

**CS-EXECUTIVE**

Applicable for June 20 / Dec 20

**New Syllabus**

# SECURITIES LAWS & CAPITAL MARKET

**CS Vikas Vohra** *Corporate BaBa*



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SANDESH



**CS Vikas Vohra    CA CS Harish A. Mathariya**

Welcome to YES Family!!

To begin with, we endorse our heartfelt thank you for showing your trust and confidence in YES Academy. We take pride to welcome you to this prestigious Academy, foundations of which are based on commitment, quality education and integrity. It has been our constant endeavour to deliver better and better. In our attempt to achieve mark of excellence and beyond, we would be even more grateful to have received your continued faith and love. We assure you, your trust will not go in vain and as reflected by our Vision Statement, we would continue to produce Best Company Secretaries as we have been doing for almost a decade now.

Combined experience of Team YES is 40 years+ and adding value each day. We have delivered outstanding results in the past with a bouquet of All India Rankers at all the levels of CS Course and with your efforts, we are confident, we will grow together.

Student convenience has always occupied a centre place at YES Academy and we strive to improve ourselves each day as we sincerely believe that improvement always has its own space, no matter what. Any suggestions from you are always welcome. Though Team shares a very good rapport with all of its students and the students feel very comfortable talking to any of their Teachers, still, if you wish to send us a suggestion, please feel free to write to us [yesacademypune@gmail.com](mailto:yesacademypune@gmail.com) or get in touch with us at 8888 235 235/ 8888 545 545.

We assure you the best of success and pride. And yes, its not just a bond of 3 years of your term, but a relationship for life now. We welcome you in advance to this prestigious course of Company Secretaries.

On behalf of **TEAM YES**

**CS Vikas Vohra    CA CS Harish A. Mathariya**  
**Founders**

Whether you like it or not, the inherent question in everyone is – Whats in it for me? It will be your folly to ignore this aspect of life. Some are motivated by money, some by a sense of purpose, some by a learning environment, some need cool environments and some need challenging environments. Nothing works for all. Something works for all. Everybody has a dominant need, which keeps changing as they keep growing. Every heart has a yearning. In that sense, we are all the same and we are all different.

The key is to take others perspective into consideration. Unless you see the world the way other sees it, you cannot empower the world to see it the way you see it. Leadership is to step into others shoes and then empowering them to walk in the direction that's right for them and that's good for all. There is no one way for all the people. Leadership has to be customized.

People relate to you not for what you are with them but for what they can be when they are with you. Deep relationships are not built by making you understand me but in giving you the confidence that I have understood you. Even with children, they find you interesting only if you talk to them about what they are interested in. once they develop that interest in your company, then you can empower them.

The secret is – TO SEE THROUGH OTHERS EYES!!!!

### **MY LOVE AND RESPECT TO.....**

To **Rajlaxmi** – My Soul. You are around

To **Nikita** – My wife, for bearing with my time crisis and being my support system in every thick and thin.

To my **Mummy** – You are my source of inspiration, your sacrifices showed me the right path every time I went wrong

To my **Papa** – You taught me the ability to bounce back and stand still, come what may

To my **Brother** – Who always inspires me believe that Life comes first and then the rest

To every **Student** – Glad to have found so many teachers in you, my source of happiness, my strength

To my **Competitors** – You added meaning and worth to my name – Vikas. Thank you for being so strong and amazing. You bring out the best in me



To **YES Academy** and to every person around, my well wishers, my critics for helping me rise in every walk. Its your blessings, which lets me survive and go far.

Some latest abbreviations at DALAL STREET -

**BSE** - Bombay Se Exit

**NSE** - Nation Se Exit

**F&O** - Future Over

**NIFTY** - No Income For This Year

**FII** - Fraudulent International Investors

**HNI** - Has No Idea

**PMS** - Pre Mediated Scam

**SIP** - Suicide by Investing Patiently

**EBITDA** - Exit Before It Tumbles Down Again

**Sandesh....**

Dear Reader,

At the outset, let me first take this opportunity to thank you for spending some of your valuable time with my words. I feel pleased to present to you, notes on **Securities Laws and Capital Markets (New Syllabus)** for **CS Executive**.

While writing this book, I have taken every possible effort to cover each and every provision as may be applicable to you and in the most lucid language, so this sums up the entire syllabus. Howsoever, there is always a scope for improvement. I shall highly appreciate any changes, corrections, errors, interpretations suggested by you so that the same can be incorporated in the subsequent editions. You may write to me at [csvikasvohra@gmail.com](mailto:csvikasvohra@gmail.com) or get in touch directly on my cell at +91 8888 078 078.

Many a times, while speaking with students, I come across this question about the opportunities for a Company Secretary and their scope in the times to come. I shall be wrong; if I simply quote that life would be simple post completion of the Course. Perhaps, the times ahead poses a lot of challenges and like I always say the only thing, which shall survive in the long run, shall be the Power of Knowledge and the ability to express the same and apply. Readers, empower yourself so robustly that as and when a challenge arises, it turns its way and says: let's catch hold of a weaker one.

It's said, "Fortune favors the brave". You give your best shot and leave the rest upon god to decide. Realize your strengths, work on your weaknesses, grab the best possible opportunity and overcome your threats. Different people define success differently as it means different to different. Realize your **"Being Successful"** factors and start chasing them every morning as you get up.

**"Do everything no matter how unglamorous, to the best of your ability"**

Because in the end, what shall matter would be quality of life you spent  
and the smiles you lent to the people around you !!!!

With this, I wish you all a happy reading and I hope that you fall in love with this subject. I wish you all good luck and that you achieve what all you work for. Keep working, keep reading, keep spreading love, happiness and smile. You shall be a part of my prayers. I promise to serve you with the best. Someday, we shall once again meet AT THE TOP....

Try to  
Reinvent  
Yourself

**VIKAS VOHRA (Corporate Baba)**

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**INDEX****PART A: SECURITIES LAWS (70 marks)**

<b>Chapter No.</b>	<b>Particulars</b>	<b>Page No.</b>
1.	Securities Contracts (Regulation) Act, 1956	1.1 – 1.18
2.	Overview of Capital Markets & SEBI	2.1 – 2.20
3.	Depositories	3.1 – 3.14
4.	SEBI (ICDR) Regulations, 2018	4.1 – 4.42
5.	SEBI (LODR) Regulations, 2015	5.1 – 5.27
6.	Takeover Code – An overview	6.1 – 6.29
7.	SEBI (Buy Back of Securities) Regulations, 1998	7.1 – 7.12
8.	SEBI (Delisting of Equity Shares) Regulations, 2009	8.1 – 8.10
9.	SEBI (Share based Employee Benefits) Regulations, 2014	9.1 – 9.12
10.	SEBI (Issue of Sweat Equity Shares) Regulations, 2002	10.1 – 10.4
11.	Insider Trading – An overview	11.1 – 11.24
12.	Mutual Funds	12.1 – 12.20
13.	Collective Investment Schemes	13.1 – 13.8
14.	SEBI (Ombudsman) Regulations, 2003	14.1 – 14.11

**PART B: CAPITAL MARKET (30 marks)**

<b>Chapter No.</b>	<b>Particulars</b>	<b>Page No.</b>
15.	Structure of Capital Market	15.1 – 15.40
16.	Capital Market Intermediaries	16.1 – 16.18
17.	Practical Problems	17.1 – 17.29

## CHAPTER 1 - SECURITIES CONTRACTS (REGULATION) ACT, 1956



**MONEY IS NOT  
EVERYTHING. MAKE  
SURE YOU EARN A LOT  
BEFORE SPEAKING SUCH  
NONSENSE**

**— Warren Buffett**

### SECURITIES CONTRACTS (REGULATION) ACT, 1956

#### Securities

'Securities' includes the following:

- Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in any incorporated company or other body corporate.
- Derivative.
- Units or any other instrument issued by any collective investment scheme.
- Government securities.
- Security receipt as defined in SARFAESI Act, 2002.
- Such other instruments as may be declared by the Central Government.
- Rights or interests in securities.
- Units or any other such instrument issued under any mutual fund scheme.



- Any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt.

### SPOT DELIVERY CONTRACT

Spot Delivery Contract means a contract which provides for -

- Actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefore 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;
- Transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository.

### STOCK EXCHANGE

Stock Exchange means -

- Any body of individuals, whether incorporated or not, constituted before corporatization and demutualization under SCRA; or
- A body corporate incorporated under the Companies Act, whether under a scheme of corporatization and demutualization or otherwise,

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

### STOCK EXCHANGE

#### Concept of Stock Exchange

Stock Exchanges constitute the primary institution of secondary market. Stock Exchanges represent the market place for buying and selling of securities and ensuring liquidity to them in the interest of the investors.

There are **23 Regional Stock Exchanges** in India. All of them are regulated in terms of Securities Contracts (Regulation) Act, 1956 and the SEBI Act, 1992 and the rules and regulations made there under. The Stock Exchanges are managed by the Board of Directors or Council of Management consisting of elected brokers and representatives of Government and public appointed by SEBI.

## RECOGNIZED STOCK EXCHANGE

### Definition of Recognized Stock Exchange

Recognized Stock Exchange means a Stock Exchange, which is for the time being **recognized by the Central Government**.

### Application for Recognition (Sections 3, 4 & of SCRA)

Any Stock Exchange, desirous of being recognized for the purposes of Securities Contracts (Regulation) Act, 1956, shall make an application to the Central Government in the prescribed manner. The application shall be accompanied with the following documents:

- a) A **copy of bye-laws** of the Stock Exchange; and
- b) A copy of the rules relating to the **constitution of a Stock Exchange**.

The Central Government shall make such enquiry as may be necessary in this behalf and if it is satisfied in all the respects, it may grant recognition to the Stock Exchange. The Central Government shall take into account the following considerations while granting the recognition:

- 1) That the **rules and bye-laws** of the Stock Exchange are such that they ensure **fair dealing and investor protection**;
- 2) That the Stock Exchange is **willing to comply with any conditions** which the Central government may impose; and
- 3) That **grant of recognition** on Stock Exchange is in the **interest of securities trade and public interest**.

**Grant of recognition shall be published in the Gazette of India and also the Official Gazette of the State in which the principal office of the Stock Exchanges is situated.**

In the interest of securities trade or public interest, if the Central Government is of the *opinion that recognition granted to a Stock Exchange should be withdrawn*, it shall serve a *written notice* on the governing body of the Stock Exchange. The Governing Body shall be given a reasonable opportunity of being heard. Thereafter if the Central Government is satisfied, it shall withdraw the recognition granted to the Stock Exchange, by way of notification in the Official Gazette. It may be noted that such withdrawal of recognition shall not affect the validity of any contract entered into before the date of examination.

### **CORPORATISATION OF STOCK EXCHANGE**

Corporatisation of Stock Exchange 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 such as Bombay Stock Exchange. Corporatisation of such exchanges is a process of converting them into incorporated companies.

### **DEMUTUALISATION OF STOCK EXCHANGE**

Demutualisation refers to *transition process of an Exchange from mutually owned association to a company owned by shareholders*. In other words, transforming the legal structure of an exchange from a mutual form to a business corporation form is referred to as demutualization.

The above, in effect, means that after demutualization, the ownership, the management and the trading rights at the Exchange are segregated from one another.

### **DEMUTUALISATION OF STOCK EXCHANGES**

The process of demutualization is to convert the traditional *“not for-profit” stock exchanges into a “for profit” company* and this process is to transform the legal structure from a mutual form to a business corporation form. The important features of the demutualisation exercise are as follows :

- 1) The board of a stock exchange should consist of 75% public interest/ shareholder directors and only 25% broker directors, and
- 2) 51% shareholding of the stock exchange should be divested to public/ investors and only 49% of shareholding can remain with the trading member brokers.

The options prescribed for divestment/dilution of brokers' shareholding in a stock exchange are as follows:

- 1) Offer for sale, by issue of prospectus, of shares held by trading member brokers.
- 2) Private placement of shares
- 3) Fresh issue of shares to the public through an IPO.

### MEMBERSHIP OF STOCK EXCHANGE

Membership of Stock Exchanges is generally given to persons who are financially sound and who have adequate experience and training in the stock market. Their enrolment as member is regulated and controlled by SBI to whom they have to pay an annual charge. A member of the Stock Exchange is called broker who can transact on behalf of his clients as well as on his own behalf. He can also take the assistance of sub-broker, whom he can appoint under the procedure of registration.

### Trading procedure at Stock Exchanges

The trading procedure involves the following steps:

- 1) Placing of the order by the client
- 2) Entry in order book by the broker
- 3) Execution of order or contract
- 4) Preparation of contract note
- 5) Entry in client register and settlement register
- 6) Actual delivery of the securities by the broker or by the client
- 7) Preparation of bill or deliver note
- 8) Entry in client register
- 9) Payment.



Trading takes place regularly on each weekday, except Saturdays, Sundays and notified holidays.  
Stock Exchange used to have extra sessions for special occasions like Diwali, budget, etc.

### LISTING OF SECURITIES

Every company issuing shares or debentures to the public by issue of prospectus shall make an application to one or more Stock Exchange for permission for enlistment of shares. (Sec. 73(1) of Companies Act, 1956)

Where a prospectus states that an application has been made for the share or debentures to be dealt in on one or more recognized Stock Exchange, such allotment will be void, if the permission has not been granted by the Stock Exchange or each such Stock Exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription list. (Sec. 73(1A) of Companies Act, 1956)

Sec. 73(1A) implies that if an application has been made to two or more Stock Exchange then the permission should be granted by all these Stock Exchange, for the allotment to be valid. Otherwise, the allotment will be void.

However, where a Stock Exchange refuses to grant permission or fails to dispose the application within ten weeks of the date of closing of the subscription list the company may appeal to the Securities Appellate Tribunal within 15 days of the date of refusal/expiry of the said ten weeks. In case an appeal is preferred, the allotment shall not be void until the appeal is decided. Thus, the allotment will be void only if the appeal is negotiated.

Where the permission has not been applied or such permission having been applied has not been granted, the company shall repay the entire amount, without interest, within 8 days from the date the company becomes liable to repay it. Beyond 8 days, the company and every director of the company who is an officer in default shall be jointly and severally liable to repay the money with an interest of 15% p.a.

### Types of listing

Listing of securities falls under five groups;

#### 1. Initial listing:

If the shares or securities are to be listed for the **first time** by a company on a Stock Exchange, it is called initial listing.

#### 2. Listing for public issue:

When a company whose share are **listed on a Stock Exchange** comes out with a public issue of securities, it has to list such issue with the Stock Exchange.

#### 3. Listing for Rights Issue:

When companies whose securities are listed on the Stock Exchange issue securities to **existing shareholders** on rights basis, it has to list such rights issues on the concerned Stock Exchange.

#### 4. Listing of Bonus Shares:

Companies issuing shares as a result of **capitalization of profit through bonus issue** shall list such issues also on the concerned Stock Exchange.

#### 5. 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 Stock Exchange.

### Advantages of Listing

The following benefits are available when securities are listed by a company in the Stock Exchange-

- a) **Public image** of the company is enhanced.
- b) The **liquidity** of the security is ensured making it easy to buy and sell the securities in the Stock Exchange.

- c) 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.
- d) Listed companies command **better support from banks and financial institutions** in the form of loans and investment.

### 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 more Stock Exchange in addition to the Designated Stock Exchange. 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.

### TYPES OF SECURITIES

Securities traded in the Stock Exchange can be classified as follows:

#### 1. Specified Securities:

The securities in which **forward trading is allowed** are referred as specified securities. In this case the buyers can carry forward the transaction from one settlement cycle of outstanding transactions to another settlement cycle.

#### 2. Unspecified Securities :

The securities, which are traded on cash basis, are termed as unspecified securities, and **cannot be carried forward** from one settlement to another but have to be settled within one settlement period.

#### 3. Permitted Securities :

The securities listed on some of the recognized Stock Exchanges, **when permitted to be traded by those Stock Exchanges** where they are not listed are called permitted securities. Such permission is given if suitable provisions exist in the regulations of the concerned Stock Exchanges.

## TYPES OF DELIVERY

Three types of delivery are permitted by the Stock Exchange namely, spot delivery, hand delivery and special delivery.

The delivery is said to be **spot delivery** if the delivery and payment for securities are to be made on the **same day or the next day**.

The delivery is said to be **hand delivery** if the delivery and payment for securities are to be made on the **day decided by the stock exchange**

A **special delivery** is one where the delivery is to be made **after the delivery period** fixed by the Stock Exchange authorities.

## POWERS OF CENTRAL GOVERNMENT

### 1. To call for periodical returns and make direct enquiries

Every stock exchange and every member shall maintain and preserve books of accounts, and other documents for a period not exceeding five years in the interest of the trade or in the public interest.

### 2. To direct rules or make rules

Where the Central Government is of opinion that it is necessary or expedient, it may, by order in writing together with a statement of the reasons direct the recognised stock exchanges to **make any rules or to amend any rules already made**. The rules so made or amended shall be **published in the Gazette of India** and also in the Official Gazette of the State where the principal or offices of the recognised stock exchange is situated.

### 3. To supersede Companies of Stock Exchanges

The Central Government may serve on the governing body a written notice that the Central Government is **considering the super session of the governing body** for the reasons specified in the notice and after giving an opportunity to the governing body to be heard, it may, by



notification in the Official Gazette, declare the governing body of such stock exchange to be superseded, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body.

The governing body of which is superseded, the person or persons appointed shall hold office for such period as may be specified in the notification.

#### 4. To Suspend Business of Recognised Stock Exchange

If in the opinion of the Central Government, an emergency has arisen, and the Central Government considers it necessary so to do, it may, by notification in the Official Gazette, direct a recognised stock exchange to suspend its business for such period not exceeding seven days, and if, in the opinion of the Central Government, the interest of the trade or the public interest requires that the period should be extended, may, by like notification extend the said period from time to time.

#### 5. To Issue Directions

If, after making or causing to be made an inquiry, SEBI is satisfied that it is necessary

- a) in the interest of investors
- b) to prevent the affairs of any recognised stock exchange, or, clearing corporation
- c) to secure the proper management of any such stock exchange or clearing corporation or agency

It may, by notification in the Official Gazette, declare that section 13 to apply to such State or States or area and every contract so made between members of such stock exchange shall be illegal.

#### 6. To prohibit contracts in certain cases

If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area shall, without the permission of the Central Government, enter into any contract for the sale or purchase of any security.

All contracts entered into after the date of the notification issued thereunder shall be illegal.

### 7. To grant Immunity

If the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act and who has made a full and true disclosure in respect of alleged violation, grant to such person, immunity from prosecution for any offence under this Act, or also from any penalty.

An immunity granted to a person may, be withdrawn by the Central Government, if it is satisfied that such person had, not complied with the condition on which the immunity was granted or had given false evidence.

### 8. To delegate or to make rules

Every rule made under this Act shall be laid, before each House of Parliament, while it is in session, for a total period of thirty days, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, so, however, that any such modification or annulment shall be without effect to the validity of anything previously done under that rule.

## POWERS OF RECOGNISED STOCK EXCHANGE

### 1. To make rules restricting voting rights

A recognised stock exchange may make rules or amend any rules made by it to provide for all or any of the following matters, namely -

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

## 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.

### CLEARING CORPORATION

A recognised stock exchange may, with the prior approval of the SEBI, transfer the duties and functions of a clearing house to a clearing corporation, being a company incorporated under the Companies Act, 2013, for the purpose of -

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

Every clearing corporation shall make bye-laws and submit the same to the SEBI for its approval.

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

### PUBLIC ISSUE AND LISTING OF SECURITIES

No securities shall be offered to the public or listed on any recognized stock exchange unless the issuer fulfil such eligibility criteria made by SEBI.

Every issuer intending to offer the certificates or instruments to the public shall make an application, before issuing the offer document to the public, to one or more recognized stock exchanges for permission for such certificates or instruments.

Where the permission applied for listing has not been granted or refused by the recognized stock exchanges or any of them, the issuer shall repay all moneys, if any, received from applicants in pursuance of the offer document, and if any such money is not repaid within

eight days after the issuer becomes liable to repay it, the issuer and every director or trustee thereof, as the case may be, who is in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at the rate of fifteen percent per annum.

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

### RIGHT OF APPEAL AGAINST REFUSAL TO LIST SECURITIES BY STOCK EXCHANGES

Where a recognised stock exchange refuses to list the securities of any company, the company shall be entitled to be furnished with reasons for such refusal, and may, -

- (a) within fifteen days from the date on which the reasons for such refusal are furnished to it, or
- (b) where the stock exchange has omitted or failed to dispose of the application for permission for the shares or debentures, within fifteen days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Securities Appellate Tribunal may, on sufficient cause being shown, allow appeal to the Securities Appellate Tribunal having jurisdiction in the matter against such refusal, omission or failure, and thereupon the Securities Appellate Tribunal may, after giving the stock exchange, an opportunity of being heard, -
  - vary or set aside the decision of the stock exchange; or
  - where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission,
  - and the stock exchange shall act in conformity with the orders of the Securities Appellate Tribunal.



### FACTORS TO BE TAKEN INTO ACCOUNT BY THE ADJUDICATING OFFICER

The adjudicating officer shall have due regard to the following factors, namely -

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

### SETTLEMENT OF ADMINISTRATIVE AND CIVIL PROCEEDINGS

Any person, against whom any proceedings have been initiated or may be initiated under may file an application in writing to SEBI proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

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

No appeal shall lie against any order passed by the SEBI or adjudicating officer.

### RECOVERY OF AMOUNTS

The Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:-

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;

- (e) appointing a receiver for the management of the person's movable and immovable properties,

### ESTABLISHMENT OF SPECIAL COURTS

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

### OFFENCES TRIABLE BY SPECIAL COURTS

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

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

### RULE 19 (2) (B) OF SECURITIES CONTRACTS REGULATION RULES, 1957

- 1) The minimum offer and allotment to public in terms of an offer document shall be-at least twenty five per cent of each class or kind of equity shares or debenture convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is less than or equal to one thousand six hundred crore rupees;

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

However, the company referred to in sub-clause (ii) or sub-clause (iii), shall increase its public shareholding to at least twenty five per cent within a period of three years from the date of listing of the securities.

### CONTINUOUS LISTING REQUIREMENT

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

For the purposes of this sub-rule, a company whose securities has been listed pursuant to an offer and allotment made to public in terms of clause (b) of sub-rule (2) of rule 19, shall maintain minimum 25% public shareholding from the date on which the public shareholding in the company reaches the level of 25% in terms of said sub-clause.

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

Where the public shareholding in a listed company falls below 25% in consequence to SCRR (Amendment) Rules, 2015, such company shall increase its shareholding to atleast 25%, in

the manner specified by the SEBI within a period of three years, as the case may be, from the date of notification of:

- (a) the Depository Receipts Scheme, 2014;
- (b) the SEBI (Share Based Employee Benefits) Regulations, 2014.

### DELISTING OF SECURITIES

A recognized stock exchange may delist any securities listed on any of the following grounds:-

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

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

- (a) the securities of the company have been listed for a minimum period of three years on the recognized stock exchange;

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

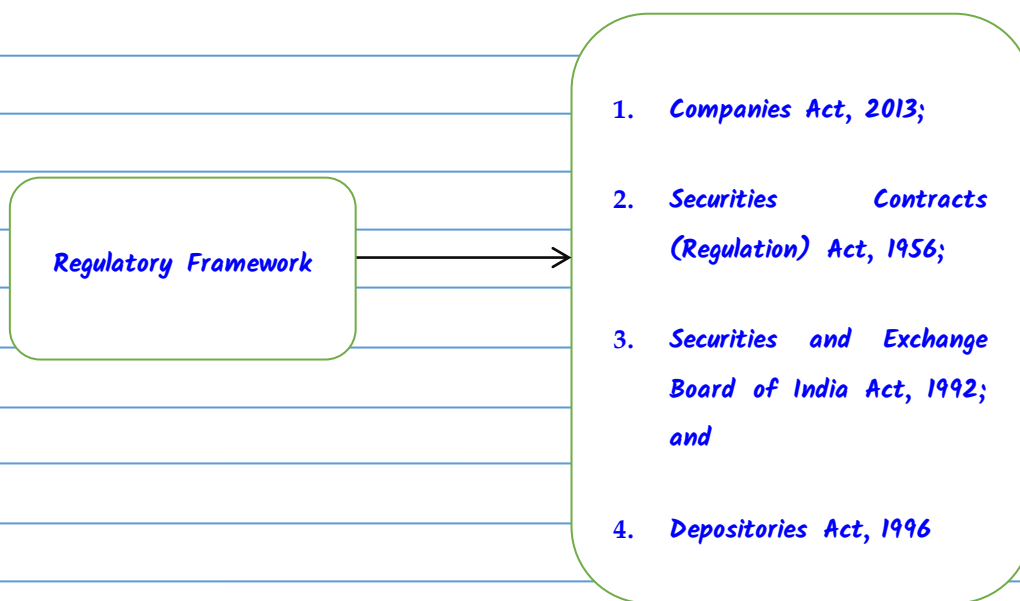
However, the condition at (c) may be dispensed with by the SEBI if the securities remain listed at least on the National Stock Exchange of India Limited or the Bombay Stock Exchange Limited.

## CHAPTER 2 - OVERVIEW OF CAPITAL MARKET AND SEBI



### REGULATORY FRAMEWORK

Securities laws comprises of the following enactments:



### Companies Act, 2013

The Companies Act, 2013 is administered by the Ministry of Corporate Affairs and it has the jurisdiction over the entire country. Further under the Ministry of Corporate Affairs, there are six Regional Directors, one for each region i.e. north, east, west, south, north-west and south-east located at Noida, Kolkata, Mumbai, Chennai, Ahmedabad and Hyderabad respectively. All the states lying in one particular region come under the jurisdiction of Regional Director of that region. Hence, all the Registrar of Companies of all the states



falling under one particular region of India act as sub-ordinate to the Regional Director of that region.

In addition to aforesaid structure, Company Law Board (henceforth National Company Law Tribunal) is also one administrative and quasi-judicial authority with regard to the Companies Act, 2013.

### SCRA, SEBI Act and Depositories Act

Securities Contracts (Regulation) Act, 1956, Securities and Exchange Board of India Act, 1992 and Depositories Act, 1996 are administered by Ministry of Finance, Government of India. Further under the Ministry of Finance, Securities and Exchange Board of India (SEBI) is the principal executive authority in respect of the aforesaid Acts.

In addition to this, Securities Appellate Tribunal (SAT) is the quasi-judicial authority with regard to the aforesaid three Acts.

## EVOLUTION AND GROWTH OF FINANCIAL SYSTEM IN INDIA

Initially after independence, Indian financial system was characterized by the following:

- No organized capital market;
- Rare case of public issue;
- Loans subject to stringent conditions;
- Few financial institutions and intermediaries, etc.

Capital Market got developed and organized with the replacement of Capital Issues (Control) Act, 1947 by Securities and Exchange Board of India Act, 1992. As a consequence, Indian capital market had seen as many as approximately 1,000 public issues per year. In the year 1969, nationalization of banks took place and as a result loans were provided to rural areas on soft terms and hence agriculture and industry got a boost.

A number of Financial Institutions were established in order to provide institutional source of finance in the form of term loans to the industry. Government of India set up three major financial institutions, namely, ICICI, IDBI and IFCI. Presently, ICICI is not in existence as it has been merged with the ICICI Bank. In addition to this a number of segment specific financial institutions were also set up. For instance, Industrial Reconstruction Bank of India for reconstruction purposes; EXIM Bank for export-import purposes; NABARD for agriculture purpose; SIDBI for small industries; National Housing Bank for housing sector, etc.

### Functions of financial systems

Following are some of the important functions of Financial Systems:

1. Regulation of currency through RBI.
2. Banking Functions through banks.
3. Management of national reserves of international currency.
4. Credit control by RBI.
5. Supply and deployment of funds for productive use.
6. Maintaining liquidity.

### SECURITIES & EXCHANGE BOARD OF INDIA (SEBI)



## Introduction

SEBI has been formed under SEBI Act, 1992. SEBI Act 1992 has come into force with effect from 30<sup>th</sup> January, 1992. SEBI is a body corporate having perpetual succession and common seal. Further, being a body corporate, its separate property, contractual rights, right to sue and be sued.

SEBI is an authority to regulate and develop the Indian capital market and protect the interest of investors in the capital market. SEBI has replaced the Controller of Capital Issues, an authority under Capital Issues (Control) Act, 1947.

## Offices of SEBI

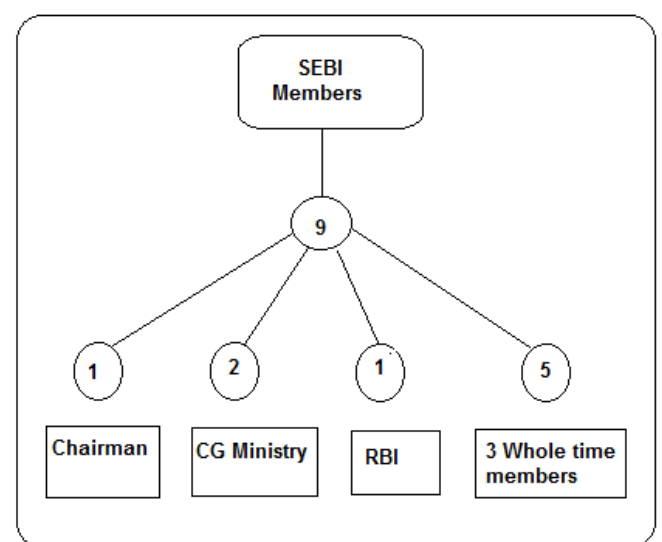
SEBI has its head office at Mumbai and its other offices are located at Delhi, Kolkata and Chennai.

## Management of SEBI (Sec 4)

The general superintendence, direction and management of the affairs of SEBI vests in its Board of Members, which exercises all powers and do all acts things which may be exercised or done by SEBI. Unless otherwise provided, the Chairman shall also have all these powers.

The Board of Members shall consist of following members, namely:

- (i) A chairman, who shall be appointed by Central Government and he shall be a person of ability, integrity and standing in the field of securities market, law, finance, accountancy, economics, administration, etc.,



- (ii) Two members from amongst the officials of the Ministry of the Central Govt. dealing with Finance and administration of the Companies Act, 2013, who shall be nominated by the Central Govt.;
- (iii) One member from amongst the officials of RBI, who shall be nominated by RBI;
- (iv) Five other members out of which at least three members shall be whole-time members, who shall be appointed by Central Government and they shall be persons of ability, integrity and standing in the field of securities market, law, finance, accountancy, economics, administration, etc.;

### Meetings of SEBI (Secs 7 & 7A)

All questions which come up before any meeting of SEBI shall be decided by a majority votes of the members present and voting, and, in the event of an equality of votes, the Chairman, or in his absence, the person presiding, shall have a second or casting vote.

An interested party, like a company director, can be a member of SEBI. But if he has any, direct or indirect, pecuniary interest in any matter coming up for consideration at a meeting of SEBI, he shall disclose the nature of his interest and shall not take part in deliberations or decision of SEBI in respect of that matter.

### Functions of SEBI (Sec.II)

The principal functions of SEBI are:

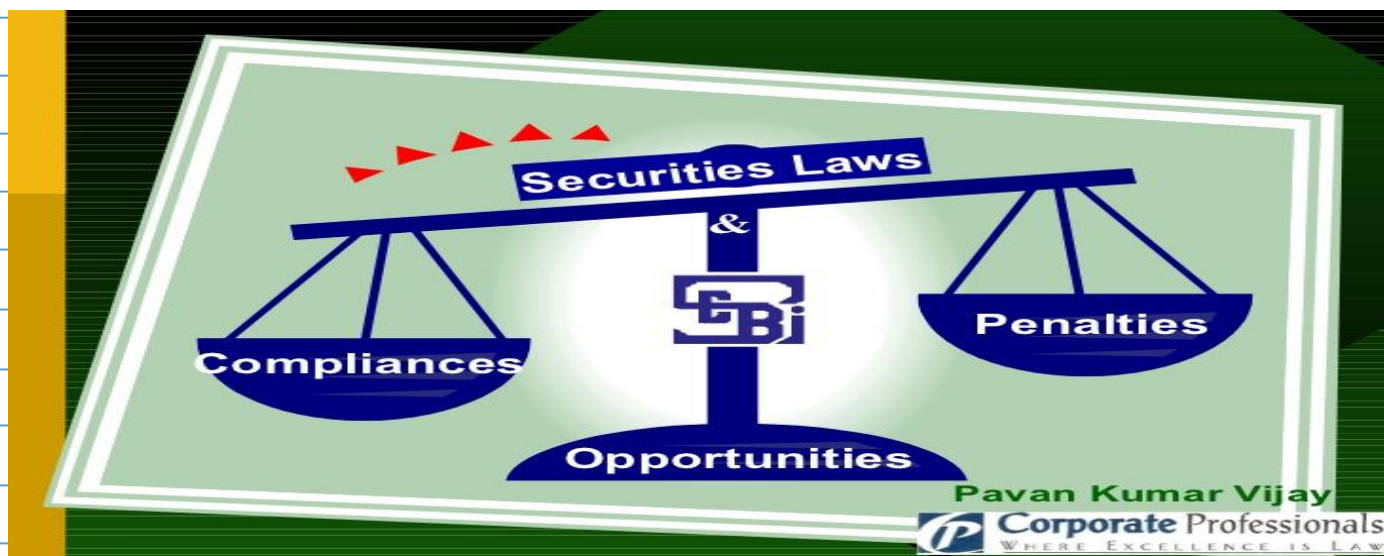
1. Protecting the interest of investor in securities market;
2. Promoting the development of securities market; and
3. Regulating the securities market.

The above functions include the following:

- (i) Regulating the business in Stock Exchanges;
- (ii) Registration and regulating the work of various intermediaries such as Brokers, Sub-brokers, Registrar and Share Transfer Agents, Merchant Bankers, Underwriters, Portfolio Managers, etc.;
- (iii) Registration and regulating the work of Depositories and Depositories Participants;

- (iv) Registration and regulating the work of Foreign Institutional Investors, Credit Rating Agencies, etc.
- (v) Registration and regulating the work of Venture Capital Funds, Mutual Funds, Collective Investment Schemes;
- (vi) Promoting Investors' education;
- (vii) Prohibiting insider trading in securities;
- (viii) Prohibiting fraudulent practices and unfair trading practices;
- (ix) Regulating substantial acquisition of shares and takeover of companies;
- (x) Undertaking inspection, conduction inquiries and audits of the Stock Exchanges, Mutual Funds and other persons associated with the securities market.

### Powers of SEBI



#### 1. Power to regulate or prohibit issue of prospectus, offer documents (Sec. 11A)

SEBI may take the following measures for the protection of investors:

- 1. It may specify by regulations -
  - a) The matters relating to issue of capital, transfer of securities and other matters incidental thereto; and
  - b) The manner in which such matters shall be disclosed by the companies.
- 2. It may, by a special or general order, -
  - a) Prohibit any company from issuing of prospectus, any offer document, or advertisement

- b) soliciting money from the public for the issue of securities; and
  - c) Specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.
3. It may specify the requirements for listing and transfer of securities and other matters incidental thereto. It may be noticed be noted that the provisions of Section 11A of Securities and Exchange Board of India Act shall not affect the provisions of the Companies Act, 2013 or Section 21 of the Securities Contracts (Regulation) Act, 1956.

## 2. Power of investigation of the affairs of an intermediary, etc. (Sec. 11C)

SEBI may appoint any person, known as Investigating Authority, to investigate the affairs of an intermediary or a person associated with the securities market in the following circumstances :

- (a) Where SEBI has reasonable ground to believe that the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or
- (b) Where SEBI has reasonable ground to believe that any intermediary or any person associated with the securities market has violated any of the provisions of SEBI Act or the rules or the regulations made or directions issued by SEBI thereunder.

The Investigating Authority may keep in its custody any books, registers, other documents and record for 6 months. Thereafter, the Investigating Authority shall return the same to the person who had produced such books etc. however, the Investigating Authority may again call for such books etc. where any person producing books etc, to the Investigating Authority requires certified copies of the same, the Investigating Authority shall give certified copies of such books etc. to him.

The Investigating Authority may, with the authorization of the Magistrate of the First Class, seize books and papers, where Investigating Authority has reasonable ground to believe that books, registers, other documents and record may be destroyed, mutilated, altered, falsified or secreted. However, the Magistrate shall not authorize seizure of books etc. of any listed public company or a public company which intends to get its securities listed on any



recognized stock exchange unless such company indulges in insider trading or market manipulation.

The Investigating Authority may keep the books etc. till the conclusion of the investigation. The Investigating Authority shall inform the Magistrate when it returns the books, etc. Before returning the books etc., the Investigating Authority may place mark of identification on them.

### 3. Power to make a cease and desist order (Sec. 11D)

SEBI may pass an order thereby requiring a person to cease and desist from committing violation of the SEBI Act or rules made thereunder. SEBI shall exercise the aforesaid power only after conducting an enquiry regarding violation.

It may be noted that SEBI shall not pass a cease and desist order against any listed company or a public company which intends to get its securities listed on any recognized stock exchange, unless it has reasonable ground to believe that such company has indulged in insider trading or market manipulation.

## INVESTIGATIONS

### (1) Grounds for Investigation

Where the SEBI has reasonable ground to believe that:

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

## (2) Duty of officers to produce Accounts and Records

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

## (3) Powers of Investigating Authority

The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before it or any person authorized by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

The Investigating Authority may keep in its custody any books, registers, other documents and record produced for six months and thereafter shall return the same to any intermediary or any person associated with securities market by whom or on whose behalf the books, registers, other documents and record are produced.

## (4) To examine on oath

Any person, directed to make an investigation may, examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

If any person fails without reasonable cause or refuses, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

### (5) To take notes on examination

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

### (6) Seizure of Records

Where in the course of an investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to any, any intermediary or any person associated with securities market may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Magistrate or Judge of such designated Court in Mumbai, as may be notified by the Central Government for an order for the seizure of such books, registers, other documents and records.

The authorised officer may requisition the services of any police officer or any office of the Central Government, or of both, to assist him.

After considering the application and hearing the Investigating Authority, if necessary, the Magistrate or Judge of the Court may, by order, authorize the investigating authority -

- (a) to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept.
- (b) to search that place or those places in the manner specified in the order and.
- (c) to seize books, registers and other documents and records, it consider necessary for the purpose of the investigation.

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

The Investigating Authority shall keep in its custody the books, registers, other documents and record seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate or Judge of the Designated Court of such return.

The Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof.

Every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures made under that Code.

### **PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING ETC.**

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

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

## ADJUDICATIONS

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

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

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

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

## SETTLEMENT OF ADMINISTRATIVE AND CIVIL PROCEEDINGS

Any person against where any proceedings have been initiated or may be initiated may file *an application in writing to the SEBI proposing for settlement of proceeding initiated or to be initiated for the alleged defaults.*

SEBI, may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum the defaulter or on such other terms as may be determined by the SEBI.

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

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

## SECURITIES APPELLATE TRIBUNAL (SAT)

### Introduction

Section 15K of SEBI Act, 1992 empowers the Central Government to set up one or more Tribunals, for the purpose of making appeals against the orders of SEBI and its adjudicating officers. These Tribunals will be known as Securities Appellate Tribunal (SAT). In exercise of the power conferred, the Central Government has set up one Tribunal at Mumbai.

### Composition of SAT

SAT shall comprise of the following :

- a) One Presiding Officer; and
- b) Two other Members.

The Presiding Officer and the Members shall be appointed by the Central Government.

### Presiding Officer

The Presiding Officer of SAT shall be appointed by the Central Govt. in consultation with the Chief Justice of India.

The person to be appointed as the Presiding Officer must be a sitting or retired Judge of the Supreme Court or a sitting or a retired Chief Justice of a High Court or a Judge of High



Court for at least seven years. It may be noted that a person who is a Member of SEBI or holding a position equivalent to Executive Director in SEBI shall not be appointed as Presiding Officer of SAT during his tenure with the SEBI as well as within two years from the date on which he ceases to hold office.

The Presiding Officer shall hold his office for a period of five years or up to the age of 70 years, whichever is earlier.

### Members

Judicial member is, or has been, a Judge of High Court for at least five years, in the case of a Judicial Member; or

The Presiding Officer and Judicial Members of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee.

The Technical Members of the Securities Appellate Tribunal shall be appointed by the Central Government on the recommendation of a Search-cum-Selection Committee.

A person shall not be qualified for appointment as Member of SAT, unless he is a person of ability, integrity and standing who 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.

It may be noted that a person who is a Member of SEBI or holding a position equivalent to Executive Director in SEBI shall not be appointed as Member of SAT during his tenure with the SEBI as well as within two years from the date on which he ceases to hold office.

The Members shall hold their office for a period of five years or up to the age of 70 years, whichever is earlier.

### Appeal to SAT (Sec.1ST)

Any person aggrieved-----

- a) By an order of the SEBI, under SEBI Act, 1992 or the rules or regulations made thereunder; or
- b) By an order made by an adjudicating officer under SEBI Act, 1992, may prefer an appeal to Securities Appellate Tribunal.

However, no appeal shall lie to SAT from an order made by SEBI or adjudicating officer, with the consent of parties.

The appeal to SAT shall be filed within a period of 45 days from the date of receiving the copy of the order of SEBI or adjudicating officer, as the case may be. However, SAT may entertain an appeal after the expiry of 45 days, if it is satisfied that there was sufficient cause for not filling it within that period.

On receipt of an appeal, SAT may confirm, modify or set aside the order appealed against after giving an opportunity of being heard.

### Powers of SAT (sec. 15u)

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

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

### Appeal against the orders of SAT (sec. 15z)

Any person aggrieved by any decision or order of SAT may file an appeal to the Supreme Court. It may be noted that the appeal can be made only on any question of law.

The appeal shall be filed **within 60 days** from the date of receiving a copy of the decision or order of SAT. However, the Supreme Court may allow a further period of 60 days for making a appeal, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the first 60 days.

### CLASSROOM NOTES FOR SAT

### POWERS OF CENTRAL GOVERNMENT

#### (a) To issue directions:

Central Government has **powers to issue directions in writing to SEBI** on questions of policy. However, the Central Government shall give an opportunity to SEBI to express its views before any such directions is given. The decision of the Central Government as to whether a question is one of policy or not shall be final.

#### (b) To Supersede SEBI:

If at any time the Central Government is of opinion that:

- (a) on account of emergency, **SEBI is unable to discharge its functions and duties** or
- (b) **SEBI has made default in complying with any direction issued by the Central Government** and as a result of such default the financial position of SEBI or the administration of SEBI has deteriorated; or

(c) circumstances exist which makes it necessary in the public interest so to do, it may, by notification, supersede SEBI for such period, not exceeding six months, as may be specified in the notification.

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

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

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

#### (c) Power to grant Immunity:

The Central Government may on the recommendations by SEBI, if satisfied that any person who is alleged to have violated any of the provisions of this Act and who has made a full and true disclosures in respect of alleged violations, grant to such persons, immunity from prosecution for any offence.

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

## APPEAL TO THE CENTRAL GOVERNMENT

The Act provides that any person aggrieved by an order of SEBI may prefer an appeal to the Central Government within such time as may be prescribed.

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

## CONTINUANCE OF PROCEEDINGS

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

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

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

## CONSENT ORDER

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

Settlement for securities laws violations, was introduced in India in the year 2007. No appeal shall lie to the Securities Appellate Tribunal from an order made by the SEBI or by an adjudicating officer, with the consent of the parties. Similar provision is provided in the Depositories Act.

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

### ROLE OF COMPANY SECRETARY

- **Right to Legal Representation:**

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

- The Securities and Exchange Board of India (SEBI) also recognises the Company Secretary as the Compliance Officer and authorizes practicing company secretaries to issue various certificates under its Regulations.

### RECOVERY OF AMOUNTS

If a person fails to pay the penalty imposed or fails to comply with any direction or fails to comply with a direction of disgorgement order issued or fails to pay any fees, the Recovery Officer may draw up a statement in the specified form specifying the amount due from the person.

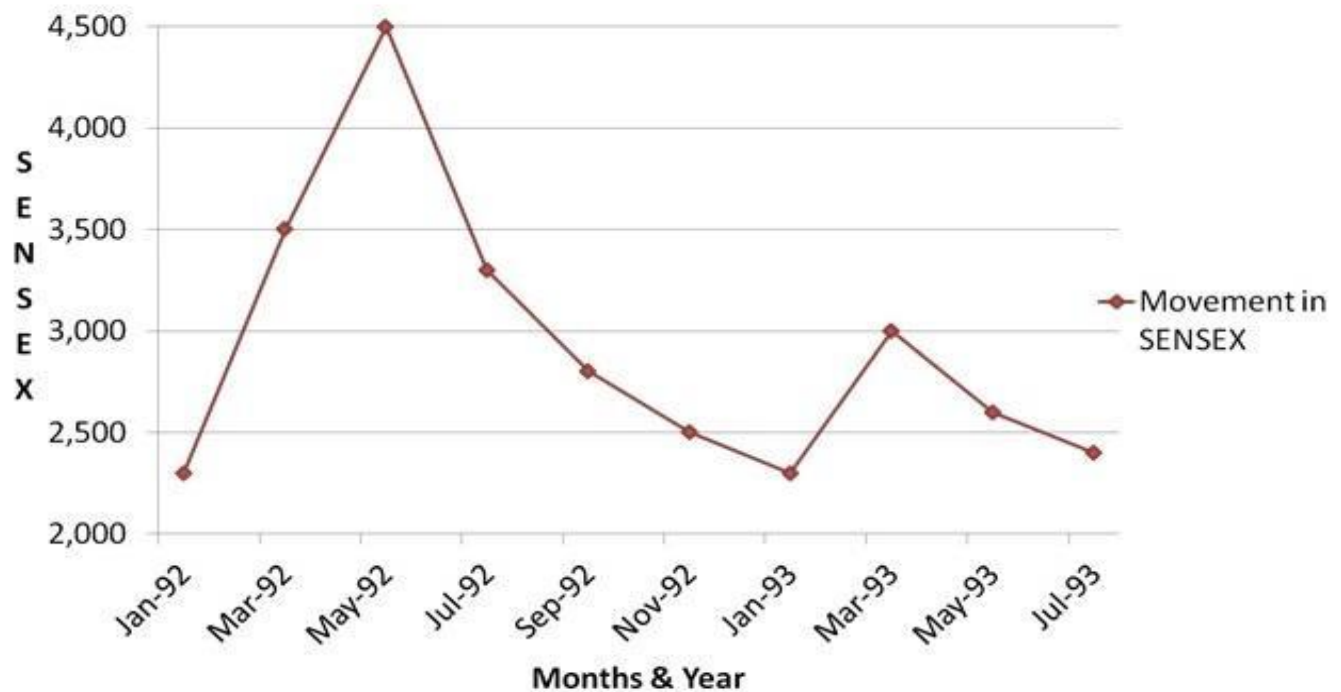
The Recovery Officer shall proceed to recover amount specified in the certificate by one or more of the following modes,

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

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



# Impact Of Scam On Market



## CHAPTER 3 - DEPOSITORIES

# Excellent Quotes by Warren Buffett



**On Earning:** "Never depend on a single income. Make investment to create a second source."

**On Spending:** "If you buy things you do not need, soon you will have to sell things you need".

**On Taking Risk:** "Never test the depth of the water with both feet".

**On Investment:** "Do not put all eggs in one basket".

**On Expectations:** "Honesty is very expensive gift. Do not expect it from cheap people".



## BASIC CONCEPT OF DEPOSITORIES

### Introduction

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.

A depository is an organization where the securities of an investor are held in the electronic form at his request through a Depository Participant (DP). If the investor wants to utilize

the services offered by a Depository, the investor has to open a beneficiary account (popularly called as Demat Account) with the Depository through a DP.

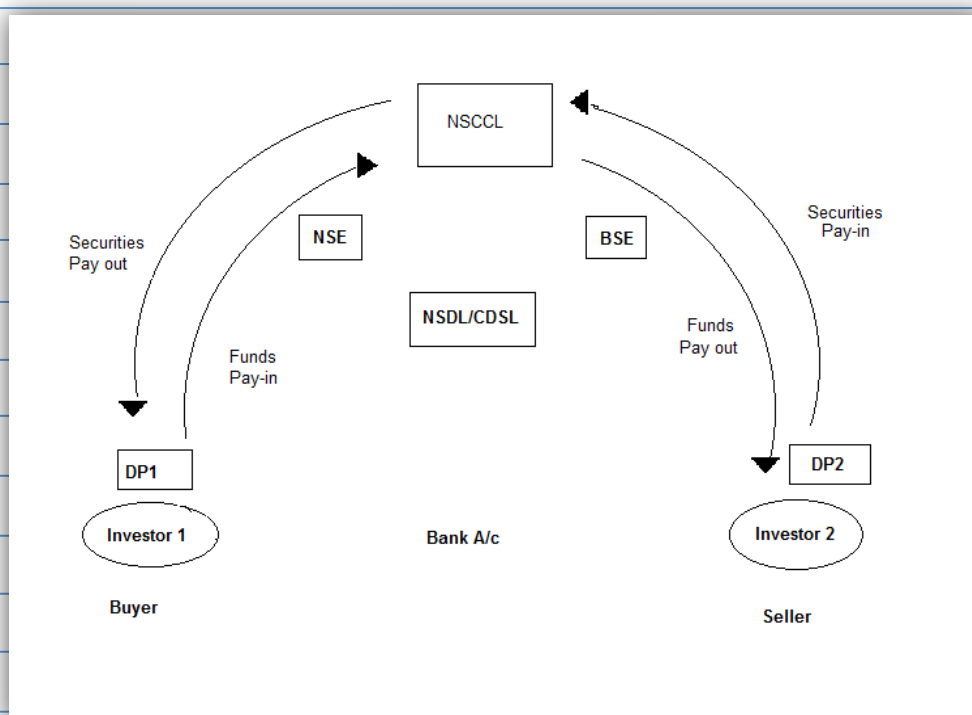
DP is the representative or agent in the depository system and it maintains the investor's securities account balance and intimates to him the status of his holding of any security. For e.g. share and debentures already in the depository mode, the buyer will become owner of the said security in the depository within a day of settlement being made/completed. The buyer is not required to apply to the company for registering the security in his name.

Dematerialization is the process by which physical share certificates are converted into electronic form. Rematerialisation is the process by which electronic holdings are converted back into physical 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.

Depository is an agency for keeping securities on deposit in electronic (paperless) form and makes scripless trading possible. The physical form of securities could be held in electronic form by way of immobilization and dematerialization.

Investors also have the option to keep their securities in the custody of an intermediary called the Custodian. Custodian holds the securities of the investor in physical form. Such hand over of securities to the custodian in physical form is called as Immobilization. While custodians immobilize the physical securities by custodial function, depositories interact with the Investors only through depository participants who are registered with depositories as well as SEBI.

Custodians provide services such as safe keeping of securities, documents of title on behalf of client under a proper system of control including physical custody or maintenance of accounts in depositories manually or in machine readable form etc. Custodial services generally provide clearing services, registration and transfer processing, safe custody, corporate actions and management information services.



## CLASSROOM NOTES FOR DEPOSITORY MECHANISM

### DEFINITION AND MEANING OF DEPOSITORY

According to Section 2 (e) of the Depositories Act, 1996, "Depository means a company formed and registered under the Companies Act, 1956/2013 and which has been granted a certificate of registration under Section 12 (IA) 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).

## 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.

Stocking 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.

## ELIGIBILITY CONDITIONS FOR DEPOSITORY SERVICES

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

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

## CERTIFICATE OF COMMENCEMENT OF BUSINESS BY DEPOSITORIES

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

## ELIGIBLE SECURITIES REQUIRED TO BE IN THE DEMAT MODE

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

## DIFFERENCE BETWEEN DEPOSITORY AND CUSTODIAN

**Depository** - Share transferred in electronic form.

**Custodian** - Shares remain in physical form. Depository can legally transfer beneficial ownership which a custodian cannot.





## ADVANTAGES OF HOLDING SECURITIES IN THE ELECTRONIC MODE

- No stamp duty on transfers.
- Faster delivery and fund settlement.
- No 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.
- Faster disbursement of non cash corporate benefits.

## DEMATERIALIZATION

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 confirm the Depository.
- Depository confirms dematerialization request to DP.
- Investor's account with DP is credited.
- DP sends Statement of Transaction to the investor.

## IMMOBILIZATION

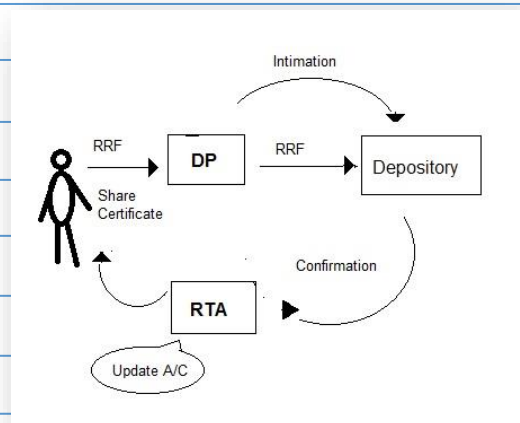
Immobilization of securities occurs when physical security certificates are stored or lodged with Depository for safe custody. All subsequent transactions in these securities take place in book entry form (electronic form). The actual owners have the right to withdraw their physical securities as and when they desire. The custodian in turn a Jumbo Certificate representing the entire issue in the name of depository on behalf of the beneficial owner.



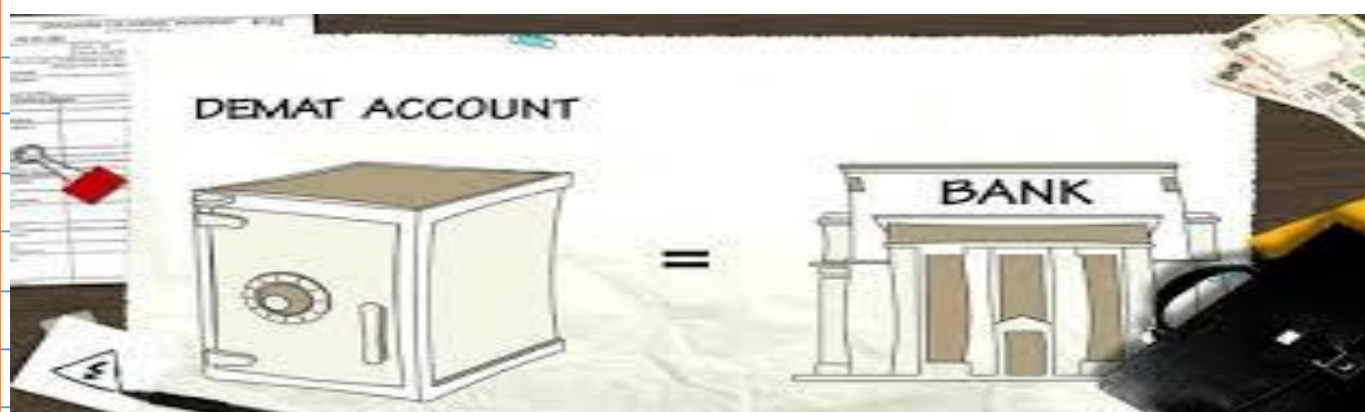
## REMATERIALIZATION

The procedure for Rematerialisation of securities is as follows:-

- i. The beneficial owner sends the request in Rematerialisation request form (RRF) to DP.
- ii. DP intimates the Depository of such request electronically.
- iii. Depository confirms the Rematerialisation request to the RTA/ Company.
- iv. RTA/ Company updates account and prints certificates and confirm the Depository.
- v. Depository updates account and download the details to DP.
- vi. RTA/ Company dispatches the certificates to the holder thereof.
- vii. DP also sends the intimation about Rematerialisation to its client.



## FUNGIBILITY

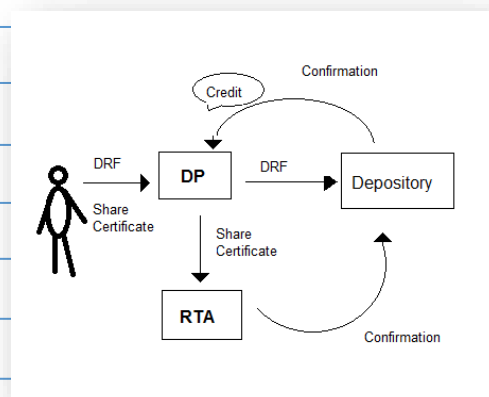


The Depositories Act, 1996 provides that all securities held in depository shall be fungible, i.e., all certificates of the same security shall become interchangeable. In electronic form, the securities lose its identity exactly like money deposited in a bank account. If a person has a Rs 500 note, it will have a serial number but when the same is deposited in the bank account, its serial number is lost and it is mixed with other currencies in the system. Much

like this is the security held in electronic form. Once deposited with a depository in demat form, it also loses its distinctive number, which is there so in case of shares held by an investor in physical form.

### PLEDGE OR HYPOTHECATION OF SECURITIES

Pledge or hypothecation means loan obtained by the owner against his shares. If a beneficial owner (owner of securities) intends to create a pledge/hypothecation on a security owned by him, he shall make an application to the Depository (NSDL/CDSL) through his Depository Participant (Broker).



The Depository, after confirmation from the pledgee (loan provider) that the securities are available from pledge with the pledgor (loan taker), shall, within 15 days of the receipt of application, create and record the pledge and send the intimation of the same to the Depository Participants of the pledgor and the pledge. On receipt of intimation, the Depository Participants of both the pledgor and the pledge shall inform the pledgor and the pledge respectively of the entry of creation of pledge/hypothecation.

The entry of pledge/ hypothecation made may be cancelled by the Depository if the pledgor 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 pledgor, then it shall be cancelled by Depository only with the prior concurrence of the pledge.

## RIGHTS OF DEPOSITORIES AND BENEFICIAL OWNER

A depository should be deemed to be the registered owner on behalf of a beneficial owner. The depository does not have any voting rights. The beneficial owner is entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities.

### Register of beneficial owner

Every depository is required to maintain a register and an index of beneficial owners in the manner provided in the Companies Act, 2013.

## AUDIT UNDER SEBI (DEPOSITORIES AND PARTICIPANTS) REGULATIONS, 2018

1. SEBI has issued a circular on 31<sup>st</sup> Dec 2002 that all the issuer listed companies must immediately comply with such Secretarial Audit.
2. 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.
3. Thus every listed company is required to obtain a **certificate on a quarterly basis** from a practicing **CS** or practicing **CA**, recording of the shares held in electronic form and in physical form with the issued and listed capital of the company.
4. Every listed company is required to submit the aforesaid certificate to the Stock Exchanges where the securities of the company are listed **within 21 days of the close of relevant quarter.**

## CLASSROOM NOTES FOR SHARE CAPITAL AUDIT

## INTERNAL AUDIT OF DEPOSITORY PARTICIPANTS

NSDL and CDSL, both the Depositories, have allowed *Company Secretaries in Practice and Chartered Accountants in Practice* to undertake Internal Audit of the *operations of Depository Participants on a quarterly basis*. While undertaking the Internal Audit function of a Depository Participant, one has to ensure the following:

1. That the operations of the Depository Participant are in compliance with the requirements of the Depositories Act, SEBI (Depositories and Participants) Regulations, 2018, *by laws and rules of depositories* and its agreement with the clients and depositories.
2. That there is *no threat to business continuity, integrity of data processing system* is maintained at all times and methods are put in place to ensure that records are not lost, destroyed or tampered with.
3. That the capacity of computer system, staff strength and internal procedures provides reasonable checks with the business.

## CLASSROOM NOTES FOR INTERNAL AUDIT

### CONCURRENT AUDIT

*Depository Participants* have been advised to appoint a firm of qualified *Chartered Accountants or Company Secretary(s)* holding a certificate of practice for conducting the concurrent audit. 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* covers *issuance and verification of DIS*.

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.

### BASIC SERVICES DEMAT ACCOUNT (BSDA)



SEBI in order to boost demat holding and to reduce the cost of maintaining securities for retail individual investors, introduced the concept of basic services demat account (BSDA). All depository participants (DPs) shall make available a "Basic Services Demat Account" with limited services and reduced costs compared to conventional demat accounts. These BSDA will also offer SMS alert facility for debit transactions.

## ELIGIBLE INVESTOR

All individual who currently have one account or plan to open a demat account where they are the sole first holder will be allowed to open the BSDA, provided that the value of securities held will **not be more than Rs. 2 lakh** at any given point of time.

An existing eligible individual who holds a demat account with a DP can convert demat account into BSDA on the date of the next billing cycle.

## Charges

The Annual Maintenance Charges (AMC) will be as per predetermined slabs. If the value of holdings is **up to Rs. 50,000** there won't be any annual maintenance charge. However, if the value of holding is in between **Rs. 50,001 to Rs. 200,000**, a fee of **Rs. 100 as AMC** may be charged. If the value of holdings exceeds, DPs are permitted to charge the same as they charge non-BSDA regular demat accounts.

## Valuation of holding

The value of holding shall be determined on the basis of the daily closing price or Net Asset Value of the securities or units of mutual funds. Where such price is not available the last traded price may be taken into account and for unlisted securities other than units of mutual funds, face value may be taken in to account.

## POWER OF THE SEBI

### To Give Directions

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

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



## CONTRAVENTION BY COMPANIES

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

Nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

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

## COGNIZANCE OF OFFENCES BY COURTS

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



## ROLE OF COMPANY SECRETARY

### a. **Right to Legal Representation:**

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

### b. **Internal Audit of Depository Participants:**

The 2 (two) Depository services providers in India, viz., National Securities Depository Ltd. (NSDL) and Central Depository Services (India) Limited (CDSL) have allowed Company Secretaries in Whole-time Practice to undertake internal audit of the operations of Depository Participants (DPs).

### c. **Reconciliation of Share Capital Audit:**

Company Secretary is authorised to issue quarterly certificate with regard to reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, details of changes in share capital during the quarter, and in principle approval obtained by the issuer from all the stock exchanges where it is listed in respect of such further issued capital under SEBI (Depositories and Participants) Regulations, 2018.

### d. **Concurrent Audit of Depository Participants:**

Practising Company Secretary is authorized to carry out concurrent audit of Depository Participants which covers audit of the process of demit account opening, control and verification of Delivery Instruction Slips (DIS).

## CHAPTER 4 - SEBI (ICDR) REGULATIONS, 2018



"A BULL MARKET IS LIKE  
SEX. IT FEELS BEST  
JUST BEFORE IT ENDS."

**CLASSROOM NOTES FOR TYPES OF IPOs, PRICING, LIMITS, OFFER DOCUMENT, ISSUE OPENING & CLOSING DATE, TIME PERIOD, DISCLAIMERS, PROMOTERS CONTRIBUTION & LOCK IN PERIOD, ALLOTMENT, ASBA AND BOOK BUILDING**

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

### METHODS OF RAISING FUNDS FROM PRIMARY MARKET

**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.

- **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.
- **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 a 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 49%, 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 two types:

- (i) **Preferential Allotment:** When a listed company issues shares or convertible securities, to a select group of persons in terms of SEBI (ICDR) Regulations, 2018, it is called a preferential allotment. The issuer is required to comply with various provisions which inter alia include pricing, disclosures in 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 issuer makes a further public offer of equity shares, or offer for sale of shares by promoter/ promoter group of listed issuer in which, the offer allocation and allotment of such shares is made only to QIBs in terms of SEB (ICDR) Regulations, 2018 for the purpose of achieving minimum public shareholding it is called an IPP.

### ALLOCATION OF NET OFFER TO PUBLIC

(I) In an issue made through the book building process the allocation in the net offer to public category should be made as follows:

- (a) not less than 35% to retail individual investors;
- (b) not less than 15% to non-institutional investors;
- (c) not more than 50% to qualified institutional buyers, five per cent of which shall be allocated to mutual funds. However, in addition to five per cent allocation available, mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.

In an issue made through the book building process and following the alternative eligibility norms provided by SEBI for public issue, the allocation in the net offer to public category shall be as follows:

- (a) not more than 10% to retail individual investors;
- (b) not more than 15% to non-institutional investors;
- (c) not less than 75% to qualified institutional buyers, 5 % of which shall be allocated to mutual funds. However, in addition to the 5% allocation available, mutual funds shall also be eligible for allocation under the balance available for qualified institutional buyers.

The issuer may allocate upto 30% of the portion available for allocation to qualified institutional buyers to an anchor investor.

## FACE VALUE OF EQUITY SHARES

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

## 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.

- (1) The issuer company can mention a price in the draft prospectus (in case of a fixed price issue) and floor price or price bank in the red herring prospectus (in case of a fixed built issue) and determine the price at a later date before registering the prospectus with the Registrar of Companies. However, the final prospectus registered with the Registrar of Companies should contain only one price.
- (2) The cap on the price band shall be less than or equal to 120% of the floor price.
- (3) The floor price or the final price should not be less than the face value of the securities.
- (4) 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 atleast 2 working days before the opening of the bid.

Draft Offer Document	Red Herring Prospectus	Offer Document
<p>"Draft Offer document" means the offer document in draft stage. The draft offer documents are filed with SEBI, atleast 30 days prior to the filing of the Offer Document with ROC/SEs. SEBI may specifies changes, if any, in the Draft Offer Document and the Issuer or the Lead Merchant banker shall carry out such changes in the draft offer document before filing the Offer Document with ROC/SEs. The Draft Offer document is available on the SEBI website for public comments for a period of 21 days from the filing of the Draft Offer Document with SEBI.</p>	<p>"Red Herring Prospectus" is a prospectus, which does not have details of either price or number of shares being offered, or the amount of issue. This means that in case price is not disclosed, the number of shares and the upper and lower price bands are disclosed. In the case of book-built issues, it is a process of price discovery and the price cannot be determined until the bidding process is completed. Only on completion of the bidding process, the details of the final price are included in the offer document. The offer document filed thereafter with ROC is called a prospectus.</p>	<p>"Offer document" means Prospectus in case of a public issue or offer for sale and Letter of Offer in case of a right issue, which is filed with Registrar of Companies (ROC) and Stock Exchanges. An offer document covers all the relevant information to help an investor to make his/her investment decision.</p>

### SR EQUITY SHARES

SR equity shares means the equity shares of an issuer having superior voting rights compared to all other equity shares issued by that issuer.

## ENTRY / ELIGIBILITY NORMS

### Unlisted Company

An unlisted company may make an initial public offering (IPO) 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 the following conditions:

1. The company has **net tangible assets of atleast Rs. 3 crores** on a restated and consolidated basis, in each of the preceding 3 full years (of 12 months each), of which **not more than 50% is held in monetary assets**. However, if more than 50% of the net tangible assets are held in monetary assets, the issuer has utilized or made firm commitments to utilize such excess monetary assets in its business or project. This limit of 50% shall not apply in case of IPO is made entirely through an offer for sale.
2. The company has **average operating profit of at least Rs.15 crores**, calculated on a restated and consolidated basis, during the **3 most profitable years** out of the immediately preceding three years;
3. The company has a **net worth of at least Rs. 1 crore** in each of the **preceding 3 full years** (of 12 months each), calculated on a restated and consolidated basis;
4. In case the company has **changed its name** within the last 1 year, **at least 50% of the revenue** calculated on a restated and consolidated basis for the preceding 1 full year is earned by the company from the activity suggested by the **new name**;

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

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

- the issuer shall be intensive in the use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology to provide products, services or business platforms with substantial value addition.
- the SR shareholder shall not be part of the promoter group whose collective net worth is more than rupees 500 crores. While determining the collective net worth, the investment of SR shareholder in the shares of the issuer company shall not be considered.
- The SR shares were issued only to the promoters/founders who holds an executive position in the issuer company;
- The issue of SR equity shares had been authorized by a special resolution passed at a general meeting of the shareholders of the issuer, where the notice calling for such general meeting specifically provided for:
  - a. the size of issue of SR equity shares,
  - b. ratio of voting rights of SR equity shares vis-à-vis the ordinary shares,
  - c. rights as to differential dividends, if any
  - d. sunset provisions, which provide for a time frame for the validity of such SR equity shares,
  - e. matters in respect of which the SR equity shares would have the same voting right as that of the ordinary shares.
- The SR equity shares have been held for a period of atleast 6 months prior to the filing of the red herring prospectus;
- The SR equity shares shall have voting rights in the ratio of a minimum of 2:1 upto a maximum of 10:1 compared to ordinary shares and such ratio shall be in whole numbers only;
- The SR equity shares shall have the same face value as the ordinary shares;
- The issuer shall only have one class of SR equity shares;
- The SR equity shares shall be equivalent to ordinary equity shares in all respects, except for having superior voting rights.

### Example

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

ended March 31, 2014, March 31, 2015 and March 31, 2016. Further monetary assets constitute less than 50% of the net tangible assets in each of the three previous financial years:

(Rs. in lacs)

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

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

### Example

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

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



## GENERAL CONDITIONS

An issuer making an initial public offer shall ensure that:

- a) it has made an **application** to one or more **stock exchanges** to seek an in-principle approval for listing;
- b) it has entered into an **agreement with a depository** for dematerialisation of the specified securities;
- c) all its specified securities held by the **promoters** are in **dematerialised form** prior to filing of the offer document;
- d) all its existing partly paid-up equity shares have either been **fully paid-up** or have been forfeited;
- e) it has made **firm arrangements of finance through verifiable means towards seventy five percent** of the stated means of finance for a specific project proposed to be funded from the issue proceeds, excluding the amount to be raised through the proposed public issue or through existing identifiable internal accruals.

## ALTERNATIVE ENTRY/ELIGIBILITY NORMS FOR BOTH UNLISTED AS WELL AS LISTED COMPANY [REG. 26(2)]

An unlisted company or a listed company, not satisfying the aforesaid conditions, shall be eligible to make a public issue of shares, if the issue is made through book-building process, with at least 75% (seventy-five percent) of the net offer to the public being allotted to Qualified Institutional Buyers (QIBs).

Here, **Qualified Institutional Buyers (QIBs)** shall mean the following:

Qualified Institutional Buyer comprises of —

- (i) a mutual fund, venture capital fund, Alternative Investment Fund and foreign venture capital investor registered with SEBI;
- (ii) a foreign portfolio investor other than Category III foreign portfolio investor, registered with SEBI;

- (iii) a public financial institution as defined in section 4A of the Companies Act, 1956 [now Section 2(72) of the Companies Act, 2013] ;
- (iv) a scheduled commercial bank;
- (v) a multilateral and bilateral development financial institution;
- (vi) a state industrial development corporation;
- (vii) an insurance company registered with the Insurance Regulatory and Development Authority;
- (viii) a provident fund with minimum corpus of twenty five crore rupees;
- (ix) a pension fund with minimum corpus of twenty five crore rupees;
- (x) National Investment Fund set up by the Government of India;
- (xi) insurance funds set up and managed by army, navy or air force of the Union of India;
- (xii) insurance funds set up and managed by the Department of Posts, India;
- (xiii) systemically important non-banking financial companies.

### ENTITIES NOT ELIGIBLE TO MAKE AN IPO

An issuer shall *not* make an initial public offer:

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

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

## ISSUE OPENING DATE

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

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

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

## PERIOD OF SUBSCRIPTION

A public issue shall be kept open for at least three working days but not more than ten 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 red herring prospectus shall be extended for a minimum period of three working days;

Provided that the total bidding period shall not exceed ten working days.

The issuer may decide to close the bidding by qualified institutional buyers one day prior to the closure of the issue subject to the following conditions:

- Bidding shall be kept open for a minimum of three days for all categories of applicants; and
- Disclosures are made in the red herring prospectus regarding the issuer's decision to close the bidding by qualified institutional buyers one day prior to closure of issue.

## SECURITY DEPOSIT

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

## IPO GRADING

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

## ISSUE OF SECURITIES IN DEMATERIALIZED FORM

No company shall make public issue of shares, unless the company enters into an agreement with a depository for dematerialization of shares already issued or proposed to be issued to the public.

## PARTLY PAID-UP SHARES

No company shall make a public issue of equity shares, unless all the existing partly-paid up shares have been fully paid or forfeited.

## DRAFT OFFER DOCUMENT & OFFER DOCUMENT TO BE AVAILABLE TO PUBLIC

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

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

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

4) *The issuer and the lead manager(s) shall ensure that the offer documents are hosted on the websites and its contents are the same as the versions as filed with the Registrar of Companies, Board and the stock exchanges.*

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

### MINIMUM OFFER TO PUBLIC

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

#### Rule 19(2)(b):

*At least 10 per cent of each class or kind of securities issued by a company was offered to the public for subscription through advertisement in newspapers for a period not less than two days and that applications received in pursuance of such offer were allotted subject to the following conditions:*

(a) *minimum 20 lakh securities (excluding reservations, firm allotment and promoters' contribution) was offered to the public;*

(b) *the size of the offer to the public, i.e., the offer price multiplied by the number of securities offered to the public was minimum Rs. 100 crores; and*

- (c) the issue was made only through **book building method** with allocation of **60 percent** of the issue size to the **qualified institutional buyers** as specified by SEBI;

### AVAILABILITY OF ISSUE MATERIAL

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

### PROHIBITION ON PAYMENT OF INCENTIVES

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

### DIFFERENTIAL PRICING

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

1. **Retail individual investors or retail individual shareholders or employees** of the issuer may be offered specified securities at a price lower than the price at which net offer is made to other categories of applicants. However, such difference shall not be more than **10% of the price** at which specified securities are offered to other categories of applicants;
2. In case of a book built issue, the price of the specified securities offered to an anchor investor shall not be lower than the price offered to other applicants;
3. In case of a composite issue, the price of the specified securities offered in the public issue may be different from the price offered in rights issue and justification for such price difference shall be given in the offer document;

4. In Alternate Method of Book-Building, the price of the specified securities offered to the employees may be at a price lower than the floor price, provided that such difference shall not be more than 10% of the floor price.

### MINIMUM PROMOTERS' CONTRIBUTION IN CASE OF IPO

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

Minimum promoters contribution shall be as follows:

- a) the promoters shall contribute twenty percent either by way of equity shares including SR equity shares held, if any or by way of subscription to convertible securities. However, if the price of the equity shares allotted pursuant to conversion is not pre-determined and not disclosed in the offer document, the promoters shall contribute only by way of subscription to the convertible securities being issued in the public issue and shall undertake in writing to subscribe to the equity shares pursuant to conversion of such securities.
- b) in case of any issue of convertible securities which are convertible or exchangeable on different dates and if the promoters' contribution is by way of equity shares (conversion price being pre-determined), such contribution shall not be at a price lower than the weighted average price of the equity share capital arising out of conversion of such securities.
- c) in case of an initial public offer of convertible debt instruments without a prior public issue of equity shares, the promoters shall bring in a contribution of at least twenty percent of the project cost in the form of equity shares, subject to contributing at least twenty percent of the issue size from their own funds in the form of equity shares. However, if the project is to be implemented in stages, the promoters' contribution shall be with respect to total



equity participation till the respective stage vis-à-vis the debt raised or proposed to be raised through the public issue.

### PROMOTERS' CONTRIBUTION TO BE BROUGHT IN BEFORE PUBLIC ISSUE OPENS

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

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

- (a) assuming full proposed conversion of convertible securities into equity shares;
- (b) assuming exercise of all vested options, where any employee stock options are outstanding at the time of initial public offer.

### SECURITIES INELIGIBLE FOR MINIMUM PROMOTERS' CONTRIBUTION

- (a) Specified securities acquired during the preceding three years, if these are **acquired for consideration other than cash** and revaluation of assets or capitalisation of intangible assets is involved in such transaction; or resulting from a bonus issue by utilisation of revaluation reserves /unrealised profits of the issuer/from bonus issue against equity shares which are ineligible for minimum promoters' contribution.
- (b) specified securities acquired by promoters and AIFs/FVCIs/scheduled commercial banks/ PFIs/ insurance companies during the preceding one year at a price lower than the price at which specified securities are being offered to public in the initial public offer.

- (c) specified securities allotted to promoters and AIFs during the preceding one year at a price less than the issue price, against funds brought in by them during that period, in case of an issuer formed by conversion of one or more partnership firms/LLPs, where the partners of the erstwhile partnership firms/LLPs are the promoters of the issuer and there is no change in the management.
- (d) specified securities pledged with any creditor.

### MINIMUM PROMOTERS' CONTRIBUTION IN CASE OF FPO

The promoters shall contribute in the public issue as follows:

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

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

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

- a) the promoters shall contribute twenty percent, as the case may be, either by way of equity shares or by way of subscription to the convertible securities. However, if the price of the equity shares allotted pursuant to conversion is not pre-determined and not disclosed in the offer document, the promoters shall contribute only by way of subscription to the convertible securities being issued in the public issue and shall undertake in writing to subscribe to the equity shares pursuant to conversion of such securities.
- b) in case of any issue of convertible securities which are convertible or exchangeable on different dates and if the promoters' contribution is by way of equity shares (conversion price being pre-determined), such contribution shall not be at a price lower than the weighted average price of the equity share capital arising out of conversion of such securities.

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

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

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

### **"WEIGHTED AVERAGE PRICE":**

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

### **SECURITIES INELIGIBLE FOR MINIMUM PROMOTERS' CONTRIBUTION**

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

- (a) specified securities **acquired during the preceding three years**, if these are:
  - i) **acquired for consideration other than cash and revaluation of assets or capitalisation of intangible assets** is involved in such transaction; or

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

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

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

### IN CASE OF FPO

#### Exemption from Requirement of Promoters' Contribution

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

(a) An issuer which does not have any identifiable promoter

(b) In case of a further public offer, where the equity shares of the issuer are frequently traded on a recognised stock exchange for a period of at least three years and the issuer has a track record of dividend payment for at least three immediately preceding years

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

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

### LOCK IN PERIOD UNDER VARIOUS CIRCUMSTANCES

The promoter's minimum contribution (20%) shall be locked - in for a period of:

- (i) 3 years from the date of commencement of commercial production; or
- (ii) 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:

- (i) 1 year from the date of commencement of commercial production; or
- (ii) The date of allotment in the public issue, whichever is later.

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

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

### LOCK IN OF SPECIFIED SECURITIES HELD BY PERSONS OTHER THAN PROMOTERS

The entire pre-issue capital held by persons other than the promoters shall be locked-in for a period of one year from the date of allotment in the initial public offer:

The provisions of this regulation shall not apply, in case of:

- (i) Equity shares allotted to employees under employee stock option prior to initial public offer, if the issuer has made full disclosures with respect to such option; and
- (ii) Equity shares held by an employee stock option trust or transferred to the employees by an employee stock option trust pursuant to exercise of options by the employees, in accordance with the employee stock option plan or employee stock purchase scheme.

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

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

### INSCRIPTION OR RECORDING OF NON-TRANSFERABILITY

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

### TRANSFERABILITY OF LOCKED-IN SPECIFIED SECURITIES

Subject to the provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the specified securities except SR equity shares held by the promoters and locked-in (promoters locked in shares), may be transferred to another promoter or any person of the promoter group or a new promoter.

The specified securities held by persons other than the promoters and locked-in as per regulation 17 (lock in of securities held by persons other than promoters), may be transferred to any other person holding the specified securities which are locked-in along with the securities proposed to be transferred.

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

## PLEDGE OF LOCKED IN SHARES

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

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

## RESERVATION

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

- (1) The issuer may make reservation on a competitive basis out of the issue size excluding promoters' contribution and net offer to public in favour of the following categories of persons:
  - Employees;
  - Shareholders (other than promoters and promoter group) of listed subsidiaries or listed promoter companies.

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



- (2) In case of an FPO, other than in a composite issue, the issuer may make a reservation on a competitive basis out of the issue size excluding promoters' contribution to the existing retail individual shareholders of the issuer.
- (3) The reservation on competitive basis shall be subject to following conditions:
- the aggregate of reservations for **employees** shall not exceed **five per cent** of the post issue capital of the issuer and the value of allotment to any employee shall not exceed two lakhs rupees. However, in the event of under-subscription in the employee reservation portion, the unsubscribed portion may be allotted on proportionate basis, for a value in excess of two lakh rupees, subject to the total allotment to an employee not exceeding five lakh rupees.
  - reservation for **shareholders** shall not exceed **ten per cent** of the issue size;
  - no further application for subscription in the net offer can be made by persons (except an employee and retail individual shareholder of the listed issuer and retail individual shareholders of listed subsidiaries of listed promoter companies) in favour of whom reservation on a competitive basis is made;
  - any unsubscribed portion in any reserved category may be added to any other reserved category and the unsubscribed portion, if any, after such inter-se adjustments among the reserved categories shall be added to the net offer category;
  - in case of under-subscription in the net offer category, spill-over to the extent of under-subscription shall be permitted from the reserved category to the net public offer category;
- (4) An applicant in any reserved category may make an application for any member of specified securities, but not exceeding the reserved portion for that category.

## UNDERWRITING

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 or the public do not subscribe to the securities offered to them.

If the issuer makes a public issue through a book building process,

- a) the issue shall be **underwritten by lead managers and syndicate members**. However, at least 75% of the net offer to the public is proposed to be compulsorily allotted to the **QIBs**, and **such portion cannot be underwritten**.

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

### MINIMUM SUBSCRIPTION

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

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

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

## MONITORING AGENCY

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

The monitoring agency shall submit its report to the issuer in the format specified in the ICDR Regulations, 2018 on a quarterly basis, till at least ninety five per cent of the proceeds of the issue excluding the proceeds raised for general corporate purposes, have been utilized.

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

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

## APPLICATION AND MINIMUM APPLICATION VALUE

The issuer shall stipulate in the offer document the minimum application size in terms of number of specified securities which shall fall within the range of minimum application value of Rs 10,000 to Rs 15,000.

The issuer shall invite applications in multiples of the minimum application value. The minimum sum payable on application per specified security shall be at least twenty five percent of the issue price.

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

## ALLOTMENT PROCEDURE & BASIS OF ALLOTMENT

1. There must be **minimum 1000 Prospective Allottees**.
2. The issuer shall not make any allotment in excess of the specified securities offered through the offer document except in case of oversubscription for the purpose of rounding off to make allotment, in consultation with the designated stock exchange.
3. The allotment of specified securities to applicants other than to the retail individual investors and anchor investors shall be on a **proportionate basis within the respective investor categories** and the number of securities allotted shall be rounded off to the nearest integer, subject to minimum allotment being equal to the minimum application size as determined and disclosed in the offer document. Provided that the value of specified securities allotted to any person, except in case of **employees shall not exceed two lakhs rupees for retail investors or up to five lakhs rupees for eligible employees**.

### Example A

- (1) Total number of specified securities on offer @ Rs. 600 per share: 1 crore specified securities.
- (2) Specified securities on offer for retail individual investors' category: 35 lakh specified securities.
- (3) The issue is over-all subscribed by 2.5 times, whereas the retail individual investors' category is oversubscribed 4 times.
- (4) The issuer has fixed the minimum application/bid size as 20 specified securities (falling within the range of ten thousand to fifteen thousand rupees) and in multiples thereof.
- (5) A total of one lakh retail individual investors have applied in the issue, in varying number of bid lots ie between 1 - 16 bid lots, based on the maximum application size of up to two lakh rupees.
- (6) Out of the one lakh investors, there are five retail individual investors A, B, C, D and E who have applied as follows:  
A has applied for 320 specified securities. B has applied for 220 specified securities. C has applied for 120 specified securities. D has applied for 60 specified securities and E has applied for 20 specified securities.

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

Sr. No.	Name of Investor	Total no of specified securities	Total number of specified securities eligible to be allotted
1.	A	320	20 specified securities (i.e. the minimum bid lot) + 38 specified securities $\left[ \frac{\{35,00,000 - (1,00,000 * 20)\}}{\{140,00,000 - (1,00,000 * 20)\}} \right] * 300 \text{ (i.e. } 320-20)$
2.	B	220	20 specified securities (i.e. the minimum bid lot) + 25 specified securities $\left[ \frac{\{35,00,000 - (1,00,000 * 20)\}}{\{140,00,000 - (1,00,000 * 20)\}} \right] * 200 \text{ (i.e. } 220-20)$
3.	C	120	20 specified securities (i.e. the minimum bid lot) + 13 specified securities $\left[ \frac{\{35,00,000 - (1,00,000 * 20)\}}{\{140,00,000 - (1,00,000 * 20)\}} \right] * 100$ (i.e. 120-20)
4.	D	60	20 specified securities (i.e. the minimum bid lot) + 5 specified securities $\left[ \frac{\{35,00,000 - (1,00,000 * 20)\}}{\{140,00,000 - (1,00,000 * 20)\}} \right] * 40$ (i.e. 60-20)
5.	E	20	20 specified securities (i.e. the minimum bid lot)

**Example B**

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

The details of the allotment shall be as follows:

No of lots	No of shares at each lot	No. of retail investors applying at each lot	Total no of shares applied for at each lot	No of investors who shall receive minimum bid-lot (to be selected by a lottery)
A	B	C	$D = (B \times C)$	E
1.	20	10,000	2,00,000	$8,750 = (1,75,000 / 2,00,000) \times 10,000$
2.	40	10,000	4,00,000	8,750



3.	60	10,000	6,00,000	8,750
4.	80	10,000	8,00,000	8,750
5.	100	20,000	20,00,000	17,500
6.	120	20,000	24,00,000	17,500
7.	140	15,000	21,00,000	13,125
8.	160	20,000	32,00,000	17,500
9.	180	10,000	18,00,000	8,750
10.	200	15,000	30,00,000	13,125
11.	220	10,000	22,00,000	8,750
12.	240	10,000	24,00,000	8,750
13.	260	10,000	26,00,000	8,750
14.	280	5,000	14,00,000	4,375
15.	300	15,000	45,00,000	13,125
16.	320	10,000	32,00,000	8,750
Total		2,00,000	328,00,000	1,75,000

### ALLOTMENT, REFUND & PAYMENT OF INTEREST

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

## POST-ISSUE RESPONSIBILITIES OF THE LEAD MANAGER

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

## RELEASE OF SUBSCRIPTION MONEY

- The lead manager(s) shall confirm to the bankers to the issue by way of copies of listing and trading approvals that all formalities in connection with the issue have been completed and that the banker is free to release the money to the issuer or release the money for

refund in case of failure of the issue.

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

### REPORTING OF TRANSACTIONS OF THE PROMOTERS AND PROMOTER GROUP

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

### POST-ISSUE REPORTS

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

### TRADING PERMISSION

The company shall make an application to one or more recognized stock exchanges for listing of specified securities on such stock exchanges and has chosen one of them as the designated stock exchange. However, in case of an initial public offer, the issuer shall make

an application for listing of the specified securities in *at least one recognized stock exchange having nationwide trading terminals.*

### RESTRICTION OF FURTHER ISSUE

The company shall not make any further issue of capital in any manner whether by way of issue of bonus shares, rights issue, public issue, etc. during the period *commencing from the date of filing the draft prospectus with SEBI till the securities have been listed or application moneys refunded on account of non-listing or under-subscription.*

However, a company can make further issue of shares before listing of shares issued earlier, provided full disclosure is made regarding total capital to be raised in the offer document.

### DUE DILIGENCE

- Due Diligence includes all the activities that are connected with evaluating a proposal. In relation to public issue of securities, due diligence is carried out by a *merchant banker.*
- The Lead Merchant Banker is responsible for *verification of the contents of a prospectus or the letter of offer in respect of an issue of securities and reasonableness*
- He submits to SEBI *at least 2 weeks prior to the opening of issue for subscription, a due diligence certificate in the prescribed form.*
- In process of due diligence, the Merchant Banker examines various documents including those relating to litigation like commercial disputes, patent disputes, disputes with collaborators etc. and also discuss with the company its directors and other officers and other agencies on matters including objects of the issue, projected profitability, price justification etc. before giving the Due Diligence Certificate.

## PRE-ISSUE ADVERTISEMENT

The issuer company shall soon after receiving final observations, if any, on the offer document from SEBI, make an advertisement in an **English** National daily with wide circulation, one **Hindi** National newspaper and a **regional language** newspaper with wide circulation at the place where the registered office of the issuer is situated. In case of a fast track issue, the advertisement shall be made before the issue opening date.

## FAST TRACK ISSUES

An Issuer Company need not file the draft offer document with SEBI and obtain observations from SEBI, or make a security Deposit with the Stock Exchanges if it satisfies the following conditions:

- (a) the equity shares of the issuer have been **listed** on any stock exchange for a period of at least **three years immediately preceding the reference date**;
- (b) **entire shareholding of the promoter group of the issuer is held in dematerialised form on the reference date**;
- (c) the **average market capitalisation of public shareholding of the issuer is at least one thousand crore rupees in case of public issue and two hundred and fifty crore rupees in case of rights issue**.
- (d) the **annualised trading turnover of the equity shares of the issuer during six calendar months immediately preceding the month of the reference date has been at least 2% of the weighted average number of equity shares listed during such six months' period**. However if the public shareholding is less than fifteen per cent of its issued equity capital, the annualised trading turnover of its equity shares has been at least two per cent of the weighted average number of equity shares available as free float during such six months' period;
- (e) **annualized delivery-based trading turnover of the equity shares during six calendar months immediately preceding the month of the reference date has been at least ten per cent of the annualised trading turnover of the equity shares during such six months' period**;
- (f) The issuer has been in compliance with the **equity listing agreement or SEBI Listing**

Regulations, 2015, as applicable, for a period of at least three years immediately preceding the reference date. Further, imposition of monetary fines by stock exchange on the issuer shall not be a ground for ineligibility for undertaking issuances under these regulations.

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

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

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

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

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

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

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

## RIGHTS ISSUE OF SHARES

Earlier, the provisions of rights issue were applicable to those cases, where the issue size was more than 50 lakhs. Now as per SEBI (ICDR) Regulations, 2018, the said limits have been revised to Rs 10 crores.

## EXIT OPPORTUNITY TO DISSENTING SHAREHOLDERS

“Dissenting Shareholders” mean those shareholders who have voted against the resolution for change in Objects or variation in terms of a contract, referred to in the offer document of the issuer.

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

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

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

## EXIT OFFER PRICE

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

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



- c) the volume-weighted average market price of such shares for a period of sixty trading days immediately preceding the relevant date as traded on the recognised stock exchange where the maximum volume of trading in the shares of the issuer are recorded during such period, provided such shares are frequently traded;
- d) where the shares are not frequently traded, the price determined by the promoters or shareholders having control and the merchant banker taking into account valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such issuers

### MANNER OF PROVIDING EXIT TO DISSENTING SHAREHOLDERS

- The notice proposing the passing of special resolution for changing the objects of the issue and varying the terms of contract, referred to in the prospectus shall also contain information about the exit offer to the dissenting shareholders.
- In addition to the disclosures required under the Companies Act, 2013, a statement to the effect that the promoters or the shareholders having control shall provide an exit opportunity to the dissenting shareholders shall also be included in the explanatory statement.
- After passing of the special resolution, the issuer shall submit the voting results to the recognised stock exchange(s).
- The issuer shall also submit the list of dissenting shareholders, as certified by its compliance officer, to the recognised stock exchange(s).
- The promoters or shareholders in control, shall appoint a merchant banker registered with SEBI and finalize the exit offer price.
- The issuer shall intimate the recognised stock exchange(s) about the exit offer to dissenting shareholders and the price at which such offer is being given.
- The recognised stock exchange(s) shall immediately on receipt of such intimation disseminate the same to public within one working day.
- To ensure security for performance of their obligations, the promoters or shareholders having control shall create an escrow account which may be interest bearing and deposit the aggregate consideration in the account at least two working days prior to opening of the tendering period.

- The tendering period shall start not later than seven working days from the passing of the special resolution and shall remain open for ten working days.
- The dissenting shareholders who have tendered their shares in acceptance of the exit offer shall have the option to withdraw such acceptance till the date of closure of the tendering period.
- The promoters or shareholders having control shall facilitate tendering of shares by the shareholders and settlement of the same through the recognised stock exchange mechanism as specified by SEBI for the purpose of takeover, buy-back and delisting.
- The promoters or shareholders having control shall, within a period of ten working days from the last date of the tendering period, make payment of consideration to the dissenting shareholders who have accepted the exit offer.
- Within a period of two working days from the payment of consideration, the issuer shall furnish to the recognised stock exchange(s), disclosures giving details of aggregate number of shares tendered, accepted, payment of consideration and the post-offer shareholding pattern of the issuer and a report by the merchant banker that the payment has been duly made to all the dissenting shareholders whose shares have been accepted in the exit offer.

### ISSUE OF WARRANTS

- An issuer shall be eligible to issue warrants in an initial public offer subject to the following:
- a) the tenure of such warrants shall not exceed eighteen months from the date of their allotment in the initial public offer;
  - b) a specified security may have one or more warrants attached to it;
  - c) the price or formula for determination of exercise price of the warrants shall be determined upfront and disclosed in the offer document and at least 25 per cent of the consideration amount based on the exercise price shall also be received upfront;
- However, in case the exercise price of warrants is based on a formula, 25 per cent consideration amount based on the cap price of the price band determined for the linked equity shares or convertible securities shall be received upfront.
- d) in case the warrant holder does not exercise the option to take equity shares against any of the warrants held by the warrant holder, within three months from the date of payment of

consideration, such consideration made in respect of such warrants shall be forfeited by the issuer.

## ROLE OF A COMPANY SECRETARY

### For listing of an IPO

A certificate from a Practising Company Secretary stating that:

- Allotment has been made as per the basis of allotment approved by the Designated Stock Exchange.
- The share certificates corresponding to equity Securities under lock in have been enfaced with non-transferability condition.
- In case of Employee reservation in the issue, Allotment of shares from the employees' quota has been made to permanent/regular employees of the company and of the promoter companies.

For In-principle approval for issue of securities issued on a preferential basis:

- A Certificate from a Practising Company Secretary confirming that:
  - a) None of the proposed allottee(s) has/ have sold any equity shares of the company during the six months period preceding the relevant date.
  - b) The pre-preferential shareholding of each of proposed allottee(s) has been locked in. Further, there is no sale/ pledge of pre-preferential holding from Relevant Date till date of lock-in.
  - c) None of the proposed allottees belonging to promoter(s) or the promoter group is ineligible for allotment.
  - d) The company will comply with all legal and statutory formalities and no statutory authority has restrained the company from issuing these proposed securities.
  - e) A certificate from a practising Company Secretary confirming the relevant date for the purpose of said minimum issue price for the proposed preferential issue.

For granting listing approvals, for the equity shares issued on a preferential basis:

A Certificate from a practising Company Secretary with respect to the proposed preferential allotment certifying that:

- a) The company has complied with all the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, Companies Act, 2013.
- b) Allotment of shares has been made only to such persons to whom offer / invitation was made.
- c) No statutory/regulatory authorities has restrained the company for issuing equity shares to the company on preferential basis.
- d) In the case of convertible instruments, the allottees have exercised the option to convert the instrument within a period of 18 months from the date of allotment of the instrument.
- e) The pre-preferential shareholding of the allottees are under lock for the period starting from relevant date up to a period immediately prior to allotment.
- f) At the time of allotment the pre-preferential shareholding (if any) of all the allottees were held in dematerialized form only.
- g) No allotment has been made to an allottee who did not have PAN at the time of allotment, unless the entity is exempt from PAN.
- h) None of the allottee has breached investment limit prescribed by any regulator.

## CHAPTER 5 - SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015



### SEBI (LISTING OBLIGATIONS AND DISCLOSURES REQUIREMENTS) REGULATIONS, 2015

Unless otherwise provided, these regulations shall apply to the listed entity which has listed any of the following designated securities on recognised stock exchange(s):

- a) specified securities listed on main board or SME Exchange or institutional trading platform;
- b) non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares;
- c) Indian depository receipts;
- d) securitised debt instruments;
- e) units issued by mutual funds;
- f) any other securities as may be specified by SEBI.

Company desirous of listing its securities shall enter into a listing agreement with the stock exchange. Existing listed entities are required to execute a fresh listing agreement within 6 months from date of notification of SEBI Listing Regulations.

According to Section 2 (52) of the Companies Act, 2013, listed company means a company which has any of its securities listed on any recognised stock exchange. This means that if a private limited company has its debt securities listed on any recognised stock exchange, then such company is under the ambit of listed company category for complying with the Companies Act, 2013 and rules and regulation made thereunder.

According to SEBI (LODR) Regulations, 2015 "listed entity" means an entity which has listed, on a recognised stock exchange(s), the designated securities issued by it or designated securities issued under schemes managed by it, in accordance with the listing agreement entered into between the entity and the recognised stock exchange(s).

## REGULATIONS

### One Time Compliances

Regulations	Particulars
6(1)	A listed entity shall appoint a CS as the Compliance Officer
7(1)	The listed entity shall appoint a share transfer agent or the listed entity registered with SEBI as Category II share transfer agent in case of share transfer facility in house.
9	The listed entity shall have a policy for preservation of documents, approved by its Board of Directors.



### Quarterly Compliances

Regulation	Particulars	Time Limit
13(3)	The listed entity shall file with the recognised stock exchange, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter	within 21 days from end of quarter
27	The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by SEBI from time to time to the recognized stock exchanges.	within 15 days from close of the quarter
31(1))(b)	The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by SEBI from time to time	within 21 days from the end of each quarter
32(1)	The listed entity shall submit to the stock exchange a statement of deviation or variation in the utilization of issue proceeds as stated on the objects clause of the offer document and the actual utilization of those funds.	-
33(3)	The listed entity shall submit quarterly and year-to-date financial results to the stock exchange	within forty-five days of end of each quarter, other than the last quarter.



### Half Yearly Compliances

Regulation	Particulars	Time Limit
7(3)	The listed entity shall submit a compliance certificate to the exchange, duly signed by both the compliance officer of the listed entity and the authorized representative of the share transfer agent	Within one month of end of each half of the financial year.
23(9)	The listed entity shall submit to the stock exchange, disclosures of related party on consolidated basis.	within thirty days from the date of publication of its standalone and consolidated financial results for the half year
33(3)	The listed entity shall also submit as part of its standalone or consolidated financial results for the half year a statement of assets and liabilities and a statement of cash flows by way of a note.	Once in six months
40(9)	The listed entity shall ensure that the share transfer agent and/or the in-house share transfer facility, as the case may be, produces a certificate from a practicing company secretary	within one month of the end of each half of the financial year

### Yearly Compliances

Regulation	Particulars	Time Limit
14	The listed entity shall pay all such fees or charges, as applicable, to the recognised stock exchange(s), in the manner specified by SEBI or the recognised stock Exchanges.	within 30 days of the end of financial year
33(3)	<p>The listed entity shall submit annual audited standalone financial results with audit report and Statement on Impact of Audit Qualifications applicable only for audit report with modified opinion to the stock exchange.</p> <p>If listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results, also submit annual audited consolidated financial results along with the audit report and Statement on Impact of Audit Qualifications applicable only for audit report with modified opinion.</p> <p>In case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange while publishing the annual audited financial results.</p> <p>The listed entity shall also submit the audited or limited reviewed financial results in respect of the last quarter along-with the results for the entire financial year)</p>	within 60 days from the end of the financial year

34	<p>The listed entity shall submit the annual report along with the Notice of the Annual General Meeting to the stock exchange.</p> <p>Amongst others, the annual report shall also consist the following: audited financial statements i.e. balance sheets, profit and loss accounts etc and Statement on Impact of Audit Qualifications as stipulated in regulation 33(3)(d), if applicable. Business responsibility report by the top one thousand listed entities based on market capitalization (calculated as on March 31 of every financial year).</p>	Not later than the day of commencement of dispatch to its shareholders.
34(1)(b)	In case any changes to the annual report, the revised copy along with the details of and explanation for the changes shall be sent	within 48 hours after the annual general meeting
36	The listed entity shall send annual report to the holders of securities	Twenty one days before AGM (in soft or hard copy)

### Event Based Compliances

Regulation	Particulars	Due date
7(5)	The listed entity shall intimate the appointment of Share Transfer Agent, to the stock exchange(s)	Within 7 days of Agreement with RTA
28(1)	The listed entity shall obtain In-principle approval from recognised stock exchange	Prior to issuance of Security
29(1)(a) read along with proviso to 29 (2)	Prior Intimations of Board Meeting for financial Result viz. quarterly, half yearly or annual, to the stock exchange(s)	At least 5 clear days in advance (excluding the date of the intimation and the date of the meeting)
29(1) (b), (c),(d), (e) & (f) read along with 29 (2)	Prior Intimations of Board Meeting for Buyback, Voluntary delisting, Fund raising by way of FPO, Rights Issue, ADR, GDR, QIP, FCCB, Preferential issue, debt issue or any other method, Declaration/recommendation of dividend, issue of convertible securities carrying a right to subscribe to equity shares or the passing over of dividend, proposal for declaration of Bonus securities etc., to the stock exchange(s)	At least 2 working days in advance
29(3)	Prior Intimations of Board Meeting for alteration in nature of Securities, alteration in the date on which interest on debentures/bonds/redemption amount, etc. shall be payable to the stock exchange(s)	At least 11 clear working days in Advance
30(6)	Disclosure of Price Sensitive Information to the stock exchange(s)	Not later than twenty four hours as per Part A of Schedule III

31A (8)	The listed entity shall disclose to the stock exchange the deemed material events i.e., receipt of request for re-classification by the listed entity from the promoter(s) seeking re-classification; Minutes of the board meeting considering such request which would include the views of the board on the request; etc.	within 24 hours from the occurrence of the event
31(1)(a)	The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities prior to listing of securities	One day prior to listing of Securities
31(1)(c)	The listed entity shall submit to the stock exchange(s) statement showing holding of securities and shareholding pattern separately for each class of securities in case of Capital Restructuring	Within 10 days of any change in capital Structure exceeding 2% of the total paid-up share capital.
37(2)	The listed entity shall file draft Scheme of Arrangement to the stock exchange(s)	Prior approval before filing with Court
39(2)	The listed entity shall issue certificates or receipts or advices, as applicable, of subdivision, split, consolidation, renewal, exchanges, endorsements, issuance of duplicates thereof or issuance of new certificates or receipts or advices, as applicable, in cases of loss or old decrepit or worn out certificates or receipts or advices, as applicable	within thirty days from the date of such lodgement
39(3)	The listed entity shall submit information with respect to loss of share certificates and issue of the duplicate certificates to the stock exchange	Within two days of getting information.

40(1) Proviso	Transfer or transmission or transposition of securities	Requests for effecting transfer of securities shall not be processed unless the securities are held in the dematerialized form with a depository
40(3)	The listed entity shall register transfers of its securities in the name of the transferee(s) and of such receipt of request for issue certificates or receipts or advices, as applicable, of transfers; or issue any valid objection or intimation to the transferee or transferor, as the case may be,	within fifteen days from the date of such receipt of request for transfer.
42(2)	The listed entity shall intimate the record date or date of closure of transfer books to all the stock exchange(s)	
42(2)	In case of Right Issue	At least three working days in advance (excluding the date of intimation and record date)
42(2)	Other than Right Issue	At least 7 clear working days in advance (excluding the date of intimation and record date)
43A	Dividend Distribution Policy by the top five hundred listed entities based on market capitalization (calculated as on March 31 of every financial year)	To formulate a dividend distribution policy which shall be disclosed in their annual reports and on their websites
42(2)	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

42(3)	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
44(3)	The listed entity shall submit to the stock exchange details regarding voting results by its Shareholders	Within 48 Hours of conclusion of its General Meeting
45(3)	The listed entity shall allowed to change its name	Prior approval from Stock Exchange(s)
46	The listed entity shall maintain a functional website containing the basic information about the listed entity and update any change in the content of its website.	within two working days from the date of change in content

Note: as per Regulation 36(4), the information and documents made by the listed entity-

(a) to the stock exchanges shall be in XBRL; and

(b) to the stock exchanges and on its website, shall be in a format that allows users to find relevant information easily through a searching tool.

#### IN-PRINCIPLE APPROVAL OF RECOGNIZED STOCK EXCHANGE(S) [REGULATION 28]

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

- (a) From all the stock exchange(s);
- (b) From all the stock exchange(s) in which the securities of the issuer are proposed to be listed;
- (c) From all recognised stock exchange(s) having nationwide trading terminals.

The requirement of obtaining in-principle approval from recognised stock exchange(s), shall not be applicable for securities issued pursuant to the scheme of arrangement for which the listed entity has already obtained No-objection Letter from recognised stock exchange(s) in accordance with regulation 37.



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

The listed entities which has listed its specified securities on any recognised stock exchange(s) either on the main board or on SME Exchange or on institutional trading platform has to comply with certain corporate governance provisions which are specified in Regulations 17 to 27 & 34(3) of the Listing Regulations.

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

22.	Disclosure of different Accounting standard	34 (3)
23.	Disclosure on Remuneration	34 (3)

### Exceptions

Regulation 15(2) of the Listing Regulations, the compliance with the corporate governance provisions as specified in Regulations 17 to 27 and clauses (b) to (i) of Regulation 46(2) and para C, D and E of Schedule V shall not apply, in respect of following -

1. The listed entity having paid up equity share capital not exceeding rupees 10 crore and net worth not exceeding rupees 25 crore, as on the last day of the previous financial year.  
If the provisions of the regulations become applicable to a listed entity at a later date, such listed entity shall comply with the requirements those regulations within six months from the date on which the provisions became applicable to the listed entity.
2. The listed entity which has listed its specified securities on the SME Exchange. For other listed entities which are not companies, but body corporate or are governed by other statutes, the provisions shall apply only to the extent that it does not violate their respective statutes and guidelines.

### BOARD COMMITTEES UNDER LODR REGULATIONS

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

### VIGIL MECHANISM

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

- The vigil mechanism shall also provide for direct access to the chairperson of the audit committee in appropriate or exceptional cases.

## RELATED PARTY TRANSACTIONS

### Under Listing Regulations, 2015

Regulation 2(1) (zb) defines “related party” means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards.

### Under Companies Act, 2013

According to section 2 (76) “related party”, with reference to a company, means —

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager or his relative is a member or director;
- (v) a public company in which a director and manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act;
- (viii) Any body corporate which is -
  - a) a holding, subsidiary or an associate company of such company;
  - b) a subsidiary of a holding company to which it is also a subsidiary; or
  - c) an investing company or the venturer of the company;”
- (ix) such other person as may be prescribed.

### Policy on materiality of related party transactions

The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions.

### When will a transaction with a related party be material?

A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

### Approval of Audit Committee

All related party transactions shall require prior approval of the audit committee

**Omnibus Approval:** Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity subject to the following conditions-

- (a) the audit committee shall lay down the criteria for granting the omnibus approval and such approval shall be applicable in respect of transactions which are repetitive in nature;
- (b) the audit committee shall satisfy itself regarding the need for such omnibus approval and that such approval is in the interest of the listed entity;
- (c) the omnibus approval shall specify as much details as possible. However, where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may grant omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.
- (d) the audit committee shall review, at least on a quarterly basis, the details of related party transactions entered into by the listed entity pursuant to each of the omnibus approvals given.
- (e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year.

### Approval of the shareholders

All material related party transactions shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party to the particular transaction or not.

### Exceptions

The approval of Audit committee and shareholders shall not be required in the following cases:

- (a) transactions entered into between two government companies;
- (b) transactions entered into between a holding company and its wholly owned subsidiary.

### ROLE OF COMPANY SECRETARY

The compliance officer of the listed entity shall be responsible for –

- ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.
- co-ordination with and reporting to SEBI, recognised stock exchange(s) and depositories with respect to compliance with rules and regulations.
- ensuring that the correct procedures have been followed that would result in the correctness, authenticity of the information, statements and reports filed by the listed entity.
- monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors.

### REGULATION 31A OF SEBI (LODR) REGULATIONS, 2015 – RECLASSIFICATION OF PROMOTER & PROMOTER GROUP SHAREHOLDERS

1. Promoter shall apply to Company for reclassification along with the supporting documents, if any.
2. Intimation to Exchange about receipt of such request from the promoter has to be made by the Company within 24 hours of receipt of such application.
3. The Board of Directors of the listed entity shall analyse the request and place the same before the shareholders in a general meeting for approval along with their views. There shall be a time gap of at least three months but not exceeding six months between the date of board meeting and the shareholders meeting considering the request for reclassification.
4. Outcome of board meeting shall be submitted to the Exchange within 24 hours of the conclusion of board meeting in which resolution regarding reclassification is approved.

5. The request of the promoter(s) seeking re-classification is required to be approved in the general meeting by an **ordinary resolution** in which the promoter(s) seeking reclassification and persons related to the promoter(s) seeking re-classification shall not vote to approve such re-classification request. The Outcome of the General Meeting shall be submitted to the **Exchange** as required under regulations applicable to the General Meetings.
6. After obtaining shareholders' approval in General Meeting, Company will submit the **application for reclassification within 30 days** from the date of approval by shareholders in the General Meeting, to the Stock Exchange.
7. Additionally, disclosure of the fact that such application has been filed with the Exchanges shall be submitted to the Exchange as intimation of material event within 24 hours of the filing of such application.
8. **Exchange shall process the application** subject to the application being complete in all respects and compliant with all applicable regulations.
9. In case of **incomplete applications**, company shall be provided opportunity to rectify the deficiencies. If the deficiencies are not rectified within 30 days of intimation of the same to the Company, the application shall be **liable to be rejected** and the processing fee paid by the company will be forfeited.
10. **Letter of acceptance shall be issued to the company by the Exchange** to effect the reclassification in the shareholding pattern subject to compliance with applicable SEBI regulations.
11. After Exchange approval / rejection of the reclassification application, same is also **required to be disclosed as material event** within 24 hours of communication of decision of the Exchange.

## OBLIGATIONS OF LISTED ENTITY WHICH HAS LISTED ITS SECURITY RECEIPTS

### Concept

### INTIMATIONS & DISCLOSURES OF EVENTS OR INFORMATION TO STOCK EXCHANGE

- (1) The listed entity shall first disclose to stock exchange(s) of all events or information, as soon as reasonably possible but not later than twenty four hours from occurrence of the event or information. In case the disclosure is made after twenty four hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanation for the delay.
- (2) The listed entity with respect to disclosures referred to in this regulation, shall provide updates related to such disclosures on a regular basis, till such time the event is resolved/closed, with relevant explanations.
- (3) The listed entity shall provide specific and adequate reply to all queries raised by stock exchange(s) with respect to any events or information.
- (4) The listed entity, suo moto, may confirm or deny any reported event or information to stock exchange(s).
- (5) The listed entity shall disclose on its website or on the website of the sponsor all such events or information which has been disclosed to stock exchange(s) under this regulation, and such disclosures shall be hosted on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.



## DISCLOSURE OF EVENTS OR INFORMATION TO STOCK EXCHANGES

The following events/information shall be disclosed by the listed entity without any application of guidelines of materiality as soon as reasonably possible but not later than twenty four hours from occurrence of event or information:

- periodic Net Asset Value;
- periodic rating obtained from credit rating agency or any revision in the rating or any expected revision in rating;
- any proposal to change or change of credit rating agency or Valuer;
- any proposal for acquisition of assets including terms of acquisition;
- any proposal to change or any change in terms of security receipts including rights or privileges or nature or form etc.;
- any breach of covenant(s) under the terms of security receipts;
- any change in the general character or nature of business/activities, disruption of operation due to natural calamity etc. of the listed entity;
- any change in value of cash-flows as disclosed if any;
- any delay or expected delay in cash flows from the due date or pre-agreed date if any;
- any receipt of cash flow or expected cash flow along with quantum so received;
- any change in percentage holding of non-performing loans across other banks;

## RATING, VALUATION & NAV DISCLOSURE

- (1) An issuer whose security receipts are listed on a stock exchange shall ensure that:
  - (i) the listed security receipts are valued at the end of each quarter i.e. as on March 31, June 30, September 30 and December 31 of every year;
  - (ii) valuation is conducted by an independent valuer; and
  - (iii) the net asset value is calculated on the basis of such independent valuation and the same is declared by the asset reconstruction company within fifteen days of the end of the quarter.
- (2) The issuer shall also comply with the extant Reserve Bank of India requirement of obtaining credit rating of security receipts at half yearly interval and declaration of

the net asset value thereafter and/or any other requirement as prescribed by the Reserve Bank of India from time to time. In those two quarters in a year, where both external valuation and credit rating are required, issuer shall disclose lower of the two calculated Net Asset Value.

### TERMS OF SECURITY RECEIPTS

- (1) Any security receipt issued *would be transferable only in favour of qualified buyers* in terms of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- (2) Unless the terms of issue provide otherwise, the listed entity shall not select any of its listed security receipts for payments otherwise than on pro rata basis or by lot and shall promptly submit to the stock exchange(s) the details thereof.

### RECORD DATE

- (1) The listed entity shall fix a record date for payment to holders of security receipts or for such other purposes as specified by the stock exchange(s).
- (2) The listed entity shall give notice in advance of at least seven working days (excluding the date of intimation and the record date) to the stock exchange(s) of the record date or of as many days as the stock exchange may agree to or require specifying the purpose of the record date.

### ROLE OF A COMPANY SECRETARY IN PRACTICE

#### Certificate regarding Transfer of Securities

Certification to the effect that all transfers have been completed within the stipulated time.  
[Regulation 40(9)]

### **Certificate Regarding Compliance of Conditions of Corporate Governance under SEBI Listing Regulations**

SEBI listing regulations authorizes Company Secretary in Practice to issue certificate regarding compliance of conditions of Corporate Governance. [Schedule V, clause E]

### **Certificate Regarding Maintenance of 100% Asset Cover**

To issue half yearly certificate regarding maintenance of 100% security cover in respect of listed non- convertible debt securities. [Regulation 56(1)] (d)]

### **Secretarial Audit Report**

Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake Secretarial Audit and shall annex with its Annual Report, a Secretarial Audit Report, given by a Company Secretary in Practice, in such form as may be specified with effect from the year ended March 31, 2019.[ Regulation 24A]

### **Certification regarding Director's Disqualification**

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

## **CASE STUDIES**

### **CASE I**

Hotsun Company is a medium-sized listed company. Mr. Mohan is a wealthy business entrepreneur and the original founder of the company. He owns 28% of the ordinary shares and is the major shareholder, but he is no longer a member of the board of directors, having resigned several years ago when the company obtained its stock market quotation.

Although he is no longer a director, Mohan continues to show considerable interest in the business affairs of the company. Recently he has been demanding that the board should consult him on issues of business strategy and dividend policy. He also believes that at least

two non-executive directors should resign because they contribute nothing of value to the board. Two members of the board agree, and argue that Mohan should be consulted regularly on important issues, given his success in leading the company in the past. However, the majority of the board members are hostile and resent Mohan's continual interference.

After a recent argument with the chairman, Mohan has threatened to sue members of the board for gross dereliction of their duties as directors. He has also demanded the resignation of a board member who is the owner of a property company that has just sold a property to Hotsun Company at a price that Mohan considers excessive. The chairman was unaware of this matter.

*Required*

As company secretary, prepare a report for the chairman advising him about

- (a) the powers of the board under the Companies Act, 2013
- (b) the appropriate measures for dealing with Mohan and responsibility of the board towards Mohan.
- (d) the provisions of RPT considering the allegations made by Mohan.

***Suggested Solution -***

(a) Powers of the Board: As per Section 179(3) of the Companies Act, 2013, the Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—

- to make calls on shareholders in respect of money unpaid on their shares;
- to authorise buy-back of securities under section 68;
- to issue securities, including debenture, whether in or outside India;
- to borrow monies;
- to invest the funds of the company;
- to grant loans or give guarantee or provide security in respect of loans;
- to approve financial statement and the Board's report;
- to diversify the business of the company;
- to approve amalgamation, merger or reconstruction;

- to take over a company or acquire a controlling or substantial stake in another company;
- to make political contributions;
- to appoint or remove key managerial personnel (KMP);
- to appoint internal auditors and secretarial auditor.

(b) Mr. Mohan was one of the founder directors of the Company and a major shareholder of the company holding 28% of the shares. A responsible business acts with care and loyalty towards its shareholders and in good faith for the best interests of the corporation. Business therefore has a responsibility to:

- Apply professional and diligent management in order to secure fair, sustainable and competitive returns on shareholder investments.
- Disclose relevant information to shareholders, subject only to legal requirements and competitive constraints.
- Conserve, protect, and increase shareholder wealth.
- Respect shareholder views, complaints, and formal resolutions.

(c) According to Section 2(76) of Companies Act 2013, "related party", with reference to a company, means-

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager or his relative is a member or director;
- (v) a public company in which a director or manager is a director and holds along with his relatives, more than two per cent. (2%) of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act;

Provided that

nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any body corporate which is—

(A) a holding, subsidiary or an associate company of such company;

(B) a subsidiary of a holding company to which it is also a subsidiary; or

(C) an investing company or the venturer of the company;”;

Explanation.— For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

(ix) a director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

Section 188 (1) of the Companies Act 2013 deals with the related party transactions with respect to:

- Sale, purchase or supply of any goods or materials
- Selling or otherwise disposing of, or buying, property of any kind
- Leasing of property of any kind
- Availing or rendering of any services
- Appointment of any agent for purchase or sale of goods, materials, services or property
- Related party's appointment to any office or place of profit in the company, its subsidiary company or associate company, and
- Underwriting the subscription of any securities or derivatives thereof, of the company.

Also, Section 188(1) of the Companies Act 2013 provides that a company shall enter into any contract or arrangement with a related party with respect to Related party transactions only with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to certain conditions.

Here, one of the board members had sold his property to Hotsun Ltd. at a price which Mohan considers excessive. The board member is related party as per Section 2(76) of Companies Act 2013 and selling property of any kind is a related party transaction as per Section 188(1) of the Companies Act 2013.

The law in India does not prohibit RPTs. Instead, the law puts into place a system of checks and balances, such as requirements for approval from the board of directors/shareholders, timely disclosures and prior statutory approvals, to ensure that the transactions are conducted within appropriate boundaries. RPTs are required to be managed transparently, so as not to impose a heavy burden on a company's resources, affect the optimum allocation of resources, distort competition or siphon off public resources.

Therefore, if the related party transaction has taken place with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to certain conditions then it is allowed as per the laws and regulations and the allegations of Mr. Mohan will not hold much significance.

## **CASE 2**

Dr. Sen, an industrial chemist with 15 years of experience, has recently been appointed to the post of Chief Executive Officer (CEO) of Pharma Ltd., a listed company. He has previously been employed in the company as Research Director. In preparation for his new assignment he has been trying to get to grips with the concept of corporate governance and all that it entails.

The board of Pharma Ltd. comprises of total ten directors (including one women director), six non-executive directors and five were considered independent. The board is responsible for overseeing strategy, approving major corporate initiatives and reviewing performance. There are three board committees - the Audit Committee, Remuneration Committee and Investors Grievance Committees. However, there is no Nomination Committee.

As the Company Secretary and Compliance Officer of Pharma Ltd, he is seeking your assistance to clarify some issues of concern.

You have been asked to prepare a brief report in which you:

- (a) Provide Dr. Sen with a robust definition of corporate governance and a brief explanation of what you understand corporate governance to be.



(b) Comment on the board composition of Pharma Ltd. with respect to the Companies Act, 2013 and SEBI LODR Regulations, 2015. Also comment whether Dr. Sen should be Chairman of the Company.

### **Suggested Solution**

(a) Corporate Governance has a broad scope. It includes both social and institutional aspects. The heart of corporate governance is transparency, disclosure, accountability and integrity. It is to be borne in mind that mere legislation does not ensure good governance. Good governance flows from ethical business practices even when there is no legislation.

Good corporate governance promotes investor confidence, which is crucial to the ability of entities listed to compete for capital. Good corporate governance is essential to develop added value to the stakeholders as it ensures transparency which ensures strong and balanced economic development. This also ensures that the interests of all shareholders (majority as well as minority shareholders) are safeguarded. It ensures that all shareholders fully exercise their rights and that the organization fully recognizes their rights.

(b) Board Composition: Section 149(1) of the Companies Act 2013 provides that every company shall have a Board of Directors consisting of individuals as directors and shall have—

- A minimum number of three directors in the case of a public company,
- Atleast two directors in the case of a private company, and
- Atleast one director in the case of a One Person Company; and
- A maximum of fifteen directors provided that a company may appoint more than fifteen directors after passing a special resolution.

Section 149(4) provides that every public listed company shall have at least one third of total number of directors as independent directors.

Regulation 17(1)(a) of SEBI LODR Regulations, 2015 provides that Board of directors shall have an optimum combination of executive and non-executive directors with at least one

woman director and not less than fifty per cent of the board of directors shall comprise of non-executive directors.

The board of Pharma Ltd. comprises of total ten directors, six non-executive directors and five were considered independent. The total number of directors is more than the minimum required directors and at least one third of total number of directors are independent directors.

Also as per SEBI Regulations, more than fifty per cent of the board of directors comprises of non-executive directors and one women director. Therefore, the board composition of Pharma Ltd. is optimum as per the laws and regulations.

Separation of Chairman and CEO: First proviso to Section 203(1) of the Companies Act, 2013 provides for the separation of role of Chairman and Chief Executive Officer subject to conditions thereunder.

It specifies that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,-

- (a) the articles of such a company provide otherwise;
- (b) the company does not carry multiple businesses;

Regulation 17(1B) of SEBI (LODR) Regulations, 2015 provides that effect from April 1, 2022, the top 500 listed entities shall ensure that the Chairperson of the board of such listed entity shall -

- (a) be a non-executive director;
- (b) not be related to the Managing Director or the Chief Executive Officer as per the definition of the term "relative" defined under the Companies Act, 2013;

Also, it is perceived that separating the roles of chairman and chief executive officer (CEO) increases the effectiveness of a company's board. It is the board's and chairman's job to monitor and evaluate a company's performance. A CEO, on the other hand, represents the management team. If the two roles are performed by the same person, then there is less accountability. A clear demarcation of the roles and responsibilities of the Chairman of the Board and that of the Managing Director/CEO promotes balance of power.

The benefits of separation of roles of Chairman and CEO can be:

**Director Communication:** A separate chairman provides a more effective channel for the board to express its views on management

**Guidance:** A separate chairman can provide the CEO with guidance and feedback on his/her performance

**Shareholders' interest:** The chairman can focus on shareholder interests, while the CEO manages the company

**Governance:** A separate chairman allows the board to more effectively fulfill its regulatory requirements

**Long-Term Outlook:** Separating the position allows the chairman to focus on the long-term strategy while the CEO focuses on short-term profitability

**Succession Planning:** A separate chairman can more effectively concentrate on corporate succession plans.

Therefore, on the basis of abovementioned laws and regulations and the potential benefits of separating Chairman and CEO, Dr. Sen should not be made Chairman of the Company as he is already CEO of the Company.

## CHAPTER 6 - TAKEOVER CODE - AN OVERVIEW



### MEANING AND CONCEPT OF TAKEOVER

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 in order 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.

## KINDS OF TAKEOVER

# Takeover : Types

## Hostile Takeover

A takeover attempt that is strongly resisted by the target firm.

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"Consider this an unfriendly takeover, if you wish,  
 but takeover it is!"

## Friendly Takeover

Target company's management and board of directors agree to a merger or acquisition by another company.

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## Friendly takeover

Friendly takeover means a takeover done with the consent of board of directors of both the parties ie the Acquirer and the Target Company. In friendly takeover, there is an agreement between the management of two companies through negotiations and the takeover bid may be with the consent of majority or all the shareholders of the target company. This kind of takeover is done through negotiations between two groups. Therefore, it is also called negotiated takeover.

### Hostile takeover

The word hostile means *without the will and intention of the management of the Target Company*. When an acquirer company does not offer the target company the proposal to acquire its undertaking but silently takes 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. Hostile takeovers directly made to the shareholders of Target Company has resulted in a multiple defensive strategies- by corporate from being taken over by the company

### Bailout takeover

Takeover of a financially sick company by a profit earning company to bail out the weak company is known as bail out takeover. A bail out takeover takes place with the approval of the Financial Institutions and banks since the objective is to revive the financially weak company and banks normally have a charge on the assets of the company.

## LEGAL ASPECTS OF TAKEOVER

The legislations/regulations that mainly govern takeover is as under:

1. *SEBI (SAST) Regulations 2011*
2. *Companies Act, 2013*
3. *Listing Agreement*

## IMPORTANT DEFINITIONS [REGULATION 2]

### ACQUIRER [REG. 2(1) (A)]

"Acquirer" means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company.

Thus, acquirer may be "any person "-even a foreign company-i.e. company incorporated outside India. If a foreign company acquires shares of its listed Indian subsidiary company,



the acquirer (foreign company) is bound to -make open offer by way of Public announcement before acquiring shares or voting rights in the listed Indian subsidiary company.

Further, the term 'any person' will encompass natural persons as well as artificial persons.

The mere fact that a person is a promoter does not make him an acquirer, unless it is shown that he either intends to acquire or is acting in concert with the acquirer for the acquisition of shares of the target company. The definition of acquirer does not include a promoter, but includes persons acting in concert with an acquirer. The question as to whether a person is acting in concert with the acquirer is essentially a question of fact. A promoter may not act in concert with the acquirer, whereas a stranger might

### **ACQUISITION [REG. 2(1)(B)]**

"Acquisition" means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company.

### **CONTROL [REG. 2(1) (E)]**

"Control" includes the right to appoint majority of the directors or to control the management or policy decisions exercisable -by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner:

Provided that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position.

### **FREQUENTLY TRADED SHARES [REG. 2(1)(J)]**

"Frequently Traded Shares" means shares of a target company, in which the traded turnover on any stock exchange during the twelve calendar months preceding the \* calendar month in which the public announcement is made, is at least ten per cent of the total number of shares of such class of the target company:



Provided that where the share capital of a particular class of shares of the target company is not identical throughout such period, the weighted average number of total shares of such class of the target company shall represent the total number of shares.

### IDENTIFIED DATE [REG. 2(1)(K)]

"Identified Date" means the date falling on the 4<sup>th</sup> working day prior to the commencement of the tendering period, for the purposes of determining the shareholders to whom the letter of offer shall be sent.

### IMMEDIATE RELATIVE [REG. 2(1)(L)]

"Immediate Relative" means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse.

It may be noted that grant-parents, father-in-law/mother-in-law/brother-in-law, uncles, nephews, grandparents, great grandparents, etc. are not "immediate relatives".

### PERSON ACTING IN CONCERT [REG. 2(1)(G)]

"Person acting in concert" means.—

Persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.

Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,—

- A company, its holding company, subsidiary company and any company under the same management or control;
- A company, its directors, and any person entrusted with the management of the company;
- Directors of companies referred to in items (i) and (ii) of this sub-clause and associates of such directors;
- Promoters and members of the promoter group;

- A mutual fund, its sponsor, trustees, trustee company, and asset management company;
- A collective investment scheme and its collective investment management company, trustees and trustee company;
- A venture capital fund and its sponsor, trustees, trustee company and asset management company;
- A foreign institutional investor and its subaccounts;
- A merchant banker and its client, who is an acquirer;
- A portfolio manager and its client, who is an acquirer;
- Banks, financial advisors and stock brokers of the acquirer, or of any company which is a holding company or subsidiary of the acquirer, and where the acquirer is an individual, of the immediate relative of such individual

#### **TARGET COMPANY [REG. 2(1)(2)]**

"Target Company" means a **LISTED INDIAN COMPANY/ LISTED INDIAN BODY CORPORATE OR corporation** established under a Central legislation, State legislation or Provincial legislation.

#### **TENDERING PERIOD [REG. 2(1)(2A)]**

"Tendering Period" means the period within which shareholders may tender their shares in acceptance of an open offer to acquire shares made under these regulations.

#### **VOLUME WEIGHTED AVERAGE MARKET PRICE [REG 2(1)(2B)]**

"Volume Weighted Average Market Price" means the product of the number of equity shares traded on a stock exchange and the price of each equity share divided by the total number of equity shares traded on the stock exchange.

#### **VOLUME WEIGHTED AVERAGE PRICE [REG. 2(1)(2C)]**

"Volume Weighted Average Price" means the product of the number of equity shares bought and price of each such equity share divided by the total number of equity shares bought.

**WEIGHTED AVERAGE NUMBER OF TOTAL SHARES [REG. 2(1)(2D)]**

"Weighted Average Number of Total Shares" means the number of shares at the -beginning of a period, adjusted for shares cancelled, bought back or issued during the aforesaid period\* multiplied by a time-weighting factor.

**CLASSROOM NOTES FOR TAKEOVER LIMITS**

## SUBSTANTIAL ACQUISITION OF SHARES, VOTING RIGHTS OR CONTROL OR INITIAL TRIGGER THRESHOLD [REGULATIONS 3-9]

- 1) Without giving a public announcement for open offer, no acquirer shall acquire shares or voting rights in a target company along with shares or voting rights, if any, held by him in person or with persons acting in concert, entitle them to exercise **twenty-five per cent or more of the voting rights** of such target company.
- 2) Without giving a public announcement for open offer, any acquirer along with his PAC's, who already holds twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding (75% or 90%), **shall not acquire any shares or voting rights more than five percent** within any financial year in such target company.

## CREEPING ACQUISITION TRIGGER [REG. 3(2)]

CREEPING ACQUISITION MEANS SLOW AND STEADY ACQUISITION OF SHARES BY THE ACQUIRER IN TARGET COMPANY. IN CREEPING ACQUISITION ACQUIRER CAN ACQUIRE **MAX 5% VOTING RIGHTS OF TARGET CO IN EACH FINANCIAL YEAR.**

The creeping acquisition route is meant to facilitate consolidation by persons already in control or holding substantial number of shares.

An acquirer who (together with PACs) holds 25% or more voting rights in a target company, but less than the maximum permissible non-public shareholding [i.e., Maximum Permissible Non-Public (Promoters') Shareholding is 75% and Minimum Permissible Public shareholding is 25%], is allowed to acquire additional voting rights in the target company to the extent of upto 5% within a financial year ending on 31st March, without making an open offer [Regulation 3(2)]. **If he acquires more than 5% additional voting rights in a financial year ending on 31st March, he will have to make an open offer.** This is subject to their (acquirer

and PACs) aggregate post acquisition shareholding not exceeding the maximum permissible non-public shareholding.

Thus, creeping acquisition can be made at the maximum rate of 5% in any one financial year without complying with the requirement of mandatory public offer by way of public announcement, provided that the post-acquisition shareholding of acquirer together with persons acting in concert with him shall not increase beyond 75%.

The open offer obligation would also apply to acquisition of shares by any person from other persons acting in concert with him such that the individual shareholding of the person acquiring shares equals or exceeds the stipulated threshold of 5% although the aggregate shareholding along with persons acting in concert may remain unchanged. [Reg. 3(3)]

It may be noted that Regulations 3(1) and 3(2) are mutually exclusive so that an acquisition can trigger either regulation 3(1) or (but not and) regulation 3(2). It is the percentage of the acquirer's shareholding before and after an acquisition that determines whether the acquisition triggers regulation 3(1) or regulation 3(2).

#### ACQUISITION OF CONTROL [REGULATION 4]



Regulation 4 provides the following:

Irrespective of acquisition or holding of shares or voting rights in a target company, no

acquirer shall acquire, directly or indirectly, control over such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target, company, in accordance with these-regulations.

### Explanation

If any acquirer wants to acquire control over a target company, he has to make public announcement to acquire shares from the shareholders of the target company.

As per Reg. 2(1) (e), Control includes acquisition, directly or indirectly, of any of the following rights by the acquirer:

- 1) Right to appoint majority of the directors;
- 2) Right to control the management;
- 3) Right to control the policy decisions.

### VOLUNTARY OFFER [REGULATION 6]

Shareholders holding shares entitling them to exercise 25% or more of the voting rights in the target company may, without breaching minimum public shareholding requirements under the listing agreement, voluntarily make an open offer to consolidate their shareholding subject to their aggregate shareholding after completion of the open offer not exceeding the maximum permissible non-public shareholding. [Regulation 6(1)]

The facility to voluntarily make an open offer shall not be available if in the proximate past (preceding 52 weeks), such persons (acquire to and PACs holding 25% or more voting rights) have made acquisitions without open offer within the creeping acquisition limit of 5%. [The first proviso to Regulation 6(1)]

Such an acquirer is prohibited from making acquisitions outside the open offer during the offer period and also prohibited from any further acquisitions for six months after the open offer except pursuant to another voluntary open offer. [Regulation 6(2)]

## CLASSROOM NOTES – MANDATORY & VOLUNTARY OPEN OFFER

### OFFER SIZE [REGULATION 7]

Regulation 7 provides the following:

Any **mandatory open offer** would be for **at least 26%**, of total shares of the target company, as of tenth working day from the closure of the tendering period [Regulation 7(1)].

A **voluntary open offer** can be made for the acquisition of shares representing **at least 10%** but shall not exceed 'such number of shares which will take the holding of the acquirer and PACs to beyond maximum non-public shareholding permitted under the listing agreement. [Reg. 7(2)] 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 fifteen working days. [Proviso to Reg. 7(2)].

### DISCLOSURE OF ACQUISITION AND DISPOSAL [REGULATION 29]

**Regulation 29(1)** provides that any acquirer along with any PAC, who acquires shares or voting rights in a target company entitle them to **5% cent or more** of the voting rights in such target company shall disclose their aggregate shareholding and voting rights in such target company in a specified form.

**Regulation 29(2)** provides that any acquirer, who together with PACs **holds 5% or more** of the voting rights in a target -company, shall disclose every acquisition or disposal of shares of such target company representing **2% or more change of the voting rights** in such target company along with their aggregate shareholding and voting rights.



Shares taken by way of encumbrance shall be treated as an acquisition; shares given upon release of encumbrance pledge shall be treated as a disposal. However, this requirement shall not apply to a scheduled commercial bank or public financial institution in connection with a pledge of shares for securing indebtedness in-the ordinary course of business. The word encumbrance means taking loan against such shares.

**Regulation 29(3)** provides that the above disclosures shall be made **within two working days** of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,-

- a. every **stock exchange** where the shares of the target company are listed; and
- b. The **target company** at its registered office.

### CLASSROOM NOTES – REGULATION 29

### CONTINUAL DISCLOSURES [REGULATION 30]

**Regulation 30(1)** provides that **every person**, who together with PACs holds **25% shares or voting rights** them to exercise of the voting rights in a target company (substantial shareholder), shall disclose their aggregate shareholding as of 31st of March, in such target company in such form as may be specified. **Disclosure shall be made within 7 working days from the end of each financial year to-**

- a. every **stock exchange** where the shares of the target company are listed; and
- b. The **target company** at its registered office.

**Regulation 30(2)** provides that the **promoter of every target company** shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the 31st day of March, in such target company in such form as may be specified. **Disclosure shall be made within 7 working days from the end of each financial year to,-**

- a. every stock exchange where the shares of the target company are listed; and

- b. The target company at its registered office.

## CLASSROOM NOTES FOR REGULATION 30

### DISCLOSURE OF ENCUMBERED SHARES [REGULATION 31]

The word *encumbrance* means loan against a particular asset. Here it means loan obtained or repaid against shares. The promoter of every target company shall disclose the following:

- details of shares in such -target company encumbered by him or by persons acting in concert with him;
- details of any invocation of such encumbrance; and
- Details of release of such encumbrance.

The disclosures required as above shall be made within *seven working days* from the creation or invocation or release of encumbrance, as the case may be to,-

- a. every stock exchange where the shares of the target company are listed; and
- b. The target company at its registered office.

The promoter of every target company shall declare on a *yearly basis* that he, along with persons acting in concert, has *not made any encumbrance, directly or indirectly, other than those already disclosed during the financial year.*

The declaration required under sub-regulation (4) shall be made within *seven working days* from the end of each financial year to -

- (a) every *stock exchange* where the shares of the target company are listed; and
- (b) the *audit committee* of the target company.

## INDIRECT ACQUISITION OF SHARES OR CONTROL

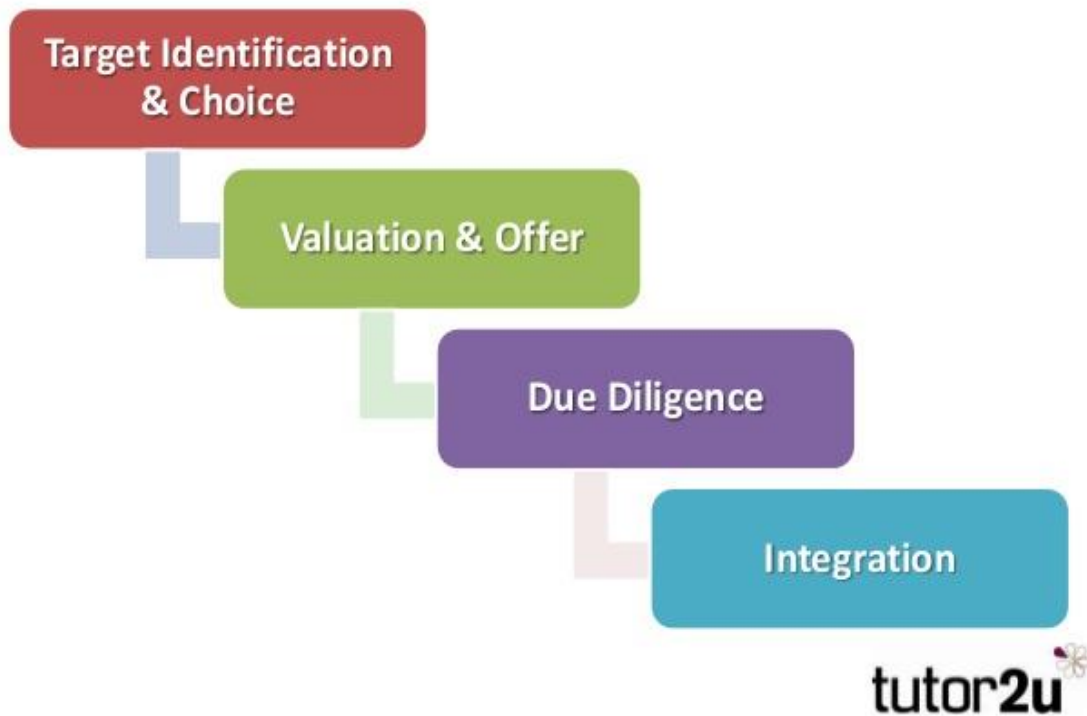
Indirect acquisition means the acquisition of shares, voting rights or control over any other company which would enable the acquirer of shares, voting rights or control to exercise such percentage of voting rights, which would otherwise have triggered an open offer process.

Certain indirect acquisitions are regarded as 'deemed direct acquisitions' if such indirect acquisition satisfy the following conditions such as:

- (a) the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired exceeds 80 percent; or
- (b) the proportionate sales turnover of target company as a percentage of the consolidated sales turnover of the entity or business being acquired exceeds 80 percent; or
- (c) the proportionate market capitalisation of the target company as a percentage of the enterprise value for the entity or business being acquired exceeds 80 percent;

**OPEN OFFER PROCESS [REGULATIONS 12-23]**

## Overview of the takeover process

**CLASSROOM NOTES FOR OPEN OFFER**

### MANAGER TO THE OPEN OFFER [REGULATION 12]

Before making any public announcement of mandatory public offer, the acquirer shall appoint a Merchant Banker, who is not directly or indirectly connected with the acquirer.

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.

### TIMING OF PUBLIC ANNOUNCEMENT AND DETAILED PUBLIC STATEMENT [REGULATION 13]

A short public announcement should be made on the same date as the date of transaction which triggered the open offer. A detailed public statement should be made within a period of 5 working days thereafter, so as to accord the acquirer sufficient time to actually work out the logistics of the offer obligations.

### PUBLICATION OF PUBLIC ANNOUNCEMENT (PA) AND DETAILED PUBLIC STATEMENT (DPS) [REG. 14]

Regulation 14(1) provides that the PA shall be sent to all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public. Regulation 14 (2) provides that a copy of the PA shall be sent to SEBI and to the target company at its registered office within one working day of the date of the PA.

Regulation 14(3) requires that the DPS shall be published in all editions of any one English national daily with wide circulation, any one Hindi national daily with wide circulation, and anyone regional language daily with wide circulation, at the place where the registered office of the target company is situated and one regional language daily at the place of the stock exchange where the maximum volume of trading in the shares of the target company are recorded during the 60 trading days preceding the date of the PA. Regulation 14(4) requires

that simultaneously with publication of such DPS to the newspapers, a copy of the same shall be sent to,-

- i. the SEBI through the manager to the open offer;
- ii. all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public; and
- iii. The target company at its registered office and the target company shall forthwith place the same before the board of directors of the target company.

### **CONTENTS OF PUBLIC ANNOUNCEMENT OF OFFER [REGULATION 15]**

Regulation 15 specifies the contents of the public announcement and detailed public statement.

The public announcement and detailed public announcement of the offer or any other advertisement, circular, brochure, publicity material or letter of offer issued in relation to the acquisition of shares **shall not contain any misleading information.**

### **FILING OF LETTER OF OFFER TO SEBI [REGULATION 16]**

**Within 5 working days from the date of the detailed public statement, the acquirer shall, through the manager to the open offer, file with SEBI the draft letter of offer in the format prescribed by SEBI along with prescribed fees.**

SEBI shall give its comments on the draft letter of offer as soon as possible but not later than fifteen working days of the receipt of the draft letter of offer. However, in the event SEBI has sought clarifications or additional information from the manager to the open offer, the period for issuance of comments shall be extended to the fifth working day from the date of receipt of satisfactory reply to the clarification or additional information sought.

In the event SEBI 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.

A letter of offer is a document addressed to the shareholders of the target company containing disclosures of the acquirer/PACs, target company, their financials, justification of the offer price, the offer price, number of shares to be acquired from the public, purpose of acquisition, future plans of acquirer, if any, regarding the target company, change in control over the target company, if any, the procedure to be followed by acquirer in accepting the shares tendered by the shareholders and the period within which all the formalities pertaining to the offer would be completed.

The Acquirer shall submit a draft letter of offer to SEBI within 5 working days from the date of detailed public announcement along with a non-refundable fee as applicable.

Sr. No.	Consideration payable under the Open Offer	Fees (Rs.)
1.	Upto ten crore rupees	Five lakh rupees (Rs. 5,00,000)
2.	More than ten crore rupees but less than or equal to one thousand crore rupees	0.5 per cent of the offer size
3.	More than one thousand crore rupees	Five crore rupees (Rs. 5,00,00,000) plus 0.125 per cent of the portion of the offer size in excess of one thousand crore rupees (1000,00,00,000)

### ESCROW ACCOUNT [REGULATION 17]

Atleast 2 days prior to the date "of the detailed public statement, the acquirer shall, as and by way of security for performance of its obligations, open an escrow account which shall consist of cash deposit with a scheduled commercial bank or bank guarantee in favor of the merchant banker or deposit of acceptable securities with appropriate margin with the merchant banker or a combination of the above.

The escrow amount shall be calculated in the following manner:



For consideration payable under the open offer up to Rs. 500 crores	25% of consideration payable
For consideration payable under the open offer exceeding Rs. 500 crores	25% of Rs. 500 crores and 10% of the balance amount

### ACQUIRERS OBLIGATIONS [REGULATION 18]

The acquirer's other obligations are as under:

- Simultaneously with the filing of the draft letter of offer with SEBI, the acquirer shall send a copy of the draft letter of offer to the target company at its registered office address and to all stock exchanges where the shares of the target company are listed.
- The letter of offer shall be dispatched to the shareholders whose names appear on the register of members of the target company -as of the identified date, not later than 7 working days from the receipt of communication of comments from SEBI or where no comments are offered by the Board, within 7 working days from the expiry of the period of 15 working-days.
- The acquirer and PACs 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.
- The acquirer shall issue an advertisement in such form as may be specified, one business day before the commencement of the tendering period, announcing the schedule of activities for the open offer and such other material detail as may be specified. Such advertisement shall be-
  - a) published in all the newspapers in which the DPS was made; and
  - b) simultaneously sent to SEBI, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.

- The acquirer shall, within 10 working days from the last date of the tendering period, complete all requirements under these regulations and other applicable law relating to the open offer including payment of consideration to the shareholders who have accepted the open offer;
- The acquirer shall be responsible to pursue all statutory approvals required by the acquirer in order to complete the open offer without any default, neglect or delay.
- Where the acquirer is unable to make the payment to the shareholders who have accepted the open offer within such period owing to non-receipt of statutory approvals required by the acquirer, SEBI may grant extension of time for making payments, subject to the acquirer agreeing to pay interest to the shareholders for the delay at such rate as may be specified by the Board.

#### REVISION OF OPEN OFFER

An acquirer may make upward revisions to the offer price to the number of shares sought to be acquired under the open offer, at any time prior to the commencement of the last three working days prior to the commencement of the tendering period, to the event of any revision of the open offer, whether by way of an upward revision in offer price, or of the offer size, the acquirer shall,-

A. make corresponding increases to the amount kept in escrow prior to such revision;

B. make an announcement in respect of such revisions in all the newspapers in which the detailed public statement pursuant to the public announcement was made;

C. simultaneously with the issue of such an announcement, inform SEBI, all the stock exchanges on which the shares of the target company are listed, and the target company, at its registered office;

### TENDERING PERIOD

The tendering period shall start not later than 12 working days from date of receipt of comments from the SEBI and shall remain open for 10 working days. Shareholders who have tendered shares in acceptance of the open offer shall not be entitled to withdraw such acceptance during the tendering period.

### CONDITIONAL OFFER [REGULATION 19]

An acquirer may make an open offer conditional as to the minimum level of acceptance. Where the open offer is pursuant to an agreement, such agreement shall contain a condition to the effect that in the event the desired level of acceptance of the open offer is not received the acquirer shall not acquire any shares under the open offer and the agreement attracting the obligation to make the open offer shall stand rescinded.

BUT Regulation 8(II) PROVIDES THAT - Where the open offer is subject to a minimum level of acceptances, the acquirer may indicate a lower price for acquiring all the acceptances despite the acceptance falling short of the indicated threshold, in the event the open offer does not receive the minimum acceptance.

### COMPETING OFFERS [REGULATION 20]

Upon a Public Announcement of an open offer for acquiring shares of a target company being made, any person other than the acquirer who has made such public announcement, shall be entitled to make a public announcement of an open offer within 15 working days of the date of the detailed public statement made by such acquirer who has made the first public announcement for such target company.

Upon public announcement of a competing offer, an acquirer who had made a preceding "competing offer shall be entitled to revise the -terms of his open offer-provided the revised terms are more favourable to the shareholders of the target company. The acquirers making

the competing offers shall be entitled to make upward revisions of the offer price at any time up to 10 working days prior to the commencement of the tendering period.

### **PAYMENT OF CONSIDERATION [REGULATION 21]**

For the amount of consideration payable in cash, the acquirer shall open a special account with a Banker to an Issue and deposit therein such sum as would together with 90% of the amount lying in the escrow account make up the entire sum due and payable to the shareholders as consideration.

The acquirer shall, within a period of 10 working days from the expiry of the tendering period, complete all procedures relating to the offer including payment of consideration to the shareholders who have accepted the offer.

Unclaimed balances in special account shall be transferred to the SEBI Investor Protection and Education Fund at the end of 7 years.

It may be noted that the balance of 10% of the escrow account shall be released to the acquirer, on the expiry of 30 days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, as certified by the manager to the open offer;

### **COMPLETION OF ACQUISITION [REGULATION 22]**

The agreement that attracts an open offer obligation may be acted upon during the pendency of the open offer only if 100% of the consideration payable under the open offer is placed in escrow.

An agreement that triggered an open offer obligation would have to be completed within 26 weeks after, the offer period. However, in the event of any extraordinary and supervening circumstances rendering it impossible to complete such acquisition within such period of 26

weeks, SEBI may for reasons to be published, may grant an extension of time by such period as it may deem fit in the interests of investors in securities and the securities market.

### WITHDRAWAL OF THE OPEN OFFER [REGULATION 23]

An offer shall be withdrawn in the following cases:

The statutory approvals required have been refused. The statutory approvals would include approval of shareholders as required by the Regulation or the approval for foreign investment by FBPB or RBI and the like.

Where the sole acquirer, being an individual has died.

Any condition stipulated in the agreement for acquisition attracting the obligation to make the open offer is not met for reasons outside the reasonable control of the acquirer.

Such circumstance as in the opinion of SEBI merits/requires withdrawal.

An offer can be withdrawn subject to the following conditions:

The acquirer will have to make a public announcement in respect of such withdrawal of offer in all the newspapers in which the original public announcement was made.

The acquirer shall also simultaneously inform the withdrawal of offer to the SEBI, all the Stock Exchanges where the shares of the company are listed and the target company at its registered office.

## OFFER PRICE [REGULATION 8]

Minimum offer price for direct acquisitions and indirect acquisitions deemed to be direct acquisitions

Regulation 8(2) of the 2011 code provides that in the case of direct acquisition of shares or voting rights in, or control over the target company, and indirect acquisition of shares or voting rights in, or control over the target company where the parameters referred to in sub-regulation (2) of regulation 5 are met, the offer price shall be the highest of, -

- a. the **highest negotiated price** per share of the target company for any acquisition under the agreement attracting the obligation to make public announcement of an open offer,
- b. the **volume-weighted average price** paid or payable for acquisitions, whether by the acquirer or by any person acting in concert with him, -during the **fifty-two weeks immediately preceding the date of the public announcement**;
- c. the **highest price** paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the **twenty six weeks immediately preceding the date of the public announcement**;
- d. the **volume-weighted average market price** of such shares for a period of **sixty trading days immediately preceding -the date of the public announcement** as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded;
- e. where the **shares are not frequently traded**, the price determined by the acquirer and the manager to the open offer taking into account **valuation parameters** including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies;

## EXEMPTIONS [REGULATIONS 10-II]

### GENERAL EXEMPTIONS [REGULATION 10]

Sub-regulation (1) of Regulation 10 exempts the following, categories of acquisitions from open offer obligations under Regulations 3 & 4 (but not from disclosure obligations under Regulations 28/20) without SEBI's approval:

Transfers between **qualifying parties** such as immediate relatives, group companies, promoters, etc. [Regulation 10(1)(3)]

Certain acquisitions in the **ordinary course of business** of stock broker, underwriter, merchant banker, scheduled commercial bank, etc. [Regulation 10(1)(b)]

Acquisition pursuant to **disinvestment in a Government Company**. [Reg. 10(1)(c)]

Acquisitions pursuant to **Scheme made under section 18 of SICA, 1985** or scheme of arrangement involving transferor company pursuant to order of Court or other statutory authority under any Indian or foreign law [Regulation 10(1)(d)] or acquisition pursuant to a resolution plan approved under section 31 of the **Insolvency and Bankruptcy Code, 2016**.

Acquisition pursuant to **SARFAESI Act, 2002** [Regulation 10(1)(e)] Acquisition under SEBI

Acquisition under SEBI (**Delisting of Equity Shares**) Regulations [Reg. 10(1)(f)]

Acquisition by way of **transmission, succession or inheritance** [Regulation 10(1)(g)]

Voting rights on **preference shares** under the Companies Act, 1956 [Reg. 10(1)(h)]

Acquisition under **Corporate Debt Restructuring** (as per scheme notified by RBI) not involving change of control provided such scheme authorized by special resolution by postal ballot. (Regulation 10(2))

Increase of voting rights to 25% through buy-back provided shareholder reduces his holding below 25% within 90 days from the date of increase, [Reg. 10(3)].

Acquisition through **Rights issue**, subject to certain conditions. [Reg. 10(4)(a)&(b)]

**Increase of voting rights through buy-back** in excess of threshold under Regulation 3(2), subject to certain conditions. [Regulation 10(4)(c)]



Acquisition of shares in a target company by any person in exchange for shares of another target company tendered pursuant to an open offer for acquiring shares under these regulations.

[Regulation 10(4)(d)]

Acquisition of shares in Target Company from state-level financial institutions by promoters of the target company. [Regulation 10(4)(e)]

Acquisition of shares in Target Company by promoters from venture capital fund or foreign venture capital investor. [Regulation 10(4)(f)]

An increase in the voting rights of any shareholder beyond the threshold limits stipulated in sub-regulations (1) and (2) of regulation 3, without the acquisition of control, pursuant to the conversion of equity shares with superior voting rights into ordinary equity shares, shall be exempted from the obligation to make an open offer under regulation 3.”

## EXEMPTIONS BY THE SEBI [REGULATION 11]

Power of SEBI to grant exemption from open offer obligations in individual cases

Regulation 11(1) provides that SEBI may, on the application made by the acquirer, for reasons recorded in writing, grant exemption from the obligation to make an open offer for acquiring shares under these regulations subject to such conditions as SEBI deems fit to impose in the interests of investors in securities and the securities market.

## DELISTING OFFER

1. Notwithstanding anything contained in these regulations, in the event the acquirer makes a public announcement of an open offer for acquiring shares of a target company in terms of regulations 3, 4 or 5, he may delist the company in accordance with provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009. Provided that the acquirer shall have declared upfront his intention to so delist at the time of making the detailed public statement and a subsequent declaration of delisting for the purpose of the offer proposed to be made under sub regulation (1) will not suffice.

2. Where an offer made under sub-regulation (1) is not successful,-
  - (i) on account of non-receipt of prior approval of shareholders in terms of clause (b) of sub-regulation (1) of regulation 8 of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; or
  - (ii) in terms of regulation 17 of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; or
  - (iii) on account of the acquirer rejecting the discovered price determined by the book building process in terms of sub-regulation (1) of regulation 16 of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, the acquirer shall make an announcement within two working days in respect of such failure in all the newspapers in which the detailed public statement was made and shall comply with all applicable provisions of these regulations.
3. In the event of failure of the delisting offer made under sub-regulation (1), the open offer obligations shall be fulfilled by the acquirer in the following manner:
  - (i) the acquirer, through the manager to the open offer, shall within five working days from the date of the announcement under sub-regulation (2), file with the Board, a draft of the letter of offer as specified in sub-regulation (1) of regulation 16; and
  - (ii) shall comply with all other applicable provisions of these regulations.  
Provided that the offer price shall stand enhanced by an amount equal to a sum determined at the rate of ten per cent per annum for the period between the scheduled date of payment of consideration to the shareholders and the actual date of payment of consideration to the shareholders.
4. Where a competing offer is made in terms of sub-regulation (1) of regulation 20,-
  - (a) the acquirer shall not be entitled to delist the company;
  - (b) the acquirer shall not be liable to pay interest to the shareholders on account of delay due to competing offer;
  - (c) the acquirer shall comply with all the applicable provisions of these regulations and make an announcement in this regard, within two working days from the date of public announcement made in terms of sub-regulation (1) of regulation 20, in all the newspapers in which the detailed public statement was made.
5. Shareholders who have tendered shares in acceptance of the offer made under sub-

regulation (1), shall be entitled to withdraw such shares tendered, within 10 working days from the date of the announcement under sub-regulation(2)

6. Shareholders who have not tendered their shares in acceptance of the offer made under sub-regulation (1) shall be entitled to tender their shares in acceptance of the offer made under these regulations.

### **FUGITIVE ECONOMIC OFFENDER OR A WILFUL DEFAULTER**

Notwithstanding anything contained in these regulations, no person who is a fugitive economic offender or a willful defaulter make a public announcement of an open offer or make a competing offer for acquiring shares or enter into any transaction, either directly or indirectly, for acquiring any shares or voting rights or control of a target company.

### **DISPATCH OF LETTER OF OFFER**

The Acquirer shall ensure that the letter of offer is dispatched to the shareholders whose names appear on the register of members of the Target Company as of the identified date, and to the custodian of shares underlying depository receipts, if any, of the Company, within maximum 7 working days from the date of receipt of communication of comments from SEBI or where no comments are offered by SEBI, within 7 working days from the expiry of 15 working days from the date of receipt of draft letter of offer by SEBI.

However, it is provided that where a shareholder holding less than 5% of the voting rights of the Target Company is resident outside India and local laws or regulations of such jurisdiction may expose the acquirer or the target company to material risk of civil, regulatory or criminal liabilities in the event the letter of offer in its final form were to be sent without material amendments or modifications into such jurisdiction, then the acquirer may refrain from dispatch of the letter of offer into such jurisdiction.

**Explanation:**

- i. Letter of offer may also be dispatched through electronic mode in accordance with the provisions of Companies Act, 2013.
- ii. On receipt of a request from any shareholder to receive a copy of the letter of offer in physical format, the same shall be provided.
- iii. The aforesaid shall be disclosed in the letter of offer;

## CHAPTER 7 - SEBI (BUY BACK OF SECURITIES) REGULATIONS, 2018



“THINGS YOU LIKE TO DO SHOULD BE A HOBBY OF YOURS, BUT THINGS THE WORLD DOES SHOULD BE A BUSINESS OF YOURS”  
- WARREN BUFFETT

### MEANING

Buy back of securities means the company buys its own shares and extinguishes the same before the name of the company is entered in its register of members.

### OBJECTIVES OF BUY BACK

- to improve earnings per share;
- to improve return on capital;
- to provide an additional exit route to shareholders when shares are under-valued or are thinly traded;
- to enhance consolidation of stake in the company;
- to prevent unwelcome takeover bids;
- to return surplus cash to shareholders;
- to support share price during periods of sluggish market conditions; and
- to service the equity more efficient.

### SOURCES OF BUY BACK

A company may purchase its own securities out of:

- i) its free reserves; or
- ii) the securities premium account; or
- iii) the proceeds of any shares or other specified securities.

## AUTHORITY

1. Buy back of securities shall be primarily authorised by the articles of association of the company.
2. Buy-back can be made with the approval of the Board of directors at a board meeting and/or by a special resolution passed by shareholders in a general meeting, depending on the quantum of buy back.
3. In case of a listed company, approval of shareholders shall be obtained only by postal ballot.

## QUANTUM OF BUY BACK

Board of directors can approve buy-back up to 10% of the total paid-up equity capital and free reserves of the company.

Shareholders by a special resolution can approve buy-back up to 25% of the total paid-up capital and free reserves of the company. However, in case of buy back of equity shares the limit of 25% of paid up capital shall be construed as 25% of equity paid up capital.

In respect of any financial year, the shareholders can approve buy back by special resolution upto 25% of total paid up equity share capital in that year.

For the purposes of these regulations, the term "shares" shall include equity shares having superior voting rights.

**Illustration:** Extract of Balance Sheet of X Ltd consist of:

Equity Share Capital - Rs. 6,00,000 of Rs. 10 each

12% Preference Share Capital - Rs. 100,000 of Rs. 100 each 14% Debenture Capital - Rs. 300,000 of Rs. 100

What is the maximum equity share capital and number of equity shares that can be bought back?

**Solution:**

- (i) Maximum equity share capital that can be bought back  
 $= \text{Rs. } 600000 \times 25\%$   
 $= \text{Rs. } 1,50,000$
- (ii) Maximum number of equity shares that can be bought back  
 $= \text{Rs. } 1,50,000 / 10$   
 $= 15000 \text{ equity shares}$

**CONDITIONS FOR BUY BACK**

1. Debt equity ratio post buy back of securities shall be 2:1. However, in case of government company carrying out a Non-Banking Finance Institution activities and Housing Finance Activities may maintain such ratio upto 6:1.
2. Securities bought back shall only be fully paid securities.
3. A declaration of solvency signed by at least two directors of the company, one of whom shall be the managing director, if any, in Form No. SH.9 and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board.

**FILING OF LETTER OF OFFER**

1. The company which has been authorized by a special resolution shall, before the buy-back of shares, file with the Registrar of Companies a letter of offer in Form No SH 8, along with the fee as prescribed.
2. Such letter of offer shall be dated and signed on behalf of the Board of directors of the company by not less than two directors of the company, one of whom shall be the managing director, where there is one.



### DISPATCH OF LETTER OF OFFER

The letter of offer shall be dispatched to the shareholders or security holders immediately after filing the same with the Registrar of Companies but **not later than 21 days** from its filing with the Registrar of Companies.

### TIME PERIOD FOR BUY BACK OFFER

1. The offer for buy-back shall remain open for a period of **minimum period of 15 days** and for a **maximum period of 30 days** from the date of dispatch of the letter of offer.
2. Buy back shall be **completed within a period of one year** from the date of its approval the shareholders or board of directors of the company, as the case may be.
3. Where all members of a company agree, the offer for buy-back **may remain open for a period less than fifteen days**.

### METHODS OF BUY BACK

- a) from the **existing shareholders** or security holders on a proportionate basis;
- b) from the **open market**;
- c) from **odd-lot holders**

### EXTINGUISHMENT OF SECURITIES BOUGHT BACK

Securities bought back shall be extinguished within a period of **7 days** from the date of completion of buy back.

### PROHIBITION ON FURTHER ISSUE OF SECURITIES

Once the securities are bought back, it shall **not issue securities of the same kind within 6 months** except by way of bonus issue.

## REGISTER OF BUY BACK

When a company buys back its securities, it shall maintain a register of securities, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed. It shall be maintained in **Form SH 10**.

## RETURN OF BUY BACK

A company shall, file with the Registrar and SEBI, a return of buy-back **within thirty days** of such completion in **Form No. SH.11**, a certificate in **Form No SH.15** signed by two directors of the company including the managing director.

## ADDITIONAL CONDITIONS FOR BUYBACK OF SHARES OR OTHER SECURITIES

A company shall **not buy-back its shares** or other specified securities :

- a) so as to **delist** its shares or other specified securities from the stock exchange.
- b) from any person through **negotiated deals**, whether on or off the stock exchange or through spot transactions or through any private arrangement.
- c) A company shall not allow buy-back of its shares unless the **consequent reduction** of its share capital is affected.

## FEW WORDS TO REMEMBER

### Buyback Period:

The period between :

- the date of board of directors resolution; or
- date of declaration of results of the postal ballot for special resolution,
- to authorize buyback of shares of the company and the date on which the payment of consideration to shareholders who have accepted the buyback offer is made.

### Small Shareholder:

A shareholder of a company, who holds shares or other specified securities whose market value, on the basis of closing price of shares or other specified securities, on the recognised stock exchange in which highest trading volume in respect of such securities, *as on record date is not more than two lakh rupee.*

### Tender offer:

An offer by a company to buy-back its own shares or other specified securities *through a letter of offer* from the holders of the shares or other specified securities of the company.

## PROCEDURE FOR BUY BACK UNDER DIFFERENT METHODS

### Buy back from existing security holders through tender offer

- (1) A company making a buy-back offer shall announce a *record date* for determining the entitlement and the names of the security holders, who are eligible to participate in the proposed buy-back offer.
- (2) The *letter of offer* along with the tender form shall be *dispatched* to the security holders, *not later than five working days* from the receipt of communication of comments from SEBI.
- (3) 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.
- (4) The acquirer or promoter shall facilitate tendering of shares by the shareholders and settlement of the same, *through the stock exchange mechanism* as specified by SEBI.
- (5) The offer for buy back shall *remain open for a period of ten working days.*
- (6) The company shall accept shares or other specified securities from the security holders on the basis of their entitlement as on record date.

*It may be noted that fifteen per cent of the number of securities which the company proposes to buy-back or number of securities entitled as per their shareholding, whichever is higher, shall be reserved for small shareholders.*

## ESCROW ACCOUNT

The company should on or before the opening of the offer, deposit in an escrow account the sum as follows:

- (i) if the consideration payable does not exceed Rs 100 crores - 25 per cent of the consideration payable;
- (ii) if the consideration payable exceeds Rs 100 crores - 25 per cent upto Rs 100 crores and 10 percent thereafter;

The escrow account referred to above shall consist of:

- (a) cash deposited with a scheduled commercial bank, or
- (b) bank guarantee in favour of the merchant banker, or
- (c) deposit of acceptable securities with appropriate margin, with the merchant banker, or
- (d) a combination of (a), (b) and (c) above;

## PAYMENT TO THE SECURITY HOLDERS

1. The company shall after the date of closure of the offer, open a special account with a SEBI registered banker to an issue and deposit such sum as, together with the amount lying in the escrow account make up the entire sum due and payable as consideration for the buy-back and may transfer the funds from the escrow account.
2. The company shall complete the verifications of offers received and make payment of consideration to those security holders whose offer has been accepted or return the shares to the security holders within seven working days of the closure of the offer.

## EXTINGUISHMENT 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.

### BUY BACK FROM OPEN MARKET

Buy-back of shares from the open market may be in any one of the following methods:

- (i) Through stock exchange.
- (ii) Book-building process.

### BUY BACK THROUGH STOCK EXCHANGE

- The **special resolution/ board resolution**, should specify the maximum price at which the buy-back will be made;
- The buy-back of securities should **not be from the promoters or persons in control of the company**;
- The company should **appoint a merchant banker and make a public announcement within seven days** from the date of passing the resolution;
- The public announcement shall be made **within 2 working days** from the date of passing special resolution;
- Simultaneously with the issue of such public announcement, the company shall file a copy of the public announcement with SEBI.
- The company shall submit the **information** regarding the shares bought back, **to the stock exchange on a daily basis** and the stock exchange shall upload the same on its official website immediately;
- The company shall upload the information regarding the shares or other specified securities bought back 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 identity of the company as a purchaser would appear on the electronic screen when the order is placed.

### BUY BACK THROUGH BOOK BUILDING

1. The **special resolution** should specify the maximum price at which the buy-back will be made.
2. The company should appoint a **merchant banker**.
3. A **public announcement** shall be made at least **seven days prior** to the commencement of the buy-back.
4. The **deposit in the escrow account** should be made before the date of the public announcement.
5. The amount to be deposited in the escrow account should be determined with reference to the maximum price as specified in the public announcement.
6. A copy of the **public announcement** must be filed with SEBI within two days of the announcement.
7. The book-building process should be made through an **electronically linked transparent facility**.
8. The number of **bidding centres** should not be less than thirty and there should be at least one electronically linked computer terminal at all the bidding centres.
9. 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**.
10. 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.

### ODD-LOT BUY-BACK

The provisions pertaining to buy-back **through tender offer** as specified above shall be apply mutatis mutandis to odd-lot shares or other specified securities.

## OBLIGATIONS OF THE COMPANY

The company shall ensure that,—

- a) the letter of offer, the public announcement of the offer or any other advertisement, circular, brochure, publicity material shall contain true, factual and material information and shall not contain any misleading information and must state that the directors of the company accept the responsibility for the information contained in such documents;
- b) the company shall not issue any shares or other specified securities including by way of bonus till the date of expiry of buyback period for the offer made under these regulations;
- c) the company shall pay the consideration only by way of cash;
- d) the company shall not withdraw the offer to buy-back after the draft letter of offer is filed with SEBI or public announcement of the offer to buy-back is made;
- e) the promoter(s) or his/their associates shall not deal in the shares or other specified securities of the company in the stock exchange or off-market, including inter- se transfer of shares among the promoters during the period from the date of passing the resolution of the board of directors or the special resolution, as the case may be, till the closing of the offer.
- f) the company shall not raise further capital for a period of one year from the expiry of buyback period, except in discharge of its subsisting obligations.
- g) No public announcement of buy-back shall be made during the pendency of any scheme of amalgamation or compromise or arrangement pursuant to the provisions of the Companies Act, 2013.
- h) The company shall nominate a compliance officer and investors service centre for compliance with the buy-back regulations and to redress the grievances of the investors.
- i) The particulars of the security certificates extinguished and destroyed shall be furnished by the company to the stock exchanges where the shares or other specified securities of the company are listed within seven days of extinguishment and destruction of the certificates.
- j) The company shall not buy-back the locked-in shares or other specified securities and non-transferable shares or other specified securities till the pendency of the lock-in or till the shares or other specified securities become transferable.



- k) The company shall within two days of expiry of buy-back period issue a public advertisement in a national daily, disclose details regarding securities bought back, amount paid and change in capital structure;
- l) The company in addition to these regulations shall comply with the provisions of buy-back as contained in the Companies Act and other applicable laws.

### **OBLIGATIONS OF THE MERCHANT BANKER**

The merchant banker shall ensure that—

- the company is able to implement the offer;
- the provision relating to escrow account has been complied with;
- firm arrangements for monies for payment to fulfill the obligations under the offer are in place;
- the public announcement of buy-back is made in terms of the regulations;
- the letter of offer has been filed in terms of the regulations;
- a due diligence certificate along with the draft letter of offer has been furnished to SEBI;
- the contents of the public announcement of offer as well as the letter of offer are true, fair and adequate and quoting the source wherever necessary;
- due compliance of sections 68, 69 and 70 of the Companies Act and any other laws or rules as may be applicable in this regard has been made;
- the bank with whom the escrow or special amount has been deposited releases the balance amount to the company only upon fulfilment of all obligations by the company under the regulations;
- a final report is submitted to SEBI in the form specified within fifteen days from the date of expiry of buyback period

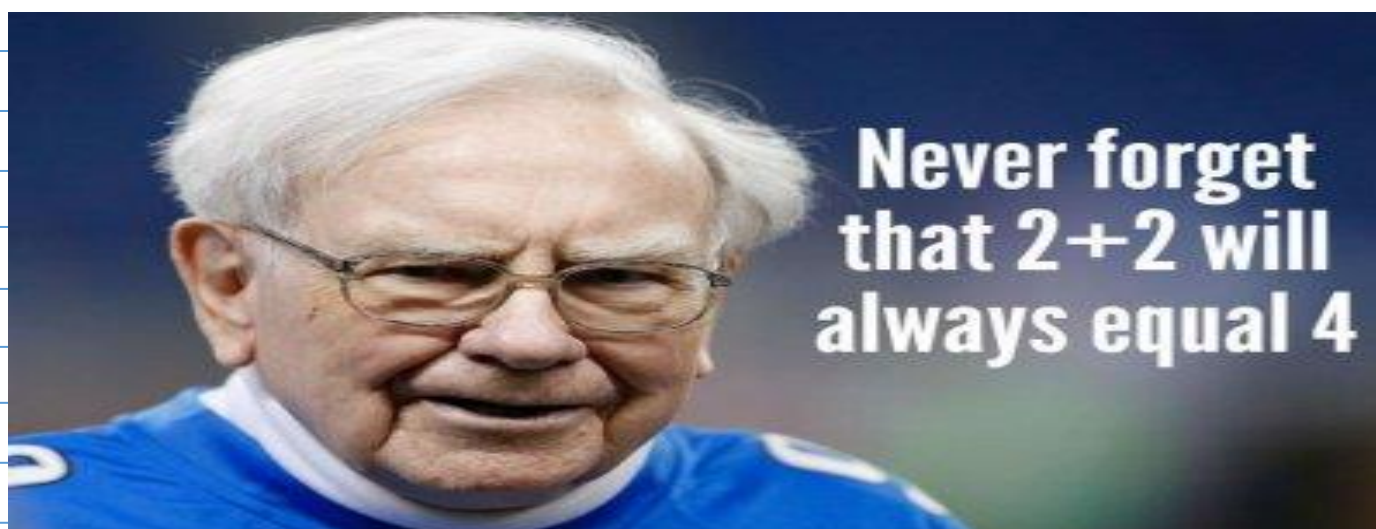
## BUYBACK VIS-A-VIS COMPLIANCE UNDER SEBI (SAST) REGULATIONS, 2011

In case the acquirer's initial shareholding was more than 25% and the increase in shareholding due to buyback is beyond the permissible creeping acquisition limit of 5% per financial year, the acquirer can get an exemption from making an open offer, subject to the following:

- Such acquirer does not vote in favour of the resolution authorising the buy-back of securities under section 68 of the Companies Act, 2013;
- In the case of a shareholders resolution, voting is by way of a postal ballot;
- The increase in voting rights does not result in an acquisition of control by such an acquirer over the target company.

In case the above conditions are not fulfilled, the acquirer may, within 90 days from the date of increase, dilute his stake so that his voting rights fall below the threshold which requires an open offer.

## CHAPTER 8 - SEBI (DELISTING OF EQUITY SHARES) REGULATIONS, 2009



Delisting denotes removal of the listing of the securities of a listed company from the Stock Exchange. Delisting differs from suspension or withdrawal of admission to dealings of listed securities, which is for a limited period.

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

'Delisting' of securities means removal of the name of the company from the stock exchange and no trade can take place in the securities of the company delisted. Delisting of securities can be done either by company voluntarily or by the stock exchange, compulsorily.

Delisting of securities may be of two types, namely, voluntary delisting and compulsory delisting. In the case of voluntary delisting, a listed company seeks of its own volition for the delisting of its securities; while in case of compulsory delisting, the Stock Exchange itself delists the securities of such Company.

## VOLUNTARY DELISTING

In voluntary delisting, a listed company decides on its own to permanently remove its securities from a stock exchange. SEBI (Delisting of Shares) Regulations 2009 gives an option to the listed company to either get itself delisted from all the recognised stock exchanges where it is listed or only from some of the few stock exchanges and continue to be listed on the exchange(s) having nation wide terminals.

The difference between two options is that of giving 'exit opportunity' to the shareholders. This is described as under:

- **No exit opportunity required to be given:** In this option, if after the proposed delisting from any one or more recognised stock exchanges, the equity shares still remain listed on any recognised stock exchange which has nation-wide trading terminals, no exit opportunity needs to be given to the public shareholders.
- **Exit opportunity must be given:** This option requires that if after the proposed delisting, the equity shares do not remain listed on any recognised stock exchange having nation-wide trading terminals, exit opportunity shall be given to all the public shareholders.

## 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. The promoters of such company shall acquire at least 90% of total issued share capital or 50% of the offer size, whichever is higher.

Exit opportunity is required to be given by the company in case if it proposes to delist its shares from all the stock exchanges.

### PROCEDURE FOR DELISTING IN CASE OF EXIT OPPORTUNITY

- (i) The Company shall obtain approval from the Board of Directors with regard to delisting of equity shares.
- (ii) Afterwards, 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 only if the votes cast by public shareholders in favour of the proposal amount to at least two times the number of votes cast by public shareholders against it.
- (iii) Subsequently the company shall make an application to the concerned recognized stock exchange for in-principle approval of the proposed delisting along with by an audit report covering a period of six months prior to the date of the application.
- (iv) The concerned stock exchange shall dispose the application within 5 working days from the date of receipt of complete application.
- (v) Within 1 year of passing the special resolution, the company shall make the final application to the concerned recognized stock exchange along with the proof of having given the exit opportunity to the existing shareholders.

### DUE DILIGENCE BY THE MERCHANT BANKER

- (1) Prior to granting approval, the board of directors of the company shall -
  - (a) make a disclosure to the recognized stock exchanges that the promoters/acquirers have proposed to delist the company;
  - (b) appoint a merchant banker to carry out due-diligence;
  - (c) obtain details of trading in shares of the company for a period of two years prior to the date of board meeting by top twenty five shareholders as on the date of the board meeting convened to consider the proposal for delisting, from the stock exchanges and details of off-market transactions of such shareholders for a period of two years and furnish the information to the merchant banker for carrying out due-diligence;
  - (d) obtain further details as required and furnish it to the merchant banker.
- (2) The board of directors of the company while approving the proposal for delisting shall certify that:

- (a) the company is in compliance with the applicable provisions of securities laws;
  - (b) the acquirer or promoter or promoter group or their related entities, are in compliance with the regulations;
  - (c) the delisting is in the interest of the shareholders.
- (3) For certification in respect of matters referred above, the board of directors of the company shall take into account the report of the merchant banker.
- (4) The merchant banker shall carry out due-diligence upon obtaining details from the board of directors. However if the merchant banker is of the opinion that details referred are not sufficient for certification, he shall obtain additional details from the board of directors of the company for such longer period as he may deem fit.
- (5) Upon carrying out due-diligence, the merchant banker shall submit a report to the board of directors of the company certifying the following:
- (a) the trading carried out by the entities belonging to acquirer or promoter or promoter group or their related entities was in compliance or not, with the applicable laws;
  - (b) any of the acquirer or promoter or promoter group entity or persons acting in concert or their related entities have carried out or not, any transaction to facilitate the success of the delisting offer which is not in compliance with the provisions of regulations.

### PUBLIC ANNOUNCEMENT

Within one working day from the date of receipt of in-principle approval from stock exchanges, the acquirer or promoters shall make a public announcement in at least one English national daily with wide circulation, one Hindi national daily with wide circulation and one regional language newspaper of the region where the concerned recognized stock exchange is located.

The public announcement contains all material information including and shall not contain any false or misleading statement. Before making the public

announcement, the promoter shall appoint a merchant banker and such other intermediaries to ensure compliance with SEBI Regulations.

The public announcement shall also specify a date, being a day not later than one working day from the date of the public announcement, which shall be the specified date for determining the names of shareholders to whom the letter of offer shall be sent.

Before making the public announcement, the acquirer or promoter shall appoint a merchant banker registered with the Board and such other intermediaries as are considered necessary.

### ESCROW ACCOUNT

The Acquirer or promoter 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 favor of the merchant banker, or
- a combination of both.

On determination of final price and making of public announcement accepting the final price, the acquirer or promoter shall forthwith deposit in the escrow account such additional sum as may be sufficient to make up the entire sum due and payable as consideration in respect of equity shares outstanding with public shareholders.

### LETTER OF OFFER

The Acquirer or promoter shall dispatch the letter of offer to the equity shareholders, not later than 2 working days from the date of the public announcement, so as to reach them at least five working days before the opening of the bidding period.



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.

### **BIDDING PERIOD**

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.

### **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 SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

The reference date for computing the floor price would be the date on which the recognized stock exchange/s were required to be notified of the board meeting in which the delisting proposal would be considered;

### MINIMUM NUMBER OF EQUITY SHARES TO BE ACQUIRED

If a counter offer has not been made by the acquirer or promoter, an offer made 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 through eligible bids at the final price determined, **reaches ninety percent of the total issued.**

### PROCEDURE AFTER CLOSURE OF OFFER

Within five working days of the closure of the offer, the promoter/acquirer and the **merchant banker** shall make a **public announcement** in the same newspapers in which the public announcement was made regarding:-

- (i) the **success** of the offer in terms of regulation 17 Along with the final price accepted by the acquirer; or
- (ii) the **failure** of the offer in terms of regulation 19

### FAILURE OF OFFER

- (1) Where the offer is rejected or is not successful, the offer shall be deemed to have failed and **no equity shares shall be acquired pursuant to such offer.**
- (2) Where the offer fails -
  - (a) the equity shares deposited or pledged by a shareholder shall be **returned or released to him within ten working days from the end of the bidding period;**
  - (b) **no final application shall be made to the exchange for delisting of the equity shares;**
  - (c) the **escrow account opened shall be closed.**

### PAYMENT OF CONSIDERATION

Upon the **success** of the offer, the promoter shall **immediately transfer the entire amount due and payable as consideration towards the equity shares tendered in the offer within 10 working days from the closure of the offer.**

### RIGHT OF REMAINING SHAREHOLDERS TO TENDER SHARES

1. Where, pursuant to acceptance of equity shares tendered in terms of these regulations, the equity shares are delisted, any remaining public shareholder holding such equity shares may tender his shares to the promoter upto a period of minimum one year from the date of delisting and, in such a case, the promoter shall accept the shares tendered at the same final price at which the earlier acceptance of shares was made.
2. The payment of consideration for shares accepted shall be made out of the balance amount lying in the escrow account.
3. The amount in the escrow account or the bank guarantee shall not be released to the promoter unless all payments are made in respect of shares tendered.

### PROMOTER NOT TO SELL SHARES [REGULATION 10(7)]

No entity belonging to the acquirer, promoter and promoter group of the Company shall sell shares of the company during the period from the date of the board meeting in which delisting proposal was approved till the completion of the delisting proposal.

### COUNTER OFFER [REGULATION 16(1A)]

If the price discovered is not acceptable to the acquirer or the promoter, the acquirer or the promoter may make a counter offer to the public shareholders within two working days of the price discovered, in the manner specified by the Board.

### DELISTING FROM ALL THE STOCK EXCHANGES EXCEPT ONE

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 recognized stock exchange which has nationwide trading terminals, no exit opportunity needs to be given to the public shareholders; and

- (ii) Not remain listed on any recognized stock exchange having nationwide trading terminals, exit opportunity shall be given to all the public shareholders holding the equity shares sought to be delisted.

### PROCEDURE FOR DELISTING FROM ALL THE STOCK EXCHANGES EXCEPT ONE

- (i) The Company shall obtain approval from the Board of Directors with regard to delisting of equity shares from one or more stock exchanges.
- (ii) Thereafter, the company shall give a public notice of the proposed delisting in at least one English national daily with wide circulation, one Hindi national daily with wide circulation and one regional language newspaper of the region where the concerned stock exchanges are located.
- (iii) The Company shall make an application to the stock exchange for delisting of shares.
- (iv) Concerned Stock Exchange shall dispose the application within 30 working days from the date of receipt of complete application.

### DELISTING OF SMALL COMPANIES

Equity shares of a company may be delisted from all the recognised stock exchanges where they are listed, if:

- (i) If a company has paid - up capital not exceeding Rs.10 crores and Net Worth not exceeding 25 Crores as on the last date of preceding year and
- (ii) the number of equity shares of the company traded on each such recognised stock exchange during the twelve calendar months immediately preceding the date of board meeting is less than ten per cent of the total number of shares of such company.
- (iii) at least ninety per cent. of such public shareholders give their positive consent in writing to the proposal for delisting, and have consented either to sell their equity shares at the price offered by the promoter or to remain holders of the equity shares even if they are delisted.

- (iv) the promoter writes individually to all public shareholders in the company informing them of his intention to get the equity shares delisted, indicating the exit price together with then justification therefore and seeking their consent for the proposal for delisting.
- (v) the promoter completes the process of inviting the positive consent and finalization of the proposal for delisting of equity shares within seventy five working days of the first communication.
- (vi) the promoter makes payment of consideration in cash within fifteen working days from the date of expiry of seventy five working days.

### COMPULSORY DELISTING

Compulsory delisting refers to permanent removal of securities of a listed company from a stock exchange as a penalizing measure by the stock exchange for not making submissions/comply with various requirements in the Listing agreement within the time frames prescribed.

### CONSTITUTION OF A PANEL

The decision regarding compulsory delisting shall be taken by a panel to be constituted by the recognized stock exchange consisting of -

- a. Two directors of the recognized stock exchange (one of whom shall be a public representative);
- b. One representative of the investors;
- c. One representative of the Ministry of Corporate Affairs or Registrar of Companies;
- d. The Executive Director or Secretary of the recognized stock exchange.

### PROCEDURE FOR COMPULSORY DELISTING

- Constitution of Panel by Recognised stock exchange to take decision regarding the compulsory delisting by the exchange.

- Public notice of compulsory delisting by recognized stock exchange in one English and one regional language newspaper of the region where the concerned recognized stock exchange is located.
- Within 15 days, representation by the any person who may be aggrieved by the proposed delisting.
- Delisting order by the recognized stock exchange.
- Public notice after delisting order by recognized stock exchange in one English and regional language newspaper of the region where the concerned recognized stock exchanges is located and information to all the stock exchanges where the shares of the company listed and also on its trading systems and website.
- Appointment of independent Valuer
- Determination of the fair value of shares by the independent valuers appointed by the recognized stock exchange.
- Acquisition of shares by the promoters at determined fair value.
- Company Promoters/PAC/ Directors can neither access securities market nor seek listing for a period of 10 years.

### NON APPLICABILITY OF REGULATIONS

These regulation shall not be applicable to :-

- securities listed without making a public issue, on the institutional trading platform of a recognised stock exchange;
- under a scheme sanctioned by the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 or by the National Company Law Tribunal under section 262 of the Companies Act, 2013;
- to any delisting of equity shares of a listed entity made pursuant to a resolution plan approved under Insolvency and Bankruptcy Code, 2016.

Provided that, exit to the shareholders should be at a price which shall not be less than the liquidation value as determined under Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 after paying off dues in the order of priority.

## CHAPTER 9- SEBI (SHARE BASED EMPLOYEE BENEFITS) REGULATIONS, 2014



### EMPLOYEES' STOCK OPTIONS (ESOPS)



### Concept & Meaning

The main idea behind an ESOP issue is to retain and motivate the employees. By inculcating a feeling of ownership amongst the employees, they can be motivated to work and it results into an overall growth of the organisation. Employees' Stock Option Scheme helps a company develop a healthy and long term relationship with their employees. It has now been accepted internationally the stock options are an effective instrument to align the interest of the employees with that of the company. It also provides an opportunity to employees to participate in the growth of the company besides creating long term wealth in their hands.



## Regulatory Framework

SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 provides the regulatory framework relating to ESOPs. These Guidelines provide for **two methods** of issuing ESOPs by a company viz., **Employee Stock Option Scheme (ESOS)** and **Employee Stock Purchase Scheme (ESPS)**. ESOS means a scheme under which a company grants option to employees. ESPS means a scheme under which the company offers shares to employees as part of a public issue or otherwise. Following are the important provisions of SEBI Guidelines

## Important Terms

### 1. Grant Date:

Grant date is the date on which list of eligible employees or directors is determined and an offer is given to all of them.

### 2. Vesting Date:

On this date, all those eligible persons who were being offered ESOPs, have a right to reply and the company accordingly vests the said member of stock options in their favour.

### 3. Exercise Date:

All the options which are vested, are now due for exercise on this particular date i.e. the employees have a right to exercise the options granted to them.

**Note:** There has to be a minimum lock in period of 1 year i.e. minimum gap between grant date and vesting date should be at least 1 year. The company is free to decide the lock in period on the shares, issued pursuant to exercise of options.

No options shall carry right of dividend or interest till the time they are converted into shares. Listed companies are bound to comply with SEBI regulations.

### 1. Eligibility to participate : Any employee not being a promoter or director holding (along with relatives) more than 10% of the outstanding equity.

2. **Compensation Committee** : Constitution of Compensation Committee of Directors is required in case of ESOS; but not in case of ESPS.
3. **Shareholder approval** : Special resolution is required to be passed at a general meeting.
4. **Pricing** : Companies are free to determine Exercise Price subject to its conforming to the accounting policies prescribed
5. **Lock-in period** : In case of ESOS, company is free to specify any lock-in period. In case of ESPS, lock-in period shall be one year from the date of allotment. If the ESPS is part of public issue and the shares are issued to employees at the same price as in the public issue, the shares issued to employee pursuant to ESPS shall not be subject to any lock-in period.
6. **Auditor's Certificate** : In case of ESOS, a certificate from the Auditors is to be placed at each AGM stating that the scheme has been implemented as per the guidelines and in accordance with the special resolution passed. In the case of ESPS, no such certificate is required.
7. **Directors' Report** : Directors' report shall contain the following disclosures about ESOS Scheme :
  - (i) The total number of shares covered by the ESOP as approved by the shareholders;
  - (ii) The pricing formula;
  - (iii) Options granted, options vested, options exercised, options forfeited, etc.,
  - (iv) Fully diluted earnings per shares (EPS) computed in accordance with International Accounting Standards.

The Director's Report related to ESPS should contain the following disclosures;

  - (a) The details of the number of shares issued in the scheme;
  - (b) The price at which such shares are issued;
  - (c) Employee-wise details of the shares issued;
  - (d) Diluted Earnings Per Share (EPS) pursuant to issuance of shares under the scheme;

(e) Consideration received against the issuance of shares.

### PROCEDURE FOR ISSUING ESOP BY A LISTED COMPANY

- Hold a **Board Meeting** to consider and approve ESOP and formation of Compensation Committee
- **Compensation committee** shall plan draft the scheme of ESOP;
- Hold Board meeting to **adopt the final scheme**, appoint the **Merchant banker** and approve the notice of the General meeting for shareholders approval;
- Hold **General Meeting** for approval of **shareholders**;
- Make an **application to the stock exchange** for obtaining in-principal approval of the stock exchange;
- Issue of letter of grant of option to the eligible employees along with the letter of acceptance of option;
- On receipt of letter of acceptance of option along with **upfront payment** (if any), from the employee issue the option certificates;
- **After expiry of vesting period**, not less than one year the options shall vest in the employee. At that time, the Company shall issue a letter of vesting along with the letter of exercise of options;
- Receipt to letter of exercise from the employee;
- Hold a **Board Meeting** at the suitable Interval during the exercise period for allotment of shares on options exercised by the optioness;
- **Dispatch of letter of allotment** along with the share certificates or credit the shares so allotted with the Depositories;
- Make an **application to the Stock exchange** for listing of the Shares so allotted;
- **Receipt of Listing of the shares** from the Stock exchange.

## SEBI (SHARE BASED EMPLOYEE BENEFITS) REGULATIONS, 2014

SEBI has, on 28<sup>th</sup> October 2014 notified SEBI (Share Based Employee Benefits) Regulations, 2014 to provide for regulation of all schemes by companies for the benefit of their employees involving dealing in shares, directly or indirectly, with a view to facilitate smooth operation of such schemes while preventing any possible manipulation and matters connected therewith or incidental thereto.

### Definitions

- **Appreciation:** means the difference between the market price of the share of a company on the date of exercise of stock appreciation right (SAR) or vesting of SAR, as the case may be, and the SAR price.
- **Employee Stock Option Scheme:** means a scheme under which a company grants employee stock option directly or through a trust.
- **Employee Stock Purchase Scheme:** means a scheme under which a company offers shares to employees, as part of public issue or otherwise, or through a trust where the trust may undertake secondary acquisition for the purposes of the scheme.
- **General Employee Benefits Scheme:** means any scheme of a company framed in accordance with these regulations, dealing in shares of the company or the shares of its listed holding company, for the purpose of employee welfare including healthcare benefits, hospital care or benefits, or benefits in the event of sickness, accident, disability, death or scholarship funds, or such other benefit as specified by such company.
- **Relevant Date:** means,-
  - in the case of grant, the date of the meeting of the compensation committee on which the grant is made; or
  - in the case of exercise, the date on which the notice of exercise is given to the company or to the trust by the employee;

- **Retirement Benefit Scheme:** means a scheme of a company, framed in accordance with these regulations, dealing in shares of the company or the shares of its listed holding company, for providing retirement benefits to the employees subject to compliance with existing rules and regulations as applicable under laws relevant to retirement benefits in India.
- **Stock Appreciation Right:** means a right given to a SAR grantee entitling him to receive appreciation for a specified number of shares of the company where the settlement of such appreciation may be made by way of cash payment or shares of the company.
- **Stock Appreciation Right Scheme:** means a scheme under which a company grants SAR to employees.

### Eligibility criteria

An employee shall be eligible to participate in the schemes of the company as determined by the compensation committee.

### Compensation committee

- A company shall constitute a compensation committee for administration and superintendence of the schemes. However, the company may designate such of its other committees as compensation committee if they fulfill the criteria as prescribed in these regulations.
- Further that where the scheme is being implemented through a trust the compensation committee shall delegate the administration of such scheme(s) to the trust.
- The compensation committee shall be a committee of such members of the board of directors of the company.
- The compensation committee shall formulate the detailed terms and conditions of the schemes which shall include the provisions as specified by SEBI.
- The compensation committee shall frame suitable policies and procedures to ensure that there is no violation of securities laws, including SEBI (Prohibition of Insider Trading) Regulations, 2015 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to

the Securities Market) Regulations, 2003 by the trust, the company and its employees, as applicable.

### Shareholders approval

Scheme shall not be offered to employees of a company unless the shareholders of the company approve it by passing a **special resolution** in the **general meeting**.

### Variation of terms of the scheme

- The company shall not vary the terms of the schemes in any manner, which may be detrimental to the interests of the employees.
- The company may by **special resolution** in a **general meeting** vary the terms of the schemes offered pursuant to an earlier resolution of the general body but not yet exercised by the employee provided such variation is not prejudicial to the interests of the employees.
- The provisions of shareholders' approval shall apply to such variation of terms as they apply to the original grant of option, SAR, shares or other benefits, as the case may be.
- A company may reprice the options, SAR or shares, as the case may be which are not exercised, whether or not they have been vested if the schemes were rendered unattractive due to fall in the price of the shares in the stock market.

### Winding up of the 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.

### Certification from auditors

In case of company which has passed a resolution for the schemes under these regulations, the board of directors shall at each annual general meeting place before the shareholders a **certificate from the auditors of the company that the scheme(s) has been implemented in accordance with these regulations** and in accordance with the resolution of the company in the general meeting.

### NON-TRANSFERABILITY

- Option, SAR or any other benefit granted to an employee shall not be transferable to any person.
- No person other than the employee to whom the option, SAR or other benefit is granted shall be entitled to such benefits.
- The option, SAR, or any other benefit granted to the employee shall not be pledged, hypothecated, mortgaged or alienated.
- In the event of death of the employee while in employment, all the options, SAR or any other benefit granted to him under a scheme till such date shall vest in the legal heirs or nominees of the deceased employee.
- In case the employee suffers a permanent incapacity while in employment, all the options, SAR or any other benefit granted to him under a scheme as on the date of permanent incapacitation, shall vest in him on that day.
- In the event of resignation or termination of the employee, all the options, SAR, or any other benefit which are granted and yet not vested as on that day shall expire.
- In the event that an employee who has been granted benefits under a scheme is transferred or deputed to an associate company prior to vesting or exercise, the vesting and exercise as per the terms of grant shall continue in case of such transferred or deputed employee even after the transfer or deputation.

### SCHEMES – IMPLEMENTATION AND PROCESS

A company may implement schemes either :-

- a) directly or
- b) by setting up an irrevocable trust(s)



## IMPLEMENTATION OF SCHEMES THROUGH TRUST

1. If a company has implemented the scheme through a trust then the same has to be decided upfront at the time of taking approval of the shareholders for setting up the schemes. However, if the scheme involves secondary acquisition or gift or both, then it is mandatory for the company to implement such schemes through a trusts.
2. SEBI may specify the minimum provisions to be included in the trust deed.
3. A person shall not be appointed as a trustee, if he 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 beneficially holds ten percent or more of the paid-up share capital of the company.
4. The trustees of a trust shall not vote in respect of the shares held by such trust, so as to avoid any misuse arising out of exercising such voting rights.
5. The trustee should ensure that appropriate approval from the shareholders has been obtained by the company in order to enable the trust to implement the scheme(s) and undertake secondary acquisition for the purposes of the scheme(s).
6. The trust shall not deal in derivatives, and shall undertake only delivery based transactions for the purposes of secondary acquisition.
7. The company may lend money to the trust on appropriate terms and conditions to acquire the shares either through new issue or secondary acquisition, for the purposes of implementation of the scheme(s).
8. Secondary acquisition in a financial year by the trust shall not exceed two percent of the paid up equity capital as at the end of the previous financial year.
9. 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.
10. The un-appropriated inventory of shares which are not backed by grants, acquired through secondary acquisition by the trust shall be appropriated within a reasonable period which shall not extend beyond the end of the subsequent financial year.

11. The trust shall be required to **hold the shares** acquired through secondary acquisition for a **minimum period of six months** except where they are required to be transferred in the circumstances enumerated in this regulation, whether off market or on the platform of stock exchange.
12. The trust shall be permitted to undertake **off-market transfer** of shares only under the following circumstances:
  - a) transfer to the employees pursuant to scheme(s);
  - b) when participating in open offer under the SEBI (**Substantial Acquisition of Shares and Takeovers**) Regulations, 2011, or when participating in **buy-back, delisting or any other exit offered** by the company generally to its shareholders.
13. The trust shall be required to make disclosures and comply with the other requirements applicable to insiders or promoters under the SEBI (**Prohibition of Insider Trading**) Regulations, 2015 or any modification or re-enactment thereto.

### EMPLOYEE STOCK PURCHASE SCHEME

The ESPS scheme shall contain the details of the manner in which the scheme will be implemented and operated.

#### Pricing and Lock-In

The company may determine the price of shares to be issued under an ESPS, provided they conform to the provisions of accounting policies under these regulation. Shares issued under an ESPS shall be **locked-in for a minimum period of one year from the date of allotment.**

However, in case where shares are allotted by a company under an ESPS in lieu of shares acquired by the same person under an ESPS in another company which has merged or amalgamated with the first mentioned company, the lock-in period already undergone in respect of shares of the transferor company shall be adjusted against the lock-in period.

**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 RIGHTS SCHEME

### Administration and Implementation

The SAR scheme shall contain the details of the manner in which the scheme will be implemented and operated. The company shall have the freedom to implement cash settled or equity settled SAR scheme. However, in case of equity settled SAR scheme, if the settlement results in fractional shares, then the consideration for fractional shares should be settled in cash.

### Vesting

There shall be a minimum vesting period of one year in case of SAR scheme.

### Rights of the SAR Holder

The employee shall not have right to receive dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of SAR granted to him

## GENERAL EMPLOYEE BENEFITS SCHEME

### Administration and Implementation

GEBS shall contain the details of the scheme and the manner in which the scheme shall be implemented and operated. At **no point in time**, the shares of the company or shares of its listed holding company shall exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of GEBS.

## RETIREMENT BENEFITS SCHEME

### Administration and Implementation

Retirement benefit scheme may be implemented by a company provided it is in compliance with these regulations, and provisions of any other law in force in relation to retirement benefits. The retirement benefit scheme shall contain the details of the benefits under the scheme and the manner in which the scheme shall be implemented and operated.

At *no point* in time, the shares of the company or shares of its listed holding company *shall exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower*, as appearing in its latest balance sheet for the purposes of RBS.

## SCHEMES IMPLEMENTED BY UNLISTED COMPANIES

The shares arising out of options or SAR granted under any scheme prior to its IPO to the employees shall be listed immediately upon exercise in all the recognised stock exchanges subject to compliance with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

## COMPLIANCES AND CONDITIONS

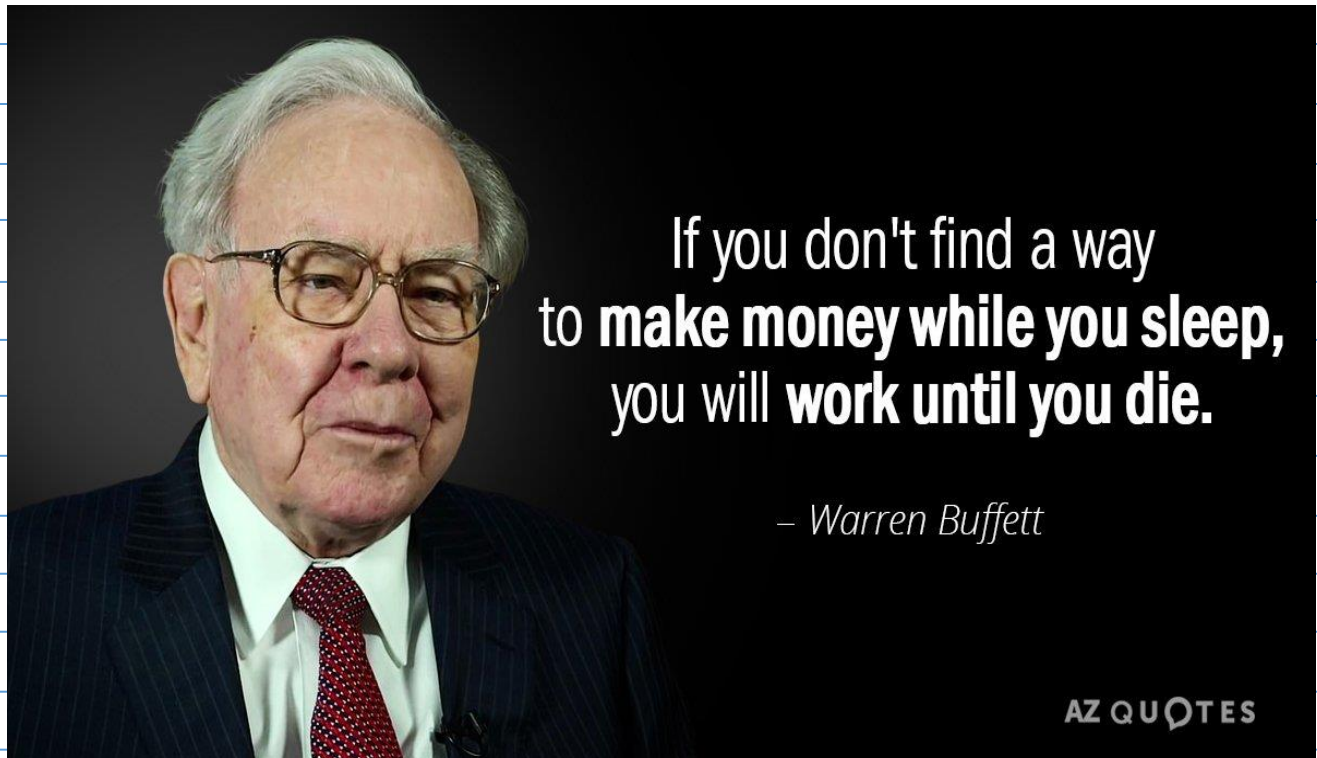
1. The company shall not make any fresh grant prior to its IPO and prior to the listing of its equity shares ('pre-IPO scheme') unless:
  - Such *pre-IPO scheme is in conformity* with these regulations; and
  - Such *pre-IPO scheme is ratified by its shareholders subsequent to the IPO*.
2. *No change shall be made in the terms* unless prior approval of the shareholders is taken for such a change, except for any adjustments for corporate actions.
3. For listing of shares, the company shall obtain the *in-principle approval of the stock exchanges*.
4. When *holding company issues option, share, SAR or benefits* to the employee of its subsidiary, the cost incurred by the holding company shall be *disclosed in the 'notes to accounts'* of the financial statements of the subsidiary company.

5. In a case, if the subsidiary reimburses the cost incurred by the holding company in granting option, share, SAR or benefits to the employees of the subsidiary, both the subsidiary as well as the holding company shall disclose the payment or receipt in the notes to accounts to their financial statements.
6. The company shall appoint a registered merchant banker for the implementation of schemes.

#### **CERTIFICATE FROM AUDITORS**

In case of company which has passed a resolution for the schemes, the board of directors shall at each annual general meeting place before the shareholders a certificate from the auditors of the company that the scheme(s) has been implemented in accordance with these regulations and in accordance with the resolution of the company in the general meeting.

## CHAPTER 10 - SEBI (ISSUE OF SWEAT EQUITY) REGULATIONS, 2002



### SWEAT EQUITY SHARES

Sweat equity shares refers to equity shares given to the **company's employees** on favourable terms, in recognition of their work. Sweat equity shares is one of the modes of making share based payments to employees of the company. The issue of sweat equity shares allows the company to **retain the employees** by rewarding them for their services.

Sweat equity shares **rewards the beneficiaries** by giving them incentives in lieu of their contribution towards the development of the company. Further, Sweat equity shares enables greater employee stake and interest in the growth of an organization as it encourages the employees to contribute more towards the company in which they feel they have a stake.

Section 2 (88) of the Companies Act, 2013 defines "sweat equity shares" which means such equity shares as are issued by a **company** to its **directors or employees** at a **discount** or for **consideration, other than cash**, for providing their **know-how** or making **available rights in the nature of intellectual property rights** or value additions, by whatever name called.

## COMPANIES ACT, 2013

According to Section 54 of the Companies Act, 2013 a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled:

- (a) The issue is authorized by a **special resolution** passed by the company in the **general meeting**.
- (b) The **resolution specifies** the number of shares, current market price, consideration if any and the class or classes of **directors or employees to whom such equity shares are to be issued**.
- (c) The sweat equity shares of a company whose equity shares are **listed** on a recognised stock exchange are issued in accordance with the **regulations made by SEBI** in this regard and if they are **not listed** the sweat equity shares are to be issued in accordance with the **rule 8 of Companies (Share Capital and Debenture) Rules, 2014**.

## WHETHER ISSUE OF SWEAT EQUITY SHARES CAN BE IN THE FORM OF PREFERENTIAL ISSUE?

Issue of Sweat Equity Shares is not a 'preferential issue' as per SEBI (ICDR) Regulations, 2018 which gives the meaning of a preferential issue excludes an issue of sweat equity shares there from, which means issue of sweat equity shares is **not a preferential issue** within the meaning of preferential issue.

## ISSUE OF SWEAT EQUITY SHARES TO PROMOTERS

In case of Issue of sweat equity shares to promoters, the same shall also be approved by simple majority of the **shareholders in General Meeting**.

Further, the promoters to whom such Sweat Equity Shares are proposed to be issued shall not participate in such resolution. Such resolution shall be **valid for a period of not more than twelve months** from the date of passing of the resolution.



## PRICING OF SWEAT EQUITY SHARES

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 **six 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 only on one stock exchange on given date**, then the price on the stock exchange 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.

## VALUATION OF INTELLECTUAL PROPERTY

- The valuation of the intellectual property rights or of the know how provided or other value addition shall be carried out by a **merchant banker**.
- The merchant banker may **consult such experts** and valuers having regard to the nature of the industry and the nature of the property or other value addition.
- The merchant banker shall **obtain a certificate from an independent Chartered Accountant** that the valuation of the intellectual property or other value addition is in accordance with the relevant accounting standards.

## PLACING OF ORDERS BEFORE AGM

In the General meeting, the Board of Directors shall place before the shareholders, a certificate from the auditors of the company that the issue of sweat equity shares has **been made in accordance with the Regulations**.

### CEILING ON MANAGERIAL REMUNERATION

The amount of Sweat Equity shares issued shall be treated as part of managerial remuneration for the purpose of sections 197 of the Companies Act, 2013, if the following conditions are fulfilled:

- (i) the Sweat Equity shares are issued to any director or manager; and
- (ii) they are issued for non-cash consideration, which does not take the form of an asset which can be carried to the balance sheet of the company in accordance with the relevant accounting standards.

### LOCK IN

The Sweat Equity shares shall be locked in for a period of three years from the date of allotment. SEBI (ICDR) Regulations, 2018 on public issue in terms of lock-in and computation of promoters' contribution shall apply if a company makes a public issue after it has issued sweat equity.

### LISTING

The Sweat Equity issued by a listed company shall be eligible for listing only if such issues are in accordance with these regulations.

## CHAPTER II - INSIDER TRADING - AN OVERVIEW



### INTRODUCTION

Insider trading came into existence from the very inception of trading of securities of a company and is now a challenge faced by investors all over the world. U.S. was the first country to formally enact legislation. In India, many committees were formed which made regulations to keep a check on the practice of insider trading.

The Patel Committee in 1986 in India defined Insider Trading as "Insider trading generally means trading in the shares of a company by the persons who are in the management of the company or are close to them on the basis of undisclosed price sensitive information regarding the working of the company, which they possess but which is not available to others."

The previous regulations which were formulated in 1992 - SEBI (Insider Trading) Regulations were punitive and were amended in 2002. The amendment in 2002 came to be known as SEBI (Prohibition of) Insider Trading) Regulations, 1992 and they were preventive in nature.

## IMPORTANT DEFINITIONS

### Insider



"Insider" means any person who is:

- i) a connected person; or
- ii) in possession of or having access to unpublished price sensitive information;

### Connected person

Connected person" means,-

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

### Person deemed to be connected person

"Person is deemed to be a connected person", if such person-

- (a) an immediate relative of connected persons specified in clause (i); or
- (b) a holding company or associate company or subsidiary company; or
- (c) an intermediary as specified in section 12 of the Act or an employee or director thereof; or

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

### Generally available information

"Generally available information" means information that is accessible to the public on a non-discriminatory basis.

### Immediate relative

"Immediate relative" means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities;

### Trading

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

### Unpublished price sensitive information

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

- (i) Financial results;
- (ii) Dividends;
- (iii) Change in capital structure;
- (iv) Mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and such other transactions;
- (v) Changes in key managerial personnel; and
- (vi) Material events in accordance with the listing agreement

### Compliance officer

Compliance Officer means

- any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there,
- who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and
- who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information,
- monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be.



**COMMUNICATION OR PROCUREMENT OF UNPUBLISHED PRICE SENSITIVE INFORMATION**

Regulation 3 provides that any person shall not:

- communicate, provide, or allow access to any unpublished price sensitive information; or
- procure from or cause the communication by any insider of unpublished price sensitive information;
- relating to a company or securities listed or proposed to be listed except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.
- the board of directors of a listed company shall make a policy for determination of "legitimate purposes" as a part of Code of Fair Disclosure and Conduct. The term "legitimate purpose" shall include sharing of unpublished price sensitive information in the ordinary course of business by an insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations.
- Any person in receipt of unpublished price sensitive information pursuant to a "legitimate purpose" shall be considered an "insider" for purposes of these regulations and due notice shall be given to such persons to maintain confidentiality of such unpublished price sensitive information in compliance with these regulations.
- An unpublished price sensitive information may be communicated, provided, allowed access to or procured, in connection with a transaction that would:-



- (i) entail an obligation to make an open offer under the takeover regulations where the board of directors of the listed company is of informed opinion that sharing of such information is in the best interests of the company;
- (ii) not attract the obligation to make an open offer under the takeover regulations but where the board of directors of the listed company is of informed opinion that sharing of such information is in the best interests of the company and the information that constitute unpublished price sensitive information is disseminated to be made generally available at least two trading days prior to the proposed transaction being effected in such form as the board of directors may determine to be adequate and fair to cover all relevant and material facts.
- The board of directors shall require the parties to execute agreements to contract confidentiality and non-disclosure obligations and such parties shall keep information so received confidential, except for the purpose specified above and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.
- The board of directors shall ensure that a structured digital database is maintained containing the names of such persons or entities with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such databases shall be maintained with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.

### TRADING WHEN IN POSSESSION OF UNPUBLISHED PRICE SENSITIVE INFORMATION

Regulation 4 prescribes that 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.

However there are certain exemptions:

1. When there is an off-market transfer between promoters who are aware of price sensitive information and both parties had made a conscious and informed trade decision. Such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which

the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.

2. In the case of **non-individual insiders**, the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; with an assurance that no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions;
3. The transaction was carried out through the **block deal window mechanism** between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;
4. The transaction in question was carried out pursuant to a **statutory or regulatory obligation** to carry out a bona fide transaction.
5. The transaction in question was undertaken **pursuant to the exercise of stock options** in respect of which the exercise price was pre-determined in compliance with applicable regulations.
6. **The trades were pursuant to a trading plan.**

In the case of connected persons, the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on SEBI. SEBI may specify such standards and requirements, from time to time, as it may deem necessary for the purpose of these regulations.

**Whether creation of a pledge or invocation of pledge is allowed when trading window is closed?**

Yes, however, the pledgor or pledgee may demonstrate that the creation of the pledge or invocation of pledge was bonafide and prove this innocence under proviso to sub-regulation (1) of regulation 4.

## TRADING PLANS

Regulation 5 states that an insider would be required to submit trading plan in advance to the compliance officer for his approval. The compliance officer is also empowered to take additional undertakings from the insiders for approval of the trading plan. Such trading plan on approval will also be disclosed to the Stock Exchanges, where the securities of the company are listed.

The trading plan shall comply with requirements as follows:

- It shall be submitted for a **minimum period of 12 months**.
- **No overlapping** of plan with the existing plan submitted by Insider.
- It shall set out either the **value of trades** to be effected or the **number of securities** to be traded along with the **nature of the trade** and the **intervals** at, or dates on which such trades shall be effected.
- Trading can **commence only after 6 months** from public disclosure of plan.
- **No trading between 20th day prior to closure of financial period and 2<sup>nd</sup> trading day after disclosure of financial results.**
- **Compliance officer to approve the plan.**
- **not entail trading in securities for market abuse.**

## Rules regarding implementation of Trading Plan

- **Pre-clearance of trades shall not be required** for a trade executed as per an approved trading plan.
- Trading window norms and restrictions on **contra trade shall not be applicable** for trades carried out in accordance with an approved trading plan.

- The trading plan once approved shall be irrevocable and the insider shall mandatorily have to implement the plan.
- However, the implementation of the trading plan shall not be commenced if any unpublished price sensitive information in possession of the insider at the time of formulation of the plan has not become generally available at the time of the commencement of implementation and in such event the compliance officer shall confirm that the commencement ought to be deferred until such unpublished price sensitive information becomes generally available information so as to avoid a violation of sub-regulation (1) of regulation 4.
- Upon approval of the trading plan, the compliance officer shall notify the plan to the stock exchanges on which the securities are listed

## DISCLOSURES OF TRADING BY INSIDERS

### Regulations 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.

### Regulations 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 for purposes of this Chapter, provided that trading in derivatives of securities is permitted by any law for the time being in force.

### Regulations 6(4)

The disclosures made shall be maintained by the company, for a minimum period of five years, in such form as may be specified.

## DISCLOSURES BY CERTAIN PERSONS

### Initial Disclosure [Regulation 7 (1)]

- (a) Every promoter, key managerial personnel and director of every company whose securities are listed on any recognised stock exchange shall disclose his holding of securities of the company as on the date of these regulations taking effect, to the company within thirty days of these regulations taking effect;
- (b) Every person on appointment as a key managerial personnel or a director of the company or upon becoming a promoter shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter.

### Continual Disclosures [Regulation 7(2)]

- (a) Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;
- (b) Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.

## DISCLOSURES BY OTHER CONNECTED PERSONS

Any company whose securities are listed on a stock exchange may require any other connected person or class of connected persons to make disclosures of holdings and trading in securities of the company in such form and at such frequency as may be determined by the company.

This is an enabling provision for listed companies to seek information from those to whom it has to provide unpublished price sensitive information. This provision confers discretion on any company to seek such information. For example, a listed company may ask that a management consultant who would advise it on corporate strategy and would need to review unpublished price sensitive information, should make disclosures of his trades to 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.

### PRINCIPLES OF FAIR DISCLOSURE FOR PURPOSES OF CODE OF PRACTICES AND PROCEDURES FOR FAIR DISCLOSURE OF UNPUBLISHED PRICE SENSITIVE INFORMATION - SCHEDULE A [Sub-regulation (1) of Regulation 8]:

1. Prompt public disclosure of unpublished price sensitive information that would impact price discovery.
2. Uniform dissemination of unpublished price sensitive information to avoid selective disclosure.
3. Designation of a senior officer as a chief investor relations officer to deal with dissemination of information and disclosure of unpublished price sensitive information.
4. Appropriate and fair response to queries on news reports and requests for verification of market rumours by regulatory authorities.
5. Ensuring that information shared with analysts and research personnel is not unpublished price sensitive information.

6. Developing best practices to make transcripts or records of proceedings of meetings with analysts and other investor relations conferences on the official website to ensure official confirmation and documentation of disclosures made.
7. Handling of all unpublished price sensitive information on a need-to-know basis.

### MINIMUM STANDARDS FOR CODE OF CONDUCT

The regulations lay down the following minimum standards for Code of Conduct to regulate, monitor and report trading by insiders :-

1. The compliance officer shall report to the board of directors and in particular, shall provide reports to the Chairman of the Audit Committee, if any, or to the Chairman of the board of directors at such frequency as may be stipulated by the board of directors.
2. All information shall be handled within the organisation on a need-to-know basis and no unpublished price sensitive information shall be communicated to any person except in furtherance of the insider's legitimate purposes, performance of duties or discharge of his legal obligations.
3. The code of conduct shall contain norms for appropriate Chinese Walls procedures, and processes for permitting any designated person to "cross the wall".
4. Employees and connected persons designated on the basis of their functional role ("designated persons") in the organisation shall be governed by an internal code of conduct governing dealing in securities.
5. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates.
6. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.
7. The timing for re-opening of the trading window shall be determined by the compliance officer taking into account various factors including the unpublished price sensitive information in question becoming generally



available and being capable of assimilation by the market, which in any event shall not be earlier than forty-eight hours after the information becomes generally available.

8. The trading window shall also be applicable to any person having contractual or fiduciary relation with the company, such as auditors, accountancy firms, law firms, analysts, consultants etc., assisting, or advising the company.

9. When the trading window is open, trading by designated persons shall be subject to preclearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.

10. The compliance officer shall confidentially maintain a list of such securities as a "restricted list" which shall be used as the basis for approving or rejecting applications for preclearance of trades.

11. Prior to approving any trades, the compliance officer shall be entitled to seek declarations to the effect that the applicant for pre-clearance is not in possession of any unpublished price sensitive information. He shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate.

12. The code of conduct shall specify any reasonable timeframe, which in any event shall not be more than seven trading days, within which trades that have been pre-cleared have to be executed by the designated person, failing which fresh pre-clearance would be needed for the trades to be executed.

13. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or

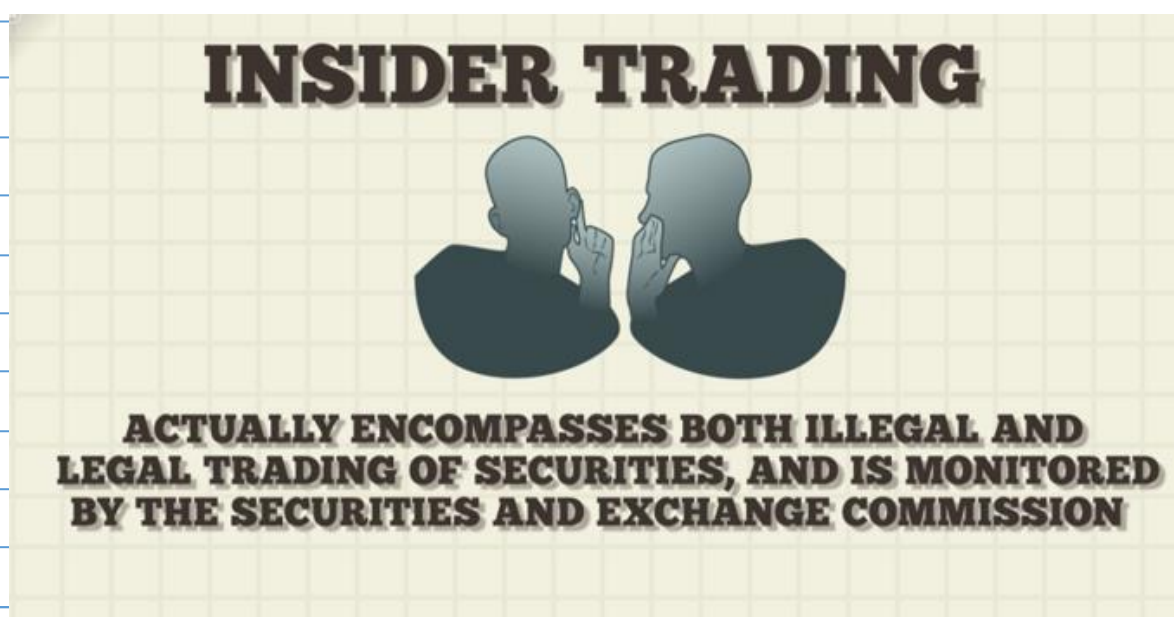
otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to SEBI for credit to the Investor Protection and Education Fund administered by SEBI under the Act.

14. Designated persons shall be required to **disclose names and Permanent Account Number** or any other identifier authorized by law of the following persons to the company on an annual basis and as and when the information changes:

- a) immediate relatives
- b) persons with whom such designated person(s) shares a material financial relationship
- c) Phone, mobile and cell numbers which are used by them.
- d) the names of educational institutions from which designated persons have graduated and names of their past employers shall also be disclosed on a one time basis.

Explanation - The term "material financial relationship" shall mean a relationship in which one person is a recipient of any kind of payment such as by way of a loan or gift during the immediately preceding twelve months, equivalent to at least 25% of such payer's annual income but shall exclude relationships in which the payment is based on arm's length transactions.

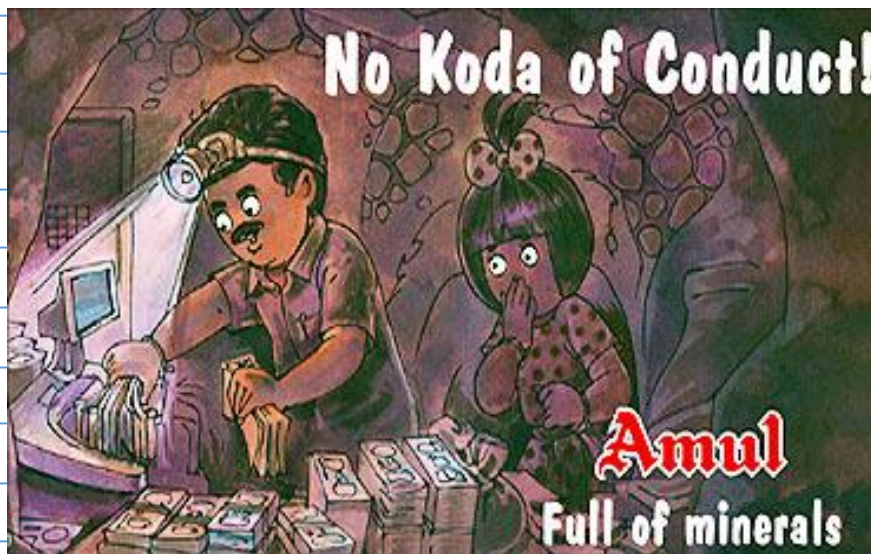
#### PENALTY FOR INSIDER TRADING UNDER SECTION 15G OF SEBI ACT



If any Insider who either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or communicates any unpublished price sensitive information to any person, he shall be liable to a penalty, which shall not be less than ten lakh rupees but which may extend to **twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.**

Violation of the provisions of these regulations attract huge monetary penalty and may lead to criminal prosecution. However those aggrieved by an order of SEBI, may prefer an appeal to the Securities Appellate Tribunal within a period of forty-five days of the order.

### ROLE OF COMPANY SECRETARY IN COMPLIANCE REQUIREMENTS



- The Company Secretary shall act as Compliance Officer and ensure compliance with SEBI (Prohibition of insider Trading) Regulations, 2015 including maintenance of various documents.
- To frame a code of fair disclosure and conduct in line with the model code specified in the Schedule A of the regulations and get the same approved by the board of directors of the company.

- To place before the board the “minimum standards for Code of Conduct” to regulate, monitor and report trading by insiders as enumerated in the Schedule B of the regulations.
- To receive initial disclosure from every Promoter, KMP and director or every person on appointment as KMP or director or becoming a Promoter
- To receive from every Promoter, employee and director, continual disclosures of the number of securities acquired or disposed of and changes therein, even if the value of the securities traded, exceeds Rs 10 lakh with single or series of transaction in any calendar quarter in prescribed form.
- To ensure that no trading shall between 20th day prior to closure of financial period and 2nd trading day after disclosure of financial results.
- The compliance officer shall approve the trading plan and after the approval of the trading plan, the compliance officer shall notify the plan to the stock exchanges on which the securities are listed.
- The Compliance Officer shall maintain records of all the declarations given by the directors/designated employees/partners in the appropriate form for a minimum period of three years.

## INFORMANT INCENTIVES AND REWARDS

A new Chapter IIIA has been prescribed under the Regulation for incentive and reward for the informants who submits to the SEBI a Voluntary Information Disclosure relating to any alleged violation of insider trading laws that has occurred, is occurring or has a reasonable belief that it is about to occur. The new provisions prescribes the manner of submitting information, various forms and procedure for determination of rewards and confidentiality of informants.

## INFORMANT

'Informant' means an individual(s), who voluntarily submits to the SEBI a Voluntary Information Disclosure Form relating to an alleged violation of insider trading laws that has occurred, is occurring or has a reasonable belief that it is about to occur, in a manner provided under these regulations, regardless of whether such individual(s) satisfies the requirements, procedures and conditions to qualify for a reward.

## IRRELEVANT, VEXATIOUS AND FRIVOLOUS INFORMATION

Irrelevant, vexatious and frivolous information includes, reporting of information which in the opinion of the SEBI -

- (i) Does not constitute a violation of insider trading laws;
- (ii) Is rendered solely for the purposes of malicious prosecution;
- (iii) Is rendered intentionally in an effort to waste the time and resource of the SEBI.

## MONETARY SANCTIONS

'Monetary Sanctions' shall mean any non-monetary settlement terms or any direction of the SEBI, in the nature of disgorgement under securities laws aggregating to at least Rupees one crore arising from the same operative facts contained in the original information.

## ORIGINAL INFORMATION

'Original Information' means any relevant information submitted in accordance with these regulations pertaining to any violation of insider trading laws that is:-

- (a) derived from the independent knowledge and analysis of the Informant;

- (b) *not known to the SEBI from any other source, except where the Informant is the original source of the information;*
- (c) *is sufficiently specific, credible and timely to –*
- *commence an examination or inquiry or audit,*
  - *assist in an ongoing examination or investigation or inquiry or audit,*
  - *open or re-open an investigation or inquiry, or*
  - *inquire into a different conduct as part of an ongoing examination or investigation or inquiry or audit directed by the SEBI;*
- (d) *not exclusively derived from an allegation made in a judicial or administrative hearing, in a Governmental report, hearing, audit, or investigation, or from the news media, except where the Informant is the original source of the information; and*
- (e) *not irrelevant or frivolous or vexatious.*

*Explanation – Information which does not in the opinion of the SEBI add to the information already possessed by the SEBI is not original information.*

### **REWARD**

*‘Reward’ means any gratuitous monetary amount for which an Informant is declared eligible as per the provisions of these regulations;*

### **SUBMISSION OF ORIGINAL INFORMATION TO THE BOARD [REGULATION 7 (B)]**

*An Informant shall submit Original Information by furnishing the Voluntary Information Disclosure Form to the Office of Informant Protection of the SEBI in the format and manner set out in Schedule D. The Voluntary Information Disclosure Form may be submitted through informant’s legal representative.*

*However where the Informant does not submit the Voluntary Information Disclosure Form through a legal representative, the SEBI may require such Informant to appear in person to ascertain his/her identity and the veracity of the information so provided.*



The legal representative shall,-

- i. Verify the identity and contact details of the Informant;
- ii. Unless otherwise required by the SEBI, maintain confidentiality of the identity and existence of the Informant, including the original Voluntary Information Disclosure Form;
- iii. Undertake and certify that he/she,-
  - (a) Has reviewed the completed and signed Voluntary Information Disclosure Form for completeness and accuracy and that the information contained therein is true, correct and complete to the best of his/her knowledge;
  - (b) Has obtained a irrevocable consent from the Informant to provide to the Board with original Voluntary Information Disclosure Form whenever required by the SEBI; and
  - (c) Agrees to be legally obligated to provide the original Voluntary Information Disclosure Form within seven (7) calendar days of receiving such requests from the SEBI
- iv. Submits to the SEBI, the copy of the Voluntary Information Disclosure Form in the manner provided in Schedule D of these regulations along with a signed certificate as required under clause (iii).

An Informant shall while submitting the Voluntary Information Disclosure Form shall expunge such information from the content of the information which could reasonably be expected to reveal his or her identity and in case where such information cannot be expunged, the Informant may identify such part of information or any document that the Informant believes could reasonably be expected to reveal his or her identity.

#### RECEIPT OF ORIGINAL INFORMATION BY THE BOARD [REGULATION 7 (C)]

The Board may designate a division to function as the independent Office of Informant Protection.

The Office of Informant Protection shall perform following as may be specified by the SEBI, including,-

- i. Receiving and registering the Voluntary Information Disclosure Form;
- ii. Making all necessary communications with the Informant;



- iii. Maintaining a hotline for the benefit of potential Informant;
- iv. Maintaining confidentiality of the legal representative of the Informant and act as an interface between the Informant and the officers of the SEBI;
- v. Interacting with the Informant Incentive Committee;
- vi. Issuing press releases and rewards relating to Informant; and
- vii. Submitting an annual report to the SEBI relating to the functioning of the Office of Informant Protection.

On receipt of the Voluntary Information Disclosure Form, the Office of Informant Protection shall communicate the substance of the information along with the evidence submitted by the informant to the relevant department or division of the SEBI for examination and initiation of necessary action, if any.

The SEBI shall not be required to send any intimation or acknowledgement to the Informant or any other person, of the examination or action initiated by the SEBI, if any, pursuant to receipt of the Voluntary Information Disclosure Form or information under these regulations, including rejection thereof.

#### **INFORMANT REWARD [Regulation 7(D)]**

Upon collection or substantial recovery of the monetary sanctions amounting to at least twice the Reward, the SEBI may at its sole discretion, declare an Informant eligible for Reward and intimate the Informant or his or her legal representative to file an application in the format provided in Schedule-E for claiming such Reward.

However the amount of Reward shall be ten percent of the monetary sanctions collected or recovered and shall not exceed Rupees One crore or such higher amount as the SEBI may specify from time to time.

The SEBI may if deemed fit, out of the total Reward payable, grant an interim reward not exceeding Rupees Ten lacs or such higher amount as the SEBI may specify from time to time, on the issue of final order by the SEBI against the person directed to disgorge.

In case of more than one Informant jointly providing the Original Information, the Reward, shall be divided equally amongst the total number of Informants. The Reward under these regulations shall be paid from the Investor Protection and Education Fund.

#### **DETERMINATION OF AMOUNT OF REWARD. [REGULATION 7 (E)]**

- The amount of the Reward, if payable, shall be determined by the SEBI.
- While determining the amount of Reward the SEBI may specify the factors that may be taken into consideration by the Informant Incentive Committee.
- An Informant may be eligible for a Reward whether or not he reported the matter to his organization as per its internal legal and compliance procedures and irrespective of such organization's compliance officer subsequently providing the same Information to the Board.

#### **APPLICATION FOR REWARD [REGULATION 7 (F)]**

Informants who are considered tentatively eligible for a Reward, shall submit the Informant Reward Claim Form set out in Schedule E to the SEBI within the period specified in the intimation sent by the Board.

Prior to the payment of a Reward, an Informant shall directly or through his or her legal representative, disclose his or her identity and provide such other information as the SEBI may require.

#### **REJECTION OF CLAIM FOR REWARD [REGULATION 7 (G)]**

No Reward shall be made to an Informant:-

- who does not submit original information;
- who has acquired the Original Information, through or as a member, officer, or an employee of:-
  - (a) any regulatory agency constituted by or under any law in India or outside India, including the SEBI;
  - (b) any self-regulatory organization;
  - (c) the surveillance or investigation wings of any recognised stock exchange or clearing corporation; or

- (d) any law enforcement organization including the police or any central or state revenue authorities.
- against whom the SEBI may initiate or has initiated criminal proceedings under securities laws;
  - who wilfully refused to cooperate with the SEBI during its course of investigation, inquiry, audit, examination or other proceedings under securities laws;
  - who:
- (a) knowingly makes any false, fictitious, or fraudulent statement or representation;
- (b) uses any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry;
- (c) fails to furnish the complete information available with him or accessible by him in relation to the alleged violation.
- who is obligated, under any law or otherwise, to report such Original Information to the SEBI, including a compliance officer under securities laws. Provided that the SEBI may if deemed fit, at its sole discretion, exempt a person from any of these disqualifications.

### **INFORMANT CONFIDENTIALITY [REGULATION 7 (H)]**

Sharing of information shall be in accordance with such assurances of confidentiality as the SEBI determines appropriate.

### **PROTECTION AGAINST RETALIATION AND VICTIMIZATION [REGULATION 7 (I)]**

Every person required to have a Code of Conduct under these regulations shall ensure that such a Code of Conduct provides for suitable protection against any discharge, termination, demotion, suspension, threats, harassment, directly or indirectly or discrimination against any employee who files a Voluntary Information Disclosure Form, irrespective of whether the information is considered or rejected by the SEBI or he or she is eligible for a Reward under these regulations.

Nothing in these regulations shall prohibit any Informant who believes that he or she has been subject to retaliation or victimisation by his or her employer, from approaching the competent court or tribunal for appropriate relief.

Any employer who violates above, may be liable for penalty, debarment, suspension, and/or criminal prosecution by the SEBI. However nothing in these regulations will require the SEBI to direct re-instatement or compensation by an employer.

### **INSTITUTIONAL MECHANISM FOR PREVENTION OF INSIDER TRADING [REGULATION 9A]**

- The Chief Executive Officer, Managing Director or such other analogous person of a listed company, intermediary or fiduciary shall put in place adequate and effective system of internal controls to ensure compliance with the requirements given in these regulations to prevent insider trading. The internal controls shall include the following:
  - (a) all employees who have access to unpublished price sensitive information are identified as designated person;
  - (b) all the unpublished price sensitive information shall be identified and its confidentiality shall be maintained as per the requirements of these regulations;
  - (d) adequate restrictions shall be placed on communication or procurement of unpublished price sensitive information as required by these regulations;
  - (c) lists of all employees and other persons with whom unpublished price sensitive information is shared shall be maintained and confidentiality agreements shall be signed or notice shall be served to all such employees and persons;
  - (e) all other relevant requirements specified under these regulations shall be complied with;
  - (d) periodic process review to evaluate effectiveness of such internal controls.
- The board of directors of every listed company and the board of directors or head(s) of the organisation of intermediaries and fiduciaries shall ensure that the Chief Executive Officer or the Managing Director or such other analogous person ensures compliance with these regulations.
- The Audit Committee of a listed company or other analogous body for intermediary or fiduciary shall review compliance with the provisions of these regulations at least once in a financial year and shall verify that the systems for internal control are adequate and are operating effectively.
- Every listed company shall formulate written policies and procedures for inquiry in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, which shall be approved by board of directors of the company and

accordingly initiate appropriate inquiries on becoming aware of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information and inform the Board promptly of such leaks, inquiries and results of such inquiries.

- The listed company shall have a whistle-blower policy and make employees aware of such policy to enable employees to report instances of leak of unpublished price sensitive information.
- If an inquiry has been initiated by a listed company in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, the relevant intermediaries and fiduciaries shall co-operate with the listed company in connection with such inquiry conducted by listed company.

### **APPEAL TO SECURITIES APPELLATE TRIBUNAL**

Violation of the provisions of these regulations attract huge monetary penalty and may lead to criminal prosecution. However those aggrieved by an order of SEBI, may prefer an appeal to the Securities Appellate Tribunal *within a period of forty-five days of the order.*

### **RECENT JUDGEMENTS AND DEVELOPMENTS:**

During the year 2018, it came to the knowledge of SEBI that several unpublished price sensitive information were circulated in private social media networking groups about certain companies ahead of their official announcements to the respective stock exchanges. This calls for immediate change in ongoing Regulations with newer requirements like Policy for leak of unpublished price sensitive information, maintaining structure digital database of persons with whom information are shared, reward and incentive system for informants etc.

In the matter of Insider Trading in the Scrip of Deep Industries Ltd., SEBI during the investigation go beyond the prescribed definition of Connected Persons under the regulation and establishes relationships and nexus of persons, leak of information on the basis of social media network websites and KYC documents with intermediaries of suspected persons and entities involved in the insider trading.

## CHAPTER 12 - MUTUAL FUNDS

**Don't save what is left after Spending,  
But spend what is left after Savings.  
–Warren Buffett**



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### CONCEPT, DEFINITION AND MEANING OF MUTUAL FUND

A mutual fund works on a very simple concept. It raises money from a lot of small investors, creates a pool of such funds and then invests the same money in various financial assets. Over a period of time, any returns generated out of such investments are distributed amongst the investors. As a token of security, the investors are issued unit certificates. The investors have the choice to either transfer, retain or redeem these units depending upon the time of fund.

In other words, Mutual Fund means a fund established in the form of a trust to raise money through sale of units to the public under one or more schemes for investing in securities, including money market instruments.

The small investors who generally lack expertise to invest on their own in the securities market prefer some kind of collective investment vehicle like mutual fund, which pool their marginal resources, invest in securities, and distribute the returns there from among them on cooperative principles. The investor benefits in terms of reduced risk and higher returns arising from professional expertise of fund manager employed by the Mutual Fund.





Initially only UTI was allowed to do the Mutual Fund business. Thereafter, in the year 1987, public sector banks and insurance companies were also allowed to do this business. Finally, in the year 1993 the mutual fund industry was opened to the private sector as well as foreign institutions.

Every mutual fund is required to have an **Asset Management Company**, a company incorporated in the Companies Act, 2013, to manage the funds of the mutual fund. The Asset Management Company should be approved by SEBI and should enter into an agreement with the trustees of the mutual funds to formulate schemes, raise money against the issue of units, etc.

**Trustees** of a mutual fund mean the Board of Trustees or the Trustee Company who holds the property of the mutual fund trust for the benefit of the unit holders.

Mutual fund is always accompanied with a sponsor. **Sponsor** means any person who, acting alone or in combination with another body corporate, establishes a mutual fund.

Mutual fund is always accompanied with a Custodian of Securities. Custodian means a person who has been granted a certificate of registration to carry on the business of custody of securities under the SEBI (Custodian of Securities) Regulations, 1996.



## ADVANTAGES OF MUTUAL FUNDS



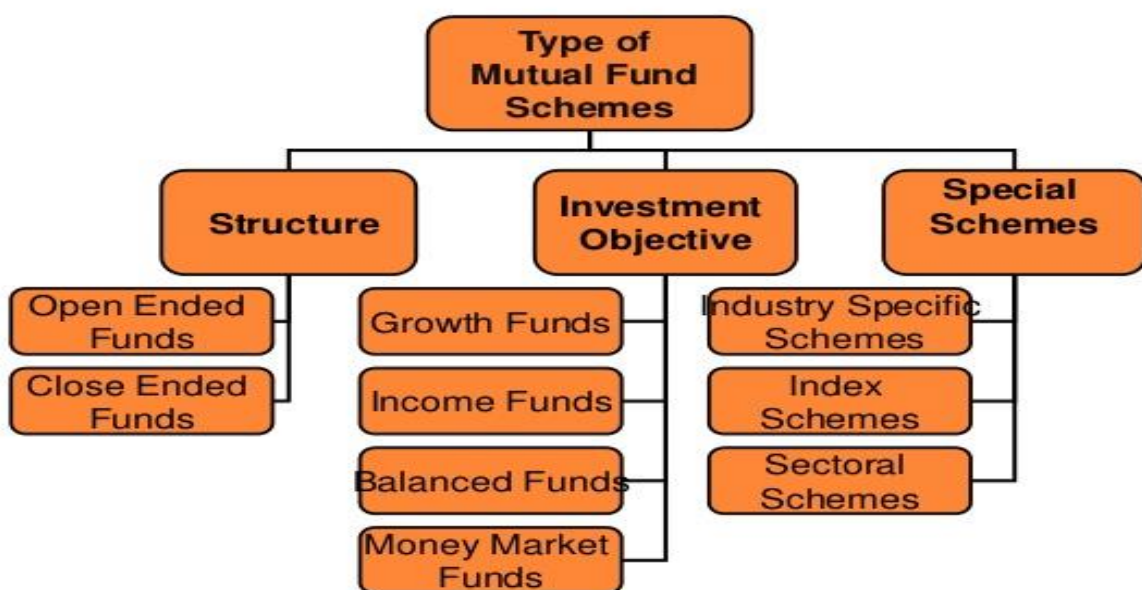
The advantages of investing in a mutual fund are:

1. **Professional Management:** Mutual funds are managed by a team of skilled professionals, who are expert in their areas. They also have a research team, which constantly analyses the performance and prospects of companies and selects suitable investments to achieve the objectives of the scheme.
2. **Diversification:** There is a very famous proverb in English, it says: “Do not lay all your eggs in one basket”. Mutual funds work on an exact similar concept. Mutual funds invest in a number of companies across sectors. Even if one particular sector collapses, the losses are covered by some other investment, which is doing well. Investors achieve this diversification through a Mutual Fund with far less money than one can do on his own.
3. **Convenient Administration:** Investing in a mutual fund reduces paper work and helps investors to avoid many problems such as bad deliveries, deliveries, delayed payments, and unnecessary follow up with brokers and companies. Mutual funds save investors time and make investing easy and convenient.
4. **Return Potential:** Over a medium to long term, mutual funds have the potential to provide a higher return as they invest in a diversified basket of selected securities.

5. **Low Costs:** Mutual funds invest huge sums of money and hence the cost of brokerage is less as compared to a direct investment made by any investor. So the overall brokerage, custodial and other fees translate into lower costs for investors.
6. **Liquidity:** Liquidity means readiness to convert investments into cash. In open-ended schemes, investors can get their money back promptly at net asset value related prices from the mutual fund itself. With close-ended schemes, investors can sell their units on a stock exchange at the prevailing market price or avail of the facility of direct repurchase at net asset value (NAV) related prices.
7. **Transparency:** As per SEBI Regulations, all the mutual funds are compulsorily required to disclose the details of the investments made by them from time to time to all its investors.

### BASIC CLASSIFICATION OF MUTUAL FUNDS

## TYPES OF MUTUAL FUNDS



All the mutual funds can be broadly classified into

- open ended mutual funds
- close ended mutual funds

As the name suggests, an **open-ended mutual fund** is a fund wherein, the fund itself buys and sells units from/to the investors. Since the fund itself buys and sells units, its units are non-fixed. The fund itself buys back the units surrendered and is ready to sell new units. Generally, the transaction takes place at the net asset value, which is calculated on a periodical basis.

A **close ended mutual fund** is the fund where mutual fund management sells a limited number of units and does not redeem them ie once the units are issued, they are redeemed only at the time of end of its tenure. In between, the investors have the choice to sell the units in the open market. Primary example of such mutual fund is UTI's Master share. The units of such mutual funds are traded in the secondary market.

Following are the important differences between close ended and open ended mutual funds :

S.No.	Close ended schemes	Open ended schemes
1.	Fixed corpus : no new units can be offered beyond the limit	Variable corpus due to ongoing purchase and redemption
2.	Listed on stock exchange for buying and selling	No listing on exchange, transactions done directly with the fund
3.	Two values available namely NAV and the Market Trading Price	Only one price namely NAV
4.	Mostly liquid	Highly liquid

## MUTUAL FUND PLANS

Sr No.	Regular Plans	Direct Plans
1	Sold through a distributor	Sold directly by the AMC
2	Higher Expense Ratio due to commissions paid to distributor	Lower Expense Ratio as no commission is paid to distributor
3	Potentially lower returns to the investor due to higher expenses	Potentially higher returns due to lower expenses

## TYPES OF MUTUAL FUNDS

Following are the important types of mutual funds:

**Income oriented mutual funds:** the fund primarily offers **fixed income** to investors. Naturally, the main securities in which investments are made by such funds are the fixed yielding ones like bonds.

**Growth oriented mutual funds:** These funds offer growth potentialities associated with investment in capital market namely:

- **High source of income** by way of dividend and
- **Rapid capital appreciation**, both from holding of good quality scrips

These funds, with a view to satisfying the growth needs of investors, primarily concentrate on the low risk and high yielding spectrum of equity scrips of the corporate sector.

**High Growth Schemes:** An investment in **high risk and high return** with a high degree of capital appreciation generating securities in which aggressive investors are willing.

**Tax Saving Schemes:** These schemes offer **tax rebates to the investors** under tax laws as prescribed from time to time. The Government offers tax incentives for investment in specified avenues e.g. Equity Linked Saving Schemes (ELSS) and Pensions Schemes. It may be noted that Equity Linked Saving Schemes (ELSS) have the lock-in period of three years.

**Hybrid mutual funds:** These funds cater to both the investment needs of the prospective investors – namely *fixed income as well as growth orientation*. Therefore, investment targets of these mutual funds are judicious mix of both the fixed income securities like bonds and debentures and also sound equity scrips. In fact, these funds utilize the concept of balanced investment management. These funds are, thus also known as “balanced funds.”

**Hedge Funds:** There is no exact definition of the term ‘Hedge Funds’. In general, Hedge Funds are unregistered *private investment partnerships, funds or pools that may invest and trade in many different markets, strategies and instruments*. Hedge funds have an investor base comprising wealthy individuals and institution and relatively high minimum investment limits. They normally pay performance fees to their managers.

It may be noted that Hedge Funds are sometimes also known as Rich Man’s Mutual Funds.

**Leverage Funds:** Leverage Funds increase the size and value of portfolio and other benefits to member through *excess gains over cost of borrowed funds*. They tend to indulge in speculative trading and risky investment.

**Money market mutual fund:** 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.

**Real Estate funds:** These are closed ended mutual funds, which invest predominantly in *real estate and properties*.

**Capital protection oriented scheme:** This is a mutual fund scheme which is designed as such and which endeavors to *protect the capital invested* therein through suitable orientation of its portfolio structure.

**Fund of Funds:** They invest only in units of other mutual funds. Such funds do not operate at present in India.

**Special Schemes:** This category includes index schemes that attempt to replicate the performance of particular index such as the BSE, Sensex or the NSE-50 or industry specific schemes (which invest in specific industries) or sectoral schemes (which invest exclusively in segment such as 'A' Group or initial public offering). Index fund schemes are ideal for investors who are satisfied with a return approximately equal to that of an index. Sectoral fund schemes are ideal for investors who have already decided to invest in particular sector or segment.

**Off-shore Funds:** Such funds invest in securities of foreign companies with RBI permission.

**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 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.

**Infrastructure Debt Fund:** They invest primarily in the debt securities or securitized debt investment of infrastructure companies.

## FIVE PRINCIPAL CONSTITUENTS

### 1. Sponsor

A sponsor is an influential investor who creates demand for a security because of their positive outlook on it. The sponsor brings in capital and creates a mutual fund trust and sets up the AMC. The sponsor makes an application for registration of the mutual fund and contributes at least 40% of the net worth of the AMC.

## 2. Asset Management Company

An asset management company (AMC) is a company that invests its clients' pooled funds into securities that match declared financial objectives. Asset management companies provide investors with more diversification and investing options than they would have themselves. AMCs manage mutual funds, hedge funds and pension plans, these companies earn income by charging service fees or commissions to their clients.

## 3. Trustee

A trustee is a person or firm that holds and administers property or assets for the benefit of a third party. A trustee may be appointed for a wide variety of purposes, such as in case of bankruptcy, for a charity, for a trust fund or for certain types of retirement plans or pensions.

No person shall be eligible to be appointed as a trustee unless—

1. he is a person of ability, integrity and standing; and
2. has not been found guilty of moral turpitude; and
3. has not been convicted of any economic offence or violation of any securities laws; and has furnished particulars as specified.

No asset management company and no director (including independent director), officer or employee of an asset management company shall be eligible to be appointed as a trustee of any mutual fund.

No person who is appointed as a trustee of a mutual fund shall be eligible to be appointed as a trustee of any other mutual fund

Two-thirds of the trustees shall be independent persons and shall not be associated with the sponsors or be associated with them in any manner whatsoever.



In case a company is appointed as a trustee then its directors can act as trustees of any other trust provided that the object of the trust is not in conflict with the object of the mutual fund.

#### 4. Unit Holders

A unitholder is an investor who owns the units issued by a trust, like a real estate investment trust or a master limited partnership (MLP). The securities issued by trusts/MF are called units, and investors in units are called unitholders. The unit in turn reflect share of the investor in the Net Assets of the fund.

#### 5. Mutual fund

A mutual fund established under the Indian Trust Act to raise money through, the sale of units to the public for investing in the capital market. The funds thus collected as per the directions of asset management company for invested. The mutual fund has to be SEBI registered.

### MARKET INTERMEDIARIES

#### Custodian

A custodian is a person who carries on the business of providing custodial services to the client. The custodian keeps the custody of the securities of the client. The custodian also provides incidental services such as maintaining the accounts of securities of the client, collecting the benefits or rights accruing to the client in respect of securities.

#### Transfer Agents

A transfer agent is a person who has been granted a Certificate of Registration to conduct the business of transfer agent under SEBI Regulations. Transfer agents' services include issue and redemption of mutual fund units, preparation of transfer documents and maintenance of updated investment records. They also record transfer of units between investors where depository does not function. They also facilitate investors to get customized reports.

### Depository

A depository facilitates the smooth flow of trading and ensure the investor's about their investment in securities.

### RISKS INVOLVED IN MUTUAL FUNDS


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- Existing/Direct plan - Growth and dividend option with payout & reinvestment facility are available.
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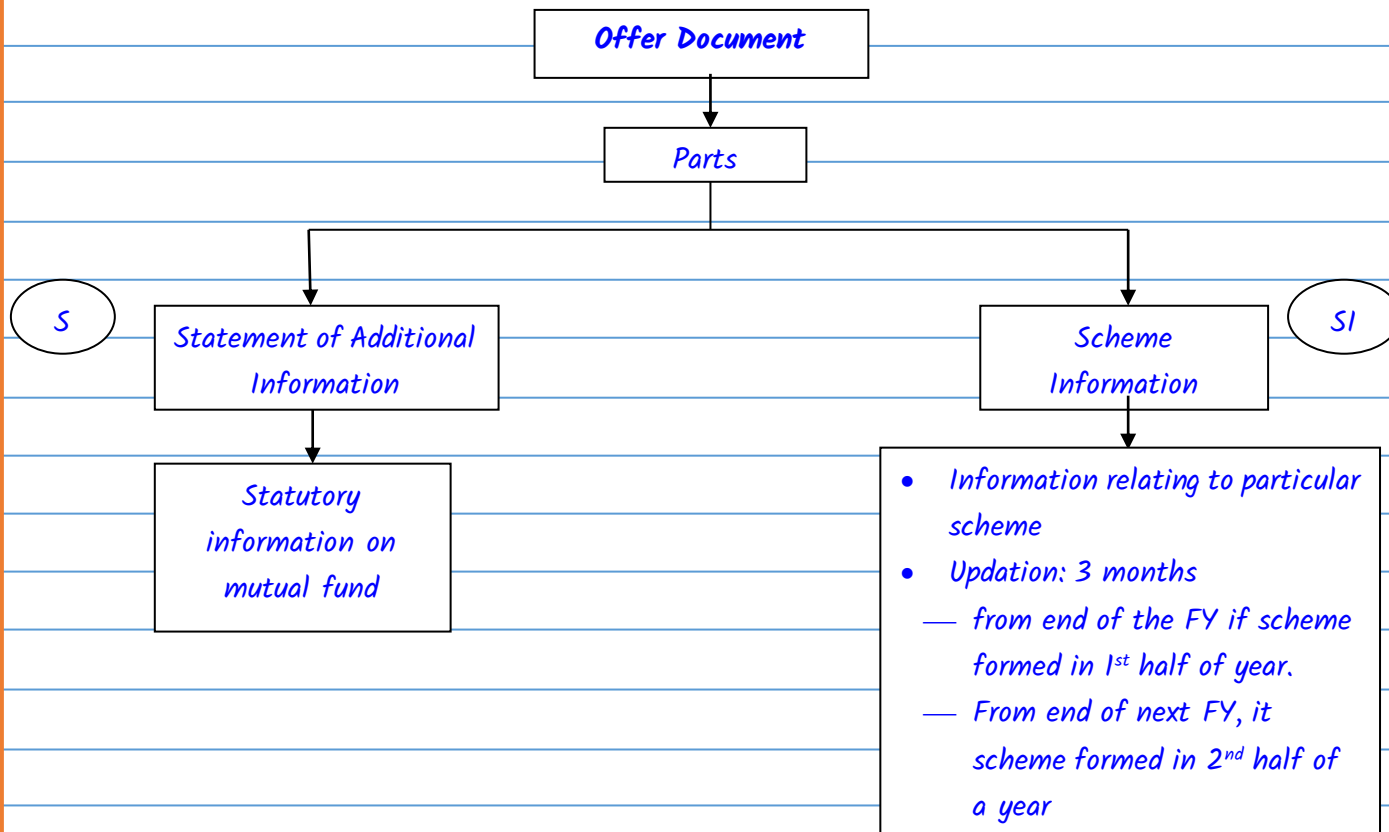
**Mutual Fund investments are subject to market risks, read all scheme related documents carefully.**

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 with minimum 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*

### OFFER DOCUMENT OF MUTUAL FUND SCHEME



### MUTUAL FUND TERMINOLOGY

#### Offer Document

- AMC raises money in new schemes through New Fund Offer (NFO)
- Offer document contains key details about the NFO - open and close dates, scheme objective, nature of the scheme, etc.
- Filed with SEBI

Two parts:

**Scheme Information Document (SID)** - A document that contains the details of the scheme. SID has to be updated every year

Key Contents:

- Scheme name on the cover page, along with scheme structure (open / closed-ended) and expected scheme nature (equity / debt / balanced / liquid / ETF)
- Highlights of the scheme
- Risk factors
- Due diligence certificate issued by the AMC
- Fees and expenses
- Rights of unit holders
- Penalties, litigations, etc.

**Statement of Additional Information** - A document that contains statutory information about the fund house offering the scheme. SAI has to be updated the end of every quarter

Key Contents:

- Information about sponsor, mutual fund, trustees, custodian and registrar & transfer agents
- Condensed financial information for schemes launched in the last three financial years
- Information on how to apply
- Rights of unit holders
- Details of the fund managers
- Tax, legal and other general information

**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 Rs. 10/-, 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 and publish the same at least in two daily newspapers on every working day.

How is it calculated:

$NAV = \text{Net Asset of the Scheme} / \text{number of outstanding units}$

Net Asset of the Scheme = Market value of investments + Receivables + other accrued income + other assets - Accrued Expenses - Other Payables - Other Liabilities

### FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

- Requires that all financial institutions (including Indian mutual funds) need to report financial transactions of US persons and entities in which US persons hold a substantial ownership.
- Enacted to prevent tax evasion through foreign investments.
- Key details required: Country of birth, Country of citizenship, country of tax residence, TIN from such country.
- Currently made mandatory for all investors (existing and new) in Indian mutual funds.
- For non-individual investors, Ultimate Beneficial Ownership (UBO) details have to be provided.

### Modes of Holding

- Single
  - Either or Survivor
- Signature of any of the applicants is sufficient for making transactions
- Joint
- Signature of all the applicants is required for making transactions

### Nomination

- Up to 3 nominees can be registered for a folio
- Units get transferred to the nominees (in the proportion specified) in case of the investor's demise
- Nomination can be updated as and when required by the investor
- A minor can also be nominated, provided the guardian is specified

- If nomination is not registered, in case of death of the investor, the legal heir has to produce documents such as Will, Legal Heir Certificate, No-Objection Certificate from other legal heirs, etc.

### EXPENSE RATIO

- The fees charged by the scheme to manage investors' money. It includes:
- 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
- GST

Under SEBI (Mutual Funds) Regulations, 1996, Mutual Funds are permitted to incur / charge certain operating expenses for managing a mutual fund scheme - such as sales & marketing / advertising expenses, administrative expenses, transaction costs, investment management fees, registrar fees, custodian fees, audit fees - as a percentage of the fund's daily net assets. This is commonly referred to as 'Expense Ratio'.

In short, Expense ratio is the cost of running and managing a mutual fund which is charged to the scheme.

For actively managed equity schemes, the total expense ratio (TER) allowed under the regulations is 2.5 % for the first ₹100 crore of average weekly net assets; 2.25 % for the next ₹300 crore, 2 % for the subsequent ₹300 crore and 1.75 % for the balance AUM.

For debt schemes, the expense ratio permitted is 0.25 % lower than that allowed for equity funds. Information on expense ratio applicable to a MF scheme is mentioned in the Scheme Information Document. For example, an expense ratio of 1% per annum means that each year 1% of a scheme's total assets will be used to cover the expenses managing and operating a scheme.

The expense ratio is calculated as a percentage of the Scheme's average Net Asset Value (NAV). The daily NAV of a mutual fund is disclosed after deducting the expenses. Thus, the TER has a direct bearing on a scheme's NAV - the lower the expense ratio of a scheme, the higher the NAV.

However, while expense ratio is important, it should be borne in mind that it is not the only criterion while selecting mutual fund scheme. A scheme with a consistently decent track record, but a higher expense ratio may be better than the one which lower expense ratio, but gives poor returns.

### HOLDING PERIOD RETURN

Holding period return is the total return received from holding an asset or portfolio of assets over a period of time, generally expressed as a percentage.

Holding period return is calculated on the basis of total returns from the asset or portfolio - i.e. income plus changes in value. It is particularly useful for comparing returns between investments held for different periods of time

$$HPR = \frac{\text{Income} + (\text{end of period value} - \text{original value})}{\text{Original Value}} \times 100$$

**Sales Charges/ Loads:** These costs are directly charged to the investors. Mutual funds use the sales loads for payments of agents' commission and expenses for distribution and marketing. Sales charges or loads are of two types:



- i) **Front end Load (Entry Load)** : Front end Load is a onetime fixed fee, which is paid by an investor while he buys into scheme/buys the units of a scheme of a mutual fund. Front end Load can be calculated in the following manner:

$$\text{Purchase Price} = \frac{\text{Net Asset Value}}{1 - \text{Front End Load}}$$

- ii) **Back end Load (Exit Load)** : This is a fixed fee payable by an investor at the time of redemption. Back end Load can be calculated in the following manner:

$$\text{Redemption price} = \frac{\text{Net Asset Value}}{1 + \text{Back End Load}}$$

### EFFICIENCY OF A MUTUAL FUND

The efficiency of mutual funds may be judged on the factors such as -

- **Stability of funds;**
- **Liquidity of funds** (listed on exchanges);
- **Increase in NAV**, consistent growth in dividend and capital appreciation;
- Whether the **investment objectives** are clearly laid and implemented;
- Whether the issuer has a **proven track record** and offers assured return not less than a percentage;
- Whether it observes investment norms to **balance risks and profits.**

### ASSET MANAGEMENT COMPANY (AMC)

Under SEBI Regulations, every mutual fund is required to have an Asset Management Company (AMC) incorporated as per Companies Act, 2013 **to manage the funds of the mutual fund.** The AMC should be approved by SEBI and should enter into an agreement with the trustees of the mutual fund to formulate schemes, raise money against units, invest the funds and after meeting the permissible costs as per norms, distribute income to the shareholders of the funds.

### Eligibility Criteria

In order to obtain a certificate of registration, the applicant must meet the following conditions as follows:

- a) The sponsor should have a sound track record and general reputation of fairness and integrity in all his business transactions.

The regulations provide that "Sound track record" means the sponsor:-

- i) Is carrying on business in financial services for a period of not less than five years; and
  - ii) The networth is positive in all the immediately preceding five years; and
  - iii) The networth in the immediately preceding year is more than the capital contribution of the sponsor in the asset management company; and
  - iv) The sponsor has profits after providing for depreciation, interest and tax in three out of the immediately preceding five years, including the fifth year;
- a) the applicant is a fit and proper person.
- b) In the case of an existing mutual fund, such fund is in the form of a trust and the trust deed has been approved by SEBI;
- c) The sponsor has contributed or contributes at least 40% to the networth of the asset management company;
- d) The sponsor or any of its directors or the principal officer to be employed by the mutual fund should not have been guilty of fraud or has not been convicted of an offence involving moral turpitude or has not been found guilty of any economic offence;
- e) Appointment of trustees to act as trustees for the mutual fund in accordance with the provisions of the regulations;
- f) Appointment of asset management company to manage the mutual fund and operate the scheme of such funds in accordance with the provisions of these regulations;
- g) Appointment of custodian in order to keep custody of the securities or gold and gold related instrument or other assets of the mutual fund held in terms of these regulations, and provide such other custodial services as may be authorized by the trustees.
- h) the board of directors of such management company has at least fifty per cent directors, who are not associate of, or associated in any manner with, the sponsor or any of its subsidiaries or the trustees;
- i) the Chairman of the asset management company is not a trustee of any mutual fund;

j) the asset management company has a **networth** of not less than rupees **fifty crore**;

### SYSTEMATIC INVESTMENT PLAN (SIP) IN MUTUAL FUND

An SIP allows an investor to invest a fixed amount regularly in a mutual fund scheme, typically an equity mutual fund scheme. An SIP helps investor to stagger the investments in equity mutual fund schemes over a period. Most mutual fund advisors do not recommend investing a lumpsum in equity mutual funds.

### SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

The provisions of SEBI (LODR) Regulations, 2015 **applies to the asset management company** managing the mutual fund scheme whose units are listed on the recognised stock exchange(s).

The listed entity shall intimate to the recognised stock exchange(s) of:

- (a) **movement in unit capital** of those schemes whose units are listed on the recognised stock exchange(s);
- (b) **rating of the scheme** whose units are listed on the recognised stock exchange(s) and any changes in the rating thereof (wherever applicable);
- (c) **imposition of penalties and material litigations** against the listed entity and Mutual Fund; and
- (d) any **prohibitory orders** restraining the listed entity from transferring units registered in the name of the unit holders.

### NET ASSET VALUE (NAV) – CUT-OFF TIMELINE

Type of Transaction	Before/ After	Cut-off Time	Applicable NAV
<b>Equity-oriented &amp; Debt funds (except liquid funds)</b>			
Purchase & Switch-in (value < Rs.2 lakhs)	3 pm	Before After	Same day NAV Next business day NAV
Purchase & Switch-in (value > Rs.2 lakhs)	3 pm	Before After	NAV of the business day on which funds are available for utilization
Redemption & Switch-out	3 pm	Before After	Same day NAV Next business day NAV
<b>Liquid Funds</b>			
Purchase & Switch-in	2 pm	Before After	Previous day NAV if funds are realized NAV of the day previous to the funds realized
Redemption & Switch-out	3 pm	Before After	NAV of the day immediately preceding the next business day NAV of the day preceding the second business day from submission

## CHAPTER 13 - COLLECTIVE INVESTMENT SCHEMES

Three great forces  
rule the world:  
stupidity, fear and  
greed.

Albert Einstein

### INTRODUCTION

A Collective Investment Schemes (CIS) is an extension of Mutual Fund wherein an investment is done in installments. In Collective Investment Schemes investors do not have day to day control over the management and operation of the scheme.

A CIS comprises a pool of assets that is managed by a Collective Investment Schemes manager as is governed by SEBI (Collective Investment Schemes) Regulations, 1999. Collective Investment Schemes provides a relatively secure means of investing on the SE.



## SEBI (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 1999

### An Overview :

SEBI (Collective Investment Schemes) Regulations, 1999 defines Collective Investment Management Company to mean a company incorporated under the Companies Act, 2013 and registered with SEBI under these regulations, whose object is to organize, operate and manage a collective investment.

No person other than a Collective Investment Management Company which has obtained a certificate under the regulations should carry on or sponsor or launch a collective investment scheme.

"Close ended collective investment scheme" means any collective investment scheme launched by a collective investment management company in which the maturity period of the collective investment scheme is specified and there is no provision for repurchase before the expiry of the collective investment scheme.

"Collective investment scheme property" includes:

- (i) subscription of money or money's worth (including bank deposits) to the collective investment scheme;
- (ii) property acquired, directly or indirectly, with, or with the proceeds of, subscription of money retired to in item (i); or
- (iii) income arising, directly or indirectly from, subscription money or property retired to in item (i) or (ii).

## RESTRICTIONS ON BUSINESS ACTIVITIES

Collective Investment Management Company cannot undertake :

Any activity other than managing the scheme.	Act as a trustee of any scheme	Launch any scheme for the purpose of investing in securities	Invest in any scheme floated by it.
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## OBLIGATIONS OF CIMC

Every Collective Investment Management Company should:

- (i) be responsible for managing the funds or properties of the scheme on behalf of the unit holders.
- (ii) exercise due diligence and care in managing assets and funds of the scheme.
- (iii) remain liable to the unit holders for its acts of commission or omissions.
- (iv) be incompetent to enter into any transaction with or through its associates, or their relatives relating to the scheme.
- (v) appoint registrar and share transfer agents and should also abide by their respective Code of Conduct.
- (vi) give receipts for all monies received and report of the receipts and payments to SEBI, on monthly basis.
- (vii) hold a meeting of Board of Directors to consider the affairs of scheme, at least twice in every three months and also ensures that its officers or employees do not make improper use of their position or information.
- (viii) obtain adequate insurance against the properties of the schemes.

## SUBMISSION OF INFORMATION AND DOCUMENTS

1. The Collective Investment Management Company should prepare quarterly reports of its activities and the status of compliance of SEBI regulations and submit the same to the trustees within one month of the expiry of each quarter.



2. The Collective Investment Management Company should file with the trustees and the SEBI, particulars of all its directors along with their interest in other companies within fifteen days of their appointment.
3. It should furnish a copy of the Balance Sheet, Profit and Loss Account; a copy of the summary of the yearly appraisal report and such other information as may be required, to the unit holders, SEBI and trustees within two months from the closure of financial year.

### ELIGIBILITY FOR APPOINTMENT AS TRUSTEE

The persons registered with the SEBI as Debenture Trustee under SEBI (Debenture Trustee) Regulations, 1993 are only eligible to be appointed as trustees.

No person is eligible to be appointed as trustee, if he is directly or indirectly associated with the persons who have control over the CIMC.

No person should be appointed as trustee of a scheme, if he has been found guilty of an offence under the securities laws or the SEBI or any authority to which the SEBI has delegated its power has passed against such person, an order under the Act for violation of any provision of the Act or of regulations made hereunder.

The trustee and the Collective Investment Management Company should enter into an agreement for managing the schemes' property.

### RIGHTS AND OBLIGATIONS OF THE TRUSTEE

The trustee should ensure that the CIMC has;

- (i) the necessary office infrastructure;
- (ii) appointed all key personnel including managers for the schemes having necessary educational qualifications and past experience;
- (iii) appointed auditors from the list of auditors approved by SEBI;
- (iv) appointed a compliance officer to redress investor grievances;

- (v) appointed registrars to an issue and share transfer agent.
- (vi) prepared a compliance manual and designed internal control mechanisms including internal audit systems;
- (vii) taken adequate insurance for the assets of the scheme;
- (viii) not given any undue or unfair advantage to any associates of the company or dealt with any of the associates in any manner detrimental to the interest of the unit holders;
- (ix) operated the scheme in accordance with the provisions of the trust deed, these regulations and the offer document;
- (x) undertaken the activity of managing schemes only;
- (xi) taken adequate steps to ensure that the interest of investors of one scheme are not compromised with the object of promoting the interest of investors of any other scheme;
- (xii) minimum networth on a continuous basis and shall inform the SEBI immediately of any shortfall
- (xiii) A meeting of the trustees to discuss the affairs of the scheme should be held at least twice in every three months.

### TERMINATION OF TRUSTEESHIP

- (a) If the trustee ceases to be trustee under SEBI (Debentures Trustees) Regulations, 1993; or
- (b) if the trustee is in the course of being wound up; or
- (c) if unit holders holding at least three-fourths of the nominal value of the unit capital of the scheme pass a resolution for removing the trustee and SEBI approves such resolution; or
- (d) if in the interest of the unit holders, SEBI, for reasons to be recorded in writing decides to remove the trustee;
- (e) if the trustee serves on the Collective Investment Management Company, a notice of not less than three months expressing intention of not to continue as trustee.

## TERMINATION OF THE AGREEMENT WITH THE COLLECTIVE INVESTMENT MANAGEMENT COMPANY

The agreement entered into by the trustee with the Collective Investment Management Company may be terminated -

- (a) if the CIMC is in the course of being wound up as per the provisions of the Companies Act, 2013 or;
- (b) if unit holders holding at least three-fourth of the nominal value of the unit capital of the scheme pass a resolution for terminating the agreement with the CIMC and the prior approval of SEBI has been obtained, or
- (c) if in the interest of the unit holders, SEBI or the trustee after obtaining prior approval of SEBI, and after giving an opportunity of being heard to the Collective Investment Management Company, decide to terminate the agreement with the CIMC.

## DISCLOSURES IN THE OFFER DOCUMENT

The CIMC shall before launching any scheme file a copy of the offer document of the scheme with the SEBI and pay filing fees as specified. The offer document should also contain true and fair view of the scheme and adequate disclosures to enable the investors to make informed decision. SEBI may carry out such modifications in the offer document as it deems fit. In case no modifications are suggested by SEBI in the offer document within 21 days from the date of filing, the Collective Investment Management Company may issue the offer document to the public.

## ALLOTMENT OF UNITS AND REFUNDS OF MONEY

The CIMC should refund the application money to the applicants, if the scheme fails to receive the minimum subscription amount. Any amount refundable should be refunded within a period of six weeks from the date of closure of subscription list, by Registered A.D. and by cheque or demand draft. In the event of failure to refund the amounts within the period specified, the CIMC has to pay interest to the applicants at a rate of fifteen percent per

annum on the expiry of six weeks from the date of closure of the subscription list. A scheme shall not be open for more than 90 days.

### UNIT CERTIFICATES

The Collective Investment Management Company should issue to the applicant, unit certificates as soon as possible but not later than six weeks from the date of closure of the subscription list. However, if the units are issued through a depository, a receipt in lieu of unit certificate will be issued as per provisions of SEBI (Depositories and Participants) Regulations, 2018 and bye-laws of the depository.

### TRANSFER OF UNITS

A unit certificate issued under the scheme should be freely transferable. The CIMC on production of instrument of transfer together with relevant unit certificates, register the transfer and return the unit certificate to the transferee within thirty days from the date of such production. However, if the units are held in a depository such units shall be transferable in accordance with the provisions of the SEBI (Depositories and Participants) Regulations, 2018 and bye-laws of the depository.

### INVESTMENTS AND SEGREGATION OF FUNDS

The Collective Investment Management Company should:

- (a) not invest the funds of the scheme for purposes other than the objective of the scheme as disclosed in the offer document.
- (b) segregate the assets of different schemes.
- (c) not invest corpus of a scheme in other schemes.
- (d) not transfer funds from one scheme to another scheme.

## LISTING OF SCHEMES

The units of every scheme shall be listed immediately after the date of allotment of units and *not later than six weeks from the date of closure* of the scheme on each of the stock exchanges as mentioned in the offer document.

## WINDING UP OF SCHEME

A scheme may be wound up :

- (a) on the *happening of any event* which, in the opinion of the trustee, requires the scheme to be wound up and the prior approval of the SEBI is obtained; or
- (b) if *unit holders* of a scheme holding at least *three-fourth* of the nominal value of the unit capital of the scheme, *pass a resolution* that the scheme be wound up and the approval of SEBI is obtained thereto; or
- (c) if in the *opinion of SEBI*, the continuance of the scheme is prejudicial to the interests of the unit-holders; or
- (d) if in the *opinion of the CIMC*, the *purpose of the scheme cannot be accomplished* and it obtains the approval of the trustees and that of the unit holders of the scheme holding at least *three-fourth* of the nominal value of the unit capital of the scheme with a resolution that the scheme be wound up and the approval of SEBI is obtained thereto.

## CHAPTER 14 - SEBI (OMBUDSMAN) REGULATIONS, 2003



3. He still lives in the same small 3-bedroom house in mid-town Omaha, that he bought after he got married 50 years ago. He says that he has everything he needs in that house. His house does not have a wall or a fence.

Don't buy more than what you "really need" and encourage your children to do and think the same

[www.nidokidos.org](http://www.nidokidos.org)

### GENERAL CONCEPTS

#### Meaning and Concept of Investor Protection

Investor Protection is to protect the investors from being deceived or being put to loss by the companies. No doubt, investor protection is the major responsibility of SEBI. SEBI has been in fact constituted for the purpose of investor protection and welfare only.

According to the preamble of the SEBI Act, the objective of setting up SEBI is to protect the interest of investors in securities, to promote the development, and to regulate the security market. During the last nineteen years, SEBI has sought to balance the two objectives by constantly reviewing and re-appraising its developments in these areas and implementing them to ensure growth of the market with efficiency, integrity, and protection of interests of investors.

All throughout, enforcement and surveillance has been a major priority for SEBI. It simplified the issue procedure, gave flexibility to the issue process and strengthened the criteria for

accessing the securities market. In secondary market, it improved market efficiency, integrity, and transparency.

SEBI action has resulted in number of complaints coming down. SEBI launched prosecution against companies apart from serving show cause notices, inspections and investigations.

### SCORES (SEBI COMPLAINTS REDRESSAL SYSTEM)



1. SCORES is a web based centralized grievance redress system of SEBI (<http://scores.gov.in>).
2. SCORES enables investors to lodge and follow up their complaints and track the status of redressal of such complaints online from the above website from anywhere.
3. This enables the market intermediaries and listed companies to receive the complaints online from investors, redress such complaints and report redressal online.
4. 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.
5. An email is generated instantaneously acknowledging the receipt of complaint and allotting a unique complaint registration number to the complainant for future reference and tracking.
6. The entity concerned uploads an Action Taken Report (ATR) on the complaint.
7. SEBI peruses the ATR and closes the complaint if it is satisfied that the complaint has been redressed adequately.



8. The concerned investor can view the status of the complaint online from the above website by logging in the unique complaint registration number;

### **WHEN CAN A CASE BE REFERRED FOR ARBITRATION**

If the grievance is not resolved by the Stock Exchange/Depository due to disputes, an investor can file arbitration subject to the Bye-laws, Rules and Regulations of the exchange / Depository. All claims, differences or disputes between the investors and stock brokers/depository participants can be filed for arbitration.

### **COMPLAINTS THAT COME UNDER THE PURVIEW OF SEBI**

Complaints arising out of issues that are covered under SEBI Act, Securities Contract Regulation Act, Depositories Act and rules and regulation made there under and relevant provisions of Companies Act, 2013.

### **MATTERS NOT CONSIDERED AS COMPLAINTS IN SCORES**

- a) Complaint not pertaining to investment in securities market.
- b) Anonymous Complaints (except whistleblower complaints).
- c) Incomplete or un-specific complaints.
- d) Allegations without supporting documents.
- e) Suggestions or seeking guidance/explanation.
- f) Not satisfied with trading price of the shares of the companies.
- g) Non-listing of shares of private offer.
- h) Disputes arising out of private agreement with companies/intermediaries.
- i) Matter involving fake/forged documents.
- j) Complaints on matters not in SEBI purview.
- k) Complaints about any unregistered/ un-regulated activity.

### COMPLAINTS AGAINST WHICH TYPE OF COMPANIES CANNOT BE DEALT ON SCORES

Complaints against the following companies cannot be dealt through SCORES even though the complaint may be against a listed entity/ SEBI registered intermediary:-

- a) Complaints against the companies which are **unlisted/delisted**, placed on the Dissemination Board of Stock Exchange.
- b) Complaints against a **sick company** or a company where a **moratorium order** is passed in winding up / insolvency proceedings.
- c) Complaints against the companies where the name of company is **struck off from Registrar of Companies (RoC)** or a **Vanishing Company** as per list published by Ministry of Corporate Affairs (MCA).
- d) **Suspended companies, companies under liquidation, BIFR etc.**
- d) **Complaints that are sub-judice** i.e. relating to cases which are under consideration by court of law, quasi-judicial proceedings etc.
- e) Complaints against companies, **falling under the purview of other regulatory bodies** viz The Reserve Bank of India (RBI), The Insurance Regulatory and Development Authority of India (IRDAI), the Pension Funds Regulatory and Development Authority (PFRDA), Competition Commission of India (CCI), etc, or under the purview of other ministries viz., MCA, etc.

### TIME LINE FOR LODGING COMPLAINT ON SCORES

From 1st August 2018, an investor may lodge a complaint on SCORES **within three years from the date of cause of complaint**, where;

- **Investor has approached the listed company or registered intermediary** for redressal of the complaint and,
- **The concerned listed company or registered intermediary rejected the complaint** or,
- **The complainant does not receive any communication** from the listed company or intermediary concerned or,
- **The complainant is not satisfied with the reply** given to him or redressal action taken by the listed company or an intermediary.

In case investor fails to lodge a complaint within the stipulated time, he may directly take up the complaint with the entity concerned or may approach appropriate court of law.

## WHEN CAN SEBI TAKE ACTION FOR NON-RESOLUTION OF INVESTOR COMPLAINTS?

For listed companies: SEBI has empowered stock exchanges to levy fine for non-redressal of investor complaints in terms of the relevant provisions of SEBI (Listing and Disclosure Requirements) Regulations, 2015.

If the complaint is not redressed/ fine is not paid, the stock exchanges can direct the depositories to freeze the entire shareholding of the promoter and promoter group in such entity as well as all other securities held in the demat account of the promoter and promoter group. If non-compliance continues, the stock exchanges may refer such cases to SEBI for enforcement actions, if any.

## OMBUDSMAN

Ombudsman in its literal sense is an independent person appointed to hear and act upon citizen's complaint about government services.

"Ombudsman" means any person appointed under regulation 3 of these regulations and unless the context otherwise requires, includes stipendiary Ombudsman.

Regulation 2(n) of the Regulations defines stipendiary Ombudsman as a person appointed under regulation 9 for the purpose of acting as Ombudsman in respect of a specific matter or matters in a specific territorial jurisdiction and for which he may be paid such expenses, honorarium, sitting fees as may be determined by SEBI from time to time.

## POWERS AND FUNCTIONS OF OMBUDSMAN

- To receive complaints specified in regulation 13 against any intermediary or a listed company or both.
- To consider such complaints and facilitate resolution thereof by amicable settlement.
- To approve a friendly or amicable settlement of the dispute between the parties.

- To adjudicate such complaints in the event of failure of settlement thereof by friendly or amicable settlement.

### PROCEDURE FOR REDRESSAL OF GRIEVANCE

- Make a complaint against a listed company or an intermediary to the Ombudsman within whose jurisdiction the registered or corporate office of such listed company or intermediary is located.
- 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.
- The complaint is required to be in writing duly signed by the complainant or his authorised representative (not being a legal practitioner) in the Form specified in the Schedule to the regulations and supported by documents, if any.
- The Ombudsman may dismiss a complaint on any of the grounds specified under the Regulations or when such complaint is frivolous in his opinion.

### POWER TO CALL FOR INFORMATION

- An Ombudsman may require the listed company or the intermediary named in the complaint or any other person, institution or authority to provide any information or furnish certified copy of any document.
- In the event of the failure of a listed company or the intermediary to comply with the requisition, the Ombudsman may, draw the inference that the information, would be unfavourable to the listed company or intermediary.
- The Ombudsman is required to maintain confidentiality of any information or document coming to his knowledge or possession in the course of discharging his duties.
- 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 reasonable.

## SETTLEMENT BY MUTUAL AGREEMENT

The Ombudsman shall cause a notice of the receipt of any complaint along with a copy of the complaint sent to the registered or corporate office of the listed company or office of the intermediary named in the complaint and endeavour to promote a settlement of the complaint by agreement or mediation between the complainant and the listed company or intermediary named in the complaint.

## AWARD AND ADJUDICATION

- In case the matter is not resolved by mutually acceptable agreement within a period of one month of the receipt of the complaint or such extended period as may be permitted by the Ombudsman.
- He may, based upon the material placed before him and after giving opportunity of being heard to the parties, give his award in writing or pass any other directions or orders as he may consider appropriate.
- Such award shall be made within a period of three months from the date of the filing of the complaint.
- The Ombudsman should send his award to the parties to the adjudication to perform their obligations under the award.

## FINALITY OF AWARD

- An award given by the Ombudsman shall be final and binding on the parties and persons claiming under them respectively.
- Any party aggrieved by the award on adjudication may file a petition before SEBI within one month from the receipt of the award or corrected award setting out the grounds for review of the award.

## REVIEW OF AWARD

- The SEBI may review the award if there is substantial mis-carriage of justice, or there is an error apparent on the face of the award.
- Where a petition for review of the award, such petition shall not be entertained by the SEBI unless the party filing the petition has deposited with SEBI seventy-five percent of the amount mentioned in the award.
- Further, the SEBI may for reasons to be recorded in writing, waive or reduce the amount to be deposited.
- The SEBI may review the award and pass such order as it may deem appropriate, within a period of forty five days of the filing of the petition for review.
- The party so directed shall implement the award within 30 days of receipt of the order of SEBI on review or within such period as may be specified by the SEBI in the order disposing off the review petition.
- The award passed by the Ombudsman shall remain suspended till the expiry of period of one month for filing review petition or till the review petition is disposed off by the SEBI.

## EVIDENCE ACT NOT TO APPLY IN THE PROCEEDINGS BEFORE OMBUDSMAN

In proceedings before the Ombudsman strict rules of evidence under the Evidence Act shall not apply and the Ombudsman may determine his own procedure consistent with the principles of natural justice.

Ombudsman shall decide whether to hold oral hearings for the presentation of evidence or for oral argument or whether the proceeding shall be conducted on the basis of documents and other materials.

No legal practitioner shall be permitted to represent the defendants or respondents at the proceedings before the Ombudsman except where a legal practitioner has been permitted to represent the complainants by the Ombudsman.

## COST AND INTEREST

The Ombudsman or SEBI, have been empowered to award reasonable compensation along with interest including future interest till date of satisfaction of the award at a rate which may not exceed one percent per mensem.

## IMPLEMENTATION OF THE AWARD

The award will be implemented by the party so directed within one month of receipt of the award from the Ombudsman or an order of the SEBI passed in review petition or within such period as specified in the award or order of SEBI.

If any person fails to implement the award or order of the SEBI passed in the review petition, without reasonable cause -

- (1) he shall be deemed to have failed to redress investors' grievances and shall be liable to a penalty under SEBI Act;
- (2) he shall also be liable for -
  - (a) an action under Section 11(4) of the SEBI Act ; or
  - (b) suspension or delisting of securities; or
  - (c) being debarred from accessing the securities market; or
  - (d) being debarred from dealing in securities; or dealing in securities; or
  - (e) an action for suspension or cancellation of certificate of registration; or
  - (f) such other action permissible which may be deemed appropriate in the facts and circumstances of the case.

## SEBI (INFORMAL GUIDANCE) SCHEME, 2003

SEBI has issued SEBI (Informal Guidance) Scheme, 2003 for facilitating the various kind of people, by providing informal guidance on the various aspects related to capital market.

Following persons may make a request for Informal Guidance under the Scheme:



- Any **intermediary** registered with SEBI.
- Any **listed or prospective listed company**.
- Any **mutual fund trustee company** or asset management company.
- Any **acquirer or prospective acquirer** under the SEBI (Substantial Acquisition of Shares & Takeover) Regulations, 1997.

The request seeking informal guidance should state that it is being made under this scheme and also state whether it is a request for a no-action letter or an interpretive letter and should be accompanied with prescribed fees and addressed to the concerned Department of SEBI.

It should also describe the request, disclose and analyse all material facts and circumstances involved and mention all applicable legal provisions. SEBI may dispose off the request as early as possible and in any case not later than 60 days after the receipt of the request.

The informal guidance may be sought for and given in two forms:

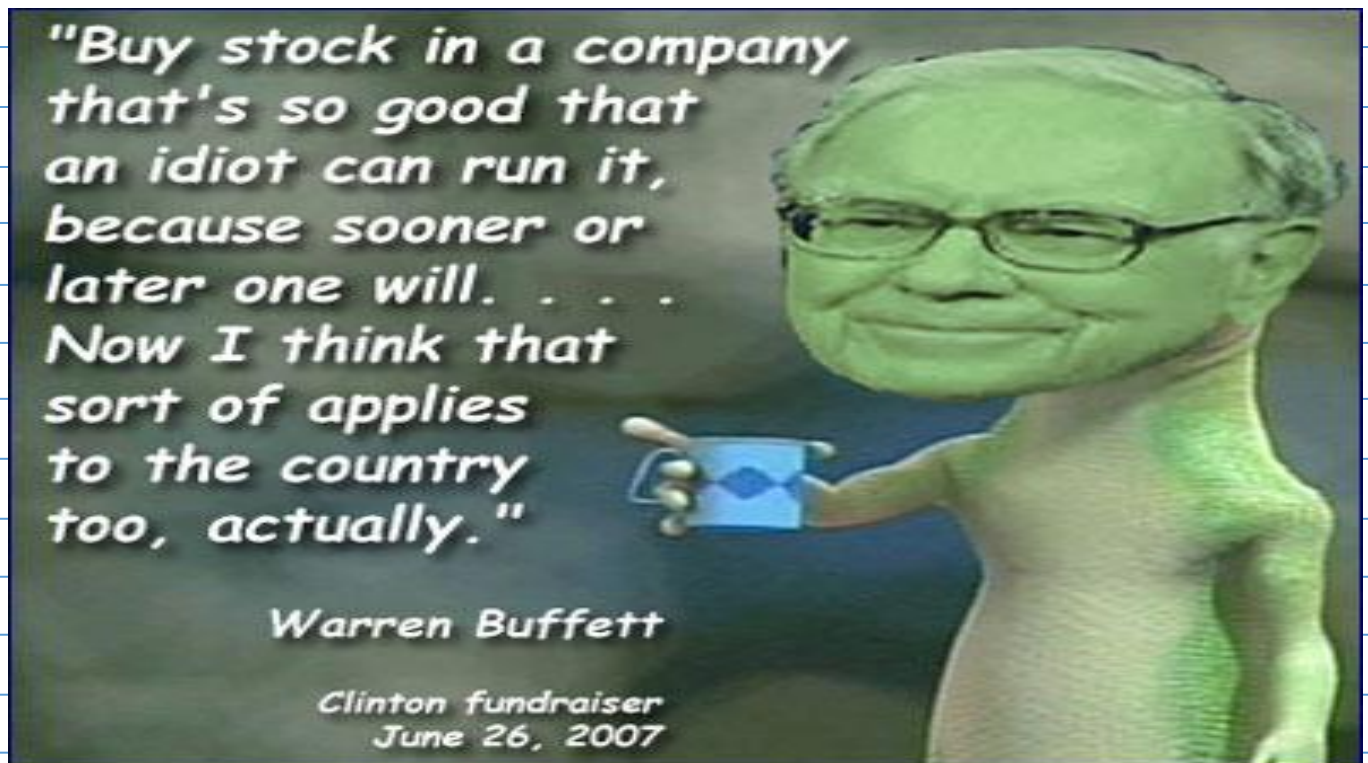
- **No-action letters:** The SEBI indicates that the Department would or would not recommend any action under any Act, Rules, Regulations, Guidelines, Circulars or other legal provisions administered by SEBI to the Board if the proposed transaction described in a request made is consummated.
- **Interpretive letters:** The SEBI provides an interpretation of a specific provision of any Act, Rules, Regulations, Guidelines, Circulars or other legal provision being administered by the SEBI in the context of a proposed transaction in securities or a specific factual situation.

SEBI may not respond to the following types of requests:

- (a) With general or incomplete factual situation;
- (b) hypothetical situations;
- (c) Where the requestor has no direct interest;
- (d) Where the applicable legal provisions are not cited;
- (e) Where a no-action or interpretive letter has already been issued;

- (f) Where investigation, enquiry or other enforcement action has already been initiated;
- (g) Cases which are subjudice;
- (h) Where policy concerns require that the Department does not respond.

## CHAPTER 15 - STRUCTURE OF CAPITAL MARKET



### INTRODUCTION

One of the important constituents of financial system is the financial market instruments, popularly known as financial products. As on date, a wide range of financial products are available in the India Financial Market which will be discussed in the forthcoming topics. As the more variety of financial products are available in the market, it suits the needs of variety of investors, and as a consequence more and more investors are attracted towards the financial market.

The main criteria for the success of a financial product is that investor gets a reasonable return on his investment and issuer gets credit on reasonable terms.

#### National level institutions

- All India Development Banks
- Industrial Development Bank of India
- Industrial Finance Corporation of India

- Small Industries Development Bank of India
- Industrial Investment Bank of India Limited

### Specialised financial institution of india (sfis)

- IFCI Venture Capital Funds Limited
- ICICI Venture Funds Limited
- Tourism Finance Corporation of India Limited (TFCI)

### Investment institutions

- Life Insurance Corporation of India (LIC)
- Unit Trust of India (UTI)
- General Insurance Corporation of India (GIC)

### State level institutions

- State Financial Corporations (SFCs)
- State Industrial Development Corporations (SIDCs)

### QUALIFIED INSTITUTIONAL BUYERS

**Qualified Institutional Buyers (QIBs)** shall mean the following:

- (i) a mutual fund, venture capital fund, Alternative Investment Fund and foreign venture capital investor registered with SEBI;
- (ii) a foreign portfolio investor other than Category III foreign portfolio investor, registered with SEBI;
- (iii) a public financial institution as defined in section 4A of the Companies Act, 1956 [now Section 2(72) of the Companies Act, 2013] ;
- (iv) a scheduled commercial bank;
- (v) a multilateral and bilateral development financial institution;
- (vi) a state industrial development corporation;
- (vii) an insurance company registered with the Insurance Regulatory and Development Authority;
- (viii) a provident fund with minimum corpus of twenty five crore rupees;

- (ix) a pension fund with minimum corpus of twenty five crore rupees;
- (x) National Investment Fund set up by the Government of India;
- (xi) insurance funds set up and managed by army, navy or air force of the Union of India;
- (xii) insurance funds set up and managed by the Department of Posts, India;
- (xiii) systemically important non-banking financial companies.

### FOREIGN PORTFOLIO INVESTOR

Foreign Portfolio Investor (FPI) means a person who satisfies the eligibility criteria prescribed under SEBI (Foreign Portfolio Investors) Regulations, 2014 and has been registered under these regulations. All existing Foreign Institutional Investors (FIIs) and Qualified Foreign Investors (QFIs) are to be merged into one category called FPI..

#### Categories of FPI

Category I FPIs include:

- (i) Government and Government related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled or at least 75% directly or indirectly owned by such Government and Government related investor(s);
- (ii) Pension funds and university funds;
- (iii) Appropriately regulated entities such as insurance or reinsurance entities, banks, asset management companies, investment managers, investment advisors, portfolio managers, broker dealers and swap dealers;
- (iv) Entities from the Financial Action Task Force member countries which are –
  - I. appropriately regulated funds;
  - II. unregulated funds whose investment manager is appropriately regulated and registered as a Category I foreign portfolio investor. However the investment manager undertakes the responsibility of all the acts of commission or omission of such unregulated fund;
  - III. university related endowments of such universities that have been in existence for more than five years;
- (v) An entity (A) whose investment manager is from the Financial Action Task Force member country and such an investment manager is registered as a Category I foreign portfolio

investor; or (B) which is at least seventy-five per cent owned, directly or indirectly by another entity, eligible under sub-clause (ii), (iii) and (iv) of clause (a) of this regulation and such an eligible entity is from a Financial Action Task Force member country. However such an investment manager or eligible entity undertakes the responsibility of all the acts of commission or omission of the applicants seeking registration under this sub-clause.

Category II FPIs include all the investors not eligible under Category I foreign portfolio investors such as –

- (i) appropriately regulated funds not eligible as Category-I foreign portfolio investor;
- (ii) endowments and foundations;
- (iii) charitable organisations;
- (iv) corporate bodies;
- (v) family offices;
- (vi) Individuals;
- (vii) appropriately regulated entities investing on behalf of their client, as per conditions specified by the Board from time to time;
- (viii) Unregulated funds in the form of limited partnership and trusts;

Explanation: An applicant incorporated or established in an International Financial Services Centre shall be deemed to be appropriately regulated.

### ALTERNATIVE INVESTMENT FUND

AIF means any fund established in India in the form of a trust, company, limited liability partnership or a body corporate which:-

- is a **privately pooled investment vehicle** that collects funds from investors, whether **Indian or Foreign**, for investing it in accordance with a defined investment policy; and
- is **not covered** under the SEBI (**Mutual Funds**) Regulations, 1996, SEBI (**Collective Investment Schemes**) Regulations, 1999 or any other regulations of SEBI, which aims to regulate fund management activities.

The following are specifically excluded from the purview of AIF Regulations (subject to conditions in certain cases):

- 1) Family Trusts;
- 2) ESOP Trusts;
- 3) Employee welfare Trusts;
- 4) Holding Companies;
- 5) Other Special Purpose Vehicle not established by fund managers, including securitization trusts, regulated under a specific regulatory framework;
- 6) Funds managed by registered securitization company or reconstruction company; and
- 7) Any such pool of funds which is directly regulated by any other Indian regulator.

### CATEGORIES OF AIF

SEBI has classified AIF into the following broad categories:

**Category I :** Funds that invest in start-up or early stage ventures or social ventures or Small Medium Enterprises (SMEs) or infrastructure or other sectors which the government consider as socially or economically desirable. For example: VCF, SME Funds, Social Venture Funds (SVF), Infra Funds.

**Category II :** Funds that do not fall in Category I and III AIF and those that do not undertake borrowing for example Private Equity Funds or Debt Funds.

**Category III :** Funds that employ diverse or complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives, for e.g. Hedge Funds.

### PRIVATE EQUITY

- Private equity is a type of equity (finance) and one of the asset classes who takes securities and debt in operating companies that are not publicly traded on a stock exchange.
- Unlike stocks, mutual funds, and bonds, private equity funds usually invest in more illiquid assets, i.e. companies. By purchasing companies, the firms gain access to those assets and revenue sources of the company, which can lead to very high returns on investments.



- Private equity consists of investors and funds that make investments directly into private companies. Capital for private equity is raised from retail and institutional investors, and can be used to fund new technologies, expand working capital within an owned company, make acquisitions, or to strengthen a balance sheet.
- The major of private equity consists of institutional investors and accredited investors who can commit large sums of money for long periods of time.
- Generally, the private equity fund raise money from investors like Angel investors, Institutions with diversified investment portfolio like - pension funds, insurance companies, banks, funds of funds etc.

### Types of private equity

- **Leveraged Buyout (LBO):** This refers to a strategy of making equity investments as part of a transaction in which a company, business unit or business assets is acquired from the current shareholders typically with the use of financial leverage. The companies involved in these type of transactions that are typically more mature and generate operating cash flows.
- **Venture Capital:** It is a broad sub-category of private equity that refers to equity investments made, typically in less mature companies, for the launch, early development, or expansion of a business.
- **Growth Capital:** This refers to equity investments, mostly minority investments, in the companies that are looking for capital to expand or restructure operations, enter new markets or finance a major acquisition without a change of control of the business.

### ANGEL FUND

- Angel investments are typically the earliest equity investments made in start-up companies.
- These networks are based on regional, industry in investor or academic affiliation.
- Angel Investors are often former entrepreneurs themselves, and enjoy working with companies at the earliest stages of business formation.

- As per SEBI (Alternative Investment Fund) Regulations, 2012, *angel fund is a sub-category of venture capital.*

### HIGH NET WORTH INDIVIDUALS

Though there is no specific definition, generally in the Indian context, *individuals with over Rs. 2 crore investible surplus* may be considered to be HNIs while those with investible wealth in the range of Rs. 25 lac - Rs. 2 crore may be deemed as Emerging HNIs.

If you are applying for an *IPO* of equity shares in an Indian company, generally, if you apply for *amounts in excess of Rs. 2 lakhs*, you fall under the *HNI category*. On the other hand, if you apply for amounts *under Rs. 2 lakhs*, you are considered as a *retail investor*.

SEBI has laid down certain criteria in SEBI (ICDR) Regulations, 2018, under which an HNI is entitled to get the shares not less than 15% of the issue, if the issue is in accordance with regulation 26(1) with SEBI (ICDR) Regulation 2018 or not more than 15% of the issue if the issue is in accordance with regulation 26(2) of SEBI (ICDR) Regulation 2018.

### VENTURE CAPITAL

- Venture Capital is one of the innovative financing resource for a company in which the *promoter has to give up some level of ownership and control of business in exchange for capital for a limited period, say, 3-5 years.*
- Venture Capital is an *equity investment made at an early stage in privately held companies, having potential to provide a high rate of return on their investments.*
- The participants in venture capital firms can be institutional investors like pension funds, insurance companies, foundations, corporations or individuals but these are high risk investments which may give high returns or high loss.

## PENSION FUNDS

- Pension Fund means a fund established by an employer to facilitate and organize the investment of employees retirement funds which is contributed by the employer and employees.
- The pension fund provide pensions for employees when they reach the end of their working years and commence retirement.
- Pension funds are commonly run by some sort of financial intermediary for the company and its employees like N.P.S. scheme is managed by UTI AMC (Retirement Solutions), although some larger corporations operate their pension funds in-house.

Pensions broadly divided into two sector:

### A-Formal sector Pensions

Formal sector pensions in India can be divided into three categories; viz pensions under an Act or Statute, Government pensions and voluntary pensions

### B-Informal sector Pensions

This scheme will cover unorganized workers who are working or engaged as home based workers, street vendors, cobblers, rag pickers, rickshaw pullers, agriculture workers, construction workers, among others.

### Legislations

There are three defining Acts for pensions in India.

1. Pensions under the EPF & MP Act 1952
2. Pensions under the Coal mines PF & MP Act 1948
3. Gratuity under the Payment of Gratuity Act, 1972

## KINDS OF CAPITAL MARKET INSTRUMENTS

Following are the various kinds of financial market instruments:

### Did You Know?

Investments made in the real estate and equities have given the highest returns of up to 20% to investors in the last two decades

### 1. SHARES

According to Companies Act, 2013 defines the term "share". As per this, share means **share in the share capital of a company**; and includes stock, except where a distinction between stock and share is expressed or implied.

By its nature, a share is not a sum of money but a bundle of rights and liabilities. A share is a right to participate in the profits of a company, while it is a going concern and declares dividend; and a right to participate in the assets of the company, when it is wound up.

There are two types of shares : Preference share and Equity share.

i) **Preference Share** : A preference share is a share which fulfils the following two conditions

- It carries preferential right in respect of payment of dividend; and
- It also carries preferential right in regard to repayment of capital.

In simple terms, preference share capital must have priority both regards to dividend as well as capital.

Following are the various types of preference shares :

**Redeemable and Irredeemable Preference Shares** : The Companies Act, 2013 provides that a company, if so authorized by its articles of association, may issue redeemable preference shares. However, a company cannot issue preference shares which is redeemable after the expiry of twenty years from the date of its issue.

It may be noted that on and after the commencement of Companies (Amendment) Act, 1996, with effect from 1<sup>st</sup> March, 1997, a company cannot issue irredeemable preference shares.

**Participating and Non-Participating Preference Shares :** A participating preference share is one which is entitled with a right to participate further in the profits after payment of a certain rate of dividend on equity shares. A non-participating preference share is one which does not have such right to further participate in the profits of the company.

Preference shares are always non-participating, unless expressly stated to be participating.

**Cumulative and Non-Cumulative Preference shares :** Cumulative preference shares give the right to demand the unpaid dividend of any year during the subsequent year(s) when the profits are available for distribution. But in the case of non-cumulative preference shares, it is not so. Preference shares are always cumulative, unless expressly stated to be participating.

**Convertible Preference Shares :** According to Section 55 of the Companies Act, 2013, a convertible preference share is that preference share, which shall be converted after a specified period of time.

**Fully convertible cumulative preferences share (Equipref) :** this instrument is in two parts i.e. part A and part B. Part A is convertible into equity shares automatically and compulsorily on the date of allotment without any application by the allottee. Part B is redeemed at par or converted into equity after the lock-in-period, at the option of the investor, at a price 30% lower than average market price.

ii) **Equity Share :** Equity share means share which is not preference share. There are two kinds of equity shares : Equity shares with equal rights and Equity shares with differential rights. There is another variant of equity shares called Sweat Equity Share.

Important characteristics of equity shares are given below:

- Equity shares, have voting rights at all general meetings of the company. These votes have the affect of the controlling the management of the company.

- Equity shares have the **right to share the profits** of the company in the form of dividend (cash) and bonus shares.
- However, even equity shareholders **cannot demand declaration of dividend** by the company which is left to the discretion of the Board of Directors.
- When the company is wound up, payment towards the equity share capital will be made to the respective shareholders only after payment of the claims of all the creditors and the preference share capital.

### EQUITY SHARES WITH DIFFERENTIAL RIGHTS

No company shall issue equity with differential rights as to dividend or voting unless it complies with the following conditions :

- 1) It is authorized by its **Articles of Association**.
- 2) The issue is authorized by an **ordinary resolution**. In case of listed companies it shall be passed through postal ballot.
- 3) Shares with differential rights shall not exceed **seventy four per cent of total voting power** including voting power in respect of equity shares with differential rights issued at any point of time
- 4) The Company has **not defaulted in filing financial statements and annual returns** in the last **3 preceding financial years**.
- 5) The company has **not defaulted in payment of declared dividend** to its shareholders or redemption or payment of **interest** on deposits or debentures or any bank loan.
- 6) The company has **not been penalized** by any court or tribunal during the last 3 years for any offence under RBI Act, SEBI Act, SCRA or FEMA.

### DEBENTURES

Section 2 (30) of the Companies Act, 2013 defines a debenture as:

"Debenture includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the company's assets or not".

However, this definition is not clear. In simple terms, a debenture may be defined as an instrument acknowledging a debt by a company to some person or persons.

The usual features of a debenture are as follows:-

1. A debenture is usually in the **form of a certificate** (like a share certificate) issued under the common seal of the company.
2. The certificate is an **acknowledgement by the company of indebtedness** to a holder.
3. A debenture usually provides for the **payment of a specified sum at a specified date**. But that is not essential. A company may issue perpetual or irredeemable debentures with no undertaking to pay.
4. A debenture usually provides for **payment of interest** until the principal sum is paid back. But again, this is not essential. Interest may be made payable subject to contingencies of uncertain nature.
5. A debenture is, as a rule, **one of a series**, although a single debenture is not uncommon. There may be a single debenture issued to one person.

Debenture may be of different kinds as follows:-

**Redeemable and Perpetual or Irredeemable Debentures** : Debentures are generally redeemable, that is to say, they are issued on the terms that the company is bound repay to repay the amount of debentures, either at a fixed date, or upon demand, or after notice, or under a system of periodical drawings. Redeemable debentures can be re-issued. A debenture in which no time is fixed for the company to pay back the money, although it may pay back at any time it chooses, is an irredeemable debenture. The debenture holder cannot demand payment as long as the company is a going concern and does not make default in making payment of the interest.

**Registered and Bearer Debentures** : Registered debentures are made out in the name of a particular person, whose name appears on the debenture certificate and who is registered by the company holder in the register of debenture holders. Such debentures are transferable in the same manner as shares. Bearer debentures, on the other hand, are made out to bearer, and are negotiable instruments, and so transferable by mere delivery like share warrants.



**Secured and Unsecured or Naked Debentures :** Where debentures are secured by a mortgage or a charge on the property of the company, they are called secured debentures. Where they are not secured by any mortgage or charge on any property of the company, they are said to be naked or unsecured.

**Convertible and Non-Convertible Debentures :** Convertible debentures are those in which an option is given to the debenture holders to exchange a part or whole of their debentures for shares in the company under certain conditions and limitations imposed regarding the period during which the option may be exercised. This enables the investor to change his position financially and begins to make profit. When the full debenture is convertible into equity shares, they are known as fully convertible debentures. When only a portion of debenture is convertible into equity shares, they are known as partly convertible debentures. Here, non-convertible portion is redeemed at the expiry of the stipulated period. Non-convertible debenture do not carry the option of conversion into equity shares and hence are redeemed on the expiry of the specified period.

**Third Party Convertible Debentures:** These are debt instruments with warrant attached which gives an option to subscribe to the equity shares of company at a price lower than the market price. These are similar to convertible debenture with warrant option except that these debentures give an option to the investor to subscribe for shares in another company.

**Fully convertible debentures with interest (optional):** In this case there is no interest payment involved for certain period. Then the holder of this instrument can exercise option and apply for securities without paying additional amount.

**Non convertible debentures:** These debentures do not carry the option of conversion into equity shares and are therefore redeemed on the expiry of the specified period or periods.

**Partly convertible debentures:** These may consist of two kinds namely -convertible and non-convertible. The convertible portion is to be converted into equity shares at the expiry of specified period. However, the non convertible portion is redeemed at the expiry of the

stipulated period. If the conversion takes place at or after 18 months, the conversion is optional at the discretion of the debenture holder.

## BONDS

Bond is a negotiable certificate evidencing indebtedness. It is normally unsecured. A debt security is generally issued by a company, municipality or government. A Bond investor lends money to the issuer and in exchange, the issuer promises to repay the loan amount on a specified maturity date. The issuer usually pays the bond holder periodic interest payments over the life of the bond.

Bond may be of different kinds as follows:-

### Government Bonds

These are the bonds issued either directly by Government of India or by the Public Sector Units (PSU's) in India. These bonds are secured as they are backed up with security from Government. These are generally offered with low rate of interest compared to other types of bonds.

### Corporate Bonds

These are the bonds issued by the private corporate companies. Indian corporates issue secured or non secured bonds. However care to be taken to consider the credit rating given by Credit Rating Agencies before investing in these bonds.

### Banks and other financial institutions bonds

These bonds are issued by banks or any financial institution. The financial market is well regulated and the majority of the bond markets are from this segment.

### Tax saving bonds

In India, the tax saving bonds are issued by the Government of India for providing benefit to investors in the form of tax savings. Along with getting normal interest, the bond

holder would also get tax benefit. In India, all these bonds are listed in National Stock Exchange and Bombay Stock Exchange in India, hence they can be easily liquidated and sold in the open market.

## FOREIGN CURRENCY CONVERTIBLE BONDS (FCCBS)

### Definition of FCCB:

Foreign Currency Convertible Bonds mean bonds issued in accordance with the Government's Guidelines and subscribed by non-resident in foreign currency and convertible into ordinary shares of the issuing company, wholly or partly, based on any equity-linked warrants attached to debt instruments.

### Meaning and Concept of FCCBs:

Foreign Currency Convertible Bonds are unsecured borrowings. They carry a fixed rate of interest. Foreign Currency Convertible Bonds are attached with an option for conversion into a fixed number of equity shares of the issuer company. Interest and redemption price where conversion option is not exercised is payable in dollars. Interest rates are very low by Indian domestic standards. Foreign Currency Convertible Bonds are denominated in any freely convertible foreign currency.

### Example

Suppose a company 'A' issues bonds with following terms -

Issue Price of the Bond Rs. 1000

Coupon rate 2%

Maturity 2 years

Convertible into equity shares @ Rs.800 per share

Now suppose an investor subscribes to 4 of these bonds. Thus the total investment is Rs.4000. On this investment, he is entitled to get an interest @ 2% for 2 years. On the maturity date, i.e. after 2 years, the investor will have an option - to either claim full redemption of the amount from the company or get the bonds converted into fully paid

equity shares @ Rs. 800 per share. Thus if he goes for the conversion he will be entitled to 5 ( $4000/800$ ) equity shares. The choice he makes will depend on the market price of the share on the date of conversion.

If the shares of the company 'A' is trading at lower than Rs.800, let's say Rs.500, the investor will be better off by claiming full redemption of his bonds and buying the shares from the market. In this case, he will get 8 ( $4000/500$ ) equity shares as against 5 which he was getting on conversion. Similarly if the market price of the share is higher than Rs. 800, the investor will benefit by getting its shares converted. Thus, on the day of maturity, an investor will seek full redemption if the conversion price is higher than the current market price, and will go for conversion if the conversion price is less than the current market price.

### FOREIGN CURRENCY EXCHANGEABLE BONDS

An FCEB involves three parties -

- (i) The **issuer company** (issuer),
- (ii) The **offered company** (OC) and
- (iii) **Investor**.

1. Under this option, an issuer company may issue FCEBs in foreign currency, and these FCEBs are convertible into shares of another company (offered company) that forms part of the same promoter group as the issuer company.
2. For Example, company ABC Ltd. issues FCEBs, then the FCEBs will be convertible into shares of company XYZ Ltd. that are held by company ABC Ltd. and where companies ABC Ltd. and XYZ Ltd. form part of the same promoter group.
3. Unlike FCCBs that convert into shares of issuer itself, FCEBs are exchangeable into shares of OC. Also, relatively, FCEB has an inherent advantage that it does not result in dilution of shareholding at the OC level.

### Conditions for issue of FCEB's

**Eligible Issuer:** The Issuing Company shall be part of the promoter group of the Offered Company and shall hold the equity share/s being offered at the time of issuance of FCEB.

**Offered Company:** The Offered Company shall be a listed company, which is engaged in a sector eligible to receive Foreign Direct Investment and eligible to issue or avail of Foreign Currency Convertible Bond (FCCB) or External Commercial Borrowings (ECB).

**Entities not eligible to issue FCEB:** An Indian company, which is not eligible to raise funds from the Indian securities market, including a company which has been restrained from accessing the securities market by the SEBI shall not be eligible to issue FCEB.

**Eligible subscriber:** Entities complying with the Foreign Direct Investment policy and adhering to the sectoral caps at the time of issue of FCEB can subscribe to FCEB. Prior approval of the Foreign Investment Promotion Board, wherever required under the Foreign Direct Investment policy, should be obtained.

**Entities not eligible to subscribe to FCEB:** Entities prohibited to buy, sell or deal in securities by the SEBI will not be eligible to subscribe to FCEB.

### INDIAN DEPOSITORY RECEIPTS

According to Section 2(48) of the Companies Act, 2013 "Indian Depository Receipt" means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts.

An IDR is an instrument **denominated in Indian Rupee** in the form of a **depository receipt** created by a domestic depository (Custodian of securities registered with SEBI) against the underlying equity of issuing company to **enable foreign companies to raise funds from Indian Securities Markets.**

## DERIVATIVES TRADING



### Introduction

Derivatives are contracts which derive their values from the value of one or more of other assets, known as underlying assets. For example, Futures, Options, etc.

### FUTURES TRADING-MECHANISM

A future contract is an arrangement by which a buyer/seller agrees to take/give delivery of the securities on a specified future date at a fixed price and make payment on the delivery date. Such contracts are zero-sum games where the gain equals loss.

The clearing house is the counterparty in such contracts. A buyer is called the 'long' and the seller 'short'. A margin is deposited at the clearing house for futures.

### FUTURES CONTRACT

Futures is a contract between two parties to buy or sell a **underlying asset of standardized quantity and quality for a price agreed upon today with delivery and payment occurring at a specified future date**. Underlying assets for the purpose include equities, foreign exchange, interest bearing securities and commodities. The idea behind financial futures contract is to

transfer future changes in security prices from one party in the contract to the other. Every futures contract entered into has two side willing buyer and a willing seller. If one side of contract makes a profit, the other side must make a loss.

## OPTIONS CONTRACT

An option contract conveys the right, but not the obligation, to buy or sell a specific security or commodity at specified price within a specified period of time. The right to buy is referred to as a call option whereas the right to sell is known as a put option. An option contract comprises of its type a put or call, underlying security or commodity expiry date, strike price at which it may be exercised.

Generally two type of options namely :

- European option - an option that may only be exercised on expiration.
- American option - an option that may be exercised on any trading day on or before expiry.

## OPTION TRADING-MECHANISM

An option is a contract between two parties in which the maker of the option (option writer) agrees to buy or sell a specified number of shares at later date for an agreed price (strike price) to the holder of the option (option buyer) on a due date and time, when and if the latter so desires, in consideration of a sum of money (premium). The premium is the price which is required to be paid for purchase of right to buy or sell.

The terms of contract allow the holder, not the maker, to cancel the option.

### Types of Option

Options are of two types: Call Option and Put Option.

In **call option**, an investor has a **right to buy**. An investor takes a call option, if he expects that the market price will be higher than the strike price to earn the difference as his profit.



In **put option**, an investor has a **right to sell**. An investor takes a put option if he expects that the market price will be lower than the strike price. The lower the market price than the strike price, the higher will be the profit for the investor.

An investor can simultaneously buy call and put option, if he is uncertain about the market conditions.

Option Contracts are classified into two types on the basis of time at which the option can be exercised:-

- **European Option** - European style options are those contracts where the option can be exercised only on the expiration date. Options traded on Indian stock exchanges are of European Style.
- **American Option** - American style options are those contracts where the option can be exercised on or before the expiration date.

## INVESTMENT STRATEGIES

**Straddle:** Combination of **one put and one call** option is known as straddle. Here, the investor is insured against any movement on either side and has opportunity to gain from upward move and down move.

**Strap:** Combination of **one put and two call** option is known as strap. Here, the investor is confident that scrip price will change, but it is more likely to go up.

**Strip:** Combination of **two puts and one call** option is known as strip. Here, the investor is confident that scrip price will change, but it is more likely to go down.

## DIFFERENCE BETWEEN FORWARD CONTRACT AND FUTURES CONTRACT

Features	Forward Contract	Futures Contract
Mechanism	Not traded on an exchange	Traded on a exchange
Contract Terms	Differs from trade to trade	Standardized contracts
Liquidity	Poor	Very high
Price discovery	Poor	Better
Counter Party Risk	Exists	Does not exist

 <b>Difference between futures and options</b> 	
Futures	Options
Futures is a pure trading tool	Options is a risk limiting tool
Both parties share the risk	Risk is borne by one party
Futures can be bought and sold in the derivatives market	Options can also be bought and sold in the derivatives market
The amount of loss or profit that one can make in a futures contract depends on the price at the time of execution of the contract	The amount of loss is restricted to the option premium paid.
IIFL Training Team	

### Example

#### Case I

Rajesh purchases 1 lot of Infosys Technologies MAY 3000 Put and pays a premium of Rs. 250. This contract allows Rajesh to sell 100 shares of Infosys at Rs. 3000 per share at any time between the current date and the end of May. In order to avail this privilege, all Rajesh has to do is pay a premium of Rs. 25,000 (Rs. 250 a share for 100 shares).

The buyer of a put has purchased a right to sell. The owner of a put option has the right to sell.

**Case 2**

If an investor is of the opinion that a particular stock say "Ray Technologies" is currently overpriced in the month of February and hence expect that there will be price corrections in the future. However he doesn't want to take a chance, just in case the prices rise. So the best option for the investor would be to take a Put option on the stock.

Lets assume the quotes for the stock are as under:

Spot Rs. 1040

May Put at 1050 Rs.10

May Put at 1070 Rs. 30

So the investor purchases 1000 "Ray Technologies" Put at strike price of Rs. 1070 and Put price of Rs. 30/-. The investor pay Rs. 30,000 as Put premium.

The position of investor in two different scenarios have been discussed below:

1. May Spot price of Ray Technologies = Rs 1020
2. May Spot price of Ray Technologies = Rs 1080

In the first situation you have the right to sell 1000 "Ray Technologies" shares at Rs.1,070/- the price of which is Rs. 1020/-.

By exercising the option the investor earn Rs.  $(1070-1020) = \text{Rs.}50$  per Put, which amounts to Rs. 50,000/-. The net income in this case is Rs.  $(50000-30000) = \text{Rs. } 20,000$ .

In the second price situation, the price is more in the spot market, so the investor will not sell at a lower price by exercising the Put. He will have to allow the Put option to expire unexercised. In the process the investor only lose the premium paid which is Rs. 30,000.

While buyer of an options has limited risk (Premium Amount), seller of an option has very high risk (Market Price- Strike Price or Strike Price - Market Price), as the case may be, depending on whether it is an call or put option.

## WARRANT

Warrant means an option issued by a company whereby the buyer is granted the right to purchase a number of shares (usually one) of its equity share capital at a given exercise price during a given period.

The holder of a warrant has the right but not the obligation to convert them into equity shares. Thus in the true sense, a warrant signifies optional conversion. In case the investor benefits by conversion of warrant, then he will convert the warrants, else he may simply let the warrant lapse.

For example if the conversion price of the warrant is Rs. 70/- and the current market price is Rs. 110/-, then the investor will convert the warrant and enjoy the capital gain of Rs. 40/-. In case the conversion is at Rs. 70/- and the current market price is Rs. 40/-, then the investor will simply let the warrant lapse without conversion.

## ASPECTS OF PRIMARY MARKET

### BOOK BUILDING

Book building means a process undertaken to elicit demand and to assess the price for determination of the quantum or value of specified securities.

#### Process

- Appoints Lead Book Runners/Co Book Runners, Lead Merchant Banker (LMB) to act as Lead Book Runner. If more than one LBM/LBR, inter-se, allocation of responsibilities to be decided.
- Filing of draft offer document with SEBI for obtaining observation and, Exchanges for in-principle approval for listing.
- Filing of Red herring prospectus with SEBI, Exchange and Registrar of Companies (RHP).
- The company shall enter into agreement with stock exchange for online offer of securities and make application for In-principle approval.

- Lead Book Runners (LBR) appoints an underwriter.
- Merchant Banker to finalise bidding/collection centres who are either:
  - (a) SEBI Registered stock broker
  - (b) Self-certified Syndicate Bank (for ASBA facility)
- Pre issue advertisement shall be made.
- Bidding and allocation for anchor investors one day before opening of issue.
- Issue opens and Investor submits forms at bidding centres.
- Electronic Bidding Process and determination of price.
- Registration of final prospectus with ROC.
- Allocation/Manner of Allotment.
- In case of Book Built Issue, the issuer in consultation with merchant banker, fixes the Price band.
- In case of Fixed Price Issue, the issuer in consultation with merchant banker, fixes the price of the shares to be offered (Face Value + Share Premium) and makes an offer. If the investors subscribe minimum 90% of the offer, the issue will succeed.

### Example

Let's take an example.

Number of shares issued by the company = 100.

Price band = Rs. 30 - Rs. 40.

Now let's check what individuals have bid for.

Bid	Number of shares	Price per share (Rs.)	Cumulative demand
1	20	40	20
2	10	38	30
3	20	37	50
4	30	36	80
5	20	35	100
6	20	33	120
7	20	30	140

The shares will be sold at the Bid 5 price of 20 shares for Rs.35.

Because Bidders 1 to 5 are willing to pay at least Rs. 35 per share. The total bids from Bidders 1 to 5 ensure all 100 shares will be sold (20 + 10 + 20 + 30 + 20). The cut-off price is therefore Bid 5's price = Rs. 35.

Bidders 1 to 5 get allotments at that price. Bidders 6 and 7 don't get an allotment because their bids are below the cut-off price. On allotment, the extra amount paid will be refunded to the investor. Since the cut-off price is Rs. 35, the 10 shares will cost Rs. 350 (10 x Rs. 35). The balance Rs. 50 will be refunded to the investor.

### ANCHOR INVESTOR

Anchor Investor means a **Qualified Institutional Buyer** who makes an application for a value of ten crore rupees or more in a public issue made through the book-building process in accordance with SEBI (ICDR) Regulations, 2018.

Out of the portion available for allocation to QIBs, allocation to Anchor Investors may be made subject to following conditions:

- a) **Maximum of 2** such investors shall be permitted for allocation upto Rs.10 crore.
- b) **Minimum of 2 and maximum of 15** such investors shall be permitted for allocation above Rs.10 crore and upto Rs. 250 crore, subject to minimum allotment of Rs. 5 crore per such investor.
- c) In case of allocation above Rs.250 crore; a **minimum of 5** such investors and a **maximum of 15** such investors for allocation upto Rs.250 crore and an additional 10 such investors for every additional Rs. 250 crore or part thereof, shall be permitted, subject to a minimum allotment of Rs.5 crore per such investor.
- d) The bidding for Anchor Investors shall **open one day before the issue opening date**.
- e) **Upto 60%** of the portion available for allocation to qualified institutional buyers shall be available to anchor investor(s) for allocation/allotment ("anchor investor portion");
- f) **One-third** of the anchor investor portion shall be reserved for domestic mutual funds;

### APPLICATION SUPPORTED BY BLOCKED AMOUNT (ASBA)

- ASBA is an application for subscribing to an issue, containing an *authorization to block the application money in a bank account.*
- Advantages of ASBA is that the *investor continues to receive the interest for amount blocked, until allotment only when shares are allotted, the money moves from the investors accounts.*
- *If the concerned investor didn't get allotment, the block is removed hence, there is no concern regarding non receipt or delay in refund, in case of allotment which was the major issue when made of payment was through cheque/DD etc.*
- *The ASBA process is mandatory in all public issues made through the book building route.*

### ASBA PROCESS

- *An ASBA investor submits an ASBA physically or electronically through the internet banking facility, to the SCSB with whom the bank account to be blocked is maintained.*
- *The SCSB blocks the application money in the bank account specified in the ASBA.*
- *The application money remains blocked in the bank account till finalisation of the basis of allotment in the issue or till withdrawal/failure of the issue or till withdrawal/rejection of the application.*
- *The application data shall thereafter be uploaded by the SCSB in the electronic bidding system.*
- *Once the basis of allotment of finalized, the Registrar to the Issue sends an appropriate request to the SCSB for unblocking the relevant bank accounts and for transferring the requisite amount to the issuer's account.*
- *In case of withdrawal/failure of the issue, the amount shall be unblocked by the SCSB on receipt of information from the pre-issue merchant bankers.*
- *The ASBA process has also helped to reduce the listing time for IPO to 6 working days from the date of the closure of the equity shares public issue.*



### SELF CERTIFIED SYNDICATE BANK (SCSB)

Self Certified Syndicate Bank (SCSB) is a bank which offers the facility of applying through the ASBA process. A bank desirous of offering ASBA facility shall submit a certificate to SEBI as per the prescribed format for inclusion of its name in SEB's list of SCSBs. A SCSB shall identify its Designed Branches (DBs) at which shall act as a coordinating branch for the Registrar of the issue, Stock Exchanges and Merchant bankers.

### USE OF UNIFIED PAYMENTS INTERFACE (UPI) WITH ASBA IN PUBLIC ISSUE PROCESS

UPI is an instant payment system developed by the National Payments Corporation of India (NPCI), an RBI regulated entity. UPI is built over the IMPS (Immediate Payment Service) infrastructure and allows you to instantly transfer money between any two parties' bank accounts. UPI as a payment mechanism is available for all public issues for which Red Herring Prospectus is filed after January 01, 2019

#### How is public issue application using UPI different from public issue application using ASBA submitted with intermediaries?

Public issue application using UPI is a step towards digitizing the offline processes involved in the application process by moving the same online. This requires you to have to create a UPI ID and PIN using any of the UPI enabled mobile application. The UPI ID can be used for blocking of funds and making payment in the public issue process. One can accept the request to block the funds for the amount they have bid by entering their UPI PIN in the mobile application.

The money shall be blocked and shall be automatically remitted to the Escrow Bank, in case of allotment. UPI in public issue process shall essentially bring in comfort, ease of use and reduce the listing time for public issues.

## **“UPI as a payment option” can be used in the public issue process”?**

### **1. UPI as part of bidding :**

- Investor will fill in the bid details in the application form as per the existing process along with his UPI ID.
- As per the existing process, investor may submit the application with any of the intermediary (Syndicate Member / Registered Stock Brokers / Registrar and Transfer Agents / Depository Participants), who, on receipt of application will upload the bid details along with UPI id in the stock exchange bidding platform.
- The stock exchange will electronically share the bid details, along with investors UPI id, with the Escrow/ Sponsor Bank appointed by the issuer company.

### **2. UPI as part of blocking:**

- The Escrow / Sponsor Bank will initiate a mandate request on the investor i.e. request the investor to authorize blocking of funds equivalent to applicant amount and subsequent debit of funds in case of allotment.
- The request raised by the Escrow/Sponsor Bank, would be electronically received by the investor as SMS/intimation on his / her bank provided mobile no. linked to UPI ID.
- Upon validation of block request by the investor, the said information would be electronically received by the investors' bank, where the funds, equivalent to application amount, would get blocked in investors account. Intimation regarding confirmation of such block of funds in investors account would also be received by the investor.

### **3. UPI as part of payment for shares post allocation process:**

- The registrar to the issue, based on information of bidding and blocking received from stock exchange, would undertake reconciliation and prepare the basis of allotment.
- Upon approval of such basis the instructions would be sent to sponsor bank to initiate process for credit of funds in the public issue escrow account and unblocking excess money.
- Based on authorisation given by investor using UPI PIN at the time of blocking, the funds, equivalent to the allotment, would be debited from investors account and remaining funds, if any, would be unblocked.

### Whether use of UPI, as a payment mechanism in public issues, is mandatory?

The applicability of UPI as a payment mechanism has been prescribed in a Phased manner as under:

**Phase I:** From January 01, 2019, the UPI mechanism for retail individual investors through intermediaries will be made effective along with the existing process and existing timeline of T+6 days. The same will continue, for a period of 3 months or floating of 5 main board public issues, whichever is later.

**Phase II:** Thereafter, for applications by retail individual investors through intermediaries, the existing process of physical movement of forms from intermediaries to Self-Certified Syndicate Banks (SCSBs) for blocking of funds will be discontinued and only the UPI mechanism with existing timeline of T+6 days will continue, for a period of 3 months or floating of 5 main board public issues, whichever is later.

**Phase III:** Subsequently, final reduced timeline will be made effective using the UPI mechanism. Up to what limit one can apply for a public issue in UPI?

The limit for IPO application is 2 Lakhs per transaction on UPI.

### Are all category of investors eligible to apply in public issues using UPI for payment?

No. Only retail individual investors are allowed to use UPI for payment in public issues. Qualified Institutional Buyers and High Net-worth Individuals shall continue to apply as per the existing process.

## GREEN SHOE OPTION

### Meaning of Green Shoe Option

Green shoe option means an option of allocating shares in excess of the shares included in the public issue and operating a post listing price stabilizing mechanism in accordance with the provisions of SEBI (ICDR) Regulations, 2018, which is granted to a company to be exercised through a Stabilizing Agent.

Green Shoe Option is available both in Initial Public Offering by an unlisted company as well as in Further Public Offering by a listed company, whether by fixed price method (i.e., Traditional Method) or price discovery method (i.e., Book Building Method).

### **Purpose of Green Shoe Option**

The basic purpose of 'green shoe option' is not to make available additional share capital to company, but to act as stabilizing force, if issue is over subscribed. The share held by promoters or pre-issue shareholders are lent to Stabilizing Agent (SA). Such lending up to 15% of issue is permissible. These are returned to promoters or pre-issue shareholders, as the case may be, do not get any profit in this transaction.

The idea is that due to excess supply of shares (permitted up to 15%) market price will not shoot up to abnormally high level.

### **Illustration**

Consider a company planning an IPO of say, 100,000 shares, at a book-built price of Rs. 100/-, resulting in an IPO size of Rs 1,00,00,000. As per the ICDR Regulations, the over-allotment component under the Green Shoe mechanism could be up to 15% of the IPO, i.e. up to 15,000 shares, i.e. Green Shoe shares. Prior to the IPO, the stabilising agent would borrow such number of shares to the extent of the proposed Green Shoe shares from the pre-issue shareholders. These shares are then allotted to investors along with the IPO shares. The total shares issued in the IPO therefore stands at 115,000 shares. IPO proceeds received from the investors for the IPO shares, i.e. Rs.100,00,000 (100,000 shares at the rate of Rs.100 each), are remitted to the Issuer Company, while the proceeds from the Green Shoe Shares Rs.15,00,000/- (15,000 shares x Rs.100/-) are parked in a special escrow bank account, i.e. Green Shoe Escrow Account. During the price stabilisation period, if the share price drops below Rs.100, the stabilising agent would utilise the funds lying in the Green Shoe Escrow Account to buy these back shares from the open market. This gives rise to the following three situations:

**Situation 1** - where the stabilising agent manages to buyback all of the Green Shoe Shares, i.e., 15,000 shares;

**Situation 2** - where the stabilising agent manages to buyback none of the Green Shoe Shares

**Situation 3** - where the stabilising agent manages to buy-back some of the Green Shoe Shares, say 10,000 shares.

Let us examine each of these situations separately:

**Situation 1** - Where all Green Shoe Shares are bought back: In this situation, funds in the Green Shoe Escrow Account (Rs. 15,00,000, in this case) would be deployed by the stabilising agent towards buying up shares from the open market. Given that the prices prevalent in the market would be less than the issue price of Rs. 100, the stabilising agent would have sufficient funds lying at his disposal to complete this operation. Having bought back all of the 15,000 shares, these shares would be temporarily held in a special depository account with the depository participant (Green Shoe Demat Account), and would then be returned back to the lender shareholders, within a maximum period of two days after the stabilisation period.

**Situation 2** - Where none of the Green Shoe Shares are bought back: This situation would arise in the (very unlikely) event that the share prices have fallen below the Issue Price, but the stabilising agent is unable to find any sellers in the open market, or in an event where the share prices continue to trade above the listing price, and therefore there is no need for the stabilising agent to indulge in price stabilisation activities.

In either of the above-said situations, the stabilising agent is under a contractual obligation to return the 15,000 shares that had initially been borrowed from the lending shareholder(s). Towards meeting this obligation, the issuer company would allot 15,000 shares to the stabilising agent into the Green Shoe Demat Account (the consideration being the funds lying in the Green Shoe Escrow Account), and these shares would then be returned by the stabilising agent to the lending shareholder(s), thereby squaring off his responsibilities.

**Situation 3** - Where some of the Green Shoe Shares are bought back, say 10,000 shares: This situation could arise in an event where the share prices witness a drop in the initial stages of the price stabilisation period, but recover towards the latter stages.

In this situation, the stabilising agent has a responsibility to return 15,000 shares to the lending shareholder(s), whereas the stabilising activities have yielded only 10,000 shares.

Similar to the instance mentioned in Situation #2 above, the issuer company would allot the differential 5,000 shares into the Green Shoe Demat Account to cover up the shortfall, and the Stabilising Agent would discharge his obligation to the lending shareholder(s) by returning the 15,000 shares that had been borrowed from them.

Both in Situation 2 and 3, the issuer company would need to apply to the exchanges for obtaining listing/ trading permissions for the incremental shares allotted by them, pursuant to the Green Shoe mechanism.

Any surplus lying in the Green Shoe Escrow Account would then be transferred to the Investor Protection and Education Fund established by SEBI, as required under ICDR Regulations and the account shall be closed thereafter.

## SECONDARY MARKET

### Stock exchange

Stock exchange is a market place for buying and selling of securities and ensuring liquidity to them in the interest of the investors.

The Securities Contracts (Regulation) Act, 1956, has defined Stock Exchange :

- (a) **any body of individuals**, whether incorporated or not, constituted before corporatisation and demutualisation or

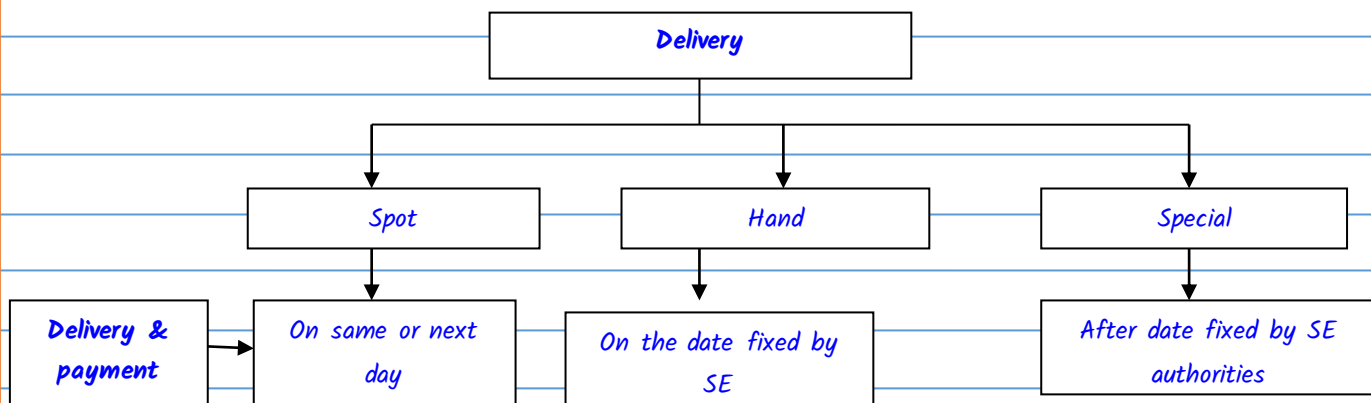
- (b) a body corporate incorporated under the Companies Act, 2013 whether under a scheme of corporatisation and demutualisation, for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.

### TYPES OF SECURITIES

**Listed Securities:** The securities of companies, which have signed the listing agreement with a stock exchange, are traded as Listed Securities in that exchange.

**Permitted Securities:** To facilitate the market participants to trade in securities of such companies, which are actively traded at other stock exchanges in India but are not listed on an exchange, trading in such securities is facilitated as permitted securities.

### TYPES OF DELIVERY

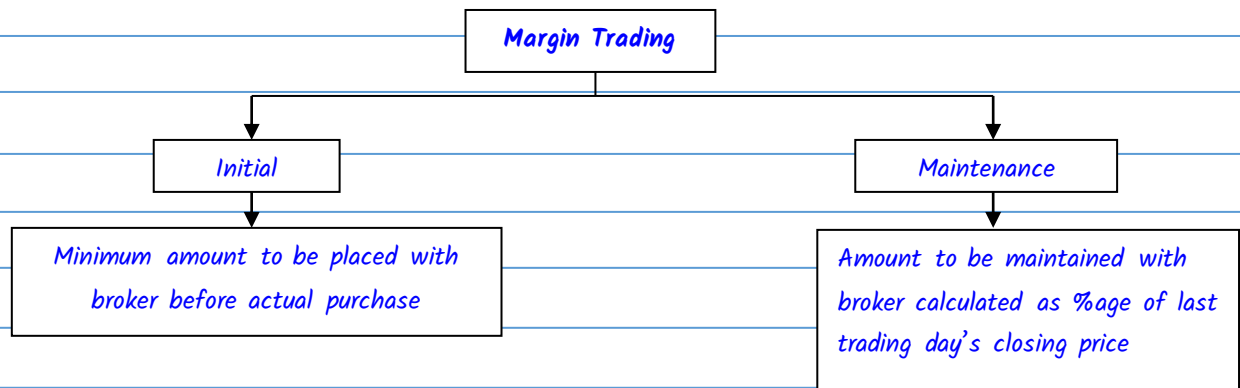


### MARGINS

Margin trading means limit provided by the Broker to its clients in order to boost trading. For example: if an investor deposits Rs. 10,000 in his account and his broker provides him a margin of 10 times on the investment, he can trade upto an amount of Rs. 1,00,000 from his account.



The margin money is to be deposited by the stockbroker with the Stock Exchange. The amount to be deposited is calculated with reference to the number of shares transacted on forward basis both in respect of purchase and sales, i.e., on long as well as short positions.



“Initial margin” in this context means the minimum amount, calculated as a percentage of the transaction value, to be placed by the client, with the broker, before the actual purchase. The broker may advance the balance amount to meet full settlement obligations.

“Maintenance margin” means the minimum amount, calculated as a percentage of market value of the securities, calculated with respect to last trading day's closing price, to be maintained by client with the broker.

## CLASSROOM NOTES FOR MARGINS

### BOOK CLOSURE AND RECORD DATE

In order to determine the name of shareholders entitled to

- Dividend
- Bonus
- Right share
- Any other right pertaining to shares

Book like Register of Members and Transfer Books are closed and it is called as Book Closure.

**Record Date** is the date on which records of a company are closed for determining the entitlement to dividends, proxies rights etc.

**Duration:** pursuant to the provisions of section 91 of the Companies Act, 2013, a Company can close books for a maximum period of 45 days in year and for 30 days at one time

**Notice:** 7 days prior notice in newspapers is required to be given before such book closure period.

### BLOCK DEAL

SEBI provided guidelines outlining a facility of allowing Stock Exchanges to provide separate trading window to facilitate execution of large trades. The Exchanges have introduced new block window mechanism for the block trades from January 01, 2018.

### SESSION TIMINGS

- a) Morning Block Deal Window: This window shall operate between 08:45 AM to 09:00 AM.
  - b) Afternoon Block Deal Window: This window shall operate between 02:05 PM to 2:20 PM.
- In the block deal the minimum order size for execution of trades in the Block deal window shall be Rs.10 Crore.
  - The orders placed shall be within  $\pm 1\%$  of the applicable reference price in the respective windows as stated above.
  - The stock exchanges disseminates the information on block deals such as the name of the scrip, name of the client, quantity of shares bought/sold, traded price, etc to the general public on the same day, after the market hours.

## BULK DEAL

- Bulk deal is a trade, where total quantity bought or sold is more than 0.5% of the number of equity shares of a listed company.
- Bulk deal can be transacted by the normal trading window provided by brokers throughout the trading hours in a day.
- Bulk deals are market driven and take place throughout the trading day.
- The stock broker, who facilitates the trade, is required to reveal to the stock exchange about the bulk deals on a daily basis.
- Bulk orders are visible to everyone. If the bulk deal happens through a single trade, it should be notified to the exchange immediately upon the execution of the order. If it happens through multiple trades, it should be notified to the exchange within one hour from the closure of the trading.

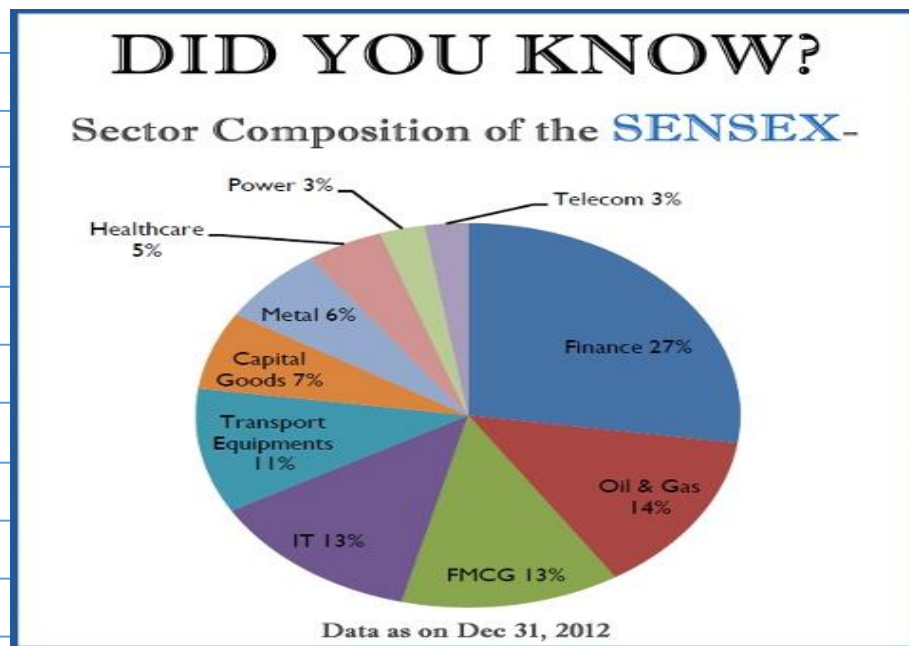
## BASIS OF SENSEX

- Sensitive Index or Sensex is the stock market index indicator for the BSE. It is sometimes referred as BSE S&P Sensex. It was first published in 1986 and is based on the market weighed stock index of 30 companies based on the financial performance. The large, established companies that represent various industrial sectors are a part of this.
- The calculation of Sensex is done by a Free-Float method that came into existence from September 1, 2003.
- The free-float method takes into account the proportion of the shares that can be readily traded in the market. This does not include the ones held by various shareholders and promoters or other locked-in shares not available in the market.

### Steps to calculate Sensex:

- The market capitalization is taken into account. This is done by multiplying all the shares issued by the company with the price of its stock.

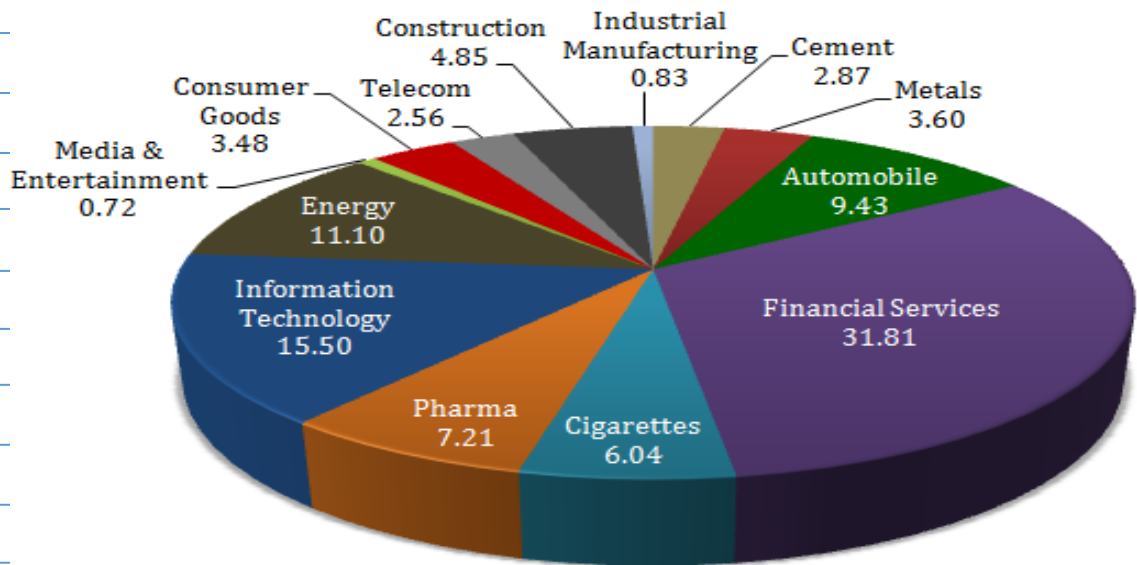
- BSE determines a Free-float factor that is a multiple of the market capitalization of the company. This helps in determining the free-float market capitalization based on the details submitted by the company.
- Ratio and Proportion are used based on the base index of 100. This helps to determine the Sensex.



## NIFTY

- National Stock Exchange Fifty or Nifty is the market indicator of NSE. It is a collection of 50 stocks. It is also referred to as Nifty 50. It is owned and managed by India Index Services and Products Ltd. (IISL).
- Nifty is calculated through the free-float market capitalization weighted method. It multiplies the Equity capital with a price to derive the market capitalization.
- The Index is determined on a daily basis by taking into consideration the current market value (free float market capitalization) divided by base market capital and then multiplied by the Base Index Value of 1000.

**Nifty 50 Companies - Sectorwise Weightage (%)**



## MARKET SURVEILLANCE

Market surveillance is either conducted by the Regulators or Exchanges or both. In India, the primary responsibility of market surveillance has been entrusted to Stock exchanges and is being closely monitored by SEBI.

Market Surveillance is broadly categorised in 2 parts viz,

- Preventive Surveillance and
- Post trade Surveillance

### A. Preventive Surveillance -

- Stringent on boarding norms for Trading Members - Stringent net worth, back ground, viability etc. checks while on boarding Trading Members.
- Index circuit filters - It brings coordinated trading halt in all equity and equity derivative markets at 3 stages of the index movement, either way viz., at 10%, 15% and 20% based on previous day closing index value.

- Trade Execution Range - Orders are matched and trades take place only if the trade price is within the reference price and execution range.
- Order Value Limitation - Maximum Order Value limit allowed per order.
- Cancel on logout - All outstanding orders are cancelled, if the enabled user logs out.
- Kill switch - All outstanding orders of that trading member are cancelled if trading member executes kill switch.
- Risk reduction mode - Limits beyond which orders level risk management shall be initiated instead of trade level.
- Compulsory close out - Incoming order, if it results in member crossing the margins available with the exchange, such order will be partially or fully cancelled, and further disallow the trading member to create fresh positions.
- Capital adequacy check - Refers to monitoring of trading member's performance and track record, stringent margin requirements, position limits based on capital, online monitoring of member positions and automatic disablement from trading when limits are breached.
- Fixed Price Band / Dynamic Price band - Limits applied within which securities shall move; so that volatility is curbed orderliness is brought about. For non-derivative securities price band is 5%, 10% & 20%. For Derivative products an operating range of 10% is set and subsequently flexed based on market conditions.
- Trade for Trade Settlement - The settlement of scrip's available in this segment is done on a trade for trade basis and no netting off is allowed.
- Periodic call auction - Shifting the security form continuous to call auction method

- Rumour Verification - Any unannounced news about listed companies is tracked on online basis and letter seeking clarification is sent to the companies and the reply received is disseminated.

### **B. Post trade surveillance**

- End of day alert - Alerts generated using statistical tools. The tool highlights stocks which have behaved abnormally from its past behaviour
- Pattern recognition model - Models designed using high end tools and trading patterns which itself identifies suspects involving in unfair trading practise.
- Transaction alerts for member - As part of surveillance obligation of members the alerts are downloaded to members under 14 different heads.

## **RISK MANAGEMENT IN SECONDARY MARKET**

The key risk management measures initiated by SEBI include:-

- Categorization of securities into groups 1, 2 and 3 for imposition of margins based on their liquidity and volatility.
- VaR based margining system.
- Specification of Mark to Market margins.
- Specification of Intra-day trading limits and Gross Exposure Limits.
- Real time monitoring of the Intra-day trading limits and Gross Exposure Limits by the Stock Exchanges.
- Specification of time limits of payment of margins.
- Collection of margins on upfront basis.
- Index based market wide circuit breakers.
- Automatic de-activation of trading terminals in case of breach of exposure limits.
- VaR based margining system has been put in place based on the categorization of stocks based on the liquidity of stocks depending on its impact cost and volatility.
- Additional margins have also been specified to address the balance 1% cases.
- Collection of margins from institutional clients on T+1 basis.



## CHAPTER 16 - CAPITAL MARKET INTERMEDIARIES



His advice to young people:

"Stay away from credit cards (bank loans) and invest in yourself and Remember:

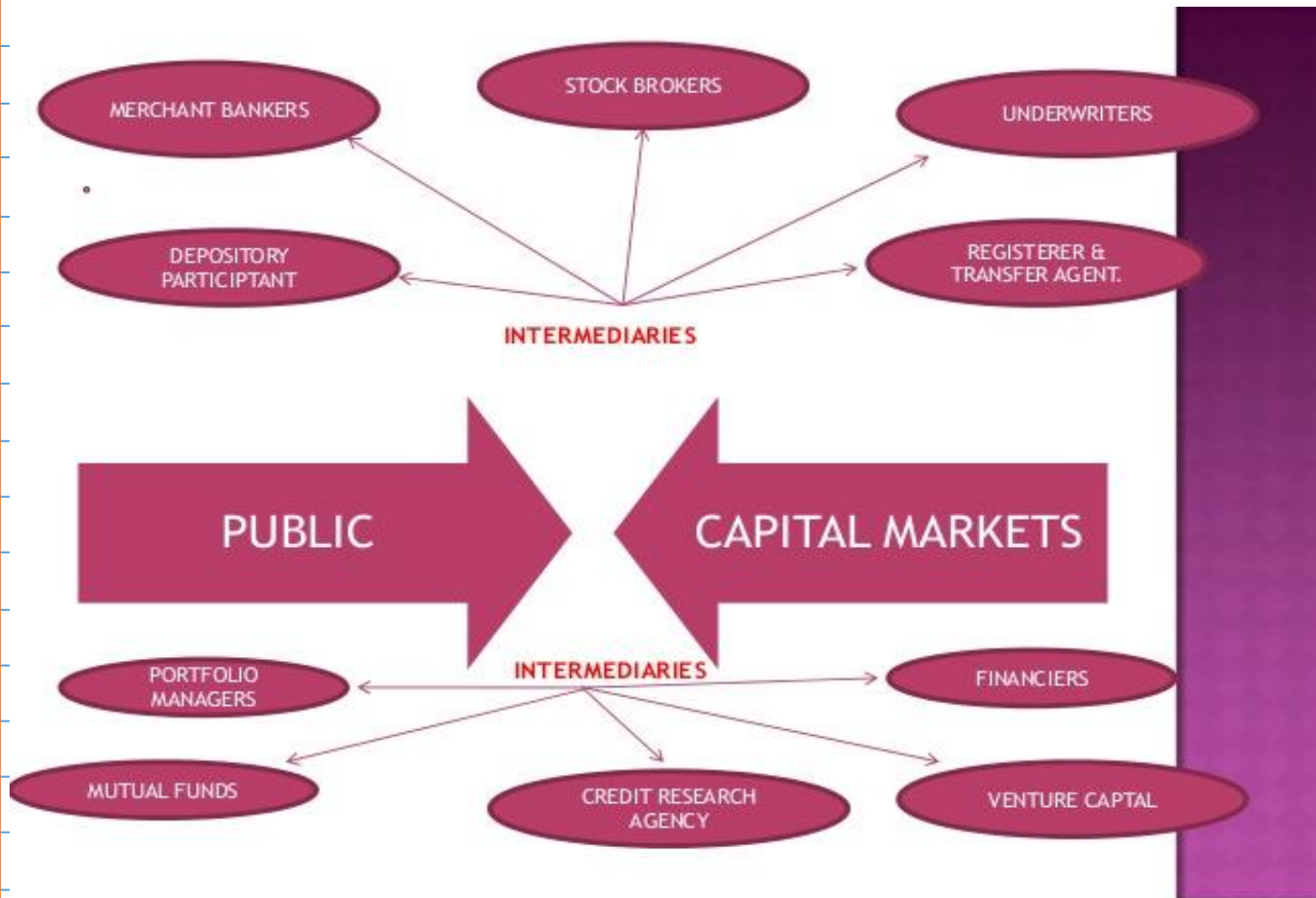
- A. Money doesn't create man but it is the man who created money.
- B. Live your life as simple as you are.
- C. Don't do what others say, just listen them, but do what you feel good.

INDIAN-SHARE-TIPS.COM COURTESY NITESH

### INTRODUCTION

Capital Market Intermediaries are the people who help the corporate and the investors to enter into various kinds of transactions in the capital market. They are the experts of various aspects of capital market. For facilitating the transactions, capital market intermediaries charge the professional fees.

## KINDS OF CAPITAL MARKET INTERMEDIARIES



Capital Market Intermediaries are classified as follows:

### Primary Market

### Secondary Market

- 1) Merchant Bankers/Lead Managers
- 2) Registrar and Share Transfer Agents
- 3) Underwriters
- 4) Bankers to an Issue
- 5) Debenture Trustees

1. Stock-Brokers and Sub-Brokers
2. Portfolio Managers
3. Custodian of Securities
4. Foreign Institutional Investors
5. Investment Advisers

## MERCHANT BANKERS

### Meaning

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, advisor* or rendering corporate advisory services in relation to issue management.

### Roles and Responsibilities

It is necessary for an issuer to appoint a merchant banker for:

- (a) Managing of *public issue* of securities;
- (b) *Underwriting* connected with the public issue management business;
- (c) Managing/Advising on *international offerings* of debt/equity i.e. GDR, ADR, bonds and other instruments;
- (d) *Private placement* of securities;
- (e) Primary or satellite dealership of *government securities*;
- (f) Corporate advisory services related to securities market including *takeovers, acquisition and disinvestment*;
- (g) *Stock broking*;
- (h) *Advisory services for projects*;
- (i) *Syndication of rupee term loans*;
- (j) *International financial advisory services*

### Capital Adequacy Requirements

The Regulations prescribes that the capital adequacy requirement shall be a *networth* of not less than *five crore rupees*.

## REGISTRARS AND SHARE TRANSFER AGENTS (RTA)

### Introduction

The expression "Registrar and Share Transfer Agent (RTA)" is the combination of two expressions, namely 'Registrar to an Issue' and 'Share Transfer Agent'.

Registrar to an Issue is related to primary market whereas Share Transfer Agent is related to secondary market. There are two categories of RTAs i.e., Category I, who acts both as the Registrar to an Issue as well as the Share Transfer Agent and Category II, who acts either as the Registrar to an Issue or as the Share Transfer Agent.

### Definition of Registrar to an Issue

Registrar to an issue means a person authorized by a body corporate to carry on the following activities on its behalf:

- 1) Collecting applications from investors in respect of an issue;
- 2) Keeping a proper record of applications and moneys received from investors;
- 3) Assisting body corporate in the following:
  - a) Determining the basis of allotment of securities;
  - b) Finalizing the list of persons entitled to allotment of securities; and
  - c) Processing and dispatching allotment letters and refund order.

### Definition of Share Transfer Agent

Share Transfer Agent means -

- 1) Any person who, on behalf of anybody corporate, maintains the records of holder of securities issued by such body corporate and deals with all matters connected with the transfer or redemption of its securities;
- 2) A department or division (by whatever name called) of a body corporate performing the activities specified in the above clause, if at any time the total number of the holder of its securities issued exceed 1 lac.

### Pre-issue Activities

- Sending instructions to Banks for reporting of collection figures and collection of applications.
- Providing inputs to the Lead Manager and Printers regarding the design of the Bid cum-Application form.

### Activities during the Issue

- Collection and Reporting of daily Collection figures.
- Collection of Data and Forms from Banks.
- Liaising with clients and Intermediaries to the Issue.

### Post Issue Activities

- Data capturing & validation
- Reconciliation
- Provide Allotment Alternatives in consultation with Client / Merchant Banker and Stock Exchanges
- Facilitating Listing
- Uploading of data to the Depositories for crediting of securities electronically
- Dispatch of Refund orders / Share Certificates / Credit Advise
- Periodic Report submission to Regulatory Authorities
- Reconciliation of Refund payments
- Attending to post issue Investor queries
- Web-based investor enquiry system for allotment / refund details Share Transfer Agent Services

### Capital Adequacy Requirements

It provides that it must have a net worth of a minimum of Rupees 50 Lacs for Category I RTA and Rupees 25 Lacs for Category RTA. Here net worth means the sum of paid-up capital and free reserves.

## GENERAL OBLIGATIONS AND RESPONSIBILITIES

Every registrar to an issue and share transfer agent holding a certificate shall:

- at all times abide by the Code of Conduct.
- not to act as such registrar for any issue of securities in case he or it is an associate of the body corporate issuing the securities.
- keep and maintain proper books of accounts and records.
- preserve the books of accounts and other records and documents maintained for a minimum period of three years.
- appoint a compliance officer for monitoring the compliance of the Act, rules and regulations.

## UNDERWRITERS

### Definition of Underwriting/ Underwriting Agreement

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 or the public do not subscribe to the securities offered to them.

Underwriter means a person who engages in the business of underwriting of an issue of securities of a body corporate. Generally, **banks, financial institutions, merchant bankers and stockbrokers do the work of underwriting.**

### Capital Adequacy Requirements

It provides that it must have a **net worth** of a minimum of **Rupees 20 Lacs**. Here net worth means the sum of paid-up capital and free reserves.

## GENERAL OBLIGATIONS AND RESPONSIBILITIES

Every underwriter shall:

- at all times abide by the Code of Conduct.
- enter into an agreement with each body corporate on whose behalf he is acting as underwriter.



- not derive any direct or indirect benefit from underwriting the issue other than the commission or brokerage payable under an agreement for underwriting.
- ensure that the total underwriting obligations under all the agreements does not exceed twenty times the net worth.
- subscribe to such securities within 45 days of the receipt of such intimation from such body corporate.
- keep and maintain proper books of account and records.
- preserve the books of account and other records and documents for a minimum period of five years.
- appoint a compliance officer for monitoring the compliance of the Act, rules and regulations.

### BANKERS TO AN ISSUE



#### Definition

Banker to an Issue means a scheduled bank (bank specified under the Schedule II to the Reserve Bank of India Act, 1934) carrying on all or any of the following activities, namely:

- 1) Accepting applications and application money;
- 2) Acceptance of allotment and calls money;
- 3) Refund of application moneys;
- 4) Payment of dividend or interest warrants.



## GENERAL OBLIGATIONS AND RESPONSIBILITIES

Every banker to an issue shall

- maintain books of account, records and the documents.
- furnish the information to the SEBI when required.
- enter into an agreement with the body corporate for whom it is acting as banker to an issue.
- inform SEBI, if any disciplinary action is taken by the Reserve Bank against the banker to an issue only in relation to issue payment work.
- abide by the code of conduct.
- appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations.

## DEBENTURE TRUSTEE

### Definition

Debenture Trustee means a trustee of a Trust Deed for securing any issue of debentures of a body corporate. It may be noted that only the following persons can do the work of debenture trustee:

- a) A scheduled bank carrying on commercial activity;
- b) A public financial institution
- c) An insurance company; and
- d) A body corporate.

### Roles and Responsibilities

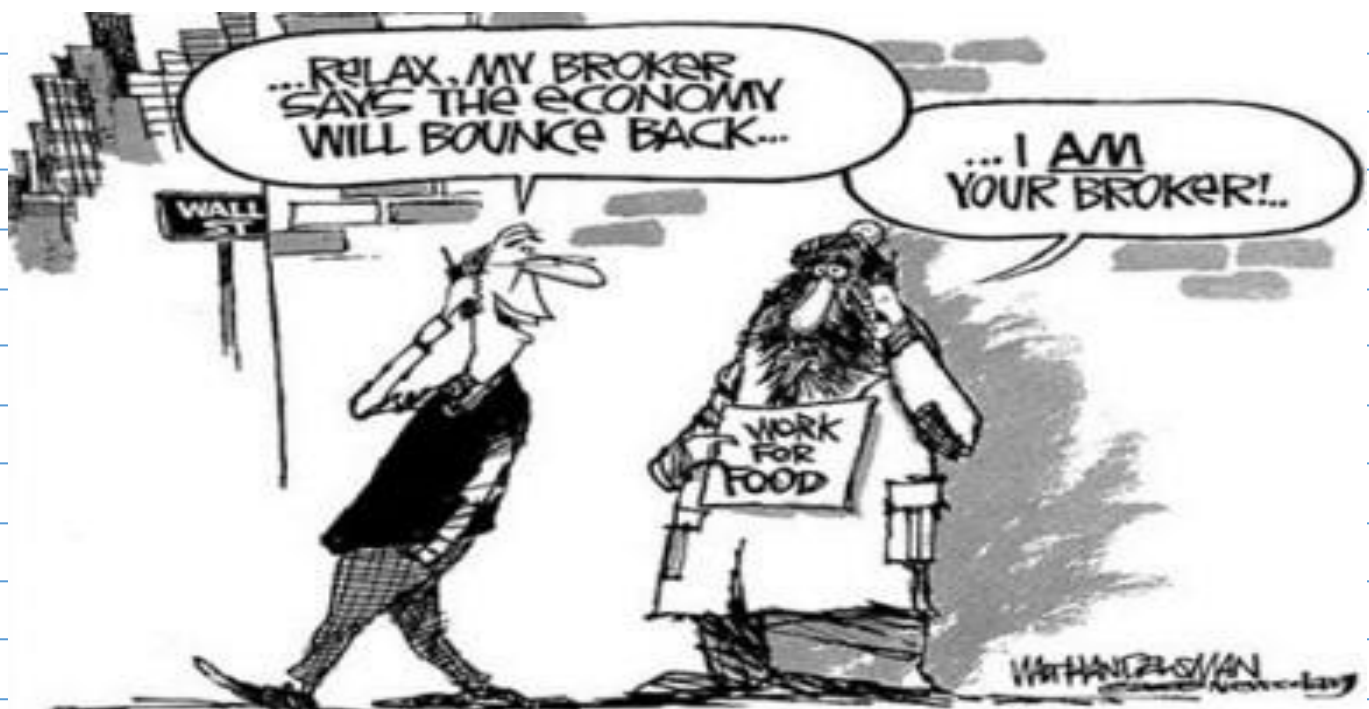
- Call for periodical reports from the body corporate, i.e., issuer of debentures.
- Take possession of trust property.
- Enforce security in the interest of the debenture holders.
- Ensure on a continuous basis that the property charged to the debenture is available and adequate at all times to discharge the interest and principal amount payable.

- Exercise **due diligence** to ensure compliance with the provisions of the Companies Act, the listing agreement or the trust deed.
- To take appropriate measures for **protecting the interest of the debenture holders** as soon as any breach of the trust deed or law comes to his notice.
- To ascertain that the **debentures** have been **converted or redeemed** in accordance with the provisions and conditions under which they are offered to the debenture holders.

### Capital Adequacy Requirements

The Regulations prescribes that the capital adequacy requirement shall be a **networth** of not less than **ten crore** rupees.

### STOCK BROKERS AND SUB-BROKERS



### Meaning and Concept of Stock Broker and Sub-broker

Stock Broker is a person registered with Stock Exchange as a member. He helps both the seller and buyer of securities to enter into a transaction. If a stockbroker has order to buy and sell same kind of securities he may complete the transaction between his clients

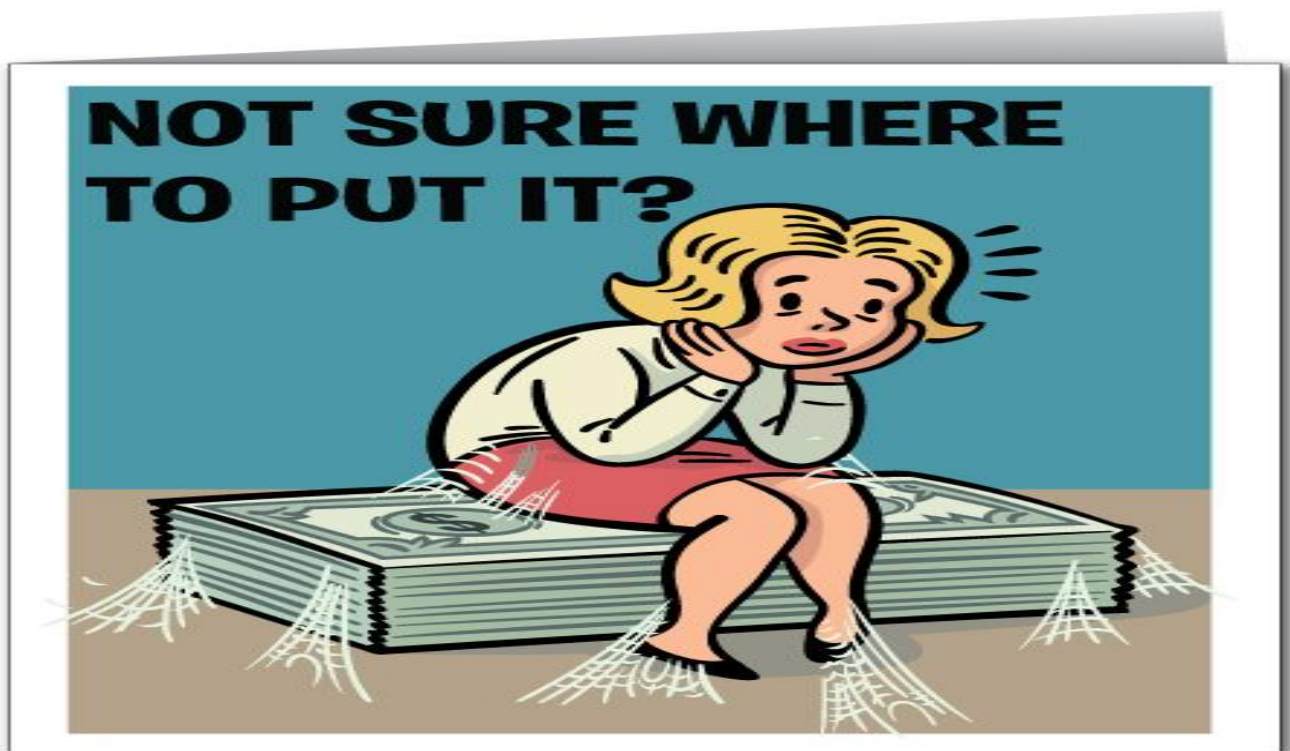
concerned. Sub-Broker is one who works along with Stock Broker and is not directly registered with Stock Exchange as a member. However, he must be recognized by the Stock Exchange. He acts as an agent of the Stock Broker.

### GENERAL OBLIGATIONS AND RESPONSIBILITIES

Every Stock Broker shall

- keep and maintain the proper books of account, records and documents.
- preserve the books of account and other records maintained for a minimum period of five years.
- appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations.

### PORTFOLIO MANAGER



### Meaning and Concept of Portfolio Manager

Portfolio means the total holdings of securities belonging to a person. Thus, Portfolio Manager means a person who manages the total holdings of securities belonging to a person. He studies the market and adjusts the investment mix for his client on a continuing basis to ensure safety of investment and reasonable returns therefrom. The Portfolio Manager charges a fee from the client for rendering portfolio management services and such fees shall be independent of the return.

There are two types of Portfolio Managers:

- 1) **Discretionary Portfolio Manager:** He manages the funds of his client independently and with full discretion in accordance with the needs of the client.
- 2) **Non-discretionary Portfolio Manager:** He manages the funds of his client without discretion and in accordance with the instructions and directions of the client.

### Definition of Portfolio Manager

Portfolio Manager means any person who, pursuant to a contract or arrangement with a client, advises, directs, or undertakes on behalf of the client the management or administration of portfolio of securities or the funds of the clients, as the case may be.

### Capital Adequacy Requirements

The Regulations prescribes that the capital adequacy requirement shall be a networth of not less than five crore rupees.

### GENERAL OBLIGATIONS AND RESPONSIBILITIES

Every portfolio manager shall:

- abide by the Code of Conduct.
- before taking up an assignment, enters into an agreement in writing with such client that clearly defines the inter se relationship between them.
- The discretionary portfolio manager shall individually and independently manage the funds of each client in accordance with the needs of the client whereas the non-

discretionary portfolio manager shall manage the funds in accordance with the directions of the client.

- not accept from the client, funds or securities worth less than fifty lakh rupees.
- act in a fiduciary capacity with regard to the client's funds.
- segregate each client's holding in securities in separate accounts.
- keep the funds of all clients in a separate account.
- transact in securities within the limitation placed by the client himself.
- not derive any direct or indirect benefit out of the client's funds or securities.
- not borrow funds or securities on behalf of the client.
- not lend securities held on behalf of the clients to a third person except as provided under SEBI (Portfolio Managers) Regulations, 2020.
- ensure proper and timely handling of complaints from his clients and take appropriate action immediately.
- ensure that any person or entity involved in the distribution of its services is carrying out the distribution activities in compliance with these regulations.

### CUSTODIAN OF SECURITIES

Custodian of Securities means any person who carries on or proposes to carry on the **business of providing custodial services**. The term 'custodial services' in relation to securities means safekeeping of securities of a client and providing related services.

Following are the important functions of Custodian of Securities;

- **maintaining accounts of securities of a client;**
- **collecting the benefits of rights accruing to the client in respect of securities**
- **keeping the client informed of the action taken or to be taken by the issuer of securities.**

### Capital Adequacy Requirements

The Regulations prescribes that the capital adequacy requirement shall be a networth of not **less than fifty crore rupees**.



**GENERAL OBLIGATIONS AND RESPONSIBILITIES**

Every custodian shall

- abide by the Code of Conduct.
- separate and segregate its activity from all other activities.
- have adequate mechanisms for the purposes of reviewing, monitoring, evaluating and inspection the custodian's controls, systems, procedures and safeguards.
- not assign or delegate its functions as a custodian to any other person unless such person is a custodian.
- open a separate custody account for each client, in the name of the client whose securities are in its custody.
- enter into an agreement with each client on whose behalf it is acting as custodian.
- have adequate internal controls to prevent any manipulation of records and documents including audits for securities, goods and rights or entitlements arising from the securities and goods held by it on behalf of its client.
- maintain the records and documents.
- appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations.
- be the duty of the custodian to furnish such information within such reasonable period as the SEBI may specify.

**INVESTMENT ADVISER**

### Meaning

"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.

### Functions

Investment advisers are those, who guide one about his or her financial dealings and investments. Basically Investment adviser give advice and provide services related to the investment management process. The Investment adviser shall done the risk profiling for clients to assess their risks.

### Capital Adequacy Requirements

A minimum *net worth* of *Rs. 25 lakhs* in case of *body corporate* while *individuals and partnership firms* will require to possess tangible assets worth at least *Rs. 1 lakh*.

### GENERAL OBLIGATIONS AND RESPONSIBILITIES

An investment adviser shall

- act in a fiduciary capacity towards its clients.
- not receive any consideration by way of remuneration or compensation or in any other form from any person other than the client being advised.
- maintain an arms-length relationship between its activities as an investment adviser.
- ensure that its investment advisory services are clearly segregated from all its other activities.
- ensure that in case of any conflict of interest of the investment advisory activities with other activities.
- not divulge any confidential information about its client, which has come to its knowledge, without taking prior permission of its clients, except where such disclosures are required to be made in compliance.
- not enter into transactions on its own account which is contrary to its advice given to clients for a period of fifteen days from the day of such advice.
- follow Know Your Client procedure as specified by the SEBI from time to time.



- abide by Code of Conduct.
- not act on its own account, knowingly to sell securities or investment products to or purchase securities or investment product from a client.
- shall furnish to the SEBI information and reports as may be specified by the SEBI from time to time.
- ensure that its representatives and partners, as applicable, comply with the certification and qualification requirements at all times.

### SEBI (RESEARCH ANALYST) REGULATIONS, 2014

SEBI (Research Analyst) Regulations, 2014, were notified by SEBI on 1st September, 2014 in exercise of the powers conferred by section 30 of SEBI Act, 1992, SEBI made these regulations.

#### Roles and Responsibilities

They study Companies and industries, analyse raw data, and make forecasts or recommendations about whether to buy, hold or sell securities. They analyse information to provide recommendations about investments in securities to their clients. Investors often view analysts as experts and important sources of information about the securities they review and often rely on their advice. There are basically three broad types of analysts, viz. sell-side analysts, buy-side analysts and independent analysts.

#### Capital Adequacy Requirements

Regulation 8 prescribes the capital adequacy requirement:-

- (1) of research analyst who is **body corporate or limited liability partnership firm** shall have a **net worth** of not less than **twenty five lakh rupees**.
- (2) of research analyst who is **individual or partnership firm** shall have net tangible assets of value not less than **one lakh rupees**.

## GENERAL OBLIGATIONS AND RESPONSIBILITIES

Research analyst or research entity shall

- maintain an arms-length relationship between its research activity and other activities.
- abide by Code of Conduct.
- furnish to the SEBI information and reports as may be specified by the SEBI from time to time.
- ensure that its employees or partners comply with the certification and qualification requirements at all times.
- maintain the records: (i) research report duly signed and dated; (ii) research recommendation provided; (iii) rationale for arriving at research recommendation; (iv) record of public appearance.
- ensure that all records shall be maintained either in physical or electronic form and preserved for a minimum period of five years.
- conduct annual audit in respect of compliance with these regulations from a CA/CS.
- Research analyst or research entity which is a body corporate or limited liability partnership firm shall appoint a compliance officer who shall be responsible for monitoring the compliance of the provisions of the Act, these regulations and circulars issued by the SEBI.

## CREDIT RATING AGENCIES

“Credit rating agency” means a body corporate which is engaged in, or proposes to be engaged in, the **business of rating of securities** offered by way of public or rights issue.

### Roles and Responsibilities

- Credit rating is extremely important as it not only plays a role in **investor protection** but also benefits industry as a whole in terms of direct mobilization of savings from individuals.

- Rating also provide a **marketing tool to the company** and its investment bankers in placing company's debt obligations with an investor base that is aware of, and comfortable with, the level of risk.
- Ratings also encourage **discipline amongst corporate borrowers to improve their financial structure** and operating risks to obtain a better rating for their debt obligations and thereby lower the cost of borrowing.

### Capital Adequacy requirements

Minimum net worth of **Rs. 25 crores**

### GENERAL OBLIGATIONS AND RESPONSIBILITIES

Every credit rating agency shall

- abide by the Code of Conduct.
- enter into a written agreement with each client whose securities it proposes to rate.
- during the lifetime of securities rated by it continuously monitor the rating of such securities.
- disseminate information regarding newly assigned ratings, and changes in earlier rating promptly through press releases and websites, and, in the case of securities issued by listed companies, such information shall also be provided simultaneously to the concerned regional stock exchange and to all the stock exchanges where the said securities are listed.
- disclose Rating Definitions and Rationale.
- Where any information is called for by the SEBI from a credit rating agency for the purposes of these regulations, including any report relating to its activities, the credit rating agency shall furnish such information to the SEBI.
- comply with such guidelines, directives, circulars and instructions as may be issued by the SEBI from time to time,
- appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations.
- keep and maintain books of accounts, records and documents for a minimum period of five years.

## DEPOSITORY PARTICIPANT

A DP is an agent of the depository through which it interfaces with the investor and provides depository services.

### Roles and Responsibilities

Depository Participant (DP) is described as an Agent (law) of the depository. They are the intermediaries between the depository and the investors. They execute pledge requests and off market transfers and on market transfer request of the investors who hold shares in demat form. Further transmission requests of investors shall also be handled. Demat/Remat requests also handled in consultation with RTI/STAs.

### Capital Adequacy requirements

Not less than Rs. one hundred crores.

## CHAPTER 17 - PRACTICAL PROBLEMS - PAST YEAR EXAMS

### 2016 - June 1(c)

Machine owns 250 preference shares of Amaze Ltd., which currently sells for Rs.77 per share and pays annual dividend of Rs. 13 per share -

- (i) What is Manish's expected return?
- (ii) If Manish requires 13% return, should he sell or buy more preference shares at the current price? (5 marks)

**2014 - Dec. [1]**

The following information has been collected regarding two shares, Share-A and Share-B, trading at BSE on 18<sup>th</sup> September, 2017.

**Share - A**

Date	Time	Price Rs.	No of shares traded
18 <sup>th</sup> September, 2017	14.45.10	385.60	550
18 <sup>th</sup> September, 2017	14.55.35	382.78	1,575
18 <sup>th</sup> September, 2017	15.00.20	380.99	1,514
18 <sup>th</sup> September, 2017	15.01.30	381.79	1,625
18 <sup>th</sup> September, 2017	15.05.40	380.38	1,025
18 <sup>th</sup> September, 2017	15.10.20	381.51	1,390
18 <sup>th</sup> September, 2017	15.20.25	381.42	800
18 <sup>th</sup> September, 2017	15.22.20	384.07	600
18 <sup>th</sup> September, 2017	15.25.55	383.74	1,200

**Share - B**

Date	Time	Price Rs.	No. of shares traded
18 <sup>th</sup> September, 2017	14.07.30	50.60	250
18 <sup>th</sup> September, 2017	14.11.40	52.10	585
18 <sup>th</sup> September, 2017	14.16.20	49.85	700
18 <sup>th</sup> September, 2017	14.26.25	51.25	425
18 <sup>th</sup> September, 2017	14.45.10	50.75	450
18 <sup>th</sup> September, 2017	14.55.35	49.95	500

*You are required to determine the closing prices and last traded prices for both the shares for 18<sup>th</sup> September, 2017. (8 marks)*



**2016 – Dec. [1](d)**

Following information has been collected regarding Share-X trading at NSE on 2<sup>nd</sup> September, 2017 :

Date	Time	Price Rs.	No. of shares traded
2 <sup>nd</sup> September, 2017	14.42.10	265.60	550
2 <sup>nd</sup> September, 2017	14.53.35	262.78	1,575
2 <sup>nd</sup> September, 2017	15.00.20	260.99	1,514
2 <sup>nd</sup> September, 2017	15.03.30	261.79	1,625
2 <sup>nd</sup> September, 2017	15.05.40	260.38	1,025
2 <sup>nd</sup> September, 2017	15.12.20	261.51	1,390
2 <sup>nd</sup> September, 2017	15.21.25	261.42	800
2 <sup>nd</sup> September, 2017	15.22.20	264.07	600
2 <sup>nd</sup> September, 2017	15.26.55	263.74	1,200

You are required to determine the closing price and last traded price for Share-X for 2<sup>nd</sup> September, 2017. (8 marks)

2014 - Dec. [2] (c)

25<sup>th</sup> January, 2013, XY Bank purchased at 91 - days treasury bill maturing on 16<sup>th</sup> March, 2013. The rate quoted by the seller is Rs. 99.25 per Rs. 100 face value. Computer the yield percentage of the treasury bill. (4 marks)

2016 - Dec. [1] (b)

As on 1<sup>st</sup> April, 2016, Russel Ltd. has surplus cash for six months. It has following two options under consideration for investing the surplus cash :

- (i) To invest in fixed deposit at an interest rate of 8% per annum payable quarterly; or
  - (ii) To buy treasury bills of the face value of Rs. 100 at Rs. 98.019 maturing after six months.
- Presuming that the risk involved in both the options is identical, state with reasons as to which option should be selected by the company for investing its surplus funds. (5 marks)

2008 – June [6] (a)

A unit of Evergrow Equity Fund is redeemed at Rs. 15, the exit load being 2.25%. Calculate the NAV. (4 marks)

2008 – Dec. [5] (a)

Define 'NAV' and 'offer price'. If Rahul invests Rs. 10,000 in a scheme that charges 2% front end load at an NAV of Rs. 10 per unit, what shall be the public offer price? (4 marks)

2010 - June [5] (c)

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. (5 marks)

2014 - June [2A] (iii)

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 -

- a) Net asset value per unit; and
- b) Public, offer price of the unit. (5 marks)



2015 - June [1] (a)

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 is Rs. 11.66 per unit and offer price is Rs. 12.50 per unit. You are required to calculate -

- (i) Front - end load; and
- (ii) Back-end load. (5 marks)

2015 - June [1] (b)

Calculate value of 'rights' from the following information -

Number of rights shares offered	2,500
Number of shares held	1,000
Ex-rights price	Rs. 18
Rights offer price	Rs. 15
Face value of a share	Rs. 10 (5 marks)

2015 - Dec. [1] (b)

Somnath Ltd. has a share capital of 50,000 equity shares of Rs. 100 each. Market value is Rs. 250 per share. The company decides to make a rights issue to the existing shareholders in proportion of one new rights share of Rs. 100 at a premium of Rs. 30 per share for every 5 shares held. Calculate the value of rights. (5 marks)

**2016 – Dec. [1] (c)**

Compute NAV and rate of return for a unit holder who bought a unit at Rs. 17.60 and received a dividend of Rs. 2 per unit during the period. Face value of the unit is Rs. 10.

Other details are as under :

Particulars	Rs. in crore
Market value of funds portfolio	4,200
Size of the scheme	2,000
Accrued income	100
Receivables	100
Accrued expenses	275
Liabilities	150
Number of outstanding units : 200 crore	

(5 marks)

2017 -June [1]

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. Compute :

- (i) NAV per unit and
- (ii) Public offer price of the unit. (5 marks)

**2017 - Dec. [1]**

ABC Ltd. a company whose equity shares are listed at BSE and NSE is seeking delisting of its equity shares from both the recognized stock exchanges. It provides an exit opportunity to all public shareholders in accordance with SEBI [Delisting of Equity Shares] Regulations, 2009. Calculate the minimum number of equity shares to be acquired for the delisting offer to be successful. Also determine the final offer price from the details given hereunder: (8 marks)

(i) Shareholding

	Number of Shares	Percentage holding
Promoter	75,00,000	75
Public	25,00,000	25
	1,00,00,000	100

(ii) The floor price in terms of SEBI [Substantial Acquisition of Shares and Takeovers] Regulations, 2011 is Rs. 550 per share.

(iii) Assume that all the public shareholders holding shares in the demat mode had participated in the book building process as follows :

Bid Price Rs.	Number of Investors	Demand [Number of Shares]
550	5	2,50,000
565	8	4,00,000
575	10	2,00,000
535	4	4,00,000
595	6	1,20,000
600	5	1,30,000
605	3	2,10,000
610	3	1,40,000
615	3	1,50,000
620	1	5,00,000
	<b>48</b>	<b>25,00,000</b>





2015 - Dec. [1] (a)

Jai Ltd. announced issue of bonus shares in the ratio of 1:3 [i.e., one share for every three shares held]. At present the face value of share is Rs. 10, current market price is Rs. 10 to Rs. 2. Calculate the share price if all other things remain constant. What would have been the situation if split would have been done before the issue of bonus shares? (5 marks)

2015 - Dec. [1]

Aishwarya Ltd. proposes to issue 10,00,000 share warrants to its promoters. The share warrants give an option to buy shares at a predetermined price. From the following share price data, identify the price at which share warrants should be issued and the amount payable by the promoters at the time of allotment :

- (i) Closing price in the market on the relevant date : Rs. 340
- (ii) The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding the relevant date; Rs. 354.
- (iii) The average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date : Rs. 350. (6 marks)

**2014 – June [1]**

Attempt the following and support your answer with necessary reasons:

- a) A transaction of dematerialized equity shares took place on Wednesday, the 19<sup>th</sup> March, 2018 at BSE. According to the compulsory rolling settlement, complete the following table with timeline of the settlement cycle :

Activity	Day and Date
Rolling settlement trading	
Custodial confirmation	
Delivery generation	
Securities and funds pay in	
Securities and funds pay out	
Valuation debit	
Auction	
Auction settlement	

(5 marks)

Answer–

Activity	Day	Day and Date
Rolling Settlement Trading	T	Wednesday i.e 19 <sup>th</sup> March
Custodial confirmation	T+1 Working days	Thursday i.e. 20 <sup>th</sup> March
Delivery generation	T+1 Working days	Thursday i.e. 20 <sup>th</sup> March
Securities and funds pay in	T+2 Working days	Friday i.e. 21 <sup>st</sup> March
Securities and funds pay out	T+2 Working days	Friday i.e. 21 <sup>st</sup> March
Valuation debit	T+2 Working days	Friday i.e. 21 <sup>st</sup> March
Auction	T+3 Working days	Monday i.e. 24 <sup>th</sup> March
Auction Settlement	T+5 Working days	Wednesday i.e. 26 <sup>th</sup> March

June 2019

A Mutual Fund having 300 units has shown Net Asset Value (NAV) of Rs 8.75 and Rs 9.45 at the beginning and at the end of the year respectively. The Mutual Fund has given two options:

- (i) Pay Rs 0.75 per unit as dividend and Rs 0.60 per unit as capital appreciation; or
- (ii) These distributions are to be reinvested at an average NAV of Rs 8.65 per unit. What difference it would make in terms of return available and which option is preferable? (5 marks)

**June 2019:**

From the following information, calculate the Enterprise Value of E Ltd. :

Balance Sheet of E Ltd. as on 31st March, 2018

Liabilities	Amount (Lakh)	Assets	Amount (Lakh)
Share Capital (Face Value of Rs 2)	952	Non-Current Assets	2,550
Reserves & Surplus	48	Current Assets :	
Minority Interest	115	Cash & Cash Equivalent	102
Short-term Borrowings	2,860	Other Current Assets	1,323
	3,975		3,975

Current Market Price Per Share is Rs 96. (4 marks)

June 2019:

The Board of directors of a listed company desires to delist its equity shares from all the recognised stock exchanges. The voting details through postal ballot are as under:

- Total nos. of voters : 7,000 (Public : 5,000 & Promoters : 2,000)
- Voting at shareholders meeting :

(a) Public shareholders :

In favour : 3,300 votes

In against : 1,700 votes

(b) All promoters shareholders have voted in favour of resolution.

By referring SEBI delisting regulation, decide upon the resolution passed by the shareholders.

(4 marks)

**June 2019:**

The financial data of a listed company as on 31<sup>st</sup> March, 2018 are as follows :

Authorized equity share capital                      Rs 10 crore

(1 crore shares of Rs 10 each)

Paid-up equity share capital                      Rs 5 crore

General reserve    Rs 3 crore

Debenture redemption reserve                      Rs 2 crore

The Board of directors of your company passed resolution by circulation for buy-back of shares to the extent of 9% of the company's paid-up share capital and free reserves.

You are required to examine the validity of the proposal with reference to the provisions of the SEBI Regulations. (4 marks)



**June 2019:**

What are the Option contracts? You are required to compute the profit/loss for each investors in below option contracts :

- (i) Mr. X writes a call option to purchase share at an exercise price of Rs 60 for a premium of Rs 12 per share. The share price rises to Rs 62 by the time the option expires.
- (ii) Mr. Y buys a put option at an exercise price of Rs 80 for a premium of Rs 8.50 per share. The share price falls to Rs 60 by the time the option expires.
- (iii) Mr. Z writes a put option at an exercise price of Rs 80 for a premium of Rs 11 per share. The price of the share rises to Rs 96 by the time the option expires.
- (iv) Mr. XY writes a put option with an exercise price of Rs 70 for a premium of Rs 8 per share. The price falls to Rs 48 by the time the option expires. (5 marks)

**Dec 2019:**

A Mutual fund has sown Net Asset Value [NAV] of Rs. 11.60 at the commencement of the year. At the end of the year NAV increases to Rs. 12.50. Meanwhile, the Fund distributes Rs. 0.75 as dividend and Rs.0.85 as capital gains.

- (i) Calculate the fund's return during the year.
- (ii) Had these distributions been re-invested at an average NAV of Rs. 12.20, what is the return for 400 units? [5 marks]

Dec 2019:

After the Initial Public Offer, the equity capital of promoters group holding in a listed company is Rs. 140 crore. The post issue equity capital of the company is Rs. 600 crore.

The promoters group holding includes [acquired during previous year] :

- i. Rs. 20 crore equity capital allotted in consideration of transfer of Technical know-how by the promoters.
- ii. Rs. 10 crore equity capital pledged with bank.

Whether the promoters group is satisfying minimum promoters contribution requirement as per SEBI regulation? Explain. [5 marks]

Dec 2019:

TechNoGrow Ltd. approved buy back proposal of 200000 Equity share capital in its Board meeting on 25<sup>th</sup> April, 2019. The record date was fixed on 25<sup>th</sup> June, 2019. The closing market price on NSE as on 25<sup>th</sup> April, 2019 and 25<sup>th</sup> June, 2019 was Rs. 2640.40 and Rs. 2514.05 respectively. Determine the number of equity shares which is eligible to be tendered by Small Shareholder Category [rounded off to lower whole number]. [5 marks]

**FORMULA TABLE**

1. Out of Money [in case of call option] = Strike Price > Market Price.

2. Out of Money [in case of put option] = Market Price > Strike Price.

3. Yield to Maturity [YTM]

$$= \frac{[100 - P] \times 365 \times 100}{P \times D}$$

$$P \times D$$

Here P = Price

D = Days to Maturity

4. Net Assets Value [NAV]

Market value of fair value of scheme's investments

+ Current Assets - Current Liabilities & Provision

No. of outstanding units on the valuation date

5. Public offer price [P.O.P] of an unit of Mutual Fund =  $\frac{\text{NAV}}{\text{Front End Load}}$

Front End Load

6. Redemption Price of an unit of Mutual Fund =  $\frac{\text{NAV}}{\text{Back End Load}}$

Back End Load

7. Value of rights [in case of mutual fund]

$$V_r = \frac{n}{m} [P_{ex} - P_{of}]$$

Here,

n = no. of rights shared offered.

m = no. of original shares held;

$P_{ex}$  = Ex-right price

$P_{of}$  = Rights offer price;

8. Rate of Return =  $\frac{[\text{NAV at Present} - \text{NAV at Purchase}] + \text{Dividend} \times 100}{\text{NAV at Purchase}}$

NAV at Purchase

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**CS Vikas Vohra**  
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### **CS Vikas Vohra, Founder - YES Academy**

Vikas is a Commerce and Law Graduate and a Company Secretary by profession. He has to his credit, few other Certifications and specialisations in Corporate and Securities Laws. On the teaching side, he has taught more than 10,000 students.

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