Issue of Capital & Disclosure Requirements

Lesson 8

KEY CONCEPTS

■ Initial Public Offer ■ Further Public Offer ■ Private Placement ■ Preferential Allotment ■ Warrants ■ Lead Manager ■ Underwriting ■ Offer Document ■ Qualified Institutional Buyer ■ Retail Individual Investor ■ Application Supported by Blocked Amount (ASBA) ■ Book Building ■ Innovators Growth Platform

Learning Objectives

To understand:

- Various types of issues in capital market
- Genesis of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018
- Conceptual understanding of important terminologies
- Modes of raising funds and compliance requirements
- Key Provisions for Draft offer document, prospectus etc.
- Lock-in-period and its requirements
- Fast-track issue
- Regulatory requirements for IPO of Indian Depository Receipts
- Regulatory framework for IPO by Small and Medium Enterprises
- Provisions for listing on Innovators Growth Platform

Lesson Outline

- Introduction
- Types of Issues
- Meaning of Draft Offer Document, Letter Of Offer and Red Herring Prospectus
- Genesis and Applicability of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018
- Initial Public Offer/Further Public Offering
- Eligibility requirements to be complied with IPO/ FPO
- Promoters' Contribution
- Lock-in Requirements
- Other requirements for IPO & FPO
- Fast Track FPO
- Rights Issue
- Preferential Issue
- Qualified Institutions Placement
- Initial Public Offer and Rights Issue of Indian Depository Receipts
- Initial Public Offer by Small and Medium Enterprises
- Innovators Growth Platform
- Bonus Issue
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

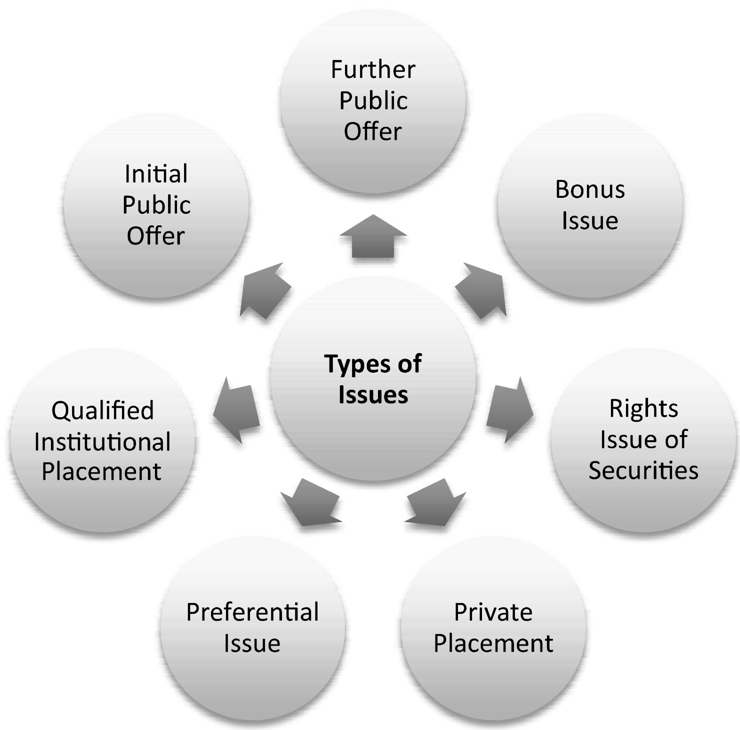
REGULATORY FRAMEWORK

- SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

INTRODUCTION

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

Types of Issues



The following are the various types of issues in the capital market -

- **Initial Public Offer:** It means an offer of specified securities by an unlisted issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holder of such securities in an unlisted issuer. In order to qualify as an Initial public offer, the offer of securities must be by an unlisted issuer company and such an issue shall be made to the public and not to the existing shareholders of the unlisted issuer company.

- **Further Public Offer (FPO):** It is an offer of specified securities by a listed issuer company to the public for subscription. In other words, another issue to the public other than its existing shareholders or to a select group of persons by the listed persons is referred to as a Further Public offer.

- **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. Hence, such details are not shown in the RHP filed with ROC as per the Companies Act, 2013. Only on completion of the bidding process, the details of the final price are included in the offer document. The offer document filed thereafter with ROC is called a prospectus.

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

Genesis

India ushered from a merit based regime (Controller of Capital Act) to disclosure based regime under SEBI. Under Controller of Capital Issues (CCI) issue size and price were approved by CCI after examining the various parameters/ ratios. With the repeal of Capital Issues (Control) Act, 1947 all the guidelines, notifications, circulars etc. issued by the office of the Controller of Capital Issues became defunct. The SEBI was given the mandate to regulate issuance of securities, namely the guidelines for Disclosure and Investor Protection, 1992. Later, the SEBI issued a compendium containing consolidated Guidelines, circulars, instructions relating to issue of capital effective from January 27, 2000. The compendium titled the SEBI (Disclosure and Investor Protection)

Guidelines, 2000 replaced the original Guidelines issued in June 1992 and clarifications thereof. On August 26, 2009 the SEBI rescinded the SEBI (DIP) Guidelines, 2000 and notified the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

To align the provisions under ICDR Regulations with Companies Act, 2013 and allied regulations, SEBI issued a consultation paper detailing the suggestive changes under various fund-raising options by listed issuers. Between 2009-till date, numerous amendments have been made to the ICDR Regulations. Different types of offerings to raise funds in the primary market have been introduced. Further, there have been changes in market practices and regulatory environment over a period of time. A need was thus felt to review and realign the ICDR Regulations with these developments and to ensure that they reflect the best practices adopted globally. In view of the same, the SEBI constituted the Issue of Capital & Disclosure Requirements Committee ("ICDR Committee") under the Chairmanship of Shri Prithvi Haldea in June, 2017, to review the ICDR Regulations with the following objectives:

a) To simplify the language and complexities in the regulations;

b) To incorporate changes/new requirements which have occurred due to change in market practices and regulatory environment; and

c) To make the regulations more readable and easier to understand.

ICDR Committee Suggestions

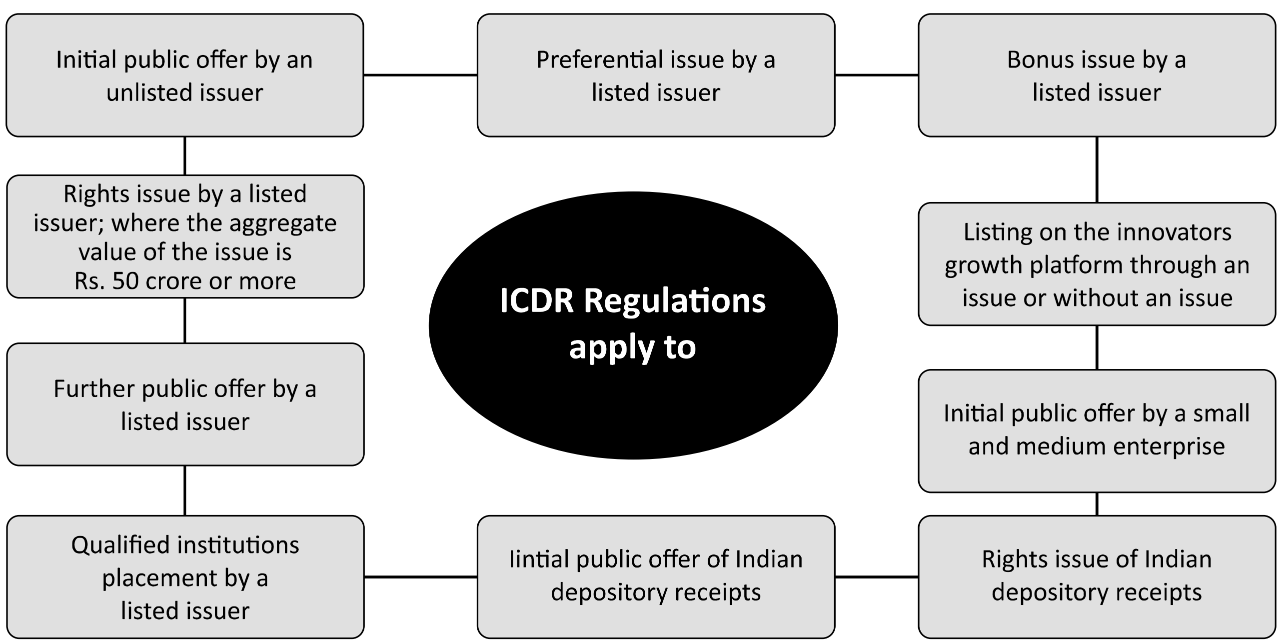
The ICDR Committee suggested certain policy changes. These suggestions were also taken to the Primary Market Advisory Committee (PMAC) of the SEBI which comprises of eminent representatives from the Ministry of Finance, Industry, Market Participants, academicians, the Institute of Chartered Accountants of India and the Institute of Company Secretaries of India. The recommendations of the PMAC were incorporated in the draft of the proposed ICDR Regulations. In addition to the public consultation, the draft regulations along with the key policy changes were also forwarded to the Ministry of Finance (MoF), Ministry of Corporate Affairs (MCA) and the Reserve Bank of India (RBI) for their comments. The provisions of Companies Act, 1956 (wherever applicable), Companies Act, 2013, the SEBI (Substantial Acquisition & Substantial Takeover) Regulations, 2011, the SEBI (Share Based Employee Benefits) Regulations, 2014 have been suitably incorporated.

SEBI vide its notification dated 11th September, 2018 issued the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ('ICDR Regulations, 2018') which was effective from 60th day of its publication in Official Gazette.

Chapter as per ICDR Regulations, 2018	***Particulars***
I.	Preliminary
II.	Initial Public Offer (IPO) on Main Board
III.	Right Issue
IV.	Further Public Offer
V.	Preferential Issue
VI.	Qualified Institutions Placement

Chapter as per ICDR Regulations, 2018	*Particulars*
VII.	IPO of Indian Depositary Receipts (IDR)
VIII.	Rights Issue of IDR
IX.	IPO by Small and Medium Enterprises (SME)
X.	Innovators Growth Platform (IGP)
XI.	Bonus Issue
XI-A.	Power to Relax Strict Enforcement of the Regulations
XII.	Miscellaneous

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



INITIAL PUBLIC OFFER / FURTHER PUBLIC OFFER

A public issue of specified securities by an issuer can be either an Initial Public Offer (IPO) or a Further Public Offer (FPO). An IPO is done by an unlisted issuer while a FPO is done by a listed issuer. As per the ICDR Regulations, the issuer shall comply with the following conditions before making an IPO of specified securities. The conditions need to be satisfied both at the time of filing the draft offer document (commonly referred to as the Draft Red Herring Prospectus) and the time of 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)]

ENTITIES NOT ELIGIBLE TO MAKE AN IPO

(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 ₹ 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 ₹ 15 crores, calculated on a restated and consolidated basis, during the three preceding 3 years, with operating profit in each of the three preceding years.

c. the issuer has a networth of atleast ₹ 1 crore in each of the preceding three full years, calculated on a restated and consolidated basis.

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

In case the Eligibility conditions are not met-

An issuer not satisfying the above-mentioned conditions shall be eligible to make an initial public offer only if the issue is made through the book-building process and the issuer undertakes to allot at least 75% of the net offer to qualified institutional buyers (QIBs) and to refund the full subscription money if it fails to do so.

Eligibility Criteria for Main Board Listing as per SEBI (ICDR) Regulations, 2018

Option I Net tangible assets, profitability and net worth track record = Net Tangible Assets of at least Rs. 3 crores (for past 3 years) Not more than 50% in monetary assets + Average operating profit of Rs. 15 crores in preceding three years (of twelve months each), with operating profit in each of these preceding three years + Net worth of at least Rs. 1 crore in each of the preceding 3 full years

Option II No net tangible assets, profitability and net worth track record = Issue through book building route with at least 75% allotted to QIBs + If QIB part is not subscribed, the issue will fail even if it is oversubscribed on overall basis

The above eligibility conditions are explained by the following examples:

Eligibility Condition No. 1

In case the issuer is proposing to file its draft offer document with the SEBI in April 2018, then the net tangible assets for the last 3 full years of 12 months each shall be atleast ₹3 crores and not more than 50% of the same shall be held in monetary assets. In the following table, it is seen that the net tangible assets is more than ₹ 3 crores in the year ended March 31, 2016, March 31, 2017 and March 31, 2018. Further monetary assets constitute less than 50% of the net tangible assets in each of the three previous financial years:

(₹ *in lacs)*

Year Ended March 31	*2016*	*2017*	*2018*
Net Tangible Assets	*2532.60*	*3510.33*	*4657.50*
Monetary Assets	*108.25*	*302.33*	*288.17*
Monetary Assets as a percentage of Net Tangible Assets	*4.27*	*8.61*	*6.19*

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

Eligibility Condition No. 2

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

(*₹ in lacs*)

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

Eligibility Condition No. 3

In case the issuer proposes to file its draft offer document with the SEBI in August 2018 then the networth shall be atleast ₹ 1 crore in each of the last 3 financial years. In the following table, it is seen that the company has a networth of ₹ 1 crore in each of the last three financial years prior to the date of the filing of the draft offer document with the SEBI.

(*₹ in lacs*)

Year Ending March 31	***2016***	***2017***	***2018***
Equity Share Capital	2000.00	2000.00	2022.00
Share Application Money	0.00	0.00	165.00
Reserves & Surplus	590.02	1430.47	2742.71
Total	**2590.02**	**3595.47**	**4764.71**
Less : Misc. Expenses not written off	0.00	0.00	0.00
Less: Deferred Tax Assets	13.45	0.00	61.08
Net worth	**2576.57**	**3595.47**	**4703.63**

Since the all the above eligibility conditions are satisfied in the example and there is no change in the name of the company, this company is eligible to make an Initial Public Offering.

However, in case an issuer does not satisfy the eligibility conditions stipulated above, it may make an Initial Public Offer through the book building process and further undertake to allot atleast 75% of the net offer to the public to qualified institutional buyers and to refund full subscription money if it fails to do so. [Regulation 6(2)]

General Conditions [Regulation 7]

- An issuer making an initial public offer shall ensure that:

  a) it has made an application to one or more stock exchanges to seek an in-principle approval for listing of its specified securities on such stock exchanges and has chosen one of them as the designated stock exchange;

  b) it has entered into an agreement with a depository for dematerialisation of the specified securities already issued and proposed to be issued;

c) all its specified securities 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.

Explanation:

For the purposes of regulation 6 and regulation 7:

(i) "Project" means the object for which monies are proposed to be raised to cover the objects of the issue.

(ii) Partnership Firms.

In case of an issuer which had been a partnership firm or a limited liability partnership, the track record of distributable profit of the partnership firm or the LLP shall be considered only if the financial statements of the partnership business for the period during which the issuer was a partnership firm conform to and are revised in the format prescribed for companies under the Companies Act, 2013 and also comply with the following:

(a) adequate disclosures are made in the financial statements as required to be made in the format prescribed under the Companies Act, 2013;

(b) the financial statements are duly certified by a Chartered Accountant stating that:

(i) the accounts and the disclosures made are in accordance with the provisions of Schedule III of the Companies Act, 2013

(ii) the accounting standards of the Institute of Chartered Accountants of India have been followed;

(iii) the financial statements present a true and fair view of the firm's accounts.

Spinning off of a division

In case of an issuer formed out of a division of an existing company, the track record of distributable profits of the division spun-off shall be considered only if the requirements regarding financial statements as provided for partnership firms and LLPs are complied with.

Additional conditions for an offer for sale [Regulation 8 and 8A]

Shares must be fully paid-up.

Shall be held by the sellers for a period of at least one year prior to the filing of the draft offer document.

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.

Further, such holding period of one year shall be required to be complied with at the time of filing of the draft offer document.

If the equity shares arising out of the conversion or exchange of the fully paid-up compulsorily convertible securities are being offered for sale, the conversion or exchange should be completed prior to filing of the offer document (i.e. red herring prospectus in the case of a book built issue and prospectus in the case of a fixed price issue), provided full disclosures of the terms of conversion or exchange are made in the draft offer document.

Non-Applicability

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

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

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:

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

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 [Regulation 13]

An issuer shall be eligible to issue warrants in an initial public offer subject to the following:

Tenure of such warrants shall not exceed eighteen months from the date of their allotment in the initial public offer	In case the warrant holder does not exercise the option to take equity shares against any of the warrants held by the warrant holder, within three months from the date of payment of consideration, such consideration made in respect of such warrants shall be forfeited by the issuer
Price or formula for determination of exercise price of the warrants shall be determined upfront and disclosed in the offer document and atleast 25 % of the consideration amount based on the exercise price shall also be received upfront	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 CRITERIA FOR FURTHER PUBLIC OFFER (FPO)

Entities not eligible to make a FPO [Regulation 102]

An issuer shall not be eligible to make a FPO of specified securities:

(a) If the issuer, any of its promoters, promoter group or directors, selling shareholders are debarred from accessing the capital market

(b) If any of the promoters or directors of the issuer is a promoter or a director of any other company which is debarred from accessing capital market by the SEBI

(c) If the issuer or any of its promoters or directors is a willful defaulter or a fraudulent borrower

(d) If any of the promoters or directors of the issuer is a fugitive offender

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.

Eligibility requirements for FPO [Regulation 103]

- An issuer shall be eligible to make a further public offer, if it has not changed its name in the last one year period immediately preceding the date of filing the relevant offer document:

  However, if an issuer has changed its name in the last one year period immediately preceding the date of filing the relevant offer document, such an issuer shall make further public offer if at least 50% of the revenue for the preceding one full year has been earned by it from the activity indicated by its new name.

  An issuer not satisfying the condition stipulated above, shall make a further public offer only if the issue is made through the book building process and the issuer undertakes to allot at least 75% of the net offer, to qualified institutional buyers and to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers.

General Conditions for FPO [Regulation 104]

An issuer making an FPO shall ensure that:

An application is made for listing of the specified securities to one or more of the recognized stock exchanges and choose one of the exchanges as the designated stock exchange.

An agreement is entered into with a depository for dematerialization of specified securities already issued and proposed to be issued.

All its existing partly paid up equity shares have either been fully paid up or have been forfeited. In other words, if a company has partly paid up equity shares, they shall not be permitted to make a public issue.

The issuer should make firm arrangements of finance through verifiable means towards 75% of the stated means of finance for the specific project proposed to be funded from the issue proceeds, excluding the amount to be raised through the proposed public issue or through existing identifiable internal accruals.

Amount for General Corporate Purposes as mentioned in objects of the issue in the draft offer document and the offer document shall not exceed 25% of the amount being raised by the issuer.

- The amount for:

  (i) general corporate purposes, and

  (ii) such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document,

  shall not exceed 35% of the amount being raised by the issuer. However, the amount raised for such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document, shall not exceed 25% of the amount being raised by the issuer.

However, such limits shall not apply if the proposed acquisition or strategic investment object has been identified and suitable specific disclosures about such acquisitions or investments are made in the draft offer document and the offer document at the time of filing of offer documents.

Issue of Warrants [Regulation 111]

An issuer shall be eligible to issue warrants in a further public offer subject to the following conditions:

- the tenure of such warrants shall not exceed eighteen months from the date of their allotment in the public issue;
- a specified security may have one or more warrants attached to it;
- the price or formula for determination of exercise price of the warrants shall be determined upfront and at least 25% of the consideration amount based on the exercise price shall also be received upfront. However, in case the exercise price of warrants is based on a formula, 25% consideration amount based on the cap price of the price band determined for the linked equity shares or convertible securities shall be received upfront;
- in case the warrant holder does not exercise the option to take equity shares against any of the warrants held by the warrant holder, within three months from the date of payment of consideration, such consideration made in respect of such warrants shall be forfeited by the issuer.

PROMOTERS' CONTRIBUTION

In Case of IPO [Regulation 14]

The promoters of the issuer shall hold at least 20% of the post-issue capital.

However, in case the post-issue shareholding of the promoters is less than 20%., alternative investment funds or foreign venture capital investors or scheduled commercial banks or public financial institutions or insurance companies registered with 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).

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 ninety five per cent of the complaints received from the investors till the end of the quarter immediately preceding the month of the reference date, and;
- the issuer has been in compliance with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for a minimum period of three years immediately preceding the reference date.

In case of FPO [Regulation 113]

- The promoters shall contribute in the public issue as follows:
  - a) either to the extent of 20% of the proposed issue size or to the extent of 20% of the post-issue capital;
  - b) in case of a composite issue (i.e., further public offer cum rights issue), either to the extent of 20% of the proposed issue size or to the extent of 20% of the post-issue capital excluding the rights issue component.

LOCK-IN REQUIREMENTS

For Securities Held by Promoters [Regulations 16 & 115]

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

Promoters Contribution	The promoters contribution including contribution made by AIFs or FVCIs or scheduled commercial banks or PFIs or insurance companies registered with IRDA, shall be locked-in for a period of 18 months from the date allotment in the IPO/FPO. However, lock-in period shall be 3 years in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure.
Promoters' holding in excess of minimum promoters' contribution	Promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of 6 months from the date of allotment in the initial public offer. However, lock-in period shall be 1 year in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure.
In case of SR Equity Shares	SR equity shares shall be under lock-in until conversion into equity shares having voting rights same as that of ordinary shares or shall be locked-in for a period specified above, whichever is later. In case of FPO, the SR equity shares shall be under lock-in until their conversion to equity shares having voting rights same as that of ordinary shares, provided they are in compliance with the other provisions of these regulations.

Securities held by persons other than Promoters [Regulation 17]

The entire pre-issue share capital, held by persons other than the promoters, shall be locked-in for a period of 6 months from the date of allotment in the initial public offer.

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

(i) Equity shares allotted to employees under employee stock option or employee stock purchase scheme 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

- **ASBA**: The issuer shall accept bids using only the ASBA facility in the manner specified by the Board. ASBA means an application for subscribing to a public issue or rights issue, along with an authorisation to self-certified syndicate bank to block the application money in a bank account.
- **IPO grading**: The issuer may obtain grading for its initial public offer from one or more credit rating agencies registered with the Board.
- **Underwriting**: If the issuer making an IPO/FPO, other than through the book building process, desires to have the issue underwritten, 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).
- **Monitoring agency:** 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.
- **Pre-issue advertisement**: The issuer shall, after filing the red herring prospectus (in case of a book built issue) or prospectus (in case of fixed price issue) with the Registrar of Companies, make a pre-issue 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.
- **Opening of the issue**: A public issue may be opened within 12 months from the date of issuance of the observations by the SEBI.
- **Minimum subscription**: The minimum subscription to be received in the issue shall be at least 90% of the offer through the offer document. In the event of non-receipt of minimum subscription, all application monies received shall be refunded to the applicants forthwith, but not later than 4 days from the closure of the issue.
- **Period of subscription**: An IPO/FPO shall be kept open for at least 3 working days and not more than 10 working days.
- **Minimum application value**: The minimum sum payable on application per specified security shall be at least 25% of the issue price.
- **Post-issue Advertisements:** The lead manager shall ensure that an advertisement giving details relating to subscription, basis of allotment, number, value and percentage of all applications including ASBA, number, value and percentage of successful allottees for all applications including ASBA, date of completion of despatch of refund orders, as applicable, or instructions to self-certified syndicate banks by the registrar, date of credit of specified securities and date of filing of listing application, etc. is released within 10 days from the date of completion of the various activities in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where registered office of the issuer is situated.
- **Release of subscription money**: The lead manager shall confirm to the bankers to the issue by way of copies of listing and trading approvals that all formalities in connection with the issue have been completed and that the banker is free to release the money to the issuer or release the money for refund in case of failure of the issue.

FAST TRACK FPO [REGULATION 155]

Eligibility

An Issuer Company need not file the draft offer document with SEBI and obtain observations from SEBI, if it satisfies the following conditions for making a further public offer through fast track route:

(a)	Listing	Equity shares of the issuer have been listed on any stock exchange for a period of at least three years immediately preceding the reference date
(b)	Demat form	Entire shareholding of the promoter group of the issuer is held in dematerialised form on the reference date
(c)	Market Capitalisation	Average market capitalisation of public shareholding of the issuer is at least ₹1000 crores in case of public
(d)	Trading Turnover	Annualised trading turnover of the equity shares of the issuer during six calendar months immediately preceding the month of the reference date has been at least 2% of the weighted average number of equity shares listed during such six months' period. However, if the public shareholding is less than fifteen per cent of its issued equity capital, the annualised trading turnover of its equity shares has been at least 2% of the weighted average number of equity shares available as free float during such six months' period
(e)	Delivery based trading	Annualized delivery-based trading turnover of the equity shares during six calendar months immediately preceding the month of the reference date has been at least 10% of the annualised trading turnover of the equity shares during such six months period
(f)	Compliance with SEBI (LODR) Regulations, 2015	The issuer has been in compliance with the equity listing agreement or Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, as applicable, for a period of at least three years immediately preceding the reference date However, if the issuer has not complied with the provisions of the listing agreement or SEBI (LODR) Regulations, 2015, as applicable, relating to composition of board of directors, for any quarter during the last three years immediately preceding the reference date, but is compliant with such provisions at the time of filing of RHP, and adequate disclosures are made in the RHP about such non-compliances during the three years immediately preceding the reference date, it shall be deemed as compliance with the condition Further, imposition of monetary fines by stock exchange on the issuer shall not be a ground for ineligibility for undertaking issuances under these regulations
(g)	Investor Complaints	Issuer has redressed at least 95% of the complaints received from the investors till the end of the quarter immediately preceding the month of the reference date
(h)	No Show-cause notices	No show-cause notices, excluding proceedings for imposition of penalty, have been issued by the Board and pending against the issuer or its promoters or whole time directors as on the reference date

(i)	No alleged violations	In case issuer or the promoter or the promoter group or the director of the issuer has settled any alleged violations of securities laws through the settlement mechanism of the Board in the past three years immediately preceding the reference date, then the disclosure of such compliance of the settlement order, shall be made in the offer document
(j)	Disciplinary measures	Equity shares of the issuer have not been suspended from trading as a disciplinary measure during last three years immediately preceding the reference date
(k)	Conflict of interest	There shall be no conflict of interest between the lead merchant banker(s) and the issuer or its group or associate company in accordance with applicable regulations
(l)	Audit Qualification	For audit qualifications, if any, in respect of any of the financial years for which accounts are disclosed in the offer document, the issuer shall provide the restated financial statements adjusting for the impact of the audit qualifications. Further, for the qualifications wherein impact on the financials cannot be ascertained, the same shall be disclosed appropriately in the offer document

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

RIGHTS ISSUE

Definition of Right Issue

"Rights issue" means an offer of specified securities by a listed issuer to the shareholders of the issuer as on the record date fixed for the said purpose.

In general, fresh shares offered to existing shareholders in proportion to their existing holding in the share capital of the company are termed as "Rights shares" popularly known as rights issue. In the rights issue the shareholders have a right to participate in the issue. It is pre-emptive rights given by the status to existing shareholders. In this rights issue, the offer is required to be made to the existing shareholders on pro-rata to their existing holdings. The shareholders who are offered may or may not subscribe to the same. They may subscribe partly or fully the offer. They have a power to renounce the shares offered to any other person who need not be an existing shareholder of the company.

An issuer offering specified securities of aggregate value of fifty crore rupees or more, through a rights issue shall satisfy the conditions of Chapter III of SEBI (ICDR) Regulations, 2018 at the time of filing the draft letter of offer with the SEBI and also at the time of filing the final letter of offer with the stock exchanges, as the case may be.

Entities not eligible to make a rights issue [Regulation 61]

An issuer shall not be eligible to make a rights issue of specified securities:

(a) if the issuer, any of its promoters, promoter group or directors of the issuer are debarred from accessing the capital market by the SEBI

(b) if any of the promoters or directors of the issuer is a promoter or director of any other company which is debarred from accessing the capital market by the SEBI

(c) if any of its promoters or directors is a fugitive economic offender

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

General conditions [Regulation 62]

(1) The issuer making a rights issue of specified securities shall ensure that:

- it has made an application to one or more stock exchanges to seek an in-principle approval for listing of its specified securities on such stock exchanges and has chosen one of them as the designated stock exchange;
- all its existing partly paid-up equity shares have either been fully paid-up or have been forfeited;
- it has made firm arrangements of finance through verifiable means towards 75% of the stated means of finance for the specific project proposed to be funded from issue proceeds, excluding the amount to be raised through the proposed rights issue or through existing identifiable internal accruals.

(2) The amount for general corporate purposes, as mentioned in objects of the issue in the draft letter of offer and the letter of offer, shall not exceed 25% of the amount raised by the issuer.

(3) The amount for:

(i) general corporate purposes, and

(ii) such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document,

shall not exceed 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.

(4) Where the issuer or any of its promoters or directors is a willful defaulter or a fraudulent borrower, the promoters or promoter group of the issuer shall not renounce their rights except to the extent of renunciation within the promoter group.

(5) Where the issuer has issued SR equity shares to its promoters or founders, then such a SR shareholder shall not renounce their rights and the SR shares received in a rights issue shall remain under lock-in until conversion into equity shares having voting rights same as that of ordinary equity shares along with existing SR equity shares.

PREFERENTIAL ISSUE

Definition of Preferential Issue

"Preferential issue" means an issue of specified securities by a listed issuer to any select person or group of persons on a private placement basis in accordance with Chapter V of these regulations and does not include an offer of specified securities made through employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or depository receipts issued in a country outside India or foreign securities.

An issuer offering specified securities through preferential issue shall satisfy the conditions of Chapter V of SEBI (ICDR) Regulations, 2018.

Issuers ineligible to make a Preferential Issue [Regulation 159]

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:

- the date of expiry of the tenure of the warrants due to non-exercise of the option to convert; or
- the date of cancellation of the warrants, as the case may be.

Conditions for preferential issue [Regulation 160]

A listed issuer making a preferential issue of specified securities shall ensure that:

- **Fully Paid-up:** All equity shares allotted by way of preferential issue shall be made fully paid up at the time of the allotment.
- **Special Resolution:** A special resolution has been passed by its shareholders.
- **Demat form:** All equity shares held by the proposed allottees in the issuer are in dematerialised form before an application seeking in-principle approval is made by the issuer to the stock exchange(s) where its equity shares are listed.
- **Compliance:** The issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the stock exchange where the equity shares of the issuer are listed and SEBI (LODR) Regulations, 2015 as amended, and any circular or notification issued by the SEBI thereunder.
- **PAN:** The issuer has obtained the Permanent Account Numbers (PAN) of the proposed allottees, except those allottees which may be exempt from specifying their PAN for transacting in the securities market by the SEBI before an application seeking in-principle approval is made by the issuer to the stock exchange(s) where its equity shares are listed.

The issuer has made an application seeking in-principle approval to the stock exchange(s), where its equity shares are listed, on the same day when the notice has been sent in respect of the general meeting seeking shareholders' approval by way of special resolution.

QUALIFIED INSTITUTIONS PLACEMENT

Definition of Qualified Institutions Placement

"Qualified institutions placement" means issue of eligible securities by a listed issuer to qualified institutional buyers on a private placement basis and includes an offer for sale of specified securities by the promoters and/ or promoter group on a private placement basis, in terms of these regulations.

The provisions relating to eligibility, conditions and other provisions for Qualified Institutions Placement have been provided in Chapter VI of SEBI (ICDR) Regulations, 2018.

Conditions for Qualified Institutions Placement [Regulation 172]

(1) A listed issuer may make a qualified institutions placement of eligible securities if it satisfies the following conditions:

(a) Special resolution:

- a special resolution approving the qualified institutions placement has been passed by its shareholders, and the special resolution shall, among other relevant matters, specify that the allotment is proposed to be made through qualified institutions placement and the relevant date referred to in regulation 171(b);
- 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 nation-wide trading terminals shall also be considered for the purpose of computation of the period of one year;
- This clause shall not be applicable to an issuer proposing to undertake qualified institutional placement for complying with the minimum public shareholding requirements specified in the Securities Contracts (Regulation), Rules 1957.

  Explanation: For the purpose of clause (b), "equity shares of the same class" shall mean equity shares which rank pari-passu in relation to rights as to dividend, voting or otherwise.

(c) An issuer shall be eligible to make a qualified institutions placement if any of its promoters or directors is not a fugitive economic offender.

(2) All eligible securities issued through a qualified institutions placement shall be listed on the recognised stock exchange where the equity shares of the issuer are listed. Provided that the issuer shall seek approval under rule 19(7) of the Securities Contracts (Regulation) Rules, 1957, if applicable.

(3) The issuer shall not make any subsequent qualified institutions placement until the expiry of two weeks from the date of the prior qualified institutions placement made pursuant to one or more special resolutions.

INITIAL PUBLIC OFFER OF INDIAN DEPOSITORY RECEIPTS

The provisions of Chapter VII shall apply to an issue of Indian Depository Receipts (hereinafter referred to as "IDR") made in terms of the Companies Act, 2013 and Companies (Registration of Foreign Companies) Rules, 2014.

An issuer making a public issue of IDRs shall satisfy the conditions of Chapter VII of SEBI (ICDR) Regulations, 2018 as on the date of filing draft offer document with the SEBI and also as on the date of filing the offer document with the Registrar of Companies.

Eligibility conditions [Regulation 183]

Eligibility

- Issuing company is listed in its home country for at least three immediately preceding years;
- Issuer is not prohibited to issue securities by any regulatory body;
- Issuer has a track record of compliance with the securities market regulations in its home country;
- Any of its promoters or directors is not a fugitive economic offender.

('Home Country' means the country where the issuer is incorporated or listed)

Conditions

- issue size shall not be less than Rs.50 crore;
- at any given time, there shall be only one denomination of IDRs of the issuer;
- issuer shall ensure that the underlying equity shares against which IDRs are issued have been or will be listed in its home country before listing of IDRs in stock exchange(s);
- issuer shall ensure that the underlying shares of IDRs shall rank pari passu with the existing shares of the same class.

Issuer shall ensure that:

- it has made an application to one or more stock exchanges to seek an in-principle approval for listing of the IDRs on such stock exchanges and has chosen one of them as the designated stock exchange;
- it has entered into an agreement with a depository for dematerialisation of the IDRs proposed to be issued;
- it has made firm arrangements of finance through verifiable means towards 75% of the stated means of finance for the project proposed to be funded from issue proceeds, excluding the amount to be raised through the proposed issue of IDRs or through existing identifiable internal accruals, have been made;
- The amount for general corporate purposes, as mentioned in objects of the issue in the draft offer document and the offer document shall not exceed 25% of the amount being raised by the issuer.

RIGHTS ISSUE OF INDIAN DEPOSITORY RECEIPTS

In addition to compliance with Chapter VII Initial Public Offer of Indian Depository Receipts, wherever applicable, a listed issuer offering IDRs through a rights issue shall satisfy the conditions specified in Chapter VIII of SEBI (ICDR) Regulations, 2018 at the time of filing the offer document.

The issuer shall ensure that it has made an application to all the stock exchanges in India, where its IDRs are already listed, for listing of the IDRs to be issued by way of rights and has chosen one of them as the designated stock exchange.

Entities not eligible to make a rights issue [Regulation 213]

An issuer shall not be eligible to make a rights issue of IDRs if –

- At the time of undertaking the rights issue, the issuer is in breach of ongoing material obligations under the listing agreement and the SEBI LODR as may be applicable to such issuer or material obligations under the deposit agreement entered into between the domestic depository and the issuer at the time of initial offering of IDRs
- Any of its promoters or directors is a fugitive economic offender

INITIAL PUBLIC OFFER BY SMALL AND MEDIUM ENTERPRISES

An issuer making an initial public offer of specified securities shall satisfy the conditions of Chapter IX of SEBI (ICDR) Regulations, 2018 as on the date of filing of the draft offer document with the SME exchange and also as on the date of filing the offer document with the Registrar of Companies.

Entities not eligible to make an initial public offer [Regulation 228]

An issuer shall not be eligible to make an initial public offer:

(a) if the issuer, any of its promoters, promoter group or directors or selling shareholders are debarred from accessing the capital market by the SEBI

(b) if any of the promoters or directors of the issuer is a promoter or director of any other company which is debarred from accessing the capital market by the SEBI

(c) if the issuer or any of its promoters or directors is a willful defaulter or a fraudulent borrower

(d) if any of its promoters or directors is a fugitive economic offender.

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

Eligibility requirements for an initial public offer

- If post issue paid-up capital is <= Rs.10 Crores - **list only on SME Board**
- If post issue paid-up capital is > Rs 10 crores but up to Rs.25 crores – **Option to list either on SME Board or on Main Board**
- SEBI does not issue any observation on the offer document
- The lead manager(s) shall submit a **due-diligence** certificate to 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 through 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.

General conditions [Regulation 230]

(1) An issuer making an initial public offer shall ensure that:

- it has made an application to one or more SME exchanges for listing of its specified securities on such SME exchange(s) and has chosen one of them as the designated stock exchange;
- it has entered into an agreement with a depository for dematerialisation of its specified securities already issued and proposed to be issued;

- all its existing partly paid-up equity shares have either been fully paid-up or forfeited;
- all specified securities held by the promoters are in the dematerialised form;
- it has made firm arrangements of finance through verifiable means towards 75% of the stated means of finance for the project proposed to be funded from the issue proceeds, excluding the amount to be raised through the proposed public offer or through existing identifiable internal accruals.

(2) The amount for general corporate purposes, as mentioned in objects of the issue in the draft offer document and the offer document shall not exceed 25% of the amount being raised by the issuer.

INNOVATORS GROWTH PLATFORM

Definition of Innovators growth platform

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

Listing on Innovators Growth Platform (IGP)

Aimed to list startups which are intensive in the use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology to provide products, services or business platform

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

BONUS ISSUE

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

A listed company issuing bonus shares shall comply with the requirements of Companies Act, 2013 and also Chapter XI of SEBI (ICDR) Regulations, 2018.

Conditions for a bonus issue [Regulation 293]

Subject to the provisions of the Companies Act, 2013 or any other applicable law, a listed issuer shall be eligible to issue bonus shares to its members if:

- it is authorised by its articles of association for issue of bonus shares, capitalisation of reserves, etc.
- If there is no such provision in the articles of association, the issuer shall pass a resolution at its general body meeting making provisions in the articles of associations for capitalisation of reserve
- it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it
- it has not defaulted in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity and bonus
- any outstanding partly paid shares on the date of the allotment of the bonus shares, are made fully paid-up
- any of its promoters or directors is not a fugitive economic offender

Restrictions on a bonus issue [Regulation 294]

- An issuer shall make a bonus issue of equity shares only if it has made reservation of equity shares of the same class in favour of the holders of outstanding compulsorily convertible debt instruments if any, in proportion to the convertible part thereof.
- The equity shares so reserved for the holders of fully or partly compulsorily convertible debt instruments, shall be issued to the holder of such convertible debt instruments or warrants at the time of conversion of such convertible debt instruments, optionally convertible instruments, warrants, as the case may be, on the same terms or same proportion at which the bonus shares were issued.
- A bonus issue shall be made only out of free reserves, securities premium account or capital redemption reserve account and built out of the genuine profits or securities premium collected in cash and reserves created by revaluation of fixed assets shall not be capitalised for this purpose.
- Bonus shares shall not be issued in lieu of dividends.
- If an issuer has issued SR equity shares to its promoters or founders, any bonus issue on the SR equity shares shall carry the same ratio of voting rights compared to ordinary shares and the SR equity shares issued in a bonus issue shall also be converted to equity shares having voting rights same as that of ordinary equity shares along with existing SR equity shares.

Completion of a bonus issue [Regulation 295]

- An issuer, announcing a bonus issue after approval by its board of directors and not requiring shareholders' approval for capitalisation of profits or reserves for making the bonus issue, shall implement the bonus issue within fifteen days from the date of approval of the issue by its board of directors:

- Where the issuer is required to seek shareholders' approval for capitalisation of profits or reserves for making the bonus issue, the bonus issue shall be implemented within two months from the date of the meeting of its board of directors wherein the decision to announce the bonus issue was taken subject to shareholders' approval.

  Explanation: For the purpose of a bonus issue to be considered as 'implemented' the date of commencement of trading shall be considered.

- A bonus issue, once announced, shall not be withdrawn.

LESSON ROUND-UP

- Public Issue of shares means the selling or marketing of shares for subscription by the public by issue of prospectus.
- Issue of Securities are regulated by the SEBI (ICDR) Regulations, 2018.
- The SEBI (ICDR) Regulations, 2018 lays down the provisions and procedure for various types of issue, including public and rights issue.
- In case of an IPO, the promoters of the issue shall hold at least 20% of the post issue capital.
- The promoters' holding in excess of minimum promoters' contribution shall be locked in for a period of six months from the date of allotment in the IPO.
- The issuer shall appoint one or more merchant bankers, which are registered with the SEBI, as lead manager(s) to the issue.
- Every company making a public issue is required to appoint a compliance officer and intimate the name of the compliance officer to SEBI.
- Public issue must be kept open for atleast 3 working days but not more than 10 working days.
- Rights issue means an offer of specified securities by a listed issuer to the shareholders of the issuer as on the record date fixed for the said purpose.
- Qualified institutions placement means issue of eligible securities by a listed issuer to qualified institutional buyers on a private placement basis and includes an offer for sale of specified securities by the promoters and/or promoter group on a private placement basis, in terms of these regulations.
- Innovators growth platform means the trading platform for listing and trading of specified securities of issuers that comply with the eligibility criteria specified in regulation 283 of SEBI (ICDR) Regulations, 2018.
- When an issuer makes an issue of shares to its existing shareholders without any consideration based on the number of shares already held by them as on a record date it is called a bonus issue.

GLOSSARY

Average market: It means the sum of daily market capitalization of "public shareholding" for a period of capitalisation of one year up to the end of the quarter preceding the month in which the proposed public shareholding issue was approved by the Board of Directors/ shareholders, as the case may be, divided by the number of trading days.

Book Building: Book Building means a process undertaken to elicit demand and to assess the price for determination of the quantum or value or coupon of specified securities or Indian Depository Receipts, as the case may be, in accordance with these regulations.

Net Worth: Net Worth means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

Basis of allotment: An allotment pattern of an issue among different categories of applicant.

General Corporate Purpose: It includes such identified purposes for which no specific amount is allocated or any amount so specified towards General Corporate Purpose or any such purpose by whatever name called, in the draft offer document, draft letter of offer, the offer document, or the letter of offer.

Offer for sale: An offer of securities by existing shareholder(s) of a company to the public of subscription through an offer document.

Price Band: The range within which the price of a security or the index of a currency is permitted to move within a given period.

Selling Shareholders: Selling Shareholders means any shareholder of the issuer who is offering for sale the specified securities in a public issue in accordance with these Regulations.

TEST YOURSELF

(*These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation*)

1. What is the eligibility requirement for making an initial public offer by an issuer?
2. Briefly enumerate the various conditions required to be fulfilled by an issuer to issuer warrant in an initial public offer.
3. Rights issue means an offer of specified securities by a listed issuer to the shareholders of the issuer as on the record date fixed for the said purpose. Enumerate the steps involved in issue and listing of rights shares.
4. PQR Limited, an unlisted company, is in the process of expanding its business. For expansion, it needs funds of ₹ 200 crore. For raising ₹ 200 crore, company has decided to bring an initial public offer through book building mechanism. It has fixed a price band of ₹ 500 – ₹ 600. Referring to provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, advise the company on the following matters :
   (i) What should be minimum application value and minimum number of equity shares in one application?
   (ii) What will be minimum sum payable on application?
   (iii) What should be minimum time period for which issue should remain open for subscription?
5. Write short notes on –
   (a) Minimum subscription
   (b) Minimum promoters' contribution and lock-in-period
   (c) Offer Document
   (d) Red-herring Prospectus