STUDY MATERIAL

EXECUTIVE PROGRAMME

CAPITAL MARKET & SECURITIES LAWS

GROUP 2

PAPER 5

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EXECUTIVE PROGRAMME

CAPITAL MARKET & SECURITIES LAWS

The securities markets are vital to the growth, development and strength of market economies and the maturity of an economy are decided based on the robustness of securities market of an economy. Considering that the Securities market is the core area of practice for the Company Secretaries, it becomes very important for the professionals to be fully aware of various laws and regulations, both for practice and guiding the Board of Directors on securities laws related matters. The securities market is governed by various regulations enacted in the course of time by the competent legislative body and regulating bodies.

This study is divided into two Parts, Part I deals with Capital Market and Part II deals with Securities Laws.

Part I of the study deals with the basic concepts of Capital Markets and enable the students to develop the understanding about the primary and secondary market which is the bridge between the investors and the corporates. It discusses the important provisions covered under the Securities Contract (Regulations) Act, 1956, Securities and Exchange Board of India Act, 1992 and Depositories Act, 1992 to govern the Indian securities markets. There are several intermediaries and institutions involved in dealing with the capital market. SEBI has also jurisdiction over all such intermediaries and persons associated with the securities market, which have also been discussed in this part.

Part II of the Study provides an in depth analysis of the legal principles applicable to listed companies in addition to the Companies Act, 2013. The Securities Exchange Board of India (SEBI) has extended its jurisdiction over corporates in the issuance of capital and transfer of securities, during the course of time has come out with several regulations for smooth functioning of the market, thereby also giving paramount importance to the stakeholders. Therefore, this study discusses various legislative and regulatory guidance such as the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, SEBI (Prohibition of Insider Trading) Regulations, 2015, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, SEBI (Delisting of Equity Shares) Regulations, 2021 etc. and role of Company Secretary thereof.

In the era of plethora of legislations, rules, and regulations, a Company Secretary professional is expected to be well aware of these rules and principles, as these compliances make the functioning of the markets smooth while violations leads to severe penalties.

This study material is published to aid the students in preparing the paper on Capital Market and Securities Laws for Executive Programme. It is part of the educational kit and takes the students step by step through each phase of preparation emphasizing key concepts, principles, legal fundamentals and procedures. Company Secretaryship being a professional course, the examination standards are set very high, with focus on knowledge of concepts, their application, procedures and case laws, for which sole reliance on the contents of this study material may not be enough. This study material may, therefore, be regarded as the basic material and must be read along with the Bare Acts, Rules, Regulations, Case Laws.

The legislative changes made upto November, 2025 have been incorporated in the study material. The students are advised to refer to the updations at the Regulator's website, Supplements relevant for the subject issued by ICSI and Chartered Secretary Journal and other publications. Specifically, students are advised to read "**Student Company Secretary" e-Journal** which covers regulatory and other relevant developments relating to the subject. In the event of any doubt, students may contact the Directorate of Academics at academics@icsi.edu.

The amendments to law made upto 31st May of the Calendar Year for December Examinations and upto 30th November of the previous Calendar Year for June Examinations shall be applicable.

Although due care has been taken in publishing this study material, the possibility of errors, omissions and/or discrepancies cannot be ruled out. This publication is released with an understanding that the Institute shall not be responsible for any errors, omissions and/or discrepancies or any action taken in that behalf.

Important Note:

The new criminal laws i.e. Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023 and Bharatiya Sakshya Adhiniyam 2023 have repealed Indian Penal Code 1860, Criminal Procedure Code 1973 and Indian Evidence Act 1872 (old criminal laws) respectively.

Therefore, by virtue of Section 8 of General Clauses Act 1897, the references to the old criminal laws, unless a different intention appears, be construed as references to the provision of new criminal laws.

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CAPITAL MARKET & SECURITIES LAWS

SYLLABUS

OBJECTIVES:

Part I: To provide the basic understanding of the working of capital market in India.

Part II: To provide conceptual understanding and working knowledge of securities laws governing the entities listed on the stock exchanges.

Level of Knowledge: Working Knowledge

PART I: CAPITAL MARKET (40 MARKS)

1. **Basics of Capital Market:** Structure of Capital Market ● Participants of Capital Market ● Capital Market Instruments.
2. **Secondary Market in India:** Development of Stock market in India ● Stock market & its operations ● Trading Mechanism ● Exchange Traded Fund ● Derivatives ● Rights Entitlements ● Block and Bulk deals ● Basis of Sensex ● Nifty ● Types of Indexes ● Clearing Corporations ● Suspension and Penalties ● Surveillance Mechanism ● Risk management in Secondary market ● Impact of various Policies on Stock Markets ● Types of Market ● Types of Trading Platform ● Regulators of Secondary Markets.
3. **Securities Contracts (Regulations) Act 1956:** Objectives of the SCR Act, Rules and Regulations made there under ● Important Definitions ● Recognized Stock Exchange ● Public issue and listing of securities ● Case Laws.
4. **Securities and Exchange Board of India:** Objective ● Powers and functions of SEBI ● Securities Appellate Tribunal ● Penalties and appeals ● Procedure for Redressal of Grievances ● SCORES ● SEBI (Informal Guidance) Scheme, 2003 ● Case Laws.
5. **Laws Governing to Depositories and Depository Participants:** Role & Functions of Depositories ● Depository Participants ● Admission of Securities ● Dematerialization & Re-materialization ● International Securities Identification Number (ISIN) ● Depository Process ● Inspection and Penalties ● Internal Audit and Concurrent Audit of Depository Participants.
6. **Securities Market Intermediaries:** Regulatory Framework ● Primary Market and Secondary Market Intermediaries ● Role and Functions of Merchant Bankers, Stock Brokers, Registrars and Transfer Agents, Bankers to an Issue, Portfolio Managers, Debenture Trustees, Investment Advisers, Research Analysts, Credit Rating Agencies, Depositories and Depositories Participants, Foreign Institutional Investors ● Internal Audit of Intermediaries by Company Secretary in Practice ● Case Laws and Case Studies.

7. **International Financial Services Centres Authority (IFSCA):** Establishment of Authority ● Powers and Functions of Authority ● International Financial Services Centre (IFSC) ● Financial Products ● Financial Services ● Listing and Trading of units in IFSC ● SEBI IFSC Guidelines.

PART II: SECURITIES LAWS (60 MARKS)

8. **Issue of Securities - Concepts:** Types of Issues ● Initial Public Offer ● Further Public Offering ● Rights Issue ● Preferential Issue ● Qualified Institutions Placement ● Initial Public Offer of Indian Depository Receipts ● Rights Issue of Indian Depository Receipts ● Initial Public Offer by Small and Medium Enterprises ● Bonus Issue ● Share Based Employee Benefits and Sweat Equity.

9. **Issue and Listing of Non-Convertible Securities**: Debt Securities and Non-Convertible Redeemable Preference Shares ● Perpetual Debt Instruments ● Commercial Paper - Issuance and Listing.

10. **Listing Obligations and Disclosure Requirements:** Compliances under SEBI (LODR) Regulations, 2015 ● Key Provisions pertaining to Corporate Governance ● Prior Intimations ● Disclosure of Events or Information ● Meeting of shareholders and voting ● Policies ● Compliance under SEBI (LODR) Regulations, 2015 which has listed its Non-Convertible securities ● Liability of a Listed Entity for Contravention ● Case Laws and Case Studies.

11. **Acquisition of Shares and Takeovers – Concepts:** Regulatory Framework ● Trigger point for making an open offer by an acquirer ● Disclosures ● Exemptions ● Case Laws and Case Studies.

12. **Prohibition of Insider Trading**: Basic Concepts ● Unpublished price sensitive information (UPSI) ● Trading Plans ● Disclosures ● Informant Incentives and Rewards ● Codes of fair disclosure and conduct ● Penalties and Appeals ● Case Laws and Case Studies.

13. **Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market:** Prohibition of certain dealings in securities ● Prohibition of manipulative, fraudulent and unfair trade practices ● Investigation ● Case Laws and Case Studies.

14. **Delisting and Buyback of Securities - Concepts:** Delisting of Equity Shares ● Voluntary Delisting ● Exit Opportunity ● Compulsory Delisting ● Conditions of buy-back ● Buy back Methods ● Tender Offer ● Open Market (Book building and Stock Exchange) ● General obligations ● Penalties ● Case Laws and Case Studies.

15. **Mutual Funds :** Regulatory Framework ● Types of Mutual Funds and Schemes ● Key players in Mutual Funds - Sponsor, Asset Management Company, Trustee, Unit holder ● Evaluating performance of Mutual funds - Net Asset Value ● Expense Ratio ● Holding Period Return.

16. **Collective Investment Schemes:** Regulatory Framework ● Restrictions on Business Activities ● Submission of Information and Documents ● Trustees and their Obligations ● Case Laws and Case Studies.

ARRANGEMENT OF STUDY LESSONS
CAPITAL MARKET & SECURITIES LAWS
GROUP 2 • PAPER 5

PART I – CAPITAL MARKET

S. No.	Lesson Title
1.	Basics of Capital Market
2.	Secondary Market in India
3.	Securities Contracts (Regulation) Act, 1956
4.	Securities and Exchange Board of India
5.	Laws Governing to Depositories and Depository Participants
6.	Securities Market Intermediaries
7.	International Financial Services Centres Authority (IFSCA)

PART II – SECURITIES LAWS

8.	Issue of Capital & Disclosure Requirements
9.	Share Based Employee Benefits and Sweat Equity
10.	Issue and Listing of Non-Convertible Securities
11.	Listing Obligations and Disclosure Requirements
12.	Acquisition of Shares and Takeovers – Concepts
13.	Prohibition of Insider Trading
14.	Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market
15.	Delisting of Equity Shares
16.	Buy-Back of Securities
17.	Mutual Funds
18.	Collective Investment Schemes

LESSON WISE SUMMARY
CAPITAL MARKET & SECURITIES LAWS

PART I – CAPITAL MARKET (40 MARKS)

Lesson 1 – Basics of Capital Market

Capital is one of the important factors of production in any economy. A well-organized financial system provides adequate capital formation through savings, finance and investments. An investment depends upon Savings and in turn Savings depends upon earnings of an individual or profits of the organization. This system may be viewed as a set of sub-systems with so many elements which are interdependent and interlinking with each other to produce the purposeful result within the boundary. Hence, the term system in the context of finance means a set of complex and closely connected financial institutions, instruments, agents, markets and so on which are interdependent and interlinking with each other to produce the economic growth within the country.

In any economy, financial Institutions play an important role because all the financial dealings and matters are handled and monitored by such Institutions. Institutions invest capital in corporations that seek to expand and grow their businesses, while corporations issue debt or equity to the institutions in return for their capital investment. Investment banks are hired to match institutions and corporations based on their risk profile and investment style.

A second important division falls between the stock markets is capital market instruments. Capital Market Instruments are responsible for generating funds for companies, corporations and sometimes governments. These are used by the investors to make a profit out of their respective markets. At the end of this lesson, the student will able to understand:

- The financial system in India;
- The structure of financial market in India;
- The regulatory framework for securities market in India;
- Various Capital Markets Instruments;
- Participants of Capital Market.

Lesson 2 – Secondary Market in India

Secondary Market refers to a market where securities are traded after being initially offered to the public in the primary market and/or listed on the Stock Exchange. Majority of the trading is done in the secondary market. Secondary market comprises of equity markets and the debt markets. There are many other factors also such as integration with global financial market, policy decision which affect the working of stock markets. At the end of this lesson, the student will able to understand:

- Concept of Secondary Market & its trading mechanism etc;
- Development of Stock Market in India and its operations;
- Risk Management in secondary market;

- Regulators of secondary market;
- Basics of Sensex, Nifty and types of Indexes.

Lesson 3 – Securities Contracts (Regulations) Act, 1956

The Securities Contracts (Regulation) Act, 1956 ("SCRA") is an important piece of legislation which regulates the stock exchanges and contracts in securities. The SCRA was enacted to prevent undesirable exchanges in securities and to control the working of stock exchange in India. It came into force on February 20, 1957. This Act gives powers to regulate and govern the stock exchanges and their working. There are certain powers which are delegated to SEBI under this Act.

This lesson will give an insight into the various Powers of Central Government, Stock Exchange and SEBI under the SCRA Act, the penal provisions, procedures, offences, the procedure for appeal to SAT, Right of Investors and various listing and delisting provisions under Securities Contract (Regulations) Rules, 1957 etc. At the end of this lesson, the student will able to understand:

- The recognition of stock exchange(s);
- Powers of Central Government under SCRA;
- Powers of Recognised Stock Exchange to make rules and bye-laws;
- Powers of SEBI under SCRA;
- Issue of securities to the Public;
- Procedure to file an appeal to Securities appellate tribunal;
- Various penalties for various offences as prescribed under the Act;
- Requirements for listing of securities with recognised stock exchange.

Lesson 4 – Securities and Exchange Board of India

With an aim to regulate the securities market in India, the Government of India set up a regulatory body i.e. Securities and Exchange Board of India ('SEBI') in 1988. It became an autonomous body by the Government of India on 12 April 1992 and given statutory powers in 1992 with SEBI Act, 1992 being passed by the Indian Parliament. The Preamble of the Securities and Exchange Board of India is "to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto".

The SEBI Act is the main Act from which several other Rules and Regulations have originated. The Act constitutes a Board ("the SEBI") to protect the investors' interest in securities and to promote the development and to regulate the securities market. The SEBI replaces the erstwhile Controller of Capital Issues. The SEBI has various powers under the Act such as, to issue various Regulations to better regulate the securities market, and for better investor protection etc. It governs and regulates the market intermediaries. It has wide powers of investigation, survey, search and seizure, powers to impound documents, take statements on oath, etc. Thus, the powers enshrined in the SEBI are of a very wide amplitude. It also has powers to issue "directions, e.g., cease and desist" orders, by virtue of which, it can prohibit any person or intermediary from carrying out certain operations. The Act provides for stringent penalties for different types of offences and violations.

The objective of this lesson, is to provide a broader information regarding various powers and functions of SEBI, various stringent penalties for protecting the interest of investors and and inspection of various regulated entities, etc. to the students. At the end of this lesson, the student will able to understand:

- Regulatory prescriptions on establishment and incorporation of SEBI;

- Powers and functions of SEBI;
- Penalties and its adjudications;
- Regulatory prescriptions on establishment and appeal to Securities Appellate Tribunal (SAT);
- Powers of the Central Government;
- SCORES Framework;
- Informal Guidance Scheme.

Lesson 5 – Laws Governing to Depositories and Depository Participants

A Depository is an organization like a Central Bank where the securities of a shareholder are held in the electronic form at the request of the shareholder through the medium of a Depository Participant. A DP can be a bank, financial institution, a broker, or any entity eligible as per SEBI norms and is responsible for the final transfer of shares from the depository to investors. The investor, at the end of a transaction receives a confirmation from the depository.

In India, there is Depository System for securities trading in which book entry is done electronically and no paper work is involved. The physical form of securities is extinguished and shares or securities are held in an electronic form. Before the introduction of the depository system through the Depository Act, 1996, the process of sale, purchase and transfer of securities was a huge problem, and there was no safety at all.

The Depositories Act, 1996 provides a legal framework for establishment of depositories to facilitate holding of securities including shares in the demat form (electronic form) and to effect transfer of securities through book entry. The Act establishes the depository system in India by providing for setting up of one or more depositories to enable the investors to hold securities in non-physical form (known as dematerialized form) and to affect transfer of securities by way of book entries in accounts maintained by the depository.

Every depository is required to be registered with SEBI and will have to obtain a Certificate for commencement of business on fulfillment of the prescribed conditions. There are two types of depositories in India, namely National Securities Depository Limited (NSDL) and Central Depository Services Limited (CDSL). The functioning of Depository and its constituents in India is primarily governed by the Depository Act 1996, SEBI (Depository & Participant) Regulations, 2018, Bye-laws and business rules of respective depositories.

The operational and functional issues relating to depository system have been discussed in this lesson to give an idea of the practical implications of various statutory and regulatory provisions. Further, a Practising Company Secretary has been recognised by SEBI for various types of Audit of Depository participants. At the end of this lesson, the student will able to understand:

- Role and Functions of depositories;
- Models of depository and its functions;
- Process of dematerialization and rematerialisation of securities;
- International Securities Identification Number (ISIN);
- Powers of the SEBI;
- Penalties and Adjudication;
- Audit of depositories i.e., Internal Audit and Concurrent Audit by a Practising Company Secretary;
- Audit of Reconciliation of Share Capital by a Practising Company Secretary.

Lesson 6 – Securities Market Intermediaries

Intermediaries are service providers and are an integral part of any financial system. The objective of these intermediaries is to smoothen the process of investment and to establish a link between the investors and the users of funds. The Market Regulator, i.e., SEBI regulates various intermediaries in the primary and secondary markets through its Regulations for these respective intermediaries. These Regulations also empower SEBI to inspect the functioning of these intermediaries and to collect fees from them and to impose penalties on erring entities.

At the end of this lesson, the student would have an overview about various types of intermediaries operating in Capital Market and its role & responsibility, Role and functions of Merchant Bankers, Stock Brokers, Registrar and Transfer Agents, bankers to an issue, Portfolio Managers, Debenture Trustees, Investment Advisers, Research Analysts, Credit Rating Agencies, Foreign Portfolio Investors, etc. Role of Company Secretary in Practice in Internal Audit of Intermediaries is also described in this lesson.

Lesson 7 – International Financial Services Centers Authority (IFSCA)

The International Financial Services Centres Authority (IFSCA) has been established on April 27, 2020 under the International Financial Services Centres Authority Act, 2019. It is headquartered at GIFT City, Gandhinagar in Gujarat. The IFSCA is a unified authority for the development and regulation of financial products, financial services and financial institutions in the International Financial Services Centre (IFSC) in India. At present, the GIFT IFSC is the maiden international financial services centre in India. Prior to the establishment of IFSCA, the domestic financial regulators, namely, RBI, SEBI, PFRDA and IRDAI regulated the business in IFSC.

As the dynamic nature of business in the IFSCs requires a high degree of inter-regulatory coordination within the financial sector, the IFSCA has been established as a unified regulator with a holistic vision in order to promote ease of doing business in IFSC and provide world class regulatory environment. The main objective of the IFSCA is to develop a strong global connect and focus on the needs of the Indian economy as well as to serve as an international financial platform for the entire region and the global economy as a whole.

At the end of this lesson, the student would have an overview about the establishment of IFSCA, powers and functions of IFSCA, International Financial Services Centre (IFSC), financial products and services, listing and trading of units in IFSC.

PART II – SECURITIES LAWS (60 MARKS)

Lesson 8 –Issue of Capital & Disclosure Requirements

The primary market is the avenue for resource mobilization and capital formation in the country as it deals with the issue of new instruments by the corporate sector such as equity shares, preference shares and debt instruments. Central and State Governments, various public sector undertakings (PSUs), statutory and other authorities such as state electricity boards and port trusts also issue bonds/debt instruments. Primary Market provides an opportunity to issuers of securities, Government as well as corporates, to raise financial resources to meet their requirements of investment and/or discharge their obligations. SEBI has issued SEBI (Issue of Capital and Disclosure Requirements) Regulations for regulation several types of issue. Through this lesson, the students will understand:

- Different types of issues i.e IPO, FPO, Bonus Issue, Rights Issue, preferential issue, qualified Institutions Placements;
- IPO of Indian Depository Receipts;
- Initial public offer by Small and Medium Enterprises.

Lesson 9 – Share Based Employee Benefits and Sweat Equity

The SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 have been notified and become effective on August 13, 2021, repealing the old regulations SEBI (Issue of Sweat Equity) Regulations, 2002 and SEBI (Share Based Employee Benefits) Regulations, 2014, which provide the framework for issuance of Sweat Equity shares by listed companies and regulation of Employee Stock Option Scheme, Employee Stock Purchase Scheme and other share based employee benefits. At the end of this lesson, the student will able to understand:

- Scheme implementation and process;
- Administration of Specific Scheme;
- Issuance of Sweat Equity Shares;
- Pricing, Accounting Treatment, Lock-In and listing of Sweat Equity Shares.

Lesson 10 – Issue and Listing of Non-Convertible Securities

SEBI vide its notification dated August 09, 2021, notified the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ('NCS Regulations') repealing the old regulations i.e. the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 Regulations") and the SEBI (Issue and Listing of Non- Convertible Redeemable Preference Shares) Regulations, 2013. The NCS Regulations providing the framework for issuance and listing of debt securities and non-convertible redeemable preference shares. The NCS Regulations also cover the listing of perpetual debt instruments, Perpetual Non- Cumulative Preference Shares and commercial paper. Through this lesson, the students will be able to understand:

- The concept of Debt Securities and Non-Convertible Redeemable Preference Shares;
- Conditions and eligibility criteria for public issue and listing of Debt Securities and Non-Convertible Redeemable;
- Listing of Private Placement of Debt Securities and Non-Convertible Redeemable Preference Shares hares;
- Issuance and Listing of Perpetual Debt Instruments, Perpetual Non-Cumulative Preference Shares and Similar Instruments;
- Issuance and Listing of Commercial Paper.

Lesson 11 – Listing Obligations and Disclosure Requirements

Listing agreement means where the securities are listed, on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange. It is a basic document which is executed between companies and the stock exchange when companies are listed on the stock exchange.

With a view to consolidate and streamline the provisions of existing listing agreements for different segments of the capital market and to align the provision relating to listed entities with the Companies Act 2013, SEBI has notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 hereinafter referred as 'Listing Regulations'.

The SEBI Listing Regulations lay down the broad principles for periodic disclosures to be given by the listed entities operating in different segments of the capital markets. The Listing Regulations have been structured to

provide ease of reference by consolidating into one single document across various types of securities listed on the Stock Exchanges. This lesson will give an overview of:

- The key provisions of the SEBI (LODR) Regulations, 2015;
- Key provisions pertaining to Corporate Governance;
- Obligations of listed entities;
- Various compliances & disclosures required to be made by the listed entities;
- Types of Board committee under listing regulations;
- Concept of Vigil Mechanism and Related Party Transactions; and
- Role of Company Secretary as a compliance officer as per the SEBI (LODR) Regulations, 2015.

Lesson 12 – Acquisition of Shares and Takeovers - Concepts

One of the most popular modes of corporate expansion is by the acquisition of an existing company. However, when the company being acquired is a listed company, then along with the promoters' stake, there are a lot of other interests, such as, public shareholders, financial institutions, foreign shareholders, etc. It is essential that all these shareholders also get a fair deal in case of an acquisition. To address all such concerns, SEBI has framed the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 which have evolved significantly over the years and notified the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 ('SAST Regulations') repealing the old regulation, providing for Acquisition of shares and takeover of listed companies popularly known as "Takeover Code".

Takeover code prescribes a systematic framework for acquisition of stake in listed companies. By these laws the regulatory system ensures that the interests of the shareholders of listed companies are not compromised in case of an acquisition or takeover. It also protect the interests of minority shareholders, which is also a fundamental attribute of corporate governance principle.

After going through this lesson, the students will have the knowledge about the various procedural aspects of takeover by an acquirer and target company with respect to acquisitions and takeover. At the end of this lesson, the student will have the conceptual clarity about the following aspects of SEBI Takeover Code:

- Triggering point while making an open offer by an acquirer;
- Procedure for making open offer to the public;
- Various disclosures requirements;
- Exemptions available to the acquirer in case of open offer.

Lesson 13 – Prohibition of Insider Trading

In India, insider trading is not only a tort i.e. a civil wrong but also a crime. The SEBI Act does not define the term by itself although it refers to the term "insider trading" in many provisions. However, using the powers to make regulations and in discharge of its functions, SEBI has made regulations prohibiting insider trading in the form of the PIT Regulations, 1992. The PIT Regulations, 1992 have had their challenges in their drafting, interpretation and reach. So, SEBI notified and issued SEBI (Prohibition of Insider Trading) Regulations, 2015 repealing the SEBI (Prohibition of Insider Trading) Regulations, 1992. The objective of these regulations is to strengthen the legal and enforcement framework, align Indian regime with international practices, provide clarity with respect to the definitions and concepts, and facilitate legitimate business transactions. At the end of this lesson, the student will be able to understand:

- Important definitions i.e., Connected person, Person deemed to be connected person, Insider, Unpublished price sensitive information;
- Restriction on communication or procurement of unpublished price sensitive information (UPSI);
- Concept of trading plans;
- Disclosures requirements;
- Code of Fair disclosure and conduct; and
- Penalty provisions in case of violations.

Lesson 14 – Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market

The SEBI (Prohibition of Fraudulent and Unfair Trade Practices in relation to the Securities Market) Regulations, 2003 enable SEBI to investigate into cases of market manipulation and fraudulent and unfair trade practices. These regulations empower SEBI to investigate into violations committed by any person, including an investor, issuer or an intermediary associated with the securities market. The regulations define frauds as acts, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person or agent while dealing in securities in order to induce another person with his connivance or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss. The regulations specifically prohibit dealing in securities in a fraudulent manner, market manipulation, misleading statements to induce sale or purchase of securities, and unfair trade practices relating to securities. SEBI can conduct investigation, suo moto or upon information received by it, through an investigation officer in respect of conduct and affairs of any person buying/selling/dealing in securities. Based on the report of the investigating officer, SEBI can initiate action for suspension or cancellation of registration of an intermediary.

At the end of this lesson, the student will be able to understand:

- Prohibition of certain dealings in securities;
- Prohibition of manipulative, fraudulent and unfair trade practices;
- Investigation and related case laws and case studies.

Lesson 15 – Delisting of Equity Shares

To streamline and strengthen the delisting process / regulations, SEBI vide its notification dated June 10, 2021 had notified SEBI (Delisting of Equity Shares) Regulations, 2021 ("the delisting regulations") which have now completely replaced the SEBI (Delisting of Equity Shares) Regulations, 2009.

The delisting regulations gives an option to the listed company to either get itself delisted from all the recognised stock exchanges where it is listed through reverse book building or only from some of the stock exchanges and continue to be listed on the exchanges having nationwide terminals through a simplified process. Additionally, these regulations provide simplified procedure for delisting of shares of smaller companies.

In order to provide a statutory backing for the delisting framework, the Government has also notified delisting rules under Rule 21 of Securities Contract (Regulations) Rules, 1957 (the SCR Rules) dealing primarily with substantive aspect on delisting. At the end of this lesson, the student will able to understand:

- Various conditions for delisting;
- Concept of voluntary and compulsory delisting;
- Comprehensive procedure for delisting of equity shares;
- Delisting of equity shares of small Companies.

Lesson 16 – Buy-Back of Securities

Buy-back of securities is a corporate financial strategy which involves capital restructuring and is resorted by companies to achieve the varied objectives of increasing earnings per share, averting hostile takeovers, improving returns to stakeholders and realigning the capital structure. Buy-back of securities, like any other transaction of corporate restructuring, brings into play several issues, both financial and non-financial, and the process of buy-back needs to be structured in a way that all the issues are taken care of favorably.

The concept of buy-back was introduced in the Companies Act, 1956 by the Companies (Amendment) Act, 1999 by the insertion of Sections 77A, 77AA and 77B. Consequently, SEBI also issued the SEBI (Buy-Back of Securities) Regulations, 1998 ("Old Regulation") on 14th November 1998 with an objective of simplyfying the language, removing redundant provisions and inconsistencies. Updating the references to the Companies Act, 2013/other new SEBI Regulations and incorporating the relevant circulars, FAQ's informal guidance in the regulations, the SEBI notified the SEBI (Buyback of Securities) Regulations, 2018 on September 11, 2018 repeal the old Regulation. These regulations are applicable to the buyback of securities of a company listed on a stock exchange. Under the Companies Act, 2013, buyback is governed by sections 68, 69 and 70 and listed companies are governed by the SEBI (Buy-Back of Securities) Regulations, 2018.

At the end of this lesson, the student will able to understand:

- Methods of buy back of securities;
- Procedure for buyback of securities from existing security shareholders, from open market and from odd-lot holders;
- Compliances related to extinguishing of bought back securities; and
- Obligations of the company and Merchant Banker.

Lesson 17 – Mutual Funds

Mutual funds are considered as one of the best available investments as compare to others they are very cost efficient and also easy to invest in, thus by pooling money together in a mutual fund, investors can purchase stocks or bonds with much lower trading costs than if they tried to do it on their own. But the biggest advantage to mutual funds is diversification, by minimizing risk & maximizing returns. A mutual fund is the most suitable investment scope for common people as it offers an opportunity to invest in a diversified, professionally managed basket of securities at a relatively lower cost.

The mutual fund industry in India began in 1963 with the formation of the Unit Trust of India (UTI) as an initiative of the Government of India and Reserve Bank of India. Much later, in 1987, SBI Mutual Fund became the first non-UTI mutual fund in India. In 1996, SEBI had formulated the regulation on Mutual Fund i.e., SEBI (Mutual Fund) Regulations, 1996, which for the first time, established a comprehensive regulatory framework for the mutual fund industry. Since then, several mutual funds have been set up by the private and joint sectors.

Mutual fund provides the information about the investment particulars of the corpus (company and sector-wise), credit ratings, market value of investments, NAVs, returns, repurchase and sale price of the schemes. At the end of this lesson, the student will able to understand:

- The structure of mutual fund and understand the advantages and risks associated with Mutual fund;
- Various schemes of mutual funds;
- SEBI laws governing mutual fund;
- Meaning of Net Asset Value, Expense Ratio and Holding Period Return.

Lesson 18 – Collective Investment Schemes

A Collective Investment Schemes (CIS) is any scheme or arrangement which pools funds from investors and involves a corpus amount of ₹100 crore or more. Every CIS has to compulsorily register itself with SEBI, file offer documents for its schemes and obtain a credit rating from a recognized rating agency, before it launches a scheme.

Collective Investment Scheme are regulated by SEBI (Collective Investment Scheme) Regulations, 1999 which was notified on October 15, 1999. These regulations defines Collective Investment Management Company to mean a company incorporated under the Companies Act, 2013 and registered with SEBI under these regulations, whose object is to organize, operate and manage a collective investment.

This lesson will give an overview of collective investment scheme, listing of schemes and its winding up etc. At the end of this lesson, the student will able to understand:

- Restrictions on business activities under CIS regulation;
- Compliances related to quarterly report of CIS;
- Obligations of collective investment management company(CIMC), trustee;
- Conditions of the termination of the agreement with the CIMC; and
- Procedure for allotment, transfer of units and winding up of scheme.

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Basics of Capital Market

Lesson 1

KEY CONCEPTS

Financial Markets

■ Money Market ■ Capital Market ■ Primary Market ■ Secondary Market

Financial Markets Participants

■ Qualified Institutional Buyers ■ Foreign Portfolio Investors ■ Alternate Investment Funds ■ Venture Capital ■ Private Equity ■ Anchor Investors ■ High Net worth Individuals ■ Pension Funds

Financial Instruments

■ Equity Shares ■ Preference Shares ■ Debentures ■ Bonds ■ Indian Depository Receipts ■ Warrants ■ Real Estate Investment Trusts ■ Infrastructure Investment Trusts

Learning Objectives

To understand:

- The financial system in India
- The structure of financial markets in India
- The regulatory framework for securities market in India
- Various regulators in the financial markets including SEBI, RBI, IRDAI and PFRDA
- The financial institutions that provide a variety of financial products and services to cater to needs of the commercial sector
- The categories of financial institutions e.g. Insurance Companies, Pension Fund, Mutual Fund, Capital Market Intermediaries etc.
- The different categories of Investment Institutions include Venture Capital, Private Equity, Hedge Funds, Qualified Institutional Buyer, Pension Funds, Foreign Portfolio Investor etc.
- The Capital market instruments including different instruments like equity shares, shares with differential voting rights, preference shares, debentures, bonds, etc.
- Various types of instruments for raising funds for mega projects like REITs and InvITs

Lesson Outline

- Financial System in India
- Financial Markets of India
- Regulatory Framework for Securities Markets in India
- Need for regulators in Capital Market
- Participants of Capital Markets
- Capital Market Instruments
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- Securities & Exchange Board of India Act, 1992
- Securities Contracts (Regulation) Act, 1956
- Reserve Bank of India Act, 1934
- SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018
- Companies Act, 2013 and the rules made thereunder
- SEBI (Foreign Portfolio Investors) Regulations, 2019
- SEBI (Alternative Investment Funds) Regulations, 2012

FINANCIAL SYSTEM IN INDIA

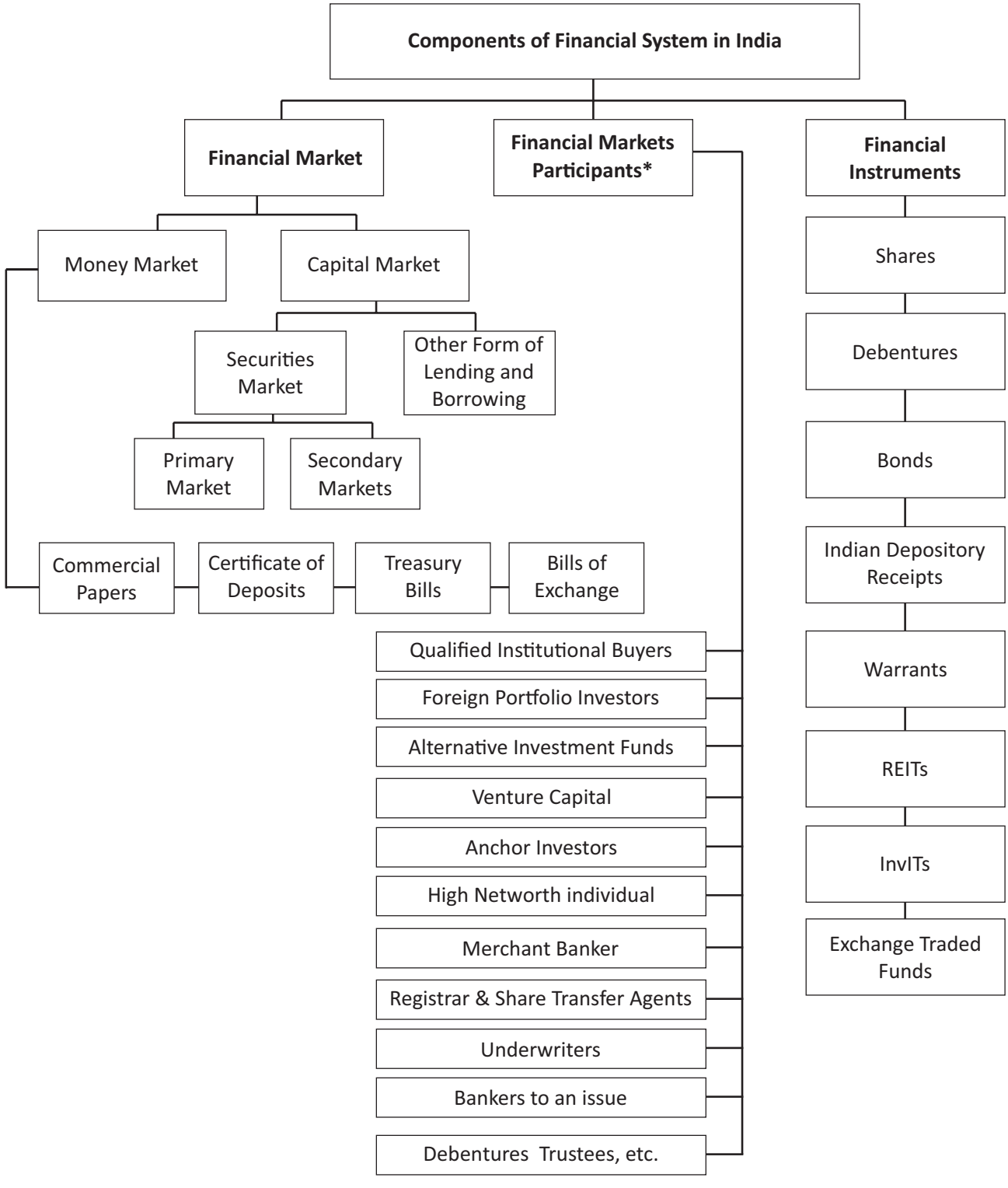
Every modern economy is based on a sound financial system which helps in production, capital and economic growth by encouraging savings habits, mobilising savings from households and other segments and allocating savings into productive usage such as trade, commerce, manufacture, etc.

Financial system covers both credit and cash transactions. All financial transactions are dealt with by cash payment or issue of negotiable instruments like cheque, bills of exchanges, hundies etc. Thus, a financial system is a set of institutional arrangements through which financial surpluses are mobilised from the units generating surplus income and transferring them to the others in need of them. The activities include production, distribution, exchange and holding of financial assets/instruments of different kinds by financial institutions, banks and other intermediaries of the market. In a nutshell, financial market, financial assets, financial services and financial institutions constitute the financial system.

Various factors influence the capital market and its growth. These include level of savings in the household sector, taxation levels, health of economy, corporate performance, industrial trends and common patterns of living.

The strength of the economy is calibrated by different economic indicators like growth in GDP (Gross Domestic Product), Agricultural production, quantum and spread of rain fall, interest rates, inflation, position on balance of payments and balance of trade, levels of foreign exchange reserves and investments and growth in capital formation.

The traditional form of financing companies projects consist of internal resources and debt financing, particularly from financial institutions for modernisation, expansion and diversification. The upsurge in performance of certain large companies and the astounding increase of their share prices boost the market sentiment to divert the savings more and more into equity investments in companies. This lead to the growth of equity cult among investors to contribute resources not only for companies but even for financial institutions and banks.



** Details of Market Intermediaries are given in Lesson Nos. 2 and 6 of this Study.*

FINANCIAL MARKETS IN INDIA

Introduction



Indian Financial Market, has been one of the oldest across the globe and is definitely the fastest growing and best among other financial markets of the emerging economies. The history of Indian capital markets is more than 200 years old, evolving around the end of the 18th century. It was at this time that India was under the rule of the East India Company. The capital market of India initially developed around Mumbai; with around 200 to 250 securities brokers participating in active trade during the second half of the 19th century. Today, Bombay Stock Exchange (BSE), one among the world's largest exchange in terms of trading turnover in the same city. Indian Financial market is one of the well-developed markets in the world.

A Financial market enables efficient trade of securities, and transfer of funds, between lenders and borrowers and also creates securities for investment. People who have surplus funds invests in these securities to earn return on their investments.

Founded in 1875 in Bombay, after almost eight decades, BSE became the first Stock Exchange to be recognized by the Indian Government on 31st August, 1957 under the Securities Contracts (Regulation) Act, 1956 and switched to electronic trading system in 1995. BSE is now the world's 6th largest Stock Exchange post reporting of its trading turnover in May 2024. In 2017 BSE become the 1st listed stock exchange of India.

Functions of Financial Market

- It facilitates mobilisation and channelization of savings into the most productive uses.
- It helps in determining the price of the securities, on the basis of their demand and supply in the market.
- It provides liquidity to tradable assets, by facilitating the exchange, as the investors can readily sell their securities and convert assets into cash.
- It facilitates exchange of assets without physical delivery.

The financial markets are mainly divided into:

a. Money Market



Money Market is a segment of the financial market where borrowing and lending of short-term funds take place. The maturity of money market instruments ranges from one day to one year. In India, this market is regulated by both RBI (the Reserve bank of India) and SEBI (the Securities and Exchange Board of India). The nature of transactions in this market is such that they are large in amount and high in volume. Thus, we can say that the entire market is dominated by large players (though in small numbers).

It performs the crucial role of providing an equilibrating mechanism to even out the short-term liquidity, surpluses & deficits and therefore, facilitates the **conduct of monetary policy of an economy.**

Characteristics of Money market instruments:

The market consists of negotiable instruments having characteristics of liquidity (quick conversion into money), minimum transaction costs and no loss in value such as treasury bills, commercial papers, certificate of deposit, etc.

b. Capital Market



Capital Market is a part of the financial system that is concerned with the industrial securities market, government securities markets, and long- term loan market.

A market that serves the medium & long-term liquidity needs of borrowers & lenders and therefore embraces all terms of lending & borrowing. The capital market comprises institutions and mechanisms through which intermediate terms funds and long-term funds are pooled and made available to business, government and individuals. The capital market also encompasses the process by which securities already outstanding are transferred. This market is also referred to as the **Barometer of the Economy.**

The existence of deep and broad capital market is absolutely crucial in spurring the growth of our country. An essential imperative for India has been to develop its capital market to provide alternative sources of funding for companies and in doing so, achieve more effective mobilisation of investors' savings. Capital market also provides a valuable source of external finance. It deals with instruments like shares, stocks, debentures and bonds. Companies turn to capital markets to raise funds needed to finance for the infrastructure facilities and corporate activities.

The capital market is a vital part of any financial system. The wave of economic reforms initiated by the government has influenced the functioning and governance of the capital market. The Indian capital market has undergone structural transformation since liberalisation. The main aim of the reforms exercise is to improve market efficiency, make stock market transactions more transparent, curb unfair trade practices and to bring our financial markets up to international standards. Further, the consistent reforms in Indian capital market, especially in the secondary market resulting in modern technology and online trading have revolutionized the stock exchange.

Need for Capital Market

Capital market plays an extremely important role in promoting and sustaining the growth of an economy.

- It is an important and efficient conduit to channel and mobilize funds to enterprises, both private and government.
- It provides an effective source of investment in the economy.
- It plays a critical role in mobilizing savings for investment in productive assets, with a view to enhancing a country's long-term growth prospects, and thus acts as a major catalyst in transforming the economy into a more efficient, innovative and competitive marketplace within the global arena.
- In addition to resource allocation, capital markets also provide a medium for risk management by allowing the diversification of risk in the economy.
- A well-functioning capital market tends to improve information quality as it plays a major role in encouraging the adoption of stronger corporate governance principles, thus supporting a trading environment, which is founded on integrity.
- Among other things, liquid markets make it possible to obtain financing for capital-intensive projects with long gestation periods. This certainly held true during the industrial revolution in the 18th century and continues to apply even as we move towards the so-called "New Economy".
- Capital markets make it possible for companies to give shares to their employees via ESOPs.
- Capital markets provide a currency for acquisitions via share swaps.
- Capital markets provide an excellent route for disinvestments to take place.
- Venture Capital and Private Equity funds investing in unlisted companies get an exit option when the company gets listed on the capital markets

For a long time, the Indian market was considered too small to warrant much attention. However, this view has changed rapidly as vast amounts of both international and domestic investment have poured into our markets over the last decade. The Indian market is no longer viewed as a static universe but as a constantly evolving one providing attractive opportunities to the investing community.

Functions of the Capital Market

The major objectives of capital market are:

- To mobilize resources for investments.
- To facilitate buying and selling of securities.
- To facilitate the process of efficient price discovery.
- To facilitate settlement of transactions in accordance with the predetermined time schedules.

Key differences between Money and Capital Markets:

	Money Market	Capital Market
Purpose	Limited to working capital requirements	For creation of Assets base
Tenure of Investment	Short Term	Long Term
Participants	Mainly Govt, Bank, institutional investors	Both Institutional and Retail

	Money Market	Capital Market
Risk	Low	High
Return on Investment	Generally Low	High
Types of Instruments	Commercial Paper, Certificate of Deposit, T-Bills	Shares, Debentures, Bonds

Securities Market

Securities Market is a place where companies can raise funds by issuing securities such as equity shares, debt securities, derivatives, mutual funds, etc. to the investors (public) and also is a place where investors can buy or sell various securities (shares, bonds, etc.). It is therefore, a market where financial instruments/claims are commonly & readily available for transfer by means of sale. Once the shares (or securities) are issued to the public, the company is required to list the shares (or securities) on the recognized stock exchanges. Securities Market is a part of the Capital Market.

FUNCTIONS OF SECURITIES MARKET

The Securities Market allows people to do more with their savings than they would otherwise could. It also provides financing that enables people to do more with their ideas and talents than would otherwise be possible. The people's savings are matched with the best ideas and talents in the economy. Stated formally, the Securities Market provides a linkage between the savings and the investment across the entities, time and space. It mobilises savings and channelises them through securities into preferred enterprises.

The Securities Market also provides a market place for purchase and sale of securities and thereby ensures transferability of securities, which is the basis for the joint stock enterprise system. The existence of the Securities Market makes it possible to satisfy simultaneously the needs of the enterprises for capital and the need of investors for liquidity.

Takeaways

Securities Market –

- is a link between investment & savings
- is a platform for both retail and institutional investors
- mobilises & channelises savings
- provides Liquidity to investors
- is a market place for purchase and sale of securities

The liquidity, the market confers and the yield promised or anticipated on security ownership may be sufficiently great to attract net savings of income which would otherwise have been consumed. Net savings may also occur because of other attractive features of security ownership, e.g. the possibility of capital gain or protection of savings against inflation.

A developed Securities Market enables all individuals, no matter how limited their means, to share the increased wealth provided by competitive private enterprises. The Securities Market allows individuals who can not carry an activity in its entirety within their resources to invest whatever is individually possible and preferred in that activity carried on by an enterprise. Conversely, individuals who can not begin an

enterprise, they can attract enough investment from others to make a start. In both cases individuals who contribute to the investment made in the enterprise share the fruits. The Securities Market, by allowing an individual to diversify risk among many ventures to offset gains and losses, increases the likelihood of long-term, overall success.

Securities market has two inter-dependent & inseparable segments which are as follows-

1. **Primary Market** : The primary market deals with the issue of new instruments by the corporate sector such as equity shares, preference shares and debt instruments. Central and State Governments, various public sector undertakings (PSUs), statutory and other authorities such as state electricity boards and port trusts also issue bonds/debt instruments.

   This market is of great significance for the economy of a country as it is through this market that funds flows for productive purposes from investors to entrepreneurs. The strength of the economy of a country is gauged by the activities of the Stock Exchanges. The primary market creates and offers the merchandise for the secondary market.

   The primary market in which public issue of securities is made through a prospectus is a retail market and there is no physical location. Offer for subscription to securities is made to the investing community. It is also known as Initial Public Offer (IPO) Market.

   There are two major types of issuers of securities:

   - Corporate Entities (companies) which mainly issue equity instruments (shares) and debt instruments (bonds, debentures, etc.).
   - Government (Central as well as State) which issues debt securities (dated securities and treasury bills). In addition to IPOs, the Company has other options to raise capital.
     - Qualified institutional placements (listed company issuing shares to Qualified Institutional Buyers (QIB).
     - In International markets through the issuance of American Depository Receipts (ADR), Global Depository Receipts (GDRs), External Commercial Borrowings (ECB) etc.

2. **Secondary Market:** The secondary market or stock exchange is a market for trading and settlement of securities that have already been issued. The investors holding securities sell securities through registered brokers/sub-brokers of the stock exchange. Investors who are desirous of buying securities, purchase them through registered broker/sub-broker of the stock exchange. It may have a physical location like a stock exchange or a trading floor. Since 1995, trading in securities is screen-based and Internet-based trading has also made an appearance in India.

   The secondary market provides a trading place for the securities already issued, to be bought and sold. It also provides liquidity to the initial buyers in the primary market to re-offer the securities to any interested buyer at any price, if mutually accepted. An active secondary market actually promotes the growth of the primary market and capital formation because investors in the primary market are assured of a continuous market and they can liquidate their investments. It is also known as Further Public Offer Market (FPO).

Difference between Primary and Secondary Market

Basis for comparison	***Primary Market***	***Secondary Market***
Meaning	The market place for issuing fresh securities	The market place for trading already issued securities

Basis for comparison	*Primary Market*	*Secondary Market*
Objectives	To raise funds	Capital Appreciation
Scope	Includes issuance of new securities through Initial Public Offer (IPO)	Includes the further trading of securities already offered to the public
Popular name	New issue market / IPO Market	After issue market
Purchasing of securities	Investors can purchase securities directly from the Company	Purchase and sale of securities is done by the investors among themselves
Financing	Primary market provides funds to new and old companies for their expansion and diversification	It does not provide funding to companies
Parties to transactions	Company and Investors	Investors among themselves
Major Intermediaries	Underwriters	Brokers
Price	Price as given in the offer document / red herring prospectus	Price fluctuates i.e. depends on demand and supply forces
Utilisation of fund	Fund gained from primary market becomes the capital of the company	Fund received from secondary market becomes income of investors

NEED FOR REGULATORS IN CAPITAL MARKET

In late 1980s the development of stock markets attracted investments by individual shareholders. Once the stock markets started flourishing, there were many malpractices like non adherence to rules and regulation, price rigging, unofficial self-modulated merchant bankers, delayed delivery issues, etc. As a result, investors felt deceived and were losing trust in securities.

Before 1992, many factors obstructed the expansion of equity trading. Fresh capital issues were controlled through the Capital Issues Control Act. Trading practices were not transparent, and there was a large amount of insider trading. Recognizing the importance of increasing investor protection, several measures were enacted to improve the fairness of the capital market.

It was also this time when the Indian Financial Markets witnessed one of the biggest scams of the century – The Harshad Mehta Scam or other wise called as the Scam 1992. The Indian Stock Market gradually crashed when the information came out.

As a measure, the Government sensed an urgent need to regulate the smooth and systematic functioning of exchanges and thus resulting in formation of SEBI. Before formation of SEBI, controller of capital issues was responsible for regulation of capital markets.

The Controller of Capital Issues was repealed in 1992 and subsequently, its office was abolished and SEBI was established on 21 February, 1992 through an ordinance issued on 30 January, 1992

REGULATORY FRAMEWORK FOR SECURITIES MARKET

Indian Capital Markets are presently regulated and monitored by the Ministry of Finance, The Securities and Exchange Board of India and The Reserve Bank of India.

The Ministry of Finance regulates through the Department of Economic Affairs - Capital Markets Division. The division is responsible for formulating the policies related to the orderly growth and development of the securities markets (i.e. share, debt and derivatives) as well as protecting the interest of the investors. In particular, it is responsible for:

- institutional reforms in the securities markets,
- building regulatory and market institutions,
- strengthening investor protection mechanism, and
- providing efficient legislative framework for securities markets.

SEBI – The Capital Markets Regulator

The Securities and Exchange Board of India (SEBI) was established in 1988 through an administrative order, but the Act was passed after about four years and it became a statutory and powerful Institution only since 1992. The Controller of Capital Issues was repealed in 1992 and subsequently, its office was abolished and SEBI was established on 21 February, 1992 through an ordinance issued on 30 January, 1992. The SEBI Act replaced the ordinance on 4 April, 1992. Certain powers under certain sections of Securities Contracts (Regulation) Act, 1956 (SCRA) and the Companies Act, 1956 (now 2013) (CA) have been delegated to the SEBI.

The regulatory powers of the SEBI were increased through the Securities Laws (Amendment) Ordinance of January 1995, which was subsequently replaced by an Act of Parliament.

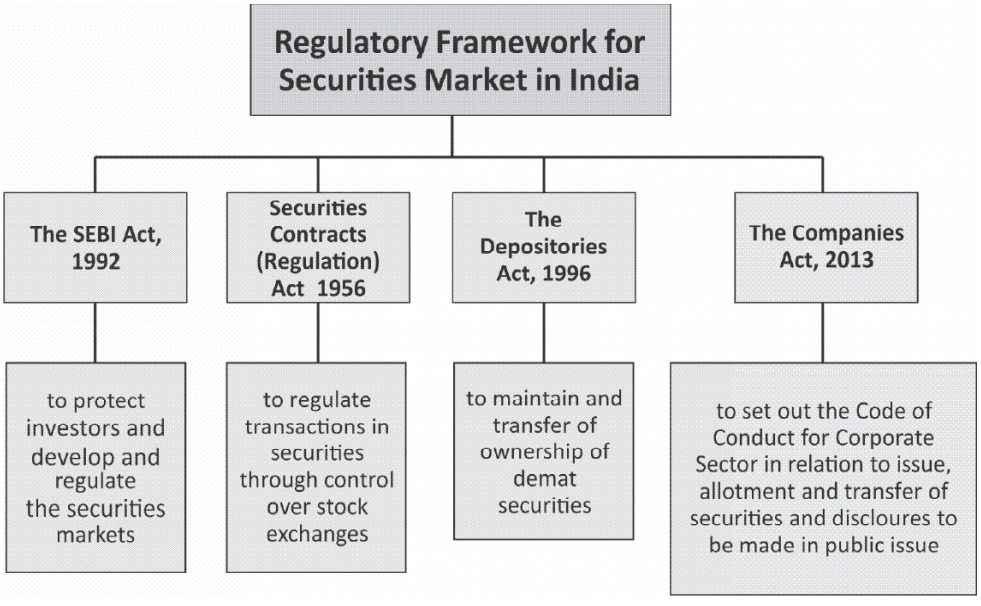
The SEBI is under the overall control of the Ministry of Finance, and has its head office at Mumbai. It has now become a very important constituent of the financial regulatory framework in India. After the 2002 amendment, SEBI has been given powers to even pass interim orders, to investigate and to hold an enquiry and then to pass a final order, which can be a cease and desist order or it can be a monetary penalty. In the area of policy making, SEBI consults the government, RBI, IRDA, PFRDA etc. and after those consultations it can come out with its policy.

SEBI was established with the statutory powers for:

- Protecting the interest of investors;
- Promoting the development of the securities market; and
- Regulating the securities market.

SEBI acts as a watchdog for all the capital market participants and its main purpose is to provide such an environment for the financial market enthusiasts that facilitate efficient and smooth working of the securities market.

It is important to ensure smooth working of capital market, as it is the arena for the players associated with the economic growth of the country. Various laws have been passed from time to time to meet this objective. The financial market in India was highly segmented until the initiation of reforms in 1992-93 on account of a variety of regulations and administered prices including barriers to entry. The reform process was initiated with the establishment of Securities and Exchange Board of India.



The SEBI Act, 1992

The SEBI Act, 1992 establishes SEBI with statutory powers for

(a) protecting the interests of investors in securities,

(b) promoting the development of the securities market, and

(c) regulating the securities market.

Its regulatory jurisdiction extends over corporates in the issuance of capital and transfer of securities, in addition to all intermediaries and persons associated with securities market. It can conduct enquiries, audits and inspection of all concerned and adjudicate offences under the Act. It has powers to register and regulate all market intermediaries and also to penalise them in case of violations of the provisions of the Act, Rules and Regulations made there under. SEBI has full autonomy and authority to regulate and develop an orderly securities market.

The Securities Contracts (Regulation) Act, 1956

It provides for direct and indirect control of virtually all aspects of securities trading and the running of stock exchanges and aims to prevent undesirable transactions in securities. It gives central government/SEBI regulatory jurisdiction over (a) stock exchanges through a process of recognition and continued supervision, (b) contracts in securities, and (c) listing of securities on stock exchanges. As a condition of recognition, a stock exchange complies with prescribed conditions of Central Government. Organised trading activity in securities takes place on a specified recognised stock exchange. The stock exchanges determine their own listing regulations which have to conform to the minimum listing criteria set out in the Rules.

The Depositories Act, 1996

The Depositories Act, 1996 provides for the establishment of depositories in securities with the objective of ensuring free transferability of securities with speed, accuracy and security by (a) making securities of public limited companies freely transferable subject to certain exceptions; (b) dematerializing the securities in the depository mode; and (c) providing for maintenance of ownership records in a book entry form. In order to streamline the settlement process, the Act envisages transfer of ownership of securities electronically by book entry without making the securities move from person to person. The Act has made the securities of all public

limited companies freely transferable, restricting the company's right to use discretion in effecting the transfer of securities, and the transfer deed and other procedural requirements under the Companies Act have been dispensed with.

The Companies Act, 2013

The Companies Act, 2013 envisage to strengthen the existing regulatory framework on Corporate Governance. It deals with issue, allotment and transfer of securities and various aspects relating to company management. It provides for standard of disclosure in public issues of capital, particularly in the fields of company management and projects, information about other listed companies under the same management, and management perception of risk factors. It also regulates underwriting, the use of premium and discounts on issues, rights and bonus issues, payment of interest and dividends, supply of annual report and other information.

Capital Market – Objective

Through SEBI, the regulation model which is sought to be put in place in India is one in which every aspect of securities market regulation is entrusted to a single highly visible and independent organization, which is backed by a statute, and which is accountable to the Parliament and in which investors can have trust.

To ensure this the three main participants of the financial market should be taken care of, i.e. issuers of securities, investor, and financial intermediaries.

Issuers of securities: These are entities in the corporate field that raise funds from various sources in the market. SEBI makes sure that they get a healthy and transparent environment for their needs.

Investors: Investors are the ones who keep the markets active. SEBI is responsible for maintaining an environment that is free from malpractices to restore the confidence of general public who invest their hard-earned money in the markets.

Financial Intermediaries: These are the people who act as interface between the issuers and investors. They make the financial transactions smooth and safe.

SEBI necessarily has the twin task of regulation and development. Its regulatory measures are always meant to be subservient to the needs of the market development. Underlying those measures is the logic that rapid and healthy market development is the outcome of well-regulated structures. In this spirit, the SEBI endeavors to create an effective surveillance mechanism and encourage responsible and accountable autonomy on the part of all players in the market, who are expected and required to discipline themselves and observe the rules of the market.

PARTICIPANTS OF CAPITAL MARKET

Qualified Institutional Buyers

Qualified Institutional Buyers (QIBs) are investment institutions who buy the shares of a company on a large scale. QIBs are those institutional investors who are generally perceived to possess expertise and the financial proficiency to evaluate and to invest in the Capital Markets.

If the investor is not capable, either by his/her individual financial limit or not permitted, to invest individually till he invests a specified statutorily fixed amount, then he usually participates indirectly through certain institutions,

through which he can invest limited sums according to the viability of both, himself and institution.

The institution is usually a collective group of people in which a large number of investors repose faith and the institution collects a large investible sum from various investors to invest in the market. When investing through the institution, investors usually have limited control on their investments in comparison to the individual investment as they hand over the amount for investment to the institution and they, in turn, engage experts to have a vigil on the market.

There are various types of institutions defined in the rules and regulations, but to qualify as a 'Qualified Institutional Buyer' (QIB), certain regulations formulated by the SEBI needs to be kept in mind. As the name itself suggests, it is in the form of an institution and under the institutionalized mechanism, they invest in the company.

According to Regulation 2(1)(ss) of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Qualified Institutional Buyer comprises of —

(i) a mutual fund, venture capital fund, Alternative Investment Fund and foreign venture capital investor registered with SEBI;

(ii) foreign portfolio investor other than individuals, corporate bodies and family offices;

(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 Insurance Regulatory and Development Authority of India;

(viii) a provident fund with minimum corpus of twenty five crore rupees;

(ix) a pension fund with minimum corpus of twenty five crore rupees registered with the Pension Fund Regulatory and Development Authority established under section 3(i) of the Pension Fund Regulatory and Development Authority Act, 2013;

(x) National Investment Fund set up by the Government of India;

(xi) Insurance funds set up and managed by army, navy or air force of the Union of India;

(xii) Insurance funds set up and managed by the Department of Posts, India;

(xiii) Systemically important non-banking financial companies.

(xiv) Accredited Investors as defined in SEBI (AIF) Regulations, 2012 for the limited purpose of their investment in Angel Funds registered with the SEBI under AIF Regulations.

Foreign Portfolio Investor

Foreign Portfolio Investor (FPI) means a person who has been registered under Chapter II of SEBI (Foreign Portfolio Investors) Regulations, 2019 which shall be deemed to be an intermediary in terms of the provisions of the SEBI Act, 1992.

Categories of FPI

Category I FPIs include:

(i) Government and Government related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled or at least 75% directly or indirectly owned by such Government and Government related investor(s);

(ii) Pension funds and university funds;

(iii) Appropriately regulated entities such as insurance or reinsurance entities, banks, asset management companies, investment managers, investment advisors, portfolio managers, broker dealers and swap dealers;

(iv) Entities from the Financial Action Task Force member countries, or from any country specified by the Central Government by an order or by way of an agreement or treaty with other sovereign Governments, which are–

I. appropriately regulated funds;

II. unregulated funds whose investment manager is appropriately regulated and registered as a Category I foreign portfolio investor. However the investment manager undertakes the responsibility of all the acts of commission or omission of such unregulated fund;

III. university related endowments of such universities that have been in existence for more than five years.

(v) An entity (A) whose investment manager is from the Financial Action Task Force member country and such an investment manager is registered as a Category I foreign portfolio investor; or (B) which is at least seventy-five per cent owned, directly or indirectly by another entity, eligible under sub-clause (ii), (iii) and (iv) of clause (a) of this regulation and such an eligible entity is from a Financial Action Task Force member country. However such an investment manager or eligible entity undertakes the responsibility of all the acts of commission or omission of the applicants seeking registration under this sub-clause.

Category II FPIs include all the investors not eligible under Category I foreign portfolio investors such as –

(i) appropriately regulated funds not eligible as Category-I foreign portfolio investor;

(ii) endowments and foundations;

(iii) charitable organisations;

(iv) corporate bodies;

(v) family offices;

(vi) individuals;

(vii) appropriately regulated entities investing on behalf of their client, as per conditions specified by the Board from time to time;

(viii) Unregulated funds in the form of limited partnership and trusts.

Explanation: An applicant incorporated or established in an International Financial Services Centre shall be deemed to be appropriately regulated.

Alternative Investment Funds

Alternative investment funds (AIFs) are defined in Regulation 2(1)(b) of the SEBI (Alternative Investment Funds) Regulations, 2012 (AIF Regulations). It refers to any privately pooled investment fund, (whether from Indian or foreign sources), in the form of a trust or a company or a body corporate or a Limited Liability Partnership (LLP) which are not presently covered by any Regulation of SEBI governing fund management (like, Regulations governing Mutual Fund or Collective Investment Scheme) nor coming under the direct regulation of any other sectoral regulators in India-IRDA, PFRDA, RBI. Hence, in India, AIFs are private funds which are otherwise not coming under the jurisdiction of any regulatory agency in India.

According to AIF Regulations, “Alternative Investment Fund” means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which,-

(i) is a privately pooled investment vehicle which collects funds from investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors; and

(ii) is not covered under the SEBI (Mutual Funds) Regulations, 1996, SEBI (Collective Investment Schemes) Regulations, 1999 or any other regulations of SEBI to regulate fund management activities.

Exclusion :

As per the AIF Regulations, the following shall not be considered as Alternative Investment Fund for the purpose of these regulations; –

(i) Family trusts set up for the benefit of 'relatives' as defined under Companies Act, 2013.

(ii) ESOP Trusts set up under the SEBI (Shares Based Employee Benefits) Regulations, 2014 (which is now SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021) or as permitted under Companies Act, 2013.

(iii) Employee welfare trusts or gratuity trusts set up for the benefit of employees.

(iv) Holding companies within the meaning of Section 2(46) of the Companies Act, 2013.

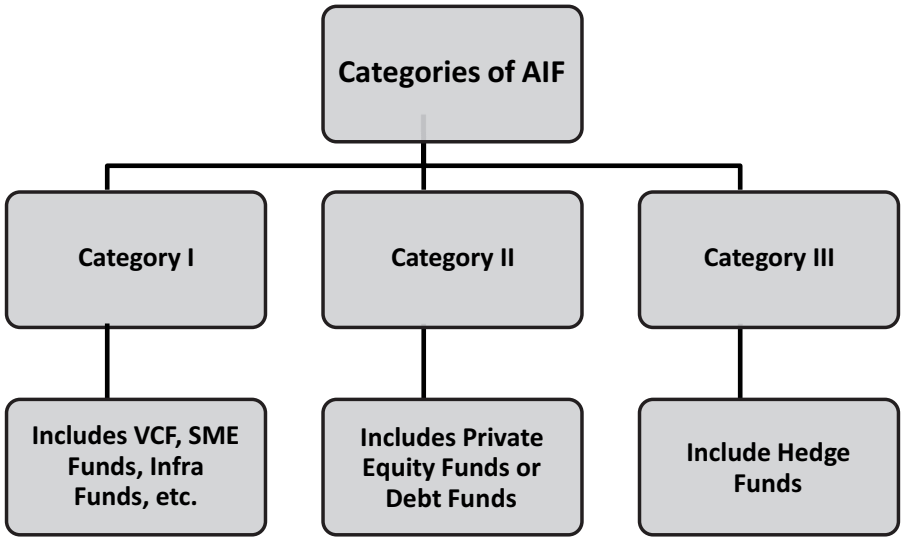
(v) Other special purpose vehicles not established by fund managers, including securitization trusts, regulated under a specific regulatory framework.

(vi) Funds managed by securitisation company or reconstruction company which is registered with the Reserve Bank of India under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

(vii) Any such pool of funds which is directly regulated by any other regulator in India.

Thus, the definition of AIFs includes venture capital fund, hedge funds, private equity funds, commodity funds, Debt Funds, infrastructure funds, etc., while, it excludes Mutual funds or collective investment schemes, family trusts, employee benefit schemes, employee welfare trusts or gratuity trusts, 'holding companies' within the meaning of Section 2(46) of the Companies Act, 2013, securitization trusts regulated a specific regulatory framework, and funds managed by securitization company or reconstruction company which is registered with the RBI under Section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

One AIF can float several schemes. Investors in these funds are large institutions, high net worth individuals and corporates. In India, AIF is regulated by the SEBI (Alternative Investment Funds) Regulations, 2012.



Categories of Alternative Investment Funds

- **Category I** : which invests in start-up or early stage ventures or social ventures or SMEs or infrastructure or other sectors or areas which the government or regulators consider as socially or economically desirable and shall include venture capital funds (VCF), SME Funds, angel funds, social impact funds, infrastructure funds, special situation funds and such other Alternative Investment Funds as may be specified;

  Alternative Investment Funds which are generally perceived to have positive spillover effects on economy and for which the Board or Government of India or other regulators in India might consider providing incentives or concessions shall be included and such funds which are formed as trusts or companies shall be construed as "venture capital company" or "venture capital fund" as specified under sub-section (23FB) of Section 10 of the Income Tax Act, 1961

- **Category II :** which does not fall in Category I and III and which does not undertake leverage or borrowing other than as permitted in these regulations;

  Alternative Investment Funds such as private equity funds or debt funds for which no specific incentives or concessions are given by the government or any other Regulator shall be included in Category II.

- **Category III** : which employs diverse or complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives.

Venture Capital

Venture Capital is one of the innovative financing resource for a company in which the promoter has to give up some level of ownership and control of business in exchange for capital for a limited period, say, 3-5 years. Venture Capital is generally equity investments made by Venture Capital funds, at an early stage in privately held companies, having potential to provide a high rate of return on their investments. It is a resource for supporting innovation, knowledge-based ideas and technology and human capital-intensive enterprises.

> "Venture Capital Fund" means an Alternative Investment Fund which invests primarily in unlisted securities of start-ups, emerging or early-stage venture capital undertakings mainly involved in new products, new services, technology or intellectual property right based activities or a new business model and shall include a migrated venture capital fund.

Essentially, a venture capital company is a group of investors who pool investments focused within certain parameters. The participants in venture capital firms can be institutional investors like pension funds, insurance companies, foundations, corporations or individuals but these are high risk investments which may give high returns or high loss.

Areas of Investment

Different venture groups prefer different types of investments. Some specialize in seed capital and early expansion while others focus on exit financing. Biotechnology, medical services, communications, electronic components and software companies seem to be the most likely attraction of many venture firms and receiving the most financing. Venture capital firms finance both early and later stage investments to maintain a balance between risk and profitability.

In India, software sector has been attracting a lot of venture finance. Besides media, health and pharmaceuticals, agri-business and retailing are the other areas that are favoured by a lot of venture companies.

Private Equity

Private equity is a type of equity (finance) and one of the asset classes who takes securities and debt in operating companies that are not publicly traded on a stock exchange. Private equity is essentially a way to invest in some assets that isn't publicly traded, or to invest in a publicly traded asset with the intention of taking it private. As a source of investment capital, private equity comes from High Net-worth Individuals (HNI) & firms that purchase stakes in private companies or acquire control of public companies with plans to make them private & consequently delist from the stock exchange. Unlike stocks, mutual funds, and bonds, private equity funds usually invest in more illiquid assets companies.

As per the definition of Private Equity as defined in AIF Regulations, "private equity fund" means an Alternative Investment Fund which invests primarily in equity or equity linked instruments or partnership interests of investee companies according to the stated objective of the fund.

By purchasing companies, the firms gain access to those assets and revenue sources of the company, which can lead to very high returns on investments. Another feature of private equity transactions is their extensive use of debt in the form of high-yield bonds. By using debt to finance acquisitions, private equity firms can substantially increase their financial returns.

Private equity consists of investors and funds that make investments directly into private companies or conduct buyouts of public companies. Capital for private equity is raised from retail and institutional investors, and can be used to fund new technologies, expand working capital within an owned company, make acquisitions, or to strengthen a balance sheet. The major of private equity consists of institutional investors and accredited investors who can commit large sums of money for long periods of time.

Private equity investments often demand long holding periods to allow for a turnaround of a distressed company or a liquidity event such as IPO or sale to a public company. Generally, the private equity fund raise money from investors like angel investors, institutions with diversified investment portfolio like – pension funds, insurance companies, banks, funds of funds etc.

Characteristics of Private Equity:

- Leverage
- Participation in Equity / ownership
- High Risk oriented

Types of Private Equity

Private equity investments can be divided into the following categories:

- **Leveraged Buyout (LBO):** This refers to a strategy of making equity investments as part of a transaction in which a company, business unit or business assets is acquired from the current shareholders typically with the use of financial leverage. The companies involved in these type of transactions that are typically more mature and generate operating cash flows.
- **Venture Capital:** It is a broad sub-category of private equity that refers to equity investments made, typically in less mature companies, for the launch, early development, or expansion of a business.
- **Growth Capital:** This refers to equity investments, mostly minority investments, in the companies that are looking for capital to expand or restructure operations, enter new markets or finance a major acquisition without a change of control of the business.

Angel Fund

Angel fund refers to money pool created by high networth individuals or companies (generally known as Angel Investor), for investing in start up business. Angel fund is defined in SEBI (Alternate Investment Funds) (Amendment) Regulations, 2013 as a sub-category of Venture Capital Fund under Category I-AIF that raises funds from accredited investors and invests in accordance with regulations specified by SEBI.

An angel investor or angel (also known as a business angel, informal investor, angel funder, private investor, or seed investor) is an affluent individual or corporate who provides capital for a business start-up, usually in exchange for convertible debt or ownership equity. A small but increasing number of angel investors invest online through equity crowd funding or organize themselves into angel groups or angel networks to share research and pool their investment capital, as well as to provide advice to their portfolio companies.

Angel investments are typically the earliest equity investments made in start-up companies. They commonly band together in investor networks. Often these networks are based on regional, industry investor or academic affiliation. Angel Investors are often former entrepreneurs themselves, and typically enjoy working with companies at the earliest stages of business formation.

The effective Angels help entrepreneurs to shape business models, create business plans and connect to resources - but without stepping into a controlling or operating role. Often Angels are entrepreneurs who have successfully built companies, or have spent a part of their career in coaching young companies.

Anchor Investors

Anchor investor means a Qualified Institutional Buyer (QIB) who makes an application for a value of at least ₹10 crore in a public issue on the main board made through the book building process or makes an application for a value of atleast Rs. 2 crore for an public issue on the SME exchange made in accordance with Chapter IX of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Upto 60% of the portion available for allocation to qualified institutional buyers shall be available for allocation/ allotment to anchor investor.

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

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

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

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

- (i) Maximum of 2 such investors shall be permitted for allocation up to two crore rupees;
- (ii) Minimum of 2 and maximum of 15 such investors shall be permitted for allocation above 2 crore rupees and up to 25 crore rupees, subject to minimum allotment of 1 crore rupees per such investor;
- (iii) In case of allocation above 25 crore rupees; a minimum of 5 such investors and a maximum of 15 such investors for allocation up to 25 crore rupees and an additional 10 such investors for every additional 25 crore rupees or part thereof, shall be permitted, subject to a minimum allotment of 1 crore rupees per such investor.

The bidding for anchor investors shall open one day before the issue opening date. The allocation to Anchor Investors shall be completed on the day of bidding by Anchor Investors. 50% of the Shares allotted to the Anchor Investor shall be locked- in for 30 days from the date of allotment and 50% of the shares shall be locked-in for 90 days from the date of allotment, in the public issue.

Test your Knowledge:

State the differences between Angel Funds and Anchor Investors

Upto 60% of the portion available for allocation to QIB shall be available to anchor investor(s) for allocation/ allotment ("anchor investor portion") and 33.33% of the anchor investor portion shall be reserved for domestic mutual funds and 6.67% shall be reserved for life insurance companies and pensions funds.

High Net Worth Individuals

HNIs or high net worth individuals is a class of individuals who are distinguished from other retail segment based on their net wealth, assets and investible surplus. While there is no standard put forth for the classification, the definition of HNIs varies with the geographical area as well as financial markets and institutions.

In an issue made through book building process, the allocation in the non-institutional investors' category shall be as follows:

(a) one third of the portion available to non-institutional investors shall be reserved for applicants with application size of more than two lakh rupees and up to ten lakh rupees;

(b) two third of the portion available to non-institutional investors shall be reserved for applicants with application size of more than ten lakh rupees.

The unsubscribed portion in either of the sub-categories specified in clauses (a) or (b), may be allocated to applicants in the other sub-category of non-institutional investors.

Pension Fund

Pension Fund means a fund established by an employer to facilitate and organize the investment of employees' retirement funds which is contributed by the employer and employees. The pension fund is a common asset pool meant to generate stable growth over the long term, and provide pensions for employees when they reach the end of their working years and commence retirement. Pension funds are commonly run by some sort of financial intermediary for the company and its employees. The Pension Fund Regulatory and Development Authority (PFRDA) regulates and administers NPS under the PFRDA Act, 2013 whereas some larger corporations operate their pension funds in-house. Pension funds control relatively large amounts of capital and represent the largest institutional investors in many nations.

Pension funds play a huge role in development of the economy and it play active role in the Indian equity market. This pension fund ensures a change in their investment attitudes and in the regulatory climate, encouraging them to increase their investment levels in equities and would have a massive impact on capital market and on the economy as a whole.

Note: Capital Market Intermediaries are given in Lesson No. 2 and Lesson No.6 in brief.

CAPITAL MARKET INSTRUMENTS

Equity shares

Equity shares, commonly referred to as ordinary share also represents the form of fractional ownership in which a shareholder, as a fractional owner, undertakes the maximum entrepreneurial risk associated with a business venture. The holder of such shares is the member of the company and has voting rights.

As per Section 2 (84) of the Companies Act, 2013, "share" means a share in the share capital of a company and includes stock.

Further, according to explanation (i) to Section 43 of Companies Act, 2013 ''equity share capital'', with reference to any company limited by shares, means all share capital which is not preference share capital. Section 43 further provides for equity share capital (i) with voting rights, or (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed.

Equity capital and further issues of equity capital by a company are generally based on the condition that they will rank *pari passu* along with the earlier issued share capital in all respects. However, as regards dividend declared by the company such additional capital shall be entitled to dividend ratably for the period commencing from the date of issue to the last day of the accounting year, unless otherwise specified in the articles or in the terms of the issue.

Important characteristics	Equity shares, have voting rights at all general meetings of the company. These votes have the affect of controlling the management of the company.
	Equity shares have the right to share the profits of the company in the form of dividend (cash) and bonus shares. However, even equity shareholders cannot demand declaration of dividend by the company which is left to the discretion of the Board of Directors.
	When the company is wound up, payment towards the equity share capital will be made to the respective shareholders only after payment of the claims of all the creditors and the preference share capital.

Equity share holders enjoy different rights as members under the Companies Act, 2013 such as:

(a) The right to vote on every resolution placed before the company – (Section 47)

(b) The rights to subscribe to shares at the time of further issue of capital by the company (Pre-emptive Right) – (Section 62)

(c) Right to inspect various statutory registers maintained by the company – (Section 94)

(d) Right to attend AGM (Section 96)

(e) Right to make requisition for extraordinary general meeting of the company – (Section 100)

(f) Right to receive notice of the meeting of members – (Section 101)

(g) Right to appoint proxy to attend and vote at the meeting on his behalf – (Section 105)

(h) Right to receive copy of annual accounts of the company – (Section 136)

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 also specifies that the listed entity shall seek to protect and facilitate the exercise of the following rights of shareholders:

(a) right to participate in, and to be sufficiently informed of, decisions concerning fundamental corporate changes,

(b) opportunity to participate effectively and vote in general shareholder meetings,

(c) Being informed of the rules, including voting procedures that govern general shareholder meetings,

(d) opportunity to ask questions to the board of directors, to place items on the agenda of general meetings, and to propose resolutions, subject to reasonable limitations,

(e) effective shareholder participation in key corporate governance decisions, such as the nomination and election of members of board of directors,

(f) exercise of ownership rights by all shareholders, including institutional investors,

(g) adequate mechanism to address the grievances of the shareholders,

(h) protection of minority shareholders from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and effective means of redress.

Shares with Differential Voting Rights

Shares with differential voting rights ("DVR") refer to equity shares holding differential rights as to dividend and/ or voting. Section 43 (a) (ii) of the Companies Act, 2013 read with Rule 4 of Companies (Share Capital & Debenture) Rules, 2014 allows a company limited by shares to issue DVRs as part of its share capital. Introduced for the first time in 2000 and issued by Tata Motors first, DVRs are seen as a viable option for raising investments and retaining control over the company at the same time Section 43(1)(ii) of the Companies Act 2013 read with the said Rules provides that companies can issue equity shares with differential rights subject to the following conditions including:

- Articles of association of the company must authorize the issue;
- The voting power in respect of shares with differential rights of the Company shall not exceed 74% of total voting power including voting power in respect of equity shares with differential rights issued at any point of time;
- Approval of shareholders by passing ordinary resolution in General Meeting and in case, where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot

It shall be noted that the holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.

Following companies are not allowed to Issue shares with DVR :

A. The Company which has defaulted in:

- filing annual returns and financial statements for the last three years;
- repayment of matured deposits or declared dividend;
- redemption of its preference shares/debentures which are due for redemption;
- payment of interest on such deposits or debentures or payment of dividend;
- repayment of term loan taken from any public financial institution or state level financial institution or from a scheduled bank that has become due and payable;
- statutory dues of the employees of the company.

However, a Company may issue equity shares with differential rights upon expiry of 5 years form the end of the financial year in which such default year in was mode good.

B. The Company which has been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934 , the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators

Some examples of listed companies having DVR :

Future Enterprises Limited, Jain Irrigation Systems Ltd.

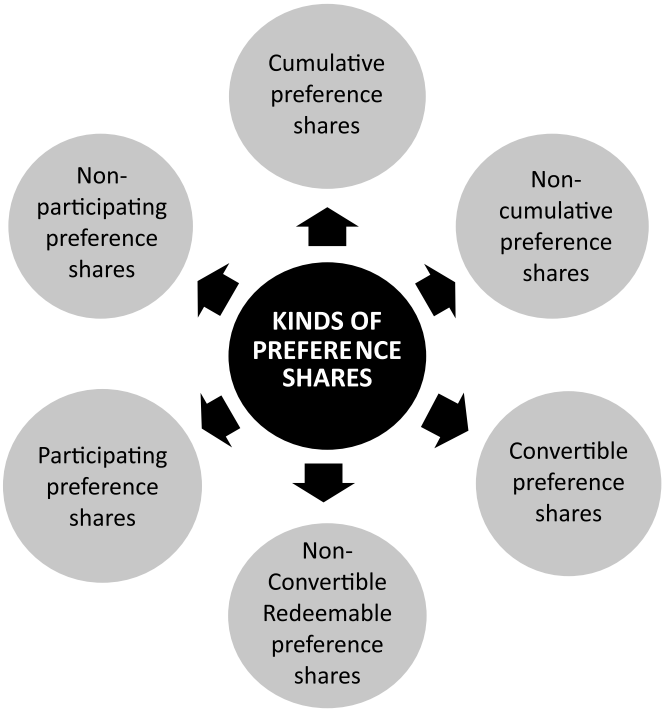
Preference Shares

Preference shares are that part of a company's share capital which carry a preferential right to:

- dividend at a fixed rate or amount; and
- repayment of capital in case of winding-up of the company.

Preference shares enjoy a preferential right to dividend and repayment of capital in case of winding-up of the company. Governed by the provisions of Section 55 of the Companies Act, 2013 the main drawback of preference shares is that they carry limited voting rights. Generally, an equity share confers on its holder a right to vote on all resolutions that require shareholder approval under the Act, any other law, or the articles of association of the company. A preference share carries voting rights only with respect of matters which directly affect the rights of the preference shareholders.

In this regard, the **Companies Act clarifies** a resolution relating to winding-up and repayment or reduction of capital is deemed to directly affect the rights of the preference shareholders. Due to these limitations on voting rights, a preference shareholder does not have much control over the company. However, a preference shareholder may acquire voting rights on par with an equity shareholder if the dividend on preference shares is in arrears.



Issuer desirous of making an offer of non-convertible redeemable preference shares to the public is required to list on one or more recognized stock exchanges. Issuer may list its non-convertible redeemable preference shares issued on private placement basis on a recognized stock exchange. [**This section has been discussed in Lesson No. 4 of Company Law Subject (Executive Programme**)]

Debentures

Section 2(30) of the Companies Act, 2013 defines debentures. "Debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not.

Debenture is a document evidencing a debt or acknowledging it and any document which fulfils either of these conditions is a Debenture.

Exclusions:

The following shall not be treated as debenture :

(a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and

(b) such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company.

The important features of a debenture are:

1. It is issued by a company as a certificate of indebtedness.
2. It usually indicates the date of redemption and also provides for the repayment of principal and payment of interest at specified date or dates.
3. In case of secured debentures, it creates a charge on the undertaking or the assets of the company.
4. Debentures holders do not have any voting rights.
5. Company shall pay interest, irrespective of profits.
6. While issuance of debentures, the company shall ensure that the parameters for designation of deposits under Companies (Acceptance of Deposits) Rules, 2014 are not triggered.

Categories of Debentures

Based on convertibility, debentures can be classified under three categories:

- **Fully Convertible Debentures (FCDs)** : These are converted into equity shares of the company with or without premium as per the terms of the issue, on the expiry of specified period or periods. If the conversion is to take place at or after eighteen months from the date of allotment but before 36 months, the conversion is optional on the part of the debenture holders in terms of SEBI (ICDR) Regulations. Interest will be payable on these debentures upto the date of conversion as per transfer issue.
- **Non Convertible Debentures (NCDs)** : These debentures do not carry the option of conversion into equity shares and are therefore redeemed on the expiry of the specified period or periods. The issuer is required to list its Public issue of NCDs on stock exchange as per SEBI (Issue and Listing of Debt Securities) Regulations, 2008. NCDs can be also issued on private placement basis.
- **Partly Convertible Debentures (PCDs)** : These may consist of two kinds namely-convertible and non-convertible. The convertible portion is to be converted into equity shares at the expiry of specified period. However, the non-convertible portion is redeemed at the expiry of the stipulated period. If the conversion takes place at or after 18 months, the conversion is optional at the discretion of the debenture holder.

Optionally Fully Convertible Debenture (OFCD)

The Optionally Fully Convertible Debenture is a kind of debenture which can be converted into shares at the expiry of a certain period at a predetermined price, if the debt holder (investor) wishes to do so. The "securities" as defined u/s 2(81) of Companies Act, 2013 means securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956. After analysing the definition of "securities" it could be rightly

concluded that an OFCD being a hybrid security falls under the definition of "securities" as defined u/s 2 (h) of securities Contract (Regulation) Act, 1956 and u/s 2(81) of Companies Act, 2013 as it inherits the characteristics of debentures initially and also that of the shares at a later stage if the option to convert the securities into shares being exercised by the security holder. [This section has been discussed in Lesson No. 6 of Company Law Subject (Executive Programme)]

Test your Knowledge:

Amongst the options for equity or debenture for fund raising, which one is recommended for the companies and why?

Bonds

Bonds are the debt security where an issuer is bound to pay a specific rate of interest agreed as per the terms of payment and repay principal amount at a later time. The bond holders are generally like a creditor where a company is obliged to pay the amount. The amount is paid on the maturity of the bond period. Generally these bonds duration would be for 5 to 10 years.

Characteristics of a Bond

1. Bond has a fixed face value, which is the amount to be returned to the investor upon maturity.
2. Fixed maturity date, which can range from a few days to years.
3. All bonds repay the principal amount after the maturity date.
4. Provides regular payment of interest, semi-annually or annually.
5. Interest is calculated as a certain percentage of the face value known as a 'coupon payment'.
6. Generally considered as less risky investment as compared to equity.
7. It helps to diversify and grow investor's money.

Types of Bond

Government Bonds	These are the bonds issued either directly by Government of India or by the Public Sector Undertakings (PSU's) in India. These bonds are secured as they are backed up with security from Government. These are generally offered with low rate of interest compared to other types of bonds.
Corporate Bonds	These are the bonds issued by the private corporate companies. Indian corporates issue secured or non secured bonds. However care to be taken to consider the credit rating given by Credit Rating Agencies before investing in these bonds.
Banks and other financial institutions bonds	These bonds are issued by banks or any financial institution. The financial market is well regulated and the majority of the bond markets are from this segment.
Tax saving bonds	In India, the tax saving bonds are issued by the Government of India for providing benefit to investors in the form of tax savings. Along with getting normal interest, the bond holder would also get tax benefit. In India, all these bonds are listed in National Stock Exchange and Bombay Stock Exchange in India, hence they can be easily liquidated and sold in the open market.

Test your Knowledge:

How is a Bond different from a Debenture?

Foreign Currency Convertible Bonds (FCCBS)

'Foreign Currency Convertible Bond' (FCCB) means a bond issued by an Indian company expressed in Foreign Currency, and the principal and interest in respect of which is payable in foreign currency.

The FCCBs are unsecured instruments which carry a fixed rate of interest and an option for conversion into a fixed number of equity shares of the issuer company. Interest and redemption price (if conversion option is not exercised) is payable in dollars. FCCBs shall be denominated in any freely convertible Foreign Currency. However, it must be kept in mind that FCCB, issue proceeds need to conform to ECB end use requirements.

Foreign investors also prefer FCCBs because of the Dollar denominated servicing, the conversion option and, the arbitrage opportunities presented by conversion of the FCCBs into equity shares at a discount on prevailing Indian market price. In addition, 25% of the FCCB proceeds can be used for general corporate restructuring.

Example

Suppose a company 'A' issues bonds with following terms –

Issue Price of the Bond ₹ 1000 Coupon rate 2% Maturity 2 years

Convertible into equity shares @ ₹800 per share

Now suppose an investor subscribes to 4 of these bonds. Thus, the total investment is Rs. 4000. On this investment, he is entitled to get an interest @ 2% for 2 years. On the maturity date, i.e. after 2 years, the investor will have an option – to either claim full redemption of the amount from the company or get the bonds converted into fully paid equity shares @ Rs. 800 per share. Thus, if he goes for the conversion he will be entitled to 5 (4000/800) equity shares.

The choice he makes will depend on the market price of the share on the date of conversion.

If the shares of the company 'A' is trading at lower than Rs. 800, let's say Rs. 500, the investor will be better off by claiming full redemption of his bonds and buying the shares from the market. In this case, he will get 8 (4000/500) equity shares as against 5 which he was getting on conversion.

Similarly if the market price of the share is higher than Rs. 800, the investor will benefit by getting its shares converted. Thus, on the day of maturity, an investor will seek full redemption if the conversion price is higher than the current market price, and will go for conversion if the conversion price is less than the current market price.

Foreign Currency Exchangeable Bonds (FCEBs)

The FCEB is used to raise funds from the international markets against the security and exchangeability of shares of another company. The key feature of these bonds is that they are issued by an Issuing Company, subscribed by a person who is a resident outside India, and are exchangeable into equity shares of another company which is called the Offered Company. Thus, FCEB involves three parties: The issuer company, offered company and an investor. Foreign Currency Exchangeable Bond (FCEB) means –

- A bond expressed in foreign currency.
- The principal and the interest in respect of which is payable in foreign currency.
- Issued by an issuing company, being an Indian company.
- Subscribed by a person resident outside India.

- Exchangeable into equity shares of another company, being offered company which is an Indian company. Either wholly or partly or on the basis of any equity related warrants attached to debt instruments. It may be noted that issuing company to be the part of promoter group of offer or company and the offeror company is to be listed and is to be eligible to receive foreign investment. Under this option, an issuer company may issue FCEBs in foreign currency, and these FCEBs are convertible into shares of another company (off company) that forms part of the same promoter group as the issuer company.

Example: Company ABC Ltd. issues FCEBs, then the FCEBs will be convertible into shares of company XYZ Ltd. that are held by company ABC Ltd. and where companies ABC Ltd. and XYZ Ltd. form part of the same promoter group. Unlike FCCBs that convert into shares of issuer itself, FCEBs are exchangeable into shares of Offered Company (OC). Also, relatively, FCEB has an inherent advantage that it does not result in dilution of shareholding at the OC level.

Test your Knowledge:

Can you now differentiate between Foreign Currency Convertible Bond (FCCB) and Foreign Currency Exchangeable Bond (FCEB)?

Indian Depository Receipts

Section 390 of the Companies Act, 2013 and rule 13 of Companies (Registration of Foreign Companies) Rules, 2014 lays down the procedure for issue of Indian Depository Receipts. Apart from this a company has to comply with Chapter VII for new issue of IDRs and VIII for rights issue of IDRs, of SEBI (ICDR) Regulations, 2018

According to Section 2(48) of the Companies Act, 2013 "Indian Depository Receipt" means any instrument in the form of a depository receipt created by a domestic depository in India and authorized by a company incorporated outside India making an issue of such depository receipts.

An IDR is an instrument denominated in Indian Rupee in the form of a depository receipt created by a domestic depository (Custodian of securities registered with SEBI) against the underlying equity of issuing company to enable foreign companies to raise funds from Indian Securities Markets. In an IDR, foreign companies would issue shares, to a domestic (Indian) depository, which would in turn issue depository receipts to investors in India. The actual shares underlying the IDRs would be held by an Overseas Custodian, which shall authorize the Indian depository to issue the IDRs. To that extent, IDRs are derivative instruments because they derive their value from the underlying shares.

IDRs involve currency risk for the underlying shares in another country.

Thus, Intermediaries involved in issue of IDR are:

1. Overseas Custodian Bank
2. Domestic Depository

Standard Chartered PLC is only company to offer IDR in the Indian market. The foreign company issuing IDRs need to comply with the requirements of rules prescribed under Companies Act, SEBI Regulations and RBI notifications/ circulars.

Derivatives

Derivatives can be of different types like futures, options, swaps, caps, floor, collars etc. The most popular derivative instruments are futures and options.

The term Derivative has been defined in Securities Contracts (Regulations) Act, as:-

A derivative is a financial instrument that derives its value from an underlying asset. This underlying asset can be stocks, bonds, currency, commodities, metals and even intangible, assets like stock indices.

Derivative includes: -

(A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;

(B) a contract which derives its value from the prices, or index of prices, of underlying securities;

(C) commodity derivatives; and

(D) such other instruments as may be declared by the Central Government to be derivatives.

Warrant

Warrant means an option issued by a company whereby the buyer is granted the right to purchase a number of shares (usually one) of its equity share capital at a given exercise price during a given period.

The holder of a warrant has the right but not the obligation to convert them into equity shares. Thus in the true sense, a warrant signifies optional conversion. In case the investor benefits by conversion of warrant, then he will convert the warrants, else he may simply let the warrant lapse. The companies listed on the Exchange can issue warrants in accordance with SEBI (ICDR) Regulations, 2018.

For example if the conversion price of the warrant is ₹ 70/- and the current market price is ₹110/-, then the investor will convert the warrant and enjoy the capital gain of ₹40/-. In case the conversion is at ₹70/- and the current market price is ₹40/-, then the investor will simply let the warrant lapse without conversion.

Real Estate Investment Trusts ('REITs')

A real estate investment trust ("REIT") is a collective investment scheme that owns, operates or finances income-producing real estate. REITs provide all investors the chance to own valuable real estate, present the opportunity to access dividend-based income and total returns, and help communities grow, thrive, and revitalize.

SEBI (Real Estate Investment Trusts) Regulations, 2014 defines "REIT" or "Real Estate Investment Trust" means a person that pools rupees crores or more for the purpose of issuing units to at least 200 investors so as to acquire and manage real estate asset(s) or property(ies), that would entitle such investors to receive the income generated therefrom without giving them the day-today control over the management and operation of such real estate asset(s) or property(ies).

Thus it refers to a pool from retail investors to acquire and manage real assets or properties. However it is clarified that any company which acquires and manages real estate asset(s) or property(ies) and offers or issues securities to the investors, shall not be construed as a REIT or Real Estate Investment Trust.

REITs allow anyone to invest in portfolios of real estate assets the same way they invest in other industries – through the purchase of individual company stock or through a mutual fund or exchange traded fund (ETF). The stockholders of a REIT earn a share of the income produced through real estate investment – without buying any finance property. Benefits of REITs include:

- **Less Capital Intensive:** Direct investment in real estate property is very capital intensive. But each shares of REITs will be comparatively more affordable (it will not require large capital outflows).

- **Suitable for small Investors:** Investing through REITs will eliminate dealing with builders, thereby avoiding potential exposure to big builders.
- **Transparency:** REITs stocks are listed in stock market, hence details will be available on public domain.
- **Assured Dividends:** REITs generates income in form of dividend. REITs dividend payment is relatively assured as most of their income is in the form of rental (lease) income.
- **Tax Free:** Dividend earned by the investors of REIT will be tax free.
- **Fast Capital Appreciation:** Capital appreciation can be phenomenal.
- **Easy to buy:** Investment in REITS easier than investment in Real Estate properties.

REITs are similar to mutual funds and shares and they provide income by way of :

- Dividend to its shareholders.
- Capital Appreciation as REIT stocks are listed in BSE and NSE.

Infrastructure Investment Trusts ('InvITs')

Considering the importance of infrastructure sector with an aim to provide a suitable platform for financing / refinancing infrastructure projects and allow the investors to participate in the growth story of infrastructure, the Government introduced a new investment vehicle named Infrastructure Investment Trusts ('InvITs') in 2014.

The SEBI has issued SEBI (Infrastructure Investment Trusts) Regulations, 2014.

The primary objective of InvITs is to promote the infrastructure sector of India by encouraging more individuals to invest in it. Typically, such a tool is designed to pool money from several investors to be invested in income-generating assets. The cash flow thus generated is distributed among investors as dividend income. When compared to Real Estate Investment Trust or REITs, the structure and operation of both are quite similar.

An InvIT is established as a trust and is registered with the SEBI. Typically, infrastructure investment trust SEBI comprises 4 elements, namely –

- **Trustee** : They are required to be registered with SEBI as debenture trustees. Also, they are required to invest at least 80% into infra assets that generate steady revenue.
- **Sponsor** : Typically, a body corporate, LLP, or any company which sets up the InvIT and is designated as such at the time of application made to the SEBI and shall include an inducted sponsor.
- **Investment manager** : As a body corporate of LLP, an investment manager supervises all the operational activities surrounding InvITs.
- **Project manager** : The authority is mostly responsible for executing projects. However, in the case of PPP projects, it serves as an entity that also supervises ancillary responsibilities.

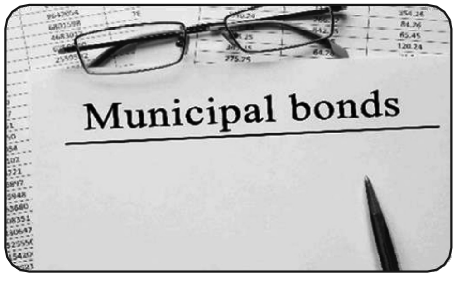
Securitized Debt Instruments

Securitized debt instruments are financial securities that are created by securitizing individual loans (debt). Securitization is a financial process that involves issuing securities that are backed by assets, most commonly debt. The assets are transformed into securities, and the process is called securitization. The owner of the securities receives an income from the underlying assets; hence, the term asset-backed securities.

Securitized debt instruments come with various advantages over conventional forms of investing and are more valuable to a portfolio. **One of the most common types of securitized debt is mortgage-backed securities.**

Securitized debts can lower interest rates and free up capital for the bank, but they can also encourage lending for reasons other than making a profit. SEBI had laid down the framework for public offer and listing of securitized debt instruments vide SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008 and had specified listing agreement for Securitized Debt Instruments. A few privately placed SDIs have already been listed on exchanges.

Municipal Bonds



Municipal bonds are also referred to as 'muni bonds'. The urban local government and agencies issue these bonds. Municipal bonds are issued when a government body wants to raise funds for projects such as infra-related, roads, airports, railway stations, schools, and so on. SEBI issued Regulations in 2015 for the urban local bodies to raise funds by issuing municipal bonds. Municipal bonds exist in India since the year 1997. Bangalore Municipal Corporation is the first urban local body to issue municipal bonds in India. Ahmedabad followed Bangalore in the succeeding years. The municipal bonds lost the ground after the initial investors' attraction it received and failed to raise the desired amount of funds. To revive the municipal bonds, SEBI came up with Regulations for the issue of municipal bonds in 2015 namely SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015. Although, efforts have been made to make it attractive for investors, however liquidity concerns, and state guarantees remains challenges.

Municipality should meet the following key eligibility criteria to issue municipal bonds in India:

- The issuer, proposing to issue municipal debt securities is eligible to raise funds under its constitution document
- The municipality must have no default in the repayment of debt securities and loans availed from the banks or non-banking financial companies in the last year.
- The municipality, promoter and directors must not be enlisted in the willful defaulters published by the Reserve Bank of India (RBI). The municipality should have no record of default in the payment of interest and repayment of principal with respect to debt instruments.
- There shall be no order or direction of restraint, prohibition or debarment by the Board is in force against the issuer or its promoters or its directors from accessing the securities market.
- Any of the promoter or director(s) of issuer has not been declared as a fugitive economic offender.

LESSON ROUND-UP

- SEBI was established with the statutory powers to protect the interest of investors; promote the development of the securities market; and regulate the securities market.
- Securities Market is a place where companies can raise funds by issuing securities such as equity shares, debt securities, derivatives, mutual funds, etc. to the investors (public) and also is a place where investors can buy or sell various securities (shares, bonds, etc.).
- The primary market deals with the issue of fresh instruments by the corporate sector such as equity shares, preference shares and debt instruments.
- The secondary market or stock exchange is a market for trading and settlement of securities that have already been issued. The investors holding securities sell securities through registered brokers/sub-brokers of the stock exchange.

- Venture Capital is generally equity investments made by Venture Capital funds, at an early stage in privately held companies, having potential to provide a high rate of return on their investments.
- Debenture is a document evidencing a debtor acknowledging it and any document which fulfils either of these conditions is a debenture.
- The FCCBs are unsecured instruments which carry a fixed rate of interest and an option for conversion into a fixed number of equity shares of the issuer company.
- A real estate investment trust is a company that owns, operates or finances income-producing real estate.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Briefly explain the Financial Markets in India.
2. Capital Market is referred as engine for economic growth. Explain.
3. Distinguish between Primary Market and Secondary Market.
4. Distinguish between Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs).
5. "Bonds are the debt security where an issuer is bound to pay a specific rate of interest." Explain.
6. "Define Alternate Investment Fund. Explain in brief different categories of AIF.
7. Differentiate between Debentures, Bonds and Warrant.
8. Elaborate the instruments that can be issued by companies incorporated outside India to access Indian capital market.
9. Explain in brief the regulators in Indian Capital Markets.

LIST OF FURTHER READINGS

- SEBI Circulars, Notifications, Orders, Manual
- Regulations/Rules/Guidelines/Circulars issued by SEBI, RBI, MCA etc. from time to time

OTHER REFERENCES (INCLUDING WEBSITES/VIDEO LINKS)

- www.sebi.gov.in
- www.mca.gov.in
- www.icsi.edu
- www.nseindia.com
- www.bseindia.com
- www. nsdl.co.in
- www.cdslindia.com

Secondary Market in India

Lesson 2

KEY CONCEPTS

■ Stock Exchange ■ Trading Mechanism ■ Market Participants ■ Exchange Traded Funds ■ Derivatives ■ Right Entitlements ■ Innovator's Growth Platform ■ Social Stock Exchange ■ Margins ■ Bulk Deal/Block Deal ■ Sensex/Nifty ■ Clearing Corporation ■ Market Surveillance

Learning Objectives

To understand:

- The Development of Stock Market in India
- Operation of stock exchanges
- Trading Platforms in India
- Stock Exchange Trading Mechanism
- Various market participants in the securities market
- Basics of trading in securities market
- Impact of various policies in securities market

Lesson Outline

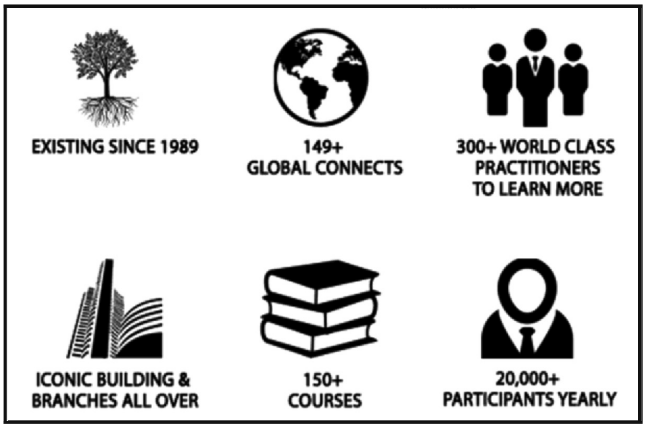
- Development of Stock Market in India
- Stock Market and its operation
- Stock Exchanges in India
- Regulation of Secondary Market
- Trading Mechanism in the Stock Exchange
- Types of securities
- Market participants
- Exchange Traded Funds
- Derivatives
- Right Entitlements
- Innovator's Growth Platform
- Margins
- Block Deal/Bulk Deal
- Stock Market Index
- Basics of Investing
- Clearing Corporation
- Market surveillance
- Risk Management in Secondary Market
- Impact of various policies on Stock Markets
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- Securities & Exchange Board of India Act, 1992
- Securities Contracts (Regulation) Act, 1956
- The Companies Act, 2013 and the rules made thereunder

DEVELOPMENT OF STOCK MARKET IN INDIA

Indian stock market marks to be one of the oldest stock markets in Asia. It dates back to the close of 18th century when the East India Company used to transact loan securities. In the 1830s, trading on corporate stocks and shares in Bank and Cotton presses took place in Bombay. Though the trading was broad but the brokers were hardly half dozen during 1840 and 1850. An informal group of 22 stockbrokers began trading under a banyan tree opposite the Town Hall of Bombay from the mid 1850s, each investing a (then) princely amount of ₹ 1. This banyan tree still stands in the Horniman Circle Park, Mumbai. In 1860, the exchange flourished with 60 brokers.



In fact the 'Share Mania' in India began with the American Civil War broke and the cotton supply from the US to Europe stopped. Further the brokers increased to 250. The informal group of stockbrokers organized themselves as the Native Share and Stockbrokers Association which, in 1875, was formally organized as the Bombay Stock Exchange (BSE). In 1956, the Government of India recognized the Bombay Stock Exchange as the first stock exchange in the country under the Securities Contracts (Regulation) Act. National Stock Exchange of India Ltd. (NSE) was given recognition as a stock exchange under the Securities Contracts (Regulation) Act, 1956 in April 1993, NSE is India's 1st demutualized stock exchange and was demutualized from the date of its inception. NSE commenced operations in the Wholesale Debt Market (WDM) segment in June, 1994 and commenced electronic trading in Capital Market 1st time in India in November, 1994. NSE is also instrumental in bringing the dematerialization of trading in India.

Since the initiation of the financial liberalisation programme in 1992, there have been substantial regulatory, structural, institutional and operational changes in the securities market of the country. These reforms were carried out with the objective of improving market efficiency, enhancing transparency, preventing unfair trade practices and bringing the Indian securities market up to international standards.

STOCK MARKET AND ITS OPERATION

Stock Exchange

Stock exchange is a market place for buying and selling of securities and ensuring liquidity to them in the interest of the investors. The stock exchanges are virtually the nerve center of the capital market and reflect the health of the country's economy as a whole.

The Securities Contracts (Regulation) Act, 1956, has defined Stock Exchange as:

(a) any body of individuals, whether incorporated or not, constituted before corporatization and demutualization under Sections 4A and 4B, or

(b) a body corporate incorporated under the Companies Act, 1956 (now as the Companies Act, 2013) 2013 whether under a scheme of corporatization and demutualization or otherwise, for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.

Stock exchange as an organized security market provides marketability and price continuity for shares and helps in a fair evaluation of securities in terms of their intrinsic worth. Thus, it helps orderly flow and distribution of savings between different types of investments.

Stock markets play a significant role in the development of any economy. They facilitate mobilization of funds from small investors & channelize them into various development needs of various sectors of the economy.

This institution performs an important part in the economic-upliftment of a country, acting as a free market for securities where prices are determined by the forces of supply and demand. Apart from the above basic function it also assists in mobilizing funds for the Government and the Industry and to supply a channel for the investment of savings in the performance of its functions.

The Stock exchanges in India as elsewhere have a vital role to play in the development of the country in general and industrial growth of companies in the private sector in particular and helps the Government to raise internal resources for the implementation of various development programmes in the public sector. As a segment of the capital market it performs an important function in mobilizing and channelizing resources which remain otherwise scattered. Thus, the Stock Exchanges trap the new resources and stimulate a broad based investment in the capital structure of industries.

Role of Stock Exchanges

- **Acts as an economic barometer:** The country's economic growth is measured with the trends in the stock market. An upward trend in the stock market denotes growth potential and downward trend denotes the fall in the economy. Hence the stock exchange is called as an economic barometer as it indicates conditions prevailing in the country.
- **Acts as a continuous market for securities:** Investors can invest in any securities, but in case of any risk, they can exit from that security and freshly re-enter into whichever security they feel as secure.
- **Responsible for securities evaluation:** The stock price indicates the performance and stability of the company. Through these investors decide according to their risk appetite whether to enter or exit or hold. The stock exchange acts as a regulator for the securities price evaluation for all the listed stocks.
- **Mobilizes savings:** Most of the public cannot invest the bulk amount in securities, so they invest in indirect ways such as mutual funds and investment trusts, and these are mobilized by stock exchanges.
- **Enables healthy speculation:** Stock exchange encourages businessmen and provides healthy speculation opportunities to speculate and gain profits from fluctuations in stock prices.
- **Protect investors:** Stock exchange ensures the protection of the funds of investors by allowing only genuine companies to be listed in the stock exchange.
- **Ensures liquidity:** Banks and some other institutions like Life Insurance Corporation (LIC) invest their funds in the stocks and earn a profit within a short period and are sold immediately if there is any necessity of funds. Thus, there is an opportunity to liquidate immediately at any time if required in the stock market.
- **Exercise vigilance/control on companies:** Every company listed on an exchange must produce their annual reports and an audited balance sheet to the stock exchange. Such reports being available in public domain promotes transparency.

- **Attracts foreign capital:** Foreign Institutional Investors (FII) are likely to invest in developing economy as the rate of returns will be high in developing economies due to growth opportunities.
- **Ensure Safety of Capital and Fair Dealing:** The transactions made in the stock exchange are made available to the public under well-defined rules and regulations abided by laws. This ensures safety and fair dealings for the average investors.
- **Regulate company management:** The firms wanting to get their securities listed must follow certain rules and fulfil certain conditions. Stock exchanges safeguard the interest of the investors and regulate the company management.

Indian Stock Exchanges

Trading in the Indian stock market majorly takes place in the below two stock exchanges -

- BSE - BSE Limited (Formerly Bombay Stock Exchange)
- NSE - National Stock Exchange of India

The Bombay Stock Exchange (BSE) has been in existence since 1875, whereas the National Stock Exchange (NSE), on the other hand, was founded in 1992 and started trading in 1994. However, both BSE and NSE exchanges follow the same trading mechanism, trading hours, settlement process, etc.

REGULATOR OF SECONDARY MARKET

Regulatory Framework of Secondary Market

The regulation of buying, selling and dealing in securities such as shares of a company, units of mutual funds, Derivatives, etc. and stock exchanges, commodity derivative exchanges and depositories comes within the purview of Securities and Exchange Board of India (SEBI) in terms of SEBI Act, 1992 (SEBI Act) and various SEBI regulations/ circulars/ guidelines/ directives.

SEBI was established on April 12, 1988 as non-statutory body and later on in 1992 was recognized as statutory body in accordance with the provisions of the SEBI Act. The mandate of SEBI is to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto.

At present, the four main legislations governing “the securities market” are:

A) The SEBI Act, 1992, which empowers SEBI with statutory powers for (i) protecting the interests of investors in securities, (ii) promoting development of the securities market, and (iii) regulating the securities market.

B) The Companies Act, 2013, which provides regulations for issuance, allotment and transfer of securities, and related matters in public issues of securities.

C) The Securities Contracts (Regulation) Act, 1956, which provides for recognition and regulation of transactions in securities in a Stock Exchange.

D) The Depositories Act, 1996, which provides for electronic maintenance and transfer of ownership of dematerialized (demat) shares.

The above legislations in detail are covered under Lesson No. 3, 4 and 5 of this Study.

TRADING MECHANISM

In the Indian securities market various products are trading like equity shares, warrants, debenture, etc. The trading in the securities of the company takes place in dematerialised form in India. Dematerialization is the process by which physical certificates of an investor are converted to an equivalent number of securities in electronic form and credited to the investor's account with his Depository Participant (DP).

Settlement of Transaction:

Trading in the securities of the company takes place on the screen based platforms provided by the Exchanges. Currently for equity shares, the settlement cycle is (T+1 day) (T means trading day/Transaction day). Any shares which are traded on the Exchange are required to be settled by the clearing corporation of the exchange on the following working day. For arriving at the settlement day all intervening holidays, which include bank holidays, NSE holidays, Saturdays and Sundays are excluded.

Introduction of T + 0 settlement : SEBI vide Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/20 dated March 21, 2024 issued guidelines for introduction of Beta version of T+0 rolling settlement cycle on optional basis in addition to the existing T+1 settlement cycle in equity cash markets, for a limited set of 25 scrips and with a limited number of brokers. The mechanism was enabled only for non-custodian clients with effect from March 28, 2024 by both National Stock Exchange (NSE) and Bombay Stock Exchange (BSE).

Increase in number of eligible scrips for trading under optional T+0 settlement cycle

Optional T+0 settlement cycle will be made available to top 500 scrips in terms of market capitalization as on December 31, 2024. The scrips shall be made available for trading and settlement starting with scrips at bottom 100 companies out of the aforesaid 500 companies and gradually include the next bottom 100 companies every month till top 500 companies are available for trading in optional T+0 settlement cycle.

The above list of scrips shall be in addition to the existing 25 scrips available for trading and settlement under the Beta version of optional T+0 settlement cycle.

Benefits of Trading in Demat Form

In electronic trading order received are matched electronically on a strict price/time priority and hence cuts down on time, cost and risk of error, as well as on fraud resulting in improved operational efficiency. It enables market participants, irrespective of their geographical locations, to trade with one another simultaneously. It provides full anonymity by accepting orders, big or small, from brokers without revealing their identity, thus providing equal access to everybody. It also provides a perfect audit trail, which helps to resolve disputes by logging in the trade execution process in entirety.

Regulatory framework for dematerialization of shares:

Listed companies

- Regulation 40 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 stipulates that requests for effecting transfer of securities shall not be processed unless the securities are held in the dematerialized form with a depository. Further it specifies that transmission or transposition of securities held in physical or dematerialised form shall be effected only in dematerialised form.

Unlisted Public companies

- In accordance with the Rule 9A of The Companies (Prospectus and Allotment of Securities) Rules, 2014, every unlisted public company shall issue the securities only in dematerialised form and facilitate

dematerialisation of all its existing securities in accordance with provisions of the Depositories Act, 1996 and regulations made there under.

- Every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with provisions of the Depositories Act, 1996 and regulations made there under.
- Every holder of securities of an unlisted public company, who intends to transfer such securities, shall get such securities dematerialised before the transfer or who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) shall ensure that all his existing securities are herd in dematerialized form before such subscription.

Unlisted Private companies

- In accordance with the Rule 9B of The Companies (Prospectus and Allotment of Securities) Rules, 2014, certain class of private companies shall issue the securities only in dematerialised form and facilitate dematerialisation of all its existing securities in accordance with provisions of the Depositories Act, 1996 and regulations made there under.
- Every such company making any offer for issue of any securities or buyback of securities or issueof bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with provisions of the Depositories Act, 1996 and regulations made there under.
- Every holder of securities of such company, who intends to transfer such securities, shall get such securities dematerialised before the transfer or who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) shall ensure that all his existing securities are herd in dematerialized form before such subscription.

TYPES OF SECURITIES

Listed Securities	The securities of companies, which have signed the listing agreement with a stock exchange, are traded as “Listed Securities” in that exchange.
Permitted Securities	To facilitate the market participants to trade in securities of such companies, which are actively traded at other stock exchanges in India but are not listed on an exchange, trading in such securities is facilitated as “permitted securities” provided they meet the relevant norms specified by the stock exchange.

MARKET PARTICIPANTS

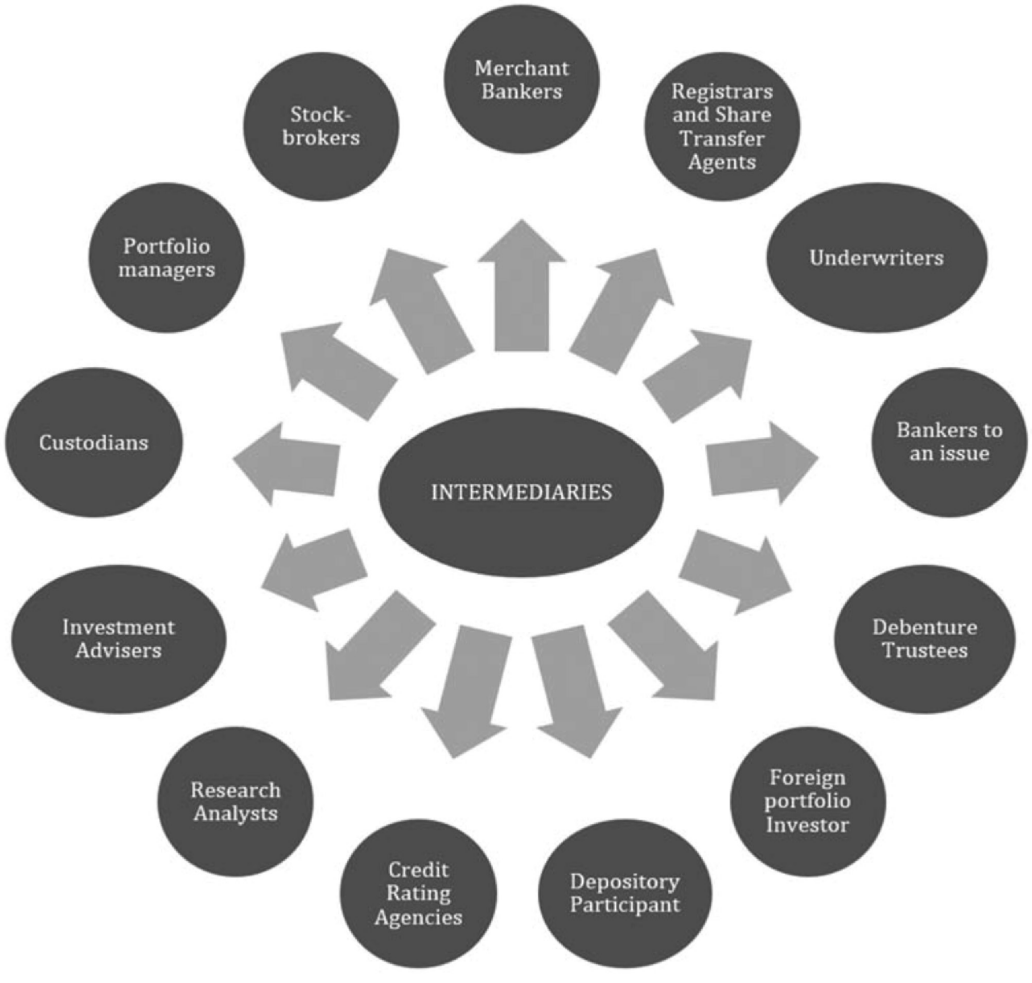
Market Participants in Securities Market include buyers, seller and various intermediaries between the buyers and sellers. Some of these entities are briefed below:

- **Market Intermediaries**

  Intermediaries are service providers and are an integral part of any financial system. The Market Regulator, i.e., SEBI regulates various intermediaries in the primary and secondary markets through its regulations for these respective intermediaries. SEBI has defined the role of each of the intermediary, the eligibility criteria for granting registration, their functions and responsibilities and the code of conduct to which they are bound. These regulations also empower SEBI to inspect the functioning of these intermediaries and to collect fees from them and to impose penalties on erring entities.

The objectives of these intermediaries are :

- To smoothen the process of investment.
- To establish a link between the investors and the users of funds.
- Corporations and Governments do not market their securities directly to the investors. Instead, they hire the services of the market intermediaries to represent them to the investors.
- Investors, particularly small investors, find it difficult to make direct investment. A small investor desiring to invest may be able to diversify across issuers to reduce risk. He may not be equipped to assess and monitor the credit risk of issuers. Market intermediaries help investors to select investments by providing investment consultancy, market analysis and credit rating of investment instruments.
- In order to operate in secondary market, the investors have to transact through share brokers. Registrars and Share Transfer Agents, Custodians and Depositories Participants are capital market intermediaries that provide important infrastructure services for both primary and secondary markets.



- **Stock Exchanges**

  Stock Exchanges offer a trading platform for buyers and sellers to carry out transaction in issued securities.

  Trading occurs on the stock exchanges like NSE, BSE through electronic trading terminals which

attribute anonymous order matching. Stock exchanges also appoint clearing and settlement agencies and clearing banks that manage the funds and securities settlement that arise out of these trades.

- **Depositories**

  Depositories are institutions that hold securities (like shares, debentures, bonds, government securities, mutual fund units) of investors in electronic form. Two prominent depositories in India are the National Securities Depository Limited (NSDL) and the Central Depository Services Limited (CDSL).



- **Depository Participant**

  A Depository Participant (DP) is an agent of the depository through which it interfaces with the investors and provides depository services. Investors enable depository participants to hold and transact in securities in the dematerialized form. While the investor-level accounts in securities are held and maintained by the DP, the company level accounts of securities issued is held and maintained by the depository.

  With the approval of SEBI, Depository Participants are appointed by the depository. Investors can open a demat account with a registered Depository Participant. They also provide services related to transactions in the securities held in dematerialized form. Demat account is essential as:

  - No stocks can be brought or sold without a demat account
  - Direct investment cannot be made without a demat account
  - Mandated by SEBI for transactions of listed company securities.

- **Trading Members/Stock Brokers & Sub-Brokers**

  - Trading members or Stock Brokers are registered members of a Stock Exchange, who assist the investors in buying/selling of securities. All secondary market transactions on stock are conducted through registered brokers of the stock exchange. Trading members can be individuals (sole proprietor), Partnership Firms or Corporate bodies, who are permitted to become members of recognized stock exchanges subject to completion of prescribed requirements.
  - A sub-broker is an entity who is not a member of Stock Exchange but who acts on behalf of a trading member or Stock Broker as an agent for assisting the investors in buying, selling or dealing in securities all the way through such trading member or Stock Broker with whom he is connected. Sub-brokers assist in increasing the reach of brokers to a larger number of investors.
  - Trades have to be routed only through the trading terminals of registered brokers of an exchange, to be accepted and executed on the electronic system.
  - SEBI registration to a broker is approved based on aspects such as capital competence, availability of adequate office space, equipment and manpower to successfully perform his activities, experience in securities trading etc.
  - Brokers receive a commission for their services, which is called as brokerage. Maximum brokerage chargeable to customers is fixed by individual stock exchanges.

- Several brokers offer research, analysis and advice about securities to buy and sell, to their investors.

- **Custodians**

  A Custodian is a body that is charged with the accountability of holding funds and securities of its large clients, characteristically institutions such as banks, insurance companies, and foreign portfolio investors. In addition to safeguarding securities, a custodian also settles transactions in these securities and keeps record of corporate actions on behalf of its clients and aids in:

  - Maintaining a client's securities and funds account
  - Collecting the benefits or rights accruing to the client in respect of securities held
  - Keeping the client informed of the actions taken or to be taken on their portfolios.

- **Clearing Corporation**

  Clearing Corporations play a vital role in protecting the interest of investors in the securities market. Clearing agencies ensure that members on the Stock Exchange meet their obligations to deliver funds or securities. These agencies act as a legal counter party to all trades and guarantee settlement of all transactions on the Stock Exchanges. It can be a part of an exchange or a separate entity.

- **Merchant Bankers**

  Merchant bankers are bodies registered with SEBI and act as issue managers, investment bankers or lead managers. Investors were enabled through depository participants to hold and transact in securities in the dematerialized form. They are single point contact for issuers during a new issue of securities. They connect and co-ordinate with other mediators such as registrars, brokers, bankers, underwriters and credit rating agencies in managing the issue process.

Test your Knowledge:

Prepare a note explaining in brief, the role of various intermediaries in the Stock Market.

EXCHANGE TRADED FUNDS (ETF)

- An Exchange traded fund (ETF) is a security that tracks an index, commodity, bonds, or a basket of assets like an index fund and is traded in the securities market. In simple words, ETFs are funds that track indexes such as Sensex, Nifty, etc. ETF may be of various types such as Equity ETF, Bond ETF, Commodity ETF, Index ETF, etc.
- When any investor buy shares/ units of an ETF, he buys shares/ units of a portfolio that tracks the performance of the index. ETFs just reflect the performance of the index they track.
- Unlike regular mutual funds, ETFs trade like a common stock on the stock exchange and the price of an ETF changes as per the trading in the market takes place.
- The trading value of an ETF depends on the net asset value of the underlying stock that it represents. ETFs, generally, have higher daily liquidity and lower fees than mutual fund schemes.
- There are many benefits of investing in ETF like hedging risks, proper allocation of assets, etc.

DERIVATIVES

A derivative is a financial instrument that derives its value from an underlying asset. This underlying asset can be stocks, bonds, currency, commodities, metals and even intangible, assets like stock indices. Derivatives can be of different types like futures, options, swaps, caps, floor, collars etc. The most popular derivative instruments are futures and options.

The term Derivative has been defined in Securities Contracts (Regulations) Act, as:-

Derivative includes: -

A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;

B) a contract which derives its value from the prices, or index of prices, of underlying securities;

C) commodity derivatives; and

D) such other instruments as may be declared by the Central Government to be derivatives.

Currency derivatives:

Currency derivatives are financial contracts between the buyer and seller involving the exchange of two currencies at a future date, and at a stipulated rate. Currency Derivative Trading is similar to Stock Futures and Options trading. However, the underlying asset are currency pairs (such as USDINR or EURINR or JPY INR or GBP INR) instead of Stocks. In currency derivatives, the investor buys or sells specific units of fixed currency on a pre-specified date and rate. Currency Options and Currency Futures trading is done in the Foreign Exchange markets. Forex rates are the value of a foreign currency relative to domestic currency. The major participants of Currency Trading in India are banks, corporations, exporters and importers.

Benefits of currency derivatives include:

- Offers diversification to investments
- Hedging opportunities to importers & exporters, for their future payables and receivables
- Gives trading opportunities because of volatility in currency
- Provides transparent rates to traders as it is exchange-traded.

Commodity Derivatives:

Commodity is a physical good attributable to a natural resource that is tradable and supplied without substantial differentiation by the general public. Commodities trade in physical (spot) markets and in futures and forward markets. Spot markets involve the physical transfer of goods between buyers and sellers; prices in these markets reflect current (or very near term) supply and demand conditions.

Commodity derivatives are financial instruments whose value is based on underlying commodities, such as oil, gas, metals, agricultural products and minerals. Other assets such as emissions trading credits, freight rates and even the weather can also underlie commodity derivatives. Commodity Derivatives markets are a good source of critical information and indicator of market sentiments. Since, commodities are frequently used as input in the production of goods or services, uncertainty and volatility in commodity prices and raw materials makes the business environment erratic, unpredictable and subject to unforeseeable risks.

Volatility in raw material costs affects businesses and can be significant given that commodity prices are driven by supply and demand from domestics as well as global markets. Ability to manage or mitigate risks by using suitable hedging in commodity derivative products, can positively affect business performance.

Benefits of commodity derivatives include:

- Offers alternative investment opportunity
- Offers higher leverage
- Return based on exposure to global market

Future

Future refers to a future contract which means an exchange traded forward contract to buy or sell a predetermined quantity of an asset on a predetermined future date at a predetermined price. Contracts are standardized and there's centralized trading ensuring liquidity.

There are two positions that one can take in a future contract:

- **Long Position -** his is when a futures contract is purchased and the buyer agrees to receive delivery of the underlying asset. The holder profits if the price of the underlying instrument increases, as the price they will pay will be less than the market price (Stock/Indices/Commodities)
- **Short Position -** This is when a futures contract is sold and the seller agrees to make delivery of the underlying asset. (stock/Indices/Commodities)

Currency Futures:

A currency future, also known as FX future, is a futures contract to exchange one currency for another at a specified date in the future at a price (exchange rate) that is fixed on the purchase date. Generally, the price of a future contract is in terms of INR per unit of other currency e.g. US Dollars. Currency future contracts allow investors to hedge against foreign exchange risk. Currency Derivatives are available on four currency pairs viz. US Dollars (USD), Euro (EUR), Great Britain Pound (GBP) and Japanese Yen (JPY). Cross Currency Futures & Options contracts on EUR-USD, GBP-USD and USD-JPY are also available for trading in Currency Derivatives segment.

Currency Future and Options Contracts (involving Indian Rupee) on Exchanges in International Financial Services Centres (IFSC)

SEBI (International Financial Services Centres) Guidelines, 2015 specified currency derivatives as permissible securities in which dealing may be permitted by stock exchanges in IFSC. RBI, announced its decision to allow Rupee derivatives (with settlement in foreign currency) to be traded in IFSC Currency futures and options contracts involving Indian Rupee (with settlement in foreign currency), the position limits for eligible market participants, per currency pair per stock exchange, differ for various segments. For eg – USD-INR, EUR-INR, GBP-INR, JPY-INR, EUR-USD, etc. have threshold for the respective gross open position across all contracts against their total open interest

Options

Options Contract give its holder the right, but not the obligation, to take or make delivery on or before a specified date at a stated price. But this option is given to only one party in the transaction while the other party has an obligation to take or make delivery. Since the other party has an obligation and a risk associated with making the good the obligation, he receives a payment for that. This payment is called as option premium.

Option contracts are classified into two types on the basis of which party has the option:

- **Call option** - A call option is with the buyer and gives the holder a right to take delivery.
- **Put option** - The put option is with the seller and gives the right to take delivery.

Option Contracts are classified into two types on the basis of time at which the option can be exercised:–

- **European Option** – European style options are those contacts where the option can be exercised only on the expiration date. Options traded on Indian stock exchanges are of European Style.
- **American Option** – American style options are those contacts where the option can be exercised on or before the expiration date.

Example

Case 1

Rajesh purchases 1 lot of Infosys Technologies MAY 3000 Put and pays a premium of ₹ 250. This contract allows Rajesh to sell 100 shares of Infosys at ₹ 3000 per share at any time between the current date and the end of May. In order to avail this privilege, all Rajesh has to do is pay a premium of ₹ 25,000 (₹ 250 a share for 100 shares).

The buyer of a put has purchased a right to sell. The owner of a put option has the right to sell.

Case 2

If an investor is of the opinion that a particular stock say "Ray Technologies" is currently overpriced in the month of February and hence expect that there will be price corrections in the future. However he doesn't want to take a chance, just in case the prices rise. So the best option for the investor would be to take a Put option on the stock.

Lets assume the quotes for the stock are as under: Spot ₹ 1040

May Put at 1050 ₹10 May Put at 1070 ₹ 30

So the investor purchases 1000 "Ray Technologies" Put at strike price of ₹1070 and Put price of ₹ 30/-. The investor pay ₹ 30,000 as Put premium.

The position of investor in two different scenarios have been discussed below:

1. May Spot price of Ray Technologies = ₹ 1020
2. May Spot price of Ray Technologies = ₹ 1080

In the first situation you have the right to sell 1000 "Ray Technologies" shares at ₹1,070/- the price of which is ₹ 1020/-. By exercising the option the investor earn ₹ (1070-1020) = ₹50 per Put, which amounts to ₹ 50,000/. The net income in this case is ₹ (50000-30000) = ₹20,000.

In the second price situation, the price is more in the spot market, so the investor will not sell at a lower price by exercising the Put. He will have to allow the Put option to expire unexercised. In the process the investor only lose the premium paid which is ₹ 30,000.

While buyer of an options has limited risk (Premium Amount), seller of an option has very high risk (Market Price- Strike Price or Strike Price - Market Price), as the case may be, depending on whether it is an call or put option.

RIGHTS ENTITLEMENTS

Rights Entitlement (RE) is the rights issued by the company to the existing shareholders to subscribe to the new shares / other securities that the shareholder of a company is eligible to apply for under the rights offer. REs are offered to shareholders based on a ratio of existing equity shares held as on the record date. Rights Entitlements (REs) are issued in dematerialised form under a separate ISIN created by the Company.

Physical shareholders shall be required to provide their demat account details to Issuer / Registrar to the Issue for credit of REs not later than two working days prior to issue closing date, such that credit of REs in their demat account takes place at least one day before issue closing date.

Options available to an Eligible Equity Shareholder in rights Issue

Eligible Equity Shareholder can:

i. apply for their Rights Equity Shares to the full extent of their Rights Entitlements; or

ii. apply for their Rights Equity Shares to the full extent of their Rights Entitlements and apply for additional Rights Equity Shares; or

iii. apply for their Rights Equity Shares to the extent of a part of their Rights Entitlements (without renouncing the other part); or

iv. apply for Rights Equity Shares to the extent of a part of their Rights Entitlements and renounce a part / rest of their Rights Entitlements; or

v. renounce their Rights Entitlements in full.

Note: Rights Entitlements (REs) which are neither subscribed nor renounced on or before the Issue Closing Date shall lapse and shall be extinguished after the Issue Closing Date.

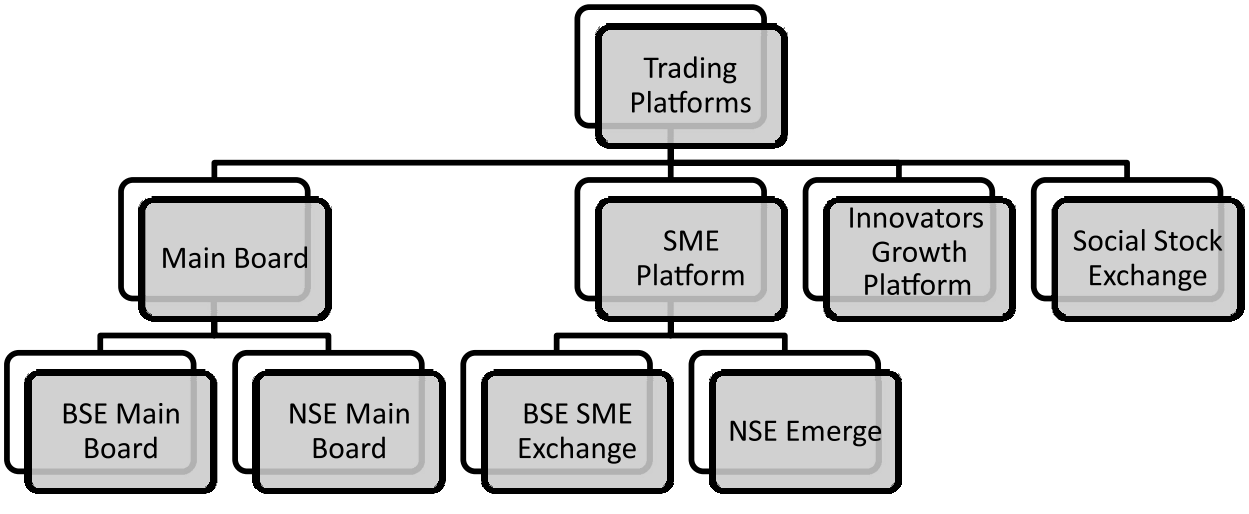
The investors can get information related to REs in the letter of offer filed by the issuer company with Stock Exchanges and is also available on SEBI website.

Renunciation of Rights Entitlements

(a) On Market Renunciation - The Investors may renounce the Rights Entitlements, credited to their respective demat accounts by trading/selling them on the secondary market platform of the Stock Exchanges through a registered stock broker in the same manner as trading / selling Equity Shares of the Company.

(b) Off Market Renunciation - The Investors may renounce the Rights Entitlements, credited to their respective demat accounts by way of an off-market transfer through a depository participant. The Rights Entitlements can be transferred in dematerialised form only. Eligible Equity Shareholders are requested to ensure that renunciation through offmarket transfer is completed in such a manner that the Rights Entitlements are credited to the demat account of the Renouncees on or prior to the Issue Closing Date.

TRADING PLATFORM IN INDIA



1. Main Board

An applicant who desires to list its securities with NSE or BSE must fulfill the pre-requisites as defined by respective stock exchange. An Issuer has to take various steps prior to making an application for listing its securities on the stock exchange These steps are essential to ensure the compliance of certain requirements by the Issuer before listing its securities on the stock exchange. The various steps to be taken include:

- In-prinicipal approval of draft prospectus
- Submission of Application
- IPO registration

Debt – Public Issue

All Non-Convertible Debentures (NCDs) issued through Initial Public Offer gets listed on the Capital Market segment of the Exchange. Every security in the trading system is given a symbol with series representative of the security. SEBI (Issue and Listing of Non- Convertible Securities) Regulations, 2021 and amendments thereon govern the issues relating to NCDs.

2. SME Platform

a) BSE SME Platform

Established in 2012, BSE SME is the market leader amongst the SME platform in India. BSE SME Platform offers an entrepreneur and investor friendly environment, which enables the listing of SMEs from the unorganized sector scattered throughout India, into a regulated and organized sector.

Requirements of Listing at BSE SME Platform

- **Incorporation** The Company shall be incorporated under the Companies Act, 1956 (now Companies Act, 2013).

Financials

- **Post Issue Paid up Capital**

The post issue paid up capital of the company (face value) shall not be more than Rs. 25 crores.

- **Networth** At least Rs. 1 crore for 2 preceding full financial years
- **Tangible Asset**

  Net Tangible Assets should be Rs. 3 Crores in last preceding full financial year..

- **Track Record**

  The track record of applicant company seeking listing should be at least 3 years. Where the applicant company has taken over a proprietorship concern/ registered partnership firm/ LLP, then the track record together with such proprietorship concern/ registered firm/ LLP should be at least 3 years.

  Provided, the applicant company seeking listing should have a track record of operations for at least one full financial year and audited financial results for one full financial year.

  Or

  Where the applicant company does not have a track record of 3 years, then the Project for which IPO is being proposed should be appraised and funded by NABARD, SIDBI, Banks (other than co-

operative banks), Financial Institutions. Provided, the applicant company seeking listing should have a track record of operations for at least one full financial year and audited financial results for one full financial year.

Earnings before Interest, Depreciation and tax

The company/ proprietorship concern/ registered firm/ LLP should have operating profit (earnings before interest, depreciation and tax) from operations for 2 out of 3 latest financial years preceding the application date.

Provided the company should have operating profit (earnings before interest, depreciation and tax) from operations for one full financial year preceding the application date.

For companies seeking listing where the project has been appraised and funded by NABARD, SIDBI, Banks (other than co-operative banks), Financial Institutions, it shall have positive operating profit (earnings before interest, depreciation and tax) from operations in one full preceding financial year.

- **Leverage Ratio**

  Leverage ratio of not more than 3:1. Relaxation may be granted to finance companies.

- **Disciplinary action**

  No regulatory action of suspension of trading against the promoter(s) or companies promoted by the promoters by any stock Exchange having nationwide trading terminals.

  The Promoter(s) or directors shall not be promoter(s) or directors (other than independent directors) of compulsory delisted companies by the Exchange and the applicability of consequences of compulsory delisting is attracted or companies that are suspended from trading on account of non-compliance.

  Director should not be disqualified/ debarred by any of the Regulatory Authority.

- **Default**

  No pending defaults in respect of payment of interest and/or principal to the debenture/ bond/ fixed deposit holders by the applicant company, promoters/ promoting company(ies), Subsidiary Companies.

- **Name change**

  In case of name change within the last one year, at least 50% of the revenue calculated on a restated and consolidated basis for the preceding 1 full financial year has been earned by it from the activity indicated by its new name.

  The activity suggesting name should have contributed to at least 50% of the revenue, calculated on a restated and consolidated basis, for the preceding one full financial year.

Other Requirements

- It is mandatory for a company to have a website.
- 100% of the Promoter's shareholding in the company should be in Dematerialised form.
- It is mandatory for the company to facilitate trading in demat securities and enter into an agreement with both the depositories.
- There should not be any change in the promoters of the company in preceding one year from date of filing the application to BSE for listing under SME segment.

- The composition of the board should be in compliance with the requirements of Companies Act, 2013 at the time of in-principle approval.
- The Net worth computation will be as per the definition given in SEBI (ICDR) Regulations
- The Company has not been referred to NCLT under IBC.
- There is no winding up petition against the company, which has been admitted by the court.

b) NSE EMERGE Platform

NSE's SME platform "EMERGE", offers emerging businesses a new and viable option for raising equity capital from a diversified set of investors in an efficient manner. These companies have the potential to unlock value and emerge on a bigger stage. EMERGE can play the critical role of significantly improving access to risk capital for emerging companies. At the same time, this platform will provide investors with exciting opportunities to invest in promising SME's / technology Startups.

EMERGE is a credible and efficient market place to bring about convergence of sophisticated investors and emerging corporates in the country. It offers opportunities to informed investors to invest in emerging businesses with exciting growth plans, innovative business models and commitment towards good governance and investor interest.

REGULATORY FRAMEWORK: EMERGE VIS-À-VIS MAIN BOARD

Particulars	Emerge	Main Board
Post-issue paid-up capital (face value)	Less than Rs 25 crore	Not less than Rs 10 crore
Minimum number of allottees in the IPO	200	1000
Observations on DRHP	By the Exchange	By SEBI
IPO underwriting	100% underwritten (15% on the books of the merchant banker)	Mandatory
Market capitalization / Issue size	No restriction	No restriction
IPO application size	Not less than Rs. 2,00,000	Rs 10,000-Rs 15,000
POST-ISSUE		
Reporting requirements (Financial accounts)	Half-yearly	Quarterly
Market making	Mandatory	Non-mandatory

3. Innvators' Growth Platform

The Securities and Exchange Board of India ("SEBI") had, in its circular dated December 12, 2018 reviewed the erstwhile framework for Institutional Trading Platform ("ITP") and proposed modifications to the existing guidelines of ITP including a change of name to Innovators Growth Platform ("IGP").

"Innovators growth platform" means the trading platform for listing and trading of specified securities of issuers that comply with the eligibility criteria specified in regulation 283 of SEBI (ICDR), 2018.

Applicability

Company with intensive use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology in their businesses.

As on the date of filing of draft information document or draft offer document with the Board, as the case may be, 25% (twenty five per cent) of the pre-issue capital of the Issuer Company for at least a period of 1 (one) year, should have been held by:

1. Qualified Institutional Buyers.
2. Innovators Growth Platform Investors for the purpose of Innovators Growth Platform.
3. The following regulated entities:
    1. Foreign Portfolio Investor.
    2. An entity meeting all the following criteria:
        1. It is a pooled investment fund with minimum assets under management of one hundred and fifty million USD.
        2. It is registered with a financial sector regulator in the jurisdiction of which it is a resident.
        3. It is resident of a country whose securities market regulator is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to Bilateral Memorandum of Understanding with the Board.
        4. It is not resident in a country identified in the public statement of Financial Action Task Force as:
            1. a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
            2. a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.
4. Any other class of investors as specified by SEBI from time to time.

Investor Allocation

The allotment to Institutional Investors as well as Non-institutional investors shall be on a proportionate basis.

Any under-subscription in the Non-institutional Investor category shall be available for subscription under the Institutional Investors' category.

Minimum application size

The minimum application size shall be two lakh rupees and in multiples thereof

Number of Allottees

The number of allottees in the initial public offer shall at least be fifty.

4. Social Stock Exchange

The Hon'ble Finance Minister as part of the Budget Speech for FY 2019-20 had proposed to initiate steps towards creating a Social Stock Exchange (SSE), under the regulatory ambit of Securities and Exchange Board of India, for listing social enterprise and voluntary organizations.

Accordingly, SEBI constituted working group on Social Stock Exchange to examine and make recommendations with respect to possible structures and mechanisms, within the securities market domain, to facilitate raising of funds by social enterprises and voluntary organizations.

While analysing the comments received on this report, it was felt that further expert advice and clarity may be needed on certain critical operational issues before comprehensively firming up views in the matter.

Accordingly, a Technical Group (TG) was constituted by SEBI on September 21, 2020 to review and make recommendations on certain critical operational issue, in the context of the recommendations made by the Working Group on the Social Stock Exchange.

After detailed deliberations, the SEBI vide notification dated July 25, 2022 inserted Chapter X-A on Social Stock Exchange in SEBI (ICDR) Regulations, 2018.

As per regulation 292A (i) "Social Stock Exchange" means a separate segment of a recognized stock exchange having nationwide trading terminals permitted to register Not for Profit Organizations and / or list the securities issued by Not for Profit Organizations in accordance with provisions of these regulations.

Applicability

The provisions of Social Stock Exchange as mentioned in Chapter X-A of SEBI (ICDR) Regulations, 2018 shall apply to the following:

a) a Not for Profit Organization seeking to only get registered with a Social Stock Exchange;

b) a Not for Profit Organization seeking to get registered and raise funds through a Social Stock Exchange;

c) a For Profit Social Enterprise seeking to be identified as a Social Enterprise

Eligibility conditions for being identified as a Social Enterprise

1. As per these regulations, a Not for Profit Organization or a For Profit Social Enterprise, to be identified as a Social Enterprise, shall establish primacy of its social intent.
2. In order to establish the primacy of its social intent, such Social Enterprise shall meet the following eligibility criteria:-
   (a) the Social Enterprise shall be indulged in at least one of the following activities:
      i. eradicating hunger, poverty, malnutrition and inequality;
      ii. promoting health care including mental healthcare, sanitation and making available safe drinking water;
      iii. promoting education, employability and livelihoods;
      iv. promoting gender equality, empowerment of women and LGBTQIA+ communities;
      v. ensuring environmental sustainability, addressing climate change including mitigation and adaptation, forest and wildlife conservation;
      vi. protection of national heritage, art and culture;
      vii. training to promote rural sports, nationally recognised sports, Paralympic sports and Olympic sports;
      viii. supporting incubators of Social Enterprises;
      ix. supporting other platforms that strengthen the non-profit ecosystem in fundraising and capacity building;
      x. promoting livelihoods for rural and urban poor including enhancing income of small and marginal farmers and workers in the non-farm sector;
      xi. slum area development, affordable housing and other interventions to build sustainable and resilient cities;

xii. disaster management, including relief, rehabilitation and reconstruction activities;

xiii. promotion of financial inclusion;

xiv. facilitating access to land and property assets for disadvantaged communities;

xv. bridging the digital divide in internet and mobile phone access, addressing issues of misinformation and data protection;

xvi. promoting welfare of migrants and displaced persons;

xvii. the activity provided under Scheduled VII of the Companies Act, 2013;

xviii. any other area as identified by the Board or Government of India from time to time.

(b) the Social Enterprise shall target underserved or less privileged population segments or regions recording lower performance in the development priorities of the Central or State Governments, or such other target segments as may be specified by the Board from time to time;

(c) For profit Social Enterprise shall have at least 67% of its activities, qualifying as eligible activities to the target population, to be established through one or more of the following:

(i) at least 67% of the immediately preceding 3-year average of revenues comes from providing eligible activities to members of the target population;

(ii) at least 67% of the immediately preceding 3-year average of expenditure has been incurred for providing eligible activities to members of the target population;

(iii) members of the target population to whom the eligible activities have been provided constitute at least 67% of the immediately preceding 3-year average of the total customer base and/or total number of beneficiaries.

3. Corporate foundations, political or religious organizations or activities, professional or trade associations, infrastructure and housing companies, except affordable housing, shall not be eligible to be identified as a Social Enterprise.

Requirements relating to registration for a Not for Profit Organization (292 F of SEBI ICDR Regulations 2018)

(1) A Not for Profit Organization shall mandatorily seek registration with a Social Stock Exchange before it raises funds through a Social Stock Exchange. However, a Not for Profit Organization may register on a Social Stock Exchange and not raise funds through it for a maximum period of 2 years form the date of registration or such duration as may be specified by SEBI.

(2) The minimum requirements for registration of a Not for Profit Organization on a Social Stock Exchange shall be specified by the SEBI from time to time.

(3) The Social Stock Exchange may specify the eligibility requirements for registration of a Not for Profit Organization in addition to the minimum requirements specified by the SEBI.

MARGINS

An advance payment of a portion of the value of a stock transaction. The amount of credit a broker or lender extends to a customer for stock purchase.

“Initial margin” in this context means the minimum amount, calculated as a percentage of the transaction value, to be placed by the client, with the broker, before the actual purchase. The broker may advance the balance amount to meet full settlement obligations.

"Maintenance margin" means the minimum amount, calculated as a percentage of market value of the securities, calculated with respect to last trading day's closing price, to be maintained by client with the broker.

When the balance deposit in the client's margin account falls below the required maintenance margin, the broker shall promptly make margin calls. However, no further exposure can be granted to the client on the basis of any increase in the market value of the securities.

The broker may liquidate the securities if the client fails to meet the margin calls made by the broker or fails to deposit the cheques on the day following the day on which the margin call has been made or the cheque has been dishonored.

The broker must disclose to the stock exchange details on gross exposure including the name of the client, unique identification number, name of the scrip and if the broker has borrowed funds for the purpose of providing margin trading facilities, name of the lender and amount borrowed, on or before 12 Noon on the following day.

Stock exchanges disclose scrip wise gross outstanding in margin accounts with all brokers to the market. Such disclosures regarding margin trading done on any day shall be made available after the trading hours on the following day through the website.

BLOCK DEAL

Block deal is execution of large trades through a single transaction without putting either the buyer or seller in a disadvantageous position. The Stock Exchanges may set their trading hours between 08:45 AM to 05:00 PM and for the Block deal mechanism, stock exchanges are permitted to provide a separate trading window(s).

The Block Deal Framework will be subject to the following conditions:

- **Session Timings**

  (a) Morning Block Deal Window: This window shall operate between the trading hours of 08:45 AM to 09:00 AM.

  (b) Afternoon Block Deal Window: This window shall operate between 02:05 PM to 2:20 PM.

- **Price Range**

  The orders placed shall be within +3% of the applicable reference price in the respective windows as stated above, subject to surveillance measures and applicable price bands.

- **Order Size**

  The minimum order size for execution of trades in the block deal windows shall be Rs. 25 Crores. Every trade executed in the block deal windows must result in delivery and shall not be squared off or reversed.

- **Dissemination of information**

  The stock exchanges shall disseminate the information on block deals such as the name of the scrip, name of the client, quantity of shares bought/sold, traded price, etc. to the general public on the same day, after the market hours.

The above provisions will also be applicable for the block deal window under the optional T+0 settlement cycle.

BULK DEAL

A "bulk" deal constitutes all transactions in a scrip (on an exchange) where the total quantity of shares bought/ sold is more than 0.5% of the number of equity shares of the company listed on the exchange. The quantitative

limit of 0.5% can be reached through one or more transactions executed during the day in the normal market segment.

- The disclosure shall be made with respect to all transactions in a scrip where total quantity of shares bought/sold is more than 0.5% of the number of equity shares of the company listed on the stock exchange.
- The brokers shall disclose to the stock exchange the name of the scrip, name of the client, quantity of shares bought/sold and the traded price.
- The disclosure shall be made by the brokers immediately upon execution of the trade.
- The Stock exchanges shall disseminate the aforesaid information on the same day after market hours to the general public.

STOCK MARKET INDEX

An Index is used to give information about the price movements of products in the financial, commodities or any other markets. Financial indexes are constructed to measure price movements of stocks, bonds, T-bills and other forms of investments. Stock market indexes are meant to capture the overall behaviour of equity markets. A stock market index is created by selecting a group of stocks that are representative of the whole market or a specified sector or segment of the market. An Index is calculated with reference to a base period and a base index value.

Benefits of Stock Market Index:

- The indices help the interested investor to compare market performance of the stock with respect to benchmark stock within that sector
- The market indices help to track the performance of the market segment or the total market. They act like markers.

Below are mentioned some categories of stock market indices:

Benchmark Index

The Nifty 50 index comprising the best 50 performing equities and BSE Sensex Index which comprises 30 best-performing stocks are markers of the NSE and BSE.

Sectoral Index

NSE and BSE have strong indicators that measure companies within a sector. Indices such as the S&P BSE Healthcare and NSE Pharma are good indicators for pharmaceutical sector. Eg Nifty Auto, Nifty Bank, Nifty FMCG, Nifty IT, Nifty Media.

Market Cap Index

Some indices choose companies based on market capitalization. Market capitalization refers to stock exchange values of publicly traded corporations.

Stock market indexes are useful for a variety of reasons. Some of them are :

- They provide a historical comparison of returns on money invested in the stock market against other forms of investments such as gold or debt.
- They can be used as a standard against which to compare the performance of an equity fund.
- It is a lead indicator of the performance of the overall economy or a sector of the economy.

- Stock indexes reflect highly up to date information.
- Modern financial applications such as Index Funds, Index Futures, Index Options play an important role in financial investments and risk management.

BASIS OF SENSEX

Sensitive Index or Sensex is the stock market index indicator for the BSE. It is also sometimes referred to as BSE S&P Sensex. It was first published in 1986 and is based on the market weighed stock index of 30 companies based on the financial performance. The large, established companies that represent various industrial sectors are a part of this.

The calculation of Sensex is done by a Free-Float method that came into existence from September 1, 2003. The free-float method takes into account the proportion of the shares that can be readily traded in the market. This does not include the ones held by various shareholders and promoters or other locked-in shares not available in the market.

Difference between market capitalization and free float method

Market capitalization is the total value of a company's shares of stock. Whereas, the number of outstanding shares for trading by the general public, is termed as a float.

Thus, the free float method to calculate the market cap excludes locked-in shares i.e. the shares held by the company and the government

Steps to calculate Sensex:

- The market capitalization is taken into account. This is done by multiplying all the shares issued by the company with the price of its stock.
- BSE determines a Free-Float factor that is a multiple of the market capitalization of the company. This helps in determining the Free-Float market capitalization based on the details submitted by the company.
- Ratio and Proportion are used based on the base index of 100. This helps to determine the Sensex.

NIFTY

National Stock Exchange Fifty or Nifty is the market indicator of NSE. It is a collection of 50 stocks. It is also referred to as Nifty 50. It is owned and managed by India Index Services and Products Ltd. (IISL).

Nifty is calculated through the Free-Float market capitalization weighted method. It multiples the Equity capital (expressed in terms of number of shares outstanding) with a price, to derive the market capitalization. To determine the Free-Float market capitalization, equity capital (as stated earlier) is multiplied by a price which is further multiplied with IWF (Investible Weight Factors) which is the factor for determining the number of shares available for trading freely in the market. The Index is determined on a daily basis by taking into consideration the current market value (Free Float market capitalization) divided by base market capital and then multiplied by the Base Index Value of 1000.

These indices are broad-market indices, consisting of the large, liquid stocks listed on the Exchange. They serve as a benchmark for measuring the performance of the stocks or portfolios such as mutual fund investments. Some of them are:

- NIFTY 50 Index
- NIFTY Next 50 Index

- NIFTY 100 Index
- NIFTY 200 Index
- NIFTY 500 Index
- NIFTY Midcap 150 Index
- NIFTY Midcap 50 Index
- NIFTY Midcap 100 Index
- NIFTY Smallcap 250 Index
- NIFTY Smallcap 50 Index
- NIFTY Smallcap 100 Index
- NIFTY Large Midcap 250 Index
- NIFTY Mid Smallcap 400 Index

BASICS OF INVESTING – A GUIDANCE TO BUDDING INVESTORS

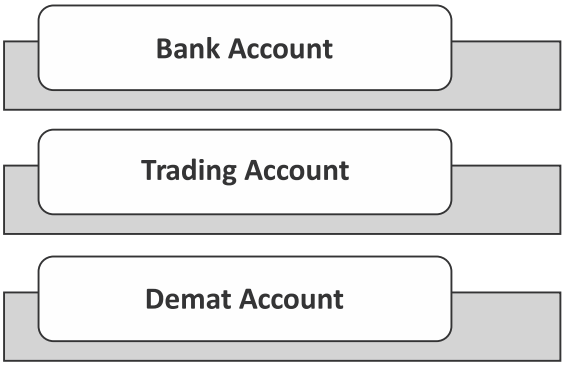
Before one starts investing in securities market, one needs to understand and identify their investment goals, objectives and risk appetite (the extent up to which they are willing to take risk). Every investment decision should reflect needs and requirements and should be as per investors desired preferences. For example, whether investor is willing to invest in safe products which give steady returns or if he want to take slightly higher risk and invest in products which may give you higher returns. Every investment comes with the risk of change in the inherent value of that investment. For example, investment in shares of automobile industry will attract the risk attached with the automobile industry (sales may go up or down or one brand of cars may be sold more than other brand, etc.). Once investor decides goals and identifies risk appetite, they need to decide the amount they want to invest and the time period over which they want to invest. The ability to take risk differs from investor to investor and could be dependent on the goals as well as the age of the investor. The investors should also be well informed about their rights, responsibilities.

Investors should make informed decision before investing in the shares of a company. They should carefully read all the information related to the company such as disclosures related to the company, its promoters, the project details, financial details, etc. These details can be found on the websites of the stock exchanges.

Key risks in investing in securities market:

- Market risk or Systematic Risk: It is inherent risk. It means that an investor may experience losses due to factors affecting the overall performance of financial markets and general economy of the country.
- Unsystematic Risk: Unsystematic risk can be described as the uncertainty attached with a particular company or industry. It is also known as specific risk.
- Inflation risk: Inflation risk is also called as purchasing power risk. It is defined as the chance that the cash flows from an investment would lose their value in future because of a decline in its purchasing power due to inflation.
- Liquidity risk: Liquidity risk arises when an investment can't be bought or sold quickly enough.
- Volatility Risk: Volatility risk arises as the Companies' stock prices may fluctuate over time.
- Currency Risk: It refers to the potential risk of loss from fluctuating foreign exchange rates that an investor may face when he has invested in foreign currency or made foreign currency-traded investments.

Pre-requisites for investing in securities market:



- Bank account.
- Trading account or broking account with a SEBI registered stock broker of a recognized Stock Exchange. This account is used to buy and sell securities on the Stock Exchanges. To open a trading account, you have to fill account opening form and submit the signed Know Your Client (KYC) documents.
- Demat account provides the facility of holding of securities in dematerialized/electronic form. The demat account can be opened with depository participant (DP) of any of the Depositories.

Know Your Client (KYC) process for opening an account:

- KYC is mandatory under the Prevention of Money Laundering Act, 2002 and Rules framed thereunder.
- While opening of Demat / Trading / Bank account, client have to submit officially valid documents (OVDs) as proof of identity and proof of address and these documents form a part of the KYC requirements.
- An investor can establish his identity and address through relevant supporting prescribed documents such as PAN card / Unique Identification (UID) (Aadhaar) / Passport / Voter ID card / Driving license, etc.
- Once the KYC form is submitted, a unique KYC Identification Number (KIN) is generated and communicated to the client by SMS/Email.
- KYC is a one-time process and is valid across all the intermediaries.

CLEARING CORPORATION

Role of Clearing Corporation

Clearing Corporation is responsible:-

- for clearing and settlement of all trades executed on Stock Exchange and deposit and collateral management and risk management functions;
- to bring and sustain confidence in clearing and settlement of securities;
- to promote and maintain, short and consistent settlement cycles;
- to provide counter-party risk guarantee; and
- to operate a tight risk containment system.

Section 8A(1) of the SCRA provides that a recognised stock exchange may, with the prior approval of the SEBI, transfer the duties and functions of a clearing house to a

(a) the periodical settlement of contracts and differences thereunder;

(b) the delivery of, and payment for, securities;

(c) any other matter incidental to, or connected with, such transfer.

Every clearing corporation shall, for the purpose of transfer of the duties and functions of a clearing house to a clearing corporation, make bye-laws and submit the same to the SEBI for its approval.

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



MARKET SURVEILLANCE

Market surveillance plays a vital role in ensuring market integrity which is the core objective of regulators. Market integrity is achieved through combination of surveillance, inspection, investigation and enforcement of relevant laws and rules. In order to enhance market integrity and safeguard interest of investors, have been introducing various enhanced pre-emptive surveillance measures such as reduction in price band, periodic call auction and transfer of securities to Trade for Trade segment from time to time.

Globally market surveillance is either conducted by the Regulators or Exchanges or both. In India, the primary responsibility of market surveillance has been entrusted to Stock Exchanges and is being closely monitored by SEBI.

Millions of orders are transmitted electronically every minute and therefore surveillance mechanisms to detect any irregularities must also be equally developed. Exchanges adopt automated surveillance tools that analyze trading patterns and are installed with a comprehensive alerts management system.

The surveillance activities are classified under two areas as below:

- Online Surveillance: is mainly related to the price movement/ abnormal fluctuation in prices or volumes.
- Offline Surveillance: conducting various types of investigations / analysis as may be warranted.

Online Surveillance includes following :

Reduction of Price Bands:

In order to maintain the market integrity and curb excessive price movement in the securities listed / traded on its Trading Platform, a surveillance framework of Price band prescribed by SEBI, has been implemented and its details are given as under:

Dynamic Price bands:

Securities on which derivative products are available have dynamic price bands wherein the initial threshold of 10% or as decided otherwise on the previous closing price is applied.

Fixed Price bands:

Securities which are not having derivative products have fixed price bands which are based on the previous closing price of the respective stocks. The maximum price band prescribed is 20 %. Exchanges revise the price bands 10 % and 5 % as a Surveillance action

Offline Surveillance includes following :

Investigation:

This includes conducting various type of analysis or investigation to detect suspected market irregularities and take appropriate actions.

Regulatory Compliance :

This includes handling compliance of SEBI/Regulatory orders and corresponding actions such as revocation/ debarment as directed against entities by regulatory bodies, taking other actions as may be specified

Surveillance Framework :

Stock exchanges in consultation with the SEBI, in addition to the aforesaid on-line surveillance, other surveillance measures viz. Graded Surveillance Measures [GSM] and Additional Surveillance Measure [ASM] have been introduced. The main objective of these measures is to;

- alert and advice investors to be extra cautious while dealing in these securities and
- advice market participants to carry out necessary due diligence while dealing in these securities.

Graded Surveillance Measure (GSM):

GSM is a surveillance measure on securities whose price is not commensurate with financial health and fundamentals.

Additional Surveillance Measure (ASM):

ASM is a surveillance measures on securities with surveillance concerns viz. Price /Volume variation, Volatility etc.

The shortlisting of securities for placing in ASM is based on an objective criteria as jointly decided by SEBI and Exchanges covering the parameters viz :High Low Variation, Client Concentration, Close to Close Price Variation, Market Capitalization, Volume Variation, Delivery Percentage, No. of Unique PANs.

RISK MANAGEMENT IN SECONDARY MARKET

The performance of secondary market has a vital bearing on the performance of primary market. A number of measures were taken to modernise the stock exchanges in the country. These measures focused on infrastructure development, transparency, efficiency and enhanced investor protection. Risk management was

further strengthened during the year by implementing a comprehensive system of margins, exposure limits and improving the efficiency of clearing and settlement systems through the introduction of settlement guarantee funds. With a view to enhancing market safety, SEBI fixed intra-day trading and gross exposure limits for brokers. SEBI continued to maintain a constant interface with the stock exchanges on various issues concerning investor protection, automated market infrastructure and overall improvement in quality of intermediation. SEBI also directed its efforts towards encouraging the stock exchanges to become effective as self-regulatory institutions. Automated screen based trading which was introduced in the country through the setting up of the OTCEI and NSE and subsequently introduced by the BSE had brought about a qualitative improvement in the market and its transparency. Transaction costs and time were also significantly reduced. During the year several of the smaller exchanges also introduced on-line screen based trading.

The key risk management measures initiated by SEBI include-

- Categorization of securities into groups 1, 2 and 3 for imposition of margins based on their liquidity and volatility.
- VaR (value at risk) based margining system.
- Specification of mark to Market margins.
- Specification of Intra-day trading limits and Gross Exposure Limits.
- Real time monitoring of the Intra-day trading limits and Gross Exposure Limits by the Stock Exchanges.
- Specification of time limits of payment of margins.
- Collection of margins on upfront basis.
- Index based market wide circuit breakers.
- Automatic de-activation of trading terminals in case of breach of exposure limits.
- VaR based margining system has been put in place based on the categorization of stocks based on the liquidity of stocks depending on its impact cost and volatility. It addresses 99% of the risks in the market.
- Additional margins have also been specified to address the balance 1% cases.
- Collection of margins from institutional clients on T+1 basis.

IMPACT OF VARIOUS POLICIES ON STOCK MARKETS

1. FED Policy

The Federal Reserve is the U.S. central bank, created by the Federal Reserve Act of 1913 to establish a monetary system that could respond effectively to stresses in the banking system. It performs five general functions to promote the effective operation of the U.S. economy and, more generally, the public interest. The Federal Reserve:

- conducts the nation's monetary policy to promote maximum employment, stable prices, and moderate longterm interest rates in the U.S. economy;
- promotes the stability of the financial system and seeks to minimize and contain systemic risks through active monitoring and engagement in the U.S. and abroad;
- promotes the safety and soundness of individual financial institutions and monitors their impact on the financial system as a whole;

- fosters payment and settlement system safety and efficiency through services to the banking industry and the U.S. government that facilitate U.S. dollar transactions and payments; and
- promotes consumer protection and community development through consumer-focused supervision and examination, research and analysis of emerging consumer issues and trends, community economic development activities, and the administration of consumer laws and regulations.

How change in US Fed rate can impact India?

The Fed Funds Rate is the interest rate at which the top US banks borrow overnight money from common reserves. All American banks are required to park a portion of their deposits with the Federal Reserve in cash, as a statutory requirement.

Actually, fed fund rate gives the direction in which US interest rates should be heading at any given point of time. If the Fed is increasing the interest rates, lending rates for companies and retail borrowers will go up and vice versa. In India, hike in repo rate may not impact the countries outside India. On the other hand, US interest rates matter a lot to global capital flows. Some of the world's richest institutions and investors have their base in USA. They constantly compare Fed rates with interest rates across the world to make their allocation decisions.

In the globalised world, markets are connected. An increase in Fed rates will be negative in general for the US stock market and if it leads to another round of sell-offs, it will also have ripple effects on the Indian market.

The Fed reduce the rate mainly for the following reasons:

- When it observes signs of a slowing economy, such as rising unemployment rates and declining business activity
- To address inflation concerns
- To resolve the geopolitical tensions and trade disputes

Any changes in the Fed Fund Rates impact the domestic borrowing market to a large extent. For instance, if the Fed rates go up, it will make the RBI hesitant in cutting rates at that time. The reason is that if RBI cut rates it will lead to heavy pullout of foreign investors from the Indian bond market.

An important discussion: *Rupee* vs. *Dollar*:

The increased federal funds rate typically increases interest rates throughout the economy, which tends to make the dollar stronger. The higher yields attract investment capital from investors abroad seeking higher returns on bonds and interest-rate products. If the Fed rates are hiked, the value of the dollar would go up, thus weakening Indian rupee in comparison. This might hurt India's forex reserves and imports. However, the weaker rupee is good for India's exports but low global demand and stiff competition would not leave much room for Indian exporters to capitalise the situation.

Bond market pressure:

Due to the higher Fed rates, US' 10-year bond yields go up, which put pressure on India's 10-year government bond yields.

RBI repo rate:

With higher Fed rates weakening the Rupee, India's imports bill go up putting pressure on the RBI to either increase repo rates or at least refrain from cutting rates in the upcoming monetary policy meetings.

2. Credit Policy of RBI

The Reserve Bank of India has a credit policy which aims at pursuing higher growth with price stability. Higher economic growth means to produce more quantity of goods and services in different sectors of an economy; The term monetary policy is also known as RBI's credit policy or money management policy. It is basically

the central bank's view on what should be the supply of money in the economy and also in what direction the interest rates should move in the banking system. It refers to the use of credit policy instruments which are at the disposal of central bank to regulate the availability, cost and use of money and credit to promote economic growth, price stability, optimum levels of output and employment, balance of payments equilibrium, stable currency or any other goal of government's economic policy.

The credit policy aims at increasing finance for the agriculture and industrial activities. When credit policy is implemented, the role of other commercial banks is very important. Commercial banks flow of credit to different sectors of the economy depends on the actual cost of credit and arability of funds in the economy.

The objectives of a monetary policy are similar to the five year plans of our country. In a nutshell it is basically a plan to ensure growth and stability of the monetary system. The significance of the monetary policy is to attain the following objectives.

- **Rapid Economic Growth:** It is an important objective as it can play a decisive role in the economic growth of country. It influences the interest rates and thus has an impact on the investment. If the RBI adopts an easy credit policy, it would be doing so by reducing interest rates which in turn would improve the investment outlook in the country. This would in turn enhance the economic growth.
- **Exchange Rate Stability:** Another important objective is maintaining the exchange rate of the home currency with respect to foreign currencies. If there is volatility in the exchange rate, then the international community loses confidence in the economy. So it is necessary for the monetary policy to maintain the stability in exchange rate. The RBI by altering the foreign exchange reserves tries to influence the demand for foreign exchange and tries to maintain the exchange rate stability.
- **Price Stability:** The monetary policy is also supposed to keep the inflation of the country in check. Any economy can suffer both inflation and deflation both of which are harmful to the economy. So the RBI has to maintain a fair balance in ensuring that during recession it should adopt an 'easy money policy' whereas during inflationary trend it should adopt a 'dear money policy'.
- **Balance of Payments (BOP) Equilibrium:** Another key objective is to maintain the BOP equilibrium which most of the developing economies don't tend to have. The BOP has two aspects which are 'BOP surplus' and 'BOP deficit'. The former reflects an excess money supply in the domestic economy, while the later stands for stringency of money. If the monetary policy succeeds in maintaining monetary equilibrium, then the BOP equilibrium can be achieved.
- **Neutrality of Money:** RBI's policy should regulate the supply of money. It is possible that the change in money supply causes disequilibrium and the monetary policy should neutralize it. However this objective of a monetary policy is always criticized on the ground that if money supply is kept constant then it would be difficult to attain price stability.

Bank Rate: is the rate at which RBI discount bills for commercial banks. This banking system involves commercial and Co-operative Banks, Industrial Development Bank of India, IFC, EXIM Bank and other approved financial institutions. Funds are provided through lending directly or rediscounting or buying money market instruments like Commercial Bills or Treasury Bills. Increase in Bank Rate increases the cost of borrowing by commercial banks which results in the reduction of credit volume to the banks and hence declines the money supply. Increase in Bank Rate means tightening of RBI's Monetary Policy.

Various Quantitative instruments of Credit Policy:

- **Repo Rate:** The rate at which the Commercial Banks borrow money from RBI. Reduction in Repo Rate helps the Commercial Banks to get money at a cheaper rate and an Increase in Repo Rate discourages the Commercial Banks to get money as the rate increases and becomes expensive. The increase in the

Repo Rate will increase the cost of borrowing and lending of the banks which will discourage the public to borrow money and encourages them to deposit.

- **Cash Reserve Ratio (CRR) :** Cash reserve ratio is the amount which the commercial banks have to maintain as cash deposit with the Reserve Bank of India. RBI may increase the CRR if it thinks that there is large amount of money supply in the economy. Conversely, it will decrease the CRR if it is of the opinion that inflation is in control and the industry needs a monetary boost up. The reduction in CRR will provide more money in the hands of commercial banks which it will pass it on to the industry. More money in the hands of industry will boost up production, consumption and employment.
- **Statutory Liquidity Ratio (SLR) :** Statutory Liquidity Ratio is the amount which commercial banks have to keep it with itself. So, SLR is the amount of money which banks have to keep in its custody at all times. SLR is also a very powerful tool to control liquidity in the economy. To encourage industries to boost up their production, SLR may be decreased to put more money in the hands of commercial banks. An increase in SLR is used as an inflation control measure to control price rise.
- **Reverse Repo Rate (RRR):** is the rate at which the RBI borrows money from the Commercial Banks. An increase in the reverse repo rate will decrease the money supply and vice-versa, other things remaining constant. An increase in Reverse Repo Rate means that Commercial Banks will get more incentives to park their funds with the RBI, therefore decreasing the supply of money in market. An increase in the Repo Rate and the Reverse Repo Rate indicates strengthening of RBI's Monetary Policy.
- **Standing Deposit Facility (SDF) Rate:** The rate at which the Reserve Bank accepts uncollateralised deposits, on an overnight basis, from all LAF participants. The SDF is also a financial stability tool in addition to its role in liquidity management. The SDF rate is placed at 25 basis points below the policy repo rate. With introduction of SDF in April 2022, the SDF rate replaced the fixed reverse repo rate as the floor of the LAF corridor.
- **Marginal Standing Facility (MSF) Rate:** The penal rate at which banks can borrow, on an overnight basis, from the Reserve Bank by dipping into their Statutory Liquidity Ratio (SLR) portfolio up to a predefined limit (2 per cent). This provides a safety valve against unanticipated liquidity shocks to the banking system. The MSF rate is placed at 25 basis points above the policy repo rate.
- **Liquidity Adjustment Facility (LAF):** The LAF refers to the Reserve Bank's operations through which it injects/absorbs liquidity into/from the banking system. It consists of overnight as well as term repo/ reverse repos (fixed as well as variable rates), SDF and MSF. Apart from LAF, instruments of liquidity management include outright open market operations (OMOs), forex swaps and market stabilisation scheme (MSS).
- **LAF Corridor:** The LAF corridor has the marginal standing facility (MSF) rate as its upper bound (ceiling) and the standing deposit facility (SDF) rate as the lower bound (floor), with the policy repo rate in the middle of the corridor.

3. Inflation Index

An index is just a collection of data that serves as a baseline for future reference. We use the index model in all areas of life, from the stock market, to inflation. We index wage levels, corporate profits as a percentage of GDP, and almost anything else that can be measured. We do this to compare where we are now to where we have been in the past.

An inflation index is an economic tool used to measure the rate of inflation in an economy. There are several different ways to measure inflation, leading to more than one inflation index with different economists and investors preferring one method to another, sometimes strongly.

Inflation Indices

In India, Consumer Price Index (CPI) and Wholesale Price Index (WPI) are two major indices for measuring inflation.

In United States, CPI and PPI (Producer Price Index) are two major indices.

The Wholesale Price Index (WPI) was main index for measurement of inflation in India till March 2014 when RBI adopted new Consumer Price Index (CPI) (combined) as the key measure of inflation.

a. Wholesale Price Index

Wholesale Price Index (WPI) is computed by the Office of the Economic Adviser in Ministry of Commerce & Industry, Government of India. It was earlier released on weekly basis for Primary Articles and Fuel Group. However, since 2012, this practice has been discontinued. Currently, WPI is released monthly.

Salient notes on WPI are as follows:

Base Year

Current WPI Base year is 2011-12 whereas the base year for CPI is 2012 currently. This is one reason for increasing difference between CPI and WPI in recent times.

b. Consumer Price Index

At the national level, there are four Consumer Price Index (CPI) numbers:

- CPI for Industrial Workers (IW)
- CPI for Agricultural Labourers (AL)
- CPI for Rural Labourers (RL) and
- CPI (Rural/Urban/Combined).

While the first three are compiled and released by the Labour Bureau in the Ministry of Labour and Employment, the fourth by the Central Statistics Office (CSO) in the Ministry of Statistics and Programme Implementation. In India, RBI uses CPI (combined) released by CSO for inflation purpose. Important notes on this index are as follows:

Base Year

Base year for CPI (Rural, Urban, Combined) is 2012=100.

Key differences between WPI & CPI

- Primary use of WPI is to have inflationary trend in the economy as a whole. However, CPI is used for adjusting income and expenditure streams for changes in the cost of living.
- WPI is based on wholesale prices for primary articles, administered prices for fuel items and ex-factory prices for manufactured products. On the other hand, CPI is based on retail prices, which include all distribution costs and taxes.
- Prices for WPI are collected on voluntary basis while price data for CPI are collected by investigators by visiting markets.
- CPI covers only consumer goods and consumer services while WPI covers all goods including intermediate goods transacted in the economy.
- WPI weights primarily based on national accounts and enterprise survey data and CPI weights are derived from consumer expenditure survey data.

Impact of Policies on Indian Stock Market

Since monetary policies are influenced by inflation and inflationary expectations in the economy it is therefore, critical that inflation index should be able to predict future inflation with reasonable accuracy. Generally, when a country is operating in a low interest rate regime, borrowers can borrow money at a lower interest rate. This aids in increased purchased power of the consumers. The demand for the goods increase and subsequently sensing a higher demand, the prices will also raise. This condition drives the inflation rates higher. When the inflation rates have raised more than the optimal levels, the Reserve Bank of India (RBI) steps in to increase interest rate to control inflation rate. When inflationary pressure starts building in the economy, RBI hikes the repo rate and/or cash reserve ratio (CRR) to manage the money supply causing higher inflation.

Maintaining an optimal inflation rate is the primary task of Monetary Policy decision makers of any nation. An optimal inflation rate ensures a healthy economy. More often than not, the policy makers tend to spur growth in a stalled economy by slashing the interest rates, thereby increasing the money available in the markets. However, in order to implement such rate cuts the inflation rate should be at an optimal level. So, it becomes a the prime responsibility of Reserve Bank to monitor Wholesale Price Index (WPI) and Consumer Price Index (CPI) to ensure that economy is balance.

A rise in the inflation rate impacts market sentiments. A higher inflation rate drives the interest rates higher and hence borrowing becomes costly for the banks, corporates and financial institutions. Therefore, the valuations of capital-intensive companies and sectors may come under pressure as their margins decrease due to the higher interest burden.

However, the markets are governed by many factors and the direction cannot be determined by reading just one factor. Global sentiments and global funds inflows are other crucial factors that impact the direction of stock markets significantly.

LESSON ROUND-UP

- Issue of IDRs is regulated by section 390 of the Companies Act, 2013, Rule 13 of the Companies (Registration of Foreign Companies) Rules, 2014 and SEBI (ICDR) Regulations, 2018.
- A real estate investment trust ("REIT") is a company that owns, operates or finances income-producing real estate.
- Securities traded in the stock exchanges can be classified as Listed cleared Securities and Permitted Securities.
- An Index is used to give information about the price movements of products in the financial, commodities or any other markets.
- National Stock Exchange Fifty or Nifty is the market indicator of NSE. It is a collection of 50 stocks. It is also referred to as Nifty 50.
- The BSE SENSEX is a free-float market-weighted stock market index of 30 well-established companies, known as S&P BSE.
- The trading in the securities of the company takes place in dematerialised form in India.
- Market surveillance plays a vital role in ensuring market integrity which is the core objective of regulators. Market integrity is achieved through combination of surveillance, inspection, investigation and enforcement of relevant laws and rules.

- There are various factors and monetary policies which has a significant impact on the working of stock markets in India like RBI Monetary Policy, Consumer Price Index (CPI), Wholesale Price Index (WPI) and US FED Policy.

GLOSSARY

Circuit Breaker: A system to curb excessive speculation in the stock market, applied by the Stock Exchange authorities, when the index spurts or plunges by more than a specified per cent. Trading is then suspended for some time to let the market cool down.

Clearing: Settlement or clearance of accounts, for a fixed period in a Stock Exchange.

Closing Price: The rate at which the last transaction in a security is struck before the close of the trading hours.

Credit Risk : The risk that a counterparty will not settle an obligation for full value, either when due or at any time thereafter. Credit risk includes pre-settlement risk (replacement cost risk) and settlement risk (principal risk).

Demutualization : Process of transition from "mutually-owned" association to a company "owned by shareholders". In other words, transformation of the legal structure from a mutual form to a business corporation form and privatisation of the corporations so constituted, is referred to as demutualization.

Interest Rate Risk: The risk that movements in the interest rates may lead to a change in expected return.

Liquidity Adjustment Facility (LAF): Under the scheme, repo auctions (for absorption of liquidity) and reverse repo auctions (for injection of liquidity) will be conducted on a daily basis (except Saturdays). It will be same-day transactions, with interest rates decided on a cut-off basis and derived from auctions on a uniform price basis.

Mark to market margin (MTM): Collected in cash for all futures contracts and adjusted against the available Liquid Net worth for option positions. In the case of Futures Contracts MTM may be considered as Mark to Market Settlement.

Market Maker: A member firm who give two way quotation for particular security(ies) and who is under an obligation to buy and sell them subject to certain conditions such as overall exposure, spread etc.

Netting: A system whereby outstanding financial contracts can be settled at a net figure, i.e. receivables are offset against payables to reduce the credit exposure to a counterparty and to minimize settlement risk.

Screen based trading: Form of trading that uses modern telecommunication and computer technology to combine information transmission with trading in financial markets.

Trading member: A member of the derivatives exchange or derivatives segment of a stock exchange who settles the trade in the clearing corporation or clearing house through a clearing member.

TEST YOURSELF

(*These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.*)

1. Briefly explain about the impact of various monetary policies on Indian stock market.
2. Distinguish between:
   (a) Primary and Secondary Markets

(b) Repo rate and reverse repo rate
(c) Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs)
(d) Currency derivatives and Commodity derivatives
(e) Block Deal and Bulk Deal
(f) Debenture Trustee and Custodian of Securities.

3. "Bonds are the debt security where an issuer is bound to pay a specific rate of interest." Explain.
4. "Calculation of Sensex is done by a Free-Float method." Elucidate.
5. Explain the eligibility criteria for listing on BSE-SME platform.
6. "Indian Stock Market is impacted by change in FED policy and FED rate". Comment briefly.
7. Mr. Zolan wants to invest in stock market. He requests your help in understanding basics of investing. Explain in details the basics of investing and prerequisites for investing in stock market.
8. Write brief notes on:
   (a) Rights Entitlement
   (b) Exchange Traded Funds
   (c) US FED Policy
9. Explain in detail role of stock exchanges in India?
10. What are NIFTY sectoral indices. Explain any five such indices?
11. Explain in brief the regulators in Indian Capital Markets?
12. How does market surveillance try to ensure market integrity in the securities market? Explain.
13. What are the key risk management measures initiated by SEBI in the secondary market? Describe.

LIST OF FURTHER READINGS

- SEBI Circulars
- SEBI Notifications
- SEBI Orders
- SEBI Manual
- Regulations/Rules/Guidelines/Circulars issued by SEBI, RBI, MCA etc. from time to time

OTHER REFERENCES (Including Websites/Video Links)

- www.sebi.gov.in
- www.mca.gov.in
- www.icsi.edu
- www.nseindia.com
- www.bseindia.com
- www. nsdl.co.in
- www.cdslindia.com

Securities Contracts (Regulation) Act, 1956

Lesson 3

KEY CONCEPTS

■ Securities ■ Derivatives ■ Recognised Stock Exchange ■ Listing ■ Delisting ■ Securities Appellate Tribunal ■ Clearing Corporation ■ Penalties

Learning Objectives

To understand:

- The genesis of introducing the law in India
- The Powers of Central Government, Stock Exchange and SEBI under the Securities Contracts (Regulation) Act, 1956
- The penal provisions, procedures or offences under the Securities Contracts (Regulations) Act, 1956
- The procedure for appeal to Securities Appellate Tribunal
- Right of Investors

Lesson Outline

- Securities Contracts (Regulation) Act, 1956 – Introduction & Genesis
- Objectives of the SCRA
- Non-applicability of Securities Contracts (Regulation) Act, 1956
- Key Definitions
- Recognition of Stock Exchanges
- Powers of Central Government
- Powers of Recognised Stock Exchange
- Powers of SEBI
- Public Issue and Listing of Securities
- Right to Appeal
- Penalties and Procedures
- Case Laws
- Securities Contracts (Regulation) Rules, 1957
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings

REGULATORY FRAMEWORK

- Securities Contracts (Regulation) Act, 1956
- Securities Contracts (Regulation) Rules, 1957
- Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018
- Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005
- Securities Contracts (Regulation) (Appeal to Securities Appellate Tribunal) Rules, 2000

SECURITIES CONTRACTS (REGULATION) ACT, 1956

Introduction & Genesis

In order to prevent undesirable transactions in securities by regulating the business of dealing therein, and by providing for certain other matters connected therewith, the Securities Contracts (Regulation) Act, 1956 was enacted by Parliament.

The stock exchanges require strict control over their activities in order to ensure safety in dealings thereon. Hence, in 1956, the Securities Contracts (Regulation) Act ('SCRA') was passed which provided for recognition of stock exchanges by the Central Government. The provisions of this Act came into force with effect from February 20, 1957.

Objective /Preamble

The Preamble of SCRA reads as under:

> An Act to prevent undesirable transactions in securities by regulating the business of dealing therein, by providing for certain other matters connected therewith.

The statement of objects and reasons as provided in the Securities Contracts (Regulation) Bill, 1954 as introduced in Lok Sabha on December 22, 1954 *inter-alia* provides as under:

The object of this Bill is to provide for the regulation of stock exchanges, and of transactions in securities dealt in on them with a view to preventing undesirable speculation in them.

The Securities Contracts (Regulation) Act, 1956, extends to the whole of India.

Broad Framework of SCRA

The Act defines various terms in relation to securities and provides the detailed procedure for the stock exchanges to get recognition from Government/SEBI, procedure for listing of securities of companies and operations of the brokers in relation to purchase and sale of securities on behalf of investors.

The Securities Contracts (Regulation) Act, 1956, provides for direct and indirect control of all aspects of the securities trading including the running of stock exchanges which aims to prevent undesirable transaction in securities by regulating the business of dealing therein. It gives the Central Government regulatory jurisdiction over:

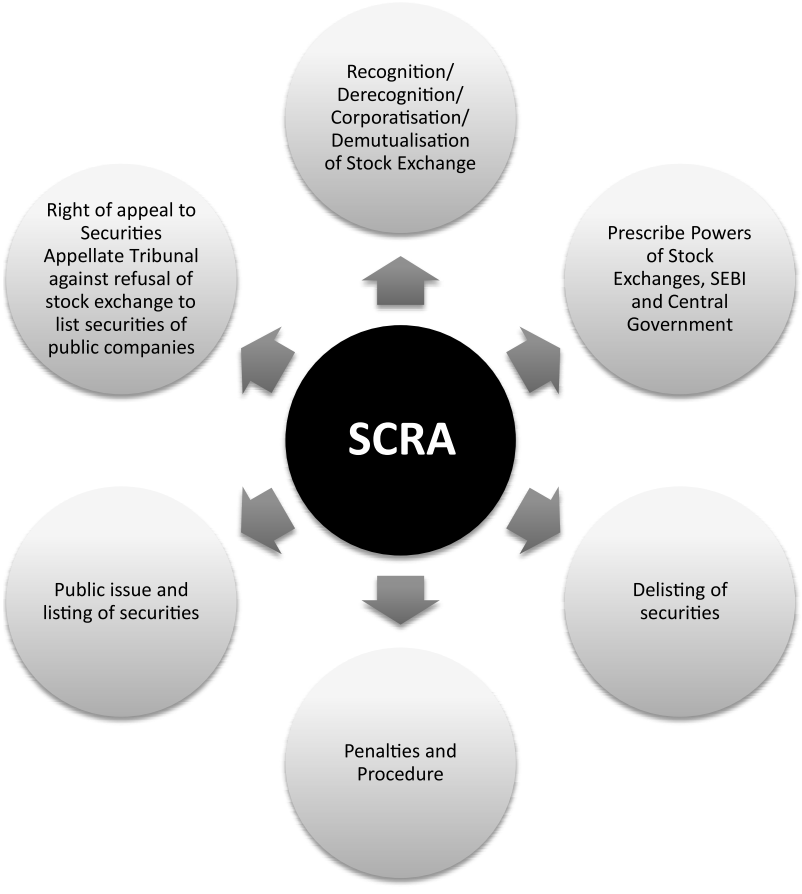
(a) Stock exchanges through a process of recognition and continued supervision,

(b) contracts in securities, and

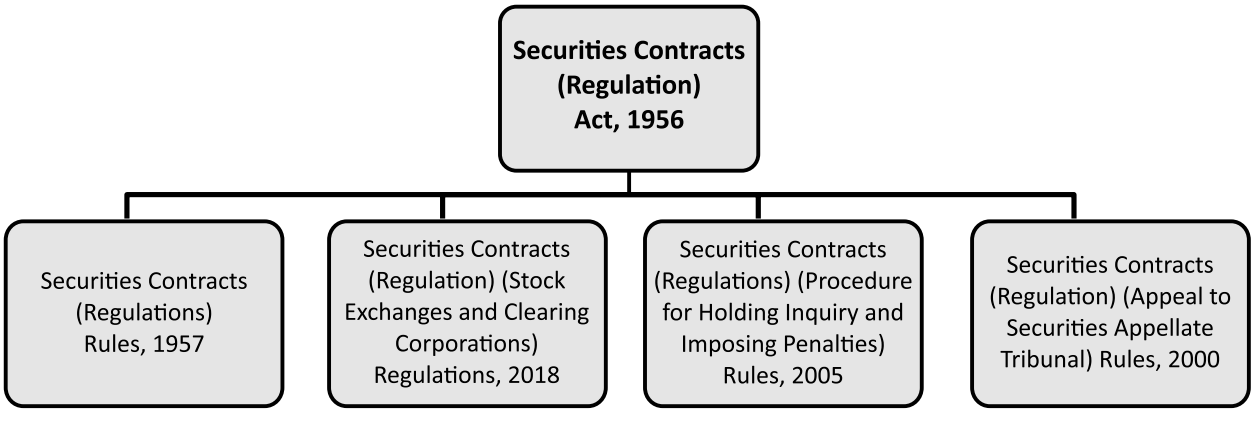
(c) listing of securities on stock exchanges.

As a condition of recognition, a stock exchange complies with the requirements prescribed by the Central Government. The stock exchanges frame their own listing regulations in consonance with the minimum listing criteria set out in Securities Contracts (Regulations) Rules, 1957.

Securities Contracts (Regulation) Act, 1956 (SCRA) – A Birds Eye View



Regulations/Rules made under SCRA



1. Securities Contracts (Regulations) Rules, 1957

The Government promulgated the Securities Contracts (Regulations) Rules, 1957 for carrying into effect the objects of the Securities Contracts (Regulation) Act.

These rules provide among other things-

- the procedure to be followed for recognition of Stock Exchanges
- submission of periodical returns and annual reports by recognized stock exchanges

- inquiry into the affairs of the stock exchanges and their members
- requirements for listing of securities.

2. The Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018

SEBI also issued the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 to regulate the recognition, ownership and governance in stock exchanges and clearing corporations.

3. Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005

The Central Government has made the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 for holding inquiry for the purpose of imposing penalty under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G3, 23GA and 23H of the Act.

4. Securities Contracts (Regulation) (Appeal to Securities Appellate Tribunal) Rules, 2000

The appeal filed before the Securities Appellate Tribunal is as per the procedure laid down under the Securities Contracts (Regulation) (Appeal to Securities Appellate Tribunal) Rules, 2000.

NON-APPLICABILITY

Section 28 provides that the provisions of SCRA shall not apply to -

The Government, the Reserve Bank of India, any local authority or any corporation set up by a special law.	any convertible bond or share warrant or any option or right, in so far as it entitles the person in whose favour any of the foregoing has been issued, whether by conversion of the bond or warrant or otherwise, on the basis of the price agreed upon when the same was issued.	the Central Government, in the interest of trade and commerce or the economic development of the country, may specify any class of contracts as contracts to which this Act or any provision contained therein shall not apply.

Whether OFCDs (Optionally Fully Convertible Debentures) issued by Sahara's were convertible bonds falling within scope of Section 28(1)(b) of SCR Act?

The Apex Court held that even though the OFCDs were claimed to be in hybrid nature that shall not mean that they are not securities as explained under the SEBI, Companies Act and SCRA (Securities Contract Regulation Act). Even though there has been no such definite definition of the word hybrid instruments under section 2(h) of the SCRA, the hybrid instruments will fall within the ambit of securities.

Contention of Sahara's that OFCDs issued by them are convertible bonds issued on the basis of the price agreed upon at the time of issue and, therefore, the provisions of SCR Act, would not apply, in view of Section 28(1)(b) cannot be sustained.

Source: https://www.lawinsider.in/insight/sahara-india-pariwar-scam-insight

KEY DEFINITIONS

Section 2 of this Act contains definitions of various terms used in the Act. Some of the important definitions are given below:

Securities [Section 2(h)]

Securities include –

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or a pooled investment vehicle or other body corporate;

(ii) derivative;

(iii) units or any other instrument issued by any Collective Investment Scheme to the investors in such schemes;

(iv) security receipt as defined in clause (zg) of Section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(v) units or any other such instrument issued to the investors under any mutual fund scheme;

(vi) units or any other instrument issued by any pooled investment vehicle;

(vii) any certificate or instrument (by whatever name called) issued to an investor by any issuer being a special purpose distinct entity which possess any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;

(viii) government securities;

(ix) such other instruments as may be declared by the Central Government to be securities; and

(x) rights or interests in securities.

Whether the hybrid Optionally Fully Convertible Debentures of the company fall within the definition of "securities" within the meaning of Companies Act, SEBI Act and SCRA?

It was held by the Apex Court that although the OFCDs issued by the two companies are in the nature of 'hybrid' instruments, it does not cease to be a "Security" within the meaning of Companies Act, SEBI Act and SCRA. The definition of "Securities" under section 2(h) of SCRA does not contain the term "hybrid instruments", the definition provided in the Act is an inclusive one and covers all "Marketable securities"

In *Sahara India Real Estate* v. *Securities & Exchange Board of India.*

Contract [Section 2(a)]

"Contract" means a contract for or relating to the purchase or sale of securities.

Spot Delivery Contract [Section 2(i)]

Spot delivery contract means a contract which provides for –

(a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository.

Stock Exchange [Section 2(j)]

Stock Exchange means –

(a) any body of individuals, whether incorporated or not, constituted before corporatisation and demutualisation under Sections 4A and 4B, or

(b) a body corporate incorporated under the Companies Act, 2013 whether under a scheme of corporatisation and demutualisation or otherwise,

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

Recognised Stock Exchange [Section 2(f)]

Recognised Stock Exchange means a stock exchange which is for the time being recognised by the Central Government.

Government security [Section 2(b)]

Government security means a security created and issued whether before or after the commencement of this Act, by the Central Government or a State Government for the purpose of raising a public loan and having one of the forms specified in clause (2) of section 2 of the Public Debt Act, 1944.

Derivative [Section 2(ac)]

Derivative includes –

(a) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;

(b) a contract which derives its value from the prices or index of prices, of underlying securities;

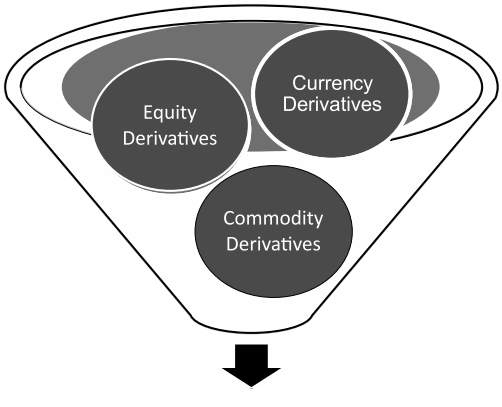
(c) commodity derivatives; and

(d) such other instruments as may be declared by the Central Government to be derivatives.

"Commodity derivative" means a contract –

(i) for the delivery of such goods, as may be notified by the Central Government in the Official Gazette, and which is not a ready delivery contract; or

(ii) for differences, which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified by the Central Government, in consultation with the SEBI, but does not include securities as referred to in sub-clauses (A) and (B) above.



Derivative

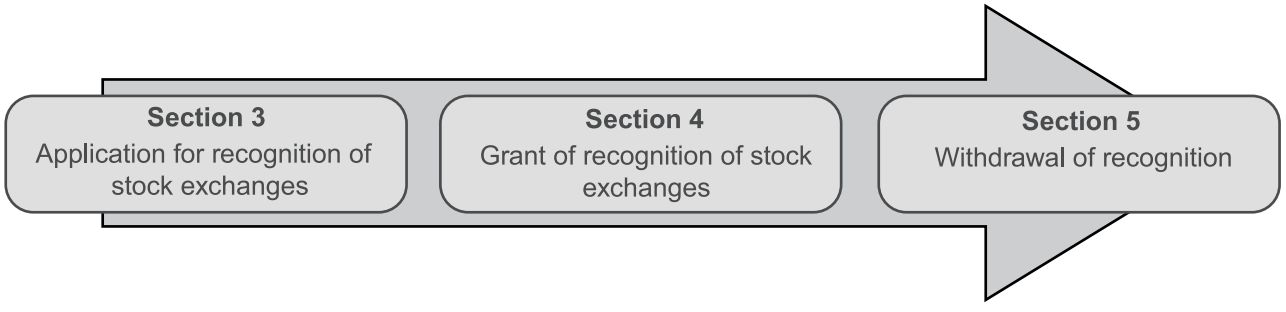
Securities Appellate Tribunal [Section 2(gb)]

Securities Appellate Tribunal means a Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992.

Member [Section 2(c)]

Member means a member of a recognised stock exchange.

RECOGNITION OF STOCK EXCHANGES



Application for recognition of stock exchange

Section 3 lays down that any stock exchange, desirous of being recognized for the purposes of this Act may make an application in the prescribed manner to the Central Government/SEBI.

Every application shall contain such particulars as may be prescribed, and shall be accompanied by a copy of the bye-laws of the stock exchange for the regulation and control of contracts and also a copy of the rules relating in general to the constitution of the stock exchange and in particular to –

(a) the governing body of such stock exchange, its constitution and powers of management and the manner in which its business is to be transacted;

(b) the powers and duties of the office bearers of the stock exchange;

(c) the admission into the stock exchange of various classes of members, the qualifications, for membership, and the exclusion, suspension, expulsion and re-admission of members therefrom or thereinto;

(d) the procedure for the registration of partnerships as members of the stock exchange in cases where the rules provide for such membership; and the nomination and appointment of authorized representatives and clerks.

Grant of recognition to stock exchange

Section 4 lays down that if the Central Government is satisfied (powers are exercisable by SEBI also) after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require;

(a) that the rules and bye-laws of a stock exchange applying for registration are in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors;

(b) that the stock exchange is willing to comply with any other conditions (including conditions as to the number of members) which the Central Government, after consultation with the governing body of the stock exchange and having regard to the area served by the stock exchange and its standing and the nature of the securities dealt with by it, may impose for the purpose of carrying out the objects of this Act; and

(c) that it would be in the interest of the trade and also in the public interest to grant recognition to the stock exchange.

It may grant recognition to the stock exchange subject to the conditions imposed upon it as aforesaid and in such form as may be prescribed.

The conditions which the Central Government (powers are exercisable by SEBI also) may prescribe for the grant of recognition to the stock exchanges may include, among other matters, conditions relating to-

(i) the qualifications for membership of stock exchanges;

(ii) the manner in which contracts shall be entered into and enforced as between members;

(iii) the representation of the Central Government on each of the stock exchange by such number of persons not exceeding three as the Central Government may nominate in this behalf; and

(iv) the maintenance of accounts of members and their audit by chartered accountants whenever such audit is required by the Central Government.

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

No application for the grant of recognition shall be refused except after giving an opportunity to the stock exchange concerned to be heard in the matter; and the reasons for such refusal shall be communicated to the stock exchange in writing.

Withdrawal of recognition

Section 5 lays down that if the Central Government is of opinion that the recognition granted to a stock exchange should in the interest of the trade or in the public interest, be withdrawn, the Central Government may serve on the governing body of the stock exchange a written notice that the Central Government is considering the withdrawal of the recognition for the reasons stated in the notice and after giving an opportunity to the governing body to be heard in the matter, the Central Government may withdraw, by notification in the Official Gazette, the recognition granted to the stock exchange.

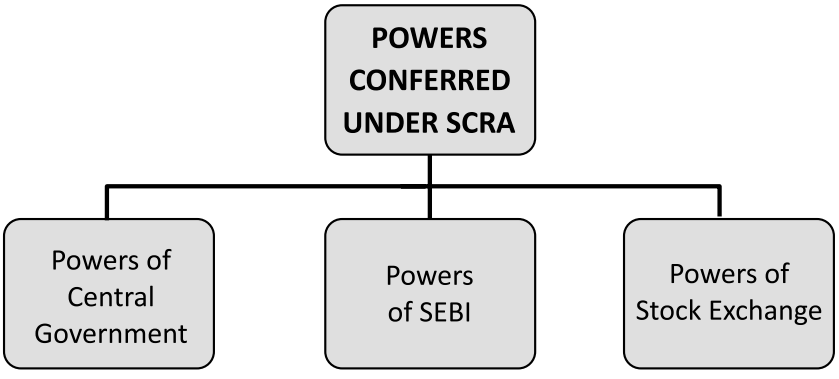
However, the withdrawal shall not affect the validity of any contract entered into or made before the date of the notification, and the Central Government may, after consultation with the stock exchange, make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contracts outstanding on that date.

Where the recognized stock exchange has not been corporatized or demutualised or it fails to submit the scheme within the specified time therefore or the scheme has been rejected by the SEBI, the recognition granted to such stock exchange, shall stand withdrawn and the Central Government shall publish, by notification in the Official Gazette, such withdrawal of recognition.

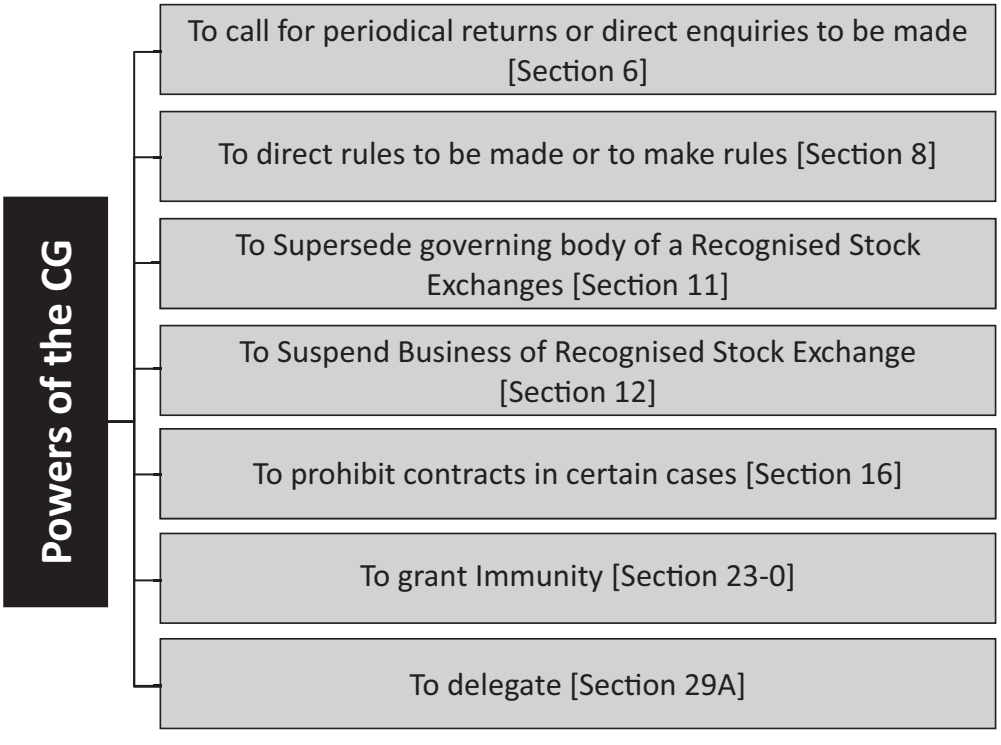
However, such withdrawal shall not affect the validity of any contract entered into or made before the date of the notification, and SEBI may, after consultation with the stock exchange, make such provisions as it deems fit in the order rejecting the scheme published in the Official Gazette.

It is to be noted that the powers under Section 4 and Section 5 have been delegated concurrently to SEBI also. Hence, SEBI may exercise these powers.

POWERS CONFERRED UNDER SCRA



POWERS OF CENTRAL GOVERNMENT



To call for periodical returns and direct enquiries to be made [Section 6]

Every recognised stock exchange shall furnish to the SEBI, such periodical returns relating to its affairs as may be prescribed.

Preservation of Books of Accounts and other documents

Every recognised stock exchange and every member thereof shall maintain and preserve for not exceeding five years such books of accounts, and other documents as the Central Government, after consultation with the stock exchange concerned, may prescribe in the interest of the trade or in the public interest, and such books of account, and other documents shall be subject to inspection to all reasonable times by SEBI.

Powers of SEBI in public interest to seek information/explanation

The Securities and Exchange Board of India, if it is satisfied that it is in the interest of the trade or in the public interest so to do, may, by order in writing, –

(a) call upon a recognised stock exchange or any member thereof to furnish in writing such information or explanation relating to the affairs of the stock exchange or of the member in relation to the stock exchange as the SEBI may require; or

(b) appoint one or more persons to make an inquiry in the prescribed manner in relation to the affairs of the governing body of a stock exchange or the affairs of any of the members of the stock exchange in relation to the stock exchange and submit a report of the result of such inquiry to the SEBI within such time as may be specified in the order or, in the case of an inquiry in relation to the affairs of any of the members of a stock exchange, direct the governing body to make the inquiry and submit its report to the SEBI.

Stock exchanges bound to produce documents sought

Where an inquiry in relation to the affairs of a recognised stock exchange or the affairs of any of its members in relation to the stock exchange has been undertaken:

(a) every director, manager, secretary or other officer of such stock exchange;

(b) every member of such stock exchange;

(c) if the member of the stock exchange is a firm, every partner, manager, secretary or other officer of the firm; and

(d) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (a), (b) and (c), whether directly or indirectly.

shall be bound to produce before the authority making the inquiry all such books of account, and other documents in his custody or power relating to or having a bearing on the subject-matter of such inquiry and also to furnish the authorities within such time as may be specified with any such statement or information relating thereto as may be required of him.

To Direct Rules or make Rules [Section 8]

Recognised Stock Exchanges to make/amend rules

Section 8 deals with the power of Central Government to make rules or direct rules to be made in respect of recognised stock exchange. Where, after consultation with the governing bodies of stock exchanges generally or with the governing body of any stock exchange in particular, the Central Government is of opinion that it is necessary or expedient so to do, it may, by order in writing together with a statement of the reasons therefor, direct the recognised stock exchanges generally or any recognised stock exchange in particular, as the case may be, to make any rules or to amend any rules already made in respect of all or any of the matters or to amend any rules already made in respect of all or any of the matters as specified, within a period of two months from the date of the order.

If any recognised stock exchange fails or neglects to comply with any order, within the period specified therein, the Central Government may make the rules for, or amend the rules made by, the recognised stock exchange, either in the form proposed in the order or with such modifications thereof as may be agreed to between the stock exchange and the Central Government.

Rules so made or amended be published in the Official Gazette

Where in pursuance of this section any rules have been made or amended, the rules so made or amended

shall be published in the Gazette of India and also in the Official Gazette or Gazettes of the State or States in which the principal office or offices of the recognised stock exchange or exchanges is or are situate, and, on the publication thereof in the Gazette of India, the rules so made or amended shall, notwithstanding anything to the contrary contained in the Companies Act, 2013 or in any other law for the time being in force, have effect as if they had been made or amended by the recognised stock exchange or stock exchanges, as the case may be.

To Supersede governing bodies of a recognised stock exchange [Section 11]

Without prejudice to any other powers vested in the Central Government under this Act, where the Central Government is of opinion that the governing body of any recognised stock exchange should be superseded, then, the Central Government may serve on the governing body a written notice that the Central Government is considering the super session of the governing body for the reasons specified in the notice and after giving an opportunity to the governing body to be heard in the matter, it may, by notification in the Official Gazette, declare the governing body of such stock exchange to be superseded, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and, where more persons than one are appointed, may appoint one of such persons to be the chairman and another to be the vice-chairman thereof.

On the publication of a notification in the Official Gazette, the following consequences shall ensure, namely –

(a) the members of the governing body which has been superseded shall, as from the date of the notification of super session, cease to hold office as such members;

(b) the person or persons appointed may exercise and perform all the powers and duties of the governing body which has been superseded;

(c) all such property of the recognised stock exchange as the person or persons appointed may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry on the business of the stock exchange, shall vest in such person or persons.

The governing body of which is superseded, the person or persons appointed shall hold office for such period as may be specified in the notification published and, the Central Government may from time to time, by notification, vary such period.

The Central Government, may at any time before the determination of the period of office of any person or persons appointed call upon the recognised stock exchange to reconstitute the governing body in accordance with its rules and on such re-constitution all the property of the recognised stock exchange which has vested in, or was in the possession of, the person or persons appointed, shall vest or re-vest, as the case may be, in the governing body so re-constituted.

However, until a governing body is so re-constituted, the person or persons appointed, shall continue to exercise and perform their powers and duties.

To Suspend business of Recognised Stock Exchange [Section 12]

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

However, where the period of suspension is to be extended beyond the first period, no notification extending the period of suspension shall be issued unless the governing body of the recognised stock exchange has been given an opportunity of being heard in the matter.

To Prohibit Contracts in Certain Cases [Section 16]

Section 16 stipulates that if the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

All contracts in contravention of the above provisions entered into after the date of the notification issued thereunder shall be illegal.

To Grant Immunity [Section 23-O]

Section 23-O deals with the power to grant immunity. The Central Government may, on recommendation by the SEBI, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation.

However, no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity. Provided further that the recommendation of the SEBI are not binding upon the Central Government.

An immunity granted to a person as mentioned above may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

To Delegate or to Make Rules [Section 29A & 30]

Power to Delegate

Section 29A stipulates that the Central Government may, by order published in the Official Gazette, direct that the powers (except the power under section 30) exercisable by it under any provision of this Act shall, in relation to such matters and subject to such conditions, if any, as may be specified in the order, be exercisable also by the Securities and Exchange Board of India or the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934.

Power to Make Rules

Section 30 empowers the Central Government to make rules for the purpose of carrying into effect the objects of this Act by notification in the Official Gazette.

In particular, such rules may provide for,–

(a) the manner in which applications may be made, the particulars which they should contain and the levy of a fee in respect of such applications;

(b) the manner in which any inquiry for the purpose of recognising any stock exchange may be made, the conditions which may be imposed for the grant of such recognition, including conditions as to the admission of members if the stock exchange concerned is to be the only recognised stock exchange in the area; and the form in which such recognition shall be granted;

(c) the particulars which should be contained in the periodical returns and annual reports to be furnished to the Central Government;

(d) the documents which should be maintained and preserved under section 6 and the periods for which they should be preserved;

(e) the manner in which any inquiry by the governing body of a stock exchange shall be made under section 6;

(f) the manner in which the bye-laws to be made or amended under this Act shall before being so made or amended be published for criticism;

(g) the manner in which applications may be made by dealers in securities for licences under section 17, the fee payable in respect thereof and the period of such licences, the conditions subject to which licences may be granted, including conditions relating to the forms which may be used in making contracts, the documents to be maintained by licensed dealers and the furnishing of periodical information to such authority as may be specified and the revocation of licences for breach of conditions;

(h) the requirements which shall be complied with—

(A) by public companies for the purpose of getting their securities listed on any stock exchange;

(B) by collective investment scheme for the purpose of getting their units listed on any stock exchange.

(ha) the grounds on which the securities of a company may be delisted from any recognised stock exchange under sub-section (1) of section 21A;

(hb) the form in which an appeal may be filed before the Securities Appellate Tribunal under sub-section (2) of section 21A and the fees payable in respect of such appeal;

(hc) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 22A and the fees payable in respect of such appeal;

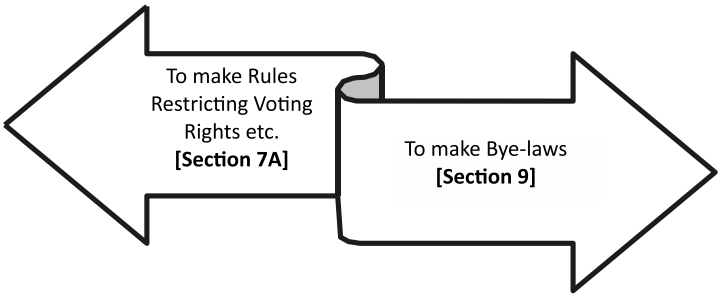
(hd) the manner of inquiry under sub-section (1) of section 23-I;

(he) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 23L and the fees payable in respect of such appeal;

(i) any other matter which is to be or may be prescribed.

Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

POWERS OF RECOGNISED STOCK EXCHANGE



To make Rules restricting voting rights etc. [Section 7A]

Section 7A of the Act stipulates that a recognised stock exchange may make rules or amend any rules made by it to provide for all or any of the following matters, namely: –

(a) the restriction of voting rights to members only in respect of any matter placed before the stock exchange at any meeting;

(b) the regulation of voting rights in respect of any matter placed before the stock exchange at any meeting so that each member may be entitled to have one vote only, irrespective of his share of the paid-up equity capital of the stock exchange;

(c) the restriction on the right of a member to appoint another person as his proxy to attend and vote at a meeting of the stock exchange; and

(d) such incidental, consequential and supplementary matters as may be necessary to give effect to any of the matters specified in clauses (a) (b) and (c).

Powers have been delegated concurrently to SEBI also.

No rules of a recognised stock exchange made or amended in relation to any matter referred to in clauses (a) to (d) shall have effect until they have been approved by the Central Government (Powers are exercisable by SEBI also) and published by that Government in the Official Gazette.

To make Bye-laws [Section 9]

Section 9 of the Act provides that any recognised stock exchange may, subject to the previous approval of the SEBI, make bye-laws for the regulation and control of contracts.

In particular, such bye-laws may provide for :

(a) the opening and closing of markets and the regulation of the hours of trade;

(b) a clearing house for the periodical settlement of contracts and differences thereunder, the delivery of and payment for securities, the passing on of delivery orders and the regulation and maintenance of such clearing house;

(c) the submission to the Securities and Exchange Board of India by the clearing house as soon as may be after each periodical settlement of all or any of the following particulars as the Securities and Exchange Board of India may, from time to time, require, namely:—

  (i) the total number of each category of security carried over from one settlement period to another;

  (ii) the total number of each category of security, contracts in respect of which have been squared up during the course of each settlement period;

  (iii) the total number of each category of security actually delivered at each clearing.

(d) the publication by the clearing house of all or any of the particulars submitted to the Securities and Exchange Board of India under clause (c) subject to the directions, if any, issued by the Securities and Exchange Board of India in this behalf;

(e) the regulation or prohibition of blank transfers;

(f) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;

(g) the regulation, or prohibition of budlas or carry-over facilities;

(h) the fixing, altering or postponing of days for settlements;

(i) the determination and declaration of market rates, including the opening, closing highest and lowest rates for securities;

(j) the terms, conditions and incidents of contracts, including the prescription of margin requirements, if any, and conditions relating thereto, and the forms of contracts in writing;

(k) the regulation of the entering into, making, performance, rescission and termination, of contracts, including contracts between members or between a member and his constituent or between a member and a person who is not a member, and the consequences of default or insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer, and the responsibility of members who are not parties to such contracts;

(l) the regulation of taravani business including the placing of limitations thereon;

(m) the listing of securities on the stock exchange, the inclusion of any security for the purpose of dealings and the suspension or withdrawal of any such securities, and the suspension or prohibition of trading in any specified securities;

(n) the method and procedure for the settlement of claims or disputes, including settlement by arbitration;

(o) the levy and recovery of fees, fines and penalties;

(p) the regulation of the course of business between parties to contracts in any capacity;

(q) the fixing of a scale of brokerage and other charges;

(r) the making, comparing, settling and closing of bargains;

(s) the emergencies in trade which may arise, whether as a result of pool or syndicated operations or cornering or otherwise, and the exercise of powers in such emergencies, including the power to fix maximum and minimum prices for securities;

(t) the regulation of dealings by members for their own account;

(u) the separation of the functions of jobbers and brokers;

(v) the limitations on the volume of trade done by any individual member in exceptional circumstances;

(w) the obligation of members to supply such information or explanation and to produce such documents relating to the business as the governing body may require.

Section 9(3) of the Act provides that the bye-laws made may :

(a) specify the bye-laws, the contravention of which shall make a contract entered into otherwise than in accordance with the bye- laws void.

(b) provide that the contravention of any of the bye-laws shall render the member concerned liable to one or more of the following punishments, namely;

  (i) fine,

  (ii) expulsion from membership,

  (iii) suspension from membership for a specified period,

  (iv) any other penalty of a like nature not involving the payment of money.

Any bye-laws shall be subject to such conditions in regard to previous publication as may be prescribed, and, when approved by the SEBI, shall be published in the Gazette of India and also in the Official Gazette of the

State in which the principal office of the recognised stock exchange is situated, and shall have effect as from the date of its publication in the Gazette of India.

However, if the SEBI is satisfied in any case that in the interest of the trade or in the public interest any bye-laws should be made immediately, it may, by order in writing specify the reasons therefor, dispense with the condition of previous publication.

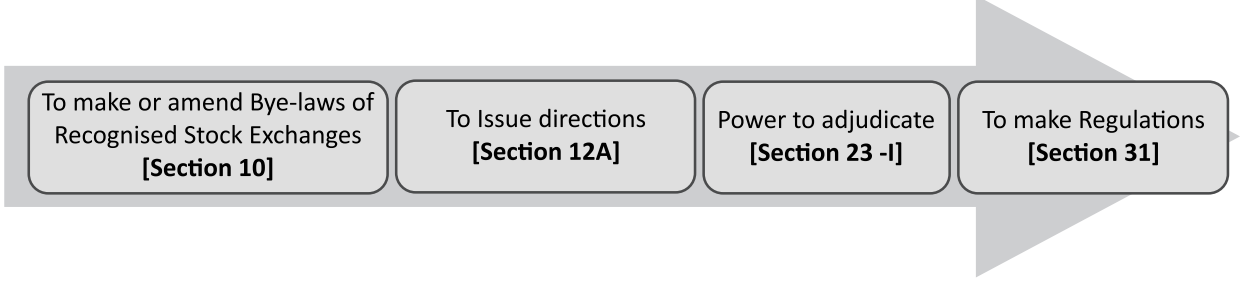
Whether by-laws framed by the Bombay Stock Exchange are subordinate legislation?

Vinay Bubna vs. Yogesh Mehta and Ors. (07.09.1998 - BOMHC):

In the above case Bombay High Court Held

Section 9(4) of the Securities Contract Act requires previous publication of the bye-laws before they can come into force. Publication is another incidence of subordinate legislation. **Therefore, there is no difficulty in holding that the bye-laws framed under Section 9 are subordinate legislation**. Section 9 of the Securities Contract Act itself confers power on the Board to make bye-laws pertaining to regulation and control of contracts. Bye-laws have been framed under the Securities Contracts (Regulation) Act, 1956. For that purpose, the relevant sections of the Act which need to be referred to are **Section 7A** of the Securities Contracts (Regulations) Act, 1956 confers a power on a recognised Stock Exchange to make rules restricting voting rights, etc. **Section 8** is the power conferred on the Central Government to direct rules to be made and/or to make rules itself after consultation with the Governing bodies of the Stock Exchanges generally or with the governing body of any Stock Exchange in particular for matters specified in **Section 3(2)**, In case the Governing Body fails to make Rules as directed power is conferred under sub-section (2) on the Central Government.

POWERS OF THE SEBI



To make or amend Bye-laws of Recognised Stock Exchanges [Section 10]

The SEBI may, either on a request in writing received by it in this behalf from the governing body of a recognised stock exchange or on its own motion, if it is satisfied after consultation with the governing body of the stock exchange that it is necessary or expedient so to do and after recording its reasons for so doing, make bye-laws, for all or any of the matters specified in section 9 or amend any bye-laws made by such stock exchange under that section.

Where in pursuance of this section any bye-laws have been made or amended, the bye-laws so made or amended shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised stock exchange is situated, and on the publication thereof in the Gazette of India, the bye-laws so made or amended shall have effect as if they had been made or amended by the recognised stock exchange concerned.

Where the governing body of a recognised stock exchange objects to any bye-laws made or amended by SEBI

on its own motion, it may, within two months of the publication thereof in the Gazette of India apply to SEBI for revision thereof and SEBI may, after giving an opportunity to the governing body of the stock exchange to be heard in the matter, revise the bye-laws so made or amended, and where any bye-laws so made or amended are revised as a result of any action taken under this sub-section, the bye-laws so revised shall be published and shall become effective.

The making or the amendment or revision of any bye-laws shall in all cases be subject to the condition of previous publication.

However, if the SEBI is satisfied in any case that in the interest of the trade or in the public interest any bye-laws should be made, amended or revised immediately, it may, by order in writing specifying the reasons therefor, dispense with the condition of previous publication.

To Issue Directions [Section 12A]

Section 12A provides that if, after making or causing to be made an inquiry, the SEBI is satisfied that it is necessary–

(a) in the interest of investors, or orderly development of securities market; or

(b) to prevent the affairs of any recognised stock exchange, or, clearing corporation, or such other agency or person, providing trading or clearing or settlement facility in respect of securities, being conducted in a manner detrimental to the interests of investors or securities market; or

(c) to secure the proper management of any such stock exchange or clearing corporation or agency or person, referred to in clause(b).

It may issue such directions –

(i) to any stock exchange or clearing corporation or agency or person referred to in clause (b) or any person or class of persons associated with the securities market; or

(ii) to any company whose securities are listed or proposed to be listed in a recognised stock exchange, as may be appropriate in the interests of investors in securities and the securities market.

Explanation : The power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made there under, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contraventions.

To make Regulations [Section 31]

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

In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matter namely :

(a) the manner, in which at least fifty-one percent of equity share capital of a recognised stock exchange is held, within twelve months from the date of publication of the order under sub-section (7), of Section 4B by the public other than shareholders having trading rights under sub-section (8) of that section;

(b) the eligibility criteria and other requirements under Section 17A;

(c) the terms determined by the SEBI Board for settlement of proceeding under sub-section (2) of section 23JA; and

(d) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulation.

Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.



To adjudicate [Section 23-I]

Section 23-I deals with power to adjudicate by the SEBI.

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

While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions, he may impose such penalty as he thinks fit in accordance with the provisions of this Act.

The SEBI may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify. However, no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter.

Further, nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal, whichever is earlier.

Extracts from SEBI Order dated 20th August 2020 in the matter of The Orissa Minerals Development Co. Ltd. [ADJUDICATION ORDER NO. Order/GR/KG/2020-21/8680-8682]

SEBI Adjudication Order:

SEBI, in exercise of the powers conferred under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules,1995 and **Section 23-I of the SC(R) Act, 1956** read with Rule 5 of the Adjudication Rules, 2005, imposed a total penalty of Rs. 2,00,000/- (Rupees Two Lacs only) under Section 15HB of the SEBI Act, 1992 and Section 23A(a) of the Securities Contracts (Regulation) Act, 1956, on the Noticees i.e. The Orissa Minerals Development Co. Ltd., Dr. Satish Chandra and Ms. Sucharita Das for violation of Clause 2.1 of Code of Corporate Disclosure Practice for Prevention of Insider Trading contained in Schedule II to Regulation 12(2) of the PIT Regulations, 1992 and also against The Orissa Minerals Development Co. Ltd for violation of Clause 36 of Listing Agreement read with Section 21 of SCRA.

Powers of SEBI not to apply to International Financial Services Centre.

The powers exercisable by the SEBI under this Act,—

(a) shall not extend to an International Financial Services Centre set up under subsection (1) of section 18 of the Special Economic Zones Act, 2005;

(b) shall be exercisable by the International Financial Services Centres Authority established under sub-section (1) of section 4 of the International Financial Services Centres Authority Act, 2019,

in so far as regulation of financial products, financial services and financial institutions that are permitted in the International Financial Services Centres are concerned.

PUBLIC ISSUE AND LISTING OF SECURITIES

Public Issue

Section 17A provides that no securities of the nature referred to in sub-clause (ie) of clause (h) of section 2 shall be offered to the public or listed on any recognised stock exchange unless the issuer fulfils such eligibility criteria and complies with such other requirements as may be specified by regulations made by the Securities and Exchange Board of India.

Section 2(h)(ie) provides that any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be.

- Every issuer intending to offer the certificates or instruments referred therein to the public shall make an application, before issuing the offer document to the public, to one or more recognised stock exchanges for permission for such certificates or instruments to be listed on the stock exchange or each such stock exchange.
- Where the permission applied for listing has not been granted or refused by the recognised stock exchanges or any of them, the issuer shall forthwith repay all moneys, if any, received from applicants in pursuance of the offer document, and if any such money is not repaid within eight days after the issuer becomes liable to repay it, the issuer and every director or trustee thereof, as the case may be, who is in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at the rate of fifteen per cent per annum.

- All the provisions of this Act relating to listing of securities of a public company on a recognised stock exchange shall, mutatis mutandis, apply to the listing of the securities of the nature referred to in sub-clause (ie) of clause (h) of section 2 by the issuer, being a special purpose distinct entity.

Listing of Securities

Section 21 of the Act provides that where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations.

Extracts from SEBI Order dated 20th August 2020 in the matter of The Orissa Minerals Development Co. Ltd. [ADJUDICATION ORDER NO. Order/GR/KG/2020-21/8680-8682]

SEBI conducted investigation into the alleged delayed disclosure of the price sensitive information by The Orissa Minerals Development Company Ltd., ("OMDC/Company"), in the scrip of OMDC, to the Stock Exchanges ("BSE" and "NSE") for alleged violation of provisions of the SEBI Act, 1992 and SEBI (Prohibition of Insider Trading) Regulations, 1992 during the investigation period July 02, 2012 to August 10, 2012.

The OMDC, Dr. Satish Chandra (Managing Director) and Ms. Sucharita Das (Company Secretary) has made belated disclosure to the stock exchanges of the important price sensitive information. Therefore, SEBI hold that they have violated the provisions of Clause 2.1 of the Code of Corporate Disclosure Practice for Prevention of Insider Trading contained in Schedule II read with Regulation 12(2) of the PIT Regulations, 1992. Further, OMDC, also violated Clause 36 of the Listing Agreement **read with Section 21 of Securities Contracts (Regulation) Act, 1956**

RIGHT OF APPEAL

Right of appeal to Central Government against refusal of stock exchanges to list securities of public companies

Where a recognised stock exchange refuses to list the securities of any public company or collective investment scheme, the company or scheme shall be entitled to be furnished with reasons for such refusal, and may, –

(a) within fifteen days from the date on which the reasons for such refusal are furnished to it, or

(b) where the stock exchange has omitted or failed to dispose of, within the time specified in section 40 of the Companies Act, 2013 (hereafter in this section referred to as the "specified time"), the application for permission for the shares or debentures to be dealt with on the stock exchange,

within fifteen days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Central Government may, on sufficient cause being shown, allow, appeal to the Central Government against such refusal, omission or failure, as the case may be, and thereupon the Central Government may, after giving the stock exchange an opportunity of being heard,–

(i) vary or set aside the decision of the stock exchange, or

(ii) where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission, and where the Central Government sets aside the decision of the recognised stock exchange or grants the permission, the stock exchange shall act in conformity with the orders of the Central Government.

Right of appeal to Securities Appellate Tribunal (SAT) against refusal to list securities of public companies by Stock exchanges

Where a recognised stock exchange, acting in pursuance of any power given to it by its bye-laws, refuses to

list the securities of any company, the company shall be entitled to be furnished with reasons for such refusal, and may, –

(a) within fifteen days from the date on which the reasons for such refusal are furnished to it, or

(b) where the stock exchange has omitted or failed to dispose of, within the time specified in section 40 of the Companies Act, 2013, the application for permission for the shares or debentures to be dealt with on the stock exchange, within fifteen days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Securities Appellate Tribunal may, on sufficient cause being shown, allow appeal to the Securities Appellate Tribunal having jurisdiction in the matter against such refusal, omission or failure, as the case may be, and thereupon the Securities Appellate Tribunal may, after giving the stock exchange, an opportunity of being heard, –

(i) vary or set aside the decision of the stock exchange; or

(ii) where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission,

and where the Securities Appellate Tribunal sets aside the decision of the recognised stock exchange or grants the permission, the stock exchange shall act in conformity with the orders of the Securities Appellate Tribunal.

Every appeal shall be in such form and be accompanied by such fee as may be prescribed. The Securities Appellate Tribunal shall send a copy of every order made by it to SEBI and parties to the appeal. The appeal filed before the Securities Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose off the appeal finally within six months from the date of receipt of the appeal.

The appeal filed before the Securities Appellate Tribunal is as per the procedure laid down under the Securities Contracts (Regulation) (Appeal to Securities Appellate Tribunal) Rules, 2000.

Right to Legal Representation

The appellant may either appear in person or authorise one or more chartered accountants or **company secretaries** or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Appeal to Supreme Court

Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order.

However the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

PENALTIES AND PROCEDURES

Any person who –

(a) without reasonable excuse fails to comply with any requisition made under sub-section (4) of section 6; or

(b) enters into any contract in contravention of any of the provisions contained in section 13 or section 16; or

(c) contravenes the provisions contained in section 17 or section 17A or section 19; or

(d) enters into any contract in derivative in contravention of section 18A or the rules made under section 30; or

(e) owns or keeps a place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes; or

(f) manages, controls, or assists in keeping any place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act or at which contracts are recorded or adjusted or rights or liabilities arising out of contracts are adjusted, regulated or enforced in any manner whatsoever; or

(g) not being a member of a recognised stock exchange or his agent authorised as such under the rules or byelaws of such stock exchange or not being a dealer in securities licensed under section 17 willfully represents to or induces any person to believe that contracts can be entered into or performed under this Act through him; or

(h) not being a member of a recognised stock exchange or his agent authorised as such under the rules or byelaws of such stock exchange or not being a dealer in securities licensed under section 17, canvasses, advertises or touts in any manner either for himself or on behalf of any other person for any business connected with contracts in contravention of any of the provisions of this Act; or

(i) joins, gathers or assists in gathering at any place other than the place of business specified in the byelaws of a recognised stock exchange any person or persons for making bids or offers or for entering into or performing any contracts in contravention of any of the provisions of this Act,

shall, without prejudice to any award of penalty by the Adjudicating Officer or the SEBI under this Act, on conviction, be punishable with imprisonment for a term which may extend to 10 years or with fine, which may extend to 25 crore rupees or with both.

Any person who enters into any contract in contravention of the provisions contained in section 15 or who fails to comply with the provisions of section 21 or section 21A or with the orders of or the section 22 or with the orders of the Securities Appellate Tribunal shall, without prejudice to any award of penalty by the Adjudicating Officer under this Act, on conviction, be punishable with imprisonment for a term which may extend to ten years or with fine which may extend to twenty five crore rupees, or with both.

The Act prescribes various penalties against persons who might be found guilty of offences under section 23 the Act.

Section	***Contravention***	***Penalty***
23A(a)	Any person who fails to furnish any information, document, books, returns or report to the recognised stock exchange or to the SEBI, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange or the Act or rules made thereunder, or who furnishes false, incorrect or incomplete information, document, books return or report	Penalty of at least 1 lakh rupees but may extend to 1 lakh rupees per day during which such failure continues, subject to a maximum of 1 crore rupees
23A(b)	Any person who fails to maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange	Penalty of at least 1 lakh rupees but may extend to 1 lakh rupees per day during which such failure continues, subject to a maximum of 1 crore rupees

Section	*Contravention*	*Penalty*
23B	Any person who fails to enter into an agreement with clients	Penalty of at least 1 lakh rupees but may extend to 1 lakh rupees per day during which such failure continues, subject to a maximum of 1 crore rupees
23C	Failure by a stock broker or sub-broker or a listed company or proposed listed company to redress investors' grievances within the time stipulated by SEBI or recognised stock exchange	Penalty of at least 1 lakh rupees but may extend to 1 lakh rupees per day during which such failure continues, subject to a maximum of 1 crore rupees
23D	Failure to segregate securities or money of client or clients or using the securities or money of client for self-use or for any other client	At least 1 lakh rupees but may extend to rupees 1 crore
23E	Failure to comply with the provisions of listing conditions or delisting conditions or grounds or breach thereof is committed, by a company or a person managing collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment fund.	Liable for penalty of at least 5 lakh rupees which may extend to rupees 25 crores
23F	If any issuer make an excess dematerialisation or delivery of unlisted securities	Penalty of at least 5 lakh rupees which may extend to 25 crores rupees
23G	Failure by recognised stock exchange to furnish periodical return or furnish false, incorrect or incomplete periodical returns to SEBI or fails or neglects to make or amend its rules or bye-laws as directed by SEBI or fails to comply with the directions of SEBI	Penalty of at least 5 lakh rupees which may extend to 25 crores rupees
23GA	Where a stock exchange / a clearing corporation fails to conduct its business with its members /any issuer/ its agent/ any person associated with the securities markets in a manner not in accordance with the rules/ regulations made by the SEBI and the directions issued by it under this Act	Penalty of at least 5 crore rupees which may extend to 25 crore rupees or three times the amount of gains made out of such failure, whichever is higher.
23H	Whoever fails to comply with any provision of this Act, the rules of articles or bye-laws or the regulations of recognised stock exchange or directions issued by SEBI for which no separate penalty has been provided	Penalty of at least 1 lakh rupees which may extend to rupees 1 crore

CASE LAWS

30.08.2022	***Atlanta Infrastructure and Finance Ltd.***	***Adjudicating Officer, SEBI***

Facts of the Case

Atlanta Infrastructure and Finance Ltd. ("Atlanta") was formerly known as Kadvani Securities Ltd. and was an authorised Non-Banking Financial Services Company (NBFC). The Company changed its name to Atlanta Infrastructure and Finance Ltd. w.e.f. August 3, 2013. The main business activity of the Company is infrastructure and development of land. The company was incorporated in 1992 and listed on BSE w.e.f June 07, 1995.

SEBI conducted an investigation into trading of the scrip of Atlanta for suspected manipulation of the scrip price for the period August 2, 2010 to January 6, 2015 and the investigation revealed that the promoters/promoter group had all disposed-of their shares on February 19, 2014 as per information provided by RTA of the company. The total promoter/promoter group shareholding of Atlanta for the quarter ended March 2014 should have been zero. Atlanta had submitted to BSE a wrong shareholding pattern. Atlanta had submitted 2,23,000 shares as promoter shareholding to BSE for the quarter ended March 2014 and therefore, was alleged to have violated Section 21 of Securities Contracts (Regulations) Act, 1956 ("SCR Act").

SEBI Order

SEBI under Section 23-I of SCR Act read with Rule 5 of SCR(A) Rules, imposed a penalty of Rs. 1,00,000/- (Rupees One Lakh only) under Section 23H of SCRA, 1956 on Atlanta Infrastructure and Finance Ltd. for violation of Section 21 of SCRA, 1956.

19.04.2022	***M/s. S.B. Securities Pvt. Ltd.***	***Adjudicating Officer, SEBI***

Facts of the Case

Securities and Exchange Board of India (hereinafter referred to as 'SEBI') and BSE Ltd. (hereinafter referred to as 'BSE') conducted a comprehensive joint inspection of M/s. S.B. Securities Pvt. Ltd. (hereinafter referred to as 'Stock Broker / Noticee/You/Broker') from March 26, 2019 to March 27, 2019 and on April 23, 2019. The said inspection was carried out at 379, Priti Building, S V Road, Vile Parle (west), Mumbai – 400 056 w.r.t. its Stock Broking activities((hereinafter referred to as 'SBs'). The period covered in the inspection was from April 2017 to September 2018 (hereinafter referred to as 'Inspection Period'). Noticee is a SEBI-registered Stock Broker, having SEBI registration number as INZ000001834. Noticee is a Stock Broker of BSE. Based on the findings of inspection and the reply of Noticee, SEBI initiated adjudication proceedings against Noticee under: a) Section 23D of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "SCRA"), for the alleged violations of Section 23D of SCRA.

SEBI Order

SEBI under Section 23-I of SCR Act, imposed a penalty of Rs. 3,00,000/- (Rupees Three Lakh only) on S.B. Securities Pvt. Ltd for violation of Section 23D of SCRA, 1956. The Noticee, a SEBI registered Intermediary, was under a statutory obligation to abide by the provisions of the SCRA, SEBI Act, Rules and Regulations and Circulars/directions issued thereunder etc., which it failed to do. Such disregard for the provisions of law governing the functioning of intermediaries calls for an appropriate penalty which should act as a deterrent.

20.08.2020	***Dr. Satish Chandra, Ms. Sucharita Das and The Orissa Minerals Development Co. Ltd. (collectively known as "Noticees") vs. SEBI***	***Adjudicating Officer, Securities and Exchange Board of India***

The disclosures were made by The Orissa Minerals Development Co. Ltd. to stock exchanges belatedly each after a period of more than 24 hours since the time of their receipt by OMDC.

Facts of the Case

SEBI conducted investigation into the alleged delayed disclosure of the price sensitive information (hereinafter referred to as "PSI") by The Orissa Minerals Development Company Ltd., (hereinafter referred to as "OMDC/ Company"), in the scrip of OMDC, to the Stock Exchanges ("BSE" and "NSE") for alleged violation of provisions of the SEBI Act, 1992 and SEBI (Prohibition of Insider Trading) Regulations, 1992 during the investigation period July 02, 2012 to August 10, 2012.

The OMDC, Dr. Satish Chandra (Managing Director) and Ms. Sucharita Das (Company Secretary) has made belated disclosure to the stock exchanges of the important price sensitive information. Therefore, SEBI hold that the Noticees have violated the provisions of Clause 2.1 of the Code of Corporate Disclosure Practice for Prevention of Insider Trading contained in Schedule II read with Regulation 12(2) of the PIT Regulations, 1992. Further, OMDC, also violated Clause 36 of the Listing Agreement read with Section 21 of Securities Contracts (Regulation) Act, 1956 ("SCRA").

By not making the disclosures on time, the Noticee has failed to comply with the mandatory statutory obligation.

SEBI Order

In view of the foregoing, considering the facts and circumstances of the case, the material on record, SEBI imposed a total penalty of Rs. 2,00,000/- (Rupees Two Lacs only) under **Section 23A(a)* of the Securities Contracts (Regulation) Act, 1956**, on the Noticees i.e. The Orissa Minerals Development Co. Ltd., Dr. Satish Chandra and Ms. Sucharita Das for violation of Clause 2.1 of Code of Corporate Disclosure Practice for Prevention of Insider Trading contained in Schedule II to Regulation 12(2) of the PIT Regulations, 1992 and also against The Orissa Minerals Development Co. Ltd for violation of Clause 36 of Listing Agreement read with Section 21 of SCRA.

**** Section 23A(a) deals with Penalty for failure to furnish information, return, etc.***

Settlement of administrative and civil proceedings

Section 23JA states that any person, against whom any proceedings have been initiated or may be initiated under section 12A or section 23-I, may file an application in writing to SEBI proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

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

For the purpose of settlement under this section, the procedure as specified by the SEBI under the SEBI Act, 1992 shall apply. No appeal shall lie under section 23L against any order passed by the SEBI or adjudicating officer, as the case may be, under this section. All settlement amounts, excluding the disgorgement amount and legal costs, realised under this Act shall be credited to the Consolidated Fund of India.

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

Appeal to Securities Appellate Tribunal

Section 23L stipulates that any person aggrieved, by the order or decision of the recognized stock exchange or the adjudicating officer or any order made by the Securities and Exchange Board of India under or sub-section (3) of section 23-I, may prefer an appeal before the Securities Appellate Tribunal.

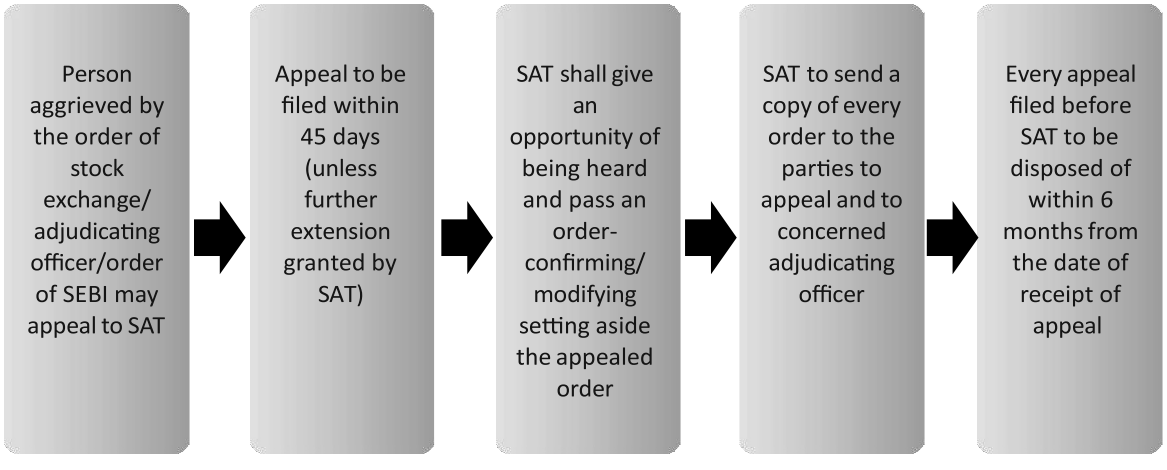
Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order or decision is received by the appellant and it shall be in such form and be accompanied by such fee as may be prescribed.

However the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

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

The Securities Appellant Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer. The appeal filed before the Securities Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

The appeal may be prefer before the Securities Appellate Tribunal as per the procedure laid down under the Securities Contracts (Regulation) (Appeal to Securities Appellate Tribunal) Rules, 2000.



Extracts from SAT Order dated 25th February 2019 in the matter of Synergy Cosmetics (Exim) Limited vs. BSE Limited [Appeal No. 469 of 2018]

Synergy Cosmetics (Exim) Limited (Company) is a listed company and its securities got delisted on the platform of the BSE Limited. The BSE Limited vide its notice dated 18.10.2016 suspended the trading in securities of the company for non-compliance of listing requirements. Since no steps were taken by the company for revocation of the suspension, a show cause notice dated 26.04.2018 was issued calling upon the company to show cause as to why the securities of the company should not be compulsorily delisted from the platform of the BSE Limited. The BSE Limited by the impugned order dated 26.06.2018 issued an order compulsorily delisting the securities of the company. The appellant being aggrieved by the computation of the fair value of the shares has filed the appeal under **Section 23L of the Securities Contracts (Regulation) Act, 1956.**

CASE LAWS

21.02.2020	*Pacific Finstock Ltd. (Appellant) vs. BSE Ltd. (Respondent)*	*Securities Appellate Tribunal*

For listing of a security, the listing norms as on date of Application filed alone is required to be consider but status of the directors/ promoters of the company are required to be considered on the date of the passing of the order on the listing application.

Facts of the Case

The appellant has filed the present appeal being aggrieved by the BSE Limited (BSE) order dated August 02, 2019 ("BSE") rejecting the listing application. The facts leading to the filing of the present appeal are:

- The appellant was a listed company on the Vadodara Stock Exchange and Ahmedabad Stock Exchange but subsequently it came on the Dissemination Board* of the BSE and remained on the Dissemination Board for the last several years.

  Dissemination Board -

  BSE has launched a Dissemination Board mechanism on BSE India website (www.bseindia.com) enabling dissemination of bids/Offer placed by buyers and sellers of securities of companies that are listed exclusively on exiting or de-recognised Regional Stock Exchanges using the services of the Trading Members of BSE.

- **SEBI Circular for Exclusively listed companies of De-recognized/Non-operational/exited Stock Exchanges placed in the Dissemination Board (DB)**

SEBI issued a Circular dated October 10, 2016 by which the companies which were on the Dissemination Board were required to get their company listed on nationwide stock exchange or provide an exit opportunity to existing shareholders.

- In terms of this Circular, the appellant submitted a plan of action to BSE for direct listing.
- In the meanwhile, the promoters/ directors of the appellant company were debarred from accessing the securities market vide SEBI's order dated September 28, 2019 passed in the matter of Kavit Industries Ltd. This fact was brought to the notice of the appellant and sought clarification as to how the company is required to comply with the requirements for direct listing of its securities. It transpires that the company vide letter dated May 18, 2019 intimated that two of its directors have resigned with effect from April 15, 2019.
- BSE after considering the aforesaid response, found that one of its promoters continued to remain as the promoter of the company inspite of being debarred by SEBI and therefore, the direct listing requirements norms had not been complied with. Accordingly, the listing application was rejected.

SAT ORDER

The appeal fails and is dismissed.

In the instant case, the debarment was in direct conflict when the norms stipulated for considering the listing agreement. Such order of SEBI of debarment of one of the promoters was brought to the knowledge of the company. The said listing requirements norms were not rectified and consequently the BSE had no option but to reject the listing application. The said order does not suffer from any manifest error of law and requires no interference.

There is no dispute on this proposition namely that the listing norms that was in force on the date when the application was filed was alone required to be considered. Subsequent norms or amended norms or regulations are not required to be considered. However, the status of the directors/ promoters of the company are required to be considered on the date of the passing of the order on the listing application. If on the date when the listing application was being considered the promoters/ directors of the company committed default and thereby incurred a debarment from accessing the securities market then it was imperative upon the authority to consider such debarment while considering the listing application.

03.12.2019	***Karvy Stock Broking Limited (Appellant) vs. National Stock Exchange of India (Respondent)***	***Securities Appellate Tribunal***

Facts of the Case

- The present appeal was filed by the appellant seeking quashment of the NSE order/circular dated December 2, 2019. Vide the said circular respondent NSE had suspended the present appellant from its membership due to the alleged non compliance of the regulatory provisions of the Exchange.
- Learned counsel for the respondent raised objection on the maintainability of the present appeal on the ground that the equally efficacious remedy is available to the appellant under National Stock Exchange of India Ltd. Rules. He therefore submitted that the appeal be not entertained.

SAT ORDER

The Rules are framed by respondent NSE in exercise of the powers of the Section 9 of the SCRA. The appellant has equally efficacious remedy to challenge the impugned order before the relevant authority of the respondent NSE. SAT did not find any reason to entertain the appeal.

Learned Senior counsel for the respondent submitted that the appeal, if any, filed by the appellant with the respondent, they would be heard expeditiously by convening meeting of the relevant authority. There is no need to bypass the statutory Rules. At this stage, learned counsel for the appellant submitted that the appellant may be provided with liberty to seek documents from the respondent. SAT did not find any hitch in acceding to the said request. The respondent shall supply the documents or grant inspection of the same relevant to the dispute.

For the reasons stated above, the appeal is disposed of. Appellant would be at liberty to file an appeal as provided by Rule 13A(d) of the NSE Rules.

Offences

Section 23M provides that if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations or byelaws made thereunder, for which no punishment is provided elsewhere in this Act, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

If any person fails to pay the penalty imposed by the adjudicating officer or the SEBI or fails to comply with the direction or order , he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both.

SECURITIES CONTRACTS (REGULATION) RULES, 1957

These rules were made by the Central Government in exercise of the powers conferred by Section 30 of the Securities Contracts (Regulation) Act, 1956 and notified on February 21, 1957. The Government promulgated

the Securities Contracts (Regulation) Rules, 1957 ('SCRR') for carrying into effect the objects of the Securities Contracts (Regulation) Act. These rules provide among other things, for the-



The rules are statutory and they constitute a code of standardized regulations uniformly applicable to all the recognised stock exchanges. Under the SCRR, the Government and the Securities and Exchange Board of India (SEBI) issue notifications, guidelines, and circulars which need to be complied with by market participants. Most of the powers under the SCRA are exercisable by Department of Economic Affairs (DEA) while a few others by SEBI. The powers of the DEA under the SCRA are also concurrently exercised by SEBI. The powers in respect of the contracts for sale and purchase of securities, gold related securities, money market securities and securities derived from these securities and carry forward contracts in debt securities are exercised concurrently by Reserve Bank of India (RBI).

REQUIREMENTS OF LISTING OF SECURITIES WITH RECOGNISED STOCK EXCHANGES

Rule 19(1)

This is one of the most important provisions of the Securities Contracts (Regulation) Rules, 1957. Rule 19 provides for the complete procedure in this regard. A public company as defined under the Companies Act, 2013, desirous of getting its securities listed on a recognised stock exchange, shall apply for the purpose to the stock exchange and forward along with its application the following documents and particulars:

(a) Memorandum and articles of association and, in the case of a debenture issue, a copy of the trust deed.

(b) Copies of all prospectuses or statements in lieu of prospectuses issued by the company at any time.

(c) Copies of offers for sale and circulars or advertisements offering any securities for subscription or sale during the last five years.

(d) Copies of balance sheets and audited accounts for the last five years, or in the case of new companies, for such shorter period for which accounts have been made up.

(e) A statement showing –

  i. dividends and cash bonuses, if any, paid during the last ten years (or such shorter period as the company has been in existence, whether as a private or public company),

  ii. dividends or interest in arrears, if any.

(f) Certified copies of agreements or other documents relating to arrangements with or between –

  i. vendors and/or promoters,

  ii. underwriters and sub-underwriters,

  iii. brokers and sub-brokers.

(g) Certified copies of agreements with –

  i. managing agents and secretaries and treasurers,

ii. selling agents,

iii. managing directors and technical directors,

iv. general manager, sales manager, managers or secretary.

(h) Certified copy of every letter, report, balance sheet, valuation contract, court order or other document, part of which is reproduced or referred to in any prospectus, offer for sale, circular or advertisement offering securities for subscription or sale, during the last five years.

(i) A statement containing particulars of the dates of, and parties to all material contracts, agreements (including agreements for technical advice and collaboration), concessions and similar other documents (except those entered into in the ordinary course of business carried on or intended to be carried on by the company) together with a brief description of the terms, subject-matter and general nature of the documents.

(j) A brief history of the company since its incorporation giving details of its activities including any reorganization, reconstruction or amalgamation, changes in its capital structure (authorised, issued and subscribed) and debenture borrowings, if any.

(k) Particulars of shares and debentures issued –

(i) for consideration other than cash, whether in whole or part,

(ii) at a premium or discount, or

(iii) in pursuance of an option.

(l) A statement containing particulars of any commission, brokerage, discount or other special terms including an option for the issue of any kind of the securities granted to any person.

(m) Certified copies of –

i. acknowledgment card or the receipt of filing offer document with the SEBI;

ii. agreements, if any, with the Industrial Finance Corporation, Industrial Credit and Investment Corporation and similar bodies.

(n) Particulars of shares forfeited.

(o) A list of highest ten holders of each class or kind of securities of the company as on the date of application along with particulars as to the number of shares or debentures held by and the address of each such holder.

(p) Particulars of shares or debentures for which permission to deal is applied for.

However, a recognised stock exchange may either generally by its bye-laws or in any particular case call for such further particulars or documents as it deems proper.

Rule 19(2)

Sub-rule 2 of Rule 19 provides that apart from complying with such other terms and conditions as may be laid down by a recognised stock exchange, an applicant company shall satisfy the stock exchange that;

(a) Its articles of association provide for the following among others –

(i) that the company shall use a common form of transfer;

(ii) that the fully paid shares will be free from all lien, while in the case of partly laid shares, the company's lien, if any, will be restricted to moneys called or payable at a fixed time in respect of such shares;

(iii) that any amount paid-up in advance of calls on any share may carry interest but shall not entitle the holder of the share to participate in respect thereof, in a dividend subsequently declared;

(iv) there will be no forfeiture of unclaimed dividends before the claim becomes barred by law;

(v) that option or right to call of shares shall not be given to any person except with the sanction of the company in general meeting.

However, a recognised stock exchange may provisionally admit to dealings the securities of a company which undertakes to amend its articles of association at its next general meeting so as to fulfill the foregoing requirements and agrees to act in the meantime strictly in accordance with the provisions of this clause.

Rule 19(2)(b)

The minimum offer and allotment to public in terms of an offer document shall be-

(i) at least twenty five per cent of each class or kind of equity shares or debenture convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is less than or equal to one thousand six hundred crore rupees;

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

(iii) at least ten percent of each class or kind of equity shares or debentures convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is above four thousand crore rupees but less than or equal to one lakh crore rupees;

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

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

The company referred to in this sub-clause (iv) shall increase its public shareholding to at least ten per cent within a period of two years and at least twenty-five per cent. within a period of five years, from the date of listing of the securities.

The applicant company, who has issued equity shares having superior voting rights to its promoters or founders and is seeking listing of its ordinary shares for offering to the public under this rule and the regulations made by the SEBI in this regard, shall mandatorily list its equity shares having superior voting rights at the same recognized stock exchange along with the ordinary shares being offered to the public.

Explanation. – For the purposes of this clause, the provisions of sub-clause (i) shall apply to, or in relation to, an applicant company desirous of getting its securities listed on a recognised stock exchange in an International Financial Service Centre, subject to the modification that the reference to "twenty-five per cent." in that sub-clause shall be construed as reference to "ten per cent.", irrespective of the post issue capital of such company and sub-clauses (ii), (iii) and (iv) shall not apply.

Conditions precedent to submission of application for listing by Stock Exchange

Sub-rule (3) of Rule 19 provides that company while applying for listing shall, as conditions precedent, undertake *inter alia* –

(a) (i) that letters of allotment will be issued simultaneously and that, in the event of its being impossible to issue letters of regret at the same time, a notice to that effect will be inserted in the press so that it will appear on the morning after the letters of allotment have been posted.

(ii) that letters of right will be issued simultaneously.

(iii) that letters of allotment, acceptance or rights will be serially numbered, printed on good quality paper and, examined and signed by a responsible officer of the company and that whenever possible, they will contain the distinctive numbers of the securities to which they relate.

(iv) that letters of allotment and renounceable letters of right will contain a proviso for splitting and that, when so required by the exchange, the form of renunciation will be printed on the back of or attached to the letters of allotment and letters of right.

(v) that letters of allotment and letters of right will state how the next payment of interest or dividend on the securities will be calculated.

(b) to issue, when so required, receipts for all securities deposited with it whether for registration, subdivision, exchange or for other purposes; and not to charge any fees for registration of transfers, for sub-division and consolidation of certificate and for sub-division of letters of allotment, renounceable letters of right, and split consolidation, renewal and transfer receipts into denominations of the market unit of trading;

(bb) to issue, when so required, consolidation and renewal certificates in denominations of the market unit of trading, to split certificates, letters of allotment, letters of right, and transfer, renewal, consolidation and split receipts into smaller units, to split call notices, issue duplicates thereof and not require any discharge on call receipts and to accept the discharge of members of stock exchange on split, consolidation and renewal receipts as good and sufficient without insisting on the discharge of the registered holders;

(c) when documents are lodged for sub-division or consolidation (or renewal) through the clearing house of the exchange;

(i) to accept the discharge of an official of the stock exchange clearing house on the company's split receipts and (consolidation receipts and renewal receipts) as good and sufficient discharge without insisting on the discharge of the registered holders; and

(ii) to verify when the company is unable to issue certificates or split receipt or (consolidation receipts or renewal receipts) immediately on lodgement whether the discharge of the registered holders, on the documents lodged for sub-division or consolidation (or renewal) and their signatures on the relative transfers are in order.

(d) on production of the necessary documents by shareholders or by members of the exchange, to make on transfers an endorsement to the effect that the power of attorney or probate or letters of administration or death certificate or certificate of the Controller of Estate Duty or similar other document has been duly exhibited to and registered by the company;

(e) to issue certificates in respect of shares or debentures lodged for transfer within a period of one month of the date of lodgement of transfer and to issue balance certificates within the same period where the transfer is accompanied by a larger certificate;

(f) to advise the stock exchange of the date of the board meeting at which the declaration or recommendation of a dividend (or the issue or right or bonus share) will be considered;

(g) to recommend or declare all dividends and/or cash bonuses at least five days before the commencement of the closure of its transfer books or the record date fixed for the purpose and so advise the stock exchange in writing of all dividends and/or cash bonuses recommended or declared immediately after a meeting of the board of the company has been held to finalise the same;

(h) to notify the stock exchange of any material change in the general character or nature of the company's business;

(i) to notify the stock exchange of any change –

(i) in the company's directorate by death, resignation, removal or otherwise,

(ii) of managing director, managing agent or secretaries and treasurers,

(iii) of auditors appointed to audit the books and accounts of the company.

(j) to forward to the stock exchange copies of statutory and annual reports and audited accounts as soon as issued, including directors' reports;

(k) to forward to the stock exchange as soon as they are issued, copies of all other notices and circulars sent to the shareholders including proceedings of ordinary and extraordinary general meetings of the company and to file with the stock exchange certified copies of resolutions of the company as soon as such resolutions become effective;

(l) to notify the stock exchange prior to intimating the shareholders, of any new issue of securities whether by way of right, privilege, bonus or otherwise and the manner in which it is proposed to offer or allot the same;

(m) to notify the stock exchange in the event of re-issue of any forfeited securities or the issue of securities held in reserve for future issue;

(n) to notify the stock exchange of any other alteration of capital including calls;

(o) to close the transfer books only for the purpose of declaration of dividend or issue of right or bonus shares or for such other purposes as the stock exchange may agree and to give notice to the stock exchange as many days in advance as the exchange may from time to time reasonably prescribe, stating the dates of closure of its transfer books (or, when the transfer books are not to be closed, the date fixed for taking a record of its shareholders or debenture holders) and specifying the purpose or purposes for which the transfer books are to be closed (or the record is to be taken) and in the case of a right or bonus issue to so close the transfer books or fix a record date only after the sanctions of the competent authority subject to which the issue is proposed to be made have been duly obtained, unless the exchange agrees otherwise;

(p) to forward to the stock exchange an annual return immediately after each annual general meeting of at least ten principal holders of each class of security of the company along with particulars as to the number of shares or debentures held by, and address of, each such holder;

(q) to grant to shareholders the right of renunciation in all cases of issue of rights, privileges and benefits and to allow them reasonable time not being less than four weeks within which to record, exercise, or renounce such rights, privileges and benefits, and to issue, where necessary, coupons or fractional certificates or provide for the payment of the equivalent of the value of the fractional right in cash unless the company in general meeting or the stock exchange agrees otherwise;

(r) to promptly notify the stock exchange–

(i) of any action which will result in the redemption, cancellation or retirement in whole or in part of any securities listed on the exchange;

(ii) of the intention to make a drawing of such securities, intimating at the same time the date of the drawing and the period of the closing of the transfer books (or the date of the striking of the balance) for the drawing;

(iii) of the amount of securities outstanding after any drawing has been made.

(s) to intimate the stock exchange any other information necessary to enable the shareholders to appraise the position of the company and to avoid the establishment of a false market in the shares of the company;

(t) that in the event of the application for listing being granted, such listing shall be subject to the rules and bye-laws of the exchange in force from time to time and that the company will comply within a reasonable time, with such further listing requirements as may be promulgated by the exchange as a general condition for new listings.

Application for listing of new securities

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

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

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

Suspension or withdrawal of admission to dealings in securities on stock exchange

Rule 19(5) stipulates that a recognised stock exchange may suspend or withdraw admission to dealings in the securities of a company or body corporate either for a breach of or non-compliance with, any of the conditions of admission to dealings or for any other reason, to be recorded in writing, which in the opinion of the stock exchange justifies such action.

However, no such action shall be taken by a stock exchange without affording to the company or body corporate concerned a reasonable opportunity by a notice in writing, stating the reasons, to show cause against the proposed action.

Further, where a recognised stock exchange has withdrawn admission to dealings in any security, or where suspension of admission to dealings has continued for a period exceeding three months, the company or body corporate concerned may prefer an appeal to the Securities Appellate Tribunal constituted under section 15K of the SEBI Act, 1992 and the procedure laid down under the Securities Contracts (Regulation) (Appeal to Securities Appellate Tribunal) Rules, 2000 shall apply to such appeal. The Securities Appellate Tribunal may, after giving the stock exchange an opportunity of being heard, vary or set aside the decision of the stock exchange and its orders shall be carried out by the stock exchange. [Rule 19(5)]

A recognised stock exchange may, either at its own discretion or shall in accordance with the orders of the Securities Appellate Tribunal restore or re-admit to dealings any securities suspended or withdrawn from the list. [Rule 19(6)]

All requirements with respect to listing prescribed by these rules shall, so far as they may be, also apply to a public sector company. [Rule 19(6A)]

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

The minimum offer and allotment requirements as prescribed under clause (b) of sub-rule (2) shall not be

applicable to the listing of such equity shares having superior voting rights issued to the promoters or founders as the case may be, in cases where the applicant company is seeking listing of its ordinary shares for offering to the public in accordance with the provisions of this rule and the regulations made by the Securities and Exchange Board of India in this regard. [Rule 19(8)]

Minimum Shareholding

Rule 19A (1) stipulates that every listed company shall maintain public shareholding of at least 25%. However, every listed public sector company which has public shareholding below 25% on the commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2018, shall increase its public shareholding to at least 25% , within a period of three years from the date of such commencement, in the manner specified by the SEBI.

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

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

However every listed public sector company whose public shareholding falls below twenty five per-cent. at any time after the commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2018, shall increase its public shareholding to at least twenty five per-cent, within a period of two years from such fall, in the manner specified by the SEBI.

Where the public shareholding in a listed company falls below 25% in consequence to SCRR (Amendment) Rules, 2015, such company shall increase its shareholding to atleast 25%, in the manner specified by the SEBI within a period of three years, as the case may be, from the date of notification of:

(a) the Depository Receipts Scheme, 2014, in cases where the public shareholding falls below 25% as a result of such scheme;

(b) the SEBI (Share Based Employee Benefits) Regulations, in cases where the public shareholding falls below 25%, as a result of such regulations.

Sub rule (5) provides that where the public shareholding in a listed company falls below twenty-five per cent, as a result of implementation of the resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016, such company shall bring the public shareholding to twenty-five per cent within a maximum period of three years from the date of such fall, in the manner specified by the Securities and Exchange Board of India.

However, if the public shareholding falls below ten per cent, the same shall be increased to at least ten per cent, within a maximum period of 12 months from the date of such fall, in the manner specified by the Securities and Exchange Board of India. It is further provided that every listed company shall maintain public shareholding of at least five per cent as a result of implementation of the resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016.

Explanation. – For the purposes of this rule, the provisions of sub-rules (1) to (5) shall apply to, or in relation to, a company listed on a recognised stock exchange in an International Financial Service Centre, subject to the

modification that references to "twenty-five per cent." in those sub-rules shall be construed as references to "ten per cent." and the first proviso to sub-rule (5) shall not apply to such company.

The Central Government may, in the public interest, exempt any listed entity in which the Central Government or State Government or public sector company, either individually or in any combination with other, hold directly or indirectly, majority of the shares or voting rights or control of such listed entity, from any or all of the provisions of this rule.

LESSON ROUND-UP

- The Securities Contracts (Regulation) Act, 1956 ('SCRA') was enacted by Parliament to prevent undesirable transactions in securities by regulating the business of dealing therein, and by providing for certain other matters connected therewith.
- SCRA provides for direct and indirect control of all aspects of the securities trading.
- Section 2 of this Act contains definitions of various terms used in the Act.
- Section 3 lays down that any stock exchange, desirous of being recognized for the purposes of this Act may make an application in the prescribed manner to the Central Government.
- Powers of the Central Government are as covered under Section 6, 8, 11, 12, 16, 23-O, 29A of the SCRA.
- Powers of Recognised Stock Exchange as covered under Section 7A and 9 of the SCRA.
- Powers of the SEBI as covered under section 10, 12A, 23-I and 31 of the SCRA.
- The Act prescribes various penalties against persons who might be found guilty of offences under the Act.
- Section 21 of the Act provides that where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015.
- Section 31 provides that, SEBI may, by notification in the Official Gazette, make regulations consistent with the provisions of this Act and the rules made thereunder to carry out the purposes of this Act.
- The Government promulgated the Securities Contracts (Regulation) Rules, 1957 for carrying into effect the object of the Securities Contracts (Regulation) Rules, 1956.

GLOSSARY

Stock Exchange : Anybody of individuals, whether incorporated or not, constituted for the purpose of assisting, regulating controlling the business of buying, selling or dealing in securities.

Admission to Dealing : The process of granting permission to the securities of a company to be listed on a Stock Exchange and to provide trading facilities for the securities in the market.

Listed Company : A company which has any of its securities offered through an offer document listed on a recognised stock exchange and also includes Public Sector Undertakings whose securities are listed on a recognised stock exchange.

Appointed date : It means the date which the SEBI may, by notification in the Official Gazette, appoint and different appointed dates may be appointed for different recognized stock exchanges.

Commodity Derivative : It means a contract - (i) for the delivery of such goods, as may be notified by the Central Government in the Official Gazette, and which is not a ready delivery contract; or (ii) for differences, which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified by the Central Government, in consultation with the SEBI, but does not include securities as referred to in sub-clauses (A) and (B) of clause (ac) of Section 2 under Securities Contracts (Regulation) Act, 1956.

Clearing : Settlement or clearance of accounts, for a fixed period in a Stock Exchange.

Member : "Member" means a member of a recognised stock exchange.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Briefly discuss the powers of stock exchange under the Securities Contracts (Regulation) Act, 1956.
2. The Central Government has directed a recognised stock exchange to suspend its business in the interest of the trade or public? Describe the powers of Central Government in accordance with SEBI (Securities Contracts (Regulation) Act, 1956.
3. ABC Ltd. is listed on National Stock Exchange of India Limited (NSE) and further planning to list its shares on BSE under Direct Listing. Can company list its shares on both stock exchanges? If yes, what are the requirements to be made for such listing on BSE in accordance with the SEBI (Securities Contracts (Regulation) Act, 1956) and rules made thereunder?
4. XYZ Ltd. has filed listing application to stock exchange. Stock exchange rejected the listing application on the ground that the listing norms had not been complied with. You as a Company Secretary prepare a note to your Managing Director in the light of rights available with the company.
5. ABC Ltd. applied for listing of instruments in a recognized stock exchange. However, permission was refused by the stock exchange. Can the company appeal to SAT against such refusal? Explain.
6. 'A stock exchange on its own can delist any security thereon'. Explain how Recognized Stock Exchange delists any securities listed thereon under Securities Contracts (Regulations) Rules, 1957.
7. What are the provisions for continuous listing requirement under Securities Contracts (Regulation) Rules, 1957? List any six methods for achieving minimum public shareholding by a listed company.

LIST OF FURTHER READINGS

- SEBI Notifications
- SEBI Circulars
- SAT Orders
- SEBI Orders

OTHER REFERENCES (Including Websites and Video Links)
• *https://www.sebi.gov.in/* • *http://sat.gov.in/* • *https://www.nseindia.com/* • *https://www.bseindia.com/*

Securities and Exchange Board of India

Lesson 4

KEY CONCEPTS

■ Securities and Exchange Board of India ■ Securities Appellate Tribunal (SAT) ■ Adjudications ■ Settlement ■ Recovery ■ Offences ■ Penalty ■ Securities ■ Investigations ■ SCORES ■ Informal Guidance ■ No-action letters ■ Imperative Letters

Learning Objectives

To understand:

- Objectives of SEBI
- Regulatory prescriptions on establishment and incorporation of SEBI
- Functions and powers of SEBI
- Regulatory prescriptions on Registration of Intermediaries
- Penalties and its adjudications
- Regulatory prescriptions on establishment and appeal to Securities Appellate Tribunal (SAT)
- Powers of the Central Government
- SCORES Framework
- Informal Guidance Scheme

Lesson Outline

- Introduction
- Establishment and Objective of SEBI
- Functions and Powers of the SEBI
- Registration of Intermediaries
- Penalties and Adjudications
- Settlement of Administrative and Civil Proceedings
- Establishment of Securities Appellate Tribunal
- Appeal to Securities Appellate Tribunal and its procedure
- Appeal to Supreme Court
- Offences & Punishments
- SCORES
- SEBI Mobile Application
- SEBI (Informal Guidance) Scheme 2003
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- Securities and Exchange Board of India Act, 1992
- SEBI (Informal Guidance) Scheme, 2003

INTRODUCTION

The Securities and Exchange Board of India was established on April 12, 1992 in accordance with the provisions of the Securities and Exchange Board of India Act, 1992. The first statutory regulatory body that the Government of India set up post the reforms of 1991 was the Securities and Exchange Board of India (SEBI).

The SEBI –

- can specify the matters to be disclosed and the standards of disclosure required for the protection of investors in respect of issues;
- can issue directions to all intermediaries and other persons associated with the securities market in the interest of investors or of orderly development for securities market; and
- can conduct enquiries, audits and inspection of all concerned and adjudicate offences under the Act.

Since its establishment in 1992, a lot of initiatives have been taken to protect the interests of the investors. SEBI under the SEBI Act, 1992 has been empowered to frame subordinate legislation and to investigate wrong doing, impose relevant penalties and to conduct search and seizure operations.

In short, it has been given necessary autonomy and authority to regulate and develop an orderly securities market. As per Section 1 of the Act, this Act may be called the Securities and Exchange Board of India Act, 1992. It extends to the whole of India. It shall be deemed to have come into force on the 30th day of January, 1992.

OBJECTIVES OF SEBI



SEBI ACT, 1992

Establishment and Incorporation of SEBI

Section 3 of the SEBI Act provides that there shall be a Board by the name of the Securities and Exchange Board of India (SEBI) established as -

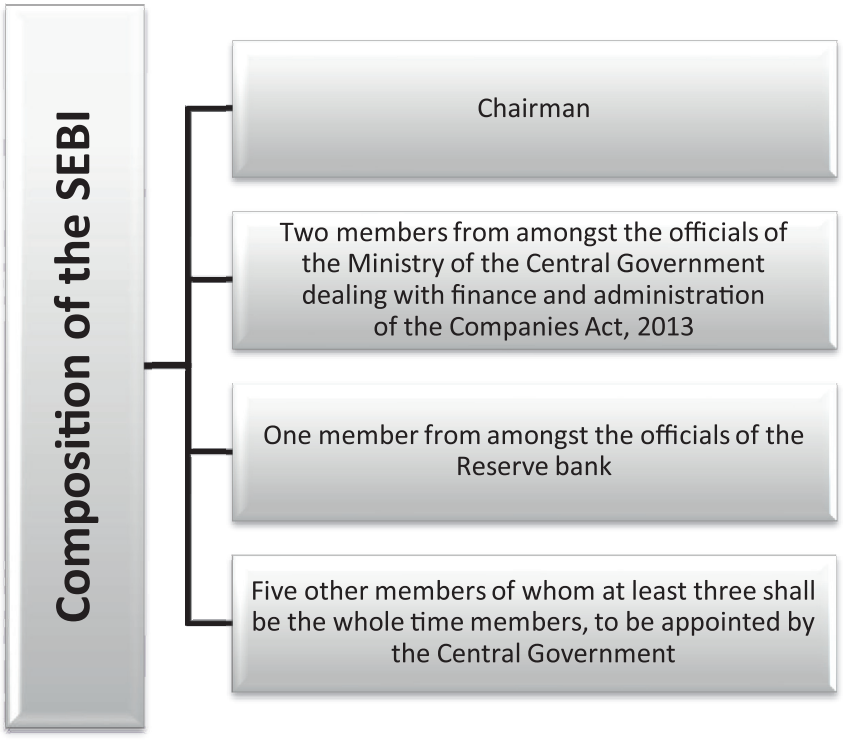
- a body corporate;

- having perpetual succession and a common seal;
- with power to acquire, hold and dispose of property, both movable and immovable; and
- to contract, and shall, by the said name, sue or be sued;
- the head office of the Board shall be at Mumbai.

Further, the Board may establish offices at other places in India.

MANAGEMENT OF THE SEBI

Section 4(1) of the SEBI Act provides that the SEBI shall consist of the following members (appointed by the Central Government), namely:



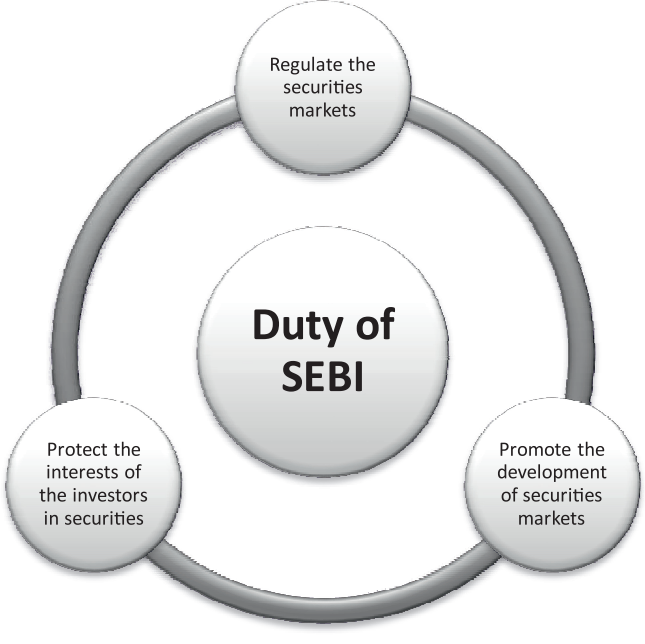
- The general superintendence, direction and management of the affairs of the Board shall vest in a Board of members, which may exercise all powers and do all acts and things which may be exercised or done by the Board.
- The Chairman shall also have powers of general superintendence and direction of the affairs of the Board and may also exercise all powers and do all acts and things which may be exercised or done by that Board.
- The Chairman and the other members shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance, economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to the Board.

FUNCTIONS AND POWERS OF THE SEBI

Chapter IV of the SEBI Act, 1992 deals with the powers and functions of SEBI.

- **Section 11** Functions of the SEBI
- **Section 11A** To Regulate or Prohibit Issue of Prospectus, Offer Document or Advertisement Soliciting Money for Issue of Securities
- **Section 11AA** To Regulate Collective Investment Schemes
- **Section 11B** Power to Issue Directions and Levy Penalty
- **Section 11C** Investigation
- **Section 11D** Cease and Desist Proceedings

Functions of the SEBI



Section 11 of the Act lays down that it shall be the duty of SEBI to protect the interests of the investors in securities and to promote the development of, and to regulate the securities markets by such measures as it thinks fit.

Section 11(2) provides that the measures may provide for –

Measures

- Regulating the business in stock exchanges and any other securities markets;
- Registering and regulating the working of stock brokers, sub-broker, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;
- Registering and regulating the working of the depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the SEBI, may by notification specify in this behalf;
- Registering and regulating the working of venture capital funds and collective investment schemes, including mutual funds;
- Promoting and regulating self-regulatory organisations;
- Prohibiting fraudulent and unfair trade practices relating to securities markets;
- Promoting investors' education and training of intermediaries of securities markets;
- Prohibiting insider trading in securities;
- Regulating substantial acquisition of shares and takeover of companies;
- Calling for information, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities markets, intermediaries and self regulatory organisations in the securities market;
- Calling for information and records:
    - from any person including any bank or any authority or board or corporation established or constituted by or under any central or state Act, which in the opinion of the SEBI, shall be relevant to any investigation or inquiry by the SEBI in respect of any transaction in securities;
    - from any such agencies, as may be specified by the SEBI, such information as may be considered necessary by it for the efficient discharge of its functions;
    - from other authorities, whether in India, or outside India having functions similar to those of the SEBI, in the matters relating to the prevention or detection of violation in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard.
- Performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956, as may be delegated to it by the Central Government;
- Levying fees or other charges for carrying out the purposes of this section;
- Conducting research for the above purposes;
- Calling from or furnishing to any such agencies, as may be specified by the SEBI such information as may be considered necessary by if for the efficient discharge of its functions;
- Performing such other functions as may be prescribed.

Powers with respect to inspection of Books and Documents

Section 11(2A) prescribes that SEBI may take measures to undertake inspection of any book, or register, or other document or record of any listed public company or a public company which intends to get its securities listed on any recognised stock exchange where SEBI has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market.

SEBI is vested with the same power as that of Civil Court

Section 11(3) of the SEBI Act provides that the SEBI has been vested with the same powers as are available to a Civil Court under the Code of Civil Procedure, 1908 for trying a suit in respect of the following matters:

(i) the discovery and production of books of account and other documents at such place and such time indicated by SEBI.

(ii) summoning and enforcing the attendance of persons and examining them on oath.

(iii) inspection of any books, registers and other documents of any person listed referred in section 12 of the Act at any place.

(iv) inspection of any book or register or other document or record of any listed company or a public company which intends to get its securities listed on any recognized stock exchange.

(v) issuing commissions for the examination of witnesses or documents.

Order by SEBI

As per Section 11(4), the SEBI, may, by an order or for reasons to be recorded in writing, in the interest of investors or securities market take any of the following measures either pending investigation or inquiry or on completion of such investigation or enquiry namely:

(a) suspend the trading of any security in a recognised stock exchange;

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self regulatory organisation from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

(e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder.

However, the SEBI shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply.

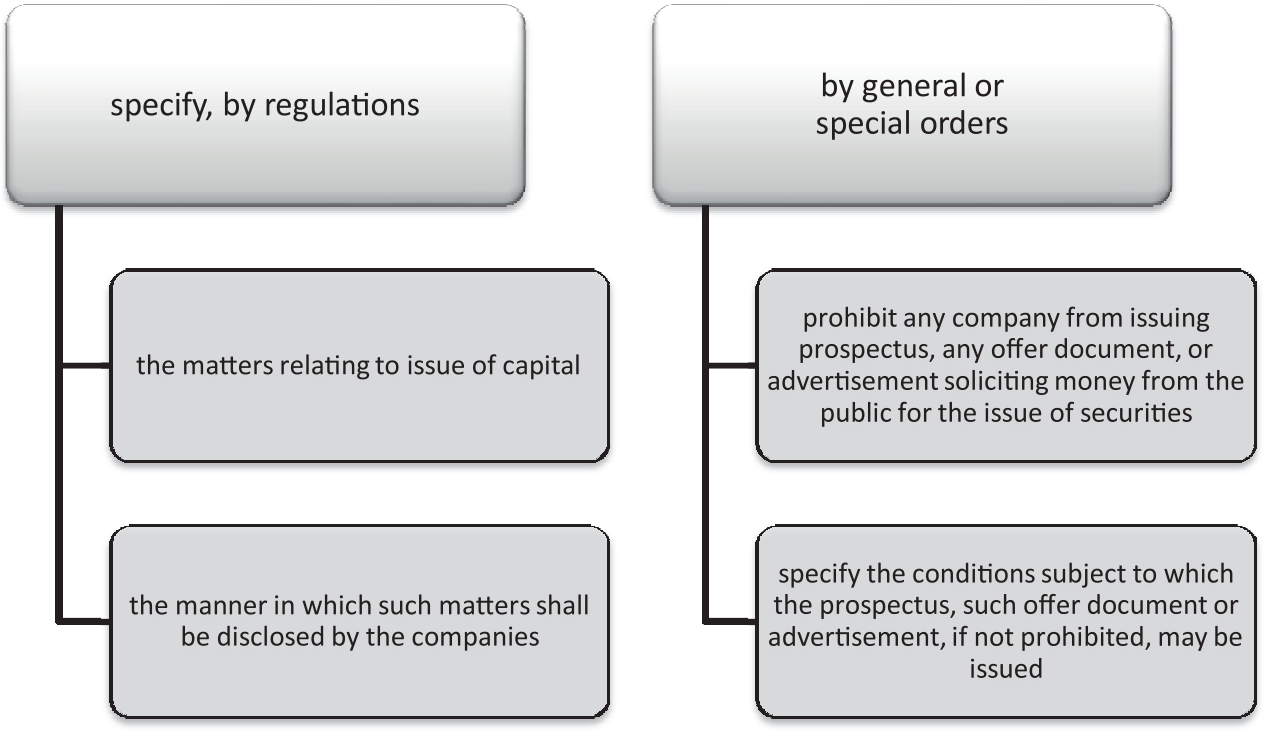
Further, only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation.

The SEBI shall give an opportunity of hearing to such intermediaries or persons concerned either before or after passing such orders.

Power of the SEBI to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities

(1) As per the section 11A, the SEBI may, for the protection of investors, –



Power to Regulate Collective Investment Schemes

Section 11AA (1) of the SEBI Act, provides that any scheme or arrangement which satisfies the conditions referred to in sub-section (2) or sub-section (2A) shall be a collective investment scheme.

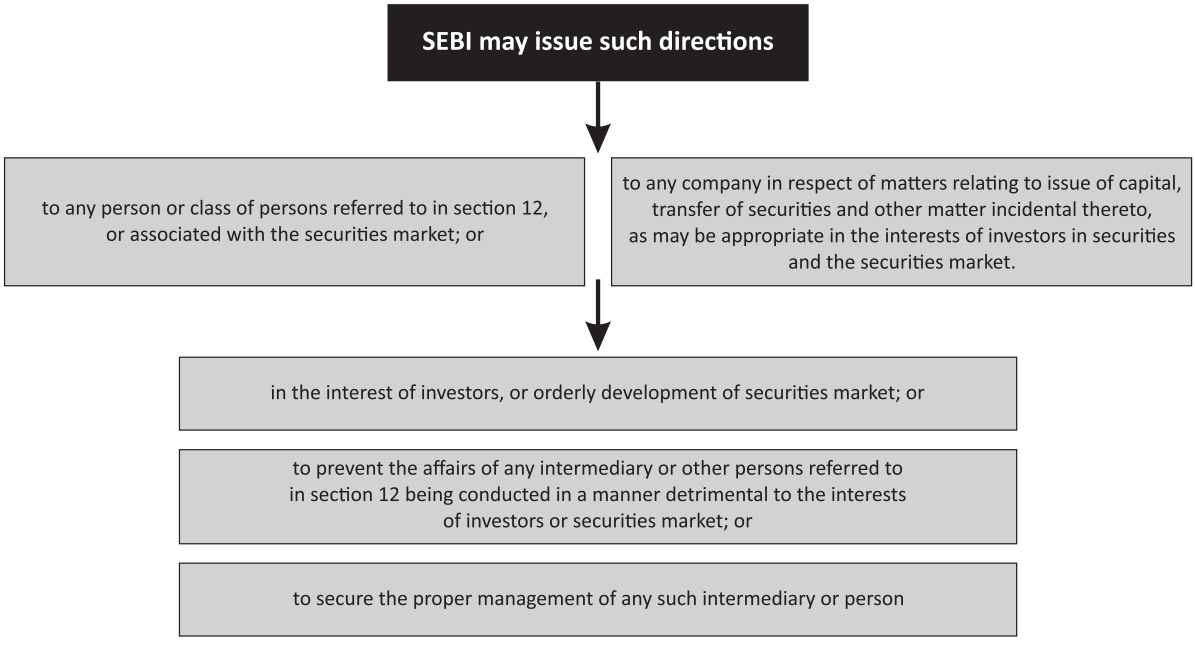
However, any pooling of funds under any scheme or arrangement, which is not registered with the SEBI or is not covered under sub-section (3), involving a corpus amount of Rs. 100 crore or more shall be deemed to be a collective investment scheme.

Note: This section has been discussed in Lesson No. 18 of this study.

Power to issue directions and levy penalty

Issue of Directions

Section 11B of the Act provides that if the SEBI is satisfied, after making or causing to be made an enquiry that it is necessary:



The power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

Investigations

(1) Grounds for Investigation

Section 11C of the Act provides that where the SEBI has reasonable ground to believe that:

- the transactions in securities are being dealt within a manner detrimental to the investors or the securities market; or
- any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by SEBI thereunder;

it may, at any time by order in writing, direct any person specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the SEBI.

(2) Duty to produce Accounts and Records

It is the duty of -

- every manager, managing director, officer and other employee of the company;
- every intermediary; or
- every person associated with the securities market;

to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) Powers of Investigating Authority

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

(4) Period of Custody

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

However, the investigating officer may call for any book,, register, other document and record if they are needed again. Further, if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced before the Investigating Authority, it shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced.

(5) Examination on oath

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

(6) Failure in compliance

If any person fails without reasonable cause or refuses	***Person shall be punishable with***
• to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty to produce; or • to furnish any information which it is his duty to furnish; or • to appear before the Investigating Authority personally when required to do so or to answer any question which is put to him by the Investigating Authority; or • to sign the notes of any examination.	• imprisonment for a term which may extend to 1 year; or • with fine, which may extend to 1 crore rupees; or • with both; and • also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

(7) Notes of examination

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

(8) Seizure of Records

Application to the Magistrate or Judge of such designated Court for an order for the Seizure of records

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

The authorised officer may requisition the services of any police officer or any office of the Central Government, or of both, to assist him for all or any of the purposes specified above and it shall be the duty of every such officer to comply with such requisition.

(9) Order of the Magistrate or Judge of such designated Court authorising the Investigating Authority

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

(a) to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and records are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize books, registers and other documents and records, it consider necessary for the purpose of the investigation.

Exemptions

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

(10) Returning of records

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

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

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

CASE LAWS

18.03.2021	***Mr. Neeleshkumar Radheshyam Lahoti (Noticee)*** ***(In the matter of Supreme Tex Mart Limited) vs. Securities and Exchange Board of India (SEBI)***	***Adjudicating Officer, SEBI***

Every person from whom information is sought should fully co-operate with the investigating officer and promptly produce all documents, records, information as may be necessary for the investigations.

Facts of the Case:

SEBI conducted an investigation into the affairs of Supreme Tex Mart Limited (STML/ Company) for the period June 01, 2016 to October 31, 2016. During the course of investigation, the Investigating Authority (IA) of SEBI issued summons under Section 11C(2) read with Section 11C(3) of the SEBI Act, 1992 to Mr. Neeleshkumar Radheshyam Lahoti (Noticee) seeking certain documents/ information. The Noticee replied to the summons and submitted certain information. However, it was alleged that the Noticee submitted incorrect information. In view of the same, SEBI initiated adjudication proceedings under Section 15HB of the SEBI Act against the Noticee.

SEBI Order:

SEBI imposed a penalty of 8 lakh on the Noticee under the provisions of Section 15HB of the SEBI Act. It was established that the Noticee provided incorrect information to the Investigating Authority (IA) of SEBI and hampered the process of investigation thus violating the provisions of Section 11C(2) read with Section 11C(3) of the SEBI Act, 1992. It was a deliberate attempt of Noticee to misguide investigation. Section 11C(3) of the SEBI Act empowers the IA to obtain records, documents, information etc., as considered relevant or necessary for the purpose of investigation. Section 11C(2) of SEBI Act casts an obligation on every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, such records, documents, information which are in their custody or power.

Cease and Desist Proceedings

Section 11D deals with the cease and desist powers of the SEBI. If the SEBI finds, after causing an inquiry to be made, that any person has violated, or is likely to violate any provisions of this Act, or any rules or regulations made thereunder, it may pass an order requiring such person to cease and desist from committing or causing such violation.

However, the SEBI shall not pass such order in respect of any listed public company or a public company which intends to get its securities listed on any recognized stock exchange unless SEBI has reasonable grounds to believe that such company has indulged in insider trading or market manipulation.

CASE LAWS

30.01.2024	***Mr. Nishaan Singh (Noticee)*** ***(In the matter of Unregistered Portfolio Management Services by Mr. Nishaan Singh, Proprietor of Sanbun Investments)***	***SEBI***

SEBI Order under Sections 11 (1), 11 (4), 11B (1) and 11D read with Section 12 (1) OF the Securities and Exchange Board of India Act, 1992 and Regulation 3 of the SEBI (Portfolio Managers) Regulations, 2020

BACKGROUND OF THE CASE

SEBI had received a complaint vide email dated October 6, 2022 from Mr. Kaif Khan ("Complainant") against M/s. Sanbun Investments, which is the sole proprietorship concern of Mr. Nishaan Singh ("Sanbun/ Nishaan / Noticee"). The Complaint interalia alleged the following:

(a) Mr. Nishaan Singh, approached him (Mr. Kaif Khan) and introduced himself as founder of Sanbun Investments, further he was informed that Sanbun, is a registered Investment Advisory and Portfolio Management firm. Mr. Nishaan Singh falsely and fraudulently represented himself as registered with SEBI and National Stock Exchange of India Ltd. and duped him of Rs. 1.21 Crore.

(b) Mr. Nishaan Singh informed that he, through Sanbun Investments, manages Investment Portfolio of the clients and the minimum funds for securities required to avail such services is Rs. 1 cr. Further, he was informed that Mr. Nishaan Singh would charge 50% of profit as professional fees. Mr. Nishaan Singh sought login details of demat accounts of complainant to execute trade as part of its services. The said details were shared by him on March 9, 2022.

(c) He has been duped by Sanbun Investments and Mr. Nishaan Singh by making false and fraudulent representation that they are SEBI registered Portfolio Manager. He has become a victim of the fraudulent activities of the Noticee.

(d) On April 24, 2022, an agreement was executed with Mr. Nishaan Singh. The said agreement mentions Mr. Nishaan Singh as a registered portfolio manager regulated by SEBI. Around May 2022, his holdings amounting to Rs.1.2 Cr., were reduced to approximately 20% of initial holdings.

SEBI Directions

SEBI issue the following directions:

(a) The Noticee shall cease and desist from acting as or holding himself out to be a Portfolio Manager, whether using 'Sanbun Investment' or otherwise. He shall cease to solicit or undertake such activity or any other unregistered activity in the securities market, directly or indirectly, in any manner whatsoever;

(b) The Noticee shall within a period of three months from the date of coming into force of this order refund Rs. 16,19,83,314.61/- received from clients and/or investors, as fees or consideration or in any other form, in respect of their unregistered portfolio management activities;

(c) The Noticee shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact person such as name(s), address(es) and contact detail(s) of person(s) to be approached for refund, within 15 days from the date of receipt of this order;

(d) The repayments to the complainants and/or investors shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trail to identify the beneficiaries of repayments;

(e) The Noticee is prevented from selling their assets, properties and holding of mutual funds/shares/ securities held by him in demat and physical form except for the sole purpose of making the refunds as directed above. Further, the banks are directed to allow debit only for the purpose of making refunds to the clients/ investors/ complainants who were availing the portfolio management services from the Noticee, as directed in this Order, from the bank accounts of the Noticee;

(f) After completing the aforesaid repayments, the Noticee shall file a report of such completion with SEBI;

(g) The remaining balance amount shall be deposited with SEBI which shall be kept in an interest bearing escrow account for a period of 1 (one) year for distribution to clients/investors who were availing the portfolio manager services from the Noticee. Thereafter, the remaining amount, if any, shall be deposited in the Investors Protection and Education Fund, maintained by SEBI;

(h) The Noticee is debarred from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of two (2) years from the date of this order or till the expiry of two (2) years from the date of completion of refunds to complainants/ investors as directed above, whichever is later;

(i) The Noticee shall not undertake, either during or after the expiry of the period of debarment/ restraint, either directly or indirectly, portfolio management services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws.

Power to Make Regulations

As per Section 30 of SEBI Act, 1992, the SEBI may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act. In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :–

- the times and places of meetings of the Board and the procedure to be followed at such meetings under subsection (1) of section 7 including quorum necessary for the transaction of business;
- the terms and other conditions of service of officers and employees of the SEBI under sub-section (2) of section 9;
- the matters relating to issue of capital, transfer of securities and other matters incidental thereto and the manner in which such matters shall be disclosed by the companies under section 11A;
- the utilisation of the amount credited under sub-section (5) of section 11;
- the fulfilment of other conditions relating to collective investment scheme under subsection (2A) of section 11AA;
- the conditions subject to which certificate of registration is to be issued, the amount of fee to be paid for certificate of registration and the manner of suspension or cancellation of certificate of registration under section 12;
- the terms determined by the SEBI for settlement of proceedings under sub-section (2) and the procedure for conducting of settlement proceedings under sub-section (3) of section 15JB;
- any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

POWERS OF SEBI NOT TO APPLY TO INTERNATIONAL FINANCIAL SERVICES CENTRE

Section 28C provides that the powers exercisable by the SEBI under this Act,—

(a) shall not extend to an International Financial Services Centre set up under sub-section (1) of section 18 of the Special Economic Zones Act, 2005;

(b) shall be exercisable by the International Financial Services Centres Authority established under subsection (1) of section 4 of the International Financial Services Centres Authority Act, 2019,

in so far as regulation of financial products, financial services and financial institutions that are permitted in the International Financial Services Centres are concerned.

REGISTRATION OF INTERMEDIARIES

Chapter V of the Act provides for registration of various intermediaries such as stock broker, sub-broker, share transfer agents etc.

Section 12(1) of the Act provides that the following intermediaries are required to obtain a registration certificate from the SEBI to buy, sell or deal in securities :

- Stock-Broker
- Sub-Broker
- Share Transfer Agent
- Banker to an issue
- Trustee of Trust Deed
- Registrar to an Issue
- Merchant Banker
- Underwriter
- Portfolio Manager
- Investment Adviser
- Depository
- Depository Participant
- Custodian of Securities
- Foreign Institutional Investor
- Credit Rating Agency
- Such other intermediary

(Above intermediaries are discussed in Lesson No. 6 of the study)

A person shall not sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the SEBI in accordance with the regulations.

It is clarified by the SEBI that a collective investment scheme or mutual fund shall not be include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment besides the component of insurance issued by an insurer.

A person shall not sponsor or cause to be sponsored or carry on or cause to be carried on the activity of an alternative investment fund or a business trust as defined in clause (13A) of section 2 of the Income-tax Act, 1961, unless a certificate of registration is granted by the SEBI in accordance with the regulations made under this Act.

Manner of application for registration

Every application for registration would in such manner and on payment of such fees as may be determined by the SEBI Regulations.

Suspension/cancellation of a certificate of registration

The SEBI may, by order, suspend or cancel a certificate of registration in such manner as may be determined by the SEBI Regulations. However, no such order shall be made unless the person concerned has been given a reasonable opportunity of being heard.

PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING ETC.

Chapter VA of the Act deals with prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

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

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognized stock exchange in contravention of the regulations made under this Act.

PENALTIES AND ADJUDICATION

Chapter VIA of the SEBI Act deals with penalties which can be imposed under the Act for various failures, defaults, non-disclosure and other offences.

It may be recalled that Section 11(2)(i) empowers SEBI to call for information and conduct enquiries and audits of the stock exchanges, mutual funds, other persons associated with securities markets, intermediaries and self-regulatory organisations in the security market.

Also Section 11(2)(ia) of the Act requires calling for information and record from any bank or any other authority or SEBI or corporation established or constituted by or under any central, state or provincial Act in respect of any transaction in securities which is under investigation or inquiry by the SEBI.

Penalties for Failures

Section	*Contravention*	*Penalty*
15A	Failure to furnish information, return, etc.	Penalty of at least 1 lakh rupees but may extend to 1 lakh rupees per day during which such failure continues, subject to a maximum of 1 crore rupees.

Section	*Contravention*	*Penalty*
15B	Failure by any person to enter into agreement with clients.	Penalty of at least 1 lakh rupees but may extend to 1 lakh rupees per day during which such failure continues, subject to a maximum of 1 crore rupees.
15C	Failure to redress investors' grievances.	Penalty of at least 1 lakh rupees but may extend to 1 lakh rupees per day during which such failure continues, subject to a maximum of 1 crore rupees.
15D	Certain defaults in case of mutual funds.	Penalty of at least 1 lakh rupees but may extend to 1 lakh rupees per day during which such failure continues, subject to a maximum of 1 crore rupees.
15E	Failure to observe rules and regulations by an asset management company.	Penalty of at least 1 lakh rupees but may extend to 1 lakh rupees per day during which such failure continues, subject to a maximum of 1 crore rupees.
15EA	In case of alternative investment funds, infrastructure investment trusts and real estate investment trusts fails to comply with the regulations made by the SEBI or directions issued by the SEBI.	Penalty of at least 1 lakh rupees but may extend to 1 lakh rupees per day during which such failure continues, subject to a maximum of 1 crore rupees or 3 times the amount of gains made out of such failure, whichever is higher.
15EB	In case investment adviser and research analyst fails to comply with the regulations made by the SEBI or directions issued by the SEBI.	Penalty of at least 1 lakh rupees but may extend to 1 lakh rupees per day during which such failure continues, subject to a maximum of 1 crore rupees.
15F	Default in case of stock brokers. If any stock broker- ● fails to issue contract notes in the form and manner specified by the stock exchange of which such broker is a member.	● Penalty of at least 1 lakh rupees but which may extend to 1 crore rupees for which the contract note was required to be issued by that broker.
	● fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the period specified in the regulations.	● Penalty of at least 1 lakh rupees but may extend to 1 lakh rupees per day during which such failure continues, subject to a maximum of 1 crore rupees.
	● charges an amount of brokerage which is in excess of the brokerage specified in the regulations.	● penalty of at least 1 lakh rupees but which may extend to five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

Section	*Contravention*	*Penalty*
15G	Insider Trading. If any insider who,— ● either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or ● communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or ● counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information.	Penalty of at least 10 lakh rupees but which may extend to 25 crore rupees or 3 times the amount of profits made out of insider trading, whichever is higher.
15H	Non-disclosure of acquisition of shares and takeovers.	Penalty of at least 10 lakh rupees but which may extend to 25 crore rupees or 3 times the amount of profits made out of such failure, whichever is higher.
15HA	Fraudulent and unfair trade practices.	Penalty of at least 5 lakh rupees but which may extend to 25 crore rupees or 3 times the amount of profits made out of such failure, whichever is higher.
15HAA	Alteration, destruction, etc., of records and failure to protect the electronic database of Board.	Penalty of at least 1 lakh rupees but which may extend to 10 crore rupees or 3 times the amount of Profits made out of such act, whichever is higher.
15HB	Contravention where no separate penalty has been provided.	Penalty of at least 1 lakh rupees but which may extend to 1 crore rupees.

ADJUDICATIONS

Section 15-I deal with the SEBI's power to adjudicate.

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

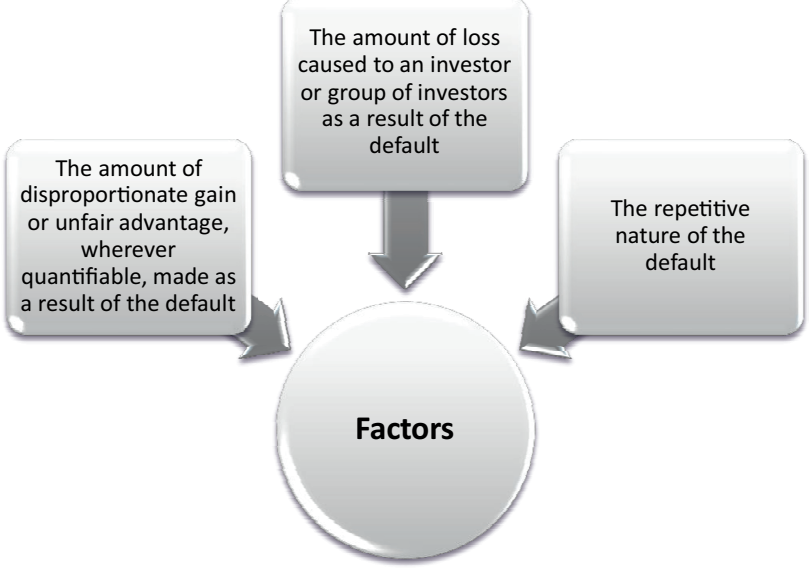
The adjudicating officer has powers to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry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

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

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

Factors to be taken into account while adjudging quantum of penalty

Section 15J lays down that while adjudging the quantum of penalty, the SEBI or the adjudicating officer shall have due regard to the following factors, viz. –



Section 15JA provides that all sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

CASE LAWS

28.02.2019	***Adjudicating Officer, SEBI (Appellant) vs. Bhavesh Pabari (Respondent)***	***Supreme Court of India***

The Supreme Court of India ruled in Adjudicating Officer, SEBI v. Bhavesh Pabari granting back the discretionary power to Adjudicating Officer (AO) under supervision and scrutiny of the court.

Facts of the Case

The SEBI Act, as the object of its enactment would indicate, was enacted "to provide for the establishment of SEBI to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto."

Sections 15 A to 15 HA of the SEBI Act, 1992 are the penalty provisions whereas Section 15 I deals with the power of adjudication and Section 15 J enumerates the "factors to be taken into account by the Adjudicating Officer" while adjudging the quantum of penalty.

Section 15J has been a part of SEBI since 1992. Section 15J lays down that while adjudging the amount of penalty, the adjudicating officer shall have due regard to the factors which are as follows:

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation- For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15-F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

The questions referred in the given case can be enumerated and summarized as follows:

(i) Whether the conditions stipulated in clauses (a), (b) and (c) of Section 15J of the Securities and Exchange Board of India Act, 1992 are exhaustive to govern the discretion in the Adjudicating Officer to decide on the quantum of penalty or the said conditions are merely illustrative?

(ii) Whether the power and discretion vested by Section 15J of the SEBI Act to decide on the quantum of penalty, regardless of the manner in which the first question is answered, stands eclipsed by the penalty provisions contained in Section 15A to Section 15HA of the SEBI Act?

The Court held that-

- The provisions of clauses (a), (b) and (c) of Section 15J are illustrative in nature and have to be taken into account whenever such circumstances exist. But this is not to say that there can be no other circumstance(s) beyond those enumerated in clauses (a), (b) and (c) of Section 15J that the Adjudicating Officer is precluded in law from considering while deciding on the quantum of penalty to be imposed.

  Conditions stipulated in clauses (a), (b) and (c) of Section 15J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty.

- Insofar as the second question is concerned, if the penalty provisions are to be understood as not admitting of any exception or discretion and the penalty as prescribed in Section 15 A to Section 15-HA of the SEBI Act is to be mandatorily imposed in case of default/failure, Section 15J of the SEBI Act would stand obliterated and eclipsed. Hence, the question referred. Sections 15-A (a) to 15 HA have to be read along with Section 15J in a manner to avoid any inconsistency or repugnancy.

01.07.2020	***India Ratings and Research Private Ltd. (Appellant) vs. SEBI (Respondent)***	***Securities Appellate Tribunal***

SEBI can call for and examine records of any proceedings if it considers the orders passed by the adjudicating officer erroneous and not in the interests of securities markets. After making inquiry, SEBI may enhance the quantum of penalty imposed, if the circumstances of the case so justify.

Facts of the Case:

The Adjudicating Officer by the impugned order dated 26th December, 2019 had imposed a penalty of Rs.25 lakhs upon the Appellant for violating the Code of Conduct to the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 while granting credit rating to IL&FS for the financial year 2018-19.

SEBI issued a second show cause notice dated 28th January, 2020 by exercising powers under Section 15I(3) of the SEBI Act directing the Appellant to show cause as to why penalty should not be enhanced as in their opinion the order of the Adjudicating Officer was not in the interest of the securities market.

"Under Section 15I(3), the SEBI can call for and examine records of proceedings if it considers the orders passed by the adjudicating officer erroneous and not in the interests of securities markets. After examining the matter, the SEBI can enhance the quantum of penalty imposed."

Misc. Application no.159 of 2020 has been filed in Appeal no.103 of 2020 praying that proceedings initiated by SEBI pursuant to the second show cause notice dated 28th January, 2020 issued under Section 15I(3) of the SEBI Act, should be stayed.

Order:

SEBI has the power to initiate proceedings under Section 15I(3) of the SEBI Act. SAT directed the Appellant to deposit a sum of Rs.25 lakhs pursuant to the impugned order dated 26th December, 2019 before the *Respondent within four weeks which would be subject to the result of the appeal.* SAT further directed that the proceedings in pursuance to the second show cause notice dated 28th January, 2020 will continue and the Respondent will pass appropriate orders after giving an opportunity of hearing to the Appellant either through physical hearing or through video conferencing but any order that is passed by the Respondent shall not be given effect to during the pendency of this appeal. Misc. Application is accordingly disposed of.

Settlement of Administrative and Civil Proceedings

Section 15JB deals with settlement of administrative and civil proceeding by SEBI.

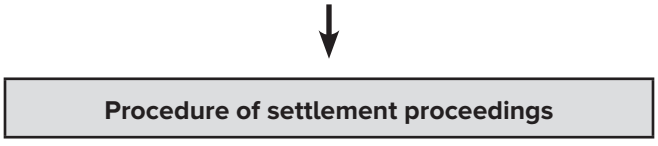
Filing of an application

Any person against where any proceedings have been initiated or may be initiated under section 11, Section 11B, section 11D, section 12(3) or section 15I, may file an application in writing to the SEBI proposing for settlement of proceeding initiated or to be initiated for the alleged defaults.

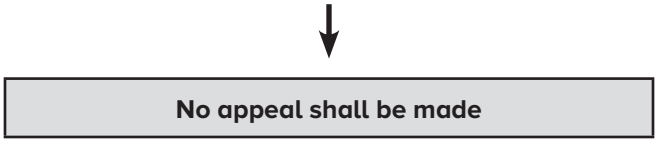
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SEBI may consider for settlements of defaults

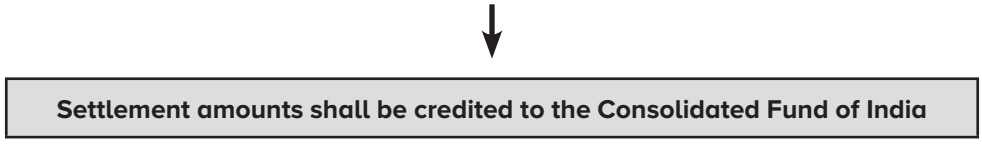
The SEBI, may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such by the defaulter or on such other terms as may be determined by the SEBI in accordance with the regulations made under this Act.



The settlement proceedings shall be conducted in accordance with the procedure specified in the regulations made under this Act.



No appeal shall lie under section 15T against any order passed by the SEBI or adjudicating officer as the case may be.



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

Case Snippets

1. JM Financial Ltd's (JMFL) former vice president on July 16, 2020 had settled an alleged insider trading case with SEBI by paying an amount of Rs 15 lakh towards settlement charges. During the span of investigation, SEBI observed that he had entered into two off-market trades in shares of JMFL and had not obtained preclearance from JMFL for the two off-market trades. Besides, he had entered the off-market transaction when the trading window was closed.
2. Shareholders of the Kapashi Commercials Ltd. on 10th July, 2020, a BSE Listed company, have settled with SEBI a case of alleged violation of takeover norms by paying over Rs 34 lakh amount towards settlement terms. They had filed an application with the SEBI proposing to settle the case for alleged violation of SAST (Substantial Acquisition of Shares and Takeovers) Regulations in respect of change in their shareholding in Kapashi Commercials. It was alleged that the four individuals made delayed disclosures to the company and BSE, about the change in their shareholding in Kapashi Commercials.
3. Northward Financial Planners (NFP) and its partners on July, 09, 2020 have settled with SEBI a case related to alleged violation of Investment Advisers regulations upon payment of Rs. 21.67 lakh towards settlement charge. NFP and partners were carrying on investment advisory activities since F.Y. 2013-14 and filed application for SEBI registration after a delay of over 4 years and continued to carry on investment advisory activity without seeking registration.

RECOVERY OF AMOUNTS

SECTION 28A(1) PROVIDES THAT IF A PERSON			
Fails to pay the penalty imposed under this Act	Fails to comply with any direction of the SEBI for refund of monies or	Fails to comply with a direction of disgorgement order issued under section 11B or	Fails to pay any fees due to the SEBI

The Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate).

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

(a) attachment and sale of the person's movable property;

(b) attachment of the person's bank accounts;

(c) attachment and sale of the person's immovable property;

(d) arrest of the person and his detention in prison;

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

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

Sub-section (2) empowered the Recovery Officer to seek the assistance of the local district administration while exercising the powers.

The recovery of amounts by a Recovery Officer, pursuant to non-compliance with any direction issued by the SEBI under section 11B, shall have precedence over any other claim against such person.

Explanation 1 - The person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person.

Continuance of proceedings

Section 28B (1) lays down that where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased.

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

For the purposes of sub-section (1), –

(a) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under

this Act, except a proceeding for levy of penalty, initiated against the deceased before his death, shall be deemed to have been initiated against the legal representative, and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased and all the provisions of this Act shall apply accordingly;

(b) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the deceased if he had survived, may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.

Every legal representative shall be personally liable for any sum payable by him in his capacity as legal representative if, while his liability for such sum remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

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

Explanation.– For the purposes of this section "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who inter-meddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.

SECURITIES APPELLATE TRIBUNAL (SAT)

In order to afford proper appellate remedies, Chapter VIB of the SEBI Act provides for the establishment of the Securities Appellate Tribunals (SAT) to consider appeals against the SEBI's orders, or penalties.

Establishment of Securities Appellate Tribunals

- As per Section 15K, the Central Government is empowered to establish a Tribunal by notification, to be known as the Securities Appellate Tribunal to exercise the jurisdiction, power and authorities conferred on it or under the Act or any other law for the time being in force.
- The Central Government shall also specify in the notification the matters and places in relation to which the Securities Appellate Tribunal may exercise jurisdiction.

Composition of Securities Appellate Tribunal

According to Section 15 L, the Securities Appellate Tribunal shall consist of a Presiding Officer and such number of Judicial Members and Technical Members as the Central Government may determine, by notification, to exercise the powers and discharge the functions conferred on the Securities Appellate Tribunal under this Act or any other law for the time being in force.

Subject to the provisions of this Act,—

(a) the jurisdiction of the Securities Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Presiding Officer of the Securities Appellate Tribunal with two or more Judicial or Technical Members as he may deem fit;

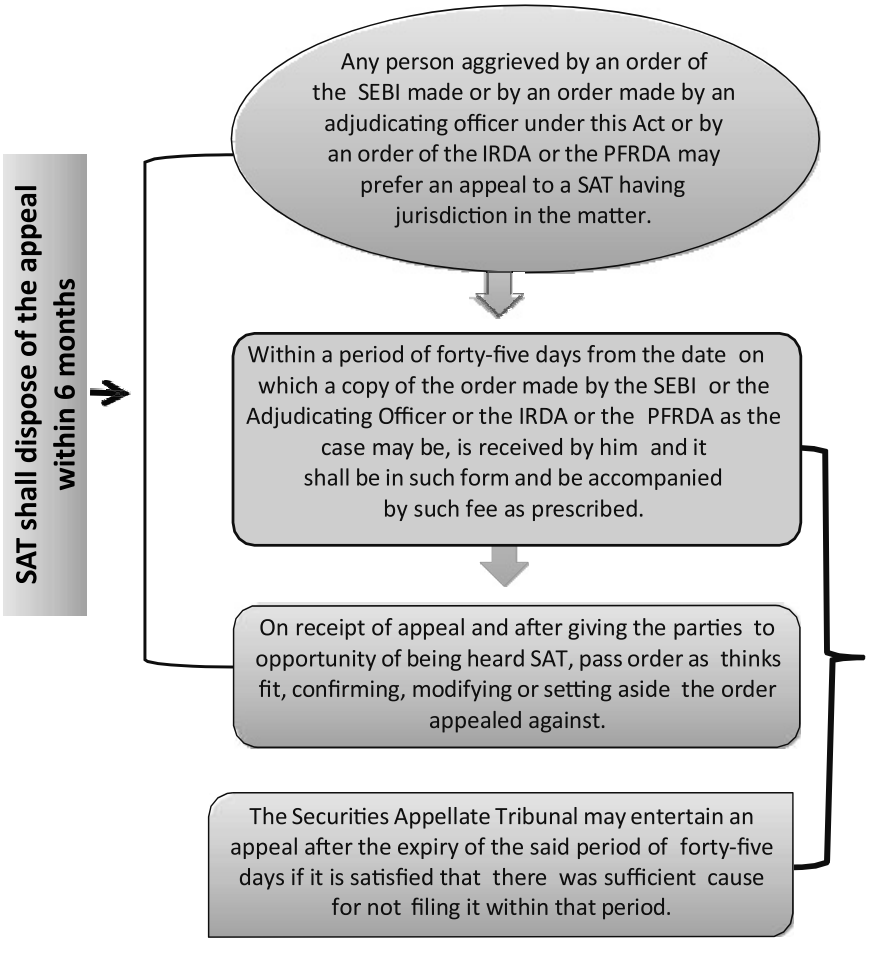
However, every Bench constituted shall include at least one Judicial Member and one Technical Member;

(c) the Benches of the Securities Appellate Tribunal shall ordinarily sit at Mumbai and may also sit at such other places as the Central Government may, in consultation with the Presiding Officer, notify.

The Presiding Officer may transfer a Judicial Member or a Technical Member of the Securities Appellate Tribunal from one Bench to another Bench.

Appeal to the Securities Appellate Tribunal

Section 15T and 15U deal with the appeal procedure and powers of Securities Appellate Tribunal.



The Securities Appellate Tribunal shall send a copy of every order made by it to the SEBI or the Insurance Regulatory and Development Authority (IRDA) or the Pension Fund Regulatory and Development Authority (PFRDA), as the case may be, the parties to the appeal and to the concerned Adjudicating Officer.

Form and procedure of appeal

Rule 4 of the Securities Appellate Tribunal (Procedure) Rules, 2000 prescribed that a memorandum of appeal shall be presented in the Form by any aggrieved person in the registry of the Appellate Tribunal within whose jurisdiction his case falls or shall be sent by registered post addressed to the Registrar. 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.

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 typewritten, cyclostyled or printed neatly, legibly and numbered consecutively.

Procedure of SAT

Section 15U lays down that the Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

Powers of SAT

The Securities Appellate Tribunals shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it ex parte;

(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(h) any other matter which may be prescribed.

Every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Where benches are constituted, the Presiding Officer of the Securities Appellate Tribunal may, form time to time make provisions as to the distribution of the business of the Securities Appellate Tribunal amongst the benches and also provide for the matters which may be dealt with, by each bench.

On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Presiding Officer of the Securities Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

If a Bench of the Securities Appellate Tribunal consisting of two members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Presiding Officer of the Securities Appellate Tribunal who shall either hear the point or points himself or refer the case for hearing only on such point or points by one or more of the other members of the Securities Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the members of the Securities Appellate Tribunal who have heard the case, including those who first heard it.

Right to Legal Representation

As per Section 15V, the appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Limitation

As per the Section 15W, the provisions of the Limitations Act, 1963 shall apply to an appeal made to Securities Appellate Tribunal.

Jurisdiction of Civil Court

Section 15Y lays down that no civil court has jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Officer appointed under this Act or a Securities Appellate Tribunal under this Act is empowered by or under this Act to determine and 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 this Act.

Appeal to Supreme Court

Section 15Z lays down that any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order.

It has been provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

Question:

What is the time period for filling an appeal with SAT and Supreme Court?

Answer:

- In case of filing appeal with SAT: Within 45 days from the date of order of the copy made by the SEBI or the adjudicating officer or the IRDA or the PFRDA, as the case may be.
- In case of filing appeal with Supreme Court: Within 60 days from the date of communication of the **decision or order of SAT.**

BAR OF JURISDICTION

Section 20A lays down that -

no order passed by the SEBI or the Adjudicating Officer under this Act shall be appealable except as provided in section 15T or section 20 and

no civil court shall have jurisdiction in respect of any matter which the SEBI (or the adjudicating officer) is empowered by, or under, this Act to pass any order and

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 order passed by the SEBI or the adjudicating officer by, or under, the SEBI Act

OFFENCES (SECTION 24)

If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years or with fine which may extend to twenty five crore rupees or with both.

If any person fails to pay the penalty imposed by the Adjudicating Officer or the SEBI or fails to comply with directions or orders, he shall be punishable with imprisonment, for a term which shall not be less than one month but which may extend to ten years or with fine which may extend to twenty - five crore rupees or with both.

Section 24A provides that any offence punishable under this Act, not being an offence punishable with imprisonment only or with imprisonment and also with fine, may before or after the institutions of any proceeding, be compounded by a Securities Appellate Tribunal or a Court before which such proceedings are pending.

COGNIZANCE OF OFFENCES BY COURTS [SECTION 26]

The court shall not take cognizance of any offence punishable under this Act or any rules or regulations made thereunder save on a complaint made by the SEBI.

ESTABLISHMENT OF SPECIAL COURTS [SECTION 26A]

For providing speedy trial of offences under this Act, the Central Government may establish or designate Special Courts by notification.

Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the Judge to be appointed is working.

A person shall not be qualified for appointment as a Judge of a Special Court unless he is holding the office of a Sessions Judge or an Additional Sessions Judge immediately before such appointment.

Offences triable by Special Courts

- Section 26B stipulates that all offences under this Act, shall be taken cognizance of and tried by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

Appeal and revision

- Section 26 C provides for appeal and revision. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Application of Code to proceedings before Special Court

- Section 26D (1) provides that the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.

Transitional provisions

- Section 26E provides that any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973.

CONTRAVENTION BY COMPANIES

Section 27 lays down that:

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

Exemption:

However, this provision shall not render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

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

SCORES (SEBI COMPLAINTS REDRESS SYSTEM)

SCORES (SEBI Complaints Redress System) is an online platform designed to help investors to lodge their complaints, pertaining to securities market, online with SEBI against listed companies and SEBI registered intermediaries. All complaints received by SEBI against listed companies and SEBI registered intermediaries are dealt through SCORES.

SEBI launched a centralized web based complaints redress system 'SCORES' in June 2011. The purpose of SCORES is to provide an administrative platform for aggrieved investors, whose grievances, pertaining to the securities market, remain unresolved by the concerned listed company, registered intermediary or recognized market infrastructure institutions (MIIs).

The salient features of SCORES are:

- Centralised database of investor complaints
- Online movement of complaints to the concerned listed company or SEBI registered intermediary
- Online upload of Action Taken Reports (ATRs) by the concerned listed company or SEBI registered intermediary
- Online viewing by investors of actions taken on the complaint and its current status
- SCORES is web enabled and provides online access 24 x7

- Complaints and reminders thereon can be lodged online at the above website at anytime from anywhere
- An email is generated instantaneously acknowledging the receipt of complaint and allotting a unique
- complaint registration number to the complainant for future reference and tracking
- The complaint forwarded online to the entity concerned for its redressal.

REDRESSAL OF INVESTOR GRIEVANCES THROUGH THE SEBI COMPLAINT REDRESSAL (SCORES) PLATFORM AND LINKING IT TO ONLINE DISPUTE RESOLUTION PLATFORM. SEBI CIRCULAR NO. SEBI/HO/OIAE/IGRD/CIR/P/2023/156 DATED SEPTEMBER 20, 2023

SEBI Complaint Redressal System (SCORES) is a centralised web based complaint redressal facilitation platform launched in 2011 vide circular dated June 3, 2011 to provide a facilitative platform for the benefit of the aggrieved investors, whose grievances against (a) listed company, (b) registered intermediary or (c) market infrastructure institution ("Entities") remain unresolved. Since then, SEBI has revised and strengthened the process of facilitating the redressal of grievances by such Entities.

In order to strengthen the existing investor grievance handling mechanism through SCORES by making the entire redressal process of grievances in the securities market comprehensive by providing a solution that makes the process more efficient by reducing timelines and by introducing auto-routing and auto-escalation of complaint, SEBI notified the SEBI (Facilitation of Grievance Redressal Mechanism) (Amendment) Regulations, 2023 and amended the various SEBI regulations such as SEBI (Stock Brokers) Regulations, 1992, SEBI (Merchant Bankers) Regulations, 1992, SEBI (Registrars to an Issue and Share Transfer Agents) Regulations,1993, SEBI (Debenture Trustees) Regulations, 1993, SEBI (Bankers to an Issue) Regulations, 1994 etc., vide notification dated August 16, 2023. Consequently, it becomes necessary to revise the extant process for redressal of investors' grievances against Entities and provide for a mechanism through which Designated Bodies may monitor the process of the redressal of investors' grievances by Entities.

The Designated Bodies, as per this circular, include Listed companies, Merchant Bankers, Bankers to an Issue, Real Estate Investment Trusts, Municipal Debt Securities, Debenture Trustees, Portfolio Managers, Mutual Funds, Depository Participants, Investment Advisers, Registrars to an Issue and Share Transfer Agents, Stock Brokers, Vault Managers.

Responsibilities of the Designated Bodies

The Designated Bodies shall be responsible for:

- Monitoring and handling grievance redressal of investors against respective entities under their domain as stipulated under Schedule
- Taking non-enforcement actions including issuing advisories, caution letters for non-redressal of investor grievances and referring to SEBI for enforcement actions.

Framework for handling of investor grievances received through SCORES by Entities and monitoring of the redressal process by designated bodies.

1. Submission of the Complaint and handling of the Complaint by the Entity:

- All Entities who are in receipt of the complaints of the investors through SCORES, shall resolve the complaint within 21 calendar days of receipt of such Complaint.
- The Complaints lodged on SCORES against any Entity shall be automatically forwarded to the concerned Entity through SCORES for resolution and submission of ATR. Entities shall resolve the

Complaint and upload the ATR on SCORES within 21 calendar days of receipt of the Complaint. The ATR of the entity will be automatically routed to the complainant.

- The Complaint against the Entity shall be simultaneously forwarded through SCORES to the relevant Designated Body. The Designated Body shall ensure that the concerned Entity submits the ATRs within the stipulated time of 21 calendar days.
- The Designated Body shall monitor the ATRs submitted by the entities under their domain and inform the concerned entity to improve the quality of redressal of grievances, wherever required.
- SEBI may concurrently monitor grievance redressal process by entities and Designated Bodies.

2. First review of the Complaint:

- In case complainant is satisfied with the resolution provided by the entity vide the ATR or complainant does not choose to review the Complaint, the Complaint shall be disposed on SCORES. However, if the complainant is not satisfied, the complainant may request for a review of the resolution provided by the entity within 15 calendar days from the date of the ATR.
- In case the complainant has requested for a review of the resolution provided by the entity or the entity has not submitted the ATR within the stipulated time of 21 calendar days, the concerned Designated Body shall take cognizance of the Complaint for first review of the resolution through SCORES. The Designated Body shall take up the first review with the concerned Entity, wherever required. The concerned Entity shall submit the ATR to the Designated Body within the time stipulated by the Designated Body.
- The Designated Body may seek clarification on the ATR submitted by the Entity for the first review. The concerned Entity shall provide clarification to the respective Designated Body, wherever sought and within such timeline, as the Designated Body may stipulate. The Designated Body shall stipulate the timeline in such as manner to ensure that the Designated Body submits the revised ATR to the complainant on SCORES within 10 calendar days of the review sought.

3. Second Review of the Complaint:

- The complainant may seek a second review of the Complaint within 15 calendar days from the date of the submission of the ATR by the Designated Body. In case the complainant is satisfied with the ATR provided by the concerned Designated Body or complainant does not choose to review the Complaint within the period of 15 calendar days, the Complaint shall be disposed on SCORES.
- In case the complainant is not satisfied with the ATR provided by the Designated Body or the concerned Designated Body has not submitted the ATR within 10 calendar days, SEBI may take cognizance of the Complaint for second review through SCORES.
- SEBI may take up the review with stakeholders involved, including the concerned entity or/and Designated Body. The concerned entity or/and Designated Body shall take immediate action on receipt of second review complaint from SEBI and submit revised ATR to SEBI through SCORES, within the timeline specified by SEBI.
- SEBI or the Designated Body (as the case may be) may seek clarification on the ATR submitted by the concerned entity for SEBI review complaint. The concerned entity shall provide clarification to the respective Designated Body and/or SEBI, wherever sought and within such timeline as specified.
- The second review Complaint shall be treated as ‘resolved’ or ‘disposed’ or ‘closed’ only when SEBI ‘disposes’ or ‘closes’ the Complaint in SCORES. Hence, mere filing of ATR with respect to SEBI review complaint will not mean that the SEBI review complaint is disposed.

4. Action for failure to redress investor complaints by listed companies:

- The Designated Stock Exchange (DSE) shall levy a fine of ₹ 1000 per day per complaint on the listed company for violation of Regulation 13 (1) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (LODR Regulations) read with SEBI circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020.
- DSE shall issue a notice intimating the listed company about the levy of fines while also directing it to submit ATRs on the pending complaints and payment of the fines within 15 days from the date of such notice.
- In case the listed company fails to redress the grievances and/or pay fine levied within 15 days from the date of such notice, the concerned DSE shall issue notices to the promoter(s) of such listed company, to ensure submission of ATRs on the pending complaints and payment of fines by the listed company within 10 days from the date of such notice.
- In case the listed entity fails to comply with the aforesaid requirement and/ or pay fine levied within the stipulated period as per the notices, the DSE shall forthwith intimate the depositories to freeze the entire shareholding of the promoter(s) in such listed company as well as all other securities held in the demat account of the promoter(s).
- In case the listed entity fails to pay the fine or resolve the complaint despite receipt of the notice as stated above, the DSE may initiate other action as deemed appropriate.
- The procedure and actions mentioned above shall only be applicable for categories of complaints provided below:

  1) Non updation of address /Signature or Corrections etc.
  2) Non-receipt of Bonus
  3) Non receipt of Dividend
  4) Non receipt duplicate debt securities certificate
  5) Non-receipt of duplicate share certificate
  6) Non receipt of fractional entitlement
  7) Non receipt of interest for delay in dividend
  8) Non receipt of interest for delay in payment of interest on debt security
  9) Non receipt of interest for delay in redemption proceeds of debt security
  10) Non receipt of interest for delay in refunds
  11) Non receipt of interest on securities
  12) Non receipt of redemption amount of debt securities
  13) Non receipt of refund in Public/ Rights issue
  14) Non receipt of Rights Issue form
  15) Non receipt of securities after conversion/ endorsement/ consolidation/ splitting
  16) Non receipt of securities after transfer
  17) Non receipt of securities in public/ rights issue
  18) Non receipt of shares after conversion/ endorsement/ consolidation/ splitting

19) Non receipt of shares after transfer

20) Non receipt of shares after transmission

21) Non receipt of shares in public/ rights issue (including allotment letter)

22) Non-receipt of interest for delay in dispatch/credit of securities

23) Receipt of refund/ dividend in physical mode instead of electronic mode

24) Receipt of shares in physical mode instead of electronic mode

25) Demat/Remat

26) Complaints of any other nature as may be informed from time to time

General provisions regarding investor grievance redressal

- Investors shall first take up their grievances for redressal with the entity concerned, through their designated persons/officials who handle issues relating to compliance and redressal of investor grievances.
- Investors who wish to lodge a Complaint on SCORES (complainant) are required to register themselves on www.scores.gov.in by clicking on "Register here" under the "Investor Corner". While filing the registration form, details like Name of the investor, Permanent Account Number (PAN), contact details, email id, are required to be provided for effective communication and speedy redressal of the grievances. Upon successful registration, a unique user id and a password shall be generated and communicated through an acknowledgement email to the complainant.
- In order to enhance ease, speed and accuracy in the redressal of grievance, the investor may lodge the Complaint against any Entity on SCORES within a period of one year from the date of occurrence of the cause of action, where:
    a. The complainant has approached the Entity for redressal of the complaint and the Entity has rejected the complaint or the complainant has not received any communication from the concerned Entity;
    b. The complainant is not satisfied with the reply received or the redressal by the concerned Entity.
- If any complaint filed on SCORES beyond the limitation period specified above, SEBI may reject such complaint.
- The following types of complaints shall not be dealt through SCORES:
    a. Complaints against companies which are unlisted/delisted and companies on Dissemination Board of Stock Exchanges (except complaints on valuation of securities).
    b. Complaints relating to cases pending in a court or subject matter of quasijudicial proceedings, disputes pending with Online Dispute Resolution mechanism under the aegis of Market Infrastructure Institutions [as per SEBI master circular SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/145 dated July 31, 2023] etc.
    c. Complaints falling under the purview of other regulatory bodies such as Reserve Bank of India, (RBI), Insurance Regulatory and Development Authority of India (IRDAI), Pension Fund Regulatory and Development Authority of India (PFRDAI), Competition Commission of India (CCI), or complaints falling under the purview of other ministries.

d. Complaints against a company under resolution under the relevant provisions of the Insolvency and Bankruptcy Code, 2016 (IBC).

e. Complaints against the companies where the name of company is struck off from Register of Companies (RoC) or a vanishing company as published by MCA.

f. Liquidated Companies or companies under liquidation.

g. Complaints which are in the nature of market intelligence i.e., information given to SEBI regarding violation of any of the provisions of the securities laws.

- SEBI shall handle the first review complaint for categories of intermediaries where no Designated Body has been appointed for the purpose.
- The complainant in the event of being dissatisfied shall give reasons for not being satisfied with the ATR and provide clear reasons for review at any stage.
- SCORES shall only be a facilitative platform for investors to get redressal of their grievances from the concerned entity.
- In cases where investors raise issues, which require adjudication on any third party rights, on questions of law or fact or which is in the nature of a lis between parties, or if investors are not satisfied with disposal on SCORES post SEBI review, they shall seek appropriate remedies through the Online Dispute Resolution mechanism in securities market. In addition, investors have the option to approach legal forums including civil courts, consumer courts etc.
- Investors can approach the Online Dispute Resolution mechanism or other appropriate civil remedies at any point of time. In case the complainant opts for Online Dispute Resolution mechanism or other appropriate civil remedies while the complaint is pending on SCORES, the complaint shall be treated as disposed on SCORES.

The provisions of this circular related to work flow of processing of investor grievances by Entities and framework for monitoring and handling of investor complaints by the Designated Bodies shall come into force with effect from April 01, 2024. **This Circular shall rescind the Master Circular SEBI/HO/OIAE/IGRD/P/CIR/2022/0150 dated November 07, 2022 with effect from April 01, 2024.**

In the continuous pursuit of protection of interests of investors in the securities market, SEBI has launched the new version of the SEBI Complaint Redress System (SCORES 2.0). The new version of SCORES strengthens the investor complaint redress mechanism in the securities market by making the process more efficient through auto-routing, auto-escalation, monitoring by the 'Designated Bodies and reduction of timelines. The new SCORES system has also been made more user friendly. SCORES is an online system where investors in securities market can lodge their complaints through web URL and an App. Investors can lodge complaints only through new version of SCORES i.e. *https://scores.sebi.gov.in* from April 01, 2024. In the old SCORES i.e. *https://scores.gov.in* investors would not be able to lodge any new complaint. However, Investors can check the status of their complaints already lodged in old SCORES and pending in the old SCORES. Further, the disposed of complaints filed in the old SCORES can be viewed at SCORES 2.0

SEBI MOBILE APPLICATION

SCORES is a platform designed to help investors to lodge their complaints online with SEBI, pertaining to securities market, against listed companies, SEBI registered intermediaries and SEBI recognized Market Infrastructure Institutions.

In its efforts to improve the ease of doing business, SEBI dated March 5, 2020, launched a Mobile Application for the convenience of investors to lodge their grievances in SEBI Complaints Redress System (SCORES).

SCORES mobile app will make it easier for investors to lodge their grievances with SEBI, as they can now access SCORES at their convenience of a smart phone. The Mobile App will encourage investors to lodge their complaints on SCORES rather than sending letters to SEBI in physical mode.

This is another effort of SEBI in improving digitalization in securities market. The App has all the features of SCORES which is presently available electronically where investors have to lodge their complaints by using internet medium. After mandatory registration on the App, for each grievance lodged, investors will get an acknowledgement via SMS and e-mail on their registered mobile numbers and e-mail ID respectively.

Investors can, not only file their grievances but also track the status of their complaint redressal. Investors can also key in reminders for their pending grievances. Tools like FAQs on SCORES for better understanding of the complaint handling process can also be accessed. Connectivity to the SEBI Toll Free Helpline number has been provided from the App for any clarifications/help that investors may require.

The Mobile App "SEBI SCORES" is available on both iOS and Android platforms.

CASE LAWS

11.02.2021	***Suman Motels Limited vs. SEBI***	***Adjudicating Officer, Securities and Exchange Board of India***

Failure to obtain SCORES Authentication and to redress investor grievances

Fact of the Case:

Securities and Exchange Board of India (hereinafter referred to as, "SEBI") vide Circular No. CIR/OIAE/2/2011 dated June 03, 2011, directed all listed companies to obtain SEBI Complaints Redressal System (hereinafter referred to as, "SCORES") authentication and also redress any pending investor grievances in that platform only. Subsequently, SEBI also vide Circulars No CIR/OIAE/1/2012 dated August 13, 2012, No. CIR/OIAE/1/2013 dated April 17, 2013 and No CIR/OIAE/1/2014 dated December 18, 2014, (hereinafter referred to as, "SEBI circulars") inter alia directed all companies whose securities were listed on Stock Exchanges to obtain SCORES authentication within a period of 30 days from the date of issue of this circular and also to redress the pending investor grievances within the stipulated time period.

It was alleged that Suman Motels Limited (hereinafter referred to as, "Noticee") had failed to obtain the SCORES authentication and to redress investor grievances pending therein within the timelines stipulated by SEBI, therefore not complying with the aforesaid SEBI Circulars.

Order

After taking into consideration all the facts and circumstances of the case, Adjudicating officer imposed a penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on the Noticee viz. Suman Motels Limited in terms of the provisions of section15HB of the SEBI Act, 1992, which will be commensurate with its non-compliances.

SECURITIES AND EXCHANGE BOARD OF INDIA (INFORMAL GUIDANCE) SCHEME, 2025

In the interests of orderly regulation and development of the securities market, the Securities and Exchange Board of India (Informal Guidance) Scheme, 2025 has been issued under sub-section (1) of section 11 of the Securities and Exchange Board of India Act, 1992.

This Scheme shall come into operation with effect from December 1, 2025 and the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 shall cease to have effect from such date.

The following persons may apply for informal guidance under the Scheme:

(a) any intermediary registered with the Board;

(b) any person or entity, by whatever name called, who is appointed to manage the investments of a pooled investment vehicle registered or trustee of such pooled investment vehicle;

(c) any company whose securities are listed on a recognised stock exchange;

(d) any company which intends to get any of its securities listed and which has filed either a listing application with any stock exchange or a draft offer document with the Board;

(e) any acquirer or prospective acquirer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;

(f) any recognized stock exchange or clearing corporation; and

(g) any depository registered with the Board.

The informal guidance may be sought for and given in two forms:

(a) No-action letters: In a No-action Letter, the Department[1] may indicate that it would or would not recommend any action under any Act, Rules, Regulations, Guidelines, and Circulars or other legal provisions administered by the Board, to the Board if the proposed transaction described in the application is consummated.

(b) Interpretive letters: In an Interpretive Letter, the Department may provide an interpretation of a specific provision of any Act, Rules, Regulations, Guidelines, and Circulars or other legal provision being administered by the Board in the context of a proposed transaction in securities or a specific factual situation.

Procedure for filing and processing of an application seeking informal guidance

The application shall be filed electronically through e-mail, addressed to the nodal coordination cell and it shall clearly indicate that it is being made under this Scheme and also indicate whether the application is for taking a No-action letter or an Interpretive letter. The application is accompanied with a fee of 50,000/-. The Department may dispose of the application as early as possible and in any case not later than 60 days after the receipt of the application.

The Department may respond to the applications, except in the following cases:

(a) the applications which are general in nature and those which do not completely and sufficiently describe the factual situation;

(b) the application which involve hypothetical situations;

(c) the application in which the applicant has no direct or proximate interest;

(d) the application where the applicable legal provisions are not cited;

(e) where a No-action or Interpretive letter has already been issued earlier by that or any other Department on a substantially similar question involving substantially similar facts, as that to which the application relates;

(f) those cases in which an investigation, enquiry or other enforcement action has already been initiated;

(g) those cases where connected issues are pending before any Tribunal or Court and on issues which are sub-judice; and

1. Department means a department of the SEBI.

(h) those cases where policy concerns require that the Department does not respond.

Confidentiality of an application may be considered as per the following process:

(a) the applicant may request for a confidential treatment for a specified period of time not exceeding 90 days from the date of the response from the Department.

(b) the applicant may, on the grounds of privacy or commercial secrecy, indicate for the Department any specific fact that may be redacted from the informal guidance before uploading it on the SEBI website even after expiry of 90 days from the Department's response.

(c) if it appears to the Department that the request for confidential treatment as requested for by the applicant in terms of (a) or (b) above should be denied, the applicant shall be informed of the same and may be permitted to withdraw the letter or written communication within 30 days of receipt of the advice, in which case the fee paid by the applicant shall be refunded without deducting the processing fee.

(d) in case an application has been withdrawn under clause (c), no response shall be given and the letter or written communication shall remain in the office record of the Board but shall not be made available to the public.

(e) if the letter or written communication is not withdrawn, it shall be made available to the public together with any written response.

The letter issued by a Department under this Scheme should not be construed as a conclusive decision or determination of any question of law or fact by the Board and shall not be binding on the Board. Such a letter shall not be construed as an order of the Board under Section 15T of the Act and shall not be appealable.

Informal Guidance

1. K.J. Joseph and Thomas John - Informal Guidance dated November 30, 2024 in the matter of Thejo Engineering Limited on Regulation 11(1) of the Takeover Regulations read with Chapter 8 of the Master Circular.

Material Facts

a) Thejo Engineering Limited ("the Company") is listed on the 'Emerge', the SME Platform of the National Stock Exchange of India Limited ("NSE") and a of migrating to the main Board of NSE. Mr. K. J. Joseph and Mr. Thomas John are the Promoters of the Company. They, along with ten other shareholders (family members of the Promoters), form the 'Promoter and Promoter Group' of the Company and collectively hold 54.27% of the Company's total shareholding. The remaining share capital of the company is held by public shareholders.

b) The Promoter and Promoter Group of the Company (except two Promoter Group Members who are not the spouse/lineal descendants of the Promoters) are contemplating to form a Family Trust (the Trust), where 51.75% of their shares (out of the total Promoter and Promoter Group's holding of 54.27%) would be moved to the Trust.

c) The beneficiaries of the Trust would be the same persons as the existing Promoter Group shareholders who are pooling their shares into the Trust with each beneficiary's beneficial interest/share in the Trust would be on the same proportion as their existing shareholding and would include the immediate relatives and lineal descendants of the individual shareholders.

d) The Trust would be a mirror image of the Promoter's holdings and consequently would not result in any change in control in the Company. It is proposed that out of the five Trustees to the Trust, one would be a neutral trustee, who shall not belong to the Promoter Group.

e) The proposed Trust intends to apply under Regulation 11(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 ("Takeover Regulations") for grant of specific exemption from the obligation to make an open offer for acquiring shares.

Query Raised

i. "Whether the Family Trust with third party as trustee, as aforesaid, be eligible for grant of specific exemption from the obligation to make an open offer for acquiring shares under Regulation 11(1) of the Takeover Regulations read with SEBI Master Circular no. SEBI/HO/CFD/POD- 1/P/CIR/2023/31 dated February 16, 2023?

ii. Whether the Family Trust which does not include some members of the promoter group and restricting the Trust only to the spouse and lineal descendants of the promoters be eligible for grant of specific exemption from the obligation to make an open offer for acquiring shares, under Regulation 11 (1) of the Takeover Regulations read with SEBI Master Circular no. SEBI/HO/CFD/POD-1/P/CIR/2023/31 dated February 16, 2023?"

SEBI's Interpretation on Query Raised

1. Regulation 11(1) of the Takeover Regulations specifies that the Board (SEBI) may for reasons to be recorded in writing, grant relaxation from the obligation to make an open offer for acquiring shares under the regulations. The relevant provision is reproduced for reference as under-

   "Exemptions by the Board.

   11.(1) The Board may for reasons recorded in writing, grant exemption from the obligation to make an open offer for acquiring shares under these regulations subject to such conditions as the Board deems fit to impose in the interests of investors in securities and the securities market…"

2. Chapter 8 of the Master Circular No. SEBI/HO/CFD/POD-1/P/ CIR/2023/31 dated February 16, 2023 for Substantial Acquisition of Shares and Takeovers ("the Master Circular") specifies the conditions which have been considered by the aforesaid Takeover Panel for the purpose of granting exemption from the obligation to make an open offer in cases of involving trusts as acquirers. The provisions of the said Chapter specifying conditions to be incorporated in the trust deed for the purpose of availing the aforesaid exemption are reproduced for reference as under-

   i. "The Trust is in substance, only a mirror image of the promoters' holdings and consequently, there is no change of ownership or control of the shares or voting rights in the target company.

   ii. Only individual promoters or their immediate relatives or lineal descendants are Trustees and beneficiaries;

   iii. The beneficial interest of the beneficiaries of the trust has not been and will not in the future, be transferred, assigned or encumbered in any manner including by way of pledge/mortgage;

   iv. In case of dissolution of the Trust, the assets will be distributed only to the beneficiaries of the trust or to their legal heirs;

   v. The Trustees will not be entitled to transfer or delegate any of their powers to any person other than one or more of themselves."

3. In the present case, the Trust is proposed to be constituted with the beneficiaries consisting of the individual promoters, their immediate relatives and lineal descendants. The persons (siblings of the Promoters) in the Promoter Group not forming part of the Trust shall continue to hold their respective shareholding in their individual names. Therefore, the proposed shareholding pattern of the Trust along with the persons of the Promoter Group who shall continue to hold shares in their individual

names shall be a mirror image of the present shareholding of the Promoters and Promoter Group and shall not result in a change in control of the company.

4. Paragraph 1, sub-paragraph (ii) of Chapter 8 of the Master Circular no. SEBI/HO/CFD/PoD-1/P/CIR/2023/31 specifies that exemption from the obligation to make an open offer was granted in cases inter alia where "only individual promoters or their immediate relatives or lineal descendants are Trustees and beneficiaries". In the present case, it is noted from the application that the beneficiaries of the Trust shall only be the Promoters, their immediate relatives (respective spouses) and lineal descendants (children). However, the applicant has intended to have one out of the five trustees as a neutral trustee, who shall not belong to the promoter group. The same is not in consonance with the aforesaid condition specified in Chapter 8 of the Master Circular. Hence, the Trust shall be not eligible for specific exemption from the obligation to make an open offer for acquiring shares.

5. Further, Paragraph 4 of Chapter 8 of the Master Circular specifies as under-

   "... It is further clarified that while the above conditions/undertaking are broad and general in nature, compliance with the above conditions does not guarantee automatic exemption from open offer and all applications will be considered by the Takeover Panel and SEBI on a case to case basis. However, the processing time of applications where the above conditions are compiled could be significantly faster."

Therefore, the compliance of the conditions specified in Chapter 8 of the Master Circular does not guarantee an automatic exemption and the application filed under Regulation 11(5) of the Takeover Regulations would be considered by the Takeover Panel on a case to case basis for the purpose of granting exemption from the obligation to make an open offer for acquiring shares.

2. Bajaj Finserv Limited - Informal Guidance dated October 11, 2024 on Related Party Transactions (Regulation 23)

Material Facts

Bajaj Finserv Limited ('BFS'), a listed company on NSE and BSE. It has JV in place with Allianz SE . Bajaj Allianz General Insurance Company Limited (BAGIC) is unlisted general insurance JV in which BFS holds 74% and Allianz SE holds remaining 26%.

Further BAGIC is material subsidiary of BFS.

In the ordinary course of business, BAGIC, has entered into a Treaty with Bajaj Allianz for re-insurance.

Further in view of BFS it is that Regulation 3(1) of the LODR Regulations, SEBI's legislative restrictions do not permit regulating related party transactions of the unlisted subsidiaries with its unlisted related parties. Therefore, related parties have to be related parties of listed entity.

Query Raised

Now in view of the above, BFS has sought clarification w.r.t. following:

1. **Applicability of threshold of materiality even for transactions by subsidiaries:** Does the numerical materiality threshold of Rs.1,000 crore or 10% turnover threshold apply to a transaction between an unlisted subsidiary (BAGIC) and a related party of the subsidiary (Allianz SE), not of the parent (BFS)?
2. **Requirement of shareholders' approval of parent entity:** Does such a transaction require BFS shareholders' approval if it exceeds the threshold, even though BFS is not directly involved?
3. **Calculation of value whether gross or net amount for the purpose of determining threshold:** How should reinsurance treaties be valued for materiality (premiums, commissions, claims) or net settlement amount?

4. **Unlisted subsidiary to identify the related parties as per LODR or not:** Whether the unlisted subsidiary has to identify related party as per the definition provided in regulation 2(zb) or as per their applicable laws, given that Listing Regulations are not applicable to them as per Regulation 3 of the Listing Regulations.

SEBI's Interpretation on Query Raised

After considering legal provisions of :

a) Regulation 2(1)(zb) of the SEBI LODR

b) Section 2(76) of the Companies Act, 2013

c) Section 2(6) of the Companies Act, 2013

d) Regulation 2(1)(zc) of the SEBI LODR

e) Regulation 23 of the SEBI LODR

the SEBI's responses were as follows:

1. The numerical materiality threshold applies to transactions between subsidiaries and their related parties, even if not related to the parent as Regulation 2(1)(zc) of LODR, the definition of 'related party transaction' includes a transaction/ contract between listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand.
2. Regulation 23(4) of LODR requires prior approval of shareholders of the listed entity for 'all material related party transactions'. Thus, if the transaction exceeds the materiality threshold, even without BFS's direct involvement, it requires shareholders' approval of listed entity.
3. It was noted that the transactions under the re-insurance treaty between BAGIC and Allianz SE involves transfer of resources as net settlement amount. Hence, the net settlement amount, taken together with previous transactions during the financial year, should be considered for the purpose of determining the value of transaction for Regulation 23(2) of LODR.
4. Unlisted subsidiaries shall comply with LODR regulations to the extent to identify related parties.

LESSON ROUND-UP

- The SEBI Act, 1992, was notified to protect the interests of the investors and to promote the development of, and to regulate the securities markets by such measures as it thinks fit.
- The SEBI regulates the securities market and the SAT acts as a watchdog to ensure justice.
- The SEBI Act, 1992 empowers an aggrieved person for remedies against the SEBI's order or penalties by establishing Securities Appellate Tribunal.
- Any person aggrieved by any decision or order of the SAT can file an appeal to the Supreme Court.
- The SEBI is empowered to issue directions and to make rules and regulations.
- The SEBI is further empowered to conduct inspections of registered intermediaries.
- Besides inspection, the SEBI is empowered to conduct investigations in case of breach of any regulation or in case of action detrimental to the interest of investors.

- SCORES is a web based centralized grievance redress system of SEBI which enables investors to lodge and follow up their complaints and track the status of redressal of such complaints online from the above website from anywhere.
- In the interests of better regulation of and orderly development of the Securities market, SEBI has issued SEBI (Informal Guidance) Scheme 2003 w.e.f. 24.6.2003. SEBI (Informal Guidance) Scheme, 2003 deals with various aspects such as the nature of request fees to be accompanied along with letter disposal of requests, SEBI discretion not request and certain types of request and confidentiality of requests, etc.

GLOSSARY

Board : Board means the Securities and Exchange Board of India established under section 3 of the SEBI Act, 1992.

Injunction : A court order by which an individual is required to perform, or is restrained from performing, a particular Act.

Securities Appellate Tribunal (SAT) : Government by notification to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under the SEBI Act or any other law for the time being in force.

Scheme : Scheme means the SEBI (Informal Guidance Process) Scheme, 2003.

Notification : Notification means a notification published in the Official Gazette.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Discuss the various functions and powers of the SEBI.
2. Explain the role of the SEBI in strengthening regulatory framework and fostering investor confidence.
3. Enumerate the various penalties which can be imposed under the SEBI Act, 1992 for various failures, defaults, non-disclosure and other offences.
4. Explain the procedure for Appeal to the Securities Appellate Tribunal.
5. Discuss the various powers of the Central Government under the SEBI Act, 1992.
6. Explain the factors to be considered by SEBI to arrive at the settlement terms.
7. ABC 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 and Unfair Trade Practices relating to the Securities Market) Regulations, 2003. ABC Ltd. is contemplating to challenge the SEBI's order before the Securities Appellate Tribunal (SAT) in an appeal. Explain the procedure for making an appeal before the SAT.
8. What is SCORES? Briefly discuss the salient features of SCORES.

9. Suresh Enterprises Limited, an unlisted company, has decided to bring an initial public offer and filed a draft offer document with SEBI. The company is not able to correctly interpret a circular issued by SEBI. The managing director of the Company wants to seek informal guidance under SEBI Informal Guidance Scheme. Mahesh, director of the company is of a view that since the company is not yet listed so company cannot seek informal guidance from SEBI. Being a company secretary, advise on the following matters :

   (i) Who can apply for informal guidance? Whether company can apply for informal guidance in the given situation?

   (ii) What are the matters on which informal guidance cannot be sought?

LIST OF FURTHER READINGS

- SEBI Notifications
- SEBI Circulars
- SEBI Orders
- SAT Orders

OTHER REFERENCES (Including Websites/Video Links)

- https://www.sebi.gov.in/index.html
- http://sat.gov.in/
- https://scores.gov.in/scores/Welcome.html

Laws Governing to Depositories and Depository Participants

Lesson 5

KEY CONCEPTS

■ Depository ■ Depository Participant (DP) ■ Issuer ■ Beneficial Owner (BO) ■ Registered Owner ■ Security

Learning Objectives

To understand:

- Basic concept of depository and how it works
- Depository participants, its roles and functions, benefits of depositories, dematerialisation process, and the regulatory framework for depository in India
- Rights and Obligations of Depositories, Participants, Issuers and Beneficial Owners
- Powers of SEBI, Depositories and Central Government
- Internal/ concurrent audit of depositories participants and also to conduct the reconciliation of share capital

Lesson Outline

- Introduction
- Depository System – An Overview
- Role of Depository and its Functions
- Benefits of Depository System
- Depository Participant
- Issuer
- Dematerialisation
- Rematerialisation
- International Securities Identification Number (ISIN)
- Demat Account Opening Process
- Legal Linkage
- Electronic Credit in New Issues
- Corporate Actions
- Depositories Act, 1996
- Powers of SEBI
- Penalties and Adjudication
- Offences and Cognizance
- Power of Central Government to Make Rules
- Power of Depositories to Make Bye-Laws
- SEBI (Depositories and Participants) Regulations, 2018
- Reconciliation & Audit under SEBI (Depositories and Participants) Regulations, 2018
- Internal Audit and Concurrent Audit of Depository Participants
- Role of Company Secretary
- Case Laws
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings

REGULATORY FRAMEWORK

- The Depositories Act, 1996
- The SEBI (Depositories and Participants) Regulations, 2018
- Bye-laws of Depository
- Business Rules of Depository
- The Companies Act, 2013
- The Indian Stamp Act, 1899
- Securities and Exchange Board of India Act, 1992
- Securities Contracts (Regulation) Act, 1956.

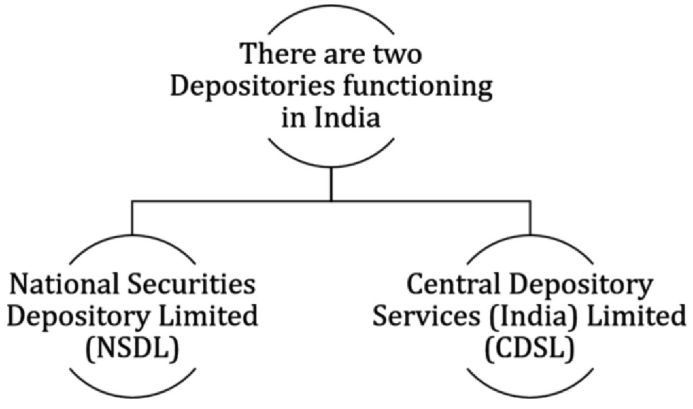
INTRODUCTION

It was the era of paper-based settlement of trades that caused substantial problems such as bad delivery and delayed transfer of title. Keeping a track of the securities involved extensive manual paperwork, and converting the transactions into respective agreements became complicated with the increasing number of transactions. There was an inherent delay in the receipt of securities and the restricted infrastructure made it difficult to manage and control the storage of such share certificates.

The Depositories Act was enacted by the Indian Parliament in 1996 to provide a legal framework for the establishment of depositories. It provided a dematerialisation route to book entry-based transfer of securities and settlement of securities trade. A depository facilitates holding investors' securities in electronic form and enables transactions to be processed by depository participants. A depository participant can be a financial institution, bank, broker, or any other entity eligible as per SEBI guidelines. Securities held in depository accounts are similar to holding funds in bank accounts. Transfer of ownership of securities is done through simple account transfers. This method does away with all the risks and hassles normally associated with paperwork. Consequently, the cost of transacting in a depository environment is considerably lower as compared to transacting in physical certificates.

AN OVERVIEW OF DEPOSITORY SYSTEM

- Depositories are institutions that hold securities of investors in dematerialized / electronic form and provide demat services to the investors through their Depository Participants (DP). The legal framework for depository system in the Depositories Act, 1996 provides for the establishment of multiple depositories. Anybody to be eligible for providing depository services must be formed and registered as a company under the Companies Act, 2013 and seek registration with SEBI and obtain a Certificate of Commencement of Business from the SEBI on fulfillment of the prescribed conditions.
- There are two depositories in our country namely, National Securities Depository Limited (NSDL) and Central Depository Services (India) Limited (CDSL). Under each Depository, there are registered Depository Participants (DPs), which provide various services to the investors like opening and maintaining of a Demat account, dematerialization of shares, etc.



- A depository is an organization 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.
- A Depository is an organization like a Central Bank where the securities of a shareholder are held in the electronic form at the request of the shareholder through the medium of a Depository Participant. To utilize the services offered by a Depository, the investor has to open an account with the Depository through a Depository Participant.
- In the depository system, share certificates belonging to the investors are to be dematerialized and their names are required to be entered in the records of depository as beneficial owners. Consequent to these changes, the investors' names in the companies' register are replaced by the name of depository as the registered owner of the securities.
- The depository, however, does not have any voting rights or other economic rights in respect of the shares as a registered owner. The beneficial owner continues to enjoy all the rights and benefits and is subject to all the liabilities in respect of the securities held by a depository.
- In the Depository mode, corporate actions such as IPOs, rights, conversions, bonus, mergers/ amalgamations, subdivisions & consolidations are carried out without the movement of paper, saving both cost & time. Information of beneficiary owners is readily available. The issuer gets information on changes in shareholding pattern on a regular basis, which enables the issuer to efficiently monitor the changes in shareholdings.
- The Depository system links the issuing corporates, Depository Participants (DPs), the Depositories and clearing corporations of stock exchanges. This network facilitates holding of securities in the soft form and effects transfers by means of account transfers.
- Under the provisions of the Depositories Act, these Depositories provide various services to investors and other Participants in the capital market, such as, clearing members, stock exchanges, investment institutions, banks and issuing corporates. 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.
- A depository cannot act as a depository unless it obtains a certificate of commencement of business from the SEBI.
- To utilize the services of 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. Registration of the depository is required under the SEBI (Depositories and Participants) Regulations, 2018 and is a pre-condition to the functioning of the depository. Depository and depository participant both are regulated by the SEBI.

Role of Depository and its Functions

i. Dematerialisation i.e., converting physical certificates to electronic form

ii. Rematerialisation i.e., conversion of securities in demat form into physical certificates

iii. Facilitating repurchase / redemption of units of mutual funds

iv. Electronic settlement of trades in stock exchanges

v. Pledging/hypothecation of dematerialised securities against loan

vi. Electronic credit of securities allotted in public issues, rights issue

vii. Receipt of non-cash corporate benefits such as bonus, in electronic form

viii. Freezing of demat accounts, so that the debits from the account are not permitted

ix. Nomination facility for demat accounts

x. Services related to change of address

xi. Effecting transmission of securities

xii. Other facilities viz. holding debt instruments in the same account, availing stock lending/borrowing facility, etc.

Bank–Depository - An Analogy

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 account holder
Facilitates transfer without having to handle money	Facilitates transfer of ownership without having to handle securities
Accountable for the safe keeping of funds	Accountable for the safe keeping of securities

Difference between Depository and Custodian

Both depository and custodian services are responsible for safe keeping of securities but they are different in the sense that the Depository can legally transfer beneficial ownership, while a custodian cannot. The main objective of a Depository is to minimize the paper work involved with the ownership, trading and transfer of securities.

BENEFITS OF DEPOSITORY SYSTEM

In the depository system, the ownership and transfer of securities takes place by means of electronic book

entries. At the outset, this system rids the capital market of the dangers related to handling of paper. The system provides numerous direct and indirect benefits, like:

- **Elimination of bad deliveries** - In the depository environment, once the holdings of an investor are dematerialised, the question of bad delivery does not arise i.e. they cannot be held "under objection". In the physical environment, buyer of shares was required to take the risk of transfer and face uncertainty of the quality of assets purchased, while in a depository environment good money certainly begets good quality of assets.
- **Elimination of all risks associated with physical certificates** - Dealing in physical securities have associated security risks of theft, mutilation of certificates, loss of certificates during movements through and from the registrars, thus exposing the investors to the cost of obtaining duplicate certificates, loss of certificates and advertisements, etc. This problem does not arise in the depository environment.
- **Immediate transfer and registration of securities** - In the depository environment, once the securities are credited to the investor's account on pay out, he becomes the legal owner of the securities. There is no further need to send it to the company's registrar for registration. If securities are purchased in the physical environment, the investor has to send it to the company's Share Transfer Agent so that the change of ownership can be registered. This process usually takes around three to four months and is rarely completed within the statutory framework of two months thus exposing the investor to opportunity cost of delay in transfer and to risk of loss in transit. To overcome this, the normally accepted practice is to hold the securities in street names i.e. not to register the change of ownership. However, if the investors miss a book closure the securities are not good for delivery and the investor would also stand to lose their corporate entitlements.
- **Faster disbursement of non-cash corporate benefits like rights, bonus, etc.** – Depository system provides for direct credit of non-cash corporate entitlements to an investors account, thereby ensuring faster disbursement and avoiding risk of loss of certificates in transit.
- **Reduction in brokerage by many brokers for trading in dematerialized securities** – Brokers provide this benefit to investors as dealing in dematerialized securities reduces their back office cost of handling paper and also eliminates the risk of being the introducing broker.
- Reduction in handling of huge volumes of paper and periodic status reports to investors on their holdings and transactions, leading to better controls.
- **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.
- **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.

DEPOSITORY PARTICIPANT (DP)

A depository interfaces with the investors through its agents called **Depository Participants** (DPs). If an investor wants to avail the services offered by the depository, the investor has to open an account with a DP. Just as a brokers act an agent of the investor at the Stock Exchange, a Depository Participant (DP) is the representative (agent) of the investor in the depository system providing the link between the Company and investor through

the Depository. The Depository Participant maintains securities' account balances and intimates the status of holding to the account holder from time to time.

Characteristics of a DP

- Transmission requests/nomination
- Acts as an Agent of Depository
- Customer interface of Depository
- Functions like Securities Bank
- Account opening
- Facilitates dematerialisation/rematerialisation
- Instant transfer on pay-out
- Enables off market transfers
- Settles trades in electronic segment
- Pledge/enforcement of pledge etc.

A DP is one with whom an investor needs to open an account to deal in shares in electronic form. While the Depository can be compared to a Bank, DP is like a branch of that bank with which an account can be opened.

Question: Who can be a DP?

Answer: Public financial institutions, scheduled commercial banks, foreign banks operating in India with the approval of the Reserve Bank of India, state financial corporations, custodians, stock-brokers, clearing corporations / clearing houses, NBFCs and registrar to an issue or share transfer agent complying with the requirements prescribed by SEBI can be registered as DP.

ISSUER

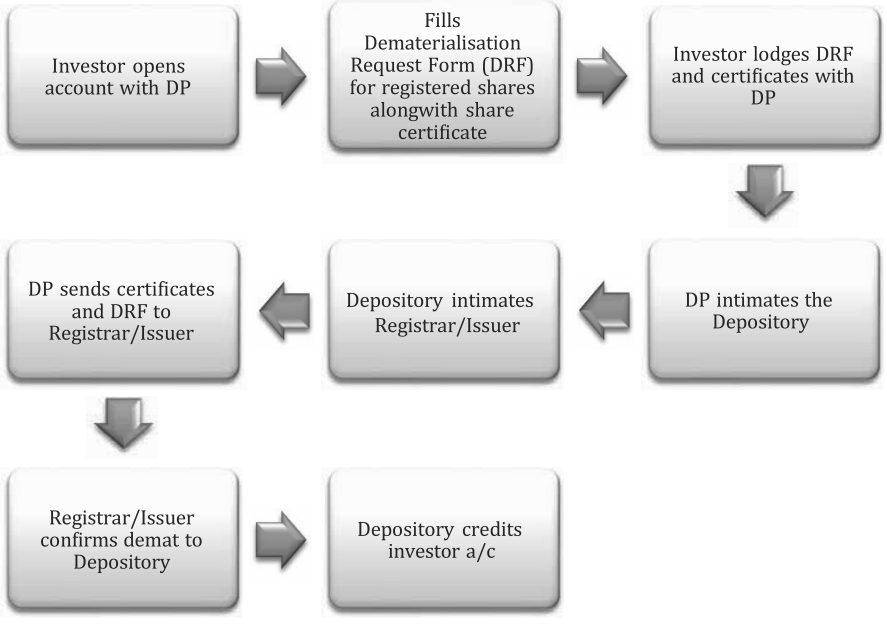
"Issuer" means person making an issue of securities. Any entity such as a corporate / State or Central Government organizations issuing securities which can be held by depository in electronic form.

Functions of Issuer	Dematerialisation Confirmation of Beneficiary Holdings Corporate Actions – Rights, Bonus, etc. Reconciliation of Depository Holdings Rematerialisation

DEMATERIALISATION

Dematerialization is a process by which the physical share certificates of an investor are taken back by the Company and an equivalent number of securities are credited his account in electronic form at the request of the investor. 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.

PROCEDURE FOR DEMATERIALISATION



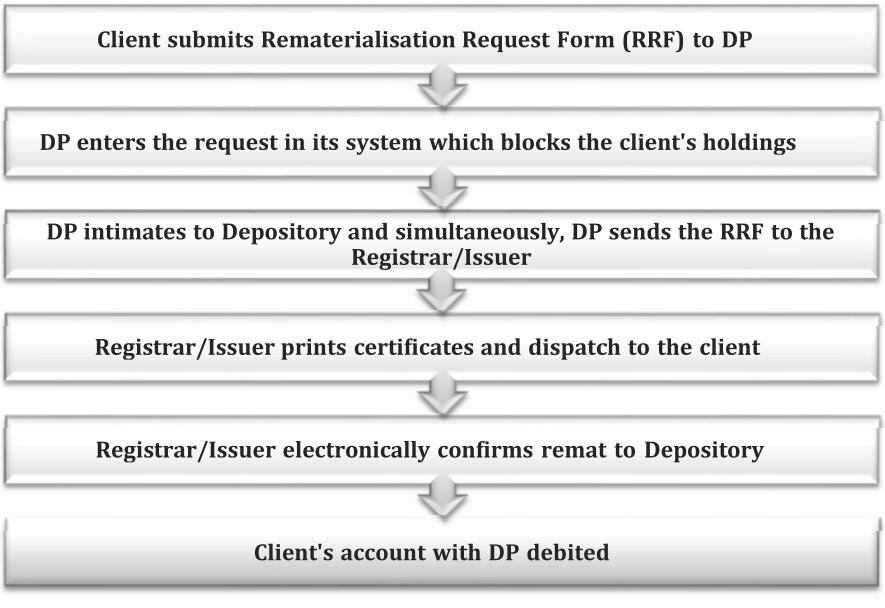
Question: Can an investor, already having a demat account; open another account with any other Depository Participant (DP)?

Answer: Yes, the investor has a choice to open another demat account with any DP.

REMATERIALISATION

Rematerialisation is the process of converting securities held in electronic form in a demat account back in physical certificate form. For the purpose of rematerialisation, the client has to submit the rematerialisation request to the DP with whom he has an account. A client can rematerialise his dematerialised holdings at any point of time. The securities sent for rematerialisation cannot be traded.

Procedure for Rematerialisation

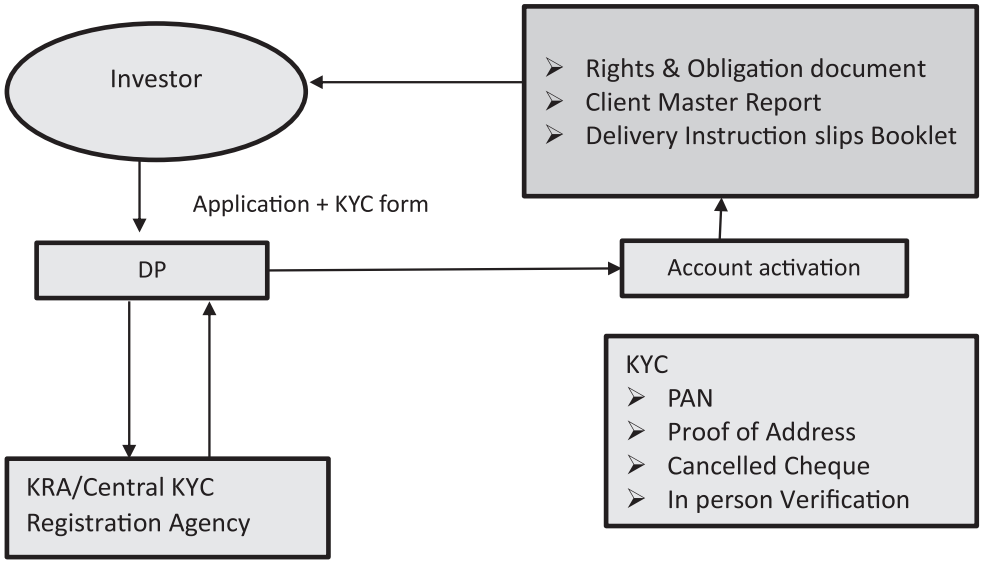


INTERNATIONAL SECURITIES IDENTIFICATION NUMBER (ISIN)

The ISIN standard is used worldwide to identify specific securities such as bonds, stocks (common and preferred), futures, warrant, rights, trusts, commercial paper and options. ISINs are assigned to securities to facilitate clearing and settlement procedures. An ISIN is a 12-digit alphanumeric code that uniquely identifies a specific security. It is issued by the National Numbering Agency, present in each respective country. It is structured in a way that it includes the country code where the headquarters of the issuing company are present, the specific security identification number, and a check digit.

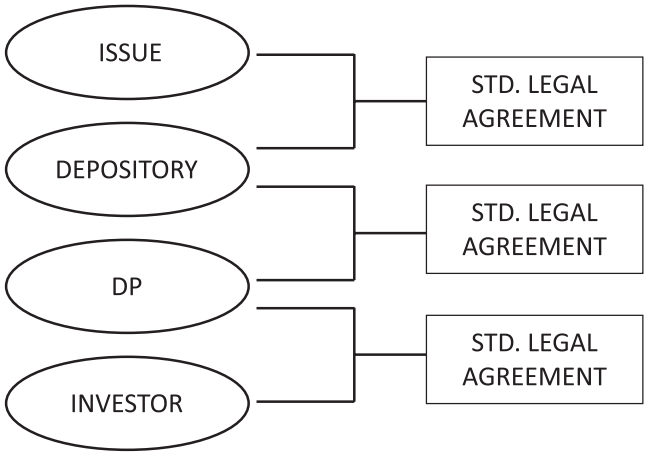
DEMAT ACCOUNT OPENING PROCESS

Demat Account Opening Process



LEGAL LINKAGE

The investors opting to join depository mode are required to enter into an agreement with depository through a participant who acts as an agent of the depository. The agencies such as custodians, banks, financial institutions, large corporate brokerage firms, non-banking financial companies etc. act as participants of depositories. The companies issuing securities are also required to enter into an agreement with the Depository.



ELECTRONIC CREDIT IN NEW ISSUES

- Investor opens account with DP
- Submits application with option to hold securities in depository giving DP-Id and Client-Id
- Registrar uploads list of allottees to Depository
- Depository credits allottee's account with DP.

CORPORATE ACTIONS

- Dividends/cash benefits, these benefits are directly forwarded to the investors by the company or its registrar and transfer agent.
- Non-cash benefits, viz. Bonus, Rights Issue, etc. these benefits are electronically credited to the beneficial owner's account through Depository.

Question: How would Mr. X get Bonus Shares if he holds shares in Demat Form?

Answer: The concerned company obtains the details of beneficiary holders and their holdings from Depository (NSDL or CDSL) as on the record date. The number of shares he is entitled for, are credited to his demat account by the company / its RTA.

DEPOSITORIES ACT, 1996

Regulatory Framework

The Depositories Act, 1996 is divided into five chapters which are discussed below as under:

Depositories Act, 1996	**Chapter I**	Definitions of various terms
	Chapter II	Certificate of Commencement of Business
	Chapter III	Rights and Obligations of Depositories, Participants, Issuers and Beneficial Owners
	Chapter IV	Enquiry and Inspection
	Chapter V	Miscellaneous

Objectives

The depositories' legislation as per the Statement of Objects and Reasons appended to the Depositories Act, 1996 aims at providing :

- A legal basis for establishment of depositories to conduct the task of maintenance of ownership records and effecting changes in ownership records through book entry;
- Dematerilisation of securities in the depositories mode as well as giving option to an investor to choose between holding securities in physical mode and holding securities in a dematerialized form in a depository;
- Making the securities fungible;
- Making the shares, debentures and any interest thereon of a public limited company freely transferable; and
- Exempting all transfers of shares within a depository from stamp duty.

Important Definitions

- "**Beneficial owner**" means a person whose name is recorded as such with a depository.
- "**Bye-laws"** means bye-laws made by a depository under section 26.
- "**Depository"** means a company formed and registered under the Companies Act, and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992.
- "**Issuer"** means any person making an issue of securities.
- **"Registered owner"** means a depository whose name is entered as such in the register of the issuer.

Certificate of Commencement of Business by Depositories

Section 3 of the Depository Act, stipulates that no depository shall act as a depository unless it obtains a certificate of commencement of business from the SEBI in such form as may be specified by the SEBI (Depositories and Participants) Regulations, 2018.

The SEBI shall not grant a certificate unless it is satisfied that the depository has adequate systems and safeguards to prevent manipulation of records and transactions.

However no certificate shall be refused unless the depository concerned has been given a reasonable opportunity of being heard.

Eligibility Condition for Depository Services

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

- has a net worth of not less than rupees one hundred crores.
- be formed and registered as a company under the Companies Act, 2013.
- be registered with SEBI as a depository under SEBI Act, 1992.
- has framed bye-laws with the previous approval of SEBI.
- has one or more participants to render depository services on its behalf.
- has adequate systems and safeguards to prevent manipulation of records and transactions to the satisfaction of SEBI.
- complies with Depositories Act, 1996 and SEBI (Depositories and Participants) Regulations, 2018.
- meets eligibility criteria in terms of constitution, network, etc.

Any person, through a participant, may enter into an agreement, in such form as may be specified by the bye-laws, with any depository for availing its services.

Rights and Obligations of Depositories, Participants, Issuers and Beneficial Owners

Agreement between depository and participant

A depository shall enter into an agreement with one or more participants as its agent in such form as may be specified by the bye-laws.

Services of depository

Any person, through a participant, may enter into an agreement, in such form as may be specified by the bye-laws, with any depository for availing its services.

Surrender of certificate of security

Any person who has entered into an agreement through a participant shall surrender the certificate of security, for which he seeks to avail the services of a depository, to the issuer in such manner as may be specified by the regulations.

The issuer, on receipt of certificate of security, shall cancel the certificate of security and substitute in its records the name of the depository as a registered owner in respect of that security and inform the depository accordingly.

A depository shall, on receipt of the information from issuer, enter the name of the person in its records, as the beneficial owner.

Registration of transfer of securities with depository

Every depository shall, on receipt of intimation from a participant, register the transfer of security in the name of the transferee. If a beneficial owner or a transferee of any security seeks to have custody of such security the depository shall inform the issuer accordingly.

Options to receive security certificate or hold securities with depository

Section 8 states that –

(1) Every person subscribing to securities offered by an issuer shall have the option either to receive the security certificates or hold securities with a depository.

(2) Where a person opts to hold a security with a depository, the issuer shall intimate such depository the details of allotment of the security, and on receipt of such information the depository shall enter in its records the name of the allottee as the beneficial owner of that security.

However, Section 29 of the Companies Act, 2013 read with the Companies (Prospectus and Allotment of Securities) Rules, 2014, provides that –

- every company making public offer and such other class or classes of companies as may be prescribed, shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.
- Further, in case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder.
- Any company, other than a company mentioned above, may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

It is not necessary that all eligible securities must be in the depository mode. In the scheme of the Depositories legislation, the investor has been given supremacy. The investor has the choice of holding physical securities or opts for a depository based ownership record.

However, in case of fresh issue of securities all securities issued have to be in dematerialized form. However, after that investor will also have the freedom to switch from depository mode to physical mode and *vice versa*. The decision as to whether or not to hold securities within the depository mode and if in depository mode, which depository or participant, would be entirely with the investor.

Question: What type of instruments are available for demat at Depository?

Answer: All types of equity/ debt instruments viz. equity shares, preference Shares, partly paid shares, bonds, debentures, commercial papers, certificates of deposit, government securities (G-SEC) etc. irrespective of whether these instruments are listed / unlisted / privately placed can be dematerialized with depository, if they have been admitted with the depository.

Restriction on Transfer of Securities

SEBI has amended relevant provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 to disallow listed companies from accepting request for transfer of securities which are held in physical form.

The shareholders who continue to hold shares and other types of securities of listed companies in physical form even after this date, will not be able to lodge the shares with company / its RTA for further transfer. They will need to convert them to demat form compulsorily if they wish to effect any transfer. Transmission or transposition of securities held in physical or dematerialised form shall also be effected only in dematerialised form.

This amendment will help in curbing fraud and manipulation risk in physical transfer of securities by unscrupulous persons. Further, with shares held in demat form will improve ease, convenience and safety of transactions for investors.

Requirements with the promoters and promoter group shareholding

As per SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the listed entity shall ensure that **hundred percent** of shareholding of promoter and promoter group is in dematerialized form and the same is maintained on a continuous basis in the manner as specified by the SEBI.

Issuance of Certificates or Receipts/Letters/Advices for securities and dealing with unclaimed securities in dematerialised form

As per the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the listed entity shall effect issuance of certificates or receipts or advices, as applicable, of subdivision, split, consolidation, renewal, exchanges, endorsements, issuance of duplicates thereof or issuance of new certificates or receipts or advices, as applicable, in cases of loss or old decrepit or worn out certificates or receipts or advices, as applicable, in dematerialised form within a period of 30 days from the date of such lodgement.

Fungibility

Section 9 states that securities in depositories shall be in fungible form.

The Act envisages that all securities held in depository shall be fungible i.e. all certificates of the same security shall become interchangeable in the sense that investor loses the right to obtain the exact certificate he 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.

Rights of Depositories and Beneficial Owner

Section 10 lays down that a depository should 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 should not have any voting rights or any other rights in respect of securities held by it. The beneficial owner is entitled to all the rights and benefits and is subject to all the liabilities in respect of his securities held by a depository.

Register of Beneficial Owner

Section 11 provides that every depository is required to maintain a register and an index of beneficial owners in the manner provided in the Companies Act, 2013.

Pledge or Hypothecation of Securities held in a Depository

Section 12 lays down that 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 should give intimation of such pledge or hypothecation to the depository and such depository is required to make entries in its records accordingly. Any entry in the records of a depository should be evidence of a pledge or hypothecation.

Furnishing of Information and Records by Depository and Issuer

Section 13 stipulates that depository shall furnish to the issuer information about the transfer of securities in the name of beneficial owners at such intervals and in such manner as may be specified by the bye-laws. Every issuer shall make available to the depository copies of the relevant records in respect of securities held by such depository.

Option to opt out in respect of any Security

Section 14 of the Act provides that if a beneficial owner seeks to opt out of a depository in respect of any security he shall inform the depository accordingly. After the receipt of intimation the depository should make appropriate entries in its records and also inform the issuer. Every issuer shall, within thirty days of the receipt of intimation from the depository and on fulfillment of such conditions and on payment of such fees as may be specified by the regulations, issue the certificate of securities to the beneficial owner or the transferee, as the case may be.

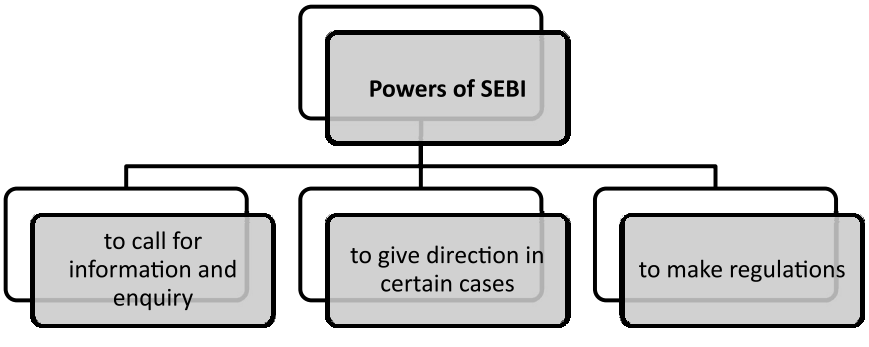
Act 18 of 1891 to apply to depositories

Section 15 lays down that the Bankers' Books Evidence Act, 1891 shall apply in relation to a depository as if it were a bank as defined in section 2 of that Act.

Depositories to Indemnify Loss in certain cases

As per section 16, any loss caused to the beneficial owner due to the negligence of the depository or the participant, would be indemnified by the depository to such beneficial owner. Where the loss due to the negligence of the participant is indemnified by the depository, the depository has the right to recover the same from such participant.

POWERS OF THE SEBI



1. To Call for Information and Enquiry

Section 18 of the Act provides that the SEBI in the public interest or in the interest of investors may by order in writing,-

- call upon any issuer, depository, participant or beneficial owner to furnish in writing such information relating to the securities held in a depository as it may require; or
- authorise any person to make an enquiry or inspection in relation to the affairs of the issuer, beneficial owner, depository or participant, who shall submit a report of such enquiry or inspection to it within such period as may be specified in the order.

Sub-section (2) to Section 18 provides that every director, manager, partner, secretary, officer or employee of the depository or issuer or the participant or beneficial owner shall on demand produce before the person making the enquiry or inspection all information or such records and other documents in his custody having a bearing on the subject matter of such enquiry or inspection.

2. To Give Directions

Section 19 provides that the SEBI, if after making or causing to be made an enquiry or inspection, the SEBI is satisfied that it is necessary in the interest of investors or the securities market or to prevent the affairs of any depository or participant being conducted in the manner detrimental to the interests of investors or the securities market, it may issue such directions, –

(a) to any depository or participant or any person associated with the securities market; or

(b) to any issuer,

as may be appropriate in the interest of investors or the securities market.

The Board may, by order, for reasons to be recorded in writing, levy penalty under sections 19A, 19B, 19C, 19D, 19E, 19F, 19FA and 19G after holding an inquiry in the prescribed manner.

3. To Make Regulations

Section 25 of the Act provides that the SEBI may, by notification in the Official Gazette, make regulations consistent with the provisions of this Act and the rules made thereunder to carry out the purposes of this Act. In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for –

- the form in which record is to be maintained;
- the form in which the certificate of commencement of business shall be issued;
- the manner in which the certificate of security shall be surrendered ;
- the manner of creating a pledge or hypothecation in respect of security owned by a beneficial owner;
- the conditions and the fees payable with respect to the issue of certificate of securities ;
- the rights and obligations of the depositories, participants and the issuers ;
- the eligibility criteria for admission of securities into the depository ;
- the terms determined by the Board for settlement of proceedings ;
- any other matter which is required to be, or may be, specified by regulations or in respect of which provision to be made by regulations.

PENALTIES AND ADJUDICATION

The SEBI may, by order, for reasons to be recorded in writing, levy, penalty after holding an inquiry in the prescribed manner.

Sl No.	*Section*	*Particulars*
1.	Section 19A	Penalty for failure to furnish information, return, etc.
2.	Section 19B	Penalty for failure to enter into an agreement.
3.	Section 19C	Penalty for failure to redress investors' grievances.
4.	Section 19D	Penalty for delay in dematerialisation or issue of certificate of securities.
5.	Section 19E	Penalty for failure to reconcile records.
6.	Section 19F	Penalty for failure to comply with directions issued by the SEBI under section 19 of the Act.
7.	Section 19FA	Penalty for failure to conduct business in a fair manner.
8.	Section 19G	Penalty for contravention where no separate penalty has been provided.
9.	Section 19H	Power to adjudicate.
10.	Section 19I	Factors to be taken into account by adjudicating officer while adjudging quantum of penalty.
11.	Section 19-IA	Settlement of Administrative Civil Proceedings.
12.	Section 19-IB	Recovery of amounts.
13.	Section 19-IC	Continuance of proceedings.
14.	Section 19J	Crediting sums realised by way of penalties to Consolidated Fund of India.

Penalties

- Contravention where no seperate penalty has been provided → Shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore Rupees.

- Failure to Furnish information/return etc.
- Failure to enter in to agreement
- Failure to redress investor's grievances
- Delay in demat or issue of certificate of securities
- failure to reconcile records
- Failure to comply with the directions issued by SEBI

→ Shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

- Failure to conduct business in a fair manner → shall be liable to penalty which shall not be less than five crore rupees but which may be extend to twenty five crore rupees or three times the amount of gains made out of such failure, whichever is higher.

Adjudication

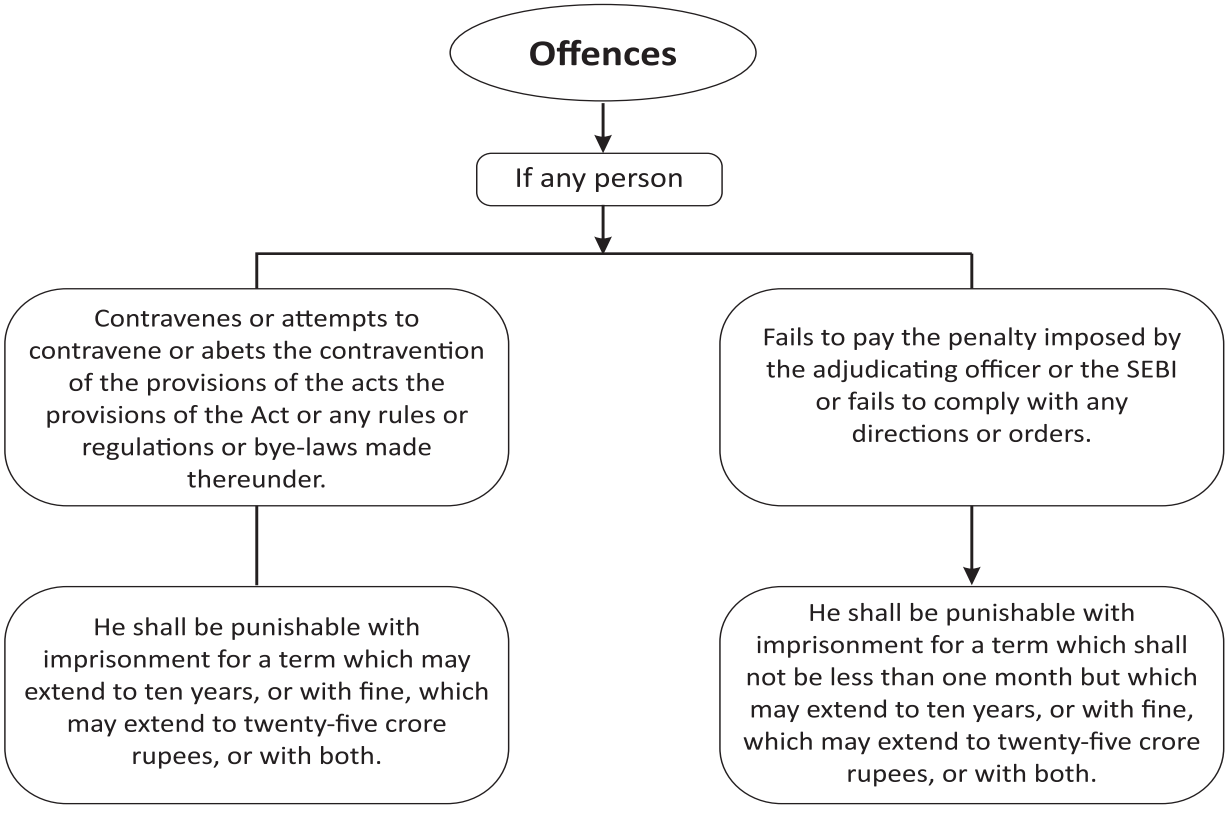
The adjudication procedure, Settlement of Administrative Civil Proceedings, Recovery of amounts, Continuance of Proceedings, as mentioned under Section 19H to 19-IC of the Depositories Act, 1996 are same as the adjudication procedure prescribed under the SEBI Act, 1992. (Lesson-4)

OFFENCES AND COGNIZANCE

Sl No.	*Section*	*Particulars*
1.	Section 20	Offences
2.	Section 21	Contravention by Companies
3.	Section 22	Cognizance of Offences by Courts
4.	Section 22A	Composition of certain Offences
5.	Section 22B	Power to grant immunity
6.	Section 22C	Establishment of Special Courts
7.	Section 22D	Offences triable by Special Courts

8.	Section 22E	Appeal and revision
9.	Section 22F	Application of Code to proceedings before Special Court
10.	Section 22G	Transitional Provisions
11.	Section 23	Appeals
12.	Section 23A	Appeal to SAT
13.	Section 23B	Procedure and powers of Securities Appellate Tribunal
14.	Section 23C	Right to legal representation
15.	Section 23 D	Limitation
16.	Section 23E	Civil court not to have jurisdiction
17.	Section 23F	Appeal to Supreme Court
18.	Section 23G	Powers of Board not to apply to International Financial Services Centre

Offences



Contravention by companies		
Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.	However, nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.	Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Cognizance of offences by courts

Section 22 provides that no court shall take cognizance of any offence punishable under this Act or any rules or regulations or bye-laws made there under, save on a complaint made by the Central Government or State Government or the SEBI or by any person.

Composition of certain offences

Section 22A provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

Power to grant immunity

Section 22B provides that the Central Government if satisfied and on recommendation by the SEBI, may grant immunity to any person from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation, if such person has made a full and true disclosure in respect of alleged violation.

However, no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity.

An immunity granted to a person may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

Miscellaneous provisions

The miscellaneous provisions from Section 22C to 23G as mentioned above in the table are same as the provisions as prescribed under the SEBI Act, 1992.

POWER OF CENTRAL GOVERNMENT TO MAKE RULES

Section 24 of the Act provides that the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- the manner of inquiry under sub-section (1) of section 19H;
- the time within which an appeal may be preferred under sub-section (1) of section 23;
- the form in which an appeal may be preferred under sub-section (3) of section 23 and the fees payable in respect of such appeal;
- the procedure for disposing of an appeal under sub-section (4) of section 23;
- the form in which an appeal may be filed before the Securities Appellate Tribunal under section 23A and the fees payable in respect of such appeal.

In exercise of the powers conferred, the Central Government makes the Depositories (Procedure for Holding enquiry and imposing penalties by adjudicating officer) Rules, 2005 for holding inquiry for the purpose of imposing penalty under sections 19A to 19G of the Depositories Act.

POWER OF DEPOSITORIES TO MAKE BYE-LAWS

A depository shall, with the previous approval of the Board, make bye-laws consistent with the provisions of this Act and the regulations. In particular, and without prejudice to the generality of the foregoing power, such bye-laws shall provide for -

- the eligibility criteria for admission and removal of securities in the depository;
- the conditions subject to which the securities shall be dealt with;
- the eligibility criteria for admission of any person as a participant;
- the manner and procedure for dematerialisation of securities;
- the procedure for transactions within the depository;
- the manner in which securities shall be dealt with or withdrawn from a depository;
- the procedure for ensuring safeguards to protect the interests of participants and beneficial owners;
- the conditions of admission into and withdrawal from a participant by a beneficial owner;
- the procedure for conveying information to the participants and beneficial owners on dividend declaration, shareholder meetings and other matters of interest to the beneficial owners;
- the manner of distribution of dividends, interest and monetary benefits received from the company among beneficial owners;
- the manner of creating pledge or hypothecation in respect of securities held with a depository;
- inter se rights and obligations among the depository, issuer, participants, and beneficial owners;

- the manner and the periodicity of furnishing information to the Board, issuer and other persons;
- the procedure for resolving disputes involving depository, issuer, company or a beneficial owner;
- the procedure for proceeding against the participant committing breach of the regulations and provisions for suspension and expulsion of participants from the depository and cancellation of agreements entered with the depository;
- the internal control standards including procedure for auditing, reviewing and monitoring.

Where the SEBI considers it expedient so to do, it may, by order in writing, direct a depository to make any bye-laws or to amend or revoke any bye-laws already made within such period as it may specify in this behalf.

If the depository fails or neglects to comply with such order within the specified period, the SEBI may make the byelaws or amend or revoke the bye-laws made either in the form specified in the order or with such modifications thereof as the SEBI thinks fit.

SEBI (DEPOSITORIES AND PARTICIPANTS) REGULATIONS, 2018

The Depositories Act, 1996 requires that the registration of the depository, depository participant and the custodian, is mandatory with the SEBI. These market intermediaries can function or commence business only after registration from SEBI has been obtained and requisite fee paid to SEBI. The requirement of registration is a continuing one and the moment the registration is cancelled or revoked or surrendered, the person shall cease to act as such.

The SEBI, on October 3, 2018, notified the SEBI (Depositories and Participants) Regulations, 2018 ('New DP Regulations'), repealing the SEBI (Depositories and Participants) Regulations, 1996 ('Old DP Regulations') introducing amendments largely related to structuring, shareholding and governance of depositories.

These regulations also contain provisions for operations and functioning of depositories, form for application and certificates used and schedule of fees for participants, etc. It also contains provisions for registration of depository and depository participants, rights and obligations of various users and constituents, inspection and procedure for action in case of default.

RECONCILIATION

Regulation 75 of SEBI (Depositories and Participants) Regulations, 2018 provides that the issuer or its agent shall reconcile the records of dematerialised securities with all the securities issued by the issuer, on a daily basis. Where the State or the Central Government is the issuer of Government securities, the depository shall, on a daily basis, reconcile the records of the dematerialised securities.

AUDIT UNDER SEBI (DEPOSITORIES AND PARTICIPANTS) REGULATIONS, 2018

Regulation 76 of SEBI (Depositories and Participants) Regulations, 2018 provides that every issuer shall submit audit report on a quarterly basis to the concerned stock exchanges audited **by a practising Company Secretary** or a qualified Chartered Accountant or a practicing Cost Accountant, for the purposes of reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, the details of changes in share capital during the quarter and the in-principle approval obtained by the issuer from all the stock exchanges where it is listed in respect of such further issued capital.

The audit report is required to give the updated status of the register of members of the issuer and confirm that securities have been dematerialized as per requests within 21 days from the date of receipt of requests by the issuer and where the dematerialization has not been effected within the said stipulated period, the report would disclose 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.

INTERNAL AUDIT AND CONCURRENT AUDIT OF DEPOSITORY PARTICIPANTS

Objectives of Audit

To assure the management that the operations of the Participant are in compliance with the requirements of The Depositories Act, 1996, SEBI (Depositories & Participants) Regulations, 2018, Bye Laws and Business Rules, agreement and Rights and Obligations of Beneficial Owner and Depository Participant and various circulars issued by Depositories from time to time.

Internal Audit

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

NSDL Bye Laws 10.3.1 reads as follow:

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

Scope of Audit

The scope of such audit shall cover the existence, scope and efficiency of the internal control system, compliance with the provisions of the Act, SEBI (Depositories and Participants) Regulations, 2018, Bye Laws, Business Rules, agreement and systems security in the office of the Participant in respect of the operations of the Depository.

CDSL Bye Laws 16.3.1 reads as follows:

"16.3.1 Every participant shall ensure that an internal audit shall be conducted in respect of the participant's operations relating to CDSL by a qualified Chartered Accountant in accordance with the provisions of the Chartered Accountants Act, 1949, or by a **Company Secretary** in accordance with the provisions of the Company Secretaries Act, 1980 or by a Cost Accountant in accordance with the provisions of the Cost and Works Accountants Act, 1959; in practice, at such intervals as may be specified by CDSL from time to time. A copy of Internal Audit report shall be furnished to CDSL."

Scope of Audit

The scope of such audit shall cover the existence, scope and efficiency of the internal control system, compliance with the provisions of the Act, the Regulations, these Bye Laws, Operating Instructions, agreements and systems security and insurance in the office of the participant in respect of the operations of CDSL.

Concurrent Audit

Concurrent audit includes following areas:

i) Account opening,

ii) Delivery Instruction Slip (DIS) book issuance,

iii) Execution of DIS,

iv) Power of Attorney modifications,

v) Account closure requests initiated by Participant,

vi) Investor grievances received by Participant,

vii) Providing Transaction Statements to clearing members (process level)

viii) KYC reconfirmation intimated by NSDL and initiated by Participant,

ix) Replacement of Original DIS image in tamper proof storage,

x) Non Disposal Undertakings (NDU),

xi) Modification in the name of client (including minor correction in name),

xii) Client data modifications,

xiii) Accreditation of investors (IGP),

xiv) Freezes due to statutory orders,

xv) Pledge & Hypothecation,

xvi) Margin Pledge / Re-Pledge,

xvii) Online account closure by client,

xviii) Execution of Electronic/ E DIS.

SEBI'S CYBER SECURITY & CYBER RESILIENCE FRAMEWORK FOR STOCK BROKERS / DEPOSITORY PARTICIPANTS

Cyber-attacks and threats attempt to compromise the Confidentiality, Integrity and Availability (CIA) of the computer systems, networks and databases (Confidentiality refers to limiting access of systems and information to authorized users, Integrity is the assurance that the information is reliable and accurate, and Availability refers to guarantee of reliable access to the systems and information by authorized users). Cyber security framework includes measures, tools and processes that are intended to prevent cyber-attacks and improve cyber resilience. Cyber Resilience is an organization's ability to prepare and respond to a cyber-attack and to continue operation during, and recover from, a cyber-attack.

The Frameworks inter-alia prescribes the following:

Depository Participants

- are mandated to conduct comprehensive cyber audit.
- shall submit with Stock Exchange/Depository a declaration from the MD/ CEO / Partners/ Proprietors certifying compliance with all SEBI Circulars and advisories related to Cyber security from time to time, a long with the Cyber audit report.
- shall identify and classify critical assets based on their sensitivity and criticality for business operations, services and data management. The critical assets shall include business critical systems, internet facing applications/systems, systems that contain sensitive data, sensitive personal data, sensitive financial data, Personally Identifiable Information (PII) data, etc.
- shall maintain up-to-date inventory of its hardware and systems, software and information assets (internal and external), details of its network resources, connections to its network and data flows.
- shall carry out periodic Vulnerability Assessment and Penetration Tests (VAPT) which inter-alia include critical assets and infrastructure components like Servers, Networking systems, Security devices, load balancers, other IT systems pertaining to the activities done as Depository Participants etc., in order to detect security vulnerabilities in the IT environment and in-depth evaluation of the security posture of the system through simulations of actual attacks on its systems and networks.

ROLE OF COMPANY SECRETARY

- **Right to Legal Representation (Section 23C):** In case of any decision of the SEBI, the aggrieved entity/ company (the appellant) may either appear in person or authorise one or more chartered accountants or company secretaries (PCS) or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal (SAT).
- **Internal Audit of Depository Participants:** The 2 (two) Depository services providers in India, viz., National Securities Depository Ltd. (NSDL) and Central Depository Services (India) Limited (CDSL) have allowed Company Secretaries in whole-time practice to undertake internal audit of the operations of Depository Participants (DPs).
- **Reconciliation of Share Capital Audit:** Company Secretary is authorised to issue quarterly certificate with regard to reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, details of changes in share capital during the quarter, and in-principle approval obtained by the issuer from all the stock exchanges where it is listed in respect of such further issued capital under SEBI (Depositories and Participants) Regulations, 2018. [Regulation 76 of SEBI (Depositories and Participants) Regulations, 2018]
- **Concurrent Audit of Depository Participants:** Practising Company Secretary is authorized to carry out concurrent audit of Depository Participants which covers audit of the process of demit account opening, control and verification of Delivery Instruction Slips (DIS).

CASE LAW

31.03.2020	***Jaypee Capital Services Ltd (Noticee) vs. SEBI***	***Whole Time Member, Securities and Exchange Board of India***

Facts of the Case

Securities and Exchange Board of India (hereinafter referred to as 'SEBI') granted a Certificate of Registration as a Depository Participant to Jaypee Capital Services Limited (JCSL/Noticee) in accordance with provisions of SEBI (Depositories and Participants) Regulations, 1996 (DP Regulations) initially for a period of five years which was valid from August 11, 2006 to August 10, 2011. The certificate of registration was, thereafter, renewed in 2011 for a further period of five years and the renewed certificate was valid till August 10, 2016.

SEBI received a letter dated April 05, 2016 from Central Depository Services (India) Limited (hereinafter referred to as 'CDSL') informing that it has terminated the agreement with the Noticee w.e.f April 04, 2016 due to non- compliance on the part of JCSL with the bye-laws of CDSL. CDSL vide the said letter also requested SEBI to cancel the certificate of registration granted to the Noticee at act as a Depository Participant with immediate effect. Thereafter, National Securities Depositories Limited (hereinafter referred to as "NSDL") vide its letter dated April 22, 2016 informed SEBI that it has also terminated the agreement with JCSL w.e.f May 23, 2016 due to the non-compliance on part of JCSL with the various byelaws of NSDL.

Based on the information provided by the Depositories viz. CDSL and NSDL, as above, it was alleged that the Noticee was no longer eligible to be admitted as a participant of depository and had failed to inform SEBI about the termination of its agreements with CDSL and NSDL.

SEBI Order

The failure on the part of the Noticee to inform SEBI of the termination of the agreement by the depositories would have to be considered as a violation of Clause 14 of the Code of Conduct for the DPs.

SEBI, in exercise of powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of the SEBI (Intermediaries) Regulations, 2008, cancelled the certificate of registration granted to the Noticee / Jaypee Capital Services Limited (SEBI Registration No. IN-DP-NSDL-291-2008/IN-DP- CDSL-368- 2006) with immediate effect.

LESSON ROUND-UP

- The legal framework for depository system in the Depositories Act, 1996 provides for the establishment of single or multiple depositories.
- There are two Depositories functioning in India, namely the National Securities Depository Limited (NSDL) and the Central Depository Services (India) Limited (CDSL).
- All the securities held by a depository are dematerialized and are in a fungible form.
- In the depository system, the ownership and transfer of securities takes place by means of electronic book entries.
- A Depository Participant (DP) is the representative (agent) of the investor in the depository system providing the link between the Company and investor through the Depository.
- The Depository Act, 1996 and SEBI (Depositories and Participants) Regulations, 2018 regulates the function of Depositories and participants.
- Regulation 76 of SEBI (Depositories and Participants) Regulations, 2018 provides that every issuer shall submit audit report on a quarterly basis to the concerned stock exchanges audited by a practicing Company Secretary or a qualified Chartered Accountant, for the purposes of reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, the details of changes in share capital during the quarter and the in-principle approval obtained by the issuer from all the stock exchanges where it is listed in respect of such further issued capital.
- Both the Depositories in India have allowed Practicing Company Secretaries to undertake internal audit of the operations of Depository Participants (DPs).
- Depository Participants are subject to concurrent audit by a Practicing Company Secretary. Concurrent Audit includes audit of process of demat account opening, control and verification of delivery instruction slips.

GLOSSARY

Board : "Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992.

Beneficial Owner (BO): The true owner of a security, which may be registered in another name means a person whose name appears as such on the records of the depository.

ISIN : International Securities Identification Number (ISIN) is a code that uniquely identifies a specific security, which is allocated at the time of admitting the same in the depository system.

Pledge : Any person having a demat account can pledge securities against loan / credit facilities extended by a pledgee, who too has a demat account with a DP.

RRN : A system generated unique number when a remat request is set up.

Transmission : Transmission of securities denotes a process by which ownership of securities is transferred to a legal heir or to some other person by operation of law. In case of transmission transfer deed and stamp duty are not required.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation)

1. Briefly outline the concept of Depository system in India.
2. ''Depository is not permitted to carry out such activities which are not incidental to its activity as a depository.'' Comment.
3. Enumerate the enquiry, inspection and penalties under the Depositories Act, 1996.
4. Elucidate the procedure for dematerialisation of shares.
5. ''Depository is to indemnify loss caused to the beneficial owner due to the negligence of the depository or the depository participant''. Examine.
6. Depository participant provides link between the company and investors. Comment.
7. Briefly explain the role of a Practicing Company Secretary in concurrent audit of depository participants.
8. Write short note on:
   (a) Fungibility
   (b) Internal Audit of Depository Participants
   (c) Concurrent Audit
   (d) Rematerialisation
   (e) Reconciliation of share capital under Regulation 75 of the SEBI (Depositories and Participants) Regulations, 2018.

LIST OF FURTHER READINGS

- SEBI Circulars
- SEBI Notifications
- SEBI FAQs
- Depositories Bye-Laws
- SEBI Annual Reports
- SEBI Monthly Bulletin

OTHER REFERENCES (Including Websites/Video Links)
• https://www.sebi.gov.in/ • https://nsdl.co.in/ • https://www.cdslindia.com/

Securities Market Intermediaries

Lesson 6

KEY CONCEPTS

■ Intermediaries ■ Net Worth ■ Self Regulatory Organization ■ Underwriting ■ Custodial Services ■ Financial Planning ■ Investment Advice ■ Portfolio

Learning Objectives

To understand:

- The provisions pertaining to Intermediaries
- Process of Registration of Intermediaries
- Regulatory framework of the intermediaries operating in the Primary and the Secondary markets
- Role and responsibilities of various intermediaries
- General Obligations of various intermediaries
- Internal audit of various intermediaries

Lesson Outline

- Introduction
- SEBI (Intermediaries) Regulations, 2008
- Registration of Intermediaries
- Regulatory Framework for Intermediaries
    1. Merchant Bankers
    2. Registrars and Share Transfer Agents
    3. Bankers to an issue
    4. Debenture Trustees
    5. Stock-brokers
    6. Portfolio managers
    7. Custodians
    8. Investment Advisers
    9. Research Analysts
    10. Credit Rating Agencies
    11. Depositories
    12. Depository Participant
    13. Foreign Portfolio Investor
- Case Laws
- Internal Audit of Intermediaries by Company Secretary in Practice
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

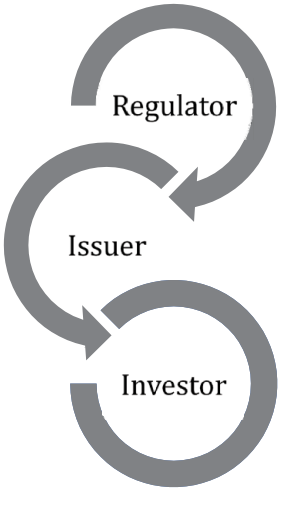
- SEBI (Intermediaries) Regulations, 2008
- SEBI (Merchant Bankers) Regulations, 1992
- SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993
- SEBI (Bankers to an Issue) Regulations, 1994
- SEBI (Debenture Trustees) Regulations, 1993
- SEBI (Stock Brokers) Regulations, 1992
- SEBI (Portfolio Managers) Regulations, 2020
- SEBI (Custodian) Regulations, 1996
- SEBI (Investment Advisers) Regulations, 2013
- SEBI (Research Analysts) Regulations, 2014
- SEBI (Credit Rating Agencies) Regulations, 1999
- SEBI (Depositories and Participants) Regulations, 2018
- SEBI (Foreign Portfolio Investors) Regulations, 2019
- Depositories Act, 1996

INTRODUCTION

Intermediaries are service providers and are an integral part of any financial system. SEBI regulates various intermediaries in the primary and secondary markets through its regulations for these respective intermediaries. SEBI has defined the role of each of the intermediary, the eligibility criteria for granting registration, their functions and responsibilities and the code of conduct to which they are bound. These regulations also empower SEBI to inspect the functioning of these intermediaries and to collect fees from them and to impose penalties on erring entities.

As per Section 11 of SEBI Act, it is the duty of SEBI to register and regulate the working of stock brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers, custodians, credit rating agencies and such other intermediaries who may be associated with securities market in any manner.

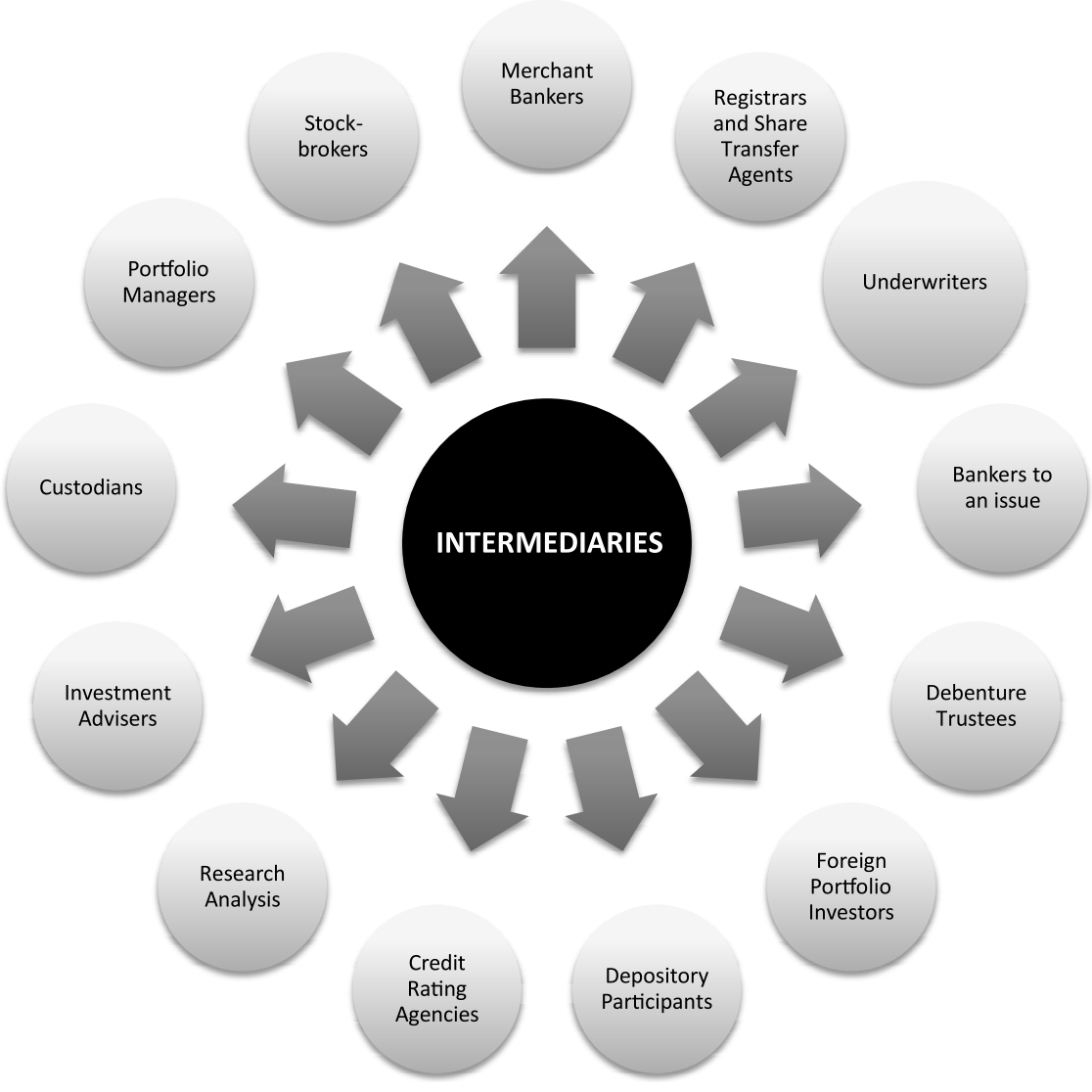
The capital market intermediaries are vital link between investor, issuer and regulator.



The objectives of these intermediaries are-

- To smoothen the process of investment;
- To establish a link between the investors and the users of funds;
- Corporations and Governments do not market their securities directly to the investors. Instead, they hire the services of the market intermediaries to represent them to the investors;
- Investors, particularly small investors, find it difficult to make direct investment. A small investor desiring to invest may be able to diversify across issuers to reduce risk. He may not be equipped to assess and monitor the credit risk of issuers. Market intermediaries help investors to select investments by providing investment consultancy, market analysis and credit rating of investment instruments;
- In order to operate in secondary market, the investors have to transact through share brokers. Registrars and Share Transfer Agents, Custodians and Depositories Participants are capital market intermediaries that provide important infrastructure services for both primary and secondary markets.

The following market intermediaries are involved in the Securities Market:



Primary Market Intermediaries	Secondary Market Intermediaries
• Merchant Bankers • Bankers to the Issue • Registrars to an issue and share transfer agents • Underwriters • Debenture Trustees	• Stock brokers • Depository • Share Transfer Agents

SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008

The SEBI introduced the Intermediaries Regulations in order to regulate the activities of intermediaries in the financial markets such as registrars to an issue, participants, asset management companies, clearing member of a clearing corporation or clearing house, foreign portfolio investors and trading members of a derivative segment or currency derivatives segment of a stock exchange.

In order to act as an intermediary, a person is required to apply to the SEBI for the grant of a certificate to act as an intermediary, as per the SEBI Intermediaries Regulations. The SEBI grants a certificate in the form specified in the relevant regulations on satisfaction of the eligibility of the applicant. A person may carry on the activities of one or more intermediaries only if it obtains a separate certificate to carry on each such activity.

Intermediaries are required to provide the SEBI with a certificate on April 1 of each year certifying, *inter alia,* compliance with obligations, responsibilities and fulfilment of eligibility criteria on a continuous basis. Further, they are required to redress investor grievances within 45 days of receipt thereof or within the time specified by the SEBI, when called upon by the SEBI.

An intermediary and its directors, officers, employees and key management personnel are required to abide by the code of conduct specified in the SEBI Intermediaries Regulations, under which they are required to, inter alia, ensure investor protection, promptly disburse dividends on behalf their clients, avoid conflict of interest and ensure that good corporate policies and corporate governance policies are in place.

SEBI may appoint inspecting authorities to undertake inspection of the books of accounts, records and documents of an intermediary for any purpose. In case of default, the SEBI may take actions including but not limited to, suspension of certificate of registration for a specified period, cancellation of registration, warning the intermediary, prohibit taking up any new assignment or contract or launch a new scheme for a specified period, and debarring a branch or an office from carrying out activities for a specified period.

According to SEBI (Intermediaries) Regulations, 2008, "intermediary" means a person mentioned in clauses (b) and (ba) of sub-section (2) of section 11 and sub-section (1) and (1A) of section 12 of the SEBI Act and includes an asset management company in relation to the SEBI (Mutual Funds) Regulations, 1996, a clearing member of a clearing corporation or clearing house, foreign portfolio investors and a trading member of a derivative segment or currency derivatives segment of a stock exchange **but does not include foreign venture capital investor, mutual fund, collective investment scheme and venture capital fund.**

Registration of Intermediaries

- **Application for Registration:** An application, for grant of a certificate to act as an intermediary, has to be made to the SEBI in Form A of Schedule I with such additional information as required to be provided under the relevant regulations, and the application fee, as specified in the relevant regulations. The applicant seeking registration to act as a stock broker or sub-broker or a trading member or a clearing member or a depository participant has to make the application along with certain additional information through the stock exchange or through the clearing corporation of which the applicant is a member or trading member or through the depository in which the applicant proposes to act as a participant, as the case may be.

- **Process of Application:** The stock exchange, the clearing corporation, the depository or the specified self regulatory organization, as the case may be, has to examine the eligibility of the applicant in terms of these regulations, relevant regulations and the rules, regulations or bye-laws of the concerned stock exchange, clearing corporation, depository or the self regulatory organization and forward the application with the application fees to the SEBI along with its recommendation as early as possible but not later than 30 days of receipt of the complete application with the specified application fees.

  Note: An applicant or an intermediary, as the case may be, may carry on the activities of one or more intermediaries only if it obtains a separate certificate to carry on each such activity.

- **Additional Information or clarifications:** The SEBI may require the applicant to furnish further information or clarifications, regarding matters relevant to the activity of such an intermediary or which may otherwise be considered necessary by the SEBI, to consider and dispose of the application.

  The applicant has to furnish such information and clarification to the satisfaction of the SEBI, within the time specified in this regard by the SEBI.

- **Verification / Inspection:** While considering the application, the information furnished by the applicant and its eligibility, the SEBI may, if it so desires, verify the information by physical verification of documents, office space, and inspect the availability of office space, infrastructure, and technological support which the applicant is required to have.

- **Consideration of Application**

  For considering the eligibility of the applicant and grant of certificate to such applicant, the SEBI shall take into account all matters which it deems relevant to the activities in the securities market, including but not limited to the following –

  - whether the applicant have in the past been refused certificate by the SEBI and if so, the ground for such refusal;
  - whether the applicant, its directors or partners, or trustees, as the case may be or its principal officer is involved in any pending litigation connected with the securities market which has an adverse bearing on the business of the applicant or on development or functioning of the securities markets;
  - whether the applicant satisfies the eligibility criteria;
  - whether the grant of a certificate to the applicant is in the interest of the investors ;
  - whether the grant of a certificate to the applicant is in the interest of the development of the securities market.

- **Rejection of Application:** Any application for grant of certificate:-

  - which is not complete in all respects and does not conform to the requirements in Form A and the requirements specified in the relevant regulation;
  - which does not contain such additional information as required by the SEBI;
  - which is incorrect, false or misleading in nature;
  - where the applicant is not in compliance with the eligibility requirements as set out under these regulations or the relevant regulations;
  - where the applicant is not a fit and proper person;
  - where the principal officer does not have the requisite qualification or experience as required under the relevant regulations;

  can be rejected by the SEBI for reasons to be recorded by the SEBI in writing;

  However, the applicant has to be given an opportunity in writing to make good the deficiencies within the time specified by the SEBI, for the purpose.

Further, where an application is rejected for the reason that it contains false or misleading information, no such opportunity may be given and the applicant cannot make any application for grant of certificate under these regulations or any other regulations for a period of 1 year from the date of such rejection.

- **Granting of Certificate:** The SEBI on being satisfied that the applicant is eligible, shall grant a certificate in the form specified in the relevant regulations and send an intimation to the applicant in this regard.
- **Conditional Registration:** Where a pending proceeding before the Board or any court or tribunal may result in the suspension or cancellation of the certificate, the SEBI may give a conditional registration.
- **Separate Certificate for other activity:** When an intermediary, who has been granted a certificate and who has filed Form A under these regulations, wishes to commence a new activity which requires a separate certificate under the relevant regulations, it has to, while seeking such certificate, not be required to file Form A, and has to furnish to the SEBI only such additional information as is required under the relevant regulations.
- **Conditions of Certificate:** Any certificate granted by the SEBI to an intermediary has to be subject to the conditions that: -
  - where the intermediary proposes to change its status or constitution, it has to obtain prior approval of the SEBI for continuing to act as an intermediary after such change in status or constitution;
  - it has to pay the applicable fees in accordance with the relevant regulations;
  - it has to abide by the provisions of the securities laws and the directions, guidelines and circulars as may be issued thereunder;
  - it has to continuously comply with the requirements of Regulation 4;
  - it has to meet the eligibility criteria and other requirements specified in these regulations and the relevant regulations.

  The SEBI may impose other conditions as it may deem fit in the interest of investors or orderly development of the securities market or for regulation of the working of the intermediary and the intermediary has to comply with such conditions.
- **Deemed Approval:** A request for prior approval which is complete in all respects has to be disposed off by the SEBI within a period of 60 days from the date of receipt of such request and where the decision of the SEBI has not been communicated to the intermediary within the said period of 60 days, the prior approval has to be deemed to have been granted.
- **Effect of refusal to grant certificate or expiry of certificate:** Where an intermediary has failed to make an application or where an existing intermediary has been refused grant of certificate under these regulations, the intermediary has to:
  - forthwith cease to act as such intermediary;
  - transfer its activities to another intermediary which has been granted a certificate for carrying on such activity and allow its clients or investors to withdraw or transfer their securities or funds held in its custody without any additional cost to such client or investor;
  - make provisions as regards liability incurred or assumed by the intermediary;
  - take such other action, within the time period and in the manner, as may be required under the relevant regulations or as may be directed by the SEBI.
- **Period of validity of certificate**

  The certificate granted to an intermediary has to be permanent unless surrendered by the intermediary or suspended or cancelled in accordance with these regulations.

General Obligations of Intermediaries

(1) An intermediary shall provide the SEBI with a certificate of its compliance officer on the 1st April of each year certifying:

(a) the compliance by the intermediary with all the obligations, responsibilities and the fulfillment of the eligibility criteria on a continuous basis under these regulations and the relevant regulations;

(b) that all disclosures made in Form A and under the relevant regulations are true and complete.

(2) Each intermediary shall prominently display a photocopy of the certificate at all its offices including branch offices.

(3) The intermediary shall also prominently display the name and contact details of the compliance officer to whom complaint may be made in the event of any investor grievance.

(4) The intermediary shall maintain such books, accounts and records as specified in the relevant regulations.

Redressal of investor grievances

The intermediary shall make endeavours to redress investor grievances promptly but not later than 45 days of receipt thereof and when called upon by the SEBI to do so it shall redress the grievances of investors within the time specified by the SEBI.

The intermediary shall maintain records regarding investor grievances received by it and redressal of such grievances.

The intermediary shall at the end of each quarter of a Financial Year ending on 31st March upload information about the number of investor grievances received, redressed and those remaining unresolved beyond three months of the receipt thereof by the intermediary on the website specified by the SEBI .

Appointment of compliance officer

An intermediary shall appoint a compliance officer for monitoring the compliance by it of the requirements of the Act, rules, regulations, notifications, guidelines, circulars and orders made or issued by the SEBI or the Central Government, or the rules, regulations and byelaws of the concerned stock exchanges, or the self regulatory organization, where applicable.

However, the intermediary may not appoint compliance officer if it is not carrying on the activity of the intermediary. The compliance officer shall report to the intermediary or its board of directors, in writing, of any material non-compliance by the intermediary.

Investment advice

An intermediary, its directors, officers, employees or key management personnel shall not render, directly or indirectly, any investment advice about any security in the publicly accessible media, whether real-time or non-real-time, unless a disclosure of its interest, direct or indirect, including its long or short position in the said security has been made, while rendering such advice.

If an intermediary's directors, officers, employees or key management personnel are rendering such advice, the intermediary shall ensure that while rendering such advice he discloses his interest, the interest of his dependent family members and that of the employer including employer's long or short position in the said security.

An intermediary shall not make a recommendation to any client or investor who may be expected to rely thereon to acquire, dispose of or retain any securities unless he has reasonable grounds to believe that the recommendation is suitable.

Code of conduct

An intermediary and its directors, officers, employees and key management personnel shall continuously abide by the code of conduct specified in Schedule III of the SEBI (Intermediaries) Regulation, 2008.

Usage of Artificial Intelligence

Any person regulated by the Board who uses artificial intelligence and machine learning tools and techniques, either designed by it or procured from third-party technology service providers, irrespective of the scale and scenario of adoption of such tools for conducting its business and servicing its investors, shall be solely responsible -

(a) for the privacy, security and integrity of investors' and stakeholders' data including data maintained by it in a fiduciary capacity throughout the processes involved;

(b) for the output arising from the usage of such tools and techniques it relies upon or deals with; and

(c) or the compliance with applicable laws in force.

The SEBI may, in case of violation take such action as it may deem fit including action under these regulations.

Restriction in having association with certain persons

- No person regulated by the SEBI or the agent of such a person shall have any direct or indirect association, with another person who-

  (i) provides advice or any recommendation, directly or indirectly, in respect of or related to a security or securities, unless the person is registered with or otherwise permitted by the SEBI to provide such advice or recommendation; or

  (ii) makes any claim, of returns or performance expressly or impliedly, in respect of or related to a security or securities, unless the person has been permitted by the SEBI to make such a claim.

  However, the above provisions shall not apply in respect of an association through a specified digital platform.

- The person regulated by the SEBI shall ensure that any person associated with it or its agent does not engage in the activities mentioned above without the necessary permission.
- The SEBI may, in case of violation of any of the above provisions, take such action as it may deem fit.

REGULATORY FRAMEWORK FOR INTERMEDIARIES

SEBI has issued regulations in respect of each intermediary to ensure proper services to be rendered by them to the investors and the capital market.

Sl No.	*Intermediary Name*	*Definition*	*Role and Responsibilities*	*SEBI Regulation*	*Net worth Requirement*
1.	Merchant Banker	'**Merchant Banker'** means any person engaged in the business of issue management either by making arrangements regarding selling buying or subscribing to securities or acting as manager/	It is necessary for an issuer to appoint a merchant banker for: (a) Managing of public issue of securities (b) Underwriting connected with the aforesaid public issue management business	SEBI (Merchant Bankers) Regulations, 1992	Not less than ₹ 5 crore

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
		consultant/advisor or rendering corporate advisory services in relation to such issue management.	(c) Managing/Advising on international offerings of debt/ equity i.e. GDR, ADR, bonds and other instruments (d) Private placement of securities (e) Primary or satellite dealership of government securities (f) Corporate advisory services related to securities market including takeovers, acquisition and disinvestment (g) Stock broking (h) Advisory services for projects (i) Syndication of rupee term loans (j) International financial advisory services.		
	GENERAL OBLIGATIONS AND RESPONSIBILITIES		• Every merchant banker shall abide by the Code of Conduct. • No merchant banker, shall carry on any business other than that in the securities market. • Every merchant banker shall keep and maintain the books of account, records and documents. • Every merchant banker shall furnish to the SEBI half-yearly unaudited financial results. • The merchant banker shall preserve the books of account and other records and documents for a minimum period of five years. • Every merchant banker acting as an underwriter shall enter into an agreement with each body corporate on whose behalf it is acting as an underwriter.		

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
			• Every merchant banker shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions, etc., issued by the SEBI or the Central Government and for redressal of investors' grievances. grievances. • All claims, differences or disputes between a merchant banker and its client arising out of or in relation to the activities of the merchant banker in the securities market shall be submitted to a dispute resolution mechanism that includes mediation and/or conciliation and/or arbitration, in accordance with the procedure specified by SEBI. • The Merchant Banker shall redress investor grievances promptly but not later than 21 calendar days from the date of receipt of the grievance and in such manner as may be specified by SEBI. • The Merchant Banker shall ensure compliance with the Investor Charter specified by SEBI.		
2.	Registrars and Share Transfer Agents	**"Registrar to an Issue'** means the person appointed by a body corporate or any person or group of persons to carry on the following activities on its or his or their behalf : (i) collecting application for investor in respect of an issue; (ii) keeping a proper record of applications and monies received from investors or paid to the seller of the securities; and (iii) assisting body corporate or person or group of persons in – (a) determining the basis of allotment of the securities in consultation with the stock exchange	**Pre-issue Activities** • Sending instructions to Banks for reporting of collection figures and collection of applications. • Providing Practical inputs to the Lead Manager and Printers regarding the design of the Bid cum-Application form. • Facilitate and establish information flow system between clients, Banks and Managers to the issue. • Liaisoning with Regulatory Authorities such as SEBI & Stock Exchanges. **Activities during the Issue** • Collection and Reporting of daily Collection figures.	SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993	For category I is ₹ 50,00,000 and category II is ₹ 25,00,000.

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
		(b) finalising the list of person entitled to allotment of securities (c) processing and dispatching of allotment letters, refund orders or certificates and other related documents in respect of the issue '**Share Transfer Agent**' means: (i) any person who on behalf of any body corporate, maintains the records of holders of securities issued by such body corporate and deals with all matters connected with the transfer and redemption of its securities; (ii) the department or division, by whatever name called, of a body corporate performing the activities as share transfer agents if at any time the total number of holders of its securities issued exceed one lakh.	• Collection of Data and Forms from Banks. • Liaisoning with clients and Intermediaries to the Issue. **Post Issue Activities** • Data capturing & validation • Reconciliation • Provide Allotment Alternatives in consultation with Client/ Merchant Banker and Stock Exchanges • Facilitating Listing • Uploading of data to the Depositories for crediting of securities electronically • Dispatch of Refund orders/ Share Certificates / Credit Advise • Periodic Report submission to Regulatory Authorities • Reconciliation of Refund payments • Attending to post issue Investor queries • Web-based investor enquiry system for allotment / refund details		

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
	GENERAL OBLIGATIONS AND RESPONSIBILITIES		• Every registrar to an issue and share transfer agent holding a certificate shall at all times abide by the Code of Conduct. • Registrar to an issue shall not to act as such registrar for any issue of securities in case he or it is an associate of the body corporate issuing the securities. • Every registrar to an issue and share transfer agent being a body corporate shall keep and maintain proper books of accounts and records. • The registrar to an issue or share transfer agent shall preserve the books of accounts and other records and documents maintained for a minimum period of eight years. • Every registrar to an issue and share transfer agent shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc. issued by the SEBI or the Central Government and for redressal of investors' grievances. • All claims, differences or disputes between registrar to an issue and share transfer agent and its client arising out of or in relation to the activities of the registrar to an issue and share transfer agent in the securities market shall be submitted to a dispute resolution mechanism that includes mediation and/or conciliation and/or arbitration, in accordance with the procedure specified by SEBI. • The registrar to an issue and share transfer agent shall redress investor grievances promptly but not later than 21 calendar days from the date of receipt of the grievance and in such manner as may be specified by SEBI. • The registrar to an issue and share transfer agent shall ensure compliance with the Invester Charter specified by SEBI.		
3.	Bankers to an issue	**'Banker to an Issue'** means a scheduled bank or such other banking company as may be specified by the SEBI from time to time, carrying on all or any of the following activities:	Bankers to the issue, as the name suggests, carries out all the activities of ensuring that the funds are collected and transferred to the Escrow accounts. While one or more banks may function as Bankers to the Issue as well as collection banks, others	SEBI (Bankers to an Issue) Regulations, 1994	--

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
		(i) Acceptance of application and application monies; (ii) Acceptance of allotment or call monies; (iii) Refund of application monies; (iv) Payment of dividend or interest warrants. (v) providing escrow services for the purposes of issue management, buyback, delisting, or open offer, as required under the relevant regulations made by SEBI; (vi) opening of a separate bank account for depositing the proceeds in the initial public offer/ further public offer; and (vii) such other activities as may be specified by SEBI.	may do the limited work of collecting the applications for securities along with the remittance in their numerous branches in different centres. The banks are expected to furnish prompt information and records to the company and to the lead manager for monitoring and progressing the issue work.		
	GENERAL OBLIGATIONS AND RESPONSIBILITIES		• Every banker to an issue shall maintain books of account, records and the documents. • Every banker to an issue shall furnish the information to the SEBI when required. • Every banker to an issue shall enter into an agreement with the body corporate for whom it is acting as banker to an issue.		

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
			• Every banker to an issue shall inform the SEBI forthwith if any disciplinary action is taken by the Reserve Bank against the banker to an issue only in relation to issue payment work. • Every banker to an issue shall abide by the code of conduct. • Every banker to an issue shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions, etc., issued by the SEBI or the Central Government and for redressal of investors' grievances. • The banker to an issue shall redress investor grievances promptly but not later than 21 calendar days from the date of receipt of the grievance and in such manner as may be specified by SEBI. • The banker to an issue shall ensure compliance with the Investor Charter specified by SEBI.		
4.	Debenture Trustees	**"Debenture Trustee"** means a trustee appointed in respect of any issue of debentures of a body corporate.	Duties of the debenture trustees are: - • satisfy itself that the prospectus or letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed. • satisfy itself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders. • call for periodical status/ performance reports from the issuer company within 7 days of the relevant board meeting or within 45 days of the respective quarter whichever is earlier.	SEBI (Debenture Trustees) Regulations, 1993	Not less than ₹ 10 crore

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
			• communicate promptly to the debenture holders defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee therefor. • ensure that the company does not commit any breach of the terms of issue of debentures or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach. • inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed. • ensure the implementation of the conditions regarding creation of security for the debentures. • ensure that the assets of the company issuing debentures and of the guarantors, if any, are sufficient to discharge the interest and principal amount at all times and that such assets are free from any other encumbrances except those which are specifically agreed to by the debenture holders.		

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
			• do such acts as are necessary in the event the security becomes enforceable. • call for reports on the utilization of funds raised by the issue of debentures. • take steps to convene a meeting of the holders of debentures as and when such meeting is required to be held. • ensure that the debentures have been converted or redeemed in accordance with the terms of the issue of debentures. • perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders. • take possession of trust property in accordance with the provisions of the trust deed. • to take appropriate measures for protecting the interest of the debenture holders as soon as any breach of the trust deed or law comes to his notice. • inform the SEBI immediately of any breach of trust deed or provision of any law, which comes to the knowledge of the trustee.		

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
			• exercise due diligence to ensure compliance by the body corporate, with the provisions of the Companies Act, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirement), Regulations, 2015, the listing agreement of the stock exchange or the trust deed or any other regulations issued by the SEBI pertaining to debt issue.		
5.	Stockbrokers	**"Stock Broker"** means a person having trading rights in any recognised stock exchange and includes a trading member.	A stock broker plays a very important role in the secondary market helping both the seller and the buyer of the securities to enter into a transaction. The buyer and seller may be either a broker or a client. When executing an order, the stock broker may on behalf of his client buy or sell securities from his own account i.e. as principal or act as an agent. For each transaction he has to issue necessary contract note indicating whether the transaction has been entered into by him as a principal or as an agent for another. While buying or selling securities as a principal, the stock broker has to obtain the consent of his client and the prices charged should be fair and justify by the conditions of the market. Stock broker may also act as an underwriter.	SEBI (Stock Brokers) Regulations, 1992	The stock broker shall have such net worth and shall deposit with the stock exchange such sum as may be specified by the SEBI/ stock exchange from time to time

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
			SEBI may designate a stock broker as a qualified stock broker having regard to its size and scale of operations, likely impact on investors and securities market, as well as governance and service standards, on the basis of the following parameters and the appropriate weightages thereon: - a) the total number of active clients; b) the available total assets of clients with the stock broker; c) the trading volumes of the stock broker; d) the end of day margin obligations of all clients of a stock broker; e) compliance score as may be specified by the Board; f) grievance redressal score as may be specified by SEBI; and g) the proprietary trading volumes of the stock broker.		
	GENERAL OBLIGATIONS AND RESPONSIBILITIES		• Every Stock Broker shall keep and maintain the proper books of account, records and documents. • Every stock broker shall preserve the books of account and other records maintained for a minimum period of five years. • Every Stock Broker acting as an underwriter shall not derive any direct or indirect benefit from underwriting the issue other than the commission or brokerage payable under an agreement for underwriting.		

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
			• Every stock broker shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions, etc., issued by the SEBI or the Central Government and for redressal of investors' grievances. • The stock broker shall ensure compliances with the Investor Charter specified by the SEBI.		
6.	Portfolio managers	**"Portfolio manager"** means a body corporate, which pursuant to a contract with a client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or goods or funds of the client, as the case may be: Provided that the Portfolio Manager may deal in goods received in delivery against physical settlement of commodity derivatives. **"Discretionary portfolio manager"** means a portfolio manager who under a contract relating to portfolio management, exercises or may exercise, any degree of discretion as to the investment of funds or management of the portfolio of securities of the client, as the case may be.	A portfolio manager plays a pivotal role in deciding the best investment plan for an individual as per his income, age as well as ability to undertake risks. A portfolio manager is responsible for making an individual aware of the various investment tools available in the market and benefits associated with each plan. Make an individual realize why he actually needs to invest and which plan would be the best for him. A portfolio manager is responsible for designing customized investment solutions for the clients according to their financial needs.	SEBI (Portfolio Managers) Regulations, 2020	Not less than ₹ 5 crores.

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
	GENERAL OBLIGATIONS AND RESPONSIBILITIES		• Every portfolio manager shall abide by the Code of Conduct as specified Schedule III of SEBI (Portfolio Managers) Regulations, 2020. • The portfolio manager shall, before taking up an assignment of management of funds and portfolio on behalf of a client, enter into an agreement in writing with such client that clearly defines the inter se relationship and sets out their mutual rights, liabilities and obligations relating to management of portfolio containing the details as specified in Schedule IV. • The discretionary portfolio manager shall individually and independently manage the funds of each client in accordance with the needs of the client, in a manner which does not partake character of a Mutual Fund, whereas the non-discretionary portfolio manager shall manage the funds in accordance with the directions of the client. • The portfolio manager shall not accept from the client, funds or securities worth less than fifty lakh rupees. However the minimum investment amount per client shall be applicable for new clients and fresh investments by existing clients. • The portfolio manager shall act in a fiduciary capacity with regard to the client's funds. • The portfolio manager shall segregate each client's holding in securities in separate accounts. • The portfolio manager shall keep the funds of all clients in a separate account to be maintained by it in a Scheduled Commercial Bank. • The portfolio manager shall transact in securities within the limitation placed by the client himself with regard to dealing in securities under the provisions of the Reserve Bank of India Act, 1934. • The portfolio manager shall not derive any direct or indirect benefit out of the client's funds or securities. • The portfolio manager shall not borrow funds or securities on behalf of the client. • The portfolio manager shall not lend securities held on behalf of the clients to a third person except as provided under these regulations.		

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
			• The portfolio manager shall ensure proper and timely handling of complaints from his clients and take appropriate action immediately. • The portfolio manager shall ensure that any person or entity involved in the distribution of its services is carrying out the distribution activities in compliance with these regulations and circulars issued thereunder from time to time. • Every portfolio manager shall keep and maintain the books of accounts, records and documents as prescribed. • Every portfolio manager shall furnish to the SEBI a net worth certificate issued by a chartered accountant as and when required by the SEBI. • The portfolio manager shall preserve the books of account and other records and documents mentioned under this chapter for a minimum period of five years. • Every portfolio manager shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc., issued by the Board or the Central Government and for redressal of investors' grievances. • All claims, differences or disputes between investors and the portfolio manager arising out of or in relation to the activities of the portfolio manager in the securities market shall be submitted to a dispute resolution mechanism that includes mediation and/or conciliation and/or arbitration, in accordance with the procedure specified by SEBI. • The Portfolio Manager shall redress investor grievances promptly but not later than 21 calendar days from the date of receipt of the grievance and in such manner as may be specified by SEBI. • The Portfolio Manager shall ensure compliances with the Investor Charter specified by the SEBI.		

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
7.	Custodians	**"Custodian"** is a person who carries on or propose to carry on the business of providing custodial services to the client. The custodian keeps the custody of the securities of the client. The custodian also provides incidental services such as maintaining the accounts of securities of the client, collecting the benefits or rights accruing to the client in respect of securities.	The custodian- ● Administrate and protect the assets of the clients. ● Open a separate custody account and deposit account in the name of each client. ● Record assets. ● Conduct registration of securities.	SEBI (Custodian) Regulations, 1996	Minimum of ₹ 75 crores.
	GENERAL OBLIGATIONS AND RESPONSIBILITIES		● Every custodian shall abide by the Code of Conduct. ● Where a custodian is carrying on any activity besides that of acting as custodian then the activities relating to his business as custodian shall be separate and segregated from all other activities. ● Every custodian shall have adequate mechanisms for the purposes of reviewing, monitoring, evaluating and inspection the custodian's controls, systems, procedures and safeguards. ● No custodian shall assign or delegate its functions as a custodian to any other person unless such person is a custodian. ● Every custodian shall open a separate custody account for each client, in the name of the client whose securities are in its custody and the assets of one client shall not be mixed with those of another client. ● Every custodian shall enter into an agreement with each client on whose behalf it is acting as custodian. ● Every custodian shall have adequate internal controls to prevent any manipulation of records and documents including audits for securities, goods and rights or entitlements arising from the securities and goods held by it on behalf of its client. ● Every custodian shall maintain the records and documents. ● Every custodian shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions, etc., issued by the SEBI or the Central Government and for redressal of investors' grievances.		

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
			• Where any information is called for by the SEBI, it shall be the duly of the custodian to furnish such information within such reasonable period as the SEBI may specify. • All claims, differences or disputes between a custodian and its client arising out of or in relation to the activities of the custodian in the securities market shall be submitted to a dispute resolution mechanism that includes mediation and/or conciliation and/or arbitration, in accordance with the procedure specified by SEBI. • The custodian is required to meet obligations and discharge responsibilities to ensure appropriate governance structure and processes, appropriate risk management policy and processes, scalable infrastructure and appropriate technical capacity and framework for orderly winding down. • The custodian shall ensure compliance with the Investor Charter specified by SEBI.		
8.	Investment Advisers	**"Investment Adviser"** means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes a part-time investment adviser any person who holds out himself as an investment adviser, by whatever name called.	Investment advisers are those, who provide investment advice. "Investment advice" means advice relating to investing in, purchasing, selling or otherwise dealing in securities, and advice on investment portfolio containing securities, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning. However, investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations. Further provided that the trading calls shall not be considered as investment advice.	SEBI (Investment Advisers) Regulations, 2013	Investment adviser is required to maintain a deposit of such sum as specified by SEBI.

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
	GENERAL OBLIGATIONS AND RESPONSIBILITIES		• An investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise. • An investment adviser shall not receive any consideration by way of remuneration or compensation or in any other form from any person other than the client being advised, in respect of the underlying products or securities for which advice is provided. • An investment adviser shall maintain an arms-length relationship between its activities as an investment adviser and other activities. • An investment adviser which is also engaged in activities other than investment advisory services shall ensure that its investment advisory services are clearly segregated from all its other activities, in the manner as prescribed hereunder. • An investment adviser shall ensure that in case of any conflict of interest of the investment advisory activities with other activities, such conflict of interest shall be disclosed to the client. • An investment adviser shall not divulge any confidential information about its client, which has come to its knowledge, without taking prior permission of its clients, except where such disclosures are required to be made in compliance with any law for the time being in force. • An investment advisor shall not enter into transactions on its own account which is contrary to its advice given to clients for a period of fifteen days from the day of such advice. • An investment advisor shall follow Know Your Client procedure as specified by the SEBI from time to time. • An investment adviser shall abide by Code of Conduct. • An investment adviser shall not act on its own account, knowingly to sell securities or investment products to or purchase securities or investment product from a client. • In case of change in control of the investment adviser, prior approval from the SEBI shall be taken.		

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
			• Investment advisers shall furnish to the SEBI information and reports as may be specified by the SEBI from time to time. • It shall be the responsibility of the investment adviser to ensure compliance with the certification and qualification requirements. • An investment adviser who uses Artificial Intelligence tools, irrespective of the scale and scenario of adoption of such tools, for servicing its clients shall be solely responsible for the security, confidentiality, integrity of the client data, use of any other information or data to arrive at investment advice, investment advice based on output of Artificial Intelligence tools and compliance with any law for the time being in force. • An investment adviser shall ensure compliance with the Investor Charter specified SEBI. • A non-individual investment adviser shall appoint either: (i) a compliance officer; or (ii) an independent professional who is a member of Institute of Company Secretaries of India or member of any other professional body as may be specified by SEBI; who shall be responsible for monitoring the compliance by the investment adviser in respect of the requirements of the Act, regulations, notifications, guidelines, instructions issued by SEBI.		
9.	Research Analysts	"**Research analyst**" means a person who, for consideration, is engaged in the business of providing research services and includes a part-time research analyst. Whereas part-time research analyst means an individual or a partnership firm who for consideration, is engaged in the business of providing research services and	Research analyst study Companies and industries, analyses raw data, and make forecasts or recommendations about whether to buy, hold or sell securities. They analyses information to provide recommendations about investments in securities to their clients. Investors often view analysts as experts and important sources of information about the securities they review and often rely on their advice.	SEBI (Research Analysts) Regulations, 2014	A research analyst shall maintain a deposit of such sum as specified by SEBI.

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
		is also engaged in any other business activity or employment. "**Research services**" means the following services provided by research analyst: i. preparation or publication of the research report or content of the research report; or ii. providing or issuing research report or research analysis; or iii. making 'buy/sell/ hold' recommendation; or iv. giving price target or stop loss target; or v. offering an opinion concerning public offer, or vi. recommending model portfolio; or vii. providing trading calls; or viii. any other service of similar nature or character, with respect to securities that are listed or proposed to be listed in a stock exchange, whether or not any such person	There are basically three broad types of analysts, viz. sell-side analysts, buy-side analysts and independent analysts.		

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
		has the job title of 'research analyst' to the clients or other persons or group of persons or general public.			
	GENERAL RESPONSIBILITIES		• Research analyst or research entity shall maintain an arms-length relationship between its research activity and other activities. • Research analyst or research entity shall abide by Code of Conduct. • In case of change in control of the research analyst or research entity, prior approval from the SEBI shall be taken. • Research analyst or research entity shall furnish to the SEBI information and reports as may be specified by the SEBI from time to time. • It shall be the responsibility of the research analyst or research entity to ensure that its employees or partners, as may be applicable, comply with the certification and qualification requirements at all times. • A research analyst or research entity shall disclose to the client the terms and conditions as may be specified by the Board and take consent of the client on such terms and conditions in such manner as may be specified by the SEBI. • A research analyst or research entity who uses Artificial Intelligence tools, irrespective of the scale and scenario of adoption of such tools, for servicing its clients shall be solely responsible for the security, confidentiality and integrity of the client data, use of any other information or data for research services, research services based on output of Artificial Intelligence tools and compliance with any law for the time being in force. • Research analyst or research entity engaged in providing model portfolio shall abide by the guidelines issued by SEBI from time to time. • A research analyst shall ensure compliance with the Investor Charter specified by the SEBI. • A non-individual research analyst or research entity shall appoint either:		

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
			(i) a compliance officer; or (ii) an independent professional who is a member of Institute of Company Secretaries of India or member of any other professional body as may be specified by SEBI; who shall be responsible for monitoring the compliance of the provisions of the Act, these regulations and circulars issued by SEBI. ● Research analyst or research entity shall maintain the records. ● All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years. ● Research analyst or research entity shall conduct annual audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India. ● All claims, differences or disputes between a research analyst or research entity and its client arising out of or in relation to the activities of the research analyst or research entity in the securities market shall be submitted to a dispute resolution mechanism that includes mediation and/or conciliation and/or arbitration, in accordance with the procedure specified by SEBI. ● The Research Analyst shall redress investor grievances promptly but not later than 21 calendar days from the date of receipt of the grievance and in such manner as may be specified by SEBI.		
10.	Credit Rating Agencies	**"Credit rating agency"** means a body corporate which is engaged in, or proposes to be engaged in, the business of rating of securities that are listed or proposed to be listed on a stock exchange recognized by the SEBI.	Credit rating is extremely important as it not only plays a role in investor protection but also benefits industry as a whole in terms of direct mobilization of savings from individuals. Rating also provide a marketing tool to the company and its investment bankers in placing company's debt obligations with a investor base that is	SEBI (Credit Rating Agencies) Regulations, 1999	Minimum ₹ 25 crores

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
			aware of, and comfortable with, the level of risk. Ratings also encourage discipline amongst corporate borrowers to improve their financial structure and operating risks to obtain a better rating for their debt obligations and thereby lower the cost of borrowing.		
	GENERAL OBLIGATIONS		• Every credit rating agency shall abide by the Code of Conduct. • Every credit rating agency shall enter into a written agreement with each client whose securities it proposes to rate. • Every credit rating agency shall, during the lifetime of securities rated by it continuously monitor the rating of such securities unless the rating is withdrawn. • Every credit rating agency shall disseminate information regarding newly assigned ratings, and changes in earlier rating promptly through press releases and websites, and, in the case of securities issued by listed companies, such information shall also be provided simultaneously to the concerned regional stock exchange and to all the stock exchanges where the said securities are listed. • Every credit rating agency shall disclose Rating Definitions and Rationale. • Where any information is called for by the SEBI from a credit rating agency for the purposes of these regulations, including any report relating to its activities, the credit rating agency shall furnish such information to the SEBI. • Every credit rating agency shall comply with such guidelines, directives, circulars and instructions as may be issued by the SEBI from time to time. • Every credit rating agency shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc. issued by the SEBI or the Central Government.		

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
			• Every credit rating agency shall keep and maintain books of accounts, records and documents for a minimum period of five years. • All claims, differences or disputes between a credit rating agency and its client arising out of or in relation to the activities of the credit rating agency in the securities market shall be submitted to a dispute resolution mechanism that includes mediation and/or conciliation and/or arbitration, in accordance with the procedure specified by SEBI.		
11.	Depository	As per section 2(e) of Depository Act, 1996 "**Depository**" means a company formed and registered under the Companies Act, 2013, and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992.	Depositories* are institutions that hold securities of investors in dematerialized / electronic form and provide demat services to the investors through their Depository Participants (DP). There are two depositories in our country namely, National Securities Depository Limited (NSDL) and Central Depository Services (India) Limited (CDSL). Under each Depository, there are registered Depository Participants (DPs), which provide various services to the investors like opening and maintaining of a Demat account, dematerialization of shares, etc. (**Note - Students are advised to refer Lesson 5 of this study for detailed provisions pertaining to Depositories as covered under the Depositories Act, 1996*)	Depositories Act, 1996; SEBI (Depositories and Participants) Regulations, 2018	not less than ₹ 100 crores
12.	Depository Participant (DP)	A **DP** is an agent of the depository through which it interfaces with the investor and provides depository services.	Depository Participant (DP) is described as an Agent (law) of the depository. They are the intermediaries between the depository and the investors.	Depositories Act, 1996; SEBI (Depositories and Participants)	In case of a non-banking finance company - net worth of not less than ₹ 50 lakhs.

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
			They execute pledge requests and off market transfers and on market transfer request of the investors who hold shares in demat form. Further transmission requests of investors shall also be handled. Demat/Remat requests also handled in consultation with RTI/ STAs.	Regulations, 2018	In case of a registrar to an issue or share transfer agent -minimum net worth of ₹ 10 crores
13.	Foreign Portfolio Investor	**"Foreign Portfolio Investor"** means a person who has been registered under Chapter II of Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 and shall be deemed to be an intermediary in terms of the provisions of the SEBI Act, 1992.	**Foreign Portfolio Investor** means a person who buy, sell or otherwise deal in securities as a foreign portfolio investor by obtaining a certificate granted by a designated depository participant on behalf of the SEBI.	SEBI (Foreign Portfolio Investors) Regulation, 2019	–
GENERAL OBLIGATIONS AND RESPONSIBILITIES			• A foreign portfolio investor shall, at all times, abide by the code of conduct; • comply with the provisions of these regulations, as far as they may apply, circulars issued thereunder and any other terms and conditions specified by the SEBI from time to time; • inform the SEBI and designated depository participant in writing, if any information or particulars previously submitted to the SEBI or designated depository participant are found to be false or misleading, in any material respect, in the manner and within timelines as may be specified by SEBI from time to time; • inform the SEBI and designated depository participant in writing, if there is any material change in the information including any direct or indirect change in its structure or ownership or control previously furnished by him to the SEBI or designated depository participant, in the manner and within timelines as may be specified by SEBI from time to time;		

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
			• as and when required by the SEBI or any other Government agency in India, submit any information, record or documents in relation to its activities as a foreign portfolio investor; • inform the SEBI and the designated depository participant, in case of any penalty, pending litigation or proceedings, findings of inspections or investigations for which action may have been taken or is in the process of being taken by an overseas regulator against it in the manner and within time line as specific by SEBI from time to time; • obtain a Permanent Account Number from the Income Tax Department; • be a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008; • undertake necessary KYC on its shareholders/ investors in accordance with the rules applicable to it in the jurisdiction where it is organised; • provide any additional information or documents; • ensure that securities held by foreign portfolio investors are free from all encumbrances. • ensure that accurate details regarding its investor group are maintained with its designated depository participant at all times. • all claims, differences or disputes between a foreign portfolio investor and a designated depository participant arising out of or in relation to the activities of the designated depository participant in the securities market shall be submitted to a dispute resolution mechanism that includes mediation and/or conciliation and/or arbitration, in accordance with the procedure specified by SEBI. • a foreign portfolio investor or a global custodian who is acting on behalf of the foreign portfolio investor, shall enter into an agreement with the designated depository participant engaged by it to act as a custodian, before making any investment.		

Sl No.	Intermediary Name	Definition	Role and Responsibilities	SEBI Regulation	Net worth Requirement
			• a foreign portfolio investor shall appoint a branch of a bank authorised by the Reserve Bank of India for opening a foreign currency denominated account and special non-resident rupee account before making any investments in India. • every foreign portfolio investor shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines and instructions issued by the designated depository participant or the Board or the Central Government. • every foreign portfolio investor shall maintain proper books of accounts, records and documents.		

CASE LAWS

11.04.2023	Rishabh Jain (Appellant) Vs. SEBI (Respondent)	Securities Appellate Tribunal

Facts of the Case:

The appeal has been filed against a SEBI common order dated July 21, 2020 passed by the Whole Time Member ("WTM") of the SEBI directing the appellant to refund the amount collected by providing Investment Advisory Services without getting itself registered under the SEBI (Investment Advisers) Regulations, 2013 ("IA Regulations") and further debarred the appellants from accessing the securities market for a period of three years from the date of the order or till the expiry of three years from the date of completion of refunds to the investors.

Based on emails and complaints received by SEBI the matter was examined and it revealed that the appellant was carrying on Investment Advisory Services through various websites and using a payment gateway through which monies were being received by the appellant Rishabh Jain. Further, examination revealed that the Investment Advisory Services was being carried out through these websites without itself getting registered under the IA Regulations.

Appellant was beneficiaries through PayUmoney from 13 websites which were providing tips and Investment Advisory Services. All these websites were unregistered. These websites were created by the appellants periodically and lured investors by promising assured monthly return on buying and selling of the securities based on the tips provided by them. Once the subscription was received, the noticees gave stock tips for a few days to the subscribers and, thereafter, stop entertaining their calls which led to the filing of the complaints. This modus operandi has not been denied.

SAT Order:

SAT is of the opinion, that on a preponderance of probability the WTM was justified in holding that the appellant was carrying out unregistered investment advisory activities and hence dismissed the appeal with no order as to costs.

28.04.2022	***AmrapaliAadya Trading & Investment Pvt. Ltd & Ors (Noticees) vs. SEBI***	***Adjudicating Officer, Securities and Exchange Board of India***

Facts of the Case:

SEBI conducted an investigation in the matter for the investigation period April 01, 2011 to March 31, 2017. On completion of investigation, it was observed that the Noticees have allegedly been found indulged in following:

a. Non-submission of information sought through summons.

b. Siphoning of clients' funds/ securities.

c. Non segregation & Mis-utilisation of client's securities and funds.

d. Mis-used the client's securities by pledging/transferring the same.

e. Routing/ Diversion of Clients' funds.

f. Running fixed return scheme for some of its clients.

g. Selling of client's securities from the employee's account.

h. Moving funds and securities to its sister concern and transferring funds from business bank account of the Noticee to its related/ group entities.

i. Non-disclosure of demat accounts to NSE.

j. Failed to carry out running account settlement.

In view of same, it was alleged that the Noticees have violated various provisions of the SEBI Act, Securities Contracts (Regulation) Rules, 1957, SEBI (Stock Brokers) Regulations, 1992 and circulars issued by SEBI from time to time.

SEBI Order

SEBI of considered view that the Noticees have violated various provisions of SEBI Act, SCRA, Rules and Regulation made and various circulars issued thereunder and thus imposed penalties totaling Rs 29 crore on nine entities, including AmrapaliAadya Trading & Investment Pvt. Ltd. and Aadya Commodities Pvt. Ltd. It was held that any omission on part of the registered intermediary is detrimental to the interest of investors in securities market.

01.07.2020	***Mr. Vishal Vijay Shah (Noticee) in the Maharashtra Polybutenes Limited vs. SEBI***	***Whole Time Member, Securities and Exchange Board of India***

Facts of the Case:

In the facts of the instant proceedings, it is observed that the Vishal Vijay Shah ("Noticee"), a registered Stock Broker had received funds in the client and settlement bank accounts from third parties in cash and had made payments to third parties on behalf of clients. It is further observed that the Noticee had also made withdrawal of cash from the client bank accounts. Under the SEBI Circulars, a responsibility has been cast on the Stock Broker to ensure that payments are received directly from the respective clients and not from third parties. Accordingly, the Noticee should have taken expedient steps to ensure that funds

received from third parties are exceptionally dealt with and suitable explanations should have been asked from the client when such blatant third party monetary amounts were received. However, there is nothing on record to suggest that such steps were indeed taken.

Further, the Noticee in its submissions has itself admitted to having carried out such irregular practices. The aforementioned conduct of the Noticee clearly demonstrates that it failed to maintain fairness in the conduct of its business, exercise due skill and care and comply with the statutory requirements. Thus, in addition to the violation of the SEBI Circulars the Noticee has also violated the provisions of Clauses A(1), (2) & (5) of the Code of Conduct as specified under Schedule II read with Regulation 9(f) of the Stock Brokers Regulations.

The BSE had earlier conducted inspection of the Noticee and upon a consideration of the BSE Inspection Reports in light of the Inspection Report, it is observed that the violations committed by the Noticee in the instant proceedings are repetitive in nature. Further, it is a well settled position of law that SEBI may initiate multiple proceedings for the same set of violations.

SEBI Order:

The Noticee had violated the aforementioned provisions of the Stock Brokers Regulations and aforementioned SEBI Circulars. Having regard to the facts and circumstances of the instant proceedings, SEBI accepted the recommendation of the Designated Authority that the Certificate of Registration of the Noticee be suspended for a period of one year.

05.06.2020	***Narendra Singh Tanwar, Proprietor of M/s Capital True Financial Services (Noticee) vs. SEBI***	***Whole Time Member, Securities Exchange Board of India***

Facts of the Case:

SEBI had received a complaint against Mr. Narendra Singh Tanwar, Proprietor of M/s Capital True Financial Services (hereinafter referred to as "Noticee"), a registered Investment Adviser (hereinafter referred to as "IA") inter alia alleging that a promise was made on behalf of the Noticee to the complainant assuring him a huge return of ₹ 28.80 lakh on a meagre investment of ₹ 20,000/- over a short period of 4 months and 10 days. Pursuant to such an assurance, an amount of ₹ 1,30,000/- was transferred by the complainant to the Noticee towards first instalment of the service fee, out of total service fee of ₹ 4,47,200/- demanded by the Noticee in instalments. However, after suffering loss on the very first day of availing the services of the Noticee, the complainant asked the Noticee to return the amount paid to him. As the Noticee refused to refund the money so taken by it as service fee and also stopped attending the phone calls of the complainant, a compliant was lodged with SEBI. The said complaint was forwarded to the Noticee for resolution and to submit an Action Taken Report (ATR) in the SEBI Complaints Redress System (SCORES).

SEBI Order:

In view of the foregoing findings and in the interest of investors and for the protection of their rights, SEBI issue following directions:

i. The Certificate of Registration as Investment Adviser bearing Registration number INA000009038 issued in favour of the Noticee was cancelled.

ii. The Noticee shall forthwith cease and desist from acting as an Investment Adviser.

iii. The Noticee shall not use the term 'Investment Adviser' directly or indirectly in any manner whatsoever on the letter-head, on the website, signage board, or otherwise.

iv. The Noticee was debarred from accessing the securities market and is further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with securities market in any manner, for a period of 2 years and during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the Noticees shall remain frozen.

29.05.2020	***Arihant Capital Markets Ltd. (Noticee) vs. SEBI***	***Adjudicating Officer, Securities Exchange Board of India***

Facts of the Case:

SEBI conducted investigation into trading activities of certain entities in the scrip of Moryo Industries Ltd. for the period of January 15, 2013 to August 31, 2014. Based on the findings of the investigation, SEBI initiated adjudication proceedings against Arihant Capital Markets Ltd. (hereinafter be referred to as, the "Noticee") under Section 15HB of the Securities and Exchange Board of India Act, 1992 , for the alleged violation of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 (as existed at the relevant time) of the Securities and Exchange Board of India (Stock Broker and Sub Brokers) Regulations, 1992.

SEBI Order:

In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon SEBI under Section 15-I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, SEBI imposed monetary penalty of ₹5,00,000/-(Rupees Five Lakhs only) on the Noticee.

31.03.2020	***Jaypee Capital Services Ltd (Noticee) vs. SEBI***	***Whole Time Member, Securities and Exchange Board of India***

Facts of the Case

Securities and Exchange Board of India (hereinafter referred to as 'SEBI') granted a Certificate of Registration as a Depository Participant to Jaypee Capital Services Limited (JCSL/Noticee) in accordance with provisions of SEBI (Depositories and Participants) Regulations, 1996 (DP Regulations) initially for a period of five years which was valid from August 11, 2006 to August 10, 2011. The certificate of registration was, thereafter, renewed in 2011 for a further period of five years and the renewed certificate was valid till August 10, 2016. SEBI received a letter dated April 05, 2016 from Central Depository Services (India) Limited (hereinafter referred to as 'CDSL') informing that it has terminated the agreement with the Noticee w.e.f April 04, 2016 due to non- compliance on the part of JCSL with the bye-laws of CDSL. CDSL vide the said letter also requested SEBI to cancel the certificate of registration granted to the Noticee at act as a Depository Participant with immediate effect. Thereafter, National Securities Depositories Limited (hereinafter referred to as "NSDL") vide its letter dated April 22, 2016 informed SEBI that it has also terminated the agreement with JCSL w.e.f May 23, 2016 due to the non-compliance on part of JCSL with the various bye-laws of NSDL.

Based on the information provided by the Depositories viz. CDSL and NSDL, as above, it was alleged that the Noticee was no longer eligible to be admitted as a participant of depository and had failed to inform SEBI about the termination of its agreements with CDSL and NSDL.

SEBI Order

The failure on the part of the Noticee to inform SEBI of the termination of the agreement by the depositories would therefore have to be considered as a violation of Clause 14 of the Code of Conduct for the DPs as given under third schedule read with Regulation 20AA of the DP Regulations.

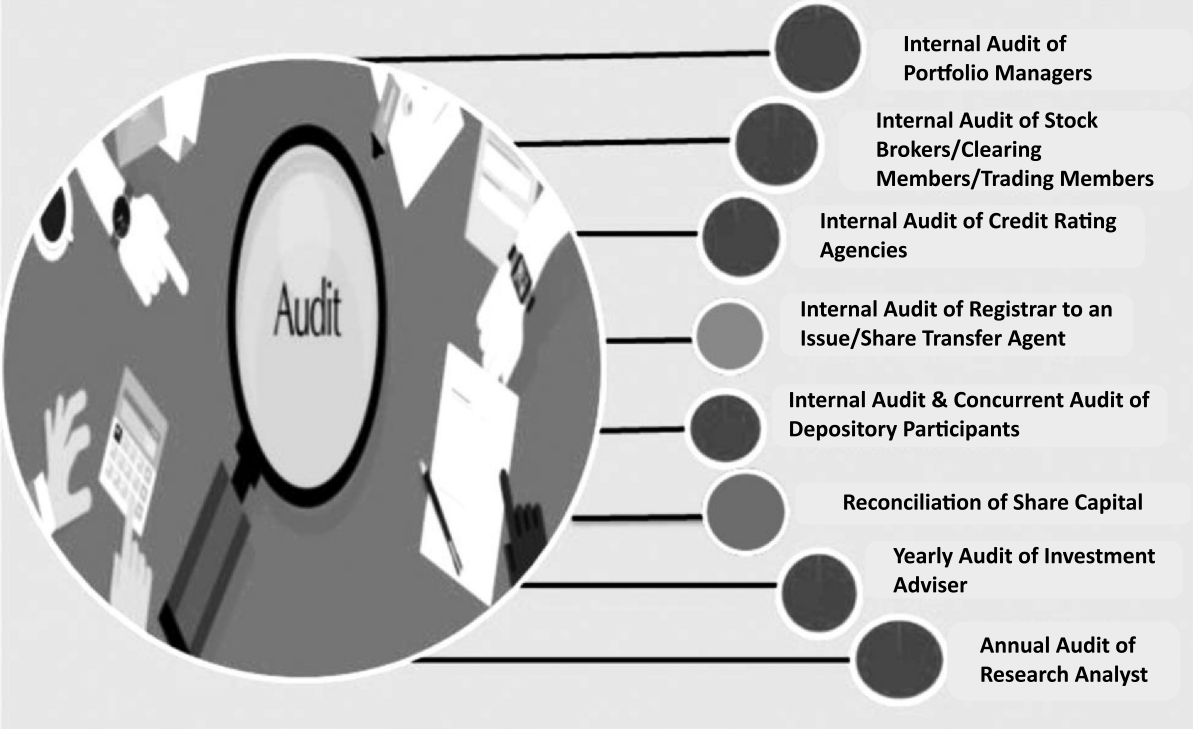
Whole Time Member, in exercise of powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of the SEBI (Intermediaries) Regulations, 2008, hereby cancel the certificate of registration granted to the Noticee / Jaypee Capital Services Limited (SEBI Registration No. IN-DP-NSDL-291-2008/IN-DP-CDSL-368- 2006) with immediate effect.

"self regulatory organization" means an organization of a class of intermediaries duly recognised by or registered with the SEBI and includes a stock exchange.

INTERNAL AUDIT OF INTERMEDIARIES BY COMPANY SECRETARY IN PRACTICE

Efficient internal control systems and processes are pre-requisite for good governance. The governance being a dynamic concept requires constant evaluation and monitoring of the systems and processes. In the context of Capital Markets, capital markets intermediaries are an important constituent of overall governance framework. Being an important link between regulators, investors and issuers, they are expected to ensure that their internal controls are so efficient that ensure effective investor service at all times and provide regulators comfort as to the compliance of regulatory prescription.

In this direction, SEBI has authorised Practising Company Secretaries to undertake internal audit of various capital market intermediaries and issue quarterly certificate with respect to reconciliation of share capital audit.



- **Internal Audit of Portfolio Managers:** There shall be internal audit by a practicing Company Secretary so as to judge the quality of internal procedures being followed by the Portfolio Manager. The report of the internal audit shall be submitted to the Board of the Portfolio Manager. Portfolio Managers shall exercise due diligence in all their operational activities. Portfolio Managers shall report to SEBI on compliance with the provisions of the above guidelines while submitting the annual reports. The report should reach SEBI within thirty calendar days from the end of the financial year.

- **Internal Audit of Stock Brokers / Trading Members / Clearing Members:** Practicing Company Secretary is authorized to carry out Internal Audit of Stock Brokers/Trading Members/Clearing Members on a half yearly basis. The scope of internal audit of stock brokers, being wide enough, covers inter alia the existence, scope and efficiency of the internal control system, compliance with the provisions of the SEBI Act, 1992, Securities Contracts (Regulation) Act, 1956, SEBI (Stock Brokers) Regulations, 1992, circulars issued by SEBI, agreements, KYC requirements, Bye Laws of the Exchanges, data security and insurance in respect of the operations of stock brokers/clearing members.
- **Internal Audit for Credit Rating Agencies (CRAs):** Half yearly audit, Report to be submitted within two months of the half year end. It shall cover all aspects of CRA operations and procedures, including investor grievance redressal mechanism, compliance with the requirements stipulated in the SEBI Act, Rules and Regulations made thereunder, and guidelines issued by SEBI from time to time.
- **Compliance audit of an investment adviser:** Yearly audit from a member of the Institute of Company Secretaries of India (ICSI) with in 6 months from the end of each financial year. in order to check the whether Requirements of Regulation 19 of the SEBI (Investment Advisers) Regulations, 2013 are complied with respects to the records to be maintained.
- **Annual audit of Research analyst or research entity:** Yearly audit in order to check the whether Requirements of SEBI (Research Analysts) Regulations, 2014 are complied with respects to the records to be maintained. A research analyst or research entity shall maintain on record an annual certificate from a member of ICSI confirming compliance with client level segregation requirements. Such annual certificate shall form part of the compliance audit.
- **Internal Audit of Registrar and Share Transfer Agent (RTA):** All RTAs are required to carry out internal audit on annual basis by independent qualified Company Secretaries who don't have any conflict of interest. The audit shall cover all aspects of RTA operations including investor grievance redressal mechanism and compliance with the requirements stipulated in the SEBI Act, Rules and Regulations made thereunder, and guidelines/circulars Issued by SEBI from time to time. The scope of the audit shall cover all issues concerning the functioning of RTAs.

LESSON ROUND-UP

- The role of intermediaries makes the market vibrant, and to function smoothly and continuously. Intermediaries possess professional expertise and play a promotional role in organising a perfect match between the supply and demand for capital in the market.
- As per Section 11 of SEBI Act, it is the duty of SEBI to register and regulate the working of stock brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisors and such other intermediaries who may be associated with securities market in any manner.
- Merchant Bankers are the key intermediaries between the company and issue of capital. The activities of the Merchant Bankers in the Indian capital market are regulated by SEBI (Merchant Bankers) Regulation, 1992.
- Underwriting is compulsory for a public issue. It is necessary for a public company which invites public subscription for its securities to ensure that its issue is fully subscribed.

- Bankers to the issue, as the name suggests, carries out all the activities of ensuring that the funds are collected and transferred to the Escrow accounts.
- A stock broker plays a very important role in the secondary market helping both the seller and the buyer of the securities to enter into a transaction.
- A portfolio manager with professional experience and expertise in the field, studies the market and adjusts the investment mix for his client on a continuing basis to ensure safety of investment and reasonable returns therefrom.
- Every Portfolio manager is required to appoint a Practising Company Secretary for conducting the internal audit.
- Custodian means any person who carries on or proposes to carry on the business of providing custodial services.
- Investment adviser means any person, who for consideration is engaged in the business of providing investment advice to clients or other group of persons and includes any person who holds out himself as an investment adviser, by whatever name called.

GLOSSARY

Financial Planning: It includes analysis of client's current financial situation, identification of their financial goals, and developing and recommending financial strategies to realize such goals.

KYC: Know your Client (KYC) means the procedure prescribed by SEBI for identifying and verifying the Proof of Address, Proof of Identity and compliance with rules, regulations, guidelines and circulars issued by SEBI or any other authority for Prevention of Money Laundering from time to time.

Portfolio Investment: A collection of securities owned by an individual or an institution (such as a mutual fund) that may include stocks, bonds and money market securities.

Adviser: A financial planner or financial intermediary who offers advice on personal financial matters. Advisers may be paid an upfront or an ongoing commission for the investments that they recommend.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Discuss the types of market intermediaries in the Securities market.
2. Explain the process of granting Certificate of Registration to Intermediaries.
3. What is Deemed approval in case of process of granting Certificate of Registration to Intermediaries?
4. The Registrar to an Issue and Share Transfer Agents constitute an important category of intermediaries in the securities market. List out the 'pre-issue' and 'post-issue' work undertaken by them.
5. What is meant by Research Analysts? Elucidate the deposit requirements laid down under SEBI (Research Analysts) Regulations, 2014 for registration as a Research Analysts.
6. Briefly discuss about the internal audit of intermediaries required to be conducted by a Company Secretary in Practice.

7. Write short notes on:
    1. Merchant Banker
    2. Debenture Trustee
    3. Custodian
    4. Investment Advisers
    5. Foreign Portfolio Investors.

LIST OF FURTHER READINGS

- SEBI Circulars
- SEBI Master Circulars
- Depositories Bye-Laws
- SEBI Annual Reports
- SEBI Monthly Bulletin
- SEBI FAQs
- SEBI Orders

OTHER REFERENCES (Including Websites/Video Links)

- https://www.sebi.gov.in/index.html
- https://www.nseindia.com/
- https://www.bseindia.com/
- http://sat.gov.in/
- https://nsdl.co.in/
- https://www.cdslindia.com/

International Financial Services Centres Authority (IFSCA)

Lesson 7

KEY CONCEPTS

■ International Financial Services Centre ■ International Financial Services Centres Authority ■ Appropriate Regulator ■ Financial Product ■ Financial Services

Learning Objectives

To understand:

- Background on Capital Market and Securities Sector in International Financial Services Centre (IFSC)
- Importance, necessity and benefits of IFSCs
- Establishment of International Financial Services Centres Authority (IFSCA)
- Powers and Functions of the IFSCA
- Various Financial Products and Services
- Regulatory prescription on listing and trading of securities in IFSC

Lesson Outline

- Background on Capital Market and Securities Sector in International Financial Services Centre (IFSC)
- International Financial Services Centre and its Importance
- Necessity and Benefits of IFSC
- International Financial Services Centres Authority – An Overview
- Legal and Regulatory Framework in Gift-IFSC
- Powers and Functions of the IFSCA
- Financial Products and Financial Services
- Listing and Trading of Securities in IFSC
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- International Financial Services Centres Authority Act, 2019
- IFSCA (Listing) Regulations, 2024

BACKGROUND ON CAPITAL MARKET AND SECURITIES SECTOR IN INTERNATIONAL FINANCIAL SERVICES CENTRE (IFSC)

The role of securities market in the domestic sector is to facilitate efficient allocation of capital to companies and contribute towards overall development of the economy. The role of the capital markets in IFSC is multi-faceted as on one hand it seeks to provide Indian companies an access to foreign capital and on the other hand it will be the gateway to channelize flow of foreign capital into Indian capital market through various means, including fund management.

The funds set up in IFSC can pool capital from foreign investors and NRIs for investments into various products in securities markets in India. Further, the fund ecosystem in IFSC can also contribute towards attracting foreign investments in certain sectors such as start-ups, SMEs, green and sustainable projects, real estate projects, infrastructure investments, etc. The Indian corporates (including banks, Central Public Sector Enterprises etc.) can also raise capital through listing of foreign currency bonds and/ or masala bonds on the stock exchanges in IFSC.

The IFSC infrastructure in capital market consists of three stock exchanges viz., India International Exchange, NSE IFSC and India International Bullion Exchange which offer various derivative products, bonds and bullion trading through IFSC. Apart from the exchanges there are clearing corporations, depository, broker-dealers, clearing members, depository participants, custodians, investment advisors, portfolio managers, debenture trustee, vault manager, ESG ratings and data products provider, research entity etc.

The International Financial Services Centres Authority ("IFSCA") has notified the regulatory framework for several activities in capital markets, including policies relating to regulation and supervision of market infrastructure institutions (stock exchanges, clearing corporations and depositories), issuance and listing of various securities on recognized stock exchanges in IFSC, regulation and supervision of various types of intermediaries operating in capital markets in IFSC and various fund management activities in IFSC.

The Authority is aiming to benchmark regulations with the best practices in other jurisdictions and to facilitate ease of doing business in IFSC. Going forward, capital markets in IFSC aim to emerge as a regional/ global hub to attract investments from the investors (including India) for providing services and channelizing investments into overseas jurisdictions.

INTERNATIONAL FINANCIAL SERVICES CENTRE

Financial Services Centres those which cater to customers outside their own jurisdiction are referred to as International Financial Services Centres (IFSCs). These centres are 'international' in the sense that they deal with the flow of finance and financial products/services across borders.

International financial services (IFS) are those cross-border services, that deal with the flow of finance and financial products and services such as raising of funds such as debt and equity, risk management, mutual funds and pension funds, asset management done by insurance companies, corporate treasury management operations among others. In common parlance, an IFSC is a jurisdiction with high concentration of financial institutions such as Banks, Stock Markets & related entities, Insurance firms, Fund Managers, FinTech firms, etc., which offer specialized financial services to non-residents and residents, in an environment that promotes financial innovation and facilitates cross border transactions.

The GIFT IFSC is becoming the destination of choice for sectors including Banking, Insurance, Capital Markets, Funds, Global In-House Centres, Fintech, Aircraft Leasing, Foreign Universities, Finance Companies, Ship Leasing and Ancillary Services. With a robust uptick in the number of international and domestic businesses setting up operations in GIFT IFSC, the smart city is transforming into a development hub.

Source: api.giftgujarat.in

Importance of IFSCs

Globally, IFSCs have assumed prominence in the financial services ecosystem primarily because of three reasons-

1. they have contributed enormously to the growth of international financial transactions,
2. these centres have played a pivotal role in accelerating the pace of financial globalization, and
3. these centres have played an invaluable role in accelerating the socio-economic growth of host countries.

In the last three decades, the world has witnessed unprecedented expansion in global trade and commerce. This global churn was primarily fueled by the integration of developing countries, especially in Asia with the global financial system. These fundamental changes brought about a paradigm shift in the global economy and created huge demand for international financial services amongst developing countries. As a result, several countries in Asia and Middle East took proactive measures to establish new age International Financial Centres in Dubai, Abu Dhabi, Qatar, etc.

The Gujarat International Finance Tech-city (GIFT) SEZ is India's maiden International Financial Services Centre (IFSC) set up under Section 18 of the Special Economic Zone Act, 2005. It is being developed as a global financial services hub. GIFT IFSC is a Multi Services Special Economic Zone which has commenced its business in April 2015.

The Percy Mistry committee report in 2007 highlighted the need for setting up an IFSC in India to bring back the financial services and transactions, that are currently carried out in offshore financial centres by Indian corporate entities to a centre which is physically on Indian soil.

Further, the IFSC has been designed as a special international financial jurisdiction by virtue of Foreign Exchange Management Act, 2002 ("**FEMA**"). Under this, the units in IFSC enjoy the benefits of a non-resident under exchange control provisions. This special carveout enables transactions to be conducted in any freely convertible foreign currency. In other words, while capital control restrictions are applicable in domestic India, the same restrictions are not applicable in the IFSC jurisdiction.

Fiscal Benefits and Tax Exemptions for Gift-IFSC

To make IFSC competitive in comparison to other jurisdictions and to attract entities and investors into IFSC, certain fiscal benefits and tax exemptions are provided to IFSC. The IFSC by virtue of being established within a SEZ had certain inherent fiscal benefits and tax exemptions and various other benefits have been provided by the Government exclusively to IFSC units. The TDS exemption enhances liquidity, boost investors and business confidence, reduces paperwork and tax credit mismatch and most importantly aligns with 10 year tax holiday. The major tax benefits in an IFSC are summarized below: -

Taxes and Duties	***Benefits for Units in IFSC***	***Benefits for Investors***
Income-tax	a) 100% tax exemption for 10 consecutive years out of 15 years b) IFSC Unit has the flexibility to select any 10 years out of 15 years block c) MAT / AMT @ 9% of book profits applies to Company / others setup as a unit in IFSC - MAT not applicable to companies in IFSC opting for new tax regime.	(a) Interest income paid to non-residents on: - (i) Monies lent to IFSC units not taxable (ii) Long Term Bonds and Rupee Denominated Bonds listed on IFSC exchanges taxable at lower rate of 4%. (b) Transfer of specified securities* listed on IFSC exchanges by a non-resident not treated as transfer - Gains accruing thereon not chargeable to tax in India.

Taxes and Duties	*Benefits for Units in IFSC*	*Benefits for Investors*
	d) Dividend paid to shareholders of company in IFSC • From 01 April 2020, dividend income distributed by Company in IFSC to be taxed in the hands of the shareholder.	*Specified securities include Bond, GDR, Foreign currency denominated bond, Rupee-denominated bond of an Indian company, Derivatives, Unit of a Mutual Fund, Unit of a business trust, Unit of Alternative Investment Fund and Foreign currency denominated equity share of a company.
Goods and Services Tax (GST)	a) No GST on services – (i) received by unit in IFSC; (ii) provided to IFSC / SEZ units, Offshore clients. b) GST applicable on services provided to Domestic Tariff Area.	No GST on transactions carried out in IFSC exchanges.
TDS Exemption	a) Zero TDS on certain payments made to units operating in GIFT IFSC. b) GIFT City TDS Exemption is a landmark move for the Indian ecosystem, aligning tax laws with global financial centres.	It cements GIFT City's status as a preferred destination for fintech, asset management and offshore operations.
Other taxes duties	State Subsidies – Lease rental, PF contribution, electricity charges.	Exemption from Securities Transaction Tax, Commodity Transaction Tax, stamp duty in respect of transactions carried out on IFSC exchanges.

Following taxes are at NIL rates: -

(i) Security Transaction Tax (STT)

(ii) Commodity Transaction Tax (CTT)

(iii) Dividend Distribution Tax (DDT)

(iv) Long Term Capital Gain (LTCG)

(v) Short Term Capital Gain (STCG)

Necessity of IFSC for domestic economy

- **Onshoring the offshore international financial services:** One of the fundamental factors which incentivized India to set up its own IFSC was the fact that as one of the largest and fastest growing major economies in the world, India could no longer afford to play a passive role in the international financial services ecosystem. India had been heavily relying on overseas financial centres for the

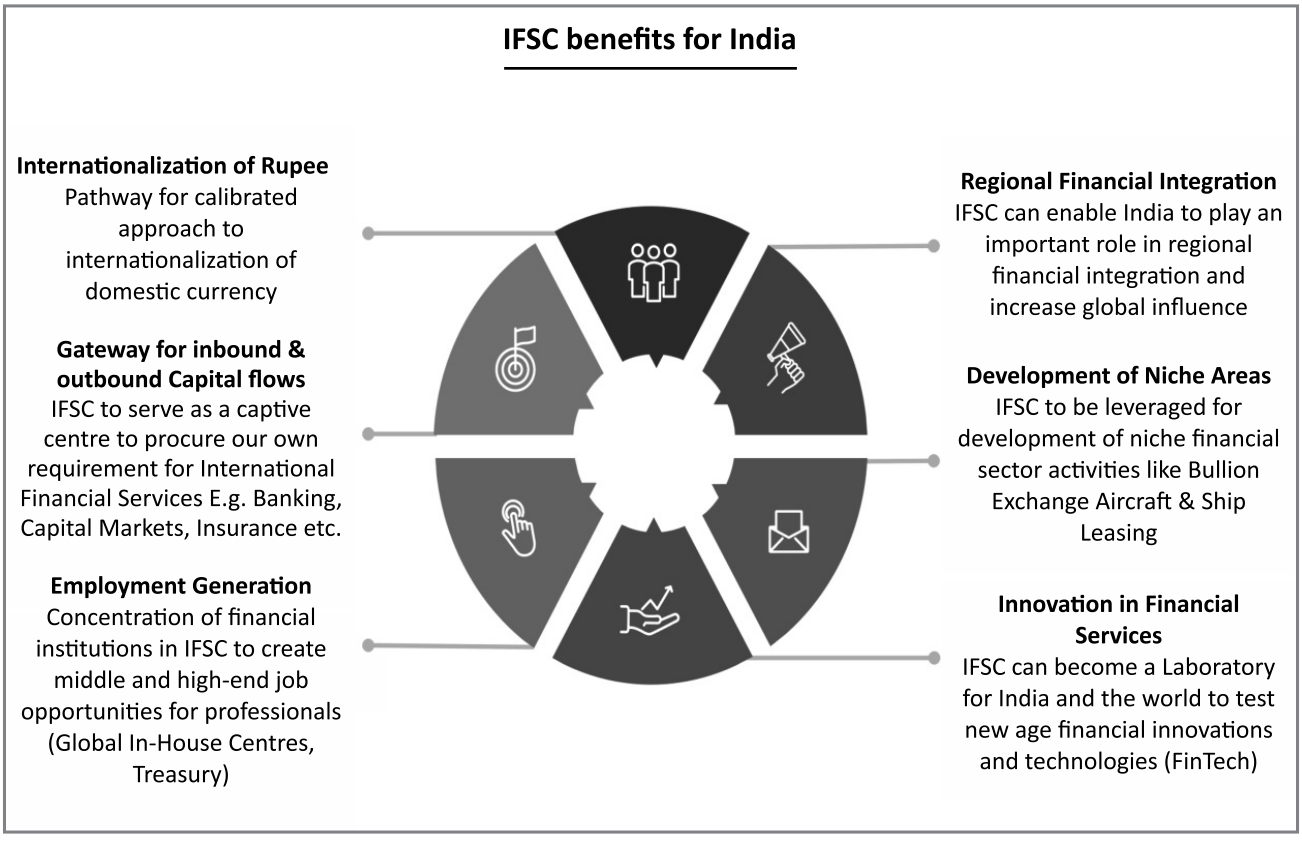
purchase of international financial services. Therefore, GIFT-IFSC was set up to transform India from being an importer of international financial services to becoming self-sufficient as well as an exporter of international financial services. Thus, the vision was of "**onshoring the offshore international financial services**".

- **India's economic growth trajectory**: More significantly, a vibrant IFSC has the potential to act as a growth catalyst for domestic Indian economy which is striving to become a USD 5 Trillion economy. Services offered in an IFSC, including Banking, Asset Management, Insurance and Capital Markets attract huge amounts of global capital inflows, such inflows can be channelized for the social economic development of India as well as to meet the Sustainable Development Goals - 2030. Therefore, the development of an IFSC was an imperative step in India's economic growth trajectory.

Another driving force for setting up an IFSC within the country was to allow bright young Indian talent especially in finance and information technology field to fully exhibit & showcase their talent and expertise, who hitherto, had to travel and work in overseas financial centres.

IFSC Benefits for India

The establishment of GIFT-IFSC will boost the growth of country and GIFT-IFSC is an important gateway to connect India with global opportunities. The benefits of having an IFSC is in India are summarized below in the following diagram: -



Thus, the setting up and operationalization of India's maiden IFSC was a bold and historic step which has catapulted India into a 21st century modern, resilient, and sustainable economy.

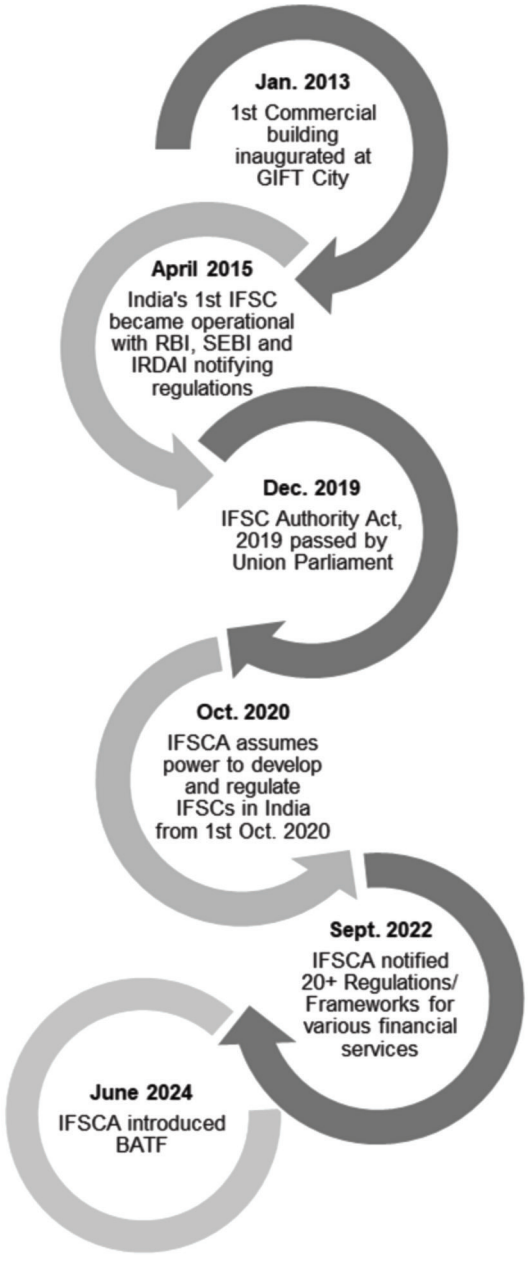
The below diagrams are the overview on GIFT-IFSC and also provides a bird view on the Business activities in IFSC.

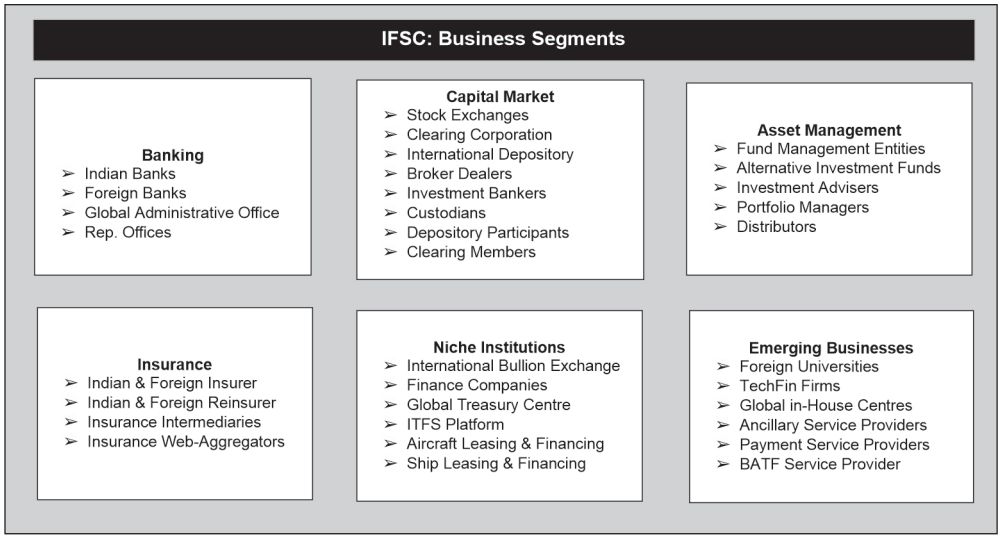
GIFT IFSC: Government of India Initiative

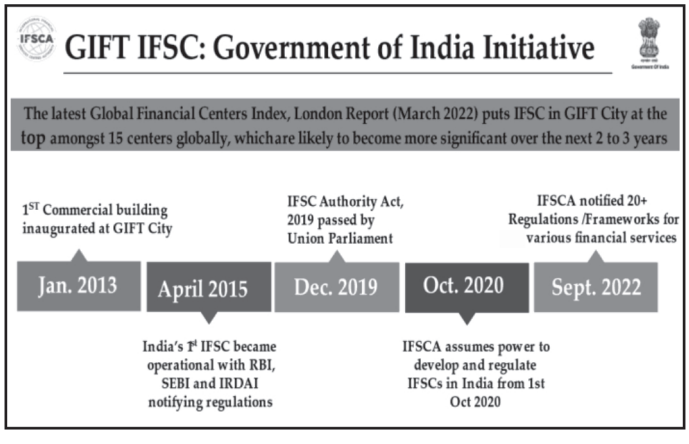
The latest Global Financial Centres Index 38 Report (September 2025), puts IFSC in GIFT City at the rank 43 out of 120 Global Financial Centres. According to the report IFSC in GIFT City will grow significantly over the next 2 to 3 years.

Business Activities

- Banking
- Fund Management
- Global In House Centre
- Capital Market
- Insurance
- Metals and Commodities
- BATF Service Providers
- Aircraft Leasing
- Fintech
- Foreign University
- Ship Leasing







BUSINESS ACTIVITIES

BANKS
- Indian banks
- Foreign banks

CAPITAL MARKET
- Stock/Commodity Exchanges
- Clearing Corporation
- Depository
- Broker Dealer

ASSET MANAGEMENT
- Alternate Investment Fund
- Investment Advisers
- Wealth Management
- Portfolio Manager
- Custodial Services

INSURANCE
- Indian Insurer
- Indian Reinsurer
- Indian Broker
- Foreign Insurer
- Foreign Reinsurer

Other Financial Institutions
- Finance Company
- Global Corporate Treasury Centre
- International Trade Finance Services Platform

Emerging Activities
- Global Fintech Hub
- Global inhouse centres
- International Bullion Exchange
- Aircraft Leasing & Financing
- Sustainable Finance
- Ancillary Services/Professional Service Providers

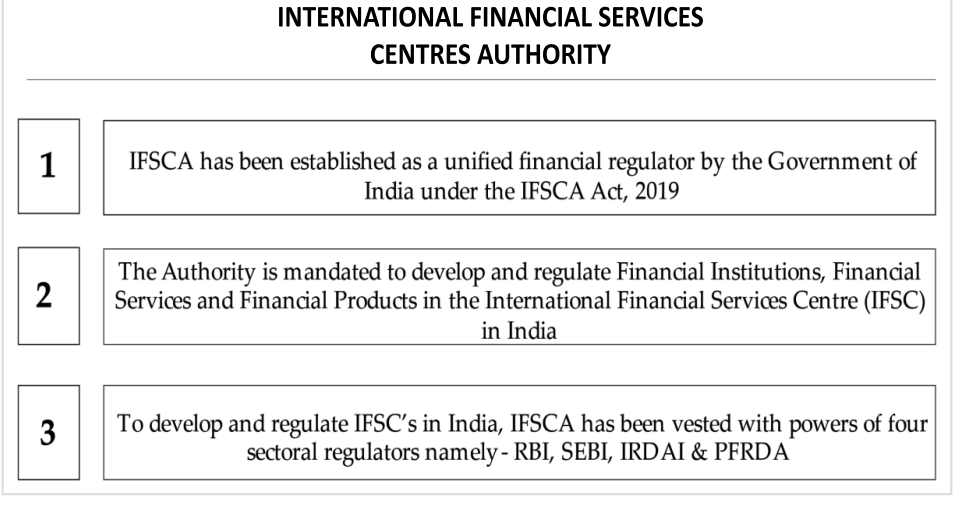
INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY

A major inflection point in IFSC's journey towards becoming a full-fledged International Financial Centre, which is comparable to and competitive with other overseas financial centres, came in the year 2019 when Government of India through the International Financial Services Centres Authority Act, 2019 (hereafter referred to the Act) established the International Financial Services Centres Authority (IFSCA) as a dedicated and unified financial regulator for IFSCs in India. The IFSCA has been statutorily empowered to develop and regulate the financial markets in the IFSCs in India.

The Act empowers IFSCA to exercise powers of four domestic regulators namely Reserve Bank of India ("**RBI**"), Securities & Exchange Board of India ("**SEBI**"), Insurance & Regulatory Development Authority of India ("**IRDAI**") & Pension Fund Regulatory & Development Authority ("**PFRDA**") under 14 (Now 15) Central Acts in so far as development and regulation of financial products, financial institutions and financial services within the IFSCs is concerned. Thus, IFSCA can perform all such quasi-legislative, executive, and quasi-judicial functions in IFSCs as are being performed by these regulators in domestic areas under these 15 Acts.

With effect from 1st October 2020, the IFSCA assumed powers of the four domestic regulators and has started the development and regulatory affairs of India's maiden IFSC in GIFT City. To develop the IFSC, the Authority has adopted a multi-pronged and calibrated approach which *inter alia,* includes creating an internationally aligned regulatory framework across all business verticals such as Banking, Capital Markets, Fund Management, Insurance, etc. Secondly, the authority is working to onshore new and niche international financial services which were previously being procured entirely from overseas financial jurisdictions. The niche financial services include International Bullion Exchange, Aircraft Leasing and Finance, Courses offered in Financial Management, Fin-Tech, Science, Technology, Engineering and Mathematics by foreign universities or foreign institutions, Ship Leasing and Financing, FinTech related services, etc. and thirdly, the Authority has been proactively working with multiple stakeholders to facilitate ease of doing business for the global and domestic financial services industry operating from GIFT IFSC.

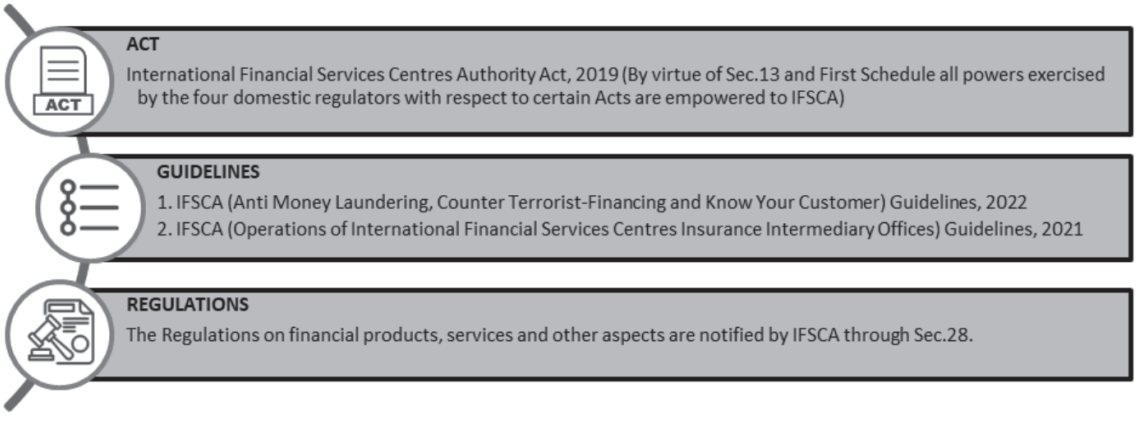
The IFSCA is a unique Authority which has been vested with a dual mandate of developing and regulating the IFSCs in India. Section 12 of the Act specifically provides that in addition to the regulatory powers of IFSCA, it shall be the duty of the IFSC Authority to develop financial institutions, financial services and financial products within the IFSCs.



Legal and Regulatory Framework in Gift – IFSC

Legal Framework

1. ACT
2. RULES
3. REGULATIONS
4. NOTIFICATIONS
5. CIRCULARS
6. GUIDELINES



MAJOR REGULATIONS NOTIFIED BY IFSCA	
(i)	Banking Regulations, 2020
(ii)	Payment and Settlement Systems) Regulations, 2024
(iii)	Bullion Market Regulations, 2025
(iv)	Capital Market Intermediaries Regulations, 2025
(v)	Payments Regulatory Board Regulations, 2025
(vi)	KYC Registration Agency Regulations, 2025
(vii)	Procedure for making regulations and subsidiary instructions Regulations, 2025
(viii)	TechFin and Ancillary Services Regulations, 2025
(ix)	Market Infrastructure Institutions Regulations, 2021
(x)	Listing Regulations, 2024
(xi)	Fund Management Regulations, 2025
(xii)	Setting up and Operation of International Branch Campuses and Offshore Education Centres Regulations, 2022
(xiii)	Global In-House Centres Regulations, 2020
(xiv)	Consolidated IFSCA (Registration of Insurance Business) Regulations, 2021
(xv)	Book-keeping, Accounting, Taxation and Financial Crime Compliance Services Regulations, 2024

Powers and Functions of the IFSCA

Functions of the Authority (Section 12 of IFSCA Act, 2019)

(a) Section 12 (1) of IFSCA Act, empowers the Authority to develop and regulate the financial products, financial services and financial institutions in an IFSC, *by such measures as it deems fit.*

Under this section, the Authority is empowered to develop and regulate the financial products, services and institutions independently. Further, the authority can take all developmental steps such as authorizing the service providers who aid in assisting the financial service providers, which are an important pillar in providing support services for the entities to function effectively and to build a supporting ecosystem around for the entities in IFSC.

It is to be noted that, the legislature has envisaged that the Authority might regulate diverse financial products, services and institutions in IFSC and at times need the regulatory flexibility. Thus, by virtue of Section 12, it has enabled the authority to adopt any measures as it deems fit.

Presently the role of the Authority has broadened as it regulates Bullion exchange, Foreign Universities and Institutions, Aircraft leasing, Ancillary service providers, Finance Companies and Fintech entities, etc. These services are either not regulated in the domestic sector or are not regulated as a financial service, like in the IFSC. Thus, Section 12 has enabled the Authority to adopt flexibility in handling the diverse regulatory landscape.

(b) Section 12 (2) empowers the Authority to regulate those financial products, financial services and financial institutions in an IFSC:

(i) which are permitted to operate in IFSC before the commencement of IFSCA Act, by any regulator; and

(ii) those which are notified by Central Government from time to time.

> Prior to the establishment of IFSCA the entities in IFSC were regulated by domestic financial regulators such as SEBI, RBI, IRDAI and PFRDA. Post the establishment of IFSCA through Section 4 of IFSCA Act, 2019 the entities are regulated by the IFSCA. For the initial period many regulations and guidelines of the domestic financial regulators were applicable to entities/products and services in the IFSC. Subsequently, IFSCA has gradually come up with multiple regulations, circulars, guidelines superseding the earlier regulatory regime.

(c) Further, Section 12 (2) enables IFSCA to recommend to the Central Government to notify other financial products, services and institutions in an IFSC.

The IFSCA had suggested Central government to notify multiple financial products and services such as Aircraft leasing, Ship leasing, Global in-house companies, etc. which has broadened the business scope in IFSC and also the number of entities registered in IFSC.

IFSC can also be perceived as a laboratory for financial experimentation which would enable the government to experiment with new financial services and based on their adoption and risk perception can be replicated in the domestic economy. IFSCA as a unified regulator exercises control over all the financial services and hence is equipped to provide better oversight on these new generation initiatives.

Powers of the Authority (Section 13 of IFSCA Act, 2019)

(a) Section 13 (1) specifies that*, all powers* exercisable by an appropriate regulator specified in First Schedule of the IFSCA Act, 2019 under respective acts, in an IFSC shall be exercised by the IFSCA, in so for *as it relates to financial products, financial services and financial institutions.*

This is a unique experimentation wherein the legislature instead of enumerating various powers, a simple reference has enabled, IFSCA to incorporate all the powers of domestic sector financial regulators. This ensures that the jurisprudence developed for the domestic regulators will be applicable for IFSCA, thereby saving a lot of time and effort in coming out with new interpretation.

(b) Section 13 (2) of IFSCA Act, empowers Central Government to amend the First Schedule by including or omitting any financial sector regulator and the law administered by it, through notification.

By virtue of Section 13 (2) of IFSCA Act, the Central Government has recently notified the Factoring regulation Act, 2011 under the First Schedule, which is administered by RBI in the domestic market.

The Regulators and respective Acts mentioned under First Schedule are as follows: -

FIRST SCHEDULE

S. No.	*Domestic Regulator*	*Statute administered*
1	The Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (2 of 1934).	1. The Reserve Bank of India Act, 1934; 2. The Banking Regulation Act, 1949; 3. The Deposit Insurance and Credit Guarantee Corporation Act, 1961; 4. The Foreign Exchange Management Act, 1999; 5. The Credit Information Companies (Regulation) Act, 2005; 6. The Government Securities Act, 2006; 7. The Payment and Settlement Systems Act, 2007. 8. The Factoring Regulation Act, 2011
2	The Securities and Exchange Board of India established under the Securities and Exchange Board of India.	1. The Securities Contracts (Regulation) Act, 1956 (42 of 1956); 2. The Securities and Exchange Board of Act, 1992 (15 of 1992); 3. The Depositories Act, 1996 (22 of 1996).
3	The Insurance Regulatory and Development Authority of India constituted under the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999).	1. The Insurance Act, 1938 (4 of 1938); 2. The General Insurance Business Insurance Regulatory and (Nationalization) Act, 1972; 3. The Insurance Regulatory and Development Authority Act, 1999 (41 of 1999).
4	The Pension Fund Regulatory and Development Authority constituted under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013).	The Pension Fund Regulatory and Development Authority Act, 2013.

FINANCIAL PRODUCTS AND FINANCIAL SERVICES

Financial Products

Section 3(1)(d) of the IFSCA Act defines "*Financial product*" as

(i) Securities;

(ii) Contracts of insurance;

(iii) Deposits;

(iv) Credit arrangements;

E.g., Trade Financing Services is one such activity which comes under Credit arrangements.

(v) Foreign currency contracts other than contracts to exchange one currency for another that are to be settled immediately; and

(vi) Any other product or instrument that may be notified by the Central Government from time to time.

New Financial Products notified by the Central Government:

(i) **Aircraft lease** including operating and financial lease and any hybrid of operating and financial lease of aircraft or helicopter and engines of aircraft or helicopter or any other part thereof;

The Government of India (GOI) vide Gazette notification dated October 06, 2020, notified aircraft operating lease as a financial product.

(ii) **Bullion spot delivery** contract;

(iii) **Bullion depository receipt** with underlying bullion;

GOI notified bullion spot trading and bullion depository receipts (BDR) with underlying bullion, as financial products and bullion related services as financial services respectively on August 31, 2020.

(iv) Operating lease including any hybrid of operating and financial lease of such product or equipment as financial product. Under this, IFSCA has been empowered to bring framework for products such as **ship leasing** and other equipment;

In view of the Authority's assessment of a huge potential for operating lease of ships and for various other equipments in the IFSC, the Government of India vide notification dated December 14, 2021, notified operating lease including any hybrid of operating and financial lease of such product or equipment, as specified by the Authority, as a financial product; Under this the Authority has specified operating lease, including an hybrid of operating and financial lease, in respect of 'Aviation training simulation devices', as a financial product.

(v) Ship lease including operating lease, and hybrid of operating and financial lease, of a ship or ocean vessel, engines of ship or ocean vessel, or any other part thereof, as a financial product.

Financial Services

Section 3(1)(e) of the IFSCA Act defines "*Financial service*" as

(i) Buying, selling, or subscribing to a financial product or agreeing to do so;

(ii) Acceptance of deposits;

(iii) Safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;

(iv) Effecting contracts of insurance;

(v) Offering, managing or agreeing to manage assets consisting of financial products belonging to another person;

(vi) Exercising any right associated with a financial product or financial service;

(vii) Establishing or operating an investment scheme;

(viii) Maintaining or transferring records of ownership of a financial product;

(ix) Underwriting the issuance or subscription of a financial product;

(x) Providing information about a person's financial standing or creditworthiness;

e.g., Credit Information Companies, Credit rating agencies.

(xi) Selling, providing, or issuing stored value or payment instruments or providing payment services;

(xii) Making arrangements for carrying on any of the services in sub-clauses (i) to (xi); (under this a framework on Ancillary Services was issued, which provides for support services such as Auditing, Accounting, Taxation and Assets Management);

(xiii) Rendering or agreeing to render advice on or soliciting for the purposes of—

a. buying, selling, or subscribing to, a financial product; or

b. availing any of the services in sub-clauses (i) to (xi); or

c. exercising any right associated with a financial product or any of the services in clauses (i) to (xi);

(xiv) Any other service that may be notified by the Central Government from time to time.

Considering the importance of professional and other service providers for the development of financial products, financial services and financial institutions in the IFSC, a framework for enabling ancillary services has been issued by IFSCA by exercising Sec.3 (1) (e) (xiii). This provision enables IFSCA to authorize such entities which are important in developing ancillary services ecosystem for the existing entities in IFSC. The framework allows the following permissible activities under ancillary services: -

a) Legal, Compliance and Secretarial;

b) Auditing, Accounting, Bookkeeping and Taxation Services;

c) Professional & Management Consulting Services;

d) Administration, Assets Management Support Services and Trusteeship Services;

e) Voice broking services to entities in IFSCs or from outside India in relation to their business of broking;

f) Ship broking for permitted activities under 'IFSCA Framework for Ship Leasing'; and

g) Any other services as approved by IFSCA from time to time.

Under the said framework more than 60 Ancillary Services firms have been authorized by IFSCA as of now.

New Financial Services notified by the Central Government:

(i) Foreign Currency settlement system, to solve the problem of facilitating seamless transactions on real-time basis, enhance liquidity management, and ensure compliance.

(ii) **Global in-House Centres (GIC)**, as financial service to provide services relating to financial products and financial services;

To enable the GIC business in GIFT IFSC, the Central Government on the recommendation of the IFSCA, vide Gazette notification dated October 06, 2020, notified GICs as a financial service to provide services relating to financial products and financial services. Subsequently, the IFSCA notified the Global In-House Centres Regulations, 2020 which permitted an entity belonging to a financial services group to set up a GIC in the IFSC.

(ii) Trading in **bullion depository receipts** with underlying bullion in relation to bullion spot delivery contracts;

(iii) Provision of bullion financing, bullion-based loans, bullion loans against collateral, **bullion vaulting**, clearing and settlement services in relation to bullion spot delivery contracts and bullion depository receipts;

(iv) **Courses offered** in Financial Management, Fin-Tech, Science, Technology, Engineering and Mathematics by **foreign universities or foreign institutions** in IFSC.

As of mid-2025, four foreign universities have formally established their presence at GIFT IFSC. The two of the foreign universities are Wollongong University and Deakin University which have been given in-principle registration by the IFSCA.

Source: giftgujarat.in

LISTING AND TRADING OF SECURITIES IN IFSC

In Globalized world, Global capital acts as an important driver of economic growth and development. The setting up of the IFSC in India is aimed at tapping global capital flows to meet India's development needs and simultaneously provide international issuers a globally competitive financial platform for the full range of international financial services.

Section 23 (3) of the Companies Act, 2013 has been notified on September 28, 2020, enabling listing of equity shares of public Indian companies in permissible foreign jurisdictions, including IFSC. Previously, the listing of equity in IFSC by companies incorporated in India and foreign jurisdiction is regulated by a combination of SEBI (IFSC) Guidelines, 2015, relevant provisions of SEBI (Issue of Capital and Disclosure requirements) Regulations, 2018, Companies Act, 2013 and Foreign currency depository receipt scheme and circulars issued thereunder.

IFSCA, in its endeavor to develop a comprehensive and consistent regulatory framework based on global best practices with a special focus on ease of doing business, enacted an all-encompassing framework to facilitate issuers to access world's capital markets. Through a cross-border listing, a company can reach beyond its home jurisdiction to identify a foreign stock exchange that meets its particular corporate financing needs. In order to provide an ecosystem for Fintech companies, IFSCA enabled the listing of startups in IFSC. Further, considering the recent innovative methods for raising of capital are being used by companies in some jurisdictions, such as by Special Purpose Acquisition Companies (SPACs), IFSCA enabled the listing of SPAC on the recognised stock exchanges, in order to facilitate sponsors, raise capital to undertake an acquisition of a company or assets.

The countries worldwide are investing into Environment, Social, Governance (ESG) projects, pursuant to the Paris Agreement and Sustainable Development Goals. The financial sector has been identified as being instrumental in advancing the zero-carbon energy transition. Considering the importance of Environment, Social and Governance issues and the ESG targets, there is a need for the regulators to provide an ecosystem for sustainable financing. IFSCA aims to move towards becoming a prominent international centre for sustainable finance, supporting the needs for ESG financing. Towards this direction, IFSCA has enabled the listing of green bonds, social bonds, sustainable bonds and sustainability linked bonds.

Listing of Securities

(a) The IFSCA (Listing) Regulations, 2024 enables the following type of listing:

i. an initial public offer of specified securities by an unlisted entity;

ii. a follow-on public offer of specified securities by a Listed Entity;

iii. an initial public offer of specified securities by a Special Purpose Acquisition Company;

iv. a rights issue or a preferential issue or a qualified institutions placement of specified securities by a Listed Entity;

v. issuance and listing of depository receipts by an entity;

vi. issue and listing of debt securities by an entity;

vii. secondary listing of securities by an entity;

viii. listing of Commercial Paper or Certificates of Deposit or other financial products as permitted by the IFSCA.

(b) The following entities would be eligible for listing of securities on the recognised stock exchanges in IFSC:

i. A company incorporated in an IFSC;

ii. A company incorporated in India; and

iii. A company incorporated in a foreign jurisdiction.

(c) Further, in respect of listing of debt securities, the following entities are also eligible to list on the recognised stock exchanges in IFSC:

i. any supranational, multilateral or statutory institution.

ii. any municipality or any similar body

iii. An entity which offers or proposes to offer soverign debt securities.

A. Listing of specified securities through IPO

The salient features for raising of capital through IPOs on a recognized stock exchange in IFSC are as follows:

a) Eligibility

An issuer shall be eligible to make an initial public offer of specified securities, only if:

(a) the issuer has an operating revenue, based on consolidated audited accounts, of at least USD twenty million in the last financial year or averaged over the last three financial years; or

(b) the issuer has a pre-tax profit, based on consolidated audited accounts, of at least USD one million in the last financial year or averaged over the last three financial years; or

(c) The issuer has a post issue market capitalization of at least USD twenty five million; or

(d) It qualifies under any other eligibility criteria specified by the IFSCA.

b) Filing of Offer Document

Where size of the proposed issue is USD fifty million or below,

(a) the issuer, through the lead manager(s), shall file a draft offer document along with applicable fee with the Authority;

(b) the lead manager(s) shall also submit a due diligence certificate along with the draft offer document;

(c) the draft offer document shall be hosted on the websites of the Authority, the recognised stock exchange(s) where the specified securities are proposed to be listed, the issuer and the lead manager(s) of the issue.

Where size of the proposed issue is more than USD fifty million,

(a) the issuer, through the lead manager(s), shall file a draft offer document along with applicable fee with the Authority;

(b) the lead manager(s) shall also submit a due diligence certificate along with the draft offer document;

(c) the draft offer document shall be hosted on the websites of the Authority, the recognised stock exchange(s) where the specified securities are proposed to be listed, the issuer and the lead manager(s) for seven working days, inviting comments from public;

(d) the lead manager(s) shall file with the Authority details of material comments received by them or by the issuer from the public on the draft offer document during such period and the consequential changes, if any, that are proposed to be made pursuant thereto, in the draft offer document;

(e) the Authority may issue observations, if any, on the draft offer document within twenty-one working days from the later of the following dates:

(i) the date of receipt of the draft offer document; or

(ii) the date of receipt of satisfactory reply from the issuer and/or the lead manager(s) where the Authority has sought any clarification or additional information from them; or

(iii) the date of receipt of clarification or information from any regulator or agency, where the Authority has sought any clarification or information from such regulator or agency; or

(iv) the date of receipt of a copy of in-principle approval given by the recognised stock exchange(s).

(f) the issuer shall carry out changes advised by the Authority, if any, in the draft offer document;

(g) the issuer shall, through the lead manager(s), file the updated offer document with the Authority and the recognised stock exchange(s) prior to going ahead with the issue.

c) Offer Timing

The offer shall be made by the issuer within a period of not more than twelve months from the date of issuance of observations by the Authority.

d) Offer Period

The initial public offer shall be kept open for at least one working day and not more than ten working days.

e) Minimum Public Offer

1. Where the issuer is a company incorporated in India, including in an IFSC, such issuer shall comply with the minimum offer and allotment to public and minimum public shareholding norms prescribed under the Securities Contracts (Regulation) Rules, 1957.
2. Where the issuer is a company incorporated outside India, the minimum offer and allotment to public shall be at least ten per cent. of the post issue capital and such issuer shall also maintain the minimum public shareholding of ten per cent. of the post issue capital on a continuous basis.

f) Minimum subscription

An offer shall be considered successful only if the minimum subscription as disclosed in the offer document is received.

g) Lockup of securities

The pre-issue shareholding of promoters and controlling shareholders of the issuer shall be locked-up for a period of 180 days from the date of allotment in the initial public offer.

B. Follow on Public Offer

A Listed Entity may make a follow-on public offer of specified securities in the manner provided in IFSCA (Listing) Regulations, 2024.

C. Listing of Special Purpose Acquisition Companies (SPAC)

A SPAC is eligible to raise capital through initial public offer of specified securities on the recognised stock exchange(s), only where:

(a) The target business combination has not been identified prior to the IPO;

(b) The SPAC has the provisions for redemption and liquidation in line with these Regulations; and

(c) The sponsor of the SPAC has a good track record in SPAC transactions, business combinations, fund management or investment banking activities and the same shall be disclosed in the offer document.

Here, sponsor shall mean a person sponsoring the formation of the SPAC and shall include persons holding any specified securities of the SPAC prior to the IPO.

The salient features of the framework for listing of SPACs are as follows:

Issue size: Not less than USD 50 million or any other amount as may be specified by the Authority from time to time. Further, the sponsors shall hold at least 15% and not more than 20% of the post issue paid up capital;

Minimum Application Size: The minimum application size in an initial public offer of SPAC shall be USD 100,000. Allotment to investors shall be on proportionate basis or discretionary basis, as disclosed in the offer document

SPAC Specific Obligations: Requirements have also been prescribed with respect to maintenance of escrow account, eligible investments pending utlisation, acquisition timeline of 3 years, right of dissenting shareholders, liquidation provisions etc.

D. Rights Issue or a Preferential Issue or a Qualified Institutions Placement

A Listed Entity may make rights issues, preferential issues or qualified institutions placement of specified securities, subject to compliance with the requirements that may be specified by the IFSCA.

E. Public Offer of Depository Receipts

An issuer incorporated outside an IFSC shall be eligible to make an issue of depository receipts only if -

(i) It is authorised to issue depository receipts as per the applicable laws of its home jurisdiction;

(ii) The underlying securities represented by such depository receipts are in dematerialised form, fully paid and free from all encumbrances.

The salient features of the framework for Public Offer of Depository Receipts are as under:

Offer size: Not less than USD 7,00,000 or any other amount as may be specified by the Authority from time to time.

Minimum Subscription: The listing of DRs shall be permitted only if the subscription in the offer is not less than USD 700,000 or any other amount as may be specified by IFSCA.

Pricing: The price of the DRs can be determined by the issuer through consultation with the lead manager(s) through fixed price or book building process.

Allotment: The allotment, payments and refunds must be completed within 5 working days from the date of closure of the issue.

F. Listing of Debt Securities

An issuer may list its debt securities on a recognised stock exchange: The debt securities proposed to be issued and listed on a recognised stock exchange may be offered on a standalone basis or through a series of issuances (including medium term note programme).

The minimum subscription amount for an investor in case of private placement shall be disclosed in the offer document.

In respect of a public issue of debt securities on a recognised stock exchange, the issuer shall comply with requirements such as appointment of trustee, creation of debenture redemption reserve and such other requirements as may be specified by the Authority or the recognised stock exchange(s).

G. Secondary Listing of Specified Securities

Secondary Listing without public offer

An issuer, having its specified securities listed in a jurisdiction outside IFSC, may list those specified securities on a recognised stock exchange(s), without making public offer, subject to the following conditions:

(a) It shall file listing application, in the manner specified by the recognised stock exchange(s); and

(b) It shall comply with the listing requirements of the recognised stock exchange(s) and such other conditions as may be specified by the IFSCA.

Listing with public offer

1. An issuer, having its specified securities listed in a jurisdiction outside IFSC, may list the specified securities on a recognised stock exchange(s) through a public offer.
2. The provisions relating to appointment of lead manager, in-principle approval from recognised stock exchanges, filing of offer document, offer timing, disclosures in offer document, reservations, pricing, offer period, minimum public offer, minimum subscription, anchor investor, underwriting, monitoring agency, allotment, listing, post-issue report, price stabilisation through green shoe option, lockup of securities, other responsibilities of lead manager and prohibition on payment of incentives provided for Initial Public Offers under PART A of Chapter III shall *mutatis mutandis* apply to listing by way of public offer.
3. A public Indian company, with dual listing in IFSC and in India, shall comply with the additional regulatory requirements as may be specified by the Authority.

H. Listing of Commercial Paper or Certificates of Deposit or other financial products

An issuer may list commercial paper, certificate of deposit and other financial product on a recognised stock

exchange in such manner and subject to such conditions as may be specified by the IFSCA. Further, an issuer may list a fund or an investment trust on a recognised stock exchange in terms of IFSCA (Fund Management) Regulations, 2022.

a) Commercial Paper

Depository: The issuer shall ensure that the CP listed on a recognised stock exchange in the IFSC is in demat form and held with a recognised depository in the IFSC or an international central securities depository.

Maturity: The issuer shall ensure that the maturity of the CP proposed to be listed on a recognized stock exchange in the IFSC is not less than 7 days and not more than 1 year.

Other conditions:

a. CP shall be issued at a discount to face value.

b. The issuance of a CP with options (call/put) is not permitted.

c. The issuance of a CP is not permitted to be underwritten or co-accepted.

Listing Application

An issuer desirous of listing its CP on a recognised stock exchange shall file the listing application along with a copy of offer document or information memorandum, as applicable, with the recognised stock exchange in accordance with the requirements specified by the exchange.

The application shall be accompanied with regulatory fee of USD 1000. The regulatory fees received by the stock exchange shall be remitted to the Authority.

b) Certificate of Deposits

Depository: The issuer shall ensure that the CD listed on a recognised stock exchange in the IFSC is in demat form and held with a recognised depository in the IFSC or an international central securities depository.

Listing Application

An issuer desirous of listing its CD on a recognised stock exchange shall file the listing application along with a copy of the offer document or information memorandum, as applicable, with the recognised stock exchange in accordance with the requirements specified by the exchange. The application shall be accompanied with regulatory fee of USD 1000. The regulatory fees received by the stock exchange shall be remitted to the Authority.

I. Post Listing Obligations

General obligation of compliance

The Listed Entity shall ensure that key managerial personnel, directors, promoters, controlling shareholders or any other person dealing with it comply with responsibilities or obligations as assigned to them under these regulations.

Compliance Officer and Obligations

(1) A Listed Entity shall appoint a qualified company secretary as the compliance officer:

Provided that where the entity is incorporated outside India, a company secretary or equivalent shall be appointed as compliance officer.

(2) The compliance officer of the Listed Entity shall be responsible for-

a) ensuring conformity with the applicable regulatory obligations under these regulations, in letter and spirit;

b) co-ordination with and reporting to the Authority, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in such manner as may be specified; and

c) ensuring that the correct procedures are followed to ensure the correctness, authenticity and comprehensiveness of the information, statements and reports filed under these regulations.

Change in Director, KMP, Auditor or Compliance Officer

1) The Listed Entity shall immediately disclose to the recognised stock exchange(s) any change in director, key managerial personnel, auditor or Compliance Officer.

2) In case of a resignation of the auditor of the Listed Entity, detailed reasons for resignation of auditor, as given by the said auditor, shall be disclosed by the Listed Entity to the recognised stock exchange(s) as soon as possible but not later than one working day of receipt of such reasons from the auditor.

3) In the case of a resignation of any director, key managerial personnel or compliance officer, such person shall inform to the recognised stock exchange(s), in writing if he is aware of any irregularities which would have a material impact on the Listed Entity, including financial reporting, as soon as possible but not later than one working day.

Shareholding Pattern

The Listed Entity shall submit its shareholding pattern to the recognised stock exchange(s), in such form and manner as may be specified by the Authority or the recognised stock exchange(s) on a quarterly basis, within fifteen working days from the end of each quarter.

Financial Statements

1) The Listed Entity shall disclose the audited standalone and consolidated financial statements for the full financial year to the recognised stock exchange(s) immediately after the approval of its board of directors, but in any event not later than three months of the end of financial year.

2) [The Listed Entity shall disclose the financial statements for first half of the financial year to the recognised stock exchange(s) immediately after the approval of its board of directors, but in any event not later than forty five days after the end of first half year.]

3) The Listed Entity shall prepare its financial statements in accordance with IFRS or US GAAP or Ind AS or other accounting standards as applicable in its home jurisdiction:

Provided that a Listed Entity preparing financial statements as per the accounting standards of its home jurisdiction (other than IFRS, US GAAP and Ind AS) shall be required to reconcile the same with IFRS.

Corporate Governance

1) The Listed Entity shall describe its corporate governance practices in its annual report in the manner specified by the laws of the jurisdiction of its incorporation.

2) The Listed Entity shall also comply with the corporate governance norms as may be specified by the Authority.

Sustainability Report

1) The Listed Entity shall disclose to the recognised stock exchange(s) a sustainability report with respect to environmental, social and governance factors for financial year, no later than six months after the end of its financial year:

Provided that this sub-regulation shall not apply to the Listed Entities having market capitalisation of less than USD 50 million.

2) The sustainability report specified in sub-regulation (1) shall be prepared based on:

   a. internationally accepted reporting standards such as Global Reporting Initiative, International Sustainability Standards Board, Task Force on Climate-related Financial Disclosures;

   b. Business Responsibility and Sustainability Reporting; or

   c. any other standards that may be specified by the Authority.

Corporate actions

1) The Listed Entity shall inform the recognised stock exchange(s) in advance of any proposed corporate actions such as stock split, consolidation, dividend, bonus issues or similar events.

2) The Listed Entity shall give notice of the record date for such corporate action to the recognised stock exchange(s), wherever applicable at least three working days in advance, specifying the purpose of the record date.

Whistle-blower mechanism

The Listed Entity shall establish a whistle-blower mechanism for directors, employees and others to report genuine concerns while ensuring adequate safeguards against victimisation of persons who use such mechanism.

Website

The Listed Entity shall maintain a functional website that contains basic information about the entity including details about its business, board of directors, key managerial personnel, compliance officer, financial statements, e-mail address for grievance redressal and annual reports.

LESSON ROUND-UP

- Financial Services Centres which cater to customers outside their own jurisdiction are referred to as International Financial Services Centres (IFSCs). These centres are 'international' in the sense that they deal with the flow of finance and financial products/services across borders.
- IFSCA has notified the regulatory framework for several activities in capital markets, including policies relating to regulation and supervision of market infrastructure institutions (stock exchanges, clearing corporations and depositories), issuance and listing of various securities on recognized stock exchanges in IFSC, regulation and supervision of various types of intermediaries operating in capital markets in IFSC and various fund management activities in IFSC.
- The Act empowers IFSCA to exercise powers of four domestic regulators namely Reserve Bank of India ("RBI"), Securities & Exchange Board of India ("SEBI"), Insurance & Regulatory Development Authority of India ("IRDAI") & Pension Fund Regulatory & Development Authority ("PFRDA") under 14 (Now 15) Central Acts in so far as development and regulation of financial products, financial institutions and financial services within the IFSCs is concerned.
- Section 12 (1) of IFSCA Act, empowers the Authority to develop and regulate the financial products, financial services and financial institutions in an IFSC.

- Section 13 (1) specifies that, all powers exercisable by an appropriate regulator specified in First Schedule of the IFSCA Act, 2019 under respective acts, in an IFSC shall be exercised by the IFSCA, in so for as it relates to financial products, financial services and financial institutions.
- Section 23 (3) of the Companies Act, 2013 has been notified on September 28, 2020, enabling listing of equity shares of public Indian companies in permissible foreign jurisdictions, including IFSC.

GLOSSARY

Appropriate Regulator: Appropriate Regulator means any financial sector regulator specified in the First Schedule of the IFSCA Act.

Authority: Authority means the International Financial Services Centres Authority established under sub-section (1) of section 4 of the IFSCA Act.

Financial Services: Financial Services shall mean activities a financial institution is allowed to carry out as specified in the respective Act of the Parliament or by the Government of India or by any regulatory authority empowered to regulate the concerned financial institution.

International Financial Services Centre: means an International Financial Services Centre set up under section 18 of the Special Economic Zones Act, 2005.

TEST YOURSELF

(*These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation*)

1. What is the International Financial Services Centres Authority (IFSCA)? What are the Powers and Functions of the IFSCA?
2. What is an International Financial Services Centre? Explain the benefits of IFSC for India.
3. What are the various Financial Products and Services as prescribed under the IFSCA Act?
4. State the provisions for the Listing and Trading of securities in IFSC.
5. In which city India's first International Financial Services Centre (IFSC) has become operational?
    a. New Delhi
    b. Mumbai
    c. Pune
    d. Gandhi Nagar.

LIST OF FURTHER READINGS

- The International Financial Services Centres Authority Act, 2019
- IFSCA (Listing) Regulations, 2024
- IFSCA Rules/ Regulations/ Circulars/ Notifications/ Guidelines
- IFSCA FAQs

OTHER REFERENCES (Including Websites/Video Links)

- *https://www.ifsca.gov.in/*

Issue of Capital & Disclosure Requirements

Lesson 8

KEY CONCEPTS

■ Initial Public Offer ■ Further Public Offer ■ Private Placement ■ Preferential Issue ■ Warrants ■ Lead Manager ■ Underwriting ■ Offer Document ■ Qualified Institutional Buyer ■ Retail Individual Investor ■ Application Supported by Blocked Amount (ASBA) ■ Book Building ■ Innovators Growth Platform ■ Social Stock Exchange

Learning Objectives

To understand:

- Various types of issues in capital market
- Genesis of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018
- Conceptual understanding of important terminologies
- Modes of raising funds and compliance requirements
- Key Provisions for Draft offer document, prospectus etc.
- Lock-in-period and its requirements
- Fast-track issue
- Regulatory requirements for IPO of Indian Depository Receipts
- Regulatory framework for IPO by Small and Medium Enterprises
- Provisions for listing on Innovators Growth Platform

Lesson Outline

- Introduction
- Types of Issues
- Meaning of Draft Offer Document, Letter of Offer and Red Herring Prospectus
- Genesis and Applicability of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018
- Initial Public Offer/Further Public Offering
- Eligibility requirements to be complied with IPO/ FPO
- Promoters' Contribution
- Lock-in Requirements
- Other requirements for IPO & FPO
- Fast Track FPO
- Rights Issue
- Preferential Issue
- Qualified Institutions Placement
- Initial Public Offer and Rights Issue of Indian Depository Receipts
- Initial Public Offer by Small and Medium Enterprises
- Innovators Growth Platform
- Bonus Issue
- Social Stock Exchange
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

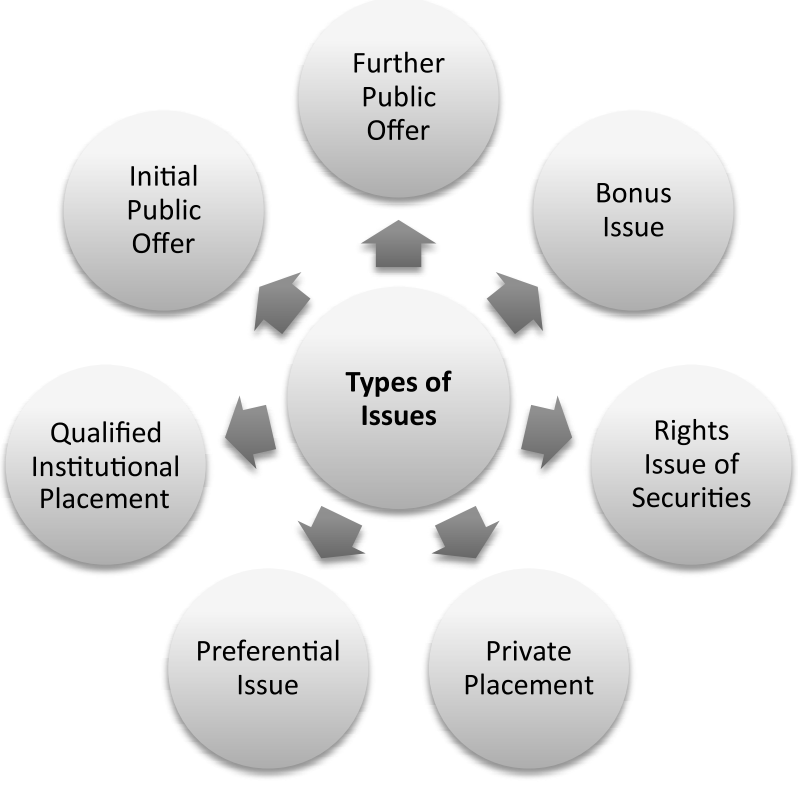
REGULATORY FRAMEWORK

- The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

INTRODUCTION

The primary market is the avenue for resource mobilization and capital formation in the country as it deals with the issue of new instruments by the corporate sector such as equity shares, preference shares and debt instruments. Central and State Governments, various public sector undertakings (PSUs), statutory and other authorities such as state electricity boards and port trusts also issue bonds/debt instruments. Primary Market provides an opportunity to issuers of securities, Government as well as corporates, to raise financial resources to meet their requirements of investment viz. working capital requirements / expansion of division /unit, etc. and/ or discharge their obligations viz. repayment of debt etc. SEBI has issued SEBI (Issue of Capital and Disclosure Requirements) Regulations ['ICDR Regulations'] for regulation several types of issue.

Types of Issues



The following are the various types of issues in the capital market -

- **Initial Public Offer:** It means an offer of specified securities by an unlisted issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holder of such securities in an unlisted issuer. In order to qualify as an Initial public offer, the offer of securities must be by an unlisted issuer company and such an issue shall be made to the public and not to the existing shareholders of the unlisted issuer company.
- **Further Public Offer (FPO):** It is an offer of specified securities by a listed issuer company to the public for subscription. In other words, another issue to the public other than its existing shareholders or to a select group of persons by the listed persons is referred to as a Further Public offer. It also includes an

offer for sale of specified securities to the public by any existing holders of such specified securities in a listed issuer.

- **Rights Issue:** Rights issue of securities is an issue of specified securities by a company to its existing shareholders as on a record date in a predetermined ratio.
- **Preferential Issue:** It refers to an issue, where a listed issuer issues shares or convertible securities, to a select group of persons on a private placement basis it is called a preferential issue. It does not include an offer of specified securities made through employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or depository receipts issued in a country outside India or foreign securities. The issuer is required to comply with various provisions which inter alia include pricing, disclosures in the notice, lock in etc., in addition to the requirements specified in the Companies Act, 2013.
- **Qualified Institutional Placement (QIP):** It refers to an issue by a listed entity to only qualified institutional buyers in accordance of Chapter VI of the SEBI (ICDR) Regulations, 2018. It also includes an offer for sale by promoters / promoter group on a private placement basis.
- **Bonus Issue:** Bonus issue of shares means additional shares issued by the Company to its existing shareholders to reward for their royalty and is an opportunity to enhance the shareholders wealth. The bonus shares are issued without any cost to the Company by capitalizing the available reserves.

MEANING OF DRAFT OFFER DOCUMENT, LETTER OF OFFER AND RED HERRING PROSPECTUS

Draft Offer Documents

"Draft Offer document" means the offer document at the initial stage. The draft offer documents are filed with the SEBI, at least 30 days prior to the filing of the Offer Document with ROC/Stock Exchanges. The SEBI may specify changes, if any, in the Draft Offer Document and the Issuer or the Lead Merchant banker shall carry out such changes in the draft offer document before filing the Offer document with ROC/SEs. The Draft Offer document is available on the SEBI website for public comments for a period of 21 days from the date of publication of the public announcement.

Offer Document

"Offer document" means Prospectus in case of a public issue or offer for sale and Letter of Offer in case of a right issue, which is filed with Registrar of Companies (ROC) and Stock Exchanges. An offer document covers all the relevant information to help an investor to make his/ her investment decision.

Red Herring Prospectus (RHP)

"Red Herring Prospectus" is a prospectus, which does not have details of either price or number of shares being offered, or the amount of issue. This means that in case price is not disclosed, the number of shares and the upper and lower price bands are disclosed. On the other hand, an issuer can state the issue size and the number of shares are determined later. An RHP for an FPO can be filed with the ROC without the price band and the issuer, in such a case will notify the floor price or a price band by way of an advertisement one day prior to the opening of the issue. In the case of book-built issues, it is a process of price discovery and the price cannot be determined until the bidding process is completed. Hence, such details are not shown in the RHP filed with ROC as per the Companies Act, 2013. Only on completion of the bidding process, the details of the final price are included in the offer document. The offer document filed thereafter with ROC is called a prospectus.

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

Genesis

India ushered from a merit-based regime (Controller of Capital Act) to disclosure based regime under SEBI. Under Controller of Capital Issues (CCI) issue size and price were approved by CCI after examining the various parameters/ ratios. With the repeal of Capital Issues (Control) Act, 1947 all the guidelines, notifications, circulars etc. issued by the office of the Controller of Capital Issues became defunct. The SEBI was given the mandate to regulate issuance of securities, namely the guidelines for Disclosure and Investor Protection, 1992. Later, the SEBI issued a compendium containing consolidated Guidelines, circulars, instructions relating to issue of capital effective from January 27, 2000. The compendium titled the SEBI (Disclosure and Investor Protection) Guidelines, 2000 replaced the original Guidelines issued in June 1992 and clarifications thereof. On August 26, 2009 the SEBI rescinded the SEBI (DIP) Guidelines, 2000 and notified the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

To align the provisions under ICDR Regulations with Companies Act, 2013 and allied regulations, SEBI issued a consultation paper detailing the suggestive changes under various fund-raising options by listed issuers. Between 2009-till date, numerous amendments have been made to the ICDR Regulations. Different types of offerings to raise funds in the primary market have been introduced. Further, there have been changes in market practices and regulatory environment over a period of time. A need was thus felt to review and realign the ICDR Regulations with these developments and to ensure that they reflect the best practices adopted globally. In view of the same, the SEBI constituted the Issue of Capital & Disclosure Requirements Committee ("ICDR Committee") under the Chairmanship of Shri Prithvi Haldea in June, 2017, to review the ICDR Regulations with the following objectives:

a) To simplify the language and complexities in the regulations;

b) To incorporate changes/new requirements which have occurred due to change in market practices and regulatory environment; and

c) To make the regulations more readable and easier to understand.

ICDR Committee Suggestions

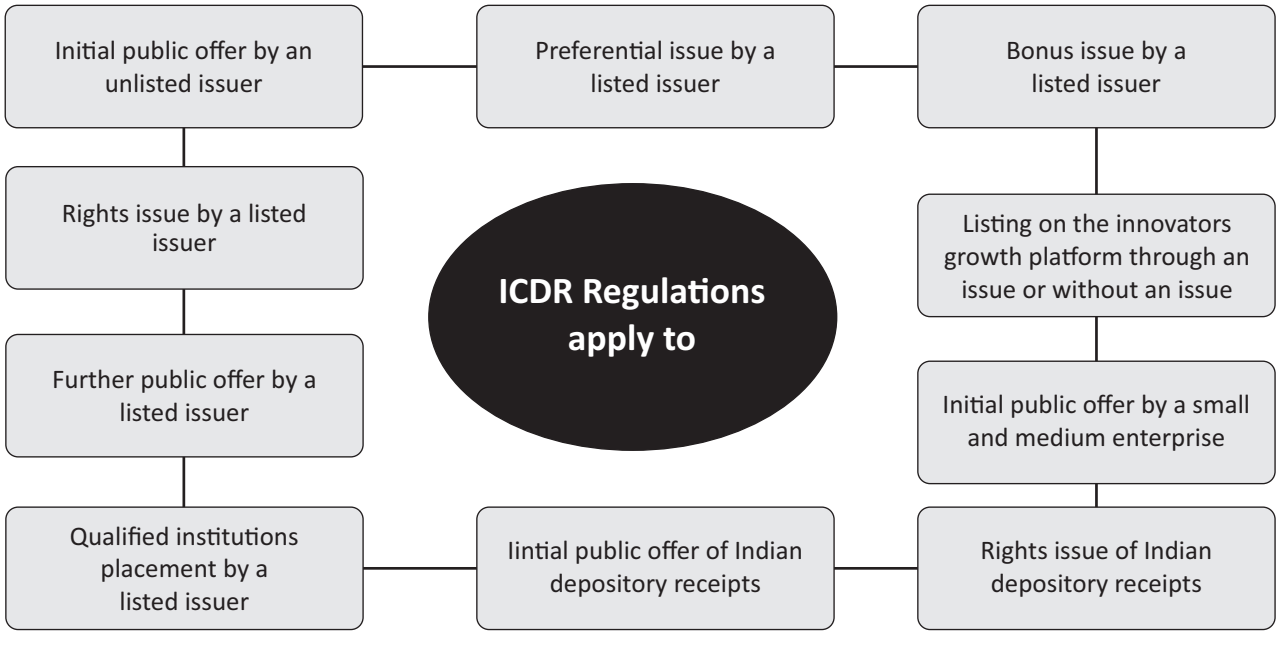
The ICDR Committee suggested certain policy changes. These suggestions were also taken to the Primary Market Advisory Committee (PMAC) of the SEBI which comprises of eminent representatives from the Ministry of Finance, Industry, Market Participants, academicians, the Institute of Chartered Accountants of India and the Institute of Company Secretaries of India. The recommendations of the PMAC were incorporated in the draft of the proposed ICDR Regulations. In addition to the public consultation, the draft regulations along with the key policy changes were also forwarded to the Ministry of Finance (MoF), Ministry of Corporate Affairs (MCA) and the Reserve Bank of India (RBI) for their comments. The provisions of Companies Act, 1956 (wherever applicable), Companies Act, 2013, the SEBI (Substantial Acquisition & Substantial Takeover) Regulations, 2011, the SEBI (Share Based Employee Benefits) Regulations, 2014 [now termed as SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021] have been suitably incorporated.

SEBI vide its notification dated 11th September, 2018 issued the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ('ICDR Regulations, 2018') which was effective from 60th day of its publication date i.e. September 11, 2018 in Official Gazette.

Chapter as per ICDR Regulations, 2018	***Particulars***
I.	Preliminary
II.	Initial Public Offer (IPO) on Main Board
III.	Right Issue

Chapter as per ICDR Regulations, 2018	*Particulars*
IV.	Further Public Offer
V.	Preferential Issue
VI.	Qualified Institutions Placement
VII.	IPO of Indian Depositary Receipts (IDR)
VIII.	Rights Issue of IDR
IX.	IPO by Small and Medium Enterprises (SME)
X.	Innovators Growth Platform (IGP)
XI.	Bonus Issue
XI-A.	Power to Relax Strict Enforcement of the Regulations
XII.	Miscellaneous

APPLICABILITY OF THE SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018 [REGULATION 3]



INITIAL PUBLIC OFFER / FURTHER PUBLIC OFFER

A public issue of specified securities by an issuer can be either an Initial Public Offer (IPO) or a Further Public Offer (FPO). An IPO is done by an unlisted issuer while a FPO is done by a listed issuer. As per the ICDR Regulations, the issuer shall comply with the following conditions before making an IPO of specified securities. The conditions need to be satisfied both at the time of filing the draft offer document (commonly referred to as the Draft Red Herring Prospectus) and the time of filing the final offer document (commonly referred to as the Prospectus) with the Registrar of Companies.

ELIGIBILITY REQUIREMENTS FOR INITIAL PUBLIC OFFER (IPO)

Entities not eligible to make an initial public offer [Regulation 5(1) & (2)]

ENTITIES NOT ELIGIBLE TO MAKE AN IPO

(a) If the issuer, any of its promoters, promoter group, directors, selling shareholders are debarred from accessing the capital market by the SEBI.

(b) If any of the promoters or directors of the issuer is a promoter or a director of any other company which is debarred from accessing the capital market.

(c) If the issuer or any of its promoters or directors is a willful defaulter or a fraudulent borrower.

(d) If any of the promoters or directors of the issuer is a fugitive offender.

(e) If there are any outstanding convertible securities or any other right which would entitled any person with any option to receive equity shares of the issuer.

Exceptions to conditions (a) and (b)

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

Non applicability of Regulation 5 (2) – For Outstanding Convertibles Securities

Outstanding options granted to employees, whether currently an employee or not, pursuant to an ESOS compliance with the Companies Act, 2013, the relevant Guidance Note or accounting standards, if any, issued by ICAI or pursuant to the Companies Act, 2013, in this regard.

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

Outstanding stock appreciation rights granted to employees pursuant to a stock appreciation right scheme, which are fully exercised for equity shares prior to the filing of the red herring prospectus (in case of book-built issues) or the prospectus (in case of fixed price issues), as the case may be, disclosures regarding such stock appreciation rights and the scheme and the total number of equity shares resulting from the exercise of such rights are made in the draft offer document and offer document.

Eligibility requirements for an initial public offer [Regulation 6(1) & 6(2)]

An issuer shall be eligible to make an IPO only if:

a. the issuer has net tangible assets of atleast ₹ 3 crores, calculated on a restated and consolidated basis, in each of the preceding three full years of (12 months each) which not more than 50% is held in monetary assets.

   However, if more than 50% of the net tangible assets are held in monetary assets, the issuer has utilized or made firm commitments to utilize such excess monetary assets in its business or project.

   Exemption for Offer for Sale: This limit of 50% shall not apply in case of IPO is made entirely through an offer for sale.

b. the issuer has an average operating profit of at least ₹ 15 crores, calculated on a restated and consolidated basis, during the three preceding 3 years, with operating profit in each of the three preceding years.

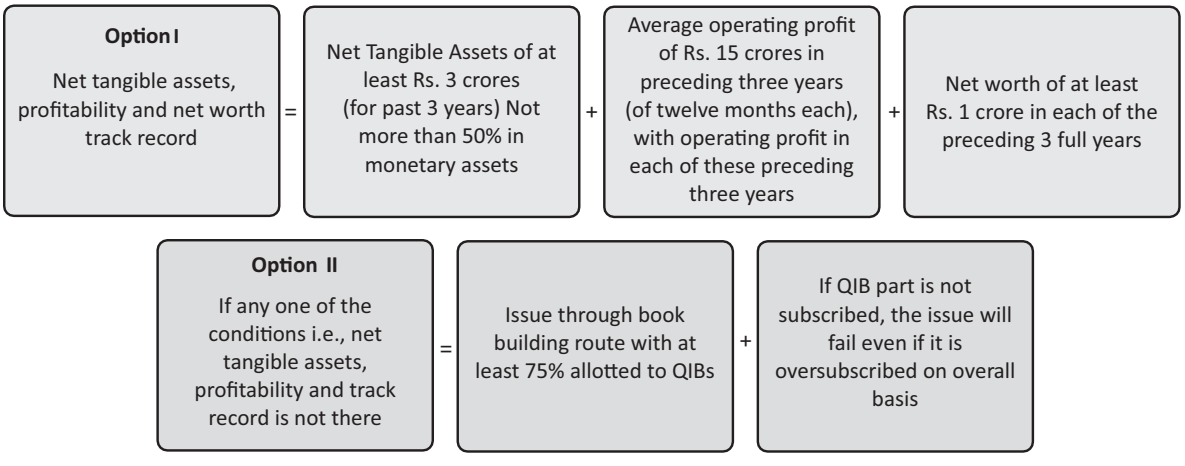
c. the issuer has a networth of atleast ₹ 1 crore in each of the preceding three full years, calculated on a restated and consolidated basis.

In case the issuer has changed its name within the last one year, atleast 50% of the revenue calculated on a restated and consolidated basis, for the preceding one full year has been earned by it from the activity indicated by the new name.

In case the Eligibility conditions are not met-

An issuer not satisfying the above-mentioned conditions shall be eligible to make an initial public offer only if the issue is made through the book-building process and the issuer undertakes to allot at least 75% of the net offer to qualified institutional buyers (QIBs) and to refund the full subscription money if it fails to do so.

Eligibility Criteria for Main Board Listing as per SEBI (ICDR) Regulations, 2018



The above eligibility conditions are explained by the following examples:

Eligibility Condition No. 1

In case the issuer is proposing to file its draft offer document with the SEBI in April 2018, then the net tangible assets for the last 3 full years of 12 months each shall be atleast ₹3 crores and not more than 50% of the same shall be held in monetary assets. In the following table, it is seen that the net tangible assets is more than ₹ 3 crores in the year ended March 31, 2016, March 31, 2017 and March 31, 2018. Further monetary assets constitute less than 50% of the net tangible assets in each of the three previous financial years:

(₹ in lacs)

Year Ended March 31	***2016***	***2017***	***2018***
Net Tangible Assets	*2532.60*	*3510.33*	*4657.50*
Monetary Assets	*108.25*	*302.33*	*288.17*
Monetary Assets as a percentage of Net Tangible Assets	*4.27*	*8.61*	*6.19*

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

Eligibility Condition No. 2

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

(₹ in lacs)

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

Eligibility Condition No. 3

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

(₹ in lacs)

Year Ending March 31	*2016*	*2017*	*2018*
Equity Share Capital	2000.00	2000.00	2022.00
Share Application Money	0.00	0.00	165.00
Reserves & Surplus	590.02	1430.47	2742.71
Total	**2590.02**	**3595.47**	**4764.71**
Less : Misc. Expenses not written off	0.00	0.00	0.00
Less: Deferred Tax Assets	13.45	0.00	61.08
Net worth	**2576.57**	**3595.47**	**4703.63**

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

Now lets say that above conditions are not met by a company, in such a case, it still may make an Initial Public Offer through the book building process and further undertake to allot atleast 75% of the net offer to the public to qualified institutional buyers and to refund full subscription money if it fails to do so. [Regulation 6(2)]

General Conditions [Regulation 7]

- An issuer making an initial public offer shall ensure that:
  a) it has made an application to one or more stock exchanges to seek an in-principle approval for listing of its specified securities on such stock exchanges and has chosen one of them as the designated stock exchange;
  b) it has entered into an agreement with a depository for dematerialisation of the specified securities already issued and proposed to be issued;
  c) all its specified securities are in the dematerialised form prior to the filing of the draft offer document held by –
     - the promoters,
     - the promoter group,
     - the selling shareholder(s),
     - the directors,
     - the key managerial personnel,
     - the senior management,
     - qualified institutional buyer(s),
     - employees,
     - shareholders holding SR equity shares,
     - entities regulated by Financial Sector Regulators,
     - any other categories of shareholders as maybe specified by the SEBI from time to time;
  d) all its existing partly paid-up equity shares have either been fully paid-up or have been forfeited;
  e) it has made firm arrangements of finance through verifiable means towards 75% of the stated means of finance for a specific project proposed to be funded from the issue proceeds, excluding the amount to be raised through the proposed public issue or through existing identifiable internal accruals.
- The amount for general corporate purposes, as mentioned in objects of the issue in the draft offer document and the offer document shall not exceed 25% of the amount being raised by the issuer.
- The amount for:
  (i) general corporate purposes, and
  (ii) such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document,

shall not exceed 35% of the amount being raised by the issuer. However, the amount raised for such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document, shall not exceed 25% of the amount being raised by the issuer.

Provided that such limits shall not apply if the proposed acquisition or strategic investment object has been identified and suitable specific disclosures about such acquisitions or investments are made in the draft offer document and the offer document at the time of filing of offer documents.

Explanation:

For the purposes of regulation 6 and regulation 7:

(i) "Project" means the object for which monies are proposed to be raised to cover the objects of the issue.

(ii) Partnership Firms or LLP.

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

(a) adequate disclosures are made in the financial statements as required to be made in the format prescribed under the Companies Act, 2013;

(b) the financial statements are duly certified by a Chartered Accountant stating that:

(i) the accounts and the disclosures made are in accordance with the provisions of Schedule III of the Companies Act, 2013

(ii) the accounting standards of the Institute of Chartered Accountants of India have been followed;

(iii) the financial statements present a true and fair view of the firm's accounts.

Spinning off of a division

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

Additional conditions for an offer for sale [Regulation 8]

Shares must be fully paid-up.

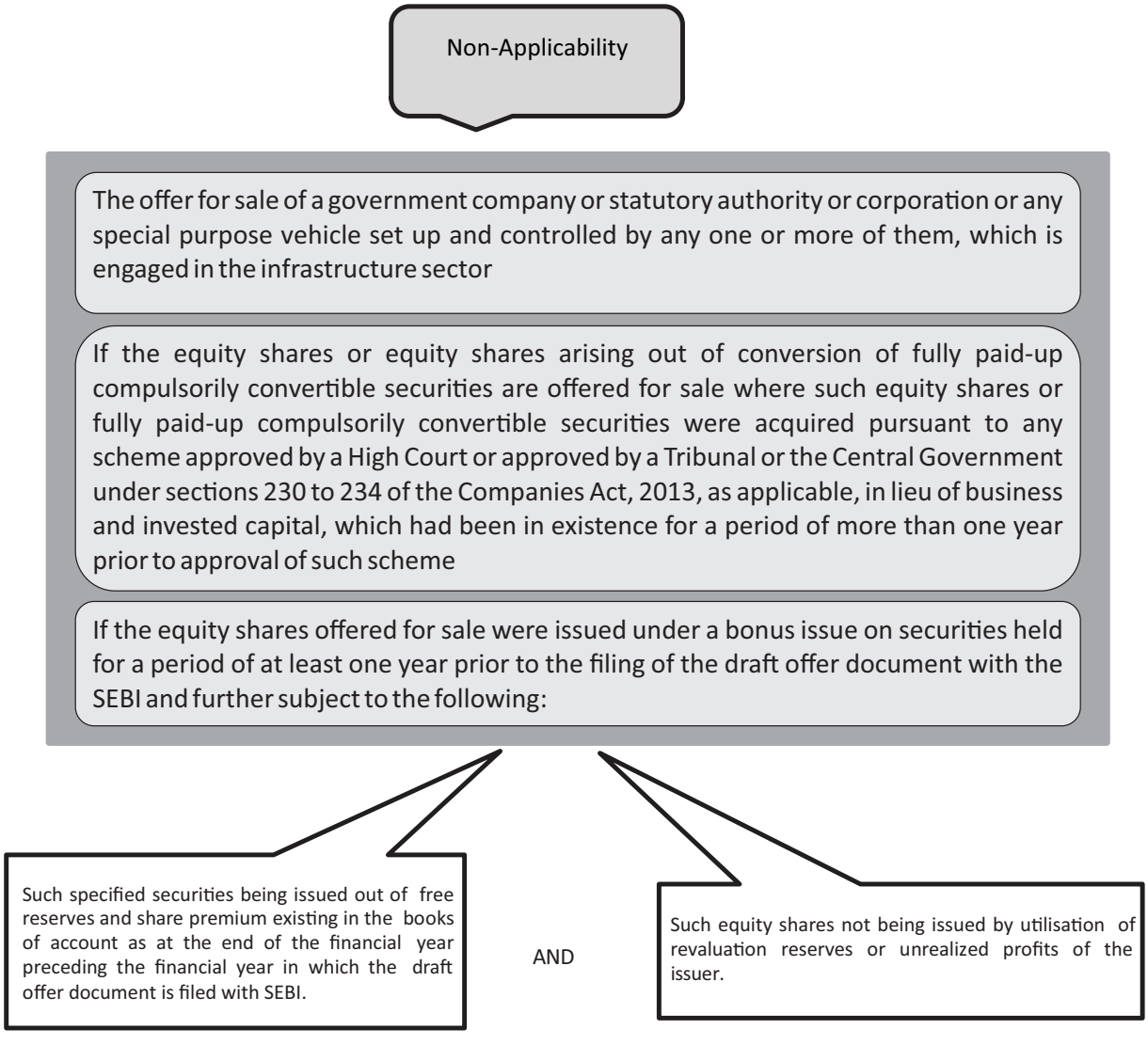
Shall be held by the sellers for a period of at least one year prior to the filing of the draft offer document.

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

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

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

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



Additional condition for offer for sale through QIB route i.e. Option II of IPO as discussed earlier:

These conditions only apply for IPO through Option II i.e. QIB route

Regulation 8A prescribed that for issues where draft offer document is filed under sub-regulation (2) of regulation 6 of these regulations:

- shares offered for sale to the public by shareholders holding, individually or with persons acting in concert, more than 20% of pre-issue shareholding of the issuer based on fully diluted basis, shall not exceed more than 50% of their pre-issue shareholding on fully diluted basis;
- shares offered for sale to the public by shareholders holding, individually or with persons acting in concert, less than 20% of pre-issue shareholding of the issuer based on fully diluted basis, shall not exceed more than 10% of pre-issue shareholding of the issuer on fully diluted basis;
- for shareholders holding, individually or with persons acting in concert, more than 20% of pre-issue shareholding of the issuer based on fully diluted basis, provisions of lock-in shall be applicable.

Issue of Warrants [Regulation 13]

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

Tenure of such warrants shall not exceed eighteen months from the date of their allotment in the initial public offer	In case the warrant holder does not exercise the option to take equity shares against any of the warrants held by the warrant holder, within three months from the date of payment of consideration, such consideration made in respect of such warrants shall be forfeited by the issuer
Price or formula for determination of exercise price of the warrants shall be determined upfront and disclosed in the offer document and atleast 25 % of the consideration amount based on the exercise price shall also be received upfront In case the exercise price of warrants is based on a formula, 25 % consideration amount based on the cap price of the price band determined for the linked equity shares or convertible securities shall be received upfront	A specified security may have one or more warrants attached to it

ELIGIBILITY CRITERIA FOR FURTHER PUBLIC OFFER (FPO)

Entities not eligible to make a FPO [Regulation 102]

An issuer shall not be eligible to make a FPO of specified securities:

(a) If the issuer, any of its promoters, promoter group or directors, selling shareholders are debarred from accessing the capital market

(b) If any of the promoters or directors of the issuer is a promoter or a director of any other company which is debarred from accessing capital market by the SEBI

(c) If the issuer or any of its promoters or directors is a willful defaulter or a fraudulent borrower

(d) If any of the promoters or directors of the issuer is a fugitive offender

Exceptions to conditions (c) and (d)

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

Eligibility requirements for FPO [Regulation 103]

- An issuer shall be eligible to make a further public offer, if it has not changed its name in the last one year period immediately preceding the date of filing the relevant offer document:

  However, if an issuer has changed its name in the last one year period immediately preceding the date of filing the relevant offer document, such an issuer shall make further public offer if at least 50% of

the revenue for the preceding one full year has been earned by it from the activity indicated by its new name.

An issuer not satisfying the condition stipulated above, shall make a further public offer only if the issue is made through the book building process and the issuer undertakes to allot at least 75% of the net offer, to qualified institutional buyers and to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers.

General Conditions for FPO [Regulation 104]

An issuer making an FPO shall ensure that:

An application is made for listing of the specified securities to one or more of the recognized stock exchanges and choose one of the exchanges as the designated stock exchange.

An agreement is entered into with a depository for dematerialization of specified securities already issued and proposed to be issued.

All its existing partly paid up equity shares have either been fully paid up or have been forfeited. In other words, if a company has partly paid up equity shares, they shall not be permitted to make a public issue.

The issuer should make firm arrangements of finance through verifiable means towards 75% of the stated means of finance for the specific project proposed to be funded from the issue proceeds, excluding the amount to be raised through the proposed public issue or through existing identifiable internal accruals.

Amount for General Corporate Purposes as mentioned in objects of the issue in the draft offer document and the offer document shall not exceed 25% of the amount being raised by the issuer.

- The amount for:
  - (i) general corporate purposes, and
  - (ii) such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document,

shall not exceed 35% of the amount being raised by the issuer. However, the amount raised for such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document, shall not exceed 25% of the amount being raised by the issuer.

However, such limits shall not apply if the proposed acquisition or strategic investment object has been identified and suitable specific disclosures about such acquisitions or investments are made in the draft offer document and the offer document at the time of filing of offer documents.

Explanation. –

For the purposes of this regulation "finance for the specific project" shall mean finance for capital expenditures only.

For the purposes of this regulation, "project" means the object for which monies are proposed to be raised to cover the objects of the issue.

Issue of Warrants [Regulation 111]

An issuer shall be eligible to issue warrants in a further public offer subject to the following conditions:

- the tenure of such warrants shall not exceed eighteen months from the date of their allotment in the public issue;
- a specified security may have one or more warrants attached to it;
- the price or formula for determination of exercise price of the warrants shall be determined upfront and at least 25% of the consideration amount based on the exercise price shall also be received upfront. However, in case the exercise price of warrants is based on a formula, 25% consideration amount based on the cap price of the price band determined for the linked equity shares or convertible securities shall be received upfront;
- in case the warrant holder does not exercise the option to take equity shares against any of the warrants held by the warrant holder, within three months from the date of payment of consideration, such consideration made in respect of such warrants shall be forfeited by the issuer.

PROMOTERS' CONTRIBUTION

In Case of IPO [Regulation 14]

The promoters of the issuer shall hold at least 20% of the post-issue capital.

However, in case the post-issue shareholding of the promoters is less than 20%., alternative investment funds or foreign venture capital investors or scheduled commercial banks or public financial institutions or insurance companies registered with IRDAI or any non-individual public shareholder holding at least 5% of the post-issue capital or any entity (individual or non-individual) forming part of promoter group other than the promoter(s) may contribute to meet the shortfall in minimum contribution as specified for the promoters, subject to a maximum of ten percent of the post-issue capital without being identified as promoter(s).

Non applicability

For IPO: The requirement of minimum promoters' contribution shall not apply in case an issuer does not have any identifiable promoter.

For FPO the requirement of minimum promoters' contribution shall not apply in case of:

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

(b) where the equity shares of the issuer are frequently traded on a stock exchange for a period of at least three years immediately preceding the reference date, and:

- the issuer has redressed at least ninety five per cent of the complaints received from the investors till the end of the quarter immediately preceding the month of the reference date, and;
- the issuer has been in compliance with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for a minimum period of three years immediately preceding the reference date.

Exception to point ii of b:

- Provided that if the issuer has not complied with the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, relating to composition of board of directors, for any quarter during the last three years immediately preceding the date of filing of draft offer document/offer document, but is compliant with such provisions at the time of filing of draft offer document/offer document, and adequate disclosures are made in the offer document about such non-compliances during the three years immediately preceding the date of filing the draft offer document/offer document, it shall be deemed as compliance with the condition. Provided further that where the promoters propose to subscribe to the specified securities offered to the extent greater than higher of the two options for minimum contribution, the subscription in excess of such percentage shall be made at a price determined in terms of the provisions of regulation 164 or the issue price, whichever is higher

In case of FPO [Regulation 113]

- The promoters shall contribute in the public issue as follows:
  a) either to the extent of 20% of the proposed issue size or to the extent of 20% of the post-issue capital;
  b) in case of a composite issue (i.e., further public offer cum rights issue), either to the extent of 20% of the proposed issue size or to the extent of 20% of the post-issue capital excluding the rights issue component.

LOCK-IN REQUIREMENTS

For Securities Held by Promoters [Regulations 16 & 115]

In a public issue, the specified securities held by promoters shall be locked-in for the period stipulated hereunder:

Promoters Contribution	The promoters contribution including contribution made by AIFs or FVCIs or scheduled commercial banks or PFIs or insurance companies registered with IRDA or any non-individual public shareholder holding at least 5% of the post-issue capital or any entity (individual or non-individual) forming part of promoter group other than the promoter(s) , shall be locked-in for a period of 18 months from the date allotment in the IPO/FPO. However, lock-in period shall be 3 years in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure.
Promoters' holding in excess of minimum promoters' contribution	Promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of 6 months from the date of allotment in the initial public offer. However, lock-in period shall be 1 year in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure.
In case of SR Equity Shares	SR equity shares shall be under lock-in until conversion into equity shares having voting rights same as that of ordinary shares or shall be locked-in for a period specified above, whichever is later. In case of FPO, the SR equity shares shall be under lock-in until their conversion to equity shares having voting rights same as that of ordinary shares, provided they are in compliance with the other provisions of these regulations.

Securities held by persons other than Promoters [Regulation 17]

The entire pre-issue share capital, held by persons other than the promoters, shall be locked-in for a period of 6 months from the date of allotment in the initial public offer.

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

(i) Equity shares allotted to employees under employee stock option or employee stock purchase scheme or stock appreciation rights scheme of the issuer of the prior to initial public offer, if the issuer has made full disclosures with respect to such option; and

(ii) Equity shares held by an employee stock option trust or transferred to the employees by an employee stock option trust pursuant to exercise of options by the employees, in accordance with the employee stock option plan or employee stock purchase scheme or stock appreciation rights scheme. However, the equity shares allotted to the employees shall be subject to the provisions of lock-in as specified under the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021;

(iii) Equity shares held by a venture capital fund or AIF of category I & II or a FVCI and such equity shares shall be locked-in for a period of at least 6 months from the date of purchase by the venture capital or AIF or FVCI.

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

For point no (iii), in case such equity shares have resulted pursuant to a bonus issue, then the holding period of such equity shares against which the bonus issue is made as well as holding period of resultant bonus equity shares together shall be considered for the purpose of calculation of six months period, subject to the following:

(a) that the bonus shares being issued out of free reserves and share premium existing in the books of account as at the end of the financial year preceding the financial year in which the draft offer document is filed with the Board; and

(b) that the bonus shares not being issued by utilisation of revaluation reserves or unrealized profits of the issuer.

For the purpose of clauses (a) and (b), equity shares shall include any equity shares allotted pursuant to a bonus issue against equity shares allotted pursuant to an employee stock option or employee stock purchase scheme or a stock appreciation right scheme.

OTHER REQUIREMENTS FOR IPO & FPO

Appointment of Lead Managers, Other Intermediaries and Compliance Officer

- The issuer shall appoint one or more merchant bankers, which are registered with the SEBI, as lead manager(s) to the issue.
- The issuer shall, in consultation with the lead manager(s), appoint other intermediaries which are registered with the SEBI after the lead manager(s) have independently assessed the capability of other intermediaries to carry out their obligations.
- The issuer shall, in case of an issue made through the book building process, appoint syndicate member and in the case of any other issue, appoint bankers to issue.

- The issuer shall appoint a registrar to the issue, registered with the SEBI which has connectivity with all the depositories.
- The issuer shall appoint a person **qualified to be a Company Secretary** as the compliance officer who shall be responsible for monitoring the compliance of the securities laws and for redressal of investors' grievances.

Disclosures and Filing of Offer Documents

- The draft offer document and offer document shall contain all material disclosures which are true and adequate to enable the applicants to take an informed investment decision.
- Prior to making an IPO/FPO, the issuer shall file 3 copies of the draft offer document with the concerned regional office of the SEBI under the jurisdiction of which the registered office of the issuer company is located. The SEBI may specify changes or issue observations, if any, on the draft offer document within 30 days. The issuer shall also file the draft offer document with the stock exchange where the specified securities are proposed to be listed.
- The issuer shall also file the draft offer document with the stock exchange(s) where the specified securities are proposed to be listed, and submit to the stock exchange(s), the Permanent Account Number, bank account number and passport number of its promoters where they are individuals, and Permanent Account Number, bank account number, company registration number or equivalent and the address of the Registrar of Companies with which the promoter is registered, where the promoter is a body corporate.
- If the SEBI specifies any changes or issues observations on the draft offer document, the issuer and lead manager shall carry out such changes in the draft offer document and shall submit to the SEBI an updated draft offer document complying with the observations issued by SEBI and before filing the offer documents with the Registrar of Companies.
- The draft offer document filed with the SEBI shall be made public for comments, if any, for a period of at least 21 days from the date of publication of the public announcement, by hosting it on the websites of the issuer, SEBI, stock exchanges where specified securities are proposed to be listed and lead manager associated with the issue.
- The issuer shall within 2 working days of filing the draft offer document with the SEBI, make a public announcement in one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated disclosing the fact of filing of the draft offer document with the SEBI and inviting the public to provide their comments to the SEBI, the issuer or the lead manager in respect of the disclosures made in the draft offer document.
- Copy of the offer documents shall also be filed with the SEBI and the stock exchange through the lead manager promptly after filing the offer documents with Registrar of Companies.

Issuance Conditions and Procedure

- **ASBA**: The issuer shall accept bids using only the ASBA facility in the manner specified by the Board. ASBA means an application for subscribing to a public issue or rights issue, along with an authorisation to self-certified syndicate bank to block the application money in a bank account. It is mandated by SEBI to use Unified Payment Interface (UPI) as Payment mechanism with ASBA for Retail Individual Investors w.e.f July 01, 2019, for applications by Retail Individual Investors (RIIs) submitted through Intermediaries
- **IPO grading**: The issuer may obtain grading for its initial public offer from one or more credit rating agencies registered with the Board.
- **Underwriting**: If the issuer making an IPO/FPO, other than through the book building process, desires

to have the issue underwritten to cover under-subscription in the issue, it shall, prior to the filing of the prospectus, enter into an underwriting agreement with the merchant bankers or stock brokers registered with the Board to act as underwriters, indicating therein the maximum number of specified securities they shall subscribe to, either by themselves or by procuring subscription, at a predetermined price which shall not be less than the issue price, and shall disclose the fact of such underwriting agreement in the prospectus. However, if the issuer makes a public issue through the book building process, the issue shall be underwritten by lead manager(s) and syndicate member(s).

- **Monitoring agency:** If the issue size, excluding the size of offer for sale by selling shareholders exceeds ₹ 100 crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a credit rating agency registered with the SEBI.
- **Pre-issue advertisement:** The issuer shall, after filing the red herring prospectus (in case of a book built issue) or prospectus (in case of fixed price issue) with the Registrar of Companies, make a pre-issue and price band advertisement in the same newspapers in which the public announcement was published.
- **Opening of the issue**: A public issue may be opened within 12 months from the date of issuance of the observations by the SEBI.
- **Minimum subscription**: The minimum subscription to be received in the issue shall be at least 90% of the offer through the offer document. In the event of non-receipt of minimum subscription, all application monies received shall be refunded to the applicants forthwith, but not later than 4 days from the closure of the issue.
- **Period of subscription**: An IPO/FPO shall be kept open for at least 3 working days and not more than 10 working days.
- **Minimum application value**: The minimum sum payable on application per specified security shall be at least 25% of the issue price.
- **Post-issue Advertisements:** The lead manager shall ensure that an advertisement giving details relating to subscription, basis of allotment, number, value and percentage of all applications including ASBA, number, value and percentage of successful allottees for all applications including ASBA, date of completion of despatch of refund orders, as applicable, or instructions to self-certified syndicate banks by the registrar, date of credit of specified securities and date of filing of listing application, etc. is released within 10 days from the date of completion of the various activities in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where registered office of the issuer is situated.
- **Release of subscription money**: The lead manager shall confirm to the bankers to the issue by way of copies of listing and trading approvals that all formalities in connection with the issue have been completed and that the banker is free to release the money to the issuer or release the money for refund in case of failure of the issue.

FAST TRACK FPO [REGULATION 155]

Eligibility

An Issuer Company need not file the draft offer document with SEBI and obtain observations from SEBI, if it satisfies the following conditions for making a further public offer through fast track route:

(a)	Listing	Equity shares of the issuer have been listed on any stock exchange for a period of at least three years immediately preceding the reference date **Therefore, Fast track route cannot be availed by issuer company if three years has not elapsed from listing.**

(b)	Demat form	Entire shareholding of the promoter group of the issuer is held in dematerialised form on the reference date
(c)	Market Capitalisation	Average market capitalisation of public shareholding of the issuer is at least ₹1000 crores in case of public
(d)	Trading Turnover	Annualised trading turnover of the equity shares of the issuer during six calendar months immediately preceding the month of the reference date has been at least 2% of the weighted average number of equity shares listed during such six months' period. However, if the public shareholding is less than fifteen per cent of its issued equity capital, the annualised trading turnover of its equity shares has been at least 2% of the weighted average number of equity shares available as free float during such six months' period
(e)	Delivery based trading	Annualized delivery-based trading turnover of the equity shares during six calendar months immediately preceding the month of the reference date has been at least 10% of the annualised trading turnover of the equity shares during such six months period
(f)	Compliance with SEBI (LODR) Regulations, 2015	The issuer has been in compliance with the equity listing agreement or Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, as applicable, for a period of at least three years immediately preceding the reference date However, if the issuer has not complied with the provisions of the listing agreement or SEBI (LODR) Regulations, 2015, as applicable, relating to composition of board of directors, for any quarter during the last three years immediately preceding the reference date, but is compliant with such provisions at the time of filing of RHP with the Registrar of Companies, and adequate disclosures are made in the RHP about such non-compliances during the three years immediately preceding the reference date, it shall be deemed as compliance with the condition Further, imposition of monetary fines by stock exchange on the issuer shall not be a ground for ineligibility for undertaking issuances under these regulations
(g)	Investor Complaints	Issuer has redressed at least 95% of the complaints received from the investors till the end of the quarter immediately preceding the month of the reference date
(h)	No Show-cause notices	No show-cause notices, excluding proceedings for imposition of penalty, have been issued by the Board and pending against the issuer or its promoters or whole time directors as on the reference date In cases where against the issuer or its promoters or whole-time directors, i) show-cause notice(s) has been issued by the Board or the Adjudicating Officer, in a proceeding for imposition of penalty; or ii) prosecution proceedings have been initiated by the Board; necessary disclosures in respect of such action(s) along-with its potential adverse impact on the issuer shall be made in the letter of offer

(i)	No alleged violations	In case issuer or the promoter or the promoter group or the director of the issuer has settled any alleged violations of securities laws through the settlement mechanism of the Board in the past three years immediately preceding the reference date, then the disclosure of such compliance of the settlement order, shall be made in the offer document
(j)	Disciplinary measures	Equity shares of the issuer have not been suspended from trading as a disciplinary measure during last three years immediately preceding the reference date
(k)	Conflict of interest	There shall be no conflict of interest between the lead merchant banker(s) and the issuer or its group or associate company in accordance with applicable regulations
(l)	Audit Qualification	For audit qualifications, if any, in respect of any of the financial years for which accounts are disclosed in the offer document, the issuer shall provide the restated financial statements adjusting for the impact of the audit qualifications. Further, for the qualifications wherein impact on the financials cannot be ascertained, the same shall be disclosed appropriately in the offer document

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

"Public shareholding" shall have the same meaning as assigned to it under the Securities Contracts (Regulation) Rules, 1957.

RIGHTS ISSUE

Definition of Right Issue



"Rights issue" means an offer of specified securities by a listed issuer to the shareholders of the issuer as on the record date fixed for the said purpose.

In general, fresh shares offered to existing shareholders in proportion to their existing holding in the share capital of the company are termed as "Rights shares" popularly known as rights issue. In the rights issue the shareholders have a right to participate in the issue. It is pre-emptive rights given by the status to existing shareholders. In this rights issue, the offer is required to be made to the existing shareholders on pro-rata to their existing holdings. The shareholders who are offered may or may not subscribe to the same. They may subscribe partly or fully the offer. They have a power to renounce the shares offered to any other person who need not be an existing shareholder of the company.

An issuer offering specified securities through a rights issue shall satisfy the conditions of Chapter III of the SEBI (ICDR) Regulations, 2018 at the time of filing the draft letter of offer with the stock exchange(s), and at the time of filing the letter of offer with the Board and the stock exchange(s).

Entities not eligible to make a rights issue [Regulation 61]

An issuer shall not be eligible to make a rights issue of specified securities:

(a) if the issuer, any of its promoters, promoter group or directors of the issuer are debarred from accessing the capital market by the SEBI

(b) if any of the promoters or directors of the issuer is a promoter or director of any other company which is debarred from accessing the capital market by the SEBI

(c) if any of its promoters or directors is a fugitive economic offender

(d) if the equity shares of the issuer are suspended from trading as a disciplinary measure

Exceptions to (a) and (b):

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

General conditions [Regulation 62]

(1) The issuer making a rights issue of specified securities shall ensure that:

- it has made an application to one or more stock exchanges to seek an in-principle approval for listing of its specified securities on such stock exchanges and has chosen one of them as the designated stock exchange;
- all its existing partly paid-up equity shares have either been fully paid-up or have been forfeited;
- it has made firm arrangements of finance through verifiable means towards 75% of the stated means of finance for the specific project proposed to be funded from issue proceeds, excluding the amount to be raised through the proposed rights issue or through existing identifiable internal accruals.

Explanation - For the purpose of this regulation 'finance for the specific project' shall mean finance of capital expenditures only.

(2) The amount for general corporate purposes, as mentioned in objects of the issue in the draft letter of offer and the letter of offer, shall not exceed 25% of the amount raised by the issuer.

(2A) The amount for:

(i) general corporate purposes, and

(ii) such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document,

shall not exceed 35% of the amount being raised by the issuer. However, the amount raised for such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft letter of offer and the letter of offer, shall not exceed 25% of the amount being raised by the issuer.

However, such limits shall not apply if the proposed acquisition or strategic investment object has been identified and suitable specific disclosures about such acquisitions or investments are made in the draft letter of offer and the letter of offer at the time of filing of offer documents.

(3) Where the issuer or any of its promoters or directors is a willful defaulter or a fraudulent borrower, the promoters or promoter group of the issuer shall not renounce their rights except to the extent of renunciation within the promoter group or to the specific investors as disclosed by the issuer.

(4) Where the issuer has issued SR equity shares to its promoters or founders, then such a SR shareholder shall not renounce their rights and the SR shares received in a rights issue shall remain under lock-in until conversion into equity shares having voting rights same as that of ordinary equity shares along with existing SR equity shares.

SEBI has introduced dematerialized Rights Entitlements (REs) which are credited to the demat account of existing shareholder as their rights. Such REs are also tradeable on exchange in case shareholder does not want to subscribed the rights issue. Investors holding REs in dematerialized mode shall be able to renounce their entitlements by trading on stock exchange platform or off-market transfer.

Can Rights Issue once announced be withdrawn?

Rights Issue cannot be withdrawn in a given situation as below:

As per Regulation 68(1), the issuer shall announce a record date for the purpose of determining the shareholders eligible to apply for specified securities in the proposed rights issue for such period as may be specified in the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. As per Regulation (2), the issuer shall not withdraw its rights issue after announcement of the record date.

However, if the issuer withdraws the rights issue after announcing the record date, it shall not be eligible to make an application for listing of any of its specified securities on any stock exchange for a period of twelve months from the record date announced under sub-regulation (1). However, the issuer may seek listing of its equity shares allotted pursuant to conversion or exchange of convertible securities, ESOPs or exercise of warrants issued prior to the announcement of the record date, on the stock exchange where its securities are listed.

PREFERENTIAL ISSUE

Definition of Preferential Issue

"Preferential issue" means an issue of specified securities by a listed issuer to any select person or group of persons on a private placement basis in accordance with Chapter V of these regulations and does not include an offer of specified securities made through employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or depository receipts issued in a country outside India or foreign securities.

An issuer offering specified securities through preferential issue shall satisfy the conditions of Chapter V of SEBI (ICDR) Regulations, 2018.

Issuers ineligible to make a Preferential Issue [Regulation 159]

a) An issuer shall not be eligible to make a preferential issue if any of its promoters or directors is a fugitive economic offender.

b) It has any outstanding dues to the SEBI, the stock exchanges or the depositories.

However, the same shall not be applicable in a case where such outstanding dues are the subject matter of a pending appeal or proceeding(s), which has been admitted by the relevant Court, Tribunal or Authority, as the case may be.

c) Preferential issue of specified securities shall not be made to any person who has sold or transferred any equity shares of the issuer during the 90 trading days preceding the relevant date. However, in respect of the preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, the SEBI may grant relaxation from the requirements of this sub-regulation, if the SEBI has granted relaxation in terms of regulation 11(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 to such a preferential allotment.

Explanation: Where any person belonging to promoter(s) or the promoter group has sold/ transferred their equity shares in the issuer during the 90 trading days preceding the relevant date, the promoter(s) and promoter group shall be ineligible for allotment of specified securities on preferential basis.

However the above restriction shall not apply to any sale of equity shares by any person belonging to promoter(s) of the promoter group which qualifies for inter-se transfer amongst qualifying persons under regulation 10(1)(a) of the SEBI (Substantial Acquisition of Shares and Takeover Regulations), 2011 or in case of transfer of shares held by the promoters or promoter group on account of invocation of pledge by a scheduled commercial bank or public financial institution or a systemically important non-banking finance company or mutual fund or insurance company registered with the Insurance Regulatory and Development Authority.

d) Any person belonging to promoter(s) or the promoter group has previously subscribed to warrants of an issuer but has failed to exercise the warrants, the promoter(s) and promoter group shall be ineligible for issue of specified securities of such issuer on preferential basis for a period of one year from:

- the date of expiry of the tenure of the warrants due to non-exercise of the option to convert; or
- the date of cancellation of the warrants, as the case may be.

Conditions for preferential issue [Regulation 160]

A listed issuer making a preferential issue of specified securities shall ensure that:

- **Fully Paid-up:** All equity shares allotted by way of preferential issue shall be made fully paid up at the time of the allotment.
- **Special Resolution:** A special resolution has been passed by its shareholders.
- **Demat form:** All equity shares held by the proposed allottees in the issuer are in dematerialised form before an application seeking in-principle approval is made by the issuer to the stock exchange(s) where its equity shares are listed.
- **Compliance:** The issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the stock exchange where the equity shares of the issuer are listed and SEBI (LODR) Regulations, 2015 as amended, and any circular or notification issued by the SEBI thereunder.
- **PAN:** The issuer has obtained the Permanent Account Numbers (PAN) of the proposed allottees, except those allottees which may be exempt from specifying their PAN for transacting in the securities market by the SEBI before an application seeking in-principle approval is made by the issuer to the stock exchange(s) where its equity shares are listed.

- **Application for in-principle approval:** The issuer has made an application seeking in-principle approval to the stock exchange(s), where its equity shares are listed, on the same day when the notice has been sent in respect of the general meeting seeking shareholders' approval by way of special resolution.

QUALIFIED INSTITUTIONS PLACEMENT

Definition of Qualified Institutions Placement

"Qualified institutions placement" means issue of eligible securities by a listed issuer to qualified institutional buyers on a private placement basis and includes an offer for sale of specified securities by the promoters and/ or promoter group on a private placement basis, in terms of these regulations.

The provisions relating to eligibility, conditions and other provisions for Qualified Institutions Placement have been provided in Chapter VI of SEBI (ICDR) Regulations, 2018.

Conditions for Qualified Institutions Placement [Regulation 172]

(1) A listed issuer may make a qualified institutions placement of eligible securities if it satisfies the following conditions:

(a) Special resolution:

- a special resolution approving the qualified institutions placement has been passed by its shareholders, and the special resolution shall, among other relevant matters, specify that the allotment is proposed to be made through qualified institutions placement and the relevant date referred to in regulation 171(b);

  ("relevant date" means:

  (i) in case of allotment of equity shares, the date of the meeting in which the board of directors of the issuer or the committee of directors duly authorised by the board of directors of the issuer decides to open the proposed issue;

  (ii) in case of allotment of eligible convertible securities, either the date of the meeting in which the board of directors of the issuer or the committee of directors duly authorised by the board of directors of the issuer decides to open the issue of such convertible securities or the date on which the holders of such convertible securities become entitled to apply for the equity shares.)

- However, no shareholders' resolution will be required in case the qualified institutions placement is through an offer for sale by promoters or promoter group for compliance with minimum public shareholding requirements specified in the Securities Contracts (Regulation) Rules, 1957;

- The allotment pursuant to the special resolution referred to in regulation 172(a) shall be completed within a period of 365 days from the date of passing of the resolution.

(b) Proposed allotment:

- the equity shares of the same class, which are proposed to be allotted through qualified institutions placement or pursuant to conversion or exchange of eligible securities offered through qualified institutions placement, have been listed on a stock exchange for a period of at least one year prior to the date of issuance of notice to its shareholders for convening the meeting to pass the special resolution;

  Provided that where an issuer, being a transferee company in a scheme of compromise, arrangement and amalgamation sanctioned by a High Court or approved by a tribunal or

the Central Government under sections 230 to 234 of the Companies Act, 2013, whichever is applicable makes qualified institutions placement, the period for which the equity shares of the same class of the transferor company were listed on a stock exchange having nation-wide trading terminals shall also be considered for the purpose of computation of the period of one year;

- This clause shall not be applicable to an issuer proposing to undertake qualified institutional placement for complying with the minimum public shareholding requirements specified in the Securities Contracts (Regulation), Rules 1957.

Explanation: For the purpose of clause (b), "equity shares of the same class" shall mean equity shares which rank pari-passu in relation to rights as to dividend, voting or otherwise.

(c) An issuer shall be eligible to make a qualified institutions placement if any of its promoters or directors is not a fugitive economic offender.

(2) All eligible securities issued through a qualified institutions placement shall be listed on the recognised stock exchange where the equity shares of the issuer are listed. Provided that the issuer shall seek approval under rule 19(7) of the Securities Contracts (Regulation) Rules, 1957, if applicable.

(3) The issuer shall not make any subsequent qualified institutions placement until the expiry of two weeks from the date of the prior qualified institutions placement made pursuant to one or more special resolutions.

INITIAL PUBLIC OFFER OF INDIAN DEPOSITORY RECEIPTS

The provisions of Chapter VII shall apply to an issue of Indian Depository Receipts (hereinafter referred to as "IDR") made in terms of the Companies Act, 2013 and Companies (Registration of Foreign Companies) Rules, 2014.

An issuer making a public issue of IDRs shall satisfy the conditions of Chapter VII of SEBI (ICDR) Regulations, 2018 as on the date of filing draft offer document with the SEBI and also as on the date of filing the offer document with the Registrar of Companies.

Eligibility conditions [Regulation 183]

Eligibility

- Issuing company is listed in its home country for at least three immediately preceding years;
- Issuer is not prohibited to issue securities by any regulatory body;
- Issuer has a track record of compliance with the securities market regulations in its home country;
- Any of its promoters or directors is not a fugitive economic offender.

('Home Country' means the country where the issuer is incorporated or listed)

Conditions

- issue size shall not be less than Rs.50 crore;
- at any given time, there shall be only one denomination of IDRs of the issuer;
- issuer shall ensure that the underlying equity shares against which IDRs are issued have been or will be listed in its home country before listing of IDRs in stock exchange(s);
- issuer shall ensure that the underlying shares of IDRs shall rank pari passu with the existing shares of the same class.

Issuer shall ensure that:

- it has made an application to one or more stock exchanges to seek an in-principle approval for listing of the IDRs on such stock exchanges and has chosen one of them as the designated stock exchange;
- it has entered into an agreement with a depository for dematerialisation of the IDRs proposed to be issued;
- it has made firm arrangements of finance through verifiable means towards 75% of the stated means of finance for the project proposed to be funded from issue proceeds, excluding the amount to be raised through the proposed issue of IDRs or through existing identifiable internal accruals, have been made;
- The amount for general corporate purposes, as mentioned in objects of the issue in the draft offer document and the offer document shall not exceed 25% of the amount being raised by the issuer.

RIGHTS ISSUE OF INDIAN DEPOSITORY RECEIPTS

In addition to compliance with Chapter VII Initial Public Offer of Indian Depository Receipts, wherever applicable, a listed issuer offering IDRs through a rights issue shall satisfy the conditions specified in Chapter VIII of SEBI (ICDR) Regulations, 2018 at the time of filing the offer document.

The issuer shall ensure that it has made an application to all the stock exchanges in India, where its IDRs are already listed, for listing of the IDRs to be issued by way of rights and has chosen one of them as the designated stock exchange.

Entities not eligible to make a rights issue [Regulation 213]

An issuer shall not be eligible to make a rights issue of IDRs if –

At the time of undertaking the rights issue, the issuer is in breach of ongoing material obligations under the listing agreement and the SEBI LODR as may be applicable to such issuer or material obligations under the deposit agreement entered into between the domestic depository and the issuer at the time of initial offering of IDRs

Any of its promoters or directors is a fugitive economic offender

INITIAL PUBLIC OFFER BY SMALL AND MEDIUM ENTERPRISES

An issuer making an initial public offer of specified securities shall satisfy the conditions of Chapter IX of SEBI (ICDR) Regulations, 2018 as on the date of filing of the draft offer document with the SME exchange and also as on the date of filing the offer document with the Registrar of Companies.

Entities not eligible to make an initial public offer [Regulation 228]

An issuer shall not be eligible to make an initial public offer:

(a) if the issuer, any of its promoters, promoter group or directors or selling shareholders are debarred from accessing the capital market by the SEBI

(b) if any of the promoters or directors of the issuer is a promoter or director of any other company which is debarred from accessing the capital market by the SEBI

(c) if the issuer or any of its promoters or directors is a willful defaulter or a fraudulent borrower

(d) if any of its promoters or directors is a fugitive economic offender

(e) if there are any outstanding convertible securities or any other right which would entitle any person with any option to receive equity shares of the issuer:

Provided that the provisions of this clause shall not apply to:

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

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

Exceptions to (a) and (b):

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

Eligibility requirements for an initial public offer

If post issue paid-up capital is <= Rs.10 Crores - **list only on SME Board**

If post issue paid-up capital is > Rs 10 crores but up to Rs.25 crores – **Option to list either on SME Board or on Main Board**

SEBI does not issue any observation on the offer document

The lead manager(s) shall submit a **due-diligence** certificate to SME Exchange

IPO shall be 100% **underwritten.** The lead manager(s) shall underwrite at least 15% of the issue size. Compulsory **market making** for a minimum period of 3 years from the date of listing

Minimum application size in IPO shall be above ₹ 2 lakhs and 2 per application

May **migrate** to Main Board if SR is passed through postal ballot with majority of minority

Spinning off of Division / Restructuring :

In case of an issuer formed out of merger or a division of an existing company, the track record of the resulting issuer shall be considered only if the requirements regarding financial statements as specified above are complied with.

Partnership firm / LLP :

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

a) adequate disclosures are made in the financial statements as required to be made by the issuer as per Schedule III of the Companies Act, 2013;

b) the financial statements are duly certified by auditors, who have subjected themselves to the peer review process of the Institute of Chartered Accountants of India (ICAI) and hold a valid certificate issued by the Peer Review Board' of the ICAI.

General conditions [Regulation 230]

(1) An issuer making an initial public offer shall ensure that:

- it has made an application to one or more SME exchanges for listing of its specified securities on such SME exchange(s) and has chosen one of them as the designated stock exchange;
- it has entered into an agreement with a depository for dematerialisation of its specified securities already issued and proposed to be issued;
- all its existing partly paid-up equity shares have either been fully paid-up or forfeited;
- all its specified securities are in the dematerialised form prior to the filing of the draft offer document held by –
  - the promoters,
  - the promoter group,
  - the selling shareholder(s),
  - the directors,
  - the key managerial personnel,
  - the senior management,
  - qualified institutional buyer(s),
  - employees,
  - shareholders holding SR equity Shares,
  - entities regulated by Financial Sector Regulators,
  - any other categories of shareholders as maybe specified by the SEBI from time to time;
- it has made firm arrangements of finance through verifiable means towards 75% of the stated means of finance for the project proposed to be funded from the issue proceeds, excluding the amount to be raised through the proposed public offer or through existing identifiable internal accruals.

Explanation: "project" means the object for which monies are proposed to be raised to cover the objects of the issue

(2) The amount for general corporate purposes, as mentioned in objects of the issue in the draft offer document and the offer document shall not exceed 15% of the amount being raised by the issuer or ₹ 10 crore, whichever is less.

(3) The amount for:

(i) general corporate purposes, and

(ii) such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document, shall not exceed thirty five per cent. of the amount being raised by the issuer:

Provided that the amount raised for such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document, shall not exceed twenty five per cent. of the amount being raised by the issuer;

Provided further that such limits shall not apply if the proposed acquisition or strategic investment object has been identified and suitable specific disclosures about such acquisitions or investments are made in the draft offer document and the offer document at the time of filing of offer documents.

Migration to SME Exchange [Regulation 276]

A listed issuer whose post-issue paid-up capital is less than twenty five crore rupees may migrate its specified securities to SME exchange 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 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 two times the number of votes cast by shareholders other than promoter shareholders against the proposal.

Migration to the Main Board [Regulation 277]

An issuer, whose specified securities are listed on a SME Exchange and whose post-issue paid-up capital is more than ten crore rupees and up to twenty five crore rupees, may migrate its specified securities to the main board of the stock exchanges if its shareholders approve such a 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.

INNOVATORS GROWTH PLATFORM

Definition of Innovators growth platform



"Innovators growth platform" means the trading platform for listing and trading of specified securities of issuers that comply with the eligibility criteria specified in regulation 283 of SEBI (ICDR) Regulations, 2018

Listing on Innovators Growth Platform (IGP)

Aimed to list startups which are intensive in the use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology to provide products, services or business platform with substantial value addition

At least 25% of pre-issue capital is held by QIBs, Innovators Growth Platform Investors, any other class of investors as specified by SEBI, for atleast a 1 year

Listing is allowed with or without IPO. SEBI will issue its observations in both the cases

The minimum offer size shall be **ten crore rupees** in case of IPO

Minimum application size shall be **two lakh rupees** and in multiples thereof

Number of allottees in the initial public offer shall at least be **fifty**

Minimum trading lot shall be **two lakh rupees** and in multiples thereof

An issuer shall be eligible for listing on the Innovators Growth Platform if none of the promoters or directors of the issuer company is a fugitive economic offender.

Additional conditions in terms of allotment, for listing with public issue:

- Any under-subscription in the non-institutional investor category shall be available for subscription under the institutional investors' category.
- The issuer may allocate up to sixty per cent of the issue size on a discretionary basis, prior to the issue opening, to eligible investors as identified under sub-regulation (1) of regulation 283, in accordance with the requirements with respect to anchor investors for public issue made on the SME exchange as may be specified.

BONUS ISSUE



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

A listed company issuing bonus shares shall comply with the requirements of Companies Act, 2013 and also Chapter XI of SEBI (ICDR) Regulations, 2018.

Conditions for a bonus issue [Regulation 293]

Subject to the provisions of the Companies Act, 2013 or any other applicable law, a listed issuer shall be eligible to announce and issue bonus shares to its members if:

it is authorised by its articles of association for issue of bonus shares, capitalisation of reserves, etc.

If there is no such provision in the articles of association, the issuer shall pass a resolution at its general body meeting making provisions in the articles of associations for capitalisation of reserve

it has received approval from the stock exchange for listing and trading of all the securities, excluding options granted to employees pursuant to an employee stock option scheme and convertibles securities, issued by the issure prior to the issuance of bonus shares

it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it

it has not defaulted in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity and bonus

any outstanding partly paid shares on the date of the allotment of the bonus shares, are made fully paid-up

any of its promoters or directors is not a fugitive economic offender

Restrictions on a bonus issue [Regulation 294]

- An issuer shall make a bonus issue of equity shares only if it has made reservation of equity shares of the same class in favour of the holders of outstanding compulsorily convertible debt instruments if any, in proportion to the convertible part thereof.
- The equity shares so reserved for the holders of fully or partly compulsorily convertible debt instruments, shall be issued to the holder of such convertible debt instruments or warrants at the time of conversion of such convertible debt instruments, optionally convertible instruments, warrants, as the case may be, on the same terms or same proportion at which the bonus shares were issued.
- A bonus issue shall be made only out of free reserves, securities premium account or capital redemption reserve account and built out of the genuine profits or securities premium collected in cash and reserves created by revaluation of fixed assets shall not be capitalised for this purpose.
- Bonus shares shall not be issued in lieu of dividends.
- If an issuer has issued SR equity shares to its promoters or founders, any bonus issue on the SR equity shares shall carry the same ratio of voting rights compared to ordinary shares and the SR equity shares issued in a bonus issue shall also be converted to equity shares having voting rights same as that of ordinary equity shares along with existing SR equity shares.
- The allotment of shares in a bonus issue shall be made only in the dematerialised form.

Completion of a bonus issue [Regulation 295]

- An issuer, announcing a bonus issue after approval by its board of directors and not requiring shareholders' approval for capitalisation of profits or reserves for making the bonus issue, shall

implement the bonus issue within fifteen days from the date of approval of the issue by its board of directors:

- Where the issuer is required to seek shareholders' approval for capitalisation of profits or reserves for making the bonus issue, the bonus issue shall be implemented within two months from the date of the meeting of its board of directors wherein the decision to announce the bonus issue was taken subject to shareholders' approval.

  Explanation: For the purpose of a bonus issue to be considered as 'implemented' the date of commencement of trading shall be considered.

- A bonus issue, once announced, shall not be withdrawn.

Can Bonus Issue be withdrawn?

As per Regulation 295, a bonus issue, once announced, shall not be withdrawn

SOCIAL STOCK EXCHANGE

SEBI has prescribed the framework for Social Stock Exchange and inserted a separate Chapter X-A under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Meaning of Social Stock Exchange

Social Stock Exchange means a separate segment of a recognized stock exchange having nationwide trading terminals permitted to register Not for Profit Organizations and / or list the securities issued by Not for Profit Organizations in accordance with provisions of these regulations.

Applicability of the Chapter [Regulation 292B]

The provisions of the above mentioned Chapter shall apply to

- a Not for Profit Organization seeking to only get registered with a Social Stock Exchange;
- a Not for Profit Organization seeking to get registered and raise funds through a Social Stock Exchange; and
- a For Profit Social Enterprise seeking to be identified as a Social Enterprise under the provisions of this Chapter.

Access to Social Stock Exchange [Regulation 292C]

A Social Stock Exchange shall be accessible to institutional investors, non-institutional investors and retail investors.

Eligibility conditions for being identified as a Social Enterprise [Regulation 292E]

- A Not for Profit Organization or a For Profit Social Enterprise, to be identified as a Social Enterprise, shall establish primacy of its social intent.
- In order to establish the primacy of its social intent, such Social Enterprise shall meet the following eligibility criteria:
  - Social Enterprise shall indulge in at least one of the activities such as eradicating hunger, poverty, malnutrition and inequality; promoting health care including mental healthcare, sanitation and making available safe drinking water; promoting education, employability and livelihoods; protection of national heritage, art and culture etc;

- the Social Enterprise shall target underserved or less privileged population segments or regions recording lower performance in the development priorities of the Central or State Governments, or such other target segments as may be specified by the SEBI from time to time;
- the For Profit Social Enterprise shall have at least 67% of its activities, qualifying as eligible activities to the target population, to be established through one or more of the following:
  - at least 67% of the immediately preceding 3-year average of revenues comes from providing eligible activities to members of the target population;
  - at least 67% of the immediately preceding 3-year average of expenditure has been incurred for providing eligible activities to members of the target population;
  - members of the target population to whom the eligible activities have been provided constitute at least 67% of the immediately preceding 3-year average of the total customer base and/or total number of beneficiaries.

- Corporate foundations, political or religious organizations or activities, professional or trade associations, infrastructure and housing companies, except affordable housing, shall not be eligible to be identified as a Social Enterprise.

Requirements relating to registration for a Not for Profit Organization [Regulation 292F]

- A Not for Profit Organization shall mandatorily seek registration with a Social Stock Exchange before it raises funds through a Social Stock Exchange. Provided that a Not for Profit Organization may register on a Social Stock Exchange and not raise funds through it for a maximum period of two years from the date of registration or such duration as may be specified by SEBI.
- The minimum requirements for registration of a Not for Profit Organization on a Social Stock Exchange shall be specified by the SEBI from time to time.
- The Social Stock Exchange may specify the eligibility requirements for registration of a Not for Profit Organization in addition to the minimum requirements specified by the SEBI.

Fund raising by Social Enterprises [Regulation 292G]

A Not for Profit Organization may raise funds on a Social Stock Exchange through:

- issuance of Zero Coupon Zero Principal Instruments to eligible investors in accordance with the applicable provisions of this Chapter;
- donations through Mutual Fund schemes as specified by the SEBI;
- any other means as specified by the SEBI from time to time.

A For Profit Social Enterprise may raise funds through:

- issuance of equity shares on the main board, SME platform or innovators growth platform or equity shares issued to an Alternative Investment Fund including a Social Impact Fund;
- issuance of debt securities;
- any other means as specified by the SEBI from time to time.

Ineligibility for raising of funds [Regulation 292H]

A Social Enterprise shall not be eligible to register or raise funds through a Social Stock Exchange or Stock Exchange, as the case may be:

(a) if the Social Enterprise, any of its promoters, promoter group or directors or selling shareholders or trustees are debarred from accessing the securities market by SEBI;

(b) if any of the promoters or directors or trustees of the Social Enterprise is a promoter or director of any other company or Social Enterprise which has been debarred from accessing the securities market by SEBI;

(c) if the Social Enterprise or any of its promoters or directors or trustees is a wilful defaulter or a fraudulent borrower;

(d) if any of its promoters or directors or trustees is a fugitive economic offender;

(e) if the Social Enterprise or any of its promoters or directors or trustees has been debarred from carrying out its activities or raising funds by the Ministry of Home Affairs or any other ministry of the Central Government or State Government or Charitable Commissioner or any other statutory body.

Issuance of Zero Coupon Zero Principal Instruments [Regulation 292I]

Zero Coupon Zero Principal Instruments shall be issued only by a Not for Profit Organization registered on a Social Stock Exchange and shall have a specific tenure. Zero Coupon Zero Principal Instruments shall be issued without any coupon and no principal amount shall be payable on its maturity.

Eligibility for issuance of Zero Coupon Zero Principal Instruments [Regulation 292J]

A Social Enterprise which is a Not for Profit Organization registered with a Social Stock Exchange may make an issue of Zero Coupon Zero Principal Instruments and list them on such Social Stock Exchange.

The Not for Profit Organization may issue Zero Coupon Zero Principal Instruments only for a specific project or activity to be completed within a duration specified in the fund raising document. Provided that the specific project or activity falls under the list of eligible activities specified under these regulations.

LESSON ROUND-UP

- Public Issue of shares means the selling or marketing of shares for subscription by the public by issue of prospectus.
- Issue of Securities are regulated by the SEBI (ICDR) Regulations, 2018.
- The SEBI (ICDR) Regulations, 2018 lays down the provisions and procedure for various types of issue, including public / rights issue / bonus issue.
- In case of an IPO, the promoters of the issue shall hold at least 20% of the post issue capital.
- The promoters' holding in excess of minimum promoters' contribution shall be locked in for a period of six months from the date of allotment in the IPO.
- The issuer shall appoint one or more merchant bankers, which are registered with the SEBI, as lead manager(s) to the issue.
- Every company making a public issue is required to appoint a Company Secretary as the compliance officer and intimate the name of the compliance officer to SEBI.
- Public issue must be kept open for atleast 3 working days but not more than 10 working days.
- Rights issue means an offer of specified securities by a listed issuer to the shareholders of the issuer as on the record date fixed for the said purpose.
- Qualified institutions placement means issue of eligible securities by a listed issuer to qualified institutional buyers on a private placement basis and includes an offer for sale of specified securities by the promoters and/or promoter group on a private placement basis, in terms of these regulations.

- Innovators growth platform means the trading platform for listing and trading of specified securities of issuers that comply with the eligibility criteria specified in regulation 283 of SEBI (ICDR) Regulations, 2018.
- When an issuer makes an issue of shares to its existing shareholders without any consideration based on the number of shares already held by them as on a record date it is called a bonus issue.

GLOSSARY

Average market capitalisation: It means the sum of daily market capitalization of "public shareholding" for a period of capitalisation of one year up to the end of the quarter preceding the month in which the proposed public shareholding issue was approved by the Board of Directors/ shareholders, as the case may be, divided by the number of trading days.

Book Building: Book Building means a process undertaken to elicit demand and to assess the price for determination of the quantum or value or coupon of specified securities or Indian Depository Receipts, as the case may be, in accordance with these regulations.

Net Worth: Net Worth means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

Basis of allotment: An allotment pattern of an issue among different categories of applicant.

General Corporate Purpose: It includes such identified purposes for which no specific amount is allocated or any amount so specified towards General Corporate Purpose or any such purpose by whatever name called, in the draft offer document, draft letter of offer, the offer document, or the letter of offer.

Price Band: The range within which the price of a security or the index of a currency is permitted to move within a given period.

Selling Shareholders: Selling Shareholders means any shareholder of the issuer who is offering for sale the specified securities in a public issue in accordance with these Regulations.

TEST YOURSELF

(*These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation*)

1. What is the eligibility requirement for making an initial public offer by an issuer?
2. Briefly enumerate the various conditions required to be fulfilled by an issuer to issuer warrant in an initial public offer.
3. Rights issue means an offer of specified securities by a listed issuer to the shareholders of the issuer as on the record date fixed for the said purpose. Enumerate the steps involved in issue and listing of rights shares.
4. PQR Limited, an unlisted company, is in the process of expanding its business. For expansion, it needs funds of ₹ 200 crore. For raising ₹ 200 crore, company has decided to bring an initial public offer through book building mechanism. It has fixed a price band of ₹ 500 – ₹ 600. Referring to provisions

of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, advise the company on the following matters :

(i) What should be minimum application value and minimum number of equity shares in one application?

(ii) What will be minimum sum payable on application?

(iii) What should be minimum time period for which issue should remain open for subscription?

5. Write short notes on –

(a) Minimum subscription

(b) Minimum promoters' contribution and lock-in-period

(c) Offer Document

(d) Red-herring Prospectus

LIST OF FURTHER READINGS

- SEBI Manual
- Premier on Companies Act, 2013
- Regulations/Rules/Guidelines/Circulars issued by SEBI, RBI, MCA etc. from time to time SEBI Annual Reports
- SEBI Monthly Bulletin

OTHER REFERENCES (Including Websites/Video Links)

- www.mca.gov.in
- www.sebi.gov.in
- www.icsi.edu
- www.nseindia.com
- www.bseindia.com
- www.nsdl.co.in
- www.cdslindia.com

Share Based Employee Benefits and Sweat Equity

Lesson 9

KEY CONCEPTS

■ Appreciation ■ Employee ■ Employee Stock Option Scheme ■ Employee Stock Purchase Scheme ■ General Employee Benefits Scheme ■ Exercise ■ Exercise Period ■ Exercise Price ■ Grant ■ Grant Date ■ Option ■ Option Grantee ■ Relevant Date ■ Retirement Benefit Scheme ■ Stock Appreciation Right or SAR ■ Stock Appreciation Right Scheme ■ Vesting ■ Vesting period ■ Sweat Equity Shares ■ Employee

Learning Objectives

To understand:

- Various provisions under the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021
- Scheme implementation and process
- Administration of Specific Scheme
- Issuance of Sweat Equity Shares
- Pricing, Accounting Treatment, Lock-In and listing of Sweat Equity Shares

Lesson Outline

- Introduction
- SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021
- Applicability
- Important Definitions
- Schemes – Implementation & Process
- Eligibility Criteria
- Compensation Committee
- Shareholders approval
- Variations of terms of the schemes
- Winding up of the schemes
- Non-Transferability
- Listing
- Certificate from Auditors
- Disclosures
- Administration of Specific Schemes
- Issue of Sweat Equity by a Listed Company
- Applicability and Definition of employee in relation to issue of sweat equity shares
- Maximum quantum of sweat equity shares
- Pricing, Valuation, Accounting Treatment, Lock-in and Listing of sweat equity shares
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

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

INTRODUCTION

SEBI (Issue of Sweat Equity) Regulations, 2002 ("Sweat Equity Regulations") and SEBI (Share Based Employee Benefits) Regulations, 2014 ("SBEB Regulations") were notified on September 24, 2002 and October 28, 2014 respectively. The Sweat Equity regulations provided framework for issuance of Sweat Equity shares by listed companies and the SBEB Regulations provided framework to regulate Employee Stock Option Scheme, Employee Stock Purchase Scheme and other share based employee benefits.

Further, to improve ease of doing business from a regulatory perspective, it was observed that, both the SBEB Regulations and the Sweat Equity Regulations regulate employee benefits arising out of and relating with the equity shares of listed companies, thus the possibility of merging both such regulations may be explored.

Accordingly, the SEBI constituted the Expert Group to analyze the above proposals, and to provide its recommendations on the following:

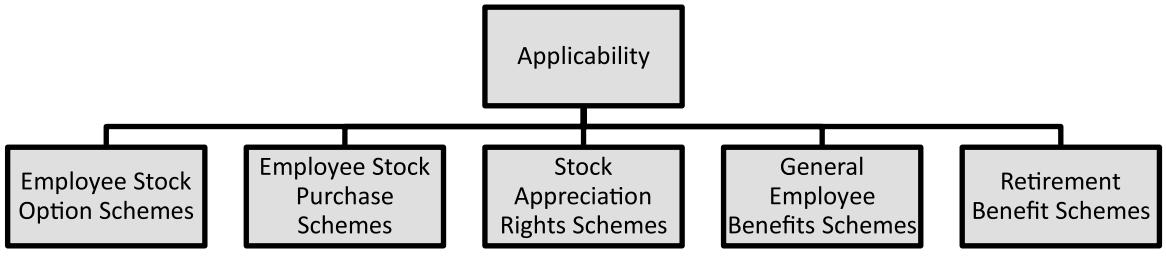
- Revisiting the framework of SBEB regulations and suggesting policy change thereto.
- Revisiting the framework of SEBI Sweat equity regulations *vis-à-vis* the Companies Act, 2013 and suggesting policy changes thereto.
- Suggesting, whether it is advisable to combine both the regulations and if so, providing a draft of combined regulations.

The changes in the two regulations and their merger into a single regulation were approved by SEBI in the Board Meeting held on August 06, 2021. **Thereafter, the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 (herein referred as "New Regulations") have been notified and become effective on August 13, 2021.**

Pursuant to this, the SEBI (Share Based Employee Benefits) Regulations, 2014 and SEBI (Issue of Sweat Equity) Regulations, 2002 (herein referred as "Erstwhile Regulations") stand repealed.

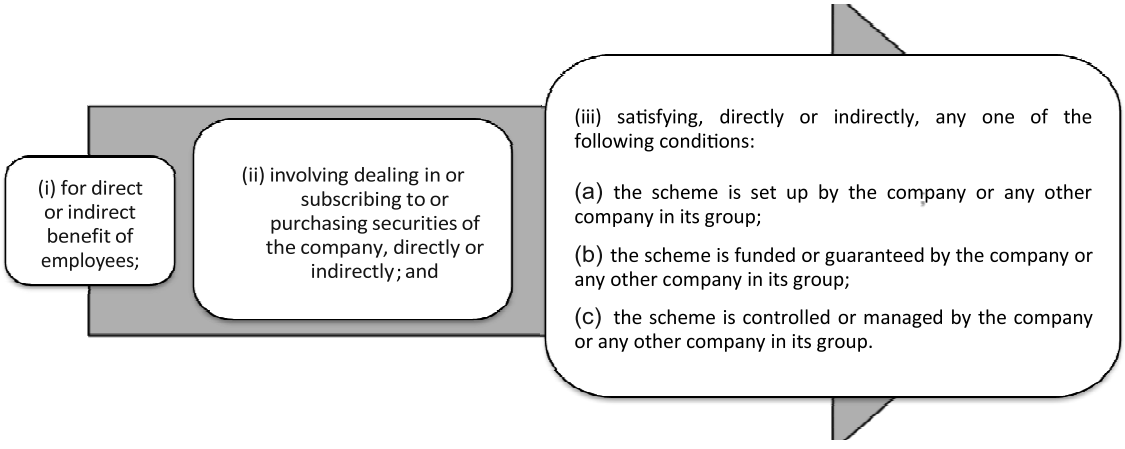
SEBI (SHARE BASED EMPLOYEE BENEFITS AND SWEAT EQUITY) REGULATIONS, 2021

Applicability



Companies Covered

The provisions of these regulations shall apply to any company whose shares are listed on a recognised stock in India and who seeks to issue sweat equity shares or has a scheme:-



The provisions pertaining to preferential issue as specified in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 shall not be applicable in case of a company issuing new shares in pursuance and compliance of these regulations except wherever specifically provided for in these regulations.

IMPORTANT DEFINITIONS

- **"Employee"**, except in relation to issue of sweat equity shares, means, –
  - (i) an employee as designated by the company, who is exclusively working in India or outside India; or
  - (ii) a director of the company, whether a whole time director or not, including a nonexecutive director who is not a promoter or member of the promoter group, but excluding an independent director; or
  - (iii) an employee as defined in sub-clauses (i) or (ii), of a group company including subsidiary or its associate company, in India or outside India, or of a holding company of the company, but does not include –
    - (a) an employee who is a promoter or a person belonging to the promoter group; or
    - (b) a director who, either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten per cent of the outstanding equity shares of the company.

Whether contractual employees are eligible to receive benefits under Share Based Employee Benefits schemes?

Yes, contractual employees are also eligible to receive benefits under the Share Based Employee Benefits schemes provided they are designated as employees by their employers and are exclusively working with such company or its group company including subsidiary or its associate company or its holding company.

- "**Secretarial auditor"** means a company secretary in practice appointed by a company under rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014 to conduct secretarial audit pursuant to regulation 24A of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.
- "**Employee stock option scheme or ESOS**" means a scheme under which a company grants employee stock options to employees directly or through a trust.

- "**Employee stock purchase scheme or ESPS**" means a scheme under which a company offers shares to employees, as part of public issue or otherwise, or through a trust where the trust may undertake secondary acquisition for the purposes of the scheme.
- "**General employee benefits scheme or GEBS"** means any scheme of a company framed in accordance with these regulations, dealing in shares of the company or the shares of its listed holding company, for the purpose of employee welfare including healthcare benefits, hospital care or benefits, or benefits in the event of sickness, accident, disability, death or scholarship funds, or such other benefit as specified by such company.
- "**Retirement benefit scheme or RBS"** means a scheme of a company framed in accordance with these regulations, dealing in shares of the company or the shares of its listed holding company, for providing retirement benefits to the employees subject to compliance with existing rules and regulations as applicable under laws relevant to retirement benefits in India.
- "**Sweat equity shares**" means sweat equity shares as defined in sub-section (88) of section 2 of the Companies Act, 2013.
- "**Appreciation**" means the difference between the market price of the share of a company on the date of exercise of SAR or the date of vesting of SAR, as the case may be, and the SAR price.
- "**Exercise**" means making of an application by an employee to the company or to the trust for issue of shares or appreciation in form of cash, as the case may be, against vested options or vested SARs in pursuance of the schemes covered under Part A or Part C of Chapter III of these regulations, as the case may be.
- **"Grant date"** means the date on which the compensation committee approves the grant.

  Explanation, – For accounting purposes, the grant date will be determined in accordance with applicable accounting standards.
- **"Option"** means the option given to an employee which gives such an employee a right to purchase or subscribe at a future date, the shares offered by the company, directly or indirectly, at a pre-determined price.
- "**Relevant date**" means,-

  (i) in the case of grant, the date of the meeting of the compensation committee on which the grant is made; or

  (ii) in the case of exercise, the date on which the notice of exercise is given to the company or to the trust by the employee.
- "**Stock appreciation right or SAR"** means a right given to a SAR grantee entitling him to receive appreciation for a specified number of shares of the company where the settlement of such appreciation may be made by way of cash payment or shares of the company.

  Explanation 1. – A SAR settled by way of shares of the company shall be referred to as equity settled SAR.

  Explanation 2. – For the purpose of these regulations, any reference to stock appreciation right or SAR shall mean equity settled SARs and does not include any scheme which does not, directly or indirectly, involve dealing in or subscribing to or purchasing, securities of the company.
- "**Stock appreciation right scheme or SAR scheme**" means a scheme under which a company grants SAR to employees.

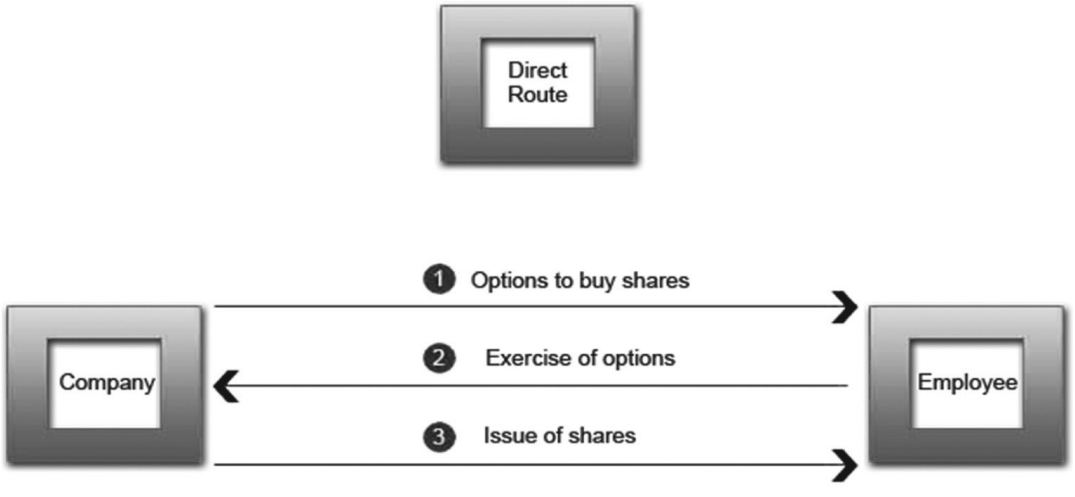
- **"SAR grantee**" means an employee to whom a SAR is granted.
- "**SAR price**" means the base price defined on the grant date of SAR for the purpose of computing appreciation.
- "**Trust**" means a trust established under the provisions of the Indian Trusts Act, 1882 including any statutory modification or re-enactment thereof, for implementing any of the schemes covered by these regulations.

SCHEMES - IMPLEMENTATION AND PROCESS

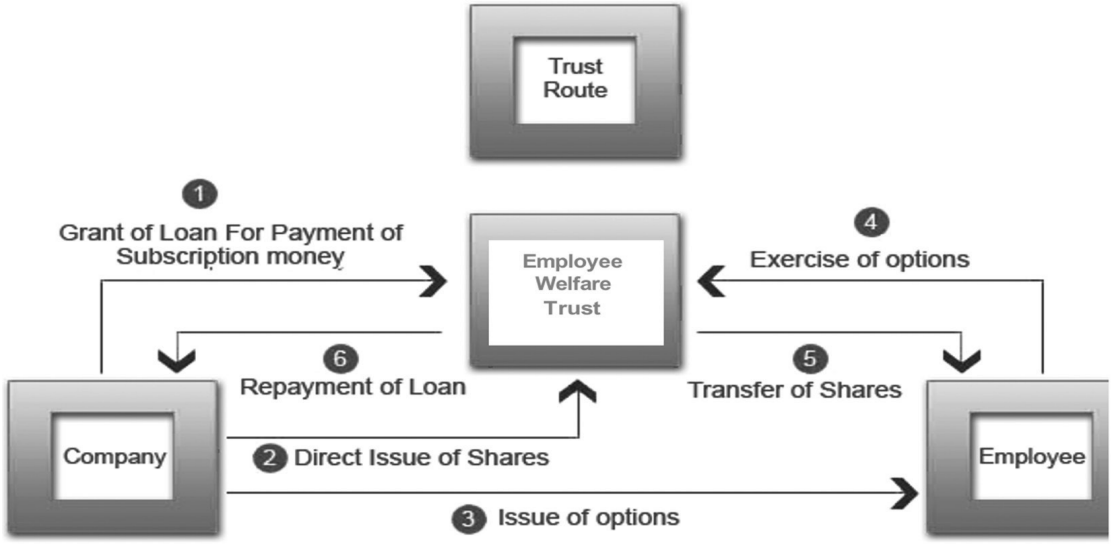
A company may implement a scheme(s) either-

- directly or
- by setting up an irrevocable trust(s).

Direct Route



Implementation of Schemes through Trust



1. If the scheme is to be implemented through a trust, the same has to be decided upfront at the time of taking approval of the shareholders for setting up the scheme(s). However, if prevailing circumstances so warrant, the company may change the mode of implementation of the scheme subject to the condition that a fresh approval of the shareholders by a special resolution is obtained prior to implementing such a change and that such a change is not prejudicial to the interests of the employees. Further provided that, if the scheme(s) involves secondary acquisition or gift or both, then it shall be mandatory for the company to implement such scheme(s) through a trust(s).

2. A company may implement several schemes as permitted under these regulations through a single trust. However, such single trust shall keep and maintain-

   – proper books of account;

   – records and documents;

   for each such scheme so as to explain its transactions and to disclose at any point of time the financial position of each scheme and in particular give a true and fair view of the state of affairs of each scheme.

3. The trust deed, under which the trust is formed, shall contain provisions as specified in Part A of Schedule-I of these regulations and such trust deed and any modifications thereto shall be mandatorily filed with the recognised stock exchange(s) in India where the shares of the company are listed.

4. Any person can be appointed as a trustee of the trust, except in cases where such person –

   i. is a director, key managerial personnel or promoter of the company or its group company including its holding, subsidiary or associate company or any relative of such director, key managerial personnel or promoter; or

   ii. beneficially holds ten percent or more of the paid-up share capital or the voting rights of the company.

   However, where individual(s) or “one person company” as defined under the Companies Act, 2013 is appointed as trustee(s), there shall be a minimum of two such trustees, and in case a corporate entity is appointed as a trustee, then it may be the sole trustee.

5. The trustees of a trust, which is governed under these regulations, shall not vote in respect of the shares held by such trust, so as to avoid any misuse arising out of exercising such voting rights.

6. The trustee should ensure that the requisite approval from the shareholders has been obtained by the company in order to enable the trust to implement the scheme(s) and undertake secondary acquisition for the purposes of the scheme(s).

7. The trust shall not deal in derivatives and shall undertake only delivery-based transactions for the purposes of secondary acquisition as permitted by these regulations.

8. Subject to the requirements of the Companies Act, 2013 read with Companies (Share Capital and Debenture) Rules, 2014, as amended from time to time, as may be applicable, the company may lend monies to the trust on appropriate terms and conditions to acquire the shares either through new issue or secondary acquisition, for the purpose of implementation of the scheme(s).

9. For the purpose of disclosures to the recognised stock exchange, the shareholding of the trust shall be shown as “non-promoter and non-public” shareholding.

Explanation. – The shares held by the trust shall not form part of the public shareholding which needs to be maintained at a minimum of twenty five per cent as prescribed under the Securities Contracts (Regulation) Rules, 1957.

10. Secondary acquisition in a financial year by the trust shall not exceed two per cent of the paid up equity capital of the company as at the end of the previous financial year.

11. The total number of shares under secondary acquisition held by the trust shall at no point of time exceed the below mentioned limits as a percentage of the paid up equity capital of the company as at the end of the financial year immediately prior to the year in which the shareholders' approval is obtained for such secondary acquisition:

Sl. No.	***Particulars***	***Limit***
A	For the schemes enumerated in Part A, Part B or Part C of Chapter III of these regulations	5%
B	For the schemes enumerated in Part D, or Part E of Chapter III of these regulations	2%
C	For all the schemes in aggregate	5%

12. The unappropriated inventory of shares which are not backed by grants, acquired through secondary acquisition by the trust under Part A, Part B or Part C of Chapter III of these regulations, shall be appropriated within a reasonable period which shall not extend beyond the end of the subsequent financial year, or the second subsequent financial year subject to approval of the compensation committee/nomination and remuneration committee for such extension to the second subsequent financial year.

13. The trust shall be required to hold the shares acquired through secondary acquisition for a minimum period of six months except where they are required to be transferred in the circumstances enumerated in these regulations, whether off-market or on the platform of recognised stock exchange.

14. The trust shall be permitted to undertake off-market transfer of shares only under the following circumstances: -

    (a) transfer to the employees pursuant to scheme(s);

    (b) while participating in an open offer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 or while participating in a buy-back, delisting or any other exit offered by the company generally to its shareholders.

15. The trust shall not become a mechanism for trading in shares and hence shall not sell the shares in secondary market except under the following circumstances:

    (a) to enable the employee to fund the payment of the exercise price, the amount necessary to meet his/her tax obligations and other related expenses pursuant to exercise of options granted under the ESOS;

    (b) on vesting or exercise, as the case may be, of SAR under the scheme covered by Part C of Chapter III of these regulations;

(c) in case of emergency for implementing the schemes covered under Part D and Part E of Chapter III of these regulations, and for this purpose –

(i) the trustee(s) shall record the reasons for such sale; and

(ii) money so realised on sale of shares shall be utilised within a definite time period as stipulated under the scheme or trust deed.

(d) participation in buy-back or open offers or delisting offers or any other exit offered by the company generally to its shareholders, if required;

(e) for repaying the loan, if the unappropriated inventory of shares held by the trust is not appropriated within the timeline as provided above;

(f) winding up of the scheme(s); and

(g) based on approval granted by the Board to an applicant, for the reasons recorded in writing in respect of the schemes covered by Part A or Part B or Part C of Chapter III of these regulations, upon payment of a non-refundable fee of rupees one lakh to the Board along with the application by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by the Reserve Bank of India.

16. The trust shall be required to make disclosures and comply with the other requirements applicable to insiders or promoters under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 or any modification or re-enactment thereto.

Eligibility Criteria

An employee shall be eligible to participate in the schemes of the company as determined by the compensation committee.

Compensation Committee

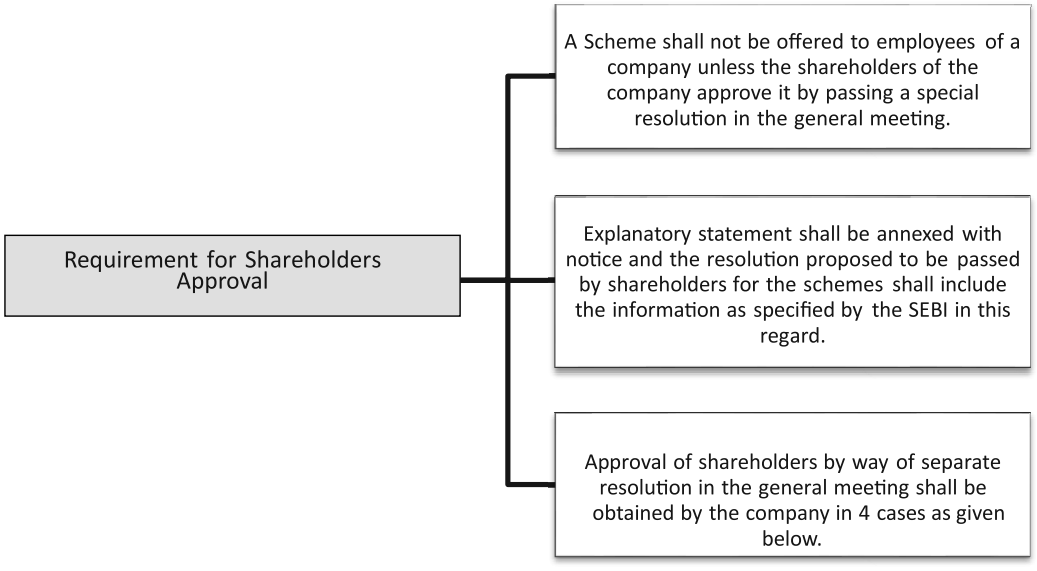
(1) A company shall constitute a compensation committee for administration and superintendence of the schemes. Where the scheme is being implemented through a trust the compensation committee shall delegate the administration of such scheme(s) to the trust.

(2) The compensation committee shall be a committee of such members of the Board of Directors of the company as provided under regulation 19 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended from time to time. However, a company may also opt to designate its nomination and remuneration committee as the compensation committee for the purposes of these regulations.

(3) The compensation committee shall, inter alia, formulate the detailed terms and conditions of the schemes which shall include the provisions as specified in Part B of Schedule – I of these regulations.

(4) The compensation committee shall frame suitable policies and procedures to ensure that there is no violation of securities laws including the SEBI (Prohibition of Insider Trading) Regulations, 2015 and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003, as amended from time to time, by the trust, the company and its employees, as may be applicable.

Shareholders Approval



Approval of shareholders by way of separate resolution in the general meeting shall be obtained by the company in case of:

a) Secondary acquisition for implementation of the schemes. Such approval shall mention the percentage of secondary acquisition (subject to limits specified under these regulations) that could be undertaken;

b) Secondary acquisition by the trust in case the share capital expands due to capital expansion undertaken by the company including preferential allotment of shares or qualified institutions placement, to maintain the five percent cap as prescribed in these regulations of such increased capital of the company;

c) Grant of option, SAR, shares or other benefits, as the case may be, to employees of subsidiary or holding company;

d) Grant of option, SAR, shares or benefits, as the case may be, to identified employees, during any one year, equal to or exceeding one per cent. of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of option, SAR, shares or incentive, as the case may be.

Variation of Terms of the Schemes

(1) A company may by special resolution of its shareholders vary the terms of the schemes offered pursuant to an earlier resolution of the general body but not yet exercised by the employees, if such variation is not prejudicial to the interests of the employees.

(2) A company shall be entitled to vary the terms of the schemes to meet any regulatory requirement without seeking shareholders' approval by special resolution.

(3) The provisions of regulation 6 (Shareholders' Approval) of these regulations shall apply to such variation of terms as they apply to the original grant of option, SAR, shares or other benefits, as the case may be.

(4) The notice for passing a special resolution for variation of terms of the schemes shall disclose full details of the variation, the rationale therefor, and the details of the employees who are beneficiaries of such variation.

(5) A company may reprice the options, SAR or shares, as the case may be, which are not exercised, whether or not they have been vested, if the schemes were rendered unattractive due to fall in the price

of the shares in the stock market. However, the company ensures that such repricing is not detrimental to the interests of the employees and approval of the shareholders by a special resolution has been obtained for such repricing.

Winding up of the Schemes

In case of winding up of the schemes being implemented by a company, the excess monies or shares remaining with the trust after meeting all the obligations, if any, shall be utilised for repayment of loan or by way of distribution to employees or subject to approval of the shareholders, be transferred to another scheme under these regulations, as recommended by the compensation committee.

Non-Transferability

- Option, SAR or any other benefit granted to an employee under the regulations shall not be transferable to any person. No person, other than the employee to whom the option, SAR or other benefit is granted, shall be entitled to the benefit arising out of such option, SAR or other benefit.
- The option, SAR, or any other benefit granted to the employee shall not be pledged, hypothecated, mortgaged or otherwise alienated in any other manner.
- In the event of death of the employee while in employment, all the options, SAR or any other benefit granted under a scheme to him/her till his/her death shall vest, with effect from the date of his/her death, in the legal heirs or nominees of the deceased employee, as the case may be.
- In case the employee suffers a permanent incapacity while in employment, all the options, SAR or any other benefit granted to him/her under a scheme as on the date of permanent incapacitation, shall vest in him/her on that day.
- In the event of resignation or termination of an employee, all the options, SAR or any other benefit which are granted and yet not vested as on that day, shall expire.

Employee identified as promoter or part of the promoter group in the draft offer document

An employee who is identified as a “promoter” or part of the “promoter group” in the draft offer document filed by a company with the Board in relation to an initial public offering, and who was granted options, SAR or any other benefit under any scheme at least one year prior to filing of the draft offer document, shall be eligible to continue to hold and/or exercise such options, SAR or any other benefit, in accordance with its terms and subject to compliance with these regulations and other applicable laws.

Listing

In case new issue of shares is made under any scheme, shares so issued shall be listed immediately in any recognised stock exchange.

In case of the existing shares are listed, following conditions need to be fulfilled :-		
Scheme is in compliance with these regulations	A statement specified by the SEBI in this regard, is filed and the company has obtained an in-principle approval from the stock exchanges	As and when an exercise is made, the company notifies the concerned stock exchange as per the statement as specified by the SEBI in this regard

Certificate from Auditors

In the case of every company which has passed a resolution for the scheme(s) under these regulations, the Board of Directors shall at each annual general meeting place before the shareholders a certificate from the **secretarial auditors** of the company that the scheme(s) has been implemented in accordance with these regulations and in accordance with the resolution of the company in the general meeting.

Disclosures

In addition to the information that a company is required to disclose in relation to employee benefits under the Companies Act, 2013, the Board of Directors of such a company shall also disclose the details of the scheme(s) being implemented, as specified in Part F of Schedule – I of these regulations.

ADMINISTRATION OF SPECIFIC SCHEMES

Employee Stock Option Scheme (ESOS)

Administration and Implementation	• An ESOS shall contain the details of the manner in which the scheme will be implemented and operated. ESOS shall not be offered unless the disclosures, as specified by SEBI in this regard, are made by the company to the prospective option grantees.
Pricing	• The company granting options to its employees pursuant to an ESOS shall be free to determine the exercise price subject to conforming to the accounting policies specified in these regulation.
Vesting Period	• There shall be a minimum vesting period of one year in case of ESOS. • The company may specify the lock-in period for the shares issued pursuant to exercise of option.
Rights of the option holder	• An employee shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to him/her, till shares are issued upon exercise of option.
Rights of the option holder	• An employee shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to him/her, till shares are issued upon exercise of option.
Consequence of failure to exercise option	• The amount paid by the employee, if any, at the time of grant, vesting or exercise of option, - • may be forfeited by the company if the option is not exercised by the employee within the exercise period; or • may be refunded to the employee if the options are not vested due to non-fulfilment of conditions relating to vesting of option as per the ESOS.

Employee Stock Purchase Scheme (ESPS)

Administration and Implementation	Pricing and Lock-In
• An ESPS scheme shall contain the details of the manner in which the scheme will be implemented and operated.	• A company may determine the price of shares to be issued under an ESPS, provided they conform to the provisions of accounting policies under these regulation.

	• Shares issued under an ESPS shall be locked-in for a minimum period of one year from the date of allotment. • If ESPS is part of a public issue and the shares are issued to employees at the same price as in the public issue, the shares issued to employees pursuant to ESPS shall not be subject to lock-in.

Stock Appreciation Rights Scheme (SAR Scheme)

Administration and Implementation	Vesting	Rights of the SAR holder
ASAR scheme shall contain the details of the manner in which the scheme will be implemented and operated. A company shall have the freedom to implement cash settled or equity settled SAR scheme. However, for the purpose of these regulations, reference to SAR shall mean equity settled SARs only. No SAR shall be offered unless the disclosures, as specified by SEBI in this regard, are made by the company to the prospective SAR grantees.	There shall be a minimum vesting period of one year in case of SAR scheme.	The employee shall not have right to receive dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of SAR granted to him/her.

General Employee Benefits Scheme (GEBS)

Administration and Implementation

(1) GEBS shall contain the details of the scheme and the manner in which the scheme shall be implemented and operated.

(2) The shares of the company or shares of its listed holding company shall not exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet (whether audited or limited reviewed) for the purposes of GEBS.

(3) The secretarial auditor of the company shall certify the above mentioned point (2) compliance at the time of adoption of such balance sheet by the company.

Retirement Benefit Scheme (RBS)

Administration and Implementation

(1) Retirement benefit scheme may be implemented by a company subject to compliance with these regulations and provisions of any other law in force in relation to retirement benefits.

(2) The retirement benefit scheme shall contain the details of the benefits under the scheme and the manner in which the scheme shall be implemented and operated.

(3) The shares of the company or shares of its listed holding company shall not exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet (whether audited or limited reviewed) for the purposes of RBS.

(4) The secretarial auditor of the company shall certify compliance with above mentioned point (3) at the time of adoption of such balance sheet by the company.

ISSUE OF SWEAT EQUITY BY A LISTED COMPANY – CHAPTER IV OF SEBI (SHARE BASED EMPLOYEE BENEFITS AND SWEAT EQUITY) REGULATIONS, 2021

Introduction

Factors behind the success of any company is its ability to attract top talent while retaining those already working within the company. One of the ways in which companies attract and retain key employees is by rewarding them with equity shares.

'Sweat equity shares' are such equity shares, which are issued by a Company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Sweat equity shares refers to equity shares given to the company's employees on favourable terms, in recognition of their work. Sweat equity shares is one of the modes of making share based payments to employees of the company. The issue of sweat equity shares allows the company to retain the employees by rewarding them for their services. Sweat equity shares rewards the beneficiaries by giving them incentives in lieu of their contribution towards the development of the company.

Further, Sweat equity shares enables greater employee stake and interest in the growth of an organization as it encourages the employees to contribute more towards the company in which they feel they have a stake.

Companies Act, 2013 empowers companies to issue sweat equity shares to its employees and directors, subject to the conditions stated therein. In case of a company whose equity shares are listed on a recognized stock exchange, the issuer company is required to conform to the Regulations made by SEBI.

Applicability

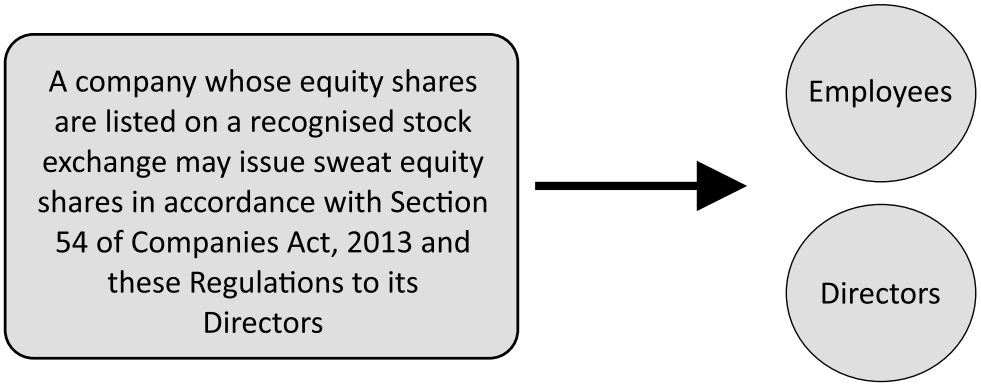
The provisions contained in this chapter shall not apply to an unlisted company. However, an unlisted company coming out with initial public offer and seeking listing of its securities on the recognized stock exchange, pursuant to issue of sweat equity shares, is required to comply with the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirement) Regulations, 2018.

Definition of employee in relation to issue of sweat equity shares

The term 'employee' means,

(i) an employee of the company working in India or abroad; or

(ii) a director of the company whether a whole time director or not.



Issue of sweat equity shares to employees

A company whose equity shares are listed on a recognised stock exchange may issue sweat equity shares in accordance with section 54 of the Companies Act, 2013 and these regulations to its employees for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Maximum quantum of sweat equity shares

A company shall not issue sweat equity shares for more than fifteen percent of the existing paid up equity share capital in a year. However, the issuance of sweat equity shares in the company shall not exceed twenty five percent of the paid up equity share capital of the company at any time.

Further, a company listed on Innovators Growth Platform shall be permitted to issue not more than fifteen percent of the paid up equity share capital in a financial year subject to overall limit not exceeding fifty percent of the paid up equity share capital of the company, up to ten years from the date of its incorporation or registration.

Special Resolution

(1) For the purposes of passing a special resolution under clause (a) of sub-section (1) of section 54 of the Companies Act, 2013), the explanatory statement to be annexed to the notice for the general meeting pursuant to section 102 of the Companies Act, 2013 shall contain disclosures as specified in the Schedule – II of these regulations.

(2) The issue of sweat equity shares to employees who belong to promoter or promoter group shall be approved by way of a resolution passed by a simple majority of the shareholders in general meeting.

However, for passing such a resolution, voting through postal ballot and/or e-voting as specified under Companies (Management and Administration) Rules, 2014 shall also be adopted.

Further, provided that the promoters/promoter group shall not participate in such resolution.

(3) Each issue of sweat equity shares shall be voted by a separate resolution.

(4) The resolution for issue of sweat equity shares shall be valid for a period of not more than twelve months from the date of passing of the resolution.

Pricing of sweat equity shares

The price of sweat equity shares shall be determined in accordance with the pricing requirements stipulated for a preferential issue to a person other than a qualified institutional buyer under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Valuation

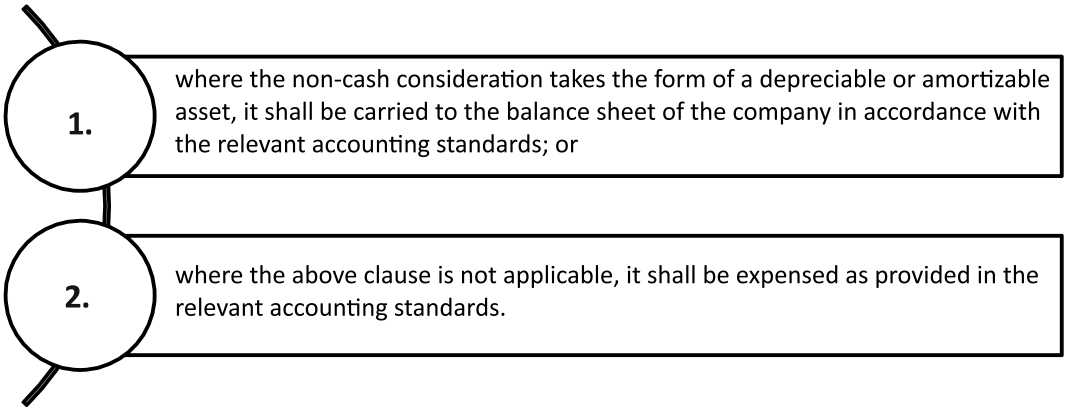
(1) The valuation of the know-how or intellectual property rights or value addition shall be carried out by a merchant banker.

(2) The merchant banker may consult such experts and valuers, as it may deem fit, having regard to the nature of the industry and the nature of the valuation of know-how or intellectual property rights or value addition.

(3) The merchant banker shall obtain a certificate from an independent chartered accountant certifying that the valuation of the know-how or intellectual property rights or value addition is in accordance with the relevant accounting standards.

Accounting Treatment

Where the sweat equity shares are issued for a non-cash consideration, such non-cash consideration shall be treated in the following manner in the books of account of the company:-



Placing of auditor's certificate before annual general meeting

In the general meeting subsequent to the issue of sweat equity shares, the Board of Directors shall place before the shareholders, a certificate from the secretarial auditor of the company that the issue of sweat equity shares has been made in accordance with these regulations and in accordance with the resolution passed by the company authorizing the issue of such sweat equity shares.

Ceiling on managerial remuneration

The amount of sweat equity shares issued shall be treated as part of managerial remuneration for the purpose of sections 196, 197 and other applicable provisions of the Companies Act, 2013, if the following conditions are fulfilled:

(i) the sweat equity shares are issued to any director or manager; and

(ii) the sweat equity shares are issued for non-cash consideration, which does not take the form of an asset which can be carried to the balance sheet of the company in accordance with the relevant accounting standards.

Lock-in of sweat equity shares

(1) The sweat equity shares shall be locked in for such period of time as specified in relation to a preferential issue under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, as amended from time to time.

(2) The provisions of the Securities and Exchange Board of India (Issue of Capital and Disclosures Requirements) Regulations, 2018 in respect of public issue in terms of lock-in and computation of promoters' contribution shall apply if a company makes a public issue after it has issued sweat equity shares.

Listing

The sweat equity shares issued by a listed company shall be eligible for listing subject to their issuance being in accordance with these regulations.

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

Any acquisition of sweat equity shares shall be subject to the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

General Obligations

The company shall ensure that –

(a) the explanatory statement to the notice for general meeting contains the disclosures specified under clause (b) of sub-section (1) of section 54 of the Companies Act, 2013 and sub-regulation (1) of regulation 32 of these regulations.

(b) the secretarial auditor's certificate required under regulation 36 is placed in the general meeting of the shareholders.

(c) the company, within seven days of the issue of sweat equity shares, sends a statement to the recognised stock exchange, disclosing:

(i) number of sweat equity shares issued;

(ii) price at which the sweat equity shares are issued;

(iii) total amount received towards sweat equity shares;

(iv) details of the persons to whom sweat equity shares have been issued; and

(v) the consequent changes in the capital structure and the shareholding pattern before and after the issue of sweat equity shares.

LESSON ROUND-UP

- Issue of Employee Stock option by a listed entity is regulated by the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021.
- The SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 (herein referred as "New Regulations") have been notified and become effective on August 13, 2021.
- The provisions of these regulations shall apply to any company whose shares are listed on a recognised stock in India and who seeks to issue sweat equity shares or has a scheme.
- A company may implement schemes either directly or by setting up an irrevocable trust(s).
- A company shall constitute a compensation committee for administration and superintendence of the schemes. Where the scheme is being implemented through a trust the compensation committee shall delegate the administration of such scheme(s) to the trust.

- An employee shall be eligible to participate in the schemes of the company as determined by the compensation committee.
- In case of winding up of the schemes being implemented by a company, the excess monies or shares remaining with the trust after meeting all the obligations, if any, shall be utilised for repayment of loan or by way of distribution to employees or subject to approval of the shareholders, be transferred to another scheme under these regulations, as recommended by the compensation committee.
- Where the equity shares of the company are listed on a recognized stock exchange, sweat equity shares should be issued in accordance with regulations made by the Securities and Exchange Board of India in this regard.
- These regulations shall not apply to an unlisted company. However, unlisted company coming out with initial public offering and seeking listing of its securities on the stock exchange, pursuant to issue of sweat equity shares, shall comply with the SEBI (ICDR) Regulations, 2018.
- In case of Issue of sweat equity shares to promoters, the same shall also be approved by simple majority of the shareholders in General Meeting.
- The sweat equity shares shall be locked in for such period of time as specified in relation to a preferential issue under the SEBI (ICDR) Regulations, 2018, as amended from time to time.
- The Sweat Equity issued by a listed company shall be eligible for listing only if such issues are in accordance with these regulations.

GLOSSARY

Grant: Issue of option to employees under the scheme.

Option grantee: An employee having a right but not an obligation to exercise an option in pursuance of ESOS.

Secondary Acquisition: Acquisition of existing shares of the company by the trust on the platform of a recognised stock exchange for cash consideration.

Vesting Period: Vesting means the process by which the employee becomes entitled to receive the benefit of a grant made to him/her under any of the schemes.

It means the period during which the vesting of option, SAR or a benefit granted under any of the schemes takes place.

Accounting Standard: Accounting Standards are codified or written statements of accounting rules and guidelines for preparation and presentation of financial statements. They are policy documents issued by an expert accounting body or by the Government or other regulatory body.

Intellectual Property: It is a category of property that includes intangible creations of the human intellect, and primarily encompasses copyrights, patents, and trademarks. It also includes other types of rights, such as trade secrets, publicity rights, moral rights, and rights against unfair competition.

Special Resolution: A special resolution is a resolution of a company's shareholders which requires at least 75% of the votes cast by the shareholders in favour of it in order to pass.

TEST YOURSELF

(*These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation*)

1. What are applicability and non-applicability of the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021?
2. State briefly the provisions of pricing and lock-in period under ESPS.
3. Your Board of directors is contemplating to take-up the agenda to issue ESOS in next meeting. Being a Company Secretary, advise your Board of directors about brief procedure for issuing of securities under SEBI Employees Stock Option Scheme (ESOS) by a listed Company.
4. Due to growing numbers of startups in India, one of the leading listed startup has apprehension that the experienced employees may leave the company to get higher pay package. The CEO desires to issue Sweat Equity Shares to the employees to retain them. You being a Company Secretary advise the management about pricing of the shares under SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021.
5. Future Ltd., a gaming platform of a listed company comprises various subsidiaries, joint venture companies, associates and other related party entities forming an internal part of Future Group. In order to retain talented human resources and to recognize the efforts of employees of these entities in the group, Future Group decided to grant cash based SARs linked to the share of Future Group to the employees of joint venture. You are required to confirm as to whether the scheme falls under the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021.

LIST OF FURTHER READINGS

- SEBI Circulars / Notifications
- SEBI FAQs

OTHER REFERENCES (Including Websites/Video Links)

- https://www.sebi.gov.in/index.html
- https://www.nseindia.com/
- https://www.bseindia.com/

Issue and Listing of Non-Convertible Securities

Lesson 10

KEY CONCEPTS

■ Debt Securities ■ Non-Convertible Securities ■ Commercial Paper ■ Electronic Book Provider Platform ■ ESG Debt Securities ■ Green Debt Security ■ Issuer ■ Non-Convertible Redeemable Preference Share ■ Perpetual Debt Instrument ■ Perpetual Non-Cumulative Preference Share ■ Secured Debt Securities

Learning Objectives

To understand:

- The conditions and eligibility criteria for public issue and listing of Debt Securities and Non Convertible Redeemable Preference Shares
- Obligations of the Issuer, Debenture Trustee and Lead Manager
- Listing of Private Placement of Debt Securities and Non-Convertible Redeemable Preference Shares
- Issuance and Listing of Perpetual Debt Instruments, Perpetual Non-Cumulative Preference Shares and Similar Instruments
- Issuance and Listing of Non-Convertible Securities issued on a Private Placement Basis
- Listing of Commercial Paper

Lesson Outline

- Introduction
- Important Definitions under the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021
- General Conditions and Eligibility Criteria:-
  - In-principle approval
  - International Securities Identification Number
  - Trust Deed
  - Listing Agreement
  - Continuous Listing Conditions
  - Trading of Non-Convertible Securities
  - Obligations of the Issuer and Debenture Trustee
- Public Issue and Listing of Debt Securities and Non Convertible Redeemable Preference Shares
- Listing of Private Placement of Debt Securities and Non-Convertible Redeemable Preference Shares
- Issuance and Listing of Perpetual Debt Instruments, Perpetual Non-Cumulative Preference Shares and Similar Instruments
- Issuance and Listing of Non-Convertible Securities issued on a Private Placement Basis
- Listing of Commercial Paper
- Role of a Company Secretary
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- SEBI (Issue and Listing of Non-convertible Securities) Regulations, 2021
- The Companies Act, 2013
- SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
- SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018
- SEBI Operational Circular
- RBI Guidelines

INTRODUCTION

A vibrant capital market, both equity and bond, has to play an increasingly pivotal role to facilitate fund mobilization for sustaining India's projected economic growth momentum. A debenture being an attractive source of funding, is a long-term debt instrument issued by corporates and Government to secure fresh funds or capital. Coupons or interest rates are offered as compensation to the lender. Company issues non convertible debentures to attract lenders and investors, these come with higher interest rates. The role of corporate bond market becomes even more important now, given the stress on the banking sector.

A company can issue two types of shares viz. Equity Shares and Preference Shares. Equity shares are also known as Ordinary Shares. While Preference shareholders enjoy the benefit of receiving their dividend distribution first; the equity shareholders enjoy voting rights in major company decisions, including mergers or acquisitions. Preference shares have the right to receive dividend at a fixed rate before any dividend is paid on the equity shares. Further, when the company is wound up, they have a right to return of the capital before that of equity shares. The Preference Shares may carry some more rights such as the right to participate in excess profits, which a specified dividend has been paid on the equity shares or the right to receive a premium at the time of redemption. The preference shares are safer investments than the equity shares. In case the company is wound up and its assets (land, buildings, offices, machinery, furniture, etc.) are being sold, the money that comes from this sale is given to the shareholders. After all, shareholders invest in a business and own a portion of it. The preference shares are most commonly issued by companies to institutions. For example, banks and financial institutions may want to invest in a company but do not want to bother with the hassles of fluctuating share prices. In that case, they would prefer to invest in a company's preference shares. Companies, on the other hand, may need money but are unwilling to take a loan. So they will issue preference shares.

Keeping in view the larger complementary role that corporate bonds have to play along-side bank credit for financing economic activities and promoting ease of doing business in India, several policy measures have been taken by the Government and the Regulators to develop a vibrant corporate bond market.

The SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred as "ILDS Regulations") and SEBI (Issue and Listing of Non- Convertible Redeemable Preference Shares) Regulations, 2013 (hereinafter referred as **"**NCRPS Regulations**"**) were notified on June 06, 2008 and June 12, 2013 respectively. The ILDS Regulations were enacted for the issuance and listing of debt securities whereas NCRPS Regulations was enacted for the issuance and listing of non-convertible redeemable preference shares. The NCRPS Regulations, also cover the listing of perpetual debt instruments (PDIs) and Perpetual Non-Convertible Preference Shares (PNCPS).

In May 2021, SEBI decided to solicit public comments on the review and merger of the ILDS Regulations and NCRPS Regulations into a single regulation - SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (hereinafter referred as **"**NCS Regulations**"**).

SEBI, in its consultation paper, stated that while debt securities are 'pure play' debt instruments, NCRPS' are hybrid equity and debt instruments – they carry a fixed dividend rate, are redeemable and the holder is entitled to voting rights in case dividend is not paid for two years as per the Companies Act, 2013, therefore, they are also termed as a '*quasi-debt'* instruments. The NCRPS Regulations, which were notified in 2013, were enacted for the issue and listing of preference shares, that were non-convertible in nature, thus largely in the nature of debt. This can also be seen in the content of the regulations including eligibility conditions, disclosure requirements, etc. which are very similar to the ILDS Regulations. The NCRPS Regulations have been modelled on the ILDS Regulations.

Subsequent to the implementation of the ILDS Regulations and NCRPS Regulations, considerable time had elapsed. Significantly, various changes had taken place in the regulatory landscape, like:

- *Amendments made to the Companies Act, 2013 ('**Companies Act'**);*
- *Repeal of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and substitution with ICDR Regulations, 2018 ('**ICDR Regulations'**);*
- *Enhancement of requirements for Debenture Trustees;*
- *Issue of various circulars in relation to the ILDS and NCRPS Regulations keeping in mind the market dynamics;*
- *Issue of informal guidance/ interpretative letters regarding interpretation of the regulations etc.*

SEBI, hence, felt that there existed a need to merge and realign the ILDS and NCRPS Regulations to ensure that ease of reference and language and also remove redundancies which would entail following objectives:

a. To simplify and to align the Regulations in line with the various circulars/guidance and various provisions of the regulations, issued by SEBI and improve the structure of the regulations in order to enhance readability;

b. To identify policy changes in line with the present market practices and the prevailing regulatory environment and to ease doing business;

c. To separate the chapters on the basis of type of issuance-public/private placement and instruments - debt securities/NCRPS/PNCPS/PDIs/ Commercial Papers, so that all relevant information is sorted and are available at one place;

d. To align the regulations with the amendment in the Companies (Share Capital and Debentures) Rules, 2014 and Companies (Prospectus and Allotment of Securities) Rules, 2014 etc.;

e. To merge all the existing circulars into a single operational circular.

The consultation paper was placed on the SEBI website on May 19, 2021 seeking public comments for a period of 21 days. After the receipt of public comments, the same were analysed and the new regulations were approved by the SEBI Board in its meeting held on June 29, 2021.

SEBI vide its notification dated August 09, 2021 introduced **SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ('NCS Regulations').** The NCS Regulations came into effect from the 7th day from the date of their publication in the official gazette i.e. 16th August, 2021.

The new NCS Regulations provides for issuance and/or listing of the following securities

a. Debt securities;

b. Non-Convertible redeemable preference shares;

c. Perpetual debt instruments or Perpetual Non-cumulative preference shares;

d. Commercial Paper.

"Non-convertible securities" means debt securities, non-convertible redeemable preference shares, perpetual non-cumulative preference shares, perpetual debt instruments and any other securities as specified by the SEBI.

Since the enactment of ILDS Regulations and NCRPS Regulations, SEBI had issued multiple circulars covering procedural and operational aspects thereof. Hence, for ease of reference, all the existing circulars and provisions were merged into a single SEBI operational circular dated August 10, 2021, with consequent changes, which detailed chapter wise. This circular acts as a 'single-point' reference for primary issuance and listing of non-convertible securities in India.

Corporate bond markets are an important part of the global capital markets and play a key role in financing the real economy. They act as an alternative to the banking channels. Hence, it is imperative to ensure fair, efficient and transparent functioning of these markets.

IMPORTANT DEFINITIONS UNDER THE SEBI NCS REGULATIONS

Debt securities: A non-convertible debt security with a fixed maturity period which creates or acknowledge indebtedness and includes debentures, bonds or any other security whether constituting a charge on the assets/ properties or not, but excludes security receipts, securitized debt instruments, money market instruments regulated by the Reserve Bank of India, and bonds issued by the Government or such other bodies as may be specified by the SEBI.

Draft offer document: It is a draft prospectus or draft shelf prospectus filed with the stock exchange(s) and the Board in relation to a public issue of debt securities or non- convertible redeemable preference shares under these regulations.

Environment, Social and Governance Debt Securities or "ESG Debt Securities" means green debt securities, social bonds, sustainability bonds, sustainability-linked bonds, or any other type of bonds, by whatever name called, that are issued in accordance with such international frameworks as adapted or adjusted to suit Indian requirements that are specified by the SEBI from time to time, and any other securities as specified.

Issuer: A company or a body corporate or a statutory corporation or a multilateral institution or a trust registered with the Board as a Real Estate Investment Trust (REIT) or an Infrastructure Investment Trust (InvIT), authorised to issue non-convertible securities and/or commercial paper under the relevant laws and in accordance with these regulations and seeks to list its non-convertible securities, with any recognized stock exchange(s).

Lead manager: He is a merchant banker registered with the Board and appointed by the issuer to manage the public issue of debt securities and/or non-convertible redeemable preference shares and in case of a book-built issue, the lead manager(s) appointed by the issuer who act(s) as the book running lead manager(s) for the purposes of book building.

Non-convertible securities: These are debt securities, non-convertible redeemable preference shares, perpetual non-cumulative preference shares, perpetual debt instruments and any other securities as specified by the Board.

Offer document: It is a prospectus, shelf prospectus, tranche prospectus in case of public issue of debt securities and/or non-convertible redeemable preference shares and a placement memorandum in case of private placement of non-convertible securities and includes a draft offer document.

Private placement: It is an offer or invitation to subscribe or issue of non-convertible securities to a select group of persons by a company (other than by way of public offer), which satisfies the applicable conditions specified in Section 42 of the Companies Act, 2013.

Public issue: It is an offer or invitation by an issuer to the public to subscribe to its debt securities and/or non-convertible redeemable preference shares which is not in the nature of a private placement.

Secured debt securities: These are such debt securities which are secured by creation of a charge on the properties or assets of the issuer or its subsidiaries or its holding companies or its associate companies having a value which is sufficient for the due repayment of principal and payment of interest thereon.

Electronic Book Provider Platform: An electronic platform for private placement of non-convertible securities provided by a recognized stock exchange(s) or a recognised depository, pursuant to obtaining approval from the Board.

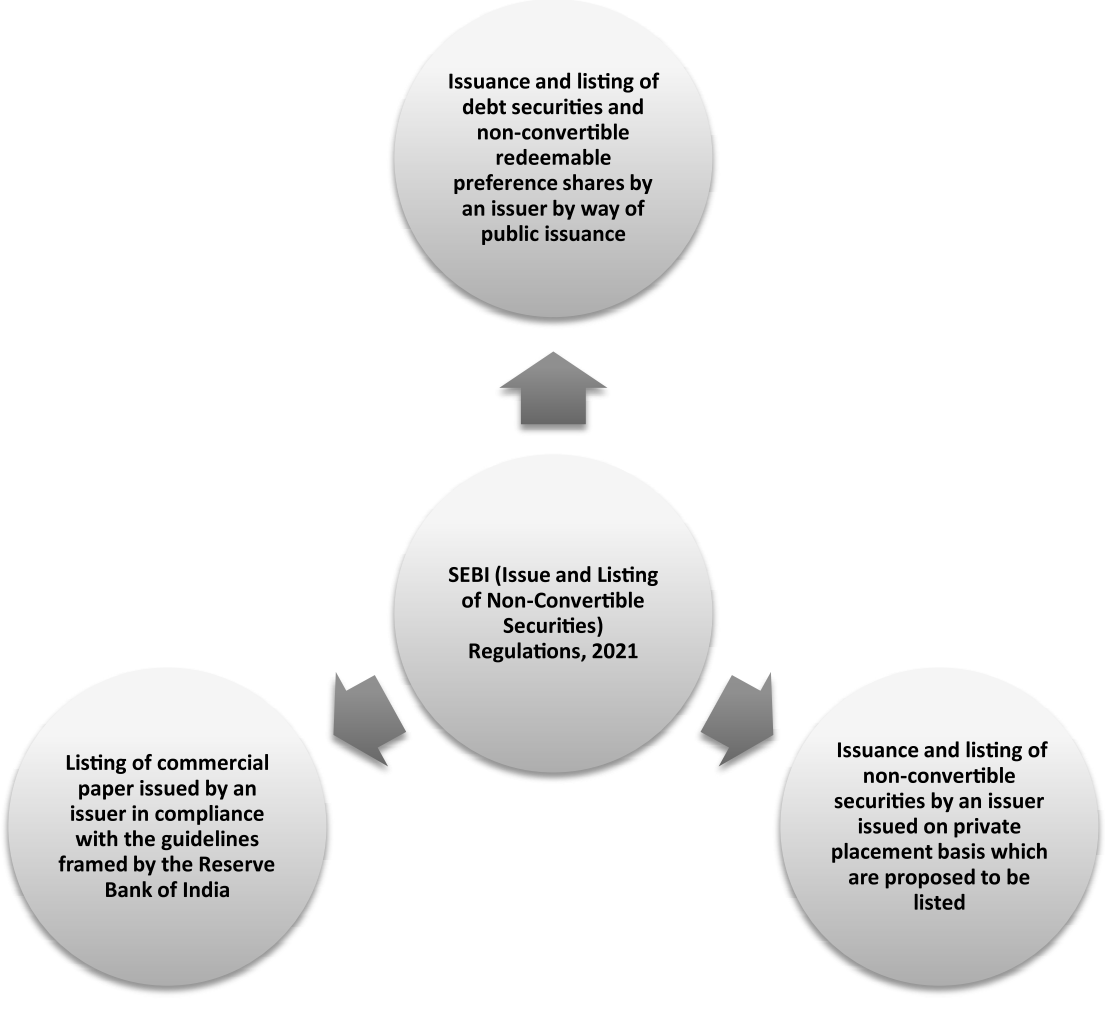
Non-convertible redeemable preference share: A preference share which is redeemable in accordance with the relevant provisions of the Companies Act, 2013 and does not include a preference share which is convertible into or exchangeable with equity shares of the issuer at a later date, at the option of the holder or not.

Perpetual debt instrument: A perpetual debt instrument issued in accordance with the guidelines framed by the Reserve Bank of India.

Perpetual non-cumulative preference share: A perpetual non-cumulative preference share issued in accordance with the guidelines framed by the Reserve Bank of India.

APPLICABILITY [REGULATION 3]

Unless otherwise provided, SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 regulations shall apply to the:



GENERAL CONDITIONS AND ELIGIBILITY CRITERIA [CHAPTER II]

Applicability of this chapter (Regulation 4)

This chapter shall apply to the issuance and listing of:

(a) debt securities and non-convertible redeemable preference shares by an issuer by way of public issuance;

(b) non-convertible securities by an issuer on private placement basis.

Unless otherwise provided in these regulations, an issuer making an offer of nonconvertible securities shall satisfy the conditions of these regulations as on:

(a) date of filing of the draft offer document with the Board or stock exchange(s);

(b) date of filing the offer document with the Board or stock exchange(s), as the case may be; and

(c) date of filing the offer document with the Registrar of Companies.

Eligible issuers (Regulation 5)

(1) The issuer shall not make an issue of non-convertible securities if as on the date of filing of draft offer document or offer document:

(a) The issuer, any of its promoters, promoter group or directors are debarred from accessing the securities market or dealing in securities by the SEBI;

(b) Any of the promoters or directors of the issuer is a promoter or director of another company which is debarred from accessing the securities market or dealing in securities by the SEBI;

(c) The issuer or any of its promoters or directors is a wilful defaulter;

(d) Any of the promoters or whole-time directors of the issuer is a promoter or whole-time director of another company which is a wilful defaulter;

(e) Any of its promoters or directors is a fugitive economic offender; or

(f) Any fine or penalties levied by the SEBI/Stock Exchanges is pending to be paid by the issuer at the time of filing the offer document.

However, the:

(i) Restrictions mentioned at (b) and (d) above shall not be applicable in case of a person who was appointed as a director only by virtue of nomination by a debenture trustee in other company.

(ii) Restrictions mentioned in (a) and (b) above shall not be applicable if the period of debarment is over as on date of filing of the draft offer document with the SEBI.

(iii) Restrictions mentioned at (c) and (d) shall not be applicable in case of private placement of non-convertible securities.

(2) Issuer shall not make a public issue of non-convertible securities if as on the date of filing of draft offer document or offer document, the issuer is in default of payment of interest or repayment of principal amount in respect of non-convertible securities, if any, for a period of more than six months.

In-principle approval (Regulation 6)

The issuer shall make an application to one or more stock exchange(s) and obtain an in-principle approval for listing of its non-convertible securities from the stock exchange(s) where such securities are proposed to be

listed. However, where the application is made to more than one stock exchange, the issuer shall choose one among them as the designated stock exchange.

Depositories (Regulation 7)

The issuer shall enter into an arrangement with a depository for dematerialization of the non-convertible securities in accordance with the Depositories Act, 1996 and regulations made thereunder and also take such steps to ensure that such securities are admitted on all the depositories.

Debenture Trustee (Regulation 8)

The issuer shall appoint a debenture trustee in case of an issue of debt securities.

Registrar to the Issue (Regulation 9)

The issuer shall appoint a Registrar to the Issue, registered with the SEBI, which has established connectivity with all the depositories. However, if the issuer itself is a Registrar to the Issue, it shall not appoint itself as a Registrar to the Issue. Provided further that the lead manager shall not act as a Registrar to the Issue in which it is also handling the post-issue responsibilities.

Credit rating (Regulation 10)

The issuer shall obtain credit rating from at least one credit rating agency, which shall be disclosed in the offer document. However, where the credit ratings are obtained from more than one credit rating agency for the issue, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document.

Creation of Recovery Expense Fund (Regulation 11)

The issuer shall create a recovery expense fund with the designated stock exchange, by depositing such amount and in such form and manner as may be specified in the regulations.

Electronic Issuances (Regulation 12)

An issuer proposing to issue non-convertible securities through the on-line system of the stock exchange and depositories shall comply with the relevant applicable requirements as may be specified in the regulations.

Issuance of Environment, Social and Governance Debt Securities (Regulation 12A)

An issuer desirous of issuing and listing of Environment, Social and Governance Debt Securities shall comply with such conditions as may be specified by the SEBI.

Framework for Environment, Social and Governance (ESG) Debt Securities(other than green debt securities)

In order to facilitate Issuers to raise funds through issuance of ESG debt securities (other than green debt securities), the operational framework for ESG debt securities (other than green debt securities) i.e. social bonds, sustainability bonds and sustainability-linked bonds has been finalized by SEBI in consultation with Industry Standard Forum as under:

- The framework shall be applicable to Environmental, Social and Governance (ESG) debt securities labelled as 'social bonds', 'sustainability bonds' and 'sustainability-linked bonds' which are listed or proposed to be listed on a recognized stock exchange.
- The requirements mentioned under this Framework shall be in addition to the requirements specified in SEBI NCS Regulations and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

- The debt securities shall be labelled as 'social bonds' or 'sustainability bonds' or 'sustainability-linked bonds' only if the funds raised through the issuance of such debt securities are proposed to be utilized for financing or refinancing projects and/or assets aligned with any of the following recognized standards or fall under the definitions given in the following paras:

  (a) International Capital Market Association (ICMA) Principles / Guidelines;

  (b) Climate Bonds Standard;

  (c) ASEAN Standards;

  (d) European Union Standards; and

  (e) Any framework or methodology specified by any financial sector regulator in India.

- **"Social Bonds"** means a debt security issued for raising funds, subject to the conditions as may be specified by the SEBI from time to time, to be utilized for social project(s) that directly aim to address or mitigate a specific social issue and/or seek to achieve positive social outcomes especially but not exclusively for a target population, falling under any of the following categories:

  (a) Affordable basic infrastructure (e.g. clean drinking water, sewers, sanitation, transport, energy)

  (b) Access to essential services (e.g. health, education and vocational training, healthcare,)

  (c) Affordable housing

  (d) Employment generation and programmes designed to prevent and/or alleviate unemployment stemming from socioeconomic crises, climate transition projects and/or other considerations for a "just transition" (such provision and/or promotion could include SME financing and microfinance)

  (e) Food security and sustainable food systems (e.g. physical, social, and economic access to safe, nutritious, and sufficient food that meets dietary needs and requirements; resilient agricultural practices; reduction of food loss and waste; and improved productivity of small-scale producers)

  (f) Socioeconomic advancement and empowerment (e.g. equitable access to and control over assets, services, resources, and opportunities; equitable participation and integration into the market and society, including reduction of income inequality)

  (g) any other category, as may be specified by the Board from time to time.

- **"Sustainability Bonds"** means a debt security issued for raising funds, subject to the conditions as may be specified by the SEBI from time to time, to be utilized for finance or re-finance of a combination of eligible green project(s) and social project(s) as specified under the definition of green bonds and social bonds respectively.

- **"Sustainability-linked Bonds"** means a debt security which has its financial and/or structural characteristics linked to predefined sustainability objectives of the Issuer, subject to the condition that such objectives are measured through predefined Sustainability Key Performance Indicators (KPIs) and assessed against predefined Sustainability Performance Targets (SPTs).

KPI: Key Performance Indicators are quantifiable metrics used to measure the performance of elected indicators.

SPT: Sustainability Performance Targets are measurable improvements in key performance indicators on to which issuers commit with a predefined timeline. SPTs should be ambitious, material and where possible benchmarked and consistent with an issuer's overall sustainability/ESG strategies or sustainable development policies.

Responsibilities of the issuer

An issuer of social bonds/ sustainability bonds shall:

(a) Maintain a decision-making process which it uses to determine the continuing eligibility of the project(s) and/or asset(s).; and

(b) Ensure that all project(s) and/or asset(s) funded by the proceeds of social bonds/ sustainability bonds, meet the documented objectives of social bonds/sustainability bonds and utilise the proceeds only for the stated purpose, as disclosed in the offer document;

Measures to mitigate the risk of purpose-washing and not being "True to Label

An issuer desirous of issuing social bonds/ sustainability bonds shall ensure the following to avoid occurrence of purpose-washing-

Purpose-washing may be defined as 'making false, misleading, unsubstantiated, or otherwise incomplete claims about the purpose for which bonds are issued.

(a) While raising funds for social objects/ sustainability objects, it shall continuously monitor to check whether the form of operations undertaken is resulting in reduction of the adverse social impact/ sustainable impact, as envisaged in the offer document.

(b) It shall not utilise funds raised through social bonds/ sustainability bonds for purposes that would not fall under the category of social bonds/ sustainability bonds.

(c) In case any such instances above come to light regarding the social bonds/ sustainability bonds already issued, it shall disclose the same to the investors and, if required, by majority of debenture holders, undertake early redemption of such debt securities.

(d) It shall not use misleading labels, hide trade-offs or cherry pick data from research to highlight social practices/ sustainable practices while obscuring others that are unfavorable in this behalf.

(e) It shall maintain highest standards associated with issue of social bonds/ sustainability bonds while adhering to the rating assigned to it.

(f) It shall quantify the negative externalities associated with utilisation of the funds raised through social bonds/ sustainability bonds.

(g) It shall not make untrue claims giving false impression of certification by a third-party entity.

Regulatory fees (Regulation 13)

In case of public issue of debt securities and/or non-convertible redeemable preference shares, the issuer shall while filing a draft offer document with the stock exchange forward a soft copy of the draft offer document to SEBI for its records along with regulatory fees as specified in the regulations.

In case of non -convertible securities issued on a private placement basis, the designated stock exchange shall collect a regulatory fee as specified in Schedule VI of these regulations from the issuer at the time of their listing.

Right to recall or redeem prior to maturity (Regulation 15)

An issuer making issuance of non-convertible securities shall:

(a) have the right to recall such securities prior to the maturity date (call option); or,

(b) shall have a right to provide such right of redemption of debt securities prior to the maturity date (put option) to all the investors or only to retail investors.

Such right to recall non-convertible securities or redeem debt securities prior to the maturity date shall be exercised in accordance with the terms of issue and detailed disclosure in this regard shall be made in offer document including date from which such right is exercisable, period of exercise (which shall not be less than three working days) and redemption amount (including the premium or discount at which such redemption shall take place).

The issuer or investor may exercise such right with respect to all the non-convertible securities issued or held by them respectively or with respect to a part of the non-convertible securities so issued or held.

In case of partial exercise of such right in accordance with the terms of the issue by the issuer, it shall be done on proportionate basis only. No such right shall be exercisable before the expiry of one year from the date of issue of such non-convertible securities. The issuer shall send a notice regarding recall or redemption of non-convertible securities, prior to maturity, to all the eligible holders of such securities and the debenture trustee(s), at least twenty-one days before the date from which such right is exercisable and the notice to the eligible holders shall be sent in the following manner:

(i) soft copy of such notice shall be sent to the eligible holders who have registered their email address(es) either with the listed entity or with any depository; and

(ii) hard copy of the notice shall be sent to the eligible holders who have not registered their email address(es) either with the listed entity or with any depository.

The issuer shall simultaneously provide a copy of such notice to the stock exchange(s) where the non-convertible securities of the issuer are listed, for dissemination on its website.

Issuer shall pay interest at the rate of fifteen percent per annum for the period of delay, if any.

After the completion of the exercise of such right, the issuer shall:

(a) submit a report to the stock exchange(s) where the non-convertible securities are listed for public dissemination regarding the details of non-convertible securities redeemed during the exercise period and details of redemption thereof;

(b) inform the debenture trustee regarding the debt securities redeemed during the exercise period and details of redemption thereof; and

(c) inform the depositories for extinguishing the non-convertible securities that have been redeemed.

Debenture Redemption Reserve/ Capital Redemption Reserve (Regulation 16)

The issuer shall create a debenture redemption reserve or capital redemption reserve in accordance with the relevant provisions of the Companies Act, 2013.

International Securities Identification Number (Regulation 17)

An issuer issuing non-convertible securities shall comply with the conditions relating to the issue of International Securities Identification Number, as may be specified by the SEBI from time to time.

Any default committed by the issuer shall be reckoned at the International Securities Identification Number level notwithstanding the debt securities and/or non-convertible redeemable preference shares being issued under different offer documents.

Trust Deed (Regulation 18)

The issuer and the debenture trustee shall execute the trust deed in such format and within such timelines as may be specified by the SEBI. Where an issuer fails to execute the trust deed within the specified period, the

issuer shall also pay interest of at least 2 percent per annum or such other rate, as specified by the SEBI to the holder of debt securities, over and above the agreed coupon rate, till the execution of the trust deed.

Every debenture trustee shall amongst other matters, accept the trust deeds which shall contain the matters as provided under Section 71 of the Companies Act, 2013 and Form No. SH.12 of the Companies (Share Capital and Debentures) Rules, 2014.

The trust deed shall not contain any clause which has the effect of:

(a) Limiting or extinguishing the obligations and liabilities of the debenture trustees or the issuer in relation to any rights or interests of the holders of the debt securities.

(b) Limiting or restricting or waiving the provisions of the Act, these regulations and circulars or guidelines issued by the SEBI.

(c) Indemnifying the debenture trustees or the issuer for loss or damage caused by their act of negligence or commission or omission.

The trust deed shall contain the issuer's bank details from which it proposes to pay the interest and redemption amount of the debt securities and the issuer shall pre-authorise the debenture trustee at the time of executing the trust deed to allow the debenture trustee to seek information about interest payment and redemption payment from such bank.

The trust deed shall also contain such other particulars as may be specified by SEBI.

Listing Agreement (Regulation 19)

Every issuer desirous of listing its non-convertible securities on a recognised stock exchange shall execute an agreement with such stock exchange.

Continuous Listing Conditions (Regulation 20)

All the issuers of non-convertible securities which are listed on stock exchange shall comply with the listing regulations and/or such other conditions and disclosure requirements as may be specified by the SEBI from time to time.

Trading of Non-Convertible Securities (Regulation 21)

The trades in non-convertible securities listed on stock exchange shall be cleared and settled through clearing corporation of stock exchange, subject to conditions as specified by the SEBI.

In case of trades of non-convertible securities which have been traded over the counter, such trades shall be reported on any one of the reporting platforms of a recognized stock exchange having a nation-wide trading terminal or such other platform as may be specified by the SEBI.

The SEBI may specify conditions for reporting of trades on the recognized stock exchange or such other platform as referred to in the regulations.

Distribution of Dividend in case of default in payment of interest or redemption of debt securities (Regulation 22)

Where the issuer has defaulted in payment of interest or redemption of debt securities or in creation of security in accordance with the terms of the offer document, any distribution of dividend shall require approval of the debenture trustee.

Obligations of the Issuer (Regulation 23)

- The issuer shall treat all applicants to an issue of non-convertible securities in a fair and equitable manner as per the procedures as may be specified by the SEBI.
- The issuer shall not employ any device, scheme, or artifice to defraud in connection with issue or subscription or distribution of non-convertible securities which are listed or proposed to be listed on the recognized stock exchange.
- The issuer shall apply for Securities and Exchange Board of India Complaints Redress System (SCORES) authentication in the format specified by the SEBI and shall use the same for all issuance of non-convertible securities.
- In case of a public issue, the issuer shall provide all required information/ documents to the lead managers for conducting the due diligence, in the form and manner as may be specified by the SEBI.
- The issuer shall ensure that the secured debt securities are secured by 100% security cover or higher security cover as per the terms of the offer document and/or Debenture Trust Deed, sufficient to discharge the principal amount and the interest thereon at all times for the issued debt securities.
- The issuer shall fix a record date for the purposes of payment of interest, dividend and payment of redemption or repayment amount or for such other purposes as specified by the SEBI. Such record date shall be fixed at 15 days prior to the due date of payment interest or dividend, repayment of principal or any other corporate actions.

Obligations of Debenture Trustee (Regulation 24)

- The debenture trustee shall be vested with the requisite powers for protecting the interest of holders of debt securities including a right to appoint a nominee director on the Board of the issuer in consultation with holders of such debt securities and in accordance with applicable law.
- The debenture trustees shall supervise the implementation of the conditions regarding creation of security for the debt securities, creation of recovery expense fund and debenture redemption reserve, as applicable.
- The debenture trustee shall monitor the security cover in relation to secured debt securities in the manner as specified by the Board.

PUBLIC ISSUE AND LISTING OF DEBT SECURITIES AND NON CONVERTIBLE REDEEMABLE PREFERENCE SHARES [CHAPTER III]

Conditions for public issue: The issuer shall appoint one or more merchant bankers registered with the SEBI, as lead manager to the issue. Where the issue is managed by more than one lead manager, the rights, obligations and responsibilities, relating to disclosures, allotment, refund and underwriting obligations, if any, of each lead manager shall be predetermined and disclosed in the draft offer document and the offer document.

Where there is only one lead manager it shall not be an associate of the issuer as provided under the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992. However, in case the lead manager is an associate of the issuer, it shall disclose itself as an associate of the issuer and its role shall be limited to marketing of the issue. Such lead manager shall not issue any due diligence certificate, in relation to the issue of such debt securities and/or non-convertible redeemable preference shares: Provided further that in case there is more than one lead manager, at least one lead manager to the issue shall not be an associate.

The issuers shall not make a public issue of debt securities and non-convertible redeemable preference shares

for providing loan to or acquisition of shares of any entity who is part of the promoter group or group companies. However, where the issuer is a Non-Banking Finance Company, Housing Finance Company or a Public Financial Institution the aforesaid restriction shall not apply and appropriate disclosures shall be made as specified in the Schedule I of these regulations.

Green Debt Security

Green Debt Security means a debt security issued for raising funds subject to the conditions as may be specified by the Board from time to time, to be utilised for project(s) and/ or asset(s) falling under any of the following categories:

(i) renewable and sustainable energy including wind, bioenergy, other sources of energy which use clean technology,

(ii) clean transportation including mass/public transportation,

(iii) climate change adaptation including efforts to make infrastructure more resilient to impacts of climate change and information support systems such as climate observation and early warning systems,

(iv) energy efficiency including efficient and green buildings,

(v) sustainable waste management including recycling, waste to energy, efficient disposal of wastage,

(vi) sustainable land use including sustainable forestry and agriculture, afforestation,

(vii) biodiversity conservation,

(viii) pollution prevention and control (including reduction of air emissions, greenhouse gas control, soil remediation, waste prevention, waste reduction, waste recycling and energy efficient or emission efficient waste to energy) and sectors mentioned under the India Cooling Action Plan launched by the Ministry of Environment, Forest and Climate Change,

(ix) circular economy adapted products, production technologies and processes (such as the design and introduction of reusable, recyclable and refurbished materials, components and products, circular tools and services) and/or eco efficient products,

(x) blue bonds which comprise of funds raised for sustainable water management including clean water and water recycling, and sustainable maritime sector including sustainable shipping, sustainable fishing, fully traceable sustainable seafood, ocean energy and ocean mapping,

(xi) yellow bonds which comprise of funds raised for solar energy generation and the upstream industries and downstream industries associated with it,

(xii) transition bonds which comprise of funds raised for transitioning to a more sustainable form of operations, in line with India's Intended Nationally Determined Contributions, and Explanation: Intended Nationally Determined Contributions (INDCs) refer to the climate targets determined by India under the Paris Agreement at the Conference of Parties 21 in 2015, and at the Conference of Parties 26 in 2021, as revised from time to time.

(xiii) any other category, as may be specified by the SEBI from time to time.

Filing of draft offer document

- Issuer shall not make a public issue of debt securities and/or non-convertible redeemable preference shares unless a draft offer document has been filed with all the stock exchanges on which such securities are proposed to be listed, through the lead manager.
- The draft offer document filed with the stock exchange shall be made public by posting the same on

the website of the stock exchange for seeking public comments for a period of 5 days from the date of filing the draft offer document with stock exchange.

However, issuers whose specified securities are listed on a recognised stock exchange having nationwide trading terminals shall post the draft offer document filed with stock exchange(s) for one day immediately after the date of filing the draft offer document with stock exchange(s).

- The draft offer document shall also be displayed on the website of the issuer and the lead manager.
- The lead manager shall ensure that the draft offer document clearly specifies the names and contact particulars including the postal and email address and telephone number of the compliance officer who shall be a Company Secretary of the issuer.
- The lead manager shall ensure that all comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies.
- The lead manager shall, prior to filing of the offer document with the Registrar of Companies, furnish to the SEBI a due diligence certificate in the format as per the regulations.

Disclosures in the offer document: The offer document shall contain all material true, fair and adequate disclosures which are necessary for the subscribers of the debt securities and non-convertible redeemable preference shares to take an informed investment decision and shall not omit/ include any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading or untrue.

Mode of Disclosure of the offer document: The offer document shall be displayed on the websites of stock exchange, issuer and lead manager which shall be available for download in PDF or any other format as may be specified by the SEBI. The issuer shall file the offer document with the stock exchange, simultaneously while filing thereof with the Registrar of Companies, for dissemination on their respective websites prior to the opening of the issue.

Advertisements for Public issues: The issuer shall make an advertisement through electronic modes such as online newspaper or website of the issuer or the stock exchange or in an english national daily and regional daily with wide circulation at the place where the registered office of the issuer is situated, on or before the issue opening date and such advertisement shall, amongst other things, contain the disclosures as specified in Schedule V.

However, the issuers opting to advertise the public issue through electronic modes shall publish a notice, in an English national daily and regional daily newspaper with wide circulation at the place where the registered office of the issuer is situated, exhibiting a QR Code and link to the complete advertisement.

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

Abridged Prospectus and application forms: The issuer and lead manager shall ensure that every application form and the abridged prospectus is in the format as specified by the SEBI and the abridged prospectus shall not contain matters which are extraneous to the contents of the offer document. The issuer may provide the facility for subscription of application in electronic mode.

Price Discovery and Book building: The issuer may determine the price and/or coupon of debt securities and non-convertible redeemable preference shares in consultation with the lead manager. The issue of debt securities and non-convertible redeemable preference shares may be at fixed price and fixed coupon or the

issuer may determine the demand and price or coupon of the debt securities and non-convertible redeemable preference shares through book building process in accordance with the procedure as may be specified by the SEBI.

Period of subscription: A public issue of debt securities or, non-convertible redeemable preference shares shall be kept open for a minimum of two working days and a maximum of ten working days. In case of a revision in the price band or yield, the issuer shall extend the bidding (issue) period disclosed in the offer document for a minimum period of one working day. However, the overall bidding (issue) period shall not exceed the maximum number of days as provided above.

In case of force majeure, banking strike or similar circumstances, the issuer may, for reasons to be recorded in writing, extend the bidding (issue) period disclosed in the offer document. However, the overall bidding (issue) period shall not exceed the maximum number of days as provided above.

Minimum subscription: Minimum subscription for a public issue shall not be less than 75% of the base issue size or as may be specified by the SEBI. In the event of non-receipt of minimum subscription, all blocked application money shall be unblocked forthwith, but not later than 8 working days from the date of closure of the issue or such time as may be specified by the SEBI.

Allotment of securities and payment of interest: The issuer shall ensure that in case of listing of debt securities and non-convertible redeemable preference shares issued to public, allotment of securities offered to public shall be made within such timeline as may be specified by the SEBI.

Where the debt securities and non-convertible redeemable preference shares are not allotted and/or application monies are not unblocked within the period stipulated, the issuer shall undertake to pay interest at the rate of 15% per annum to the investors.

Underwriting: A public issue of debt securities and non-convertible redeemable preference shares may be underwritten by eligible intermediaries, either in full or part and in such case, adequate disclosures regarding the underwriting arrangements shall be disclosed in the offer document.

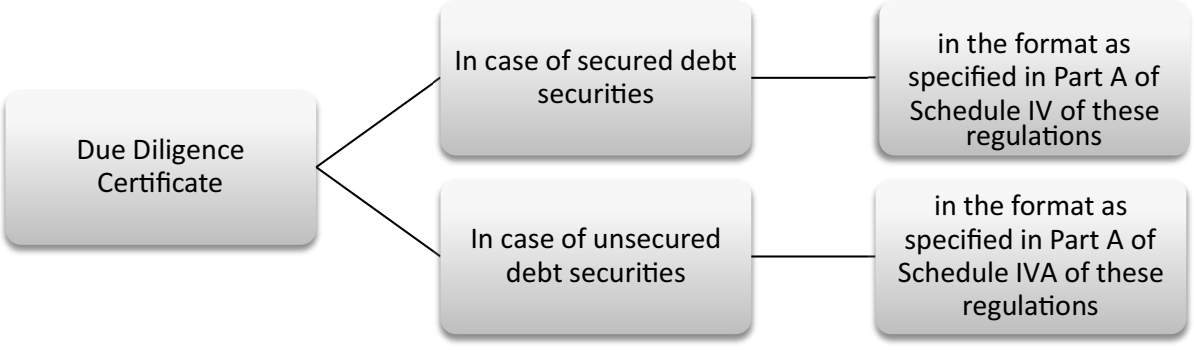
Mandatory listing of a public issue of debt securities and non-convertible redeemable preference shares: An issuer desirous of making an offer of debt securities and non-convertible redeemable preference shares to the public shall make an application for listing to stock exchange in terms of sub-sections (1) and (2) of Section 40 of the Companies Act, 2013.

Other Obligations of the Lead Manager

- The lead manager shall not employ any device, scheme, or artifice to defraud in connection with issue or subscription or distribution of debt securities and non-convertible redeemable preference shares which are listed or proposed to be listed on a recognized stock exchange.
- The lead manager shall ensure that the secured debt securities are secured by hundred percent security cover or higher security cover as per the terms of the offer document and/or Debenture Trust Deed, sufficient to discharge the principal amount and the interest thereon at all times for the issued debt securities.
- The lead manager shall ensure payment of additional interest by the issuer in accordance with these regulations in case of non-allotment of debt securities and non-convertible redeemable preference shares.

Due Diligence by Debenture trustee

(1) The debenture trustee shall, at the time of filing the draft offer document with the stock exchange(s) and prior to opening of the public issue of debt securities, furnish to the SEBI and stock exchange(s), a due diligence certificate:



(2) The debenture trustee shall at the time of filing of the listing application by the issuer, furnish to the Board and to the stock exchange(s), a due diligence certificate:

a. in case of secured debt securities, in the format as specified in Part B of Schedule IV of these regulations; and

b. in case of unsecured debt securities, in the format as specified in Part B of Schedule IVA of these regulations.

(3) The stock exchange shall disclose the offer document and due diligence certificates provided by the debenture trustee on its website.

LISTING OF PRIVATE PLACEMENT OF DEBT SECURITIES AND NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES [CHAPTER IV]

Listing Application: Where the issuer has disclosed the intention to seek listing of debt securities and non-convertible redeemable preference shares issued on private placement basis, the issuer shall forward the listing application along with the disclosures as per this regulation to the stock exchange within such days as may be specified by the SEBI from the date of closure of the issue.

Allotment of securities: The issuer shall ensure allotment of debt securities and non-convertible redeemable preference shares issued on a private placement basis and credit to the dematerialised account of the investors, is made within such time as may be specified by the SEBI.

ISSUANCE AND LISTING OF PERPETUAL DEBT INSTRUMENTS, PERPETUAL NON-CUMULATIVE PREFERENCE SHARES AND SIMILAR INSTRUMENTS [CHAPTER V]

General Conditions: An issuer may issue perpetual debt instruments, perpetual non-cumulative preference shares and instruments of similar nature in compliance with the guidelines issued by the Reserve Bank of India and/or any other relevant laws applicable to them.

Issuers permitted by the Reserve Bank of India to issue perpetual debt instruments, perpetual non-cumulative preference shares and instruments of similar nature forming part of non-equity regulatory capital may list such instruments after complying with the conditions stipulated under chapter V of these Regulations.

ISSUANCE AND LISTING OF NON-CONVERTIBLE SECURITIES ISSUED ON A PRIVATE PLACEMENT BASIS [CHAPTER VA]

Filing of general information document and key information document: An issuer making a private placement of non-convertible securities, and seeking listing thereof on stock exchange(s), shall file a general information document with the stock exchange(s), which shall contain the following disclosures, namely, -

(a) disclosures specified in Schedule I of these regulations;

(b) disclosures specified in the Companies Act, 2013, as applicable; and

(c) additional disclosures as may be specified by the SEBI.

The general information document shall be valid for a period of one year from the date of opening of the first offer of non-convertible securities made under that general information document. In respect of a second or subsequent offer of non-convertible securities, during the period of validity for a period of one year of that general information document, no further general information document shall be required to be filed.

An issuer making a private placement of second or subsequent offer of non-convertible securities, during the validity of the general information document or a shelf prospectus or a shelf placement memorandum, as the case may be, shall file a key information document for each such second or subsequent offer of non-convertible securities, with the stock exchange(s).

LISTING OF COMMERCIAL PAPER [CHAPTER VI]

- Issuers desirous of listing of commercial paper shall comply with the conditions as may be specified by the SEBI from time to time.
- An issuer that has filed a general information document under these regulations and subsequently intends to issue commercial paper and seeks listing thereof, during the validity period of such general information document, shall file a key information document with the disclosures as may be specified by the Board.
- An issuer that has filed a shelf prospectus in case of public issue under these regulations and subsequently intends to issue Commercial Paper and seeks listing thereof, during the validity period of such shelf prospectus, shall not be required to file a general information document so long as the key information document is filed in accordance with these regulations.
- The designated stock exchange shall collect a regulatory fee as specified in the regulations from an issuer of commercial paper at the time of their listing.
- The issuer shall apply for Securities and Exchange Board of India Complaints Redress System (SCORES) authentication in the format specified by the Board and shall use the same for issuance and listing of commercial paper.

ROLE OF A COMPANY SECRETARY

A Company Secretary is a vital link between the company and its Board of Directors, shareholders, government and regulatory authorities and all other stakeholders. A Company Secretary can play an important role in fulfilling the role as a governance professional for companies with listed debt securities.

The Company Secretary monitors, manages the information updates and conducts regular assessment to ensure that company remains abreast of the regulatory standards.

LESSON ROUND-UP

- SEBI vide its notification dated August 09, 2021 introduced SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ('NCS Regulations'). The NCS Regulations came into effect from the 7th day from the date of their publication in the official gazette i.e. 16th August, 2021.
- The new NCS Regulations provides for issuance and/or listing of the following securities:
  - Debt securities;
  - Non-Convertible redeemable preference shares;
  - Perpetual debt instruments or Perpetual Non-cumulative preference shares ;
  - Commercial Paper.
- "Non-convertible securities" means debt securities, non-convertible redeemable preference shares, perpetual non-cumulative preference shares, perpetual debt instruments and any other securities as specified by the SEBI.
- The issuer shall make an application to one or more stock exchange(s) and obtain an in-principle approval for listing of its non-convertible securities from the stock exchange(s) where such securities are proposed to be listed.
- The issuer shall appoint a debenture trustee in case of an issue of debt securities.
- The issuer and the debenture trustee shall execute the trust deed within such timelines as may be specified by the SEBI.
- Every issuer desirous of listing its non-convertible securities on a recognised stock exchange shall execute an agreement with such stock exchange.
- All the issuers of non-convertible securities which are listed on stock exchange shall comply with the listing regulations and/or such other conditions and disclosure requirements as may be specified by the SEBI from time to time.
- The trades in non-convertible securities listed on stock exchange shall be cleared and settled through clearing corporation of stock exchange, subject to conditions as specified by the SEBI.
- The debenture trustee shall, at the time of filing the draft offer document with the stock exchange and prior to opening of the public issue of debt securities, furnish to the SEBI and stock exchange, a due diligence certificate.
- Where the issuer has disclosed the intention to seek listing of debt securities and non-convertible redeemable preference shares issued on private placement basis, the issuer shall forward the listing application along with the disclosures as per this regulation to the stock exchange within such days as may be specified by the SEBI from the date of closure of the issue.
- An issuer may issue perpetual debt instruments, perpetual non-cumulative preference shares and instruments of similar nature in compliance with the guidelines issued by the Reserve Bank of India and/or any other relevant laws applicable to them.
- Issuers desirous of listing of commercial paper shall comply with the conditions as may be specified by the SEBI from time to time.

GLOSSARY

Abridged Prospectus: Abridged Prospectus means a memorandum accompanying the application form for a public issue containing such salient features of a prospectus as specified by the SEBI.

Advertisement: Advertisement means and includes notices, brochures, pamphlets, show cards, catalogues, hoardings, placards, posters, insertions in newspaper, pictures, films, websites or in any other print or digital medium, radio, television programmes through any electronic medium.

Lead Manager: Lead Manager means a merchant banker registered with the SEBI and appointed by the issuer to manage the public issue of debt securities and/or non-convertible redeemable preference shares and in case of a book-built issue, the lead manager appointed by the issuer who act as the book running lead manager for the purposes of book building.

Offer Document: Offer document means a prospectus, shelf prospectus, tranche prospectus in case of public issue of debt securities and/or non-convertible redeemable preference shares and a placement memorandum in case of private placement of non-convertible securities and includes a draft offer document.

Private Placement: Private Placement means an offer or invitation to subscribe or issue of non-convertible securities to a select group of persons by a company (other than by way of public offer), which satisfies the applicable conditions specified in Section 42 of the Companies Act, 2013.

Working Day: Working Day means all days on which commercial banks in the city, as specified in the offer document, are open for business.

TEST YOURSELF

(*These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.)*

1. Enumerate the applicability for issuance and listing of debt securities and non-convertible redeemable preference shares by an issuer by way of public issuance in terms of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021.
2. What do you understand by Green Debt Securities? Explain.
3. Explain the framework for ESG Debt Securities as specified by the SEBI?
4. What are the conditions for issuance of Perpetual Debt Instruments?
5. Briefly explain the obligations of Issuer and Debenture Trustee as per the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021.
6. What do you understand by 'private placement'? State the various conditions prescribed by SEBI for listing of Debt Securities and Non-Convertible Redeemable Preference Shares issued on private placement basis.
7. Sunshine Ltd. is a company with the main objective of Waste Management & Recycling. Company wants to raise funds for financing its activities from the Indian Debt Market. What is your advice to the company?

LIST OF FURTHER READINGS
• www.sebi.gov.in • SEBI Notifications • SEBI Manual SEBI Circulars

OTHER REFERENCES (Including Websites and Video Links)
• www.nseindia.com • www.bseindia.com

Listing Obligations and Disclosure Requirements

Lesson 11

KEY CONCEPTS

■ Disclosures ■ Designated securities ■ Specified securities ■ Listing agreement ■ Key Managerial Personnel ■ Listed Entity ■ Net Worth ■ Related Party ■ Small and Medium Enterprises ■ Subsidiary Company

Learning Objectives

To understand:

- Key provisions of the SEBI (LODR) Regulations, 2015
- Various time and event based compliances
- Various disclosure requirements prescribed therein
- Regulatory prescriptions on Corporate Governance provisions
- Conceptual Understanding on various committees of the Board
- Conceptual Understanding on various policies of a listed company

Lesson Outline

- Applicability
- Key Definitions
- Obligations of Listed Entities
- Key Provisions pertaining to Corporate Governance under SEBI (LODR) Regulations, 2015
- Board Committee
- Related Party Transactions
- Prior Intimations
- Disclosure of Events or Information
- Documents and Information to Shareholders
- Meeting of shareholders and voting
- Policies and Processes under SEBI (LODR) Regulations
- Compliances under SEBI (LODR) Regulations, 2015
- Liability of a Listed Entity for Contravention
- Role of Company Secretary
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
- Securities Contracts (Regulation) Act, 1956*
- Securities Contracts (Regulations) Rules, 1957*

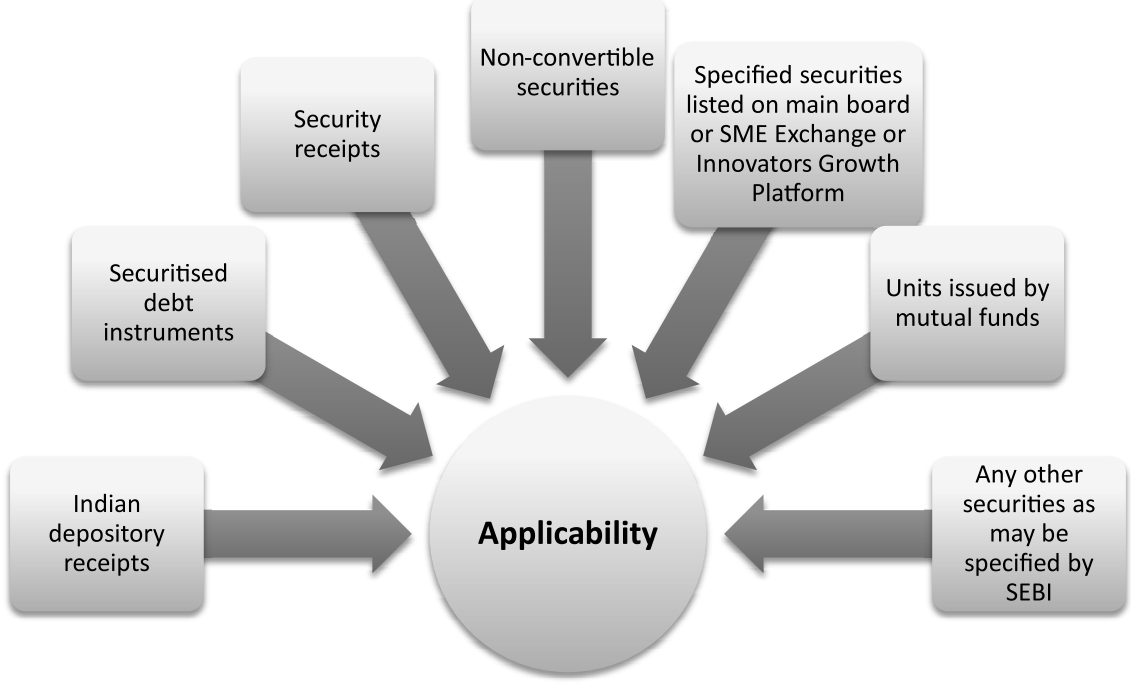
* ***For relevant Section and rules pertaining to the listing, please refer Lesson No.3 of this Study.***

SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

SEBI notified SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 on September 2, 2015, which were effective from December 1, 2015 with two objectives, firstly, to align clauses of the listing agreement with Companies Act, 2013 and secondly, to consolidate the conditions under different securities listing agreements in one single regulation. Any company intending to offer its shares to the public for subscription is required to be listed on the stock exchange and has to comply with SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015.

Applicability [Regulation 3]

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



2. The applicability of the provisions of these regulations to a listed entity on the basis of market capitalisation shall be determined as follows:

   (a) Every recognized stock exchange shall, at the end of the calendar year i.e., 31st December, prepare a list of entities that have listed their specified securities ranking such entities on the basis of their average market capitalisation from 1st July to 31st December of that calendar year.

(b) The relevant provisions shall then become applicable to a listed entity that is required to comply with such requirements for the first time (or, if applicable, required to comply after any interim period) after a period of three months from December 31 (i.e. April 1) or from the beginning of the immediate next financial year, whichever is later:

However, the listed entity, which is required to comply for the first time or after a period of cessation, shall put in place systems and processes for compliance with Regulation 34(2) (f) within a period of three months from December 31(i.e. on or before April 1) or from the beginning of the immediate next financial year, whichever is later, and further disclose the Business Responsibility and Sustainability Report and/or assurance as per the Business Responsibility and Sustainability Report Core in the Annual Report prepared for the financial year in which systems and processes were required to be put in place in accordance with this proviso.

(c) The listed entity shall continue to comply with relevant provisions that were applicable to it based on the market capitalisation of previous year and continue(s) to remain applicable on the basis of its rank in the list prepared by recognized stock exchanges as per clause (a) of this sub-regulation.

2A. The provisions of these regulations, which become applicable to a listed entity on the basis of criteria of market capitalisation, shall continue to apply to such an entity unless its ranking changes in the list prepared as per the point mentioned above and such change results in the listed entity remaining outside the applicable threshold for a period of three consecutive years.

2B. For such listed entities which remain outside the applicable threshold for a period of three consecutive years as mentioned above, the provisions that apply on the basis of criteria of market capitalisation shall cease to apply at the end of the financial year following the 31st December of the third consecutive year. However, for those listed entities that follow January to December as its financial year, the provisions shall cease to apply at the end of three months from 31st December of the third consecutive year (i.e. on 31st March).

3. The provisions of these regulations which become applicable to listed entities on the basis of the criterion of the value of outstanding listed debt securities shall continue to apply to such entities even if they fall below such thresholds as mentioned in sub-regulation (1A) of regulation 15.

In-Principle Approval [Regulation 28]

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

(a) where the securities are listed only on recognised stock exchange(s) having nationwide trading terminals, from all such stock exchange(s);

(b) where the securities are not listed on any recognised stock exchange having nationwide trading terminals, from all the stock exchange(s) in which the securities of the issuer are proposed to be listed;

(c) where the securities are listed on recognised stock exchange(s) having nationwide trading terminals as well as on the recognised stock exchange(s) not having nationwide trading terminals, from all recognised stock exchange(s) having nationwide trading terminals.

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

KEY DEFINITIONS

- **"Listed entity"** means an entity which has listed, on a recognised stock exchange(s), the designated securities issued by it or designated securities issued under schemes managed by it, in accordance with the listing agreement entered into between the entity and the recognised stock exchange(s).
- **"Designated securities"** means specified securities, non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares, Indian depository receipts, securitised debt instruments, security receipts, units issued by mutual funds, Zero Coupon Zero Principal Instruments and any other securities as may be specified by the SEBI.
- **"Specified securities"** means 'equity shares' and 'convertible securities' as defined under clause (eee) of sub- regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.
- **"SR equity shares"** means the equity shares of a listed entity having superior voting rights compared to all other equity shares issued by that listed entity.
- **"Listing agreement"** means an agreement that is entered into between a recognised stock exchange and an entity, on the application of that entity to the recognised stock exchange, undertaking to comply with conditions for listing of designated securities.
- "**Net worth**" means net worth as defined in sub-section (57) of section 2 of the Companies Act, 2013.
- "**Related party**" means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards:

  Provided that:

  (a) any person or entity forming a part of the promoter or promoter group of the listed entity; or

  (b) any person or any entity, holding equity shares:

  (i) of twenty per cent or more; or

  (ii) of ten per cent or more, with effect from April 1, 2023;

  in the listed entity either directly or on a beneficial interest basis as provided under section 89 of the Companies Act, 2013, at any time, during the immediate preceding financial year;

  shall be deemed to be a related party.

  Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange.
- **"Independent Director"** means a non-executive director, other than a nominee director of the listed entity:

  (i) who, in the opinion of the board of directors, is a person of integrity and possesses relevant expertise and experience;

  (ii) who is or was not a promoter of the listed entity or its holding, subsidiary or associate company or member of the promoter group of the listed entity;

  (iii) who is not related to promoters or directors in the listed entity, its holding, subsidiary or associate company;

  (iv) who, apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, during the three immediately preceding financial years or during the current financial year;

(v) none of whose relatives-

(A) is holding securities of or interest in the listed entity, its holding, subsidiary or associate company during the three immediately preceding financial years or during the current financial year of face value in excess of fifty lakh rupees or two percent of the paid-up capital of the listed entity, its holding, subsidiary or associate company, respectively, or such higher sum as may be specified;

(B) is indebted to the listed entity, its holding, subsidiary or associate company or their promoters or directors, in excess of such amount as may be specified during the three immediately preceding financial years or during the current financial year;

(C) has given a guarantee or provided any security in connection with the indebtedness of any third person to the listed entity, its holding, subsidiary or associate company or their promoters or directors, for such amount as may be specified during the three immediately preceding financial years or during the current financial year; or

(D) has any other pecuniary transaction or relationship with the listed entity, its holding, subsidiary or associate company amounting to two percent or more of its gross turnover or total income:

Provided that the pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company or their promoters, or directors in relation to points (A) to (D) above shall not exceed two percent of its gross turnover or total income or fifty lakh rupees or such higher amount as may be specified from time to time, whichever is lower.

(vi) who, neither himself/herself, nor whose relative(s) —

(A) holds or has held the position of a key managerial personnel or is or has been an employee of the listed entity or its holding, subsidiary or associate company or any company belonging to the promoter group of the listed entity, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

Provided that in case of a relative, who is an employee other than key managerial personnel, the restriction under this clause shall not apply for his / her employment.

(B) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of —

1. a firm of auditors or company secretaries in practice or cost auditors of the listed entity or its holding, subsidiary or associate company; or

2. any legal or a consulting firm that has or had any transaction with the listed entity, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm.

(C) holds together with his relatives two per cent or more of the total voting power of the listed entity; or

(D) is a chief executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts or corpus from the listed entity, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the listed entity;

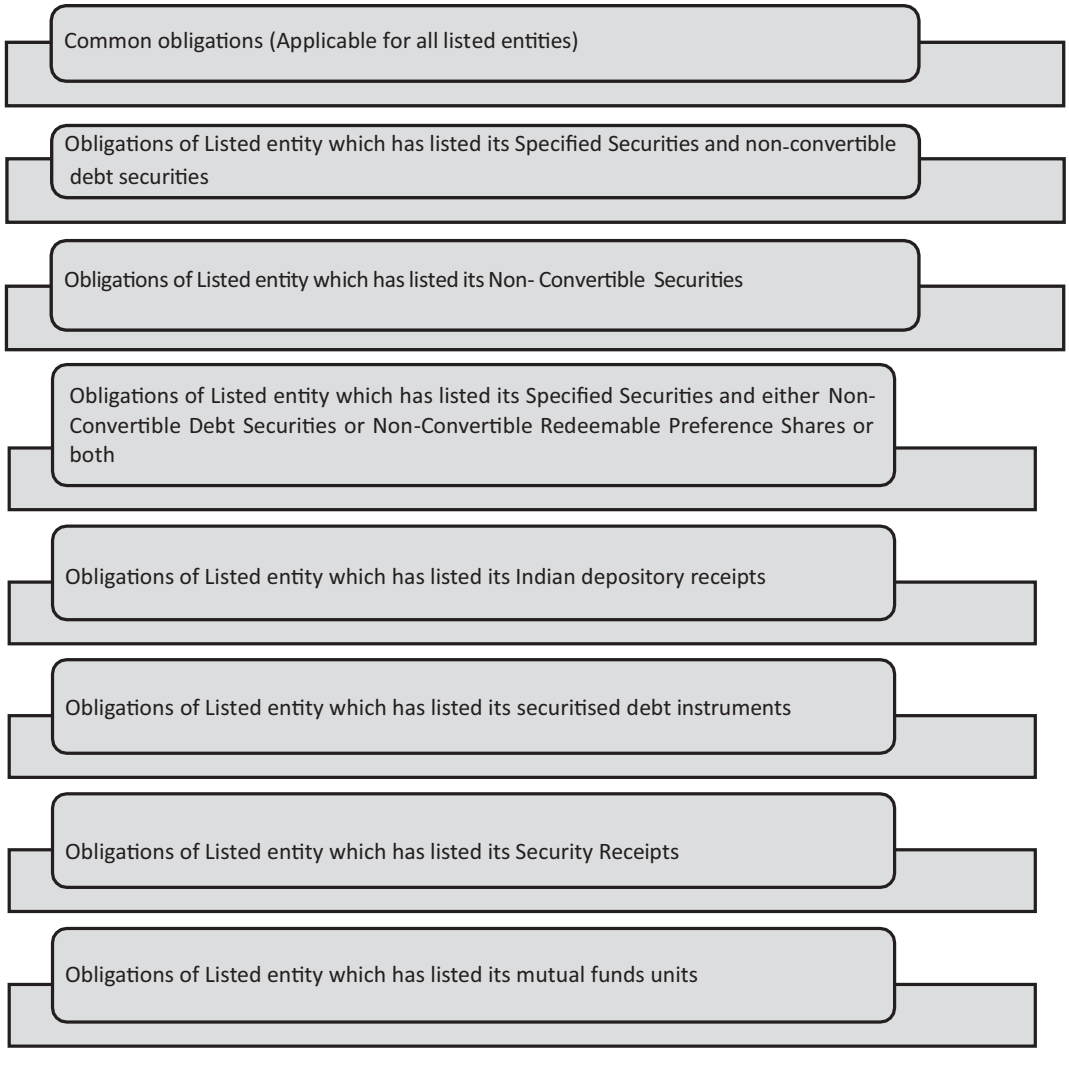
(E) is a material supplier, service provider or customer or a lessor or lessee of the listed entity;

(vii) who is not less than 21 years of age;

(viii) who is not a non-independent director of another company on the board of which any non-independent director of the listed entity is an independent director.

OBLIGATIONS OF LISTED ENTITIES

The obligations of listed entities have been classified under following categories -



COMMON OBLIGATIONS OF LISTED ENTITIES

The listed entity shall ensure that key managerial personnel, directors, promoters or any other person dealing with the listed entity, complies with responsibilities or obligations, if any, assigned to them under these regulations.

General obligations applicable to all listed companies

Following are the key obligations applicable to all listed companies:

- **Compliance officer and his/her obligations:** A listed company shall appoint a qualified Company Secretary as the Compliance officer who shall be responsible for:

- Ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit;
- Co-ordination and reporting to Board, recognised stock exchange(s) and depositories;
- Ensuring correct procedures are followed and reports are filed;
- Monitoring email address of grievance redressal division.

Any vacancy in the office of the Compliance Officer shall be filled by the listed entity at the earliest and in any case not later than three months from the date of such vacancy. However, the listed entity shall not fill such vacancy by appointing a person in interim capacity, unless such appointment is made in accordance with the laws applicable in case of a fresh appointment to such office and the obligations under such laws are made applicable to such person.

Whether a director of a listed company who is a qualified company secretary can be appointed as a compliance officer in the same listed company?

As per Reg. 6(1) of SEBI (LODR) Regulations, 2015, a compliance officer shall be a qualified company secretary. There is no restriction prescribed under these regulations which prohibits the director of the listed company to act as a compliance officer of the listed entity.

- **Share-transfer agent:** The listed entity shall appoint a share transfer agent or mange the share transfer facility in house.
- **Co-operation with intermediaries registered with the SEBI:** Wherever applicable, the listed entity shall co-operate with and submit correct and adequate information to the intermediaries registered with the SEBI such as credit rating agencies, registrar to an issue and share transfer agent etc.
- **Preservation of documents:** 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-
  - documents whose preservation shall be permanent in nature;
  - documents with preservation period of not less than eight years after completion of the relevant transactions.

However, the listed entity may keep documents in electronic mode.

- **Filing of information:** The listed entity shall file the reports, statements, documents, filings and any other information with the recognised stock exchange(s) on the electronic platform as specified by the SEBI or the recognised stock exchange(s) and shall put in place infrastructure as required for this compliance. SEBI may enable integrated filing of periodic reports, statements, documents and any other information required to be filed by a listed entity under the Act or the regulations made thereunder in the format and within the timelines as may be specified.
- **Scheme of Arrangement:** 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 exchange(s).
- **Payment of dividend or interest or redemption or repayment:** The listed entity shall use any of the electronic mode of payment facility approved by the Reserve Bank of India, in the manner specified in Schedule I of SEBI LODR Regulations, for the payment of dividends, interest, redemption or repayment amounts.

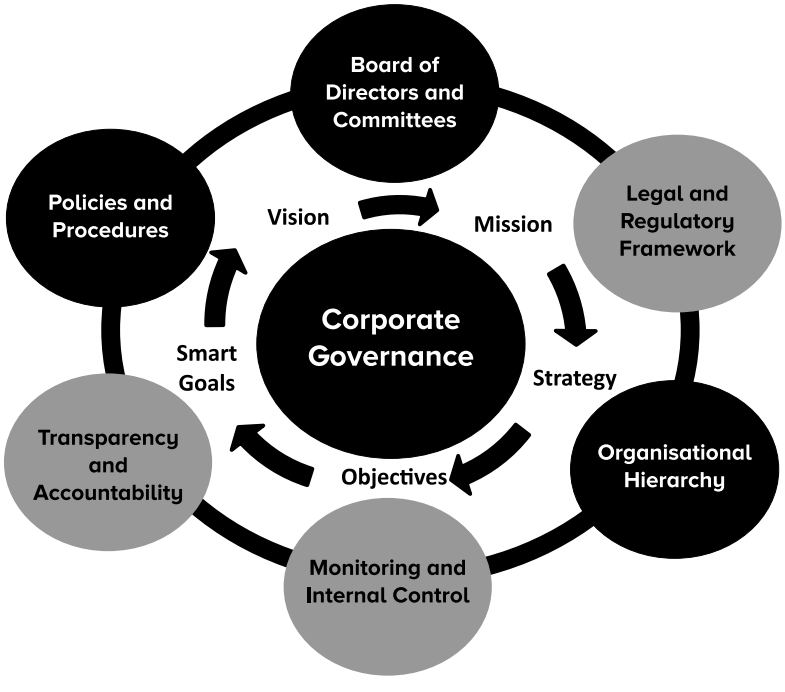
- **Grievance Redressal Mechanism:** The listed entity shall redress investor grievance promptly but not later than 21 calendar days from the date of receipt of the grievance and in such manner as may be specified by the SEBI. The listed entity shall ensure that it is registered on the SCORES platform or such other electronic platform or system of the SEBI as shall be mandated from time to time.

  However, in case of securitized debt instrument, SCORES registration may be taken at trustee level for all special purpose distinct entities, they are trustees of.

- **Fees and other charges to be paid to the recognized stock exchange(s):** The listed entity shall pay all such fees or charges, as applicable, to the recognised stock exchange(s), in the manner specified by the SEBI or the recognised stock exchange(s).

KEY PROVISIONS PERTAINING TO CORPORATE GOVERNANCE UNDER SEBI (LODR) REGULATIONS, 2015

The listed entities which has listed its specified securities on any recognised stock exchange(s) either on the main board or on SME Exchange or on Innovators Growth Platform has to comply with certain corporate governance provisions which are specified in Regulations 17 to 27 and clause (b) to (i) and t of regulation 46(2) and para C, D and E of Schedule V of the SEBI (LODR) Regulations.

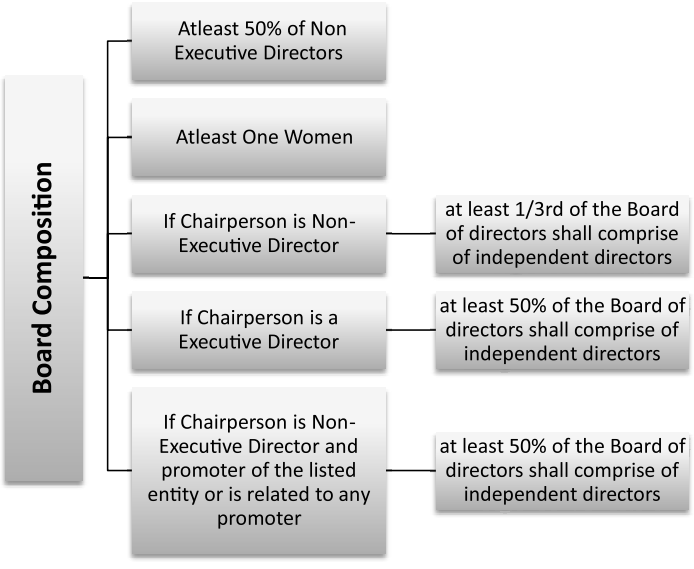


Composition of Board of Directors [Regulation 17]

Board of Directors shall have optimum combination of executive and non-executive directors with at least one-woman director and not less than fifty per cent. of the board of directors shall comprise of non-executive directors.

However, the Board of directors of the top 1000 listed entities shall have at least one independent woman director.

The Composition of board of directors of the listed entity shall be as follows:



Where the listed company has outstanding SR equity shares, atleast half of the board of directors shall comprise of independent directors.

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

Academic Guidance

Question:

ABC Limited is a listed entity and having on Board one-woman Director as Executive Director. The Company is within the top 1000 listed entities. Whether the Company still requires to appoint another woman Director?

Answer:

In the given case, the Company will be required to appoint one Independent woman Director as the Company is having Executive woman Director and not independent.

Question:

Mr. A is non-executive director of ABC Limited. X, Y and Z are promoters of ABC Limited. Mr. A is a chairperson of the Company and he is also related to X. Suggest the requirement of Independent directors for ABC Limited.

Answer:

In the given case, since Mr. A is non-executive chairperson and is related to promoter, then ABC Limited will be required to appoint atleast half of the directors as independent director.

Minimum Directors Requirement

The board of directors of the top 2000 listed entities shall comprise of not less than six directors.

Maximum age of non-executive directors

No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of 75 years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.

However, the listed entity shall ensure compliance with this at the time of appointment or re-appointment or any time prior to the non-executive director attaining the age of 75 years.

Shareholders approval for appointment as director or manager

The listed entity shall ensure that approval of shareholders for appointment or re-appointment of a person on the Board of Directors or as a manager is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier. For public sector company approval shall be taken at the next general meeting.

However, if such appointment or re-appointment of a person to the board of directors or as a manager is subject to approval of regulatory, government or statutory authorities, then the time taken to receive such approvals shall be excluded for the purposes of this clause.

With effect from April 1, 2024, the continuation of a director serving on the board of directors of a listed entity shall be subject to the approval by the shareholders in a general meeting at least once in every five years from the date of their appointment or reappointment, as the case may be.

Vacancy in the office of director

Any vacancy in the office of a director shall be filled by the listed entity at the earliest and in any case not later than three months from the date of such vacancy. However, if the vacancy results in any non-compliance, the listed entity shall ensure compliance at the earliest and not later than 3 months from the date of such vacancy. Further, if any vacancy caused due to expiration of term of office of any director, the resulting vacancy shall be filled by the listed entity not later than the date such office is vacated.

Meetings of Board

The Board shall meet at least four times a financial year, with a maximum time gap of one hundred and twenty days between any two consecutive meetings.

Quorum of board meeting

The quorum for every meeting of the board of directors of the top 2000 listed entities shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director.

Board Committee



	Audit Committee	***Nomination & Remuneration Committee***	***Stakeholders Relationship Committee***	***Risk Management Committee***
Composition	• The committee shall comprise of at least three directors. • At least Two-thirds of the members of audit committee shall be independent directors. • In case of a listed entity having outstanding SR equity shares, the audit committee shall only comprise of independent directors. • All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.	• The committee shall comprise of at least three directors. • All directors of the committee shall be non-executive directors. • At least two-thirds of the directors shall be independent directors.	• The committee shall comprise of atleast three directors. • The committee shall have at least one independent director. • In case of a listed entity having outstanding SR equity shares, at least two thirds of the Stakeholders Relationship Committee shall comprise of independent directors.	• The Risk Management Committee shall have minimum three members with majority of them being members of the board of directors, including at least one independent director. • In case of a listed entity having outstanding SR equity shares, at least two thirds of the Risk Management Committee shall comprise independent directors.

	Audit Committee	***Nomination & Remuneration Committee***	***Stakeholders Relationship Committee***	***Risk Management Committee***
Chairperson	• The chairperson shall be an independent director. • The Chairperson shall be present at Annual general meeting to answer shareholder queries.	• The Chairperson 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 Committee and shall not chair such Committee. • The Chairperson of 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.	• The chairperson of this committee shall be a non-executive director. • The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders.	• 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.
Meetings	• The committee shall meet at least four times in a financial year and not more than one hundred and twenty days shall elapse between two consecutive meetings.	• The committee shall meet at least once in a financial year.	• The committee shall meet at least once in a financial year.	• The committee shall meet at least twice in a financial year.

	Audit Committee	***Nomination & Remuneration Committee***	***Stakeholders Relationship Committee***	***Risk Management Committee***
Quorum	● The quorum for audit committee meeting shall either be two members or one third of the members of the audit committee, whichever is greater, with at least two independent directors.	● The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the committee, whichever is greater, including at least one independent director in attendance.	–	● The quorum for a meeting of the Risk Management Committee shall be either two members or one third of the members of the committee, whichever is higher, including at least one member of the board of directors in attendance. ● The meetings of the risk management committee shall be conducted in such a manner that on a continuous basis not more than two hundred and ten days shall elapse between any two consecutive meetings.

	Audit Committee	*Nomination & Remuneration Committee*	*Stakeholders Relationship Committee*	*Risk Management Committee*
Role of Committee	• 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.	• The role of the nomination and remuneration committee shall be as specified as in Part D of the Schedule II.	• The role of the Stakeholders Relationship Committee shall be as specified as in Part D of the Schedule II.	• 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 (such function shall specifically cover cyber security). • The role and responsibil-ities of the Risk Management Committee shall mandatorily include the performance of functions specified in Part D of Schedule II.

Question:

ABC Limited is a listed company having all committees constituted in compliance with listing regulations. Its Audit committee having 5 directors, out of which 4 directors are independent. At a meeting of the Audit Committee, 2 directors were present (one non-executive and one independent). Is the meeting valid?

Answer:

In terms of the listing regulations, two independent directors should be present at the meeting of the Audit Committee to constitute a valid quorum. Therefore, the aforesaid Meeting is invalid as only one Independent Director was present.

Note:

- The Company Secretary shall act as the secretary to the audit committee.
- The provisions of Risk Management Committee shall be applicable to top 1000 listed entities, and also applicable to a high value debt listed entity.
- The Risk Management Committee shall have powers to seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

Maximum Number of Directorships / Committee Membership & Chairpersonship

- A person shall not be a director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020. However, a person shall not serve as an independent director in more than seven listed entities.
- Any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities.

  Explanation-1. For the purpose of this regulation, the count for the number of listed entities on which a person is a director / independent director shall be cumulative of those whose equity shares are listed on a stock exchange and 'high value debt listed entities'.

  Explanation-2. The directorship held by a person on an ex-officio basis due to statute or applicable contractual framework in case of PSUs and entities set up under a public private partnership arrangement shall not be included in calculating the maximum number of directorships.
- 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 / she is a director which shall be determined as follows:

  (a) the 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, high value debt listed entities and companies under Section 8 of the Companies Act, 2013 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.

Question:

Mr. A is a Director of ABC Listed company. He holds following membership / chairmanship in following companies –

1. Chairman of Audit Committee of ABC Listed company

2. Chairman of Nomination & Remuneration Committee of ABC Listed company
3. Chairman of Stakeholders' Relationship Committee of ABC Listed company
4. Chairman of Audit Committee of XYZ Limited company
5. Chairman of Nomination & Remuneration Committee of XYZ Limited company
6. Chairman of Stakeholders' Relationship Committee of XYZ Limited company

Please advise the limit of membership / chairpersonship.

Answer:

Mr. A, in the given case, is chairman of above mentioned committees. Only Audit Committee and Stakeholders Relationship Committee will be counted for the purpose and both ABC Listed company and XYZ Limited, being public limited company will be considered.

In view of the above, his total chairperson is 4 which is within the limit of 5 committee chairpersonship as permitted.

It is to be noted that chairpersonship is counted in the overall limit of membership as well.

Related Party Transactions (Regulation 23)

As per Regulation 2(1) (zb) of SEBI (LODR) Regulations, 2015 "related party" means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards.

Provided that:

(a) any person or entity forming a part of the promoter or promoter group of the listed entity; or

(b) any person or any entity, holding equity shares:

(i) of twenty per cent or more; or

(ii) of ten per cent or more, with effect from April 1, 2023;

in the listed entity either directly or on a beneficial interest basis as provided under section 89 of the Companies Act, 2013, at any time, during the immediate preceding financial year, shall be deemed to be a related party.

However, this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s).

As per Regulation 2(1)(zc) of SEBI (LODR) Regulations, 2015, related party transaction means a transaction involving a transfer of resources, services or obligations between:

(i) a listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand; or

(ii) a listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries, with effect from April 1, 2023;

regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract:

Following shall not be a related party transaction:

(a) the issue of specified securities on a preferential basis, subject to compliance of the requirements under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018;

(b) the following corporate actions which are uniformly applicable/offered to all shareholders in proportion to their shareholding:

i. payment of dividend;

ii. subdivision or consolidation of securities;

iii. issuance of securities by way of a rights issue or a bonus issue; and

iv. buy-back of securities.

(c) acceptance of fixed deposits by banks/Non-Banking Finance Companies at the terms uniformly applicable/offered to all shareholders/public, subject to disclosure of the same along with the disclosure of related party transactions every six months to the stock exchange(s), in the format as specified by the SEBI.

(d) acceptance of current account deposits and saving account deposits by banks in compliance with the directions issued by the Reserve Bank of India or any other central bank in the relevant jurisdiction from time to time.

(e) retail purchases from any listed entity or its subsidiary by the directors or key managerial personnel of the listed entity or its subsidiary, and relatives of such directors or key managerial personnel, without establishing a business relationship and at the terms which are uniformly applicable/offered to all employees, directors, key managerial personnel and relatives of directors or key managerial personnel.

However, this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s).

Under Companies Act, 2013

According to section 2 (76) "related party", with reference to a company, means –

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager or his relative is a member or director;

(v) a public company in which a director or manager is a director and holds or holds along with his relatives, more than two per cent of its paid-up share capital;

(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act;

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

(viii) Any body corporate which is –

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

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

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

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

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

When will a transaction with a related party be material?

A transaction with a related party shall be considered material, if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds the following:

Consolidated Turnover of Listed Entity	Threshold
(I) Up to ₹20,000 Crore	10% of the annual consolidated turnover of the listed entity
(II) More than ₹20,000 Crore to upto ₹40,000 Crore	₹2,000 Crore + 5% of the annual consolidated turnover of the listed entity above ₹20,000 Crore
(III) More than ₹40,000 Crore	₹3,000 Crore + 2.5% of the annual consolidated turnover of the listed entity above ₹40,000 Crore or ₹5000 Crores, whichever is lower.

For the purpose of computing the thresholds stated above, the annual consolidated turnover of the listed entity shall be determined based on the last audited financial statements of the listed entity.

Illustration 1. For listed entities in (II)	
If the annual consolidated turnover of a listed entity is ₹30,000 Crore	₹2,000 Crore + 5% of the remaining ₹10,000 Crore = ₹2,500 Crore
Illustration 2. For listed entities in (III)	
If the annual consolidated turnover of a listed entity is ₹50,000 Crore	₹3,000 Crore + 2.5% of the remaining ₹10,000 Crore = ₹3,250 Crore.
Illustration 3. For listed entities in (III)	
If the annual consolidated turnover of a listed entity is ₹1,50,000 Crore	₹3,000 Crore + 2.5% of the remaining ₹1,10,000 Crore = ₹5,750 Crore. However, threshold for material related party transaction would be ₹5,000 Crore as it is lower than ₹5,750 Crore.

With effect from April 01, 2025, in case of a listed entity which has listed its specified securities on the SME Exchange, a transaction with a related party shall be considered material, if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds Rupees 50 crore or 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower.

With effect from July 01, 2019, a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed 5% the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

Approval of Audit Committee

All related party transactions and subsequent material modifications shall require prior approval of the audit committee of the listed entity.

However, only those members of the audit committee, who are independent directors, shall approve related party transactions.

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

(a) the audit committee shall lay down the criteria for granting the omnibus approval in line with the policy on related party transactions 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:

(i) the name(s) of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into;

(ii) the indicative base price / current contracted price and the formula for variation in the price if any; and

(iii) 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 rupees one crore per transaction.

(d) the audit committee shall review, at least on a quarterly basis, the details of related party transactions entered into by the listed entity or its subsidiary pursuant to each of the omnibus approvals given.

(e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year.

Approval of the shareholders

All material related party transactions and subsequent material modifications as defined by the audit committee shall require prior approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not.

However, the requirements specified above shall not apply in respect of a resolution plan approved under section 31 of the Insolvency Code, subject to the event being disclosed to the recognized stock exchanges within one day of the resolution plan being approved.

Further, the omnibus approval granted by the shareholders for material related party transactions in an annual general meeting shall be valid till the date of the next annual general meeting held within the timelines prescribed under Section 96 of the Companies Act, 2013 or rules, notifications,or circulars issued thereunder from time to time. In case of omnibus approvals for material related party transactions, granted by shareholders in general

meetings other than annual general meeting, the validity of such omnibus approvals shall not exceed one year from the date of such approval.

Exceptions

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

(a) transactions entered into between two public sector 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;

(c) transactions entered into between two wholly-owned subsidiaries of the listed holding company, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

(d) transactions which are in the nature of payment of statutory dues, statutory fees or statutory charges entered into between an entity on one hand and the Central Government or any State Government or any combination thereof on the other hand.

(e) transactions entered into between a public sector company on one hand and the Central Government or any State Government or any combination thereof on the other hand.

Corporate Governance requirements related to Subsidiary [Regulation 24]

- "Material Subsidiary" shall mean a subsidiary, whose turnover or net worth exceeds twenty percent of the consolidated turnover or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.

  Explanation.- The listed entity shall formulate a policy for determining 'material' subsidiary.

- 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, whether incorporated in India or not.

- The audit committee of the listed entity shall review the financial statements, in particular, the investments made by the unlisted subsidiary.

- 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.

- 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.- For the purpose of this regulation, the term "significant transaction or arrangement" shall mean any individual transaction or arrangement that exceeds or is likely to exceed ten percent of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted subsidiary for the immediately preceding accounting year.

Secretarial Audit and Secretarial Compliance Report [Regulation 24A]

(a) Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake Secretarial Audit by a Secretarial Auditor who shall be a Peer Reviewed Company Secretary and shall annex a Secretarial Audit Report in such form as specified, with the annual report of the listed entity.

Here, "Secretarial Auditor" means a Company Secretary in Practice or a firm of Company Secretary(ies) in practice appointed to conduct the Secretarial Audit and "Peer Reviewed Company Secretary" means a Company Secretary in practice, who is either practicing individually or as a sole proprietor or as a partner of a Peer Reviewed Practice Unit, holding a valid certificate of peer review issued by the Institute of Company Secretaries of India.

(b) On the basis of recommendation of board of directors, a listed entity shall appoint or re-appoint:

(i) an individual as Secretarial Auditor for not more than one term of five consecutive years; or

(ii) a Secretarial Audit firm as Secretarial Auditor for not more than two terms of five consecutive years, with the approval of its shareholders in its Annual General Meeting:

However, an individual Secretarial Auditor who has completed his or her term as mentioned above in point (i) shall not be eligible for re-appointment as Secretarial Auditor in the same entity for five years from the completion of his or her term.

A Secretarial Audit firm which has completed its term as mentioned above in point no. (ii) , shall not be eligible for re-appointment as Secretarial Auditor in the same entity for five years from the completion of such term.

Provided further that as on the date of appointment no Secretarial Audit firm having a common partner or partners to the other Secretarial Audit firm, whose tenure has expired in the listed entity immediately preceding the financial year, shall be appointed as Secretarial Auditor of the same listed entity for a period of five years.

Provided further that, nothing contained in these regulations shall prejudice the right of the entity to remove Secretarial Auditor with the approval of its shareholders in its Annual General Meeting or the right of the Secretarial Auditor to resign from such office of the listed entity.

(c) The casual vacancy arising out of resignation, death or disqualification of a Secretarial Auditor shall be filled by the board of directors of the listed entity within a period of three months and the secretarial auditor so appointed shall hold office till the conclusion of the next annual general meeting.

Every listed entity shall submit a secretarial compliance report in such form as specified, to stock exchanges, within sixty days from end of each financial year.

Exceptions for Listed Entity which has listed its Specified Securities

As per Regulation 15(2) of the SEBI (LODR) Regulations, 2015 the compliance with the corporate governance provisions as specified in Regulations 17 to 27 and clauses (b) to (i) and t of Regulation 46(2) and para C, D and E of Schedule V shall not apply, in respect of following -

1. A listed entity having:-

- paid up equity share capital not exceeding rupees 10 crore; and
- net worth not exceeding rupees 25 crore, as on the last day of the previous financial year.

Provided that-

Once the corporate governance provisions become applicable to a listed entity, they shall continue to remain applicable till such time the equity share capital and the networth of such entity reduces and remains below the specified threshold for a period of three consecutive financial years.

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

3. The provisions as specified in regulation 17 shall not be applicable during the insolvency resolution process period in respect of a listed entity or a high value debt listed entity which is undergoing corporate insolvency resolution process under the Insolvency Code. However, the role and responsibilities of the board of directors as specified under regulation 17 shall be fulfilled by the interim resolution professional or resolution professional in accordance with sections 17 and 23 of the Insolvency Code.

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

   However, the roles and responsibilities of the committees specified in the respective regulations shall be fulfilled by the interim resolution professional or resolution professional.

5. Notwithstanding any provisions under Regulation 15(2) stated above, the provisions of Companies Act, 2013 shall continue to apply, wherever applicable.

PRIOR INTIMATIONS [REGULATION 29]

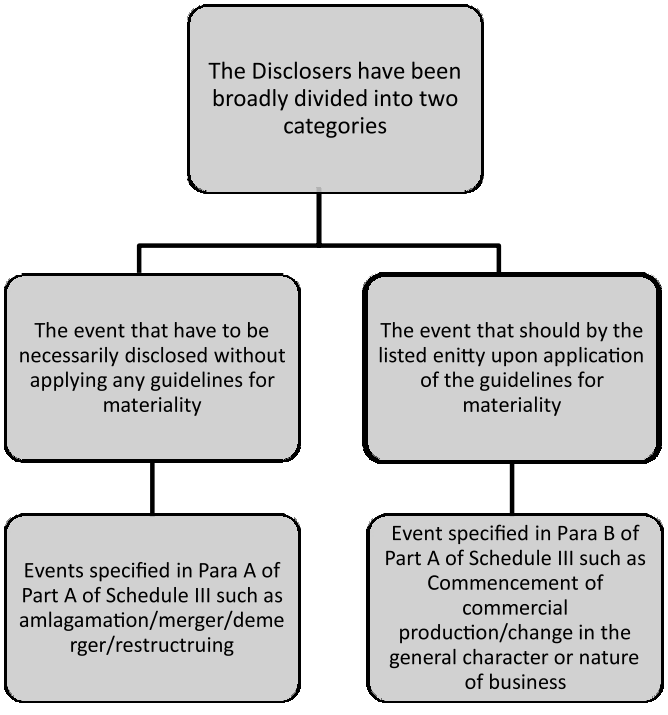
The listed entity is required to give prior intimation of at least two working days in advance excluding the date of the intimation and date of the meeting, to stock exchange about the meeting of the board of directors in which any of the following proposals is due to be considered. This is to ensure a complete transparency and to maintain the volatility of the market price of the shares of the Company.

- financial results viz. quarterly, half yearly, or annual, as the case may be;
- proposal for buyback of securities;
- proposal for voluntary delisting;
- fund raising by way of issue of securities (excluding security receipts, securitized debt instruments or money market instruments regulated by the Reserve Bank of India), through FPO, rights issue, ADR/GDR/ FCCB, QIP, debt issue, preferential issue or any other method and for determination of issue price;
- declaration/ recommendation of dividend, issue of convertible securities including convertible debentures;
- declaration of bonus securities;
- any alteration in the form or nature of any of its listed securities or in the rights or privileges of the holders thereof;
- 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.

The intimation required above, shall mention the date of such meeting of board of directors.

DISCLOSURE OF EVENTS OR INFORMATION [REGULATION 30]

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.



- The listed entity shall frame a policy for determination of materiality, based on criteria specified in this sub-regulation, duly approved by its board of directors, which shall be disclosed on its website.
- The board of directors of the listed entity shall authorize one or more Key Managerial Personnel for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchange and the contact details of such personnel shall be also disclosed to the stock exchange and as well as on the listed entity's website.
- The listed entity shall first disclose to the stock exchange all events or information which are material in terms of the provisions of this regulation as soon as reasonably possible and in any case not later than the following:

  (i) thirty minutes from the closure of the meeting of the board of directors in which the decision pertaining to the event or information has been taken;

  (ii) twelve hours from the occurrence of the event or information, in case the event or information is emanating from within the listed entity;

  (iii) twenty four hours from the occurrence of the event or information, in case the event or information is not emanating from within the listed entity.

  In case the disclosure is made after the timelines specified above, the listed entity shall, along with such disclosure provide the explanation for the delay.

Outcome of Meetings of the board of directors

a) dividends 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 including by way of issue of securities (excluding security receipts, securitized debt instruments or money market instruments regulated by the Reserve Bank of India), through further public offer, rights issue, American Depository Receipts/ Global Depository Receipts/ Foreign Currency Convertible Bonds, qualified institutions placement, debt issue, preferential issue or any other method.

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 exchange(s).

Academic Guidance

Question: What is the disclosure timeline of the material events if the board meeting closes after normal trading hours but more than three hours before the beginning of the normal trading hours of the next trading day?

Answer: In such cases, the listed entity must disclose the decision pertaining to the events within 3 hours from the closure of the board meeting.

Question: How should the financial results disclosures be made if the board meeting is held for more than one day?

Answer: The financial results must be disclosed within 30 minutes or 3 hours, as applicable, from the closure of such meeting for the day on which it has been considered.

DOCUMENTS & INFORMATION TO SHAREHOLDERS [REGULATION 36]

The listed entity shall send the annual report to the shareholders not less than 21 days before the annual general meeting in the following manner:

(a) Soft copies of full annual report to all those shareholders who have registered their email address either with the listed entity or with any depository;

(b) A letter providing the weblink including the exact path, where complete details of the annual report is available to those shareholders who have not so registered.

(c) Hard copy of full annual report to those shareholders, who request for the same.

MEETINGS OF SHAREHOLDERS AND VOTING [REGULATION 44]

- The top 100 listed entities by market capitalization, shall hold their annual general meetings within a period of five months from the date of closing of the financial year.
- The top 100 listed entities shall provide one-way live webcast of the proceedings of the annual general meetings.
- The listed entity shall provide the facility of remote e-voting to its shareholders and submit to the stock exchange, within 2 working days of conclusion of its General Meeting, details regarding the voting results in the format specified by the SEBI.

POLICIES AND PROCESSES UNDER SEBI (LODR) REGULATIONS

Regulation	*Title of Policy*	*Requirements*
9	Preservation of documents Policy	To be classified into two categories:- 1. documents whose preservation shall be permanent in nature. 2. documents with preservation period of not less than eight years after completion of the relevant transactions.
16(1)(c)	Policy on determining "material subsidiary"	The listed entity shall formulate a policy for determining 'material' subsidiary.
17(5)	Code of Conduct	The 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.
17(9)(b)	Risk Management Policy	The board of directors shall be responsible for framing, implementing and monitoring the risk management plan for the listed entity.
22	Vigil Mechanism	• The listed entity shall formulate a vigil mechanism/whistle blower policy for directors and employees to report genuine concerns. • The vigil mechanism shall provide for adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism. • The vigil mechanism shall also provide for direct access to the chairperson of the audit committee in appropriate or exceptional cases.
23(1)	Materiality of related party transactions and on dealing with related party transactions	The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions, including clear threshold limits duly approved by the board of directors and such policy shall be reviewed by the board of directors at least once every three years and updated accordingly.
30	Policy on determination of materiality of events/ information	The listed entity shall frame a policy for determination of materiality, based on criteria specified, duly approved by its board of directors, which shall be disclosed on its website.
43A	Dividend Distribution Policy	The top 1000 listed entities based on market capitalization shall formulate a dividend distribution policy which shall be disclosed on the website of the listed entity and a web-link shall also be provided in their annual reports.
Part D of Schedule II	Board Diversity Policy	The Nomination and Remuneration Committee shall devise a policy on diversity of board of directors.

COMPLIANCES UNDER SEBI (LODR) REGULATIONS WHICH HAS LISTED ITS SPECIFIED SECURITIES

Listed entity shall comply with the following compliances under the SEBI (LODR) Regulations:-

- One Time Compliances
- Quarterly Compliances
- Half yearly Compliances
- Yearly Compliances
- Event based Compliances.

One-time Compliances

The following are the one time compliances:-

Regulation	*Particulars*
6(1)	A listed entity shall appoint a Company Secretary as the Compliance Officer. However, the compliance officer shall be an officer, who is in whole time employment of the listed entity, not more than one level below the board of directors and shall be designated as Key Managerial Personnel.
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 one 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

Quarterly Compliances

Regulation	*Title*	*Particulars*	*Time Limit*
13(3)	Statement on Redressal of Investor Grievances	The listed entity shall file with the recognised stock exchange(s) on a quarterly basis a statement detailing the redressal of investor grievances in such form and within the timelines as may be specified by the SEBI.	Within 30 days from end of quarter
27(2)(a)	Quarterly Compliance report on Corporate Governance	The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by SEBI from time to time to the recognized stock exchange(s)	Within 30 days from the end of each quarter
31(1)(b)	Shareholding pattern	The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by SEBI from time to time	Within 21 days from the end of each quarter

Regulation	*Title*	*Particulars*	*Time Limit*
32(1)	Statement of deviation(s) or Variation(s)	The listed entity shall submit to the stock exchange a statement of deviation or variation (for public issue, rights issue, preferential issue etc.)	Quarterly Basis till such time the issue proceeds have been fully utilized or the purpose for which these proceeds were raised has been achieved
32(6)	Monitoring Agency Report	Where the listed entity has appointed a monitoring agency to monitor utilisation of proceeds of a public or rights issue, the listed entity shall submit to the stock exchange(s) any comments or report received from the monitoring agency	Within 45 days from the end of each quarter
33(3)	Financial results	The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange. In case the listed entity has subsidiaries, the listed entity shall also submit quarterly/ year- to date consolidated financial results	Within 45 days of end of each quarter, other than the last quarter
47	Advertisements in Newspapers	Financial results containing a QR Code and the details of the webpage of complete financial results, along-with the modified opinion(s) or reservation(s), if any, expressed by the auditor	Within 48 hours of conclusion of the meeting of board of directors at which the financial results were approved

Half Yearly Compliances

Regulation	*Title*	*Particular*	*Time Limit*
23(9)	Related Party disclosures	The listed entity shall submit to the stock exchange, disclosures of related party transactions in the format as specified by the SEBI from time to time and publish the same on its website	Within 15 days from the date of publication of its standalone and consolidated financial results
33(3)	Statement of Assets and Liabilities/ Cashflow	The listed entity shall also submit as part of its standalone or consolidated financial results for the half year a statement of assets and liabilities and a statement of cash flows by way of a note	Half-yearly basis

Yearly Compliances

Regulation	*Title*	*Particulars*	*Time Limit*
14	Annual Listing Fees	The listed entity shall pay all such fees or charges, as applicable, to the recognised stock exchange(s), in the manner specified by SEBI or the recognised Stock Exchange(s)	Within 30 days of the end of financial year
24A	Secretarial Audit and Secretarial Compliance Report	The listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit by a Secretarial Auditor who shall be a peer reviewed Company Secretary and shall annex a secretarial audit report in such form as specified, with the annual report of the listed entity.	Within 60 days from end of each financial year
33(3)	Annual Financial results	The listed entity shall submit annual audited standalone financial results with audit report and Statement on Impact of Audit Qualifications applicable only for audit report with modified opinion, to the stock exchange	Within 60 days from the end of the financial year
34	Annual Report	The listed entity shall submit to the stock exchange and publish on its website the annual report along with the Notice of the Annual General Meeting	On and before the commencement of dispatch to its shareholders
34(1)(b)	Changes to annual report	In case any changes to the annual report, the revised copy along with the details of and explanation for the changes shall be sent	Not later than 48 hours after the annual general meeting

Event Based Compliances

Regulation	*Title*	*Particulars*	*Time Limit*
7(5)	Share-transfer agent	The listed entity shall intimate the appointment of Share Transfer Agent, to the stock exchange(s)	Within 7 days of Agreement with RTA
31(1)(a)	Holding of Specified securities	The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities prior to listing of securities	One day prior to listing of Securities

Regulation	*Title*	*Particulars*	*Time Limit*
31(1)(c)	Shareholding pattern	The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities in case of Capital Restructuring exceeding 2% of the total paid-up share capital	Within 10 days of any capital restructuring
31A(8)	Disclosure of material events in case for reclassification of any person as promoter/public	The listed entity shall disclose to the stock exchange the deemed material events i.e., receipt of request for re-classification by the listed entity from the promoter(s) seeking re-classification, outcome of the board meeting considering such request which would include the views of the board on the request, etc.	Within 24 hours from the occurrence of the event
37(1)	Scheme of arrangement	The listed entity shall file draft Scheme of Arrangement to the stock exchange(s)	Prior approval before filing with Court or Tribunal for obtaining the no-objection letter
39(2)	Issue of Certificate	The listed entity shall effect issuance of letter of confirmation or receipts or advices, as applicable, of subdivision, split, consolidation, renewal, exchanges, endorsements, issuance of duplicates thereof or letter of confirmation or receipts or advices, as applicable, in cases of loss or old decrepit or worn out certificates or receipts or advices, as applicable, in dematerialised form	Within 30 days from the date of such lodgment
42(2)	Record Date / Book Closure	The listed entity shall intimate the record date or date of closure of transfer books to all the stock exchange(s) specifying the purpose of the record date where it is listed or where stock derivatives are available on the stock of the listed entity or where listed entity's stock form part of an index on which derivatives are available. The listed entity shall intimate the following events: (a) declaration of dividend (b) issue of right or bonus shares (c) issue of shares for conversion of debentures or any other convertible security	In case of Right Issue, at least 3 working days in advance (excluding the date of intimation and record date) Other than Right Issue, at least 7 working days in advance (excluding the date of intimation and record date)

Regulation	*Title*	*Particulars*	*Time Limit*
		(d) shares arising out of rights attached to debentures or any other convertible security (e) corporate actions like mergers, demergers, splits, etc. (f) such other purposes as may be specified by the stock exchange(s) * For securities held in physical form the listed entity may announce transfer book closure	
46	Maintenance of website	The listed entity shall maintain a functional website containing the basic information about the listed entity and update any change in the content of its website	Within 2 working days from the date of change in content

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

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

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

REGULATIONS APPLICABLE ON TOP 1000 AND TOP 2000 LISTED ENTITIES

TOP 1000 LISTED ENTITIES	*TOP 2000 LISTED ENTITIES*
Board of directors shall have at least one independent woman director.	The Listed Entities ranked from 1001 to 2000 as per the list prepared by the recognized stock exchange shall endeavor to have at least one woman independent director on its board of directors.
–	The board of directors shall comprise of not less than six directors.
Entities shall undertake Directors and Officers insurance ('D and O insurance') for all their independent directors of such quantum and for such risks as may be determined by its board of directors.	–
–	The quorum for every meeting of the board of directors shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director.

TOP 1000 LISTED ENTITIES	*TOP 2000 LISTED ENTITIES*
	The independent directors shall endeavour to hold at least two meetings in a financial year, without the presence of non-independent directors and members of the management and all the independent directors shall endeavour to be present at such meetings.
The provisions of Risk Management Committee shall be applicable to top 1000 listed entities.	Listed entities ranked from 1001 to 2000 in the list prepared by recognized stock may constitute a risk management committee with the composition, roles and responsibilities.
The top 1000 listed entities based on market capitalisation shall formulate a dividend distribution policy which shall be disclosed on the website of the listed entity and a web-link shall also be provided in their annual reports.	–
The Annual Report shall contain for the top 1000 listed entities based on market capitalization, a Business Responsibility and Sustainability Report (BRSR) on the environmental, social and governance disclosures, in the format as may be specified by SEBI from time to time.	–

COMPLIANCES UNDER SEBI (LODR) REGULATIONS FOR THE LISTED ENTITY WHICH HAS LISTED ITS NON-CONVERTIBLE SECURITIES

Regulation	*Title*	*Intimation to Stock Exchanges*	*Time Limit*
50(1)	Prior intimation to stock exchanges	The listed entity shall give prior intimation to the stock exchange about the Board meeting in which any of the following proposals is to be considered: (a) an alteration in the form or nature of non-convertible securities that are listed on the stock exchange or in the rights or privileges of the holders thereof; (b) an alteration in the date of the interest/ dividend/ redemption payment of non-convertible securities; (c) financial results viz. quarterly or annual, as the case may be; (d) fund raising by way of issuance of non-convertible securities; or	At least two working days in advance, excluding the date of the intimation and the date of the meeting of the board of directors

Regulation	*Title*	*Intimation to Stock Exchanges*	*Time Limit*
		(e) any matter affecting the rights or interests of holders of non-convertible securities.	
50(2)	Intimation to Stock exchanges	The listed entity shall also intimate the stock exchange, in case of: (a) any annual general meeting or extraordinary general meeting that is proposed to be held for obtaining shareholder approval for the proposals in relation to financial results viz. quarterly or annual, as the case may be or fund raising by way of issuance of non-convertible securities; (b) any meeting of the holders of non-convertible securities in relation to any matter affecting the rights or interests of holders of non-convertible securities.	Not later than the date of commencement of dispatch of notices
52(1)	Quarterly Financial results	The listed entity shall prepare and submit un-audited or audited quarterly and year to date standalone financial results on a quarterly basis in the format as specified by the Board	Within 45 days from the end of the quarter, other than last quarter
Proviso to 52(1)	Copy of financial results to Debenture Trustee	The listed entities which have listed their debt securities, a copy of the financial results submitted to stock exchanges shall be provided to Debenture Trustees	On the same day on which the information is submitted to the stock exchange
52(2)	Annual Financial Results	The listed entity shall prepare and submit Annual audited standalone and consolidated financial results	Within 60 days from the end of the financial year
54(2)	Disclosure of Security Cover	The listed entity shall disclose to the stock exchange the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities.	In quarterly, half-yearly, year-to-date and annual financial statements as applicable
55	Credit Ratings	Each rating obtained by the listed entity with respect to non-convertible securities shall be reviewed by a credit rating agency registered by the SEBI	Atleast once a year
57	Certificate	The listed entity shall submit a certificate to the stock exchange regarding status of payment of interest or dividend or repayment or redemption of principal in case of non-convertible securities.	Within one working day the interest or dividend or principal becoming due

LIABILITY OF A LISTED ENTITY FOR CONTRAVENTION

The listed entity or any other person thereof who contravenes any of the provisions of these SEBI (LODR) regulations, shall, in addition to liability for action in terms of the securities laws, be liable for the following actions by the respective stock exchange(s), in the manner specified in circulars or guidelines issued by the SEBI:

(a) imposition of fines;

(b) suspension of trading;

(c) freezing of promoter/promoter group holding of designated securities, as may be applicable, in coordination with depositories;

(d) any other action as may be specified by the SEBI from time to time.

ROLE OF COMPANY SECRETARY

For Company Secretary in Employment

- A listed entity shall appoint a Qualified Company Secretary as the Compliance Officer. The compliance officer of the listed entity shall be responsible for –
  - ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.
  - co-ordination with and reporting to SEBI, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.
  - ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations.
  - monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors.
- The Company Secretary shall act as the secretary to the audit committee.

For Company Secretary in Practice

In addition to the above responsibilities, the following are the recognition to Company Secretary under the SEBI Listing Regulations, 2015 :

- **Certificate Regarding Compliance of Conditions of Corporate Governance under SEBI Listing Regulations:** SEBI listing regulations authorizes Company Secretary in Practice to issue certificate regarding compliance of conditions of Corporate Governance. [Schedule V, clause E]
- **Secretarial Audit and Secretarial Compliance Report:** Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit by a Secretarial Auditor who will be a peer reviewed company secretary and shall annex a secretarial audit report, in such form as specified, with the annual report of the listed entity [Regulation 24A].
- **Certification regarding Director's Disqualification:** A certificate shall be obtained from a Company Secretary in Practice that none of the directors on the board of the company have been debarred or disqualified from being appointed or continuing as Directors of Companies by the Board/ Ministry of Corporate Affairs or any such Statutory Authority. [Schedule V, Part C, Clause 10(i)]

CASE LAWS

29.12.2023	***Adjudication Order in the matter of India Steel Works Limited***	***Securities and Exchange Board of India***

Facts of the case

SEBI had initiated Adjudication Proceedings in respect of India Steel Works Ltd. ('Noticee'/ 'Company') for the alleged violations of Regulation 17(1C) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 in the matter of India Steel Works Limited. It was inter alia alleged in the SCN that the Noticee had not obtained approval of shareholders for appointment of new director and thereby had violated provisions of Regulation 17 (1C) of SEBI (LODR) Regulations, 2015.

The text of Regulation 17(1C) of SEBI (LODR) Regulations, 2015 reads as under:

"17(1C). The listed entity shall ensure that approval of shareholders for appointment or re-appointment of a person on the Board of Directors or as a manager is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier."

Adjudication Order

Noticee being listed entity, was obligated to ensure that approval of shareholders for appointment of director as a Board of Director was taken at the next general meeting or within a time period of three months from the date of appointment, whichever was earlier.

Hence, Noticee had violated provisions of Regulation 17(1C) of SEBI (LODR) Regulations, 2015 and liable for monetary penalty under section 15HB of the SEBI Act, 1992. After taking into consideration the facts and circumstances of the case, Adjudicating Officer of SEBI imposed a penalty of Rs. 1 lakh on the India Steel Works Ltd.

04.03.2020	***Picturehouse Media Ltd. vs. Bombay Stock Exchange Ltd.***	***Securities Appellate Tribunal***

Penalty imposed for non-compliance of SEBI LODR Regulations on delay appointment of women director

The provisions of the LODR regulations require that every listed company should have a women director. The appellant hereby is a public listed company and one women director resigned and consequently the post became vacant which was require to be filled up by another woman under the LODR Regulations. Since there was a delay in appointing a woman director of the company, the penalty was imposed by BSE under LODR Regulations. The appellant has filed the appeal against the order passed by BSE imposing a penalty of ₹7,59,920/- for violation of Regulations 17(1) and 19(1) and 19(2) of SEBI LODR Regulations, 2015. In the light of default committed by the appellant SAT did not find any error in the impugned order and dismissed the appeal.

LESSON ROUND-UP

- SEBI has notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 on September 2, 2015 after the consultation process. The LODR Regulations came into force w.e.f. December 1, 2015.
- A listed entity shall appoint a Qualified Company Secretary as a Compliance Officer.
- The Listed entity shall comply with the following compliances under Listing Regulations:
    - One Time Compliances
    - Quarterly Compliances
    - Half yearly Compliances
    - Yearly Compliances
    - Event based Compliances.
- The listed entities which has listed its specified securities on any recognised stock exchange(s) either on the main board or on SME Exchange or on institutional trading platform has to comply with certain corporate governance provisions which are specified in Regulations 17 to 27 of the SEBI (LODR) Regulations.
- The Board of directors shall have an optimum combination of executive and non-executive directors with at least one-woman independent director and at least 50% of the board of directors shall comprise of non-executive directors.
- The Board Committees are required to be constituted under SEBI (LODR) Regulations:
    - Audit Committee
    - Nomination and Remuneration committee
    - Stakeholders Relationship Committee
    - Risk Management Committee.
- The listed entity shall formulate a vigil mechanism/whistle blower policy for directors and employees to report genuine concerns.
- The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions including clear threshold limits duly approved by the board of directors and such policy shall be reviewed by the board of directors at least once every three years and updated accordingly.
- All material related party transactions shall require approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not.
- Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit by a Secretarial Auditor who will be a peer reviewed company secretary and shall annex a secretarial audit report with the annual report of the listed entity.

GLOSSARY

Financial Year: "Financial Year" shall have the same meaning as assigned to it under sub-section (41) of section 2 of the Companies Act, 2013.

Record Date: A date on which the records of a company are closed for the purpose of determining the stock-holders to whom dividends, proxies rights etc., are to be sent.

Committee: "Committee" shall mean committee of board of directors or any other committee so constituted.

Quarter: "Quarter" means the period of three months commencing on the first day of April, July, October or January of a financial year.

Quarterly Results: "Quarterly Results" means the financial results prepared in accordance with these regulations in respect of a quarter.

Half Year: "Half year" means the period of six months commencing on the first day of April or October of a financial year.

Net Worth: "Net worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

Schedule: "Schedule" means a schedule annexed to these regulations.

Subsidiary: "Subsidiary" means a subsidiary as defined under sub-section(87) of section 2 of the Companies Act, 2013.

Working Days: "Working Days" means working days of the stock exchange where the securities of the entity are listed.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation)

1. Briefly explain the applicability of the SEBI (LODR) Regulations, 2015.
2. Elucidate the obligations of Listed Entities under the SEBI (LODR) Regulations, 2015.
3. State the conditions for which Omnibus approval of Audit Committee is required under the SEBI (LODR) Regulations, 2015.
4. What are the requirement of Secretarial Audit under the SEBI (LODR) Regulations, 2015?
5. Explain the Event based compliances under the SEBI (LODR) Regulations, 2015.
6. Discuss about the various committees which are required to be mandatorily constituted under the SEBI (LODR) Regulations, 2015.
7. Explain the obligations of Independent Directors w.r.t. Directorship / membership of the Committees under the SEBI (LODR) Regulations, 2015.
8. List out various policies which are to be maintained by the listed companies under SEBI (LODR) Regulations, 2015.

LIST OF FURTHER READINGS
• SEBI Circulars • SEBI Notifications • SEBI Annual Reports • SEBI Monthly Bulletin • SS - 1 Secretarial Standard on Meetings of the Board of Directors • SEBI FAQs • SEBI orders

OTHER REFERENCES (Including Websites and Video Links)
• *https://www.sebi.gov.in/index* • *html https://www.nseindia.com/* • *https://www.bseindia.com/*

Acquisition of Shares and Takeovers – Concepts

Lesson 12

KEY CONCEPTS

■ Target Company ■ Acquirer ■ Person acting in concert ■ Control ■ Acquisition ■ Offer period and tendering period ■ Offer size

Learning Objectives

To understand:

- Meaning and purpose of substantial acquisition
- Background on evolution of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
- The methods including strategy for such acquisitions
- Events requiring the Open offer to be made to shareholders of Target Company
- The process of making open offer
- Statutory Obligations of Acquirer / Directors of the Target Company / Manager of the Offer
- Disclosure requirements by promoters / certain persons
- Certain exemptions from this Regulations

Lesson Outline

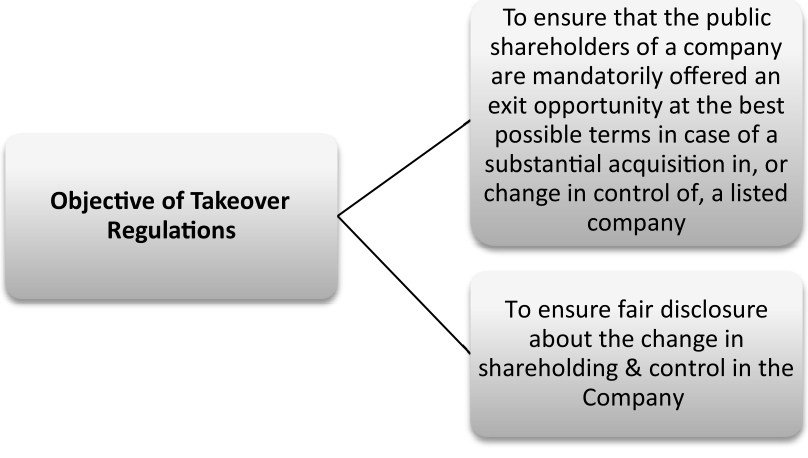
- Introduction
- Genesis
- SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
- Important Definitions
- Applicability & Exception
- Trigger point for making an open offer by an acquirer
- Open Offer
- Minimum Offer Size
- Process at glance
- Disclosures
- Exemptions
- Case Laws
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
- SEBI (Delisting of Equity Shares) Regulations, 2021
- SEBI (Listing obligation and Disclosure Requirements) Regulations, 2015

INTRODUCTION

The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 [SEBI Takeover Regulations or SEBI (SAST) Regulations] prescribes a systematic framework for acquisition of stake in listed companies. By these laws the regulatory system ensures that the interests of the shareholders of listed companies are not compromised in case of an acquisition or takeover by acquirer. It also protect the interests of minority shareholders, which is also a fundamental attribute of corporate governance principle. Evidently, it is equally important to note that in this highly competitive business world, it is critical for each of the stakeholders in a company to guard their interests in the company from all forms of third party. So, in case third party (Acquirer) proposes any such acquisition or control over listed companies, such Acquirer would provide exit opportunity to Shareholders of that listed company prior to completion of such transaction. The SEBI Takeover Regulations ensures that public shareholders of a listed company are treated fairly and equitably in relation to a substantial acquisition in, or takeover of, a listed company thereby maintaining stability in the securities market.



GENESIS

The existence of an efficient and smooth-functioning market for takeovers plays an important role in the economic development of a country. It is a widely recognized fact that one of the key elements of a robust corporate governance regime in any country is the existence of an efficient and well-administered set of Takeover Regulations. Regulations on takeovers seek to ensure that the takeover markets operate in a fair, equitable and transparent manner.

The evolution of SEBI Takeover Regulations can be summarised as follows:

1980s	Initial threads of regulation were incorporated in the late 1980s through Listing Agreement
1992	The SEBI Act, 1992 expressly mandated SEBI to regulate substantial acquisition of shares and takeovers by suitable measures

1994	Takeover Regulations of 1994
1995	SEBI appointed a committee to review the Takeover Regulations of 1994 under the chairmanship of Justice P.N. Bhagwati (the Bhagwati Committee). Bhagwati Committee submitted its report in January 1997
1997	Taking into consideration its recommendations of Bhagwati Committee, the SEBI (SAST) Regulations of 1997 were notified by SEBI on February 20, 1997, repealing the Takeover Regulations of 1994
2001	A review of the Takeover Regulations of 1997 was carried out by a reconstituted committee chaired by Justice P.N. Bhagwati. The reconstituted Bhagwati committee submitted its report in May 2002. SEBI (SAST) Regulation, 1997 was amended 23 times
2009	SEBI constituted the Takeover Regulations Advisory Committee with the mandate to examine and review the Takeover Regulations of 1997 and to suggest suitable amendments, as deemed fit. The Committee was chaired by Mr. C. Achutan
2011	Taking into consideration its recommendations of C. Achutan Committee, the SEBI (SAST) Regulation of 2011 were notified by SEBI on September 23, 2011, repealing the Takeover Regulations of 1997

Shri C. Achutan Committee had provided for following objectives of the then proposed Takeover SEBI (SAST), Regulation, 2011:

a. To provide a transparent legal framework for facilitating takeover activities;

b. To protect the interests of investors in the securities market, taking into account that the acquirer, shareholders, and investors need a fair, equitable and transparent framework.;

c. To balance the various conflicting objectives and interests of all stakeholders in the context of substantial acquisition of shares and takeover in the listed companies;

d. To provide each shareholder an opportunity to exit his investment in the target company when a substantial acquisition of shares, or takeover of a target company takes place, on terms that are not inferior to the terms on which substantial shareholders exit their investments;

e. To provide acquirers with a transparent legal framework to acquire shares or control of the target company and to make an open offer;

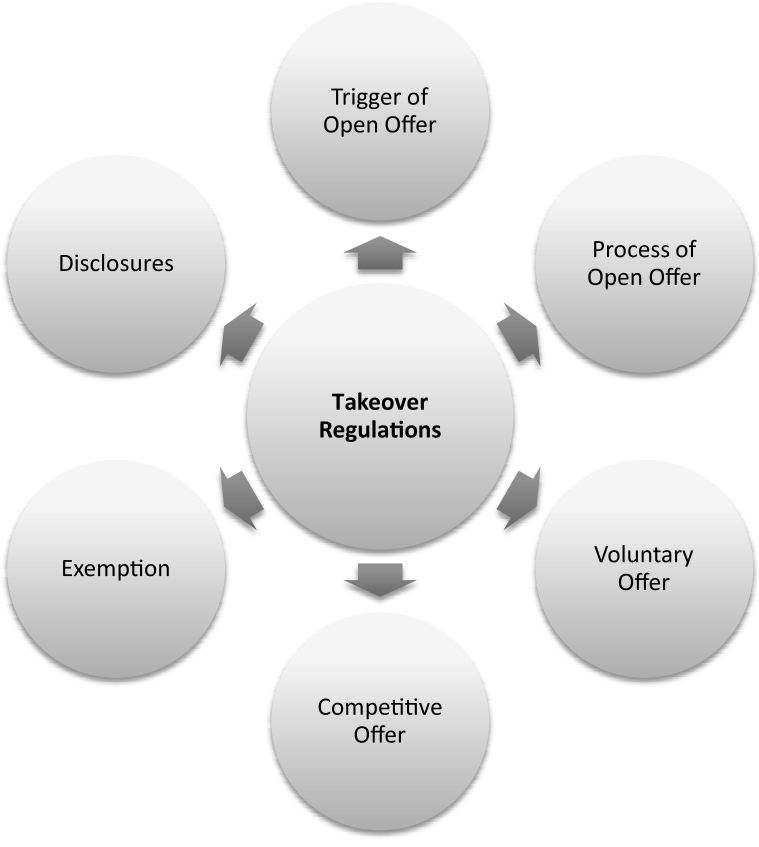
f. To ensure that the affairs of the target company are conducted in the ordinary course when a target company is subject matter of an open offer;

g. To ensure that fair and accurate disclosure of all the material information is made by the person responsible for making them to various stakeholders to enable them to take informed decisions;

h. To regulate and provide for fair and effective competition among acquirers desirous of taking over the same target company; and

i. To ensure that only those acquirers who are capable of actually fulfilling their obligations under the Takeover Regulations make open offers.

SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011 - A BIRDS EYE VIEW



Important Definition

Acquirer

"Acquirer" means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company. [Reg. 2(1)(a)]

Acquisition

"Acquisition" means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company. [Reg. 2(1)(b)]

Control

"Control" includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner. Provided that, a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position. [Reg. 2(1)(e)]

Enterprise value

Enterprise value means the value calculated as market capitalization of a company plus debt, minority interest and preferred shares, minus total cash and cash equivalents. [Reg. 2(1)(h)]

Enterprise Value= Market capitalization+ Debt+ Minority Interest + Preferred Shares - Total Cash and Cash Equivalents

Frequently traded shares

"Frequently traded shares" means shares of a target company, in which the traded turnover on any stock exchange during the twelve (12) calendar months preceding the calendar month in which the public announcement is required to be made under these regulations, is at least ten percent of the total number of shares of such class of the target company. However, where the share capital of a particular class of shares of the target company is not identical throughout such period, the weighted average number of total shares of such class of the target company shall represent the total number of shares. [Reg. 2(1)(j)]

Maximum permissible non-public shareholding

"Maximum permissible non-public shareholding" means such percentage shareholding in the target company excluding the minimum public shareholding required under the Securities Contracts (Regulation) Rules, 1957.

Fugitive Economic Offender

"Fugitive economic offender" shall mean an individual who is declared a fugitive economic offender under section 12 of the Fugitive Economic Offenders Act, 2018. [Reg. 2(1)(ja)]

Identified Date

"Identified date" means the date falling on the tenth working day prior to the commencement of the tendering period, for the purposes of determining the shareholders to whom the letter of offer shall be sent. [Reg. 2(1)(k)]

Immediate Relative

"Immediate relative" means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse. [Reg. 2(1)(l)]

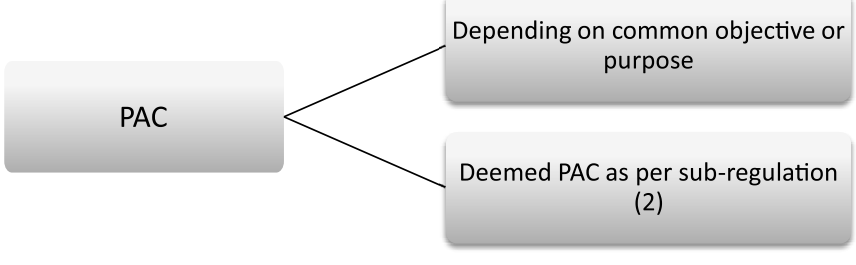
Offer period

"Offer period" means the period between the date of entering into an agreement, formal or informal, to acquire shares, voting rights in, or control over a target company requiring a public announcement, or the date of the public announcement, as the case may be, and the date on which the payment of consideration to shareholders who have accepted the open offer is made, or the date on which open offer is withdrawn, as the case may be. [Reg. 2(1)(p)]

Tendering Period and Offer Period both are different. Offer Period is wider and includes tendering period.

Persons Acting in Concert [Reg. 2(1)(q)]

"Person acting in concert" may be classified in two category as follows :



"Persons acting in concert" means, –

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

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

(i) a company, its holding company, subsidiary company and any company under the same management or control;

(ii) a company, its directors, and any person entrusted with the management of the company;

(iii) directors of companies referred to in item (i) and (ii) of this sub-clause and associates of such directors;

(iv) promoters and members of the promoter group;

(v) immediate relatives;

(vi) a mutual fund, its sponsor, trustees, trustee company, and asset management company;

(vii) a collective investment scheme and its collective investment management company, trustees and trustee company;

(viii) a venture capital fund and its sponsor, trustees, trustee company and asset management company;

(ix) an alternate investment fund and its sponsor, trustees, trustee company and manager;

(x) a merchant banker and its client, who is an acquirer;

(xi) a portfolio manager and its client, who is an acquirer;

(xii) banks, financial advisors and stock brokers of the acquirer, or of any company which is a holding company or subsidiary of the acquirer, and where the acquirer is an individual, of the immediate relative of such individual. However, this shall not apply to a bank whose sole role is that of providing normal commercial banking services or activities in relation to an open offer under these regulations;

(xiii) an investment company or fund and any person who has an interest in such investment company or fund as a shareholder or unitholder having not less than 10 per cent of the paid-up capital of the investment company or unit capital of the fund, and any other investment company or fund in which such person or his associate holds not less than 10 per cent of the paid-up capital of that investment company or unit capital of that fund. However, this shall not be applicable to holding of units of mutual funds registered with the SEBI.

Example: - Mr. Arvind, Mr. Manish and Mr. Harish are individuals interested in acquiring shares of Company XYZ. Individually, each of them holds less than the threshold limit for triggering disclosure requirements as per SEBI regulations. However, they have a common purpose of collectively gain control or influence over Company XYZ. They collaborate, pool their resources or voting rights, and act together to acquire shares or voting rights in Company XYZ.

Even though individually they might not have breached the threshold for disclosure requirements, under Regulation 2(1)(q), they could be considered "persons acting in concert" if they are acting together with a common objective regarding the acquisition of shares or voting rights in Company XYZ and therefore they had collectively breached the threshold limit.

Consequently, they would be required to disclose their combined shareholding or voting rights and comply with other obligations outlined in the regulation.

Judicial Pronouncement: *Supreme Court in the case of M/S Daiichi Sankyo Company vs. Jayaram Chigurupati & Ors. [2010] INSC 470 (8 July 2010) held that what does the deeming provision do? The deeming provision simply says that in case of specified kinds of relationships, in each category, the person paired with the other*

would be deemed to be acting in concert with him/it. What it means is that if one partner in the pair makes or agrees to make substantial acquisition of shares etc. in a company it would be presumed that he/it was acting in pursuance of a common objective or purpose shared with the other partner of the pair. For example, if a company or its holding company makes or agrees to make a move for substantial acquisition of shares etc. of a certain target company then it would be presumed that the move is in pursuance of a common objective and purpose jointly shared by the holding company and the subsidiary company. But the mere fact that two companies are in the relationship of a holding company and a subsidiary company, without anything else, is not sufficient to comprise "persons acting in concert". Something more is required to comprise "persons acting in concert" than the mere relationship of a holding company and a subsidiary company.

Target company

"Target Company" means a company and includes a body corporate or corporation established under a Central legislation, State legislation or Provincial legislation for the time being in force, whose shares are listed on a stock exchange. [Reg. 2(1)(z)]

Tendering period

"Tendering period" means the period within which shareholders may tender their shares in acceptance of an open offer to acquire shares made under these regulations. [Reg. 2(1)(za)]

Volume weighted average market price

"Volume weighted average market price" means the product of the number of equity shares **traded** on a stock exchange and the price of each equity share divided by the total number of equity shares **traded** on the stock exchange. [Reg. 2(1)(zb)]

Number of shares traded on the Stock Exchange on a particular day: X, Market Price: **Y**

$$\text{Volume Weighted Average Market Price} = \frac{X1*Y1*+X2*Y2*+X3*Y3.....}{X1+X2+X3.....}$$

Volume weighted average market price

Number of shares traded on the Stock Exchange on a particular day: X, Market Price: Y

Sr. No.	No. of shares Traded (X)	Market Price Per share (in ₹) (Y)	Trade Value (in ₹) (Shares * Price) (X*Y)
1	200	60	12000
2	250	30	7500
3	300	25	7500
4	420	35	14700
Total	1170		₹ 41700

To calculate the Volume Weighted Average Market Price (VWAP):

$$\text{VWAP} = \frac{\text{(no. of equity share traded * price of each equity share)}}{\text{(Total no. of equity share traded)}}$$

$$= \frac{₹\ 41700}{1170} = ₹\ 35.64 \text{ (rounded to two decimal places)}$$

So, the VWAP for stock XYZ on that trading day is approximately ₹ 35.64

Volume weighted average price

"Volume weighted average price" means the product of the number of equity shares **bought** and price of each such equity share divided by the total number of equity shares bought. [Reg. 2(1)(zc)]

$$\frac{\text{(No. of equity share bought * price of each equity share)}}{\text{Total no. of equity share bought}}$$

Weighted average number of total shares

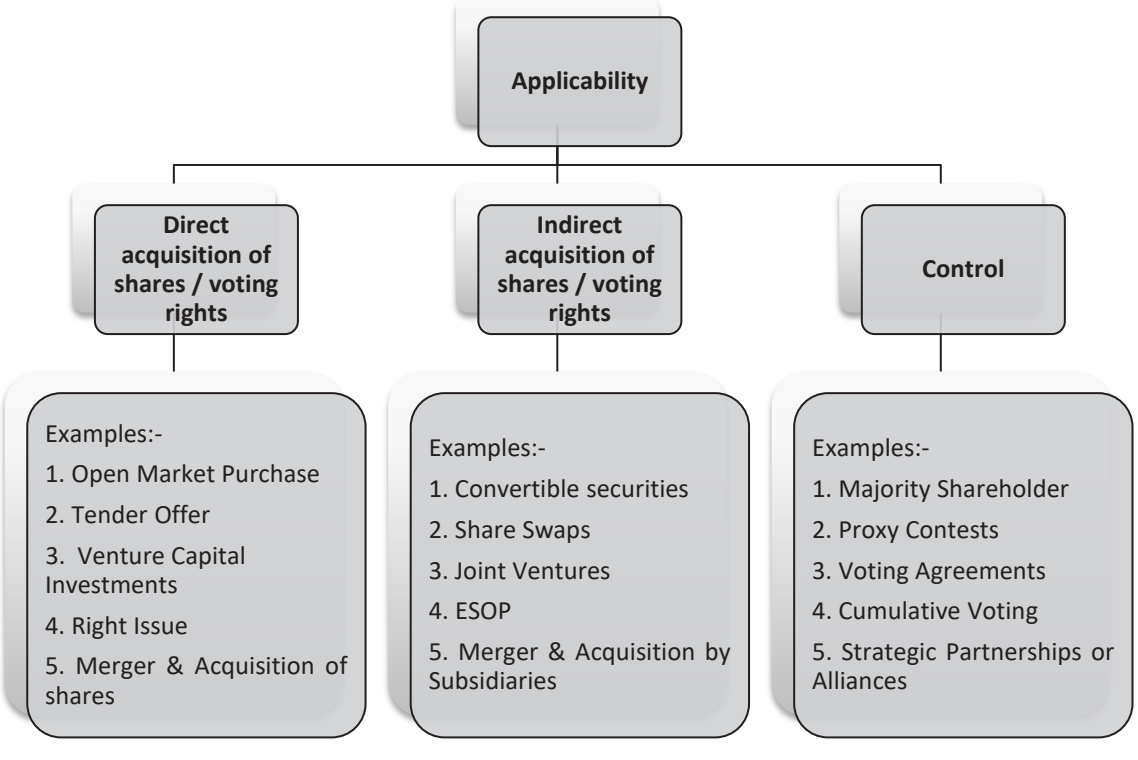
"Weighted average number of total shares" means the number of shares at the beginning of a period, adjusted for shares cancelled, bought back or issued during the aforesaid period, multiplied by a time-weighing factor. [Reg. 2(1) (zd)]

Wilful defaullter

"wilful defaulter" means any person who is categorized as a wilful defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India and includes any person whose director, promoter or partner is categorized as such [Reg. 2(1)(ze)]

APPLICABILITY & EXCEPTION

These regulations shall apply to direct and indirect acquisition of shares or voting rights, in or control over Target Company.



The Regulations therefore, gets triggered on the following event (on case basis)

- Direct acquisition of shares / voting rights
- Indirect acquisition of shares / voting rights
- Control

Further, it may be triggered by Acquirer alone OR along with Person acting in concert.

However, these regulations shall not apply to direct and indirect acquisition of shares or voting rights in, or control over a company listed without making a public issue, on the Innovators Growth platform of a recognized stock exchange.

TRIGGER POINT FOR MAKING AN OPEN OFFER BY AN ACQUIRER

25% Shares or Voting Rights

An acquirer, along with Persons acting in concert (PAC), if any, who intends to acquire shares which along with his existing shareholding would entitle him to exercise 25% or more voting rights, can acquire such additional shares only after making a Public Announcement (PA) to acquire minimum twenty six percent shares of the Target Company from the shareholders through an Open Offer.

For example –

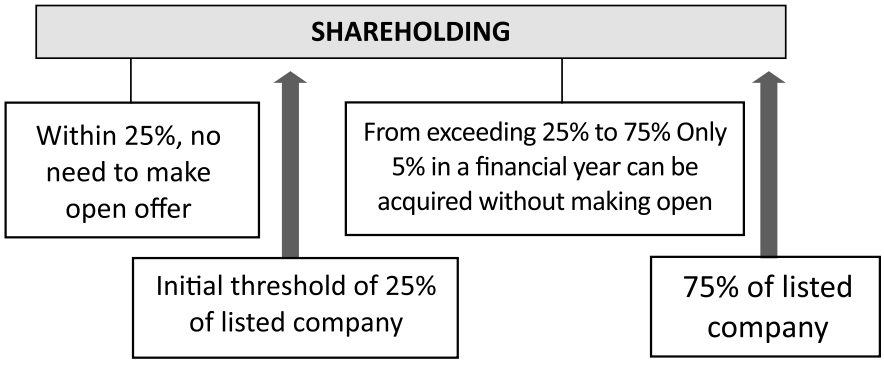
Mr. A is presently holding 1% in Ram Enterprises Limited, a listed entity and he further desires to acquire the shares as tabulated below :

Case	Pre Holding	Proposed Acquisition	Post Holding	Applicability of SEBI Takeover Regulation, 2011
1	1%	26%	27%	Open offer required
2	1%	23%	24%	Open offer NOT required

Creeping Acquisition Limit

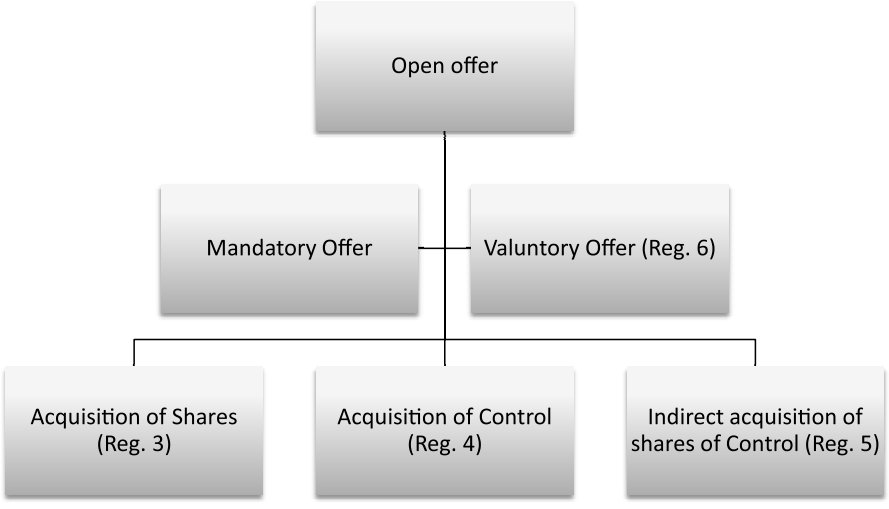
An acquirer who holds 25% or more but less than maximum permissible non-public shareholding of the Target Company, can acquire such additional shares as would entitle him to exercise more than 5% of the voting rights in any financial year ending March 31 only after making a Public Announcement to acquire minimum twenty six percent shares of Target Company from the shareholders through an Open Offer.

Name	Per Holding	Creeping Acquisition	Post Holding	Applicability of SEBI Takeover Regulation, 2011
A	26%	3%	29%	Open offer NOT required
B	26%	6%	32%	Open Offer required



OPEN OFFER

SEBI Takeover Regulations, 2011 provides certain trigger events wherein the Acquirer is required to give Open Offer to the shareholders of the Target Company to provide them exit opportunity. However, it also allows the Acquirer to make voluntary offer as well.



I. Mandatory Open Offer

Acquisition of Shares (Regulation 3)

SEBI Takeover Regulations, 2011 provides a threshold for mandatory Open Offer. These regulations provides that whenever an acquirer acquires the shares in excess of the threshold as prescribed under regulation 3 and in case of control Regulation 4 of SEBI Takeover Regulations, 2011, the acquirer is required to make a public announcement of offer to the shareholders of the Target Company.

Regulation 3(1) of the SEBI Takeover Regulations, 2011 provides that the Acquirer to give an open offer to the shareholders of Target Company on the acquisition of shares or voting rights entitling the Acquirer along with the persons acting in concert with him to exercise 25% or more voting rights in the Target Company.

Further Regulation 3(2) of the SEBI Takeover Regulations, 2011 provides that any Acquirer who holds shares between 25%-75%, together with PACs can acquire further 5% shares as creeping acquisition without giving an Open Offer to the shareholders of the Target Company upto a maximum of 75%. The quantum of acquisition of additional voting rights shall be calculated after considering the following:

(a) No Netting off allowed:

For the purpose of determining the quantum of acquisition of additional voting rights, the gross acquisitions without considering the disposal of shares or dilution of voting rights owing to fresh issue of shares by the target company shall be taken into account.

Case of Mr. A for FY 2020-21:

Details of Acquirer	Present holding	Acquisition	Disposal	Post Holding
A	27%	3%	-	30%
A	30%	1%	-	31%

A	31%	-	4%	27%
A	27%	3%	-	30%

The shareholding of Mr. A at the beginning of FY 2020-21 was 27% and at the closure of FY 2020-21 was 30%. Therefore, during the year he has increased holding by (30-27=3%).

However, netting is not permitted under Takeover Regulations, therefore if you add all acquisitions i.e. 3%, 1%, 3%, it amounts to 7%. Therefore, the 4th transaction whereby Mr. A further acquires 3% would trigger the Open offer requirements.

(b) Incremental voting rights in case of fresh issue

In the case of acquisition of shares by way of issue of new shares by the target company, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition.

Question:

What is the basis of computation of the creeping acquisitions limit under Regulation 3(2) of Takeover Regulations 2011?

Answer:

For computing acquisitions limits for creeping acquisition specified under regulation 3(2), gross acquisitions/ purchases shall be taken in to account thereby ignoring any intermittent fall in shareholding or voting rights whether owing to disposal of shares or dilution of voting rights on account of fresh issue of shares by the target company. SEBI in the interpretative letter dated 18th September, 2015 issued under the SEBI (Informal Guidance) Scheme, 2003 as requested by M/s Adani Properties Private Limited has held that an exempt acquisition would not be counted towards computing acquisitions on a gross basis.

Example 1:

Let's consider an illustration when a mandatory open offer might be triggered under the SEBI (SAST) Regulations:

Company XYZ is a listed company with 1,00,000 outstanding shares. Mr. A holds 24,000 shares (24% of the total shares) in Company XYZ.

According to SEBI regulations:

Initial Acquisition Threshold (Regulation 3(1)):

Acquisition of 25% or more of the shares or voting rights in a listed company triggers an obligation to make an open offer to acquire additional shares from the public shareholders.

Subsequent Acquisition Threshold (Regulation 3(2)):

If an entity already holds between 25% to 75% of the shares, acquiring an additional 5% or more within any financial year triggers another open offer.

Initial Acquisition by Mr. A:

Mr. A holds 24% of Company XYZ (24,000 shares out of 1,00,000). He decides to acquire an additional

6,000 shares taking his total holding to 30,000 shares (30% of the total). This acquisition triggers a mandatory open offer because Mr. A has crossed the 25% threshold.

Further Acquisition by Mr. A:

After the initial open offer, Mr. A now holds 30,000 shares (30%). If Mr. A decides to acquire an additional 5,000 shares taking his total holding to 35,000 shares (35% of the total).

This second acquisition triggers another mandatory open offer because Mr. A already held between 25% to 75% and has acquired an additional 5% or more.

Therefore, in both cases Mr. A is obliged to make an open offer to the remaining shareholders of Company XYZ to purchase their shares at a fair price as per SEBI regulations.

Example 2:

Mr. A is contemplating acquisition of XYZ Limited, a listed entity. He presently holds 23% and his brother, who is having common objective holds 3%. Together their holding is 26%. Mr. A, in view of creeping acquisition limits, desires to further acquire 3% assuming the 5% ceiling in every financial year.

Answer:

In view of Regulation 3(3) as discussed above, though together they hold 26% and can avail 5% ceiling, but in case Mr. A on individual basis crossing the threshold of 25% or more (since presently he holds 23% and further contemplates to acquire 3% more), he will be required to make open offer.

However, in given case, if his brother only acquires 3% and increase their total holding to 29% then their will be no requirement of Open Offer.

Acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceed the stipulated thresholds, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of where there is a change in the aggregate shareholding with persons action in concert. **[Regulation 3(3)]**

This entire Regulation shall not apply to acquisition of shares or voting rights of a company by the promoters or shareholders in control, in terms of the provisions of Schedule XX of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018. **[Regulation 3(4)]**

Further for the purpose of this regulation, any reference to “twenty-five per cent” in case of listed entity which has listed its specified securities on Innovators Growth Platform shall be read as “forty-nine per cent”.

Acquisition of Control

Regulation 4 of the SEBI Takeover Regulations, 2011 specifies that if any acquirer acquires, directly or indirectly, control over the Target Company irrespective of the fact whether there has been any acquisition of shares or not, then he has to give public announcement to acquire shares from shareholders of the Target Company.

Indirect Acquisition of Shares or control

The concept of Indirect acquisition of shares has been recognized under Regulation 5 of the SEBI Takeover Regulations, 2011. It explains indirect acquisition as the acquisition of shares, voting rights or control over any other company which would enable the acquirer of shares, voting rights or control to exercise such percentage of voting rights, which would otherwise have triggered an open offer process over which would enable the acquirer to exercise control over a company.

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

proportionate NAV of the target company as % of the consolidated NAV of the entity or business being acquired exceeds 80 %	proportionate sales turnover of the target company as % of the consolidated sales turnover of the entity or business being acquired exceeds 80 %	proportionate market cap. of the target company as % of the enterprise value of the entity or business being acquired exceeds 80 %

The 'deemed direct acquisition' has to follow the same mandatory open offer related requirements as a direct acquisition of shares, voting rights or control.

Regulatory Compliance and Monetary Penalty: A Case Study on Violation of SEBI Regulations

Background:

Genus Prime Infra Limited (GPIL) witnessed an attempt by individuals—Mr. Rajendra Kumar Agarwal, Mr. Jitendra Kumar Agarwal, and Mr. Amit Agarwal—to acquire 26% of the company's shares through an open offer, as per SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. During this period, certain promoters of GPIL, including Vivekshil Dealers Pvt. Ltd. acquired shares but failed to comply with Regulation 3(2) by not making a requisite public announcement.

Key Events:

- **Acquisition Timeline:** Between August 22, 2013, and September 23, 2013, Vivekshil Dealers Pvt Ltd, a GPIL promoter, acquired shares in increments.
- **Shareholding Increase:** Vivekshil Dealers Pvt Ltd's shareholding rose from 67.13% to 72.14% during this period.
- **Regulatory Obligation:** Regulation 3(2) of the SEBI regulations mandates a public announcement following an acquisition beyond a certain threshold within a financial year.
- **Failure to Comply:** Despite the increase in shareholding triggering Regulation 3(2), the promoters did not issue the required public announcement.

Issues:

1. Non-Compliance with Regulation 3(2): Vivekshil Dealers Pvt Ltd failed to make a public announcement as mandated by SEBI regulations following their acquisition of shares, which breached the statutory obligation.
2. Inadvertent Violation: The promoters claimed the violation was inadvertent and lacked any malicious intent, attributing it to oversight rather than willful non-compliance.

SEBI's Action:

- Imposition of Penalty: SEBI, under its regulatory authority, invoked Section 15 I of the SEBI Act, 1992, and Rule 5 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.
- Monetary Penalty: SEBI imposed a monetary penalty of Rs. 10,00,000 on the promoters for the established violation of Regulation 3(2) of the SEBI regulations.

II. Voluntary Offer

Voluntary Offer means the Open Offer given by the acquirer voluntarily without triggering the mandatory Open Offer obligations as envisaged under these regulations. Voluntary Offers are an important means for substantial shareholders to consolidate their stake and therefore recognized the need to introduce a specific framework for such Open Offers.

Regulation 6 of the Takeover Regulations provides the threshold and conditions for making the Voluntary Open Offer which are detailed below:

Prior holding of at least 25 % shares and shareholding of the acquirer and persons acting in concert (PAC) post completion of Open Offer

An acquirer, who together with persons acting in concert with him, holds shares or voting rights in a target company entitling them to exercise twenty-five per cent or more but less than the maximum permissible non-public shareholding, shall be entitled to voluntarily make a public announcement of an open offer for acquiring shares in accordance with these regulations, subject to their aggregate shareholding after completion of the open offer not exceeding the maximum permissible non-public shareholding.

Therefore, under Voluntary Offer the size of the Offer would be as such that the minimum public shareholding shall be maintained even after acquisition of shares by the Acquirer.

Further for the purpose of this regulation, any reference to “twenty-five per cent” in case of listed entity which has listed its specified securities on Innovators Growth Platform shall be read as “forty-nine per cent”.

Acquisition of shares prior to the voluntary open offer

However, where an acquirer or any person acting in concert with him has acquired shares of the target company in the preceding fifty-two weeks without attracting the obligation to make a public announcement of an open offer, he shall not be eligible to voluntarily make a public announcement of an open offer for acquiring shares under this regulation.

Prohibition on the acquisition of shares during the Offer Period

SEBI Takeover Regulations, 2011 prohibits the acquirer who has made a Voluntary Open Offer from further acquiring the shares during the Offer Period otherwise than under the Open Offer.

Restriction of the acquisition of shares after completion of open offer

An acquirer and persons acting in concert with him, who have made a public announcement under this regulation to acquire shares of a target company shall not be entitled to acquire any shares of the target company for a period of six months after completion of the open offer except pursuant to another voluntary open offer.

However, such restriction shall not prohibit the acquirer from making a competing offer upon any other person making an open offer for acquiring shares of the target company. Shares acquired through bonus issue or stock splits shall not be considered for purposes of the dis-entitlement set out in this regulation.

Wilful Defaulter

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

However, this regulation shall not prohibit the wilful defaulter from making a competing offer in accordance

with regulation 20 of these regulations upon any other person making an open offer for acquiring shares of the target company.

Therefore, for willful defaulter the only route available is making competing offer.

Fugitive Economic Offender

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

Key differences between Compulsory and Voluntary Open Offer

Particulars	Compulsory Open Offer	Voluntary Open Offer
Eligibility	Can be triggered through both direct and indirect acquisition.	Can be triggered by acquirer holding in excess of 25% or more. Further the acquirer or PAC should not have acquired shares of target Company without the obligation to make mandatory offer during the preceding 52 weeks
Applicability	On crossing the threshold or the creeping acquisition or by way of control	No such applicability is required
Minimum size of Open Offer	Minimum size shall be 26% of the total shares of the target company	Minimum size shall be 10% of the total shares of the target company
Public Disclosure Requirement	Mandatory Public Announcement	Voluntary Public Announcement
Purpose	Regulatory Compliance and Fairness to Shareholders	Strategic or Tactical Reasons, Investment, or Control Objectives
Compliance Consequences	Regulatory Penalties for Non-Compliance	No Direct Regulatory Penalties for Not Making an Offer

MINIMUM OFFER SIZE

The minimum offer size for an open offer is as under:

Open offer when triggered	*Minimum open offer size*
Direct acquisition under Regulation 3 & 4 or Indirect acquisition under Regulation 5	26% of the total shares of the Target Company as on the 10th working day from the closure of the tendering period.

Voluntary under Regulation 6	10% of the voting rights in the Target Company of the company. The post offer shareholding of the Acquirer and PACs in such case shall not exceed the maximum permissible non-public shareholding.

PROCESS AT GLANCE

Appointment of Merchant Banker prior to Public Announcement (PA)

The Public Announcement of an open offer shall be sent to all the stock exchanges on which the shares of the target company are listed

Opening of Escrow Account - 2 working days prior to the date of the detailed public statement towards security for performance of his obligations under these regulations

Detailed Public Statement – within 5 working days from the date of public announcement

Filing of Draft Letter of Offer with SEBI and send a copy to Target Company and Stock Exchanges within 5 working days from detailed public statement

Dispatch Letter of Offer - Within 7 working days of receiving comments from SEBI

Upward revision of Offer price, if any by Acquirer - prior to the commencement of the last 1 working day before the commencement of the tendering period

Recommendation of Committee of Independent Directors to be published -at least 2 working days before the commencement of the tendering period

Tendering Period : Commencement - shall start not later than 12 working days from date of receipt of comments from the Board and to remain open for 10 working days

Tendering Period to be closed after 10 working days

Payment of consideration - within 10 working days from the last date of the tendering period

Post Offer Advertisement – within 5 working days from closure of offer period

DISCLOSURES

In the SEBI Takeover Regulations, 2011, the obligation to give the disclosures on the acquisition of certain limits, is only on the acquirer and not on the Target Company. Further as against the Open Offer obligations where the individual shareholding is also to be considered, the disclosure shall be of the aggregated shareholding and voting rights of the acquirer or promoter of the target company or every person acting in concert with him.

EVENT BASED DISCLOSURES

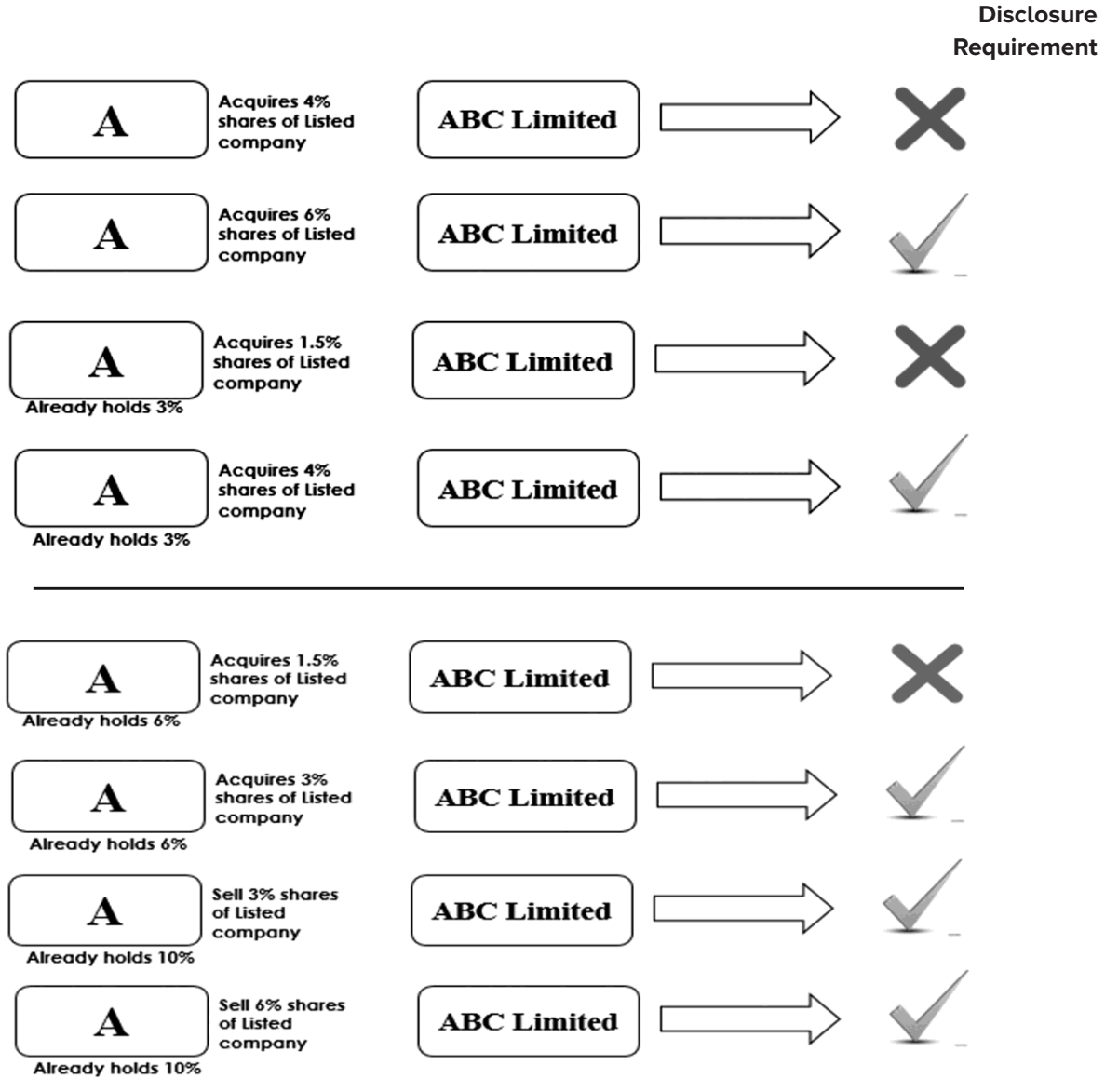
Regulation	*Made by*	*Trigger*	*Time Period*	*Made to*
Regulation 29(1)	Acquirer	Acquirer + persons acting in concert (PAC) acquiring 5% or more of the shares or voting rights of the target company shall disclose to their aggregate shareholding and voting rights in such target company. This disclosure is like an initial disclosure which is required to be given on acquiring 5% or more shares or voting rights of Target Company. Further in case of listed entity which has listed its specified securities on Innovators Growth Platform, any reference to "five per cent" shall be read as "ten per cent".	Within two working days of the receipt of intimation of allotment of shares, or the acquisition or the disposal of shares or voting rights in the target company.	Every Stock Exchange where the shares of the target company are listed and the target company at its registered office.
Regulation 29(2)	Acquirer	Any person + persons acting in concert (PAC), holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five percent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this subregulation; and such change exceeds two per cent of total shareholding or voting rights in the target company. Further in case of listed entity which has listed its specified securities on Innovators Growth Platform, any reference to "five per cent" shall be read as "ten per cent" and any reference to "two per cent" shall be read as "five per cent".	Within two working days of the receipt of intimation of allotment of shares or the acquisition or the disposal of shares or voting rights in the target company.	Every Stock Exchange where the shares of the target company are listed and the target company at its registered office.

Note :

- Shares taken by way of encumbrance shall be treated as an "acquisition".
- Share given upon release of encumbrance shall be treated as a "disposal".
- The requirement as listed above shall not apply to a Scheduled Commercial bank or public financial

institution or a housing finance company or a systematically important non-banking financial company as pledgee in connection with a pledge of shares for securing indebtness in the ordinary course of business.

Example:



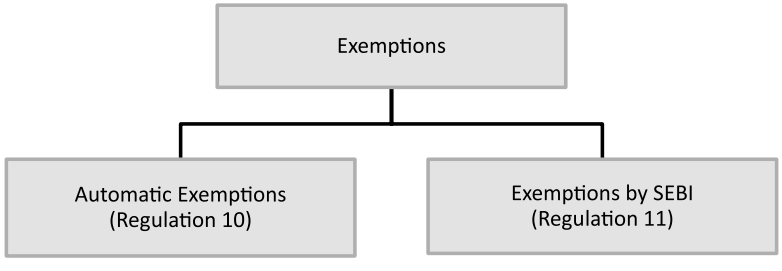
DISCLOSURES OF ENCUMBERED SHARES

Regulation	*Who will make*	*Trigger*	*Time Period*	*Made to*
Regulation 31(1)	Promoter	Promoter + PAC creating encumbrance on the shares of the target company. The aforesaid disclosure requirement shall not be applicable where such encumbrance is undertaken in a depository.	Within 7 working days from the creation or invocation or release of encumbrance as the case may be.	Every Stock exchange where the shares.

Regulation 31(2)	Promoter	Invocation of such encumbrance or release of such encumbrances of the shares of the target company. The aforesaid disclosure requirement shall not be applicable where such encumbrance is undertaken in a depository.	Within 7 working days from the creation or invocation or release of encumbrance as the case may be.	Every Stock exchange where the shares.
Regulation 31(4)	Promoter	Promoter + PAC shall declare on a yearly basis that he, along with persons acting in concert, has not made any encumbrance, directly or indirectly, other than those already disclosed during the financial year.	Within 7 working days from the financial year ending 31st March every year.	Every Stock exchange where the shares are listed and the Audit Committee of the Target Company.

EXEMPTIONS

While the fundamental objective of the SEBI Takeover Regulations is investor protection, the SEBI Takeover Regulations also provides for certain exemptions from the open offer obligation without deviating from its objective.



Regulation 10 - Automatic Exemptions

Regulation 10 of the SEBI Takeover Regulations, 2011 provides for automatic exemptions from the applicability of making Open Offer to the shareholders of the Target Company in respect of certain acquisitions subject to the compliance of certain conditions specified therein. Some of the important exemptions provided therein regulation 10 along with their conditions for exemption is detailed below.

Further, Regulation 11 of SEBI Takeover Regulations, 2011 provides the provisions whereby the acquirer can apply to SEBI for availing the exemption from the Open Offer obligations and the Target Company can apply for relaxation from strict compliance with any procedural requirement relating to Open Offer as provided under Chapter III and IV of these regulations.

The following acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfillment of the conditions stipulated therefor :

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

(i) immediate relatives;

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

It is necessary that promoters should have shown as such in the filing for a period of at least 3 years prior to the acquisition.

(iii) a company, its subsidiaries, its holding company, other subsidiaries of such – holding company, persons holding not less than fifty per cent of the equity shares of such company, other companies in which such persons hold not less than fifty per cent of the equity shares, and their subsidiaries subject to control over such qualifying persons being exclusively held by the same persons;

For this sub-regulation, the company shall include a body corporate, whether Indian or foreign.

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

It is necessary that persons acting in concert should have shown as such in the filing for a period of at least 3 years prior to the acquisition.

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

(b) ***acquisition in the ordinary course of business by, –***

(i) an underwriter registered with the SEBI by way of allotment pursuant to an underwriting agreement;

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

(iii) a merchant banker registered with SEBI or a nominated investor in the process of market making or subscription to the unsubscribed portion of;

(iv) any person acquiring shares pursuant to a scheme of safety net in terms of the then existing SEBI (ICDR) Regulations, 2009;

(v) a merchant banker registered with SEBI acting as a stabilising agent or by the promoter or pre-issue shareholder;

(vi) by a registered market-maker of a stock exchange in respect of shares for which he is the market maker during the course of market making;

(vii) a Scheduled Commercial Bank, acting as an escrow agent; and

(viii) invocation of pledge by Scheduled Commercial Banks or Public Financial Institutions as a pledgee.

(c) ***acquisitions at subsequent stages, by –***

An acquirer who has made a public announcement of an open offer for acquiring shares pursuant to an agreement of disinvestment, as contemplated in such agreement.

(d) ***acquisition pursuant to a scheme, –***

(i) made under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 or any statutory modification or re-enactment thereto;

(ii) of arrangement involving the target company as a transferor company or as a transferee company,

or reconstruction of the target company, including amalgamation, merger or demerger, pursuant to an order of a court or a tribunal under any law or regulation, Indian or foreign; or

(iii) of arrangement not directly involving the target company as a transferor company or as a transferee company, or reconstruction not involving the target company's undertaking, including amalgamation, merger or demerger, pursuant to an order of a court or a tribunal or under any law or regulation, Indian or foreign, subject to, –

A. the component of cash and cash equivalents in the consideration paid being less than twenty-five per cent of the consideration paid under the scheme; and

B. where after implementation of the scheme of arrangement, persons directly or indirectly holding at least thirty-three per cent of the voting rights in the combined entity are the same as the persons who held the entire voting rights before the implementation of the scheme.

(da) acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016.

(e) acquisition pursuant to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

(f) acquisition pursuant to the provisions of SEBI (Delisting of Equity Shares) Regulations, 2021.

(g) acquisition by way of transmission, succession or inheritance.

(h) acquisition of voting rights or preference shares carrying voting rights arising out of the operation of sub-section (2) of section 47 of the Companies Act, 2013.

(i) acquisition of shares by the lenders pursuant to conversion of their debt as part of a debt restructuring implemented in accordance with the guidelines specified by RBI.

However, the conditions specified under sub-regulation (6) of regulation 158 of the SEBI (ICDR) Regulations, 2018 are complied with.

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

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

(2B) Any acquisition of shares or voting rights or control of the target company by way of preferential issue in compliance with regulation 164A of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 shall be exempt from the obligation to make an open offer.

(3) An increase in voting rights in a target company of any shareholder beyond the limit attracting an obligation to make an open offer under regulation 3(1), pursuant to buy-back of shares by the target company shall be exempt from the obligation to make an open offer.

(4) ***The following acquisitions shall be exempt from the obligation to make an open offer –***

(a) acquisition of shares by any shareholder of a target company, upto his entitlement, pursuant to a rights issue;

(b) acquisition of shares by any shareholder of a target company, beyond his entitlement, pursuant to a rights issue;

(c) increase in voting rights in a target company of any shareholder pursuant to buy-back of shares;

(d) acquisition of shares in a target company by any person in exchange for shares of another target company tendered pursuant to an open offer for acquiring shares under these regulations;

(e) acquisition of shares in a target company from state-level financial institutions or their subsidiaries or companies promoted by them, by promoters of the target company pursuant to an agreement between such transferors and such promoter;

(f) acquisition of shares in a target company from a venture capital fund or Category I Alternative Investment Fund or a foreign venture capital investor registered with the SEBI, by promoters of the target company pursuant to an agreement between such venture capital fund or category I Alternative Investment Fund or foreign venture capital investor and such promoters.

However, certain exemptions require PRIOR disclosures / intimation to stock exchanges as tabulated below:

Particulars	***Timeline***
Regulation 10(1): (a) acquisition pursuant to inter se transfer of shares amongst qualifying persons, being, – (i) immediate relatives; (ii) persons named as promoters in the shareholding pattern filed by the target company in terms of the listing regulations or as the case may be, the listing agreement or these regulations for not less than three years prior to the proposed acquisition; (iii) a company, its subsidiaries, its holding company, other subsidiaries of such – holding company, persons holding not less than fifty per cent of the equity shares of such company, other companies in which such persons hold not less than fifty per cent of the equity shares, and their subsidiaries subject to control over such qualifying persons being exclusively held by the same persons; (iv) persons acting in concert for not less than three years prior to the proposed acquisition, and disclosed as such pursuant to filings under the listing regulations or as the case may be, the listing agreement; (v) shareholders of a target company who have been persons acting in concert for a period of not less than three years prior to the proposed acquisition and are disclosed as such pursuant to fi under the listing regulations or as the case may be, the listing agreement, and any company in which the entire equity share capital is owned by such shareholders in the same proportion as their holdings in the target company without any differential	At least four working days prior to the proposed acquisition, intimate the Stock Exchanges and the Target company with details of proposed acquisition.

Regulation 10(4): (e) acquisition of shares in a target company from state-level financial institutions or their subsidiaries or companies promoted by them, by promoters of the target company pursuant to an agreement between such transferors and such promoter; (f) acquisition of shares in a target company from a venture capital fund or Category I Alternative Investment Fund or a foreign venture capital investor registered with the SEBI, by promoters of the target company pursuant to an agreement between such venture capital fund or category I Alternative Investment Fund or foreign venture capital investor and such promoters.	At least four working days prior to the proposed acquisition, intimate the Stock Exchanges and the Target company with details of proposed acquisition.

In all exemptions a report is to be submitted to Stock Exchanges: In respect of any acquisition made pursuant to exemption provided, the acquirer shall file a report with the stock exchanges where the shares of the target company are listed, in such form as may be specified not later than four working days from the acquisition.

Question: Mr. X is Promoter of ABC (India) Limited (Target Company). Mr. X is presently holding 53,073 shares constituting 0.52% of the paid up equity capital of the Target Company. Further, Mr. X has been allotted 75,000 convertible warrants, convertible in to equity. After conversion of warrant in to equity the shareholding of Mr. X will increase from 0.52% to 1.26% of the paid up equity capital. Further, Ms. Z who is Mr. X's elder sister's daughter and holding 7,80,000 equity shares constituting 7.76% of the paid up equity share capital of the Company. Ms. Z is a foreign shareholder and she wanted to gift (Off Market Transaction) her entire shareholding to her mother Mrs. Y and in turn Mrs. Y wanted to gift the entire shareholding to Mr. X.

If the entire transaction as contemplated, if concluded, then the shareholding of Mr. X will increase from 0.52% to 9.02% and the shareholding of the promoter group will increase from 34.28% to 43.30%. You have been engaged as Practising Company Secretary by Mr. X to advise on the following:

a) Is this increase in the promoter group shareholding would trigger open offer requirements in terms of Regulation 3(2) of the SEBI (SAST) Regulation, 2011.

b) Further, Whether such transaction would be exempted under Regulation 10 of the SEBI (SAST) Regulations, 2011.

Answer: The set of facts as disclosed in the question contains three transactions. First, conversion of convertible warrants in to equity. Secondly, transfer of shares through off market transaction from Ms. Z to Mrs. Y and thirdly, transfer of shares through off market transaction from Mrs. Y to Mr. X. Regarding the first transaction, the trigger and open offer requirements, if any has to be considered at the time of conversion of warrants in to equity as the same would depends on the shareholding pattern of the promoter and promoter's group prevailing at the time of conversion of warrants in to equity shares. Regarding the second and third transaction, considering that Ms. Z, Mrs. Y and Mr. X are immediate relative thus they would be considered as PAC in terms of Regulation 2(1)(q) of the SEBI (SAST) Regulations, 2011. Therefore, the shareholding of the promoters along with PACs would increase more than 5% limit and would trigger open offer requirements under Regulation 3(2) of the SEBI (SAST), 2011. However, the transaction is between immediate relatives, the transaction would be exempt from the obligation to make an open offer as per Regulation 10(1)(a)(i) of the SEBI (SAST), Regulations, 2011 subject to the compliance with the conditions as mentioned under the proviso to Regulation 10(1)(a)(i) and Regulation 10(5), (6) and (7) of the SEBI (SAST), Regulations, 2011.

Regulation 11 – Exemption by SEBI

Regulation 11 provides that a self-attested application being made by the acquirer in writing giving the details of the proposed acquisition and grounds on which the exemption is sought. SEBI may grant exemption to the acquirer from the Open Offer obligations subject to the compliance with such conditions as it deems fits. For instance, in case where the exemptions is sought from the Open Offer obligations which has been triggered pursuant to the issue of shares by way preferential allotment, SEBI may require that the approval of shareholders should be obtained by way of postal ballot. Further, along with the application, the acquirer is also required to pay a non-refundable fee of Rs.5,00,000,by way of direct credit in the bank account.

However, it is to be noted that the Acquirer is not exempted from making other compliances related to the disclosure requirements as provided under regulation 29, 30 and 31 of the SEBI Takeover Regulations, 2011.

Points to ponder:

M/s ABC Ltd is a listed Company on the Bombay Stock Exchange Limited. The promoter of M/s ABC Ltd is M/s BCD Private Limited which holds 49.84% of the total paid up capital of the M/s ABC Ltd and the remaining shares are held by the public. M/s BCD Private Limited is in turn promoted by one Mr. X and M/s DEF Private Limited. The shareholding of M/s BCD is divided between Mr. X and M/s DEF Private Limited in the ratio of 60% and 40% respectively. Mr. X has approached M/s DEF Private Limited to sell 40% of its shares in the M/s BCD Private Limited to M/s DEF Private Limited. After this transaction the shareholding of M/s BCD Private Limited will be divided between Mr. X and M/s DEF Private Limited in the ratio of 20% and 80% respectively. This transaction had resulted in the indirect acquisition of control of M/s ABC Limited in the favour of M/s DEF Private Limited. Now, M/s DEF Private Limited is planning to make an application to the SEBI under Regulation 11 of the SEBI (SAST), Regulation, 2011 for obtaining the exemption for making an open offer in terms of the provision of the SEBI (SAST), Regulation, 2011. In these circumstances, you are asked to put your argument, if:

a) you are representing M/s DEF Private Limited before the whole-time Member of SEBI.

b) You are working as a representative of the SEBI and presenting your argument before the whole-time Member of SEBI.

CASE LAWS

07.07.2020	*M/s Sungold Capital Limited vs. SEBI*	*Whole Time Member, Securities and Exchange Board of India*

One of the principles underlying under SAST Regulations is exit opportunity to the public shareholders of the Target Company at the best price and accordingly, the provisions of SAST Regulations deals with offer price, that offer price in an open offer highest of the prices of shares of the Target Company derived through various methods.

Facts of the Case:

The respective acquirers/PAC's after acquiring shares/voting rights of Sungold Capital Limited ("Target Company") beyond the threshold of initial/creeping acquisition have failed to make an open offer in terms of Regulation 10 and 11(1) of SAST Regulations, 1997, on, April 1, 2007 and September 14, 2007, respectively. As per Regulation 21(19) of SAST Regulations, 1997, the acquirer and the PAC's were jointly and severally liable for discharge of obligations under SAST Regulations, 1997.

SAST Regulations, 1997 has been repealed by Regulation 35(1) of SAST Regulations, 2011 and has been replaced by SAST Regulations, 2011. Regulation 35(2)(b) of SAST Regulations, 2011, *provides that all obligations incurred under the SAST Regulations, 1997, including the obligation to make an open offer, shall remain unaffected as if the repealed regulations has never been repealed.*

Therefore, the obligations to make open offer, incurred by the acquirers/PAC's under SAST Regulations, 1997, are saved and can be enforced against them by virtue of Regulation 35 of SAST Regulations, 2011.

Order:

SEBI directed acquirers/PAC's of the target company to make a public announcement of a combined open offer for acquiring shares of Sungold Capital Ltd., within a period of 45 days from the date when this order comes into force, in accordance with SAST Regulations. The acquirers/PAC's shall along with the offer price, pay interest at the rate of 10% per annum for delay in making of open offer, for the period starting from the date when the Noticees incurred the liability to make the public announcement and till the date of payment of consideration, to the shareholders who were holding shares in the Target Company on the date of violation and whose shares are accepted in the open offer, after adjustment of dividend paid, if any.

17.03.2020	***Susheel Somani & Ors. (Appellant) vs. SEBI (Respondent)***	***Securities Appellate Tribunal***

Penalty imposed by SEBI on violating SAST Regulations, further reduced by SAT considering it a technical breach

Facts of the Case:

Aggrieved by the order of the Adjudicating Officer (AO) of the respondent SEBI dated December 27, 2017 imposing a penalty of Rs. 15 lacs for violation of provisions of public announcement of an open offer under Regulation 3(2) read with Regulation 13(1) of the SEBI (SAST) Regulations, 2011, the present appeal is preferred.

The appellants contended before the AO that there was no violation of Regulation 3(2) read with Regulation 13(1) of the SAST Regulations, 2011 since the transfer was inter se between the promoters, the same was exempted from making a public announcement as provided by Regulation 10 of the SAST Regulations.

As regard the exemption, the AO found that while Regulation 10 of the SAST Regulations provides for making disclosures to the stock exchanges and to the company within a period of two working days. In the present case, the appellants made the disclosures on 7th day as against the provisions of Regulation 29(3).

[Reg. 29(3) provides that the disclosures are required to be made within two working days]

Order:

Technically the appellants were not exempted from making public announcement and, thus, are in violation of the relevant regulations. The AO has observed that as the condition of making disclosures within two working days is not fulfilled the act was not find for grant of exemption. In the circumstances, the penalty was imposed. The appellants made the disclosures though belatedly after five days as required by Regulation 29 of the SAST Regulations.

Thus, it was a technical breach and, therefore, AO instead of imposing a penalty of Rs. 15 lacs, imposed a penalty of Rs. 5 lacs which would have been just and sufficient. The appeal was partly allowed.

07.09.2017	*Mega Resources Ltd. (Appellant) vs. SEBI (Respondent)*	*Securities Appellate Tribunal*

Ignorance of law will not excuse the appellant to escape the liability of violating the law

Facts of the Case:

The Appellant, Mega Resources Limited, is aggrieved by the order dated 13.08.2014 passed by the Adjudicating Officer (AO), SEBI, imposing a penalty of Rs. 2,00,000/- under Section 15A(b) of the SEBI Act and Rs. 50,00,000/-under Section 15 H(ii) of the SEBI Act for failure on the part of the appellant to comply with the provisions of Regulation 7(1) read with Regulation 7(2) and Regulation 11(1) read with Regulation 14(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

The appellant has admitted that pursuant to the acquisition of 25000 equity shares through off-market transactions the shareholding of the Promoters/Promoter Group of the Company had increased from 50.46% to 60.46% of the Target Company. This triggered Regulation 11(1) of the erstwhile SAST Regulations along with the requirement of submission of certain disclosures under Regulation 7(1) and 7(2) of the erstwhile Regulations. It is admitted by the appellant that the non-compliance with the disclosure requirements in respect of acquisition of shares and failure to make an open offer to the shareholders of the Company was due to lack of awareness of the erstwhile regulations on the part of the Appellant and purely unintentional and without any malafide intentions. However, it is trite law that ignorance of law will not excuse the appellant to escape the liability of violating the law nor ever absolve the wrongdoer of his crime or misconduct.

Further, the appellant contended that in the matter of imposition of penalty, the Section 15(H)(ii) of the SEBI Act, 1992 was amended dated October 29, 2002 and the penalty for non-disclosure of acquisition of shares and takeovers was enhanced from a maximum of Rs. Five Lakh to Rs. Twenty Five crore. It is argued that since the violation in Appeal was committed in February, 2001, the appellant would be governed by the erstwhile provisions of Section 15H(ii) of the SEBI Act, which existed on the date of violation in question.

Order:

It is true that the maximum monetary penalty imposable for non-disclosure of acquisition of shares and takeovers under the erstwhile SEBI Act on the date of violation by the Appellant was Rs. Five Lakh and by the amendment dated October 29, 2002 it is up to Rs. Twenty Five Crore or three times of the amount of profits made out of such failure, whichever is higher. However, the moot point in this connection to be noted is that as on October 29, 2002 the obligation to make disclosure and public announcement under Regulations 7(1) read with 7(2) and 11(1) read with 14(1) continued. Therefore, because the violation was continued even after October 29, 2002, the appellant has been rightly imposed penalty under the amended provisions of Section 15H(ii) of the SEBI Act. Since the punishment imposable now for such non-disclosure and public announcement is up to Rs. Twenty Five Crore, SAT finds that the penalty of Rs. Fifty Lakh is just and reasonable and not disproportionate. The contention of the appellant in this regard is, therefore, liable to be turned down. Therefore, in the peculiarity of the facts and circumstances of the case and, in particular, the continuity of the obligation to make disclosure and public announcement, the penalty of Rs. Fifty Lakh is upheld and the appeal is dismissed.

16.03.2020	*G P Shah Investment Private Limited & Ors. (Appellant) vs. SEBI (Respondent)*	*Securities Appellate Tribunal*

Facts of the Case:

The present appeal has been filed against the order of the Adjudicating Officer (AO), SEBI dated March 13, 2019 imposing a penalty of 5 crores to be paid by the appellants jointly and severally, under Section 15H (ii) of the SEBI Act, 1992 for violation of Regulation 3(2) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 ("SAST Regulations, 2011" for convenience).

This Tribunal held that the date on which the appellants acquired the shares triggered the provisions of Regulation 3(2) of the SAST Regulations, 2011 and consequently incurred an obligation to make a combined public announcement of an open offer for acquiring the shares of the target company.

Order:

SAT finds that no relief can be granted to the appellants as AO granted several opportunities but the appellants chose not to appear or file any reply. In the light of the aforesaid, SAT are of the opinion that sufficient opportunity was given to the appellants to contest the matter which they failed to do so. Thus, remanding the matter back to the AO in the given circumstances does not arise. With regard to the quantum of penalty, SAT finds that the order of the Whole Time Member (WTM) directing the appellants to make a public announcement was issued as far back as on July 08, 2013 which after 7 years has not as yet been complied with. Considering the aforesaid and the admitted violations, SAT did not find any error in the imposition of penalty imposed by the AO though, under Section 15HB a maximum penalty of Rs. 25 crores or three times the amount of profits could have been imposed. In view of the aforesaid, SAT do not find any merit in the appeal and the same is dismissed with no order as to costs.

LESSON ROUND-UP

- The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, aims at protecting interest of the investors in securities of a listed company providing amongst others, an opportunity for the public shareholders to exit where there is a substantial acquisition of shares or voting rights or control over a listed company, consolidation of holdings by existing shareholders and related disclosures and penalties for non- compliance etc.
- The Takeover Regulations, 1997 stands repealed from October 22, 2011, i.e. the date on which SAST Regulations, 2011 came into force.
- The SEBI Takeover Regulations, 2011 provides certain trigger events wherein the Acquirer is required to give Open Offer to the shareholders of the Target Company to provide them exit opportunity.
- Regulation 6 of the Takeover Regulations provides the threshold and conditions for making the Voluntary Open Offer.
- Regulation 10 & 11 provides for automatic exemptions and exemptions by SEBI.
- The public announcement shall be sent to all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public. The Acquirer also need to publish Detailed Public Statement within 5 working days.

- The Tendering Period remains open for 10 working days.
- In SEBI Takeover Regulations, 2011, the obligation to give the disclosures on the acquisition of certain limits is only on the acquirer and not on the Target Company.

GLOSSARY

Competitive Bid: An offer made by a person other than the acquirer who has made the first public announcement.

Control of management: The right to appoint directly or indirectly or by virtue of agreements or in any other manner majority of directors on the Board of the target company or to control management or policy decisions affecting the target company.

Disinvestment: Disinvestment means the direct or indirect sale by the Central Government or any State Government or by a government company, as the case may be, of shares or voting rights in, or control over, a target company, which is a public sector undertaking.

Encumbrance: It shall include a pledge, lien or any such transaction, by whatever name called.

Public Announcement: A public announcement is an announcement made in the newspapers by the acquirer primarily disclosing his intention to acquire shares of the target company from existing shareholders by means of an open offer.

Takeover: Takeover is a corporate device whereby one company acquires control over another company, usually by purchasing all or majority of its shares.

Weighted average number of total shares: Means the number of shares at the beginning average number of a period, adjusted for shares cancelled, bought back or issued during the aforesaid of total shares period, multiplied by a time-weighing factor.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. What do you mean by Persons Acting in Concert under the SEBI (SAST) Regulations, 2011?
2. What are the conditions for making Voluntary open offer?
3. Discuss about the continuous disclosure required to be made under these regulations.
4. Briefly explain the conditions on which SEBI can grant exemption to an acquirer.
5. An acquirer, holding 25% or more but less than maximum permissible non-public shareholding of the Target Company can acquire such additional shares as would entitle him to exercise more than 5% of the voting rights in any financial year. Explain the statement indicating the creeping acquisition limit for making an open offer by an acquirer.
6. Discuss on the minimum size of offer to be made by the acquirer and exception to it, if any.

7. MN Ltd. is a listed company. The promoters hold 61.50% paid up equity share capital as on 31st March, 2020. On November 2, 2020, some of the promoters who hold convertible warrants in the company converted 1500000 warrants into shares, as result of which the holding of promoters increased by 4.10%. Vihaan ("Transferor"), one of the promoters holds 18.50% of equity share capital in the company proposed to gift 1.20% equity shares of the company to immediate relative by way of Transferor. Taking into account SEBI (SAST) regulations, answer the following questions in detail :

   (i) Whether the proposed transfer trigger an obligation upon the Transferor for open offer?

   (ii) Will the transaction covered under creeping acquisition?

   (iii) Would the promoters be permitted to avail any exemption under the regulation?

LIST OF FURTHER READINGS

- SEBI Manual SEBI Circulars
- SEBI Notifications

OTHER REFERENCES (Including Websites and Video Links)

- www.sebi.gov.in
- www.nseindia.com
- www.bseindia.com

Prohibition of Insider Trading

Lesson 13

KEY CONCEPTS

■ Unpublished price sensitive information ■ Insider ■ Connected Person ■ Designated Person ■ Insider Trading ■ Trading Window ■ Pre-clearance ■ Compliance Officer

Learning Objectives

To understand:

- Meaning of insider trading
- Legislative history of insider trading
- Conceptual Understanding on Important Terminologies
- Meaning of important terminologies under SEBI (Prohibition of Insider Trading) Regulations and its application through case laws
- Regulatory prescriptions on communication of unpublished price sensitive information
- Regulatory mandates on trading by insiders/designated persons
- Disclosure requirements by certain persons

Lesson Outline

- Introduction
- Genesis
- Regulatory Framework
  - Provisions of SEBI Act, 1992
  - SEBI (Prohibition of Insider Trading) Regulations, 2015 – An overview
- Key Definitions
- Restrictions
  - Communication or Procurement of Unpublished Price Sensitive Information (UPSI)
  - Trading when in possession of UPSI
- Case Laws
- Trading Plans
- Disclosures Requirements
- Informant Incentives and Rewards
- Codes of Fair Disclosure and Conduct
- Penalty Provisions for violations of the Regulations
- Appeal to Securities Appellate Tribunal
- Role of Company Secretary as Compliance Officer
- Checklists under SEBI (Prohibition of Insider Trading) Regulations 2015
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- Section 12 A and 15 G of SEBI Act, 1992
- SEBI (Prohibition of Insider Trading) Regulations, 2015

INTRODUCTION

Insider trading essentially denotes dealing in a company's securities on the basis of confidential information, relating to the company, which is not published or not known to the public (known as 'unpublished price-sensitive information'), used to make personal profits or avoid loss.

The practice of Insider Trading came into existence ever since the very concept of trading of securities of a company became prevalent among the investors worldwide and has now become a formidable challenge for investors all over the world. The growing magnitude of the world's securities markets in the past decades has further raised the concerns of the securities market regulators across the globe.

Genesis

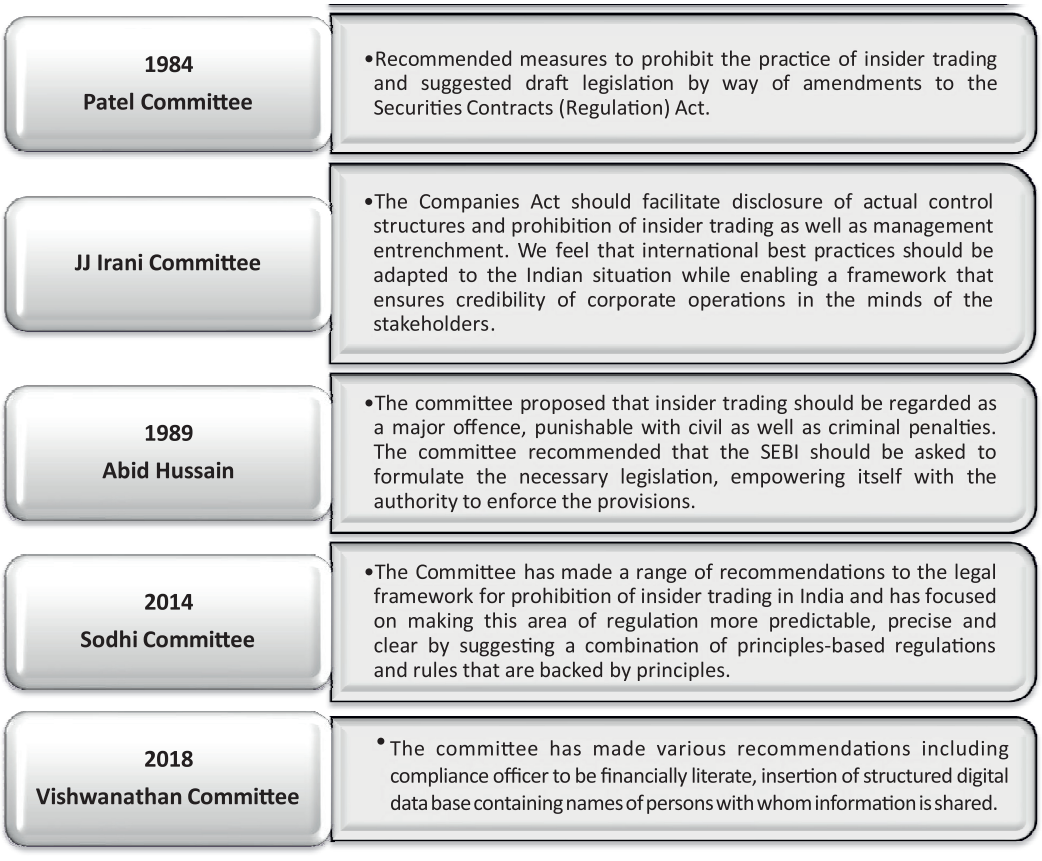
The United States of America was the first country to formally enact a legislation to effectively tackle the menace of insider trading. Over the years, most of the jurisdictions around the world have recognized the requirement to restrict insider trading in one form or other and accordingly put in place legal restrictions to this effect so as to maintain investors' confidence in the capital market.

The history of Insider Trading in India dates back to the 1940's with the formulation of government committees such as the Thomas Committee under the chairmanship of Mr. P.J. Thomas, to evaluate restrictions that can be imposed on short swing profit.

India was not late in recognizing the detrimental impact of insider trading. The history of Insider Trading in India dates back to the 1940's with the formulation of government committees such as the Thomas Committee under the chairmanship of Mr. P.J. Thomas, to evaluate restrictions that can be imposed on short swing profit of 1948, which evaluated *inter alia*, the regulations in the US on short swing profits (profits made by the purchase and sale both, of the company's securities simultaneously within a prescribed time frame) under Section 16 of the Securities Exchange Act, 1934.

Committees Recommending Prohibition of Insider Trading

1948 Thomas Committee	•Under the chairmanship of P.J. Thomas, the then Economic Adviser to the Finance Ministry. On the basis of Recommendations of the Committee Section 307 and 308 of Companies Act 1956 dealing is disclosure of shareholdings of directors/managers introduced.
1950 Bhabha Committee	•The Bhaba Committee report made a distinction between the directors who buy or sell shares while in possession of general information and those who buy or sell shares based on the specific information, such as the conclusion of a favourable contract or the intention a company's board to recommend an increased dividend.
1977 Sachar Committee	•Recommended comprehensive amendments to sections 307 and 308 with a view to strengthening the provisions thereof. The Committee made two-fold recommendations - one relating to fuller disclosure of transactions by those who have price-sensitive information and another prohibition of transactions by such persons during certain specified period unless there are exceptional circumstances.



REGULATORY FRAMEWORK

SEBI ACT, 1992

The provisions pertaining to insider trading are prescribed in Section 12A and Section 15G of the SEBI Act, 1992:

Section 12A

No person shall directly or indirectly –

- engage in insider trading;
- deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder.

Section 15G

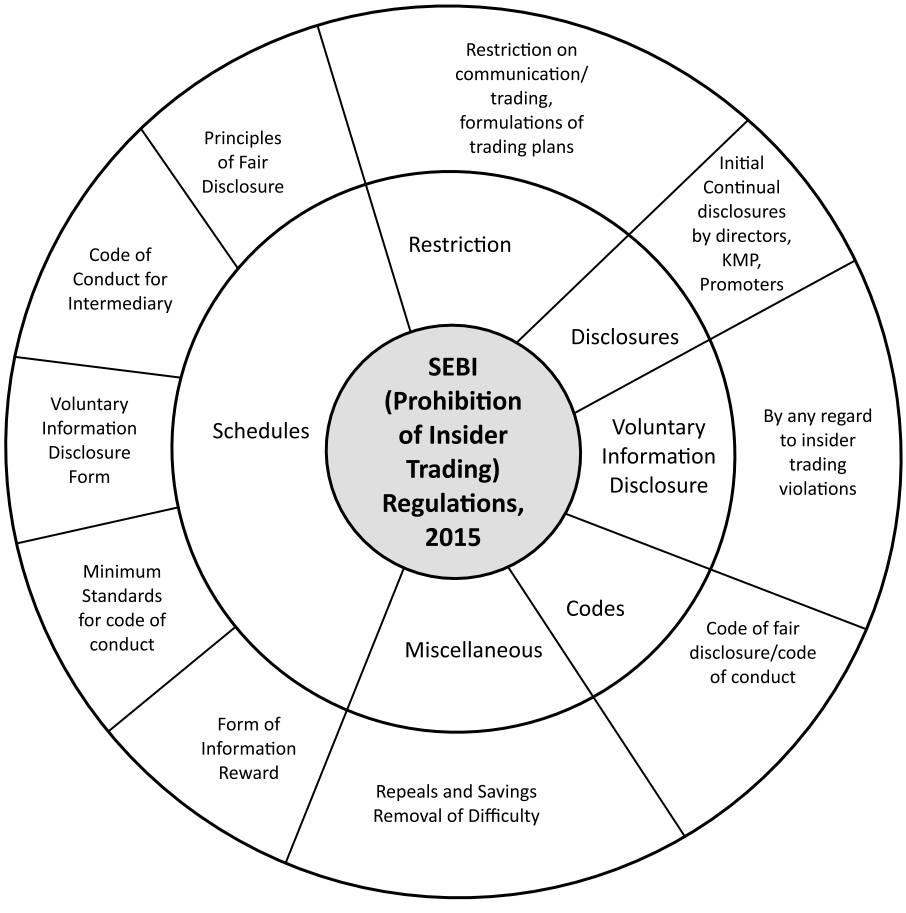
Penalty for insider trading

If any insider who, –

- either on his own behalf or on behalf of any other person, deals in securities of a body;
- corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or
- communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

- counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty [which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015 – REGULATORY FRAMEWORK



KEY DEFINITIONS

Compliance officer

Compliance Officer means:

any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there, ***who is financially literate*** and is capable of appreciating requirements for legal and regulatory compliance under these regulations, and *who shall be responsible for*:

(a) compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information;

Extracts from interpretive letter dated 21st October, 2015 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of Mindtree Ltd.

Question: Can a senior person, say a Chief Financial Officer (CFO) or a Company Secretary (CS), who is not reporting to the Board, act as compliance officer and update the Board on the transactions related to Insider Trading Quarterly. Can the company appoint more than one person as the Compliance Officer under the Code?

(b) monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be.

Connected person

Connected person means:

- any person who is or has been during six months prior to the concerned Act, associated with a company in any capacity, directly or indirectly;
- including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship; or
- by being a director, officer or an employee of the company or holds any position including a professional or business relationship whether temporary or permanent with the company; or

that allows such person, directly or indirectly, access to unpublished price-sensitive information or reasonably expected to allow such access.

Can CS as well as CFO be appointed as a Compliance Officer, so that one can sign and submit the documents if the other person is on travel?

Guidance from SEBI: Regulation 2(1)(c) of SEBI (PIT) Regulations, 2015 defines Compliance Officer as any senior officer, designated so and reporting to the board of directors or head of the organisation in case board is not there, who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of UPSI, monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of the organisation, as the case may be. The functions and responsibility of the Compliance Officer are specified in Regulation 2(1)(c) of the SEBI (PIT) Regulations, 2015. The company may at its discretion appoint any senior officer as the Compliance Officer, necessarily report to the Board of directors or head of the organization as the case may be. Appointing any other person shall not be in accordance with the Regulations. In case of appointing more than one person as Compliance Officer they shall be held jointly and severally responsible.

Insider

"Insider" means any person who is:

(i) a connected person; or

(ii) in possession of or having access to unpublished price sensitive information.

It is noted that anyone in possession of or having access to unpublished price sensitive information should be considered as an "insider" regardless of the manner in which one came into possession of or had access to such information. The above definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information.

Person deemed to be connected person

"Person is deemed to be a connected person" unless the contrary is established, if such person is –

(a) a relative of connected person(s); or

(b) a holding company or associate company or subsidiary company; or

(c) an intermediary as specified in Section 12 of the SEBI Act or an employee or director thereof; or

(d) an investment company, trustee company, asset management company or an employee or director thereof; or

(e) an official of a stock exchange or of clearing house or corporation; or

(f) a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or

(g) a member of the board of directors or an employee, of a public financial institution as defined in Section 2(72) of the Companies Act, 2013; or

(h) an official or an employee of a self-regulatory organization recognised or authorized by the SEBI; or

(i) a banker of the company; or

(j) a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his relative or banker of the company, has more than ten percent of the holding or interest; or

(k) a firm or its partner or its employee in which a connected person is also a partner; or

(l) a person sharing household or residence with a connected person.

It is to be noted that the above definition intends to bring into its ambit persons who may seemingly not occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations.

Immediate Relative

"Immediate Relative" means

- spouse of a person,
- parents,
- sibling, and
- child of such person or of the spouse,
- any of whom is either dependent financially on such person,
- or consults such person in taking decisions relating to trading in securities.

Question: If a spouse is financially independent and does not consult an insider while taking trading decisions, is that spouse exempted from the definition of 'immediate relative'?

Answer: A spouse is presumed to be an 'immediate relative', unless rebutted so.

Proposed to be listed

Proposed to be listed shall include securities of an unlisted company:

(i) if such unlisted company has filed offer documents or other documents, as the case may be, with the SEBI, stock exchange(s) or registrar of companies in connection with the listing; or

(ii) if such unlisted company is getting listed pursuant to any merger or amalgamation and has filed a copy of such scheme of merger or amalgamation under the Companies Act, 2013.

Informant

"Informant" means an individual(s), who voluntarily submits to the Board a Voluntary Information Disclosure Form relating to an alleged violation of insider trading laws that has occurred, is occurring or has a reasonable belief that it is about to occur, in a manner provided under these regulations, regardless of whether such individual(s) satisfies the requirements, procedures and conditions to qualify for a reward.

Trading

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

Unpublished price sensitive information

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

(i) Financial results;

(ii) Dividends;

(iii) Change in capital structure;

(iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business, award or termination of order/contracts not in the normal course of business and such other transactions;

(v) changes in key managerial personnel, other than due to superannuation or end of term, and resignation of a Statutory Auditor or Secretarial Auditor;

(vi) change in rating(s), other than ESG rating(s);

(vii) fund raising proposed to be undertaken;

(viii) agreements which may impact the management or control of the company;

(ix) fraud or defaults by the company, its promoter, director, key managerial personnel, or subsidiary or arrest of key managerial personnel, promoter or director of the company, whether occurred within India or abroad;

(x) resolution plan/ restructuring or one-time settlement in relation to loans/borrowings from banks/ financial institutions;

(xi) admission of winding-up petition filed by any party /creditors and admission of application by the Tribunal filed by the corporate applicant or financial creditors for initiation of corporate insolvency resolution process against the company as a corporate debtor, approval of resolution plan or rejection thereof under the Insolvency and Bankruptcy Code, 2016;

(xii) initiation of forensic audit, by whatever name called, by the company or any other entity for detecting mis-statement in financials, misappropriation/ siphoning or diversion of funds and receipt of final forensic audit report;

(xiii) action(s) initiated or orders passed within India or abroad, by any regulatory, statutory, enforcement authority or judicial body against the company or its directors, key managerial personnel, promoter or subsidiary, in relation to the company;

(xiv) outcome of any litigation(s) or dispute(s) which may have an impact on the company;

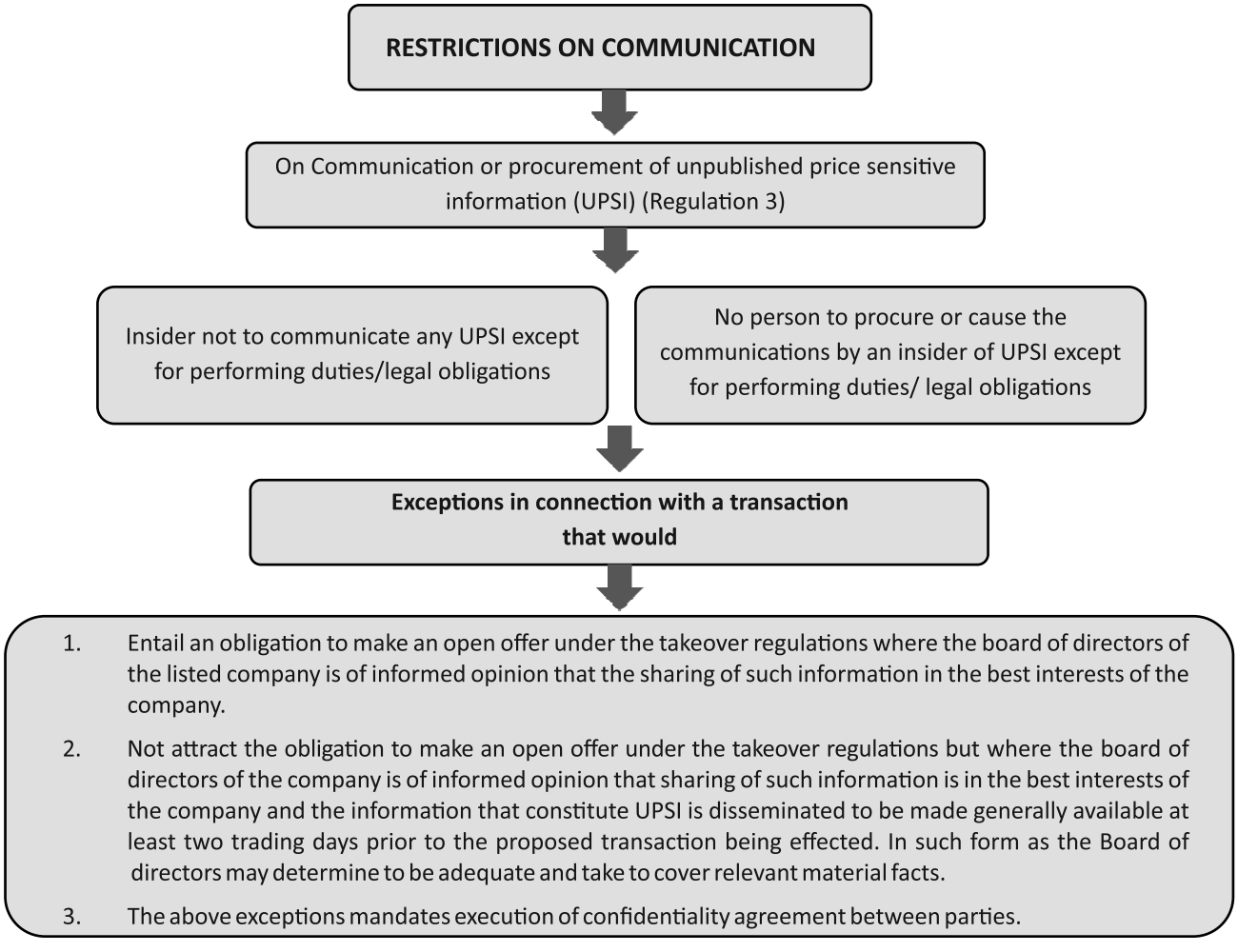
(xv) giving of guarantees or indemnity or becoming a surety, by whatever named called, for any third party, by the company not in the normal course of business;

(xvi) granting, withdrawal, surrender, cancellation or suspension of key licenses or regulatory approvals.

Extracts from SAT Order dated 12th July 2019 in the matter of Mr. G. Bala Reddy vs. SEBI [Appeal No. 509 of 2015]

In this case, a Company had secured work orders but the same were not disclosed to stock exchange as the contract was not yet issued to the Company and the Company was only found to be the lowest price bidder. During this period, certain entities had dealt in the shares of this Company with a contention that being the lowest bidder of a contract is a usual course of business and hence, does not amount to UPSI. SAT held that considering that the promoter was aware that the Company was L1 (lowest bidder), this information was UPSI and hence it was incumbent upon Promoters not to deal in the scrips of the Company directly or indirectly.

RESTRICTION ON COMMUNICATION OR PROCUREMENT OF UNPUBLISHED PRICE SENSITIVE INFORMATION (UPSI) (REGULATION 3)



Restriction on Communication

No insider to communicate UPSI (Regulation 3)

(1) No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders *except where such communication is in furtherance of legitimate purposes*, performance of duties or discharge of legal obligations.

No person shall procure from or cause the communication by any insider of unpublished price sensitive information [Regulation 3(2)]

(2) No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

Note: This provision is intended to impose a prohibition on unlawfully procuring possession of unpublished price sensitive information. Inducement and procurement of unpublished price sensitive information not in furtherance of one's legitimate duties and discharge of obligations would be illegal under this provision.

Policy for determination of Legitimate Purposes [Regulation 3(2A)]

(2A) The board of directors of a listed company shall make a policy for determination of "legitimate purposes" as a part of "Codes of Fair Disclosure and Conduct" formulated under regulation 8. Explanation – For the purpose of illustration, the term "legitimate purpose" shall include sharing of unpublished price sensitive information in the ordinary course of business by an insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations.

Recipient of UPSI received on legitimate purpose is also an insider [Regulation 3(2B)]

(2B) Any person in receipt of unpublished price sensitive information pursuant to a "legitimate purpose" shall be considered an "insider" for purposes of these regulations and due notice shall be given to such persons to maintain confidentiality of such unpublished price sensitive information in compliance with these regulations.

Exceptions:

(3) Notwithstanding anything contained in this regulation, an unpublished price sensitive information may be communicated, provided, allowed access to or procured, in connection with a transaction that would:–

(i) entail an obligation to make an open offer under the takeover regulations where the board of directors of the listed company is of informed opinion that sharing of such information is in the best interests of the company;

(ii) not attract the obligation to make an open offer under the takeover regulations but where the board of directors of the listed company is of informed opinion that sharing of such information is in the best interests of the company and the information that constitute unpublished price sensitive information is disseminated to be made generally available at least two trading days prior to the proposed transaction being effected in such form as the board of directors may determine to be adequate and fair to cover all relevant and material facts.

Note: It is intended to permit communicating, providing, allowing access to or procuring UPSI also in transactions that do not entail an open offer obligation under the takeover regulations when authorised by the board of directors if sharing of such information is in the best interests of the company. The board of directors, however, would cause public disclosures of such unpublished price sensitive information well before the proposed transaction to rule out any information asymmetry in the market.

Execution of confidentiality agreement - A mandate

(4) For purposes of sub-regulation (3), the board of directors shall require the parties to execute agreements to contract confidentiality and non-disclosure obligations on the part of such parties and such parties shall keep information so received confidential, except for the purpose of sub-regulation (3), and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.

Maintenance of structured database with names of persons with whom UPSI is shared and names of persons who shared the same

Question: What information should a listed Company maintain in its structured digital database under Regulation 3(5), in case the designated person is a fiduciary or intermediary?

Answer: The listed company should maintain the names of the fiduciary or intermediary with whom they have shared information along with the Permanent Account Number (PAN) or other unique identifier authorized by law, in case PAN is not available. The fiduciary / intermediary, shall at their end, be required to maintain details as required under the Schedule C in respect of persons having access to UPSI.

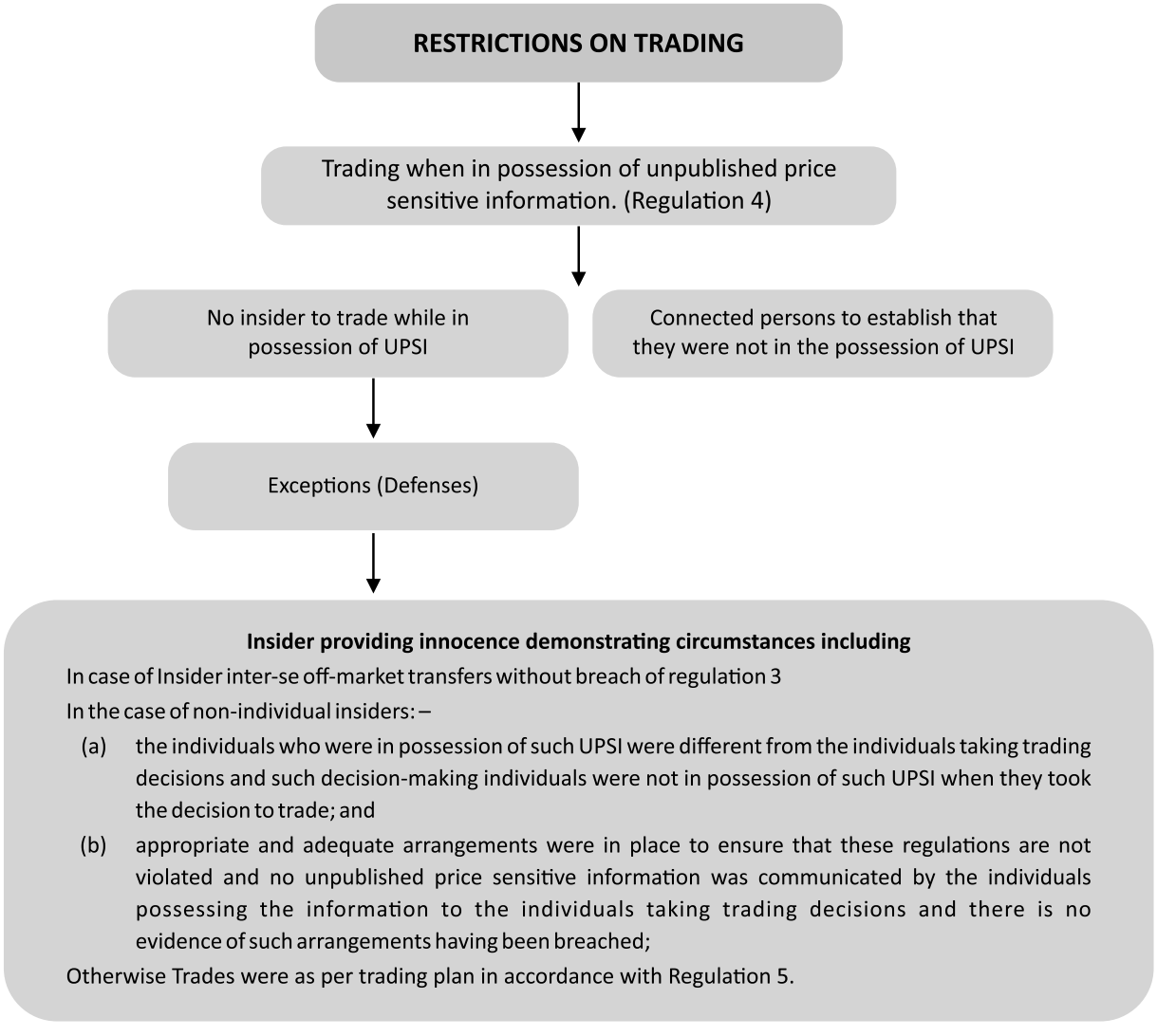
For example: If the listed company has appointed a law firm or Merchant Banker in respect of fund raising activity, it should obtain the name of the entity, so appointed, along with the PAN or other identifier, in case PAN is not available. The law firm or the Merchant Banker would in turn maintain its list of persons along with PAN or other unique identifier (in case PAN is not available), in accordance with Regulation 9A(2)(d) and as required under Schedule C, with whom they have shared the unpublished price sensitive information.

(5) The Board of Directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that a structured digital database is maintained containing the nature of unpublished price sensitive information and the names of such persons who have shared the information and also the names of such persons with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such database shall not be outsourced and shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.

However, entry of information, not emanating from with in the organisation, in structured digital database may be done not later than 2 calender days from the receipt of such information.

(6) The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that the structured digital database is preserved for a period of not less than eight years after completion of the relevant transactions and in the event of receipt of any information from the Board regarding any investigation or enforcement proceedings, the relevant information in the structured digital database shall be preserved till the completion of such proceedings.

TRADING WHEN IN POSSESSION OF UNPUBLISHED PRICE SENSITIVE INFORMATION (UPSI): PERMISSION & LIMITATION



Insider not to trade in securities while in possession of unpublished price sensitive information

- **Regulation 4** prescribes that an insider shall not trade in securities, which are listed or proposed to be listed on stock exchange, when in possession of unpublished price sensitive information, except in the following situations:
- where there is an ***off-market inter-se transfer*** between insiders who were in possession of the same UPSI, or
- the transaction was carried through the ***block deal window mechanism*** between persons who were in the possession of the UPSI.

Block deal is a trade, with a minimum quantity of 5 lakh shares or minimum value of Rs. 5 crore, executed through a single transaction, on the special "Block Deal window".

Provided that:

a. there should be no breach of Regulation 3;

b. both the parties had made a conscious and informed trade decision;

c. UPSI should not have been obtained under Regulation (3).

Provided further that, off-market trades shall be reported by the insiders to the Company within two working days which shall further notify the particulars of these trades to the stock exchange(s) where the securities are listed within two working days of receipt of such disclosure or from becoming aware of such information.

- the transaction in question, was carried out pursuant to a statutory or regulatory obligation to carry out a bonafide transaction,
- the transaction in question, was undertaken pursuant to the ***exercise of stock options*** in respect of which the exercise price was pre-determined in compliance of with applicable regulations,
- in case of ***non-individual insiders***, individuals taking the trade decision & individuals possessing the UPSI are different from each other **and** while taking the trade decision the individuals were not in possession of such UPSI **and** appropriate & adequate precautionary arrangements were made to ensure that these regulations are not violated **and** there are no evidence also of such arrangements having been breached,
- the trades were in accordance to ***trading plan*** set up in accordance with Regulation 5.

Explanation, for the purpose of above Regulation:

Question: Whether creation of a pledge or invocation of pledge is allowed when trading window is closed?

Answer: Yes, however, the pledgor or pledgee may demonstrate that the creation of the pledge or invocation of pledge was bona-fide and prove this innocence under proviso to sub-regulation (1) of Regulation 4.

- When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.
- In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the SEBI.
- The SEBI may specify such standards and requirements, from time to time, as it may deem necessary for the purpose of these regulations.

CASE LAWS

15.02.2021	***Mr. Prannoy Roy vs. Securities and Exchange Board of India (SEBI)***	***Supreme Court of India***

The appeals will be heard by the SAT without insisting on deposit of half the amount of fines as a pre-condition for hearing appeals.

Background / Facts of the Case

SEBI conducted an investigation into the suspected insider trading in the scrip of NDTV (hereinafter referred to as "the Company") during the period starting from September 01, 2006 to June 30, 2008 (hereinafter referred to as "Investigation Period").

While the investigation conducted into the matter, *inter alia*, revealed that Mr. Sanjay Dutt and his associated entities had indulged in insider trading in the scrip of NDTV (for which separate proceedings have been initiated) at the same time, the investigation also concurrently detected that Mr. Prannoy Roy and Mrs. Radhika Roy have carried out insider trading in the scrip of NDTV during the Investigation Period.

Mr. Prannoy Roy and Mrs. Radhika Roy had together bought 48,35,850 NDTV shares on December 26, 2007 at the rate of ₹400 per share. Subsequently, Mr. Prannoy Roy and Mrs. Radhika Roy had sold 24,10,417 and 25,03,259 shares respectively on April 17, 2008 at 10:26:42 at the rate of ₹435.10 per share. The trading in the shares of NDTV was done by Mr. Prannoy Roy and Mrs. Radhika Roy while in possession of UPSI (purchase on December 26, 2007) and within 24 hours of disclosing the price sensitive information to the stock exchanges (sale on April 17, 2008), during the period when the trading window for them was closed, thereby making a wrongful gain of ₹16,97,38,335/-

The gain made by Mr. Prannoy Roy and Mrs. Radhika Roy on the total number of shares jointly purchased by them during the UPSI period has been determined as below:

Name	***Buy Quantity during UPSI period pertaining to PSI-6****	***Actual sell price on April 17, 2008 (₹)***	***Actual buy price on December 26, 2007 (₹)***	***Gain (₹) #***
Prannoy Roy and Radhika Roy	A	B	C	(B-C) x A
	4835850	435.1	400	169738335

***Price Sensitive Information (PSI) - 6:** The Board of the Company decided to evaluate options for reorganization of the Company, which could include de-merger/ split of the Company into News related businesses and investments in 'Beyond News' businesses which are currently held through its subsidiary, NDTV Networks Plc.

Therefore, by making the aforesaid sales of Company's shares held by them, Mr. Prannoy Roy and Mrs. Radhika Roy have together received a gain of ₹16.97 crores for themselves.

Alleged Violations

Mr. Prannoy Roy and Mrs. Radhika Roy, being the "insiders" with respect to NDTV in terms of regulation 2(e) of the PIT Regulations, 1992, have traded in NDTV shares during UPSI period pertaining to PSI-6, while in possession of the UPSI. Regulation 3(i) of the PIT Regulations, 1992, *inter alia*, prohibits an insider, either on his own behalf or on behalf of any other person, from dealing in securities of a company listed on any stock exchange when he is in possession of any UPSI.

Further, in terms of regulation 4 of the PIT Regulations, 1992, any insider who deals in securities in contravention of regulation 3 is said to be guilty of insider trading. In view of the aforesaid discussions and factual findings, SEBI found that, in the instant case, Mr. Prannoy Roy and Mrs. Radhika Roy, by dealing in shares of NDTV on December 26, 2007, while in possession of unpublished price sensitive information (PSI- 6), have violated the provisions of section 12A(d), (e) of the SEBI Act, 1992 read with regulation 3(i) and regulation 4 of the PIT Regulations, 1992.

The PIT Regulations, 1992, have been repealed by the SEBI (Prohibition of Insider Trading) Regulations, 2015. As per Regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015, any proceedings initiated for contraventions of provisions of the PIT Regulations, 1992 are saved and, hence, can be proceeded with under the said PIT Regulations, 1992.

SEBI Order

Mr. Prannoy Roy and Mrs. Radhika Roy had made a wrongful gain of ₹16,97,38,335 while trading in the shares of the Company. The gains made by them have been calculated as the difference between actual sell price (i.e., ₹435.1) received and actual buy price (i.e., ₹400) of 4835850 shares of NDTV incurred by them.

In order to protect the interest of investors and the integrity of the securities market, SEBI, in exercise of its powers conferred under section 19 of the SEBI Act, 1992, read with section 11, 11(4) and 11B of the SEBI Act, 1992, issued the following directions:

(a) Mr. Prannoy Roy and Mrs. Radhika Roy, jointly or severally, disgorge the amount of wrongful gain of ₹16,97,38,335/-, along with interest at the rate of 6% per annum from April 17, 2008, till the date of actual payment of disgorgement amount along with interest, within 45 days from the date of coming into force of this order.

(b) Mr. Prannoy Roy and Mrs. Radhika Roy shall be restrained from accessing the securities market and further prohibited them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 2 years.

Appeal to SAT

Mr. Prannoy Roy and Mrs. Radhika Roy filed an appeal against the SEBI's order dated November 27, 2020 whereby SEBI had barred them from the securities market for two years and also directed them to disgorge illegal gains of ₹ 16.97 crore for indulging in insider trading more than 12 years ago.

SAT ORDER

SAT has directed NDTV's promoters Prannoy Roy and Radhika Roy to deposit 50 per cent of the disgorged amount before SEBI within four weeks. If NDTV deposits the amount, the balance amount will not be recovered during the pendency of the appeal before SAT.

Supreme Court Order

A bench headed by Chief Justice S A Bobde directed that appeals of the appellants shall be heard by the Securities Appellate Tribunal (SAT) at Mumbai without insisting on any deposit of amount.

Further, the Hon'ble Supreme Court vide its order dated February 15, 2021 exempted Prannoy Roy and Radhika Roy from making deposit before the SAT for hearing their appeals. The Hon'ble Supreme Court directed that "no amount shall be coercively recovered from the appellants (Prannoy Roy and Radhika Roy) for hearing the case".

References

1. *https://www.sebi.gov.in/enforcement/orders/nov-2020/order-in-the-matter-of-new-delhi-television-limited-mr-prannoy-roy-and-mrs-radhika-roy_48314.html*
2. *http://sat.gov.in/english/pdf/E2021_JO202181.PDF*
3. *http://sat.gov.in/english/pdf/E2021_JO2020558_1.PDF*
4. *https://main.sci.gov.in/supremecourt/2021/829/829_2021_31_6_26161_Order_15- Feb-2021.pdf*

22.03.2021	***Shruti Vora, Neeraj Kumar Agarwal, Parthiv Dalal and Aditya Omprakash Gaggar (Appellants) vs. Securities and Exchange Board of India (SEBI) (Respondent)***	***Securities Appellate Tribunal (SAT)***

A "forwarded as received" WhatsApp message circulated on a group regarding quarterly financial results of a Company closely matching with the vital statistics, shortly after the in-house finalization of the financial results by the Company and some time before the publication/disclosure of the same by the concerned Company, would not amount to an UPSI under the provisions of SEBI (Prohibition of Insider Trading) Regulations.

Facts of the case

The case pertains to the circulation of Unpublished Price Sensitive Information (UPSI) in various private WhatsApp groups about certain companies including Bajaj Auto Ltd., Bata India Ltd., Ambuja Cements Ltd., Asian Paints Ltd., Wipro Ltd. and Mindtree Ltd. As a result, SEBI vide its orders imposed a penalty of Rs. 15 Lakh each on Shruti Vora, Neeraj Kumar Agarwal, Parthiv Dalal and Aditya Omprakash Gaggar for violating the Sections 12 A (d) & 12 A (e) of the SEBI Act, 1992 and Regulation 3 (1) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations).

Hence, the appeals were filed by the appellants to SAT.

The SEBI orders show that numerous messages were retrieved from the devices of the appellants. Quarterly financial results of the above mentioned six companies for different period of time say December, 2016, March, 2017 were finalized after about 15 days of closure of the quarter by the respective finance team, tax team, auditor's team etc. All those were finalized around 15 days prior to respective disclosure of the same on the platform of the stock exchange. However, within a day or two of the finalization of the financial results, one liner WhatsApp messages in the present group were circulated which closely matched with the respective later on published financial results.

For instance the WhatsApp message was "Wipro revenue 13700 PBIT 2323 PBT 2758". Actual figure of the financial results published later on in details disclosed the essence as revenue 13764 crores PBIT 2323.6 ("PBIT – Profit before Interest and Tax") and PBT 2758.9 ("PBT – Profit before Tax").

Thus, the deviation between the figures given in the WhatsApp message and actual result was 0.47% regarding revenue, 0.03% in the case of PBIT and 0.03% in the case of PBT. Similar pattern was observed regarding the other WhatsApp messages regarding other companies for different quarterly period.

The SEBI in its orders reasoned that though the appellants were involved as employees or otherwise in the securities market, their duties did not involve sending any such messages to any of the clients and some of the entities to whom the messages were forwarded were not even clients.

Further the proximity of the circulation of the WhatsApp messages with publication of financial results, striking resemblances between the figures circulated via messages and actual results declared by the respective companies, also weighed with the learned AO in each of the case to come to the conclusion that the message was nothing but circulation of unpublished price sensitive information in violation of PIT Regulations.

Each of the appellant raised similar defenses. They submitted that the messages mined by the respondent SEBI from the devices admittedly would show that none of the appellants were the originator of the messages but they had simply forwarded the messages as received from some other sources.

SAT Order:

The SAT set aside the penalty imposed by the SEBI for forwarding allegedly UPSI of six companies on WhatsApp.

Further, the SAT said that AO of the SEBI failed –

- to appreciate that the appellants were pleading that the WhatsApp messages might have been originated from the brokerage houses, or from the estimates found on the platform of Bloomberg which were floated and were in the public domain.
- to take into consideration that there were numerous other messages of similar nature received and forwarded by the appellant which did not at all match with the published financial results.

Appellant Shruti Vora in the case of Wipro has specifically pointed out that along with the said message, a similar message regarding Axis Bank had also reached her which she had also forwarded. The published results, in that case, however, were widely different. The AO did not give any weightage to the same, SAT said.

- to prove any preponderance of probabilities that the impugned messages were unpublished price sensitive information, that the appellants knew that it was unpublished price sensitive information and with the said knowledge they or any of them had passed the said information to other parties.

For details: *http://sat.gov.in/english/pdf/E2021_JO2020313_25.PDF*

TRADING PLANS

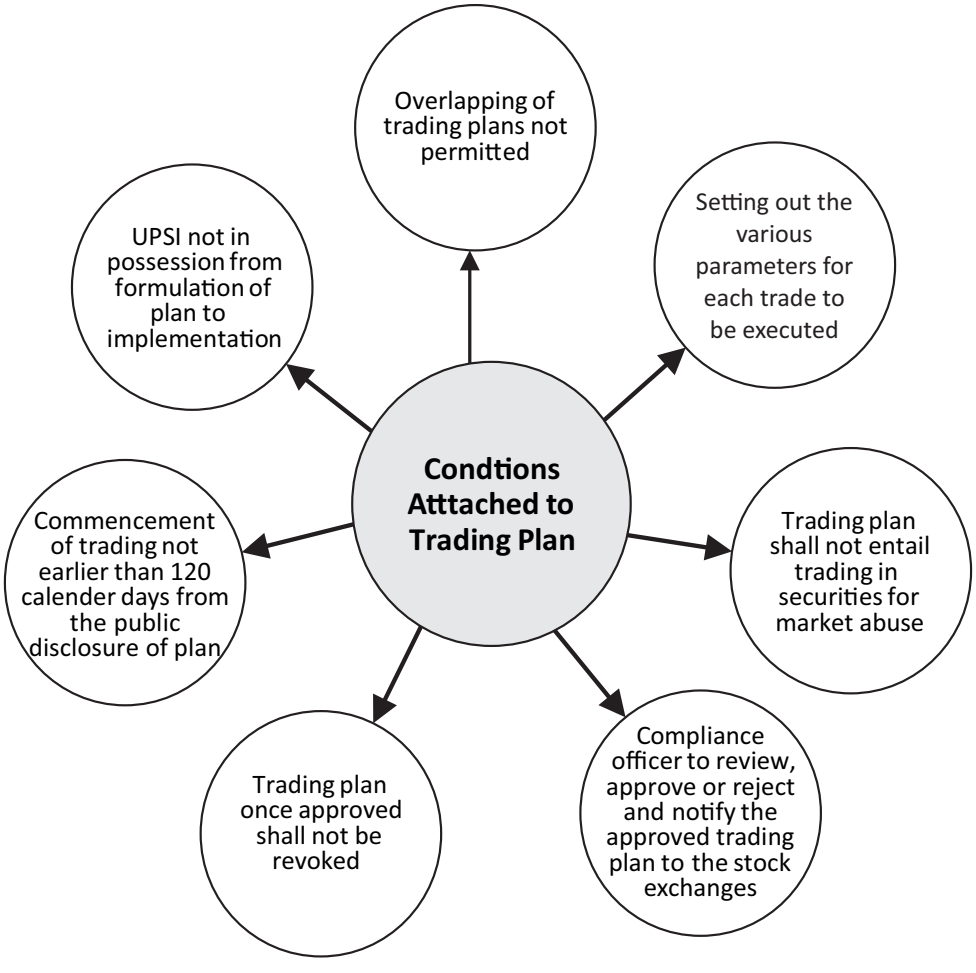
As per **Regulation 5**, an insider shall be entitled to formulate a trading plan in advance and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such plan.

The compliance officer shall review the trading plan to assess whether the plan would have any potential for violation of these regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor the implementation of the plan.

Mr. X traded in shares of company as per trading plan approved by the compliance officer. If at a later stage any unpublished price sensitive information comes to his knowledge, it will not affect the transaction, since Mr. X has already determined to make such transaction as per trading plan.

However, pre-clearance of trades shall not be required for a trade executed as per an approved trading plan.

Further, trading window norms shall not be applicable for trades carried out in accordance with an approved trading plan.



- The trading plan once approved shall be irrevocable and the insider shall mandatorily have to implement the plan, without being entitled to either execute any trade in the securities outside the scope of the trading plan or to deviate from it except due to the permanent in capacity or bankruptcy or operation of law.

  However, the implementation of the trading plan shall not be commenced if any unpublished price sensitive information in possession of the insider at the time of formulation of the plan has not become generally available at the time of the commencement of implementation.

  However, if the insider has set a price limit for a trade as per the parameters set out, the insider shall execute the trade only if the execution price of the security is within such limit. If price of the security is outside the price limit set by the insider, the trade shall not be executed.

  In case of non-implementation (full/partial) of trading plan due to either reasons enumerated in sub-regulation 4 or failure of execution of trade due to inadequate liquidity in the scrip, the following procedure shall be adopted:

  (i) The insider shall intimate non-implementation (full/partial) of trading plan to the compliance officer within two trading days of end of tenure of the trading plan with reasons thereof and supporting documents, if any.

  (ii) Upon receipt of information from the insider, the compliance officer, shall place such information along with his recommendation to accept or reject the submissions of the insider, before the Audit Committee in the immediate next meeting. The Audit Committee shall decide whether such non-implementation (full/partial) was bona fide or not.

  (iii) The decision of the Audit Committee shall be notified by the compliance officer on the same day to the stock exchanges on which the securities are listed.

  (iv) In case the Audit Committee does not accept the submissions made by the insider, then the compliance officer shall take action as per the Code of Conduct.

- The compliance officer shall approve or reject the trading plan within two trading days of receipt of the trading plan and notify the approved plan to the stock exchanges on which the securities are listed, on the day of approval.

Mr. A submitted his trading plan for approval after declaring the UPSI in his possession. The trading plan was approved subject to the condition that the UPSI in his possession would become generally available before commencement of trading. If due to some reasons, the said UPSI has not become generally available till the date of trade indicated in the approved trading plan, the commencement of trading by Mr. A should be deferred until such UPSI becomes generally available information.

Guidance from SEBI (dated 24th August 2015)

Question: Who will be approving authority for trades done by the Compliance Officer or his immediate relatives, as Insiders?

Guidance: The Board of Directors of the company shall be the approving authority in such cases and may stipulate such procedures as are deemed necessary to ensure compliance with these regulations.

Extracts from SEBI's Interpretive Letter dated 19th July, 2018 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of Hawkins Cookers Ltd. (HCL) regarding sale of shares by an Independent Director.

Facts of the case:

a) One of the company's independent directors wants to sell his equity shares of the company.

b) The sale shall be done as per a trading plan in accordance with regulation 4(iii) of the SEBI (PIT) Regulations, 2015.

c) As per para 8 of Schedule B to the PIT Regulations, while applying for preclearance, the said director will have to submit an undertaking to the company to the effect that he is not in possession of any Unpublished Price Sensitive Information (UPSI).

d) By virtue of participation in the Board meetings and access to the information that is shared at such meetings, the said director is deemed to be perpetually in possession of UPSI. Therefore, the said undertaking is not possible.

Question: a) Whether the said director may submit a trading plan as required for a plan to trade shares above INR 20 lakh in value and proceed with executing the same without giving the said undertaking.

b) What procedure should be followed by the company and/ or the said director such that the said director may lawfully execute the trade?

Guidance from SEBI: a) Regulation 5 of the PIT Regulations provides exception to the general rule that prohibits trading by insiders when in possession of UPSI. Further, regulation 5, inter alia, states that the trading plan shall be approved by the compliance officer and shall not entail trading in securities for market abuse. In this regard, regulation 5 (3) especially states that the compliance officer shall review the trading plan to assess whether the plan would have any potential for violation of PIT Regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor the implementation of the plan.

b) In the absence of an approved trading plan, designated persons are subject to the requirements of code of conduct formulated by the company in terms of regulation 9 read with schedule B to the PIT Regulations.

DISCLOSURE REQUIREMENTS

A pictorial representation of disclosure requirements under Regulation 7, covering initial, continual disclosures and disclosures by connected persons are given below.

INITIAL DISCLOSURES	CONTINUAL DISCLOSURES	DISCLOSURES BY OTHER CONNECTED PERSONS
Promoter / Member of Promoter Group / Director / Key Managerial personnel to disclose holding of their securities to the company Within 7 days from the date of their appointment/ becoming promoter or member of promoter group.	Every promoter/ **Member of Promoter Group/Designated Person** / director to disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified Company to notify to the exchange within 2 trading days of receipt of intimation.	Any other connected person or class of connected persons to make disclosures of holdings and trading in listed securities as prescribed.

Initial Disclosures [Regulation 7(1)]

(a) Every person on appointment as a key managerial personnel or a director of the company or upon becoming a promoter or member of the promoter group shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter.

Continual Disclosures [Regulation 7(2)]

(a) Every promoter, member of the promoter group, designated person and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

(b) Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.

Explanation. — It is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2).

Disclosures by other connected persons [Regulation 7(3)]

Any company whose securities are listed on a stock exchange may, at its discretion require any other connected person or class of connected persons to make disclosures of holdings and trading in securities of the company in such form and at such frequency as may be determined by the company in order to monitor compliance with these regulations.

This is an enabling provision for listed companies to seek information from those to whom it has to provide unpublished price sensitive information. This provision confers discretion on any company to seek such information. For example, a listed company may ask that a management consultant who would advise it on corporate strategy and would need to review unpublished price sensitive information, should make disclosures of his trades to the company.

Disclosures - Who, what and when?

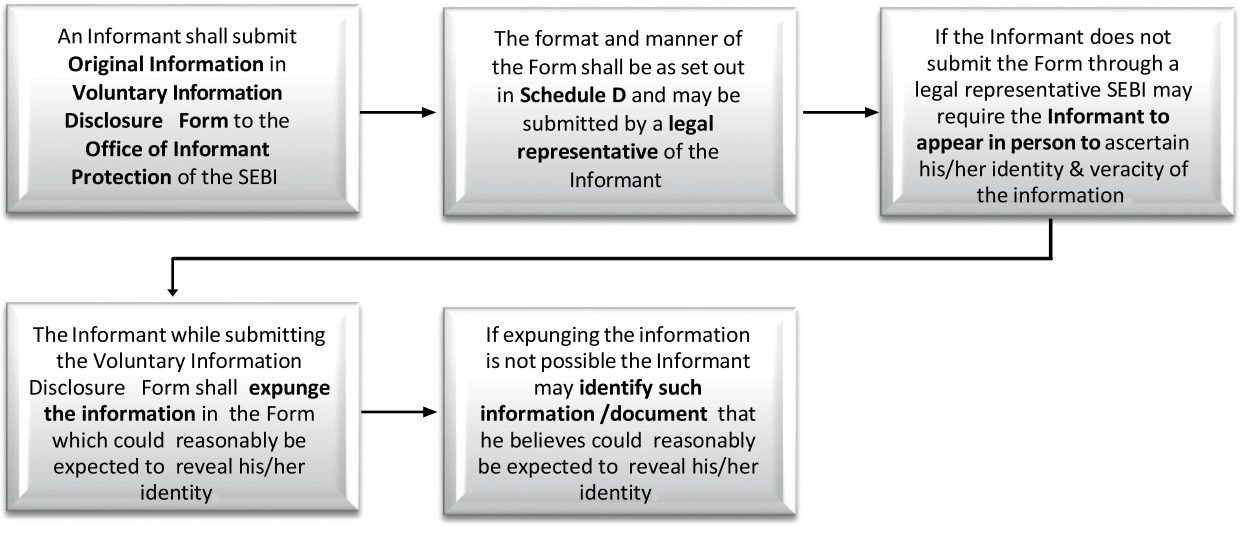
Who	***What***	***When***
Promoter/member of Promoter Group	Initial disclosure	Within 7 days from the date of their appointment/becoming promoter or member of promoter Group
	Continual Disclosure	the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified
Director	Initial disclosure	Within 7 days from the date of their appointment
	Continual Disclosure	the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified

Key Managerial personnel	Initial disclosure	Within 7 days from the date of their appointment
	Continual Disclosure (as Designated Person)	the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified
Designated Person	Continual Disclosure	the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified
Other Connected persons	Any company whose securities are listed on a stock exchange may, at its discretion require any other connected person or class of connected persons to make disclosures of holdings and trading in securities of the company in such form and at such frequency as may be determined by the company in order to monitor compliance with these regulations.	
Company	Company to notify to the exchange within 2 trading days of receipt of disclosure.	

INFORMANT INCENTIVES AND REWARDS

Chapter IIIA has been added to SEBI (Prohibition of Insider Trading) Regulations 2015 vide SEBI (Prohibition of Insider Trading (Third Amendment) Regulations, 2019 w.e.f December 26, 2019, prescribing for incentive and reward for the informants who submits to the SEBI a Voluntary Information Disclosure relating to any alleged violation of insider trading laws that has occurred, in occurring or has a reasonable belief that it is about to occur. The new provisions prescribe the manner of submitting information, various forms and procedure for determination of rewards and confidentiality of informants.

Brief process flow of submission to the SEBI [Regulation 7 (B)]



An Informant shall submit **Original Information** in **Voluntary Information Disclosure Form** to the **Office of Informant Protection** of the SEBI.

The format and manner of the Form shall be as set out in **Schedule D** and may be submitted by a **legal representative** of the Informant.

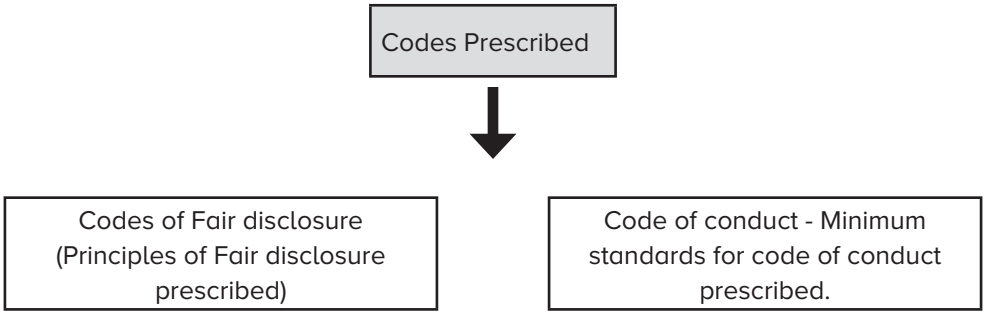
If the Informant does not submit the Form through a legal representative SEBI may require the **Informant to appear in person to** ascertain his/her identity & veracity of the information.

The Informant while submitting the Voluntary Information Disclosure Form shall **expunge the information** in the Form which could reasonably be expected to reveal his/her identity.

If expunging the information is not possible the Informant may **identify such information /document** that he believes could reasonably be expected to reveal his/her identity.

CODES OF FAIR DISCLOSURE AND CONDUCT [REGULATION 8 & REGULATION 9]

Chapter IV of SEBI (Prohibition of Insider Trading) Regulations 2015 deals with codes to be documented and followed by listed companies/market intermediaries.



SCHEDULE A- Principles for fair disclosure shall be as follows:

1. **Prompt public disclosure** of unpublished price sensitive information that would impact price discovery no sooner than credible and concrete information comes into being in order to make such information generally available.
2. **Uniform and universal dissemination** of unpublished price sensitive information to avoid selective disclosure.
3. Designation of a senior officer as a **chief investor relations officer** to deal with dissemination of information and disclosure of unpublished price sensitive information.
4. **Prompt dissemination** of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available.
5. **Appropriate and fair response to queries** on news reports and requests for verification of market rumours by regulatory authorities.
6. Ensuring that information shared with **analysts and research personnel** is not unpublished price sensitive information.

Question: Whether Chief Investor Relations Officer (CIRO) will also be responsible along with Compliance Officer for not disseminating information or non-disclosure of UPSI?

Answer: Regulation 2(c) clearly provides the functions and responsibilities of the compliance officer. Specific responsibilities to deal with dissemination of information and disclosure of UPSI are given to CIRO under clause 30 of Schedule A. It is company's discretion to designate two separate persons as CIRO and compliance officer, respectively for fulfilling specified responsibilities in cases where CIRO and compliance officer have been designated for overlapping functions, they shall be jointly and severally responsible.

7. Developing **best practices to make transcripts or records of proceedings of meetings** with analysts and other investor relations conferences on the official website to ensure official confirmation and documentation of disclosures made.
8. Handling of all unpublished price sensitive information on a **need-to-know basis**.

CODE OF FAIR DISCLOSURE

Board of directors of listed company to formulate and publish a code of practices and procedures for fair disclosure of UPSI on the official website of the company.

Regulatory intent

This provision intends to require every company whose securities are listed on stock exchanges to formulate a stated framework and policy for fair disclosure of events and occurrences that could impact price discovery in the market for its securities. Principles such as, equality of access to information, publication of policies such as those on dividend, inorganic growth pursuits, calls and meetings with analysts, publication of transcripts of such calls and meetings, and the like are set out in the schedule.

The Regulation

Regulation 8 (1) states that the board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.

To notify the code of fair disclosure/amendment thereof to the stock exchanges.

Regulation 8(2) states that every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed.

The board of directors of a listed company shall make a policy for determination of "legitimate purposes" as a part of "Codes of Fair Disclosure and Conduct" formulated under regulation 8.

The term "legitimate purpose" shall include sharing of unpublished price sensitive information in the ordinary course of business by an insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations.

CODE OF CONDUCT

Board of Directors of every listed company and the board of directors or head(s) of the organisation of every intermediary ensure that the chief executive officer or managing director formulate code of conduct with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons.

Regulatory intent

It is intended that every company whose securities are listed on stock exchanges and every intermediary registered with SEBI is mandatorily required to formulate a code of conduct governing trading by designated persons and their immediate relatives. The standards set out in the schedules are required to be addressed by such code of conduct.

The Regulation

Regulation 9 (1) states that the board of directors of every listed company and the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director shall formulate a code of conduct with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B (in case of a listed company) and Schedule C (in case of an intermediary) to these regulations, without diluting the provisions of these regulations in any manner.

Explanation – For the avoidance of doubt it is clarified that intermediaries, which are listed, would be required to formulate a code of conduct to regulate, monitor and report trading by their designated persons, by adopting the minimum standards set out in Schedule B with respect to trading in their own securities and in Schedule C with respect to trading in other securities.

The board of directors or head(s) of the organisation, of every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct.

Regulatory intent

It is intended to mandate persons other than listed companies and intermediaries that are required to handle unpublished price sensitive information to formulate a code of conduct governing trading in securities by their designated persons. These entities include professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies. Even entities that normally operate outside the capital market may handle unpublished price sensitive information. This provision would mandate all of them to formulate a code of conduct.

The Regulation

Regulation 9 (2) states the board of directors or head(s) of the organisation, of every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by their designated persons and immediate relative of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule C to these regulations, without diluting the provisions of these regulations in any manner.

Explanation - Professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies shall be collectively referred to as fiduciaries for the purpose of these regulations.

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

The board of directors or such other analogous authority shall in consultation with the compliance officer specify the **designated persons** to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation and **shall include**:-

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

(ii) Employees of material subsidiaries of such listed companies designated on the basis of their

functional role or access to unpublished price sensitive information in the organization by their board of directors;

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

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

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

Minimum Standards for Code of Conduct

Schedule B of these regulations lays down the following minimum standards for Code of Conduct for listed companies to regulate, monitor and report trading by designated persons:-

1. The **Compliance Officer shall report** to the board of directors and in particular, shall provide reports to the Chairman of the Audit Committee, if any, or to the Chairman of the board of directors at such frequency as may be stipulated by the board of directors but not less than once in a year.
2. All information shall be handled within the organisation on a **need-to-know** basis and no unpublished price sensitive information shall be communicated to any person except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.
3. The code of conduct shall contain norms for appropriate **Chinese Walls** procedures, and processes for permitting any designated person to "cross the wall".
4. **Designated persons and immediate relatives** of designated persons in the organisation shall be governed by an internal code of conduct governing dealing in securities.
5. Designated persons may **execute trades** subject to compliance with these regulations. Towards this end, a **notional trading window** shall be used as an instrument of monitoring trading by the designated persons.
6. The **trading window shall be closed** when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates.

Failure to close trading window by the Compliance Officer, during the occurring of an event that generates price-sensitive information is a violation of the said Code of Conduct which holds the Compliance Officer liable for adjudicating proceedings.

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When the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate

7. Designated persons and their immediate relatives **shall not trade** in securities when the trading window is closed. However, for unpublished price sensitive information not emanating from within the listed company, trading window may not be closed.
8. **Trading restriction period** shall be made applicable from the end of every quarter till 48 hours after the declaration of financial results. The gap between clearance of accounts by audit committee and board meeting should be as narrow as possible and preferably on the same day to avoid leakage of material information.

9. The trading window restrictions mentioned above **shall not apply** in respect of –

   (a) transactions specified in clauses (i) to (iv) and (vi) of the proviso to sub-regulation (1) of regulation 4 and in respect of a pledge of shares for a bonafide purpose such as raising of funds, subject to preclearance by the compliance officer and compliance with the respective regulations made by the Board;

   (b) transactions which are undertaken in accordance with respective regulations made by the SEBI such as acquisition by conversion of warrants or debentures, subscribing to rights issue, further public issue, preferential allotment or tendering of shares in a buy-back offer, open offer, delisting offer or transactions which are undertaken through such other mechanism as may be specified by the SEBI from time to time.

10. The timing for **re-opening of the trading window** shall be determined by the compliance officer taking into account various factors including the unpublished price sensitive information in question becoming generally available and being capable of assimilation by the market, which in any event shall not be earlier than forty-eight hours after the information becomes generally available.

11. When the trading window is open, trading by designated persons shall be subject to **pre-clearance by the compliance officer**, if the value of the proposed trades is above such thresholds as the board of directors may stipulate.

12. Prior to approving any trades, the compliance officer shall be entitled to seek **declarations** to the effect that the applicant for pre-clearance is not in possession of any unpublished price sensitive information.

13. He shall also have regard to whether any such **declaration is reasonably capable of being rendered inaccurate.**

14. The code of conduct shall specify any reasonable timeframe, which in any event shall not be more than seven trading days, within which **trades** that have been **pre-cleared have to be executed** by the designated person, failing which fresh pre-clearance would be needed for the trades to be executed.

15. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade **shall not execute a contra trade**. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to SEBI for credit to the Investor Protection and Education Fund administered by the SEBI under the Act.

    However, this shall not be applicable for trades pursuant to exercise of stock options.

16. The code of conduct shall stipulate such **formats** as the board of directors deems necessary for making applications for pre-clearance, reporting of trades executed, reporting of decisions not to trade after securing pre-clearance, and for reporting level of holdings in securities at such intervals as may be determined as being necessary to monitor compliance with these regulations.

17. Without prejudice to the power of the SEBI under the Act, the code of conduct shall stipulate the sanctions and disciplinary actions, including wage freeze, suspension, recovery, etc., that may be imposed, by the listed company required to formulate a code of conduct under sub-regulation (1) of regulation 9, for the contravention of the code of conduct. Any amount collected under this clause shall be remitted to the Board for credit to the Investor Protection and Education Fund administered by the SEBI under the Act.

18. The code of conduct shall specify that in case it is observed by the listed company required to formulate a code of conduct, that there has been a **violation of these regulations, it shall inform the SEBI promptly.**

19. Designated persons shall be required to **disclose names and Permanent Account Number** or any other identifier authorized by law of the following persons to the company on an annual basis and as and when the information changes:

    (a) immediate relatives,

    (b) persons with whom such designated person(s) shares a material financial relationship,

    (c) phone, mobile and cell numbers which are used by them.

    In addition, the names of educational institutions from which designated persons have graduated and names of their past employers shall also be disclosed on a one time basis.

    Explanation – The term **"material financial relationship"** shall mean a relationship in which one person is a recipient of any kind of payment such as by way of a loan or gift from a designated person during the immediately preceding twelve months, equivalent to at least 25% of the annual income of such designated person but shall exclude relationships in which the payment is based on arm's length transactions.

20. Listed entities shall have a process for how and when people are brought **'inside' on sensitive transactions.** Individuals should be made aware of the duties and responsibilities attached to the receipt of Inside Information, and the liability that attaches to misuse or unwarranted use of such information.

Institutional Mechanism for Prevention of Insider trading [Regulation 9A]

- The Chief Executive Officer, Managing Director or such other analogous person of a listed company, intermediary or fiduciary shall put in place adequate and effective system of internal controls to ensure compliance with the requirements given in these regulations to prevent insider trading.

  The internal controls shall include the following:

  (a) all employees who have access to unpublished price sensitive information are identified as designated person;

  (b) all the unpublished price sensitive information shall be identified and its confidentiality shall be maintained as per the requirements of these regulations;

  (c) adequate restrictions shall be placed on communication or procurement of unpublished price sensitive information as required by these regulations;

  (d) lists of all employees and other persons with whom unpublished price sensitive information is shared shall be maintained and confidentiality agreements shall be signed or notice shall be served to all such employees and persons;

  (e) all other relevant requirements specified under these regulations shall be complied with;

  (f) periodic process review to evaluate effectiveness of such internal controls.

- The board of directors of every listed company and the board of directors or head(s) of the organisation of intermediaries and fiduciaries shall ensure that the Chief Executive Officer or the Managing Director or such other analogous person ensures compliance with these regulations.

- The Audit Committee of a listed company or other analogous body for intermediary or fiduciary shall review compliance with the provisions of these regulations at least once in a financial year and shall verify that the systems for internal control are adequate and are operating effectively.

Every listed company shall formulate written policies and procedures for inquiry in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, which shall be approved by board of directors of the company.

The listed company shall have a whistle-blower policy and make employees aware of such policy to enable employees to report instances of leak of unpublished price sensitive information.

Every listed company shall formulate written policies and procedures for inquiry in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, which shall be approved by board of directors of the company.

The listed company shall have a whistle-blower policy and make employees aware of such policy to enable employees to report instances of leak of unpublished price sensitive information.

- Every listed company **shall formulate written policies and procedures for inquiry in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information**, which shall be approved by board of directors of the company and accordingly initiate appropriate inquiries on becoming aware of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information and inform the Board promptly of such leaks, inquiries and results of such inquiries.
- The listed company shall have a **whistle-blower policy** and make employees aware of such policy to enable employees to report instances of leak of unpublished price sensitive information.
- If an inquiry has been initiated by a listed company in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, the relevant intermediaries and fiduciaries shall co-operate with the listed company in connection with such inquiry conducted by listed company.

PENALTY PROVISIONS FOR VIOLATIONS OF THE REGULATIONS

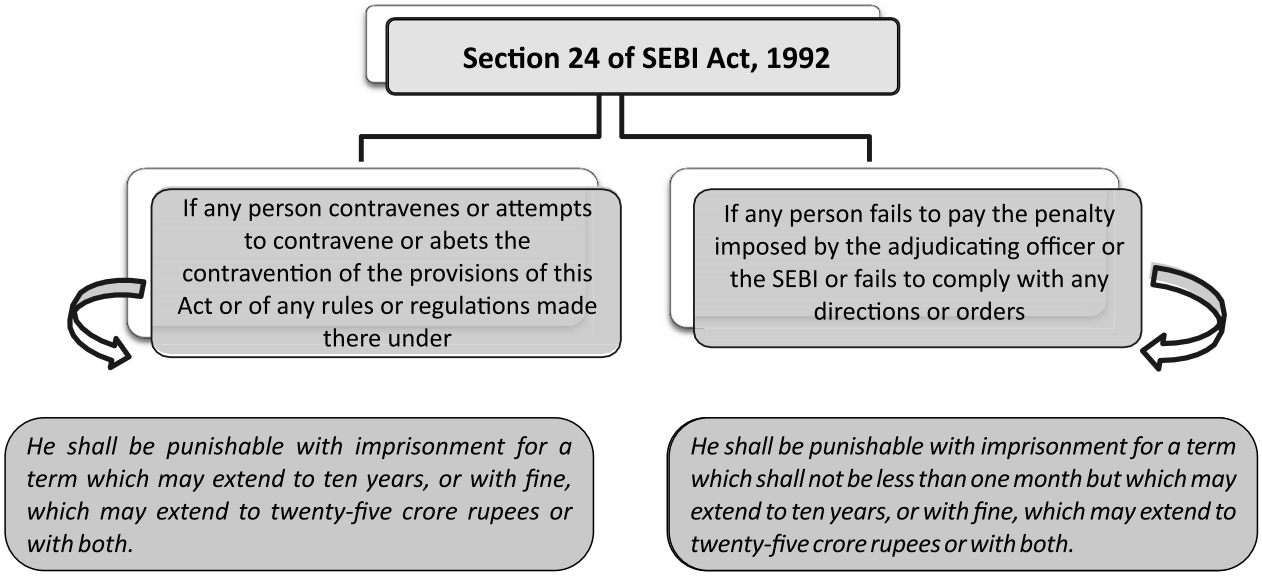
If any person violates provisions of these regulations, he shall be liable for appropriate action under Sections 11, 11 B, 11D, Chapter VIA and Section 24 of the SEBI Act.

Penalty for insider trading under section 15G of the SEBI Act, 1992

If any insider who, –

- either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or
- communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
- counsels, or procures for any other person to deal in any securities of any.

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



APPEAL TO SECURITIES APPELLATE TRIBUNAL

Violation of the provisions of these regulations attract huge monetary penalty and may lead to criminal prosecution. However, those aggrieved by an order of SEBI, may prefer an appeal to the Securities Appellate Tribunal **within a period of forty-five days of the order.**

ROLE OF COMPANY SECRETARY AS COMPLIANCE OFFICER

The obligations cast upon the Company Secretary in relation to insider trading regulations are summarized here under. The Company Secretary shall:

1. Ensure compliance with SEBI (Prohibition of insider Trading) Regulations, 2015 including maintenance of various documents.
2. Frame a Code of Fair Disclosure in line with the model code specified in the Schedule A of the regulations, get the same approved by the board of directors of the company and submit to the stock exchanges.
3. Frame Code of Conduct for the listed company to regulate, monitor and report trading by designated persons in accordance with the minimum standards as enumerated in the Schedule B to these regulations.
4. Receive initial disclosure from every Promoter, KMP and director or every person on appointment as KMP or director or becoming a Promoter shall disclose its shareholding in the prescribed form within :
   - 7 days of such appointment or becoming a promoter.
5. Receive from every Promoter, designated persons and director, continual disclosures of the number of securities acquired or disposed of and changes therein, even if the value of the securities traded, exceeds Rs. 10 lakh with single or series of transaction in any calendar quarter in prescribed form within two trading days of :
   - receipt of the disclosure, or
   - from becoming aware of such information

   Submit the disclosures received as above to the stock exchanges as applicable.

6. Pre Clear the trade pursuant to the requests received from the designated persons and also monitor trading in accordance with the regulations.
7. Ensure that no trading shall between 20th day prior to closure of financial period and 2nd trading day after disclosure of financial results.
8. Approve the trading plan and after the approval of the trading plan, as compliance officer shall notify the plan to the stock exchanges on which the securities are listed.
9. Maintain records, as a Compliance Officer, of all the declarations given by the directors/designated employees/ partners in the appropriate form for a minimum period of three years.
10. Take additional undertakings, as a compliance officer, from the insiders for approval of the trading plan. Such trading plan on approval will also be disclosed to the Stock Exchanges, where the securities of the company are listed.
11. Monitor trades and the implementation of the code of conduct under the overall supervision of the Board of Directors of the listed company.
12. Frame and then monitor adherence to the rules for the preservation of "Price sensitive information".
13. Ensure that proper internal control system is in place and continuously monitor and review of its functioning.
14. Suggest any improvements required in the policies, procedures, etc. to ensure effective implementation of the code.
15. Assist in addressing any clarifications regarding the SEBI (Prohibition of Insider Trading) Regulations, 2015 and the company's code of conduct.
16. Maintain a list of all information termed as 'price sensitive information'.
17. Maintain a record of names of files containing confidential information deemed to be price sensitive information and persons in charge of the same.
18. Ensure that files containing confidential information are kept secured.
19. Keep records of periods specified as 'Close period' and the 'Trading window'.
20. Ensure that the trading restrictions are strictly observed and all directors/officers/designated employees conduct all their dealings in the securities of the company only in a valid trading window and do not deal in the company's securities during the period when the trading window is closed.
21. Receive and maintain records of periodic and annual statement of holdings from directors/officers/ designated employees and their dependent family members.
22. Ensure that the "Trading Window" is closed at the time of :
    a) Declaration of financial results (quarterly, half-yearly and annual).
    b) Declaration of dividends (interim and final).
    c) Issue of securities by way of public/right/bonus etc.
    d) Any Major expansion plans or execution of new projects.
    e) Amalgamation, mergers, takeovers and buy-back.
    f) Disposal of whole or substantially whole of the undertaking.
    g) Any change in policies, plans or operations of the company.

23. Maintain a structured digital database of name(s) of persons and entities with whom unpublished price sensitive information are shared along with their PAN and other details.

24. Serve due notices to maintain confidentiality for every such person(s) with whom information are shared for legitimate purposes.

25. Educate the employees, board of directors regarding the provisions of the regulations and amendments from time to time for their better understanding and compliances.

26. Assist the board of directors to undertake enquiry or investigation in case of any suspected violation of the regulation and advising on taking appropriate disciplinary actions including transfer of all unlawful gain to the SEBI Investor Protection and Education Fund.

27. Place before the Chief Executive Officer/Partner or a committee notified by the organization/firm, as a Compliance Officer, on a monthly basis all the details of the dealing in the securities by designated employees/ directors/partners of the organization/firm.

CHECKLISTS UNDER SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

A. Checklists for KMP and other employees (including Company Secretary)

B. Checklists for Board of Directors

C. Checklists for PCS firms, advocates, auditors and practicing professionals.

A. CHECKLIST FOR COMPLIANCE OFFICER

As per Regulation 2(c) "compliance officer" means any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there, who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and **who shall be responsible for-**

"financially literate" shall mean a person who has the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

- compliance of policies, procedures,
- maintenance of records,
- monitoring adherence to the rules for the preservation of unpublished price sensitive information,
- monitoring of trades, and
- the implementation of the codes specified in these regulations.

under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be;

I. Compliance of policies and procedures

(a) Whether the Company has formulated code of practices and procedures for fair disclosure of UPSI as per the principles set out in the regulations.

(b) Whether the code of fair disclosure is published on the website of the company.

(c) Whether the code of fair disclosure and amendments thereof has been intimated to the stock exchanges.

(d) Whether the company has formulated code of conduct to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons.

(e) Whether the Board has designated the chief executive officer or managing director to formulate the code of conduct with their approval.

(f) Whether the company has designated a compliance office to administer the code of conduct and other requirements.

(g) It is advisable to train the employees on principles of fair disclosure and code of conduct.

II. Maintenance of records

Ensure that disclosures of trades by insiders are maintained for a minimum period of five years.

III. Monitoring UPSI

(a) Identify the nature of information, whether it is an Unpublished Price Sensitive Information or Generally available information.

(b) Designate a senior officer as Chief investor relations officer to deal with dissemination of information and disclosure of UPSI.

(c) Ensure to handle the UPSI on need to know basis.

(d) Do not share UPSI with analysts and research personnel.

(e) Disseminate UPSI uniformly to avoid selective disclosure.

(f) Identify the designated persons (Employees designated on the basis of their functional role) to monitor the use of UPSI.

(g) Declaration from persons seeking pre-clearance that they are not in possession of UPSI.

IV. To Advise the Board on Minimum Standards for Code of Conduct.

V. To advise on designated persons who shall be governed by the code of conduct. Employees designated on the basis of their functional role **("designated persons**") in the organisation shall be governed by an internal code of conduct governing dealing in securities.

VI. To advise on mechanism for dissemination of information on need-to-know basis.

VII. To advise on the closure of trading window.

VIII. To advise on the format of applications of pre-clearance, reporting of trades etc.

IX. To maintain restricted list of securities which shall be used as the basis for approving/rejecting applications for pre-clearance.

X. To prescribe norms for Chinese wall procedures.

XI. To prescribe the time limit within which the trades are to be executed from the date of pre-clearance which should not be more than seven days.

XII. Trading plans.

(a) Monitoring of Trading Plans.

(b) Approval of Trading plans.

XIII. Intimation to stock exchanges

(a) Intimation of Initial disclosures by Directors/KMP/Promoters/member of promoter group.

(b) Intimation of continual disclosures by Promoter/member of promoter group/directors/designated persons (including KMP as designated person).

(c) Intimation of disclosures by other connected persons.

B. CHECKLISTS FOR KMP AND OTHER EMPLOYEES (INCLUDING COMPANY SECRETARY)

- To make initial and continual disclosures as prescribed.

C. CHECKLISTS FOR BOARD OF DIRECTORS

(a) To formulate Code of Fair disclosure.

(b) To formulate Code of Conduct.

(c) Communication of UPSI in the best interest of the Company relating to transaction as given in Regulation 3(3).

(d) Obtaining non-disclosure agreement from parties to whom the UPSI is communicated as given in Regulation 3(4).

(e) In consultation with the compliance officer, to specify the designated persons to be covered by such code on the basis of their role and function in the organisation.

(f) To fix thresholds for pre-clearance.

(g) To prescribe format for application for pre-clearance, reporting of trades executed, reporting of decisions not to trade after securing pre-clearance, recording of reasons for such decisions and for reporting level of holdings in securities at such intervals as may be determined as being necessary to monitor compliance with these regulations.

CASE LAWS

April 19, 2022	***Balram Garg and Ms. Shivani Gupta & Ors. (Appellants) vs. Securities and Exchange Board of India (Respondent)***	***Supreme Court of India***

Insider Trading cannot be presumed due to proximity between the parties.

Brief Facts of the Case:

P. Chand Jeweller Pvt. Ltd. was incorporated on April 13, 2005 under the Companies Act, 1956 as a Private Limited Company. However, pursuant to a resolution passed by the shareholders on July 5, 2011, the company was converted into a Public Limited Company, following which the name of the company was changed to "PC Jeweller Ltd." ("PCJ").

SEBI vide its impounding order dated 17.12.2019 and a show-cause notice dated 24.04.2020 alleged that the Padam Chand Gupta (P.C. Gupta) was the Chairman of PCJ during the relevant period and was a "connected person" in terms of Regulation 2(1)(d)(i) and an "insider" under Regulation 2(1)(g) of the SEBI (Prevention of Insider Trading Regulations), 2015 ("PIT Regulations").

Balram Garg, who is the brother of P.C. Gupta and the Managing Director of PCJ is also a "connected person" in terms of Regulation 2(1)(d)(i) and an "insider" under Regulation 2(1)(g) of the PIT Regulations.

Sachin Gupta and Smt. Shivani Gupta (son and daughter-in-law of Balram Garg's deceased brother late P.C. Gupta) and Amit Garg (son of Amar Garg, who was also the brother of Balram Garg) traded on the basis of Unpublished Price Sensitive Information ("UPSI") received by them on account of their alleged proximity to P.C. Gupta and Balram Garg between the period from 01.04.2018 to 31.07.2018.

It was also alleged that all the appellants shared the same residence.

Aggrieved by the order of SEBI, the Appellants filed appeals before the Securities Appellate Tribunal ("SAT") and the Tribunal, vide its order dated 21.10.2021, dismissed the Appeals preferred by the Appellants.

Supreme Court Judgment:

Supreme Court allowed the appeals and set aside the final orders of Whole Time Member and SAT. It was held that in the absence of any material available on record to show frequent communication between the parties, there could not have been a presumption of communication of UPSI by the appellant Balram Garg. The trading pattern of the appellants cannot be the circumstantial evidence to prove the communication of UPSI by the appellant Balram Garg to the other appellants. Regulation 3 of the PIT Regulations, which deals with communication of UPSI, does not create a deeming fiction in law. Hence, it is only through producing cogent materials (letters, emails, witnesses etc.) that the said communication of UPSI could be proved and not by deeming the communication to have happened owing to the alleged proximity between the parties.

LESSON ROUND-UP

- To curb insider trading SEBI formulated SEBI (Prohibition of Insider Trading) Regulations, 2015 and which prescribes code of fair disclosure and conduct to be followed by listed companies and entities connected with them.
- The Insider Trading Regulations comprises of five chapters and five schedules encompassing the various regulations relating to Insider Trading.
- Insider means and includes deemed to be a connected person. The definition of deemed to be a connected person is inclusive and very elaborate.
- The regulations not only seeks to curb dealing in securities, they also seek to curb communicating or counseling about securities by the insiders.
- The regulations provide for initial as well as continual disclosures by members of the company by the directors/ employees/ designated employees/promoter/promoter group at regular interval.

GLOSSARY

Chinese Walls : Artificial barriers to the flow of information set up in large firms to prevent the movement of sensitive information between departments.

Generally Available Information : Generally available information means information that is accessible to the public on a non-discriminatory basis and shall not include unverified event on information reported in print or electronic media.

Immediate relative : Immediate relative means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities.

Securities : "Securities" shall have the meaning assigned to it under the Securities Contracts (Regulation) Act, 1956 or any modification thereof.

Trading day : Trading day means a day on which the recognized stock exchanges are open for trading.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. All designated persons are insiders, but all insiders are not designated persons. Do you agree ?
2. Whether trading on the basis of UPSI is prohibited even for persons not falling under the definition of 'Designated Persons' under the PIT Regulations?
3. The compliance officer wants to get his trading plans approved. What is the process of getting the approval?
4. Pre-approved trading plans does not require pre-clearance. Elucidate the statement.
5. The onus is on the insider to prove the innocence of use of unpublished price sensitive information. Explain the statement.
6. Attempt the following:
    a. Insider Trading normally means trading in shares of a company by the persons who are in the management of the company or close to them on the basis of price sensitive information which they possess but not others. In light of this, state whether the following information is price sensitive:
        i. The CEO of the company met with an accident and has been hospitalized,
        ii. Intended declaration of bonus issue,
        iii. Increase in Repo rate by RBI by 15 basis point,
        iv. Company is planning for diversification through opening of another plant.
    b. Sandy was the Finance Manager of Quick Works Ltd. a public listed company. He was alleged in the case of insider trading though however he left the company 110 days prior to the allegation imposed on him. He contended that he cannot be treated as the "connected person" as he has left the organization prior to the act of insider trading. Was his contention valid? Answer with reasons, in brief.

LIST OF FURTHER READINGS

- SEBI Manual
- SEBI Circulars
- SEBI Notifications
- SEBI Orders

OTHER REFERENCES (Including Websites and Video Links)
• *www.sebi.gov.in* • *www.icsi.edu* • *www.nseindia.com* • *www.bseindia.com* • *www.nsdl.co.in* • *www.cdslindia.com* • *www.sat.gov.in*

Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market

Lesson 14

KEY CONCEPTS

■ Dealing in Securities ■ Fraud ■ Appointing Authority ■ Investigation ■ Investigating Authority ■ Unfair Trade Practices

Learning Objectives

To understand:

- Genesis of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003
- Concept of fraudulent and unfair trade practice
- Powers of Investigating Authority
- Actions to be taken by SEBI in case of violation
- To provide clarity among the intermediaries, issuers, investors and other connected persons in the securities markets about the practices that are prohibited, fraudulent and unfair

Lesson Outline

- Genesis and Background
- SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003
  - Important Definitions
  - Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market
  - Investigation
  - Power of Investigating Authority
  - Submission of Report to SEBI
  - Enforcement by the SEBI
- Case Laws
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- Securities & Exchange Board of India Act, 1992
- SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

INTRODUCTION

The SEBI (Prohibition of Fraudulent and Unfair Trade Practices in relation to the Securities Market) Regulations, 2003 enable SEBI to investigate into cases of market manipulation and fraudulent and unfair trade practices. These regulations empower SEBI to investigate into violations committed by any person, including an investor, issuer or an intermediary associated with the securities market. The regulations define frauds as acts, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person or agent while dealing in securities in order to induce another person with his connivance or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss. The regulations specifically prohibit dealing in securities in a fraudulent manner, market manipulation, misleading statements to induce sale or purchase of securities, and unfair trade practices relating to securities. SEBI can conduct investigation, suo moto or upon information received by it, through an investigation officer in respect of conduct and affairs of any person buying/selling/dealing in securities. Based on the report of the investigating officer, SEBI can initiate action for suspension or cancellation of registration of an intermediary.

GENESIS AND BACKGROUND

Section 11(2) (e) of the SEBI Act, 1992 prohibits fraudulent and unfair trade practices relating to securities market. However, SEBI Act does not prescribe or specify as to which practices would be considered to be fraudulent and unfair trade practices. While the fraudulent and unfair trade practices are commonly understood, it was felt that these practices be defined specifically to provide clarity amongst the intermediaries, issuers, investors and other connected persons in the securities markets about the practices that are prohibited, fraudulent and unfair.

With this objective in mind, the SEBI came out with the draft of the Regulations for Prohibition of Fraudulent and Unfair Trade Practices relating to securities market on March 16, 1995 for public comments defining the fraudulent and unfair trade practices. These draft regulations were brought out to cover market manipulation on the stock exchanges, practices like front running, price rigging, artificial increasing or decreasing the prices of the securities within the ambit of these regulations.

The guiding principles behind the drafting of these regulations were that a market will function as an efficient market only if those seeking to disturb its equilibrium and those seeking to generate false signals shall be prohibited from doing so and wrongdoers shall be punished.

In May 2002, SEBI proposed to review the entire fraudulent and unfair trade practices regulations. After review, the SEBI came out with SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 on July 17, 2003.

SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003

Important Definitions

- **Dealing in Securities [Regulation 2 (1) (b)]**

  Dealing in Securities includes:

  (i) an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy,

sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any persons including as principal, agent, or intermediary referred to in section 12 of the SEBI Act , either by themselves or through mule accounts;

(ii) such acts which may be knowingly designed to influence the decision of investors in securities; and

(iii) any act of providing assistance to carry out the aforementioned acts.

- **Fraud [Regulation 2(1)(c)]**

"Fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

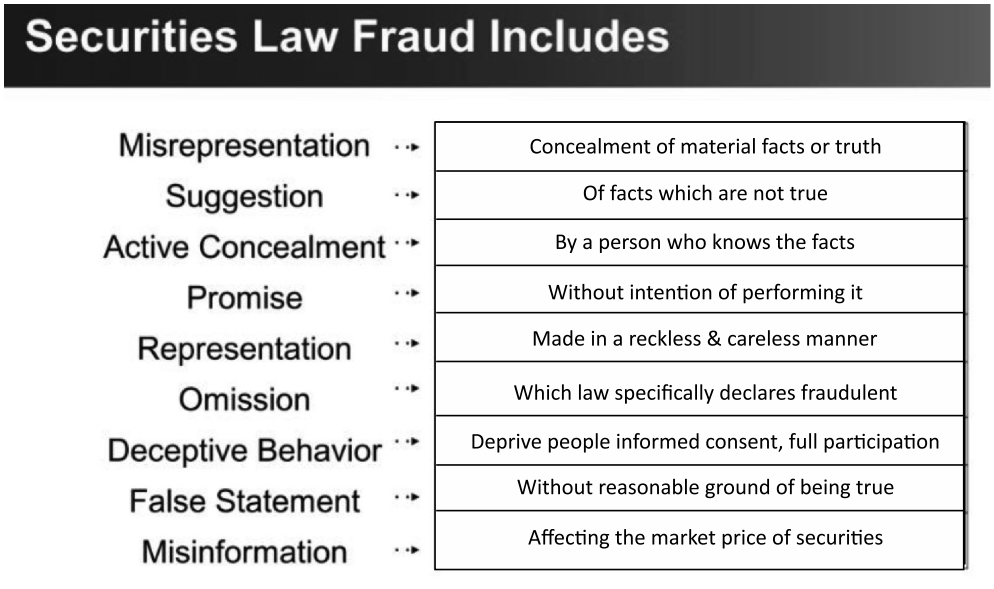
(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent;

(7) deceptive behaviour by a person depriving another of informed consent or full participation;

(8) a false statement made without reasonable ground for believing it to be true;

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.



Exceptions to 'Fraud'

Regulation 2 (1) (c) of SEBI (Prohibtion of Fradulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 provides for certain exceptions to 'Fraud' and states that nothing contained in the clause shall apply to any general comments made in good faith in regard to-

(a) the economic policy of the government

(b) the economic situation of the country

(c) trends in the securities market or

(d) any other matter of a like nature

whether such comments are made in public or in private.

- **Investigating Authority [Regulation 2(1)(d)]**

  "Investigating Authority" means any person authorized by the SEBI to undertake investigation under section 11C of the SEBI Act.

- **Mule Account [Regulation 2 (1) (da)]**

  "Mule Account" includes a trading account maintained with a stock broker or a dematerialised account or bank account linked with such trading account in the name(s) of a person, where the account is effectively controlled by another person, whether or not the consideration for transactions in the account are paid by such other person.

PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO THE SECURITIES MARKET

Prohibition of certain dealings in securities [Regulation 3]

No person shall directly or indirectly -

a) buy, sell or otherwise deal in securities in a fraudulent manner;

b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the SEBI Act or the rules or the regulations made there under;

c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the SEBI Act or the rules and the regulations made there under.

Example:

1. Ramesh is working as Finance Executive with company ABC Ltd. He used to receive instructions from Piyush, who is Managing Director of ABC Ltd. Based on the said instructions Ramesh used to trade on behalf of Piyush. Ramesh indulged in front running by using information received from Piyush for trading in same scrip and squared off trades along with trades of Piyush for making wrongful gain.
2. X bought shares in advance of ABC company based on the price-sensitive information received from the employee of XYZ and later sold those shares of ABC company to XYZ company for profit (front-running).

Prohibition of Manipulative, Fraudulent and Unfair Trade Practices [Regulation 4]

(1) Regulation 4 provides that no person shall indulge in a manipulative fraudulent or an unfair trade practice in securities markets.

> Any act of diversion, mis-utilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company or transactions through mule accounts for indulging in manipulative, fraudulent and unfair trade practice shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

(2) Further, any dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves any of the following:—

(a) knowingly indulging in an act which creates false or misleading appearance of trading in the securities market;

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

(c) inducing any person to subscribe to an issue of the securities for fraudulently securing the minimum subscription to such issue of securities, by advancing or agreeing to advance any money to any other person or through any other means;

(d) inducing any person for dealing in any securities for artificially inflating, depressing, maintaining or causing fluctuation in the price of securities through any means including by paying, offering or agreeing to pay or offer any money or money's worth, directly or indirectly, to any person;

(e) any act or omission amounting to manipulation of the price of a security including, influencing or manipulating the reference price or bench mark price of any securities;

(f) knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

(h) selling, dealing or pledging of stolen, counterfeit or fraudulently issued securities whether in physical or dematerialized form:

Provided that if:-

(i) the person selling, dealing in or pledging stolen, counterfeit or fraudulently issued securities was a holder in due course; or

(ii) the stolen, counterfeit or fraudulently issued securities were previously traded on the market through a bonafide transaction;

(iii) such selling, dealing or pledging of stolen, counterfeit or fraudulently issued securities shall not be considered as a manipulative, fraudulent, or unfair trade practice.

(i) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities;

(j) a market participant entering into transactions on behalf of client without the knowledge of or instructions from client or misutilizing or diverting the funds or securities of the client held in fiduciary capacity;

(k) circular transactions in respect of a security entered into between persons including intermediaries to artificially provide a false appearance of trading in such security or to inflate, depress or cause fluctuations in the price of such security;

(l) fraudulent inducement of any person by a market participant to deal in securities with the objective of enhancing his brokerage or commission or income;

(m) an intermediary predating or otherwise falsifying records including contract notes, client instructions, balance of securities statement, client account statements;

(n) any order in securities placed by a person, while directly or indirectly in possession of information that is not publically available, regarding a substantial impending transaction in that securities, its underlying securities or its derivative;

(o) Knowingly planting false or misleading news which may induce sale or purchase of securities;

(p) mis-selling of securities or services relating to securities market;

Mis-selling means sale of securities or services relating to securities market by any person, directly or indirectly, by-

- knowingly making a false or misleading statement, or
- knowingly concealing or omitting material facts, or
- knowingly concealing the associated risk, or
- not taking reasonable care to ensure suitability of the securities or service to the buyer.

(q) illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any collective investment scheme by any person.

Examples:

1. Suresh is employed as the Managing Director and Chief Executive Officer in XYZ Ltd. a public listed company. The auditors raised a suspicion regarding the veracity of the financial statements of the Company. The share price of the Company had gone up due to the misstatements. Hence, Suresh has violated the provisions of section 12A(a), 12(A)(b) and 12A(c) of the Securities and Exchange Board of India Act 1992, read with Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(k) and 4(2)(r) of the PFUTP Regulations, 2003.
2. The company 'VCL' came out with an Initial Public Offering of 10 lakh equity shares of Rs. 10 which was subsequently listed on Delhi Stock Exchange, Bombay Stock Exchange Ltd. (BSE) and National Stock Exchange of India Limited (NSE). The company has issued the misleading advertisements. Hence, the company has violated the provisions of Regulations 4, 5 and 6 of the PFUTP Regulations, 2003.

INVESTIGATION

Power of the SEBI to order investigation [Regulation 5]

Where the SEBI, the Chairman, the member or the Executive Director (hereinafter referred to as "appointing authority") has reasonable ground to believe that—

(a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market in violation of these regulations;

(b) any intermediary or any person associated with the securities market has violated any of the provisions of the Act or the rules or the regulations,

it may, at any time by order in writing, direct any person (hereinafter referred to as the "Investigating Authority") specified in the order to investigate the affairs of such intermediary or persons associated with the securities market or any other person and to report thereon to the SEBI in the manner provided in section 11C of the SEBI Act.

Powers of Investigating Authority [Regulation 6]

Without prejudice to the powers conferred under the SEBI Act, the Investigating Authority shall have the following powers for the conduct of investigation, namely:—

(1) to call for information or records from any person as per section 11(2)(i) of the SEBI Act;

(2) to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in section 12 of the Act) which intends to get its securities listed on any recognized stock exchange where the Investigating Authority has reasonable grounds to believe that such company has been conducting its activities in violation of these regulations;

(3) to require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorized by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of the investigation;

(4) to keep in his custody any books, registers, other documents and record produced for a maximum period of six months:

However, the Investigating Authority may call for any book, register, other document or record if the same is needed again:

Further, if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced before the Investigating Authority, he shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced;

(5) to examine orally and to record the statement of the person concerned or any director, partner, member or employee of such person and to take notes of such oral examination to be used as an evidence against such person :

However, the said notes shall be read over to, or by, and signed by, the person so examined;

(6) to examine on oath any manager, managing director, officer or other employee of any intermediary or any person associated with securities market in any manner in relation to the affairs of his business and

may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally;

(7) to call for information and record from any person including any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which are under investigation;

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

(9) to keep in his custody the books, registers, other documents and record seized under these regulations for such period not later than the conclusion of the investigation as he considers necessary and thereafter to return the same to the person, the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person from whose custody or power they were seized:

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

(10) every search or seizure made under this regulation shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures made under that Code.

Duty to co-operate, etc. [Regulation 8]

(1) It shall be the duty of every person in respect of whom an investigation has been ordered under Regulation 5-

(a) to produce to the Investigating Authority or any person authorized by him such books, accounts and other documents and record in his custody or control and to furnish such statements and information as the Investigating Authority or the person so authorized by him may reasonably require for the purposes of the investigation;

(b) to appear before the Investigating Authority personally when required to do so by him under regulation 6 to answer any question which is put to him by the Investigating Authority.

(2) Without prejudice to the provisions of the Companies Act, 2013, it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 of the SEBI Act or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorized by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) Such person shall—

(a) allow the Investigating Authority or any person authorized by him in this behalf to have access to the premises occupied by such person at all reasonable times for the purpose of investigation;

(b) extend to the Investigating Authority or any person authorized by him in this behalf reasonable facilities for examining any books, accounts and other documents in his custody or control (whether kept manually or in computer or in any other form) reasonably required for the purposes of the investigation;

(c) provide to such Investigating Authority or any person authorized by him in this behalf any such books, accounts and records which, in the opinion of the Investigating Authority, are relevant to the investigation or, as the case may be, allow the Investigating Authority or any person authorized by him in this behalf to take computer print-outs thereof.

Submission of report to SEBI [Regulation 9]

The Investigating Authority shall, on completion of investigation, after taking into account all relevant facts, submit a report to the appointing authority. However, the Investigating Authority may submit an interim report pending completion of investigations if he considers necessary in the interest of investors and the securities market or as directed by the appointing authority.

Enforcement by the SEBI [Regulation 10 and 11]

If SEBI is satisfied that there is a violation of these regulations and after giving a reasonable opportunity of hearing to the persons concerned, may issue directions or take action.

Further, the SEBI may, in the interest of investors and securities market, dispense with the opportunity of pre-decisional hearing by recording reasons in writing and shall give an opportunity of post-decisional hearing to the persons concerned as expeditiously as possible.

Regulations 11(1) prescribed that, the SEBI may, by an order, for reasons to be recorded in writing, in the interests of investors and securities market, issue or take any of the following actions or directions, either pending investigation or enquiry or on completion of such investigation or enquiry, namely:—

(a) suspend the trading of the security found to be or *prima facie* found to be involved in fraudulent and unfair trade practice in a recognized stock exchange;

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is in violation or *prima facie* in violation of these regulations;

(e) direct and intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of a fraudulent and unfair transaction;

(f) require the person concerned to call upon any of its officers, other employees or representatives to refrain from dealing in securities in any particular manner;

(g) prohibit the person concerned from disposing of any of the securities acquired in contravention of these regulations;

(h) direct the person concerned to dispose of any such securities acquired in contravention of these regulations, in such manner as the SEBI may deem fit, for restoring the *status quo ante*.

Any final order passed under sub-regulation (1) shall be put on the website of the SEBI.

Manner of service of summons and notices issued by the SEBI [Regulation 11A]

(1) A summons or notice issued by the SEBI shall be served on the person through any of the following modes, namely—

(a) by delivering or tendering it to that person or his duly authorised agent; or

(b) by sending it to the person by fax or electronic mail or electronic instant messaging services along with electronic mail or by courier or speed post or registered post:

However, the courier or speed post or registered post shall be sent to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain, with acknowledgment due:

Further, a summons or notice sent by fax shall bear a note that the same is being sent by fax and in case the document contains annexure, the number of pages being sent shall also be mentioned:

Also, a summons or notice sent through electronic mail or electronic instant messaging services along with electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service.

(2) In case of failure to serve a summons or notice through any one of the modes as mentioned above, the summons or notice may be affixed on the outer door or some other conspicuous part of the premises in which the person resides or is known to have last resided, or carried on business or personally works, or last worked, for gain and a written report thereof shall be prepared in the presence of two witnesses.

(3) In case of failure to affix the summons or notice on the outer door as provided under sub-regulation (2), the summons or notice shall be published in at least two newspapers, one of which shall be in an English daily newspaper having nationwide circulation and another shall be in a newspaper having wide circulation published in the language of the region where that person was last known to have resided or carried on business or personally worked for gain.

Suspension or cancellation of registration [Regulation 12]

(1) The SEBI may, without prejudice to any action under the securities laws or directions or circulars issued thereunder, by an order, for reasons to be recorded in writing, in the interests of investors and securities market take the following action against an intermediary:

(a) issue a warning or censure;

(b) suspend the registration of the intermediary; or

(c) cancel of the registration of the intermediary.

However, no final order of suspension or cancellation of an intermediary for violation of these regulations shall be passed unless the procedure specified in the regulations applicable to such intermediary under the SEBI [(Intermediaries) Regulations, 2008] is complied with.

CASE LAWS

31.01.2024	***Kishan Vishram Nanda, Kishan Vishram Nanda HUF and six family members (Noticees)*** ***Order in the matter of Front-Running of the Trades of Sanctum Wealth Management Private Limited now known as Sanctum Wealth Private Limited***	***Whole time Member, SEBI***

Facts of the Case:

Pursuant to the receipt of the said alert, SEBI carried out an investigation into the matter to verify the veracity of the information brought out in the alert and ascertain whether there had been any violation of the provisions of the SEBI Act, 1992 and any other Regulations or provisions of securities laws. Consequent to the completion of investigation in the matter, a common Show Cause Notice dated May 20, 2021 ("SCN") was issued to the entities, i.e., Kishan Vishram Nanda and entities related to him, based on the findings of the said investigation. In this regard, the following facts have inter alia been brought out in the SCN with respect to the conduct of the Noticees:

a. Kishan Vishram Nanda worked as an equity dealer in the broking arm of Sanctum ("Sanctum-Broker") for the Big Client, which was the PMS arm of Sanctum i.e., Sanctum-PMS. Owing to this position, he

was privy to the information regarding the impending trade orders of the Big Client, information that was not publicly available.

b. Kishan Vishram Nanda opened a trading account in the name of Kishan Vishram Nanda HUF and also opened six additional trading accounts in the name of his family members.

c. Kishan Vishram Nanda traded through these accounts to front run the impending trade orders of the Big Client i.e., Sanctum PMS.

d. Kishan Vishram Nanda was the Information Carrier("IC") as he was in possession of non-public information regarding impending trade orders of Sanctum PMS and the main front runner who traded through his HUF account (Kishan Vishram Nanda HUF) and through his proxy trading accounts in the names of his six family members. The accounts of these family members were used as Mule Accounts to front run the impending trade orders of the Big Client.

SEBI has defined front-running in one of its circular (CIR/EFD/1/2012 dated May 25, 2012) in the following manner-

"Front-running; for the purpose of this circular, 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."

Thus, from the above, any trading activity to be considered as front-running should satisfy the following:

a. information regarding an impending substantial large order of an investor in a particular security that is not publicly available; and

b. order placed by the alleged front-runner in securities prior to the large order of the Big Client, while possessing the aforesaid non-public information.

Based on the above, it has been alleged that the Noticees have violated Section 12A (a), (b), (c) & (e) of SEBI Act, 1992 ("SEBI Act") read with Regulations 3(a), 3(b), 3(c), 3(d), 4 (1) and 4 (2)(q) of the Prohibition of Fraudulent and Unfair Trade Practice Regulations ("PFUTP Regulations").

Penalty for fraudulent and unfair trade practices. Section 15HA of SEBI Act, 1992:

"If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

SEBI Directions and Monetary Penalties–

1. Kishan Vishram Nanda is restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly for a period of 3 years.
2. Kishan Vishram Nanda is restrained from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, or associating himself with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI, in any capacity, for a period of 3 years.
3. Kishan Vishram Nanda is imposed with monetary penalty of Rs. 5 lakh.
4. Kishan Vishram Nanda HUF and other family members are restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly for a period of 1 year and restrained from holding any position of Director or key managerial

personnel in any listed company or any intermediary registered with SEBI, or associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI, in any capacity, for a period of 1 year.

5. Noticees are directed, jointly and severally, to disgorge a sum of Rs. 34,84,605.26 along with an interest at the rate of 12% simple interest per annum (computed from the last front-running date i.e., October 16, 2020 till the date of actual payment) within a period of 45 days from the date of receipt of this Order.

For details: https://www.sebi.gov.in/enforcement/orders/jan-2024/order-in-the-matter-of-front-running-of-the-trades-of-sanctum-wealth-management-private-limited-now-known-as-sanctum-wealth-private-limited_80981.html

25.08.2020	***Mrs. Bharti Goyal (Appellant) vs. SEBI (Respondent) and Mr. Laxmikant Vyas (Appellant) vs. SEBI (Respondent)***	***Securities Appellate Tribunal (SAT)***
05.01.2021	***SEBI (Appellant) vs. Bharti Goyal etc. (Respondent)***	***The Supreme Court of India***

The direction for substituting the penalty which has been imposed under Section 15HA of SEBI Act, 1992 with a warning is contrary to the statutory provisions.

Background/ Facts of the Case

The SEBI conducted an investigation in the matter of Mapro Industries Limited (Mapro/MIL) during July 1, 2014 to November 30, 2014 (investigation period) and the possible violation of Regulations 3(a), (b), (c) & (d), 4(1), 4(2) (a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 by the Noticees (total 16 entities).

SEBI had initiated investigation against sixteen entities, including the appellant, for manipulating the price of the scrip of Mapro Industries Limited (**Mapro**), a listed company, by trading above the last traded price (**LTP**) and violating various provisions of the SEBI (PFUTP) Regulations, 2003. While six of the entities which had engaged in market manipulation were suspected to be related entities, the appellants were part of the other ten entities which were not shown to be connected to these related entities.

Alleged Violations

It was alleged that during this period the price of the scrip was raised from Rs.79.15 on July 1, 2014 to a high of Rs.493.40 on November 10, 2014 and thereafter closing at Rs.430 on November 28, 2014. Though only six entities were found to be suspected group entities the scope of the investigation was expanded to another ten entities who were found to be part of the top traders during the investigation period. What is held in the impugned order is that though there is no connection/relationship of these ten entities to the six suspected entities by the very manipulative nature of their trades such as placing buy orders mostly at the beginning of trading hours and substantively above the Last Traded Price (LTP) they have manipulated the trading system and disturbed the market equilibrium in the scrip of Mapro.

Together these ten entities raised the price of the scrip by Rs.241.95 by trading a total quantity of 1174 shares in 43 trades. It was also held in the impugned order that the contribution of these ten entities was about 69% of the total net LTP which was achieved in 29 trades with a total quantity of just 234 shares.

SEBI Findings

The SEBI observed that they had executed 120 trades as buyers and out of which their 22 trades contributed to positive LTP of Rs. 139.95 which was 18.07% of market positive LTP. On further analysis of said 22 trades, it was observed that buy orders were placed first in 14 trades and LTP contribution of such trades were Rs. 88.95 which was 11.48% of the total positive market LTP.

SEBI, from the trading pattern of the entities, noted that the entities manipulated the share price of the company by contributing positively to the LTP (last traded price) which consequently led to the rise in the price of the scrip.

SEBI found that the trades done by the Noticees are in violation thus liable for monetary penalty under Section 15HA of SEBI Act for violation of Regulations3(a), (b), (c) & (d), 4(1), 4(2) (a) and (e) of SEBI PFUTP Regulations, 2003. Without delving into the aspect of connection between the appellants and the connected/ suspected entities, SEBI held that by the very nature of their trades, the appellants manipulated the scrip price and disturbed the market equilibrium.

SEBI Order

SEBI imposed a penalty of Rs. 5,00,000 each on 10 individuals and six entities under Section 15 HA of the SEBI Act, 1992 for violating the Regulations 3(a), (b), (c) & (d), 4(1), 4(2) (a) and (e) of SEBI PFUTP Regulations, 2003.

Appeal before Securities Appellate Tribunal (SAT)

Bharti Goyal, one of the individual one which fine was imposed, has filed an appeal before SAT. Ms. Bharti Goyal, appeared in person during hearing and contended that she invested in the shares of Mapro in the normal course of business as she is a small-time trader though not frequent and there is no connection or relationship with any connected/suspected entity and finally lost money in this investment.

The learned counsel for the Respondent in Appeal contended that placing buy orders well above the LTP is completely irrational as no rational investor would like to buy shares at a price substantially higher than the LTP.

While the trading pattern of Appellant; placing the buy orders for generally very small number of shares and the timing of the orders; all point towards possible violation of the provisions of PFUTP Regulations it is also possible that an investor through a thorough observation of the movement of the scrip could be placing orders in the system without any intention to manipulate the market. Since the dividing line is very thin and blurred distinguishing both these categories is a difficult, if not impossible, task.

SAT Order dated August 25, 2020

The SAT modified the penalty order imposed by SEBI for the manipulation in the scrip price of a listed entity into a warning, on account of non-establishment of a connection between the appellants and the connected/ suspected entities that are alleged to have manipulated the price.

SEBI Appeal before Supreme Court of India

SEBI filed appeal before Supreme Court of India. Mr. K K Venugopal, learned Attorney General for India, (from Appellant side) submitted that Section 15HA of the Securities and Exchange Board of India Act 1992, as amended on 8 September 2014, provides for a minimum penalty of Rs. 5,00,000 which can go up to Rs. 25 crores. Hence, the imposition of a warning which is not a penalty contemplated by section 15 HA is beyond jurisdiction. It has been submitted that similar orders have been passed by SAT in many other cases, leading to several appeals being filed before this Court by SEBI.

Supreme Court of India Order dated 05.01.2021

Prima facie, the direction for substituting the penalty which has been imposed under Section 15HA with a warning is contrary to the statutory provisions. The SAT is not exercising the jurisdiction under Article 226 of the Constitution and is a creature of the statute. Even the jurisdiction under Article 226 has to be exercised in a manner consistent with law. Hence, there shall be a stay of the operation of the impugned judgment and order of the SAT dated 25 August 2020.

For details:

https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi_data/attachdocs/jan-2021/1611552289485.pdf#page=1&zoom=page-width,-15,842

http://sat.gov.in/english/pdf/E2020_JO2020159.PDF

01.01.2021	***Order In the matter of Reliance Petroleum Limited (now known as Reliance Industries Limited)***	***Adjudication Officer, SEBI***

The positions taken by clients on behalf of principal which is not known to the trading members or the market at large, will be treated as fraudulent and manipulative in nature.

Background

SEBI conducted an investigation into the trading in the scrip of Reliance Petroleum Limited (now known as Reliance Industries Limited) for the period November 1, 2007 to November 29, 2007 ('Investigation Period'/'IP'). The SEBI observed that RIL had entered into a well-planned operation with its Agents to corner the open interest in the RPL Futures and to earn undue profits from the sale of RPL shares in both cash & futures segments and to dump large number of RPL shares in the cash segment during the last ten minutes of trading on the settlement day resulting in a fall in the settlement price.

Facts of the Case

A resolution was passed by the Board of Directors of 'Noticee-1' ('RIL') on March 29, 2007 which *inter-alia* approved the operating plan for the year 2007-08 and resource requirements for the next two years, i.e., approximately Rs. 87,000 crore. Thereafter, RIL decided to sell approximately 5% of its shareholding in RPL (i.e., upto 22.5 crore RPL shares) in November 2007.

RIL admittedly appointed 12 agents, between 30th October, 2007 to 3rd November, 2007, to undertake transactions in the November 2007 RPL Futures (settlement period 1st November -29th November 2007) on its behalf.

The said Agents appointed by RIL took short positions in the F&O Segment on behalf of RIL, while RIL undertook transactions in RPL shares in the cash segment. During the period of 1st November 2007 to 29th November 2007, various transactions were undertaken by RIL in the Cash Segment and by RIL through the Agents in the F&O Segment. From 15th November 2007 onwards, RIL's short position in the F&O Segment constantly exceeded the proposed sale of shares in the Cash Segment. On 29th November 2007, RIL sold a total of 2.25 crore shares in the Cash Segment during the last 10 minutes of trading resulting in fall in the prices of RPL shares, which also lowered the settlement price of RPL November Futures in the F&O Segment. RIL's entire outstanding position of 7.97 crores in the F&O Segment was cash settled at this depressed settlement price resulting in profits on the said short positions. The said profits were transferred by the agents to RIL as per a prior agreement.

As per SEBI's order, RIL executed a well-planned scheme of manipulative trades in the Cash Segment and the F&O Segment in Reliance Petroleum Limited shares. As a result of their involvement in this scheme, these entities have violated the provisions of Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2) (d), (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and SEBI Circular no. SMDRP/DC/CIR10/01 dated November 02, 2001.

Alleged Violations

During investigation, it was alleged that RIL manipulated the settlement price by placing huge sell orders in the cash segment during the last ten minutes of trading on November 29, 2007 (the day of expiry of RPL November Futures contracts) which depressed the closing share price of RPL, while simultaneously having large short position in RPL November futures through its agents.

It was also alleged that Shri Mukesh D. Ambani (hereinafter referred to as 'Noticee-2'), being the Chairman & Managing Director of RIL, was responsible for its day-to-day affairs and thereby, liable for the manipulative trading done by RIL.

SEBI Findings

Mr. Sandeep Agarwal was commonly authorized by the 12 Agents to place orders in the F&O Segment, who was an employee of a wholly owned subsidiary of RIL. SEBI noted that the orders were placed by the same person for all the entities and the entities were connected directly or indirectly with RIL.

During the month of November 2007, the front entities of RIL had held a position which was substantial compared to the maximum permissible limit, in accordance with NSE data.

These arrangements were entered with the intention to corner the F&O segment and were therefore fraudulent and manipulative in nature. Agents of RIL had assumed individual positions in the November 2007 futures of RPL, without disclosing their relationship with the principal, i.e., RIL. The fact that the clients have been authorized by RIL to take separate and independent position limits was not known to the trading members or the market at large.

SEBI Order

SEBI imposed a penalty of Rs. 40 crores on Reliance Industries Ltd (RIL) and its Chairman & Managing Director, Mukesh Ambani and Rs.20 crores and Rs.10 crores on other two entities i.e. Navi Mumbai SEZ Pvt Ltd. and Mumbai SEZ Ltd respectively for alleged manipulation in the trading of Reliance Petroleum Limited's (now known as RIL) securities.

For details:

https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi_data/attachdocs/jan-2021/1609505405059_1.pdf#page=1&zoom=page-width,-16,792

26.08.2021	***Nishant Inbuild Limited (Noticee)*** ***In the matter of PMC Fincorp Ltd.***	***Adjudication Officer, SEBI***

Creation of misleading appearance of trading and manipulation the price of the scrip by contributing to the price rise to be treated as Unfair Trade Practice as per Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

Facts of the Case

SEBI carried out an investigation in the matter of PMC Fincorp Ltd. wherein it was observed that lots of buyers and sellers were trading in the scrip of PMC during the investigation period of March 29, 2012 to March 31, 2015. The shares of company were listed on UP Stock Exchange Ltd (UPSE) and subsequently got listed on Bombay Stock Exchange Ltd (BSE) on March 12, 2012. The investigation was carried out to ascertain the artificial demand in the scrip of PMC during the IP by continuously buying shares at increasing prices and then holding on to the shares purchased by Noticee and other entities, thereby also reducing the shares held by the public and that their trades were manipulative in nature. The Investigation Period was divided into five patches to identify the volume traded and fluctuation in prices.

Noticee along with connected entities as mentioned in the SEBI order contributed to high trading volumes in Patch 3 and 4 which lead to fluctuate the price of the scrip of PMC Fincorp Ltd. Further, Noticee and other entities namely Embassy, Economy, Seabird Retails, Seabird Distributors and Seabird Vincon had fund transfers with PMC. On analysis of bank statements of aforesaid entities, it was observed that PMC had transferred funds to aforesaid entities who in turn transferred the aforesaid funds to their respective brokers for settlement of their trading in the scrip of PMC.

Alleged Violations

1. It was alleged that a group of 92 entities were found to be connected to one another on the basis of fund transfers, off market transactions, common directors, same address etc. and in common connection with Noticee by one or other way.
2. From the trading analysis of the Investigation Period, SEBI had observed that some of the entities had traded among themselves and contributed to market +ve contribution.
3. Few of the entities were alleged to have aided 11other connected entities (buyers) by selling shares to increase the price of the scrip.
4. It was alleged that the Noticee, along with the 33 connected entities created misleading appearance of trading and manipulated the price of the scrip by contributing to the price rise and have violated Section 12 A(a),(b),(c) of SEBI Act read with Regulation 3(a),(b),(c),(d) and Regulation 4(1), 4(2) (a), (e) of PFUTP Regulations.

SEBI Findings

Noticee was involved in negative and positive LTP contribution both.

From the volume traded during the Investigation Period of Patch 3 (20/03/2013 to 12/03/2014) and Patch 4 (13/03/2014 to 21/10/2014), SEBI noted that the Noticee was a significant buyer in the PMC scrip during Patches 3 and 4, and contributed to high trading volumes in Patch 3 and 4. Amongst the connected entities it was the 9th largest trading entity, providing significant liquidity in the scrip during Patches 3 and 4. The trading pattern of the Noticee thus establishes that it contributed to trading volumes and provided liquidity.

Noticee was connected with other Entities

The Noticee, through its trades provided the necessary counterparties and liquidity required to maintain volumes of trading in the scrip and enable the entities Economy, Embassy, Seabird Distributors, Seabird Vincon, Seabird Retails, Famous, Rolex and Shivdarshan to continuously buy in the scrip at increasing prices. Noticee also facilitated in fund transfers from PMC and its promoter through loans directly or via Seabird Distributors which were uses to pay to the brokers for some of its purchases.

The SEBI found that Noticee had a close connection with the Embassy, Seabird Distributors, Seabird Vincon, Economy, Seabird Retails, which have been found to have manipulated the price of the scrip. Further, Noticee also had close connection with PMC and its promoters namely Prabhat Management and RRP Management Services which have been found to be played a part in funding or routing of funds to Economy, Embassy, Seabird Distributors, Seabird Vincon, Seabird Retails.

Hence, Noticee contributed to significant trading volume in the scrip during patch 3 and 4 and provided liquidity and was a counterparty to trades by aforesaid entities.

SEBI Order

SEBI imposed a penalty of Rs. 5 Lakh on Nishant Inbuild Limited.

For details:

https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi_data/attachdocs/aug-2021/1629975605187_1.pdf#page=1&zoom=page-width,-15,842

02.09.2021	***M/s Achal Investments Ltd. In the matter of Mis-utilization of funds raised through preferential issue***	***Whole Time Member, SEBI***

Mis-utilisation and diversion of the proceeds is considered as violation of high standards of ethics and corporate governance and attract penalty under the provisions of SEBI (PFUTP) Regulations, 2003.

Background

The SEBI conducted an investigation in dealing in securities by raising of funds through preferential issue of equity shares and utilization thereof by the M/s Achal Investments Ltd. (Company) to ascertain whether there was any violation of the provisions of SEBI Act, 1992, Listing Agreement read with provisions of SEBI (LODR) Regulations, 2015 and SEBI (PFUTP) Regulations, 2003.

Facts of the Case

The company had issued equity shares on preferential basis to 47 entities. The objects of the preferential issue of equity shares issued to the shareholders are as under:

1. To strengthen the equity base of the company,
2. To arrange the funds required for meeting the enhanced working capital requirements of the company,
3. To meet certain capital expenditure, and
4. To meet expenditure for general corporate purposes.

The company, in response to a Bombay Stock Exchange Notice admitted that it has deviated from the stated objectives in utilization of the issue proceeds. Further, the company informed SEBI that it has obtained ratification for the deviation from its shareholders in the AGM.

The ratified details of utilization of proceeds of preferential issue are mentioned below:

- Loans & Advances – Rs. 1,55,00,000
- Advance for purchase of shares – Rs. 27,69,600
- Repayment of Loan – Rs. 8,50,000

Alleged Violations

A Show Cause Notice (SCN) issued to the Company *inter alia*, states the following allegations:

1. The Company has mis-utilized and diverted the proceeds received through the preferential issue of equity shares.
2. The Company, while seeking ratification from its shareholders after a delay of 5 years, has not made full and complete disclosure of facts and information pertaining to the alleged mis-utilization and diversion of proceeds.
3. The Company by mis-utilizing and diverting the proceeds received through the preferential issue of equity shares has committed fraud on its shareholders.
4. The Company failed to make the quarterly disclosure regarding utilization of preferential issue proceeds as required under Clause 43 of Listing Agreement.

It was also alleged that following provisions have been violated by the company:

- Section 12A of SEBI Act, 1992 (SEBI Act) deals with Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control
- Regulation 2(1)(c) of PFUTP Regulations
- Regulation 3. Prohibition of certain dealings in securities
- Regulation 4. Prohibition of manipulative, fraudulent and unfair trade practices
- Conditions for Listing as per SCRA.

SEBI Findings:

1. One of the reasons for deviation of funds was advance for purchase of shares to the SEBI registered Sub-brokers. However, it was found that the MoUs which were executed by the Company do not stipulate even the basic details of the names of the scrips that need to be purchased, quantity of shares, price, whether the shares have to be purchased in the primary market or in the secondary market through Stock Exchanges or in off market, etc. Hence, it was observed that the transfer of funds by the Company to the Sub-brokers could not have been for the purpose of purchasing shares. To the contrary, it was alleged that the funds were transferred for the Sub-brokers' own use since no KYC formalities were completed and no orders were made.

   SEBI concluded that the company has mis-utilized the proceeds received from the preferential issue of equity shares. This action is not only detrimental to the interest of the company but also to the interest of its shareholders.

2. Another allegation was in relation to a loan given to an individual which was also ratified by the shareholders. SEBI noticed that the said loan amount cannot be considered as a normal business transaction of the Company as deployment of funds out of the working capital. No legally binding agreement had been entered into by the Company, no interest was charged from the borrower and no collateral was taken from the borrower. It was deduced that the company had no intention to secure the return of funds.

In light of the aforesaid discussion, which brings out the alleged mis-utilization and diversion of proceeds of preferential issue of equity shares by the Company, it was alleged that the company has committed fraud as defined under Regulations 2(1)(c)(2) and 2(1)(c)(4) of the PFUTP Regulations.

SEBI observed that the company has employed, in connection with the preferential issue of securities, a manipulative device to defraud the existing and prospective shareholders and has engaged in a practice which has acted as a fraud on them. These acts of the Company in making such a suggestion are a fraudulent or an unfair trade practice as it knew the same to be not true and the Company was aware that such misleading information would influence the decision of investors and induce them in dealing in securities.

The company contended that it sought shareholders' approval for ratification of deviation of proceeds of preferential issue. However, SEBI noted that the company had merely informed the shareholders that it had deviated from the purpose for which the proceeds were raised and had not made full and complete disclosure of facts and information pertaining to the alleged mis-utilization and diversion of proceeds of preferential issue of equity shares.

SEBI concluded that the Company in order to ratify the alleged mis-utilization and diversion of proceeds of preferential issue of equity shares from its shareholders, has in the said process, misled and influenced its shareholders. Further, the act of the Company not to make true and complete disclosure and diversion of proceeds of preferential issue of equity shares is not only a device to manipulate its shareholders to ratify the mis-utilization and diversion of proceeds of preferential issue of equity shares but it is also meant to deprive the shareholders of giving informed consent regarding the ratification process. SEBI held that the said act of the Company has led to the violation of provisions of Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act.

SEBI Order

SEBI issued the following directions to the company:

1. That it is restrained from accessing the securities market and from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever, for a period of five (05) years from the date of Order.
2. That it shall bring back the amount of Rs.1,38,29,600/- due to it, which has been extended either directly or indirectly, to the entities mentioned in this Order, along with due interest, expeditiously and take all necessary action, including legal actions, towards bringing back the said sum. It shall file a quarterly report stating the compliance of this direction to SEBI.
3. Imposed penalty of Rs. 20,00,000/- (Rs. 10 lakh each under Section 15HA of the SEBI Act, 1992 and under Section 23E of the SCRA).

For details:

https://www.sebi.gov.in/enforcement/orders/sep-2021/order-in-the-matter-of-achal-investments-ltd-_52366.html

LESSON ROUND-UP

- Section 11(2) (e) of the SEBI Act, 1992 prohibits fraudulent and unfair trade practices relating to securities market.
- The SEBI (Prohibition of Fraudulent and Unfair Trade Practices in relation to the Securities Market) Regulations, 2003 enable SEBI to investigate into cases of market manipulation and fraudulent and unfair trade practices.
- These regulations empower SEBI to investigate into violations committed by any person, including an investor, issuer or an intermediary associated with the securities market.
- The regulations define frauds as acts, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person or agent while dealing in securities in order to induce another person with his connivance or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss.
- The regulations specifically prohibit dealing in securities in a fraudulent manner, market manipulation, misleading statements to induce sale or purchase of securities, and unfair trade practices relating to securities.
- SEBI can conduct investigation, suo moto or upon information received by it, through an investigation officer in respect of conduct and affairs of any person buying/selling/dealing in securities. Based on the report of the investigating officer, SEBI can initiate action for suspension or cancellation of registration of an intermediary.
- Regulation 4 deals with the Prohibition of Manipulative, Fraudulent and Unfair Trade Practices.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation)

1. What do you mean by dealing in Securities?
2. What do you mean by Fraud and what are the exceptions to the Fraud as per SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003?
3. What are the condition when dealing in securities is treated as manipulative, fraudulent and unfair trade practice?
4. Breifly explain the powers of Investigating Authority?
5. In case if a Company is found to be in violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003, what are the actions SEBI can take against the company?

LIST OF FURTHER READINGS

- SEBI Circulars
- SEBI Notifications
- SEBI Orders

- SEBI Manual
- Regulations/Rules/Guidelines/Circulars issued by SEBI, RBI, MCA etc. from time to time

OTHER REFERENCES (Including Websites/Video Links)

- www.sebi.gov.in
- www.mca.gov.in
- www.icsi.edu
- www.nseindia.com
- www.bseindia.com
- www.nsdl.co.in
- www.cdslindia.com

Delisting of Equity Shares

Lesson 15

KEY CONCEPTS

■ Voluntary Delisting ■ Compulsory Delisting ■ Bidding Mechanism ■ Reverse Book Building ■ Exit Opportunity ■ Discovered Price ■ Escrow Account ■ Counter Offer ■ Initial Public Announcement ■ Detailed Public Announcement ■ Floor Price ■ Innovators Growth Platform ■ Small Company

Learning Objectives

To understand:

- Meaning of Delisting
- Types of Delisting
- Various requirements to be complied for delisting
- Various provisions of delisting
- Conditions and procedure for delisting where exit opportunity is required and not required
- Consequences of delisting in case of compulsory delisting

Lesson Outline

- Introduction
- Genesis
- Regulatory Framework of SEBI (Delisting of Equity Shares) Regulations, 2021
- Applicability
- Non-Applicability
- Conditions for delisting
- Voluntary delisting
- Conditions and Procedure for delisting where exit opportunity is not required
- Conditions and Procedure for delisting where exit opportunity is required
- Compulsory Delisting
- Special provisions for Small Companies
- Special provisions for companies listed on Innovators Growth Platform
- Provisions Pertaining to Delisting under the Securities Contract (Regulation) Act, 1956
- Role of Company Secretary in delisting
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- SEBI (Delisting of Equity Shares) Regulations, 2021
- Section 21A and 23E of the Securities Contracts (Regulation) Act, 1956

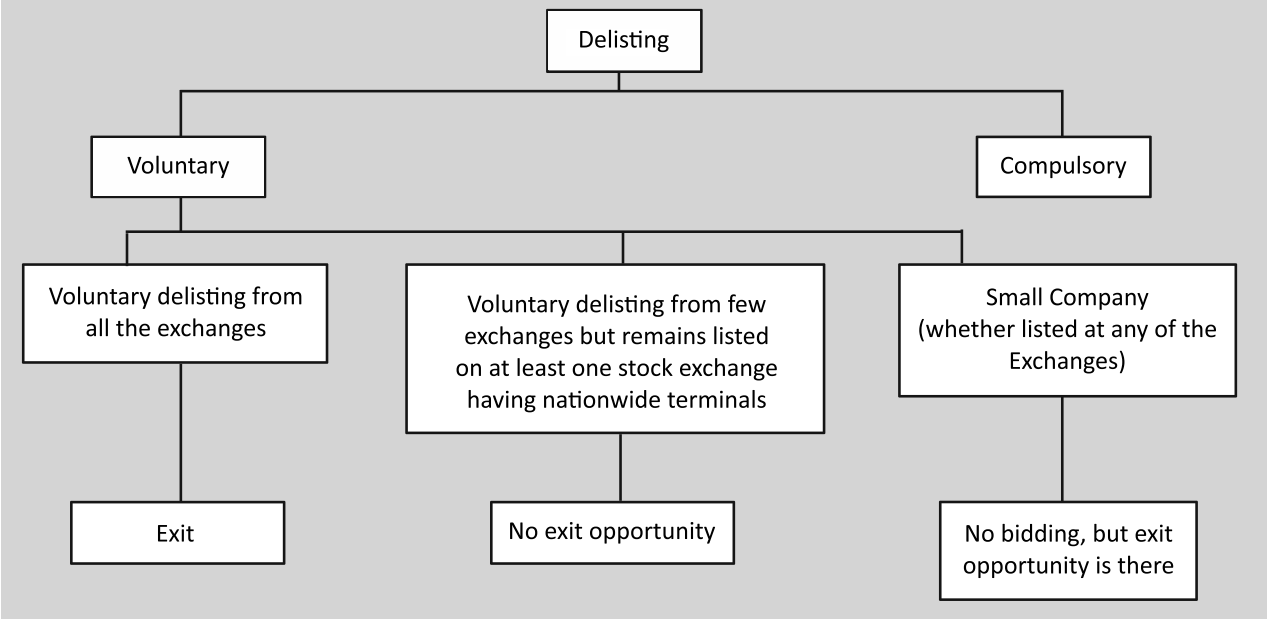
INTRODUCTION

Meaning of Delisting

The term "delisting" of securities means removal of securities of a listed company from a stock exchange. As a consequence of delisting, the securities of that company would no longer be traded at that stock exchange.

The company list its securities on the stock exchange so as to provide marketability and liquidity to the security holders. The Companies choose to list themselves to grab the advantages of listing viz; lower cost of capital, greater shareholder base, liquidity in trading of shares, prestige etc. Delisting which is totally the reverse of listing denotes removal of the securities of a listed company from the platform of Stock Exchange.

Delisting of securities can be done either by company voluntarily or by the stock exchange, compulsorily.



In voluntary delisting, a company decides on its own to remove its securities from a stock exchange. There could be many reasons for companies to take the route of voluntary delisting such as company ceased to carry on business, bankruptcy or the company has been acquired or merged with another entity. Whereas in compulsory delisting, the securities of a company are removed from a stock exchange as a penal measure for not making submissions/complying with various requirements set out in the Listing agreement within the time frames prescribed. The company has no choice to exercise on its removal from stock exchanges.

Delisting is different from suspension or withdrawal of admission to dealings of listed securities, which is for a limited period. Whereas, 'Suspension' of trading in securities means that no trade can take place in the securities of the company suspended for a temporary period. Suspension is not done at the instance of company but it is action taken by the Stock Exchanges against the company, generally for non-compliance of listing conditions as stipulated under the SEBI (Listing Obligations and Disclosure Requirements) Regulations,

2015 (LODR Regulations) for which the Stock exchanges may impose fines or freeze promoter/promoter group holding of designated securities, as may be applicable in coordination with depositories. Once, the company makes good the compliance of the listing conditions under the LODR Regulations, stock exchange withdraws the suspension and permits trading.

GENESIS

In its continuous endeavor to ease the process of delisting, SEBI in the year 2002 constituted a committee on delisting of shares to *inter alia* examine and review the conditions for delisting of securities of companies listed on recognized stock exchanges and suggest norms and procedures in connection therewith. The Report of the Committee was considered and accepted by SEBI. Pursuant to the same, SEBI issued the SEBI (Delisting of Securities) Guidelines, 2003.

The said Guidelines, although to a great extent, covered the issues involved in Delisting of Securities. Various representations and views from intermediaries, stock exchanges, shareholders' associations, chambers of commerce, etc., were given to the Regulators on the operational issues and procedural complications in the guidelines.

SEBI circulated Concept Paper on the proposed SEBI (Delisting of Securities) Regulations, 2006, asking for public comments on the proposed Regulations. SEBI received various comments, opinions and suggestions on the subject and finally, by its publication dated June 10, 2009 in the Official Gazette, the SEBI notified the SEBI (Delisting of Equity Shares) Regulations, 2009, thereby superseding the earlier SEBI (Delisting of Securities) Guidelines, 2003.

To further streamline and strengthen the delisting process / regulations, a comprehensive review of the delisting regulations has been proposed with the following key objectives:

- Enhance disclosures to help investors to take informed investment decisions
- Refine process
- Rationalize the existing timelines, so as to complete the delisting in time bound manner
- Streamline the delisting regulations to make it robust, efficient, transparent and investor's friendly
- Plug gaps
- Update references to the Companies Act, 2013 and other securities laws.

Taking note of the above objectives, SEBI vide its notification dated June 10, 2021 had notified the SEBI (Delisting of Equity Shares) Regulations, 2021 which have now completely replaced the SEBI (Delisting of Equity Shares) Regulations, 2009.

Since then, several amendments have been carried out in the Delisting Regulations according to the changing needs and developments in the securities market.

REGULATORY FRAMEWORK OF SEBI (DELISTING OF EQUITY SHARES) REGULATIONS, 2021

These regulations contain 8 chapters and 4 schedules dealing with the following:

1.	Chapter I	Preliminary (Definitions)
2.	Chapter II	Delisting of Equity Shares

3.	Chapter III	Voluntary Delisting
4.	Chapter IV	Exit Opportunity
5.	Chapter V	Compulsory Delisting
6.	Chapter VI	Special Provisions for Small Companies
7.	Chapter VII	Miscellaneous
8.	Chapter VIII	Powers of Board, Directions by the Board, Repeal and Savings
9.	Schedule I	Contents of the detailed Public Announcement
10.	Schedule II	The Reverse Book Building Process
11.	Schedule III	Guidelines for Compulsory Delisting
12.	Schedule IV	Timelines for Counter Offer

APPLICABILITY (REGULATION 3)

These regulations shall be applicable to delisting of equity shares of a company including equity shares having superior voting rights from all or any of the recognized stock exchanges where such shares are listed.

NON-APPLICABILITY

These regulation shall not be applicable to :–

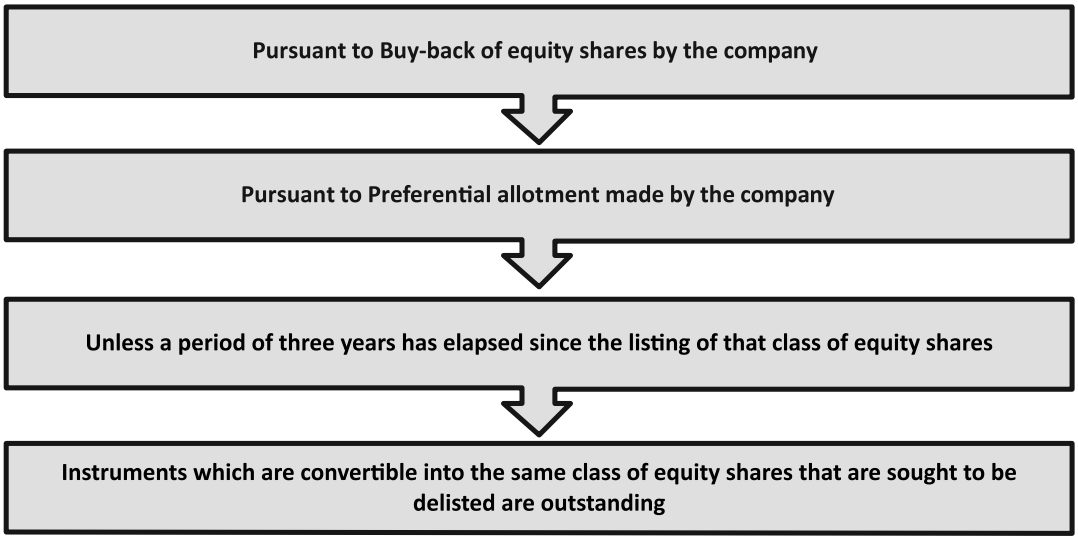
- securities listed and traded on the innovators growth platform of a recognised stock exchange, without making a public issue;
- any delisting of equity shares of a listed entity made pursuant to a resolution plan approved under section 31 of the Insolvency Code, if such plan, –
  - (a) provides for delisting of such share; or
  - (b) provides an exit opportunity to the existing public shareholders at a specified price.

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

Further, the details of delisting of such shares along with the justification for exit price in respect of delisting proposed shall be disclosed to the recognized stock exchanges within one day of resolution plan being approved under section 31 of the Insolvency Code.

CONDITIONS FOR DELISTING

Regulation 4 provides that neither any company shall apply for nor any recognised stock exchange shall permit delisting of equity shares of a company-



No acquirer shall directly or indirectly employ the funds of the company to finance an exit opportunity or an acquisition of shares made pursuant to delisting provided under these regulation.

An acquirer shall not propose delisting of equity shares of a company, if the acquirer had sold equity shares of the company during the a period of six months prior to the date of the initial public announcement.

No acquirer shall, directly or indirectly-

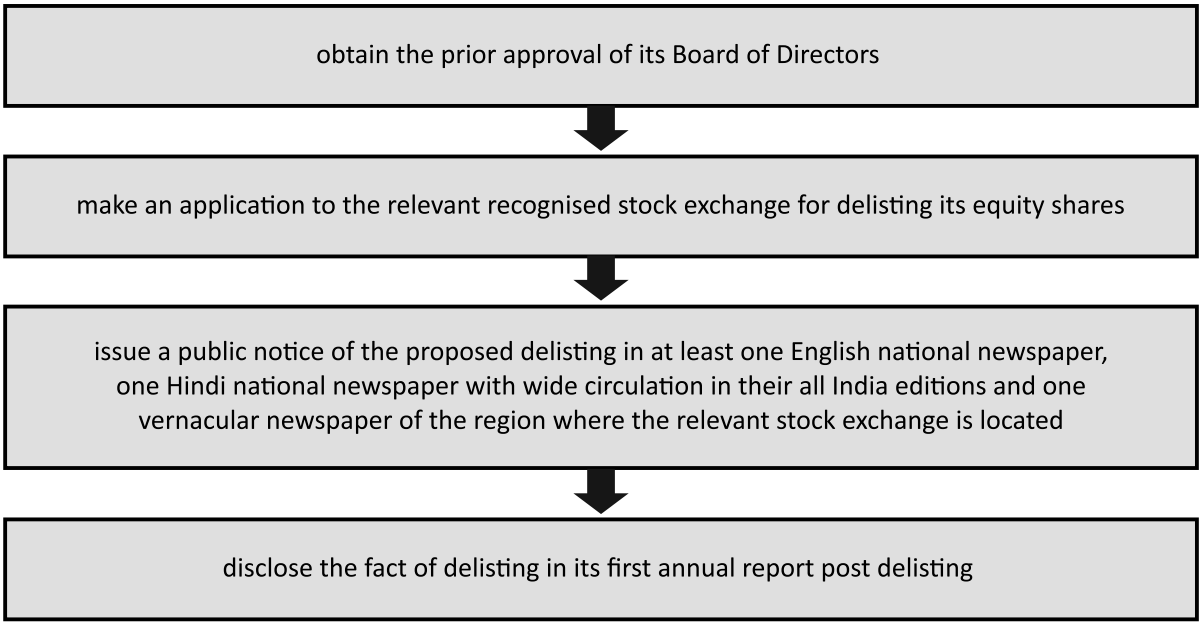
- Employ any device, scheme or artifice to defraud any shareholder or other person; or
- Engage in any transaction or practice that operates as a fraud or deceit upon any shareholder or other person; or
- Engage in any act or practice that is fraudulent, deceptive or manipulative in connection with any delisting of equity shares.

VOLUNTARY DELISTING

"**Voluntary Delisting**" means the delisting of equity shares of a company voluntarily on an application made by the company under Chapter III of these regulations. In voluntary delisting, the promoters of the listed company decides on their own to permanently remove its securities from a stock exchange.

Conditions and procedure for delisting where exit opportunity is not required

Regulation 5 of SEBI (Delisting of Equity Shares) Regulations, 2021 provides that a company may delist its equity shares from one or more of the recognised stock exchanges on which it is listed without providing an exit opportunity to the public shareholders, if after the proposed delisting, the equity shares remain listed on any recognised stock exchange that has nationwide trading terminals. Any company desirous of delisting its equity shares where no exit opportunity is required shall-



An application for delisting shall be disposed of by the recognised stock exchange within a period not exceeding thirty working days from the date of receipt of such application that is complete in all respects

The following details shall be provided in the above mentioned Public notice:

(a) The names of the recognized stock exchanges from where the equity shares of the company are intended to be delisted.

(b) The reasons for such delisting.

(c) The fact of continuation of listing of equity shares on recognized stock exchange having nationwide trading terminals.

Conditions and procedure for delisting where exit opportunity is required

Regulation 7 provides that the equity shares of a company may be delisted from all the recognised stock exchanges having nationwide trading terminals on which they are listed, after an exit opportunity has been provided by the acquirer to all the public shareholders holding the equity shares sought to be delisted, in accordance with Chapter IV of these regulations.

Initial public announcement (Regulation 8)

On the date when the acquirer decides to voluntarily delist the equity shares of the company, it shall make an initial public announcement to all the stock exchanges on which the shares of the company are listed and the stock exchanges shall forthwith disseminate the same to the public.

A copy of the initial public announcement shall also be sent to the company at its registered office not later than one working day from the date of the initial public announcement.

The initial public announcement shall contain:—

(a) the reasons for delisting;

(b) an undertaking with respect to compliance with regulations 4(2) and 4(5) of these regulations.

The initial public announcement shall not omit any relevant information or contain any misleading information.

Appointment of the manager to the offer (Regulation 9)

Prior to making an initial public announcement, the acquirer shall appoint a merchant banker registered with the SEBI as the Manager to the offer. The Manager to the offer shall not be an associate of the acquirer.

The initial public announcement and the subsequent activities as required under these regulations shall be undertaken by the acquirer through the Manager to the offer.

Obligation of the manager to the offer (Regulation 29)

Before making the detailed public announcement, the Manager to the offer for delisting of equity shares shall ensure that –

- the acquirer is able to implement the delisting offer.
- firm arrangements for funds through verifiable means have been made by the acquirer to meet the payment obligations under the delisting offer.
- the contents of the initial public announcement, the detailed public announcement, the letter of offer and the post-bidding advertisement(s) are complete, true, fair and adequate in all material aspects, based on reliable sources and are in compliance with the requirements under these regulations and other applicable securities laws.
- market intermediaries engaged for the purpose of the delisting of equity shares are registered with the SEBI.
- the Manager to the offer shall exercise due diligence, care and professional judgment to ensure compliance with these regulations.
- the Manager to the offer shall not, either directly or indirectly through its associates, deal in its own account in the shares of the company after its appointment as Manager to the offer till the conclusion of the delisting offer.
- the Manager to the offer to ensure that the acquirer complies with the provisions of these regulations.

Approval by the Board of Directors (Regulation 10)

The company shall obtain the approval of its Board of Directors in respect of the proposal, not later than twenty one days from the date of the initial public announcement.

The Board of Directors of the company, while considering the proposal for delisting, shall certify that—

(a) the company is in compliance with the applicable provisions of securities laws;

(b) the acquirer and its related entities are in compliance with the applicable provisions of securities laws in terms of the Company Secretary including compliance with sub-regulation (5) of regulation 4 of these regulations;

(c) the delisting, in their opinion, is in the interest of the shareholders of the company.

While communicating the decision of the Board of Directors on the proposal for delisting of equity shares, the company shall also submit to the recognized stock exchanges on which the equity shares of the company are listed, the due - diligence report of the Company Secretary and the audit report as per regulation 76 of the SEBI (Depositories and Participants) Regulations, 2018.

Upon receipt of the above mentioned communication from the company, the stock exchanges shall forthwith disseminate the same to the public.

Appointment of peer review Company Secretary to carry out the Due-Diligence

The Board of Directors of the company, before considering the proposal of delisting, shall appoint a Peer Review Company Secretary and provide the following information to such Company Secretary for carrying out due-diligence: -

(a) the details of buying, selling and dealing in the equity shares of the company by the acquirer or its related entities during the period of two years prior to the date of board meeting held to consider the proposal for delisting, including the details of the top twenty five shareholders, for the said period;

(b) the details of off-market transactions of all the shareholders mentioned in clause (a) for a period of two years;

(c) any additional information if the Company Secretary is of the opinion that the information provided under clauses (a) and (b) is not sufficient for providing the certification.

After obtaining the information from the Board of Directors of the company, the Company Secretary shall carry out the due-diligence and submit a report to the Board of Directors of the company certifying that the buying, selling and dealing in the equity shares of the company carried out by the acquirer or its related entities and the top twenty five shareholders is in compliance with the applicable provisions of securities laws including these regulations.

Approval by shareholders (Regulation 11)

The company shall obtain the approval of the shareholders through a special resolution, not later than forty five days from the date of obtaining the approval of Board of Directors. The special resolution shall be passed through postal ballot and / or e-voting as per the applicable provisions of the Companies Act, 2013 and the rules made thereunder. The company shall disclose all material facts in the explanatory statement sent to the shareholders in relation to such a resolution.

The special resolution shall be acted upon only if the votes cast by the public shareholders in favour of the proposal are at least two times the number of votes cast by the public shareholders against it.

In-principle approval of the stock exchange (Regulation 12)

The company shall make an application to the relevant recognised stock exchange for in-principle approval of the proposed delisting of its equity shares in the Form specified, not later than fifteen working days from the date of passing of the special resolution or receipt of any other statutory or regulatory approval, whichever is later.

The application seeking in-principle approval for the delisting of equity shares shall be accompanied by an audit report as required under regulation 76 of the SEBI (Depositories and Participants) Regulations, 2018 in respect of the equity shares sought to be delisted, covering a period of six months prior to the date of the application.

Such application seeking in-principle approval for the delisting of the equity shares shall be disposed of by the recognised stock exchange within a period not exceeding, fifteen working days from the date of receipt of such application that is complete in all respects.

Escrow account (Regulation 14)

The acquirer shall open an interest bearing escrow account with a Scheduled Commercial Bank, not later than seven working days from the date of obtaining the shareholders' approval, and deposit therein an amount equivalent to twenty five percent of the total consideration, calculated as below:

i. in case delisting is proposed through reverse book building process; the total consideration shall be calculated on the basis of the number of equity shares outstanding with the public shareholders

multiplied with the floor price or the indicative price, if any given by the acquirer in terms of sub-regulation (4) of regulation 20 of these regulations; whichever is higher;

ii. in case delisting is proposed through the fixed price process; the total consideration shall be calculated on the basis of the number of equity shares outstanding with the public shareholders multiplied with the fixed delisting price offered by the acquirer.

The acquirer shall enter into a tripartite agreement with the Manager to the offer and the Bank for the purpose of opening the escrow account and shall authorize the Manager to the offer to operate such account as per the provisions of these regulations.

Before making the detailed public announcement, the acquirer shall deposit in the escrow account, the remaining consideration amount being seventy five percent of the total consideration amount calculated as mentioned above.

On determination of the discovered price and making of the public announcement accepting the discovered price, the acquirer shall forthwith deposit in the escrow account such additional sum as may be sufficient to make up the entire sum due and payable as consideration in respect of equity shares outstanding with the public shareholders.

The escrow account shall consist of either the cash deposited with a Scheduled Commercial Bank or a bank guarantee in favour of the Manager to the offer or a combination of both.

In case of failure of the delisting offer, ninety nine percent of the amount lying in the escrow account shall be released to the acquirer within one working day from the date of public announcement of such failure. The remaining one percent amount lying in the escrow account shall be released post return of the shares to the public shareholders or confirmation of revocation of lien marked on their shares by the Manager to the offer as per the timelines provided in these regulations.

Detailed public announcement (Regulation 15)

The acquirer shall, within one working day from the date of receipt of in-principle approval for delisting of equity shares from the recognised stock exchange, make a detailed public announcement in at least one English national newspaper with wide circulation, one Hindi national newspaper with wide circulation in their all India editions and one vernacular newspaper of the region where the relevant recognised stock exchange is located.

The detailed public announcement shall contain all material information including the information specified in Schedule I of these regulations and shall not contain any false or misleading statement.

The detailed public announcement shall also specify a date, being a day not later than one working day from the date of the detailed public announcement, which shall be the 'specified date' for determining the names of the shareholders to whom the letter of offer shall be sent. The detailed public announcement shall be dated and signed by the acquirer.

Letter of offer (Regulation 16)

The acquirer shall dispatch the letter of offer to the public shareholders not later than two working days from the date of the detailed public announcement made. The letter of offer shall be sent to all public shareholders, holding equity shares of the class sought to be delisted, whose names appear on the register of the company or depository as on the date specified in the detailed public announcement.

A copy of the letter of offer shall also be made available on the websites of the company and the Manager to the offer for the benefit of the public shareholders. The letter of offer shall contain all the disclosures made in the detailed public announcement and such other disclosures as may be necessary for the shareholders to take an informed decision.

Bidding/Tendering mechanism (Regulation 17)

In case delisting is proposed through the reverse book building process or through fixed price process, the bidding period or the tendering period, as the case may be, shall begin within seven working days from the date of the detailed public announcement and shall remain open for five working days. The acquirer shall facilitate the tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism as specified by the SEBI.

The Manager to the offer shall ensure that the outcome of the reverse book building process or the fixed price process, as the case may be, is announced within two hours of the closure of the bidding period or the tendering period.

The acquirer through the Manager to the offer shall, within two working days from the closure of the bidding period or the tendering period, make a public announcement in the same newspapers in which the detailed public announcement under Regulation 15 (1) of these regulations was made, of the success or failure of the fixed price delisting process or the reverse book building process and also disclose the discovered price accepted by acquirer, in the event of success of the reverse book building process.

Manner of tendering shares (Regulation 18)

The equity shares shall be tendered/offered by the public shareholders, including by way of marking a lien through the stock exchange mechanism, in the manner specified by the SEBI.

Right of shareholders to participate in the delisting process (Regulation 19)

The public shareholders holding the equity shares of the company, which are sought to be delisted, shall be entitled to participate in the fixed price process or in the reverse book building process in the manner specified in Schedule II of these regulations. The Manager to the issue shall take necessary steps to ensure compliance with the same.

Any holder of depository receipts issued on the basis of the underlying equity shares and a custodian keeping custody of such equity shares shall not be entitled to participate in the delisting process.

However, any holder of depository receipts may participate in the delisting process after converting such depository receipts into equity shares of the company that are proposed to be delisted.

Floor Price (Regulation 19A)

The floor price of the equity shares proposed to be delisted through reverse book building process or through fixed price process, as the case may be, shall not be less than the highest of the following:

- volume weighted average price paid or payable for acquisitions by the acquirer along with persons acting in concert, during the 52 weeks immediately preceding the reference date;
- the highest price paid or payable for any acquisition by the acquirer along with persons acting in concert during the 26 weeks immediately preceding the reference date;
- adjusted book value (considering consolidated financials) as determined by an independent registered valuer: Provided that adjusted book value shall not be applicable in case of delisting of Public Sector Undertakings.
- the volume weighted average market price for a period of 60 trading days immediately preceding the reference date on the stock exchange where the maximum trading volume of the equity shares is recorded, provided such shares are frequently traded;

- the price determined by an independent registered valuer taking into account valuation parameters such as the book value, comparable trading multiples and any other customary valuation metrics for valuation of shares of companies in the same industry where the shares are not frequently traded.

Discovered price (Regulation 20)

After fixation of the floor price in terms of Regulation 19A, the discovered price shall be determined through the reverse book building process in the manner specified in Schedule II of these regulations, and shall be disclosed in the detailed public announcement and the letter of offer by the manager of the officer.

The acquirer shall have the option to provide an indicative price in respect of the delisting offer, which shall be higher than the floor price calculated in terms of Regulation 19A. The acquirer shall also have the option to revise the indicative price upwards before the start of the bidding period and the same shall be duly disclosed to the shareholders.

The acquirer may, if it deems fit, pay a price higher than the discovered price.

In case the discovered price is not acceptable to the acquirer, a counter offer may be made by the acquirer to the public shareholders within two working days of the closure of bidding period

Fixed Delisting Price (Regulation 20 A)

(1) In case the acquirer has proposed delisting through fixed price process; the acquirer shall provide a fixed delisting price which shall be at least 15% more than the floor price calculated in terms of regulation 19A.

(2) The acquirer shall be eligible to undertake delisting through fixed price process only if the shares of the company are frequently traded.

(3) The acquirer shall be bound to accept the equity shares tendered or offered in the delisting offer, if the post-offer shareholding of the acquirer along with the shares tendered by the public shareholders reaches 90% at the fixed delisting price, offered by the acquirer.

Minimum number of equity shares to be acquired (Regulation 21)

An offer made or a counter offer made by the acquirer, as the case may be, shall be deemed to be successful if,-

(a) the post offer promoter shareholding of the acquirer, along with the shares tendered/offered by public shareholders accepted as eligible bids at the discovered price or the fixed price or the counter offer price, as the case may be, reaches 90% of the total issued shares of that class excluding the following:

  (i) shares which are held by a custodian and against which depository receipts have been issued overseas; and

  (ii) shares held by a Trust set up for implementing an Employee Benefit scheme under the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014;

  (iii) shares held by inactive shareholders such as vanishing companies and struck off companies, shares transferred to the Investor Education and Protection Fund's account and shares held in terms of sub-regulation (4) of regulation 39 read with Schedule VI of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015.

  However, such shareholders shall be certified by the Peer Review Company Secretary appointed by the Board of Directors of the company for due-diligence.

Explanation. — The cut-off date for determination of inactive shareholders shall be the date on which the in-principle approval of the Stock Exchange is received, which shall be adequately disclosed in the public announcement.

An illustration for arriving at the discovered price is given as under:

Bid Price (Rs.)	***Number of investors***	***Demand (Number of shares)***	***Cumulative demand (Number of shares)***	
550	5	2,50,000	2,50,000	
565	8	4,00,000	6,50,000	
575	10	2,00,000	8,50,000	
585	4	4,00,000	12,50,000	
595	6	1,20,000	13,70,000	
600	5	1,30,000	15,00,000	Final Offer Price
605	3	2,10,000	17,10,000	
610	3	1,40,000	18,50,000	
615	3	1,50,000	20,00,000	
620	1	5,00,000	25,00,000	
Total	48	25,00,000		

In the given illustration, assuming floor price of Rs.550/- per share, promoter/ acquirer shareholding at 75% and number of shares required for successful delisting as 15,00,000, the final price would be the price at which the promoter reaches the threshold of 90%, i.e., it would be Rs.600/- per share.

Option to accept or reject the discovered price or counter offer (Regulation 22)

The acquirer shall be bound to accept the equity shares tendered or offered in the delisting offer, if the discovered price determined through the reverse book building process is equal to the floor price or the indicative price, if any, offered by the acquirer.

The acquirer shall be bound to accept the equity shares, at the indicative price, if any offered by the acquirer, even if the price determined through the reverse book building process is higher than the floor price but less than the indicative price.

However, the abovementioned provisions shall not apply if the discovered price pursuant to reverse book building process is higher than the indicative price.

In case of delisting through reverse book building process; a counter - offer may be made by the acquirer to the public shareholders, provided

- the post-offer shareholding of the acquirer, along with the shares tendered by public shareholders, is not less than seventy-five percent; and
- not less than fifty percent of the public shareholding has been tendered.

The above mentioned counter-offer may be made within two working days of the closure of the bidding period and thereafter the acquirer shall ensure compliance with the provisions of these regulations in accordance with the timelines provided in Schedule IV.

The counter offer price shall not be less than the higher of –

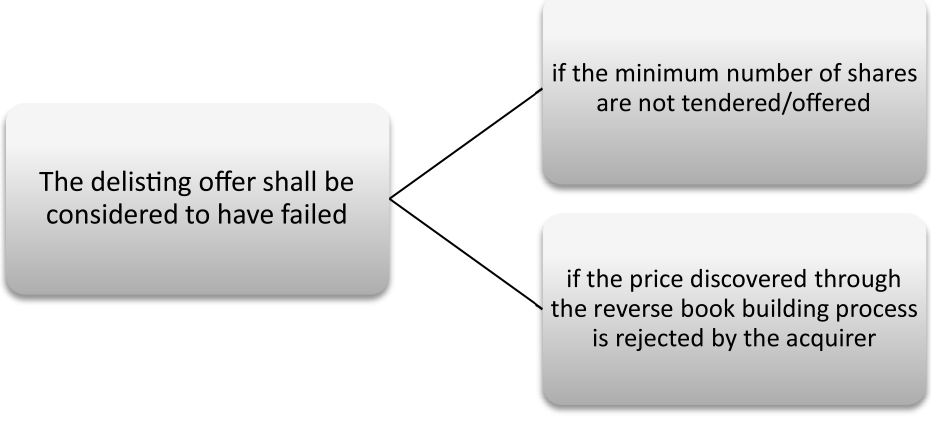
- volume weighted average price of the shares tendered/offered in the reverse book building process; and

- the indicative price, if any, offered by the acquirer.

Timelines for counter offer (Schedule IV)

Sr. No.	*Activity*	*Timelines*
1.	Public announcement of counter offer by the acquirer through stock exchange mechanism	Within 2 working days from the date of closure of reverse book building bidding process
2.	Publication of counter offer public announcement in the same newspapers where the detailed public announcement was made	Within 4 working days from the closure of the reverse book building bidding process
3.	Option to withdraw the shares tendered during the reverse book building process	Within 10 working days from the counter offer public announcement
4.	Dispatch of "Letter of offer for counter offer"	Within 4 working days from the closure of the reverse book building bidding process
5.	Opening of counter offer bidding process	Not later than 7 working days from the date of public announcement
6.	Closing of counter offer bidding process	Not later than 5 working days from the opening of counter offer bidding process
7.	Public announcement of success/failure of counter offer in the same newspaper in which detailed public announcement was made	Not later than 5 working days of the closing of the counter offer bidding process
8.	Payment of consideration	Not later than 10 working days from the closing of counter offer or through the secondary market settlement mechanism, as the case may be
9.	Release of equity shares	On the date of making public announcement of the success or failure of the counter offer

Failure of offer (Regulation 23)



(1) Where the delisting offer fails the equity shares tendered / offered as the case may be, shall be released-

- on the date of disclosure of the outcome of the reverse book building process or the fixed price process, if the minimum number of shares are not tendered / offered;
- on the date of making public announcement for the failure of the delisting offer if the price discovered through the reverse book building process is rejected by the acquirer;
- in accordance with Schedule IV of these regulations if a counter offer has been made by the acquirer.

  However, the acquirer shall not be required to return the shares if the offer is made pursuant to regulation 5A of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

(2) Where the delisting offer fails-

- The expenses relating to the offer for delisting shall be borne by the acquirer.
- The acquirer, whose delisting offer has failed, shall not make another delisting offer until the expiry of six months.

Payment upon success of the offer (Regulation 24)

All the public shareholders, whose bids are accepted, shall be paid the discovered price or a higher price, if any, offered by the acquirer or fixed price offered by the acquirer, as stated in the public announcement in the following manner -

(i) In case the discovered price is equal to the floor price or the indicative price or in case the acquirer is bound to accept the equity shares in the delisting offer or in terms of fixed price, the payment shall be made through the secondary market settlement mechanism;

(ii) In case the discovered price or the price, if any, offered by the acquirer, is higher than the floor price or the indicative price, as the case may be, the payment shall be made within five working days from the date of the public announcement.

The acquirer shall be liable to pay interest at the rate of ten percent per annum to all the shareholders, whose bids have been accepted in the delisting offer, if the price payable is not paid to all the shareholders within the time specified thereunder.

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

Final application to the stock exchange after successful delisting (Regulation 25)

Within 5 working days from the date of making the payment to the public shareholders, the acquirer shall make the final application for delisting to the relevant recognised stock exchange in the Form specified by such stock exchange from time to time.

The final application for delisting shall be accompanied with necessary details / information, as the recognised stock exchange may require, of having provided the exit opportunity.

The final application for delisting shall be disposed of by the recognised stock exchange within 15 working days from the date of receipt of such application that is complete in all respects. Upon disposal of the final application for delisting by the stock exchange, the equity shares of the company shall be permanently delisted from the stock exchange.

Right of the remaining public shareholders to tender equity shares (Regulation 26)

The remaining public shareholders, whose shares were either not accepted or were not tendered at all during the bidding period, shall have a right to tender their equity shares for a minimum period of 1 year from the date of delisting.

The acquirer shall be under an obligation during such period to accept the shares of the remaining public shareholders, at the same price at which the equity shares had been delisted. The payment of consideration for equity shares accepted shall be made out of the balance amount lying in the escrow account.

The Manager to the offer shall ensure that the amount lying in the escrow account or the bank guarantee shall not be released to the acquirer for a minimum period of one year or till the time payment has been made to the remaining public shareholders, whichever is earlier.

Cancellation of outstanding depository receipts (Regulation 31)

After delisting of equity shares from all the recognized stock exchanges having nationwide trading terminals, the company shall be required to compulsorily cancel all the outstanding depository receipts issued overseas and change them into the underlying equity shares in the home jurisdiction after termination of the depository receipts program(s), within 1 year of such delisting.

OBLIGATIONS OF THE COMPANY (REGULATION 28)	Upon receipt of the detailed public announcement, the Board of Directors of the company shall constitute a Committee of independent directors to provide reasoned recommendations on the delisting offer.
	The Committee of independent directors shall provide its written reasoned recommendations on the proposal for delisting of equity shares to the Board of Directors of the company and in relation thereto, the Committee may also seek external professional advice at the expense of the company.
	The Committee of independent directors, while providing reasoned recommendations on the delisting proposal, shall disclose the voting pattern of the meeting in which the said proposal was discussed.
	The company shall publish such recommendations of the Committee of independent directors, along with the details of the voting pattern, at least 2 working days before the commencement of the bidding period, in the same newspapers in which the detailed public announcement of the offer for delisting of equity shares was published, and simultaneously, a copy of the same shall be sent to the stock exchange(s) and the Manager to the offer.
OBLIGATIONS OF THE ACQUIRER (REGULATION 30)	Prior to making the initial public announcement of the offer for the delisting of equity shares, the acquirer shall ensure that firm financial arrangements have been made for fulfilling the payment obligations under the delisting offer and that the acquirer is able to implement the delisting offer, subject to any statutory approvals for the delisting offer that may be necessary.
	The acquirer shall ensure that the contents of the initial public announcement, the detailed public announcement, the letter of offer and announcement about success or failure of the offer for delisting are true, fair and adequate in all material aspects, not misleading and based on reliable sources that shall be mentioned wherever necessary.

The acquirer and the persons acting in concert with it shall be jointly and severally responsible for the fulfilment of the applicable obligations under these regulations.
The acquirer shall ensure to acquire the shares offered by the remaining public shareholders at the same price at which the equity shares had been delisted for a minimum period of one year.
No acquirer or persons acting in concert with it shall sell shares of the company during the delisting period.

Procedure for Voluntary delisting from all the stock exchanges

Initial Public Announcement [IPA] by the acquirer [Reg. 8]

↓

Appointment of Manager prior to announcement [Reg. 9]

↓

Approval by Board of Director [Reg. 10]
[Not later than 21 days from the date of IPA]

↓

Approval by Shareholders [Reg. 11]
[Not later than 45 days of Board Resolution]

↓

Application to relevant recognised stock exchange for in-principle approval of proposed delisting [Reg. 12]
[Not later than 15 days from the date of special Resolution
OR receipt of other regulatory approval whichever is later]

↓

Opening of Escrow Account [Reg.14]
[Not later than 7 working days from the date of Special Resolution]

↓

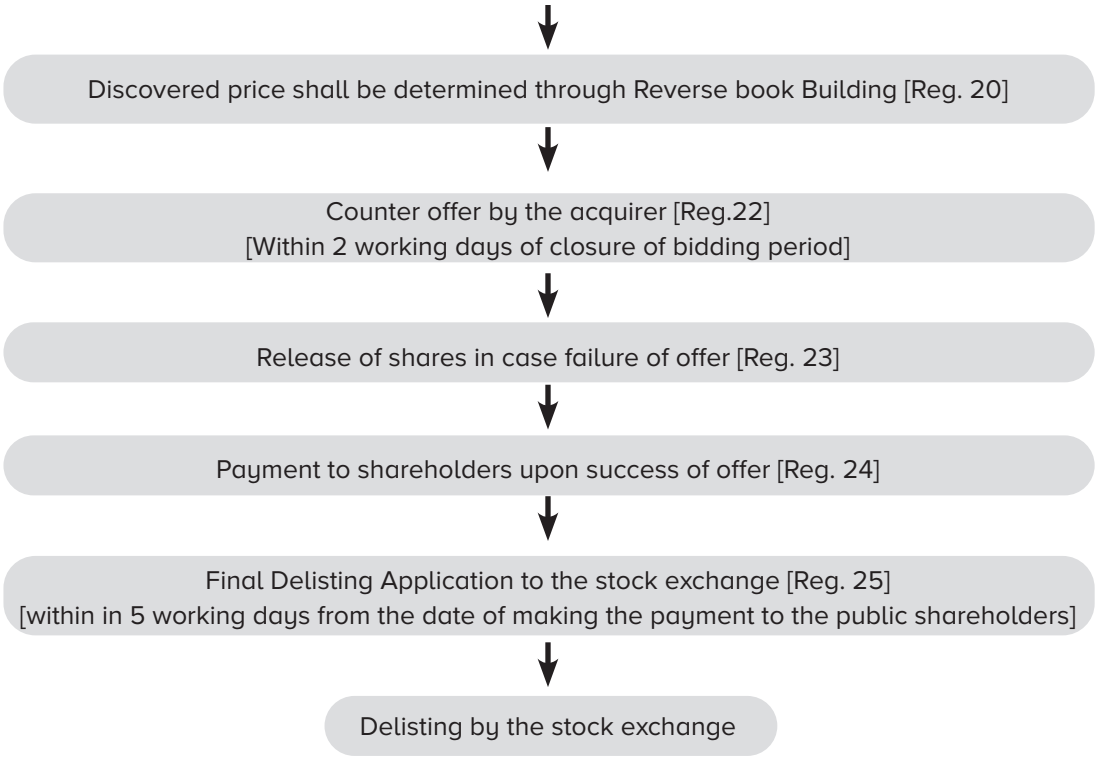
Detailed Public Announcement [Reg. 15]
[Within 1 working day of receipt of in-principle approval from recognised stock exchange]

↓

Dispatch of letter of offer [Reg. 16]
[Not later than 2 working days from the date of detailed public announcement, to the public shareholders]

↓

Commencement of Bidding/Tendering Mechanism [Reg. 17]
[Within 7 working days from the date of detailed public announcement-
which shall remain open for 5 working days]



COMPULSORY DELISTING

Compulsory delisting refers to permanent removal of securities of a listed company from a stock exchange as a penalizing measure at the behest of the stock exchange for not making submissions/comply with various requirements set out in the Listing agreement within the time frames prescribed.

As per Regulation 32(1) a recognized stock exchange may, by a reasoned order, delist any equity shares of a company on any ground prescribed in the rules made under the Securities Contracts (Regulation) Act, 1956 .

However, no order of compulsory delisting shall be issued unless the company has been given a reasonable opportunity of being heard.

Constitution of Panel [Regulation 32(2)]

The decision regarding compulsory delisting shall be taken by a panel to be constituted by the recognized stock exchange consisting of -

a. Two Directors of the recognized stock exchange (one of whom shall be a public representative);

b. One representative of an investor association recognised by the SEBI;

c. One representative of the Ministry of Corporate Affairs or Registrar of Companies; and

d. The Executive Director or Secretary of the recognized stock exchange.

Public notice before delisting order [Regulation 32(3)]

Before passing an order, the recognised stock exchange shall give a notice in at least one English national newspaper with wide circulation, one Hindi national newspaper with wide circulation in their all India editions and one vernacular newspaper of the region where the relevant recognised stock exchange is located, of the proposed delisting, giving a time period of not less than fifteen working days from the date of such notice, within

which representations, if any, may be made to the recognised stock exchange by any person aggrieved by the proposed delisting and shall also display such notice on its trading systems and website.

Delisting Order by the Recognised Stock Exchange [Regulation 32 (4)]

The recognised stock exchange shall, while passing any order of compulsory delisting, consider the representation, if any, made by the company and also any representation received in response to the notice, and shall comply with the guidelines provided in these regulations.

GUIDELINES FOR COMPULSORY DELISTING

- The recognised stock exchange shall take into account the grounds prescribed in the rules made under the Securities Contracts (Regulation) Act, 1956 while compulsorily delisting the equity shares of the company.
- The recognised stock exchange shall take all reasonable steps to trace the promoters of a company whose equity shares are proposed to be delisted.
- The recognised stock exchange shall consider the nature and extent of the alleged noncompliance by the company and the number and percentage of public shareholders who may be affected by such non-compliance.
- The recognised stock exchange shall take reasonable efforts to verify the status of compliance with the provisions of the Companies Act, 2013 and the rules and regulations made thereunder, by the company with the office of the concerned Registrar of Companies.
- The names of the companies whose equity shares are proposed to be delisted and their promoters shall be displayed in a separate section on the website of the recognised stock exchange. If delisted, the names shall be shifted to another separate section on the website.
- The recognised stock exchange shall in appropriate cases file prosecutions under relevant provisions of the Securities Contracts (Regulation) Act, 1956 or any other law for the time being in force against identifiable promoters and directors of the company for the alleg ed non-compliances.
- The recognised stock exchange shall, in appropriate cases, under the applicable provisions of the Companies Act, 2013, file a petition for winding up the company or make a request to the Registrar of Companies to strike off the name of the company from the register.

Public notice after Delisting Order [Regulation 32 (5)]

Where the recognized stock exchange passes the delisting order, it shall, -

(a) forthwith publish a notice in one English national newspaper with wide circulation, one Hindi national newspaper with wide circulation in their all India editions and one vernacular newspaper of the region where the relevant recognised stock exchange is located.

The following disclosures are to be made in the notice –

- The fact of such delisting;
- The name and address of the company;
- The fair value of the delisted equity shares; and
- The names and addresses of the promoters of the company who would be liable under sub-regulation (4) of regulation 33 of these regulations.

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

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

Rights of public shareholders in case of compulsory delisting (Regulation 33)

Where the equity shares of a company are compulsorily delisted by a recognised stock exchange, the recognised stock exchange shall appoint an independent valuer who shall determine the fair value of the delisted equity shares.

The recognised stock exchange shall form a Panel of expert valuers and from the said Panel, the valuer shall be appointed. The value of the delisted equity shares shall be determined by the valuer as prescribed.

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

The promoter shall be liable to pay interest at the rate of ten percent per annum to all the shareholders, who offer their shares under the compulsory delisting offer, if the price payable is not paid to all the shareholders within the time specified.

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

CONSEQUENCES OF COMPULSORY DELISTING

Where a company has been compulsorily delisted, the company, its whole-time directors, persons responsible for ensuring compliance with the securities laws, its promoters and the companies which are promoted by any of them shall not directly or indirectly access the securities market or seek listing of any equity shares or act as an intermediary in the securities market for a period of 10 years from the date of such delisting.

Procedure for Compulsory Delisting

Constitution of Panel by Recognised stock exchange to take decision regarding the compulsory delisting by the exchange

↓

Public notice of compulsory delisting by recognized stock exchange in one English national, one Hindi national and one vernacular newspaper of the region where the relevant recognized stock exchange is located

↓

The recognised stock exchange shall give above mentioned notice giving a time period of not less than 15 working days from the date of such notice, within which representations may be made to the recognised stock exchange by any person aggrieved by the proposed delisting

↓

Delisting order by the recognized stock exchange

↓

Public notice after delisting order by recognized stock exchange in one English national, one Hindi national and one vernacular newspaper of the region where the relevant recognized stock exchanges is located, of the fact of such delisting and information to all the stock exchanges where the equity shares of the company listed and also on its website

↓

Appointment of independent Valuer

↓

Determination of the fair value of the delisted equity shares by the Independent valuers appointed by the recognized stock exchange

↓

Acquisition of shares by the promoters from the public shareholders at determined fair value

↓

Company/ whole-time directors/ persons responsible for ensuring compliance with the securities laws/ Promoters can neither access securities market nor seek listing for a period of 10 years

Question:

The equity Shares of XYZ limited have been delisted from the stock exchange. When can an application be made for listing of such equity shares of XYZ limited?

Answer:

No application for listing shall be made in respect of equity shares of a company which have been delisted under Chapter III (Voluntary Delisting) or under Chapter VI (Exit Opportunity in case delisting of equity shares of a company from all the recognised stock exchanges), for a period of 3 years from the delisting and which have been delisted under Chapter V (Compulsory Delisting), for a period of 10 years from the delisting, except the following:

(a) whose equity shares have been delisted pursuant to a resolution plan under section 31 of the Insolvency Code;

(b) whose equity shares are listed and traded on the innovators growth platform pursuant to an initial public offer and which is delisted from the said platform;

(c) whose equity shares have been delisted in terms of regulation 35 (Delisting of equity shares of small companies).

SPECIAL PROVISIONS FOR DELISTING

Delisting of equity shares of small Companies (Regulation 35)

Equity shares of a company may be delisted from all the recognised stock exchanges where they are listed, without following the procedure in Chapter IV (Exit Opportunity) of these regulations, if,-

the company has a paid up capital not exceeding 10 crore rupees and net worth not exceeding 25 crore rupees as on the last date of preceding financial year	the number of equity shares of the company traded on each such recognised stock exchange during the 12 calendar months immediately preceding the date of board meeting held for consideration of the proposal of delisting, is less than 10% of the total number of shares of the company	the company has not been suspended by any of the recognised stock exchanges having nationwide trading terminals for any non¬compliance in the preceding one year

Delisting of equity shares may be made if, in addition to fulfilment of the requirements of regulation 10 (Approval by the Board of Directors) and regulation 11 (Approval by shareholders), the following conditions are fulfilled:-

(a) acquirer appoints a Manager to the offer and decides an exit price after consultation;

(b) the exit price offered to the public shareholders shall not be less than the floor price determined in terms of clause (e) of sub-regulation (2) of regulation 8 of the Takeover Regulations;

(c) the acquirer writes individually to all the public shareholders of the company informing them of its intention to get the equity shares delisted, the exit price together with the justification therefor and seeking their consent for the proposal for delisting;

(d) the public shareholders, irrespective of their numbers, holding ninety percent or more of the public shareholding give their consent in writing to the proposal for delisting, and consent either to sell their equity shares at the price offered by the acquirer or to continue to hold the equity shares even if they are delisted;

(e) the acquirer completes the process of inviting the positive consent and finalisation of the proposal

for delisting of equity shares within seventy five working days of the first communication made under clause (c);

(f) the acquirer makes payment of consideration in cash within fifteen working days from the date of expiry of seventy five working days mentioned in clause (e).

The communication made to the public shareholders under clause (c) shall contain justification for the offer price and specifically mention that consent for the proposal would include consent for dispensing with the exit price discovery through reverse book building method.

The acquirer shall be liable to pay interest at the rate of ten percent per annum to all the shareholders, whose bids have been accepted in the delisting offer, is not paid to all the shareholders within the time specified thereunder. However, in case the delay was not attributable to any act or omission of the acquirer or was caused due to the circumstances beyond the control of the acquirer, the SEBI may grant waiver from the payment of such interest.

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

Delisting of Equity Shares of Companies Listed on Innovators Growth Platform after making an Initial Public Offer (Regulation 36)

A company whose equity shares are listed and traded on the innovators growth platform pursuant to an initial public offer may be delisted from the innovators growth platform, if –

(a) such delisting is approved by the Board of Directors of the company;

(b) such delisting is approved by the shareholders of the company by a special resolution passed through postal ballot or e-voting, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution. However, the special resolution shall be acted upon only if the votes cast by the majority of public shareholders are in favour of such exit proposal;

(c) delisting price is based on a floor price determined in terms of regulation 8 of Takeover Regulations, as may be applicable, and an additional delisting premium justified by the acquirer;

(d) the post offer shareholding of the acquirer along with the persons acting in concert with it, taken together with the shares tendered reaches seventy five per cent of the total issued shares of that class and at least fifty per cent shares of the public shareholders as on date of the board meeting are tendered and accepted; and

(e) the recognised stock exchange, on which its shares are listed, approves of such delisting.

Delisting in case of winding up of a company and de-recognition of a stock exchange

In case of winding up proceedings of a company whose equity shares are listed on a recognised stock exchange, the rights, if any, of the shareholders of such company shall be in accordance with the laws applicable to those proceedings. Where the SEBI withdraws recognition granted to a stock exchange or refuses renewal of recognition to it, the SEBI may, in the interest of investors pass appropriate order in respect of the status of equity shares of the companies listed on that stock exchange.

PROVISIONS PERTAINING TO DELISTING UNDER THE SECURITIES CONTRACT (REGULATION) ACT, 1956

Delisting of securities [Section 21A]

A recognised stock exchange may delist the securities, after recording the reasons therefor, from any recognised stock exchange on any of the ground or grounds as may be prescribed under this Act. However the securities

of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.

A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange delisting the securities within 15 days from the date of the decision of the recognised stock exchange delisting the securities. However, the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.

Rule 21 of the Securities Contracts (Regulation) Rules, 1957deals with delisting of securities. A recognized stock exchange may, without prejudice to any other action that may be taken under the Act or under any other law for the time being in force, delist any securities listed thereon on any of the following grounds in accordance with the regulations made by the SEBI, namely:–

(a) the company has incurred losses during the preceding three consecutive years and it has negative networth;

(b) trading in the securities of the company has remained suspended for a period of more than six months;

(c) the securities of the company have remained infrequently traded during the preceding three years;

(d) the company or any of its promoters or any of its director has been convicted for failure to comply with any of the provisions of the Act or the SEBI Act, 1992 or the Depositories Act, 1996 or rules, regulations, agreements made thereunder, as the case may be and awarded a penalty of not less than rupees one crore or imprisonment of not less than three years;

(e) the addresses of the company or any of its promoter or any of its directors, are not known or false addresses have been furnished or the company has changed its registered office in contravention of the provisions of the Companies Act, 2013; or

(f) shareholding of the company held by the public has come below the minimum level applicable to the company as per the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the company has failed to raise public holding to the required level within the time specified by the recognized stock exchange.

However, no securities shall be delisted unless the company concerned has been given a reasonable opportunity of being heard.

If the securities is delisted under clause (1),

(a) the company, promoter and director of the company shall be jointly and severally liable to purchase the outstanding securities from those holders who wish to sell them at a fair price determined in accordance with regulations made by the SEBI, under the Act; and

(b) the said securities shall be delisted from all recognized stock exchanges.

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

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

(b) the delisting of such securities has been approved by the two-third of public shareholders; and

(c) the company, promoter and/or the director of the company purchase the outstanding securities from those holders who wish to sell them at a price determined in accordance with regulations made by SEBI under the Act.

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

Penalty for failure to comply with provision of delisting conditions or grounds [Section 23E]

If a company or any person managing collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment fund, fails to comply with the delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.

ROLE OF COMPANY SECRETARY IN DELISTING

The Board of Directors of the company, before considering the proposal of delisting, shall appoint a **Peer Review Company Secretary**, who shall carry out the due-diligence and submit a report to the Board of Directors of the company certifying that the buying, selling and dealing in the equity shares of the company carried out by the acquirer or its related entities and the top twenty five shareholders is in compliance with the applicable provisions of securities laws including compliance with these regulations.

The SEBI has widen the area of responsibilities of a Company Secretary by mandating a listed company to appoint Company Secretary to act as compliance officer under the SEBI (LODR) Regulations. Being a compliance officer, it is the responsibility of a Company Secretary to look after and ensure timely compliances of various SEBI regulations. In case of non-compliance with the listing regulation a stock exchange may delist the securities of a company.

Apart from this, a Company Secretary has to appoint and co-ordinate with various intermediaries, regulators, etc. and advise the Board of Directors, the various requirements of Delisting.

CASE LAWS

16.06.2022	***Autoriders Finance Ltd. - Appellant v. National Stock Exchange of India Ltd. -Respondent***	***Securities Appellate Tribunal***

Facts of the Case:

The National Stock Exchange of India Limited ('NSE') issued a show cause notice dated August 26, 2020 to the appellant Company to show cause as to why the appellant Company should not be compulsorily delisted under Regulation 22(1) of the Delisting Regulations on the ground of continuous non-compliance with respect to the requirements under the Listing Regulations. Thereafter, the respondent sent an e-mail to the appellant Company on September 4, 2020 stating therein that reply has not been received by the respondent.

It transpires that the Delisting Committee considered the matter on September 24, 2020 and thereafter passed the impugned order on November 27, 2020 directing compulsorily delisting of the appellant Company under Regulation 22(1) of the Delisting Regulations. The appellant is aggrieved by the order dated November 27, 2020.

The appellant contends that no opportunity of hearing was provided by the Delisting Committee before passing the impugned order and therefore the said order is violative of the principles of natural justice as embodied under Article 14 of the Constitution of India.

The proviso to Regulation 22(1) of the Delisting Regulations clearly indicates that no order directing delisting of the shares of the Company shall be made unless the Company is given a reasonable opportunity of being heard.

SAT Order:

SAT opined that the impugned order is violative of principles of natural justice since no notice of hearing or opportunity of hearing was provided to the appellant Company. The proviso clearly stated that no order shall be passed under Regulation 22(1) unless the Company has been given a reasonable opportunity of

being heard. It means that the Delisting Committee is required to give a notice for hearing which admittedly no such notice was issued. For the reasons stated aforesaid, the impugned order cannot be sustained and is quashed.

LESSON ROUND-UP

- Delisting of securities means removal of securities of a listed company from a stock exchange. As a consequence of delisting, the securities of that company would no longer be traded at that stock exchange.
- SEBI has notified the SEBI (Delisting of Equity Shares) Regulations, 2021 by its notification dated June 10, 2021.
- The delisting regulations are applicable to delisting of equity shares of a company from all or any of the recognised stock exchanges where such shares are listed.
- Delisting can be voluntary or compulsory. In voluntary delisting, a company decides its own to permanently remove its securities from stock exchange.
- A recognised stock exchange may by order delist any equity shares of a company on any grounds prescribed under the Securities Contracts (Regulation) Act, 1956.
- When a company has been compulsorily delisted the company, its whole-time directors, persons responsible for ensuring compliance with the securities laws, its promoters and the companies which are promoted by any of them shall not directly or indirectly access the securities market or seek listing of any equity shares or act as an intermediary in the securities market for a period of ten years from the date of such delisting.
- SEBI (Delisting of Equity Shares) Regulations, 2021 also provides the special provisions for small companies, companies listed on innovators growth platform and for delisting by operation of law.
- There are certain circumstances as prescribed by the SEBI where delisting is not permissible.

GLOSSARY

Acquirer : Acquirer includes a person who decides to make an offer for delisting of equity shares of the company along with the persons acting in concert in accordance with regulation 5A of the Takeover Regulations or who is the promoter or part of the promoter group along with the persons acting in concert.

Bid : An offer of a price to buy it as an auction. Business on the stock exchange is done through bids. Bid also refers to the price one is willing to pay.

Delisting Exchange: The exchange from which securities of a company are proposed to be delisted.

Offer Price : Price at which units in trust can be bought. It often includes an entry fee. It also refers to the price at which securities are offered to the public.

Public : Public means persons other than, the promoter and promoter group; subsidiaries and associates of the company.

Public shareholding : Public shareholding shall have the same meaning as assigned to it under rule 2(e) of the Securities Contracts (Regulation) Rules, 1957 as amended from time to time and “public shareholders” shall be construed accordingly.

Working Days : It means the working days of the SEBI.

Detailed Public Announcement : Detailed public announcement means the announcement made by the acquirer in terms of regulation 15 read with Schedule I of these regulations.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation)

1. Discuss the conditions and procedure for delisting where exit opportunity is required.
2. Explain the conditions for delisting under SEBI (Delisting of Equity Shares) Regulations, 2021.
3. Can cash component of the escrow account in the delisting offer process be maintained in an interest bearing account?
4. What are the rights of public shareholders in case of compulsory delisting of securities?
5. Write a note on the following-
    a. Obligations of the Manager to the offer
    b. Discovered Price
    c. Counter Offer
    d. Public announcement in Voluntary Delisting from all the Stock Exchanges.
6. XYZ Ltd., a company listed on nationwide two stock exchanges. It decided to delist its securities from both the stock exchanges. By complying all delisting regulations, the promoters have made an open offer to buy shares from public shareholders. Referring to the SEBI Delisting Regulations, advise the company with respect to the following matters :
    (a) How the payment of consideration will be made to the successful shareholders who have tendered their shares in an open offer ?
    (b) What are the rights of remaining shareholder who have not tendered their shares during open offer ?
7. Hawai Ltd. is public company with a paid-up share capital of Rs.8 crores as per the latest audited balance sheet. The net worth of the company for the year 2020-21 was 22 crores. The company is listed on Bombay Stock Exchange (BSE). The Board plans for the delisting of its Equity Shares from the exchange. As a Company Secretary, advice the Board.

LIST OF FURTHER READINGS

- SEBI Notifications
- SEBI Circulars

OTHER REFERENCES (Including Websites/Video Links)

- https://www.sebi.gov.in/
- https://www.nseindia.com/
- https://www.bseindia.com/

Buy-Back of Securities

Lesson 16

KEY CONCEPTS

■ Buy-back ■ Buy-back Period ■ Specified Securities ■ Tender Offer ■ Open Market

Learning Objectives

To understand:

- Concept of buy-back of securities
- Provisions of the SEBI (Buy-Back of Securities) Regulations 2018
- Various Method of Buy-back
- Regulatory prescriptions on conditions/sources of buy-back of securities
- Obligations of the Company/Merchant Banker for buy-back of shares

Lesson Outline

- Introduction
- Objectives of Buy-Back
- Buy-back provisions under the Companies Act, 2013
- Applicability
- Important Definitions
- Conditions for Buy-back of Shares or Other Securities
- Methods of buy-back
- Sources for buy-back
- Prohibitions for buy-back
- Authorisation for buy-back
- Explanatory Statement
- Additional Disclosures
- Buy-back Process
- Buy-back through Tender Offer
- Buy-back from the Open Market
- Obligations of the Company/ Merchant Banker for all buy-back of shares or other specified securities
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- SEBI (Buy-Back of Securities) Regulations, 2018
- Companies Act, 2013
- Companies (Share Capital and Debenture) Rules, 2014
- SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
- SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

INTRODUCTION

Buy-back of Securities - Meaning

The term buy-back implies the act of purchasing its own shares/securities by a company. This facility enables the Company to go back to the holders of its own shares/securities and make an offer to purchase such shares/ securities from them.

The corporates adopts various tools, viz., mergers, amalgamations and takeovers for restructuring the business. All these activities, in turn, impacts the functioning of the capital market, more particularly the movement of share prices. As the shares of companies are held by different segments of society, viz., entrepreneurs, Body Corporates, institutional investors and individual shareholders including small investors, it is reasonable that there should be equality of treatment and opportunities to all shareholders, transparency, proper disclosure and above all protection of interests of small and minority shareholders.

Similarly, buy-back of securities is a corporate financial strategy which involves repurchase of its outstanding shares by a company.

There are generally two ways a company can return cash to its shareholders –

- declaration of dividend; or
- through buy-back of shares.

A buy-back represent a more flexible way of returning surplus cash to its shareholders as it is governed by a process laid down by law, it is carried out through the stock exchange mechanism and is more tax efficient as it does not involve the company to make payment of dividend distribution tax and it has the benefits of long term capital gains.

Buy-back leads to reduction in outstanding number of equity shares, which may lead to improvement in earnings per equity share and enhance return on net worth and create long term value for continuing shareholders. In India, while buy-back of securities is not permitted as a treasury option under which the securities may be reissued later, a company can resort to buy-back to reduce the number of shares issued and return surplus cash to the shareholders.

The buy-back of securities is governed by Section 68, 69 and 70 of the Companies Act, 2013 and Rule 17 of the Companies (Share Capital and Debentures) Rules, 2014. For Listed Companies, the SEBI Regulations for Buy Back will also be applicable.

OBJECTIVES OF BUY-BACK

Buy-back is a process whereby a company purchases its own shares or other specified securities from the lable the holders thereof.

1. To strategically increase promoters' shareholding subject to compliance with SEBI (SAST) Regulations, 2011;
2. To improve earnings per share;
3. To improve return on capital, return on net worth and to enhance the long-term shareholder value;
4. To enhance consolidation of stake in the company;
5. To prevent unwelcome takeover bids;
6. To return surplus cash to shareholder and allow profitable deployment of cash surplus;
7. To achieve optimum capital structure;
8. To support share price during periods of sluggish market conditions;
9. To service the equity more efficient; and
10. To provide an additional exit route to shareholders when shares are under valued or are thinly traded.

The decision to buy-back is also influenced by various other factors relating to the company, such as growth opportunities, capital structure, sourcing of funds, cost of capital and optimum allocation of funds generated.

PROVISIONS OF THE COMPANIES ACT, 2013

Buy back of securities are governed by Section 68, 69 and 70 of the Companies Act, 2013 and Rule 17 of Companies (Share Capital and Debentures) Rules, 2014. Listed companies have to comply with the regulations laid down by SEBI also in this behalf. Pursuant to Section 68(1) of the Companies Act, 2013, a company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of –

(a) its free reserves;

(b) the securities premium account; or

(c) the proceeds of the issue of any shares or other specified securities:

However, no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

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

(a) The buy-back is authorised by its articles.

(b) Buy back must be authorized by a Special Resolution. But if the buy-back amounts to 10% or less of the total paid-up equity capital and free reserves of the company then the Board resolution is enough and the company is not required to pass any special resolution.

(c) The buy-back is twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company.

However, in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent in this clause shall be construed with respect to its total paid-up equity capital in that financial year.

(d) The ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and its free reserves.

However, the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies.

(e) All the shares or other specified securities for buy-back are fully paid-up.

(f) The buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by the SEBI in this behalf.

(g) The buy-back in respect of shares or other specified securities other than those specified in clause (f) is in accordance with such rules as may be prescribed. However, no offer of buy-back mentioned above shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.

The notice of the meeting at which the special resolution is proposed to be passed shall be accompanied by an explanatory statement.

Every buy-back shall be completed within a period of one year from the date of passing of the special resolution or Board Resolution as the case may be.

SEBI (BUY-BACK) REGULATIONS, 2018

The objective of notifying the SEBI (Buy-back of Securities) Regulations, 2018 was to simplify the language of Buyback Regulations, 1998, removing redundant provisions and inconsistencies, updating the references to the new Companies Act, 2013/ other new SEBI Regulations, and incorporating the circulars, FAQs and informal guidance in the Buy-back Regulations, wherever possible.

Considering that a significant number of provisions as outlined under Section 68, 69 and 70 of the Companies Act, 2013 were proposed to be incorporated in the Buy-back Regulations to make it self-contained and more comprehensive, it was proposed to re-frame an entirely new set of Buy-back Regulations in lieu of the extant 1998 version of the regulations. Further, the existing provisions have also been re-structured and re-sequenced to give a better flow in the new Buy-back Regulations.

In line with the aforesaid mandate, the SEBI in its Board Meeting held on March 28, 2018 approved the proposal to undertake public consultation process before coming out with new Buy-back Regulations for reviewing the SEBI (Buy-Back of Securities) Regulations, 1998.

Thereafter, SEBI vide its Notification dated September 11, 2018, notified the changes proposed by it in the discussion paper, through the SEBI (Buy-Back of Securities) Regulations, 2018.

SEBI (Buy-Back) Regulations, 2018 are applicable only on Listed Entities and the unlisted entities shall continue to be governed by applicable provisions of Companies Act, 2013.

APPLICABILITY

SEBI (Buy-back of Securities) Regulations, 2018 shall apply to buy-back of shares or other specified securities of a company in accordance with the applicable provisions of the Companies Act, 2013.

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

IMPORTANT DEFINITIONS

Associate	It includes a person, – ● who directly or indirectly by himself or in combination with relatives, exercise control over the company; or ● whose employee, officer or director is also a director, officer or employee of company.
Buy-back Period	The period between the date of board of directors resolution; or date of declaration of results of the postal ballot for special resolution, as the case may be, to authorize buy-back of shares of the company and the date on which the payment of consideration to shareholders who have accepted the buy-back offer is made.
Control	It has the same meaning as defined in clause (e) of sub-regulation (1) of regulation (2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
Secretarial Auditor	Secretarial Auditor means an auditor as defined in the Secretarial Standards – I issued by the Institute of Company Secretaries of India.
Small Shareholder	A shareholder of a company, who holds shares or other specified securities whose market value, on the basis of closing price of shares or other specified securities, on the recognised stock exchange in which highest trading volume in respect of such securities, as on record date is not more than two lakh rupee.
Specified Securities	It includes employees' stock option or other securities as may be notified by the Central Government from time to time.
Tender offer	An offer by a company to buy-back its own shares or other specified securities through a letter of offer from the holders of the shares or other specified securities of the company.

CONDITIONS FOR BUYBACK OF SHARES OR OTHER SECURITIES

The maximum limit of any buy-back shall be 25% or less of the aggregate of paid-up capital and free reserves of the company, based on both standalone and consolidated financial statements of the Company, whichever sets out a lower amount. All shares or other specified securities for buy-back shall be fully paid-up.

Note:

- In respect of the number of equity shares bought back in any financial year, the maximum limit shall be 25% and be construed with respect to the total paid-up equity shares capital of the company in that financial year.

- The ratio of the aggregate of secured and unsecured debts owed by the company to the paid-up capital and free reserves after buy-back shall,-

  (a) be less than or equal to 2:1, based on both standalone and consolidated financial statements of the company whichever is lower. However, if a higher ratio of the debt to capital and free reserves for the company has been notified under the Companies Act, 2013, the same shall prevail; or

  (b) be less than or equal to 2:1, based on both standalone and consolidated financial statements of the company whichever is lower, after excluding financial statements of all subsidiaries that are non-banking financial companies and housing finance companies regulated by Reserve Bank of India or National Housing Bank, as the case may be. However, buy-back of securities shall be permitted only if all such excluded subsidiaries have their ratio of aggregate of secured and unsecured debts to the paid-up capital and free reserves of not more than 6:1 on standalone basis.

Additional Conditions for Buy-back of Shares or Other Securities

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

  (a) so as to delist its shares or other specified securities from the stock exchange.

  (b) from any person through negotiated deals, whether on or off the stock exchange or through spot transactions or through any private arrangement.

- A company shall not make any offer of buy-back within a period of one year reckoned from the date of expiry of buy-back period of the preceding offer of buy-back, if any.
- A company shall not allow buy-back of its shares unless the consequent reduction of its share capital is effected.

All the filings to the SEBI shall be mode only in electronic mode after being digitally signed by the **Company Secretary** or the person authorized by the board of the Company.

Illustration:

Extract of Balance Sheet of X Ltd consist of:

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

12% Preference Share Capital = Rs. 1,00,000 of Rs. 100 each

14% Debenture Capital = Rs. 3,00,000 of Rs. 100

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

Solution:

(i) Maximum equity share capital that can be bought back

= Rs. 6,00,000*25%

= Rs. 1,50,000

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

= Rs. 1,50,000/10

= 15,000 equity shares

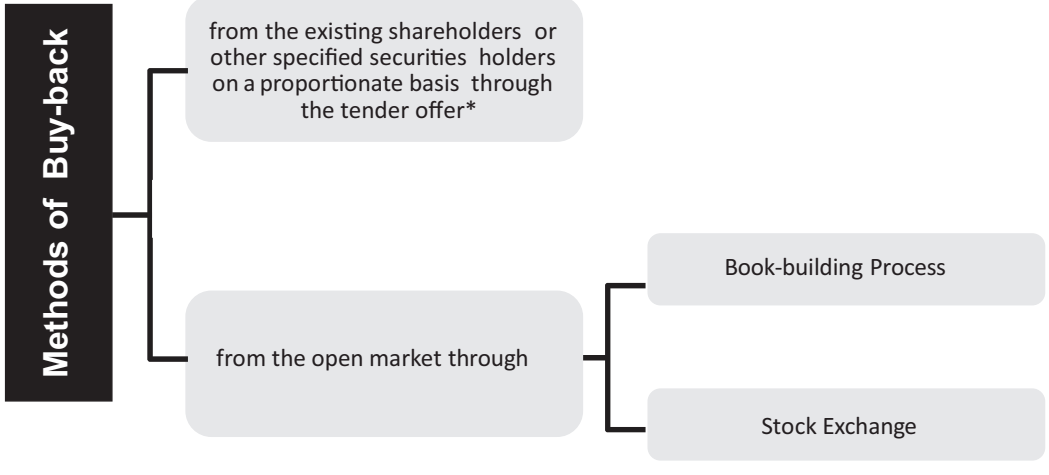
Illustration:

The financial data of a listed company as on 31st March, 2022 are as follows : Authorized equity share capital ₹ 10 crore (1 crore shares of ₹ 10 each) Paid-up equity share capital ₹ 5 crore General reserve ₹ 3 crore Debenture redemption reserve ₹ 2 crore. The Board of directors of your company passed resolution by circulation for buy-back of shares to the extent of 9% of the company's paid-up share capital and free reserves. You are required to examine the validity of the proposal with reference to the provisions of the SEBI Regulations.

According to the regulation 5 of the SEBI (Buy-back of Securities) Regulations, 2018, the company shall not authorize any buy-back (whether by way of tender offer or from open market or odd lot) unless a special resolution has been passed at a general meeting of the company authorising the buy-back. However, special resolution is not required, where the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and such buy-back has been authorised by the board of directors by means of a resolution passed at its meeting. In the given case, the company desired to buy-back of shares to the extent of 9% of paid-up capital and free reserves by way of passing of board resolution through circulation, However, as per above regulations, the board resolution should be passed at its meeting not through circulation. Therefore, with reference to the above stated provisions, the proposal of buy-back is not valid.

METHODS OF BUY-BACK

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



*In case any member of the promoter/promoter group has declared its intention to not participate in the buy-back, the shares held by such member of the promoter/promoter group shall not be considered for computing the entitlement ratio.

The buy-back from the open market through stock exchanges, based on the standalone or consolidated financial statements of the company, whichever sets out a lower amount, shall be less than:—

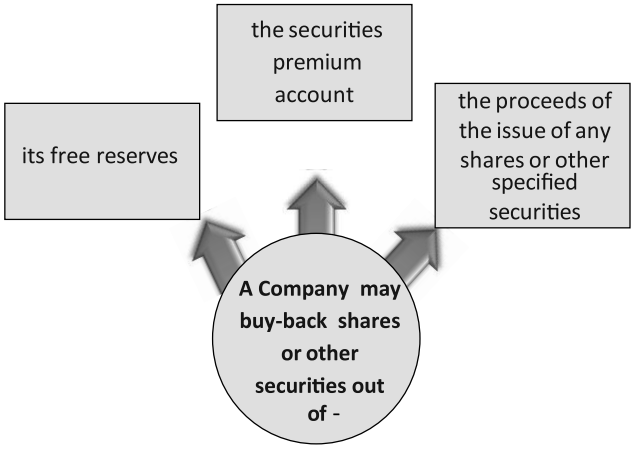
(i) 15% of the paid up capital and free reserves of the company till March 31, 2023;

(ii) 10% of the paid up capital and free reserves of the company till March 31, 2024;

(iii) 5% of the paid up capital and free reserves of the company till March 31, 2025.

However, buy-back from the open market through the stock exchange shall not be allowed with effect from April 1, 2025.

SOURCES OF BUY-BACK



Note: Buy-back shall not be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

PROHIBITIONS FOR BUY-BACK

The Company shall not directly or indirectly purchase its own shares or other specified securities:

- through any subsidiary company including its own subsidiary companies;
- through any investment company or group of investment companies; or
- if a default is made by the company in the repayment of deposits accepted either before or after the commencement of the Companies Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company.

The buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

AUTHORISATION FOR BUY-BACK

The company shall not authorise for any buy-back whether by way of tender offer or from open market unless:

- Authorisation for Buyback in the Articles of the Company.
- A special resolution is required to passed at a general meeting of the company for such authorisation.
- No special resolution is required where the buy-back is 10% or less of the total paid-up equity capital and free reserves of the company and such buy-back has been authorised by the board of directors by means of a resolution passed at its meeting.
- It has obtained the prior consent of its lenders in case of a breach of any contract with such lender.

Note:

- In case of Special Resolution, a copy of the resolution passed at the general meeting shall be filed with SEBI and the stock exchanges where the shares or other specified securities of the company are listed, within seven working days from the date of passing of the resolution.
- In case of only Board Resolution, a copy of Board Resolution passed in the meeting of the Board of Directors, shall file with SEBI and the stock exchanges, where the shares or other specified securities of the company are listed, within two working days of the date of the passing of the resolution.

Every buy-back shall be completed within a period of one year from the date of passing of the special resolution at general meeting, or the resolution passed by the board of directors of the company, as the case may be.

The company shall, after expiry of the buy-back period, file with the Registrar of Companies and SEBI, a return containing such particulars relating to the buy-back within thirty days of such expiry, in the format as specified in the Companies (Share Capital and Debentures) Rules, 2014.

Where the buy-back is from open market either through the stock exchange or through book building, the resolution of board of directors shall specify the maximum price at which the buy-back shall be made. However, where there is a requirement for the Special Resolution as specified in clause (b) of sub-regulation 1 of regulation 5 of these Regulations, the special resolution shall also specify the maximum price at which the buy-back shall be made.

No insider shall deal in shares or other specified securities of the company on the basis of unpublished price sensitive information relating to buy-back of shares or other specified securities of the company.

EXPLANATORY STATEMENT

The notice of the meeting at which the special resolution is proposed to be passed shall be accompanied by an explanatory statement pursuant to section 102 of the Companies Act containing mandatory disclosures as specified under sub-section 3 of section 68 of the Companies Act –

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

ADDITIONAL DISCLOSURES

The company is required to provide an additional disclosure as per Schedule I to these regulations, in addition to disclosures mentioned above under sub section 3 of section 68 of the Companies Act, 2013 as discussed below:

(i) Date of the Board meeting at which the proposal for buy-back was approved by the Board of Directors of the company;

(ii) Necessity for the buy-back;

(iii) Maximum amount required under the buy-back and its percentage of the total paid up capital and free reserves;

(iv) Maximum price at which the shares or other specified securities are proposed be bought back and the basis of arriving at the buy-back price;

(v) Maximum number of securities that the company proposes to buy-back;

(vi) Method to be adopted for buy-back as referred to in sub-regulation (iv) of regulation 4;

(vii) (a) the aggregate shareholding of the promoter and of the directors of the promoters, where the promoter is a company and of persons who are in control of the company as on the date of the notice convening the General Meeting or the Meeting of the Board of Directors;

(b) aggregate number of shares or other specified securities purchased or sold by persons including persons mentioned in (a) above from a period of six months preceding the date of the Board Meeting at which the buy-back was approved till the date of notice convening the general meeting;

(c) the maximum and minimum price at which purchases and sales referred to in (b) above were made along with the relevant dates;

(viii) Intention of the promoters and persons in control of the company to tender shares or other specified securities for buy-back indicating the number of shares or other specified securities, details of acquisition with dates and price;

(ix) A confirmation that there are no defaults subsisting in repayment of deposits, redemption of debentures or preference shares or repayment of term loans to any financial institutions or banks;

(x) A confirmation that the Board of Directors has made a full enquiry into the affairs and prospects of the company and that they have formed the opinion:

(a) that immediately following the date on which the General Meeting or the meeting of the Board of Directors is convened there will be no grounds on which the company could be found unable to pay its debts;

(b) as regards its prospects for the year immediately following that date that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company will be able to meet its liabilities as and when they fall due and will not be rendered insolvent within a period of one year from that date; and

(c) in forming their opinion for the above purposes, the directors shall take into account the liabilities as if the company were being wound up under the provisions of the Companies Act, 1956 or Companies Act, 2013 or the Insolvency and Bankruptcy Code 2016 (including prospective and contingent liabilities);

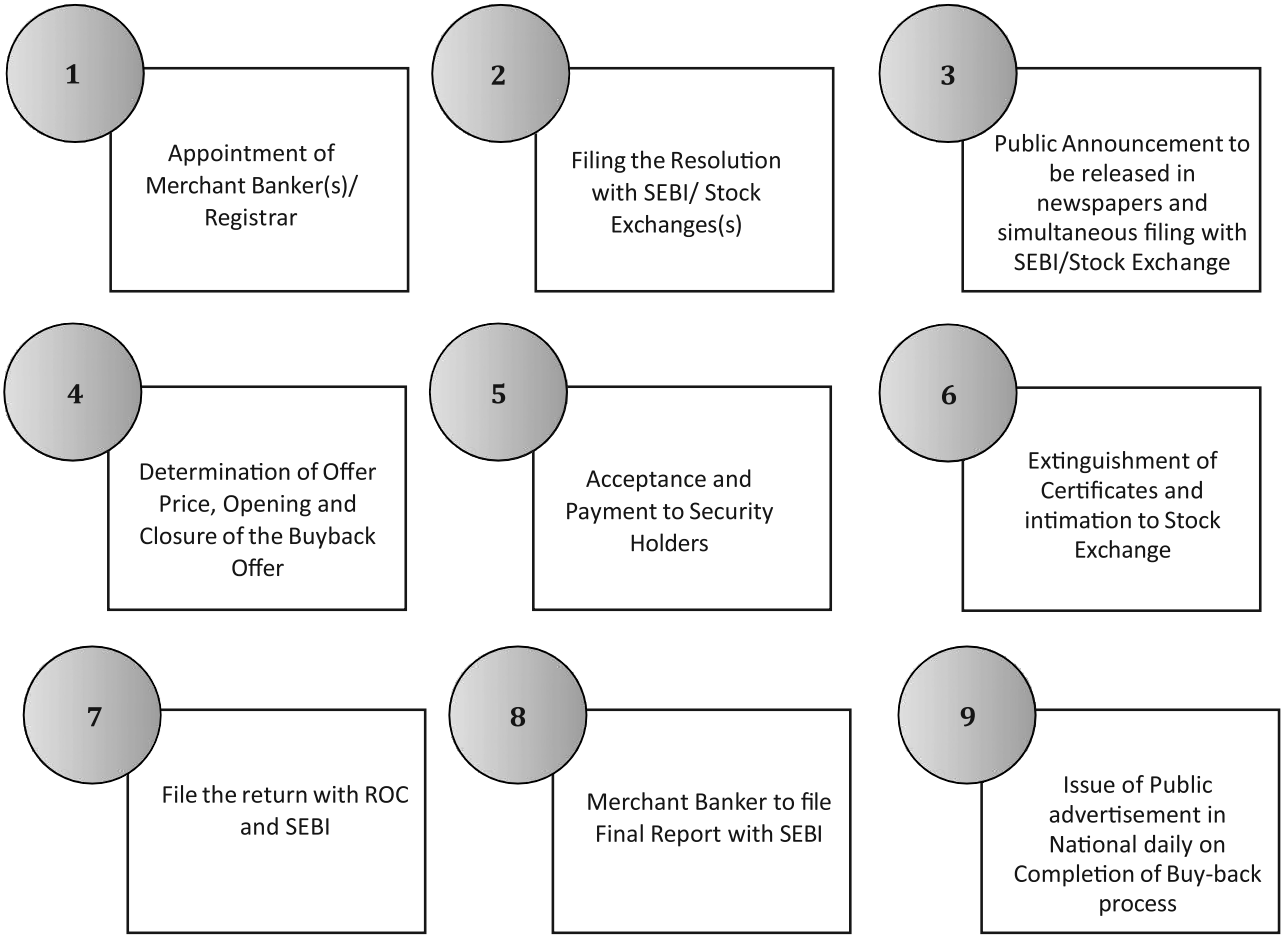
(xi) A report addressed to the Board of Directors by the company's auditors stating that-

(a) they have inquired into the company's state of affairs;

(b) the amount of the permissible capital payment for the securities in question is in their view properly determined; and

(c) the Board of Directors have formed the opinion as specified in clause (x) on reasonable grounds and that the company will not, having regard to its state of affairs, will not be rendered insolvent within a period of one year from that date.

BUY-BACK PROCESS



BUY-BACK THROUGH TENDER OFFER

A company may buy-back its shares or other specified securities from its existing securities holders on a proportionate basis in accordance with the provisions of these Regulations.

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

In case of a buy-back through tender offer, the Board of Directors of the company may, till one working day prior to the record date, increase the maximum buy-back price and decrease the number of securities proposed to be bought back, such that there is no change in the aggregate size of the buy-back.

Additional Disclosures

In addition to the disclosures provided in Schedule I to these regulations, the following disclosure are required to be made in the explanatory statement:

- the maximum price at which the buy-back of shares or other specified securities shall be made and whether the board of directors of the company is being authorised at the general meeting to determine subsequently the specific price at which the buy-back may be made at the appropriate time;
- if the promoter intends to offer his shares or other specified securities, the quantum of shares or other

specified securities proposed to be tendered and the details of their transactions and their holdings for the last six months prior to the passing of the special resolution for buy-back including information of number of shares or other specified securities acquired, the price and the date of acquisition.

Disclosures, filing requirements and timelines for public announcement and draft letter of offer

1.	**Public Announcement**	• The company shall make a public announcement within two working days from the date of declaration of results of the postal ballot for special resolution/ board of directors resolution in at least one English National Daily, one Hindi National Daily and one Regional language daily, all with wide circulation at the place where the Registered Office of the company is situated. • The company shall, simultaneously with the public announcement made, along with the fees specified in Schedule V, file a copy of the public announcement in electronic mode, with the SEBI and the stock exchanges on which its shares or other specified securities are listed. • The stock exchanges shall forthwith disseminate the public announcement to the public. • A copy of the public announcement shall be placed on the respective websites of the stock exchange(s), merchant banker and the company.
2.	**Filing with SEBI**	The company shall within two working days from the record date, file the following in electronic mode with the SEBI: a) a letter of offer, containing disclosures as specified in Schedule III, through a merchant banker who is not an associate of the company. b) a certificate in the form specified by the SEBI, issued by the merchant banker, who is not an associate of the company, certifying that the buy-back offer is in compliance of these regulations and that the letter of offer contains the information required under these regulations. c) a declaration of solvency in specified form and in a manner provided in sub-section (6) of section 68 of the Companies Act. In case of buy-back through tender offer, no draft letter of offer is required to be filed with the SEBI.

Offer Procedure

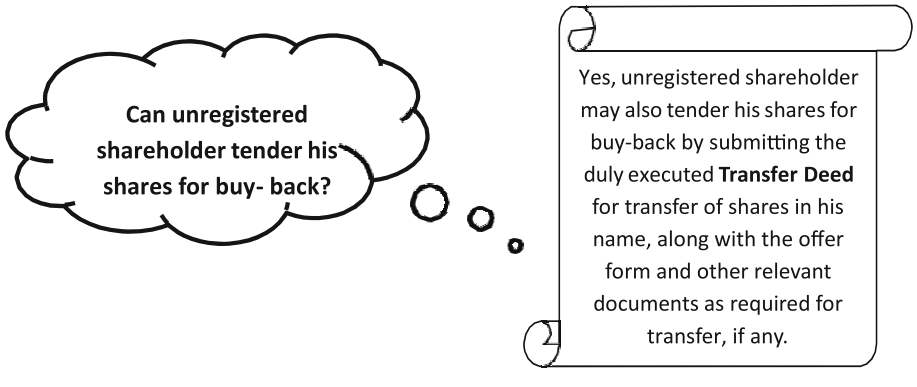
- While making buy-back offer, the company shall announce a record date in the public announcement for the purpose of determining the entitlement and the names of the security holders, who are eligible to participate in the proposed buy-back offer.
- The company shall dispatch the letter of offer along with the tender form to all securities holders which are eligible to participate in the buy-back offer.

  Note: The public announcement shall disclose that the dispatch of the letter of offer, shall be through electronic mode in accordance with the provisions of the Companies Act, within two working days from the record date and that in the case of receipt of a request from any shareholder to receive a copy of the letter of offer in physical form, the same shall be provided.

- If case an eligible public shareholder does not receive the tender offer/off form, even though he can participate in the buy-back off and tender shares in the manner as provided by the SEBI.
- The date of the opening of the offer shall be not later than four working days from the record date. It shall be remain open for a period of five working days.
- The company shall provide the facilities for tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism in the manner as provided by the SEBI.
- The company shall accept shares or other specified securities from the securities holders on the basis of their entitlement as on record date.
- The shares proposed to be bought back shall be divided into two categories;
  a. Reserved category for small shareholders; and
  b. General category for other shareholders, and the entitlement of a shareholder in each category shall be calculated accordingly.

  Note:

  Holdings of multiple demat accounts would be clubbed together for identification of small shareholder if sequence of Permanent Account Number for all holders is matching. Similarly, in case of physical shareholders, if the sequence of names of joint holders is matching, holding under such folios should be clubbed together for identification of small shareholder.
- After accepting the shares or other specified securities tendered on the basis of entitlement, shares or other specified securities left to be bought back, if any in one category shall first be accepted, in proportion to the shares or other specified securities tendered over and above their entitlement in the offer by securities holders in that category and thereafter from securities holders who have tendered over and above their entitlement in other category.



Please note that shareholders holding shares in physical form will not be eligible to tender shares under the offer, unless the shares held by them are dematerialised.

Escrow Account

The company shall, within two working days of the public announcement, as and by way of security for performance of its obligations under the regulations, deposit in an escrow account such sum as specified under SEBI Regulations. The amount in the escrow shall be deposited in the following manner:

Amount of Consideration	*% of amount to be deposited*
Consideration not more than Rs. 100 crores	25 per cent of the consideration payable;
Consideration exceeds Rs. 100 crores	25 percent upto Rupees 100 crores and 10 percent thereafter.

The escrow account referred to above shall consist of (subject to appropriate margin)

(i) cash including bank deposits deposited with any scheduled commercial bank, or

(ii) bank guarantee issued in favour of the merchant banker by any scheduled commercial bank, or

(iii) deposit of frequently traded and freely transferable equity shares or other freely transferable securities, or

(iv) government securities, or

(v) units of mutual funds invested in gilt funds and overnight schemes, or

(vi) a combination of above.

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

Where the escrow account consists of deposit with a scheduled commercial bank, the company shall, while opening the account, empower the merchant banker to instruct the bank to make payment the amount lying to the credit of the escrow account, as provided in the regulations.

Where the escrow account consists of a bank guarantee, such bank guarantee shall be in favour of the merchant banker and shall be valid until thirty working days after the expiry of buyback period or until the completion of all obligations under these regulations, whichever is later.

The bank guarantee shall not be returned by the merchant banker until the completion of all obligations under the SEBI (Buy-back of Securities) Regulations, 2018.

The company shall, in case the escrow account consists of securities, empower the merchant banker to realise the value of such escrow account by sale or otherwise and if there is any deficit on realisation of the value of the securities, the merchant banker shall be liable to make good any such deficit. In case the escrow account consists of approved securities, these shall not be returned by the merchant banker till completion of all obligations under the regulations.

Where part of the escrow account is in a form other than cash, the company shall deposit with a scheduled commercial bank, in cash, a sum of not less than two and half per cent of the total amount earmarked for buyback as specified in the resolution of the Board of Directors or the special resolution, as the case may be, as security for the fulfilment of its obligations under the regulations.

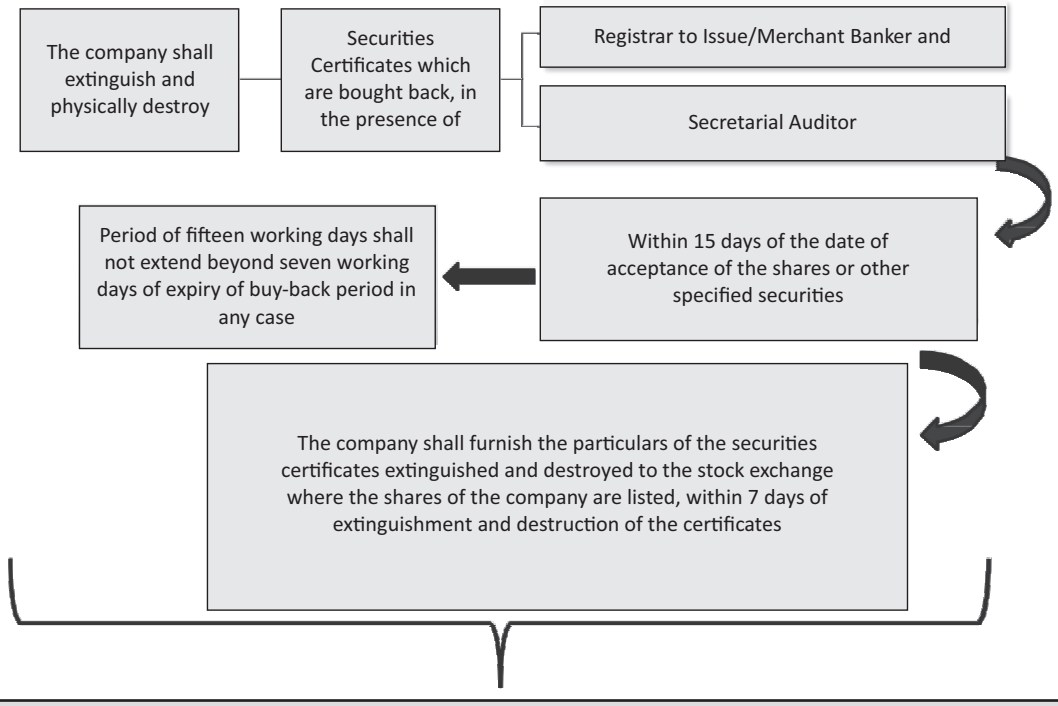
On payment of consideration to all the securities holders who have accepted the offer and after completion of all formalities of buy-back, the amount, guarantee and securities in the escrow, if any, shall be released to the company. The SEBI in the interest of the securities holders may in case of nonfulfillment of obligations under the regulations by the company forfeit the escrow account either in full or in part.

The amount forfeited may be distributed pro rata amongst the securities holders who accepted the offer and balance, if any, shall be utilised for investor protection.

Closure and Payment to Securities Holders

- The company shall open a special account with a banker to an issue, registered with the SEBI immediately after the date of closure of the offer, and deposit therein, such sum as would, together with ninety percent of the amount lying in the escrow account, make-up the entire sum due and payable as consideration for buy-back in terms of these regulations and for this purpose, may transfer the funds from the escrow account.
- The company shall complete the verification of offers received and make payment of consideration to those holders of securities whose offer has been accepted and return the remaining shares or other specified securities to the securities holders within five working days of the closure of the offer.

Extinguishment of Certificate and other Closure Compliances



The company shall furnish a certificate to the SEBI within 7 days extinguishment and destruction of the certificates, certifying compliance as specified above, and duly certified and verified by:

a) Registrar and whenever there is no registrar, by the merchant banker;

b) Two directors of the company, one of whom shall be a managing director, where there is one; and

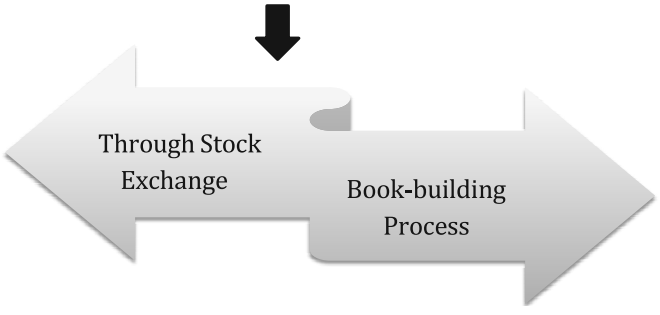
c) the secretarial auditor of the company.

Note:

- The company shall ensure that all the securities bought-back are extinguished within seven working days of expiry of buy-back period.
- If the shares or other specified securities offered for buy-back is already dematerialised, then it shall be extinguished and destroyed in the manner specified under SEBI (Depositories and Participants) Regulations, 1996, and the bye-laws, the circulars and guidelines framed thereunder.
- Where a company buys-back its shares or other specified securities under these regulations, it shall maintain a register of the shares or securities so bought, in Form SH. 10 in pursuance of section 68(9) of the Companies Act, 2013.

BUY-BACK FROM THE OPEN MARKET

The company may buy-back of shares or other specified securities from the Open Market may be in any of the following methods:



The company shall ensure that at least 75% of the amount earmarked for buy-back, as specified in the resolution of the board of directors or the special resolution, as the case may be, is utilized for buying-back shares or other specified securities.

Further, the company shall ensure that at a minimum of 40% of the amount earmarked for the buy-back, as specified in the resolution of the Board of Directors or the special resolution, as the case may be, is utilized within the initial half of the specified duration.

Buy-back of Shares Through Stock Exchange

1.	**Pre-conditions**	• The company may buy-back only on stock exchanges having nationwide trading terminals. For this purpose, a separate window shall be created by the concerned stock exchange. • The buy-back of the shares or other specified securities through the stock exchange shall not be made from the promoters or persons in control of the company. • The buy-back of shares or other specified securities shall be made only through the order matching mechanism except 'all or none' order matching system.
2.	**Disclosures, filing requirements and timelines of public announcement**	• The company shall appoint a merchant banker and make a public announcement in manner as specified in buy-back of shares through tender offer. • The public announcement shall be made within two working days from the date of passing the board of director's resolution or date of declaration of results of the postal ballot for special resolution, as relevant and shall contain disclosures as specified in these regulations. • The company shall, simultaneously with the public announcement made in terms of sub-clause (a), along with the fees specified in Schedule V, file a copy of the public announcement in electronic mode with the SEBI and the stock exchanges on which its shares or other specified securities are listed. • The stock exchanges shall forthwith disseminate the public announcement to the public.

		• A copy of the public announcement shall be placed on the respective websites of the stock exchange(s), merchant banker and the company. • The public announcement shall also contain disclosures regarding details of the brokers and stock exchanges through which the buy-back of shares or other specified securities would be made. ***Note: In case of the buy-back from open market, no draft letter of offer/ letter of offer is required to be filed with SEBI.*** • The buy-back through stock exchanges shall be undertaken only in respect of frequently traded shares. • The buy-back through stock exchanges shall be subject to the restrictions on placement of bids, price and volume as specified by the SEBI.
3.	**Opening of the offer on stock exchange**	• The identity of the company as a purchaser shall be appeared on the electronic screen when the order is placed. The buy-back offer shall open not later than four working days from date of public announcement and shall close:- a) within six months, if the buy-back offer is opened on or before March 31, 2023; b) within 66 working days, if the buy-back offer is opened on or after April 1, 2023 and till March 31, 2024; and c) within 22 working days, if the buy-back offer is opened on or after April 1, 2024 and till March 31, 2025. However, with effect from April 1, 2025, the option of open market buyback through the stock exchange shall not be available to any company except in cases where the buyback offer has opened on or before Mach 31, 2025.
4.	**Subsequent compliances**	• The company shall submit the information regarding the shares or other specified securities bought-back, to the stock exchange on a daily basis in such form as may be specified by SEBI and the same shall be uploaded immediately on the official website stock exchange and on Company's website.
5.	**Procedure for buy-back shares or other specified securities in Physical form**	• A separate window shall be created by the stock exchange, which shall remain open during the period of buy-back, for buy-back of shares or other specified securities in physical form. • The Company shall buyback shares or other securities holding physical shares only through this separate window after verification of identity and address of eligible shareholders by broker. • The price at which the shares or other specified securities are bought back shall be the volume weighted average price of the shares or other specified securities bought-back, other than in the physical form, during the calendar week in which such shares or other specified securities were received by the broker.

		However, the price of shares or other specified securities tendered during the first calendar week of the buy-back shall be the volume weighted average market price of the shares or other specified securities of the company during the preceding calendar week. Further, the effect on the price of the equity shares of the company due to material price movement and confirmation of reported event or information may be excluded as per the framework specified under Regulation 30(11) of the SEBI (LODR) Regulations, 2015 for determination of the volume weighted average market price. ***Note*: *In case no shares or other specified securities were bought back in the normal market during calendar week, the preceding week when the company has last bought back the shares or other specified securities may be considered.***
6.	**Escrow Account**	• The company shall, within two working days of the public announcement, create an escrow account towards security for performance of its obligations under these regulations, and deposit in escrow account 25 per cent of the amount earmarked for the buy-back as specified in the resolution of the board of directors or the special resolution, as the case may be. • The escrow account may be in the form of (subject to appropriate margin): (a) cash deposited with any scheduled commercial bank; or (b) bank guarantee issued in favour of the merchant banker by any scheduled commercial bank; (c) deposit of frequently traded and freely transferable equity shares or other freely transferable securities with appropriate margin with the merchant banker; or (d) government securities; or (e) units of mutual funds invested in gilt funds and overnight schemes; or (f) a combination of the above. • For such part of the escrow account as is in the form of a cash deposit with a scheduled commercial bank, the company shall while opening the account, empower the merchant banker to instruct the bank to make payment of the amounts lying to the credit of the escrow account, to meet the obligations arising out of the buy-back. • For such part of the escrow account as is in the form of a bank guarantee; a) the same shall be in favour of the merchant banker and shall be kept valid for a period of thirty working days after the expiry of buy-back period of the offer or till the completion of all obligations under these regulations, whichever is later.

		b) the same shall not be returned by the merchant banker till completion of all obligations under the regulations. ● Where part of the escrow account is in the form other than cash, the company shall deposit with a scheduled commercial bank, in cash, a sum of at least 2.5 per cent of the total amount earmarked for buy-back as specified in the resolution of the board of directors or the special resolution, as the case may be, as and by way of security for fulfillment of the obligations under the regulations by the company. ● The amount may be released from escrow account for making of payment to the shareholders subject to at least 2.5 per cent of the amount earmarked for buy-back as specified in the resolution of the board of directors or the special resolution, as the case may be, remaining in the escrow account at all points of time. ● After utilisation of at least 50 % of the amount earmarked for buy-back as specified in the resolution of the Board of Directors or Special Resolution, as case may be, the amount and the guarantee remaining in the escrow account, if any, shall be released to the company. ● In the event of non-compliance as specified above, SEBI may direct the merchant banker to forfeit the escrow account, subject to a maximum of 2.5 percent of the amount earmarked for buy-back as specified in the resolution of the board of directors or the special resolution, as the case may be, except in cases where,- a) volume weighted average market price (VWAMP) of the shares or other specified securities of the company during the buy-back period was higher than the buy-back price as certified by the merchant banker based on the inputs provided by the Stock exchanges. b) sell orders were inadequate despite the buy orders placed by the company as certified by the merchant banker based on the inputs provided by the stock exchanges. c) such circumstances existed which were beyond the control of the company and in the opinion of SEBI merit consideration. d) In the event of forfeiture for non-fulfilment of obligations as specified in these regulation, the amount forfeited shall be deposited in the Investor Protection and Education Fund of Securities and Exchange Board of India.
7.	**Extinguishment of certificates**	● The provisions pertaining to the extinguishment of certificates for tender offers specified above shall apply for extinguishment of certificates for buy-back from open market. ● The verification of acceptances shall be completed by the company within fifteen working days of the payout.

		• The company shall extinguish and physically destroy the securities certificates so bought back during the month in the presence of a Merchant Banker and the Secretarial Auditor, on or before the fifteenth day of the succeeding month. However, the company shall ensure that all the securities bought-back are extinguished within seven working days of expiry of buy-back period.

Buy-back through book building

A company may buy-back its shares or other specified securities from its existing securities holders through the book building process.

Disclosures, filing requirements and timelines for public announcement	• The company, which has been authorised by a special resolution or a resolution passed by its Board of Directors, as the case may be, shall appoint a merchant banker and make a public announcement within two working days from the date of the approval of Board of Directors or of the shareholders, as the case may be. • The disclosures in the public announcement shall be made in accordance with Schedule II. • The book building process shall commence within seven working days from the date of the public announcement. • The public announcement shall contain the detailed methodology pertaining to intimation required to be made prior to the opening of the buy-back offer as specified in Schedule- VI.
Offer procedure	• The company making the buy-back offer shall disclose the maximum buy-back price, being the upper end of the price range, as approved by the Board of Directors of the company or its shareholders, as the case may be and the book value of the shares or other specified securities of the company. • The company shall publish the offer opening announcement on the date of commencement of the buy-back. • In case of frequently traded securities, the lower end of the price range shall not be less than the higher of: ▪ the closing price of the securities of the company on the date of the Notice as specified in Schedule- VI; and ▪ the volume weighted average market price of the shares or other specified securities of the company in the fifteen trading days prior to the date of the intimation of the meeting of the Board of Directors approving the buy-back. • In case of infrequently traded securities, the lower end of the price range shall not be less than the price of the securities of the company determined on the basis of the report of a registered valuer.

	• The buy-back price shall depend upon the price discovered through the bids received from the shareholders within the price range. The effect on the price of the equity shares of the company due to material price movement and confirmation of reported event or information may be excluded as per the framework specified under Regulation 30(11) of the SEBI (LODR) Regulations, 2015 for calculation of the lower end of the price range under this regulation.
Payment to holders of shares or other specified securities	• The payment of consideration to holders of shares or other specified securities shall be completed within a period of five working days from the date of closure of the buy-back offer.
Retail and Promoter participation	• Retail investors shall have the option to bid at the buy-back price. 'Retail investors' means securities holders who hold shares or other specified securities of the company up to two lakh rupees in value calculated on the basis of the closing price as on the identified date as specified in Schedule-VI. • Promoters along with their associates shall not be permitted to participate in buy-back through book building.
Methodology of acceptance of bids	• The buy-back offer shall be kept open for a minimum of two trading days. • Securities holders can submit bids for any number of shares or other specified securities of the company, not exceeding the total number of securities in the relevant category, at a price within the price range.
	• In the event that, the bids are more than the buy-back size: ▪ The price at which hundred per cent of the buy-back size is reached shall be the buy-back price; and ▪ shares or other specified securities tendered at or below the buyback price shall be accepted at the buy-back price and in proportion to the size of the bids received. • In the event that the bids are less than the buy-back size; all the shares or other specified securities tendered shall be accepted at the highest bid price. • Once the public announcement is made, the buy-back shall not be withdrawn or terminated and bids once placed shall not be withdrawn.
Extinguishment of certificates	• The provisions pertaining to extinguishment of certificates for tender offer shall be applicable mutatis mutandis to the buy-back through book building.

OBLIGATIONS FOR ALL BUY-BACK OF SHARES OR OTHER SPECIFIED SECURITIES

Obligations of the Company	*Obligations of the Merchant Banker*
● The company shall ensure that, – ➢ the letter of offer, the public announcement of the offer or any other advertisement, circular, brochure, publicity material shall contain true, factual and material information and shall not contain any misleading information and must state that the directors of the company accept the responsibility for the information contained in such documents; ➢ the company shall not issue any shares or other specified securities including by way of bonus till the date of expiry of buy- back period for the offer made under these regulations except in discharge of subsisting obligations through conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares However, the relevant details and the potential impact of such subsisting obligations, if any, shall be disclosed in the public announcement.. ➢ the company shall pay the consideration only by way of cash; ➢ the company shall not withdraw the offer to buy-back after the draft letter of offer is filed with SEBI or public announcement of the offer to buy-back is made; ➢ the promoter(s) or his/their associates shall not deal in the shares or other specified securities of the company in the stock exchange or off-market, including inter-se transfer of shares among the promoters during the period from the date of passing the resolution of the board of directors or the special resolution, as the case may be, till the closing of the offer; ➢ the company shall not raise further capital for a period of one year from the expiry of buy-back period, except in discharge of its subsisting obligations. ● No public announcement of buy-back shall be made during the pendency of any scheme of amalgamation or compromise or arrangement pursuant to the provisions of the Companies Act, 2013. ● The company shall nominate a compliance officer and investors service centre for compliance with the buy-back regulations and to redress the grievances of the investors. ● particulars of the security certificate extinguished and destroyed shall be furnished by the company to the stock exchanges where the shares or other specified securities of the company are listed within seven working days of extinguishment and destruction of the certificates.	The merchant banker shall ensure that – ● the company is able to implement the offer; ● the provision relating to escrow account has been complied with; ● firm arrangements for monies for payment to fulfill the obligations under the offer are in place; ● the public announcement of buy-back is made in terms of the regulations; ● the letter of offer has been filed in terms of the regulations; ● a due diligence certificate along with the draft letter of offer has been furnished to SEBI; ● the contents of the public announcement of offer as well as the letter of offer are true, fair and adequate and quoting the source wherever necessary; ● due compliance of sections 68, 69 and 70 of the Companies Act and any other laws or rules as may be applicable in this regard has been made; ● the bank with whom the escrow or special amount has been deposited releases the balance amount to the company only upon fulfilment of all obligations by the company under the regulations;

• The company shall not buy-back the locked-in shares or other specified securities and non-transferable shares or other specified securities till the pendency of the lock-in or till the shares or other specified securities become transferable. • The company shall within two working days of expiry of buy-back period issue a public advertisement in a national daily, inter alia, disclosing: a) number of shares or other specified securities bought; b) price at which the shares or other specified securities bought; c) total amount invested in the buy-back; d) details of the securities holders from whom shares or other specified securities exceeding one percent of total shares or other specified securities are bought back; and e) the consequent changes in the capital structure and the shareholding pattern after and before the buy-back. • The company in addition to these regulations shall comply with the provisions of buy-back as contained in the Companies Act and other applicable laws.	• a final report is submitted to SEBI in the form specified within fifteen days from the date of expiry of buy-back period.

LESSON ROUND-UP

- "Buy-back" means the purchase of its own shares or other specified securities by a company.
- Buy-back of securities is regulated by the SEBI (Buy-Back of Securities) Regulations, 2018 in case of listed companies. The company shall not make any buy-back unless it is authorised by the company's articles. In case of no authorisation, the company may authorise the articles by passing of special resolution in the General Meeting.
- Buy-back of securities is a corporate financial strategy which involves capital restructuring and is prevalent globally with the underlying objectives of increasing earnings per share, averting hostile takeovers, improving returns to the stakeholders and realigning the capital structure.
- The main objective of buy-back may be to improve earnings per share; to improve return on capital, return on net worth and to enhance the long-term shareholder value; to provide an additional exit route to shareholders when shares are undervalued or are thinly traded; to enhance consolidation of stake in the company; to prevent unwelcome takeover bids; to return surplus cash to shareholders; to achieve optimum capital structure; to support share price during periods of sluggish market conditions and to service the equity more efficiently.
- Buy-back of securities may be made :
  a) from the existing shareholders or other specified securities holders on a proportionate basis through the tender offer; or
  b) from the open market through book-building and Stock exchange.

- A company may undertake a buy-back of its own shares or other specified securities out of its free reserves or the securities premium account; or the proceeds of the issue of any shares or other specified securities.
- Every buy-back shall be completed within a period of one year from the date of passing of the special resolution at general meeting, or the resolution passed by the board of directors of the company, as the case may be.
- The company shall, after expiry of the buy-back period, file with the Registrar of Companies and SEBI, a return containing such particulars relating to the buy-back within thirty days of such expiry, in the format as specified in the Companies (Share Capital and Debentures) Rules, 2014.

GLOSSARY

Buyback period: Buyback period means the period between the date of board of directors resolution or date of declaration of results of the postal ballot for special resolution, as the case may be, to authorize buyback of shares of the company and the date on which the payment of consideration to shareholders who have accepted the buyback offer is made.

Bid : An offer of a price to buy as in an auction. Business on the Stock Exchange is done through bids. Bid also refers to the price one is willing to pay for a security.

Company : A company as defined under the Companies Act whose shares or other specified securities are listed on a Stock Exchange and which buys or intends to buy such shares or other specified securities in accordance with these regulations.

Tender Offer : Tender offer means an offer by a company to buy-back its own shares or other specified securities through a letter of offer from the holders of the shares or other specified securities of the company.

Earnings per share (EPS) : It is the portion of a company's profit allocated to each outstanding share of common stock and it serves as an indicator of a company's profitability.

Working Day : It means any working day of the SEBI.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. What do you mean by buy-back of Securities? Can a company buy-back its own shares or any specified securities through negotiated deals or through any private arrangements? Comment with methods allowed for buy-back.
2. XYZ Ltd., has equity share capital of Rs. 20,00,000 of face value of Rs. 10 each, listed in BSE Ltd. The company has proposed for buy-back of its shares up to 25%. As a Company Secretary explain the conditions for buy-back of shares.
3. Explain the provisions for opening of Escrow Account with respect to buy-back of shares through Tender Offer?
4. Can a company buy-back its shares without passing shareholders' resolution?

5. What are the sources available for buy-back of shares or other specified securities under the SEBI (Buy- back of securities) Regulations, 2018?
6. Elucidate the provisions with respect to Buy-back of physical shares under the SEBI (Buy-back of Securities) Regulations, 2018?
7. Explain the obligations of a company under the SEBI (Buy-back of Securities) Regulations, 2018?
8. Amber Ltd. is a listed company on the leading stock exchange of the country. The company has substantial bank balances in the financial statement for the Financial Year 2021-22. There is no foreseeable investment opportunity with the company. Hence the management decided to buy-back its equity shares from the market. As a Company Secretary, prepare a note to the Managing Director enumerating the conditions for buy-back of shares with reference to SEBI (Buy-Back of Securities) Regulations, 2018.
9. The financial data of a listed company as on 31st March, 2022 are as follows :

   Authorized equity share capital Rs. 10 crore (1 crore shares of Rs.10 each)

   Paid-up equity share capital Rs. 5 crore

   General reserve Rs. 3 crore

   Debenture redemption reserve Rs. 2 crore

   The Board of directors of the company passed resolution by circulation for buy-back of shares to the extent of 9% of the company's paid-up share capital and free reserves. You are required to examine the validity of the proposal with reference to the provisions of the SEBI Regulations.
10. The following is an extract of Balance Sheet of ABC Ltd. :

    Equity Shares Capital — 50,000 Equity Share of Rs. 10 each.

    10% Debenture Capital — 20,000 Debenture of Rs. 10 each.

    On 21st April, 2022, the Board of Directors decided to buy-back 5,000 equity shares for which they would call Extra-ordinary General Meeting. In the year 2020, the company has defaulted in payment of interest on secured loan to Bank amounted to Rs. 25 crore, which was remedied in the year 2021. Comment on the above situation.

LIST OF FURTHER READINGS

- SEBI Circulars
- SEBI Notifications
- SEBI FAQs

OTHER REFERENCES (Including Websites/Video Links)

- https://www.sebi.gov.in/
- https://www.nseindia.com/
- https://www.bseindia.com/

Mutual Funds

Lesson 17

KEY CONCEPTS

■ Mutual Fund ■ Asset Management Company ■ Sponsor ■ Trustees ■ Close-Ended Scheme ■ Open-Ended Scheme ■ Exchange Traded Fund ■ Fund of Funds Scheme ■ Money Market Mutual Fund ■ Real Estate Mutual Fund Scheme ■ Unit ■ Unit Holder ■ Offer Document

Learning Objectives

To understand:

- Meaning of Mutual Fund
- Trend of mutual funds in India over a period of time
- Structure of a Mutual Fund
- Various schemes of mutual funds
- Advantages and risk involved in Mutual Fund
- SEBI laws governing mutual fund

Lesson Outline

- Introduction
- Overview of Mutual Funds Industry in India
- Structure of a Mutual Fund
- Classification of Mutual Funds
- Key Players in Mutual Fund Industry
- Mutual Fund Terminologies
- Net Asset Value
- Expense Ratio
- Holding Period Return
- Evaluating Performance of Mutual Fund
- Advantages of Mutual Funds
- Risks involved in Mutual Funds
- SEBI (Mutual Fund) Regulations, 1996 – An Overview
- Registration of Mutual Funds
- Constitution and Management of Asset Management Company and Custodian
- Schemes of Mutual Funds
- Code of Conduct of Mutual Funds
- Advertisement Code
- Restriction on Investment by Mutual Fund Companies
- Pricing of Units of Mutual Fund
- Facilitating Transaction in Mutual Fund Schemes through the Stock Exchange Infrastructure
- Provisions pertaining to Mutual Funds under the SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015
- Case Law and Case Study
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- SEBI (Mutual Funds) Regulations, 1996

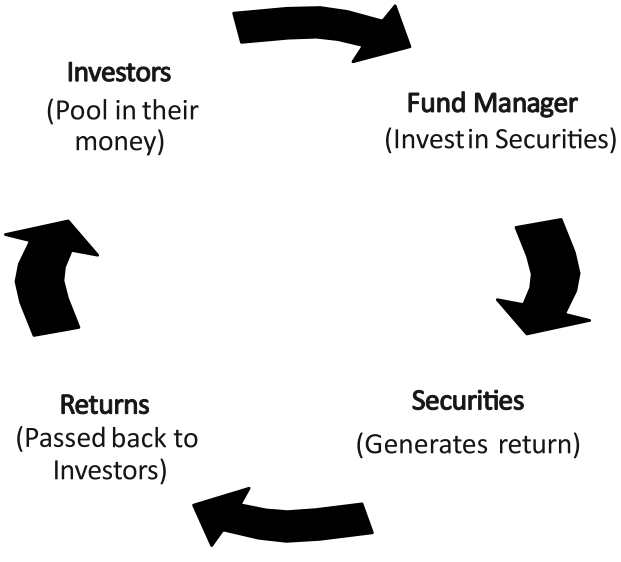
INTRODUCTION

As our Economy continues to grow there is a huge amount of wealth creating opportunities surfacing everywhere. A Mutual fund is a professionally managed form of collective investment that pools money from many investors and invest in stocks, bonds, short-term money market instruments and other securities.

The major reason investor chooses mutual funds are professional and management diversification. The investors should compare the risks and expected yields after adjustment of tax on various instruments while taking investment decisions.

SEBI (Mutual Fund) Regulations, 1996, define **"mutual fund"** as a fund established in the form of a trust to raise monies through the sale of units to the public or a section of the public under one or more schemes for investing in securities, money market instruments, gold or gold related instruments, real estate assets and such other assets as specified by the SEBI.

Mutual Funds are a vehicle that collects money from investors to buy securities. These investors have a common objective, and this pool of money is advised by the fund manager who decides how to invest the money. With good fund management, the Mutual Fund Manager (or Portfolio Manager) generates returns for the investors, which are passed back to investors. Diversification reduces the risk because all stocks may not move in the same direction in the same proportion at the same time. The mutual funds normally come out with a number of schemes with different investment objectives which are launched from time to time. A mutual fund is required to be registered with SEBI before it can collect funds from public.

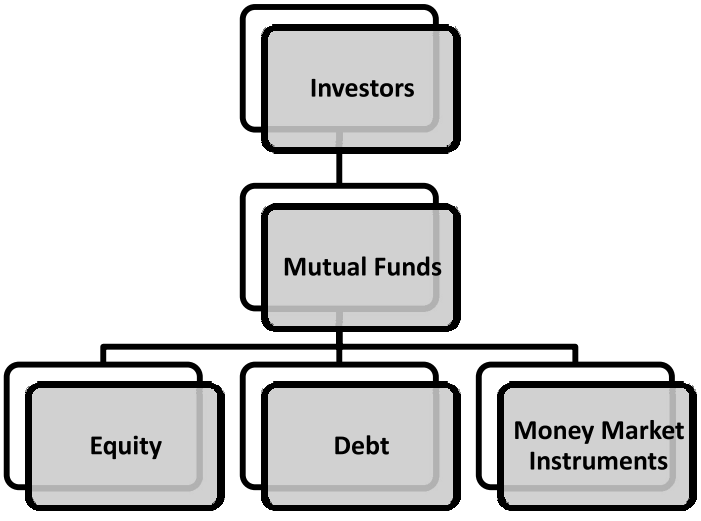


What is a mutual fund?

As the two words, Mutual connotes getting together and Fund connotes money. Hence by definition, a Mutual Fund is a vehicle for investing money for investors with a common objective.

A Mutual Fund is a trust that collects money from investors who share a common financial goal, and invest the proceeds in different asset classes, as defined by the investment objective. Simply put, mutual fund is a financial intermediary, set up with an objective to professionally manage the money pooled from the investors at large.

By pooling money together in a mutual fund, investors can enjoy economies of scale and can purchase stocks or bonds at a much lower trading costs compared to direct investing in capital markets. The other advantages are diversification, stock and bond selection by experts, low costs, convenience and flexibility.



List of all stakeholders in Indian mutual fund industry is as follows:

- Reserve Bank of India (RBI)
- Securities and Exchange Board of India (SEBI)
- Association of Mutual Funds in India (AMFI)
- Ministry of Finance
- Self Regulatory Organization (SROs)
- Income Tax Regulations
- Investors' Associations

OVERVIEW OF MUTUAL FUNDS INDUSTRY IN INDIA

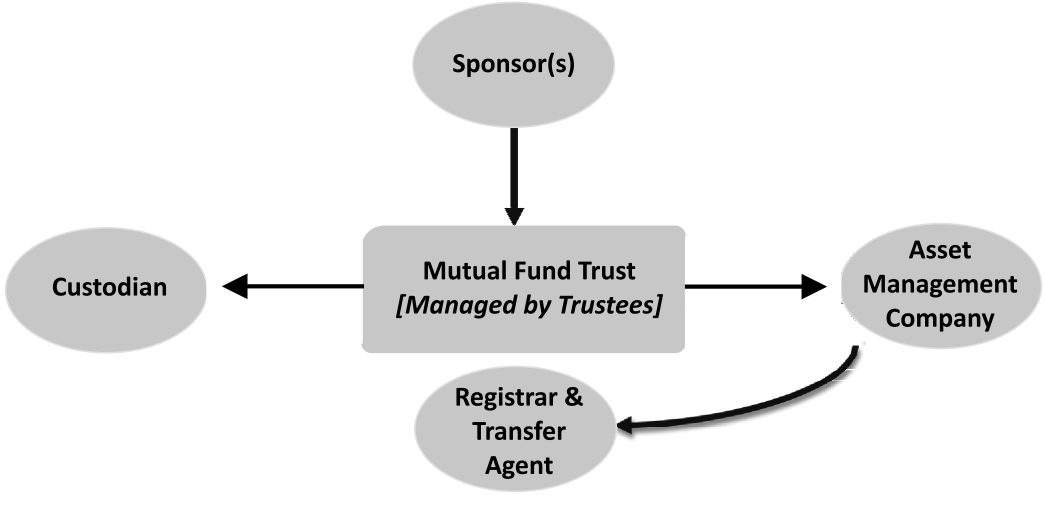
- The mutual fund industry in India began in 1963 with the formation of the Unit Trust of India (UTI) as an initiative of the Government of India and the Reserve Bank of India. In early 1990s, Government allowed public sector banks and institutions to set up mutual funds.
- Much later, in 1987, SBI Mutual Fund became the first non-UTI mutual fund in India.
- Subsequently, the year 1993 heralded a new era in the mutual fund industry. This was marked by the entry of private companies in the sector. Franklin Templeton (erstwhile Kothari Pioneer) was the first of its kind.
- After the Securities and Exchange Board of India (SEBI) Act was passed in 1992, the SEBI Mutual Fund Regulations came into being in 1996.
- As the industry expanded, a non-profit organization, the Association of Mutual Funds in India (AMFI), was established on 1995. Its objective is to promote healthy and ethical marketing practices in the Indian mutual fund Industry. SEBI has made AMFI certification mandatory for all those engaged in selling or marketing mutual fund products.

STRUCTURE OF A MUTUAL FUND

A mutual fund is set up in the form of a trust, which has sponsor, trustees, asset management company ("AMC") and a custodian. SEBI prescribes comprehensive set of guidelines in the functioning of a mutual fund through the SEBI (Mutual Funds) Regulations, 1996. These regulations stipulate that a mutual fund must consist of five important entities:

1. **Sponsor -** Sponsor is the principal body, who brings the capital as per the guideline issued by SEBI to start a mutual fund.
2. **Trust & Trustee -** Trust is created by sponsor and trustees are appointed to manage the operations of a trust. The trustees' job is to ensure that all the funds are managed as per the defined objective and investors' interest is protected.
3. **Asset Management Company (AMC) -** The Trustee appoints AMC to manage the funds of the investors and, in return, get the fee to manage the fund.
4. **Custodian -** Custodian job is to the safekeeping of the investors' fund and securities and to ensure that it would be used for intended purpose only.
5. **Registrar and Transfer Agent (RTA) -** RTAs job is to manage the backend operation of the mutual fund and managing investors' transaction request and other related services.

Mutual Fund Structure



Mutual Fund Structure - Example

Description	*Entity*
Mutual Fund Trust	IDBI Mutual Fund
Sponsor	IDBI Bank Limited
Trustee	IDBI MF Trustee Company Limited
Asset Management Company	IDBI Asset Management Limited
Registrar	KFIN Technologies Private Limited
Custodian	SBI SG Global Securities Private Limited

Regulator & Industry Body

Regulator: Securities and Exchange Board of India (SEBI)

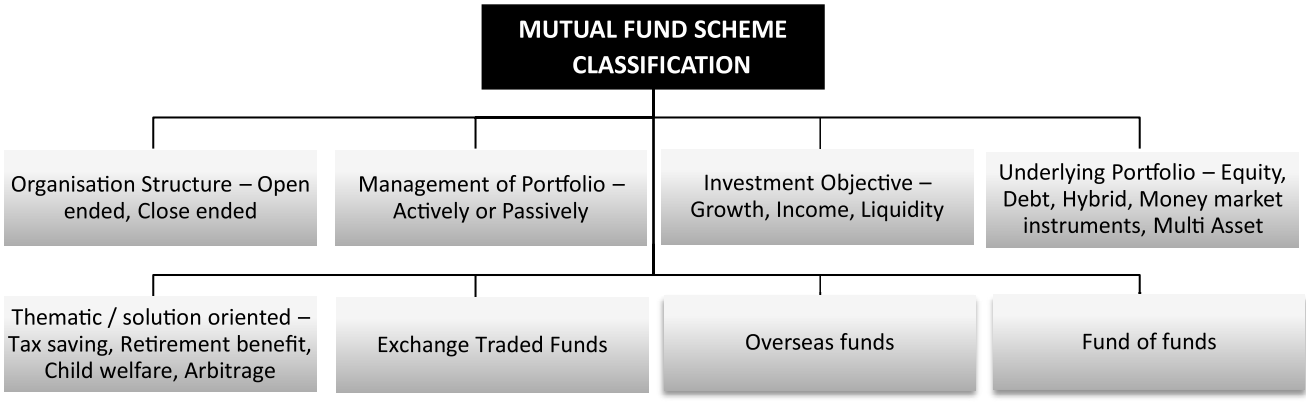
- Regulates mutual funds, custodians and registrars & transfer agents.
- The applicable guidelines for mutual funds are set out in SEBI (Mutual Funds) Regulations, 1996; which are updated periodically.

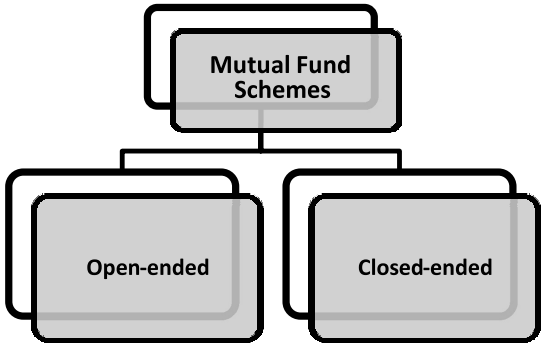
Industry Body: Association of Mutual Funds in India (AMFI)

- As of now, all 44 AMCs are members of AMFI. (*Source: www.amfiindia.com*)
- Recommends and promotes best business practices and code of conduct.
- Disseminates information and carries out studies/research on mutual fund industry.

CLASSIFICATION OF MUTUAL FUNDS

Mutual funds come in many varieties, designed to meet different investor goals. Mutual funds can be broadly classified based on –





Open Ended	*Close Ended*
• Can be purchased on any transaction day	• Can be purchased only during NFO
• Can be redeemed on any transaction day [Except when units are locked-in in the case of Equity-Linked Savings Scheme (ELSS) funds]	• Can be redeemed only at maturity
• High liquidity	• Low on liquidity

Besides these, there are other types of mutual funds also to meet the investment needs of several groups of investors. Some of them include the following:

(a) **Income Oriented Schemes:** The fund primarily offer fixed income to investors. Naturally enough, the main securities in which investments are made by such funds are the fixed income yielding ones like bonds, corporate debentures, Government securities and money market instruments, etc.

(b) **Growth Oriented Schemes:** These funds offer growth potentialities associated with investment in capital market namely: (i) high source of income by way of dividend and (ii) rapid capital appreciation, both from holding of good quality scrips. These funds, with a view to satisfying the growth needs of investors, primarily concentrate on the low risk and high yielding spectrum of equity scrips of the corporate sector.

(c) **Hybrid Schemes:** These funds cater to both the investment needs of the prospective investors – namely fixed income as well as growth orientation. Therefore, investment targets of these mutual funds are judicious mix of both the fixed income securities like bonds and debentures and also sound equity scrips. In fact, these funds utilise the concept of balanced investment management. These funds are, thus, also known as "balanced funds".

(d) **High Growth Schemes:** As the nomenclature depicts, these funds primarily invest in high risk and high return volatile securities in the market and induce the investors with a high degree of capital appreciation.

(e) **Capital Protection Oriented Scheme:** It is a scheme which endeavours to protects the capital invested in the mutual fund through suitable orientation of is portfolio structure.

(f) **Tax Saving Schemes:** These schemes offer tax rebates to the investors under tax laws as prescribed from time to time. This is made possible because the Government offers tax incentive for investment in specified avenues. For example, Equity Linked Saving Schemes (ELSS) and pensions schemes.

(g) **Special Schemes:** This category includes index schemes that attempt to replicate the performance of particular index such as the BSE, Sensex or the NSE-50 or industry specific schemes (which invest in specific industries) or sectoral schemes (which invest exclusively in segment such as 'A' Group or initial public offering). Index fund schemes are ideal for investors who are satisfied with a return approximately equal to that of an index. Sectoral fund schemes are ideal for investors who have already decided to invest in particular sector or segment.

(h) **Real Estate Funds:** These are close ended mutual funds which invest predominantly in real estate and properties.

(i) **Off-shore Funds:** Such funds invest in securities of foreign companies with RBI permission.

(j) **Leverage Funds:** Such funds, also known as borrowed funds, increase the size and value of portfolio and offer benefits to members from out of the excess of gains over cost of borrowed funds. They tend to indulge in speculative trading and risky investments.

(k) **Hedge Funds:** They employ their funds for speculative trading, i.e. for buying shares whose prices are likely to rise and for selling shares whose prices are likely to fall.

(l) **Fund of Funds:** They invest only in units of other mutual funds. Such funds do not operate at present in India.

(m) **New Direction Funds:** They invest in companies engaged in scientific and technological research such as birth control, anti-pollution, oceanography etc.

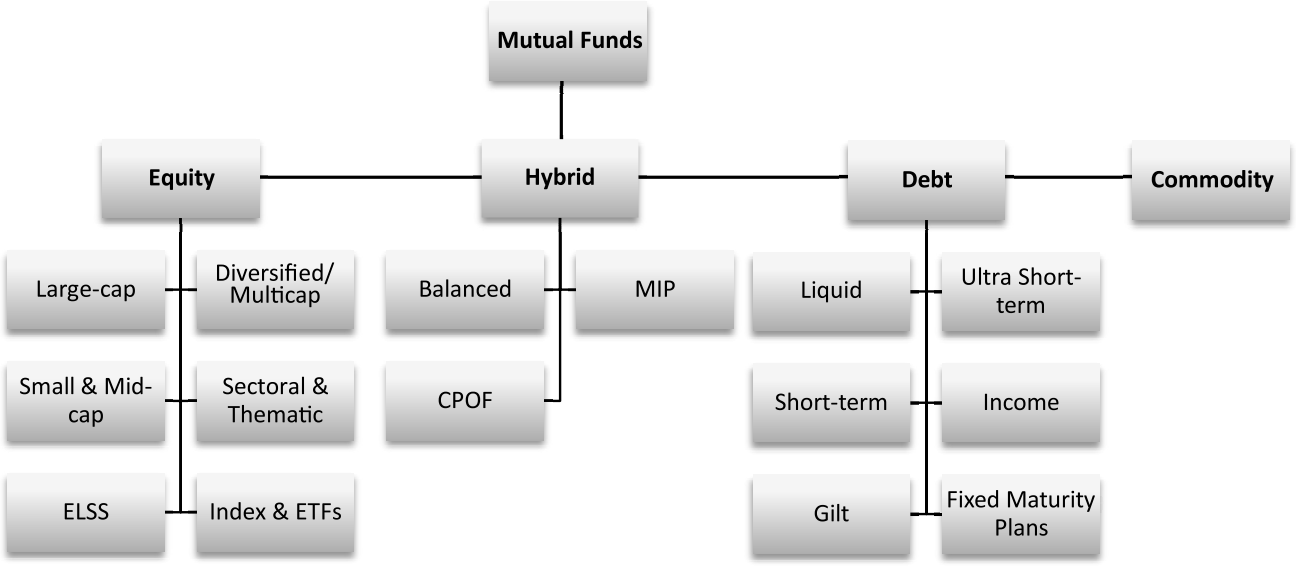
(n) **Exchange Trade Funds (ETFs)** are a new variety of mutual funds that first introduced in 1993. ETFs are sometimes described as mere "tax efficient" than traditional equity mutual funds, since in recent years,

some large ETFs have made smaller distribution of realized and taxable capital gains than most mutual funds.

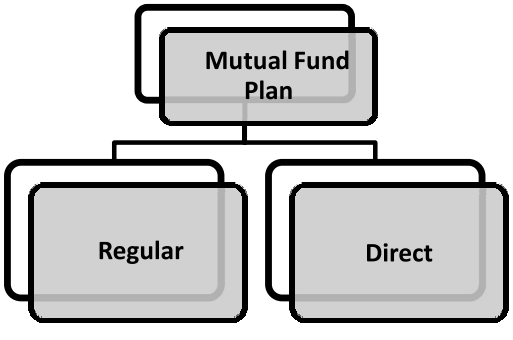
(o) **Money Market Mutual Funds:** These funds invest in short- term debt securities in the money market like certificates of deposits, commercial papers, government treasury bills etc. Owing to their large size, the funds normally get a higher yield on such short term investments than an individual investor.

(p) **Infrastructure Debt Fund:** They invest primarily in the debt securities or securitized debt investment of infrastructure companies.

Categories of Mutual Funds



Types of Mutual Fund Plans

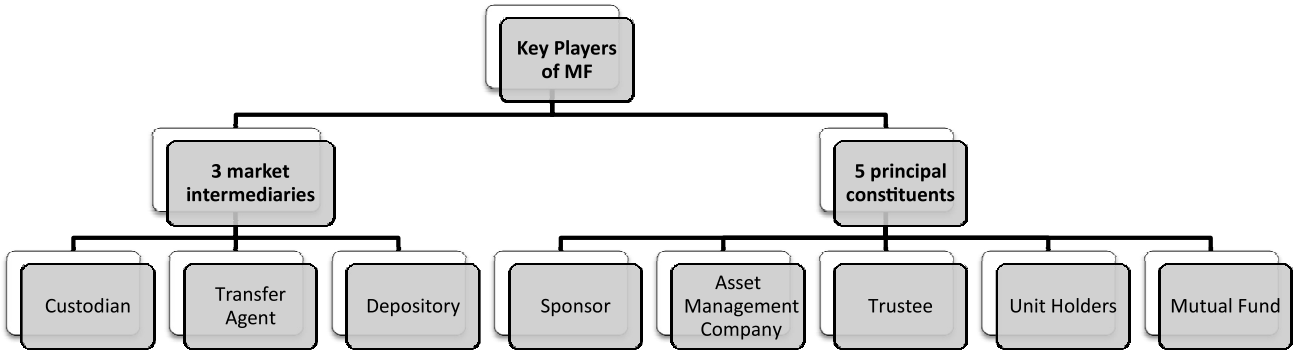


Regular Plans	*Direct Plans*
• Sold through a distributor	• Sold directly by the Asset Management Company (AMC)
• Higher Expense Ratio (Due to commissions paid to distributor)	• Lower Expense Ratio (No commission paid to distributor)
• Potentially lower returns to the investor (Due to higher expenses)	• Potentially higher returns (Due to lower expenses)

KEY PLAYERS IN MUTUAL FUND

A mutual fund is a professionally-managed investment scheme, usually run by an asset management company that brings together a group of people and invests their money in stocks, bonds and other securities. It is formed by trust body.

There are five principal constituents and three market intermediaries in the formation and functioning of mutual fund:



Five principal constituents

- **Sponsor**

  A sponsor is an ***influential investor*** who creates demand for a security because of their positive outlook on it. The sponsor brings in capital and creates a mutual fund trust and sets up the AMC. The sponsor makes an application for registration of the mutual fund and contributes at least 40% of the **net worth** of the AMC.

- **Asset Management Company**

  An asset management company (AMC) is a company that invests its ***clients' pooled funds*** into securities that match declared ***financial objectives***. Asset management companies provide investors with more ***diversification*** and ***investing options***. AMCs manage mutual funds, hedge funds and pension plans, these companies earn income by charging ***service fees*** or commissions to their clients.

  The sponsor or, if so authorised by the trust deed, the trustee, shall appoint an asset management company, which has been approved by the SEBI. The appointment of an asset management company can be terminated by majority of the trustees or by seventy-five per cent of the unit holders of the scheme. Any change in the appointment of the asset management company shall be subject to prior approval of the SEBI and the unitholders.

- **Trustee**

  A trustee is a person or firm that holds and administers property or assets for the benefit of a ***third party.*** A trustee may be appointed for a wide variety of purposes, such as in case of bankruptcy, for a charity, for a trust fund or for certain types of retirement plans or pensions.

- **Unit Holders**

  A unitholder is an investor who owns the **units issued by** a trust, like a real estate investment trust or a master limited partnership (MLP). The securities issued by trusts/MF are called ***units***, and investors in units are called unitholders. The unit in turn reflect share of the investor in the Net Assets of the fund.

- **Mutual fund**

  A mutual fund established under the Indian Trust Act to raise money through, the ***sale of units*** to the public for investing in the ***capital market*** The funds thus collected as per the directions of asset management company for invested. The mutual fund has to be SEBI registered.

Three market intermediaries are:

- **Custodian**

  A custodian is a person who carries on the business of providing custodial services to the client. The custodian keeps the custody of the securities of the client. The custodian also provides incidental services such as maintaining the accounts of securities of the client, collecting the benefits or rights accruing to the client in respect of securities.

  Every custodian should have adequate facilities, sufficient capital and financial strength to manage the custodial services. The SEBI (Custodian of Securities) Regulations, 1996 prescribe the roles and responsibilities of the custodians.

  The roles and responsibilities of the custodians are to administrate and protect the assets of the clients; Open a separate custody account and deposit account in the name of each client; Record assets; and Conduct registration of securities.

- **Transfer Agents**

  A transfer agent is a person who has been granted a Certificate of Registration to conduct the business of transfer agent under the SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993. Transfer agents' services include issue and redemption of mutual fund units, preparation of transfer documents and maintenance of updated investment records. They also record transfer of units between investors where depository does not function. They also facilitate investors to get customized reports.

- **Depository**

  A depository facilitates the smooth ***flow of trading*** and ensure the investor`s about their investment in securities.

MUTUAL FUND TERMINOLOGIES

A. Offer Document

- AMC raises money in new schemes through New Fund Offer (NFO)
- Offer document contains key details about the NFO – open and close dates, scheme objective, nature of the scheme, etc.
- Filed with SEBI

Two parts:

1. **Scheme Information Document (SID)** - A document that contains the details of the scheme, which the investor should know before investing. SID has to be updated every year.

   Key Contents:

   - Scheme name on the cover page, along with scheme structure (open / closed-ended) and expected scheme nature (equity / debt / balanced / liquid / ETF)
   - Highlights of the scheme

- Risk factors
  - Standard
  - Scheme specific
- Due diligence certificate issued by the AMC
- Fees and expenses
- Rights of unit holders
- Penalties, litigations, etc.

2. **Statement of Additional Information (SAI) -** A document that contains statutory information about the fund house offering the scheme. SAI has to be updated the end of every quarter.

   Key Contents:

   - Information about sponsor, mutual fund, trustees, custodian and registrar & transfer agents
   - Condensed financial information for schemes launched in the last three financial years
   - Information on how to apply
   - Rights of unit holders
   - Details of the fund managers
   - Tax, legal and other general information

B. Key Information Memorandum (KIM)

- Essentially a summary of SID & SAI
- As per SEBI regulations, every application form should be accompanied by the KIM
- The KIM has to be updated at least once a year

Contents

- Name of the AMC, Mutual Fund Trust, Trustee, Fund Manager(s) and Scheme details
- Open and close dates of the issue
- Issue price of the scheme
- Plans and options available in the scheme
- Risk profile of the scheme
- Benchmark
- Dividend policy
- Performance of the scheme and benchmark over last 1, 3, 5 years and since inception
- Loads and expenses
- Contact information and registrars

C. Fact Sheets

Usually provided on a monthly basis by AMCs

Contains the following:

- NAV and Assets under Management (AUM)
- Expense ratio, exit loads, average maturity, yield-to-maturity (YTM), modified duration
- Benchmark & Fund manager details
- Past performance
- Scheme's allocation & portfolios
- Style box
- Other scheme attributes – like risk category, minimum investment amount, scheme objective, etc.

D. Assets under Management (AUM) What is AUM?

It is the total market value of the assets managed by a mutual fund scheme as on a particular date

Periodic AUM Available

- Month-end
- Quarterly average

E. Know Your Client (KYC) – What is KYC?

- A one-time process made mandatory to invest in mutual funds
- Key details required: PAN, Address proof, contact details, occupation and income details
- With a view to bring uniformity in the KYC requirements for the securities markets, SEBI has initiated usage of uniform KYC by all SEBI registered intermediaries. In this regard SEBI has issued the SEBI {KYC (Know Your Client) Registration Agency (KRA)}, Regulations, 2011.

Where can it be done?

- CDSL Ventures Limited KRA
- CAMS KRA
- Karvy KRA
- NDML KRA (wholly owned subsidiary of NSDL)
- NSE Data & Analytics Limited (wholly owned subsidiary of NSE)

F. Foreign Account Tax Compliance Act (FATCA) – What is FATCA?

- Requires that all financial institutions (including Indian mutual funds) need to report financial transactions of US persons and entities in which US persons hold a substantial ownership
- Enacted to prevent tax evasion through foreign investments
- Key details required: Country of birth, Country of citizenship, country of tax residence, TIN from such country
- Currently made mandatory for all investors (existing and new) in Indian mutual funds
- For non-individual investors, Ultimate Beneficial Ownership (UBO) details have to be provided.

G. Modes of Holding

- Single
- Either or Survivor
    - o Signature of any of the applicants is sufficient for making transactions
- Joint
    - o Signature of all the applicants is required for making transactions.

H. Nomination

- Nomination is a facility that enables an individual unitholder to nominate a person, who can claim the Units held by the unitholder or the redemption proceeds thereof in the event of death the unitholder
- Up to 3 nominees can be registered for a folio
- Units get transferred to the nominees (in the proportion specified) in case of the investor's demise
- Nomination can be updated as and when required by the investor
- A minor can also be nominated, provided the guardian is specified
- If nomination is not registered, in case of death of the investor, the legal heir has to produce documents such as Will, Legal Heir Certificate, No-Objection Certificate from other legal heirs, etc.

Systematic Investment Plan (SIP) in Mutual Fund

Systematic Investment Plan (SIP) is an investment plan (methodology) offered by Mutual Funds wherein one could invest a fixed amount in a mutual fund scheme periodically, at fixed intervals – say once a month, instead of making a lump-sum investment. The SIP instalment amount could be as little as Rs.500 per month. SIP is similar to a recurring deposit where you deposit a small /fixed amount every month.

SIP has been gaining popularity among Indian MF investors, as it helps in investing in a disciplined manner. Systematic Investment Plans offered by mutual funds are easily the best way to enter the world of investments over the long term.

To illustrate, a small amount of ₹1000 invested every month at an interest rate of 8% for 25 years would give ₹ 9.57 Lakh. That means investment of just ₹ 3 Lakh would have grown three times over.

NET ASSET VALUE

The performance of a particular scheme of a mutual fund is denoted by Net Asset Value (NAV). In simple words, NAV is the market value of the securities held by the scheme.

Mutual funds invest the money collected from investors in securities markets. Since market value of securities changes every day, NAV of a scheme also varies on day to day basis.

The NAV per unit is the market value of securities of a scheme divided by the total number of units of the scheme on any particular date.

For example, if the market value of securities of a mutual fund scheme is INR 200 lakh and the mutual fund has issued 10 lakh units of INR 10 each to the investors, then the NAV per unit of the fund is INR 20 (i.e.200 lakh/10 lakh). NAV is required to be disclosed by the mutual funds on a daily basis.

Unlike stocks (where the price is driven by the market and changes from minute-to-minute), mutual funds don't declare NAVs through the day. Instead, NAVs of all mutual fund schemes are declared at the end of the trading

day after markets are closed, in accordance with SEBI Mutual Fund Regulations. Further, as per SEBI Mutual Fund Regulations, for all mutual fund schemes, other than liquid fund schemes, the mutual fund Units are allotted only at prospective NAV, i.e., the NAV that would be declared at the end of the day, based on the closing market value of the securities held in the respective schemes.

How is it calculated?

$$\text{Net Asset Value} = \frac{\text{Net Asset of the Scheme}}{\text{Number of units outstanding}}$$

Net Asset of the Scheme = Market value of investments + Receivables+ other accrued income+ other assets – Accrued Expenses- Other Payables- Other Liabilities

Net Asset Value (NAV) – Cut-off Timeline

Type of Scheme	*Transaction type*	*Cut-off timings*
Liquid Funds & Overnight Funds	Subscription (including Switch-in from other schemes)	1:30 p.m.
	Redemption (including Switch-in from other schemes)	3:00 p.m.
All other schemes (other than Liquid Funds / Overnight Funds)	Subscription (including Switch-in from other schemes)	3:00 p.m.
	Redemption (including Switch-in from other schemes)	3:00 p.m.

EXPENSE RATIO

- The fees charged by the scheme to manage investors' money.

What does it contain?

- Fees paid to service providers like trustees, Registrar & Transfer Agents, Custodian, Auditor, etc.
- Asset management expenses
- Commissions paid to distributors
- Other selling expenses including advertising expenses
- Expenses on investor communication, account statements, dividend / redemption cheques / warrants
- Listing fees and Depository fees.
- Service tax.

Under SEBI (Mutual Funds) Regulations, 1996, Mutual Funds are permitted to incur / charge certain operating expenses for managing a mutual fund scheme – such as sales & marketing / advertising expenses, administrative expenses, transaction costs, investment management fees, registrar fees, custodian fees, audit fees – as a percentage of the fund's daily net assets.

This is commonly referred to as 'Expense Ratio'. In short, Expense ratio is the cost of running and managing a mutual fund which is charged to the scheme. All expenses incurred by a Mutual Fund, AMC will have to be managed within the limits specified under Regulation 52(6) & (6A) of the SEBI Mutual Funds Regulations.

The expense ratio is calculated as a percentage of the Scheme's average Net Asset Value (NAV). The daily NAV of a mutual fund is disclosed after deducting the expenses. Thus, the expense ratio has a direct bearing on a scheme's NAV – the lower the expense ratio of a scheme, the higher the NAV.

Illustration:

1. Name of the Scheme	XYZ
Size of the Scheme	Rs.100 Lakh
Face Value of the Share	Rs.10
Number of the outstanding shares	10 Lakhs
Market value of the fund's investments Receivables	Rs.180 Lakhs
Accrued Income	Rs.1 Lakhs
Receivables	Rs.1 Lakh
Liabilities	Rs.50,000
Accrued expenses	Rs.50,000
Find NAV per unit?	

Solution

NAV per unit = (Investment + Recoverable + Accrued Income – Liabilities – Accrued expenses/No of units (mutual fund)

= (180 Lakhs + 1 Lakh + 1 – 0.50 Lakh – 0.50 Lakh)/10 Lakhs

NAV = Rs.18.10 per unit

2. ABC mutual Fund has the following assets in scheme XYZ at the close business on 31st March, 2022.

Company	*No. of Shares*	*Market Price Per Share*
N Ltd	25000	Rs. 20
D Ltd	35000	Rs. 300
S Ltd	29000	Rs. 380
C Ltd	40000	Rs. 500

The total number of units of scheme XYZ are 10 Lakh. The Scheme XYZ has accrued expenses of Rs. 2,50,000 and other Liabilities of Rs 2,00,000. Calculate the NAV per unit of the scheme XYZ

Solution

Company	*No. of Shares*	*Market Price Per Share*	*Value of Assets/ Liabilities*
N Ltd	25000	Rs. 20	500000
D Ltd	35000	Rs. 300	10500000
S Ltd	29000	Rs. 380	11020000
C Ltd	40000	Rs. 500	20000000

Accrued Expenses	(250000)
Liabilities	(200000)
Net Assets	41570000
No. of Units	1000000
NAV	41.57

3. The redemption price of mutual fund unit is ₹ 48 while the front end load and back end load charges are 2% and 3% respectively. Compute:

i) NAV per unit

ii) Public offer price of the unit.

Solution:

Redemption Price = NAV	Public Offer Price = N A V
(1+ Back End Load) 48 = NAV	(1- Front End Load)
(1+0.03)	= 49.44
= 48x1.03	(1-0.02)
NAV= ₹ 49.44	= 49.44
	0.98
	Public Offer Price = ₹ 50.45

HOLDING PERIOD RETURN (HPR)

Holding period return is the total return received from holding an asset or portfolio of assets over a period of time, generally expressed as a percentage. Holding period return is calculated on the basis of total returns from the asset or portfolio i.e. income plus changes in value. It is particularly useful for comparing returns between investments held for different periods of time.

Calculation of HPR

$$HPR = \frac{\text{Income + (end of period value- original value) x 100}}{\text{Original Value}}$$

Illustration: 2 Calculate HPR for a unit holder who bought a unit at ₹ 17.60 and received a dividend of ₹ 2 per unit during the period. Face value of the unit is ₹ 10and current unit price is ₹19.875

$$HPR = \frac{\text{Dividend+ (NAV at present- NAV at purchase) x 100}}{\text{NAV at purchase}}$$

= 2+ (19.875- 17.60) 17.60

HPR = 24.29%

EVALUATING PERFORMANCE OF MUTUAL FUND

While looking at a mutual fund scheme's performance, one must not be led by the scheme's return in isolation. A scheme may have generated 10% annualised return in the last couple of years. But then, even the market indices would have gone up in similar way during the same period. Under-performance in a falling market, i.e. when the NAV of the scheme falls more than its benchmark (or the market), is the time when one must review his/her investment.

One must compare the scheme's return as against its benchmark return. It is better to be rid of investment in a scheme that consistently under-performs as compared to its benchmark over a period of time, from one's portfolio. It is important to identify under-performers over the longer time horizon (as also out-performers).

In addition, one may also consider evaluating the 'category average returns' as well. Even if a scheme has outperformed its benchmark by a decent margin, there could be better performers in the peer group. The category average returns will reveal how good (or bad) is one's investment is against its peers which help in deciding whether it is time shift the investment to better performers.

One may be holding a too little or too much-diversified portfolio. Even the expense ratio of some of the schemes that one could be holding may be high compared to others within the same category.

ADVANTAGES OF MUTUAL FUNDS

The advantages of investing in a mutual fund are:

1. **Professional Management:** Investors avail the services of experienced and skilled professionals who are backed by a dedicated investment research team which analyses the performance and prospects of companies and selects suitable investments to achieve the objectives of the scheme.
2. **Diversification:** Mutual funds invest in a number of companies across a broad cross-section of industries and sectors. This diversification reduces the risk because seldom do all stocks decline at the same time and in the same proportion. Investors achieve this diversification through a Mutual Fund with far less money than one can do on his own.
3. **Convenient Administration:** Investing in a mutual fund reduces paper work and helps investors to avoid many problems such as bad deliveries, delayed payments and unnecessary follow up with brokers and companies. Mutual funds save investors time and make investing easy and convenient.
4. **Return Potential:** Over a medium to long term, Mutual funds have the potential to provide a higher return as they invest in a diversified basket of selected securities.
5. **Low Costs:** Mutual funds are a relatively less expensive way to invest compared to directly investing in the capital markets because the benefits of scale in brokerage, custodial and other fees translate into lower costs for investors.
6. **Liquidity:** In open ended schemes, investors can get their money back promptly at net asset value related prices from the mutual fund itself. With close ended schemes, investors can sell their units on a stock exchange at the prevailing market price or avail of the facility of direct repurchase at net asset value (NAV) related prices which some close ended and interval schemes offer periodically or offer it for redemption to the fund on the date of maturity.
7. **Transparency:** Investors get regular information on the value of their investment in addition to disclosure on the specific investments made by scheme, the proportion invested in each class of assets and the fund manager's investment strategy and outlook.

RISKS INVOLVED IN MUTUAL FUNDS

The fundamental reason which makes mutual fund risky lies in the fact that it puts money in a variety of investment instruments – debt, equity and corporate bonds, among others. Since the prices of these investment instruments tend to fluctuate in response to several factors, investors may be subjected to loss. In a broader sense, mutual fund risk can be categorized as – systematic risk and unsystematic risk

Types of Risks	*Cause of Risk*
Volatility risk	Typically, equity-based funds invest in the shares of companies that are listed on stock exchanges. The value of such funds is based on companies' performance, which often gets affected due to the prevalent microeconomic factors.
Credit risk	Credit risk in mutual fund investment often results from a situation, wherein, the issuer of the scheme fails to pay the promised interest. In case of debt funds, typically, fund managers include investment-grade securities with high credit ratings.
Liquidity risk	Mutual funds with a long-term and rigid lock-in period like ELSS often come with liquidity risk. Such a risk signifies that investors often find it challenging to redeem their investments without incurring a loss.
Concentrated risk	This mutual fund risk is also prevalent among investors. It can be described as the situation when investors tend to put all their money into a single investment scheme or in one sector. For instance, investing entirely in just one company's stocks often bears a substantial risk of losing capital if caught amidst bad market situations.
Inflation risk	It can be best described as the risk of losing one's purchasing power, mainly due to the rising inflation rate. Typically, investors are exposed to the impact of this risk when the rate of returns earned on investments fails to keep up with the increasing inflationary rate.

Also, Mutual funds may face the following risks, leading to non-satisfactory performance:

1. Excessive diversification of portfolio, losing focus on the securities of the key segments.
2. Too much concentration on blue-chip securities.
3. Necessity to effect high turnover through liquidation of portfolio resulting in large payments of brokerage and commission.
4. Poor planning of investment returns.
5. Unresearched forecast on income, profits and Government policies.
6. Fund managers being unaccountable for poor results.
7. Failure to identify clearly the risk of the scheme as distinct from risk of the market.
8. Under performance in comparison to peers.

SEBI (MUTUAL FUNDS) REGULATIONS, 1996 – AN OVERVIEW

SEBI (Mutual Fund) Regulations, 1996 has been notified on December 09, 1996 with objective to improve the working and regulation of the mutual fund industry, so that mutual funds could provide a better performance and service to all categories of investors and offer a range of innovative products in a competitive manner to match investor needs and preferences across various investor segments. SEBI (Mutual Funds) Regulations, 1996 deals with 10 Chapters and 12 schedules.

Important Definitions

"Mutual Fund" means a fund established in the form of a trust to raise monies through the sale of units to the public or a section of the public under one or more schemes for investing in securities, money market instruments, gold or gold related instruments, silver or silver related instruments, real estate assets and such other assets and instruments as may be specified by the Board from time to time.

However, infrastructure debt fund schemes may raise monies through private placement of units, subject to conditions specified in these regulations:

Further, mutual fund schemes investing in exchange traded commodity derivatives may hold the underlying goods in case of physical settlement of such contracts.

"Unit" means the interest of the unit holders in a scheme, which consists of each unit representing one undivided share in the assets of a scheme.

"Unit Holder" means a person holding unit in a scheme of a mutual fund.

"Asset Management Company" means a company formed and registered under the Companies Act, 1956 or Companies Act, 2013 and approved as such by the SEBI under sub-regulation (2) of regulation 21.

"Close-ended scheme" means any scheme of a mutual fund in which the period of maturity of the scheme is specified.

"Open-ended scheme" means a scheme of a mutual fund which offers units for sale without specifying any duration for redemption.

"Market Abuse" includes manipulative, fraudulent and unfair trade practices which may contravene Section 12A of the Act or any of the provisions of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 or the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.

"Money Market Instruments" includes commercial papers, commercial bills, treasury bills, Government securities having an unexpired maturity up to one year, call or notice money, certificate of deposit, usance bills, and any other like instruments as specified by the Reserve Bank of India from time to time.

"Sponsor" means any person who, acting individually or in concert with another body corporate, establishes a mutual fund.

"Trustees" mean the Board of Trustees or the Trustee Company who hold the property of the Mutual Fund in trust for the benefit of the unit holders.

"Offer document" means any document by which a mutual fund invites public for subscription of units of a scheme.

REGISTRATION OF MUTUAL FUNDS

Eligibility Criteria for Registration of Mutual Funds

For the purpose of grant of a certificate of registration, the applicant has to fulfill the following, namely –

- The sponsor should have a sound track record and general reputation of fairness and integrity in all business transactions.

  Explanation: For the purposes of this clause "sound track record" shall mean the sponsor should, —

(i) be carrying on business in financial services for a period of not less than five years; and

(ii) ensure that the networth is positive in all the immediately preceding five years; and

(iii) ensure that the positive liquid networth is more than the proposed capital contribution of the sponsor in the asset management company and ensure that in case of change in control of the existing asset management company due to acquisition of shares, the positive liquid net worth of the sponsor or funds tied up by the sponsor is to the extent of aggregate par value or market value of the shares proposed to be acquired, whichever is higher; and

(iv) have net profit after providing for depreciation, interest and tax in each of the immediately preceding five years; and

(v) have average net annual profit after depreciation, interest and tax during the immediately preceding five years of at least rupees ten crore:

Provided that if the requirements specified under Explanation to clause (a) are not fulfilled, the sponsor shall,-

1. adequately capitalize the asset management company such that the net worth of the asset management company is not less than rupees one hundred fifty crore; and
2. ensure that the initial shareholding equivalent to capital contributed to the asset management company to the extent of not less than rupees one hundred fifty crore is locked-in for a period of five years; and
3. appoint experienced personnel in asset management company such that the total combined experience of Chief Executive Officer, Chief Operating Officer, Chief Risk Officer, Chief Compliance Officer and Chief Investment Officer should be at least thirty years; and
4. ensure that in case of acquisition of existing asset management company, the sponsor shall have minimum positive liquid net worth equal to incremental capitalization required to ensure minimum capitalization of the asset management company and the positive liquid net worth of the sponsor or the funds tied up by the sponsor are to the extent of aggregate par value or market value of the shares proposed to be acquired, whichever is higher; and
5. ensure that in case of acquisition of stake in an existing asset management company, the shareholding equivalent to at least rupees one hundred fifty crore shall be locked in for five years; and
6. ensure that other conditions in this regard as may be specified by the Board from time to time are adhered to.

   However, a private equity fund or a pooled investment vehicle or a pooled investment fund may also be permitted to sponsor mutual funds subject to such other conditions as may be specified by the SEBI from time to time.

- The applicant is a fit and proper person.
- In the case of an existing mutual fund, such fund is in the form of a trust and the trust deed has been approved by the SEBI.
- The sponsor has contributed or contributes at least 40% to the net worth of the asset management company.

  However, any person who holds 40% or more of the net worth of an asset management company shall be deemed to be a sponsor and will be required to fulfill the eligibility criteria specified in these regulations.

- The sponsor or any of its directors or the principal officer to be employed by the mutual fund should not have been guilty of fraud or has not been convicted of an offence involving moral turpitude or has not been found guilty of any economic offence.
- Appointment of trustees to act as trustees for the mutual fund in accordance with the provisions of the regulations.
- Appointment of asset management company to manage the mutual fund and operate the scheme of such funds in accordance with the provisions of these regulations.
- Appointment of custodian in order to keep custody of the securities or goods or gold and gold related instrument or other assets of the mutual fund held in terms of these regulations, and provide such other custodial services as may be authorised by the trustees.

Norms for Shareholding & Governance in Mutual Funds

(1) No sponsor of a mutual fund, its associate or group company including the asset management company of the fund, through the schemes of the mutual fund or otherwise, individually or collectively, directly or indirectly, have –

(a) 10% or more of the share-holding or voting rights in the asset management company or the trustee company of any other mutual fund; or

(b) representation on the board of the asset management company or the trustee company of any other mutual fund.

(2) Any shareholder holding 10% or more of the share-holding or voting rights in the asset management company or the trustee company of a mutual fund, shall not have, directly or indirectly, -

(a) 10% or more of the share-holding or voting rights in the asset management company or the trustee company of any other mutual fund; or

(b) representation on the board of the asset management company or the trustee company of any other mutual fund.

However, in the event of a merger, acquisition, scheme of arrangement or any other arrangement involving the sponsors of the mutual funds, shareholders of the asset management companies or trustee companies, their associates or group companies which results in the incidental acquisition of shares, voting rights or representation on the board of the asset management companies or trustee companies, this regulation shall be complied with within a period of one year of coming into force of such an arrangement.

Terms and Conditions of Registration

- the trustees, the sponsor, the asset management company and the custodian shall comply with the provisions of SEBI (Mutual Fund) Regulations, 1996.
- the mutual fund shall forthwith inform the SEBI, if any information or particulars previously submitted to the SEBI was misleading or false in any material respect.
- the mutual fund shall forthwith inform the SEBI, of any material change in the information or particulars previously furnished, which have a bearing on the registration granted by it.
- payment of fees as specified in the SEBI (Mutual Fund) Regulations, 1996.

Constitution and Management of Mutual Funds and Operation of Trustees

(i) A mutual fund shall be constituted in the form of a trust and the instrument shall be in the form of a deed duly registered under the Registration Act.

(ii) The trust deed shall not contain any clause which has the effect of limiting or extinguishing the obligations and liabilities of the trusts or indemnifying the trustees/ asset management company for loss or damage caused to the unitholders by their acts of negligence or acts of commission or omission.

Disqualification from being Appointed as Trustees

- A mutual fund shall appoint trustees in accordance with these regulations. A person shall not be eligible to be appointed as a trustee unless—
  - (a) he is a person of ability, integrity and standing; and
  - (b) has not been found guilty of moral turpitude; and
  - (c) has not been convicted of any economic offence or violation of any securities laws; and
  - (d) has furnished particulars as specified in Form C.
- No asset management company and no director (including independent director), officer or employee of an asset management company shall be eligible to be appointed as a trustee of any mutual fund.
- No person who is appointed as a trustee of a mutual fund shall be eligible to be appointed as a trustee of any other mutual fund.
- Two-thirds of the trustees shall be independent persons and shall not be associated with the sponsors or be associated with them in any manner whatsoever.
- In case a company is appointed as a trustee then its directors can act as trustees of any other trust provided that the object of the trust is not in conflict with the object of the mutual fund.
- In case a company is appointed as the trustee of a mutual funds, the chairperson of the Board of directors of that trustee company shall be independent director.

APPROVAL OF THE SEBI FOR APPOINTMENT OF TRUSTEE

No trustee shall initially or any time thereafter be appointed without prior approval of the SEBI.

CONSTITUTION AND MANAGEMENT OF ASSET MANAGEMENT COMPANY AND CUSTODIAN

Appointment of an Asset Management Company

- The sponsor or, if so authorised by the trust deed, the trustee, shall appoint an asset management company, which has been approved by the SEBI.
- The appointment of an asset management company can be terminated by majority of the trustees or by seventy-five per cent of the unitholders of the scheme.
- Any change in the appointment of the asset management company shall be subject to prior approval of the SEBI and the unitholders.

Eligibility Criteria for Appointment of Asset Management Company

- in case the asset management company is an existing asset management company it has a sound track record, general reputation and fairness in transactions;

- the asset management company is a fit and proper person;
- the directors of the asset management company are persons having adequate professional experience in finance and financial services related field and not found guilty of moral turpitude or convicted of any economic offence or violation of any securities laws;
- the key personnel of the asset management company have not been found guilty of moral turpitude or convicted of economic offence or violation of securities laws or worked for any asset management company or mutual fund or any intermediary during the period when its registration has been suspended or cancelled at any time by the Board;
- the board of directors of such asset management company has at least fifty per cent directors, who are not associate of, or associated in any manner with, the sponsor or any of its subsidiaries or the trustees;
- the Chairman of the asset management company is not a trustee of any mutual fund;
- the asset management company has a net worth of not less than rupees fifty crore deployed in assets as specified by the SEBI.
- The networth of Asset Management Company as mentioned above shall be maintained on continuous basis and it shall be responsibility of the sponsor to ensure the same.

Appointment of Custodian

- The mutual fund shall appoint a Custodian to carry out the custodial services for the schemes of the fund and sent intimation of the same to the Board within fifteen days of the appointment of the Custodian.
- However, in case of a gold exchange traded fund scheme, the assets of the scheme being gold or gold related instruments may be kept in the custody of a custodian registered with the SEBI.
- However, in case of a silver exchange traded fund scheme, the assets of the scheme being silver or silver related instruments and in case of a real estate mutual fund scheme, the title deed of real estate assets held by it, may be kept in the custody of a custodian registered with the SEBI.

Agreement with Custodian

- The mutual fund shall enter into a custodian agreement with the custodian, which shall contain the clauses which are necessary for the efficient and orderly conduct of the affairs of the custodian.
- However, the agreement, the service contract, terms and appointment of the custodian shall be entered into with the prior approval of the trustees.

SCHEMES OF MUTUAL FUND

Procedure for Launching of Schemes

- No scheme shall be launched by the asset management company unless such scheme is approved by the trustees and a copy of the offer document has been filed with the SEBI.
- The offer documents shall contain adequate disclosures to enable the investors to make informed decisions.
- The mutual fund shall pay the minimum filing fee to the SEBI while filing the offer document and the balance filing fee within such time as may be specified by the SEBI.
- For listing of units of any scheme of a mutual fund on the recognised stock exchange(s), the asset management company of that mutual fund shall take all necessary steps and obtain the in-principle approval from the recognised stock exchange.

- Before listing of units of any scheme of mutual fund on the recognised stock exchange(s), the asset management company of that mutual fund shall execute an agreement with such exchange(s).
- Every close ended scheme, other than an equity linked savings scheme, shall be listed on a recognised stock exchange within such time period and subject to such conditions as specified by the SEBI.
- No scheme other than the initial offering period of any equity-linked saving scheme can be opened for subscription for more than 15 days. Further, the minimum subscription and the extent of over subscription that is intended to be retained should be specified in the offer document. In the case of over-subscription, all applicants applying up to 5,000 units must be given full allotment subject to over subscription.
- The AMC is required to refund the application money if minimum subscription is not received, and also the excess over subscription within five working days of closure of subscription.

CODE OF CONDUCT OF MUTUAL FUNDS

(i) The schemes should not be organized, operated and managed in the interest of sponsors or the directors of AMC or special class of unit holders;

(ii) It shall ensure the adequate dissemination of adequate, fair, accurate and timely information of all the stake holders;

(iii) The excessive concentration of business with the broking firm or associates should be avoided;

(iv) The scheme - wise segregation of bank accounts and securities accounts must be ensured;

(v) The investment should be made in accordance with the investment objectives stated on the offer documents;

(vi) It must not use any unethical means to sell, market or induce any investor to buy their schemes;

(vii) The high standards of integrity and fairness in all the dealings should be maintained by the trustees and AMCs;

(viii) The AMCs shall not make any exaggerated statements.

ADVERTISEMENT CODE

(i) Advertisement shall be accurate, true, fair, clear, complete, unambiguous and concise.

(ii) Advertisement shall not contain statement which are false,misleading, biased or deceptive, based on assumptions and shall not contain any testimonials or any ranking based on any criteria.

(iii) No celebrities shall form part of advertisement.

(iv) No advertisement shall directly or indirectly discredit other advertisements or make unfair comparisons.

(v) Advertisements shall be accompanied by a standard warning in legible fonts which states “Mutual fund investments are subject to market risks, read all schemes related document carefully.” No addition or deletion of words shall be made to the standard warning.

(vi) In audio visual media based advertisements, the standard warning in visual and accompanying voice over reiteration shall be audible in a clear and understandable manner. For example, in standard warning both the visual and the voice over reiteration containing 14 words running for at least 5 seconds may be considered as clear and understandable.

(vii) Advertisement shall not be so designed as likely to be misunderstood or likely to be disguise the significance of any statement.

RESTRICTION ON INVESTMENT BY MUTUAL FUNDS

(i) The schemes shall not invest more than 10% of its NAV in debt instruments issued by a single issuer which are rated not below investment grade by a Credit Rating Agency.

However, such limit can be increased to 12% of its NAV with prior approval of Board of Trustee and Board of Directors of AMC.

(ii) A mutual fund scheme shall not invest in unlisted debt instruments including commercial papers, except Government Securities and other money market instruments.

However, Mutual Fund Schemes may invest in unlisted non-convertible debentures up to a maximum of 10% of the debt portfolio of the scheme subject to such conditions as may be specified by the SEBI.

(iii) Mutual fund shall not own more than 10% of company's paid-up capital carrying voting rights or 10% of units of REITs issued by a single issuer, as the case may be.

(iv) The transfer of investments from one scheme to another shall be done only at the prevailing market price & the securities so transferred shall be in conformity with the investment objective of the scheme to which such transfer has been made.

(v) A scheme may invest in another scheme under the same asset management company or any other mutual fund without charging any fees. However, the aggregate inter-scheme investments made by all schemes shall not exceed 5% of the NAV of the mutual fund. (This shall not apply to funds of funds scheme)

(vi) The buy and sell by all the mutual funds shall be made on the basis of the deliveries.

(vii) All securities shall be purchase or transferred in the name of the mutual fund scheme.

(viii) No mutual fund scheme shall make any investment in:

(a) any unlisted security of an Associate or Group Company of the Sponsor;

(b) any security issued by way of private placement by an associate or group company of the sponsor;

(c) the listed securities of group companies of the sponsor which is in excess of 25 per cent of the net Assets.

(ix) No mutual fund shall make any investment in the funds of fund scheme.

(x) No mutual fund shall invest more than 10% of its NAV in the equity shares or equity related instruments of any entity.

(xi) All investments by a mutual fund scheme in equity shares and equity related instruments shall only be made provided such securities are listed or to be listed.

Question: What are the avenues available to Indian Mutual Funds for investment abroad?

Answer: Indian Mutual Funds registered with SEBI are permitted to invest in the following:

(i) ADRs and GDRs;

(ii) Equity of overseas company;

(iii) Foreign debt securities;

(iv) Money market instruments;

(v) Government securities;

(vi) Derivative;

(vii) Short - term deposits;

(viii) Units issued by overseas mutual funds.

PRICING OF UNITS OF MUTUAL FUND

(1) The price at which the units may be subscribed or sold and the price at which such units may at any time be repurchased by the mutual fund shall be made available to the investors in the manner specified by the SEBI.

(2) The assets management company shall provide the methodology of calculating the sale and repurchase price of units in the manner specified by the SEBI.

(3) While determining the prices of the units, the mutual fund shall ensure that the repurchase price is not lower than 97% of the Net Asset Value.

FACILITATING TRANSACTION IN MUTUAL FUND SCHEMES THROUGH THE STOCK EXCHANGE INFRASTRUCTURE

SEBI vide its Circulars dated October 04, 2013, and dated December 09, 2014 had permitted mutual fund distributors to use recognised stock exchanges' infrastructure to purchase and redeem mutual fund units directly from Mutual Fund / Asset Management Companies.

Subsequently, SEBI vide its Circular no. SEBI/HO/MRD/DSA/CIR/P/2016/113 dated October 19, 2016 allowed SEBI Registered Investment Advisors (RIAs) to use infrastructure of the recognised stock exchanges to purchase and redeem mutual fund units directly from Mutual Fund/ Asset Management Companies on behalf of their clients, including direct plans.

In order to further increase the reach of this platform, SEBI vide its Circular dated February 26, 2020 had decided to allow investors to directly access infrastructure of the recognised stock exchanges to purchase and redeem mutual fund units directly from Mutual Fund/ Asset Management Companies.

PROVISIONS PERTAINING TO MUTUAL FUNDS UNDER THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

The provisions of chapter IX of the SEBI LODR Regulations, 2015 applies to the asset management company managing the mutual fund scheme whose units are listed on the recognised stock exchange(s).

Submission of Documents

The listed entity is required to intimate to the recognised stock exchange, the information relating to daily Net Asset Value, monthly portfolio, half yearly portfolio of those schemes whose units are listed on the recognised stock exchange(s) in the format as specified under SEBI (Mutual Funds) Regulations, 1996 and directions issued there under.

The listed entity is also required to intimate to the recognised stock exchange of:

(a) movement in unit capital of those schemes whose units are listed on the recognised stock exchange(s);

(b) rating of the scheme whose units are listed on the recognised stock exchange(s) and any changes in the rating thereof (wherever applicable);

(c) imposition of penalties and material litigations against the listed entity and Mutual Fund; and

(d) any prohibitory orders restraining the listed entity from transferring units registered in the name of the unit holders.

Dissemination on the website of stock exchange(s)

The listed entity shall submit such information and documents, which are required to be disseminated on the listed entity's website in terms of SEBI (Mutual Funds) Regulations, 1996 and directions issued thereunder, to the recognized stock exchange for dissemination.

CASE LAW

23.05.2006	***SEBI Vs. Shriram Mutual Fund***	***Hon'ble Supreme Court***

Facts

The respondent was a mutual fund and the asset management company. During the period from June, 1998 to September, 1999, the respondent had conducted business through associated brokers, in excess of the limits prescribed under regulation 25(7)(*a*) of the 1996 Regulations on 12 occasions covering 6 quarters. The respondent had failed to comply with the terms and conditions attached to the certificate of registration granted to it, inasmuch as it did not exercise diligence to ensure that the transactions by its own asset management company were confined to the permissible limits. The Adjudicating Officer imposed a sum of Rs. 5 lakhs as penalty on the respondent No. 2 under section 15E for failure to comply with regulation 25(7)(*a*) and Rs. 2 lakhs on the respondent No. 1 for failure to comply with the terms and conditions attached to the certificate of registration.

The respondents filed appeals before the Securities Appellate Tribunal, *inter alia*, contending that the transactions with the associate brokers were related to thinly traded securities, for which there were no ready markets available through the normal stock exchange, or were relating to securities which did not have any large volume or trade in the market.

The Tribunal set aside the order passed by the Adjudicating Officer on the ground that the penalty to be imposed for failure to perform a statutory obligation is a matter of discretion which has to be exercised judicially and on a consideration of all the relevant facts and circumstances. The Tribunal also held that

the Adjudicating Officer had to be satisfied with the material placed before him that the violation deserved punishment. The appeal was filed to Supreme Court.

Hon'ble SUPREME COURT JUDGMENT

The Hon'ble Supreme Court set aside the decision of Securities Appellate Tribunal in *Shriram Mutual Fund* v. *Chairman*.

It was held by Supreme Court that the penalty is warranted by the quantum which has to be decided by taking into consideration the factors stated in section 15J of SEBI Act. In its opinion, *mens rea* is not an essential ingredient for contravention of the provisions of a civil act. The penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. In other words, the breach of a civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not.

The SEBI was set up to promote orderly and healthy growth of the securities market and for investors protection SEBI has been monitoring and regulating the activities of Stock Exchanges, Mutual Funds and Merchant Bankers, etc. to achieve these goals. The capital market has witnessed tremendous growth in recent times, characterized particularly by the increasing participation of the Public. Investors' confidence in the capital market can be sustained largely by ensuring investors protection. That it became imperative to impose monetary penalties also in addition to other penalties in cases of default.

The Court held that *mens rea* is not an essential element for imposing penalty for breach of civil obligations.

23.10.2017	***SAHARA ASSET MANAGEMENT COMPANY P. LTD & ORS. Appellant(s)*** ***VERSUS*** ***SECURITIES AND EXCHANGE BOARD OF INDIA & ORS. Respondent(s)***	***Hon'ble Supreme Court***

Facts of the case:

SEBI passed an order dated June 23, 2011 against two Sahara group entities namely Sahara India Real Estate Corporation Ltd. (SIRECL), Sahara Housing Investment Corporation Ltd. (SHICL) and some of their Directors to refund the money collected through the issue of Optionally Fully Convertible Debentures (OFCDs) and restrained those Directors from associating themselves with any listed public company and any public company which intends to raise money from the public till such time the money is refunded to the investors to the satisfaction of SEBI.

Following these orders against the two Sahara group companies and their Directors SEBI initiated proceedings by appointing a Designated Authority under the Intermediaries Regulations on June 9, 2014. This Designated Authority was to enquire into whether there was any violation of the provisions of the Mutual Fund Regulations, 1996 as well as related SEBI Circulars by the Sahara Mutual Fund, Sahara Sponsor, Sahara AMC and its Trustees. The Designated Authority submitted the report on October 14, 2014 holding that these entities are no longer fit and proper persons to carry on the business of mutual fund and recommended cancellation of certificate of registration of Sahara MF.

The impugned order has been issued consequent to the findings by SEBI that Sahara Sponsor is not a 'fit and proper person' because its Promoter-Director is not a fit and proper person and hence the Sahara MF and Sahara AMC are no longer fit and proper to carry on the business of mutual fund.

Thus, SEBI vide order dated July 28, 2015 had ordered cancellation of Certificate of Registration of Sahara Mutual Fund with effect from expiry of 6 months from the date of the order.

Subsequently, Sahara MF, Sahara AMC and others had preferred an appeal against the SEBI order dated July 28, 2015 before the Hon'ble Securities Appellate Tribunal (SAT). The Hon'ble SAT vide order dated July 28, 2017 disposed of the said appeal, granting a period of 6 weeks to the appellants to approach the Hon'ble Supreme Court of India.

Sahara MF and others subsequently filed an appeal in the Hon'ble Supreme Court, challenging the aforesaid order of the Hon'ble SAT.

Hon'ble Supreme Court Order

The said appeal was dismissed by the Hon'ble Supreme Court vide order dated October 23, 2017.

CASE STUDY

Winding up of Six Yield-Oriented Fixed Income Schemes of Franklin Templeton India amid Covid-19- A Case Study

INTRODUCTION

COVID-19 started showing its impact on the mutual fund industry during pandemic. Though we could attribute most of that outflow to corporates redeeming funds to meet their quarter end obligations, high volatility and uncertainty as consequences of the pandemic could have also played a major hand in the redemption pressure for debt schemes. Foreign Institutional Investors (FIIs) have been redeeming investments heavily in

equity and debt segment ever since WHO declared COVID-19 a pandemic. In March 2020, FIIs pulled out Rs. 60,375 crore from the debt market.

High redemption and lack of buying interest has made debt mutual fund schemes vulnerable, especially those with higher exposure to low rated instruments. This instability has claimed its first casualty in debt mutual funds.

ABOUT FRANKLIN TEMPLETON (INDIA)

Franklin Templeton's association with India dates back to over 2 decades as an investor. As part of the group's major thrust on investing in markets around the world, the India office was set up in 1996 as Templeton Asset Management India Pvt. Limited. It flagged off the mutual fund business with the launch of Templeton India Growth Fund in September 1996, and since then the business has grown at a steady pace.

Franklin Templeton (India) is one of the largest foreign fund houses in the country. It manages one of the most comprehensive ranges of mutual funds catering to varied investor requirements and offering different investment styles to choose from.

WINDING-UP OF SPECIFIC SCHEMES

The Trustees of Franklin Templeton Mutual Fund (FTMF) in India announced that they have, after careful analysis and review of the recommendations submitted by Franklin Templeton AMC, and in close consultation with the investment team, voluntarily decided to wind up their suite of six yield oriented, managed credit funds effective from April 23, 2020.

In light of the severe market dislocation and illiquidity caused by the COVID-19 pandemic, this decision has been taken in order to protect value for investors via a managed sale of the portfolio. This action is limited to the below-mentioned funds, which have material direct exposure to the higher yielding, lower rated credit securities in India that have been most impacted by the ongoing liquidity crisis in the market.

Details of schemes being wound up

S. No.	***Name of the Scheme***	***Scheme Characteristic (based on Macaulay duration or credit rating) as stated in the scheme information document***	***Macaulay duration* in years as on 22 April 2020***
1.	Franklin India Ultra Short Bond Fund	Investing in Instruments with Macaulay duration between 3-6 months	0.38
2.	Franklin India Short term Income Fund	Investing in Instruments with Macaulay duration between 1-3 years	2.41
3.	Franklin India credit Risk Fund	A bond fund focusing on AA and below rated corporate bonds (excluding AA+ rated corporate bonds)	2.37
4.	Franklin India Low Duration Fund	Investing in Instruments with Macaulay duration between 6-12 months	1.17
5.	Franklin India Dynamic Accrual Fund	Investing across duration	1.95
6.	Franklin India Income Opportunity Fund	Investing in Instruments with Macaulay duration between 3-4 years	3.94

Macaulay duration is the weighted average of the time to receive the cash flows from a bond. It is measured in units of years. Macaulay duration tells the weighted average time that a bond needs to be held so that the total present value of the cash flows received is equal to the current market price paid for the bond.

CAUSES FOR WINDING UP THESE SCHEMES

According to a statement to investors from FTMF, Franklin Templeton (India) winding up these schemes in order to preserve value and secure an orderly and equitable exit for investors in these yield-oriented schemes. The credit climate was extremely challenging over the last quarter or so, and Covid-19 severely heightened the pressure resulting in a spike in yields and sharply reduced liquidity. The ongoing global pandemic has impacted business activity across a wide range of sectors and diminished portfolio companies' ability to access funds and service existing debt. Mutual funds are facing unprecedented liquidity challenges during the lockdown which was necessary to address the Covid-19 pandemic.

Factors like rising redemption pressures, mark to market losses, following spike in yields and rising illiquidity in portfolios, following lower trading volumes have together caused severe and worsening liquidity crunch for open-end mutual fund schemes. This impact will be long-lasting, and bond market conditions are unlikely to return to normalcy in the immediate future.

The schemes had to resort to continuous borrowing to fund redemptions during this time, and were unable to repay the borrowings through sale of portfolio securities due to the prevailing market environment. The Investment manager did not believe it was prudent to continue funding redemptions through potentially increasing levels of borrowings.

FTMF follows a high-risk high-return strategy for the above mentioned funds - Meaning a major part of its portfolio is exposed to lower rated securities (rating below AAA). The market disruption due to the virus outbreak has impacted these securities the most. Under conditions of high redemption pressure, mutual funds sell their liquid assets to meet the demand, leaving the portfolio highly exposed to illiquid assets. Thus, investors who choose to stay invested are at a disadvantage here.

Anticipating continued liquidity stress to the funds, the fund house thought winding up the scheme is the only viable option for the unit holders to minimize erosion of value.

KEY IMPLICATIONS FOR INVESTORS ON SUCH WINDING UP

a) **Suspension of Purchase and Redemption:** The six wound up schemes were no longer available for subscription or redemption, post cut-off time on 23 April 2020. All Systematic Investment Plans (SIP), Systematic Transfer Plans (STP) and Systematic Withdrawal Plans (SWP) into and from the abovementioned schemes stand cancelled post cut-off time on 23 April 2020.

b) **Distribution of monies from Scheme Assets:** Following the decision to wind-up the schemes, Franklin Templeton (India) will proceed to assist the Trustees with orderly realization and liquidation of the underlying assets with the objective of preserving value for unit holders, and with distribution of the proceeds thereof to the unit holders after discharging the liabilities of the schemes.

c) **Tax Implications:** The amount received by investors are in the form of redemption of units and would, where such amount or part thereof represents a gain for the investor, be taxed as capital gain in the hands of investors depending on inter alia the period of their investment in the scheme. Investors can take advice from a tax expert as impact could vary depending on their status and income.

SEBI/SAT/SUPREME COURT'S DIRECTION TO FRANKLIN TEMPLETON MUTUAL FUND - KEY BULLETS

- SEBI vide its press release dated May 7, 2020 has advised Franklin Templeton mutual fund (FT) to focus on returning money to investors, in the context of their winding up six of their debt schemes.
- However, a small number of investors sought the intervention of various courts and winding up of the schemes were stayed.
- In October 2020, the High Court of Karnataka issued its judgment, in which it upheld the decision to wind up the Funds and held that there was "nothing wrong with the decision making process," but determined that consent of the unitholders u/r 18(15)(c) was required to implement the decision.
- On December 3, 2020, the SC issued an interim order allowing the Trustee to seek unitholder approval for winding up the six Funds, without prejudice to the right of the parties to argue on the interpretation of the regulation and other aspects of the appeal.
- The Trustee then proceeded to conduct votes for each of the six Funds, which concluded on December 29, 2020, and a substantial majority (above 96%) of the voting unitholders of each of the Funds voted in favor of the winding-up decision. Thereafter, the SC allowed the Trustee to distribute the cash available in the schemes to the respective unitholders proportionately and appointed SBI Funds Management Private Limited, a public sector entity, to undertake the distribution.
- Further vide order dated February 12, 2021, the SC upheld the validity of the e-voting exercise and confirmed the winding-up status of the schemes. With the consent of all the parties, the SC appointed SBI Mutual Fund Pvt. Ltd as the liquidator to monetize the assets of the scheme and distribute the proceeds to the unitholders.
- Since the date of the winding up till July 9, 2021, the six schemes have received INR 25,859 crore from maturities, coupons, sale, and prepayments. The total amount distributed in the winding up schemes stands at INR 26,783.22 crores amounting to 106% of the AUM as on April 23, 2020.
- SEBI initiated a forensic audit/inspection, with respect to the affairs of the six fixed income schemes and fund of funds schemes that invested in these six schemes. SEBI had communicated the observations/findings of the said forensic audit/inspection to the Trustee and the AMC and sought their comments together with relevant supporting documents/ records. The Trustee and the AMC had submitted their response to SEBI. Subsequently, SEBI has issued Show Cause Notices ('SCNs'), on 24 November 2020 to the AMC and on 27 November 2020 to the Trustee and 8 employees of the AMC (including an ex-employee), upon consideration of observations in forensic audit / inspection and responses thereon submitted by the AMC and the Trustee. The Trustee and the AMC and 8 employees (including an ex employee) had submitted their response to the SEBI on these SCNs.
- On June 7, 2021, SEBI issued an order against the AMC and on June 14, 2021 a separate joint order against the Trustee and certain AMC officers and employees, finding violations of certain regulatory provisions, including – at a high level – with respect to similarity in investment strategies among the Funds, calculation of duration and valuation of portfolio securities, documentation of investment diligence and investment terms, and portfolio risk management. SEBI's orders include, as applicable, monetary penalties, disgorgement of investment management and advisory fees, and a prohibition from launching new fixed income funds in India for a two-year period.
- The AMC filed an appeal and an application for stay before the Hon'ble Securities Appellate Tribunal (SAT). After hearing the parties, the Hon'ble SAT has stayed the operation of the order passed by the WTM.

LESSON ROUND-UP

- Mutual fund is a trust that collects money from a number of investors who share a common investment Objective and invests the same in equities, bonds, money market instruments and/or other securities.
- Mutual funds are regulated by the SEBI (Mutual Fund) Regulations, 1996.
- Mutual Fund schemes could be 'open ended' or close-ended' and actively managed or passively managed.
- There are five principal constituents and three market intermediaries in the formation and functioning of mutual fund.
- A mutual fund shall be constituted in the form of a trust and the instrument shall be in the form of a deed duly registered under the Registration Act.
- The mutual fund shall enter into a custodian agreement with the custodian, which shall contain the clauses which are necessary for the efficient and orderly conduct of the affairs of the custodian.
- No scheme shall be launched by the asset management company unless such scheme is approved by the trustees and a copy of the offer document has been filed with the SEBI.
- The SEBI (LODR) Regulations, 2015 is applicable to the AMC managing the mutual fund scheme whose units are listed on the recognised stock exchange.

GLOSSARY

Diversification: The process of investing across different asset classes (equity, debt, property, etc.) and across different investments within each asset class (for instance, investing across equity shares of various companies in case of equity) to reduce risk.

Investment objective: Every mutual fund scheme has an investment objective according to which the fund manager has to make investments for the scheme. For example, in case of an equity fund, the investment objective may be to invest in large cap companies across a range of sectors in order to give investors capital appreciation.

Maturity: Some investments such as close-ended funds have a maturity date, which is the date on which the investor is paid back his principal amount as well as all income due to him on that investment.

Repurchase/ Redemption: When a mutual fund investor wants to exit from his mutual fund investment, he can sell back the units to the mutual fund and receive cash. The mutual fund 'repurchases' his units and the investor is said to 'redeem' his units.

Custodian: Custodian means a person who has been granted a certificate of registration to carry on the business of custodian of securities under the Securities and Exchange Board of India (Custodian of Securities) Regulations, 1996.

Networth: Networth means the aggregate of the paid up capital and free reserves after deducting therefrom, miscellaneous expenditure to the extent not written off or adjusted or deferred revenue expenditure, intangible assets and accumulated losses.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation)

These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Elucidate the key players of Mutual funds in the formation and functioning of mutual fund.
2. What do you mean by Net Asset Value? How to calculate NAV?
3. Distinguish between Open ended Mutual Funds and Close ended Mutual funds.
4. What is the Eligibility Criteria for Registration of Mutual Funds?
5. What is the Procedure for Launching of Mutual Funds Schemes?
6. Write short notes on the followings:
    a) Asset Management Company
    b) Holding Period Return
    c) Expense Ratio
    d) Code of Conduct of Mutual Fund
7. S is holding 2000 units of a equity-oriented scheme of a mutual fund and 1000 units of a debt scheme of a mutual fund. On 7th June, 2022 he is interested to redeem these units. Prevailing net asset value (NAV) of these units are as under :

Date	***Net Asset Value (NAV)***	
	Equity-oriented scheme (in ₹)	***Debt scheme (in ₹)***
6th June	45	35
7th June	46	34
8th June	47	33

He makes an application for redemption of above units on 7th June, 2022 at 2:30 pm. Based on given information answer the following:

(i) What do you mean by cut-off time? What are the cut-off time for equity-oriented & Debt funds (except liquid funds)?

(ii) What will be the applicable NAV in his case?

(iii) What will be applicable NAV if application for redemption is made at 3:15 pm?

LIST OF FURTHER READINGS

- SEBI Circulars
- SEBI Notifications
- SEBI Orders
- SEBI FAQs

OTHER REFERENCES (Including Websites/Video Links)

- https://www.sebi.gov.in/
- https://www.amfiindia.com/

Collective Investment Schemes

Lesson 18

KEY CONCEPTS

■ Collective Investment Scheme ■ Collective Investment Management Company ■ Closed-ended Collective Investment Scheme ■ Collective Investment Scheme Property ■ Appraising Agency ■ Unit ■ Unit Holder

Learning Objectives

To understand:

- Meaning of Collective Investment Scheme
- Genesis of SEBI (Collective Investment Schemes) Regulations, 1999
- Regulatory prescriptions on Collective Investment Scheme and how they are regulated
- Business Activities and Obligations of Collective Investment Management Company
- Trustees and their obligations
- Collective Investment Schemes of Collective Investment Management Company
- Penal provisions for violations

Lesson Outline

- Meaning of Collective Investment Scheme
- Genesis
- SEBI (Collective Investment Schemes) Regulations, 1999 – An Overview
- Important Definitions
- Registration of Collective Investment Management Company
- Business Activities and Obligations of Collective Investment Management Company
- Trustees and their obligations
- Collective Investment Schemes of Collective Investment Management Company
- General Obligations of Collective Investment Management Company
- Penal Provisions
- Key Aspects for launching collective Investment Scheme
- Case Laws
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- SEBI Act, 1992
- SEBI (Collective Investment Schemes) Regulations, 1999

MEANING OF COLLECTIVE INVESTMENT SCHEME (CIS)

The increasing complexity of the financial markets witnessed unravelled financial schemes that defrauded investors by promising exorbitantly high returns on their principal investment. It was in response to these Ponzi Schemes that the SEBI formulated regulations encompassing Collective Investment Schemes (CIS) that specifically characterized a unique manner of financial manipulations.

A collective investment scheme is a scheme that comprises a pool of assets that is managed by a collective investment scheme manager and is governed by the Collective Investment Schemes Regulations given by SEBI. Section 11AA of the SEBI Act was amended to include a new proviso which gave SEBI the power to regulate all pooling of funds under any scheme or arrangement in excess of Rs. 100 crores not regulated by any other law, thus slipping into the net of a CIS.

GENESIS

The Last many years have witnessed initiative by private entrepreneurs to undertake plantation activities on a commercial scale. The effort per se commendable as its supplements the Government's efforts to prevent erosion of forest base and also channelizes private instruments towards agro plantation activity. However, it was noticed that the promoters themselves invested a minimal amount in such venture and sourced a majority of the funds from ordinary investors. The high returns promised by these schemes coupled with questionable claims of fiscal incentives and effective rural marketing helped many of these companies to mobilize large amounts over a period of time. The initial succession mobilizing funds by some of these companies lead to a mushrooming of such schemes through the country.

The Government, after detailed consultations with the regulatory bodies, decided that the appropriate regulatory framework for regulating entities which issue instruments like Agro Bonds, Plantation Bonds, etc. has to be put in place. A press release was issued by the Government on November, 18, 1997, conveying that such schemes should be treated as Collective Investment Scheme coming under the SEBI Act, 1992. In order to regulate such Collective Investment Schemes, both from the point of view of investor protection as well as promotion of legitimate investment activity, SEBI was asked to formulate the draft regulations for them. The Press release further states that once these regulations come into force, it is expected that they will promote legitimate investment activity in plantation and other agriculture based business, while at the same time giving investors and adequate degree of protection for their investments.

In order to examine and finalize the draft regulation for collective investment schemes, SEBI appointed committee under the Chairmanship of Dr. S.A.Dave. The committee contained representations from the Government Ministries, Regulatory Bodies, Consumer Forum, Professional Bodies and Plantation Industries. The Committee held its first meeting of January 28, 1998 and began its task by reviewing the information submit the existing schemes to gather an insight into the structuring of the offerings by some of the large collective investment schemes. The data submitting by the existing schemes and its analysis provided by the SEBI helped the committee in analysing the aspects relating to schemes features, disclosures, background of promoters etc. The members of committee were also conducted the site visits of some of the plantations.

As per the date available it was noticed that large sums of monies had been collected by entities which did not necessarily have sufficient experience in agro based activities. The schemes were typically open ended and the disclosure made to the investors was not adequate to enable informed decisions. There were high risks associated with these ventures due to the long gestation period involved coupled with crop risks. The committee members felt that some interim majors of investor's protection must be notified pending finalisation of regulations.

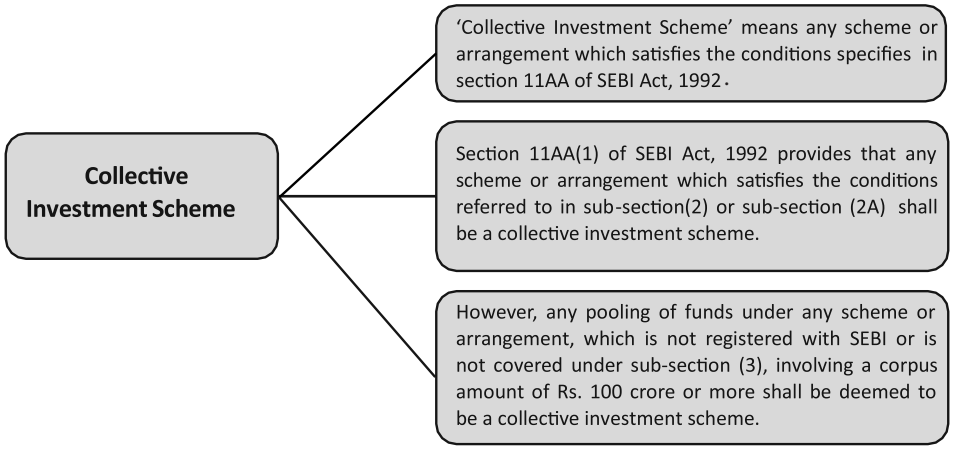
Considering the huge risk associated with such schemes, the Government of India felt that it was necessary to regulate such financial schemes and set up an appropriate regulatory framework and therefore government amended various laws such as SEBI Act and also framed SEBI (Collective Investment Schemes) Regulations 1999 ("CIS Regulations") for regulating such entities. The committee made a recommendation for mandatory credit rating for existing schemes desiring to mobilize further funds. This provision was expected to provide a degree of risk assessment of the future cash flows by the independent and accredited agencies.

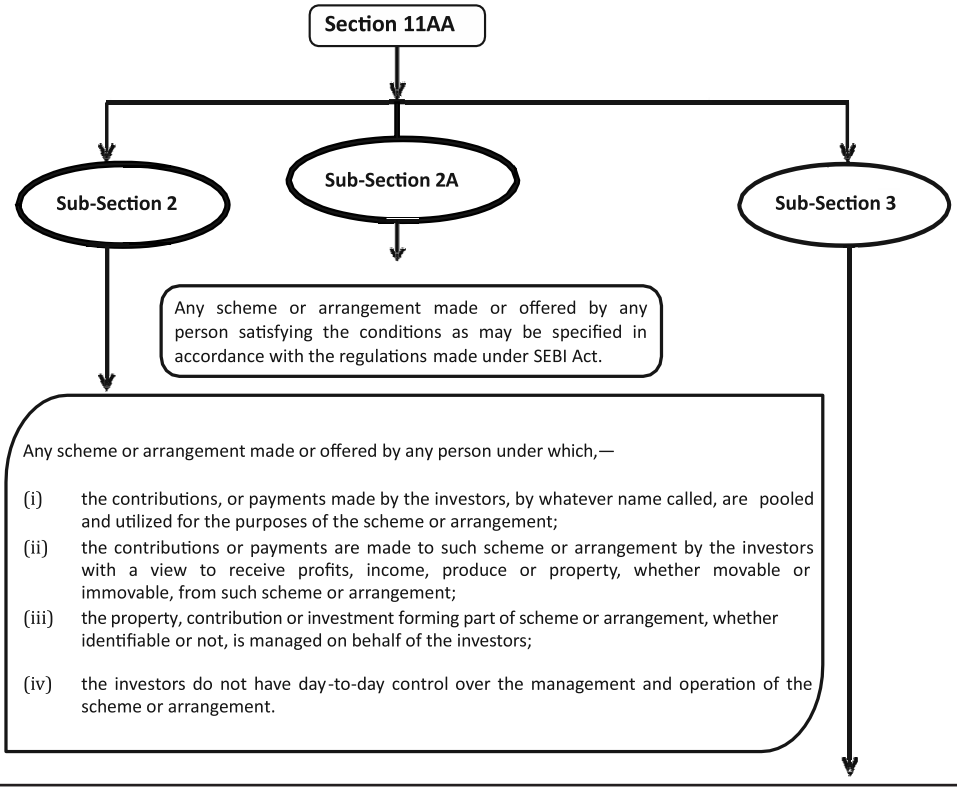
SEBI (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 1999 – AN OVERVIEW

Regulatory Framework

1.	Chapter I	Preliminary (Important Definitions)
2.	Chapter II	Registration of Collective Investment Management Company
3.	Chapter III	Business Activities and Obligations of Collective Investment Management Company
4.	Chapter IV	Trustees and their Obligations
5.	Chapter V	Collective Investment Schemes of Collective Investment Management Company
6.	Chapter VI	General Obligations
7.	Chapter VII	Inspection and Audit
8.	Chapter VIII	Procedure for Action in case of Default
9.	Chapter IX	Existing Collective Investment Schemes
10.	Chapter IX-A	Existing Schemes or Arrangements deemed to be a Collective Investment Scheme
11.	Chapter IX-B	Power to relax strict enforcement of the Regulations
12.	Chapter X	Miscellaneous

Important Definitions





The following shall not be Collective Investment Scheme (CIS):

(i) made or offered by a co-operative society registered under the Co- operative Societies Act, 1912 or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

(ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934;

(iii) being a contract of insurance to which the Insurance Act, 1938, applies;

(iv) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952;

(v) under which deposits are accepted under section 74 of the Companies Act, 2013;

(vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 406 of the Companies Act, 2013;

(vii) falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982;

(viii) under which contributions made are in the nature of subscription to a mutual fund;

(ix) such other scheme or arrangement which the Central Government may, in consultation with SEBI, notify, shall not be a collective investment scheme.

SEBI in its order dated February 25, 2020 in case of *Vayaa Builder and Developers (P.) Ltd.* (*VBDP*) held –

Where VBDP and its directors had mobilized funds from investors through different land/plot allotment scheme which satisfied four requirements of a collective investment scheme as defined in section 11AA and since these schemes were being carried out without obtaining registration from SEBI in violation of section 12(1B), VBDP and its directors were to be directed to refund illegally mobilised funds to investors and were also to be restrained from accessing securities market.

Other Important Definitions

- **Collective Investment Management Company**

  Collective Investment Management Company means a company incorporated under the Companies Act, 1956 or the Companies Act, 2013 and registered with SEBI under these regulations, whose object is to organize, operate and manage a collective investment scheme.

- **Closed-ended Collective Investment Scheme**

  Closed-ended collective investment scheme means any collective investment scheme launched by a Collective Investment Management Company, in which the period of maturity of the collective investment scheme is specified and there is no provision for re-purchase before the expiry of the maturity of the collective investment scheme.

- **Collective Investment Scheme Property**

  Collective investment scheme property includes:

  (i) subscription of money, or money's worth (including bank deposits) to the collective investment scheme;

  (ii) property acquired, directly or indirectly, with, or with the proceeds of, subscription of money referred to in item (i); or

  (iii) income arising, directly or indirectly from, subscription money or property referred to in item (i) or (ii).

- **Appraising Agency**

  Appraising Agency means an agency empanelled with the Board for the purpose of conducting technical or financial appraisal of the collective investment scheme.

- **Unit**

  Unit includes any instrument issued under a collective investment scheme, by whatever name called, denoting the value of the subscription of a unit holder.

- **Unit Holder**

  Unit holder means a person holding a unit in a collective investment scheme.

No person other than Collective Investment Management Company to launch Collective Investment Scheme

No person other than a Collective Investment Management Company which has obtained a certificate under these regulations shall carry on or sponsor or launch a collective investment scheme.

Registration Provisions under SEBI Act, 1992

Section 12 (1B) of the SEBI Act states that-

> "No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the SEBI in accordance with the regulations".

With this provision, a ban was imposed on a person carrying on any CIS, unless a certificate of registration is obtained in accordance with the regulations framed by SEBI.

Application for Grant of Certificate

Regulation 4 provides that any person proposing to carry any activity as a Collective Investment Management Company on or after the commencement of these regulations shall make an application to the SEBI for the grant of registration as specified under these regulations.

Application by a Scheme or Arrangement Deemed to be a Collective Investment Scheme

Regulation 4A provides that-

(1) Any person proposing to carry on or sponsor or launch any scheme or arrangement which would be deemed to be a collective investment scheme shall make an application for grant of registration as a Collective Investment Management Company as specified under these regulations. However, any scheme or arrangement which is otherwise regulated or prohibited under any other law shall not be deemed to be a collective investment scheme.

(2) All other provisions of these regulations and the guidelines and circulars issued there under, shall apply to any scheme or arrangement deemed to be a collective investment scheme.

Application by Existing Collective Investment Schemes

Any person who immediately prior to the commencement of these regulations was operating a collective investment scheme, shall make an application to the SEBI for the grant of a certificate within a period of two months from such date.

> Any person who has been operating a collective investment scheme at the time of commencement of these regulations shall be deemed to be an existing collective investment scheme and shall also comply with the provisions of these regulations.

Explanation: The expression 'operating a collective investment scheme' shall include carrying out the obligations undertaken in the various documents entered into with the investors who have subscribed to the collective investment scheme.

An existing collective investment scheme shall make an application to the SEBI in the manner specified in these regulations. The application made shall be dealt with in any of the following manner:

(a) by grant of provisional registration by SEBI ;

(b) by grant of a certificate of registration by the SEBI ;

(c) by rejection of the application for registration by the SEBI.

Conditions for eligibility

SEBI shall not consider an application for the grant of a certificate unless the applicant satisfies the following conditions, namely:—

(a) the applicant is set up and registered as a company under the Companies Act;

(b) the applicant has, in its Memorandum of Association specified the managing of collective investment scheme as one of its main objects;

(c) the applicant or its promoters should have a sound track record and general reputation of fairness and integrity in all their business transactions.

(d) the applicant is a fit and proper person for the grant of such certificate;

(e) the applicant has adequate infrastructure to enable it to operate collective investment scheme in accordance with the provision of these regulations;

(f) the directors or key personnel of the applicant shall consist of persons of honesty and integrity having adequate professional experience in related field and have not been convicted for an offence involving moral turpitude or for any economic offence or for the violation of any securities laws;

(g) at least fifty per cent of the directors of such Collective Investment Management Company shall consist of persons who are independent and are not directly or indirectly associated with the persons who have control over the Collective Investment Management Company;

(h) no person, directly or indirectly connected with the applicant has in the past been refused registration by the Board under the Act.

(i) at least one of the directors, on the Board of the Collective Investment Management Company, who is not subject to retirement, is a representative of the trustee;

(j) the Collective Investment Management Company is not a trustee of any collective investment scheme;

(k) in case the applicant is an existing collective investment scheme, it complies with the provisions of Chapter IX of these regulations.

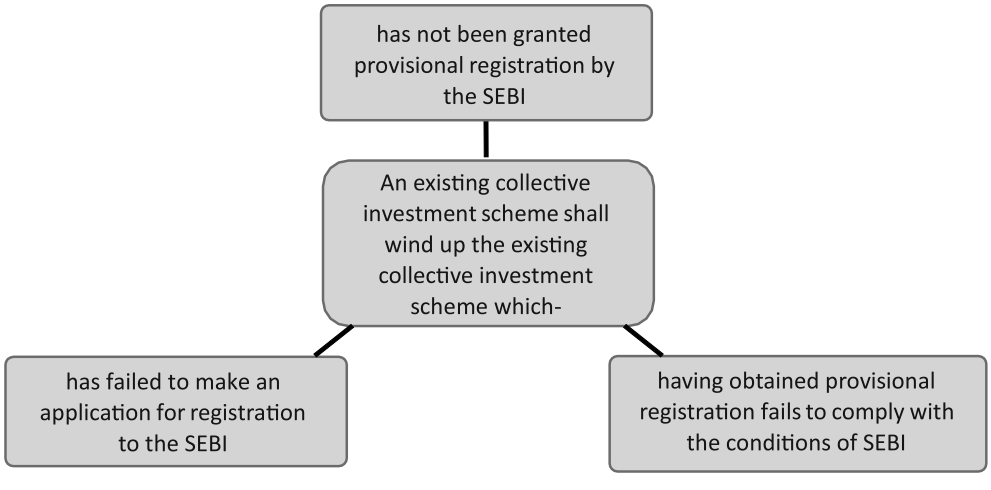
Grand of Certificate

Regulation 10 provides that the SEBI may on receipt of an application and on being satisfied that the applicant complies with the eligibility conditions shall grant a certificate on such terms and conditions as are in the interest of investors.

Procedure where Registration is not Granted

Where an application made under regulation 4 for grant of registration does not satisfy the conditions specified under these regulations, the SEBI may reject the application after giving the applicant a reasonable opportunity of being heard and inform the applicant of the same. The decision shall be communicated to the applicant by the SEBI within 30 days of such decision stating therein the grounds on which the application has been rejected.

Winding up of Existing Collective Investment Scheme (CIS)



BUSINESS ACTIVITIES AND OBLIGATIONS OF COLLECTIVE INVESTMENT MANAGEMENT COMPANY

Restrictions on Business Activities

The Collective Investment Management Company (CIMC) should not:

- undertake any activity other than that of managing the CIS
- act as a trustee of any CIS
- launch any CIS for the purpose of investing in securities
- invest in any CIS flooated by it

However, it has been provided that a CIMC may invest in its own CIS, if it makes a disclosure of its intention to invent in the offer document of the CIS, and does not charge any fees on its investment in that CIS.

Obligations of Collective Investment Management Company (CIMC)

Every Collective Investment Management Company should :	be responsible for managing the funds or properties of the CIS on behalf of the unit holders and take all reasonable steps and exercise due diligence to ensure that the CIS is managed in accordance with the provisions of these regulations, the offer document and the trust deed.
	exercise due diligence and care in managing assets and funds of the CIS and also be responsible for the acts of commissions and omissions by its employees or the persons whose services have been availed by it.
	remain liable to the unit holders for its acts of commission or omissions.
	be incompetent to enter into any transaction with or through its associates, or their relatives relating to the CIS.
	appoint registrar and share transfer agents and should also abide by their respective Code of Conducts.
	give receipts for all monies received and report of the receipts and payments to SEBI, on monthly basis.

hold a meeting of Board of Directors to consider the affairs of CIS, at least twice in every three months and also ensures that its officers or employees do not make improper use of their position or information to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the CIS.

obtain adequate insurance against the properties of the CIS and comply with such guidelines, directives, circulars and instructions as may be issued by SEBI from time to time on the subject of Collective Investment Scheme.

All claims, differences or disputes between the Collective Investment Management Company and investors arising out of or in relation to the activities of the Collective Investment Management Company in the securities market shall be submitted to a resolution mechanism that includes mediation and/or conciliation and/or arbitration, in accordance with the procedure specified by the SEBI.

Grievance Redressal Mechanism

The Collective Investment Management Company shall redress investor grievances promptly but not later than 21 calendar days from the date of receipt of the grievance and in such manner as may be specified by the SEBI.

SEBI may also recognize a body corporate for handling and monitoring the process of grievance redressal within such time and in such manner as may be specified.

Submission of Information and Documents

- The Collective Investment Management Company should prepare quarterly reports of its activities and the status of compliance of SEBI regulations and submit the same to the trustees within one month of the expiry of each quarter.
- The Collective Investment Management Company should file with the trustees and the SEBI, particulars of all its directors along with their interest in other companies within fifteen days of their appointment.
- It should furnish a copy of the Balance Sheet, Profit and Loss Account and a copy of the summary of the yearly appraisal report to the unit holders within 2 months from the closure of financial year.
- The Collective Investment Management Company shall furnish to the SEBI and the trustee such information and documents to the SEBI and the trustee as may be required by them concerning the affairs of the collective investment scheme.

TRUSTEES AND THEIR OBLIGATIONS

A Collective Investment Scheme (CIS) should be constituted in the form of a trust and the instrument of trust should be framed in the form of a deed duly registered under the provisions of the Indian Registration Act, 1908 executed by the CIMC in favour of the trustees named in such an instrument. CIMC can appoint a trustee under the deed to hold the assets of the scheme for the benefit of unit holders.

Trustee means a person who holds the property of the collective investment scheme in trust for the benefit of the unit holders, in accordance with these regulations.

Contents of Trust Deed

The trust deed should contain such clauses as are specified and other clauses as are necessary for safeguarding the interests of the unit holders.

No trust deed should contain a clause which has the effect of limiting or extinguishing the obligations and liabilities of the Collective Investment Management Company in relation to any scheme or the unit holders; or indemnifying the trustee or the Collective Investment Management Company for loss or damage caused to the unit holders by their acts of negligence or acts of commissions or omissions.

Eligibility for Appointment as Trustee

The persons registered with the SEBI as Debenture Trustee under SEBI (Debenture Trustee) Regulations, 1993 are only eligible to be appointed as trustees of collective investment schemes. However, no person is eligible to be appointed as trustee, if he is directly or indirectly associated with the persons who have control over the CIMC. The CIMC shall furnish to SEBI particulars in respect of trustees appointed in the prescribed form.

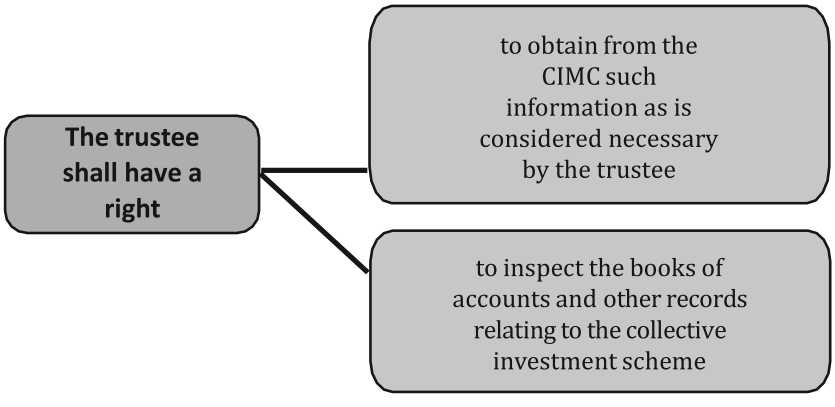
Appointment of Trustee not Found Guilty

No person should be appointed as trustee of a collective investment scheme, if he has been found guilty of an offence under the securities laws or the SEBI or any authority to which the SEBI has delegated its power has passed against such person, an order under the Act for violation of any provision of the Act or of regulations made hereunder.

Agreement with Collective Investment Management Company

The trustee and the Collective Investment Management Company should enter into an agreement for managing the collective investment schemes' property. The agreement for managing the collective investment scheme property should contain clauses as specified and such other clauses as are necessary for the purpose of fulfilling the objectives of the collective investment scheme.

Rights and Obligations of the Trustee



- The trustee should ensure that the CIMC has:
  - (i) the necessary office infrastructure;
  - (ii) appointed all key personnel including managers for the collective investment schemes and submitted their bio-data which shall contain the educational qualifications and past experience in the areas relevant for fulfilling the objectives of the collective investment schemes;

(iii) appointed auditors from the list of auditors approved by SEBI to audit the accounts of the CIS;

(iv) appointed a compliance officer to comply with the provisions of the Act and these regulations and to redress investor grievances;

(v) appointed registrars to an issue and share transfer agent;

(vi) prepared a compliance manual and designed internal control mechanisms including internal audit systems;

(vii) taken adequate insurance for the assets of the collective investment scheme;

(viii) not given any undue or unfair advantage to any associates of the company or dealt with any of the associates in any manner detrimental to the interest of the unit holders;

(ix) operated the collective investment scheme in accordance with the provisions of the trust deed, these regulations and the offer document of the collective investment scheme(s);

(x) undertaken the activity of managing collective investment schemes only;

(xi) taken adequate steps to ensure that the interest of investors of one collective investment scheme are not compromised with the object of promoting the interest of investors of any other collective investment scheme;

(xii) minimum net worth on a continuous basis and shall inform the SEBI immediately of any shortfall;

(xiii) been diligent in empanelling the marketing agents and in monitoring their activities.

- The trustee should forthwith take such remedial steps as are necessary and immediately inform the SEBI of the action taken where the trustee believes that the conduct of business of the collective investment scheme is not in accordance with these regulations.
- The trustee should be accountable for, and act as the custodian of the funds and property of the respective collective investment schemes and should hold the same in trust for the benefit of the unit holders in accordance with these regulations and the provisions of trust deed.
- The trustee should be responsible for the calculation of any income due to be paid to the collective investment scheme and also for any income received in the Collective Investment Scheme to the unit holders.
- The trustee shall convene a meeting of the unit holders -

  (a) whenever required to do so by the SEBI in the interest of the unit holders; or

  (b) whenever required to do so on the requisition made by unitholders holding at least one-tenth of nominal value of the unit capital of any collective investment scheme; or

  (c) when any change in the fundamental attributes of any collective investment scheme.

  However no such change shall be carried out unless the consent of unit holders holding at least three - fourths of nominal value of the unit capital of the collective investment scheme is obtained.

  Explanation:- For the purposes of this clause “fundamental attributes” means the investment objective and terms of a collective investment scheme.

- The trustee shall review -

  (a) on a quarterly basis (i.e., by the end of March, June, September and December) every year all activities carried out by the Collective Investment Management Company;

(b) periodically all service contracts relating to registrars to an issue and share transfer agents and satisfy itself that such contracts are fair and reasonable in the interest of the unit holders;

(c) investor complaints received and the redressal of the same by the Collective Investment Management Company.

- The trustee should ensure that -
  a) net worth of CIMC is not deployed in a manner which is detrimental to interest of unit holders;
  b) the property of each collective investment scheme is clearly identifiable as collective investment scheme property and held separately from property of the CIMC;
  c) Clearances or no objection certificate should be obtained, in respect of transactions relating to property of the scheme from such authority as is competent to grant such clearance or no objection certificate.
- The trustee should abide by the Code of Conduct as specified in the Third Schedule.
- The trustee is required to furnish to SEBI on a quarterly basis every year
  a) a report on the activities of the collective investment scheme;
  b) a certificate stating that the trustee has satisfied himself that affairs of the Collective Investment Management Company and of the various collective investment schemes are conducted in accordance with these regulations and investment objective of each collective investment scheme.
- The trustee should cause:
  (a) The profit and loss accounts and balance sheet of the collective investment schemes to be audited at the end of each financial year by an auditor empanelled with the SEBI;
  (b) Each collective investment scheme to be appraised at the end of each financial year by an appraising agency;
  (c) Collective investment scheme to be rated by a credit rating agency.
- A meeting of the trustees to discuss the affairs of the collective investment scheme should be held at least twice in every three months in a financial year.
- The trustee should report to SEBI any breach of these regulations that has, or is likely to have, made materially adverse effect on the interests of unit holders, as soon as they become aware of the breach.
- The trustee should ensure that –
  a) the fees and expenses of the collective investment scheme are within the limits as specified;
  b) accounts of the collective investment schemes are drawn up in accordance with the accounting norms as specified;
  c) accounts of the collective investment scheme and the format of the balance sheet and the profit and loss account as specified under these regulation.

Termination of Trusteeship

The trusteeship of a trustee should come to an end –

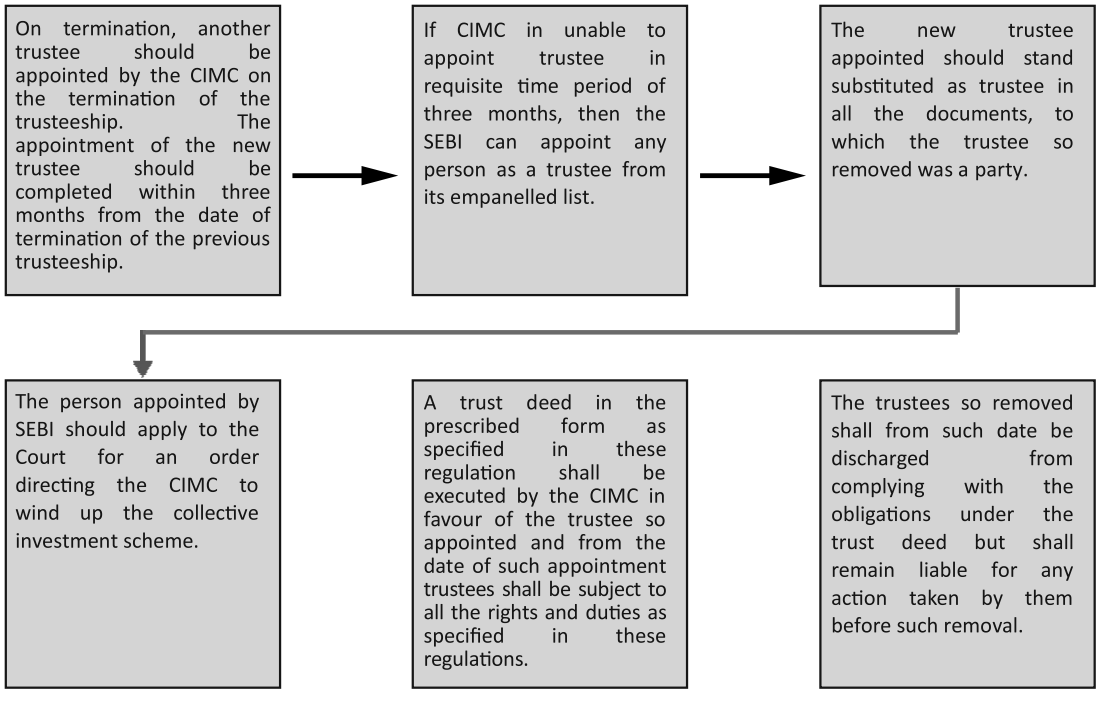
(a) If the trustee ceases to be trustee under SEBI (Debentures Trustees) Regulations, 1993; or

(b) if the trustee is in the course of being wound up; or

(c) if unit holders holding at least three-fourths of the nominal value of the unit capital of the collective investment scheme pass a resolution for removing the trustee and SEBI approves such resolution; or

(d) if in the interest of the unit holders, SEBI, for reasons to be recorded in writing decides to remove the trustee for any violation of the Act or these regulations committed by them or the trustee should be afforded reasonable opportunity of being heard before action is taken under this clause;

(e) if the trustee serves on the Collective Investment Management Company, a notice of not less than three months expressing intention of not to continue as trustee.



Termination of the Agreement with the Collective Investment Management Company

The agreement entered into by the trustee with the Collective Investment Management Company may be terminated –

(a) if the CIMC is in the course of being wound up as per the provisions of the Companies Act, 2013, or

(b) if unit holders holding at least three-fourth of the nominal value of the unit capital of the collective investment scheme pass a resolution for terminating the agreement with the CIMC and the prior approval of SEBI has been obtained, or

(c) if in the interest of the unit holders, SEBI or the trustee after obtaining prior approval of SEBI, and after giving an opportunity of being heard to the Collective Investment Management Company, decide to terminate the agreement with the CIMC.

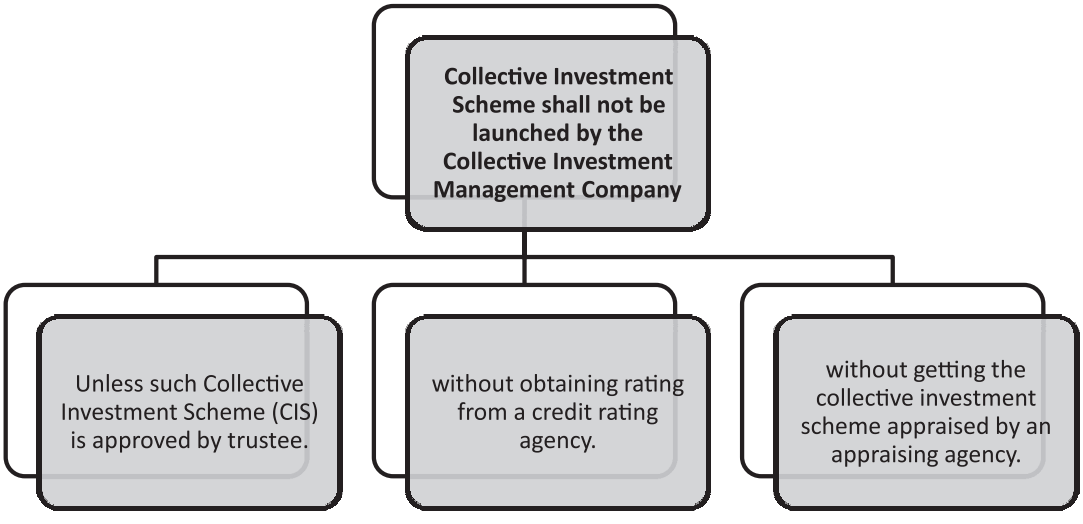
Another CIMC registered with SEBI, should be appointed upon the termination of agreement by the trustee within three months from the date of such termination. The CIMC so removed continues to act as such at the discretion of trustee or the trustee itself may act as CIMC till such time as new CIMC is appointed.

The CIMC appointed should stand substituted as a party in all the documents to which the CIMC so removed

was a party. The CIMC so removed should continue to be liable for all acts of omission and commissions notwithstanding such termination. If, none of the CIMC, registered under the regulations, consent to be appointed as CIMC within a further period of three months, then the trustee may wind up the collective investment scheme. An agreement for managing collective investment scheme property should be executed in favour of the new CIMC subject to all the rights and duties as specified in the regulations.

COLLECTIVE INVESTMENT SCHEMES OF COLLECTIVE INVESTMENT MANAGEMENT COMPANY

Procedure for launching of collective investment schemes



Close ended collective investment scheme and collective investment scheme duration

Collective Investment Management Company shall:-

(a) launch only close ended collective investment schemes;

(b) the duration of the collective investment schemes shall not be of less than three calendar years.

Insurance

Collective Investment Management Company shall obtain adequate insurance policy for protection of the collective investment scheme property.

Closure of subscription list

Each collective investment scheme shall immediately after the closure of the subscription list comply with the following conditions, namely,-

(a) minimum subscription amount of Rs. 20 crore;

(b) minimum 20 investors; and

(c) no person shall hold more than25% of the assets under management of scheme.

However, where the collective investment scheme fails to comply with this, Collective Investment Management Company shall be liable to refund the application money to the applicants.

No guaranteed returns

No collective investment scheme shall provide guaranteed or assured returns. However indicative return may be indicated in the offer document only, if the same is assessed by the appraising agency and expressed in monetary terms.

Disclosures in the offer Document

- The CIMC shall before launching any collective investment scheme file a copy of the offer document of the collective investment scheme with the SEBI and pay filing fees. The offer document should contain information such as name of the collective investment scheme, name and address of the registered office of the Collective Investment Management Company and trustee, Risk Factors, Disclaimer Clause etc, as specified in the Sixth Schedule.
- The offer document should also contain true and fair view of the collective investment scheme and adequate disclosures to enable the investors to make informed decision.
- SEBI may in the interest of investors require the CIMC to carry out such modifications in the offer document as it deems fit.
- In case no modifications are suggested by SEBI in the offer document within 21 days from the date of filing, the Collective Investment Management Company may issue the offer document to the public.

Advertisement material

Advertisements in respect of every collective investment scheme shall be in conformity with the Advertisement Code as specified in the Seventh Schedule. The advertisement for each collective investment scheme shall disclose in addition to the investment objectives, the method and periodicity of valuation of collective investment scheme property.

Appraising Agency

The appraising agency whose appraisal report forms part of the offer document and has given a written consent for the inclusion of the appraisal report in the offer document shall be liable for any statement in the appraisal report which is misleading, incorrect or false.

Misleading Statements

The offer document and advertisement materials shall not be misleading or contain any statement or opinion which are incorrect or false. Where an offer document or advertisement includes any statement or opinions which are incorrect or false or misleading, every person -

(i) who is a director of the Collective Investment Management Company at the time of the issue of the offer document;

(ii) who has issued the offer document and shall be punishable under the Act unless he proves either that the statement or opinion was immaterial or that he had reasonable ground to believe at the time of the issue of the offer document or advertisement that the statement was true.

Offer period

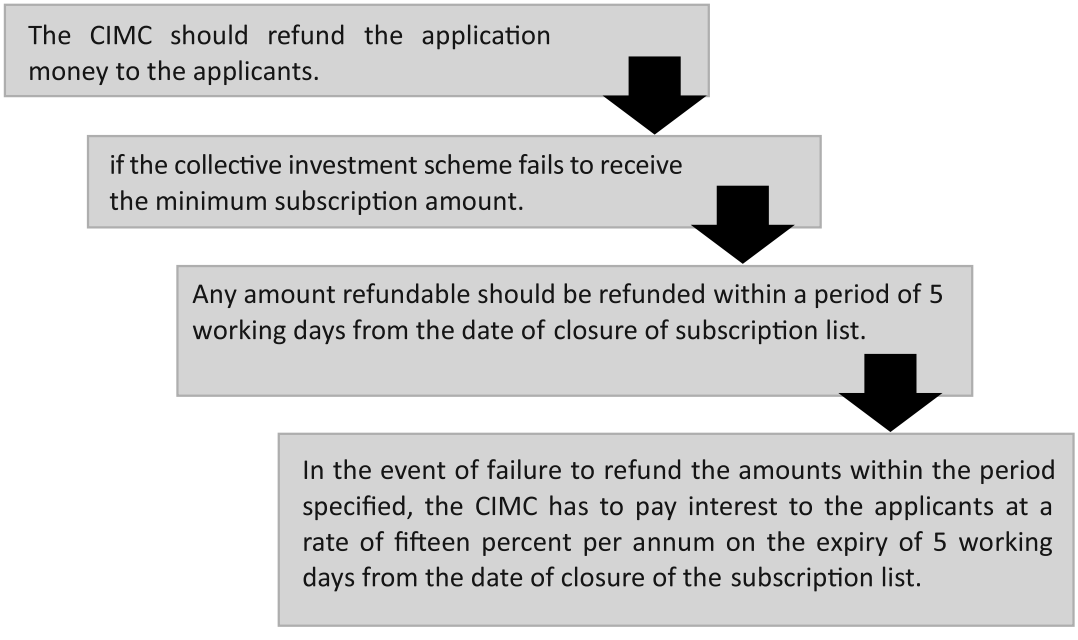
No collective investment scheme shall be open for subscription for more than 15 days. However, collective investment scheme may be kept open for subscription for a maximum of another 15 days subject to issuance of public notice by the Collective Investment Management Company before the expiry of initial 15 days.

Allotment of units and Refunds of Moneys

The Collective Investment Management Company should specify in the offer document –

a) the minimum and the maximum subscription amount it seeks to raise under the collective investment scheme; and

b) in case of oversubscription, the process of allotment of the amount oversubscribed.



Unit Certificates

The Collective Investment Management Company should issue to the applicant whose application has been accepted, the units only in dematerialized form within a period of five working days] from the date of closure of the subscription list.

Transfer of Units

A unit certificate issued under the collective investment scheme should be freely transferable. The CIMC on production of instrument of transfer together with relevant unit certificates, register the transfer and return the unit certificate to the transferee within thirty days from the date of such production. However, if the units are held in a depository such units shall be transferable in accordance with the provisions of the SEBI (Depositories and Participants) Regulations, 1996 and bye-laws of the depository.

Money to be kept in separate account and utilisation of money

(1) The subscription amount received should be kept in a separate bank account in the name of the collective investment scheme and utilised for –

(a) adjustment against allotment of units only after the trustee has received a statement from the registrars to the issue and share transfer agent regarding minimum subscription amount, as stated in the offer document, having been received from the public, or

(b) for refund of money in case minimum subscription amount, as stated in the offer document, has not been received or in case of over-subscription.

(2) The minimum subscription amount as specified in the offer document couldn't be less than the minimum amount, as specified by the appraising agency, needed for completion of the project for which the collective investment scheme is being launched.

(3) The moneys credited to the account of the collective investment scheme should be utilised for the purposes of the scheme and as specified in the offer document.

(4) Any unutilised amount lying in the account of the collective investment scheme should be invested in the manner as disclosed in the offer document.

Investments and Segregation of Funds

The Collective Investment Management Company should:

(a) not invest the funds of the collective investment scheme for purposes other than the objective of the collective investment scheme as disclosed in the offer document.

(b) segregate the assets of different collective investment schemes.

(c) not invest corpus of a collective investment scheme in other collective investment schemes.

(d) not transfer funds from one collective investment scheme to another collective investment scheme.

However, it has been provided that inter-scheme transfer of collective investment scheme property may be permitted at the time of termination of the collective investment scheme with prior approval of the trustee and the SEBI.

(e) not invest more than 25% of the amount raised by Collective Investment Management Company in projects owned directly or indirectly by Collective Investment Management Company.

Listing of Collective Investment Schemes

The units of every scheme shall be listed immediately after the date of allotment of units and not later than six weeks from the date of closure of the scheme on each of the stock exchanges as mentioned in the offer document.

Winding up of Collective Investment Scheme

A scheme should be wound up on the expiry of duration specified in the collective investment scheme or on the accomplishment of the objective of the collective investment scheme as specified in the offer document.

A collective investment scheme may be wound up :

(a) on the happening of any event which, in the opinion of the trustee, requires the collective investment scheme to be wound up and the prior approval of the SEBI is obtained; or

(b) if unit holders of a collective investment scheme holding at least three-fourth of the nominal value of the unit capital of the collective investment scheme, pass a resolution that the scheme be wound up and the approval of SEBI is obtained thereto; or

(c) if in the opinion of SEBI, the continuance of the collective investment scheme is prejudicial to the interests of the unit-holders; or

(d) if in the opinion of the CIMC, the purpose of the collective investment scheme cannot be accomplished and it obtains the approval of the trustees and that of the unit holders of the collective investment scheme holding at least three-fourth of the nominal value of the unit capital of the collective investment scheme with a resolution that the collective investment scheme be wound up and the approval of SEBI is obtained thereto.

Where a collective investment scheme is to be wound up, the trustee shall give notice disclosing the circumstances leading the winding up of the collective investment scheme in a daily newspaper having nationwide circulation and in the newspaper published in the language of the region where the CIMC is registered.

The trustee should dispose of the assets of the collective investment scheme concerned in the best interest of the unit holders of that collective investment scheme. The proceeds of sale realised, should be first utilised towards the discharge of such liabilities as are due and payable under the collective investment scheme and after making appropriate provision for meeting the expenses connected with such winding up, the balance shall be paid to the unit holders in proportion to their unit holding.

After the completion of the winding up, the trustee should forward to SEBI and the unit holders –

(a) a report on the steps taken for realisation of assets of the collective investment scheme, expenses for winding up and net assets available for distribution to the unit holders, and

(b) a certificate from the auditors of the collective investment scheme to the effect that all the assets of the collective investment scheme are realised and the details of the distribution of the proceeds.

The unclaimed money, if any at the time of winding up, should be kept separately in a bank account by the trustee for a period of three years for the purpose of meeting investors' claims and thereafter, should be transferred to investor protection fund, as may be specified by the SEBI.

Effect of commencement of winding up proceedings

On and from the date of the publication of notice, the trustee or the CIMC as the case may be, shall cease to carry on any business activities in respect of the collective investment scheme so wound up.

Cessation of the collective investment scheme

If SEBI is satisfied that all the measures for winding up of the collective investment scheme have been complied with, the collective investment scheme shall cease to exist.

GENERAL OBLIGATIONS OF COLLECTIVE INVESTMENT MANAGEMENT COMPANY

Maintain proper books of account and records, etc.

(1) Every Collective Investment Management Company shall-

(a) keep and maintain proper books of account, records and documents, for each collective investment scheme so as to explain its transactions and to disclose any point of time the financial position of each collective investment scheme and in particular give a true and fair view of the state of affairs of the collective investment scheme, and

(b) intimate to the SEBI and the trustees the place where such books of account, records and documents including computer records are maintained.

(2) Every Collective Investment Management Company shall continue to maintain and preserve, for a period of five years after the close of each collective investment scheme, its books of account, records, computer data and documents.

Financial year

The financial year for all the collective investment schemes shall end as on March 31 of each year.

Dispatch of warrants and proceeds

The Collective Investment Management Company shall-

(a) Dispatch to the unit holders the warrants within 42 days of the declaration of the interim returns.

(b) Dispatch the redemption proceeds within 30 days of the closure or the winding up of the collective investment scheme.

Statement of Accounts and Annual Report

The Collective Investment Management Company shall:

a) not exceed the ceilings on expenses or fees in respect of the collective investment scheme. The expense incurred in case of Initial Issue Expenses and Annual recurring expenses shall not exceed 2.00 percent of the funds raised under the collective investment scheme. However, other direct costs, if any, which are incidental to the operation of the collective investment scheme may be charged to scheme, as may be approved by trustee;

b) prepare the accounts of the collective investment scheme in accordance with accounting norms as specified in Part II of the Ninth Schedule;

c) comply with format of balance sheet and profit and loss accounts as specified in Part III of the Ninth Schedule.

An annual report and annual statement of accounts of each collective investment scheme shall be prepared in respect of each financial year. Every Collective Investment Management Company shall within two months from the date of closure of each financial year forward to the SEBI a copy of the Annual Report.

Auditor's Report

Every collective investment scheme shall have the annual statement of accounts audited by an auditor who is empanelled with the SEBI and who is not in any way associated with the auditor of the Collective Investment Management Company. The auditor shall be appointed by the trustee. The auditor shall forward his report to the trustee and such report shall form part of the Annual Report.

Publication of Annual Report and summary thereof

The collective investment scheme wise annual report or an abridged form thereof shall be published in a national daily as soon as possible but not later than two calendar months from the date of finalisation of accounts. The annual report shall contain details as specified in the Ninth Schedule and such other details as are necessary for the purpose of providing a true and fair view of the operations of the collective investment scheme.

The report if published in abridged form shall carry a note that full annual report shall be available for inspection at the Head Office and all branch offices of the Collective Investment Management Company.

Periodic and continual disclosures

The Collective Investment Management Company and the trustee, shall make such disclosures or submit such documents as they may be called upon by the SEBI to make or submit.

The Collective Investment Management Company on behalf of the collective investment scheme shall furnish the following periodic reports to the SEBI, namely:

(a) copies of the duly audited annual statements of account including the balance sheet and the profit and loss account in respect of each collective investment scheme, once a year;

(b) a copy of quarterly unaudited accounts;

(c) a quarterly statement of changes in net assets for each of the collective investment schemes.

Quarterly disclosures

A Collective Investment Management Company, on behalf of the collective investment scheme shall before the expiry of one month from the close of each quarter that is 31st March, 30th June, 30th September and 31st December publish its unaudited financial results in one daily newspaper having nationwide circulation and in a newspaper published in the language of the region where the Head Office of the Collective Investment Management Company is situated.

However, the quarterly unaudited report shall contain details as specified in the regulations and such other details as are necessary for the purpose of providing a true and fair view of the operations of the collective investment scheme.

Disclosures to the investors

The trustee shall ensure that the Collective Investment Management Company shall make such disclosures to the unit holders as are essential in order to keep them informed about any matter which may have an adverse bearing on their investments.

Calling of meeting of unit holders, transfer and transmission of units

The calling of meeting of unit holders as well as transfer and transmission of units of collective investment scheme shall be as per the provisions of the Eighth Schedule.

PENAL PROVISIONS

As per Section 15D of the SEBI Act, 1992 –

Contravention	*Penalty*
Carrying on any collective investment scheme without obtaining certificate of registration: If any person, who is required to obtain a certificate of registration from the SEBI for sponsoring or carrying on any collective investment scheme, sponsors or carries on any collective investment scheme without obtaining such certificate of registration	shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme subject to a maximum of one crore rupees
Carrying on any collective investment scheme without complying with the terms and conditions of certificate of registration: If any person, registered with the SEBI as a collective investment scheme, for sponsoring or carrying on any investment scheme, fails to comply with the terms and conditions of certificate of registration	shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees

Fails to make an application for listing of collective investment schemes: If any person, registered with the SEBI as a collective investment scheme, fails to make an application for listing of its schemes as provided for in the regulations governing such listing	shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees
Fails to dispatch unit certificates: If any person, registered as a collective investment scheme, fails to dispatch unit certificates of any scheme in the manner provided in the regulation governing such dispatch	shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees
Fails to refund the application monies: If any person, registered as a collective investment scheme, fails to refund the application monies paid by the investors within the period specified in the regulations	shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees
Fails to invest money collected by collective investment schemes: If any person, registered as a collective investment scheme, fails to invest money collected by such collective investment schemes in the manner or within the period specified in the regulations	shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees

Securities Appellate Tribunal, Mumbai Bench in case of *Shree Sai Space Creations Ltd.*(*SSCL*) (Appellant Company) held –

Where appellant company was involved in mobilizing funds by launching (CIS) without obtaining SEBI registration and it failed to comply with directions issued by SEBI to refund entire amount to investor, penalty of Rs. 25 lakhs imposed on appellant was reasonable and Adjudicating Officer's direction to pay penalty of Rs. 25 lakhs by appellant could not be faulted.

SEBI concluded that appellant company set up in year 2010 was engaged in fund mobilizing activity from public by launching Collective Investment Scheme (CIS) without obtaining SEBI registration and accordingly directed appellant to file a proposal for refund of entire amount. However, appellants had not completed process of repayment to investors despite lapse of three years from date of order.

KEY ASPECTS FOR LAUNCHING COLLECTIVE INVESTMENT SCHEME

1. The company floating CIS shall have to seek registration with SEBI as Collective Investment Management Company (CIMC).
2. CIS shall be constituted as a two tiered structure comprising of a trust and a CIMC.
3. At the time of application for Registration as CIMC, these entities should have a minimum net worth of Rs. 3 crores which shall have to be increased to Rs. 5 crores within three years from the date of grant of registration.

4. **Compulsory Filing of Offer Documents:** Every collective investment Scheme shall have to file offer documents with SEBI containing adequate disclosures to enable the investors to take informed investment decisions.
5. **Mandatory Rating Requirement:** Each collective investment scheme shall have to obtain a rating from recognised credit rating agencies such as CRISIL Limited, Fitch Ratings India Private Limited, ICRA Limited, CARE, SMERA.
6. The projects being undertaken must also be appraised by an empanelled appraising agency such as Agricultural Finance Corporation Ltd., North Eastern Development Finance Corporation Ltd. (NEDFI), Indian Institute of Forest Management, The Forest Research Institute (FRI).
7. **No Assured Return:** The collective investment schemes are prohibited from guaranteeing assured returns. Indicative returns, if any, provided by the collective investment scheme shall be based on the projections in the appraisal report.
8. **Advertisement Code:** Advertisements in respect of every collective investment scheme shall have to conform to the SEBI's advertisement code.
9. **Subscription Period:** No collective investment scheme shall be kept open for subscription for a period of more than 90 days. The collective investment schemes shall be close ended in nature. The collective investment schemes must indicate the minimum and maximum amount proposed to be raised over this period.
10. **Duration of collective investment Schemes:** The duration of the collective investment schemes shall be for a minimum period of 3 years.
11. **Insurance:** Compulsory Insurance cover for the assets of the collective investment scheme and personal indemnity cover for the CIMC shall be obtained.
12. **Listing:** Units issued under the Collective Investment Schemes are to be compulsorily listed on recognised stock exchanges.
13. **Accounting/Valuation norms:** Accounting/valuation norms as stipulated shall have to be followed by Collective Investment Schemes.

CASE LAWS

05.06.2020	• ***Dairyland Plantations (India) Limited – Noticee No. 1*** • ***Mrs. Roshan D. Nariman – Noticee No. 2*** • ***Ms. Taz N. Nariman – Noticee No. 3*** • ***Ms. Jeroo Nariman – Noticee No. 4*** • ***Mrs. Silloo R. Nariman – Noticee No. 5*** • ***Mr. Urvaksh Naval Hoyvoy – Noticee No. 6*** • ***Mrs. Shernaz Kershasp patel – Noticee No. 7*** • ***Mrs. Meher Khushru Patel – Noticee No. 8*** • ***Mrs. Rukhshana Meher Anklesaria – Noticee No. 9***	***Whole Time Member*** ***Securities and Exchange Board of India***

Facts of the Case:

Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an examination into the business activities being carried out by Dairyland Plantations (India) Limited (hereafter referred to as "Company/DPL/Noticee no.1"). The examination of the business activities of the Company revealed that the Company had launched a scheme named as Green Gold Bonds scheme (hereinafter referred to as "Scheme") which apparently possessed the requisite ingredients of a collective investment scheme (hereinafter referred to as "CIS"). It was noticed that the said Scheme entailed a one-time payment of Rs. 5 000 in lieu of a unit of 5 Teakwood trees with a holding period of 20 years and on maturity, the contributor/ investor had the option to get the teak trees or the realised sale proceeds thereof. The examination of the details of the scheme further revealed that the Company had mobilised approx. Rs. 1,00,82,000/- (Rs One Crore and Eighty-Two Thousand) from 1660 contributors/investors. It was observed that the Scheme was launched by the Company

Thousand) from 1660 contributors/investors. It was observed that the Scheme was launched by the Company during the period from 1992 to 1996 and during the said period as well as subsequently thereafter during the operation of the Scheme, the Noticees no. 2 to 9 were its Directors and were responsible for the affairs of the management of the business of the Company. It was also noticed that the said Scheme was being carried on without obtaining registration from SEBI, in violation of provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") and SEBI (Collective Investment Schemes) Regulations, 1999 (hereafter referred to as "CIS Regulations").

It is noted that Section 12 (1B) of SEBI Act, which came into effect on January 25, 1995 prohibited a person from carrying out any CIS, unless he obtains registration from SEBI. However, the section permitted existing entity who were carrying out CIS activities prior to the commencement of the aforesaid provision to continue with the existing scheme till Regulations governing CIS are promulgated. Subsequently a separate CIS Regulations of SEBI was enacted which came into force on October 15, 1999 in terms of which, all the existing CIS (prior to the commencement of CIS Regulations) were required to apply for registration or else, were required to wind up the existing CIS after making repayment to the contributors/investors and also were further required to file a Winding Up and Repayment report (hereinafter referred to as "WRR") with SEBI in terms of the said CIS Regulations. Accordingly, various companies including the Noticee Company, which were running CIS schemes at the time of promulgation of the afore-stated CIS Regulations, were asked vide several letters and public notices, to abide by the provisions of the CIS Regulations and submit their compliance reports as mandated under the said Regulations. However, the Noticee Company neither obtained provisional registration, nor applied for registration of its CIS Scheme by the prescribed date of March 31, 2000, and did not even take necessary steps for winding up of the Scheme. Therefore, a Show Cause Notice dated May 12, 2000 (hereinafter referred to as "SCN") was issued to the Company calling upon it to show cause as to why suitable directions shall not be issued against it for continuing with its CIS activities, in violations of the provisions of SEBI Act the CIS Regulations.

Order:

SEBI issue following directions:-

a) The Noticee Company shall, within a month from the date of issue of this order, cause to effect a newspaper publication in one national daily in English and in Hindi each, and in a local daily with wide circulation in each of the States wherein the investors reside, mentioning in bold letters the name of the Scheme i.e 'Green Gold Bonds Scheme' in the said News Papers and inviting complaints/claims from any investor in respect of the said Green Gold Scheme from contributors/investors that are still outstanding. The newspaper publications shall also contain an advisory, informing the investors to forward a copy of their complaints/claims, with the superscription "Complaints/Claims in the Matter of Dairyland Plantations (India) Ltd.", to SEBI.

b) A period of one month from the date of the advertisement shall be provided to contributors/investors for submitting any claim/complaint as stated aforesaid.

c) The Company shall furnish to SEBI the details of the investors viz; name of the investors, amount invested, year of investment, address and other material information etc., within a period of 15 days from the date of this order.

d) An interest bearing escrow account shall be opened by the Noticee Company in a nationalised public sector bank and the entire outstanding amount payable to the investors under the above stated Scheme shall be transferred/deposited to this escrow account within one month from the date of this order.

e) The Company shall wind up its existing CIS and refund the money collected by the Company under the Scheme to the contributors/investors which are due to them strictly as per the terms of offer of the scheme. Those investors who want to opt for repayment in the form of 5 Teak-wood trees and not in cash, the Noticees shall refund them in the form of Teak-wood Trees on a best efforts basis but in the event the repayments cannot be made in the form of Teak-wood trees for want of permission/ authorisation to cut the trees or any other genuine hardships, those investors shall also be repaid their dues in cash as per the terms of the scheme.

f) The present incumbent Directors (Noticees no. 4 to 6) shall ensure that the aforesaid directions are complied with.

g) Noticee Company and present incumbent Directors shall submit to SEBI a final Winding Up and Repayment Report (WRR) in the prescribed format for the purpose along with information on the claims so received, contributors/ investors so refunded and other details of escrow account duly supported by list of all contributors/investors, their contact details, details of investments and corresponding refunds made to the investors, bank account statements of the company indicating refunds so made to the investors and receipts taken from the investors acknowledging such refunds along with a consolidated statement of such repayments having been made, duly certified by two Independent Chartered Accountants, within a period of six (06) months from the date of this Order.

h) Any amount remaining balance in the aforesaid escrow account after making repayment to contributors/ investors, shall be transferred to Investor Protection and Education Fund established under the SEBI (Investor Protection and Education Fund) Regulations, 2009 after a lapse of 1 year from the date of this order.

i) All the Noticee Directors along with the Company (Noticee No.1) except for the Noticee no. 2 and 3 (against whom the proceedings stand abated on account of death), are restrained from accessing the Securities Market including by issuing prospectus, offer document or advertisement soliciting money from the public and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, for a period of one (01) year with effect from the date of filing of WRR to SEBI. It is clarified that during the period of restraint, the existing holding of securities of the Noticees including units of mutual funds, shall remain frozen.

j) In the event the Noticee Company and the present Directors fail to carry out the directions issued at subparagraph (a) to (h) above or any complaint is received hereinafter suggesting that the Company has failed to pay all the dues to the investors, the Noticee Company and its Directors (Noticees no. 4, 6, 7, 8 and 9) shall be jointly and severally liable to refund to the contributors/ investors such amounts in the manner provided under the direction in sub-para (e) above within a period of 03 months from the end of the six (06) months as directed under sub-para (g) above.

k) The Noticee Company and its present Directors shall not divert any funds raised from public at large and shall not alienate or dispose of or sell any of the assets of the Company except for the purpose of making refund to its investors as directed above.

l) The Noticee Company and Director Noticees no. 4, 6, 7, 8 and 9 shall provide inventory of details of all their assets (movable and immovable) within a period of one (01) month from the date of this order.

25.02.2019	***Nicer Green Housing Infrastructure Developers Ltd. &Ors. (Appellant) vs. SEBI (Respondent)***	***Securities Appellate Tribunal***

In the absence of any evidence that the appellants had refunded and that they are ready and willing to pay the balance amount to investors in a time bound manner, SAT is of the opinion that there is no infirmity in the order passed by SEBI disposing of their representations.

Facts of the Case:

The Nicer Green Housing Infrastructure Developers Ltd., Appellant No. 1 is a company incorporated under the Companies Act, 1956 as a public limited company and is engaged in the business of acquiring agricultural land and developing the same for the purpose of re-sale. SEBI found that the activity of fund mobilization by the appellant no. 1 under its scheme fell within the ambit of "Collective Investment Scheme" as defined under Section 11AA of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, 'SEBI Act').

SEBI issued an order dated November 9, 2015 under Section 19 read with Sections 11(1), 11B and 11(4) of the SEBI Act read with Regulation 65 of Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 issuing a slew of directions restraining the appellant and its directors from collecting any money from the investors or to launch or to carry out any investments schemes.

SEBI further directed to refund the money collected under its scheme to the investors and thereafter wind up the company. The appellants being aggrieved by the said order filed an Appeal before the Securities Appellate Tribunal wherein the appellants contended that they are ready and willing to comply with the order passed by SEBI contending that out of an amount of Rs. 31.71 crore collected the appellants have already refunded Rs. 27.48 crore and that the appellants are ready and willing to refund the balance amount in a time bound manner.

Order:

SAT finds that no proof has been filed either before SEBI or even before this Tribunal to show that the appellants had refunded a sum of Rs. 27.48 crore and that they are ready and willing to pay the balance amount in a time bound manner. In the absence of any evidence being filed, SAT is of the opinion that there is no infirmity in the order passed by SEBI disposing of their representations. The appeal lack merit and is dismissed summarily.

LESSON ROUND-UP

- A collective investment scheme is a trust based scheme that comprises a pool of assets that is managed by a collective investment scheme manager and is governed by the Collective Investment Schemes Regulations given by the SEBI.
- A collective investment scheme should be constituted in the form of a trust and the instrument of trust should be in the form of a deed duly registered under the provisions of the Indian Registration Act, 1908 executed by the Collective Investment Management Company in favour of the trustees named in such an instrument.

- Collective Investment Management Company is regulated by the SEBI (Collective Investment Schemes) Regulations, 1999.
- The SEBI (Collective Investment Schemes) Regulations, 1999 defines Collective Investment Management Company to mean a company incorporated under the Companies Act, 2013 and registered with SEBI under these regulations, whose object is to organize, operate and manage a collective investment scheme.
- Trustee means a person who holds the property of the collective investment scheme in trust for the benefit of the unit holders, in accordance with these regulations.
- The units of every collective investment scheme shall be listed immediately after the date of allotment of units and not later than six weeks from the date of closure of the collective investment scheme on each of the stock exchanges as mentioned in the offer document.
- No collective investment scheme shall provide guaranteed or assured returns.
- No collective investment scheme shall be open for subscription for more than 90 days.
- The trustee shall ensure that the Collective Investment Management Company shall make such disclosures to the unit holders as are essential in order to keep them informed about any matter which may have an adverse bearing on their investments.

GLOSSARY

Fundamental Attributes: It means the investment objective and terms of a collective investment scheme.

Pooling: Pooling is the basic concept behind collective investments. The money of thousands of individual investors, who share a common investment objective, is pooled together to form a CIS portfolio.

Ponzi Scheme: A ponzi scheme is an investment from where clients are promised a large profit in short term at little or no risk at all.

Unit Holders: It means a person holding a unit in a Collective Investment Scheme.

Net Worth: "Net worth" means the aggregate value of the paid-up equity capital and free reserves (excluding funds created out of revaluation), reduced by the aggregate value of accumulated losses and deferred expenditure not written off, including miscellaneous expenses not written off.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation)

1. What do you understand by the word "Ponzi Scheme" ? Who regulate the Collective Investment Scheme? List any four key aspects for launching a Collective Investment Scheme.
2. "Co-ordination of Trustee and Collective Investment Management Company is absolutely necessary for success of a Collective Investment Scheme." Explain in this context, the rights available to the trustee.
3. What are the restrictions imposed on business activities for Collective Investment Management Company?

4. Discuss the schemes and arrangements which are not coming under the ambit of collective investment scheme.
5. What are the obligations of Collective Investment Management Company under the SEBI (Collective Investment Scheme) Regulations, 1999?
6. State the provisions relating to allotments of units and refund of money under the SEBI (Collective Investment Scheme) Regulations, 1999.
7. What should be the contents of the trust deed which is required to be executed under the SEBI (Collective Investment Scheme) Regulations, 1999.

LIST OF FURTHER READINGS

- SEBI Circulars / Notifications

OTHER REFERENCES (Including Websites/Video Links)

- https://www.sebi.gov.in/index.html
- https://www.sebi.gov.in/sebi_data/faqfiles/jan-2017/1485846814724.pdf

WARNING

Regulation 27 of the Company Secretaries Regulations, 1982

In the event of any misconduct by a registered student or a candidate enrolled for any examination conducted by the Institute, the Council or any Committee formed by the Council in this regard, may suo-moto or on receipt of a complaint, if it is satisfied that, the misconduct is proved after such investigation as it may deem necessary and after giving such student or candidate an opportunity of being heard, suspend or debar him from appearing in any one or more examinations, cancel his examination result, or registration as a student, or debar him from re-registration as a student, or take such action as may be deemed fit.

It may be noted that according to regulation 2(ia) of the Company Secretaries Regulations, 1982, 'misconduct' in relation to a registered student or a candidate enrolled for any examination conducted by the Institute means behaviour in disorderly manner in relation to the Institute or in or around an examination centre or premises, or breach of any provision of the Act, rule, regulation, notification, condition, guideline, direction, advisory, circular of the Institute, or adoption of malpractices with regard to postal or oral tuition or resorting to or attempting to resort to unfair means in connection with writing of any examination conducted by the Institute, or tampering with the Institute's record or database, writing or sharing information about the Institute on public forums, social networking or any print or electronic media which is defamatory or any other act which may harm, damage, hamper or challenge the secrecy, decorum or sanctity of examination or training or any policy of the Institute.

EXECUTIVE PROGRAMME
CAPITAL MARKET & SECURITIES LAWS – TEST PAPER
GROUP 2 • PAPER 5

(*This test paper is for practice and self-study only and not to be sent to the Institute*)

Time allowed: 3 hours ***Maximum Mark: 100***

Total number of questions: 6

NOTE: *Answer* ***ALL*** *Questions*

PART I : CAPITAL MARKET (40 MARKS)

1(a) ABC Limited is a Navratna Central Public Sector Enterprise (PSU) established on 7th January, 1980 having its registered office at New Delhi and listed in National Stock Exchange, is a wholly owned government company having equity share capital of ₹ 100 Crore and issued Optionally Fully Convertible Debentures (OFCD) of ₹ 5 Crore. From the days of first commercial operation since 1980 the Company has continuously been earning profits.

One of the directors of the company Mr. A claim that the Securities Contracts (Regulation) Act, 1956 and Rules made thereunder is not applicable to Public Sector Undertakings (PSU) with 100% government holding.

In this context, comment on the validity of the following statements with reasons:

i. The Securities Contracts (Regulation) Act, 1956 is not applicable to ABC Ltd. as Government of India has 100% equity in the company.

ii. Optionally Fully Convertible Debentures (OFCD) are not securities according to the Securities Contracts (Regulation) Act, 1956.

iii. Rule 19(2)(b) of the Securities Contracts (Regulation) Rules, 1957 is not applicable to Public Sector Undertakings (PSUs).

iv. Rule 19A of the Securities Contracts (Regulation) Rules, 1957 is not applicable to Public Sector Undertakings (PSUs).

(2 Marks each)

(b) (i) The Securities and Exchange Board of India (SEBI) was established in accordance with the provisions of the SEBI Act, 1992. SEBI under the SEBI Act, 1992 has been empowered to frame subordinate legislation and to investigate wrong doing, impose relevant penalties and to conduct search and seizure operations. Briefly explain the role of the SEBI in strengthening regulatory framework and fostering investor confidence.

(ii) ABC Ltd. is a public company listed on stock exchange. The company declared a dividend in the Annual General Meeting held on 1st May, 2021. However, the dividend was distributed on 5th June, 2021. One of the shareholders Bharati made a complaint on SCORES platform. In view of this, briefly discuss the salient features of SCORES. Can Bharati make the compliant related to dividend to SCORES?

(iii) Capital Market is referred as engine for economic growth. Explain.

(iv) Private Equity and Angel Fund are same. Critically examine.

(3 Marks each)

Attempt all part of either Q. No. 2 or Q. No. 2 A

2(a) The certificate granted by the SEBI to an intermediary is subject to certain conditions. Elaborate the conditions and state the period of validity of certificate.

(b) Hunda Capital Ltd. is incorporated on January 20, 2022 and registered with SEBI as Registrar to an Issue and Share Transfer Agents. The company wants to know its pre-issue and post-issue activities. List out the pre-issue and post-issue work undertaken by the registrar to an Issue and Share Transfer Agents.

(c) What is the International Financial Services Centres Authority (IFSCA)? Briefly explain the Powers and Functions of the IFSCA?

(d) Govind Ltd. has filed listing application to stock exchange. Stock exchange rejected the listing application on the ground that the listing norms had not been complied with. You as a Company Secretary prepare a note for your Managing Director regarding the rights available to the company.

(5 Marks each)

OR (Alternate question to Q. No. 2)

2A. (i) (a) X, a shareholder of a listed company holding 1000 equity shares of ₹ 100 each in physical form as on 1st January 2022, wants to transfer to another shareholder Y on 1st May, 2022. Can X transfer his shares to Y in physical form?

(b) X, a shareholder of a listed company is holding Commercial Paper and Certificate of Deposits of ₹ 50,000 & ₹ 20,000 respectively. State whether a Commercial Paper and Certificate of Deposits can be dematerialised with Depository?

(ii) Alternative Investment Fund means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which is a privately pooled investment vehicle which collects funds from investors. Define the term Alternate Investment Fund (AIF). Briefly explain the different categories of AIF.

(iii) SEBI imposed a penalty of ₹ 8 lakh on Mr. Satish kumar under the provisions of Section 15HB of the SEBI Act. It was established that he provided incorrect information to the Investigating Authority (IA) of SEBI and hampered the process of investigation thus violating the provisions of the SEBI Act, 1992. Mr. Satish kumar, aggrieved by the decision of Adjudicating Officer under the SEBI Act, 1992 moved to Civil Court to contest the case. Is the action of Mr. Satish kumar correct in light of SEBI provisions? Give your views and suggest Mr. Satish kumar.

(iv) Write short notes on Future and Options.

(5 Marks each)

PART-II : SECURITIES LAWS (60 MARKS)

3(a) GDL Limited is a company incorporated under the Companies Act, 2013 and having the business of manufacturing of watch components, precision engineering components and press tools. The paid-up Equity Share Capital of the GDL Limited is ₹ 1,27,37,064. The company had come out with a Rights Issue of 10,86,956 Equity Shares of ₹ 10 each at an issue price of ₹ 230 each and Issue closed on 7th May 2022. The allotment of shares of the Rights Issue was completed on 17th May 2022. Digital Technology Private Limited **('Buyer')**, member of the Promoter Group of GDL Limited, holds 17,615 (0.14%) fully paid-up equity shares which includes 2,000 shares allotted pursuant to Rights Issue on 17th May 2022. Mr. Shankar, member of the Promoter Group of GDL Limited **('Seller')** holds 8,10,851 (6.37%) fully paid-up equity shares which includes 1,30,000 shares allotted pursuant to Rights Issue on 17th May 2022. The Buyer made multiple transactions in the shares of GDL Limited during 2019 to 2022. The details of the transactions are as follows:

Date	Buy Quantity	Sell Quantity	Remarks
23-10-2019	1000	0	Market
24-10-2019	2	0	Market
23-11-2019	15094	0	Conversion of Warrants into Shares
28-06-2020	0	999	Market
24-06-2020	0	1	Market
19-08-2020	0	1000	Market
20-08-2020	0	2150	Market
15-02-2022	0	3640	Market
17-05-2022	2000		Right Shares

Both Buyer and Seller are named in the Shareholding Pattern filed by GDL Limited for more than three years. The Buyer proposes to buy equity shares of the GDL Limited from seller through an Inter se transfer of shares as per Regulation 10(1)(a)(ii) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

In view of the above facts, answer the following with reasons:

i. Whether the proposed inter-se transfer of shares between insider (Buyer and Seller) within a period of six months post the allotment of shares under Rights Issue of the GDL Limited will violate provisions regarding contra trade of the SEBI (Prohibition of Insider Trading) Regulations, 2015?

ii. Whether the Buyer who has sold shares of the GDL Limited on 15th February, 2022 through market transaction, can buy shares from the Seller through inter-se transfer within 6 months from the above sale of shares?

iii. Whether closure of trading window restrictions would be applicable to the said proposed transaction?

(4 Marks each)

(b) ABC Limited contravened the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 2015. Advise ABC Limited regarding the consequences of such violation?

(3 Marks)

4(a) Future Ltd. has recently launched a Mutual Fund Scheme with the name 'GI Equity Multi Cap Scheme' with following details:

Size of the Scheme: ₹ 200 lakh

Face value of the unit: ₹ 20

Number of the outstanding units: 20 lakh

Market value of the fund's investments receivables: ₹ 360 lakh

Accrued Income: ₹ 2 lakh

Receivables: ₹ 2 lakh

Liabilities: ₹ 1 lakh

Accrued expenses: ₹ 1 lakh

Based on the above-mentioned information, answer the following:

(i) What do you mean by NAV?

(ii) Find out the NAV in the present case.

(iii) What does an expense ratio contain in a Mutual Fund Scheme?

(b) Bharat Ltd. is a listed company, manufacturing auto ancillary components. One of the directors of the company is a fugitive offender. The company wants to bring Further Public Offer (FPO). You being the company secretary of the company, advise whether the company can issue FPO. State the general conditions and the eligibility requirements for FPO under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

(c) Red Stone Ltd. entered into listing agreement on 21st May, 2022 as per SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 with stock exchange. The company is planning to conduct a Board Meeting of its Directors on 28th June, 2022 for consideration of its annual financial results. Whether the company needs to give prior intimation to stock exchange? Explain the matters for which prior intimation of the Board Meeting shall be given to the stock exchange under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

(5 Marks each)

5(i) Distinguish between Employee Stock Option Scheme (ESOS) and Employee Stock Option Purchase (ESPS).

(ii) What actions SEBI can take against the company in case it is found to be in violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003? Briefly explains the powers of Investigating Authority with reference to violation under the above-mentioned regulations.

(iii) Sujata Ltd. is a listed company. The promoters hold 61.50% paid up equity share capital as on 31st March 2022. On November 02, 2022, some of the promoters who holds convertible warrants in the company converted 15,00,000 warrants into shares, as a result of which the holding of the promoters increased by 4.10%. Vihaan (Transferor), one of the promoters holds 18.50% of equity share capital in the company proposed to gift 1.20% equity shares of the company to immediate relative by way of transfer. Taking into account SEBI (Substantial Acquisition of Shares and Takeover) Regulations, answer the following questions:

(i) Whether the proposed transfer trigger an obligation upon the transferor for open offer?

(ii) Will the transaction be covered under creeping acquisition?

(iii) Whether promoters will be permitted to avail any exemption under the regulation?

(5 Marks each)

Attempt all part of either Q. No. 6 or Q. No. 6 A

6(a) Enumerate the applicability for issuance and listing of debt securities and non-convertible redeemable preference shares by an issuer by way of public issuance in terms of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021.

(b) The financial data of a listed company as on 31st March, 2022 are as follows:

Authorized equity share capital: ₹ 10 crore (1 crore shares of ₹ 10 each)

Paid-up equity share capital: ₹ 5 crore

General reserve: ₹ 3 crore

Debenture redemption reserve: ₹ 2 crore

The Board of directors of the company passed resolution by circulation for buy-back of shares to the extent of 9% of the company's paid-up share capital and free reserves. You are required to examine the validity of the proposal with reference to the provisions of the SEBI (Buy-Back of Securities) Regulations, 2018.

(c) The financial data of Tech Energy Limited as on 31st March, 2023 are as under:

Authorised Share Capital: ₹ 700 crore

Paid-up Capital: ₹ 300 crore

Free Reserves: ₹ 800 crore

The company has pending convertible debenture of ₹ 150 crore, due for conversion in financial year 2021-22. The company proposes to issue bonus shares in the ratio of 1:1 after conversion of debenture. You being a Company Secretary, advise on the procedure to be followed by referring the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

(5 Marks each)

OR (Alternate question to Q. No. 6)

6A(i) Rajat Ltd. had launched a scheme named as Malamal scheme. The scheme entailed a onetime payment of ₹ 10,000 in lieu of a unit of 10 Teakwood trees with a holding period of 20 years and on maturity, the contributor/investor have an option to get the teak trees or the realised sale proceeds thereof. The scheme was launched by the company for two calendar years. Within such short span of time, the scheme mobilized ₹ 2 crore from 2,000 contributors/investors. The scheme was being carried on without obtaining registration from SEBI. Referring to the SEBI Regulations, answer the following:

(i) State the provisions under which the registration was required.

(ii) What are the powers of SEBI in this regard?

(iii) What should be the minimum duration of the scheme?

(ii) Answer the following with reference to the SEBI (Prohibition of Insider Trading) Regulations, 2015 by giving reasons:

(a) Does exercise of ESOPs/ESPS come under the definition of Trading under the Insider Trading Regulations?

(b) Can a CFO, who has not reported to the Board of Directors, act as a Compliance Officer and update the Board on the transactions related to Insider Trading?

(c) Can the company appoint more than one person as Compliance Officer under the regulation?

(iii) Pinki Ltd. being a listed company has not complied the requirements of listing agreement with the stock exchange. The stock exchange decided for compulsory delisting of the securities from its trading platform. With reference to the SEBI (Delisting of Equity Shares) Regulations, 2021, answer the following

a) Whether once listed, stock exchange can go for compulsory delisting of securities of Pinki Ltd.?

b) What are the provisions for constitution of panel?

c) What time period will be given for representation to Pinki Ltd.?

(5 Marks each)