherein the size of such investment shall not be more than 10% of the post-investment fully diluted paid-up capital of the listed Indian investee company. Such investments can be made in listed companies on the stock market or through private placements and other available routes. Foreign Portfolio Investors need to be registered with SEBI prior to commencing investment activity and such persons can be institutional or non-institutional investors. Such registration with SEBI shall be in accordance with the SEBI (Foreign Portfolio Investors) Regulations, 2019. The registration with SEBI will provide the necessary rules and regulations to be followed for FPI activity. In addition, the modalities for FPI investments under FEMA are covered in the Master Directions and the NDI Rules of RBI.

3. **FVCI Route** – The Foreign Venture Capital Investment (FVCI) route is available to off-shore funds that seek to make venture capital investments in eligible unlisted investee companies in India. FVCI funds need to be registered with SEBI prior to commencing investment activity under the SEBI (Foreign Venture Capital Investors) Regulations 2000. The registration with SEBI will provide the necessary rules and regulations to be followed for FVCI activity. In addition, the modalities for FVCI investments under FEMA are covered in the Master Directions and NDI Rules of RBI. FVCIs are allowed to invest only in stipulated priority sectors

[9] These regulations are notified on 17 October 2019.

such as bio-technology, infrastructure etc. except in the case of start-ups which can be from any sector.

An FVCI can also acquire units of a Category I AIF or any scheme therein. An FVCI may also invest in securities on a recognised stock exchange subject to the provisions of the SEBI (FVCI) Regulations, 2000. This includes receiving the proceeds of the liquidation of such schemes or funds. The pricing for such transactions relating to acquisition/ transfer securities/ instruments is not regulated and they can be at a price that is mutually acceptable to the buyer and the seller/ issuer.

2.3.12 Competition Act, 2002

The Competition Act, 2002 was passed by the Parliament in the year 2002, to which the President accorded assent in January, 2003. It was subsequently amended by the Competition (Amendment) Act, 2007.

In accordance with the provisions of the Amendment Act, the Competition Commission of India and the Competition Appellate Tribunal have been established. The provisions of the Competition Act relating to anti-competitive agreements and abuse of dominant position were notified on May 20, 2009.

The Competition Act, 2002, prohibits anti-competitive agreements, abuse of dominant position by enterprises and regulates combinations (acquisition, acquiring of control and M&A), which causes or likely to cause an appreciable adverse effect on competition within India. The Commission works to:

- Prevent practices having adverse effect on competition
- Promote and sustain competition in the market
- Protect the interests of consumers, and
- Ensure freedom of trade carried on by other participants in markets, in India.

Section 6 of the Competition Act, 2002, states that "No person or enterprise shall enter into a combination[10] which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void".

The Act prescribes threshold limits beyond which business combinations need to be referred to the CCI for necessary approval before it can be effected.

In case of an offer pursuant to the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011, the merchant banker managing the open offer may be required to follow up with the Competition Commission of India (CCI) so as to disclose the status of CCI approval for the proposed takeover by the acquirer and its status in the offer document of the acquirer. However, seeking the approval of the CCI is the primary responsibility of the acquire or the companies in question and not that of the merchant banker under this Act.

[10]Combination defined, includes mergers &amalgamation, acquisition of shares, assets above thresholds and domestic nexus.

2.3.13 Companies Act, 2013

Merchant Bankers provide various services to the companies. Most of the operational aspects pertaining to a company is administered and regulated by the provision contained in the Companies Act 2013. Certain sections of the Companies Act which have an impact on the issue process of a company are as discussed hereunder:

Chapter III of the Act deals with “Prospectus and Allotment of securities” and is further divided into two parts, Part I deals with Public Offer and Part II deals with Private Placement.

Section 23 of the Act states that a company whether public or private may issue securities. A public company may issue securities:
(a) to public through prospectus ("public offer") by complying with the provisions of the Act; or
(b) through private placement by complying with the provisions specified in the Act; or
(c) through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the SEBI Act, 1992 and the rules and regulations made thereunder.

Section 24 enumerates powers of SEBI to administer various sections of Companies Act, 2013 in case of listed public companies or Companies intending to go public.

Section 25 specifies the documents which could be deemed to be a prospectus and the enactments applicable thereto.

Section 26 states that a prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall be taken as the date of publication of the prospectus and lays down the matters to be stated and reports which need to be to be set out in prospectus. It imposes restriction on the director or other person who is responsible that the prospectus with regards to compliance with the provisions of the Companies Act. It also specifies that Experts should be unconnected with formation or management of company and Expert’s consent to issue of prospectus containing statement by him respectively.

The penalties on default or non-compliance with any provisions of the Companies Act have also been stated in Sections 36-38.

Section 31[11] of Companies Act, 2013 specifies that —

1. Any class of companies, as prescribed by SEBI may file a shelf prospectus[12] with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under such prospectus. Further, in respect

[11] Section 31 is required to be read with Rule 10 Companies (Prospectus and Allotment of Securities) Rules, 2014.
[12] "Shelf Prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

of a second or subsequent offer issued during the period of validity of shelf prospectus, no further prospectus is required.

2. A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer and other prescribed changes, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under such prospectus.
   Where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, they shall intimate the changes to such applicants. If the applicants express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days.
3. Where an information memorandum is filed, every time an offer of securities is made as aforesaid, such memorandum together with the shelf prospectus shall be deemed to be a prospectus. The concept of shelf prospectus will save expenditure and time of the companies in issuing a new prospectus every time they wish to issue securities to the public within a period of one year.

Section 32 of the Act deals with Red Herring Prospectus [13]and states that:

1. A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus and shall file it with the Registrar at least 3 days prior to the opening of the subscription list and the offer.

3. A red herring prospectus shall carry the same obligations as are applicable to a prospectus. Any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

4. Upon the closing of the offer of securities, the prospectus shall be filed with the Registrar and SEBI which shall have all the details which were not there in the Red herring prospectus e.g. the total capital raised, whether by way of debt or share capital, and the closing price of the securities etc.
Companies Act, 2013 has also specified the requirements with respect to Abridged Prospectus as under:

"Abridged Prospectus" means a memorandum containing such salient features of a prospectus as may be specified by SEBI by making regulations in this behalf.

[13] Red Herring Prospectus has been defined in the Companies Act, 2013 as a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

Section 33 states that no form of application can be issued for the purchase of any securities of a company unless it is accompanied by an abridged prospectus. There are, however, following exceptions to this rule:
(a) where the offer is made in connection with the bona fide invitation to a person to enter into an underwriting agreement with respect to such securities;
(b) where the securities are not offered to the public;

A copy of the prospectus shall be furnished to a person on a request being made by him before the closing of the subscription list and the offer. If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

The merchant bankers who are involved with the issue management process shall ensure adherence to the provisions of the Companies Act, 2013 as well as the Rules made thereunder.

Readers are advised to refer to the Companies Act for better understanding of these sections.

2.3.14 Prevention of Money Laundering Act 2002

India is a full-fledged member of the Financial Action Task Force, an international watchdog for money laundering. It is an inter-governmental body that sets international standards that aim to prevent these illegal activities. Member nations are required to pass domestic laws to prevent money laundering and perform an oversight function.
In pursuance of international commitments, the Prevention of Money Laundering Act (PMLA) was enacted to prevent the generation of black money and proceeds from criminal activities. The Act brings RBI, SEBI and IRDA under its purview and hence, is applicable to all financial institutions, banks, insurance companies, mutual funds and their intermediaries. The Act came into force from 1st July 2005. Under section 3 of the Act, whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of the offence of money-laundering. In other words, money laundering is the process of conversion of money obtained from criminal activity into apparently legitimate money by concealing its criminal origin. As per Section 48 and 49 of the Act, the officers of Directorate of Enforcement have been given the power to investigate cases of money laundering. The officers can launch prosecution in the designated Special Court for the offence of money laundering. The ED can take actions like confiscation of property if the same is determined to be proceeds of crime derived from a Scheduled Offence under the PMLA, and to prosecute the persons involved in the offence.

Generation of black money through cash transactions and funnelling it into bank accounts through layering with a series of fictitious transactions using shell companies is a very good example of money laundering in the domestic economy. Money laundering through cross border route is also possible through the process of round tripping, hawala transactions etc. and routing the funds through tax haven bank accounts held by private trusts and other concealed entities.

Money laundering is a serious economic offence as it undermines the integrity of the market participants, distorts economic performance, misallocates capital flows, evades taxes and finances criminal and terrorist activities.

Banking companies, financial institutions and intermediaries under the Act are known as reporting entities. A reporting entity is to maintain records (Section 12) and furnish information as and when required to the Director –Financial Intelligence Unit –India. (Section 12 A). They are also required to verify and maintain records of the identity of their clients. Such records are required to be maintained for a period of 5 years from the date of cessation of the transaction between the client and the reporting entity.

2.3.15 SEBI (Bankers to an Issue) Regulations, 1994

The SEBI (Bankers to an Issue) regulations govern / regulate the Bankers to an Issue (BTI) activity which includes (a) Acceptance of application and application monies; (b) Acceptance of allotment or call monies; (c) Refund of application monies; (d) Payment of dividend or interest warrants. The Banker to an Issue is required to be registered with SEBI subject to complying with the eligibility conditions. SEBI regulates its activities through reports of its activities filed with SEBI on a periodic basis.

Every banker to an issue is required to enter into an agreement with the issuer company for which it is acting as banker to an issue. The agreement shall specify the following:

a. The number of centres at which the applications and application monies of an issue of an issuer company will be collected from the investors;
b. The time within which the statement regarding the applications and application monies received from the investors investing in an issue of the issuer company will be forwarded to the registrar to an issue or the issuer company, as the case may be;
c. That a daily statement will be sent by the designated controlling branch of the bankers to the issue to the registrar to an issue indicating the number of applications received on that date from the investors investing in the issue of the issuer company, and the amount of application money received.

2.3.16 SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993

The SEBI (Registrars to an Issue and Share Transfer Agents[14]) Regulations mainly deal with registration, code of conduct of entities who undertake activities like collecting applications from investors in respect of an issue and keeping proper record of applications and monies received from investors or paid to seller of the securities.

[14]"Share transfer agent" means(i) any person, who on behalf of any body corporate, maintains the records of holders of securities issued by such body corporate and deals with all matters connected with the transfer and redemption of its securities; (ii) a department or division, by whatever name called, of a body corporate performing the activities referred in the above point if at any time the total number of the holders of its securities issued exceed one lakh;

The Registrars to the Issue also assist the issuer company or person or group of person in (a) determining the basis of allotment of securities in consultation with stock exchange, (b) finalizing the list of persons entitled to allotment, (c) processing and dispatching allotment letters, refund orders or certificates and other related documents in respect of an issue.

The Registrar and Transfer Agents (RTA) have a significant role to play in a public issue of shares. They are appointed by the issuer in consultation with the lead manager to the issue and enter into an agreement detailing their responsibility in the issue work. The scope of activity of the RTA encompasses the period before the issue opens, during the period of issue and after the issue closes.

Pre-Issue Work

- To enter into an Escrow Agreement with the Company, Selling Shareholders, the BRLMs and the Bankers to the Offer where-in the Registrar shall issue requisite instructions to the Bankers to the Offer in terms of the Escrow Account Agreement.

- If applicable to enter into a Share Escrow Agreement with the Company and the Selling Shareholders ("Share Escrow Agreement") in terms of which the Selling Shareholders shall prior to the filing of the Red Herring Prospectus open a share escrow account ("Share Escrow Account") with the Registrar wherein the Selling Shareholders shall transfer its Offered Shares. The Registrar shall operate the said Share Escrow Account in terms of the instructions issued by the BRLMs and in terms of the Share Escrow Account Agreement;

- To enter into the 'Syndicate Agreement' with the Company, the Selling Shareholders and the BRLMs and an 'Underwriting Agreement' with the Company, the Selling Shareholders, the BRLMs in terms of which the members of the Syndicate shall fulfil their underwriting obligations and the Registrar shall provide the necessary notices and perform such other functions as may be agreed upon in accordance with such Underwriting Agreement;

- Liaisoning with the Depositories on behalf of the Company for obtaining the International Securities Identification Number ("ISIN") and for finalising the tripartite agreement to be entered into with the Depositories;

- Liaisoning with the Company for dematerialization of the Equity Shares held by the existing shareholders of the Company in physical form, including, the Promoters, the Selling Shareholders and members of the Promoter Group, if any, prior to the filing of the Draft Red Herring Prospectus;

- Provide detailed instructions to the Self-Certified Syndicate Banks ("SCSBs"), including the format and timeline of receipt of information;

- Providing/ specifying the format to the Designated Intermediaries in which information in relation to ASBA is required;

- Intimation on the amount of processing fees payable to SCSBs in respect of syndicate ASBA and brokerage and selling commission payable to the members of the Syndicate, Registered Brokers, RTAs and CDPs;

Issue Work

- Collect and report information on the daily collections/bids received to the lead manager/ book running lead managers.
- Collection of data and forms from banks.
- Liaisoning with clients and intermediaries to the issue.

Post- Issue Work

- The sole responsibility of the Registrar is to procure and collect the final certificates from all the SCSBs, including the syndicate SCSBs, participating in the Offer, within two working days from the closure of the Offer;

- While collecting the final certificates, the Registrar shall check the accuracy of the date of such certificates and confirm that such certificates, duly signed on the letterhead/ stamped, have been received within specified time limit as mentioned in the applicable regulations and relevant circulars issued by SEBI;

- To obtain from the Depositories the Demographic Details of the Bidders (including PAN and MICR code) and to validate this data with the Bid file and highlight any discrepancies.

  a) Prepare technical rejection list based on the electronic Bid files received from the Stock Exchanges without reference to the physical Bid cum Application Forms;

  b) Deliver the Bid file received from the Stock Exchanges containing the application numbers, number of Equity Shares, amount and any other additional fields as may be required to all the SCSBs who shall use such information for due validation;

  c) Reconcile the compiled data received from the Stock Exchanges and all SCSBs, and match the same with the depository database for correctness of DP ID, Client ID and PAN;

  d) To ensure that the Basis of Allotment is in accordance with the SEBI ICDR Regulations, guidelines and notifications and as specified in the Offer Documents;

  e) To assist in seeking approval of the Basis of Allotment with the Designated Stock Exchange as per the SEBI ICDR Regulations and the relevant provisions of the Offer Documents along with the BRLMs and the Company;

  f) To prepare the complete list of valid applications (after all rejections), and present the same category-wise;

g) To prepare a statement of Bids proposed to be rejected, separately for QIBs, Non-Institutional Investors and Retail Individual Investors.

h) To prepare a technical rejection list, including rejected Bids, based on the electronic Bid files received from the Stock Exchanges and the Depositories' database;

i) To send the Confirmation Allocation Note ("CAN") to the Anchor Investors and the Allotment Advice to Bidders as applicable who have been Allotted Equity Shares in the Offer;

j) To keep accurately, at all times, the electronic records relating to Bids received from all SCSBs, the Designated Intermediaries and the BRLMs, including:

   i. Bids from the online Bidding system of the Stock Exchanges and Bids furnished by SCSBs, the Designated Intermediaries;

   ii. Particulars relating to the allocation and Allotment of Equity Shares against valid Bids;

   iii. Particulars relating to the requisite money to be transferred to Public Offer Account, in accordance with the terms of this Agreement, the Red Herring Prospectus, the Prospectus, the SEBI ICDR Regulations and the Companies Act; and

   iv. Particulars relating to, rejected/ unsuccessful Bids.

k) To specifically record cases of multiple Bids and keep them available for inspection along with the relevant records, namely the electronic data received from the Stock Exchanges and the data validated from the Depositories;

l) To prepare distribution schedule and analysis form (for purposes of the Stock Exchanges or the Company);

m) Prepare the following registers and other data:
   i. Top 50/100 shareholders (for the Stock Exchanges);
   ii. Allotment registers;
   iii. Register of members;
   iv. Index of members;
   v. Return of Allotment (for the Registrar of Companies);
   vi. Cross Reference Register; and
   vii. Postal journal for documents mailed.
   viii. Number of Equity Shares to be allotted against each valid Bid and the list of successful Bidders;

ix. Details of rejected Bids, if any, along with reasons for rejection and details of unsuccessful Bids, if any, to enable the Bankers to the Offer or the SCSBs to refund the amount or unblock the relevant bank accounts, as the case maybe.

n) In case of failure of the Offer, to give appropriate instructions for unblocking of the relevant ASBA bank accounts/ issuance of instructions for refund to the Anchor Investors,

To give instructions to the Depositories to carry out lock-in for the pre-Offer share capital (except the Offered Shares, ESOP and equity shares held by a venture capital fund or a foreign venture capital investor for a period of at least six months from the date of purchase) as per the SEBI ICDR Regulations.

To dispatch Allotment Advice / intimations and credit of the Equity Shares to the Allottees' respective demat accounts.

2.3.17 SEBI (Intermediaries) Regulations, 2008

Every SEBI registered intermediary dealing in the stock markets are required to be registered under the SEBI Act, 1992. For this purpose, the SEBI (Intermediaries) Regulations, 2008 prescribes the procedure for registration of intermediaries, general obligations, inspection and disciplinary proceedings and inter alia, criteria for determining a fit and proper person and code of conduct. Merchant Bankers are also required to comply with SEBI (Intermediaries) Regulations, 2008 in addition to the SEBI (Merchant Bankers) Regulations.

2.3.18 SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021

Listed companies are allowed to issue shares to their employees under the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021. The Regulations prescribe the schemes and the companies to which these Regulations are applicable, implementation of the scheme through trusts, eligibility of the employee to participate in ESOS of the company, formation of compensation committee, Shareholders' approval, pricing, lock-in period and rights of the option-holder and disclosures required to be made in the Director's Report subsequent to ESOP. It also specifies the process of administration and implementation with respect to Employees Stock Option Scheme (ESOS), Employees Stock Purchase Scheme (ESPS), Stock Appreciation Rights Scheme (SARS), General Employee Benefits Scheme (GEBS) and Retirement Benefit Scheme (RBS). Compliances and Conditions are specified under Regulation 12 which includes the appointment of registered merchant banker for implementation of schemes covered under these Regulations.

2.3.19 SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021

These regulations shall apply to (a) public issue of debt securities and non-convertible redeemable preference shares; (b) issuance and listing of non-convertible securities on private

placement basis on a recognized stock exchange and (c) listing of commercial paper issued by an issuer in compliance with the guidelines framed by the RBI. These regulations specify the issue requirements for public issues, the procedure for listing of debt securities, conditions for continuous listing and trading of debt securities, obligations of intermediaries and issuers and procedure for action in case of violation of regulations.

Section 8.4 of this workbook deals in detail about the role of Merchant Banker in issue of listing of Debt Securities.

In case of public issue of debt securities and non-convertible redeemable preference shares, the Company shall appoint one or more merchant bankers registered with SEBI at least one of whom shall be a lead merchant banker. The lead merchant banker must ensure that –

- The draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the issuer including the postal and email address, telephone.
- All comments received on the draft offer document are suitably addressed and shall also furnish to SEBI a due diligence certificate as per these regulations prior to the filing of the offer document with the Registrar of Companies.

2.3.20 SEBI (Real Estate Investment Trust) Regulations, 2014

"REIT" or "Real Estate Investment Trust" shall mean a trust registered as such under these regulations.

The manager of the trust, in consultation with trustee, shall appoint the valuer(s), auditor, registrar and transfer agent, merchant banker, custodian and any other intermediary or service provider or agent for managing the assets of the REIT or for offer and listing of its units or any other activity pertaining to the REIT in a timely manner.

REIT, through the merchant banker shall file a draft offer document along with the specified fee, with the designated stock exchange(s) and the SEBI, not less than thirty working days before filing the offer document with the designated stock exchange and the SEBI.

The draft offer document filed with the SEBI shall be made public, for comments, if any, by hosting it on the websites of the SEBI, designated stock exchanges and merchant bankers associated with the issue for a period of not less than 21 days. The draft offer document and/or offer document shall be accompanied by a due diligence certificate signed by the lead merchant banker. The lead merchant banker shall ensure that all comments received from SEBI on the draft offer document are suitably taken into account prior to the filing of the offer document with the designated stock exchanges. The manager shall submit to the trustee-

(a) quarterly reports on the activities of the REIT including receipts for all funds received by it and for all payments made, position on compliance with these regulations, specifically including compliance with investment conditions, related party transactions and borrowings and deferred payments, performance report, status of development of under-construction properties, within 30 days of end of such quarter;

(b) valuation reports within 15 days of the receipt of the valuation report from the valuer;

(c) decision to acquire or sell or develop any property or expand existing completed properties along with rationale for the same;

(d) details of any action which requires approval from the unit holders as required under these regulations;

(e) details of any other material fact including change of its directors, any legal proceedings that may have a significant bearing on the activity of the REIT within 7 working days of such action.

2.3.21 SEBI (Infrastructure Investment Trust) Regulations, 2014

"InvIT" or 'Infrastructure Investment Trust' shall mean the trust registered as such under these regulations. The role of the manager includes the following:

- Ensure that the investments made by the InvIT are in accordance with the investment conditions specified in regulation 18 and in accordance with the investment strategy of the InvIT.
- In consultation with trustee, appoint the valuer(s), auditor, registrar and transfer agent, merchant banker, custodian and any other intermediary or service provider or agent as may be applicable with respect to activities pertaining to the InvIT in a timely manner and in accordance with these regulations.
- Responsible for all activities pertaining to issue of units and listing of units of the InvIT including–
    - filing of placement memorandum with SEBI;
    - filing of the offer document with SEBI and the exchanges within the prescribed time period;
    - dealing with all matters up to allotment of units to the unit holders;
    - obtaining in-principle approval and final listing and trading approvals from the designated stock exchanges;
    - dealing with all matters relating to issue and listing of the units of the InvIT as specified under these regulations and any guidelines as may be issued by SEBI in this regard.

- Ensure that disclosures made in the offer document or placement memorandum contains material, true, correct and adequate disclosures and are in accordance with these regulations and guidelines or circulars issued hereunder.
- Ensure adequate and timely redressal of all unit holders' grievances pertaining to activities of the InvIT.
- Ensure that the disclosures or reporting to the unit holders, SEBI, trustees and designated stock exchanges, are in accordance with these regulations and guidelines or circulars issued hereunder.
- Submit to the trustee:
    - quarterly reports on the activities of the InvIT including receipts for all funds received by it and for all payments made, position on compliance with these regulations, specifically compliance with investment conditions, related parties transactions and borrowing and deferred payments, performance report, status of development of under-construction projects, within thirty days of end of such quarter;
    - valuation reports as required under these regulations within fifteen days of the receipt of the valuation report from the valuer;
    - decision to acquire or sell or develop or bid for any asset or projector expand existing completed assets or projects along with rationale for the same;
    - details of any action which requires approval from the unit holders as may be required under the regulations;
    - details of any other material fact including change in its directors, change in its shareholding, any legal proceedings that may have a significant bearing on the activity of the InvIT, within seven working days of such action.
    - Ensure that the audit of accounts of the InvIT by the auditor is done not less than once annually and such report is submitted to the designated stock exchange within 60 days of end of financial year ending March 31st.
    - Place before its board of directors in case of company or the governing board in case of an LLP a report on activity and performance of the InvIT at least once every quarter within thirty days of end of every quarter.

2.3.22 The Depositories Act, 1996

The Depositories Act enables setting up of multiple depositories in India. The Act ushered in an era of efficient capital market infrastructure, improved investor protection, reduced risks and increased transparency of transactions in the securities market. The Act specifies, inter alia, the rights and obligations of depositories, participants, issuers and beneficial owners.

As on date, there are two registered depositories in India viz. Central Depository Services (India) Limited (CDSL) and National Securities Depository Ltd. (NSDL).

2.3.23 SEBI (Depositories and Participants) Regulations, 2018

These Regulations deal with the procedural requirements to be complied with by the Depository or Depository Participant with respect to registration of depository, obtaining of certificate of commencement of business, registration of participant, rights and obligations of depositories, participants, issuers, manner of surrender of certificate of security and creation of pledge or hypothecation. "Participant" as defined in The Depositories Act, 1996 means a person registered as such under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992.

A Depository Participant (DP) is described as an agent of the depository. They are the intermediaries between the depository and the investors. The relationship between the DPs and the depository is governed by an agreement made between the two under the Depositories Act, 1996, SEBI [Depositories and Participants] Regulations, 2018 and the Bye laws of the Depository.

2.3.24 SEBI (Certification of Associated Persons in Securities Markets) Regulations, 2007

The SEBI (CAPSM) Regulations, 2007, Regulations 7 and 8, delegates the following powers and functions to National Institute of Securities Markets (NISM):

(a) The functions of NISM in respect of certification for associated persons in the securities market shall include putting in place and implementing the certification process, procedure and policies.

(b) NISM in consultation with SEBI may lay down standards which may, (i) specify that all or any portion of such standards shall be applicable to all or any category of associated persons working or associated with all or any class of intermediaries in securities market; (ii) specify that no associated person in any such class may be qualified to be employed or engaged or continued to be employed or engaged by an intermediary unless he is in compliance with such standards of examination, continuing professional education requirements and such other qualifications as NISM in consultation with the SEBI may specify.

Obligation of Obtaining Certification

Regulation 3 of the SEBI (CAPSM) Regulations, 2007 provides that SEBI may by notification in the official gazette require such categories of associated persons to obtain requisite certificate for engagement or employment with such classes of intermediaries and from such date as may be specified in the notification ***provided*** that an associated person employed or engaged by an intermediary prior to the date specified by SEBI may continue to be employed or engaged by the intermediary if he obtains the certificate within two years from the said date.

An associated person on being employed or engaged by an intermediary on or after the date specified by SEBI shall obtain the certificate within one year from the date of being employed or engaged by the intermediary.

An associated person, who as on the date specified by SEBI, holds a certificate for a category as recognised by SEBI shall not be required to obtain a fresh certificate for the same category during the validity of such certificate.

Manner of Obtaining Certification

Regulation 4 of SEBI (CAPSM) Regulations, 2007 specifies the manner of obtaining the certificate the first time. These are further detailed below:

A Principal[15] may obtain the certificate by any of the following manners:-

(a) Passing the relevant certificate examination, as may be specified by NISM.
(b) Successfully completing such number of classroom credits accumulated through attending classes on such subjects as may be specified by NISM from time to time.
(c) Delivering such number of formal classroom sessions in all or specific programmes of continuing professional education as may be specified by NISM from time to time.

A person other than a Principal, who has attained 50 years of age or who has 10 years of experience in the securities market, may obtain the certificate by any of the following methods:

(a) Passing the relevant certificate examination, as may be specified by NISM.
(b) Successfully completing such number of classroom credits accumulated through attending classes on such subjects as may be specified by NISM from time to time.

All other persons may obtain the certificate by the following method:

(a) Passing the relevant certificate examination, as may be specified by NISM.

Validity Period of Certificate

The certificate given under regulation 3 of SEBI (CAPSM) Regulations, 2007 is valid for a period of 3 years from the date of the grant of the certificate or revalidation as the case may be. Upon the expiry of the validity of the certificate possessed by the associated person, the certificate shall be revalidated for a period of 3 years provided the associated person successfully completes a programme of continuing professional education as specified by NISM.

Associated persons engaged in the activities[16] as mentioned in sub-regulation 4 of regulation 3 of the SEBI (CAPSM) shall continue to be so engaged only upon holding a valid certificate.

Continuing Professional Education Requirements

Upon expiry of the validity of the certificate possessed by an associated person, the certificate may get revalidated, provided the associated person successfully completes a programme of continuing professional education, as may be specified by NISM during 12 months preceding the date of expiry of the certificate, or by passing the relevant NISM Certification Examination before the expiry of the existing certificate[17].

The certificate will be revalidated for a period of three years from the date of expiry of the existing certificate. Different categories of persons may get their certificate revalidated through different methods as follows:

A Principal may get his/her certificate revalidated by any of the following ways:

(a) Passing the relevant certificate examination, as may be specified by NISM.
(b) Successfully completing such number of classroom credits accumulated through attending classes on such subjects as may be specified by NISM from time to time.
(c) Delivering such number of formal classroom sessions in all or specific programmes of continuing professional education as may be specified by NISM from time to time.

A person other than a Principal, who has attained 50 years of age or who has 10 years of experience, may get the certificate revalidated by any of the following methods:

(a) Passing the relevant certificate examination, as may be specified by NISM.
(b) Successfully completing such number of classroom credits accumulated through attending classes on such subjects as may be specified by NISM from time to time.

All other persons may get their certificate revalidated by any of the following methods:

(a) Passing the relevant certificate examination, as may be specified by NISM.
(b) Successfully completing such number of classroom credits accumulated through attending classes on such subjects as may be specified by NISM from time to time.

[16]Activity wherein the (a) the associated person as part of his work or operation deals or interacts with the investors, issuers or clients of intermediaries;(b) the associated person deals with assets or funds of investor or clients; (c) the associated person handles redressal of investor grievances;(d) the associated person is responsible for internal control or risk management;(e) the associated person is responsible for compliance of any rules or regulations;(f) the associated person is engaged in activities that have a bearing on operational risk of the intermediary.
[17]See NISM communiqué Ref. No. NISM/Certification/ CPE General/2011/1 dated December 21, 2011.

Under the SEBI (CAPSM) Regulations, employees working with SEBI registered Merchant Bankers and performing various SEBI regulated functions such as those relating to IPO, FPO, Open Offer, Buy-Back, Delisting etc. and is involved in, or deals with any of the following: (a) The investors, issuers or clients of intermediaries; (b) Assets or funds of investors or clients; (c) Redressal of investor grievances; (d) Internal control or risk management; (e) Activities having a bearing on operational risk; (f) Maintain books and records pertaining to above activities are mandatorily required to take the NISM-Series-IX: Merchant Banking Certification Examination.[18]

2.3.25 SEBI (Foreign Portfolio Investors) Regulations, 2019

SEBI issued the SEBI (Foreign Portfolio Investors) Regulations, 2019 on 23rd September 2019. A Foreign Portfolio Investor (FPI) has been defined to mean a person who satisfies the prescribed eligibility criteria and has been registered under the FPI Regulations. All existing Foreign Institutional Investors (FIIs) and QFIs are to be merged into one category called FPI.

Eligibility Criteria

An applicant desirous of FPI registration should, inter alia, satisfy the following conditions:

• It should not be resident in India or a Non-Resident Indian or an overseas citizen of India.

• non-resident Indians or overseas citizens of India or resident Indian individuals may be constituents of the applicant provided they meet the conditions specified by the SEBI from time to time:

Provided that resident Indian other than individuals, may also be constituents of the applicant, subject to the following conditions, namely –

(i) such resident Indian, other than individuals, is an eligible fund manager of the applicant, as provided under sub-section (4) of section 9A of the Income Tax Act, 1961 (43 of 1961); and

(ii) the applicant is an eligible investment fund as provided under sub-section (3) of section 9A of the Income Tax Act, 1961 (43 of 1961) which has been granted approval under the Income Tax Rules, 1962

Provided further that resident Indian, other than individuals, may also be constituents of the applicant, subject to the following conditions, namely –

(i) the applicant is an Alternative Investment Fund setup in the International Financial Services Centres and regulated by the International Financial Services Centres Authority;

(ii) such resident Indian, other than individuals, is a Sponsor or Manager of the applicant; and

(iii) the contribution of such resident Indian, other than individuals, shall be up to-

[18]SEBI Gazette Notification No. LAD-NRO/GN/2013-14/15/6319 dated August 2, 2013.

(a) 2.5% of the corpus of the applicant or US $ 7,50,000 (whichever is lower), in case the applicant is a Category I or Category II Alternative Investment Fund; or

(b) 5% of the corpus of the applicant or US $ 1.5 million (whichever is lower), in case the applicant is a Category III Alternative Investment Fund

• It should be a resident of a country:

- whose securities market regulator is a signatory to IOSCO's Multilateral MOU or a signatory to a bilateral MOU with SEBI, provided that an applicant falling under Government or Government related investor, shall be considered as eligible for registration, if the applicant is a resident in a country as may be approved by the Government of India.;
- whose central bank is a member of the Bank for International Settlements;
- against whom the Financial Action Task Force (FATF) has not issued any warnings.

• It should legally be permitted to invest in securities outside the country of its incorporation or establishment or place of business.

• It should be authorised by its Memorandum of Association and Articles of Association or equivalent document(s) or the agreement to invest on its own behalf or on behalf of its clients.

• It must meet the prescribed criteria of a fit and proper person.

Among other things, the SEBI (FPI) Regulations specifies the investment restrictions and conditions for the Foreign Portfolio Investors. It specifies the list of securities in which the Foreign Portfolio Investors can invest in. In cases, where a foreign institutional investor or a sub account, prior to commencement of these regulations, holds equity shares in a company whose shares are not listed on any recognized stock exchange, and continues to hold such shares after initial public offering and listing thereof, such shares shall be subject to lock-in for the same period, if any, as is applicable to shares held by a foreign direct investor placed in similar position, under the policy of the Government of India relating to foreign direct investment for the time being in force.

In respect of investments in the secondary market, the Regulation prescribes additional conditions. Some of the important conditions are listed below:

1. A foreign portfolio investor shall transact in the securities in India only on the basis of taking and giving delivery of securities purchased or sold. However, this restriction shall not apply to (a) any transactions in derivatives on a recognized stock exchange; (b) short selling transactions in accordance with the framework specified by the Board; (c) any transaction in securities pursuant to an agreement entered into with the merchant banker in the process of market making or subscribing to unsubscribed portion of the issue in accordance with the SEBI (ICDR) Regulations, 2018; (d) any other transaction specified by the SEBI.
   The transaction of business in securities by a foreign portfolio investor shall be only through stock brokers registered by SEBI. However, this restriction shall not apply to:

(a) transactions in Government securities and such other securities falling under the purview of the RBI carried out in the manner as specified by the RBI;

(b) sale of securities in response to a letter of offer sent by an acquirer in accordance with the SEBI SAST Regulations, 2011;

(c) sale of securities in response to an offer made by any promoter or acquirer in accordance with the SEBI Delisting Regulations, 2021;

(d) sale of securities in accordance with the SEBI Buy-back Regulations, 2018;

(e) divestment of securities in response to an offer by Indian companies in accordance with Operative Guidelines for Disinvestment of Shares by Indian Companies in the overseas market through issue of American Depository Receipts or Global Depository Receipts as notified by the Government of India from time to time;

(f) any bid for, or acquisition of, securities in response to an offer for disinvestment of shares made by the Central Government or any State Government;

(g) any transaction in securities pursuant to an agreement entered into with merchant banker in the process of market making or subscribing to unsubscribed portion of the issue in accordance with Chapter IX of the SEBI (ICDR) Regulations, 2018;

(h) transactions in corporate bonds by foreign portfolio investors;

(i) transactions on the electronic book provider platform of recognised stock exchanges;

(j) transactions to receive, hold and sell unlisted securities as referred at regulation 20(2) and transactions in unlisted securities received through involuntary corporate actions including a scheme of a merger or demerger approved in accordance with the provisions of the Companies Act, 2013 as well as the applicable guidelines issued by the Board or pursuant to implementation of any resolution plan approved under the Insolvency and Bankruptcy Code, 2016 or in accordance with the guidelines issued by the Government of India or the RBI or any other regulator for a scheme of debt resolution: Provided that such unlisted holdings of the foreign portfolio investor shall be treated as FDI;

(k) transactions for transfer of right entitlements;

(l) purchase or sale transactions of illiquid or suspended or delisted securities by a FPI;

(m) transactions between registered FPIs, who are multi investment manager structure of the same beneficial owner and have common PAN; and

(n)any other transaction as may be specified by the SEBI

FPIs are subject to investment restrictions and compliance requirements for their investment activity. Candidates may read the SEBI (FPI) Regulations for further understanding.

2.3.26 SEBI (Alternative Investment Funds) (AIF) Regulations, 2012

"Alternative Investment Fund" means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which is a privately pooled investment vehicle which collects funds from investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors and which is not covered by SEBI under any other fund management regulations SEBI has specified the eligibility criteria for an AIF. The Regulations also specify the investment strategy and conditions for investment in all categories of AIF. Alternative Investment Fund can raise funds through private placement by issue of information memorandum or placement memorandum. The Alternative Investment Fund may launch schemes subject to filing of placement memorandum with the Board.

This Regulation also covers the requirements for Angel Fund. "Angel Fund" means a sub-category of Venture Capital Fund under Category I- Alternative Investment Fund that raises funds from angel investors and invests in accordance with the provisions of this Chapter. The provisions of this Chapter shall apply to angel funds and schemes launched by such angel funds.

Alternative Investment Funds shall seek registration under different sub-categories as mentioned in the SEBI (AIF) Regulations. Category I Alternative Investment Fund which invests in start-up or early stage ventures or social ventures or SMEs or infrastructure or other sectors or areas which the government or regulators consider as socially or economically desirable and shall include venture capital funds, SME Funds, social venture funds, special situation funds, infrastructure funds and such other Alternative Investment Funds as may be specified;

Category II Alternative Investment Fund which does not fall in Category I and III and which does not undertake leverage or borrowing other than to meet day-today operational requirements and as permitted in these regulations;

Category III Alternative Investment Fund which employs diverse or complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives.

2.3.27 SEBI (Research Analyst) Regulations, 2014

The SEBI (Research Analyst) Regulations 2014, specifies who is a research analyst and the specific regulations to be followed by them. The regulation defines "research analyst" as a person who is primarily responsible for-

i. preparation or publication of the content of the research report; or

ii. providing research report; or

iii. making 'buy/sell/hold' recommendation; or

iv. giving price target; or

v. offering an opinion concerning public offer,

with respect to securities that are listed or to be listed in a stock exchange, whether or not any such person has the job title of 'research analyst' and includes any other entities engaged in issuance of research report or research analysis.

Persons acting as a Research analyst or research entity cannot hold himself out as a research analyst, unless he holds a SEBI Registration certificate. An individual registered as research analyst under these regulations, individuals employed as research analyst and partners of a research analyst, if any, engaged in preparation and/or publication of research report or research analysis shall have the following minimum qualifications, at all times:

(i) A professional qualification or post-graduate degree or post graduate diploma in finance, accountancy, business management, commerce, economics, capital market, financial services or markets provided by:

> (a) a university which is recognized by University Grants Commission or by any other commission/council/board/body established under an Act of Parliament in India for the purpose; or
>
> (b) an institute/association affiliated with such university; or
>
> (c) an institute/ association/university established by the central government or state government; or
>
> (d) autonomous institute falling under administrative control of Government of India; or

(ii) professional qualification or post-graduate degree or post graduate diploma which is accredited by All Indian Council for Technical Education, National Assessment and Accreditation Council or National Board of Accreditation or any other council/board/body set up under an Act of Parliament in India for the purpose; or

(iii) a professional qualification by completing a Post Graduate Program in the Securities Market (Research Analysis) from NISM of a duration not less than one year;

(iii) a graduate in any discipline with an experience of at least five years in activities relating to financial products or markets or securities or fund or asset or portfolio management.

The SEBI (Research Analyst) Regulation specifies the limitations on trading, the internal policies and control procedures governing the dealing and trading by any research analyst. The regulation also specifies the limitations on publication of research report, public appearance and conduct of business, etc.

2.3.28 SEBI (Investment Adviser) Regulations, 2013

The SEBI (Investment Adviser) Regulation, 2013 basically regulates investment Advisers. "Investment Adviser" means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called;

"Investment Advice" means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning:

Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations;

This Regulation specifies that any person acting as Investment Adviser needs to be registered with SEBI, it also lists out the conditions and requirements to be followed by Investment Advisers. The regulation specifies the general obligations and responsibilities of the Investment Advisers, disclosures which they need to make to their clients etc.

Review Questions

1. The merchant banker leading a public offer is popularly known as the 'Lead Manager'. State whether True or False.
   (a) True
   (b) False

2. Which Act in the Indian Capital Market deals with laws relating to listed as well as unlisted Companies?

   (a) SEBI Act
   (b) Competition Act 2002
   (c) SCRA
   (d) All of the above

3. As per the SEBI (Certification of Associated Persons in Securities Markets) Regulations, 2007, a certificate is valid for a period of _____ from the date of grant of certificate or revalidation as the case may be.
   (a) 3 years
   (b) 2 years
   (c) 5 years
   (d) 7 years

4. Which Act aims at prohibiting anti-competitive agreements, abuse of dominant position by enterprises and regulates combinations (acquisition, acquiring of control and M&A), which causes or likely to cause an appreciable adverse effect on competition within India?
   (a) SEBI Act, 1992
   (b) Competition Act, 2002
   (c) Companies Act, 2013
   (d) FEMA, 1999

Chapter 3 - Registration, Code of Conduct & General Obligations of Merchant Bankers in India

LEARNING OBJECTIVES:

After studying this chapter, you should know about the:

- Different categories and eligibility criteria for becoming a merchant banker
- General obligations and code of conduct for merchant bankers
- Investor grievance redressal and SCOREs mechanism

3.1 Introduction

In this chapter, readers will get an insight into the various regulatory aspects of the Merchant Bankers in India. These aspects deal with constitution and registration of merchant banks in India, specified activities and business, code of conduct, general obligations and responsibilities and incidental matters including redressal of investor grievances.

Activities Covered under Merchant Banking

As per the SEBI (Merchant Bankers) Regulations, 1992, a body corporate other than a non-banking financial company (NBFC) can undertake activities that are relating to merchant banker. Some of the specific activities[19] carried out by a merchant banker are listed below:

a) Managing the public issue of securities
b) Underwriting the public issue
c) Managing/advising on international debt/equity offerings like GDRs, ADRs, FCCBs etc.
d) Private placement of securities
e) Primary/satellite dealership of government securities
f) Corporate advisory services such as mergers, takeovers, buybacks etc.
g) Stock broking
h) Advisory services for projects
i) Syndication of domestic loan offerings
j) International financial advisory services

Who can be a Merchant Banker?

A merchant banker who has been granted certificate of registration to act as primary or satellite dealer by Reserve Bank of India may carry on such business as may be permitted by the Reserve Bank of India. A merchant banker, who has been granted certificate of registration under these

[19]SEBI Circular Ref. No.: RMB CIRCULAR NO. 1(98-99) June 05, 1998

regulations, may ensure market making in accordance with Chapter IX of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 which deals with initial public offers made by Small and Medium Enterprises (SME) companies.

Merchant bankers, irrespective of the activity in which they are involved / dealing are governed by the SEBI (Merchant Bankers) Regulations, 1992 issued by SEBI and Amendment Regulations issued thereunder from time to time and need to be registered with SEBI under the aforementioned regulation. The requirements for the grant of certificate of registration to merchant banker and the regulations applicable to them will be dealt with in detail in the following sections.

3.2 Registration of Merchant Bankers[20]

3.2.1 Definition of Merchant Banker

In the SEBI (Merchant Bankers) Regulations, 1992, a Merchant Banker is defined as "*any person who is engaged in the business of issue management either by making arrangements regarding selling, buying or subscribing to securities or acting as manager, consultant, adviser or rendering corporate advisory service in relation to such issue management".*[21]

3.2.2 Categories of Merchant Bankers

An application for the grant of certificate of registration as merchant bankers needs to be submitted to SEBI in Form A as specified in the SEBI (Merchant Bankers) Regulations (*hereinafter referred as SEBI MB Regulations).* The regulation states that an application for registration made under this regulation shall be accompanied by a non-refundable application fee of Rs. 50,000/- and can be made only for Category I Merchant Banker.

"(a) Category I, that is—

(i) to carry on any activity of the issue management, which will, *inter alia*, consist of preparation of prospectus and other information relating to the issue, determining financial structure, tie up of financiers and final allotment and refund of the subscriptions; and

(ii) to act as adviser, consultant, manager, underwriter, portfolio manager;

Stock Brokers and/ or Merchant bankers holding a valid registration certificate under SEBI Act are entitled to act as an underwriter. However, an applicant can carry on the activity as portfolio manager only if he obtains separate certificate of registration under the SEBI (Portfolio Manager) Regulations, 1993. SEBI on being satisfied that the applicant is eligible, shall grant a certificate of registration.

[20]For the purpose of registration, merchant bankers who were not carrying on non-securities market activities or those who are planning to discontinue the same, should submit an undertaking to SEBI that they will not carry on any other activity than that in securities market.

[21]Definition of Merchant Banker as given in the SEBI (Merchant Bankers) Regulations, 1992.

3.2.3 Eligibility Criteria for registering as a Merchant Banker

An applicant seeking registration as Merchant Banker shall comply with the requirements such as the Capital Adequacy Requirements, Registration Fees, and Criteria for fit and proper person etc. which would be discussed in the following sections.

Consideration of Application

SEBI shall consider grant of a certificate of merchant banker to an applicant who complies with the following requirements as mentioned below:

(a) An applicant shall be a body corporate other than a non-banking financial company as defined under section 45-I(f) of the RBI Act, 1934, *provided* that the merchant banker who has been granted registration by the RBI to act as Primary or Satellite Dealer may carry on such activity subject to the condition that it shall not accept or hold public deposit;

(b) The applicant should have the necessary infrastructure like adequate office space, equipment's and manpower to effectively discharge his activities;

(c) The applicant has in its employment, a minimum of two persons who are professionally qualified in finance or law or accountancy or business management from a Government recognised university or institution or who have a recognised degree in finance or law or accountancy or business management from a foreign university or institution;

(d) A person directly or indirectly connected[22] with the applicant has not been granted registration by the SEBI;

(e) The applicant, his partner, director or principal officer are not involved in any litigation connected with the securities market which has an adverse bearing on the business of the applicant;

(f) The applicant, his director, partner or principal officer have not been at any time been convicted for any offence involving moral turpitude or has been found guilty of any economic offence;

(g) The applicant has the professional qualification from an institution recognized by the Government in finance, law or business management;

(h) Grant of certificate to the applicant is in the interest of investors;

(i) The applicant satisfies the capital adequacy requirements and is Fit and proper person.

Capital Adequacy Requirements

[22]Directly or indirectly connected means any person being an associate, subsidiary or inter-connected or group company of the applicant in case of the applicant being a body corporate

The regulation 7 of the SEBI Merchant Banking Regulations specify that the capital adequacy requirements for applicants seeking registration as Merchant Bankers is that it shall have a net worth of not less than Rs. 5 crore. Net worth here means the sum of paid-up capital and free reserves of the applicant at the time of making application.

Fit and Proper Person

For purpose of granting registration to an applicant, SEBI takes into account the "Criteria for fit and proper person" as given under the SEBI (Intermediaries) Regulations 2008. It states:

"*The applicant or intermediary shall meet the criteria, as provided in the respective regulations applicable to such an applicant or intermediary including:*

(a) the competence and capability in terms of infrastructure and manpower requirements; and

(b) the financial soundness, which includes meeting the net worth requirements."

Furnishing of Information, Clarification and Personal Representation

Regulation 5 of SEBI (Merchant Bankers) Regulations states that:

1) The applicant may be required to furnish to SEBI further information or clarification regarding matters relevant to the activity of a merchant banker for the purpose of disposal of the application.
2) The applicant or its principal officer shall, if so required, appear before SEBI for personal representation.

3.2.4 Registration, Renewal Fees & Validity

SEBI, after being satisfied that the applicant is eligible for registration as a merchant banker, shall grant the certificate of registration as mentioned in the SEBI (Merchant Bankers) Regulation. On being intimated of the grant of this certificate the merchant banker is required to pay the requisite fees as mentioned in the SEBI (Merchant Bankers) Regulations within 15 days of receipt of such intimation from SEBI.

Every Merchant Banker is required to pay a fee of Rs. 20 lakh as registration fees. A merchant banker who has been granted a certificate of registration, to keep its registration in force, shall pay a fee of nine lakh rupees every three years from the sixth year, from the date of grant of certificate of registration or from the date of grant of certificate of initial registration granted prior to the commencement of the SEBI (Change in Conditions of Registration of Certain Intermediaries) (Amendment) Regulations, 2016, as the case may be. The fees specified shall be payable by the merchant banker by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or by a demand draft in favour of Securities and Exchange Board of India payable at Mumbai or at the respective regional office.

3.2.5 Conditions of Registration

Any certificate which has been granted to the merchant banker under the SEBI (Merchant Bankers) Regulation shall be subject to the following conditions as mentioned below.

(a) Where the merchant banker proposes change in control, it shall obtain prior approval of the SEBI for continuing to act as such after the change;

(b) The merchant banker shall pay the fees for registration in the manner as provided in these regulations;

(c) The merchant banker shall take adequate steps for redressal of grievances of the investors within 21 days of the date of the receipt of the complaint and keep SEBI informed about the number, nature and other particulars of the complaints received;

(d) It shall maintain capital adequacy requirements at all times during the period.

(e) It shall abide by the regulations made under the SEBI Act, 1992 in respect of the activities carried on by it as merchant banker.

(f) It shall immediately intimate SEBI, details of changes that have taken place in the information that was submitted, while seeking registration.

(g) where the merchant banker is acting as an underwriter, it shall enter into a valid agreement with the body corporate on whose behalf it is acting as an underwriter and shall abide by the regulations made under the Act in respect of the activities carried on by it as underwriter.

3.3 Code of Conduct for Merchant Bankers

The Regulation 13 provides that each merchant banker registered with SEBI should follow the prescribed code of conduct as given under the Schedule III of the SEBI (Merchant Bankers), Regulation. The code of conduct emphasises the importance of integrity, honesty and ethical behaviour expected from merchant bankers. It also lays out the need for proper supervision of the employees and agents of a merchant bank, since they are in contact with investors and clients very frequently. Since the business of a merchant banker is totally client and investor driven, merchant bankers are expected to keep in mind the interests of the investors at all times and redress any grievances immediately as well as keep SEBI informed of the same.

The code of conduct as prescribed by SEBI is as follows:

1. A merchant banker shall make all efforts to protect the interests of investors.

2. A merchant banker shall maintain high standards of integrity, dignity and fairness in the conduct of its business.

3. A merchant banker shall fulfill its obligations in a prompt, ethical, and professional manner.

4. A merchant banker shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.

5. A merchant banker shall endeavour to ensure that-

(a) Inquiries from investors are adequately dealt with;

(b) Grievances of investors are redressed in a timely and appropriate manner;

(c) Where a complaint is not remedied promptly, the investor is advised of any further steps which may be available to the investor under the regulatory system.

6. A merchant banker shall ensure that adequate disclosures are made to the investors in a timely manner in accordance with the applicable regulations and guidelines so as to enable them to make a balanced and informed decision.

7. A merchant banker shall endeavour to ensure that the investors are provided with true and adequate information without making any misleading or exaggerated claims or any misrepresentation and are made aware of the attendant risks before taking any investment decision.

8. A merchant banker shall endeavour to ensure that copies of the prospectus, offer document, letter of offer or any other related literature is made available to the investors at the time of issue or the offer.

9. A merchant banker shall not discriminate amongst its clients, save and except on ethical and commercial considerations.

10. A merchant banker shall not make any statement, either oral or written, which would misrepresent the services that the merchant banker is capable of performing for any client or has rendered to any client.

11. A merchant banker shall avoid conflict of interest and make adequate disclosure of its interest.

12. A merchant banker shall put in place a mechanism to resolve any conflict of interest situation that may arise in the conduct of its business or where any conflict of interest arises, shall take reasonable steps to resolve the same in an equitable manner.

13. A merchant banker shall make appropriate disclosure to the client of its possible source or potential areas of conflict of duties and interest while acting as merchant banker which would impair its ability to render fair, objective and unbiased services.

14. A merchant banker shall always endeavour to render the best possible advice to the clients having regard to their needs.

15. A merchant banker shall not divulge to anybody either orally or in writing, directly or indirectly, any confidential information about its clients which has come to its knowledge, without taking prior permission of its clients, except where such disclosures are required to be made in compliance with any law for the time being in force.

16. A merchant banker shall ensure that any change in registration status/any penal action taken by the SEBI or any material change in the merchant banker's financial status, which may adversely affect the interests of clients/investors is promptly informed to the clients and any business remaining outstanding is transferred to another registered intermediary in accordance with any instructions of the affected clients.

17. A merchant banker shall not indulge in any unfair competition, such as weaning away the clients on assurance of higher premium or advantageous offer price or which is likely to harm the interests of other merchant bankers or investors or is likely to place such other merchant bankers in a disadvantageous position while competing for or executing any assignment.

18. A merchant banker shall maintain arm's length relationship between its merchant banking activity and any other activity.

19. A merchant banker shall have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations, its clients, investors and other registered entities from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions.

20. A merchant banker shall not make untrue statement or suppress any material fact in any documents, reports or information furnished to the SEBI.

21. A merchant banker shall maintain an appropriate level of knowledge and competence and abide by the provisions of the Act, regulations made there under, circulars and guidelines, which may be applicable and relevant to the activities carried on by it. The merchant banker shall also comply with the award of the Ombudsman passed under the SEBI (Ombudsman) Regulations, 2003.

22. A merchant banker shall ensure that SEBI is promptly informed about any action, legal proceedings, etc., initiated against it in respect of material breach or non-compliance by it, of any law, rules, regulations, and directions of SEBI or of any other regulatory body.

23. (a) A merchant banker or any of its employees shall not render, directly or indirectly, any investment advice about any security in any publicly accessible media, whether real-time or non-real-time, unless a disclosure of his interest including a long or short position, in the said security has been made, while rendering such advice.

(b) In the event of an employee of the merchant banker rendering such advice, the merchant banker shall ensure that such employee shall also disclose the interests, if any, of himself, his dependent family members and the employer merchant banker, including their long or short position in the said security, while rendering such advice.

24. A merchant banker shall demarcate the responsibilities of the various intermediaries appointed by it clearly so as to avoid any conflict or confusion in their job description.

25. A merchant banker shall provide adequate freedom and powers to its compliance officer for the effective discharge of the compliance officer's duties.

26. A merchant banker shall develop its own internal code of conduct for governing its internal operations and laying down its standards of appropriate conduct for its employees and officers in carrying out their duties. Such a code may extend to the maintenance of professional excellence and standards, integrity, confidentiality, objectivity, avoidance or resolution of conflict of interests, disclosure of shareholdings and interests, etc.

27. A merchant banker shall ensure that good corporate policies and corporate governance are in place.

28. A merchant banker shall ensure that any person it employs or appoints to conduct business is fit and proper and otherwise qualified to act in the capacity so employed or appointed (including having relevant professional training or experience).

29. A merchant banker shall ensure that it has adequate resources to supervise diligently and does supervise diligently persons employed or appointed by it in the conduct of its business, in respect of dealings in securities market.

30. A merchant banker shall be responsible for the Acts or omissions of its employees and agents in respect of the conduct of its business.

31. A merchant banker shall ensure that the senior management, particularly decision makers have access to all relevant information about the business on a timely basis.

32. A merchant banker shall not be a party to or instrument for—

(a) creation of false market;

(b) price rigging or manipulation; or

(c) passing of unpublished price sensitive information in respect of securities which are listed and proposed to be listed in any stock exchange to any person or intermediary in the securities market.

33. A merchant banker or any of its directors, partners or manager having the management of the whole or substantially the whole of affairs of the business, shall not either through its account or their respective accounts or through their associates or family members, relatives or friends indulge in any insider trading

34. A merchant banker acting as an underwriter shall not make any statement, either oral or written, which would misrepresent—

(a) the services that the underwriter is capable of performing for its client, or has rendered to any other issuer company;

(b) his underwriting commitment.

35. A merchant banker acting as an underwriter shall not indulge in any unfair competition, which is likely to be harmful to the interest of other entities acting as underwriters carrying on the

business of underwriting or likely to place such other underwriters in a dis-advantageous position in relation to the underwriter while competing for, or carrying out any assignment.

3.4 General obligations and Responsibilities

In this section we discuss the general responsibilities of a merchant banker as prescribed in the SEBI Merchant Banking Regulations, which includes following the Code of Conduct, maintaining proper books of accounts, submitting half yearly results and other relevant information to SEBI as well as specific responsibilities with regard to lead managers of an issue. The relevant sections from the SEBI Regulations are mentioned in the parentheses.

3.4.1 Code of Conduct

In order to maintain the highest level of honesty, integrity, ethics, professional judgment and keeping the interests of the investor in mind, SEBI requires that merchant bankers follow the Code of Conduct as specified in the SEBI Regulations, (already been discussed in the section 3.3).

3.4.2 Merchant banker not to associate with any business other than that of the securities market

No merchant banker, other than a Bank or a Public Financial Institution, who has been granted a certificate of registration under these regulations shall carry on any business other than that in the securities market.

3.4.3 Maintain books of accounts, records etc.

The solvency and financial stability of merchant bankers is of prime importance to the merchant banking business. Keeping this in mind, SEBI has prescribed the following rules under regulation 14 of the SEBI Merchant Banking Regulations:

(1) Every merchant banker shall keep and maintain the following books of account, records and documents namely:

(a) a copy of balance sheet as at the end of each accounting period;

(b) a copy of profit and loss account for that period;

(c) a copy of the auditor's report on the accounts for that period;

(d) a statement of financial position.

(e) Records and documents pertaining to due diligence exercised in pre-issue and post-issue activities of issue management and in case of takeover, buy-back and delisting of securities.

(2) Every merchant banker shall intimate to SEBI the place where the books of account, records and documents are maintained.

(3) Every merchant banker shall, after the end of each accounting period furnish to SEBI copies of the balance sheet, profit and loss account and such other documents for any other preceding five accounting years when required by SEBI.

(4) Every merchant banker acting as an underwriter shall also maintain the following records with respect to—(i) details of all agreements entered with a body corporate on whose behalf it is acting as an underwriter; (ii) total amount of securities of each body corporate subscribed to in pursuance of an agreement; (iii) statement of capital adequacy requirements; (iv) such other records as may be specified by the SEBI from time to time

The above documents need to be maintained for a minimum period of 5 years. In order to facilitate efficient maintenance of records and documents relied upon by merchant bankers while conducting their due diligence in public issues, stock exchanges have set up an online Document Repository platform which would enable Merchant bankers to upload and maintain the aforesaid documents electronically. The Document Repository platform is intended to facilitate easier access to documents pertaining to the public issue process, which are required to be maintained by Merchant bankers.[23]

3.4.4 Submission of half-yearly results

In order to properly monitor the capital adequacy and the financial health of the merchant banker, Regulation 15 has mandated merchant bankers to submit the unaudited half-yearly financial results when required by SEBI. In this context, it is important to note the requirements of Regulation 17, which states that every merchant banker shall, within two months from the date of the auditor's report, take steps to rectify the deficiencies made out in the auditor's report.

3.4.5 Responsibilities of lead managers

Lead managers of an issue are primarily responsible for the pricing, financing and distribution of the securities. They have a greater responsibility towards investors, SEBI and the issuer company. SEBI under regulation 20 has mandated that:

No lead manager shall agree to manage or be associated with any issue unless its responsibilities relating to the issue particularly, those of disclosures, allotment and refund are clearly defined, allocated and determined and a statement specifying such responsibilities is disclosed in the draft offer document and offer document:

Provided that, where there is more than one lead merchant banker to the issue, the responsibilities of each of the lead merchant banker shall clearly be demarcated and a statement specifying such responsibilities shall be disclosed in the draft offer document and offer document.

[23] SEBI Circular Ref. No: SEBI/HO/CFD/CFD-TPD-1/P/CIR/2024/170 dated December 5, 2024.

This is to ensure that the lead managers are well aware of their rights and duties in the course of issuance of a security.

3.4.6 Lead Merchant Banker not to associate with any Merchant Banker which is not holding SEBI registration

In order to ensure the highest standards of integrity and service to investors and clients, Regulation 21 of the SEBI MB Regulation has prescribed that merchant bankers shall not be lead managers in any issue if a merchant banker who is not holding a certificate of registration from SEBI is associated to the issue.

Additionally, regulation 21A of the SEBI MB Regulation requires that a merchant banker, being a promoter or an associate of either the issuer of the securities or of a person making an offer to sell or purchase securities in terms of any of the regulations made by the Board, shall not lead manage any issue or be associated with any activity undertaken under any of the regulations made by the Board by such issuer or person:

However, a merchant banker who is an associate of such issuer or person may be appointed, if he is involved only in the marketing of the issue or offer. The term 'associate of the issuer or the person who is issuing the securities' here is interpreted as:

"(i) either of them controls, directly or indirectly through its subsidiary or holding company, not less than fifteen percent of the voting rights in the other; or

(ii) Either of them, directly or indirectly, by itself or in combination with other persons, exercises control over the other; or

(iii) There is a common director

(a) in the issuer and the merchant banker; or

(b)in the issuer's subsidiary or holding company and the merchant banker:

Provided that this clause shall not be applicable where the director concerned is a nominee director:

Provided further that this clause shall not be applicable where the director concerned is an independent director subject to recusal by the said independent director in respect of the issue from the boards of both issuer and merchant banker

This aims at preventing any issues relating to conflict of interest.

3.4.7 Underwriting Obligations

As per provisions of the regulation 22 of the SEBI Merchant Banking Regulation, for every issue, the lead manager will accept a minimum underwriting obligation of 5% of the total underwriting commitment[24] or Rs. 25 lakh, whichever is lesser.

Provided that, if the lead manager is unable to accept this obligation, he shall make arrangement for the issue to be underwritten by a merchant banker associated with the issue and shall keep SEBI informed about this.

Further, in any issue made in accordance with the SEBI (ICDR) Regulations, 2018, (Initial Public Offer by Small and Medium Enterprises), the merchant banker shall itself or jointly with other merchant bankers associated with the issue underwrite at least 15% of the issue size on their own account.

3.4.8 Acquisition of shares prohibited

In order to prevent merchant bankers from profiting from sensitive information they may have about their clients or otherwise, SEBI has prohibited acquisition of shares on the basis of such information. Regulation 26 of the SEBI Merchant Banking Regulation states that "No merchant banker or any of its directors, partner or manager or principal officer shall either on their respective accounts or through their associates or relatives, enter into any transaction in securities of bodies corporate on the basis of unpublished price sensitive information obtained by them during the course of any professional assignment either from the clients or otherwise."

3.4.9 Information to SEBI

Every merchant banker shall submit to the Board complete particulars of the transaction for acquisition of securities of a body corporate whose issue is managed by that merchant banker, within fifteen days from the date of entering into such a transaction:

Provided that complete particulars of a transaction for acquisition of securities pursuant to underwriting or market making obligations in accordance with the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 shall be submitted to the Board on a quarterly basis.

3.4.10 Disclosures to the SEBI

In order to maintain highest levels of transparency, merchant bankers are required to make disclosures regarding issue management and capital adequacy. Regulation 28 states as under:

"A merchant banker shall disclose to SEBI, as and when required, the following information, namely:

[24]Is the amount of an underwriter's statutory underwriting commitment which the lead manager allows the underwriter to keep for the underwriter's own sales effort (http://www.capitalmarketsadvisors.com/glossary.html).

(i) His responsibilities with regard to the management of the issue;

(ii) Any change in the information or particulars previously furnished, which have a bearing on the certificate granted to it;

(iii) The names of the body corporate whose issues he has managed or has been associated with;

(iv)The particulars relating to the breach of the capital adequacy requirement as specified in regulation 7;

(v) Relating to his activities as a manager, underwriter, consultant or adviser to an issue, as the case may be.

It further states that the merchant banker shall submit a periodic report in such manner as may be specified by SEBI from time to time.

3.4.11 Appointment of Compliance Officer

In order to deal with investor grievances and any compliance issues with the Code of Conduct, a merchant banker is required to appoint a Compliance Officer to ensure the proper compliance to all the rules and regulations applicable to the merchant banker as per Regulation 28A of the SEBI Merchant Banking Regulation.

"(1) Every merchant banker shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions, etc., issued by SEBI or the Central Government and for redressal of investors' grievances.

(2) The compliance officer shall immediately and independently report to SEBI any non-compliance observed by him and ensure that the observations made or deficiencies pointed out by SEBI on/in the draft prospectus or the letters of offer as the case may be, do not recur."

3.5 Redressal of Investor Grievances and SCORES

SEBI has vide its Circular No. CIR/OIAE/2/2011 dated June 3, 2011 provided for a system for processing of investor complaints against listed companies called SEBI Complaints Redress System (SCORES). This is a centralised web based complaints redress system. The salient features of this system are:

- Centralised database of all complaints
- Online movement of complaints to the concerned listed companies
- Online upload of Action Taken Reports (ATRs) by the concerned intermediaries / companies and
- Online viewing by investors of actions taken on the complaint and its current status

Complaints arising out of issues that are covered under SEBI Act, Securities Contract Regulation Act, Depositories Act and Rules and Regulation made there under and provisions that are covered under section 26 of Companies Act are complaints dealt with by SEBI.

For redressal of investor grievances, each Merchant Banker is given a user id and password for gaining access to the SCORES website. The merchant banker is expected to log in to the website on a daily basis to check for any new complaints uploaded by SEBI and to initiate steps to get these resolved at the earliest. As stated above, the merchant banker is also expected to submit an Action Taken Report (ATR) in respect of each such complaint.

Certain matters are not considered as complaints in SCORES. These are given hereunder:

- Complaints that are incomplete or not specific
- Allegations without supporting documents
- Offering suggestions or seeking guidance/explanation
- Seeking explanation for non-trading of shares or illiquidity of shares
- Not satisfied with trading price of the shares of the companies
- Non-listing of shares of private offer
- Disputes arising out of private agreement with companies/intermediaries

Apart from this, there are certain complaints not dealt with by SEBI:

- Complaints against unlisted/delisted/wound up/liquidated/sick companies
- Complaints that are sub-judice (relating to cases which are under consideration by court of law, quasi-judicial proceedings etc.)
- Complaints falling under the purview of other regulatory bodies viz. RBI, IRDA, PFRDA, CCI, etc., or under the purview of other ministries viz., MCA, etc.

Review Questions

1. A Merchant Banker applicant should have how many people in his employment who should be experienced to conduct the business of Merchant Banker?
   (a) 5
   (b) 2
   (c) 7
   (d) 10

2. The fees payable by the merchant banker on grant of certificate of registration should be by a demand draft in favour of 'Association of Investment Bankers of India (AIBI)' payable at Mumbai. State whether True or False.
   (a) True
   (b) False

3. Every merchant banker shall submit to SEBI complete particulars of any transaction for acquisition of securities of any Body Corporate whose issue is being managed by that merchant banker within _____ from the date of entering into such transaction.
   (a) 30 days
   (b) 15 days
   (c) 21 days
   (d) 45 days

4. SCORES system of SEBI does not deal with any complaints which fall under the purview of the other regulatory bodies i.e. IRDAI, PFRDA etc. State whether True or False.
   (a) True
   (b) False

Chapter 4: Issue Management – Important Terms

LEARNING OBJECTIVES:

After studying this chapter, you should know about the:

- Various terms which are related to offering e.g. IPO, Green Shoe Option, QIP, etc

In the following chapters we will discuss the Issue management process, underwriting provisions with regards to the Merchant banker's role in it. However before going into the process details, we look at the important frequently used terms in the Issue Management process and the primary market. These terms are discussed in this chapter.

4.1 Understand the various terms related to Offering

(1) Initial Public Offer

Initial Public Offer (IPO) means an offer of specified securities by an unlisted issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such securities in an unlisted issuer. When an unlisted company makes either a fresh issue of securities or an offer for sale of its existing securities or both; for the first time to the public; it is termed as an IPO. This paves the way for listing and trading of the issuer's securities.

(2) Further Public Offer

A further public offering (FPO) means an offer of specified securities by a listed issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such securities in a listed issuer. It is when an already listed company makes either a fresh issue of securities to the public i.e. other than to its existing shareholders or an offer for sale to the public or both through an offer document it is called a further public offer. FPO can be made through a book building process or a fixed price issue.

FPO may be made through the Fast Track Issue (FTI) process, provided certain conditions as prescribed under the SEBI ICDR Regulations are complied with. Such issues are also granted exemptions from requirements such as filing the draft offer document with SEBI, issuance of observations by SEBI etc.

(3) Net Offer to Public

"Net offer to public" means an offer of specified securities to the public but does not include reservations made for certain investor-categories. It also does not include securities if any, to be subscribed by the promoter group. It is important to note that the Net Offer to the Public should be in compliance with Rule 19(2)(b) of SCRR (Refer section 2.3.3 of this workbook).

(4) Rights Issue

Rights issue means an offer of specified securities by a listed issuer to the shareholders of the issuer as on the record date fixed for the said purpose.
Rights issue may be made through the Fast track issue process also provided certain conditions as prescribed under the SEBI ICDR Regulations are complied with. Such issues are also granted exemptions from requirements such as filing the draft offer document with SEBI, issuance of observations by SEBI etc.

(5) Qualified Institutions Placement

When a listed issuer issues equity shares or securities convertible in to equity shares to Qualified Institutional Buyers only in terms of provisions of Chapter VI of SEBI (ICDR) Regulations, 2018 SEBI ICDR, it is called a QIP. As per SEBI ICDR, Qualified Institutional Buyer means:

- SEBI registered mutual fund, venture capital fund, Alternative Investment Fund and foreign venture capital investor registered with the Board;
- Foreign portfolio investor other than individuals, corporate bodies and family offices;
- A Public financial institution
- Scheduled commercial bank;
- Multilateral and bilateral Development Financial Institution;
- State Industrial Development Corporation;
- Insurance company registered with the IRDA;
- Provident Fund with minimum corpus of Rs. 25 crore;
- Pension Fund with minimum corpus of Rs. 25 crore;
- National Investment Fund set up by the Government of India;
- Insurance Funds set up and managed by army, navy or air force of the Union of India;
- Insurance Funds set up by the Department of Posts.
- Systemically important non-banking financial companies.

(6) Preferential Issue

Preferential issue means an issue of specified securities by a listed issuer to any select person or group of persons on a private placement basis and does not include an offer of specified securities made through a public issue, rights issue, bonus issue, employee stock option scheme, employee stock purchase scheme or qualified institutions placement or an issue of sweat equity shares or depository receipts issued in a country outside India or foreign securities.

(7) Offer for sale through Stock Exchange Mechanism

In order to facilitate promoters to dilute/offload their holding in listed companies in a transparent manner with wider participation, SEBI has allowed the offer for sale of shares by promoters of such companies through a separate window provided by the stock exchange(s). The details about the mechanism are given in SEBI Circular Reference No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/10 dated January 10, 2023.

(8) Offer Document

Offer document is a document which contains all the relevant information about the company, promoters, projects, financial details, objects of raising the money, terms of the issue etc. and is used for inviting subscription to the issue being made by the issuer. Offer Document is called "Red Herring Prospectus" and/or "**Prospectus**" in case of a public issue or offer for sale and "**Letter of Offer**" in case of a rights issue. Terms used for offer documents vary depending upon the stage or type of the issue where the document is used. As per the SEBI ICDR Regulations, "offer document" means a red herring prospectus, prospectus or shelf prospectus and information memorandum in terms of section 31 of the Companies Act, 2013 in case of a public issue and letter of offer in case of a rights issue.

Draft offer document is an offer document filed with SEBI for specifying changes, if any, in it, before it is filed with the Registrar of companies (ROCs) in case of a public issue and before it is filed with the Stock Exchanges in case of a Rights Issue. Draft offer document is made available in public domain including SEBI website, for enabling public to give comments, if any, on the draft offer document.

Red herring prospectus is an offer document used in case of a book built public issue. It contains all the relevant details except that of price or number of shares being offered. It is filed with RoC before the issue opens.

(9) Book Building Process

As per the SEBI ICDR Regulations, "book building" means a process undertaken to elicit demand and to assess the price for determination of the quantum or value or coupon of specified securities or Indian Depository Receipts, as the case may be, in accordance with these regulations.

In the book built method, the process aids price and demand discovery. It is a mechanism where, during the period for which the book for the offer is kept open, bids are collected from investors at various prices at which they are willing to subscribe to a certain number of shares, which is within the price band specified by the issuer. Price band indicates the floor price which is the minimum price at which the bid can be made and the cap which is the upper limit of the price at which the bid can be made. [25] The cap price shall be at 105% of the floor price but cannot be more than 20% of the floor price. The process is directed towards both the institutional as well

[25] In case of book built issues, a minimum price band of at least 105% of the floor price shall be applicable for all issues opening on or after SEBI notification in the official gazette.

as the retail investors. The issue price is determined after the bid closure based on the demand generated in the process.

(10) Fixed Price Issue

In fixed price issue, the prospectus that is filed with RoC contains the issue price per share and the demand for the issue is known only while the issue is kept open for subscription.

(11) Differential Pricing

When one category of investors is offered shares at a price different from the other category it is called differential pricing. An issuer company can allot the shares to retail individual investors and certain other categories of investors at a prescribed discount to the price at which the shares are offered to other categories of public.

(12) Fast Track Issue

SEBI introduced Fast Track Issue (FTI) in order to enable well established and compliant listed companies satisfying certain specific entry norms/conditions to access Indian Primary Market in a time effective manner. Such companies can proceed with FPOs / Right Issues by filing a copy of Red Herring Prospectus / Prospectus with the ROC or the Letter of Offer with designated Stock Exchange, SEBI and Stock Exchanges. Such companies are not required to file Draft Offer Document for SEBI comments and to Stock Exchanges.

The equity shares of the company have been listed on any stock exchange having nationwide trading terminals for a period of at least three years immediately preceding the reference date[26].

- The entire shareholding of the promoter group of the issuer is required to be held in dematerialised form as on the reference date.
- The "average market capitalisation of public shareholding" of the issuer is atleast Rs. 250 crore rupees for a fast track rights issue and Rs. 1000 crore in the case of a fast track public issue.
- The annualized trading turnover of the shares of the company during six calendar months immediately preceding the month of the reference date has been at least two percent of the weighted average number of shares listed during the said six months period; Provided that for issuers, whose public shareholding is less than fifteen percent of its issued equity capital, the annualised trading turnover of its equity shares has been at least two percent of the weighted average number of equity shares available as free float during such six months' period;
- The annualised 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 percent of the annualised trading turnover of equity shares during such six months' period;

[26] Reference date" means: (a) in case of a public issue by a listed issuer, the date of registering the red herring prospectus (in case of a book built issue) or prospectus (in case of a fixed price issue) with the Registrar of Companies; and (b) in case of a rights issue by a listed issuer, the date of filing the letter of offer with the designated stock exchange.

- The company has redressed at least 95% of the total shareholder / investor grievances or complaints received till the end of the quarter immediately preceding the month of the date of filing of offer document with Registrar of Companies/ Stock Exchanges;
- The issuer has been in compliance with the equity listing agreement or the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, as applicable, for a period of at least three years immediately preceding the reference date; Provided that if the issuer has not complied with the provisions of the listing agreement or the SEBI (Listing Obligations and Disclosure Requirements) 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;

  Provided further that imposition of only monetary fines by stock exchanges on the issuer shall not be a ground for ineligibility for undertaking issuances under this regulation;
- That no show cause notices have been issued or prosecution proceedings have been initiated by SEBI and pending against the issuer or its promoters or whole-time directors as on the reference date;

  In cases where against the issuer or its promoters or whole-time directors,

  i) show-cause notice(s) has been issued by the SEBI or the Adjudicating Officer, in a proceeding for imposition of penalty; or

  ii) prosecution proceedings have been initiated by the SEBI;

  necessary disclosures in respect of such action(s) along-with its potential adverse impact on the issuer shall be made in the letter of offer.
- If the issuer or the promoter or the promoter group or the director of the issuer has settled any alleged violations of securities laws through the settlement mechanism of the Board in the past three years immediately preceding the reference date, then the disclosure of such compliance of the settlement order, shall be made in the letter of offer;
- The equity shares of the issuer have not been suspended from trading as a disciplinary measure during last three years immediately preceding the reference date;
- There shall be no conflict of interest between the lead manager(s) and the issuer or its group companies in accordance with the applicable regulations.
- The promoters and promoter group shall mandatorily subscribe to their rights entitlement and shall not renounce their rights, except to the extent of renunciation within the promoter group or for the purpose of complying with minimum public shareholding norms prescribed under the Securities Contracts (Regulation) Rules, 1957;
- For audit qualifications, if any, in respect of any of the financial years for which accounts are disclosed in the letter of offer, the issuer shall provide the restated financial statements adjusting for the impact of the audit qualifications. Further, for the qualifications wherein impact on the financials cannot be ascertained the same shall be disclosed appropriately in the letter of offer.

(13) Green Shoe Option

SEBI ICDR Regulations has defined green shoe option as an option of allotting equity shares in excess of the equity shares offered in the public issue as a post-listing price stabilising mechanism. Green Shoe Option is a price stabilizing mechanism in which shares are issued in excess of the issue size, by a maximum of 15%. From an investor's perspective, an issue with green shoe option provides more probability of getting shares and also that post listing price may show relatively more stability. The specified securities bought from the market and credited in the special account with the depository participant shall be returned to the promoters or pre-issue shareholders immediately, in any case not later than two working days after the end of the stabilisation period. Hence effectively, the issuer borrows securities from the promoters or pre-issue shareholders and returns it to them after the stabilisation period.

(14) Application Supported by Blocked Amount and Unified Payment Interface

Application Supported by Blocked Amount (ASBA) means an application for subscribing to a public issue or rights issue, along with an authorisation to self-certified syndicate bank to block the application money in a bank account;
The bank will block the application money in the bank account specified in the ASBA on the basis of the authorisation.
(i) In case of all, public issues, the issuer shall accept bids using only ASBA facility in the manner specified by the Board;
(ii) In case of rights issues, where not more than one payment option is given, the issuer shall provide the facility of ASBA in accordance with the procedure and eligibility criteria specified by SEBI provided that in case of qualified institutional buyers and non-institutional investors the issuer shall accept bids using ASBA facility only. Provided that the applicants in a rights issue shall be eligible to make applications through ASBA facility only if such applicant: (i) is holding equity shares in dematerialised mode; (ii) has not renounced entitlement in part or in full; and (iii) is not a renouncee.

Provided further that payment made for application for any reserved portion outside the issue period can be through electronic banking modes.

When applying through ASBA, his application money shall be debited from the bank account only if his/her application is selected for allotment after the basis of allotment is finalised, or the issue is withdrawn/failed.

Under ASBA facility, investors can apply in any public/ rights issues by using their bank account. Investor submits the ASBA form (available at the designated branches of the banks acting as SCSB) after filling the details like name of the applicant, PAN number, demat account number, bid quantity, bid price and other relevant details, to their banking branch by giving an instruction to block the amount in their account. In turn, the bank will upload the details of the application in the bidding platform. Investors shall ensure that the details that are filled in the ASBA form are correct otherwise the form is liable to be rejected.

Every stock broker shall accept orders from all clients/investors who place orders through him and every Self Certified Syndicate Bank, Registrar to Issue and Share Transfer Agents or Depository Participants shall accept Applications Supported by Blocked Amount from ASBA investors.

Further, SEBI had introduced the use of Unified Payments Interface (UPI) as a payment mechanism with ASBA for applications in public issues by retail individual investors through intermediaries (Syndicate members, Registered Stock Brokers, Registrar and Transfer agent and Depository Participants).[27]

(15) Hard and Soft Underwriting

Hard underwriting is when an underwriter agrees to buy his commitment at its earliest stage. The underwriter guarantees a fixed amount to the issuer from the issue. The underwriter bears a risk which is much higher than soft underwriting. Hard underwriting is also known as firm underwriting because the underwriter undertakes to buy a certain number of securities in a public offer.

In case of soft underwriting, the underwriter has to take up his share of devolvement (i.e. underwriting commitment less procurement) in case public response to the offer is not sufficient. So, the underwriter's liability arises at a later stage based on investor response. Thus, in case the shares are not subscribed by investors, the issue is devolved on underwriters and they have to bring in the amount by subscribing to the shares. In soft underwriting, the risk to the underwriter is lower. In a public offer, retail individual investors may either withdraw or revise their bids until closure of the issue. However, the qualified institutional buyers and the non-institutional investors shall neither withdraw nor lower the size of their bids at any stage.

(16) Open and Closed Book

In an open book building system the merchant banker along with the issuer ensures that the demand for the securities and the bids are displayed online on the website of the Stock Exchanges. Here, the investor can be guided by the movements of the bids during the period in which the bid is kept open. Indian Book building process provides for an open book system.

In the closed book building system, the book is not made public and the bidders will have to take a call on the price at which they intend to make a bid without having any information on the bids submitted by other bidders.

(17) Basis of Allocation

After the closure of the issue, for example a book built public issue, the bids received are aggregated under different categories i.e., Qualified Institutional Buyers (QIBs), Non-Institutional Buyers (NIBs), Retail, etc. The allotment of specified securities to each retail individual investor

[27] SEBI circular reference number SEBI/HO/CFD/DIL2/CIR/P/2018/138 dated November 1, 2018.

shall not be less than the minimum bid lot, subject to availability of shares in retail individual investor category, and the remaining available shares, if any, shall be allotted on a proportionate basis. Further, the allotment of specified securities to each Non-Institutional Buyers shall not be less than the Rs. 2,00,000/-, subject to availability of shares in Non-Institutional Buyers category, and the remaining available shares, if any, shall be allotted on a proportionate basis.

(18) Categories of Investor

Investors are broadly classified under following categories:

- ***Retail individual Investor (RIIs)****:* means an investor who applies or bids for securities for a value of not more than Rs. 2 lakh.

- ***Qualified Institutional Buyers (QIBs)***: means (a) a public financial institution; (b) a scheduled commercial bank; (c) a mutual fund, venture capital fund, alternative investment fund and foreign venture capital investor registered with SEBI; (d) a foreign portfolio investor registered with SEBI, other than individuals, corporate bodies, and family offices; (e) a multilateral and bilateral development financial institution; (f) a state industrial development corporation; (g) an insurance company registered with the Insurance Regulatory and Development Authority of India (IRDAI); (h) a provident fund with minimum corpus of Rs. 25 crores; (i) a pension fund with minimum corpus of Rs. 25 crores; (i) National Investment Fund; (k) insurance funds set up and managed by army, navy or air force of the Union of India; (l) insurance funds set up and managed by the Department of Posts, India (m) systemically important non-banking financial companies.

- ***Non-Institutional Investors (NIIs):*** Investors who do not fall within the definition of the above two categories are categorized as "Non-Institutional Investors.

- ***Anchor Investor*****:** Anchor investor means a qualified institutional buyer who makes an application for a value of at least ten crore rupees in a public issue on the main board made through the book building process in accordance with these regulations or makes an application for a value of at least two crore rupees for an issue made in accordance with regulations.
  a) 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 made in accordance with the regulations.

  b) Up to sixty percent of the portion available for allocation to qualified institutional buyers shall be available for allocation/allotment ("anchor investor portion") to the anchor investor(s).

  c) Allocation to the anchor investors shall be on a discretionary basis, subject to the following:

(I) In case of public issue on the main board, through the book building process

(i) maximum of 2 such investors shall be permitted for allocation up to ten crore rupees; and (ii) minimum of 2 and maximum of 15 such investors shall be permitted for allocation above ten crore rupees and up to two fifty crore rupees, subject to minimum allotment of five crore rupees per such investor; and (iii) in case of allocation above two fifty crore rupees, a minimum of 5 such investors and a maximum of 15 such investors for allocation up to two fifty crore rupees and an additional 10 such investors for every additional two fifty crore rupees or part thereof, shall be permitted, subject to a minimum allotment of five crore rupees per such investor.

(II) In case of public issue on the SME exchange, through the book building process:

(i) maximum of 2 such investors shall be permitted for allocation up to two crore rupees; and (ii) minimum of 2 and maximum of 15 such investors shall be permitted for allocation above two crore rupees and up to twenty five crore rupees, subject to minimum allotment of one crore rupees per such investor; and (iii) in case of allocation above twenty five crore rupees; a minimum of 5 such investors and a maximum of 15 such investors for allocation up to twenty five crore rupees and an additional 10 such investors for every additional twenty five crore rupees or part thereof, shall be permitted, subject to a minimum allotment of one crore rupees per such investor.

d) One-third of the anchor investor portion shall be reserved for domestic mutual funds.

e) The bidding for anchor investors shall open one day before the issue opening date.

f) 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.

g) The allocation to anchor investors shall be completed on the day of the bidding by the anchor investors.

h) If the price fixed as a result of book building is higher than the price at which the allocation is made to the anchor investors, the anchor investors shall pay the additional amount. However, if the price fixed as a result of book building is lower than the price at which the allocation is made to the anchor investors, the excess amount shall not be refunded to the anchor investors and the anchor investor shall be allotted the securities at the same price at which the allocation was made to it.

i) The number of shares allocated to the anchor investors and the price at which the allocation is made, shall be made available to the stock exchange(s) by the lead manager(s) for dissemination on the website of the stock exchange(s) before opening of the issue.

j) There shall be a lock-in of 30 days on the shares allotted to the anchor investors from the date of allotment. However, w.e.f April 1, 2022, the lock in of 30 days shall be applicable for 50% of the portion allocated and for the remaining portion, lock in of 90 days shall be applicable from the date of allotment.

k) Neither the (i) lead manager(s) or any associate of the lead managers (other than mutual funds sponsored by entities which are associate of the lead managers or insurance companies promoted by entities which are associate of the lead managers or Alternate Investment Funds (AIFs) sponsored by the entities which are associate of the lead manager or FPIs other than Category III sponsored by the entities which are associate of the lead manager) nor (ii) any person related to the promoter/promoter group/ shall apply under the Anchor Investors category. [28]

l) Applications made by a qualified institutional buyer under the anchor investor category and under the non-anchor Investor category shall not be considered as multiple applications.

(19) Designated Stock Exchange

The stock exchange where securities of the issuer are proposed to be listed and is chosen by the issuer is a designated stock exchange. In case where one or more of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange.

(20) Employee

Employee means a permanent employee, working in India or outside India, of the issuer or of the promoters or subsidiary company of the issuer, or a director of the issuer, whether whole-time or not and does not include (i) promoters, (ii) a person belonging to the promoter group; or (iii) a director who either himself/herself or through their relatives or through anybody corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the issuer; Provided that for the purposes of stock option schemes, employee shall have the same meaning as assigned to under the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021;

(21) Specified Securities

[28] For the purpose of clause (k) above, a qualified institutional buyer who has any of the following rights shall be deemed to be a person related to the promoters or promoter group of the issuer: (I) rights under a shareholders' agreement or voting agreement entered into with promoters or promoter group of the issuer; (II) veto rights; or (III) right to appoint any nominee director on the board of the issuer. Further, for the purposes of this regulation, an anchor investor shall be deemed to be an "associate of the lead manager" if: (i) either of them controls, directly or indirectly through its subsidiary or holding company, not less than fifteen percent. of the voting rights in the other; or (ii) either of them, directly or indirectly, by itself or in combination with other persons, exercises control over the other; or (iii) there is a common director, excluding nominee director, amongst the anchor investor and the lead manager.

Specified securities means equity shares and convertible securities. The word 'Securities' has been defined in the SCRA, 1956 (refer section 2.3.2 of this workbook).

(22) Unified Payment Interface (UPI) Mechanism

Unified Payments Interface or UPI is an immediate real-time payment system that helps in instantly transferring the funds between the two bank accounts. UPI is built over the IMPS infrastructure using a payment address which uniquely identifies a person's bank a/c. Hence, UPI is a concept that allows multiple bank accounts to get into a single mobile application. It was developed by the National Payments Corporation of India, an RBI regulated entity. Most payment applications currently operating in India for mobile fund transfers and merchant payments use UPI technology.

SEBI issued a circular[29] to introduce UPI based payment mechanism with Application Supported by Block Amount (ASBA) for applications in public issues by retail individual investors through intermediaries (Syndicate members, Registered Stock Brokers, Registrar and Transfer agent and Depository Participants). The underlying objective is to increase the efficiency, eliminate need for manual intervention at various stages, and to reduce the time duration from issue closure to listing by upto 3 working days. In the first phase, UPI was introduced as an additional payment feature along with existing payment methods. In the second phase, the existing process of physical movement of forms from intermediaries to Self-Certified Syndicate Banks (SCSBs) for blocking of funds was to be discontinued and only the UPI mechanism was proposed to be used.

The use of UPI in a public issue requires a sponsor bank which means a Banker to the Issue registered with SEBI that is appointed by the Issuer to act as a conduit between the Stock Exchanges and NPCI in order to push the mandate collect requests and / or payment instructions of the retail investors into the UPI. In the issue, the UPI would allow the facility to block the funds of the retail investor at the time of application. For this purpose, a retail individual investor would submit the bid-cum-application form with any of the intermediaries and use his / her UPI ID for the purpose of blocking of funds.

UPI has since been successfully used in public issues and SEBI is presently in the process of evaluating the migration to the third phase of this system by reducing the processing time of public offers from the present T+6 to the T+3 system[30].

(23) Alternate Capital Market for SME Start-ups

Under the ICDR Regulations, small and medium enterprises (SMEs) have been given an opportunity to list their securities on an alternative platform in the stock exchange, known as the SME Exchange. 'SME exchange' means a trading platform of a recognised stock exchange having

[29] SEBI/HO/CFD/DIL2/CIR/P/2018/138 dated November 1, 2018.
[30] SEBI has clarified that the second phase will continue until further notice due to the disruption caused by the Covid pandemic - SEBI/HO/CFD/DIL2/CIR/P/2 dated March 30, 2020.

nationwide trading terminals permitted by the SEBI to list the specified securities issued in accordance with the regulations and includes a stock exchange granted recognition for this purpose but does not include the Main Board (Main Exchange).

The issue of specified securities under the SME platform is applicable to companies whose post-issue paid up capital will not exceed face value of Rs. 10 crores. However, companies whose paid up capital is between Rs. 10 crore and Rs. 25 crore are also eligible to make such issues if they decide to continue on the SME exchange without migration to the Main Board.

Further, the promoters shall continue to hold atleast 20% of such post-issue capital. However, in case the post-issue shareholding of the promoters is less than twenty per cent., AIFs or FVCIs or SCBs or FPIs or insurance companies registered with IRDAI 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). Further that the requirement of minimum promoters' contribution shall not apply in case an issuer does not have any identifiable promoter.

Migration to SME Exchange

A listed issuer with share capital of less than 25 crore rupees may migrate to SME exchange if the shareholders approve by special resolution through postal ballot. Provided that the votes cast in favour of such proposal by non-promoter shareholders are at least two times the votes cast against it by non-promoter shareholders.

Migration to Main Board

An issuer, whose specified securities are listed on a SME Exchange and whose share capital is more than ten crore rupees and upto twenty-five crore rupees, may migrate its specified securities to Main Board (Main exchange) if its shareholders approve such migration by passing a special resolution through postal ballot and upon fulfilling the listing eligibility criteria. Provided that the votes cast in favour of the special resolution by the non-promoter shareholders are at least two times the votes cast against it by non-promoter shareholders.

(24) Alternate Capital Market under Innovators' Growth Platform

SEBI ICDR Regulations specifies provisions for specified categories of issuers to seek listing of their specified securities pursuant to an IPO or only for trading on a stock exchange of their specified securities without making a public offer. This market known as the '*Innovators Growth Platform (IGP)*' is accessible only to institutional investors and non-institutional investors.

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

I. Qualified Institutional Buyers;
II. Innovators Growth Platform Investors for the purpose of Innovators Growth Platform;

III. The following regulated entities:
- a. Foreign Portfolio Investor;
- b. An entity meeting all the following criteria:
  - i. It is a pooled investment fund with minimum assets under management of one hundred and fifty million USD;
  - ii. It is registered with a financial sector regulator in the jurisdiction of which it is a resident;
  - iii. It is resident of a country whose securities market regulator is a signatory to the IOSCO's Multilateral Memorandum of Understanding or a signatory to Bilateral Memorandum of Understanding with the Board;
  - iv. It is not resident in a country identified in the public statement of FATF for counter measures or other specified ineligibility.

IV. Any other class of investors as specified by SEBI from time to time.

The following entities shall be eligible to be considered as Innovators Growth Platform Investors for the purpose of innovators growth platform:

(i) any individual with total gross income of Rs. 50 lakhs annually and who has minimum liquid net worth of Rs. 5 crore; or
(ii) any body corporate with net worth of Rs. 25 crore
(iii) any family trust with net worth of Rs, 25 crore.

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

Companies listed on the Innovators Growth Platform have the option of migrating to the main board of the stock exchange subject to fulfilment of the conditions specified in the SEBI ICDR Regulations 2018.

Review Questions

1. Who is a Qualified Institutional Buyer?
   (a) SEBI registered mutual fund, venture capital fund
   (b) SEBI registered FPI
   (c) Scheduled commercial bank
   (d) All of the above

2. Under ASBA facility, investors apply in _____ by using their bank account.
   (a) Public Issues
   (b) Rights Issues
   (c) Preferential Issues
   (d) Both (a) and (b)

3. Further Public Offer (FPO) can be made only through book building issues through the stock exchange route. State whether True or False?
   (a) True
   (b) False

4. "Innovators Growth Platform (IGP)" is accessible only to Institutional and Non-Institutional Investors. State whether True or False?

   (a) True
   (b) False

Chapter 5: Issue Management - Process and Underwriting

LEARNING OBJECTIVES:

After studying this chapter, you should know about the:

- Issue management process which includes filing of offer document, documents required to be filed before the issue etc.
- Pricing of issue
- Underwriting obligations
- Minimum subscription, allotment and refund

In India, the Merchant Bankers registered with SEBI have been provided with statutory exclusivity in managing the public offers such as IPOs, rights, FPOs and secondary issues. In the overall process of issue management, the merchant banker plays a variety of important roles such as, an expert advisor to the management of the issuer company, who performs due diligence on the company, as an event manager and coordinator to ensure timely completion of the issue, as a watch dog for the statutory compliance and as a person in fiduciary capacity for protection of the interests of the investors. At the time of an issue, it also acts as an interface between the issuer company and the SEBI. The role of merchant banker in different capacity will be emphasised as the processes involved in issue management are discussed further in this chapter. Merchant bankers are also expected to guard against conflict of interest at every stage.

This chapter deals with the regulations governing the process of Issue management (public issues, rights issues, further public offers etc.) and underwriting of issues as per provisions given in the SEBI (Issue of Capital and Disclosure Requirements) Regulation, 2018 hereinafter referred to as SEBI ICDR Regulations.

5.1 Issue Management

The provision of the SEBI ICDR Regulations streamlines the framework for public issues. It along with public issues also deals with –

- rights issues made by listed companies, where the aggregate value of the issue is Rs. 50 crore or more;
- a further public offer by a listed issuer;
- a preferential issue by a listed issuer;
- a qualified institutions placement by a listed issuer;
- an initial public offer of Indian depository receipts;
- a rights issue of Indian depository receipts;
- an initial public offer by a small and medium enterprise;
- a listing on the Innovators Growth Platform through an issue or without an issue; and

- a bonus issue by a listed issuer.

5.1.1 Initial Public Offer (IPO)

The regulations also set out the eligibility requirements which an issuer needs to fulfil for initial public offer on the Main Board of the designated stock exchange. Unless otherwise provided in the regulations, an issuer making an initial public offer of specified securities shall satisfy the conditions as per the regulations as on the date of filing of the draft offer document with SEBI and also as on the date of registering the offer document with the Registrar of Companies.

Entities not eligible to make an Initial Public Offer (Regulation 5 of SEBI (ICDR) Regulations):

(1) An issuer shall not be eligible to make an initial public offer -
- if the issuer, any of its promoters, promoter group or directors or selling shareholders are debarred from accessing the capital market by SEBI.
- if any of the promoters or directors of the issuer is a promoter or director of any other company which is debarred from accessing the capital market by SEBI.
- if the issuer or any of its promoters or directors is a wilful defaulter or fraudulent borrower.
- if any of its promoters or directors is a fugitive economic offender.

(2) 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:
Provided that the provisions of this sub-regulation shall not apply to:
(a) 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;
(b) 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 Initial Public Offer (IPO) (Regulation 6 of SEBI (ICDR) Regulations):

(1) The eligibility conditions to be fulfilled by an issuer for making an IPO is specified in Regulation 6 of the SEBI (ICDR) Regulations, 2018. As per regulation 6(1) of the SEBI ICDR Regulations, an issuer may make an IPO, if:
   a. it has net tangible assets of at least Rs. 3 crore, calculated on a restated and consolidated basis, in each of the preceding three full years (of twelve months each), of which not more than fifty percent are held in monetary assets:
   Provided that if more than fifty percent of the net tangible assets are held in monetary assets, the issuer has utilised or made firm commitments to utilise such excess monetary assets in its business or project;

Provided further that the limit of fifty percent on monetary assets shall not be applicable in case the IPO is made entirely through an offer for sale.

b. it has an average operating profit of at least Rs. 15 crore, calculated on a restated and consolidated basis, during the preceding three years (of twelve months each), with operating profit in each of these preceding three years;

c. it has a net worth of at least Rs. 1 crore in each of the preceding three full years (of twelve months each), calculated on a restated and consolidated basis;

d. if it has changed its name within the last one year, at least fifty percent 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 its new name.

(2) An issuer not satisfying the condition stipulated in sub-regulation (1) shall be eligible to make an initial public offer only if the issue is made through the book-building process and the issuer undertakes to allot at least seventy-five percent of the net offer to qualified institutional buyers and to refund the full subscription money if it fails to do so.

General Conditions for IPO (Regulation 7 of the SEBI (ICDR) Regulations)

(1) 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 percent 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.

(2) 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 percent of the amount being raised by the issuer.

(3) The amount for (i) general corporate purposes, and (ii) such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document, shall not exceed 35% of the amount being raised by the issuer.

The amount so earmarked for such objects where the issuer company has not identified acquisition or investment target, 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. Further, such limits shall not apply if the proposed acquisition or strategic investment object has been identified and suitable specific disclosures about such acquisitions or investments are made in the draft offer document and the offer document at the time of filing of offer documents.[31]

Additional Conditions for an in IPO (Regulation 8 of the SEBI ICDR Regulations)

Only such fully paid-up equity shares may be offered for sale to the public, which have been held by the sellers for a period of at least one year prior to the filing of the draft offer document:
Provided that 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, 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 referred in this sub-regulation.

Provided further that such holding period of one year shall be required to be complied with at the time of filing of the draft offer document. [32]

Provided further that the requirement of holding equity shares for a period of one year shall not apply:
a) in case of an 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;
b) if the equity shares offered for sale were acquired pursuant to any scheme approved by a High Court 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;

c) 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 SEBI and further subject to the following:

(i) 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

[31] SEBI/LAD-NROGN/2022/63: SEBI ICDR Amendment Regulations 2022 Dated January 14, 2022.

[32] 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.

(ii) such equity shares not being issued by utilisation of revaluation reserves or unrealized profits of the issuer.

Additional Conditions for an offer for Sale (OFS) for issues under 6(2) of SEBI ICDR Regulations (Regulation 8A of ICDR Regulations)[33]

a. Shares offered for sale to the public by shareholders, individually or with persons acting in concert, holding more than 20% of pre-issue shareholding of the issuer, shall not exceed more than 50% of their pre-issue shareholding on fully diluted basis.
b. Shares offered for sale by selling shareholders, individually or with persons acting in concert, holding less than 20% of pre-issue shareholding of the issuer, shall not exceed more than 10% of pre-issue shareholding of the issuer.

Eligibility requirements for issue of convertible debt instruments in IPO (Regulation 9 of SEBI ICDR Regulations)

An issuer shall be eligible to make an initial public offer of convertible debt instruments even without making a prior public issue of its equity shares and listing thereof. *Provided* that it is not in default of payment of interest or repayment of principal amount in respect of debt instruments issued by it to the public, if any, for a period of more than six months.

Additional requirements for issue of convertible debt instruments in IPO

Regulation 10 of SEBI (ICDR) Regulations specifies that:

(1) In addition to other requirements laid down in these regulations, an issuer making an initial public offer of convertible debt instruments shall also comply with the following conditions:

(a) it has obtained credit rating from at least one credit rating agency;

(b) it has appointed at least one debenture trustee in accordance with the provisions of the Companies Act, 2013 and the SEBI (Debenture Trustees) Regulations, 1993;

(c) it shall create a debenture redemption reserve in accordance with the provisions of the Companies Act, 2013 and rules made thereunder;

(d) if the issuer proposes to create a charge or security on its assets in respect of secured convertible debt instruments, it shall ensure that:

(i) such assets are sufficient to discharge the principal amount at all times;

(ii) such assets are free from any encumbrance;

(iii) where security is already created on such assets in favour of any existing lender or security trustee or the issue of convertible debt instruments is proposed to be secured by creation of security on a leasehold land, the consent of such lender or security trustee or lessor for a second or pari passu charge has been obtained and submitted to the debenture trustee before the opening of the issue;

[33] SEBI/LAD-NROGN/2022/63: SEBI ICDR Amendment Regulations 2022 Dated January 14, 2022.

(iv) the security or asset cover shall be arrived at after reduction of the liabilities having a first or prior charge, in case the convertible debt instruments are secured by a second or subsequent charge.

(2) The issuer shall redeem the convertible debt instruments in terms of the offer document.

Regulation 12 specifies that an issuer shall not issue convertible debt instruments for financing or for providing loans to or for acquiring shares of any person who is part of the promoter group or group companies. Provided that an issuer shall be eligible to issue fully convertible debt instruments for these purposes if the period of conversion of such debt instruments is less than eighteen months from the date of issue of such debt instruments.

Regulation 13 states 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 twenty-five percent of the consideration amount based on the exercise price shall also be received upfront;

Provided that in case the exercise price of warrants is based on a formula, 25 percent 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.

5.1.2 Further Public Offer

Regulation 102 of SEBI ICDR specifies the provisions for those entities who are not eligible to make a further public offer. It states that an issuer shall not be eligible to make a further public offer:

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

(b) if any of the promoters or directors of the issuer is a promoter or 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 or a fraudulent borrower;

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

However, the restrictions stated 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 further public offer is given in Regulation 103 of SEBI ICDR

(1) An issuer is eligible to make a FPO, if it has not changed its name in the last one year period immediately preceding the date of filing of the offer document. Further, in case, the name has been changed, such issuer shall make FPO if atleast 50% of the revenue for the preceding one full ear is earned by the activity indicated by its new name.

(2) An issuer not satisfying the condition as mentioned in the above point may make a further public offer only if the issue is made through the book-building process and the issuer undertakes to allot at least seventy-five percent of the net offer, to qualified institutional buyers and to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers.

General conditions for Further Public Offer (Regulation 104)

(1) An issuer making a further 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 specified securities already issued and proposed to be issued;

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

(d) it has made firm arrangements of finance through verifiable means towards seventy-five per cent. of the stated means of finance [34]for the 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.

(2) 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.

(3) The amount for (i) general corporate purposes, and (ii) such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document, shall not exceed 35% of the amount being raised by the issuer.

The amount so earmarked for such objects where the issuer company has not identified acquisition or investment target, 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. Further,

[34] Finance shall mean finance for capital expenditure only.

such limits shall not apply if the proposed acquisition or strategic investment object has been identified and suitable specific disclosures about such acquisitions or investments are made in the draft offer document and the offer document at the time of filing of offer documents.[35]

Additional conditions for an offer for sale in FPO (Regulation 105)

Only such fully paid-up equity shares may be offered for sale to public which have been held by the selling shareholder(s) for a period of at least one year prior to the filing of the draft offer document. Provided further that such holding period of one year shall be required to be complied with at the time of filing of the draft offer document.

Provided that 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, 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.

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

Provided further that the requirement of holding the equity shares for a period of one year shall not apply:

a) in case of an 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;

b) if the equity shares offered for sale were acquired pursuant to any scheme approved by a High Court or approved by a tribunal or the Central Government under the sections 230 to 234 of the 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;

c) 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 SEBI and further subject to the following:

> (i) 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
>
> (ii) such equity shares not being issued by utilisation of revaluation reserves or unrealized profits of the issuer.

Eligibility for issue of Convertible Debt Instruments and Warrants in FPO (Regulation 106)

[35] SEBI/LAD-NROGN/2022/63: SEBI ICDR Amendment Regulations 2022 Dated January 14, 2022.

An issuer shall be eligible to make a further public offer of convertible debt instruments if its equity shares are already listed. However, this is only applicable when the issuer is not in default in payment of interest or repayment of principal amount in respect of debt instruments issued by it to the public, if any, for a period of more than six months.

Additional requirements for issue of convertible debt instruments in FPO (Regulation 107- 111)

(1) In addition to other requirements laid down in these regulations, an issuer making a public issue of convertible debt instruments shall also comply with the following conditions:

a) it has obtained credit rating for such convertible debt instrument from one or more credit rating agencies;

b) it has appointed at least one debenture trustee in accordance with the provisions of the Companies Act, 2013 and the SEBI (Debenture Trustees) Regulations, 1993;

c) it shall create a debenture redemption reserve in accordance with the provisions of the Companies Act, 2013 and rules made thereunder;

d) if the issuer proposes to create a charge or security on its assets in respect of secured convertible debt instruments, it shall ensure that:

i) such assets are sufficient to discharge the principal amount at all times;

ii) such assets are free from any encumbrance;

iii) where security is already created on such assets in favour of public financial institutions or scheduled commercial banks or the issue of convertible debt instruments is proposed to be secured by creation of security on a leasehold land, the consent of such public financial institution, scheduled commercial bank or lessor for a second or pari passu charge has been obtained and submitted to the debenture trustee before the opening of the issue;

iv) the security or asset cover shall be arrived at after reduction of the liabilities having a first or prior charge, in case the convertible debt instruments are secured by a second or subsequent charge.

(2) The issuer shall redeem the convertible debt instruments in terms of the offer document.

Roll over of Non-Convertible Portion of Partly Convertible Debt Instruments (Regulation 108)

(1) The non-convertible portion of partly convertible debt instruments issued by a listed issuer, the value of which exceeds ten crore rupees, may be rolled over, subject to compliance with the provisions of the Companies Act, 2013 and the following conditions:

(a) seventy-five per cent of the holders (in value) of the convertible debt instruments of the issuer have, through a resolution, approved the rollover through postal ballot;

(b) the issuer has, along with the notice for passing the resolution, sent to all holders of the convertible debt instruments, an auditors' certificate on the cash flow of the issuer and with comments on the liquidity position of the issuer;

(c) the issuer has undertaken to redeem the non-convertible portion of the partly convertible debt instruments of all the holders of the convertible debt instruments who have not agreed to the resolution;

(d) credit rating has been obtained from at least one SEBI registered credit rating agency within a period of one month prior to the due date of redemption and has been communicated to the holders of the convertible debt instruments, before the roll over.

(2) The creation of fresh security and execution of fresh trust deed shall not be mandatory if the existing trust deed or the security documents provide for continuance of the security till redemption of secured convertible debt instruments. Provided the debenture trustee shall decide if the issuer is required to create fresh security and to execute fresh trust deed.

Conversion of Optimally Convertible Debt Instruments into Equity Share Capital (Regulation 109)

(1) The issuer shall not convert its optionally convertible debt instruments into equity shares unless the holders of such convertible debt instruments have sent their positive consent to the issuer and non-receipt of reply to any notice sent by the issuer for this purpose shall not be construed as consent for conversion of any convertible debt instruments.

(2) Where the value of the convertible portion of any listed convertible debt instruments issued by an issuer exceeds ten crore rupees and the issuer has not determined the conversion price of such convertible debt instruments at the time of making the issue, the holders of such convertible debt instruments shall be given the option of not converting the convertible portion into equity shares:

Provided that where the upper limit or conversion formula on the price of such convertible debt instruments and justification thereon is determined and disclosed to the investors at the time of making the issue, it shall not be necessary to give such option to the holders of the convertible debt instruments for converting the convertible portion into equity share capital within the said upper limit.

(3) Where an option is to be given to the holders of the convertible debt instruments and if one or more of such holders do not exercise the option to convert the instruments into equity share capital at a price determined in the general meeting of the shareholders, the issuer shall redeem that part of the instruments within one month from the last date by which option is to be exercised, at a price which shall not be less than its face value.

(4) The provisions mentioned above in sub-regulation (3) shall not apply if such redemption is in terms of the disclosures made in the offer document.

Issue of Convertible Debt Instruments for Financing (Regulation 110)

An issuer shall not issue convertible debt instruments for financing or for providing loans to or for acquiring shares of any person who is part of the promoter group or group companies:

Provided that an issuer shall be eligible to issue fully convertible debt instruments for these purposes if the period of conversion of such debt instruments is less than eighteen months from the date of issue of such debt instruments.

Issue of Warrants (Regulation 111)

An issuer shall be eligible to issue warrants in a further public offer subject to the following conditions:

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

(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 at least twenty-five per cent of the consideration amount based on the exercise price shall also be received upfront;

Provided that in case the exercise price of warrants is based on a formula, twenty-five 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.

5.2 Obligations Relating to Issues

In the subsequent section, we will be dealing with the appointment of merchant bankers and other intermediaries by the issuer company and their obligations relating to the issue such as filing of offer document, maintaining proper due diligence etc.

5.2.1 Appointment of Merchant Bankers and other Intermediaries/Agencies

Since the process of issue management is of critical importance to the issuer company, the selection of the merchant banker and the other related intermediaries is also of great significance. The Regulation 23 and 69 of the SEBI ICDR Regulations for Initial Public Offer and Rights Issue respectively discusses the process of appointing merchant bankers and other intermediaries for the issue which is as discussed below:

Regulation 23 specifies the following:

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

(2) 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 as specified in Schedule I of the SEBI ICDR Regulations.

(3) 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 and if any of the lead manager is an associate of the issuer, it shall disclose itself as an associate of the issuer and its role shall be limited to marketing of the issue.

(4) 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.

(5) The issuer shall enter into an agreement with the lead manager(s) in the format specified in the regulation and enter into agreements with other intermediaries as required under the respective regulations applicable to the intermediary concerned:
Provided that 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, 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: Provided further that in case of ASBA process, the issuer shall take cognisance of the deemed agreement of the issuer with the self-certified syndicate banks.

(6) 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 in the manner specified in the regulations (Schedule XII).

(7) The issuer shall appoint a registrar to the issue, registered with SEBI, which has connectivity with all the depositories:
Provided that if the issuer itself is a registrar, it shall not appoint itself as registrar to the issue;
Provided further that the lead manager shall not act as a registrar to the issue in which it is also handling the post-issue responsibilities.

(8) 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.

5.2.2 Due Diligence and Preparation of Offer Document

Due Diligence

The Code of Conduct of a merchant banker under the SEBI Regulations requires a Lead Manager, amongst other things, to exercise due diligence, ensure proper care and exercise independent professional judgment. Further, the Code of Conduct also requires a Lead Manager to ensure that adequate disclosures are made to investors in a timely manner and in accordance with applicable law, so as to enable investors to make an informed investment decision. Furthermore, the ICDR Regulations also require due diligence certificates to be issued by Lead Managers at various stages of an offer and the formats for such certificates have been provided in the ICDR Regulations. Lead managers are required to submit due diligence certificate(s) to SEBI at various stages of a transaction. It is also an important compliance requirement that the Merchant Banker Regulations require Lead Managers to maintain records and documents pertaining to due diligence exercised in pre-issue and post-issue matters for a minimum period of five years.

There is no legal definition of 'due diligence' but it is an important step in every investment related transaction. In the context of a merchant banker's function, the objective of due diligence is to collect information about the issuer company that helps the lead manager assess the disclosures in the offer document in connection with their obligations under applicable regulations. According to the AIBI's publication on due diligence36, the due diligence shall cover the following aspects –

- In addition to review of documents sought by Lead Managers, the diligence exercise should include discussions with the representatives of the Issuer (i.e. its Promoters, its Directors, its Key Managerial Personnel and its other key employees).

- A Lead Manager is required to examine documents provided by the Issuer to understand various aspects of the Issuer's businesses, operations and financial condition. This will enable Lead Managers to ensure that the Offer Document contains all necessary disclosures. Accordingly, review and examination of the documents provided by the Issuer, along with incorporation of necessary disclosures in the Offer Documents should be a necessary part of due diligence.

- The Lead Managers are required to independently review all documents and information provided by the Issuer.

- Lead Managers, with the assistance of legal advisers appointed with respect to the offering, should brief the representatives of the Issuer on their statutory responsibilities and liabilities in connection with the offering under the Companies Act 2013, the ICDR Regulations, the SEBI LODR Regulations, the uniform listing agreement executed with the stock exchanges and other important applicable regulations such as those on prevention of insider trading, substantial acquisitions and takeovers etc.

- Some other major areas which are considered during due diligence process are as given below:
  - Promoter/promoter group

[36] Association of Investment Bankers of India's Due Diligence Manual released in 2012 as updated from time to time.

- Capital structure
- Capital built up
- Risk factors
- Management
- Business
- Financial statements
- Litigations

Role of External parties in the due diligence process

During the due diligence process, the Lead Manager and the issuer are assisted by external parties such as legal counsels, statutory auditors and specialised industry experts, if required. The legal counsel may assist the Lead Manager in carrying out legal documentary due diligence, assisting the issuer in the preparation of the Offer Documents in compliance with ICDR Regulations, the Companies Act, 2013 and other applicable laws and advising the lead managers on legal matters relating to the offering. In addition, the legal counsels may also issue legal and disclosure opinions in relation to the issue to the Lead Managers. The statutory auditors of the issuer company also provide their reports on the financial information included in the Offer Documents and other relevant certifications pertaining to the issue including "comfort letters" for financial information included in the Offer Documents including for periods subsequent to the date of the last audited financial statements.

Key due diligence documents

The lead manager should maintain the following documents being part of their due diligence:

1. Contracts as per the Offer Document shall include:
    a. Letters of appointment issued to the Lead Manager
    b. Issue Agreement between the issuer and the Lead Manager
    c. MOU between the issuer and the Registrar to the Issue
    d. Escrow Agreement
    e. Syndicate Agreement
    f. Underwriting Agreement
    g. Tripartite Agreement between NSDL/CDSL, Registrar to the issue and issuer
    h. Monitoring agency agreement, if applicable
2. Indicative list of other documents:
    a. Memorandum and Articles of Association
    b. Certificate of incorporation and change of name of the issuer
    c. Certified true copies of the Board resolution and shareholders' resolution of the issuer authorising the issue
    d. Auditors' reports for the relevant financial period specified in the ICDR Regulations
    e. Annual reports, for the relevant financial period specified in the ICDR Regulations
    f. Auditor's Tax benefit report

g. Appraisal reports or valuation reports by independent experts
h. Initial listing approvals of the Stock Exchanges
i. Communication exchanged with SEBI and other regulatory authorities, including due diligence certificates issued by the Lead Managers
j. Legal opinions provided by the legal counsels, if any
k. Corporate presentations made by the issuer company to the Lead Managers, if any
l. KYC documentation of promoters and key management personnel in line with the internal guidelines of the concerned Lead Manager (s)
m. Agreement with advertising agencies
n. Consents from Auditors, Directors, IPO Grading Agency, Bankers to the Company, Bankers to the Issue, Compliance Officer, Lead Managers, Tax Expert, Other Experts, Legal Advisors, Registrars to the issue, Refund Bankers, Syndicate Members
o. IPO grading report
p. Material agreement not in the ordinary course of business that are listed as material contracts in the Offer Document

For further understanding of the detailed procedure of conducting due diligence as a merchant banker and the complete details of documents /records to be verified, readers are advised to refer to the AIBI's Due Diligence Manual referred to above.

5.2.3 Preparation of Offer Document

The process of public offering for issue of securities is very closely regulated by SEBI to prevent any wrong-doing on part of the issuer company. One of the cornerstones of such oversight is on preparation of the offer document that makes all the disclosures required for investors to make informed investment decisions. In order to issue securities, an issuer has to file a draft offer document with SEBI through the appointed lead merchant banker and pay the requisite fees.

Regulation 24 of ICDR specifies that the disclosures in the draft offer document and offer document shall contain all material disclosures which are true and adequate to enable the applicants to take an informed investment decision. The lead manager(s) shall exercise due diligence and satisfy themselves about all aspects of the issue including the veracity and adequacy of disclosure in the draft offer document and the offer document.

The red-herring prospectus, and prospectus shall contain: (a) disclosures specified in the Companies Act, 2013 and; (b) disclosures specified in Part A of Schedule VI of SEBI ICDR Regulations.

The lead manager(s) shall call upon the issuer, its promoters and its directors or in case of an offer for sale, also 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 these regulations.

The lead manager(s) shall ensure that the information contained in the draft offer document and offer document and the particulars as per restated audited financial statements in the offer document are not more than six months old from the issue opening date.

The AIBI Due Diligence Manual provides further guidance on preparation of offer documents and inclusion of expert opinions. Offer documents contain 'expertise' and 'non-expertise' portions. In relation to the 'expertise' portion, e.g., the financial statements and the technical reports etc., Lead Managers should be able to rely on the reports /information /certifications provided for disclosure purposes. Lead Managers should endeavor to satisfy themselves that it is reasonable to rely on the information provided by the expert. In case the Issuer belongs to any specialized industry (like oil or gas or mining or other specialized business) or has a project or a facility which requires technical expertise, independent experts / third parties may be appointed and their reports (such as reserve reports or appraisal or feasibility report for a project or quotations for certain objects of the issue) be procured. Such reports along with other relevant details as prescribed under ICDR Regulations may then become the basis for disclosures forming part of the offer documents. The independent experts/ third parties whose report is disclosed in the offer documents shall also issue the necessary consent letter / emails (as applicable). Moreover, any adjective / superlative / specific positioning of the issuer or its products should be backed by an independent source as part of industry report or survey by independent agency or trade body.

With respect to 'non-expertise' content of the offer document, the concept of 'materiality' is advised in deciding when and to what extent inclusions are required. Materiality analysis serves a dual function in the disclosure process. Firstly, materiality analysis shapes the content of mandatory disclosure required under securities laws. Secondly, materiality analysis shapes the content of clarifying disclosure; information not expressly mandated by disclosure requirements needs to be disclosed only if it is material and necessary to ensure that there is no mis-statement or omission of a material fact.

5.2.4 Filing of Offer Document

The Regulation 25 of the SEBI ICDR Regulations deals with the filing of offer documents with SEBI. The provisions of the Regulation are as follows:

1. Prior to making an initial public offer, 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 in Schedule III, through the lead manager(s).

2. 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;

3. 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. In cases where the promoter is a body corporate and Permanent Account Number, bank account number, company registration number or equivalent and the address of the Registrar of Companies with which the promoter is registered should be given.

4. SEBI may specify changes or issue observations, if any, on the draft offer document within thirty days from the later of the following dates:

   a) the date of receipt of the draft offer document; or

   b) the date of receipt of satisfactory reply from the lead manager(s), 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 the Board 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 stock exchange(s).

5. If SEBI specifies any changes or issues observations on the draft offer document, the issuer and lead manager(s) shall carry out such changes in the draft offer document and shall submit to SEBI an updated draft offer document complying with the observations and highlighting all changes made in the draft offer document and before filing the offer documents with the Registrar of Companies or an appropriate authority, as applicable.

6. If there are any changes in the draft offer document in relation to the matters specified in Schedule XVI, an updated offer document or a fresh draft offer document, as the case may be, shall be filed with SEBI along with fees specified in Schedule III.

7. Copy of the offer documents shall also be filed with SEBI and the stock exchange(s) through the lead manager(s) promptly after filing the offer documents with Registrar of Companies.

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

Fees to be paid along with the Offer Document

The SEBI ICDR Regulations prescribes the fees to be paid by the issuer to SEBI with respect to every draft offer document or in case of fast track issue, every offer document and in case of updation of any draft offer document.

The fees shall be paid in advance by way of direct credit in SEBI's bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or by means of a demand draft drawn in favour of 'the Securities and Exchange Board of India' payable at the place of office of SEBI, in terms of Schedule IV, where the draft offer document or offer document or updated draft offer document, as the case may be, is filed.

The fee structure is as given below:

a) In case of a public issue

Issue Size, including intended retention of oversubscription	*Fees to be paid*
Less than or equal to Rs. 10 crore	A flat charge of Rs. 1,00,000
More than Rs. 10 crore but less than or equal to Rs. 5000 crore	0.1 percent of the issue size
More than Rs. 5000 crore	Rs. 5,00,00,000 (Five Crore Rupees) Plus 0.025 percent of the portion of the Issue Size in excess of Rs. 5,000 crore

b) In case of a rights issue

Issue Size, including intended retention of oversubscription	*Fees to be paid*	*Amount / Rate of fees for filing within one year after expiry of SEBI Observation letter*
Less than or equal to Rs. 10 crore	A flat charge of Rs. 50,000/-	A flat charge of Rs. 25,000/-
More than Rs. 10 crore	0.05 percent of the Issue Size	0.025 percent of the Issue Size

c) Listing without a public issue:

Paid-up capital of the entity	*Amount / Rate of fees*
Less than or equal to ten crore rupees.	A flat charge of one lakh rupees (Rs. 1,00,000/-).
More than ten crore rupees, but less than or equal to five thousand rupees	0.1 percent of the paid-up capital
More than five thousand crore rupees.	Five crore rupees (Rs.5,00,00,000/-) plus 0.025 percent of the portion of the paid-up capital in excess of five thousand crore rupees (Rs.5000,00,00,000/-).

d) Updation of an offer document:

	Amount / Rate of fees
Where updation or changes are made in any of the sections specified in Para 2 of Schedule XVI of these regulations	Ten thousand rupees (Rs. 10,000/-) for updations or changes per section, subject to total fee not exceeding one fourth (1/4th) of the filing fees paid at the time of filing the draft document with SEBI or fifty thousand rupees (Rs.50,000/-), whichever is higher.

Where the issue size is not determinable at the time of submission of the draft offer document or the offer document in case of a fast track issue, the issuer shall pay fees mentioned at para (2), based on the estimated issue size.

If the issue size estimated by the issuer differs from the eventual issue size and thereby:

(a) the fees paid by the issuer is deficient, the balance fee shall be paid by the issuer within seven days of finalisation of the basis of allotment; or

(b) the fees paid by the issuer is in excess, excess fee shall be refunded by SEBI to the issuer.

5.2.5 Documents to be submitted before Opening of the Issue

The lead manager(s) shall submit the following documents to SEBI after issuance of observations by SEBI or after expiry of the period as mentioned in the regulation 25 if SEBI has not issued observations:

a) a statement certifying that all changes, suggestions and observations made by SEBI have been incorporated in the offer document;

b) a due diligence certificate as per Form C of Schedule V, at the time of registering of the offer document;

c) a copy of the resolution passed by the board of directors of the issuer for allotting specified securities to promoter(s) towards amount received against promoters' contribution, before opening of the issue;

d) a certificate from a statutory auditor, before opening of the issue, certifying that promoters' contribution has been received in accordance with these regulations, accompanying therewith the names and addresses of the promoters who have contributed to the promoters' contribution and the amount paid and credited to the issuer's bank account by each of them towards such contribution;

e) a due diligence certificate, in the event the issuer has made a disclosure of any material development by issuing a public notice pursuant to para 4 of Schedule IX.

5.2.6 Security Deposit

The issuer shall, before the opening of the subscription list, deposit with the designated stock exchange, an amount calculated at the rate of one percent of the issue size available for subscription to the public in the manner specified by SEBI and/or stock exchange(s). The deposited amount as mentioned above shall be refundable or forfeitable in the manner specified by SEBI.

5.2.7 Listing Approvals from Stock Exchange

The Issuer is required to enter into a listing agreement with the Stock Exchanges, where the securities of an issuer are proposed to be listed. The Listing Agreement prescribes the initial conditions and the requirements for continuous listing on the Stock Exchanges. The compliances to be fulfilled are both time-based and event based compliances. It is a standard set of Agreement to be entered into by the Companies seeking listing from the stock exchanges.

There are three main stages in the listing process, viz., in-principle approval from stock exchanges, listing of the securities and trading permission.

There are certain listing requirements with respect to Articles of Association (AoA) also which need to be complied with. The main requirements with respect to Articles of Association are as given below:

i. There should be no clauses which are restrictive in nature
ii. A few clauses need to be incorporated in the AoA, if they do not already form part of the same, example fully paid shares shall be free from all lien and in the case of partly paid shares the Issuer's lien shall be restricted to moneys called or payable at a fixed time in respect of such shares.
iii. The exchanges also have certain eligibility criteria for companies getting listed through an IPO. The important ones are tabulated below:

Sr. No.	Particulars	National Stock Exchange	Bombay Stock Exchange
1.	Paid up capital of the applicant	Minimum 10 crores	Minimum 10 crores
2.	Track record of Profitability	Atleast 3 years	-
3.	Issue Size	-	Minimum Rs. 10 crores
3.	Market Capitalisation	Minimum 25 crores	Minimum 25 crores
4.	Entities in the Group not having been debarred etc.	In the past one year	-

Note: The detailed eligibility criteria of the respective exchanges have been detailed on their website.

In-principle approval:

As per Schedule XIX read with Regulations 7, 62, 104 and 183 of SEBI ICDR Regulations, the issuer is required to obtain in-principle approval from recognised Stock Exchange as follows:

(a) in case of an initial public offer or an issue of Indian Depository Receipt, from all recognised stock exchanges on which the issuer or issuing company proposes to get its specified securities listed and
(b) in case of other issues, before issuance of further securities, as follows:

(i) where the securities are listed only on recognised stock exchange(s) having nationwide trading terminals, from all such stock exchange(s);

(ii) where the securities are not listed on any recognised stock exchange having nationwide trading terminals, from all the stock exchange(s) on which the securities of the issuer are proposed to be listed;

(iii) where the specified securities are listed on recognised stock exchange(s) having nationwide trading terminals as well as on the recognised stock exchange(s) not having nationwide trading terminals, from all recognised stock exchange(s) having nationwide trading terminals.

5.2.8 Application for Listing is required to be made as follows:

(1) The issuer or the issuing company, as the case may be, shall complete the pre-listing formalities within the time lines specified by SEBI from time to time.

(2) The issuer or the issuing company, as the case may be, shall, make an application for listing, within such period from the date of allotment as may be specified by SEBI from time to time, to one or more recognized stock exchange(s) along with the documents specified by stock exchange(s) from time to time.

(3) In the event of failure to make an application for listing by the issuer within the time stipulated in (2) above, or non-receipt of the listing permission by the issuer from the stock exchange(s) or withdrawal of the 'Observation Letter' issued by SEBI, wherever applicable, the securities shall not be eligible for listing and the issuer shall be liable to refund the subscription monies, if any, to the respective allottees immediately, along with penal interest for each day of delay at the rate of fifteen percent per annum from the date of allotment.

5.2.10 Listing Agreement states as follows:

Every issuer or the issuing company desirous of listing its securities on a recognised stock exchange shall execute a listing agreement with such stock exchange in terms of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

5.2.11 Obligation of stock exchange(s) relating to in-principle approval as under:

The stock exchange(s) shall grant in-principle approval/list the securities or reject the application for in-principle approval /listing by the issuer or issuing company, as the case maybe, within thirty days from the later of the following dates:

(a) the date of receipt of application for in-principle approval/listing from issuer;

(b) the date of receipt of satisfactory reply from the issuer, as the case may be, in cases where the stock exchange(s) has sought any clarification from them.

As per Regulation 28 of SEBI (Listing Obligations and Disclosure Requirements) Regulations (Listing Regulations), the company is required to obtain 'in-principle approval for listing from the exchanges having nationwide trading terminals where it is listed, before issuing further shares or securities. Where the company is not listed on any exchange having nationwide trading terminals, it agrees to obtain such 'in-principle' approval from all the exchanges in which it is listed before issuing further shares or securities. The company also agrees to make an application to the Exchange for the listing of any new issue of shares or securities and of the provisional documents relating thereto. However, for an IPO, the company seeks in-principle approval as per the clause 7(1)(a) of SEBI ICDR Regulations. Exchanges provide the In-principle approval and SEBI gives its observation.

The next stage is to ***apply for listing*** on the stock exchange for which a letter of application and a form of Listing Application is prescribed by the Exchanges.

The third stage is obtaining ***trading permission***, which is granted after fulfilment of the requirements which is stated by the respective exchanges.

One of the requirements at this stage is to enter into the Listing Agreement between the Issuer and the Stock Exchange.

5.2.12 Listing of further Issues by Issuers already listed on the Stock Exchanges

Issuers whose securities are already listed on the NSE or BSE or both shall apply for admission to listing on the Stock Exchanges of any further issue of securities made by them. The application for admission shall be made in the forms prescribed in this regard[37] or in such other form or forms as the Relevant Authority may from time to time prescribe in addition thereto or in modification or substitution thereof.

5.2.13 Draft Offer Document and offer document to be made public

[37]Appendix 'E' - Schedule of Distribution; Appendix 'G'- Application Letter for Listing of further issues; Appendix 'H' - Listing Application providing details of securities; Appendix 'I' - Checklist for supporting documents submitted (as applicable).

1. The draft offer document filed with SEBI shall be made public for comments, if any, for a period of at least 21 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.
2. 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.
3. The lead manager(s) shall, after expiry of the period stipulated in sub-regulation (1), 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.
4. 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, Board and the stock exchanges, as applicable.
5. 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.

5.2.14 Despatch of Issue Material and Distribution

The lead merchant bankers are responsible for the dispatch of the issue material to all the parties concerned. This involves the dispatch of the offer document and other materials like forms for ASBA (Application Supported by Blocked Amount) to the designated stock exchanges, syndicate members, underwriters, bankers to the issue, investors' associations and Self Certified Syndicate Banks in advance.

5.2.15 Opening, Closing and Listing of an issue

Along with the SEBI ICDR Regulations, Section 26 and Section 31 of the Companies Act, 2013 and Rule 3, 4, 5, 6, of the Companies (Prospectus and Allotment of Securities) Rules, 2014 have an important role to play in the issue opening process which are stated as under:

Subject to proper compliances with the Act and the Regulations, a public issue or a rights issue may be opened:

(1) A public issue may be opened within twelve months from the date of issuance of the observations by SEBI under regulation 25;
(2) An issue shall be opened after at least three working days from the date of filing, the red herring prospectus, in case of a book built issue and the prospectus, in case of a fixed price issue, with the Registrar of Companies. Section 31 of Companies Act 2013 states as under:

(1) Any class or classes of companies, as SEBI may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

(2) A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus:

Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

(3) Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus[38] shall be deemed to be a prospectus.

According to Regulation 46, an initial public offer 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, subject to the overall maximum of ten days. In case of force majeure, banking strike, or similar circumstances, the issue may extend the bidding for a minimum period of one working day.

Subject to other requirements such as obtaining the listing approval of the stock exchange and execution of the uniform listing agreement, an issuer has to list the security for trading within 3 days, i.e. (T+3) from the date of close of the issue. After the introduction of UPI mechanism for retail individual investors (see Chapter 4), SEBI is contemplating further reducing the time period to list the securities on the stock exchanges.

5.3 Pricing of Issue

Issue pricing, especially in IPOs, is a determinant based on the fundamentals of the company, prevailing market valuations for other companies in general, and peer companies (if any) in particular. The fundamentals would consist of the business prospects in the future with the envisaged investment as well as the past financial performance of the company. In FPOs, the

[38] Shelf prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

market factors such as past performance of the scrip and prevailing market valuations weigh tremendously on the pricing. The lead managers make an initial assessment of the indicative price at which the issue can sell in the market during the due diligence process. Thereafter, they enter into discussions with market participants such as syndicate members, brokers and institutional investors. They also keep in mind views of analysts who can create an opinion on the issue. Based on a combined assessment, they are in a position to advise the issuer on what could be the clearing price for the issue which after approval by the board of the issuer becomes the issue price (in a fixed price offer) and the floor price (in a book built offer).

Face value of equity shares

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

- The issuer may determine the price of equity shares, and in case of convertible securities, the coupon rate and the conversion price, in consultation with the lead manager(s) or through the book building process, as the case may be.

- The issuer may offer its 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 may be offered specified securities at a price not lower than by more than ten percent of the price at which net offer is made to other categories of applicants, excluding anchor investors;
  b) in case of a book built issue, the price of the specified securities offered to the anchor investors shall not be lower than the price offered to other applicants;
  c) In case the issuer opts for the alternate method of book building in terms of Part D of Schedule XIII, the issuer may offer the specified securities to its employees at a price not lower than by more than ten percent of the floor price.
- Discount, if any, shall be expressed in rupee terms in the offer document.

<u>Price and Price Band:</u>

- The issuer may mention a price or a price band in the offer document (in case of a fixed price issue) and a floor price or a price band in the red herring prospectus (in case of a book built issue) and determine the price at a later date before filing the prospectus with the Registrar of Companies:
  Provided that the prospectus filed with the Registrar of Companies shall contain only one price or the specific 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 percent of the floor price: Provided that the cap of the price band shall be atleast one hundred and five percent of the floor price
- The floor price or the final price shall not be less than the face value of the specified securities.
- The issuer shall announce the floor price or the price band at least two working days before

the opening of the issue in the pre - issue and price band advertisement in the format specified under Part A of Schedule X in the same newspapers in which the public announcement was published (under sub - regulation (2) of Regulation 26)

- The announcement as referred earlier shall contain relevant financial ratios computed for both 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 the stock exchange(s) and shall also be pre-filled in the application forms to be made available on the websites of the stock exchange(s).

5.4 Underwriting

After the repeal of SEBI Underwriters Regulation, SEBI made amendments to the SEBI (Merchant Bankers) regulation. The amendment states that every merchant banker acting as an underwriter shall enter into an agreement with each body corporate on whose behalf it is acting as an underwriter. The agreement shall provide for the following:[39]

- Period for which the agreement shall be in force;
- Allocation of duties and responsibilities between merchant banker and client;
- The amount of underwriting obligations;
- The period, within which the underwriter has to subscribe to the issue after being intimated by or on behalf of such body corporate;
- The amount of commission or brokerage payable to the underwriter;
- Details of arrangements, if any, made by the underwriter for fulfilling the underwriting obligations.

General responsibilities of a Merchant Banker as Underwriter.

(1) A Merchant Banker acting as an underwriter shall not derive any direct or indirect benefit from underwriting the issue other than the commission or brokerage payable under the agreement for underwriting entered with client.

(2) At any point of time, the total underwriting obligations under all the agreements shall not exceed twenty times of the net worth of the merchant banker.

1) (3) Every Merchant Banker acting as an underwriter, in the event of being called upon to subscribe for securities of a body corporate pursuant to an agreement for underwriting, shall subscribe to such securities within 45 days of the receipt of such intimation from such body corporate. If the issuer makes a public issue through the book building process,
    a) the issue shall be underwritten by lead manager(s) and syndicate member(s): Provided that at least seventy-five percent of the net offer proposed to be compulsorily allotted to qualified institutional buyers for the purpose of compliance

[39] SEBI Gazette Notification No. SEBI/LAD-NRO/GN/2021/13, Dated March 30, 2021.

of the eligibility conditions specified in sub-regulation (2) of regulation 6, cannot be underwritten.

b) the issuer shall, prior to filing the prospectus, enter into underwriting agreement with the lead manager(s) and syndicate member(s), indicating therein 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 fulfil their underwriting obligations, the lead manager(s) shall fulfil 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 underwritten issue, the lead manager(s) shall undertake minimum underwriting obligations as specified in the SEBI (Merchant Bankers) Regulations, 1992.
f) where the issue is required to be underwritten, the underwriting obligations should at least to the extent of minimum subscription.

As per the Regulation 136 of the SEBI ICDR Regulations:

(1) If the issuer making a further public offer, other than through the book building process, desires to have the issue underwritten, it shall appoint SEBI registered merchant bankers or stock brokers to act as underwriters.

(2) If the issuer makes a public issue through the book building process –

(a) the issue shall be underwritten by lead manager(s) and syndicate member(s):

Provided that at least seventy-five per cent of the net offer proposed to be compulsorily allotted to qualified institutional buyers for the purpose of compliance of the eligibility conditions, shall not be underwritten.

(b) the issuer shall, prior to filing the prospectus, enter into underwriting agreement with the lead manager(s), and syndicate member(s), indicating therein 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 fulfil their underwriting obligations, the lead manager(s) shall fulfil 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 underwritten issue, the lead manager(s) shall undertake minimum underwriting obligations as specified in the SEBI (Merchant Bankers) Regulations, 1992

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

5.5 Issuance Conditions and Procedures

SEBI (ICDR) Regulations also specifies the Issuance Conditions and Procedures. Regulation 32 states the conditions of allocation in net offer to the public.

(1) In an issue made through the book building process (under sub-regulation (1) of regulation 6) the allocation in the net offer category shall be as follows:

(a) not less than thirty-five percent to retail individual investors;

(b) not less than fifteen percent to non-institutional investors;

(c) not more than fifty percent to qualified institutional buyers, five percent of which shall be allocated to mutual funds:

Provided that the unsubscribed portion in either of the categories specified in clauses (a) or (b) may be allocated to applicants in any other category:

Provided further that in addition to five percent allocation available in terms of clause (c), mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.

(2) In an issue made through the book building process under sub-regulation (2) of regulation 6, the allocation in the net offer category shall be as follows:

(a) not more than ten percent to retail individual investors;

(b) not more than fifteen percent to non-institutional investors;

(c) not less than seventy-five percent to qualified institutional buyers, five percent of which shall be allocated to mutual funds.

Provided that the unsubscribed portion in either of the categories specified in clauses (a) or (b) may be allocated to applicants in the other category:

Provided further that in addition to five percent allocation available in terms of clause (c), mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.

(3) In an issue made through the book building process, the issuer may allocate up to sixty percent of the portion available for allocation to qualified institutional buyers to anchor investors in accordance with the specified conditions.

(3A) In an issue made through book building process, the allocation in the non-institutional investors category shall be as follows:

a) one third of the portion available to non-institutional investors shall be reserved for applicants with application size of more than two lakh rupees and up to ten lakh rupees;
b) two third of the portion available to non-institutional investors shall be reserved for applicants with application size of more than ten lakh rupees.

Provided that the unsubscribed portion in either of the above mentioned sub-categories may be allocated to applicants in the other sub-category of non-institutional investors.

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

i) minimum fifty percent to retail individual investors; and

ii) remaining to: (a) individual applicants other than retail individual investors; and (b) other investors including corporate bodies or institutions, irrespective of the number of

specified securities applied for; Provided that the unsubscribed portion in either of the categories specified in clauses (a) or (b) may be allocated to applicants in the other category. [40]

5.6 Minimum Subscription

The minimum subscription to be received in the issue shall be at least ninety percent of the offer through the offer document, except in case of an offer for sale of specified securities. Therefore, in a composite offer involving a fresh issue of shares along with an offer for sale, the minimum subscription shall be reckoned with regard to the fresh issue of shares only.

Provided that the minimum subscription to be received shall be subject to the allotment of minimum number of specified securities, as prescribed under the Securities Contracts (Regulation) Rules, 1957.

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

5.7 Allotment, Refund and Payment of Interest

SEBI had introduced the use of Unified Payments Interface (UPI) as a payment mechanism with Application Supported by Blocked Amount (ASBA) for applications in public issues by retail individual investors through intermediaries (Syndicate members, Registered Stock Brokers, Registrar and Transfer agent and Depository Participants) from January 2019.[41]

Allotment procedure and basis of allotment

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

(2) 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.
Provided that in case of oversubscription, an allotment of not more than one percent of the net offer to public may be made for the purpose of making allotment in minimum lots.

(3) The allotment of specified securities to applicants other than to the retail individual investors, non-institutional 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

[40]Explanation: For the purpose of sub-regulation (4), if the retail individual investor category is entitled to more than fifty percent of the issue size on a proportionate basis, the retail individual investors shall be allocated that higher percentage.
[41]SEBI Circular Ref. No. SEBI/HO/CFD/DIL2/CIR/P/2018/138 Dated November 1, 2018.

nearest integer, subject to minimum allotment being equal to the minimum application size as determined and disclosed in the offer document:
Provided that the value of specified securities allotted to any person, except in case of employees, in pursuance of reservation made under clause (a) of sub-regulation (1) or clause (a) of sub-regulation (2) of regulation 33, shall not exceed two lakhs rupees for retail investors or up to five lakhs rupees for eligible employees.

(4) 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.

(4A) The allotment of specified securities to each non-institutional investor shall not be less than the minimum application size, subject to the availability of shares in non-institutional investors' category, and the remaining shares, if any, shall be allotted on a proportionate basis in accordance with the conditions specified in Schedule XIII of SEBI ICDR regulations.[42]

(5) 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 specified in the regulations.

Allotment, Refund and Payment of Interest

(1) The issuer and lead manager(s) shall ensure that the specified securities are allotted and/or application monies are refunded or unblocked within specified period.

(2) The lead manager(s) shall ensure that the allotment, credit of dematerialised securities and refund or unblocking of application monies, as may be applicable, are done electronically.

(3) Where the specified securities are not allotted and/or application monies are not refunded or unblocked within the period stipulated in sub-regulation (1) above, the issuer shall undertake to pay interest at the rate of fifteen percent per annum to the investors and within such time as disclosed in the offer document and the lead manager(s) shall ensure the same.

5.8 Post Issue Functions, Reporting and Compliance

The lead managers have the following responsibilities under the ICDR Regulations with regard to post-issue reporting and compliance.

- 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

[42] SEBI/LAD-NRO/GN/2022/63 Dated January 14, 2022 w.e.f April 1, 2022.

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/ despatch of refund orders are completed and securities are listed. Any act of omission or commission on the part of any of the intermediaries noticed by the lead manager(s) shall be duly reported 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. Information in respect of underwriters who have failed to meet their underwriting devolvement shall be reported to SEBI in prescribed format.

- Under Regulation 51, 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 as specified within ten days from the date of completion of the various activities. Such details shall also be placed on the websites of the stock exchange.

- Under Regulation 53, 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. 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.

- 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 four 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 four 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 fourth 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 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 regularly monitor redressal of investor grievances arising from any issue related activities.

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

Review Questions

1. Which of the following activities does the merchant banker have to perform in the process of Issue Management?
   (a) Handles the statutory compliance requirements
   (b) Event Manager
   (c) Handles the investors' interest in fiduciary capacity
   (d) All of the above

2. A promoter of XYZ company wants to raise resources through public issue. He was barred from accessing the capital market last year by SEBI on account of insider trading. Is he eligible to come out with public issue?
   (a) Yes, he can raise money through public issue
   (b) No he cannot raise money through public issue

3. A specified security may have one or more warrant attached to it. State whether True or False?
   (a) True
   (b) False

4. Who appoints the accountants and the auditors who help in reviewing and auditing financials and preparing financial statement as per SEBI (ICDR) Regulations for inclusion in the Offer Document?
   (a) Issuer Company
   (b) Merchant Banker
   (c) Association of Investment Bankers of India
   (d) Ministry of Corporate Affairs

Chapter 6: Issue Management - General Obligations of Merchant Bankers and Due Diligence

LEARNING OBJECTIVES:

After studying this chapter, you should know about the:

- General obligations of merchant bankers relating to issue management process
- Offer for sale through stock exchange mechanism
- Preferential issue, QIP process, Rights issue
- Due diligence to be followed by the merchant banker

6.1 General Obligations of Merchant Bankers with regards to Issue Management

The SEBI ICDR Regulations prescribes general obligations of Issuers and other intermediaries who are related with the process of issue management for different offers prescribed under the Regulations. However, we will only discuss those obligations which are pertaining to Merchant Bankers.

1. **Prohibition of payment of incentives:** No person connected with the issue shall offer any incentive, whether direct or indirect, in any manner, whether in cash or kind or services or otherwise to any person for making an application for allotment of specified securities. However, this does not apply to fees or commission for services rendered in relation to the issue.

2. **Public Communications / Research reports:** All public communication, publicity materials, advertisements and research reports shall comply with the provisions as specified in Schedule IX of the SEBI ICDR Regulations.

   (1) Any public communication including advertisements, publicity material and research reports (referred to as public communication) issued or made by the issuer or its associate company, or by the lead manager(s) or their associates or any other intermediary connected with the issue or their associates, shall contain only such information as contained in the draft offer document/offer document and shall comply with the following:

   (a) it shall be truthful, fair and shall not be manipulative or deceptive or distorted and it shall not contain any statement, promise or forecast which is untrue or misleading;

   (b) if it reproduces or purports to reproduce any information contained in the draft offer document or draft letter of offer or offer document, as the case may be, it shall reproduce such information in full and disclose all relevant facts not to be restricted to select extracts relating to that information;

(c) it shall be set forth in a clear, concise and understandable language;

(d) it shall not include any issue slogans or brand names for the issue except the normal commercial name of the issuer or commercial brand names of its products already in use or disclosed in the draft offer document or draft letter of offer or offer document, as the case may be;

(e) it shall not contain slogans, expletives or non-factual and unsubstantiated titles;

(f) if it presents any financial data, data for the past three years shall also be included alongwith particulars relating to revenue, net profit, share capital, reserves / other equity (as the case may be), earnings per share, dividends and the book values, to the extent applicable;

(g) advertisements shall not use technical, legal or complex language and excessive details which may distract the investor;

(h) advertisements shall not contain statements which promise or guarantee rapid increase in revenue or profits;

(i) advertisements shall not display models, celebrities, fictional characters, landmarks, caricatures or the likes;

(j) advertisements on television shall not appear in the form of crawlers (advertisements which run simultaneously with the programme in a narrow strip at the bottom of the television screen) on television;

(k) advertisements on television shall advise the viewers to refer to the draft offer document or offer document, as the case may be, for the risk factors;

(l) advertisement or research report containing highlights, shall advise the readers to refer to the risk factors and other disclosures in the draft offer document or the offer document, as the case may be, for details in not less than point seven size;

(m) advertisement displayed on a billboard/banners shall contain information as specified in the regulations; and shall prominently advise the viewers to refer to the draft offer document and offer document for details and risk factors.

(2) All public communications issued or published in any media during the period commencing from the date of the meeting of the board of directors of the issuer in which the public issue is approved till the date of filing draft offer document with SEBI shall be consistent with its past practices:

Provided that where such public communication is not consistent with the past practices of the issuer, it shall be prominently displayed or announced in such public communication that the issuer is proposing to make a public issue of specified securities in the near future and is in the process of filing a draft offer document.

(3) All public communications issued or published in any media during the period commencing from the date of filing draft offer document or draft letter of offer till the date of allotment of securities offered in the issue, shall prominently disclose that the issuer is proposing to make a public issue or rights issue of the specified securities and has filed the draft offer document or the draft letter of offer or has filed the offer document or letter of offer, as the case may be, and that it is available on the websites of SEBI, lead manager(s) and stock exchanges.

Provided that requirements of this sub-regulation shall not be applicable in case of advertisements of products or services of the issuer.

(4) The issuer shall make a prompt, true and fair disclosure of all material developments which take place between the date of filing offer document and the date of allotment of specified securities, which may have a material effect on the issuer, by issuing public notices in all the newspapers in which the issuer had released pre-issue advertisement under applicable provisions of these regulations;

(5) The issuer shall not, directly or indirectly, release, during any conference or at any other time, any material or information which is not contained in the offer document.

(6) For all issue advertisements and public communications, the issuer shall obtain the approval from the lead manager(s) responsible for marketing the issue and shall also provide copies of all issue related materials to all lead manager(s).

(7) Any advertisement or research report issued/ made by the issuer/cause to be issued by the issuer or its associate company (as defined under the Companies Act, 2013), or by the lead manager(s) or their associates (as defined in the SEBI (Merchant Bankers) Regulations, 1992) or any other intermediary connected with the issue or their associates (as defined under SEBI (Intermediaries) Regulations, 2008) shall comply with the following:

a) it shall be truthful, fair and shall not be manipulative or deceptive or distorted and it shall not contain any statement, promise or forecast which is untrue or misleading;

b) if it reproduces or purports to reproduce any information contained in the draft offer document or draft letter of offer or offer document, as the case may be, it shall reproduce such information in full and disclose all relevant facts not to be restricted to select extracts relating to that information;

c) it shall be set forth in a clear, concise and understandable language;

d) it shall not include any issue slogans or brand names for the issue except the normal commercial name of the issuer or commercial brand names of its products already in use or and disclosed in the draft offer document or draft letter of offer or offer document, as the case may be;

e) if it presents any financial data, data for the past three years shall also be included along with particulars relating to sales, gross profit, net profit, share capital, reserves, earnings per share, dividends and the book values, to the extent applicable;

f) no advertisement shall use extensive technical, legal terminology or complex language and excessive details which may distract the investor;

g) no issue advertisement shall contain statements which promise or guarantee rapid increase in profits;

h) no issue advertisement shall display models, celebrities, fictional characters, landmarks or caricatures or the likes;

i) no issue advertisement shall appear in the form of crawlers (the advertisements which run simultaneously with the programme in a narrow strip at the bottom of the television screen) on television;

j) in any issue advertisement on television screen, the risk factors shall not be scrolled on the television screen and the advertisement shall advise the viewers to refer to draft offer document or draft letter of offer or offer document, as the case may be, or other documents, the red herring prospectus or other offer document for details;

k) no issue advertisement shall contain slogans, expletives or non-factual and unsubstantiated titles;

l) if an advertisement or research report contains highlights, the advertisement or research report, as applicable, shall prominently advise the viewers to refer to the draft offer document or draft letter of offer or offer document, as the case may be, for details containing highlights; it shall also contain risk factors with equal importance in all respects including print size of not less than point seven size;

m) an issue advertisement displayed on a billboard shall not contain information other than that specified in Part D of Schedule X;

n) an issue advertisement which contains highlights or information other than the details contained in the format as specified in Schedule X shall prominently advise the viewers to refer to the offer document for details and risk factors.

(8) No public information with respect to the issue shall contain any offer of incentives, to the investors whether direct or indirect, in any manner, whether in cash or kind or services or otherwise.

(9) No advertisement relating to product or service provided by the issuer shall contain any reference, directly or indirectly, to the performance of the issuer during the period commencing from the date of the resolution of the board of directors of the issuer approving the public issue till the date of allotment of specified securities offered in such issue.

(10) No information which is extraneous to the information disclosed in the draft offer document or offer document, as the case may be, or otherwise, shall be given by the issuer or any member of the issue management team or syndicate to any particular section of the investors or to any research analyst in any manner whatsoever, including at road shows, presentations, in research or sales reports or at bidding centres.

(11) The lead manager(s) shall submit a compliance certificate for the period between the date of filing the draft offer document/ draft letter of offer and the date of closure of the issue, in respect of news reports appearing in any of the following media:

a) newspapers mentioned in these regulations;

b) print and electronic media controlled by a media group where the media group has a private treaty or shareholders' agreement with the issuer or promoters of the issuer. [43]

3. **Publicly Available Document:** The lead merchant banker along with the issuer shall ensure that the contents of offer documents hosted on the websites as required in the Regulation is same as that of the printed copies filed with the RoC, SEBI and the stock exchanges. As and when required by any investor, the lead merchant banker and the recognised stock exchange should furnish a copy of the draft offer document and final offer document. However, a reasonable sum of money can be charged by the merchant banker or the recognised stock exchange for the same.

4. **Redressal of Investor Grievances:** The post-issue lead merchant bankers should look into the post-issue activities such as allotment, refund, dispatch and giving instructions to the syndicate members, Self-Certified Syndicate Banks and other intermediaries. The lead merchant banker is required to also look into and monitor the redressal of the investor grievances if any.

5. **Post-issue Reports:** In case of public issue, as per Regulation 55, the lead manager(s) shall submit a final post-issue report as specified in Part A of Schedule XVII, along with a due diligence certificate 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. In rights issue, the lead merchant banker shall submit post-issue reports as follows:

   - Initial post issue report as specified in Part B of Schedule XVII, within three days of closure of the issue;

[43](I) Public communication or publicity material includes corporate, issue advertisements of the issuer, interviews by its promoters, directors, duly authorized employees or representatives of the issuer, documentaries about the issuer or its promoters, periodical reports and press releases.
(II) Any advertisement issued by the issuer shall be considered to be misleading, if it contains: a) Statements made about the performance or activities of the issuer without necessary explanatory or qualifying statements, which may give an exaggerated picture of such performance or activities. b) An inaccurate portrayal of past performance or its portrayal in a manner which implies that past gains or income will be repeated in the future.

- Final post issue report as specified in Part C of Schedule XVII, within fifteen days of the date of finalization of basis of allotment or within fifteen days of refund of money in case of failure of issue.
- The lead merchant banker shall submit a due diligence certificate as per the format specified in Form F of Schedule V, along with the final post issue report.

6. **Post-issue Advertisements:**

   (1) 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 aforementioned details shall also be placed on the websites of the stock exchange(s).

7. **Co-ordination with other Intermediaries:** The post-issue merchant banker has to maintain close coordination with the registrars to the issue and arrange to depute its officers to the offices of various intermediaries at regular intervals after the closure of the issue. This would enable the post-issue merchant banker to monitor (a) the flow of application from collecting bank branches and/or SCSBs; (b) processing of the applications including the application form for ASBA; (c) other related matters till the basis of allotment is finalized.

   In cases, where there is a devolvement on underwriters, the merchant banker who underwrite the issues has to ensure that the notice for devolvement containing the obligation of the underwriters is issued within a period of ten days from the date of closure of the issue. It is also the responsibility of the post-issue merchant banker to confirm to the bankers to issue 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.

8. **Miscellaneous responsibilities:** The merchant banker has to ensure that all the information contained in the offer document and the particulars as per the audited financial statements in the offer document are not more than 6 months old from the issue opening date.[44]The following needs to be complied with:

[44]As per Rule 5 of the Companies (Prospectus and Allotment of Securities) Rules, 2014, the audited financial statements should not be older than 120 days from the date of issue of the Prospectus; In addition, for issues marketed abroad, in case of a Regulation S or a Rule 144A transaction, the audited accounts should not be older than 135 days from the date of the offer document.

i. Although Regulation 24 requires that audited financial statements contained in the offer document are not older than six months from the date of opening of the issue, it is actually required to be ensured that the same are not older than six months from the date of filing of the DRHP with SEBI and the RHP & Prospectus with RoC as well.
ii. As per Rule 5 of the Companies (Prospectus and Allotment of Securities) Rules, 2014, the audited financial statements should not be older than 120 days from the date of issue of the Prospectus.
iii. Ensure that the dispatch of refund orders, allotment letters and share certificates are done by way of registered post or certificate of posting, whichever is applicable.
iv. Ensure payment of interest to the applicants for delayed dispatch of allotment letters, refund orders, etc. as per the disclosures made in the offer document.
v. In case of absence of definite information about subscription figures, the issue shall be kept open for the required number of days to avoid any dispute, at a later date, by the underwriters in respect of their liability.

9. **Promoters Contribution & shares ineligible for promoter's contribution:** SEBI (ICDR) Regulations, 2018 specified the promoter's contribution in the public issue, which are as follows;

(a) In case of an initial public offer, not less than 20% of the post-issue capital; Provided that in case the post issue shareholding of the promoters is less than twenty percent., alternative investment funds may contribute for the purpose of meeting the shortfall in minimum contribution as specified for promoters, subject to a maximum of ten percent of the post issue capital.
(b) In case of a further public offer, either to the extent of 20% of the proposed issue size or to the extent of 20% of the post-issue capital;
(c) In case of a composite issue, either to the extent of 20% of the proposed issue size or to the extent of 20% of the post-issue capital excluding the rights issue component.

In case of a public issue or composite issue of convertible securities, minimum promoter's contribution shall be as follow:
The promoters shall contribute 20% as stipulated in the (a), (b) and (c) above, as the
(i) The promoters shall contribute 20% as stipulated in the (a), (b) and (c) above, as the case may be either by way of equity shares or by way of subscription to the convertible securities, provided that if the price of the equity shares allotted pursuant to conversion is not predetermined and not disclosed in the offer document, the promoter 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;
(ii) In case of any issue of convertible securities which are convertible or exchangeable on different dates and if the promoter's contribution is by way of equity shares, 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.

(iii) Subject to the points (i) and (ii) above, 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 atleast 20% of the project cost in the form of equity shares, subject to contributing at least 20% of the issue size from their own funds in the form of equity shares.

Provided that 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.

In case of a further public offer or composite issue, the contribution of promoters in FPO or in composite issue in excess of the mandated minimum contribution, will be treated as a preferential allotment to the promoters and shall be priced as per the provisions applicable for preferential allotment or issue price whichever is higher.

The promoters shall satisfy the requirements of this regulation at least one day prior to the date of opening of the issue and the amount of promoter's 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.

Provided that 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;

Provided that where the minimum promoters' contribution is more than one hundred crore rupees, 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 pro-rata basis before the calls are made to public.

SEBI (ICDR) Regulations also specifies the securities which are ineligible for minimum promoters' contribution. Such specified securities are given below:

(a) Specified securities acquired during the preceding three years, if they are:
   i. Acquired for consideration other than cash and revaluation of assets or capitalization of intangible assets is involved in such transaction; or
   ii. Resulting from a bonus issue by utilization of revaluation reserves or unrealised profits of the issuer or from bonus issue against equity shares which are ineligible for minimum promoters' contribution;

However, it is to be noted that proviso to Section 63(1) of Companies Act, 2013 specifically states that no issue of bonus shares shall be made by capitalising reserves created by revaluation of assets.

(b) Specified securities acquired by the promoters and alternative investment funds or foreign venture capital investors or scheduled commercial banks or public financial institutions or insurance companies registered with Insurance Regulatory and Development Authority of India,

during the preceding one year at a price lower than the price at which specified securities are being offered to the public in the initial public offer:

Provided that nothing contained in this clause shall apply:

(i) If the promoters and alternative investment funds, as applicable, pay to the issuer the difference between the price at which the specified securities are offered in the initial public offer and the price at which the specified securities had been acquired;

(ii) If such specified securities are acquired in terms of the scheme under sections 230 to 234 of the Companies Act, 2013, as approved by a High Court or a tribunal or the Central Government, as applicable, by the 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;

(iii) 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 the infrastructure sector;

(c) Specified securities allotted to the promoters and alternative investment funds during the preceding one year at a price less than the issue price, against funds brought in by them during that period, in case of an issuer formed by conversion of one or more partnership firms or limited liability partnerships, where the partners of the erstwhile partnership firms or limited liability partnerships are the promoters of the issuer and there is no change in the management:
Provided that specified securities, allotted to the promoters against the capital existing in such firms for a period of more than one year on a continuous basis, shall be eligible;

(d) Specified securities pledged with any creditor.

10. **Restriction on Transferability (Lock-in) of Promoter's Contribution:** In a public issue, the specified securities held by promoters shall be locked in for the period as given below:
    (a) Minimum promoters' contribution including contribution made by alternative investment funds or foreign venture capital investors or scheduled commercial banks or public financial institutions or insurance companies registered with Insurance Regulatory and Development Authority of India referred to in proviso to sub-regulation (1) of regulation 1, shall be locked-in for a period of eighteen months from the date of commencement of commercial production or date of allotment in the public issue, whichever is later; Provided that in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure, then the lock-in period shall be three years from the date of allotment in the initial public offer.
    (b) Promoters' holding in excess of minimum promoters' contribution shall be locked in for a period of six months. Provided that in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure, then the lock-in period shall be one year from the date of allotment in the initial public offer.

Date of commencement of lock in and inscription of non-transferability

- Specified securities held by promoters and persons other than promoters shall not be transferable (hereinafter referred to as "lock-in') from the date of allotment of the specified securities in the proposed public issue for the period stipulated here below.

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

- Where 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.

Lock-in of specified securities held by persons other than promoters

In case of an initial public offer, the entire pre-issue capital held by persons other than the promoters shall be locked-in for a period of six months from the date of allotment in the initial public offer; Provided that nothing contained in this regulation shall apply to:

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

b) equity shares held by an employee stock option trust or transferred to the employees by an employee stock option trust pursuant to exercise of options by the employees, whether currently employees or not, in accordance with the employee stock option plan or employee stock purchase scheme. However, the equity shares allotted to the employees shall be subject to the provisions of lock-in as specified under the SEBI (Share Based Employee Benefits) Regulations, 2014.

c) equity shares held by a venture capital fund or alternative investment fund of category I or Category II or a foreign venture capital investor:
Provided that such equity shares shall be locked in for a period of at least six months from the date of purchase by the venture capital fund or alternative investment fund or foreign venture capital investor.

Lock-in of specified securities lent to stabilising agent under green shoe option

The lock-in provisions shall not apply with respect to the specified securities lent to stabilising agent for the purpose of green shoe option, during the period starting from the date of lending of such specified securities and ending on the date on which they are returned to the lender.

Provided that the specified securities shall be locked-in for the remaining period from the date on which they are returned to the lender.

Pledge of locked-in specified securities

Specified securities, except Superior Voting Rights Equity Shares ("SR equity shares") held by the promoters and locked-in may be pledged as a 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 regulation 16, the loan has been granted to the issuer company or its subsidiary(ies) 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 regulation 16 and the pledge of specified securities is one of the terms of sanction of the loan.

Provided that 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

Subject to the provisions of SEBI (Substantial Acquisition of shares and Takeovers) Regulations, 2011, the specified securities, except SR equity shares held by the promoters and locked-in, may be transferred to another promoter or any person of the promoter group or a new promoter and the specified securities held by persons other than the promoters and locked-in, may be transferred to any other person holding the specified securities which are locked-in along with the securities proposed to be transferred:

Provided that the 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.

Eligibility conditions for fast track issue[45]

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

[45]Unless otherwise specified, nothing contained in sub-regulations (1), (2), (4) and (5) of regulation 71 shall apply if the issuer satisfies the conditions for making a rights issue through the fast track route.

c) the average market capitalisation of public shareholding of the issuer is at least two hundred and fifty crore rupees [in at least one of the recognized stock exchanges with nationwide trading terminal, where its securities are listed]
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 two percent of the weighted average number of equity shares listed during such six months' period:

Provided that for issuers, whose public shareholding is less than fifteen percent of its issued equity capital, the annualised trading turnover of its equity shares has been at least two percent of the weighted average number of equity shares available as free float during such six months' period;

e) the 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 percent of the annualized trading turnover of equity shares during such six month's period;

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

Provided that if the issuer has not complied with the provisions of the listing agreement or the SEBI (Listing Obligations and Disclosure Requirements) 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;

Provided further that imposition of only monetary fines by stock exchanges on the issuer shall not be a ground for ineligibility for undertaking issuances under this regulation;

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

h) that no show-cause notices, excluding proceedings for imposition of penalty, have been issued by the Board and pending against the issuer or its promoters or whole-time directors as on the reference date
In cases where against the issuer or its promoters or whole-time directors,
i) show-cause notice(s) has been issued by the Board or the Adjudicating Officer, in a proceeding for imposition of penalty; or
ii) prosecution proceedings have been initiated by the Board;
necessary disclosures in respect of such action(s) along-with its potential adverse impact on the issuer shall be made in the letter of offer;

i) the issuer or promoter or promoter group or director of the issuer has not settled any alleged violation of securities laws through the settlement mechanism with SEBI during three years immediately preceding the reference date then the disclosure of such compliance of the settlement order, shall be made in the letter of offer;

j) the 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 manager(s) and the issuer or its group companies in accordance with the applicable regulations.

l) the promoters and promoter group shall mandatorily subscribe to their rights entitlement and shall not renounce their rights, except to the extent of renunciation within the promoter group or for the purpose of complying with minimum public shareholding norms prescribed under the Securities Contracts (Regulation) Rules, 1957;

m) for audit qualifications, if any, in respect of any of the financial years for which accounts are disclosed in the letter of offer, the issuer shall provide the restated financial statements adjusting for the impact of the audit qualifications.
Further, for the qualifications wherein impact on the financials cannot be ascertained the same shall be disclosed appropriately in the letter of offer.

Eligibility requirements for an IPO by small and medium enterprises (SME)

(1) An issuer shall be eligible to make an initial public offer only if its post-issue paid-up capital is less than or equal to ten crore rupees.

(2) An issuer, whose post issue face value capital is more than ten crore rupees and upto twenty five crore rupees, may also issue specified securities as per the regulations.

(3) An issuer may make an initial public offer, if it satisfies track record and/or other eligibility conditions of the SME Exchange(s) on which the specified securities are proposed to be listed.
Provided that in case of an issuer which had been a partnership firm or a limited liability partnership, the track record of operating profit of the partnership firm or the limited liability partnership shall be considered only if the financial statements of the partnership business for the period during which the issuer was a partnership firm or a limited liability partnership, conform to and are revised in the format prescribed for companies under the Companies Act, 2013 and also comply with the following:

a. Adequate disclosures are made in the financial statements as required to be made by the issuer as per the Companies Act, 2013;

b. The financial statements are duly certified by auditors, who have subjected themselves to the peer review process of the Institute of Chartered Accountants of India (ICAI) and hold a valid certificate issued by the Peer Review Board‘ of the ICAI, stating that: (i) the accounts and the disclosures made are in accordance with the Companies Act, 2013; (ii) the accounting standards prescribed under the Companies Act, 2013 have been followed; (iii) the financial statements present a true and fair view of the firm‘s accounts;

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

Additional conditions for an offer for sale

Only such fully paid-up equity shares may be offered for sale to the public, which have been held by the sellers for a period of at least one year prior to the filing of the draft offer document:
Provided that 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, 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.
Provided further that such holding period of one year shall be required to be complied with at the time of filing of the draft offer document.
Provided further that the requirement of holding equity shares for a period of one year shall not apply:
a) in case of an 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;
b) if the equity shares offered for sale were acquired pursuant to any scheme approved by a High Court 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;
c) 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 SEBI and further subject to the following: (i) 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 the Board; and (ii) such equity shares not being issued by utilisation of revaluation reserves or unrealized profits of the issuer.

8A. For issues where draft offer document is filed under sub-regulation (2) of regulation 6 of these regulations:

a. shares offered for sale to the public by shareholder(s) holding, individually or with persons acting in concert, more than twenty per cent of pre-issue shareholding of the issuer based on

fully diluted basis, shall not exceed more than fifty per cent of their pre-issue shareholding on fully diluted basis;

b. shares offered for sale to the public by shareholder(s) holding, individually or with persons acting in concert, less than twenty per cent of pre-issue shareholding of the issuer based on fully diluted basis, shall not exceed more than ten per cent of pre-issue shareholding of the issuer on fully diluted basis;
c. for shareholder(s) holding, individually or with persons acting in concert, more than twenty per cent of pre-issue shareholding of the issuer based on fully diluted basis, provisions of lock-in as specified under regulation 17 of these regulations shall be applicable, and relaxation from lock-in as provided under clause (c) of regulation 17 of these regulations shall not be applicable.

11. Corporate Governance and Composition of the Board of Directors

There are specific laws in both Companies Act, 1956/Companies Act, 2013 and Regulations issued by SEBI with respect to Board and Committee meetings and the resolutions to be passed therein. The Compliance Officer is required to ensure that the laws for conduct of these meetings and the information to be provided to the Board for this purpose are complied with. The norms of Corporate Governance specified in Listing Regulations with respect to composition of the Board, to have optimum combination of executive and non-executive directors with at least one woman director with not less than 50 percent of the board of directors comprising of non-executive directors, non-executive directors' compensation and disclosures, code of conduct for the board of directors, disclosures related to related party transactions, appointment of independent directors on the board, formation of committee's viz., audit committee, investor grievances redressal committee, remuneration committee, nomination committee etc. need to be complied with.

12. Reservation in IPO's

The issuer is permitted to make reservations to certain categories of persons. This is excluding the promoter's contribution and the net offer to the public. As per SEBI ICDR regulation;

(1) The issuer may make reservations on a competitive basis out of the issue size excluding promoters' contribution in favour of the following categories of persons:

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

Provided that 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) The reservations on a competitive basis shall be subject to the following conditions:

a. the aggregate of reservations for employees shall not exceed five percent of the post-issue capital of the issuer and the value of allotment to any employee shall not exceed two lakhs rupees:
   Provided that in the event of under-subscription in the employee reservation portion, the unsubscribed portion may be allotted on a proportionate basis, for a value in excess of two lakhs rupees, subject to the total allotment to an employee not exceeding five lakhs rupees.
b. reservation for shareholders shall not exceed ten percent. of the issue size;
c. no further application for subscription in the net offer can be made by persons (except an employee and retail individual shareholder) in favour of whom reservation on a competitive basis is made;
d. 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;
e. 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 offer.

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

Reservations in case of rights issue

(1) The issuer shall make a rights issue of equity shares only if it has made reservation of equity shares of the same class in favour of the holders of outstanding compulsorily convertible debt instruments, if any, in proportion to the convertible part thereof.
(2) The equity shares so reserved for the holders of fully or partly compulsorily convertible debt instruments shall be issued to the holder of such convertible debt instruments at the time of conversion of such convertible debt instruments, on the same terms at which the equity shares offered in the rights issue were issued.
Provided that for the purposes of offering such rights entitlements, the issuer company shall not be required to credit rights entitlements.
(3) Subject to other applicable provision of these regulations, the issuer may make reservation for its employees along with rights issue subject to the condition that the value of allotment to any employee shall not exceed two lakhs rupees.
Provided that in the event of under-subscription in the employee reservation portion, the unsubscribed portion may be allotted on a proportionate basis, for a value in excess of two lakhs rupees, subject to the total allotment to an employee not exceeding five lakhs rupees.

Reservation on a competitive basis in case of further public offer

(1) The issuer may make reservations on a competitive basis out of the issue size excluding promoters' contribution in favour of the following categories of persons:
(a) employees;

(b) shareholders (other than promoters and promoter group) of listed subsidiaries or listed promoter companies:
Provided that 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 a further public offer, other than in a composite issue, the issuer may make a reservation on a competitive basis out of the issue size excluding promoters' contribution for the existing retail individual shareholders of the issuer.

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

a. the aggregate of reservation for employees shall not exceed five percent of the post-issue capital of the issuer and the value of allotment to any employee shall not exceed two lakhs rupees:
   Provided that in the event of under-subscription in the employee reservation portion, the unsubscribed portion may be allotted on a proportionate basis, for a value in excess of two lakhs rupees, subject to the total allotment to an employee not exceeding five lakhs rupees.
b. reservation for shareholders shall not exceed ten percent of the issue size;
c. 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;
d. any unsubscribed portion in any reserved category may be added to any other reserved category/categories and the unsubscribed portion, if any, after such inter-se adjustments amongst the reserved categories shall be added to the net offer category;
e. 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.

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

Reservation on a competitive basis in case of initial public offer by small and medium enterprises

(1) The issuer may make reservations on a competitive basis out of the issue size excluding promoters' contribution in favour of the following categories of persons:

a) employees;

b) shareholders (other than promoters and promoter group) of listed subsidiaries or listed promoter companies
Provided that 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) The reservations on a competitive basis shall be subject to following conditions:

a. the aggregate of reservations for employees shall not exceed five percent of the post-issue capital of the issuer and the value of allotment to any employee shall not exceed two lakhs rupees:
   Provided that in the event of under-subscription in the employee reservation portion, the unsubscribed portion may be allotted on a proportionate basis, for a value in excess of two lakhs rupees, subject to the total allotment to an employee not exceeding five lakhs rupees.
b. reservation for shareholders shall not exceed ten percent of the issue size;
c. no further application for subscription in the net offer can be made by persons (except an employee and retail individual shareholder) in favour of whom reservation on a competitive basis is made;
d. any unsubscribed portion in any reserved category may be added to any other reserved category(ies) and the unsubscribed portion, if any, after such inter-se adjustments among the reserved categories shall be added to the net offer category;
e. 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.

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

13. Identification of Promoters and Promoters Group

"Promoter" has been defined in SEBI ICDR regulations as a person:
i) who has been named as such in a draft offer document or offer document or is identified by the issuer in the annual return referred in the Companies Act, 2013; or
ii) who has control over the affairs of the issuer, directly or indirectly whether as a shareholder, director or otherwise; or
iii) in accordance with whose advice, directions or instructions the board of directors of the issuer is accustomed to act; Provided that nothing in above mentioned shall apply to a person who is acting merely in a professional capacity; Provided further that a financial institution, scheduled commercial bank, foreign portfolio investor other than Category III foreign portfolio investor, mutual fund, venture capital fund, alternative investment fund, foreign venture capital investor, insurance company registered with the Insurance Regulatory and Development Authority of India or any other category as specified by SEBI from time to time, shall not be deemed to be a promoter merely by virtue of the fact that twenty percent or more of the equity share capital of the issuer is held by such person unless such person satisfy other requirements prescribed under these regulations;

"Promoter group" includes:
i) the promoter;
ii) an immediate relative of the promoter (i.e. any spouse of that person, or any parent, brother, sister or child of the person or of the spouse); and

iii) in case promoter is a body corporate:

A) a subsidiary or holding company of such body corporate;

B) anybody corporate in which the promoter holds twenty percent or more of the equity share capital; and/or anybody corporate which holds twenty percent or more of the equity share capital of the promoter;

iv) in case the promoter is an individual:

A) any body corporate in which twenty percent or more of the equity share capital is held by the promoter or an immediate relative of the promoter or a firm or Hindu Undivided Family in which the promoter or any one or more of their relative is a member;

B) any body corporate in which a body corporate as provided in (A) above holds twenty percent or more, of the equity share capital; and

C) any Hindu Undivided Family or firm in which the aggregate share of the promoter and their relatives is equal to or more than twenty percent of the total capital;

v) all persons whose shareholding is aggregated under the heading "shareholding of the promoter group":

Provided that a financial institution, scheduled bank, foreign portfolio investor other than Category III foreign portfolio investor, mutual fund, venture capital fund, alternative investment fund, foreign venture capital investor, insurance company registered with the IRDAI or any other category as specified by SEBI from time to time, shall not be deemed to be promoter group merely by virtue of the fact that twenty percent or more of the equity share capital of the promoter is held by such person or entity:

Provided further that such financial institution, scheduled bank, foreign portfolio investor other than Category III foreign portfolio investor, mutual fund, venture capital fund, alternative investment fund and foreign venture capital investor insurance company registered with the Insurance Regulatory and Development Authority of India or any other category as specified by the Board from time to time shall be treated as promoter group for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;

14. Disclosures relating to Group Companies

The lead merchant banker shall review and retain the certificates confirming the constitution of the promoter group and the group companies; shareholding, board of directors of the corporate promoters and the group companies, litigation, disassociation by the promoters in the last 3 years and various other confirmations required under the ICDR Regulations, based on which disclosures are made in the Offer Document in relation to promoters, promoter group and group companies. The Non-Compete agreement, if applicable and the family settlement agreement, if any, also need to be reviewed by the lead merchant banker and documented for future reference.

Further, the Memorandum of Association (MoA) and Article of Association (AoA) of the corporate promoters and group companies should be reviewed by the Merchant Banker. Additionally, the annual reports of the group companies for the last 3 years, agreements and regulatory filings

where promoters have been identified as such by the issuer in the past shall also be reviewed by the Merchant Banker.

15. Disclosures relating to Litigations

The legal counsel assists the Lead Merchant Bankers to assess the diligence process and review litigation related documents, if any. The issuer company is required to immediately inform the Lead Managers about any new development on any disclosed litigation matter or any new litigation. The following documents shall be reviewed and retained by the Lead Managers:

- MIS/Summarised table of legal cases involving the issuer to be provided by the issuer.
- Certifications provided by the promoters, Directors, Issuer, Group Companies, Subsidiaries and Joint Ventures in respect of the litigations.
- Last orders etc of litigation against the issuer, subsidiaries which could have a materially adverse effect on the position of the issuer.

Further, the lead managers also need to review and check the following documents:

- Case papers of all the litigations relating to the issuer and subsidiaries which are required to be disclosed under the ICDR Regulations and provided by the issuer.
- In respect of a large number of similar cases which are combined for disclosure purpose, case papers for some litigation are reviewed on a sample basis.

16. General Information Document (GID)

SEBI has issued guidelines relating to General Information Document. It states that Lead Managers' shall ensure that:

1. the GID should explicitly incorporate the date of last updation;
2. the updated copy of GID is provided to an investor as and when requested, in form and manner so requested by the investor;
3. The updated GID is made available on the websites of the:
   a. Stock Exchange(s) where the shares pursuant to an issue are proposed to be listed; and
   b. The respective Lead Manager(s) to the issue, where DRHP / RHP / Draft Prospectus / Prospectus is made available.

6.2 Preferential Issue

(1) The lead manager shall ensure that listed issuer makes a preferential issue of specified securities, if only the following conditions are met with:

A listed issuer making a preferential issue of specified securities shall ensure that:

a. All equity shares allotted by way of preferential issue shall be made fully paid up at the time of the allotment;
b. A special resolution has been passed by its shareholders;

c. All equity shares held by the proposed allottees in the issuer are in dematerialised form before an application seeking in-principle approval is made by the issuer to the stock exchange(s) where its equity shares are listed;
d. The issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the stock exchange where the equity shares of the issuer are listed and the SEBI (Listing Obligations and Disclosure Requirements), 2015, as amended, and any circular or notification issued by SEBI thereunder;
e. The issuer has obtained the Permanent Account Numbers (PANs) of the proposed allottees, except those allottees which may be exempt from specifying their Permanent Account PAN for transacting in the securities market by SEBI before an application seeking in-principle approval is made by the issuer to the stock exchange(s) where its equity shares are listed;
f. the issuer has made an application seeking in-principle approval to the stock exchange(s), where its equity shares are listed, on the same day when the notice has been sent in respect of the general meeting seeking shareholders' approval by way of special resolution.

Preferential issue of specified securities shall not be made when equity shares of the issuer have been sold or transferred by any Person including the promoter(s) and promoter group, within 90 trading days, preceding the relevant date: :

Provided the above restriction shall not apply to any sale of equity shares by any person belonging to promoter(s) of the promoter group (i) which qualifies for inter-se transfer amongst qualifying persons or (ii) in case of transfer on account of invocation of pledge by a scheduled commercial bank or public financial institution or a systemically important non- banking finance company or mutual fund or insurance company registered with the Insurance Regulatory and Development Authority.

Where promoter(s) or the promoter group previously subscribed to warrants of an issuer but has failed to exercise the warrants, ineligible for a period of one year from:

a) the date of expiry of the tenure of the warrants due to non-exercise of the option to convert; or
b) the date of cancellation of the warrants, as the case may be.

An issuer shall not be eligible to make a preferential issue if any of its promoters or directors is a fugitive economic offender or it has any outstanding dues to the Board, the stock exchanges or the depositories. Further it is also not applicable where such outstanding dues are the subject matter of a pending appeal or proceeding(s), which has been admitted by the relevant Court, Tribunal or Authority, as the case may be.

(2) The issuer shall, in addition to the disclosures required under section 102 of the Companies Act, 2013 or any other applicable law, disclose the following in the explanatory statement to the notice for the general meeting proposed for passing resolution:

a) Objects of the preferential issue;

b) Maximum number of specified securities to be issued;

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

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

e) Time frame within which the preferential issue shall be completed;

f) Identity of the natural persons who are the ultimate beneficial owners of the shares proposed to be allotted and/or who ultimately control the proposed allottees.

Provided that if there is any listed company, mutual fund, scheduled commercial bank, insurance company registered with the Insurance Regulatory and Development Authority of India in the chain of ownership of the proposed allottee, no further disclosure will be necessary.

fa) the percentage of post preferential issue capital that may be held by the allottee(s) and change in control, if any, in the issuer consequent to the preferential issue. [41]

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

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

i) Disclosures specified in Schedule VI, if the issuer or any of its promoters or directors is a wilful defaulter or a fraudulent borrower.

j) the current and proposed status of the allottee(s) post the preferential issues namely, promoter or non-promoter

(3) The issuer shall place a copy of the certificate of a practicing company secretary before the general meeting of the shareholders considering the proposed preferential issue, certifying that the issue is being made in accordance with the requirements of these regulations. The issuer shall also host the certificate on its website and provide a link for the same in the notice for the general meeting of the shareholders considering the proposed preferential issue.

(4) Specified securities may be issued on a preferential basis for consideration other than cash:
Provided that consideration other than cash shall comprise only swap of shares pursuant to a valuation report by an independent registered valuer, which shall be submitted to the stock exchange(s) where the equity shares of the issuer are listed
Provided further that if the stock exchange(s) is not satisfied with the appropriateness of the valuation, it may get the valuation done by any other valuer and for this purpose it may seek any information, as deemed necessary, from the issuer.

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

Pricing

Frequently Traded shares

1) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of 90 trading days or more as on the relevant date, the price of the equity shares to be allotted pursuant to the preferential issue shall be not less than higher of the following:
   a) the 90 trading days volume weighted average price of the related equity shares quoted on the recognised stock preceding the relevant date; or b. the 10 trading days volume weighted average prices of the related equity shares quoted on a recognised stock exchange preceding the relevant date.
   Provided that if the Articles of Association of the issuer provide for a method of determination which results in a floor price higher than that determined under these regulations, then the same shall be considered as the floor price for equity shares to be allotted pursuant to the preferential issue.
2) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of less than 90 trading days as on the relevant date, the price of the equity shares to be allotted pursuant to the preferential issue shall be not less than the higher of the following:
   a) The price at which equity shares were issued by the issuer in its initial public offer or the value per share arrived at in a scheme of compromise, arrangement and amalgamation under sections 230 to 234 the Companies Act, 2013, as applicable, pursuant to which the equity shares of the issuer were listed, as the case may be; or
   b) The average of volume weighted average prices of the related equity shares quoted on the recognised stock exchange during the period the equity shares have been listed preceding the relevant date; or
   c) The average of the 10 trading days the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.
   Provided that if the Articles of Association of the issuer provide for a method of determination which results in a floor price higher than that determined under these regulations, then the same shall be considered as the floor price for equity shares to be allotted pursuant to the preferential issue.
3) Where the price of the equity shares is determined in terms of sub-regulation (2), such price shall be recomputed by the issuer on completion of 90 trading days from the date of listing on a recognised stock exchange with reference to the 90 trading days volume weighted average prices of the related equity shares quoted on the recognised stock exchange during these 90 trading days and if such recomputed price is higher than the price paid on allotment, the difference shall be paid by the allottees to the issuer. Provided that if the Articles of Association of the issuer provide for a method of determination which results in a floor price higher than that determined under these regulations, then the same shall be considered as the floor price for equity shares to be allotted pursuant to the preferential issue.

4) A preferential issue of specified securities to qualified institutional buyers, not exceeding five in number, shall be made at a price not less than 10 trading days volume weighted average prices of the related equity shares quoted on a recognised stock exchange preceding the relevant date. Provided that if the Articles of Association of the issuer provide for a method of determination which results in a floor price higher than that determined under these regulations, then the same shall be considered as the floor price for equity shares to be allotted pursuant to the preferential issue.
   No allotment shall be made, either directly or indirectly, to any qualified institutional buyer who is a promoter or any person related to the promoters of the issuer:
   Provided that a qualified institutional buyer who does not hold any shares in the issuer and who has acquired rights in the capacity of a lender shall not be deemed to be a person related to the promoters.
   Explanation. — For the purpose of this clause, a qualified institutional buyer who has any of the following rights shall be deemed to be a person related to the promoters of the issuer:
   (a) rights under a shareholders‘ agreement or voting agreement entered into with promoters or promoter group;
   (b) veto rights; or
   (c) right to appoint any nominee director on the board of the issuer
5) “Frequently traded shares” means the shares of the issuer, in which the traded turnover on any recognised stock exchange during the 240 trading days preceding the relevant date, is at least ten percent of the total number of shares of such class of shares of the issuer:
   Provided that where the share capital of a particular class of shares of the issuer is not identical throughout such period, the weighted average number of total shares of such class of the issuer shall represent the total number of shares.

Frequently Traded shares – Second option for Pricing

Infrequently Traded shares

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

The price determined for a preferential issue shall be subject to appropriate adjustments, if the issuer:

a) makes an issue of equity shares by way of capitalization of profits or reserves, other than by way of a dividend on shares;
b) makes an issue of equity shares after completion of a demerger wherein the securities of the resultant demerged entity are listed on a stock exchange;
c) makes a rights issue of equity shares;
d) consolidates its outstanding equity shares into a smaller number of shares;

e) divides its outstanding equity shares including by way of stock split;
f) re-classifies any of its equity shares into other securities of the issuer;
g) is involved in such other similar events or circumstances, which in the opinion of the concerned stock exchange, require adjustments.

The effect on the price of the equity shares of the issuer due to material price movement and confirmation of reported event or information may be excluded as per the framework specified under sub-regulation (11) of regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for determination of the price for a preferential issue.

As per Regulation 170 of the SEBI ICDR Regulation, allotment pursuant to the special resolution shall be completed within a period of 15 days from the date of passing such resolution. However, in cases where application for exemption from SEBI under the SEBI (SAST) Regulation, 2011 or any approval from any other regulatory authority for allotment is pending, the period of 15 days shall be counted from the date of order on such application or the date of approval or permission, as the case may be. However, the requirement of allotment within 15 days shall not apply to allotment of specified securities on preferential basis pursuant to a scheme of corporate debt restructuring as per the corporate debt restructuring framework specified by the RBI.

Further, if the allotment of specified securities is not completed within 15 days from the date of special resolution, a fresh special resolution shall be passed. The relevant date for determining the price of specified securities will be taken with reference to the date of latter special resolution.

Notwithstanding anything contained above, where a preferential allotment is made that attracts an obligation to make an open offer for shares of the issuer under SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011, and there is no offer made under sub-regulation (1) of regulation 20 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011, the period of fifteen days shall be counted from the expiry of the period specified in sub-regulation (1) of regulation 20 or date of receipt of all statutory approvals required for the completion of an open offer under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011:

Provided that if an offer is made under sub-regulation (1) of regulation 20 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011, the period of fifteen days shall be counted from the expiry of the offer period as defined in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011:

Provided further that the above provisions shall not apply to an offer made under sub-regulation (1) of regulation 20 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011, pursuant to a preferential allotment."

Allotment shall only be made in dematerialised form.

Lock-in of Specified Securities

1) The specified securities, allotted on a preferential basis to the promoters or promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on a preferential basis to the promoters or the promoter group, shall be locked-in for a period of 18 months from the date of trading approval granted for the specified securities or equity shares allotted pursuant to exercise of the option attached to warrant, as the case may be:
   Provided that not more than twenty percent of the total capital of the issuer shall be locked-in for 18 months from the date of trading approval:
   Provided further that equity shares allotted in excess of the twenty percent shall be locked-in for six months from the date of trading approval pursuant to exercise of options or otherwise, as the case may be.
   Provided further that in case of convertible securities or warrants which are not listed on stock exchanges, such securities shall be locked in for a period of one year from the date of allotment.
2) The specified securities allotted on a preferential basis to persons other than the promoters and promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to such persons shall be locked-in for a period of six months from the date of trading approval. Provided that in case of convertible securities or warrants which are not listed on stock exchanges, such securities shall be locked in for a period of one year from the date of allotment.
3) Lock-in of the equity shares allotted pursuant to conversion of convertible securities other than warrants, issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in.
4) The equity shares issued on a preferential basis pursuant to any resolution of stressed assets under a framework specified by the Reserve Bank of India or a resolution plan approved by the NCLT under the Insolvency and Bankruptcy Code 2016, shall be locked-in for a period of one year from the trading approval: Provided that the lock-in provision shall not be applicable to the specified securities to the extent to achieve 10% public shareholding
5) If the amount payable by the allottee, in case of re-calculation of price (under sub-regulation (3) of regulation 164) is not paid till the expiry of lock-in period, the equity shares shall continue to be locked-in till such amount is paid by the allottee.
6) The entire pre-preferential allotment shareholding of the allottees, if any, shall be locked-in from the relevant date up to a 90 trading days from the date of trading approval:
   Provided that in case of convertible securities or warrants which are not listed on stock exchanges, the entire pre-preferential allotment shareholding of the allottees, if any, shall be locked-in from the relevant date up to 90 trading days from the date of allotment of such securities. [46]

[46] For the purpose of this regulation: (I) The expression "total capital of the issuer" means:
(a) equity share capital issued by way of public issue or rights issue including equity shares issued pursuant to conversion of specified securities which are convertible; and (b) specified securities issued on a preferential basis to the promoters or the promoters group.

(7) Lock-in requirements for an allottee who has become a promoter due to change in control consequent to the preferential issue shall be the same as those applicable to the promoters and promoter group under the SEBI ICDR Regulation.

6.3 Qualified Institutional Placement

Definitions:

“eligible securities” include equity shares, non-convertible debt instruments along with warrants and convertible securities other than warrants;

"relevant date" means:

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

The lead manager shall ensure that a listed issuer making Qualified Institutional Placement (QIP) shall satisfy the following condition (Regulation 172 of SEBI (ICDR) Regulations):

(1) A listed issuer may make a Qualified Institutions Placement (QIP) of eligible securities if it satisfies the following conditions:

a) A special resolution approving the QIP has been passed by its shareholders, and the special resolution shall, among other relevant matters, specify that the allotment is proposed to be made through QIP and the relevant date.
   Provided that no shareholders’ resolution will be required in case the qualified institutions placement is through an offer for sale by promoters or promoter group for compliance with minimum public shareholding requirements specified in the Securities Contracts (Regulation) Rules, 1957; Provided further that allotment pursuant to the special resolution referred to in this clause (a) of regulation 172 shall be completed within a period of 365 days from the date of passing of the resolution.

(II) For the computation of twenty percent of the total capital of the issuer, the amount of minimum promoters’ contribution held and locked-in, in the past in terms of SEBI (Disclosure and Investor Protection) Guidelines, 2000 or these regulations shall be taken into account.

(III) The minimum promoters’ contribution shall not be put under fresh lock-in again, even though it is considered for computing the requirement of twenty percent. of the total capital of the issuer, in case the said minimum promoters’ contribution is free of lock-in at the time of the preferential issue.

For the purposes of this regulation, the date of trading approval shall mean the latest date when trading approval has been granted by all the stock exchanges where the equity shares of the issuer are listed, for specified securities allotted.

b) The equity shares of the same class, which are proposed to be allotted through qualified institutions placement or pursuant to conversion or exchange of eligible securities offered through qualified institutions placement, have been listed on a stock exchange for a period of at least one year prior to the date of issuance of notice to its shareholders for convening the meeting to pass the special resolution subject to conditions as specified in the regulation.

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

(2) All eligible securities issued through a qualified institutions placement shall be listed on the recognised stock exchange where the equity shares of the issuer are listed.

Provided that the issuer shall seek approval under rule 19(7) of the Securities Contracts (Regulation) Rules, 1957, if applicable.

(3) The issuer shall not make any subsequent qualified institutions placement until the expiry of 2 weeks from the date of the prior qualified institutions placement made pursuant to one or more special resolutions.

Conditions for offer for sale by promoters [for compliance with minimum public shareholding requirements specified in the Securities Contracts (Regulation) Rules, 1957]

The promoters and members of the promoter group may make an offer for sale of fully paid up equity shares, through a qualified institutions placement, for the purpose of achieving minimum public shareholding in terms of the Securities Contracts (Regulation) Rules, 1957.

Provided that the promoters or members of the promoter group shall not make such offer for sale if the promoter or member of the promoter group has purchased or sold any equity shares of the issuer during twelve weeks' period prior to the date of the opening of the issue and they shall not purchase or sell any equity shares of the issuer during the twelve weeks' period after the date of closure of the issue:

Provided further that such promoters or members of the promoter group may, within the twelve week periods provided above, sell equity shares of the issuer held by them through offer for sale through stock exchange mechanism specified by SEBI or through an open market sale, in accordance with the conditions specified by SEBI from time to time, subject to the condition that there shall be a gap of minimum two weeks between the two successive offer(s).

The merchant banker, while seeking in-principle approval for listing of the eligible securities issued under QIP, furnish to each stock exchange on which the same class of equity shares of the issuer are listed, a due diligence certificate stating that the eligible securities are being issued under QIP and that the issuer complies with the provisions of the SEBI ICDR Regulations. The issuer company shall also furnish a copy of the placement document, a certificate confirming

compliance with the provisions related to Qualified Institutional Placement while submitting application for seeking in-principle approval from the stock exchanges.

Monitoring Agency

If the issue size, excluding the size of offer for sale by selling shareholders, exceeds one hundred crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a credit rating agency registered with the Board: Provided that nothing contained in this clause shall apply to an issue of specified securities made by a bank or public financial institution or an insurance company.
The qualified institutions placement shall be made on the basis of a preliminary placement document and placement document which shall contain all material information, including those specified in the Companies Act, 2013, if any, and disclosures as specified in Schedule VII shall be made, including as specified therein if the issuer or any of its promoters or directors is a wilful defaulter or a fraudulent borrower.

Pricing and Restrictions on Allotment

(1) The qualified institutions placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the equity shares of the same class quoted on the stock exchange during the two weeks preceding the relevant date:
Provided that the issuer may offer a discount of not more than five percent on the price so calculated, subject to approval of shareholders as specified in the regulations, except that no shareholders' approval will be required in case of a qualified institutions placement made through an offer for sale by promoters for compliance with minimum public shareholding requirements specified in the Securities Contracts (Regulation) Rules, 1957.

(2) Where eligible securities are convertible into or exchangeable with equity shares of the issuer, the issuer shall determine the price of such equity shares allotted pursuant to such conversion or exchange taking the relevant date as disclosed in the special resolution.

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

(4) The issue price shall be subject to appropriate adjustments, if the issuer:

a) Makes an issue of equity shares by way of capitalization of profits or reserves, other than by way of a dividend on shares;

b) Makes a rights issue of equity shares;

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

d) Divides its outstanding equity shares including by way of stock split;
e) Re-classifies any of its equity shares into other securities of the issuer;
f) Is involved in such other similar events or circumstances, which in the opinion of the concerned stock exchange, requires adjustments.

(5) The effect on the price of the equity shares of the issuer due to material price movement and confirmation of reported event or information may be excluded as per the framework specified under sub-regulation (11) of regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for calculation of the issue price under this regulation.

Minimum number of allottees

(1) The minimum number of allottees for each placement of eligible securities made under shall at least be:
a) two, where the issue size is less than or equal to Rs. 250 crores
b) five, where the issue size is greater than Rs. 250 crores:

Provided that no single allottee shall be allotted more than fifty percent of the issue size.

(2) Qualified institutional buyers belonging to the same group or who are under same control shall be deemed to be a single allottee.[47]

The tenure of the convertible or exchangeable eligible securities issued through qualified institutions placement shall not exceed sixty months from the date of allotment. Further the eligible securities allotted under the qualified institutions placement shall not be sold by the allottee for a period of one year from the date of allotment, except on a recognised stock exchange.

6.4 Rights issue

Reservations
The issuer making rights issue, shall ensure that none of its promoters, promoter group or directors are debarred from accessing the capital market by SEBI and are not a fugitive economic offender;

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

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

- The equity shares so reserved for the holders of fully or partly compulsorily convertible debt instruments shall be issued to the holder of such convertible debt instruments at the time of conversion of such convertible debt instruments, on the same terms at which the equity shares offered in the rights issue were issued. Provided that for the purposes of offering such rights entitlements, the issuer company shall not be required to credit rights entitlements.
- Subject to other applicable provision of these regulations, the issuer may make reservation for its employees along with rights issue subject to the condition that the value of allotment to any employee shall not exceed Rs. 2 Lakhs. Provided that 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 Rs. 2 lakhs, subject to the total allotment to an employee not exceeding Rs. 5 lakhs.
- The abridged letter of offer shall contain the disclosures as specified by SEBI in the regulations and shall not contain any matter extraneous to the contents of the letter of offer.
- Every application form distributed by the issuer or any other person in relation to the issue shall be accompanied by a copy of the abridged letter of offer.
- The issuer shall provide the ASBA facility in the manner specified by SEBI where not more than one payment option is provided.
  Provided that the applicants in a rights issue shall be eligible to make applications through ASBA facility only if such applicant: (i) is holding equity shares in dematerialised mode; (ii) has not renounced entitlement in part or in full; and (iii) is not a renouncee.
  Provided further that payment made for application for any reserved portion outside the issue period can be through electronic banking modes.
- The lead manager(s) shall ensure availability of the letter of offer and other issue material including application forms with stock exchanges, registrar to issue, registrar and share transfer agents, depository participants, stock brokers, underwriters, bankers to the issue, investors' associations and self-certified syndicate banks before the opening of the issue.
- The abridged letter of offer, along with application form, shall be despatched through registered post or speed post or by courier service or by electronic transmission to all the existing shareholders at least three days before the date of opening of the issue.
- The letter of offer shall also be provided by the issuer or lead manager(s) to any existing shareholder who makes a request in this regard.
- Shareholders who have not received the application form may make an application in writing on a plain paper, along with the requisite application money.
- Shareholders making an application on plain paper shall not be entitled to renounce their rights and shall not utilise the application form for any purpose including renunciation even if it is received subsequently.
- If a shareholder makes an application both in an application form as well as on a plain paper, both applications are liable to be rejected.
- The issuer shall decide the issue price, in consultation with the lead manager(s), before determining the record date, which shall be determined in consultation with the designated stock exchange.
- The issue price shall not be less than the face value of the specified securities.

- The issuer shall disclose the issue price in the letter of offer filed with SEBI and the stock exchange(s).
- Subject to the compliance with the provisions of the Companies Act, 2013, a rights issue may be opened within twelve months from the date of issuance of the observations by SEBI. Provided that in case of a fast track issue, the issue shall open within twelve months from the record date.
- The issuer shall announce a record date for the purpose of determining the shareholders eligible to apply for specified securities in the proposed rights issue for such period as may be specified in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
- The issuer shall not withdraw its rights issue after announcement of the record date. However, if the issuer withdraws the rights issue after announcing the record date, it shall not be eligible to make an application for listing of any of its specified securities on any stock exchange for a period of twelve months from the record date announced as per regulation; Provided that the issuer may seek listing of its equity shares allotted pursuant to conversion or exchange of convertible securities, ESOPs or exercise of warrants issued prior to the announcement of the record date, on the stock exchange where its securities are listed.

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

a) part payment on application with balance money to be paid in calls; or

b) full payment on application; Provided that the part payment, if any, on application shall not be less than twenty-five percent of the issue price and such issuer shall obtain the necessary regulatory approvals to facilitate the same.

<u>Pre-Issue Advertisement for Rights Issue</u>

(1) The issuer shall issue an advertisement in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation, at the place where registered office of the issuer is situated and also give an intimation to the stock exchanges for dissemination on their websites at least two days before the date of opening of the issue, disclosing the following:

a. the date of completion of despatch of abridged letter of offer and the application form;
b. the centres other than registered office of the issuer where the shareholders or the persons entitled to receive the rights entitlements may obtain duplicate copies of the application form in case they do not receive the application form within a reasonable time after opening of the rights issue;
c. a statement that if the shareholders entitled to receive the rights entitlements have neither received the original application forms nor they are in a position to obtain the duplicate form, they may make application in writing on a plain paper to subscribe to the rights issue along with a format specifying therein necessary particulars such as name, address, ratio of rights issue, issue price, number of equity shares held, ledger folio numbers, depository participant ID, client ID, number of equity shares entitled and applied for, additional shares if any, amount to be paid along with application, and particulars of cheque, etc. to be drawn in favour of the issuer‘s account;

d. a statement to the effect that if the shareholder makes an application using the application form as well as plain paper, both the applications shall be liable to be rejected at the option of the issuer.

(2) 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.

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

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

Utilisation of funds raised through rights issue

As per the SEBI (ICDR), the issuer shall utilise the funds collected in rights issues after the finalisation of the basis of allotment.

Manner of disclosures in the offer document

(1) The draft letter of offer and letter of offer shall contain all material disclosures which are true and adequate to enable the applicants to take informed investment decision.

(2) Without prejudice to the above mentioned condition, the draft letter of offer and letter of offer shall contain disclosures as specified in the regulations. [48]

(3) The lead manager(s) shall exercise due diligence and satisfy themselves about all aspects of the issue including the veracity and adequacy of disclosure in the draft letter of offer and the letter of offer.

(4) The lead manager(s) shall call upon the issuer, its promoters and its directors to fulfil their obligations as disclosed by them in the draft letter of offer and letter of offer and as required in terms of these Regulations.

(5) The lead manager(s) shall ensure that the information contained in the draft letter of offer and letter of offer and the particulars as per audited financial statements in the letter of offer are not more than six months old from the issue opening date.

(6) An issuer shall make disclosures in the draft letter of offer, letter of offer and abridged letter of offer, if the issuer or any of its promoters or directors is a wilful defaulter or fraudulent borrower.

(7) In the letter of offer the issuer shall disclose the process of credit of rights entitlements in the demat account and renunciation thereof.

Exemption from Open Offer in case of acquisition through Rights Issue

[48] As specified in Part B or Part B-1 of Schedule VI

- The acquisition of shares by any shareholder upto his entitlement pursuant to rights issue is exempt from the obligation to make an open offer under Takeover Regulation.

- Acquisition of shares by any shareholder in a right issue beyond his entitlement pursuant to right issue is exempt from obligation to make an offer in terms of Takeover Regulation subject to fulfilling the conditions mentioned therein. Such conditions broadly include;

  - Shareholder has not renounced any of his entitlement in rights issue.
  - The price at which the rights issue is made is not higher than the Ex-right price of the shares of the issuer company arrived as per the specifications.

6.5 Indian Depository Receipts

Chapter VII of SEBI ICDR specify the provisions relating to issue of Indian Depository Receipts which is briefly discussed below:

Applicability

Indian Depository Receipts (IDR) offers a route for domestic companies to tap into the international markets by listing their shares on global stock exchanges.
IDRs are issued by a domestic depository on behalf of the issuing company, which is listed on a foreign stock exchange. Each IDR represents a certain number of underlying shares of the issuing company, whose value is derived from those shares.

These receipts are denominated in Indian rupees and can be traded on international stock exchanges, making it easier for foreign investors to access the Indian market without dealing with currency conversions.

The provisions of this Chapter shall apply to an issue of Indian Depository Receipts (IDR) made in terms of the Companies Act, 2013 and Companies (Registration of Foreign Companies) Rules, 2014.

Reference date
Unless otherwise specified, an issuer making a public issue of IDRs shall satisfy the conditions as per the regulations as on the date of filing draft offer document with SEBI and also as on the date of filing the offer document with the Registrar of Companies.

Eligibility conditions
(1) An issuer shall be eligible to make an issue of IDRs only if:
a) The issuing company is listed in its home country for at least three immediately preceding years;
b) The issuer is not prohibited to issue securities by any regulatory body;

c) The issuer has a track record of compliance with the securities market regulations in its home country; [49]

d) Any of its promoters or directors is not a fugitive economic offender and not a wilful defaulter

;

(2) The issue shall be subject to the following conditions:

a. Issue size shall not be less than Rs. 50 crore.
b. At any given time, there shall be only one denomination of IDRs of the issuer.
c. Issuer shall ensure that the underlying equity shares against which IDRs are issued have been or will be listed in its home country before listing of IDRs in stock exchange(s).
d. Issuer shall ensure that the underlying shares of IDRs shall rank pari passu with the existing shares of the same class.

(3) The issuer shall ensure that:

a. It has made an application to one or more stock exchanges to seek an in-principle approval for listing of the IDRs 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 IDRs proposed to be issued;
c. It has made firm arrangements of finance through verifiable means towards 75% of the stated means of finance for the project proposed to be funded from issue proceeds, excluding the amount to be raised through the proposed issue of IDRs or through existing identifiable internal accruals.

(4) 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.

<u>Minimum Subscription</u>

(1) The minimum subscription to be received in the issue shall be at least 90% of the offer through the offer document.

(2) For non-underwritten issues:

a. If the issuer does not receive the minimum subscription of 90% of the offer through offer document on the date of closure of the issue, or if the subscription level falls below 90% after the closure of issue, the issuer shall forthwith refund through verifiable means the entire subscription amount received.

[49]The term "home country" means the country where the issuer is incorporated and listed.

b. If the issuer fails to refund the entire subscription amount within 4 days from the date of the closure of the issue, it is liable to pay the amount with interest to the subscribers at the rate of 15% per annum for the period of delay.

(3) For underwritten issues:

a. If the issuer does not receive the minimum subscription of 90% of the offer through offer document including devolvement of underwriters, all application monies received shall be refunded through verifiable means to the applicants forthwith, but not later than 4 days from the closure of the issue.
b. If the issuer fails to refund the entire subscription amount within 4 days from the date of the closure of the issue, it is liable to pay the amount with interest to the subscribers at the rate of 15% per annum for the period of delay.

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

Fungibility

The Indian Depository Receipts shall be fungible into underlying equity shares of the issuing company in the manner specified by the Board and Reserve Bank of India, from time to time.

Disclosures in and filing of offer documents

Disclosures in the draft offer document and offer document

(1) The offer document shall contain all material disclosures which are true, correct and adequate to enable the applicants to take an informed investment decision.
(2) Without prejudice to the generality of the above condition, the offer document shall contain:
(a) disclosures specified in the Companies (Registration of Foreign Companies) Rules, 2014; and
(b) disclosures in the manner as specified in Part A of Schedule VIII.

(3) The lead manager(s) shall exercise due diligence and satisfy themselves about all aspects of the issue including the veracity and adequacy of disclosure in the draft offer document and the offer documents.
(4) The lead manager(s) shall call upon the issuer, its promoters or directors to fulfil their obligations as disclosed by them in the draft offer document or offer document, as the case may be, and as required in terms of these Regulations.

Filing of the draft offer document and Due Diligence Certificate

(1) Prior to making an initial public offer, the issuer shall file 3 copies of the draft offer document with SEBI, along with the specified fees through the lead manager(s).

(2) The draft offer document and the offer documents filed with SEBI shall also be furnished to SEBI in a soft copy.
(3) The lead manager(s) shall:

a. Submit a certificate confirming that an agreement has been entered into between the issuer and the lead manager(s)
b. Submit a due diligence certificate as per format given in Part H of Schedule V to the Board along with the draft offer document;
c. Certify that all amendments, suggestions or observations made by the Board have been incorporated in the offer document;
d. Submit a due diligence certificate as per format given in Part C of Schedule V, at the time of filing the offer document with the Registrar of the Companies.
e. A due diligence certificate as per Form D of Schedule V, in the event the issuer has made a disclosure of any material development by issuing a public notice.

Draft offer document and offer document to be available to the public

(1) The draft offer document filed with SEBI shall be made public for comments, if any, for a period of at least 21 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.

(2) The issuer shall, within 2 days of filing of the draft offer document with SEBI, make a public announcement in one English national daily newspaper with wide circulation and one Hindi national daily newspaper with wide circulation, disclosing to the public 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.

(3) The lead manager(s) shall, after expiry of the period, 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.

(4) 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.

(5) 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.

Filing of Offer Document before Issue Opening

(1) The issuer shall, before filing the offer document with the Registrar of Companies, file with SEBI through the lead manager(s), an updated draft offer document highlighting all changes made in the draft offer document.

(2) If there are any changes in the draft offer document an updated offer document or a fresh draft offer document, as the case may be, shall be filed with SEBI along with the specified fees.

(3) Copy of the offer documents shall also be filed with SEBI and the stock exchange(s) through the lead manager(s) promptly after filing the offer documents with the registrar of companies.

Appointment of Lead Manager, other intermediaries and compliance officer

(1) The issuer shall appoint one or more merchant bankers, which are registered with the Board, as lead manager(s) to the issue and shall also appoint other intermediaries, in consultation with the lead manager and shall enter into an agreement with the lead manager on the lines of format of agreement as specified in Schedule II.

(2) 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 documents as specified in Schedule I.

(3) 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 and if any of the lead manager(s) 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.

(4) The issuer shall appoint a registrar to the issue, registered with SEBI, which has connectivity with all the depositories.

(5) The issuer shall enter into an agreement with an overseas custodian bank and a domestic depository.

(6) The issuing company shall make arrangements for collection at centres.

(7) 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.

Pricing and Price Band

- The issuer may determine the price of the IDRs in consultation with the lead manager(s) or through the book building process, as the case may be.
- The issuer shall undertake the book building process in a manner specified in the regulations.

- The issuer may mention a price or a price band in the offer document (in case of a fixed price issue) and a floor price or a price band in the red herring prospectus (in case of a book built issue) and determine the price at a later date before filing the prospectus with the Registrar of Companies: Provided that the prospectus filed with the Registrar of Companies shall contain only one price or the specific coupon rate, as the case may be.
- The cap on the price band shall be less than or equal to 120 percent of the floor price.
- The floor price or the final price shall not be less than the face value of the IDRs.
- Where the issuer opts not to make the disclosure of the floor price or price band in the red herring prospectus, the issuer shall announce the floor price or the price band at least 2 working days before the opening of the issue in the same newspapers in which the pre-issue advertisement was released or together with the pre-issue advertisement.
- The announcement shall contain relevant financial ratios computed for both 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 the stock exchange(s) and shall also be pre-filled in the application forms to be made available on the websites of the stock exchange(s).

Differential pricing

- The issuer may offer its IDRs at different prices, subject to the following:
  a) retail individual investors or employees entitled for reservation may be offered specified securities at a price not lower by more than 10% of the price at which net offer is made to other categories of applicants, excluding anchor investors. [50]

- Discount, if any, shall be expressed in rupee terms in the offer document.

Issuance conditions

- The procedure to be followed by each class of applicant shall be mentioned in the offer document.
- The minimum application amount shall be Rs. 20,000/-.

Allocation in the issue

- The allocation in the issue shall be as follows:
  (a) at least 50% of the issue shall be allotted to qualified institutional buyers on proportionate basis;

[50]Employee shall mean a person who: i) is a resident of India, and ii) is a permanent and full-time employee or a director, whether whole time or part time, of the issuer or of the holding company or subsidiary company or of the material associate(s) of the issuer, whose financial statements are consolidated with the issuer's financial statements, working in India and does not include promoters and an immediate relative of the promoter.

(b) the remaining portion of the issue may be allocated among the categories of non-institutional investors and retail individual investors including employees, at the discretion of the issuer and the manner of allocation shall be disclosed in the offer document. Allotment to investors within a category shall be on proportionate basis:
Provided that at least 30% of the IDRs being offered in the public issue shall be available for allocation to retail individual investors and in case of under-subscription in retail individual investor category, spill over to other categories to the extent of under subscription may be permitted.

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

Abridged prospectus

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

Post Issue Reports

The lead manager(s) shall submit a final post-issue report along with a due diligence certificate as per the specified format within 7 days of the date of finalisation of basis of allotment or within 7 days of refund of money in case of failure of issue.

Undersubscribed Issue

In case of undersubscribed issue of IDR, the merchant banker shall furnish information in respect of underwriters who have failed to meet their underwriting devolvement to SEBI as per provisions specified in the SEBI (ICDR) Regulations.

Allotment procedure and basis of allotment

- 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.
  Provided that in case of oversubscription, an allotment of not more than one percent of the net offer to public may be made for the purpose of making allotment in minimum lots.
- The allotment of specified securities to applicants other than retail individual investors shall be on 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:

Provided that value of specified securities allotted to retail individual investors shall not exceed two lakhs rupees.

- The allotment of specified securities to each retail individual investor shall not be less than the minimum bid lot, subject to 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 allotment procedure as specified in the regulations.

Allotment, refund and payment of interest

- The issuer shall ensure that the letters of allotment for the IDRs are issued simultaneously to all allottees and that in the event of it being impossible to issue letters of regret at the same time, a notice to that effect shall be issued in the media so that it appears on the morning after the letters of allotment have been despatched.
- The issuer and lead manager(s) shall ensure that the IDRs are allotted and/or application monies are refunded or unblocked within such period as may be specified by the Board.
- The lead manager(s) shall ensure that the allotment, credit of dematerialised securities, refunding or unlocking of application monies, as may be applicable, are done electronically. Where the specified securities are not allotted and/or application monies are not refunded or unblocked within the stipulated period, the issuer shall undertake to pay interest at the rate of fifteen percent per annum to the investors and within such time as disclosed in the offer document and the lead manager(s) shall ensure the same.

Review Questions

1. Which Act/Regulation prescribes the general obligations to be followed by Issuers and other intermediaries who are related with the process of issue management?
   (a) The Securities Contract (Regulations) Act, 1956
   (b) The Companies Act 2013
   (c) SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018
   (d) SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011

2. No advertisement shall be issued giving any impression that the issue has been fully subscribed or oversubscribed during the period the issue is open for subscription. State whether True or False.
   (a) True
   (b) False

3. Who is required to look into and monitor the redressal of the investor grievances, if any which has arisen during issue management process?
   (a) Registrar to an Issue
   (b) Lead merchant banker
   (c) Debenture Trustee
   (d) Depository

4. As per SEBI (ICDR) Regulation, the aggregate reservation on competitive basis for employees shall not exceed ___ percent of the post issue capital of the issuer.
   (a) 5
   (b) 10
   (c) 15
   (d) 20

Chapter 7: Other Merchant Banking Activities[51] - Mergers, Acquisitions & Takeovers

LEARNING OBJECTIVES:

After studying this chapter, you should know about the:

- Role of merchant banker in Mergers, Acquisitions & Takeovers
- Key feature of the SEBI (Substantial Acquisition of Shares & Takeovers) Regulations

Merchant bankers are also involved in many other activities, such as providing advisory services regarding mergers and acquisitions divestments, takeovers etc. to corporate houses which may involve a change in ownership of a company or business. In the following sections we will discuss the role of merchant banker in M&A activities, Takeovers, and in the next chapter we shall discuss about buyback of equity shares, delisting of shares, Issue and listing of Debt Securities and Issue of ESOPs.

7.1 Mergers, Acquisitions & Takeovers

'Merger' is a broader term and it denotes a combination of two or more companies to form a single entity, in which either one or both lose their identity and a new company is formed. When both companies lose their identity, a new company is formed and existing companies' stocks are surrendered and shares of new company are issued in their place. Merger is not necessarily amongst two equal or comparable stature companies.

An 'acquisition' is the purchase of one business or company by another company or other business entity. Consolidation occurs when two companies combine together to form a new enterprise altogether, and neither of the previous companies survives independently. 'Acquisition' usually refers to a purchase of a smaller firm by a larger one.

The terms Merger and Acquisition are used synonymously, however, they are slightly different in their meanings. When one company takes over another and clearly establishes itself as the new owner, the purchase is called an acquisition. From a legal point of view, the target company ceases to exist, the buyer "swallows" the business and the buyer's stock continues to be traded.

In the pure sense of the term, a merger happens when two firms agree to go forward as a single new company rather than remain separately owned and operated. This kind of action is more precisely referred to as a "merger of equals". The firms are often of about the same size. Both companies' stocks are surrendered and new company stock is issued in its place. For example, in

[51]Some content of this chapter have been borrowed from generally available information from the internet.

the 1999 merger of GlaxoWellcome and SmithKline Beecham, both firms ceased to exist when they merged, and a new company, GlaxoSmithKline, was created.

'Takeover' is the acquisition of substantial shares or voting rights for the purpose of seeking management control of the company. If management of a prospective selling company is unwilling to negotiate a transaction with a prospective buyer, the buyer may make a direct bid to the seller's shareholders and purchase seller's shares from the market to acquire a controlling stake in the seller's company. The target company may be maintained as a subsidiary or division or dissolved or be merged.

Takeover can be by merger of a solvent acquirer with a sick company for availing the tax benefits, or else it can be acquisition of shares through direct negotiations with one who owns controlling interest or through open offer or market purchase of requisite voting rights to change the management of the company.

7.1.1 Difference between Mergers, Acquisitions and Takeovers

A ***merger*** is a mutual decision of two companies to combine and become one entity. The combined business, through structural and operational advantages secured by the merger, can cut costs and increase profits, boosting shareholder values for both groups of shareholders. A ***takeover, or acquisition***, on the other hand, is characterized by the purchase of a smaller company by a much larger one. This combination of "unequals" can produce the same benefits as a merger, but it does not necessarily have to be a mutual decision. A larger company can initiate a hostile takeover of a smaller firm, which essentially amounts to buying the company in the face of resistance from the smaller company's management. Unlike in a merger, in an acquisition, the acquiring firm usually offers a cash price per share to the target firm's shareholders or the acquiring firm's share's to the shareholders of the target firm according to a specified conversion ratio. Either way, the purchasing company essentially finances the purchase of the target company, buying it outright for its shareholders. An example of an acquisition would be how the Walt Disney Corporation bought Pixar Animation Studios in 2006. In this case, the takeover was friendly, as Pixar's shareholders all approved the decision to be acquired.

There is no tangible difference between an acquisition and a takeover; both words can be used interchangeably - the only difference is that each word carries a slightly different connotation. Typically, takeover is used to reference a hostile takeover where the company being acquired is resisting. In contrast, acquisition is frequently used to describe more friendly acquisitions or negotiated acquisition. Takeovers involve change in management control of the target company while acquisitions usually result in change in control when majority stakes are acquired in the target company.

7.1.2 Role of Merchant Banker in Mergers, Acquisitions and Takeovers

In all types of corporate restructuring, the merchant banker performs the pivotal role, acting as a catalyst for the entire deal. However, in transactions involving mergers and acquisitions, the task becomes onerous. In a merger, functions relating to (i) preparation and circulation of information memoranda, (ii) deal structuring & negotiations, (iii) valuation and due diligence are

taken care of by one or more merchant bankers, (iv) providing fairness opinion on valuation of assets/shares and (v) certificate on disclosure of unlisted company involved in scheme in the abridged prospectus. Mergers involve statutory compliances and application to the Court/Tribunal. It also involves liasoning with accountants, lawyers or company secretaries.

Mergers and Acquisitions in India are regulated by the following legislations and regulators:
1. The Companies Act, 2013
2. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
3. The Foreign Exchange Management Act, 1999
4. The Reserve Bank of India and the RBI Act, 1934.
5. The Income Tax Act, 1961
6. The Competition Act 2002
7. Master Circular SEBI dated November 23, 2021

Mergers, amalgamations, de-mergers, acquisitions of business units or divisions, are all governed by Companies Act 2013. Any acquisitions of shares or control in listed Indian companies are governed by the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011 (hereafter referred to as the takeover code). The Companies Act and The Takeover Code work in very different ways and impose very different sets of regulations on the merger and/or acquisition process within India. In this section, however, we discuss in detail the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011, and the compliances which are required to be adhered to by the merchant bankers with respect to any other legislation.

In acquisitions and takeovers involving open offers, the merchant banker's role involves managing the public offer and ensuring compliance with the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. The role of a Merchant Banker in takeovers and substantial acquisition of shares is described in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

7.2 SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

The SEBI (Substantial Acquisition of shares and takeovers) Regulations, 2011 (hereinafter referred as SEBI SAST Regulation) ensure greater transparency, fairness, and equitable treatment to all investors, timeliness and accuracy of disclosure of information, prevention of frivolous offers and enforcement against violations. The major thrust of these Regulations is to ensure that when a large number of shares changes hands, that is, one group sells a substantial or controlling block of shares to another; the minority shareholders also get the opportunity to sell their shares at the fair price. In absence of this Code, an existing group, say A, could sell the controlling stake to another group, say B, and the common shareholders would simply continue to hold the shares without getting the right to participate in the sale that happened.

The Regulations envisage acquisitions for:

(a) Change in Control of Management
(b) Consolidation of Holdings

(c)
(d) Substantial Acquisition of shares or voting rights

Definitions:

"Acquirer" means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company;

"Control" includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner: Provided that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position;

"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 per cent of the total number of shares of such class of the target company:

Provided that where the share capital of a particular class of shares of the target company is not identical throughout such period, the weighted average number of total shares of such class of the target company shall represent the total number of shares;

"Offer period" means the period between the date of entering into an agreement, formal or informal, to acquire shares, voting rights in, or control over a target company requiring a public announcement, or the date of the public announcement, as the case may be, and the date on which the payment of consideration to shareholders who have accepted the open offer is made, or the date on which open offer is withdrawn, as the case may be;

"Persons acting in concert" means,-

(1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.

(2) following categories shall be deemed to be persons acting in concert,

(i) a company, its holding company, subsidiary company and any company under the same management or control;

(ii) a company, its directors, and any person entrusted with the management of the company;

(iii) directors of companies above referred to and their associates

(iv) promoters and members of the promoter group;

(v) immediate relatives;

(vi) a mutual fund, its sponsor, trustees, trustee company, and asset management company;

(vii) a collective investment scheme and its collective investment management company, trustees and trustee company;

(viii) a venture capital fund and its sponsor, trustees, trustee company and asset management company;

(viiia) an alternative investment fund and its sponsor, trustees, trustee company and manager;

(ix) a merchant banker and its client, who is an acquirer;

(x) a portfolio manager and its client, who is an acquirer;

(xi) banks, financial advisors and stock brokers of the acquirer, or of any company which is a holding company or subsidiary of the acquirer, and where the acquirer is an individual, of the immediate relative of such individual:

(xiii) an investment company or fund and any person who has an interest in such investment company or fund as a shareholder or unitholder having not less than 10 per cent of the paid-up capital of the investment company or unit capital of the fund, and any other investment company or fund in which such person or his associate holds not less than 10 per cent of the paid-up capital of that investment company or unit capital of that fund:

"promoter" has the same meaning as in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and includes a member of the promoter group;

7.2.1 Substantial acquisition of shares or voting rights

As per the SEBI SAST Regulation, an acquirer shall not acquire shares or voting rights in a target company which entitle them (acquirer and persons acting in concert) to exercise 25% or more of the voting rights in the target company unless they have made a public announcement of an open offer for acquiring shares of such target company.

No acquirer who together with persons acting in concert with him, has acquired and holds in accordance with the SEBI SAST, shares or voting rights in a target company entitling them to exercise 25% or more of the voting rights in the target company, but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than 5% of the voting rights after making a public announcement of open offer for acquiring shares of such target company.[52]

[52] For the purpose of this regulation, any reference to "twenty-five per cent" in case of listed entity which has listed its specified securities on Innovators Growth Platform shall be read as "forty-nine per cent". This has been made to make the platform more accessible to companies in view of the evolving start-ups ecosystem.

Further, such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding. Provided further that, acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 shall be exempt from the obligation under the proviso to the sub-regulation (2) of regulation 3. In other words, in such resolution cases, even if the thresholds mentioned in the SAST are exceeded by the acquirer of the distressed company, no open offer obligation arises towards the minority shareholders of such company.

Unless the public announcement of an open offer for acquiring shares of the target company is made, no acquirer shall acquire directly or indirectly control over such target company.

For determining the quantum of acquisition of additional voting rights under this sub-regulation,-

(i) gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.

(ii) in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition.

For the purposes of calculating 25% or 5%, acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert.

Above mentioned provisions shall not apply to acquisition of shares or voting rights of a company by the promoters or shareholders in control, in terms of the provisions of Schedule XX of SEBI ICDR Regulations.

7.2.2 Voluntary Offer

(a) An acquirer, who together with persons acting in concert with him, holds shares or voting rights in a target company entitling them to exercise 25% or more but less than the maximum permissible non-public shareholding, shall be entitled to voluntarily make a public announcement of an open offer for acquiring shares in accordance with SEBI SAST, provided the shareholding after completion of the open offer does not exceed the maximum permissible non-public shareholding. Further, where the acquirer or any person acting in concert with him has acquired shares of the target company in the preceding 52 weeks without attracting the obligation to make a public announcement of an open offer, he shall not be eligible to voluntarily make a public announcement of an open offer for acquiring

shares under SAST. In such offer periods, the acquirer shall not be entitled to acquire any shares otherwise than which is under the open offer.

(b) An acquirer and persons acting in concert with him, who have made a public announcement under this regulation to acquire shares of a target company, shall not be entitled to acquire any shares of the target company for a period of six months after completion of the open offer except pursuant to another voluntary open offer. Further, such restriction shall not prohibit the acquirer from making a competing offer upon any other person making an open offer for acquiring shares of the target company. Shares acquired through bonus issue or stock splits shall not be considered for purposes of the disentitlement set out in this regulation.

(c) Notwithstanding anything contained in these regulations, no person who is a wilful defaulter shall make a public announcement of an open offer for acquiring shares or enter into any transaction that would attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations: Provided that this regulation shall not prohibit the wilful defaulter from making a competing offer in accordance with regulation 20 of these regulations upon any other person making an open offer for acquiring shares of the target company.

(d) Notwithstanding anything contained in these regulations, no person who is a fugitive economic offender shall make a public announcement of an open offer or make a competing offer for acquiring shares or enter into any transaction, either directly or indirectly, for acquiring any shares or voting rights or control of a target company.

7.2.3 Offer Size

The open offer for acquiring shares to be made by the acquirer and persons acting in concert with him shall be for at least 26% of total shares of the target company, as on 10th working day from the closure of the tendering period. Further, the total shares of the target company as of the 10th working day from the closure of the tendering period shall take into account all potential increases in the number of outstanding shares during the offer period contemplated as of the date of the public announcement. Further the offer size shall be proportionately increased in case of an increase in total number of shares, after the public announcement which is not contemplated on the date of the public announcement.

The open offer shall be for acquisition of at least such number of shares as would entitle the holder thereof to exercise an additional 10% of the voting rights in the target company, and shall not exceed such number of shares as would result in the post-acquisition holding of the acquirer and persons acting in concert with him exceeding the maximum permissible non-public shareholding applicable to such target company. Further, in case of a competing offer being made, the acquirer who has voluntarily made a public announcement of an open offer shall be entitled to increase the number of shares for which the open offer has been made to such number of shares as he deems fit. Such increase in offer size has to be made within a period of 15 working days from the public announcement of a competing offer, failing which the acquirer shall not be entitled to increase the offer size.

Upon an acquirer opting to increase the offer size under as per the above provisions, such open offer shall be deemed to have been made under sub-regulation (2) of regulation 3 (acquisition of five percent voting rights in a financial year) of SAST and the provisions of those regulations shall apply accordingly.

In the event of shares accepted in the open offer were such that the shareholding of the acquirer taken together with persons acting in concert with him pursuant to completion of the open offer results in their shareholding exceeding the maximum permissible non-public shareholding, the acquirer shall be required to bring down the non-public shareholding to the level specified and within the time permitted under SC(R)R, 1957.

The acquirer whose shareholding exceeds the maximum permissible non-public shareholding, pursuant to an open offer under these regulations shall not be eligible to make a voluntary delisting offer under the SEBI (Delisting of Equity Shares) Regulations, 2021 unless a period of 12 months has elapsed from the date of the completion of the offer period.

Any open offer made under these regulations shall be made to all shareholders of the target company, other than the acquirer, persons acting in concert with him and the parties to any underlying agreement including persons deemed to be acting in concert with such parties, for the sale of shares of the target company.

Provided that if the open offer has been made by an acquirer under sub-regulation (1) of regulation 3, regulation 4 or regulation 5 of SAST and the acquirer has stated upfront his intention to retain the listing of the target company in the public announcement and the detailed public statement issued pursuant to an open offer in accordance with these regulations, the acquirer may alternatively undertake a proportionate reduction of the shares or voting rights to be acquired pursuant to the underlying agreement for acquisition/ subscription of shares or voting rights and the purchase of shares so tendered, upon the completion of the open offer process such that the resulting shareholding of the acquirer in the target company does not exceed the maximum permissible non-public shareholding prescribed under the Securities SC(R)R, 1957. Provided further that in case of a preferential allotment pursuant to a Share Subscription Agreement which may trigger an open offer as envisaged in the above proviso, the Board Resolution and shareholder resolution shall be appropriately worded, so as to include the effective date of allocation/allotment and the quantum thereof. Notwithstanding anything contained in regulation 170 of the SC(R)R, 1957, in case of undertaking a scale down of subscription of shares or voting rights from the agreement, the period of fifteen days for allotment of shares shall be counted from the date of the closure of the tendering period for the open offer.

Subject to regulation 5A, the acquirer whose shareholding exceeds the maximum permissible non-public shareholding, pursuant to an open offer under these regulations, shall not be eligible to make a voluntary delisting offer under the Delisting Regulations, unless a period of twelve months has elapsed from the date of the completion of the offer period.

7.2.4 Offer Price

I. In case of direct acquisition of shares or voting rights in, or control over the target company, and indirect acquisition of shares of voting rights in, or control over the target company where the parameters as mentioned in the sub-regulation (2) of regulation 5 of SAST are met, the offer price shall be highest of –

(a) The highest negotiated price per share of the target company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer;

(b) The volume-weighted average price paid or payable for acquisitions, whether by the acquirer or by any person acting in concert with him, during the fifty-two weeks immediately preceding the date of the public announcement;

(c) The highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the 26 weeks immediately preceding the date of the public announcement;

(d) The volume weighted average market price of such shares for a period of 60 trading days immediately preceding the date of the public announcement as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded;

Provided that the price determined as per clause (d) shall not apply in the case of disinvestment of a public sector undertaking by the Central Government or a State Government, as the case may be. Provided further that this proviso shall apply only in case of a change in control in the public sector undertaking.

(e) Where the shares are not frequently traded, the price determined by the acquirer and the manager to the open offer taking into account valuation parameters including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies;

(f) the per share value computed under sub-regulation (5), if applicable.

II. In case of an indirect acquisition of shares or voting rights in, or control over the target company, where the parameter as mentioned in sub-regulation (2) of regulation 5 are not met, the offer price shall be the highest of-

(a) The highest negotiated price per share, if any, of the target company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer;

(b) The volume weighted average price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the 52 weeks immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;

(c) The highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during 26 weeks immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;

(d) The highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, between the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, and the date of the public announcement of the open offer for shares of the target company made under SAST regulations;

(e) the volume-weighted average market price of the shares for a period of sixty trading days immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded

Provided that the price determined as per clause (d) shall not apply in the case of disinvestment of a public sector undertaking by the Central Government or a State Government, as the case may be. Provided further that this proviso shall apply only in case of a change in control in the public sector undertaking.; and

(f) the per share value computed under sub-regulation (5), if applicable.

III. In such cases, where the offer price is incapable of being determined as per provisions mentioned above, the offer price shall be the fair price of shares of the target company. It shall be determined by the acquirer and the manager to the open offer taking into account valuation parameters as are customary for valuation of shares of such companies.

IV. In the case of an indirect acquisition and open offers where,

(1) The proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired;

(2) The proportionate sales turnover of the target company as a percentage of the consolidated sales turnover of the entity or business being acquired; or

(3) The proportionate market capitalisation of the target company as a percentage of the enterprise value for the entity or business being acquired;

Is in excess of 15%, on the basis of the most recent audited annual financial statements, the acquirer shall be required to compute and disclose in the letter of offer, the per share value of the target company taken into account for the acquisition, along with a detailed description of methodology adopted for such computation.[53]

V. Where the acquirer or any person acting in concert with him has any outstanding convertible instruments convertible into shares of the target company at a specific price,

[53] For the purposes of computing the percentages referred to in point (3) above, the market capitalisation of the target company shall be taken into account on the basis of the volume-weighted average market price of such shares on the stock exchange for a period of sixty trading days preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period.

the price at which such instruments are to be converted into shares, shall also be considered as a parameter as mentioned in points I and II above.

VI. The price paid for shares of the target company (for the purpose of points mentioned in points I and II above) shall include any price paid or agreed to be paid for the shares or voting rights in, or control over the target company, in any form whatsoever, whether stated in the agreement for acquisition of shares or in any incidental, contemporaneous or collateral agreement, whether termed as control premium or as non-compete fees or otherwise.

VII. In cases, where the acquirer has acquired or agreed to acquire whether by himself or through or with persons acting in concert with him any shares or voting rights in the target company during the offer period, whether by subscription or purchase, at a price higher than the offer price, the offer price shall be revised to the highest price paid or payable for any such acquisition. Further, no such acquisition shall be made after the third working day prior to the commencement of the tendering period and until the expiry of the tendering period.

VIII. The price parameters shall be adjusted by the acquirer in consultation with the manager to the offer, for corporate actions such as issuances pursuant to rights issue, bonus issue, stock consolidations, stock splits, payment of dividend, de-mergers and reduction of capital, where the record date for effecting such corporate actions falls prior to 3 working days before the commencement of the tendering period. Further, no adjustment shall be made for dividend declared with a record date falling during such period except where the dividend per share is more than 50% higher than the average of the dividend per share paid during the 3 financial years preceding the date of the public announcement.

IX. In such cases, where the acquirer or persons acting in concert with him acquires shares of the target company during the period of 26 weeks after the tendering period at a price higher than the offer price under the SEBI SAST regulations, the acquirer and persons acting in concert shall pay the difference between the highest acquisition price and the offer price, to all the shareholders whose shares were accepted in the open offer, within 60 days from the date of such acquisition. Further, this provision shall not be applicable to acquisitions under another open offer under these regulations or pursuant to the SEBI (Delisting of Equity Shares) Regulations, 2021, or open market purchases made in the ordinary course on the stock exchanges, not being negotiated acquisition of shares of the target company, by way of bulk deals, block deals or in any other form.

X. In such cases, where the open offer is subject to a minimum level of acceptances, the acquirer may, indicate a lower price subject to other provisions of the SEBI SAST for acquiring all the acceptances. The lower price shall not be less than the price as determined under the SAST despite the acceptance falling short of the indicated minimum level of acceptance (in the event the open offer does not receive the minimum acceptance).

XI. In case of any indirect acquisition (other than those acquisitions which has already been discussed in the above mentioned), the offer price shall stand enhanced by an amount equal to a sum determined at the rate of 10% per annum for the period between the earlier of the date on which the primary acquisition, or the date on which the intention

or the decision to make the primary acquisition is announced in the public domain and the date of the detailed public statement, provided such period is more than 5 working days.

XII. The offer price for partly paid up shares shall be computed as the difference between the offer price and the amount due towards call-in-arrears including calls remaining unpaid with interest, if any.

XIII. The offer price for equity shares carrying differential voting rights shall be determined by the acquirer and the manager to the open offer. The full disclosure of justification for the price as determined shall be given in a detailed public statement and the letter of offer.

XIV. In cases, where the price parameters as mentioned in the SAST regulation is not available or denominated in Indian Rupees, the conversion of such amount into the Indian Rupees shall be effected at the Exchange rate as prevailing on the date preceding the date of public announcement and the acquirer shall set out the source details of the exchange rate in public announcement, detailed public statement and the letter of offer.

XV. The effect on the price of the equity shares of the target company due to material price movement and confirmation of reported event or information may be excluded as per the framework specified under sub-regulation (11) of regulation 30 of the listing regulations for determination of the offer price under this regulation.

7.2.5 Payment Mode

I. The offer price may be paid in –

a) cash;
b) by issue, exchange or transfer of listed shares in the equity share capital of the acquirer or of any person acting in concert;
c) by issue, exchange or transfer of listed secured debt instruments issued by the acquirer or any person acting in concert with a rating not inferior to investment grade as rated by a SEBI registered credit rating agency;
d) by issue, exchange or transfer of convertible debt securities entitling the holder thereof to acquire listed share in the equity share capital of the acquirer or of any person acting in concert; or
e) a combination of payment mode as mentioned in points (a), (b), (c) and (d).

Further, where any shares have been acquired or agreed to be acquired by the acquirer and persons acting in concert with him, during the 52 weeks immediately preceding the date of public announcement and constitute more than 10% of the voting rights in the target company has been paid for in cash, the open offer shall entail an option to the shareholders to require payment of the offer price in cash. A shareholder who has not exercised an option in his acceptance shall be deemed to have opted for receiving the offer price in cash. In case of revision in offer price the mode of payment of consideration may be altered subject to the condition that the component of the offer price to be paid in cash prior to such revision is not reduced.

II. For the purposes of clause (b), clause (d) and clause (e) of sub-regulation (1), the shares sought to be issued or exchanged or transferred or the shares to be issued upon

conversion of other securities, towards payment of the offer price, shall conform to the following requirements, —

(a) such class of shares are listed on a stock exchange and frequently traded at the time of the public announcement;
(b) such class of shares have been listed for a period of at least two years preceding the date of the public announcement;
(c) the issuer of such class of shares has redressed at least 95 percent of the complaints received from investors by the end of the calendar quarter immediately preceding the calendar month in which the public announcement is made;
(d) the issuer of such class of shares has been in material compliance with the listing regulations for a period of at least two years immediately preceding the date of the public announcement:
Provided that in case where the Board is of the view that a company has not been materially compliant with the provisions of the listing regulations, the offer price shall be paid in cash only;
(e) the impact of auditors' qualifications, if any, on the audited accounts of the issuer of such shares for three immediately preceding financial years does not exceed five per cent. of the net profit or loss after tax of such issuer for the respective years; and
(f) the Board has not issued any direction against the issuer of such shares not to access the capital market or to issue fresh shares.

III. Where the shareholders have been provided with options to accept payment in cash or by way of securities, or a combination thereof, the pricing for the open offer may be different for each option subject to compliance with minimum offer price requirements under regulation 8:

Provided that the detailed public statement and the letter of offer shall contain justification for such differential pricing.

IV. In the event the offer price consists of consideration to be paid by issuance of securities, which requires compliance with any applicable law, the acquirer shall ensure that such compliance is completed not later than the commencement of the tendering period:
Provided that in case the requisite compliance is not made by such date, the acquirer shall pay the entire consideration in cash.

V. Where listed securities are offered as consideration, the value of such securities shall be higher of:
(a) the average of the weekly high and low of the closing prices of such securities quoted on the stock exchange during the six months preceding the relevant date;
(b) the average of the weekly high and low of the closing prices of such securities quoted on the stock exchange during the two weeks preceding the relevant date; and
(c) the volume-weighted average market price for a period of sixty trading days preceding the date of the public announcement, as traded on the stock exchange where the maximum volume of trading in the shares of the company whose securities are being offered as consideration, are recorded during the six-month period prior to relevant date and the ratio of exchange of shares shall be duly certified by an independent merchant

banker (other than the manager to the open offer) or an independent chartered accountant having a minimum experience of ten years.[54]

The effect on the price of the listed equity shares, which are offered as consideration, due to material price movement and confirmation of reported event or information may be excluded as per the framework specified under sub-regulation (11) of regulation 30 of the listing regulations for determination of the price of such equity shares under this regulation.

7.2.6 Exemptions

The SEBI SAST regulations provides cases which are exempt from the obligation to make an open offer as discussed above. We will discuss some of them in this section but for the complete list of exemptions please refer to regulation 10 and 11 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011. There are general exemptions and some are granted by the SEBI but subject to the fulfilment of conditions given below.

(1) *General Exemptions*

i. Acquisition pursuant to inter se transfer of shares amongst qualifying persons who can be -
   (1) Immediate relatives;
   (2) Persons named as promoters in the shareholding pattern filed by the target company in terms of the listing regulations or as the case may be, the listing agreement or the SAST regulations for not less than 3 years prior to the proposed acquisition;
   (3) A company, its subsidiaries, its holding company, other subsidiaries of such holding company, persons holding not less than 50% of the equity shares of such company, other companies in which such persons hold not less than 50% of the equity shares, and their subsidiaries subject to control over such qualifying persons being exclusively held by the same persons; [55]
   (4) Persons acting in concert for not less than 3 years prior to the proposed acquisition, and disclosed as such pursuant to filings under the listing regulations or as the case may be, the listing agreement;
   (5) Shareholders of a target company who have been persons acting in concert for a period of not less than three years prior to the proposed acquisition and are disclosed as such pursuant to filings under the listing regulations or as the case may be, the listing agreement, and any company in which the entire equity share capital is owned by such shareholders in the same proportion as their holdings in the target company without any differential entitlement to exercise voting rights in such company:

ii. Acquisition in the ordinary course of business by, -
   (1) A SEBI registered underwriter by way of allotment pursuant to an underwriting agreement in terms of SEBI ICDR Regulations;

[54]For the purposes of this sub-regulation, the "relevant date" shall be the thirtieth day prior to the date on which the meeting of shareholders is held to consider the proposed issue of shares.

[55]The company shall include body corporate, whether Indian or foreign.

(2) A SEBI registered stock broker on behalf of his client in exercise of lien over the shares purchased on behalf of the client under the bye-laws of the stock exchange where the stock broker is a member;
(3) A SEBI registered merchant banker or a nominated investor in the process of market making or subscription to the unsubscribed portion of issue in terms provisions as specified in the SEBI ICDR Regulations,
(4) Any person acquiring shares pursuant to a scheme of safety net in terms of provisions as given in the SEBI ICDR Regulations,
(5) A SEBI registered merchant banker acting as a stabilising agent or by the promoter or pre-issue shareholder in terms of SEBI ICDR Regulations,
(6) A registered market maker of an exchange;
(7) A scheduled commercial bank, acting as an escrow agent; and
(8) Invocation of pledge by SCBs or public financial institutions as a pledge.

iii. Acquisitions at subsequent stages, by an acquirer who has made a public announcement of an open offer for acquiring shares pursuant to an agreement of disinvestment, as contemplated in such agreement, provided that;
(1) Both the acquirer and the seller are the same at all the stages of acquisition, and
(2) Full disclosures of all the subsequent stages of acquisition, if any, have been made in the public announcement of the open offer and in the letter of offer.

iv. Acquisition pursuant to a scheme, -
(1) Made under section 18 of the Sick Industrial Companies (Special Provision) Act, 1985 or any statutory modification or re-enactment thereto;
(2) Of arrangement involving the target company as a transferor company or as a transferee company, or reconstruction of the target company, including amalgamation, merger or demerger, pursuant to an order of a court or a tribunal or a competent authority under any law or regulation, India or foreign; or
(3) Of arrangement not directly involving the target company as a transferor company or as a transferee company, or reconstruction not involving the target company's undertaking, including amalgamation, merger or demerger, pursuant to an order of a court or a tribunal or competent authority under any law or regulation, India or foreign, subject to, -
- The component of cash and cash equivalents in the consideration paid being less than 25% of the consideration paid under the scheme, and
- Where after implementation of the scheme of arrangement, persons directly or indirectly holding atleast 33% of the voting rights in the combined entity are the same as the persons who held the entire voting rights before the implementation of the scheme.

v. Acquisition pursuant to a resolution plan approved under Section 31 of the Insolvency and Bankruptcy Code, 2016.

vi. Acquisition pursuant to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

vii. Acquisition pursuant to the provisions of the SEBI (Delisting of Equity Shares) Regulations, 2021.

viii. Acquisition by way of transmission, succession or inheritance

ix. Acquisition of voting rights or preference shares carrying voting rights arising out of the operation of sub-section (2) of section 47 of the Companies Act, 2013

x. Acquisition of shares by the lenders pursuant to conversion of their debt as part of a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India:

Provided that the conditions specified under sub-regulation (6) of regulation 158 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 are complied with.

increase in voting rights arising out of the operation of sub-section (1) of section 106 of the Companies Act, 2013 or pursuant to a forfeiture of shares by the target company, undertaken in compliance with the provisions of the Companies Act, 2013 and its articles of association.

xi. Increase in voting rights arising out of the operation of sub-section (1) of section 106 of the Companies Act, 2013 or pursuant to a forfeiture of shares by the target company, undertaken in compliance with the provisions of the Companies Act, 2013 and its articles of association.

(h) increase in voting rights arising out of the operation of sub-section (1) of section 106 of the Companies Act, 2013 or pursuant to a forfeiture of shares by the target company, undertaken in compliance with the provisions of the Companies Act, 2013 and its articles of association.

(3) An increase in the voting rights of any shareholder beyond the threshold limits stipulated in sub-regulations (1) and (2) of regulation 3, without the acquisition of control, pursuant to the conversion of equity shares with superior voting rights into ordinary equity shares, shall be exempted from the obligation to make an open offer under regulation 3.

(4) Any acquisition of shares or voting rights or control of the target company by way of preferential issue in compliance with regulation 164A of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 shall be exempt from the obligation to make an open offer under sub-regulation (1) of regulation 3 and regulation 4.

(3) An increase in voting rights in a target company of any shareholder beyond the limit attracting an obligation to make an open offer under sub-regulation (1) of regulation 3, pursuant to buy-back of shares [by the target company] shall be exempt from the obligation to make an open offer provided such shareholder reduces his shareholding such that his voting rights fall to below the threshold referred to in sub-regulation (1) of regulation 3 within ninety days from the date of the closure of the said buy-back offer.

(4) The following acquisitions shall be exempt from the obligation to make an open offer under sub-regulation (2) of regulation 3 -

(a) acquisition of shares by any shareholder of a target company, upto his entitlement, pursuant to a rights issue;

(b) acquisition of shares by any shareholder of a target company, beyond his entitlement, pursuant to a rights issue, subject to fulfillment of the following conditions -

(i) the acquirer has not renounced any of his entitlements in such rights issue; and

(ii) the price at which the rights issue is made is not higher than the ex-rights price of the shares of the target company, being the sum of -

(a) the volume weighted average market price of the shares of the target company during a period of sixty trading days ending on the day prior to the date of determination of the rights issue price, multiplied by the number of shares outstanding prior to the rights issue, divided by the total number of shares outstanding after allotment under the rights issue:

Provided that such volume weighted average market price shall be determined on the basis of trading on the stock exchange where the maximum volume of trading in the shares of such target company is recorded during such period; and

(b) the price at which the shares are offered in the rights issue, multiplied by the number of shares so offered in the rights issue divided by the total number of shares outstanding after allotment under the rights issue:

(c) increase in voting rights in a target company of any shareholder pursuant to buy-back of shares:

Provided that - (i) such shareholder has not voted in favour of the resolution authorising the buy-back of securities under section 68 of the Companies Act, 2013 (18 of 2013);

(ii) in the case of a shareholder resolution, voting is by way of postal ballot;

(iii) where a resolution of shareholders is not required for the buy-back, such shareholder, in his capacity as a director, or any other interested director has not voted in favour of the resolution of the board of directors of the target company authorising the buy-back of securities under 68 of the Companies Act, 2013 (18 of 2013); and

(iv) the increase in voting rights does not result in an acquisition of control by such shareholder over the target company:

Provided further that where the aforesaid conditions are not met, in the event such shareholder reduces his shareholding such that his voting rights fall below the level at which the obligation to make an open offer would be attracted under sub-regulation (2) of regulation 3, within ninety days from the date of closure of the buy-back offer by the target company, the shareholder shall be exempt from the obligation to make an open offer;

(d) acquisition of shares in a target company by any person in exchange for shares of another target company tendered pursuant to an open offer for acquiring shares under these regulations;

(e) acquisition of shares in a target company from state-level financial institutions or their subsidiaries or companies promoted by them, by promoters of the target company pursuant to an agreement between such transferors and such promoter;

(f) acquisition of shares in a target company from a venture capital fund or category I Alternative Investment Fund or a foreign venture capital investor

registered with the Board, by promoters of the target company pursuant to an agreement between such venture capital fund or category I Alternative Investment Fund or foreign venture capital investor and such promoters.

Exemptions by the SEBI

(a) SEBI may grant exemption from the obligation to make an open offer for acquiring shares under the SEBI SAST regulations subject to conditions imposed by SEBI and after recording it in writing.
(b) After recording the reasons, relaxations may be granted from strict compliance with any procedural requirement as mentioned in the SEBI SAST, subject to conditions imposed by SEBI and in the interests of investors in securities and securities market.
(c) For seeking exemption, the acquirer shall file an application with SEBI, supported by a duly sworn affidavit, giving details of the proposed acquisition and the grounds on which the exemption has been sought. The acquirer or the target company, as the case may be, shall along with the application pay a non-refundable fee of Rs. five lakh, by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or by way of banker's cheque or demand draft payable in Mumbai in favour of SEBI.
(d) SEBI after hearing the applicant and considering all relevant facts and circumstances, pass a reasoned order either granting or rejecting the exemption or relaxation sought. The order shall be placed on the SEBI Website.

7.2.7 Process of Open Offer

Appointment of Merchant Banker

SEBI SAST regulation prescribes that before making any public announcement of offer, the acquirer shall appoint a SEBI registered merchant banker who shall not be an associate of the acquirer. A public announcement is an announcement made in the newspapers by the acquirer primarily disclosing his intention to acquire shares of the target company from existing shareholders by means of an open offer. The public announcement of the open offer for acquiring shares shall be made by the acquirer through the merchant bankers to the offer.

Apart from the above mentioned activity, the Merchant Banker services are required in the capacity of the manager of the offer or in an independent capacity in the following:

(i) Regarding 'Mode of Payment' when securities of the acquirer company are offered in lieu of cash payment, the value of such securities shall be determined in the specified manner, as duly certified by an independent merchant banker (other than the manager to the offer) or an independent chartered accountant having a minimum experience of ten years.
(ii) Regarding 'Provision of escrow', the entire amount of escrow amount deposited with the bank in cash shall be released to the acquirer upon withdrawal of offer only if the manager to the open offer certifies the same. Further the balance of the escrow account after transfer of cash to the special escrow account shall be released to the acquirer, on the expiry of 30

days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, as certified by the manager to the open offer.

(iii) The entire amount of escrow amount deposited with the bank in cash shall be released to the acquirer upon the expiry of 30 days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, upon certification by the manager to the open offer, where the open offer is for exchange of shares or other secured instruments.

General obligations of the Merchant banker

SEBI SAST also lays down the general obligations of the Merchant Banker which is discussed in the section below. The manager to the open offer shall -

1. Ensure prior to public announcement being made that (a) the acquirer is able to implement the open offer; and (b) firm arrangements for funds through verifiable means have been made by the acquirer to meet the payment obligations under the open offer.
2. Ensure that the contents of the public announcement, the detailed public statement and the letter of offer and the post offer advertisement are true, fair and adequate in all material aspects, not misleading in any material particular, are based on reliable sources, state the source wherever necessary, and are in compliance with the requirements under the SEBI SAST.
3. Furnish to SEBI a due diligence certificate along with the draft letter of offer filed with SEBI.
4. Ensure that market intermediaries engaged for the purposes of the open offer are registered with SEBI.
5. Exercise diligence, care and professional judgment to ensure compliance with these regulations.
6. Not deal on his own account in the shares of the target company during the offer period.
7. File a report with SEBI within 15 working days from the expiry of the tendering period, in such form as may be specified, confirming status of completion of various open offer requirements.

Upon appointment of the merchant banker, the public announcement of the open offer is made. The merchant banker is required under regulations to perform such duties as mentioned in the para above. There are some other specific requirements under the SEBI SAST based on the obligations stated above which we discuss in the following sections:

Timing

The public announcement shall be made in accordance with the restrictions regarding the content and the publication, on the date of agreeing to acquire shares or voting rights in, or control over the target company.

(a) In case of market purchases, such public announcement shall be made prior to placement of the purchase order with the stock broker to acquire the shares, which would take the entitlement to voting rights beyond the stipulated thresholds;

(b) Pursuant to an acquirer acquiring shares or voting rights in, or control over the target company upon converting convertible securities without a fixed date of conversion or upon conversion of depository receipts for the underlying shares of the target company, such public announcement shall be made on the same day as the date of exercise of the option to convert such securities into shares of the target company;

(c) Pursuant to an acquirer acquiring shares or voting rights in, or control over the target company upon conversion of convertible securities with a fixed date of conversion, such announcement shall be made on the second working day preceding the scheduled date of conversion of such securities into shares of the target company;

(d) Pursuant to a disinvestment, the announcement shall be made on the same day as the date of executing the agreement for acquisition of shares or voting rights in or control over the target company;

(e) In the case of indirect acquisition of shares or voting rights in, or control over the target company where none of the parameters as referred to in regulation 5 of SAST are met, may be made at any time within 4 working days from the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;

(f) in the case of indirect acquisition of shares or voting rights in, or control over the target company where any of the parameters referred to in regulation 5 of SAST are met, announcement shall be made on the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;

(g) pursuant to an acquirer acquiring shares or voting rights in, or control over the target company, under preferential issue, such announcement shall be made on the date on which the board of directors of the target company authorises such preferential issue;

(h) the public announcement pursuant to an increase in voting rights consequential to a buy-back not qualifying for exemption under SAST, shall be made not later than the 90th day from the date of closure of the buy-back offer by the target company;

(i) the public announcement pursuant to any acquisition of shares or voting rights in or control over the target company where the specific date on which title to such shares, voting rights or control is acquired is beyond the control of the acquirer, shall be made not later than 2 working days from the date of receipt of intimation of having acquired such title.

A public announcement referred to in regulation 3 and regulation 4 for a proposed acquisition of shares or voting rights in or control over the target company through a combination of, (i) an

agreement and any one or more modes of acquisition referred to in sub-regulation (2) of regulation 13, or (ii) any one or more modes of acquisition referred in clause (a) to (i) of sub-regulation (2) of regulation 13, shall be made on the date of first such acquisition, provided the acquirer discloses in the public announcement the details of the proposed subsequent acquisition.

The public announcement made under voluntary offer process shall be made on the same day as the date on which the acquirer takes the decision to voluntarily make a public announcement of an open offer for acquiring shares of the target company.

After the manager to the offer makes the public announcement, a detailed public statement shall be published by the acquirer through the manager to the open offer in accordance with the provisions as mentioned in the SEBI SAST, not later than 5 working days of the public announcement.

Publication

The public announcement shall be sent to all the stock exchanges on which the shares of the target company are listed. The stock exchanges shall forthwith disseminate such information to the public. A copy of the public announcement shall be sent to SEBI and to the target company at its registered office within 1 working day of the date of the public announcement. The detailed public statement pursuant to the public announcement needs to be published in all editions of any 1 English national daily with wide circulation, any 1 Hindi national daily with wide circulation, and any 1 regional language daily with wide circulation at the place where the registered office of the target company is situated and 1 regional language daily at the place of the stock exchange where the maximum volume of trading in the shares of the target company are recorded during the sixty trading days preceding the date of the public announcement. Simultaneously with publication of such detailed public statement in the newspapers, a copy of the same shall be sent to -

i. SEBI through the manager to the open offer,
ii. Stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public,
iii. Target Company at its registered office and the target company shall forthwith circulate it to the members of its board.

Contents of the Public Announcement

The public announcement shall contain such information as may be specified, including the following -

- name and identity of the acquirer and persons acting in concert with him;
- name and identity of the sellers, if any;
- nature of the proposed acquisition such as purchase of shares or allotment of shares, or any other means of acquisition of shares or voting rights in, or control over the target company;

- the consideration for the proposed acquisition that attracted the obligation to make an open offer for acquiring shares, and the price per share, if any;
- the offer price, and mode of payment of consideration; and
- offer size and conditions as to minimum level of acceptances, if any
- intention of the acquirer to either delist the target company or retain the listing of the target company. In case of proposed delisting under regulation 5A of SAST, the proposed open offer price and indicative price as required under such regulation shall be disclosed along with an explanation setting out the rationale and basis for justifying the indicative price.

The detailed public statement pursuant to the public announcement shall contain such information as may be specified in order to enable shareholders to make an informed decision with reference to the open offer.

The public announcement of the open offer, the detailed public statement, and any other statement, advertisement, circular, brochure, publicity material or letter of offer issued in relation to the acquisition of shares under these regulations shall not omit any relevant information, or contain any misleading information.

Filing of Letter of Offer with SEBI

A letter of offer is a document addressed to the shareholders of the target company containing disclosures of the acquirer/ persons acting in concert, target company, their financials, justification of the offer price, number of shares to be acquired from the public, purpose of acquisition, future plans of acquirer, if any, regarding the target company, change in control over the target company, if any, the procedure to be followed by acquirer in accepting the shares tendered by the shareholders and the period within which all the formalities pertaining to the offer would be completed.

Within 5 working days from the date of the detailed public statement made the acquirer shall, through the manager to the open offer, file with SEBI, a draft of the letter of offer containing information as may be specified along with a non-refundable fee, by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or by way of a banker's cheque or demand draft payable in Mumbai in favour of SEBI. The non-refundable fees are prescribed in the SAST Regulations -

Sl. No.	**Consideration Payable under the Open Offer**	**Fee (Rs.)**
a.	Upto Rs. 10 crore	Five lakh rupees (Rs. 5,00,000)
b.	>Rs. 10 crore but ≤ Rs. 1000 crore	0.5 percent of the offer size
c.	>Rs. 1000 crore	Five crore rupees (Rs. 5,00,00,000) plus 0.125 percent of the portion of the offer size

		in excess of one thousand crore rupees (Rs. 1000,00,00,000).

The consideration payable under the open offer shall be calculated at the offer price assuming full acceptance of the open offer. In the event the open offer is subject to differential pricing, the open offer shall be computed at the highest offer price irrespective of the manner of payment of the consideration. In the event of consideration payable under the open offer being enhanced owing to a revision to the offer price or offer size the fees payable shall stand revised accordingly and shall be paid within 5 working days from the date of such revision.

The manager to the open offer is required to provide soft copies of the public announcement, the detailed public statement and the draft letter of offer in accordance with such specifications as may be specified and the SEBI shall upload the same on its website.

It should be understood that while Acquirer is primarily responsible for the correctness, adequacy and disclosure of all relevant information in this Letter of Offer, the Merchant Banker is expected to exercise due diligence to ensure that the Acquirer duly discharges its responsibility adequately.

SEBI shall give its comments on the draft letter of offer as expeditiously as possible but not later than fifteen working days of the receipt of the draft letter of offer and in the event of no comments being issued by the SEBI within such period, it shall be deemed that the SEBI does not have comments to offer. Provided that in the event the SEBI has sought clarifications or additional information from the manager to the open offer, the period for issuance of comments shall be extended to the fifth working day from the date of receipt of satisfactory reply to the clarification or additional information sought.

The Merchant Banker will incorporate in the letter of offer the comments made by SEBI and then send the letter of offer along with the blank acceptance form, to all the shareholders whose names appear in the register of the company on the Specified Date.

In the case of competing offers, the SEBI shall provide its comments on the draft letter of offer in respect of each competing offer on the same day.

In the event the disclosures in the draft letter of offer are inadequate SEBI may call for a revised letter of offer and shall deal with the revised letter of offer in accordance with provisions mentioned above.

Provision of Escrow

1. The acquirer should create an escrow account towards security for performance of his obligations under the SAST regulations, at least two working days prior to the date of the detailed public statement of the open offer for acquiring shares. The acquirer shall deposit in escrow account such aggregate amount as per the following scale:

Sl. No.	Consideration payable under the Open Offer	Escrow Amount
a.	On the first Rs. 500 crore	Amount equal to 25% of the consideration.
b.	On the balance consideration	Additional amount equal to 10% of the balance consideration.

Where an open offer is made conditional upon minimum level of acceptance, 100% of the consideration payable in respect of minimum level of acceptance or 50% of the consideration payable under the open offer, whichever is higher, shall be deposited in cash in the escrow account.

2. The consideration payable under the open offer shall be computed as per provisions given in the SAST and in case of upward revision of the offer price or of the offer size, the value of the escrow amount shall be computed on the revised consideration calculated at such revised offer price, and the additional amount shall be brought into the escrow account prior to effecting such revision.
3. The escrow account may be in the form of-
   a. cash deposited with any scheduled commercial bank;
   b. bank guarantee issued in favour of the manager to the open offer by any scheduled commercial bank; or
   c. deposit of frequently traded and freely transferable equity shares or other freely transferable securities with appropriate margin.

   Further securities sought to be provided towards escrow account shall be required to conform to the requirements as set out in the SAST Regulations. The deposit of securities shall not be permitted in respect of indirect acquisitions where public announcement has been made in terms of clause (e) of sub-regulation (2) of regulation 13 of SAST. 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.
4. In the event of the escrow account being created by way of a bank guarantee or by deposit of securities, the acquirer shall also ensure that at least 1% of the total consideration payable is deposited in cash with a scheduled commercial bank as a part of the escrow account.
5. For such part of the escrow account as is in the form of a cash deposit with a scheduled commercial bank, the acquirer shall while opening the account, empower the manager to the open offer to instruct the bank to issue a banker's cheque or demand draft or to make payment of the amounts lying to the credit of the escrow account, in accordance with requirements under the SAST regulations.
6. For such part of the escrow account as is in the form of a bank guarantee, such bank guarantee shall be in favour of the manager to the open offer and shall be kept valid throughout the offer period and for an additional period of thirty days after completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer.

7. For such part of the escrow account as is in the form of securities, the acquirer shall empower the manager to the open offer to realise the value of such escrow account by sale or otherwise, and in the event there is any shortfall in the amount required to be maintained in the escrow account, the manager to the open offer shall be liable to make good such shortfall.
8. The manager to the open offer shall not release the escrow account until the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, save and except for transfer of funds to the special escrow account as required under SAST regulation.
9. In the event of non-fulfillment of obligations under the SAST by the acquirer SEBI may direct the manager to the open offer to forfeit the escrow account or any amounts lying in the special escrow account, either in full or in part.
10. The escrow account deposited with the bank in cash shall be released only in the following manner:
    a. Entire amount will be released to the acquirer upon withdrawal of offer as per the provisions of the SAST regulations and should be certified by the manager to the open offer, provided, that in the event the withdrawal is pursuant to the provisions as stated in the SAST regulations (withdrawal of open offer), the manager to the open offer shall release the escrow account receipt of confirmation of such release from SEBI.
    b. For transfer of an amount not exceeding 90% of the escrow account, to the special escrow account.
    c. To the acquirer, the balance of the escrow account after transfer of cash to the special escrow account, on the expiry of 30 days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, as certified by the manager to the open offer.
    d. The entire amount to the acquirer upon the expiry of 30 days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, upon certification by the manager to the open offer, where the open offer is for exchange of shares or other secured instruments.
    e. The entire amount shall be released to the manager of the open offer, (in the event of forfeiture for non-fulfilment of any of the obligations under the SAST), for distribution after deduction of expenses, if any, of registered market intermediaries associated with the open offer.

Other Procedures Requirements for Open Offer Process

1. Simultaneously with the filing of the draft letter of offer with SEBI, the acquirer shall send a copy of the draft letter of offer to the target company at its registered office address and to all stock exchanges where the shares of the target company are listed.

   The letter of offer shall be dispatched to the shareholders whose names appear on the register of members of the target company as of the identified date, not later than seven working days from the receipt of comments from SEBI or where no comments are offered by

SEBI, within 7 working days from the expiry of the period as stipulated in the SAST Regulations.[56&57]

In cases where local laws or regulations of any jurisdiction outside India may expose the acquirer or the target company to material risk of civil, regulatory or criminal liabilities in the event the letter of offer in its final form were to be sent without material amendments or modifications into such jurisdiction, and the shareholders resident in such jurisdiction hold shares entitling them to less than 5% of the voting rights of the target company, the acquirer may refrain from dispatch of the letter of offer into such jurisdiction. Provided further that every person holding shares, regardless of whether he held shares on the identified date or has not received the letter of offer, shall be entitled to tender such shares in acceptance of the open offer.

2. Simultaneously with the dispatch of the letter of offer, the acquirer shall send the letter of offer to the custodian of shares underlying depository receipts, if any, of the target company.

3. Irrespective of whether a competing offer has been made, an acquirer may make upward revisions to the offer price, and subject to the other provisions of these regulations, to the number of shares sought to be acquired under the open offer, at any time prior to the commencement of the last one working day before the commencement of the tendering period.

4. In the event of any revision of the open offer, whether by way of an upward revision in offer price, or of the offer size, the acquirer shall -
   (a) make corresponding increases to the amount kept in escrow account prior to such revision;
   (b) make an announcement in respect of such revisions in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and
   (c) simultaneously with the issue of such an announcement, inform SEBI, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.
5. The acquirer shall disclose during the offer period every acquisition made by the acquirer or persons acting in concert with him of any shares of the target company in such form as may be specified, to each of the stock exchanges on which the shares of the target company are listed and to the target company at its registered office within 24 hours of such acquisition, and the stock exchanges shall forthwith disseminate such information to the public. Further, the acquirer and persons acting in concert with him shall not acquire or sell any shares of the target company during the period between 3 working days prior to the commencement of the tendering period and until the expiry of the tendering period.

[56]SAST sub-regulation (4) of regulation 16.

[57]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.

6. The acquirer shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism as specified by SEBI.

   Transfer of shares of shareholders under the tender offers would be made directly to the account maintained by the clearing corporation. After such transfer of securities, the clearing corporation will be allowed to utilize the securities towards the settlement obligations under such offers. Further, consideration for the accepted shares in the tender offer and shares tendered but not accepted under such offer would be credited directly to shareholders' bank and demat accounts respectively.[58]

7. The acquirer shall issue an advertisement 1 working day before the commencement of the tendering period, announcing the schedule of activities for the open offer, the status of statutory and other approvals, if any, whether for the acquisition attracting the obligation to make an open offer under these regulations or for the open offer, unfulfilled conditions, if any, and their status, the procedure for tendering acceptances and such other material detail as may be specified. The advertisement shall be (a) published in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and (b) simultaneously sent to SEBI, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.

8. The tendering period shall start within 12 working days from date of receipt of comments from SEBI and shall remain open for 10 working days. Shareholders who have tendered shares in acceptance of the open offer shall not be entitled to withdraw such acceptance during the tendering period.

9. The acquirer shall, within 10 working days from the last date of the tendering period, complete all requirements under these regulations and other applicable law relating to the open offer including payment of consideration to the shareholders who have accepted the open offer.

10. The acquirer shall be responsible to pursue all statutory approvals required by the acquirer in order to complete the open offer without any default, neglect or delay. In cases where the acquirer is unable to make the payment to the shareholders who have accepted the open offer within the stipulated period owing to non-receipt of statutory approvals required by the acquirer, SEBI may, grant extension of time for making payments, subject to the acquirer agreeing to pay interest to the shareholders for the delay at rate as specified. However, SEBI shall have to be satisfied that such non-receipt was not attributable to any wilful default, failure or neglect on the part of the acquirer.

SAST sub-regulation (4) of regulation 16.

[58]Explanation: (i) Letter of off

11. (a) The acquirer shall issue a post offer advertisement within five working days after the offer period (in the format specified), giving details including aggregate number of shares tendered, accepted, date of payment of consideration.
    (b) Such advertisement shall be (i) published in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and (ii) simultaneously sent to SEBI all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.

Conditional Offer and Procedure

An acquirer can make an open offer conditional as to the minimum level of acceptance, provided that the open offer is made after the agreement. The agreement shall have a condition that in the event the desired level of acceptance of the open offer is not received, the acquirer shall not acquire any shares under the open offer and the agreement attracting the obligation to make the open offer shall stand rescinded.

Where an open offer is made conditional upon minimum level of acceptances, the acquirer and persons acting in concert with him shall not acquire, during the offer period, any shares in the target company except under the open offer and any underlying agreement for the sale of shares of the target company pursuant to which the open offer is made.

Competing Offer and Procedure

(a) When a public announcement of an open offer for acquiring shares of a target company is made, any person, other than the acquirer who has made such public announcement, is entitled to make a public announcement of an open offer within 15 working days of the date of the detailed public statement made by the acquirer who has made the first public announcement.
(b) The open offer made shall be for such number of shares which, when taken together with shares held by the acquirer along with persons acting in concert with him, shall be at least equal to the holding of the acquirer who has made the first public announcement, including the number of shares proposed to be acquired by him under the offer and any underlying agreement for the sale of shares of the target company pursuant to which the open offer is made.
(c) Notwithstanding anything contained in the SAST regulations, an open offer made within the period (15 working days) shall not be regarded as a voluntary open offer and the provisions of these regulations shall apply accordingly. Every open offer as mentioned above (para) and the open offer first made shall be regarded as competing offers for purposes of SAST.
(d) Nobody is entitled to make a public announcement of an open offer for acquiring shares, or enter into any transaction that would attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations, after the period of fifteen working days and until the expiry of the offer period for such open offer.

A person is not entitled to make a public announcement of an open offer for acquiring shares, or enter into any transaction that would attract the obligation to make a public announcement of an open offer under the SAST until the expiry of the offer period where-

a. the open offer is for acquisition of shares pursuant to disinvestment; or
b. the open offer is pursuant to a relaxation from strict compliance as granted by SEBI (discussed in earlier section).

(e) The schedule of activities and the tendering period for all competing offers shall be carried out with identical timelines. The last date for tendering shares in acceptance of every competing offer shall stand revised to the last date for tendering shares in acceptance of the competing offer last made.

(f) After making the public announcement of a competing offer, an acquirer who had made a preceding competing offer shall be entitled to revise the terms of his open offer provided the revised terms are more favourable to the shareholders of the target company. Further, the acquirers making the competing offers shall be entitled to make upward revisions of the offer price at any time up to 1 working day prior to the commencement of the tendering period.

(g) Unless the open offer first made is an open offer conditional as to the minimum level of acceptances, no acquirer making a competing offer may be made conditional as to the minimum level of acceptances.

Payment of consideration

The acquirer shall open a special escrow account with a SEBI registered banker to an issue and deposit the amount of consideration (in cash). The cash so deposited makes up for the entire sum due and payable to the shareholders as consideration payable under the open offer. It also empowers the manager to the offer to operate the special escrow account on behalf of the acquirer for the purposes as stated in the SAST. The acquirer shall complete payment of consideration whether in the form of cash, or as the case may be, by issue, exchange or transfer of securities, to all shareholders who have tendered shares in acceptance of the open offer, within ten working days of the expiry of the tendering period.

Any unclaimed balances, lying to the credit of the special escrow account at the end of seven years from the date of deposit thereof, shall be transferred to the Investor Protection and Education Fund established under the SEBI (Investor Protection and Education Fund) Regulations, 2009.

Completion of Acquisition

1) The acquirer as per regulations shall not complete the acquisition of shares or voting rights in, or control over, the target company, whether by way of subscription to shares or a purchase of shares attracting the obligation to make an open offer for acquiring shares, until the expiry of the offer period. Further, in case of an offer made[59] pursuant to a preferential allotment, the offer has to be completed within the period as provided under sub-regulation

er may also be dispatched through electronic mode in accordance with the prov

(1) of regulation 70 of SEBI (Issue of Capital and Disclosure) Regulations, 2018. In case of a delisting offer made under regulation 5A of SAST, the acquirer shall complete the acquisition of shares attracting the obligation to make an offer for acquiring shares, only after making the public announcement regarding the success of the delisting proposal made in terms of sub-regulation (4) of regulation 17 of the Delisting Regulations.

2) Notwithstanding anything which is discussed in the above (para 1) and subject to the acquirer depositing in the escrow account under regulation 17, cash of an amount equal to the entire consideration payable under the open offer assuming full acceptance of the open offer, the parties to such agreement may after the expiry of 21 working days from the date of detailed public statement, act upon the agreement and the acquirer may complete the acquisition of shares or voting rights in, or control over the target company as contemplated.

   (2A) Notwithstanding anything contained in sub-regulation (1), an acquirer may acquire shares of the target company through preferential issue or through the stock exchange settlement process, other than through bulk deals or block deals, subject to, -

   (i) such shares being kept in an escrow account,
   (ii) the acquirer not exercising any voting rights over such shares kept in the escrow account: Provided that such shares may be transferred to the account of the acquirer, subject to the acquirer complying with requirements specified in sub-regulation (2).

3) The acquirer shall complete the acquisitions contracted under any agreement attracting the obligation to make an open offer not later than 26 weeks from the expiry of the offer period. In case of any extraordinary and supervening circumstances rendering it impossible to complete such acquisition within the stipulated period, SEBI may grant an extension of time by such period as it may deem fit in the interests of investors in securities and the securities market. The reasons for granting extension may be also published.

The SAST regulations have laid down the general obligations of the Merchant Banker. For any failure to carry out these obligations as well as for failure/non-compliance of other provisions of the Regulations, penalties have also been laid down which shall be applicable to any defaulting intermediary.

Withdrawal of open offer

(1) An open offer for acquiring shares once made shall not be withdrawn except under any of the following circumstances,-

(a) statutory approvals required for the open offer or for effecting the acquisitions attracting the obligation to make an open offer under these regulations having been finally refused, subject to such requirements for approval having been specifically disclosed in the detailed public statement and the letter of offer;

(b) the acquirer, being a natural person, has died;

(c) any condition stipulated in the agreement for acquisition attracting the obligation to make the open offer is not met for reasons outside the reasonable control of the acquirer, and such

agreement is rescinded, subject to such conditions having been specifically disclosed in the detailed public statement and the letter of offer; 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.

(d) such circumstances as in the opinion of the SEBI, merit withdrawal. In such case the SEBI shall pass a reasoned order permitting withdrawal, and such order shall be hosted by the SEBI on its official website.

(2) In the event of withdrawal of the open offer, the acquirer shall through the manager to the open offer, within two working days,-

(a) make an announcement in the same newspapers in which the public announcement of the open offer was published, providing the grounds and reasons for withdrawal of the open offer; and

(b) simultaneously with the announcement, inform in writing to,-

(i) the Board;

(ii) all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public; and

(iii) the target company at its registered office.

Review Questions

1. Merchant Banker is involved in which of the following activities?
   (a) Mergers
   (b) Takeovers
   (c) Acquisitions
   (d) All of the above

2. Merger is necessarily amongst two equal or comparable stature companies. State whether True or False.
   (a) True
   (b) False

3. Takeover is the acquisition of substantial _____ for the purpose of seeking management control of the company.
   (a) Rights
   (b) Debentures
   (c) Shares or Voting Rights
   (d) None of the above

4. The SEBI (Substantial Acquisition of shares and takeovers) Regulations, 2011 ensures greater transparency, fairness, and equitable treatment to all investors. State whether True or False.
   (a) True
   (b) False

Chapter 8: Other Merchant Banking Activities - Disinvestment, Buyback of Equity Shares

LEARNING OBJECTIVES:

After studying this chapter, you should know about the role of Merchant Banker in:

- Disinvestment transactions
- Buyback of shares and delisting of shares
- Issue and listing of debt issues
- Share based employee benefits

8.1 Disinvestment

Disinvestment means the direct or indirect sale by the Central Government or any State Government or by a government company, as the case may be, of shares or voting rights in, or control over, a target company, which is a public sector undertaking. Transactions related to Government entities can be either a disinvestment transaction or an advisory transaction.
Disinvestment transactions are generally of two types:

(1) An offer for sale by the selling shareholder (in this case the Government of India) through the prospectus- at times this could be a combination of a fresh issue and an offer for sale; or Offer for Sale through the Stock Exchange Mechanism; or
(2) Strategic sale directly to a successful bidder

8.1.1 Role of Merchant Banker in Disinvestment Transactions

The role of a Merchant Banker in Disinvestment transactions is similar to the transactions of any IPO / FPO / OFS (SE) or a strategic sale in the private sector. Merchant bankers may be required to provide their services in disinvestment decisions of the government. The concerned department for this activity in the Central Government is the Department of Investment and Public Asset Management (DIPAM) within the Ministry of Finance. The services can be in the area of advice with regard to bidding process, valuation and bid pricing, conducting the bid process or the proposed market transaction such as an OFS as per SEBI Regulations or a strategic sale to an identified third party.

Apart from strategic disinvestments, advisory transactions for a Government entity could be for a bonus issue or a buy-back or any other advisory transaction. In such cases also, the role of a

Merchant Banker is similar to the transactions of advisory nature for any entity in the private sector. If a Merchant Banker has been mandated to provide advisory services to any Government entity then DPE guidelines issued by the Department of Public Enterprises, have to be kept in mind.

However, there are certain guidelines issued by the Department of Public Enterprises (DPE) which are available at http://dpe.nic.in/important_links/dpe_guidelines.

In order to review the performance of the PSU, a composite score based on its performance for the last three years would be calculated. For calculation of composite score, 6 performance indicators have been identified based on their general applicability to the PSUs. The performance indicators have been chosen so as to capture the performance of PSUs irrespective of their belonging to manufacturing sector or services sector. The 6 identified performance indicators are:

Table 8.1: Six identified performance indicators as per DPE guidelines

	Parameter	Weightage
1	Net Profit to Net Worth	25
2	Manpower Cost to total Cost of Production or Cost of Services	15
3	PBDIT to Capital employed	15
4	PBIT to Turnover	15
5	Earnings Per Share	10
6	Inter Sectoral Performance	20
	TOTAL	100

Table 8.2: Scoring scale at different levels of EPS

Earnings Per Share (FV Rs. 10)	Scores
>=30	10
>=20 &<30	8
>=10 &<20	6
>=5 &<10	4
>=0 &<5	2
>= 5 &<0	0
>= 10 &-5	-2

8.2 Role of Merchant Banker in Buy back of Equity Shares

SEBI (Buy-back of Securities) Regulations is applicable to buy-back of shares or other specified securities of a company listed on a stock exchange. However, a company listed on a stock exchange shall not buy-back its shares or other specified securities so as to delist its shares or other specified securities from the stock exchange.

A company shall buy-back its shares or other specified securities using any of the following methods:

(a) from the existing shareholders or other specified securities holders on a proportionate basis through the tender offer;

(b) from the open market through

(i) book-building process, or

(ii) stock exchange;

Provided that no offer of buy-back for five percent or more of the paid up capital and free reserves of the company shall be made from the open market till March 31, 2025.

Buy-back from the open market through the stock exchange shall not be allowed with effect from April 1, 2025.

The maximum limit of any buy-back shall be twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company, based on the standalone or consolidated financial statements of the company, whichever sets out a lower amount.

The debt equity ratio, after buy-back shall, be less than or equal to 2:1.

A company may undertake a buy-back of its own shares or other specified securities out of— (a) its free reserves; (b) the securities premium account; or (c) the proceeds of the issue of any shares or other specified securities: Provided that no such buy-back shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

No company shall directly or indirectly purchase its own shares or other specified securities: (a) through any subsidiary company including its own subsidiary companies; (b) through any investment company or group of investment companies; or (c) if a default is made by the company in the repayment of deposits, 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:A company shall not buy-back its shares or other specified securities so as to delist its shares or other specified securities from the stock exchange.

A company shall not buy-back its shares or other specified securities 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 effected.

The procedure for buy-back of securities has been prescribed in the SEBI (Buy-Back of Securities) Regulations, 2018. As per the Regulations, appointment of merchant banker is the first step before starting the process of public announcement for buyback.

8.2.1 Obligations of Merchant Banker in Buy back of Equity Shares

The obligations specified for a merchant banker under the Regulation have been specified in the SEBI (Buy back of Equity Shares) Regulations, 2018. The merchant banker shall ensure that -

a. the company is able to implement the offer;
b. the provision relating to escrow account as referred in the regulation has been made;
c. firm arrangements for monies for payment to fulfil the obligations under the offer are in place;
d. the public announcement of buy-back is made in terms of the regulations (under the tender offer method, o a copy of the public announcement in electronic mode, shall also be submitted with the SEBI and the stock exchanges on which its shares or other specified securities are listed
e. the letter of offer has been filed in terms of the regulations (under the tender offer method, the draft letter of offer, along with a soft copy, containing disclosures as specified in the regulations shall be filed through a merchant banker who is not associated with the company within five days of the public announcement. Under the open market purchase method, it shall be filed simultaneously with the public announcement);
f. the merchant banker shall furnish to SEBI a due diligence certificate which shall accompany the draft letter of offer;
g. the merchant banker shall ensure that 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;
h. under the book building method, the merchant banker shall assist the company to determine the buyback price based on the acceptances received from shareholders.
i. the merchant banker shall ensure compliance with the Companies Act[60], and any other laws or rules as may be applicable in this regard;

isions of Companies Act, 2013.
(ii) On receipt of a reque

j. upon fulfilment of all obligations by the company under the regulations, the merchant banker shall inform the bank with whom the escrow or special amount has been deposited to release the balance amount to the company;
k. the merchant banker shall send a final report to SEBI in the form specified, in electronic mode within 15 working days from the date of expiry of buyback period.

Contents of the Public Announcement

- The public announcement shall contain the following information as specified in the Schedule II of the SEBI (Buyback of Securities) Regulations, 2018.
- The Public announcement shall be dated and signed on behalf of the Board of Directors of the company by its manager or secretary, if any, and by not less than two directors of the company one of whom shall be a managing director where there is one.
- A full and complete disclosure of all material facts including the disclosures mentioned in Schedule I shall also be made, which is as given hereunder:

Schedule I: Contents of the Explanatory Statement

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 buyback price;
v. Maximum number of securities that the company proposes to buy back;
vi. Method to be adopted for buyback as referred in sub-regulation (iv) of regulation 4 (refer above);
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 buyback 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 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-
(i) they have inquired into the company's state of affairs;
(ii) the amount of the permissible capital payment for the securities in question is in their view properly determined; and
(iii) 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.

(xii) Prior approval obtained from the lenders of the company in case of a breach of any covenant with such lender(s).

Schedule IV: Public Announcement for Open Market Buy-back through Stock Exchange

In addition to the disclosures already mentioned above, the following disclosures shall be made:

i. Date of shareholders' approval for buy back, if applicable;
ii. Minimum and maximum number of securities that the company proposes to buy back, sources of funds from which the buyback would be made and the cost of financing the buy back;
iii. Proposed time table from opening of offer till the extinguishment of the certificates;
iv. Process and methodology to be adopted for the buyback;
v. Brief information about the company;
vi. Audited Financial information for the last 3 years and the lead manager shall ensure that the particulars (audited statement and un-audited statement) contained therein shall not be more than more than 6 months old from the date of the public announcement together with financial ratios as may be specified by the SEBI;

vii. Details of escrow account opened and the amount deposited therein;

viii. Listing details and stock market data:

(a) high, Low and average market prices of the securities of the company proposed to be bought back, during the preceding three years;

(b) monthly high and low prices for the six months preceding the date of the public announcement;

(c) the number of securities traded on the days when the high and low prices were recorded on the relevant stock exchanges during the period stated at(a) and (b) above;

(d) the stock market data referred to above shall be shown separately for periods marked by a change in capital structure, with such period commencing from the date the concerned stock exchange recognises the change in the capital structure (e.g. when the securities have become ex-rights or ex-bonus);

(e) the market price immediately after the date of the resolution of the Board of directors approving the buy back; and

(f) the volume of securities traded in each month during the six months preceding the date of the public announcement along with high, low and average prices of securities of the company, details relating to volume of business transacted should also be stated for respective periods.

ix. Present capital structure (including the number of fully paid and partly paid securities) and shareholding pattern;

x. The capital structure including details of outstanding convertible instruments, if any post buyback;

xi. Aggregate shareholding of the promoter group and of the directors of the promoters, where the promoter is a company and of persons who are in control of the company;

xii. Aggregate number of shares or other specified securities purchased or sold by persons mentioned in clause xi above during a period of twelve months preceding the date of the public announcement; the maximum and minimum price at which purchases and sales referred to above were made along with the relevant dates;

xiii. Management discussion and analysis on the likely impact of buy back on the company's earnings, public holdings, holdings of NRIs/FIIs etc., promoters' holdings and any change in management structure;

xiv. Details of statutory approvals obtained;

xv. Collection and bidding centres;

xvi. Name of compliance officer and details of investors service centres;

xvii. Such other disclosures as may be specified by the Board from time to time by way of guidelines.

<u>Disclosures in the Letter of Offer</u>

The company file with SEBI the letter of offer containing disclosures, within 2 working days from the record date in electronic mode. The issuer company shall work with the merchant banker for such filing and the merchant banker shall ensure that all disclosures are provided as per SEBI requirement. The letter of offer shall contain disclosures most of which finds mention in the

public statement. The disclosures which form part of the letter of offer only have been stated below:

The letter of offer shall be dated and signed on behalf of the Board of Directors of the company by its manager or secretary, if any, and by not less than two directors of the company one of whom shall be a managing director where there is one. The letter of offer shall, inter-alia, contain the following;
i. Disclosures in Schedule IV;
ii. Disclaimer Clause as may be specified by the SEBI;
iii. Record date and ratio of buyback as per the entitlement in each category.

8.3 Role of Merchant Banker in Delisting of Shares

SEBI (Delisting of Equity Shares) Regulations, 2021 apply to delisting of equity shares of a company from all or any of the recognised stock exchanges where such shares are listed. **Provided** that these regulations shall not apply to securities listed without making a public issue, on the Innovators Growth Platform of a recognised stock exchange.

These regulations are also not applicable 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 which shall not be less than the price, at which a promoter or any entity belonging to the promoter group or any other shareholder, directly or indirectly, is provided an exit opportunity: specified in the resolution plan subject to specified conditions(c) the details of delisting of such shares along with the justification for the exit price, shall be disclosed to the recognized stock exchange(s) where the shares are listed within one day of approval of the resolution plan
As per these regulations, before making the public announcement, the acquirer or promoter shall appoint a merchant banker registered with SEBI. It shall be the responsibility of the promoter and the merchant banker to ensure compliance with the provisions as stated by SEBI in its regulations. Also before the public announcement, the acquirer or promoter shall open an escrow account and deposit therein the total estimated amount of consideration calculated on the basis of the floor price and the number of equity shares outstanding with public shareholders. The escrow account shall consist of either cash deposited with a scheduled commercial bank, or a bank guarantee in favour of the merchant banker, or a combination of both. Where the escrow account consists of deposit with a scheduled commercial bank, the promoter shall, while opening the account, empower the merchant banker to instruct the bank to issue banker's cheques or demand drafts for the amount lying to the credit of the escrow account, for the purposes mentioned in these regulations, and the amount in such deposit, if any, remaining after full payment of consideration for equity shares tendered in the offer.

The acquirer or promoter is required to despatch the letter of offer to the public shareholders of equity shares, not later than 2 working days from the date of the detailed public announcement made under regulation 15 of these regulations. The letter of offer shall contain all the disclosures

made in the public announcement and such other disclosures as may be necessary for the shareholders to take an informed decision. The bidding form also needs to be sent along with the letter of offer.

A promoter or a person acting in concert with any of the promoters shall not make a bid in the offer and the merchant banker shall take necessary steps to ensure compliance with this provision. Offer price with respect to delisting is required to be determined by the promoter and the merchant banker taking into account certain factors as specified. Within two working days of closure of the offer, the promoter/acquirer and the merchant banker shall make a public announcement in the same newspapers in which the public announcement was made regarding:
(i) the success of the offer, along with the final price accepted by the acquirer; or
(ii) the failure of the offer; or
(iii) rejection of the final price discovered by the promoters.

8.4 Role of Merchant Bankers in Issue and Listing of Debt Securities

The issue of debt securities is regulated by:

(1) SEBI (Issue and Listing of Debt Securities) Regulations, 2008
(2) Various circulars issued by SEBI
(3) Companies Act, 2013 and Rules framed thereunder
(4) Listing Regulations
(5) RBI Rules and Regulations and
(6) SCRA and SCRR.

The SEBI (Issue and Listing of Debt Securities) Regulations, 2008 applies to -

(a) public issue of debt securities; and

(b) listing of debt securities issued through public issue or on private placement basis on a recognized stock exchange.

The following are the important points to be kept in mind in case of issuance of debt securities[61]:-

(1) Shelf Prospectus can be issued only by a certain category of issuers.
(2) The issuer may decide the amount of minimum subscription which it seeks to raise by issue of debt securities and disclose the same in the offer document. The minimum subscription as stipulated by SEBI is 75% of the base issue size for both NBFCs and Non-NBFCs issuers. Further, if the issuer does not receive minimum subscription of its base issue size (75%), then

st from any shareholder to receive a copy of the letter of o

the entire application monies shall be refunded within stipulated period from the date of the closure of the issue.

(3) Security has to be created within a specified time limit for debt securities which are secured.

(4) Debenture redemption reserve needs to be created[62].

(5) In case of public issue of debt securities, the base issue size should be a minimum of Rs.100 crore.

(6) Issuers are allowed to retain over-subscription money upto a maximum of 100% of the base issue size. In case of issuers filing a shelf prospectus, they can retain oversubscription upto the rated size as specified in their shelf prospectus.

(7) The debt securities may be secured or unsecured instruments subject to other regulatory requirements.

(8) In case of private placement of debt securities, there is a limit on the number of potential investors who can be approached. In the event where this limit is breached, it shall be deemed to be a public issue and all requirements of a public issue shall apply.

As per the Issue and Listing of Debt Securities Regulations, the issuer shall appoint one or more SEBI registered merchant bankers, at least one of whom shall be a lead merchant banker. The issuer and the lead merchant banker has to ensure that the offer document contains all material disclosures which will help the subscribers of the debt securities take informed investment decision. It should include the following:

a) Disclosures specified in Section 26 of the Companies Act, 2013;

b) Disclosures as mentioned in these regulations, viz., memorandum and articles of associations and a copy of the trust deed, copy of the latest audited balance sheet and annual report, statement containing particulars of dates of, and parties to all material contracts and agreements, name and address of the registered office of the issuer and the directors of the issuer etc. The details disclosure list is provided in the schedule I of the SEBI (Issue and listing of debt securities) Regulations, 2008;

c) Additional disclosures as may be specified by SEBI;

(9) In case of public issue of debt securities, online applications are permitted, ASBA facility can be availed by investors and the post issue timelines applicable for public issue of equity shall be applicable.

The Lead Merchant Banker shall ensure that all comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies.

A copy of draft and final offer document shall also be forwarded to SEBI for its records, simultaneously with filing of these documents with designated stock exchange. The lead

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ffer in physical format, the same shall be provided.

(iii) The aforesaid shall be disclosed in the letter of offer.

mpanies (Share Capital and Debentures) Rules, 2014. Under this amendment, the requirement for creation of debenture redemption reserve (DRR) was dispensed with for All India Financial Institutions and banks regulated by the RBI as well as housing finance companies registered with the National Housing Bank with regard to public issue or private placement of debt securities. NBFCs regulated by the RBI and other listed companies are exempted from DRR requirements with regard to public issues only. Similar exemptions have been specified for unlisted companies as well.

merchant banker shall, prior to filing of the offer document with the Registrar of Companies, furnish to SEBI a due diligence certificate as per specifications of this regulations.

Where any person makes a request for a physical copy of the offer document, the same shall be provided to him by the issuer or lead merchant banker. The issuer and lead merchant banker shall ensure that:

(a) every application form issued by the issuer is accompanied by a copy of the abridged prospectus;

(b) the abridged prospectus shall not contain matters which are extraneous to the contents of the prospectus;

(c) adequate space shall be provided in the application form to enable the investors to fill in various details like name, address, etc.

The issuer may determine the price of debt securities in consultation with the lead merchant banker and the issue may be at fixed price or the price may be determined through book building process in accordance with the procedure as may be specified by SEBI.

The following are the important documents relating to debt issues:

Public Issue

(1) Draft Prospectus / Draft Shelf Prospectus
(2) Prospectus / Shelf Prospectus
(3) Tranche Prospectus
(4) Issue Agreement
(5) Escrow Agreement
(6) Debenture Trustee Agreement
(7) Agreement with the Registrars to the Issue
(8) Application Form
(9) Debenture Certificate (in case of allotment in physical mode)
(10) Refund Warrants / stationery
(11) Debenture Trust Deed

Private Placement

(1) Information Memorandum (as per Form PAS-2 prescribed under the Prospectus & Allotment of Securities Rules, 2014)
(2) Offer Letter (as per Form PAS-4 prescribed under the Prospectus & Allotment of Securities Rules, 2014);
(3) Record of Private Placement Offers (as per Form PAS-5 prescribed under the Prospectus & Allotment of Securities Rules, 2014).

The following are the major steps required in case of a public issue of debt securities:-

(1) Approval of the shareholders and the Board of Directors of the issuer company.
(2) Appointment of the SEBI Registered intermediaries such as Merchant Banker(s), Registrars, Debenture Trustee, Bankers to the Issue and Brokers to the Issue.
(3) The Draft Prospectus or the Draft Shelf Prospectus, as applicable, has to be prepared which should contain the disclosures as required by the SEBI Debt Regulations and the Companies Act and has to be filed with the Stock Exchanges. This document is available to the public for comments for a period of seven days.
(4) After the end of the seven day period, the Prospectus or the Shelf Prospectus is prepared after incorporating comments received from the public, if any, adopted by the Board of Directors of the issuer company and filed with the Stock Exchanges and SEBI.
(5) Thereafter the issue opens and remains open for the period as mentioned in the offer document.
(6) After closure of the offer, the Registrar processes the applications and identifies the cases of technical rejections, prepares a basis of allotment and submits the same to the designated stock exchange.
(7) Upon receipt of the approval of the designated stock exchange, the company's Board allots the debt securities.
(8) Thereafter, the registrar completes the process of crediting the debt securities in demat mode, despatch of physical certificates (to those who have opted for allotment in such a mode), despatch of refund orders / credit of refund to the bank accounts of unsuccessful allottees and despatch of intimation of allotment / refund.

Once these activities are completed, the final listing approval and trading permissions are obtained from the stock exchanges.

8.4.1 Obligations of Merchant Banker under Issue and Listing of Debt Securities

Apart from all the above requirements, the obligations of the merchant banker are specifically stated in the regulation.

i. The issuer shall disclose all the material facts in the offer documents issued or distributed to the public and shall ensure that all the disclosures made in the offer document are true, fair and adequate and there is no misleading or untrue statements or mis-statement in the offer document.

ii. The Merchant Banker shall verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the issuer is in compliance with these regulations as well as all transaction specific disclosures as required in the Companies Act, 2013.

iii. The issuer shall treat the applicants in a public issue of debt securities in a fair and equitable manner as per the procedures as may be specified by SEBI.

iv. The intermediaries shall be responsible for the due diligence in respect of assignments undertaken by them in respect of issue, offer and distribution of securities to the public.

v. No person shall employ any device, scheme or artifice to defraud in connection with issue or subscription or distribution of debt securities which are listed or proposed to be listed on a recognized stock exchange.

vi. The issuer and the merchant banker shall ensure that the security created to secure the debt securities is adequate to ensure 100% asset cover for the debt securities.

8.5 Role of Merchant Banker in Share Based Employee Benefits

Share Based Employee Benefits apply to any company whose shares are listed on any recognised stock exchange in India. The Company shall appoint a registered Merchant Banker for the implementation of Share Based Employee Benefits as per the regulations for the implementation of schemes covered by these regulations till the stage of obtaining in-principal approval from the stock exchanges in accordance with clause (b) of regulation 10 of SEBI (share based employee benefits) regulation.

A merchant banker plays a crucial role in Share Based Employee Benefits (SBEB) by providing expert advice, managing the administrative process of issuing shares to employees under schemes like ESOPs (Employee Stock Option Plans), ensuring compliance with regulatory requirements, and facilitating the overall smooth execution of the SBEB program, including valuation of shares and structuring the plan to best suit the company's needs.

8.6 Role of Merchant Banker in cases where exit opportunity is required to be given to dissenting shareholders

Some of the definitions relevant under this section is given below:

“Dissenting shareholders” means those shareholders who have voted against the resolution for change in objects or variation in terms of a contract, referred to in the prospectus of the issuer;

“Frequently traded shares” shall have the same meaning as assigned to it in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

“Relevant date” means date of the board meeting in which the proposal for change in objects or variation in terms of a contract, referred to in the prospectus is approved, before seeking shareholders’ approval.

The promoters or shareholders in control, shall appoint a SEBI registered merchant banker and finalize the exit offer price in accordance with these regulations.

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.

8.7 Role of Merchant Banker in Issue of Securities by Small and Medium Enterprises (SME)

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

Disclosures in the draft offer document and offer document

1) The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.
2) Without prejudice to the generality of sub-regulation (1), the offer document shall contain:
   a) disclosures specified in the Companies Act, 2013; and
   b) disclosures specified in Part A of Schedule VI.
3) The lead manager(s) shall exercise due diligence and satisfy themselves about all aspects of the issue including the veracity and adequacy of disclosure in the draft offer document and the offer document.
4) The lead manager(s) shall call upon the issuer, its promoters and its directors or in case of an offer for sale, also the selling shareholders, to fulfil their obligations as disclosed by them in the draft offer document or offer document, as the case may be, and as required in terms of these regulations.
5) 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 the offer document

1) The issuer shall file a copy of the offer document with SEBI through the lead manager(s), immediately upon filing of the offer document with the Registrar of Companies:
2) SEBI shall not issue any observation on the offer document.
3) The lead manager(s) shall submit a due-diligence certificate as per Form A of Schedule V including additional confirmations as provided in Form G of Schedule V along with the offer document to SEBI.
4) The offer document shall be displayed from the date of filing in terms of sub-regulation (1) on the websites of the Board, the lead manager(s) and the SME exchange(s).
5) The offer documents shall also be furnished to SEBI in a soft copy.

Offer document to be made available to public

1) 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, Board and the SME exchange(s).
2) The lead manager(s) and the SME exchange(s) shall provide copies of the offer document to the public as and when requested and may charge a reasonable sum for providing a copy of the same.

Underwriting by Merchant Bankers and Underwriters

1) The initial public offer shall be underwritten for hundred percent of the offer and shall not be restricted upto the minimum subscription level.
2) The lead manager(s) shall underwrite at least 15% of the issue size on their own account(s).
3) The issuer, in consultation with lead manager(s), shall appoint merchant bankers or stock brokers, registered with the Board, to act as underwriters and may enter into an agreement with the nominated investors indicating therein the number of specified securities which they agree to subscribe at the issue price in case of under-subscription.
4) The lead manager(s) shall file an undertaking to SEBI that the issue has been 100% underwritten along with the list of underwriters, nominated investors and sub-underwriters indicating the extent of underwriting or subscription commitment made by each of them, one day before the opening of issue.
5) If any of the underwriters fail to fulfill their underwriting obligations or the nominated investors fail to subscribe to the unsubscribed portion, the lead manager(s) shall fulfill the underwriting obligations.
6) The underwriters/ sub-underwriters, other than the lead manager(s) and the nominated investors, who have entered into an agreement for subscribing to the issue in case of under-subscription, shall not subscribe to the issue in any manner except for fulfilling their obligations under their respective agreements with the lead manager(s) in this regard.
7) All underwriting and subscription arrangements made by the lead manager(s) shall be disclosed in the offer document.

Minimum Application Value

1) 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.
   Provided that 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 qualified institutional buyers.
2) The minimum application size shall be one lakh rupees per application.
3) The issuer shall invite applications in multiples of the minimum application amount.

4) The minimum sum payable on application per specified security shall at least be 25% of the issue price: Provided that in case of an offer for sale, the full issue price for each specified security shall be payable on application. [63]

Minimum Number of Allottees

No allotment shall be made pursuant to any initial public offer, if the number of prospective allottees is less than fifty.

Market Making

1) The lead manager(s) shall ensure compulsory market making through the stock brokers of the SME exchange(s) appointed by the issuer, in the manner specified by SEBI for a minimum period of three years from the date of listing of the specified securities or from the date of migration from the Main Board (in terms of regulation 276).
2) The market maker or issuer, in consultation with the lead manager(s) may enter into agreements with the nominated investors for receiving or delivering the specified securities in market making, subject to the prior approval of the SME exchange.
3) The issuer shall disclose the details of the market making arrangement in the offer document.
4) The specified securities being bought or sold in the process of market making may be transferred to or from the nominated investors with whom the lead manager(s) and the issuer have entered into an agreement for market making:
   Provided that the inventory of the market maker, as on the date of allotment of the specified securities, shall be at least 5% of the specified securities proposed to be listed on SME exchange.
5) The market maker shall buy the entire shareholding of a shareholder of the issuer in one lot, where the value of such shareholding is less than the minimum contract size allowed for trading on the SME exchange:
   Provided that market maker shall not sell in lots less than the minimum contract size allowed for trading on the SME exchange.
6) The market maker shall not buy the shares from the promoters or persons belonging to the promoter group of the issuer or any person who has acquired shares from such promoter or person belonging to the promoter group during the compulsory market making period.
7) The promoters' holding shall not be eligible for offering to the market maker during the compulsory market making period:
   Provided that the promoters' holding which is not locked-in as per these regulations can be traded with prior permission of the SME exchange, in the manner specified by the Board.

[63] "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.

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

8.8 Role of Merchant Banker in Alternative Investment Funds

'Alternative Investment Fund' or 'AIF' means any fund established or incorporated in India which is a privately pooled investment vehicle which collects funds from sophisticated investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors.

SEBI (Alternative Investment Funds) Regulations, 2012, as amended ("AIF Regulations"), requires Merchant Banker to provide due diligence certificate for placement memorandum for Scheme.

SEBI vide its Circular dated October 21, 2021 provided the framework of the role and responsibilities of Merchant Banker for providing certificate. All AIFs shall launch scheme(s) subject to filing of placement memorandum with SEBI through a SEBI registered Merchant Banker.

Due-diligence and disclosures in placement memorandum

1) The Merchant Banker ("MB") shall independently exercise due diligence of all the disclosures in the placement memorandum
2) MB shall satisfy itself with respect to veracity and adequacy of the disclosures and provide a due diligence certificate

Review Questions

1. Which SEBI Regulation applies to delisting of equity shares of a company from all or any of the recognised stock exchanges where such shares are listed?
   (a) SEBI (Buy-Back of Securities) Regulations, 2018
   (b) SEBI (Issue and Listing of Debt Securities) Regulations, 2008
   (c) SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018
   (d) SEBI (Delisting of Equity Shares) Regulations, 2021

2. The escrow account opened for the purpose of fulfilling delisting requirements shall consist of either cash deposited with a scheduled commercial bank, or a bank guarantee in favour of the merchant banker, or a combination of both. State whether True or False?
   (a) True
   (b) False

3. The issuer and the merchant banker shall ensure that the security created to secure the debt securities is adequate to ensure ____ asset cover for the debt securities.
   (a) 50 percent
   (b) 75 percent
   (c) 80 percent
   (d) 100 percent

4. Department of Economic Affairs handles all matters related to the disinvestment of Government of India shareholding in Central Public Sector Enterprises. State whether True or False.
   (a) True
   (b) False

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