

**Qualification for appointment as Presiding Officer or Member of SAT [Section 15M] :** Following person can be appointed as Presiding Officer of the SAT:

- (a) A person who is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court.
- (b) A person who is a sitting or retired Judge of a High Court who has completed 7 years of service as a Judge in a High Court.

The Presiding Officer shall be appointed by the Central Government in consultation with Chief Justice of India or his nominee.

A person can be appointed as a member of SAT, if 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.

A member of the SEBI or any person holding a post at senior management level equivalent to Executive Director in the SEBI shall not be appointed as Presiding Officer or Member of SAT during his service or tenure or within 2 years from the date on which he ceases to hold office as such in the SEBI.

**Tenure of office of Presiding Officer and other Members of SAT [Section 15N] :** The Presiding Officer and every other Member of a SAT shall hold office for a term of 5 years from the date on which he enters upon his office and shall be eligible for re-appointment.

No person shall hold office as the Presiding Officer after he has attained the age of 68 years.

No person shall hold office as a Member after he has attained the age of 62 years.

**Question 29] Hon'ble Justice Mr. HCJ, a retired High Court Judge, attained the age of 62 years on 31.12.2014. The Central Government appointed him as the Presiding Officer of the Securities Appellate Tribunal (SAT) with effect from 1.1.2015.**

**You are required to state, with reference to the provisions of the SEBI Act, 1992, the term for which he may be appointed as Presiding Officer of the SAT. Whether he can be reappointed as Presiding Officer of the SAT?**

**Ans.:** As per Section 15M, a retired High Court Judge can be appointed as Presiding Officer of the SAT if he has completed 7 years of service as a Judge in a High Court.

As per Section 15N, no person shall hold office as the Presiding Officer after he has attained the age of 68 years.

Keeping in view above provisions, Mr. HCJ can be appointed as Presiding Officer of SAT since at the date of appointment he has attained age of 62 years. However, on attainment of age of 68 years, Mr. HCJ shall have to vacate the office of Presiding Officer and he shall not be reappointed as Presiding Officer.

**Question 30] Write a short note: Appeal to the SAT** CS (Executive) - June 2011 (6 Marks)

**Ans.:** Appeal to the Securities Appellate Tribunal [Section 15T] :

An appeal shall lie to SAT against the following orders:

- ◆ An order made of an Adjudicating Officer imposing penalty.
- ◆ Any order of SEBI made under the SEBI Act, 1992 or the rules or regulations made there under.

Every appeal to SAT shall be filed within a period of 45 days from the date on which a copy of the order. However, the SAT may entertain an appeal after the expiry of 45 days if it is satisfied that there was sufficient cause for not filing it within that period.

On receipt of an appeal, the SAT may pass orders as it thinks fit, confirming, modifying or setting aside the order appealed after giving an opportunity of being heard to the parties.

The SAT shall send a copy of every order made by it to the SEBI, parties to the appeal and to the concerned Adjudicating Officer.

Appeal should be decided by the SAT expeditiously and possibly within 6 months.

**Question 31] Mr. DB is a member of RPA Ltd. He obtains an order against the company for redressal of his grievances against the company. But the company fails to redress the grievances of DB within the time fixed by the SEBI. The Board thereafter imposed penalty upon the company u/s 15C of the SEBI Act, 1992. RPL Ltd. seeks your advice whether it has any remedy against the order of SEBI. Advise.**

CA (Final) - Nov 2008 (8 Marks)

**Ans.:** Section 15C lays down that if any listed company or any person who is registered as an intermediary, after having been called upon by the board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the board, such company or intermediary shall be liable to a penalty of ₹ 1 lakh for each day during which such failure continues or ₹ 1 crore, whichever is less.

RPA Ltd. was penalized under the provisions of above-mentioned section. Now two remedies are available to RPA Ltd. in this matter:

- (i) **Appeal to the Securities Appellate Tribunal :** Section 15T provides that any person aggrieved by an order of the SEBI may prefer an appeal to SAT. Such appeal shall be filed within a period of 45 days from the date on which a copy of the order is received. However, the SAT may entertain an appeal after the expiry of 45 days if it is satisfied that there was sufficient cause for not filing it within that period. On receipt of an appeal, the SAT may pass orders as it thinks fit, confirming, modifying or setting aside the order appealed after giving an opportunity of being heard to the parties.
- (ii) **Appeal to the Supreme Court :** Section 15Z provides that any person aggrieved by any decision or an order of the SAT may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or an order to him on any question of law arising out of such order. The Supreme Court may allow it to be filed within a further period not exceeding 60 days if it is satisfied that the appellant was prevented by sufficient cause.

**Question 32] Write a short note: Powers of the SAT** CS (Executive) - June 2013 (4 Marks)

“Securities Appellate Tribunal shall have the same power as are vested in a Civil Court, while trying a suit.” In the light of this statement, state the powers vested in SAT as a Civil Court.

CS (Executive) - Dec 2014 (5 Marks)

**Ans.:** Procedure and powers of the SAT [Section 15U]: The SAT is not bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

SAT has a power of Civil Court in respect of

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

Every proceeding before SAT shall be deemed to be a judicial proceeding and the SAT shall be deemed to be a Civil Court.

**Question 32A] What do you mean by Securities Appellate Tribunal (SAT)? What is its composition? As a Company Secretary, advise the aggrieved party about the appeal procedure and powers of SAT.**

CS (Executive) - June 2016 (6 Marks)

**Ans.:** In order to afford proper appellate remedies, SEBI Act, 1992 provides for the establishment of the Securities Appellate Tribunals to consider appeals against SEBI's orders.

As per section 15K, the Central Government is empowered to establish by notifications one or more Appellate Tribunals, to be known as the Securities Appellate Tribunals to exercise the jurisdiction, power and authorities conferred on such Tribunal by SEBI Act, 1992 or any other law for the time being in force. The Central Government has set up a tribunal at Mumbai.

**Composition of SAT:** *Please refer to answer of Question 28.*

**Procedure and powers of SAT:** *Please refer to answer of Question 32.*

**Question 33] Who can appear before the SAT on behalf of appellant to present his case before the SAT?**

**Ans.: Right to legal representation [Section 15V] :** The appellant may either appear in person or authorise one or more CAs or CSs or CWAs or legal practitioners or any of its officers to present his or its case before the SAT.

**Question 34] Whether provisions of the Limitation Act, 1963 shall apply to an appeal made to SAT?**

**Ans.: Limitation [Section 15W] :** The provisions of the Limitation Act, 1963 shall apply to an appeal made to Securities Appellate Tribunal.

**Question 35] Whether Civil Court have jurisdiction to entertain any suit or proceeding to which SEBI Act, 1992 applies?**

**Ans.: Civil Court not to have jurisdiction [Section 15Y] :** No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Officer or SAT is empowered under this Act to determine.

Similarly, no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act.

**Question 36] Write a short note on: Appeal to Supreme Court against the order of the SAT**

**Ans.: Appeal to Supreme Court [Section 15Z] :** Any person aggrieved by any decision or order of the SAT may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order of the SAT to him on any *question of law* arising out of such order.

However, if the Supreme Court may allow to file appeal within a further period of 60 days if is satisfied that the applicant was prevented by sufficient cause.

**Question 37] Explain the Power of Central Government to issue directions to SEBI under the SEBI Act, 1992.**

**Ans.: Power of Central Government to issue directions [Section 16]:** The Central Government has power to issue directions to SEBI on questions of policy from time to time. However the Central Government shall as far as practicable, give an opportunity to SEBI to express its views before such directions is given. The decision of the Central Government shall be final whether it is a question of policy or not.

**Question 38] Under which circumstances the Central Government can supersede the SEBI?**

**Ans.: Power of Central Government to supersede the SEBI [Section 17(1)] :** In following cases the Central Government by notification supersede the SEBI for a period, not exceeding 6 months, if the Central Government is of opinion that –

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

**Effect of notification [Section 17(2)] :** Upon the publication of a notification superseding the SEBI:

- (a) All the members shall vacate their offices from the date of supersession;
- (b) All the powers, functions and duties of the SEBI be exercised and discharged by persons appointed by the Central Government shall till the SEBI is reconstituted; and
- (c) All property owned or controlled by the SEBI shall vest in the Central Government.

**Reconstitution of SEBI [Section 17(3)] :** The Central Government may reconstitute the SEBI by a fresh appointment and persons who vacated their offices shall not be deemed disqualified for appointment.

**Action report to lay in Parliament [Section 17(4)] :** The Central Government shall cause a notification issued and a full report of any action taken and the circumstances leading to action under this section to be laid before each House of Parliament at the earliest.

**Question 39] Briefly explain the provisions relating filing of return and reports by the SEBI to the Central Government under the SEBI Act, 1992.**

**Ans.: Returns and reports [Section 18]:** The SEBI shall furnish to the Central Government returns and statements and particulars in regard to any proposed or existing programme for the promotion and development of the securities market, as the Central Government may, from time to time, require.

The SEBI shall also submit a report to the Central Government in prescribed form giving a true and full account of its activities, policy and programmes during financial year within **90 days** after the end of each financial year.

A copy of such report shall be laid before each House of Parliament as soon it is received by the Central Government.

**Question 40] Write a short note on: Appeal to Central Government against order of SEBI**

**Ans.: Appeals to Central Government [Section 20] :** Any person aggrieved by an order of the SEBI under SEBI Act, 1992 or the rules or regulations made there under may prefer an appeal to the Central Government within prescribed time.

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

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

The Central Government shall be give a reasonable opportunity of being heard to the appellant before disposing of an appeal.

**Question 41] Write a short note on : Offence under SEBI Act, 1992**

**Ans.: Offences [Section 24(1)] :** If any person contravenes or attempts to contravene or abets the contravention of the provisions of the Act or of any rules or regulations made thereunder, he shall be punishable –

- With imprisonment for a term which may extend to **10 years**, or
- With fine, which may extend to ₹ **25 crore** or
- With both.

**Penalty for failure to pay penalty imposed by the Adjudicating Officer [Section 24(2)] :** If any person fails to pay the penalty imposed by the Adjudicating Officer or fails to comply with any of his directions or orders, he shall be punishable

- With imprisonment for a term which shall not be less than **1 month** but which may extend to **10 years** or
- With fine, which may extend to ₹ **25 crore** or
- With both.

**Question 42] Write a short note on : Compounding of offences under the SEBI Act, 1992****Ans.: Composition of certain offences [Section 24A]:**

- ◆ Offences punishable under the Act are compoundable.
- ◆ Offences can be compounded either before or after institution of proceedings.
- ◆ Offences can be compounded by SAT or Court before which proceedings are pending.

*Following offences are compoundable:*

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

*Following offences are not compoundable:*

- × Offences punishable with imprisonment only
- × Offences punishable with fine *and* imprisonment

**Question 43] Can Central Government grant immunity to a person who has violated the provisions of the SEBI Act, 1992?****Ans.: Power to grant immunity [Section 24B] :** The Central Government may grant immunity to a person who has violated the provisions of the SEBI Act, 1992.**Conditions for granting immunity :**

- ◆ SEBI makes recommendation to the Central Government.
- ◆ Concerned person has made full and true disclosure in respect of alleged violation.
- ◆ Proceedings for the prosecution for any such offence not have been instituted before granting immunity.
- ◆ The Central Government may impose condition subject to which immunity shall be granted.

**Withdrawal of immunity :** 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,
- Such person had given false evidence.

**Consequence of withdrawal of immunity :** After withdrawal of immunity, the concerned person may be tried for the offence of which he appears to have been guilty and shall also become liable to the imposition of any penalty.**Question 44] Write a short note on : Cognizance of offences by Courts under the SEBI Act, 1992****Ans.: Cognizance of offences by Courts [Section 26] :** No Court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder except on a complaint made by the SEBI.**SEBI (ANNUAL REPORT) RULES, 1994****Question 45] Write a short note on: SEBI (Annual Report) Rules, 1994****Ans.:**

- ◆ The Central Government notified SEBI (Annual Report) Rules, 1994, in exercise of its powers under the SEBI Act, 1992.
- ◆ SEBI shall submit to the Central Government an annual report giving a true and full account of its activities, policies and programmes during the previous financial year in the prescribed form appended to the Rules.

- ◆ Such annual report shall be submitted to the Central Government within 90 days after the end of each financial year.
- ◆ A copy of the annual report submitted by SEBI to Central Government shall be laid before each House of Parliament, as soon as may be after it is received by Central Government.
- ◆ The form of the annual report is divided into 4 parts.

**Part I :** It deals with policies and programmes to be reviewed in respect of the general, economic, environmental and the investment climate, primary and secondary markets, mutual funds, intermediaries, foreign institutional investment, other activities and programmes having a bearing on the working of the Securities Market and finally an assessment and prospects of the times ahead.

**Part II :** It deals with a review of the working and operation of SEBI in respect of different segments of the market as detailed under Part I.

**Part III :** It contains detail of the functions of SEBI.

**Part IV :** It contains detail of the organisational matter of SEBI.

### **SEBI (FORM OF ANNUAL STATEMENT OF ACCOUNTS & RECORDS) RULES, 1994**

**Question 46] Write a short note on: SEBI (Form of Annual Statement of Accounts & Records) Rules, 1994**

**Ans.:**

- ◆ SEBI (Form of Annual Statement of Accounts and Records) Rules, 1994 were notified by the Central Government with Comptroller and Auditor General of India (CAG).
- ◆ SEBI shall prepare a balance sheet, income and expenditure account and receipts and payments account at the expiration of a period of 12 months ending with 31st March every year in the forms - **Form A, Form B & Form C** respectively.
- ◆ SEBI shall preserve these statements for a minimum period of **5 years** and that they shall be signed by the Chairman and an officer authorised by SEBI.
- ◆ The accounts of SEBI shall be audited by the CAG and SEBI shall pay the CAG for the services rendered.
- ◆ The CAG or his authorised persons shall have the same rights, privileges and authority in connection with such audit as the CAG has in connection with audit of government accounts.
- ◆ The CAG or his authorised persons shall have the right to demand the production of books, accounts, connected vouchers and documents and papers and to inspect any of the offices of SEBI.
- ◆ The accounts of SEBI as certified by the C&AG together with the audit report shall be forwarded annually to the Central Government who shall cause the same to be laid before each House of Parliament.

### **THE SECURITIES APPELLATE TRIBUNAL (PROCEDURE) RULES, 2000**

**Question 47] Define the following authorities as per the Securities Appellate Tribunal (Procedure) Rules, 2000**

- (i) Presiding Officer
- (ii) Registrar
- (iii) Appellate Tribunal
- (iv) Adjudicating Officer

**CS (Inter) - June 2007 (1 × 4 = 4 Marks)**

**Ans.:**

- (i) Presiding Officer mean the Presiding Officer of the SAT appointed u/s 15L of the SEBI Act, 1992.

- (ii) Registrar means the Registrar of the Appellate Tribunal.  
 (iii) Appellate Tribunal means the SAT established u/s 15K of the SEBI Act, 1992.  
 (iv) Adjudicating Officer means an officer appointed u/s 15-I(1) of the SEBI Act, 1992.

**Question 48]** Fortune Ltd. is a registered stock broker of the Bombay Stock Exchange. SEBI levied a penalty of ₹ 2 Crore on the company for violation of the provisions of SEBI (Prohibition of Fraudulent & Unfair Trade Practices relating to the Securities Market) Regulations, 2003. Fortune Ltd. is contemplating to challenge the SEBI's order before the Securities Appellate Tribunal in an appeal. Explain the procedure for making an appeal before the SAT.

CS (Inter) - Dec 2003 (8 Marks), June 2005 (8 Marks)

CS (Executive) - Dec 2016 (8 Marks)

**Ans.:** As per Section 15T any person aggrieved by an order of SEBI or by an Adjudicating Officer may prefer an appeal to a SAT. Such appeal has to be filed as per SAT (Procedure) Rules, 2000.

Following are the important provisions relating to SAT (Procedure) Rules, 2000.

**Limitation for filing appeal :** Every appeal shall be filed within a period of 45 days from the date on which a copy of the order against which the appeal is filed, is received by the appellant. However SAT may entertain an appeal after the expiry of the said period of 45 days if it is satisfied that there was sufficient cause for not filing it within that period.

**Form and procedure of appeal :** A memorandum of appeal can be filed with SAT or shall be sent by registered post addressed. A memorandum of appeal sent by post shall be deemed to have been presented in the registry on the day it was received in the registry.

**Appeal to be in writing :** Every appeal filed before the SAT shall be typewritten, cyclostyled or printed neatly.

**Presentation and scrutiny of memorandum of appeal :** If, on scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number. If an appeal on scrutiny is found to be defective and the defect noticed is formal in nature, the Registrar may allow the appellant to rectify the same in his presence and if the said defect is not formal in nature, the Registrar may allow the appellant such time to rectify the defect as he may deem fit.

**Fee:** Every memorandum of appeal shall be accompanied with a fee and such fee may be remitted in the form of crossed DD drawn in favour of "The Registrar, Securities Appellate Tribunal" payable at the station where the registry is located.

Amount of penalty	Amount of fee payable
Less than ₹ 10,000	₹ 500
₹ 10,000 or more but less than ₹ 1 lakh	₹ 1,200
₹ 1 lakh or more	₹ 1,200 (+) ₹ 1,000 for every ₹ 1 lakh of penalty or fraction thereof

**Contents of memorandum of appeal :** Every memorandum of appeal shall set forth concisely under distinct heads, the grounds of such appeal without any argument or narrative, and such ground shall be numbered consecutively.

**Documents to accompany memorandum of appeal :** Every memorandum of appeal shall be in triplicate and shall be accompanied by certified copy of the order.

**Plural remedies:** A memorandum of appeal shall not seek relief or reliefs therein against more than one order unless the reliefs prayed for are consequential.

**Date of hearing to be notified :** The SAT shall notify the parties the date of hearing of the appeal as the Presiding Officer may by general or special order direct.

**Hearing of appeal :** On the day fixed or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The SAT shall, then, if necessary, hear the SEBI or its authorized representative against the appeal, and in such case the appellant shall be entitled to reply. During the course of the hearing of appeal the written arguments could be supplemented by time-bound oral arguments.

In case the appellant does not appear in person or through an authorized representative when the appeal is called for hearing, the SAT may dispose of the appeal on merits.

### **THE SEBI (SETTLEMENT OF ADMINISTRATIVE & CIVIL PROCEEDINGS) REGULATIONS, 2014**

*Under the SEBI Act, 1992, Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996, SEBI pursues two streams of enforcement actions i.e. Administrative/Civil or Criminal. Administrative/civil actions include issuing directions such as remedial orders, cease & desist order, suspension or cancellation of certificate of registration and imposition of monetary penalty under the respective statutes and action pursued or defended in a court of law/tribunal. Criminal action involves initiating prosecution proceedings against violators by filing complaint before a criminal court. Consent order is a remedial measure for settling civil proceedings initiated by SEBI.*

*SEBI has framed SEBI (Settlement of Administrative & Civil Proceedings) Regulations, 2014. These regulations will enable the persons who have defaulted on any SEBI laws & civil proceedings have been initiated against them, to settle the proceedings. These regulations do not provide for settling proceedings which are under criminal in nature. Thus, defaults & proceedings of civil nature can only be settled.*

#### **Question 49] What is the scope of settlement proceedings for defaults of civil nature under the SEBI (Settlement of Administrative & Civil Proceedings) Regulations, 2014?**

**Ans.: Scope of settlement proceedings [Regulation 5(1)] :** Application for settlement proceedings shall not be considered by the SEBI, if -

- (a) The alleged default was committed within a period of 24 calendar months from the date of the last settlement order where the applicant was a party. (Thus, 2 years gap is necessary for second time settlement of same default)
- (b) An earlier application with regard to the same alleged default has been rejected.
- (c) The applicant has been party to 2 settlement orders during the period of 36 calendar months, prior to the date of applications. (Thus, in 3 years only 2 settlement is allowed whether it relates to same or different defaults)
- (d) If audit or investigation in respect of any alleged default is not complete.

#### **Question 50] Which type of defaults are out of the scope of the SEBI (Settlement of Administrative & Civil Proceedings) Regulations, 2014?**

**Ans.: Defaults that cannot be settled [Regulation 5(2)] :** The following proceedings are out of the scope of the Regulations, i.e. a specified proceeding cannot be settled, if it involves any of the following defaults:

- (a) Defaults involving insider trading and communication of unpublished price sensitive information.
- (b) Fraudulent and UTP including front running, which in the opinion of SEBI are serious and have a market wide impact or have caused substantial losses to or affect the rights of investors in securities, especially retail investors and small shareholders.

The expression 'front running' means usage of non-public information to directly or indirectly, buy or sell securities or enter into options or futures contracts, in advance of a substantial order, on an impending transaction, in the same or related securities or futures or options contracts, in anticipation that when the information becomes public; the price of such securities or contracts may change.



- (c) Failure to make an open offer except where the applicant agrees to make the open offer or where SEBI is of the opinion that the making of the open offer would not be beneficial to the shareholders or is infructuous.
- (d) Defaults or manipulative practices by mutual funds, AIFs, CISs and their sponsors or AMCs, CIMCs, managers, trustees that result in substantial losses to investors, except in cases where the applicant has compensated the investors for the losses, to the satisfaction of SEBI.
- (e) Failure to redress investor grievances except where the alleged default is with regard to delayed redressal.
- (f) Failure, by issuers of securities or entities who invite investment, to make material disclosures in offer documents.
- (g) Raising of monies by issuance of securities or pooling of funds, in violation of securities laws where the remedy is refund of such monies.
- (h) Non-compliance of notices and summons issued by SEBI or summons issued by the adjudicating officer.
- (i) Non-compliance of any order or direction passed under the securities laws.

Thus, any civil proceedings apart from above can be brought & can be settled.

**Question 51] What are the terms of settlement of defaults by the SEBI? What kind of directions can be issued by the SEBI in case of non-monetary settlement?**

**Ans.: Settlement terms [Regulation 8] :** The settlement terms may include a settlement in monetary or non-monetary terms as per guidelines specified in **Schedule II**.

**Terms of non-monetary settlement :** The non-monetary terms may include following directions:

- (a) Voluntary suspension of certificate of registration or closure of business for a specified period.
- (b) Removal from Management.
- (c) Direction in the nature of disgorgement, where it is possible to identify the investors who have incurred losses on account of the action or inaction of the applicant.

**Disgorgement is defined as "the act of giving up something (such as profits illegally obtained) on demand or by legal compulsion".**

- (d) Debarment of certain individuals from acting as a partner or officer or director of an intermediary or as an officer or director of a company that has a class of securities regulated by SEBI, for specified periods.
- (e) Cancellation of securities and reduction in shareholding where the securities are issued fraudulently including cancellation of bonus shares received on such securities, if any, and re-imbursement of any dividends received, etc.
- (f) Voluntary lock-in of securities.
- (g) Implementation of enhanced policies and procedures to prevent future securities laws violations as well as direction to appoint or retain an independent consultant to review policies and procedures.
- (h) Directions to provide enhanced training and education to employees of intermediaries.
- (i) Directions relating to internal audit and reporting requirements.
- (j) Any other directions that may be issued by SEBI under the securities laws in the interest of the investors.

**Treatment of amount received on settlement :**

- ◆ The amount of settlement will be credited in the **Consolidated Fund of India** and the legal cost will be included in the **General Fund** of SEBI.
- ◆ The ill-gotten profits made will be credited in SEBI's **Investor Protection & Education Fund**.

**Question 52] What factors are to be considered to arrive at the settlement terms by the SEBI under the SEBI (Settlement of Administrative & Civil Proceedings) Regulations, 2014?**

**Ans.:** Factors to be considered to arrive at the settlement terms [Regulation 9] : While arriving at the settlement terms, the SEBI shall consider following factors:

- (a) Conduct of the applicant in the investigation;
- (b) The role played by the applicant in case the alleged default is committed by a group of persons;
- (c) Nature, gravity and impact of alleged defaults;
- (d) whether any other proceeding against the applicant for non-compliance of securities laws is pending or concluded;
- (e) Whether the alleged default is minor or major in nature;
- (f) The extent of amount of harm and/or loss to investors' and/or gain by the applicant;
- (g) Processes which have been introduced since the alleged default to minimize future defaults or lapses;
- (h) Compliance schedule proposed by the applicant;
- (i) Economic benefits accruing to any person from the non-compliance or delayed compliance;
- (j) Conditions which are necessary to deter future non-compliance by the same or another person;
- (k) Satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them;
- (l) Whether the applicant has undergone any other enforcement action for the same violation;
- (m) Any other factors necessary in the facts and circumstances of the case.

**Question 53] As a Company Secretary advise your Managing Director procedure for settlement of proceeding started by the SEBI against your company for defaults of civil nature.**

**Ans.:** Following procedure has to be followed for settlement of proceeding for defaults under the SEBI (Settlement of Administrative & Civil Proceedings) Regulations, 2014:

1. The person who wants to have proceedings settled has to make application along with requisite fees.
2. The applicant shall make full & true disclosures.
3. Application should be complete & if not complete it will be returned. The return of application can be resubmitted within 15 days from the day of rejection of application.
4. The Settlement terms include settlement monetary or non-monetary terms. The Settlement Amount will be calculated in accordance with the guidelines specified in **Schedule II** of these regulations.
5. The settlement once completed will be published on SEBI website.
6. If there is any non-compliance of settlement order then the original proceeding which was settled would be restored.
7. The application may be rejected if applicant refuses to receive or respond to the communications sent by SEBI or non submission or delays the submission of information, document, etc. as required or non appearance before the internal committee on more than one occasion or violates in any manner the undertaking and waivers specified, or non remittance or delays the payment of settlement amount and/or does not abide by the undertaking and waivers.

**SEBI (PROCEDURE FOR SEARCH & SEIZURE) REGULATIONS, 2014**

*These Regulations are repealed. Hence, not relevant for examination*

**OBJECTIVE QUESTIONS****Question A] Expand the following abbreviations :**

- |          |          |
|----------|----------|
| (1) SEBI | (5) VCF  |
| (2) SAT  | (6) SCRA |
| (3) CAG  | (7) AMC  |
| (4) IPEF |          |

**Question B] State, with reasons in brief, whether the following statements are correct or incorrect :**

- (1) Investigating Authority appointed by the SEBI has no power to seize the records.
- (2) Foreign Institutional Investors (FII) are not required to be registered with the SEBI.
- (3) Failure to enter into an agreement with the client by registered intermediary is not subject to any penalty.
- (4) No person shall hold office as the Presiding Officer after he has attained the age of 65 years.
- (5) Only legal practitioners may appear to present his client or his case before the SAT.

**Question C] Re-write the following sentences after filling-up the blank spaces with appropriate word(s)/figure(s):**

- (1) As per Section 15HA of the SEBI Act, 1992 if any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than \_\_\_\_\_ but which may extend to \_\_\_\_\_ or \_\_\_\_\_ of profits made out of such practices, whichever is higher.
- (2) As per Section 15M of the SEBI Act, 1992, a retired High Court Judge can be appointed as Presiding Officer of the SAT if he has completed \_\_\_\_\_ of service as a Judge in a High Court.
- (3) As per Section 15T of the SEBI Act, 1992, every appeal to SAT shall be filed within a period of \_\_\_\_\_ from the date on which a copy of the order.
- (4) As per Section 15Z of the SEBI Act, 1992, any person aggrieved by any decision or order of the SAT may file an appeal to the Supreme Court within \_\_\_\_\_ from the date of communication of the decision or order of the SAT to him.
- (5) SEBI shall submit to the Central Government an annual report within \_\_\_\_\_ after the end of each financial year.

**Question D] Select the correct option.**

1. Which of the following is/are the objective(s) of the SEBI Act, 1992?
 

(I) To protect the interests of investors in securities	for settlement proceedings shall not be considered by the SEBI if the alleged default was committed within a period of _____ from the date of the last settlement order where the applicant was a party.
(II) To promote the fair dealing by the issuer of securities	(a) 36 calendar months
(III) To increase the profits of investors thereby increasing their wealth	(b) 2 years
(a) All (I), (II) & (III)	(c) 24 calendar months
(b) Only (II) & (III)	(d) 3 years
(c) Only (I) & (II)	
(d) Only (I)	
2. Under the SEBI (Settlement of Administrative & Civil Proceedings) Regulations, 2014, application \_\_\_\_\_
3. The members in SEBI shall be nominated by \_\_\_\_\_

- |                        |
|------------------------|
| (a) Central Government |
| (b) RBI                |

- (c) Both Central Government and RBI
- (d) Central Government in consultation with Ministry of Corporate Affairs.
4. Which of the following defaults are outside the scope of the SEBI (Settlement of Administrative & Civil Proceedings) Regulations, 2014?
- (A) Defaults involving insider trading and communication of unpublished price sensitive information.
- (B) Delayed redressal investor grievances
- (a) Both (A) and (B)
- (b) (B) only
- (c) Neither (A) nor (B)
- (d) (A) only
5. SEBI can pass Cease and desist under \_\_\_\_\_ of the SEBI Act, 1992
- (a) Section 11A
- (b) Section 11C
- (c) Section 11D
- (d) Section 11F
6. Provisions relating to compounding of offences are contained in \_\_\_\_\_
- (a) Section 22A
- (b) Section 24A
- (c) Section 24B
- (d) Section 25A
7. Under section 15A of the SEBI Act, 1992 failure to furnish information or return, a person shall be liable to penalty \_\_\_\_\_
- (a) which shall not be less than ₹ 5 lakh but which may extend to ₹ 5 lakh for each day subject to a maximum of ₹ 25 Crore
- (b) of ₹ 1 lakh or imprisonment for 6 months
- (c) of ₹ 5 lakh subject to a maximum of ₹ 3 crore or imprisonment for 6 months
- (d) which shall not be less than ₹ 1 lakh but which may extend to ₹ 1 lakh for each day subject to a maximum of ₹ 1 Crore.
8. Under the SEBI (Settlement of Administrative & Civil Proceedings) Regulations, 2014, non-monetary terms of settlement are specified in \_\_\_\_\_
- (a) Schedule I
- (b) Schedule II
- (c) Partly in Schedule I and partly in Schedule II
- (d) None of the above
9. Under Section 15F of the SEBI Act, 1992, a registered stock broker shall be liable to penalty of \_\_\_\_\_
- (a) Fine only
- (b) Imprisonment only
- (c) Fine or imprisonment
- (d) Fine and imprisonment
10. Section 18 of the SEBI Act, 1992 provides that the SEBI shall also submit a report to the Central Government in prescribed form giving a true and full account of its activities, policy and programmes during financial year within \_\_\_\_\_ after the end of each financial year.
- (a) 60 days
- (b) 90 days
- (c) 120 days
- (d) 45 days
11. \_\_\_\_\_ shall establish Securities Appellate Tribunal by issuing notification.
- (a) The Central Government in consultation with RBI
- (b) The Central Government
- (c) The Central Government in consultation with Ministry of Corporate Affairs
- (d) Ministry of Finance
12. Which type of defaults & proceedings can be settled under the SEBI (Settlement of Administrative & Civil Proceedings) Regulations, 2014?
- (a) Defaults of civil nature
- (b) Defaults of criminal nature
- (c) Both (a) and (b)
- (d) Either (a) or (b)
13. The Presiding Officer and every other Member of a SAT shall hold office for a term of \_\_\_\_\_ from the date on which he enters upon his office and shall be eligible for re-appointment.
- (a) 3 years
- (b) 5 years
- (c) 8 years
- (d) 10 years
14. The accounts of SEBI shall be audited by the \_\_\_\_\_

- (a) Practicing Chartered Accountant appointed by the SEBI
- (b) Comptroller and Auditor General of India (CAG)
- (c) Chartered Accountant appointed by the Comptroller and Auditor General of India
- (d) Both (a) and (b)

15. Every appeal to SAT shall be filed within a period of \_\_\_\_\_ from the date on which a copy of the order.

- (a) 45 days
- (b) 30 days
- (c) 90 days
- (d) 60 days

16. Any person aggrieved by any decision or order of the SAT may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order of the SAT to him on any \_\_\_\_\_ arising out of such order.

- (a) question of law
- (b) question of fact
- (c) question of law or fact
- (d) question of national importance

17. As per Section 24(1) of the SEBI Act, 1992, if any person contravenes or attempts to contravene or abets the contravention of the provisions of the Act or of any rules or regulations made thereunder, he shall be punishable –

- (a) with imprisonment for a term which may extend to 10 years or with fine, which may extend to ₹ 25 Crore or with both
- (b) with imprisonment for a term which shall not be less than 1 month but which may extend to 10 years or with fine, which may extend to ₹ 25 Crore or with both.
- (c) with imprisonment for a term which may extend to 5 years or with fine, which may extend to ₹ 10 Crore or with both.

- (d) with imprisonment for a term which may extend to 3 years or with fine, which may extend to ₹ 15 Crore or with both.

18. Which of the following defaults are outside the scope of the SEBI (Settlement of Administrative & Civil Proceedings) Regulations, 2014?

- (1) manipulative practices by mutual funds
- (2) Non-compliance of notices and summons issued by SEBI or summons issued by the adjudicating officer.
- (a) (1) only
- (b) (2) only
- (c) Both (1) and (2)
- (d) Neither (1) nor (2)

19. Which of the following offence(s) is/are not compoundable under the SEBI Act, 1992?

Offences punishable with –

- (1) fine only
- (2) imprisonment only
- (3) fine or imprisonment
- (4) fine and imprisonment
- (5) fine or imprisonment or both
- (a) (5), (3), (4) & (2)
- (b) (3), (5) & (1)
- (c) (2) only
- (d) (4) & (2)

20. What will be the amount of fee payable to the SAT as per SAT (Procedure) Rule, 2000 for filing appeal against the order of adjudicating officer imposing fine of ₹ 5 lakhs.

- (a) ₹ 5,200
- (b) ₹ 2,500
- (c) ₹ 4,000
- (d) ₹ 10,000

### Answers to Question A :

Abbreviation	Long Form
SEBI	Securities Exchange Board of India
SAT	Securities Appellate Tribunal
CAG	Comptroller and Auditor General of India
IPEF	Investor Protection & Education Fund

VCF	Venture Capital Funds
CIS	Collective Investment Schemes
SCRA	Securities Contracts (Regulation) Act
AMC	Asset Management Company
UTP	Unfair Trade Practices

**Answers to Question B :**

- (1) **Incorrect.** As per **Section 11C**, if Investigating Authority has reasonable ground to believe that the records destroyed, mutilated, altered, falsified or secreted, he can make application to the Judicial Magistrate of the first class for order of seizure of records.
- (2) **Incorrect.** As per **Section 12**, depository, participant, custodian of securities, foreign institutional investor, credit rating agency, or any other intermediary associated with securities market shall buy, sell or deal in securities only as per terms and conditions of a certificate of registration obtained from SEBI.
- (3) **Incorrect.** As per **Section 15B**, if any registered intermediary fails to enter into an agreement with his client, it shall be liable to a penalty which shall not be less than ₹ 1 lakh but which may extend to ₹ 1 lakh for each day during which such failure continues subject to a maximum of ₹ 1 crore.
- (4) **Incorrect.** No person shall hold office as the Presiding Officer after he has attained the age of 68 years.
- (5) **Incorrect.** As per **Section 15V**, The appellant may either appear in person or authorise one or more CAs or CSs or CWAs or legal practitioners or any of its officers to present his or its case before the SAT.

**Answer to Question C :**

- (1) ₹ 5 lakh; ₹ 25 crore; 3 times (2) 7 years (3) 45 days (4) 60 days (5) 90 days

**Answer to Question D :**

- |        |        |         |         |         |         |
|--------|--------|---------|---------|---------|---------|
| 1. (c) | 5. (c) | 9. (a)  | 12. (a) | 15. (a) | 18. (c) |
| 2. (c) | 6. (b) | 10. (b) | 13. (b) | 16. (a) | 19. (d) |
| 3. (c) | 7. (d) | 11. (b) | 14. (b) | 17. (a) | 20. (a) |
| 4. (d) | 8. (b) |         |         |         |         |

# 19

## CHAPTER

# DEPOSITORIES

**Introduction :** Traditionally, to transfer the shares, the share transfer form has to be accompanied by original share certificate. This was creating big problem in security market as there had to be physical movement of thousands of share certificates which had become un-manageable due to increase in transaction in stock market. Problems of bogus share certificates and 'signature of transferor not tallying' were creating havoc in smooth functioning of share market. To overcome this difficulty, the Depositories Act, 1996 was introduced by the Government of India. The main aim of depositories is to introduce paperless trading and smooth functioning of settlement of security transactions.

### Question 1] Write a short note on : Depository System

**Ans.:** A depository is a system which holds shares in the form of electronic account. Under the scheme, a 'depository' has to be established. Depository is an agency with whom securities are deposited for safe keeping and handling them on behalf of owner of securities. Such shares are termed as 'demat shares'.

There are 'Depository Participants' (DP) who acts as agents for Depositories. DP is in an intermediary between investor and depository. Normally banks, financial institutions, brokers acts as depository participants. The 'Depositories' and 'DPs' have to register with SEBI.

There are two Depositories functioning in India, namely the National Securities Depository Ltd. (NSDL) and the Central Depository Services (India) Ltd. (CDSL).

Under the provisions of the Depositories Act, 1996 depositories provide various services to investors and other participants such as, clearing members, stock exchanges, investment institutions, banks and issuing companies. These include basic facilities like account opening, dematerialization, settlement of trades and advanced facilities like pledging, distribution of non-cash corporate actions, distribution of securities to allottees in case of public issues, etc.

All the securities held by a depository shall be dematerialized and shall be in a fungible form. To utilize the services offered by a depository, the investor has to open an account with the depository through a participant, similar to the opening of an account with any of the bank branches to utilize services of that bank.

### Question 2] The depository system functions very much like the banking system. Comment.

CS (Executive) - Dec 2010 (3 Marks), Dec 2014 (4 Marks)

**Ans.:** The Depository system functions very much like the banking system. Following points are given in support of this statement :

- ◆ A bank holds funds in accounts whereas a depository holds securities in accounts for its clients.
- ◆ A bank transfers funds between accounts whereas a depository transfers securities between accounts.
- ◆ Both the bank and the depository are accountable for the safe keeping of funds and securities respectively.

A depository is a system which holds shares in the form of electronic account. A Depository performs the functions of holding safe-keeping, transferring and allowing withdrawal of securities like bank performs functions of holding, safe-keeping, transferring and withdrawal of money. When you deposit your money, your account is credited. When you withdraw cash, your account is debited. The currency notes paid to

you will be different from the once you deposited. Thus, serial number of currency notes deposited and withdrawn will never be the same – same will be the situation in depository scheme. The depository participant with whom you have opened demat account gives you periodic statement of your account just like bank give you statement/passbook regarding your deposit and withdrawal of funds from the accounts.

### Bank - Depository - The Similarities

Bank	Depository
Holds funds in an account	Holds securities in an account
Transfers funds between accounts on the instruction of the account holder.	Transfers securities between accounts on the instruction of the beneficial owner of account holder.
Facilitates transfer without having to handle money.	Facilitates transfer of ownership without having to handle securities.
Facilitates safe-keeping of money	Facilitates safe-keeping of securities.

#### Question 3] What is a Depository?

**Ans.:** A depository is an organisation which holds securities like shares, debentures, bonds, government securities, mutual fund units etc. of investors in electronic form at the request of the investors through a registered depository participant. It also provides services related to transactions in securities.

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

#### Question 4] Write a short note on: Depository Participant (DP) CS (Inter) - June 2006 (5 Marks)

CS (Executive) - June 2010 (2 Marks), June 2012 (3 Marks)

**Depository participant provides link between the company and investors. Comment.**

CS (Executive) - June 2016 (4 Marks)

**Ans.:** A Depository Participant is an agent of the depository through which it interfaces with the investor and provides depository services.

According to SEBI guidelines, Financial Institutions like banks, custodians, stockbrokers etc. can become participants in the depository.

DP is one with whom a client needs to open an account to deal in electronic form. While the Depository can be compared to a Bank, DP is like a branch of a bank with which one can have an account. Therefore, DPs are authorized to maintain accounts of dematerialized shares. They help in instantaneous electronic transfer of shares held in Demat form through electronic book entry system. Thus, depository participant provides links between company and investors.

#### Characteristics of a depository participant:

- Acts as an agent of Depository
- Customer interface of Depository
- Functions like Securities Bank
- Account opening
- Facilitates dematerialisation
- Instant transfer on pay-out
- Credits to investor in IPO, rights, bonus
- Settles trades in electronic segment



**Question 5] What is dematerialization (Demat) and Rematerialization (Remat)?**

**What do you understand by dematerialization of securities?**

CS (Executive) - Dec 2009 (5 Marks), June 2012 (2 Marks)

**Distinguish between: Dematerialization & Rematerialization** CS (Inter) - Dec 2005 (2 Marks)

**Ans.:** Dematerialization is the process by which physical certificates of an investor are converted to an equivalent number of securities in electronic form.

An investor will have to first open an account with a Depository Participant and then request for the dematerialization of his share certificates through the Depository Participant so that the dematerialized holdings can be credited into that account. This is very similar to opening a Bank Account.

Dematerialization of shares is optional and an investor can still hold shares in physical form. However, he/she has to demat the shares if he/she wishes to sell the same through the Stock Exchanges. Similarly, if an investor purchases shares from the Stock Exchange, he/she will get delivery of the shares in demat form.

Rematerialization is the process of converting securities held in electronic form in a demat account back in physical certificate form.

**Question 6] Distinguish between: Dematerialization & Rematerialization**

CS (Inter) - Dec 2005 (2 Marks), June 2006 (2 Marks)

**Ans.:** Following are the main points of distinction between dematerialization & rematerialization:

Points	Dematerialization	Rematerialization
<b>Meaning</b>	Dematerialization is the process by which physical certificates of an investor are converted to an equivalent number of securities in electronic form.	Rematerialization is the process of converting securities held in electronic form in a demat account back in physical certificate form.
<b>Sequence</b>	Firstly, share in physical form are dematerialized, so it's primary.	In rematerialization electronic shares are again converted into physical shares, so it's secondary.
<b>Form</b>	Investor use Dematerialization Request Form (DRF)	Investor use Rematerialization Request Form (RRF)
<b>Stamp duty</b>	When shares are held in dematerialized, further transfer of shares does not attract stamp duty.	When shares are rematerialized, further transfer of shares attracts stamp duty.

**Question 7] Dematerialization and immobilization are distinct terms.**

CS (Inter) - Dec 2007 (4 Marks)

CS (Executive) - Dec 2011 (3 Marks), Dec 2015 (4 Marks)

**Ans.:** Following are the main points of distinction between dematerialization & immobilization:

Points	Dematerialization	Immobilization
<b>Meaning</b>	Dematerialization is the process by which physical certificates of an investor are converted to an equivalent number of securities in electronic form.	Immobilization is the process where physical share certificates are kept in vaults with the depository for safe custody.
<b>Withdraw of original share certificate</b>	Physical share certificate surrendered at the time of dematerialization cannot be withdrawn but investor can ask for fresh certificate by adopting rematerialization process.	The actual owner has the right to withdraw his original share certificate are kept in vaults with the depository.
<b>Cost</b>	This model is simple and cost effective.	This model is not popular as it is complex and expensive.

**Que. No. 8] Distinguish between: Shares in physical form and Shares in dematerialized form**

**CS (Executive) – June 2008 (4 Marks)**

**Ans.:** Following are the main points of distinction between 'Shares in physical form' and 'Shares in dematerialized form':

Points	Shares in physical form	Shares in dematerialized form
<b>Nature</b>	Share certificates are issued in physical form.	No physical scrips are in existence. Only electronic record is maintained by depository.
<b>Account</b>	No necessity of opening accounts.	It is necessary to open a demat account.
<b>Time in transfer</b>	Transfer of shares takes longer time due to physical movement of documents.	Since there is electronic transfer, it takes effect immediately.
<b>Stamp duty</b>	To transfer shares is held in physical form, stamp duty has to be paid.	No stamp duty is payable for transferring the share in dematerialized form.
<b>Theft &amp; forgery</b>	There are chances of theft and forgery.	The chance of theft and forgery are remote.
<b>Bad delivery</b>	There are chances of bad delivery.	There are no chances of bad delivery.

**Question 9] Distinguish between: Depository & Custodian**

**CS (Inter) – Dec 2006 (2 Marks)**

**Ans.:** Following are the main points of distinction between Depository & Custodian:

Points	Depository	Custodian
<b>Meaning</b>	Dematerialization is the process by which physical certificates of an investor are converted to an equivalent number of securities in electronic form.	A Custodian is a person who carries on the business of providing custodial services to the client.
<b>Transfer of ownership</b>	Depository can legally transfer beneficial ownership.	Custodian cannot transfer legally ownership.
<b>Regulation</b>	Depositories are governed by the SEBI (Depositories & Participants) Regulations, 1996.	Custodian are governed by the SEBI (Custodian of Securities) Regulations, 1996
<b>Net worth</b>	Depository must have a net worth of a minimum of ₹ 100 crores.	Custodian must have a net worth of a minimum of ₹ 50 crores.
<b>Numbers</b>	There are only two depositories registered with SEBI.	There are many custodian are registered with the SEBI.

**Question 10] Depository is a boon to capital market and investor both. Elucidate the statement and bring out the advantage of the depository scheme.**

**CS (Executive) – Dec 2008 (5 Marks), June 2014 (5 Marks)**

**Explain the term 'demat'. State the benefits of demat securities.**

**CS (Executive) – June 2009 (3 Marks)**

**Ans.:** 'Demat' refers to dematerialization which is the process by which physical certificates of an investor are converted to an equivalent number of securities in electronic form.

The main aim of depositories is to introduce paperless trading and smooth functioning of settlement of security transactions. Following are the advantages of the depository scheme/demat:

- (1) No stamp duty :** In case of transfer of physical shares, stamp duty is payable on the market value of shares being transferred. However, for transfer of securities in the electronic form no stamp duty is payable.
- (2) Immediate transfer and registration of securities :** Physical transfer of shares was lengthy process as process usually takes around three to four months. Since, depository is a system works in electronic environment, there is immediate transfer of securities.

- (3) **Elimination of bad deliveries** : In case of transfer of physical shares, transfers could be withheld for bad deliveries e.g. signature of transfer is not tallying. In the depository environment, the question of bad delivery does not arise i.e. they cannot be held "under objection".
- (4) **Elimination of all risks associated with physical certificates** : All risks associated with physical certificates such as delays, loss-in-transit, theft, mutilation etc. eliminated. This problem does not arise in the depository environment.
- (5) **No "odd lot"** : In traditional system, shares are required to be transferred in lot say 50 or 100. Now, with the introduction of depository scheme, the concept of an "odd lot" in respect of dematerialized shares stands abolished, i.e. in the demat mode, market lot becomes one share.
- (6) **Faster disbursement of non-cash corporate benefits** : Depository system provides for direct credit of non-cash corporate benefits like bonus, right issue & dividend to an investors account, thereby ensuring faster disbursement and avoiding risk of loss in transit.
- (7) **Reduction in transactions cost** : In physical transfer of shares transaction cost like brokerage and handling charges was high. Further courier/postal charges for sending share certificates/transfer deeds are also required to be incurred. But in depository scheme brokerage charges are get reduced and other charges like courier/postal charges are required at all.
- (8) **Elimination of problems related to change of address of investor, transmission, etc.** : In case of change of address or transmission of demat shares, investors are saved from undergoing the entire change procedure with each company or registrar. Investors have to only inform their DP with all relevant documents and the required changes are effected in the database of all the companies, where the investor is a registered holder of securities.
- (9) **Elimination of problems related to selling securities on behalf of a minor** : A natural guardian is not required to take court approval for selling demat securities on behalf of a minor.

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**Question 11] Discuss briefly the regulatory framework for a depository system in India.**

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

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

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

- ◆ The Companies Act, 2013
- ◆ The Indian Stamp Act, 1899
- ◆ SEBI Act, 1992
- ◆ Securities Contracts (Regulation) Act, 1956
- ◆ Benami Transaction (Prohibition) Act, 1988
- ◆ Income-tax Act, 1961
- ◆ Bankers Books Evidence Act, 1891

### **THE DEPOSITORIES ACT, 1996**

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**Question 12] What are the objectives of the Depositories Act, 1996?**

**Ans.:** Objectives of the Depositories Act, 1996 are as follows:

- ◆ To provides for the establishment of depositories like NSDL and CDSL

- ◆ To curb the irregularities in the capital market
- ◆ To protect the interests of the investors
- ◆ To pave a way for an orderly conduct of the financial markets
- ◆ To enable market free transferability of securities with speed, accuracy and transparency
- ◆ To exempt all transfers of shares within a depository from stamp duty
- ◆ To provide dematerialization of securities in the depositories mode

**Question 13] State the provisions relating to registration of Depositories. How many Depositories are registered with SEBI?**

**Ans.: Certificate of commencement of business by depositories [Section 3]:** A depository shall not act as a depository unless it obtains a certificate of commencement of business from the SEBI. Thus, a depository has to get registered itself in accordance with the SEBI (Depositories & Participants) Regulations, 1996. The SEBI will grant it certificate if it is satisfied that the depository has adequate systems and safeguards to prevent manipulation of records and transactions.

SEBI cannot refuse to grant certificate unless the depository concerned has been given a reasonable opportunity of being heard.

At present two depositories *viz.* National Securities Depository Ltd. (NSDL) and Central Depository Services (India) Ltd. (CDSL) are registered with SEBI.

**Question 14] State the eligibility criteria for depository to provide depository services in India.**

**Ans.:** Any company to be eligible to provide depository services must:

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

**Question 15] Write a short note on : Agreement of Depository with Participants**

**Ans.: Agreement between depository and participant [Section 4]:** A depository shall enter into an agreement with one or more participants as its agent. Every such agreement shall be as per the form specified in the bye-laws of depositories.

**Question 16] Write a short note on: Fungibility** CS (Executive) - Dec 2008 (5 Marks)

**Securities in depositories shall be in fungible form. Comment.**

CS (Executive) - June 2016 (4 Marks)

**Ans.: Securities in depositories to be in fungible form [Section 9] :** All securities held by a depository shall be dematerialised and shall be in a fungible form *i.e.* all certificates of the same security shall become interchangeable in the sense that investor loses the right to obtain the exact certificate he surrenders at the time of entry into depository. *It is like withdrawing money from the bank without bothering about the distinctive numbers of the currencies.*

**Question 17] Write a short note on : Rights of depositories and beneficial owner**

**Ans.: Rights of depositories and beneficial owner [Section 9] :** A depository shall be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of a beneficial owner.

The depository as a registered owner shall not have any voting rights or any other rights in respect of securities held by it.

The beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository.

**Question 18] Distinguish between : Beneficial owners under depository mode and Registered owners under depository mode**

CS (Inter) - June 2008 (4 Marks)

CS (Executive) - Dec 2012 (4 Marks)

**Ans.: Registered Owner & Beneficiary Owner:**

All the public limited companies are required by the Companies Act, 2013 to maintain an index of members, wherein they are required to keep a record of the owners of the company. With the concept of dematerialization of securities and transfer of shares through book entry system coming up, registered owners are NSDL and CDSL only.

So, in the index of members of any company, there are only two registered owners, *i.e.* the two depositories. The depositories keep a track of all the clients through the depository participants.

Therefore, the registered owners are the depositories whereas the beneficiary owners are the people who are holding the securities at any given point of time.

Whenever a company declares a bonus issue, the securities are transferred in the name of the two depositories and they further transfer it to the clients through their participants. Therefore, the depositories are known as the registered owners and the investors are known as the beneficiary owners as they get the benefits of all the corporate actions.

**Question 19] Write a short note on : Register of beneficial owner**

**Ans.: Register of beneficial owner [Section 11] :** Every depository shall maintain a register and an index of beneficial owners in the manner provided in the Companies Act, 2013.

**Question 20] Write a short note on: Pledging of securities in dematerialized form**

CS (Inter) - Dec 2005 (5 Marks), June 2006 (4 Marks)

**Ans.: Pledge or hypothecation of securities held in a depository [Section 12] :** A beneficial owner may with the previous approval of the depository create a pledge or hypothecation in respect of a security owned by him through a depository.

Every beneficial owner shall give intimation of pledge or hypothecation to the depository and depository shall make entries in its records accordingly.

**Procedure for pledging securities :** Any entry in the records of a depository shall be evidence of a pledge or hypothecation. Securities held in demat mode can be pledged. A Beneficial Owner (BO) can, not only pledge his demat securities, but, may also be able to obtain higher loan amounts, with lower rate of interest. Moreover, procedure for pledging securities in demat form is very convenient, both, for the pledgor and the pledge. The procedure for pledging securities is as follows:

- ◆ The pledgor and the pledgee must have BO accounts with CDSL. These accounts can be with the same DP or with different DPs.
- ◆ The pledgor has to fill up the Pledge Request Form (PRF) in duplicate available with his DP.
- ◆ On receipt of the PRF, the pledgor's DP shall verify that the securities can be pledged.
- ◆ The DP then sets up a pledge request in the depository system and a unique Pledge Sequence No. (PSN) will be generated. The PSN number should be recorded on the PRF.

- ◆ Authorized official of the DP should sign the PRF and stamp it. A copy of the PRF is then given to the pledgor.
- ◆ One copy of PRF (with the PSN) should be sent to the pledgee by the Pledgor. The Pledgee will then countersign the PRF for acceptance/rejection of the pledge request and submit the PRF to his DP.
- ◆ The pledgee's DP has the facility to access the request. Based on copy of PRF the pledgee's DP either accepts or rejects the pledge request.

When dematerialized securities are pledged, they remain in the pledgor BOs demat account but they are blocked so that they cannot be used for any other transaction.

**Question 21] An investor holding shares in electronic form can opt out of in respect of any security and thus can hold shares in physical form. Comment.**

**Ans.:** It is not necessary that an investor should hold shares in dematerialized form. He can opt out of depository scheme at any time subject compliance of provisions of Section 14 of the Depositories Act, 1996.

**Option to opt out in respect of any security [Section 14]:**

- (1) If a beneficial owner seeks to opt out of a depository in respect of any security he shall inform the depository accordingly.
- (2) The depository shall on receipt of intimation make appropriate entries in its records and shall inform the issuer.
- (3) Every issuer shall, within 30 days of the receipt of intimation from the depository and on fulfilment of conditions and on payment of fees, issue the certificate of securities to the beneficial owner or the transferee.

**Question 22] Depository is to indemnify loss caused to the beneficial owner due to the negligence of the depository or the participant. Comment.**

**Ans.:** Depositories to indemnify loss in certain cases [Section 16] : Any loss caused to the beneficial owner (investor) due to the negligence of the depository or the participant, the depository shall indemnify such beneficial owner.

Where the loss due to the negligence of the participant is indemnified by the depository, the depository shall have the right to recover the same from such participant.

**Question 23] State the power of SEBI that it can exercise under the Depositories Act, 1996?**

**Ans.:** Power of SEBI to call for information and enquiry [Section 18] : The SEBI can take following actions in the public interest or in the interest of investors:

- (a) The SEBI may ask to furnish information in writing relating to the securities held in a depository to any issuer, depository, participant or beneficial owner.
- (b) The SEBI may authorise any person to make an enquiry or inspection in relation to the affairs of the issuer, beneficial owner, depository or participant. Such authorized person shall submit a report of enquiry or inspection to the SEBI within specified period.
- (c) It is duty of every director, manager, partner, secretary, officer or employee of the depository or issuer or the participant or beneficial owner to produce before authorized person all information or records and other documents which relates to such enquiry or inspection.

**Power of SEBI to give directions in certain cases [Section 19] :** After making enquiry or inspection, the SEBI can issue appropriate direction to any issuer, depository or participant or any person associated with the securities market.

**Question 24] What is the penalty under the Depositories Act, 1996 for failure to furnish information and returns?**

**Ans.: Penalty for failure to furnish information, return, etc. [Section 19A] :** A person shall be liable to penalty which shall not be less than ₹ 1 lakh per day till default continues or ₹ 1 crore, whichever is less, if he fails –

- (a) To furnish any document, return or report to the SEBI.
- (b) To file return or furnish information, books or other documents within specified time
- (c) To maintain books of account or records.

**Question 25] What is the penalty under the Depositories Act, 1996 for failure by depository or participant to enter into agreement with clients?**

**Ans.: Penalty for failure by any person to enter into agreement with clients [Section 19B] :** If any depository or participant or issuer or its agent or intermediary fails to enter into an agreement with his client, it shall be liable to a penalty which shall not be less than ₹ 1 lakh per day till default continues or ₹ 1 crore, whichever is less.

**Question 26] What is the penalty under the Depositories Act, 1996 for failure to redress investors grievances?**

**Ans.: Penalty for failure to redress investors grievances [Section 19C] :** If any depository or participant or issuer or its agent or intermediary fails to redress grievances of investors within the time specified by the SEBI, such depository or participant or issuer or its agent or intermediary shall be liable to a penalty which shall not be less than ₹ 1 lakh per day till default continues or ₹ 1 crore, whichever is less.

**Question 27] What is the penalty under the Depositories Act, 1996 for delay in dematerialization or issue of certificate of securities?**

**Ans.: Penalty for delay in dematerialization or issue of certificate of securities [Section 19D] :** If any issuer or its agent or registered intermediary fails to dematerialise or issue the certificate of securities on opting out of a depository by the investors within prescribed time, it shall be liable to a penalty of ₹ 1 lakh per day till default continues or ₹ 1 crore, whichever is less.

**Question 28] What is the penalty under the Depositories Act, 1996 for failure to reconcile records?**

**Ans.: Penalty for failure to reconcile records [Section 19E] :** If a depository or participant or any issuer or its agent or registered intermediary fails to reconcile the records of dematerialised securities, it shall be liable to a penalty of ₹ 1 lakh per day till default continues or ₹ 1 crore, whichever is less.

**Question 29] What is the penalty under the Depositories Act, 1996 for failure to comply with directions issued by SEBI?**

**Ans.: Penalty for failure to comply with directions issued by SEBI [Section 19F] :** If any person fails to comply with the directions issued by the SEBI within the specified time, he shall be liable to a penalty of ₹ 1 lakh per day till default continues or ₹ 1 crore, whichever is less.

**Question 30] Can penalty be levied for a contravention if no penalty is provided in the Depositories Act, 1996 for committing such contravention?**

**Ans.: Penalty for contravention where no separate penalty has been provided [Section 19G] :** If any person fails to comply with any provision of the Depositories Act, 1996, Rules or Regulations or directions issued by the SEBI for which no separate penalty has been provided, he shall be liable to a penalty which shall not be less than ₹ 1 lakh but which may extend to ₹ 1 Crore.

**Question 31] Explain the procedure to be adopted by the SEBI for adjudication of penalties under the Depositories Act, 1996. Also state the factors that must be taken into account by adjudicating officer while determining the quantum of penalty in such case.**

**Ans.: Power to adjudicate [Section 19H] :** For imposing penalties u/ss 19A to 19G, SEBI shall appoint adjudicating officer for holding an inquiry for the purpose of imposing any penalty.

While holding an inquiry the Adjudicating Officer shall have power to summon and enforce the attendance of any person to give evidence or to produce any document which may be relevant to the inquiry.

If on, Adjudicating Officer is satisfied that the person has failed to comply with the provisions of Sections 19A to 19G, he may impose penalty in accordance with the provisions of any of those sections.

**Factors to be taken into account by the Adjudicating Officer [Section 19-I] :** While adjudging quantum of penalty, the Adjudicating Officer shall have due regard to the following factors:

- (a) The amount of disproportionate gain or unfair advantage (if 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.

**Question 32] Write a short note on : Recovery of amounts due under the Depositories Act, 1996**

**Ans.: Recovery of amounts [Section 19-IB] :** The Recovery Officer of the SEBI shall proceed to recover the amount due from concerned person under the Depositories Act, 1996, if such person -

- Fails to pay the penalty imposed by the adjudicating officer or
- Fails to comply with a direction of disgorgement order issued u/s 19 or
- Fails to pay any fees due to SEBI.

The amount due can be recovered by any 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 & immovable properties.

The amount due under the Depositories Act, 1996 will be recovered as per the provisions of the Income-tax Act, 1961.

**Question 33] Write a short note on : Offence under the Depositories Act, 1996**

**Ans.: Offences [Section 20(1)] :** If any person contravenes or attempts to contravene or abets the contravention of the provisions of the Act or of any rules or regulations made thereunder, he shall be punishable -

- With imprisonment for a term which may extend to **10 years**, or
- With fine, which may extend to ₹ **25 crore** or
- With both.

**Penalty for failure to pay penalty imposed by the Adjudicating Officer [Section 20(2)] :** If any person fails to pay the penalty imposed by the Adjudicating Officer or fails to comply with any of his directions or orders, he shall be punishable.

- With imprisonment for a term which shall not be less than **1 month** but which may extend to **10 years** or
- With fine, which may extend to ₹ **25 crore** or
- With both.



**Question 34] Write a short note on : Cognizance of offences by Courts under the Depositories Act, 1996**

**Ans.: Cognizance of offences by Courts [Section 22] :** No court shall take cognizance of any offence punishable under the Act except on complaint made by the Central Government or State Government or the SEBI or by any person.

No court inferior to that of a Court of Session shall try any offence punishable under the Act.

**Question 35] Explain the power of the Central Government to grant immunity under the Depositories Act, 1996. CS (Executive) - June 2014 (6 Marks)**

**Ans.: Power to grant immunity [Section 24B] :** The Central Government may grant immunity to a person who has violated the provisions of the SEBI Act, 1992.

**Conditions for granting immunity:**

- ◆ SEBI makes recommendation to the Central Government.
- ◆ Concerned person has made full and true disclosure in respect of alleged violation.
- ◆ Proceedings for the prosecution for any such offence not have been instituted before granting immunity.
- ◆ The Central Government may impose condition subject to which immunity shall be granted.

**Withdrawal of immunity :** 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
- Such person had given false evidence.

**Consequence of withdrawal of immunity :** After withdrawal of immunity, the concerned person may be tried for the offence of which he appears to have been guilty and shall also become liable to the imposition of any penalty.

**Question 36] Write a short note on : Establishment of Special Courts under the Depositories Act, 1996**

**Ans.: Establishment of Special Courts [Section 22C] :** The Central Government may by notification establish or designate Special Courts for the purpose of providing speedy trial of offences under the Depositories Act, 1996.

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.

A Sessions Judge or an Additional Sessions Judge can only be appointment as a judge of a Special Court.

**Question 37] Write a short note on : Appeal to Securities Appellate Tribunal (SAT)**

CS (Executive) - June 2011 (6 Marks)

**Ans.: Appeal to Securities Appellate Tribunal (SAT) [Section 23A]:**

- (1) Any person aggrieved by an order of the SEBI may prefer an appeal to the SAT within prescribed time.
- (2) If SEBI has passed order with the consent of the parties appeal cannot be made to the SAT.
- (3) Every appeal shall be filed within a period of **45 days** from the date the order is received by the person and it shall be made in prescribed form along with prescribed fees. The SAT may allow the appeal after the expiry of 45 days; if the appellant satisfies that he had sufficient cause for not preferring the appeal within 45 days.
- (4) The SAT may pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against after giving the parties to the appeal an opportunity of being heard.
- (5) The SAT shall send a copy of every order made by it to the SEBI and parties to the appeal.
- (6) Appeal should be decided by the SAT expeditiously and possibly within 6 months.

**Question 38] Write a short note on : Powers of the SAT CS (Executive) - June 2013 (4 Marks)**

**“Securities Appellate Tribunal shall have the same power as are vested in a Civil Court, while trying a suit.” In the light of this statement, state the powers vested in SAT as a Civil Court.**

**CS (Executive) - Dec 2014 (5 Marks)**

**Ans.: Procedure and powers of SAT [Section 23B]:**

The SAT is not bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

SAT has a power of Civil Court in respect of

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

Every proceeding before SAT shall be deemed to be a judicial proceeding and the SAT shall be deemed to be a Civil Court.

**Question 39] Who can appear before the SAT on behalf of appellant to present his case before the SAT?**

**Ans.: Right to legal representation [Section 23C]:** The appellant may either appear in person or authorise one or more CAs or CSs or CWAs or legal practitioners or any of its officers to present his or its case before the SAT.

**Question 40] Whether Civil Court have jurisdiction to entertain any suit or proceeding to which SEBI Act, 1992 applies?**

**Ans.: Civil Court not to have jurisdiction [Section 23E] :** No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Officer or SAT is empowered under this Act to determine.

Similarly, no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act.

**Question 41] Write a short note on : Appeal to Supreme Court against the order of the SAT**

**Ans.: Appeal to Supreme Court [Section 23F] :** Any person aggrieved by any decision or order of the SAT may file an appeal to the Supreme Court within **60 days** from the date of communication of the decision or order of the SAT to him on any *question of law* arising out of such order.

However, if the Supreme Court may allow to file appeal within a further period of **60 days** if is satisfied that the applicant was prevented by sufficient cause.

**Question 42] Write a short note on : Bye-laws of depository**

**Ans.: Power of depositories to make bye-laws [Section 26]:**

- (1) A depository can make bye-laws with the previous approval of the SEBI. Such bye-law should be consistent with the provisions of the Depositories Act, 1996 and the regulations made thereunder.
- (2) Such bye-law should provide various matters as contained in Section 26(2).

- (3) The SEBI may by order in writing direct a depository to make any bye-laws or to amend or revoke any bye-laws already made within specific period in order.
- (4) If the depository fails to make or amend bye-laws, the SEBI may make the bye-laws or amend or revoke the bye-laws of depository.

### **SEBI (DEPOSITORIES & PARTICIPANTS) REGULATIONS, 1996**

#### **Question 43] List the securities that can be dematerialized.**

**Ans.:** As per **Regulation 28**, the following securities are eligible for holding in dematerialized form:

1. Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of similar nature of any incorporated company or other body corporate, including underlying shares of ADRs & GDRs.
2. Units of mutual funds, rights under collective investment schemes and venture capital funds, commercial paper, certificate of deposit, securitized debt, money market instruments, government securities and unlisted securities.

#### **Question 44] Write a short note on: Depository Agreement CS (Executive) - June 2011 (4 Marks)**

**Ans.:** Every depository is required to enter into an agreement with the issuer in respect of securities disclosed as eligible to be held in demat form. No agreement is required to be entered into where the depository itself is an issuer of securities.

Depository Agreement also sets forth the rights and duties of the depository in respect of the deposited shares and all other securities.

The depository is also required to enter into a tripartite agreement with the issuer, its transfer agent and itself where company has appointed a transfer agent.

#### **Question 44A] Write a short note on: Wind-down Plan**

**Ans.:** **Wind-down Plan [Regulation 35B]:** Every depository shall devise and maintain a wind-down plan in accordance with guidelines specified by the SEBI.

'Wind-down plan' means a process or plan of action employed, for transfer of the beneficial owner accounts and other operational powers of the depository to an alternative institution that would take over the operations of the depository in scenarios such as -

- Erosion of net-worth of the depository or
- Insolvency of the depository or
- Inability of the depository to provide critical depository operations or services.

#### **Question 45] State the composition of Governing Board of depository. Also state the disclosure and corporate governance requirements of depositories.**

**Ans.:** **Governing Board :** The governing board of every depository is required to include:

- (a) Shareholder directors
- (b) Public interest directors
- (c) Managing director.

Any employee of a depository may be appointed on the governing board and such director shall be deemed to be a shareholder director.

The chairperson shall be elected by the governing board from amongst the public interest directors subject to prior approval of SEBI.

The number of public interest directors shall not be less than the number of shareholder directors in a depository.

The managing director shall be an *ex-officio* director on the governing board and shall not be included in either the category of public interest directors or shareholder directors.

**Disclosures and Corporate Governance :** The disclosure requirements and corporate governance norms as specified for listed companies shall *mutatis mutandis* apply to a depository.

**Question 46] Write a short note on: Establishment of Investor Protection Fund (IPF) by Depositories**

**Ans.: Investor Protection Fund [Regulation 53C]:**

- (1) Every depository shall establish and maintain an Investor Protection Fund (IPF) for the protection of interest of beneficial owners. However, IPF shall not be used by the depository for the purpose of indemnifying the beneficial owner u/s 16 of the Depositories Act, 1996.
- (2) Every depository shall credit 5% or such percentage as may be specified by the SEBI, of its profits from depository operations every year to the IPF.
- (3) The contribution to and utilization of the IPF shall be in accordance with the norms specified by the SEBI.

*SEBI's Circular provides following relating to Investor Protection Fund (IPF):*

**Utilization of the IPF:** The IPF may be utilized for the following purposes with a focus on depository related services:

- (i) Promotion of investor education and investor awareness programmes through seminars, lectures, workshops, publications (print and electronic media), training programmes etc. aimed at enhancing securities market literacy and promoting retail participation in securities market.
- (ii) To aid, assist, subsidize, support, promote and foster research activities for promotion/development of the securities market.
- (iii) To utilize the fund for supporting initiatives of Depository Participants for promotion of investor education and investor awareness programmes.
- (iv) To utilize the fund in any other manner as may be prescribed/permitted by SEBI in the interest of investors.

**Internal Guidelines:** Depositories shall frame their internal guidelines on utilization of the funds in accordance with the aforementioned objectives and post approval of their board, submit the same to SEBI within 30 days from the date of this circular. Depositories shall also keep SEBI informed of any subsequent changes in internal guidelines with regard to utilization of IPF.

**Constitution and Management of the IPF:** The IPF shall be administered by way of a Trust created for the purpose.

- (a) The IPF Trust shall consist of at least one Public Interest Director of the depository, one person of eminence from an academic institution from the field of finance/an expert in the field of investor education/a representative from the registered investor associations recognized by SEBI and Managing Director of the Depository.
- (b) The Depository shall provide the secretariat for the IPF Trust.
- (c) The Depository shall ensure that the funds in the IPF are kept in a separate account designated for this purpose and that the IPF is immune from any liabilities of the Depository.

**Contribution to the IPF:** The following contributions shall be made by the Depository to the IPF -

- (1) 5% of their profits from Depository operations every year.
- (2) All fines and penalties recovered from Depository Participants and other users including Clearing Member pool account penalty as specified by SEBI.
- (3) Interest or Income received out of any investments made from the IPF.

- (4) Funds lying to the credit of IPR (Investor Protection Reserve)/BOPF (Beneficial Owners Protection Fund) of the Depository or any other such fund/reserve of the Depository shall be transferred to IPF.
- (5) Any other sums as may be prescribed by SEBI from time to time.

**Investments of Fund:** Funds of the Trust shall be invested in instruments such as Central Government securities, fixed deposits of scheduled banks and any such instruments which are allowed as per the investment policy approved by the Board of the Depository. The investment policy shall be devised with an objective of capital protection along with highest degree of safety and least market risk.

The balance available in the IPF as at the end of the month and the amount utilized during the month including the manner of utilization shall be reported in the Monthly Development Report of the Depository.

**Question 47] Write a short note on : Audit under the SEBI (Depositories & Participants) Regulations, 1996**

**Write a short note on : Reconciliation of shares under Regulation 55A of the SEBI (Depositories & Participants) Regulations, 1996** **CS (Executive) - June 2015 (4 Marks)**

**Ans.: Audit [Regulation 55A]:** Every issuer shall submit audit report on a **quarterly basis** to the concerned stock exchanges audited by a practicing CS or CA.

**Purpose of Audit :** The audit is conducted for the following purposes:

- To reconcile total issued capital, listed capital and capital held by depositories in dematerialized form
- To give the details of changes in share capital during the quarter and
- To give the details of in-principle approval obtained by the issuer from all the stock exchanges where it is listed in respect of further issued capital.
- To give the updated status of the Register of Members of the issuer
- To confirm that securities have been dematerialized as per requests within 21 days from the date of receipt of requests by the issuer
- If the dematerialization has not been effected within 21 days, the reasons for such delay.

The issuer is under an obligation to immediately bring to the notice of the depositories and the stock exchanges, any difference observed in its issued, listed, and the capital held by depositories in dematerialized form.

**Question 48] Write a short note on : Internal Audit of operations of Depository Participants**

**Ans.:** The two Depository service providers in India, *viz.*, NSDL & CDSL have allowed Practicing CS or CA to undertake internal audit of the operations of Depository Participants.

As per bye-law of NSDL such audit has to be conducted at interval of not more than **3 months**.

As per bye-law of CDSL such audit has to be conducted at such intervals as may be specified by CDS from time to time.

A copy of Internal Audit report shall be furnished to NSDL or CDSL.

**Question 49] Write a short note on : Concurrent Audit of Depository Participants (DPs)**

**CS (Inter) - June 2008 (3 Marks)**

**CS (Executive) - Dec 2013 (4 Marks)**

**Ans.:**

- ◆ NSDL *vide* its Circular has provided for concurrent audit of the Depository Participants.
- ◆ The Circular provides that, the process of demat account opening, control and verification of Delivery Instruction Slips (DIS) is subject to Concurrent Audit.

- ◆ DPs have been advised to appoint a firm of practicing CS/CA for conducting the concurrent audit. However, the participants may entrust the concurrent audit to their Internal Auditors.
- ◆ In respect of account opening, the Concurrent Auditor should verify all the documents including KYC documents furnished by the Clients and verified by the officials of the Participants.
- ◆ The Concurrent Auditor should conduct the audit in respect of all accounts opened, DIS issued and controls on DIS 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 or non-compliance observed should be mentioned in the audit report.
- ◆ The Management of the DPs should comment on the observations made by the Concurrent Auditor.
- ◆ The Concurrent Audit Report should be submitted on a quarterly basis in a hard copy to NSDL.
- ◆ If the Auditor for Internal and Concurrent Audit is the same, consolidated report may be submitted.

**Question 50] Discuss the procedure followed by depository participants regarding issuance and verification of delivery instruction slip (DIS). CS (Executive) - June 2013 (4 Marks)**

**Ans.: Issuance of DIS :** The procedure followed by the Participants with respect to:

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

**Verification of DIS :** The procedure followed by the Participants with respect to:

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

**Question 51] Write a short note on : In-Person Verification (IPV)**

**CS (Executive) - Dec 2014 (4 Marks)**

**Ans.:** SEBI has made it mandatory for all the intermediaries including Depository Participant (DP) to carry out IPV of their clients.

The intermediary shall ensure that the details like name of the person doing IPV, his designation, organization with his signatures and date are recorded on the KYC form at the time of IPV.

The IPV carried out by one SEBI registered intermediary can be relied upon by another intermediary.

**Question 52] What do you understand by Designated Depository Participant (DDP)? What are the eligibility criteria prescribed for the registration of DDP?**

**Ans.:** Designated Depository Participant (DDP) means a person who has been approved by SEBI under Chapter III of the **SEBI (Foreign Portfolio Investors) Regulations, 2014**. A person shall not act as DDP unless it has obtained the approval of SEBI. As of now 18 DDP were registered with SEBI which includes Axis Bank Ltd., HSBC Ltd., India Infoline Ltd. etc.

**Eligibility criteria for DDP :** SEBI shall grant an approval to a person to act as DDP subject to following conditions:

- (a) The applicant is a Participant and Custodian registered with the SEBI.
- (b) The applicant is an Authorized Dealer Category-1 bank authorized by the RBI.
- (c) The applicant has multinational presence either through its branches or through agency relationships with intermediaries regulated in their respective home jurisdictions.
- (d) The applicant has systems and procedures to comply with the requirements of FATF Standards, Prevention of Money Laundering Act, 2002 and the rules and circulars prescribed there under.
- (e) A Certificate of Registration granted to a DDP shall be permanent unless suspended or cancelled by SEBI or surrendered by the DDP.

The SEBI had also issued operating guidelines for DDP who would grant registration to Foreign Portfolio Investors (FPI).

DDPs are authorised to grant registration to FPIs on behalf of the SEBI. The application for grant of registration is to be made to the DDP in a prescribed form along with the specified fees.

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**Question 52A] Write a short note on: Single registration for Depository Participants**

**Ans.:** As per the amendment, the existing requirement of obtaining certificate of initial registration to act as a participant and subsequently permanent registration to continue to act as a participant for each depository has been done away. For the purpose of single registration, the following guidelines are being issued:

- ◆ If a new entity desires to act as a participant in any of the depository, then the entity shall apply to SEBI for certificate of initial registration through the concerned depository in the manner prescribed in the DP Regulations.
- ◆ If an entity has been granted a certificate of registration to act as a participant through one depository and wishes to act as a participant with the other depository then it shall directly apply to the concerned depository for approval in the manner as prescribed in the DP Regulations.
- ◆ The concerned depository, on receipt of the application, may grant approval to the entity after exercising due diligence and on being satisfied about the compliance of all relevant eligibility requirements including the following:
  - (a) The applicant, its directors, proprietor, partners and associates shall be fit and proper.
  - (b) The applicant has taken satisfactory corrective steps to rectify the deficiencies or irregularities observed in the past inspections or in case of actions initiated/taken by SEBI/depository or other regulators.
  - (c) Recovery of all pending fees/dues payable to SEBI and depository and
  - (d) Payment of registration fees as prescribed in the DP Regulations.

The depositories shall report to SEBI about the approval as stated above on a monthly basis.

- ◆ The participant shall apply to SEBI for permanent registration through any of the depositories in which it is acting as a participant as per the DP Regulations.
- ◆ The depositories shall coordinate and share information with each other, about their participants.

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**Question 53] What do you understand by Basic Services Demat Account (BSDA)? Who can open such account? What are the maintenance charges of such account?**

**Ans.:** With a view to achieve wider financial inclusion, encourage holding of demat accounts and to reduce the cost of maintaining securities in demat accounts for retail individual investors, SEBI introduced the concept of basic services demat account (BSDA). All depository participants (DPs) shall make available a BSDA with limited services and reduced costs compared to conventional demat accounts. These BSDA will also offer SMS alert facility for debit transactions.

**Eligible Investor :** The BSDA promises to provide limited services at reduced costs to retail investors. All individual who currently have one account or plan to open an 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 ₹ 2 lakh at any given point of time. However, Investors can open only one BSDA across all DPs.

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 based on value of holding of securities as on the last day of previous billing cycle.

**Charges :** The annual maintenance charges which will have to pay for BSDA will be as per pre-determined slabs. If the value of holdings is up to ₹ 50,000 there won't be any annual maintenance charge. However, if the value of holding is in between ₹ 50,001 to ₹ 200,000, a fee of ₹ 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 into account.

**Question 54] Write a short note on: SARAL account opening form for resident individuals**

**Ans.:** SEBI Circulars dated March 4, 2015 for SARAL account opening for resident individuals. It is an account opening process for Resident individual investors with a view to encourage their participation, it is, therefore, decided that such individual investors can open a trading account and demat account by filling up a simplified Account Opening Form (AOF) termed as 'SARAL AOF'.

This form will be separately available with the intermediaries and can also be downloaded from the Exchanges' and Depositories' website. The investors who open account through SARAL AOF will also have the option to obtain other facilities, whenever they require, on furnishing of additional information.

For these set of individual investors, the requirement of submission of 'proof of address' is as follows:

- ◆ Individual investor may submit only one documentary proof of address (either residence/correspondence or permanent) while opening a trading account or demat account or while undergoing updation.
- ◆ In case the proof of address furnished by the said investor is not the address where the investor is currently residing, the intermediary may take a declaration of the residence/correspondence address on which all correspondence will be made by the intermediary with the investor. No proof is required to be submitted for such correspondence/residence address.
- ◆ In the event of change of address due to relocation or any other reason, investor may intimate the new address for correspondence to the intermediary within two weeks of such a change. The residence/correspondence address and any such change thereof may be verified by the intermediary through 'positive confirmation' such as (i) acknowledgement of receipt Welcome Kit/dispatch of contract notes/any periodical statement, etc. (ii) telephonic conversation; (iii) visits, etc.

**OBJECTIVE QUESTIONS**

**Question A] Expand the following abbreviations:**

- |          |          |
|----------|----------|
| (1) DP   | (6) DIS  |
| (2) NSDL | (7) IPV  |
| (3) DRF  | (8) DDP  |
| (4) RRF  | (9) BSDA |
| (5) PRF  | (10) BO  |



**Question B] State, with reasons in brief, whether the following statements are correct or incorrect:**

- (1) A depository holds *only* equity shares of investors in electronic form through a registered depository participant.
- (2) Dematerialization of shares is optional.
- (3) Dematerialization is the process where physical share certificates are kept in vaults with the depository for safe custody.
- (4) For transfer of securities in the electronic form no stamp duty is payable
- (5) Securities in depositories shall be in fungible form.
- (6) A depository shall be deemed to be the beneficial owner for the purposes of effecting transfer of ownership of security.
- (7) Holding shares in demat form *i.e.* electronic form is compulsory under the Depositories Act, 1996.
- (8) Depository is not liable for the loss caused to investor due to the negligence of the Depository Participant.
- (9) A depository can make byelaws with the previous approval of the SEBI.
- (10) An employee of a depository cannot be appointed on the governing board of depository.

**Question C] Re-write the following sentences after filling-up the blank spaces with appropriate word(s)/figure(s):**

- (1) A \_\_\_\_\_ is an agent of the depository through which it interfaces with the investor and provides depository services.
- (2) \_\_\_\_\_ is the process by which physical certificates of an investor are converted to an equivalent number of securities in electronic form.
- (3) \_\_\_\_\_ is the process of converting securities held in electronic form in a demat account back in physical certificate form.
- (4) \_\_\_\_\_ is the process where physical share certificates are kept in vaults with the depository for safe custody.
- (5) Depository must have a net worth of a minimum of ₹ \_\_\_\_\_
- (6) At present two depositories *viz.* \_\_\_\_\_ and \_\_\_\_\_ are registered with SEBI.
- (7) No court inferior to that of a \_\_\_\_\_ shall try any offence punishable under the Depositories Act, 1996.
- (8) Every depository should credit \_\_\_\_\_ of its profits every year to the Investor Protection Fund.

**Question D] Select the correct option**

1. \_\_\_\_\_ is the process where physical share certificates are kept in vaults with the depository for safe custody.
  - (a) Dematerialization
  - (b) Rematerialization
  - (c) Immobilization
  - (d) Immovability
2. Depository Participants (DPs) is an intermediary between \_\_\_\_\_.
  - (a) Investor and company
  - (b) Investor and depository
  - (c) Company and depository
  - (d) Company and other market intermediary
3. The Depository system functions very much like the \_\_\_\_\_.
  - (A) Banking system
  - (B) Insurance system
  - (a) (B) only
  - (b) (A) only
  - (c) Both (A) and (B)
  - (d) Neither (A) nor (B)

4. As per present legal system, the depository may function in which of the following form?
- As a company formed and registered under the Companies Act, 2013
  - As a Trust registered under the Indian Trust Act, 1882
  - As a society registered under the Societies Registration Act, 1860
    - (i) and (ii)
    - (ii) and (iii)
    - (ii) only
    - (i) only
5. Which of the following can become 'Depository Participants' in the depository?
- Stock brokers
  - Banks
  - Credit Rating Agencies
  - Financial institution
    - (II) & (IV)
    - (I), (IV) & (II)
    - (III) & (I)
    - (IV), (I), (III) & (II)
6. It is not necessary that an investor should hold shares in dematerialized form. He can opt out of depository scheme at any time subject compliance of provisions of \_\_\_\_\_ of the Depositories Act, 1996
- Section 14
  - Section 15
  - Section 16
  - Section 13
7. As per Section 19B of the Depositories Act, 1996, if any depository or participant or issuer or its agent or intermediary fails to enter into an agreement with his client, it shall be liable to a penalty which shall not be less than \_\_\_\_\_
- ₹ 1 lakh per day till default continues or ₹ 25 Crore, whichever is less.
  - ₹ 1 lakh per day till default continues or ₹ 25 Crore, whichever is more.
  - ₹ 1 lakh per day till default continues or ₹ 1 Crore, whichever is more.
  - ₹ 1 lakh per day till default continues or ₹ 1 Crore, whichever is less.
8. As per Section 22C of the Depositories Act, 1996, which of the following persons can be appointment as a judge of a Special Court?
- Additional Sessions Judge
  - Judicial Magistrate of First Class
    - (2) only
    - Both (1) and (2)
    - (1) only
    - Neither (1) nor (2)
9. Under the provisions of the Depositories Act, 1996, appeal to SAT has to be filed within \_\_\_\_\_ from the date of order.
- 60 days
  - 30 days
  - 45 days
  - 90 days
10. As per Section 23F of the Depositories Act, 1996, any person aggrieved by any decision or order of the SAT may file an appeal to the Supreme Court within \_\_\_\_\_ from the date of communication of the decision or order of the SAT to him on any \_\_\_\_\_ arising out of such order.
- 60 days; question of law
  - 90 days; question of facts
  - 90 days; question of law
  - 60 days; question of facts
11. Which of the following securities are eligible for holding in dematerialized form?
- ADRs & GDRs
  - Units of mutual funds
  - Commercial paper
  - Units of collective investment schemes
  - Certificate of deposit
  - Units of venture capital funds
    - 1, 2, 4 & 6
    - 3, 5 & 1
    - 2, 5, 1, 3, 6 & 4
    - 4, 2, 1, 5 & 3
12. Every depository should credit \_\_\_\_\_ of its profits every year to the Investor Protection Fund.
- 25%
  - 10%

- (c) 15% (a) 100 Crores  
 (d) 30% (b) 50 Crores
13. Every issuer shall submit audit report on a \_\_\_\_\_ basis to the concerned stock exchanges audited by a practicing CS or CA. (c) 200 Crores  
 (d) 75 Crores
- (a) Monthly basis  
 (b) Quarterly basis  
 (c) Six monthly  
 (d) Yearly
14. Custodian must have a net worth of a minimum of ₹ \_\_\_\_\_. (a) registered owner; beneficial owner  
 (b) beneficial owner; registered owner  
 (c) registered owner; issuer company  
 (d) issuer company; registered owner
15. As per Section 9 of the Depositories Act, 1996, a depository shall be deemed to be the \_\_\_\_\_ for the purposes of effecting transfer of ownership of security on behalf of a \_\_\_\_\_

### Answers to Question A:

Abbreviation	Long Form
DP	Depository Participant
NSDL	National Securities Depository Ltd.
CDSL	Central Depository Services (India) Ltd.
DRF	Dematerialization Request Form
RRF	Rematerialization Request Form
PRF	Pledge Request Form
DIS	Delivery Instruction Slip
IPV	In-Person Verification
DDP	Designated Depository Participant
BSDA	Basic Services Demat Account
BO	Beneficial Owner

### Answers to Question B:

- (1) **Incorrect.** A depository is an organisation which holds securities like shares, debentures, bonds, government securities, mutual fund units etc. of investors in electronic form at the request of the investors through a registered depository participant.
- (2) **Correct.** Dematerialization of shares is optional and an investor can still hold shares in physical form.
- (3) **Incorrect.** Immobilization is the process where physical share certificates are kept in vaults with the depository for safe custody.
- (4) **Correct.** In case of transfer of physical shares, stamp duty is payable on the market value of shares being transferred. However, for transfer of securities in the electronic form no stamp duty is payable.
- (5) **Correct.** All securities held by a depository shall be dematerialised and shall be in a fungible form *i.e.* all certificates of the same security shall become interchangeable in the sense that investor loses the right to obtain the exact certificate he surrenders at the time of entry into depository. It is like withdrawing money from the bank without bothering about the distinctive numbers of the currencies.
- (6) **Incorrect.** A depository shall be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of a beneficial owner. The registered owners are the depositories whereas the beneficiary owners are the people who are holding the securities at any given point of time.

- (7) **Incorrect.** It is not necessary that an investor should hold shares in dematerialized form. He can opt out of depository scheme at any time subject compliance of provisions of Section 14 of the Depositories Act, 1996.
- (8) **Incorrect.** Any loss caused to the beneficial owner (investor) due to the negligence of the depository or the participant, the depository shall indemnify such beneficial owner. Where the loss due to the negligence of the participant is indemnified by the depository, the depository shall have the right to recover the same from such participant.
- (9) **Correct.** A depository can make byelaws with the previous approval of the SEBI. Such bye-law should be consistent with the provisions of the Depositories Act, 1996 and the regulations made thereunder.
- (10) **Incorrect.** Any employee of a depository may be appointed on the governing board and such director shall be deemed to be a shareholder director.

**Answers to Question C:**

(1) Depository Participant (2) Dematerialization (3) Rematerialization (4) Immobilization (5) 100 Crores (6) NSDL; CDSL (7) Court of Session (8) 25%

**Answers to Question D:**

- |        |        |        |         |         |         |
|--------|--------|--------|---------|---------|---------|
| 1. (c) | 5. (b) | 8. (c) | 10. (a) | 12. (a) | 14. (b) |
| 2. (b) | 6. (a) | 9. (c) | 11. (c) | 13. (b) | 15. (a) |
| 3. (b) | 7. (d) |        |         |         |         |
| 4. (d) |        |        |         |         |         |

**LISTING OF SECURITIES****Question 1] Write a short note on: Types of Listing**

CS (Executive) - Dec 2016 (4 Marks)

**Ans.:** Listing of securities falls under 5 groups -

- (1) **Initial Listing:** If the shares or securities are to be listed for the first time by a company on a stock exchange is called initial listing.
- (2) **Listing for Public Issue:** When a company whose shares 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:** It is listing of shares issued as a result of capitalisation of profit through bonus.
- (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.

**Question 2] "Listing of securities with stock exchanges is a matter of great importance for companies and investors." Comment on this statement and list out the benefits of listing for the companies and investors.**

CS (Inter) - Dec 2007 (5 Marks)

**Ans.:** **Benefits to the Company:** The following benefits are available to the company when securities are listed by a company in the stock exchange:

- (1) Public image of the company is enhanced.
- (2) The liquidity of the security is ensured making it easy to buy and sell the securities in the stock exchange.
- (3) Tax concessions are made available both to the investors and the companies.
- (4) 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.
- (5) Listed companies command better support such as loans and investments from Banks and FIs.

**Benefits to the investors:**

- (1) It affords liquidity to their holdings.
- (2) It affords them to obtain the best prices for the securities they want to sell off.
- (3) The Stock Exchange quotation helps the investors to keep themselves abreast of the price changes of the securities owned or held by them.
- (4) The investors get maximum protection in regard to their holdings, because the Stock Exchange rules and regulations have been formulated with the end in view.

- (5) Listing gives an added collateral value to the securities held by investors, for banks in making loans and advances prefer a security quoted on the Stock Exchange.
- (6) Listing is also advantageous in the matter of income-tax, wealth-tax, estate duty and other taxes payable by shareholders in their capacity as assessee.

**Question 3] Explain: Multiple Listing**

CS (Executive) - June 2013 (3 Marks), June 2016 (2 Marks)

**Ans.:** A company with a paid-up capital above ₹ 5 Crores should list its securities or have its securities permitted for trading, on at least one stock exchange having Nationwide Trading Terminals.

**Benefit of multiple listing:** 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.

**Question 4] Discuss briefly legal provisions under different statutes governing listing of securities.**

**Ans.:** Legal provisions under different statutes governing listing of securities are given below:

*Companies Act, 2013:*

**Power of SEBI to regulate issue and transfer of securities [Section 24]:** Any Company which is listed or intend to get their securities listed on any recognized stock exchange will be administered by Regulations prepared by SEBI for matters relating to issue and transfer of securities and non-payment of dividend.

**Securities to be dealt with in stock exchanges [Section 40]:**

- (1) Every company making public offer shall make an application to one or more recognised stock exchange and obtain permission for the securities to list on such stock exchange.
- (2) If the prospectus states that an application has been made to list shares on stock exchange, such prospectus shall also state the name of the stock exchange in which the securities shall be dealt with.
- (3) All monies received on application from the public shall be kept in a separate bank account in a scheduled bank. Such application money can be utilized only for the following purposes:
  - (a) For adjustment against allotment of securities or
  - (b) For the repayment of monies if the company is unable to allot securities.
- (4) Any condition which requires any applicant to waive compliance above requirements shall be void.
- (5) If a default is made in complying with the provisions of this section,
  - The company shall be punishable with a fine which shall not be less than ₹ 5 lakhs but which may extend to ₹ 50 lakhs and
  - Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than ₹ 50 thousand but which may extend to ₹ 5 lakhs, or with both.
- (6) A company may pay commission to any person in connection with the subscription to its securities subject to prescribed conditions.

*Securities Contracts (Regulation) Act, 1956:*

**Conditions for listing [Section 21]:** Where securities are listed on the application of the company in any recognised stock exchange, such company shall comply with the conditions of the listing agreement.

**Right of appeal to SAT against refusal to list securities [Section 22]:**

- ◆ Where a recognised stock exchange refuses to list the securities of any public company, it shall furnish the reasons for such refusal.
- ◆ Time period for filing appeal is 15 days from the date of refusal. However, SAT may extend such period not exceeding 1 month on sufficient cause being shown.
- ◆ Every appeal to SAT shall be in prescribed form along with prescribed fee.

- ◆ SAT may vary or set aside the decision of the stock exchange.
- ◆ If application is not disposed by the stock exchange within specified time, SAT may grant or refuse the permission.
- ◆ Appeal should be decided by the SAT expeditiously and possibly within 6 months.
- ◆ SAT shall send a copy of every order made by it to the SEBI and parties to the appeal.

### **COMPLIANCES UNDER SEBI (LISTING OBLIGATIONS & DISCLOSURE REQUIREMENTS) REGULATIONS, 2015**

*SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 hereinafter referred as SEBI (LODR) Regulations, 2015.*

#### **Question 5] State the applicability of SEBI (LODR) Regulations, 2015.**

**Ans.: Applicability of the regulations [Regulation 3]:** These regulations shall apply to the listed entity who has listed any of the following designated securities on recognized stock exchange:

- (a) Specified securities listed on main board or SME Exchange or Institutional Trading Platform (ITP)
- (b) Non-convertible Debt Securities (NDS), Non-Convertible Redeemable Preference Shares (NCRPS), 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 the SEBI.

#### **Question 6] State the compliance requirement under the SEBI (LODR) Regulations, 2015 relating to "Compliance Officer".**

**Discuss the duties of a 'Compliance Officer' in a listed company. CS (Inter) - Dec 2006 (4 Marks)**

**Ans.: Compliance Officer and his Obligations [Regulation 6]:**

- (1) A listed entity shall appoint a qualified **Company Secretary** as the **Compliance Officer**.
- (2) The Compliance Officer of the listed entity shall be responsible for -
  - (a) Ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.
  - (b) Co-ordination with and reporting to SEBI, recognized stock exchanges and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.
  - (c) Ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations.
  - (d) Monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors:

However, requirements of this regulation shall not be applicable in the case of units issued by mutual funds which are listed on recognized stock exchange but shall be governed by the provisions of the **SEBI (Mutual Funds) Regulations, 1996**.

#### **Question 7] State the compliance requirement under the SEBI (LODR) Regulations, 2015 relating to "Share Transfer Agent".**

**Ans.: Share Transfer Agent [Regulation 7]:**

- (1) The listed entity shall appoint a share transfer agent or manage the share transfer facility in-house. However, in the case of in-house share transfer facility, as and when the total number of holders of securities of the listed entity exceeds **1 lakh**, the listed entity shall either register with the SEBI as a **Category II Share Transfer Agent** or appoint Registrar to an issue and share transfer agent registered with the SEBI.
- (2) The listed entity shall ensure that all activities in relation to both physical and electronic share transfer facility are maintained either in house or by Registrar to an issue and share transfer agent registered with the SEBI.
- (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, wherever applicable, within 1 month of end of each half of the financial year, certifying compliance with the requirements of clause (2).
- (4) In case of any change or appointment of a new share transfer agent, the listed entity shall enter into a tripartite agreement between the existing share transfer agent, the new share transfer agent and the listed entity, in the manner as specified by the SEBI from time to time. However, in case the existing share transfer facility is managed in-house, the agreement referred above shall be entered into between the listed entity and the new share transfer agent.
- (5) The listed entity shall intimate such appointment, referred to in (4), to the stock exchange within 7 days of entering into the agreement.
- (6) The agreement referred to in (4) shall be placed in the subsequent meeting of the board of directors. However, this requirement shall not be applicable to the units issued by mutual funds that are listed on recognized stock exchanges.

**Question 8] State the compliance requirement under the SEBI (LODR) Regulations, 2015 relating to "Preservation of documents".**

**Ans.: Preservation of documents [Regulation 9]:** The listed entity shall have a policy for preservation of documents, approved by its board of directors, classifying them in at least two categories as follows-

- (a) Documents whose preservation shall be permanent in nature
- (b) Documents with preservation period of not less than **8 years** after completion of the relevant transactions.

The listed entity may keep documents specified in clauses (a) and (b) in electronic mode.

**Question 9] State any six regulations of the SEBI (LODR) Regulations, 2015.**

**CS (Executive) - Dec 2008 (5 Marks), June 2012 (6 Marks)**

**Ans.:** Some of the regulations of the of the SEBI (LODR) Regulations, 2015 are as follows:

<b>Scheme of Arrangement [Regulation 11]</b>	The listed entity shall ensure that any scheme of arrangement/amalgamation/merger/reconstruction/reduction of capital etc. to be presented to any Court or Tribunal does not in any way violate, override or limit the provisions of securities laws or requirements of the stock exchanges.
<b>Payment of dividend etc. [Regulation 12]</b>	The listed entity shall use electronic mode of payment facility approved by the RBI for the payment of dividends, interest, redemption or repayment principle amounts. However, where it is not possible to use electronic mode of payment, 'payable-at-par' warrants or cheques may be issued.
<b>Fees and other charges [Regulation 14]</b>	Listed entity shall pay all such fees or charges, as applicable, to the recognized stock exchanges, in the manner specified by the SEBI or the recognized stock exchanges.
<b>Annual Information Memorandum [Regulation 35]</b>	The listed entity shall submit to the stock exchanges an Annual Information Memorandum in the manner specified by the SEBI from time to time.



<b>Minimum Public Shareholding [Regulation 38]</b>	The listed entity shall comply with the minimum public shareholding requirements specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957 in the manner as specified by the SEBI from time to time. However, this provision shall not apply to entities listed on institutional trading platform without making a public issue.
<b>Dividends [Regulation 43]</b>	The listed entity shall declare and disclose the dividend on per share basis only. The listed entity shall not forfeit unclaimed dividends before the claim becomes barred by law and such forfeiture, if effected, shall be annulled in appropriate cases.
<b>Voting by Shareholders [Regulation 44]</b>	The listed entity shall provide the facility of remote e-voting facility to its shareholders, in respect of all shareholders' resolutions. The listed entity shall submit to the stock exchange, within 48 hours of conclusion of its General Meeting, details regarding the voting results in the format specified by the SEBI. The listed entity shall send proxy forms to holders of securities in all cases mentioning that a holder may vote either for or against each resolution.
<b>Accounting Standards [Regulation 48]</b>	The listed entity shall comply with all the applicable and notified Accounting Standards from time to time.

**Question 10] State the compliance requirement under the SEBI (LODR) Regulations, 2015 relating to "Grievance Redressal Mechanism".**

**Ans.: Grievance Redressal Mechanism [Regulation 13]:**

- (1) Listed entity shall ensure that adequate steps are taken for expeditious redressal of investor complaints.
- (2) Listed entity shall ensure that it is registered on the SCORES platform or such other electronic platform or system of the SEBI as shall be mandated from time to time, in order to handle investor complaints electronically in the manner specified by the SEBI.
- (3) Listed entity shall file with the recognized stock exchanges on a quarterly basis, within 21 days from the end of each quarter, 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.
- (4) Statement as specified above shall be placed, on quarterly basis, before the board of directors of the listed entity.

**Question 11] State the compliance requirement under the SEBI (LODR) Regulations, 2015 relating to "Vigil Mechanism".**

**Write a short note on : Whistle Blower Policy**

**CS (Executive) - June 2015 (4 Marks), June 2016 (4 Marks)**

**Ans.:** Regulation 22 of the SEBI (LODR) Regulations, 2015 makes the following provisions on Whistle Blower Policy.

**Vigil Mechanism [Regulation 22]:** The listed entity shall formulate a vigil mechanism for directors and employees to report genuine concerns.

The vigil mechanism shall provide for adequate safeguards against victimization of directors or employees or any other person who avail the mechanism and also provide for direct access to the chairperson of the audit committee in appropriate or exceptional cases.

**'Whistle Blower Policy'/'vigil mechanism' explained:**

*The concept of 'Whistle Blower Policy'/'vigil mechanism' is borrowed from western thinking. The concept is that there are many employees at various levels in the organization who feel that something is going wrong e.g. corruption, violation of law, wastages, unethical practices etc. The policy/mechanism to report such corruption, violation of law, wastages, and unethical practices is known as vigil mechanism.*

*In many cases when lower level employee reports such incidence and they are victimized - may be demoted or removed from his job. In fear of losing job he will not report such incidence hence regulation provides that vigil mechanism shall provide adequate safeguards against victimization of directors or employees or any other person who avail the mechanism.*

**Question 12] State the compliance requirement under the SEBI (LODR) Regulations, 2015 relating to "Related Party Transactions".**

**Ans.: Related Party Transactions [Regulation 23]:**

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

*Explanation:* A transaction with a related party shall be considered material if the transaction 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.

- (2) All related party transactions shall require prior approval of the audit committee.
- (3) Audit committee may grant *omnibus approval* for related party transactions proposed to be entered into by the listed entity subject to the following conditions, namely -
- (a) The audit committee shall lay down the criteria for granting the omnibus approval in line with the policy on related party transactions of the listed entity and such approval shall be applicable in respect of transactions which are repetitive in nature.
  - (b) The audit committee shall satisfy itself regarding the need for such omnibus approval and that such approval is in the interest of the listed entity.
  - (c) The omnibus approval shall specify:
    - The names of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into.
    - The indicative base price/current contracted price and the formula for variation in the price if any.
    - Such other conditions as the audit committee may deem fit.

However, where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may grant omnibus approval for such transactions subject to their value not exceeding ₹ 1 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 1 year and shall require fresh approvals after the expiry of 1 year.
- (4) 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.
- (5) The provisions (2), (3) and (4) shall not be applicable in the following cases:
- (a) Transactions entered into between two government companies.
  - (b) Transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.
- (6) All entities falling under the definition of related parties shall abstain from voting irrespective of whether the entity is a party to the particular transaction or not.

**Omnibus approval explained:**

*Black's Law Dictionary defines 'omnibus' as 'relating to or dealing with numerous objects or items at once; including many things or having various purposes'. In the context of the related party transaction, 'omnibus' refers to the collective approval of the transaction instead of the piecemeal/individual approval.*

**Question 13] State the compliance requirement under the SEBI (LODR) Regulations, 2015 relating to "Related Party Transactions".**

**Ans.: In-principle approval of recognized stock exchanges [Regulation 28]:** The listed entity, before issuing securities, shall obtain an 'in-principle approval' from recognized stock exchanges in the following manner:

- (a) Where the securities are listed only on recognized stock exchanges having nationwide trading terminals, from all such stock exchanges.
- (b) Where the securities are not listed on any recognized stock exchange having nationwide trading terminals, from all the stock exchanges in which the securities of the issuer are proposed to be listed.
- (c) Where the securities are listed on recognized stock exchanges having nationwide trading terminals as well as on the recognized stock exchanges not having nationwide trading terminals, from all recognized stock exchanges having nationwide trading terminals.

The requirement of obtaining in-principle approval from recognized stock exchanges 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 recognized stock exchange.

**Question 14] Prepare a brief note for your Managing Director regarding items in respect of which prior intimation is required to be given to the stock exchange in the light of provisions of SEBI (LODR) Regulations, 2015.**

**Ans.: Prior Intimations [Regulation 29]:**

- (1) Listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in which any of the following proposals is to be considered:
  - (a) Financial results viz. quarterly, half yearly or annual, as the case may be.
  - (b) Proposal for buyback of securities
  - (c) Proposal for voluntary delisting.
  - (d) Fund raising by way of further public offer, rights issue, ADRs/GDRs/FCCBs, qualified institutions placement, debt issue, preferential issue or any other method and for determination of issue price.  
Such intimation shall also be given in case of any AGM or EOGM or postal ballot that is proposed to be held for obtaining shareholder approval for further fund raising indicating type of issuance.
  - (e) Declaration/recommendation of dividend, issue of convertible securities including convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of dividend.
  - (f) The proposal for declaration of bonus securities where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers. In case the declaration of bonus by the listed entity is not on the agenda of the meeting of board of directors, prior intimation is not required to be given to the stock exchanges.
- (2) The intimation required to be given as above shall be given at least **2 working days in advance**, excluding the date of the intimation and date of the meeting. However, intimation regarding item specified in clause (1)(a), to be discussed at the meeting of board of directors shall be given at least **5 days in advance** (excluding the date of the intimation and date of the meeting), and such intimation shall include the date of such meeting of board of directors.

- (3) The listed entity shall give intimation to the stock exchanges at least **11 working days** before any of the following proposal is placed before the board of directors -
- (a) Any alteration in the form or nature of any of its securities that are listed on the stock exchange or in the rights or privileges of the holders thereof.
  - (b) Any alteration in the date on which, the interest on debentures or bonds, or the redemption amount of redeemable shares or of debentures or bonds, shall be payable.

**Question 15] Prepare a brief note for your CEO which events and information is required to be given to the stock exchange under the Regulation 30 of the SEBI (LODR) Regulations, 2015.**

**Ans.: Disclosure of events or information [Regulation 30]:**

- (1) Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.
- (2) Events specified in **Para A of Part A of Schedule III** are deemed to be material events and listed entity shall make disclosure of such events.
- (3) The listed entity shall make disclosure of events specified in **Para B of Part A of Schedule III**, based on application of the guidelines for materiality.
- (4) The listed entity shall consider the following criteria for determination of materiality of events/information:
  - (a) The omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly.
  - (b) The omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date.
  - (c) In case where the criteria specified in clauses (a) & (b) are not applicable, an event/information may be treated as being material if in the opinion of the board of directors of listed entity, the event/information is considered material.

The listed entity shall frame a policy for determination of materiality, duly approved by its board of directors, which shall be disclosed on its website.

- (5) The board of directors of the listed entity shall authorize one or more KMP for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchanges and contact details of such personnel shall be also disclosed to the stock exchanges and as well as on the listed entity's website.
- (6) The listed entity shall first disclose to stock exchanges of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than **24 hours** from the occurrence of event or information. In case the disclosure is made after 24 hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanation for delay.  
Disclosure for events specified in sub-para 4 of **Para A of Part A of Schedule III** shall be made within **30 minutes** of the conclusion of the board meeting.
- (7) The listed entity shall, with respect to disclosures referred to in this regulation, make disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations.
- (8) The listed entity shall disclose on its website all such events or information which has been disclosed to stock exchanges under this regulation, and such disclosures shall be hosted on the website of the listed entity for a minimum period of 5 years and thereafter as per the archival policy of the listed entity, as disclosed on its website.
- (9) The listed entity shall disclose all events or information with respect to subsidiaries which are material for the listed entity.

- (10) The listed entity shall provide specific and adequate reply to all queries raised by stock exchanges with respect to any events or information. The stock exchanges shall disseminate information and clarification as soon as reasonably practicable.
- (11) The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchanges.
- (12) In case where an event occurs or an information is available with the listed entity, which has not been indicated in **Para A or B of Part A of Schedule III**, but which may have material effect on it, the listed entity is required to make adequate disclosures in regard.

### Schedule III

#### Part A: Disclosures of events or information: Specified Securities

#### [Regulation 30]

The following shall be events/information, upon occurrence of which listed entity shall make disclosure to stock exchanges:

#### A.

1. Acquisitions (including agreement to acquire), Scheme of Arrangement (amalgamation/merger/demerger/restructuring), or sale or disposal of any unit(s), division(s) or subsidiary of the listed entity or any other restructuring.  
*Explanation:* The word 'acquisition' shall mean - (i) acquiring control, whether directly or indirectly; or, (ii) acquiring or agreeing to acquire shares or voting rights in, a company, whether directly or indirectly, such that - (a) the listed entity holds shares or voting rights aggregating to 5% or more of the shares or voting rights in the said company, or (b) there has been a change in holding from the last disclosure and such change exceeds 2% of the total shareholding or voting rights in the said company.
2. Issuance or forfeiture of securities, split or consolidation of shares, buyback of securities, any restriction on transferability of securities or alteration in terms or structure of existing securities including forfeiture, reissue of forfeited securities, alteration of calls, redemption of securities etc.
3. Revision in Ratings.
4. Outcome of Meetings of the board of directors: The listed entity shall disclose to the exchanges, within 30 minutes of the closure of the meeting, held to consider the following: (a) dividends or cash bonuses recommended or declared or the decision to pass any dividend and the date on which dividend shall be paid/dispatched (b) any cancellation of dividend with reasons thereof (c) the decision on buyback of securities (d) the decision with respect to fund raising proposed to be undertaken (e) increase in capital by issue of bonus shares through capitalization including the date on which such bonus shares shall be credited/dispatched (f) reissue of forfeited shares or securities, or the issue of shares or securities held in reserve for future issue or the creation in any form or manner of new shares or securities or any other rights, privileges or benefits to subscribe to (g) short particulars of any other alterations of capital, including calls; (h) financial results (i) decision on voluntary delisting by the listed entity from stock exchanges.
5. Agreements (*viz.* shareholder agreements, joint venture agreements, family settlement agreements (to the extent that it impacts management and control of the listed entity), agreements/treaties/contracts with media companies) which are binding and not in normal course of business, revisions or amendments and terminations thereof.
6. Fraud/defaults by promoter or key managerial personnel or by listed entity or arrest of key managerial personnel or promoter.
7. Change in directors, KMP (MD, CEO, CFO, CS etc.), Auditor and Compliance Officer.
8. Appointment or discontinuation of share transfer agent.
9. Corporate debt restructuring.
10. One time settlement with a bank.
11. Reference to BIFR and winding-up petition filed by any party/creditors.
12. Issuance of Notices, call letters, resolutions and circulars sent to shareholders, debenture holders or creditors or any class of them or advertised in the media by the listed entity.

13. Proceedings of Annual and extraordinary general meetings of the listed entity.
  14. Amendments to memorandum and articles of association of listed entity, in brief.
  15. Schedule of Analyst or institutional investor meet and presentations on financial results made by the listed entity to analysts or institutional investors;
- B.**
1. Commencement or any postponement in the date of commencement of commercial production or commercial operations of any unit/division.
  2. Change in the general character or nature of business brought about by arrangements for strategic, technical, manufacturing, or marketing tie-up, adoption of new lines of business or closure of operations of any unit/division (entirety or piecemeal).
  3. Capacity addition or product launch.
  4. Awarding, bagging/receiving, amendment or termination of awarded/bagged orders/contracts not in the normal course of business.
  5. Agreements (*viz.* loan agreements (as a borrower) or any other agreements which are binding and not in normal course of business) and revisions or amendments or terminations thereof.
  6. Disruption of operations of any one or more units or division of the listed entity due to natural calamity (earthquake, flood, fire etc.), force majeure or events such as strikes, lockouts etc.
  7. Effect(s) arising out of change in the regulatory framework applicable to the listed entity
  8. Litigation(s)/dispute(s)/regulatory action(s) with impact.
  9. Fraud/defaults etc. by directors (other than key managerial personnel) or employees of listed entity.
  10. Options to purchase securities including any ESOP/ESPS Scheme.
  11. Giving of guarantees or indemnity or becoming a surety for any third party.
  12. Granting, withdrawal, surrender, cancellation or suspension of key licenses or regulatory approvals.
- C.** Any other information/event *viz.* major development that is likely to affect business, e.g. emergence of new technologies, expiry of patents, any change of accounting policy that may have a significant impact on the accounts, etc. and brief details thereof and any other information which is exclusively known to the listed entity which may be necessary to enable the holders of securities of the listed entity to appraise its position and to avoid the establishment of a false market in such securities.
- D.** Without prejudice to the generality of para (A), (B) and (C) above, the listed entity may make disclosures of event/information as specified by the Board from time to time.

**Question 16] State the compliance requirements under the SEBI (LODR) Regulations, 2015 relating to "holding of specified securities and shareholding pattern".**

**Ans.: Holding of specified securities and shareholding pattern [Regulation 31]:** The listed entity shall submit to the stock exchanges a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the SEBI from time to time within the following timelines -

- (a) One day prior to listing of its securities on the stock exchanges.
- (b) On a quarterly basis, within 21 days from the end of each quarter.
- (c) Within 10 days of any capital restructuring of the listed entity resulting in a change exceeding 2% of the total paid-up share capital.

In case of listed entities which have listed their specified securities on SME Exchange, the above statements shall be submitted on a half yearly basis within 21 days from the end of each half year.

The listed entity shall ensure that 100% of shareholding of promoters and promoter group is in dematerialized form and the same is maintained on a continuous basis in the manner as specified by the SEBI.

The listed entity shall comply with circulars or directions issued by the SEBI from time to time with respect to maintenance of shareholding in dematerialized form.

**Question 17] You are the Company Secretary of Swift IT Solutions Ltd., which is a newly listed company, and your managing director wants you to prepare a note on the requirements relating to publication of financial results. Briefly outline the various requirements of SEBI (LODR) Regulation, 2015. CS (Inter) - June 2006 (8 Marks)**

**You are Company Secretary of All Season Travels Ltd., which being listed on the stock exchange after an IPO is made by the company. Your Board of directors desires to understand about the compliance requirements relating to publication of financial results. Write a Board note on 'Regulation 33 of the SEBI (LODR) Regulation, 2015'. CS (Executive) - Dec 2011 (7 Marks)**

**Ans.: Financial Results [Regulation 33]:**

- (1) While preparing financial results, the listed entity shall comply with the following:
  - (a) Financial results shall be prepared on the basis of accrual accounting policy and shall be in accordance with uniform accounting practices adopted for all the periods.
  - (b) The quarterly and year to date results shall be prepared in accordance with the recognition and measurement principles laid down in AS-25 or IAS-31 (*Interim Financial Reporting*), specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or as specified by the ICAI, whichever is applicable.
  - (c) The standalone financial results and consolidated financial results shall be prepared as per Generally Accepted Accounting Principles in India.  
In addition to the above, the listed entity may also submit the financial results, as per the IFRS notified by the IASB.
  - (d) The listed entity shall ensure that the limited review or audit reports submitted to the stock exchanges on a quarterly or annual basis are to be given only by an auditor who has subjected himself to the peer review process of ICAI and holds a valid certificate issued by the Peer Review Board of the ICAI.
  - (e) The listed entity shall make the disclosures specified in Part A of Schedule IV.
- (2) The approval and authentication of the financial results shall be done by listed entity in the following manner:
  - (a) The quarterly financial results submitted shall be approved by the board of directors: Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.
  - (b) The financial results submitted to the stock exchange shall be signed by the chairperson or managing director, or a whole time director or in the absence of all of them; it shall be signed by any other director of the listed entity who is duly authorized by the board of directors to sign the financial results.
  - (c) The limited review report shall be placed before the board of directors, at its meeting which approves the financial results, before being submitted to the stock exchanges.
  - (d) The annual audited financial results shall be approved by the board of directors of the listed entity and shall be signed in the specified manner.
- (3) The listed entity shall submit the financial results in the following manner:
  - (a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within 45 days of end of each quarter, other than the last quarter.
  - (b) In case the listed entity has subsidiaries, the listed entity may also submit quarterly/year-to-date consolidated financial results subject to following:

- (i) The listed entity shall intimate to the stock exchange, whether or not listed entity opts to additionally submit quarterly/year-to-date consolidated financial results in the first quarter of the financial year and this option shall not be changed during the financial year. This option shall also be applicable to listed entity that is required to prepare consolidated financial results for the first time at the end of a financial year in respect of the quarter during the financial year in which the listed entity first acquires the subsidiary.
- (ii) In case the listed entity changes its option in any subsequent year, it shall furnish comparable figures for the previous year in accordance with the option exercised for the current financial year.
- (c) The quarterly and year-to-date financial results may be either audited or unaudited subject to the following:
- In case the listed entity opts to submit unaudited financial results, they shall be subject to limited review by the statutory auditors of the listed entity and shall be accompanied by the limited review report. In case of public sector undertakings this limited review may be undertaken by any practicing CA.
  - In case the listed entity opts to submit audited financial results, they shall be accompanied by the audit report.
- (d) The listed entity shall submit annual audited standalone financial results for the financial year, within 60 days from the end of the financial year along with the audit report and Statement on Impact of Audit Qualifications. If the 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. In case of audit reports with unmodified opinions, the listed entity shall furnish a declaration to that effect to the Stock Exchanges while publishing the annual audited financial results.
- (e) The listed entity shall also submit the audited financial results in respect of the last quarter along-with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures up to the third quarter of the current financial year.
- (f) The listed entity shall also submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities as at the end of the half-year.
- (4) The applicable formats of the financial results and Statement on Impact of Audit Qualifications for audit report with modified opinion shall be in the manner as specified by the SEBI.
- (5) For the purpose of this regulation, any reference to 'quarterly/quarter' in case of listed entity which has listed their specified securities on SME Exchange shall be respectively read as 'half yearly/half year' and the requirement of submitting 'year-to-date' financial results shall not be applicable for a listed entity which has listed their specified securities on SME Exchange.
- (6) The Statement on Impact of Audit Qualifications for audit report with modified opinion and the accompanying annual audit report shall be reviewed by the stock exchanges.

**Question 18] State the compliance requirements under the SEBI (LODR) Regulations, 2015 relating to "Annual Report".**

**Ans.: Annual Report [Regulation 34]:** The listed entity shall submit the annual report to the stock exchange within 21 working days of it being approved and adopted in AGM.

Annual report shall contain the following:

- (a) Audited financial statements *i.e.* balance sheets, profit and loss accounts and Statement on Impact of Audit Qualifications.



- (b) Consolidated financial statements audited by its statutory auditors.
- (c) Cash flow statement presented only under the indirect method as prescribed in AS-3 or IAS-7
- (d) Directors report.
- (e) Management discussion and analysis report - either as a part of directors report or addition thereto
- (f) For the top 500 listed entities based on market capitalization (calculated as on March 31 of every financial year), business responsibility report describing the initiatives taken by them from an environmental, social and governance perspective, in the format as specified by the SEBI from time to time. However, listed entities other than top 500 listed companies based on market capitalization and listed entities which have listed their specified securities on SME Exchange, may include these business responsibility reports on a voluntary basis in the format as specified.
- (g) The annual report shall contain other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V *i.e.* Corporate Governance Report.

**Question 19] Write a short note on: Management Discussion and Analysis Report**

Priya, a nominee director on the Board of Aroma Ltd., a listed company, informed the Board of directors during a Board meeting that the next annual report of the company shall contain a 'Management Discussion and Analysis Report'. You being the Company Secretary have been asked by the Board to prepare the said report. State the matters you would include in the report.

CS (Executive) - Dec 2016 (4 Marks)

**Ans.:** As part of the Annual Report a Management Discussion and Analysis report should form part of the Annual Report to the shareholders. This Management Discussion & Analysis should include discussion on the following matters within the limits set by the company's competitive position:

- ◆ Industry structure and developments
- ◆ Opportunities and threats
- ◆ Segment/product wise performance
- ◆ Outlook
- ◆ Risks and concerns
- ◆ Internal control systems and their adequacy
- ◆ Discussion on financial performance with respect to operational performance.
- ◆ Material developments in Human Resources/Industrial Relations front, including number of people employed.

**Question 20] You are working as Company Secretary in Reliance Ltd., a listed company. Your company's Managing Director wants to know what compliance has to be made in respect of following matters:**

- (a) Copies of annual report to shareholder
- (b) Information to be provided to shareholder for appointment of a new director.

**Ans.:** Documents & information to shareholders [Regulation 36]:

- (1) The listed entity shall send the annual report in the following manner to the shareholders:
  - (a) Soft copies of full annual report to all those shareholders who have registered their email addresses for the purpose
  - (b) Hard copy of statement containing the salient features of all the documents, as prescribed in Section 136 of Companies Act, 2013 or rules made thereunder to those shareholders who have not so registered.
  - (c) Hard copies of full annual reports to those shareholders, who request for the same.

- (2) The listed entity shall send annual report, to the holders of securities, not less than 21 days before AGM.
- (3) In case of the appointment of a new director or re-appointment of director the shareholders must be provided with the following information:
  - A brief resume of the director
  - Nature of his expertise in specific functional areas
  - Disclosure of relationships between directors *inter se*
  - Names of listed entities in which the person also holds the directorship and the membership of Committees of the board
  - Shareholding of non-executive directors.

**Question 21] Hi-Fi Ltd., a listed company desires to declare right issue and bonus issue on its equity share capital. As a Company Secretary advice what type of compliance has to be made by the company under SEBI (LODR) Regulations, 2015?**

**Ans.: Record date or date of closure of transfer books [Regulation 42]:**

- (1) The listed entity shall intimate the record date to all the stock exchanges where it is listed for the following purposes:
  - (a) Declaration of dividend.
  - (b) Issue of right or bonus shares.
  - (c) Issue of shares for conversion of debentures or any other convertible security.
  - (d) Shares arising out of rights attached to debentures or any other convertible security
  - (e) Corporate actions like mergers, de-mergers, splits and bonus shares, where stock derivatives are available on the stock of listed entity or where listed entity's stocks form part of an index on which derivatives are available.
  - (f) Such other purposes as may be specified by the stock exchanges.
- (2) The listed entity shall give notice in advance of at least 7 working days to stock exchanges of record date specifying the purpose of the record date.
- (3) The listed entity shall recommend or declare all dividend or cash bonuses at least 5 working days before the record date fixed for the purpose.
- (4) The listed entity shall ensure the time gap of at least 30 days between two record dates.
- (5) For securities held in physical form, the listed entity may, announce dates of closure of its transfer books in place of record date. However, there must be time gap of at least 30 days between two dates of closure of its transfer books.

**Question 22] Write a short note on: Dividend Distribution Policy**

**Ans.: Dividend Distribution Policy [Regulation 43A]:** The top 500 listed entities based on market capitalization shall formulate a dividend distribution policy which shall be disclosed in their annual reports and on their websites.

The dividend distribution policy shall include the following parameters:

- (a) Circumstances under which the shareholders of the listed entities may or may not expect dividend.
- (b) Financial parameters that shall be considered while declaring dividend.
- (c) Internal and external factors that shall be considered for declaration of dividend.
- (d) Policy as to how the retained earnings shall be utilized.
- (e) Parameters that shall be adopted with regard to various classes of shares.

The listed entities other than top 500 listed entities based on market capitalization may disclose their dividend distribution policies on a voluntary basis in their annual reports and on their websites.

**Question 23] XYZ Ltd. is listed on Bombay Stock Exchange and the board of directors of decides to change name to PQR Ltd. State compliance to be made by the company under SEBI (LODR) Regulations, 2015 for changing the name of company.**

**Can a listed company change its name as and when necessary? Give reasons in support of your answer.**  
CS (Executive) - Dec 2009 (4 Marks)

**Ans.: Change in name of the listed entity [Regulation 45]:** The listed entity shall be allowed to change its name subject to compliance with the following conditions:

- (a) A time period of at least one year has elapsed from the last name change.
- (b) At least 50% of the total revenue in the preceding one year period has been accounted for by the new activity suggested by the new name
- (c) The amount invested in the new activity/project is at least 50% of the assets of the listed entity. However, if any listed entity has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of 6 months from the change of activities in compliance of provisions as applicable to change of name prescribed under Companies Act, 2013.

On satisfaction of above conditions, the listed entity shall file an application for name availability with ROC.

On receipt of confirmation regarding name availability from ROC, before filing the request for change of name with the ROC, the listed entity shall seek approval from Stock Exchange by submitting a certificate from CA stating compliance with required conditions.

**Question 24] State the compliance requirements under the SEBI (LODR) Regulations, 2015 relating to "Website".**

**Ans.: Website [Regulation 46]:**

- (1) Listed entity shall maintain a functional website containing the basic information about the listed entity.
- (2) The listed entity shall disseminate the following information on its website:
  - (a) Details of its business.
  - (b) Terms and conditions of appointment of independent directors.
  - (c) Composition of various committees of board of directors.
  - (d) Code of conduct of board of directors and senior management personnel.
  - (e) Details of establishment of vigil mechanism/Whistle Blower Policy.
  - (f) Criteria of making payments to non-executive directors, if the same has not been disclosed in annual report.
  - (g) Policy on dealing with related party transactions.
  - (h) Policy for determining 'material subsidiaries'.
  - (i) Details of familiarization programmes imparted to independent directors including the following details -
    - (i) number of programmes attended by independent directors (during the year and on a cumulative basis till date),
    - (ii) number of hours spent by independent directors in such programmes (during the year and on cumulative basis till date), and
    - (iii) other relevant details

- (j) The email address for grievance redressal and other relevant details;
  - (k) Contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances.
  - (l) Financial information including:
    - (i) Notice of meeting of the board of directors where financial results shall be discussed.
    - (ii) Financial results, on conclusion of the meeting of the board of directors where the financial results were approved.
    - (iii) Complete copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report etc.
  - (m) Shareholding pattern.
  - (n) Details of agreements entered into with the media companies and/or their associates, etc.
  - (o) Schedule of analyst or institutional investor meet and presentations made by the listed entity to analysts or institutional investors simultaneously with submission to stock exchange.
  - (p) New name and the old name of the listed entity for a continuous period of one year, from the date of the last name change.
- (3) The listed entity shall ensure that the contents of the website are correct.
- (4) The listed entity shall update any change in the content of its website within 2 working days from the date of such change in content.

**Question 25] State the compliance requirements under the SEBI (LODR) Regulations, 2015 relating to "Website".**

**Ans.: Advertisements in Newspapers [Regulation 47]:**

- (1) The listed entity shall publish the following information in the newspaper.
  - (a) Notice of meeting of the board of directors where financial results shall be discussed.
  - (b) Financial results along-with the modified opinions or reservations, expressed by the auditor. If the listed entity has submitted both standalone and consolidated financial results, the listed entity shall publish consolidated financial results Turnover, Profit before tax and Profit after tax, on a stand-alone basis, as a foot note and a reference to the places, such as the website of listed entity and stock exchanges, where the standalone results of the listed entity are available.
  - (c) Statements of deviations or variations Regulation 32(1) on quarterly basis, after review by audit committee and its explanation in directors report in annual report
  - (d) Notices given to shareholders by advertisement.
- (2) The listed entity shall give a reference in the newspaper publication, to link of the website of listed entity and stock exchanges, where further details are available.
- (3) The listed entity shall publish the specified information in the newspaper simultaneously with the submission of the same to the stock exchanges. However, financial results at shall be published within 48 hours of conclusion of the meeting of board of directors at which the financial results were approved.
- (4) The information as per clause (1) shall be published in at least one English language national daily newspaper circulating in the whole or substantially the whole of India and in one daily newspaper published in the language of the region, where the registered office of is situated. However, the requirements of this regulation shall not be applicable in case of listed entities which have listed their specified securities on SME Exchange.

**CORPORATE GOVERNANCE REQUIREMENTS UNDER THE SEBI (LODR) REGULATIONS, 2015**

**Question 26] Explain the term: Corporate Governance** CS (Executive) - Dec 2009 (3 Marks)

**Corporate governance is looked upon as a distinctive brand and benchmark in the profile of corporate excellence. Comment.** CS (Executive) - June 2016 (4 Marks)

**Ans.:** Corporate Governance is a system of rules, practices and processes by which a company is directed and controlled. Corporate governance essentially involves balancing the interests of the many stakeholders in a company - these include its shareholders, management, customers, suppliers, financiers, government and the community.

Corporate Governance stipulates parameters of accountability, control and reporting functions of the board of directors. It is set of systems and procedures to ensure that the company is managed to suit best interest of all stakeholders.

In India, requirements of corporate governance have been specified by SEBI through SEBI (LODR) Regulations, 2015.

**Question 27] State the compliance requirement under the SEBI (LODR) Regulations, 2015 relating to "Board of Directors".**

**Nikhil Ltd., a listed company is confused about the composition of Board of directors, seeks your advice regarding the composition of Board of directors as per SEBI (LODR) Regulations, 2015. As a Company Secretary of Nikhil Ltd., offer your suggestions by highlighting provisions of applicable regulation.** CS (Executive) - Dec 2015 (6 Marks)

**Ans.:** Board of Directors [Regulation 17]:

- (1) Composition of board of directors of the listed entity shall be as follows:
  - (a) Board of directors shall have an optimum combination of executive and non-executive directors with at least 1 woman director.
  - (b) At least 50% directors shall be non-executive directors.
  - (c) Where the chairperson of the board of directors is a non-executive director, at least 1/3<sup>rd</sup> of the board of directors shall comprise of independent directors.
  - (d) Where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors.

However, where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.

- (2) Board of directors shall meet at least **4 times** a year, with a maximum time gap of one **120 days** between any two meetings.
- (3) Board of directors shall periodically review compliance reports pertaining to all laws applicable to the listed entity, prepared by the listed entity as well as steps taken by the listed entity to rectify instances of non-compliances.
- (4) Board of directors of the listed entity shall satisfy itself that plans are in place for orderly succession for appointment to the board of directors and senior management.
- (5) Board of directors shall lay down a code of conduct for all members of board of directors and senior management of the listed entity. The code of conduct shall suitably incorporate the duties of independent directors as laid down in the Companies Act, 2013.
- (6) The board of directors shall recommend all fees or compensation, if any, paid to non-executive directors, including independent directors and shall require approval of shareholders in general meeting.

The requirement of obtaining approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of sitting fees without approval of the Central Government.

The approval of shareholders shall specify the limits for the maximum number of stock options that may be granted to non-executive directors, in any financial year and in aggregate.

Independent directors shall not be entitled to any stock option.

- (7) The minimum information to be placed before the board of directors is specified in **Part A of Schedule II**.
- (8) Chief Executive Officer and Chief Financial Officer shall provide the compliance certificate to the board of directors as specified in **Part B of Schedule II**.
- (9) The listed entity shall lay down procedures to inform members of board of directors about risk assessment and minimization procedures. The board of directors shall be responsible for framing, implementing and monitoring the risk management plan for the listed entity.
- (10) The performance evaluation of independent directors shall be done by the entire board of directors. However, in the above evaluation the directors who are subject to evaluation shall not participate.

**Parts A & B of Schedule II:**

**PART A: Minimum information to be placed before board of directors**

- A. Annual operating plans and budgets and any updates.
- B. Capital budgets and any updates.
- C. Quarterly results for the listed entity and its operating divisions or business segments.
- D. Minutes of meetings of audit committee and other committees of the board of directors.
- E. The information on recruitment and remuneration of senior officers just below the level of board of directors, including appointment or removal of CFO and CS.
- F. Show cause, demand, prosecution notices and penalty notices, which are materially important.
- G. Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
- H. Any material default in financial obligations to and by the listed entity, or substantial non-payment for goods sold by the listed entity.
- I. Any issue, which involves possible public or product liability claims of substantial nature, including any judgment or order which, may have passed strictures on the conduct of the listed entity or taken an adverse view regarding another enterprise that may have negative implications on the listed entity.
- J. Details of any joint venture or collaboration agreement.
- K. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
- L. Significant labour problems and their proposed solutions. Any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of VRS etc.
- M. Sale of investments, subsidiaries, assets which are material in nature and not in normal course of business.
- N. Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
- O. Non-compliance of any regulatory, statutory or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer etc.

**PART B: Compliance Certificate**

The following compliance certificate shall be furnished by chief executive officer and chief financial officer:

- A. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:
  - (1) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;

- (2) these statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations.
- B. There are, to the best of their knowledge and belief, no transactions entered into by the listed entity during the year which are fraudulent, illegal or violative of the listed entity's code of conduct.
- C. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the listed entity pertaining to financial reporting and they have disclosed to the auditors and the audit committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.
- D. They have indicated to the auditors and the Audit committee
- (1) significant changes in internal control over financial reporting during the year;
  - (2) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and
  - (3) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the listed entity's internal control system over financial reporting.

**Question 28] Discuss briefly the composition, role and responsibilities of an audit committee under the listing regulations. CS (Executive) - Dec 2010 (7 Marks), June 2013 (9 Marks)**

**Ans.: Audit Committee [Regulation 18]:**

- (1) Every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference, subject to the following:
- (a) The audit committee shall have minimum **3 directors as members**.
  - (b) **2/3<sup>rd</sup>** of the members of audit committee shall be **independent directors**.
  - (c) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
- Explanation 1:* For the purpose of this regulation, 'financially literate' shall mean the ability to read and understand basic financial statements *i.e.* balance sheet, profit and loss account, and statement of cash flows.
- Explanation 2:* For the purpose of this regulation, a member shall be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.
- (d) The chairperson of the audit committee shall be an independent director and he shall be present at Annual general meeting to answer shareholder queries.
  - (e) The Company Secretary shall act as the secretary to the audit committee.
  - (f) The audit committee at its discretion shall invite the finance director or head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee. However, occasionally the audit committee may meet without the presence of any executives of the listed entity.
- (2) The listed entity shall conduct the meetings of the audit committee in the following manner:
- (a) The audit committee shall meet at least **4 times** in a year and not more than **120 days** shall elapse between two meetings.
  - (b) The quorum for audit committee meeting shall either be **2 members** or **1/3<sup>rd</sup> members, whichever is greater**, with at least **2 independent directors**.

- (c) The audit committee shall have powers to investigate any activity within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.
- (3) The role of the audit committee and the information to be reviewed by the audit committee shall be as specified in Part C of Schedule II.

**Question 29] State the compliance requirement under the SEBI (LODR) Regulations, 2015 relating to "Nomination & Remuneration Committee".**

**Ans.: Nomination and remuneration committee [Regulation 19]:**

- (1) Board of directors shall constitute the Nomination & Remuneration Committee as follows:
- The committee shall comprise of at least three directors.
  - All directors of the committee shall be non-executive directors.
  - At least 50% of the directors shall be independent directors.
- (2) The Chairperson of the Nomination & Remuneration Committee shall be an independent director. However, the chairperson of the listed entity, whether executive or non-executive, may be appointed as a member of the Nomination & Remuneration Committee and shall not chair such committee.
- (3) The Chairperson of the Nomination & Remuneration Committee may be present at the annual general meeting, to answer the shareholders' queries. However, it shall be up to the chairperson to decide who shall answer the queries.
- (4) The role of the Nomination & Remuneration Committee shall be as specified as in Part D of the Schedule II.

#### Part D of Schedule II

##### A. Role of nomination and remuneration committee:

- Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the board of directors a policy relating to, the remuneration of the directors, key managerial personnel and other employees.
- Formulation of criteria for evaluation of performance of independent directors and the board of directors.
- Devising a policy on diversity of board of directors.
- Identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal.
- Whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.

##### B. Stakeholders Relationship Committee

The Committee shall consider and resolve the grievances of the security holders of the listed entity including complaints related to transfer of shares, non-receipt of annual report and non-receipt of declared dividends.

**Question 30] State the compliance requirement under the SEBI (LODR) Regulations, 2015 relating to "Stakeholders Relationship Committee".**

**Ans.: Stakeholders Relationship Committee [Regulation 20]:**

- The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the mechanism of redressal of grievances of shareholders, debenture holders and other security holders.
- The chairperson of this committee shall be a non-executive director.
- The board of directors shall decide other members of this committee.



- (4) The role of the Stakeholders Relationship Committee shall be as specified as in **Part D** of the **Schedule II**.

**Question 31] State the compliance requirement under the SEBI (LODR) Regulations, 2015 relating to "Risk Management Committee".**

**Ans.: Risk Management Committee [Regulation 21]:**

- (1) The board of directors shall constitute a Risk Management Committee.
- (2) The majority of members of Risk Management Committee shall consist of members of the board of directors.
- (3) The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.
- (4) The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.
- (5) This provision shall be applicable to top 100 listed entities, determined on the basis of market capitalization, as at the end of the immediate previous financial year.

**Question 32] State the contents of Corporate Governance Report.**

**Ans.: As per Schedule V of the SEBI (LODR) Regulations, 2015 following disclosures shall be made in the section on the Corporate Governance of the Annual Report.**

- (1) A brief statement on listed entity's philosophy on code of governance.
- (2) **Board of directors:**
  - (a) Composition and category of directors (e.g. promoter, executive, non-executive, independent non-executive, nominee director - institution represented and whether as lender or as equity investor).
  - (b) Attendance of each director at the meeting of the board of directors and the last AGM.
  - (c) Number of other board of directors or committees in which a director is a member or chairperson.
  - (d) Number of meetings of the board of directors held and dates on which held.
  - (e) Disclosure of relationships between directors *inter se*.
  - (f) Number of shares and convertible instruments held by non-executive directors.
  - (g) Web link details of familiarization programmes imparted to independent directors.
- (3) **Audit committee:**
  - (a) Brief description of terms of reference.
  - (b) Composition, name of members and chairperson.
  - (c) Meetings and attendance during the year.
- (4) **Nomination and Remuneration Committee:**
  - (a) Brief description of terms of reference
  - (b) Composition, name of members and chairperson
  - (c) Meeting and attendance during the year
  - (d) Performance evaluation criteria for independent directors.
- (5) **Remuneration of Directors:**
  - (a) All pecuniary relationship or transactions of the non-executive director's *vis-à-vis* the listed entity shall be disclosed in the annual report.

- (b) Criteria of making payments to non-executive directors. Alternatively, this may be disseminated on the listed entity's website and reference drawn thereto in the annual report.
- (c) Disclosures with respect to remuneration. In addition to disclosures required under the Companies Act, 2013, the following disclosures shall be made:
  - (i) All elements of remuneration package of individual directors summarized under major groups, such as salary, benefits, bonuses, stock options, pension etc.
  - (ii) Details of fixed component and performance linked incentives, along with the performance criteria.
  - (iii) Service contracts, notice period, severance fees.
  - (iv) Stock option details, if any and whether issued at a discount as well as the period over which accrued and over which exercisable.

**(6) Stakeholders grievance committee:**

- (a) Name of non-executive director heading the committee.
- (b) Name and designation of compliance officer
- (c) Number of shareholders complaints received so far.
- (d) Number not solved to the satisfaction of shareholders.
- (e) Number of pending complaints.

**(7) General body meetings:**

- (a) Location and time, where last three AGMs held.
- (b) Whether any special resolutions passed in the previous three annual general meetings.
- (c) Whether any special resolution passed last year through postal ballot - details of voting pattern.
- (d) Person who conducted the postal ballot exercise.
- (e) Whether any special resolution is proposed to be conducted through postal ballot.
- (f) Procedure for postal ballot.

**(8) Means of communication:**

- (a) Quarterly results
- (b) Newspapers wherein results normally published
- (c) Any website, where displayed
- (d) Whether it also displays official news releases
- (e) Presentations made to institutional investors or to the analysts.

**(9) General shareholder information:**

- (a) AGM - date, time and venue.
- (b) Financial year.
- (c) Dividend payment date.
- (d) Name and address of each stock exchange at which the listed entity's securities are listed and a confirmation about payment of annual listing fee to each of such stock exchange.
- (e) Stock code.
- (f) Market price data - high, low during each month in last financial year.
- (g) Performance in comparison to broad-based indices such as BSE SENSEX, CRISIL Index etc.
- (h) In case the securities are suspended from trading, the director's report shall explain the reason thereof.

- (i) Registrar to an issue and share transfer agents.
- (j) Share transfer system.
- (k) Distribution of shareholding
- (l) Dematerialization of shares and liquidity.
- (m) Outstanding GDRs or ADRs or warrants or any convertible instruments, conversion date and likely impact on equity.
- (n) Commodity price risk or foreign exchange risk and hedging activities.
- (o) Plant locations.
- (p) Address for correspondence.

**(10) Other Disclosures:**

- (a) Disclosures on materially significant related party transactions that may have potential conflict with the interests of listed entity at large.
- (b) Details of non-compliance by the listed entity, penalties and restrictions imposed on the listed entity by stock exchange or the board or any statutory authority, on any matter related to capital markets, during the last 3 years.
- (c) Details of establishment of vigil mechanism whistle blower policy, and affirmation that no personnel have been denied access to the audit committee.
- (d) Details of compliance with mandatory requirements and adoption of the non-mandatory requirements.
- (e) Web link where policy for determining material subsidiaries is disclosed.
- (f) Web link where policy on dealing with related party transactions.
- (g) Disclosure of commodity price risks and commodity hedging activities.
- (11) Non-compliance of any requirement of corporate governance report, with reasons thereof shall be disclosed.

**Question 33] State the compliance requirement under the SEBI (LODR) Regulations, 2015 relating to "corporate governance with respect to subsidiary of listed entity".**

**Ans.: Corporate governance with respect to subsidiary of listed entity [Regulation 24]:**

- (1) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, incorporated in India.
- (2) The audit committee of the listed entity shall also review the financial statements, in particular, the investments made by the unlisted subsidiary.
- (3) The minutes of the meetings of the board of directors of the unlisted subsidiary shall be placed at the meeting of the board of directors of the listed entity.
- (4) The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.

*Explanation:* 'Significant transaction or arrangement' shall mean any individual transaction or arrangement that exceeds or is likely to exceed 10% of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted material subsidiary for the immediately preceding accounting year.

- (5) A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than 50% or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting

except in cases where such divestment is made under scheme of arrangement duly approved by a Court/Tribunal.

- (6) Selling, disposing and leasing of assets amounting to more than twenty per cent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal.
- (7) Where a listed entity has a listed subsidiary, which is itself a holding company, the provisions of this regulation shall apply to the listed subsidiary in so far as its subsidiaries are concerned.

**Question 34] State the compliance requirement under the SEBI (LODR) Regulations, 2015 relating to "obligations with respect to independent directors".**

**Ans.: Obligations with respect to independent directors [Regulation 25]:**

- (1) A person shall not serve as an independent director in more than **7 listed entities**. However, any person who is serving as a whole time director in any listed entity shall serve as an independent director in not more than **3 listed entities**.
- (2) The maximum tenure of independent directors shall be in accordance with the Companies Act, 2013.
- (3) The independent directors of the listed entity shall hold at least 1 meeting in a year, without the presence of non-independent directors and members of the management. All the independent directors shall strive to be present at such meeting.
- (4) The independent directors in their meeting shall, *inter alia* -
  - (a) Review the performance of non-independent directors and the board of directors as a whole.
  - (b) Review the performance of the chairperson of the listed entity, taking into account the views of executive directors and non-executive directors.
  - (c) Assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors that is necessary for the board of directors to effectively and reasonably perform their duties.
- (5) An independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his knowledge, attributable through processes of board of directors, and with his consent or connivance or where he had not acted diligently with respect to the provisions contained in these regulations.
- (6) An independent director who resigns or is removed from the board of directors of the listed entity shall be replaced by a new independent director by listed entity at the earliest but not later than the immediate next meeting of the board of directors or 3 months from the date of such vacancy, whichever is later. However, where the listed entity fulfils the requirement of independent directors in its board of directors without filling the vacancy created by such resignation or removal, the requirement of replacement by a new independent director shall not apply.
- (7) The listed entity shall familiarize the independent directors through various programmes about the listed entity, including the following:
  - (a) Nature of the industry in which the listed entity operates.
  - (b) Business model of the listed entity.
  - (c) Roles, rights, responsibilities of independent directors.
  - (d) Any other relevant information.

**Question 35] State the compliance requirement under the SEBI (LODR) Regulations, 2015 relating to "Obligations with respect to employees including senior management, KMP, directors and promoters".**

**Ans.: Obligations with respect to employees including senior management, KMP, directors and promoters [Regulation 26]:**

- (1) A director shall not be a member in more than ten committees or act as chairperson of more than five committees across all listed entities in which he is a director which shall be determined as follows:
  - (a) Limit of the committees on which a director may serve in all public limited companies, whether listed or not, shall be included and all other companies including private limited companies, foreign companies and Section 8 companies shall be excluded.
  - (b) For the purpose of determination of limit, chairpersonship and membership of the audit committee and the Stakeholders Relationship Committee alone shall be considered.
- (2) Every director shall inform the listed entity about the committee positions he or she occupies in other listed entities and notify changes as and when they take place.
- (3) All members of the board of directors and senior management personnel shall affirm compliance with the code of conduct of board of directors and senior management on an annual basis.
- (4) Non-executive directors shall disclose their shareholding, held either by them or on a beneficial basis for any other persons in the listed entity in which they are proposed to be appointed as directors, in the notice to the general meeting called for appointment of such director.
- (5) Senior management shall make disclosures to the board of directors relating to all material, financial and commercial transactions, where they have personal interest that may have a potential conflict with the interest of the listed entity at large.
- (6) No employee including KMP or director or promoter of a listed entity shall enter into any agreement for himself or on behalf of any other person, with any shareholder or any other third party with regard to compensation or profit sharing in connection with dealings in the securities of such listed entity, unless prior approval for the same has been obtained from the Board of Directors as well as public shareholders by way of an ordinary resolution. Such agreement, if any, whether subsisting or expired, shall be disclosed to the stock exchanges for public dissemination.

If the Board of Directors approves such agreement, the same shall be placed before the public shareholders for approval by way of an ordinary resolution in the forthcoming general meeting. All interested persons involved in the transaction covered under the agreement shall abstain from voting in the general meeting.

**Other corporate governance requirements [Regulation 27]:**

- (1) The listed entity may, at its discretion, comply with requirements as specified in **Part E of Schedule II**.
- (2) The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by the SEBI from time to time to the recognized stock exchanges within 15 days from close of the quarter. Details of all material transactions with related parties shall be disclosed along with report on corporate governance.
- (3) Report on corporate governance shall be signed either by the compliance officer or the CEO of the listed entity.

<b>Part E of Schedule III</b>	
<b>Discretionary Requirements</b>	
<b>A. The Board:</b>	Non-executive chairperson may be entitled to maintain a chairperson's office at the listed entity's expense and also allowed reimbursement of expenses incurred in performance of his duties.
<b>B. Shareholder Rights:</b>	A half-yearly declaration of financial performance including summary of the significant events in last six-months, may be sent to each household of shareholders.
<b>C. Modified opinion in audit report:</b>	The listed entity may move towards a regime of financial statements with unmodified audit opinion.

- D. Separate posts of chairperson and CEO:** The listed entity may appoint separate persons to the post of chairperson and managing director or CEO.
- E. Reporting of internal auditor:** The internal auditor may report directly to the audit committee.

**Question 36] Write a short note on: Corporate Governance Compliance Certificate**

CS (Executive) - June 2015 (4 Marks)

**Ans.:** As per SEBI guidelines, the company shall obtain a certificate from either the Statutory Auditors or Practicing Company Secretary regarding compliance of conditions of corporate governance.

Compliance Certificate is required to be annexed with the Directors' Report, which is sent annually to all the shareholders of the company.

The Compliance Certificate shall also be sent to the Stock Exchanges along with the Annual Report filed by the company.

## DELISTING

**Question 37] Distinguish between: Compulsory Delisting & Voluntary Delisting**

**Write a short note on: Compulsory Delisting**

CS (Executive) - Dec 2011 (4 Marks)

**Write a short note on: Delisting of securities**

CS (Executive) - Dec 2011 (4 Marks)

**Write a short note on: Voluntary Delisting**

CS (Executive) - June 2013 (4 Marks)

**Ans.:** **Compulsory Delisting:** Compulsory delisting refers to permanent removal of securities of a listed company from a stock exchange as a penalizing measure for -

- Not complying with the requirements of Listing agreement
- Not complying with the requirements of provisions of the SEBI Act, 1992, SCR Act, 1956, Companies Act, 2013.

Power to compulsory delist the shares of any company can be exercised by the recognised stock exchange u/s 21A of the SCR Act, 1956.

**Voluntary Delisting:** In voluntary delisting, a listed company decides on its own to permanently remove its securities from a stock exchange by complying provisions of the SEBI (Delisting of Equity Shares) Regulations, 2009.

**Question 38] The shares of Runfast Ltd. were listed in Delhi Stock Exchange. The stock exchange delisted the shares of the company. The aggrieved company approaches you as a Company Secretary in Practice to know the remedy available to the company. Give your suggestions to the company keeping in view the provisions of the Securities Contracts (Regulation) Act, 1956.**

CS (Executive) - Dec 2014 (10 Marks)

**Ans.:** **Delisting of securities [Section 21A]:** A recognised stock exchange may delist the securities of company on any of the ground or grounds prescribed under the SCR Act, 1956.

Recognised stock exchange shall record reasons for delisting and shall give a reasonable opportunity of being heard to the company.

**Appeal:** A listed company or an aggrieved investor may file an appeal before the SAT within 15 days from the date of delisting of securities. However, on sufficient cause being shown SAT may extend period further by 1 month.

The provisions of sections 22B to 22E shall apply to such appeal.

**DELISTING**

**Question 39] Distinguish between: Compulsory Delisting & Voluntary Delisting**

**Write a short note on: Compulsory Delisting**

CS (Executive) - Dec 2011 (4 Marks)

**Write a short note on: Delisting of securities**

CS (Executive) - Dec 2011 (4 Marks)

**Write a short note on: Voluntary Delisting**

CS (Executive) - June 2013 (4 Marks)

**Ans.: Compulsory Delisting:** Compulsory delisting refers to permanent removal of securities of a listed company from a stock exchange as a penalizing measure for -

- Not complying with the requirements of Listing agreement
- Not complying with the requirements of provisions of the SEBI Act, 1992, SCR Act, 1956, Companies Act, 2013.

Power to compulsory delist the shares of any company can be exercised by the recognised stock exchange u/s 21A of the SCR Act, 1956.

**Voluntary Delisting:** In voluntary delisting, a listed company decides on its own to permanently remove its securities from a stock exchange by complying provisions of the SEBI (Delisting of Equity Shares) Regulations, 2009.

**Question 40] The shares of Runfast Ltd. were listed in Delhi Stock Exchange. The stock exchange delisted the shares of the company. The aggrieved company approaches you as a Company Secretary in Practice to know the remedy available to the company. Give your suggestions to the company keeping in view the provisions of the Securities Contracts (Regulation) Act, 1956.**

CS (Executive) - Dec 2014 (10 Marks)

**Ans.: Delisting of securities [Section 21A]:** A recognised stock exchange may delist the securities of company on any of the ground or grounds prescribed under the SCR Act, 1956.

Recognised stock exchange shall record reasons for delisting and shall give a reasonable opportunity of being heard to the company.

**Appeal:** A listed company or an aggrieved investor may file an appeal before the SAT within 15 days from the date of delisting of securities. However, on sufficient cause being shown SAT may extend period further by 1 month.

The provisions of sections 22B to 22E shall apply to such appeal.

**THE SEBI (DELISTING OF EQUITY SHARES) REGULATIONS, 2009**

**Question 41] Define 'Public Shareholders' as per the SEBI (Delisting of Equity Shares) Regulations, 2009.**

**Ans.: Public Shareholders [Regulation 1(v)]:** Public shareholders mean the holders of equity shares, other than the following:

- (a) Promoters
- (b) Holders of depository receipts issued overseas against equity shares held with a custodian and such custodian.

**Question 42] State the applicability of the SEBI (Delisting of Equity Shares) Regulations, 2009**

**Ans.: Applicability [Regulation 3(1)]:** The SEBI (Delisting of Equity Shares) Regulations, 2009 shall apply to delisting of equity shares of a company from all or any of the recognised stock exchanges where such shares are listed.

**Non-Applicability [Regulation 3(2)]:** The SEBI (Delisting of Equity Shares) Regulations, 2009 shall not apply to any delisting made pursuant to a scheme sanctioned by the Board for Industrial and Financial

Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions) Act, 1985 or by the National Company Law Tribunal (NCLT) u/s 262 of the Companies Act, 2013, if such scheme -

- (a) Lays down any specific procedure to complete the delisting; or
- (b) Provides an exit option to the existing public shareholders at a specified rate.

**Question 43] List the equity shares that cannot be delisted from the recognized stock exchange under the SEBI (Delisting of Equity Shares) Regulations, 2009.**

**Delisting not permissible in certain circumstances. Comment.**

CS (Executive) - June 2015 (4 Marks)

**Ans.: Delisting not permissible in certain circumstances [Regulation 4]:** Following categories of equity shares cannot be delisted from the recognized stock exchange:

- (a) Equity shares brought back pursuant buy back scheme.
- (b) Equity shares issued under preferential allotment.
- (c) Class of equity shares which has not completed 3 years of listing.
- (d) Securities convertible in to equity shares until they are converted.

**Question 44] Whether it is permissible for the company to delist its equity shares from all the stock exchange where they are listed?**

**Ans.: Delisting from all recognized stock exchanges [Regulation 5]:** A company may delist its equity shares from all the recognized stock exchanges where they are listed or from the only recognized stock exchange where they are listed.

However, all public shareholders holding equity shares are given an exit opportunity in accordance with Chapter IV of the Regulation.

**Question 45] "A company cannot get itself delisted without giving sufficient opportunity to shareholders to exit." Comment.**

CS (Executive) - June 2014 (5 Marks)

**Ans.: Delisting from only some of the recognized stock exchanges [Regulation 6]:** If a company has listed its equity shares on more than one stock exchange, it may continue listing of its equity shares on particular exchange and delist its equity shares from some or all other stock exchange. Following conditions are required to be fulfilled in this regard:

- (a) If the company decides to continue its listing on stock exchange having nationwide trading terminals, no exit opportunity needs to be given to the public shareholders.
- (b) If the company decides to continue its listing on stock exchange not having nationwide trading terminals, exit opportunity needs to be given to the public shareholders.

'Recognized stock exchange having nationwide trading terminals' means BSE, NSE or other stock exchange specified by the SEBI in this regard.

**Question 46] Discuss the eligibility criteria for voluntary de-listing of shares.**

CS (Inter) - Dec 2005 (5 Marks), June 2006 (5 Marks)

CS (Inter) - Dec 2009 (5 Marks)

**Ans.: Case I: Procedure for delisting where no exit opportunity is required [Regulation 7]:**

- (1) Any company desirous of delisting its equity shares under Regulation 6(b) has to comply with following conditions and procedure -
  - (a) The proposed delisting shall be approved by board of directors board meeting.



- (b) The company shall give a public notice of the proposed delisting in at one English national daily with wide circulation, one Hindi national daily with wide circulation and one regional language newspaper where the concerned stock exchanges are located.
  - (c) The company shall make an application to the concerned stock exchange for delisting its equity shares.
  - (d) The fact of delisting shall be disclosed in the first Annual Report of the company prepared after the delisting.
- (2) The public notice shall mention the names of the recognised stock exchanges from which the equity shares of the company are intended to be delisted, the reasons for such delisting and the fact of continuation of listing of equity shares on recognised stock exchange having nationwide trading terminals.
- (3) An application for delisting shall be disposed by the stock exchange within a period not exceeding 30 working days from the date of receipt of application.

**Case II: Conditions and procedure for delisting where exit opportunity is required [Regulation 8]:**

- (1) Any company desirous of delisting its equity shares under Regulation 6(b) has to comply with following conditions and procedure -
- (a) The company should obtain prior approval of the board of directors in board meeting.
  - (b) The company should also obtain prior approval of shareholders by special resolution passed through postal ballot. Notice should disclose of all material facts in the explanatory statement. However, the special resolution shall be acted upon *if and only if* the votes cast by public shareholders in favour of the proposal are two times the number of votes cast against it.
  - (c) The company should make an application to the concerned recognised stock exchange for in-principle approval of the proposed delisting in specified form.
  - (d) Application to stock exchange should be made within one year of passing the special resolution.
- (2) An application seeking in-principle approval for delisting shall be accompanied by an audit report as per Regulation 55A of the SEBI (Depositories & Participants) Regulations, 1996 covering a period of 6 months prior to the date of the application.
- (3) An application shall be disposed of by the recognised stock exchange within a 30 working days from the date of receipt of application.
- (4) The recognised stock exchange shall not unfairly withhold application. It may require the company to satisfy it as to -
- (a) Compliance with Regulation 8(1)(b).
  - (b) The resolution of investor grievances by the company.
  - (c) Payment of listing fees to that recognised stock exchange.
  - (d) The compliance with condition of the listing agreement.
  - (e) Any litigation or action pending pertaining to its activities in the securities market or any other matter having a material bearing on the interests of its equity shareholders.
  - (f) Any other relevant matter as the recognised stock exchange may deem fit to.
- (5) A final application for delisting shall be accompanied with proof of having given the exit opportunity.

**Question 47] Write a short note on: Compulsory Delisting**

CS (Executive) - Dec 2011 (4 Marks), June 2012 (5 Marks)

**Ans.: Compulsory delisting by a stock exchange [Regulation 22]:**

- (1) A recognised stock exchange may by passing order delist any equity shares of a company on u/s 21A of the SCR Act, 1956. However, a reasonable opportunity of being heard should be given to the company before passing such order.
- (2) The decision regarding compulsory delisting shall be taken by a panel to be constituted by the recognised stock exchange consisting of -
  - (a) Two directors of the recognised stock exchange (one of whom shall be a public representative)
  - (b) One representative of the investors
  - (c) One representative of the MCA or ROC
  - (d) Executive Director or Secretary of the recognised stock exchange.
- (3) The recognised stock exchange shall give a notice of the proposed delisting in one English national daily and one regional language newspaper. Such notice must state time of not less than 15 working days for making representations by any person who may be aggrieved by the proposed delisting. Such notice shall also be displayed on trading systems and website of stock exchange.
- (4) The recognised stock exchange shall while passing any order, consider the representations, made by the company and any representations received in response to the notice given news papers and shall comply with the criteria specified in Schedule III of the Regulation.
- (5) Where the recognised stock exchange passes an order, it shall -
  - (a) forthwith publish notice of such delisting in newspaper, disclosing the name and address of the company, the fair value of the delisted equity shares and the names and addresses of promoters of the company and
  - (b) inform about such delisting and the surrounding circumstances to all other stock exchanges where the equity shares are listed.

**Consequences of compulsory delisting [Regulation 24]:** Where a company has been compulsorily delisted, the company, its whole time directors, its promoters and the companies which are promoted by any of them shall not directly or indirectly access the securities market or seek listing for any equity shares for a period of **10 years** from the date of such delisting.

**Question 48] What are the rights of security holders in case of compulsory delisting of securities?**  
CS (Executive) - Dec 2009 (5 Marks)

**Ans.: Rights of public shareholders in case of a compulsory delisting [Regulation 23]:**

- (1) In case of compulsory delisting, the recognised stock exchange shall appoint an independent valuer who shall determine the fair value of the delisted equity shares.
- (2) The recognised stock exchange shall form a panel of expert valuers from whom the valuer shall be appointed.
- (3) The promoter of the company shall acquire delisted equity shares from the public shareholders by paying them the value determined by the valuer, subject to their option of retaining their shares.

**Question 49] State the special provisions for delisting of small companies.**

**Ans.: Special provisions in case of small companies [Regulation 27]:**

- (1) Equity shares of a company may be delisted from all the recognized stock exchanges where they are listed if -
  - (a) The company has **paid-up capital** not exceeding ₹ **10 Crore** and **net worth** not exceeding ₹ **25 Crore** as on the last date of preceding financial year
  - (b) The number of equity shares traded on such recognized stock exchange during the 12 calendar months immediately preceding the date of board meeting in which resolution of delisting is passed is less than 10% of the total number of shares. However, if the share capital of a particular

class of shares of the company is not identical throughout such period, the weighted average of the shares of such class shall represent the total number of shares of such class of shares of the company.

- (c) The company has not been suspended by any of the recognized stock exchange having nationwide trading terminals for any non-compliance in the preceding 1 year.
- (2) A delisting of equity shares may be made only if, in addition to fulfilment of the requirements of Regulation 8, the following conditions are fulfilled -
- (a) The promoter appoints a merchant banker and decides an exit price.
- (b) The exit price offered to the public shareholders shall not be less than the floor price determined Regulation 15(2).
- (c) 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.
- (d) At least 90% 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.
- (e) The promoter completes the process of inviting the positive consent and finalization of the proposal for delisting of equity shares within 75 working days of the first communication.
- (f) The promoter makes payment of consideration in cash within 15 working days from the date of expiry of 75 working days.
- (3) The communication made to the public shareholders shall contain justification for the offer price with particular reference to the applicable parameters and specifically mention that consent for the proposal would include consent for dispensing with the exit price discovery through book building method.

The concerned recognized stock exchange may delist such equity shares upon satisfying itself of compliance with this regulation.

## OBJECTIVE QUESTIONS

### Question A] Expand the following abbreviations:

- |          |          |           |            |
|----------|----------|-----------|------------|
| (1) AGM  | (5) MCA  | (9) RTA   | (13) LODR  |
| (2) EGM  | (6) IFRS | (10) ICDR | (14) ITP   |
| (3) ICAI | (7) IASB | (11) KMP  | (15) NDS   |
| (4) RPD  | (8) PRB  | (12) BIFR | (16) NCRPS |

### Question B] Re-write the following sentences after filling-up the blank spaces with appropriate word(s)/figure(s):

- (1) A company with a paid-up capital above \_\_\_\_\_ should list its securities or have its securities permitted for trading, on at least one stock exchange having \_\_\_\_\_
- (2) A listed entity shall preserve documents for period of not less than \_\_\_\_\_ after completion of the relevant transactions.
- (3) Prior intimation for proposal for buyback of securities shall be given at least \_\_\_\_\_
- (4) The listed entity shall ensure that \_\_\_\_\_ of shareholding of promoters and promoter group is in dematerialized form and the same is maintained on a continuous basis in the manner as specified by the SEBI.
- (5) In annual report cash flow statement shall be presented only under the \_\_\_\_\_ method as prescribed in \_\_\_\_\_

- (6) The listed entity shall send annual report, to the holders of securities, not less than \_\_\_\_\_ before AGM.
- (7) The listed entity shall give notice in advance of at least \_\_\_\_\_ to stock exchanges of record date specifying the purpose of the record date.
- (8) A person shall not serve as an independent director in more than \_\_\_\_\_. However, any person who is serving as a whole time director in any listed entity shall serve as an independent director in not more than \_\_\_\_\_.
- (9) Where a company has been compulsorily delisted, the company, its whole time directors, its promoters and the companies which are promoted by any of them shall not directly or indirectly access the securities market or seek listing for any equity shares for a period of \_\_\_\_\_ from the date of such delisting.

### Answer to Question B:

- (1) ₹ 5 Crores; Nationwide Trading Terminals. (2) 8 years (3) 2 working days in advance (4) 100% (5) indirect; AS-3 or IAS-7 (6) 21 days (7) 7 working days (8) 7 listed entities; 3 listed entities (9) 10 years

### Question C] Select the correct option.

1. If the shares or securities are to be listed for the first time by a company on a stock exchange is called -
- (a) Open listing  
(b) Initial listing  
(c) Both (a) and (b)  
(d) Neither (a) nor (b)
2. A company with a paid-up capital above \_\_\_\_\_ should list its securities or have its securities permitted for trading, on at least one stock exchange having Nationwide Trading Terminals.
- (a) ₹ 5 Crores  
(b) ₹ 10 Crores  
(c) ₹ 3 Crores  
(d) ₹ 2 Crores
3. Under which regulation of SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 a listed entity shall appoint a qualified Company Secretary as the Compliance Officer?
- (a) Regulation 6  
(b) Regulation 5  
(c) Regulation 7  
(d) Regulation 4
4. The listed entity shall submit the annual report to the stock exchange within \_\_\_\_ of it being approved and adopted in AGM.
- (a) 2 working days  
(b) 12 hours  
(c) 21 working days  
(d) 15 minutes
5. Board of directors shall meet at least \_\_\_\_\_ a year, with a maximum time gap of one \_\_\_\_\_ between any two meetings.
- (a) 3 times; 120 days  
(b) 5 times; 90 days  
(c) 4 times; 3 months  
(d) 4 times; 120 days
6. The audit committee shall have minimum \_\_\_\_\_ as members and \_\_\_\_\_ of the members of audit committee shall be independent directors.
- (a) 3 directors; 2/3<sup>rd</sup>  
(b) 2 directors; 1/3<sup>rd</sup>  
(c) 3 directors; 1/3<sup>rd</sup>  
(d) 2 directors; 2/3<sup>rd</sup>
7. As per SEBI (LODR) Regulations, 2015, the quorum for audit committee meeting shall -
- (a) either be 3 members or 2/3<sup>rd</sup> members, whichever is greater, with at least 3 independent directors.  
(b) either be 2 members or 2/3<sup>rd</sup> members, whichever is greater, with at least 2 independent directors.  
(c) either be 2 members or 1/3<sup>rd</sup> members, whichever is greater, with at least 2 independent directors.

- (d) either be 5 members or 1/3rd members, whichever is greater, with at least 2 independent directors.
8. As per \_\_\_\_\_ of the SEBI (LODR) Regulations, 2015 following disclosures shall be made in the section on the Corporate Governance of the Annual Report.
- (a) Schedule V  
(b) Schedule III  
(c) Schedule VI  
(d) Schedule IV
9. As per Regulation 25 of the SEBI (LODR) Regulations, 2015, a person shall not serve as an independent director in more than \_\_\_\_\_. However, any person who is serving as a whole time director in any listed entity shall serve as an independent director in not more than \_\_\_\_\_
- (a) 7 companies; 3 companies  
(b) 7 listed entities; 3 listed entities  
(c) 10 listed entities; 5 listed entities  
(d) 10 companies; 3 companies
10. \_\_\_\_\_ may file an appeal before the SAT within 15 days from the date of delisting of securities.
- (a) A listed company  
(b) an aggrieved investor  
(c) A listed company or an aggrieved investor or SEBI  
(d) A listed company or an aggrieved investor
11. Which of the following person(s) is/are treated as 'Public Shareholder' under the SEBI (Delisting of Equity Shares) Regulations, 2009?
- (1) Promoters  
(2) Holders of convertible bonds  
(3) Holders of depository receipts
- (a) (1) & (2)  
(b) (2) & (3)  
(c) (1) & (3)  
(d) (1), (2) & (3)
12. Which of the following categories of shares cannot be delisted from the recognized stock exchange under Regulation 4 of the SEBI (Delisting of Equity Shares) Regulations, 2009?
- (I) Equity shares brought back pursuant to buy back scheme  
(II) Equity shares held by Central or State Government  
(III) Class of equity shares which has completed 3 years of listing.  
(IV) Non-convertible securities
- (a) (I) & (II)  
(b) (II) & (III)  
(c) (I), (II) & (III)  
(d) (I) only

### Answer to Question A:

Abbreviation	Long Form
AGM	Annual General Meeting
EGM	Extra-ordinary Meeting
ICAI	Institute of Chartered Accountant of India
RPD	Related Party Disclosures
MCA	Ministry of Corporate Affairs
IFRS	International Financial Reporting Standards
IASB	International Accounting Standards Board
PRB	Peer Review Board
RTA	Registrars & Share Transfer Agent
ICDR	Issue of Capital & Disclosure Requirements
KMP	Key Managerial Personnel
BIFR	Board for Industrial and Financial Reconstruction
SICA	Sick Industrial Companies Act
LODR	Listing Obligations & Disclosure Requirements

Abbreviation	Long Form
ITP	Institutional Trading Platform
NDS	Non-convertible Debt Securities
NCRPS	Non-Convertible Redeemable Preference Shares

**Answer to Question C:**

1. (b)      3. (a)      5. (d)      7. (c)      9. (b)      11. (c)  
2. (a)      4. (c)      6. (a)      8. (a)      10. (d)      12. (d)

# 21

## CHAPTER

# ISSUE OF SECURITIES

**Question 1] Briefly explain the various methods of raising funds by a company from primary market.**

**CS (Executive) – June 2012 (15 Marks), Dec 2013 (4 Marks)**

**What do you understand by Qualified Institutions Placement (QIP)?**

**CS (Executive) – June 2013 (5 Marks)**

**Ans.:** Public Issue of shares means the selling or marketing of shares for subscription by the public by issue of prospectus. For raising capital from the public by the issue of shares, a public company has to comply with the provisions of the Companies Act, 2013, the SCR Act, 1956 including the Rules & Regulations made thereunder and the guidelines and instructions issued by the concerned Government Authorities, Stock Exchanges and SEBI etc.

A company can raise funds from the primary market through different methods as given below:

- (1) **Public Issue :** When company issues securities to new investors for becoming part of shareholders family of the issuer it is called a public issue. Public issue can be further classified into following two categories:
  - (a) **Initial Public Offer (IPO) :** When an unlisted company makes either a fresh issue of securities or offers its existing securities for sale or both for the first time to the public, it is called an IPO.
  - (b) **Further Public Offer (FPO) or Follow on offer :** When an already listed company makes either a fresh issue of securities to the public or an offer for sale to the public, it is called a FPO.
- (2) **Right Issue :** When an issue of securities is made by an issuer to its existing shareholders it is called a rights issue.
- (3) **Bonus Issue :** When the company issue securities to its existing shareholders without any consideration it is called a bonus issue. Such shares are issued generally by capitalizing the company's profit & loss account, free reserve or securities premium account.
- (4) **Private Placement :** When an issuer makes an issue of securities to a select group of persons it is called private placement. However, issue of securities by way of private placement cannot be made to more than **49 persons**. Private placement of securities can be of following three types:
  - (a) **Preferential Allotment :** When a listed issuer issues shares or convertible securities, to a select group of persons it is called a preferential allotment. Such shares are issued as per provisions of **Chapter VII** of SEBI (ICDR) Regulations, 2009. The issuer is required to comply with various provisions which include pricing, disclosures in the notice, lock in etc., in addition to the requirements specified in the Companies Act, 2013.
  - (b) **Qualified Institutions Placement (QIP) :** When a listed issuer issues equity shares or securities convertible into equity shares to selected Qualified Institutions Buyers (QIBs) it is called a QIP. Such shares are issued as per provisions of **Chapter VIII** of SEBI (ICDR) Regulations, 2009.
  - (c) **Institutional Placement Programme (IPP) :** When a listed issuer makes a further public offer of equity shares, or offer for sale of shares by promoter to QIBs. IPP can only be used to raise minimum public shareholding requirements to 25%. Such shares are issued as per **Chapter**

VIIIA of SEBI (ICDR) Regulations, 2009 for the purpose of achieving minimum public shareholding the offer allocation and allotment of such shares is called an IPP.

**Question 2] Explain the mechanism of offer for sale (OFS) through secondary market settlement.**

CS (Executive) – Dec 2014 (4 Marks)

**Ans.:** Offer for Sale (OFS) is another form of share sale, very much similar to Follow-on Public Offer (FPO). OFS mechanism facilitates the promoters of an already listed company to sell or dilute their existing shareholdings through an exchange based bidding platform.

Except the promoters of the company, all market participants like individuals, mutual funds, FIIs, insurance companies, corporates, QIBs, HUFs etc. can bid/participate in the OFS process or buy the shares. The promoters of the company can only participate as the sellers in the process.

*What differentiates Offer for Sale process from IPOs/FPOs?*

**Physical Application :** Unlike IPOs/FPOs, no physical application forms are issued to apply for shares in the OFS process. OFS process is completely platform based.

**Time Period :** While IPOs/FPOs remain open for 3-4 days, OFS gets over in a single trading day as the markets gets closed for trading at 3:30 p.m.

### SEBI (ISSUE OF CAPITAL & DISCLOSURE REQUIREMENTS) REGULATIONS, 2009

**Question 3] Explain the term 'anchor investor' as per the SEBI (ICDR) Regulations, 2009.**

CS (Executive) – June 2011 (2 Marks)

**Ans.:** Anchor Investor [Regulation 2(1)(c)] : Anchor investor means a Qualified Institutional Buyer (QIB) who makes an application for a value of ₹ 10 Crore or more in a public issue made through the book building process.

**Question 4] Explain the term 'ASBA' as per the SEBI (ICDR) Regulations, 2009.**

**Ans.:** Application Supported by Blocked Amount [Regulation 2(1)(f)] : It means an application for subscribing to a public or rights issue, along with an authorisation to Self Certified Syndicate Bank to block the application money in a bank account.

**Question 5] Explain the term 'book building' as per the SEBI (ICDR) Regulation, 2009.**

CS (Inter) – Dec 2005 (5 Marks)

CS (Executive) – June 2011 (2 Marks), Dec 2011 (5 Marks)

**Ans.:** Book Building [Regulation 2(1)(d)] : Book building means a process undertaken to elicit demand and to assess price for determination of the *quantum* or *value* of specified securities or Indian Depository Receipts (IDR).

Book Building is basically a process used in IPO for efficient price discovery. It is a mechanism where, during the period for which the IPO is open, bids are collected from investors at various prices, which are above or equal to the floor price. The offer price is determined after the bid closing date.

#### Book building explained:

Suppose, if the company desire to issue its shares at a fixed price of ₹ 420. The investor has no choice to accept the shares at price offered by the company. But, it may happen that the investor is actually willing to pay ₹ 450 or more price for the share looking the bright future of the company. But since company has already fixed price of ₹ 420 it is going lose ₹ 30 per share. If company is issuing 100 lakhs shares it is going lose ₹ 30 Crore. Thus, in book building process the price is discovered by receiving bids from the prospective investor and on the basis of price booked by various investors the final price is decided. Since, the price is discovered by receiving booking price from investor it is called as 'book building'.



**Question 6] Explain the term 'composite issue' as per the SEBI (ICDR) Regulations, 2009.**

CS (Inter) – June 2008 (2 Marks)

**Ans.: Composite issue [Regulation 2(1)(h)] :** Composite issue means public issue and right issue of securities made simultaneously by listed company. The allotment in both public issue and rights issue is also made simultaneously.

**Question 7] Explain the term 'net worth' as per the SEBI (ICDR) Regulations, 2009.**

**Ans.: Net Worth [Regulation 2(1)(v)] :** Net worth means the aggregate of the paid-up share capital, securities premium account, and reserves and surplus (excluding revaluation reserve) as reduced by the aggregate of miscellaneous expenditure (to the extent not adjusted or written off) and the debit balance of the profit and loss account.

Particulars	
Paid-up share capital	xxxx
Securities premium account	xxxx
Reserves and surplus	xxxx
Revaluation reserve ( <i>not to be considered</i> )	-
Miscellaneous expenditure	(xxx)
Profit and loss account	(xxx)
<b>Net Worth</b>	<b>xxxx</b>

**Question 8] Write a short note on: Qualified Institutional Buyer** CS (Inter) – Dec 2007 (2 Marks)

CS (Executive) – Dec 2012 (4 Marks)

**Every institutional buyer is qualified institutional investor. Comment.**

CS (Executive) – Dec 2013 (4 Marks)

**Ans.: Qualified Institutional Buyer [Regulation 2 (1)(zd)] :** It means:

- (i) A Mutual Fund, Venture Capital Fund, Alternative Investment Fund & Foreign Venture Capital Investor registered with the SEBI
- (ii) A Category I & II Foreign Portfolio Investor registered with the SEBI
- (iii) A Public Financial Institution
- (iv) A Scheduled Commercial Bank
- (v) A multilateral and bilateral development financial institution
- (vi) A state industrial development corporation
- (vii) An Insurance Company registered with the IRDA
- (viii) A Provident Fund with minimum corpus of ₹ 25 crore
- (ix) A Pension Fund with minimum corpus of ₹ 25 crore
- (x) National Investment Fund
- (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.

Thus, only above stated institutional buyers are QIB and not other institutional buyers.

**Question 9] Explain the term 'retail individual investor' as per the SEBI (ICDR) Regulations, 2009.**

**Ans.: Retail individual investor [Regulation 2(1)(ze)] :** Retail individual investor means an investor who applies or bids for specified securities for a value of not more than ₹ 2 lakhs.

**Retail individual shareholder [Regulation 2(1)(zf)] :** Retail individual shareholder means a shareholder of a listed issuer, who applies or bids for specified securities for a value of not more than ₹ 2 lakhs.

**Question 9A] Define the term 'institutional investor'.**

**Ans.:** Institutional Investor means qualified institutional buyer or family trust or systematically important NBFCs registered with RBI or intermediaries registered with SEBI, all with net-worth of more than ₹ 500 Crore, as per the last audited financial statements.

**Question 10] State the applicability of the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009.**

**Ans.:** **Applicability of the regulations [Regulation 3] :** The SEBI (ICDR) Regulations, 2009 shall apply to the following:

- (a) A public issue
- (b) A rights issue (if the aggregate value of specified securities offered is ₹ 50 lakhs or more)
- (c) A preferential issue
- (d) An issue of bonus shares by a listed issuer
- (e) A qualified institutions placement by a listed issuer
- (f) An issue of IDRs

**Non-Applicability :** These regulations shall not apply to issue of securities under Regulation 9(1)(b), (d) & (e) of the SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011.

**Question 11] What are the eligibility norms for public issue by an unlisted company?**

CS (Executive) - June 2010 (4 Marks)

**SEBI has provided alternative eligibility norms for the public issue of securities. Comment.**

CS (Executive) - Dec 2012 (4 Marks)

**Ans.:** **Conditions for initial public offer by unlisted companies: [Regulation 26(1)] :** An unlisted company may make an Initial Public Offer (IPO) only if it meets *all the following conditions:*

- (a) **Assets Criteria :** The Company has **net tangible assets** of at least ₹ 3 crore in each of the last 3 years of which not more than 50% are held in **monetary assets**.

However, if more than 50% of the net tangible assets are held in monetary assets, the company has to make a firm commitment to utilise excess monetary assets in its business or project. Further, the limit of 50% on monetary assets shall not be applicable in case the public offer is made entirely through an offer for sale.

- (b) **Profit Criteria :** The Company has a minimum average **pre-tax operating profit** of ₹ 15 crore in last 3 out of 5 years.
- (c) **Net-worth Criteria :** The Company has a **net worth** of at least ₹ 1 Crore in last 3 years.
- (d) **Issue Size Criteria :** The proposed issue and previous issues made in same financial year together does not exceed 5 times its pre-issue net worth as per the audited balance sheet of the last financial year.
- (e) **Name Criteria :** If the company has changed its name within the last 1 year, at least 50% of the revenue for the last 1 year has been earned by it from the activity indicated by the new name.

**Alternative norms for unlisted public companies [Regulation 26(2)] :** If the company is not satisfying the above condition it may make an initial public offer through the book-building process.

However, the company must undertake to allot, at least 75% of the net offer to public, to Qualified Institutional Buyers (QIBs) and to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers. Further the number of prospective allottees should not be less than 1,000.

**Conditions for public issue by Listed Companies :** Listed companies making public issue has to satisfy the Condition No. 1 (d) & (e) stated above.

**Question 12] Write a short note on : Draft Offer document CS (Executive) – Dec 2013 (4 Marks)**

**Ans.:** Draft Offer document means the offer document in draft stage.

- ◆ The draft offer documents are filed with SEBI, at least 30 days prior to the filing of the Offer Document with ROC or designated stock exchange. [Regulation 6(1)]
- ◆ SEBI may specify changes 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 or designated stock exchange. [Regulation 6(2)]
- ◆ The Draft Offer document is available on the SEBI website for public comments for a period of 21 days from the filing of it with SEBI.

**Draft Offer Document to be made public :** The draft offer document filed with SEBI shall be made public for comments for a period of 21 days from the date of filing with SEBI by hosting it on the websites of the SEBI, recognized stock exchanges and merchant bankers associated with the issue.

After a period of 21 days, the Lead Merchant Bankers shall file with SEBI a statement giving information of the comments received during that period and the consequential changes to be made in the draft offer document.

**Question 13] Write a short note on: Offer Document**

**Ans.:** Offer Document [Regulation 2(1)(x)] : Offer document means a prospectus red-herring prospectus or shelf prospectus and information memorandum in terms of Section 31 of the Companies Act, 2013 in case of a public issue. In case of a rights issue, 'letter of offer' is offer document.

An offer document covers all the relevant information to help an investor to make his investment decision.

**Question 14] Write a short note on: Red-herring Prospectus CS (Executive) – June 2013 (4 Marks)**

**Ans.:** The term 'red-herring prospectus' is not defined in SEBI (ICDR) Regulation, 2009.

As per **Explanation to Section 32** of the Companies Act, 2013, "red herring prospectus" means a prospectus which does not include complete particulars of the *quantum* or *price* of the securities included therein.

Provisions of red herring prospectus are applicable to all companies except those are covered under shelf prospectus. The provision is mainly applicable for book building.

A company proposing to issue a red-herring prospectus shall file it with the ROC at least 3 days prior to the opening of the subscription list and the offer.

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

**Question 15] Write a short note on: Shelf Prospectus CS (Inter) – June 2007 (2 Marks)**

**Ans.:** Sometimes, securities are issued in stages over a period of time. In such case filing of prospectus each time will be expensive and hence provision of shelf prospectus has been introduced.

Thus, suppose if the company wants to issue securities in one year time span in stages, such company has to file shelf prospectus at the time of first issue and at the time of second and subsequent issue within period of one year they have file only information memorandum and need not to file prospectus again. Thus, information memorandum indicates the changes that have occurred between two issues of securities.

As per Section 31 of the Companies Act, 2013, Shelf Prospectus means a prospectus in respect of which the securities are issued for subscription over a certain period without the issue of a further prospectus.

Following are the provisions in relation to shelf prospectus:

- (1) Any classes of companies allowed under the SEBI Regulations, may file a shelf prospectus with the ROC at the stage of the first offer of securities which shall indicate a period of 1 year as the validity period of such prospectus.
- (2) The period of 1 year shall commence from the date of opening of the first offer of securities.
- (3) In respect of a second or subsequent offer of securities issued during the period of 1 year, no further prospectus is required to be issued.
- (4) A company filing a shelf prospectus shall be required to file an information memorandum between the first offer of securities or the previous offer of securities and the succeeding offer of securities. An information memorandum shall contain all material facts relating to new charges created, changes in the financial position of the company that have occurred between two issues.
- (5) If a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any change, the company or other person shall intimate the changes to applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within 15 days.
- (6) Where an information memorandum is filed, every time an offer of securities is made, such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

The information memorandum shall be prepared in **Form PAS-2** and filed with the ROC along with the fee within 1 month prior to the issue of a second or subsequent offer of securities under the shelf prospectus. [Rule 10 of the Companies (Prospectus & Allotment of Securities) Rules, 2014]

**Question 16] Write a short note on: Debarment**

**Ans.:** An issuer cannot make a public or rights issue of specified securities if the issuer, its promoters, promoter group or directors or persons in control are debarred from accessing the capital market by SEBI. If any of the promoters, directors or person in control of the issuer was or also is a promoter, director or person in control of any other company which is debarred from accessing the capital market under any order or directions made by SEBI.

**Question 17] Write a short note on: Issue of Securities in Dematerialised Form**

**Ans.:** A company cannot make 'public issue' or 'rights issue' or 'offer for sale' of securities, unless the company enters into an agreement with a depository for dematerialisation of securities already issued or proposed to be issued to the public or existing shareholders.

The company has given an option to subscribers or shareholders or investors to receive the security certificates or to hold securities in dematerialized form with a depository.

Thus, subscriber can receive share certificate, if he so opt. There is no compulsion to issue shares in demat form only.

**Question 18] What do you understand by 'Fast Track Issue'? Explain in brief the provisions related to fast track issue?**

CS (Executive) - Dec 2008 (4 Marks), June 2010 (4 Marks)

CS (Executive) - June 2013 (5 Marks), Dec 2015 (8 Marks)

**Write a short note on: Fast Track Issue** CS (Executive) - June 2011 (4 Marks), Dec 2016 (3 Marks)

**Ans.:** Making public issue is very time consuming and costly affair. The company has to make lot of compliance under the SEBI Regulations. To overcome this difficulty, SEBI has provided Fast Track Route to already listed companies who are coming with public issue and rights issues. The fast-track route is an alternative to access public funds by way of further capital offerings.

The facility of Fast Track Route is available to well established and compliant listed companies.

Such companies are not required to file draft offer document with SEBI and stock exchanges.

**Condition for Fast Track Issue :**

- (1) **Minimum Listing Period :** The Company is already listed company whose shares are listed for last 3 years in any stock exchange having nationwide terminals.
- (2) **Average Market Capitalisation :** The "average market capitalisation of public shareholding" is at least ₹ 3,000 Crore.
- (3) **Turnover of shares :** The annualized trading turnover of the shares in last 6 months before reference date is at least 2% of weighted average number of listed shares.  
However, if the public shareholding is less than 15% of its issued equity capital, the annualized trading turnover of its equity shares has been at least 2% of the weighted number of equity shares available as free float during such 6 months period.
- (4) **Grievances Redressed :** The company has redressed at least 95% of the investor grievances received till the end of last quarter immediately preceding before the reference date.
- (5) **Compliance with listing agreement :** The Company has complied with listing agreement for last 3 years before the reference date. However, if the company comply the listing agreement at the time of filing of offer document with the ROC or designated stock exchange and makes adequate disclosures in the offer document then it shall be deemed as compliance with the condition.
- (6) **Impact of auditors qualifications :** The impact of auditors qualifications on the audited accounts does not exceed 5% of net profit and loss after tax for the financial years disclosed in the offer document.
- (7) **No pending prosecution :** No prosecution proceedings or show cause notices issued by SEBI are pending against the company or its promoters or whole time directors as on the reference date.
- (8) **Promoters holding is in dematerialised form :** The entire shareholding of the promoter group is held in dematerialised form as on the reference date.

A listed issuer company has to satisfy all above requirements.

The company has file to ROC and Designated Stock Exchange following:

- A red herring prospectus in case of a book built issue or
- Prospectus in case of a fixed price issue

The company simultaneously file a copy of 'red herring prospectus' or 'prospectus' with SEBI.

**Question 19] Can issuer company offer specified securities at different prices? What are the conditions laid down under the SEBI investor protection regulations with regard to differential pricing of securities?**

CS (Executive) - June 2010 (5 Marks), Dec 2012 (4 Marks)

**Write a short note on: Differential Pricing**

CS (Executive) - June 2013 (4 Marks), Dec 2013 (4 Marks)

CS (Executive) - June 2016 (2 Marks)

**A company cannot offer its shares at different sets of people in a particular public issue. Comment.**

CS (Executive) - Dec 2015 (8 Marks), Dec 2016 (4 Marks)

**Ans.: Issue Price :** There is no restriction on the price at which shares can be issued. The pricing can be decided by the issuer and Lead Merchant Banker. They can charge any price which they feel market can bear, but justification for price is required to be given in offer document.

**Differential Pricing :** In public issue, the company can offer specified securities at different prices as per the following norms:

- (a) The company can offer shares at lower price to 'retail individual investors' than price offered to other categories of applicants. However, difference in price should not be more than 10% of price offered to other categories of applicants.

- (b) In case of a book built issue, the price offered to an anchor investor should not be lower than the price offered to other applicants.
- (c) If the company opts for alternate method of book building, the issuer can offer securities to its employees at a price, lower than floor price. However, the difference between price and floor price shall not be more than 10%.
- (d) In case of a composite issue, the price of the securities offered in the public issue can be different from the price offered in rights issue. However, justification for such price difference should be given in the offer document.

**Question 20] Write a short note on : Price Band**

**CS (Executive) – June 2013 (4 Marks)**

**Ans.:** Norms relating to 'pricing' and 'price band' as per ICDR Regulation are as follows:

- (1) In case of a fixed price issue, the issuer can mention a 'price' or 'price band' in the draft prospectus.
- (2) In case of a book built issue, the issuer can mention 'floor price' or 'price band' in the red herring prospectus. Thus, the issuer can determine the final price at a later date before registering the prospectus with the ROC. The prospectus registered with the ROC should contain only one price.
- (3) If the 'floor price' or 'price band' is not mentioned in the red herring prospectus, the issuer should announce the floor price or price band at least

- 5 working days before the opening of the bid in case of IPO and

- 1 working day before the opening of the bid in case of a FPO

Above announcement has to be made in all newspapers in which the pre issue advertisement appears.

- (4) The announcement should contain relevant financial ratios computed for both upper and lower end of the price band and also a statement drawing attention of the investors to the section titled "basis of issue price" in the prospectus.
- (5) The announcement and the relevant financial ratios shall be disclosed on the websites of those stock exchanges where the securities are proposed to be listed and shall also be pre-filled in the application forms available on the websites of the stock exchanges.
- (6) The cap on the price band shall be less than or equal to 120% of the floor price. (For example price band of ₹ 100 – ₹ 120 is allowed but not ₹ 120 – ₹ 121)
- (7) The floor price or the final price should not be less than the face value of the specified securities.

Floor price is the lowest preconceived price that a seller will accept. Also called as reserve price.

'Price Band' is a value-setting method in which a seller indicates an upper and lower cost range, between which buyers are able to place bids. The price band's floor and cap provides guidance to the buyers. This type of auction pricing technique is often used with IPOs.

For example, let's say Company XYZ is going to go public. As part of the IPO process, Bank ABC (Company XYZ's investment bank) sets a price band on its shares of ₹ 45 to ₹ 50 per share. This means that buyers must bid at least ₹ 45 a share for the first issue of the shares.

**Question 21] Define 'par value' of shares. Explain the terms and conditions related to denomination of the shares.**

**CS (Inter) – Dec 2006 (4 Marks)**

**Write a short note on: Par value and denomination of shares**

**CS (Inter) – Dec 2007 (4 Marks)**

**Ans. :** Par value means face value of shares. It is the value per unit of shares disclosed in memorandum of the company.

Norms relating to 'face value' as per ICDR Regulation are as follows:

- ◆ Face value i.e. par value of shares shall be ₹ 10 if issue price is less than ₹ 500.

- ◆ If issue price is more than ₹ 500, face value can be below ₹ 10. However, face value should be in multiple of Rupee i.e. ₹ 2, ₹ 3, ₹ 5 etc. Face value should not be in decimal of a rupee.
- ◆ Face value and statement about the issue price being "X" time of the face value should be included in offer document and application form in identical size as that of issue or price band.

**Question 22] Write a short note on: Promoters Contribution**

CS (Executive) – June 2012 (4 Marks), Dec 2012 (4 Marks)

**Ans.:** Promoters must have some reasonable contribution in the company. If they have no stake in the company, they are less likely to be careful. Following norms have been prescribed for promoter's contributions:

Unlisted Company	In case of Public Issue*	Not less than 20% of the post-issue capital
Listed Company	In case of Public Issue	To the extent of 20% of the proposed issue or 20% of the post-issue capital
	Composite Issue**	20% of the proposed public issue or 20% of the post-issue capital.

\* In case the post issue shareholding of the promoters is less than 20%, alternative investment funds may contribute for the purpose of meeting the shortfall subject to a maximum of 10% of the post issue capital.

\*\* Rights issue component of the composite issue shall be excluded while calculating the post-issue capital.

**Promoters Contribution to be brought in before Public Issue opens:**

- ◆ Promoters shall bring in the full amount of contribution including premium at least one day prior to opening date of the issue.
- ◆ Promoter's contribution shall be kept in an escrow account with a Scheduled Commercial Bank and the said contribution shall be released to the company along with the public issue proceeds.
- ◆ Where the promoter's contribution has been brought prior to the public issue, the company shall give use of such funds in Cash Flow Statement in the offer document.
- ◆ If the promoter's minimum contribution exceeds ₹ 100 Crores, the promoters shall bring in ₹ 100 crores before the opening of the issue and the remaining contribution shall be brought on *pro-rata* basis before the calls are made on public.

**Exemption from requirement of Promoter's Contribution :**

The requirement of minimum promoter's contribution shall not apply in case of:

- (a) Professionally managed company where there is no identifiable promoter.
- (b) In case of a further public offer, where the equity shares of the issuer are frequently traded in a stock exchange for last 3 years and the company has a track record of dividend payment for last 3 years.
- (c) In rights issues shares.

However, in all the above cases the promoters shall disclose their existing shareholding and the extent to which they are participating in the proposed issue in the offer document.

**Question 23] Write a short note on: Lock-in-period**

CS (Executive) – Dec 2011 (4 Marks), June 2013 (4 Marks)

**What is the lock-in-period for promoter's contribution? CS (Executive) – Dec 2009 (5 Marks)**

**Ans.:** Lock-in means promoter cannot sale the shares to others during prescribed period. The idea is that promoter should have stake in the company. Moreover, they are not expected to make profit by selling the shares which earlier they had.

**For securities held by Promoters :**

In a public issue, the specified securities held by promoters shall be locked-in for the period as stated below:

- (a) **Minimum contribution locked for 3 years** : The promoters contribution including contribution made by AIF is subject to lock-in-period of **3 years** from the date of commencement of commercial production or date of allotment in the public issue whichever is later.
- (b) **Extra contribution to be locked for 1 year** : Any contribution made by promoters over and above the minimum contribution shall be subject to a lock-in-period of **1 year** in case of all the companies.
- (c) **Promoters of listed companies exempted** : In case of issue of securities by listed company which are listed for last 3 years and has track record of dividend payment in last 3 years, the promoter's contribution shall not be subject to lock-in-period.

**Securities held by persons other than promoters :**

The entire pre-issue share capital shall be locked in for a period of 1 year from the date of commencement of commercial production or the date of allotment in the public issue, whichever is later.

This is not applicable:

- (a) In case of equity shares allotted to employees under ESO prior to initial public offer, if the issuer has made full disclosures with respect to such option and
- (b) Equity shares held by a VCF or AIF Category I or a Foreign Venture Capital Investor. Such equity shares shall be locked-in for a period of at least 1 year from the date of their purchase.

**Securities lent to Stabilising Agent under Green Shoe Option (GSO) :**

If the shares held by promoters are lent to the Stabilizing Agent, they should be exempted from the lock-in requirements till they are returned from Stabilizing Agent to Promoters.

**Transferability of share under lock-in**

- (1) Transfer of lock-in securities within the promoters is permitted. Thus, shares held by promoters which are under lock-in can be transferred to and amongst promoters or promoter group or to a new promoter or persons in control of the company.
- (2) The securities held by persons other than promoters can be transferred to any other person holding the securities which are locked-in.

However, in both cases transferee cannot transfer the securities until lock-in period is over.

Further both above transfer are subject SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011.

**Pledging of Securities held by the promoters during lock-in-period :**

Such shares are allowed to be pledged with Scheduled Commercial Bank or Public Financial Institutions (PFI) as collateral security for loans granted by such banks or PFI to the company. These cannot be pledged for any other purpose.

**Question 24] Explain the SEBI Regulations relating to 'underwriting of securities'.**

**Ans.:** Underwriting means an agreement to subscribe to the securities of a body corporate when the existing shareholders or the public do not subscribe to the securities :

- (1) The company has to appoint underwriters as per the SEBI (Underwriters) Regulations, 1993 for public issue or rights issue.
- (2) Public issue through book building process should be underwritten by book runners or syndicate members. However, at least 75% of the net offer be compulsorily allotted to QIB and cannot be underwritten.
- (3) The issuing company shall enter into underwriting agreement with the book runner, who in turn shall enter into underwriting agreement with syndicate members. Such underwriting agreement shall indicate the number of securities to be subscribed and price for it in case of under subscription in the issue.



- (4) If syndicate members fail to fulfil their underwriting obligations, the lead book runner shall fulfil the underwriting obligations.
- (5) The book runners and syndicate members can subscribe to issue only to fulfil their underwriting obligations.
- (6) In case of every underwritten issue, the lead merchant banker or the lead book runner shall undertake minimum underwriting obligations as specified in the SEBI (Merchant Bankers) Regulations, 1992.
- (7) Where 100% of the offer through offer document is underwritten, the underwriting obligations shall be for the entire 100% of the offer and shall not be restricted up to the minimum subscription level.
- (8) In respect of an underwritten issue, the lead merchant banker shall ensure that the relevant details of underwriters are included in the offer document as follows:

**Question 25] Write a short note on: Issue opening date**

CS (Executive) - Dec 2008 (3 Marks), June 2013 (4 Marks)

**Ans.:**

- (1) **If SEBI issues observation letter :** A public issue may be open within 12 months from the date of issue of the observation letter by SEBI.
- (2) **If SEBI do not issue observation letter :** Issue may be open within 3 months of expiry from 31<sup>st</sup> day from the date of filing of draft offer document with SEBI.
- (3) **Fast Track Issue :** The issue must open within the period stipulated in Section 26(1)(a) of the Companies Act, 2013 and Rules made thereunder.
- (4) **In case of Shelf Prospectus :** The first issue can be opened within 3 months of issuance of observations by SEBI.

**Question 25A] Write a short note on: Subscription List**

CS (Executive) - Dec 2008 (3 Marks), Dec 2011 (4 Marks)

CS (Executive) - June 2013 (4 Marks)

**Ans.:** A public issue must be kept open for at least 3 working days and maximum 10 working days including revision in price band.

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

**Question 26] Write a short note on: Pre & post issue advertisement**

**Explain the term: Pre-issue advertisement**

CS (Executive) - June 2011 (2 Marks)

**Ans.:** Advertisement includes notices, brochures, pamphlets, show cards, catalogues, hoardings, placards, posters, insertions in newspaper, cover pages of offer documents, pictures and films in any print media or electronic media, radio, television programme.

**Pre-issue advertisement :**

Pre-issue advertisement can be issued by the company after receiving final observations on the offer document from SEBI.

Pre-issue advertisement can be issued 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.

Advertisement has to be given in prescribed format and is subject to Section 30 of the Companies Act, 2013.

**Post-issue Advertisements**

The post-issue Lead Merchant Banker is required to ensure that post issue advertisement is released within 10 days from the date of completion of various activities at least in an English National Daily, one

Hindi National Paper and a Regional language daily circulated at the place where registered office of the issuer company is situated.

Post-issue Lead Merchant Banker is required to ensure that there should be no advertisement that issue has been oversubscribed. Advertisement should mention only that issue is open or closed.

**Question 27] Write a short note on: Mandatory Collection Centres**

**CS (Executive) - Dec 2008 (3 Marks)**

**Ans.:** Minimum number of collection centres for issues are to be at the four metropolitan centre viz. Mumbai, Delhi, Kolkata and Chennai and at all such centres where the stock exchanges are located in the region in which the registered office of the company is situated.

In addition, all designated branches of self certified syndicate banks shall be deemed to be mandatory collection centres.

However, the issuer company is free to appoint as many collection centres as it may deem fit in addition to the above minimum requirement.

**Question 28] Write a short note on: Minimum Subscription** **CS (Inter) - June 2008 (4 Marks)**

**Ans.:** Minimum subscription received must be 90% of the public or right issue. If the subscription is less than 90%, shares cannot be allotted and application money received must be refunded as stated below:

- (a) **Non-underwritten issue :** Within 15 days from the date of closure of the issue.
- (b) **Underwritten Issue :** Within 70 days from the date of closure of the issue if underwriters fail to make up shortfall within 60 days of the closure of issue.

If application money is not refunded within the period stated above, interest is payable for the delay.

**Question 29] Explain the procedure for approval of 'basis of allotment' by the stock exchange.**

**CS (Executive) - Dec 2008 (5 Marks)**

**Write a short note on: Basis of Allotment**

**CS (Executive) - June 2012 (4 Marks)**

**Ans.:** **Person responsible for basis of allotment :** In a public issue of securities, the Executive or Managing Director of the Designated Stock Exchange along with the post issue Lead Merchant Banker and the Registrars to the Issue shall be responsible to ensure that the basis of allotment is finalised in a *fair and proper* manner in accordance with the SEBI (ICDR) Regulations, 2009.

**Oversubscription :** In case of oversubscription, shares are allotted on pro-rata basis or drawal of lot in the presence of public representative of the concerned stock exchange.

**Commencement of trading :** The listed company would ensure that all steps for completion of the necessary formalities for listing and commencement of trading at all stock exchanges where the securities are to be listed have been taken within 7 working days of finalisation of basis of allotment.

**Question 30] In a public issue, the companies are allowed to reserve certain portion of the issue for its employees, shareholders and other persons. Discuss with reference to SEBI (ICDR) Regulation, 2009.**

**Ans.:** The companies are allowed to reserve certain portion of the issue for its employees, shareholders and other persons. Such reservation shall be subject to following conditions:

- (a) The aggregate of reservations for employees shall not exceed 5% of the issue size.
- (b) Reservation for shareholders shall not exceed 10% of the issue size.
- (c) Reservation for persons who have business association as depositors, bondholders and subscribers to services shall not exceed 5% of the issue size.

- (d) Any unsubscribed portion in any reserved category may be added to any other reserved category and the unsubscribed portion, if any, after such *inter-se* adjustments among the reserved categories shall be added to the net offer to the public category.
- (e) In case of under-subscription in public category, spill-over to the extent of under subscription shall be permitted from the reserved category to public offer category.
- (f) Value of allotment to any employee made shall not exceed ₹ 2 lakhs.

**Question 31] Discuss briefly SEBI Regulations relating to "allocation in net offer to public category"**

**Ans.:** Allocation in net offer to public category is as follows:

- (1) **If an issue is made through the book building process:** The allocation in the net offer to public category should be made as follows:
- ◆ Not less than 35% to retail individual investors;
  - ◆ Not less than 15% to non-institutional investors;
  - ◆ Not more than 50% to QIB, 5% of which shall be allocated to mutual funds.

However, in addition to 5% allocation available, mutual funds shall be eligible for allocation under the balance available for QIBs.

- (2) **If an issue is made through the book building process and following the alternative eligibility norms,** the allocation in the net offer to public category shall be as follows:
- ◆ Not more than 10% to retail individual investors;
  - ◆ Not more than 15% to non-institutional investors;
  - ◆ Not less than 75% to QIB, 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 QIBs.

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

- (3) **If an issue is made other than through the book building process,** allocation in the net offer to public category shall be made as follows:
- ◆ Minimum 50% to retail individual investors and
  - ◆ Remaining to other investors including corporate bodies or institutions.

The unsubscribed portion in either of the categories specified in clause (a) or (b) may be allocated to applicants in the other category.

**Question 32] What is due diligence in the process of public issue of securities?**

CS (Inter) – Dec 2005 (5 Marks)

CS (Executive) – June 2009 (5 Marks), June 2010 (4 Marks)

**Ans.:** *Due diligence means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation.*

Thus, in relation to public issue due diligence means to confirm that required procedural activities are duly complied with and obligations imposed by the Regulations are duly fulfilled by the issuer company and other person engaged in issue process such as Merchant Bankers, Registrar to Issue, Debenture Trustees etc.

Other important points relating to due diligence is as follows:

- ◆ The Lead Merchant Bankers shall exercise due diligence and satisfy himself that all the aspects of the issue including the veracity and adequacy of disclosure in the offer documents are duly complied with.

- ◆ The lead merchant bankers shall call upon the issuer, its promoters or directors to fulfil their obligations as disclosed in the offer document.
- ◆ The merchant banker shall continue to be responsible for post-issue activities till the subscribers receives their securities or refund of application moneys and the listing agreement is entered with the stock exchange and listing/trading permission is obtained.

The Merchant Bankers and company are also required to file various certificates or documents as prescribed in SEBI (ICDR) Regulations, 2009. These certificates are also called as due diligence certificates by which Merchant Bankers and Company confirms to the SEBI that required provisions and formalities are duly complied in relation public issue.

**Question 33] Write a short note on: Allotment of Securities**

**Ans.:** The issuing company has to allot securities offered to the public within 15 days of the closure of public issue. If the company do not allot securities or refund money within 15 days, interest @ 15% is payable. However, applications received after the closure of issue in fulfilment of underwriting obligations to meet the minimum subscription requirement, shall not be entitled for the said interest.

**Question 34] Write a short note on: Compliance Officer**

CS (Inter) - Dec 2006 (4 Marks)

CS (Executive) - June 2013 (3 Marks)

**Ans.:** Every company making a public issue is required to appoint a compliance officer and intimate the name of the compliance officer to SEBI. Compliance Officer shall directly liaise with SEBI with regard to compliance with various laws, rules regulations, and other directives issued by SEBI and investor complaints related matters. He is also required to co-ordinate with regulatory authorities in various matters and provides necessary guidance so as to ensure compliance internally and ensure that observations/deficiency pointed out by SEBI does not recur.

In terms of **Clause 47 of the Listing Agreement**, Compliance Officer shall be Company Secretary, who shall be responsible for ensuring the correctness, authenticity and comprehensiveness of the information, statements, reports etc. filled under corporate filing and dissemination system as specified in the listing agreement.

**Question 35] Write a short note on: Redressal of investors grievances in public issue**

**Ans.:** SEBI (ICDR) Regulations, 2009 make it necessary for companies

- To assign high priority to investor grievances and
- To ensure that all preventive steps have been taken to minimise the number of complaints.

The companies are expected to set up proper grievance monitoring and redressal system in consultation with the Lead Merchant Banker and Registrar to an issue.

The offer documents shall also disclose the arrangements evolved by the company for redressal of investor grievances.

**Question 36] Distinguish between: Fixed Price Process & Book Building Process**

**What is book building? What is difference between 'fixed price process' & 'book building process'?**

CS (Executive) - June 2010 (5 Marks), Dec 2013 (4 Marks)

**Book-building process of determining price of a public issue is preferred in case of initial public offer (IPO) while fixed price process is used for further public offer (FPO). Comment.**

CS (Executive) - Dec 2015 (4 Marks)

**Ans.:** Following are the main points of difference between fixed price process & book building process:

Points	Fixed Price Process	Book Building Process
<b>Meaning</b>	In fixed price process the issue price known in advance to the investors.	In book building process the issue price is not known in advance to the investors. Only price band is offered.
<b>Demand</b>	Demand for the securities offered is known only after the closure of the issue.	Demand for the securities offered can be known everyday as the book is built.
<b>Payment</b>	Payment is made at the time of subscription wherein refund is given after allocation.	Payment is made only after allocation.
<b>Document</b>	In fixed price process the company issue prospectus.	In book building the company has to issue red herring prospectus.
<b>Concept</b>	This is old and traditional concept.	This concept is comparatively new to Indian Security Market.

**Question 37] What do you mean by 'reservation on competitive basis'? Who are the persons eligible in case of issue made through book building? CS (Executive) - June 2015 (5 Marks)**

**Ans.:** 'Reservation on Competitive Basis' means allotment of shares in proportion to the shares applied by the concerned reserved categories. Reservation on competitive basis can be made to employees, shareholders and shareholders of group companies, Mutual Funds, FII, etc.

(1) In case of an issue made through the book building process, the issuer may make reservation on competitive basis in favour of the following persons:

- (a) Employees of the issuing company, employee of promoting companies who are in the permanent and full time employment.
- (b) Shareholders of listed promoting companies.
- (c) Shareholders of listed group companies.

However, if the promoting companies are designated financial institutions or state and central financial institutions, the shareholders of such promoting companies shall not be eligible for the reservation on competitive basis;

- (d) Persons who are associated with the issuer as depositors, bond holders or subscribers to services as on the date of filing the draft offer document with SEBI.

However, the issuer shall not make the reservation to the issue management team, syndicate members, their promoters, directors and employees and for the group or associate companies of the issue management team and syndicate members and their promoters, directors and employees.

**Question 38] Explain the accounting ratio which are to be disclosed in under the heading 'basis for issue of price' in an offer document for an issue under book building process.**

**CS (Inter) - June 2008 (4 Marks)**

**Ans.:** The following accounting ratios shall be given under the 'basis for issue price' for each of the accounting periods for which the financial information is given:

1. Pre-issue EPS for the last 3 years (as adjusted for changes in capital)
2. Pre-issue Price Earnings Ratio (P/E Ratio)
3. Average return on net-worth in the last 3 years.
4. Net Asset Value (NAV) per share based on last balance sheet.
5. Comparison of all the accounting ratios of the issuer company as mentioned above with the industry average and with the accounting ratios of the peer group (i.e. companies of comparable size in the same industry).

**Question 39] Explain the procedure of bidding in book building issue.**

CS (Inter) – June 2007 (4 Marks)

CS (Executive) – June 2009 (5 Marks), Dec 2010 (5 Marks)

**Ans.:** The process of bidding should be in compliance of the following requirements:

- (a) Bidding process shall be carried out only through recognised stock exchanges having electronically linked transparent bidding facility.
- (b) The Lead Book Runner shall ensure the availability of adequate infrastructure with syndicate members for data entry of the bids in a timely manner.
- (c) The syndicate members shall be present at the bidding centres and at least one computer terminal is available for the purpose of bidding at all the bidding centres.
- (d) During the period for which issue is open for bidding, the applicants may approach the stock brokers to place an order for bidding.
- (e) Every stock broker shall accept orders from all clients who place orders through him and every Self Certified Syndicate Bank shall accept ASBA from investors.
- (f) Applicants who are QIBs shall place their bids only through stock brokers who shall have the right to vet the bids.
- (g) The bidding terminals shall contain an online graphical display of demand and bid prices updated at periodic intervals, not exceeding 30 minutes.
- (h) At the end of each day during bidding period, the demand including allocation made to anchor investors, shall be shown graphically on the bidding terminals for information of public.
- (i) The retail individual investors may either withdraw or revise their bids until finalization of allotment.
- (j) The issuer may decide to close the bidding by QIBs one day prior to the closure of the issue subject to the following conditions:
  - Bidding shall be kept open for a minimum of 3 days for all categories of applicants.
  - Disclosures are made in the red herring prospectus regarding the issuer's decision to close the bidding by QIBs one day prior to closure of issue.
- (k) The QIBs and the Non-Institutional Investors (NII) shall neither withdraw nor lower the size of their bids at any stage.
- (l) The identity of QIBs making the bidding shall not be made public.
- (m) The stock exchanges shall continue to display data pertaining to book built issues in an uniform format on their website giving category-wise details of bids received, for a period of at least 3 days after closure of bids.

**Question 40] Write a short note on: Anchor Investor**

CS (Executive) – Dec 2010 (4 Marks), June 2014 (4 Marks)

**Ans.:** Anchor Investor means a qualified institutional buyer who makes an application for a value of ₹ 10 crore or more in a public issue made through the book building process.

- (a) Allocation to Anchor Investors shall subject to the following:
  - ◆ **For first ₹ 10 crore:** Maximum 2 anchor investors shall be permitted for allocation.
  - ◆ **For above ₹ 10 crore and up to ₹ 250 Crore:** Minimum 2 and maximum 15 anchor investors shall be permitted for allocation subject to minimum allotment of ₹ 5 Crore per anchor investor.

- ◆ **For above ₹ 250 crore:** Minimum 5 and maximum of 25 anchor investors shall be permitted for allocation above, subject to minimum allotment of ₹ 5 Crore per anchor investors.
- (b) Up to 30% of the portion available for allocation to QIBs shall be available to anchor investors.
- (c) One-third of the anchor investor portion shall be reserved for domestic mutual funds.
- (d) The bidding for Anchor Investors shall open one day before the issue opening date.
- (e) Anchor Investors shall pay application money equal application money to payable by other categories of investors. The balance to be paid within 2 days of the date of closure of the issue.
- (f) Allocation to anchor investors shall be completed on the day of bidding by anchor investors.
- (g) If the price fixed in book building is higher than the price at which the allocation is made to Anchor Investor, the Anchor Investor shall bring in the additional amount. *However, if the price fixed in book building is lower than the price at which the allocation is made to Anchor Investor, the excess amount shall not be refunded to the Anchor Investor and the Anchor Investor shall take allotment at the price at which allocation was made to it.*
- (h) The number of shares allocated and the price at which the allocation is made to Anchor Investors shall be made available in public domain by the merchant banker before opening of the issue.
- (i) There shall be a lock-in of 30 days on the shares allotted to the Anchor Investor from the date of allotment in the public issue.
- (j) Merchant Bankers or any person related to promoter, promoters group or Merchant Bankers cannot apply under Anchor Investor category.
- (k) The applications made by QIBs under the Anchor Investor category and under the Non Anchor Investor category cannot be considered as multiple applications.

**Question 41] Write a short note on: ASBA**

**CS (Executive) - Dec 2011 (4 Marks)**

**Ans.:** "Application Supported by Blocked Amount" means an application containing an authorization to Self Certified Syndicate Bank to block the application money in a bank account for subscribing to a public or rights issue.

If an investor is applying through ASBA, his application money shall be debited from the bank account only if his application is selected for allotment after the basis of allotment is finalized.

It is a supplementary process of applying in IPO, Right Issues and FPO made through book building route and co-exists with the current process of using cheque as a mode of payment and submitting applications. ASBA is stipulated by SEBI and available from most of the banks operating in India.

**Benefits of ASBA :**

- ◆ The investor need not pay the application money by cheque rather block his bank account to the extent of the application money, thus continue to earn interest on application money.
- ◆ The investor does not have to bother about refunds, as in ASBA only an amount proportionate to the securities allotted is taken from the bank account when his application is selected for allotment after the basis of allotment is finalised.
- ◆ The application form is simpler.
- ◆ The investor deals with the known intermediary i.e. his own bank.
- ◆ No loss of interest, since the application amount is not debited to the savings account on application.
- ◆ Since the amount is available in the account, it is considered for calculation of the Average Quarterly Balance (AQB).
- ◆ Customer can revise or withdraw the bid before the end of the issue in the prescribed format with the bank.

**Eligibility of Investors :** An Investor is eligible to apply through ASBA process if:

- ◆ He is a "Resident Retail Individual Investor".
- ◆ He is bidding at cut-off, with single option as to the number of shares bid for.
- ◆ He is applying through blocking of funds in a bank account with the bank.
- ◆ He has agreed not to revise his bid.
- ◆ He is not bidding under any of the reserved categories.

**Question 42] What is 'application supported by blocked amount' (ASBA)? Briefly explain ASBA process.**  
CS (Executive) – Dec 2010 (5 Marks), June 2012 (5 Marks)

**Ans.:** "Application Supported by Blocked Amount" means an application containing an authorization to Self Certified Syndicate Bank to block the application money in a bank account for subscribing to a public or rights issue.

**ASBA Process :** In ASBA investor submits an application physically or electronically to the bank with whom the bank account to be blocked is maintained. Such bank is called "Self Certified Syndicate Bank" (SCSB). The bank then blocks the application money on the basis of an authorization.

The application money remains blocked till finalisation of the basis of allotment or till withdrawal/failure of the issue.

Thereafter, the application data uploaded by the bank in the electronic bidding system through a web enabled interface provided by the Stock Exchanges.

Once the basis of finalized allotment, the Registrar to the Issue sends request to the bank for unblocking the accounts and to transfer the requisite amount to the issuer's account.

In case of withdrawal or failure of the issue, the amount shall be unblocked by the bank on receipt of information from the pre-issue merchant bankers.

**Question 43] Write a short note on: Self Certified Syndicate Bank (SCSB)**

CS (Executive) – June 2011 (4 Marks)

**Ans.:** 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 in prescribed format for inclusion of its name in SEBI's list of SCSBs.

A SCSB shall identify its Designated Branches (DBs) at which an ASBA investor shall submit ASBA.

A SCSB shall also identify the Controlling Branch (CB) which shall act as a coordinating branch for the Registrar of the issue, Stock Exchanges and Merchant Bankers. The SCSB shall communicate the following details to Stock Exchanges:

- ◆ Name and address of SCSB.
- ◆ Addresses of Designated and Controlling Branches and other details such as telephone number, fax number and email ids.
- ◆ Name and contacts details of a nodal officer at a senior level from the Controlling Branch.

**Question 44] Explain the term: Green Shoe Option**

CS (Inter) – Dec 2007 (2 Marks)

CS (Executive) – June 2011 (2 Marks)

**Write a short note on: Green Shoe Option**

CS (Inter) – Dec 2006 (5 Marks)

CS (Executive) – Dec 2008 (5 Marks), June 2013 (3 Marks)

CS (Executive) – Dec 2016 (3 Marks)



**Ans.:** "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 **Regulation 45** of the **SEBI (ICDR) Regulations, 2009**.

Green Shoe Option is also legally referred to as an **over-allotment option**.

The Green Shoe Company (now called Stride Rite Corp.) was the first issuer to allow the over-allotment option to its underwriters, hence the name Green Shoe Option.

GSO was recognised by SEBI in year 2003. **ICICI Bank** has used Green Shoe Option first time in its public issue through book building mechanism in India.

Green Shoe Option system is available only in IPO and not for subsequent issues.

Thus, basic purpose of 'Green Shoe Option' is not to make available additional share capital to the company, but to act as stabilizing force for its share price, if the issue is over subscribed.

#### How Green Shoe Option works?

- ◆ The company pass resolution in general meeting seeking authorisation for the possibility of allotment of further shares to the 'Stabilising Agent' (SA).
- ◆ The company appoints Lead Book Runner (or Underwriter) as Stabilising Agent.
- ◆ Stabilising Agent enters into agreement with the promoter for lending shares. (Such lending up to 15% of issue size is permissible) (*Assume issue size is 1,00,000 shares plus 15,000 shares borrowed from promoters*)
- ◆ Total shares equal to 'issue size' (i.e. 1,00,000) and shares borrowed from the promoters (i.e. 15,000) will be issued to public. Amount received on extra 15,000 shares from the public will be kept in separate account called escrow account to which SA has access.
- ◆ After listing of shares, if the price of shares goes up, the SA is not required to stabilise the price and will exercise the GSO as everyone i.e. company and investor will get benefited. Hence, the company will issue further 15,000 shares to underwriters so that they can return the shares borrowed from the promoters. Total issue in this case will be 1,15,000 shares.
- ◆ After listing if price goes down, the SA is required to stabilise the price by buying shares from the market up to 15% i.e. 15,000 shares and these shares will be returned to the promoters. Thus, total issue in this case will be 1,00,000 shares only.

#### Example :

**Step 1:** Assume that the company wants to issue 100 shares and the price discovered through the book-building mechanism is ₹ 10 per share. The company has also made a provision of 15% GSO to the underwriters of the issue. This means, at the discretion of underwriters, the company will further issue 15 shares at the same price of ₹ 10 to the specific underwriter, who, in turn, will act as the Stabilisation Agent (SA) for the issue.

The option is valid only for a period of 30 days post listing of the IPO. The amount raised by selling these 15 shares will be in the escrow account, to which the underwriter has the access.

**Step 2:** On the closure of IPO, the underwriter issues 115 shares (minimum IPO size 100 shares). The shares can be a loan from the promoter or any existing shareholder of the company.

**Step 3:** If the stock price goes up after listing of shares, the SA is not required to stabilise the price and will exercise the GSO, whereby the company will issue further 15 shares to the underwriter and collect money for the same at the book-build price (offer price). Underwriter will give these shares back to promoter from whom he has borrowed shares.

In case the stock price goes down below the issue price post-listing, then the underwriter uses the money from the escrow account up to the extent of 15 shares to buy shares from the secondary market and the issue size remains at 100 shares. The underwriter, in this case, returns the 15 shares to the lender.

#### Question 45] What is price stabilization fund?

CS (Executive) - June 2009 (5 Marks)

**Ans.:** The fund created for stabilization of the share price after the public issue is known as price stabilization fund. The aim of the fund is to protect the share price from falling below the issue price.

For the purpose of operating a price stabilization fund the issuer company appoints a Stabilization Agent (SA).

The stabilization mechanism shall be available for the company for the period disclosed in the prospectus which shall not exceed 30 days from the date of listing of shares.

**Question 46] State the additional disclosure required to be made in a prospectus in case issue of shares through Green Shoe Option?**

**Ans.:** The 'draft prospectus', 'red-herring prospectus' and the 'final prospectus' should contain the following additional disclosures in case of Green Shoe Option:

- Name of the SA.
- The maximum number of shares proposed to be over-allotted.
- The period for which the company proposes to avail of the stabilisation mechanism.
- The maximum increase in the capital and the post issue shareholding pattern in case the company is required to allot further shares.
- The maximum amount of funds to be received by the company in case of further allotment and the use of these additional funds.
- Details of the agreement entered into by SA with the promoters to borrow shares which shall include name of the promoters, their existing shareholding, number and percentage of shares to be lent by them and other important terms and conditions including the rights and obligations of each party.
- The final prospectus shall disclose additionally the exact number of shares to be allotted pursuant to the public issue, stating separately the number of shares to be borrowed from the promoters and over-allotted by the SA, and the percentage of such shares in relation to the total issue size.

**Question 47] You are the Company Secretary of Great India Ltd. Prepare a Board note outlining various requirements of SEBI guidelines for rights issue.**

CS (Executive) – June 2010 (8 Marks), Dec 2010 (5 Marks)

CS (Executive) – June 2013 (5 Marks)

**Ans.: Meaning of right issue :** Rights issue means issue of further shares by existing company to its existing shareholders, employees and other persons as per Section 62 of the Companies Act, 2013.

If the aggregate value of securities offered does not exceed ₹ 50 lakhs, the SEBI (ICDR) Regulations, 2009 does not apply.

**Requirements of SEBI guidelines for rights issue :**

- ◆ A listed company proposing to make rights issue has to file 'draft letter of offer' through its Merchant Banker to the SEBI and ROC at least 30 days prior to the filing of the 'letter of offer' with the Designated Stock Exchange (DSE).
- ◆ The company should obtain in-principle approval from stock exchange on which company's shares are proposed to be listed.
- ◆ If SEBI specifies any changes in 'draft letter of offer', the company has to carry out changes as specified by the SEBI.
- ◆ A Company can make a right issue if there no partly paid-up shares. Hence, existing partly paid-up shares should be made fully paid-up by making necessary call and if calls are not paid, company can forfeit the shares.
- ◆ An existing listed company may freely price its security offered through a rights issue.
- ◆ Issue price or price band is not required to be disclosed in the 'draft letter of offer'. The issue price may be determined anytime before fixation of the record date, in consultation with the Designated Stock Exchange.

- ◆ The promoters shall disclose in the offer document their existing shareholding and the extent to which they are participating in the proposed right issue.
- ◆ A company has to enter a 'Memorandum of Understanding' with Lead Merchant Banker specifying mutual rights, liabilities and obligations relating to the issue.
- ◆ If a rights issue is managed by more than one Merchant Banker the rights, obligations and responsibilities of each merchant banker shall be demarcated in offer document.
- ◆ Lead merchant banker shall ensure that the abridged letters of offer are dispatched to all shareholders at least 3 days before the date of opening of the issue.
- ◆ A company may make reservation on competitive basis as specified in Regulation.
- ◆ The Lead Merchant Banker shall ensure that an advertisement giving the date of completion of despatch of letters of offer, shall be released in at least in an English National Daily with wide circulation, one Hindi National Paper and a Regional language daily circulated at the place where registered office of the issuer company is situated at least 3 days before the date of opening of the issue.
- ◆ A company cannot withdraw rights issue after announcement of record date.
- ◆ Rights issues shall be kept open for at least 15 days and not more than 30 days.
- ◆ If the issuer company does not receive the minimum subscription of 90% of the issue, the entire subscription shall be refunded to the applicants within 15 days from the date of closure of the issue.
- ◆ If there is delay in refunding excess application money, the company will liable to pay interest at the rate of 15% p.a. for the period of delay.
- ◆ The time period for finalization of basis of allotment in the rights issues is 15 days from the date of closure of the issue.
- ◆ The company may utilise the funds collected in the rights issue only after the basis of allotment is finalized.

**Question 48] You are the Company Secretary of Golden Securities Ltd. The Board of Directors wants to make a right issue of shares to its existing shareholder in the ratio of 2 shares for every single shares held by the shareholder. Prepare a note highlighting the steps involved in issue of rights shares.**

**CS (Inter) - Dec 2006 (6 Marks), Dec 2011 (8 Marks)**

**As a Company Secretary of Lucky Ltd., prepare a Board note giving various requirements of SEBI guidelines for rights issue and enumerate the various major steps involved in such an issue.**

**CS (Executive) - Dec 2016 (8 Marks)**

**Ans.:** The various steps involved for issue of rights share are enumerated below:

1. Check whether the rights issue is within the authorised share capital of the company. If not, steps should be taken to increase the authorised share capital.
2. Notify the stock exchange concerned the date of Board Meeting at which the rights issue is proposed to be considered at least 2 days in advance of the meeting.
3. Rights issue shall be kept open for at least **15 days** and not more than **30 days**.
4. Convene the Board meeting and place before it the proposal for rights issue.
5. The Board should decide on the following matters:
  - Quantum of issue and the proportion of rights shares.
  - Alteration of share capital, if necessary, and offering shares to persons other than existing holders of shares in terms of Section 62 of the Companies Act, 2013.
  - Fixation of record date.
  - Appointment of merchant bankers and underwriters

- Approval of draft letter of offer or authorisation of managing director/company secretary to finalise the letter of offer in consultation with the managers to the issue, the stock exchange and SEBI.
- 6. Immediately after the Board Meeting notify the concerned Stock Exchanges about particulars of Board's decision.
- 7. If it is proposed to offer shares to persons other than the shareholders of the company, a General Meeting has to be convened and a resolution is to be passed for the purpose in terms of Section 62 of the Companies Act, 2013.
- 8. Forward 6 sets of letter of offer to concerned Stock Exchange.
- 9. Despatch letters of offer to shareholders by registered post.
- 10. Check that an advertisement giving date of completion of despatch of letter of offer has been released in at least an English National Daily, one Hindi National Paper and a Regional Language Daily where registered office of the issuer company is situated.
- 11. Check that the advertisement contains the list of centres where shareholders or persons entitled to rights may obtain duplicate copies of composite application forms in case they do not receive original application form along with the prescribed format on which application may be made.
- 12. The applications of shareholders who apply both on plain paper and also in a composite application form are liable to be rejected.
- 13. Make arrangement with bankers for acceptance of share application forms.
- 14. Prepare a scheme of allotment in consultation with Stock Exchange.
- 15. Convene Board Meeting and make allotment of shares.
- 16. Make an application to the Stock Exchange where the company's shares are listed for permission of listing of new shares.

**Question 49] Discuss the various formalities to be complied with for the issue of bonus shares under the SEBI (Issue of Capital & Disclosure Requirement) Regulations, 2009.**

CS (Inter) - June 2007 (6 Marks)

CS (Executive) - June 2010 (10 Marks), June 2014 (6 Marks)

**Ans.:** When the company issue securities to its existing shareholders without any consideration it is called a bonus issue. Such shares are issued generally by capitalizing the company's profit & loss account, free reserve or securities premium account.

A listed company proposing to issue bonus shares shall comply with the following :

- (1) (a) No company shall, pending conversion of FCDs/PCDs, issue any shares by way of bonus unless similar benefit is extended to the holders of such FCDs/PCDs, through reservation of shares in proportion to such convertible part of FCDs or PCDs.  
(b) The shares so reserves may be issued at the time of conversion of such debentures on the same terms on which the bonus issues were made.
- (2) The bonus issue shall be made out **free reserves** built out of the genuine profits or **share premium** collected in cash only.
- (3) **Revaluation Reserves** created by revaluation of fixed assets are **not capitalized**.
- (4) The declaration of bonus issue, **in lieu of dividend, is not made**.
- (5) The bonus issue is not made unless the **partly-paid shares existing are made fully paid-up**.
- (6) The company:
  - (a) has **not defaulted in payment of interest or principal in respect of fixed deposits and interest on existing debentures or principal on redemption thereof**; and.

- (b) has sufficient reason to believe that it has **not defaulted in respect of the payment of statutory dues** of the employees such as contribution to provident fund, gratuity, bonus, etc.
- (7) A company which announces its bonus issue after the approval of the Board of Directors must implement the proposal **within a period of 6 months** from the date of such approval and shall not have the option of changing the decision.
- (8) The **Articles of Association** of the company shall contain a **provision for capitalization** of reserves, etc. If there is no such provision in the Articles of Company shall **pass a resolution** at its general body meeting making provisions in the Articles of Associations for capitalization.
- (9) Consequent to the issue of bonus shares if the subscribed and **paid-up capital exceeds the authorized share capital**, a **resolution shall be passed** by the company at its general body meeting for increasing the authorized capital.
- (10) A **certificate duly signed** by the issuer company and countersigned by **statutory auditors** or by **Company Secretary in practice** to the effect that above provisions are duly complied shall be forwarded to the SEBI.

**Question 49A] For the purpose of issue of bonus shares, the reserves created by revaluation of fixed assets shall not be capitalized.**

**CS (Executive) - Dec 2016 (2 Marks)**

**Ans.:** When the company issue securities to its existing shareholders without any consideration it is called a bonus issue. Such shares are issued generally by capitalizing the company's profit & loss account, free reserve or securities premium account.

A listed company proposing to issue bonus shares shall comply with conditions given in SEBI (Disclosure & Investor Protection) Regulation. One of the conditions for issue of bonus share is that **Revaluation Reserves** created by revaluation of fixed assets are **not capitalized**.

Thus, companies cannot issue bonus shares out of reserve created by revaluation of fixed assets.

**Question 50] Discuss briefly the steps involved in issue of bonus shares by a listed company.**

**CS (Executive) - June 2011 (7 Marks)**

**Ans.:** The procedure for issue of bonus shares by a listed company is enumerated below:

1. Ensure that if conversion of FCDs/PCDs is pending, similar benefit has been extended to the holders of such FCDs/PCDs, through reservation of shares in proportion of such convertible part of FCDs/PCDs.
2. The shares so reserved may be issued at the time of conversions of such debentures on the same terms on which the bonus issue was made.
3. Ensure that bonus issue has been made out of free reserves built out of the genuine profits or securities premium collected in cash only.
4. Ensure that reserves created by revaluation of fixed assets are not capitalised.
5. Ensure that the company has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it or in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity, bonus etc.
6. Ensure that the bonus issue is not made in lieu of dividend.
7. There should be a provision in the articles of association of the company permitting issue of bonus shares; if not, steps should be taken to alter the articles suitably.
8. The share capital as increased by the proposed bonus issue should be well within the authorised capital of the company; if not, necessary steps have to be taken to increase the authorised capital.
9. Finalise the proposal and fix the date for the Board Meeting for considering the proposal and for authorising the taking up of incidental and attendant matters.

10. If there are any partly paid-up shares, ensure that these are made fully paid-up before the bonus issue is recommended by the Board of directors.
11. The date of the Board Meeting at which the proposal for bonus issue is proposed to be considered should be notified to the Stock Exchange where the company's shares are listed.
12. Hold the Board Meeting and get the proposal approved by the Board.
13. The resolution to be passed at the General Meeting should also be approved by the Board in its meeting. The intention of the Board regarding the rate of dividend to be declared in the year after the bonus issue should be indicated in the resolution for bonus issue to be passed by members in general meeting.
14. Immediately after the Board meeting intimate the Stock Exchange regarding the outcome of the Meeting.
15. Ensure that the company has announced bonus issue after the approval of Board of Directors and did not require shareholders' approval for capitalization of profits or reserves for making bonus issue as per the Article of Association, had implemented bonus issue within fifteen days from the date of approval of the issue by the board of directors of the company and must not have the option of changing the decision. However, where the company was required to seek shareholders' approval for capitalization of profits or reserves for making bonus issue as per the Article of Association, the bonus issue has implemented within two months from the date of meeting of the Board of Directors where in the decision to announce bonus was taken subject to shareholders' approval.
16. Arrangements for convening the general meeting should then be made keeping in view the requirements of the Companies Act, with regard to length of notice, explanatory statement etc. Also 3 copies of the notice should be sent to the Stock Exchange concerned.
17. Hold the general meeting and get the resolution for issue of bonus shares passed by the members. A copy of the proceedings of the meeting is to be forwarded to the concerned Stock Exchange.
18. In consultation with the Regional Stock Exchange fix the date for closure of register of members or record date and get the same approved by the Board of directors. Issue a general notice in respect of the fixation of the record date in two newspapers one in English language and other in the language of the region in which the Registered Office of the company is situated.
19. Give 7 day's notice to the Stock Exchange concerned before the date of book closure/record date.
20. After the record date process the transfers received and prepare a list of members entitled to bonus shares on the basis of the register of members as updated. This list of allottees is to be approved by the Board or any Committee thereof. The list usually serves as allotment list and on this basis the allotment is to be made to the eligible members.
21. File return of allotment with the Registrar of Companies within 30 days of allotment. Also intimate Stock Exchange concerned regarding the allotments made.
22. Ensure that the allotment is made within 15 days of the date on which the Board of directors approved the bonus issue.
23. Submit an application to the Stock Exchange for listing the bonus shares allotted.

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**Question 51] Write a short note on: Advantages of issuing bonus shares**

**Ans.:** Advantages of issuing bonus shares are as follows:

1. Fund flow is not affected adversely.
2. Market value of the Company's shares comes down to their nominal value by issue of bonus shares.
3. Market value of the members' shareholdings increases with the increase in number of shares in the company.

4. Bonus share is not an income. Hence, it is not a taxable income.
5. Paid-up share capital increases with the issue of bonus shares.

**Question 52] Preferential issue is not for retail investors. Comment.**

**CS (Executive) - Dec 2012 (4 Marks)**

**Ans.:** Preferential issue means issuance of equity shares to promoter group or selected investors. It covers allotment of convertible debentures or any other financial instruments that could be converted into equity shares at a later date. The investors could be institutional investors, private equity investors, high net-worth individuals, or companies.

Preferential issue is one of the key sources of funding for companies. One of the biggest advantages of a preferential issue is that the company can raise money quickly and cheaply compared with other means of raising money, say IPO or issue of shares on a rights basis.

Preferential issues and private placement is only for selected class of investors and not for the retail investors. It is like a wholesale market, where institutions with financial clout are allowed to participate.

**Real example of private placement:** Sesa Sterlite Ltd. has issued Secured, Rated, Non-Cumulative, Redeemable Debentures of ₹ 10,00,000 (Rupees Ten Lakhs) each up to ₹ 1200,00,00,000 (Rupees One Thousand Two Hundred Crores) in year 2014 on private placement basis to institutional buyers.

Thus, companies can arrange huge capital by using private placement of securities instead of going for IPO and other options which are costly and where more requirements under various statutes and regulations are required to be complied with.

**Question 53] Discuss briefly the SEBI Regulations for preferential issue of shares by listed companies.**

**CS (Executive) - Dec 2011 (5 Marks), Dec 2012 (5 Marks)**

**Ans.:** SEBI Regulations for preferential issue of shares by listed companies are as follows:

- ◆ The companies has comply with the pricing requirement as stated in Regulation.
- ◆ The company has to pass a special resolution at the meeting of shareholders.
- ◆ The explanatory statement to the notice for the general meeting should contain the details about the objects of the issue through preferential offer and required information stated in regulation.
- ◆ The tenure of the convertible securities to be issued under preferential issue should not exceed beyond 18 months from the date of their allotment.
- ◆ Securities issued under preferential issue are subject to lock-in period of 3 years.
- ◆ The company has to complete allotment of securities under preferential issue within a period of 15 days from the date of passing of the resolution.
- ◆ All the equity shares held by the proposed allottees in the issuer are to be in dematerialise form.
- ◆ An issuer cannot make preferential issue of securities to any person who has sold any equity shares of the issuer during last 6 months.
- ◆ A listed company shall not make any preferential issue of specified securities unless it is in compliance with the conditions for continuous listing.
- ◆ A listed company shall not make any preferential allotment of specified securities unless it has obtained the PAN of the proposed allottees.

**Question 54] How would you fix the price in preferential issue of shares in a listed company?**

**CS (Inter) - June 2007 (4 Marks)**

**Ans.:** Price of shares in preferential issue is decided as follows:

- (1) If the equity shares have been listed on a stock exchange for 26 weeks or more on the relevant date : The price of shares will be higher of the following two:
- The average of weekly high and low of the closing prices during last 26 weeks
  - The average of the weekly high and low of the closing prices during last 2 weeks.
- (2) If the equity shares have been listed on a stock exchange for less than 26 weeks on the relevant date : The price of shares will be higher of the following three:
- The price at which shares were issued by the company in its IPO or the value per share arrived at in a scheme of merger or amalgamation under sections 230 to 232 of the Companies Act, 2013.
  - The average of weekly high and low of the closing prices quoted on the stock exchange during the period shares have been listed.
  - The average of the weekly high and low of the closing prices during last 2 weeks.

Relevant date means the date 30 days prior to the date on which the meeting of general body of shareholders is held as per Section 62 of the Companies Act, 2013.

**Question 54A]** 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:

- Closing price in the market on the relevant date: ₹ 340
- 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: ₹ 354

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: ₹ 350.

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**Ans.:** As per SEBI (ICDR) Regulations, 2009 the price of equity shares which have been listed on a stock exchange for 26 weeks or more on the relevant date will be higher of the following two:

- The average of weekly high and low of the closing prices during last 26 weeks
- The average of the weekly high and low of the closing prices during last 2 weeks.

Thus, price should be ₹ 354.

The promoter should be liable to pay at least 25% of the price. Hence, amount to be paid will be ₹ 88.50 (354 × 25%).

**Question 55]** State the conditions to be complied with by the companies for making qualified institutions placement of its securities.

**Ans.:** A listed issuer can make qualified institutions placement subject to the following conditions:

**Special Resolution :** A special resolution approving the issue is required to be passed by the shareholders.

**Listing of existing shares on a recognised stock exchange having nationwide trading terminal :** Prior to the date of issuance of notice to its shareholders for convening the meeting to pass the special resolution, the equity shares of the same class which are proposed to be allotted through QIP are listed on a recognised stock exchange having nationwide trading terminal for a period of at least one year.

**Minimum Public Shareholding :** It is in compliance with the requirement of minimum public shareholding specified in the listing agreement with the stock exchange.

**Relevant Date :** In the special resolution, it shall be, among other relevant matters, the resolution must specify the relevant date and the also specify that the allotment is proposed to be made through QIP.



**No withdrawal of bid :** The application in qualified institutions placement cannot be withdraw their bids after the closure of the issue.

**Restrictions on allotment :** If the size of the issue is less than or equal to ₹ 250 Crore minimum 2 allottees for each placement and where the issue size is greater than ₹ 250 Crore minimum of 5 allottees required. A single allottee cannot be allotted more than 50% of the issue size.

**Validity of the special resolution :** An allotment pursuant to the special resolution approving the proposed QIP is required to be completed within a period of 12 months from the date of passing of the resolution.

**Restriction on amount raised :** The aggregate of the proposed QIP and all previous QIPs made by the issuer in the same financial year should not exceed 5 times the net worth of the issuer as per the audited balance sheet of the previous financial year.

**Tenure :** The tenure of the convertible or exchangeable eligible securities issued through qualified institutions placement should not be more than 60 months from the date of allotment.

**Transferability of Securities:** The eligible securities allotted cannot be sold by the allottee for a period of 1 year from the date of allotment, except on a recognised stock exchange.

**Question 56] Write a short note on: Placement Document**

**Ans.:** 'Placement Document' means document prepared by Merchant Banker for the purpose of Qualified Institutions placement and contains all the relevant and material disclosures to enable QIBs to make an informed decision.

**Disclosures required to be made in Placement Document**

- ◆ A placement document should contain all material information specified in SEBI (ICDR) Regulations, 2009.
- ◆ The placement document needs to be serially numbered and copies are required to be circulated only to select investors.
- ◆ The issuer, while seeking in-principle approval from the recognised stock exchange is require to furnish a copy of the placement document, a certificate confirming compliance with the provisions ICDR Regulations along with any other documents required by the stock exchange.
- ◆ The placement document is required to be placed on the website of the issuer and concerned stock exchange with a disclaimer to the effect that it is in connection with a qualified institutions placement and that no offer is being made to the public or to any other category of investors.

**Time period for filing the copy of placement document with SEBI :** A copy of the placement document is required to be filed with SEBI for its record within 30 days of the allotment of eligible securities.

**Question 57] State the SEBI Regulations relating to issue of securities by Small and Medium Enterprises (SMEs).**

**Ans.:** The necessary provisions for the listing of specified securities under the SME Platform in accordance with SEBI (ICDR) Regulations, 2009 are as follows:

**Applicability :** A company can issue specified securities if the post-issue face value capital does not exceed ₹ 10 Crore.

An issuer, whose post issue face value capital is more than ₹ 10 Crore and up to ₹ 25 Crore, may also issue specified securities in SME Exchange.

**Filing of offer document :** A company is not required to file the draft offer document with SEBI. But the company has to file a copy of the offer document with SEBI through a Merchant Banker, simultaneously with the filing of the prospectus with the SME exchange and the ROC.

SEBI should not issue any observation on the offer document.

The offer document shall be displayed from the date of filing on the websites of SEBI, the issuer, the merchant banker and the SME exchange.

**Minimum application value and number of allottees :** The minimum application size in terms of number of specified securities shall not be less than ₹ 1 lakh per application. The minimum number of prospective allottees should be less than fifty.

**Listing of specified securities :** The specified securities issue in accordance with the provision of SEBI (ICDR) Regulations, 2009 will be listed on SME exchange.

A listed company may migrate the specified securities already listed on any recognized stock exchange to the SME exchange.

**Migration to SME exchange :** A listed company whose post-issue face value capital is less than ₹ 25 Crore can migrate its specified securities to SME exchange -

- If its shareholders approve such migration by passing a special resolution through postal ballot and
- If such issuer fulfils the eligibility criteria for listing laid down by the SME exchange.

However, the special resolution shall be acted upon if and only if the votes cast by shareholders other than promoters in favour of the proposal amount to at least 2 times the number of votes cast by shareholders other than promoter shareholders against the proposal.

**Migration to Main Board :** An company, whose specified securities are listed on a SME Exchange and whose post issue face value capital is more than ₹ 10 crore and up to ₹ 25 Crore, can migrate its specified securities to Main Board -

- If its shareholders approve such migration by passing a special resolution through postal ballot to this effect and
- If such issuer fulfils the eligibility criteria for listing laid down by the Main Board.

However, the special resolution shall be acted upon if and only if the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal.

Where the post issue face value capital of an issuer listed on SME exchange is likely to increase beyond ₹ 25 crore by virtue of any further issue of capital by the issuer, the issuer shall migrate its specified securities listed on SME exchange to Main Board and seek listing of specified securities proposed to be issued on the Main Board subject to the fulfilment of the eligibility criteria for listing of specified securities laid down by the Main Board.

**Underwriting Obligation :**

- The issue shall be 100% underwritten.
- The Merchant Banker shall underwrite at least 15% of the issue size.
- The issuer in consultation with Merchant Banker may appoint underwriters.
- If other underwriters fail to fulfil their underwriting obligations or other nominated investors fail to subscribe to unsubscribed portion, the merchant banker shall fulfil the underwriting obligations.
- The underwriters other than the merchant banker and the nominated investors, who have entered into an agreement for subscribing to the issue in case of under-subscription, shall not subscribe to the issue in any manner except for fulfilling their obligations under their respective agreements with the merchant banker in this regard.
- All the underwriting and subscription arrangements made by the merchant banker shall be disclosed in the offer document.
- The merchant banker shall file an undertaking to SEBI that the issue has been 100% underwritten along with the list of underwriters and nominated investors indicating the extent of underwriting or subscription commitment made by them, one day before the opening of issue.

**Market Making :** The Merchant Banker ensure that there shall be compulsory market making through the stock brokers of SME exchange for a minimum period of 3 years from the date of listing of specified securities.

**Main Board :** It means a recognized stock exchange having nationwide trading terminals, other than SME exchange.

**Nominated investor :** It means QIB or private equity fund, who enters into an agreement with the Merchant Banker to subscribe to the issue in case of under-subscription or to receive or deliver the specified securities in the market making process.

**Question 57A] What are the provisions of SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009, for exit offer to be made by the promoters in case of change in objects or variation in the terms of contract referred to in the prospectus?**

**Ans.:** As per **Section 13(8)** of the Companies Act, 2013, a company which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and –

- (i) The details in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, indicating the justification for such change.
- (ii) The dissenting shareholders shall be given an *opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the SEBI.*

As per **Section 27** of the Companies Act, 2013 a company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of, or except subject to an authority given by the company in general meeting by way of special resolution.

The details, as may be prescribed, of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated indicating clearly the justification for such variation. Such company shall not use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, *shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the SEBI by making regulations in this behalf.*

Regulations 69A to 69G of the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 makes the provisions for conditions and manner of providing exit opportunity to dissenting shareholders.

**Applicability [Regulation 69A]:** The provisions of an exit offer to be made by the promoters or shareholders in control of an issuer to the dissenting shareholders applies if there is change in objects or variation in the terms of contract referred to in the prospectus. (i.e. *to say when provisions of sections 13(8) and 27 of the Companies Act, 2013 applies*)

**Definitions [Regulation 69B]:**

- (a) Dissenting shareholders means those shareholders who have voted against the resolution for change in objects or variation in terms of a contract, referred to in the prospectus of the issuer.
- (b) Frequently traded shares shall have the same meaning as assigned to it in the SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011.
- (c) Relevant date means date of the board meeting in which the proposal for change in objects or variation in terms of a contract, referred to in the prospectus is approved, before seeking shareholders approval.

**Conditions for exit offer [Regulation 69C]:** The promoters or shareholders in control shall make the exit offer in accordance to the dissenting shareholders, if -

- (a) The public issue has opened after April 1, 2014.
- (b) The proposal for change in objects or variation in terms of a contract, referred to in the prospectus is dissented by at least **10% of the shareholders** who voted in the general meeting.
- (c) The amount to be utilized for the objects for which the prospectus was issued is less than 75% of the amount raised (including the amount earmarked for general corporate purposes as disclosed in the offer document).

**Eligibility [Regulation 69D]:** 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 [Regulation 69E]:** The 'exit price' payable to the dissenting shareholders shall be the highest of the following:

- (a) Volume-weighted average price during last 52 weeks before the relevant date.
- (b) The highest price paid or payable for any acquisition during last 26 weeks before the relevant date.
- (c) Volume-weighted average market price shares for a period of 60 trading days before the relevant date as traded on the recognized stock exchange, provided such shares are frequently traded.
- (d) Where the shares are not frequently traded, the price determined by the merchant banker taking into account valuation parameters.

**Manner of providing exit to dissenting shareholders [Regulation 69F]:**

- (1) 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.
- (2) A statement to the effect that the promoters or the shareholders having control shall provide an exit opportunity to the dissenting shareholders shall also be included in the explanatory statement to the notice for passing special resolution.
- (3) After passing of the special resolution, the issuer shall submit the voting results to the recognized stock exchange.
- (4) The issuer shall also submit the list of dissenting shareholders, as certified by its compliance officer, to the recognized stock exchanges.
- (5) The promoters or shareholders in control, shall appoint a merchant banker and finalize the exit offer price.
- (6) The issuer shall intimate the recognized stock exchange about the exit offer to dissenting shareholders and the price at which such offer is being given.
- (7) The recognized stock exchange shall immediately on receipt of such intimation disseminate the same to public within one working day.
- (8) To ensure security for performance of their obligations, the promoters or shareholders having control, as applicable, shall create an escrow account which may be interest bearing and deposit the aggregate consideration in the account at least two working days prior to opening of the tendering period.
- (9) The tendering period shall start not later than 7 working days from the passing of the special resolution and shall remain open for 10 working days.
- (10) 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.
- (11) The promoters or shareholders having control shall facilitate tendering of shares by the shareholders and settlement of the same through the recognized stock exchange mechanism as specified by SEBI for the purpose of takeover, buy-back and delisting.