

## INDEX

PART I – CAPITAL MARKET						
NO.	LESSON TITLE	PAGE NO.	LECTURE	1 <sup>ST</sup> READING	2 <sup>ND</sup> READING	3 <sup>RD</sup> READING
1	BASICS OF CAPITAL MARKET	1.1 to 1.16				
2	SECONDARY MARKET IN INDIA	2.1 to 2.18				
3	SECURITIES CONTRACTS (REGULATION) ACT, 1956	3.1 to 3.16				
4	SECURITIES AND EXCHANGE BOARD OF INDIA	4.1 to 4.16				
5	LAWS GOVERNING TO DEPOSITORIES AND DEPOSITORY PARTICIPANTS	5.1 to 5.11				
6	SECURITIES MARKET INTERMEDIARIES	6.1 to 6.11				
7	INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)	7.1 to 7.8				
PART II – SECURITIES LAW						
8	ISSUE OF CAPITAL & DISCLOSURE REQUIREMENTS	8.1 to 8.13				
9	SHARE BASED EMPLOYEE BENEFITS AND SWEAT EQUITY	9.1 to 9.9				
10	ISSUE AND LISTING OF NON-CONVERTIBLE SECURITIES	10.1 to 10.7				
11	LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS	11.1 to 11.17				
12	ACQUISITION OF SHARES AND TAKEOVERS – CONCEPTS	12.1 to 12.9				
13	PROHIBITION OF INSIDER TRADING	13.1 to 13.10				
14	PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET	14.1 to 14.5				
15	DELISTING OF EQUITY SHARES	15.1 to 15.13				
16	BUY-BACK OF SECURITIES	16.1 to 16.10				
17	MUTUAL FUNDS	17.1 to 17.11				
18	COLLECTIVE INVESTMENT SCHEMES	18.1 to 18.8				

## CHAPTER 8 - ISSUE OF CAPITAL & DISCLOSURE REQUIREMENTS

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

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. SEBI has issued SEBI (Issue of Capital and Disclosure Requirements) Regulations [‘ICDR Regulations’] for regulation several types of issue.

### TYPES OF ISSUES

- **Initial Public Offer (IPO):** 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.
- **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 Allotment:** 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 allotment. 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.
- **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 in draft 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 filing of the Draft Offer Document with the SEBI.
- **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.

## APPLICABILITY OF THE SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018 [REGULATION 3]

1. Initial public offer by an unlisted issuer
2. Rights issue by a listed issuer; where the aggregate value of the issue is Rs. 50 crore or more
3. Further public offer by a listed issuer
4. Qualified institutions placement by a listed issuer
5. Preferential issue by a listed issuer
6. initial public offer of Indian depository receipts
7. Bonus issue by a listed issuer
8. Listing on the innovators growth platform through an issue or without an issue
9. Initial public offer by a small and medium enterprise
10. Rights issue of Indian depository receipts

## 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 registering or 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)]

- a) If the issuer, any of its promoters, promoter group, selling shareholders are debarred from accessing the capital market by the SEBI.
- b) If any of the promoters or directors of the issuer is a promoter or a director of any other company.
- 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.

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

### ► Non applicability of Regulation 5(1) & (2)

- 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.

### ► 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 Rs. 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. 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 Rs.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 Rs. 1 crore in each of the preceding three full years, calculated on a restated and consolidated basis.
- d) 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.

### 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 held by the promoters are in dematerialised form prior to filing of the offer document;
  - d) all its existing partly paid-up equity shares have either been fully paid-up or have been forfeited;
  - e) it has made firm arrangements of finance through verifiable means towards 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.

### ADDITIONAL CONDITIONS FOR AN OFFER FOR SALE

1. Shares must be fully paid up
2. Shall be held by the sellers for a period of at least one year prior to the filing of the draft offer document.
3. In case the equity shares received on conversion or exchange of fully paid-up compulsorily convertible securities including depository receipts are being offered for sale, the holding period of such convertible securities, including depository receipts, as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period.
4. Further, such holding period of one year shall be required to be complied with at the time of filing of the draft offer document.

5. 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.

► **Non-Applicability**

1. The offer for sale of a government company or statutory authority or corporation or any special purpose vehicle set up and controlled by any one or more of them, which is engaged in the infrastructure sector
  2. Equity shares offered for sale were acquired pursuant to any scheme approved by a High Court, or approved by a tribunal or the Central Government under the sections 230 to 234 of Companies Act, 2013, as applicable, in lieu of business and invested capital which had been in existence for a period of more than one year prior to approval of such scheme
  3. If the equity shares offered for sale were issued under a bonus issue on securities held for a period of at least one year prior to the filing of the draft offer document with the SEBI and further subject to the following:
    - a) Such specified securities being issued out of free reserves and share premium existing in the books of account as at the end of the financial year preceding the financial year in which the draft offer document is filed with SEBI and
    - b) Such equity shares not being issued by utilisation of revaluation reserves or unrealized profits of the Issuer
- 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

**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 at least 25 % of the consideration amount based on the exercise price shall also be received upfront
- A specified security may have one or more warrants attached to it.

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.

## ELIGIBILITY REQUIREMENTS FOR FPO

**Entities not eligible to make a FPO of specified securities:**

- a) If the issuer, any of its promoters, promoter group, 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 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 the promoters or directors of the issuer is a fugitive offender.

However, the restrictions under (a) and (b) above shall not apply to the persons or entities 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

- 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

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:

- general corporate purposes, and
- 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.

## PROMOTERS' CONTRIBUTION

In Case of IPO [Regulation 14]	In case of FPO [Regulation 113]
<ul style="list-style-type: none"> <li>• The promoters of the issuer shall hold at least 20% of the post-issue capital.</li> <li>• However, in case the post-issue shareholding of the promoters is less than 20%, alternative investment funds or foreign venture capital investors or</li> </ul>	<p>The promoters shall contribute in the public issue as follows:</p> <p>a) either to the extent of 20% of the proposed issue size or to the extent of 20% of the post-issue capital;</p>

<p>scheduled commercial banks or public financial institutions or insurance companies registered with IRDA may contribute to meet the shortfall in minimum contribution as specified for the promoters, subject to a maximum of ten percent of the post-issue capital without being identified as promoter(s).</p>	<p>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.</p>
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### Non applicability

- 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 95% 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

## LOCK-IN REQUIREMENTS

### ► For Securities Held by Promoters

In a public issue, the specified securities held by promoters shall be locked-in for the period stipulated hereunder:

<p><b>Promoters Contribution</b></p>	<p>The promoters contribution including contribution made by AIFs or FVCIs or scheduled commercial banks or PFIs or insurance companies registered with IRDA, 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.</p>
<p><b>Promoters' holding in excess of minimum promoters' contribution</b></p>	<p>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.</p>
<p><b>In case of SR Equity Shares</b></p>	<p>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.</p>

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

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

## 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 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.
- 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 filing, by hosting it on the websites of the SEBI, stock exchanges where specified securities are proposed to be listed and lead manager associated with the issue.
- The issuer shall within 2 days of filing the draft offer document with the SEBI, make a public announcement in one English national daily newspaper 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

<b>ASBA</b>	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.
<b>IPO grading</b>	The issuer may obtain grading for its initial public offer from one or more credit rating agencies registered with the Board.
<b>Underwriting</b>	If the issuer making an IPO/FPO, other than through the book building process, desires to have the issue underwritten, it shall appoint merchant bankers or stock brokers, registered with the SEBI, to act as underwriters. 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).
<b>Monitoring agency</b>	If the issue size 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
<b>Pre-issue advertisement</b>	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 preissue advertisement in one English national daily newspaper with wide circulation, 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.
<b>Opening of the issue</b>	A public issue may be opened within 12 months from the date of issuance of the observations by the SEBI.
<b>Minimum subscription</b>	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.
<b>Period of subscription</b>	An IPO/FPO shall be kept open for at least 3 working days and not more than 10 working days.
<b>Minimum application value</b>	The minimum sum payable on application per specified security shall be at least 25% of the issue price.
<b>Post-issue Advertisements</b>	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.
<b>Release of subscription money</b>	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:

1	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
2	Demat form	Entire shareholding of the promoter group of the issuer is held in dematerialised form on the reference date
3	Market Capitalisation	Average market capitalisation of public shareholding of the issuer is at least `1000 crores in case of public
4	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
5	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
6	Compliance with SEBI (LODR) Regulations, 2015	<ul style="list-style-type: none"> <li>▶ The issuer has been in compliance with the equity listing agreement or SEBI (LODR) Regulations, 2015, as applicable, for a period of at least 3 years immediately preceding the reference date</li> <li>▶ 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 3 years immediately preceding the reference date, but is compliant with such provisions at the time of filing of RHP, 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</li> <li>▶ Further, imposition of monetary fines by stock exchange on the issuer shall not be a ground for ineligibility for undertaking issuances under these regulations</li> </ul>
7	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
8	No Showcause 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
9	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
10	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
11	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
12	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

## 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]

- An issuer shall not be eligible to make a preferential issue if any of its promoters or directors is a fugitive economic offender or if it has any outstanding dues to the Board, 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. 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.
- However, where 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:
  - a) the date of expiry of the tenure of the warrants due to non-exercise of the option to convert; or
  - b) the date of cancellation of the warrants, as the case may be.

### 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.

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

“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);
- 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;
- 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 nationwide 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]

- 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.

### Eligibility requirements for an initial public offer

- If post issue paid-up capital is  $\leq$  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 SEBI
- IPO shall be 100% underwritten. The lead manager(s) shall underwrite at least 15% Compulsory market making for a minimum period of 3 years from the date of listing
- Minimum application size in IPO & Trading lot shall be one lakh rupees
- May migrate to Main Board if SR is passed though postal ballot with majority of minority

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.

## 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

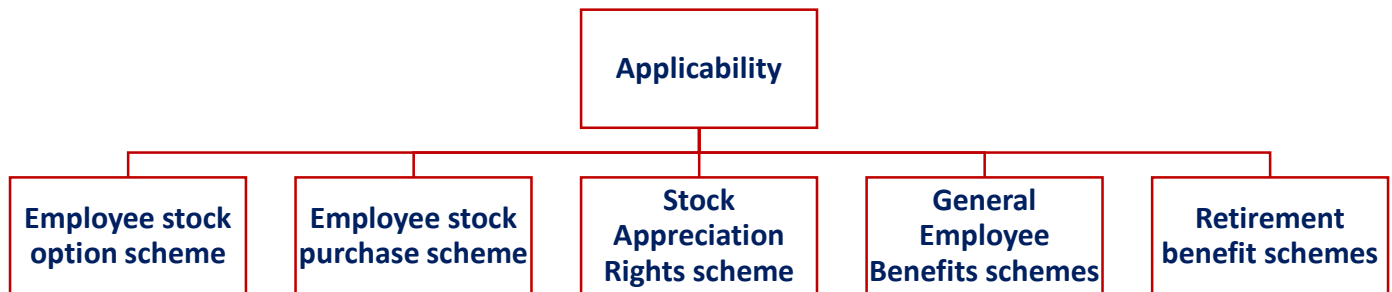
### Listing on Innovators Growth Platform (IGP)

- 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
- 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

# CHAPTER 9 - SHARE BASED EMPLOYEE BENEFITS AND SWEAT EQUITY

## SEBI (SHARE BASED EMPLOYEE BENEFITS AND SWEAT EQUITY) REGULATIONS, 2021

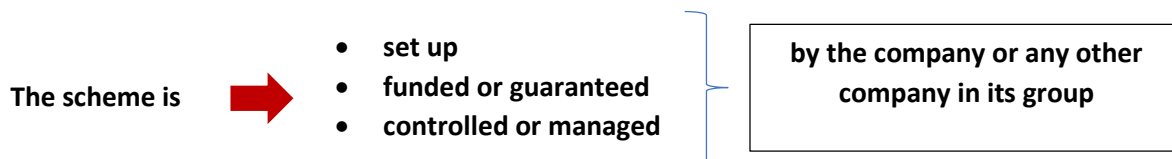
### APPLICABILITY



### 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:-

- i. for direct or indirect benefit of employees;
- ii. involving dealing in or subscribing to or purchasing securities of the company, directly or indirectly; and
- iii. satisfying, directly or indirectly, any one of the following conditions:



The provisions of 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

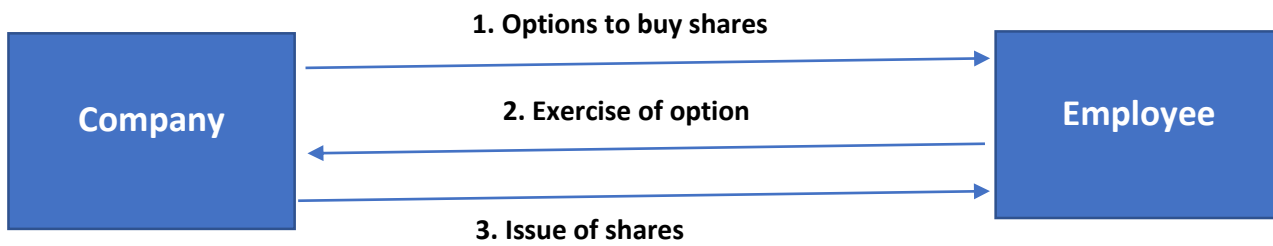
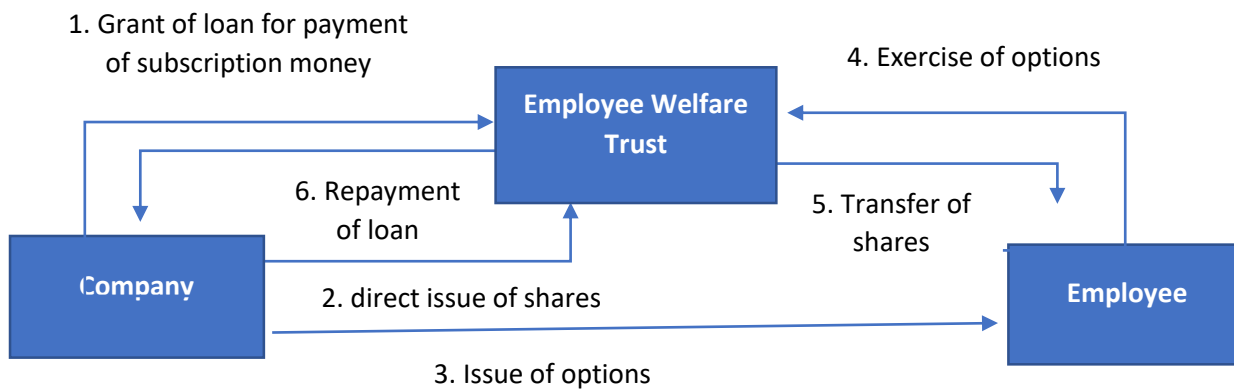
<b>Employee</b>	<p><b>“Employee”, except in relation to issue of sweat equity shares, means, –</b></p> <ol style="list-style-type: none"> <li>i. an employee as designated by the company, who is exclusively working in India or outside India; or</li> <li>ii. a director of the company, whether a whole time director or not, including a nonexecutive director who is not a promoter or member of the promoter group, but excluding an independent director; or</li> <li>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 –             <ol style="list-style-type: none"> <li>a) an employee who is a promoter or a person belonging to the promoter group; or</li> <li>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.</li> </ol> </li> </ol>
<b>ESOS</b>	<p><b>“Employee stock option scheme or ESOS” means a scheme under which a company grants employee stock options to employees directly or through a trust.</b></p>

<b>ESPS</b>	“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.
<b>GEBS</b>	“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.
<b>RBS</b>	“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.
<b>Sweat equity shares</b>	“Sweat equity shares” means sweat equity shares as defined in sub-section (88) of section 2 of the Companies Act, 2013.
<b>Appreciation</b>	“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.
<b>Exercise</b>	“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.
<b>Grant date</b>	“Grant date” means the date on which the compensation committee approves the grant
<b>Option</b>	“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
<b>Relevant date</b>	“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.
<b>SAR</b>	“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.
<b>SAR scheme</b>	“Stock appreciation right scheme or SAR scheme” means a scheme under which a company grants SAR to employees.
<b>SAR grantee</b>	“SAR grantee” means an employee to whom a SAR is granted.
<b>SAR price</b>	“SAR price” means the base price defined on the grant date of SAR for the purpose of computing appreciation.

## **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. 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.
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 it 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” 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: -
- transfer to the employees pursuant to scheme(s);
  - 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:**
- 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;
  - on vesting or exercise, as the case may be, of SAR under the scheme covered by Part C of Chapter III of these regulations;
  - 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 –
    - the trustee(s) shall record the reasons for such sale; and
    - money so realised on sale of shares shall be utilised within a definite time period as stipulated under the scheme or trust deed.
  - participation in buy-back or open offers or delisting offers or any other exit offered by the company generally to its shareholders, if required;
  - for repaying the loan, if the unappropriated inventory of shares held by the trust is not appropriated within the timeline as provided above;
  - winding up of the scheme(s); and
  - 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.

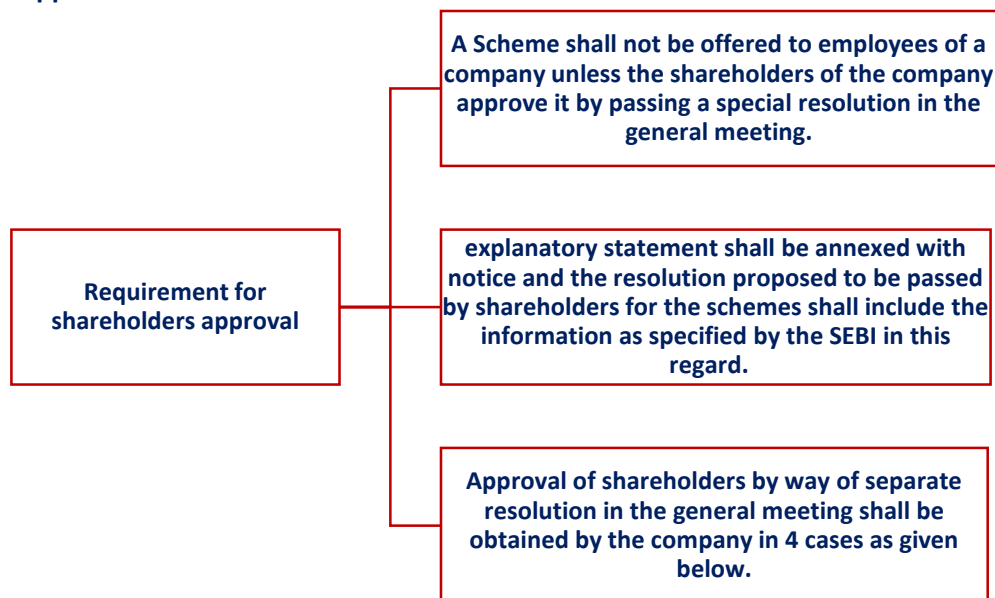
#### ► Eligibility Criteria

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.

#### ▶ **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.

#### ▶ **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.

#### ▶ **EMPLOYEE STOCK OPTION SCHEME (ESOS)**

<b>Administration and Implementation</b>	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.
<b>Pricing</b>	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 regulations.
<b>Vesting Period</b>	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.
<b>Rights of the option holder</b>	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.
<b>Consequence of failure to exercise option</b>	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)**

<b>Administration and Implementation</b>	An ESPS scheme shall contain the details of the manner in which the scheme will be implemented and operated.
<b>Pricing and Lock-In</b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• Shares issued under an ESPS shall be locked-in for a minimum period of one year from the date of allotment.</li> </ul>

- 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)

<b>Administration and Implementation</b>	<ul style="list-style-type: none"> <li>• ASAR scheme shall contain the details of the manner in which the scheme will be implemented and operated.</li> <li>• 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.</li> <li>• 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.</li> </ul>
<b>Vesting</b>	There shall be a minimum vesting period of one year in case of SAR scheme.
<b>Rights of the SAR holder</b>	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)	▶ RETIREMENT BENEFIT SCHEME (RBS)
<b>Administration and Implementation</b>	
<ol style="list-style-type: none"> <li>1. GEBS shall contain the details of the scheme and the manner in which the scheme shall be implemented and operated.</li> <li>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.</li> <li>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.</li> </ol>	<ol style="list-style-type: none"> <li>1. RBS 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.</li> <li>2. The RBS shall contain the details of the benefits under the scheme and the manner in which the scheme shall be implemented and operated.</li> <li>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.</li> <li>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.</li> </ol>

## ISSUE OF SWEAT EQUITY BY A LISTED COMPANY – CHAPTER IV OF SEBI (SHARE BASED EMPLOYEE BENEFITS AND SWEAT EQUITY) REGULATIONS, 2021

### ▶ Introduction

‘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. 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.

### ▶ 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.

### ▶ Maximum quantum of sweat equity shares

A company shall not issue sweat equity shares for more than 15 % 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, the explanatory statement to be annexed to the notice 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.

### ▶ 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.

**▶ 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.

## CHAPTER 10 - ISSUE AND LISTING OF NON-CONVERTIBLE SECURITIES

### INTRODUCTION

The SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 were notified on June 06, 2008 and June 12, 2013 respectively. 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 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.

### IMPORTANT DEFINITIONS UNDER THE SEBI NCS REGULATIONS

<b>Debt securities:</b>	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.
<b>Non-convertible securities</b>	It 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.
<b>Issuer:</b>	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).
<b>Electronic Book Provider Platform:</b>	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.
<b>Non-convertible redeemable preference share:</b>	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.
<b>Perpetual debt instrument:</b>	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 NCS Regulations, 2021 shall apply to the:

1. Issuance and listing of debt securities and non-convertible redeemable preference shares by an issuer by way of public issuance
2. Issuance and listing of non-convertible securities by an issuer Issued on private placement basis which are proposed to be listed
3. Listing of commercial paper issued by an issuer in compliance with the guidelines framed by the Reserve Bank of India

### 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 non-convertible securities shall satisfy the conditions of these regulations as on:

Date of filing of  
the



- Draft offer document with the Board or stock exchange(s);
- offer document with the Board or stock exchange(s), as the case may be; and
- 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:

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.
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.
Restrictions mentioned at (c) and (d)	shall not be applicable in case of private placement of nonconvertible 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.
- **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. Issuer shall send notice to all the eligible holders of such non-convertible securities and debenture trustee at least twenty-one days before the date from which such right is exercisable.
  - Issuer shall also provide a copy of such notice to the stock exchange(s) where such nonconvertible securities are listed for wider dissemination and shall make an advertisement in an english national daily and regional daily having wide circulation at the place where the registered office of the issuer is situated, indicating the details of such rights and eligibility of the holders who are entitled to avail such right. 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 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. Such trust deed shall consist of two parts:
  - a) Part A containing statutory/standard information pertaining to the debt issue.
  - b) Part B containing details specific to the particular debt issue.
- 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.

### ➤ 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 nonconvertible 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.

### ➤ **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.

### ➤ **Issuance of green debt securities:**

An issuer desirous of issuing and listing of green debt securities shall comply with the conditions as may be specified by the SEBI.

Green Debt Security means a debt security issued for raising funds that are to be utilised for project(s) and/ or asset(s) falling under any of the following categories, subject to the conditions as may be specified by the SEBI from time to time:

- Renewable and sustainable energy including wind, solar, bioenergy, other sources of energy which use clean technology,
- Clean transportation including mass/public transportation,
- Sustainable water management including clean and/or drinking water, water recycling,
- Climate change adaptation,
- Energy efficiency including efficient and green buildings,
- Sustainable waste management including recycling, waste to energy, efficient disposal of wastage,
- Sustainable land use including sustainable forestry and agriculture, afforestation,
- Biodiversity conservation, or
- a 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 7 working days from the date of filing the draft offer document with stock exchange.

- 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.

<b>Disclosures in the offer document:</b>	The offer document shall contain all material true, fair and adequate disclosures which are necessary for the subscribers to take an informed 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.
<b>Mode of Disclosure of the offer document:</b>	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.
<b>Advertisements for Public issues:</b>	The issuer shall make an advertisement 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.
<b>Prohibition on payment of incentives:</b>	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.
<b>Abridged Prospectus and application forms:</b>	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.
<b>Price Discovery and Book building</b>	The issuer may determine the price and/or coupon of debt securities and nonconvertible 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.
<b>Minimum subscription:</b>	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.
<b>Allotment of securities and payment of interest</b>	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.
<b>Underwriting:</b>	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.
<b>Mandatory listing of a public issue</b>	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.

## 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 nonconvertible 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.

## 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.
- 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

## CHAPTER 11 - LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS

### 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

- These regulations shall apply to a listed entity which has listed any of the following designated securities on recognised stock exchange(s):
  1. Indian Depository Receipts
  2. Securitised debt instruments
  3. Security Receipts
  4. Non-convertible securities
  5. Specified securities listed on main board or SME exchange or Innovative Growth Platform
  6. Units issued by mutual funds
  7. Any other securities as may be specified by SEBI
- The provisions of these regulations which become applicable to listed entities on the basis of market capitalisation criteria shall continue to apply to such entities even if they fall below such thresholds.

### IN-PRINCIPLE APPROVAL

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

<b>Listed entity</b>	"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).
<b>Designated securities</b>	"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.

<b>Specified securities</b>	“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.
<b>Listing agreement</b>	“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

## 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.

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
- ▶ **Share-transfer agent:** The listed entity shall appoint a share transfer agent or manage 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).
- ▶ **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, for the payment of dividends, interest, redemption or repayment amounts.
- ▶ **Grievance Redressal Mechanism:** The listed entity shall ensure that adequate steps are taken for expeditious redressal of investor complaints. 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.
- ▶ **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)

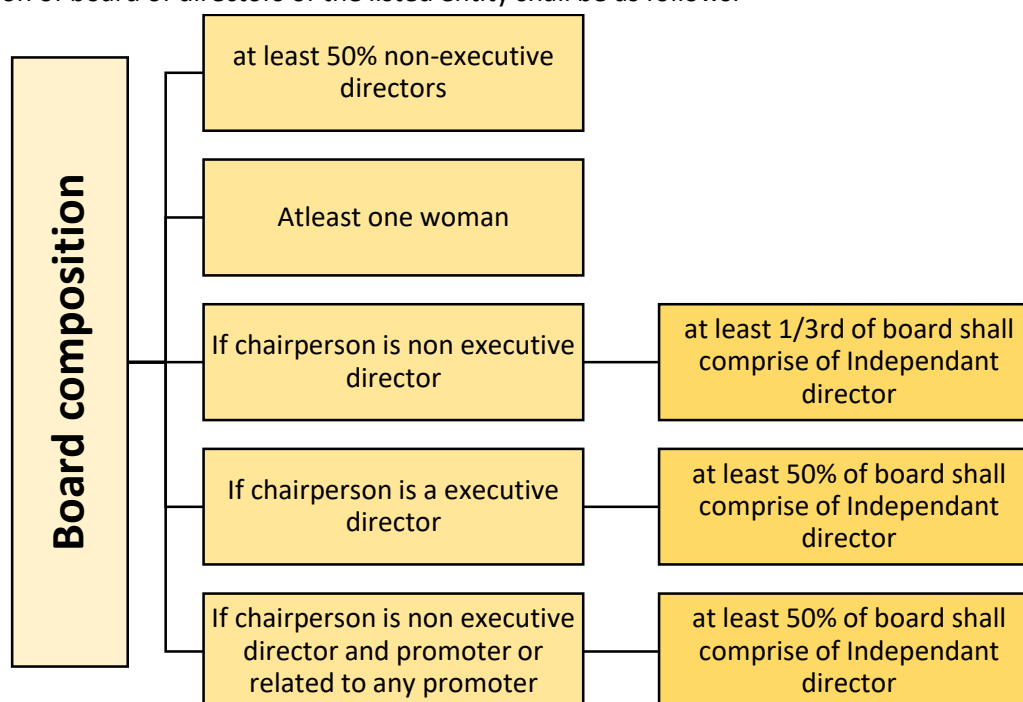
## KEY PROVISIONS PERTAINING TO CORPORATE GOVERNANCE UNDER SEBI (LODR) REGULATIONS, 2015

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]**

The Composition of board of directors of the listed entity shall be as follows:



- 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 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020.
- 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.

► **Minimum Directors Requirement:**

The board of directors of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) 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. The listed entity shall ensure that approval of shareholders for 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.

► **Meetings of Board:**

The Board shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings.

► **Quorum of board meeting:**

The quorum for every meeting of the board of directors of the top 1000 listed entities with effect from April 1, 2019 and of the top 2000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director.

**BOARD COMMITTEES:**

1. **Audit Committee (Regulation 18)**
2. **Nomination and Remuneration Committee (Regulation 19)**
3. **Stakeholders Relationship Committee (Regulation 20)**
4. **Risk management Committee (Regulation 21)**

	<b>AUDIT COMMITTEE</b>	<b>NOMINATION &amp; REMUNERATION COMMITTEE</b>
<b>Composition</b>	<ul style="list-style-type: none"> <li>• The committee shall comprise of at least three directors.</li> <li>• At least Two-thirds of the members shall be independent directors.</li> <li>• In case of a listed entity having outstanding SR equity shares, the audit committee shall only comprise of independent directors.</li> <li>• All members shall be financially literate and at least one member shall have accounting or related financial management expertise.</li> </ul>	<ul style="list-style-type: none"> <li>• The committee shall comprise of at least three directors.</li> <li>• All directors of the committee shall be non-executive directors.</li> <li>• At least two-thirds of the directors shall be independent directors</li> </ul>
<b>Chairperson</b>	<ul style="list-style-type: none"> <li>• The chairperson shall be an independent director.</li> <li>• The Chairperson shall be present at Annual general meeting to answer shareholder queries</li> </ul>	<ul style="list-style-type: none"> <li>• The Chairperson shall be an independent director.</li> <li>• 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.</li> <li>• 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.</li> </ul>
<b>Meetings</b>	<ul style="list-style-type: none"> <li>• The committee shall meet at least four times in a year and not more than 120 days shall elapse between two meetings.</li> </ul>	<ul style="list-style-type: none"> <li>• The committee shall meet at least once in a year</li> </ul>
<b>Quorum</b>	<ul style="list-style-type: none"> <li>• The quorum for 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</li> </ul>	<ul style="list-style-type: none"> <li>• The quorum for a meeting 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.</li> </ul>
<b>Role of Committee</b>	<ul style="list-style-type: none"> <li>• as specified in Part C of Schedule II</li> </ul>	<ul style="list-style-type: none"> <li>• as specified in Part D of the Schedule II</li> </ul>

	STAKEHOLDERS RELATIONSHIP COMMITTEE	RISK MANAGEMENT COMMITTEE
<b>Composition</b>	<ul style="list-style-type: none"> <li>The committee shall comprise of atleast three directors.</li> <li>The committee shall have at least one independent director.</li> <li>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.</li> </ul>	<ul style="list-style-type: none"> <li>The Committee shall have minimum three members with majority of them being members of the board of directors, including at least one independent director.</li> <li>In case of a listed entity having outstanding SR equity shares, at least two thirds of Committee shall comprise independent directors</li> </ul>
<b>Chairperson</b>	<ul style="list-style-type: none"> <li>The chairperson shall be a non-executive director.</li> <li>The Chairperson shall be present at the annual general meetings to answer queries of the security holders</li> </ul>	<ul style="list-style-type: none"> <li>The Chairperson shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.</li> </ul>
<b>Meetings</b>	<ul style="list-style-type: none"> <li>The committee shall meet at least once in a year</li> </ul>	<ul style="list-style-type: none"> <li>The committee shall meet at least twice in a year.</li> </ul>
<b>Quorum</b>		<ul style="list-style-type: none"> <li>The quorum for a meeting 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.</li> <li>The meetings of the risk management committee shall be conducted in such a manner that on a continuous basis not more than 180 days shall elapse between any two consecutive meetings</li> </ul>
<b>Role of Committee</b>	<ul style="list-style-type: none"> <li>as specified as in Part D of the Schedule II</li> </ul>	<ul style="list-style-type: none"> <li>The role and responsibilities of the Committee shall mandatorily include the performance of functions specified in Part D of Schedule II.</li> </ul>

**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, determined on the basis of market capitalisation, as at the end of the immediate previous financial year.
- 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 8 listed entities with effect from April 1, 2019 and in not more than 7 listed entities with effect from April 1, 2020. However, a person shall not serve as an independent director in more than 7 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 - 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 only those whose equity shares are listed on a stock exchange.]
- 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.

### RELATED PARTY TRANSACTIONS (REGULATION 23)

- As per Regulation 2(1) (zb) "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), 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 by the listed entity 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.

However, this definition shall not be applicable for the units issued by mutual funds which are listed on a recognized stock exchange(s)

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

- a) 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 one thousand 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.

- b) 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 five percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity

#### ▶ Approval of Audit Committee

All related party transactions 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 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 of the listed entity and such approval shall be applicable in respect of transactions which are repetitive in nature;
- b) the audit committee shall satisfy itself regarding the need for such omnibus approval and that such approval is in the interest of the listed entity;
- c) the omnibus approval shall specify:
  - 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 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.

#### ▶ Exceptions

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

- a) transactions entered into between two government companies;
- b) transactions entered into between a holding company and its wholly owned subsidiary 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. Government Company(ies) means Government Company as defined in sub-section (45) of section 2 of the Companies Act, 2013.

**CORPORATE GOVERNANCE REQUIREMENTS RELATED TO SUBSIDIARY [REGULATION 24]**

- “Material Subsidiary” shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income 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]**

- Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex a secretarial audit report given by a company secretary in practice, in such form as specified, with the annual report of the listed entity.
- 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.

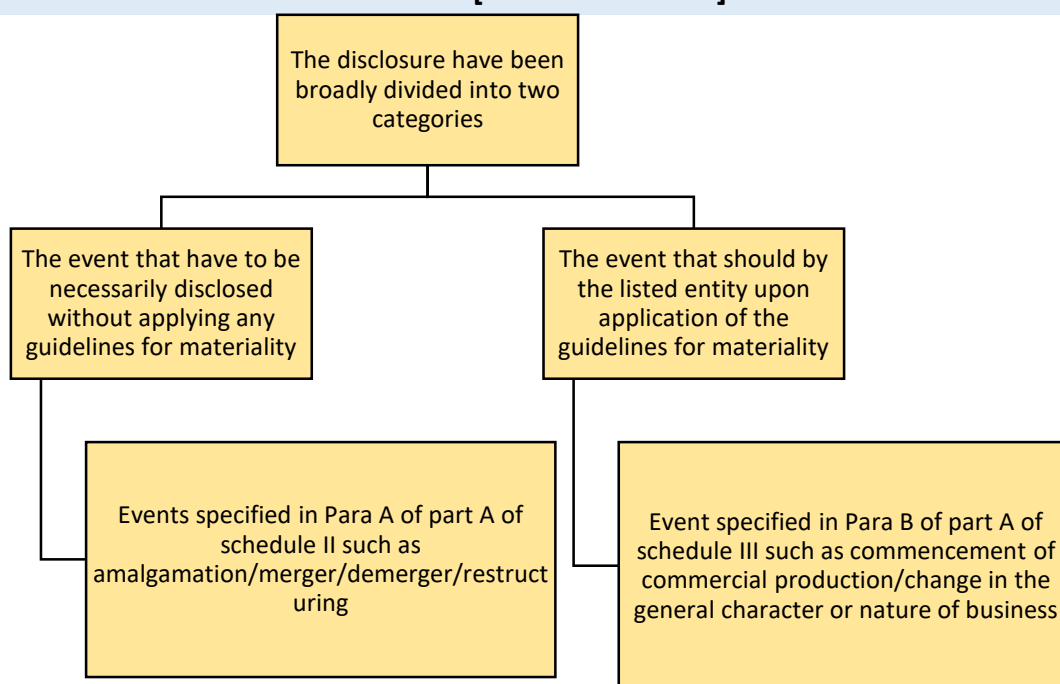
Provided that- Once the above regulations become applicable to a listed entity, they shall continue to remain applicable till such time the equity share capital or the network of such entity reduces and remains below the specified threshold for a period of three consecutive financial years
2. A listed 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 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.

At least 5 Clear Days in advance	At least 2 Working Days in advance	At least 11 Working Days in advance
<ul style="list-style-type: none"> <li>financial results viz. quarterly, half yearly, or annual, as the case may be.</li> </ul>	<ul style="list-style-type: none"> <li>proposal for buyback of securities;</li> <li>proposal for voluntary delisting;</li> <li>fund raising by way of FPO, rights issue, ADR/GDR/FCCB, QIP, debt issue, preferential issue or any other method and for determination of issue price;</li> <li>declaration/ recommendation of dividend, issue of convertible securities including convertible debentures;</li> <li>declaration of bonus securities.</li> </ul>	<ul style="list-style-type: none"> <li>any alteration in the form or nature of any of its listed securities or in the rights or privileges of the holders thereof;</li> <li>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.</li> </ul>

**DISCLOSURE OF EVENTS OR INFORMATION [REGULATION 30]**

- 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 stock exchange of all events or information as soon as reasonably possible and not later than 24 hours from the occurrence of event or information

**Outcome of Meetings of the board of directors****(to be disclosed to the Exchange within 30 minutes of the closure of the meeting)**

- a) dividends and/or cash bonuses recommended or declared or the decision to pass any dividend and the date on which dividend shall be paid/dispatched;
- b) any cancellation of dividend with reasons thereof;
- c) the decision on buyback of securities;
- d) the decision with respect to fund raising proposed to be undertaken;
- e) increase in capital by issue of bonus shares through capitalization including the date on which such bonus shares shall be credited/dispatched;
- f) reissue of forfeited shares or securities, or the issue of shares or securities held in reserve for future issue or the creation in any form or manner of new shares or securities or any other rights, privileges or benefits to subscribe to;
- g) short particulars of any other alterations of capital, including calls;
- h) financial results;
- i) decision on voluntary delisting by the listed entity from stock exchange(s).

In case of board meetings being held for more than one day, the financial results shall be disclosed within thirty minutes of end of the meeting for the day on which it has been considered

**MEETINGS OF SHAREHOLDERS AND VOTING [REGULATION 44]**

- The top 100 listed entities by market capitalization, determined as on March 31st of every financial year, 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 Board

**POLICIES AND PROCESSES UNDER SEBI (LODR) REGULATIONS**

Reg.	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	<ul style="list-style-type: none"> <li>• The listed entity shall formulate a vigil mechanism/whistle blower policy for directors and employees to report genuine concerns.</li> <li>• The vigil mechanism shall provide for adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism.</li> </ul>

		<ul style="list-style-type: none"> <li>The vigil mechanism shall also provide for direct access to the chairperson of the audit committee in appropriate or exceptional cases.</li> </ul>
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 in this sub-regulation, 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.

#### A. 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
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
9	The listed entity shall have a policy for preservation of documents, approved by its Board of Directors

#### B. QUARTERLY COMPLIANCES

Regulation	Title	Particulars	Time Limit
13(3)	Investor complaints Statement	The listed entity shall file with the recognised stock exchange, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter	within 21 days from end of quarter

27(2)	Quarterly Compliance report	The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by SEBI	within 21 days from the end of each quarter
31(1)(b)	Shareholding pattern	The listed entity shall submit a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by SEBI from time to time	within 21 days from the end of each quarter
32(1)	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 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 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, 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

### C. HALF YEARLY COMPLIANCES

Regulation	Title	Particulars	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	The listed entity is required to publish the same on its website
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

### D. YEARLY COMPLIANCES

Regulation	Title	Particulars	Time Limit
7(3)	Compliance Certificate	The listed entity shall submit a compliance certificate to the exchange, duly signed by both the compliance officer of the listed entity and the	Within 30 from the end of the financial year

		authorised representative of the share transfer agent certifying that all activities in relation to share transfer facility of the listed entity are maintained either in house or by Registrar to an issue and share transfer agent registered with the SEBI	
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
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 and publish on its website the annual report along with the Notice of the Annual General Meeting to the stock exchange	Not later than the day of 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
36	Annual reports to securities holders	The listed entity shall send annual report to the holders of securities	Not less than 21 days before the annual general meeting. (in soft or hard copy)
40(9)	Certificate	The listed entity shall ensure that the share transfer agent and/or the in-house share transfer facility, as the case may be, produces a certificate from a practising company secretary certifying that all certificates have been issued within thirty days of the date of lodgment for transfer, subdivision, consolidation, renewal, exchange or endorsement of calls/ allotment monies	Within 30 days from the end of the financial year

#### E. 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
31(1)(c)	Shareholding pattern	The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern	Within 10 days of any capital restructuring

		separately for each class of securities in case of Capital Restructuring	exceeding 2% of the total paid-up share capital
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, Minutes of the board meeting considering such request which would include the views of the board on the request, etc.	within 24 hours from the occurrence of the event
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
39(2)	Issue of Certificate	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 30 days from the date of such lodgment
39(3)	Information relating loss of securities	The listed entity shall submit information with respect to loss of share certificates and issue of the duplicate certificates to the stock exchange	Within 2 days of getting information
40(3)	Registering the transfer of securities	The listed entity shall register transfers of its securities in the name of the transferee(s) and issue certificates or receipts or advices, as applicable, of transfers; or issue any valid objection or intimation to the transferee or transferor, as the case may be	Within 15 days from the date of such receipt of request for transfer
	Transmission request	The listed entity shall ensure that transmission requests are processed	Within 7, after receipt of the specified documents
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 (d) shares arising out of rights attached to 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)

		(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 500, TOP 1000 AND TOP 2000 LISTED ENTITIES

TOP 500 LISTED ENTITIES	TOP 1000 LISTED ENTITIES	TOP 2000 LISTED ENTITIES
Board of directors shall have at least one independent woman director by April 1, 2019	Board of directors shall have at least one independent woman director by April 1, 2020.	
	The board of directors (with effect from April 1, 2019) shall comprise of not less than six directors.	The board of directors (with effect from April 1, 2020) shall comprise of not less than six directors.
	With effect from January 1, 2022, 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 with effect from April 1, 2019 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director.	The quorum for every meeting of the board of directors with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director.
	The provisions of Risk Management Committee shall be applicable to top 1000 listed entities	
	The top 1000 listed entities 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 top 500, 1000 and 2000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

## COMPLIANCES UNDER SEBI (LODR) REGULATIONS FOR THE LISTED ENTITY WHICH HAS LISTED ITS NON-CONVERTIBLE SECURITIES

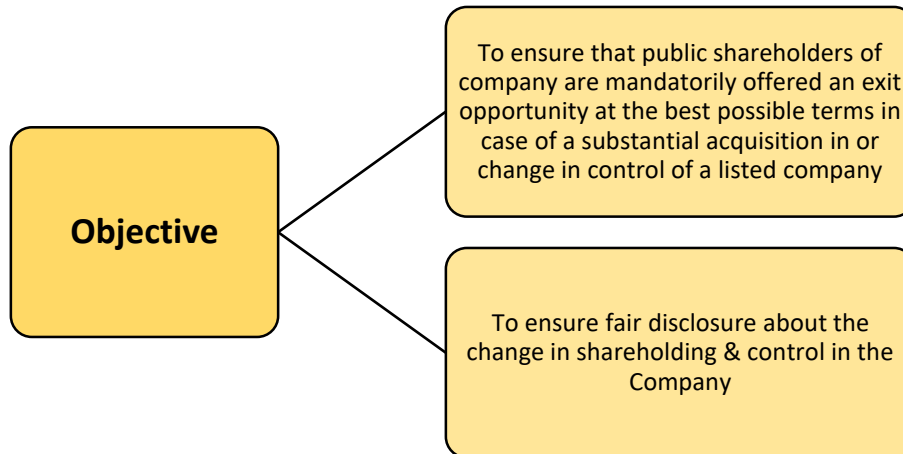
Regulation	Title	Intimation to Stock Exchanges	Time Limit
50(1)	Intimation to stock exchanges	<p>The listed entity shall give prior intimation to the stock exchange about the Board meeting in which any of the following proposals is to be considered:</p> <ol style="list-style-type: none"> <li>an alteration 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;</li> <li>an alteration in the date of the interest/dividend/ redemption payment of nonconvertible securities;</li> <li>financial results viz. quarterly or annual, as the case may be;</li> <li>fund raising by way of issuance of nonconvertible securities; or</li> <li>any matter affecting the rights or interests of holders of non-convertible securities.</li> </ol>	At least two working days in advance, excluding the date of the intimation and the date of the meeting of the board of directors
50(2)	Intimation to Stock exchanges	<p>The listed entity shall also intimate the stock exchange, in case of:</p> <ol style="list-style-type: none"> <li>any AGM 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;</li> <li>any meeting of the holders of nonconvertible securities in relation to any matter affecting the rights or interests of holders of non-convertible securities.</li> </ol>	Not later than the date of commencement of dispatch of notices
52(1)	Quarterly Financial results	The listed entity shall prepare and submit unaudited 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	Quarterly, halfyearly, year-to-date and annual

		created and maintained with respect to its secured listed non-convertible debt securities.	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(1)	Certificate	The listed entity shall submit a certificate to the stock exchange regarding status of payment in case of non-convertible securities.	Within one working day of the interest or dividend or principal becoming due

## CHAPTER 12 - ACQUISITION OF SHARES AND TAKEOVERS – CONCEPTS

### 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.



### IMPORTANT DEFINITION

<b>Acquirer</b>	“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.
<b>Acquisition</b>	“Acquisition” means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company.
<b>Control</b>	“Control” includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner. However, 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.
<b>Enterprise value</b>	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.
<b>Frequently traded shares</b>	“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.
<b>Maximum permissible non-public shareholding</b>	“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

<b>Fugitive Economic Offender</b>	“Fugitive economic offender” shall mean an individual who is declared a fugitive economic offender under section 12 of the Fugitive Economic Offenders Act, 2018.
<b>Identified Date</b>	“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.
<b>Immediate Relative</b>	“Immediate relative” means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse.
<b>Offer period</b>	“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.
<b>Target company</b>	“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.
<b>Tendering period</b>	“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.
<b>Volume weighted average market price</b>	“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.
<b>Volume weighted average price</b>	“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.
<b>Weighted average number of total shares</b>	“Weighted average number of total shares” means the number of shares at the beginning of a period, adjusted for shares cancelled, bought back or issued during the aforesaid period, multiplied by a time-weighting factor.
<b>Wilful defaulter</b>	“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

## 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	Creeping Acquisition Limit
An acquirer, along with Persons acting in concert (PAC), if any, who intends to acquire shares which along with his existing shareholding <b>would entitle him to exercise 25% or more voting</b> rights, can acquire such additional shares only after making a Public Announcement (PA) to acquire <b>minimum twenty six percent</b> shares of the Target Company from the shareholders through an Open Offer.	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 <b>entitle him to exercise more than 5%</b> of the voting rights in any financial year ending March 31 only after making a Public Announcement to acquire <b>minimum twenty six percent</b> shares of Target Company from the shareholders through an Open Offer.

## 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. Regulation 3 of the SEBI Takeover Regulations, 2011 provides 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 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

#### 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. [Regulation 3(2)]

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

Indirect acquisition is 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.

## 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 PAC, holds shares or voting rights in a target company entitling them to exercise 25% or more but less than the maximum permissible non-public shareholding, shall be entitled to voluntarily make a public announcement of an open offer, subject to their aggregate shareholding after completion of the open offer not exceeding the maximum permissible non-public shareholding. Further for the purpose of this regulation, any reference to "25%" in case of listed entity which has listed its specified securities on Innovators Growth Platform shall be read as "49%".
- **Acquisition of shares prior to the voluntary open offer :** 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 PAC, 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.
- **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.

## MINIMUM 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.

## 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.**

Regulation	Made by	Trigger	Time Period	Made to
29(1)	Acquirer	Acquirer + persons acting in concert (PAC) acquiring 5% or more of the shares or voting rights of the target company. Further in case of listed entity which has listed its specified securities on Innovators Growth Platform, any reference to “5%” shall be read as “10%”.	Within two working days of the receipt of intimation	Every Stock Exchange where the shares of the target company are listed and the target company at its registered office.
29(2)	Acquirer	Any person + persons acting in concert (PAC), holds 5% or more of the shares or voting rights in a target company, the disclosure shall be made even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure and such change exceeds 2% 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 “5%” shall be read as “10%” and any reference to “2%” shall be read as “5%”.		

### 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 indebtedness in the ordinary course of business.

## 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.	Within 7 working days from the creation or	Every Stock exchange where

Regulation 31(2)	Promoter	Invocation of such encumbrance or release of such encumbrances of the shares of the target company.	invocation or release of encumbrance as the case may be.	the shares are listed.
Regulation 31(4)	Promoter	Promoter + PAC shall declare on a yearly basis that he, along with PAC, 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.

## PROCESS AT GLANCE



## EXEMPTIONS

### Regulation 10 - Automatic Exemptions

#### (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 preissue 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.

### Regulation 11 – Exemption by SEBI

On an application being made by the acquirer in writing giving the details of the proposed acquisition and grounds on which the exemption is sought along with duly sworn affidavit, 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 of 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.

## CHAPTER 13 - PROHIBITION OF INSIDER TRADING

### 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.

### KEY DEFINITIONS

<b>Compliance Officer</b>	<p>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:</p> <ol style="list-style-type: none"> <li>compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information;</li> <li>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.</li> </ol>
<b>Connected person</b>	<ul style="list-style-type: none"> <li>any person who is or has during six months prior to the concerned Act has been associated with a company, directly or indirectly;</li> <li>in any capacity (including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relation); or</li> <li>is a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company, whether temporary or permanent; or</li> <li>that allows such person, directly or indirectly, access to unpublished price-sensitive information or reasonably expected to allow such access.</li> </ul>
<b>Insider</b>	<p>"Insider" means any person who is:</p> <ol style="list-style-type: none"> <li>a connected person; or</li> <li>in possession of or having access to unpublished price sensitive information.</li> </ol>
<b>Person deemed to be connected person</b>	<p>"Person is deemed to be a connected person" unless the contrary is established, if such person is</p> <ol style="list-style-type: none"> <li>an immediate relative of connected person(s); or</li> <li>a holding company or associate company or subsidiary company; or</li> <li>an intermediary as specified in Section 12 of the SEBI Act or an employee or director thereof; or</li> <li>an investment company, trustee company, asset management company or an employee or director thereof; or</li> <li>an official of a stock exchange or of clearing house or corporation; or</li> <li>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</li> <li>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</li> <li>an official or an employee of a self-regulatory organization recognised or authorized by the SEBI; or</li> <li>a banker of the company; or</li> </ol>

	<p>j) a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten percent of the holding or interest.</p> <p><b>It is to be noted that the above definition intends to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations.</b></p>
<b>Immediate Relative</b>	<p><b>"Immediate Relative" means</b></p> <ul style="list-style-type: none"> <li>• spouse of a person,</li> <li>• parents,</li> <li>• sibling, and</li> <li>• child of such person or of the spouse,</li> <li>• any of whom is either dependent financially on such person,</li> <li>• or consults such person in taking decisions relating to trading in securities.</li> </ul>
<b>Proposed to be listed</b>	<p>Proposed to be listed shall include securities of an unlisted company:</p> <ol style="list-style-type: none"> <li>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</li> <li>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.</li> </ol>
<b>Informant</b>	<p><b>"Informant" means</b> 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.</p>
<b>Trading</b>	<p><b>"Trading" means</b> and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly.</p>
<b>Unpublished price sensitive information</b>	<p><b>Unpublished price sensitive information</b></p> <p><b>"Unpublished price sensitive information" means</b> 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–</p> <ol style="list-style-type: none"> <li>a) Financial results;</li> <li>b) Dividends;</li> <li>c) Change in capital structure;</li> <li>d) Mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and such other transactions;</li> <li>e) Changes in key managerial personnel.</li> </ol>

## RESTRICTION ON COMMUNICATION OR PROCUREMENT OF UNPUBLISHED PRICE SENSITIVE INFORMATION (UPSI) (REGULATION 3)

### 1) Restriction on Communication

- i. No insider shall communicate, provide, or allow access to any UPSI, 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 UPSI.
- ii. No person shall procure from or cause the communication by any insider of UPSI, 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.

## 2) Policy for determination of Legitimate Purposes

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 UPSI 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.

## 3) Recipient of UPSI received on legitimate purpose is also an insider

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.

## 4) Exceptions:

Notwithstanding anything contained in this regulation, an UPSI 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 UPSI 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.

## 5) Execution of confidentiality agreement - A mandate

For purposes of above, 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 above purpose, and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.

## 6) Maintenance of structured database with names of persons with whom UPSI is shared and names of persons who shared the same

- 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
  - a. the nature of unpublished price sensitive information and
  - b. the names of such persons who have shared the information
  - c. 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.
- The board of directors or head(s) 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)

- An insider shall not trade in securities, which are listed or proposed to be listed on stock exchange, when in possession of UPSI, **except in the following situations:**
  - a. where there is an **off-market inter-se transfer** between insiders who were in possession of the same UPSI, or
  - b. the transaction was carried through the block deal window mechanism between persons who were in the possession of the UPSI.

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).
- d. 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.
- c. the transaction in question, was carried out pursuant to a statutory or regulatory obligation to carry out a bonafide transaction,
- d. 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,
- e. 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,
- f. the trades were in accordance to trading plan set up in accordance with Regulation 5.

### Explanation, for the purpose of above Regulation:

- When a person who has traded in securities has been in possession of UPSI, 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.

**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".

## TRADING PLANS (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.
- However, pre-clearance of trades shall not be required for a trade executed as per an approved trading plan. Further, trading window norms and restrictions on contra trade shall not be applicable for trades carried out in accordance with an approved trading plan.
- The trading plan once approved shall be irrevocable and the insider shall mandatorily have to implement the plan, without being entitled to either deviate from it or to execute any trade in the securities outside the scope of the trading plan.

- However, the implementation of the trading plan shall not be commenced if any UPSI in possession of the insider at the time of formulation of the plan has not become generally available at the time of the commencement of implementation and in such event the compliance officer shall confirm that the commencement ought to be deferred until such unpublished price sensitive information becomes generally available information so as to avoid a violation of subregulation (1) of Regulation 4.
- Upon approval of the trading plan, the compliance officer shall notify the plan to the stock exchanges on which the securities are listed.

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.

#### Conditions attached to Trading plan:

1. Overlapping of trading plans not permitted
2. Trading plans specify the value of trades/ number of securities to be traded and dates etc.
3. Trading plan shall not entail trading in securities for market abuse
4. Trading plan not entail trading for a reasonable period around the declaration of financial results
5. Compliance officer to review, approve and notify the trading plan to stock exchanges
6. Trading plan once approved shall not be revoked
7. Commencement of trading not earlier than 6 months fro the public disclosure of plan
8. UPSI not in possession from formulation of plan to implementation
9. Trading plan shall entail trading for a period of not less than 12 months

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.

#### DISCLOSURE REQUIREMENTS

- **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 7 days** of such appointment or becoming a promoter.

- **Continual Disclosures [Regulation 7(2)]**

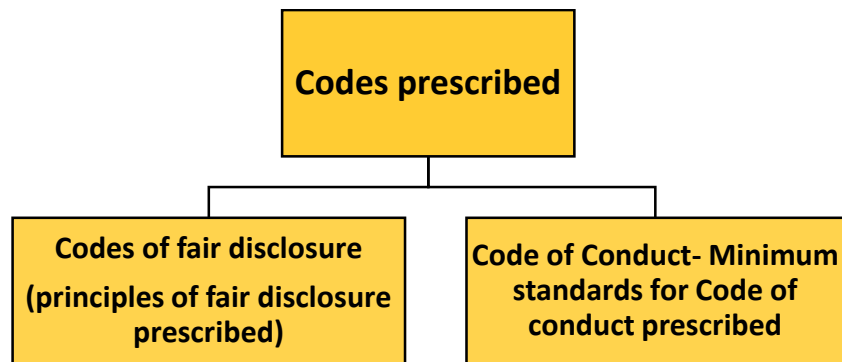
- Every promoter, member of the promoter group, designated person and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series 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;
- Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed **within 2 trading days** of receipt of the disclosure or from becoming aware of such information.

- **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.

## 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:

- Prompt public disclosure** of UPSI that would impact price discovery no sooner than credible and concrete information comes into being in order to make such information generally available.
- Uniform and universal dissemination** of unpublished price sensitive information to avoid selective disclosure.
- Designation of a senior officer as a **chief investor relations officer** to deal with dissemination of information and disclosure of unpublished price sensitive information.
- Prompt dissemination** of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available.
- Appropriate and fair response to queries** on news reports and requests for verification of market rumours by regulatory authorities.
- Ensuring that information shared with **analysts and research personnel** is not unpublished price sensitive information.
- 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.
- Handling of all unpublished price sensitive information on a **need-to-know basis**.

	<b>CODE OF FAIR DISCLOSURE Regulation 8</b>	<b>CODE OF CONDUCT Regulation 9(1)</b>	<b>CODE OF CONDUCT Regulation 9(2)</b>
<b>Regulatory intent</b>	This provision intends to require <b>every listed company</b> to formulate a stated framework and policy for fair disclosure of events and occurrences that	It is intended that <b>every listed company and every intermediary</b> registered with SEBI is mandatorily required to formulate a code of conduct	It is intended to <b>mandate persons other than listed companies and intermediaries</b> that are required to handle UPSI to

	could impact price discovery in the market for its securities.	governing trading by designated persons and their immediate relatives.	formulate a code of conduct governing trading in securities by their designated persons.
<b>The Regulation</b>	<ul style="list-style-type: none"> <li>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 <b>Schedule A</b> to these regulations, without diluting the provisions of these regulations in any manner.</li> <li>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.</li> <li>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.</li> </ul>	<p>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 <b>Schedule B (in case of a listed company)</b> and <b>Schedule C (in case of an intermediary)</b> to these regulations, without diluting the provisions of these regulations in any manner.</p> <p><b>Explanation-</b> Intermediaries, which are listed, would be required to formulate a code of conduct 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.</p>	<p>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 <b>Schedule C</b> to these regulations, without diluting the provisions of these regulations in any manner.</p> <p><b>Explanation-</b> 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.</p>

- 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:-
  - 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;
  - 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.

### 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 UPSI are identified as designated person;
  - b) all the UPSI 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 UPSI 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 organization 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 UPSI or suspected leak of UPSI**, which shall be approved by board of directors of the company and accordingly initiate appropriate inquiries on becoming aware of leak of UPSI or suspected leak of UPSI 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 UPSI or suspected leak of UPSI, the relevant intermediaries and fiduciaries shall co-operate with the listed company in connection with such inquiry.

### PENALTY PROVISIONS FOR VIOLATIONS OF THE REGULATIONS

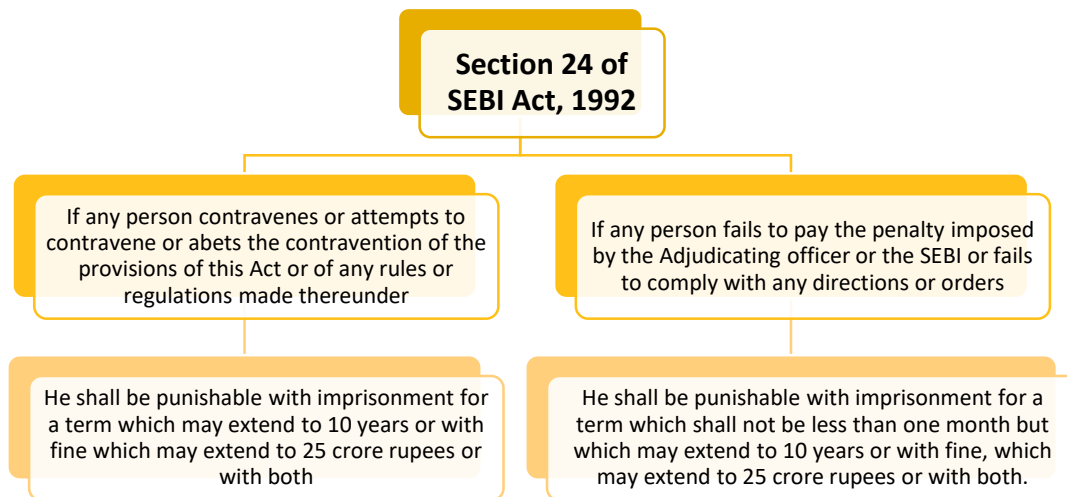
If any person violates provisions of these regulations, he shall be liable for appropriate action under Sections 11, 11 B, 11D, Chapter VIA and Section 24 of the SEBI Act.

#### 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 body corporate on the basis of unpublished price-sensitive information,

- shall be liable to a penalty which shall not be less than 10 lakh rupees but which may extend to 25 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.

## CHAPTER 14 - PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET

### 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.

### SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003

#### • Important Definitions

<b>Dealing in Securities</b> <b>[Regulation 2 (1) (b)]</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; (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.
<b>Fraud</b> <b>[Regulation 2(1)(c)]</b>	<p>“Fraud” includes <b>any act, expression, omission or concealment committed</b> 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 <b>in order to induce another person or his agent to deal in securities</b>, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—</p> <ol style="list-style-type: none"> <li>1. a <b>knowing misrepresentation of the truth or concealment of material fact</b> in order that another person may act to his detriment;</li> <li>2. a <b>suggestion as to a fact which is not true</b> by one who does not believe it to be true;</li> <li>3. an <b>active concealment of a fact</b> by a person having knowledge or belief of the fact;</li> <li>4. a promise made without any intention of performing it;</li> <li>5. a <b>representation made in a reckless and careless manner</b> whether it be true or false;</li> <li>6. any such act or omission as any other law specifically declares to be fraudulent;</li> <li>7. <b>deceptive behaviour</b> by a person depriving another of informed consent or full participation;</li> <li>8. a <b>false statement made without reasonable ground</b> for believing it to be true;</li> <li>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.</li> </ol> <p><b>Exceptions to ‘Fraud’</b></p> <p>Nothing contained in the clause shall apply to any general comments made in good faith in regard to-</p> <ol style="list-style-type: none"> <li>a) the economic policy of the government</li> <li>b) the economic situation of the country</li> <li>c) trends in the securities market or</li> <li>d) any other matter of a like nature</li> </ol> <p>whether such comments are made in public or in private.</p>
<b>Investigating Authority</b>	<p>“Investigating Authority” means any person authorized by the SEBI to undertake investigation under section 11C of the SEBI Act.</p>

[Regulation  
2(1)(d)]

Securities Law Fraud includes:

<b>Misrepresentation</b>	• Concealment of material fact or truth
<b>suggestion</b>	• Of facts which are not true
<b>Active Concealment</b>	• By a person who knows the facts
<b>Promise</b>	• without intention of performing it
<b>Representation</b>	• made in a reckless and careless manner
<b>Omission</b>	• law specifically declares to be fraudulent
<b>Deceptive behavior</b>	• deprive people informed consent, full participation
<b>False statement</b>	• without reasonable ground for being true
<b>Misinformation</b>	• affecting the market price of securities

## 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 -**

- buy, sell or otherwise deal in securities in a fraudulent manner;
- 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;
- 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;
- 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:

- 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.
- 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 (frontrunning).

### • Prohibition of Manipulative, Fraudulent and Unfair Trade Practices [Regulation 4]

- No person shall indulge in a fraudulent or an unfair trade practice in securities.

**Following information shall be always deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market:**

- 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
- that would directly or indirectly manipulate the price of securities of that company

**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.

## 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 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, It 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, Investigating shall give certified copies of such books, registers, other documents and record to such person.
- 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 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 record 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 from whose custody or power they were seized:

However, the Investigating Authority may, before returning them 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.

- **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.

- **Enforcement by the SEBI [Regulation 10 and 11]**

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:—

- 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;
- restrain persons from accessing the securities market** and prohibit any person associated with securities market to buy, sell or deal in securities;
- suspend any office-bearer of any stock exchange** or self-regulatory organization from holding such position;
- impound and retain the proceeds or securities in respect of any transaction which is in violation or prima facie in violation of these regulations;
- 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;
- 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;
- prohibit the person concerned from disposing of any of the securities** acquired in contravention of these regulations;
- 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 shall be put on the website of the SEBI.

- **Suspension or cancellation of registration [Regulation 12]**

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:**

issue <b>a warning</b> or censure;	<b>suspend</b> the registration of the intermediary; or	<b>cancel</b> of the registration of the intermediary.
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However, final order shall not be passed unless the procedure specified in the regulations applicable to such intermediary under the SEBI [(Intermediaries) Regulations, 2008 is complied with.

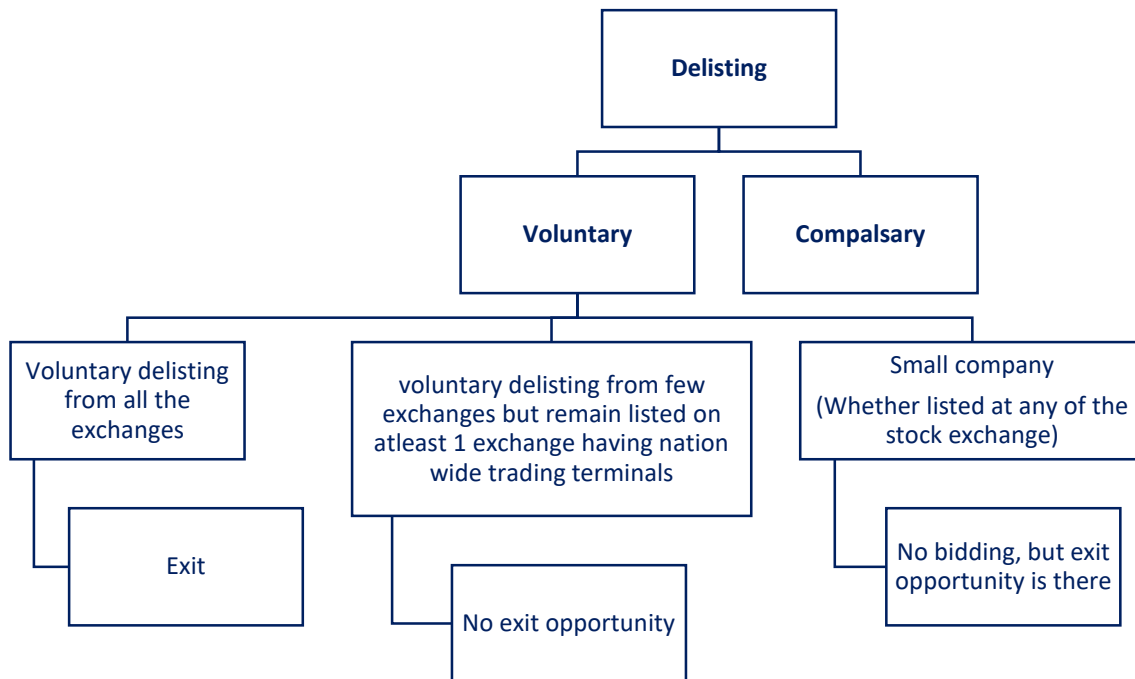
## CHAPTER 15 - DELISTING OF EQUITY SHARES

### INTRODUCTION

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 lists 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 of securities can be done either by company voluntarily or by the stock exchange, compulsorily.



### 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 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 1 day of resolution plan being approved under section 31 of the Insolvency Code.

## CONDITIONS FOR DELISTING (Regulation 4)

- Neither any company shall apply for nor any recognised stock exchange shall permit delisting of equity shares of a company-
  - Pursuant to buy-back of equity shares by the Company
  - Pursuant to Preferential allotment made by the Company
  - Unless a **period of three years** has elapsed since the listing of that class of equity shares
  - Instruments which are convertible in to the same class of equity shares that are sought to be delisted are outstanding
- 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 6 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)

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-

- a) obtain the prior approval of its board of directors
- b) make an application to the relevant recognised stock exchange for delisting of equity shares
- c) Issue a public notice of the proposed delisting in atleast one English national newspaper, one Hindi national newspaper with wide circulation in their all India editions and one vernacular newspaper of the region where the relevant stock exchange is located
- d) disclose the fact of delisting in its first annual report post delisting

An application for delisting shall be disposed of by the recognised stock exchange within a period **not exceeding 30 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)

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 1 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.

### ▶ 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.
- He shall exercise due diligence, care and professional judgment to ensure compliance with these regulations.
- He 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 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 21 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 reviewer 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 Reviewer 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 25 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 45 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 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 15 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 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.
- The acquirer shall open an interest bearing escrow account with a Scheduled Commercial Bank, **not later than 7 working days** from the date of obtaining the shareholders' approval, and
- deposit therein an amount equivalent to 25% of the total consideration, 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 these regulations, whichever is higher.
- 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 75%** 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 these regulations, whichever is higher.
- 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.

- In case of failure of the delisting offer, **99% of the amount** lying in the escrow account shall be released to the acquirer **within 1 working day** from the date of public announcement of such failure. The **remaining 1 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 1 working day** from the date of receipt of in-principle approval for delisting of equity shares 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 1 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 2 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 mechanism (Regulation 17)

- The bidding period shall **start not later than 7 working days** from the date of the detailed public announcement and shall **remain open for 5 working days**.
- The acquirer shall facilitate 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 is announced within two hours of the closure of the bidding period. **Within 2 working days** from the closure of the bidding period, the acquirer shall, through the Manager to the offer, make a public announcement in the same newspapers in which the detailed public announcement was made, disclosing the success or failure of the reverse book building process, along with the discovered price accepted by the acquirer in the event of success of the said 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 reverse book building process (Regulation 19)**

- Public shareholders holding the equity shares of the company, which are sought to be delisted, shall be entitled to participate in the reverse book building process in the manner specified in Schedule II of these regulations.
- Any holder of depository receipts may participate in the reverse book building process after converting such depository receipts into equity shares of the company that are proposed to be delisted.

▶ **Discovered price (Regulation 20)**

The floor price shall be determined in terms of regulation 8 of Takeover Regulations as may be applicable. After fixation of the floor price, the discovered price shall be determined through the reverse book building process in the manner specified in Schedule II of these regulations, and the Manager to the offer shall disclose the same in the detailed public announcement and the letter of offer.

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. 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

▶ **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 (along with the persons acting in concert with the promoter) taken together with the shares accepted through eligible bids at the final price determined, reaches 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 SEBI (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.
- b) 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.

▶ **Option to accept or reject the discovered price or counter offer (Regulation 22)**

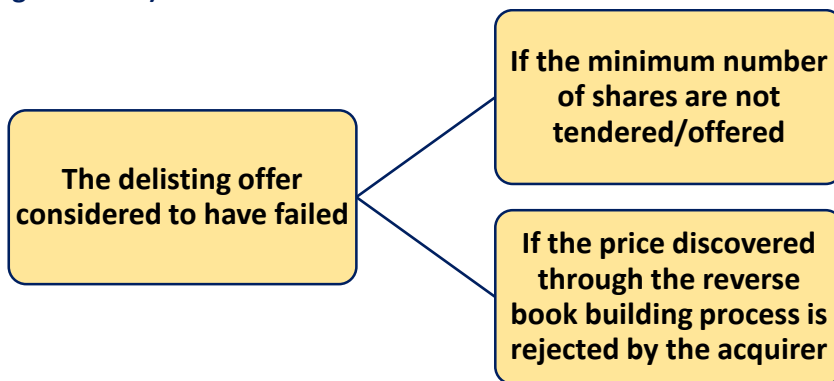
- The acquirer shall be bound to accept the equity shares tendered or offered in the delisting offer, if the discovered price determined through the reverse book building process is equal to the floor price or the indicative price, if any, offered by the acquirer.
- The acquirer shall be bound to accept 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 is higher than the indicative 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 2 working days** of the closure of 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 book value of the company as certified by the Manager to the offer.

► **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 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, 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, 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 recognized 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 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, 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.

### 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 -

- Two Directors of the recognized stock exchange (one of whom shall be a public representative);
- One representative of an investor association recognised by the SEBI;
- One representative of the Ministry of Corporate Affairs or Registrar of Companies; and
- 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 15 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

1. 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.
2. It shall take all reasonable steps to trace the promoters of a company whose equity shares are proposed to be delisted.
3. It 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.
4. It 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.
5. 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.
6. It 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 alleged non-compliances.
7. It, 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 subregulation (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, 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 3 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 10% 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.

### 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,-

- a. 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
- b. 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
- c. 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

#### ▶ Additional Conditions:

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 to be 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 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 90% 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 recognized stock exchange on any of the ground or grounds as may be prescribed under this Act. However the securities shall not be delisted unless the company 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 (SAT) 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 SAT 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**.

### ▶ **Grounds of delisting of securities by recognized stock exchange (Rule 21)**

A recognized stock exchange may 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 3 consecutive years** and it has negative networth;
- b) trading in the securities of the company has remained suspended for a period of **more than 6 months**;
- c) the securities of the company have remained infrequently traded during the **preceding 3 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 1 crore or imprisonment of not less than 3 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.

▶ **Delisting of securities on the request of the company:**

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 3 years** on the recognized stock exchange;
- b) the delisting of such securities has been **approved by the 2/3<sup>rd</sup> 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 SEBI 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**.

## CHAPTER 16 - BUY-BACK OF SECURITIES

### INTRODUCTION

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. There are generally two ways a company can return cash to its shareholders –

- declaration of dividend; or
- through buy-back of shares.

### OBJECTIVES OF BUY-BACK

To strategically increase promoters' shareholding subject to compliance with SEBI (SAST) Regulations, 2011;

To improve earnings per share

To improve return on capital, return on net worth and to enhance the long-term shareholder value;

To enhance consolidation of stake in the company;

To prevent unwelcome takeover bids;

To return surplus cash to shareholder and allow profitable deployment of cash surplus;

To achieve optimum capital structure;

To support share price during periods of sluggish market conditions;

To service the equity more efficient; and

To provide an additional exit route to shareholders when shares are under valued or are thinly traded

### 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.
- d) 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.
- e) 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.
- f) All the shares or other specified securities for buy-back are fully paid-up.
- g) 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.
- h) 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.
- i) 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

### Important Definitions

<b>Associate</b>	It includes a person, – <ul style="list-style-type: none"> <li>• who directly or indirectly by himself or in combination with relatives, exercise control over the company; or</li> <li>• whose employee, officer or director is also a director, officer or employee of company.</li> </ul>
<b>Buy-back Period</b>	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.
<b>Control</b>	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.
<b>Odd Lots</b>	'Odd Lots' mean the lots of shares or other specified securities of a company, whose shares are listed on a recognised stock exchange, which are smaller than such marketable lots, as may be specified by the stock exchange.
<b>Small Shareholder</b>	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.
<b>Specified Securities</b>	It includes employees' stock option or other securities as may be notified by the Central Government from time to time.
<b>Tender offer</b>	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

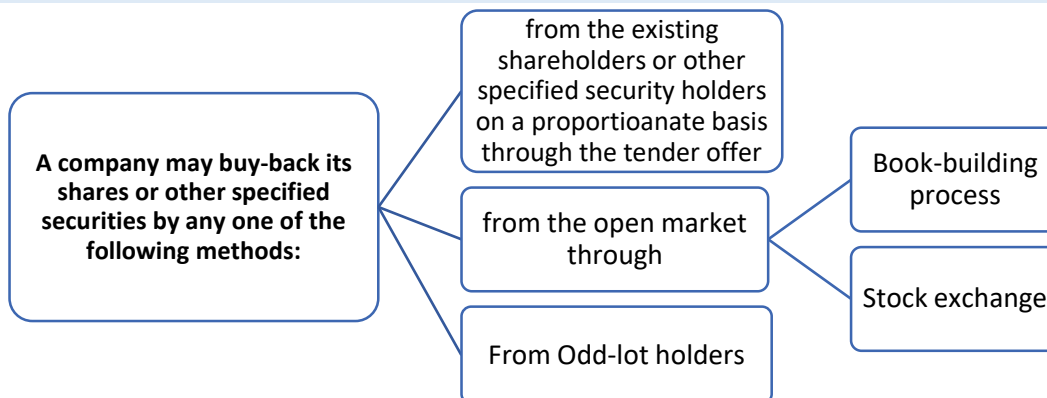
- The maximum limit of any buy-back shall be 25% or less of the aggregate of paid-up capital and free reserves of the company, based on both standalone and consolidated financial statements of the company. All shares or other specified securities for buy-back shall be fully paid-up.

- In respect of the buy-back of equity shares in any financial year, the reference to 25% in this regulation shall be construed with respect to its total paid-up equity capital 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. 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, 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

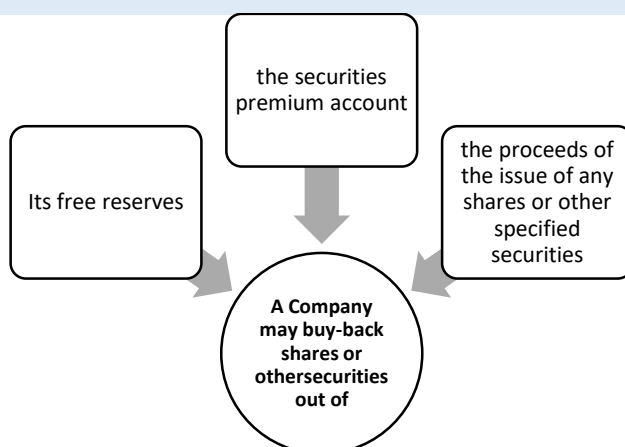
- A company shall not buy-back its shares or other specified securities :
  - a) so as to delist its shares or other specified securities from the stock exchange.
  - b) from any person through negotiated deals, whether on or off the stock exchange or through spot transactions or through any private 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.

### METHODS OF BUY-BACK



No offer of buy-back for 15% or more of the paid up capital and free reserves of the company, based on both standalone and consolidated financial statements of the company, shall be made from the open market.

### 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

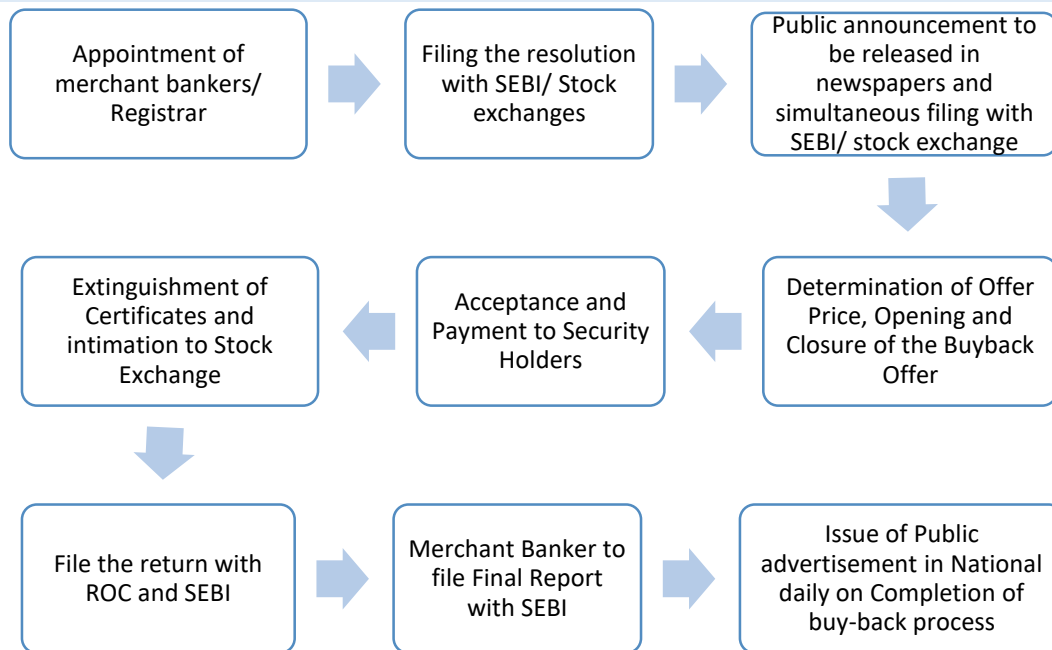
**The Company shall not directly or indirectly purchase its own shares or other specified securities:**

- 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 or odd lot unless:
  - Authorisation for buy-back in the Articles of Association
  - A special resolution is required to be passed at a general meeting of the Company for such authorization.
  - 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 authorized by the board of directors by means of a resolution passed at its meeting
- In case of Special Resolution, a copy of the special resolution passed shall be filed with SEBI and the stock exchanges within 7 days from the date of passing of the resolution.
- In case of only Board Resolution, a copy of Board Resolution passed shall be filed with SEBI and the stock exchanges within 2 working days of the date of the passing of the resolution.
- Every buy-back shall be completed within a period of 1 Year from the date of passing of the special resolution or the board resolution, 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 30 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.

**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, 15% 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.

1.	<b>Public Announcement</b>	<ul style="list-style-type: none"> <li>The company shall make a public announcement <b>within 2 working days</b> 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.</li> <li>A copy of the public announcement along with the soft copy, shall also be submitted to SEBI, simultaneously, through a merchant banker.</li> </ul>
2.	<b>Filing with SEBI</b>	<p>The company shall <b>within 5 working days</b> of the public announcement file the following :</p> <ul style="list-style-type: none"> <li>A draft letter of offer, along with a soft copy, containing disclosures as specified in these regulations through a merchant banker who is not associated with the company.</li> <li>A declaration of solvency in specified form and in a manner provided in Section 68(6) of the Companies Act, 2013.</li> <li>Prescribed fees as specified in these regulations.</li> </ul> <p>SEBI may provide its comments on the draft letter of offer within 7 working days of the receipt of the draft letter of offer. Letter of Offer shall be dispatch to the shareholders after making changes suggested by SEBI, if any.</p>
3.	<b>Offer Procedure</b>	<ul style="list-style-type: none"> <li>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.</li> <li>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 not later than five working days from the receipt of communication of comments from SEBI.</li> <li>Letter of Offer may also be dispatched through electronic mode in accordance with the provisions of the Companies Act, 2013.</li> </ul>

		<ul style="list-style-type: none"> <li>On receipt of a request from any shareholder to receive a copy of the letter of offer in physical form, the same shall be provided.</li> <li>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.</li> <li>The date of the opening of the offer shall be not later than five working days from the date of dispatch of the letter of offer. It shall be remain open for a period of ten working days.</li> <li>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.</li> <li>The company shall accept shares or other specified securities from the securities holders on the basis of their entitlement as on record date.</li> </ul>						
	<b>Escrow Account</b>	<p>The company shall as and by way of security for performance of its obligations under the regulations, on or before the opening of the offer, deposit in an escrow account such sum as specified under SEBI Regulations. The amount in the escrow shall be deposited in the following manner:</p> <table border="1"> <thead> <tr> <th>Amount of Consideration</th> <th>% of amount to be deposited</th> </tr> </thead> <tbody> <tr> <td>not more than Rs. 100 crores</td> <td>25 % of the consideration payable;</td> </tr> <tr> <td>exceeds Rs. 100 crores</td> <td>25 % upto Rupees 100 crores and 10 percent thereafter.</td> </tr> </tbody> </table> <p><b>Note:</b> The cash component of the escrow account may be maintained in an interest bearing account. However, the merchant banker shall ensures that the funds should be available at the time of making payment to shareholders. After the 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. In case of non-fulfilment of obligations under the regulations, SEBI in the interest of the securities holders may forfeit the escrow account either in full or in part. Such forfeited amount may be distributed amongst the securities holders who accepted the offer and balance, if any, on pro rata which shall be utilised for investor protection.</p>	Amount of Consideration	% of amount to be deposited	not more than Rs. 100 crores	25 % of the consideration payable;	exceeds Rs. 100 crores	25 % upto Rupees 100 crores and 10 percent thereafter.
Amount of Consideration	% of amount to be deposited							
not more than Rs. 100 crores	25 % of the consideration payable;							
exceeds Rs. 100 crores	25 % upto Rupees 100 crores and 10 percent thereafter.							
	<b>Closure and Payment to Securities Holders</b>	<ul style="list-style-type: none"> <li>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.</li> <li>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 seven working days of the closure of the offer.</li> </ul>						
	<b>Extinguishment of Certificate and other Closure Compliances</b>	<ul style="list-style-type: none"> <li>The company shall extinguish and physically destroy securities certificates which are bought back in the presence of Registrar to issue/Merchant Banker and statutory auditor within 15 days of the date of acceptance of the shares or other specified securities period of 15 days shall not extend beyond 7 days of expiry of buy-back period in any case.</li> </ul>						

	<ul style="list-style-type: none"> <li>• The Company shall furnish the particulars of the securities certificates extinguished and destroyed to the stock exchange where the shares of the company are listed, within 7 days of extinguishment and destruction of the certificates-</li> <li>• 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: <ul style="list-style-type: none"> <li>a. Registrar and whenever there is no registrar, by the merchant banker;</li> <li>b. Two directors of the company, one of whom shall be a managing director, where there is one; and</li> <li>c. the statutory auditor of the company.</li> </ul> </li> <li>• The company shall ensure that all the securities bought-back are extinguished within seven days of expiry of buy-back period.</li> <li>• 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.</li> <li>• 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.</li> </ul>
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### ODD-LOT BUY-BACK

The provisions pertaining to buy-back through tender offer as specified above shall be apply mutatis mutandis to odd-lot shares or other specified securities.

### 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:

- Through stock exchange
- Book-building process

The company shall ensure that at least 50% 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.

### Buy-back of Shares Through Stock Exchange

1.	<b>Pre-conditions</b>	<ul style="list-style-type: none"> <li>• The company may buy-back only on stock exchanges having nationwide trading terminals.</li> <li>• The buy-back through the stock exchange shall not be made from the promoters or persons in control of the company.</li> <li>• 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.</li> </ul>
2.	<b>Disclosures, filing requirements and timelines of public announcement</b>	<ul style="list-style-type: none"> <li>• The company shall appoint a merchant banker and make a public announcement in manner as specified in buy-back of shares through tender offer.</li> <li>• The public announcement shall be made within 2 working days from the date of passing the board of director's resolution</li> <li>• Simultaneously with the issue of such public announcement, the company shall file a copy of the public announcement with SEBI along with the prescribed fees.</li> <li>• In case of the buy-back from open market, no draft letter of offer/ letter of offer is required to be filed with SEBI.</li> </ul>

3.	<b>Opening of the offer on stock exchange</b>	<ul style="list-style-type: none"> <li>• The identity of the company as a purchaser shall be appeared on the electronic screen when the order is placed.</li> <li>• The buy-back offer shall be opened not later than 7 working days from the date of public announcement and shall be closed within six months from the date of opening of the offer.</li> </ul>
4.	<b>Subsequent compliances</b>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
5.	<b>Procedure for buy-back shares or other specified securities in Physical form</b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>
6.	<b>Escrow Account</b>	<ul style="list-style-type: none"> <li>• The company shall, before opening of the offer, 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.</li> <li>• The escrow account may be in the form of:             <ol style="list-style-type: none"> <li>a) cash deposited with any scheduled commercial bank; or</li> <li>b) bank guarantee issued in favour of the merchant banker by any scheduled commercial bank.</li> </ol> </li> <li>• For such part of the escrow account as is in the form of a bank guarantee;             <ol style="list-style-type: none"> <li>a. the same shall be in favour of the merchant banker and shall be kept valid for a period of thirty days after the expiry of buy-back period of the offer or till the completion of all obligations under these regulations, whichever is later.</li> <li>b. the same shall not be returned by the merchant banker till completion of all obligations under the regulations.</li> </ol> </li> <li>• Where part of the escrow account is in the form of a bank guarantee, 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 buyback 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.</li> </ul>

		<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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,- <ul style="list-style-type: none"> <li>volume weighted average market price (VWAMP) of the shares or other specified securities of the company during the buyback period was higher than the buy-back price as certified by the merchant banker based on the inputs provided by the Stock exchanges.</li> <li>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.</li> <li>such circumstances existed which were beyond the control of the company and in the opinion of SEBI merit consideration.</li> <li>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.</li> </ul> </li> </ul>
7.	<b>Extinguishment of certificates</b>	<ul style="list-style-type: none"> <li>Verification of acceptance shall be completed within 15 days of payout.</li> <li>The company shall extinguish and physically destroy the security certificates so bought back during the month in the presence of a Merchant Banker and the Statutory Auditor, on or before the fifteenth day of the succeeding month:</li> <li>the company shall ensure that all the securities bought-back are extinguished within seven days of the last date of completion of buyback.</li> </ul>

### Buy-back through Book Building

1.	<b>Pre-conditions</b>	Special resolution or Board Resolution, as the case may be, shall be passed for authorisation of Buy-back
2.	<b>Disclosures, Filing requirements and timelines for public announcement</b>	<ul style="list-style-type: none"> <li>The company shall appoint a merchant banker and make a public announcement and made disclosures in public announcement under these regulations.</li> <li>The public announcement shall be made at least 7 days prior to the commencement of buy-back.</li> </ul>
3.	<b>Escrow Account</b>	<ul style="list-style-type: none"> <li>The deposit in the escrow account should be made before the date of the public announcement.</li> <li>The amount to be deposited in the escrow account should be determined with reference to the maximum price as specified in the public announcement</li> </ul>
4.	<b>Filing with SEBI</b>	A copy of the public announcement shall be filed with SEBI within two days of such announcement along with the prescribed fees.
5.	<b>Offer</b>	The book-building process shall be made through an electronically linked

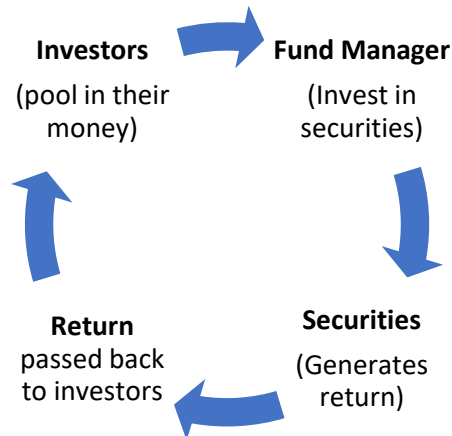
	<b>Procedure</b>	<p>transparent facility.</p> <ul style="list-style-type: none"> <li>• The number of bidding centers shall not be less than 30 and there shall be at least 1 electronically linked computer terminal at all the bidding centers.</li> <li>• The offer for buy-back shall remain open to the securities holders for a period not less than 15 days and not exceeding 30 days.</li> <li>• The merchant banker and the company shall determine the buy-back price based on the acceptances received.</li> <li>• The final buy-back price, which shall be the highest price accepted shall be paid to all holders whose shares or other specified securities have been accepted for buy-back.</li> <li>• The provisions pertaining to verification of acceptances and the provisions pertaining to opening of special account and payment of consideration for tender offer shall be applicable mutatis mutandis to the buy-back through book building.</li> </ul>
6.	<b>Extinguishment of certificates</b>	<ul style="list-style-type: none"> <li>• The provisions of extinguishment of certificates for tender offer shall be applicable mutatis mutandis.</li> </ul>

## CHAPTER 17 - MUTUAL FUNDS

### INTRODUCTION

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.



### STRUCTURE OF A MUTUAL FUND

#### ▶ 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.

#### ▶ 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 43 AMCs are members of AMFI. (Source: [www.amfiindia.com](http://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 Fund Schemes:

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:

<b>Income Oriented Schemes</b>	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</b>	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.
<b>Hybrid Schemes</b>	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”.
<b>High Growth Schemes</b>	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.
<b>Capital Protection Oriented Scheme</b>	It is a scheme which endeavours to protect the capital invested in the mutual fund through suitable orientation of its portfolio structure.
<b>Tax Saving Schemes</b>	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.
<b>Special Schemes</b>	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.
<b>Real Estate Funds</b>	These are close ended mutual funds which invest predominantly in real estate and properties.
<b>Off-shore Funds</b>	Such funds invest in securities of foreign companies with RBI permission.
<b>Leverage Funds</b>	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.
<b>Hedge Funds</b>	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.
<b>Fund of Funds</b>	They invest only in units of other mutual funds. Such funds do not operate at present in India.

<b>New Funds</b>	<b>Direction</b>	They invest in companies engaged in scientific and technological research such as birth control, anti-pollution, oceanography etc.
<b>Exchange Funds (ETFs)</b>	<b>Trade</b>	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.
<b>Money Market Mutual Funds</b>	<b>Market</b>	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.
<b>Infrastructure Fund</b>	<b>Debt</b>	They invest primarily in the debt securities or securitized debt investment of infrastructure companies.

### Types of Mutual fund plans:

Regular Plans	Direct Plans
Sold through a distributor	Sold directly by the Asset Management Company (AMC)
Sold directly by the Asset Management Company (AMC)	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

### 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.
- 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.
- Trustee:** A trustee is a person or firm that holds and administers property or assets for the benefit of a third party.
- 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.
- 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:

- Custodian:** A custodian is a person who carries on the business of providing custodial services to the client. The custodian also provides incidental services such as maintaining the accounts of securities of the client, collecting the benefits or rights accruing to the client in respect of securities.
- Transfer Agents:** A transfer agent is a person who has been granted a Certificate of Registration to conduct the business of transfer agent under 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.
- 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	
Scheme Information Document (SID)	Statement of Additional Information (SAI)
<p>A document that contains the details of the scheme, which the investor should know before investing. SID has to be updated every year.</p> <p><b>Key Contents:</b></p> <ul style="list-style-type: none"> <li>• Scheme name on the cover page, along with scheme structure (open / closed-ended) and expected scheme nature (equity / debt / balanced / liquid / ETF)</li> <li>• Highlights of the scheme</li> <li>• Risk factors               <ul style="list-style-type: none"> <li>o Standard</li> <li>o Scheme specific</li> </ul> </li> <li>• Due diligence certificate issued by the AMC</li> <li>• Fees and expenses</li> <li>• Rights of unit holders</li> <li>• Penalties, litigations, etc.</li> </ul>	<p>A document that contains statutory information about the fund house offering the scheme. SAI has to be updated the end of every quarter.</p> <p><b>Key Contents:</b></p> <ul style="list-style-type: none"> <li>• Information about sponsor, mutual fund, trustees, custodian and registrar &amp; transfer agents</li> <li>• Condensed financial information for schemes launched in the last three financial years</li> <li>• Information on how to apply</li> <li>• Rights of unit holders</li> <li>• Details of the fund managers</li> <li>• Tax, legal and other general information</li> </ul>

<p><b>B. Key Information Memorandum (KIM)</b></p> <ul style="list-style-type: none"> <li>• Essentially a summary of SID &amp; SAI</li> <li>• As per SEBI regulations, every application form should be accompanied by the KIM</li> <li>• The KIM has to be updated at least once a year</li> </ul> <p><b>Contents</b></p> <ul style="list-style-type: none"> <li>• Name of the AMC, Mutual Fund Trust, Trustee, Fund Manager(s) and Scheme details</li> <li>• Open and close dates of the issue</li> <li>• Issue price of the scheme</li> <li>• Plans and options available in the scheme</li> <li>• Risk profile of the scheme</li> <li>• Benchmark</li> <li>• Dividend policy</li> <li>• Performance of the scheme and benchmark over last 1, 3, 5 years and since inception</li> <li>• Loads and expenses</li> </ul> <p>Contact information and registrars</p>	<p><b>C. Fact Sheets</b></p> <p>Usually provided on a monthly basis by AMCs. Contains the following:</p> <ul style="list-style-type: none"> <li>• NAV and Assets under Management (AUM)</li> <li>• Expense ratio, exit loads, average maturity, yield-to-maturity (YTM), modified duration</li> <li>• Benchmark &amp; Fund manager details</li> <li>• Past performance</li> <li>• Scheme's allocation &amp; portfolios</li> <li>• Style box</li> <li>• Other scheme attributes – like risk category, minimum investment amount, scheme objective, etc.</li> </ul> <p><b>D. Assets under Management (AUM):</b></p> <p>It is the total market value of the assets managed by a mutual fund scheme as on a particular date</p> <p><b>Periodic AUM Available</b></p> <ul style="list-style-type: none"> <li>• Month-end</li> <li>• Quarterly average</li> </ul>
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## 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.

NET ASSET VALUE	EXPENSE RATIO
<ul style="list-style-type: none"> <li>• The performance of a particular scheme of a mutual fund is denoted by Net Asset Value (NAV).</li> <li>• NAV is the market value of the securities held by the scheme.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul> <p><b>How is it calculated?</b></p> $\text{NAV} = \frac{\text{Net Asset of the Scheme}}{\text{Number of units outstanding}}$ <p><b>Net Asset of the Scheme</b> = Market value of investments + Receivables+ other accrued income+ other assets – Accrued Expenses- Other Payables- Other Liabilities</p>	<ul style="list-style-type: none"> <li>• The fees charged by the scheme to manage investors' money.</li> <li>• What does it contain? <ul style="list-style-type: none"> <li>✓ Fees paid to service providers like trustees, Registrar &amp; Transfer Agents, Custodian, Auditor, etc.</li> <li>✓ Asset management expenses</li> <li>✓ Commissions paid to distributors</li> <li>✓ Other selling expenses including advertising expenses</li> <li>✓ Expenses on investor communication, account statements, dividend / redemption cheques / warrants</li> <li>✓ Listing fees and Depository fees.</li> <li>✓ Service tax.</li> </ul> </li> <li>• Under SEBI (Mutual Funds) Regulations, 1996, Mutual Funds are permitted to incur / charge certain operating expenses for managing a mutual fund scheme as a percentage of the fund's daily net assets. This is commonly referred to as 'Expense Ratio'.</li> <li>• All expenses incurred by a Mutual Fund, AMC will have to be managed within the limits specified under Regulation 52(6) &amp; (6A) of the SEBI Mutual Funds Regulations.</li> <li>• The expense ratio is calculated as a percentage of the Scheme's average Net Asset Value (NAV).</li> <li>• 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</li> </ul>

### 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

$$\text{HPR} = \frac{\text{Income} + (\text{end of period value} - \text{original value})}{\text{Original Value}} \times 100$$

## 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

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 invest-ments 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

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
<b>Volatility risk</b>	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.
<b>Credit risk</b>	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.
<b>Liquidity risk</b>	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.
<b>Concentrated risk</b>	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.
<b>Inflation risk</b>	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.

## SEBI (MUTUAL FUNDS) REGULATIONS, 1996 – An OVERVIEW

### Important Definitions

<b>Mutual Fund</b>	"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.
<b>Close-ended scheme</b>	Any scheme of a mutual fund in which the period of maturity of the scheme is specified.
<b>Open-ended scheme</b>	A scheme of a mutual fund which offers units for sale without specifying any duration for redemption.
<b>Money Market Instruments</b>	"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.

## 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 his business transactions. Explanation:

For the purposes of this clause "**sound track record**" shall mean the sponsor should –

- be carrying on business in financial services for a period of not less than five years; and
- ensure that the networth is positive in all the immediately preceding five years; and
- ensure that the 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 networth of the sponsor is more than the aggregate par value or market value of the shares so acquired, whichever is higher; and

iv. the sponsor has profits after providing for depreciation, interest and tax in three out of the immediately preceding five years, including the fifth year. However, the applicant shall have a networth not less than rupees one hundred crore in case the aforementioned requirement is not fulfilled.

- 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 Board.
- 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.

### ▶ 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 AMC can be terminated by majority of the trustees or by 75% 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 AMC is an existing asset management company it has a sound track record, general reputation and fairness in transactions;
- the AMC is a fit and proper person;
- the directors of the AMC 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.
- ▶ **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 15 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

### PROCEDURE FOR LAUNCHING OF SCHEMES

- No scheme shall be launched by the AMC 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.
- The mutual fund, which intends to list units of its scheme on the recognized stock exchange(s), shall obtain 'in-principle' approval from recognized stock exchange(s) in the manner as specified by the recognized stock exchange(s) from time to time.
- Every mutual fund desirous of listing units of its schemes on a recognized stock exchange shall execute an agreement with such stock exchange.
- The listing of close-ended schemes is mandatory and these should be listed on a recognized stock exchange within such time period and subject to such conditions as specified by the SEBI.
- No scheme other than equity-linked saving scheme can be opened for subscription for more than 15 days. Further, the minimum subscription and the extent of over subscription that is intended to be retained should be specified in the offer document. In the case of over-subscription, all applicants applying up to 5,000 units must be given full allotment subject to over subscription.
- The AMC is required to refund the application money if minimum subscription is not received, and also the excess over subscription within five working days of closure of subscription.

### CODE OF CONDUCT OF MUTUAL FUNDS

- 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;
- It shall ensure the adequate dissemination of adequate, fair, accurate and timely information of all the stake holders;
- The excessive concentration of business with the broking firm or associates should be avoided;
- The scheme - wise segregation of bank accounts and securities accounts must be ensured;
- The investment should be made in accordance with the investment objectives stated on the offer documents;
- It must not use any unethical means to sell, market or induce any investor to buy their schemes;
- The high standards of integrity and fairness in all the dealings should be maintained by the trustees and AMCs;
- 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.
- 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.

## 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 mutual fund 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 95% of the Net Asset Value.

## CHAPTER 18 - COLLECTIVE INVESTMENT SCHEMES

### 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.

### COLLECTIVE INVESTMENT SCHEME

'Collective Investment Scheme' means any scheme or arrangement which satisfies the conditions specifies in section 11AA of SEBI Act, 1992. However, any pooling of funds under any scheme or arrangement, which is not registered with 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.

**Section 11AA(2):** Any scheme or arrangement made or offered by any person under which-

- 1) the contributions or payments made by investors are pooled and utilized for the purposes of the scheme or arrangement;
- 2) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable;
- 3) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not is managed on behalf of the investors;
- 4) the investors do not have day-to-day control over the management and operation of the scheme or arrangement.

**Section 11AA(3): The following shall not be Collective Investment Scheme (CIS):**

- i. made or offered by a co-operative society
- ii. under which deposits are accepted by non-banking financial companies
- iii. being a contract of insurance to which the Insurance Act, 1938, applies;
- iv. providing for any Scheme, Pension Scheme or the Insurance Scheme
- 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;
- viii. under which contributions made are in the nature of subscription to a mutual fund;
- ix. such other scheme or arrangement notified by Central Government in consultation with SEBI

### Definitions

<b>Collective Investment Management Company</b>	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.
<b>Closed-ended Collective Investment Scheme</b>	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
<b>Collective Investment Scheme Property</b>	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).
<b>Appraising Agency</b>	Appraising Agency means an agency empanelled with the Board for the purpose of conducting technical or financial appraisal of the collective investment scheme

## REGISTRATION PROVISIONS UNDER SEBI ACT, 1992

No person other than a CIMC which has obtained a certificate under these regulations shall carry on or sponsor or launch a collective investment scheme.

- **Application for Grant of Certificate:** any person proposing to carry any activity as a CIMC 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:** Any person proposing to carry on or sponsor or launch any scheme or arrangement which would be deemed to be a CIS shall make an application for grant of registration. However, any scheme or arrangement which is otherwise regulated or prohibited under any other law shall not be deemed to be a CIS.
- **Application by Existing Collective Investment Schemes:** Any person who immediately prior to the commencement of these regulations was operating a CIS, shall make an application to the SEBI for the grant of a certificate within a period of two months from such date. 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.
- **Winding up of Existing Collective Investment Scheme (CIS):** An existing CIS shall wind up the existing CIS which-
  1. Has not been granted provisional registration by the SEBI
  2. Having obtained provisional registration fails to comply with the conditions of SEBI
  3. Has failed to make an application for registration to the SEBI
- **Procedure where Registration is not Granted:** The SEBI may reject the application after giving the applicant a reasonable opportunity of being heard and inform the applicant of the same within 30 days of such decision.

## 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 floated 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 invest 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 guidelines issued by SEBI.

#### Submission of Information and Documents

- The CIMC 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 CIMC should file with the trustees and the SEBI, particulars of all its directors along with their interest in other companies within 15 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 CIMC 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.

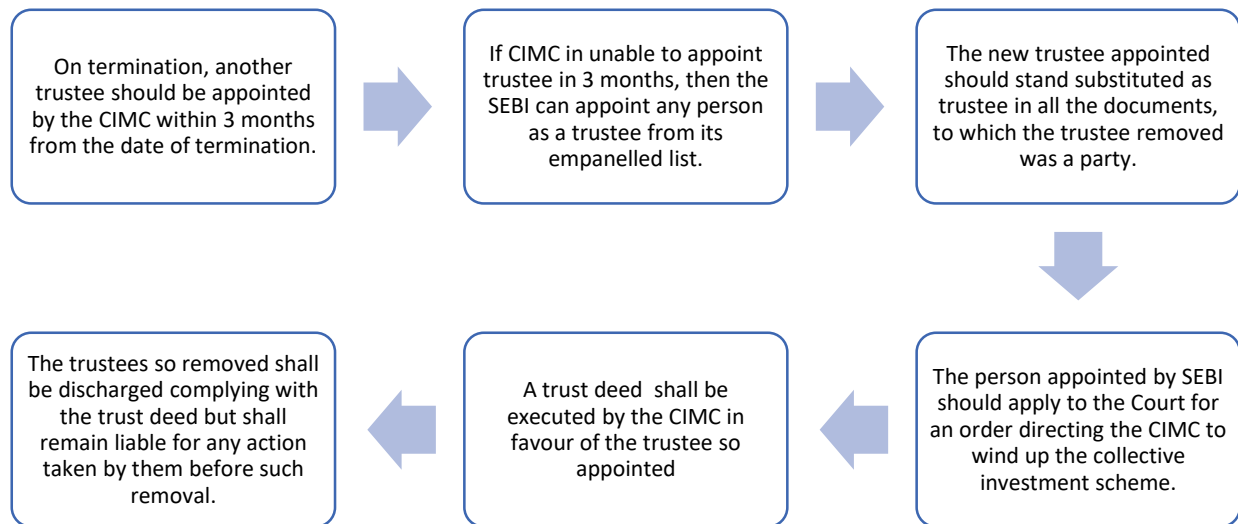
- ▶ **Contents of Trust Deed:** The trust deed should contain such clauses as are specified and other clauses as are necessary for safeguarding the interests of the unit holders. No trust deed should contain a clause which has the effect of limiting or extinguishing the obligations and liabilities of the CIMC in relation to any scheme or the unit holders; or indemnifying the trustee or the CIMC 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.
- ▶ **Appointment of Trustee not Found Guilty:** No person should be appointed as trustee of a CIMC, 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 CIMC should enter into an agreement for managing the collective investment schemes' property.
- ▶ **Rights and Obligations of the Trustee**
  - **The trustee shall have a right to**
    - a) To obtain from such CIMC such information as is considered necessary by the trustee
    - b) To inspect the books of accounts and other records relating to CIS
  - **The trustee should ensure that the CIMC has:**
    - i. the necessary office infrastructure;
    - ii. appointed all key personnel including managers;
    - 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;
    - 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 CIS;

- 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 CIS in accordance with the provisions of the trust deed, these regulations and the offer document;
  - 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.
  - The trustee shall review -
    - a) on a quarterly basis 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 CIS 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
  - e) if the trustee serves on the Collective Investment Management Company, a notice of not less than 3 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 CIMC may be terminated –

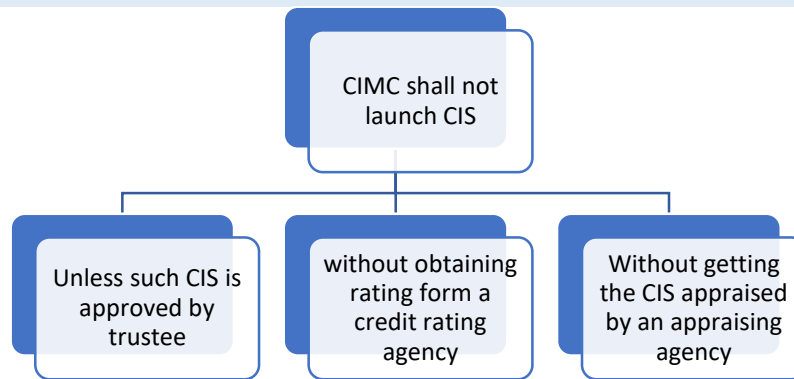
- a) if the CIMC is in the course of being wound up as per the provisions of the Companies Act, 2013, or
- b) if unit holders holding at least 3/4<sup>th</sup> of the nominal value of the unit capital of the CIS pass a resolution for terminating the agreement with the CIMC and the prior approval of SEBI 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 CIMC, 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 3 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 3 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

- 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 3 calendar years.
- CIMC shall **obtain adequate insurance policy** for protection of the CIS property.
- 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 than 25% of the assets under management of scheme.
 However, where the collective investment scheme fails to comply with this, CIMC shall be liable to refund the application money to the applicants.
- CIS shall **not 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 with the SEBI and pay filing fees.
- 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.

- **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 CIMC 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, it may be kept open for subscription for a maximum of another 15 days subject to issuance of public notice by the CIMC 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.
    - The CIMC should refund the application money to the applicants,
    - if the collective investment scheme fails to receive the minimum subscription amount.
    - Any amount refundable should be refunded within a period of 5 working days from the date of closure of subscription list.
    - In the event of failure to refund the amounts within the period specified, the CIMC has to pay interest to the applicants at a rate of 15% per annum on the expiry of 5 working days from the date of closure of the subscription list.
- ▶ **Unit Certificates:** The CIMC should issue to the applicant whose application has been accepted, the units only in dematerialized form within a period of 5 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.

#### ▶ **Investments and Segregation of Funds**

The CIMC should:

- a) not invest the funds of the collective investment scheme for purposes other than the objective of the 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, Inter-scheme transfer 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 CIMC in projects owned directly or indirectly by CIMC.

#### ▶ **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 scheme or on the accomplishment of the objective 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 scheme to be wound up and the prior approval of the SEBI is obtained; or
  - b) if unit holders holding at least 3/4<sup>th</sup> of the nominal value of the unit capital 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 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 holding at least 3/4<sup>th</sup> of the nominal value of the unit capital 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.

## PENAL PROVISIONS

As per Section 15D of the SEBI Act, 1992

Contravention	Penalty
If any person, <b>sponsors or carries on any CIS without obtaining certificate of registration</b>	shall be liable to a penalty which shall not be less than <b>1 lakh rupees</b> but which may <b>extend to 1 lakh rupees for each day</b> during which he sponsors or carries on any such CIS subject to a maximum of 1 crore rupees
If any person, registered with the SEBI as a CIS, <b>fails to comply with the terms and conditions of certificate of registration</b>	shall be liable to a penalty which shall <b>not be less than 1 lakh rupees</b> but which may <b>extend to 1 lakh rupees for each day</b> during which such failure continues subject to a <b>maximum of 1 crore rupees</b>
If any person, registered with the SEBI as a CIS, <b>fails to make an application for listing of its schemes as provided for in the regulations governing such listing</b>	
If any person, registered as a CIS, <b>fails to dispatch unit certificates of any scheme</b> in the manner provided in the regulation governing such dispatch	
If any person, registered as a CIS, <b>fails to refund the application monies</b> paid by the investors within the period specified in the regulations	
If any person, registered as a CIS, <b>fails to invest money collected by such CIS</b> in the manner or within the period specified in the regulation	