

## INDEX

| Sr. No. | Chapter Name                                       | Pg. No.             |
|---------|--|---------------------|
| 1       | Securities contract Regulation Act 1956            | 1.1 – 1.13          |
| 2       | Securities Exchange Board of India                 | 2.1 – 2.10          |
| 3       | Depositories Act 1996                              | 3.1 – 3.8           |
| 4       | ICDR Regulations 2018                              | 4.1 – 4.18          |
| 5       | LODR 2018  | 5.1 – 5.20          |
| 6       | Takeover code 2011 or SEBI ( SAST) Regulation 2011 | 6.1 – 6.16          |
| 7       | Buy back of securities                             | 7.1 – 7.12          |
| 8       | Delisting of Equity Shares                         | 8.1 – 8.16          |
| 9       | Share based Employee Benefit                       | 9.1 – 9.10          |
| 10      | Issue of Sweat Equity Regulations 2002             | 10.1 – 10.4         |
| 11      | SEBI (Prohibition of Insider Trading) Reg 2015     | 11.1 – 11.8         |
| 12      | Mutual Funds                                       | 12.1 – 12.12        |
| 13      | Collective Investment Scheme                       | 13.1 – 13.4         |
| 14      | SEBI (Ombudsman) Regulation 2003                   | 14.1 – 14.9         |
| 15      | Capital Market                                     | Covered from Module |
| 16      | Capital Market Intermediaries                      | 16.1 – 16.7         |



## Securities (Contract Regulation) Act 1956

### INTRODUCTION

Stock Market plays an integral role in the development of an economy. They provide a platform where people who have surplus money to invest (Investors) meets people who are in need of money (Corporates). It mobilizes funds from Investor to the Companies.

Securities Contracts (Regulation) Act, 1956 was enacted with an intention to prevent undesirable transaction and regulate the working of the Stock Market.

The Act extends to the whole of India and came into force on 20th February, 1957.

### Objective of the Act

The Act was enacted for the following purposes:

- ✓ Prevention of Undesirable Transaction in securities.
- ✓ Regulate the working of Stock Exchange in country.

Providing for certain other connected matters.

### Non-applicability of the Act

The Act shall not apply to:

- i. The Government, the RBI, any local authority or any corporation set up by a special law;
- ii. Any convertible bond or share warrant or any option or right in relation thereto.

### IMPORTANT DEFINITIONS

|                   |  |
|-------------------|--|
| <b>Securities</b> | <b>Securities include:</b> <ul style="list-style-type: none"><li>➤ Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or body corporate.</li><li>➤ Derivative and Security Receipt.</li><li>➤ Units or any other instrument issued by any collective investment scheme.</li><li>➤ Units or any such instrument issued to investors under any mutual fund scheme.</li><li>➤ Government securities.</li><li>➤ Such other instruments as may be declared by CG to be securities.</li><li>➤ Rights or interests in securities.</li></ul> |
| <b>Contract</b>   | Contract means a contract for or relating to the purchase or sale of securities.   |



|  |   |
|--|---|
| <b>Spot Delivery Contract</b>          | <p>A spot delivery contract means a contract which provides for:</p> <p>Actual delivery of securities and the payment of a price either on the same day as the date of the contract or on the next day.</p> <p><b>Note:</b> The actual period taken for the dispatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality.</p> <p>Transfer of the securities by depository from account of beneficial owner to account of another beneficial owner when such securities are dealt with by a depository.</p> |
| <b>Stock Exchange (SE)</b>             | <p><b>Stock Exchange means:</b></p> <p>Any body of individuals, whether incorporated or not, constituted before corporatisation and demutualisation <b>OR</b></p> <p>A body corporate incorporated under the Companies Act, 2013 whether under a scheme of corporatisation and demutualization or otherwise, for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.</p>  |
| <b>Demutualization Sec 4A</b>          | <p>Demutualization refers to the conversion of an existing non-profit organization into a profits-oriented company. In other words, an association that is mutually owned by members converts itself into an organization that is owned by shareholders.</p>  |
| <b>Corporatisation</b>                 | <p>Corporatisation of Stock Exchanges is the process of converting the organizational structure of the stock exchange from a non-corporate structure to a corporate structure. Traditionally, some of the stock exchanges in India were established as "Association of persons", like BSE, ASE etc. Corporatisation of these exchanges is the process of converting them into incorporated companies.</p>   |
| <b>Recognised Stock Exchange (RSE)</b> | <p>Recognised Stock Exchange means a stock exchange which is for the time being recognised by the CG.</p>   |



|                             |   |
|-----------------------------|---|
| <b>Clearing Corporation</b> | <p>A clearing corporation should mandatorily be a company incorporated under Companies Act, 2013.</p> <p><b>It shall carry out the following functions: -</b></p> <ul style="list-style-type: none"><li>a) The periodical settlement of contracts and differences thereunder;</li><li>b) The delivery of, and payment for, securities;</li><li>c) Any other matter incidental to, or connected with, such transfer.</li></ul> <p>Every clearing corporation shall, make bye-laws and submit the same to the SEBI for its approval.</p> <p>SEBI may, on being satisfied that it is in the interest of the trade and also in the interest of public will grant approval to transfer the duties and functions of a clearing house to a clearing corporation.</p> |
|-----------------------------|---|

## RECOGNITION OF STOCK EXCHANGE

### Application to CG

Any stock exchange which is desirous of being recognised for the purposes of this Act may make an application in the prescribed manner to the CG.

Every application shall contain such particulars as may be prescribed, and also a copy of the rules relating in general to the constitution of the stock exchange and in particular to:

- i. The governing body of such stock exchange, its constitution and powers of management and the manner of transacting the business.
- ii. The powers and duties of the office bearers of the stock exchange.
- iii. The admission into the stock exchange of various classes of members, the qualifications and other related matters.
- iv. The procedure for the registration of partnerships as members of the stock exchanges.

### Grant of Recognition to CG

If the CG (currently delegated to SEBI) may grant recognition to the stock exchange if it is satisfied after making such inquiry that:

- ✓ The rules and bye-laws of a stock exchange applying for registration are in conformity with prescribed conditions of investor protection;
- ✓ The stock exchange is willing to comply with any other conditions; and
- ✓ It would be in the interest of the trade and also in the public interest to grant recognition to the stock exchange.

**Note:** Every grant of recognition to a stock exchange under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the stock exchange is situated, and such recognition shall have effect as from the date of its publication in the Gazette of India.

### Withdrawal of Recognition

CG (currently delegated to SEBI) can withdraw the recognition given to a Stock Exchange if it is required to do so in public notice. CG has to serve a notice to such Stock Exchange





and also give opportunity of being heard before giving a notification in the Official Gazette.

**Note:** However, the withdrawal shall not affect the validity of any contract entered into or made before the date of the notification!

### POWERS OF THE CENTRAL GOVERNMENT

|  |   |
|--|---|
| <b>To call for periodical returns and make direct enquiries</b>              | <ul style="list-style-type: none"><li>➤ Every recognised stock exchange shall submit periodical returns relating to its affairs to SEBI.</li><li>➤ SEBI has power to inspect books of accounts and other documents maintained by stock exchanges at all reasonable times.</li><li>➤ <b>Note:</b> Every SE and its members, shall maintain books of accounts, and other documents as prescribed by CG and preserve it up-to 5 years.</li><li>➤ Every stock exchange shall submit a copy of its annual report to the Central Government and to SEBI.</li></ul>  |
| <b>Make Rules or Direct to make Rules for SE</b>                             | <p>CG has power to make rules or direct rules for a particular Stock Exchange or Stock Exchanges in general. CG after consultation with the governing body of the stock exchange can do so if it is necessary.</p> <p>The Stock Exchange have to abide by the directions within 2 months from the date of order.</p>  |
| <b>To Supersede Companies of Stock Exchanges or Suspend Business Thereof</b> | <p>In case the CG is of opinion that the governing body of any recognized stock exchange should be superseded, then,</p> <p><b>The CG may:</b></p> <ol style="list-style-type: none"><li>Serve on the governing body a written notice that the CG is considering the supersession of the governing body for the reasons specified in the notice;</li><li>Give an opportunity to the governing body to be heard in the matter;</li><li>Declare the governing body of such stock exchange to be superseded;</li><li>Appoint any person or persons to exercise and perform all the powers and duties of the governing body; and</li><li>Appoint one of such persons to be the chairman and another to be the vice-chairman thereof.</li></ol> <p><b>Publication of order in Official Gazette:</b></p> <p>The order will get effective only after publication in Official Gazette.</p> <p><b>Effect of such order</b></p> <ul style="list-style-type: none"><li>✓ The members of the governing body shall cease to hold office from the date of notification.</li><li>✓ The person or persons appointed may exercise and perform all the powers and duties of the governing body which has been superseded.</li></ul> |



|   |   |
|---|---|
|   | <ul style="list-style-type: none"> <li>✓ The property of the recognised stock shall vest in such appointed person.</li> </ul>   |
| <b>Suspend Business of Stock Exchange</b>     | <p>CG by giving a notification in Official Gazette can suspend the business of the stock exchange up-to 7 days in case any emergency has arose and CG and CG feels it is necessary to take such step to deal with the situation.</p> <p>The period can be extended in public interest.</p>  |
| <b>Issue Directions</b>                       | <p>CG can issue direction to any -</p> <ul style="list-style-type: none"> <li>✓ Stock exchange; or</li> <li>✓ Clearing corporation;</li> <li>✓ Person or class of persons associated with the securities market;</li> <li>✓ Company whose securities are listed or proposed to be listed in a recognised stock exchange.</li> </ul> <p><b>Conditions;</b></p> <p>CG will issue such directions only if it is:</p> <ul style="list-style-type: none"> <li>✓ In the interest of investors, or development of securities market, OR</li> <li>✓ To prevent the affairs of RSE/Clearing corporation in a manner detrimental to the interests of investors or securities market; OR</li> <li>✓ To secure the proper management of any such party(ies) mentioned above.</li> </ul> |
| <b>To Prohibit Contracts in Certain Cases</b> | <p>CG can prohibit certain types of contracts related to securities to prevent undesirable speculation in a particular State or area. The prohibition can be imposed by notification in the Official Gazette,</p> <p>CG can impose such prohibition only if it is of opinion that it is necessary to do so. All contracts entered in contravention of the provisions after the date of the notification issued thereunder shall be illegal.</p>   |
| <b>To make Rules</b>                          | <p>CG has power to make rules for the purpose of carrying out the objects of this Act. The rules so formed shall be notified in the Official Gazette.</p>   |

## POWERS OF RECOGNISED STOCK EXCHANGE (RSE)

### 1. To make Rules restricting Voting Rights etc.

RSE may make rules or amend any existing rules in order to restrict the Voting Rights of members.

**The rules may be related to following matters:**

- ✓ Only members shall have the voting right in respect of any matter placed before stock exchange at any meeting.
- ✓ Each member shall be entitled to only one vote, irrespective of paid up share capital.
- ✓ Members shall not have a right to appoint a proxy.



- ✓ Matters that are required to give shape to the above three matters.

## **2. To Make Bye-Laws**

Any recognised stock exchange may, subject to the previous approval of SEBI, make bye-laws for the regulation and control of contracts.

### **Penalty on Contravention of Bye-laws of Stock Exchange by Members:**

- ✓ Fine.
- ✓ Expulsion from membership.
- ✓ Suspension from membership for a specified period.
- ✓ Any other penalty of a like nature not involving the payment of money.

## **POWERS OF SEBI**

### **1. Power to make or amend Bye-laws of Recognised Stock Exchanges**

SEBI has power to make or amend bye-laws of a RSE.

#### **Following are the requisites to use this power:**

- ✓ SEBI can use this power suo-motu (on its own) or on a request made by governing body of stock exchange.
- ✓ It can exercise such power if it is satisfied after consultation with the governing body of the stock exchange that it is necessary or expedient to do so.
- ✓ Such bye-laws should be published in the Official Gazette.
- ✓ It will be effective from the date of publication in Official Gazette.
- ✓ It will take effect as if the bye-laws are made by the RSE.
- ✓ The making or the amendment or revision of any bye-laws shall in all cases be subject to the condition of previous publication.

### **Objection by Governing Body**

Where the governing body of a RSE objects to any bye-laws made or amended by SEBI on its own motion, it may, within 2 months of the publication in the Gazette of India apply to SEBI for revision thereof and SEBI may, after giving an opportunity of being heard to the governing matter revise the bye-laws so made or amended.

### **2. Power to make Regulations**

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

### **3. Adjudicating Power**

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

**While carrying out such inspection the adjudicating officer shall have following powers:**

- ✓ To summon and enforce the attendance of any person who may have some evidence documents relevant to the subject matter.



- ✓ He may impose such penalty as he thinks fit in accordance with the provisions of this Act. **While imposing such penalty the adjudicating officer shall consider the following factors:**
- The amount of gain or unfair advantage made.
  - The amount of loss caused to an investor or group of investor.
  - The repetitive nature of the default.

**Note:** SEBI can enhance the punishment in public interest after giving sufficient opportunity of being heard to the party concerned.

### Application for listing & compliance with listing agreement

Every company who desires to get listed on a stock exchange and makes an application for listing shall comply with the conditions of the listing agreement with that stock exchange.

### Refusal by RSE to list the securities

Where a stock exchange refuses to list the securities of any company it shall furnish the reasons for such refusal.

### Appeal against Refusal of Recognised Stock Exchange

The aggrieved company can file an appeal against refusal of the RSE to Securities Appellate Tribunal (SAT).

### Time Limit for filing an appeal

|   |   |
|---|---|
| If Reason for Refusal is received by the Company  | Within 15 days of receipt of order of refusal                                       |
| If Reason for Refusal is not received by the Company  | Within 15 days of expiry of time specified in Section 40 of the Companies Act, 2013 |
| <b>Extension:</b> Extension of 1 month can be granted by SAT if cause of delay is sufficiently explained. |   |

### Disposal of Appeal by SAT

On receipt of application SAT should give an opportunity of being heard to the Stock Exchange thereafter SAT can pass any of the following order:

- ✓ Vary the order
- ✓ Set aside the order
- ✓ Confirm the order

**Note:** SAT shall deal with the appeal as expeditiously as possible and within 6 months.

The Stock Exchange shall act in conformity with the orders of the Securities Appellate Tribunal.



**Appeal against order of SAT**

An aggrieved party can file an appeal to the Supreme Court against the order of SAT within 60 days of receipt of order of SAT. Extension of 60 days can be granted by the Supreme Court if sufficient reason is explained.

**Note:** Appeal to Supreme Court can be filed only on a question of law.

**DELISTING OF SECURITIES**

A RSE may delist the securities of any company after giving reasonable opportunity of being heard to the company. The grounds of delisting should be as per prescribed grounds of the Act.

**Appeal against delisting order**

|                 |  |
|-----------------|--|
| Appeal filed by | - A listed company or<br>- An aggrieved investor   |
| Appealed to     | Securities Appellate Tribunal (SAT)  |
| Time            | Within 15 days from the date of the decision of the RSE.<br>Extension of 1 month can be granted by SAT |

**Disposal of Appeal by SAT**

On receipt of application SAT should give an opportunity of being heard to the Stock Exchange thereafter SAT can pass any of the following order

- ✓ Vary the order
- ✓ Set aside the order
- ✓ Confirm the order

**Note:** SAT shall deal with the appeal as expeditiously as possible and within 6 months.

The Stock Exchange shall act in conformity with the orders of the SAT.

**Appeal against order of SAT**

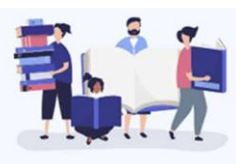
An aggrieved party can file an appeal to the Supreme Court against the order of SAT within 60 days of receipt of order of SAT. Extension of 60 days can be granted by the Supreme Court if sufficient reason is explained.

**Note:** Appeal to Supreme Court can be filed only on a question of law.

If a person fails to pay the penalty imposed, the amount can be recovered by following means:

- ✓ Attachment and sale of the person's movable property;
- ✓ Attachment of the person's bank accounts;
- ✓ Attachment and sale of the person's immovable property;
- ✓ Arrest of the person and his detention in prison;
- ✓ Appointing a receiver for the management of the person's movable and immovable properties.

**Note:** AM penalties realised under the Act shall be credited to the CFI.





**Offences**

|   |   |
|---|---|
| If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations or bye-laws made thereunder, for which no punishment is provided elsewhere. | <b>Imprisonment:</b> Maximum 10 years, <b>OR</b><br><b>Fine:</b> Maximum Rs. 25 Crore or Both                             |
| If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders.   | <b>Imprisonment:</b> Minimum 1 month & Maximum 10 years, <b>OR</b><br><b>Fine:</b> Maximum Rs. 25 Crore<br><b>OR Both</b> |

**Special Note:** The above offences are in addition to the penalties imposed by the Adjudicating Officer.

**Composition of Offences****Following offences can be compounded**

- ✓ Offences punishable with fine only
- ✓ Offences punishable with fine or imprisonment
- ✓ Offences punishable with fine or imprisonment or both

**Following offences cannot be compounded**

- ✓ Offence punishable with imprisonment only, or
- ✓ Offences punishable with imprisonment and also with fine

**Compounding the offences can be done by -**

- ✓ Securities Appellate Tribunal, or
- ✓ Court

**Application for compounding can be filed**

At any time, either before or after the institution of any proceeding.

**Offences by Company**

|   |   |
|---|---|
| Every person who, at the time when the offence was committed, was in charge of, and was responsible to, the company for the conduct of tire business. | Shall be deemed to be guilty of the offence<br>However, any such person shall not be liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. |
| Offence has been committed with the consent or connivance of, or is attributable to any gross negligence on   | Deemed to be guilty of that offence.  |





|   |  |
|---|--|
| the part of any director, manager, secretary or other officer of the company. |  |
|---|--|

## MISCELLANEOUS

### Establishment of Special Court

- ✓ The CG may establish Special Courts for the purpose of providing speedy trial of offences under this Act.
- ✓ **Composition:** A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.
- ✓ **Qualification:** He should be Sessions Judge or an Additional Sessions Judge.

### Entitlement to Dividend

**General Rule (Transferor Right):** Right to retain and receive dividend lies in the hands of the registered holder of shares even if he has transferred the shares for consideration to transferee.

**Exception Rule (Transferee Right):** Right to get dividend will shift to transferee of securities if the transferee has lodged all the documents required for making the transfer of security **within 15 days** of the due date of dividend.

### Extension of time can be granted as follows:

| Particulars   | Extension  |
|---|--|
| In case of death of the transferee  | Actual period taken by his legal representative to establish his claim to the dividend |
| In case of loss of the transfer deed by theft or any other cause beyond the control of the transferee | Actual period taken for the replacement of transfer deed                               |
| In case of delay caused due to post   | Actual period of delay   |

**Special Note:** This section will be applicable also in case of income declared by collective investment scheme or mutual funds.

### Listing of Securities

Listing of securities with stock exchange is a matter of great importance for companies and investors as it provides the liquidity to the securities in the market. The prices at which the securities are traded in the stock exchange are published in the News Papers.

A public company wishes to get its securities listed on a RSE, shall apply to the stock exchange for listing of securities along with the following documents and particulars: -

- a) MOA and AOA and a copy of debenture trust deed in case of issue of debenture.



- b) Copies of prospectus or statements in lieu of prospectus issued by the company at any time.
- c) Copies of offers for sale and circulars or advertisements offering any securities for subscription or sale during the last 5 years.
- d) Copies of balance sheets and audited accounts for the last 5 years, or in the case of new companies, for such shorter period for which accounts have been made up.
- e) A statement showing:
  - i. Dividends and cash bonuses, if any, paid during the last 10 years (or such shorter period as the company has been in existence, whether as a private or public company);
  - ii. Dividends or interest in arrears, if any.
- f) Certified copies of agreements or arrangements with or between:
  - 1. Vendors and/or promoters;
  - 2. Underwriters and sub-underwriters;
  - 3. Brokers and sub-brokers.
- g) Certified copy of every letter, report, balance sheet, valuation contract, court order or other document, part of which is reproduced or referred to in any prospectus, offer for sale, circular or advertisement offering securities for subscription or sale, during the last five years.
- h) A statement containing particulars of the dates of, and parties to all material contracts, agreements (including agreements for technical advice and collaboration), concessions and similar other documents (except those entered into in the ordinary course of business carried on or intended to be carried on by the company) together with a brief description of the terms, subject-matter and general nature of the documents.
- i) A brief history of the company since its incorporation giving details of its activities including any reorganization, reconstruction or amalgamation, changes in its capital structure (authorised, issued and subscribed) and debenture borrowings.

**Minimum offer & allotment to public**

| Post Issued Capital Size                  | Minimum offer to public   |
|---|---|
| Up-to Rs. 1600 Crore                      | At least 25% of each class or kind of equity shares or debenture convertible into equity shares issued by the company.  |
| Above Rs. 1600 Crore up-to Rs. 4000 Crore | At least such percentage of each class or kind of equity shares or debentures convertible into equity shares issued by the company which is equivalent to the value of Rs. 400 Crore. |
| Above Rs. 4000 Crore                      | At least 10% of each class or kind of equity shares or debentures convertible into equity shares issued by the company.   |

**Special Note:** Further a company, referred above in Case II and Case III shall increase its public shareholding to at least 25%, within 3 years from the date of listing of the securities, in the manner specified by SEBI.

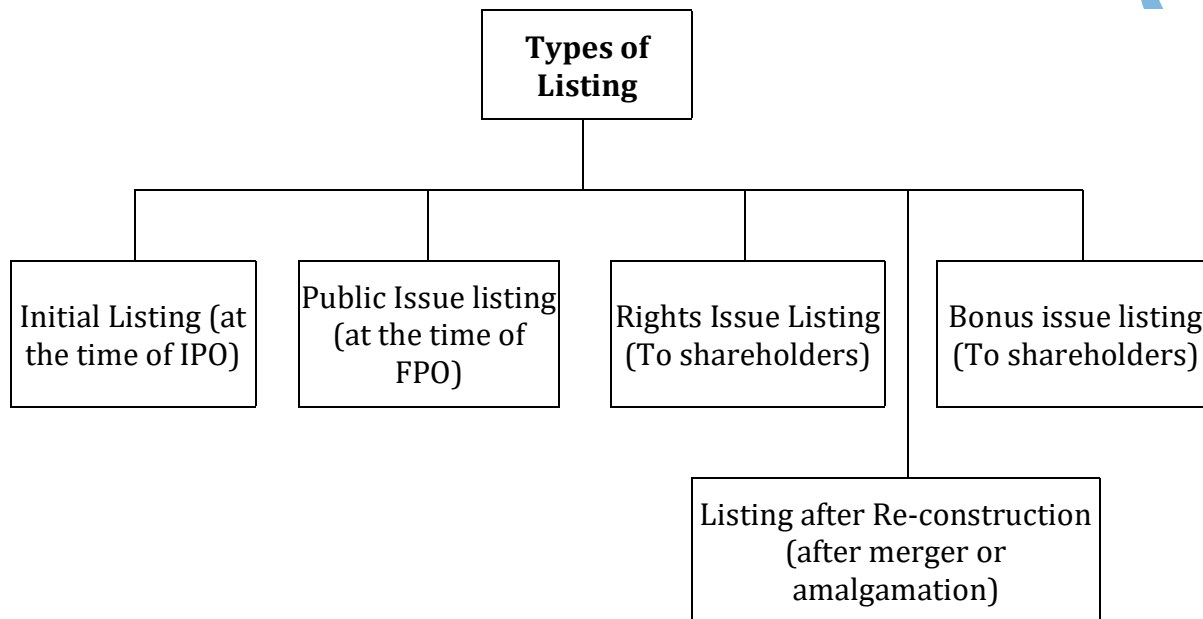


### Application for listing of new securities

- 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 is already listed on a RSE.

### Types of Listing

Listing of securities falls under 5 groups



- **Initial Listing:** If the shares or securities are to be listed for the 1<sup>st</sup> time by a company on a stock exchange is called initial listing.
- **Listing for Public Issue:** When a company whose shares are listed on a SE comes out with a public issue of securities, it has to list such issue with the SE.
- **Listing for Rights Issue:** When companies whose securities are listed on the SE issue securities to existing shareholders on rights basis, it has to list such rights issues on the concerned SE.
- **Listing of Bonus Shares:** Shares issued as a result of capitalization of profit through bonus issue shall list such issues also on the concerned SE.
- **Listing for Merger or Amalgamation:** When new shares are issued by an amalgamated company to the shareholders of the amalgamating company, such shares are also required to be listed on the concerned SE.

### Multiple Listing

A company with a paid-up capital of over Rs. 5 crores should list its securities or have its securities permitted for trading, on at least one SE having nationwide Trading Terminals.

Multiple listing provides arbitrage opportunities to the investors, whereby they can make profit based on the difference in the prices prevailing in the said exchanges.

### Benefits of Listing

The following benefits are available when securities are listed by a company in the SE

- (i) Public image of the company is enhanced.



- (ii) The liquidity of the security is ensured making it easy to buy and sell the securities in the SE.
- (iii) Tax concessions are made available both to the investors and the companies,
- (iv) Listing procedure compels company management to disclose important information to the investors enabling them to make crucial decisions with regard to keeping or disposing of such securities.
- (v) Listed companies command better support such as loans & investments from Banks & FIs.

### **Suspension or Withdrawal of admission to dealings in securities on stock exchange**

A RSE may suspend or withdraw admissions to dealing in securities of a company.

#### **Reason for Withdrawal**

- ✓ Breach/Non-compliance of conditions
- ✓ Any other reason, to be recorded in writing

#### **Important Highlights**

- ✓ Before such suspension/withdrawal company should be given a reasonable opportunity of being heard and show cause notice.
- ✓ If the period of suspension exceeds 3 months' company may prefer an appeal to SAT.
- ✓ SAT after giving opportunity of being heard can set aside, confirm or vary the decision of Stock Exchange.
- ✓ The order of SAT shall be a binding on Stock Exchange.

### **Delisting of securities on stock exchange**

A RSE may delist any securities listed on it

#### **Grounds of Delisting**

- ✓ The company has incurred losses during the preceding 3 consecutive years and it has negative networth.
- ✓ Trading in the securities of the company has remained suspended for a period of more than 6 months.
- ✓ Securities of the company have remained infrequently traded during the preceding 3 years.
- ✓ The company or any of its promoters or any of its directors has been convicted under this Act, SEBI Act and Depositories Act.
- ✓ Company is unable to maintain the minimum public shareholding.

Before delisting company should be given a reasonable opportunity of being heard and show cause notice.







**CS Praveen Choudhary**  
**CS Executive New Syllabus**

**FLAT 50% OFF**  
**All Law Subjects**  
**(CLAW, SBEC, JIGL, SLCM, EBCL)**

**Call @ 7744859960 / 7276368299**

[Click Here to Buy / Watch Demo](#)



## Securities Exchange Board of India

### INTRODUCTION

SEBI is a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable and to contract, sue and be sued in its own name.

Its Head Office is at Mumbai and is empowered to establish its offices at other places in India. SEBI presently has offices also in Ahmedabad, Jaipur, Kolkata, Guwahati, Bhubaneswar, New Delhi, Chennai and Bengaluru.

### OBJECTIVE OF SEBI

- i. Protecting the interests of investors in securities;
- ii. Promoting the development of the securities market; and
- iii. Regulating the securities market.

### COMPOSITION OF SEBI

- i. A Chairman;
- ii. 2 members from Ministry of Central Government dealing with finance & administration of the Companies Act, 2013;
- iii. 1 member from the Reserve Bank of India;
- iv. 5 other members of whom at least 3 shall be the whole-time members.

### FUNCTIONS OF SEBI

#### Powers and Functions of SEBI

It is the duty of SEBI to take such measures for the protection of the interest of the investors and promoting the development of the securities market.

#### These measures include:

- i. Regulating the Business in Stock Exchanges and any other securities market;
- ii. Registering and Regulating the work of the Intermediaries;
- iii. Registering and Regulating the work of the Depositories, Participants, FIIs and Credit Rating Agencies;
- iv. Registering and Regulating the work of the Venture Capital Funds and Collective Investment Schemes;
- v. Prohibiting the Unfair and Fraudulent Trade Practices;
- vi. Prohibiting the Insider Trading in Securities;
- vii. Regulating Substantial Acquisition of Shares and Takeover of Companies;
- viii. Calling for any required Information, undertaking Inspections and conducting Inquiries and Audits of the Stock Exchanges;
- ix. Levying Fees and other charges for carrying out the purposes of this section;
- x. Conducting Research for above purposes;
- xi. Performing any other function as may be prescribed.

#### SEBI has been vested with the same powers as that of a Civil Court

- i. The discovery and production of books of accounts and other documents;
- ii. Summoning and enforcing the attendance of persons and examining them on oath;





- iii. Inspection of books, registers and other related instruments of intermediaries;
- iv. Issuing commissions for the examination of the witnesses or documents.

### **Power to Issue Directions**

The SEBI has the power to prohibit any company from issuing any offer document in the interest of the investors. If SEBI is satisfied after making inquiries that it is necessary.

### **In the interest of the investors**

- i. To prevent the activities of any intermediary;
- ii. To secure proper management of such intermediary.

### **It may issue such directions, as may be necessary to**

- a) Any person or class of persons;
- b) To any company for the matters relating to issue of capital, transfer of securities, etc.

### **Investigations**

- i. If SEBI has reasonable grounds to believe that:
  - ✓ Any matter connected with the securities market is being dealt with in such a way that it is detrimental to the interest of investors, it may direct an investigation;
  - ✓ Any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations.
- ii. It is the duty of any authorized person of the company and every intermediary to produce necessary documents before the investigating authority.
- iii. The investigating authority has the right to keep any books, registers, other documents and records for 6 months in his custody.

### **Cease and Desist Proceedings**

If, in the opinion of the Board, any person has violated or is likely to violate any of the provisions, rules or regulations of the Act, it may pass an order requiring such person to cease and desist from committing such action.

### **Consent Orders**

It means an order settling administrative or civil proceedings between the regulator and a person who may be found to have violated securities laws.

In simple terms, consent order in relation to SEBI, it is an out-of-court settlement order between regulator and a company which has violated the prescribed rules as mentioned in SEBI Act.

It provides flexibility of wider array of enforcement and remedial actions which will achieve the twin goals of:

- i. Appropriate sanctions;
- ii. Remedies & deterrence without resorting to litigation, lengthy proceedings and delays.



**PENALTIES**

| Default/Failure  | Section | Punishment   |
|--|---------|--|
| Failure to furnish any Document, Return or Report to the Board   | 15A     | Penalty of Rs. 1 Lakh for each day of failure or Rs. 1 Cr, (w.i.l) |
| To file any return which was required to be filed under the Act  |         |  |
| Failure to maintain Books of Accounts or Records   |         |  |
| Any person who is registered as an Intermediary and is required to enter into an agreement with his client, fails to enter into such agreement | 15B     |  |
| If a Company or any Intermediary fails to redress investors grievances   | 15C     |  |
| If Mutual Fund or CIS failed to obtain certificate of registration from SEBI   | 15D     |  |
| If Mutual Fund or CIS failed to comply with conditions of certificate of registration  |         |  |
| Failure to make an Application for Listing of the Schemes by Mutual Fund or CIS  |         |  |
| Failure by Mutual Fund or CIS to dispatch unit Certificate of any Schemes by Mutual Fund or CIS  |         |  |
| Failure by Mutual Fund or CIS to Refund Application Monies of Investors of a CIS   |         |  |
| Failure by Mutual Fund or CIS to invest the Money as decided   |         |  |



| Penalty for failure to observe rules and regulations by an asset management company   | 15E     |  |
|---|---------|--|
| Default/Failure   | Section | Punishment   |
| If a stock broker fails to deliver any security or fails to make payment of the amount due to the investor within the period specified in the regulations | 15F     | Rs. 1 Lakh or 5 times the amount of brokerage charged in excess of the specified brokerage, (w.i.h)                      |
| If charges an amount of brokerage which is in excess of the brokerage specified in the regulations  |         |  |
| Offence related to Insider Trading  | 15G     | Minimum: Rs. 10 Lakh<br>Maximum: Penalty of Rs. 25 Cr or 3 times profit made out of insider trading, whichever is higher |
| Offence related to Non-Disclosure of Acquisition of Shares and Takeovers  | 15H     | Minimum: Rs. 10 Lakh<br>Maximum: Penalty of Rs. 25 Cr or 3 times profit made out of insider trading, (w.i.h)             |
| Penalty for fraudulent and unfair trade practices   | 15HA    | Minimum: Rs. 5 Lakh<br>Maximum: Rs. 25 Cr or 3 times the amount of profits made out of such practices, (w.i.h)           |
| Penalty for contravention where no separate penalty has been provided   | 15HB    | Minimum: Rs. 1 Lakh<br>Maximum Rs. 1 Crore   |

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

### Adjudicating Power

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



**While carrying out such inspection the adjudicating officer shall have following powers:**

- ✓ To summon and enforce the attendance of any person who may have some evidence documents relevant to the subject matter.
- ✓ He may impose such penalty as he thinks fit in accordance with the provisions of this Act.

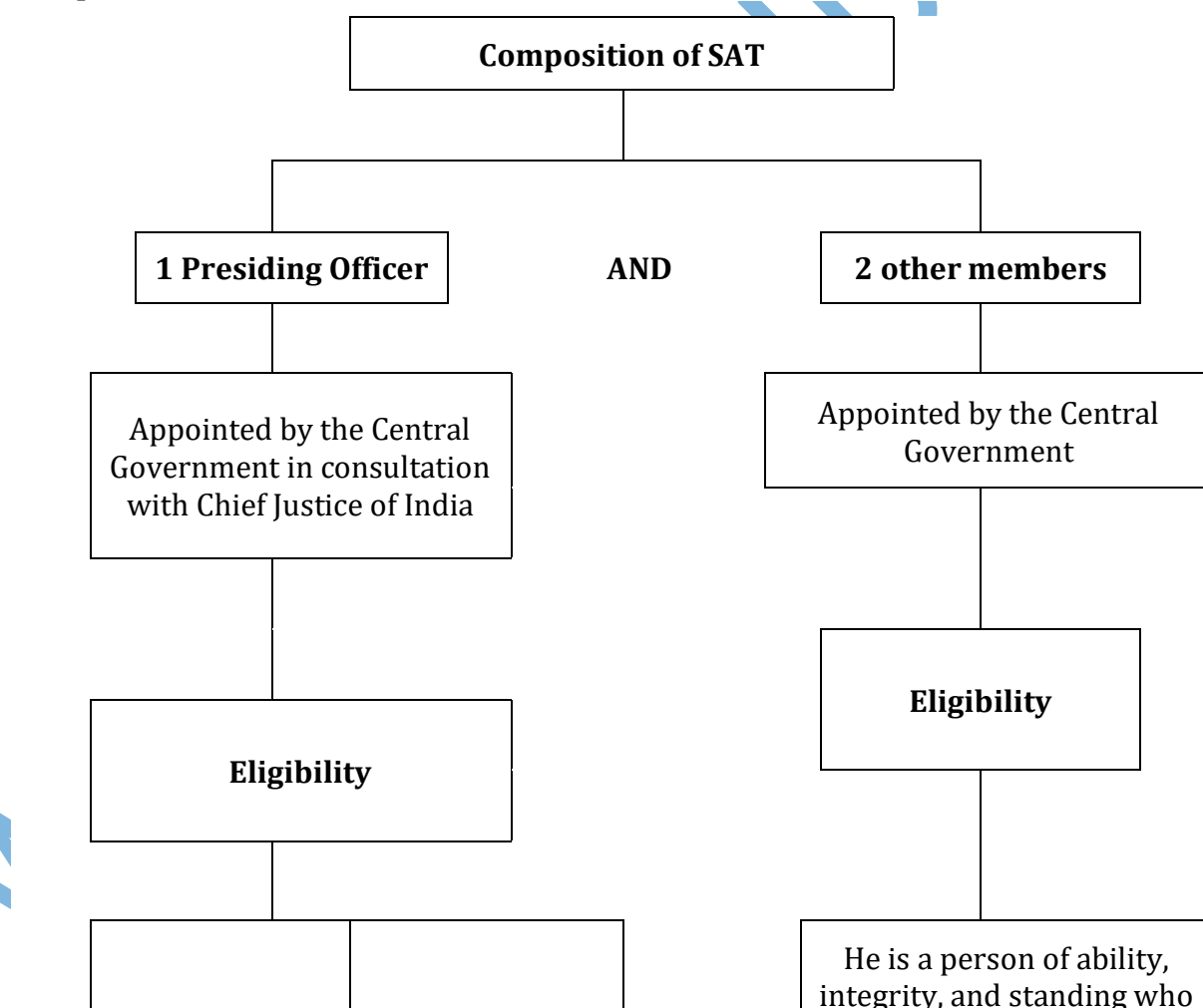
**While imposing such penalty the adjudicating officer shall consider the following factors:**

- i. The amount of gain or unfair advantage made.
- ii. The amount of loss caused to an investor or group of investor.
- iii. The repetitive nature of the default.

### SECURITIES APPELATE TRIBUNAL (SAT)

The CG is empowered to establish by notifications one or more Appellate Tribunals, to be known as the SAT. SAT will accept appeals against the SEBI order.

#### Composition



|   |    |  |    |  |    |   |
|---|----|--|----|--|----|---|
| He is a sitting or retired Judge of the Supreme Court | OR | He is a sitting or retired Chief Justice of a High Court | OR | He is a sitting or retired Justice of a High Court having min 7 years experience | OR | has shown capacity in dealing with problems relating to securities market and has qualification and experience of corporate law, securities laws, finance, economics or accountancy |
|---|----|--|----|--|----|---|

**Note:**

1. The proceedings of the SAT will not be invalidated in any manner on the ground merely of any defect in the constitution of a Securities Appellate Tribunal. <sup>2</sup>
2. Presiding Officer and other officers and employees of Securities Appellate Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

**Tenure of SAT Officials**

|                   |   |
|-------------------|---|
| Presiding Officer | 5 years or attainment of 68 years whichever is earlier (reappointment possible) |
| Other Member      | 5 years or attainment of 62 years whichever is earlier (reappointment possible) |

**Appeal to SAT**

Any person aggrieved by the decision of the RSE or adjudicating officer or any order of SEBI may appeal to **SAT within 45 days** of receiving the order. SAT may grant extended time if satisfied.

**Disposal of Appeal by SAT**

On receipt of application SAT should give an opportunity of being heard to the parties thereafter SAT can pass any of the following order

- ✓ Vary the order
- ✓ Set aside the order
- ✓ Confirm the order

**Note:** SAT shall deal with the appeal as expeditiously as possible and within 6 months.

**Appeal against order of SAT**

An aggrieved party can file an appeal to the Supreme Court against the order of SAT within 60 days of receipt of order of SAT. Extension of 60 days can be granted by the Supreme Court if sufficient reason is explained.

**Note:** Appeal to Supreme Court can be filed only on a question of law.

**Procedure in SAT**

- ✓ SAT is not bound by the procedure laid down by the CPC, 1908



- ✓ It shall be guided by the principles of natural justice
- ✓ It will be bound by provisions of this Act and of any rules
- ✓ The provisions of the Limitations Act, 1963 shall apply to an appeal made to SAT

### **Powers of SAT**

The SAT shall have the same powers as are vested in a Civil Court under the CPC, 1908, while trying a suit, in respect of the following matters, namely:

- ✓ Summoning and enforcing the attendance of any person and examining him on oath;
- ✓ Requiring the discovery and production of documents;
- ✓ Receiving evidence on affidavits;
- ✓ Issuing commissions for the examination of witnesses or documents;
- ✓ Reviewing its decisions;
- ✓ Dismissing an application for default or deciding it ex parte-,
- ✓ Setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- ✓ Any other matter which may be prescribed.

**Note:** No civil court has jurisdiction to entertain any suit or proceeding in respect of any matter which is taken up by SAT.

### **Appeal to Supreme Court**

- ✓ 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.
- ✓ Appeal can be on any question of fact or law arising out of such order.
- ✓ **Extension of 60 days** can be granted if sufficient cause for delay is explained.

### **POWERS OF CENTRAL GOVERNMENT**

#### ➤ **To Issue Directions:**

The CG has the power to issue directions in writing to SEBI on question of policy as it may deem fit from time to time.

#### ➤ **To Supersede the Board:**

- ✓ The CG has the power to supersede the SEBI after the satisfaction of necessary conditions and by notification in the Official Gazette
- ✓ Maximum period for which CG can supersede SEBI is 6 months.
- ✓ The CG can exercise its power in following circumstances: -
  - a) On account of grave emergency when SEBI is unable to discharge its functions and duties.
  - b) SEBI has persistently made default in complying with any direction issued by CG or did not discharged its functions and duties imposed.
  - c) In the public interest.
- ✓ Effect of Supersession:
  - The members shall vacate their office from the date of supersession;
  - All the powers, functions and duties which may of the Board will be discharged by such person or persons as the CG may direct; and
  - All property owned or controlled by SEBI shall vest in the CG until SEBI is reconstituted.





**➤ To grant immunity:**

- ✓ CG may grant immunity to any person who is alleged to have violated any of the provisions of this Act.
- ✓ Such immunity will be granted if the person has made a full and true disclosures in respect of alleged violations and fulfilled other conditions.
- ✓ Such immunity be granted only if recommended by SEBI.
- ✓ No such immunity shall be granted by the CG if the proceedings for the prosecution for offence have been instituted before the date of receipt of application for grant of such immunity.
- ✓ An immunity granted to a person can be withdrawn if CG is satisfied that the person has not complied with the condition on which the immunity was granted.

**OFFENCES**

|   |   |
|---|---|
| If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations or bye-laws made thereunder, for which no punishment is provided elsewhere. | <b>Imprisonment:</b> Maximum 10 years, <b>OR</b><br><b>Fine:</b> Maximum Rs. 25 Crore or Both                   |
| If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders.   | <b>Imprisonment:</b> Minimum 1 month & Maximum 10 years, <b>OR</b><br><b>Fine:</b> Maximum Rs. 25 Crore or Both |

**Special Note:** The above offences are in addition to the penalties imposed by the Adjudicating Officer.

**Composition of Offences****Following offences can be compounded**

- ✓ Offences punishable with fine only
- ✓ Offences punishable with fine or imprisonment
- ✓ Offences punishable with fine or imprisonment or both

**Following offences cannot be compounded**

- ✓ Offence punishable with imprisonment only, or
- ✓ Offences punishable with imprisonment and also with fine

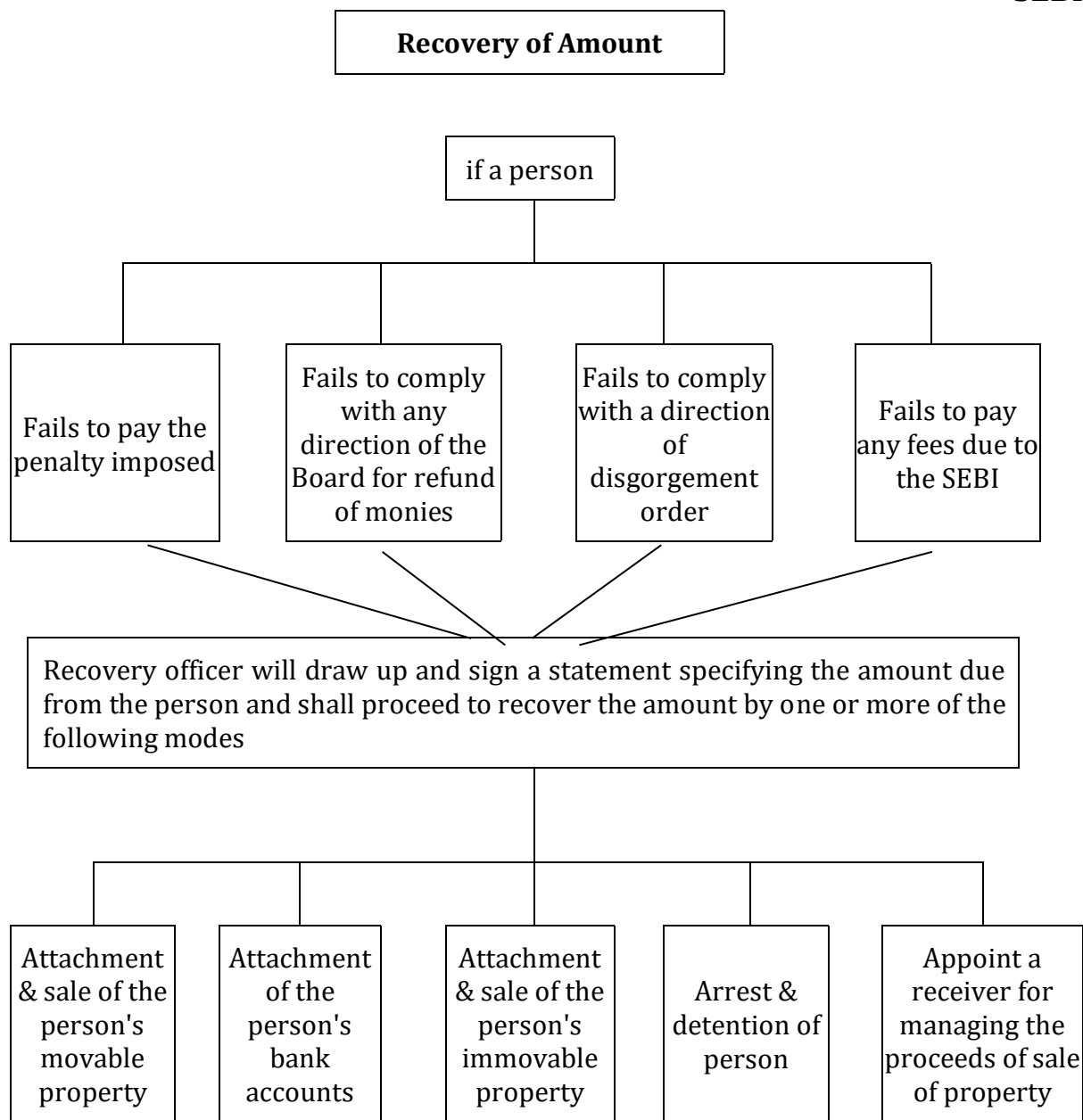
**Offences by Company**

|  |  |
|--|--|
| Every person who, at the time when the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business. | Shall be deemed to be guilty of the offence.<br>However, any such person shall not be liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that |
|--|--|



|   |   |
|---|---|
|   | he exercised all due diligence to prevent the commission of such offence. |
| Offence has been committed with the consent or connivance of, or is attributable to any gross negligence on the part of any director, manager, secretary or other officer of the company. | Deemed to be guilty of that offence.                                      |





**"Recovery Officer"** means any officer of SEBI, authorized by general or special order in writing, to exercise the powers of a Recovery Officer.

## MISCELLANEOUS

### Establishment of Special Court

- ✓ The CG may establish Special Courts for the purpose of providing speedy trial of offences under this Act;
- ✓ **Composition:** A Special Court shall consist of a single judge who shall be appointed by the CG with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.
- ✓ **Qualification:** He should be Sessions Judge or an Additional Sessions Judge.
- ✓ **Triable Offences:** All offences punishable under this Act are triable at Special Courts.



### Delegation of Powers

SEBI has the power to delegate its powers to any member, officer of the Board or any other person as it may be necessary.

### Appeal to the Central Government

Any person aggrieved by the order of SEBI shall prefer an appeal to the CG within such time made under prescribed form and manner.

### Role of a Company Secretary

1. **Right to Legal Representation:** Any person aggrieved (the appellant) may either appear in person or authorise one or more CA or PCS or cost accountants or legal practitioners or any of its officers to present his or its case before the SAT.
2. **Compliance Officer:** SEBI also recognises the CS as the Compliance Officer of the company
3. **Certification by Practicing Company Secretary (PCS):** PCS can issue various certificates including corporate governance in case of listed companies.





**CS Praveen Choudhary**  
**CS Executive New Syllabus**

**FLAT 50% OFF**  
**All Law Subjects**  
**(CLAW, SBEC, JIGL, SLCM, EBCL)**

**Call @ 7744859960 / 7276368299**

[Click Here to Buy / Watch Demo](#)





# Depositories Act, 1996

## INTRODUCTION

1. The Depositories Act, 1996 has introduced the system of depositories in India. It has come into force with effect from **20<sup>th</sup> September, 1995**.
2. A depository is an organisation where the securities of an investor are held in **the electronic form** at his request through the medium of a **Depository Participant (DP)**.
3. If the investor wants to utilize the services offered by a Depository, the investor has to open a beneficiary account with the Depository through a DP.
4. DP is the representative or agent in the depository system and it maintain the investor's securities account balances and intimates to him the status of his holdings from time to time. The investor can open accounts with one or more DPs.
5. When a person buys any security e.g. shares and debentures already in the depository the buyer will become owner of the said security in the depository within a day of settlement being made / completed.
6. The buyer is not required to apply to the company for registering the security in his name. Dematerialisation is the process by which physical share certificates are converted into electronic entries.
7. Rematerialisation is the process by which electronic holdings are converted back into certificates. The investor has to pay charges to the Depository and the DP for opening of account and also for every transaction in the account.

## Definition and Meaning of Depository [Section 2(e)]

"Depository means a company formed and registered under the Companies Act, 2013 and which has been granted a certificate of registration under Section 12(1A) of the Securities and Exchange Board of India Act, 1992".

There are two depository players in the market i.e., **National Securities Depository Limited (NSDL)** and **Central Depository Service (India) Limited (CDSL)**.

**Central Depository Services (India) Limited**  
Convenient • Dependable • Secure

**Demat.... Go Green**

**Announcement** | **Foreign Portfolio Investors Statistics** | **e-KYC** | **MyEasiWill**

| CDSL Update as on Dec 31, 2016 |      | Demat Custody          |             |
|--------------------------------|------|------------------------|-------------|
| Live Companies                 | 9734 | Quantity (in Million)  | 2,55,277    |
| Depository Participants        | 584  | Value (INR in Million) | 1,52,83,768 |

**Quick Links**

- Login to - MyEasi
- Login to - CAS
- Login to - DDP
- Register - Training
- How to Open Your Demat Account ?
- List of CDSL DPs
- Communiqués
- Rajiv Gandhi Eq. Savings Sch. (RGESS)
- Trade Repository
- Regulatory Orders
- Corporate Bonds
- CDSL MyEasi App

**Why CDSL?**  
State-of-the-art technologies ensure that CDSL is always convenient.

**What's New?**  
2016

- Trade Repository
- CDSL wins Dell EMC Award 2016





### Definition and Meaning of Depository Participant

Depository Participant (DP) is the agent of the depository and is the interface between the depository and the investor. According to SEBI Guidelines, financial institutions, banks, custodians, stock brokers etc. can become depository participants.

Stock Holding Corporation of India Limited (SHCIL) is the first depository participant in India registered with NSDL.

Besides **SHCIL**, a number of new and private and foreign banks like Times Bank, HDFC Bank, ICICI Bank, **IDBI Bank**, **Hong Kong Bank**, **Standard Chartered Bank** are providing shares depository services to its customers from its various branches.

#### LIST OF QUALIFIED DEPOSITORY PARTICIPANTS(QDPs)

| CDSL    |   |            |                                |
|---------|---|------------|--------------------------------|
| SR. NO. | DP  | DEPOSITORY | DATE OF APPROVAL TO ACT AS QDP |
| 1       | INDIA INFOLINE LIMITED                            | CDSL       | December 20, 2011              |
| 2       | ORBIS FINANCIAL CORPORATION LIMITED               | CDSL       | February 29, 2012              |
| 3       | IL&FS SECURITIES SERVICES LIMITED                 | CDSL       | March 15, 2012                 |
| 4       | GLOBE CAPITAL MARKET LIMITED                      | CDSL       | March 15, 2012                 |
| 5       | STOCK HOLDING CORPORATION INDIA LIMITED           | CDSL       | March 22, 2012                 |
| 6       | GEOJIT BNP PARIBAS FINANCIAL SERVICES LIMITED     | CDSL       | March 29, 2012                 |
| 7       | SMC GLOBAL SECURITIES LTD                         | CDSL       | March 29, 2012                 |
| 8       | DALMIA SECURITIES PRIVATE LIMITED                 | CDSL       | March 29, 2012                 |
| 9       | J M FINANCIAL SERVICES PRIVATE LIMITED            | CDSL       | April 23, 2012                 |
| 10      | HDFC BANK LIMITED                                 | CDSL       | June 6, 2012                   |
| 1       | KOTAK MAHINDRA BANK LIMITED                       | NSDL       | October 25, 2011               |
| 2       | HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED | NSDL       | November 7, 2011               |
| 3       | DEUTSCHE BANK A.G.                                | NSDL       | November 23, 2011              |
| 4       | CITIBANK N.A.                                     | NSDL       | November 23, 2011              |
| 5       | SBI-SG GLOBAL SECURITIES SERVICES PVT LIMITED     | NSDL       | December 12, 2011              |
| 6       | INDIA INFOLINE LIMITED                            | NSDL       | December 12, 2011              |

### Advantages of Holding Securities In The Electronic Mode

- No stamp duty on transfers.
- Faster delivery and fund settlement
- Odd lot- trading is possible in any lot.
- Eliminates risks associated with physical deliveries such as loss theft, forgery etc.
- Eliminates handling of large volumes of paper
- Facilitates pledge and hypothecation.

### Opening a Beneficiary Account

The procedure for opening a beneficiary account is as under:-

- Fills up account opening form and submits photographs of each signatory.
- Signs agreement with DP.
- DP intimates Account No.



- Investor to quote Account No. in all correspondence with DP.

### Procedure to Pledge or Hypothecation of Securities

- If a beneficial owner intends to create a pledge/hypothecation on a security owned by him, he shall make an application to the Depository through his Depository Participant.
- The Depository, after confirmation from the pledgee (pawnee) that the securities are available for pledge with the pledger (pawner), shall, within 15 days of the receipt of application, create and record the pledge and send the information of the same to Depository Participants of pledger and the pledgee.
- On receipt of intimation, the Depository Participants of both the pledger and the pledgee shall inform the pledger and the pledgee respectively of the entry of creation of pledge/hypothecation.
- The entry of pledge/ hypothecation made may be cancelled by the Depository if the pledger or pledgee makes an application to the Depository through their Depository Participants.
- It may be noted that if the application for cancellation of the entry of pledge has been made by the pledger, then it shall be cancelled by Depository only with the prior concurrence (agreement) of the pledgee.

### Dematerialisation

The procedure for dematerialization is as under:-

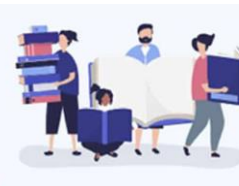
- Submits dematerialization request form (DRF) along with the share certificates (transferred in the name of the investor).
- Deface share certificates as "surrendered for dematerialization".
- DP electronically transmits DRF to the depository.
- DP sends the share certificates and physical DRF to the RTA / Company.
- Depository electronically transmits the demat request to the RTA / Company.
- RTA/Company checks authenticity of request and confirms to Depository.
- Investor's account with DP is credited.
- DP sends Statement of Transaction to the investor.

### Rematerialisation

is the process by which electronic holdings are converted back into Physical certificates.

Procedure for rematerialisation of securities is as follows:-

- The beneficial owner **sends the request** in rematerialisation request form (**RRF**) to DP.
- DP **intimates the Depository** of such request electronically.
- Depository **confirms the rematerialisation** request to the RTA/ Company.
- RTA/Company **update account** and **prints certificates** and confirm the Depository.
- Depository **updates account** and download the details to DP.
- RTA/Company **dispatches the certificates** to the holder thereof.
- DP also sends the **intimation about rematerialisation** to its client.



**Difference between D.P and Depositories**

|      | <b>Basis</b> | <b>Depository Participant</b>                 | <b>Depositories</b>                                       |
|------|--------------|---|---|
| i)   | Intermediary | Between Beneficial owner (B.O) & Depositories | Between company & D.P                                     |
| ii)  | Agent        | D.P is an agent of B.O                        | Depositories is an agent of company                       |
| iii) | Deal         | Dealing of shares through D.P                 | No direct dealing through Depositories                    |
| iv)  | Branch       | lots of branches                              | Only 2 branches in India                                  |
| v)   | System       | D.P is a component of system of Depositories  | Depositories is a system to facilitate electronic trading |
| vi)  | Registration | D.P only register with SEBI                   | Registered as well as required COBC                       |

**Secretarial Audit**

- SEBI has issued a circular on 31st Dec 2002 that all the issuer companies must immediately subject themselves to a Secretarial Audit.
- This circular provides for reconciliation of total shares of a company held in NSDL, CDSL and physical form by the shareholders with the total issued and listed capital of the company.
- Thus every listed company is required to obtain a certificate on a quarterly basis from a practicing CS or practicing CA, reconciling of the shares held in electronic form and in physical form with the issued and listed capital of the company.
- Every listed company is required to submit the aforesaid certificate to the Stock exchanges where the securities of the company are listed within 30 days of the close of relevant quarter.

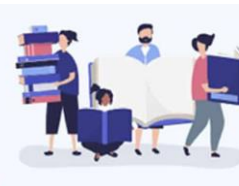
**Enquiry, Inspection and Penalty Section [18, 19 and 20]**

SEBI can exercise the following powers, if it is necessary in the public interest or in the interest of investors:

- It can call upon any issuer, depository, depository participant, or beneficial owner to furnish certain information.
- It can authorize any person to make an enquiry or inspection in relation to the affairs of the issuer, depository, depository participant, or beneficial owner.

After the enquiry or inspection, SEBI may issue such directions as may be appropriate in the interest of the investor or the securities market, to the following persons:

- Any depository.
- Any depository participant.
- Any issuer.
- Any person associated with the securities market.



Whosoever contravenes the provisions of the Depositories Act, 1996 or any regulations, or byelaws made under this Act shall be punishable with imprisonment, which may extend to 5 years or with fine or with both.

### **Fungibility**

The Depositories Act, 1996 envisages that all securities held in depository shall be fungible, i.e., all certificates of the same security shall become interchangeable in the sense that investor loses the right to obtain the exact certificate he surrender at the time of entry into depository.

It is like withdrawing money from the bank without bothering about the distinctive numbers of the currencies.

### **Registered and Beneficial Owners**

#### **Registered Owner**

A depository should be deemed to be the registered owner in the depository's system who will transfer and hold security on behalf of a beneficial owner

- ✓ The depository as a registered owner should not have any voting rights or any other rights in respect of securities held by it.
- ✓ Every depository is required to maintain a register of beneficial owner.
- ✓ Every depository shall furnish to the issuer information about the transfer of securities in the name of beneficial owners.

#### **Beneficial Owners**

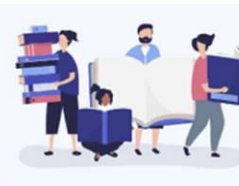
The Investor is not the registered owner but the beneficial owner in depository system.

- ✓ The beneficial owner is entitled to all the rights and benefits.
- ✓ He is subject to all the liabilities in respect of his securities held by a depository.
- ✓ A beneficial owner may with the previous approval of the depository create a pledge or hypothecation or any other encumbrance in respect of a security owned by him through a depository.

**Power of the SEBI to give Directions:** SEBI may after proper investigations and enquiry issue such directions to any depository or participant which may be in the interest of general public.

#### **Penalties**

| Offence/Contravention/Default  | Penalty  |
|--|--|
| Any person fails to furnish any information, documents, books, returns or fails to maintain books of account | Minimum : Rs. 1 Lakh for each day during which such failure continues<br>Maximum : Rs. 1 Crore |
| Failure by any person to enter into an agreement with clients  |  |
| Failure to redress investor grievances   |  |





|  |  |
|--|--|
| Delay in dematerialisation or issue of certificate of securities |  |
| Failure to reconcile records                                     |  |
| Failure to comply with directions issued by SEBI                 |  |
| Penalty for contravention where no separate penalty is imposed   | Minimum : Rs. 1 Lakh Maximum : Rs. 1 Crore |

**Note:** The adjudication procedure as mentioned under Sections **19H** to **19J** of the Depositories Act, **1996** is same as the adjudication procedure prescribed under SEBI Act, **1992**.

### Offences

|  |   |
|--|---|
| If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations or bye-laws made thereunder, for which no punishment is provided elsewhere | <b>Imprisonment:</b> Maximum 10 years, or<br><b>Fine:</b> Maximum Rs. 25 Crore, or Both                   |
| If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders   | <b>Imprisonment:</b> Minimum 1 month & Maximum 10 years, or<br><b>Fine:</b> Maximum Rs. 25 Crore, or Both |

### Offences by Company

|  |  |
|--|--|
| Every person who, at the time when the offence was committed, was in charge of, and was responsible to, the company for: the conduct of the business                                     | Shall be deemed to be guilty of the offence.<br>However, any such person shall not be liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. |
| Offence has been committed with the consent or connivance of, or is attributable to any gross negligence on the part of any director, manager, secretary or other officer of the company | Deemed to be guilty of that offence.   |

### SEBI (DEPOSITORIES AND PARTICIPANTS) REGULATION, 1996

- ✓ The registration of the depository, its participant and the custodian is mandatory with SEBI;
- ✓ Requisite fees must also be paid to SEBI in respect of the registration;
- ✓ The proper agreement must be entered into by all the parties;
- ✓ Drafts of these agreements are to be included in the bye-laws and to be approved by SEBI.





**Records to be maintained by Depository & Depository Participant**

Every depository is required to maintain following records & documents which are as follows:-

- i. Records of securities dematerialised;
- ii. The names of the transferor, transferee, and the dates of the transfer of securities;
- iii. A register and index of beneficial owner;
- iv. The details of holding of securities of the beneficial owner at the end of each day;
- v. Records of approvals, notices, entries;
- vi. Details of participants;
- vii. Details of securities declared to be eligible for dematerialisation.

**Depository Participant**

The Participants have to maintain the following Documents for a period of 5 years:-

- i. Records of all transactions entered into;
- ii. (it) Details of the securities dematerialised;
- iii. Records of instructions received from beneficial owners;
- iv. Records of approvals, notices, entries.

**Audit under SEBI (Depositories & Participants) Regulation, 1996**

- i. It is the duty of every issuer to submit an audit report on a quarterly basis on a recognized stock exchange.
- ii. Any difference in the records maintained by the issuer shall be reported to the depositories and stock exchanges.

**Internal Audit**

The two Depository service providers in India, viz., NSDL and CDSL have allowed Company Secretaries in whole-time practice to undertake internal audit of the operations of Depository Participants (DPs).

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

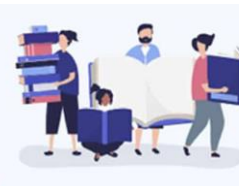
Every Depository Participant shall ensure that an internal audit shall be conducted in respect of the participant's operations relating to CDS by a qualified Chartered Accountant in accordance with the provisions of the Chartered Accountants Act, 1949 or by a Company Secretary in practice in accordance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

**Concurrent Audit**

The process of Demat Account opening, control and verification of Delivery Instructions slips is subject to concurrent audit. Depository Participants have been advised to appoint a firm of qualified CA/CS holding a certificate of practice for conducting the concurrent audit. However, the participants in case they so desire, may entrust the concurrent audit to their Internal Auditors.

• **Issuance of DIS:** The procedure followed is as under:-

- i. Issuance of DIS booklets;



- ii. Existence of control on DIS issued to clients;
- iii. Maintenance of records for issuance of DIS booklets in the back office.

• **Verification of DIS:** The procedure followed is as under:-

- i. Date and time stamping on instruction slips;
- ii. Blocking of used/lost/stolen instruction slips;
- iii. Two-step verification for a transaction for more than Rs. 5 lakhs;
- iv. Instruction received from the dormant accounts.

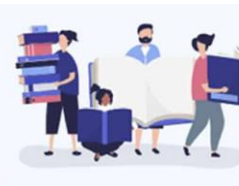
In respect of account opening, the auditor should verify all the documents including KYC documents furnished by the Clients and verified by the officials of the Participants. The scope of concurrent audit with respect to control and verification of DIS cover the areas given below:—

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

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

**Role of a Company Secretary**

1. **Right to Legal Representation:** Any person aggrieved (the appellant) may either appear in person or authorise one or more CA or PCS or cost accountants or legal practitioners or any of its officers to present his or its case before the SAT.
2. **Internal Audit of DP's:** The 2 Depository services providers in India, NSDL and CDSL have allowed PCS to undertake internal audit of the operations of Depository Participants (DPs).
3. **Concurrent Audit of DP's :** PCS can carry out concurrent audit of depository participants.
4. **Reconciliation of Share Capital Audit:** Company Secretary is authorised to issue quarterly certificate on reconciliation of share certificate





**CS Praveen Choudhary**  
**CS Executive New Syllabus**

**FLAT 50% OFF**  
**All Law Subjects**  
**(CLAW, SBEC, JIGL, SLCM, EBCL)**

**Call @ 7744859960 / 7276368299**

[Click Here to Buy / Watch Demo](#)



## SEBI (ICDR) Regulations, 2018

### INTRODUCTION

Raising fund from public is a very challenging cohesive activity which involves compliances of array of laws. To streamline the framework for public issues SEBI enacted SEBI (Issue of Capital & Disclosure Requirements) or SEBI (ICDR) Regulation, 2009.

SEBI ICDR Regulations lay down guidelines relating to conditions for various kinds of issues including public and rights issue. It provides detailed provisions relating to IPO & FPO.

Repealing the SEBI (ICDR) Regulations, 2009, SEBI has recently notified new SEBI (ICDR) Regulations, 2018 on **11th September, 2018**. These new regulations came into effect from the end of 60th day of the date of publication i.e. **11th November, 2018**.

### Stages of an Issue

**The whole process of issue of shares can be divided into two parts:**

- ✓ Pre-issue activities, and
- ✓ Post-issue activities

#### Pre-issue Activities:

All activities beginning with the planning of capital issue till the opening of the subscription list are pre-issue activities.

#### Post-issue Activities:

All activities subsequent to the opening of the subscription list may be called post issue activities.

### IMPORTANT DEFINITIONS

**Qualified Institutional Buyer means:**

- i. Mutual fund, venture capital fund investor registered with the SEBI;
- ii. A foreign institutional investor and sub-account (other than a sub-account which is a foreign corporate or foreign individual), registered with the SEBI;
- iii. A public financial institution;
- iv. A scheduled commercial bank;
- v. A multilateral and bilateral development financial institution;
- vi. A State industrial development corporation;
- vii. Insurance company registered with the IRDA;
- viii. A provident fund with minimum corpus of Rs. 25 crore;
- ix. A pension fund with minimum corpus of Rs. 25 crore;
- x. National Investment Fund set up by resolution of the GOI published in the Gazette;
- xi. Insurance funds set up and managed by army, navy or air force of the Union of India;
- xii. Insurance funds set up and managed by the Department of Posts, India.





**Anchor Investor:** Means a QIB who makes an application for the following values:

| Case  | Minimum value of Application |
|---|------------------------------|
| Public issue on the main board made through the book building process | At-least Rs. 10 Crore        |
| Public issue of Small Medium Enterprises (SME)                        | At-least Rs. 2 Crore         |

**Draft Letter of offer:** means the draft letter of offer filed with the Board in relation to a rights issue under these regulations.

**Draft Offer document:** means the offer document in draft stage. The draft offer documents are filed with SEBI, at least 30 days prior to the filing of the Offer Document with ROC/SEs who may specify changes, if any, in the Draft Offer Document and the Issuer shall carry out such changes in the draft offer document before filing the Offer Document with ROC/SEs.

**Offer Document:** Offer document means Prospectus/Shelf Prospectus/Red Herring Prospectus in case of a public issue and Letter of Offer in case of a right issue, which is filed with ROC and SE. It covers all relevant information to help an investor to make investment decision.

**Note:** Offer Document before filing with ROC is a draft Offer Document.

**Red Herring Prospectus (RHP):** It is a prospectus, which does not have details of either price or number of shares being offered, or the amount of issue. An RHP for an FPO can be filed with the ROC without the price band and the issuer, in such a case will notify the floor price or a price band by way of an advertisement one day prior to the opening of the issue.

**Reference Date:** Reference date means:

- ✓ In case of a public issue of securities by a listed company - the date of filing of red herring prospectus (in case of a book built issue) or prospectus (in case of a fixed price issue) with ROC;
- ✓ In case of a rights issue of securities by a listed company where the aggregate value of such securities, including premium, if any, **exceeds Rs. 10 Cr** - the date of filing of letter of offer with Designated Stock Exchange (**DSE**).

**Infrastructure Company:**

**An enterprise wholly engaged in the business of -**

- i. Developing, or
- ii. Operating and maintaining, or
- iii. Developing, operating and maintaining any infrastructure facility.

**Promoter:**

Promoter shall include 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; **OR**
- ii. who has control over the affairs of the issuer, directly or indirectly whether as a shareholder, director or otherwise; **OR**



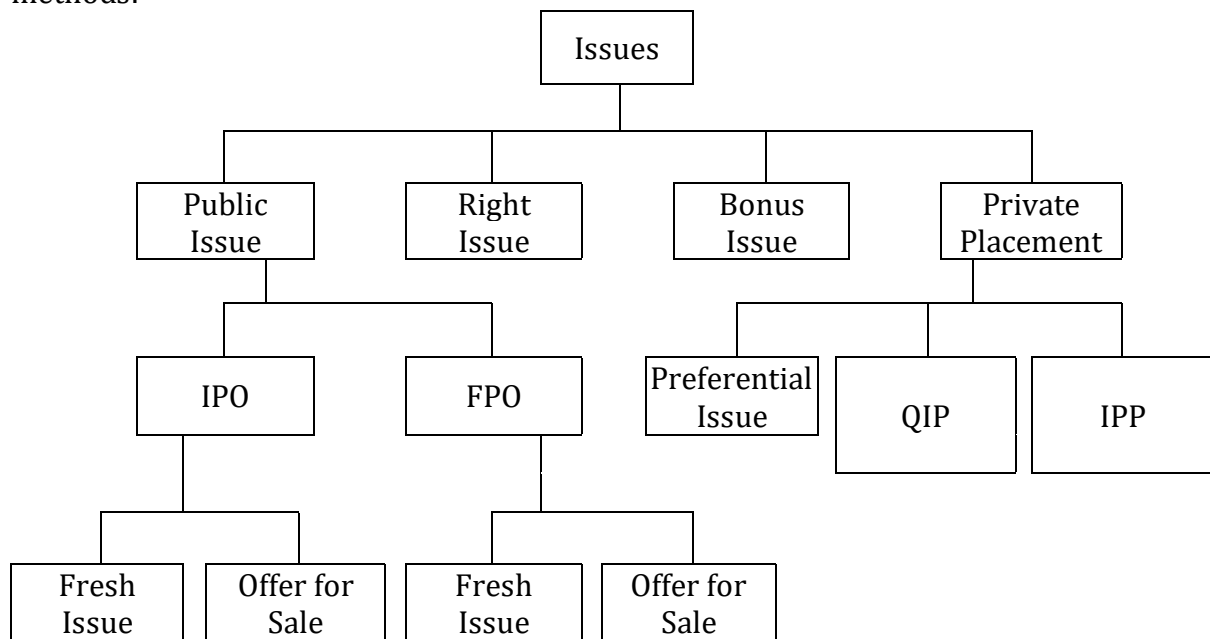


- iii. in accordance with whose advice, directions or instructions the BOD of the issuer is accustomed to act.

**Note:** If a person gives direction/instructions merely in professional capacity, he shall not be treated as promoter.

### TYPES OF ISSUES

Public Issue of shares means the selling of shares to the general public by issue of prospectus. A company can raise funds from the primary market by using the following methods:



**Public Issue:** When an offer is made to new investors (general public) for becoming shareholders of the issuer company it is called a public issue.

#### Classification of Public issue:

##### (i) Initial Public Offer (IPO):

When an unlisted public company offers its securities for sale for the first time to the general public, it is known as an IPO.

##### (ii) Further Public Offer (FPO) or follow on offer:

When a listed company offers a fresh issue of securities to the general public for sale, it is known as an FPO.

**Rights Issue:** When a listed company offers or issues securities to the existing shareholders on a particular date fixed by the issuer company (i.e. record date), it is called a rights issue. The rights issue is always issued at price not like bonus shares.

**Bonus Issue:** When an issuer makes an issue of securities to its existing shareholders as on a record date, without any consideration from them, it is called a bonus issue. The shares are issued out of the company's free reserve or share premium account in a particular ratio to the number of securities held on a record date.



**Private Placement:** When an issuer makes an issue of securities to a select group of persons not exceeding 50 (200 as per Rules) and which is neither a rights issue nor a public issue, it is called a private placement.

**Private placement of shares or convertible securities by listed issuer can be of 2 types: -**

- (i) **Preferential Allotment:** When a listed company issues shares or convertible securities, to a select group of persons in terms of provisions of Chapter VII of SEBI (ICDR) Regulations, it is called a preferential allotment. The issuer is required to comply with various provisions which inter alia include pricing, disclosures in notice etc., in addition to requirements specified in Companies Act.
- (ii) **Qualified Institutions Placement (QIP):** When a listed company issues equity shares or securities convertible into equity shares to QIBs only, it is called a QIP.
- (iii) **Institutional Placement Programme (IPP):** When a listed company issues equity shares or securities convertible into equity shares to QIBs only for the purpose of achieving minimum public shareholding it is called an IPP.

### INITIAL PUBLIC OFFER

When an unlisted public company offers its securities for sale for the 1<sup>st</sup> time to the general public, it is known as an IPO.

### Eligibility

An unlisted company can make an IPO of equity shares only if it fulfils the following conditions.

**The company has:**

- i. Net tangible assets of at least Rs. 3 Cr in each of the preceding 3 full years (of 12 months each), of which not more than 50% is held in monetary assets.
- ii. Minimum Average Operating Profit of Rs. 15 Cr during preceding 3 years (of 12 months each) with operating profit in each of these preceding 3 years.
- iii. Net worth of at least Rs. 1 Cr in each of the preceding 3 full years (of 12 months each).
- iv. In case of change of name of the company within the last 1 year, at least 50% of the revenue for the preceding 1 full year is being earned by the company from the activity suggested by the new name.

**Note:** If a company does not satisfy the above conditions it can bring an IPO only if it is made through the book-building process and the issuer undertakes to allot, at least 75% of the net offer to public, to QIB and to refund full subscription money if it fails to make the said minimum allotment to QIB.

### Ineligibility

An issuer shall not be eligible to make an IPO if-

- i. The issuer, any of its promoters, promoter group or directors or selling shareholders are debarred from accessing the capital market by the SEBI.  
**Note:** Selling shareholder means shareholder of the issuer who is offering for sale the specified securities in a public issue in accordance with these Regulations.
- ii. 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 the SEBI.



- iii. If the issuer or any of its promoters or directors is a wilful defaulter.
- iv. If any of its promoters or directors is a fugitive economic offender.

**Note:** Fugitive economic offender shall mean an individual who is declared a fugitive economic offender u/s 12 of the Fugitive Economic Offenders Act, 2018.

### General Conditions

#### **Appointment of Lead Merchant Banker, Intermediaries and Compliance Officer:**

The issuer shall appoint one or more merchant bankers, which are registered with the SEBI. If more than one merchant banker is appointed, then one should be designated as the lead merchant banker. At-least one merchant banker/lead manager should not be associated with the issuer.

Other intermediaries will be appointed by the issuer in consultation of the lead merchant banker. The issuer shall appoint a compliance officer who will be responsible for monitoring the compliances of securities law.

#### **Filing of Offer Document:**

An issuer company cannot make any public issue of securities, unless a draft offer document has been filed with SEBI and stock exchanges on which the stock is desired to be listed, through a Merchant Banker. The SEBI can suggest changes within 30 days from the date of receipt of draft document by the SEBI. If the SEBI suggest changes, the same should be carried out by the issuer before registering the final offer document with the ROC or other authorities. Simultaneously a final copy of offer document shall also be filed with SEBI and SE.

#### **Draft offer Document should also be available to Public for comments:**

The draft offer document filed with the SEBI shall be made public on the website of SEBI and Stock Exchange for comments of the public. It should be available for at least 21 days from the date of filing.

**Note:** The issuer shall, **within 2 days** of filing the draft offer document with the SEBI, make a public announcement in one English national daily newspaper, one Hindi national daily newspaper and one regional language newspaper at the place where the registered office of the issuer is situated, disclosing the fact of that public is invited for comments.

#### **Application to Stock Exchange:**

An issuer company shall make application to one or more stock exchange after choosing one of them as a designated stock exchange.

#### **Promoter shareholding in Dematerialised Form:**

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

#### **Issue of Securities in Dematerialised Form:**

A company cannot make public issue unless the company enters into an agreement with a depository for dematerialisation of securities already issued or proposed to be issued to the public or existing shareholders.



Partly Paid-up Shares: All the existing partly paid-up shares must be made fully paid or forfeited.

### Minimum Promoters Contribution

In an IPO, the promoters of the issuer company must contribute at least 20% of the post-issue capital before the opening of the issue.

In case the post-issue shareholding of the promoters is less than 20%, AIFs may contribute for the purpose of meeting the shortfall in minimum contribution as specified for promoters, subject to a maximum of 10% of the post-issue capital.

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

**Important Provisions:** Promoters shall bring in the full amount of the promoter's contribution including premium at least one day prior to the issue opening date. The promoter's contribution shall be kept in an escrow account and the said contribution amount shall only be released to the company along with the public issue proceeds.

Where the promoter's contribution has been brought prior to the public issue and has already been deployed by the company, the company shall give the cash flow statement in the offer document disclosing the use of such funds. If the promoter's contribution **exceeds Rs. 100 Cr**, the promoters shall bring in Rs. 100 Cr. before the opening of the issue and the remaining contribution shall be brought in by the promoters in advance on pro-rata basis before the calls are made on public.

### Lock-in-Period for Promoter's Contributions

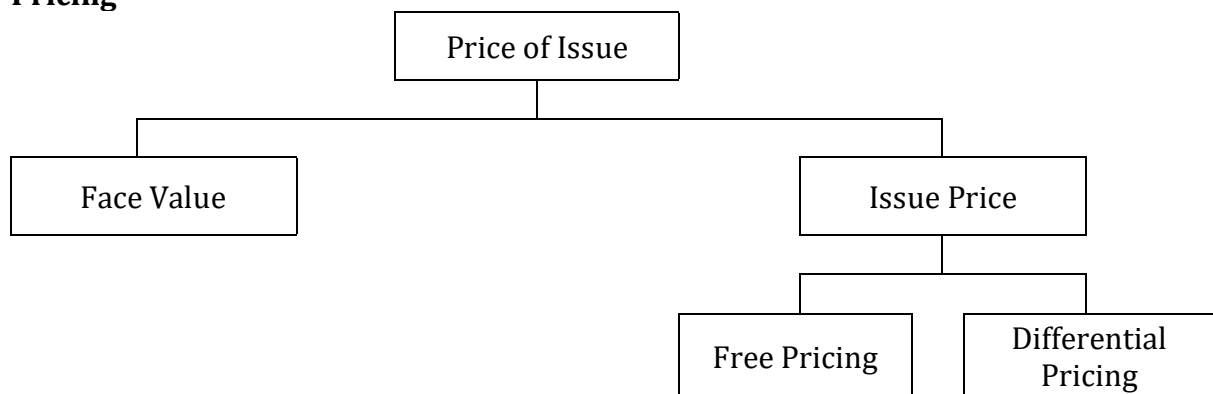
The promoter's minimum contribution (i.e. 20%) shall be locked-in for a period of 3 yrs. from the date of commencement of commercial production or the date of allotment in the public issue, whichever is later. The excess promoters' contribution over the required minimum contribution shall be locked-in for a period of 1 year from the date of commencement of commercial production or the date of allotment in the public issue, whichever is later.

**Note:** The entire pre-issue share capital, other than that locked-in as minimum promoters' contribution, shall be locked-in for a period of 1 year from the date of commencement of commercial production or the date of allotment in the public issue, whichever is later.

### Exemption from Lock-in

- i. **Transfer to Stabilizing Agent:** Promoter's securities lent to Stabilizing Agent under Green Shoe Option.
- ii. **Transfer of Shares amongst Promoters/Promoters Group:** During the period of lock-in, promoters can transfer their shares amongst the promoter/promoters group or to a new promoter or person in control of the Company subject to the continuation of lock-in in the hands of transferee for remaining period.
- iii. **Pledging of Securities:** Pledging of securities during lock-in period is allowed with Banks or financial institution as collateral securities for sanction of loan.



**Pricing****Face Value**

An issuer company is free to decide the denomination of each equity share for any initial public offer. 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.

**Issue Price****Free Pricing**

A company may freely price its public issue of equity shares. An issuer company shall decide the price of public issue in consultation with lead merchant banker (an intermediary who is involved in managing the issue for the company). SEBI & Govt, do not play any role in price fixation. Issue price should not be less than face value otherwise it will result into contravention of Sec 53 of the Companies Act, 2013.

In this regard, the company and the lead merchant banker are required to give full disclosure of the parameters of fixing of price.

**There are 2 types of price:**

- ✓ Fixed Price, and
- ✓ Floor Price/Price Band

In case of fixed price, the company has to file prospectus with the ROC before opening of the issue. In case the company is opting for price band, then such company has to file RHP with the ROC before opening of issue.

**Differential Pricing**

An issuer company can offer securities subject to the following provisions:

- i. It will only be offered to retail individual investors/employees.
- ii. The value for making an application under this category shall not be more than Rs. 2 Lakhs.

**Note:**

1. 'Retail individual investor' means an investor who applies or bids for securities of or for a value of not more than Rs. 2,00,000.
2. '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 -





- a) Promoters;
  - b) A person belonging to the promoter group; or
  - c) A director who either himself/herself or through their relatives or through any body corporate, directly or indirectly, holds more than 10% of the outstanding equity shares of the issuer.
- iii. The difference shall not be more than 10% of the price at which specified securities are offered to other categories of applicants.
- iv. If the issuer company opts for alternate method of book building, the issuer company can offer securities to its employees at a price, lower than floor price and the difference between such price and floor price shall not be more than 10%.

### Price and Price Band

- **For Book Building Process:** The issuer company has to announce price band in place of fixed price for the issue of securities. The price band shall be included in the red herring prospectus of the company.
- **For Other than Book Building Process:** The issuer company has to fix price of issue of securities before submitting prospectus with the Registrar of Companies.

### Allocation in net offer to Public

A person shall not make an application in the net offer to public category for that number of specified securities which exceeds the number of specified securities offered to public. An issue made via the **book building process as per regulation 6(1)**, then the allocation in the net offer to public category shall be as follows

- a) Not less than 35% to retail individual investors (RII);
- b) Not less than 15% to non-institutional investors;
- c) not more than 50% to QIB, 5% of which shall be allocated to mutual fund.

### Special Note:

1. The unsubscribed portion in (a) or (b) may be allocated to applicants in the other category.
2. Mutual funds shall be eligible for allocation under the balance available for QIB, in addition to 5% allocation in (c).
3. An issue made via the **book building process under regulation 6(2)**, then allocation in the net offer to public category shall be as follows: -
  - a) not more than 10% to RII;
  - b) not more than 15% to non-institutional investors;
  - c) not less than 75% to QIB, 5% of which shall be allocated to mutual fund.

### Special Note:

1. The unsubscribed portion in (a) or (b) may be allocated to applicants in the other category.
2. Mutual funds shall be eligible for allocation under the balance available for QIB, in addition to 5% allocation in (c).

**Note:** In an issue made through the book building process, the issuer may allocate up to 60% of the portion available for allocation to QIB to anchor investor.

3. An issue made other than the book building process, allocation in the net offer to public category shall be- made as follows:
  - a) Minimum 50% to RII; and



b) Remaining to:

- ✓ Individual applicants other than RII, and
- ✓ Other investors including corporate bodies or institutions, irrespective of the number of specified securities applied for.

**Note:** The unsubscribed portion in either of the categories specified above may be allocated to applicants in the other category.

**Special Note,** “institutional investor” means

- i. qualified institutional buyer; or
- ii. family trust or intermediaries registered with the SEBI,

With net worth of more than Rs. 50 Crore as per the last audited financial statements, for the purposes of listing and/or trading on institutional trading platform in terms of Chapter X.

### Underwriting

Underwriting means an agreement with the underwriters to subscribe to the securities of a company when the total subscription from all the subscribers does not match the minimum subscription (i.e. 90% of the issue). In short, underwriting means an agreement with or without conditions to subscribe to the securities of a body corporate when the existing shareholders of such body corporate and/or the public do not subscribe to the securities offered to them.

**In this regard, the important provisions are:**

- a) The issuer company shall appoint one or more underwriters.
- b) Where the issuer company makes a public issue through the book building process, such issue shall be underwritten by lead managers or syndicate members.
- c) 75% of the net offer to public proposed to be compulsorily allotted to QIBs cannot be underwritten.
- d) The issuer shall enter into underwriting agreement with lead managers, who in turn shall enter into underwriting agreement with syndicate members, indicating therein the number of specified securities which they shall subscribe to at pre-determined price in event of under subscription.
- e) If syndicate members fail to fulfill their underwriting obligations, the lead managers shall fulfill the underwriting obligations.
- f) The lead manager and syndicate members shall not subscribe to the issue in any manner except for fulfilling their underwriting obligations.
- g) In case of every underwritten issue, the lead merchant banker or the lead manager shall undertake minimum underwriting obligations.

### Opening of the Issue

An IPO may be opened **within 12 months** from the date of issuance of the observation letter by SEBI.

In case of book building process, an issue shall be opened after **at least 3 working days** from the date of registering the RHP, in case of a fixed price issue, with the ROC.

### Minimum Subscription

In respect of a public issue of securities, the minimum subscription to be received should not be less than 90% of the offer.



In the event of non-receipt of minimum subscription all application monies received shall be refunded **within 15 days** from the closure of the issue.

**Note:** The requirement of minimum subscription is not applicable to offer for sale.

### Period for Subscription

A public issue must be kept open for **at least 3 working days but not more than 10 working days** including the days for which the issue is kept open in case of revision in price band.

In case the price band in a public issue made through the book building process is revised, the bidding (issue) period disclosed in the RHP should be extended for a minimum period of 3 working days. However, the total bidding period should not exceed 10 working days. Rights issue should be kept open for a minimum period of 15 days and for a maximum period of 30 days.

### Minimum Number of Share Applications and Application Money

The minimum application money varies from issue to issue within the range of **Rs. 10,000 to Rs. 15,000**. The issuer company, in consultation with the merchant banker, shall stipulate the minimum application size subject to the above amount. The 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.

Assuming an issue is being made at a price of Rs. 1000 per equity share. In this case, the issuer in consultation with the lead merchant banker can determine the minimum application lot within the range of 10-15 equity shares (in value terms between Rs. 10,000-15,000).

The minimum application moneys to be paid by an applicant at the time of application shall not be less than 25% of the issue price.

### Basis for Allotment

As the SEBI Regulations, the Executive Director/Managing Director of the Designated Stock Exchange along with Lead Merchant Banker and the Registrar to the Issue shall be responsible to finalise the basis of allotment in a fair and proper manner.

The issuer shall not make an allotment pursuant to a public issue if the number of prospective allottees is less than 1000.

Over-subscription: In case of over-subscription, an allotment of up-to 1% of the net offer to public may be made for the purpose of making allotment in minimum lots.

### Allotment, refund and payment of interest

**The issuer and lead manager(s) shall ensure that:**

- ✓ The specified securities are allotted.
- ✓ Application monies are refunded or unblocked within such period as may be specified by the Board.
- ✓ Credit of dematerialised securities and refund or unblocking of application monies, as may be applicable, are done electronically.
- ✓ Payment of interest at the rate of 15% p.a. if refund not done within specified time.

### Post-Issue Advertisements

After completion of issue, the Lead Manager is required to advertise all information relating to oversubscription, basis of allotment, number, value and percentage of



applications, number, value and percentage of successful allottees, date of completion of despatch of refund orders or instructions to self certified syndicate banks by the Registrar, date of despatch of certificates and date of filing of listing application is released **within 10 days** from the date of completion of the various issue related activities.

**The above information should be advertised at least in:**

- i. An English National Daily with wide circulation,
- ii. One Hindi National Paper, and
- iii. A Regional language daily circulated at the place where registered office of the issuer company is situated.

**Restriction on further capital issue**

An issuer shall not make any further capital issue whether by way of public issue, rights issue, preferential issue, qualified institutions placement, issue of bonus shares or otherwise during the period between the date of filing the draft offer document and the listing of the specified securities offered through the offer document or refund of application monies.

**Special Note:** The above restriction shall not apply to an ESOS.

**RIGHT ISSUE**

When a listed company offers or issues securities to the existing shareholders on a particular date fixed by the issuer company (i.e. record date), it is called a rights issue. The rights issue is always issued at price not like bonus shares, which are issued for free.

**Applicability of Regulations**

If an issuer makes a right issue of securities where the aggregate value of securities is Rs. 10 Cr. or more then it is required to satisfy the conditions of this Chapter.

**Ineligibility**

Same as Normal IPO/FPO

**General Conditions**

- **Application to Stock Exchange:** An issuer company shall make application for in-principle approval to one or more stock exchange after choosing one of them as a designated stock exchange.
- **Partly Paid-up Shares:** All its existing partly paid-up equity shares have either been fully paid-up or have been forfeited.
- **Appointment of Lead Merchant Banker, Intermediaries and Compliance Officer:** The issuer shall appoint one or more merchant bankers, which are registered with the Board. If more than one merchant banker is appointed then one should be designated as the lead merchant banker/lead manager. Atleast one merchant banker/lead manager should not be associated with the issuer.





Other intermediaries will be appointed by the issuer in consultation of the lead merchant banker. The issuer shall appoint a compliance officer who will be responsible for monitoring the compliances of securities law.

• **Filing of Draft Letter of Offer:** An issuer company shall file a draft offer document with SEBI and stock exchanges on which the stock is desired to be listed, through a Lead Manager. The Board can suggest changes within 30 days from the date of receipt of draft letter of offer by the Board. If the Board suggest changes, the same should be carried out by the issuer before registering the final letter of offer with the Registrar of Companies (ROC) or other authorities. Simultaneously a final copy of letter of offer shall also be filed with Board and Stock Exchanges.

**Special Note:** There is a concept of Fast Track Right Issue as well. In this case the issuer will directly file the Letter of Offer with the Board instead of draft letter of offer.

• **Draft Letter of Offer should also be available to Public for comments:** The draft letter of offer filed with the Board shall be made public on the website of Board and Stock Exchange for comments of the public. It should be available for at least 21 days from the date of filing.

### Record Date

The issuer shall announce a record date for the purpose of determining the shareholders who are eligible to apply for right issue.

Once the record date is announced, the issuer shall not withdraw the issue otherwise it will not be eligible to make an application for listing of any of its specified securities on any stock exchange for a period of 12 months from the record date announced.

### Pricing

The issuer shall decide the issue price, in consultation with the lead managers and designated stock exchanges before the record date and the same shall be disclosed in letter of offer filed with the Board and the stock exchange.

### Opening of the Issue

The right issue may be opened within 12 months from the date of issuance of the observation letter by SEBI. In case of a fast track issue, the issue shall open within 12 months from the record date.

### Minimum Subscription

In respect of a public issue of securities, the minimum subscription to be received should not be less than 90% of the offer.

In the event of non-receipt of minimum subscription all application monies received shall be refunded within 15 days from the closure of the issue. The requirement of minimum subscription is not applicable to offer for sale.

### Period of Subscription

Rights issue should be kept open for a minimum period of 15 days and for a maximum period of 30 days.





### **Payment of Money**

Issue shall give following payment options to the shareholders:-

- ✓ Part payment on application with balance money to be paid in calls; or
- ✓ Full payment on application.

The minimum application moneys to be paid by an applicant at the time of application shall not be less than 25% of the issue price.

### **Basis for Allotment**

As the SEBI Regulations, the Executive Director/Managing Director of the Designated Stock Exchange along with Lead Merchant Banker and the Registrar to the Issue shall be responsible to finalise the basis of allotment in a fair and proper manner.

### **Allotment, refund and payment of interest**

The issuer and lead manager(s) shall ensure that:

- ✓ The specified securities are allotted.
- ✓ Application monies are refunded or unblocked within such period as may be specified by the SEBI.
- ✓ Credit of dematerialised securities and refund or unblocking of application monies, as may be applicable, are done electronically.
- ✓ Payment of interest at the rate of 15% per annum if refund not done within specified time.

### **Post-issue Advertisements**

After completion of issue, the Lead Manager is required to advertise all information relating to oversubscription, basis of allotment, number, value and percentage of applications, number, value and percentage of successful allottees, date of completion of dispatch of refund orders or instructions to self certified syndicate banks by the Registrar, date of dispatch of certificates and date of filing of listing application is released within 10 days from the date of completion of the various issue related activities.

### **The above information should be advertised at least in:**

- i. An English National Daily with wide circulation,
- ii. One Hindi National Paper, and
- iii. A Regional language daily circulated at the place where registered office of the issuer company is situated.

### **Restriction on Further Issue of Capital**

An issuer shall not make any further capital issue whether by way of public issue, rights issue, preferential issue, qualified institutions placement, issue of bonus shares or otherwise during the following period

|                                    |  |
|------------------------------------|--|
| <b>In case of Fast Track Issue</b> | Between the date of filing the letter of offer and the listing of the specified securities offered through the offer document or refund of application monies. |
|------------------------------------|--|



|                               |  |
|-------------------------------|--|
| <b>In case of other Issue</b> | Between the date of filing the draft letter of offer and the listing of the specified securities offered through the offer document or refund of application monies. |
|-------------------------------|--|

**Special Note:** The above restriction shall not apply to an employee stock option scheme.

### Fast Track Right Issue

This concept was introduced for the purpose to access primary market in lesser time. "Fast Track Issues" enable well established and law compliant listed companies to access Indian primary market in a time effective manner. A Listed Company has to satisfy terms & conditions for accessing primary market under Fast Track Issues scheme.

The aforesaid companies are not required to file draft offer document with SEBI and SE.

### FURTHER PUBLIC OFFER

#### Eligibility

A listed company may make a public issue of equity shares or any other security which may be converted into or exchanged with equity shares at a later date, only if it meets all **following condition:**

- ✓ In case of change of name of the company within the last one year, **at least 50%** of the revenue for the preceding 1 full year is being earned by the company from the activity suggested by the new name.

**Note:** If a company does not satisfy the above conditions it can bring a FPO only if it is made through the book-building process and the issuer undertakes to allot, **at least 75% of the net offer to public**, to qualified institutional buyers and to refund full subscription money if it fails to make the said minimum allotment to QIB.

**Note:** If a company has any outstanding convertibles through an earlier public issue where the conversion price/tenure was disclosed, this condition will not be applicable.

#### Ineligibility

Same as IPO

#### General Conditions

- **Appointment of Lead Merchant Banker, Intermediaries and Compliance Officer:**

Same as IPO

- **Filing of Offer Document:**

Same as IPO

- **Draft offer Document should also be available to Public for comments:**

Same as IPO

- **Application to Stock Exchange:**

Same as IPO

- **Issue of Securities in Dematerialised Form:**



Same as IPO

• **Partly Paid-up Shares:**

All the existing partly paid-up shares must be made fully paid or forfeited.

**Minimum Promoter Contribution**

Promoters of the listed entity should contribute in accordance with the following provisions in case of FPO:

| Type of Issue                  | Promoter's Contribution   |
|--------------------------------|---|
| FPO other than composite issue | To the extent of 20% of the proposed issue <b>OR</b> 20% of the post-issue capital. |
| Composite Issue                | 20% of the proposed public issue <b>OR</b> 20% of the post-issue capital.           |

**Note:** Composite issue means any 2 types of issue of securities at the same time by the issuer company like rights cum-preferential-issue of shares. Further, Right issue component of the composite issue shall be excluded while calculating the post-issue capital.

• **Important Provisions:** Promoters shall bring in the full amount of the promoter's contribution including premium **at least 1 day prior** to the issue opening date. The promoter's contribution shall be kept in an escrow account and the said contribution amount shall only be released to the company along with the public issue proceeds.

Where the promoter's contribution has been brought prior to the public issue and has already been deployed by the company, the company shall give the cash flow statement in the offer document disclosing the use of such funds. If the promoter's contribution **exceeds Rs. 100 Cr**, the promoters shall bring in Rs. 100 Cr. before the opening of the issue and the remaining contribution shall be brought in by the promoters in advance on pro-rata basis before the calls are made on public.

• **Exemption from Requirement of Promoter's Contribution**

- In case of companies where no identifiable promoter or promoter group exists.
- The issuer company's shares are frequently traded in a recognized stock exchange for a period of at least 3 years. AND
- Issuer company has track record of dividend payment for at least immediately preceding 3 years.

**Lock-in Period for Promoter's Contributions:**

The provisions for Lock-in of promoters contribution in case of FPO is same as in case of IPO, discussed previously in this chapter.

**Pricing**



**Face Value**

Same as IPO

**Issue Price**

• **Free Pricing**

Same as IPO

• **Differential Pricing**

Same as IPO

• **Price and Price Band**

➤ **For Book Building Process:** Same as IPO

➤ **For Other than Book Building Process:** same as IPO

**Important points related to Price & Price Band**

- i. The issuer company can mention a price in the draft prospectus (in case of a fixed price issue) and floor price or price band in the red herring prospectus (in case of a book built issue) and determine the price at a later date before registering the prospectus with the Registrar of Companies.
- ii. The prospectus registered with the Registrar of Companies should contain only one price.
- iii. If the floor price or price band is not mentioned in the red herring prospectus, the issuer company should announce the floor price or price band in all the newspapers in which the pre-issue advertisement was released, at least 1 working day before the opening of the bid (In case of IPO it was 2 days).
- iv. The announcement should 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 in the prospectus.
- v. The cap on the price band shall be less than or equal to 120% of the floor price.
- vi. The floor price or the final price should not be less than the face value of the securities.

**Allocation in net offer to Public –**

Same as in case of IPO, discussed earlier in this chapter.

**Underwriting** - Same as in case of IPO, discussed earlier in this chapter.

**Opening of the Issue** - Same as in case of IPO, discussed earlier in this chapter.

**Minimum Subscription** - Same as in case of IPO, discussed earlier in this chapter.

**Period of Subscription** - Same as in case of IPO, discussed earlier in this chapter.

**Minimum Number of Share Applications and Application Money** - Same as in case of IPO, discussed earlier in this chapter.

**Basis of Allotment** - Same as in case of IPO, discussed earlier in this chapter.

**Allotment, refund and payment of interest** - Same as in case of IPO, discussed earlier in this chapter. **Post-issue Advertisements** - Same as in case of IPO, discussed earlier in this chapter.

**Restriction on Further Issue of Capital**

An issuer shall not make any further capital issue whether by way of public issue, rights issue, preferential issue, qualified institutions placement, issue of bonus shares or otherwise during the following period -



|                             |  |
|-----------------------------|--|
| In case of Fast Track Issue | Between the date of filing the offer document (in case of book building) and prospectus (in case of fixed price method) and the listing of the specified securities or refund of application monies. |
| In case of other Issue      | Between the date of filing the draft offer document and the listing of the specified securities offered through the offer document or refund of application monies.                                  |

**Special Note:** The above restriction shall not apply to an employee stock option scheme.

### Fast Track FPO

This concept was introduced for the purpose to access primary market in lesser time. "Fast Track Issues" enable well established and law compliant listed companies to access Indian primary market in a time effective manner. A Listed Company has to satisfy terms & conditions for accessing primary market under Fast Track Issues scheme. The aforesaid companies are not required to file draft offer document with SEBI and SE.

### DUE DILIGENCE

**Due Diligence** means a process through which merchant banker evaluates the risk involved in any transactions like merger, acquisition & public issue of securities. **Due Diligence may be of different types like:**

- Accounting Due Diligence
- Legal Due Diligence
- Environmental Due Diligence
- Human resources Due Diligence

A merchant banker holding a valid certificate of registration of SEBI is required to be appointed to manage the issue. A Memorandum of Understanding (MOU) is required to be entered into between lead merchant bankers and the issuer company specifying their mutual rights, liabilities and obligations relating to the issue.

The standard of due diligence shall be such that merchant banker shall satisfy himself about all aspects of offering, veracity (truth) and adequacy of disclosure in offer document. Lead manager who is responsible for preparation of the offer documents is required to submit to SEBI draft prospectus complete in all respects along with the Due Diligence Certificate, inter se allocation of Responsibilities Certificate and a copy of Memorandum of Understanding and the requisite fee in accordance with SEBI (Merchant Bankers) Rules and Regulations, 1992.

In case of a fast track issue, inter se allocation of responsibilities is not required to be submitted. In case of a debenture issue, the lead merchant banker shall also furnish to SEBI a due diligence certificate given by the debenture trustee in the prescribed format along with the draft offer document. In case of fast track issue, the lead manager shall furnish a due diligence certificate in the prescribed format along with a copy of red herring prospectus, prospectus or letter of offer, as the case may be.

**In addition to the due diligence certificate to be furnished along with the draft prospectus, lead managers are also required to:**





- i. Certify that all the amendments suggested/observations made by SEBI have been given effect to in the prospectus,
- ii. Furnish a fresh due diligence certificate at the time of filing the prospectus with the Registrar of Companies,
- iii. furnish a fresh certificate immediately before the opening of the issue that no corrective action is needed, and
- iv. furnish a fresh and final compliance certificate before the issue is dosed for subscription.





**CS Praveen Choudhary**  
**CS Executive New Syllabus**

**FLAT 50% OFF**  
**All Law Subjects**  
**(CLAW, SBEC, JIGL, SLCM, EBCL)**

**Call @ 7744859960 / 7276368299**

[Click Here to Buy / Watch Demo](#)



## SEBI (LODR) Regulation 2015

Under Securities Contract Regulation Act, 1956 every company is required to comply with Listing Agreement. Listing Agreement is an agreement entered at the time of listing between the company and the Stock Exchange.

In 2015, SEBI has revamped the listing agreement compliance requirement and replaced it with the new SEBI (Listing Obligation & Disclosure Requirements) Regulation, 2015 notified on September 2, 2015 which came into force from December 1, 2015.

### OBJECTIVE OF REGULATION

- ✓ To align the listing agreement with the Companies Act, 2013.
- ✓ To consolidate the provisions of existing listing agreements for different segments.

### APPLICABILITY

The Listing Regulations are applicable to a listed entity which has listed any of the following designated securities on recognized stock exchange(s):

- Specified securities i.e. equity shares and convertible securities listed on main Board, or SME Exchange or institutional Trading Platform;
- Non-convertible Debt Securities, Non-convertible Redeemable Preference Shares, Perpetual Debt Instrument, Perpetual Non-cumulative Preference Shares;
- Indian depository receipts;
- Securitised Debt Instruments;
- Units issued by mutual funds;
- Other securities as may be specified by SEBI.

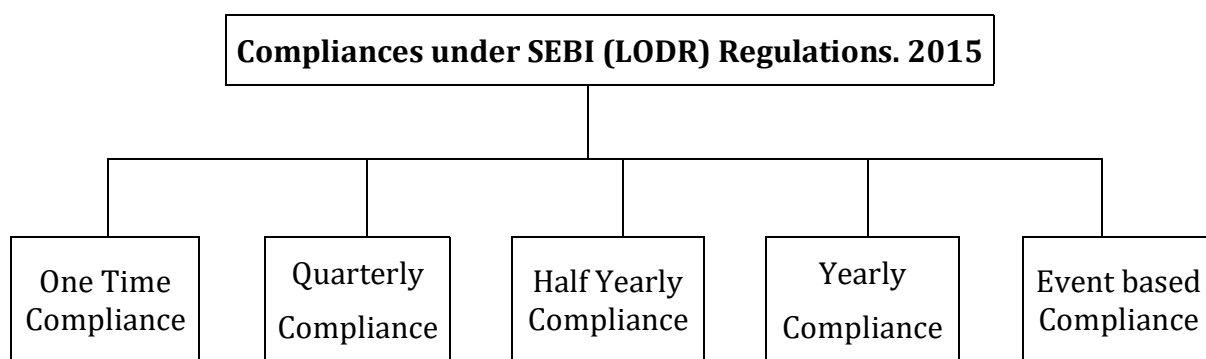
### CATEGORIES OF OBLIGATIONS OF LISTED ENTITIES

Following are the categories of Obligations: -

1. Common Obligation which are applicable to all listed entities.
2. Obligation of Listed Entities whose specified securities are listed.  
**Note:** Specified securities means Equity shares & Convertible securities.
3. Obligation of Listed entities which has listed its
  - ✓ Non-convertible Debt Securities, **OR**
  - ✓ Non-convertible Redeemable Preference shares, **OR**
  - ✓ Both
4. Obligation of listed entities which has listed its Specified Securities and Non-convertible Debt Securities or Non-convertible Redeemable Preference shares or Both.
5. Obligation of Listed entities which has listed its Indian Depository Receipts.
6. Obligation of Listed entities which has listed its debt instruments.
7. Obligation of Listed entities which has listed its Mutual Fund units.



**COMPLIANCES UNDER SEBI (LODR) REGULATIONS, 2015**



| ONE TIME COMPLIANCES |  |
|----------------------|--|
| Reg 6(1)             | A listed entity shall appoint a Company Secretary as the Compliance Officer                              |
| Reg 7(1)             | The listed entity shall appoint a share transfer agent or shall have in house share transfer facility    |
| Regulation 9         | The listed entity shall appoint a share transfer agent or shall have an in house share transfer facility |
| Regulation 18        | Constitution of Audit Committee  |
| Regulation 19        | Constitution of Nomination and Remuneration Committee  |
| Regulation 20        | Constitution of Stakeholders Relationship Committee  |
| Regulation 21        | Constitution of Risk Management Committee  |
| Regulation 22        | Constitution of Vigil Mechanism  |



| QUARTERLY COMPLIANCES   |   |                                    |
|-------------------------|---|------------------------------------|
| Regulation              | Particulars   | Time limit                         |
| Regulation 13(3)        | <b>Submission of Investor Grievance Statement</b><br><b>Content of statement:</b> A statement giving the no. of investor complaints <ul style="list-style-type: none"> <li>✓ pending at the beginning of the quarter,</li> <li>✓ received during the quarter,</li> <li>✓ disposed of during the quarter, and</li> <li>✓ remaining unresolved at the end of the quarter</li> </ul> <b>Submitted by:</b> Listed Entity Submitted to RSE | Within 21 days from end of quarter |
| Regulation 27           | <b>Submission of Corporate Governance Report</b><br><b>Content:</b> Quarterly Compliance report on Corporate Governance<br><b>Submitted by:</b> Listed Entity<br><b>Submitted to:</b> RSE   | Within 15 days from end of quarter |
| Regulation 31(1)(b)     | <b>Submission of Share Holding Pattern</b><br><b>Content:</b> A statement showing holding of securities and shareholding pattern separately for each class of securities<br><b>Submitted by:</b> Listed Entity<br><b>Submitted to:</b> RSE  | Within 21 days from end of quarter |
| Regulation 33(3)        | <b>Submission of Financial Results and Consolidated Financial Results</b><br><b>Content:</b> Quarterly and year-to-date financial results and Consolidated Financial Results<br><b>Submitted by:</b> Listed Entity<br><b>Submitted to:</b> RSE  | Within 45 days from end of quarter |
| HALF YEARLY COMPLIANCES |   |                                    |
| Regulation              |   | Time limit                         |





|   |   |  |
|---|---|--|
| Regulation 7(3)                           | <b>Submission of Compliance Certificate</b><br>Certificate duly signed by both the compliance officer of the listed entity and the authorised representative of the share transfer agent<br><b>Submitted by:</b> Listed Entity<br><b>Submitted to:</b> RSE  | Within 1 month of end of each half of the FY   |
| Regulation 40(9)                          | <b>Certificate from PCS</b><br>The listed entity shall ensure that the share transfer agent and/or the in-house share transfer facility, as the case may be, produces a certificate from a PCS<br><b>Content:</b> Certifying that all share certificates have been issued within 30 days of the date of lodgement for transfer<br><b>Produced by:</b> STA/In-house transfer facility<br><b>Produced to:</b> Listed Entity | Within 1 month of end of each half of the FY   |
| Regulation 40(10)                         | <b>Submission of PCS Certificate</b><br>The certificate received above in regulation 40(9) will be submitted by Listed Entity to RSE<br><b>Submitted by:</b> Listed Entity<br><b>Submitted to:</b> RSE  | As soon as received by STA/In-house transfer facility  |
| SEBI (LODR) (Amendment) Regulations, 2018 | Submission of Consolidated RPT (Related Party Transactions) Listed entity to submit disclosures of related party transactions on a consolidated basis to Stock exchange<br><b>Submitted by:</b> Listed Entity<br><b>Submitted to:</b> RSE   | Within 30 days from the date of publication of the standalone and consolidated financial results for the half-year |
|   | <b>YEARLY COMPLIANCES</b>   |  |
| <b>Regulation</b>                         | <b>Particulars</b>  | <b>Time limit</b>  |
| Regulation 14                             | <b>Payment of Annual fee</b><br>Annual fee of Stock Exchange where securities of the company are listed   | Within 30 days of the end of financial year  |



|   |  |   |
|---|--|---|
| Regulation 33(3)  | <b>Submission of Annual Audited Financial Results and Audit Report</b><br><b>Content:</b> Annual audited standalone financial results with audit report and Statement on Impact of Audit Qualifications<br><b>Submitted by:</b> Listed Entity Submitted to: RSE<br><b>Special Note:</b> The recent amendments relax the requirement of getting the financial results of the last quarter audited before submission and allows limited review of financial results of the last quarter. | Within 60 days from end of quarter  |
| Regulation 34   | <b>Submission of Annual Report</b><br>The listed entity shall submit the annual report to the stock exchange<br><b>Submitted by:</b> Listed Entity<br><b>Submitted to:</b> RSE   | Annual reports filed till the Year ending 31st March 2018 - Within 21 working days of it being approved and adopted in the AGM<br><br>Annual reports filed for the Year ending 31st March 2019 and thereafter - Not later than the day when annual return were dispatched to the shareholders |
| SEBI (LODR) (Amendment) Regulations, 2018, Para 3(x)(b) | <b>Disclosures of key changes in financial indicators</b><br>A. Details of significant changes (i.e., change of 25% or more as compared to the immediately previous financial year) including: <ul style="list-style-type: none"> <li>✓ Debtors turnover</li> <li>✓ Inventory turnover</li> <li>✓ Interest coverage ratio</li> <li>✓ Current ratio</li> <li>✓ Debt equity ratio</li> </ul>   | To be disclosed in the Management Discussion and Analysis (MD&A) section of the annual report   |
|   |  |   |



|   | YEARLY COMPLIANCES   |  |
|---|--|--|
| Regulation  | Particulars  | Time limit   |
|   | <ul style="list-style-type: none"> <li>✓ Operating profit margin (%)</li> <li>✓ Net profit margin (%)</li> </ul> <p>B. Details of any change in Return on Net Worth as compared to previous year</p> |  |
| SEBI (LODR) (Amendment) Regulations, 2018, Para 3(t) (ii) | <b>Disclosures of subsidiary accounts</b><br>Separate audited financial statements of each subsidiary of the listed entity should be uploaded  | At least 21 days prior to the date of the AGM called to consider accounts of that FY                 |
|   | EVENT BASED COMPLIANCES  |  |
| Regulation  | Particulars  | Time limit   |
| Regulation 7(5)   | <b>Appointment of Share Transfer Agent</b><br>The listed entity shall intimate the appointment of Share Transfer Agent, to the stock exchange  | Within 7 days of Agreement with RTA  |
| Regulation 28(1)  | <b>In-principal Approval</b><br>The listed entity shall obtain In-principle approval from RSE  | Prior making a fresh issue   |
| Regulation 29(1)(a) & 29(2)                               | <b>Intimation of BM for approval of Financial Result</b><br>Prior intimations of Board Meeting for approval of financial result viz. quarterly, half yearly or annual, to the stock exchange         | At least 5 clear days in advance (excluding the date of the intimation and the date of the meeting)  |
| Regulation 29(3)  | <b>Intimation of BM</b><br>Prior intimations of Board Meeting for alteration in nature of Securities to the SE   | At least 11 clear days in advance (excluding the date of the intimation and the date of the meeting) |



| Regulation 29(1)(b), (c), (d) (e), (f) & 29(2) | <b>Intimation of BM</b><br>Prior intimations of Board Meeting for Buyback, Voluntary delisting, Fund raising by way of FPO, Rights Issue, ADR, GDR, QIP, FCCB, Preferential issue, debt issue or any other method, Declaration/recommendation of dividend, issue of convertible securities carrying a right to subscribe to equity shares or the passing over of dividend, proposal for declaration of Bonus securities etc., to the stock exchange(s) | At least 2 clear days in advance (excluding the date of the intimation and the date of the meeting) |
|--|--|---|
| <b>EVENT BASED COMPLIANCES</b>                 |  |   |
| <b>Regulation</b>                              | <b>Particulars</b>   | <b>Time limit</b>   |
| Regulation 30(6)                               | <b>Price Sensitive Information</b><br>Disclosure of Price Sensitive Information to the SE  | Not later than 24 hours   |
| Regulation 31(l)(a)                            | Statement of shareholding prior to listing of securities   | 1 day prior to listing  |
| Regulation 31(l)(c)                            | <b>Capital Restructuring</b><br>Statement of shareholding at the time of capital restructuring   | Within 10 days of any change in capital structure exceeding 2% of the total PSC                     |
| Regulation 37(2)                               | The listed entity shall file draft Scheme of Arrangement to the stock exchange   | Prior approval before filing with Court   |
| Regulation 42(2)                               | <b>Intimation of Record Date</b><br>The listed entity shall intimate the record date or date of closure of transfer books to all the stock exchange(s)   | At least 7 clear working days in advance  |
| Regulation 42(3)                               | <b>Intimation of Record Date for Dividend</b><br>The listed entity shall give notice to stock exchange(s) of Record date for declaring dividend and/or cash bonus  | At least 5 clear working days in advance  |
| Regulation 44(3)                               | <b>Voting Result</b><br>The listed entity shall submit to the stock exchange details regarding voting results by shareholders  | Within 48 hours of conclusion of its GM   |
| Regulation 45(3)                               | Change of name by Listed Entity  | Prior approval of SE  |



|   |   |  |
|---|---|--|
| SEBI<br>(LODR)<br>(Amendment)<br>Regulations,<br>2018, Para<br>3(t) (ii) and<br>Para<br>3(x)(c)(ii) | All credit ratings obtained for all its outstanding instruments   | Updated immediately as and when there is any revision in any of the ratings        |
| SEBI<br>(LODR)<br>(Amendment)<br>Regulations,<br>2018, Para<br>3(v)                                 | <b>Disclosure of reasons for resignation of auditors</b><br>The listed entity to disclose to the stock exchanges detailed reasons for resignation of auditors | As soon as possible but not later than 24 hours from the receipt from the auditors |

### CORPORATE GOVERNANCE UNDER SEBI (LODR) REGULATIONS, 2015

Corporate governance denotes the process, structure and relationship through which the BOD oversees what the management does. It is also about being answerable to different stakeholders.

Corporate governance deals with laws, procedures, practices and implicit rules that determine a company's ability to take informed managerial decisions.

**The ICSI definition:** Corporate Governance is the application of best management practices, compliance of law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders.

#### Non-applicability

1. These provisions will not apply to the listed entity having:

- Paid up equity share capital up-to Rs. 10 Crore, and
- Net worth not up-to Rs. 25 Crore, as on the last day of the previous FY.

**Note:** If the provisions of the regulations become applicable to a listed entity at a later date, such listed entity shall comply with the requirements those regulations within 6 months from the date on which the provisions became applicable to the listed entity.

2. The listed entity which has listed its specified securities on the SME Exchange.

3. An entity undergoing Insolvency Resolution Process under IBC, 2016.





## **Composition of Board of Directors**

### **Minimum number of directors**

The minimum number of Directors in a listed company is 3 as per the Companies Act, 2013.

SEBI (LODR) (Amendment) Regulations, 2018 propose to increase the minimum number of directors on the BOD to 6 instead of 3 on the BOD of the top 1000 listed entities by 1st April 2019 and for the top 2000 listed entities by 1st April 2020.

### **Women Director**

The Companies Act and SEBI (LODR) Regulations require at-least one woman director to be on the board of listed entities who may be either an independent or a non-independent director.

The SEBI (LODR) (Amendment) Regulations, 2018 require at least one independent woman director on the board of the top 500 listed entities by 1st April 2019 and for the top 1000 listed entities by 1st April 2020.

### **Executive/Non-Executive Director**

The BOD of the company shall have an optimum combination of executive and non-executive directors with at-least one woman director:

- ✓ Not less than 50% of the BOD shall comprise of non-executive directors;
- ✓ The number of independent directors would depend on whether the Chairman is executive or non-executive;
- ✓ If the Board has a Non-Executive Chairman, at least 1/3 of the Board should comprise of independent directors;
- ✓ If the Board has an Executive Chairman, at least 1/2 of Board should comprise of independent directors.

**Special Note:** If the regular non-executive Chairman is a promoter of a listed company or is related to promoter or persons occupying management positions at the board level or at one level below the board, at least 50% of the board of the company should consist of independent directors.

### **Related to any promoter means**

- a) If the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it;
  - b) If the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.
- Appointment or Continuation of a person as a non-executive director on attaining the age of 75 years will require shareholders' approval by a Special Resolution. Explanatory statement annexed to the notice for such motion should indicate the justification for appointing such a person.

**Note:** The Companies Act has a similar requirement only for the MD, WTD, or managers attaining the age of 70 years.



### **Limit on Directorship**

The Amendments restrict maximum directorships to eight listed entities and seven listed entities with effect from 1st April 2019 and 1st April 2020 respectively.

### **Limit on appointment of independent Directors**

- ✓ A person shall not serve as an independent director in more than 7 listed companies;  
**OR**
- ✓ Any person who is serving as a WTD in any listed company shall serve as an independent director in not more than 3 listed companies.

**Note:** The count for the number of listed entities on which a person is a director/independent director shall be only those whose equity shares are listed on a stock exchange.

### **Quorum of the Board Meeting**

The Companies Act requires a quorum of 1 /3rd of the total strength of the board of directors or 2 directors, whichever is higher, for every board meeting. SEBI (LODR) (Amendment) Regulations, 2018 require the quorum for every meeting of the board of directors of the listed entity to be 1/3rd of its total strength or 3 directors, whichever is higher, including at least one independent director.

The participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of such quorum. The above amendment for top 1,000 listed entities shall come into effect from 1st April 2019 and for top 2,000 listed entities shall come into effect from 1st April 2020.

### **Board Committees**

A board committee is a small working group identified by the board, consisting of directors. Committees are usually formed as a means of improving board effectiveness and efficiency, in areas where more focused, specialized and technical discussions are required.

Committees are usually formed as a means of improving board effectiveness and efficiency in areas where more focused, specialized and technical discussions are required. These committees prepare the groundwork for decision-making and report at the subsequent board meeting.

Any board should regularly review its own structure and performance and whether it has the right committee structure and an appropriate scheme of delegation from the board.

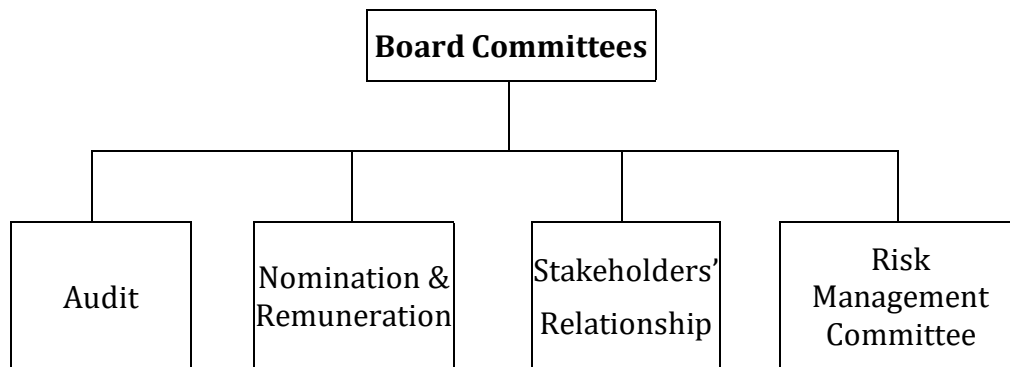
### **Classification of Board Committees**

Mandatory Committees under SEBI (LODR) Regulations, 2015 are:

- Audit Committee
- Nomination and Remuneration Committee
- Stakeholders Relationship Committee
- Risk Management Committee

### **VARIOUS TYPES OF COMMITTEES UNDER SEBI (LODR) REGULATIONS, 2015**





### AUDIT COMMITTEE

Audit Committee is one of the main pillars of the corporate governance mechanism in any company. The Committee is charged with the principal oversight of financial reporting and disclosure.

The constitution of Audit Committee is mandated under the Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

**Audit Committee Provisions in Companies Act** Section 177 of the Companies Act, 2013

**Constitution of Audit Committee:** As per the provisions of the Companies Act, 2013, the following companies are required to constitute an Audit Committee:-

1. Every Listed Public Companies, or
2. Unlisted public companies having:
  - (a) Paid-up capital of Rs. 10 Crore or more;
  - (b) Turnover of Rs. 100 Crore or more;
  - (c) Aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs. 50 Crore or more.

**Note:** The calculation of above paid-up share capital or turnover or outstanding loans etc. shall be based on the last audited Financial Statements. The Companies Act, 2013 provides 1 year from the date of its enforcement for reconstitution of the Audit Committee.

**Members:** The Audit Committee shall comprise of minimum 3 directors with majority of the directors being Independent Directors. The majority of members of Audit Committee should be financial literate.

**Chairman:** The Chairman of the Audit Committee should be financially literate.

**Special Note:** The requirement of Independent directors forming a majority is not applicable to Section 8 companies.

### Role of Audit Committee:

- a) The recommendation for appointment, remuneration and terms of appointment of auditors;
- b) Review and monitor the auditors' independence and performance, and effectiveness of audit process;
- c) Examination of the financial statement and the auditors' report thereon;



- d) Approval or any subsequent modification of transactions of the company with related parties;
- e) Scrutiny of inter-corporate loans and investments;
- f) Valuation of undertakings or assets of the company, wherever it is necessary;
- g) Evaluation of internal financial controls and risk management systems;
- h) Monitoring the end use of funds raised through public offers and related matters.

**Establishment of Internal Control Systems:** The Audit Committee recommends the establishment of Internal Control Systems (relating to financial) and may also call the auditors for comments relating to internal control systems, the scope of audit etc.

**Investigation:** The Audit Committee can start investigation in the matter or referred by the Board and also have the authority to obtain advice from external sources and have full access to records of the company.

**Disclosure in Board's Report:** Section 177(8) of the Act provides that the Board's report shall disclose:

- ✓ Composition of an Audit Committee.
- ✓ Where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in the report along with the reasons therefor.

**Establishments of Vigil Mechanism:** Every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report genuine concerns or grievances:-

1. The companies which accept deposits from the public;
2. The companies which have borrowed money from banks and public financial institutions in excess of Rs. 50 Crore.

**Note:** In case of repeated frivolous complaints being filed by a director or an employee, the Audit Committee or the director nominated to play the role of Audit Committee may take suitable action against the concerned director or employee including reprimand.

**Audit Committee provisions in SEBI (Listing Obligation Disclosure Requirements), 2015**

[Regulation 18 of SEBI (LODR) Regulations, 2015]

Every listed entity shall constitute a qualified and independent audit committee as per Regulation 18. **Members:**

- ✓ The Audit Committee shall have minimum three directors as members;
- ✓ Two-thirds of the members of Audit Committee shall be independent directors;
- ✓ All members of Audit Committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

**Chairman:** The Chairman of the Audit Committee shall be an Independent director and shall be present at Annual General Meeting to answer shareholder's queries.

**Secretary:** The Company Secretary shall act as the Secretary to the committee.



**Invitees:**

- ✓ The Audit Committee may invite such of the executives, as it considers appropriate to be present at the meetings of the committee.
- ✓ The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the Audit Committee.

Note: Financially literate means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows. A person will be treated to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience.

**Number of Meetings:** The Audit Committee should meet at least 4 times in a year and the maximum gap between two meetings shall not exceed 120 days.

**Quorum:** The quorum shall be either 2 members or 1/3rd of the members of Audit Committee whichever is greater subject to minimum of 2 independent members present in the meeting.

**Additional Role of Audit Committee in LODR:** The role of the Audit Committee includes the following:

- ✓ Oversight of company's financial reporting process & disclosure of financial information.
- ✓ Recommending to the Board appointment, re-appointment and the replacement or removal of the statutory auditor and the fixation of audit fees.
- ✓ Approval of payment to statutory auditors for any other services rendered.
- ✓ Reviewing, with the management, the annual or quarterly financial statements before submission to the board for approval.
- ✓ Reviewing, with the management, performance of statutory and internal auditors, and adequacy of the internal control systems.
- ✓ Reviewing the adequacy of internal audit function.
- ✓ Scrutiny of inter-corporate loans and investments.
- ✓ Valuation of undertakings or assets of the listed entity, wherever it is necessary.
- ✓ Evaluation of internal financial controls and risk management systems.
- ✓ Discussion with internal auditors of any significant findings and follow up.
- ✓ Discussion with statutory auditors before the audit commences, about the nature and scope of audit.
- ✓ Review of utilization of loans/advances/investment by the holding company in the subsidiary exceeding Rs. 100 crore or 10% of the asset size of the subsidiary, whichever is lower. (Effective from: 1st April 2019)

**Compliance:** A listed entity is required to comply both with the Companies Act, 2013 as well as SEBI (LODR) Regulations, 2015. Whereas, other entities who need to constitute Audit Committee will comply with Companies Act, 2013.

**Comparison of Audit Committee under Companies Act, 2013 and SEBI (LODR) Regulation, 2015**

- ✓ LODR requires that all members of Audit Committee shall be financially literate and at least one member shall have accounting or related financial management expertise whereas the Companies Act, 2013 provides for majority of members of Audit





Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.

- ✓ The Regulations requires 2/3rd of members of the Audit Committee to be independent whereas Companies Act, 2013 requires majority of members to Audit Committee to be independent.
- ✓ The role of Audit Committee under the Regulations is wider.
- ✓ The Companies Act, 2013 does not prescribe that the Chairman shall be an independent Director.
- ✓ The Companies Act, 2013 does not provide for frequency of meeting of the Audit Committee.
- ✓ The Companies Act, 2013 does not provide for quorum for Audit Committee meeting.

### NOMINATION AND REMUNERATION COMMITTEE

The Nomination and Remuneration Committee helps the Board relating to the appointment of the members of the Board. This Committee finalises the conditions of employment and remuneration of senior management, and to management's and personnel's remuneration and incentive schemes.

**NRC provisions in Companies Act** [Section 178 of the Companies Act, 2013]

**Constitution of Nomination Committee:** The following companies are required to constitute a Nomination Committee:

1. Every listed Public Companies, or
2. Unlisted public companies having:
  - a) paid-up capital of Rs. 10 Crore or more;
  - b) turnover of Rs. 100 Crore or more;
  - c) aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs. 50 Crore or more.

**Special Note:** Dormant and Section 8 Companies not required to constitute NRC.

**Note:** The calculation of above paid-up share capital or turnover or outstanding loans etc. shall be based on the last audited Financial Statements.

**Members:** This committee shall consist of 3 or more non-executive directors out of which not less than 1/2 shall be independent directors.

**Formulation of Policy:** The Nomination and Remuneration Committee shall consider the following while formulating the policy :-

- a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;
- b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
- c) remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals.

### Role & Responsibilities of Nomination and Remuneration Committee

- a. Identifying the persons who are qualified to become Directors and who may be appointed in senior management;
- b. Recommend to the Board the appointment and removal of any director;



- c. Specify the manner for effective Evaluation of Board, Director's Committees performance;
- d. Formulation of the parameters for determining qualifications, positive attributes and independence of a Director, and
- e. Recommend a policy relating to the remuneration for the Directors, KMP and other employees.

### **NRC Provisions in SEBI (Listing Obligation Disclosure Requirements), 2015**

[Regulation 19 of SEBI (LODR) Regulations, 2015]

**Members:** The company shall set up a Nomination and Remuneration Committee which shall comprise at least 3 directors, all of whom shall be non-executive directors and at least 1/2 shall be independent.

**Chairman:** The Chairman of the committee shall be an independent director. The Chairman of the Nomination and Remuneration Committee shall present at the AGM and answer the shareholders' queries in this regard.

#### **Additional Role under LODR:**

- ✓ Formulation of criteria for evolution of performance of Independent director and the Board of Directors.
- ✓ Devising a policy on diversity of Board of Directors.
- ✓ To extend or continue the terms of appointment of Independent Director.
- ✓ The role of the NRC of the board of a listed entity will also include recommendations made to the board on all the payments made, in whatsoever form, to the senior management.

**Note:** "senior management" by specifying that it comprises all members of the management one level below the chief executive officer/managing director/whole-time director/manager (including chief executive officer/manager, in case they are not part of the board) as well as the company secretary and the chief financial officer.

**Meeting:** NRC is required to meet at least once in a year. The quorum for a meeting of the NRC shall be either 2 members or 1/3rd of the members of the committee, whichever is greater, including at least one independent director in attendance.

**Compliance:** A listed entity is required to comply both with the Companies Act, 2013 as well as SEBI (LODR) Regulations, 2015. Whereas, other entities who need to constitute Nomination Remuneration Committee will comply with Companies Act, 2013.

### **Comparison of Nomination Remuneration Committee under Companies Act, 2013 and SEBI (LODR) Regulation, 2015**

1. The regulation prescribes that the Chairperson of the committee shall be an Independent Director.
2. The regulation requires all the members of the committee to be non-executive directors.
3. The regulation prescribes that the Chairperson of committee may be present at the Annual General Meeting.
4. The regulation prescribes the following key additions to the role of the committee:-
  - ✓ formulation of criteria for evolution of performance of Independent director and the Board of Directors



- ✓ devising a policy on diversity of Board of Directors
- ✓ To extent or continue the terms of appointment of Independent Director

### STAKEHOLDERS RELATIONSHIP COMMITTEE (SRC)

**SRC provisions under Companies Act, 2013** [Section 178(5) of the Companies Act, 2013]

**Constitution:** A company has to constitute a "Stakeholders Relationship Committee" where such company has more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year.

**Note:** The provisions of this section are not at all clear regarding the constitution of Stakeholders Relationship Committee.

**Chairperson:** The Chairperson of a Stakeholders Relationship Committee shall be a non-executive director or other member of the Board. This committee considers and resolves the grievances of security holders of the company.

**Note:** The Chairperson of each of the committees or in his absence, any other member of the committee duly authorised by him, shall attend the general meetings of the company.

### SRC provisions under SEBI (Listing Obligation Disclosure Requirements), 2015

[Regulation 20 of SEBI (LODR) Regulations, 2015]

The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the mechanism of redressal of grievances of shareholders, debenture holders and other security holders.

**Members:** The company shall set up an SRC which shall comprise at least 3 directors, atleast one of whom shall be independent.

**Chairperson:** The Chairperson of this committee shall be a non-executive director. The Chairman of the SRC shall present at the AGM and answer the shareholders' queries in this regard.

**Meeting:** Members of the Stakeholders Relationship Committee shall meet atleast once in a year.

### Additional Role of SRC under LODR

- ✓ Resolving the grievances of the security holders of the listed entity including complaints related to transfer/transmission of shares, non-receipt of annual report, non-receipt of declared dividends, issue of new/duplicate certificates, general meetings, etc.
- ✓ Review of measures taken for effective exercise of voting rights by the shareholders.
- ✓ Review of adherence to the service standards adopted by the listed entity in respect of various services being rendered by the Registrar & Share Transfer Agent.
- ✓ Review of the various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends.
- ✓ Ensuring timely receipt of dividend warrants/Annual Reports/statutory notices by the shareholders of the company.

**Compliance:** A listed entity is required to comply both with the Companies Act, 2013 as well as SEBI (LODR) Regulations, 2015. Whereas, other entities who need to constitute Stakeholders Relationship Committee will comply with Companies Act, 2013.



### Comparison of Stakeholders Relationship Committee under Companies Act, 2013 and SEBI (LODR) Regulation, 2015

1. The Regulations specifically prescribe role of the committee in Schedule II, Part D of the Regulations.
2. Further a listed entity even if having less than 1000 debenture holders/security holders is required to constitute a Stakeholder Relationship Committee.

#### **RISK MANAGEMENT COMMITTEE** [Required only under Regulation 21 of SEBI (LODR) Regulations]

As per regulation 21 of the listing regulation, the top 500 listed entities, determined on the basis of market capitalisation, shall lay down the procedures about the risk assessment and minimization procedures:

- a. The Board is responsible for framing, implementing and monitoring the risk management plan.
- b. The company shall also constitute a Risk Management Committee. The Board shall define the roles and responsibilities of the Risk Management Committee.

#### **VIGIL MECHANISM** [Regulation 22 of SEBI (LODR) Regulations, 2015]

The listed entity shall formulate a vigil mechanism for directors and employees to report genuine concerns and provide for adequate safeguards against victimization of directors or employees or any other person who avail the mechanism.

#### **Note:**

1. The vigil mechanism shall also provide for direct access to the Chairperson of the Audit Committee in appropriate or exceptional cases.
2. If the Board is required to take recommendation of any of the Committee on any matter, and the Board has not accepted the recommendation, then the Board is required to disclose this fact, along with the reasons thereof.

#### **Related Party Transaction [Regulation 23 of SEBI (LODR) Regulations, 2015]**

##### **DEFINITION OF RELATED PARTY** [Regulation 2(1)(zb) of SEBI (LODR) Regulations, 2015]

"Related Party means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards."

##### **Deemed Related Party**

Related Party includes any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall be deemed to be a related party.

##### **Definition of Related Party Transaction** [Regulation 2(1)(zc) of SEBI (LODR) Regulations, 2015]

"Related party transaction means a transfer of resources services or obligations between a listed entity and a related party, regardless of whether a price is charged or not whether in single or multiple transactions."

Note: Related party transaction definition is wide in LODR as compared to Companies Act, 2013.





|  |  |
|--|--|
| <b>Policy on materiality of related party transactions</b>       | The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions.  |
| <b>When will a transaction with a related party be material?</b> | A transaction with a related party shall be considered material if the transaction(s) whether individually or taken together with previous transactions during a financial year, exceeds 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.   |
| <b>Approval of Related Party Transactions</b>                    | <div style="text-align: center;"> <pre> graph TD     RPT[Related Party Transaction (RPT)] --&gt; AC[Audit Committee Approval]     RPT --&gt; SH[Shareholder's Approval]     AC --&gt; AC_Note[All RPT transaction need audit committee approval]     SH --&gt; SH_Note[Material RPT transaction need shareholder approval]                     </pre> </div> <p><b>Approval of Audit Committee:</b> All related party transactions shall require prior approval of the Audit Committee.</p> <p><b>Approval of Shareholders:</b> All material related party transactions shall require approval of the shareholders through resolution.</p> <p>Note: Approval of shareholders will not be required for resolution plan approved under Section 31 of Insolvency and Bankruptcy Code, 2016 if such plan was disclosed to Stock Exchange within 1 day of such plan.</p> <p><b>Exceptions</b></p> <p>The approval of Audit Committee and shareholders shall not be required in the following cases:-</p> <ul style="list-style-type: none"> <li>✓ transactions between 2 government companies.</li> <li>✓ transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed</li> </ul> |





|  |   |
|--|---|
|  | before the shareholders at the general meeting for approval.  |
| <b>Omnibus Approval of Audit Committee</b> | <p>Audit Committee may grant omnibus approval for related party transactions if following conditions are satisfied:-</p> <ul style="list-style-type: none"> <li>✓ the Audit Committee shall lay down the criteria for granting the omnibus approval in accordance with the policy on related party transactions;</li> <li>✓ the Audit Committee should be satisfied for the need of omnibus approval in the interest of the listed entity;</li> <li>✓ Contents of omnibus approval: <ul style="list-style-type: none"> <li>○ the name(s) of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into;</li> <li>○ the indicative base price/current contracted price and the formula for variation in the price if any; and</li> <li>○ such other conditions.</li> </ul> </li> </ul> <p>Note: Where above details are not available, Audit Committee may grant omnibus approval for value not exceeding Rs. 1 Crore per transaction.</p> <p>Quarterly review of related party transaction entered by omnibus approval.</p> |

## MISCELLANEOUS

### Secretarial Audit

As per SEBI (LODR) (Amendment) Regulations, 2018, every listed entity and its material unlisted Indian subsidiaries is required to annex with its annual report, a secretarial audit report given by a practising company secretary. The secretarial audit report form will be prescribed by SEBI.

Effective Date: It shall take effect from the year ending 31st March 2019.

Note: Material subsidiary to mean a subsidiary whose income or net worth exceeds 10% of the consolidated income or net worth, respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.

### Annual General Meeting

#### Reduction in Time limit for prescribed Companies

As per SEBI (LODR) (Amendment) Regulations, 2018, top 100 listed entities are required to hold their AGM within a period of 5 months from the date of closing of the financial year, instead of 6 months as given under the Companies Act, 2013.

The Amendments intends to align the timeline for holding AGM with the global practices.

**Note:** This requirement is applicable to top 100 listed entities by market capitalization, determined as on 31st March of every financial year.

### Webcast of proceedings of the meeting



One Stop Solution for CS Students

**Flat 50% OFF on CS Video Lectures**

  **7744859960 / 7276368299**

**India's Best Faculties @ Unbelievable Prices**

Unlimited Views | Free Mock Tests | Personalised Guidance | Many More



As per SEBI (LODR) (Amendment) Regulations, 2018, top 100 listed entities are required to provide oneway live webcast of the proceedings of the AGM.

### In-principal Approval

The listed entity, before issuing securities, shall obtain an 'in-principle' approval from recognised stock exchange(s) in the following manner:-

- ✓ Where the securities are listed only on recognised stock exchange(s) having nationwide trading terminals, from all such stock exchange (s);
- ✓ Where the securities are not listed on any recognised stock exchange having nationwide trading terminals, from all the stock exchange(s) in which the securities of the issuer are proposed to be listed;
- ✓ Where the securities are listed on recognised stock exchange(s) having nationwide trading terminals as well as on the recognised stock exchange(s) not having nationwide trading terminals, from all recognised stock exchange(s) having nationwide trading terminals.

**Note:** In-principle approval not required if the listed entity has already obtained No-Objection Letter from recognised stock exchange(s) in accordance with regulation 37.

### ROLE OF A COMPANY SECRETARY

1. A Company Secretary shall be appointed as the compliance officer. The compliance officer of the listed entity shall be responsible for:
  - ✓ Ensuring conformity with the regulatory provisions.
  - ✓ Co-ordination with and reporting to SEBI, recognised stock exchange(s) and depositories with respect to compliance.
  - ✓ Ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations.
  - ✓ Monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors.
2. Issue of Certificate by PCS under regulation 40(9) (discussed in half yearly compliance).
3. Signing of Corporate Governance Certificate (discussed in quarterly compliance).
4. Issue of Certificate by PCS disclosing that none of the directors on the board of the company have been debarred or disqualified from being appointed or continuing as the directors of companies by the SEBI/MCA or any such statutory authority.





**CS Praveen Choudhary**  
**CS Executive New Syllabus**

**FLAT 50% OFF**  
**All Law Subjects**  
**(CLAW, SBEC, JIGL, SLCM, EBCL)**

**Call @ 7744859960 / 7276368299**

[Click Here to Buy / Watch Demo](#)



# TAKEOVERS



## Introduction

The term takeover is not defined in the Companies Act, 2013. Broadly speaking, takeover refers to acquisition of company by another company.

Takeover is an acquisition of shares carrying voting rights in a company with a view to gain control over the management of the company. It takes place when an individual or a group of individuals or a company acquires control over the assets of a company either by acquiring majority of its shares or by obtaining control of the management of the business and affairs of the company.

Quite often, as a prelude to non-organic corporate restructuring, corporate embark on acquisition of companies and then take steps to amalgamate or merge the acquired company or amalgamate or merger with the acquired company and in the process also demerge some of the undertakings.

## OBJECTS/ADVANTAGES OF TAKEOVER:

- ❖ To achieve product development through acquiring firms with compatible products and technological competence.
- ❖ To diversify by acquiring companies with new product lines.
- ❖ To maximize shareholders wealth by optimum utilization of resources.
- ❖ To eliminate competition.
- ❖ To obtain the advantage of economies of scale.
- ❖ To increase market share.
- ❖ To command better bargaining position.

## KINDS OF TAKEOVER:

Takeovers may be broadly classified into three kinds:

|                           |  |
|---------------------------|--|
| <b>Friendly Takeover:</b> | Friendly takeover is with the consent of taken over company. In friendly takeover, there is an agreement between the management of 2 companies through negotiations and the takeover bid may be with the consent of majority or all shareholders of the target company. This kind of takeover is done through negotiations between 2 groups. Therefore, it is also called negotiated takeover. |
|---------------------------|--|





|   |  |
|---|--|
| <b>Hostile Takeover (June 2006)/June 2009</b> | When an acquirer company does not offer the target company the proposal to acquire its undertaking but silently and unilaterally pursues efforts to gain control against the wishes of existing management, such acts of acquirer are known as 'hostile takeover'. Such takeovers are hostile on management and are thus called hostile takeover.  |
| <b>Bail out Takeover (Dec 2005)</b>           | Takeover of a financially sick company by a profit earning company to bail out the former is known as bail out takeover. Such takeover normally takes place in pursuance to the scheme of rehabilitation approved by the financial institution or the scheduled bank, who have lent money to the sick company. The lead financial institutions, evaluates the bids received in respect of the purchase price track record of the acquirer and his financial position. This kind of takeover is done with the approval of the Financial Institutions and banks. |

### LEGAL FRAMEWORK FOR TAKEOVER

Following is the legal framework for takeover of companies:

- ❖ Section 235 & 236 of the Companies Act, 2013.
- ❖ SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; and
- ❖ Regulation 31 & 38 of the Listing Obligation and disclosure Regulations 2015.

**Note:** - In the case of unlisted companies, takeover is regulated only by Section 235 & 236 of the Companies Act 2013, however, in the case of listed companies; takeover is regulated by aforesaid Takeover Code and LODR 2015.

### Takeover Bids

A technique adopted by company for taking over control of the management and affairs of another company by acquiring its controlling shares.

An offer to the shareholders of a company, whose shares are not closely held, to buy their shares in the company at the offered price within the stipulated period of time. It is addressed to the shareholders with a view to acquiring sufficient number of shares to give the Offeror Company, voting control of the target company.

It may be a friendly takeover bid or Hostile takeover bid and it may also be mandatory bid or competitive bids.

#### Questions

|                        |  |
|------------------------|--|
| June 2008              | What do you mean by Takeover Bids? Distinguish between 'partial Bids' and 'competitive bids' in accordance with the SEBI (SAST) Regulations, 2011. |
| Dec 2010/<br>June 2007 | Write short notes on Competitive Bids  |
| June 2007<br>Dec 10    | Diff between 'Mandatory Bids' and 'competitive Bids'   |

### Mandatory Takeover bids (as per SAST requirement)

- ❖ For acquisition of 25% or more of the shares or voting rights;





**Takeover**

- ❖ For acquiring additional shares or voting rights more than 5% of the voting rights in any financial year ending on 31st March if such person already holds not less than 25% but not more than 75% or 90% of the shares or voting rights in a company as the case may be;
- ❖ For acquiring control over a company.

**Factors Determining Vulnerability of Companies to Takeover Bids**

- ❖ Low stock price with relation to the replacement cost of assets or their potential earning power;
- ❖ A highly liquid balance sheet with large amounts of excess cash, a valuable securities portfolio, and significantly unused debt capacity;
- ❖ Good cash flow in relation to current stock prices;
- ❖ Subsidiaries and properties which could be sold off without significantly impairing cash flow; and
- ❖ Relatively small stockholdings under the control of an incumbent management.

**Legal Framework for Takeover**

| In case of Closely held Company               | In case of Public Listed Company  |
|---|---|
| Procedure of Sec 235 & 236 has to be followed | Sec 235 & 236<br>LODR 2015<br><u>Mainly</u><br>Regulation 31<br>Regulation 38 |

**Takeover of Unlisted and Closely Held Companies (Sec 235 & 236)**

**Power to acquire shares of shareholders dissenting from scheme or contract approved by majority [Sec 235]**

- (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has, **within 4 months** after making of an offer in that behalf by the transferee company, been approved by the holders of **not less than 9/10<sup>th</sup> in value of the shares** whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies, the transferee company **may, at any time within 2 months** after the expiry of the said 4 months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.
- (2) Where a notice is given, the transferee company shall, unless on an application made by the dissenting shareholder to the NCLT, **within 1 month** from the date on which the notice was given and the NCLT thinks fit to order otherwise, be entitled to and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.
- (3) Where a notice has been given by the transferee company and the NCLT has not, on an application made by the dissenting shareholder, made an order to the contrary, the transferee company shall, **on the expiry of 1 month** from the date on which the notice has been given, or, if an application to the NCLT by the dissenting shareholder is then pending, after that application has been disposed of, send a copy of the notice to the transferor company together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferor company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other



## Takeover

consideration representing the price payable by the transferee company for the shares which, by virtue of this section, that company is entitled to acquire, and the transferor company shall—

- (a) Thereupon register the transferee company as the holder of those shares; and
  - (b) Within 1 month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company.
- (4) Any sum received by the transferor company under this section shall be paid into a separate bank a/c, and any such sum and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which said sum or other consideration were respectively received and shall be disbursed to the entitled shareholders **within 60 days**.

**Note:** → Dissenting shareholder includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company under the scheme or contract.

### **Purchase of minority shareholding [Sec 236]**

- (1) In the event of an acquirer, or a PAC with such acquirer, becoming registered holder of 90% or more of the issued equity share capital of a company, or in the event of any person or group of persons becoming 90% majority or holding 90% of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares.
- (2) The acquirer, person or group of persons shall offer to the minority shareholders of the company for buying the equity shares held by them at a price determined on the basis of valuation by a registered valuer as per prescribed rules.
- (3) Without prejudice to the provisions of sub-sections (1) and (2), the minority shareholders of the company may offer to the majority shareholders to purchase their shareholding at the price determined as per rules as may be prescribed under sub-section (2).
- (4) The majority shareholders shall deposit an amount equal to the value of shares to be acquired by them, in a separate bank a/c to be operated by the transferor company for at least 1 year for payment to the minority shareholders and such amount shall be disbursed to the entitled shareholders within 60 days:  
Provided that such disbursement shall continue to be made to the entitled shareholders for a period of 1 year, who for any reason had not been made disbursement within the said period of 60 days or if the disbursement have been made within the aforesaid period of 60 days, fail to receive or claim payment arising out of such disbursement.
- (5) Here, the transferor company shall act as a transfer agent for receiving and paying the price to the minority shareholders and for taking delivery of the shares and delivering such shares to the majority, as the case may be.
- (6) In the absence of a physical delivery of shares by the shareholders within the specified time, the share certificates shall be deemed to be cancelled, and the transferor company shall be authorised to issue shares in lieu of the cancelled shares and complete the transfer in accordance with law and make payment of the price out of deposit made by the majority in advance to the minority by dispatch of such payment.
- (7) If majority shareholders requires a full purchase and making payment of price by deposit with the company for any shareholder who have died or ceased to exist, or whose heirs, successors, administrators or assignees have not been brought on record by transmission, the right of such shareholders to make an offer for sale of minority equity shareholding shall continue and be available for a period of 3 years from the date of majority acquisition or majority shareholding.



## Takeover

- (8) Where the shares of minority shareholders have been acquired under this section and as on or prior to the date of transfer following such acquisition, the shareholders holding 75% or more minority equity shareholding negotiate or reach an understanding on a higher price for any transfer, proposed or agreed upon, of the shares held by them without disclosing the fact or likelihood of transfer taking place on the basis of such negotiation, understanding or agreement, the majority shareholders shall share the additional compensation so received by them with such minority shareholders on a pro rata basis.
- (9) When a shareholder or the majority equity shareholder fails to acquire full purchase of the shares of the minority equity shareholders, then, the provisions of this section shall continue to apply to the residual minority equity shareholders, even though,—
- The shares of the company of the residual minority equity shareholder had been delisted; and
  - The period of 1 year or the period specified in the regulations made by the SEBI under SEBI Act, 1992 had elapsed.

### Question

Dec  
2005

In the context of corporate restructuring, briefly mention the provisions of Sec 235 relating to powers and duties to acquire shares of shareholders dissenting from scheme or contracts approved by majority shareholders.

### Takeover of Listed Company

In case of Takeover of listed company apart from the above mentioned requirement we also have to follow SAST Regulations 2011 and also the requirement under the Listing [Regulations\(2018\)](#). Some requirement of FEMA 1999 may also have to be followed if acquirer is person Resident outside India.

### Listing Obligation and Disclosure Requirement 2015

#### Regulation 38 – Minimum level of public shareholding

- The issuer company agrees to comply with the requirements specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957.
- Where the issuer company is required to achieve the minimum level of public shareholding specified in Rule 19(2)(b) and/or Rule 19A of the Securities Contracts (Regulation) Rules, 1957, it shall adopt any of the following methods to raise the public shareholding to the required level:-
  - Issuance of shares to public through prospectus; or
  - offer for sale of shares held by promoters to public through prospectus; or
  - sale of shares held by promoters through the secondary market in terms of SEBI circular or
  - Institutional Placement Programme (IPP) in terms of Chapter VIIIA of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended; or
  - Rights Issues to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, whether present or future, that may arise from such issue;  
**OR**
  - Bonus Issues to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, whether present or future, that may arise from such issue;  
**OR**
  - Any other method as may be approved by SEBI, on a case to case basis.

#### Regulation 31 – Takeover Offer

A company agrees that it is a condition for continued listing that whenever the takeover offer is made or there is any change in the control of the management of the company, the person who secures the control of the management of the company and the company whose shares have been acquired shall





comply with the relevant provisions of the SEBI (Substantial Acquisition of Shares and Take-overs) Regulations.

|  |  |
|--|--|
| <b>Target Company</b>  | The company / body corporate or corporation whose equity shares are listed in a stock Exchange and in which a change of shareholding or control is proposed by an acquirer, is referred to as the 'Target Company'.  |
| <b>Control</b>   | "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:  |
| <b>Disclaimer Clause</b>   | <ul style="list-style-type: none"> <li>❖ It is to be noted that filing of draft letter of offer to SEBI doesn't amount to approval of SEBI's consent</li> <li>❖ Filing of offer document is to facilitate the shareholders of company to take an informed decision with regards to offer made by the acquirer</li> <li>❖ SEBI is not responsible for correctness of any document.</li> <li>❖ Primary responsibility is that of acquirer &amp; lead merchant Banker.</li> </ul> |
| <b>Promoter</b>  | Has the same meaning as in SEBI (Issue of capital & Disclosure requirements) Regulations, 2009.  |
| <b>Wilful Defaulter Notification dated 25 May 2016 Regulation 2(1)(ze)</b> | Any person who is categorized as a wilful defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by RBI and includes any person whose director, promoter or partners categorised as such.   |

**Questions**

|                  |   |
|------------------|---|
| <b>June 2006</b> | Promoters as per the SEBI (SAST) Regulation, 2011.  |
| <b>Dec 2005</b>  | SEBI (SAST) Regulations, 2011 is applicable even if the acquirer is a person resident outside India. Comment. |
| <b>Dec 2006</b>  | Discuss whether the filing of draft letter of offer with SEBI amounts to approval of its contents.            |

**Disclosures Related Provisions**

| <b>Event Based Disclosure</b>   | <b>Continual Disclosure (D08)</b>  |
|---|--|
| Any person, who along with PACs crosses the threshold limit of <b>5% or more of shares or voting rights</b> , has to disclose his aggregate shareholding and voting rights to the Target Company at its registered office and to every Stock Exchange where the shares of the Target Company are listed | Continual disclosures of aggregate shareholding shall be made within 7 working days of financial year ending on March 31 to the target company at its registered office and every stock exchange where the shares of the Target Company are listed by:<br>(a) Shareholders (along with PACs, if any) holding |



|  |   |
|--|---|
| <p>within 2 working days of acquisition as per the format specified by SEBI.</p> <p>Any person who already holds <b>5% or more of shares or Voting rights</b> of the target company and who acquires or sells shares <b>exceeding 2% of total shares or the voting rights</b>, shall disclose details of such acquisitions/sales to the Target company at its registered office and to every Stock Exchanges where the shares of the Target Company are listed within 2 working days of such transaction, as per the format specified by SEBI.</p> | <p>shares or voting rights entitling them to exercise <b>25% or more</b> of the voting rights in the target company.</p> <p>(b) Promoter (along with PACs, if any) of the target company irrespective of their percentage of holding.</p> |
|--|---|

### Disclosures of encumbered shares

The promoter (along with PACs) of the target company shall disclose details of shares encumbered by them or any invocation or release of encumbrance of shares held by them to the target company at its registered office and every stock exchange where shares of the target company are listed, within 7 working days of such event.

### Encumbrance (Regulation 28(3))

Includes a pledge, lien or any such transaction, by whatever name called.” and are required to be disclosed to the stock exchanges in terms of the Takeover Regulations, 2011.

**Important to Note:** - for disclosure purpose Shares includes convertible securities also. So for computing the trigger limit for disclosure.

**%age with respect to shares** → Total no. of Eq. + other Convertible securities should be taken into account

**%age with respect to voting rights** → Voting right on Eq. + other securities (GDR/ADR if carry voting right)

#### Example 1:

Company A has 100 equity shares, 50 partly convertible debentures and 10 GDRs. 1 GDR carries 1 voting right.

Hence

Total shares of Company A =  $100 + 50 + 10 = 160$

Total voting capital of Company A =  $100 + 10 = 110$

#### Example 2:

Person B has 8 equity shares, 7 PCDs and 1 GDR

Person b has  $8+7+1 = 16$  shares (shares for disclosure purpose includes convertible securities)

Person B's holding in terms of shares =  $16/160 = 10\%$  of shares

Person B's voting rights =  $8+1 = 9$  voting rights

Person B's holding in terms of voting rights =  $9/110 = 8\%$  of voting rights

Since person B is holding more than 5% of shares or voting rights, he is required to make disclosures for any acquisition/ sale of 2% or more of shares or voting rights.





### Scenario I

Person B acquires 2 equity shares and 2 PCD

In terms of shares, Person B has acquired  $4/160 = 2.5\%$  of shares

In term of voting Right, person B has acquired  $2/110 = 1.8\%$  of voting rights

Since acquisition done by person B represents 2% or more of shares, the disclosure are required.

### Scenario II

Person B acquires 20 PCDs

In terms of shares, person B has acquired 20 shares, i.e.  $20/160$  i.e. 12.5% shares. In terms of voting rights, he has not acquired a single voting right i.e. 0 voting right. However, since acquisition done by person B represent 2% or more of shares (through no voting rights) the disclosure are required.

### Regulation 3: - Open offer thresholds

1. If acquires  $\geq 25\%$  of shares or voting rights  $\rightarrow$  open offer b4 acquiring such additional shares
2. If acquisition  $> 25\% <$  maximum permissible non public shareholding  $\rightarrow$  Need to make open offer b4 further acquisition of  $> 5\%$  of voting rights in FY ending 31<sup>st</sup> March

Here Maximum Permissible non public shareholding = Total Shareholding – min public share holding.

**Note:** - As per SCRR 1957 minimum public shareholding

\*Public Co. other than PSU  $\rightarrow 25\%$

\*Public Co. which is PSU  $\rightarrow 10\%$

### Regulation 3(2): - Creeping acquisition? (5M) (Dec 2004)

An acquirer who along with the PAC holds 25% or more but less than maximum permissible non-public shareholding in a target company, can acquire additional 5% of voting rights in any financial year ending March 31st, without making an open offer.

### Delisting offer (Reg 5A)

- 1) If an acquirer makes a public announcement of an open offer for acquiring shares of a target company, he may delist the company as per SEBI (Delisting of Equity shares) Regulation 2009.

Provided that the acquirer shall have declared upfront his intention to so delist at the time of making the detailed public statement

- 2) If an offer made is not successful because of any prescribed reason, the acquirer shall make an announcement within 2 working days in respect of such failure in all the newspapers in which the DPS was made and shall comply with all applicable provisions of these regulations.
- 3) 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 2 working days from the date of public announcement made in all the newspapers in which the DPS was made.



## Takeover

- 4) Shareholders who have tendered shares in acceptance of the offer, shall be entitled to withdraw such shares tendered, within 10 working days from the date of the announcement
- 5) 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

### Regulation 6: - Voluntary Open offer

To be made by a person holding  $\geq 25\%$  of shares or voting rights but  $<$  maximum permissible non-public shareholding

### Regulation 6A (Notified on 25th May 2016)

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.

### Offer Size (Reg 7)

The open offer for acquiring shares to be made by the acquirer and persons acting in concert with him under Reg 3 & Reg 4 shall be for at least 26% of total shares of the target company, as of 10<sup>th</sup> working day from the closure of the tendering period.

The total shares of the target co. as of 10<sup>th</sup> working day from the closure of the tendering period shall take into account all potential increases in the no. of outstanding shares during the offer period contemplated as of the date of the public announcement.

A Voluntary open offer can be made for the acquisition of shares representing at least 10% of **voting rights in (2018)** target company but shall not exceed such no. of such shares which will take the holding of the acquirer and PACs to beyond maximum non public shareholding permitted.

Upon a competing offer being made, such an acquirer would be permitted to increase his offer size to a normal full sized open offer within 15 working days.

### Open offer process

- Prior to making of a public announcement, the acquirer shall appoint Merchant Banker registered with the Board, who is not an associate of the acquirer, as manager to the offer.
- The public announcement of the open offer for acquiring shares required under these regulations shall be made by the acquirer through such manager to the open offer.
- Public announcement.

Provided further if Acquirer acquires the shares or voting rights of the Target Company in excess of the limits prescribed under Regulation 3 and 4, then the Acquirer is required to give a Public Announcement of an Open Offer to the shareholders of the Target Company. During the process of making the Public Announcement of an Open Offer, the Acquirer is required to give Public Announcement and publish Detailed Public Statement. For this purpose separate time line has been prescribed.



**Exemption from making an open offer (Mandatory Bids)**

**Regulation 10: Automatic Exemption**

1. Acquisition in relation to inter se transfer of shares amongst qualifying person. Provided acquisition price is not more than 25% of 60 days volume weighted Average price [for frequently trade shares]  
For infrequently traded shares → Acquisition price shall not be more than 25% of price determined under regulation 8(2)
2. Acquisition in ordinary course of business by
  - ❖ Underwriters
  - ❖ Stock Broker
  - ❖ Merchant Banker (acting as Stabilizing Agent)
  - ❖ Registered Market Maker
  - ❖ Scheduled Commercial Bank (SCB)
  - ❖ Invocation of pledge by Bank
  - ❖ Acquisition as per Sec 44 of SEBI (ICDR) Regulation 2009
3. Acquisition in pursuant of
  - ❖ Agreement of disinvestment
  - ❖ Arrangement involving Merger and Amalgamation, Demerger ordered by Court.
  - ❖ Provision of SARFAESI Act 2002
  - ❖ SEBI (Delisting of Equity Shares) Regulation 2009
  - ❖ Transmission, succession or inheritance
  - ❖ Scheme of corporate Debt Restructuring according to scheme notified by RBI.
4. Increase in voting rights pursuant to buy back, provided the shareholding shall decrease below the threshold within 90 days of such increase

**Regulation 11**

**Exemption granted by SEBI**

1. Where Central Govt. or State Govt. superseded the Board of Directors (BOD) of company.
2. Exemption in public interest

**Note:** - For seeking exemption acquire/ target co. needs to file an application along-with affidavit to SEBI.

**Regulation 16: - Filing Draft Letter of offer**

Within 5 working days of publication DPS, the acquirer through the manager to the offer is required to file a draft letter of offer with SEBI for its observations.

The Board 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 Board within such period, it shall be deemed that the Board does not have comments to offer:

Provided that in the event the Board 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.



Provided further that in the event the Board specifies any changes, the manager to the open offer and the acquirer shall carry out such changes in the letter of offer before it is dispatched to the shareholders.

### **Regulation 17:- Escrow account**

At-least 2 working days prior to the date of the Detailed Public Statement (DPS) of open offer for acquiring shares, the acquirer shall create an escrow account towards security for performance of his obligations under these regulations, and deposit in escrow account such aggregate amount as specified.

The purpose of these provisions is to ensure that the acquirer has sufficient funds to pay the consideration under the offer and he has secured sufficient financial arrangement.

**Escrow a/c means:** - a bank account which is required to be opened by an acquirer who proposes to make public announcement of offer.

### **Amount to be deposited in Escrow Account:**

- On 1st 500 Cr. → 25% of consideration
- On balance → additional amt equal to 10%.

If offer is made conditional upon minimum level of acceptance, then higher of following shall be deposited

- 100% of consideration payable in respect of minimum level of acceptance or
- 50% of consideration payable under the open offer.

**Note:** - if any upward revision is made in open offer → make corresponding increase in Escrow Account.

### **Mode of Payment (Reg 9)**

(a) **Cash Deposit** with any scheduled commercial bank

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.

(b) **Bank guarantee**

In the favour of manager (merchant banker) to the offer and shall be kept valid throughout the offer period and additional 30 days after the payment to the shareholders who have tendered their shares have been made.

(c) Deposit of **frequently traded and freely transferable equity shares** or other freely transferable securities. Manager to the Open Offer shall be empowered to realize the value of escrow account by way of sale or otherwise.

**Further in case of any shortfall in the amount in the escrow account, such shortfall shall be made good by the Manager**

**Note:** - in case of Bank Guarantee or Deposit of Securities → at least 1% of total consideration should be deposited in Cash.

### **Release of amount from Escrow Account**

**In the following cases only**

1. In case of withdrawal of offer, the entire amount can be released only after certification by the managers to the open offer.





## Takeover

2. The amount deposited in special escrow account is transferred to special bank account opened with the Bankers to an issue; however the amount so transferred shall not exceed 90% of the cash deposit.
3. The balance 10% is released to the acquirer on the expiry of thirty days from the completion of all obligations under the offer.
4. The entire amount to the acquirer on the expiry of thirty days from the completion of all obligations under the offer where the open offer is for exchange of shares or other secured instruments.
5. In the event of forfeiture of amount, the entire amount is distributed in the following manner:
  - ❖ 1/3<sup>rd</sup> of the amount to Target Company;
  - ❖ 1/3<sup>rd</sup> of the Escrow account to the IEPF established under SEBI (IEPF) Regulations, 2009;
  - ❖ Residual 1/3<sup>rd</sup> is to be distributed to the shareholders who have tendered their shares in the offer.

### Regulation 18

#### Draft Letter of offer

- ❖ 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.

#### Dispatch of letter of offer to share holders

- ❖ Not later than 7 working days from the receipt of comments from the Board or
- ❖ Where no comments are offered by the Board, within 7 working days from the expiry of the stipulated period.

#### Letter of offer to the custodian of shares underlying depository receipts

- ❖ Send the letter of offer to the custodian of shares underlying depository receipts, if any, of the target company

### Size of an Open Offer

- ❖ An Open offer must be made for a minimum of 26% of the target company's share capital.
- ❖ Voluntary open offer must be for at least 10% of the target company's share capital.

#### Disclosure of acquisition during offer period

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 twenty-four hours of such acquisition, and the stock exchanges shall forthwith disseminate such information to the public:

Provided that the acquirer shall not acquire or sell any shares of the target company during the period between three working days prior to the commencement of the tendering period and until the expiry of the tendering period.

#### Advertisement before the tendering period

One 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





|                                   |   |
|-----------------------------------|---|
|                                   | <p>any, and their status, the procedure for tendering acceptances and such other material detail as may be specified:</p> <p><b>Provided that such advertisement shall be,—</b></p> <ul style="list-style-type: none"><li>❖ Published in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and</li><li>❖ Simultaneously sent to the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.</li></ul>                           |
| <b>Offer period</b>               | The period starting from the date of the event triggering open offer till completion of payment of consideration to shareholders by the acquirer or withdrawal of the offer by the acquirer as the case maybe.  |
| <b>Tendering period</b>           | The <b>10 working days</b> falling within the offer period, during which the eligible shareholders who wish to accept the open offer can tender their shares in the open offer. The tendering period shall start not later than twelve working days from date of receipt of comments from the Board and shall remain open for ten 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.  |
| <b>Completion of requirements</b> | <p>Within 10 working days from the last date of the tendering period, complete all requirements relating to the open offer including payment of consideration to the shareholders who have accepted the open offer.</p> <p>Acquirer will be responsible for all statutory approvals required to complete the open offer without any default, neglect or delay</p>   |
| <b>Post offer Advertisement</b>   | <p>Within 5 working days after the offer period, giving details including aggregate number of shares tendered, accepted, date of payment of consideration.</p> <p><b>Such advertisement shall be,—</b></p> <ul style="list-style-type: none"><li>i. Published in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and</li><li>ii. Simultaneously sent to the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.</li></ul> |

**Note:** - the offer size percentage is calculated on the fully diluted share capital of the target company taking into account potential increase in the number of outstanding shares as on 10th working day from the closure of the open offer.

### Regulation 19:- Conditional Offer

An offer in which the acquirer has stipulated a minimum level of acceptance.

‘Minimum level of acceptance’ implies minimum number of shares which the acquirer desires under the said conditional offer. If the number of shares validly tendered in the conditional offer, are less than the minimum level of acceptance stipulated by the acquirer, then the acquirer is not bound to accept any shares under the offer. In a conditional offer, if the minimum level of acceptance is not reached, the acquirer shall not acquire any shares in the target company under the open offer or the Share Purchase Agreement which has triggered the open offer.



### **Regulation 20 Competing Offer**

An offer made by a person, other than the acquirer who has made the first public announcement. A competitive offer shall be made within 15 working days of the date of the Detailed Public Statement (DPS) made by the acquirer who has made the first PA. If any competitive offer is made, the acquirer can revise the terms of his open offer provided the revised terms are favourable to the shareholders of the target company. Such revision can be made up to 3 **ONE** working days. (2018)

### **Regulation 21 Payment of Consideration**

The acquirer shall complete payment of consideration whether in the form of cash, or as the case may be, by issue, exchange/transfer of Securities, to all shareholders who have tendered shares in acceptance of the open offer within 10 working days of the expiry of the tendering period, by transferring the consideration to a Special Escrow Account.

### **Regulation 23 Withdrawal of open Offer**

Open offer cannot be withdrawn except in following cases:

- ❖ Statutory approvals required for the open offer or for effecting the acquisitions attracting the obligation to make an open offer have been refused subject to such requirement for approvals having been specifically disclosed in the DPS and the letter of offer;
- ❖ Any condition stipulated in the SPA attracting the obligation to make the open offer is not met for reasons outside the reasonable control of the acquirer, subject to such conditions having been specifically disclosed in the DPS and the letter of offer;
- ❖ Sole acquirer being a natural person has died;
- ❖ Such circumstances which in the opinion of SEBI merit withdrawal of open offer.

### **Regulation 25 Obligation of Acquirer (Dec 2006)**

(1) Ensure financial arrangements have been made for fulfilling the payment obligations under the open offer and that the acquirer is able to implement the open offer, subject to any statutory approvals for the open offer that may be necessary.

(2) In the event the acquirer has not declared an intention in the detailed public statement and the letter of offer to alienate any material assets of the target company or of any of its subsidiaries whether by way of sale, lease, encumbrance or otherwise outside the ordinary course of business, the acquirer, where he has acquired control over the target company, shall be debarred from causing such alienation for a period of 2 years after the offer period:

Provided that in the event the target company or any of its subsidiaries is required to so alienate assets despite the intention to alienate not having been expressed by the acquirer, such alienation shall require a special resolution passed by shareholders of the target company, by way of a postal ballot and the notice for such postal ballot shall inter alia contain reasons as to why such alienation is necessary.

(3) Ensure that the contents of the public announcement, the detailed public statement, the letter of offer and the post-offer advertisement are true, fair and adequate in all material aspects and not misleading in any material particular, and are based on reliable sources, and state the source wherever necessary.



- (4) The acquirer and persons acting in concert with him shall not sell shares of the target company held by them, during the offer period.
- (5) The acquirer and persons acting in concert with him shall be jointly and severally responsible for fulfilment of applicable obligations under these regulations.

### **Regulation 26 Obligation of Target Company**

1. After public announcement of Public offer BOD of such target company shall ensure that during the offer period, the business of the target company is conducted in the ordinary course consistent with past practice.
2. During offer period the BOD of target co. Or its subsidiary should not.
  - ❖ Alienate any material assets whether by way of sale, lease, encumbrance or otherwise or enter into any agreement therefor outside the ordinary course of business
  - ❖ Effect any material borrowings outside the ordinary course of business;
  - ❖ Issue or allot any authorised but unissued securities entitling the holder to voting rights

**Provided that the target company or its subsidiaries may,—**

  - i. issue or allot shares upon conversion of convertible securities issued prior to the public announcement of the open offer, in accordance with pre-determined terms of such conversion;
  - ii. issue or allot shares pursuant to any public issue in respect of which the red herring prospectus has been filed with the Registrar of Companies prior to the public announcement of the open offer; or
  - iii. issue or allot shares pursuant to any rights issue in respect of which the record date has been announced prior to the public announcement of the open offer;
  - ❖ Implement any buy-back of shares or effect any other change to the capital structure of the target company;
  - ❖ Enter into, amend or terminate any material contracts to which the target company or any of its subsidiaries is a party, outside the ordinary course of business, whether such contract is with a related party, within the meaning of the term under applicable accounting principles, or with any other person; and
  - ❖ Accelerate any contingent vesting of a right of any person to whom the target company or any of its subsidiaries may have an obligation, whether such obligation is to acquire shares of the target company by way of employee stock options or otherwise.
3. In any general meeting of a subsidiary of the target company in respect of the matters referred to in sub regulation (2), the target company and its subsidiaries, if any, shall vote in a manner consistent with the special resolution passed by the shareholders of the target company.
4. The target company shall be prohibited from fixing any record date for a corporate action on or after the third working day prior to the commencement of the tendering period and until the expiry of the tendering period.
5. The target company shall furnish to the acquirer within two working days from the identified date, a list of shareholders as per the register of members of the target company containing names, addresses, shareholding and folio number, in electronic form, wherever available, and a list of persons whose applications, if any, for registration of transfer of shares are pending with the target company:

Provided that the acquirer shall reimburse reasonable costs payable by the target company to external agencies in order to furnish such information.
6. Upon receipt of the detailed public statement, the board of directors of the target company shall constitute a committee of independent directors to provide reasoned recommendations on such open offer, and the target company shall publish such recommendations:



**Takeover**

Provided that such committee shall be entitled to seek external professional advice at the expense of the target company.

7. The committee of independent directors shall provide its written reasoned recommendations on the open offer to the shareholders of the target company and such recommendations shall be published in such form as may be specified, at least 2 working days before the commencement of the tendering period, in the same newspapers where the public announcement of the open offer was published, and simultaneously, a copy of the same shall be sent to,—
  - ❖ The Board;
  - ❖ 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
  - ❖ To the manager to the open offer, and where there are competing offers, to the manager to the open offer for every competing offer.
8. The board of directors of the target company shall facilitate the acquirer in verification of shares tendered in acceptance of the open offer.
9. The board of directors of the target company shall make available to all acquirers making competing offers, any information and co-operation provided to any acquirer who has made a competing offer.
10. Upon fulfilment by the acquirer, of the conditions required under these regulations, the board of directors of the target company shall without any delay register the transfer of shares acquired by the acquirer in physical form, whether under the agreement or from open market purchases, or pursuant to the open offer.







**CS Praveen Choudhary**  
**CS Executive New Syllabus**

**FLAT 50% OFF**  
**All Law Subjects**  
**(CLAW, SBEC, JIGL, SLCM, EBCL)**

**Call @ 7744859960 / 7276368299**

[Click Here to Buy / Watch Demo](#)



## BUY BACK OF SECURITIES

### Purpose:

A company would opt for buy - back for the following reasons:-

- i. To improve shareholder value - Buy back generally results in higher earnings per share (E.P.S.)
- ii. As a defence mechanism - Buy back provides a safeguard against hostile takeovers by increasing promoters' holding.
- iii. To provide an additional exit route to shareholders when shares are undervalued or thinly traded.
- iv. To return surplus cash to shareholders.

### Important Provisions [Section 68(1)]:

(1) A company may purchase its own shares or other specified securities out of:

- (i) Its free reserves;
- (ii) The securities premium account; or
- (iii) The proceeds of an earlier issue of shares or other specified securities.

However, no buy - back can be done out of proceeds of all earlier issue of same kind of shares / securities.

**Note:** - Company must have sufficient balance in any one or more of these accounts for this purpose.

Specified Securities includes → ESOP or other securities as may be notified by CG.

(2) For buy - back purpose, the following conditions must be fulfilled:-

- a. Buy - back is authorized by the articles of association of the Company. If it doesn't, Alter the AOA
- b. A company may, by a Board Resolution or Special Resolution in AGM can buy back depending on quantum of buyback. In case of Listed co. Shareholders' approval shall be through Postal Ballot only.

### Quantum of Buyback→

- a) If buyback is up to 10% of total paid up equity Capital & Free Reserve→by passing BR in BM
- b) If Buy back up to 25% of total paid up Capital & Free Reserve→By SR in GM

However in a financial year, they can only approve up-to 25% of total Equity Capital.

**Note:** - Board resolution must be passed at a Board Meeting only and not by circulation. Such buyback can be done once in one year only. If it wants to acquire more than 10% within 365 days of previous buyback. BOD will have to take approval of Shareholders in AGM for buyback up to 25%.

No offer shall be made within a period of 1 yr from the date of Closure of preceding offer of buyback

(iii) After buy - back, the debt equity ratio shall be less than or equal to 2 i.e., the debt should not be more than twice the equity after buy - back. However, the Central Government may notify higher ratio of Debt equity.



**Note:** -Here 'debt' means secured as well as unsecured debts; and 'equity' means equity share capital and free reserves.

If company is listed company → Buyback shall be as per SEBI regulations.

If company is unlisted Public company or Private Company → Buy back shall be as per Rules made under **Chapter IV of the companies Act 2013**

### **Explanatory Statement**

The notice of meeting, at which SR of Buy back is to be passed shall be accompanied by an explanatory Statement stating –

- ❖ a full and complete disclosure of all material facts;
- ❖ the necessity for the buy-back;
- ❖ the class of shares or securities intended to be purchased under the buy-back;
- ❖ the amount to be invested under the buy-back; and
- ❖ The time-limit for completion of buy-back.

**Additionally Rule 17** of companies (Share Capital and Debentures) Rules 2014 provides for following disclosure in ES for Private co. And Unlisted Public Company Date of BM

- ❖ the objective of the buy-back;
- ❖ the class & no. of shares or other securities to be bought back;
- ❖ the method to be adopted for the buy-back;
- ❖ the price & basis of arriving at buyback Price;
- ❖ the max amt to be paid & the sources of funds from which the buy-back would be financed;
- ❖ the time-limit for the completion of buy-back;
- ❖ And many more things.

### **Procedure**

**(Rule 17 (2))** → Before Buyback, File with ROC a letter of offer in Form No.SH-8, properly dated & signed on behalf of BOD by at-least 2 directors one of whom shall be MD, if any and prescribed fees.

**(Rule 17 (3))** → Before Buyback, File with ROC and SEBI (in case of listed co.) Declaration of Solvency in form SH – 9 signed by at-least 2 directors one of whom shall be MD, if any in prescribed form and verified by an affidavit as specified in said form.

**(Rule 17 (4))** → Afterwards the Letter of Offer shall be dispatched to shareholders within 21 days from its filing with ROC.

**Note:** - LOO shall contain true, Factual & material info and shall not contain any misleading information and must state that the directors of the company accept the responsibility for the information contained in such document.

**(Rule 17 (5))** → Offer shall remain open for 15 days to max 30 days from date of Dispatch of LOO.

**(Rule 17 (6))** → If shares offered by Shareholders are more than shares to be bought back, then acceptance shall be on proportionate basis.





**(Rule 17 (7))** → complete the verification of offer within 15 days from date of closure of the offer and the shares lodged shall be deemed to be accepted, if rejection is not communicated within 21 days from the date of closure of the offer.

**After verification within 7 days:**

- a) Make payment of consideration in cash to shareholders whose shares are accepted
- b) Return the share certificates whose application is rejected

**Rule 17(8):-** immediately after the date of closure of the offer, open a separate bank account & deposit sum needed for the purpose of buy back.

**Rule 17(10):-** the company shall ensure that

- i. Shall not withdraw the offer once announced.
- ii. For this purpose company shall not borrow from bank or any FI
- iii. Cannot use the proceeds of earlier issue of same kind of shares or securities for buyback.

|                    |  |
|--------------------|--|
| <b>Sec 68(4)</b>   | Every buy - back shall be completed within one year from the date of passing the Special Resolution or Board Resolution, as the case may be.   |
| <b>Sec 68(5)</b>   | Method of Buy back<br>The buy - back may be <ul style="list-style-type: none"><li>❖ from the existing holders or security holder on a proportionate basis;</li><li>❖ from the open market;</li><li>❖ by purchasing ESOP or Sweat Equity shares</li></ul>   |
| <b>Sec 68(7)</b>   | The company shall extinguish and physically destroy the shares / securities bought - back within 7 days of the last date of completion of buy - back.  |
| <b>Sec 68(8)</b>   | The company shall not make any issue of same shares / securities within a period of 6 months from the date of completion of buy - back.<br><b>Exceptions are:-</b> <ul style="list-style-type: none"><li>❖ Bonus issue.</li><li>❖ Conversion of warrants;</li><li>❖ Stock option scheme;</li><li>❖ Sweat equity; and</li></ul> Conversion of preference shares / debentures into equity shares.  |
| <b>Sec 68(9):</b>  | The Company shall maintain a register of shares / Securities bought -back in Form No. SH - 10, giving the following details:- <ul style="list-style-type: none"><li>❖ the consideration paid;</li><li>❖ the date of cancellation;</li><li>❖ the date of extinguishment and physical destruction; and</li><li>❖ Such other particulars as may be prescribed.</li></ul> Such registered shall be maintained in the R.O and shall be in custody of secretary of the company or any other person authorized by board and such person shall authenticate the entries in register. |
| <b>Sec 68(10):</b> | After the completion of buy - back, the company shall file with the ROC and also with SEBI, if listed; a return in Form No. SH-11 + a certificate inform No. SH-15 signed by 2 directors of company including MD (if any) contains such particulars as may be prescribed, within 30 days of such completion. [Rule 17(13) and Rule   |





|                    |  |
|--------------------|--|
|                    | 17(14)]  |
| <b>Sec 68(11):</b> | In case of default, the company or any officer of the company who is in default shall be punishable with a fine of at least Rs. 1 lakh up to maximum of Rs. 3 lakhs and with imprisonment for a term which may extend to 3 years or with both.<br>Specified Securities = Employees stocks option or other securities as may be notified by the Central Govt. |

**Section 69****Transfer to Capital Redemption Reserve**

Where a company purchases its own shares out of **free reserves** or **security premium account** then a sum equal to nominal value of the share so purchases shall be transferred to the capital redemption reserve (CRR) account and details of such transfer shall be disclosed in the balance sheet. CRR may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

**Section 70****Prohibitions on Buy-Back**

- ❖ Through any subsidiary or investment company.
- ❖ Through any investment company or group of investment companies
- ❖ Further, a company is prohibited to buy back its own shares or other specified securities, if it is defaulter in the following cases:-
  - ❖ repayment of deposits or interest accrued thereon; or
  - ❖ Redemption of debentures. preference shares; or
  - ❖ payment of dividend; or
  - ❖ Repayment of any term loan or interest payable thereon to any financial institution or bank.
- ❖ If the company has not complied with the provisions of Sections 92 (Annual Return), 123 (Declaration of Dividend), 127(punishment for failure to distribute dividend) and section 129 (Financial Statement).

**Income tax Aspect**

**Section 46A of the Income Tax Act, 1961:**→ Any consideration received by a security holder from any company on buy back shall be chargeable to tax on the difference between the cost of acquisition and the value of consideration received by the security holder as **capital gains**. Computation shall be as per sec 48 of IT Act 1961. In respect of Foreign Institutional Investors (FIIs), as per the provisions of Section 196D (2) of the Income Tax Act, 1961 no TDS shall be made before remitting the consideration for equity shares tendered under the offer by FIIs as defined u/s 115AD of the Income Tax Act, 1961.

NRIs, OCBs and other non-resident shareholders (excluding FIIs) will be required to submit a No Objection Certificate (NOC) or tax clearance certificate obtained from the Income Tax authorities under the Income Tax Act. In case the aforesaid NOC or tax clearance certificate is not submitted, the company should deduct tax at the maximum marginal rate as may be applicable to the category of shareholders on the entire consideration amount payable to such shareholders.

**BUY BACK PROCESS FOR LISTED SECURITIES**

**SEBI (BUY-BACK OF SECURITIES) REGULATION, 1998]:**

All the listed companies are required to comply with SEBI Regulations 1998 and as amended from time to time, in addition to the provisions of the companies Act.

**These regulations broadly cover the following aspects.**

- ❖ Special Resolution and its additional disclosure requirements
- ❖ Methods of buy back including buy back through reverse book building, from existing shareholders through tender offer etc.,
- ❖ Filing of offer documents, public announcement requirements.
- ❖ Offer procedure/opening of escrow account etc.
- ❖ General obligations of company, merchant banker etc

**Regulation 4**

**METHODS OF BUY-BACK:**

A company may buy back its own shares or other specified securities by any one of the following methods:

- ✓ From the existing security-holders on a proportionate basis through the tender offer;
- ✓ From the open market through:
  - book-building process,
  - stock exchange
- ✓ From odd-lot holders.

It may be noted that no offer of buy back for 15% or more of paid up capital and free reserves, shall be made from the open market.

**Regulation 4(4):-** a company shall not make any offer of buy-back within a period of one year reckoned from the date of closure of the preceding offer of buy-back, if any.”

**Note:** - Regulation 4(2) does not permit buy back through negotiated deals (off and on stock exchange), private arrangement, and spot transactions.

**Regulation 5**

**Special Resolution and its additional disclosure requirements:**

|                        |   |
|------------------------|---|
| <b>Regulation 5(1)</b> | For the purposes of passing a special resolution the explanatory statement to be annexed to the notice for the general meeting shall contain disclosures as specified in <b>Schedule II Part A</b> to the Regulations.  |
| <b>Regulation 5(2)</b> | A copy of the above resolution shall be filed with SEBI and the stock exchanges where the shares or other specified securities of the company are listed, within seven days from the date of passing of their solution. |

**Regulation 5A**

In case of Board approval:

- provides a company, authorized by a resolution passed by the Board of Directors at its meeting to buy back its shares or other specified securities, shall file a copy of the resolution, with the SEBI and the stock exchanges, where the shares or other specified



securities of the company are listed, within two working days of the date of the passing of the resolution.

### **Disclosures under Schedule II Part A**

An explanatory statement containing full and complete disclosure and the following disclosures prescribed in Schedule II Part A of the Regulations should be annexed to the notice where the buy-back is pursuant to shareholders' approval.

- Date of the Board meeting at which the proposal for buy back was approved;
- Necessity for the buy back;
- Maximum amount required under the buy back and its percentage of the total paid up capital and free reserves;
- Maximum price at which the shares or other specified securities are proposed be bought back;
- Maximum number of securities that the company proposes to buy back;
- Method to be adopted for buyback;
- ❖ the aggregate shareholding of the promoter and of the directors of the promoters, as on the date of the notice convening the General Meeting or the Meeting of the Board of Directors;
- ❖ aggregate number of shares or other specified securities purchased or sold 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;
- ❖ the maximum and minimum price at which purchases and sales made along with the relevant dates;
- Intention of the promoters to tender shares or other specified securities for buyback indicating the number of shares or securities, details of acquisition with dates and price;
- 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;
- 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:-
  - ❖ there will be no grounds on which the company could be found unable to pay its debts;
  - ❖ 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
  - ❖ 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 (including prospective and contingent liabilities);
- auditor's report addressed to the Board of Directors
  - ❖ they have inquired into the company's state of affairs;
  - ❖ the amount of the permissible capital payment for the securities properly determined; 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.

### **Regulation 6**

#### **Buy-back from existing security-holders through tender offer:**

A company may buy back its securities from its existing security-holders on a proportionate basis in accordance with the provisions of the Regulations. **15% of the number of securities**



**Buyback Regulation**

which the company proposes to buy back of number of securities entitled as per their shareholding, whichever is higher, shall **be reserved for small shareholders.**

**Regulation 7**

**Additional Disclosures:**

In addition to disclosure required under Schedule II Part A, the following disclosures to be made to the explanatory statement.

- ❖ the maximum price at which the buy-back of shares or other specified securities shall be made and whether the BOD of the company are being authorized at the GM to determine subsequently the specific price at which the buy-back may be made at the appropriate time;
- ❖ If the promoter intends to offer their shares or other specified securities,
- ❖ The quantum of shares or other specified securities proposed to be tendered, and
- ❖ The details of their transactions and their holdings for the last six months prior to the passing of the special resolution including number of shares or securities acquired, the price and the date of acquisition.

**Regulation 8**

Public announcement and Filing of offer documents:

- ❖ The company shall make a public announcement within two working days from the date of resolution in at-least one English National Daily, one Hindi National Daily and a Regional language daily all with wide circulation at the place where the Registered office of the company is situated and shall contain all the material information as specified in Schedule II, Part A.
- ❖ A copy of the public announcement shall also be submitted to the Board through a merchant banker.
- ❖ The company shall within five working days of the public announcement file with the Board a draft-letter of offer containing disclosures as specified in Schedule III through a merchant banker.
- ❖ The Board may give its comments on the draft letter within seven working days of the receipt of the draft letter of offer.
- ❖ In the event the Board has sought clarifications or additional information from the merchant banker the period of issuance of comments shall be extended to the seventh working day from the date of receipt of satisfactory reply.
- ❖ In the event the Board specifies any changes, the merchant banker and the company shall carryout such changes in the letter of offer before it is dispatched to the shareholders.
- ❖ The company shall file along with the draft letter of offer, a declaration of solvency in the prescribed form and in a manner prescribed in the Companies Act.

**Regulation 9**

**Offer procedure:**

- ❖ A company shall announce a record date for the purpose of determining the entitlement and the names of the security holders, who are eligible to participate.
- ❖ The letter of offer and tender form shall be dispatched to the security holders not later than five working days from the receipt of communication of comments from the Board.
- ❖ The date of the opening of the offer shall be not later than five working days from the date of dispatch of letter of offer.
- ❖ The offer for buy back shall remain open for a period of ten working days.





**Buyback Regulation**

- ❖ The company shall accept shares or other specified securities from the security holders on the basis of their entitlement as on record date.
- ❖ The shares proposed to be bought back shall be divided in to two categories;
- ❖ reserved category for small shareholders and
- ❖ the general category for other shareholders

**Regulation 10**

**Escrow account**

**Provides That -**

- ❖ The company should on or before the opening of the offer, deposit in an escrow account.
- ❖ the escrow amount is payable in the following manner:
  - ✓ **if the consideration payable does not exceed Rs 100 Cr:** 25 per cent of the consideration payable;
  - ✓ **if the consideration payable exceeds Rs 100 Cr:** 25 per cent upto Rs 100 crores and 10 per cent thereafter;
- ❖ the escrow account referred to above shall consist of:
  - ✓ cash deposited with a scheduled commercial bank, or
  - ✓ bank guarantee in favour of the merchant banker, or
  - ✓ deposit of acceptable securities with appropriate margin, with the merchant banker, or
  - ✓ a combination of (a), (b) and (c) above;
- ❖ where the escrow account consists of deposit with a scheduled commercial bank:- the company while opening the account, should empower the merchant banker to instruct the bank to issue a banker's cheque or demand draft
- ❖ where the escrow account consists of bank guarantee:- such bank guarantee shall be in favour of the merchant banker and valid until thirty days after the closure of the offer;
- ❖ Where the escrow account consists of securities:- merchant banker to realize the value of such escrow account by sale or otherwise. If there is any deficit on realization of the value of the securities, the merchant banker shall be liable to make good any such deficit;
- ❖ in case the escrow account consists of bank guarantee or approved securities, these shall not be returned by the merchant banker till the completion of all obligations under the Regulations;
- ❖ where the escrow account consists of bank guarantee or deposit of approved securities:- the company required to deposit with the bank in cash one per cent of the total consideration payable;
- ❖ on payment of consideration and after completion of all the formalities of buy-back, the amount, guarantee and securities in the escrow, if any, should be released to the company;
- ❖ SEBI, in the interest of the security-holders, may, in case of non-fulfillment of obligations by the company forfeit the escrow account either in full or in part;
- ❖ The amount so forfeited may be distributed pro rata amongst the security-holders who accepted the offer and the balance, if any, shall be utilized for investor protection.

**Regulation 11**

**Payment to the Security holders:**

- ❖ after the date of closure of the offer: - The company should open a special account with a SEBI registered banker to an issue and deposit the amount lying in the escrow account make up the entire sum due and payable as consideration for the buy-back and for this purpose, may transfer the funds from the escrow account.



## Buyback Regulation

- ❖ The company shall complete the verifications of offers received and make payment of consideration to security holders or return the shares or other specified securities to the security holders within seven working days of the closure of the offer.

### Regulation 12

#### Extinguishing of bought-back securities:

- ❖ The company shall **extinguish and physically destroy the security** certificates so bought back in the presence of a Registrar to issue or the Merchant Banker and the Statutory Auditor **within fifteen days** of the date of acceptance of the shares or other specified securities. The company shall also ensure that all the securities bought - back are extinguished within seven days of the last date of completion of buy - back.
- ❖ Dematerialized securities shall be extinguished and destroyed in the manner of SEBI (Depositories and Participants) Regulations, 1996.
- ❖ The company shall, furnish a certificate to the Board certifying compliance duly certified and verified by -
  - ❖ the registrar and whenever there is no registrar by the merchant banker;
  - ❖ two directors of the company one of whom shall be a managing director where there is one;
  - ❖ the statutory auditor of the company,
- ❖ The certificate shall be furnished to the Board by the seventh day of the month succeeding the month in which the securities certificates are extinguished and destroyed.
- ❖ The company shall furnish, the particulars of the security certificates extinguished and destroyed, to the stock exchanges by the seventh day of the month succeeding the month in which the securities certificates are extinguished and destroyed.
- ❖ The company shall also maintain a record of security certificates which have been cancelled and destroyed.

### Regulation 14

#### Buy-back from Open Market:

- ❖ buy-back of shares or other specified securities from the open market may be:
  - (i) Through stock exchange; or
  - (ii) Book-building process.
- ❖ At least 50% of the amount earmarked for buy back, resolutions is utilized for buying back shares and other specified securities

### Regulation 15

#### Buy-back through the stock exchange:

Provides that a company should buy-back its specified securities through the stockexchange as provided hereunder:

- ❖ the SR/BR as under Regulation 5 and 5A respectively, should specify the maximum price at which the buy-back will be made;
- ❖ The buy-back of securities should not be from the promoters.
- ❖ the company should appoint a merchant banker and make a public announcement as referred to in Regulation 8 within seven days from the date of passing the resolution under Regulation 5 and 5A;
- ❖ the company shall file a copy of the public announcement with the Board.
- ❖ the company shall submit the information regarding the shares or securities bought back, to the stock exchange on a daily basis and the stock exchange shall upload the same on its official website immediately;"



## Buyback Regulation

- ❖ the company shall upload such information on its website on a daily basis;"
- ❖ The buy-back offer shall open not later than seven working days from the date of public announcement and shall close within six months from the date of opening of the offer."
- ❖ the buy-back should be made only on stock exchanges having Nationwide Trading Terminal facility and only through the order matching mechanism except 'all or none' order matching system;
- ❖ the company shall submit information regarding the shares or other specified securities bought back, to the stock exchange on daily basis in such form as may be specified by the board;
- ❖ The identity of the company as a purchaser would appear on the electronic screen when the order is placed.
- ❖ The company shall upload the information regarding the shares or other specified securities bought back, on its website on daily basis.

### Buy-back through book-building (Regulation 17) (June 2009)

A company can buy-back its securities through the book-building process as provided hereunder:

1. (a) The special regulation as in Regulation 5 or 5A, should specify the maximum price at which the buy-back will be made.
- (b) The company should appoint a merchant banker.
- (c) A public announcement as referred to in Regulation 8 shall be made **at least 7 days** prior to the commencement of the buy-back.
- (d) Subject to the provisions of Sub-clauses (i) and (ii), the provisions of Regulation 10 regarding escrow account are applicable:
  - (i) The deposit in the escrow account should be made before the date of the public announcement.
  - (ii) The amount to be deposited in the escrow account should be determined with reference to the maximum price as specified in the public announcement containing detailed methodology of the book-building process, manner of acceptance, format of acceptance to be sent by the security-holders pursuant to public announcement and details of bidding centres.
- (e) A copy of the public announcement must be filed with SEBI within 2 days of the announcement along with the fees as specified in Schedule IV to the Regulations. The Public announcement shall also contain the detailed methodology of the book building process, the manner of acceptance, the format of acceptance to be sent by the security holders pursuant to the public announcement and the details of bidding centres.
- (f) The book-building process should be made through an electronically linked transparent facility.
- (g) The number of bidding centres should not be less than thirty and there should be at least 1 electronically linked computer terminal at all the bidding centres.
- (h) The offer for buy-back should be kept open to the security-holders for a period of not less than fifteen days and not exceeding thirty days.
- (i) The merchant banker and the company should determine the buy-back price based on the acceptances received and the final buy-back price, which should be the highest price accepted should be paid to all holders whose securities have been accepted for the buy-back.

### Obligations of the company (Dec 2006)

According to Regulation 19 of the Regulations,  
The company shall ensure that:



### Buyback Regulation

- the letter of offer, the public announcement of the offer or any other advertisement, circular, brochure, publicity material contains true, factual and material information and does not contain any misleading information and must state that the directors of the company accept the responsibility for the information contained in such documents;
- the company shall not issue any specified securities including by way of bonus till the date of closure of the offer is made under these Regulations;
- the company shall pay consideration only by cash;
- the company shall not withdraw the offer to buy-back after the draft letter of offer is filed with the SEBI or public announcement of the offer to buy-back is made;
- The promoter or the person shall not deal in the specified securities of the company in the stock exchange or off market, including inter-se transfer of shares among the promoters during the period "from the date of passing the resolution under regulation 5 or regulation 5A till the closing of the offer.
- The company shall not raise further capital for a period of one year from the closure of buy-back offer, except in discharge of its subsisting obligations.

No public announcement of buy-back shall be made during the pendency of any scheme of amalgamation or compromise or arrangement pursuant to the provisions of the Companies Act.

The company should nominate a compliance officer and investors service centre for compliance with the buy-back regulations and to redress the grievances of the investors [Sub-regulation (3)].

The particulars of the said security certificates extinguished and destroyed should be furnished by the company to the stock exchanges where the securities of the company are listed, within seven days of extinguishment and destruction of the certificates [Sub regulation (4)].

The company should not buy-back the locked-in securities and non-transferable securities till the pendency of the lock-in or till the securities become transferable [Sub regulation (5)].

The company should issue, within two days of the completion of buy-back, a public advertisement in a national daily, *inter alia*, disclosing the following:

- i. number of securities bought;
- ii. price at which the securities were bought;
- iii. total amount invested in the buy-back;
- iv. details of the security-holders from whom securities exceeding one per cent of the total securities were bought-back; and
- v. The consequent changes in the capital structure and the shareholding pattern after and before the buy-back.

### Obligations of the merchant banker

Regulation 20 provides that the merchant banker should ensure that:

- the company is able to implement the offer;
- the provision relating to escrow account has been made;
- firm arrangements for monies for payment to fulfil the obligations under the offer are in place;





**Buyback Regulation**

- the public announcement of buyback is made and the letter of offer has been filed in terms of the Regulations;
- the merchant banker should furnish to SEBI, a due diligence certificate which should accompany the draft letter of offer;
- The merchant banker should 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.
- the merchant banker should ensure compliance of Section 68 and Section 69 of the Companies Act, and any other applicable laws or rules in this regard;
- Upon fulfilment of all obligations by the company under the Regulations, the merchant banker should inform the bank with whom the escrow or special amount has been deposited to release the balance amount to the company and send a final report to SEBI in the specified form, within 15 days from the date of closure of the buy-back offer.





**CS Praveen Choudhary**  
**CS Executive New Syllabus**

**FLAT 50% OFF**  
**All Law Subjects**  
**(CLAW, SBEC, JIGL, SLCM, EBCL)**

**Call @ 7744859960 / 7276368299**

[Click Here to Buy / Watch Demo](#)



## INTRODUCTION

Delisting of securities means permanent removal of securities of a listed company from a stock exchange. As a consequence of delisting, the securities of delisted company would no longer be traded at stock exchanges. A company may delist its shares due to the various reasons like - Merger, Amalgamation and Voluntary delisting. After delisting of securities of any company, the trading of such delisted securities shall be held as private selling or buying of shares.



## Non-applicability of the Regulations

These regulations shall not apply to any delisting of equity shares of a listed entity made pursuant to a resolution plan approved under Section 31 of the Insolvency and Bankruptcy Code, 2016, if such plan —

- a) lays down any specific procedure to complete the delisting of such share; or
- b) provides an exit option to the existing public shareholders at a price specified in the resolution plan.

## DELISTING & SUSPENSION

On one hand delisting denotes removal of the listing of the securities of a listed company from the Stock Exchange, on the other hand suspension or withdrawal of admission to dealings of listed securities, which is for a limited period.

'Suspension' of trading in securities means that no trade can take place in the securities of the company suspended for a temporary period. Suspension is not done at the instance of company but it is action taken by the Stock Exchanges.

## Distinction between Suspension & Delisting

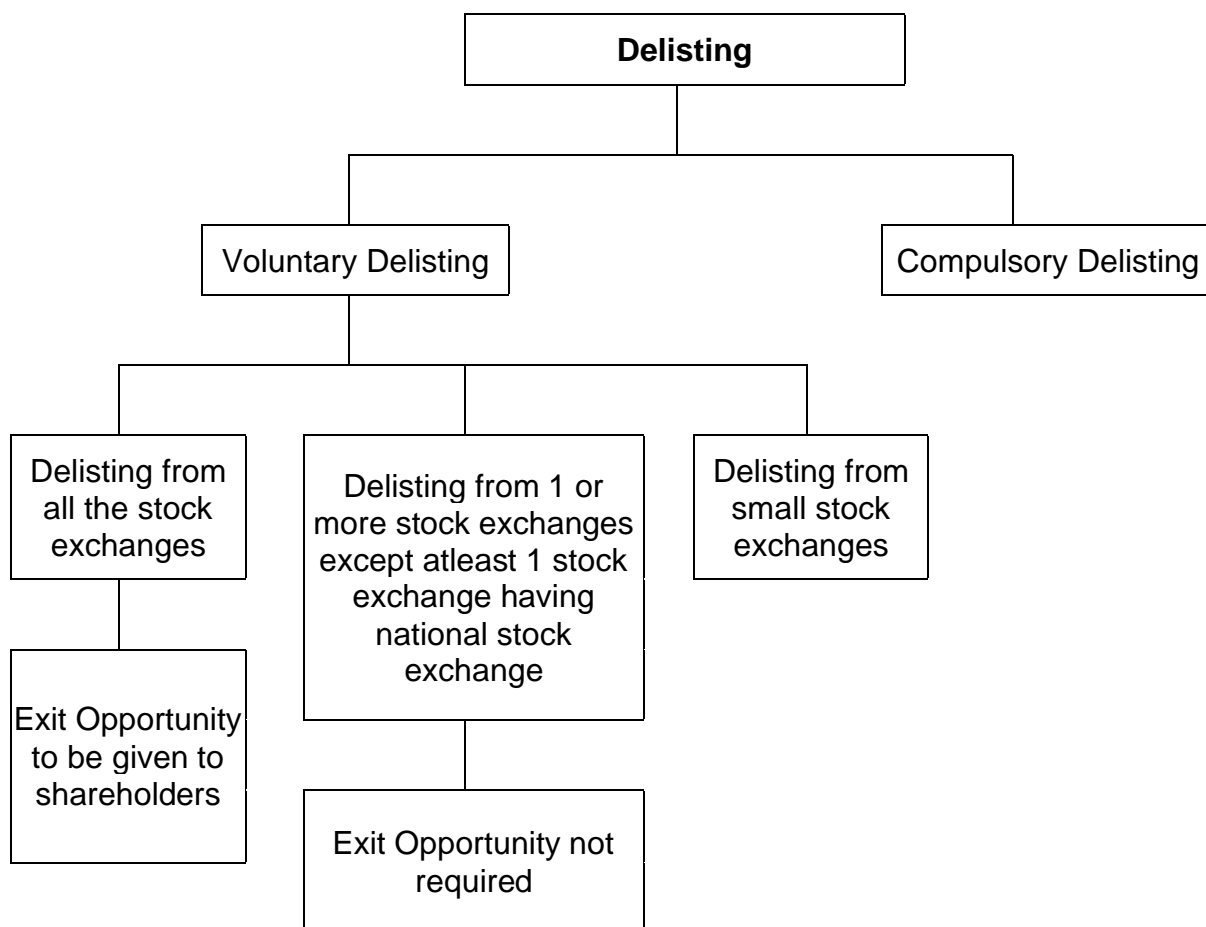
| Suspension  | Delisting  |
|---|--|
| <ul style="list-style-type: none"><li>✓ Suspension involves temporary suspending the trading of securities of a company on Stock Exchange.</li><li>✓ Suspension is not done at the instance of company but it is action taken by the Stock Exchanges.</li></ul> | <ul style="list-style-type: none"><li>✓ Delisting is permanent removal of the listing of securities of a listed company from the Stock Exchange.</li><li>✓ Voluntary delisting is at the instance of company whereas Compulsory Delisting is action taken by the Stock Exchange.</li></ul> |

## TYPES OF DELISTING



## Delisting of Eq shares

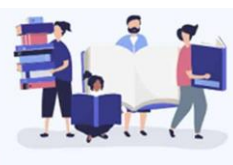
We can mainly divide delisting into two parts i.e. Voluntary Delisting and Compulsory Delisting.



### Distinction between Voluntary and Compulsory Delisting

| Voluntary Delisting  | Compulsory Delisting   |
|--|--|
| Voluntary delisting is a wish of a company for permanent removal of trading of its shares from the stock market.                     | Compulsory delisting is a penalty imposed on company which has not complied with provisions of listing agreement requirement.  |
| In simple words, it is an action taken by the company on its own to permanently remove its securities trading from a stock exchange. | Compulsory delisting means permanent removal of securities trading on of listed company from stock exchange as penalizing measure at behest of stock exchange for not making submissions/ comply with requirements set out in the Listing agreement within prescribed time frames. |
| In voluntary delisting, a company has to follow SEBI (Delisting of Equity Shares) Regulations, 2009.                                 | The Stock Exchanges have power under the provisions of the Securities Contracts (Regulation) Act, 1956 to delist the trading of any securities of a listed company.  |

### VOLUNTARY DELISTING





## Delisting of Eq shares

Voluntary delisting is a wish of a company for permanent removal of trading of its shares from the stock market. We can further divide voluntary delisting into three parts:—

- i. Delisting from all stock exchanges (Exit option will be required)
- ii. Delisting from few stock exchanges (Exit option not required)
- iii. Delisting of small companies

➤ **Delisting from all Stock Exchanges:** If a company wishes to delist its shares from all the Stock Exchanges in India, such company is supposed to comply with SEBI (DELISTING OF EQUITY SHARES) REGULATIONS, 2009. Exit Route will be given by the company.

The provisions of SEBI Delisting Regulations, 2009 are not applicable on a scheme sanctioned by the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 or by the NCLT.

➤ **Circumstances in which Delisting are not permissible:** Stock Exchange will not permit for delisting of shares of a company on following grounds:—

- i. Buy-back of equity shares by the company; or
- ii. Preferential allotment made by the company; or
- iii. The period of listing should not be less than 3 years; or
- iv. Instruments which are convertible into the same class of equity shares that are sought to be delisted are outstanding.
- v. Delisting of convertible securities.

### Note:

- a) No promoter shall directly or indirectly employ the funds of the company to finance an acquisition of shares.
- b) No promoter shall employ any device or scheme to defraud shareholders or creditors.
- c) No promoter shall engage in any act that is fraudulent, deceptive or manipulative in connection with such delisting.

## Procedure for Voluntary Delisting from all the Stock Exchanges

Step 1

### Convening of Board Meeting

The company shall obtain approval from the Board of Directors with regard to delisting of equity shares.

Step 2

### Intimation of Board Meeting to Stock Exchange

The decision of Board Meeting regarding proposal of delisting will be communicated to the Stock Exchange.



Step 3

### Shareholders through Special Resolution

The company shall obtain approval from the shareholders in the form of special resolution passed only through postal ballot.

The special resolution shall be acted upon if and only if the votes cast by public shareholders in favour of the proposal amount to at least twice the number of votes cast by public shareholders against it.

Step 4

### Application for in-principle approval

Subsequently the company shall make an application to the concerned RSE for in-principle approval of the proposed delisting along with by an audit report covering a period of 6 months prior to the date of the application.

Step 5

### Grant of in-principle approval by Stock Exchange

The Stock Exchange shall dispose the application within 5 working days from date of receipt of application. While considering the application SE will consider the following:

1. Compliance with SEBI regulations;
2. The resolution of investor grievances by the company;
3. Payment of listing fees to that RSE.
4. Compliance with the requirements of listing agreement.

Step 6

### Appointment of Merchant Banker

A merchant banker registered with SEBI will be appointed to carry out the delisting process.

**Note:** No person associated with promoter shall be appointed as merchant banker.

Step 7

### Determination of Offer Price

The offer price shall be determined through book building process after fixation of floor price and disclosure of the same in the public announcement and the letter of offer. The floor price shall be determined in terms of regulation 8 of SEBI (SAST) Regulations, 2011.

**Note:** The reference date for computing the floor price would be the date on which the stock exchange were required to be notified of the board meeting in which the delisting proposal would be considered.



Step 8

### Opening Escrow Account

The promoter and promoter group shall open an escrow account with a scheduled bank and deposit therein the total estimated amount of consideration to be paid to the equity 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. It can also be maintained at interest bearing account, provided funds are available when needed.

Step 9

### Public Announcement

The promoters and promoter group shall make a public announcement within 1 working day from the date of receipt of in-principle approval for delisting from the recognized stock exchange. The public announcement should be in

- ✓ one English national daily with wide circulation,
- ✓ one Hindi national daily with wide circulation, and
- ✓ one regional language newspaper of the region where the concerned RSE is located

The public announcement contains all material information and shall not contain any false or misleading statement.

Step 10

### Dispatch of Letter of Offer

The promoter shall despatch the letter of offer to the equity shareholders, not later than 2 working days from the date of the public announcement.

The letter of offer shall be sent to all public shareholders whose names appear on the register of the company or depository as on the date specified in the public announcement.

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 letter of offer shall be accompanied with a bidding form for use of public shareholders and a form to be used by them for tendering shares. A public shareholder can participate even if he do not receive bidding form in a manner specified by SEBI.

### Bidding Period



**Delisting of Eq shares**

Step 11

The date of opening of the offer shall not be later than 7 working days from the date of the public announcement. The offer shall remain open for a period of 5 working days.

Price will be determined at the end of bidding period, which may or may not be accepted by the promoter, which is discussed one by one as follows:—

**If the Final price is accepted by the promoter, the process after Step 11 will be as follows:**

Step 12

**Minimum Number of Equity Shares to be acquired**

An offer shall be deemed to be successful if:

- ✓ The post offers promoter shareholding (along with the persons acting in concert with the promoter) reaches 90% of the total issued shares excluding ADR/ GDR/overseas depository receipts;
- ✓ At least 25% of the public shareholders holding shares in the demat mode as on date of the board meeting had participated in the Book Building Process.

Step 13

**Public Announcement after Closure of Offer**

The promoter and the merchant banker shall make a public announcement regarding the success of the offer along with final price accepted by the acquirer within 5 working days of closure of the offer. Such public announcement shall be in

- ✓ one English national daily with wide circulation,
- ✓ one Hindi national daily with wide circulation, and
- ✓ one regional language newspaper of the region where the concerned RSE are located.

Step 14

**Payment of Consideration**

After ascertainment of success of the offer, the promoter shall immediately transfer in a special bank account the entire amount due and payable as consideration towards the equity shares. The payment to shareholders shall be made within 10 working days from the closure of the offer.

Step 15

**Final Application to Stock Exchange**

A final application for delisting be made to the concerned RSE accompanied with such proof of having given the exit opportunity.

**Delisting Order by RSE**





Step 16 The RSE should pass the delisting order.

If the Final Price is NOT accepted by the promoter and the promoter DO NOT make a Counter Offer, the process after Step 11 will be as follows:—

Step 12A

**Return of the equity shares tendered**

Where the promoter decides not to accept the offer price so determined, then they shall not acquire any equity shares tendered and the equity shares deposited by a shareholder shall be returned or released to him within 10 working days of closure of the bidding period.

If the Final Price is NOT accepted by the promoter and the promoter make a Counter Offer, the process after Step 11 will be as follows:—

Step 12B

**Return of the equity shares tendered**

Where the promoter decides not to accept the offer price so determined he also has an option to make a counter offer within 2 working days of the discovery of the price and should not be less than the book value of the company as certified by the merchant banker.

Note: The counter offer shall be deemed to be successful only if the post offer promoter shareholding (along with the persons acting in concert with the promoter) taken together with the shares accepted at the counter offer price reaches 90 percent of the total issued shares of that class.

**Delisting from only some of the RSE:** A company may delist its equity shares from one or more stock exchanges where they are listed and continue their listing on other stock exchanges, if after the proposed delisting the equity shares would:

- i. remain listed on any RSE which has nationwide trading terminals, no exit opportunity needs to be given to the public shareholders; and
- ii. not remain listed on any RSE having nationwide trading terminals, exit opportunity shall be given to all the public shareholders holding the equity shares sought to be delisted.

➤ **Procedure for Voluntary Delisting from few stock exchange subject to listing on at-least 1 national stock exchange:**

Step 1

**Convening of Board Meeting**

The company shall obtain approval from the Board of Directors with regard to delisting of equity shares.

**Intimation of Board Meeting to Stock Exchange**



### Delisting of Eq shares

Step 2 The decision of Board Meeting regarding proposal of delisting will be communicated to the Stock Exchange.

#### Public Notice

The company shall give a public notice of the proposed delisting along with reasons and fact that it will remain listed on atleast 1 national stock exchange in

Step 3

- ✓ one English national daily with wide circulation,
- ✓ one Hindi national daily with wide circulation, and
- ✓ one regional language newspaper of the region where the concerned SE are located

#### Application to the Stock Exchange

Step 4

The company shall make an application to tire stock exchange for delisting of shares.

#### Disposal of Application by Stock Exchange

Step 5

Concerned Stock Exchange shall dispose of the application within 30 working days from the date of receipt of complete application.

#### Disclosure in Annual Report

Step 6

The fact of delisting shall be disclosed in the first annual report of the company prepared after the delisting.

### Voluntary Delisting of Small Companies:

Small Company means

1. A company has a paid up capital not exceeding Rs. 10 Crore and net worth not exceeding Rs. 25 Crore as on the last date of preceding financial year;
2. The number of equity shares of the company traded on each such SE during the twelve calendar months immediately preceding the date of board meeting is less than 10% of the total number of shares of such company.
3. The company has not been suspended by any of the RSE having nationwide trading terminals for any non-compliance in the preceding 1 year.

### Procedure for Voluntary Delisting of Small Company



Step 1

**Convening of Board Meeting**

The company shall obtain approval from the Board of Directors with regard to delisting of equity shares.

Step 2

**Intimation of Board Meeting to Stock Exchange**

The decision of Board Meeting regarding proposal of delisting will be communicated to the Stock Exchange.

Step 3

**Appointment of Merchant Banker**

The promoter shall appoint a merchant banker registered with SEBI.

Step 4

**Shareholders through Special Resolution**

The company shall obtain approval from the shareholders in the form of special resolution passed only through postal ballot.

The special resolution shall be acted upon if and only if the votes cast by public shareholders in favour of the proposal amount to at least twice the number of votes cast by public shareholders against it.

Step 5

**Application for In-principle approval**

Subsequently the company shall make an application to the concerned RSE for in-principle approval of the proposed delisting along with by an audit report covering a period of 6 months prior to the date of the application.

Step 6

**Grant of In-principle approval by Stock Exchange**

The Stock Exchange shall dispose the application within 5 working days from date of receipt of application. While considering the application Stock Exchange will consider the following:—

- Compliance with SEBI regulations;
- The resolution of investor grievances by the company;
- Payment of listing fees to that RSE;
- Compliance with the requirements of listing agreement.

Step 7

**Determination of Exit Price**

The exit price shall not be less than the floor price shall be determined in terms of SEBI (SAST) Regulations, 2011.



Step 8

### **Public Notice**

The company shall give a public notice in

- one English national daily with wide circulation,
- one Hindi national daily with wide circulation, and
- one regional language newspaper of the region where the concerned RSE is located

Step 9

### **Letter to public shareholders**

The promoter shall write individual letters to public shareholder

- Intention of delisting the shares.
- Exit price and justification of the exit price.
- Seeking the consent of the shareholders for delisting proposal.

Step 10

### **Consent of Public Shareholders**

At-least 90% of the public shareholders shall give their positive consent in writing for the delisting of the shares. Shareholders should be given following 2 options:

- Surrender their shares at the exit price determined, or
- to remain the shareholders even if the shares get delisted.

Step 12

### **Payment to Shareholders**

The promoters shall make the payment in cash to the public shareholders who have tendered their shares within 15 working days from the date of expiry of 75 working days as mentioned above.

Step 13

### **Final application to Stock Exchange**

A final application for delisting be made to the concerned RSE accompanied with such proof of having given the exit opportunity in accordance with the abovesaid provisions.





Step 14

#### Delisting Order

The recognized stock exchange shall dispose off the application of the delisting complete in all respects and pass the delisting order.

### COMPULSORY DELISTING

Compulsory Delisting means permanent removal of securities of a listed company from a stock exchange as a penalizing measure at the behest of the stock exchange for not making submissions/complying with various requirements set out in the Listing agreement.

A stock exchange may pass an order for delisting any equity shares of a company on any ground as prescribed in the Securities Contracts (Regulation) Act, 1956 and its rules. The decision on delisting shall be taken by a panel to be constituted by the stock exchange. The panel consists of:

- i. 2 directors of the stock exchange;
- ii. One representative of the investors;
- iii. One representative of the MCA or ROC; and
- iv. The Executive Director or Secretary of the RSE.

### Procedure for Compulsory Delisting

Step 1

#### Public Notice before Delisting Order

Before passing an order, a notice in this regard shall be published in one English national daily with wide circulation, and one regional language newspaper of the region where the concerned RSE is located.

Step 2

#### Representation by Aggrieved Party

Time period of not less than 15 working days from the notice, be given to any person who may be aggrieved by the proposed delisting to make representations to the RSE.

Step 3

#### Delisting Order by Stock Exchange

The recognized stock exchange passes an order of delisting within 15 days of the last date when representation can be made. While passing such order the S.E. will consider the following:



## Delisting of Eq shares

Nature and extent of the alleged non-compliance of the company.

The number and percentage of shareholders who may be affected by such non-compliance.

The status of compliance of the company with the office of the concerned Registrar of Companies.

Step 4

### Public Notice after Disclosure

The Stock Exchange will publish the order of delisting in one English national daily with wide circulation, and

one regional language newspaper of the region where the concerned recognized stock exchange is located.

Additionally, it should also inform all other stock exchanges where the equity shares of the company are listed, about such delisting and the surrounding circumstances.

Step 5

### Appointment of Independent Valuer to determine Exit Price

The recognized stock exchange shall form a panel of expert valuers from whom the valuer or valuers shall be appointed.

- The promoter of the delisted company shall acquire equity shares from the public shareholders by paying them the value determined by the valuer, subject to their option of retaining their shares.

Step 6

### Determination of Fair Value

The independent valuer(s) within 3 months of the date of delisting of RSE shall determine the fair value of the delisted equity shares at which the shares may be tendered by the public shareholders.

Step 7

### Acquisition of Shares

The promoters shall acquire the shares at the fair value from the public shareholders.

## Consequence of Compulsory Delisting

Where a company has been compulsorily delisted the company its whole-time directors, its promoters and the companies which are promoted by any of them shall



### Delisting of Eq shares

not directly or indirectly access the securities market or seek listing for any equity shares for a period of 10 years from the date of such delisting.

#### Special Powers to the recognized stock Exchanges

1. The RSE can file prosecutions under relevant provisions of the Securities Contracts (Regulation) Act, 1956 or any other law for the time being in force against identifiable promoters and directors of the company for the alleged non-compliances.
2. The RSE can also file a petition for winding up the company u/s 271 of the Companies Act, 2013 or make a request to the Registrar of Companies to strike off the name of the company from the register u/s 248 of the said Act.

#### ROLE OF A COMPANY SECRETARY

1. **Responsibility of Compliances:** Being a compliance officer it is the responsibility of a Company Secretary to look after and ensure timely compliances of various SEBI regulations. In case of noncompliance with the listing regulation a stock exchange may delist the securities of a company.
2. In case if delisting a Company Secretary has to appoint and co-ordinate with various intermediaries, regulators, etc. and advise the BOD, the various requirements of Delisting.





**CS Praveen Choudhary**  
**CS Executive New Syllabus**

**FLAT 50% OFF**  
**All Law Subjects**  
**(CLAW, SBEC, JIGL, SLCM, EBCL)**

**Call @ 7744859960 / 7276368299**

[Click Here to Buy / Watch Demo](#)





## SEBI (Share based Employee Benefit) Regulations, 2014

### INTRODUCTION

Employee Stock Option Plans (ESOP) are one of the most important tools to attract, encourage and retain Employees. Now-a-days, many companies are using these tools with an intention of creating wealth for the Employees, on one hand and motivating Employees to have long term career aspirations in the Organization, on the other. Extending benefits through ESOPs is like creating a win-win situation for both Employer & Employee.



### ISSUE OF ESOP AS PER COMPANIES ACT, 2013

[Section 62(1)(c) of the Companies Act, 2013]

#### Employees Stock Option [Section 2(37)]

means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price.

Section 62(1)(b) provides that a company may issue further shares to its employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed. In case of private company special resolution has been substituted by ordinary resolution.

### Rule 12 of Companies (Share Capital and Debentures) Rules, 2014

#### Approval of Share Holders:

The issue of Employees Stock Option Scheme has been approved by the shareholders of the company by passing a Special Resolution.

**Note:** In case of Private Company, Ordinary Resolution is required in place of Special Resolution.

#### Who are eligible for an ESOP Scheme?

- a) A permanent employee of the company who has been working in India or outside India; or
- b) A director of the company, whether a whole-time director or not but excluding an independent director; or

**Note:** As per Companies (Amendment) Ordinance, 2018 passed on 2nd November 2018, now even the independent director can also participate in the ESOP.

- c) An employee or director of a subsidiary, in India or outside India, or of a holding company of the company or of an associate company.

#### Who are not eligible for an ESOP Scheme?

- a) Promoter-cum-Employee: An employee who is a promoter or a person belonging to the promoter group; or
- b) Director-cum-Employee: A director who either himself or through his relative or through anybody corporate, directly or indirectly, holds more than 10% of the outstanding equity shares of the company.

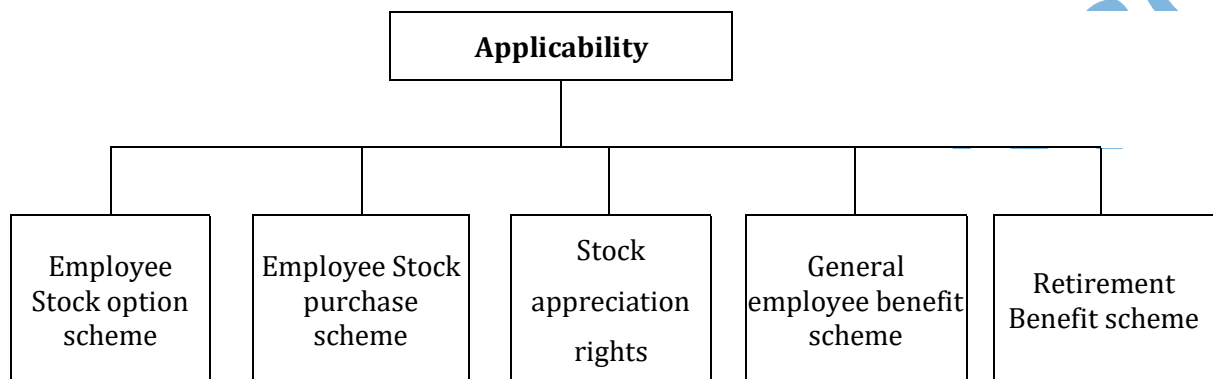


**Note:**

- a) The option granted to employees shall not be transferable to any other person.
- b) The option granted to the employees shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner.
- c) No person other than the employees to whom the option is granted shall be entitled to exercise the option.

**SEBI (SHARE BASED EMPLOYEE BENEFITS) REGULATIONS, 2014**

**Applicability**



**1. Employee Stock Option Scheme (ESOS)**

ESOS means a scheme under which a company grants employee stock option directly or through a trust.

**2. Employee Stock Purchase Plan (ESPP)**

ESPP means a scheme under which a company offers shares to employees, as part of public issue or otherwise, or through a trust.

**3. Stock Appreciation Rights (SARs)**

Although, SARs are not technically employee stock options, companies often use them in a like manner. SARs provide employees with cash payments equal to the appreciation of the company's stock over a specified duration. Thus, unlike other options, SARs provide employees with equity upside without exposure to any downside.

**4. General Employee Benefit Scheme**

A scheme dealing in shares of the company or the shares of its listed holding company, for the purpose of employee welfare including healthcare benefits, hospital care or benefits, or benefits in the event of sickness, accident, disability, death or scholarship funds, or such other benefit as specified by such company.

**5. Retirement Benefit Scheme**

A scheme dealing in shares of the company or the shares of its listed holding company, for providing retirement benefits to the employees.

**Non Applicability**

Shares issued to employees in compliance with the provisions pertaining to preferential allotment as specified in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

**Special Resolution**

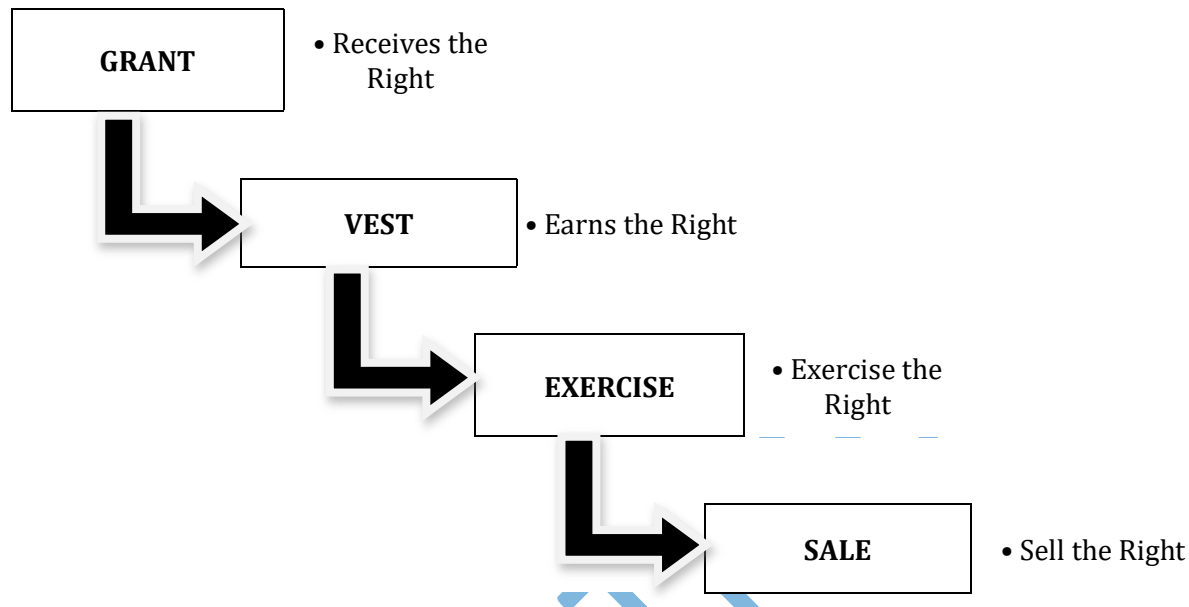
Special Resolution is required to implement any scheme under ESOR



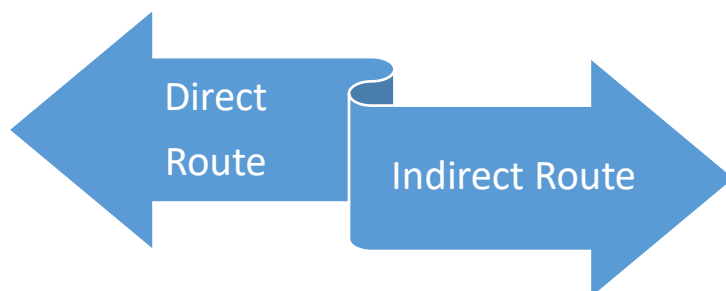
The company shall not vary the terms of the schemes in any manner, which may be detrimental to the interests of the employees. Though it can vary the terms of the schemes to meet any regulatory requirements.

It is required to pass a special resolution in a general meeting vary the terms of the schemes.

### Life cycle of ESOP



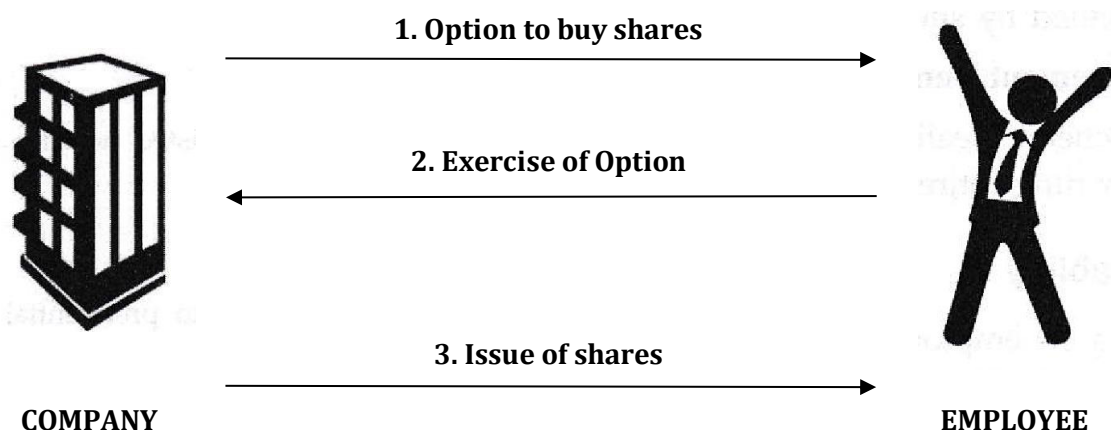
### Implementation Schemes



The new regulations introduced Indirect Route for the issue of ESOP. The unique thing about the indirect route is that the company can issue ESOP even from buying the shares from the Secondary market (Stock Exchange/Share Market). This option is not available in direct route. As direct route involves issue of shares and raising capital of the company.



### Direct Route



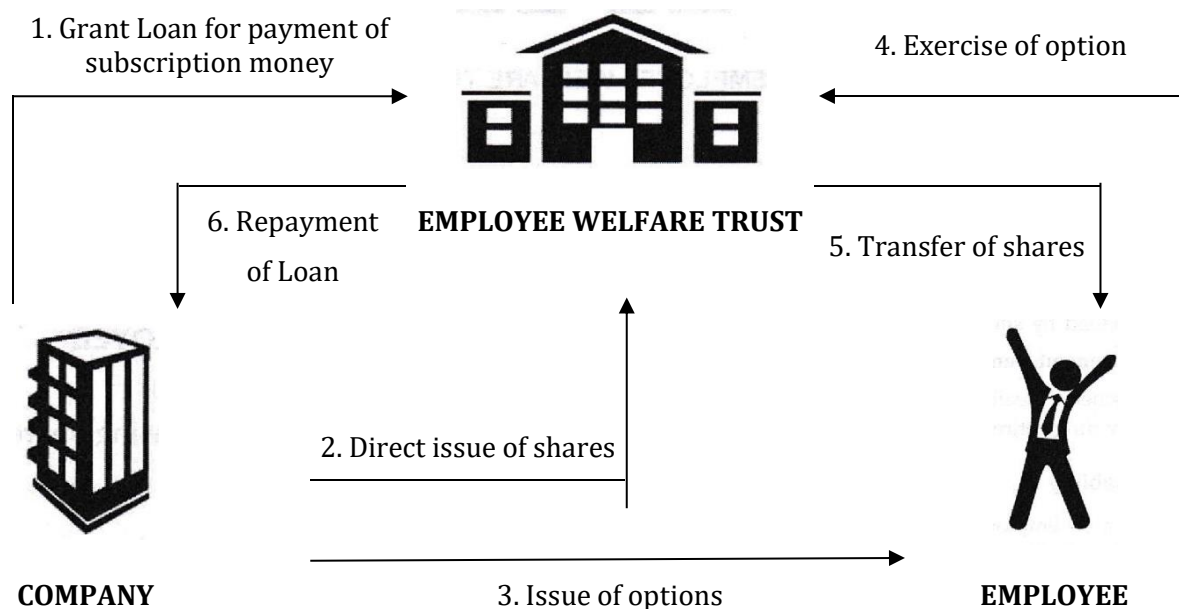
1. Company forms a Compensation Committee & define the eligibility criteria of ESOPs.
2. Issue Fresh shares for ESOPs.
3. After vesting period employees can exercise the option.
4. On exercise of an option company issue the shares to the employees.

### Indirect Route/Trust Route

Indirect Route is a newly introduced concept which gives an option to the company to distribute ESOP via 2 route:

- **Issue of new shares:** The company can issue new **ESOP** shares to employees which will increase the share capital of the company.
- **Acquiring shares from Secondary Market:** The company will buy shares from the securities market and issue it as ESOP to the employees. This will not increase the capital of the company.

### Indirect Route for issue of new shares



1. Company forms an Employee Welfare Trust and grants loan to the trust for subscribing shares.

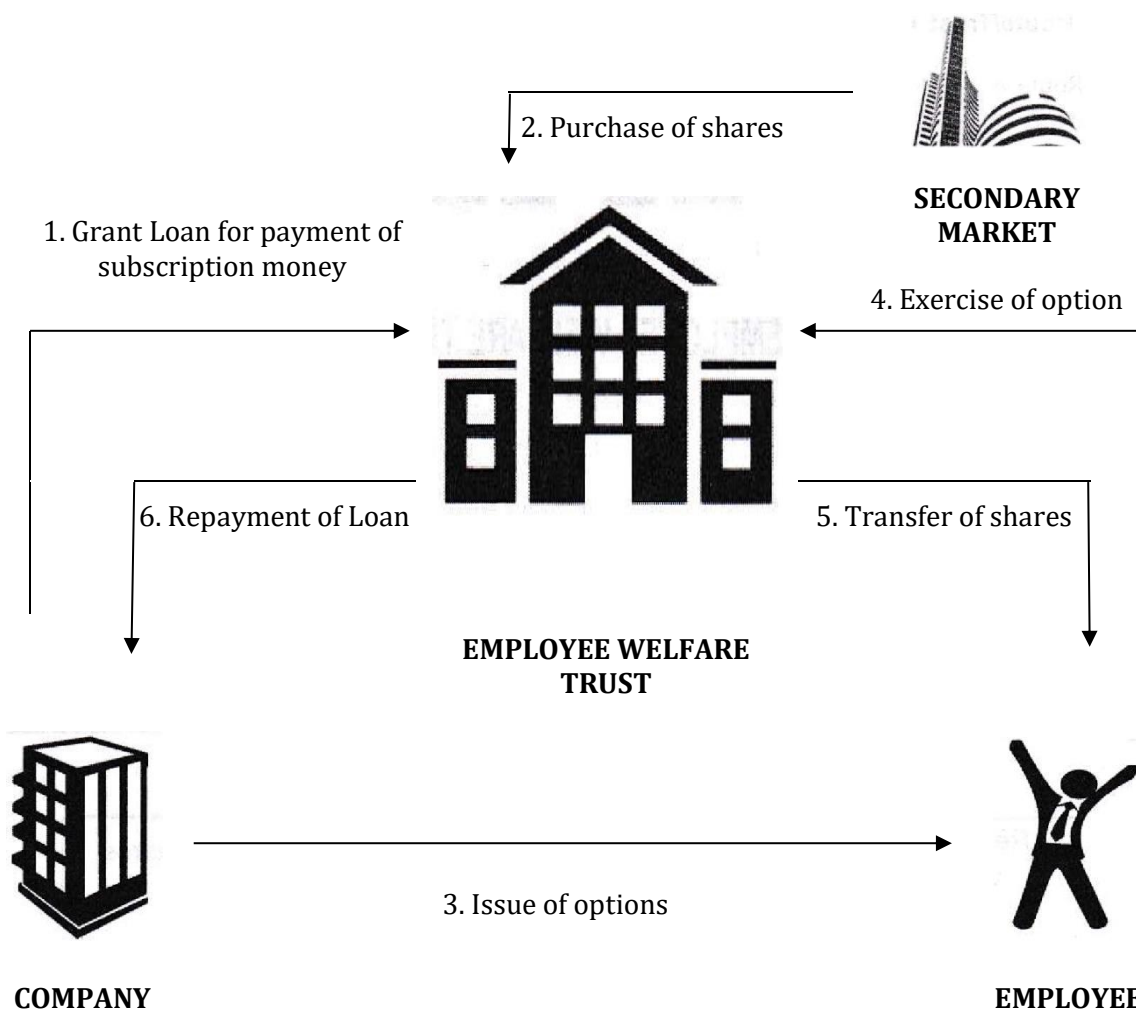




2. Company issue fresh shares to the Trust.
3. Company issues option to the Employees.
4. Employees exercise the options.
5. Trust Transfers the shares to the employee upon receipt of exercise price.
6. Trust repays the loan to the company.

### Indirect Route for acquiring shares from the Secondary Market

If a company wants to acquire shares from the secondary market to issue ESOP, it can do so only through Indirect Route, by appointing employee benefit trust as a company is not permitted to buy its own shares under section 67 of the Companies Act, 2013. Following is the methodology to issue ESOP through



1. Company forms an Employee Welfare Trust and grants loan to the trust for purchasing shares.
2. Trust purchase share from the Secondary Market.
3. Company issue option to the Employees.
4. Employees exercise the options.
5. Trust Transfers the shares to the employee upon receipt of exercise price.
6. Trust repays the loan to the company.

### Important Highlights in Trust/Indirect Route

- ✓ If a company is desirous to take the trust route it should be decided upfront at the time of taking shareholder approval for the scheme;



- ✓ Trust route is mandatory if the Scheme involves secondary market acquisition or gift or both;
- ✓ Several Schemes can be implemented through a single Trust. But such single trust shall keep and maintain:
  - proper books of account,
  - records and documents, for each such scheme;
- ✓ Trust deed should be as per the SEBI's specification;
- ✓ No dealings in derivatives by Trusts;
- ✓ Trustees shall not have the power to vote/receive dividend on the shares held by the Trust;
- ✓ The shareholding of the trust shall be shown as 'non-promoter and non-public' shareholding;
- ✓ Threshold of acquisition: Secondary acquisition in a financial year by the trust shall not exceed two per cent of the paid up equity capital as at the end of the previous financial year;
- ✓ The total number of shares under secondary acquisition held by the trust shall at no time exceed the below mentioned prescribed limits as a percentage of the paid up equity capital as at the end of the financial year immediately prior to the year in which the shareholder approval is obtained for such secondary acquisition:

|  |    |
|--|----|
| For the schemes enumerated in Part A, Part B or Part C of Chapter III of these regulations | 5% |
| For the schemes enumerated in Part D, or Part E of Chapter III of these regulations        | 2% |
| For all the schemes in aggregate   | 5% |

- ✓ A minimum holding period of 6 months for the shares bought from the market. In simple words, trust should hold the securities acquired from the secondary market for at-least 6 months;
- ✓ The trust shall be required to make disclosures and comply with the other requirements applicable to insiders or promoters under the SEBI (Prohibition of Insider Trading) Regulations, 2015.

### Ineligibility to Become a Trustee

A person shall not be appointed as a trustee, if he—

- i. is a director, key managerial personnel or promoter of the company or its holding, subsidiary or associate company or any relative of such director, key managerial personnel or promoter; or
- ii. beneficially holds 10% more of the paid-up share capital of the company.

Provided where individuals or one person companies' as defined under the Companies Act, 2013 are appointed as trustees, there shall be a minimum of two such trustees, and in case a corporate entity is appointed as a trustee, then it may be the sole trustee.

### Eligibility Criteria

An employee shall be eligible to participate in the schemes of the company as determined by the compensation committee.

### Compensation Committee

- ✓ The company shall constitute a compensation committee for administration and superintendence of the schemes.
- ✓ The compensation committee shall be a committee of such members of the board of directors of the company as provided under section 178 of the Companies Act, 2013, as amended or modified from time to time.



- ✓ The compensation committee shall formulate the detailed terms and conditions of the schemes which shall include the provisions as specified by Board in this regard.
- ✓ The compensation committee shall frame suitable policies and procedures to ensure that there is no violation of securities laws.

### Winding up of scheme

In case of winding up of the schemes being implemented by a company through trust, the excess monies or shares remaining with the trust after meeting all the obligations, if any, shall be utilised for repayment of loan or by way of distribution to employees as recommended by the compensation committee.

### Non-Transferability of option

- ✓ Option, SAR or any other benefit granted to an employee under the regulations shall not be transferable to any person.
- ✓ Only the person to whom such option, SAR or other benefit is granted shall be entitled to the benefit.
- ✓ The option, SAR, or any other benefit granted to the employee shall not be pledged, hypothecated, mortgaged or otherwise alienated in any other manner.

### Status of ESOP option in cases of death/permanent disability/resignation of employees

- Death of Employee:** In the event of the death of employee while in employment, all the options granted to him till such date shall vest in the legal heirs or nominees of the deceased employee.
- Permanent incapacity:** In case the employee suffers a permanent incapacity while in employment, all the options granted to him as on the date of permanent incapacitation, shall vest in him on that day.
- Resignation of Employment:** In the event of resignation or termination of employment, all options not vested in the employee as on that day shall expire.

### Disclosure in the Board's Report

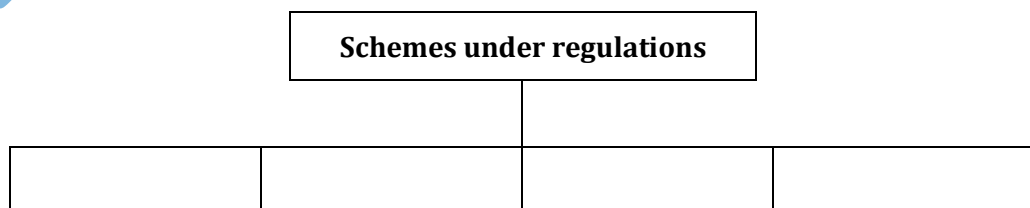
The Board of Directors shall disclose the details in the Director's Report in a particular year of the ESOP Scheme i.e. options granted, options vested, options exercised, the total number of shares arising as a result of exercise of option, options lapsed, the exercise price, variation of terms of options, money realized by exercise of options, total number of options in force, employee-wise details of options granted.

### Listing

The shares issued under ESOP by a listed company shall be eligible for listing only if:

- ✓ Such issues are in accordance with these regulations.
- ✓ In-principle approval from the stock exchanges is taken.
- ✓ As and when an exercise is made, the company notifies the concerned stock exchange as per the statement as specified by SEBI in this regard.

### Administration of Specific Schemes



|                              |                                |                           |                                 |                           |
|------------------------------|--------------------------------|---------------------------|---------------------------------|---------------------------|
| Employee Stock option scheme | Employee Stock purchase scheme | Stock appreciation rights | General employee benefit scheme | Retirement Benefit scheme |
|------------------------------|--------------------------------|---------------------------|---------------------------------|---------------------------|

### Employee Stock Option Scheme

**Pricing:** The company will have the freedom to determine the exercise price subject to conforming to the accounting policies as specified in these regulation.

**Minimum one year vesting period:** There shall be a minimum period of 1-year gap between the grant of options and vesting of option. In a case where options are granted by a company under its Employees Stock Option Scheme in lieu of options held by the same person under an Employees Stock Option Scheme in another company, which has merged or amalgamated with the first-mentioned company, the period during which the options granted by the merging or amalgamating company were held by him shall be adjusted against the minimum vesting period required.

**Company has freedom to specify lock-in period:** The company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option.

**No right of dividend or voting till exercise of option:** The Employees shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to them, till shares are issued on exercise of option.

**Forfeiture/refund:** The amount, if any, payable by the employees, at the time of grant of option:

- may be forfeited by the company if the option is not exercised by the employees within the exercise period; or
- the amount may be refunded to the employees if the options are not vested due to non-fulfilment of conditions relating to vesting of option as per the Employees Stock Option Scheme.

### Employee Stock Purchase Scheme

**Pricing:** The company will have the freedom to determine the exercise price subject to conforming to the accounting policies as specified in these regulation.

**Lock in period:** Shares issued under an ESPS shall be locked-in for a minimum period of one year from the date of allotment. However, in case where shares are allotted by a company under an ESPS in lieu of shares acquired by the same person under an ESPS in another company which has merged or amalgamated with the first-mentioned company, the lock-in period already undergone in respect of shares of the transferor company shall be adjusted against the lock-in period.

**Special Note:** This application is at the level of employee and not at the level of trust. Lock-in in terms of regulation 22(2) shall be applicable from the day shares are received by the employees.

**Note:** If ESPS is part of a public issue and the shares are issued to employees at the same price as in the public issue, the shares issued to employees pursuant to ESPS shall not be subject to lock-in.

### Stock Appreciation Right Schemes

**Vesting:** There shall be a minimum vesting period of one year in case of SAR scheme. However, in a case where SAR is granted by a company under an SAR scheme in lieu of SAR held by the same person under an SAR scheme in another company which has merged or amalgamated with the first-mentioned company, the period during which the SAR granted by the transferor company were held by the employee shall be adjusted against the minimum vesting period.





**Rights of the SAR Holder:** The employee shall not have right to receive dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of SAR granted to him.

### General employee Benefit Scheme

At no point in time, the shares of the company or shares of its listed holding company shall exceed 10% of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of GEBS.

### Retirement Benefit Scheme

At no point in time, the shares of the company or shares of its listed holding company shall exceed 10% of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of RBS.

**Special Note:** Issue of ESOP will be treated as material disclosure as per Regulation 30 of the SEBI (LODR), 2015 and will require disclosure to Stock Exchange.

### PROCEDURE FOR ESOP IN LISTED COMPANY

Hold BM and constitute Compensation Committee

Compensation Committee will draft an ESOP Scheme

Convene the Board Meeting and pass the scheme. Appoint Merchant Banker and call GM to take shareholder's approval

Approve the ESOP Scheme by passing a special resolution

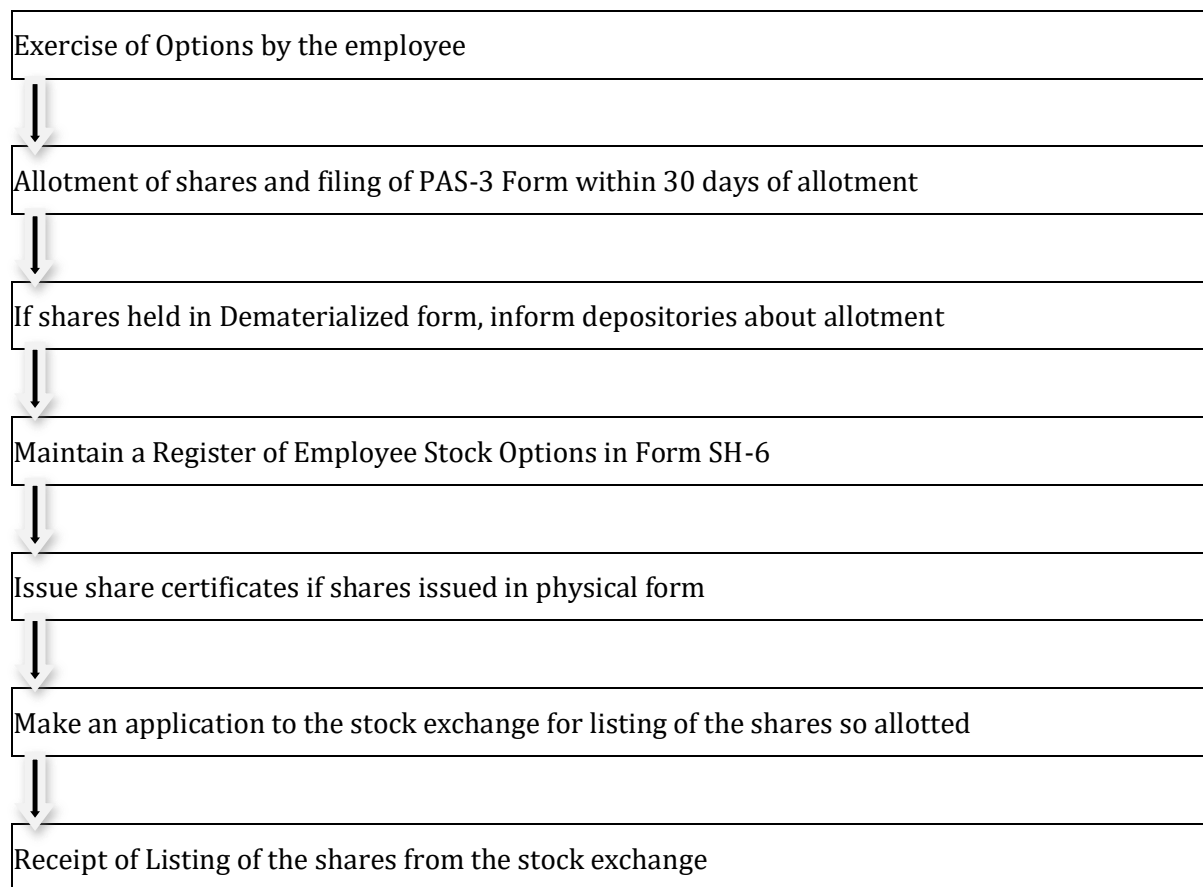
File Special Resolution with ROC in Form MGT 14 within 30 days of passing SR passed

Take in principal approval of the stock exchange

After approval of ESOP scheme, grant options to the eligible employees

Vesting of Options - Minimum vesting period of 1 year





#### **ROLE OF COMPANY SECRETARY**

- A Certificate from Company Secretary for receipt of money.
- A quarterly certificate from the PCS specifically certifying that the company has received the application/allotment monies from the applicants of these shares.





**CS Praveen Choudhary**  
**CS Executive New Syllabus**

**FLAT 50% OFF**  
**All Law Subjects**  
**(CLAW, SBEC, JIGL, SLCM, EBCL)**

**Call @ 7744859960 / 7276368299**

[Click Here to Buy / Watch Demo](#)



## SEBI (Issue of Sweat Equity) Regulations, 2002

Sweat equity shares are issued by the company to the employees or directors in lieu of their contribution towards the development of the company. Recognition of efforts of employees and directors help the company to retain these employees or directors. It is like rewarding the employees or directors by giving them equity benefits instead of cash payments.

### ISSUE OF SWEAT EQUITY SHARES AS PER COMPANIES ACT 2013

[Section 54 of the Companies Act, 2013]

Section 2(88) of the Companies Act, 2013:

**Sweat Equity Shares** means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

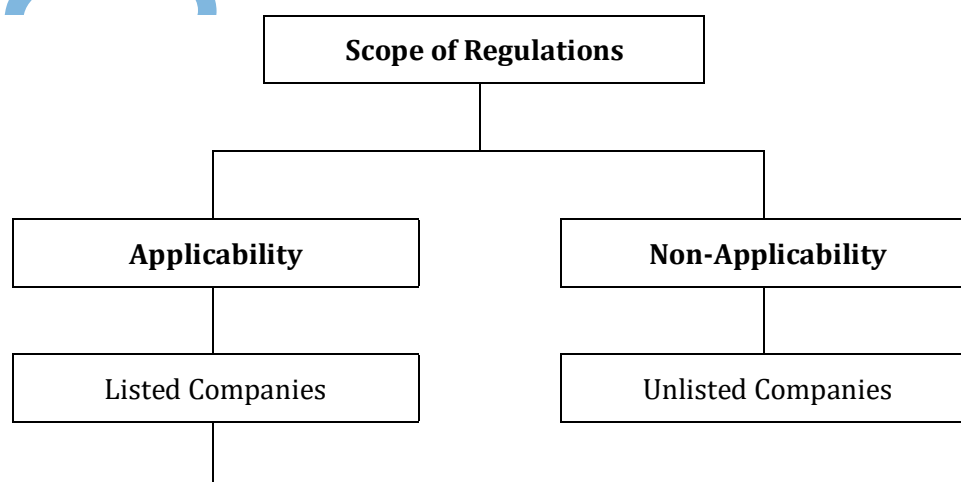
**Section 54 of the Companies Act, 2013:** A company may issue sweat equity shares of a class of shares already issued subject to the following conditions:

- The issue of Sweat Equity Shares must be authorised by a Special Resolution (SR).
- The SR carries the details like number of shares, current market price, consideration, and the class of directors or employees to whom sweat equity shares are to be issued.
- In case of listed company, the sweat equity shares are issued in accordance with the regulations made by SEBI and in case of unlisted company, the sweat equity shares are issued in accordance with the Companies Act and its rules.
- The holders of such shares shall rank pari-passu with other equity shareholders.

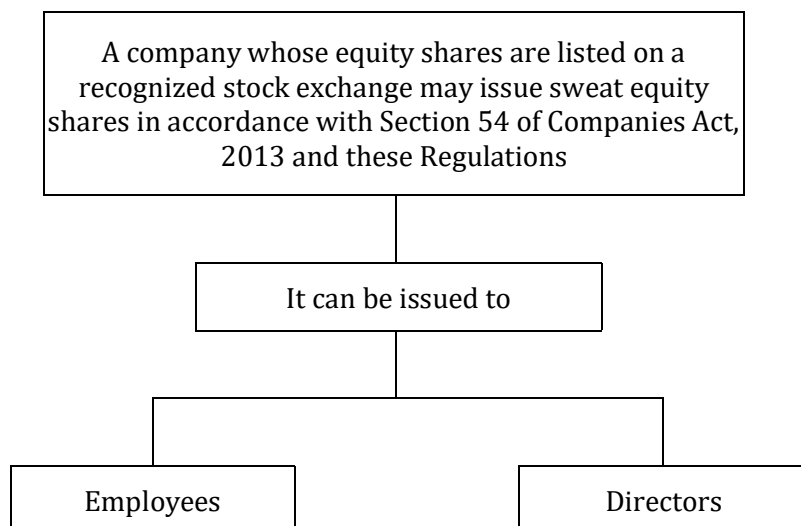
Apart from the provisions in the Companies Act, 2013 if a listed entity issues sweat equity it also has to comply with SEBI (Issue of Sweat Equity) Regulations, 2002.

### SEBI (ISSUE OF SWEAT EQUITY) REGULATIONS, 2002

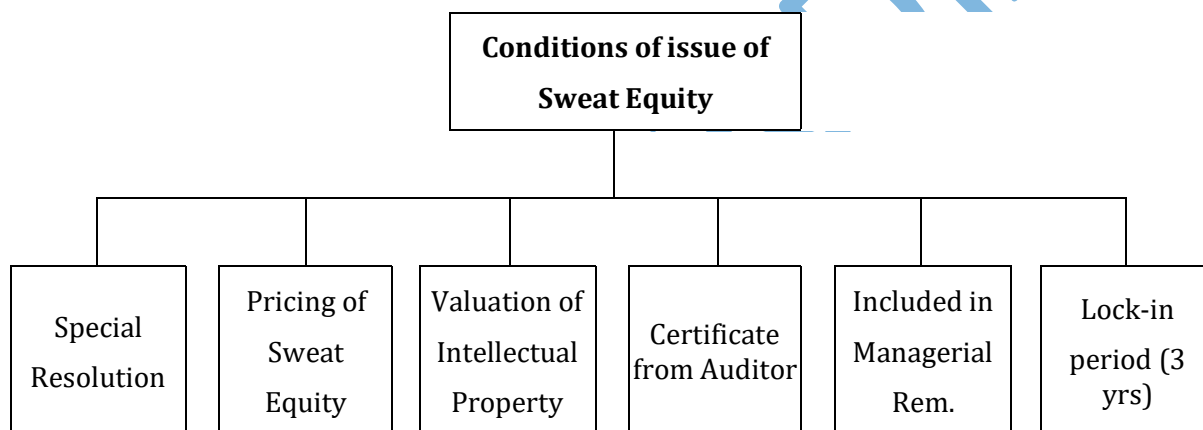
#### Applicability/Non-Applicability







**Conditions of Issue of Sweat Equity as per SEBI Regulations**



**Special Resolution**

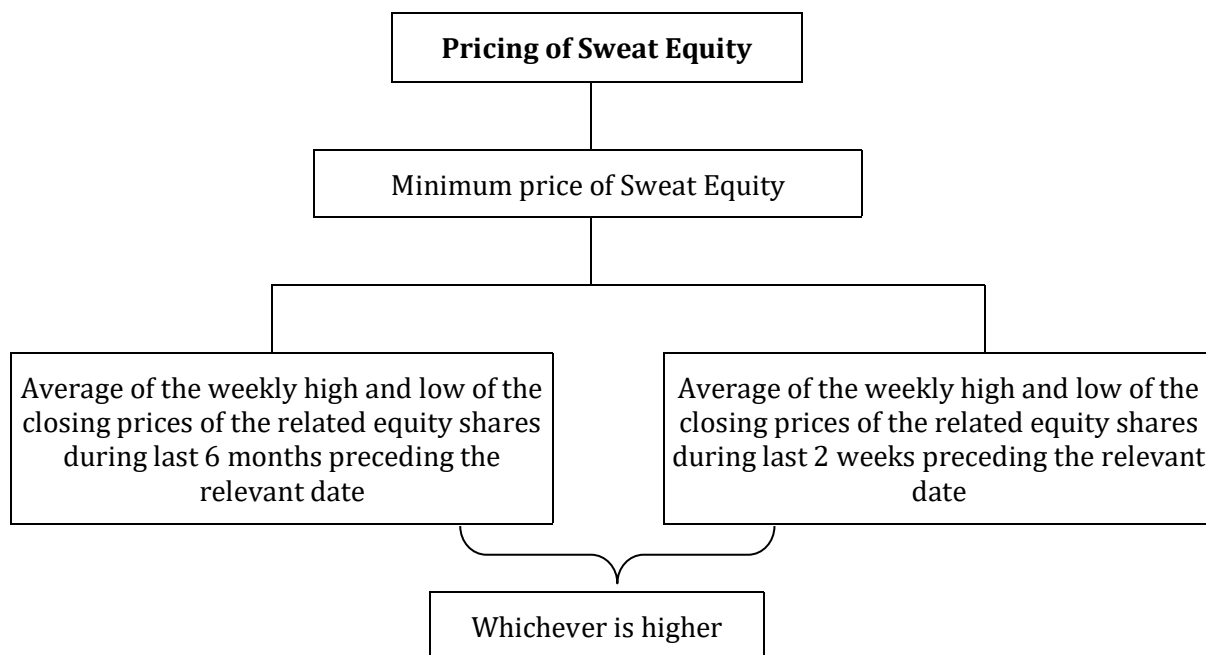
Issue of Sweat Equity Shares to be authorized by special resolution at a general meeting. The explanatory statement should lay down following additional information:

- ✓ Total number of shares to be issued as sweat equity.
- ✓ Current market price of the shares of the company.
- ✓ Value of the intellectual property rights or technical know-how or other value addition to be received from the employee or director along with the valuation report/basis of valuation.
- ✓ Names of the employees or directors or promoters to whom the sweat equity shares shall be issued and their relationship with the company.
- ✓ Consideration, if any, to be paid for the sweat equity.
- ✓ Issue Price of sweat equity.
- ✓ Ceiling on managerial remuneration, if any, which will be affected by issuance of such sweat equity.
- ✓ A statement confirming compliance with the accounting policies.
- ✓ Diluted Earning Per Share.

Note: In case of issue of sweat equity shares to promoters, the same shall also be approved by simple majority of the shareholders in General Meeting and the promoters who are receiving it will not be permitted to vote on such resolution.



**Pricing**



The price of sweat equity shares shall not be less than the higher of the following:—

- The average of the weekly high and low of the closing prices of the related equity shares during last 6 months preceding the relevant date; or
- The average of the weekly high and low of the closing prices of the related equity shares during the two weeks preceding the relevant date.

|  |  |
|--|--|
| If the shares are listed on more than one stock exchange, but quoted on given date | Then the price on the stock exchange where they are quoted shall be considered                     |
| If the share price is quoted on more than one stock exchange                       | Then the stock exchange where there is highest trading volume during that date shall be considered |
| If the shares are not quoted on the given date                                     | Then the share price on the next trading day shall be considered                                   |

**Note:** “Relevant date” for this purpose means the date which is 30 days prior to the General Meeting.

**Valuation of Intellectual Property Rights**

- ✓ The valuation of the intellectual property rights or of the know-how shall be carried out by a merchant banker.
- ✓ The merchant banker may consult such experts and valuer if he may deem fit.
- ✓ The merchant banker shall obtain a certificate from an independent Chartered Accountant that the valuation of the intellectual property or other value addition is in accordance with the relevant accounting standards.

**Certificate of Auditor at the General Meeting**

**Sweat Equity Reg 2002**

The BOD shall place a certificate in the General Meeting subsequent to the issue of sweat equity. The certificate should be issued by the auditors of the company that the issue of sweat equity shares has been made in accordance with the Regulations and Resolution.

**Part of managerial remuneration**

The amount of sweat equity shares issued shall be treated as part of managerial remuneration subject to the fulfilment of the following conditions:

- a) The sweat equity shares are issued to the director or manager; and
- b) They are issued for consideration other than cash.

**Note:** The sweat equity shares issued during an accounting period, the accounting value of sweat equity shares shall be treated as a form of compensation to the employee or the director in the financial statements of the company.

**Lock-in period**

Sweat equity shares shall be non-transferable for three years from the date of allotment.

**Note: Lock-in period of Sweat Equity Shares -**

The sweat equity shares issued to directors or employees shall be locked-in (Non-transferable) for 3 years from the date of allotment. The share certificates are under lock-in and the period of expiry of lock-in shall be stamped in bold or in any other manner on the share certificate.

**Listing**

The Sweat Equity issued by a listed company shall be eligible for listing only if such issues are in accordance with these regulations.





**CS Praveen Choudhary**  
**CS Executive New Syllabus**

**FLAT 50% OFF**  
**All Law Subjects**  
**(CLAW, SBEC, JIGL, SLCM, EBCL)**

**Call @ 7744859960 / 7276368299**

[Click Here to Buy / Watch Demo](#)





## SEBI (Prohibition of Insider Trading) Reg 2015

### INTRODUCTION

With an intention of bringing the Insider Trading practices with parity to the global scenario and to fill the loopholes in the existing regulations SEBI introduced the new SEBI (Prohibition of Insider Trading) Regulations, 2015 which replaced and repealed the SEBI (Prohibition of Insider Trading) Regulations, 1992.



### LATEST INSIDER TRADING CASE IN USA

**Rajat Gupta:** Rajat Gupta, who sat on boards at some of the most influential companies in the U.S., was charged in October with helping his friend Raj Rajaratnam carry out his ill-fated insider trading scheme. The FBI contends that Gupta illegally leaked inside information about firms where he had been a director - including Goldman Sachs and Procter & Gamble - to Rajaratnam's Galleon Group hedge fund. The conspiracy count of which Gupta was convicted carries a maximum sentence of five years in prison and at least \$250,000 in fines. Gupta faces 20 years and a \$5 million fine for each securities fraud count. He has been found guilty for one conspiracy and three of the five counts of securities fraud.



**Raj Rajaratnam:** The Galleon Group founder was convicted in May of spearheading the largest insider trading scheme to ever involve a hedge fund. The regulator slapped Raj Rajaratnam with a record \$92.8 million penalty and 11 years behind the bar for his crimes. The case also marked the first time the SEC deployed court-ordered wiretaps to track down criminality on Wall Street.



### WHAT IS INSIDER TRADING

Insider Trading is trading/dealing of a company's securities by an insider on the basis on Unpublished Price Sensitive Information.

**So the elements of the definition are as follows: —**

- ✓ There is a trading or dealing of a company's securities
- ✓ The dealing is by an Insider
- ✓ The dealing is on the basis of Unpublished Price Sensitive Information

### Trading of Securities:

"Trading" means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly.



**In simple words it means and includes:**

- ✓ Subscribing
- ✓ Buying
- ✓ Selling
- ✓ Dealing
- ✓ Agreeing to subscribe, buy, sell, deal in any securities

**Insider**

"Insider" means any person who is:

- i. a connected person; or
- ii. in possession of or having access to unpublished price sensitive information

**Note:** The new Regulations have also brought in its ambit person who do not occupy any position in a company but are in regular touch with the company & its officials and therefore possess Unpublished Price Sensitive Information.

**Connected Person**

Connected person" means -

- any person who is or has during the 6 months prior to the concerned act has been associated with a company, directly or indirectly, in any capacity which may include:
  - ✓ frequent communication with its officers, or
  - ✓ contractual, fiduciary or employment relationship, or
  - ✓ 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 UPSI or is reasonably expected to allow such access.
- Person is Deemed to be a Connected Person:

The persons falling within the following categories shall be deemed to be connected persons unless the contrary is established:

- a) an immediate relative of connected persons specified above; or
- b) a holding company or associate company or subsidiary company; or
- c) an intermediary 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 Board; 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 10% of the holding or interest.



### **Unpublished Price Sensitive Information**

Any information, relating to a company or its securities, that is not generally available, and is likely to materially affect the price of the securities is a UPSI.

It includes:

- ✓ Financial results;
- ✓ Dividends;
- ✓ Change in capital structure;
- ✓ Mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and such other transactions;
- ✓ Changes in key managerial personnel; and
- ✓ Material events in accordance with the listing agreement.

In short, till the time price sensitive information is not intimated to general public via newspaper, stock exchange, media or websites of a listed company, such information is known as unpublished price sensitive information provided such information is likely to materially affect the price.

### **COMPLIANCES UNDER SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015** **COMMUNICATION OR PROCUREMENT OF UNPUBLISHED PRICE SENSITIVE INFORMATION** **(Regulation 3)**

**(a) No Communication of UPSI except official communication:** Reg. 3(1):

No insider shall 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.

**(b) No Procurement of UPSI from Insider:** Reg. 3(2):

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

**(c) Exception to the above provisions:** Reg. 3(3):

An UPSI may be communicated, provided, allowed access to or procured, in following cases:—  
For Open Offer: UPSI may be communicated, provided, allowed access to or procured if it involve an obligation to make an open offer under the takeover regulations where the board of directors of the company is of informed opinion that the proposed transaction is in the best interests of the company.

Other than open offer: UPSI may be communicated, provided, allowed access to or procured if it does not attract the obligation to make an open offer under the takeover regulations but where the board of directors of the company is of informed opinion that the proposed transaction is in the best interests of the company and the information that constitute UPSI is disseminated to be made generally available at least 2 trading days prior to the proposed transaction being effected in such form as the board of directors may determine.

**(d) Execution of a confidentiality and non-disclosure agreement:** The board of directors shall require the parties to execute agreements to contract confidentiality and non-disclosure



## Insider Trading

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.

### TRADING WHEN IN POSSESSION OF UNPUBLISHED PRICE SENSITIVE INFORMATION (UPSI) (Regulation 4)

An insider shall not trade in securities, which are listed or proposed to be listed on stock exchange when in possession of unpublished price sensitive information.

#### Exceptions:

#### 1. Off-market Transaction between Promoters

Promoters possessing UPSI can trade in securities if ALL the following conditions are satisfied:

- ✓ They have acquired such price sensitive information without breaching regulation 3.
- ✓ Both parties had made a conscious and informed trade decision.

#### 2. If Insiders are Non-Individual

A non-individual insider like Banks/Depositories of the company etc. can trade in securities if ALL the following conditions are satisfied:

- ✓ The individual possessing such UPSI is different from individual taking decision of trading.
- ✓ The individual who took decision of trading did not had any UPSI at the time of decision making.
- ✓ Appropriate and adequate arrangements were in place to ensure that these regulations are not violated.

#### 3. Any other Case

Trading is permitted if the trades were pursuant to a trading plan set up in accordance with regulation 5.

### TRADING PLAN (Regulation 5)

If an Insider wants to trade in securities of a company of which he possess UPSI he is required to submit trading plan in advance to the compliance officer for his approval. Following are the important compliances related to trading plan:

- Such trading plan on approval by the compliance officer will also be disclosed to the stock exchanges, where the securities of the company are listed.
- Trading plan shall be for a minimum period of 12 months.
- No overlapping of plan with the existing plan submitted by Insider.
- It shall contain the following details:
  - Value of trades to be effected or the number of securities to be trade
  - Nature of the trade
  - Intervals of date or dates on which such trades shall be effected.
- Trading shall commence only after the expiry of 6 months from the public disclosure of plan.
- Trading shall close 20 days before the closure of the financial period till the 2nd trading day after the disclosure of such financial results.





## Insider Trading

**Example:** If the financial period is 1st quarter (April to June) then the trading will be closed from twentieth trading day before 30 June to the second trading day after the disclosure of financial results for first quarter (result is declared in BM as per LODR).

- The trading plan once approved by the Compliance Officer shall be irrevocable and the insider shall mandatorily have to implement the plan.

### DISCLOSURES OF TRADING BY INSIDERS - General Disclosure (Regulation 6)

- Specific form for disclosure:** Reg. 6(1): Every public disclosure shall be made in a specified form.
- Disclosure by any person:** Reg. 6(2): The disclosures to be made by any person shall include those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions.
- Disclosure includes derivatives:** Reg. 6(3): The disclosures of trading in securities shall also include trading in derivatives of securities and the traded value of the derivatives shall be taken into account.
- Maintenance of Record:** Reg. 6(4): The disclosures made shall be maintained by the company, for a minimum period of 5 years, in the specified form.

### DISCLOSURE ON INTEREST BY CERTAIN PERSON (Regulation 7)

| Category of Disclosure | Content of Disclosure   | Disclosure By Whom                            | Disclosure to whom | Time period   |
|------------------------|---|---|--------------------|---|
| Initial Disclosure     | Holding on the date of commencement of regulation   | Promoter, KMP or Director of a listed company | Company            | Within 30 days of these Regulation taking effect                          |
|                        | Holding on the date of appointment  | Promoter, KMP or Director of a listed company | Company            | Within 7 days of the appointment  |
| Continual Disclosure   | Value of securities traded, in aggregate, in a calendar quarter, exceeds traded value of Rs. 10 Lac or any other value as may be prescribed | Step 1  |                    |   |
|                        |   | Promoter or Director or Employee              | Company            | Within 2 days of such transaction   |
|                        |   | Step 2  |                    |   |
|                        |   | Company                                       | Stock Exchange     | Within 2 days of receipt of disclosure from promoter director or employee |



|                        |                            |                  |         |                             |
|------------------------|----------------------------|------------------|---------|-----------------------------|
| other connected person | As required by the company | Connected Person | Company | As specified by the Company |
|------------------------|----------------------------|------------------|---------|-----------------------------|

**Code of Fair Disclosure (Regulation 8)**

1. 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.
2. 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.

**Some important contents of this Code are:**

- ✓ Uniform & universal dissemination of UPSI to avoid selective disclosure;
- ✓ Designation of a senior officer as a chief investor relations officer to deal with dissemination of information & disclosure of UPSI;
- ✓ Appropriate & fair response to queries on new reports & requests for verification of market rumors by regulatory authority;
- ✓ Ensuring that information shared with analysts & research personnel is not UPSI.

**Code of Conduct (Regulation 9)**

1. The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.
2. 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 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.

**Some important contents of this Code are:**

- ✓ All information shall be handled within the organization on a need-to-know basis;
- ✓ The BOD shall, in consultation with the Compliance Officer, specify the designated persons to be covered by such code;
- ✓ A notional trading window shall be used as an instrument of monitoring trading by designated persons. Trading window shall be closed designated persons is expected to be in possession of UPSI;
- ✓ Compliance officer shall determine timing for re-opening of the trading window, which shall not be less than 48 hrs. when the information becomes publically available;



- ✓ Designated persons shall be subject to pre-clearance by compliance officer;
- ✓ Code of conduct shall stipulate such formats as the BOD deems fit for making applications for pre-clearance etc.

#### PENALTIES FOR NON-COMPLIANCE

**Penalty for insider trading under Section 24 of SEBI Act:** If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder or if any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders. He shall be punishable with imprisonment for a term which shall not be **less than 1 month** but which may be extended to **10 years and fine** which may be extended to **Rs. 25 crores or both**.

**Penalty for insider trading under Section 15G of SEBI Act:** If any Insider who either on his own behalf or on behalf of any other person, deals in securities of a listed entities on the basis of any UPPSI; or communicates any UPPSI to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or counsels, or procures for any other person to deal in any securities of anybody corporate on the basis of UPPSI. He shall be liable to a penalty of **Rs. 25 crores or three times** the amount of profits made out of insider trading, whichever is higher.

#### ROLE OF COMPANY SECRETARY FOR INSIDER TRADING COMPLIANCES

The following obligations cast upon the Company Secretary with regard to Compliances of insider trading regulations:

- a) **Compliances with Insider Trading Regulations:** Ensure compliance of SEBI (Prohibition of Insider Trading) Regulations, 2015 including maintenance of various register record documents.
- b) **Framing of Code of Conduct:** CS shall frame a code of fair disclosure and conduct in line with the model code as specified under the insider trading regulations and get it approved by the board of directors of the company.
- c) **Place before SEBI:** CS should place before SEBI the "minimum standards for Code of Conduct" to regulate, monitor and report trading by insiders as enumerated in the Schedule B of the regulations.
- d) **One time Disclosures:** CS should receive initial disclosure from every Promoter, KMP and director or every person on appointment as KMP or director or becoming a Promoter, about their shareholding within:
  - ✓ 30 days from the effect of insider regulations, or
  - ✓ 7 days of such appointment or becoming a promoter.
- e) **Continual Disclosures:** CS should receive from every Promoter, employee and director, continual disclosures of the number of securities acquired or disposed of, if the value of the securities traded, exceeds Rs. 10 lakh in any calendar quarter within 2 trading days of:
  - ✓ receipt of the disclosure, or
  - ✓ from becoming aware of such information.
- f) **No Trading Period:** CS should ensure that no trading shall happen between 20th day prior to closure of financial period and 2nd trading day after disclosure of financial results.



**Insider Trading**

- g) **Approval of Trading Plan:** Approve the trading plan and after the approval of the trading plan, as compliance officer shall notify the plan to the stock exchanges on which the securities are listed.
- h) **Maintain the records:** Maintain the records of all the declarations given by the directors/ designated employees/partners for a minimum period of 3 years.
- i) **Monitoring of Trades:** Monitor of trades and the implementation of the code of conduct under the overall supervision of the Board of Directors of the listed company.
- j) **Maintain the list of Information:** Maintain a list of all information termed as 'price sensitive information'.
- k) **Keeping record of Trading Window:** Keep records of periods specified as 'close period' and the 'Trading window'.







**CS Praveen Choudhary**  
**CS Executive New Syllabus**

**FLAT 50% OFF**  
**All Law Subjects**  
**(CLAW, SBEC, JIGL, SLCM, EBCL)**

**Call @ 7744859960 / 7276368299**

[Click Here to Buy / Watch Demo](#)



Mutual Funds

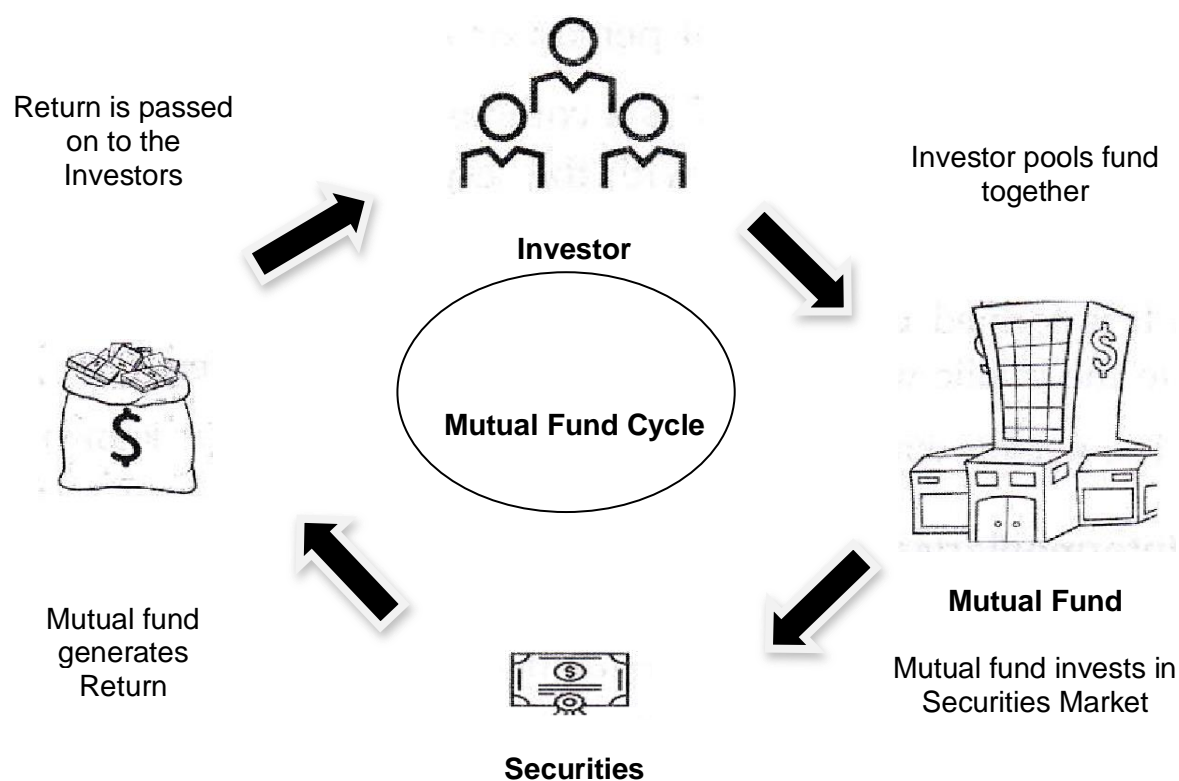
**INTRODUCTION**

Mutual fund is a process of pooling resources from the investors and investing funds in securities. The process of pooling the resources together and issuing units to the investors and then investing funds in securities is known as the scheme of "Mutual Funds".

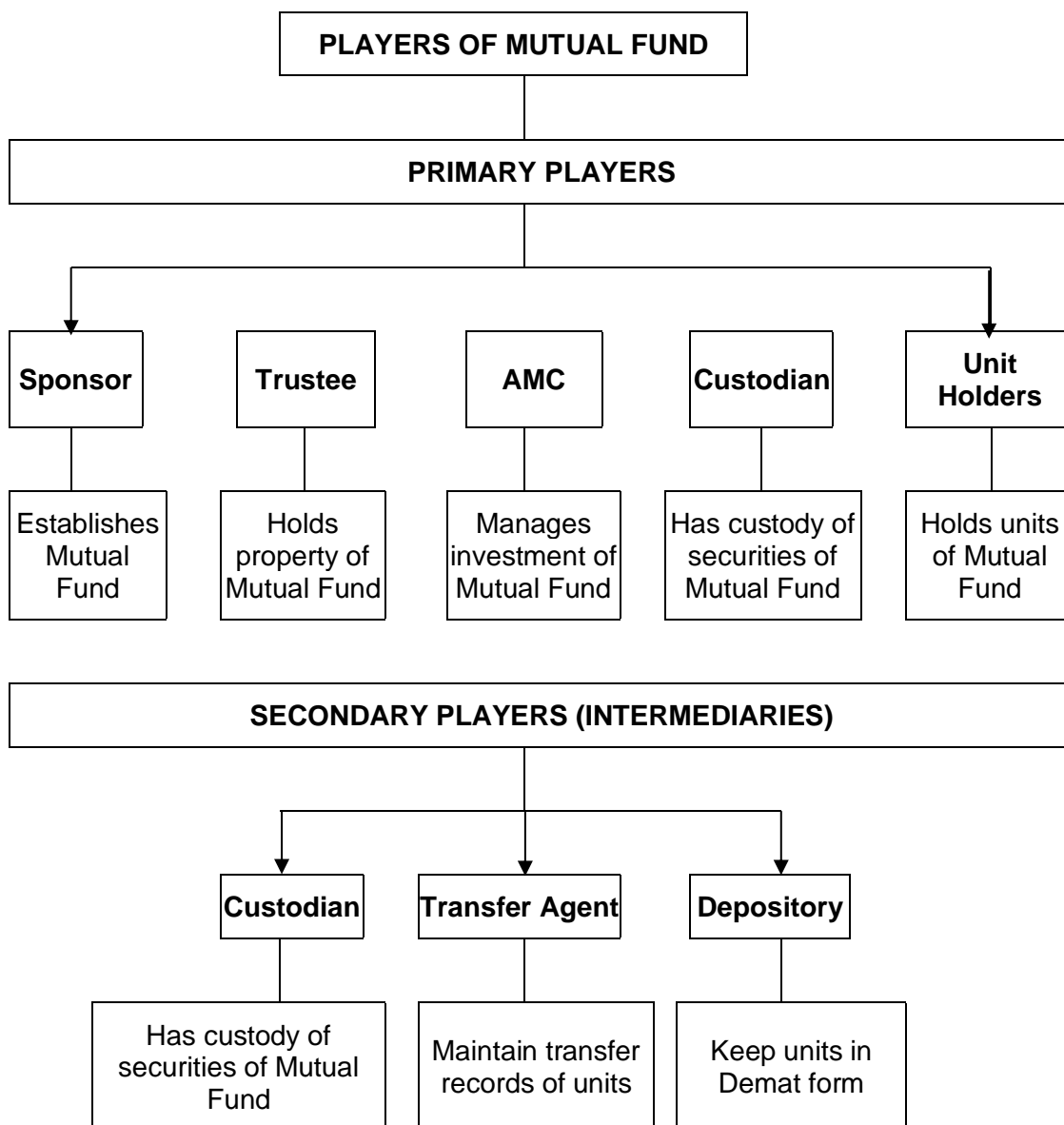
In other words, it works like a trust which pools the savings of investors and invests these in capital and money market instruments. Mutual funds offer good investment opportunities to the investors. Like all investments, they also carry certain risks.



**MUTUAL FUND OF CYCLE**



PLAYERS OF MUTUAL FUND



Primary Players

- ✓ **Sponsor:** A sponsor is the one who establishes the Mutual Fund. He is the promoter of the Mutual Fund. The sponsor is required to invest at-least 40% of the Net worth of the mutual fund.
- ✓ **Trustees:** Trustees are the ones who hold property of the Mutual Fund, for the benefit of the unit holders. The trustee can be an individual person or a company.
- ✓ **Asset Managing Company (AMC):** AMC is a company registered under the Companies Act, 2013 registered with SEBI. AMC is entrusted with the responsibility of managing the various schemes and operations of the Mutual Fund. It decides how to invest the funds of mutual fund. The AMC is the investment manager of the trust.
- ✓ **Mutual Fund:** It is formed under India Trust Act and registered with SEBI for sale of units of mutual funds to the public which pools the funds of unit holders.
- ✓ **Unit holders:** The person who holds the units of mutual fund is known as Unit Holder.



### Secondary Players (Intermediaries of Securities Market)

- **Custodian:** The custodian has the custody of all the shares and various other securities bought by the AMC. The custodian is responsible for the safe keeping of all the securities. It is registered with SEBI.
- **Transfer Agents:** Registered with SEBI to facilitate issue, redemption and transfer of securities. They maintain updated investment records.
- **Depository:** Depository holds the units in De-mat form to ensure free flow of mutual fund trade.

### ADVANTAGES OF MUTUAL FUNDS

- ✓ **Professional Management:** The funds of Asset Management Company (AMC) are managed by the experience and high caliber professionals who are backed by the dedicated research team. The research team analyses the performance and prospects of the companies for purpose of investments of funds.
- ✓ **Diversified Investment:** The AMC diversifies the total funds into different sectors or industry for reducing the risk. In short, diversification of funds reduces the risk of investment.
- ✓ **Return Potential:** Mutual funds provide higher returns as they invest in a diversified basket of selected securities.
- ✓ **Low Cost:** If we compare this form of investment with the other forms, the mutual funds are less expensive, because the economies of scale is achieved in brokerage, custodial fee, etc.
- ✓ **Transparency:** It provides regular information to the investors about the value of their investment.
- ✓ **Liquidity:** The open ended mutual funds are very liquid and it can be easily encashed by the investors. Even the close ended schemes are tradable in the securities market.
- ✓ **Tax Benefits:** Many mutual funds are tax exempt under section 80C of the Income Tax Act.
- ✓ **Protection to the interest of Investors:** Being regulated by the SEBI, mutual funds have to comply with the strict rules and regulations designed to protect the interest of the Investors.

### DISADVANTAGES OF MUTUAL FUND

Mutual funds may face the following risks, leading to non-satisfactory performance:—

1. Excessive diversification of portfolio, losing focus on the securities of the key segments.
2. Too much concentration on blue-chip securities which are high priced and which do not offer more than average return.
3. Necessity to effect high turnover through liquidation of portfolio resulting in large payments of brokerage and commission.
4. Poor planning of investment returns.
5. Unresearched forecast on income, profits and Government policies.
6. Fund managers being unaccountable for poor results.
7. Failure to identify clearly the risk of the scheme as distinct from risk of the market.
8. Under performance in comparison to peers.

### BASIC CLASSIFICATION OF MUTUAL FUNDS (MF)

- ✓ **Open-ended Mutual Funds:**

It is a mutual fund scheme where investors invest and redeem their investment throughout the year. It gives flexibility to an investor to purchase and redeem the units of mutual funds at any time at a fixed NAV during the life time of funds.





**Mutual Funds**

Example: Unit Trust of India's US 64 Scheme and State Bank of India Mutual Fund's SBI Magnum Mutual Fund

Key features of such scheme are liquidity and its free entry and exit from the fund. It is a never ending fund and can be used it as systematic investment platform. The listing of open ended mutual fund is not required and the corpus of this fund is flexible and always varies.

✓ **Close-ended Mutual Funds:**

It is a fund which opens for limited period for subscription. The investors can invest directly in the fund at the time of initial offer. After initial offer, an investor can buy units of this type of mutual funds from tire market like equity shares of any company. The listing of Close-ended mutual funds is mandatory on the recognized stock exchanges (i.e. BSE & NSE or others).

Example: ICICI Prudential Fusion Fund - Growth, Principal PNB Long Term Fund 3-year Series II - Growth, Reliance Fixed Horizon Fund - V 3 Yrs Plan - Dividend

In other words, a close-ended scheme has fixed corpus and stipulated maturity period ranging between 2 and 5 years.

\* **Difference between Open-ended & Close-ended Mutual Funds:**

| Heading      | Open-ended Mutual Funds      | Close-ended Mutual Funds            |
|--------------|------------------------------|-------------------------------------|
| Fixed Corpus | Variable corpus (total fund) | Fixed corpus (total fund)           |
| Listing      | Not required                 | Listing is mandatory                |
| Liquidity    | Always liquid                | After expiry of the maturity period |
| NAV          | Disclosed at the end of day  | Market Trading Price                |
| Opening      | Always open                  | Only for limited period             |

**MUTUAL FUND SCHEMES BASED ON INVESTMENT OBJECTIVE**

**Income Oriented Mutual Fund:** These funds offer a fixed income to investors and it has lower risk as compared to growth funds. Under this scheme, the Asset Management Company invests funds income oriented schemes like Bonds, Debentures, Government Bonds & securities and commercial papers.

**Features**

- (i) These schemes are generally have lesser risk as compared to Growth schemes.
- (ii) These schemes give fixed income.

**Growth oriented Mutual Fund:** These funds offer capital appreciation over a period. Under this scheme, the Asset Management Company invests funds in the equity shares which have significant growth potential. Despite good return under this mutual fund scheme, there is no assurance or guarantee of return. In other words, it is a scheme which has high risk and high return.

**Features:**

- (i) High risk and High return.
- (ii) No Guarantee or assurance for return.
- (iii) The objective of this fund to get High capital appreciation.



## Mutual Funds

**Hybrid Mutual Funds/Balanced Mutual Funds:** These funds have features of income oriented funds and growth oriented funds.

Example: HDFC Prudence, an equity oriented hybrid fund under this scheme, the AMC invests the entire funds in types of securities:

- (i) Equity shares, and
- (ii) Bonds & Fixed income oriented instruments.

**High Growth Schemes:** These funds primarily invest in high risk and high return volatile securities in the market and induce the investors with a high degree of capital appreciation.

**Capital Protection Oriented Scheme:** It is a scheme which protects the capital invested in the mutual fund through suitable orientation of portfolio structure.

**Real Estate Funds:** These are close-ended mutual funds which invest predominantly in real estate and properties.

**Off-shore Funds:** Such funds invest in securities of foreign companies with RBI permission.

**Leverage Funds:** Such funds, also known as borrowed funds, increase the size and value of portfolio and offer benefits to members from out of the excess of gains over cost of borrowed funds. They tend to indulge in speculative trading and risky investments.

**Hedge Funds:** They employ their funds for speculative trading, i.e. for buying shares whose prices are likely to rise and for selling shares whose prices are likely to fall.

**Fund of Funds:** They invest only in units of other mutual funds. Such funds do not operate at present in India.

**New Direction Funds:** They invest in companies engaged in scientific and technological research such as birth control, anti-pollution, oceanography etc.

**Exchange Trade Funds (ETFs):** These are a new variety of mutual funds that first introduced in 1993. ETFs are sometimes described as mere "tax efficient" than traditional equity mutual funds, since in recent years, some large ETFs have made smaller distribution of realized and taxable capital gains than most mutual funds.

**Money Market Mutual Funds:** These funds invest in short-term debt securities in the money market like certificates of deposits, commercial papers, government treasury bills etc. Owing to their large size, the funds normally get a higher yield on such short-term investments than an individual investor.

**Infrastructure Debt Fund:** They invest primarily in the debt securities or securitized debt investment of infrastructure companies.

### NET ASSET VALUE (NAV)

Mutual funds raise money by selling their shares to public and redeeming them at current net asset value. Net asset value is the value of the assets of each unit of the scheme. Thus if the NAV is more than the face value of, there is an appreciation for the investment. If the NAV is less than the face value, it indicates depreciation of the investment.

Every mutual fund shall compute the NAV of each scheme by dividing the net asset of the scheme by the number of units of that scheme outstanding on the date of valuation and publish the same at least in two daily newspapers at intervals not exceeding one week. However, the net asset value of any scheme for special target segment or any monthly scheme which are not mandatorily required to be listed in the stock exchange may publish the NAV at monthly or quarterly intervals as permitted by SEBI.

The Net Asset Value (NAV) of a mutual fund is the price at which units of a mutual fund are bought or sold. It is the market value of the fund after deducting its liabilities.



**Calculation of NAV**

$$\text{Net Asset Value} = \frac{\text{Net Assets of the Scheme} *}{\text{Number of units Outstanding}}$$

| <b>*Net Asset of the Scheme</b> |                   |
|---------------------------------|-------------------|
| <b>Add:</b>                     | <b>Less:</b>      |
| Market value of investments     | Accrued Expenses  |
| Receivables                     | Other Payables    |
| other accrued income            | Other Liabilities |
| other assets                    |                   |

**Rules for Market Value of Investment**

| <b>Asset</b>                  | <b>Valuation Rule</b>                              |
|-------------------------------|--|
| Liquid assets like cash       | As per books                                       |
| Listed & Traded Securities    | Closing Market Price                               |
| Debenture & Bonds             | Closing traded price or yield                      |
| Illiquid shares or debentures | Last known price or book values whichever is lower |
| Fixed Income Securities       | Current yield                                      |

**Note:** See Practical Question given below for clarity.

**Cut-off time of NAV**

An investor can invest in a mutual fund on any business day of the year, but the NAV of the mutual fund will not be same every day. Rather the purchasing NAV will depend upon what time you submit your application. This could be the NAV of the same day, previous day or the next day. The rules for cut-off time of NAV are as follows:

| <b>Type of Transaction</b>                          | <b>Timing</b> | <b>NAV applicable</b>  |
|---|---------------|--|
| <b>Equity &amp; Debt Funds</b>                      |               |  |
| Purchase & Switch-in of value up-to Rs. 2 Lakhs     | Before 3 P.M. | Same day NAV   |
|   | After 3 P.M.  | Next business day NAV  |
| Purchase & Switch-in of value more than Rs. 2 Lakhs | Before 3 P.M. | NAV of the business day on which funds are available for utilization |
|   | After 3 P.M.  |  |
| Redemption & switch-out                             | Before 3 P.M. | Same day NAV   |



|                         |               |   |
|-------------------------|---------------|---|
|                         | After 3 P.M.  | Next business day NAV   |
| <b>Liquid Funds</b>     |               |   |
| Purchase & Switch-in    | Before 2 P.M. | Previous day NAV (only if the money is also paid before 2 PM.)  |
|                         | After 2 P.M.  | Same day NAV (only if the money is also paid)                   |
| Redemption & switch-out | Before 2 P.M. | Previous day NAV (only if the fund also transfer before 2 P.M.) |
|                         | After 2 PM.   | Same day NAV (only if the fund also transfer before 2 P.M.)     |

### HOLDING PERIOD RETURN/RETURN ON MUTUAL FUND

Holding period return is the total return received from holding an asset or portfolio of assets over a period of time, generally expressed as a percentage.

**Holding Period Return/Return** =  $\frac{\text{Income (in the form of Dividend and Capital Gain)} + \text{Change in NAV} \times 100}{\text{NAV at purchase date}}$

OR Return =  $\frac{D1 + \text{CGI} + (\text{NAVI} - \text{NAV0})}{\text{NAV0}} \times 100$

Where,

D1 is Dividend

CGI is capital gain

NAVI is Current present date NAV

NAV0 is NAV on purchase date

**Q1.** Safal Mutual Fund provides the following information related to one of its schemes:

Size of the scheme: R\$. 2,000 crore.

Face value of the units : Rs. 10 per unit.

Number of outstanding units : 200 crore.

Market value of funds' portfolio : Rs. 4,200 crore.

Receivables : Rs. 100 crore.

Accrued income : Rs. 100 crore.

Liabilities : Rs. 150 crore.

Accrued expenses : Rs. 275 crore.

You are required to calculate net asset value (NAV) of the scheme and rate of return if a unit holder has purchased units at the NAV of Rs. 15 per unit and received a dividend of Rs. 2 per unit during the period.

(6 marks) June 2006





**Ans.** **Net Asset Value** =  $\frac{\text{Net Assets of the Scheme}}{\text{Number of units Outstanding}}$

**Net Asset of the Scheme = Market value of investments + Receivables + other accrued income + other assets - Accrued Expenses - Other Payables - Other Liabilities.**

**Net Asset of the Scheme**                      **Rs. 4200 Crore + Rs. 100 Crore + Rs. 100 Crore - Rs. 150 Crore - Rs. 275 Crore**

**= Rs. 3975 Crore**

**NAV**    **= Rs. 3975 Crore**  
**200 Crore units**

**= Rs. 19.875**

**Return**                                      **=  $\frac{(\text{NAV1} - \text{NAV0}) + \text{D1} + \text{CGI}}{\text{NAV0}} \times 100$**   
**=  $\frac{(19.875 - 15) + 2}{15} \times 100 = 45.833\%$**

**Q2.** A mutual fund had a net asset value of Rs. 20 at the beginning of month made income & capital gain distribution of Re. 0.0375 and Re. 0.03 per share respectively during the month and then ended the month with a NAV of Rs. 20.06. Calculate monthly return.

**Ans.** **Return =  $\frac{(\text{NAV1} - \text{NAV0}) + \text{D1} + \text{CGI}}{\text{NAV0}} \times 100$**   
**=  $\frac{(20.06 - 20) + 0.0375 + 0.03}{20} \times 100 = 0.6375\%$  per month**

**Note:** Since the NAV of the beginning and end of the month is given we need not divide the return by 12 to find monthly return as it is already in monthly form.

**Q3.** Determine NAV of a mutual fund scheme:

|   |               |
|---|---------------|
| Listed shares at cost (ex dividend)                     | Rs. 20 Lakh   |
| Cash in hand  | Rs. 1.23 Lakh |
| Bonds & Debentures at Cost                              | Rs. 4.30 Lakh |
| (out of the above bonds not listed & quoted are 1 Lakh) |               |
| Other fixed interest securities at cost                 | Rs. 4.50 Lakh |
| Dividend accrued  | Rs. 0.80 Lakh |
| Amounts payable on shares                               | Rs. 6.32 Lakh |
| Expenditure accrued                                     | Rs. 0.7/Lakh  |
| Number of units (Rs. 10 Face Value each)                | 2,40,000      |



Current realizable value of fixed income securities of Rs. 106.50  
FV of Rs. 100

All listed shares were purchased when index (price) was 1200. On NAV date, the index (price) is ruling at 2120. Listed bonds & debentures carry a market value of Rs. 5 Lakhs on NAV date.

| Ans. | Particulars                   | Computation                      | Value in lakhs |
|------|-------------------------------|----------------------------------|----------------|
|      | Equity shares                 | Index (2120/1200) × 20           | 35.33          |
|      | Cash in hand                  | Book Value                       | 1.23           |
|      | Bonds & Debentures not listed | Book Value                       | 1.00           |
|      | Bonds & Debentures listed     | Market Value                     | 5.00           |
|      | Dividend accrued              |                                  | 0.80           |
|      | Fixed Income securities       | Market Value (106.50/100) × 4.50 | 4.79           |
|      | TOTAL ASSETS (I)              |                                  | 48.15          |
|      | Due on shares                 |                                  | 6.32           |
|      | Expenses payable              |                                  | 0.75           |
|      | TOTAL LIABILITIES (II)        |                                  | 7.07           |
|      | NET ASSETS (I - II)           |                                  | 41.08          |

No. of units is 240000 i.e 2.4 lakhs

$$\text{NAV} = \frac{41.08 \text{ Lakhs}}{2.40 \text{ Lakhs}} = \text{Rs. } 17.12 \text{ per unit}$$

Expense Ratio is the annual fee charged by the mutual fund scheme to manage money on your behalf. It covers the fund manager's fee along with other expenses required to run the fund administration. It includes the following:—

- ✓ Fees paid to service providers like trustees, Registrar & Transfer Agents, Custodian, Auditor, etc.
- ✓ Asset management expenses
- ✓ Commissions paid to distributors
- ✓ Other selling expenses including advertising expenses
- ✓ Expenses on investor communication, account statements, dividend/redemption cheques/warrants
- ✓ Listing fees and Depository fees
- ✓ Service tax

The lower the Expense Ratio the higher the NAV.

#### Front End & Back End Load



**Mutual Funds**

A front-end load is a commission or sales charge applied at the time of the initial purchase of units of mutual fund. A back-end load is a fee (sales charge or load) that investors pay when selling mutual fund shares.

$$\text{Expenses Ratio} = (\text{Expenses} \times 100) / (\text{NAV}_1 + \text{NAV}_0) / 2$$

Where,  $\text{NAV}_1$  = NAV at Year End

$\text{NAV}_0$  = NAV at beginning of Year

$$\text{Purchase Price OR Public offer Price} = \text{NAV} / (1 - \text{front end load})$$

$$\text{Redemption Price} = \text{NAV} / (1 + \text{back end load})$$

Q4. Super mutual fund has launched a scheme named 'Super Bonanza'. The net asset value (NAV) of the scheme is Rs. 12.00 per unit. The redemption price of Rs. 11.65 per unit and offer price is Rs. 12.50 per unit. You are required to calculate—

(i) Front end load

(ii) Back end load (6 marks) June 2015

Ans. Net asset value of the Scheme 'Super Bonanza' is Rs. 12.00 per unit. Redemption price is Rs. 11.65 per unit and offer price is Rs. 12.50 per unit

(i) Front-end load charges

$$\text{Public Offer Price} = \text{NAV} / (1 - \text{front end load})$$

Let us assume that front end load = x

$$12.50 = 12 / (1 - x)$$

$$12.50 - 12.50x = 12$$

$$x = 0.50 / 12.50$$

$$x = 0.04$$

$$\text{Front-end load} = 4\%$$

$$\text{Front-end load charges} = \text{Rs. } 0.48/- \text{ per unit}$$

(ii) Back-end load charges

$$\text{Redemption Price} = \text{NAV} / (1 + \text{back end load})$$

Let us assume that back end load = y

$$11.65 = 12 / (1 + y)$$

$$y = 0.35 / 11.65 = 0.03$$

$$\text{Back-end load} = 3\%$$

$$\text{Back-end load charges} = \text{Rs. } 0.36/- \text{ per unit}$$

Q5. The redemption price of a mutual fund unit is Rs. 48 while the front-end load and back-end load charges are 2% and 3% respectively. You are required to calculate —

(i) Net asset value per unit; and

(ii) Public offer price of the unit. (7 marks) June 2010



Ans. Information's as per question Redemption price of Mutual Fund = Rs. 48

Front end Load = 2% @ 0.02, Back end Load = 3% or 0.03

(i) Net Assets value = ?

Redemption price = NAV/ (1 + Back end Load)

Now putting figures with the help of question

48 = NAV / (1 + 0.03)

Or, 48 = NAV (1.03)

Or, NAV = 48 x (1.03) = Rs. 49.44

(ii) Public offer price = 50.45

### **SEBI (MUTUAL FUNDS) REGULATIONS, 1996**

Key provisions of this regulation:

- All the schemes to be launched by the AMC needs to be approved by the Board of Trustees and copies of offer documents of such schemes are to be filed with SEBI.
- The offer documents shall contain adequate disclosures to enable the investors to make informed decisions.
- The listing of close-ended schemes is mandatory and they should be listed on a recognised stock exchange within 6 months from the closure of subscription. However, the listing is not mandatory in case:
  - ✓ if the scheme provides for monthly income or caters to senior citizens, women, children and physically handicapped;
  - ✓ if the scheme discloses details of repurchase in the offer document; or
  - ✓ if the scheme opens for repurchase within six months of closure of subscription;
  - ✓ if the scheme is a capital protection oriented scheme.
- Units of a close-ended scheme can be converted into an open-ended scheme with the consent of a majority of the unit-holders and disclosure is made in the offer document about the option and period of conversion.
- Units of close-ended scheme may be rolled over by passing a resolution by a majority of the shareholders.
- No scheme other than equity-linked saving scheme can be opened for subscription for more than 15 days. Further, the minimum subscription and the extent of over subscription that is intended to be retained should be specified in the offer document. In the case of over-subscription, all applicants applying up to 5,000 units must be given full allotment subject to over-subscription.
- The AMC is required to refund the application money if minimum subscription is not received, and also the excess over subscription within five working days of closure of subscription.
- A close-ended scheme shall be wound up on redemption date, unless it is rolled over, or if 75% of the unit-holders of a scheme pass a resolution for winding up of the scheme; if the trustees on the happening of any event require the scheme to be wound up; or if SEBI, so directs in the interest of investors.

### **SEBI (LODR) REGULATIONS, 2015**

#### **Obligations Of Listed Entity Which Has Listed Its Mutual Fund Units**

**Applicability (Regulation 88):** Applicable to the asset management company managing the mutual fund scheme whose emits are listed on the RSE.

**Compliances for listed Assets Management Company (Regulation 90):**





**Mutual Funds**

1. The listed entity shall intimate to the recognized stock exchange(s) the information relating to
  - a) Daily Net Asset Value (NAV),
  - b) Monthly portfolio,
  - c) Half yearly portfolio of those schemes.
2. The listed entity shall intimate to the recognised stock exchange(s) in the manner specified by the recognised stock exchange(s) of:
  - a) Movement in unit capital of those schemes whose units are listed on the RSE
  - b) Rating of the scheme whose units are listed on the RSE and any changes in the rating thereof (wherever applicable);
  - c) Imposition of penalties and material litigations against the listed entity and Mutual Fund;
  - d) Any prohibitory orders restraining the listed entity from transferring units registered in the name of the unit holders.

Dissemination on the website of stock exchange(s) (Regulation 91): The listed entity shall submit such information and documents, which are required to be disseminated on the listed entity's website in terms of SEBI (Mutual Funds) Regulations, 1996 and directions issued thereunder, to the RSE for dissemination.





**CS Praveen Choudhary**  
**CS Executive New Syllabus**

**FLAT 50% OFF**  
**All Law Subjects**  
**(CLAW, SBEC, JIGL, SLCM, EBCL)**

**Call @ 7744859960 / 7276368299**

[Click Here to Buy / Watch Demo](#)



## Collective Investment Scheme

### INTRODUCTION

A collective investment scheme is a trust based scheme that comprises a pool of assets that is managed by a collective investment scheme manager and is governed by the Collective Investment Schemes Regulations given by SEBI.

The sums of money that are exchanged on the Stock Exchange and in the money markets make them too pricy for most people. With a CIS, the money or funds from a group of investors are pooled or collected together to form a CIS portfolio.



### COLLECTIVE INVESTMENT SCHEME

A collective investment scheme is a scheme that comprises a pool of assets that is managed by a collective investment scheme manager and is governed by the Collective Investment Schemes Regulations given by SEBI.

The investor hold a portion of the scheme known as Units of CIS. Investors do not have day-to-day control over the management and operation of such scheme or arrangement.

### Definition of Collective Investment Scheme

Section 11AA of the SEBI Act, 1992 defines it as any Scheme or Arrangement made or offered by any company under which:

- a) The contributions, or payments made by the investors, by whatever name called, are pooled and utilised solely for the purposes of the scheme or arrangement;
- b) The contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;
- c) The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors; and
- d) The investors do not have day-to-day control over the management and operation of the scheme or arrangement.

On the backdrop of Sahara/Saradha scams, in 2013 SEBI modified the definition of Collective Investment Scheme and include any scheme/arrangement floated by any person (instead of a company as was defined earlier) and any such scheme with corpus of more than Rs. 100 Crore shall also be deemed to be a CIS by SEBI.

The Securities Laws (Amendment) Act, 2014 defines it "Any pooling of funds under any scheme or arrangement, which is not registered with SEBI, involving a corpus amount of Rs. 100 crore or more shall be deemed to be a collective investment scheme



In short, A Collective Investment Scheme (CIS), as its name suggests, is an investment scheme wherein several individuals come together to pool their money for investing in a particular asset(s) and for sharing the returns arising from that investment as per the agreement reached between them prior to pooling in the money.

"Close ended collective investment scheme" means any collective investment scheme launched by a collective investment management company, in which the maturity period of the collective investment scheme is specified and there is no provision for repurchase before the expiry of the collective investment scheme.

• **The CIS, however, does not include any Scheme or Arrangement:**

- i. Made or offered by a co-operative society,
- ii. Under which deposits are accepted by non-banking financial companies,
- iii. Being a contract of insurance,
- iv. Providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952,
- v. Under which deposits are accepted under section 74 of the Companies Act, 2013,
- vi. Under which deposits are accepted by a company declared as Nidhi or a mutual benefit society under section 406 of the Companies Act, 2013,
- vii. Falling within the meaning of Chit business as defined in clause (d) of section 2 of Chit Fund Act, 1982, and
- viii. Under which contributions made are in the nature of subscription to a mutual fund.

**SEBI (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 1999 - AN OVERVIEW**

**Definition**

Collective Investment Management Company mean a company incorporated under the Companies Act, 2013 and registered with SEBI under these regulations, whose object is to organize, operate and manage a collective investment.

**Certificate of Registration to carry on CIS business**

No person other than a Collective Investment Management Company which has obtained a certificate under the regulations should carry on or sponsor or launch a collective investment scheme.

**Collective Investment Scheme Property**

"Collective investment scheme property" includes:

- ✓ subscription of money or money's worth (including bank deposits) to the collective investment scheme;
- ✓ property acquired, directly or indirectly, with, or with the proceeds of, subscription of money; or
- ✓ income arising, directly or indirectly from, subscription money or property above.



### **Restriction on Business Activities**

#### **Collective Investment Management Company should not:**

- i. undertake any activity other than that of managing the scheme;
- ii. act as a trustee of any scheme;
- iii. launch any scheme for the purpose of investing in securities;
- iv. invest in any schemes floated by it.

However, it has been provided that a CIMC may invest in its own scheme, if it makes a disclosure of its intention to invest in the offer document of the scheme, and does not charge any fees on its investment in that scheme.

#### **Obligations of Collective Investment Management Company**

Every Collective Investment Management Company should:

- i. be responsible for managing funds or properties of scheme on behalf of the unit holders;
- ii. exercise due diligence and care in managing assets and funds of the scheme;
- iii. also be responsible for the acts of commissions and omissions by its employees or the persons whose services have been availed by it;
- iv. appoint registrar and share transfer agents and should also abide by their respective Code of Conducts as specified by SEBI;
- v. give monthly receipts for all monies received and report of receipts & payments to SEBI;
- vi. hold a meeting of Board of Directors to consider the affairs of scheme, at least twice in every 3 months and also ensure that its officers or employees do not make improper use of their position or information to gain an advantage for themselves or for any other person or to cause detriment to the scheme;
- vii. obtain adequate insurance against the properties of the schemes and comply with such guidelines, directives, circulars and instructions as may be issued by SEBI.

#### **Penal Provisions**

If, a registered collective investment management company violates certain provisions of the regulations, then following will be the consequences:—

- Suspension/cancellation of certificate.
- SEBI may initiate criminal prosecution in the interests of the securities market and the investors passing of following directions such as:
  - requiring the person concerned not to collect any money from investor or to launch any scheme;
  - prohibiting the person concerned from disposing of any of the properties of the scheme acquired in violation of the Regulations;
  - requiring the person concerned to dispose off the assets of the scheme in a manner as may be specified in the directions;



- requiring the person concerned to refund any money or the assets to the concerned investors along with the requisite interest or otherwise, collected under the scheme;
- prohibiting the person concerned from operating in the capital market or from accessing the capital market for a specified period.

### ROLE OF COMPANY SECRETARY

The Company Secretary shall ensure that the money mobilization carried out by the company will not trigger the parameters of CIS Regulations.





**CS Praveen Choudhary**  
**CS Executive New Syllabus**

**FLAT 50% OFF**  
**All Law Subjects**  
**(CLAW, SBEC, JIGL, SLCM, EBCL)**

**Call @ 7744859960 / 7276368299**

[Click Here to Buy / Watch Demo](#)



## **SEBI (Ombudsman) Regulation 2003**

### **INTRODUCTION**

Securities market plays an extremely important role in promoting and sustaining the growth of an economy. It plays an important role in mobilizing savings of investors for investment in productive assets of corporates, with a view of enhancing a country's long-term growth prospects, and thus acts as a major catalyst in transforming the economy into a more efficient, innovative and competitive marketplace within the global arena.



It is also imperative to note that not only mobilisation of funds is important but also it is required to protect the interest of investors. In this regard, the Govt. of India has taken several measures to protect of interest of investors and make the operations of the securities market more transparent, efficient and safe.

### **INVESTOR GRIEVANCES**

There will be instances when an investor has a complaint against, a listed company or an intermediary registered with SEBI. In the event of such complaint, the investor should first approach the concerned company/intermediary against whom there is a complaint.

But if the response received by the company/intermediary is not satisfactory the investors should know as to which authority they should approach, to get their complaints redressed.

### **SCORES (SEBI COMPLAINT REDRESS SYSTEM)**

SCORES is a web-based centralized grievance redress system of SEBI ([www.scores.gov.in](http://www.scores.gov.in)). SCORES enables investors to lodge and follow up their complaints and track the status of redressal of such complaints from anywhere.



This enables the market intermediaries and listed companies to receive the complaints online from investors, redress such complaints and report redressal online. All the activities starting from lodging of a complaint till its closure by SEBI would be online in an automated environment and the complainant can view the status of his complaint online.

#### **Features:**

- ✓ SCORES is web enabled and provides online access 24 x 7;
- ✓ Complaints and reminders thereon can be lodged online at anytime from anywhere;



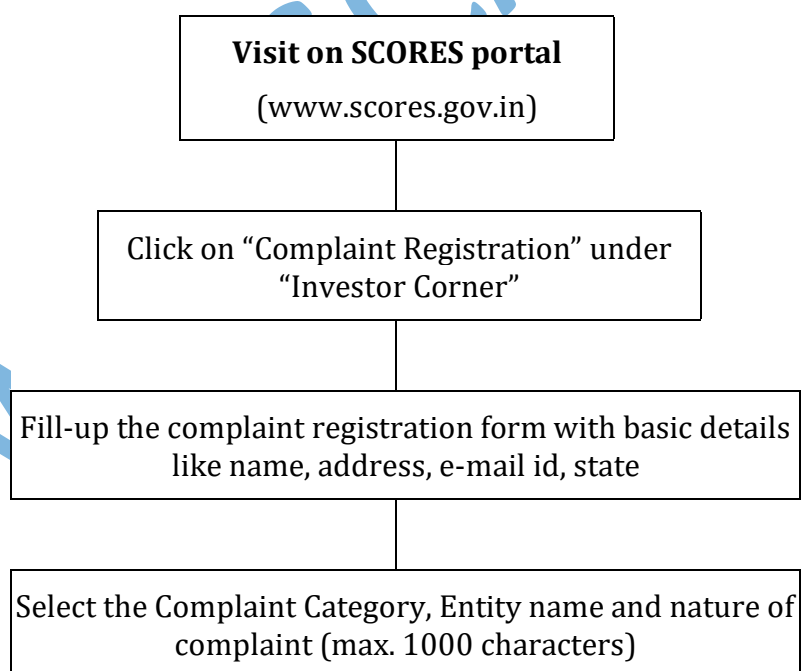


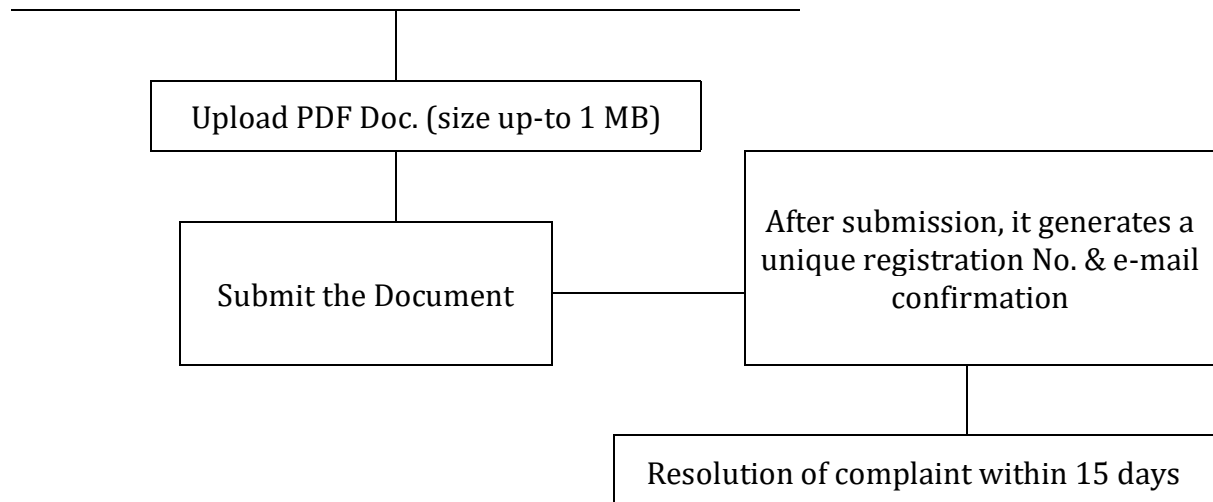
- ✓ An e-mail is generated instantly acknowledging the receipt of complaint and allotting a unique complaint number to the complainant for future reference and tracking;
- ✓ The complaint forwarded online to the entity concerned for its redressal;
- ✓ The entity concerned uploads an Action Taken Report (ATR) on the complaint;
- ✓ SEBI peruses the ATR and closes the complaint if it is satisfied that the complaint has been redressed adequately;
- ✓ The concerned investor can view the status of the complaint online from the above website by logging in the unique complaint registration number;
- ✓ The entity concerned and the concerned investor can seek and provide clarification on his complaint online to each other;
- ✓ Every complaint has an audit trail; and
- ✓ All the complaints are saved in a central database which generates relevant MIS reports to enable SEBI to take appropriate policy decisions and or remedial actions, if any.

### **Limitations in Dealing with Complaints at SCORES**

1. Sometimes when the entity is advised to send reply to complainant, the entity or company denies wrongdoing, and it remains unclear as to who is wrong or whether any wrong has actually happened.
2. SEBI cannot act as a judge or an arbitrator and force the entity or company to resolve the complaint.
3. SEBI cannot act as personal representative or attorney of the complainant.
4. Investors can also seek to resolve their complaint through the courts, consumer courts, or arbitration.

### **How to file a complaint on SCORES?**





**Note:** To make efficient complaints redressal mechanism through SCORES, it is mandated by SEBI to all stock brokers and DPs that they shall redress the complaints within 15 days from the date of receipt of complaint. In case of additional information required from the complainant, then it should be redress within 7 days from the date of receipt of complaint, the period of 15 days shall be counted from the receipt of additional information.

### Referral to Arbitration

If the grievance has not been resolved by the Stock Exchange/Depository due to disputes, an investor can file arbitration. All claims, differences or disputes between the investors and stock brokers/depository participants can be filed for arbitration.

### Matters that are not considered as complaints by SEBI

- ✓ 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 arise out of private agreement with companies/intermediaries

### OMBUDSMAN

Ombudsman, in its literal sense, is an independent person appointed to hear and act upon citizen's complaints about Government Services. In this regard, SEBI has issued SEBI (Ombudsman) Regulations, 2003.

"Ombudsman means any person appointed under the aforesaid regulations and also includes Stipendiary Ombudsman."

Stipendiary Ombudsman means a person appointed for the purpose of acting as Ombudsman in respect of a specific matter and for which he may be paid such expenses, honorarium and sitting fees as may be determined by SEBI from time to time.



• **A Person is Eligible to be Appointed as Stipendiary Ombudsman, if he:**

- i. has held a judicial post or an executive office under the Central or State Government for at least 10 years;
- ii. is having experience of at least 10 years in matters relating to investor protection;
- iii. has been a legal practitioner in corporate matters for at least 10 years; or
- iv. has served for a minimum period of 10 years in any public financial institution.

• **Following are the Important Powers and Functions of Ombudsman**

- i. To receive complaints against any intermediary or a listed company;
- ii. To consider such complaints and facilitate resolution thereof by amicable settlement;
- iii. To approve amicable settlement of the dispute between the parties; and
- iv. To adjudicate such complaints in the event of failure of amicable settlement.

• **Budget and Accounts of Ombudsman office**

- a) The Ombudsman is required to draw up an annual budget for his office in consultation with SEBI.
- b) He shall incur expenditure within and in accordance with the approved budget.
- c) He shall submit an annual report to the SEBI within 3 months of the close of each financial year containing general review of activities of his office.

• **Matters which can be referred to the Ombudsman or SEBI**

- ✓ Non-receipt of refund orders;
- ✓ Non-receipt of share certificates, unit certificates, debenture certificates, bonus shares;
- ✓ Non-receipt of allotment letters in public issue of securities of companies or units of mutual funds or collective investments schemes;
- ✓ Non-receipt of dividend by shareholders or unit-holders;
- ✓ Non-receipt of interest on debentures, redemption amount of debentures or interest on delayed payment of interest on debentures;
- ✓ Non-receipt of interest on delayed refund of application monies;
- ✓ Non-receipt of annual reports or statements pertaining to the portfolios;
- ✓ Non-receipt of redemption amount from a mutual fund or returns from collective investment scheme;
- ✓ Non-transfer of securities by an issuer company, mutual fund, Collective Investment Management Company or depository within the stipulated time;
- ✓ Non-receipt of letter of offer or consideration in takeover or buy-back offer or delisting;
- ✓ Non-receipt of statement of holding corporate benefits or any grievances in respect of corporate benefits, etc.;
- ✓ Any grievance in respect of public, rights or bonus issue of a listed company;
- ✓ Any of the matters covered under Section 24 of the Companies Act, 2013;



- ✓ Any grievance in respect of issue or dealing in securities against an intermediary or a listed company.

**Procedure for filing complaint with Ombudsman**

|  |   |   |
|--|---|---|
| Against whom complaint can be filed  | <ul style="list-style-type: none"><li>• Against Listed Company</li><li>• Against Intermediary registered with SEBI</li></ul>  |   |
| Who can file complaint   | <ul style="list-style-type: none"><li>• Any aggrieved person who has a grievance against a listed company or an intermediary</li><li>• His authorised representative, or</li><li>• Any investors association recognised by the SEBI</li></ul>   |   |
| Complaint to be filed with whom  | <ul style="list-style-type: none"><li>• Ombudsman within whose jurisdiction the registered or corporate office of such listed company or intermediary is located</li><li>• If SEBI has not notified any Ombudsman for a particular locality or territorial jurisdiction, the complainant may request the Ombudsman located at the Head Office of the SEBI for forwarding his complaint to the Ombudsman of competent jurisdiction</li></ul> |   |
| Pre-requisites of Complaint  | <ul style="list-style-type: none"><li>• It should be in writing</li><li>• It should be duly signed by the complainant or his authorised representative (not being a legal practitioner)</li><li>• It should be in the specified Form</li><li>• It should be supported by documents, if any</li></ul>  |   |
| Ombudsman will accept the Complaint only if these conditions are satisfied | Written representation to Company/ Intermediary   | The Ombudsman or SEBI will accept the complaint only if the party has first made a written representation to the listed company or the intermediary<br><br>AND<br><br>The listed company or the intermediary had either rejected the complaint or not responded to the complaint within 1 month |
|  | Time Limit for making Complaint   | The Complaint should be made within:<br><br>- 6 months from the date of receipt of communication of rejection   |



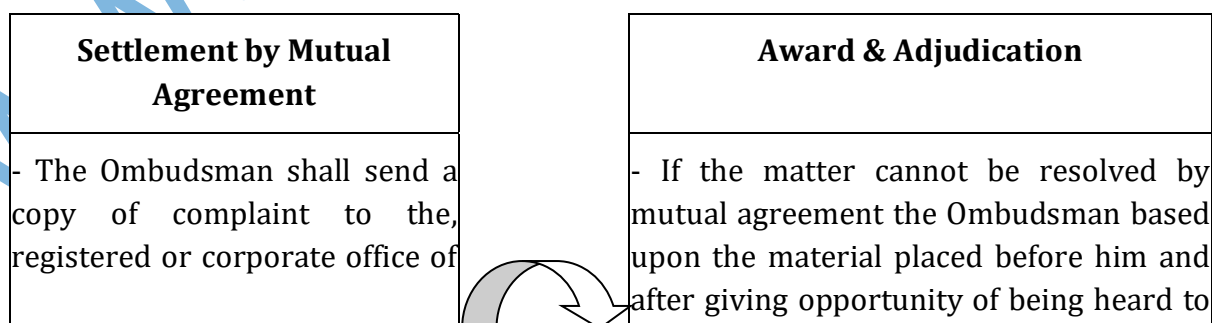


|  |   |   |
|--|---|---|
|  |   | - 7 months from the date of making written representation, if no response was received within 1 month |
| When will Ombudsman not accept the Complaint | <ul style="list-style-type: none"> <li>• If the complaint is in respect of the same subject matter which was settled through the Office of SEBI or Ombudsman concerned in any previous proceedings</li> <li>• If the complaint pertains to the same subject matter for which any proceedings before SEBI or any court, tribunal or arbitrator or any other forum is pending or a decree or award or a final order has already been passed</li> <li>• If the complaint is in respect of or pertaining to a matter for which action has been taken by the SEBI</li> </ul> |   |

### Proceeding by Ombudsman

1. **Power to call Information:** On receipt of complaint the Ombudsman has the power to call for information from the Company /Intermediary.
2. **Principle of Natural Justice:** The Ombudsman has to apply principles of natural justice and fair play in the proceedings.
3. **Confidentiality:** The Ombudsman is required to maintain confidentiality of any information or document coming to his knowledge or possession in the course of discharging his duties and shall not disclose such information or document to any person except and as otherwise required by law or with the consent of the person furnishing such information or document.
4. **Reasonable Disclosure allowed:** The Ombudsman has been empowered to disclose information or document furnished by a party in a complaint to the other party or parties, to the extent considered by him to be reasonably required to comply with the principles of natural justice and fair play in the proceedings.

### Redressal by Ombudsman



the listed company or office of |  
the intermediary.

- The Ombudsman shall endeavor to promote a settlement by agreement or mediation between the concerned parties.

the parties, give his award or pass an order in writing.

- The award will be made within 3 months from the date of the filing of the complaint.  
- The Ombudsman should send his award to the parties concerned to perform their obligations under the award.

**Special Note:**

1. An award given by the Ombudsman shall be final and binding on the parties and persons claiming under them respectively.
2. Ombudsman shall decide whether to hold oral hearings for the presentation of evidence or for oral argument or whether the proceeding shall be conducted on the basis of documents and other materials.

**Note:** In proceedings before the Ombudsman strict rules of evidence under the Evidence Act shall not apply and the Ombudsman may determine his own procedure consistent with the principles of natural justice.

**Petition with SEBI against Reward**

Any party aggrieved, by the award may file a petition before SEBI within 1 month from the receipt of the award or corrected award setting out the grounds for review of the award.

SEBI may review the award passed by the adjudicating officer/Ombudsman. Following are the essentials of the review:

- ✓ SEBI will review the reward if there is substantial mis-carriage of justice, or there is an error apparent on the face of the award.
- ✓ Petition of review will be entertained only if the petitioner has paid 75% of the amount mentioned in the reward. This amount can be reduced or waived by SEBI may for reasons to be recorded in writing.
- ✓ SEBI may review the award and pass such order as it may deem appropriate, within a period of 45 days of the filing of the petition for review.
- ✓ The party so directed shall implement the award within 30 days of receipt of the order of SEBI on review.

**Implementation of the Award**

The award will be implemented by the party so directed within one month of receipt of the award from the Ombudsman or an order of SEBI passed in review petition or within such period as specified in the award or order of SEBI.

**Failure of Implementation of the Award**



If any person fails to implement the award or order of SEBI passed in the review petition, without reasonable cause:

- he shall be deemed to have failed to redress investors' grievances and shall be liable to a penalty under Section 15C of the SEBI Act;
- he shall also be liable for—
  - suspension or delisting of securities; or
  - being debarred from accessing the securities market; or
  - being debarred from dealing in securities, or dealing in securities; or
  - an action for suspension or cancellation of certificate of registration; or
  - such other action permissible which may be deemed appropriate in the facts and circumstances of the case.

### **SEBI (INFORMAL GUIDANCE) SCHEME, 2003**

In most of the regulations, rules and circulars, SEBI has imposed various responsibilities upon intermediaries, company, mutual fund trustees, acquirer etc. At times it becomes very difficult for them to understand these rules and regulations with the interpretation of SEBI objective.

Therefore, to accomplish its object of development of securities market SEBI issued informal guidance scheme to help these entities or persons in informal way. Through this scheme any intermediary or other concern may get their concept clear from SEBI.

### **Who can request for guidance?**

The Scheme permits only market intermediaries and listed companies to seek informal guidance.

- ✓ Any intermediary registered with the SEBI.
- ✓ Any listed company.
- ✓ Any company which intends to get any of its securities listed and which has filed either a listing application with any stock exchange or a draft offer document with the SEBI or the Central Listing authority.
- ✓ Any mutual fund trustee company or asset management company.
- ✓ Any acquirer or prospective acquirer under the SEBI (as per SAST).

### **Form of guidance**

Guidance can be in form of:

- No-Action Letters
- Interpretive Letters

### **No-action Letters**



In these letters the Department of SEBI indicates that a Department would or would not recommend any action under any Act, Rules, Regulations, Guidelines, Circulars or other legal provisions administered by SEBI.

### **Interpretive Letters**

Through interpretive letters SEBI provides an interpretation of a specific provision of any Act, Rules, Regulations, Guidelines, Circulars or other legal provision being administered by SEBI in the context of a proposed transaction in securities or a specific factual situation.

### **Conditions for seeking informal guidance**

- The person who is seeking guidance under this scheme has to clearly state that he is seeking informal guidance under the said Scheme. He will have to mention that he is requesting for a no action letter or an interpretive letter.
- The request has to be accompanied with a fee.
- The request has to be addressed to the concerned department of SEBI.
- There should be a dear description of the nature of request.

### **Disposal of Request**

SEBI's department will have to respond within a period of 60 days from the date of the receipt of the request. It may even give a hearing to the requestor.

### **SEBI may not respond to the following types of requests:**

- General Requests and which do not give sufficient factual information;
- Those which involve hypothetical situations;
- Those requests in which the requestor has no direct or proximate interest;
- Where the applicable legal provisions are not cited;
- Where a no-action or interpretive letter has already been issued by that or any other Department on a substantially similar question involving substantially similar facts, as that to which the request relates;
- Those cases in which investigation, enquiry or other enforcement action has already been initiated;
- Those cases where connected issues are pending before any Tribunal or Court;
- Those cases where policy concerns require that the Department does not respond.







**CS Praveen Choudhary**  
**CS Executive New Syllabus**

**FLAT 50% OFF**  
**All Law Subjects**  
**(CLAW, SBEC, JIGL, SLCM, EBCL)**

**Call @ 7744859960 / 7276368299**

[Click Here to Buy / Watch Demo](#)



## Capital Market Intermediaries

### INTRODUCTION

Capital Market Intermediaries are an important link between investor, issuer company and the regulator. In other words, we cannot imagine any transaction in the capital market without Capital Market Intermediaries.

They simply connect an investor with the user of funds in pursuance of SEBI regulations. Market intermediaries help investors to select investments by providing investment consultancy, market analysis and credit rating of investment instruments.

### SECURITIES MARKET INTERMEDIARIES

The following are the Securities Market Intermediaries: —

- a) Merchant Bankers
- b) Registrars and Share Transfer Agents (RTA)
- c) Underwriters
- d) Bankers to issue
- e) Debenture Trustees
- f) Portfolio Manager
- g) Stock-brokers and sub-brokers
- h) Custodian of Securities
- i) Investment Advisor
- j) Credit rating Agencies
- k) Depository Participant

**Merchant Banker:** Merchant Banker means a person who manages the business of issue of securities by making arrangements for selling, buying or subscribing to securities. It is obligatory on the part of Issuer company to appoint a merchant banker in relation to any public issue like IPO, Right Issue, Buy Back & Delisting. A person who undertakes any assignment of merchant bankers shall first get it registered with SEBI under the provisions of SEBI (Merchant Banker) Regulations, 1992.

Under clause (2)(cb) of SEBI (Merchant Banker) Regulations, 1992, **Merchant Banker** means 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. Merchant Banker shall have minimum Net worth of Rs. 5 Crores for registration.

### Example of Merchant Banker

- ✓ SBI Capital Markets Ltd.,
- ✓ ICICI Securities Ltd.,
- ✓ Reliance Securities Ltd. and



✓ Karvy Investor Services Limited

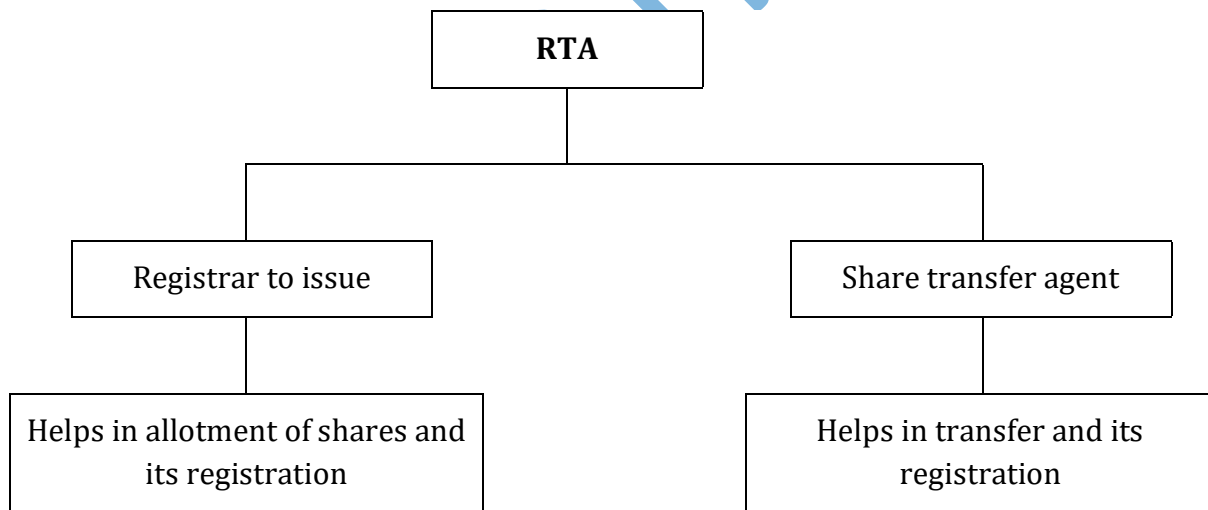
The Merchant banker undertakes the following activities including preparation of prospectus, advisory on projects, determining financial structure, due diligence, tie-up with financiers, allotment of shares and refunds:

- a) Managing of public issue of securities;
- b) Preparation of prospectus/letter of offer;
- c) Final allotment of shares and refund of application money;
- d) Underwriting connected with the aforesaid public issue management business;
- e) Managing/Advising on international offerings of debt/equity i.e. GDR, ADR, ECBs, FCCBs, FCEBs and bonds;
- f) Private placement of securities;
- g) Primary or satellite dealership of government securities;
- h) Corporate advisory services with regard to takeovers, acquisition and disinvestment.

**Registrar and Transfer Agent (RTA):**

RTA means a person who works like a Registrar to an Issue and Transfer Agent. An RTA is governed under the provisions of the SEBI (Registrar to an Issue and Share Transfer Agents) Regulations, 1993.

**Example of RTA:** Karvy Computershare Pvt. Ltd. & Intime Spectrum Registry Ltd.\_



- **Registrar to an Issue:** Registrar to an Issue means a person who finalizes the list of eligible allottees for a public issue. He is responsible for rejecting the invalid applications and also ensures crediting shares to the demat accounts of the successful applicants. He dispatches the refund orders to those applicants in whose favour no share has been allotted.
- **Functions/Activities of Registrar to an Issue:**
- a) Collecting application from investors in respect of an issue;
  - b) Keeping proper record of applications and monies received from investors;
  - c) Determining the basis of allotment in consultation with the stock exchange;
  - d) Finalising the list of allottees;
  - e) Processing and dispatching the allotment letters, refund orders or certificates etc.



## Intermediaries

- **Share Transfer Agent:** Share Transfer Agent means a person who keeps records of holders of the securities in connection with transfer and redemption of securities. In India, it is obligatory to all listed companies to outsource the activities in relation to registration and transfer of securities.

The Registrars to an Issue and Share Transfer Agents constitute an important category of intermediaries in the primary market. They render very useful services in mobilising new capital and facilitating proper records of the details of the investors, so that the basis for allotment could be decided and allotment ensured as per SEBI Regulations.

➤ **Pre-Issue Work:**

- Finalisation of bankers to issue, list of branches, controlling and collecting branches.
- Design of application form, bank schedule, pre-printed stationery.
- Preparing and issuing detailed instructions on procedure to be followed by collecting and controlling branches.
- Arranging, despatch of application schedule for listing of applications to collecting and controlling branches.

➤ **Issue Work**

- Collection of daily figure from bankers to the issue.
- Informing Stock Exchange/SEBI and providing necessary certificates to Lead Manager on closure of issue.
- Scrutiny of application received from bankers to issue.
- Reconciliation of number of applications, securities applied and money received with final certificate received from bank.
- Finalising basis of allotment after approval of the stock exchange.
- Allotment of shares on the formula derived by stock exchange.
- Obtaining certificate from auditors in connection with the allotment.
- Preparation of the list of allottees and non-allottees as per the basis of allotment approved by stock exchange.
- Preparation of allotment register, register of members, index register.
- Preparing share certificate on the computer.
- Mailing of documents by registered post.
- Issuing call notices for allotment money to allottees.
- Issue of duplicate refund order.

## Underwriter:

Underwriter means a person who engages in the business of underwriting of an issue of securities of a company. An underwriter assures the issuing company to take up shares or securities to a certain limit in case the company fails to collect minimum subscription from the general public to the expected level.

For this arrangement, the underwriter will enter into an agreement with the issuing company and the assuring party such as a financial institution, banks, merchant banker, or broker. Underwriting is mandatory for a public issue. It is necessary for a public





company which invites public subscription for its securities to ensure that its issue is fully subscribed. In case of any short-fall, it has to be made good by underwriting arrangements made in advance of the opening of the public issue.

**Banker to an Issue:**

Banker to an Issue means a scheduled bank which carries out the activities like acceptance of application and application monies, acceptance of allotment or call monies, refund of application monies & payment of dividend or interest warrant during and after issue of securities.

It also opens Escrow account for collection and utilisation of public issue proceeds. The banks are expected to furnish prompt information and records to the issuer company and to the lead manager for monitoring and progressing the issue work. For this purpose, the company has to enter into an agreement with different banks specifying the conditions, terms and remuneration for services to be rendered by each such bank.

**Debenture Trustee:**

Debenture Trustee (DT) means a trustee of a trust deed for securing any issue of debentures of a company. DT protects the interest of debenture holders in case the company fails to pay the principal as well as interest amount to the debenture holders.

It is necessary that the company makes proper arrangements to extend assurances and comply with legal requirements in favour of the investors who are entitled to this type of security. The issuing company has to complete the process of finalising and executing the trust deed or document and get it registered within the prescribed period and file the charge with the Registrar of Companies (ROC) in respect of the security offered.

**Role and Functions:**

- i. Call for periodical reports from the company, i.e., issuer of debentures.
- ii. Take possession of trust property in accordance with the provisions of the trust deed.
- iii. Enforce security in the interest of the debenture holders.
- iv. Ensure that the property charged to the debenture is available and adequate at all times to discharge the interest and principal amount payable in respect of the debentures and such property is free from any other encumbrances.
- v. Exercise due diligence to ensure compliance by the company with the provisions of the Companies Act and the listing agreement or the trust deed.
- vi. To take appropriate measures for protecting interest of the debenture holders in case of any breach comes to notice.
- vii. To ascertain that the debentures have been converted or redeemed as per law.
- viii. Appoint a nominee director on the board of the company, if required.

**Portfolio Manager:**



## **Intermediaries**

Any person who pursuant to contract or arrangement with the client, advises or directs or undertakes on behalf of the client, the management or administration of a portfolio of securities or the funds of the clients, as the case may be.

A portfolio manager plays an important role in deciding the best investment plan for an individual as per his income, age as well as ability to undertake risks. A portfolio manager is responsible for making an individual aware of the various investment tools available in the market and benefits associated with each plan. Make an individual realize why he actually needs to invest and which plan would be the best for him. A portfolio manager is responsible for designing customized investment solutions for the clients according to their financial needs.

### **Stock-broker & Sub-broker:**

Stock Broker is a member of stock exchange and they are intermediaries who are allowed to trade in securities on the exchange. They buy and sell on their own behalf as well as on behalf of their clients. A stock broker plays an important role in the secondary market helping both the seller and the buyer of the securities to enter into a transaction. When executing an order the stock broker may on behalf of his client buy or sell securities from his own account i.e. as principal acts, as an agent.

Sub-broker means any person not being a member of stock exchange who acts on behalf of a stock broker as an agent or otherwise for assisting the investors in buying, selling or dealing in securities through such stock brokers.

A sub-broker is one who works along with the main broker and is not directly registered with the stock exchange as a member. He acts on behalf of the stock broker as an agent or otherwise for assisting the investors in buying, selling or dealing in securities through such stock brokers.

### **Custodian of Securities:**

A custodian is a person who carries on the business of providing custodial services to the client. The custodian keeps the custody of the securities of the client. The custodian also provides incidental services such as maintaining the accounts of securities of the client, collecting the benefits or rights accruing to the client in respect of securities.

Every custodian should have adequate facilities, sufficient capital and financial strength to manage the custodial services.

### **Roles and Responsibilities:**

- i. Administrate and protect the assets of the clients.
- ii. Open a separate custody account and deposit account in the name of each client.
- iii. Record assets.
- iv. Conduct registration of securities.
- v. Custodial services refer to the safeguarding of securities of a client. The activities relating to custodial services involve collecting the rights benefiting the client in



respect of securities, maintaining the securities' account of the client, informing the clients about the actions taken or to be taken, and maintaining records of the services.

### **Investment Adviser:**

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.

The globalization of the capital markets, the proliferation of asset classes and the bewildering variety of risks that the average institutional investor is confronted which have increased the need for the specialized expertise that investment advisers provide.

Investment advisers serve as facilitators, making sure that all clients have many opportunities to express their financial concerns and issues. Basically Investment advisers give advice and provide services related to the investment management process.

In order to add value, the investment adviser is called upon to apply specialized knowledge, experience and analytical resources to create and deliver focused advice to client and works to increase the investment knowledge of clients and thereby support the fiduciary obligations clients face in the management of their plan.

### **Credit Rating Agencies (CRA):**

Credit Rating is an indicator of risk involved in any financial products. Credit Rating symbolises risk of any financial product based on the overall evolution of the issuer company. In other words, credit rating establishes a link between risk and return.

An investor can use credit rating to understand the level of risk and expected rate of return from such financial product. We can also say that credit rating is the evaluation of the creditworthiness of a business organisation based on various parameters like financial conditions, industry risk and management etc.

As per SEBI (Credit Rating Agencies) Regulations, 1999, the definition of credit rating agencies and rating: "CRA means a body corporate engaged in or proposes to be engaged in the business of rating of securities offered by the way of public or right issue."

In simple term, CRA is a company that assigns credit ratings, which rate a debtor's ability to pay back debt by making timely interest payments and the likelihood of default. Further, it is an obligation on all the companies which are doing rating business, must register itself with SEBI before starting its business. In India, there are six credit rating agencies registered with SEBI which give credit ratings namely, CRISIL (Credit Rating and Information Services (India) Limited), ICRA Limited (Investment Information and Credit Rating Agency of India Limited), CARE (Credit Analysis and Research Limited), India Ratings and Research Pvt. Ltd. (Formerly Fitch Rating India Pvt. Ltd.), Brickwork Rating Pvt. Ltd., and SMERA (SME Rating Agency of India Limited).

### **INTERNAL AUDIT OF INTERMEDIARIES BY PCS**



**Intermediaries**

Efficient internal control systems and processes are basis key for good governance. Governance is a dynamic concept requires constant evaluation and monitoring of the systems and processes. In the context of Capital Markets, capital markets intermediaries are an important constituent of overall governance framework. Being an important link between regulators, investors and issuers, they are expected to ensure that their internal controls are so efficient that ensure effective investor service at all times and provide regulators comfort as to the compliance of regulatory prescription. In this direction, SEBI has authorised PCS to undertake internal audit of various capital market intermediaries.

**ROLE OF COMPANY SECRETARY**

All market intermediaries shall appoint a Company Secretary as a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc. issued by SEBI or the CG and for redressal of investors' grievances. The compliance officer shall immediately and independently report to SEBI for any non-compliance observed by him.







**CS Praveen Choudhary**  
**CS Executive New Syllabus**

**FLAT 50% OFF**  
**All Law Subjects**  
**(CLAW, SBEC, JIGL, SLCM, EBCL)**

**Call @ 7744859960 / 7276368299**

[Click Here to Buy / Watch Demo](#)

